ICTR-00-56-T
17-06-2011
(31209 — 30621)

31209
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
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ORIGINAL: ENGLISH

TRIAL CHAMBER II

Before Judges: Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 17 May 2011

2011 JUN 17 P 3:34
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THE PROSECUTOR
v.
Augustin NDINDILIYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No: ICTR-00-56-T

JUDGEMENT AND SENTENCE

For the Prosecutor:
Alphonse Van
Moussa Séfon
Abubacarr Tambadou
Lloyd Stickland
Faria Rekkas

For the Defence:
For **Augustin Ndindiliyimana**:
Christopher Black & Vincent Lurquin
For **Augustin Bizimungu**:
Gilles St. Laurent & Benoît Henry
For **François-Xavier Nzuwonemeye**:
Charles Taku & Beth Lyons
For **Innocent Sagahutu**:
Fabian Segatwa & Saidou Doumbia

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CHAPTER I: Overview of the Case

1.1 Introduction

1. This case concerns the role of four members of the Rwandan Army and *Gendarmerie nationale* in the events in Rwanda between 6 April and 17 July 1994. These individuals are: Major General Augustin Ndindiliyimana, Chief of Staff of the *Gendarmerie nationale;* Major General Augustin Bizimungu, Commander of Operations for Ruhengeri *secteur* and Chief of Staff of the Rwandan Army after 19 April 1994; Major François-Xavier Nzuwonemeye, Commander of the elite Reconnaissance (RECCE) Battalion; and Captain Innocent Sagahutu, Commander of Squadron A of the RECCE Battalion.

2. In this overview, the Chamber will provide a brief account of each allegation in the Indictment,[1] along with a synopsis of its findings in relation to each allegation. The full reasoning underlying the Chamber's findings is set out in Chapters IV and V of the Judgement.

1.1.1 *Allegations Withdrawn and Acquittals Entered at the Close of the Prosecution's Case in Chief*

3. At the close of the Prosecution's case in chief, the Prosecution withdrew a number of allegations described in various paragraphs of the Indictment and subject to acquittals by the Chamber. These withdrawn allegations are contained in paragraphs 71, 72, 79, 92, 94, 95, 97 and 98 of the Indictment. The Chamber also entered an acquittal for paragraph 66, which the Prosecution did not willingly withdraw. The Prosecution failed to lead evidence on a number of paragraphs, including some of the events relating to paragraphs 51, 54, 55, 56, 57, 58, 80 and 85. The Chamber therefore did not consider any of the incidents in these paragraphs in its verdict. These matters are detailed in Chapter II of the Judgement.

1.1.2 *Count 1: Conspiracy to Commit Genocide*

4. The Indictment alleges that the four Accused conspired among themselves and with other high-ranking Hutu civilian and military authorities to commit genocide against Tutsi. In response, all Accused reject the allegation that they conspired to commit genocide. Nzuwonemeye, in addition, submits that the Indictment failed to plead with the requisite specificity the allegations of conspiracy proffered against him.

5. The Chamber has limited its findings to a determination of whether the four Accused in this trial conspired to commit genocide against Tutsi based on the facts alleged in the Indictment. In so doing, the Chamber finds that the Prosecution failed to prove that the Accused engaged in a conspiracy to commit genocide.

1.1.3 *Counts 2 and 3: Genocide or in the Alternative Complicity in Genocide*

6. The Indictment alleges that Ndindiliyimana and Bizimungu are responsible as direct perpetrators and superiors for genocide against the Tutsi population of Rwanda. In the alternative, the Indictment alleges that Ndindiliyimana and Bizimungu were complicit in genocide.

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[1] In this Judgement, the Indictment refers to the Prosecution's Amended Indictment of 23 August 2004.

1.1.3.1 Bizimungu and the Killing of Tutsi by *Interahamwe* in Rwankeri *Secteur* and Busogo Parish

7. The Indictment alleges that on 7 April 1994, Bizimungu attended a meeting of prominent members of the Ruhengeri community, where he stated that Tutsi should be killed. It is alleged that following the meeting, local militiamen and soldiers under Bizimungu's command killed Tutsi in Rwankeri *secteur* and at Busogo Parish.

8. The Chamber finds that Bizimungu attended the 7 April 1994 meeting alluded to in the Indictment and that he made remarks calling for the killing of Tutsi in Ruhengeri. The Chamber further finds that widespread killings began after the meeting. The Chamber has concluded that Bizimungu's remarks contributed significantly to the killings by *Interahamwe* in Rwankeri *secteur*. As for the events at Busogo Parish, the Chamber finds that the Prosecution has failed to prove that Bizimungu's remarks had any effect on the assailants who killed Tutsi civilians at the parish.

1.1.3.2 Bizimungu and the Killing of Tutsi by *Interahamwe* at the Ruhengeri Court of Appeal

9. The Indictment alleges that Bizimungu and the *sous-préfet* of Ruhengeri met with members of the *Interahamwe* on or about 8 April 1994 and urged them to kill the Tutsi refugees at the Ruhengeri Court of Appeal. The Indictment further alleges that on or about 14 April 1994, Bizimungu, who was situated at a location close to the Ruhengeri Court of Appeal, signalled for the *Interahamwe* to attack the refugees there. This resulted in the deaths of more than 100 Tutsi.

10. The Chamber finds that more than 100 Tutsi refugees were killed by *Interahamwe* at the Ruhengeri Court of Appeal. However, the evidence adduced by the Prosecution fails to reliably implicate Bizimungu in those crimes.

1.1.3.3 Bizimungu and the Killing of Tutsi by *Interahamwe* at Roadblocks in EGENA

11. The Indictment alleges that on 16 June 1994, Bizimungu held a meeting with members of the *Interahamwe* at EGENA Camp at which he ordered *Interahamwe* militiamen to establish roadblocks in order to intercept Tutsi fleeing from the areas affected by the war. The Indictment further alleges that a large number of Tutsi and Hutu misidentified as Tutsi were killed at a roadblock at EGENA Camp as a result of Bizimungu's instructions to the militia at that meeting.

12. The Chamber finds that the Prosecution failed to prove that Bizimungu held a meeting with militiamen at EGENA Camp and that a large number of Tutsi and Hutu misidentified as Tutsi were killed at a roadblock erected near EGENA Camp.

1.1.3.4 Bizimungu and the Killing of Tutsi in Byangabo Neighbourhood

13. The Indictment alleges that Lieutenant Mburuburengero, a subordinate of Bizimungu, ordered *Interahamwe* militiamen to exterminate Tutsi in Ruhengeri. The Indictment further alleges that as a result of Mburuburengero's order, and using weapons and fuel provided by soldiers, 60 to 70 Tutsi were killed in the morning in Byangabo neighbourhood after their houses had been set aflame in order to flush them out.

14. The Chamber is not satisfied that Lieutenant Mburuburengero gave orders to militiamen that precipitated the killings at Byangabo neighbourhood on 7 April 1994. The Chamber is also not satisfied that soldiers provided weapons and fuel that contributed to the killings in Byangabo. The Prosecution therefore failed to prove this allegation beyond reasonable doubt.

1.1.3.5 Bizimungu and the Killing of Tutsi at Various Places in Kigali, Gitarama, Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri

15. The Indictment alleges that between mid-April and late-June 1994, soldiers under Bizimungu's command killed and caused serious bodily and mental harm to Tutsi at various locations in Kigali, Gitarama, Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri.

16. The Chamber finds that the Prosecution has proved beyond reasonable doubt that Rwandan Army soldiers killed and caused serious bodily and mental harm to Tutsi at the Josephite Brothers compound, *École Technique Officielle* ("ETO") and Nyanza Hill, the Musambira *commune* office and dispensary, *École des Sciences Infirmières de Kabgayi* ("ESI")[2] and the TRAFIPRO Centre ("TRAFIPRO"). The Chamber finds Bizimungu guilty of failing to prevent or punish the perpetrators of the crimes committed at the Josephite Brothers compound on 7 June and at the Musambira *commune* office and dispensary, ESI and TRAFIPRO during April and May 1994. However, the Chamber finds that Bizimungu is not criminally responsible for the participation of soldiers in crimes at the Josephite Brothers on 8 April and at ETO-Nyanza because those events took place before Bizimungu assumed his position as Chief of Staff of the Rwandan Army.

17. The Chamber finds that the Prosecution has failed to prove beyond reasonable doubt Bizimungu's culpability for the remaining allegations.

1.1.3.6 Ndindiliyimana and the Killing of Tutsi by *Gendarmes* at Kansi Parish

18. The Indictment alleges that between 20 and 22 April 1994, *gendarmes* who were assigned to guard Ndindiliyimana's house in Nyaruhengeri provided weapons and fuel to *Interahamwe* militiamen to kill Tutsi at Kansi Parish.

19. The Chamber finds that thousands of Tutsi civilians had sought refuge at Kansi Parish in the days before 20 April. The Chamber also accepts that a large number of those refugees were subsequently killed. The Chamber finds that the *gendarmes* stationed at Ndindiliyimana's house not only provided fuel and weapons to militia at Kansi Parish, but also directly participated in the killing of Tutsi refugees at the parish. The Chamber is satisfied that Ndindiliyimana had knowledge of the role of these *gendarmes* in the killings, but did not take measures to punish them. The Chamber therefore finds Ndindiliyimana criminally responsible as a superior for these crimes.

[2] In this Judgement, the *École des Sciences Infirmières de Kabgayi* (ESI) includes the Kabgayi Primary School referred to in the Indictment.

1.1.3.7 Ndindiliyimana and the Killing of Tutsi at the Nyaruhengeri *Secteur* Office

20. The Indictment alleges that *gendarmes* guarding Ndindiliyimana's residence in Nyaruhengeri provided two grenades to an *Interahamwe* militiaman named Kajuga, and that those grenades were subsequently used to seriously injure Tutsi refugees at the Nyaruhengeri *secteur* office.

21. The Chamber finds that this allegation has not been proved beyond reasonable doubt.

1.1.3.8 Ndindiliyimana and the Killing of Tutsi by *Gendarmes* at St. André College

22. The Indictment alleges that on or about 13 April 1994, *gendarmes* from the Nyamirambo brigade in collaboration with *Interahamwe* killed Tutsi men who had sought refuge at St. André College in Kigali. The Chamber finds that the Prosecution has proved beyond reasonable doubt that *gendarmes* based at Nyamirambo brigade participated in the killing of Tutsi civilians at St. André College.

23. The Chamber is also satisfied that Ndindiliyimana had reason to know that *gendarmes* under his command had committed these crimes and that he did not take any action to punish them. Accordingly, the Chamber finds Ndindiliyimana criminally responsible as a superior for these killings.

1.1.3.9 Ndindiliyimana and the Killing of Tutsi by *Gendarmes* and *Interahamwe* at CELA

24. The Indictment alleges that on or about 22 April, *gendarmes* removed approximately 60 Tutsi refugees from CELA and brought them to the *gendarmerie*'s Camp Muhima, where they were handed over to *Interahamwe* who subsequently killed them.

25. The Chamber, Judge Park dissenting, finds that the Prosecution did not adduce sufficient evidence to prove beyond reasonable doubt that Ndindiliyimana knew or had reason to know of the role of *gendarmes* in these events. Therefore, the Chamber does not find him culpable as a superior for these crimes.

1.1.4 *Count 4: Murder as a Crime Against Humanity*

26. The Indictment alleges that Ndindiliyimana, Bizimungu, Nzuwonemeye and Sagahutu are responsible as direct perpetrators and superiors for murder as a crime against humanity.

1.1.4.1 Bizimungu and the Killing of Tutsi by Militiamen at Ruhengeri Agronomic Centre

27. The Indictment alleges that at some point between 11 and 14 April 1994, Bizimungu brought four bound Tutsi to a roadblock at the Ruhengeri Agronomic Centre and ordered *Interahamwe* militiamen there to kill them.

28. The Chamber notes that one of the witnesses who testified in relation to this allegation recanted his testimony before another ICTR Trial Chamber. Consequently, the Chamber has disregarded his evidence. Upon consideration of the remaining evidence, the Chamber is not satisfied that this allegation has been proved beyond reasonable doubt.

1.1.4.2 Bizimungu and the Killing of Tutsi at Various Locations in Kigali and Gitarama

29. The Indictment alleges that Bizimungu's conduct at various locations in Kigali and Gitarama amounted not only to genocide, as detailed above, but also to murder and extermination as crimes against humanity.

30. In support of this allegation, the Prosecution relies on the same evidence that it presented in support of the allegation of genocide based on the killings of Tutsi at these locations. Accordingly, the Chamber makes the same factual findings as it did when considering these killings in relation to the crime of genocide. This leads the Chamber to find Bizimungu guilty of murder as a crime against humanity for the killings at the Josephite Brothers compound on 7 June and the killings at the Musambira *commune* office and dispensary, ESI and TRAFIPRO during April and May 1994. It finds Bizimungu not guilty for murder as a crime against humanity in relation to the charges at ETO-Nyanza, *Centre Hospitalier de Kigali* ("CHK") and Charles Lwanga Church.

1.1.4.3 Bizimungu and the Abduction and Killing of Tutsi by Soldiers and *Interahamwe* at Various Locations in Butare

31. The Indictment alleges that after 19 April 1994, soldiers of the Rwandan Army under the command of Bizimungu killed many Tutsi at the *préfecture* office, Episcopal Church of Rwanda ("EER"), Gishamvu Church and Nyumba Parish in Butare.

32. The Chamber notes that the Prosecution presented no evidence in support of the events at Gishamvu Church and Nyumba Parish. In relation to the events at the *préfecture* office and EER, the Chamber is satisfied that soldiers under Bizimungu's command abducted and killed Tutsi refugees at these locations. The Chamber further finds that Bizimungu knew or had reason to know of the role of Rwandan Army soldiers in these crimes, but did not take measures to prevent or punish them. The Chamber therefore finds him guilty as a superior for these crimes.

1.1.4.4 Bizimungu and the Abduction and Killing of Tutsi by Soldiers and *Interahamwe* in Gisenyi

33. The Indictment alleges that on 7 April 1994, Anatole Nsengiyumva, a subordinate of Bizimungu, ordered soldiers, militiamen and local leaders at a military camp to kill all Tutsi and RPF accomplices and then to distribute rifles and grenades to militiamen. The Indictment further alleges that between April and July 1994, militiamen in Gisenyi abducted and killed Tutsi and moderate Hutu on the orders of Nsengiyumva.

34. The Chamber finds that the evidence in relation to these crimes is insufficient to sustain a finding of guilt against Bizimungu.

1.1.4.5 Bizimungu and the Abduction and Killing of Tutsi by Soldiers and *Interahamwe* in Cyangugu

35. The Indictment alleges that in April and May 1994, *Interahamwe* and soldiers under the command of Bizimungu abducted and killed Tutsi refugees from Kamarampaka Stadium in Cyangugu ("Cyangugu Stadium") and Camp Nyarushishi in Cyangugu *préfecture*.

36. The Chamber finds that male Tutsi refugees at the stadium were identified and removed from the stadium and subsequently killed by soldiers and *Interahamwe*. The Chamber further finds that Bizimungu knew or had reason to know of these crimes. Accordingly, the Chamber finds Bizimungu criminally responsible for killings committed by soldiers at Cyangugu Stadium. However, the Chamber finds that the Prosecution evidence is insufficient to conclude that soldiers were implicated in killings of Tutsi men at Camp Nyarushishi.

1.1.4.6 Ndindiliyimana and the Killing of Ignace Habimana and Célestine Munyanshagore in Nyaruhengeri

37. The Indictment alleges that on 5 May 1994, Ndindiliyimana ordered a group of *Interahamwe* in Nyaruhengeri to kill two Tutsi men named Ignace Habimana and Célestine Munyanshagore.

38. The Chamber finds that there were significant inconsistencies within the Prosecution evidence. Accordingly, the Chamber is not satisfied that this allegation has been proved beyond reasonable doubt.

1.1.4.7 Ndindiliyimana and the Killing of Civilians by *Interahamwe* at a *Gendarmerie* Roadblock Near Camp Kacyiru

39. The Indictment alleges that during April 1994, at a roadblock near the *Gendarmerie* Headquarters at Camp Kacyiru, *Interahamwe* supervised by two *gendarmes* from Camp Kacyiru killed several Tutsi as well as some Hutu.

40. The Chamber is not persuaded that *gendarmes* from Kacyiru were involved in operating the roadblock in question or that they were implicated in the crimes that may have been committed at that roadblock. Consequently, the Chamber does not find Ndindiliyimana criminally responsible for this allegation.

1.1.4.8 Ndindiliyimana and the Killing of Gahoki

41. The Indictment alleges that in late April 1994, *gendarmes* stationed at Ndindiliyimana's house in Nyaruhengeri killed a Tutsi named Gahoki and took his motorcycle for their use.

42. The Chamber finds that the Prosecution has failed to adduce sufficient evidence to prove beyond reasonable doubt that Ndindiliyimana was implicated in the killing of Gahoki. The Chamber therefore finds Ndindiliyimana not guilty in respect to this allegation.

1.1.4.9 Ndindiliyimana and the Killing of Aloys Niyoyita and Phocus Kananeri by *Gendarmes* in Kigali

43. The Indictment alleges that in early May 1994, *gendarmes* killed Aloys Niyoyita, a member of the Liberal Party, and Phocus Kananeri. Both of the victims were Tutsi.

44. The Chamber finds that the Prosecution has not established beyond reasonable doubt that *gendarmes* were responsible for the killings of Niyoyita and Kananeri. The Chamber accordingly finds Ndindiliyimana not guilty of these murders.

1.1.4.10 Ndindiliyimana and the Killing of Tutsi at a Roadblock in Nyamirambo

45. The Indictment alleges that in April 1994, *gendarmes* operated a roadblock in Nyamirambo *secteur* at which Tutsi were stopped and summarily executed. The Chamber is not persuaded by the evidence implicating *gendarmes* in these crimes and therefore does not find Ndindiliyimana criminally responsible for this allegation.

1.1.4.11 Nzuwonemeye and Sagahutu and the Killing of Prime Minsiter Agathe Uwilingiyimana

46. The Indictment alleges that members of the RECCE Battalion under the command of Nzuwonemeye and Sagahutu, acting in collaboration with soldiers of the Presidential Guard, tortured and killed the Prime Minister, Agathe Uwilingiyimana, in her residence in Kigali on 7 April 1994. The Indictment further alleges that soldiers killed three members of the Prime Minister's entourage, including her husband.

47. The Chamber heard a significant number of Prosecution and Defence witnesses concerning the death of Prime Minister Agathe Uwilingiyimana. The Chamber finds that RECCE Battalion members participated in the killing of the Prime Minister on 7 April 1994. The Chamber further finds that Nzuwonemeye and Sagahutu maintained regular communication with their subordinates at the residence of the Prime Minister as the attack unfolded, sending them supplies and issuing operational instructions. The Chamber is therefore satsified that the Prosecution has proved beyond reasonable doubt that Nzuwonemeye and Sagahutu ordered and aided and abetted the killing of the Prime Minister.

1.1.4.12 Nzuwonemeye and Sagahutu and the Killing of Belgian UNAMIR Soldiers

48. The Indictment alleges that members of the RECCE Battalion under the command of Nzuwonemeye and Sagahutu participated in the abduction of ten Belgian soldiers attached to the United Nations Assistance Mission for Rwanda ("UNAMIR") on 7 April 1994 from the residence of Prime Minister Agathe Uwilingiyimana. The Indictment further alleges that these peacekeepers were disarmed and taken to Camp Kigali, where they were brutally killed by soldiers of the RECCE Battalion, the Presidential Guard and the Music Company.

49. The Chamber heard credible and concordant evidence establishing that soldiers under the command of Nzuwonemeye and Sagahutu were implicated in the killings of ten Belgian UNAMIR soldiers at Camp Kigali. The Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Nzuwonemeye ordered the abduction and killing of the Belgian soldiers. However, the Chamber finds that Nzuwonemeye had reason to know of the involvement of his subordinates in these killings. The Chamber finds Nzuwonemeye guilty as a superior for failing to punish these crimes.

50. The Chamber finds that Sagahutu ordered RECCE Battalion soldiers to put down the resistance led by the surviving Belgian soldiers in the UNAMIR building at Camp Kigali. Furthermore, the Chamber finds that a multiple grenade launcher used in the attack came from Sagahutu's office and that Sagahutu was aware that it was to be used to attack the UNAMIR soldiers. The Chamber finds Sagahutu guilty as a superior for failing to prevent or punish these crimes.

1.1.4.13 Nzuwonemeye, Sagahutu and Bizimungu and the Killing of Tutsi at the *Centre Hospitalier de Kigali*

51. The Indictment alleges that throughout the months of April, May and June 1994, soldiers of the RECCE Battalion under the command of Nzuwonemeye and Sagahutu killed Tutsi civilians at CHK.

52. The Chamber finds that the Prosecution did not present sufficient evidence to find that soldiers of the Rwandan Army, including the RECCE Battalion, took part in killings of Tutsi civilians at CHK. Consequently, the Chamber cannot hold Bizimungu, Nzuwonemeye and Sagahutu responsible as superiors for killings at CHK.

1.1.5 *Count 5: Extermination as a Crime Against Humanity*

53. Count 5 of the Indictment charges Ndindiliyimana and Bizimungu with extermination as a crime against humanity for killings also charged as genocide and murder as a crime against humanity. The jurisprudence of the International Tribunals permits cumulative convictions for both genocide and extermination, as both crimes contain materially distinct elements. However, the Chamber cannot enter convictions for both extermination and murder as crimes against humanity because the element of murder is subsumed within the crime of extermination. Therefore, where the Chamber finds the existence of extermination as a crime against humanity, it must acquit on the count of murder as a crime against humanity, as the latter is a lesser offence subsumed within the former.

54. The Chamber recalls that the Prosecution failed to prove beyond reasonable doubt the culpability of the Accused for killings at a number of locations. Therefore, the Chamber will only consider the killings of Tutsi civilians at Kansi Parish between 20 and 22 April 1994, at the Josephite Brothers compound on 7 April 1994, and at the *préfecture* office and EER in Butare after 19 April 1994 in relation to the charge of extermination.

55. With regard to the killings at Kansi Parish, the Chamber finds that the Prosecution has proved beyond reasonable doubt that the killings resulted in the deaths of a large number of civilians. The evidence therefore supports the Prosecution's charge of extermination as a crime against humanity. As the Chamber cannot enter cumulative convictions for murder and extermination based on the same facts, the Chamber only enters a conviction for extermination against Ndindiliyimana for the killings at Kansi Parish.

56. With regard to the killings at the Josephite Brothers compound on 7 June, the Chamber finds that the evidence establishes that a large number of civilians were killed. The evidence therefore supports the Prosecution's charge of extermination as a crime against humanity. As the Chamber cannot enter cumulative convictions for murder and extermination based on the same facts, the Chamber only enters a conviction for extermination against Bizimungu for the killings at the Josephite Brothers compound.

57. With regard to the killings at the *préfecture* office and EER in Butare, the Prosecution presented evidence of the killings of a relatively small number of Tutsi men. The Chamber finds that the evidence adduced by the Prosecution does not satisfy the scale required for extermination as a crime against humanity. Therefore, the Chamber does not find Bizimungu criminally responsible for extermination for the killings at the *préfecture* office and EER in Butare.

1.1.6 *Count 6: Rape as a Crime Against Humanity*

1.1.6.1 Bizimungu and the Rape of Tutsi by Soldiers and *Interahamwe* in Various Locations

58. The Indictment alleges that Rwandan Army soldiers raped Tutsi women at the Kicukiro *conseiller's* office and CHK in Kigali, as well as at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama, at the *préfecture* office, EER, Gishamvu Church and Nyumba Parish in Butare, and at Cyangugu Stadium.

59. The Chamber finds that soldiers raped women at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama, at the *préfecture* office and EER in Butare, and at Cyangugu Stadium. The Chamber also finds that Bizimungu knew or had reason to know of the rapes committed at these locations, and finds him criminally responsible as a superior for these crimes. The Chamber finds Bizimungu not guilty of the remaining rape charges.

1.1.6.2 Nzuwonemeye and Sagahutu and the Rape of Tutsi by Soldiers at the *Centre Hospitalier de Kigali*

60. The Indictment alleges that soldiers of the RECCE Battalion under the command of Nzuwonemeye and Sagahutu raped Tutsi women at CHK between the months of April and June 1994.

61. The Chamber finds that the Prosecution has not proved beyond reasonable doubt that soldiers of the Rwandan Army committed rapes against Tutsi women at CHK. The Chamber therefore finds Nzuwonemeye and Sagahutu not guilty for the rapes committed at CHK.

1.1.7 *Counts 7: Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II*

62. The Indictment alleges that the four Accused are criminally responsible for murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. In support of these war crimes charges, the Prosecution relies on allegations pleaded in relation to genocide and murder as a crime against humanity.

63. The Chamber recalls that the jurisprudence of the Tribunal establishes that war crimes contain a materially distinct element from both genocide and crimes against humanity and that they protect different interests. As such, cumulative convictions can be entered where the evidence also sustains the additional, distinct element necessary for war crimes, namely the nexus between the crime and an armed conflict. The Chamber has taken judicial notice of the existence of a non-international armed conflict in Rwanda between 7 April and 17 July 1994. The Chamber has previously found that the Prosecution failed to establish beyond reasonable doubt the responsibility of the Accused for the killings at EGENA, Charles Lwanga Church, CHK, ETO-Nyanza Hill, Gisenyi, CELA and the Nyamirambo roadblock. Accordingly, the Chamber does not find the Accused responsible for war crimes with respect to these allegations.

64. The Chamber has previously found Ndindiliyimana responsible as a superior for the killings at St. André College; Bizimungu responsible as a superior for the killings at the Josephite Brothers compound in Kigali on 7 June and the killings at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama; Nzuwonemeye and Sagahutu

responsible as direct perpetrators for the killing of Prime Minister Agathe Uwilingiyimana; and Nzuwonemeye and Sagahutu responsible superiors for the killings of the Belgian soldiers in Kigali.

65. Accordingly, the Chamber finds Ndindiliyimana guilty as a superior of murder as a war crime for failing to punish the killings at St. André College; Bizimungu guilty as a superior of murder as a war crime for failing to prevent or punish the killings at the Josephite Brothers compound on 7 June and at the Musambira *commune* office and dispensary, ESI and TRAFIPRO during April and May 1994; Nzuwonemeye and Sagahutu guilty of murder as a war crime for ordering and aiding and abetting the killing of Prime Minister Uwilingiyamana; and Nzuwonemeye guilty as a superior of murder as a war crime for failing to punish the killings of the Belgian soldiers. In addition, in line with the charge under Count 7 of the Indictment, the Chamber finds Sagahutu guilty of murder as a war crime for ordering and aiding and abetting the killings of the Belgian soldiers.

1.1.8 *Count 8: Rape as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II*

66. The Indictment alleges that Bizimungu, Nzuwonemeye and Sagahutu are criminally responsible for rape as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II. In support of these war crimes charges, the Prosecution relies on allegations pleaded in relation to genocide and rape as a crime against humanity.

67. In line with its findings for genocide and crimes against humanity, in relation to war crimes the Chamber finds Bizimungu responsible as a superior for rapes at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama, at the *préfecture* office and EER in Butare, and at Cyangugu Stadium. For reasons previously given, the Chamber finds Bizimungu not guilty with respect to the remaining rape allegations.

68. The Chamber finds Nzuwonemeye and Sagahutu not guilty of the rapes committed at CHK for the reasons given above.

1.2 Verdict

69. In arriving at its verdict, the Chamber has carefully considered the testimony of the witnesses, the evidence admitted into the record and the arguments of the parties. Having considered the evidence in its totality, the Chamber enters the following verdict against Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye and Innocent Sagahutu.

70. The Chamber has found Ndindiliyimana responsible as a superior for failing to punish the killings of Tutsi at Kansi Parish in Nyaruhengeri between 20 and 22 April 1994 and the killings of Tutsi at St. André College in Kigali on or about 13 April 1994. The Chamber does not find Ndindiliyimana responsible for the remaining charges in the Indictment.

71. The Chamber therefore finds Ndindiliyimana guilty of genocide (Count 2), murder as a crime against humanity (Count 4), extermination as a crime against humanity (Count 5) and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7).

72. The Chamber has found Bizimungu responsible for aiding and abetting the killings of Tutsi in Rwankeri *secteur*. The Chamber has also found Bizimungu responsible as a superior for failing to prevent or punish the killings of Tutsi at the Josephite Brothers compound in Kigali on 7 June 1994, the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama during April and May 1994, the *préfecture* office and EER in Butare after 19 April 1994, and Cyangugu Stadium during April and May 1994. In addition, the Chamber has found Bizimungu responsible as a superior for failing to prevent or punish the rapes of women at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama during April and May 1994, the *préfecture* office and EER in Butare after 19 April 1994, and Cyangugu Stadium during April and May 1994. The Chamber does not find Bizimungu responsible for the remaining charges in the Indictment.

73. The Chamber therefore finds Bizimungu guilty of genocide (Count 2), murder as a crime against humanity (Count 4), extermination as a crime against humanity (Count 5), rape as a crime against humanity (Count 6), murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7), and rape as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 8).

74. The Chamber has found François-Xavier Nzuwonemeye responsible for ordering and aiding and abetting the killing of Prime Minister Agathe Uwilingiyamana. In addition, the Chamber has found Nzuwonemeye responsible as a superior for failing to punish the killings of the Belgian UNAMIR soldiers on 7 April 1994. The Chamber does not find Nzuwonemeye responsible for the remaining charges in the Indictment.

75. The Chamber therefore finds François-Xavier Nzuwonemeye guilty of murder as a crime against humanity (Count 4) and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7).

76. The Chamber has found Innocent Sagahutu responsible for ordering and aiding and abetting the killings of Prime Minister Agathe Uwilingiyamana and the Belgian UNAMIR soldiers on 7 April 1994. The Chamber does not find Sagahutu responsible for the remaining charges in the Indictment.

77. The Chamber therefore finds Innocent Sagahutu guilty of murder as a crime against humanity (Count 4) and murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7).

1.3 Sentence

78. The Chamber has considered a number of factors in arriving at a unique sentence for each of the four Accused, including the gravity of the crimes committed as well as the aggravating and mitigating factors as argued by the Parties. The Chamber is entitled to enter a single sentence where the crimes charged constitute a single set of crimes in a specified geographic area and time frame. Accordingly, the Chamber exercises its discretion and will impose a single, universal sentence for each of the Accused.

79. In light of the gravity of the crimes committed by each of the Accused and the particular aggravating and mitigating circumstances of each case, the Chamber sentences Augustin Ndindiliyimana to time served since he was arrested in Belgium on 29 January

2000; Augustin Bizimungu to 30 years imprisonment; François-Xavier Nzuwonemeye to 20 years imprisonment and Innocent Sagahutu to 20 years imprisonment.

80. Bizimungu, Nzuwonemeye and Sagahutu shall remain in the custody of the Tribunal pending their transfer to the States in which they will serve their sentence. Ndindiliyimana shall be immediately released. The Chamber requests that the Registry make the necessary arrangements.

1.4 The Accused

1.4.1 *Augustin Ndindiliyimana*

81. Augustin Ndindiliyimana was born in 1943[3] and raised in Nyaruhengeri *commune*, Butare *préfecture*, Rwanda.[4] Ndindiliyimana joined the military in 1966, enrolling in the military academy from which he graduated in 1968. Between 1971 and 1974, he attended the war college in Brussels to complete two separate courses of study.[5]

82. Upon his return from Belgium in 1974, Ndindiliyimana was posted to the basic training centre in Kanombe, Kigali. While stationed at Kanombe in 1975, he helped establish the Para Commando Battalion and served as the unit's director of intelligence and training.[6] In 1977, Ndindiliyimana was transferred to the *École Supérieure Militaire* (ESM), where he taught courses on platoon leadership, general staff techniques, tactics and revolutionary warfare, and additionally commanded a group of trainees.[7] Two years later, Ndindiliyimana was transferred to the Staff Headquarters of the Rwandan Army. As Chief of Personnel of the General Staff between 1979 and 1982, Ndindiliyimana was responsible for recruiting senior, junior and non-commissioned officers as well as enlisted soldiers.[8]

83. In February 1982, Ndindiliyimana was appointed Minister of Youth and Sports.[9] Concurrent to his ministerial duties, Ndindiliyimana maintained his military commission, rising through the ranks of the Rwandan Army first to Commander, then Lieutenant Colonel and finally full Colonel.[10] In 1990, he was appointed Minister of Transport and Communication.[11] In 1991, Ndindiliyimana was appointed Minister in the President's Office for Defence and Security Issues.[12] From December 1991 to April 1992, Ndindiliyimana served as Minister of Defence.[13] In 1992, he was elected President of the Rwandan Olympic Committee,[14] and he remained active in the committee until March 1994.[15]

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[3] Indictment, para. 4.
[4] T. 16 June 2008, p. 3.
[5] T. 16 June 2008, p. 2.
[6] T. 16 June 2008, p. 2.
[7] T. 16 June 2008, p. 2-3.
[8] T. 16 June 2008, p. 3.
[9] T. 16 June 2008, pp. 3, 12, 14.
[10] T. 16 June 2008, p. 31.
[11] T. 16 June 2008, pp. 3, 19-20.
[12] T. 16 June 2008, pp. 3, 25-27.
[13] T. 16 June 2008, pp. 28-29.
[14] T. 16 June 2008, p. 15.
[15] T. 16 June 2008, p. 15.

84. In June 1992, Ndindiliyimana was appointed Chief of Staff of the *Gendarmerie*.[16] Beyond commanding all Rwandan *gendarmes*, Ndindiliyimana rebuilt the organisation's command structure,[17] reviewed the *Gendarmerie's* capacity and completed a report on the integration of the RPF into the *Gendarmerie* in June 1993.[18] On 1 January 1994, Ndindiliyimana was promoted to the rank of Major General under the provisions of the Arusha Accords.[19]

85. In the morning of 7 April 1994, Ndindiliyimana became a member of the Crisis Committee.[20] The Crisis Committee, which was composed of a number of senior leaders of the Rwandan Armed Forces, ceased to exist when a civilian government was formed on 9 April. The nature of the Crisis Committee and Ndindiliyimana's role are points of contention between the parties, and are discussed in detail in the factual findings.

86. On 5 June 1994, Ndindiliyimana was replaced as Chief of Staff of the *Gendarmerie* and appointed ambassador to Germany.[21] On 17 June 1994, he left Rwanda for Zaire,[22] eventually arriving in Belgium on 1 or 2 July 1994.[23]

87. Augustin Ndindiliyimana was arrested in Belgium on 28 January 2000.[24]

1.4.2 *Augustin Bizimungu*

88. Augustin Bizimungu was born on 28 August 1952[25] in Mukarange *commune*, Byumba *préfecture*, Rwanda.[26] Bizimungu received a diploma in modern humanities in Ruhengeri before studying at ESM between 1972 and 1974.[27]

89. After completing his studies at ESM, Bizimungu was commissioned as a Second Lieutenant and sent to the commando training school in Bigogwe for a month of specialised instruction.[28] Between August 1974 and January 1975, Bizimungu attended the commando training centre in *Marche les Dames*.[29] Between March and June 1975, he attended another commando training course at Bigogwe, after which he became an instructor at the centre.[30] While an instructor at Bigogwe, he was promoted to Lieutenant in 1977 and then to Captain in 1980.[31] In 1982, Bizimungu attended the Royal Defence Institute in Belgium, from which

[16] T. 16 June 2008, p. 39.
[17] T. 16 June 2008, pp. 41-42.
[18] T. 16 June 2008, pp. 42-47.
[19] T. 16 June 2009, p. 1.
[20] T. 20 June 2008, p. 64.
[21] T. 18 June 2008, pp. 68-69.
[22] T. 18 June 2008, p. 71.
[23] T. 18 June 2008, p. 72.
[24] Prosecution Closing Brief, para. 51.
[25] Indictment, para. 1.
[26] T. 4 December 2007, p. 2.
[27] T. 4 December 2007, p. 3.
[28] T. 4 December 2007, p. 3.
[29] T. 4 December 2007, pp. 3-4.
[30] T. 4 December 2007, p. 4.
[31] T. 4 December 2007, p. 5.

he graduated in 1984 with a diploma in chief of staff studies.[32] While in Belgium, he was promoted to the rank of Major.[33]

90. In 1984, Bizimungu was appointed S-2 and S-3 Officer of the Para Commando Battalion at Kanombe.[34] In January 1985, he was transferred to Gako and appointed to become the commander of the Bugesera training centre.[35] In March 1988, Bizimungu was appointed commander of the Ruhengeri Para Commando Battalion and promoted to the rank of Lieutenant Colonel in 1991.[36] In December 1993, Bizimungu was promoted to full Colonel and the following month, January 1994, he was appointed commander of military operations for the Ruhengeri *secteur*.[37] During this period, he participated in a Ministry of Defence appraisal of the Rwandan Army.[38] On 16 April 1994, Bizimungu was simultaneously appointed Chief of Staff of the Rwandan Army and promoted to the rank of Major General.[39] Bizimungu took up his post as Chief of Staff on 19 April 1994.[40]

91. Augustin Bizimungu was arrested in August 2002 in Angola.[41]

1.4.3 *François-Xavier Nzuwonemeye*

92. François-Xavier Nzuwonemeye was born on 30 August 1955[42] in Ruli, Musasa *commune*, Kigali, Rwanda.[43] In 1975, he enrolled in ESM.[44] Upon graduating in 1978, Nzuwonemeye was assigned to the Para Commando Battalion in Kanombe, where he served first as a platoon leader and later as company commander.[45]

93. In 1979, Nzuwonemeye was sent to North Korea, where he completed courses in intelligence, security and protection.[46] The following year, he was transferred to the General Staff of the Rwandan Army, where he worked as an officer in the G-2 division. Within the G-2, he led the internal security apparatus of the army and taught courses in accounting.[47] The following year, in 1981, he was promoted to Lieutenant.[48] While on the General Staff, Nzuwonemeye completed further advanced studies in deciphering in Paris in 1983, military administration in Brussels in 1986 and a second course in military administration ("BAM") in 1988, and a study tour of the United States, including the Pentagon.[49] In 1984 he was promoted to Captain, in 1987 to Major and in 1990 to Full Major.[50]

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[32] T. 4 December 2007, p. 4.
[33] T. 4 December 2007, p. 5.
[34] T. 4 December 2007, p. 4.
[35] T. 4 December 2007, pp. 4-5.
[36] T. 4 December 2007, p. 5.
[37] T. 4 December 2007, p. 5.
[38] T. 4 December 2007, p. 5.
[39] T. 4 December 2007, p. 5.
[40] T. 13 December 2007, p. 4.
[41] T. 6 December 2007, p. 46; T. 11 December 2007, p. 60.
[42] Indictment, para. 7.
[43] T. 6 October 2008, p. 2.
[44] T. 6 October 2008, p. 2.
[45] T. 6 October 2008, p. 3.
[46] T. 6 October 2008, p. 2.
[47] T. 6 October 2008, p. 3.
[48] T. 6 October 2008, p. 4.
[49] T. 6 October 2008, p. 2.
[50] T. 6 October 2008, p. 4.

94. In October 1990, Nzuwonemeye was transferred to the G-3 office and assumed command of the secretariat of operations.[51] In 1991, he was appointed commander of the 42nd Battalion in Gisenyi, and in January 1993 the commander of the 94th Battalion.[52] In November 1993, Nzuwonemeye was appointed commander of the RECCE Battalion, which he led until July 1994.[53]

95. François-Xavier Nzuwonemeye was arrested in France on 15 February 2000.[54]

1.4.4 *Innocent Sagahutu*

96. Innocent Sagahutu was born in 1962 in Gisuma *commune*, Cyangugu *préfecture*, Rwanda.[55] In 1981, Sagahutu enrolled in ESM.[56] Upon graduating in 1985, he received his commission as a Second Lieutenant and was assigned to the *Gendarmerie* in Gikongoro.[57] In 1987, Sagahutu was transferred to the Reconnaissance squad of the army, serving as a platoon commander.[58] During his posting to the Reconnaissance squad, he completed cavalry and junior officer courses.[59] In 1990, the Reconnaissance squad was enlarged to a battalion size, and Sagahutu commanded Squadron A from 1990 until July 1994.[60] After the defeat of the Rwandan Armed Forces and the assumption of power by the RPF in July 1994, Sagahutu fled to Zaire.[61]

97. Innocent Sagahutu was arrested in Denmark on 15 February 2000.[62]

[51] T. 6 October 2008, p. 3.
[52] T. 6 October 2008, p. 3.
[53] T. 6 October 2008, p. 3.
[54] Prosecution Closing Brief, para. 54.
[55] T. 1 December 2008, p. 1.
[56] T. 1 December 2008, p. 2.
[57] T. 1 December 2008, p. 2.
[58] T. 1 December 2008, p. 2.
[59] T. 1 December 2008, p. 2.
[60] T. 1 December 2008, p. 5; Prosecution Closing Brief, para. 56.
[61] T. 1 December 2008, p. 37.
[62] Prosecution Closing Brief, para. 57.

CHAPTER II: PRELIMINARY ISSUES

2.1 Rule 98*bis* Challenges

2.1.1 *Introduction*

98. Under Rule 98*bis* of the Statute, the Trial Chamber shall enter a judgement of acquittal for counts where the evidence is insufficient to sustain a conviction at the close of the Prosecution's case in chief.[63] In order to survive a Rule 98*bis* challenge, the Prosecution's evidence must be sufficient to allow a reasonable trier of fact to find the accused guilty beyond reasonable doubt of the crime charged at the conclusion of the trial.[64] Therefore, the relevant question is not whether the Trial Chamber would enter a conviction on the basis of the Prosecution evidence at the close of its case in chief, but whether it could if the evidence was believed.[65] In order to enter a judgement of acquittal, the Trial Chamber must therefore find that there is no evidence of probative value in support of the allegation.[66]

99. In evaluating the evidence in response to a Rule 98*bis* challenge, the Trial Chamber recalls that it need not evaluate the evidence in relation to specific facts alleged in challenged paragraphs of the Indictment. Rather, the Trial Chamber determines the sufficiency of the Prosecution's evidence in relation to particular counts of the Indictment.[67] An accused may therefore be acquitted of specific counts, but not of a particular set of facts alleged in the Indictment.

100. The Prosecution may, however, request the withdrawal of specific paragraphs of the Indictment. In that case, the Defence is not required to present evidence responding to paragraphs of the Indictment withdrawn by the Prosecution at the Rule 98*bis* stage.[68]

2.1.2 *Allegations Withdrawn by the Prosecution at the Rule 98bis Stage*

101. At the close of its case in chief, the Prosecution withdrew paragraphs 71, 72, 92, 94, 95, 97 and 98 of the Indictment concerning Ndindiliyimana, as it had not led any evidence to support the allegations in those paragraphs.[69] The Prosecution also withdrew paragraph 79 concerning Bizimungu for the same reason.[70] The Chamber accepted the Prosecution's submission and held that neither Ndindiliyimana nor Bizimungu was required to lead evidence in response to the allegations contained in those paragraphs.[71]

2.1.3 *Acquittals at the Rule 98bis Stage*

102. In addition to the withdrawn paragraphs, the Defence successfully challenged several counts in the Indictment. In response to the parties' submissions, the Chamber entered a judgement of acquittal for complicity in genocide (Count 3) against Ndindiliyimana, as the

[63] Rule 98*bis* of the Rules of Procedure and Evidence ("Rules").
[64] *Ndindiliyimana* Defence Motions Decision, para. 6.
[65] *Ndindiliyimana* Defence Motions Decision, para. 6.
[66] *Ndindiliyimana* Defence Motions Decision, para. 6.
[67] *Ndindiliyimana* Defence Motions Decision, paras. 9-10.
[68] *Ndindiliyimana* Defence Motions Decision, para. 10.
[69] *Ndindiliyimana* Defence Motions Decision, para. 11.
[70] *Ndindiliyimana* Defence Motions Decision, para. 11.
[71] *Ndindiliyimana* Defence Motions Decision, para. 11.

Prosecution had previously withdrawn pargraphs 71 and 72 of the Indictment, which provided the sole factual basis for that count.[72]

103. The Chamber similarly entered a judgement of acquittal for murder as a war crime (Count 7) against Ndindiliyimana under Article 6(1) of the Statute, as the Prosecution had withdrawn paragraph 92 of the Indictment, which provided the sole factual basis for that count.[73] However, the Chamber denied the Defence motion to also acquit under Article 6(3) of the Statute, as the evidence adduced in support of the charge of murder as a crime against humanity was sufficient to maintain the war crimes charge for superior responsibility.[74]

2.2 Evidentiary Matters

2.2.1 *General Principles*

104. The Trial Chamber must consider each piece of evidence in light of the totality of the evidence admitted at trial. In doing so, it must duly consider and give appropriate weight to all the evidence. It is not obligated to expressly refer to all evidence in the Judgement. The evidence before the Trial Chamber is assessed in accordance with the Statute, the Rules and the jurisprudence of the Tribunal. When no guidance can be found in these sources, the Chamber decides matters of evidence in such a way that best favours a fair determination of the case in accordance with the spirit of the Statute and general principles of law.[75]

2.2.2 *Judicial Notice*

105. The Tribunal was established in the aftermath of the Rwandan genocide in 1994. Since then the Tribunal has heard extensive factual and legal analysis of the genocide, the armed conflict between the RPF and the Rwandan Armed Forces, and the historical context of the events occurring between April and July 1994. Rule 94 of the Rules permits the Trial Chamber to take judicial notice of "facts of common knowledge" that "are not reasonably subject to dispute".[76] Given the ICTR's substantial jurisprudence surrounding the period between 1990 and July 1994, the Chamber takes judicial notice of the existence of genocide against the Tutsi of Rwanda,[77] the widespread and systematic killing of Tutsi and Hutu civilians,[78] and of a non-international armed conflict during the period covered by the Indictment against the accused and, where relevant, during the period preceding it.[79]

106. Although the Chamber takes judicial notice of certain facts that are beyond dispute, it recalls that in doing so it cannot relieve the Prosecution of its burden to prove its case beyond reasonable doubt.[80] Judicially noticed facts merely establish another method by which the Prosecution can prove its case; they do not prove the case itself. Likewise, the taking of judicial notice does not shift the Prosecution's burden to the Accused.[81] Therefore, in taking

[72] *Ndindiliyimana* Defence Motions Decision, para. 28.
[73] *Ndindiliyimana* Defence Motions Decision, para. 42.
[74] *Ndindiliyimana* Defence Motions Decision, para. 43.
[75] Rule 89(B) of the Rules.
[76] *Semanza* Appeal Judgement, para. 194.
[77] *Karemera* Interlocutory Appeal on Judicial Notice, para. 35; *Zigiranyirazo* Trial Judgement, para. 10; *Rwamakuba* Trial Judgement, para. 2.
[78] *Seromba* Trial Judgement, para. 4.
[79] *Semanza* Trial Judgement, paras. 192, 198; *Ntagerura et al.* Trial Judgement, para. 74.
[80] *Semanza* Trial Judgement, paras 191-192; *Rwamakuba* Trial Judgement, para. 2.
[81] *Semanza* Trial Judgement, para. 191.

judicial note of indisputable facts that do not directly implicate the Accused, the Chamber notes that it does not arrive at its ultimate verdict on the basis of these judicially noticed facts.[82] The Chamber's legal findings are based solely on those facts adduced at trial and subjected to examination and rebuttal by the Defence.

2.2.3 *Burden and Standard of Proof*

107. Pursuant to Article 20(3) of the Statute, the accused are presumed innocent until proven guilty. This presumption places the burden of establishing the guilt of the accused on the Prosecution, a burden it retains throughout the entire trial. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.[83] The burden of proof applies to all facts presented at trial, every element of the crimes charged and each mode of liability.[84]

108. In reaching its findings regarding the allegations pleaded in the Indictment, the Chamber may draw inferences from circumstantial evidence.[85] As the Appeals Chamber has held, when relying on circumstantial evidence, "the required standard of proof – beyond reasonable doubt – necessitates that the accused can be found guilty on the basis of circumstantial evidence only where this is the sole possible reasonable inference from the available evidence."[86] The Trial Chamber's ability to draw inferences does not relieve the Prosecution of the burden of proving each element of the crime charged in the Indictment beyond reasonable doubt.[87]

109. While the Defence does not have to adduce rebuttal evidence to the Prosecution case, the Prosecution will fail to discharge its burden of proof if the Defence presents evidence that raises a reasonable doubt in regard to the Prosecution case.[88] The Chamber's refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must still determine whether the evidence accepted at trial establishes the accused's guilt beyond reasonable doubt.[89]

2.2.4 *Viva Voce Evidence*

110. There is a general preference for *viva voce* evidence by witnesses in court.[90] In order to evaluate the testimony of a particular witness, the Trial Chamber considers various factors, including "the witness's demeanour in court, his role in the events in question, the plausibility and clarity of his testimony, whether there are contradictions or inconsistencies in his successive statements or between his testimony and other evidence, any prior examples of

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[82] *Semanza* Trial Judgement, paras 191-192; *Seromba* Trial Judgement, para. 5.
[83] Rule 87(A) of the Rules.
[84] *Ntagerura et al.* Appeal Judgement, paras. 170, 174-175; *Martić* Appeal Judgement, para. 55; *Halilovic* Appeal Judgement, para. 125; *Popović et al.* Trial Judgement, para. 9.
[85] *Muhimana* Appeal Judgement, para. 49; *Gacumbitsi* Appeal Judgement, para. 72.
[86] *Ntagerura et al.* Appeal Judgement, para. 399; *Seromba* Appeal Judgement, para. 221.
[87] *Gacumbitsi* Appeal Judgement, para. 41; *Rwamakuba* Trial Judgement, para. 37.
[88] *Rukundo* Trial Judgement, para. 37.
[89] *Rukundo* Trial Judgement, paras. 36-37; *Nchamihigo* Appeal Judgement; *Nchamihigo* Trial Judgement, para. 13; *Kayishema and Ruzindana* Appeal Judgement, para. 117; *Niyitegeka* Appeal Judgement, paras. 60-61.
[90] *Simba* Appeal Judgement, para. 103; *Rutaganda* Appeal Judgement, para. 33.

false testimony, any motivation to lie, and the witness's responses during cross-examination."[91]

111. The Chamber recognises that a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court. Therefore, the lack of precision or minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and a prior statement, does not necessarily discredit the evidence of a witness.[92] While such issues do call for cautious consideration, there is no automatic bar on relying upon such evidence. Where the Trial Chamber refuses to accept certain evidence given by a witness, it may nonetheless accept and rely on other parts of the testimony deemed to be reliable and credible.[93]

112. The Chamber also recalls that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.[94] However, where a single witness gives testimony concerning a particular incident, the Chamber recalls that it must act with particular care before accepting such evidence on its own when making a finding of guilt.[95]

113. Similarly, while direct evidence is preferred, hearsay evidence is not *per se* inadmissible before the Trial Chamber as long as it is probative of an issue in the case.[96] However, the Trial Chamber has the discretion to treat such hearsay evidence with caution, depending on the circumstances of the case.[97] In certain circumstances, extraneous factors may require the use of corroborating evidence in support of hearsay testimony.[98]

114. The Trial Chamber also considers the individual circumstances of the witness, including his or her role in the events in question, his or her relationship with the accused and whether the witness has an underlying motive to give a certain version of the events.

2.2.5 *Expert Witnesses*

115. The Chamber is cognisant of the important role that an expert witness can play in "provid[ing] specialised knowledge that may assist the fact finder to understand the evidence presented."[99] For this reason, Trial Chambers have afforded expert witnesses wide latitude to present probative information about which they do not have firsthand knowledge.[100]

116. When assessing and weighing the evidence of an expert witness, the Trial Chamber considers factors such as the professional competence of the expert, the positions held by the expert, the scope of his or her expertise, the methodologies used in preparing evidence, the

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[91] Media Appeal Judgement, para. 194; *Kamuhanda* Appeal Judgement, paras. 179, 181; *Zigiranyirazo* Trial Judgement, para. 90; *Bikindi* Trial Judgement, para. 31.
[92] *Nchamihigo* Trial Judgement, para. 15.
[93] *Seromba* Appeal Judgement, para. 110; *Simba* Appeal Judgement, para. 212.
[94] *Muvunyi* Appeal Judgement, para. 128; *Seromba* Appeal Judgement, para. 79; Media Appeal Judgement, para. 652; *Muhimana* Appeal Judgement, paras. 101, 120.
[95] *Zigiranyirazo* Trial Judgement, para. 92; *Bikindi* Trial Judgement, para. 33; *Popović et al.* Trial Judgement, para. 13.
[96] Media Appeal Judgement, para. 509; *Gacumbitsi* Appeal Judgement, para. 115.
[97] *Rutaganda* Appeal Judgement, paras. 275-276.
[98] Rule 89 of the Rules; *Muvunyi* Trial Judgement, paras. 12-13; *Rukundo* Trial Judgement, para. 39; *Rutaganda* Appeal Judgement, para. 34.
[99] *Simba* Trial Judgement, para. 174; Media Appeal, para. 198.
[100] *Semanza* Appeal Judgement, para. 303.

credibility of the findings made in light of these factors and other evidence, and the relevance and reliability of the evidence in relation to the case as a whole.[101]

2.2.6 *Documentary Evidence*

117. In order to properly assess the allegations before it, the Trial Chamber relies upon documentary evidence proffered by the parties. Documentary evidence can provide valuable corroboration of witness testimony or supplement valuable information where oral evidence is insufficient. However, documentary evidence is not, as a matter of law, preferable to *viva voce* testimony.[102] In evaluating and weighing the evidence, the Trial Chamber looks particularly at factors such as authenticity and proof of authorship.[103]

2.3 Defects in the Indictment

2.3.1 *Introduction*

118. The Chamber notes that certain paragraphs in the Indictment share a common deficiency and raise issues relevant to the proper pleading of the Indictment. The Chamber deems it expedient to deal with these paragraphs as a preliminary issue.

2.3.2 *Applicable Law*

2.3.2.1 Specificity

119. It is well established that the Prosecution must know its case before proceeding to trial and cannot mould the case against the accused in the course of the trial depending on how the evidence unfolds.[104]

120. Pursuant to Article 20(4) of the Statute, an accused must be informed of the "nature and cause" of the charges against him or her. This has been interpreted to oblige the Prosecution to plead in an indictment the precise legal qualification of the offence as well as the material facts underlying it. In assessing whether the Prosecution has fulfilled this obligation, paragraphs in an indictment should not be read in isolation but rather should be considered in the context of the other paragraphs.[105]

121. In order to guarantee a fair trial, the Prosecution must plead material facts underpinning the charges against an accused in the indictment with a sufficient degree of specificity. This is to ensure that the accused is on notice of the allegations such that he or she can prepare a defence and is not otherwise prejudiced.[106]

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[101] *Semanza* Appeal Judgement, para. 303; *Zigiranyirazo* Trial Judgement, para. 93; *Blagojević and Jokić* Trial Judgement, para. 27; *Simić* Appeal Judgement, para. 28.
[102] *Simba* Appeal Judgement, para. 132.
[103] *Zigiranyirazo* Trial Judgement, para. 94; *Bikindi* Trial Judgement, para. 37.
[104] *Muvunyi* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 27, *Ntakirutimana* Appeal Judgement, para. 26. *See also Kvočka et al.* Appeal Judgement, para. 30; *Niyitegeka* Appeal Judgement, para. 194; *Kupreškić et al.* Appeal Judgement, para. 92.
[105] *Ntagerura et al.* Appeal Judgement, paras. 29-30
[106] Articles 17(4) and 18(4) of the ICTR and ICTY Statutes, respectively, provide: "Upon a determination that a prima *facie case* exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute". Rule 47(C) of the ICTR and

122. The question of whether material facts are pleaded with the required degree of specificity depends on the context of the particular case.[107] An indictment has, for example, been found defective on the basis that it refers to broad date ranges,[108] the places where the crimes are alleged to have occurred are only generally indicated and the victims are only generally identified.[109] The Chamber further notes that the required degree of specificity varies according to the form of participation alleged against an accused.[110]

123. Where direct participation is alleged pursuant to Article 6(1) of the Statute, the Prosecution must fully adhere to its obligation to provide particulars in the indictment.[111] This includes specifying "the identity of the victim, the time and place of the events and the means by which the acts were committed."[112] If the Prosecution alleges that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, it is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused that form the basis for the charges in question.[113]

124. Where the Prosecution relies on a theory of joint criminal enterprise, the Prosecution must specifically plead this mode of responsibility in the indictment; failure to do so will result in a defective indictment.[114] The Prosecution should plead the purpose of the enterprise, the identity of the participants, the nature of the accused's participation in the enterprise, and the period of the enterprise.[115] The indictment should also clearly indicate which form of joint criminal enterprise is being alleged.[116]

125. Where superior responsibility is alleged pursuant to Article 6(3) of the Statute, the specificity requirement is less stringent. This does not, however, obviate the Prosecution's

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ICTY RPE states: "The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged". The ICTY and the ICTR have interpreted the obligation of the Prosecution to set out a concise statement of the facts in the light of the provisions concerning the rights of the accused. Article 20(2) of the Statutes of the ICTY and the ICTR provides that: "In the determination of charges against him, the accused shall be entitled to a fair and public hearing". Article 20(4) provides that: "In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing". *See Krnojelac* Appeal Judgement, para. 130; *Ntagerura et al.* Trial Judgement, para. 29; *Kvočka* Form of the Indictment Decision, para. 14.

[107] *Kupreškić et al.* Appeal Judgement, para. 89.

[108] However, the Chamber recalls that "a broad date range, in and of itself, does not invalidate a paragraph of an indictment" and that at times "the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of victims and the dates of the commission of the crimes." *See Muvunyi* Appeal Judgement, para. 59.

[109] *Kvočka et al.* Appeal Judgement, para. 31.

[110] *Krnojelac* Form of the Indictment Decision, para. 18.

[111] *Brđanin* Form of the Indictment Decision, para. 22.

[112] *Muhimana* Appeal Judgement, para. 76; *Gacumbitsi* Appeal Judgement, para. 49; *Ntagerura et al.* Appeal Judgement, para. 23; *Ntakirutimana* Appeal Judgement, para. 32, *quoting Kupreškić et al.* Appeal Judgement, para. 89. *See also Ndindabahizi* Appeal Judgement, para. 16.

[113] *Ntagerura et al.* Appeal Judgement, para. 25.

[114] *Ntagerura et al.* Appeal Judgement, para. 24; *Kvočka et al.* Appeal Judgement, para. 42.

[115] *Simic* Appeal Judgement, para. 22; *Simba* Appeal Judgement, para. 63; *Ntagerura et al.* Appeal Judgement, para. 27; *Kvočka et al.* Appeal Judgement, para. 31.

[116] *Simba* Appeal Judgement, para. 63; *Ntagerura et al.* Appeal Judgement, para. 24.

obligation to particularise the underlying criminal events for which it seeks to hold the accused responsible.[117]

126. Accordingly, where superior responsibility is alleged, the Prosecution should plead the following material facts: (1) the relationship of the accused to his subordinates; (2) the acts and crimes of his alleged subordinates; (3) the criminal conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates;[118] and (4) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent the crimes or to punish his subordinates thereafter.[119] Therefore, these are material facts which must be pleaded with a sufficient degree of specificity.[120]

127. A failure to adhere to these principles and a failure to properly plead the material facts in an indictment with sufficient specificity constitutes a material defect in an indictment.[121]

2.3.2.2 Exception to Specificity

128. The pleading principles that apply to indictments in international criminal tribunals differ from those in domestic jurisdictions because of the nature and scale of the crimes when compared with those in domestic jurisdictions. For this reason, there is a narrow exception to the specificity requirement for indictments at international criminal tribunals. In some cases, the widespread nature and sheer scale of the alleged crimes make it unnecessary and impracticable to require a high degree of specificity.[122]

129. However, this exception must be balanced with the accused's right to be informed in detail about the nature and cause of the charges against him and should be assessed on a case by case basis.

2.3.2.3 Curing of Defects in an Indictment

130. In the ordinary course of proceedings, a challenge to the form of an indictment should be made at a relatively early stage of proceedings and usually at the pre-trial stage. An accused, therefore, is in the ordinary course of events expected to challenge the form of an

[117] *Ntagerura et al.* Appeal Judgement, para. 35

[118] A superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6(3) of the Statute. The Appeals Chamber has held that an accused is sufficiently informed of his subordinates where they are identified as coming from a particular camp and under the Accused's authority. It has *also* held that physical perpetrators of crimes can be identified by category in relation to a particular crime site. *See Muvunyi* Appeal Judgement, paras. 55-56; *Ntagerura et al.* Appeal Judgement, paras. 140, 141, 153; *Blagojević and Jokić* Appeal Judgement, para. 287; and *Simba* Appeal Judgement, paras. 71-72 (concerning identification of other members of a joint criminal enterprise), *quoting Simba* Trial Judgement, para. 393.

[119] *Muvunyi* Appeal Judgement, para. 19.

[120] *Krnojelac* Form of the Indictment Decision, para. 18; *Ntagerura et al.* Trial Judgement, para. 35.

[121] *Ntagerura et al.* Appeal Judgement, para. 22 ("If an accused is not properly notified of the material facts of his alleged criminal activity until the Prosecution files its Pre-Trial Brief or until the trial itself, it will be difficult for his Defence to conduct a meaningful investigation prior to the commencement of the trial. The question of whether an indictment is pleaded with sufficient particularity is therefore dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform an accused clearly of the charges against him so that he may prepare his defence. An indictment which fails to plead material facts in sufficient detail is defective").

[122] *Kvočka* Form of the Indictment Decision, para. 17.

indictment prior to the rendering of judgement or, at the very least, to challenge the admissibility of evidence of material facts not pleaded in an indictment by interposing a specific objection at the time the evidence is introduced.[123] An accused's failure to make specific challenges to the form of an indictment during the course of the trial or to challenge the admissibility of evidence of material facts not pleaded in the indictment does not, however, preclude the Trial Chamber from assessing an indictment at the post-trial phase.

131. When assessing an indictment at the post-trial phase, the primary concern for the Chamber is whether defects in the indictment materially prejudiced the accused.[124] In this regard, the Chamber may find that any prejudice that may have been caused by a defective indictment was cured by timely, clear and consistent information provided to the accused by the Prosecution.[125] The timing of such communications, the importance of the information to the ability of the accused to prepare his defence and the impact of the newly-disclosed material facts on the Prosecution's case are some of the relevant factors that the Chamber may consider in determining whether a defect in the indictment has been cured.[126]

2.3.3 *Alleged Defects in the Indictment Concerning the Murder of the Prime Minister and the Belgian Soldiers*

132. The Indictment alleges that Nzuwonemeye and Sagahutu are criminally responsible for the murders of Prime Minister Agathe Uwilingiyimana, members of her entourage and the Belgian UNAMIR soldiers under Count 1 and Count 4. Nzuwonemeye and Sagahutu submit that the following paragraphs of the Indictment are defective:

> Count 1, Conspiracy to Commit Genocide, paragraph 38:
>
> On 7 April 1994, in Kigali, elements of the Reconnaissance Battalion commanded by François-Xavier Nzuwonemeye and Innocent Sagahutu, in concert with elements of the Presidential Guard commanded by Protais Mpiranya, killed the Prime Minister of the Transitional Government, Agatha [*sic*] Uwilingiyimana, and the ten Belgian UNAMIR soldiers who had been assigned to escort her. The Prime Minister had intended to go to the radio station to address the nation and forewarn the various protagonists about engaging in excesses and to make an appeal for calm. Those murders, and others, annihilated several obstacles that stood in the way of the genocide.
>
> Count 4, Crimes Against Humanity (Murder), paragraphs 103 and 105, respectively:
>
> During the morning of 7 April 1994, elements of the Reconnaissance battalion under the command of François-Xavier Nzuwonemeye and led by Innocent Sagahutu, acting in concert with members of the Presidential Guard and *Interahamwe*

[123] *Niyitegeka* Appeal Judgement, para. 199.
[124] *Ntagerura et al.* Appeal Judgement, para. 30. *See also Niyitegeka* Trial Judgement, para. 196 (On appeal, "the question is whether the error of trying the accused on a defective indictment 'invalidated the decision' and warrants the Appeals Chamber's intervention").
[125] *Kupreškić et al.* Appeal Judgement, para. 114 ("The Appeals Chamber, however, does not exclude the possibility that, in some instances, a defective indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her. Nevertheless, in light of the factual and legal complexities normally associated with the crimes within the jurisdiction of this Tribunal, there can only be a limited number of cases that fall within that category."). *See also Ntakirutimana* Appeal Judgement, para. 27.
[126] *Bagosora et al.* Trial Judgement, para. 29, *citing* to *Niyitegeka* Appeal Judgement, para. 197.

> militiamen hunted down, tortured and killed Prime Minister Agathe Uwilingiyimana. They also killed three members of the Prime Minister's entourage, including her husband....
>
> During the morning of 7 April 1994, ten UNAMIR Belgian peacekeepers were arrested at the residence of Agathe Uwilingiyimana by soldiers from the Reconnaissance battalion under the command of François-Xavier Nzuwonemeye and led by Innocent Sagahutu, assisted by their colleagues from the Presidential Guard. After being disarmed, the Belgian peacekeepers were led to Kigali Camp where they were horribly killed and mutilated by an unleashed horde composed of soldiers from the Reconnaissance Battalion, the Presidential Guard and the Music Company.

2.3.3.1 Nzuwonemeye's Submissions Regarding Count 1

133. In his Closing Brief, Nzuwonemeye argues that the pleading under Count 1 is defective because the Indictment fails to plead the *actus reus* of conspiracy. Specifically, it is submitted that "allegation[s] of murders can not legally support an allegation of conspiracy" because "[t]he *actus reus* of conspiracy is the element of agreement, not the acts which result from the agreement".[127]

134. The Chamber recalls that the elements of conspiracy to commit genocide are: (1) an agreement between two or more persons to commit the crime of genocide;[128] and (2) the intent required for the crime of genocide. While the agreement to commit genocide is "the defining element of the crime of conspiracy",[129] it need not be a formal or express agreement. An agreement may be "inferred from the coordinated actions by individuals who have a common purpose and are acting within a unified framework."[130]

135. Having considered the Indictment and the Pre-Trial Brief,[131] the Chamber finds that Nzuwonemeye's complaint in relation to the pleading of Count 1 is without merit. Paragraph 22 of the Indictment clearly states that the Accused acting in concert with others are alleged to have "decided and executed a common scheme ... to destroy, in whole or in part, the Tutsi ethnic group .... [and that the Accused] in concert with the other actors mentioned ... planned, incited, ordered, committed, or otherwise aided and abetted the planning, preparation or execution of the planned extermination of the Tutsi ethnic group." The Chamber finds that this paragraph correctly pleads the *actus reus* required for the crime of conspiracy. Furthermore, the Chamber rejects Nzuwonemeye's submission that "murders can not legally support an allegation of conspiracy". The Chamber has considered the Indictment in its entirety.[132] Having done so, the Chamber finds that the Indictment does not rely on allegations of murder to "legally support" the allegation of conspiracy. On the contrary, the Indictment clearly alleges that the murders of Prime Minister Agathe Uwilingiyimana,

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[127] Nzuwonemeye Closing Brief, para. 489 (emphasis omitted). *See also* Nzuwonemeye Closing Brief, para. 271.

[128] *Musema* Trial Judgement, para. 191; Media Trial Judgement, paras. 1041-1042. The Chamber notes that more recent Appeals Chamber pronouncements on conspiracy can be found in the Media Appeal Judgement, para. 894. *See also Bagosora et al.* Trial Judgement, para. 2087.

[129] Media Trial Judgement, para. 1042.

[130] Media Trial Judgement, para. 1047.

[131] *Ndindiliyimana et al.* Prosecutor's Pre-Trial Brief Pursuant to Rule 73*bis* of the Rules of Procedure and Evidence.

[132] In particular, the Chamber notes that paragraph 38 of the Indictment alleges that the murders of the Prime Minister and the Belgian soldiers were carried out in support of a common purpose to "annihilate several obstacles that stood in the way of the genocide."

members of her entourage and the Belgian UNAMIR soldiers are evidence of an agreement and of the conspiracy charged under Count 1. The Prosecution's allegations concerning the killings of the Prime Minister and the Belgian soldiers are therefore a factual basis for the inference that Nzuwonemeye together with other individuals listed in paragraph 22 of the Indictment were part of a conspiracy to commit genocide against Tutsi.

136. The Pre-Trial Brief further supports this conclusion. Part I of the Pre-Trial Brief, entitled "Factual Allegations", alleges that the four Accused, among others, "were ringleaders of [an] ill-fated venture"[133] intended to "rid Rwanda of its Tutsi population and Hutu dissenters".[134] It then lists the killing of the Prime Minister and the Belgian soldiers as crimes that were a part of this plan.[135]

137. Moreover, the section of the Pre-Trial Brief that describes the allegations under Count 1 relating to Nzuwonemeye states that the allegations are based on an agreement to commit genocide, and that the killings of the Prime Minister and the Belgian soldiers were a part of that agreement. The relevant paragraphs are as follows:

> [François-Xavier Nzuwonemeye/Innocent Sagahutu] participated in an unequivocal and determinable manner in the plan prepared and executed by the Hutu ruling class to exterminate the Tutsi population of Rwanda.[136]
>
> On 7 April 1994, in Kigali, soldiers of the Reconnaissance Battalion commanded by François-Xavier Nzuwonemeye, in concert with elements of the Presidential Guard, killed the Prime Minister Agathe Uwilingiyimana and the ten Belgian UNAMIR soldiers who had been assigned to escort her. The Prime Minister had intended to go to the radio station to address the nation and forewarn the various protagonists about engaging in excesses and to make an appeal for calm. Those murders, and others, annihilated several obstacles that stood in the way of the genocide.[137]
>
> On 7 April 1994, in Kigali, elements of the Reconnaissance Battalion, commanded by Innocent Sagahutu, and acting on his instructions, in concert with elements of the Presidential Guard, killed the Prime Minister Agathe Uwilingiyimana and the ten Belgian UNAMIR soldiers who had been assigned to escort her. The Prime Minister had intended to go to the radio station to address the nation and forewarn the various protagonists about engaging in excesses and to make an appeal for calm. Those murders, and others, annihilated several obstacles that stood in the way of the genocide.[138]

138. The Chamber therefore finds that Nzuwonemeye had sufficient notice of the allegations pleaded in paragraphs 22 and 38 of the Indictment.

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[133] Pre-Trial Brief, para. 24.
[134] Pre-Trial Brief, para. 23.
[135] Pre-Trial Brief, paras. 28-29.
[136] Pre-Trial Brief, paras. 106, 125.
[137] Pre-Trial Brief, para. 111.
[138] Pre-Trial Brief, para. 127.

2.3.3.2 Nzuwonemeye's Submissions Regarding Count 4

139. In regard to Count 4, Nzuwonemeye argues that the pleading is defective because it fails to identify the nexus between, on the one hand, the killing of the Prime Minister and the three members of her entourage and, on the other hand, "widespread or systematic attacks against a civilian population."[139]

140. The Chamber is not satisfied that this failure to draw the connection between the murder of Prime Minister Agathe Uwilingiyimana and the widespread or systematic attack against a civilian population renders the Indictment defective in light of the Appeals Chamber's decision in *Karemera et al.*, which allowed for judicial notice to be taken of the existence of a widespread or systematic attack against a civilian population based on Tutsi ethnic identification in Rwanda during the time period covered by the Indictment.[140] Following this decision, it has become a common practice to plead allegations of crimes against humanity in the same manner that the Prosecution has done in this case. It suffices to plead the chapeau elements of the crime in relation to specific persons rather than specific factual allegations in addition to the chapeau.[141] For these reasons, the Chamber does not find the Indictment to be defective in this regard.

141. Nzuwonemeye also argues that the pleading of Count 4 is defective in relation to the killing of the Prime Minister's husband and entourage, although the exact reason for this submission is not specified.[142] The Chamber assumes that this submission is based on the non-identification of members of the Prime Minister's entourage. Paragraph 103 of the Indictment specifies that the unidentified victims were members of the Prime Minister's entourage, and the summary of Witness DT's evidence annexed to the Pre-Trial Brief states that the victims were persons who were in her home.[143] The Chamber finds that these qualifiers provided Nzuwonemeye with sufficient information to prepare his defence in that he knew that the victims were connected to the Prime Minister and that they were persons who were present in her home.

142. Further, Nzuwonemeye submits that Count 4 is defective because he is alleged to be responsible under both Article 6(1) and Article 6(3) of the Statute, but there are no allegations in reference to Article 6(1) and the Prosecution did not distinguish which acts support each form of participation.[144] The Chamber rejects both of Nzuwonemeye's arguments. Paragraph 78 of the Indictment specifies which crimes are attributed to each mode of liability, including allegations in reference to Article 6(1), and this information is reiterated in the Pre-Trial Brief in paragraphs 114 to 116 for the charges against Nzuwonemeye and paragraphs 130 to 132 for the charges against Sagahutu.

[139] Nzuwonemeye Closing Brief, para. 485.
[140] *Karemera* Interlocutory Appeal on Judicial Notice, para. 29.
[141] *See Gatete* Indictment, paras. 30, 33, 39.
[142] Nzuwonemeye Closing Brief, para. 492.
[143] Pre-Trial Brief Annexure IV, pp. 125-126 ("Witness will testify that the Presidential Guard soldiers and the reinforcement of soldiers from Kanombe were involved in the killing of Prime Minister Agathe and her family among others in her house on 7 April 1994…").
[144] Nzuwonemeye Closing Brief, para. 593.

2.3.3.3 Sagahutu's Submissions Regarding Count 1

143. The Chamber notes that in his Closing Brief, Sagahutu argues that the pleading in Count 1 alleging that he was involved with others in a conspiracy to commit genocide is defective in relation to the killings of the Prime Minister and the Belgian soldiers because it is unclear "what the Prosecution intends to prove: that as a soldier, he followed orders and thus he himself gave some; but it is not known from who he is alleged to have received his orders, nor when: in the evening of 6 April or in the morning of 7 April; or even if he were a soldier he would have, all the same, taken the initiative of this crime with his Co-Accused, but their state of mind is not described anywhere."[145] The Chamber finds Sagahutu's complaint in relation to the pleading of Count 1 to be without merit. Paragraph 38 of the Indictment alleges clearly that soldiers of the RECCE Battalion led by Sagahutu, acting together with soldiers of the Presidential Guard commanded by Mpiranya, killed the Prime Minister. Sagahutu's conduct is alleged to have been an effectuation of a conspiracy to commit genocide against Tutsi, as alleged in paragraph 22 of the Indictment. The Prosecution case is that Sagahutu's conduct pleaded in paragraph 38 yields the inference that he was party to a conspiracy to commit genocide pleaded in paragraph 22. The Chamber is therefore satisfied that the pleading of paragraph 38 does not suffer from material defects and that it adequately pleads Sagahutu's participation in these allegations.

144. The Chamber's conclusion is supported by a reading of the Indictment in its entirety. These criminal allegations are also listed under Count 4 of the Indictment. Under Count 4, paragraphs 103 and 105 state that at the time of the killings, the RECCE Battalion was "under the command of François-Xavier Nzuwonemeye and led by Innocent Sagahutu."[146] Furthermore, paragraph 104 alleges that Sagahutu was in radio contact with Nzuwonemeye prior to the murder of the Prime Minister, and paragraph 107 alleges that Sagahutu gave orders concerning the arrest of the Belgian soldiers and the killing of the Prime Minister to Sergeant Major Bizimungu. The Chamber does not find the pleading of paragraphs 104 and 107 to be defective.

145. A review of the Pre-Trial Brief also lends support to the Chamber's finding. Paragraphs 111 and 127 of the Pre-Trial Brief, both of which detail the specific allegations under Count 1, state that Nzuwonemeye was the commander and superior of the soldiers implicated in the killings of the Prime Minister and the Belgian soldiers, and that Sagahutu was likewise in command but also carried out Nzuwonemeye's orders:

> On 7 April 1994, in Kigali, soldiers of the Reconnaissance Battalion *commanded by François-Xavier Nzuwonemeye*, in concert with elements of the Presidential Guard, killed the Prime Minister Agathe Uwilingiyimana and the ten Belgian UNAMIR soldiers who had been assigned to escort her.[147]
>
> On 7 April 1994, in Kigali, elements of the Reconnaissance Battalion, *commanded by Innocent Sagahutu and acting on his instructions*, in concert with elements of the Presidential Guard, killed Prime Minister Agathe Uwilingiyimana and the ten Belgian UNAMIR soldiers who had been assigned to escort her.[148]

[145] Sagahutu Closing Brief, para. 606.
[146] Indictment, paras. 103, 105.
[147] Pre-Trial Brief, para. 111 (emphasis added).
[148] Pre-Trial Brief, para. 127 (emphasis added).

146. The summaries of the testimony expected from Prosecution witnesses, which are annexed to the Pre-Trial Brief, also detail the role of Sagahutu in the killing of the Prime Minister. Witness ALN's summary states that in the morning of 7 April 1994, Nzuwonemeye ordered Sagahutu to kill the Prime Minister;[149] Witness DAK's summary states that Sagahutu acted in concert with military headquarters in the murder of the Prime Minister;[150] Witness HP's summary states that Sagahutu gave the order for the Prime Minister's murder;[151] and Witness DA's summary states that Sagahutu and Nzuwonemeye were accomplices to her murder.[152]

147. It is clear from these different statements that the Prosecution is alleging that Sagahutu gave orders in relation to both criminal events. The statements provided Sagahutu with notice of evidence that he made unilateral orders and in other cases that the original order came from Nzuwonemeye. Sagahutu's argument that the Indictment is defective is therefore without merit as Sagahutu had sufficient information concerning the allegations to properly prepare his defence.

2.3.4 *Alleged Defects in the Indictment Concerning the Distribution of Weapons*

2.3.4.1 Sagahutu's Submissions Regarding Count 1

148. In his Closing Brief, Sagahutu argues that paragraph 41 of the Indictment is defective.[153] Paragraph 41 states:

> In Kigali, in April and May 1994, Innocent Sagahutu and Protais Mpiranya distributed weapons on several occasions to fanaticized militiamen, whose criminal activities were well known to them, while asking them to persevere in the undertaking to exterminate the Rwandan Tutsi.

Sagahutu submits that the "the Indictment is silent on where this allegedly took place in Kigali, and when in April and May".[154]

149. The Chamber considers the date range of "April and May 1994" to be sufficiently precise given the nature of the Prosecution's allegation that Sagahutu distributed weapons on "several occasions" during this period. The Chamber finds the allegation in paragraph 41 to be somewhat vague in regard to the location of the alleged weapons distribution.

150. The Chamber notes that the summary of Witness DA's testimony annexed to the Pre-Trial Brief states that the witness intended to testify "that Captain Sagahutu distributed weapons to the *Interahamwe* at roadblocks within Kigali and encouraged them to kill the Tutsis with the weapons … in 1994."[155] The Chamber finds that this provided Sagahutu with

[149] Pre-Trial Brief, p. 97.
[150] Pre-Trial Brief, p. 103.
[151] Pre-Trial Brief, p. 120.
[152] Pre-Trial Brief, p. 124.
[153] Paragraph 607 of Sagahutu's Closing Brief incorrectly states, "Innocent Sagahutu is *also* charged with weapons distribution on several occasions in Kigali, in April and May 1994, together with Protais Mpiranya, to militiamen, whose criminal activities were well known to them; he is alleged to have requested them to persevere in the enterprise of exterminating the Rwandan Tutsi (para. 39)". The Chamber notes that Sagahutu's reference to paragraph 39 is incorrect and that the allegation referred to is in fact contained in paragraph 41 of the Indictment.
[154] Sagahutu Closing Brief, para. 608.
[155] Pre-Trial Brief, p. 124.

clear notice that the location of the crimes alleged in paragraph 41 of the Indictment was roadblocks within Kigali. As a result, Sagahutu was not materially prejudiced by the vague nature of this allegation in the Indictment.

2.3.4.2 The Pleading of Paragraphs 30 and 31 of the Indictment

151. Paragraph 30 of the Indictment alleges that in January 1993, Bizimungu, in his capacity as commander of Ruhengeri Operational Sector, addressed his troops and stated that the enemy was known and that the enemy was the Tutsi, thereby echoing the doctrine professed by senior officers in the army.[156] Paragraph 31 of the Indictment alleges that in February 1994, Bizimungu reiterated the statement set out in paragraph 30 when he declared that "if the RPF attacked Rwanda again, he did not want to see one Tutsi alive in his sector of operations."

152. The Chamber notes that these allegations do not specify the location of Bizimungu's alleged speech, nor do they provide any details about the troops Bizimungu allegedly addressed. Consequently, the Chamber finds paragraphs 30 and 31 to be impermissibly broad, ambiguous and vague.

153. The Chamber notes that the Pre-Trial Brief does add to the Indictment insofar as it mentions the location as Ruhengeri.[157] However, the Chamber considers that this in itself is insufficient to cure the ambiguous nature of these charges. The Chamber therefore finds paragraphs 30 and 31 of the Indictment to be defective and without cure. Consequently, the Chamber dismisses these charges against Bizimungu.

2.3.5 *The Pleading of Paragraphs 68 and 69 of the Indictment (Underlying Criminal Events in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri)*

2.3.5.1 The Indictment

154. Paragraphs 68 and 69 charging genocide or complicity in genocide in the alternative allege, *inter alia,* that soldiers under the command of Bizimungu "committed murders and caused serious bodily or mental harm to many Tutsis."[158]

155. The Prosecution submits that "such acts of violence were observed" in various locations and that Bizimungu is criminally responsible pursuant to Article 6(3) of the Statute because "he knew or had reason to know ... that his subordinates were about to commit or had committed such acts of violence [and] ... did not take any of the reasonable steps to prevent the said crimes [or] ... punish the perpetrators [thereafter]."[159]

156. Specifically, paragraphs 68 and 69 provide:

> Finally from mid-April to late June 1994, while Augustin Bizimungu was exercising his functions as Chief of Staff of the Rwandan Army, soldiers under his command, committed murders and caused serious bodily or mental harm to many Tutsi, with the

[156] Indictment, para. 30.
[157] Pre-Trial Brief, para. 44.
[158] Indictment, paras. 61-62, 73-75.
[159] Indictment, paras. 61 and 75.

> intent to destroy, in whole or in part, the Tutsi ethnic group in ...Gisenyi, Cyangugu, Kibuye and Ruhengeri.
>
> Such acts of violence were specifically observed ... in Butare ... Gisenyi, Kibuye and Ruhengeri, during the months of April, May and June.

157. Contrary to other locations pleaded in paragraphs 68 and 69, the Chamber finds that the pleading of material facts in respect of Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri is impermissibly broad, ambiguous and vague.

158. In relation to crimes alleged in Cyangugu, paragraph 68 of the Indictment identifies Cyangugu as one of the *préfectures* in which soldiers under Bizimungu's command allegedly committed murders and caused serious bodily or mental harm to Tutsi. However, neither paragraph 68 nor paragraph 69 provides further details of the alleged crime site in Cyangugu or the dates on which the crimes are alleged to have occurred in this *préfecture*. The Chamber finds that paragraph 68 lacks specificity in respect of crimes allegedly committed in Cyangugu. This had the effect of failing to put Bizimungu on notice of the material facts of his alleged criminal conduct.

159. In relation to crimes alleged in Butare, Gisenyi, Kibuye and Ruhengeri, the Indictment is vague because within the broad three month date range set out in paragraph 69, the Prosecution failed to sufficiently particularise and adequately specify the exact locations at which crimes were alleged to have been committed and observed.

160. The effect of such vagueness is that an objective reader of the Indictment would not be able to decipher where exactly the alleged crimes were observed in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri, and consequently what were the nature and circumstances of the crimes alleged at these locations. Therefore, it could not be said that Bizimungu had notice of the specific criminal incidents at these locations for which he should have taken preventive or disciplinary action.

161. Consequently, the Chamber finds paragraphs 68 and 69 defective to the extent that the general allegations in respect of crimes alleged in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri did not suffice to put Bizimungu on notice of the material facts of his criminal conduct.

162. The Chamber will now consider whether Bizimungu was nevertheless accorded a fair trial, whether the defect in the Indictment caused prejudice to Bizimungu and whether the defect was cured.

2.3.5.2 Prejudice to the Accused

163. The Chamber recalls that the Indictment is the only accusatory instrument and that it is only under limited circumstances that a defective indictment can be cured. For this purpose, the Chamber has reviewed the Indictment in its entirety and finds that there are no other paragraphs in the Indictment that clarify or provide further details of the facts underpinning the allegations of genocide in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri set out in paragraphs 68 and 69.

164. The Chamber has carefully reviewed the Pre-Trial Brief, the Prosecution's opening speech delivered on 20 September 2004 and the Indictment in its entirety. In none of these

documents did the Prosecution indicate that it intended to rely on the facts set out in other paragraphs of the Indictment, and the evidence adduced to prove those facts, in order to establish Bizimungu's responsibility pursuant to Article 6(3) for genocide (or complicity in genocide in the alternative) in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri. Therefore, the Pre-Trial Brief and opening speech did not cure the defect in paragraphs 68 and 69 of the Indictment by providing clear notice to Bizimungu of the material facts underpinning the crimes alleged at these locations.

165. On the contrary, the Chamber finds that paragraph 332 of the Pre-Trial Brief, which provides that "[t]he Accused have been cumulatively charged on the basis of the same set of facts, *save for* genocide and complicity in genocide" (emphasis added), had the opposite effect of providing such notice.

166. Consequently, the Chamber finds that there was simply no way for Bizimungu to have known that the Prosecution intended to rely on the facts specified in other paragraphs of the Indictment, and the evidence adduced to prove those facts, in order to establish his criminal responsibility under Article 6(3) for genocide in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri, as alleged in paragraphs 68 and 69.

167. Two further factors militate against the Prosecution's attempt to rely post-trial on the facts set out in other paragraphs of the Indictment, and the evidence adduced to prove those facts, in order to establish Bizimungu's responsibility for genocide in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri. First, aside from paragraphs 68 and 69, there are no other paragraphs in the Indictment that contain references to crimes committed in Kibuye. Second, the Trial Chamber finds the manner in which the Prosecution pleaded crimes in other locations in paragraphs 68 and 69 revealing. Crimes alleged in these other locations were pleaded with far greater precision and specificity.[160] The Chamber finds no good reason why the Prosecution failed to plead crimes alleged in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri in a similar manner, or at the very least to refer to those other paragraphs of the Indictment that provide further facts in regard to the crimes at these locations.

168. The Chamber finds that the defects in paragraphs 68 and 69 in respect of crimes alleged in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri were not cured and caused material prejudice to Bizimungu. Therefore, the Chamber will not make any factual findings in respect of these locations when assessing the allegations of genocide in these paragraphs.

[160] Indictment, para. 69 ("Such acts of violence were specifically observed at Charles Lwanga Church on 8 and 10 June 1994; at the Josephite Brothers compound, on 8 April and 7 June 1994; at ETO-Nyanza, on 11 April 1994; at the *Centre Hospitalier de Kigali*, during the months of April, May and June 1994; at the Kicukiro *conseiller's* office, during the months of April and May 1994; at Kabgayi Primary School, from April to June 1994; at the Musambira *commune* office and Dispensary, in April and May 1994; at TRAFIPRO, in April and May 1994.").

CHAPTER III: WITNESS CREDIBILITY AND CONTEMPT OF COURT

3.1 Credibility of Witnesses GFR, GFA and GAP

169. Prosecution Witnesses GFA and GAP gave evidence relating to the involvement of Bizimungu in various events in and around Ruhengeri *préfecture*. Those events include the training and arming of the *Interahamwe*,[161] meetings and speeches by Bizimungu in Ruhengeri,[162] the killing of Tutsi by *Interahamwe* in Rwankeri *secteur* and by soldiers at Busugo Parish,[163] the Court of Appeal massacre,[164] the killing of Tutsi by *Interahamwe* at roadblocks in EGENA,[165] the killing of Tutsi by soldiers in Ruhengeri,[166] and the killing of Tutsi by *Interahamwe* at the ISAE Busugo roadblock in Ruhengeri.[167]

170. Prosecution Witness GFR gave evidence relating to the involvement of Ndindiliyimana in the murder of Célestin Munyanshagore and Ignace Habimana,[168] as well as the murder of a Tutsi tradesman named Gashugi (a.k.a. Gahoki/Gasoki),[169] in Nyaruhengeri *commune*, Butare *préfecture*.

3.1.1 *Developments Since the Witnesses Testified Before this Chamber*

171. Following their testimony before this Chamber, certain incidents took place that might impact upon the credibility of these witnesses' evidence. First, in April 2008, Witness GFA was recalled in the *Karemera et al.* trial. During his testimony, Witness GFA recanted almost all of his prior testimony before the *Karemera et al.* Trial Chamber including his evidence regarding Augustin Bizimungu, against whom he had testified before this Chamber from 30 January to 2 February 2006.[170] Second, in a letter to the ICTR President dated 29 May 2009,[171] Witness GFR recanted the entire contents of his prior testimony before this Chamber.[172] Finally, in January 2010 in the *Karemera et al.* trial, the Defence tendered a transcript of an interview held between Witness GAP and Defence Counsel Peter Robinson, in which Witness GAP made statements contradicting his evidence before this Chamber against Bizimungu.[173] However, when Witness GAP was recalled to appear before the *Karemera et al.* Trial Chamber, he disavowed the statements he had allegedly made during his interview with Counsel Robinson and reaffirmed his original testimony.[174]

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[161] Indictment, para. 27.
[162] Indictment, paras. 29-31.
[163] Indictment, para. 63.
[164] Indictment, paras. 64-65.
[165] Indictment, para. 66.
[166] Indictment, paras. 68-70.
[167] Indictment, para. 81.
[168] Indictment, para. 93.
[169] *See* Indictment, para. 99; Prosecution Closing Brief, paras. 923-942. The Indictment refers to the victim as "Gahoki", whereas the Prosecution's Closing Brief refers to him as "Gashugi (a.k.a. Gasoki)".
[170] Defence Exhibit 689A; Defence Exhibit 690A; Defence Exhibit 691A; Defence Exhibit 692A; Defence Exhibit 693A.
[171] Defence Exhibit 697; Defence Exhibit 698; T. 24 June 2009, p. 2.
[172] *Ndindiliyimana* Decision on GFR's Recantation.
[173] Defence Exhibit 699A; Defence Exhibit 700.
[174] *See Ndindiliyimana* Decision on Admission of *Karemera* Transcripts.

172. The Chamber recalls that the incidents outlined above were the subject of a number of motions by the parties in this case. In its decisions on those motions, the Chamber deferred its determination of whether the incidents have any bearing on the witnesses' credibility in this case. The Chamber will now consider this question. More specific credibility assessments relating to particular allegations in the Indictment will be undertaken in the factual findings section of this Judgement.

3.1.2 *Applicable Principles*

173. The key issue to be decided is not whether the Chamber is satisfied beyond reasonable doubt of the truth of the witnesses' subsequent statements in which they allegedly recanted their prior testimony. Rather, the Chamber must decide whether the witnesses' subsequent statements raise doubts as to the credibility of their testimony before this Chamber. Where such doubts arise, the Chamber has discretion to decide whether to reject the witness's testimony entirely or whether that testimony may still be relied upon in the presence of other credible corroborating evidence.[175] On the other hand, where the witness's alleged recantation is completely implausible and there were multiple pieces of credible evidence that corroborated the witness's original testimony, the Chamber may exercise its discretion to disregard the recantation and treat the witness's original testimony before this Chamber as credible.[176]

3.1.3 *Analysis*

3.1.3.1 Witness GFA's Recantation in the *Karemera et al.* Trial

174. Prosecution Witness GFA gave evidence before this Chamber for four days from 30 January to 2 February 2006. Prior to testifying before this Chamber, Witness GFA had testified as a Prosecution witness in the trials of *Karemera et al.* and *Bizimungu et al.*

175. On 21 August 2007, Witness GFA wrote a letter to the ICTR President requesting a meeting with the Defence lawyers representing the four Accused against whom he had given evidence, namely Augustin Bizimungu, Joseph Nzirorera, Jerome Bicamumpaka and Ephrem Setako.[177] On 5 December 2007, the *Bizimungu et al.* Chamber granted the Bicamumpaka Defence's motion to meet with Witness GFA in the presence of representatives of the Prosecution and the Witnesses & Victims Support Section ("WVSS").[178] At that meeting, which took place on 8 February 2008, the witness stated that he had lied in his testimony before the Tribunal because he had been pressured by Rwandan prosecutors to implicate certain high-level accused in genocide-related crimes in Rwanda in 1994.[179] The witness claimed that the Rwandan prosecutors had provided him with a list of accused individuals, including Augustin Bizimungu, whom he was supposed to incriminate. Witness GFA further stated that he had collaborated with other detainees in the Ruhengeri prison in Rwanda to fabricate testimony against those individuals. Prosecution Witnesses GFC and GFV were among the co-detainees with whom Witness GFA claimed to have collaborated in this way.[180]

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[175] Media Appeal Judgement, para. 460.
[176] *Kamuhanda* Appeal Judgement, paras. 212-221.
[177] Defence Exhibit 676.
[178] *Bizimungu* Motion to Meet Prosecution Witnesses.
[179] Defence Exhibit 677.
[180] Defence Exhibit 677.

176. Witness GFA was subsequently recalled to testify in the *Karemera et al.* trial from 10 to 17 April 2008.[181] When cross-examined by Defence counsel for Joseph Nzirorera, the witness recanted almost all of his prior testimony as a Prosecution witness against the Accused persons in the *Karemera et al., Bizimungu et al.* and *Ndindiliyimana et al.* trials. Although the witness admitted that many of the acts of genocide occurred, he denied that they were ordered by any of the Accused against whom he had earlier testified. He also recanted part of his own role in the genocide. More relevant to the case at hand, the witness specifically recanted his previous testimony that Augustin Bizimungu ordered the killing of four Tutsi at the ISAE Busogo roadblock around 10 or 11 April 1994.[182] The witness also recanted his testimony regarding Bizimungu's participation in a series of meetings at the house of Joseph Nzirorera's mother's.[183] The witness stated that he never saw Bizimungu from 6 April 1994 until he went into exile.[184]

177. In re-examination, the Prosecution put to Witness GFA a number of written statements which had been given by other individuals to the ICTR investigators or Rwandan prosecutors and which implicated the relevant Accused before this Tribunal in the crimes alleged against them by the ICTR Prosecutor. Those statements were given prior to 2002, when the witness claimed the Rwandan prosecutors had started pressuring him to confess. The witness responded that other people had concocted lies earlier than he had.[185]

178. The Prosecution also put to the witness written statements taken from a number of individuals, including Prosecution Witnesses GFC and GFV, who the witness alleged were involved in the fabrication of testimony implicating the Accused. In those statements, all of the witnesses denied Witness GFA's allegations.[186] In one statement, Witness GFC claimed that Witness GFA had told him of his plans to change his testimony if he was continually accused in Rwanda.[187] In another statement, Witness GFV reaffirmed that his original testimony was accurate and that nobody had told him what to say. Witness GFV stated:

> I think [Witness GFA] is lying now when he says that he was forced to plead guilty and tells lies in Arusha because he is angry that he will have to go back to prison. In the prison no authority told us what to say in our guilty pleas, and in this regard I can confront [Witness GFA]. I am willing to say this in front of him, and I am willing to come back to Arusha to say the same things to the ICTR Judges.[188]

179. Witness GFA responded by stating that Witness GFV was still in prison in Rwanda and still under threat, "so he can only give the same information that he was asked to give."[189] According to Witness GFA, "Witness [GFV] cannot tell the truth today because of the situation in which he finds himself. If he dared to tell the truth, that could even cost him his life."[190]

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[181] Defence Exhibit 689A; Defence Exhibit 690A; Defence Exhibit 691A; Defence Exhibit 692A; Defence Exhibit 693A.
[182] Defence Exhibit 689A.
[183] Defence Exhibit 689A.
[184] Defence Exhibit 689A.
[185] Defence Exhibit 691A.
[186] Defence Exhibit 678; Defence Exhibit 692A.
[187] Defence Exhibit 692A.
[188] Defence Exhibit 678; Defence Exhibit 692A.
[189] Defence Exhibit 678; Defence Exhibit 692A.
[190] Defence Exhibit 678; Defence Exhibit 692A.

180. The *Bizimungu et al.* Trial Chamber subsequently ordered the recall of Witness GFA for further cross-examination.[191] However, prior to further cross-examination in those proceedings, the witness absconded.[192]

181. On 14 May 2008, the *Karemera et al.* Trial Chamber directed the Registrar to appoint an independent *amicus curiae* to investigate the alleged false testimony of Witness GFA and to advise on the possible initiation of proceedings for false testimony pursuant to Rule 91(B) of the Rules.[193] The *Amicus* Report found that it was beyond reasonable doubt that Witness GFA had given false testimony,[194] but it did not establish on which particular occasion he did so.[195] By a Decision of 18 May 2010, the *Karemera et al.* Trial Chamber ordered the Registrar to appoint another independent *amicus curiae* to conduct the prosecution against Witness GFA for false testimony.[196]

182. The Chamber has carefully reviewed the transcripts of Witness GFA's testimony in the *Karemera et al.* trial in April 2008, during which he recanted much of his prior testimony regarding the acts of certain Accused, including Augustin Bizimungu.[197] In the view of the Chamber, Witness GFA's recantation in the *Karemera et al.* trial raises doubts as to the credibility of his testimony before this Chamber. For these reasons, the Chamber will not rely on his evidence in the absence of corroboration by other credible evidence.[198] The determination of whether Witness GFA's testimony is corroborated will be made in the factual findings section of the Judgement.

3.1.3.2 Witness GFR's Recantation in the Present Case

183. Prosecution Witness GFR gave evidence before this Chamber on 29 and 30 March 2005. Subsequently, in a letter to the ICTR President dated 29 May 2009, Witness GFR expressed a desire to recant his testimony before this Chamber because he was coerced by the Rwandan authorities to give false testimony against Ndindiliyimana.[199] The Prosecution contested the authenticity of the letter and objected to its admission.[200]

184. In its Decision of 4 August 2009, pursuant to Rule 91(B) of the Rules of Evidence and Procedure, the Chamber directed the Registrar to appoint an independent *amicus curiae* to investigate: (1) Witness GFR's current whereabouts; (2) whether he did in fact write the letter; and, if so, (3) whether he was willing to return to the Tribunal to give testimony under oath.[201]

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[191] *Bizimungu* Motion to Recall Prosecution Witness GFA.
[192] *Bizimungu* Motion to Recall Prosecution Witness GFA, para. 2.
[193] *Karemera* Decision on Prosecutor's Confidential Motion.
[194] *Karemera Amicus* Report, paras. 118, 126, *cited in Karemera* Decision Not to Prosecute, para. 3.
[195] *Karemera Amicus* Report, para. 119.
[196] *Karemera* Decision on Remand, paras. 4-6.
[197] Defence Exhibit 689A; Defence Exhibit 690A; Defence Exhibit 691A; Defence Exhibit 692A; Defence Exhibit 693A.
[198] Media Appeal Judgement, para. 466. In the Media case, the Appeals Chamber rejected the trial testimony of Witness EB to the extent it was not corroborated because evidence obtained after the trial suggested that he had recanted his trial testimony and that "genocide survivors consider [Witness EB] ready to do anything for money".
[199] T. 24 June 2009, p. 2.
[200] T. 24 June 2009, p. 3.
[201] *Ndindiliyimana* Decision on Witness Recantation.

185. The Chamber received the *Amicus* Report on 2 October 2009.[202] The Prosecution contested the reliability of the *Amicus* Report and argued that it was not clear that the person who had presented himself to the *Amicus* was actually Witness GFR, since he did not provide any form of identification.[203] The Chamber therefore instructed the Registrar to establish, *inter alia,* whether the person who had met with the *Amicus* was in fact Witness GFR.[204]

186. On 10 February 2010,[205] the Chamber admitted the following documents into evidence: (i) Witness GFR's letter;[206] (ii) the *Amicus* Report;[207] and (iii) the written submissions of the Registrar and associated annexes.[208] After reviewing the letter and the reports, the Chamber concluded that "the witness has now disavowed the entirety of his testimony".[209] The Chamber indicated that it would address the consequences of Witness GFR's recantation in its final Judgement.[210]

187. Having considered the above evidence, the Chamber finds that the consequences of Witness GFR's recantation are twofold. First, in the view of the Chamber, Witness GFR's complete recantation of his testimony before this Chamber renders his evidence unreliable. The Chamber therefore excludes any consideration of Witness GFR's evidence in assessing the allegations contained in the Indictment.

188. Second, the Chamber considers that the circumstances satisfy the requirements of Rule 91(C) to initiate the prosecution of Witness GFR for false testimony. Rule 91(C) provides that if the Chamber considers, after appointing an *amicus curiae* to investigate pursuant to Rule 91(B)(ii), that there are sufficient grounds to proceed against a person for giving false testimony, the Chamber may either direct the Prosecutor to prosecute the matter or it may issue an order in lieu of an indictment and direct an *amicus curiae* to prosecute the matter.[211] The Chamber's discretion to order prosecution for false testimony is therefore premised on its determination that "sufficient grounds" exist to warrant such prosecution.[212] The Appeals Chamber held in the *Karemera* case that the "sufficient grounds" requirement is satisfied by the existence of evidence that establishes a *prima facie* case of false testimony before the Tribunal.[213]

189. Based on the evidence tendered in this trial, the Chamber considers that sufficient grounds exist to justify an order pursuant to Rule 91(C) directing the prosecution of Witness GFR for giving false testimony before this Chamber. The Chamber has the discretion to direct the Prosecution to prosecute the matter pursuant to Rule 91(C)(i) or, in circumstances where the Prosecution has a conflict of interest with respect to the prosecution, the Chamber

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[202] *Ndindiliyimana et al.* Final Report by Boniface Njiru *Amicus Curiae* Relating to Witness GFR on Ndindiliyimana's Motion Requesting a Remedy for Possible Witness Recantation.
[203] *Ndindiliyimana et al.* Augustin Ndindiliyimana's Motion for Admission of Statements Relating to Witness GFR's Recantation of his Testimony.
[204] *Ndindiliyimana* Interim Order.
[205] *Ndindiliyimana* Decision on GFR's Recantation.
[206] Defence Exhibit 697.
[207] Defence Exhibit 698.
[208] Defence Exhibit 699; *Ndindiliyimana et al.* Registrar's Strictly Confidential Submissions in Respect of the Trial Chamber II "Interim Order to Ascertain the Identity of Witness GFR and Other Matters".
[209] *Ndindiliyimana* Decision on GFR's Recantation, para. 15.
[210] *Ndindiliyimana* Decision on GFR's Recantation, para. 15.
[211] *Karemera* Decision on Remand, para. 4.
[212] *Karemera* Decision Not to Prosecute, para. 17.
[213] *Karemera* Decision Not to Prosecute.

may issue an order in lieu of an indictment and direct the *amicus curiae* to prosecute pursuant to Rules 91(C)(ii). Witness GFR alleges that Rwandan prosecutors pressured him to fabricate evidence against an accused person before this Tribunal. Given that this allegation could impact upon the credibility of other Prosecution witnesses before this Tribunal, a conflict of interest would exist if the Prosecution were to conduct the prosecution of Witness GFR.

190. Accordingly, on 24 May 2011 the Chamber issued an order pursuant to Rule 91(C)(ii) directing an *amicus curiae,* as appointed by the Registrar, to conduct the prosecution of Witness GFR for false testimony.[214]

3.1.3.3 Witness GAP's Statements in an Interview with Peter Robinson

191. Prosecution Witness GAP testified before this Chamber from 15 to 22 February 2005. He subsequently testified in the *Karemera et al.* case on 21, 25 and 26 January 2010. During Witness GAP's testimony in the *Karemera et al.* case, the Defence tendered a transcript of a recorded interview held on 18 November 2009 between the witness and Peter Robinson, the Lead Counsel for the Accused Joseph Nzirorera, in which the witness made statements that raised questions about the credibility of his testimony. The witness clearly recanted these statements in his testimony before the *Karemera et al.* Trial Chamber and reaffirmed his original testimony.[215]

192. On 13 October 2010, this Chamber admitted into evidence the following documents in the present case: (1) open session transcripts of Witness GAP's testimony in *Karemera et al.* on 21, 25 and 26 January 2010; (2) the transcript of the audio recording of the interview between Witness GAP and Counsel Robinson; and (3) certain related exhibits tendered by the Defence.[216]

193. The Chamber has carefully reviewed these documents and it does not consider that they undermine the credibility of Witness GAP's testimony in the present case. The Chamber notes that the witness was recalled before the *Karemera et al.* Trial Chamber regarding the allegation that he had contradicted his earlier testimony during his recorded conversation with Counsel Robinson. Before that Chamber, Witness GAP reaffirmed the veracity of his testimony and clearly disavowed the recantation statements he had made during his interview with Counsel Robinson.[217]

194. Therefore, the Chamber is of the view that the witness is yet to recant his testimony before any of the Chambers of this Tribunal. In fact, during his appearance before the *Karemera et al.* Trial Chamber following his interview with Counsel Robinson, the witness reaffirmed his prior testimony in a resolute manner. The Chamber will therefore accord more weight to the witness's sworn testimony than to the statements that he gave outside the court.

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[214] *Ndindiliyimana* Order to Prosecute. The Chamber notes that by ordering an *amicus curiae* to prosecute the witness under Rule 92(C)(ii) it is that it is following the same procedure as in *Prosecutor v. Karemera et al.*, Decision on Remand following Appeal Chamber's Decision of 16 February 2010, 18 May 2010.
[215] Defence Exhibit 699A; Defence Exhibit 700.
[216] *Ndindiliyimana* Decision on Admission of Karemera Transcripts.
[217] Defence Exhibit 697A; Defence Exhibit 698A; Defence Exhibit 699A.

CHAPTER IV: FACTUAL FINDINGS

4.1 Background

4.1.1 *The Arusha Accords*

195. The Arusha Accords ("Accords") were a set of five bilateral agreements between the government of Rwanda and the Rwandan Patriotic Front ("RPF") negotiated between August 1992 and August 1993. The Accords sought to resolve the ongoing armed conflict between the Rwandan government forces and the RPF and to establish a power sharing agreement between the parties to that conflict.

196. The civil war began on 1 October 1990 when the RPF, a politico-military movement composed largely of Tutsi refugees and children of refugees, attacked Rwanda from their bases in Uganda.[218] The conflict continued as low-level guerrilla warfare between October 1990 and July 1992, eventually stopping when the sides agreed to a ceasefire.[219] The Arusha Accords were preceded by the N'Sele Ceasefire Agreement, which included provisions for the cessation of violence and laid the groundwork for future negotiations between the parties, which in turn led to the signing of the Accords.

197. The Accords consisted of five protocols, the last of which was signed on 4 August 1993. A primary component of the Accords was the establishment of a transitional government with a power sharing arrangement between three groups: the *Mouvement républicain national pour la démocratie et le développement* ("MRND") led by President Juvénal Habyarimana; other political parties opposed to the MRND; and the RPF.[220] The provisions of the Accords allowed Habyarimana to remain as President of Rwanda, but power was shifted to a Council of Ministers, which consisted of 19 seats. Five of the Council's seats were allocated to the MRND led by President Habyarimana.[221] The RPF was similarly allocated five ministerial seats, as well as the post of Vice Prime Minister. Other parties such as the *Mouvement démocratique républicain* ("MDR"), *Parti Social Démocrate* ("PSD") and *Parti Libéral* ("PL") obtained nine seats as well as the post of Prime Minister.[222] The Accords also established a Transitional National Assembly whose membership was to be apportioned among the parties represented in the Council of Ministers, with a small number of additional seats reserved for smaller parties not represented in the Council of Ministers.[223]

198. A second essential component of the Accords was the integration of the ex-belligerents into a new Rwandan military. The new Rwandan Army was to draw 60 per cent of its troops from existing forces and 40 per cent from the RPF. Command positions were to be shared equally between the government army and the RPF, down to the level of battalion, with a former Rwandan Army official assuming control of the new army and a former RPF official assuming control of the *Gendarmerie*. The Accords capped the size of the new Rwandan military at a number smaller than either the former Rwandan Army or the RPF, and

[218] Prosecution Exhibit 107(A), pp. 4, 11; T. 18 September 2006, p. 51.
[219] Prosecution Exhibit 107(A), p. 14.
[220] Prosecution Exhibit 107(A), p. 17.
[221] Prosecution Exhibit 107(A), pp. 17-18.
[222] Prosecution Exhibit 107(A), p. 18.
[223] Prosecution Exhibit 107(A), p. 18; T. 20 September 2006, pp. 13-14.

therefore both forces were obligated to demobilise those troops not integrated into the new army.[224]

199. The Accords were scheduled to enter into effect within 37 days after their signing in August 1993. In order to facilitate and monitor the implementation of the Accords, a UN peacekeeping force was created and dispatched to Rwanda at the request of both the Rwandan government and the RPF.[225]

200. Habyarimana was installed as President of the broad-based transitional government on 5 January 1994. Although planned, the Transitional National Assembly was not installed that same day. There is evidence on the record that after assuming the presidency, Habyarimana delayed the creation of the Transitional National Assembly and other institutions mandated by the Accords.[226]

4.1.2 *United Nations Assistance Mission for Rwanda (UNAMIR)*

201. The United Nations Assistance Mission for Rwanda (UNAMIR) was created by mandate of the UN Security Council in October 1993, although planning for the mission had begun several months earlier.[227] Following the terms of the Arusha Accords, the UN dispatched Roméo Dallaire, a Canadian General, on a two-week reconnaissance mission to Rwanda on 17 August 1993 to determine whether a peacekeeping mission was necessary and possible.[228] At the time, Dallaire led the United Nations Observer Mission Uganda-Rwanda ("UNOMUR"), which had been monitoring the Ugandan-Rwandan border since June 1993. During his visit to Rwanda, Dallaire met with government and RPF officials, eventually producing a report that was submitted to the UN Department for Peacekeeping Operations (DPKO) in early September.[229] His technical report was approved by DPKO in mid-September,[230] and the Security Council approved UNAMIR on 5 October 1993 as a Chapter Six mission.[231]

202. Security Council Resolution 872 mandated UNAMIR to establish a weapons secure area in Kigali (which would become the Kigali Weapons Secure Area, or "KWSA"); to monitor the ceasefire zone; to monitor the security situation during the transitional government's mandate prior to the elections; to assist with mine clearance; to investigate non-compliance with the provisions of the Arusha Accords for the integration of armed forces; to monitor the repatriation and resettlement of refugees and displaced persons; to facilitate humanitarian assistance operations; and to investigate and report incidents involving the *Gendarmerie* and police.[232]

203. In his testimony before this Chamber, General Dallaire identified four milestones that the UNAMIR mission set for itself, namely: (1) the deployment of forces to take over the demilitarised zone; (2) the deployment of forces to relieve the French half-battalion; (3) the

[224] Prosecution Exhibit 107(A), p. 18.
[225] T. 11 October 2006, p. 41.
[226] Prosecution Exhibit 107(A), pp. 22-23; T. 18 September 2006, p. 46.
[227] T. 20 November 2006, p. 21.
[228] T. 20 November 2006, p. 21.
[229] T. 20 November 2006, pp. 21, 26.
[230] T. 20 November 2006, p. 27.
[231] T. 20 November 2006, pp. 27-28.
[232] Security Council Resolution 872 (1993), S/RES/872, 5 October 1993; T. 20 November 2006, p. 28.

transfer of an RPF battalion to Kigali and the establishment of a protection force for RPF politicians in the capital; and (4) the establishment of the broad-based transitional government, which was to be in place by 1 January 1994.[233]

204. The UNAMIR mission was led by Roger Booh Booh, a Cameroonian diplomat who was appointed the Secretary General's Special Representative and Head of Mission. General Dallaire was appointed Force Commander.[234] UNAMIR's Headquarters were located at the Amahoro Stadium in Kigali.[235]

205. Under its Chapter Six mandate, UNAMIR rules of engagement were limited to self-defence.[236] Although the Accords requested a broader mandate including the protection of individuals, UNAMIR's military functions were limited to protecting the UN mission and its assets,[237] with a special exception permitting the use of force in response to large-scale crimes against humanity.[238]

206. On 22 October 1993, General Dallaire and three Ugandan officers arrived in Kigali, thereby marking the beginning of UNAMIR's operations in Rwanda.[239] By late March 1994, 2,568 troops had arrived.[240] Although 5,000 troops were requested in Dallaire's initial assessment, the Security Council's mandate capped the troop deployment at 2,800.[241] A contingent of 450 Belgian soldiers constituted the largest national contingent within UNAMIR.[242] In addition, UNAMIR was comprised of a half-battalion of Bangladeshi soldiers,[243] a battalion of Ghanaian troops,[244] a company of Tunisians[245] and 100 civilians.[246]

207. UNAMIR contingents were deployed throughout the capital and in demilitarised zones, with additional unarmed observers deployed throughout the country including the capital, the RPF zone and various camps to assist in the implementation of the KWSA and to monitor the movements of the RPF and Rwandan Armed Forces.[247]

208. UNAMIR observers were also stationed at the *Conseil National pour le Développement* (CND) where RPF troops, VIPs and political staff were housed in Kigali.[248] Finally, some troops were deployed to southern Rwanda to monitor the approximately 300,000 refugees from Burundi who were located there.[249]

[233] T. 20 November 2006, pp. 29-30.
[234] T. 20 November 2006, p. 27.
[235] T. 10 October 2006, pp. 30-31.
[236] T. 20 November 2006, p. 28.
[237] T. 20 November 2006, p. 29.
[238] T. 20 November 2006, p. 28.
[239] T. 20 November 2006, p. 28.
[240] T. 20 November 2006, pp. 28-29.
[241] Prosecution Exhibit 107(A), p. 11.
[242] T. 20 November 2006, p. 29.
[243] T. 20 November 2006, p. 30
[244] T. 20 November 2006, p. 30
[245] T. 20 November 2006, p. 31
[246] T. 20 November 2006, p. 29.
[247] T. 20 November 2006, p. 30.
[248] T. 20 November 2006, pp. 30-31.
[249] T. 20 November 2006, p. 30.

4.1.3 *The Kigali Weapons Secure Area*

209. In order to implement the Accords, the KWSA was created in December 1993. The KWSA was established by provision of the 5 October 1993 UNAMIR mandate[250] to minimise the possibility of conflict between the Accords-mandated RPF military contingent in Kigali and Rwandan government forces. In particular, the KWSA was to ensure that the ex-belligerents conducted their operations in accordance with a structured plan.[251] The agreement provided for a 10 to 15 kilometre zone of enforcement around Kigali, some 700 square kilometres, which would be enforced by UNAMIR and the *Gendarmerie*.[252]

210. The KWSA's particulars were negotiated in Kigali between UNAMIR, the Rwandan government and the RPF. Preliminary meetings were held bilaterally between the UN contingent and the parties, and once an agreement had been reached on a number of key provisions, trilateral meetings were held to finalise the agreement. The KWSA was signed on 23 December 1993 and went into effect the following day.[253] As the head of the *Gendarmerie*, Ndindiliyimana played a central role in negotiating the agreement.[254]

211. The essential component of the KWSA was the "control of all manner of weapons, of military personnel and movements of those military elements".[255] The KWSA's mandate included verifying vehicles, conducting surprise weapons checks and deploying observers to various camps and places where military equipment was stored.[256] Under the KWSA, all weapons and ammunition were to be secured in barracks or armouries, which were subject to routine verification. No significant troop or convoy movements were allowed without a UNAMIR escort, and senior politicians could only travel with an escort. Furthermore, regular roadside checks of vehicles were conducted to ensure that no weapons were brought in or out of the KWSA.[257] The agreement also required the free movement of observers to ensure compliance with the KWSA's terms.[258]

212. The KWSA required UNAMIR and the *Gendarmerie* to work together to enforce its provisions. The two forces cooperated to man checkpoints and conduct "cordon and search" operations for illegally stored weapons.[259] However, in order to conduct specific search operations, UNAMIR had to petition UN Headquarters for permission, and only a single operation was conducted (on 4 April 1994).[260] Neither the *Gendarmerie* nor UNAMIR was permitted to conduct weapons searches without the cooperation of the other.[261]

213. The UNAMIR contingent proved unable to enforce the KWSA's provisions. Although the KWSA called for 24-hour observation of *gendarmerie* and army locations, there were insufficient observers, vehicles and communications systems to provide such

[250] Security Council Resolution 872 (1993), S/RES/872, 5 October 1993; T. 20 November 2006, p. 28.
[251] T. 21 November 2006, p. 62.
[252] T. 16 January 2008, p. 41.
[253] T. 16 January 2008, p. 42.
[254] T. 16 January 2008, p. 43.
[255] T. 16 January 2008, p. 42.
[256] T. 20 November 2006, p. 31.
[257] T. 20 November 2006, p. 31.
[258] T. 16 January 2008, p. 42.
[259] T. 16 January 2008, pp. 45-46.
[260] T. 16 January 2008, pp. 46-47, 54.
[261] T. 16 January 2008, p. 47.

coverage.[262] The evidence shows that the parties also violated the terms of the agreement by illegally storing weapons within the weapons secure area.[263]

4.1.4 *The Rwandan Army*

214. The Rwandan Army (FAR) constituted one half of the Rwandan Armed Forces, and operated under the supervisory authority of the Rwandan Ministry of Defence.[264] The primary mission of the Rwandan Army was to protect the territorial integrity of Rwanda.

215. The Rwandan Army was commanded by the Chief of Staff. To assist in command and control of the army, the Chief of Staff employed a General Staff comprised of four bureaus: Personnel and Administration (G-1), Intelligence (G-2), Military Operations (G-3) and Logistics (G-4).[265] The G-1 was responsible for both military and civilian army personnel management, maintaining data about the various units, maintaining discipline and compliance with military law, and prisoners of war.[266] The G-2 protected classified information and collected intelligence about the enemy, directed intelligence and counter-intelligence training for officers and soldiers, conducted psychological warfare and reported on troop morale to the Chief of Staff.[267] The duties of the G-3 concentrated on military operations. During peacetime, the G-3 trained troops, planned military exercises and manoeuvres, and managed military training centres.[268] During wartime, the G-3 planned military operations, conducted battle and coordinated tactical deployments based on the orders of the Chief of Staff.[269] The G-4 equipped troops and provided them with supplies, transportation and weapons, and coordinated the provision of medical care and evacuation services to soldiers in the field.[270]

216. Beneath the General Staff were the commanders of the various operational sectors.[271] The Rwandan Army was divided into a number of regional operational sectors, also known as ops *secteurs*, including Ruhengeri, Kirambo, Byumba, Mutara, Rwamagana, Gisenyi, Kibungo, Gabiro, Nyagatare, Kigali, Ngarama and Mugesera.[272] Each operational sector was assigned a number of battalions. For instance, in April 1994 the 32nd and 73rd Battalions, the Ruhengeri Commando Battalion, the 1st Muvumba Battalion and others were stationed in the Ruhengeri operational sector.[273] Although each operational sector was assigned specific battalions, those units could be transferred to other locations as needed.[274]

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[262] T. 21 November 2006, p. 64.
[263] T. 20 September 2006, pp. 31-32; T. 11 October 2005, pp. 59-60; T. 22 November 2006, p. 45.
[264] Prosecution Exhibit 107(A), p. 11; T. 25 January 2008, p. 12.
[265] Defence Exhibit 645A, p. 1.
[266] Defence Exhibit 645A, p. 2.
[267] Defence Exhibit 645A, p. 3.
[268] Defence Exhibit 645A, pp. 3-4.
[269] Defence Exhibit 645A, p. 4.
[270] Defence Exhibit 645A, p. 4.
[271] T. 11 December 2007, p. 38.
[272] T. 4 December 2007, pp. 37-39; T. 5 December 2007, p. 36; T. 6 December 2007, pp. 14, 26; 11 December 2007, pp. 20, 29, 38-39, 43; T. 12 December 2007, pp. 52, 84; T. 13 December, pp. 5, 25.
[273] T. 12 December 2007, p. 77.
[274] T. 12 December 2007, p. 82.

217. During the conflict between the Rwandan Army and the RPF, the total troop strength of the Rwandan Armed Forces was approximately 29,000, with individual combat units containing between 600 and 800 personnel.[275]

4.1.4.1 The Reconnaissance Battalion and Other Elite Units

218. The Rwandan Armed Forces contained a number of elite units that played an important role in the events after 6 April 1994. The most prominent of these were the Presidential Guard, the Para Commando Battalion, the Huye Battalion and the RECCE Battalion. The RECCE Battalion is of particular relevance to this case.

219. The RECCE Battalion was constituted as an armoured vehicle unit that was enlarged in 1990 from a squad to a battalion[276] and based at Camp Kigali.[277] In April 1994, Nzuwonemeye was the battalion commander,[278] and Sagahutu commanded one of its combat squadrons.[279] The commander of the RECCE Battalion received orders directly from the General Staff of the Rwandan Army.[280]

220. In 1994, the RECCE Battalion consisted of approximately 20 to 25 armoured vehicles.[281] Operationally, the battalion was divided into three combat squadrons, an infantry squadron to assist in missions and protect the armoured vehicles, and a command and support squadron.[282] Each combat squadron was composed of a command unit and two combat platoons.[283] The combat platoons were subdivided into two combat sections, which were further divided into two combat squads.[284]

221. The basic mission of the RECCE Battalion was twofold. First, it was tasked with the defence of Rwanda, including carrying out first strike missions against enemy forces and providing a rapid response to attacks. Second, it conducted reconnaissance missions for other Rwandan Army units.[285] In December 1993, the RECCE Battalion received an additional mandate to reinforce troops guarding the President.[286] After 6 April 1994, the RECCE Battalion's mission expanded under a special provision of the Rwandan Army regulations to include protecting sensitive positions in Kigali, including the national radio system, the National Bank of Rwanda and the Telecom building.[287] The battalion was also ordered to conduct missions behind RPF lines.[288]

4.1.5 *The Rwandan Gendarmerie*

[275] Defence Exhibit 153, p. 7, para. 33(b).
[276] T. 1 December 2008, p. 5.
[277] T. 3 December 2008, p. 15.
[278] T. 6 October 2008, p. 3.
[279] T. 1 December 2008, p. 5.
[280] T. 1 December 2008, p. 7.
[281] T. 6 October 2008, p. 18.
[282] T. 6 October 2008, p. 5; T. 1 December 2008, p. 5.
[283] T. 1 December 2008, p. 6.
[284] T. 1 December 2008, p. 6.
[285] T. 6 October 2008, pp. 21-22.
[286] T. 6 October 2008, p. 22.
[287] T. 1 December 2008, pp. 13, 22; T. 6 October 2008, p. 21.
[288] T. 6 October 2008, p. 21.

222. The *Gendarmerie nationale* constituted the other half of the Rwandan Armed Forces. It was organised along the lines of several European military police forces, with twofold duties depending on whether the country was at war.[289] The primary peacetime mission of the *Gendarmerie* was to maintain public security.[290] In times of war, the *Gendarmerie* assisted the army and sent *gendarmes* to the front. While on combat operations, *gendarmes* served under the operational command of the army unit to which they had been assigned.[291] Logistical and disciplinary duties remained with the *Gendarmerie*.[292]

223. The *Gendarmerie* was run by the General Staff, which was commanded by the Chief of Staff. As commander of the *Gendarmerie*, the Chief of Staff was given absolute legal authority over the force and was responsible for the proposals of his immediate staff.[293] Immediately subordinate to the Chief of Staff were the heads of four bureaus of the General Staff,[294] who also served as the Chief of Staff's closest advisors.[295] The G-1 was responsible for all personnel issues.[296] The G-2 was concerned with intelligence matters. The G-3 was responsible for training and operations. Finally, the G-4 handled logistics for the *Gendarmerie*.[297]

224. Beneath the General Staff was the national *gendarmerie* corps, which was based in Ruhengeri, and eight "territorial units" attached to the *préfecture* administrations in Kigali, Butare, Gikongoro, Cyangugu, Gisenyi, Ruhengeri, Byumba and Kibungo.[298] The Chief of Staff also had authority over a number of specialised units including the road safety unit, the Kanombe airport unit, a mobile intervention unit in Kigali, a general services unit, a technical services unit, a construction unit, a criminal research and documentation unit, and a headquarters unit.[299] In approximately July 1993, the *Gendarmerie* also formed a VIP company, which was a 30-man platoon responsible for protecting the Prime Minister and various party leaders.[300]

225. The *Gendarmerie* consisted of 6,000 members in early 1994, with deployments in 10 *préfectures*. Each detachment contained between 300 and 400 troops with the exception of Kigali, which was allocated approximately 730 *gendarmes*.[301] Prior to the October 1990 war, the *Gendarmerie* had a total strength of 2,000 men. With the start of the war with the RPF, veteran *gendarmes* were dispatched to the frontlines, and 4,000 new *gendarmes* were recruited to meet security needs in the rest of the country.[302] In order to compensate for the massive influx of new recruits, some veteran *gendarmes* were brought out of retirement to

[289] Defence Exhibit 153, p. L0022658, para. 47.
[290] T. 28 January 2008, p. 42.
[291] T. 28 January 2008, p. 43.
[292] T. 28 January 2008, p. 6; T. 17 January 2008, pp. 53-54; T. 18 February 2009, pp. 10, 48; T. 10 June 2008, p. 28; T. 23 June 2008, pp. 11-13; T. 23 January 2008, p. 46 (ICS).
[293] T. 20 June 2008, pp. 16-17.
[294] T. 20 June 2008, p. 17.
[295] T. 16 June 2008, p. 40.
[296] T. 16 June 2008, pp. 40-41.
[297] T. 28 January 2008, p. 8; T. 28 June 2008, p. 42.
[298] T. 28 January 2008, p. 8.
[299] T. 28 January 2008, pp. 8, 11; T. 16 June 2008, p. 71.
[300] T. 5 June 2008, p. 7.
[301] Defence Exhibit 153, pp. 9-10, paras. 49-50, 53.
[302] Defence Exhibit 153, p. 9.

assist in training, although the UN concluded that only half of the recruits received substantial instruction, with the remainder receiving a 15 day basic course.[303]

4.2 Allegations of Planning and Preparation for the Genocide

226. The Indictment alleges that from late 1990 until July 1994, all four Accused "decided and executed a common scheme" with a number of other high level political and military leaders, together with numerous administrators, soldiers and civilians, "who espoused their cause to destroy, in whole or in part, the Tutsi ethnic group which was one of the component elements of the Rwandan population."[304] According to the Prosecution, the visible components of this "strategy for perpetrating the genocide" included the definition of the enemy by senior military and political officials, incitement to hatred and ethnic violence, the arming and training of *Interahamwe* militiamen, the preparation of lists of people to be eliminated, the numerous obstructions to the implementation of the Arusha Accords, and the deliberate refusal to restore order and seek out the perpetrators once the massacres of the civilian population had begun.[305]

227. The Prosecution submits that the proper inference to be drawn from the evidence is that at various times, each of the Accused agreed to participate in a broader plan to kill Tutsi civilians in order to homogenise Rwandan society in favour of Hutu citizens. By their acts or their obstinate refusal to mobilise the Rwandan Armed Forces to fulfil their legal mandate to maintain and safeguard public peace, the four Accused acting in concert with others planned, incited, ordered, committed, or otherwise aided and abetted the planning, preparation or execution of the conspiracy to commit genocide against Tutsi.[306]

228. The Chamber will first consider the earliest alleged evidence of conspiracy, the work of the Enemy Commission, followed by the preparation of lists of people to be eliminated; the arming and training of civilian militias; various meetings that are said to have taken place between 1992 and 1994; the obstruction of the Arusha Accords; the concealment of weapons; the ownership of *Radio Télévision Libre des Milles Collines* ("RTLM") shares; and finally the failure to stop RTLM broadcasts.

4.2.1 *Definition of the Enemy*

4.2.1.1 Introduction

229. On 4 December 1991, President Habyarimana set up a military commission to determine "[w]hat must be done in order to defeat the enemy militarily, in the media, and politically". Colonel Théoneste Bagosora, the *directeur de cabinet* of the Ministry of Defence, chaired this Commission (the Enemy Commission), which sat until about 20 December 1991. On 21 September 1992, the then Chief of Staff of the Rwandan Army, Colonel Déogratias Nsabimana, sent a letter to all commanders of operational sectors directing them to circulate to their units a document (the ENI Document) containing excerpts of the Enemy Commission's report. The ENI Document defined the enemy as:

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[303] Defence Exhibit 153, p. 9, para. 48.
[304] Indictment, para. 22.
[305] Indictment, para. 25.
[306] Indictment, para. 22.

> The extremist Tutsi within the country and abroad who are nostalgic for power and who have NEVER acknowledged and STILL DO NOT acknowledge the realities of social Revolution of 1959, and who wish to regain power in RWANDA by all possible means, including the use of weapons.[307]

230. The Prosecution alleges that the depiction of Tutsi in their entirety as the "enemy" or accomplices of the enemy in the ENI Document, together with the measures proposed in that document to address the threat posed by Tutsi, provide evidence of a conspiracy to commit genocide against the Tutsi. The Prosecution also submits that the anti-Tutsi ideology espoused in the ENI Document facilitated and encouraged ethnic hatred towards Tutsi and contributed to the genocide in 1994. The Prosecution maintains that the military elites of the FAR, including the Accused in this case, subscribed to and supported the anti-Tutsi ideology expressed in the ENI Document.[308]

231. The Defence disputes the Prosecution's allegations that the production of the ENI Document evidences a conspiracy by the Accused and others to commit genocide against Tutsi. The Defence contends that the Prosecution's allegation that the ENI Document depicted Tutsi as the "enemy" is based on a selective reading of the document. The ENI Document, when read in its entirety, does not support the Prosecution's allegations since it is clear that it depicts the RPF and its internal allies as the enemy of Rwanda, rather than the Tutsi as an ethnic group. The Defence maintains that the Commission's report was therefore prompted by a legitimate strategic need for the military authorities to define the enemy during a time of war. Even if one were to accept the Prosecution's contentions regarding the ENI Document, the Prosecution has not established any link between the definition of the enemy contained in the ENI Document and the Accused in this trial.[309]

4.2.1.2 Deliberations

232. In light of the war situation that prevailed in Rwanda at the time, the Chamber does not consider the establishment of the Enemy Commission by President Habyarimana in December 1991 to be unusual. The issue that the Chamber must decide is whether the report authored by members of that Commission depicted Tutsi as the "enemy" of Rwanda by virtue of their ethnicity, thereby espousing an ideological position that viewed all Tutsi as enemies who should be defeated.

233. The Prosecution submits that the publication and subsequent use of the ENI Document indicate a conspiracy on the part of the military authorities, including the Accused in this case, to commit genocide against Tutsi. The Chamber will first consider whether the ENI Document itself is evidence of a conspiracy among the members of the Enemy Commission to commit genocide against Tutsi, before turning to the question of whether the subsequent use of that Document provides evidence of the existence of a conspiracy to commit genocide and of the participation of the Accused in that conspiracy.

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[307] Indictment, para. 26; Prosecution Closing Brief, para. 142; Prosecution Exhibit 112.
[308] Indictment, paras. 25-26; Prosecution Closing Brief, paras. 137-149.
[309] Ndindiliyimana Closing Brief, para. 20; Nzuwonemeye Closing Brief, paras. 358-381; Bizimungu Closing Brief, paras. 40-50.

234. The full 32-page report of the Enemy Commission was entitled: "Evaluation of the situation of the RAF".[310] However, the entire report is not available to the Chamber. Only an excerpt of the report (the ENI Document), which Colonel Nsabimana disseminated to his subordinates on 21 September 1992, was tendered in this trial.[311] A statement from one of the members of the Enemy Commission in 1991, tendered as exculpatory material pursuant to Rule 68 of the Rules, provides some explanation for the unavailability of the entire report. According to this statement, President Habyarimana did not want the full report to be disseminated because it was critical of three senior officers of the Rwandan Armed Forces who were close to the President.[312] The Chamber notes that the statement is corroborated to some extent by the evidence of Prosecution Expert Witness Alison Des Forges, an expert in Rwandan history, who testified that the full report was "very tightly held even among senior military officers", in part because it recommended the removal of certain high-ranking military officers who were close to the President.[313]

235. Colonel Nsabimana's letter of 21 September 1992, to which the ENI Document was attached, directed all commanders of operational sectors to "circulate this document widely, highlighting in particular the chapters concerning the definition, identification and recruiting grounds of the enemy."[314] The letter and the attached ENI Document were marked "SECRET" and were intended only for internal use within the military.[315] The ENI Document subsequently fell into the hands of the opposition and was then circulated publicly.[316]

236. The first two provisions of the ENI Document, concerning the definition and identification of the enemy, read as follows:

> DEFINITION OF THE ENEMY
>
> The enemy can be subdivided into two categories:
>
> the primary enemy
>
> enemy supporters
>
> 1. The primary enemy are the extremist Tutsi within the country and abroad who are nostalgic for power and who have NEVER acknowledged and STILL DO NOT

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[310] Chamber's Exhibit 12A, p. 6. Chamber's Exhibits 6 through 17 were admitted into evidence on 12 April 2011 pursuant to its Decision on the Admission of Written Statements Disclosed by the Prosecutor Pursuant to Rule 68(1) of the Rules of Procedure and Evidence (with Strictly Confidential Annex). The Chamber notes that the exculpatory statements were disclosed by the Prosecution pursuant to Rule 68 after the trial had finished. In this regard, the Chamber recalls that a Trial Chamber may, where the Prosecution's violation of its disclosure obligation is so extensive or occurs at such a late stage of the proceedings that it would violate the right of the accused to trial without undue delay, or where it would be impossible or impractical to recall Prosecution witnesses without effectively re-opening the case in its entirety, opt to draw reasonable inferences from the disclosed material at the stage of its definitive evaluation of the evidence. *See Orić* Decision on Ongoing Complaints, para. 35.

[311] Prosecution Exhibit 112. The Chamber acknowledges the difficulties inherent in relying upon the excerpt in the absence of the full report. *See* Defence Exhibit 663, pp. 46-48; T. 26 November 2008, pp. 15-20; Bizimungu Closing Brief, para. 42.

[312] Chamber's Exhibit 12A, p. 6.

[313] T. 19 September 2006, p. 54.

[314] Prosecution Exhibit 112, p. 1.

[315] T. 19 September 2006, p. 54; T. 28 May 2007, p. 32; T. 25 June 2008, p. 26; T. 7 October 2008, pp. 44-46.

[316] T. 19 September 2006, p. 54; 27 September 2006, p. 22; T. 7 October 2008, p. 45; Chamber's Exhibit 12A, p. 6.

acknowledge the realities of the Social Revolution of 1959, and who wish to regain power in RWANDA by all possible means, including the use of weapons.

2. Enemy supporters are all who lend support to the primary enemy....

Political opponents who desire power or peaceful and democratic change in the current political regime in RWANDA are NOT to be confused with the ENEMY or supporters of the ENEMY.

IDENTIFICATION OF THE ENEMY

The ENEMY, or their accomplices, be they Rwandan or foreign nationals within the country or abroad, can be identified in particular by any of the following acts:

- Taking up arms and attacking RWANDA;

- Purchasing arms for enemy soldiers;

- Contributing money to support the ENEMY;

- Spreading propaganda favourable to the ENEMY;

- Recruiting for the ENEMY;

- Contaminating public opinion by spreading false rumours and information;

- Spying for the ENEMY;

- Divulging military secrets to the ENEMY;

- Acting as a liaison officer or runner for the ENEMY;

- Organising or performing acts of terrorism and sabotage in support of ENEMY activities;

- Organising or inciting revolts, strikes or any form of disorder to support ENEMY activities;

- Refusing to fight the ENEMY;

- Refusing to comply with war requisitions.

Political opponents who desire power or peaceful and democratic change in the current political regime in RWANDA are NOT to be confused with the ENEMY or supporters of the ENEMY.[317]

237. The Chamber has reviewed the above excerpt of the ENI Document and finds that it characterises only Tutsi who are "extremists" and "nostalgic for power" and who wish to regain power "by all possible means, including the use of weapons" as the "enemy", rather than the entire Tutsi population. The Chamber's view is premised on the fact that the depiction of the enemy in the above excerpt is based not on ethnic identity *per se*, but on the enemy's political objectives and actions taken in furtherance of such objectives, such as taking up arms against the regime, carrying out propaganda and recruitment for the enemy, spying and sabotage. Both clauses on the enemy contain an exception for political opponents who seek power within the political system through peaceful means.

238. The Chamber notes that in several places, the ENI Document uses the term "Tutsi" in reference to the enemy, and it makes generalisations that might suggest that the authors of the report considered the entire Tutsi population to be the enemy.[318] Prosecution Expert Witness

[317] Prosecution Exhibit 112, p. 3.
[318] Prosecution Exhibit 107, p. 15; T. 19 September 2006, p. 61.

Des Forges expressed the opinion that the frequent references to "Tutsi" throughout the ENI Document provide an indication of the thinking of the members of the Enemy Commission. According to Des Forges, at the time the Document was published, it was widely interpreted as expressing the view that all Tutsi were considered to be the enemy.[319] Des Forges's view was contested by Defence Expert Witness Bernard Lugan, who expressed the view that the ENI Document characterised only those Tutsi who subscribed to certain political stances as the enemy, rather than the Tutsi in their entirety.[320]

239. The Chamber has carefully considered the views of Des Forges regarding the interpretation of the ENI Document. It does not consider Des Forges's evidence to subvert its earlier finding that the ENI Document is inconclusive in proving that its authors considered all Tutsi to be enemies of the reigning government. The Chamber notes that throughout the ENI Document, the term "Tutsi" is generally qualified by other terms such as "extremist" Tutsi, Tutsi "refugees" or the Tutsi "diaspora". The second half of the document speaks almost entirely about the RPF and has virtually no references to Tutsi. For example, the section entitled "Enemy military and political organization" provides a detailed analysis of the structure and support system of the RPF.[321] Similarly, the section entitled "Enemy goals, resources and methods" states, "The goal of the RPF is to seize power in RWANDA and install the political system of its choice."[322]

240. The Chamber has also considered the terms of the letter dated 21 September 1992 from Chief of Staff Nsabimana to all commanders of operational sectors, to which the ENI Document was attached.[323] Nsabimana was a member of the Enemy Commission in 1991 and he is among the individuals who the Prosecution alleges were part of a conspiracy, together with the four Accused in this case, to commit genocide against Tutsi.[324] Nsabimana's letter appears to focus upon the RPF as the enemy, rather than the Tutsi *per se*. For example, the letter states that the enemy "is now on our territory, whereas [when the Commission produced its report], they were attacking from UGANDA. Their ranks, which used to be small, have since swollen considerably. The cease-fire has been effective and negotiations to bring an end to the war are underway."[325] In the view of the Chamber, the terms of Nsabimana's letter provide further support for the conclusion that the ENI Document did not equate Tutsi with the enemy by virtue of their ethnicity.

241. In light of the above analysis the Chamber is not satisfied that that the ENI Document indicates the existence of a conspiracy on the part of the Rwandan military authorities, including the Accused in this case, to perpetrate genocide against the Tutsi ethnic group.

242. That said, the Chamber acknowledges that the ENI Document included a clear ethnic component in its definition of the enemy, and it generally overemphasised the ethnic nature of the conflict. Des Forges expressed the view that the ENI Document led people to equate the enemy with the Tutsi ethnic group, and that this "facilitated attacks upon [Tutsi] and

[319] T. 19 September 2006, pp. 57-58.
[320] Defence Exhibit 663, p. 46; *See also* T. 28 May 2007, pp. 41-42; T. 25 June 2008, p. 27; T. 7 October 2008, pp. 44-46.
[321] Prosecution Exhibit 112, p. 5.
[322] Prosecution Exhibit 112, p. 10.
[323] Prosecution Exhibit 112, p. 1.
[324] Indictment, para. 22.
[325] Prosecution Exhibit 112, p. 1. The Chamber has also considered the terms of Prosecution Exhibit 113, but it finds that the letter does not provide any support for the existence of a conspiracy.

attempts to eliminate them."[326] In the Chamber's opinion, the ENI Document may have played a role in isolating Tutsi on the basis of ethnicity, and this isolation was an important precondition of the genocide. Nonetheless, the Prosecution has not presented sufficient evidence to prove that the subsequent use of the ENI Document indicates a conspiracy to commit genocide.

243. Even if the Chamber were to accept the Prosecution's argument that the production or subsequent use of the ENI Document is evidence of a conspiracy to commit genocide, the Chamber considers that there is not sufficient evidence connecting the Accused to that document. None of the Accused served on the Enemy Commission, and there is no evidence that any of the Accused authored or had any influence over the content of the ENI Document. Furthermore, although there is some evidence that Bizimungu propounded anti-Tutsi messages in the lead-up to and during the genocide, there is no evidence linking those messages to the ENI Document, and there is no evidence suggesting that any of the Accused took measures to disseminate the ENI Document within their respective units.[327]

244. Consequently, the Chamber finds that the Prosecution has not established beyond reasonable doubt that the production or subsequent use of the ENI Document is evidence of a conspiracy to perpetrate genocide against Tutsi or of the participation of the Accused in any such conspiracy.

4.2.2 *Preparation of Lists of People to be Eliminated*

245. Paragraph 25 of the Indictment identifies the preparation "of lists of people to be eliminated" as one of the "visible components" of the conspiracy to commit genocide.[328] This allegation is not particularised in subsequent paragraphs of the Indictment nor is it linked to any of the Accused in this case. Furthermore, the Prosecution presented no evidence suggesting that the Accused were in any way involved in the preparation of lists of people to be eliminated. Accordingly, the Chamber dismisses this allegation against the Accused.

4.2.3 *Ndindiliyimana and the Provision of Material Support to Interahamwe*

4.2.3.1 Introduction

246. Paragraph 25 of the Indictment identifies "the training of MRND *Interahamwe* militiamen and the distribution of weapons to them by elements of the *Forces armées rwandaises*" as one of the "visible components" of the conspiracy to commit genocide.[329] In this regard, the Chamber recalls that the Prosecution presented evidence regarding the provision of weapons by Ndindiliyimana to *Interahamwe* militiamen. The Chamber will now consider whether this evidence is suggestive of Ndindiliyimana's involvement in a conspiracy to commit genocide against Tutsi.

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[326] T. 11 October 2006, p. 33.
[327] Nzuwonemeye Closing Brief, paras. 377-380; Ndindiliyimana Closing Brief, para. 20.
[328] Indictment, para. 25.
[329] Indictment, para. 25.

4.2.3.2 Evidence

4.2.3.2.1 Prosecution Evidence

Prosecution Witness AMW

247. Witness AMW was a member of the *Interahamwe* in 1994.[330] Beginning on 13 April 1994, he was positioned at a roadblock located in Mucyakabiri, about 600 metres from Murambi.[331] He testified that a number of civilian and military authorities often passed through this roadblock while he was stationed there.[332]

248. Witness AMW recalled that Ndindiliyimana passed through the roadblock sometime in April 1994 with four other persons dressed in *Gendarmerie* uniforms.[333] The witness recognised Ndindiliyimana because he had seen him in the company of President Habyarimana and other authorities during the inauguration ceremony of Gitarama Stadium between 1985 and 1987.[334] Witness AMW testified that during his brief stop at the Mucyakabiri roadblock, Ndindiliyimana took a pistol from a box in the cabin of his vehicle and gave it to the leader of the roadblock, who was known as Égide.[335] Ndindiliyimana also congratulated the guards manning the roadblock for their role in combating the enemy, whom he described as "the Tutsis and all those who resembled them."[336] Ndindiliyimana's stop at the roadblock lasted about five minutes, after which he headed in the direction of the government office in Murambi.[337]

249. Witness AMW testified that he saw Ndindiliyimana a second time four days later at another roadblock controlled by a person known as Shitani.[338] During this encounter, Ndindiliyimana told the guards manning the roadblock that they should remain alert for any Tutsi among the displaced persons fleeing from Kigali.[339] Ndindiliyimana also promised to provide Shitani with guns as a reward for "doing his job very well" and authorised Shitani to take beer freely at Mucyakabiri at his expense.[340] The witness understood Ndindiliyimana's remarks towards Shitani to indicate his satisfaction with Shitani's role in arresting and intercepting Tutsi at the roadblock. The witness further testified that prior to Ndindiliyimana's stop at this roadblock, the Tutsi who were arrested at this roadblock there were taken to the *commune* office. However, after Ndindiliyimana's visit, Tutsi arrested at the roadblock were summarily killed.[341]

[330] T. 23 February 2005, p. 13.
[331] T. 23 February 2005, pp. 13, 15, 38.
[332] T. 23 February 2005, p. 15.
[333] T. 23 February 2005, pp. 20, 22.
[334] T. 23 February 2005, p. 21.
[335] T. 23 February 2005, p. 22.
[336] T. 23 February 2005, p. 22.
[337] T. 23 February 2005, pp. 22-23.
[338] T. 23 February 2005, p. 23.
[339] T. 23 February 2005, p. 23.
[340] T. 23 February 2005, p. 23.
[341] T. 23 February 2005, p. 24.

Prosecution Witness ANA

250. Witness ANA testified that early in the morning of 22 May 1994, he went to the football Nyanza Stadium to look for acting *bourgmestre* Nicodème Bizimana.[342] The witness recalled that there was a crowd of between 500 and 1000 mostly young persons in the stadium listening to a speech given by Ndindiliyimana.[343] Witness ANA heard Ndindiliyimana imploring the crowd to fight the *Inkotanyi* enemy as well as accomplices within the country and to participate in military training for that purpose.[344] Ndindiliyimana had some weapons with him and he promised the crowd that he would try to bring a larger batch.[345] After Ndindiliyimana's speech, Captain Birikunzira, the commander of the Nyanza *Gendarmerie,* took the floor and explained that the enemy could be categorised into two groups: the *Inkotanyi,* who were at the front, and the accomplices of the *Inkotanyi*, or Tutsi members of the population.[346] According to Witness ANA, Ndindiliyimana was still present when Birikunzira gave his speech.[347]

Prosecution Witness KF

251. Witness KF was a *gendarme* stationed at Camp Kacyiru in 1994. She testified that in April 1994, *Interahamwe* entered Camp Kacyiru and were then housed there until the end of the war.[348] The witness recalled that the first *Interahamwe* entered Camp Kacyiru on 7 April seeking shelter after having been fired upon by the RPF while manning roadblocks near the camp.[349] According to Witness KF, the *Interahamwe* were housed in a large multi-purpose hall, which was also used to house officers, located near the General Staff office.[350] Witness KF recalled seeing *Interahamwe* at the camp each time she was on duty there and she stated that they became, "more or less, our neighbours throughout the war."[351]

252. Witness KF also testified to having witnessed *Interahamwe* being provided with weapons at Camp Kacyiru. The witness recalled that on one occasion, she saw a red pickup truck parked near an ammunitions depot and Lieutenant Colonel Nzapfakumunsi and the truck's driver distributing weapons to about 20 *Interahamwe*.[352] After the weapons had been distributed, the witness encountered a member of the *Interahamwe* who asked her whether she also had grenades to distribute.[353] The witness subsequently learned that the *Interahamwe* were given weapons such as Enfield rifles, FALs and Kalashnikovs.[354]

253. Witness KF stated that the *Interahamwe* would enter and exit the camp at will and that they appeared to work there like the other inhabitants.[355] The *Interahamwe* were provided with medical care at the camp and assistance was also extended to members of

[342] T. 22 March 2005, pp. 41-42.
[343] T. 22 March 2005, p. 43.
[344] T. 22 March 2005, p. 43.
[345] T. 22 March 2005, p. 43.
[346] T. 22 March 2005, p. 44.
[347] T. 22 March 2005, p. 44.
[348] T. 17 January 2006, p. 25.
[349] T. 17 January 2006, p. 25.
[350] T. 17 January 2006, p. 25.
[351] T. 17 January 2006, p. 25.
[352] T. 17 January 2006, p. 27.
[353] T. 17 January 2006, p. 26.
[354] T. 17 January 2006, p. 26.
[355] T. 17 January 2006, p. 28.

Interahamwe who did not reside at the camp.[356] The witness observed members of the *Interahamwe* entering the camp at night in order to avail themselves of the services of the camp's resident doctor.[357] Witness KF described the *Interahamwe* as "at home" in Camp Kacyiru, finding safety and security alongside the *gendarmes* and others assigned there.[358] The witness explained that if an *Interahamwe* was wounded or otherwise needed help, they would simply come into Camp Kacyiru and obtain care or provisions from the *gendarmes*.[359] The witness stated that *Interahamwe* often came to the headquarters office "to see those working there" and to receive assistance with various "problems".[360]

254. The witness testified that those *Interahamwe* who resided at the camp objected to and sometimes killed Tutsi they discovered on the camp premises. Witness KF recalled that on 19 May, a Tutsi woman named Marie who had sought refuge at the camp was killed by *Interahamwe* in collaboration with Second Lieutenant Munyaneza. However, Witness KF added that she did not witness this incident herself.[361]

255. Witness KF testified that the *Interahamwe* seemed to be supervised from outside the camp, but also collaborated with *gendarmes* within the camp.[362] She noticed that the *Interahamwe* at the camp worked in coordination with two non-commissioned officers (NCOs) in Camp Kacyiru: Sergeant Major Nteziryayo, the Secretary of the General Staff, and Sergeant Simpunga.[363] According to the witness, these two NCOs worked with the *Interahamwe*, the commander of the General Staff and an unidentified officer.[364]

256. Witness KF testified that on 20 April, Ndindiliyimana arrived at Camp Kacyiru and chaired a meeting.[365]

4.2.3.2.2 Defence Evidence

Defence Witness CBL104

257. Witness CBL104 was a member of the *Gendarmerie* and worked as Ndindiliyimana's driver in 1994. He disputed the suggestion that Ndindiliyimana gave a pistol to an *Interahamwe* leader named Égide at a roadblock in Gitarama.[366] The witness testified that it was inconceivable that Ndindiliyimana, given his high rank and the fact that he had orderlies at his disposal, would have taken it upon himself to distribute weapons.[367] The witness stated, "[A]nyone who says that General Ndindiliyimana distributed weapons – issued weapons, would be a liar, because Ndindiliyimana was a high-ranking officer. If he had wanted to distribute weapons, he would have asked his subordinates to do it rather than doing it himself

[356] T. 17 January 2006, p. 28.
[357] T. 17 January 2006, p. 28.
[358] T. 17 January 2006, p. 28.
[359] T. 17 January 2006, p. 29.
[360] T. 17 January 2006, pp. 29-30.
[361] T. 17 January 2006, pp. 30-31.
[362] T. 17 January 2006, p. 29.
[363] T. 17 January 2006, pp. 29, 33.
[364] T. 17 January 2006, p. 29.
[365] T. 17 January 2006, p. 19.
[366] T. 4 June 2008, p. 14 (ICS).
[367] T. 4 June 2008, p. 13 (ICS).

which proves to you, therefore, that this is merely a tissue of lies and no such thing occurred."[368]

258. Witness CBL104 testified that he drove Ndindiliyimana to Nyanza to visit students of the military academy (ESM) who had relocated to secondary schools in Nyanza from the ESM campus in Kigali due to security concerns.[369] During this visit, Ndindiliyimana did not go to the Nyanza Stadium as was alleged by Prosecution Witness ANA.[370] Witness CBL104 further testified that he drove Ndindiliyimana everywhere and therefore would have known had Ndindiliyimana gone to the Nyanza Stadium.[371]

Defence Witness Antoine Nemeyabahizi

259. Witness Nemeyabahizi, the Tutsi director of the *Hôtel de Tourisme* in Gitarama, testified that there was a roadblock located about 300 metres from the hotel in 1994.[372] The witness stated that a former hotel employee named Égide was in control of this roadblock and that Égide even approached the hotel on three occasions in an attempt to attack the Tutsi.[373]

260. Nemeyabahizi explained that Ndindiliyimana, knowing that there were Tutsi seeking refuge in the *Hôtel de Tourisme*, provided four *gendarmes* to guard the premises from *Interahamwe* and gave the hotel permission to refuse entry to *Interahamwe* by stating that the government had requisitioned the hotel for official military business.[374] The witness also stated that Ndindiliyimana had "saved" him and he posed the question, "Why would [Ndindiliyimana] give a gun to someone who wanted to kill me? That's impossible."[375] Nemeyabahizi further testified that he never saw Ndindiliyimana with a pistol and that, despite enjoying Ndindiliyimana's full support, Nemeyabahizi had not received a pistol when he asked for one.[376]

261. Nemeyabahizi disputed Prosecution Witness AMW's claim that Ndindiliyimana gave a pistol to an *Interahamwe* leader known as Égide. The witness stated, "How can you expect a general -- from the Chief of Staff to indulge in little things with an imbecile like Égide? An eagle cannot eat flies."[377]

Defence Witness Jean Marie Vianney Nzapfakumunsi

262. Witness Nzapfakumunsi was a *Gendarmerie* officer based at Camp Kacyiru from April to July 1994. He disputed the claims made by Prosecution Witness KF that *Interahamwe* were allowed to enter or reside at Camp Kacyiru.[378] In particular, the witness rejected Witness KF's claim that *Interahamwe* were housed at the auditorium near the camp's command post. Nzapfakumunsi testified that from 9 April 1994, the area around the auditorium was subjected to an intense and protracted attack by the RPF because it was

[368] T. 4 June 2008, p. 19 (ICS).
[369] T. 4 June 2008, pp. 16-17 (ICS).
[370] T. 4 June 2008, p. 16 (ICS).
[371] T. 4 June 2008, p. 16 (ICS).
[372] T. 22 January 2008, pp. 45-46.
[373] T. 22 January 2008, p. 46.
[374] T. 22 January 2008, pp. 41-42.
[375] T. 22 January 2008, p. 46.
[376] T. 22 January 2008, p. 47.
[377] T. 22 January 2008, p. 46.
[378] T. 18 February 2009, p. 11; T. 17 January 2006, p. 25.

located near the command post.[379] According to Nzapfakumunsi, the command post was moved from its original location on 11 or 12 April because the building could not offer protection from the shelling.[380] The people who were previously sheltered at the auditorium were evacuated due to the attack.[381] Nzapfakumunsi stated that in light of this situation, it would have been impossible for members of the *Interahamwe* to remain housed in the auditorium "throughout the war".[382]

263. Nzapfakumunsi also rejected Witness KF's claim that he distributed weapons to *Interahamwe* at the camp. Nzapfakumunsi stated, "[A]t the Kanombe airport command in the magazines dump there were no weapons, so I could not distribute firearms that I did not have in my store."[383] He further testified that he could not distribute weapons that belonged to another unit commander and had been given by the General Staff. According to Nzapfakumunsi, he knew that if he distributed weapons to the *Interahamwe*, those "arms would be used against [him]".[384]

264. Nzapfakumunsi also responded to Witness KF's claim that two NCOs, namely Sergeants Nteziryayo and Simpunga, collaborated with the *Interahamwe* at Camp Kacyiru. The witness stated that he was informed that Sergeant Nteziryayo had deserted the camp, together with another NCO known as Ngerero, and joined the *Interahamwe*.[385] The witness also testified that Ngerero was facing disciplinary proceedings at the time of his desertion;[386] Ngerero had declared his intention to kill Nzapfakumunsi, who subsequently reported the matter to the Chief of Staff, who then initiated disciplinary proceedings against Ngerero.[387] Nzapfakumunsi stated that he had no information regarding Sergeant Simpunga.[388] He added that with the resumption of hostilities with the RPF, the *Gendarmerie* found it difficult to arrest *gendarmes* who were deserting from its ranks and joining the *Interahamwe*.[389]

265. Finally, Nzapfakumunsi disputed Witness KF's claim that Ndindiliyimana chaired a meeting on 20 April 1994 at Camp Kacyiru.[390] The witness explained that it would not have been feasible for Ndindiliyimana to hold a meeting at Camp Kacyiru given the intense and protracted shelling of the camp by the RPF.[391] Nzapfakumunsi stated that Ndindiliyimana visited Camp Kacyiru only once, in either April or May 1994, but did not hold any meetings during that brief visit.[392]

[379] T. 18 February 2009, pp. 13-14.
[380] T. 18 February 2009, p. 14.
[381] T. 18 February 2009, pp. 11, 14.
[382] T. 18 February 2009, p. 13; T. 17 January 2006, p. 25.
[383] T. 18 February 2009, p. 21.
[384] T. 18 February 2009, p. 21.
[385] T. 18 February 2009, pp. 21-22
[386] T. 18 February 2009, p. 22
[387] T. 18 February 2009, p. 22
[388] T. 18 February 2009, p. 22
[389] T. 18 February 2009, pp. 23-24, 27
[390] T. 18 February 2009, pp. 10; T. 17 January 2006, p. 19.
[391] T. 18 February 2009, p. 10.
[392] T. 18 February 2009, p. 11.

Defence Witness CBP85

266. Witness CBP85 was a military lawyer in Kigali in April 1994.[393] He testified that he moved from Kigali to Nyanza between 15 and 20 May and was tasked with training new recruits there.[394] According to the witness, Ndindiliyimana visited Nyanza between 21 and 24 May, and was accompanied by Murasampongo, the G1 officer of the Rwandan Army, and another *Gendarmerie* officer. The next day, Ndindiliyimana transferred at least 30 of the new recruits to the *Gendarmerie*.[395] Witness CBP85 did not see Ndindiliyimana again before leaving Nyanza in late May or early June.[396]

4.2.3.3 Deliberations

267. In assessing this allegation against Ndindiliyimana, the Chamber will first consider his alleged speech at Nyanza Stadium, before considering his alleged support for *Interahamwe* at various roadblocks and finally the alleged events at Camp Kacyiru.

4.2.3.3.1 Ndindiliyimana's Alleged Speech at Nyanza Stadium

268. The Chamber recalls that Prosecution Witness ANA is the only witness to have testified that Ndindiliyimana gave a speech at Nyanza Stadium on 22 May 1994 encouraging the audience to kill Tutsi and promising to provide weapons in support of such killings.[397] The Chamber notes that at the time of his testimony, the witness was serving a lengthy prison sentence after having been convicted of crimes related to the 1994 genocide.[398] For this reason, the Chamber treats his evidence with caution.

269. Furthermore, the Chamber has heard evidence from a number of Defence witnesses suggesting that the public meeting alleged by Witness ANA did not in fact take place. Defence Witness CBP85, who was in Nyanza at the time, denied that a public meeting featuring a speech by Ndindiliyimana was held at Nyanza Stadium. Defence Witness CBL104, Ndindiliyimana's driver at the time, testified that Ndindiliyimana had never even visited the stadium.[399] Given the contravening testimony of these witnesses, the Chamber finds that Witness ANA's evidence with respect to the alleged public meeting at Nyanza Stadium is insufficient absent further corroboration.

270. The Chamber also notes that Witness ANA was cross-examined at length during the *Nyiramasuhuko et al.* proceedings about the events that occurred in Nyanza on 22 May 1994. However, the witness never mentioned during that trial that he attended a large public meeting at Nyanza Stadium on 22 May in which Ndindiliyimana addressed the crowd.[400] The witness attempted to explain this omission by stating that he was not asked about Ndindiliyimana or about what had happened in the morning of 22 May 1994 while testifying in that case.[401] The Chamber is not convinced by this explanation in light of the exhaustive

[393] T. 28 May 2008, p. 38 (ICS).
[394] T. 28 May 2008, pp. 42-43 (ICS).
[395] T. 28 May 2008, pp. 44, 50 (ICS).
[396] T. 28 May 2008, pp. 44-45, 50 (ICS).
[397] T. 22 March 2005, pp. 41-44.
[398] T. 23 March 2005, pp. 10, 13, 42.
[399] T. 4 June 2008, pp. 16-17; T. 25 February 2008, pp. 30, 38; T. 26 May 2008, pp. 33, 55.
[400] T. 23 March 2005, p. 41.
[401] T. 23 March 2005, p. 41.

nature of the cross-examination of the witness in *Nyiramasuhuko et al.* regarding the events in Nyanza on 22 May 1994. This discrepancy raises further doubts about the reliability of Witness ANA's evidence and his overall credibility.

271. Even if the Chamber were to accept Witness ANA's evidence as credible, the Chamber is not satisfied that his account of Ndindiliyimana's alleged speech at Nyanza Stadium provides evidence that Ndindiliyimana conspired to commit genocide against Tutsi. Merely urging the audience to join the war effort against the RPF and offering to provide them with weapons is not in itself indicative of a desire to target and kill Tutsi civilians.

272. For these reasons, the Chamber is not satisfied that Witness ANA's evidence offers support for the Prosecution's allegation that Ndindiliyimana was implicated in a conspiracy to commit genocide against Tutsi.

4.2.3.3.2 Ndindiliyimana's Support for the Militia at Various Roadblocks

273. The Chamber recalls that it heard testimony from Prosecution Witness AMW regarding Ndindiliyimana's conduct at two roadblocks in Gitarama manned by *Interahamwe*. This witness alleged that Ndindiliyimana encouraged the *Interahamwe* at these roadblocks to kill Tutsi, that he promised to provide them with weapons and that in one instance he actually provided an *Interahamwe* member with a weapon. Witness AMW testified that at one of these roadblocks, the *Interahamwe* started to kill Tutsi after an encounter with Ndindiliyimana.

274. The Chamber notes that at the time of his testimony, Witness AMW was in detention awaiting trial for allegations of involvement in genocide-related crimes in 1994.[402] Accordingly, the Chamber approaches his evidence with caution.

275. The Chamber has grave concerns about the credibility of Witness AMW's testimony. In particular, the Chamber recalls that the witness claimed to have identified Ndindiliyimana at the Mucyakabiri roadblock in April 1994 after having previously seen him only once at a public ceremony at Gitarama Stadium between 1985 and 1987, when he was 15 or 16 years old.[403] The Chamber is not satisfied that the witness would have been able to identify Ndindiliyimana accurately and reliably based on one brief sighting of him seven to nine years before the encounter at that roadblock in 1994.

276. The Chamber also recalls Witness AMW's inconsistent account of the identity of Ndindiliyimana's escorts during his passage through the roadblock in Mucyakabiri. During his testimony before this Chamber, Witness AMW stated that Ndindiliyimana had *gendarme* escorts. However, in his testimony during the *Bizimungu et al.* case, the witness claimed that Ndindiliyimana was escorted by Presidential Guard soldiers when he passed through the roadblock.[404] When asked to explain this discrepancy, the witness stated that Ndindiliyimana's escorts were in fact Presidential Guards dressed in the uniforms of the *Gendarmerie*.[405] The Chamber finds that Witness AMW's inconsistent account of Ndindiliyimana's escorts undermines the reliability of his evidence as well as his overall credibility.

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[402] T. 23 February 2005, p. 7 (ICS).
[403] T. 23 February 2005, pp. 9, 20.
[404] T. 24 February 2005, p. 55; T. 28 February 2005, p. 19.
[405] T. 28 February 2005, p. 20.

277. The Chamber heard credible evidence from a number of Defence witnesses that raises further doubts about the veracity of Witness AMW's testimony. Defence Witness CBL104, Ndindiliyimana's driver at the time, refuted Witness AMW's account that Ndindiliyimana stopped at a roadblock manned by *Interahamwe* at Mucyakabiri and gave a pistol to a guard named Égide. Witness CBL104 testified that it was highly implausible that an officer of Ndindiliyimana's rank would have personally taken a pistol from a cabin at the back of his vehicle and given it to an *Interahamwe* member. The witness stated that Ndindiliyimana had orderlies at his disposal who would have most likely carried out such tasks. In addition, Defence Witness Nemeyabahizi, a Tutsi director of the *Hôtel de Tourisme* in Gitarama, testified that Ndindiliyimana posted a few *gendarmes* to the hotel in order to protect the witness and other Tutsi who had been threatened by *Interahamwe* such as Égide.[406] The witness rejected the possibility that Ndindiliyimana, who had helped him considerably, would have provided weapons to such *Interahamwe*.

278. The Chamber also notes that Witness AMW's testimony contravenes the totality of the evidence concerning Ndindiliyimana's conduct *vis-à-vis* the killings of Tutsi in 1994. The Chamber has considered this evidence in assessing the allegations pleaded in paragraphs 45 to 50 of the Indictment, and in greater detail in assessing Ndindiliyimana's sentence. The sum of the evidence suggests that Ndindiliyimana not only refrained from materially supporting and inciting killings, but that he took affirmative steps to reduce both the threat and the actual infliction of violence upon Tutsi. In this regard, the Chamber highlights the statements of Witness Des Forges and Fidèle Uwizeye regarding Ndindiliyimana's visit to Murambi in Gitarama on 22 April 1994 to plead with members of the interim government to intervene to stop the killings by *Interahamwe*.[407] The Chamber also recalls that Des Forges's assessment of Ndindiliyimana's conduct during the month of April, when Witness AMW alleges that Ndindiliyimana supported the killings of Tutsi by *Interahamwe* at roadblocks, led her to conclude that his conduct was consistent with "someone who opposes any killings of Tutsi civilians and any plan to do so".[408]

279. Having considered the evidence set out above, the Chamber does not accept accomplice Witness AMW's uncorroborated evidence that Ndindiliyimana gave a pistol to an *Interahamwe* guard at a roadblock in Gitarama, encouraged the *Interahamwe* there to kill Tutsi and offered to buy them alcohol as a token of support for their criminal conduct at the roadblocks. Therefore, the Chamber finds that Witness AMW's evidence does not support the Prosecution's allegation that Ndindiliyimana was part of a conspiracy to commit genocide against Tutsi.

4.2.3.3.3 Events at Camp Kacyiru

280. The Chamber has considered Prosecution Witness KF's testimony regarding the close collaboration between *gendarmes* at Camp Kacyiru and members of the *Interahamwe*. For reasons set out below, the Chamber finds Witness KF's testimony to be unreliable in the absence of credible corroborating evidence.

281. The Chamber recalls that Witness KF testified that members of the *Interahamwe* were sheltered in a multi-purpose hall near the command post in Camp Kacyiru upon the

[406] T. 22 January 2008, pp. 41-42.
[407] T. 11 October 2006, pp. 58-59; Chamber's Exhibit 13A, p. 8.
[408] T. 11 October 2006, p. 60.

resumption of hostilities with the RPF. However, in light of Defence Witness Nzapfakumunsi's detailed account of the circumstances at the camp during this period, the Chamber finds Witness KF's claim to be dubious.

282. Nzapfakumunsi, who worked at the command post, testified that the intense and protracted shelling of Camp Kacyiru, and in particular the command post, which began on 9 April 1994 would have made it impossible for the *Interahamwe* to have resided in the multi-purpose hall throughout the length of the hostilities with the RPF, as was alleged by Witness KF. Specifically, Nzapfakumunsi testified that the command post of the camp was targeted during this attack and that it was subsequently moved to a different location because the building that had housed the command post had been rendered structurally unsafe. The multi-purpose hall was also attacked during this time due to its proximity to the command post, and the people within it were evacuated following the transfer of the command post. Furthermore, Nzapfakumunsi testified that the multi-purpose hall had a weak roof that offered no protection from the shelling.

283. The Chamber finds Witness Nzapfakumunsi's account of the situation at Camp Kacyiru to be credible. Thus, contrary to Witness KF's claim, the Chamber finds that it would have been impossible for anyone to remain in the multi-purpose hall for any length of time during the shelling, let alone throughout the war. His evidence is corroborated to a significant extent by Ndindiliyimana and Witness CBP62, both of whom testified that the General Staff of the *Gendarmerie* was relocated from the camp to the Ministry of Public Works in Kimihurura due to the intensity of the RPF attack.[409]

284. The credibility of Witness KF's testimony regarding events at Camp Kacyiru is further diminished by her unconvincing claim that Ndindiliyimana chaired a meeting at the camp on 20 April 1994. Having found that the *Gendarmerie's* General Staff moved from Camp Kacyiru to a different location as a result of the RPF onslaught, the Chamber finds it difficult to believe that Ndindiliyimana would have chaired a meeting at Kacyiru Camp only one to two weeks after the relocation. The Chamber therefore rejects this claim by Witness KF.

285. Witness KF's testimony also suggests that the *Interahamwe* at Camp Kacyiru had links to the high command of the *Gendarmerie* or the commanders at the camp. The Chamber recalls that Witness KF testified that two NCOs of the *Gendarmerie* at the camp, namely Nteziryayo and Simpunga, collaborated with the *Interahamwe* and worked with the "commander of the General Staff". While the Chamber accepts, based on Nzapfakumunsi's testimony, that Nteziryayo collaborated with the *Interahamwe*, Nzapfakumunsi's evidence raises doubts as to whether his collaboration was endorsed by the *Gendarmerie's* high command. Nzapfakumunsi testified that Nteziryayo had defected from the *Gendarmerie* and joined the *Interahamwe*, together with Sergeant Ngerero who was subject to disciplinary proceedings at the time of his defection. For this reason, the Chamber has doubts as to whether the collaboration between some of the *gendarmes* at the camp with the *Interahamwe* was condoned by the *Gendarmerie's* high command.

286. The Chamber finds that the deficiencies in Witness KF's testimony described above undermine her overall credibility as a witness and cast considerable doubt on the reliability of her testimony. For these reasons, the Chamber is not satisfied that Witness KF's evidence

[409] *See* T. 27 May 2008, p. 38.

supports the Prosecution's allegation that Ndindiliyimana was implicated in a conspiracy to commit genocide against Tutsi.

4.2.4 *Military Training and Distribution of Weapons to Interahamwe*

4.2.4.1 Introduction

287. The Indictment alleges that in the course of 1992, 1993 and 1994, the political and military authorities, including Théoneste Bagosora, Augustin Bizimungu and Protais Mpiranya, provided military training and weapons to *Interahamwe*. It is alleged that the training took place in Ruhengeri, Cyangugu, Gisenyi and Butare *préfectures*, in Mutara *secteur*, and that the training sites were the Gako, Gabiro, Mukamira and Bigogwe military camps.[410]

4.2.4.2 Evidence

4.2.4.2.1 Prosecution Evidence

Prosecution Witness Roméo Dallaire

288. Witness Dallaire testified that Prime Minister Faustin Twagiramungu visited him on 11 January 1994 to speak of an informant who was said to be a high level member of the *Interahamwe*.[411] Twagiramungu told Dallaire that the informant had approached him saying that the *Interahamwe* were being armed and trained, and that the informant could not continue to function within the *Interahamwe* because of the extreme "misactions" that were being planned.[412]

289. Dallaire asked the commander of the Kigali *secteur*, Colonel Luc Marchal, to gather more information from the informant, whom they knew as "Jean-Pierre".[413] Marchal reported back that evening and told Dallaire that, according to Jean-Pierre,

> the MRND party was arming and training the *Interahamwe* to be not only a force to be used should they be required to fight, but also to be a force to be used to conduct massive scale of rounding up and killing of Tutsi … it contained also information of arms being distributed, training being conducted, of lists being made of targets that they would go after and the general information in regard to the conduct of the *Interahamwe* in what it potentially would be doing if called upon to implement that would seem to be a very diabolical plan of attacking and killing ultimately on a large scale the Tutsis. … [and] including the fact that he had mentioned that the Belgian soldiers would be potentially targeted.[414]

290. The following day, one of Dallaire's officers found weapons in the MRND Headquarters in Kigali, which was supposedly rented to the MRND by Ndindiliyimana. Jean-Pierre had previously informed Dallaire that the building was in fact a weapons cache.[415]

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[410] Indictment, para. 27.
[411] T. 20 November 2006, p. 33.
[412] T. 20 November 2006, pp. 33-34.
[413] T. 20 November 2006, p. 34; T. 22 November 2006, p. 45.
[414] T. 20 November 2006, p. 34.
[415] T. 20 November 2006, p. 45.

Prosecution Witness Frank Claeys

291. Witness Claeys, a Belgian UNAMIR officer in Rwanda in 1994, testified that on 10 January 1994 he met with an informant named Jean-Pierre Turatsinze, who was a former member of the Presidential Guard.[416] The witness testified, "[Jean-Pierre] told us he was in charge of training of persons who were members of the party, and who constituted the group that was referred to as the *Interahamwe*, that is, the militia of the MRND party."[417]

292. Jean-Pierre informed the witness that he "was in charge of the distribution of weapons in the various *cellule*s within Kigali. These weapons were stored to be used subsequently".[418] Jean-Pierre further stated that he "was in a position to receive weapons from units that were in Kigali with the authorisation of the local military authorities", and that the commanding officers of various military units would give him the authorisation to take weapons from the stocks that were stored in their areas.[419] Jean-Pierre informed the witness that he was in contact with Ngirumpatse, the chairman of the MRND, and his secretary.[420]

293. Witness Claeys met with Jean-Pierre again on 13 January 1994. Following this meeting, Jean-Pierre took the witness and the witness's colleague, Captain Deme, through Kigali so that he could point out the places that were designated as weapons caches and inform Claeys and Deme of the number of weapons stored in each location. The witness testified that approximately 100 AK-47 and G3 weapons were stored at the MRND Headquarters.[421]

Prosecution Expert Witness Alison Des Forges

294. Witness Des Forges testified extensively about the evolution of Rwanda's programme of civilian self-defence between 1990 and 1994. Des Forges stated that the government instituted a civilian self-defence programme in 1990 requiring local people to guard roadblocks and to carry out night patrols, but the programme lapsed following the RPF retreat in October 1990.[422] The programme was revived in September 1992, and one man for every ten households in the area near the Ugandan border was given military training as part of a self-defence force against the RPF. The trained civilians lived at home and were to go to action on the orders of Rwandan soldiers or *gendarmes*.[423]

295. In early 1993, Rwandan political and military leaders began advocating vigorously for a formalised national programme of "civilian self-defence" to defend against RPF infiltration.[424] President Habyarimana himself gave his public approval to such a plan in February 1993, and the initial steps were taken to distribute arms to civilians as part of what eventually became the civilian self-defence programme.[425] Soldiers provided firearms to

[416] T. 11 October 2005, pp. 27-28.
[417] T. 11 October 2005, p. 28.
[418] T. 11 October 2005, p. 28.
[419] T. 11 October 2005, pp. 28-29.
[420] T. 11 October 2005, p. 28.
[421] T. 11 October 2005, pp. 59-60.
[422] Prosecution Exhibit 107(A), pp. 23-24; T. 18 September 2006, p. 63; T. 20 September 2006, p. 27.
[423] Prosecution Exhibit 107(A), p. 24.
[424] Prosecution Exhibit 107(A), p. 24.
[425] T. 20 September 2006, pp. 24, 27.

residents of Gituza *commune* in Byumba *préfecture* and Mutara *commune* in Gisenyi *préfecture*, and a number of residents of Gituza *commune* also received training.[426]

296. A military commission was established in October 1993 to put the civil defence system into effect, "in preparation for having an armed population to be mobilised and to react on the orders of military and administrative officials."[427] Des Forges testified that the plan was to incorporate the militia into this system, "so that party loyalty would no longer be an obstacle."[428] After October 1993, the pace of distribution increased with firearms, grenades and machetes being delivered to militia. What made the system different during this period, according to Des Forges, was the extension of the programme nationwide and into those areas where there was no combat.[429] Des Forges emphasised that the use of "the ideas of defence", particularly "the propagation of the idea that the enemy was everywhere", helped to expand the programme in this way.[430]

297. Des Forges testified:

> Simultaneous with that, there was greater attention given to recruiting, training and arming militia members, particularly of the MRND, the group known as *Interahamwe*, also in some cases CDR. The dates are difficult to pin down but certainly by the end of the year [1993], there was a noticeable increase in the number of militia being trained.[431]

298. This continued into early 1994, when Rwandan soldiers trained hundreds of new *Interahamwe* recruits at military camps and other locations.[432] Military leaders also provided firearms to civilian authorities and political party leaders, who passed them on to militia.[433]

299. In February 1994, planners of the civil defence system met again and produced a document entitled "Organization of civilian self-defence", which discussed preparations for "popular resistance" in the event of renewed combat. The document specified that such resistance must be led by members of the armed forces. It called for participation from supporters of political parties that "defend the principle of the republic and democracy", a phrase which according to Des Forges came to mean the Hutu Power parties.[434] The document detailed a plan to supply participants with 4,995 firearms and 499,500 bullets. It also mentioned the need for traditional weapons such as bows, arrows and spears, which it said the people should acquire for themselves. The programme was to defend against actual RPF combatants, but also "disguised RPF" and their "accomplices". Des Forges noted that this language was so broad that it could easily be interpreted as including Tutsi civilians.[435]

300. On 29 March 1994, army officers again met to discuss the civil defence programme. The Chief of Staff, General Nsabimana, produced a written report on the meeting. The report stated that soldiers and former soldiers would command the recruits, who were to be "reliable

[426] Prosecution Exhibit 107(A), p. 27.
[427] T. 20 September 2006, pp. 26-27, 33.
[428] T. 20 September 2006, pp. 26, 45.
[429] T. 20 September 2006, p. 27.
[430] T. 20 September 2006, p. 27.
[431] T. 20 September 2006, p. 45; *see also* T. 20 September 2006, pp. 29-30, 34-35.
[432] Prosecution Exhibit 107(A), p. 25; T. 26 September 2006, p. 29.
[433] Prosecution Exhibit 107(A), p. 25.
[434] Prosecution Exhibit 107(A), pp. 25-26.
[435] Prosecution Exhibit 107(A), pp. 25-26.

citizens", and the Minister of Defence and Minister of the Interior were to be contacted to obtain the necessary firearms for the civilians. Given the scarcity of weapons, it was suggested that *bourgmestres* should instruct civilians in the use of traditional weapons including swords, spears, machetes, bows and arrows.[436] Des Forges expressed the view that the plan to train civil defence forces in the use of traditional weapons indicated that their target was civilian rather than military.[437] The civil defence system was formally implemented throughout the country on 25 May 1994 in a directive by Prime Minister Jean Kambanda.[438]

301. Thus, Des Forges explained that the civilian self-defence system existed in various forms at different periods during the war. It began as a legitimate effort to use civilians against a combatant force. Eventually, however, it morphed into a programme that could and did lead to the use of armed force against Tutsi civilians as such.[439] Des Forges testified, "When the plan was enlarged, to encompass areas then remote from the battlefield, and when the directives suggested the presence of the enemy embedded in the community … then the plan change[d] in nature."[440]

Prosecution Witness OX

302. Witness OX testified that on 7 April 1994, at the Gisenyi bus terminal, he saw Colonel Anatole Nsengiyumva and Captain Bizimuremye[441] holding a meeting with a large number of *Interahamwe* leaders including Bernard Munyagishari, Omari Faizi (a.k.a. Serushango), Thomas and Mabuye.[442] The witness saw that the *Interahamwe* were bringing down a large number of crates from two pick-up trucks and that Bizimuremye was then distributing firearms and grenades from the crates to the *Interahamwe*.[443]

Prosecution Witness AOG

303. Witness AOG testified that he was a member of the MRND and was present at the meeting around November 1991 when the *Interahamwe* was established.[444] He was subsequently closely involved with the activities of the *Interahamwe*.[445] He recalled that in 1993 the MRND provided the *Interahamwe* with weapons, as well as providing training in the handling and assembly of weapons, shooting and military drills.[446] The witness testified that the Ministry of National Defence gave 800 weapons to the chairman of the MRND, Mathieu Ngirumpatse, who then gave them to Kasimu Turatsinze, the intermediary between the MRND and the *Interahamwe*. Turatsinze in turn gave 400 weapons including

[436] Prosecution Exhibit 107(A), pp. 26-27; T. 21 September 2006, p. 5.
[437] T. 20 September 2006, p. 33.
[438] Prosecution Exhibit 211A; T. 21 September 2006, p. 9.
[439] T. 20 September 2006, p. 33.
[440] T. 20 September 2006, p. 33.
[441] The Chamber notes that Bizimuremye is spelled "Bizumuremye" in the transcripts of witness DO's testimony. The Chamber is satisfied that the two witnesses are referring to the same person.
[442] T. 14 June 2006, pp. 7-9, 64.
[443] T. 14 June 2006, pp. 8, 66.
[444] T. 20 February 2006, p. 39 (ICS); T. 21 February 2006, p. 18.
[445] T. 21 February 2006, pp. 18-19, 41 (ICS).
[446] T. 21 February 2006, pp. 17-18 (ICS).

Kalashnikovs, R4s and light automatic weapons[447] to Robert Kajuga, who then distributed them among the *Interahamwe* in Kigali town.[448]

Prosecution Witness DA

304. Witness DA was a soldier in the RECCE Battalion in Kigali from 1991 to 1994.[449] He testified that *Interahamwe* received weapons training at locations such as Gabiro in Mutara region and Kimihurura at the Presidential Guard barracks.[450] At the end of 1992, the witness saw three or four groups of *Interahamwe* receiving training in the vicinity of Camp Gabiro, each group consisting of between 500 and 600 people.[451] The *Interahamwe* were trained by Rwandan soldiers, including commando troops from Camp Gabiro, together with French instructors.[452] The witness also saw *Interahamwe* receiving weapons training at the Presidential Guard camp in Kimihurura in May 1993.[453] He testified that Rwandan soldiers, including some soldiers of the Presidential Guard, provided the training in conjunction with French soldiers.[454]

Prosecution Witness DY

305. Witness DY was a soldier in the RECCE Battalion in Kigali from 1988 to 1994.[455] He testified that in 1993, Rwandan soldiers commanded by Lieutenant Colonel Mukundiye trained the *Interahamwe* in Mutara.[456] The witness went to Kabiro in Mutara on one occasion in 1993, where he heard gunshots and saw a large number of soldiers. An instructor informed the witness that the gunshots were the *Interahamwe* undergoing training. The witness was also told that if UNAMIR were to arrive at the camp, he should tell them that the trainees were forest rangers.[457]

Prosecution Witness DCK

306. Witness DCK was a soldier in the Music Company in Camp Kigali in 1994.[458] He testified that in late June or early July 1994, he accompanied the Operations commander, General Kabiligi, to the Kigali city *préfecture* office where Kabiligi met about 40 *Interahamwe* and gave them new Kalashnikovs, ammunition and grenades. Kabiligi asked the *Interahamwe* if they knew how to handle weapons, and they replied, "Yes, we were trained in weapons handling."[459]

[447] T. 21 February 2006, p. 23 (ICS).
[448] T. 21 February 2006, pp. 17-18 (ICS).
[449] T. 11 January 2005, p. 28 (ICS).
[450] T. 13 January 2005, p. 18.
[451] T. 13 January 2005, pp. 19-21; 20 January 2005, p. 55; T. 25 January 2005, p. 67.
[452] T. 20 January 2005, p. 55; T. 13 January 2005, p. 21.
[453] T. 13 January 2005, p. 22.
[454] T. 13 January 2005, p. 22; T. 25 January 2005, p. 70.
[455] T. 23 January 2006, pp. 27-28.
[456] T. 23 January 2006, pp. 28-29, 33.
[457] T. 24 January 2006, p. 62.
[458] T. 8 March 2005, p. 34.
[459] T. 9 March 2005, p. 17.

Prosecution Witness GLJ

307. Witness GLJ testified that he attended a meeting at the Kigali *préfecture* office at some point between 10 and 20 April 1994. Those present at the meeting included the Kigali *Préfet* Renzaho, the *bourgmestre*, the *conseiller de secteur*, the *responsable de cellule* Major Nyamuhimba, and Baziruwiha, who was the commander of the *Gendarmerie* brigade in Nyamirambo.[460] At the meeting, the *préfet* told the witness to collect guns from the Ministry of Defence in order to distribute them at roadblocks in the area.[461] The witness subsequently received ten rifles together with ammunition from an army major at the Ministry of Defence. The witness distributed the guns to members of the population so that they could use them at roadblocks, where "they were saying they were facing *Inkotanyi*".[462]

Prosecution Witness DO

308. Witness DO testified that he attended a meeting at Camp Gisenyi on 7 April 1994. Those present at the meeting included Captain Bizumuremyi and the commander of the camp, Colonel Anatole Nsengiyumva, as well as a number of soldiers and the "heads" of the *Interahamwe*.[463] According to the witness, Bizumuremyi was well known in Gisenyi because "in a way" he was the head of the *Interahamwe*.[464]

309. After the meeting, the witness heard Colonel Nsengiyumva ask Captain Bizumuremyi

> to provide the people in charge of the *Interahamwe* with the equipments [sic] that he needed. And [Nsengiyumva] said that if they were lacking in anything, then [Bizumuremyi] should make sure that the *Interahamwe* were given the equipment necessary to do their job.[465]

310. Nsengiyumva then instructed Bizumuremyi to distribute weapons and ammunition to the *Interahamwe*.[466] Under Bizumuremyi's supervision, soldiers collected weapons including Kalashnikovs, pistols and grenades from a nearby depot and distributed them to the *Interahamwe*.[467]

Prosecution Witness AMW

311. Witness AMW became a member of the *Interahamwe* in April 1994 after the death of President Habyarimana.[468] The witness manned roadblocks in his *commune* together with soldiers and other *Interahamwe*. He testified that some of the *Interahamwe* at the roadblocks were armed with rifles that they had received from Rwandan soldiers.[469]

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[460] T. 15 June 2005, p. 11.
[461] T. 15 June 2005, p. 17.
[462] T. 15 June 2005, pp. 24-25.
[463] T. 11 May 2006, pp. 46-47.
[464] T. 11 May 2006, p. 41.
[465] T. 11 May 2006, p. 47.
[466] T. 11 May 2006, pp. 47-48; T. 15 May 2006, pp. 72-74.
[467] T. 11 May 2006, pp. 47-48; T. 15 May 2006, pp. 72-74.
[468] T. 23 February 2005, p. 8 (ICS); T. 23 February 2005, pp. 13, 47.
[469] T. 23 February 2005, p. 14.

Prosecution Witness GAP

312. Witness GAP testified that he attended a meeting held at some point between December 1992 and January 1993 at the *commune* office in Mukingo.[470] The purpose of the meeting was threefold: to create a group of *Interahamwe,* to store firearms in Ruhehe and to plan firearm training for "the young people".[471] Those present at the meeting included Augustin Bizimungu, Joseph Nzirorera, Juvénal Kajelijeli, Ephrem Setako, Casimir Bizimungu and Baheza, as well as the *responsables* of the *cellule* and the *secteur* councils.[472]

313. Witness GAP stated that following this meeting, Bizimungu established a store for ammunition and arms on Ruhehe Hill, approximately 200 metres from the Mukingo *commune* office.[473] The youth formed the *Interahamwe* and began regular physical training, firearms training and ideological training.[474] Reservists "under the command of Karorero, the Chief Warrant Officer", led the *Interahamwe* in their military training,[475] and soldiers instructed the *Interahamwe* in their firearms training at Camp Mukamira.[476] Kajelijeli was in charge of their ideological training, which consisted of showing the *Interahamwe* the evil deeds and the malice of the Tutsi.[477] The training at Mukingo *commune* continued until 13 July 1994, when the witness and other members of Mukingo *commune* fled to Zaire.[478]

314. In the morning of 7 April 1994, Bizimungu delivered Kalashnikov rifles and grenades to the witness at the Mukingo *commune* office and told the witness that the weapons should be distributed to *Interahamwe.* The *bourgmestre* then arrived and stated that weapons should also be given to the *conseiller de secteur* and the *responsable de cellule*. The witness distributed the weapons to Kajelijeli, the *Interahamwe*, the *conseiller de secteur* and the *responsable de cellule*.[479]

Prosecution Witness GFD

315. Witness GFD was a member of the MRND in 1994 and became an *Interahamwe* following the death of President Habyarimana on 6 April 1994.[480] On 20 April 1994, the witness responded to a press release calling for people to go to the Nkuli *commune* office and enlist in the civil defence. The witness testified:

> Civil defence was a group that was set up after the death of Habyarimana. Some *Interahamwe* were selected and sent to the Mukamira camp for military training, and at the end of the training session, those who took part were sent to the war front. And those people would help in tracing the Tutsis who were targeted.[481]

[470] T. 15 February 2005, p. 25.
[471] T. 15 February 2005, p. 25.
[472] T. 15 February 2005, pp. 23, 25.
[473] T. 15 February 2005, pp. 26-27.
[474] T. 15 February 2005, pp. 26, 37.
[475] T. 15 February 2005, pp. 36-37.
[476] T. 15 February 2005, pp. 36-37.
[477] T. 15 February 2005, pp. 36-37.
[478] T. 15 February 2005, p. 38.
[479] T. 15 February 2005, pp. 42-43, 46; T. 22 February 2005, pp. 41-42.
[480] T. 10 May 2005, p. 63.
[481] T. 10 May 2005, p. 63.

316. The witness and around 500 other people were then sent to Camp Mukamira for military training.[482] At the camp, they received training in weapons handling and camouflage from soldiers of the Rwandan Army. They were also taught that "the Tutsis were wicked, and that if we were not careful, the Tutsis were going to kill us like they killed Habyarimana."[483] At the end of the training, they were given Kalashnikovs, R-4s and grenades, and then deployed in groups alongside soldiers. They were told that the objective of their military training was "chasing the Tutsis, as well as going to fire on the RPF *Inkotanyi*."[484]

Prosecution Witness GFC

317. Witness GFC was a member of the *Interahamwe* in 1993 and 1994.[485] He testified that he underwent *Interahamwe* training for approximately one to two months towards the end of 1993.[486] The training took place at the Mukingo *commune* office and included physical education, weapons handling and shooting.[487] The senior instructor was Karorero and other instructors included Sergeant Dusabimana, Sergeant Tuyizere and Bimenyimana.[488]

318. A number of authorities, including Juvénal Kajelijeli, Captain Hasengineza and Jetan Bambonye, visited the *Interahamwe* during their training at the *commune* office.[489] The witness testified that these authorities

> told us that Tutsis were mean, Tutsis-*Inyenzi*, and that it was the Tutsis who had attacked us and that we should chase them away. They told us that if we did not all receive weapons, we should forgive them, but that those who were to receive the weapons should make good use of them and that others would use traditional weapons.[490]

319. At the end of their training, Joseph Nzirorera gave the *Interahamwe kitenge* uniforms consisting of a shirt, trousers and a beret, and Captain Hasengineza and an officer named Karorero gave them rifles.[491] The authorities told the *Interahamwe* that they would be posted at roadblocks to pursue Tutsi who were considered the enemy, *Inkotanyi* and *Inyenzi*.[492]

Prosecution Witness GFU

320. Witness GFU testified that he was a member of the *Impuzamugambi*, the youth wing of the CDR political party, prior to the death of President Habyarimana on 6 April 1994.[493] Three days after the President's death, the CDR youth leader summoned the group and informed them that the "military and civilian authorities had launched an appeal and that we should all go to the stadium to begin training."[494]

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[482] T. 10 May 2005, p. 63.
[483] T. 10 May 2005, p. 64.
[484] T. 10 May 2005, p. 65.
[485] T. 1 March 2005, pp. 12, 18.
[486] T. 1 March 2005, pp. 12, 18.
[487] T. 1 March 2005, pp. 12-13.
[488] T. 1 March 2005, p. 19.
[489] T. 1 March 2005, pp. 21-22.
[490] T. 1 March 2005, p. 22.
[491] T. 1 March 2005, p. 22.
[492] T. 1 March 2005, p. 23.
[493] T. 27 January 2005, pp. 51-52.
[494] T. 27 January 2005, pp. 53-54, 56.

321. The Ruhengeri *Impuzamugambi* subsequently received military training at Ruhengeri Stadium, alongside members of the *Interahamwe* and *Impuzamugambi* from other *communes*.[495] Sergeant Majors from Camp Muhoza trained them in weapons handling, dismantling of weapons and military techniques.[496] The training lasted for three days, after which the trainees received weapons and ammunition.[497] Augustin Bizimungu and his deputies attended the closing ceremony. The witness testified, "General Bizimungu addressed us and briefed us on our training, and said that now that we had completed training, we were to be assigned to roadblocks to track down *Inyenzi Inkotanyis* and their accomplices."[498]

322. Following Witness GFU's training at Ruhengeri Stadium, he received training from soldiers in grenade handling in the Cyabararika forests, together with about 20 to 30 youths who also manned his roadblock.[499] Colonel Setako organised the training and told the group that its purpose was to prepare them to fight the *Inkotanyi* and their accomplices.[500] The trainees received grenades at the end of training.[501]

Prosecution Witness GFV

323. Witness GFV testified that he was a member of the *Interahamwe* in 1993 and 1994.[502] Beginning in 1993, he underwent training that included learning how to shoot, how to dismantle and reassemble a weapon, and how to use grenades.[503] The training took place in Mukingo *commune* and lasted around two to two and a half months.[504] There were numerous small groups being trained at the same time.[505] The training was conducted by soldiers including Chief Warrant Officer Karorero from Camp Mukamira, Nzirorera's young brother Sergeant Dusabimana, Corporal Ndagijimana, son of Bambali, and Bimenyimana, the son of Sebigori.[506] Soldiers provided the *Interahamwe* with firearms for their training, including about 15 R4 and Kalashnikov rifles.[507] These weapons were obtained from Ruhehe Hill.[508]

324. During Witness GFV's training, Augustin Bizimungu "would come to hold meetings in Camp Mukamira".[509] The witness saw Bizimungu a total of four times during this period.[510] In addition, "MRND officials would normally come as well as the military authorities of Camp Mukamira."[511] The visitors included Juvénal Kajelijeli, "Bambonye who was the CDR official", Chief Warrant Officer Karorero and Major Bizabarimana, "who was the commanding officer of Mukamira Camp".[512] When these authorities came to visit, they would tell the *Interahamwe* that "the *Inyenzi/Inkotanyi* were not human beings" but were

[495] T. 27 January 2005, pp. 52-54.
[496] T. 27 January 2005, p. 56.
[497] T. 27 January 2005, p. 53.
[498] T. 27 January 2005, p. 53.
[499] T. 27 January 2005, p. 58; T. 2 February 2005, p. 13; T. 3 February 2005, p. 75.
[500] T. 27 January 2005, p. 58.
[501] T. 2 February 2005, p. 58.
[502] T. 23 May 2005, p. 14.
[503] T. 23 May 2005, p. 14.
[504] T. 23 May 2005, p. 14.
[505] T. 26 May 2005, p. 14.
[506] T. 23 May 2005, pp. 15-16.
[507] T. 26 May 2005, pp. 4-5.
[508] T. 23 May 2005, p. 22.
[509] T. 23 May 2005, p. 17.
[510] T. 23 May 2005, p. 20.
[511] T. 23 May 2005, p. 21.
[512] T. 23 May 2005, pp. 21-22.

"like cockroaches ... normally seen in trees or in food stores", and that the *Interahamwe* should "look for the accomplices of the *Inyenzi* as well as the *Inyenzi/Inkotanyi* themselves".[513]

Prosecution Witness GFA

325. Witness GFA was a member of the *Interahamwe* from 1991 to 1994.[514] He testified that sometime after February 1993, the *Amahindure* or *Virunga* force was formed as a civil defence system for Nkuli and Mukingo *communes*.[515] The *Amahindure* was made up of *Interahamwe* and *Impuzamugambi*, and its objective was to collaborate with "Rwandan Army forces to mount a counter-attack against the RPF *Inkotanyi* and the enemy, that is, the Tutsi".[516]

326. The *Amahindure* was formed at a meeting at the Mukingo *commune* office. Those present at the meeting included Augustin Bizimungu, Juvénal Kajelijeli, Joseph Nzirorera, Colonel Bonaventure Ntibitura, Major Bisabarimana, Jean-Baptiste Nyabusore, the leader of the *préfecture* Charles Nzabagerageza, and the managing director Alphonse Ndivumarera, together with members of the population and *Interahamwe* and *Impuzamugambi*.[517]

327. Following that meeting, the witness and other *Interahamwe* took part in training consisting of physical exercises, military parade, weapons handling, shooting range exercises and military techniques.[518] The training took place in Mukingo and Ruhere *communes* and at Camp Mukamira.[519] The *Interahamwe* used firearms that came from the military position at Ruhehe Hill, close to the Mukingo *commune* office, and Camp Mukamira.[520] The instructors were soldiers, retired soldiers and *Interahamwe* including Mborimuremye from the Mukingo *commune* office, Gervais Musafiri, Jean-Pierre Muganimana, Jean-Pierre Ndagigimana, Noelle Ndayisaby, Rwasubutare, the leader of the *Interahamwe* Françoise Dusabimana and Chief Warrant Officer Karorero.[521]

328. The training lasted for about three months.[522] At the end of the training, some of the trainees received Kalashnikovs and R4s.[523] Witness GFA testified, "We were supposed to use those guns to fight the *Inkotanyi* and their accomplices who were inside the country."[524] The witness himself received a Kalashnikov at the house of Nzirorera's mother.[525] Others received their weapons at the house of Nzirorera's mother, Camp Mukamira or Ruhere *commune*.[526]

[513] T. 23 May 2005, p. 22.
[514] T. 30 January 2006, pp. 61-62.
[515] T. 30 January 2006, p. 71; T. 2 February 2006, p. 7.
[516] T. 30 January 2006, p. 71.
[517] T. 30 January 2006, pp. 71-72.
[518] T. 30 January 2006, pp. 76-77.
[519] T. 30 January 2006, pp. 77, 80.
[520] T. 30 January 2006, p. 77.
[521] T. 30 January 2006, pp. 78-80.
[522] T. 30 January 2006, p. 77.
[523] T. 30 January 2006, p. 80.
[524] T. 30 January 2006, p. 80.
[525] T. 30 January 2006, pp. 80-81.
[526] T. 30 January 2006, p. 81.

Prosecution Witness AOF

329. Witness AOF was a member of the *Amahindure* force in 1993 and 1994.[527] He testified that the *Amahindure* was established in July or August 1993 to work together with the *Interahamwe* and the *Impuzamugambi*.[528] The *responsable de cellule* summoned the witness and other members of the civilian population to the Nkuli *commune* office, where they were enlisted in the *Amahindure*.[529] Chief Warrant Officer Karorero was the leader of the *Amahindure*, and other instructors included André Ntuyenabo, Sergeant Karamera and Corporal Alphonse Semanza.[530]

330. The witness and approximately 300 other individuals were subsequently trained in the Nkuli *commune* office and the neighbouring forest.[531] The training lasted for two months.[532] During the training, the trainees did not have real guns but instead used pieces of wood shaped as guns.[533] In December 1993, the witness and nine other trainees were sent to Camp Mukamira for training in shooting using Kalashnikovs and live ammunition.[534]

331. The witness testified that he saw Bizimungu in August 1993 at a meeting at the Nkuli *commune* office.[535] Also present at that meeting were the commander of Camp Mukamira Bizabarimana, a businessman named Félicien Kabuga, and the *bourgmestre* of Nkuli *commune* and *responsable* of the *Amahindure* Dominique Gasimbanyi.[536] Bizimungu spoke at the meeting and said that the enemy was the Tutsi and that "he was going to find solutions to all our problems with the cooperation of the others who had come with him".[537] Félicien Kabuga then took the floor and said that he had placed an order abroad for uniforms and footgear for the *Amahindure*.[538] Bizabarimana informed them that guns would be distributed to *Amahindure* members from Mukamira and Gitwa *secteurs,* since there were a large number of Tutsi in those two *secteurs*.[539]

332. Approximately one week after the meeting, while the witness was still undergoing training, commander Bizabarimana brought a number of rifles in a truck to the Nkuli *commune* office. The witness saw soldiers unloading about one hundred Kalashnikovs from the truck and stocking them at the *commune* office.[540] Other trainees told the witness that, two days later, the weapons were taken to Mukamira and Gitwa *secteurs* by the respective *conseillers*.[541]

[527] T. 16 March 2006, p. 19.
[528] T. 16 March 2006, pp. 18-19.
[529] T. 16 March 2006, p. 21.
[530] T. 16 March 2006, pp. 19-20.
[531] T. 16 March 2006, p. 20; T. 29 March 2006, p. 29.
[532] T. 29 March 2006, p. 38.
[533] T. 29 March 2006, p. 36.
[534] T. 16 March 2006, p. 21.
[535] T. 16 March 2006, p. 12.
[536] T. 16 March 2006, pp. 13, 16.
[537] T. 16 March 2006, p. 16.
[538] T. 16 March 2006, p. 17.
[539] T. 16 March 2006, p. 17.
[540] T. 16 March 2006, p. 17.
[541] T. 16 March 2006, pp. 17-18.

Prosecution Witness GS

333. Witness GS was a member of the Rwandan Armed Forces residing in Camp Kanombe in Kigali town in April 1994.[542] He testified that in the morning of 9 April 1994, he saw Major Ntibihura distributing sub-machine guns, Kalashnikovs, ammunition and grenades to a group of *Interahamwe* at Camp Kanombe.[543] A uniformed soldier who was a member of the Para Commando Battalion accompanied the *Interahamwe*.[544] The witness subsequently saw *Interahamwe* on several occasions in Camp Kanombe in front of the office of Major Ntibihura. Each time, the *Interahamwe* obtained ammunition and submitted reports on their activities.[545]

334. The witness further testified that the *Interahamwe* were trained by Rwandan Army soldiers in the Gabiro area of Mutara *préfecture* in 1993 and 1994.

4.2.4.2.2 Defence Evidence

The Accused Bizimungu

335. Bizimungu testified that in January 1992, a civilian defence system was established in the Ruhengeri and Byumba *préfectures* in response to a deteriorating security situation. Following repeated requests from the *préfets,* the Ministry of the Interior provided 300 rifles to those *préfectures,* and Bizimungu managed the distribution of the weapons to certain *communes*.[546] He testified that the weapons were distributed to the *communes* that were under the greatest threat from the RPF, not the *communes* that had the highest Tutsi populations.[547]

336. Bizimungu emphasised that the weapons were not distributed to the civilian population at large, but rather to "an organisation within a *commune* for the greater good of a *commune*, with a view to reinforcing security."[548] He testified:

> Maybe if there was abuse at a later stage in time – that's a great shame. However, as regards the intention, the motivation, it was very far from our minds to arm – or, provide weapons for one part of the population to get up against the other part.[549]

337. Bizimungu further testified that people chosen from the population had previously received weapons training through the various *communes* concerned. Bizimungu stressed that those people were not *Interahamwe* at that time but were members of the general population.[550]

338. Bizimungu stated that after February 1993, there was a military position opposite the Mukingo *commune* office on Ruhehe Hill, but he denied that any weapons were stored at that location.[551] He denied having attended a meeting with the *Amahindure* at the Nkuli *commune*

[542] T. 2 February 2006, p. 54.
[543] T. 2 February 2006, pp. 68, 72; T. 3 February 2006, pp. 22-23.
[544] T. 2 February 2006, p. 72; T. 3 February 2006, pp. 23-24.
[545] T. 2 February 2006, pp. 73-74.
[546] T. 11 December 2007, pp. 4-6; T. 5 December 2007, p. 73.
[547] T. 11 December 2007, pp. 6-7.
[548] T. 11 December 2007, p. 6.
[549] T. 11 December 2007, p. 6.
[550] T. 11 December 2007, pp. 5-6.
[551] T. 11 December 2007, pp. 3-4.

office in 1993.[552] He also denied that military training took place at Ruhengeri Stadium after the death of the President[553] or that grenade training was provided in Cyabararika Forest in May 1994.[554]

Defence Witness DE11-4

339. Defence Witness DE11-4 testified that a civil defence programme did not exist in Ruhengeri in February 1993, that he did not participate in any meeting at the Mukingo *commune* office as asserted by Prosecution Witness GFA and that there were no stockpiles of arms on Ruhehe Hill.[555]

Defence Expert Witness Bernard Lugan

340. Witness Lugan, an expert in Rwandan history, testified that from 1 October 1990 there was a programme called "*Amarondo*", which consisted of a series of measures intended to protect the Rwandan population from the RPF's criminal activities and infiltrations. However, there was no national "civil defence" programme before April 1994, at least not in the sense of a military process similar to those that exist in France, Switzerland and the former Yugoslavia.[556] Lugan explained that *Amarondo* "covers … civilian measures taken to provide security throughout the country", whereas "[c]ivilian defence is a military process, in spite of the name 'civilian'".[557]

341. Between 1990 and 1994, the security measures taken as part of *Amarondo* varied depending on the level of the RPF threat.[558] For example, in September 1991, following RPF attacks in the *sous-préfecture* of Ngarama, Mutara, it was agreed that one person for every ten families would be armed.[559] Local authorities in the areas close to the border with Uganda, particularly in Ruhengeri and Byumba, subsequently took measures to arm selected members of the population.[560] These measures were initiated by the local administrative authorities rather than the army.[561]

342. Following the RPF attack of February 1993, weapons were distributed to four *communes* in Gisenyi, but most of those arms were recovered on the orders of the government after the ceasefire signed on 7 March 1993.[562] On 2 March 1993, representatives of the main political parties met in Kigali and produced a declaration that called on the government to organise the entire population in the civil defence of the country.[563]

343. On 29 March 1994, military leaders met with the *préfet* of Kigali to discuss the development of a civilian self-defence programme to defend against the RPF in Kigali.[564] The

[552] T. 11 December 2007, p. 7.
[553] T. 11 December 2007, p. 8.
[554] T. 11 December 2007, pp. 9-10.
[555] T. 27 November 2007, pp. 22-25.
[556] Defence Exhibit 663, pp. 32-33; T. 26 November 2008, pp. 5, 21-22; T. 27 November 2008, pp. 66-68.
[557] T. 26 November 2008, pp. 21-22; T. 27 November 2008, p. 66.
[558] Defence Exhibit 663, p. 35.
[559] Defence Exhibit 663, p. 36.
[560] Defence Exhibit 663, p. 37.
[561] Defence Exhibit 663, p. 37.
[562] Defence Exhibit 663, p. 38.
[563] Defence Exhibit 142; Defence Exhibit 663, p. 39.
[564] Defence Exhibit 663, pp. 33, 40-41.

report of the meeting, dated 30 March 1994 and classified "very secret", set out a plan to select and train reliable civilians to participate in the programme.[565] After 6 April 1994, the government intensified its efforts to create a formal civil defence programme at the national level, culminating in the 25 May 1994 Directive by Prime Minister Jean Kambanda.[566]

4.2.4.3 Deliberations

344. There is considerable evidence suggesting that the Rwandan political and military authorities provided weapons and military training to civilians, many of whom were identified as *Interahamwe* militiamen, between 1992 and 1994.[567] The Chamber has considered the expert reports and testimony of Prosecution Expert Witness Alison Des Forges and Defence Expert Witness Bernard Lugan, both of whom provided detailed descriptions of the provision of weapons and training to civilians in Rwanda during this period.[568] Despite disagreements about certain terminology, the Chamber notes that there are a number of substantive similarities between the expert reports of these two witnesses.

345. The Prosecution also presented other firsthand evidence of Rwandan authorities providing training and weapons to civilians between 1992 and 1994.[569] Witnesses AOG,[570] GAP,[571] OX,[572] DO[573] and GS[574] gave firsthand accounts of political and military officials providing weapons to the *Interahamwe*. Witnesses GAP,[575] GFA,[576] AOF[577] and DO[578] attended meetings at which political and military officials discussed the training and/or arming of the *Interahamwe*. Witnesses GFV,[579] GFA,[580] GFC,[581] GFD[582] and GFU[583] received weapons and military training from Rwandan soldiers. Witness DA saw Rwandan soldiers training *Interahamwe*.[584] Witness GLJ testified that the authorities provided civilians with weapons to be used at roadblocks soon after the President's death in April 1994.[585] Dallaire and Colonel Claeys received information from an *Interahamwe* leader in January

[565] Defence Exhibit 663, pp. 33, 40-41.
[566] Defence Exhibit 663, pp. 40-44. *See also* Prosecution Exhibit 811.
[567] *See* Prosecution Exhibit 208; Prosecution Exhibit 209; Prosecution Exhibit 210; Prosecution Exhibit 212.
[568] Prosecution Exhibit 107, pp. 23-28; Defence Exhibit 663, pp. 32-44.
[569] In addition to the evidence identified below, *see* T. 23 February 2005, p. 14; T. 9 March 2005, p. 17; T. 23 January 2006, pp. 28-29, 33; T. 24 January 2006, p. 62; T. 16 March 2006, pp. 20-21; T. 29 March 2006, p. 29.
[570] T. 21 February 2006, pp. 17-18, 23 (ICS).
[571] T. 15 February 2005, pp. 42-43, 46; T. 22 February 2005, pp. 41-42.
[572] T. 14 June 2006, p. 66.
[573] T. 11 May 2006, pp. 47-48; T. 15 May 2006, pp. 72-74.
[574] T. 2 February 2006, pp. 68, 72; T. 3 February 2006, pp. 22-23.
[575] T. 15 February 2005, p. 25.
[576] T. 30 January 2006, p. 71.
[577] T. 16 March 2006, p. 12.
[578] T. 11 May 2006, pp. 47-48; T. 15 May 2006, pp. 72-74.
[579] T. 23 May 2005, p. 14; T. 26 May 2005, pp. 4-5.
[580] T. 30 January 2006, pp. 76-77.
[581] T. 1 March 2005, pp. 12, 18, 22.
[582] T. 10 May 2005, pp. 63-65.
[583] T. 27 January 2005, pp. 52-56.
[584] T. 13 January 2005, pp. 19-21; 20 January 2005, p. 55; T. 25 January 2005, p. 67; T. 13 January 2005, p. 22.
[585] T. 15 June 2005, pp. 17, 24-25.

1994 that the MRND was arming and training the *Interahamwe*.[586] The Defence presented witnesses to refute some of the specific allegations made by these witnesses.[587]

346. In addition to this general evidence, Witnesses GAP, GFA, GFU and AOF gave evidence that directly implicates Bizimungu in the arming and training of civilians, including *Interahamwe,* between 1992 and 1994.[588]

347. The Chamber notes that a number of these witnesses are former *Interahamwe* who have been convicted of crimes connected to the genocide, and their evidence must therefore be approached with caution.[589] The Chamber has raised further questions about the credibility of some of these witnesses in other sections of the Judgement, and it does not consider all details of all their accounts to be reliable. In particular, the Chamber declines to rely on the testimony of Witness GFA regarding the meeting at the Mukingo *commune* office after February 1993, the creation of an *Amahindure* force, the weapons store at Ruhehe Hill and the military training of the *Interahamwe* in Mukingo *commune*, because he specifically recanted those parts of his testimony in the *Karemera et al.* trial.[590] The Chamber recalls, however, that Witness GAP testified about similar events before this Chamber.[591]

348. Having considered the totality of the evidence, the Chamber is convinced that Rwandan military and civilian authorities were arming and training civilians, many of whom were members of the *Interahamwe,* from late 1992 until mid-1994. The Chamber is also convinced that Bizimungu played a key role in these activities, particularly in view of the scale and organisation of the *Interahamwe* training programmes in Ruhengeri *préfecture,* the role of Rwandan soldiers under Bizimungu's command in training the *Interahamwe* and the large number of weapons involved.

349. The Chamber notes that the Prosecution intends to rely on this evidence to prove that Bizimungu conspired with military and civilian authorities to commit genocide against Tutsi. The Defence contests this allegation. The issue to be determined by the Chamber, therefore, is whether the evidence that Bizimungu and other Rwandan authorities armed and trained the *Interahamwe* is part of a conspiracy to commit genocide, or whether Bizimungu's conduct can plausibly be viewed as an extension of the civil defence mechanisms adopted by the government to enhance its ability to fight the war against the RPF.

350. In his testimony before this Chamber, Bizimungu acknowledged that the political and military authorities were arming and training civilians in Ruhengeri and Byumba *préfectures* in early 1992. However, he insisted that those weapons and training programmes were provided within the framework of Rwanda's civilian self-defence system, in response to RPF

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[586] T. 11 October 2005, p. 28; T. 20 November 2006, pp. 33-34.
[587] T. 27 April 2007, p. 16; T. 16 May 2007, pp. 7, 30; T. 25 May 2007, pp. 12-14; T. 7 June 2007, p. 59 (ICS); T. 16 October 2007, pp. 22-23; T. 17 October 2007, pp. 15-16; T. 24 October 2007, pp. 20, 22-24, 31; T. 30 October 2007, pp. 45-46; T. 27 November 2007, pp. 22-25; 5 December 2007, pp. 8-11 (ICS); Defence Exhibit 448A; Defence Exhibit 448B; Defence Exhibit 448C.
[588] T. 15 February 2005, pp. 24-27, 42-43; T. 22 February 2005, pp. 41-42; T. 27 January 2005, pp. 52-54; T. 30 January 2006, pp. 71-72; T. 16 March 2006, pp. 12, 16, 18-19.
[589] *See* T. 14 June 2005, pp. 32-33 (ICS); T. 11 May 2006, pp. 32-36 (ICS); T. 23 February 2005, p. 7 (ICS); T. 15 February 2005, p. 4 (ICS); T. 1 March 2005, p. 9 (ICS); T. 3 March 2005, p. 39; T. 27 January 2005, pp. 35-46 (ICS); T. 23 May 2005, p. 12; T. 30 January 2006, p. 57; T. 29 March 2006, pp. 14, 21-22.
[590] The details of Witness GFA's recantation are set out in Chapter III of this Judgement. *See also* Defence Exhibit 689A; Defence Exhibit 691A.
[591] T. 15 February 2005, pp. 25-27, 36-37.

infiltration as well as the general banditry triggered by the war, and were not intended to be used against the Tutsi population.[592] Bizimungu further testified that the people chosen to participate in the civilian self-defence programme were not *Interahamwe* at that time, but were members of the general population.[593]

351. The Chamber is satisfied that a civilian self-defence system existed in some form in Rwanda between 1990 and 1994, although it was only formalised as a national programme through the 25 May 1994 Directive issued by Prime Minister Kambanda.[594] Both Expert Witnesses Des Forges and Lugan recognised that a programme for civilian security or self-defence was established in 1990 and then expanded and developed between 1992 and 1994.[595] According to Des Forges, at the beginning, the civilian self-defence programme could be described as "the legitimate exercise in self defence against the military force".[596] This was particularly important in the area near the Ugandan border. The civilian self-defence programme also provided a way to unite the political party militias, including the *Interahamwe,* in a single purpose and bring them under control "so that party loyalty would no longer be an obstacle."[597] Both Des Forges and Lugan emphasised that the character of the civilian self-defence programme shifted over time, though the precise timeline for this evolution is unclear.[598]

352. The evidence outlined above demonstrates that a large number of civilians, many of whom were *Interahamwe*, received weapons and military training between 1992 and 1994 as part of Rwanda's civilian self-defence programme. However, these activities must be assessed against the backdrop of war that prevailed in Rwanda from 1 October 1990.[599] The Chamber accepts that the *Interahamwe* who were armed and trained as part of the civil defence mechanism were implicated in the killing of Tutsi during the genocide of 1994 in Rwanda. The question that calls for the Chamber's resolution is whether they were trained and armed in order to prepare them to take part in the genocide against Tutsi.

353. It is the Chamber's view that the arming and training of civilians, some of whom were *Interahamwe,* as part of Rwanda's system of civilian self-defence does not in itself demonstrate a conspiracy by Bizimungu and others to use the *Interahamwe* for the purpose of committing genocide against Tutsi civilians. It is well-established that, when confronted with circumstantial evidence suggesting the participation of the accused in a conspiracy to commit genocide, the Chamber may only convict where this conspiracy is the only reasonable inference. Having thoroughly considered the evidence, the Chamber is not convinced that the evidence excludes the possibility that the training and arming of civilians had motives related to the military objective of waging war against the RPF, particularly in light of the

[592] Bizimungu Closing Brief, paras. 51-75; T. 11 December 2007, pp. 4-7; T. 5 December 2007, p. 73.
[593] T. 11 December 2007, pp. 5-6.
[594] Prosecution Exhibit 211.
[595] Prosecution Exhibit 107, pp. 23-24; Defence Exhibit 663, pp. 32-37.
[596] T. 20 September 2006, p. 33.
[597] T. 20 September 2006, p. 26.
[598] Prosecution Exhibit 107, pp. 23-28; T. 20 September 2006, pp. 33-34; Defence Exhibit 663, p. 35. Lugan distinguished between the *Amarondo* programme, which existed between 1990 and 1994 and which focused on civilian self-defence overseen by local administrative authorities, and the more militarized concept of *"defence civile"*, which he says did not exist before 6 April 1994. *See* Defence Exhibit 663, pp. 32-33.
[599] In this regard, the Chamber has considered carefully the reports and testimony of Defence Expert Witnesses Helmut Strizek (Defence Exhibit 637) and Bernard Lugan (Defence Exhibit 663).

government's limited resources and the focus on defence against infiltrators and accomplices.[600]

354. The Chamber will now consider the evidence that the training of the *Interahamwe* was accompanied by the propagation of anti-Tutsi sentiments. The Prosecution alleges that anti-Tutsi messages were disseminated as part of the civilian military training and that this supports the inference that the provision of weapons and training was part of a conspiracy by Bizimungu and others to commit genocide.[601]

355. Des Forges testified that after October 1993, the civilian self-defence programme was extended nationwide and into those areas where there was no combat, and that this expansion was accompanied by "the propagation of the idea that the enemy was everywhere".[602] Witness GFC testified that the trainees at the Mukingo *commune* office in 1993 were told "that Tutsis were mean, Tutsis-*Inyenzi*, and that it was the Tutsis who had attacked us and that we should chase them away."[603] Witness GFC also testified that the authorities gave the trainees weapons and told them that they would be posted at roadblocks to pursue the Tutsi enemy, *Inkotanyi* and *Inyenzi*.[604] Witness GAP testified that trainees in Mukingo *commune* in 1993 received "ideological" training to show them the evil deeds and the malice of the Tutsi.[605] Witnesses GFU[606] and GFD[607] testified about similar anti-Tutsi propaganda during their training in mid and late April 1994. General Dallaire testified that in January 1994, he received information from an *Interahamwe* leader known as "Jean-Pierre" that the MRND was arming and training the *Interahamwe* not only to fight the RPF if required, "but also to be a force to be used to conduct massive scale of rounding up and killing of the Tutsis".[608]

356. The Chamber exercises caution with respect to the evidence of Witnesses GFC, GAP, GFU and GFD. Nonetheless, the Chamber notes that their first-hand accounts of their training and receipt of weapons were broadly similar, particularly those of Witnesses GFC and GAP who testified about training at the same location in 1993. The Chamber considers these aspects of their evidence to be believable. The information that Jean-Pierre provided to General Dallaire and Colonel Claeys in January 1994 provides general corroboration of these witnesses' evidence regarding the arming and training of the *Interahamwe* in the lead-up to the genocide. However, given that the evidence based on Jean-Pierre's information is second or third-hand and his current whereabouts are unknown, the Chamber is reluctant to rely on his assertion that the purpose of these activities was to kill Tutsi civilians.

357. The Chamber is satisfied that at least some parts of the civilian military training programmes between 1992 and 1994 were accompanied by anti-Tutsi and anti-RPF propaganda. However, the Chamber has carefully considered the tenor of the ideology propagated in the course of such training and is not satisfied that the aim of the propaganda

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[600] Des Forges expressed this view in her testimony before this Chamber. *See* T. 20 September 2006, pp. 33-34.
[601] Prosecution Closing Brief, paras. 275, 358-359.
[602] T. 20 September 2006, p. 27.
[603] T. 1 March 2005, p. 22.
[604] T. 1 March 2005, p. 23.
[605] T. 15 February 2005, pp. 26, 36-37. Witness GFA also testified that the *Interahamwe* training in Mukingo and Ruhere *communes* and at Camp Mukamira was accompanied by anti-Tutsi messages, but the Chamber has disregarded this evidence in light of GFA's specific recantation of that part of his testimony in the *Karemera et al.* trial. The details of his recantation are set out in Chapter III of the Judgement.
[606] T. 27 January 2005, p. 53.
[607] T. 10 May 2005, pp. 64-65.
[608] T. 20 November 2006, p. 34; T. 22 November 2006, p. 44.

was to incite the trainees against members of the Tutsi ethnic group, as opposed to whipping up fervour against the RPF as a military adversary. The Chamber recalls its earlier finding that the evidence tendered in this trial does not exclude the possibility that the civil defence mechanism was directed toward military objectives. That being the case, the anti-Tutsi utterances discussed by Prosecution witnesses could reasonably be understood as being aimed at the RPF force as opposed to members of the Tutsi ethnic group as such. Therefore, the Chamber is not satisfied that the anti-Tutsi propaganda disseminated during the civilian military training is probative of the fact that such training was part of a conspiracy to commit genocide against Tutsi.

358. It follows that the Chamber is not satisfied beyond reasonable doubt that the provision of weapons and military training to the *Interahamwe* between 1992 and 1994 was part of a preconceived plan on the part of Rwandan authorities, including Bizimungu, to target Tutsi civilians.

4.2.5 *President Habyarimana's Speech*

359. The Indictment alleges that in order to legitimise, if necessary, the process of arming and training the *Interahamwe*, President Juvénal Habyarimana declared in 1993 in Ruhengeri that the *Interahamwe* had to be equipped so that, come the right time, *"ils descendent"* (they should swing into action).[609]

360. The Chamber notes that paragraph 28 contains no allegation against the Accused in this case. At best, this paragraph provides background information which may help to contextualise the allegations against the Accused set out elsewhere in the Indictment. Furthermore, the Prosecution presented no evidence of the alleged speech or of its relationship to the allegations against the Accused regarding the training and provision of weapons to the *Interahamwe*. Accordingly, the Chamber will not consider this charge in assessing the allegation of conspiracy to commit genocide.

4.2.6 *Meetings Prior to 7 April 1994*

4.2.6.1 Introduction

361. The Indictment alleges that between 1992 and 1994, Augustin Bizimungu, accompanied by Juvénal Kajelijeli and others, regularly took part in meetings that were generally held on Saturdays at the home of Joseph Nzirorera, the MRND National Secretary, and that the purpose of these meetings was to devise a strategy for fighting the Tutsi enemy.[610]

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[609] Indictment, para. 28.

[610] Indictment, para. 29. In Chapter II of the Judgement, the Chamber found that the allegations in paragraphs 30 and 31 of the Indictment are impermissibly broad, ambiguous and vague. The Chamber further found that these defects were not cured by subsequent notice to Bizimungu of the nature of the charges against him. Accordingly, the Chamber will not consider the charges in paragraphs 30 and 31 of the Indictment in assessing the allegation of conspiracy to commit genocide.

4.2.6.2 Evidence

4.2.6.2.1 Prosecution Evidence

Prosecution Witness GFA

362. Witness GFA was a member of the MRND party and the *Interahamwe* in 1994.[611] He testified that around 1992, he started attending meetings at the house of Nzirorera's mother.[612] The witness was present at most of these meetings,[613] which were held mainly on weekends.[614] The meetings were also attended by Augustin Bizimungu, Ephrem Setako, Alphonse Dirizamunga, Juvénal Kajelijeli, Esdras Baheza, Jean Damascene Niyoyita, Asiel Ndisetse, Michel Bakuzakundi, Bambonye and members of the *Interahamwe*.[615]

363. According to the witness, the authorities present conducted the meetings in the sitting room of the house, while he and other *Interahamwe* waited within the compound.[616] Only on one occasion did he attend the actual meeting inside the house.[617] Normally, François Dusabimana, who was a Sergeant in the Rwandan Army and also Nzirorera's younger brother, would come outside and relate to them what was being said in the meetings.[618]

364. At the end of the meetings, some of the authorities, including Bizimungu, would speak directly to the *Interahamwe* outside the building in order to tell them what had been decided and to give them instructions.[619] According to Witness GFA, they were told that the RPF *Inkotanyi* were the country's enemy because they had invaded the country on 1 October 1990. They were also informed that the RPF were cooperating with Tutsi inside Rwanda, and they were asked to look for these accomplices who apparently included "[a]ll men married to Tutsi women [and] all Tutsis in the opposition".[620] The *Interahamwe* were instructed to set up roadblocks[621] and to hand any accomplices over to the military or civilian authorities.[622]

365. Witness GFA testified that Nzirorera told them that he was the one who had ordered Kajelijeli to create the *Interahamwe*. Nzirorera also introduced the *Interahamwe* to the other authorities present at the meetings, and told the authorities that they should assist the *Interahamwe* so that if the authorities had any problems they could turn to them.[623] In return, Nzirorera told the *Interahamwe* to obey the orders of the authorities gathered at the meeting just as they obeyed his own orders.[624] The witness testified that these were routine statements, which Nzirorera repeated at every meeting.[625]

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[611] T. 30 January 2006, p. 58.
[612] T. 30 January 2006, pp. 61-62.
[613] T. 30 January 2006, p. 66.
[614] T. 30 January 2006, p. 63.
[615] T. 30 January 2006, p. 62.
[616] T. 30 January 2006, p. 67.
[617] T. 30 January 2006, p. 70.
[618] T. 30 January 2006, pp. 69-70.
[619] T. 30 January 2006, p. 70.
[620] T. 30 January 2006, p. 65.
[621] T. 30 January 2006, p. 67.
[622] T. 30 January 2006, p. 65.
[623] T. 30 January 2006, p. 67.
[624] T. 30 January 2006, p. 67.
[625] T. 30 January 2006, p. 67.

366. According to the witness, Bizimungu participated in these meetings on several occasions.[626] Bizimungu never opposed anything that was said on the above issues, and he supported the statements made by Nzirorera, saying that "that was how things had to be done"[627] and that the *Interahamwe* "wouldn't have any problem and that [they] should cooperate with the soldiers and look for the enemy."[628] Witness GFA explained, "The enemy he was referring to was the Tutsi."[629] Asked how he knew this, the witness replied, "[T]he definition had already been given to us, be it over the radio or at meetings, we were told that the *Inkotanyi* had attacked the country, that the RPF was Tutsis, from within and from without the country, as well as the other persons I have mentioned."[630]

367. Witness GFA also testified to having met Bizimungu at a "security meeting" held at the Mukingo *commune* office at some point after February 1992. Also present at the meeting were "the *Interahamwe*, *Impuzamugambi*, ... Charles Nzabagerageza, ... Juvénal Kajelijeli, Joseph Nzirorera, Colonel Bonaventure Ntibitura, Major Bizabarimana, ... Alphonse Ndivumarera, Jean-Baptiste Nyabusore ... Dominique Gatsimbanyi ... as well as other *communal conseillers*, including Ndisetse."[631]

368. According to the witness, it was during this meeting that they "set up the *Virunga* force or the *Amahindure* ... That force was made up of MRND *Interahamwe*s and *Impuzamugambi* of the CDR ... and the objective of the force was to corroborate the Rwandan Armed Forces to mount a counter-attack against the RPF *Inkotanyi* and the enemy, that is, the Tutsis."[632] Bizimungu did not speak at this meeting; however, neither did he oppose anything that was said.[633]

Prosecution Witness GFC

369. Witness GFC was a member of the MRND party and the *Interahamwe*.[634] The witness stated that he received physical and military training at the Mukingo *commune* office for one to two months in 1993, and that only Hutus were allowed to participate in that training.[635] He testified that he learned about this training from Witness GFA.[636]

370. According to Witness GFC, Witness GFA attended a meeting at the house of Nzirorera's mother at which the *Interahamwe* training sessions were planned.[637] Joseph Nzirorera, Augustin Bizimungu, Juvénal Kajelijeli, Esdras Baheza, Nyabusore, Michel Bakuzakundi and Michel Niyigaba were among the persons who attended this meeting.[638]

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[626] T. 30 January 2006, p. 66.
[627] T. 30 January 2006, p. 67.
[628] T. 30 January 2006, p. 66.
[629] T. 30 January 2006, pp. 66-67.
[630] T. 30 January 2006, p. 67.
[631] T. 30 January 2006, pp. 71-72.
[632] T. 30 January 2006, p. 71.
[633] T. 30 January 2006, pp. 72-73.
[634] T. 1 March 2005, p. 12.
[635] T. 1 March 2005, pp. 18-19.
[636] T. 1 March 2005, p. 13.
[637] T. 1 March 2005, p. 13.
[638] T. 1 March 2005, p. 17.

Prosecution Witness GAP

371. Witness GAP was a local government official from 1990 to 1994.[639] He testified that among other occasions, he encountered Bizimungu "at the time of the meetings preparing the genocide."[640]

372. The first of these meetings that the witness attended was on 25 January 1991 at the Mukamira *commune* office.[641] According to the witness, "Augustin Bizimungu, Joseph Nzirorera, Juvénal Kajelijeli, Ephrem Setako, Casimir Bizimungu, Baheza, as well as the *responsables* of the *cellule* and the *secteural* councils", were all present.[642] The witness testified that all the authorities present spoke at the meeting, but he did not provide the content of anything said by Bizimungu.[643] The witness testified, "[T]he purpose of the meeting was to track down the accomplices of the *Inkotanyi*, in other words, the Tutsi intellectuals and Hutus who belonged to -- followed the opposition, Hutus that collaborated with the *Inkotanyi*. In the course of that meeting, we made lists of those people, and they had to be arrested and killed."[644] The witness identified 18 Tutsi on that list who had been killed.[645]

373. The second meeting at which the witness saw Bizimungu was held at some point between December 1992 and January 1993 at the Mukingo *commune* office.[646] The same authorities from the first meeting were present, and all appeared to agree with the purpose of the meeting.[647] This purpose was threefold: to create a group of *Interahamwe*, to organise a store of firearms in Ruhehe and to plan firearm training for "the young people".[648] According to the witness, each of these activities was subsequently carried out. The store of firearms was set up and stocked by Bizimungu.[649]

374. Bizimungu chaired the third meeting that the witness attended, which took place at some point between December 1993 and January 1994 in the public meeting area behind the *commune* office in Kagezi *cellule*.[650] The witness testified that "Juvénal Kajelijeli and the *bourgmestre* Harelimana, the *conseillers* and the *responsable de cellule* and the head of *communal* administrative departments" were also present, along with the inhabitants of Mukingo *commune*, including Tutsi.[651] According to the witness, "In the course of the meeting Bizimungu declared that if the RPF came to resume hostilities no Tutsi would survive and we had to continue patrols to track down Tutsi accomplices, as well as their sympathisers."[652] Such patrols were already taking place. Both Hutus and Tutsi participated

[639] T. 15 February 2005, pp. 14-15 (ICS).
[640] T. 15 February 2005, p. 22.
[641] T. 15 February 2005, p. 22.
[642] T. 15 February 2005, p. 23.
[643] T. 15 February 2005, p. 24.
[644] T. 15 February 2005, p. 24.
[645] T. 15 February 2005, pp. 24-25.
[646] T. 15 February 2005, p. 25.
[647] T. 15 February 2005, p. 25.
[648] T. 15 February 2005, p. 25.
[649] T. 15 February 2005, pp. 26-27.
[650] T. 15 February 2005, p. 33. The Chamber notes that there is a discrepancy between the English and French transcripts. The witness testified in Kinyarwanda. The English transcript says Kagezi *commune*, but the French transcript (T. 15 February 2005, p. 37) says Kagezi *cellule*. The Chamber finds the French transcript to be accurate.
[651] T. 15 February 2005, p. 33.
[652] T. 15 February 2005, p. 33.

in the patrols, as those who refused were often branded accomplices of the *Inkotanyi* and then arrested, handed over to soldiers and killed.[653]

375. The fourth occasion on which the witness saw Bizimungu was during a series of meetings held the last Saturday of each month in January, February and March 1994.[654] Regular attendees at these meetings were Augustin Bizimungu, Casimir Bizimungu, Setako, Baheza, Nzirorera, Nyabusore, Gatsimbanyi, Harelimana, Bambonye and the *Conseiller* Ndisetse.[655] These meetings were convened by Nzirorera. The witness testified that before the meetings, there was a ceremony held at the house of Nzirorera's mother, after which the participants would proceed to Nzirorera's house for the meeting.[656]

376. The witness further stated, "[T]he purpose of the meeting was the same as that announced by Augustin Bizimungu when he said that, 'If the RPF resumed hostilities, no Tutsi would survive' and we had to continue our patrols to track down *Inkotanyi* accomplices."[657] The witness testified that the plan to exterminate Tutsi conceived during those meetings was implemented in April 1994 when President Habyarimana's plane was shot down.[658]

Prosecution Witness AOF

377. Witness AOF became a member of the *Amahindure* force in 1993.[659] He testified that he encountered Bizimungu in 1993 at a meeting about the equipment shortages of the *Amahindure*, held at the Nkuli *commune* office.[660] Present at that meeting were also Dominique Gasimbanyi (the *bourgmestre* of Nkuli), Bizabarimana, Félicien Kabuga and Chief Warrant Officer Karorero.[661] According to Witness AOF, Bizimungu stated that the *Amahindure* should know that their enemy was the Tutsi and that, with the cooperation of those present, he would find solutions to all their problems.[662]

378. The witness also stated that he saw Bizimungu at a meeting held in the conference room of the Nkuli *commune* office in December 1993.[663] The meeting was attended by members of the Mukingo and Nkuli *cellules*, and officials from neighbouring *cellules*, including *responsables*.[664] The witness testified that Bizimungu arrived at the meeting accompanied by soldiers and opened the meeting by stating, "You are taking things lightly. Do you know that the Tutsi is your enemy who has to be uprooted as the plant called *Igisura* is uprooted?"[665]

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[653] T. 15 February 2005, p. 34.
[654] T. 15 February 2005, p. 34.
[655] T. 15 February 2005, p. 35.
[656] T. 15 February 2005, pp. 34, 36; T. 17 February 2005, p. 58; T. 1 March 2005, p. 13.
[657] T. 15 February 2005, p. 36.
[658] T. 15 February 2005, p. 36.
[659] T. 16 March 2006, p. 19.
[660] T. 16 March 2006, p. 12.
[661] T. 16 March 2006, pp. 12-13, 16.
[662] T. 16 March 2006, p. 16.
[663] T. 16 March 2006, p. 28 (ICS); T. 30 March 2006, p. 25.
[664] T. 16 March 2006, p. 28 (ICS).
[665] T. 16 March 2006, p. 28 (ICS). The *Igisura* plant is a weed that farmers uproot and dry out so it can no longer grow on their farms. The comment reiterates a statement allegedly made by President Habyarimana, who referred to the Tutsi as *Igisura* that needed to be eradicated from farmers' fields.

4.2.6.2.2 Defence Evidence

Defence Witness DE9-7

379. Witness DE9-7 was one of the senior staff at the Advanced Institute of Livestock and Agriculture (ISAE) in Busogo.[666] Contrary to the testimony of Prosecution Witnesses GAP[667] and GFA,[668] Witness DE9-7 testified that he did not attend any meetings with Bizimungu between 1990 and 1994,[669] apart from a dance competition at which Bizimungu was present.[670]

380. In response to Witness GAP's allegations, Witness DE9-7 testified that he did not attend any meetings at Nzirorera's house in 1994.[671] He stated that he had only ever visited Nzirorera's home once, in order to discuss the inauguration of the ISAE.[672]

381. In response to Witness GFA's allegations, Witness DE9-7 testified that he did not attend any meetings at the house of Nzirorera's mother from 1992 onwards.[673] The only time he went to the house of Nzirorera's mother for the wedding of Nzirorera's sister.[674]

Defence Witness DB15-11

382. Witness DB15-11 was a relative of Nzirorera's mother.[675] From 1990 to 1994, the witness was able to visit the house of Nzirorera's mother at least three times per week and every weekend.[676] She testified that Nzirorera visited his mother infrequently,[677] roughly four or five times between 1990 and 1993,[678] and that she was present every time Nzirorera came to visit.[679] The final time she saw Nzirorera before the death of the President was in August 1993.[680]

383. The witness testified that she did not know Augustin Bizimungu.[681] She further testified that between 1990 and 1994, no meeting took place at the house of Nzirorera's mother at which any of the persons mentioned by Witness GAP were present.[682]

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[666] T. 5 June 2007, p. 69.
[667] T. 15 February 2005, p. 35.
[668] T. 30 January 2006, p. 62.
[669] T. 5 June 2007, p. 69.
[670] T. 5 June 2007, pp. 68-69.
[671] T. 5 June 2007, p. 70.
[672] T. 5 June 2007, p. 73.
[673] T. 5 June 2007, p. 75.
[674] T. 5 June 2007, p. 74.
[675] T. 7 June 2007, p. 42 (ICS).
[676] T. 7 June 2007, p. 66 (ICS).
[677] T. 7 June 2007, p. 66 (ICS).
[678] T. 7 June 2007, p. 68 (ICS).
[679] T. 7 June 2007, p. 66 (ICS).
[680] T. 7 June 2007, p. 67 (ICS).
[681] T. 7 June 2007, p. 54 (ICS).
[682] T. 7 June 2007, pp. 55-56 (ICS).

Defence Witness DB11-2

384. From October 1990 until April 1994, Witness DB11-2 worked in Nkuli *commune* and lived in Mukingo *commune*.[683] The witness's only interaction with Bizimungu was when the latter visited him at the Nkuli *commune* office and asked him to look after the cattle at Camp Mukamira.[684] According to the witness, Bizimungu never came to the Nkuli *commune* office to chair a meeting,[685] and he could not have done so because only *commune* officials could convene and chair meetings.[686]

385. The witness further testified that no meeting of importance could have taken place at Nkuli *commune* office without his knowledge.[687] In response to a question about a meeting that Witness AOF claimed took place at the Nkuli *commune* office, which was attended by Bizimungu, Kabuga, Bizabarimana, Gatsimbanyi and Karorero, the witness stated, "That meeting never took place. If such a meeting had been held, then I would have been informed about it."[688]

386. Similarly, when asked about the second meeting that Witness AOF claimed took place in 1993, at which Bizimungu allegedly likened the Tutsi to *igisura*, the witness replied, "[T]hat meeting was never held ... If such a meeting had been held, I would have known about it."[689]

387. Witness DB11-2 also addressed claims by Witness GFA that Nzirorera held meetings with officials and the *Interahamwe* at the house of Nzirorera's mother. The witness stated, "No meeting was held at the house of Nzirorera's mother. I lived quite close to that house and it was usual for me to go there. So no meeting could have taken place there unknown to me."[690]

388. Witness DB11-2 testified that until January 1994, Witness GFA was a secondary school student and so could not have been a member of the *Interahamwe*[691] and could not have received military training.[692] In addition, he asserted that Witness GFA did not attend any meetings in his declared capacity as a member of the *Interahamwe*.[693]

Defence Witness DB11-11

389. Witness DB11-11 was *responsable* of Butakanyundo *cellule* from 1988 to 1994.[694] He testified that he did not know Bizimungu, never saw him at a public meeting in Mukingo *commune*, and never heard that he had attended a public meeting in Mukingo *commune*.[695] The witness asserted that it would not have been possible for local military authorities to

[683] T. 12 June 2007, p. 6 (ICS).
[684] T. 12 June 2007, pp. 26-27 (ICS).
[685] T. 12 June 2007, p. 27 (ICS).
[686] T. 12 June 2007, pp. 27, 31 (ICS).
[687] T. 12 June 2007, p. 26 (ICS).
[688] T. 12 June 2007, p. 29 (ICS).
[689] T. 12 June 2007, p. 30 (ICS).
[690] T. 12 June 2007, p. 33 (ICS).
[691] T. 12 June 2007, pp. 33-34, 36 (ICS).
[692] T. 12 June 2007, p. 40 (ICS).
[693] T. 12 June 2007, pp. 34, 36 (ICS).
[694] T. 17 October 2007, pp. 6-7 (ICS).
[695] T. 17 October 2007, pp. 13, 18.

convene a public meeting at the Mukingo *commune* office[696] and that he would have known had Bizimungu done so.[697]

390. The witness also testified that he was not aware that any meetings attended by military authorities, including Bizimungu, took place at the house of Nzirorera's mother.[698]

Defence Witness DB11-26

391. From 1981 until July 1994, Witness DB11-26 lived approximately 100 metres from the Nkuli *commune* office.[699] At the time of her testimony, she was a judge and registrar for the *Gacaca* Courts.[700]

392. The witness testified that she did not know Bizimungu personally.[701] She stated that no meeting of senior authorities took place at the Nkuli *commune* office between October 1990 and July 1994. Considering her proximity to the office, had such a meeting taken place, she would have know about it.[702] She also testified that at no point during this period did any soldiers from the Rwandan Army attend a meeting at the Nkuli *commune* office.[703]

393. When presented with Witness AOF's claim that Bizimungu and Kabuga, among others, attended a meeting at the Nkuli *commune* office in 1993, the witness replied, "I never heard of any mention of such a meeting."[704] She explained that if an important business person such as Kabuga had attended a meeting at the Mukingo *commune* office, she and the rest of the inhabitants would have known.[705]

394. Similarly, when presented with Witness AOF's claim that at a meeting in December 1993, attended by members of the Mukingo and Nkuli *cellule*, Bizimungu likened the Tutsi to *igisura*, the witness responded, "No such meeting was organised. You are talking about officials from two *communes* .... If such a crowd had gathered at the *communal* office, we would have wondered why such a crowd was gathering at the *commune* office. So, that meeting never took place."[706]

395. The witness further testified that in light of her role as a *Gacaca* judge, "If such a meeting had taken place, I do not see how I would not have become aware of it because the information would definitely have been addressed – or, discussed by members of the population."[707]

[696] T. 17 October 2007, pp. 12-13.
[697] T. 17 October 2007, p. 13.
[698] T. 17 October 2007, p. 17.
[699] T. 12 November 2007, pp. 13-14 (ICS).
[700] T. 12 November 2007, p. 15 (ICS).
[701] T. 12 November 2007, p. 20.
[702] T. 12 November 2007, p. 21.
[703] T. 12 November 2007, p. 24.
[704] T. 12 November 2007, p. 22.
[705] T. 12 November 2007, pp. 22-23.
[706] T. 12 November 2007, p. 23.
[707] T. 12 November 2007, pp. 23-24.

Defence Witness DE4-16

396. Witness DE4-16 was a battalion commander in the Rwandan Army in 1993 and 1994.[708] His battalion was based in Ruhengeri operational sector, and as a result he was a direct subordinate of Bizimungu.[709] The witness had previously known Bizimungu for many years as they were both officers of a similar age.[710]

397. The witness testified that he was not aware of any public meetings held by Bizimungu at which Tutsi were blatantly threatened.[711] He stated that it was extremely rare or impossible for a military official to convene or chair a civilian meeting.[712] According to the witness, a legislative order dated 31 January 1959, which required public meetings to have prior written authorisation from a *préfet,* was still in place between 1990 and 1994.[713] In addition, it was forbidden for military officials to express their political opinions publicly.[714]

398. The witness testified that it would have been implausible for an official to make direct statements against one group at a public meeting, as the population of Mukingo included both Hutu and Tutsi, all of whom were eligible to attend the meetings.[715] Furthermore, the witness never saw Bizimungu display anger or hatred towards Tutsi.[716] The witness stated that Bizimungu's driver and secretary were Tutsi, and that it would have been unlikely that Bizimungu's driver would have driven him to and from a meeting where such opinions were expressed.[717]

Defence Witness DE8-14

399. Witness DE8-14 was a *sous-préfet* at various locations in Rwanda from 1980 until 1994.[718] The witness denied that in the absence of a *préfet* or a *sous-préfet* it would be possible for somebody else, such as a military commander, to chair or convene a security council meeting.[719] The witness testified that before 1 October 1990, Bizimungu would take part in such meetings or would ask one of the soldiers under his authority to do so.[720] However, from 1 October 1990 to 9 February 1993 (when the witness left Ruhengeri), neither Bizimungu nor any soldier under his authority took part in any of those meetings.[721]

[708] T. 24 May 2007, p. 81 (ICS).
[709] T. 24 May 2007, p. 82 (ICS).
[710] T. 24 May 2007, p. 82 (ICS).
[711] T. 25 May 2007, p. 16.
[712] T. 25 May 2007, p. 17.
[713] T. 28 May 2007, p. 11.
[714] T. 28 May 2007, p. 11.
[715] T. 25 May 2007, p. 17.
[716] T. 25 May 2007, pp. 17-18.
[717] T. 25 May 2007, p. 17.
[718] T. 14 May 2007, p. 50 (ICS).
[719] T. 14 May 2007, p. 73.
[720] T. 14 May 2007, p. 75.
[721] T. 14 May 2007, p. 75.

Defence Witness DE8-19

400. Witness DE8-19 was a senior officer in the Rwandan Army until June 1992.[722] He had known Bizimungu for many years prior to the latter's appointment as commander of the Ruhengeri operational sector.[723]

401. Witness DE8-19 refuted the suggestion that Bizimungu subscribed to anti-Tutsi ideology. The witness testified that if Bizimungu had made discriminatory statements against Tutsi, he would have been immediately dismissed and imprisoned both during the single-party era and after the introduction of multi-party democracy.[724]

4.2.6.3 Notice of Charges

402. Paragraph 29 of the Indictment alleges that Bizimungu attended meetings generally held on Saturdays at the house of Joseph Nzirorera between 1992 and 1994.[725] It is alleged that the purpose of these meetings was to devise a strategy for fighting the Tutsi enemy. The Pre-Trial Brief, in paragraphs 38 and 39, alleges the same material facts.

403. In order to substantiate these claims, the Prosecution relies on the testimony of Witnesses GFA, GFC and GAP.[726] However, the evidence provided by these witnesses raised the possibility that some of these meetings were in fact held at the house of Nzirorera's mother, rather than at his own personal residence.[727] The Chamber recalls that during the testimony of Witness GFA, the Defence objected to the inclusion of evidence regarding meetings at the house of Nzirorera's mother, due to its variation from the Indictment.[728]

404. Having carefully reviewed the Pre-Trial Brief and the transcripts of evidence in regard to the location of the meetings alleged in paragraph 29 of the Indictment, the Chamber finds that the Defence was not prejudiced by the inclusion of testimony about meetings at the house of Nzirorera's mother. In the view of the Chamber, any defect that did exist in paragraph 29 of the Indictment was cured by the Pre-Trial Brief, in which the summaries of both Witnesses GFA and GFC's testimony specified that meetings took place at the house of Nzirorera's mother.[729] That Bizimungu's ability to mount a defence was not materially impaired is also demonstrated by the fact that the Defence was able to produce a number of witnesses who testified against the occurrence of meetings at the house of Nzirorera's mother.[730]

4.2.6.4 Deliberations

405. The Chamber will first consider whether paragraph 29 of the Indictment contains defects, and if so, whether such defects are cured. The Chamber will then evaluate the credibility of the evidence and determine whether its supports the charge against Bizimungu.

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[722] T. 5 November 2007, p. 8 (ICS).
[723] T. 5 November 2007, pp. 12-13 (ICS).
[724] T. 5 November 2007, p. 40 (ICS).
[725] Indictment, para. 29.
[726] Prosecution Closing Brief, para. 182.
[727] T. 30 January 2006, p. 63; T. 1 March 2005, p. 13; T. 15 February 2005, pp. 34, 36; T. 17 February 2005, p. 58.
[728] T. 30 January 2006, pp. 58-61.
[729] Pre-Trial Brief, Annexure IV, paras. 15, 94.
[730] *See* Bizimungu Defence Witnesses DE9-7, DB15-11, DB11-2, and DB11-11.

406. The Prosecution relies upon the testimony of Witnesses GFA, GFC and GAP to substantiate the claims that between 1992 and 1994, Bizimungu regularly took part in meetings at the house of Nzirorera and the house of his mother, and that the purpose of these meetings was to devise a strategy for fighting the Tutsi enemy.

407. These witnesses corroborate each other on a number of points. They all agree that Nzirorera convened a number of meetings between 1992 and 1994, and that some of the meetings took place at his mother's house. All three witnesses testified that the meetings were attended by Nzirorera, Bizimungu, Baheza and Nzirorera; Witnesses GFA and GAP further agree that Setako, Ndisete and Bambonye were present; Witnesses GFA and GFC agree that Kajelijeli and Bakuzakundi were present; and Witnesses GFC and GAP agree that Nyabusore were present. All three witnesses testified that the purpose of the meetings related to the organisation of the *Interahamwe* and included the hunt for accomplices of the RPF.

408. As set out in Chapter III of the Judgement, the Chamber recalls that Witness GFA specifically recanted his testimony regarding the meetings at the house of Nzirorera's mother in the *Karemera et al.* trial.[731] The Chamber will therefore disregard his evidence on this point.

409. Witness GFC testified that he did not attend the meeting at the house of Nzirorera's mother, but instead learned of that meeting from Witness GFA. While the Chamber may rely upon hearsay evidence, it is required to treat such evidence with caution.[732] In this particular instance, where the witness obtained the information from another witness whose testimony the Chamber has rejected as not credible, it is the view of the Chamber that it should not rely on this evidence. Accordingly, the Chamber will disregard the evidence of Witness GFC.

410. The Chamber is therefore left with the evidence of Witness GAP. In cross-examination, Witness GAP was confronted with two prior statements given to ICTR investigators in which he had stated that meetings took place every Saturday at Nzirorera's house, whereas during his testimony he claimed that the meetings only occurred on the last Saturday of every month.[733] Witness GAP also testified that the meetings were held at Nzirorera's house, and it was only during cross-examination that the witness stated that there was first a ceremony held at the house of Nzirorera's mother, after which the participants would go to Nzirorera's house for the actual meeting.[734] The Chamber accepts that due to the length of time since the incidents took place and the fact that the two properties are closely linked, these differences do not render the evidence of Witness GAP incredible.

411. The Chamber notes, however, that Witness GAP testified that Bizimungu told the participants at the meetings that the purpose was to discuss patrols to track down *Inkotanyi* and their accomplices and to ensure that all Tutsi would be killed if the RPF resumed hostilities. It is the view of the Chamber that such statements do not, on their own, establish the existence of an agreement between the Accused and others to commit genocide. The existence of such a conspiracy is not the only reasonable inference to be drawn from the evidence set out above. It is important to note that Ruhengeri was at that time of the alleged meetings and for some years beforehand a key battle-ground between the RPF and the FAR. As a result, it is conceivable that the purpose of such meetings was to organise a civilian

[731] Defence Exhibit 689A.
[732] *Muvunyi* Appeal Judgement, para. 70.
[733] T. 17 February 2005, pp. 41, 43-44.
[734] T. 17 February 2005, p. 58.

defence force. Therefore, the Chamber finds that the Prosecution has not proved this allegation beyond reasonable doubt.

4.2.7 *Ndindiliyimana's Alleged Opposition to the Arusha Accords and the Kigali Weapons Secure Area*

4.2.7.1 Introduction

412. The Indictment alleges that Ndindiliyimana took part in a meeting at the MRND Headquarters on 7 January 1994 to oppose the disarmament programme that was included in the Arusha Accords.[735] The Indictment further alleges that Ndindiliyimana compromised the effectiveness of the KWSA, a protocol agreement to the Arusha Accords, the purpose of which was to enhance the implementation of the Arusha Accords.[736]

4.2.7.2 Evidence

413. The Chamber notes that the Prosecution did not adduce any evidence to support the allegation in paragraph 32 of the Indictment that Ndindiliyimana attended a meeting at the MRND Headquarters on 7 January 1994, the purpose of which was to oppose the implementation of the KWSA. Accordingly, the Chamber dismisses this allegation.

414. The Chamber will now consider the evidence relating to the allegation in paragraph 33 of the Indictment that Ndindiliyimana compromised the effectiveness of the KWSA.

4.2.7.2.1 Prosecution Evidence

Prosecution Witness AOG

415. Witness AOG was a leading member of the *Interahamwe*. He testified that he once attended a meeting at which Mathieu Ngirumpatse, the MRND Chairman, told the gathering that the Minister of Defence had informed him about plans by UNAMIR to carry out searches for weapons held in contravention of the KWSA. In light of this information, Ngirumpatse urged Robert Kajuga, who was the President of the *Interahamwe* and who was responsible for the distribution of weapons to the *Interahamwe*, to exercise caution when distributing weapons. The witness further testified that Ngirumpatse also claimed at the meeting that the Chief of Staff of the *Gendarmerie*, Ndindiliyimana, had promised to forewarn him of any imminent searches by UNAMIR so that they could hide their weapons.[737]

416. Witness AOG testified that Ndindiliyimana did forewarn Ngirumpatse about plans by UNAMIR officials to carry out inspections for weapons held in contravention of the KWSA. The witness was informed that Robert Kajuga received information said to have emanated from Ndindiliyimana alerting him that UNAMIR was intending to carry out searches for weapons in Nyange and Gikondo *secteurs* in Kigali.[738] On both occasions, Ndindiliyimana is alleged to have provided Ngirumpatse with information regarding those search operations, and Ngirumpatse is alleged to have relayed that information to Robert Kajuga so that he

[735] Indictment, para. 32.
[736] Indictment, para. 33.
[737] T. 21 February 2006, p. 24 (ICS).
[738] T. 21 February 2006, p. 24 (ICS).

could evade the search.[739] Kajuga then warned Aloys Ngirabatware, the Chairman of the *Interahamwe* in Remera *secteur*, who then removed the weapons that were stashed away in Nyange. Thus, UNAMIR's search in that *secteur* was unsuccessful.[740] The witness testified that the same happened in Gikondo *secteur*.[741] According to the witness, by divulging such information to leaders of the MRND, Ndindiliyimana compromised the efficacy of the UNAMIR search operations which were designed to ensure compliance with the KWSA.[742]

417. The Chamber recalls that the witness was extensively cross-examined regarding his links with the Office of the Prosecutor of the Tribunal (OTP). The witness testified that he first came into contact with OTP investigators in 1996 through a friend,[743] and that he started collaborating with the OTP in 1997. Witness AOG explained that the reason why he cooperated with the OTP was because he noted that members of the former Rwandan regime were intent on leaving a large majority of the exiled Rwandans in refugee camps while they themselves settled their families in Europe and West Africa.[744]

418. Witness AOG testified that he participated in two major operations led by the OTP in various parts of Africa to capture individuals who were accused of having played a role in the genocide in Rwanda in 1994.[745] The witness testified that in the course of his work with the OTP from 1997 to 2000, he received several sums of money as reimbursements for expenses that he had incurred while assisting the OTP in its operations to arrest suspects.[746] In cross-examination, the witness conceded that he received a sum of $29,925.00 from the OTP between November 1996 and December 2000.[747] However, he denied that he was remunerated for his collaboration with the OTP.[748] The witness testified that at the time, he subsisted on a salary that he received from his employment with an international transport company while in exile in Zaire and Kenya.[749]

419. The witness also testified that he received a sum of $8,000 from the Tribunal as a contribution to his daughter's tuition fees.[750] He explained that this was because he was put under the witness protection scheme of his country and was precluded from engaging in gainful employment, and he therefore requested the Tribunal for assistance with his daughter's tuition fees.[751]

420. The witness was also probed about the assistance that he had received from the Tribunal to obtain permanent resident status in the country where he resided at the time of his testimony.[752] The witness testified that he informed the investigators of the Tribunal that his

[739] T. 21 February 2006, p. 25 (ICS).
[740] T. 21 February 2006, pp. 24-25 (ICS).
[741] T. 21 February 2006, pp. 24-25 (ICS).
[742] T. 27 February 2006, p. 25 (ICS).
[743] T. 23 February 2006, pp. 31-32 (ICS).
[744] T. 22 February 2006, p. 35 (ICS).
[745] T. 22 February 2006, pp. 36-37; T. 23 February 2006, pp. 24, 37.
[746] T. 23 February 2006, p. 39.
[747] T. 3 March 2006, p. 28 (ICS).
[748] T. 23 February 2006, p. 39 (ICS).
[749] T. 23 February 2006, p. 23 (ICS).
[750] T. 23 February 2006, p. 12 (ICS).
[751] T. 23 February 2006, p. 14 (ICS).
[752] T. 23 February 2006, p. 19 (ICS).

application for residence was stalling and that the investigators of the Tribunal told him that "they were going to follow that closely."[753]

4.2.7.2.2 Defence Evidence

Defence Witness CBP 7

421. Witness CBP 7 was a member of the *Gendarmerie* in April 1994. He testified that the *Gendarmerie* collaborated quite closely with the UNAMIR force in ensuring adherence with the KWSA. To this effect, the *Gendarmerie* carried out patrols and search operations together with UNAMIR in order to enforce the KWSA.[754]

Defence Witness Luc Marchal

422. Witness Luc Marchal arrived in Rwanda on 4 December 1993 and stayed until 19 April 1994 when the Belgian detachment of the UNAMIR force, which he commanded, was withdrawn from Rwanda.[755] Marchal testified that he first met Ndindiliyimana during the negotiations that led to the agreement for the creation of the KWSA.[756] The witness testified that UNAMIR was mandated by Resolution 872 adopted by the UN Security Council on 5 October 1993 to establish a weapons consignment area in Kigali.[757] According to the witness, Ndindiliyimana made an important contribution to the process that led to the creation of the KWSA.[758]

423. Marchal testified that the KWSA was signed on 21 December 1993 and came into effect on 23 December 1993.[759] The purpose behind the establishment of the KWSA was to control weapons and troops within Kigali so as create an auspicious environment for the implementation of the transitional institutions envisaged in the Arusha Accords and to enhance the general security in Kigali.[760] According to Marchal, the geographical expanse covered by the agreement was the city of Kigali, an area spanning about 700 square kilometres.[761] The parties to the agreement were UNAMIR, the Rwandan government and the RPF.[762] Marchal testified that the restrictions on weapons and troops set forth in the KWSA were intended to last until October 1995, when the elections were expected to be held.[763]

424. The witness testified that as the commander of the Kigali *secteur* unit of UNAMIR, he was vested with the responsibility to ensure that the parties to the KWSA complied with its terms.[764] The *Gendarmerie* was expected to collaborate with UNAMIR in enforcing compliance with the KWSA because unlike the *Gendarmerie*, UNAMIR had no authority to carry out enforcement measures such as establishing roadblocks and conducting searches.[765]

[753] T. 23 February 2006, p. 19 (ICS).
[754] T. 7 July 2008, p. 42.
[755] T. 16 January 2008, pp. 24, 32, 35.
[756] T. 16 January 2008, pp. 34-35.
[757] T. 16 January 2008, pp. 34, 37.
[758] T. 16 January 2008, pp. 43-44.
[759] T. 16 January 2008, pp. 37, 41.
[760] T. 16 January 2008, pp. 34-35, 42.
[761] T. 16 January 2008, p. 41.
[762] T. 16 January 2008, p. 41.
[763] T. 16 January 2008, pp. 41-42.
[764] T. 16 January 2008, p. 44.
[765] T. 16 January 2008, pp. 39, 43.

Marchal testified that the *Gendarmerie* collaborated with UNAMIR in ensuring compliance with the KWSA.[766] He further testified that without the cooperation of the *Gendarmerie*, the UNAMIR force would have found it difficult to enforce the KWSA.[767] Unlike the *Gendarmerie*, the Rwandan Armed Forces and the RPF were less than cooperative towards UNAMIR.[768]

425. Marchal gave evidence that he had several meetings with Ndindiliyimana in the course of his work to ensure the implementation of the KWSA.[769] He considered these meetings to be conducive to the achievement of their mutual and reciprocal obligations related to the KWSA.[770] He also considered Ndindiliyimana to be trustworthy.[771] Marchal testified that had Ndindiliyimana sought to deceive him about his attitude towards the implementation of the KWSA, he would have definitely found out. He stated, "[I]f there was any need on the part of General Ndindiliyimana to play a double game, so to speak, we would have been able to see through it."[772]

426. Marchal testified that Ndindiliyimana was in favour of the implementation of the KWSA, and that his support explained the *Gendarmerie*'s consistent collaboration with UNAMIR to ensure compliance.[773] Marchal observed that a few days after the KWSA came into force, the high command of the *Gendarmerie*, led by Ndindiliyimana, issued very clear orders to its units directing them to comply with the terms of the KWSA.[774] Marchal observed that Ndindiliyimana's adherence to the agreement is evidenced by his direction to the *gendarmes* not to arm themselves with machine guns while operating within the KWSA and his decision to substantially reduce the number of weapons carried by *gendarmes* operating in that area.[775]

427. Marchal disputed the claims made by Prosecution Witness AOG that Ndindiliyimana divulged information to the leadership of the MRND regarding plans by UNAMIR to carry out searches for weapons, and that as a result of his conduct, Ndindiliyimana undermined the search operations conducted by UNAMIR in Nyange and Gikondo *secteurs* in Kigali. Marchal testified that even though UNAMIR had information regarding the existence of weapon caches in contravention of the KWSA, only one search operation was carried out in early April 1994. This search operation did not cover the *secteurs* alleged in the testimony of Witness AOG.[776] Further searches were planned but the circumstances did not allow them to be carried out. Marchal dismissed the possibility that UNAMIR would have conducted search operations without his knowledge.[777]

428. Marchal explained that the reason why UNAMIR carried out only one search almost three months after the KWSA came into effect was because the UN authorities were not inclined to allow such searches to be carried out despite several requests by General

[766] T. 16 January 2008, pp. 44-45.
[767] T. 16 January 2008, pp. 45-46.
[768] T. 16 January 2008, pp. 45, 58; T. 18 January 2008, p. 8.
[769] T. 16 January 2008, pp. 61-63.
[770] T. 16 January 2008, p. 62.
[771] T. 16 January 2008, pp. 62-63.
[772] T. 16 January 2008, p. 63.
[773] T. 16 January 2008, p. 61.
[774] T. 16 January 2008, p. 61.
[775] T. 16 January 2008, p. 63.
[776] T. 16 January 2008, p. 47.
[777] T. 16 January 2008, p. 53.

Dallaire.[778] Marchal further testified that the UN authorities construed the UNAMIR mission to be primarily a defensive one and therefore raids on weapons caches would have exceeded UNAMIR's mandate.[779]

429. Marchal testified that his regard for Ndindiliyimana increased over the years and he thought in retrospect that Ndindiliyimana was courageous to have consistently supported the implementation of the KWSA given the strong opposition to its implementation at the time.[780]

Defence Witness CBP 46

430. Witness CBP 46, a Major in the *Gendarmerie* in April 1994,[781] testified that the *Gendarmerie* cooperated with UNAMIR in enforcing compliance with the KWSA. To this effect, they established and manned roadblocks and also took part in joint search operations and preventive patrols with UNAMIR to enforce the implementation of the KWSA.[782]

Defence Witness André Vincent

431. Witness Vincent served as the head of the Belgian commission for military assistance to Rwanda from 1991 to 1994.[783] In the course of his stay in Rwanda, he met with Ndindiliyimana on several occasions, both in a personal and a professional capacity.[784] Vincent testified that Ndindiliyimana was in favour of the implementation of the Arusha Accords.[785] He further testified that the *Gendarmerie* extended support to UNAMIR so that it could achieve its mission of implementing the Arusha Accords.[786]

Defence Witness Johan Swinnen

432. Witness Swinnen served as the Belgian Ambassador to Rwanda from 16 August 1990 to 12 April 1994.[787] He testified that he met with Ndindiliyimana on several occasions during his diplomatic service in Rwanda. According to Swinnen, as far as he could gather from his interactions with Ndindiliyimana, the latter was not opposed to the implementation of the Arusha Accords.[788] He further testified that his relationship with Ndindiliyimana would not have developed to the extent that it did had Ndindiliyimana been opposed to the implementation of the Accords.[789]

[778] T. 16 January 2008, pp. 46-48.
[779] T. 16 January 2008, pp. 46-48.
[780] T. 22 January 2008, p. 11.
[781] T. 25 January 2008, p. 13.
[782] T. 28 January 2008, p. 10.
[783] T. 10 June 2008, p. 3.
[784] T. 10 June 2008, p. 15.
[785] T. 10 June 2008, p. 19.
[786] T. 10 June 2008, p. 20.
[787] T. 22 October 2008, pp. 2, 6.
[788] T. 22 October 2008, p. 9.
[789] T. 22 October 2008, p. 9.

The Accused Ndindiliyimana

433. Ndindiliyimana testified that the *Gendarmerie's* working relationship with UNAMIR in enforcing the KWSA, despite initial difficulties, improved with the passage of time. Ndindiliyimana stated that the *Gendarmerie* supported UNAMIR's efforts to implement the KWSA.[790] He further testified that the high command of the *Gendarmerie* met on a weekly basis with UNAMIR to discuss their joint efforts to enforce the KWSA and that he also assigned one of his officers to liaise with UNAMIR in order to enhance cooperation between his force and UNAMIR in ensuring implementation of the KWSA.[791]

4.2.7.3 Deliberations

434. The Chamber has found that the Prosecution failed to adduce any evidence in support of the allegation in paragraph 32 of the Indictment. The Chamber will therefore focus its deliberations on the allegation in paragraph 33 of the Indictment that Ndindiliyimana sought to undermine searches conducted by UNAMIR for weapons held in contravention of the KWSA. The Prosecution alleges that Ndindiliyimana forewarned Mathieu Ngirumpatse, the MRND Chairman, of plans by UNAMIR to carry out weapons searches and therefore compromised the efficacy of those searches. The Prosecution submits that Ndindiliyimana's opposition to the implementation of the KWSA supports the inference that he was implicated in a conspiracy to commit genocide against Tutsi.

435. To support this allegation, the Prosecution relies on the sole testimony of Witness AOG, a former member of the *Interahamwe*. The witness testified to having attended a meeting at which Mathieu Ngirumpatse, the MRND Chairman, told the audience that he had been informed by the Minister for Defence of plans by UNAMIR to carry out searches for weapons in Kigali in accordance with the KWSA.[792] The witness further testified that Ngirumpatse informed the attendees at this meeting that Ndindiliyimana had promised to alert him about such operations before they were carried out.[793] Thereafter, the witness was informed that due to information received from Ndindiliyimana, the leadership of the MRND and *Interahamwe* succeeded in evading UNAMIR searches for weapons in Nyange and Gikondo *secteurs* in Kigali.[794]

436. While the Chamber considers Witness AOG's evidence to be relevant to some of the events underpinning the Indictment, it has concerns about the impartiality of Witness AOG's testimony in light of his extensive collaboration with the OTP and the financial advantages that may have accrued to him as a result of that collaboration. For these reasons, the Chamber will exercise caution when weighing his evidence. The Chamber notes that, contrary to the claims by the Defence in this trial, there is no evidence suggesting that the OTP sought to financially induce the witness to provide evidence in its favour.

437. Even if the Chamber were to cast aside its reservations regarding the impartiality of Witness AOG's evidence, the Chamber is not satisfied that the uncorroborated evidence of Witness AOG is sufficient to prove that Ndindiliyimana sought to undermine the UNAMIR-led efforts to ensure compliance with the KWSA. The Chamber notes that Witness AOG's

[790] T. 16 June 2008, p. 60.
[791] T. 16 June 2008, p. 60.
[792] T. 21 February 2006, p. 24.
[793] T. 21 February 2006, p. 24.
[794] T. 21 February 2006, pp. 24-25.

evidence is sparsely detailed as to how he learned of the collusion between Ndindiliyimana and the leadership of the MRND in undermining UNAMIR's search operations in Nyange and Gikondo *secteurs* in Kigali.

438. Moreover, the Chamber has heard a considerable amount of evidence indicating Ndindiliyimana's support for the Arusha Accords and the KWSA, as well as evidence that contravenes the specific allegations of Witness AOG that Ndindiliyimana undermined UNAMIR's searches in Nyange and Gikondo *secteurs* in Kigali. Witness Marchal, who was intimately involved with the UNAMIR efforts to implement the Accords, testified at length that Ndindiliyimana was consistent in his support for both the Accords and the KWSA.[795] His assessment of Ndindiliyimana's favourable disposition towards the Accords and the KWSA is replicated in the evidence of a number of Prosecution and Defence witnesses such as Dallaire, Claeys, Marchal, Swinnen, Vincent and Witness CBP 46. Most of these witnesses had a working relationship with Ndindiliyimana and were well-placed to determine his stance towards the implementation of both the Accords and the KWSA.

439. In addition to the above evidence regarding Ndindiliyimana's favourable disposition towards the Accords, the Chamber heard authoritative evidence from Witness Marchal indicating that UNAMIR carried out only one search for weapons that were held in contravention of the KWSA. He further testified that UNAMIR intended to carry out further searches but the circumstances did not allow them to do so.[796] Marchal denied that this search covered Nyange and Gikondo *secteurs* in Kigali.[797] He also dismissed the possibility that UNAMIR would have conducted search operations without his knowledge.[798] The Chamber notes that it has heard evidence from Witnesses Dallaire and Claeys confirming Marchal's claim that he was vested with the responsibility of monitoring the implementation of the KWSA. Given his intimate involvement with the enforcement of the KWSA, the Chamber accepts that Marchal would have been well-placed to know the measures taken by UNAMIR to enforce compliance with the KWSA. The fact that he denied that UNAMIR conducted a search for weapons in Nyange and Gikondo *secteurs* leaves the Chamber with doubts about the veracity of Prosecution Witness AOG's claims.

440. The Chamber notes that Marchal's evidence is corroborated to a considerable extent by the evidence of Witness Dallaire. The latter testified that ever since the KWSA came into force, UNAMIR carried out only one search operation for weapons in collaboration with the *Gendarmerie* on 1 April 1994.[799] The search was not successful and therefore plans were made to carry out a further search on 7 April.[800] Having weighed his evidence, the Chamber notes that there is no suggestion in Dallaire's testimony that the search operation that was carried out on 1 April extended to the Nyange and Gikondo *secteurs* in Kigali.

441. In determining Ndindiliyimana's possible implication in undermining UNAMIR efforts to enforce the KWSA, the Chamber has also considered Witness Dallaire's evidence that UNAMIR had information "gathered here and there", suggesting that the search operation of 1 April was sabotaged by hardliners or extremists who had infiltrated the

[795] T. 16 January 2008, pp. 61-63; T. 22 January 2008, p. 11.
[796] T. 16 January 2008, p. 53.
[797] T. 16 January 2008, p. 47.
[798] T. 16 January 2008, p. 53.
[799] T. 20 November 2006, p. 48.
[800] T. 20 November 2006, p. 48.

Gendarmerie and leaked information to outsiders regarding the search.[801] According to Dallaire, UNAMIR therefore planned to conduct another search on 7 April, but proposed to disclose information regarding the search only to the Chief of Staff of the *Gendarmerie* a day before it was carried out in order to limit the possibility of it being compromised.[802]

442. The Chamber is not satisfied that there is any suggestion in Dallaire's evidence that he blamed Ndindiliyimana for the sabotage of the search operation carried out on 1 April 1994. On the contrary, the fact that UNAMIR officials sought to inform only Ndindiliyimana of its intention to carry out searches a day before suggests that they did not consider Ndindiliyimana to pose a threat to the efficacy of those searches. In the Chamber's view, Dallaire's evidence considered in its entirety indicates that Ndindiliyimana collaborated effectively with UNAMIR in enforcing compliance with the KWSA.

443. Having considered the evidence discussed above, the Chamber does not accept Prosecution Witness AOG's allegations that Ndindiliyimana undermined the efforts led by UNAMIR to ensure compliance with the KWSA. The Chamber therefore finds that the Prosecution has failed to prove this allegation beyond reasonable doubt.

4.2.8 *Concealment of Vehicles*

4.2.8.1 Introduction

444. The Indictment alleges that in January and February 1994, Nzuwonemeye, as part of a "dissimulation strategy", hid "about 20 armoured vehicles and about ten jeeps ... belonging to the Reconnaissance Battalion ... in Gisenyi and at certain of President Habyarimana's residences in Kiyovu and Rambura" and that on 7 April 1994, these vehicles returned to Kigali "to assist the ground troops charged with tracking down the civilian population."[803]

4.2.8.2 Evidence

4.2.8.2.1 Prosecution Evidence

Prosecution Witness DA

445. Witness DA was a member of the RECCE Battalion in 1994. He testified that following the signing of the Arusha Accords, UNAMIR military observers were dispatched to Camp Kigali to monitor the movement of weapons.[804] He testified that the RECCE Battalion had approximately 25 armoured vehicles, the use of which was controlled by the commander of the battalion.[805]

446. Witness DA testified that at the end of 1993 or at the beginning of 1994, approximately six or seven of the RECCE Battalion's armoured vehicles were moved from Camp Kigali to Rambura in Gisenyi and hidden at President Habyarimana's residence.[806] The witness explained that the reason behind this move was that the RECCE Battalion did not

[801] T. 20 November 2006, pp. 48-49.
[802] T. 20 November 2006, pp. 48-49.
[803] Indictment, para. 34.
[804] T. 17 January 2005, p. 92; T. 18 January 2005, p. 55; T. 20 January 2005, pp. 24-26.
[805] T. 11 January 2005, pp. 31, 40.
[806] Spelled Rwambura in the transcript.

want UNAMIR to know about the existence of these vehicles.[807] The witness further stated that at the time, he resided in Rambura, Gisenyi and that he witnessed the arrival of those vehicles there.[808]

447. The witness testified that on 6 April 1994, following the death of the President, orders were issued for the armoured vehicles to be returned to Kigali.[809] The witness was among the soldiers who were involved in the operation to return those vehicles to Kigali. They travelled the whole night and arrived in Kigali between 3.00 and 4.00 a.m. in the morning of 7 April.[810] According to the witness, the armoured vehicles did not return to Camp Kigali but were deployed to other locations in Kigali.[811] Some vehicles, for example, were deployed to "the presidency" and others were sent to replace jeeps stationed at Radio Rwanda.[812] The witness did not know who had ordered the return of those vehicles or their redeployment to various locations in Kigali.[813]

Prosecution Witness AWC

448. Witness AWC was a member of the RECCE Battalion and was stationed at Camp Kigali in April 1994. He testified that he had heard "people say that we should try to hide our weapons" and that Squadron C of the RECCE Battalion had been sent to Rambura for that purpose.[814]

Prosecution Witness DY

449. Witness DY was a member of Squadron C of the RECCE Battalion in April 1994. He testified that at the end of 1993, Nzuwonemeye informed members of the RECCE Battalion that the Arusha Accords required UNAMIR observers to inspect weapons at the disposal of the forces in Rwanda and that the army had to hide part of its weapons in order to avoid UNAMIR inspections.[815]

450. Consequently, members of Squadron C of the RECCE Battalion took some armaments of RECCE to Rambura in order to hide them from UNAMIR observers. The witness explained that some of the equipment was also hidden in President Habyarimana's residence in Kiyovu. In March 1994, the witness visited Rambura and saw the armoured vehicles that were hidden "at the residence of the President".[816]

451. Witness DY testified that following the death of the President, the armoured vehicles were brought back to Camp Kigali where the RECCE Battalion was based. He did not, however, know the exact date on which those armoured cars were brought back.[817]

[807] T. 11 January 2005, pp. 40-41; T. 18 January 2005, pp. 53-55; T. 20 January 2005, pp. 24-25.
[808] T. 11 January 2005, pp. 41-42; T. 18 January 2005, p. 57.
[809] T. 18 January 2005, pp. 66-67.
[810] T. 18 January 2005, pp. 66-67.
[811] T. 18 January 2005, pp. 67-68.
[812] T. 18 January 2005, pp. 68-69.
[813] T. 18 January 2005, pp. 66, 69.
[814] T. 19 January 2006, pp. 31-32.
[815] T. 23 January 2006, pp. 37-38; T. 24 January 2006, pp. 29-30.
[816] T. 23 January 2006, pp. 37-38; T. 24 January 2006, p. 23.
[817] T. 24 January 2006, p. 39.

Prosecution Witness HP

452. Witness HP was a member of the RECCE Battalion in 1994.[818] He testified that after the Arusha Accords came into effect, weapons and armoured vehicles of Squadron C were taken from Camp Kigali and hidden in Rambura. This was because the RECCE Battalion "wanted to hide these weapons from the UNAMIR control."[819]

Prosecution Witness Roméo Dallaire

453. Witness Dallaire testified that following the implementation of the KWSA, he received information that there were "heavy weapons" located in the "town of the President".[820] Specifically, Dallaire stated that in January or February 1994, he had information that those weapons were in fact in the tea plantation near the President's village of birth[821] and that "heavy weapons systems ... were moved out of Kigali just before the KWSA".[822] He believed that this was done in bad faith. He explained, however, that he did not conduct subsequent investigations to verify this information.[823]

454. Dallaire further testified that UNAMIR observers charged with monitoring the implementation of the KWSA received very little cooperation from Nzuwonemeye, the commander of the RECCE Battalion.[824]

4.2.8.2.2 Defence Evidence

The Accused Nzuwonemeye

455. Nzuwonemeye testified that in 1994, the RECCE Battalion had approximately 20 to 25 armoured vehicles.[825] In the first week of December 1993, the Chief of Staff of the Rwandan Army, General Nsabimana, ordered him to send a squadron from RECCE Headquarters to Rambura, Gisenyi in order to "strengthen the protection of the residence of the President." Squadron C of RECCE was accordingly sent to Rambura together with approximately seven to nine armoured vehicles.[826] These vehicles did not return to Kigali until 8 April 1994.[827]

456. In the second week of December 1993, General Nsabimana ordered Nzuwonemeye to send two armoured vehicles to the residence of the President in Kiyovu, Kigali.[828] Two armoured vehicles were then placed at the President's residence in Kiyovu.[829] According to

[818] T. 9 May 2005, p. 11.
[819] T. 9 May 2005, pp. 17-18.
[820] T. 20 November 2006, p. 48.
[821] T. 22 November 2006, pp. 37, 42-43.
[822] T. 21 November 2006, p. 66; T. 22 November 2006, p. 42.
[823] T. 21 November 2006, p. 66.
[824] T. 21 November 2006, p. 65; T. 22 November 2006, p. 2.
[825] T. 6 October 2008, p. 18.
[826] T. 6 October 2008, pp. 22-24.
[827] T. 6 October 2008, p. 25.
[828] T. 6 October 2008, pp. 22, 25, 27; T. 8 October 2008, pp. 6, 11.
[829] T. 6 October 2008, pp. 20, 22-23, 25, 27; T. 8 October 2008, pp. 4-6, 11-12, 34, 54.

Nzuwonemeye, these vehicles remained there until 6 April 1994, after which they were deployed to other sensitive areas.[830]

457. Nzuwonemeye testified that he supported the Arusha Accords and accordingly cooperated with UNAMIR observers in implementing the Accords.[831] He further testified that he informed those observers about the deployment of armoured vehicles to the residence of President Habyarimana in Rambura, Gisenyi as well as in Kiyovu, Kigali.[832]

Defence Witness NGT

458. Witness NGT was a member of Squadron C of the RECCE Battalion in 1994.[833] He explained that in March 1994, Squadron C was deployed to protect President Habyarimana's residence in Rambura, Gisenyi.[834] Squadron C returned to Kigali from Rambura on 8 April 1994.[835] The witness stated that armoured vehicles from the RECCE Battalion were stationed at the other residence of the President in Kiyovu, Kigali.[836]

459. The witness further testified that the RECCE Battalion supported the Arusha Accords and was "ready to welcome the RPF soldiers".[837]

Defence Witness K4

460. Witness K4 worked for the RECCE Battalion in 1994. He testified that towards the end of November 1993, Squadron C of RECCE was deployed to Rambura in order to provide security to the residence of President Habyarimana.[838] The witness testified that he was informed of Squadron C's deployment to Rambura by the regimental Sergeant Major as he was required to draw up the location of units.[839] The witness further testified that the order to deploy Squadron C was given by the Chief of Staff of the Rwandan Army.[840]

Defence Witness Y1

461. Witness Y1 was a member of the Rwandan Army in 1994. He testified that in either 1992 or 1993, following an order from the Chief of Staff of the Rwandan Army, Nzuwonemeye deployed armoured vehicles to Rambura in order to reinforce the guard at President Habyarimana's residence in Rambura.[841] The witness stated that Nzuwonemeye did not have the competence to issue such an order and that he only implemented the instructions of the Chief of Staff of the Army.[842]

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[830] T. 6 October 2008, p. 27; T. 8 October 2008, pp. 4, 34.
[831] T. 6 October 2008, pp. 28-31, 33.
[832] T. 6 October 2008, pp. 28-31, 33.
[833] T. 23 September 2008, p. 4.
[834] T. 23 September 2008, p. 4.
[835] T. 23 September 2008, pp. 6-7.
[836] T. 23 September 2008, pp. 28, 30-32.
[837] T. 23 September 2008, p. 19.
[838] T. 30 June 2008, pp. 8-9, 37-39.
[839] T. 30 June 2008, pp. 8-9, 38.
[840] T. 30 June 2008, p. 9.
[841] T. 25 June 2008, p. 34.
[842] T. 25 June 2008, pp. 31-34.

462. Witness Y1 testified that the Rwandan Army did not attempt to hinder or frustrate the implementation of the Arusha Accords or the establishment of the KWSA.[843] He rejected the assertion that armoured vehicles were deployed to Rambura in order to help the population track down Tutsi.[844]

Defence Witness Faustin Habimana

463. Witness Habimana was a member of the Rwandan Army in 1994. He testified that prior to 6 April 1994, Squadron C of the RECCE Battalion together with approximately five or six armoured vehicles had been sent to Rambura in order to ensure security at the residence of President Habyarimana. This was necessary because there "had ... been attacks in western Rwanda ... launched by the RPF [and the vehicles were required to] monitor and see if there would be attacks in western Rwanda so that they could fend them off."[845]

Defence Witness Y2

464. Witness Y2 was a member of Squadron C of the RECCE Battalion in 1994. He testified that in March 1994, he was sent to the residence of the President in Rambura in order to replace members of Squadron B. This was because there had been security problems in Kabatwa. He stated that there were "seven or eight armoured vehicles" located in Rambura and that those vehicles did not return to Kigali until 8 April.[846]

Defence Witness F10

465. Witness F10 was a member of the RECCE Battalion in 1994.[847] He testified that RECCE had approximately 20 armoured vehicles in working condition and that he had been told that a squadron from the RECCE Battalion had been sent to Rambura for training purposes.[848] According to the witness, Nzuwonemeye supported the Arusha Accords.[849]

4.2.8.3 Deliberations

466. It is undisputed that armoured vehicles from the RECCE Battalion were deployed in Rambura and Kiyovu.[850] It is, however, disputed that these actions were taken during January and February 1994 as the Indictment alleges. It is further disputed that these actions were taken in an attempt to evade UNAMIR inspections required under the KWSA. The Defence argues that the deployment of these vehicles served legitimate security concerns and was not carried out in furtherance of a conspiracy to commit genocide against Tutsi.

467. The Chamber will first assess whether these armoured vehicles were deployed to Rambura and Kiyovu in order to evade UNAMIR inspections. The Chamber will then consider whether the deployment is evidence of a conspiracy to commit genocide.

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[843] T. 25 June 2008, pp. 31-32.
[844] T. 25 June 2008, pp. 34-35.
[845] T. 13 November 2008, p. 26.
[846] T. 15 September 2008, pp. 12-13, 15, 19-20.
[847] T. 24 October 2008, p. 5 (ICS).
[848] T. 24 October 2008, pp. 8- 9 (ICS).
[849] T. 24 October 2008, p. 6 (ICS).
[850] T. 6 October 2008, pp. 20, 22-23, 25, 27; T. 8 October 2008, pp. 4-6, 11, 12, 34, 54.

468. At the outset, the Chamber finds that the Prosecution failed to adduce sufficient evidence that the operation to move armoured vehicles from Camp Kigali, where the RECCE Battalion was based, was done in January and February 1994.[851] Having reviewed the evidence tendered on this subject, the Chamber finds that armoured vehicles were initially deployed to Rambura at the end of December 1993 but remained there into 1994. The Chamber recalls that the Defence argued that evidence of armoured vehicles being concealed during and prior to 1994 is "outside the temporal jurisdiction of the Tribunal".[852] The Chamber notes that it is now well established that pre-1994 evidence may be considered provided that it has "probative value"[853] and that the underlying crimes for which the accused is charged fit properly within the Tribunal's temporal jurisdiction. The Chamber will therefore consider the evidence on the deployment of the armoured vehicles despite the fact that the events took place prior to 1994, because that evidence is relevant to a determination of whether Nzuwonemeye was implicated in a conspiracy to commit genocide against Tutsi.[854]

469. Furthermore, the Chamber finds that the Prosecution's allegation that "20 armoured vehicles and about 10 jeeps" were hidden by RECCE is not supported by the evidence. The evidence available to the Chamber suggests that the RECCE Battalion possessed approximately 20 armoured vehicles.[855] Of these, between six and eight armoured vehicles were deployed to Rambura.[856] The Chamber is unable to make a finding in respect of the number of vehicles that were deployed to the Presidential residence in Kiyovu, but it is satisfied that vehicles were also placed at this residence. The Chamber will now consider whether Nzuwonemeye's decision to deploy these vehicles was taken in order to evade UNAMIR inspections directed towards the implementation of the KWSA.

470. The Chamber recalls that Prosecution Witness DY testified that at the end of 1993, Nzuwonemeye informed members of the RECCE Battalion that following the establishment of the KWSA, armoured vehicles belonging to the battalion should be hidden in order to evade UNAMIR inspections implementing the KWSA. Thereafter, armoured vehicles were removed from Camp Kigali and taken to Rambura and Kiyovu in order to evade inspection by UNAMIR observers. This was corroborated by Prosecution Witnesses DA and HP. Prosecution Witness Dallaire also testified that he received independent intelligence that armoured vehicles were hidden in President Habyarimana's hometown and he believed that the order to move those vehicles was given in bad faith.[857] Dallaire further testified that Nzuwonemeye was not cooperative with the UNAMIR observers in implementing the KWSA. The Chamber also recalls the testimony of Prosecution Witness AWC that he "heard" people say that vehicles should be hidden, although the Chamber finds that Witness AWC's evidence is based on hearsay from an unidentifiable source.[858]

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[851] Witness DA suggested that the vehicles were deployed at the end of 1993 or at the beginning of 1994; Witness DY suggested that the vehicles were deployed at the end of 1993; General Dallaire suggested that the vehicles were moved out of Kigali before KWSA took effect, which was in December 1993; and Witness HP could not remember the "exact date" that the vehicles were deployed.
[852] Nzuwonemeye Closing Brief, para. 406.
[853] Rule 89(C) of the Rules.
[854] *Bagosora et al.* Trial Judgement, para. 2091.
[855] T. 24 October 2008, p. 8 (ICS).
[856] T. 24 January 2005, p. 33; T. 13 November 2008, p. 26.
[857] T. 21 November 2006, p. 66.
[858] T. 19 January 2006, pp. 31-32.

471. Having considered this evidence, the Chamber finds that it establishes beyond reasonable doubt that armoured vehicles were moved to Rambura and Kiyovu in an attempt to evade UNAMIR inspections. The Chamber has also considered the evidence elicited from Defence witnesses and finds that it does not undermine this finding.

472. The Prosecution alleges that such actions were "part of a well-conceived plan by the Rwandan military, as an institution, to obstruct the full implementation of the Arusha Accords and as a visible component of the strategy for perpetrating the genocide".[859]

473. The Chamber is not satisfied that it has sufficient evidence demonstrating that Nzuwonemeye's decision to hide armoured vehicles or their eventual return to Kigali was taken in furtherance of a conspiracy to commit genocide against Tutsi.[860] The evidence available to the Chamber suggests that the armoured vehicles were returned to Kigali on 7 April 1994. However, the Prosecution failed to adduce credible and sufficient evidence that this was for the purpose of tracking down the civilian population as part of a conspiracy to commit genocide.[861]

474. The Chamber is not satisfied that opposition to the implementation of the Arusha Accords or the KWSA, in and of itself, is sufficient to establish Nzuwonemeye's involvement in a conspiracy to commit genocide against Tutsi. Consequently, the Prosecution has not proved beyond reasonable doubt that the only reasonable inference to be drawn from the evidence adduced by the Prosecution is that Nzuwonemeye was implicated in a conspiracy to commit genocide against Tutsi.

4.2.9 *Protais Mpiranya and the Obstruction of the Installation of the Transitional Government*

475. The Indictment alleges that on 5 January 1994, at the swearing-in ceremony of the broad-based transitional government in Kigali, Major Protais Mpiranya prevented access by political opponents, or a significant number of them, to the premises of the CND.[862]

476. The Chamber finds that, on a reasonable reading of the charge, it does not appear to link any of the Accused in this case with the obstruction of the installation of the broad based transitional government on 5 January 1994 as part of a conspiracy to commit genocide against Tutsi. The charge appears to relate entirely to the alleged actions of Major Protais Mpiranya. The Chamber therefore dismisses this charge in relation to all four Accused in this trial.

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[859] Prosecution Closing Brief, para. 558.
[860] Prosecution Closing Brief, para. 558.
[861] For example, Witness DA simply testified that armoured vehicles returned and were deployed to other locations in Kigali. Furthermore, Witness DA did not know who had ordered the return of the vehicles. *See* T. 18 January 2005, pp. 66-69. Witness DY also did not "know the exact date on which those armoured cars were brought back". He simply testified that the armoured vehicles "were brought back to the base". *See* T. 14 December 2006, p. 39.
[862] Indictment, para. 35.

4.2.10 *Sagahutu's Shares in Radio Télévision Libre des Milles Collines*

4.2.10.1 Introduction

477. The Indictment alleges that Innocent Sagahutu purchased a number of shares in RTLM when it was founded and that he blatantly encouraged the FAR to buy shares in RTLM, which advocated total war against the Tutsi.[863]

4.2.10.2 Evidence

4.2.10.2.1 Prosecution Evidence

Prosecution Witness DA

478. Witness DA was a soldier in the RECCE Battalion in Kigali from 1991 to 1994.[864] He testified that towards the end of 1993, Sagahutu called the soldiers of RECCE together and told them, "We are going to establish a radio station".[865] Sagahutu asked each of the soldiers to make a voluntary contribution of 5,000 francs to buy a share in RTLM. At least five people purchased a share in the radio station and paid 5,000 francs. The witness did not himself purchase a share in RTLM at that time. Sagahutu promised the witness that he would organise the purchase for him, but "matters soon evolved" and the witness did not know whether Sagahutu did in fact organise the purchase.[866]

479. Sagahutu told the soldiers whom he had convened that RTLM was going to add to what was being done by Radio Rwanda, which was providing insufficient information on the "situation" at the war front. The witness testified that Sagahutu "made people understand that the radio station was going to be set up with the objective of fighting the enemy."[867] In cross-examination, when asked whether there were any indications that the station was intended to broadcast anti-Tutsi propaganda, Witness DA responded, "People were talking about it."[868]

Prosecution Expert Witness Alison Des Forges

480. Witness Des Forges testified that RTLM was launched in April 1993 by a group of MRND and CDR loyalists because they feared losing control of the essential medium of the radio to hostile forces.[869] The biggest shareholder was President Habyarimana himself, and other shareholders included members of the President's family, leading military officers and leading persons of the MRND and CDR.[870]

481. The radio station began test broadcasts in mid-1993 and regular broadcasts several months later.[871] According to Des Forges, RTLM disseminated increasingly virulent attacks on Tutsi, inciting violence against them.[872] Des Forges testified:

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[863] Indictment, para. 36.
[864] T. 11 January 2005, p. 28 (ICS).
[865] T. 13 January 2005, pp. 23, 32; T. 25 January 2005, p. 57.
[866] T. 13 January 2005, pp. 32-33.
[867] T. 25 January 2005, p. 57.
[868] T. 25 January 2005, p. 56.
[869] Prosecution Exhibit 107, p. 10; T. 19 September 2006, p. 64.
[870] T. 19 September 2006, p. 64.
[871] Prosecution Exhibit 107, p. 10.

> The association of enemy with Tutsi which entered the public domain as a result of the definition of the enemy document, was subsequently reinforced through the press, including nominally, independent organs of the press such as RTLM and Kangura, but organs which were permitted to continue sowing hatred and calling for the extermination of "enemy".[873]

Other Prosecution Witnesses

482. Witness Dallaire testified that between April and June 1994, RTLM was inciting people to kill, rape, mutilate and "destroy" Tutsi.[874] Prosecution Witness AOG testified that he listened to RTLM broadcasts during the three days preceding 9 April 1994 and that the broadcasts contained "messages of hatred and incitement ... of the population to kill Tutsi. They encouraged the people to kill the Tutsi, the enemy. They did not have to hide it. They used the word 'Tutsi'."[875]

4.2.10.2.2 Defence Evidence

The Accused Innocent Sagahutu

483. Sagahutu acknowledged that he bought four shares in RTLM in 1993, but he stated that the purchase was an ordinary investment made with the hope of making a profit.[876] He denied having encouraged other people to buy shares in the company.[877] When presented with a list of RTLM shareholders,[878] Sagahutu stated that he did not see the names of any soldiers from his squadron.[879]

Other Defence Witnesses

484. Witness DE 8-14 was a shareholder in RTLM. He acknowledged that RTLM broadcast repulsive and virulent anti-Tutsi messages that encouraged acts of violence against Tutsi.[880] Witness CSS was a soldier in RECCE in 1993 and 1994.[881] He testified that he never saw Sagahutu campaign for soldiers to purchase shares of RTLM, nor did he hear about any such campaign.[882] Another RECCE soldier, Witness Faustin Habimana,[883] testified that some people did purchase shares in RTLM when it was first created, but to his knowledge Sagahutu never campaigned to encourage soldiers to purchase shares in the radio station.[884] Witness UDS was also a soldier in RECCE during this period. He testified that he purchased one share in RTLM when it was first established after having heard an advertisement on Radio Rwanda,[885] but he never heard of Sagahutu campaigning for soldiers to buy shares

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[872] Prosecution Exhibit 107, pp. 10-11.
[873] T. 21 September 2006, p. 30.
[874] T. 21 November 2006, p. 26
[875] T. 21 February 2006, p. 46 (ICS).
[876] T. 1 December 2008, p. 41.
[877] T. 1 December 2008, p. 41.
[878] Defence Exhibit 13.
[879] T. 2 December 2008, p. 21.
[880] T. 15 May 2007, pp. 23-24.
[881] T. 23 October 2008, pp. 15-16 (ICS).
[882] T. 23 October 2008, pp. 43-44.
[883] T. 13 November 2008, p. 3.
[884] T. 13 November 2008, p. 11.
[885] T. 27 October 2008, p. 50 (ICS).

from RTLM. The witness testified, "had [Sagahutu] done it I would have known because we were working together".[886]

4.2.10.3 Deliberations

485. It is not disputed that Sagahutu purchased a number of shares in RTLM when it was first founded in 1993. The Prosecution alleges that Sagahutu also encouraged soldiers to buy shares in the new radio station. According to the evidence elicited from Prosecution witnesses, RTLM regularly broadcast anti-Tutsi messages which incited hatred towards the Tutsi "enemy". The Chamber notes that the Prosecution seeks to utilise the evidence on Sagahutu's acts of purchasing shares and encouraging soldiers to buy shares in RTLM to support its allegation that he was party to a conspiracy to commit genocide against Tutsi.

486. The Defence submits that the Tribunal should reject the charge in paragraph 36 of the Indictment as the facts related to this allegation fall outside the Tribunal's temporal jurisdiction of 1 January to 31 December 1994.[887] The Appeals Chamber has made it clear that the provisions of the Statute on the temporal jurisdiction of the Tribunal do not preclude the admission of evidence on events prior to 1994, where such evidence is relevant and has probative value in terms of clarifying the context in which the crimes occurred, establishing by inference an accused's criminal intent or showing a deliberate pattern of conduct.[888] It is therefore possible for the Chamber to consider evidence of Sagahutu's support for RTLM in 1993 as indicative of his participation in a conspiracy to commit genocide, despite the fact that his conduct is alleged to have occurred outside the period covered by the Tribunal's temporal jurisdiction. Accordingly, the Chamber dismisses this submission by the Defence

487. Turning to the substance of the allegation, the Chamber notes that Sagahutu acknowledges that he bought four shares in RTLM in 1993, but he denies having encouraged soldiers to buy shares in the company.[889] Prosecution Witness DA was the only witness to testify that Sagahutu encouraged soldiers to purchase RTLM shares when the radio station was established in 1993.[890] Three Defence Witnesses testified that, as far as they were aware, Sagahutu did not campaign for soldiers to purchase RTLM shares.[891]

488. Having considered the evidence tendered during trial, the Chamber is convinced that RTLM was aligned with extremist Hutu elements, a fact that is demonstrated by its role in the genocide of 1994. However, even if the Chamber accepts the evidence of Witness DA that Sagahutu campaigned for soldiers to purchase RTLM shares, the Chamber is not persuaded that Sagahutu's act of buying RTLM shares and encouraging soldiers to do so is indicative of his participation in a conspiracy to commit genocide. The Chamber finds that apart from buying shares in RTLM, no evidence was adduced to suggest that Sagahutu, acting in concert with others, played a substantial role in the establishment of the radio station or took part in its operations or in the formulation of its policies. In the view of the Chamber, his purchase of shares and encouragement of others to purchase shares are not, without additional evidence, sufficient to establish his participation in a conspiracy to commit genocide.

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[886] T. 27 October 2008, p. 51 (ICS).
[887] Sagahutu Closing Brief, paras. 160-161, 173.
[888] Media Appeal Judgement, para. 315.
[889] T. 1 December 2008, p. 41.
[890] T. 13 January 2005, pp. 32-33.
[891] T. 23 October 2008, pp. 43-44; T. 13 November 2008, p. 11; T. 27 October 2008, p. 51 (ICS).

4.2.11 *Ndindiliyimana's Failure to Stop Radio Télévision Libre des Milles Collines Broadcasts*

4.2.11.1 Introduction

489. The Indictment alleges that, although incitement to ethnic or racial hatred and violence against Tutsi were rife in the broadcasts of RTLM, Augustin Ndindiliyimana avoided investigating or ordering any judicial probe of the RTLM journalists who were inciting to ethnic or racial hatred and violence on a daily basis.[892]

4.2.11.2 Evidence

4.2.11.2.1 Prosecution Evidence

Prosecution Witness Roméo Dallaire

490. Witness Dallaire testified that between April and June 1994, RTLM was inciting people to kill Tutsi.[893] On a number of occasions, the witness as well as human rights representatives and others from outside the country questioned why the government had not stopped the radio station from broadcasting these messages. Dallaire discussed the RTLM broadcasts with Ndindiliyimana and other military leaders during that period. Their response was always that RTLM was a private radio station that was exercising its legitimate freedom of expression. Nonetheless, Ndindiliyimana told Dallaire that he would attempt to influence RTLM to stop the broadcasts but that his efforts were unlikely to be effective.[894]

Prosecution Expert Witness Alison Des Forges

491. Witness Des Forges testified that the association of the enemy with Tutsi was reinforced through organs of the press, including RTLM, which were permitted to continue sowing hatred and calling for the extermination of the "enemy".[895]

492. In cross-examination, Des Forges acknowledged that she wrote the following passage in one of her books:

> In April General Ndindiliyimana and Colonel Gatsinzi and Rusatira summoned Gaspard Gahigi of RTLM and Jean François Nsengiyumva of Radio Rwanda to the military school in Kigali. The officers supposedly told them that the radios must stop calling for violence against Tutsi and discrediting military officers opposed to the genocide.[896]

493. When asked whether Ndindiliyimana's actions appear to be consistent with "someone who opposes any killings of Tutsi civilians and any plan to do so", Des Forges replied, "Those actions in and of themselves do appear to be consistent with that, yes." Des Forges emphasised, however, that April 1994 was "sadly … a time of very inconsistent actions on

[892] Indictment, para. 37.
[893] T. 21 November 2006, p. 26.
[894] T. 21 November 2006, p. 26.
[895] T. 21 September 2006, p. 30.
[896] T. 11 October 2006, p. 60.

the part of many people, whereas some who were actively involved in the genocide also saved people's lives."[897]

4.2.11.2.2 Defence Evidence

The Accused Ndindiliyimana

494. Ndindiliyimana testified that the Chief of Staff of the *Gendarmerie* does not have the jurisdiction or authority to initiate investigations against journalists who are responsible for slanderous articles. Moreover, Ndindiliyimana was not aware of any provision that would have empowered him to compel the Prosecutor or the legal department to prosecute in such cases.[898]

Defence Witness Stanislas Harelimana

495. Witness Harelimana was Prosecutor of the Kigali Appeals Court in 1994.[899] He testified about the jurisdiction and functioning of the Prosecutor's office, the role and powers of judicial police officers and the overall authority of the Minister of Justice.

496. The witness explained that the role of the *gendarmes,* as judicial police officers, is to investigate crimes, gather evidence and arrest the perpetrators. The *gendarmes* have the authority to carry out these activities on their own initiative, without the authorisation of the state Prosecutor. For ordinary crimes, the *gendarmes* then dispatch the case files to the Prosecutor's office. However, in relation to crimes against "state security", such as inciting ethnic tensions within the country, the *gendarmes* are obliged to refer the case to the Ministry of Justice instead of the Prosecutor's office.[900] In cross-examination, the witness testified that he was not aware of any investigative report written by the *Gendarmerie* regarding the programmes that were broadcast on RTLM in 1994.[901]

497. According to the witness, it was not the role of the *Gendarmerie* to monitor private radio stations, since this was the responsibility of the Minister of Information.[902] The witness testified:

> If any media were behaving in a manner that was contrary to the law on the media, then the Minister of Information would contact the Minister of Justice and point out that such and such an individual ought to be brought to book because they are engaged in activities that are contrary to the law. Yet the Minister of Information did not do anything.[903]

498. Ultimately, the decision to deal with the private press "could only have been a decision from government taken by the Minister of Justice upon consultation with his colleagues."[904]

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[897] T. 11 October 2006, p. 60.
[898] T. 16 June 2008, p. 52.
[899] T. 30 January 2008, p. 3.
[900] T. 30 January 2008, pp. 6-10, 19-20; T. 31 January 2008, pp. 56-57.
[901] T. 31 January 2008, pp. 61-62.
[902] T. 31 January 2008, p. 68.
[903] T. 30 January 2008, p. 39.
[904] T. 30 January 2008, p. 38.

Defence Witness Pascal Ndengejeho

499. Witness Ndengejeho was the Rwandan Minister of Information when RTLM was founded in 1993. He testified that it was the Minister of Information who had the jurisdiction to cancel the licence of a private radio station.[905] The *Gendarmerie* did not have the power to arrest RTLM journalists or staff members without a written instruction from the Prosecutor's office or the authorisation of the relevant departments in government.[906]

Defence Witness André Vincent

500. Witness Vincent testified that it was "entirely inconceivable" that the Chief of Staff of the *Gendarmerie* could have opposed, much less shut down, a radio station such as RTLM.[907]

4.2.11.3 Deliberations

501. It is clear that RTLM played a significant role in stoking ethnic tension before 6 April 1994 and in inciting genocide against Tutsi thereafter. The Prosecution alleges that Ndindiliyimana, the highest law enforcement officer in Rwanda, refused to investigate or order a judicial probe into the RTLM broadcasts.[908] However, the Prosecution has presented little evidence to support the allegation that Ndindiliyimana avoided using his powers to investigate RTLM journalists or otherwise to stop RTLM from broadcasting anti-Tutsi messages.

502. The Defence disputes the Prosecution's allegation and submits that Ndindiliyimana had no legal authority or jurisdiction to shut down the radio station or arrest its staff without a warrant from the Rwandan Prosecutor.[909] According to the Defence, that authority lay with the Minister of Information and the Minister of Justice. The Chamber will now examine the evidence regarding Ndindiliyimana's powers of investigation and the steps that he took to investigate or otherwise to stop the RTLM broadcasts in 1994.

503. Defence Witness Harelimana, who was the Prosecutor of the Kigali Appeals Court in 1994, testified that the *gendarmes* were responsible for investigating offences and that they could arrest individuals where there was sufficient evidence of the commission of a crime. Ultimately, however, the decision whether to initiate proceedings lay with the Prosecutor for ordinary crimes or with the Minister of Justice for crimes against "state security".[910] Based on this evidence, the Chamber is satisfied that Ndindiliyimana had some legal authority to investigate the RTLM journalists responsible for the anti-Tutsi broadcasts.

504. Having found that Ndindiliyimana had authority to investigate the conduct of the RTLM journalists, the Chamber will now determine whether he took any measures to alleviate the problems posed by RTLM to public order. The Defence submits that the evidence of Prosecution Expert Witness Des Forges indicates that Ndindiliyimana tried to intervene to encourage RTLM to tone down its broadcasts.[911] In this regard, Des Forges

[905] T. 29 October 2008, pp. 58-63.
[906] T. 29 October 2008, pp. 61-63.
[907] T. 10 June 2008, pp. 18-19.
[908] Prosecution Closing Brief, para. 490; Indictment, para. 37.
[909] Ndindiliyimana Closing Brief, paras. 25, 56.
[910] T. 30 January 2008, pp. 6-10, 19-20; T. 31 January 2008, pp. 56-57.
[911] Ndindiliyimana Closing Brief, paras. 25, 56.

testified that Ndindiliyimana summoned Gaspard Gahigi, the editor-in-chief of RTLM, in April 1994 and told him that the station must stop calling for violence against Tutsi and discrediting military officers opposed to the genocide.[912] General Dallaire testified that he discussed the anti-Tutsi RTLM broadcasts with Ndindiliyimana between April and June 1994. Ndindiliyimana told Dallaire that he would attempt to influence RTLM to stop the broadcasts but that his efforts were unlikely to be effective.[913]

505. In the view of the Chamber, the evidence of Witnesses Des Forges and Dallaire suggests that Ndindiliyimana did in fact try to use his personal persuasion to stop the RTLM broadcasts. While his personal intervention to dissuade journalists at RTLM from broadcasting hateful messages against Tutsi may not be tantamount to investigating them for their conduct, the Chamber is satisfied that in the context that prevailed in Rwanda at the time, Ndindiliyimana's intervention evinced a genuine attempt on his part to prevent RTLM from issuing hateful broadcasts against Tutsi. The Chamber's finding is buttressed by Des Forges's response to a question from the Defence in cross-examination as to whether Ndindiliyimana's actions in summoning the editor-in-chief of RTLM, Gaspard Gahigi, and telling him to desist from hateful broadcasts appeared to be consistent with "someone who opposes any killings of Tutsi civilians and any plan to do so".[914] Des Forges replied, "Those actions in and of themselves do appear to be consistent with that, yes."[915]

506. The Chamber considers that the Prosecution did not lead credible evidence to prove that Ndindiliyimana failed to take measures within his power to investigate or order a judicial probe into the anti-Tutsi broadcasts on RTLM. It follows that the Prosecution has not proved this charge beyond reasonable doubt.

4.3 Acts Associated with Genocide

4.3.1 *The Killing of Prime Minister Agathe Uwilingiyimana and the Belgian Soldiers*

4.3.1.1 Introduction

507. The Indictment alleges that on 7 April 1994 in Kigali, elements of the RECCE Battalion commanded by Nzuwonemeye and Sagahutu, in concert with elements of the Presidential Guard, killed Prime Minister Agathe Uwilingiyimana and the Belgian soldiers who had been assigned to escort her. The Prime Minister had intended to go to the radio station to address the nation in order to forewarn the various protagonists about engaging in excesses and to make an appeal for calm. It is alleged that those murders, and others, annihilated several obstacles that stood in the way of the genocide.[916]

508. The Chamber has found both Nzuwonemeye and Sagahutu guilty of murder as a crime against humanity, as well as murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, for the killings of Prime Minister Agathe Uwilingiyimana and the Belgian soldiers. In its factual findings for murder as a crime against humanity, the Chamber set out in detail the evidence relevant to these crimes. Therefore, the Chamber does not deem it necessary to repeat that evidence in assessing the allegations

[912] T. 11 October 2006, p. 60.
[913] T. 21 November 2006, p. 26.
[914] T. 11 October 2006, p. 60.
[915] T. 11 October 2006, p. 60.
[916] Indictment, para. 38.

described in paragraphs 38 and 39 of the Indictment. At this point, the Chamber will only consider whether the two incidents are indicative of the involvement of Nzuwonemeye and Sagahutu in a conspiracy to commit genocide, as alleged in paragraph 38 of the Indictment.

4.3.1.2 Deliberations

509. The Chamber notes that the Prosecution alleges that Prime Minister Agathe Uwilingiyimana and the Belgian soldiers were killed in order to diminish resistance to the effectuation of a conspiracy to commit genocide against Tutsi conceived by the Accused and other Rwandan Hutu leaders listed in paragraph 22 of the Indictment. The Indictment further alleges that the involvement of Nzuwonemeye and Sagahutu and their subordinates in these killings is indicative of their involvement in a conspiracy to commit genocide. The Chamber will now consider whether the evidence tendered in this trial supports the inferences advanced by the Prosecution.

4.3.1.2.1 Killing of the Belgian Soldiers

510. In its factual findings for murder as a crime against humanity, the Chamber found that the killing of the Belgian soldiers took place in two phases. During the first phase, sick or disabled soldiers attacked the whole group of UNAMIR soldiers at Camp Kigali using a variety of crude instruments including canes, rifle butts and rocks. As a result of this initial attack, at least six Belgian soldiers were killed while between two and four Belgian soldiers managed to retreat into the UNAMIR building along with five Ghanaian soldiers. During the second phase, the Ghanaians were allowed to leave while Rwandan soldiers began lobbing grenades and firing small arms onto the UNAMIR building in which the Belgians were sheltering. The Chamber found that many healthy and active Rwandan soldiers, including soldiers from the RECCE Battalion, were involved in the attack during this second phase.

511. Having considered the entirety of the evidence pertinent to the killing of the Belgian soldiers at Camp Kigali, the Chamber is not satisfied that those killings proceeded according to a preconceived plan. By their very nature, those murders appear to have been unplanned and disorganised. Furthermore, there is concordant evidence before the Chamber that the Belgian soldiers were attacked as a result of rumours that members of the Belgian detachment of UNAMIR were responsible for the downing of the President's plane. This evidence further suggests that the attack was spontaneous rather than being part of a plan or design. The fact that the attack against the Belgian soldiers became more organised as it progressed, following the involvement of fit soldiers of the RECCE and other battalions based at Camp Kigali, does not undermine the Chamber's finding that the killings were not committed pursuant to a preconceived plan.

512. The above analysis precludes a finding that Nzuwonemeye and Sagahutu were implicated in a conspiracy to commit genocide against Tutsi, notwithstanding their role in the killing of the Belgian soldiers at Camp Kigali on 7 April 1994.

4.3.1.2.2 Assassination of Prime Minister Agathe Uwilingiyimana

513. The Chamber has found that both Nzuwonemeye and Sagahutu ordered and aided and abetted the assassination of Prime Minister Uwilingiyimana in the morning of 7 April 1994. The Chamber recalls that Prosecution Witness Dallaire testified that Prime Minister Agathe Uwilingiyimana intended to give a radio address on 8 April 1994 in order to attempt to quell

the violence in Rwanda. The Chamber considers the evidence of Dallaire to be credible. The Prosecution submits that the assassination of the Prime Minister was part of a plan to remove obstacles to the genocide, since the Prime Minister's impending speech calling for calm posed a risk to the broader plan to commit genocide against the Tutsi.

514. While the Chamber is satisfied that the Prosecution has adduced compelling evidence implicating the two Accused in the killing of Prime Minister Agathe Uwilingiyimana, the Chamber is not satisfied that the evidence supports the Prosecution's allegation that their role in the killing of the Prime Minister is suggestive of their participation in a conspiracy to commit genocide against Tutsi.

515. Based on the evidence of Prosecution Witnesses AWC and DY, the Chamber is satisfied that at Bagosora's request, Nzuwonemeye attended a meeting at Army Headquarters on the night of 6 to 7 April.[917] In reaching this finding, the Chamber has considered the evidence adduced by the Defence suggesting that Nzuwonemeye did not attend this meeting and instead spent the night at Camp Kigali. The Chamber is not persuaded by this evidence in light of the firsthand accounts of Witnesses AWC and DY, who testified that Bagosora invited Nzuwonemeye to the meeting at Army Headquarters and that Nzuwonemeye did in fact leave Camp Kigali in order to attend that meeting.

516. The Chamber also accepts that Nzuwonemeye returned to Camp Kigali from the meeting at Army Headquarters between 4.00 and 5.00 a.m., and then held a short meeting with his squadron commanders in his office. The Chamber is satisfied that the Prosecution led compelling evidence suggesting that following that meeting, Nzuwonemeye ordered Sagahutu to send RECCE Battalion soldiers to reinforce the Presidential Guard soldiers who were at the residence of Prime Minister Agathe Uwilingiyimana.[918] Sagahutu complied with this order and instructed two armoured vehicles to move from Radio Rwanda to the Prime Minister's residence.

517. While the Chamber has heard evidence that at the meeting at Army Headquarters on the night of 6 to 7 April, Bagosora and other officers allied with him rejected Dallaire's suggestions to allow the Prime Minister a role in the process of resolving the crisis that ensued from the death of President Habyarimana, there is no evidence that the attendees at the meeting resolved to kill the Prime Minister. That being the case, the Chamber is unable to conclude that Nzuwonemeye and Sagahutu's instructions to deploy armoured vehicles in the immediate vicinity of the Prime Minister's residence were issued pursuant to a decision taken during the meeting held at the Army Headquarters.

518. Having carefully reviewed the evidence presented during this trial, the Chamber considers that the evidence is open to other reasonable inferences that are not necessarily consistent with the allegation that the Prime Minister was killed pursuant to a conspiracy to commit genocide. The Chamber therefore finds that the Prosecution has failed to prove this allegation beyond reasonable doubt.

[917] T. 18 January 2006, pp. 28-30; T. 23 January 2006, p. 36.
[918] *See* the evidence of Witnesses AWC and ALN.

4.3.2 *Nzuwonemeye and the Events Preceding the Deaths of Prime Minister Agathe Uwilingiyimana and the Belgian Soldiers*

4.3.2.1 Introduction

519. The Indictment alleges that shortly before the murders of the Belgian soldiers and Prime Minister Agathe Uwilingiyimana, Nzuwonemeye assembled his troops at Camp Kigali and informed them of the deaths of President Habyarimana and the Chief of Staff of the Rwandan Army, Nsabimana. It is alleged that in his address, Nzuwonemeye identified the enemy as the RPF, and called on his troops to eliminate all its accomplices within the country before taking on the enemy.[919]

4.3.2.2 Evidence

4.3.2.2.1 Prosecution Evidence

Prosecution Witness AP

520. Witness AP was a member of the RECCE Battalion based at Camp Kigali. He testified that on 6 April 1994, he was in his quarters at the camp when he heard a bugle call and went to the meeting point of the RECCE Battalion within the camp a little after 10.00 p.m.[920] The witness recalled that the assembled soldiers were addressed by Nzuwonemeye, who informed them that *Inyenzi* had shot down President Habyarimana's plane. Nzuwonemeye further told the group to get their firearms and ammunition, to be in a state of readiness and to wait for further instructions from the authorities.[921]

Prosecution Witness DY

521. Witness DY was a member of the RECCE Battalion in April 1994.[922] He recalled that he was at Camp Kigali on the night of the President's death. He testified that he heard an explosion and was subsequently instructed to assemble at the RECCE Battalion meeting point at the camp.[923] Nzuwonemeye addressed the assembly, stating that the President's plane had been shot down by *Inyenzi*.[924] The witness testified that Nzuwonemeye left the assembly shortly after he was informed that someone was phoning him from the Army Headquarters.[925]

Prosecution Witness DA

522. Witness DA was a member of the RECCE Battalion in April 1994.[926] He testified that shortly after the President's plane crash, the Camp Kigali bugle sounded calling the soldiers to assembly. The witness estimated that there were approximately 300 to 350 RECCE Battalion soldiers present at the assembly, and that both Nzuwonemeye and Sagahutu were also present.[927] Nzuwonemeye addressed the assembled troops and told them that the

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[919] Indictment, para. 39.
[920] T. 7 September 2005, p. 75.
[921] T. 7 September 2005, p. 75.
[922] T. 23 January 2006, p. 28.
[923] T. 23 January 2006, p. 35.
[924] T. 23 January 2006, p. 35.
[925] T. 23 January 2006, p. 36.
[926] T. 11 January 2005, p. 29.
[927] T. 11 January 2005, pp. 39-40.

President's plane had been shot down but that no one had specific details regarding that incident and that they should remain on stand by.[928] Nzuwonemeye also stated that the Prime Minister would have to answer for this accident.[929] Nzuwonemeye then requested that vehicles be brought out to block the roads leading to the Prime Minister's residence.[930]

Prosecution Witness ANK

523. Witness ANK was a member of the RECCE Battalion in April 1994.[931] He testified that on 6 April 1994, the Camp Kigali bugle sounded and the soldiers went to the RECCE assembly ground.[932] He stated that there were around 250 soldiers present at the assembly and that both Nzuwonemeye and Sagahutu were also present.[933] The witness recalled that Nzuwonemeye told the assembled soldiers that the President's plane had been shot down by Tutsi and RPF soldiers based at the CND.[934] He also told them not to leave the camp and that everyone should remain where they were and be ready to defend themselves.[935] Nzuwonemeye then went back to his office and the soldiers dispersed.[936]

Prosecution Witness DCK

524. Witness DCK was a member of the Music Company in April 1994.[937] He recalled that in the evening of 6 April, the Camp Kigali bugle sounded and the various units of the camp, including units of the RECCE Battalion, assembled at their respective positions. The assembled soldiers were then informed of the President's plane crash.[938]

Prosecution Witness HP

525. Witness HP was a member of the RECCE Battalion in April 1994.[939] He testified that following the downing of the President's plane, members of the RECCE Battalion gathered at their assembly point in their respective squadrons.[940] The witness was in Squadron A and he recalled that his commander, Sagahutu, addressed the squadron and told them to be on a state of alert. Sagahutu then provided weapons from the weapons store.[941] The witness recalled that Nzuwonemeye was in his office at the RECCE base.[942]

Prosecution Witness ALN

526. Witness ALN was a driver in the RECCE Battalion in April 1994.[943] He testified that after the downing of the President's plane, he picked up Nzuwonemeye from his home and

[928] T. 11 January 2005, pp. 39-40.
[929] T. 11 January 2005, p. 40.
[930] T. 11 January 2005, p. 40.
[931] T. 31 August 2005, p. 77 (ICS).
[932] T. 1 September 2005, p. 2.
[933] T. 1 September 2005, pp. 2-3.
[934] T. 1 September 2005, p. 3.
[935] T. 1 September 2005, p. 3.
[936] T. 1 September 2005, p. 3.
[937] T. 8 March 2005, p. 33.
[938] T. 8 March 2005, pp. 55-56.
[939] T. 9 May 2005, p. 11 (ICS).
[940] T. 9 May 2005, p. 15.
[941] T. 9 May 2005, pp. 15-16.
[942] T. 9 May 2005, p. 16.
[943] T. 29 September 2004, p. 39.

took him to the RECCE building.[944] The witness recalled that Nzuwonemeye ordered the squadron to be on standby. Nzuwonemeye then had a meeting with the commanders of the squadron, following which he attended a meeting at the Chief of Staff's office.[945]

Prosecution Witness AWC

527. Witness AWC was a member of the RECCE Battalion in April 1994.[946] He testified that following the news of the President's plane crash, he went to Camp Kigali and rejoined the RECCE Battalion.[947] Upon his arrival at Camp Kigali, the witness went to his office and Nzuwonemeye arrived shortly after. The witness stayed in the office while Nzuwonemeye went outside. The witness subsequently heard the phone ring and answered the call from Colonel Bagosora, who asked to speak to Nzuwonemeye regarding a meeting to be held at the General Staff.[948] The witness then called Nzuwonemeye, who took the phone call.[949] Following the call, Nzuwonemeye left the RECCE building and walked towards the General Staff office.[950]

4.3.2.2.2 Defence Evidence

Defence Witness K4

528. Witness K4 was a member of the RECCE Battalion in April 1994.[951] He testified that Prosecution Witness AWC was not in the RECCE office on 6 April 1994 but was on paternity leave, thus making it impossible for him to have known what took place.[952]

Defence Witness CSS

529. Witness CSS was a member of the RECCE Battalion in April 1994. He testified that there was no assembly of RECCE Battalion soldiers at Camp Kigali on 6 April 1994 following the death of President Habyarimana.[953]

Defence Witness Faustin Habimana

530. Witness Habimana was a member of the RECCE Battalion in April 1994. He testified that there was no assembly of RECCE Battalion soldiers at Camp Kigali on 6 April 1994.[954]

[944] T. 29 September 2004, p. 39.
[945] T. 29 September 2004, p. 42.
[946] T. 18 January 2006, p. 24 (ICS).
[947] T. 18 January 2006, p. 28.
[948] T. 18 January 2006, p. 29.
[949] T. 18 January 2006, p. 29.
[950] T. 18 January 2006, p. 30.
[951] T. 30 June 2008, p. 4 (ICS).
[952] T. 30 June 2008, p. 12.
[953] T. 23 October 2008, p. 24.
[954] T. 13 November 2008, p. 6.

4.3.2.3 Deliberations

531. In assessing the allegation in paragraph 34 of the Indictment, the Chamber first considers whether the Prosecution has adduced sufficient evidence proving that Nzuwonemeye convened an assembly of RECCE Battalion soldiers at Camp Kigali in the evening of 6 April 1994. The Chamber will then consider whether the speech that he is alleged to have delivered to the assembled soldiers is indicative of Nzuwonemeye's participation in a conspiracy to commit genocide against the Tutsi.

532. In support of this allegation, the Prosecution called a number of former RECCE Battalion soldiers who were based at Camp Kigali in April 1994. Prosecution Witnesses AP, DY, DA and ANK all testified that shortly after the death of President Habyarimana on 6 April 1994, RECCE Battalion soldiers were called to an assembly at Camp Kigali. Having carefully reviewed their evidence, the Chamber notes that it converges in important respects. Their evidence is also partially corroborated by Prosecution Witness DCK, who as a member of the Music Company did not assemble with RECCE, but saw members of the RECCE Battalion moving towards the RECCE assembly point.

533. The Chamber notes that the evidence of Witness HP differs from that of the above witnesses insofar as Witness HP testified that it was Sagahutu who addressed Squadron A at the assembly. However, a close examination of Witness HP's testimony shows that his estimated time of the death of the President, and thus the assembly that followed, was around 3.00 or 4.00 a.m. This leads the Chamber to conclude that the witness was in fact referring to a different assembly later in the night of 6 to 7 April, and as such his evidence does not contradict the evidence of the other Prosecution witnesses. Based on the firsthand evidence of Prosecution Witnesses AP, DY, DA and ANK, the Chamber is satisfied beyond reasonable doubt that in the evening of 6 April, soldiers of the RECCE Battalion assembled outside RECCE base at Camp Kigali.

534. The Chamber notes that its finding above is not impaired by the evidence given by the Defence witnesses who denied that RECCE Battalion soldiers were convened to an assembly after the death of President Habyarimana in the evening of 6 April. The Chamber recalls that Defence Witness Habimana stated that he did not attend a general assembly and that such an assembly did not occur. The Chamber notes that the mere fact that the witness did not attend the assembly does not preclude the possibility that an assembly may have taken place. In addition, the Chamber notes that Defence Witness CSS did mention an alert being sounded and squadron leaders making announcements to RECCE Battalion soldiers similar to the evidence of Witness HP. This suggests that a second meeting may have taken place later that evening.[955]

535. Turning to Nzuwonemeye's speech at the assembly, the Chamber notes that Prosecution Witnesses AP, DY, DA and ANK all testified that Nzuwonemeye made a short speech to RECCE Battalion soldiers during the assembly in question. The Chamber observes that the content of the speech as recalled by these witnesses is similar in many aspects, namely the news that the President's plane had been shot down and the reference to *Inyenzi* (according to Witnesses AP and DY) or "Tutsi" (according to Witness ANK). However, no witness recalled Nzuwonemeye "calling on his troops to eliminate all [the RPF's] accomplices within the country before taking on the enemy" as alleged in paragraph 39 of the

[955] T. 23 October 2008, pp. 23-24.

Indictment. In fact, Witnesses AP, DA and ANK all recalled Nzuwonemeye telling the assembled troops to wait for further information, while Witness DY did not recall any further instructions.

536. Having found that Nzuwonemeye did not in fact call for the elimination of all accomplices within the country, the Chamber is unable to conclude that his speech is indicative of a conspiracy to commit genocide. In the Chamber's view, the first two elements of Nzuwonemeye's speech, namely the news of the plane crash and the fact that Nzuwonemeye blamed the RPF/*Inyenzi* for the accident, are not indicative of a conspiracy to commit genocide. Nzuwonemeye's use of the term *Inyenzi* during his speech appears to refer principally to the RPF troops. It follows that the Prosecution has not proved this allegation against Nzuwonemeye beyond reasonable doubt.

4.3.3 *Protais Mpiranya and the Assassination of Rwandan Politicians Between 7 and 11 April 1994*

537. The Indictment alleges that between 7 and 11 April 1994, elements of the Presidential Guard, commanded by Protais Mpiranya, assassinated many Rwandan political figures including Boniface Ngulinzira, the Minister of Foreign Affairs of the outgoing government.[956]

538. The Chamber notes that it has considered the alleged assassination of Boniface Ngulinzira in relation to the allegations against Ndindiliyimana in paragraph 48 of the Indictment. Paragraph 40 of the Indictment does not allege the involvement of Bizimungu, Nzuwonemeye and Sagahutu in the killing of Boniface Ngulinzira as part of a conspiracy to commit genocide against Tutsi. Rather, the allegation focuses entirely on the role of the subordinates of Major Protais Mpiranya, the commander of the Presidential Guard in April 1994, who is not an accused in this case. Therefore, the Chamber will not consider this allegation in relation to Bizimungu, Nzuwonemeye and Sagahutu.

4.3.4 *Distribution of Weapons to Militia in April and May 1994*

4.3.4.1 Introduction

539. The Indictment alleges that in April and May 1994 in Kigali, Innocent Sagahutu and Protais Mpiranya distributed weapons on several occasions to "fanaticised militiamen", whose criminal activities were well known to them, while asking them "to persevere in the undertaking to exterminate the Rwanda Tutsi."[957]

4.3.4.2 Evidence

4.3.4.2.1 Prosecution Evidence

Prosecution Witness DA

540. Witness DA, a soldier of the RECCE Battalion in April 1994, testified that he was a member of Sagahutu's escort and acted as a driver and as a messenger in Sagahutu's

[956] Indictment, para. 40.
[957] Indictment, para. 41.

office.[958] He stated that on 7 April 1994, while at Camp Kigali, he was ordered by Sagahutu to load 25 guns into the latter's vehicle.[959]

541. After doing so, Witness DA left the camp with Sagahutu in his vehicle. They drove to the Gitega area, where they were stopped at a roadblock located "[a]t the crossroads of the road from Nyamirambo and the road coming down from the hospital, CHK, *Centre Hospitalier de Kigali*".[960] The roadblock was manned by several soldiers, some *gendarmes* and a number of *Interahamwe* and civilians. Witness DA noted that a number of Tutsi had been stopped at the roadblock and that around 20 dead bodies of men, women and children lay on the ground nearby.[961] According to the witness, Sagahutu gave the leaders of the *Interahamwe* at the roadblock some of the weapons that he had earlier loaded into his vehicle. The witness further testified that Sagahutu told those manning the roadblock that if they "needed anything whatsoever, they should speak to him."[962]

542. Witness DA and Sagahutu then drove towards Nyamirambo. On their way, they stopped at a roadblock located near ONATRACOM, the public transport company. The witness saw soldiers, *gendarmes* and *Interahamwe* at the roadblock, and a number of dead bodies lying nearby. The witness assumed that these were the bodies of Tutsi because it was Tutsi who were being stopped at the roadblock.[963] According to the witness, Sagahutu gave those manning the roadblock five or six rifles and asked them to "give him an account of the situation at those roadblocks and to tell him how they were doing their work." The witness explained that in asking the people at the roadblock to account for their "work", he understood Sagahutu to be asking about their role in "hunting down Tutsis."[964]

543. From the roadblock at ONATRACOM, they proceeded towards Nyamirambo and stopped at a number of smaller roadblocks, including one that was located near the Nyamirambo Mosque. At each of these roadblocks, Sagahutu distributed no more than two rifles.[965]

544. They then proceeded to Nyabugogo and stopped at another roadblock located near a building known as *Chez Kabuga*, which was owned by a prominent businessman in Kigali named Félicien Kabuga. This roadblock was manned by soldiers, *gendarmes* and *Interahamwe*. The witness observed about 50 to 60 dead bodies lying near the roadblock. He surmised that they were the bodies of Tutsi, given that members of that ethnic group "were the ones who were targeted by the killings at the time."[966] Sagahutu gave those manning the roadblock the remaining arms in his possession.[967]

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[915] T. 11 January 2005, p. 29 (ICS).
[959] T. 12 January 2005, pp. 9-10.
[960] T. 12 January 2005, p. 10.
[961] T. 12 January 2005, pp. 11-12.
[962] T. 12 January 2005, p. 13.
[963] T. 12 January 2005, p. 14.
[964] T. 12 January 2005, p. 15.
[965] T. 12 January 2005, p. 16.
[966] T. 12 January 2005, p. 16.
[967] T. 12 January 2005, pp. 16-17.

4.3.4.2.2 Defence Evidence

The Accused Nzuwonemeye

545. Nzuwonemeye testified that it would not have been possible for Sagahutu to acquire weapons and distribute them to *Interahamwe* since he did not have access to the RECCE Battalion's armoury. Nzuwonemeye stated that only he and his junior officer had access to the armoury.[968] He further testified that from 6 April until the time that he left the country in July 1994, he monitored the situation with respect to the weaponry and that no weapons went missing from the armoury.[969]

Defence Witness CSS

546. Witness CSS worked as a messenger in Sagahutu's office.[970] He testified that there were no weapons stored in Sagahutu's office.[971]

547. He further testified that he supervised Prosecution Witness DA, who also worked as a messenger in Sagahutu's office.[972] Witness CSS stated that Witness DA did not accompany Sagahutu out of Camp Kigali on 7 April 1994.[973] Witness CSS also disputed Witness DA's claim that he drove Sagahutu because Witness DA only possessed a class B driving license and therefore was not permitted to drive military vehicles.[974]

The Accused Sagahutu

548. Sagahutu testified that weapons belonging to the RECCE Battalion were all kept in the battalion's armoury, which was under the responsibility of the commander of the battalion. Therefore, Sagahutu stated that he would not have been able to obtain any weapons in order to distribute them to *Interahamwe*.[975]

549. Sagahutu contested Witness DA's claim that he accompanied him during a trip around Kigali town on 7 April 1994. According to Sagahutu, Witness DA did not leave Camp Kigali at any point on that day.[976] Furthermore, Sagahutu denied seeing any roadblocks in Kigali prior to 9 April 1994.[977]

Defence Witness Claudien Ndagijimana

550. Witness Ndagijimana was an officer of the *Gendarmerie* based at Camp Kacyiru.[978] He was attached to the security battalion responsible for providing security to high profile politicians.[979] Ndagijimana testified that in the morning of 7 April 1994, he was ordered by

[968] T. 7 October 2008, p. 29.
[969] T. 7 October 2008, p. 29.
[970] T. 23 October 2008, pp. 17-18 (ICS).
[971] T. 23 October 2008, p. 41.
[972] T. 23 October 2008, p. 18 (ICS); T. 23 October 2008, p. 20.
[973] T. 23 October 2008, p. 35.
[974] T. 23 October 2008, pp. 39, 55.
[975] T. 2 December 2008, p. 21.
[976] T. 2 December 2008, p. 16.
[977] T. 2 December 2008, p. 20.
[978] T. 5 June 2008, p. 3.
[979] T. 5 June 2008, p. 3.

Lieutenant Colonel Bavugamenshi, the commander of the security battalion who had learned of the killings of a number of politicians in Kigali, to visit the residences of those politicians in order to determine their situation and that of the *gendarmes* who were posted at their residences to protect them.[980] The witness testified that in the course of this mission, which started at 8.30 a.m. and ended at 10.30 a.m.,[981] he passed through the areas where Prosecution Witness DA claimed to have seen roadblocks on 7 April. These areas were Gitega (at the crossroads between the Nyamirambo road and the road leading to CHK), ONATRACOM, the Nyamirambo Mosque and *Chez Kabuga* in Nyabugogo. The witness testified that contrary to Witness DA's claims, there were no roadblocks in these areas.[982]

551. Later that morning, the witness went on another patrol, leaving Camp Kacyiru at 11.00 a.m. and returning at around 1.00 or 1.20 p.m.[983] In the course of this patrol, the witness passed a location referred to as Yamaha, which is 1 to 1.5 kilometres from *Chez Kabuga*. Once again, the witness did not see anything unusual on the road leading to *Chez Kabuga*.[984] He testified that he saw the first roadblocks in Kigali on 9 April 1994.[985]

Defence Witness KHS

552. Witness KHS was a *gendarme* attached to the road safety unit of the *Gendarmerie*.[986] On 7 April 1994, he was ordered to conduct a patrol around Camp Muhima, leaving between 10.00 and 11.00 a.m., and returning around 1.00 p.m.[987] In the course of this patrol, the witness passed through the Nyabugogo area (including *Chez Kabuga*),[988] ONATRACOM, Gitega and the Nyarugenge market area.[989] The witness testified that he did not observe any roadblocks in these areas manned by both military personnel and civilians.[990]

Defence Witness CPB63/UNS

553. Witness CPB63/UNS was an officer of the *Gendarmerie* in April 1994.[991] He testified that on 7 April 1994, while travelling from Butare to Kigali, he passed through the road near *Chez Kabuga* in Nyabugogo between the hours of 4.00 and 5.00 p.m. He did not see anything unusual at *Chez Kabuga*, nor did he not see any roadblocks there.[992]

Defence Witness CBJS

554. Witness CBJS was a shop manager who lived approximately 100 metres from *Chez Kabuga*. He testified that he did not see any roadblock at *Chez Kabuga* on 7 or 8 April. It was only on 9 or 10 April that roadblocks were established in the area near *Chez Kabuga*.[993]

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[980] T. 5 June 2008, p. 10.
[981] T. 5 June 2008, p. 35.
[982] T. 5 June 2008, pp. 33, 35, 39.
[983] T. 5 June 2008, p. 38.
[984] T. 5 June 2008, p. 39.
[985] T. 5 June 2008, p. 40.
[986] T. 27 October 2008, p. 3 (ICS).
[987] T. 27 October 2008, p. 10.
[988] T. 27 October 2008, p. 11.
[989] T. 27 October 2008, p. 10.
[990] T. 27 October 2008, pp. 12-13.
[991] T. 23 January 2008, p. 41 (ICS).
[992] T. 24 January 2008, pp. 5-7 (ICS).
[993] T. 3 November 2008, pp. 6-7.

4.3.4.3 Deliberations

555. Having reviewed the evidence of Witness DA, the Chamber is satisfied that the witness gave a credible and consistent account that on 7 April 1994, Sagahutu distributed weapons to *Interahamwe* who were stationed at various roadblocks in Kigali. In reaching this finding, the Chamber has carefully weighed the evidence elicited from Defence witnesses seeking to impugn the credibility of Witness DA's testimony.

556. The Chamber recalls that Nzuwonemeye and Sagahutu both testified that the latter could not have acquired weapons to distribute to *Interahamwe* because he had no access to the armoury of the RECCE Battalion. They both testified that only Nzuwonemeye, in his capacity as the commander of the RECCE battalion, and another officer had access to the armoury.[994] Furthermore, Witness CSS, a messenger in Sagahutu's office, denied that there were any weapons stored in Sagahutu's office.[995] For these reasons, Sagahutu could not have distributed weapons to *Interahamwe* as alleged by Witness DA.

557. Having considered the above evidence, the Chamber finds it difficult to accept that Sagahutu, the commander of Squadron A of the RECCE battalion, would not have had access to the battalion's armoury or would have had difficulties acquiring 25 rifles at a time when the Rwandan Armed Forces were in a high state of alert following the death of President Habyarimana on 6 April 1994.

558. Furthermore, the claim that Sagahutu had no access to the RECCE battalion's armoury is difficult to accept in light of the pertinent evidence of Defence Witness Mathieu Setabaruka, a member of the Rwandan Army printing press unit based at Camp Kigali. He testified that following the downing of the President's plane, weapons stores were opened and soldiers of his unit collected weapons from those stores.[996] While the Chamber acknowledges that the witness's testimony refers to the specific conduct of soldiers within his unit in Camp Kigali, it considers his evidence to be illustrative of the situation that existed at the camp following the death of the President.

559. For these reasons, the Chamber is not persuaded that an officer of Sagahutu's rank and responsibility within the RECCE Battalion would not have had access to the armoury of that battalion or would have found it impossible to acquire 25 rifles on 7 April.

560. With respect to the claim by Witness CSS, a messenger in Sagahutu's office, that the latter had no weapons stored in his office,[997] the Chamber is not satisfied that his evidence is compelling enough to lead the Chamber to discard the concordant and credible evidence of Witnesses DA and AWC, who both testified that Sagahutu had weapons in his office on 7 April. The Chamber therefore rejects Witness CSS's claim to the contrary.

561. The Chamber has also considered the evidence of Witness CSS that Witness DA could not have driven Sagahutu because he only possessed a class B driving licence and therefore was not permitted to drive military vehicles.[998] Witness CSS further testified that

[994] T. 2 December 2008, p. 21; T. 7 October 2008, p. 29.
[995] T. 23 October 2008, p. 41.
[996] T. 10 July 2008, p. 50; T. 11 July 2008, pp. 8-9.
[997] T. 23 October 2008, p. 41.
[998] T. 23 October 2008, pp. 39, 55.

Witness DA did not accompany Sagahutu outside Camp Kigali on 7 April.[999] This claim is also supported by the testimony of Sagahutu.[1000] The Chamber notes that the question of whether Witness DA could drive Sagahutu does not have a significant bearing on the veracity of his evidence regarding the conduct of Sagahutu at the roadblocks in Kigali on 7 April. While Witness DA claimed to have had driving functions in the office of Sagahutu, his evidence contains no suggestion that he drove Sagahutu as he toured roadblocks manned by *Interahamwe* in various areas of Kigali on 7 April. Witness CSS's evidence does not therefore undermine Witness DA's evidence.

562. The Defence for Sagahutu claims that Witness DA's testimony is difficult to accept in light of the evidence of Prosecution Witnesses ALN, Major Nzuwonemeye's driver, and HP, a driver for Sagahutu.[1001] Witness ALN testified that he personally saw Sagahutu in his office at Camp Kigali at 2.30 p.m. on 7 April.[1002] Witness HP testified that he spent a large amount of time in Camp Kigali with Sagahutu on 7 April, but did not rule out the possibility that Sagahutu might have left the camp at some point.[1003] The Chamber is not convinced that the fact that Witness ALN may have seen Sagahutu at the camp at 2.30 p.m. on 7 April is sufficient to negate the evidence of Witness DA that he travelled with Sagahutu on that day. The Chamber further recalls that Witness HP, who claimed to have spent a great deal of time with Sagahutu at Camp Kigali on 7 April, did not rule out the possibility that Sagahutu may have left the camp at some point on that day. The Chamber therefore finds that Witness DA's evidence is not impugned by the limited evidence of Witness ALN regarding Sagahutu's presence at the camp on 7 April.

563. The Chamber also recalls that the Defence referred to the evidence of a number of witnesses who disputed Witness DA's testimony regarding the existence of roadblocks in Kigali on 7 April. Defence Witnesses Ndagijimana and KHS testified that on 7 April, they passed through the areas where Witness DA claimed to have seen roadblocks but did not observe any roadblocks there.[1004] The Defence also referred to the evidence of Witnesses CPB63/UNS and CBJS, who claimed to have separately passed by the building known as *Chez Kabuga* in Nyabugogo on 7 April but did not see any roadblock there.[1005] Witnesses Ndagijimana, CBJS and Sagahutu gave evidence that no roadblocks were established in Kigali prior to 9 April 1994.[1006]

564. The Chamber is not satisfied that the evidence canvassed above raises doubts about the credibility of Witness DA's account. Contrary to the claims of these witnesses that roadblocks were not established in Kigali until 9 April, the Chamber accepts that roadblocks were established in various parts of Kigali in the immediate aftermath of the death of President Habyarimana on 6 April. The Chamber refers to the credible evidence of Witness Dallaire, the force commander of UNAMIR, who testified that roadblocks were erected in various parts of Kigali on 7 April.[1007] The Chamber also recalls the evidence of Defence Witness Marchal, the UNAMIR sector commander for Kigali, that he observed a number of

[999] T. 23 October 2008, p. 35.
[1000] T. 2 December 2008, p. 16.
[1001] T. 9 May 2005, pp. 12, 34-35.
[1002] T. 29 September 2004, p. 52.
[1003] T. 9 May 2005, p. 35.
[1004] T. 5 June 2008, p. 64; T. 27 October 2008, pp. 3-4.
[1005] T. 25 January 2008, pp. 5-7; T. 3 November 2008, pp. 6-7.
[1006] T. 2 December 2008, p. 20; T. 5 June 2008, p. 40; T. 3 November 2008, pp. 6-7.
[1007] T. 20 November 2006, p. 54; T. 22 November 2006, p. 21.

roadblocks in Kigali on the night of 6 April. Marchal added that there were so many roadblocks that it took him one hour to complete what was normally a 15 minute journey by car on the night of 6 April.[1008] He also testified to the existence of a number of roadblocks in Kigali on 7 April.[1009] The Chamber accepts the credible and concordant evidence of Dallaire and Marchal regarding the establishment of roadblocks in Kigali on 7 April. In light of this cogent evidence, the Chamber refrains from imparting any weight to the Defence evidence that there were no roadblocks in the areas where Witness DA claimed to have seen them.

565. The Chamber therefore finds, based on the firsthand and credible evidence of Witness DA, that Sagahutu distributed weapons to *Interahamwe* who manned various roadblocks in Kigali on 7 April 1994 and that he made utterances to the militia encouraging them to persist in the killings of Tutsi. The Chamber notes, however, that the Prosecution did not present additional evidence to prove that Sagahutu distributed weapons to militia located at various roadblocks in Kigali throughout the months of April and May 1994, as alleged in paragraph 41 of the Indictment.

566. Having found that Sagahutu distributed weapons to *Interahamwe* on 7 April, the Chamber will now determine whether this finding supports the inference that Sagahutu was involved in a conspiracy to commit genocide against Tutsi. The Chamber accepts that Sagahutu's role in the roadblocks in Kigali on 7 April as described in the evidence of Witness DA could plausibly be construed as being supportive of the crimes committed by *Interahamwe* against Tutsi civilians at those roadblocks. However, there is no evidence suggesting that Sagahutu's conduct at the roadblocks was undertaken pursuant to a conspiracy between him and others to commit genocide against Tutsi. The evidence does not exclude the reasonable possibility that Sagahutu may have been acting independently of a preconceived agreement with others to perpetrate genocide against Tutsi. It follows that the Prosecution has not proved this allegation beyond reasonable doubt.

4.3.5 *President Sindikubwabo's Speech in Butare on 19 April 1994 and Prime Minister Kambanda's Praise of RTLM*

4.3.5.1 Introduction

567. The Indictment alleges that on or about 19 April 1994, interim President Théodore Sindikubwabo gave a speech in Butare advocating "nothing less than ethnic cleansing", which then led to the killing of Tutsi in Butare by members of the Presidential Guard.[1010] The Indictment also alleges that "on or about 21 April 1994, the Prime Minister of the interim Government, Jean Kambanda, praised RTLM, knowing full well that that radio station was calling for the extermination of the Tutsi and their supposed accomplices." Specifically, the Indictment alleges that Kambanda described RTLM as the "*arme indispensable pour combattre l'ennemi* [indispensable weapon for fighting the enemy]".[1011]

[1008] T. 17 January 2008, pp. 43-44.
[1009] T. 21 January 2008, pp. 53, 62, 64.
[1010] Indictment, para. 42.
[1011] Indictment, para. 43.

568. The Indictment further alleges that "Augustin Ndindiliyimana and Augustin Bizimungu were not uninvolved in this" and that the two Accused are criminally responsible pursuant to Article 6(1) of the Statute.[1012]

4.3.5.2 Evidence

Prosecution Witness AOG

569. Witness AOG testified that on 19 April 1994, he attended the swearing-in ceremony of Sylvain Nsabimana as the *préfet* of Butare. The witness explained that the swearing-in ceremony took place at the former headquarters of the MRND in Butare and that he was outside that building as the ceremony was taking place. There were loudspeakers outside and therefore the witness could hear the speeches that were given during the ceremony.[1013]

570. According to the witness, Prime Minister Kambanda and President Sindikubwabo attended the ceremony. The witness testified that he heard President Sindikubwabo say during the ceremony, "[P]eople of Butare ... the war is everywhere in Rwanda and ... only the *préfecture* of Butare ... has yet not been affected."[1014] Sindikubwabo also stated that there was a "serious situation" for people of Butare who felt that the war did not have anything to do with them, and that those people "should allow those who want to work room to be able to do their job."[1015] The witness understood the reference to the word "work" in Sindikubwabo's speech to mean attacking Tutsi who were considered to be enemies.[1016]

571. The witness testified that prior to 19 April,[1017] there had been no killings of Tutsi in Butare. However, widespread attacks and killings of Tutsi took place in Butare following President Sindikubwabo's speech at the swearing-in ceremony of the newly appointed *préfet*.[1018]

572. On the night of 19 April, soldiers attacked the witness in the home of his cousin and informed him they had just killed the Queen Mother, a Tutsi, who lived in Butare.[1019] On 20 April, the witness went to Cyanga *commune* where the *bourgmestre* of that *commune* held a meeting and informed the gathering that he had received orders from the "authorities" to kill all Tutsi in their respective *secteurs* and *communes*.[1020] Thereafter, the people who attended that meeting killed Tutsi. The witness testified that these killings took place around 26 April.[1021]

573. During cross-examination, the Defence disputed the evidence of Witness AOG that by telling his audience to "work", President Sindikubwabo called on Hutu residents of Butare to start killing Tutsi. In support of this submission, the Defence referred to Sindikubwabo's own explanation of what he meant by the term *"gukora"* translated as "work." According to the Defence, Sindikubwabo allegedly stated, "I gave no orders to the effect that there should be

[1012] Indictment, para. 44.
[1013] T. 22 February 2006, p. 11 (ICS).
[1014] T. 22 February 2006, p. 11 (ICS).
[1015] T. 22 February 2006, pp. 11-12 (ICS).
[1016] T. 22 February 2006, pp. 11-12 (ICS).
[1017] T. 22 February 2006, pp. 7-8 (ICS).
[1018] T. 22 February 2006, pp. 16, 30 (ICS).
[1019] T. 22 February 2006, p. 16 (ICS).
[1020] T. 22 February 2006, pp. 17-18 (ICS).
[1021] T. 22 February 2006, p. 18 (ICS).

confrontations between members of the population. Quite on the contrary, I instead ordered the people to go about their usual activities. That is what *gukora* means. Do your work, go about your usual activities and do not engage in confrontations."[1022]

574. In addition to disputing the meaning that Prosecution witnesses imparted to Sindikubwabo's speech, the Defence put it to Witness AOG that the killings in Butare were not precipitated by Sindikubwabo's speech but were triggered by RPF attacks in the area and provocations by Tutsi in Butare.[1023] The witness responded that the killings could not have been caused by the RPF attack in Butare because the RPF was not yet in Butare on 19 April.[1024]

Prosecution Witness Alison Des Forges

575. Witness Des Forges testified that up until 16 April 1994, killing of Tutsi in Butare was "very limited."[1025] She explained that on 19 April, President Sindikubwabo gave an "extremely well-known speech" at an event marking the removal of the *préfet* of Butare who had resisted killing of Tutsi.[1026] During the speech, Sindikubwabo scolded the people of Butare for not being concerned with the war that was going on in other parts of Rwanda and the threat that it posed to them.[1027] Specifically, Sindikubwabo stated, "You must understand that it's time to get to work; that those of you who do not understand, those of you who are not with us are against us, and you will suffer the consequences."[1028] Des Forges also testified that Sindikubwabo said in his speech, "[Y]ou people of Butare maybe do not understand because the war is far from here."[1029] Excerpts of this speech were also broadcast on the radio.[1030]

576. In Des Forges's expert opinion, "[T]he message [of the speech] was clear". Killings of Tutsi began in Butare the following day, whereas "until that time, killing had been limited."[1031] The witness made reference to several attacks against Tutsi that took place soon after Sindikubwabo's speech. The killings were perpetrated by soldiers, *gendarmes* and members of the militia.[1032] The witness testified that the soldiers first killed the Queen Mother and then "went through the town of Butare neighbourhood by neighbourhood, barriers were set up, patrols were set up."[1033] The killings took place throughout Butare *préfecture*, particularly in the hospitals, orphanages and schools.[1034]

[1022] T. 28 February 2006, p. 18 (ICS).
[1023] T. 28 February 2006, p. 18 (ICS).
[1024] T. 28 February 2006, p. 18 (ICS).
[1025] T. 20 September 2006, p. 58.
[1026] T. 20 September 2006, p. 70.
[1027] Defence Exhibit 174; T. 27 September 2006, pp. 29-30; T. 10 Oct. 2006, pp. 47, 50.
[1028] T. 20 September 2006, p. 70.
[1029] T. 20 September 2006, p. 71.
[1030] T. 20 September 2006, p. 70.
[1031] T. 20 September 2006, p. 70.
[1032] T. 20 September 2006, p. 70.
[1033] T. 20 September 2006, p. 71.
[1034] T. 20 September 2006, p. 71.

Prosecution Witness GFS

577. Witness GFS testified that he heard from unidentified people that President Sindikubwabo gave a speech in Butare in which he chastised the Hutu population for not taking part in the killings of Tutsi and urged them to start doing so immediately.[1035] The witness later heard Sindikubwabo's speech over the radio.[1036] The witness also testified that Sindikubwabo stated during his speech that the Hutu in Butare had allowed themselves to be seen as indifferent to the fighting going on in the rest of the country.[1037]

578. Witness GFS testified that there were no killings of Tutsi in Butare prior to 21 April 1994.[1038] Thereafter, killings of Tutsi began in Butare, especially at Kansi Parish, an unnamed school, the *commune* offices in Nyaruhengeri *secteur* and the *commune* office at Kibilizi.[1039]

Prosecution Witness ZG

579. Witness ZG, a university lecturer,[1040] testified that he heard the speech given by President Sindikubwabo in Butare over the radio on 19 April 1994.[1041] In his speech, Sindikubwabo reproached the listeners for their indifference to the war in Kigali, and asked the population to go to "work".[1042] The witness testified that he understood the term "work" to be a call addressed to Hutu to kill Tutsi and to destroy property such as banana plantations and cattle belonging to them.[1043] The witness explained that the term "to work" or *"travailler"* was also used by members of *Parti du Mouvement de l'Emancipation Hutu* ("PARMEHUTU") in 1961 to refer to the killing of Tutsi and the destruction of their property.[1044]

580. On 20 April, the witness heard from unidentified sources that soldiers had established roadblocks in front of the Hotel Faucon and the Hotel Ibis and that the soldiers were asking for identification from passers-by.[1045] The witness learned from individuals returning from town that Hutu were allowed to pass through those roadblocks whereas Tutsi were arrested and shot, including the wife of one of the witness's neighbours.[1046]

581. The witness testified that around 5.00 a.m. in the morning of 21 April, he was awoken by gunshots interspersed with grenade explosions.[1047] Thereafter, the witness departed in the direction of the *secteur* office. He observed approximately 10 members of the Presidential

[1035] T. 27 September 2004, p. 16.
[1036] T. 27 September 2004, p. 17; T. 28 September 2004, pp. 28-29.
[1037] T. 27 September 2004, p. 17; T. 28 September 2004, pp. 28-29.
[1038] T. 27 September 2004, p. 16.
[1039] T. 27 September 2004, p. 23.
[1040] Prosecution Exhibit 98; T. 1 June 2006, p. 4 (ICS).
[1041] T. 1 June 2006, pp. 12-13.
[1042] T. 1 June 2006, p. 15.
[1043] T. 1 June 2006, p. 27.
[1044] T. 1 June 2006, p. 26; T. 8 June 2006, p. 36.
[1045] T. 1 June 2006, p. 35.
[1046] T. 1 June 2006, pp. 35-36.
[1047] T. 1 June 2006, p. 38.

Guard dressed in military clothing, and heard people saying, "The GP is arriving, the GP is arriving", meaning that the Presidential Guard was arriving.[1048]

582. The witness testified that the shooting continued until he fled with his family at 11.00 a.m.[1049] Before fleeing, the witness heard that three of his Tutsi neighbours had been killed by members of the Presidential Guard.[1050] The witness returned to Tumba *secteur* on 23 April, where he encountered a Presidential Guard who pointed a gun at him and asked, "How come there's still a Tutsi here?", referring to the witness's wife who was Tutsi.[1051] The witness's neighbour was able to get the soldiers to leave without harming the witness's wife by bribing them.[1052]

4.3.5.3 Deliberations

583. Based on the evidence of Witnesses AOG, GFS, ZG and Des Forges, the Chamber is satisfied that the President of the interim government, Sindikubwabo, gave a speech during the swearing-in ceremony of the *préfet* of Butare on 19 April 1994.[1053]

584. The Chamber notes that while the Defence does not contest the fact that Sindikubwabo gave the speech as alleged in the Indictment, it disputes the meaning and effect that the Prosecution witnesses sought to impart to that speech.[1054] In particular, the Defence submits that the reference to the word "work" in President Sindikubwabo's speech was not meant to incite Hutu residents of Butare to kill Tutsi. In support of its contention regarding the import of the term "work" in Sindikubwabo's speech, the Defence referred to Sindikubwabo's subsequent explanation of the meaning of that term. According to the Defence, Sindikubwabo explained that when he used the word "work" in his speech, he only meant that the people should "go about [their] usual activities and ... not engage in confrontations."[1055] In addition, the Defence contested the submission that Sindikubwabo's speech precipitated the killings of Tutsi in Butare. Instead, the Defence suggested that the killings in Butare were caused by RPF attacks and provocations by Tutsi in the area.[1056]

585. In evaluating the meaning of the term "work" in Sindikubwabo's speech, the Chamber has placed particular weight on the account given by Prosecution witnesses of how they understood the meaning of the term at the time. Witness AOG gave evidence that he understood the reference to the term "work" in Sindikubwabo's speech to mean attacking Tutsi, who were considered to be enemies.[1057] Similarly, Witness ZG, a university lecturer, testified that the term "work" in Sindikubwabo's speech was a call addressed to Hutu to destroy property belonging to Tutsi and to kill them.[1058] The witness explained that the term was also used by members of the PARMEHUTU party in Rwanda in 1961 to incite Hutu to

[1048] T. 1 June 2006, p. 39; T. 8 June 2006, p. 11.
[1049] T. 1 June 2006, p. 41.
[1050] T. 1 June 2006, p. 41; T. 7 June 2006, p. 57.
[1051] T. 7 June 2006, p. 61.
[1052] T. 7 June 2006, p. 61.
[1053] See the testimony of Witnesses Des Forges and Dallaire regarding RTLM, summarised in the Chamber's discussion of paragraphs 36 and 37 of the Indictment; T. 23 May 2006, pp. 60-61 (ICS); T. 21 February 2006, p. 46 (ICS).
[1054] T. 28 February 2006, p. 18 (ICS).
[1055] T. 28 February 2006, p. 18 (ICS).
[1056] T. 28 February 2006, p. 18 (ICS).
[1057] T. 22 February 2006, p. 11 (ICS).
[1058] T. 1 June 2006, p. 27.

attack members of the Tutsi ethnic group.[1059] Based on the evidence of these witnesses, the Chamber is persuaded that by asking his audience to go to "work", Sindikubwabo called on them to commence attacking Tutsi. The Chamber therefore rejects Sindikubwabo's *ex post facto* explanation of what he meant by that term.

586. This interpretation is particularly concerning when Sindikubwabo's speech is viewed in its broader context. The Chamber recalls that the speech was made at the swearing-in ceremony of the new *préfet* of Butare, who replaced the previous *préfet*, a Tutsi who was removed from his position on account of his resistance to the killings in Butare. In his speech, Sindikubwabo called on the Hutu residents of Butare to shed their indifference to the ongoing war against the RPF. The evidence of Witnesses AOG, GFS, ZG, QBP, XY and Des Forges indicates that killings of Tutsi in Butare began shortly after Sindikubwabo delivered his speech. Prior to Sindikubwabo's speech, no widespread killings of Tutsi had been observed in Butare. Against this backdrop and having reviewed the speech in its entirety, the Chamber is satisfied that President Sindikubwabo instigated the killings of Tutsi civilians in Butare during his speech of 19 April 1994.

587. In reaching this finding, the Chamber has considered the alternative account advanced by the Defence regarding the cause of the killings in Butare. The Defence argued that the killings in Butare were triggered by the hostile activities of the RPF and Tutsi in Butare rather than Sindikubwabo's speech. The Chamber is not convinced by this submission since there is no evidence suggesting that the RPF was active in Butare during the relevant period. The Chamber is persuaded by the evidence of Witness Des Forges, who testified that Sindikubwabo's remark in his speech that the war was "far" from Butare is an indication that the hostilities between the Rwandan government forces and the RPF had not reached Butare at the time that he gave his speech.[1060] Therefore, the Chamber is not satisfied that the killings of Tutsi in Butare in April 1994 were precipitated by the hostile activities of the RPF and Tutsi.

588. In the view of the Chamber, the evidence relevant to these events suggests that the killings of Tutsi civilians in Butare were planned and organised. This view is inferable from the fact that the killings followed a speech by Sindikubwabo, the interim President of Rwanda between April and July 1994, in which he urged Hutu residents of Butare to take part in the war against the RPF. Following Sindikubwabo's speech on 19 April, militia from Kigali arrived in Butare and established barriers and carried out patrols in concert with soldiers and *gendarmes*. They then systematically proceeded to kill Tutsi civilians including Rosalie Gicanda, the Queen Mother and a surviving member of the Tutsi monarchy.[1061] The extent of the killing was made possible through the provision of government and military personnel and material.[1062] These events, considered together, suggest that the killings in Butare were planned and organised, rather than being random acts of violence.

589. However, the Chamber finds that there is no evidence that either Ndindiliyimana or Bizimungu was present at the meeting where the speech was delivered, nor is there any evidence that they expressed support for the speech or disseminated its contents. The Chamber is therefore not satisfied that Sindikubwabo's speech alone, in the absence of

[1059] T. 1 June 2006, p. 26; T. 8 June 2006, p. 36.
[1060] T. 20 September 2006, p. 71.
[1061] T. 20 September 2006, p. 70.
[1062] T. 20 September 2006, p. 71.

further evidence, is suggestive of the Accused's implication in a conspiracy to commit genocide against Tutsi.

590. The Chamber has also considered the allegation contained in paragraph 43 of the Indictment that Jean Kambanda, the Prime Minister, praised RTLM and described it as the "*arme indispensable pour combattre l'ennemi* [indispensable weapon for fighting the enemy]", while knowing that the radio station was calling for the extermination of Tutsi. The Chamber finds that even if it were to accept the allegation that Kambanda praised RTLM, it is not satisfied that this fact alone generates a plausible inference that either Ndindiliyimana or Bizimungu was involved in a conspiracy to commit genocide against Tutsi.

591. The Chamber therefore concludes that the Prosecution has failed to prove beyond reasonable doubt the allegations against Ndindiliyimana and Bizimungu described in paragraphs 42, 43 and 44 of the Indictment.

4.3.6 *The Crisis Committee and the Formation of the Interim Government*

4.3.6.1 Introduction

592. The Indictment alleges that on 7 April 1994, following the death of President Habyarimana and the Chief of Staff of the Rwandan Army, Major General Déogratias Nsabimana, Ndindiliyimana was appointed by his peers to chair the military Crisis Committee, which was to fill the power vacuum pending the establishment of new institutions.[1063] The Indictment further alleges that Ndindiliyimana and Théoneste Bagosora, in full agreement, supported the institution of an interim government composed solely of Hutu extremists.[1064]

4.3.6.2 Evidence

4.3.6.2.1 Prosecution Evidence

Prosecution Witness Roméo Dallaire

593. Witness Dallaire gave evidence that he attended a meeting held at the Army Headquarters in Kigali on the night of 6 April 1994 following the death of President Habyarimana.[1065] The meeting was chaired by Colonel Bagosora, who was then the *directeur de cabinet* at the Ministry of Defence, and was attended by senior officers of the army and the *Gendarmerie* including Ndindiliyimana.[1066]

594. Dallaire testified that the officers at the meeting broached the possibility of forming a military authority that would manage the crisis resulting from the death of the President. It was envisaged that this authority would exercise power until such time that a civilian government was established.[1067] Dallaire further testified that the officers attending this

[1063] Indictment, para. 45.
[1064] Indictment, para. 46.
[1065] T. 20 November 2006, p. 51.
[1066] T. 20 November 2006, p. 52.
[1067] T. 20 November 2006, pp. 52-53.

meeting recommended that a civilian government be established at the earliest possible opportunity.[1068]

595. Dallaire stated that in the course of the meeting, he urged the assembled officers to involve Prime Minister Agathe Uwilingiyimana in the process of resolving the crisis prevailing in the country.[1069] However, his proposal was rejected by some of the officers at the meeting on the ground that the Prime Minister lacked authority and did not command the respect of the population.[1070] The rejection of his proposal, together with the fact that a number of ministers allied with opposition parties could not be accounted for at the time, led Dallaire to suspect that some of the officers at the meeting intended to stage a *coup d'état*.[1071]

596. Dallaire gave evidence that throughout the meeting, Ndindiliyimana listened to and acquiesced in whatever was suggested by Bagosora. Ndindiliyimana's only intervention during the meeting was his proposal that measures be taken to ensure the security of important sites such as radio and television stations in Kigali, and his further suggestion that such measures be taken in accordance with the provisions of the KWSA.[1072]

597. Dallaire also testified that he advised Bagosora during the meeting to seek out Booh Booh, the UN Secretary General's Special Representative to Rwanda, in order to inform him about the situation in the country and to solicit his views on the resolution of the political crisis.[1073]

598. Dallaire gave evidence of his participation in a second meeting attended by a number of senior officers of the Rwandan Armed Forces. The meeting was held at ESM in Kigali in the morning of 7 April and was also chaired by Bagosora.[1074] In the course of the meeting, Bagosora announced to the assembled officers the plans to form a Crisis Committee under the chairmanship of Ndindiliyimana.[1075] He further announced that the committee would be responsible for resolving the political crisis resulting from the death of President Habyarimana.[1076]

599. Dallaire also testified about the formation of the interim government a few days after the death of President Habyarimana. He stated that on 8 April, around 9.00 a.m., he went to the Ministry of Defence and found Bagosora in the conference hall together with a number of men dressed in civilian clothes.[1077] According to Dallaire, Bagosora was surprised to see him at the Ministry and approached him before he could enter the hall. Bagosora then informed Dallaire that he was chairing a meeting of a number of politicians who were expected to form the government that would replace the Crisis Committee composed of military officers.[1078]

600. Dallaire testified that during a meeting of the Crisis Committee chaired by Ndindiliyimana in the afternoon of 8 April, he was informed that an interim civilian

[1068] T. 20 November 2006, pp. 52-53.
[1069] T. 20 November 2006, p. 52.
[1070] T. 20 November 2006, pp. 52-53.
[1071] T. 20 November 2006, p. 53.
[1072] T. 20 November 2006, p. 53.
[1073] T. 20 November 2006, p. 52.
[1074] T. 20 November 2006, p. 56.
[1075] T. 20 November 2006, p. 56.
[1076] T. 20 November 2006, p. 56.
[1077] T. 21 November 2006, p. 16.
[1078] T. 21 November 2006, pp. 16-17.

government had been established and that members of that government were going to be sworn in either in the evening of 8 April or the following morning.[1079] Dallaire further testified that while attending a meeting of the Crisis Committee held at the Diplomat Hotel, he was informed that members of the interim government had been sworn in and were preparing to relocate to Gitarama.[1080]

601. According to Dallaire, he received information from the UN Headquarters in the evening of 8 April suggesting that the newly established government should not be recognised as the legitimate government of Rwanda and that the UN Secretary General's Special Representative to Rwanda, Booh Booh, should not establish any links with it.[1081] Dallaire stated that despite these instructions, he felt that it was imperative that he establish contact with whoever was in control of the country. He therefore met with Sindikubwabo, the President of the interim government, in the presence of Ndindiliyimana on 9 April.[1082]

602. Dallaire testified that the interim government was comprised of politicians who subscribed to extremist Hutu ideology.[1083]

Prosecution Expert Witness Alison Des Forges

603. Witness Des Forges testified that following the death of President Habyarimana, a small group of officers met at the Army Headquarters in order to evaluate the situation prevailing in the country. The meeting was chaired by Théoneste Bagosora, the *directeur de cabinet* at the Ministry of Defence.[1084] Des Forges testified that in the course of this meeting, Bagosora wanted to take advantage of the void left by the death of the President and take over power.[1085] However, his bid to seize power was resisted by some of the officers at the meeting who distrusted him and had no confidence in his competence.[1086]

604. Des Forges further testified that in the course of this meeting, General Dallaire proposed that the attendees involve the Prime Minister in the resolution of the crisis because she was still the head of the government and exercised legitimate authority.[1087] According to Des Forges, Dallaire's proposal to defer to the Prime Minister was vehemently rejected by Bagosora, who refused to acknowledge her authority.[1088] Dallaire also suggested to Bagosora to consult with Booh Booh, the UN Secretary General's special representative to Rwanda, on measures to be taken in order to resolve the crisis. Following this suggestion, Bagosora, Dallaire and another officer of the Rwandan Army went to meet with Booh Booh at his residence. Des Forges testified that during that meeting, Booh Booh told Bagosora that any attempt by the military officers to take over power would be unacceptable and would lead to the withdrawal of UNAMIR forces from Rwanda. She further testified that Booh Booh urged Bagosora to make plans for the MRND to nominate a successor to President Habyarimana. Bagosora accepted Booh Booh's suggestions and met with the leading members of the

[1079] T. 21 November 2006, pp. 18-20.
[1080] T. 21 November 2006, p. 20.
[1081] T. 21 November 2006, p. 21.
[1082] T. 21 November 2006, p. 21.
[1083] T. 21 November 2006, pp. 22-23.
[1084] T. 20 September 2006, p. 46.
[1085] T. 20 September 2006, pp. 46-47.
[1086] T. 20 September 2006, p. 47.
[1087] T. 20 September 2006, p. 46.
[1088] T. 20 September 2006, pp. 46-47.

MRND with the view of forming a civilian government. Des Forges testified that due to Booh Booh's intervention, Bagosora relinquished his plans to take over power and accepted the formation of a civilian government.[1089]

605. Des Forges gave evidence that on 7 April 1994, about 50 high-ranking officers of the Rwandan Armed Forces met at ESM to discuss the critical situation in the country.[1090] Des Forges expressed the view that by that time, hostilities between the Rwandan Armed Forces and the RPF had not resumed and it would have still been possible to get Prime Minister Agathe Uwilingiyimana to take control of the situation and restore order. However, Bagosora and others who were in charge refused to allow the Prime Minister any role in the management of the crisis and made concerted efforts to locate her so as to kill her. In fact, the Prime Minister had sought the help of UNAMIR to get to the radio station where she intended to speak to the nation about the prevailing situation and plead for calm in the country.[1091]

606. Des Forges stated that a Crisis Committee composed of senior officers of the Rwandan Armed Forces was formed shortly after the death of President Habyarimana. Members of the committee met for the first time either in the evening of 7 April or the morning of 8 April. During this inaugural meeting of the committee, Bagosora attempted to chair the committee; however, his bid to lead the committee was rejected by some members of the committee and Ndindiliyimana was instead appointed to chair the committee.[1092]

607. Des Forges testified that following the establishment of the interim government on 9 April, the Crisis Committee was disbanded. She stated that the fact that the committee ceased its functions on 9 April is inferable from her review of notes prepared by Ndindiliyimana, in which he referred to the committee as "the ex-crisis committee" after 9 April.[1093] Despite the formal cessation of the committee's functions, some members of the committee continued to meet for almost a week or about 10 days or even longer after 9 April. Des Forges testified that those members met on 16 April in a bid to restrain some journalists of Radio Rwanda and RTLM from inciting violence.[1094]

608. With respect to the formation of the interim government, Des Forges testified that Bagosora made contacts with the leaders of various parties, including the MRND, and that his consultations with members of those parties led to the selection of Sindikubwabo as the President of the country. Bagosora invited a number of politicians to a meeting in which various posts of the interim government were assigned to them.[1095] Thereafter, Bagosora presented members of the newly established interim government to members of the Crisis Committee during a meeting of that committee held in the evening of 8 April.[1096] Des Forges testified that members of the interim government were drawn from various parties operating in Rwanda at the time such as the MRND, MDR, PL and PSD. However, the formation of that government contravened the provisions of the Arusha Accords since members of the RPF were not represented in the interim government. She stated that the Arusha Accords

[1089] T. 20 September 2006, p. 47.
[1090] T. 20 September 2006, p. 47.
[1091] T. 20 September 2006, p. 47.
[1092] T. 20 September 2006, pp. 48, 54.
[1093] T. 20 September 2006, p. 48.
[1094] T. 20 September 2006, p. 48.
[1095] T. 20 September 2006, p. 48.
[1096] T. 20 September 2006, p. 54.

required the inclusion of the RPF in the broad-based transitional government.[1097] According to Des Forges, the interim government was sworn in on 9 April and remained in power until July when it was forced to retreat to Zaire.[1098]

609. Des Forges testified that members of the interim government subscribed to the pro-Hutu ideology that was in ascendancy at the time.[1099] According to Des Forges, the fact that the interim government was dominated by politicians who subscribed to extremist Hutu ideology had a deleterious effect on the course of events in Rwanda in 1994. [1100] The ideological dispositions of members of this government meant that there would be no meaningful resistance on the part of the government to the elimination of the Tutsi.[1101]

4.3.6.2.2 Defence Evidence

Defence Witness Luc Marchal

610. Witness Marchal testified that he attended the emergency meeting at the Army Headquarters convened after the death of President Habyarimana on the night of 6 April 1994. The meeting was chaired by Colonel Bagosora. Marchal observed that the officers who attended the meeting were supportive of the creation of a government that conformed to the provisions of the Arusha Accords.[1102] Marchal also recalled hearing Ndindiliyimana call upon General Dallaire to inform the international community that the officers who attended the meeting at the Army's Headquarters on 6 April were not intending to stage a *coup d'état*.[1103]

Defence Witness CBP 7

611. Witness CBP 7 was an officer of the *Gendarmerie* in April 1994.[1104] He testified that he attended a meeting at the Army Headquarters on the night of 6 to 7 April 1994 following the death of President Habyarimana. The meeting started at 9.00 p.m. and ended at 2.00 a.m., and was chaired by Colonel Bagosora.[1105] According to the witness, the meeting was convened in order to discuss solutions to the crisis resulting from the death of the President.[1106]

612. The witness testified that in the course of the meeting, a decision was taken to send a delegation to see the UN Secretary General's Special Representative, Booh Booh, to discuss the replacement of the President and to seek his opinion on how to proceed with the implementation of the Arusha Accords.[1107] The witness testified that after the meeting, General Dallaire, Bagosora and Ephraim Rwabalinda, the liaison officer to UNAMIR, met with Booh Booh as was decided at the meeting.[1108]

[1097] T. 20 September 2006, p. 48.
[1098] T. 20 September 2006, p. 49.
[1099] T. 20 September 2006, pp. 48-49.
[1100] T. 20 September 2006, p. 55.
[1101] T. 20 September 2006, p. 55.
[1102] T. 17 January 2008, p. 46; T. 18 January 2008, pp. 54-55.
[1103] T. 18 January 2008, p. 47.
[1104] T. 7 July 2008, p. 18.
[1105] T. 7 July 2008, pp. 23, 25 (ICS).
[1106] T. 7 July 2008, pp. 20-21 (ICS).
[1107] T. 7 July 2008, pp. 23-24 (ICS).
[1108] T. 7 July 2008, p. 24 (ICS).

613. Following their meeting with Booh Booh, those three individuals returned to the Army Headquarters and informed the officers who had taken part in the earlier meeting of the suggestions made by Booh Booh. They stated that Booh Booh planned to convene a meeting with members of the diplomatic corps, especially those who were involved in the peace process, and that the meeting was planned to take place at the United States Embassy in Kacyiru.[1109] They also stated that Booh Booh had suggested that a meeting be held with the leaders of the MRND in order to get them to nominate a person to replace the late President Habyarimana, since the Arusha Accords provided that the MRND would hold that position.[1110]

614. Witness CBP 7 also testified to having attended a meeting held at ESM at 10.00 a.m. on 7 April 1994.[1111] The meeting was chaired by Bagosora and attended by General Dallaire, officers of the General Staff of the army and the *Gendarmerie*, officers from the Ministry of Defence, commanders of the operational sectors and major units of the two corps.[1112]

615. The witness testified that during this meeting, a decision was taken to establish a Crisis Committee and a number of officers were appointed to serve as members of that committee.[1113] The witness recalled that the officers who were designated to serve as members of the Crisis Committee were drawn from the Ministry of Defence, the army and the *Gendarmerie*.[1114] The witness further testified that no one was formally designated to chair the committee during the meeting held at ESM; however, it was expected that Bagosora, given his position as the *directeur de cabinet* at the Ministry of Defence, would chair the Crisis Committee.[1115]

616. According to the witness, the mission of the Crisis Committee was to ensure security in the country and assist civilian politicians in resolving the crisis caused by the death of the President.[1116]

Defence Witness Jean Marie Vianney Nzapfakumunsi

617. Witness Nzapfakumunsi was an officer of the *Gendarmerie* in April 1994.[1117] He testified that on 7 April 1994, at about 9.30 a.m., he attended a meeting held at ESM which was chaired by Colonel Bagosora.[1118] The meeting was attended by the commanders of the army and *gendarmerie* units in Kigali, officers from the General Staff and other officers of the army.[1119]

618. According to the witness, the officers attending this meeting were divided about how to resolve the crisis that resulted from the death of President Habyarimana.[1120] One side favoured the establishment of a civilian government in compliance with the Arusha Accords

[1109] T. 7 July 2008, p. 32 (ICS).
[1110] T. 7 July 2008, p. 24 (ICS).
[1111] T. 7 July 2008, p. 26 (ICS).
[1112] T. 7 July 2008, pp. 26-27 (ICS).
[1113] T. 7 July 2008, p. 27.
[1114] T. 7 July 2008, p. 28.
[1115] T. 7 July 2008, pp. 28, 87.
[1116] T. 7 July 2008, pp. 27-28.
[1117] T. 18 February 2009, pp. 5-7.
[1118] T. 18 February 2009, p. 30.
[1119] T. 18 February 2009, p. 30.
[1120] T. 18 February 2009, p. 30.

and opposed the assumption of power by members of the armed forces, while another group wanted members of the armed forces to take control of the country.[1121]

619. The witness stated that Ndindiliyimana spoke during this meeting and supported the establishment of a civilian government in accordance with the provisions of the Arusha Accords. According to the witness, Ndindiliyimana was the first among the attendees at the meeting to express support for a position favourable to the implementation of the Arusha Accords.[1122] The witness further testified that the majority of the officers who attended the meeting at ESM were in favour of the establishment of a civilian government in line with the terms of the Arusha Accords.[1123]

620. Nzapfakumunsi testified that in the course of the meeting, Bagosora stated that a committee composed of officers of the Rwandan Armed Forces had been established in order to assist in resolving the prevailing crisis.[1124] It was also proposed at the meeting that the membership of the Crisis Committee be strengthened in order to enhance its ability to resolve the crisis in Rwanda in a manner that complied with the Arusha Accords.[1125]

The Accused Ndindiliyimana

621. Ndindiliyimana testified that shortly after the death of President Habyarimana on the night of 6 April 1994, he attended a meeting at the Army Headquarters chaired by Colonel Bagosora. He testified that the rules stipulated that in the absence of the Minister for Defence, meetings of members of the General Staff of the Army and the *Gendarmerie* would be chaired by the *directeur du cabinet* of the Ministry of Defence. Since the meeting at the Army Headquarters on the night of 6 April was attended by members of the General Staff of the two corps, Bagosora, in his capacity as *directeur du cabinet*, was required to chair this meeting because the Minister of Defence was out of the country.[1126]

622. During the meeting, Bagosora suggested the establishment of a Crisis Committee in order to manage the critical situation resulting from the death of President Habyarimana.[1127] Ndindiliyimana suggested that the crisis be resolved in compliance with the terms of the Arusha Accords and therefore suggested that all parties to the Accords be invited to participate in the resolution of the crisis. To achieve these objectives, he suggested to the officers attending the meeting to contact Booh Booh, the UN Secretary General's Special Representative to Rwanda, so that he could approach members of the RPF in order to invite them to participate in the process of resolving the crisis. Thereafter, Bagosora, General Dallaire and Lieutenant Colonel Rwabalinda, the Rwandan Army's liaison officer to UNAMIR, left in order to meet with Booh Booh.[1128]

623. Ndindiliyimana testified that the delegation returned to the Army Headquarters after meeting with Booh Booh and informed Ndindiliyimana and other officers that Booh Booh

[1121] T. 18 February 2009, pp. 30-31.
[1122] T. 18 February 2009, p. 31.
[1123] T. 18 February 2009, p. 31.
[1124] T. 18 February 2009, p. 31.
[1125] T. 18 February 2009, pp. 31-32.
[1126] T. 17 June 2008, pp. 22-23.
[1127] T. 17 June 2008, p. 21.
[1128] T. 17 June 2008, p. 22.

had suggested that they consult with the leading officials of the MRND in order to get them to designate a successor to President Habyarimana.[1129]

624. In cross-examination, Ndindiliyimana was asked whether the officers who attended the meeting at the Army Headquarters on the night of 6 to 7 April 1994 intended to stage a *coup d'état*. He responded that the discussions at the meeting were mainly concerned with the restoration of security; however, some of the officers, especially Bagosora, made statements that suggested that they intended to stage a *coup d'état*.[1130] For his part, Ndindiliyimana testified that he was opposed to the idea that members of the armed forces should take control of the country in contravention of the terms of the Arusha Accords.[1131]

625. Ndindiliyimana denied that Bagosora rejected the involvement of Prime Minister Agathe Uwilingiyimana in the process of resolving the political crisis.[1132] He also denied that Bagosora objected to the Prime Minister making a radio broadcast to the nation.[1133] Ndindiliyimana was confronted with Prosecution Exhibit 245, the record of an interview between Booh Booh and Professor Reyntjens in which the former stated that Bagosora rejected the proposal made by Booh Booh and Dallaire to convene a meeting with Prime Minister Agathe Uwilingiyimana. Ndindiliyimana stated that he was not present at the meeting at the residence of Booh Booh and therefore could not verify the accuracy of that information. Ndindiliyimana further stated that Dallaire never told him that Bagosora had rejected the involvement of the Prime Minister in the resolution of the political situation.[1134]

626. Ndindiliyimana stated that around 9.00 a.m. on 7 April 1994 he went to the residence of the United States Ambassador to Rwanda for a meeting, but the meeting never took place. While at the residence, the United States Ambassador asked Ndindiliyimana and Bagosora why they had refused to allow the Prime Minister to take part in the management of the situation. Ndindiliyimana testified that he did not respond to the question since he was not aware that anyone had refused to allow the Prime Minister to take part in the resolution of the political problems resulting from the death of the President.[1135]

627. Ndindiliyimana also testified to attending a meeting at ESM at 10.00 a.m. on 7 April. The meeting was chaired by Bagosora and attended by officers of the army and *Gendarmerie*. During his address to the gathered officers, Bagosora spoke about a number of issues including the formation of a Crisis Committee.[1136] Ndindiliyimana stated that the Crisis Committee was formed during this meeting. According to Ndindiliyimana, the purpose of the Crisis Committee was to ensure security in conjunction with UNAMIR and also to support the politicians in their attempt to find a solution to the political crisis.[1137]

628. Ndindiliyimana affirmed that he was appointed to become a member of the Crisis Committee and played an active role in seeking to achieve the objectives of that committee. He denied, however, that he was appointed to be the chairman of the Crisis Committee.[1138]

[1129] T. 17 June 2008, p. 25.
[1130] T. 20 June 2008, p. 70.
[1131] T. 20 June 2008, p. 67.
[1132] T. 20 June 2008, pp. 74-75.
[1133] T. 20 June 2008, p. 77.
[1134] T. 20 June 2008, pp. 77-79.
[1135] T. 20 June 2008, pp. 77-79; T. 17 June 2008, p. 31.
[1136] T. 17 June 2008, pp. 31-32.
[1137] T. 17 June 2008, p. 35.
[1138] T. 17 June 2008, p. 34.

Ndindiliyimana stated that the issue of the chairmanship of the committee was in fact not broached in the meeting held at ESM since it was assumed that Bagosora, who had chaired the meetings leading up to the formation of the Crisis Committee, would also chair the committee.[1139] Ndindiliyimana testified that on 8 April, during a meeting of the Crisis Committee, Bagosora sought to chair the meeting but his attempt was rejected by members of the committee and Ndindiliyimana was therefore appointed to chair the meeting. Ndindiliyimana testified that the Crisis Committee never convened another meeting thereafter.[1140]

629. In cross-examination, Ndindiliyimana was probed about his chairmanship of the Crisis Committee. He was confronted with a passage in the decision of the Belgian Permanent Commission on Refugees dated 28 May 1998 granting him refugee status in Belgium, which suggested that Ndindiliyimana had agreed to chair the Crisis Committee in order to unravel a stalemate that resulted from the refusal of some members to allow Bagosora to chair the committee. Ndindiliyimana testified that this passage in the decision confirms his contention that he only chaired one meeting of the Crisis Committee in order to resolve the impasse that stemmed from the refusal of some of the members to allow Bagosora to chair the committee.[1141]

630. Ndindiliyimana was also confronted with a *pro justitia* statement given by Colonel Rusatira, the former commanding officer of ESM and a member of the Crisis Committee, to the Belgian judicial authorities, in which Rusatira stated that in light of the refusal of some members of the Crisis Committee to allow Bagosora to chair the committee, Ndindiliyimana was selected to chair the committee. Ndindiliyimana responded by saying that Rusatira's statement lends support to his earlier testimony that he only chaired one meeting of that committee after the members refused to allow Bagosora to chair the meeting.[1142]

631. Ndindiliyimana denied that he had any role in the formation of the interim government after the death of President Habyarimana. He testified that on 8 April 1994, between 1.00 and 2.00 p.m., he went to the Ministry of Defence where he found a number of MRND politicians including Ngirumpatse, Nzirorera and Karemera. Those politicians informed him that they had agreed to the request of the UN Secretary General's Special Representative to Rwanda, Booh Booh, that leaders of the MRND appoint a successor to Habyarimana. They informed him that they had appointed the speaker of the general assembly, Sindikubwabo, to become the President of the interim government.[1143] Ndindiliyimana testified that he found the proposal to be valid and agreed with it.[1144]

632. Ndindiliyimana testified that during a meeting of the Crisis Committee held in the evening of 8 April, Bagosora arrived at the meeting accompanied by politicians who had been appointed to serve as members of the interim government and requested assistance with

[1139] T. 17 June 2008, p. 34.
[1140] T. 20 June 2008, p. 70.
[1141] T. 20 June 2008, pp. 63-66.
[1142] T. 20 June 2008, pp. 63-66.
[1143] T. 17 June 2008, pp. 46-47.
[1144] T. 17 June 2008, p. 47.

organising the swearing-in ceremony.[1145] Ndindiliyimana stated that he was not familiar with the majority of the politicians who were selected to form the interim government.[1146]

633. Ndindiliyimana testified that he believed that the establishment of the interim government on 8 April was done in compliance with the law, despite the fact that members of the RPF were not included in that government. He further stated that efforts were made to contact the RPF in order to involve them in the establishment of the transitional government, but members of the RPF refused to take part in the process.[1147]

634. According to Ndindiliyimana, the Crisis Committee ceased its functions following the formation of the interim government. However, about five members of the committee continued to meet in order to resolve major problems that arose at the time and to assist the interim government in ensuring security in the country.[1148] These officers were Gatsinzi, Rusatira, Balthazar, a G1 officer at the Army General Staff and Ndindiliyimana himself.[1149]

4.3.6.3 Deliberations

635. The Chamber notes that there is concordant evidence suggesting that after the death of President Habyarimana, a group of officers of the Rwandan Armed Forces met at the Army Headquarters on the night of 6 April in order to resolve the crisis resulting from the death of the President. The evidence available to the Chamber suggests that the officers attending this meeting were divided on how the crisis should be resolved. The evidence of Witness Des Forges and Ndindiliyimana suggests that a group of officers led by Bagosora advocated for a committee composed of leading officers of the Rwandan Armed Forces to take over the reins of power and dispense with the Arusha Accords. The Chamber recalls Ndindiliyimana's evidence that Bagosora's remarks on the establishment of a Crisis Committee at this meeting suggested that Bagosora intended to stage a *coup d'état.*

636. However, the evidence available to the Chamber suggests that Bagosora's suggestions in favour of a *coup d'état* were rejected by the officers who attended the meeting at the Army Headquarters on the night of 6 April. Des Forges testified that some of the officers attending this meeting did not trust Bagosora and had no confidence in his competence. The Chamber has not heard any credible evidence suggesting that Ndindiliyimana supported the suggestions advanced by Bagosora. Des Forges's evidence on Ndindiliyimana's conduct after this meeting suggests that Ndindiliyimana was opposed to the suggestions put forward by Bagosora on how to resolve the crisis resulting from the death of President Habyarimana. She testified that Ndindiliyimana acting in concert with other moderate officers attempted to prevent Bagosora from realising his ambitions of taking over the reins of power.[1150] The fact that a significant proportion of the officers attending this meeting were in favour of the resolution of the crisis in a manner that complied with the Arusha Accords is inferable from the evidence of Witnesses Dallaire and Marchal, who both attended the meeting. Dallaire testified that the majority of the officers attending this meeting wanted the Crisis Committee to have a delimited role of overseeing the country until the establishment of a civilian government in compliance with the Accords. Marchal testified that during this meeting,

[1145] T. 17 June 2008, p. 47.
[1146] T. 17 June 2008, p. 17.
[1147] T. 23 June 2008, pp. 1-2.
[1148] T. 17 June 2008, p. 47.
[1149] T. 17 June 2008, p. 47.
[1150] T. 11 October 2006, p. 57.

Ndindiliyimana supported the implementation of the Accords and ask Dallaire to allay any fears on the part of the international community that the officers attending the meeting intended to stage a *coup d'état* in contravention of the Accords.

637. The Chamber also recalls that Ndindiliyimana testified that he initially agreed with Bagosora's proposal to establish a Crisis Committee to oversee the country during the meeting on the night of 6 April. However, Dallaire's probing of Bagosora in the course of the meeting on the exact scope of the committee led him to suspect that the committee may have adverse consequences for the implementation of the Arusha Accords. He therefore suggested that Booh Booh, the UN Secretary General's Special Representative to Rwanda, be consulted to devise solutions to the crisis. The Chamber notes that this account by Ndindiliyimana is supported by Chambers Exhibit 9A, a statement given by one of the officers who attended the meeting on the night of 6 April 1994.[1151]

638. Having considered the evidence canvassed above, the Chamber finds that the officers attending this meeting were divided on the resolution of the crisis in the country at the time. The evidence also suggests that Ndindiliyimana was not in favour of the suggestions raised by some of the officers to dispense with the Arusha Accords and stage a *coup d'état.* Given the rifts among the officers attending this meeting, the Chamber has considerable doubts as to whether this meeting was convened in order to further a conspiracy to commit genocide against Tutsi. Moreover, the evidence available to the Chamber regarding Ndindiliyimana's remarks at this meeting raises further doubts about his alleged implication in any such conspiracy.

639. The Chamber notes that there is concordant evidence that a group of about 50 high-ranking officers of the Rwandan Armed Forces met at ESM in the morning of 7 April 1994. A Crisis Committee, which had first been broached during the meeting held at the Army Headquarters in the evening of 6 April, was established during this meeting of 7 April. Members of the committee were then designated during a meeting held at ESM the following morning (8 April), and the committee started its functions after that meeting. Ndindiliyimana admitted to having been selected to become a member of this committee along with other senior members of the Rwandan Armed Forces. A number of witnesses who attended the meeting at ESM testified that the committee was entrusted with the responsibility of ensuring security in the country and assisting in the resolution of the political crisis resulting from the death of the President.

640. The Chamber recalls that the Indictment alleges that Ndindiliyimana was appointed to serve as chairman of the Crisis Committee and that, in full agreement with Bagosora, he established the interim government composed solely of Hutu extremists. The Prosecution's allegation is predicated on the supposition that the Crisis Committee chaired by Ndindiliyimana had an instrumental role in the establishment of the interim government; hence the Prosecution's emphasis on Ndindiliyimana's chairmanship of the committee as proof of his involvement in the establishment of the interim government.

641. Having considered the evidence regarding Ndindiliyimana's involvement with the Crisis Committee, the Chamber accepts that Ndindiliyimana did chair the meetings of the committee during its short-lived existence. However, the Chamber is not satisfied that Ndindiliyimana was appointed to serve as chairman of the Crisis Committee at the very

[1151] *See* T. 17 January 2008, pp. 46-47; Chamber's Exhibit 9A, p. 4.

inception of its mandate. The Chamber recalls that it was only Witness Dallaire who testified that during the meeting at ESM in the morning of 7 April, he heard Bagosora, who chaired the meeting, inform the audience that a decision had been taken to form a Crisis Committee under the chairmanship of Ndindiliyimana. However, Dallaire's evidence is disputed by the evidence of Witness CBP 7 and Ndindiliyimana, who both denied that any of the officers at the meeting were designated to chair the committee. Rather, they testified that it was expected that Bagosora would chair the meetings of the committee.

642. The Chamber recalls that Ndindiliyimana testified that he was only appointed to chair the inaugural meeting of the Crisis Committee because other members were not inclined to allow Bagosora to chair the committee. This situation led to a stalemate, and Ndindiliyimana was then appointed to chair the meeting in order to resolve the deadlock. His evidence is supported by the evidence of Des Forges and the statements of a number of individuals who were former members of the committee; those statements were tendered into evidence as exculpatory statements pursuant to Rule 68 of the Rules.[1152] The Chamber finds that the fact that Bagosora attempted to chair the committee supports the claims made by Ndindiliyimana and Witness CBP 7 that Ndindiliyimana was not selected to lead the committee during the meeting at ESM, as was alleged by Dallaire.

643. Notwithstanding Ndindiliyimana's alleged chairmanship of the committee, the Chamber is not satisfied based on the evidence tendered in this trial that he had a significant role in the establishment of the interim government that ruled Rwanda following the death of President Habyarimana. The Chamber finds it noteworthy that the Prosecution witnesses who testified about the circumstances that led to the selection of members of the interim government, namely Dallaire and Des Forges, did not ascribe a significant role to Ndindiliyimana in the selection of the politicians who formed the interim government. On the contrary, their evidence suggests that the selection of those politicians was done by Bagosora and senior politicians allied with the MRND.[1153]

644. The Chamber notes that the evidence of these Prosecution witnesses converges in important respects with the evidence of Ndindiliyimana. He testified that on 8 April 1994, he went to the Ministry of Defence and found a number of leading politicians aligned with the MRND. They informed him that they intended to appoint the President of the National Assembly, Sindikubwabo, as the President of the interim government. Ndindiliyimana stated that he agreed with their proposal. Ndindiliyimana further testified that during a meeting of the Crisis Committee on 8 April, Bagosora arrived accompanied by a number of politicians whom he introduced to the committee as the members of the interim government.[1154] The Chamber is not satisfied that the fact that Ndindiliyimana chaired some of the meetings of the Crisis Committee, in itself, is evidence that he had a significant role in the selection of the politicians who formed the interim government.

645. Furthermore, the suggestion that Ndindiliyimana acted in concert with Bagosora to establish a government whose composition violated the provisions of the Arusha Accords is inconsistent with the considerable body of evidence suggesting that the two were not in agreement as to how the crisis resulting from the death of President Habyarimana should be resolved. Contrary to Bagosora, who favoured a *coup d'état*, the evidence shows that

[1152] *See* Chamber's Exhibit 15A, p. 3.
[1153] *See* T. 21 November 2006, pp. 16-17; T. 20 September 2006, pp. 48, 54.
[1154] T. 17 June 2008, p. 47.

Ndindiliyimana consistently supported the Arusha Accords and favoured the establishment of a government that complied with the terms of the Accords. In light of this evidence, the Chamber finds the Prosecution allegation that Ndindiliyimana collaborated with Bagosora to form a government composed solely of Hutu politicians known for their extremist ideological positions towards the Tutsi to be implausible.

646. In weighing this allegation, the Chamber has considered whether Ndindiliyimana's evidence that he considered the interim government to be a legally constituted entity and made no objections to its formation could be construed as suggestive of his support for the extremist positions espoused by members of that government.[1155] The Chamber notes that there is a considerable body of evidence that militates against such a finding. The Chamber has heard credible evidence that Ndindiliyimana attempted to convince members of the interim government to intervene to stop the killings of Tutsi civilians. The Chamber recalls the evidence of Des Forges, who testified that Ndindiliyimana's conduct during the period when the interim government was formed is inconsistent with the conduct of someone who supported a conspiracy to commit genocide against Tutsi.[1156] Her assessment is based on Ndindiliyimana's opposition to Bagosora's concerted attempts to take over power and dispense with the Arusha Accords after the President's death,[1157] Ndindiliyimana's efforts together with other moderate officers to meet journalists of RTLM and Radio Rwanda to ask them to desist from inciting ethnic hatred and to rein in members of the Presidential Guards,[1158] and Ndindiliyimana's joint efforts with Rusatira to plead with members of the interim government and other politicians to intervene to stop the killings during a meeting with those officials held at Murambi in Gitarama on 22 April 1994.[1159]

647. The Chamber notes that Des Forges's evidence regarding the meeting at Murambi is corroborated by the testimony of Ndindiliyimana himself.[1160] It is also supported by the statement given by Fidèle Uwizeye to the investigators of the OTP.[1161] This statement was tendered as an exculpatory document pursuant to Rule 68 of the Rules. In this statement, Uwizeye, who was the *préfet* of Gitarama at the time of the events pleaded in the Indictment, stated that Ndindiliyimana and Rusatira arrived at Murambi, where the interim government was based, and sought to press members of that government to intervene and stop the ongoing massacres. According to the statement, the presentations made by Ndindiliyimana and Rusatira were not well received by members of that government, who castigated them for their lack of resolve in fighting the RPF.[1162]

648. The fact that Ndindiliyimana was not ideologically aligned with members of the interim government is also inferable from the letter that was addressed to him from Édouard Karemera, a prominent politician allied with the MRND, dated 26 April 1994.[1163] Having reviewed that letter and also the evidence of Des Forges, the Chamber notes that Karemera

[1155] T. 17 June 2008, p. 17.
[1156] T. 11 October 2006, p. 60.
[1157] T. 11 October 2006, p. 55; T. 20 September 2006, pp. 47, 54.
[1158] T. 11 October 2006, p. 60.
[1159] *See* T. 11 October 2006, pp. 58-59.
[1160] T. 18 June 2008, pp. 17-18.
[1161] The Chamber has not assigned Fidèle Uwizeye a pseudonym as he had agreed to testify before the Chamber under his own name but was ultimately not called as a witness. Furthermore, he had previously testified under his own name in other cases before this Tribunal.
[1162] Chamber's Exhibit 13A, p. 8.
[1163] Defence Exhibit 507.

expressed his displeasure at Ndindiliyimana's lack of support for the interim government and urged him to show more support for that government. Karemera also informed Ndindiliyimana that members of the interim government were not pleased with the presentations that he had made to them, a possible reference to the strained meeting between Ndindiliyimana and some members of the interim government held on 22 April 1994 at Murambi where the interim government was headquartered. Finally, Karemera warned Ndindiliyimana that a perception was gathering force that he was leading a group of officers from the south of Rwanda to revolt, a possibility that would advantage the RPF.[1164]

649. Des Forges testified that in his letter, Karemera excoriated Ndindiliyimana for having Tutsi as part of his escort and for his lack of support for the interim government. According to Des Forges, Karemera's letter essentially stated, "You need to get on board with the programme. You need to stop the presentations you have been making to us. You need to more publicly demonstrate your support for what's going on."[1165]

650. The Chamber accepts, based on the cogent evidence of Des Forges and Dallaire, that the fact that the interim government was composed of politicians who subscribed to extremist Hutu ideology and who were implacably opposed to the implementation of the Arusha Accords and collaboration with the RPF gave impetus to the widespread killings of Tutsi and diminished resistance to the massacres from government circles. The Chamber is not satisfied, however, that Ndindiliyimana collaborated with the interim government as part of a conspiracy to commit genocide against Tutsi. The fact that Ndindiliyimana considered the interim government to be a legally constituted government and may have collaborated with that government to some extent is not in itself evidence that he was implicated in a conspiracy to commit genocide against Tutsi. The Chamber is therefore not satisfied that the Prosecution has adduced sufficient evidence to prove the allegations in paragraphs 45 and 46 of the Indictment beyond reasonable doubt.

4.3.7 *Ndindiliyimana's Failure to Intervene to Stop the Killings of Members of the Belgian Detachment of UNAMIR*

4.3.7.1 Introduction

651. The Indictment alleges that on 7 April 1994, between 10.00 a.m. and 1.00 p.m., the military Crisis Committee met at ESM. It is alleged that in the course of this meeting, Commander Nubaha of Camp Kigali came and informed Ndindiliyimana and Théoneste Bagosora, who were chairing the meeting, that Rwandan soldiers were killing Belgian UNAMIR soldiers. The Indictment states that Ndindiliyimana and Bagosora "allowed the meeting to continue without taking the slightest action either directly or through the intermediary of the commanders whose subordinates were implicated in the killings. Hence, the assassination of the ten soldiers from the Belgian contingent, the largest in the UN peacekeeping mission, and the withdrawal of the Belgian contingent as of 11 April 1994."[1166] The Indictment further alleges that Ndindiliyimana's refusal to intervene to prevent the killing of those soldiers was motivated by a desire to precipitate the withdrawal of the Belgian detachment of UNAMIR and thereby to remove meaningful resistance to the

[1164] T. 13 October 2006, p. 17.
[1165] T. 13 October 2006, p. 17.
[1166] Indictment, para. 47.

effectuation of the conspiracy to commit genocide against Tutsi conceived by Ndindiliyimana and others.[1167]

4.3.7.2 Evidence

4.3.7.2.1 Prosecution Evidence

Prosecution Witness Roméo Dallaire

652. Witness Dallaire testified that while on his way to a meeting with senior members of the Rwandan Armed Forces on 7 April 1994 at ESM, he saw two Belgian UNAMIR soldiers who appeared to be injured at Camp Kigali.[1168] At the end of the meeting at ESM, Dallaire approached Ndindiliyimana and expressed his concerns regarding the Belgian soldiers he had seen and asked about the situation at the camp. Ndindiliyimana responded that there was chaos at the camp but that measures were being taken to restore order there.[1169]

653. Dallaire stated that in 1995, he testified before the Belgian judicial commission of inquiry into the killing of the Belgian soldiers at Camp Kigali in 1994. He informed members of that commission that he had regular contacts with Ndindiliyimana, considered him to be a moderate and believed him to be sincere when he told the witness that he was doing everything possible to save the Belgian soldiers at Camp Kigali.[1170] According to Dallaire, he also informed members of the Belgian commission that Ndindiliyimana had told him "that Camp Kigali was in the hands of rogue elements, that RGF ["Rwandan Government Forces"] officers were trying to control the situation and had been fired upon, that the soldiers were out of control, and that the force commander was not permitted to go to the camp, given the risks involved."[1171]

654. Dallaire testified that on 7 April 1994, he requested access to Camp Kigali in order to ascertain the situation of the Belgian soldiers. However, Colonel Bagosora denied him permission to enter the camp on the ground that the situation there was dangerous.[1172] Bagosora assured the witness that he was taking measures to resolve the crisis at the camp.[1173]

655. Dallaire recalled that he met Bagosora at his office in the afternoon of 7 April. During that meeting, Bagosora told him that members of the Belgian detachment of UNAMIR should be withdrawn from Rwanda given the broadcasts by RTLM implicating them in the death of President Habyarimana. Bagosora further suggested that their presence was bound to exacerbate what was already a fraught situation.[1174] Dallaire testified that it was the first time that he had heard a member of the Rwandan government broaching the withdrawal of the Belgian detachment of UNAMIR from Rwanda.[1175]

[1167] Indictment, para. 50.
[1168] T. 20 November 2006, p. 56.
[1169] T. 20 November 2006, p. 57.
[1170] T. 6 December 2006, pp. 42-43.
[1171] T. 6 December 2006, p. 43.
[1172] T. 20 November 2006, p. 61.
[1173] T. 20 November 2006, p. 61.
[1174] T. 20 November 2006, p. 61.
[1175] T. 20 November 2006, p. 61.

656. Dallaire further testified that some of the officers of the Rwandan Armed Forces attending the meeting of the Crisis Committee at the Army Headquarters in the evening of 7 April called for the withdrawal of the Belgian detachment of UNAMIR. Those officers were concerned that the presence of the Belgians was likely to hamper the efforts to restore order given the widespread perception that they were responsible for the death of President Habyarimana.[1176] However, Dallaire could not recall the names of the officers who made that suggestion.[1177]

657. According to Dallaire, he learned of the death of the Belgian soldiers after the conclusion of the meeting of the Crisis Committee in the evening of 7 April at Camp Kigali. During that meeting, Dallaire pressed Ndindiliyimana for information regarding the whereabouts of the Belgian soldiers who were held at Camp Kigali on 7 April. After the meeting, Ndindiliyimana received a telephone call from an army officer and was informed that the Belgian soldiers were located at the *Centre Hospitalier de Kigali* (CHK). Thereafter, the witness together with Ndindiliyimana and the interim Chief of Staff of the Army, Marcel Gatsinzi, and others went to CHK. Upon arrival, they were directed to the morgue where they found the slain bodies of 11 members of the Belgian detachment of UNAMIR. Dallaire stated that Ndindiliyimana and all the officers who were at the morgue were quite shocked at the condition of the dead bodies.[1178] Dallaire testified that he informed members of the Belgian commission of inquiry into the deaths of the Belgian soldiers that Ndindiliyimana "appeared to be shocked and was apologetic for the state of the corpses … ordered that the bodies be cleaned up and laid out in dignity, and stated that those who had committed this terrible act would be found."[1179]

Prosecution Expert Witness Alison Des Forges

658. Witness Des Forges gave evidence that following the death of Prime Minister Agathe Uwilingiyimana on 7 April 1994, members of the Belgian detachment of UNAMIR who had been assigned to protect the Prime Minister were removed from her residence and taken to Camp Kigali and killed.[1180] Des Forges testified that following their arrival at the camp, some of the Belgian soldiers were killed immediately and some died after a long struggle.[1181]

659. Des Forges stated that at the time that the Belgian soldiers were killed at Camp Kigali on 7 April, a number of high-ranking officers of the Rwandan Armed Forces, including Ndindiliyimana, were meeting at ESM, a military college situated in considerable proximity to the camp where the Belgian soldiers were killed.[1182] According to Des Forges, the officers attending the meeting at ESM heard the gunshots that led to the killing of those soldiers.[1183]

[1176] T. 21 November 2006, p. 15.
[1177] T. 21 November 2006, pp. 15-16.
[1178] T. 21 November 2006, p. 15.
[1179] T. 6 December 2006, p. 44.
[1180] T. 20 September 2006, p. 47.
[1181] T. 20 September 2006, p. 47.
[1182] T. 20 September 2006, p. 47.
[1183] T. 20 September 2006, p. 47.

4.3.7.2.2 Defence Evidence

Defence Witness Johann Swinnen

660. Witness Swinnen was Belgium's ambassador to Rwanda at the time that the Belgian soldiers of UNAMIR were killed in April 1994. He testified that Ndindiliyimana called him between 2.00 and 3.00 a.m. on 8 April and pleaded with him to ensure that the Belgian detachment of UNAMIR was not withdrawn from Rwanda as a result of the killing of some members of that detachment. Swinnen stated that Ndindiliyimana informed him that the withdrawal of the Belgian detachment would have a deleterious effect on the efforts being undertaken to resume the peace process.[1184] Swinnen further testified that Ndindiliyimana told him that the withdrawal of the Belgian detachment would discourage Rwandans who were working to restore the peace process and that the presence of the Belgian soldiers was therefore indispensable to any success in restoring the peace process.[1185] Witness Swinnen recalled that his telephone conversation with Ndindiliyimana was emotionally charged and he believed Ndindiliyimana to be sincere in his requests to ensure that members of the Belgian detachment of UNAMIR were not withdrawn from Rwanda.[1186]

Defence Witness CBP 7

661. Witness CBP 7, an officer of the *Gendarmerie* in April 1994, testified that he attended a meeting of the officers of the Rwandan Armed Forces held at ESM on 7 April 1994.[1187] The witness testified that while attending the meeting at ESM, he was not informed that members of the Belgian detachment of UNAMIR had been killed at Camp Kigali.[1188] Rather, he learned of the killing of those soldiers after the meeting at ESM.[1189]

662. Witness CBP 7 also testified that Dallaire addressed the meeting at ESM, but he did not inform the audience that Belgian soldiers of UNAMIR were being attacked at Camp Kigali.[1190] The witness testified that during the meeting, they heard gunshots but were not informed about the cause of the firing.[1191] The gunshots lasted for a very brief period and then the meeting resumed.[1192]

The Accused Ndindiliyimana

663. Ndindiliyimana testified that he attended the meeting of the officers of the Rwandan Armed Forces held at ESM in the morning of 7 April 1994. In the course of the meeting, Colonel Nubaha, the commanding officer of Camp Kigali, arrived at about 10.45 a.m. and spoke to Bagosora, who was chairing the meeting. Ndindiliyimana testified that he was seated next to Bagosora and overheard Nubaha tell Bagosora that "the situation at the camp

[1184] T. 22 October 2008, pp. 10-11.
[1185] T. 22 October 2008, pp. 10-11.
[1186] T. 22 October 2008, pp. 10-11.
[1187] T. 7 July 2008, p. 26 (ICS).
[1188] T. 7 July 2008, p. 29 (ICS).
[1189] T. 7 July 2008, p. 29 (ICS).
[1190] T. 7 July 2008, p. 33 (ICS).
[1191] T. 7 July 2008, p. 33 (ICS).
[1192] T. 7 July 2008, pp. 33-34 (ICS).

was tense".[1193] Thereafter, Bagosora ordered Nubaha to return to the camp and restore order, and promised to visit the camp in person after the conclusion of the meeting. According to Ndindiliyimana, Nubaha returned to the camp following Bagosora's instructions.[1194]

664. Ndindiliyimana testified that shortly after Nubaha's departure, the meeting was briefly interrupted by the sound of gunfire. The individuals who were tasked with ensuring security at the meeting stepped outside to find out what had happened. They returned shortly thereafter but did not suggest that anything serious had happened. The meeting was then resumed.[1195]

Defence Witness Jean Marie Vianney Nzapfakumunsi

665. Witness Nzapfakumunsi, an officer of the *Gendarmerie* in April 1994, was among the officers who attended the meeting at ESM on 7 April 1994. He testified that the attendees of that meeting were not informed of the killing of Belgian UNAMIR soldiers at Camp Kigali during the meeting.[1196] Rather, the witness testified that he only learned of the death of the Belgian soldiers after the meeting at ESM.[1197]

666. Nzapfakumunsi gave evidence that the meeting at ESM was briefly interrupted by the sound of gunfire. Thereafter, Colonel Rusatira, the commander of ESM, left the venue of the meeting accompanied by two officers in order to find out what had happened.[1198] According to the witness, Rusatira returned to the meeting and spoke briefly with Bagosora.[1199] Following this conversation, Bagosora ordered the resumption of the meeting.[1200] However, none of the attendees at the meeting were informed about the cause of the shooting.

4.3.7.3 Deliberations

667. The Chamber has already considered in great detail the killing of the Belgian UNAMIR soldiers by Rwandan soldiers at Camp Kigali on 7 April 1994 in its factual findings for murder as a crime against humanity. In this instance, the Chamber will limit its deliberations to determining whether Ndindiliyimana's alleged failure to prevent the killing of the Belgian soldiers lends support to the Prosecution's allegation that he was implicated in a conspiracy to commit genocide against Tutsi.

668. The Chamber notes that the allegations pleaded in paragraphs 47 and 50 of the Indictment are predicated on two facts which, according to the Prosecution, lead to the inference that Ndindiliyimana was party to a conspiracy to commit genocide against Tutsi. First, the Prosecution alleges that Ndindiliyimana was aware of the killing of the Belgian soldiers while attending a meeting at a location situated in close proximity to Camp Kigali, where those soldiers were slain. Second, the Prosecution alleges that his refusal to intervene to prevent the killing of the Belgian soldiers was motivated by his desire to precipitate the withdrawal of the Belgian detachment of UNAMIR from Rwanda and thereby to diminish

[1193] T. 17 June 2008, pp. 35-36.
[1194] T. 17 June 2008, pp. 35-36.
[1195] T. 17 June 2008, pp. 35-36.
[1196] T. 18 February 2009, pp. 32-33.
[1197] T. 18 February 2009, p. 33.
[1198] T. 18 February 2009, p. 50.
[1199] T. 18 February 2009, p. 50.
[1200] T. 18 February 2009, p. 50.

resistance to plans by him and others to perpetrate genocide against Tutsi. For reasons articulated below, the Chamber is not satisfied that the Prosecution has adduced sufficient evidence to substantiate these allegations.

669. The Chamber notes that in support of its claim that Ndindiliyimana was aware of the killing of the Belgian soldiers while attending the meeting at ESM, the Prosecution relies on the evidence of Witness Des Forges. She testified that the officers attending the meeting heard gunshots, which were part of the exchange of fire that led to the killing of the Belgian soldiers at Camp Kigali.[1201] Her evidence suggests that Ndindiliyimana and other attendees at the meeting could not have been oblivious to the killing of those soldiers given the close proximity of Camp Kigali to ESM, where the meeting was held.[1202]

670. The Chamber has also heard evidence from a number of Defence witnesses who attended the meeting at ESM and who denied having been informed of the killing of Belgian soldiers during the meeting. These witnesses are CBP 7, a former member of the *Gendarmerie* General Staff, Nzapfakumunsi, a senior officer of the *Gendarmerie,* and Ndindiliyimana himself. The Chamber notes that these witnesses provided concordant evidence that the meeting at ESM was briefly interrupted by the sound of gunshots. However, none of the officers attending this meeting were informed that the gunshots were in any way linked to the killing of Belgian soldiers at the adjacent Camp Kigali. The witnesses testified that the individuals who were tasked with providing security at the meeting stepped out to determine what had happened. Nzapfakumunsi recalled that among the people who left the meeting temporarily was Colonel Rusatira, the commanding officer of ESM. He later returned and spoke briefly with Bagosora, who was chairing the meeting. The witnesses further testified that none of the individuals who left the meeting following the gunshots reported that the gunshots were linked to the killing of the Belgian soldiers at Camp Kigali. Given the lack of information suggesting that anything serious had happened, Bagosora ordered the resumption of the meeting.

671. The Chamber has weighed the indirect evidence provided by Des Forges in light of the contravening evidence of the Defence witnesses who attended the meeting at ESM. Having done so, the Chamber is not satisfied that Des Forges's indirect evidence reliably demonstrates that the officers who attended the meeting knew that the gunshots were related to the events that led to the slaying of the Belgian soldiers at Camp Kigali on 7 April 1994.

672. In determining Ndindiliyimana's knowledge of the killing of the Belgian soldiers while attending the meeting at ESM, the Chamber has paid close attention to his evidence that in the course of that meeting, Colonel Nubaha, the commander of Camp Kigali, arrived and informed Bagosora that the camp had descended into a state of disorder. The Chamber has also considered the evidence of Dallaire that while on his way to the meeting at ESM, he saw two Belgian soldiers who appeared to be injured at Camp Kigali. Dallaire testified that at the end of the meeting at ESM, he informed Ndindiliyimana that he had seen some of his soldiers who appeared to be injured at Camp Kigali and asked him about the state of affairs at the camp. Ndindiliyimana responded that the camp had fallen into disorder and that measures were being taken to restore order. The Chamber notes that in his testimony, Ndindiliyimana confirmed that after the meeting at ESM, he conversed with Dallaire regarding the situation at Camp Kigali.

[1201] T. 20 September 2006, p. 47.
[1202] T. 20 September 2006, p. 47.

673. Having weighed the evidence canvassed above, the Chamber is not satisfied that over and above suggesting that Ndindiliyimana was aware of the fraught situation prevailing at Camp Kigali, the evidence establishes that he knew of the killing of the Belgian soldiers at the camp on 7 April 1994 during the meeting held at ESM. The Chamber notes that Nubaha's comments as relayed by Ndindiliyimana do not suggest that the killing of the Belgian soldiers was made known to anyone at the meeting.

674. It is undisputed that Dallaire informed Ndindiliyimana that he had seen the Belgian soldiers at Camp Kigali while heading to the meeting at ESM and asked Ndindiliyimana about the situation at the camp. However, there is no evidence indicating that Dallaire informed Ndindiliyimana that Belgian soldiers were being killed at Camp Kigali. Furthermore, the Chamber finds that the possibility that Dallaire might have informed Ndindiliyimana about the killing of Belgian soldiers at Camp Kigali after the meeting at ESM is precluded by the fact that Dallaire was not himself aware of the killings at that time. Rather, Dallaire testified that he learned of the killing of the Belgian soldiers in the evening of 7 April from Ndindiliyimana, after the conclusion of the meeting of the Crisis Committee held at the Army Headquarters chaired by Ndindiliyimana. Dallaire testified that Ndindiliyimana was himself informed of the death of the Belgian soldiers by an officer of the Rwandan Army in the evening of 7 April. This evidence raises doubts about the Prosecution's allegation that Ndindiliyimana knew of the killing of the Belgian soldiers while attending the meeting at ESM in the morning of 7 April.

675. The Chamber is therefore not satisfied that the Prosecution has proved beyond reasonable doubt that Ndindiliyimana was aware of the killing of the Belgian soldiers while attending the meeting at ESM on 7 April 1994. Furthermore, the Chamber has doubts as to whether Ndindiliyimana, in his capacity as the Chief of Staff of the *Gendarmerie*, would have been able to intervene effectively at a Rwandan Army camp, which by all accounts had descended into chaos, and restore order there. This fact may explain his suggestion to Dallaire to seek the assistance of Rwandan Army officers in resolving the difficult situation at the camp.

676. Moreover, the evidence before the Chamber is inconsistent with the suggestion that Ndindiliyimana was in favour of the withdrawal of the Belgian detachment of UNAMIR from Rwanda in April 1994 in order to eliminate their potential resistance to the plans by Ndindiliyimana and his co-conspirators to undermine the implementation of the Arusha Accords and to commit genocide against Tutsi. The Chamber has credible evidence indicating that Ndindiliyimana consistently supported the implementation of the Arusha Accords and the bid by UNAMIR to ensure compliance with the Accords. The Chamber refers to the evidence of Defence Witness Luc Marchal, the commander of the UNAMIR units in Kigali, who was vested with responsibility for ensuring the implementation of the KWSA, a protocol agreement to the Arusha Accords. Marchal testified at considerable length that Ndindiliyimana supported the implementation of the Arusha Accords and collaborated with UNAMIR in its mission to ensure compliance with the Accords. His evidence is corroborated to a significant extent by the evidence of Prosecution Witnesses Dallaire and Frank Claeys and Defence Witnesses Johann Swinnen and André Vincent.

677. Furthermore, the Chamber notes that the evidence of Witnesses Des Forges, Marchal and Nzapfakumunsi suggests that Ndindiliyimana continued his support for the implementation of the Arusha Accords. Des Forges testified that Ndindiliyimana acting in collaboration with other moderate officers opposed Bagosora's plans to take over power and

subvert the implementation of the Arusha Accords. The fact that Ndindiliyimana supported a resolution of the crisis resulting from the death of President Habyarimana that complied with the provisions of the Arusha Accords is also supported by the evidence of Witnesses Marchal and Nzapfakumunsi. Marchal, who attended the meeting held at the Army Headquarters on the night of 6 to 7 April 1994, testified that Ndindiliyimana along with a number of the officers who attended that meeting supported the implementation of the Arusha Accords. Nzapfakumunsi, a senior officer of the *Gendarmerie* based in Kigali, was among the officers who attended the meeting held at ESM on 7 April. Nzapfakumunsi testified that the officers attending this meeting were divided on how to resolve the crisis caused by the death of President Habyarimana. One side supported the taking over of power by officers of the Rwandan Armed Forces in contravention of the Arusha Accords. The other side favoured the creation of a civilian government in compliance with the terms of the Arusha Accords. Nzapfakumunsi testified that Ndindiliyimana was among the officers who favoured the implementation of the Arusha Accords. In view of this evidence, the Chamber is not persuaded by the Prosecution submissions that Ndindiliyimana was indifferent to the killings of the Belgian soldiers because he wanted those soldiers to be withdrawn from Rwanda given the likely prospect that they would have opposed the plan to subvert the implementation of the Arusha Accords and commit massacres against Tutsi.

678. The Indictment also alleges that the withdrawal of the Belgian detachment of UNAMIR from Rwanda in April 1994 and the killing of a number of moderate politicians left an institutional void, which was subsequently filled by the interim government composed of extremist Hutu politicians formed at the behest of Ndindiliyimana and Bagosora. The Chamber recalls its finding when discussing the allegations in paragraph 45 and 46 of the Indictment that Ndindiliyimana had no role in the selection of the politicians who formed the interim government. That being the case, the Chamber finds the Prosecution's claim that Ndindiliyimana favoured the withdrawal of the Belgian contingent of UNAMIR in order to facilitate the establishment of a government composed of Hutu politicians who were implacably opposed to the Arusha Accords and cooperation with the RPF to be implausible.

679. The suggestion that Ndindiliyimana failed to prevent the killing of the Belgian soldiers so as to precipitate their withdrawal from Rwanda is rendered even less credible by the evidence of Witnesses Swinnen and Des Forges on the conduct of Ndindiliyimana shortly after the slaying of the Belgian soldiers on 7 April 1994. Swinnen, Belgium's ambassador to Rwanda in April 1994, testified that Ndindiliyimana called him in the morning of 8 April, between 2.00 and 3.00 a.m., and pleaded with him to ensure that the Belgian detachment of UNAMIR was not withdrawn from Rwanda following the killing of some of its members on 7 April. Swinnen testified that Ndindiliyimana expressed concerns that the withdrawal of the Belgian detachment would have a deleterious effect on the efforts being undertaken to implement the Arusha Accords.[1203] Swinnen further testified that Ndindiliyimana sounded sincere in his requests to ensure that members of the Belgian detachment of UNAMIR were not withdrawn from Rwanda.[1204]

680. In assessing this allegation, the Chamber has also accorded weight to the testimony of Des Forges on Ndindiliyimana's telephone conversation with Swinnen in the morning of 8 April 1994. Des Forges testified that Ndindiliyimana's efforts to ensure the continued stay of the Belgian detachment of UNAMIR, as evidenced by his telephone conversation with

[1203] T. 22 October 2008, pp. 10-11.
[1204] T. 22 October 2008, pp. 10-11.

Swinnen, were prompted by fears that their withdrawal would lead to the killings of people like him, a senior officer of the *Gendarmerie* who hailed from south of Rwanda, and members of other ethnic groups by the extremists who had taken over power at the time and who demonstrated ruthlessness in eliminating potential sources of resistance.[1205]

681. Having considered the evidence delineated above, the Chamber does not accept that Ndindiliyimana failed to intervene to prevent the killing of the Belgian soldiers knowing that such killings would precipitate the withdrawal of the entire Belgian detachment of UNAMIR as part of a conspiracy to commit genocide against Tutsi. It follows that the Prosecution has not proved the allegations described in paragraphs 47 and 50 of the Indictment beyond reasonable doubt.

4.3.8 *The Killing of Opposition Politicians Between 7 and 11 April 1994*

4.3.8.1 Introduction

682. The Indictment alleges that between 7 and 11 April 1994, elements of the Presidential Guard, the RECCE Battalion and *Interahamwe* murdered or sought to murder all political figures in the opposition who had been designated to occupy prominent positions in the broad-based transitional government that was to be put in place pursuant to the Arusha Accords. The victims included the Prime Minister of the transitional government who was in office until 7 April, Agathe Uwilingiyimana, Ministers Frédéric Nzamurambaho, Faustin Rucogoza, Landouald Ndasingwa, Boniface Ngulinzira and the President of the Constitutional Court, Joseph Kavaruganda.[1206]

683. The Indictment further alleges that although the *Gendarmerie* was responsible for protecting those politicians, and although Ndindiliyimana had been informed of the threat to their lives well before the events, Ndindiliyimana did not take adequate steps to protect them from being killed, nor did he in any way reorganise the security system after the first massacres were committed.[1207] Finally, the Indictment alleges that Ndindiliyimana's refusal to intervene to prevent the killing of prominent opposition politicians was motivated by a desire to create an institutional vacuum and thereby to remove obstacles to the spread and continuation of the massacres.[1208]

4.3.8.2 Evidence

4.3.8.2.1 Prosecution Evidence

Prosecution Witness Annonciata Mukarubibi

684. Witness Mukarubibi was the wife of the late Joseph Kavaruganda, who was the President of the Constitutional Court in April 1994. The witness and her husband lived in Kimihurura neighbourhood in Kigali, where most of the ministers in the transitional

[1205] T. 12 October 2006, p. 19.
[1206] Indictment, para. 48.
[1207] Indictment, para. 49.
[1208] Indictment, para. 50.

government of the time lived. Their neighbours included Frédéric Nzamurambaho (Minister of Agriculture) and Faustin Rucogoza (Minister of Information).[1209]

685. At around 5.30 a.m. on 7 April 1994, the witness and her husband were awoken by a Ghanaian UNAMIR soldier who was stationed at their house. The soldier informed them that soldiers had arrived at their house and wanted to see her husband Kavaruganda. According to the witness, about 30 soldiers had arrived at her house,[1210] including *gendarmes* and some soldiers who had the "insignia of commandos" inscribed on their uniforms.[1211] The witness stated that those soldiers were led by an officer called Captain Kabrera.

686. Witness Mukarubibi testified that while her husband was speaking to the soldiers in their living room, she heard Captain Kabrera instructing her husband to come with him because they did not want Kavaruganda to "swear in the RPF" into the transitional government.[1212] Thereafter, Kavaruganda returned to the bedroom where his wife was waiting and locked all the doors leading to their room.[1213] Kavaruganda then instructed his children to hide.

687. The witness testified that at around 6.00 a.m., Kavaruganda called UNAMIR and requested their assistance. UNAMIR officials advised him to "take cover" and wait for the assistance of their soldiers who were expected to arrive at his house shortly.[1214] Shortly thereafter, the soldiers who were inside their house began to shoot and break through all the doors in the house.[1215] Kavaruganda then left his room and was informed by Kabrera, the leader of the soldiers, that he intended to take him to the location "where [they had taken] other government personalities, where [they had taken] Landouald Ndasingwa [and] Minister Faustin Rucogoza … That is where we are taking you to so that you may not officiate the swearing-in ceremony. We want to ensure your security". Kabrera then ordered Kavaruganda to come with him.[1216]

688. Subsequently, Kavaruganda, the witness and their two children were ordered to board a red military vehicle. After driving for about 100 metres, the vehicle stopped and Kabrera asked the witness and her daughters to disembark. The witness did so and returned home.[1217]

689. The witness testified that a short while later, Kabrera returned with Kavaruganda to their house.[1218] While at their house, Kavaruganda attempted to give her his identity card and some money. However, those items were seized by soldiers who had remained at their house. The soldiers threw Kavaruganda's identity card on the ground and asked the witness, "Do you think your husband really needs his identity card anymore?" The witness inferred from this comment that the soldiers intended to kill her husband. Kabrera then left with Kavaruganda and the witness never saw her husband again.[1219]

[1209] T. 14 November 2006, p. 38.
[1210] T. 14 November 2006, p. 48.
[1211] T. 14 November 2006, pp. 41-42.
[1212] T. 14 November 2006, pp. 42, 45.
[1213] T. 14 November 2006, pp. 42, 45.
[1214] T. 14 November 2006, p. 45.
[1215] T. 14 November 2006, pp. 46-47.
[1216] T. 14 November 2006, pp. 47-48.
[1217] T. 14 November 2006, p. 49.
[1218] T. 14 November 2006, p. 51.
[1219] T. 14 November 2006, pp. 51-55.

690. Presidential Guard soldiers who remained at the witness' house told her, "Why would you get the President killed? ... Why didn't you advise your husband not to disrespect President Habyarimana?"[1220] At around 10.00 a.m., those soldiers informed her that they were heading to the house of Frédéric Nzamurambaho, who was a cabinet minister of the government and who lived near them, in order to kill him. The soldiers drove in the direction of Nzamurambaho's house and shortly thereafter, the witness heard gunshots and screaming coming from Nzamurambaho's house. The witness recalled that these sounds lasted for approximately 30 minutes. A short while later, the witness met Nzamurambaho's son who informed her that his father had been killed by soldiers at their house.[1221]

691. On 9 April, the witness heard on the radio that Kavaruganda had been killed.[1222]

Prosecution Witness CJ

692. Witness CJ lived in the house of Frédéric Nzamurambaho in Kimihurura, Kigali in April 1994. He testified that on the night of 6 April 1994, he was alerted by the *gendarmes* posted at Nzamurambaho's house that Presidential Guards had visited that house twice.[1223]

693. In the morning of 7 April, the witness saw soldiers arrive at the neighbouring house of Joseph Kavaruganda. The witness claimed to have heard those soldiers asking Kavaruganda to open the door and stating that they had come to fetch him.[1224] According to the witness, the soldiers appeared to be annoyed since Kavaruganda was not complying with their instructions.

694. Shortly thereafter, approximately 12 soldiers whom the witness believed to be members of the Presidential Guard arrived at Nzamurambaho's house, but Nzamurambaho was not there at the time.[1225] The soldiers asked all the inhabitants of the house to assemble in the living room, and then the soldiers searched the house. Some of the soldiers left at that point, leaving approximately six soldiers at the house.

695. The witness testified that the soldiers then attacked and shot at Nzamurambaho's family. While the attack was unfolding, the witness escaped and hid in the ceiling of the house. Approximately 15 minutes later, the witness heard Nzamurambaho, who had returned to his house, speaking with the soldiers who demanded money from him. Thereafter, the witness heard a gunshot.[1226]

696. Witness CJ testified that when he came down from the ceiling, he saw the slain bodies of Nzamurambaho and several members of his family lying in the house.[1227]

[1220] T. 14 November 2006, p. 55.
[1221] T. 14 November 2006, pp. 55-56.
[1222] T. 14 November 2006, p. 63.
[1223] T. 28 June 2006, pp. 18-19 (ICS).
[1224] T. 28 June 2006, pp. 19-21, 32 (ICS).
[1225] T. 28 June 2006, pp. 19, 23 (ICS).
[1226] T. 28 June 2006, p. 21 (ICS).
[1227] T. 28 June 2006, pp. 21, 23 (ICS).

Prosecution Witness Florida Mukeshimana

697. Witness Mukeshimana was married to Boniface Ngulinzira, who was a minister in the transitional government in April 1994. The witness testified that on 7 April 1994, they were informed by UNAMIR soldiers posted at their house that Landouald Ndasingwa, a fellow minister in the transitional government, had been killed. They were then advised by those soldiers to leave their house. They were evacuated to the *École Technique Officielle* in Kicukiro (ETO) where a Belgian contingent of UNAMIR was stationed.[1228]

698. The witness testified that on 11 April, the Belgian UNAMIR soldiers who were protecting the refugees at ETO left that location. The witness and her husband therefore decided to return to their house. While on their way to their house, they were intercepted by a group of *Interahamwe* and taken to a house where they found other refugees. Later, about six soldiers arrived at that house and asked her husband to identify himself. Once her husband identified himself by name, the soldiers took him away and the witness never saw him again.[1229]

699. On 26 April, the witness heard an RTLM radio broadcast in which it was announced, "We have exterminated all RPF accomplices, so let Ngulinzira go again and sell our country to the RPF." This announcement led the witness to conclude that her husband had been killed.[1230]

Prosecution Witness BB

700. Witness BB was a member of the Presidential Guard based at Camp Kimihurura on 6 April 1994.[1231] He testified that while at the camp on 7 April, at around 11.00 a.m., he overheard a radio conversation between Warrant Officer Rulinda and Major Protais Mpiranya, the commander of the Presidential Guards. According to the witness, Rulinda informed Mpiranya that the Minister of Information, Rucogoza, had been brought into Camp Kimihurura.[1232]

701. In his examination-in-chief, the witness stated that Mpiranya angrily answered Rulinda by saying, "Why do you spare such persons?"[1233] However, in cross-examination the witness admitted that his evidence-in-chief regarding Mpiranya's response to Rulinda was inconsistent with the account that he had given in his pre-trial statement. Contrary to his evidence-in-chief, the witness stated in his pre-trial statement that he heard Mpiranya respond to Rulinda's query by saying, "Why do you keep those people around?" as opposed to saying, "Why do you spare such persons?"[1234] The witness testified that his pre-trial statement is more accurate than his evidence-in-chief.

702. The witness testified that about 30 minutes after hearing the conversation between Rulinda and Mpiranya, he heard gunshots coming from the canteen area of the camp. He was later informed by a corporal named Mujyambere that Minister Rucogoza had been shot and

[1228] T. 6 September 2006, pp. 30-31.
[1229] T. 6 September 2006, pp. 34-36.
[1230] T. 6 September 2006, p. 39.
[1231] T. 15 June 2006, pp. 24-25.
[1232] T. 15 June 2006, pp. 30-32.
[1233] T. 15 June 2006, p. 30.
[1234] T. 19 June 2006, p. 61.

that the President of the Constitutional Court, Joseph Kavaruganda, was being held in custody.[1235]

703. The witness also testified that at some point between 11.00 a.m. and 12.00 noon, he saw a group of Para Commandos leave the camp. Approximately 15 minutes later, the witness heard gunshots and then the Para Commandos returned to the camp. Witness BB testified that he was informed by another soldier called Adolph Musabyimana that the Para Commandos had gone out to the house of Landouald Ndasingwa and killed him.[1236]

Prosecution Expert Witness Alison Des Forges

704. Witness Des Forges testified that a number of politicians who were considered to be supportive of the Arusha Accords were killed following the death of President Habyarimana on 6 April 1994.[1237] Those politicians included Rucogoza,[1238] Agathe Uwilingiyimana, Kavaruganda, Ngulinzira, Ndasingwa and Nzamurambaho.[1239]

705. In her expert report, Des Forges provided further explanations for the killings of those politicians. She stated that "within hours" of the death of President Habyarimana,

> members of the armed forces had killed political leaders opposed to Hutu Power, thus fulfilling the prediction made by the head of military intelligence in July 1992. The slain politicians were seen as responsible for concessions to the RPF and several of them, including the prime minister, were also seen as obstacles to installing a new political configuration, comprised only of Hutu Power supporters. After these leaders from the previous government were eliminated on April 7, military and political leaders of Hutu Power designated and installed a new government to implement its objectives.[1240]

4.3.8.2.2 Defence Evidence

Defence Witness Luc Marchal

706. Witness Marchal was the commander of the UNAMIR units in Kigali *secteur* in 1994. He testified that in the morning of 7 April 1994, between 7.00 and 7.15 a.m., Colonel Bavugamenshi, the commander of the *gendarmerie* battalion tasked with providing close protection to high profile politicians, arrived at his office and informed him that Presidential Guard soldiers had assassinated a number of politicians in the Kimihurura neighbourhood.[1241] The witness further testified that Bavugamenshi asked him to intervene to avert further killings of politicians, because Bavugamenshi's unit was incapable of preventing Presidential Guard soldiers from perpetrating further atrocities.[1242]

707. Marchal testified that the only unit of UNAMIR that could effectively intervene in Kimihurura in order to avert such assassinations was the one that formed the escort of Prime

[1235] T. 15 June 2006, p. 30.
[1236] T. 15 June 2006, pp. 46-47, 53; T. 19 June 2006, pp. 8-9, 70-71.
[1237] T. 20 September 2006, p. 22.
[1238] T. 16 October 2006, p. 42.
[1239] T. 20 September 2006, p. 55.
[1240] Prosecution Exhibit 107A, p. 30.
[1241] T. 17 January 2008, p. 54.
[1242] T. 17 January 2008, p. 54.

Minister Agathe Uwilingiyimana.[1243] However, this unit could not intervene in Kimihurura since it was deployed at the Prime Minister's residence.[1244] In light of this circumstance, he requested members of the Belgian mortar battalion to intervene in Kimihurura, but their intervention was not successful in preventing further assassinations of moderate politicians residing in that area.[1245]

708. According to Marchal, the killings of moderate politicians by Presidential Guard soldiers appeared to be organised. He further testified that Presidential Guard soldiers moved in groups of about 20 soldiers during their incursions into the houses of the politicians whom they eventually assassinated. Given the number and organisation of these assailants, the UNAMIR soldiers who were posted at the houses of the politicians found it difficult to prevent the killings by Presidential Guard soldiers.[1246]

709. Marchal gave evidence that Landouald Ndasingwa, who was among the politicians who were assassinated following the death of President Habyarimana, called him shortly before he was killed and informed him about the presence of a Presidential Guard soldier in front of his house.[1247]

710. According to Marchal, the killings of the politicians by Presidential Guard soldiers may have been motivated by a desire to avenge the death of President Habyarimana and the Chief of Staff of the Army, Nsabimana, by targeting individuals who were perceived to be responsible for their deaths.[1248] Marchal further testified that members of the Presidential Guard were known for their devotion to Habyarimana and Nsabimana.[1249]

Witness Claudien Ndagijimana

711. Witness Ndagijimana was a member of the *gendarmerie* battalion responsible for the security of high profile politicians in April 1994.[1250] The battalion was commanded by Lieutenant Colonel Bavugamenshi.[1251]

712. The witness testified that around 11.00 a.m. on 7 April 1994, he was instructed by Bavugamenshi, who had received reports about the killing of a number of politicians, to visit their houses.[1252] Thereafter, the witness visited the houses of Joseph Kavaruganda and Frédéric Nzamurambaho and found that they had been killed.[1253] The witness testified that three *gendarmes* had been posted at the houses of those politicians.[1254] However, during his visits to their houses on 7 April, the witness did not find any of the *gendarmes* or UNAMIR

[1243] T. 17 January 2008, p. 54.
[1244] T. 17 January 2008, p. 55.
[1245] T. 17 January 2008, p. 55.
[1246] T. 17 January 2008, p. 55.
[1247] T. 21 January 2008, p. 51.
[1248] T. 21 January 2008, p. 52.
[1249] T. 21 January 2008, p. 52.
[1250] T. 5 June 2008, p. 7.
[1251] T. 5 June 2008, p. 7.
[1252] T. 5 June 2008, pp. 10, 62.
[1253] T. 5 June 2008, p. 10.
[1254] T. 5 June 2008, pp. 11, 63.

soldiers who were posted to those houses nor did he have any information regarding their exact whereabouts.[1255]

713. The witness testified that Bavugamenshi did not inform him who was responsible for the killings of the politicians on 7 April.[1256] However, he heard that members of the Presidential Guard soldiers were responsible for those killings.[1257] The witness testified that *gendarmes* who were posted at the politicians' houses of those politicians could not prevent their killings because they were outnumbered by Presidential Guard soldiers.[1258] He further testified that he was informed that those *gendarmes* were disarmed by the Presidential Guard soldiers during the killings and were taken to the Presidential Guard camp in Kimihurura.[1259] However, the witness received no information on what became of those *gendarmes*.[1260]

Witness Jean Marie Vianney Nzapfakumunsi

714. Witness Nzapfakumunsi testified that he met Lieutenant Colonel Bavugamenshi, the commander of the VIP protection unit of the *Gendarmerie,* prior to the commencement of the meeting of officers of the Rwandan Armed Forces held at ESM on 7 April 1994. The witness testified that Bavugamenshi informed him that members of the Presidential Guard had killed a number of politicians allied with opposition parties on the night of 6 to 7 April 1994.[1261]

4.3.8.3 Deliberations

715. The Chamber is satisfied beyond reasonable doubt that Joseph Kavaruganda, Frédéric Nzamurambaho, Landouald Ndasingwa, Boniface Ngulinzira and Faustin Rucogoza, all of whom were senior members of the transitional government under the premiership of Agathe Uwilingiyimana, were killed in the immediate aftermath of the death of President Habyarimana. The Chamber recalls that none of the parties in this trial dispute the killing of these politicians. However, there is considerable disagreement as to whether the politicians were killed in order to further a conspiracy to commit genocide against Tutsi.

716. Having closely reviewed the evidence, the Chamber is not satisfied that there is sufficient evidence to find that *gendarmes* were implicated in the killings of these politicians. There is concordant evidence suggesting that Presidential Guard soldiers played a leading role in those killings. Prosecution Witness Annonciata Mukarubibi, Kavaruganda's wife, Witness CJ, who lived at Nzamurambaho's house at the time of the events, and Witness BB, a Presidential Guard soldier based at Kimihurura, all implicated Presidential Guard soldiers in the killings of Kavaruganda, Nzamurambaho and Rucogoza. Witness Marchal, the commander of the UNAMIR units operating in Kigali, testified that he received a telephone call from Landouald Ndasingwa shortly before the latter was killed. In the course of that conversation, Ndasingwa informed Marchal about his concerns for his security and told him that he could see a Presidential Guard soldier outside his house. The witness further testified that before their conversation was cut short, he heard gunshots and grenade explosions. This

[1255] T. 5 June 2008, pp. 10-11, 62.
[1256] T. 5 June 2008, p. 64.
[1257] T. 5 June 2008, p. 64.
[1258] T. 5 June 2008, p. 65.
[1259] T. 5 June 2008, p. 12.
[1260] T. 5 June 2008, p. 65.
[1261] T. 18 February 2009, p. 32.

leads the Chamber to conclude that Presidential Guard soldiers had a significant role in the deaths of Kavaruganda, Nzamurambaho, Rucogoza and Ndasingwa.

717. Based on the evidence of Witness Florida Mukeshimana, Boniface Ngulinzira's wife, the Chamber is satisfied that the latter was killed by soldiers of the Rwandan Army after his abduction on 11 April 1994 following a brief stay at ETO. However, the Chamber has no specific information on the unit of the Rwandan Army to which the assailants who killed Ngulinzira belonged. The fact that he was killed because of his avid support for the Arusha Accords is inferable from Witness Mukeshimana's testimony that on 26 April, she heard a radio broadcast by RTLM in which it was announced, "We have exterminated all RPF accomplices, so let Ngulinzira go again and sell our country to the RPF".[1262] In addition to the evidence set out above, the Chamber has heard credible evidence, albeit of a general nature, from a number of Defence witnesses confirming its finding that Presidential Guard soldiers played a significant, if not exclusive, role in the killings of these politicians. The Chamber recalls that Witness Marchal testified that in the morning of 7 April, he was informed by Lieutenant Colonel Bavugamenshi, the commander of the VIP security battalion of the *Gendarmerie*, that Presidential Guard soldiers had assassinated a number of politicians residing in the Kimihurura area. Marchal further testified that Bavugamenshi asked him to intervene to stop further killings of moderate politicians by members of the Presidential Guard since his unit was incapable of preventing the Presidential Guards from committing atrocities.

718. Witness Nzapfakumunsi, a senior officer of the *Gendarmerie* in April 1994, testified to having been informed by Lieutenant Colonel Bavugamenshi shortly before the commencement of the meeting at ESM in the morning of 7 April that soldiers of the Presidential Guard had assassinated a number of politicians. Witness Ndagijimana, a member of the *Gendarmerie's* security battalion, testified that he was ordered to visit the houses of the slain politicians and pick up *gendarmes* who were posted at these houses and return them to Camp Kacyiru. He testified that at a number of these houses, he did not find any *gendarmes* and upon inquiry he was informed that the *gendarmes* had been disarmed by Presidential Guard soldiers during the attack against the politicians and taken to the Presidential Guard camp at Kimihurura.

719. In determining whether *gendarmes* had any role in the killing of these politicians, the Chamber has considered the evidence of Witness Annonciata Mukarubibi, the wife of Kavaruganda, one of the politicians slain on 7 April 1994. The witness testified that she saw *gendarmes* together with soldiers inside her house just before the attack against her family.[1263] However, aside from seeing *gendarmes* inside the house together with soldiers, her evidence contains no specific information implicating *gendarmes* in the attack. Given that *gendarmes* were posted at the house of Kavaruganda, as suggested by the evidence of Witness Ndagijimana, the Chamber is not satisfied that the mere presence of *gendarmes* inside Kavaruganda's house at the time, in the absence of additional evidence, is sufficient to support the conclusion that *gendarmes* took part in the attack against Kavaruganda's family and his eventual killing.

[1262] T. 6 September 2006, p. 39.
[1263] T. 14 November 2006, pp. 42-45.

720. The Chamber has also considered the submissions made by the Prosecution in the course of its cross-examination of Defence Witness Marchal regarding the possible complicity of *gendarmes* in the killing of the moderate politicians. The Prosecution referred to a statement in Marchal's book on his experiences in Rwanda to the effect that soldiers and *gendarmes* erected roadblocks in the Kimihurura area in order to isolate that area while members of the Presidential Guard were assassinating moderate politicians. The Prosecution submitted that this statement leads to the inference that *gendarmes* collaborated with Presidential Guard soldiers in the killing of these politicians.[1264] Marchal admitted that he wrote this statement in his book and that the conduct of *gendarmes* could be construed as supportive of the crimes perpetrated by Presidential Guards.[1265] However, Marchal added that he was not aware of the reasons that prompted *gendarmes* to establish roadblocks in the area. He also disputed the Prosecution's submission that *gendarmes* supported the Presidential Guard soldiers in assassinating politicians, since members of the Presidential Guard required no such assistance given their high level of organisation and the fact they had a base in Kimihurura, where most of these politicians resided.[1266]

721. Having weighed the Prosecution's submissions and the evidence of Witness Marchal, the Chamber is not satisfied that it has credible evidence suggesting that *gendarmes* colluded with Presidential Guard soldiers in the killing of these politicians. Marchal was at best tentative as to whether the establishment of roadblocks by *gendarmes* in the Kimihurura area at the time that the politicians were killed was inextricably linked to the killings of the politicians by Presidential Guard soldiers.

722. The Chamber also notes that it has heard evidence suggesting that far from extending support to the killings of politicians by soldiers of the Presidential Guard, some *gendarmes* who were posted at politicians' houses attempted to warn them of the suspicious activities of Presidential Guard soldiers in the Kimihurura area. The Chamber refers to the evidence of Witness CJ that *gendarmes* guarding Nzamurambaho warned the witness of the suspicious activities of the Presidential Guard soldiers in the area before the attack against Nzamurambaho's family.

723. The Chamber also notes that there is a considerable body of evidence suggesting that *gendarmes* who were posted at the houses of these politicians were overwhelmed by the Presidential Guard soldiers as opposed to colluding with them in carrying out the assassinations. The Chamber refers to the evidence of Witness Marchal suggesting that the small number of UNAMIR soldiers who were guarding these politicians were incapable of stopping a large group of Presidential Guard soldiers who were well-armed and organised.[1267] His evidence, while not directly related to the conduct of *gendarmes* in the politicians' houses, illustrates the situation that prevailed at the time. Marchal also testified that in the morning of 7 April, Bavugamenshi, the commander of the *gendarmerie* battalion responsible for the protection of high profile politicians, requested him to intervene to prevent Presidential Guard soldiers from committing further crimes since his unit was overwhelmed by Presidential Guard soldiers.

[1264] T. 21 January 2008, pp. 52-54.
[1265] T. 21 January 2008, pp. 55-56.
[1266] T. 21 January 2008, pp. 55-56.
[1267] T. 17 January 2008, p. 55.

724. This evidence is also corroborated to a significant extent by the evidence of Defence Witness Claudien Ndagijimana. He testified that in the morning of 7 April, he was ordered by Bavugamenshi to conduct a visit to the houses of a number of high profile politicians who were reported to have been attacked. The witness testified that he visited the houses of Kavaruganda and Nzamurambaho during this mission and found that they had been killed. However, he did not find either *gendarmes* or UNAMIR soldiers who had been posted to the houses of those politicians and when he inquired about their whereabouts, he was informed that they had been disarmed by Presidential Guard soldiers during the attacks and taken to the Presidential Guard camp located in Kimihurura.[1268]

725. The Chamber also recalls the evidence of Witness Des Forges that Ndindiliyimana acted in concert with other moderate officers of the Rwandan Armed Forces to restrain members of the Presidential Guard from committing further atrocities in the immediate aftermath of the killing of President Habyarimana.

726. In view of Ndindiliyimana's efforts to restrain Presidential Guard soldiers from perpetrating further atrocities, considered in concert with the lack of evidence suggesting that *gendarmes* were implicated in the killings of politicians and the considerable evidence indicating that *gendarmes* stationed at politicians' houses were overwhelmed by Presidential Guard soldiers during the attack, the Chamber does not accept the Prosecution's claim that Ndindiliyimana deliberately failed to protect these politicians from being killed in order to further a conspiracy to commit genocide against Tutsi.

727. Furthermore, the Chamber notes that the Indictment alleges that Ndindiliyimana had prior knowledge of the threat that these politicians may be killed. The Prosecution failed to adduce any evidence to support this aspect of the allegation. In any event, this claim by the Prosecution presupposes that the killings were carried out in accordance with a preconceived plan. There is little evidence to support this assumption.

728. That said, the Chamber is satisfied that these killings were organised. The Chamber finds it inconceivable that lower echelon soldiers, acting on their own, would systematically kill a number of leading national politicians without the orders and knowledge of their superiors. The fact that these attacks were led by an officer with the rank of a captain, and also the fact that some of these politicians such Kavaruganda and Rucogoza were abducted from their houses and held at Camp Kimihurura of the Presidential Guard before they were killed, supports the Chamber's finding regarding the organised nature of these killings. The Chamber also recalls the evidence of Luc Marchal who testified that at the time, the killings of these politicians appeared to him to be well-organised operations. The fact that the assassinations were organised, however, does not necessarily entail that they were planned well in advance in the absence of additional evidence to that effect.

729. The Chamber also recalls that paragraph 50 of the Indictment alleges that Ndindiliyimana failed to prevent the moderate politicians from being killed in order to eliminate a potential obstacle to the plan to commit genocide against Tutsi and install a government that was amenable to that plan. The Chamber cannot rule out the possibility that the killings of these politicians were designed to eliminate opposition to the establishment of an interim government composed solely of extremist Hutu politicians in contravention of the Arusha Accords. The Chamber also accepts, based on the evidence of Des Forges, that the

[1268] T. 5 June 2008, pp. 10-11, 62.

establishment of an interim government composed of Hutu politicians implacably opposed to the Arusha Accords contributed to the escalation of the massacres against Tutsi.

730. However, the Chamber recalls its earlier findings regarding the allegations in paragraphs 45 to 47 of the Indictment that Ndindiliyimana had no significant role in the establishment of the interim government composed solely of extremist Hutu politicians and that he consistently supported the implementation of the Arusha Accords both before and after 6 April 1994. In light of these findings, the Chamber is not persuaded that Ndindiliyimana endorsed the killings of these politicians in order to facilitate the establishment of the interim government in contravention of the terms of the Arusha Accords as part of a conspiracy to commit genocide against Tutsi.

731. It follows that the Chamber is not satisfied that the Prosecution has proved beyond reasonable doubt that Ndindiliyimana was implicated in the killings of moderate politicians who supported the implementation of the Arusha Accords as part of a conspiracy to commit genocide against Tutsi. The Chamber therefore dismisses the allegations pleaded in paragraphs 48 to 50 of the Indictment.

4.3.9 *Transfer of Gendarmes to the War Front*

4.3.9.1 Introduction

732. The Indictment alleges that in April 1994, Augustin Ndindiliyimana had Majors Cyriaque Habyarimana and Jabo, who had allegedly refused to be involved with the massacres in Butare and Kibuye, transferred to the frontline.[1269]

4.3.9.2 Evidence

4.3.9.2.1 Prosecution Evidence

Prosecution Witness KJ

733. Witness KJ was a *gendarme* based at Camp Kibuye of the *Gendarmerie* in April 1994.[1270] He testified that a few days after the death of President Habyarimana on 6 April, the *préfet* of Kibuye, Clement Kayishema, arrived at the camp and had discussions with Major Jabo, the commander of the Kibuye squad of the *Gendarmerie*. The witness, who was standing guard at the entrance gate to the camp, testified that he was located close to where Jabo was conversing with the *préfet* and that he overheard their conversation. The witness heard Jabo inform the *préfet* that he intended to offer protection to the people who had fled their houses following the death of the President, provided that they all gathered in stadiums or churches.[1271]

734. Following his discussion with *Préfet* Kayishema, Jabo deployed six *gendarmes* to the Gatwaro Stadium where a large number of people fleeing the violence in Kibuye had sought refuge.[1272] However, those *gendarmes* returned to the camp the following day and claimed

[1269] Indictment, para. 51.
[1270] T. 21 March 2006, pp. 2-3.
[1271] T. 21 March 2006, pp. 14-15.
[1272] T. 21 March 2006, p. 15.

that they had been expelled from the stadium by *Préfet* Kayishema, who intended to replace them with *Interahamwe*.[1273]

735. Witness KJ also testified about a second visit to the camp by *Préfet* Kayishema in April 1994. On this occasion, the *préfet* held discussions with Major Jabo in his office.[1274] Half an hour later, the *préfet* left Jabo's office and appeared to be visibly infuriated.[1275]

736. Shortly thereafter, the witness heard *Préfet* Kayishema speaking loudly about his frustration at Jabo's refusal to allow him to enlist *gendarmes* in the killing of Tutsi whom he accused of being responsible for the death of President Habyarimana.[1276] The witness also heard the *préfet* say that he intended to address his requests to the senior officers of the *Gendarmerie*.[1277]

737. Major Jabo was subsequently transferred from the Kibuye squad to Kigali with some troops under his command.[1278] Witness KJ claimed to have seen a letter from the *Gendarmerie* Chief of Staff effecting Jabo's transfer and appointing Lieutenant Masengesho to be the new commander of the Kibuye squad of the *Gendarmerie*.[1279]

4.3.9.2.2 Defence Evidence

Defence Witness Jean Marie Vianney Nzapfakumunsi

738. Witness Nzapfakumunsi, an officer of the *Gendarmerie*, testified that from 7 April 1994 he was stationed at Camp Kacyiru in Kigali. He served as the S3 officer at the camp starting on 17 April 1994.[1280] The witness testified that Camp Kacyiru came under sustained attack by the RPF a few days after 9 April 1994. He stated that due to a lack of adequate troops within the *Gendarmerie*, the high command of the *Gendarmerie* sought reinforcements from the Army in order to defend the camp. In response to this request, the Army General Staff sent the Huye Battalion to the camp.[1281] However, the deployment of the Battalion at Camp Kacyiru did not last long because it was instructed to attend to an important mission away from the camp.[1282]

739. Following the departure of the Huye Battalion, two *Gendarmerie* companies from Butare and Kibuye were brought to Camp Kacyiru to reinforce the defence of the camp. According to the witness, the company from Kibuye was led by Major Jabo, while the one from Butare was led by Major Habyarabutuma.[1283] The witness testified that his evidence on the purpose behind the deployment of the two companies at Camp Kacyiru is also based on conversations that he had with Jabo and Habyarimana during their assignment at the

[1273] T. 21 March 2006, pp. 15-16.
[1274] T. 21 March 2006, p. 16.
[1275] T. 21 March 2006, p. 17.
[1276] T. 21 March 2006, p. 17.
[1277] T. 21 March 2006, p. 17.
[1278] T. 21 March 2006, pp. 24-25.
[1279] T. 21 March 2006, pp. 24-25.
[1280] T. 18 February 2009, p. 5.
[1281] T. 18 February 2009, p. 16.
[1282] T. 18 February 2009, p. 16.
[1283] The Chamber notes that in paragraph 51 of the Indictment, the Major is named as "Cyriaque Habyarimana", but in the transcripts of Witness Nzapfukumunsi's testimony, he is referred to as Major "Habyarabutuma" of Butare.

camp.[1284] According to Witness Nzapfakumunsi, but for the reinforcements provided by the two companies, Camp Kacyiru would not have withstood the RPF offensive for as long as it did.[1285]

The Accused Ndindiliyimana

740. Ndindiliyimana rejected the accusations levelled against him by the Prosecution that he transferred Majors Jabo and Habyarimana from their respective units because of their opposition to the killings of Tutsi. Ndindiliyimana explained that the two officers were transferred to Camp Kacyiru in Kigali for legitimate military reasons. According to Ndindiliyimana, the attack against Camp Kacyiru in April 1994 provided the backdrop to the deployment of those officers to Camp Kacyiru. Ndindiliyimana testified:

> For the *Gendarmerie*, it was the Kacyiru camp that was most under threat. We have referred to the specialised units and provided the figures regarding the Kacyiru camp. It is only the Kigali detachment reserves that were available to defend that camp, since the others had been dispatched to other areas in the country. So there were about 300 persons remaining to defend that camp. But given the scope of the camp and the defence tactics in place, it required that at least three battalions be used to effectively defend that camp.[1286]

741. Ndindiliyimana stated that given the strategic importance of Camp Kacyiru, the intensity of the attack that the RPF launched against the camp and the insufficient number of *gendarmes* available to him in Kigali to repel the attack, he requested reinforcement from the army in order to defend the camp. A battalion of the army known as the Huye Battalion was subsequently dispatched to assist with the defence of the camp. However, the Huye Battalion soldiers were reassigned away from the camp shortly after their arrival.

742. Ndindiliyimana therefore requested two companies from the Kibuye and Butare *gendarmerie* squads to be dispatched to Camp Kacyiru in order to strengthen the defence of the camp.[1287] Majors Jabo and Habyarimana led those companies during their deployment at the camp. Ndindiliyimana denied that the transfer of Jabo and Habyarimana was prompted by the need to diminish their alleged resistance to the killings of Tutsi civilians in Butare and Kibuye or that their transfer was punishment for taking such stances.[1288]

743. Ndindiliyimana stated that he decided to reinstate Major Jabo in his position in Kibuye in order to address the deteriorating general security in that area.[1289]

744. Ndindiliyimana further testified that the Prosecution's allegation that he transferred Majors Habyarimana and Jabo from their units to Kigali in April 1994 suggests that he was vested with the authority to effect such transfers.[1290] However, as the Chief of Staff of the *Gendarmerie*, he had no authority to transfer a unit commander without the authorisation of the Minister of Defence.[1291] The Defence submits that Ndindiliyimana's lack of such

[1284] T. 18 February 2009, pp. 16-17.
[1285] T. 18 February 2009, pp. 16-17.
[1286] T. 18 June 2008, p. 24.
[1287] T. 18 June 2008, p. 23.
[1288] T. 18 June 2008, p. 23; T. 23 June 2008, pp. 29-30.
[1289] T. 18 June 2008, p. 24.
[1290] T. 18 June 2008, p. 24.
[1291] T. 18 June 2008, p. 23.

authority is evidenced by a letter addressed to Ndindiliyimana during his tenure as Chief of Staff of the *Gendarmerie* from James Gasana, the Minister of Defence up to July 1993.[1292] The letter states that "any important decision that may impact the functioning of the services or commit the department should be approved by the Minister. These include transfers of commanders of operational sectors, camp commanders, or heads of services, as well as any significant redeployment of officers and units."[1293] Gasana is also alleged to have instructed Ndindiliyimana that the transfer of officers between units and sectors could not be effected without his authorisation.[1294]

Defence Witness CBP7/B13

745. Witness CBP7/B13, an officer of the *Gendarmerie* in April 1994, testified that Camp Kacyiru was attacked by RPF forces in April 1994.[1295] According to the witness, the *Gendarmerie* did not have sufficient troops to defend the camp and therefore sought reinforcements from the Army. Subsequently, the Huye Battalion was dispatched to the camp. However, that battalion was then assigned to another mission and therefore had to terminate its deployment at the camp. For this reason, two companies of the *Gendarmerie* from Kibuye and Butare were brought to the camp as reinforcement for the defence of the camp.[1296] The witness testified that Major Jabo, who was the commander of the Kibuye squad, led the company from that squad during its deployment at Camp Kacyiru.[1297]

746. The witness testified that due to ill health, Major Jabo returned to Kibuye shortly after he was deployed to Camp Kacyiru.[1298]

Defence Witness CBP67

747. Witness CBP67, a Sergeant of the *Gendarmerie* based at Camp Kibuye, disputed the allegation that Ndindiliyimana transferred Major Jabo from Kibuye to Camp Kacyiru in Kigali on account of his resistance to the killings of Tutsi in Kibuye. According to the witness, Jabo and a group of *gendarmes* were transferred to Kigali in order to reinforce the defence of Camp Kacyiru on or around 9 or 10 April.[1299] However, Jabo was forced to cut short his assignment at Camp Kacyiru and returned to Kibuye in the month of April 1994 because of ill health.[1300] The *gendarmes* who had accompanied him during his assignment to Kacyiru remained in Camp Kacyiru.[1301]

[1292] T. 18 June 2008, pp. 25-27. The letter is contained in a book written by James Gasana entitled "*Rwanda: from State Party to the Barracks*".
[1293] T. 18 June 2008, pp. 26-27.
[1294] T. 18 June 2008, pp. 26-27.
[1295] T. 7 July 2008, p. 48 (ICS).
[1296] T. 7 July 2008, p. 48 (ICS).
[1297] T. 7 July 2008, p. 48 (ICS).
[1298] T. 7 July 2008, p. 48 (ICS).
[1299] T. 6 February 2008, p. 41.
[1300] T. 6 February 2008, pp. 42-43.
[1301] T. 6 February 2008, pp. 42-43.

4.3.9.3 Deliberations

748. The Chamber notes that there is no disagreement among the parties in this trial that Majors Habyarimana and Jabo were transferred from their units to Kigali. Ndindiliyimana did not dispute the fact that sometime in April 1994, at his request, Majors Jabo and Habyarimana, accompanied by some troops from the Kibuye and Butare squads, were transferred to Camp Kacyiru in Kigali in order to reinforce the defence of the camp from RPF attack. However, the parties disagree on the motives behind the transfer of these officers. The Prosecution claims that Ndindiliyimana transferred these officers to Kigali because of their resistance to the killings of Tutsi in their respective areas. On the other hand, the Defence claims that these officers were transferred for valid military reasons unrelated to the killings of Tutsi in Butare and Kibuye.

749. At the outset, the Chamber notes that the Prosecution did not adduce any evidence suggesting that Major Habyarimana was transferred from Butare to Kigali on account of his resistance to the killings of Tutsi in Butare. Therefore, the Chamber will not consider this allegation.

750. With respect to the transfer of Major Jabo, the Chamber notes that the Prosecution relies solely on the evidence of Witness KJ, a *gendarme* based at Camp Kibuye during the period relevant to the Indictment. He testified that Jabo declined to grant the request by *Préfet* Kayishema to allow *gendarmes* to take part in the killings of Tutsi in Kibuye whom he considered to be responsible for the death of President Habyarimana. The witness further testified that he heard Kayishema say after a strained meeting with Jabo that he intended to request senior officers of the *Gendarmerie* to allow him to enlist *gendarmes* in the killings of Tutsi. Witness KJ claimed that shortly after that meeting, Jabo was transferred from Kibuye to Camp Kacyiru in Kigali. The witness also claimed to have seen the telegram emanating from Ndindiliyimana instructing Jabo to relocate with some troops to Camp Kacyiru.

751. Having carefully reviewed the testimony of Witness KJ in light of the evidence of a number of Defence witnesses on the motives behind Major Jabo's transfer to Kacyiru, the Chamber is not satisfied that Witness KJ's uncorroborated evidence is sufficient to support a finding that Jabo's transfer was due to his differences with the *préfet* regarding the involvement of *gendarmes* in the killing of Tutsi in Kibuye. The fact that Jabo was transferred shortly after a strained meeting with Kayishema, the *préfet* of Kibuye, is not sufficient in itself to conclude that his transfer was linked to his refusal to grant Kayishema's request to use *gendarmes* in the killings of Tutsi in Kibuye.

752. In the Chamber's view, the fact that Witness KJ claimed to have seen a telegram emanating from Ndindiliyimana ordering the transfer of Major Jabo does not significantly bolster Witness KJ's evidence. His evidence lacks any suggestion that the telegram contained information indicating that the transfer was linked to Jabo's stance towards the killings of Tutsi in Kibuye. The claim that Jabo's transfer was linked to the killings of Tutsi in Kibuye is at best speculation incapable of satisfying the standards of proof in a criminal trial.

753. Furthermore, the Chamber notes that its misgivings about the reliability of Witness KJ's evidence are heightened in light of the compelling and concordant evidence of Defence Witnesses Nzapfakumunsi, B13 and CBP-67, all former members of the *Gendarmerie,* who testified that the transfer of Major Jabo was prompted by legitimate military objectives far removed from the motives suggested in paragraph 51 of the Indictment. Their evidence

indicates that Jabo was transferred to Camp Kacyiru along with a company from the Kibuye *Gendarmerie* squad in order to reinforce the depleted troops fighting to defend Camp Kacyiru from RPF attack. The evidence of these witnesses further suggests that Jabo's deployment at Camp Kacyiru was terminated shortly after his arrival at the camp and he returned to Kibuye.

754. The Chamber notes that the fact that Major Jabo was requested to move to Camp Kacyiru in Kigali with some troops from the Kibuye and Butare squads lends support to the claim by the Defence that his transfer was prompted by military objectives as opposed to being an attempt to punish him for his stance regarding the killings of Tutsi in Kibuye. Having heard this evidence, the Chamber does not accept the Prosecution's allegation that Ndindiliyimana transferred Jabo to Kigali on account of his opposition to the killings of Tutsi civilians in Kibuye based on the limited and uncorroborated evidence of Witness KJ. The Chamber therefore finds that the Prosecution has failed to prove this allegation beyond reasonable doubt.

4.3.10 *Issuance of Laissez-passers to Interahamwe by Ndindiliyimana*

4.3.10.1 Introduction

755. The Indictment alleges that from April to June 1994, Augustin Ndindiliyimana issued many *laissez-passers* to leaders of the *Interahamwe* to enable them to scour the country and coordinate the massacres of the Tutsi population.[1302]

4.3.10.2 Evidence

4.3.10.2.1 Prosecution Evidence

Prosecution Witness KJ

756. Witness KJ, a *gendarme* based at Camp Kibuye,[1303] testified that he saw two telegram messages emanating from the *Gendarmerie* Chief of Staff in April 1994. The first message directed members of all *gendarmerie* units to cooperate with members of the army and civilians to fight against the enemy.[1304] The second message directed the Chief of Staff of the Army to provide civilians bearing written authorisation from the *Gendarmerie* Chief of Staff with necessary materials to facilitate the fight against the enemy.[1305]

757. Witness KJ also testified that a number of *Interahamwe* leaders arrived at the Kibuye camp and were provided with various supplies. The witness claimed to have seen Ntirugiribambe, the head of the *Interahamwe* in Kibuye, being provided with food, tents, ammunition and firearms at the camp.[1306] Ntirugiribambe was sometimes accompanied by Robert Kajuga, the national President of the *Interahamwe,* during his visits to the camp. The witness also recalled that he saw Mika Muhimana, a *conseiller de secteur* for Gishyita *secteur,* arrive at the camp on several occasions and receive weapons, ammunition and food in support of the massacre operations committed by the *Interahamwe* in Kibuye

[1302] Indictment, para. 52.
[1303] T. 21 March 2006, p, 2.
[1304] T. 21 March 2006, p. 31.
[1305] T. 21 March 2006, p. 31.
[1306] T. 21 March 2006, p. 32.

préfecture.[1307] The witness testified that during such visits, Ntirugiribambe and Muhimana carried *laissez-passers* signed by Ndindiliyimana authorising them to be provided with various supplies by *gendarmes*.[1308]

4.3.10.2.2 Defence Evidence

The Accused Ndindiliyimana

758. Ndindiliyimana denied that he issued *laissez-passers* to leaders of the *Interahamwe* so that they could be provided with materials in support of the massacres against Tutsi civilians.[1309]

Defence Witness CBP67

759. Witness CBP67, a Sergeant of the *Gendarmerie* based at Camp Kibuye, disputed the claims made by Prosecution Witness KJ that he saw telegrams emanating from Ndindiliyimana urging *gendarmes* to cooperate with the *Interahamwe* or allowing the *Interahamwe* to be provided with military and general provisions. According to the witness, given his senior role at Camp Kibuye after 6 April, he would have seen such telegrams had they arrived there.[1310] The witness testified that he was always at the camp except for one week beginning from 9 April; therefore, had such telegrams been sent to the camp, he would have definitely known about them.[1311] Furthermore, had such messages arrived in his absence, he would also have been notified upon his return.[1312] The witness also testified that in the event that Ndindiliyimana had sent such telegrams to the commander of the camp, it is highly unlikely that the commander would have posted them on the board or disclosed the source of the message.[1313]

760. The witness also denied that *gendarmes* at Camp Kibuye provided a number of leaders of the *Interahamwe* with military and general provisions.[1314]

Defence Witness Claudien Ndagijimana

761. Witness Ndagijimana, a member of the *Gendarmerie*, testified that he was posted to the Kibuye squad of the *Gendarmerie* sometime in May 1994. During his time at Kibuye, the witness was supervised by Major Jabo, the commander of the Kibuye squad. The witness recalled that at one point during his stay at Kibuye, the *préfet* of Kibuye, Clement Kayishema, arrived at the camp and met with Major Jabo. After their meeting, the witness observed that Jabo appeared to be displeased about the demands that the *préfet* had made of him.[1315] According to the witness, Jabo told him that *Préfet* Kayishema had "asked for

[1307] T. 21 March 2006, p. 32.
[1308] T. 21 March 2006, p. 32.
[1309] T. 18 June 2008, p. 22.
[1310] T. 6 February 2008, p. 40.
[1311] T. 6 February 2008, p. 40.
[1312] T. 6 February 2008, p. 40.
[1313] T. 6 February 2008, p. 40.
[1314] T. 6 February 2008, p. 40.
[1315] T. 5 June 2008, pp. 20-21.

weapons, grenades to go and attack in Bisesero." The witness stated, "He told me, 'do you have those weapons?' He said 'what weapons, what troops since you are alone here?'"[1316]

4.3.10.3 Deliberations

762. The Chamber recalls that Witness KJ was the sole Prosecution witness to testify about the issuance of *laissez-passers* to *Interahamwe* leaders by Ndindiliyimana. His testimony was limited to activities at Camp Kibuye of the *Gendarmerie*. The Chamber notes that the Prosecution presented no evidence that *Interahamwe* bearing *laissez-passers* issued by Ndindiliyimana were observed in other parts of Rwanda.

763. The Chamber also notes that none of the *laissez-passers* that Ndindiliyimana is alleged to have issued to leaders of the *Interahamwe* were tendered into evidence during this trial. The Chamber will therefore treat this allegation with caution.

764. Witness KJ testified that on the instructions of Ndindiliyimana, leaders of the *Interahamwe* were provided with material such as food and weapons at Camp Kibuye of the *Gendarmerie*. These materials were then used to support the massacres against Tutsi perpetrated by *Interahamwe* in Kibuye *préfecture*. The Chamber notes that Witness KJ's claim is predicated on two alleged facts. First, he testified that while at Camp Kibuye of the *Gendarmerie* in April 1994, he saw two telegram messages from the *Gendarmerie* Chief of Staff directing members of all *Gendarmerie* units to cooperate with members of the Army and civilians to fight against the enemy. The second message directed the Army Chief of Staff to supply civilians bearing authorisation from him with materials in order to facilitate the fight against the enemy.[1317] Second, Witness KJ testified that he observed *Interahamwe* leaders such as Ntirugiribambe, the head of the *Interahamwe* in Kibuye, at times accompanied by Robert Kajuga, the national President of the *Interahamwe,* and Mika Muhimana, a *conseiller* of Gishyita *secteur,* being provided with weapons, ammunition, tents and food at Camp Kibuye. According to the witness, these *Interahamwe* leaders had *laissez-passers* issued by Ndindiliyimana during their visits to the camp.[1318]

765. Even if the Chamber were to accept Witness KJ's claim that he saw telegrams purportedly emanating from Ndindiliyimana in April 1994, the Chamber is not satisfied that Witness KJ's generic description of the messages contained in those telegrams is sufficient to establish that Ndindiliyimana encouraged his subordinates to collude with *Interahamwe* to commit killings against Tutsi. The witness's evidence on the telegrams is open to other plausible readings that are not consistent with the meaning that he sought to impart to them. The Chamber is therefore not persuaded that this aspect of his evidence supports the allegation described in paragraph 52 of the Indictment.

766. The Chamber has also considered Witness KJ's testimony that a number of *Interahamwe* leaders, bearing *laissez-passers* signed by Ndindiliyimana, were provided with various supplies at Camp Kibuye of the *Gendarmerie* in support of the massacres that they perpetrated against Tutsi.[1319]

[1316] T. 5 June 2008, pp. 20-21.
[1317] T. 21 March 2006, p. 31.
[1318] T. 21 March 2006, p. 32.
[1319] T. 21 March 2006, p. 32.

767. The Prosecution's failure to tender the *laissez-passers* into evidence, considered together with the contravening evidence of Defence Witnesses CBP 67 and Claudien Ndagijimana, both of whom were based at Camp Kibuye, as well as Defence Exhibit 488, leave the Chamber reluctant to accept Witness KJ's evidence regarding the provision of supplies to *Interahamwe* leaders at Camp Kibuye on the instructions of Ndindiliyimana. In reaching this finding, the Chamber has accorded particular weight to the evidence of Claudien Ndagijimana and Defence Exhibit 488. This exhibit is a telegram sent by *Préfet* Kayishema to the Minister of the Interior in June 1994 requesting him to direct the commander of the Kibuye *gendarmerie* squad to provide support to an operation that he intended to carry out in Bisesero hills. Witness Ndagijimana testified that in May 1994, Major Jabo refused to grant a request by *Préfet* Kayishema for material assistance to support a campaign against Tutsi in Bisesero. Jabo's refusal to grant such requests provides the backdrop to Kayishema's telegram to the Minister of the Interior requesting him to direct the commander of Kibuye *gendarmerie* squad to provide material support for a campaign against Tutsi at Bisesero hills. In light of this evidence, the Chamber is not persuaded that *Interahamwe* leaders were provided with supplies at Camp Kibuye at the behest of Ndindiliyimana. Had that been the case, it is unlikely that Kayishema would have requested the intervention of the Minister of the Interior as evidenced by this exhibit.

768. The Chamber's misgivings about Witness KJ's uncorroborated evidence are further compounded by Witness KJ's own evidence that he travelled with Major Jabo, the commander of the Kibuye squad of the *Gendarmerie*, to Kigali in April 1994 in search of supplies for *gendarmes* in Kibuye. In Kigali, they stopped at the General Staff of the *Gendarmerie* where Jabo met with Ndindiliyimana and requested supplies. According to the witness, Ndindiliyimana informed Jabo that he had no authority to grant his request for supplies without the approval of the Minister of Defence. Jabo and Witness KJ then went to the Ministry of Defence, where his request was granted. Jabo subsequently returned to the *Gendarmerie* Headquarters and was provided with the requested supplies. In light of this evidence, the Chamber has doubts that Ndindiliyimana, who could not grant requests for supplies from his own officers without the approval of the Minister of Defence, would have issued blanket permissions to *Interahamwe* leaders allowing them to receive military and general supplies from *gendarmes*.

769. For these reasons, the Chamber is not satisfied that Witness KJ's uncorroborated evidence is sufficient to support the allegation described in paragraph 52 of the Indictment. The Prosecution has therefore failed to prove this allegation beyond reasonable doubt.

4.3.11 *Ndindiliyimana's Failure to Restore Public Order*

4.3.11.1 Introduction

770. The Indictment alleges that from April to June 1994, Ndindiliyimana received daily situation reports (SITREPs) from his troops, notably during meetings held at the *Gendarmerie* Headquarters at Camp Kacyiru. It is claimed that these reports indicated the scale and scope of the massacres being perpetrated against the civilian population. The Indictment further alleges that Ndindiliyimana went to various *préfectures* to assess the situation. Although he had at his disposal several *Gendarmerie* units not involved in combat to defend Rwandan territory, Ndindiliyimana, who as Chief of Staff of the *Gendarmerie* was responsible under law for maintaining public order and protecting people and their property,

took no significant action to quell the upheaval or to seek out perpetrators.[1320] According to the Prosecution, Ndindiliyimana's inaction was evidence of his participation in a conspiracy to commit genocide.[1321]

4.3.11.2 Evidence

4.3.11.2.1 Prosecution Evidence

Prosecution Witness ANC

771. Witness ANC, a *gendarme* working with the security battalion of the *Gendarmerie* in Kigali in April 1994, testified that he was assigned to join Ndindiliyimana's security detail from April until June 1994. The witness testified that at times he was deployed as a guard at Ndindiliyimana's residence and that he also travelled with Ndindiliyimana as part of his escort.[1322]

772. Witness ANC testified that on or around 15 April 1994 he escorted Ndindiliyimana to Murambi, Gitarama, along with a number of other *gendarmes* and a driver.[1323] Along the way, the convoy came across a group of refugees who were climbing the Musambira hill towards Gitarama. The refugees said that they were fleeing from *Interahamwe* attacks.[1324] The convoy subsequently reached a roadblock at the junction of the road that led to the seat of the government. The roadblock was manned by *Interahamwe* who were armed with guns, spears and machetes. Witness ANC testified:

> The *Interahamwe* were striking people and Ndindiliyimana came out of the car and told the *Interahamwe* not to kill people at that location. He told them to drive away the refugees to the opposite hill and that is where you are going to kill them. And he added that he didn't want anybody to be killed at that roadblock.[1325]

773. The convoy continued along the road leading to the seat of the government for approximately 100 metres, where they came across a checkpoint manned by *gendarmes*.[1326] According to the witness, Ndindiliyimana told the *gendarmes* "that those *Interahamwe* shouldn't kill anybody at that roadblock. So [Ndindiliyimana] told them to tell the *Interahamwe* to go and kill the people who were in the opposite hills."[1327] After passing the *gendarme* checkpoint, they went to the Government Headquarters on Murambi Hill in Gitarama, where they stayed for around two days.[1328]

774. Witness ANC testified about another occasion in April when he escorted Ndindiliyimana to the Government Headquarters in Gitarama, where Ndindiliyimana had a short meeting with the then Prime Minister Kambanda. The witness was standing three metres away from the two men in the courtyard during their meeting. Kambanda addressed

[1320] Indictment, para. 53.
[1321] Indictment, paras. 22-25.
[1322] T. 29 May 2006, pp. 45-46.
[1323] T. 29 May 2006, p. 49.
[1324] T. 29 May 2006, p. 49.
[1325] T. 29 May 2006, p. 50.
[1326] T. 29 May 2006, pp. 51, 53.
[1327] T. 29 May 2006, p. 52.
[1328] T. 29 May 2006, p. 54.

Ndindiliyimana in a severe manner, saying that he was unhappy because the *gendarmes* under Ndindiliyimana were not doing anything.[1329]

775. The convoy then travelled from Gitarama to the *gendarme* camp at Nyanza. On the way, the convoy stopped at a roadblock manned by *Interahamwe* in Ruhango town. The *Interahamwe* told Ndindiliyimana that they had "started work", that they had arrested a number of *Inyenzi* and that they were first going to interrogate them before killing them. In reply, Ndindiliyimana told them to "carry on working".[1330] When the convoy reached Ngakegere neighbourhood in Nyanza, they saw *Interahamwe* destroying houses and driving people away, but Ndindiliyimana did not take any action to stop them.[1331] Ndindiliyimana asked Warrant Officer Hategekimana, who was leading a *Gendarmerie* patrol that was passing by, to "update" him on the situation. Hategekimana stated in Kinyarwanda, "General, here we have started working, there is no problem".[1332] According to the witness, everybody at the time knew that the word "*Kukora*" used by Hategekimana meant "killing Tutsi".[1333]

776. Subsequently, the convoy travelled to the *Gendarmerie* camp in Nyanza, before driving towards Nyaruhengeri. On the way, they stopped at Kansi where there was a roadblock manned by *Interahamwe*. A number of *gendarmes* were stationed nearby.[1334] The *Interahamwe* told Ndindiliyimana that there were refugees both inside and outside Kansi Parish. Ndindiliyimana informed the *Interahamwe* that he did not want refugees to be present there.[1335] When the convoy passed Kansi Parish the following day, the witness saw that the sides of the roads were littered with corpses.[1336]

4.3.11.2.2 Defence Evidence

The Accused Ndindiliyimana

777. Ndindiliyimana testified that in the early days of April, he received some information regarding the security situation in *préfectures* around Rwanda, but that information was often contradictory and it was also infrequent due to the poor lines of communication.[1337] In cross-examination, Ndindiliyimana was confronted with a transcript of his testimony in the *Bagambiki* case, where he stated:

> In my capacity as Chief of Staff with a full department of employees, we would regularly receive from all the *gendarmerie* units ... information on the situation that prevailed in the *préfecture* where we had our units. ...The reports were ... made on a regular basis. There is what we call information reports that are given everyday and we would receive them at the General Staff. ... It is the commander of the *gendarmerie* unit that would send the report to us.[1338]

[1329] T. 29 May 2006, p. 57.
[1330] T. 29 May 2006, p. 57.
[1331] T. 29 May 2006, p. 58.
[1332] T. 29 May 2006, p. 58.
[1333] T. 29 May 2006, p. 59.
[1334] T. 29 May 2006, p. 60.
[1335] T. 29 May 2006, p. 60.
[1336] T. 30 May 2006, p. 1.
[1337] T. 17 June 2008, p. 65.
[1338] T. 23 June 2008, p. 9.

Ndindiliyimana also confirmed before the *Bagambiki* Trial Chamber that he continued to receive such reports after the 6 April.[1339]

778. Before this Chamber, in response to the evidence cited above, Ndindiliyimana stated:

> The situation worsened as the war evolved. The means I am referring to became scarce once our Alcatel telecommunications systems became faulty and the resources were no longer sufficient, when even our facilities at general staff were destroyed at a given point in time. But it would be dishonest to say that we did not have any intelligence reports from our units at the level of the command of the unit.[1340]

779. Regarding his visits to other *préfectures*, Ndindiliyimana testified that on 15 April 1994 he travelled to Butare and met with the unit commander Habyarabatuma, who informed him that the *gendarmes* were having trouble intervening because they did not have enough resources.[1341] Ndindiliyimana further stated during cross-examination that in early to mid-May, he visited Kibuye[1342] and Gitarama[1343] *préfectures* twice and Butare[1344] and Cyangugu[1345] *préfectures* once.

780. In response to the information that he received, in April 1994 Ndindiliyimana set up a small team to conduct "investigations into the massacres, into the killings, and to all acts of violence, criminal acts and so forth".[1346] Ndindiliyimana testified, "[W]e set up a group which moved about, visiting units to see what was happening and then report to the General Staff ... and the Chief of Staff would also visit troops on the ground and make his own assessment."[1347] Ndindiliyimana also addressed the nation in a radio interview and called on the population "to abstain from killing members of the population, because this might encourage the enemy."[1348] In addition, Ndindiliyimana protected a number of Tutsi at his own home, including Tutsi women, clergy and 20 to 30 orphans.[1349]

781. Throughout this period, Ndindiliyimana maintained contact with General Dallaire and asked for his assistance to defend the *Hôtel des Milles Collines* from attack. Ndindiliyimana testified, "Still under relations with UNAMIR and General Dallaire, I can say we had a number of meetings to try to find a solution to the issue of the members of the population who were dying like flies because we desired to find a way to peace."[1350]

4.3.11.3 Deliberations

782. Paragraph 53 of the Indictment contains three distinct, but related, allegations. The first is that Ndindiliyimana received daily SITREPs informing him of the scale and scope of the massacres that were taking place around Rwanda. The second is that he travelled to

[1339] T. 23 June 2008, p. 9.
[1340] T. 23 June 2008, p. 9.
[1341] T. 17 June 2008, p. 66.
[1342] T. 18 June 2008, pp. 50, 59.
[1343] T. 18 June 2008, pp. 53, 59.
[1344] T. 18 June 2008, p. 51.
[1345] T. 18 June 2007, p. 56.
[1346] T. 17 June 2008, p. 66.
[1347] T. 17 June 2008, p. 66.
[1348] T. 18 June 2008, p. 15.
[1349] T. 18 June 2008, pp. 43-44.
[1350] T. 17 June 2008, p. 69.

various *préfectures* in order to assess the situation. The third is that, despite the knowledge of the massacres he gained through the SITREPs and visiting various *préfectures*, Ndindiliyimana took no significant action to quell the upheaval or to seek out perpetrators. The Prosecution submits that Ndindiliyimana's indifference to the killings is indicative of his participation in a conspiracy to commit genocide.[1351]

783. Based on the evidence outlined above, the Chamber is satisfied that Ndindiliyimana received daily SITREPs from his troops and that he visited various *préfectures* to assess the situation.[1352] The Chamber notes that the Prosecution presented no evidence as to the content of the SITREPs, particularly regarding the identity of the perpetrators and the locations of the killings. That said, the Chamber recalls Ndindiliyimana's own admission that in April 1994 he received regular reports containing "information on the situation that prevailed in the *préfecture* where we had our units".[1353] Ndindiliyimana further testified that in response to the information that he received, he set up a team to conduct "investigations into the massacres, into the killings, and to all acts of violence, criminal acts and so forth".[1354] Ndindiliyimana also addressed the nation in a radio interview on 22 April, calling on the population "to abstain from killing members of the population, because this might encourage the enemy."[1355] In light of this evidence, the Chamber is satisfied that Ndindiliyimana was aware of the scale and scope of the killings that were taking place in Rwanda at that time.

784. In considering the allegation that Ndindiliyimana took no significant action to restore public order, the Chamber has carefully reviewed the evidence of Prosecution Witnesses ANC, ANA and ANW. The Chamber notes that the evidence of Witnesses ANA and ANW suggests that Ndindiliyimana encouraged *Interahamwe* to commit crimes against members of the Tutsi ethnic group. Their evidence is set out in detail in the Judgement in relation to the allegation in paragraph 52 of the Indictment. In the Chamber's view, the evidence of Witnesses ANA and ANW lacks credibility and provides no support for the allegation in paragraph 53.

785. It is clear from the written submissions and oral arguments of the Prosecution that it relies to a considerable extent on the evidence provided by Witness ANC to prove the allegation in paragraph 53 of the Indictment. As Witness ANC is the key witness in relation to this allegation, the Chamber will set out in detail its assessment of the credibility of his testimony.

786. The Chamber recalls that Prosecution Witness ANC testified extensively about his role as part of Ndindiliyimana's personal escort and about Ndindiliyimana's whereabouts and actions from 7 April to mid-June 1994. In particular, Witness ANC testified about certain occasions when Ndindiliyimana travelled to other *préfectures* and ignored or even encouraged the killing of Tutsi civilians. Having carefully weighed his evidence, the Chamber finds that Witness ANC's testimony lacks credibility for the reasons set out below.

787. First, the Chamber notes that Witness ANC had difficulty recalling dates. The only specific date mentioned by Witness ANC was 15 April 1994, when he testified to having

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[1351] Indictment, paras. 22-25.
[1352] T. 23 June 2008, p. 9; T. 29 May 2006, pp. 49-60; T. 30 May 2006, p. 1.
[1353] T. 23 June 2008, p. 9.
[1354] T. 17 June 2008, p. 66.
[1355] T. 18 June 2008, p. 15.

escorted Ndindiliyimana and Karemera to the MRND Headquarters in Kimihurura.[1356] The Chamber accepts that given the considerable time that had elapsed between the events and Witness ANC's testimony, it is unreasonable to expect him to recall dates with precision. However, in this instance, it is concerning that he failed to recall any specific dates of events allegedly involving Ndindiliyimana. The Chamber further observes that despite his inability to recall any dates, the witness was able to recall specific quotes from Ndindiliyimana inciting killing at various roadblocks, the exact locations of roadblocks and other details.

788. Witness ANC was also unable to provide crucial details of his work as a member of Ndindiliyimana's escort. The Chamber recalls that the witness was asked to identify his immediate supervisor, a non-commissioned officer who led the *gendarmes* in Ndindiliyimana's escort. Quite implausibly, the witness claimed not to know his immediate supervisor.[1357] Furthermore, Witness ANC appeared vague when responding to questions regarding the operational details of his work as a member of Ndindiliyimana's escort; for instance, he did not know the number of *gendarmes* who were part of Ndindiliyimana's escort.[1358] Witness ANC also testified that he did not know the ethnic origins of other members of Ndindiliyimana's escort, stating, "I never asked anyone to tell me what their ethnic origins were."[1359] The fact that there were a noticeable number of Tutsi in Ndindiliyimana's escort is evidenced by a letter from Karemera to Ndindiliyimana dated 26 April 1994, in which Karemera states, "It would appear you have chosen a Tutsi officer as secretary and that your personal escort is dominated by Tutsis."[1360] Furthermore, Witness ANC repeatedly stated that he did not recall knowing or being around several people who were frequently in the company of Ndindiliyimana and his escort, including Ndindiliyimana's personal secretary and a house assistant who worked at Ndindiliyimana's home.[1361] The fact that the witness had no knowledge of these details leaves the Chamber with considerable doubts about the veracity of his claim that he was a member of Ndindiliyimana's escort from April to June 1994.

789. The credibility of Witness ANC's claim is further diminished by his inability to recall a number of high profile events that would almost certainly have been known by anyone in Ndindiliyimana's escort. In particular, Witness ANC testified that he was not aware of the events of the evening of 7 April 1994, when Ndindiliyimana loaned "members of" his personal escort to General Dallaire to escort him from CHK hospital, where Ndindiliyimana and Dallaire had discovered the slain bodies of the Belgian soldiers, to the UNAMIR Headquarters at Amahoro Stadium.[1362] The escort was ambushed on the way to Amahoro Stadium, and subsequently spent the night away from Ndindiliyimana's residence due to fears for their safety.[1363] The fact that this incident occurred is established beyond reasonable doubt by the evidence of Dallaire and Ndindiliyimana. The Chamber finds it implausible that the witness would not have known of this incident had he been a member of Ndindiliyimana's escort.

[1356] T. 29 May 2006, p. 46.
[1357] T. 30 May 2006, p. 52; T. 31 May 2006, pp. 12-13.
[1358] T. 30 May 2006, p. 49.
[1359] T. 30 May 2006, p. 43.
[1360] T. 30 May 2006, p. 47.
[1361] T. 30 May 2006, pp. 31, 46-48.
[1362] T. 30 May 2006, p. 61.
[1363] T. 30 May 2006, pp. 61-63.

790. Witness ANC was also unable to give informative answers when pressed for details regarding Ndindiliyimana's important meetings during the period that he claimed to have served as a member of his escort.[1364] Moreover, although Witness ANC claimed to have escorted Ndindiliyimana during his trips to Gitarama, he could not recall where Ndindiliyimana spent his nights while in Gitarama. The Chamber heard credible evidence from *hôtelier* Antoine Nemeyabahizi of *Hôtel Tourisme* in Gitarama, who testified that not only did Ndindiliyimana often stay at *Hôtel Tourisme*, but members of his escort also stayed at the hotel and Ndindiliyimana left some of those *gendarmes* to protect Tutsi civilians who were hidden in the hotel.[1365] This evidence was confirmed by other members of Ndindiliyimana's escort such as Witness CBL104.[1366] The Chamber finds it inconceivable that Witness ANC, who purported to be a member of Ndindiliyimana's escort at the time, would have failed to know where Ndindiliyimana lodged while in Gitarama.

791. The credibility of Witness ANC is further impaired by his claim, refuted by documentary evidence tendered by the Defence, regarding Ndindiliyimana's itinerary as he attempted to leave Rwanda for his new post as the Ambassador to Germany. Witness ANC testified that he escorted Ndindiliyimana out of Rwanda from Kigali to Goma, in the former Zaire, sometime in mid-June 1994.[1367] However, extracts of Ndindiliyimana's passport show that he first tried to enter Burundi on 17 June 1994 and that he was only subsequently compelled to flee via Zaire, some days later.[1368] In the Chamber's view, had Witness ANC escorted Ndindiliyimana throughout the month of June 1994, he would have known about Ndindiliyimana's attempt to enter Burundi. His failure to recall this incident further vitiates the credibility of his testimony and his claim that he served as a member of Ndindiliyimana's escort from April to June 1994.

792. The Chamber's doubts about the reliability of Witness ANC's testimony are amplified by the fact that he failed to identify the location of Ndindiliyimana's house on a map of his neighbourhood in Kigali,[1369] while simultaneously maintaining that he himself resided there on-and-off for nearly three months.[1370] While it is possible to forget such detail over the course of twelve years, the Chamber considers that Witness ANC's failure to locate Ndindiliyimana's house, considered in conjunction with the other noted limitations of his evidence, casts doubts on the credibility of his evidence.

793. The Chamber also considers Witness ANC's testimony regarding his initial contact with ICTR investigators to be problematic. The Chamber finds it difficult to accept that the witness would, without any mediation, have directly approached the Public Prosecutor of Rwanda, Martin Ngoga, in order to arrange for him to testify before the Tribunal.[1371]

794. A careful assessment of Witness ANC's evidence leads the Chamber to conclude that his evidence was based on selective recollection and was motivated by a desire to incriminate Ndindiliyimana. The Chamber notes that the witness professed not to have known of any detail that may exculpate Ndindiliyimana and that he vividly recalled many details that may

[1364] T. 30 May 2006, p. 30.
[1365] T. 22 January 2008, p. 41.
[1366] T. 4 June 2008, p. 12.
[1367] T. 30 May 2006, pp. 40-42; T. 31 May 2006, pp. 25-26.
[1368] T. 31 May 2006, pp. 26-27; Defence Exhibit 121.
[1369] Defence Exhibit 119.
[1370] T. 30 May 2006, pp. 55-58.
[1371] T. 31 May 2006, pp. 27-34.

incriminate him. This tendency is observable from his evidence regarding the presence of Tutsi orphans at Ndindiliyimana's residence. The witness conceded that at some point during his stay at Ndindiliyimana's residence, he did observe the presence of those orphans. However, the witness hastened to add that it was not Ndindiliyimana who was responsible for protecting the orphans, but rather other *gendarmes* assigned to Ndindiliyimana's residence.[1372] At certain points, Witness ANC even insinuated, rather implausibly, that he himself was responsible for rescuing the orphans.

795. The Chamber finds it difficult to accept that lower echelon *gendarmes* such as the witness would have brought a number of Tutsi orphans to Ndindiliyimana's residence without his approval. Witness ANC's attempt to distance Ndindiliyimana from any role in the protection of those orphans is implausible and suggests the witness's desire to incriminate Ndindiliyimana rather than provide a truthful account of the events underpinning the allegations against him. The witness's incriminatory attitude towards Ndindiliyimana is also suggested by his answer to a question by Defence Counsel as to why he did not allude to the presence of those orphans at Ndindiliyimana's residence during his examination-in-chief. The witness responded that he "had come to testify against [Ndindiliyimana], and not to talk about him in a positive light."[1373] This statement, coupled with Witness ANC's questionable explanation of how orphans came to be protected at Ndindiliyimana's residence, leaves the Chamber with considerable misgivings about the impartiality of Witness ANC's testimony.

796. For the reasons outlined above, the Chamber finds that the cumulative weight of the problems in Witness ANC's evidence severely impairs its credibility. The Chamber will therefore disregard the allegations that Witness ANC levelled against Ndindiliyimana.

797. The rejection of the testimony of Witness ANC leaves the Chamber with little evidence to substantiate the allegation in paragraph 53 of the Indictment. In the view of the Chamber, this evidence is not sufficient to prove the allegation beyond reasonable doubt. In particular, the Chamber is not satisfied that Ndindiliyimana's alleged indifference is in any way indicative of his participation in a conspiracy to commit genocide against Tutsi. The evidence in this case is open to other reasonable inferences that are inconsistent with a finding that Ndindiliyimana was party to any such conspiracy.

798. Furthermore, the Chamber notes the Defence submission that "Ndindiliyimana did the best he could with the resources available to him to restore peace after the massacres began".[1374] In this regard, the Chamber recalls that there is a significant body of evidence suggesting that Ndindiliyimana did in fact take measures to stop the killings using the resources that were available to him at the time. This evidence is set out in detail in the sentencing section of the Judgement. The evidence of Ndindiliyimana's efforts to stop the killings raises further doubts about Ndindiliyimana's participation in a conspiracy to commit genocide.

799. It follows that the Prosecution has not proved this allegation beyond reasonable doubt.

[1372] T. 30 May 2006, pp. 65-66; T. 31 May 2006, p. 34.
[1373] T. 31 May 2006, p. 34.
[1374] Ndindiliyimana Closing Brief, paras. 29, 133-163.

4.3.12 *Bizimungu's Encouragement of Ruhengeri Interahamwe*

4.3.12.1 Bizimungu's Comments to the *Conseiller* of Mukamira *Secteur*

4.3.12.1.1 Introduction

800. The Indictment alleges that on 7 April 1994 in Ruhengeri, Augustin Bizimungu congratulated a *conseiller* of Mukamira *secteur* for successfully tracking down Tutsi and encouraged him to continue his work in "exterminating the small cockroaches".[1375]

4.3.12.1.2 Evidence

Prosecution Witness AOE

801. Witness AOE testified that he attended a meeting at trader Rukabu's house in Mukamira *secteur* at approximately 9.00 a.m. on 7 April 1994.[1376] At the meeting, the witness recalled Bizimungu making a speech stating, "Habyarimana's plane was brought down by accomplices, so you should know when you are farming and cultivating in a field where the plant known as *igisura* is growing, the farmer should uproot that plant so that there are no more seeds off that plant."[1377]

4.3.12.1.3 Deliberations

802. Having closely examined the Prosecution evidence, the Chamber can only find the evidence of Witness AOE who attended a meeting on 7 April 1994. The Chamber notes that the Pre-Trial Brief stated that Witness IZ would testify as to a meeting on 7 April, yet this witness was never called by the Prosecution.[1378]

803. The Chamber recalls its decision at the beginning of Witness AOE's testimony that his evidence in relation to 7 April would go only to Bizimungu's *mens rea*.[1379] The Chamber therefore rejects the evidence of Witness AOE in regard to the allegation in paragraph 54 of the Indictment.

804. In any event, the Chamber notes that the evidence of Witness AOE would fail to sustain a conviction under paragraph 54. First, the witness failed to recall the *conseiller* of Mukamira being present as stated in the Indictment. Second, the content of the speech allegedly given by Bizimungu, as recalled by Witness AOE is fundamentally different from that of the speech ascribed to Bizimungu in the Indictment.

805. The Prosecution has therefore failed to prove this allegation beyond reasonable doubt.

[1375] Indictment, para. 54.
[1376] T. 8 June 2005, pp. 22-23.
[1377] T. 8 June 2005, p. 24.
[1378] Pre-Trial Brief, pp. 93-94.
[1379] T. 8 June 2005, p. 17.

4.3.12.2 Bizimungu's Statements at a Meeting on the Night of 6 to 7 April 1994

4.3.12.2.1 Introduction

806. The Indictment alleges that in the morning of 7 April 1994, Augustin Bizimungu went to Joseph Nzirorera's house in Ruhengeri and told MRND militants, "[T]he time has come to put into practice the recommendations made to you. I have just been talking on the phone with Nzirorera and we have agreed that you should start killing all the Tutsi. Start with your respective neighbourhoods before moving into the other areas of the *commune*". It is alleged that Bizimungu then assured the militants that weapons had been placed at their disposal at the Ruhehe armoury and he promised to provide them with fuel for burning the homes of Tutsi. According to the Indictment, the following day Bizimungu made good on his promise by distributing fuel in Cyohoha-Rukeri in the company of Lieutenant Mburuburengero.[1380]

807. The Chamber has already considered the evidence in relation to this charge in considering the allegation of genocide in paragraph 63 of the Indictment. The Chamber will not repeat this evidence but will simply analyse whether the evidence also supports the charge of conspiracy to commit genocide.

4.3.12.2.2 Deliberations

808. While the Chamber accepts that Tutsi civilians were killed as a result of a speech made by Bizimungu during a meeting on the night of 6 to 7 April, the Chamber is not satisfied that Bizimungu's speech at the meeting is suggestive of his involvement in a conspiracy to commit genocide against Tutsi.

809. The Chamber recalls its findings in relation to paragraph 29 of the Indictment that there is not sufficient evidence to substantiate the Prosecution's claim that Bizimungu attended meetings between 1992 and 1994 at which plans were made to destroy the Tutsi in whole or in part. In view of this finding, the Chamber is unwilling to accept the Prosecution's claim that the meeting on the night of 6 to 7 April was a continuation of a series of meetings at which a plan to kill Tutsi was conceived.

810. The above finding leaves open the reasonable possibility that the meeting on the night of 6 to 7 April was called spontaneously in response to the news of the President's death rather than being part of a series of meetings at which a conspiracy to commit genocide against Tutsi was hatched. The Chamber is therefore not satisfied that Bizimungu's remarks at the meeting or his alleged conduct following that meeting support the inference that he was implicated in a conspiracy to commit genocide against Tutsi. Accordingly, the Chamber dismisses the allegation in paragraph 55 of the Indictment in its entirety.

4.3.12.3 Bizimungu and the Ruhengeri Meeting on 8 April 1994

4.3.12.3.1 Introduction

811. The Indictment alleges that on 8 April 1994, at a meeting in Ruhengeri attended by over 700 people, Augustin Bizimungu castigated the *Inkotanyi*, calling them perpetrators of genocide and urging the audience to follow the example of the *Interahamwe* in Mukingo

[1380] Indictment, para. 55.

commune, who killed over 200 Tutsi in Busogo parish. He allegedly then called for the murder of all Tutsi.[1381]

4.3.12.3.2 Evidence

4.3.12.3.2.1 Prosecution Evidence

Witness GFD

812. Witness GFD was a trader, and on 8 April 1994 was travelling to a market centre called Kora Mutura in order to sell his goods.[1382] Kora was located in Mutura *commune*, in Gisenyi *préfecture*, near the border with Ruhengeri *préfecture*.[1383]

813. Upon arrival at Kora, at around 10.00 a.m., the witness was stopped by soldiers and forced to attend a meeting at the Kora dispensary.[1384] This meeting was attended by around 700 people. Several Hutu authority figures were present, including Bizimungu, Major Bizabarimana, and the *bourgmestre* and deputy *bourgmestre* of Karago *commune*.[1385]

814. The meeting started at between 10.00 and 11.00 a.m.[1386] The witness described the meeting in the following terms:

> Bizimungu addressed members of the population. He talked about history and said that Tutsis were bad people. He talked about how *Inkotanyi* attacked the Butaro market and killed women and children; that they attacked Ruhengeri town to kill people, and killed people as well in Kinigi, and that if it continued, the Tutsis were going to exterminate us. He went on to give the example of the *Interahamwe* of Mukongo [sic], and said that if we followed the example of the Mukingo *Interahamwe,* and if we did what the *Interahamwe* did in Busogo, those members of the population would not have any problem. The Tutsis cannot take power, and that the Tutsis were our neighbours and cannot kill, we, the Hutus.[1387]

815. Asked by Counsel for the Prosecution what decision was reached at the meeting, the witness replied, "The decision that was taken was to kill the Tutsis."[1388]

4.3.12.3.2.2 Defence Evidence

Witness DE4-16

816. Witness DE4-16 was a Major in the Rwandan Army in 1994. He testified that he was summoned to a meeting by Bizimungu at 8.00 a.m. on 8 April 1994. The meeting took place at the Army Headquarters in Kigali and was chaired by Bizimungu. The witness described the meeting as an "order group" at which the chair would dictate orders to those present.[1389]

[1381] Indictment, para. 56.
[1382] T. 10 May 2005, p. 54.
[1383] T. 10 May 2005, p. 54; T. 17 May 2005, pp. 43-44; T. 18 May 2005, p. 5.
[1384] T. 10 May 2005, p. 54; T. 17 May 2005, p. 42.
[1385] T. 10 May 2005, p. 55.
[1386] T. 17 May 2005, p. 43.
[1387] T. 10 May 2005, p. 55.
[1388] T. 10 May 2005, p. 56.
[1389] T. 24 May 2007, pp. 96-97.

Witness DE4-33

817. Witness DE4-33 was a member of the Rwandan Army engaged in fighting the RPF at Nkumba on 8 April 1994.[1390] He testified that Major Bizabarimana was in command at Nkumba from 8.00 a.m. until the recapture of the Nkumba *commune* office later that day. The witness also recalled that around 11.00 a.m., Bizimungu arrived and stayed for approximately 20 minutes.[1391]

Witness DB2-8

818. Witness DB2-8 was a member of the Rwandan Army stationed at Camp Bigogwe in 1994.[1392] He confirmed that Camp Bigogwe was in Gisenyi and was no more than two kilometres from Kora. The witness also confirmed that Kora fell within the Gisenyi operational *secteur*.[1393]

819. The witness stated that in the morning of 8 April at 9.00 a.m., he left his position manning a roadblock at Shaba in Kora and toured the Kora area accompanied by a fellow soldier. The witness returned to the roadblock around 11.00 a.m.[1394] He testified that during his tour, he saw no crowds of people and nothing happening at Kora market.[1395] At no time on that day did he see or learn of the presence of Bizimungu at Kora.[1396]

Witness DB2-2

820. Witness DB2-2 was residing in Rwankuba *cellule* in Kora *secteur* from 2 to 9 April 1994 attending a wake.[1397] He explained that on 8 April, he was at his parents' house close to Kora and went to collect water on several occasions from an area opposite the pyrethrum drying area and to the market to buy drinks for visitors.[1398] The witness testified that he went to fetch water between 10.00 a.m. and 11.00 a.m., but he was unable to specify the exact time that he went to the market.[1399] The witness never saw or heard of a meeting convened at the Kora market on 8 April or of Bizimungu's attendance at such a meeting.[1400] Moreover, the witness was not aware of any meeting involving Bizimungu at the Kora dispensary.[1401] The witness testified that on 8 April, as it was not a market day, there were only a few people at the market. He described the market as "almost empty".[1402]

[1390] T. 16 May 2007, p. 18.
[1391] T. 16 May 2007, p. 19.
[1392] T. 19 April 2007, pp. 4-5.
[1393] T. 19 April 2007, p. 5.
[1394] T. 19 April 2007, pp. 13, 16-17.
[1395] T. 19 April 2007, pp. 17-19.
[1396] T. 19 April 2007, p. 18.
[1397] T. 20 April 2007, p. 12.
[1398] T. 20 April 2007, p. 19.
[1399] T. 20 April 2007, pp. 19-20.
[1400] T. 20 April 2007, pp. 20-21.
[1401] T. 20 April 2007, p. 21.
[1402] T. 20 April 2007, p. 23.

Witness DE8-19

821. Witness DE8-19, a former high-ranking member of the Rwandan Army, testified that Ruhengeri and Gisenyi were separate operational *secteurs*. He confirmed that Kora was in Gisenyi *préfecture*.[1403] The witness stated that if Bizimungu had made a speech at Kora as alleged, he would have been trespassing on territory commanded by someone else.[1404]

The Accused Bizimungu

822. Bizimungu testified that Kora was in Gisenyi operational *secteur*.[1405] He denied the allegation contained in paragraph 56 of the Indictment, stating that on 8 April he was engaged in a "race against time to prepare for the RPF advance" and was therefore not in a position to go to Kora and make a speech as alleged by the Prosecution.[1406]

4.3.12.3.3 Notice of Charges

823. The Defence for Bizimungu submits that it was not provided with reasonable notice of the material facts relating to this meeting. This submission centres on the discrepancy between the location of the meeting alleged in the Indictment and the location that was identified by Witness GFD. The Indictment claims that the meeting took place in Ruhengeri whereas Witness GFD testified that it took place in Kora, which is located in Gisenyi *préfecture*.[1407]

824. The Chamber recalls that "[t]he charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused,"[1408] and that the Indictment must set out "the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him or her so that he or she may prepare his or her defence."[1409]

825. Having carefully reviewed the Pre-Trial Brief and the transcripts of evidence, the Chamber finds that Bizimungu was not materially prejudiced by the discrepancy between the Indictment and Witness GFD's testimony. Aside from the location of the meeting, the Indictment provides details regarding the date on which the meeting took place, the size of the audience and the content of Bizimungu's speech. Witness GFD's testimony essentially mirrored all of these elements. As a result, the Defence was able to produce several witnesses who asserted that Bizimungu could not have attended such a meeting on 8 April as he was engaged in fighting the RPF on the Ruhengeri front.[1410]

826. Furthermore, the Defence was able to produce a number of additional witnesses who directly contested Witness GFD's claim that there was a meeting attended by Bizimungu at the Kora dispensary on 8 April 1994.[1411] This might be attributed to the fact that although Kora was located in Gisenyi *préfecture*, it was not far from the border with Ruhengeri

[1403] T. 5 November 2007, p. 41 (ICS).
[1404] T. 5 November 2007, p. 42 (ICS).
[1405] T. 11 December 2007, p. 20.
[1406] T. 11 December 2007, p. 20.
[1407] Bizimungu Closing Brief, para. 186.
[1408] *Muvunyi* Appeal Judgement, para. 18.
[1409] Media Appeal Judgement, para. 322.
[1410] Defence Witnesses DE4-16, DE4-33 and Augustin Bizimungu.
[1411] Defence Witnesses DB2-8, DB2-2, DE8-19.

préfecture. Therefore, in light of the other detail provided by the Indictment, the Defence was able to make the reasonable inference that the meeting referred to in paragraph 56 actually took place at the Kora dispensary in Gisenyi *préfecture*.

827. The Defence was also able to conduct a lengthy cross-examination of Witness GFD, and at no point during his testimony did the Defence make any objection regarding lack of notice in regard to his allegations about the Kora dispensary meeting.

828. For these reasons, the Chamber finds that the Defence was not materially prejudiced by the Prosecution's failure to specify the precise location of the alleged meeting in paragraph 56 of the Indictment.

4.3.12.3.4 Deliberations

829. The Prosecution relies solely on the evidence of Witness GFD to support the allegation in paragraph 56 of the Indictment. The Chamber recalls that in 1999 the witness was convicted and sentenced to a number of years imprisonment for his admitted role in the genocide.[1412] The Chamber therefore approaches his evidence with caution.

830. The Chamber has considered the Defence submissions seeking to impugn the credibility of Witness GFD's evidence. The Defence submits that due to the position of Kora within Gisenyi *préfecture* and Bizimungu's position as commander of Ruhengeri operations, it is unlikely that he would have been at Kora to make the speech. The Chamber notes that while Kora is in Gisenyi *préfecture*, it is in fact close to the border with Ruhengeri *préfecture* and within easy reach of Ruhengeri town. In light of the short distance between Kora and Ruhengeri, the Chamber is not persuaded by this submission.

831. The Chamber also notes the Defence submission that 8 April was not a market day and therefore Witness GFD's claim that 700 people were present is implausible. In the Chamber's view, even if the day in question was not a market day, hundreds of people were living and working in close proximity to the market and soldiers would have had no difficulty attracting the attention of people to a meeting, especially if the presence of a prominent leader such as Bizimungu was known. The Chamber notes that the presence of such a large number of people would have been particularly noticeable to residents of the area given that it was not a market day. However, the Chamber recalls the testimony of Defence Witness DB2-2 that market was "almost empty" on 8 April.[1413] Similarly, Defence Witnesses DB2-8 testified that he toured the area around the market between 9.00 and 11.00 a.m. but did not notice any large group of people there.[1414]

832. In addition, the Chamber has considered the evidence of Defence Witnesses DE4-16 and DE4-33, who placed Bizimungu in other areas both before and after his alleged speech at Kora.[1415] While the Chamber finds their testimony to be credible, it notes that these witnesses failed to cover the time period between 10.00 a.m. and 11.00 a.m., when Bizimungu allegedly made his speech at Kora.

[1412] *See* T. 10 May 2005, pp. 48-51.
[1413] T. 20 April 2007, p. 23.
[1414] T. 19 April 2007, pp. 17-19.
[1415] T. 24 May 2007, pp. 96-97; T. 16 May 2007, p. 19.

833. Having considered the evidence of these Defence witnesses, coupled with the Prosecution's reliance on a single witness whose testimony the Chamber treats with caution, the Chamber finds that there remains some doubt as to Bizimungu's presence at Kora and the speech that he is alleged to have made there. The Chamber therefore dismisses this allegation against Bizimungu.

4.3.12.4 Bizimungu and the Meeting on 18 May 1994

4.3.12.4.1 Introduction

834. The Indictment alleges that on or about 18 May 1994, Augustin Bizimungu took part in a meeting during which the military hierarchy praised the performance of the militiamen and underscored the need to better arm them.[1416]

4.3.12.4.2 Deliberations

835. The Chamber finds that the Prosecution presented no evidence relating to the meeting pleaded in paragraph 57 of the Indictment. The Chamber therefore dismisses this allegation against Bizimungu.

4.3.12.5 Bizimungu's Visit to the Remera-Rukoma Hospital on 21 May 1994

4.3.12.5.1 Introduction

836. The Indictment alleges that on or about 21 May 1994, Augustin Bizimungu visited Remera-Rukoma Hospital where he congratulated the militiamen who had just killed about 10 people at the hospital and in its vicinity, and asked them to double their vigilance in hunting down Tutsi.[1417]

4.3.12.5.2 Evidence

4.3.12.5.2.1 Prosecution Evidence

Prosecution Witness GFD

837. Witness GFD was a member of the *Interahamwe* from 7 April 1994.[1418] He testified that he saw Bizimungu on 21 May 1994 at Remera-Rukoma Hospital in Gitarama. The witness was present at the hospital from 17 May, along with other *Interahamwe* and civil defence members who were asked to go to the hospital to provide reinforcements for the fighting occurring in the area.[1419]

838. The witness recalled that Bizimungu arrived at the hospital between 10.00 a.m. and 12.00 noon on 17 May aboard a military helicopter. Bizimungu was in the company of the helicopter pilot and two other soldiers whom the witness did not recognise.[1420] Upon Bizimungu's arrival, there was a large assembly of soldiers and members of the civil

[1416] Indictment, para. 57.
[1417] Indictment, para. 58.
[1418] T. 10 May 2005, p. 62.
[1419] T. 10 May 2005, p. 65.
[1420] T. 19 May 2005, p. 50.

defence.[1421] When Bizimungu alighted from the helicopter, he was welcomed by the commanding officers present at the hospital.[1422] Lieutenant Ndagijimana introduced Bizimungu to the audience. Bizimungu then addressed those present, congratulating them for the job already done and telling them to persevere in the fight against the RPF and not to forget the RPF accomplices.[1423] The witness recalled that Bizimungu congratulated him and other soldiers and members of the civil defence because the region no longer contained any Tutsi, the final 14 having been killed in fighting close to the hospital.[1424] The witness also stated that upon his arrival, Bizimungu saw 14 or 15 dead bodies at the hospital but failed to arrest anyone in relation to the incident.[1425] The meeting lasted approximately 30 minutes,[1426] after which Bizimungu took the body of a white man, who had been killed in Mugina *commune*, onto the helicopter and left.[1427]

839. The witness confirmed that a white man was killed on 18 May and that his body was brought wrapped in a blanket to the Remera-Rukoma Hospital. The witness stated that it was common knowledge at the time that any white person was assumed to be an accomplice of the RPF.[1428]

4.3.12.5.2.2Defence Evidence

Defence Witness DB15-8

840. Witness DB15-8 lived in Gitarama, Taba *commune* in 1994.[1429] He testified that he observed the presence of soldiers in the area from the beginning of May 1994. There were approximately 20 to 50 soldiers in the hospital who were recovering from injuries, as well as a number of soldiers who had "settled" at Kanyinya Hill.[1430] The witness stated that the soldiers arrived at Kanyinya Hill towards the end of May and remained there until the witness fled in early July. The witness recalled that these soldiers would come down to the hospital to provide provisions to the injured soldiers.[1431]

841. The witness heard of no incidents involving the deaths of people in the hospital other than those who died as part of normal hospital functions. He was aware of killings taking place in the area, but he stated that no soldiers were involved in those killings. He did recall one case where soldiers killed *Interahamwe* who were reported to have killed civilians.[1432]

842. The witness recalled a helicopter coming to the area in May, and he estimated that it was probably between 8 and 10 May.[1433] The witness was at the school when the helicopter

[1421] T. 10 May 2005, p. 66.
[1422] T. 19 May 2005, p. 51.
[1423] T. 10 May 2005, p. 66; T. 19 May 2005, pp. 53-54.
[1424] T. 10 May 2005, p. 66.
[1425] T. 19 May 2005, p. 51; T. 10 May 2005, p. 66. The witness stated that Bizimungu was not present when the 14 Tutsi were killed but the bodies of the Tutsi were present when he arrived.
[1426] T. 19 May 2005, p. 53.
[1427] T. 10 May 2005, p. 66.
[1428] T. 19 May 2005, p. 53.
[1429] T. 7 November 2007, p. 3 (ICS).
[1430] T. 7 November 2007, pp. 4-5 (ICS).
[1431] T. 7 November 2007, p. 5 (ICS).
[1432] T. 7 November 2007, pp. 5-6 (ICS).
[1433] T. 7 November 2007, p. 12.

landed on the school playing field between 10.00 a.m. and 12.00 noon.[1434] He stated that three men in military uniforms were on board,[1435] but no other soldiers were present.[1436] The witness testified that two of the men alighted from the helicopter and asked for directions to the residence of Usabuwera. Sometime later, the two men returned to the helicopter with the daughter of Usabuwera and then left. The witness stated that he enquired why Usabuwera's daughter had been taken and the wife of Usabuwera told him that the daughter had keys to the bank, from which the men wanted to take out money.[1437] The witness estimated that the helicopter was present for between 20 to 30 minutes.[1438] He refuted the suggestion that a dead white person was taken aboard the helicopter.[1439]

843. The witness stated that he did not know who Augustin Bizimungu was and therefore was unable to confirm or deny whether he was in the helicopter.[1440] However, the witness stated that if a high-ranking military person such as Bizimungu had visited the area, people would have known about it.[1441] The witness also stated that he would have known about the arrival of another helicopter in the area, as he was a regular visitor to the hospital and had friends there. However, he was not aware of another helicopter visit.[1442]

844. The witness testified that no one was killed after the helicopter left. Tutsi had previously been killed in the area around 19 or 20 April. According to the witness, people were saying that the *Interahamwe* in the area had killed those Tutsi, but he had no personal knowledge of that fact. The witness confirmed that he was not aware of the involvement of soldiers in the killings.[1443]

Defence Witness DB15-9

845. Witness DB15-9 stated that a military presence arrived in Taba on Kayinya Hill at the beginning of June 1994. He did not recall any soldiers being present at Remera-Rukoma Hospital except for those who were brought in ill or injured.[1444] The witness recalled being told that injured soldiers began arriving at the hospital in May.[1445] He testified that apart from the soldiers on Kanyinya Hill, no other soldiers arrived in Remera-Rukoma or Taba before June.[1446]

846. The witness stated that there were killings in the area, but those killings took place some distance from the hospital at the *commune* office.[1447] He recalled the killing of a pastor and his family who were taken from near the hospital and the school and were killed not far from the *commune* office.[1448] The witness also recalled a teacher named Samuel who was

[1434] T. 7 November 2007, p. 12 (ICS).
[1435] T. 7 November 2007, p. 12.
[1436] T. 7 November 2007, p. 26 (ICS).
[1437] T. 7 November 2007, pp. 12-13.
[1438] T. 7 November 2007, p. 26 (ICS).
[1439] T. 7 November 2007, p. 18.
[1440] T. 7 November 2007, p. 13.
[1441] T. 7 November 2007, p. 14.
[1442] T. 7 November 2007, p. 14.
[1443] T. 7 November 2007, p. 15.
[1444] T. 9 November 2007, pp. 8-9.
[1445] T. 9 November 2007, p. 18.
[1446] T. 9 November 2007, p. 18.
[1447] T. 9 November 2007, p. 10.
[1448] T. 9 November 2007, pp. 10, 19.

killed.[1449] Although the witness confirmed that he was not present when these victims were killed, he stated that it was common knowledge that *Interahamwe* had killed them.[1450] The witness had never heard of soldiers killing anyone in the area.[1451]

847. The witness recalled a helicopter landing in front of the primary school in the Remera-Rukoma area during the last week of April between 9.30 and 10.00 a.m.[1452] There were three people in the helicopter, all wearing military uniforms, but no soldiers were present on the ground when the helicopter landed.[1453] The helicopter was on the ground for between 15 and 20 minutes[1454] during which the passengers went to Usabuwera's home and brought back Usabuwera's daughter, Rose.[1455] At the time of the incident, the witness was not aware why Usabuwera's daughter had been taken, but he later learned that she had the keys to the bank.[1456] The witness stated that he did not see the body of a white man being taken into the helicopter.[1457]

848. The witness testified that he had no information about Bizimungu other than that he had heard that following the death of the President, Bizimungu was to be the Commander-in-Chief of the Rwandan Army. The witness was not aware of Bizimungu going to Remera-Rukoma between April and June 1994. The witness stated that if a person of Bizimungu's importance had come to his area, he would have surely heard about it.[1458]

Defence Witness DA5-2

849. Witness DA5-2 was a member of the Rwandan Army. He testified that Camp Kanombe was evacuated on the night of 21 to 22 May 1994 and that Bizimungu was busy working from Army Headquarters to organise the evacuation.[1459]

850. The witness recalled that at that time, Army helicopters had been taken to Camp Mukamira because it was no longer possible to fly helicopters from Kigali due to the war.[1460]

851. He also recalled that from the beginning of May, Bizimungu's movements were very limited. The RPF had taken up positions close to the Chief of Staff's office and the office was besieged, making movement very difficult.[1461] The witness refuted suggestions that Bizimungu could have visited Remera-Rukoma Hospital on 21 May. He explained that the situation in Kigali prevented such travel and he reminded the Chamber that around 8 April was the fall of Camp Kanombe, which occupied much of Bizimungu's time.[1462]

[1449] T. 9 November 2007, p. 19.
[1450] T. 9 November 2007, p. 19.
[1451] T. 9 November 2007, p. 11.
[1452] T. 9 November 2007, pp. 11, 20.
[1453] T. 9 November 2007, p. 11.
[1454] T. 9 November 2007, p. 12.
[1455] T. 9 November 2007, pp. 12, 21.
[1456] T. 9 November 2007, p. 12.
[1457] T. 9 November 2007, p. 12.
[1458] T. 9 November 2007, pp. 12-13.
[1459] T. 23 May 2007, p. 45.
[1460] T. 23 May 2007, pp. 46-47, 52.
[1461] T. 23 May 2007, p. 47.
[1462] T. 23 May 2007, p. 50.

4.3.12.5.3 Deliberations

852. The Chamber has before it the evidence of one Prosecution Witness, GFD, who stated that Bizimungu visited Remera-Rukoma Hospital on 21 May 1994 and made a speech in which he encouraged those present to continue the fight against Tutsi and congratulated the audience on the killings up to that point.

853. The Defence called Witnesses DB15-8 and DB15-9, who testified to the presence of a helicopter in the area but stated that it was present in early May 1994, not 21 May 1994. These witnesses also testified that the helicopter was used to pick up a person with bank keys, not to transport Bizimungu to make a speech.

854. The Chamber finds that the testimony of Witness GFD on the one hand and the testimony of Witnesses DB15-8 and DB15-9 on the other describe two separate incidents. The Chamber considers that these cannot be the same incident because Witness GFD did not mention the presence of a woman boarding a helicopter, while Witnesses DB15-8 and DB15-9 did not mention the presence of a military official. Witnesses DB15-8 and DB15-9 maintained that due to the comparatively small size of the area, they would have known if another helicopter had landed as claimed by Witness GFD. While the Chamber accepts that the presence of a helicopter in the area would have been a rarity, it does not consider it inevitable that the two witnesses would have known about all movements in the area. Nonetheless, the Chamber concludes that the three witnesses were describing two independent events.

855. The Chamber will now consider the evidence of Defence Witness DA5-2. The Chamber notes that this witness, given his position within the Rwandan Army, was well placed to comment on Bizimungu's movements. The Chamber finds his evidence to be credible in relation to the movements of Bizimungu around 21 May. However, the Chamber considers his explanation that helicopters could not fly from Kigali, where Bizimungu was based, to be implausible. The Chamber notes that helicopters could have taken off from western Kigali as the entirety of the evidence suggests that western Kigali did not fall to the RPF until early July.

856. Having considered the evidence of Defence Witnesses DB15-8, DB15-9 and DA5-2, the Chamber concludes that the Defence evidence fails to raise a doubt as to the validity of Witness GFD's claims. The Chamber will now decide whether the content of the speech allegedly made by Bizimungu amounts to evidence of his participation in a conspiracy to commit genocide.

857. The Chamber has carefully considered the content of Bizimungu's speech, as recalled by Witness GFD, and it is not satisfied that the speech amounts to evidence of Bizimungu's participation in a conspiracy to commit genocide. Rather, the Chamber considers it to be within Bizimungu's role as Chief of Staff to visit sick and convalescing troops under his command in order to offer support and encouragement. The Chamber further finds the content of the speech, acknowledging the war and urging those present to keep fighting, to be in accordance with his role as a leader of troops in a time of conflict. Witness GFD's reference to the removal of Tutsi from the area is not enough, in the Chamber's view, to conclude that Bizimungu was party to an agreement to commit genocide. It is also a reasonable possibility that Bizimungu was acting in his capacity as Chief of Staff of the Rwandan Army in furtherance of the war against the RPF.

858. It follows that the Prosecution has not proved this allegation beyond reasonable doubt.

4.3.12.6 Bizimungu's Failure to Take Action to Stop the Killings and Restore Order

4.3.12.6.1 Introduction

859. The Indictment alleges that from mid-April to late June 1994, Bizimungu deliberately abstained from ensuring that the Rwandan Army, which was under his command, fulfilled its duty to restore order as required by Rwandan laws and regulations.[1463] The Indictment further alleges that Bizimungu refused to take action to stop the killings in Rwanda when approached by the United States Department of State.[1464]

4.3.12.6.2 Deliberations

860. In its factual findings for genocide and crimes against humanity, the Chamber found that Bizimungu failed to exercise his authority to address crimes that were committed in some parts of Rwanda such as Kigali, Butare, Cyangugu and Gitarama during his tenure as Chief of Staff of the Rwandan Army. In reaching these findings, the Chamber considered a number of Prosecution exhibits including the records of two telephone calls from Prudence Bushnell, the then United States Deputy Secretary of State in charge of African Affairs, to Bizimungu asking him to take action to stop the killings of civilians. In response to Bushnell's requests, Bizimungu is reported to have stated that he would require a cessation of hostilities between his forces and the RPF before he could stop the killings and restore order. The Chamber also found that despite his knowledge of the implication of his subordinates in these crimes, Bizimungu failed to take action to stop the killings and restore order.

861. The Chamber accepts that Bizimungu's failure to take meaningful action to stop large-scale crimes, despite his material ability to do so, suggests indifference to his obligation to protect the lives of civilians. However, the Chamber is not satisfied that the Prosecution has presented sufficient evidence to prove that Bizimungu's inaction was part of a conspiracy to commit genocide against Tutsi. Consequently, the Chamber finds that the Prosecution has failed to prove this allegation beyond reasonable doubt.

4.4 Genocide

4.4.1 *Bizimungu*

4.4.1.1 Killing of Tutsi by *Interahamwe* at Rwankeri *Secteur*

4.4.1.1.1 Introduction

862. The Indictment alleges that Augustin Bizimungu attended a meeting on or around 7 April 1994 at Joseph Nzirorera's home, during which he made a speech. A portion of the alleged speech is quoted in paragraph 55 of the Indictment. It is further alleged that following Bizimungu's speech, *Interahamwe* killed 150 Tutsi in Rwankeri *secteur*, Ruhengeri. The Indictment also alleges that on the same day, *Interahamwe* under the supervision of soldiers

[1463] Indictment, para. 59.
[1464] Indictment, para. 60.

from Kanombe and Bigogwe camps, who were under Bizimungu's authority, participated in an attack at Busogo Parish that resulted in the killing of "more than 200 Tutsi."[1465]

4.4.1.1.2 Evidence

4.4.1.1.2.1 Prosecution Evidence

Prosecution Witness GFV

863. Witness GFV admitted that he was a member of the *Interahamwe* and took part in the killings of Tutsi in April and May 1994.[1466] The witness testified that in the morning of 7 April, he arrived at Byangabo market between 5.00 and 6.00 a.m. and saw 35 to 40 *Interahamwe* there.[1467]

864. The witness saw Kajelijeli, Bambonye and Chief Warrant Officer Karorero arrive by truck and enter the house of Nzirorera's mother, where a meeting was taking place.[1468] The witness testified that he also saw Nyabusore, the director of the ISAE, Colonel Setako and Major Bizabarimana arrive at the house of Nzirorera's mother in order to attend the meeting.[1469] The witness stated that participants at this meeting decided to kill Tutsi at Busogo Parish.[1470] Bambonye and Kajelijeli emerged out of the venue of the meeting and told the witness and others that they "should kill all the Tutsis of Busogo including babies still in their mother's wombs".[1471] As a result of these remarks by these local officials, Rukara and Lucian were among the first Tutsi to be killed in the morning of 7 April.[1472]

865. According to the witness, neither Augustin Bizimungu nor Prosecution Witness GAP attended this meeting.[1473]

Prosecution Witness GAP

866. Witness GAP was a local government official in Ruhengeri in 1994.[1474] He testified that he attended a meeting at the house of Joseph Nzirorera's mother on the night of 6 April 1994.[1475] The witness arrived at the meeting around midnight on 6 April and left at approximately 5.00 a.m. the next morning.[1476] He claimed to have been invited to this meeting by Joseph Nzirorera.[1477]

867. Witness GAP recalled that Augustin Bizimungu chaired the meeting. Also present were Setako, Casimir Bizimungu, Joseph Nzirorera, Esdras Baheza, Emmanuel Harelimana,

[1465] Indictment, paras. 55, 63.
[1466] T. 23 May 2005, pp. 7, 14.
[1467] T. 23 May 2005, pp. 24-26; T. 25 May 2005, p. 24.
[1468] T. 23 May 2005, p. 25; T. 25 May 2005, pp. 24-26.
[1469] T. 25 May 2005, pp. 26-27.
[1470] T. 23 May 2005, pp. 24-25.
[1471] T. 23 May 2005, p. 26.
[1472] T. 23 May 2005, p. 26.
[1473] T. 25 May 2005, pp. 35, 42.
[1474] T. 15 February 2005, pp. 15-16 (ICS).
[1475] T. 15 February 2005, pp. 39-40.
[1476] T. 17 February 2005, pp. 51-52; T. 21 February 2005, pp. 18, 24.
[1477] T. 21 February 2005, pp. 18-19.

Nyabusore, Gatsimbanyi, Niyoyita, Bambonye, Ndisette, Lazaro Ndangizi and approximately 80 *Interahamwe*.[1478] According to the witness, Kajelijeli did not attend the meeting.[1479]

868. The witness stated that Augustin Bizimungu arrived at the meeting between 2.00 and 3.00 a.m.[1480] While at the meeting, Bizimungu stated, "Habyarimana is dead and he was assassinated by the *Inyenzis*", and he told the audience that by the morning no Tutsi should survive.[1481] Bizimungu also urged the attendees to set up roadblocks to ensure that Tutsi would not escape. Bizimungu stated that weapons would be provided the following morning in order to reinforce those who were manning the Ruhehe roadblock as well as those who were stationed at Mukingo *commune* office.[1482]

869. The witness recalled that all the speakers at the meeting stated that President Habyarimana had been killed by Tutsi, "that is the *Inyenzi*", and therefore that no Tutsi should be spared. In addition, the speakers discussed the re-establishment of roadblocks "in order to ensure that no Tutsis, no accomplices of the Tutsis should survive." They also discussed the need to provide weapons in addition to those that were available at Ruhehe roadblock and the Mukingo *commune* office.[1483]

870. Witness GAP stated that when he left the meeting at around 5.00 a.m., Augustin Bizimungu was still at the house. The witness did not know when Bizimungu left.[1484] In cross-examination, it was put to the witness that when testifying in a different trial at the Tribunal he had stated that he was the last person to leave the meeting, but in a pre-trial statement he had claimed that he was the first person to leave.[1485] In response, the witness denied that he had changed his testimony.[1486]

871. The witness testified that as a result of the discussion at the meeting, he established a roadblock in front of the Mukingo *commune* office. The roadblock was manned by members of the *Interahamwe* whom the witness had selected.[1487]

872. Witness GAP recalled that in the morning of 7 April, at around 7.00 a.m., Augustin Bizimungu brought Kalashnikov rifles and grenades to the Mukingo *commune* office.[1488] Some of the weapons were then taken to Ruhehe hill and some were kept at the *commune* office. Bizimungu told the witness to give the weapons to *Interahamwe*.[1489] The *bourgmestre* then instructed the witness to distribute some of the weapons to *Interahamwe*, the *conseiller*

[1478] T. 15 February 2005, p. 40; T. 21 February 2005, pp. 27-28.
[1479] T. 21 February 2005, pp. 7-8. This was despite stating that he did see Kajelijeli present at the meeting in previous testimony (T. 21 February 2005, pp. 20-21). The witness explained that he had recalled the wrong *bourgmestre*—it was actually Harelimana who was present rather than Kajelijeli (T. 21 February 2005, pp. 21-23).
[1480] T. 15 February 2005, p. 40.
[1481] T. 15 February 2005, p. 41.
[1482] T. 15 February 2005, p. 41.
[1483] T. 15 February 2005, p. 41.
[1484] T. 21 February 2005, p. 35.
[1485] T. 21 February 2005, pp. 40-42.
[1486] T. 21 February 2005, pp. 40-42.
[1487] T. 15 February 2005, p. 43.
[1488] T. 15 February 2005, pp. 42-43.
[1489] T. 15 February 2005, p. 42.

and the *responsable de cellule*.[1490] The witness also gave some weapons to Kajelijeli for him to distribute at Byangabo.[1491]

873. The witness testified that at some point, he and the *bourgmestre* went to Byangabo. Upon arrival, they found that Kajelijeli had provided weapons to the *Interahamwe* there. While at Byangabo, the witness observed Kajelijeli giving instructions to the soldiers and *Interahamwe* to the effect that "they should conduct house to house search[es], [and] kill all the Tutsis all the way to the Busogo Parish".[1492] The witness also observed that a Tutsi named Rukara had been killed.[1493]

874. The witness stated that he did not witness the killing of Tutsi in Mukingo *commune*.[1494] However, he recalled that Kajelijeli came to the *commune* office between 7.00 and 8.00 a.m. and asked the *bourgmestre* for the assistance of the population to bury the bodies of the Tutsi who had been killed at Busogo Parish.[1495] Witness GAP testified that he, along with the *bourgmestre* and *communal* police, then followed Kajelijeli to Busogo Parish.[1496] Once they arrived at Busogo Parish, they found approximately 400 to 500 dead bodies, some of which the witness recognised as Tutsi. According to the witness, Bizimungu was also present at that location and he instructed the *bourgmestre* to bury the bodies.[1497] Bizimungu then left and the witness and his colleagues buried the bodies.[1498]

Prosecution Witness GFC

875. Witness GFC, a member of the *Interahamwe*, testified that he went to Byangabo marketplace in the morning of 7 April 1994. There he met with other *Interahamwe* and their leader Niyigaba, as well as local officials including Kajelijeli, Ndisetse, Karorero and Bambonye. According to the witness, these officials urged the *Interahamwe* at the marketplace to exterminate the Tutsi, whom they accused of being responsible for the death of President Habyarimana.[1499] Thereafter, the *Interahamwe* leader, Niyigaba, hit a Tutsi with a machete and killed him. Following this killing, the *Interahamwe* dispersed throughout the Mukingo *commune* in order to kill Tutsi.[1500] The witness, who was armed with a homemade club at the time,[1501] stated that he did not personally kill any Tutsi, but handed them over to other *Interahamwe* so that they could be killed.[1502] He further stated that he was willing to kill Tutsi in the event that others had not killed them.[1503]

876. However, in cross-examination, the witness admitted to participating in the killing of three Tutsi and to burning two houses, although he did not know the number of victims that

[1490] T. 15 February 2005, p. 46.
[1491] T. 15 February 2005, p. 46. The witness described Byangabo as located on the road that links Gisenyi with Ruhengeri, three kilometres from the Mukingo *commune* office, and containing a commercial centre and marketplace.
[1492] T. 15 February 2005, p. 46.
[1493] T. 15 February 2005, p. 46.
[1494] T. 15 February 2005, p. 47.
[1495] T. 15 February 2005, p. 47.
[1496] T. 15 February 2005, p. 48.
[1497] T. 15 February 2005, pp. 48-49.
[1498] T. 15 February 2005, pp. 48-49.
[1499] T. 1 March 2005, p. 25.
[1500] T. 1 March 2005, p. 25.
[1501] T. 1 March 2005, p. 26.
[1502] T. 1 March 2005, p. 26.
[1503] T. 1 March 2005, p. 26.

resulted from the arson attack.[1504] He also admitted that on 7 April, he and other *Interahamwe* moved through the *secteur* killing all the Tutsi they came across, and that he committed killings in all the *secteurs* at one point.[1505] The witness further admitted that he participated in attacks in Musonga.[1506]

Prosecution Witness GFA

877. Witness GFA testified that on 7 April 1994, between 6.00 and 7.00 a.m., he went to have tea at the Byangabo centre.[1507] At the market, he saw Jean Baptiste Nyabusore, who was the director of the ISAE, Gahiki, who was a businessman, and *bourgmestre* Juvénal Kajelijeli going to the house of Nzirorera's mother.[1508] However, the witness did not recall seeing Augustin Bizimungu there.[1509]

878. While at the Byangabo market, the witness was invited to attend a meeting held at the house of Nzirorera's mother.[1510] The witness went to the house and then returned to Byangabo. Approximately seven minutes after his return, an individual named Dusabiye, whom had also been at the house of Nzirorera's mother, "invited [them] to go and kill the Tutsis, telling [them] that it was the RPF, that is the Tutsi, who had killed President Habyarimana."[1511] Dusabiye told one Michel Niyigaba to go and fetch Rukara, a Tutsi, so that he could "set an example on him". Dusabiri and Dusabimana immediately killed Rukara using stones and a small axe.[1512] Dusabiye then asked them to "go up and kill Tutsis", threatening that anyone who refused to do so would have to "bear the consequences".[1513] Witness GFA and others left and killed Rukara's older brother, Lucien Rundatsingwa.[1514] They then went to Busogo and Rwankeri *cellules*, as well as Mambaga, and killed all Tutsi who were residing there.[1515]

879. The witness stated that he participated in an attack together with soldiers on the house of a Tutsi family named Rutatinya.[1516] The witness saw Sergeant François Dusabimana kill members of the Rutatinya family, and he stated that Corporal Rashero, an instructor at Camp Bigogwe, provided the petrol that was used to burn the house.[1517]

880. Thereafter, the witness together with Dusabimana, Rashero and others went to attack Tutsi who had sought refuge at Busogo Parish. Once there, they killed the Tutsi refugees and later returned to the parish to loot and steal vehicles.[1518] The witness estimated that his group was made of up of approximately 100 people including 20 to 30 soldiers.[1519] The witness described the group that attacked the Busogo Parish as consisting of members of the

[1504] T. 3 March 2005, pp. 10, 13.
[1505] T. 3 March 2005, p. 16.
[1506] T. 3 March 2005, p. 10.
[1507] T. 31 January 2006, p. 2; T. 1 February 2006, p. 39.
[1508] T. 31 January 2006, pp. 2-3.
[1509] T. 1 February 2006, p. 39.
[1510] T. 31 January 2006, p. 2.
[1511] T. 31 January 2006, p. 2.
[1512] T. 31 January 2006, pp. 2-3.
[1513] T. 31 January 2006, p. 2.
[1514] T. 31 January 2006, p. 2.
[1515] T. 31 January 2006, pp. 2-3.
[1516] T. 31 January 2006, pp. 6-7.
[1517] T. 31 January 2006, pp. 6-7.
[1518] T. 31 January 2006, p. 3.
[1519] T. 31 January 2006, pp. 5-6.

Impuzamugambi and *Interahamwe* militia as well as soldiers armed with guns and grenades who came from the direction of the ESDT school.[1520] During the attack at Busogo Parish, the witness saw Corporal Rashero shoot a child at close range.[1521]

Prosecution Witness GFD

881. Witness GFD stated that he became a member of the *Interahamwe* on 7 April 1994.[1522] He testified that in the morning of 7 April, he went to Mukamira market in Nturo centre, Kintobo *secteur*, Myabisozi *cellule*.[1523] While at the market, sometime between 10.00 a.m. and 12.00 noon, the witness saw Sergeant Uzaribara lead a group of 200 to 250 people, originating from Ngyinyo *secteur*, in an attack on Tutsi in the area.[1524] The witness joined the group in the attack. Shortly thereafter, the group surrounded a house occupied by Tutsi. Someone threw a grenade into the compound of the residence. The witness assumed that it was Sergeant Uzaribara because no one else possessed a grenade and because the witness was later told by others that it was Uzaribara. Those at the residence exited the house and were attacked and killed by the group. As a result of the attack, six Tutsi were killed.[1525] The attackers then looted the property and left.[1526]

4.4.1.1.2.2 Defence Evidence

Defence Witness DA5-1

882. Defence Witness DA5-1 was a soldier of the Rwandan Army based at Camp Mukamira in April 1994.[1527] He testified that he visited Bizimungu every night from 4 to 6 April at his home in Camp Mukamira.[1528] The witness recalled that he visited Bizimungu in the evening of 6 April and found him to be ill with gout.[1529] Bizimungu was using crutches in order to walk.[1530] Bizimungu retired to his room around 8.00 p.m., and the witness did not see him thereafter.[1531] The witness left Bizimungu's house between 8.40 and 8.50 p.m.[1532]

883. The following day, that is 7 April, the witness met Bizimungu's driver at Mukamira Camp who informed him that Bizimungu was still feeling unwell, but would make an effort to get to the operations centre in Ruhengeri.[1533]

[1520] T. 31 January 2006, p. 7.
[1521] T. 31 January 2006, p. 7. The witness identified Bigogwe Camp as being located in Mutura *commune*, Gisenyi *préfecture*.
[1522] T. 10 May 2005, p. 62.
[1523] T. 10 May 2005, p. 52; T. 16 May 2005, p. 41.
[1524] T. 10 May 2005, pp. 52-53; T. 16 May 2005, p. 41; T. 17 May 2005, p. 3.
[1525] T. 10 May 2005, pp. 52-53; T. 16 May 2005, p. 46. The witness identified them as Pangras Bizuru, his wife named Mukamuzima, his two sons, Kivumu Ndagijimana, and someone named Murekezi.
[1526] T. 10 May 2005, p. 53.
[1527] T. 17 May 2007, p. 29.
[1528] T. 17 May 2007, p. 30.
[1529] T. 17 May 2007, pp. 30-32.
[1530] T. 17 May 2007, pp. 30-32.
[1531] T. 17 May 2007, p. 31.
[1532] T. 17 May 2007, p. 31.
[1533] T. 17 May 2007, p. 11.

Defence Witness DB2-6

884. Witness DB2-6 was a member of Bizimungu's house staff at Camp Mukamira on 6 April 1994.[1534] On that date, the witness was at Bizimungu's home where the family was mourning the passing of Bizimungu's late mother.[1535] According to the witness, Bizimungu could hardly move on that night because of problems with his legs, and he was using crutches to aid his movement.[1536]

885. In the evening of 6 April, around 9.00 p.m., an alert was sounded at the camp. Some of the officers and soldiers who were present at Bizimungu's house left once they heard the alert. However, Bizimungu remained at the house.[1537]

886. The witness recalled that around 10.00 p.m., he heard that Habyarimana's plane had been shot down.[1538] Around the same time, the commander of Camp Mukamira, Bizabarimana, came to Bizimungu's home. The witness recalled that Bizimungu and Bizabarimana had a conversation and then Bizabarimana left. Later, around 3.00 a.m. on 7 April, Bizabarimana came back and then left again.[1539] Also around 3.00 a.m., the witness fell asleep and did not wake until 8.00 a.m.[1540]

887. The witness recalled that in the morning of 7 April, a doctor came to the house to treat Bizimungu.[1541] Thereafter, Bizimungu left the house between 10.00 and 11.00 a.m.[1542] According to the witness, this was the first time that Bizimungu had left the house since the previous evening. [1543]

Defence Witness DB11-2

888. Witness DB11-2 is a relative of Prosecution Witness GFA.[1544] Witness DB11-2 stated that it would not have been possible for Witness GFA to attend meetings at the house of Nzirorera's mother without Witness DB11-2's knowledge.[1545] The witness further stated that Witness GFA never mentioned to him that he had met Bizimungu or attended meetings at which Bizimungu was present.[1546] The witness also stated that Witness GFA was not a member of any political party[1547] and that there was no *Interahamwe* structure within Ruhengeri.[1548]

889. The witness, who lived near the house of Nzirorera's mother,[1549] testified that on the night of 6 April 1994, he did not notice any vehicles passing by on their way to the house of

[1534] T. 17 April 2007, pp. 85, 88.
[1535] T. 17 April 2007, p. 93.
[1536] T. 17 April 2007, p. 64.
[1537] T. 17 April 2007, pp. 64, 93-94.
[1538] T. 17 April 2007, p. 64.
[1539] T. 17 April 2007, pp. 65-66.
[1540] T. 17 April 2007, p. 93.
[1541] T. 17 April 2007, p. 66.
[1542] T. 17 April 2007, pp. 65-66.
[1543] T. 17 April 2007, p. 65.
[1544] T. 12 June 2007, p. 7 (ICS).
[1545] T. 12 June 2007, p. 34 (ICS).
[1546] T. 12 June 2007, p. 34 (ICS).
[1547] T. 12 June 2007, p. 35 (ICS).
[1548] T. 12 June 2007, p. 35 (ICS).
[1549] T. 12 June 2007, pp. 38-39 (ICS).

Nzirorera's mother.[1550] He further stated that no meetings or social functions took place between January and March 1994 at the house of Nzirorera's mother.[1551]

890. Witness DB11-2 recalled that in the morning of 7 April, while at home, he saw Michel Niyigaba pursue Rukara at the Byangabo market.[1552] Rukara was then caught, stoned and killed with a small hoe.[1553] According to Witness DB11-2, Witness GFA was at the market while Rukara was being attacked.[1554]

Defence Witness DB15-11

891. Witness DB15-11 is related to Joseph Nzirorera and lived in Ruhengeri in April 1994.[1555] The witness testified that she stayed at the house of Nzirorera's mother in Byangabo on the night of 6 April 1994.[1556] She explained that the house was in the vicinity of Byangabo market.[1557] The witness denied that telephone calls were made from the house following the President's death in the evening of 6 April, since the house did not have a telephone line.[1558]

892. The witness denied that a meeting took place at the house of Nzirorera's mother in the early morning of 7 April. She explained that she spent the night in a room adjacent to the sitting room and was not aware of any such meeting.[1559] The witness testified that she did not see Joseph Nzirorera on the night of 6 to 7 April 1994.[1560] She also denied Witness GAP's claim that *Interahamwe* or other individuals such as Bizimungu met at the house on 7 April.[1561]

893. The witness recalled that in the morning of 7 April, she heard gunshots and saw smoke coming from the Byangabo market area.[1562]

894. The witness stated that Tutsi were killed in Mukingo *commune*, particularly Busogo Parish, between 7 April and the end of April 1994.[1563] However, she never saw *Interahamwe* in Mukingo *commune* between 1990 and April 1994.[1564] The witness had heard that a neighbour named Rukara was killed in April 1994.[1565]

[1550] T. 12 June 2007, p. 38 (ICS).
[1551] T. 12 June 2007, pp. 33, 39 (ICS).
[1552] T. 13 June 2007, p. 25 (ICS).
[1553] T. 13 June 2007, p. 25 (ICS).
[1554] T. 13 June 2007, p. 25 (ICS).
[1555] T. 7 June 2007, p. 42 (ICS).
[1556] T. 7 June 2007, pp. 45-46 (ICS).
[1557] T. 7 June 2007, p. 46 (ICS).
[1558] T. 7 June 2007, p. 47 (ICS).
[1559] T. 7 June 2007, p. 50 (ICS).
[1560] T. 7 June 2007, p. 53 (ICS).
[1561] T. 7 June 2007, pp. 53-54 (ICS).
[1562] T. 7 June 2007, p. 79 (ICS).
[1563] T. 7 June 2007, p. 73 (ICS).
[1564] T. 7 June 2007, p. 72 (ICS).
[1565] T. 7 June 2007, p. 79 (ICS).

The Accused Augustin Bizimungu

895. Bizimungu denied taking part in a public meeting on 7 April where he advocated the killing of Tutsi. He testified that he did not leave his home until 10.00 or 11.00 a.m. on 7 April and he was not with Setako at all on that day.[1566]

896. Bizimungu stated that on the night of 6 to 7 April 1994, he was ill and remained at home. However, he was in contact throughout this time with his deputy, Lieutenant Colonel Bivaguhara, and the General Staff of the Army and was therefore able to monitor the situation. The witness recalled that around 12.30 a.m., he learned that sector commanders had been convened to a meeting at ESM in Kigali. Due to his poor health, Bizimungu could not attend the meeting at ESM and was instead represented by his deputy Bivaguhara.[1567]

897. Bizimungu testified that on 7 April, he left his home between 10.00 and 11.00 a.m.[1568] and proceeded to his office in Ruhengeri. At around 1.00 or 2.00 p.m., he received information suggesting that the hostilities between the Rwandan government forces and the RPF might resume and he therefore convened all the battalion commanders to a meeting at his office.[1569]

898. Bizimungu stated that he learned about the existence of the *Interahamwe* in Ruhengeri after he was arrested in 2002. However, while in Rwanda, he was aware of the word "*Interahamwe*" being used in relation to youth who attended rallies.[1570]

899. Bizimungu denied that he distributed weapons to civilians. However, he stated that due to the insecurity in some *communes* of Ruhengeri caused by RPF infiltration and banditry, it was decided that the local authorities in those *communes* should be provided with weapons in order to enhance their security.[1571] Bizimungu testified that the distribution of weapons to the communal authorities was under his management in his capacity as the commander of Ruhengeri operational *secteur*.[1572] He testified that the distribution of weapons to communal authorities under this scheme was based on an assessment of the security needs of those *communes*.[1573] These weapons were not distributed to civilians nor were they used to kill Tutsi civilians.[1574] Bizimungu denied Prosecution Witness GAP's claim that Bizimungu gave him weapons in the morning of 7 April. Bizimungu stated that it was inconceivable that he would have taken it upon himself to distribute weapons given the fact that as an operational *secteur* commander, he had staff who could assist him with that chore.[1575]

900. Bizimungu also denied that he supervised the burial of Tutsi who had been killed at Busogo Parish on 8 April.[1576]

[1566] T. 11 December 2007, p. 18.
[1567] T. 6 December 2007, p. 19.
[1568] T. 11 December 2007, pp. 16-17.
[1569] T. 11 December 2007, p. 17.
[1570] T. 7 December 2007, p. 21.
[1571] T.11 December 2007, p. 5
[1572] T.11 December 2007, p. 5
[1573] T. 11 December 2007, p. 6
[1574] T. 11 December 2007, p. 6.
[1575] T. 11 December 2007, p. 32.
[1576] T. 11 December 2007, pp. 20-21.

4.4.1.1.3 Notice of Charges

901. At the outset, the Chamber notes that the Indictment states that the meeting on the night of 6 to 7 April 1994 took place at Nzirorera's house.[1577] However, all the evidence called by the Prosecution refers to a meeting held at the house of Joseph Nzirorera's mother as opposed to Nzirorera's house as alleged in the Indictment.[1578]

902. The Chamber recalls, as discussed elsewhere in the Judgement, that in the event of a defect within the Indictment, any such defect can be cured by timely, clear and consistent information provided to the accused by the Prosecution. Accordingly, the Chamber has carefully reviewed the Prosecution Pre-Trial Brief and other relevant post-Indictment disclosures in order to determine whether Bizimungu had adequate notice of the charges underlying the allegation pleaded in paragraph 63 of the Indictment.

903. In the Pre-Trial Brief, the Chamber notes that the summary of Witness GAP's evidence does not specify the location of this meeting.[1579] However, the summaries of Witnesses GFC,[1580] GFE[1581] and GFA[1582] all state that the meetings took place at the house of Nzirorera's mother. Furthermore, while other witnesses' summaries are silent regarding the location of the meeting, no summary explicitly mentions meetings taking place at Nzirorera's house. Based on its review of the Prosecution Pre-Trial Brief, the Chamber therefore considers that Bizimungu had notice of the fact that the location of meetings included the house of Nzirorera's mother.

904. The Chamber further notes that the Defence did not challenge the introduction of evidence regarding meetings at the house of Nzirorera's mother. Rather than opposing the inclusion of the evidence, the Defence called Witnesses DB11-11 and DB15-11 to challenge the Prosecution allegation that the meeting took place at the house of Nzirorerera's mother.

905. For these reasons, the Chamber finds that the Defence was not materially prejudiced by the discrepancy between the Indictment and the Prosecution evidence in relation to the location of the meeting. The Chamber will therefore proceed to consider this evidence on its merits.

4.4.1.1.4 Deliberations

906. The Chamber notes that the Indictment alleges that Bizimungu gave a speech during a meeting at the house of Joseph Nzirorera's mother on 7 April calling for the killing of Tutsi. As a result of Bizimungu's speech, members of the *Interahamwe* killed Tutsi civilians in Rwankeri *secteur*, and soldiers from Kanombe and Bigogwe Camps killed Tutsi civilians at Busogo Parish. These killings are alleged to have occurred on 7 April. The Chamber will consider each element of this charge in sequence.

[1577] Indictment, para. 63.
[1578] *See* Prosecution Witnesses GAP, GFA and GFV.
[1579] Pre-Trial Brief, p. 85.
[1580] Pre-Trial Brief, p. 91.
[1581] Pre-Trial Brief, p. 113.
[1582] Pre-Trial Brief, p. 120.

4.4.1.1.4.1 The Meeting at the House of Joseph Nzirorera's Mother

907. The Prosecution called a number of witnesses, all of whom are former members of the *Interahamwe*, to support its allegation that Bizimungu attended a meeting at the house of Joseph Nzirorera's mother on the night of 6 to 7 April 1994. The Chamber notes that many of these witnesses have been convicted of crimes related to the 1994 genocide.[1583] Due to their role as accomplices, the Chamber will treat their evidence with caution.

908. Witnesses GFV, GAP and GFA all testified that a meeting took place at the house of Nzirorera's mother in the evening or early morning of 6 to 7 April. Having reviewed the evidence of these witnesses, the Chamber is satisfied that a meeting did take place at the house of Nzirorera's mother on that night. The Chamber notes that these witnesses gave varying accounts of the time that the meeting occurred. However, these variances are not significant enough to impugn the credibility of these witnesses given the considerable lapse of time between the meeting and their testimony. The Chamber is also of the view that the fact that this meeting took place over several hours may be a reasonable explanation for these variances. For these reasons, the Chamber does not consider these variances to detract from the credibility of these witnesses regarding the occurrence of the meeting.

909. The Chamber recalls that Witness GAP was the sole Prosecution witness to testify that Bizimungu attended the meeting at the house of Joseph Nzirorera's mother. The other Prosecution witnesses stated that they did not see either Bizimungu or Witness GAP at the meeting. The Chamber will now consider whether the sole testimony of Witness GAP is sufficient to support a finding that Bizimungu attended the meeting in question.

910. The Chamber notes that the failure of Witnesses GFV and GFA to see Bizimungu at the house of Nzirorera's mother, where the meeting was held, can be plausibly explained by the differences in time between Bizimungu's presence at the house and the witnesses' arrival in the area close to the house. The evidence of Witnesses GFV and GFA suggests that they arrived at the Byangabo market, which is close to the house of Nzirorera's mother, between 5.00 and 7.00 a.m. on 7 April. Witness GAP's evidence suggests that Bizimungu arrived at the house for the meeting around 2.00 a.m. and remained there after Witness GAP had left. In light of these time differences, it is a reasonable possibility that Bizimungu may have left the meeting before the witnesses arrived at the market. For this reason, the Chamber is not persuaded that the tentative evidence of Witnesses GFV and GFA rules out the possibility that Bizimungu attended the meeting at the house of Nzirorera's mother. The Chamber therefore accepts Witness GAP's evidence that Bizimungu took part in this meeting.

911. Having found that Bizimungu attended the meeting at the house of Nzirorera's mother on the night of 6 to 7 April, the Chamber will now consider whether he gave a speech calling for the killing of Tutsi. The Chamber has carefully considered the evidence before it and cannot find any reference either in testimony or exhibits to the entire speech as quoted in paragraph 55 of the Indictment. However, the Chamber considers that, when comparing the speech excerpt quoted in paragraph 55 with Witness GAP's testimony of the speech, the content of both is similar in important respects. Witness GAP recalled in his testimony that

[1583] *See* T. 23 May 2005, pp. 7-8, 13; T. 1 March 2005, pp. 8-9 (ICS); T. 3 March 2005, pp. 8, 39; T. 15 February 2005, p. 4 (ICS); T. 30 January 2006, pp. 57-58; T. 10 May 2005, pp. 48-50. Witness DB11-2 was charged with genocide in 1998 but was subsequently acquitted of all charges and released: T. 12 June 2007, pp. 8-9 (ICS).

Bizimungu stated, "Habyarimana is dead and he was assassinated by the *Inyenzis*", that no Tutsi should survive, and that those assembled should set up roadblocks to ensure that Tutsi would not escape. The Chamber finds that this is the essence of the speech quoted in paragraph 55, albeit in less detail. Therefore, the Chamber considers Witness GAP's testimony regarding the content of this speech to be substantially consistent with that found in paragraph 55 of the Indictment.

912. In reaching the above findings, the Chamber has considered whether Witness GAP's pre-trial statements cast doubt on his credibility with respect to Bizimungu's presence and participation at the meeting in question.

913. First, the Chamber recognises that Witness GAP provided varying accounts as to who chaired the meeting. In cross-examination, the witness admitted to having provided a statement on 16 April 2003 in which he described the meeting at the house of Nzirorera's mother on the night of 6 to 7 April 1994. In that statement, the witness claimed that the meeting was chaired by Setako while Bizimungu acted as secretary.[1584]

914. Contrary to his statement of 16 April 2003, Witness GAP testified before this Chamber that the meeting was chaired by Nzirorera since it was held at his mother's home.[1585] When asked to explain this discrepancy, the witness stated that Nzirorera chaired the meeting in his capacity as a civilian authority and Augustin Bizimungu chaired the meeting as a military authority. The witness then explained that Setako and Casimir Bizimungu made statements during the meeting that tallied with statements made by Nzirorera and Augustin Bizimungu.[1586] Eventually, the witness stated that all the authorities chaired the meeting because all of them spoke.[1587]

915. The Chamber is not satisfied that Witness GAP's conflicting accounts of who chaired the meeting detract from the credibility of his evidence that Bizimungu together with other authorities attended the meeting. The Chamber notes that his account of the meeting both in his evidence and in his pre-trial statement, despite variances regarding the specific role of the various participants, does not diverge on the fact that Bizimungu and other figures of authority attended the meeting in question. The Chamber is therefore unwilling to discard Witness GAP's firsthand evidence regarding Bizimungu's attendance and participation at the meeting because of these variances. Given the considerable time lapse and the fraught backdrop to the meeting, it is unreasonable to expect the witness to recount the details of the meeting with precision. However, the Chamber is satisfied that his evidence is sufficiently detailed to support the allegation pleaded in paragraph 63 of the Indictment.

916. In addition, the Chamber has considered the submissions raised by the Defence seeking to impugn the credibility of Witness GAP's evidence regarding Bizimungu's speech at the meeting. The Defence submits that Witness GAP's evidence on this point is doubtful in light of the fact that in a number of his pre-trial statements, he claimed that various participants spoke at the meeting. The Defence referred to Witness GAP's statement dated 17 March 2003, in which he said that Casimir Bizimungu spoke at the meeting and instructed those in attendance to search for and kill Tutsi in Mukingo *commune* beginning the next

[1584] T. 21 February 2005, pp. 28-29.
[1585] T. 21 February 2005, p. 30.
[1586] T. 21 February 2005, pp. 30-31.
[1587] T. 21 February 2005, p. 30.

day.[1588] The Defence also referred to another statement by the witness dated 16 April 2003, in which he stated that Colonel Setako made a speech at the meeting urging the killing of Tutsi in revenge for the death of the President.[1589] In cross-examination, Defence counsel put to Witness GAP a further statement in which the witness claimed that Nzirorera had made a speech at the meeting calling for all Tutsi to be killed in Mukingo and Nkuli *communes*.[1590]

917. Having considered the above statements by Witness GAP, the Chamber is not satisfied that the variations identified by the Defence amount to material contradictions. The Chamber recalls the witness's testimony that a number of people spoke at the meeting. The Chamber accepts as plausible the explanations advanced by the witness that each of his pre-trial statements refers to the role of a specific participant at the meeting because the interviewers focused on the role of that participant during the relevant interview. This being the case, it is reasonable to expect that Witness GAP would provide several statements focusing on specific persons and their specific roles. The fact that in each of these statements, the witness focused exclusively on the role of one participant at the meeting without referring to others does not undermine Witness GAP's evidence regarding the participation of Bizimungu and other individuals in the meeting. Therefore, the Chamber considers that the credibility of the witness is not damaged by these submissions of the Defence.

918. For similar reasons, the Chamber is also not satisfied that Witness GAP's varying accounts of the participation of Kajelijeli and Harelimana raise doubts about the credibility of his evidence regarding Bizimungu's participation in the meeting.[1591] The Chamber finds that given the considerable time lapse between the events in question and the time of Witness GAP's testimony, and also the consecutive appointments of Harelimana and Kajelijeli as *bourgmestre*, it is a reasonable possibility that the witness simply confused the presence of the above individuals at the meeting. This variance does not detract from the credibility of Witness GAP's evidence regarding the participation of Bizimungu at the meeting.

919. The Chamber notes that the Defence called Witnesses DA5-1 and DB2-6 to provide, in essence, an alibi defence for Bizimungu. They testified that Bizimungu, who was suffering from gout, did not leave his home at Mukamira army base until the late morning of 7 April, thus making it impossible for him to have attended the meeting at the house of Nzirorera's mother in the evening and early morning of 6 to 7 April. This account is supported by Bizimungu himself, who stated that he did not leave his home until 10.00 or 11.00 a.m. on 7 April.

920. The Chamber is not convinced by the evidence of these witnesses. Furthermore, the Chamber considers it unlikely that Bizimungu, who was commander of the Ruhengeri operational *secteur* of the Army at the time, would have been absent from such a crucial meeting convened shortly after the news of the President's death. Given the attendance of

[1588] T. 21 February 2005, p. 29.
[1589] T. 21 February 2005, p. 31.
[1590] T. 21 February 2005, p. 33.
[1591] Witness GAP has previously offered varying accounts as to who participated in the meeting. It was put to the witness that his latest recollection was incorrect with respect to the participants at the meeting, based on his statement dated 17 March 2003 and in his testimony in the *Bizimungu et al.* trial in which he stated that Kajelijeli was present at the meeting. In his testimony before this Chamber, the witness stated that Kajelijeli was not present and that it was in fact Harelimana, the *bourgmestre* at the time, who was present at the meeting. The witness explained that he had confused the two and that in fact where his previous statements and testimony read "Kajelijeli", this Chamber should understand him to be referring to Harelimana. *See* T. 21 February 2005, pp. 19-22.

both national and Ruhengeri-based leaders at the meeting, together with the fact that Ruhengeri had seen the brunt of fighting between government forces and the RPF for years leading up to that time, the Chamber finds it difficult to believe that the commander of the Ruhengeri operational sector of the Rwandan Army would have failed to attend.

921. Therefore, the Chamber is not persuaded by the evidence of Defence Witness DB2-6 that Bizimungu remained at his house throughout the night of 6 to 7 April and did not attend the meeting. In view of the urgency and seriousness of the situation in Ruhengeri at the time and Witness GAP's firsthand evidence of Bizimungu's presence at the meeting, the Chamber is unwilling to accept the evidence of Witness DB2-6. Moreover, the Chamber is reluctant to accept the alibi account provided by this witness given his possible interest in exonerating Bizimungu from the charges pleaded in the Indictment. The witness was a member of Bizimungu's house staff and has a clear allegiance to Bizimungu's family.

922. Turning to the evidence of Defence Witness DA5-1, the Chamber finds that his evidence does not exclude the possibility that Bizimungu attended the meeting at the house of Nzirorera's mother during the night of 6 to 7 April. Witness DA5-1 claimed to have visited Bizimungu at his house in the evening of 6 April. The witness stated that Bizimungu retired to his room around 8.00 p.m. and that he never saw him during that night. Even if the Chamber were to accept his account, it is possible that Bizimungu left his home after 8.00 p.m. without the knowledge of the witness.

923. Finally, the Chamber has considered the evidence of Defence Witness DB15-11, a relative of Nzirorera who stated that no meeting took place at the house of Nzirorera's mother as she was present at the house all night and saw nothing. First, the Chamber approaches this evidence with caution due to the relationship between the witness and Nzirorera, which shows a clear motivation for the witness to deny the existence of a meeting. Second, the Chamber finds that this evidence is outweighed by the Prosecution evidence of the existence of a meeting at the house of Nzirorera's mother.

4.4.1.1.4.2 Killings in Rwankeri Following the Meeting

924. Having found that Bizimungu attended the meeting at the house of Nzirorera's mother and that he made a speech at that meeting calling for the killing of Tutsi in Ruhengeri, the Chamber will now examine whether the remarks made by Bizimungu at that meeting led to the killing of Tutsi in Rwankeri *secteur* by members of the *Interahamwe*.

925. Having weighed the totality of the evidence relevant to these events, the Chamber is satisfied that there is a close link between the anti-Tutsi remarks made by the authorities, including Bizimungu, during the meeting at the house of Nzirorera's mother and the killings of Tutsi civilians at Rwankeri by *Interahamwe*. The evidence of Prosecution Witnesses GFV, GFC and GFA suggests that shortly after the conclusion of the meeting, a number of officials including Bambonye emerged from the house of Nzirorera's mother and urged the *Interahamwe* who had gathered at Byangabo market to kill Tutsi in the area. The evidence is compelling that not only was Bambonye present at the meeting, but that a number of *Interahamwe* had gathered at Byangabo market by the time the meeting finished.

926. This being the case, the Chamber is satisfied that the instructions issued by the local officials such as Bambonye to *Interahamwe* who had gathered at the market to kill Tutsi shortly after the meeting were directly linked to the anti-Tutsi remarks made by Bizimungu

and other authorities during their speeches at the meeting. The evidence also suggests that after Bambonye's instructions, the *Interahamwe* killed two Tutsi in and around the Byangabo market and then headed to Rwankeri *secteur* where they killed more Tutsi civilians. Having considered the evidence relevant to the events of 7 April in Ruhengeri, the Chamber is satisfied that it is a reasonable inference that the killings of Tutsi civilians by *Interahamwe* in Rwankeri *secteur* were precipitated by the anti-Tutsi remarks made by Bizimungu at the meeting held at the house of Nzirorera's mother.

927. The Chamber further notes that the evidence elicited from Defence Witnesses DB11-2 and DB11-11 corroborates the evidence of Prosecution witnesses regarding the killings of Tutsi at Byangabo market and in Rwankeri *secteur* on 7 April.

4.4.1.1.4.3 Killings by Soldiers from Kanombe and Bigogwe Camps at Busogo Parish

928. The Chamber has heard evidence from Prosecution Witnesses GFA and GFC regarding the killings at Busogo Parish. Both witnesses testified to having participated, alongside other *Interahamwe* members, in the killings at the parish on 7 April 1994. In addition to the evidence of these witnesses, Prosecution Witness GAP testified that he saw Bizimungu at Busogo Parish on 8 April overseeing the burial of 400 to 500 dead bodies, one day after the alleged killings of the Tutsi refugees at the parish.[1592]

929. The Chamber notes that Prosecution Witnesses GFA and GFC identified soldiers as being among the assailants at the parish. While the Chamber accepts based on the evidence of Prosecution Witnesses GFA, GFC and GAP that Tutsi civilians at Busogo Parish were killed by both *Interahamwe* and soldiers, the Chamber is not satisfied that the evidence elicited from Prosecution witnesses establishes a clear nexus between Bizimungu's remarks at the meeting and the killings at Busogo Parish.

930. The Chamber recalls that Bizimungu is charged with criminal responsibility for the killings of Tutsi civilians at Busogo Parish pursuant to Article 6(1) of the Statute. In order for an accused to be culpable under Article 6(1), he must be found to have committed, ordered, instigated or otherwise aided and abetted the crimes in question. The Chamber is not satisfied that the Prosecution has adduced sufficient evidence proving that Bizimungu's anti-Tutsi remarks at the meeting held at the house of Nzirorera's mother had a significant bearing on the conduct of the assailants who killed the Tutsi civilians at Busogo Parish. For this reason, the Chamber is unwilling to hold Bizimungu criminally responsible for the killings at the parish pursuant to Article 6(1) of the Statute. The mere fact that soldiers were implicated in these killings is not sufficient to support a finding of guilt pursuant to Article 6(1).

931. The Chamber is therefore satisfied that the Prosecution has proved beyond reasonable doubt that Bizimungu's anti-Tutsi speech during the meeting held at the house of Nzirorera's mother on 7 April substantially contributed to the killings of Tutsi civilians in Rwankeri *secteur* on that day. However, the Chamber is not satisfied that the Prosecution has proved beyond reasonable doubt that Bizimungu bears criminal responsibility pursuant to Article 6(1) of the Statute for the killings of Tutsi civilians at Busogo Parish.

[1592] T. 15 February 2005, pp. 48-49.

4.4.1.2 Killing of Tutsi by *Interahamwe* at Ruhengeri Court of Appeal

4.4.1.2.1 Introduction

932. The Indictment alleges that on or around 8 April 1994, Bizimungu met a group of *Interahamwe* and "asked them to prepare to intervene at the Ruhengeri Court of Appeal where Tutsi, who … were destined for extermination, had sought refuge."[1593] The Indictment also alleges that on or around 14 April, the militiamen met Bizimungu "in front of" the Ruhengeri Court of Appeal and that he pointed to the building and then withdrew after the first grenade was thrown. Over 100 people are alleged to have been killed in the attack. It is further alleged that in the evening, Bizimungu "had broadcast an announcement on the radio, alleging that the refugees had died under RPF bombs."[1594]

4.4.1.2.2 Evidence

4.4.1.2.2.1 Prosecution Evidence

Prosecution Witness GFU

933. Witness GFU testified that he was a member of *Impuzamugambi,* the youth wing of the CDR party, in 1994.[1595] Following the death of President Habyarimana on 6 April, the witness was informed by a person he knew as Pierre[1596] that "military and civilian authorities had launched an appeal" for people to go to Ruhengeri Stadium in order to receive training.[1597] Consequently, approximately three days after the death of the President, the witness and other members of the *Impuzamugambi* and *Interahamwe* proceeded to Ruhengeri Stadium where they underwent a three-day military training programme provided by soldiers from Camp Muhoza.[1598]

934. The witness explained that upon completion of his training, there was a closing ceremony attended by Bizimungu and his deputies. Bizimungu addressed those present and informed them that they "were to be assigned to roadblocks to track down *Inyenzi Inkotanyis* and their accomplices".[1599] The witness was then issued an R-4 rifle and sent to a roadblock at the SGP petrol station in Mubona *secteur*, Ruhengeri.[1600]

935. Witness GFU testified that on the day before he went to the Ruhengeri Court of Appeal, he attended a meeting at the Ruhengeri *préfecture* office. Those present at the meeting included Bizimungu, *Préfet* Basile (who chaired the meeting), Gahunde and Pierre of the CDR and Bivugabagabo, as well as other *préfets*, *sous-préfets* and *bourgmestres*.[1601] The

[1593] Indictment, para 64.
[1594] Indictment, para 65.
[1595] T. 27 January 2005, p. 51.
[1596] Witness GFU testified that Pierre was a youth leader in the CDR. The Chamber notes that references to Pierre in the Transcripts are also spelt "Peri" and "Pere". These names are therefore used interchangeably.
[1597] T. 27 January 2005, pp. 53-54.
[1598] T. 27 January 2005, pp. 53, 56, 58. Witness GFU testified that he was trained in handling firearms and traditional weapons. He also testified that in 1994 he and about 20 other youths received training at Cyabararika forest on how to handle grenades. During the training, Colonel Setako informed the trainees that they were being prepared to fight the *Inkotanyi* and their accomplices.
[1599] T. 27 January 2005, p. 53.
[1600] T. 27 January 2005, pp. 59-60.
[1601] T. 27 January 2005, pp. 53-54; T. 2 February 2005, pp. 29-30; T. 2 February 2005, p. 29.

witness testified that "it was in that meeting that the plan to attack the appeals court was discussed".[1602] The witness claimed that during the meeting, Bizimungu referred to the Tutsi refugees at the Court of Appeal as "filth" and "requested that this filth or this dirt be removed within a few days". Witness GFU understood Bizimungu's remarks as a call to kill the refugees.[1603]

936. Witness GFU then described the attack that took place at the Court of Appeal. He explained that on the following day, he was at the SGP petrol station roadblock when a person he knew as Nzirorera, the Speaker of the Rwandan National Assembly and a member of the MRND party, stopped at the roadblock. Nzirorera asked the witness and other militiamen at the roadblock to follow him to Mukingo.[1604] Upon arrival in Mukingo, they met the Mukingo *Interahamwe*. The entire group (including the Mukingo *Interahamwe*) then boarded vehicles and headed to the Court of Appeal in Ruhengeri.[1605]

937. On arrival, Witness GFU saw that there were approximately 15 to 20 *gendarmes* surrounding and guarding the Court and that inside the Court building was a group of Tutsi refugees including women, children and elderly men.[1606] The witness testified that the *gendarmes* fired shots into the air and then left the scene.[1607]

938. Shortly thereafter, the witness saw Bizimungu arrive in the area and enter the Hotel Muhabura, which was located opposite the Court of Appeal. The witness then accompanied the youth leader Pierre to the hotel. There they found Bizimungu sitting on the terrace together with Bivugabagabo, Setako and other soldiers whose names the witness could not recall.[1608] Witness GFU explained that Bizimungu gave them the "green light" to attack the refugees and said, "Now, right now, start working".[1609] The witness stated, "[S]ince this had been agreed in the meeting that we were to rid ourselves of the dirt, and since he said we could start working, we went back to the site and began firing [at the refugees]."[1610] Throughout the attack, Bizimungu "was seated on the Hotel Muhabura terrace".[1611] The witness claimed that the attack did not last more than an hour.[1612]

939. Following the attack, Witness GFU returned to the roadblock. He testified that shortly thereafter, "Nzirorera came to verify if the work had been completed. He came to take note – or take stock of what had happened at the Court of Appeal."[1613] Upon doing so, Nzirorera "found some people had not yet died". Nzirorera then made the witness and others return to the Court of Appeal to "[finish] off all of those who were still alive".[1614] Nzirorera then left.

[1602] T. 27 January 2005, p. 62.
[1603] T. 27 January 2005, pp. 63-64.
[1604] T. 27 January 2005, p. 62.
[1605] T. 27 January 2005, p. 62.
[1606] T. 27 January 2005, pp. 64-65.
[1607] T. 3 February 2005, p. 30.
[1608] T. 27 January 2005, pp. 65-66.
[1609] T. 27 January 2005, p. 67.
[1610] T. 27 January 2005, p. 67.
[1611] T. 27 January 2005, p. 68.
[1612] T. 27 January 2005, p. 68.
[1613] T. 27 January 2005, p. 70.
[1614] T. 27 January 2005, p. 70.

According to Witness GFU, approximately 200 or 250 Tutsi men, women and children were killed in the attack.[1615]

Prosecution Witness GFV

940. Witness GFV was a member of the *Interahamwe* in 1994.[1616] On 14 April 1994, the witness was in Byangabo when a group of *Interahamwe* from Ruhengeri including members known as Pere, Cyaka, Evariste, Mwenge, Toto and Tuta arrived in two Daihatsu pickup vehicles.[1617] The *Interahamwe* from Ruhengeri told the witness and other Mukingo *Interahamwe* that Bizimungu had "asked them to get reinforcement from the Mukingo *Interahamwe*".[1618] Initially, the witness and his colleagues refused to go with them. This was because they did not have approval from their superiors.[1619]

941. The Ruhengeri *Interahamwe* then headed to a nearby petrol station together with Witness GFV and his colleagues in order to find the witness's superiors. There they met Chief Warrant Officer Karorero and Kajelijeli, who was the leader of *Interahamwe* in Mukingo *commune*.[1620] The Ruhengeri *Interahamwe* repeated that Bizimungu had sent them and stated that reinforcements were required because "there was a chief warrant officer who brought Tutsis from Busengo and kept them at the Court of Appeals".[1621] Permission was given for Witness GFV and the Mukingo *Interahamwe* to accompany the Ruhengeri *Interahamwe* to the Court of Appeal.[1622]

942. Witness GFV and other Mukingo *Interahamwe* then boarded a vehicle and went to Mukamira where they picked up weapons. The witness testified that he received two or three grenades from Karorero. The entire group then proceeded towards the Court of Appeal.[1623] Upon arrival, a small group of *Interahamwe* from Ruhengeri, including Pere, got out of the vehicle and went into Hotel Muhabura, which was located opposite the Court of Appeal.[1624]

943. At the Court of Appeal, the witness saw three *gendarmes* who fired into the air.[1625] Shortly thereafter, Pere and his colleagues returned from Hotel Muhabura and told Witness GFV and the others that Bizimungu had given the order to shoot at the Court of Appeal.[1626] Upon hearing this, a person named Musafili shot open the locks on the doors of the Court of Appeal, after which the other attackers entered the building and killed Tutsi refugees.[1627] Witness GFV testified that although he was present during the attack, he did not participate in

[1615] T. 27 January 2005, pp. 68-69.
[1616] T. 23 May 2005, p. 14; Prosecution Exhibit 34, under seal.
[1617] T. 23 May 2005, pp. 28-29.
[1618] T. 23 May 2005, p. 29.
[1619] T. 23 May 2005, p. 28-30.
[1620] T. 23 May 2005, p. 28-31.
[1621] T. 23 May 2005, p. 32.
[1622] T. 23 May 2005, pp. 29-32.
[1623] T. 23 May 2005, p. 32.
[1624] T. 23 May 2005, pp. 33-34.
[1625] T. 23 May 2005, p. 35.
[1626] T. 23 May 2005, p. 35.
[1627] T. 23 May 2005, p. 39.

it.[1628] He estimated that approximately 150 or 200 unarmed Tutsi women, men and children were killed in the attack.[1629]

Prosecution Witness GFA

944. Witness GFA testified that he was a member of the *Interahamwe* in 1994.[1630] On 14 April 1994, the witness was in Mukingo *commune* when he received a message from Juvénal Kajelijeli requesting that he go to the Byangabo petrol station.[1631] Upon arrival, he saw two Daihatsu pickup vehicles loaded with *Impuzamugambi* militia who had arrived from Ruhengeri. Kajelijeli then told the witness to find *Interahamwe* who could go and help the *Impuzamugambi* kill Tutsi refugees at the Court of Appeal.[1632] Witness GFA thereafter went in search of *Interahamwe* and brought them to the petrol station.[1633] In the witness's presence, the *Interahamwe* and *Impuzamugambi* boarded the two vehicles and left.

945. Witness GFA was later informed by the *Interahamwe* who had gone to Ruhengeri that they killed Tutsi at the Ruhengeri Court of Appeal.[1634] During his testimony, the witness wrote down the names of some of the *Interahamwe*, including Prosecution Witnesses GFC and GFV, whom he had asked to go and help the *Impuzamugambi* attack Tutsi refugees at the Court of Appeal.[1635] Witness GFA also gave a list of the militia from Ruhengeri, including Prosecution Witness GFU and one Pere, who had come to Mukingo to seek assistance from the *Interahamwe*.[1636]

946. Witness GFA further testified that approximately two weeks after the death of the President, he attended a meeting with approximately 3000 others at which the new *Préfet*, Basile, was introduced to members of the population in the Ruhengeri *préfecture*.[1637]

4.4.1.2.2.2 Defence Evidence

The Accused Bizimungu

947. Bizimungu denied any involvement in planning or implementing the attack on the Ruhengeri Court of Appeal.[1638] He rejected Witness GFU's testimony that he attended a meeting on 13 April 1994 during which he referred to the Tutsi refugees at the Court of Appeal as "filthy" and stated that they must be removed.[1639] Furthermore, Bizimungu told the Chamber that he could not have been present with *Préfet* Basile at the meeting of 13 April because Basile had not yet become *préfet*, and Ruhengeri only had a *sous-préfet* at that

[1628] T. 23 May 2005, p. 39.
[1629] T. 23 May 2005, p. 39.
[1630] T. 30 January 2006, p. 58.
[1631] T. 31 January 2006, p. 18.
[1632] T. 31 January 2006, p. 18.
[1633] T. 31 January 2006, pp. 18, 23.
[1634] T. 31 January 2006, pp. 19, 23.
[1635] T. 31 January 2006, pp. 29-31; Prosecution Exhibit 78, under seal.
[1636] T. 31 January 2006, p. 31; Prosecution Exhibit 79, under seal.
[1637] T. 30 January 2006, p. 73.
[1638] T. 11 December 2007, p. 21-23.
[1639] T. 11 December 2007, p. 22.

date.[1640] Bizimungu also denied that he was present with Setako at Hotel Muhabura because according to him, he had not seen Setako from 4 April and only saw him "later" in Kigali.[1641]

948. Bizimungu explained that on 12 April, he received instructions from General Gatsinzi, then Chief of Staff, to put together a UNAMIR column that was moving from the demilitarised zone in Byumba to Ruhengeri. He therefore contacted his battalion commanders and, together with them, prepared to receive the UNAMIR troops who arrived at about 11.00 p.m. that evening.[1642] Bizimungu further explained that after the departure of the UNAMIR column, he had a "day of normal activity" on 13 April and went home on 14 April because he had not been home in a long time.[1643] Contrary to the Prosecution evidence, Bizimungu specifically denied his presence at Hotel Muhabura on 14 April and denied that he had ordered the massacre of the Tutsi civilians at the Court of Appeal.[1644]

Defence Witness Basile Nsabumugisha

949. Witness Basile Nsabumugisha testified that prior to 19 April 1994, he worked at the Ministry of Foreign Affairs and was based in Kigali.[1645] He stated that on 17 April 1994, he learned over the radio that he had been chosen to be the *préfet* of Ruhengeri *préfecture*.[1646] Accordingly, on 19 April the witness left Kigali and went to Ruhengeri. He was officially sworn in as *préfet* on 22 April at the Ruhengeri *préfecture* office, in the presence of about 50 to 100 people.[1647]

950. The witness explained that he was appointed *préfet* because his predecessor, Sylvestre Baliyanga, had been killed. He further explained that between 8 April and 22 April 1994, there had been no *préfet* in Ruhengeri.[1648]

951. Witness Basile denied that he ever chaired or participated in a meeting regarding Tutsi refugees at the Court of Appeal.[1649] The witness further testified that from 19 April, when he arrived in Ruhengeri, until 13 July 1994, when he left the city, he did not see Bizimungu and was never told by anyone that Bizimungu had been in Ruhengeri.[1650]

952. In relation to the attack at the Court of Appeal, the witness testified that he was not present during any such attack. He was, however, informed and heard on the radio that on 14 April the Court of Appeal had "come under attack from young persons from Kigombe and others who had come from elsewhere."[1651]

[1640] T. 11 December 2007, pp. 22-23.
[1641] T. 11 December 2007, p. 23.
[1642] T. 11 December 2007, p. 22.
[1643] T. 11 December 2007, p. 22.
[1644] T. 11 December 2007, p. 23.
[1645] T. 26 October 2007, pp. 5-6.
[1646] T. 26 October 2007, p. 6; T. 29 October 2007, pp. 59-60.
[1647] T. 26 October 2007, p. 13.
[1648] T. 29 October 2007, pp. 22-23.
[1649] T. 29 October 2007, p. 17-18.
[1650] T. 26 October 2007, p. 25.
[1651] T. 29 October 2007, p. 31.

Defence Witness DB 15-6

953. Witness DB 15-6 was a senior law enforcement officer in Ruhengeri *préfecture* in 1994.[1652] He testified that on 12 April 1994, he attended a security meeting at which it was decided to move refugees from Busengo to the Ruhengeri Court of Appeal.[1653] This was because there was a *gendarme* post in that *commune* and because *bourgmestres* of various other *communes* had indicated that they could not provide safety for these people within their *communes*.[1654]

954. The meeting was attended by several high-ranking officials of Ruhengeri and was chaired by the representative of the *préfet*, *Sous-Préfet* Célestin Ntarwanda, because the *préfet* had been killed on the night of 7 April.[1655] Witness DB 15-6 testified that neither Basile Nsabumugisha nor Bizimungu attended this meeting.[1656] According to the witness, Basile Nsabumugisha first came to Ruhengeri on 19 April 1994 after his appointment as *préfet*.[1657] The witness also stated that Peri, whom he described as a "great bandit" and "a terrorist", did not attend the meeting and that no bodyguards were allowed into the meeting room.[1658]

955. When asked about his knowledge of the attack on the Court of Appeal in Ruhengeri, Witness DB 15-6 testified that the decision to take refugees to the Court was made during a security meeting, which to his recollection was held on 12 April 1994.[1659] According to the witness, as far as he knew, the security meeting that was held on 12 April was the only one of its kind during that period. Had there been any other meeting, the witness claimed he would have been aware of it.[1660] Regarding the actual attack on the Court of Appeal, the witness stated, "I heard that people were taken to the Appeals Court in search of refuge, and that later on a gang of young people, who were bandits, attacked them and killed them".[1661]

Defence Witness DE 11-4

956. Witness DE 11-4 was a politician in Ruhengeri in April 1994.[1662] He testified that he was living in Kigali at the time of the President's death.[1663] On 13 April, the witness fled Kigali with his family and travelled towards Gisenyi, stopping for the night at Camp Gitarama.[1664] The next morning, the witness continued his journey, stopping to drop off family members of other soldiers at Camp Mukamira and then continuing to Gisenyi where

[1652] T. 30 October 2007, p. 32 (ICS).
[1653] T. 30 October 2007, pp. 46, 49.
[1654] T. 30 October 2007, pp. 46-47.
[1655] Defence Witness DB 15-6 listed the following as having attended the meeting: the *sous-préfet* of Busengo, Nzanana; the *bourgmestre* of Busogo; the *bourgmestre* of Nyakinama; the *bourgmestre* of Nkuli; the *bourgmestre* of Ruhengeri; the commander of the detachment; the commander of EGENA; the prosecutor and presiding judge of the court of first instance; the officer in charge of the intelligence service; the representative of ORINFOR; and the director of the prison. *See* T. 30 October 2007, pp. 46-49.
[1656] T. 30 October 2007, pp. 48-49.
[1657] T. 30 October 2007, p. 48.
[1658] T. 30 October 2007, pp. 49-50.
[1659] T. 30 October 2007, p. 51.
[1660] T. 30 October 2007, p. 51.
[1661] T. 30 October 2007, p. 46.
[1662] T. 27 November 2007, pp. 3-5.
[1663] T. 27 November 2007, p. 26.
[1664] T. 27 November 2007, p. 26.

he found accommodation for his family.[1665] He remained in Gisenyi until he received an official order to return to Ruhengeri in early June.[1666]

957. The witness stated that he was aware of the attack at the Court of Appeal as it was, in his opinion, "common knowledge".[1667] He refuted the assertion that he was present at a meeting before the attack at the Court of Appeal at which it was decided to kill the refugees there.[1668]

Defence Witness DC 2-4

958. Witness DC 2-4 was a driver in Ruhengeri in April 1994. He testified that he was an "eyewitness" to the attack on the Court of Appeal.[1669] According to the witness, on the day of the attack he was returning from Mukamira when he stopped at Cyangugu and learned that the refugees staying at the Ruhengeri Court of Appeal had been killed.[1670] Upon hearing this report, he travelled to Ruhengeri to verify whether it was true.[1671] When he arrived at the Court, while still sitting inside his vehicle, he saw corpses that had been "piled on the side" next to the Court.[1672] He also saw soldiers[1673] trying to push back the crowds that had gathered at the scene, while at the same time "making efforts to bury the bodies of the victims."[1674] The witness stated that according to information he obtained from the local population, those who attacked the Court of Appeal "were said to be criminals in the Ruhengeri region"[1675] and that to his knowledge neither Bizimungu nor other soldiers played any role in that massacre.[1676]

Defence Witness DB 2-5

959. Witness DB 2-5 was a soldier in the Rwandan Army assigned to the Ruhengeri operational sector in April 1994.[1677] He testified that about a week after President Habyarimana's death, he left the military camp with another soldier, without authorisation and without weapons,[1678] in order to "get something to drink".[1679] The witness and the other soldier first went to Hotel Muhabura, which was closed, so they continued on towards Umushikarinyaro Inn.[1680] On the way, they passed the Court of Appeal and saw that there

[1665] T. 27 November 2007, pp. 26-27.
[1666] T. 27 November 2007, p. 47.
[1667] T. 27 November 2007, p. 25.
[1668] T. 27 November 2007, pp. 24-25.
[1669] T. 30 April 2007, p. 10.
[1670] T. 30 April 2007, pp. 7-8 (ICS); T. 30 April 2007, p. 12.
[1671] T. 30 April 2007, p. 12.
[1672] T. 30 April 2007, p. 12.
[1673] The witness had first identified those controlling the situation at the Court as "security officers", but later stated that soldiers "were the ones preventing the crowd from getting closer to the Appeals Court." *See* T. 30 April 2007, p. 13.
[1674] T. 30 April 2007, p. 13.
[1675] T. 30 April 2007, p. 20.
[1676] T. 30 April 2007, pp. 20-22.
[1677] T. 3 May 2007, pp. 3, 9-10.
[1678] The witness testified that leaving the camp without authorisation was considered a serious offence in the military at the time and that, if caught, a soldier was sanctioned to five days in a "police room", unable to leave the camp. *See* T. 3 May 2007, p. 30.
[1679] T. 3 May 2007, p. 12 (ICS).
[1680] T. 3 May 2007, p. 12 (ICS).

were people inside, but did not know whether they were refugees.[1681] Before arriving at Umushikarinyaro Inn, they heard "screams which seemed to come from Ruhengeri town."[1682] When they turned, they saw a mob going towards the Court of Appeal, at which point they became frightened and decided to return to the camp.[1683] On their way back, they passed Hotel Muhabura where they saw a huge crowd of civilians carrying traditional weapons and clubs moving towards the Court.[1684] Less than five minutes into the walk back to camp, they heard gunshots and grenade explosions, at which point they began running.[1685] The witness recalled that the shooting stopped after approximately ten minutes.[1686]

Defence Witness DB 11-35

960. Witness DB 11-35 testified that he was employed at Hotel Muhabura in April 1994.[1687] He explained that the hotel was located in Kigombe *commune*, Ruhengeri, and that only a road separated the hotel from the Ruhengeri Court of Appeal.[1688] He estimated the distance between the two locations to be approximately 100 metres.[1689] The witness told the Chamber that Hotel Muhabura was not open on 14 April 1994, the day that the attack on refugees at the Court of Appeal took place, and added that it had not in fact opened for business since the death of the President on 6 April.[1690]

961. Witness DB 11-35 testified that on 14 April, he went to the hotel in the morning in order to clean the premises.[1691] Upon arrival, the witness saw a number of people around the area of the Court of Appeal. The witness asked a guard at the Court what was happening and was told that it involved refugees from Busengo.[1692]

962. At approximately 12.30 to 1.00 p.m., the witness heard the sound of whistles blowing and people screaming. The witness then went to the front entrance of the hotel and saw a group of people he described as "bandits". Among the group was a person the witness knew as Peri.[1693] The group then went past the Court building and headed in the direction of Gisenyi.[1694]

963. At approximately 2.30 to 3.00 p.m., the witness was in the hotel when he again heard noise and also heard gunshots.[1695] When the witness went outside, he saw a crowd of people fleeing in opposite directions away from the Court.[1696] After about five minutes, a military

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[1681] T. 3 May 2007, p. 31. The witness also testified that he had never before, on his walks to get juice or for other purposes, passed through the Court of Appeals.
[1682] T. 3 May 2007, p. 12 (ICS).
[1683] T. 3 May 2007, p. 12 (ICS).
[1684] T. 3 May 2007, pp. 19, 46.
[1685] T. 3 May 2007, p. 12 (ICS).
[1686] T. 3 May 2007, p. 13 (ICS). While the witness testified that the sounds of gunshots and grenades lasted only ten minutes, he admitted that the sounds became much fainter as he ran away from the Court, towards the camp. *See* T. 3 May 2007, p. 46.
[1687] T. 14 November 2007, pp. 5-6 (ICS).
[1688] T. 14 November 2007, p. 7 (ICS).
[1689] T. 14 November 2007, p. 7 (ICS).
[1690] T. 14 November 2007, pp. 7-8 (ICS).
[1691] T. 14 November 2007, p. 8 (ICS).
[1692] T. 14 November 2007, p. 9 (ICS).
[1693] T. 14 November 2007, p. 9 (ICS).
[1694] T. 14 November 2007, p. 9 (ICS).
[1695] T. 14 November 2007, p. 10 (ICS).
[1696] T. 14 November 2007, p. 11 (ICS).

vehicle arrived and dropped off two individuals, followed a few minutes later by either soldiers or *gendarmes*,[1697] all of whom attempted to control the movement of people who had gathered to see what was happening.[1698]

964. Witness DB 11-35 testified that the refugees who had been at the Court were killed on that day.[1699] He further testified that throughout the time he spent at the hotel, from about 10.00 a.m. to approximately 4.00 p.m., no one visited the hotel or sat on the terrace.[1700] In particular, the witness denied that Bizimungu, Colonel Setako or Major Bivugabagabo visited the hotel on that day or sat on the terrace.[1701]

Defence Witness DB 2-13

965. Witness DB 2-13 was a priest in Ruhengeri in April 1994.[1702] He testified that he knew Bizimungu as the commander of Camp Mukamira and considered him a friend.[1703] Although the witness lived some four kilometres away from the Court of Appeal at the time of the attack of 14 April, he heard of the attack and learned that it was carried out by *Interahamwe*.[1704] The witness stated that at the time of the attack, "Bandits were very many, and … people called *Interahamwe* were not properly organised … These were the young people who were creating chaos in town, in various offices, who were seeking to steal everywhere. These people were not under the control of the civil service."[1705]

966. The witness also expressed the view that it was impossible for authorities, such as Bizimungu, to have participated in the killings. The witness stated, "[H]e could not have participated in such activities, particularly since the watchword of the people, the residents, did not allow him to conduct himself in that manner."[1706] Witness DB 2-13 testified that Bizimungu's name was never directly or indirectly referenced in regards to responsibility for the attack on the Court of Appeal.[1707]

4.4.1.2.3 Deliberations

967. Both Prosecution and Defence evidence indicates that on 14 April 1994, several hundred Tutsi were murdered in an attack at the Ruhengeri Court of Appeal. It is also common ground that the attack was directly perpetrated by two militia groups, the *Impuzamugambi* from Ruhengeri town and the *Interahamwe* from Mukingo *commune*.

968. The key question before the Chamber is whether Bizimungu directly participated in the massacre at the Court of Appeal. The Chamber will first consider whether Bizimungu directly participated by encouraging militiamen during a meeting to kill Tutsi refugees at the Court of Appeal, as alleged in paragraph 64 of the Indictment. The Chamber will then

[1697] The witness was unable to recall whether they were soldiers or *gendarmes*.
[1698] T. 21 November 2007, pp. 13, 24.
[1699] T. 14 November 2007, p. 11 (ICS).
[1700] T. 14 November 2007, pp. 9, 12-13 (ICS). The witness did, however, state that there was nothing keeping someone from going to the terrace, even if the hotel was closed.
[1701] T. 14 November 2007, p. 12 (ICS).
[1702] T. 23 October 2007, p. 34 (ICS).
[1703] T. 24 October 2007, pp. 29-30.
[1704] T. 24 October 2007, p. 23.
[1705] T. 24 October 2007, p. 24.
[1706] T. 24 October 2007, p. 25.
[1707] T. 24 October 2007, p. 25.

consider whether Bizimungu directly participated by pointing to the Court and signalling for the attack to commence, as alleged in paragraph 65 of the Indictment.

4.4.1.2.3.1 The Meeting

969. Prosecution Witness GFU was the only witness to provide a firsthand account of the alleged meeting pleaded in paragraph 64 of the Indictment. At the outset, the Chamber notes that at the time of his testimony, Witness GFU was incarcerated and serving a lengthy prison sentence in Rwanda for crimes related to the genocide.[1708] He was also an accomplice to the massacre at the Ruhengeri Court of Appeal. Accordingly, the Chamber views the witness's testimony with caution.

970. The Chamber finds Witness GFU's evidence problematic. His evidence describing a meeting in which Bizimungu participated is uncorroborated and there are significant differences between his sworn testimony and five of his pre-trial statements made between 28 November 2000 and 19 November 2003.

971. The Chamber notes that in his first two statements, which total 19 pages and contain extensive information about events during the relevant period, Witness GFU did not make any reference to Bizimungu. Furthermore, the Chamber notes that unlike his testimony, Witness GFU did not in any of his five statements claim to have attended a meeting at the Ruhengeri *préfecture* office. He also did not in any of his pre-trial statements claim to have attended a meeting at which Bizimungu discussed the fate of Tutsi refugees at the Court of Appeal.

972. On the contrary, Witness GFU's pre-trial statements clearly suggest that he did not attend any meeting at which the issue of Tutsi refugees at the Court of Appeal was discussed. Witness GFU's statements to ICTR investigators dated 14 November 2002 and 18 February 2003 state that he was "informed" about the outcome of the alleged meeting at the *préfecture* office by *Préfet* Basile and someone else while he (Witness GFU) was on duty at the SGP petrol station roadblock in Ruhengeri.[1709] The Chamber therefore finds that Witness GFU's testimony that he attended a meeting with Bizimungu the day before the attack at the Court of Appeal is irreconcilable with his pre-trial statements, in which he claimed that he was "informed" that such a meeting took place.

973. When confronted with these inconsistencies during cross-examination, Witness GFU offered several different explanations. Initially, he claimed that he had not mentioned Bizimungu's name in his early statements because he "had just come back from Zaire and ... was arrested and ... wasn't in a state of serenity".[1710] Witness GFU then explained that he had lied in his early statements because he wanted to "mask the full extent of [his] ... responsibility because [he] hadn't yet fully understood the [judicial] process".[1711] He also

[1708] T. 27 January 2005, pp. 35-46 (ICS).
[1709] Defence Exhibit 20, under seal (the witness claimed "that at a meeting held by senior military officers [General Bizimungu Augustin, Colonel Setako Ephrem, Colonel Ntibitura and Colonel Bivugabagabo] in Ruhengeri it had been decided that Tutsi refugees sheltering in the Ruhengeri Court of Appeal should be killed that same day"). Defence Exhibit 20(A) (the witness claimed that he was "visited by *préfet* Basile and the *sous-préfet* Nzanana of Busengo. They told us that they had a meeting at which it was decided that the refugees from Busengo who were gathered at the Court of Appeal should be killed").
[1710] T. 31 January 2005, p. 20.
[1711] T. 31 January 2005, p. 20.

explained that the investigators' questions were targeted at specific individuals and that his answers ought to be understood in that context.[1712] Witness GFU finally claimed that he lied in his early statements for security reasons and that he did not mention the names of key individuals because "there was a risk that members of that official's family would kill you".[1713] He testified that it was not until "around January 2003" that he decided to tell the truth about his involvement in the events of 1994.[1714]

974. The Chamber is not persuaded by any of these explanations. It is highly unlikely that Witness GFU would have forgotten to mention Bizimungu in his early statements given Bizimungu's prominence and his alleged role in the Court of Appeal massacre. Witness GFU's explanation that he masked his role in the massacre until January 2003 is inconsistent with his statement dated 14 November 2002, in which he accepts that he killed Tutsi at the Court of Appeal. Most significantly, however, Witness GFU's explanation that he only decided to tell the truth after January 2003 fails to explain why the witness, in his statement dated 18 February 2003, maintained that he did not attend any meeting but was "informed" that such a meeting took place.

975. The Chamber finds that the evidence submitted by Defence Witnesses Basile, DB 15-6 and DB 11-4 provides further reason to doubt Witness GFU's evidence.

976. Defence Witnesses Basile and DE11-4 refuted Witness GFU's assertion that they attended a meeting at which the issue of Tutsi at the Court of Appeal was discussed. Both Defence witnesses claimed that they were not in Ruhengeri at the time of the alleged meeting.[1715] Basile testified that he only came to Ruhengeri on 19 April and was sworn in as *préfet* on 22 April. This casts doubt on Witness GFU's uncorroborated assertion that Basile in his capacity as *préfet* chaired a meeting in Ruhengeri on 13 April (the eve of the attack on the Court of Appeal). Basile's arrival in Ruhengeri on 19 April is further confirmed by the evidence of Defence Witness DB 15-6 and is also corroborated by Prosecution Witness GFA, who testified that two weeks after the death of the President, he attended the ceremony with approximately 3000 others at which "the new *préfet*, Basil was introduced to members of the population in the Ruhengeri *préfecture*."[1716] Witness GFU's testimony that on 13 April Basile chaired a meeting as *préfet* of Ruhengeri is therefore doubtful.

977. Defence Witness DB15-6's evidence in relation to the alleged meeting at which it was decided to house the Busengo Tutsi at the Ruhengeri Court of Appeal and his knowledge of the attack at the Court was also unchallenged by the Prosecution.[1717] He refuted Prosecution Witness GFU's assertion that Bizimungu and Basile were present during a meeting discussing Tutsi refugees at the Court of Appeal. He further denied that Peri or Witness GFU attended such a meeting.

[1712] T. 31 January 2005, pp. 29, 31.
[1713] T. 2 February 2005, pp. 11-12.
[1714] T. 31 January 2005, pp. 28, 54.
[1715] T. 27 November 2007, pp. 25-26.
[1716] T. 31 January 2006, p. 73. The Chamber notes that the transcript of Witness GFA's evidence refers to "Basil" rather than "Basile", but the Chamber is satisfied that the witness is referring to the same person.
[1717] The Prosecution did not pose any questions to Defence Witness DB15-6 relating either to the meeting at which it was decided to house the Tutsi at the Ruhengeri Court of Appeal or to the actual attack at the Court of Appeal.

978. Defence Witness DB 15-6 was a senior member of Ruhengeri's security establishment in 1994. The Chamber accepts the witness's evidence that he attended a meeting at which the relocation of Tutsi refugees to the Court of Appeal was discussed. The Chamber finds that Witness DB 15-6 was in a position to know of and report on matters of security, including a meeting that discussed how to deal with a large group of vulnerable unarmed Tutsi civilians. In so doing, the Chamber finds that Witness DB 15-6's evidence raises reasonable doubt in relation to Witness GFU's version of events. It is, for example, highly unlikely that a high level meeting such as the one described by Witness DB 15-6 or Witness GFU would have been open to individuals such as Peri or indeed the bodyguard of Peri, Witness GFU himself.

979. The Chamber finds that Witnesses GFU and DB 15-6 were speaking about the same meeting. The fact that they respectively testified that the meeting took place on 12 and 13 April at the *préfecture* office and that it concerned the same issue (i.e., what to do about the Tutsi refugees) shows that the two witnesses could not have been speaking about two different meetings. The slight difference in the dates can be explained by the lapse of time between 1994 and the dates of the witnesses' testimony. However, the Chamber finds that the evidence of Witness DB 15-6 further diminishes the credibility of Witness GFU. As a senior member of Ruhengeri's security establishment in 1994, Witness DB 15-6 was better placed to know of and report on matters of security such as how to deal with a large group of vulnerable unarmed Tutsi civilians.

980. The Chamber finally recalls that Defence Witness DB 11-4, who Witness GFU alleges was also present at the meeting of 13 April, denied his presence at the meeting and maintained that on 13 April, he was on his way from Kigali to Gisenyi in search of accommodation for his family and the families of some of his colleagues in the army. The Prosecution has not advanced any evidence to support Witness GFU's account that Witness DB 11-4 was present at the meeting. The Chamber therefore has doubts about this aspect of Witness GFU's testimony.

981. In light of the uncorroborated accomplice evidence of Prosecution Witness GFU, his inconsistent pre-trial statements and the evidence provided by Defence Witnesses Basile, DB 15-6 and DB 11-4, which contradicts important aspects of Witness GFU's testimony, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that on 8 April or any other date thereafter, Bizimungu addressed militiamen and encouraged them to prepare to attack Tutsi refugees at the Ruhengeri Court of Appeal.

4.4.1.2.3.2 The Attack

982. Prosecution Witness GFU is the only witness who claims to have seen Bizimungu at the scene of the attack at the Court of Appeal. He is also the only witness who claims to have heard Bizimungu order the attack to commence.[1718] The Chamber finds, however, that Witness GFU's evidence in relation to the attack is fraught with inconsistencies between his sworn testimony and his five pre-trial statements. Specifically, Witness GFU provided various accounts of how he came to be involved in the attack, his role and participation in the attack, who ordered the attack, and the presence of Bizimungu and other key individuals.

[1718] T. 27 January 2005, p. 67 (Witness GFU testified that Bizimungu stated, "Now, right now, start working.").

983. Witness GFU's testimony that he participated and killed Tutsi in an attack at the Court of Appeal on 14 April differs from his first two pre-trial statements. In his statement dated 28 November 2000, the witness was silent on the subject. In his statement of 10 to 11 November 2001, the witness denied that he had any role in the attack against Tutsi refugees at the Court of Appeal and stated, "[A]t no time did I visit the scene of the massacre".[1719] Witness GFU offered several explanations for these inconsistencies. One such explanation is that the witness only decided to tell the truth in January 2003. The Chamber notes that the witness first admitted his participation in the attack at the Court of Appeal in his statement dated 14 November 2002.[1720]

984. Finally, in his statement dated 19 November 2003, Witness GFU claimed that after the initial attack at the Court of Appeal, he returned to the roadblock. He then received a message from Nzirorera requesting that he and others return to Hotel Muhabura. On doing so, the witness saw Nzirorera, who stated that there were "still survivors" and that Witness GFU and others should "finish the work". In his pre-trial statement, the witness was clear that he did not participate in any second attack. In his testimony, however, the witness stated that he did in fact participate in both attacks at the Court of Appeal. The Chamber notes that the statement dated 19 November 2003 was made after the time when the witness claimed to have decided to tell the truth. The Chamber therefore finds that the witness offered no explanation for this inconsistency.

985. Witness GFU also provided differing versions as to how he came to participate in the attack at the Court of Appeal. In his testimony, he claimed that he was at the SGP petrol station roadblock when Nzirorera stopped and asked Witness GFU and other militiamen to follow him first to Mukingo and then to the Court of Appeal.[1721] In so doing, the witness deviated from his version of events recounted in his pre-trial statements. In his statement dated 14 November 2002, the witness suggested that it was *Préfet* Basile and the *bourgmestre* of Kigombe, Maniragaba, who instructed him and others to head first to Mukingo and then to the Court of Appeal. This again differed from his statement dated 18 February 2003, in which he claimed that it was *Préfet* Basile and *Sous-Préfet* Nzanana who visited him at the SGP roadblock and instructed him to go to Mukingo and then to the Court of Appeal. The Chamber notes that the statement dated 18 February 2003 was made after the time when the witness claimed to have decided to tell the truth. The Chamber therefore finds that the witness offered no explanation for this inconsistency.

986. Witness GFU also provided differing versions as to the presence and role of Bizimungu as well as the identity of the persons who ordered the attack at the Court of Appeal. In his testimony, the witness claimed that Bizimungu was present during the attack and that he gave the green light for the attack to take place. In his statement dated 14 November 2002, despite making reference to Bizimungu in relation to the alleged meeting held in advance of the attack, the witness failed to place Bizimungu at the scene of the attack at the Court of Appeal. The Chamber notes that in this statement, the witness provided a detailed account of who was present at the scene and in fact claimed that he was informed that "Colonel Setako and two senior officers [Colonel Bivugabagabo and Colonel Ntibura]

[1719] Defence Exhibit 20B, under seal.
[1720] The Chamber recalls that his admission that he participated in the attack in his statement dated 14 November 2002 is inconsistent with his explanation that prior to January 2003 he attempted to "mask the full extent of [his] responsibility". *See* T. 31 January 2005, p. 20.
[1721] T. 27 January 2005, p. 62.

had commanded that we should kill all the Tutsi in Ruhengeri Court of Appeal". At no stage did the witness suggest that he heard Bizimungu order the attack at the Court of Appeal. The Chamber finds that the witness's explanation for this omission, namely that the investigators' questions were targeted at specific individuals and that his answers ought to be understood in that context, does not account for why he made reference to Bizimungu in relation to the meeting but not in relation to the attack.[1722]

987. The Chamber also notes that in his final statement dated 19 November 2003, Witness GFU claimed that it was Nzirorera who "address[ed] all the *Interahamwe* in the vehicles, saying: you know your mission: you are to eliminate [everyone, including] babies, even embryos." Following the attack, Nzirorera requested the witness and others to meet him at the Hotel Muhabura and to "go back and finish the work". The Chamber notes that the statement again fails to mention Bizimungu and further suggests that Nzirorera had a prominent role in ordering the attack. The witness again offered several explanations for this inconsistency.[1723] The Chamber however, is not persuaded by any of the witness's explanations. The Chamber finds that the witness's differing version of events relate to fundamental features of the evidence and raise reasonable doubt in relation to his credibility. The Chamber recalls that Witness GFU is a self-confessed accomplice in the attack and that his evidence must be treated with caution. In light of the above, the Chamber finds that it would be unsafe to rely on his evidence without corroboration.

988. The Chamber recalls that Prosecution Witnesses GFV and GFA also provided evidence in relation to the attack at the Court of Appeal. Considering first the evidence of Witness GFV, the Chamber notes that the witness was an accomplice who testified that he was present during the attack at the Court of Appeal. At the time of his testimony, the witness was on provisional release and awaiting sentence from *Gacaca* proceedings.[1724] Accordingly, the Chamber views the witness's testimony with caution.

989. The Chamber considers that Witness GFV's evidence in relation to his knowledge of the attack at the Court of Appeal, who ordered the attack and the role played by Bizimungu is problematic. This is because the witness's testimony differs significantly from his account of events given in the case of *Karemera et al.* and his account of events as contained in the five statements he made to Rwandan authorities between 4 November 1998 and 17 May 2001.

990. Commencing with Witness GFV's knowledge of the attack at the Court of Appeal, the witness in his sworn testimony before this Chamber testified that he was present during the attack of 14 April 1994. This differed from a statement made by the witness dated 4 November 1998, in which he claimed that he had no knowledge of the attack, and a statement dated 2 February 1999, in which he listed crimes to which he wished to plead guilty but made no mention of the attack at the Court of Appeal.[1725] Witness GFV's explanation for this omission was that his first two statements "did not contain the whole truth".[1726] He explained that his statement dated 2 February 1999 was drafted by Niyigaba, the President of the *Interahamwe* in Mukingo, and that Niyigaba had asked Witness GFV to leave out certain

[1722] T. 31 January 2005, pp. 29, 31.
[1723] T. 2 February 2005, pp. 49-50
[1724] T. 23 May 2005, p. 12.
[1725] Defence Exhibit 48.
[1726] T. 24 May 2005, pp. 20, 27, 43.

authorities and incidents.[1727] The witness further claimed that his last confessional statement brought "together all elements that [he had] omitted in the earlier confessional statements".

991. The Chamber has examined the witness's last confessional statement made to Rwandan authorities, since the witness suggested that this contained a complete and truthful account of events. The Chamber notes that in this statement, Witness GFV suggested that he killed Tutsi at the Court of Appeal and was arrested as a result. This is inconsistent with his sworn testimony before the Chamber, in which he claimed that he did not kill any Tutsi in the attack.

992. Witness GFV's evidence in relation to Bizimungu's request for reinforcements from the Mukingo *Interahamwe* to go to the Court of Appeal is also inconsistent. Prior to giving evidence before this Chamber, Witness GFV testified in the case of *Karemera et al.* In that case, the witness was asked whether he knew who had ordered reinforcements from the Mukingo *Interahamwe* to attack the Court of Appeal. His answer was that the *Interahamwe* from Kigombe did not disclose the name of the person who had sent for such reinforcements.[1728] The Chamber finds that the witness's response in *Karemera et al.* is irreconcilable with his sworn testimony in this case, in which he stated clearly that "Bizimungu asked them to get reinforcement[s] from the Mukingo *Interahamwe*".[1729] In accounting for this inconsistency, Witness GFV stated that he did not mention Bizimungu's name in *Karemera et al.* because he had forgotten it. Subsequently, he explained that he did not mention Bizimungu's name because he feared for his life.[1730]

993. Witness GFV's evidence in relation to Bizimungu's role in the attack at the Court of Appeal is also problematic. The witness testified that he did not see Bizimungu during the attack but had been informed of his presence.[1731] His evidence placing Bizimungu at the scene of the attack is therefore hearsay evidence from an unidentifiable source.

994. In addition, the Chamber notes that contrary to his sworn testimony, Witness GFV did not in any of his five statements made to Rwandan authorities link Bizimungu to the attack at the Court of Appeal. Specifically, not once did the witness allege that Bizimungu gave the order for the attack to begin. This is despite naming Bizimungu in relation to other incidents. The Chamber also notes that the witness failed to make any reference to Hotel Muhabura. In explaining this omission and inconsistency, Witness GFV told the Chamber that he did not mention Bizimungu in his statements because he forgot to mention that detail and because he "had not seen him at that particular time", and only later did he learn that the order had come from Bizimungu.[1732]

995. Most importantly, the Chamber notes that in the *Karemera et al.* trial, Witness GFV was expressly asked whether he knew Bizimungu and whether Bizimungu had "any role to play in the attack that day".[1733] The witness responded, "No, I didn't see him on that day."[1734] The Chamber finds that Witness GFV's response in *Karemera et al.* was clear in that he did

[1727] T. 24 May 2005, p. 28.
[1728] Defence Exhibit 48.
[1729] T. 23 May 2005, p. 29.
[1730] T. 25 May 2005, p. 12.
[1731] T. 26 May 2005, p. 59.
[1732] T. 25 May 2005, pp. 10-12.
[1733] Defence Exhibit 48.
[1734] T. 25 May 2005, pp. 16-17.

not implicate Bizimungu in the attack at the Court of Appeal. This interpretation is supported by Witness GFV's testimony in *Karemera et al.*, in which he stated, "It was Kajelijeli who gave us the order [to attack the Court of Appeal]".[1735] Witness GFV was also asked to name the military authorities who were involved in the Court of Appeal massacre. In his response, the witness named Bivugavagabo but again made no reference to Bizimungu.

996. The inconsistencies between Witness GFV's evidence in *Karemera et al.*, his evidence before this Chamber and his prior statements are fundamental. It is unlikely that the witness would have simply forgotten to mention the name of a prominent personality such as Bizimungu in relation to the attack in either the *Karemera et al.* case or in any of his statements made to Rwandan authorities. The Chamber finds that the combined effect of these inconsistencies raises reasonable doubt in relation to Witness GFV's evidence and credibility.

997. The Chamber now turns to evidence given by Prosecution Witness GFA. Witness GFA was also an accomplice to the massacre at the Court of Appeal, and in 2005 he was convicted of genocide before the Rwandan courts.[1736] The Chamber therefore treats his evidence with caution. Furthermore, as set out in Chapter III of the Judgement, Witness GFA recanted almost all of his testimony before the *Karemera et al.* Trial Chamber, including much of his testimony implicating Bizimungu in crimes alleged in the Indictment in this case.[1737] For these reasons, the Chamber will not rely on Witness GFA's evidence in the absence of corroboration by other credible evidence.

998. The Chamber notes that Witness GFA corroborated Witness GFV's account that on 14 April 1994, Ruhengeri *Interahamwe* arrived in Byangabo in two Daihatsu vehicles. He also supported Witness GFV in suggesting that the Ruhengeri *Interahamwe* met Kajelijeli at a local petrol station and that Kajelijeli encouraged the Mukingo *Interahamwe* to join the Ruhengeri *Interahamwe* in order to attack Tutsi at the Court of Appeal. The witness also confirmed that Witness GFV was one of the Mukingo militiamen who went with the Ruhengeri *Interahamwe* to the Court of Appeal.

999. Witness GFA did not, however, at any point suggest that it was Bizimungu who had instructed the Ruhengeri *Interahamwe* to seek out other *Interahamwe* in order to attack the Court of Appeal. On the contrary, Witness GFA was clear that he was instructed by Kajelijeli to go into Mukingo town and recruit young militiamen to join the attackers from Ruhengeri. The Chamber finds Witness GFA's failure to implicate Bizimungu surprising given that he played a direct role in seeking out *Interahamwe* to assist in the attack at the Court of Appeal.

1000. The Chamber further finds that Witness GFA was not present during the attack at the Court of Appeal. His evidence of the attack is limited to hearsay evidence from unidentifiable *Interahamwe* who returned to Mukingo in the afternoon following the attack. Witness GFA therefore fails to corroborate the most salient aspects of Witnesses GFU and GFV's evidence. This includes Bizimungu's alleged presence at Hotel Muhabura, Bizimungu's alleged role in the attack and the allegation that Bizimungu gave the signal for the attack to begin. Accordingly, the Chamber finds that the evidence provided by Witness GFA is of limited probative value.

[1735] T. 25 May 2005, p. 16.
[1736] T. 30 January 2006, p. 57.
[1737] Defence Exhibit 689A; Defence Exhibit 690A; Defence Exhibit 691A; Defence Exhibit D692A; Defence Exhibit D693A.

4.4.1.2.3.3 Conclusion

1001. The Chamber finds that killings took place at the Court of Appeal on 14 April 1994 and that several hundred Tutsi men, women and children were tragically massacred in the attack. However, the Prosecution evidence in support of the allegations set out in paragraphs 64 and 65 of the Indictment is limited to three witnesses, all of whom are accomplices. The Chamber recalls that accomplice testimony is admissible, but must be considered carefully because accomplice witnesses may have motives or incentives to implicate the accused.[1738] The Chamber also recalls that corroboration is important when assessing a witness's credibility.[1739]

1002. While the evidence in relation to the presence of military and high-ranking officials is consistent, when assessing Bizimungu's presence the Chamber finds that all three Prosecution witnesses provided inconsistent accounts. These inconsistencies are fundamental and raise reasonable doubt. The Chamber therefore finds that the Prosecution has failed to prove beyond reasonable doubt the allegations set out in paragraphs 64 and 65 of the Indictment.

4.4.1.3 Killing of Tutsi by *Interahamwe* at Roadblocks in EGENA Area

1003. The Indictment alleges that on 16 June 1994, Augustin Bizimungu told militiamen at EGENA camp to set up roadblocks "to unmask the *Inkotanyi* who had hidden among Hutu fleeing the combat zones." As a result of that order, a large number of Tutsi civilians and Hutu mistaken as Tutsi were killed in that area in the following hours and days.[1740]

4.4.1.3.1 Evidence

Prosecution Witness GFD

1004. Witness GFD was a member of the civil defence in Ruhengeri in 1994.[1741] He testified that in June 1994, he was receiving treatment as an outpatient at EGENA *gendarmerie* camp in Ruhengeri town.[1742]

1005. The witness stated that on 16 June 1994, he saw Bizimungu at EGENA camp at around 2.00 p.m.[1743] The following officers accompanied Bizimungu: Mburuburengero from Mukamira, Lieutenant Kanyaruganda from Mukingo and Dankarago from Ruhembo.[1744] The witness recalled that Bizimungu held a meeting where he met the wounded persons at EGENA, instructed those who had recovered to return to the battlefield and instructed others

[1738] *Niyitegeka* Appeal Judgement, para. 98; *Nchamihigo* Appeal Judgement, para. 305.
[1739] *Nchamihigo* Appeal Judgement, para. 47.
[1740] Indictment, para. 66.
[1741] Prosecution Exhibit 33, under seal.
[1742] T. 10 May 2005, p. 67; T. 19 May 2005, p. 61. The status of EGENA as a *gendarmerie* camp is corroborated by Prosecution Witness GFU. *See* T. 1 February 2005, p. 42; T. 2 February 2005, pp. 27-28; T. 19 May 2005, pp. 60-62. The witness stated that he was present at EGENA camp as he had been wounded at Gitarama and was taken to Ruhengeri hospital but was spending the night at EGENA. *See* T. 10 May 2005, p. 67.
[1743] T. 10 May 2005, p. 67; T. 19 May 2005, p. 63.
[1744] T. 19 May 2005, pp. 61, 63. The witness also stated that the commander of EGENA was Commander Bahembera, qualifying his answer that he assumed Bahembra to be the commander because he appeared to be in charge at the time the witness was there. *See* T. 19 May 2005, p. 61.

to assist in manning roadblocks.[1745] The witness estimated that between 50 and 70 soldiers attended the meeting, although he added that not all attendees were from EGENA as there were some from Camp Murosa and some from the *Gendarmerie*. However, the witness did not know the units to which the soldiers belonged.[1746]

1006. The witness stated that Lieutenant Kanyaruganda from Mukingo spoke during the meeting and urged the attendees to establish roadblocks. Bizimungu also spoke and stated, "Those who can do so, should mount the roadblocks, and those who are in good health should go to the war front."[1747] The witness testified that Bizimungu also stated that the roadblocks should be utilised "to seek out all the Tutsis and those in opposition to the regime".[1748]

1007. Following the speech, the witness left the hospital and went to man a roadblock that had been established opposite Camp Mukamira. The witness stated that he remained at the roadblock until 13 July when he went into exile.[1749]

4.4.1.3.2 Deliberations

1008. In support of the allegation pleaded in paragraph 66 of the Indictment, the Prosecution relies on the sole testimony of Prosecution Witness GFD.

1009. Witness GFD testified that he was present on 16 June 1994 when Bizimungu delivered a speech at EGENA camp. The Indictment alleges that Bizimungu's speech was delivered to militiamen, whereas Witness GFD's evidence suggests that the meeting was attended by 50 to 70 soldiers. The witness did not provide any evidence that militiamen were in attendance at the meeting in question. The Chamber notes that at the time of the alleged meeting, the witness may have been a member of the militia in Ruhengeri. However, the Chamber is not satisfied that his own attendance at the meeting, in the absence of further evidence, is sufficient to prove that Bizimungu delivered his speech to militiamen at the meeting.

1010. Furthermore, the Chamber notes that Witness GFD's evidence fails to provide support for the allegation that several Tutsi civilians and Hutu mistaken as Tutsi were killed as a result of Bizimungu's alleged speech at EGENA camp on 16 June 1994.

1011. For these reasons, the Chamber finds that the evidence of Witness GFD alone is not sufficient to prove beyond reasonable doubt the allegation contained in paragraph 66 of the Indictment.

4.4.1.4 Killing of 60 to 70 Tutsi in the Byangabo Neighbourhood

4.4.1.4.1 Introduction

1012. The Indictment alleges that on 7 April 1994, Lieutenant Mburuburengero of Camp Mukamira, Augustin Bizimungu's subordinate, told a group of militiamen to exterminate the Tutsi in Ruhengeri. As a result of that order, and using weapons and fuel provided by the

[1745] T. 10 May 2005, p. 67; T. 19 May 2005, p. 62.
[1746] T. 19 May 2005, p. 62.
[1747] T. 19 May 2005, p. 64; T. 10 May 2005, p. 67.
[1748] T. 10 May 2005, p. 67.
[1749] T. 10 May 2005, p. 67.

soldiers, 60 to 70 Tutsi were killed in the morning in Byangabo neighbourhood after their houses had been set aflame in order to flush them out.[1750]

4.4.1.4.2 Evidence

4.4.1.4.2.1 Prosecution Evidence

Prosecution Witness GFC

1013. Witness GFC was a member of the MRND party in April 1994.[1751] He testified that in the morning of 7 April 1994 he went to the Byangabo market square where he met with other *Interahamwe*.[1752] The Witness saw Juvénal Kajelijeli, Ndisetse, Chief Warrant Officer Karorero, Bambonye and members of the *Interahamwe* including their leader, Michel Niyigaba. The officials told the *Interahamwe* who had gathered at the market, "[I]t is time for you to exterminate the Tutsis because it is the Tutsis who shot down the [President's] plane."[1753] According to the witness, thereafter the *Interahamwe* leader Niyigaba hit a Tutsi with a machete and killed him at the Byangabo market square.[1754]

1014. The witness recalled that the assembled *Interahamwe* then "dispersed throughout the *commune* to look for Tutsis and kill them." The witness stated that he did not personally kill Tutsi, but played a role in handing Tutsi over to others to be killed. However, he admitted that if the others had not killed those Tutsi, he would have killed them himself.[1755]

1015. Witness GFD testified that the following morning, Bizimungu delivered weapons to the witness at the Mukingo *commune* office and told him to distribute them to *Interahamwe*.[1756] The witness gave some of those weapons to Kajelijeli, the *bourgmestre* of Mukingo *commune*,[1757] who then distributed them to *Interahamwe* in Byangabo.[1758]

Prosecution Witness GFV

1016. Witness GFV was a member of the *Interahamwe* in April 1994.[1759] He testified that in the morning of 7 April 1994, he arrived at Byangabo market between 5.30 and 6.00 a.m.[1760] Upon arrival at the market, he noticed that there was a meeting taking place at the house of Nzirorera's mother, which was less than five minutes on foot from the market. He testified that the following persons were present at the meeting: Colonel Setako, Major Bizabarimana,

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[1750] Indictment, para. 67.
[1751] T. 1 March 2005, p. 12. In 1996, the witness was arrested after his return from exile to Zaire and detained in Ruhengeri Prison for participating in the genocide of 1994. At the time of his testimony, the witness had been provisionally released and was awaiting sentencing from a *Gacaca* Court. *See* T. 1 March 2005, pp. 8-9 (ICS); T. 3 March 2005, pp. 8, 39.
[1752] T. 1 March 2005, p. 25.
[1753] T. 1 March 2005, p. 25.
[1754] T. 1 March 2005, p. 25.
[1755] T. 1 March 2005, pp. 25-26.
[1756] T. 15 February 2005, pp. 42-43.
[1757] T. 15 February 2005, p. 23.
[1758] T. 15 February 2005, p. 46.
[1759] T. 23 May 2005, pp. 5-6, 14. The witness testified that he participated in the killing of Tutsi in 1994. He was imprisoned at the Ruhengeri Prison, provisionally released and at the time of his testimony was awaiting sentencing by a *Gacaca* Court. *See* T. 23 May 2005, pp. 7-8, 12.
[1760] T. 23 May 2005, p. 24; T. 25 May 2005, p. 23.

Chief Warrant Officer Karorero, Nyabusohe (the Director of the ISAE), Bambonye and Kajelijeli.

1017. The witness testified that Bambonye, in the company of Kajelijeli, came out of the meeting and said that the approximately 70 assembled *Interahamwe* "should kill all the Tutsis of Busogo including babies still in their mother's wombs."[1761] Bambonye further stated that the Tutsi "were *Inyenzi* that had accomplices within the country and that they were the ones who had killed Habyarimana." Following Bambonye's remarks, Michel Niyigaba, the leader of the *Interahamwe*, killed a Tutsi civilian named Rukara with a small axe.[1762] The witness recalled that after Rukara was killed, an *Interahamwe* named Musafiri shot and killed Lucian, a Tutsi who happened to be Rukara's brother.[1763]

Prosecution Witness GAP

1018. Witness GAP testified that in the morning of 7 April 1994, he went to the Byangabo market between 8.00 and 8.30 a.m. in the company of Kajelijeli.[1764] Upon arrival, the witness noticed that *Interahamwe* had killed a Tutsi named Rukara. Kajelijeli then began to distribute weapons he had received at the *commune* office to the *Interahamwe* present.[1765] The witness further testified that Kajelijeli gave instructions to the soldiers and *Interahamwe* to conduct house-to-house searches and "kill all the Tutsis all the way to the Busogo Parish".[1766]

1019. According to the witness, he was present at a meeting that took place at the house of Nzirorera's mother on the night of 6 to 7 April 1994.[1767] The witness explained that the meeting was attended by senior military and public officials. Among the issues that were discussed at the meeting was a plan to kill Tutsi because they were perceived to be responsible for the death of the President.[1768]

Prosecution Witness GFA

1020. Witness GFA was a member of the *Interahamwe* in 1994.[1769] He testified that he went to the Byangabo market in the morning of 7 April to have tea.[1770] Upon arrival, he saw Jean-Baptiste Nyabusore, Gahiki and Juvénal Kajelijeli going into the house of Nzirorera's mother.[1771] Thereafter, Dusabiye (François Dusabimana or Dusabe) returned to the market to fetch Michel Niyigaba, the leader of the Mukingo *Interahamwe*. They both went back to the house of Nzirorera's mother and Michel informed the witness that he was also wanted at the

[1761] T. 23 May 2005, pp. 25-26; T. 25 May 2005, p. 24.
[1762] T. 23 May 2005, pp. 25-26.
[1763] T. 23 May 2005, p. 26.
[1764] T. 15 February 2005, pp. 15-16 (ICS), 38; T. 15 February 2005, p. 46. At the time of his testimony, the witness was detained in the Ruhengeri Prison and was awaiting judgement and sentencing for crimes of genocide he confessed to have committed in 1994. *See* T. 15 February 2005, p. 4 (ICS).
[1765] T. 15 February 2005, p. 46.
[1766] T. 15 February 2005, p. 46.
[1767] T. 15 February 2005, pp. 39-40.
[1768] T. 15 February 2005, pp. 40-41.
[1769] T. 30 January 2006, pp. 61-62. The witness was later arrested for his participation in the 1994 genocide in Rwanda and detained in Ruhengeri Prison. He confessed to his participation in genocide on 12 September 2000. *See* T. 30 January 2006, pp. 50-51, 53, 57.
[1770] T. 31 January 2006, p. 2.
[1771] T. 31 January 2006, pp. 2-3.

meeting.[1772] Witness GFA went to the house, where he saw Nzirorera's mother talking to Nyabusore, Gahiki and Kajelijeli.[1773]

1021. Witness GFA then returned to the market. A few minutes later, Michel and Dusabiye arrived at the market and invited the witness and other *Interahamwe* to go and kill Tutsi. According to Witness GFA, Dusabiye stated that "it was the RPF, that is the Tutsi who had killed President Habyarimana".[1774] The witness further testified that Dusabiye then instructed Michel Niyigaba to fetch a Tutsi named Rukara to make an example out of him. Rukara was then killed by Michel, Dusabiri and Dusabiye and others using a small axe and stones.[1775]

1022. Dusabiye then instructed the witness and other *Interahamwe* to go and kill Tutsi, threatening that there would be consequences if they did not adhere to that order.[1776] The witness explained that they left and killed Lucien Rundatsingwa, who was Rukara's brother.[1777] According to the witness, throughout the time that he and his fellow *Interahamwe* and *Impuzamugambi* were killing Tutsi, they were not stopped by any local authorities. Rather, they were assisted by soldiers in killing Tutsi.[1778]

4.4.1.4.2.2 Defence Evidence

Defence Witness DB15-11

1023. Witness DB15-11 testified that her relative's house was below the tarred road from Kigali to Gisenyi, about 20 to 30 paces from the Byangabo market.[1779] She explained that she could see the Byangabo market from the house. The witness stayed at her relative's house on 7 April 1994 until about 11.30 a.m. or 12.00 noon. During that time, she heard gunshots and could see smoke from the market that morning.[1780]

1024. According to the witness, Rukara was her neighbour and lived near the market. The witness recalled hearing during the time of the genocide that Rukara had been killed.[1781]

Defence Witness DB11-2

1025. Witness DB11-2 is a relative of Prosecution Witness GFA.[1782] Witness DB11-2 explained that he could observe from his house what was happening in Byangabo market.[1783] He testified that on 7 April 1994, Michel Myagaba was pursuing Rukara, who in turn was screaming, "What do you want from me?" According to the witness, Rukara was eventually

[1772] T. 31 January 2006, p. 2.
[1773] T. 31 January 2006, pp. 2-3.
[1774] T. 31 January 2006, p. 2.
[1775] T. 31 January 2006, p. 2.
[1776] T. 31 January 2006, p. 2.
[1777] T. 31 January 2006, pp. 2-3.
[1778] T. 31 January 2006, pp. 4-6.
[1779] T. 7 June 2007, p. 42 (ICS); T. 7 June 2007, pp. 46-47 (ICS).
[1780] T. 7 June 2007, pp. 78-79 (ICS).
[1781] T. 7 June 2007, p. 79 (ICS).
[1782] T. 12 June 2007, pp. 3, 7 (ICS), 22. Witness DB11-2 was arrested on 9 October 1998 and detained in the Ruhengeri Prison for charges of committing genocide. The witness was discharged and acquitted of all charges and released on 28 July 2003. *See* T. 12 June 2007, pp. 8-10, 14-15 (ICS); Defence Exhibit 276A; Defence Exhibit 276B; Defence Exhibit 276D.
[1783] T. 13 June 2007, p. 24 (ICS).

caught, taken to Byangabo, and stoned and killed with a small hoe. Witness DB11-2 saw Witness GFA at the scene when this incident occurred.[1784]

4.4.1.4.3 Deliberations

1026. The Chamber notes that the allegation in paragraph 67 of the Indictment contains two elements: first, the role of Lieutenant Mburuburengo, a subordinate of Augustin Bizimungu, in instigating the killings in Byangabo neighbourhood; and second, the provision of weapons and fuel by soldiers to those committing the killings in Byangabo. The Chamber will deal with each element of this allegation in turn.

1027. At the outset, the Chamber notes that contrary to the Indictment, which suggests that 60 to 70 Tutsi were killed in the Byangabo neighbourhood, the Prosecution only led evidence of the killing of two Tutsi civilians at the Byangabo market. Apart from these two killings, the Prosecution did not lead any other evidence of killings of Tutsi in the Byangabo neighbourhood.

4.4.1.4.3.1 Events at the Byangabo Market Square

1028. It is common evidence between Prosecution and Defence witnesses that two Tutsi were killed in the morning of 7 April 1994 at the Byangabo market square. Prosecution witnesses are consistent that in the morning of 7 April, after the death of the President, a group of senior military and public officials met at the home of Nzirorera's mother and that after the meeting, a number of officials including Kajelijeli, Bambonye, Dusabiye and Michel Niyigaba came out of the house into the market centre and told a gathering of *Interahamwe* that the Tutsi were responsible for shooting down the President's plane. The Chamber notes that according to the Prosecution witnesses, these officials made instigating comments such as "it is time for you to exterminate the Tutsis because it is the Tutsis who shot down the plane"; "kill all the Tutsis of Busogo including babies still in their mother's wombs"; and that Tutsi were "*Inyenzi* that had accomplices within the country and that they were the ones who had killed Habyarimana". The Prosecution evidence suggests that following these remarks, Dusabiye instructed a prominent *Interahamwe* named Michel Niyigaba to fetch a Tutsi named Rukara to make an example out of him. In full view of those assembled at the market square, Niyigaba, Dusabiri and Dusabiye killed Rukara. The assailants then proceeded to kill Lucien, Rukara's brother.

1029. The Chamber recalls that Defence Witness DB11-2 testified to having observed the killings from his home, and he stated that it was Michel Niyigaba who killed Rukara. This is also corroborated by Defence Witness DB15-11, who did not witness the killing of Rukara but gave evidence that from her relative's home she observed the chaos at the market square in the morning of 7 April and later heard about Rukara's murder. Based on the consistent evidence of these Prosecution and Defence witnesses, the Chamber finds that two killings took place at the Byangabo market.

4.4.1.4.3.2 Involvement of Lieutenant Mburuburengero

1030. The Indictment alleges that the killings at the Byangabo market square occurred at the instigation of Lieutenant Mburuburengero. However, the Prosecution failed to call any

[1784] T. 13 June 2007, p. 25 (ICS).

evidence in relation to the involvement of Mburuburengero in these crimes. Instead, the evidence adduced suggests that the killings at the Byangabo marketplace and surrounding area took place as a result of the meeting at the house of Nzirorera's mother on the night of 6 to 7 April. The Chamber has discussed this meeting in detail in its analysis of paragraph 63 of the Indictment. There is no evidence to suggest that Mburuburengero attended the meeting. Rather, several witnesses testified that Kajelijeli, Bambonye and Dusabiye emerged from the meeting into the market square and incited the crowd of gathered *Interahamwe* to kill Tutsi. As a result of this incitement the leader of the Mukingo *Interahamwe*, Niyigaba, killed a Tutsi civilian named Rukara.

1031. Therefore, there is no evidence before the Chamber that the named person, Lieutenant Mburuburengero, was involved in encouraging militia to kill Tutsi at the Byangabo marketplace. The Chamber considers the involvement of Mburuburengero to be a key part of the charge in paragraph 67 of the Indictment.

4.4.1.4.3.3 Provision of Weapons and Fuel by Soldiers

1032. The second aspect of the allegation in paragraph 67 of the Indictment is that soldiers provided weapons and fuel that contributed to the killings in Byangabo. The Chamber notes that the only evidence in relation to the provision of weapons comes from Prosecution Witness GAP, who testified that Bizimungu himself delivered weapons to the Mukingo *commune* office in the morning of 7 April, and that Kajelijeli then distributed those weapons in Byangabo.[1785]

1033. The Chamber is not convinced that the actions of Bizimungu, as recalled by Witness GAP, fall within the ambit of the charge in paragraph 67. The Chamber notes that this allegation is pleaded under Article 6(3) of the Statute and is therefore a charge relating to the involvement of Bizimungu's subordinates in these crimes. The Indictment clearly identifies the subordinates as Mburuburengero and other soldiers who provided fuel and weapons. As discussed above, there is no evidence of the involvement of Mburuburengero, and the Chamber has before it no other evidence of the involvement of Bizimungu's subordinates in these crimes.

1034. It follows that the Prosecution has not proved this allegation beyond reasonable doubt.

4.4.1.5 Acts of Violence Against Tutsi by Soldiers at Various Locations in Kigali, Gitarama, Butare, Gisenyi, Cyangugu, Kibuye, and Ruhengeri, April to June 1994

4.4.1.5.1 Introduction

1035. The Indictment alleges that from mid-April to late June 1994, while Bizimungu was Chief of Staff of the Rwandan Army, soldiers under his command committed murders and caused serious bodily and mental harm to many Tutsi at places in Kigali, Gitarama, Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri. Specifically, the Indictment alleges that acts of violence took place at Charles Lwanga Church on 8 and 10 June 1994; at the Josephite Brothers compound on 8 April and 7 June 1994; at ETO-Nyanza on 11 April 1994; at the *Centre Hospitalier de Kigali* from April to June 1994; at the Kicukiro *conseiller's* office during April and May 1994; at Kabgayi Primary School from April to June 1994; at the

[1785] T. 15 February 2005, pp. 42-43, 46; T. 22 February 2005, pp. 41-42.

Musambira *commune* office and dispensary during April and May 1994; at TRAFIPRO during April and May 1994; in Butare from 19 April to late June 1994; and in Gisenyi, Kibuye and Ruhengeri from April to June 1994.[1786] The Indictment alleges that Bizimungu bears superior responsibility for these crimes.[1787]

4.4.1.5.1.1 Improper Pleading of Crimes Allegedly Committed by Soldiers in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri

1036. As set out in Chapter II of the Judgement, the Chamber notes that in paragraphs 68 to 70 of the Indictment, the Prosecution fails to plead with requisite specificity the facts underlying its allegation of superior responsibility against Bizimungu with respect to crimes in Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri. The Chamber has therefore found the pleading in paragraphs 68 and 69 to be defective with respect to crimes alleged at these locations. These defects were not cured and deprived Bizimungu of adequate notice of the facts underlying the allegations against him at these locations.

1037. Accordingly, the Chamber will limit its consideration of paragraphs 68 and 69 of the Indictment to the crimes allegedly committed at Charles Lwanga Church on 8 and 10 June 1994, at the Josephite Brothers compound on 8 April and 7 June 1994, at ETO-Nyanza on 11 April 1994, at the *Centre Hospitalier de Kigali* from April to June 1994, at the Kicukiro *conseiller's* office during April and May 1994, at Kabgayi Primary School from April to June 1994, at the Musambira *commune* office and dispensary during April and May 1994 and at TRAFIPRO during April and May 1994.

4.4.1.5.1.2 Allegations of Serious Bodily and Mental Harm

1038. The Chamber notes that paragraphs 68 and 69 of the Indictment allege that soldiers under Bizimungu's command committed murders and caused serious bodily and mental harm to Tutsi through "acts of violence" at these locations. The Chamber recalls that for the purposes of genocide, the notion of "causing serious bodily harm" refers to 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.[1788] According to the Appeals Chamber, "the quintessential examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs."[1789] Serious mental harm refers to more than minor or temporary impairment of mental faculties.[1790] The serious bodily or mental harm, however, need not be an injury that is permanent or irremediable.[1791]

1039. Although paragraphs 68 and 69 of the Indictment do not specifically allege that soldiers committed rapes at the locations identified therein, it is well established that rape

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[1786] Indictment, paras. 68-69.
[1787] Indictment, paras. 61, 70.
[1788] *Bagosora et al.* Trial Judgement, para. 2117; *Seromba* Appeal Judgement, paras. 46-49; *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, para. 320, *citing Kayishema and Ruzindana* Trial Judgement, para. 110.
[1789] *Seromba* Appeal Judgement, para. 46.
[1790] *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.
[1791] *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, paras. 320, 322.

falls within the notion of "serious bodily and mental harm" to which the Prosecution refers in paragraph 68. Indeed, the Appeals Chamber has noted that "nearly all convictions for the causing of serious bodily or mental harm involve rapes or killings."[1792] The Chamber therefore finds that Bizimungu had sufficient notice that the alleged "acts of violence" causing "serious bodily or mental harm" in paragraphs 68 and 69 of the Indictment included rapes. Accordingly, the Chamber will consider the evidence of killings and rapes committed by soldiers at the locations specified in paragraph 69 in assessing the charges of genocide against Bizimungu.[1793]

4.4.1.5.1.3 Allegations at Charles Lwanga Church

1040. Paragraph 69 of the Indictment alleges that soldiers committed acts of violence at Charles Lwanga Church on 8 and 10 June 1994. The Chamber recalls that Witness DBJ was the only Prosecution witness to testify about an attack at Charles Lwanga Church in June 1994. Two Prosecution witnesses, WG and GCB, testified about an attack at Charles Lwanga Church on 8 April 1994. However, there is no mention in the Indictment of an attack at the church on this date. Moreover, the Pre-Trial Brief makes no mention of an attack of 8 April in its discussion of the allegations of genocide and murder as a crime against humanity at Charles Lwanga Church. In relation to the allegation of genocide in paragraphs 68-70 of the Indictment, the Pre-Trial Brief refers to an attack at Charles Lwanga Church "on 8 and 9 June 1994",[1794] while in relation to the allegation of murder as a crime against humanity in paragraph 84 of the Indictment, the Pre-Trial Brief refers to an attack at Charles Lwanga Church "on 10 June 1994".[1795] Accordingly, the Chamber will not consider the evidence of this 8 April attack in assessing these allegations.[1796]

4.4.1.5.1.4 Allegations at Kabgayi Primary School

1041. Paragraph 69 of the Indictment alleges that soldiers committed acts of violence at Kabgayi Primary School in Gitarama *préfecture* from April to June 1994. However, the Chamber recalls that on 27 April 2000, during the initial appearance of the Accused pursuant to the Rule 62 of the Rules, the Prosecution stated, "Between April and June 1994, many people sought refuge in Kabgayi, the Gitarama *préfecture*. Most of the refugees were concentrated in Kabgayi Primary School, known previously as Kabgayi Nursing School, in short ESI, which is in fact adjacent to Kabgayi Nursing School."[1797]

1042. The Chamber recalls that Witness EZ testified about incidents that took place at Kabgayi Nursing School or *École des Sciences Infirmières de Kabgayi* (ESI), but she did not specifically refer to crimes committed at Kabgayi Primary School. In light of the Prosecution's statement on 27 April 2000, the Chamber finds that the events at ESI described

[1792] *Seromba* Appeal Judgement, para. 46.
[1793] The Chamber also notes that the Prosecution Closing Brief specifically includes rape within the notion of "serious bodily or mental harm" for the purposes of the genocide charge. Paragraph 684 of the Closing Brief states that soldiers under Bizimungu's command "committed murders and caused serious bodily or mental harm, *including rape*, to many Tutsi ... in Kigali, Gitarama, Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri *préfectures* ..." (emphasis added).
[1794] Pre-Trial Brief, para. 54.
[1795] Pre-Trial Brief, para. 58.
[1796] The Chamber will consider the evidence of the 8 April 1994 attack at Charles Lwanga Church in its factual findings for Count 7.
[1797] T. 27 April 2000, p. 71.

by Witness EZ fall within the allegation of crimes at Kabgayi Primary School in paragraphs 68 and 69 of the Indictment. The Chamber further notes that the Prosecution clearly indicated in its Pre-Trial Brief that Witness EZ would testify about killings and rapes committed at ESI in Kabgayi, without limiting that evidence to Kabgayi Primary School.[1798] The Bizimungu Defence did not object to the introduction of this evidence during Witness EZ's testimony; on the contrary, Defence counsel cross-examined Witness EZ extensively in regard to the alleged killings and rapes in the ESI complex.[1799]

1043. Having carefully reviewed the Indictment, the Pre-Trial Brief and the transcripts of proceedings, the Chamber finds that Bizimungu had sufficient notice that the Prosecution would present evidence about killings and rapes committed by soldiers at ESI in Kabgayi.

4.4.1.5.2 Evidence

1044. The Chamber notes that the Prosecution relies on much of the same evidence to prove the allegations of genocide in paragraphs 68 to 70 of the Indictment as it relies on to prove the allegations of murder, extermination and rape as crimes against humanity in paragraphs 82-88, 109 and 111-115 of the Indictment. The Chamber will now set out this evidence in detail and assess whether it supports the charge of genocide as alleged by the Prosecution. In subsequent sections of the Judgement dealing with crimes against humanity, the Chamber will not repeat this evidence in its entirety but will simply analyse whether the evidence supports the charges of murder, extermination and rape as crimes against humanity.

4.4.1.5.2.1 Charles Lwanga Church, 9 to 10 June 1994

Prosecution Witness DBJ

1045. Witness DBJ was a Tutsi member of the Josephite Brotherhood based at Nyamirambo in Kigali.[1800] He testified that on 7 June 1994, a group of soldiers arrived at the Josephite Brothers compound and asked the witness and other members of the Brotherhood to vacate the premises since they intended to occupy them.[1801]

1046. The witness and his colleagues then sought refuge at the nearby St. Charles Lwanga Church.[1802] The witness testified that at the time, the church was headed by two priests known as Fathers Otto and Blanchard.[1803] The witness stayed at the church until 9 or 10 June 1994.[1804] He testified that a large number of civilians, mostly women and children of Tutsi ethnicity, had sought refuge at the church during that period.[1805]

1047. Witness DBJ testified that on either 9 or 10 June 1994, members of the UNAMIR force arrived at the church and took photos. Shortly thereafter, *Interahamwe* arrived at the church aboard trucks and attacked the UNAMIR soldiers and wounded one of them.[1806] The

[1798] Pre-Trial Brief, p. 107.
[1799] *See* T. 6 October 2005, pp. 25-38; Bizimungu Closing Brief, paras. 1019-1020.
[1800] T. 29 August 2005, p. 7.
[1801] T. 29 August 2005, p. 35; T. 31 August 2005, p. 52.
[1802] T. 29 August 2005, pp. 35-36.
[1803] T. 29 August 2005, p. 36.
[1804] T. 29 August 2005, p. 37.
[1805] T. 29 August 2005, p. 37.
[1806] T. 29 August 2005, p. 37.

Interahamwe then attacked the refugees who were inside the church. They used rifle butts to break the windows and lobbed hand grenades into the church.[1807] According to the witness, the assailants were led by Kigingi, who was the leader of the *Interahamwe* in the Nyamirambo area of Kigali where St. Charles Lwanga Church was located.[1808]

1048. As the attack unfolded, Witness DBJ came out of the church and saw a number of soldiers, a few *gendarmes* and *Interahamwe* outside.[1809] According to the witness, the soldiers and *gendarmes*, who were led by an officer known as Colonel Munyakazi, arrived at the church after the attack by the *Interahamwe* had started.[1810] The witness gave evidence that during such attacks by the *Interahamwe*, soldiers and *gendarmes* would arrive at the scene of the attack "perhaps, to ensure the smooth functioning of the operation."[1811] However, instead of averting such attacks, the soldiers and *gendarmes* only "witnessed what was going on."[1812]

1049. Witness DBJ testified that at some point during the attack, *Interahamwe* boarded women and children into their trucks and then drove them in the direction of Mount Kigali.[1813] The witness also testified that some of the civilians were killed during the attack at the church, including an old member of the Josephite Brotherhood named Pierre Cacamumakuba.[1814] The witness stated that he and other members of the Josephite Brotherhood escaped the attack at the church with the assistance of Colonel Munyakazi.[1815] The latter drove them aboard his double cabin pick-up to St. Paul and then to St. Famille Church, where they eventually found shelter.[1816] On their way to St. Famille, the vehicle in which they were travelling was stopped at a roadblock manned by *Interahamwe* led by Kigingi.[1817] The witness testified that Kigingi sought to block their passage through the roadblock and threatened to kill them because he suspected that they were Tutsi.[1818]

1050. In cross-examination, Defence counsel asked the witness whether soldiers participated in the attack against the refugees at St. Charles Lwanga Church between 9 and 10 June 1994. The witness responded that, based on his observations, "it was people that I will refer to as the *Interahamwe* who attacked the Charles Lwanga Parish".[1819]

4.4.1.5.2.2 Josephite Brothers Compound, 8 April 1994 and 7 June 1994

Prosecution Witness DBJ

1051. Witness DBJ, a Tutsi, was a member of a religious organisation known as Josephite Brothers based at Nyamirambo, Kigali.[1820] He testified that by 8 April 1994, about 200 to 250

[1807] T. 29 August 2005, p. 37.
[1808] T. 29 August 2005, p. 38.
[1809] T. 29 August 2005, p. 38.
[1810] T. 29 August 2005, pp. 38-39; T. 31 August 2009, pp. 51-52, 63.
[1811] T. 29 August 2005, p. 38.
[1812] T. 29 August 2005, p. 39.
[1813] T. 29 August 2005, p. 38.
[1814] T. 29 August 2005, pp. 39-40.
[1815] T. 29 August 2005, p. 38.
[1816] T. 29 August 2005, pp. 38-42.
[1817] T. 29 August 2005, p. 40.
[1818] T. 29 August 2005, p. 40.
[1819] T. 31 August 2005, p. 51.
[1820] T. 29 August 2005, pp. 6-7, 10.

civilians, mainly Tutsi, had sought refuge at the Josephite Brothers compound. However, the witness added that the number of those refugees could have been "less than 200".[1821]

1052. Witness DBJ testified that on 8 April, between 4.30 and 5.30 p.m., two groups of assailants arrived at the compound and attacked the civilians there.[1822] The first group of assailants was comprised of young men who were dressed in civilian clothes combined with pieces of military clothing. They were armed mainly with traditional weapons such as clubs, machetes, hatchets and spears, although some of them were armed with hand grenades and guns.[1823] The second group of assailants was comprised of soldiers who appeared quite distinct from the first group of assailants, as they were dressed in complete military uniforms including military boots.[1824] They were also armed with firearms.[1825] The witness further testified that those soldiers wore black berets, a fact that led him to conclude that they were members of the Presidential Guard.[1826]

1053. Thereafter, the two sets of assailants attacked the civilians at the Josephite Brothers compound.[1827] The soldiers shot and lobbed grenades into the buildings where the people resided at the compound, while the young male assailants "hacked away" at the civilians using their traditional weapons.[1828] As the attack unfolded, the witness and a few others left the building, which had come under sustained attack from the assailants, and went outside to the compound.[1829] There they encountered a soldier who identified himself as a member of the Presidential Guard.[1830] The soldier also showed the witness his identity card attesting to his membership of that unit.[1831] The witness could not decipher the contents of the card since it was late in the day, but he managed to see the soldier's photo on the card.[1832] The witness further testified that while conversing with the soldier, the latter asked them, "What did President Habyarimana not do to you so that you will have to reward him by killing him?" The soldier further told the witness that they had come to the compound in order to "hunt *Inyenzis*" and that they were "killing *Inyenzis*."[1833]

1054. While at the compound, the witness observed the soldier referred to above order a girl aged about 20 to strip and then he took her to a room inside the building where members of the Josephite Brothers lodged. Subsequently, the witness saw the soldier "in the process of raping that young girl" as he passed by the building where the soldier had taken the girl. The witness further testified that it was obvious to him that the sexual intercourse between the soldier and the girl was not consensual. The following day, the witness saw the dead body of the young girl but he did not know who had killed her.[1834]

[1821] T. 29 August 2005, p. 11.
[1822] T. 29 August 2005, pp. 11-12.
[1823] T. 29 August 2005, p. 13.
[1824] T. 29 August 2005, p. 13.
[1825] T. 29 August 2005, p. 13; T. 30 August 2005, p. 29.
[1826] T. 30 August 2005, p. 29.
[1827] T. 29 August 2005, p. 13.
[1828] T. 29 August 2005, p. 13.
[1829] T. 29 August 2005, p. 13.
[1830] T. 29 August 2005, p. 13.
[1831] T. 29 August 2005, pp. 13-14.
[1832] T. 29 August 2005, p. 14; T. 30 August 2005, p. 52.
[1833] T. 29 August 2005, p. 14.
[1834] T. 29 August 2005, p. 14.

1055. Witness DBJ estimated that the attack at the Josephite Brothers compound on 8 April lasted between 40 and 50 minutes.[1835] After the attack, the witness saw a large number of dead bodies lying around the corridors and a number of injured people who were pleading for assistance. However, the witness could not estimate the number of people who were killed during that attack.[1836]

1056. Witness DBJ gave evidence about a second attack at the Josephite Brothers compound perpetrated by soldiers. He testified that on 7 June 1994, between 2.00 and 3.00 p.m., a group of about 15 to 20 soldiers arrived at the compound and attacked both Tutsi members of the Brotherhood and the refugees.[1837] The witness testified that at the time the soldiers arrived at the Josephite Brothers compound, he was resting in the bursar's room. Shortly after their arrival, three to four soldiers, dressed in military uniforms and armed with guns, entered the bursar's room and briefly spoke to the witness. They then grabbed a few items from the room and proceeded to other parts of the building.[1838]

1057. Witness DBJ testified that shortly thereafter, soldiers selected Tutsi who were at the Josephite Brothers compound and led them out of the compound.[1839] He testified that prior to removing those civilians, the soldiers must have inspected the identity cards of the civilians at the compound in order to ascertain whether they were of Tutsi ethnicity. The witness drew that inference because the soldiers only removed members of Tutsi ethnic group and did not remove any of the Hutu civilians who were also present at the compound at the time.[1840]

1058. When asked to explain why soldiers did not abduct him despite the fact that he was a Tutsi, the witness explained that it was possible that his physical traits, which do not correspond to those stereotypically associated with members of the Tutsi ethnic group, may have led the assailants to mistake him for a Hutu.[1841]

1059. The witness testified that shortly after the soldiers had led the selected civilians out of the Josephite Brothers compound, Narcisse Gakwaia, a fellow member of the Brotherhood who was among those civilians, returned to the compound with his clothes covered in blood and informed the witness that following their removal from the compound, the soldiers had led them to a location behind the compound and fired at them.[1842] He further informed the witness that almost all of the abducted civilians had been killed and that he was the sole survivor of the attack.[1843]

1060. The witness recalled that six Tutsi members of the Josephite Brotherhood, namely, Elie Gerard Rwaka, Louis Kaneza, Itangishaka nicknamed Kajagali, Alexander Kayitera, Stanislas Gofi and Louis Rwahiga, were among the civilians who were slain by soldiers on 7 June 1994.[1844] Two of those victims, namely, Kayitera and the 89-year-old Rwahiga, were killed inside the Josephite Brothers compound where the witness saw their dead bodies.[1845]

[1835] T. 29 August 2005, p. 15.
[1836] T. 29 August 2005, pp. 16-17.
[1837] T. 29 August 2005, pp. 26-27.
[1838] T. 29 August 2005, pp. 26-27.
[1839] T. 29 August 2005, pp. 27, 30.
[1840] T. 29 August 2005, p. 32.
[1841] T. 29 August 2005, pp. 32-33.
[1842] T. 29 August 2005, pp. 27, 31-33.
[1843] T. 29 August 2005, pp. 27, 31-33.
[1844] T. 29 August 2005, p. 34.
[1845] T. 29 August 2005, p. 35.

According to Witness DBJ, more than a hundred people were killed during the attack of 7 June 1994.[1846]

1061. The witness testified that a mass grave was later discovered at the very location where Narcisse Gakwaia had indicated to him that the killings of civilians had taken place on 7 June 1994.[1847] The witness testified that the bodies in the mass grave were exhumed and he identified the dead bodies of two members of the Josephite Brotherhood, namely, Kaneza and Gerard, among the exhumed bodies.[1848] The witness explained that he identified the body of Kaneza from his shoes and that of Gerard from his bald head.[1849]

The Accused Bizimungu

1062. During his testimony, Bizimungu was invited to respond to the allegation that soldiers under his command committed crimes against Tutsi civilians at the Josephite Brothers compound on 7 June 1994.[1850] In his response, Bizimungu stated that by 7 June 1994, there was intense fighting in Kigali.[1851] Bizimungu also stated that the situation in Kigali was further exacerbated by the RPF's incessant shelling of Kigali and the news that a number of Hutu leaders of the Catholic Church had been killed by RPF soldiers in Kabgayi.[1852] It was in this context that Bizimungu was informed of attacks against religious centres by assailants, some of whom were dressed in military uniforms.[1853] Bizimungu gave evidence that following the fall of Camp Kanombe on 21 May 1994, "there was proliferation of army uniforms everywhere, a phenomenon that existed well before but … was aggravated by the loss of Kanombe."[1854] Given these circumstances, it was difficult to distinguish soldiers of the Rwandan Army from those of the RPF.[1855]

1063. Bizimungu further testified that he never received any reports during his tenure as Chief of Staff of the Army indicating that soldiers from various units of the Rwandan Army had committed crimes.[1856]

4.4.1.5.2.3 ETO-Nyanza, 11 April 1994

4.4.1.5.2.3.1 Evidence

Prosecution Witness AR

1064. Prosecution Witness AR, a Tutsi, testified that on 8 April 1994, he and his family sought refuge at the *École Technique Officielle* ("ETO") in Kicukiro, Kigali. The witness explained that he sought refuge at ETO because Belgian soldiers from UNAMIR were

[1846] T. 29 August 2005, p. 34.
[1847] T. 29 August 2005, p. 33.
[1848] T. 29 August 2005, pp. 33, 35.
[1849] T. 29 August 2005, p. 35.
[1850] T. 11 December 2007, pp. 39-40.
[1851] T. 11 December 2007, p. 40.
[1852] T. 11 December 2007, p. 40.
[1853] T. 11 December 2007, p. 40.
[1854] T. 11 December 2007, p. 40.
[1855] T. 11 December 2007, p. 40.
[1856] T. 11 December 2007, p. 40.

stationed there.[1857] When he arrived at ETO, he saw approximately 2,000 to 3,000 refugees.[1858]

1065. The witness testified that on 11 April 1994, the Belgian soldiers left ETO.[1859] Shortly thereafter, *Interahamwe* and Rwandan Army soldiers arrived at ETO and began attacking the refugees there. The witness and his family fled ETO together with approximately 2,000 to 3,000 other refugees.[1860] They headed towards Amahoro Stadium, where they thought they would be protected by UNAMIR soldiers who were based there.[1861] However, the refugees were stopped at a roadblock manned by *Interahamwe* and were told that anyone who was not Hutu would not be allowed to pass.[1862] The refugees fled the roadblock and continued on their way to the stadium. However, they were intercepted by a group of 15 to 20 soldiers.[1863]

1066. Thereafter, soldiers and *Interahamwe* led the witness and other refugees towards Nyanza Hill. On their way, the witness saw a man he recognised as Colonel Bagosora sitting in a Mercedes Benz jeep. Bagosora appeared to be "monitoring the situation". The witness claimed that he knew Bagosora because he was "one of the officials of the country".[1864] The witness further testified that as they were being marched towards Nyanza Hill, they were joined by other civilians. By the time they reached Nyanza Hill at 5.00 p.m., the number of the civilians had increased to approximately 4,000 to 5,000.[1865]

1067. At Nyanza Hill, the witness and other civilians were attacked by soldiers and *Interahamwe*. This attack continued until the assailants had run out of ammunition.[1866] According to the witness, the assailants were resupplied with more ammunition and then the attack continued until the soldiers believed that all of the refugees had been killed.[1867]

1068. The witness survived the attack and remained at Nyanza Hill until 13 April 1994, when RPF soldiers arrived and rescued him. The witness testified that his wife and three of his children died in the attack.[1868]

Prosecution Witness Roméo Dallaire

1069. In cross-examination, the Defence for Bizimungu put a number of submissions to Witness Dallaire regarding the events at ETO and Nyanza Hill on 11 April 1994. The Defence put it to Dallaire that contrary to the allegations of the Prosecution, none of the refugees at ETO were killed by soldiers of the Rwandan Army at Nyanza Hill on 11 April.[1869] Rather, the Defence contended that it was RPF soldiers who killed about 2,000 Hutu civilians

[1857] T. 21 September 2005, pp. 32-33.
[1858] T. 21 September 2005, pp. 35-36, 85.
[1859] T. 21 September 2005, pp. 35, 65, 67.
[1860] T. 21 September 2005, pp. 35-36, 85.
[1861] T. 21 September 2005, pp. 36-37.
[1862] T. 21 September 2005, p. 35.
[1863] T. 21 September 2005, pp. 36-37.
[1864] T. 21 September 2005, pp. 39, 40-41; T. 22 September 2005, p. 8.
[1865] T. 21 September 2005, pp. 40-41, 43.
[1866] T. 21 September 2005, p. 48.
[1867] T. 21 September 2005, p. 48.
[1868] T. 21 September 2005, pp. 49, 54.
[1869] T. 6 December 2006, p. 10.

at Nyanza Hill on 11 April.[1870] The Defence also submitted that the fact that Nyanza Hill was under the control of the RPF by the night of 11 April is further evidence that the killings at Nyanza Hill were committed by RPF soldiers.[1871] According to the Defence, the RPF subsequently invented and disseminated false information to the effect that Rwandan government soldiers had perpetrated killings of thousands of Tutsi refugees from ETO at Nyanza Hill on 11 April.[1872] The Defence further submitted that the fact that Nyanza Hill was not featured in the inventory of massacre sites prepared by the Ministry of Higher Education and Culture of the RPF-led government and that no reference had been made to this incident before the issuance of the Indictment against Rutaganda by the ICTR Prosecutor in 1996 provide further evidence that no Tutsi civilians were killed at Nyanza Hill by soldiers of the Rwandan Army.[1873]

1070. In his response, Witness Dallaire stated that Belgian soldiers who were based at ETO in Kigali left that location on 11 April 1994 as a result of the decision by the Belgian government to withdraw the entire Belgian contingent of UNAMIR from Rwanda. The departure of those soldiers left about 4,000 Rwandan civilians who had sought refuge at ETO without any protection.[1874] The witness subsequently learned that about 2,400 of those civilians were led to Nyanza Hill and killed.[1875]

4.4.1.5.2.4 *Centre Hospitalier de Kigali*

4.4.1.5.2.4.1 Prosecution Evidence

Prosecution Witness DAR

1071. Witness DAR worked at CHK from April to mid-May 1994.[1876] He testified that following his arrival at CHK on 7 April, he stayed at the hospital for a period of about five to six weeks without returning to his residence.[1877] From 7 April, he noted that uniformed and armed soldiers had established a roadblock at the entrance of the hospital and would ask all entrants into the hospital to identify themselves.[1878] According to the witness, soldiers maintained control of the entrance to the hospital for the entire period of his stay.[1879] Those who failed to present their identity cards or those whom the soldiers considered to be Tutsi or suspected of being accomplices of the "enemy" were refused entry into the hospital and were asked to stand aside at the entrance.[1880]

1072. The witness also observed the presence of a large group of soldiers inside the compound of the hospital throughout the period of his stay.[1881] Some of those soldiers were

[1870] The Chamber notes that the Defence submissions are allegedly drawn from a book entitled *"Du génocide à la défaite"* by Ntaribi Kamanzi. *See* T. 6 December 2006, pp. 9-10.
[1871] T. 6 December 2006, p. 8.
[1872] T. 6 December 2006, p. 8.
[1873] T. 6 December 2006, pp. 8-10.
[1874] T. 6 December 2006, p. 10.
[1875] T. 6 December 2006, p. 10.
[1876] T. 3 May 2006, p. 63 (ICS); T. 4 May 2006, p. 20.
[1877] T. 4 May 2006, pp. 20-22.
[1878] T. 3 May 2006, p. 66; T. 10 May 2006, p. 39.
[1879] T. 4 May 2006, p. 32.
[1880] T. 3 May 2006, p. 71; T. 10 May 2006, p. 40; T. 4 May 2006, p. 32.
[1881] T. 3 May 2006, pp. 66-67.

wounded and were being treated at the hospital.[1882] However, he had no knowledge of the units of the army to which those soldiers belonged.[1883]

1073. The witness testified that in the morning of 8 April, between 9.00 and 9.30 a.m., while on his way out of the CHK compound to run an errand, he saw a group of about 100 civilians being led to the CHK's morgue by a group of about 15 soldiers armed with rifles and dressed in military uniforms and black berets, accompanied by the same number of *Interahamwe* armed with traditional weapons.[1884] The witness heard some of those civilians protesting that they were not Tutsi or *Inyenzi* as they were marched by the soldiers and *Interahamwe*.[1885]

1074. Witness DAR testified that he was later informed by an employee of CHK named Jean Paul, who was among those civilians who had been captured by the soldiers and *Interahamwe* in the morning of 8 April, that they were led to one of the morgues at CHK.[1886] Jean Paul told the witness that upon reaching the morgue, *Interahamwe* ordered the civilians to undress and then attacked them, leading to the deaths of a number of civilians.[1887] Witness DAR testified that following his conversation with Jean Paul, he saw a large number of naked corpses lying outside one of CHK's morgues.[1888] The witness added that he did not see those bodies on the same day that they were allegedly killed, nor does he remember the day that he saw them.[1889] The civilians whom the witness saw being led to the morgue by soldiers and *Interahamwe* were brought from outside and were not patients receiving treatment at CHK, although some of them were former patients at CHK.[1890]

1075. Witness DAR testified that during his stay at the hospital, a number of Tutsi girls who were doing their internships at the hospital and staying in the laundry section of CHK were removed by armed soldiers at night and raped.[1891] He testified that two of those girls named Penelope and Uwimana Clarise were frequently abducted and raped by the soldiers.[1892] The witness was led to conclude that something "unfortunate" had happened to those girls given their sad deportment when they returned to the hospital following their abductions by soldiers.[1893] However, none of the girls informed the witness that they had been raped by soldiers during their stay at CHK.[1894]

1076. According to Witness DAR, the soldiers at CHK appeared to be commanded by an officer known as Lieutenant Pierre.[1895] The witness inferred that Pierre commanded the soldiers at CHK because Pierre assisted him in regaining some of his possessions, which had

[1882] T. 3 May 2006, pp. 66-67.
[1883] T. 10 May 2006, p. 50; T. 11 May 2006, p. 27.
[1884] T. 3 May 2006, pp. 67, 69; T. 4 May 2006, p. 38; T. 10 May 2006, pp. 1-2.
[1885] T. 3 May 2006, p. 71.
[1886] T. 3 May 2006, pp. 72-73; T. 10 May 2006, p. 43.
[1887] T. 3 May 2006, pp. 72-73; T. 10 May 2006, p. 43.
[1888] T. 3 May 2006, p. 73.
[1889] T. 3 May 2006, pp. 73-74.
[1890] T. 4 May 2006, p. 43.
[1891] T. 4 May 2006, pp. 3, 5, 8.
[1892] T. 4 May 2006, pp. 3, 5.
[1893] T. 4 May 2006, p. 18.
[1894] T. 11 May 2006, pp. 27-28.
[1895] T. 3 May 2006, p. 74; T. 10 May 2006, pp. 45-46.

been stolen by the soldiers manning the roadblock at the entrance to the hospital.[1896] However, the witness did not know the unit of the army to which Pierre was attached.[1897]

1077. The witness also claimed to have encountered Pierre at the paediatric ward holding a list. Pierre read out two names from the list and asked the witness whether he knew those individuals.[1898] However, the witness did not see the contents of the list held by Pierre.[1899]

1078. The witness testified that he was later informed that the head nurse at CHK had compiled a list of Tutsi civilians at CHK and gave it to Pierre.[1900] The witness was also informed that at night, Pierre and Stephanie Ndayambaje would go to the wards and remove Tutsi patients whose names were featured on that list.[1901] The witness added that Ndayambaje's daughter was among the people who had informed of him of the abductions of Tutsi patients from the wards by Pierre and Ndayambaje.[1902] However, the witness did not know where those patients were eventually taken.[1903]

1079. He further testified that he was informed by three of his colleagues at CHK, namely Innocent, Caritas and Mado, that a young Tutsi girl named Chantal Uwicyeza, who had sought refuge at the laundry section of CHK, was abducted and later killed by Pierre and Stephanie Ndayambaje.[1904]

Prosecution Witness ZA

1080. Witness ZA, a Tutsi, testified that she sought refuge at CHK from 10 April to mid-May 1994, when she fled from the hospital.[1905] She gave evidence that prior to entering the hospital on 10 April, she was stopped by soldiers at a roadblock located at the entrance of the hospital and was asked to present her identity documents.[1906] There were about four armed and uniformed soldiers at that roadblock.[1907]

1081. The witness testified that following her arrival at the hospital, she was asked to assist at the maternity ward given her prior experience working at that ward.[1908] On four or five occasions, she observed armed soldiers going about the maternity ward and registering the names and bed numbers of patients.[1909] She subsequently noted that the patients whose names and bed numbers had been recorded by the soldiers went missing and were never seen again.[1910] She was later informed by other patients at the ward that soldiers only abducted Tutsi patients and that they assured Hutu patients at that ward of their security.[1911]

[1896] T. 3 May 2006, p. 74.
[1897] T. 10 May 2006, p. 44.
[1898] T. 10 May 2006, pp. 3-4.
[1899] T. 10 May 2006, pp. 3-4.
[1900] T. 10 May 2006, p. 4
[1901] T. 4 May 2006, p. 10; T. 10 May 2006, pp. 3-4.
[1902] T. 4 May 2006, p. 4.
[1903] T. 4 May 2006, p. 10.
[1904] T. 3 May 2006, pp. 75, 78; T. 4 May 2006, p. 1.
[1905] T. 23 May 2006, p. 64 (ICS); T. 24 May 2006, pp. 1, 14, 18 (ICS).
[1906] T. 24 May 2006, p. 16 (ICS).
[1907] T. 24 May 2006, pp. 14-15 (ICS).
[1908] T. 23 May 2006, p. 59 (ICS); T. 24 May 2006, pp. 17-18 (ICS).
[1909] T. 24 May 2006, p. 19 (ICS).
[1910] T. 24 May 2006, pp. 19-20 (ICS).
[1911] T. 24 May 2006, pp. 21-22, 68 (ICS); T. 29 May 2006, pp. 9-10 (ICS).

1082. Witness ZA further testified that while at CHK, she was shown a list containing the names of a number of the nurses at CHK, including herself, whom the soldiers intended to kill.[1912] The witness fled CHK shortly after she learned of the plans to kill her.[1913]

1083. According to Witness ZA, the soldiers present at CHK were commanded by an officer known as Lieutenant Pierre. She drew that inference based on the deference that the other soldiers accorded him.[1914] Witness ZA further testified that she was informed by *gendarmes* at the hospital that Pierre was known as Pierre Nsengimana and was a member of 33rd battalion.[1915] She also stated that an unidentified soldier at CHK informed her that Pierre reported to the Ministry of Defence.[1916]

4.4.1.5.2.4.2 Defence Evidence

Defence Witness UKL

1084. Witness UKL worked as a doctor at CHK from 1993 to 25 May 1994.[1917] He testified that during the period from 7 April to 25 May 1994, he worked primarily at the maternity ward, located about 8 to 10 metres away from the main entrance to the hospital, but he also worked at the emergency ward and at the operating theatre, located about 15 metres and 100 metres from the main entrance, respectively.[1918] The witness disputed claims by Prosecution witnesses that the main entrance to CHK was not controlled by soldiers during the period that he worked at the maternity ward, that is from 7 April to around 24 or 25 May 1994.[1919]

1085. The witness testified that given the size of CHK and the fact that he attended to duties in various units of the hospital, he was in a suitable position to monitor the movements of patients, visitors and soldiers.[1920] He maintained that during the period that he stayed at the hospital after 7 April, there were no security concerns within the hospital or among the staff or patients.[1921] The witness testified that both wounded and healthy soldiers frequented the hospital, but he was not informed that soldiers had either mistreated Tutsi women or abducted or killed Tutsi patients on the premises of CHK, nor was he informed that the head nurse had compiled a list of Tutsi civilians to be killed.[1922]

Defence Witness Providence Nyiramondo

1086. Witness Nyiramondo worked as a nurse at CHK until the end of May 1994, when the hospital staff were evacuated.[1923] She testified that while working at CHK during April and May 1994, she was stationed in the general reception service office located a few metres away from the main entrance of the hospital.[1924] According to the witness, the main entrance

[1912] T. 24 May 2006, p. 24 (ICS).
[1913] T. 24 May 2006, pp. 27-28 (ICS).
[1914] T. 24 May 2006, p. 41 (ICS).
[1915] T. 24 May 2006, pp. 27, 41 (ICS).
[1916] T. 24 May 2006, p. 28 (ICS).
[1917] T. 30 June 2008, p. 58 (ICS).
[1918] T. 1 July 2008, p. 2.
[1919] T. 30 June 2008, p. 75; T. 1July 2008, p. 10.
[1920] T. 1 July 2008, p. 47.
[1921] T. 1 July 2008, p. 45.
[1922] T. 1 July 2008, p. 15.
[1923] T. 15 July 2008, pp. 11, 14, 17.
[1924] T. 15 July 2008, p. 4.

of CHK was not controlled by soldiers from 7 April 1994 onwards.[1925] She further testified that she never observed nor was she informed that Tutsi staff or patients were abducted and never seen again.[1926] She also denied that Tutsi girls and women were abducted and raped in the hospital laundry room or the front kiosk.[1927] She testified that she was not aware that lists of Tutsi staff or patients who were to be killed had been prepared at CHK.[1928]

1087. Witness Nyiramondo also disputed Prosecution Witness DAR's testimony that soldiers killed civilians in the hospital and left their corpses at the mortuary.[1929] She testified that she was only aware of Red Cross and health and sanitation units bringing corpses to the morgue.[1930] She also named several Tutsi individuals who worked at CHK after 7 April 1994,[1931] but she did not know Witness ZA as being among the Tutsi who worked at the hospital at that time.[1932]

Defence Witness S3

1088. Defence Witness S3, a Red Cross employee at the time of the events pleaded in the Indictment, testified that he was in charge of coordinating relief and evacuation operations for displaced persons in the city of Kigali from 9 April 1994.[1933] He testified that initially, the Red Cross took wounded or ill people to CHK. However, after the shelling of CHK in late April, Red Cross took wounded people to its hospital located in Kiyovu instead of CHK.[1934] Witness S3 estimated that from 9 April to late April 1994, he visited CHK at least three times a week and spent not more than half an hour at the hospital during each visit.[1935] He further testified that during these visits, he never saw a roadblock manned by soldiers at the entrance of CHK.[1936]

1089. During his visits to CHK, the witness only saw wounded soldiers who were patients at CHK and other soldiers guarding or protecting the wounded soldiers. However, the witness never saw or heard about soldiers killing, raping or kidnapping Tutsi civilians at CHK.[1937] He also denied seeing *Interahamwe* at CHK.[1938]

1090. According to Witness S3, the Red Cross would not have taken wounded people to CHK knowing that civilians were being killed at that location.[1939] The witness testified that for this reason, the Red Cross stopped taking wounded people to CHK after the hospital was shelled and instead took them to a makeshift hospital in Kiyovu.[1940]

[1925] T. 15 July 2008, p. 6.
[1926] T. 15 July 2008, p. 7.
[1927] T. 15 July 2008, pp. 7, 8.
[1928] T. 15 July 2008, pp. 1, 5.
[1929] T. 15 July 2008, p. 8.
[1930] T. 15 July 2008, p. 9.
[1931] T. 15 July 2008, p. 9.
[1932] A list of the names of the Tutsi staff at CHK provided by Witness Nyiramondo was tendered as Defence Exhibit 551. *See* T. 15 July 2008, p. 15.
[1933] T. 16 September 2008, p. 6 (ICS).
[1934] T. 16 September 2008, p. 7 (ICS).
[1935] T. 16 September 2008, pp. 11, 16.
[1936] T. 16 September 2008, p. 12.
[1937] T. 16 September 2008, p. 12.
[1938] T. 16 September 2008, p. 19.
[1939] T. 16 September 2008, pp. 12-13, 17.
[1940] T. 16 September 2008, pp. 12-13.

Defence Witness RRS

1091. Defence Witness RRS, a soldier of the Rwandan Army, served as a cook in the headquarters company stationed at Camp Kigali.[1941] His duties consisted of supplying food to soldiers in various locations, including the wounded soldiers who were being treated at CHK.[1942] Witness RRS estimated that he went to CHK at least once, if not twice, per day from 7 to 15 April 1994 in order to provide food to the soldiers who were admitted at the hospital.[1943] Witness RRS testified that during his visits to CHK throughout this period, he never saw soldiers controlling the main gate to the hospital nor did he hear that soldiers committed rapes against Tutsi women at CHK.[1944]

Defence Witness Bernard Uwizeyimana

1092. Witness Bernard Uwizeyimana, a military advisor attached to the 61st Battalion in *Remera Y'Abaforongo*,[1945] gave evidence that on 13 April 1994, he was wounded by shrapnel during the war with the RPF and was evacuated to CHK for treatment.[1946] According to the witness, the entrance to CHK was not controlled by soldiers at that time.[1947] Witness Uwizeyimana remained at CHK until 19 April 1994. During that period, he did not see armed soldiers at the hospital, nor did he hear that soldiers committed rapes against Tutsi women at CHK.[1948]

4.4.1.5.2.5 Kicukiro *Conseiller's* Office

1093. The Chamber notes the neither the Pre-Trial Brief nor the Prosecution Closing Brief makes reference to specific "acts of violence" committed at the Kicukiro *conseiller's* office. The Chamber has also reviewed the entire trial record and the Prosecution's opening remarks made on 20 September 2004, and finds that the Prosecution presented no evidence in connection with this allegation. The Chamber therefore finds that this allegation has not been proved beyond reasonable doubt.

4.4.1.5.2.6 *École des Sciences Infirmières* de Kabgayi

Prosecution Witness EZ

1094. Witness EZ, a Tutsi, lived in Taba *commune* in 1994.[1949] She testified that she went to ESI in Gitarama *préfecture* around 18 April to seek refuge from the attacks on Tutsi.[1950] Upon arrival, Witness EZ saw that a number of Tutsi civilians had sought refuge at ESI.[1951] The witness explained that at the time, wounded soldiers lived in the ESI compound but were sheltered in a different building from the refugees. The witness explained that the ESI

[1941] T. 30 October 2008, p. 25 (ICS).
[1942] T. 30 October 2008, p. 28.
[1943] T. 30 October 2008, p. 33.
[1944] T. 30 October 2008, p. 35.
[1945] T. 5 November 2008, p. 9.
[1946] T. 5 November 2008, pp. 10-12.
[1947] T. 5 November 2008, pp. 10, 11.
[1948] T. 5 November 2008, pp. 12, 19.
[1949] Prosecution Exhibit 64.
[1950] T. 5 October 2005, pp. 9-14, 60.
[1951] T. 5 October 2005, p. 14; T. 5 October 2005, p. 22 (ICS).

compound was not fenced, but it was made up of several buildings arranged around a central courtyard with a single exit.[1952]

1095. The witness estimated that she stayed at ESI for almost one month.[1953] During that period, soldiers and *Interahamwe* arrived at the compound on a regular basis and took away refugees who were never seen again.[1954] These soldiers wore military uniforms with military boots, and some also wore berets. The witness explained that at first, the soldiers would only attack the refugees at ESI at night, but later the soldiers would also arrive at the compound during the day and attack the refugees.[1955]

1096. During the period that she sought refuge at the ESI compound, the witness saw Akayesu, the *bourgmestre* of Taba *commune,* come to ESI accompanied by soldiers and a *commune* policeman named Athanase. She further testified that during his visits, Akayesu removed a number of refugees from ESI whose names were featured on a listthat he carried. The witness observed that Akayesu seemed to be "warmly received" by the soldiers at ESI. The witness also testified that a member of parliament named Ruvugama, as well as Sixbert Ndayambaje, who was the former *bourgmestre* of Runda *commune,* also visited ESI during that period. The witness stated that Ndayambaje also had a list of names but she did not see him select and remove any refugees.[1956]

1097. The witness testified that the refugees who were abducted from ESI by soldiers, militia and Akayesu were killed in the ESI compound very near to where the witness and other refugees were located. The witness also stated that the refugees who were abducted from ESI did not come back. The witness gave the names of four Tutsi refugees who were taken away from ESI and did not return. In particular, she identified a priest named Father Callixte, a carpenter named Bushaija and two other victims named Gérard and Mukamam. After the removal of Father Callixte, the witness saw *Interahamwe* wearing Father Callixte's clothes.[1957] The fact that the abducted refugees were never seen again and the fact that she saw some of the assailants wearing the clothes of the abducted refugees led the witness to conclude that those refugees had been killed.

1098. In addition to the killings, Witness EZ gave evidence that soldiers came to ESI at night and took away women and young girls in order to rape them in the forest.[1958] The witness was herself raped a number of times by soldiers. The witness recalled that on one occasion, soldiers came to ESI at around 5.00 p.m. and attempted to take a woman in order to rape her. The woman refused to abide with orders of the soldiers, so the soldiers raped her at the compound in front of the other refugees and then killed her.[1959] During this incursion into the compound, the soldiers took a group of about 40 women and young girls, including the witness, to the forest situated between the Red Cross buildings and ESI. The soldiers ordered those women to undress and then took turns in raping the women.[1960] The soldiers told the women not to scream, and threatened to kill anyone who screamed. The witness estimated

[1952] T. 5 October 2005, p. 14; T. 6 October 2005, pp. 24-25.
[1953] T. 5 October 2005, p. 18.
[1954] T. 5 October 2005, pp. 17-18.
[1955] T. 5 October 2005, p. 14.
[1956] T. 5 October 2005, p. 18.
[1957] T. 5 October 2005, pp. 20-21 (ICS); T. 6 October 2005, pp. 34-35.
[1958] T. 5 October 2005, pp. 14-17.
[1959] T. 5 October 2005, p. 16; T. 6 October 2005, p. 28.
[1960] T. 5 October 2005, p. 16; T. 6 October 2005, pp. 28-30.

that around 30 soldiers perpetrated the rapes against them on that occasion,[1961] and the witness herself was raped by around 15 soldiers.[1962] According to the witness, the rapes lasted the whole night because the refugees only went back to the school at around 5.00 a.m.[1963]

1099. The witness testified, "Not a single night went by without [the female refugees] being raped."[1964] The witness named Mukantaganda Petronile, Annonciate and Séraphine Ngutegure as being among the refugees at ESI who were also raped.[1965] The witness stated that from around 15 May, one of the soldiers decided to rape her all by himself so she did not have to be raped by several men.[1966]

4.4.1.5.2.7 TRAFIPRO and the Musambira *Commune* Office and Dispensary

Prosecution Witness DBA

1100. Witness DBA, a Tutsi,[1967] testified that following the death of the President on 6 April 1994, she left her home and went to the Musambira dispensary in Gitarama in order to seek medical treatment.[1968] The dispensary was located close to the Musambira *commune* office and the court. The witness recalled that the head nurse at the dispensary named Marciane behaved disparagingly towards her and then called an *Interahamwe* member named Abdulhamane, together with a number of soldiers. Thereafter, Abdulhamane and six soldiers who were armed with guns and knives arrived at the dispensary and took the witness and other women to an area nearby.[1969] Four of the soldiers then raped the witness.[1970] She explained that she knew that the men who raped her were soldiers from their uniforms, which consisted of a shirt, helmet, trousers and boots.[1971]

1101. The witness further testified that the same set of soldiers who raped her also raped another woman and then cut between her legs with a bayonet.[1972]

Prosecution Witness DBH

1102. Witness DBH, a Tutsi, was a farmer in Musambira *commune*[1973] and was six months pregnant in April 1994.[1974] Following the death of President Habyarimana, the witness hid in a banana plantation for approximately one week with her Tutsi brothers and neighbours.[1975] She testified that they were persuaded to come out of hiding because Abdulhamane, a local

[1961] T. 5 October 2005, p. 16; T. 6 October 2005, pp. 28, 30.
[1962] T. 5 October 2005, p. 16; T. 6 October 2005, pp. 28, 30.
[1963] T. 5 October 2005, p. 16; T. 6 October 2005, p. 30.
[1964] T. 5 October 2005, p. 17.
[1965] T. 5 October 2005, pp. 21-22 (ICS).
[1966] T. 5 October 2005, p. 17.
[1967] Prosecution Exhibit 26.
[1968] T. 17 March 2005, p. 36 (ICS).
[1969] T. 17 March 2005, p. 36 (ICS).
[1970] T. 17 March 2005, p. 36 (ICS); T. 21 March 2005, pp. 56-57 (ICS).
[1971] T. 17 March 2005, p. 37 (ICS).
[1972] T. 17 March 2005, pp. 36, 38 (ICS).
[1973] T. 20 June 2005, pp. 3-4.
[1974] T. 23 June 2005, pp. 22-23.
[1975] T. 20 June 2005, p. 4.

Interahamwe leader, sent a messenger to tell them that "peace and security had been restored".[1976]

1103. The witness and her Tutsi brothers and neighbours went to the Musambira *commune* office, where a man named Edswald "registered" them.[1977] Abdulhamane told the refugees that they were being registered in order to get assistance. However, immediately after the registration, a number of *Interahamwe* wearing banana leaves arrived at the *commune* office and began killing the Tutsi with small hoes, clubs and machetes.[1978]

1104. Later, soldiers dressed in military uniforms including hats or berets with marks inscribed on them arrived at the *commune* office.[1979] The witness explained that some of the refugees who were afraid of being killed with machetes and small hoes gave money to the soldiers so that the soldiers could "kill them with a gun" instead.[1980] Witness DBH witnessed the killing of a man named Gatete after he had paid the soldiers to kill him with a gun.[1981] The witness testified that the soldiers attacked "thousands" of refugees at the *commune* office and that none of the male refugees survived that attack.[1982] The women buried the bodies of the victims in a grave located about 15 metres from the *commune* office.[1983] Witness DBH estimated that they buried between 7,000 and 8,000 bodies.[1984] Thereafter, Abdulhamane locked up the surviving refugees, including the witness, in a building at the Musambira dispensary or "clinic".[1985]

1105. Witness DBH testified that she was locked in the building at the Musambira dispensary for approximately two days.[1986] During that period, soldiers came and took her and other female refugees into the bush to rape them.[1987] On the first occasion, three soldiers came and dragged the witness out of the clinic to rape her. The soldiers were wearing camouflage military uniforms and carrying weapons, and one of them wore a camouflage helmet.[1988] On another day, two soldiers took the witness outside the building and raped her. The witness testified that on that day, she "was not the only one taken in that manner. There were other people who were also taken." After the soldiers had raped the witness, they said that "they had had enough of raping Tutsis" and the witness went back to the clinic.[1989]

1106. Subsequently, Witness DBH and a number of other women decided to escape. She testified that they made a hole in the fence and escaped through the hole at nightfall without being seen by the guards.[1990]

[1976] T. 20 June 2005, pp. 5, 9.
[1977] T. 20 June 2005, p. 5.
[1978] T. 20 June 2005, pp. 6-7, 11.
[1979] T. 20 June 2005, p. 7
[1980] T. 20 June 2005, pp. 6, 11.
[1981] T. 20 June 2005, pp. 6, 11.
[1982] T. 20 June 2005, pp. 7-8.
[1983] T. 21 June 2005, pp. 33, 36-37.
[1984] T. 20 June 2005, p. 7.
[1985] T. 20 June 2005, pp. 7-9.
[1986] T. 22 June 2005, p. 2.
[1987] T. 20 June 2005, p. 9.
[1988] T. 20 June 2005, pp. 10-11.
[1989] T. 20 June 2005, pp. 13-14.
[1990] T. 22 June 2005, pp. 17-19.

Prosecution Witness DBB

1107. Witness DBB, a Tutsi, was a student living in Rwinanka *cellule* in Musambira *commune* in 1994.[1991] She testified that sometime around 10 April 1994, following the killings of Tutsi in her area, she sought refuge at the Musambira *commune* office.[1992] Upon arrival, she found other refugees as well as armed policemen in green uniforms.[1993] A few days later, an *Interahamwe* named Abdulhamane[1994] arrived at the *commune* office with other *Interahamwe* and started killing the refugees using clubs, machetes and guns.[1995] The policemen joined the assailants in killing the Tutsi.[1996] The witness stated that all of the male refugees were killed during the massacre.[1997]

1108. Following the killings at the *commune* office, Abdulhamane and the police officers asked the refugees to go to Musambira church.[1998] The witness remained at the church for about one week[1999] and then fled to the Musambira dispensary.[2000]

1109. Approximately one week after Witness DBB arrived at the Musambira dispensary, a soldier wearing a camouflage uniform and a beret came and asked the refugees to gather in a yard near the *commune* office.[2001] The witness recalled that immediately afterwards, Abdulhamane came with *Interahamwe* and attacked the refugees using clubs and machetes. Those who tried to escape were shot by soldiers.[2002] According to the witness, many refugees died and the survivors were asked to bury the bodies in three large pits. The survivors then returned to the dispensary for two nights, at which point Abdulhamane arrived and chased them away saying they should go to their respective houses and wait for death.[2003] The witness and other refugees then left the dispensary and returned to their homes.[2004]

1110. After witnessing further killings at her home, the witness returned to the Musambira church.[2005] Approximately one week later, the witness and other refugees were transported on a bus to the TRAFIPRO Centre in Kabgayi, escorted by two soldiers in military uniforms and a policeman in a green uniform.[2006] When she arrived at TRAFIPRO, the witness observed that there were already a large number of refugees there. The witness stayed at TRAFIPRO for approximately one week. On several occasions during that period, soldiers came to the centre and killed refugees.[2007]

[1991] T. 26 January 2006, p. 43.
[1992] T. 26 January 2006, p. 27.
[1993] T. 26 January 2006, p. 29.
[1994] The Chamber notes that the name Abdulhamane has two different spellings in the same transcript, but it is satisfied that both spellings signify the same person.
[1995] T. 26 January 2006, pp. 27-30.
[1996] T. 26 January 2006, pp. 28-30.
[1997] T. 26 January 2006, p. 29.
[1998] T. 26 January 2006, p. 31.
[1999] T. 26 January 2006, p. 31.
[2000] T. 26 January 2006, p. 35.
[2001] T. 26 January 2006, p. 35.
[2002] T. 26 January 2006, p. 35.
[2003] T. 26 January 2006, p. 35.
[2004] T. 26 January 2006, pp. 35-36.
[2005] T. 26 January 2006, p. 36.
[2006] T. 26 January 2006, pp. 37-38.
[2007] T. 26 January 2006, p. 38.

1111. The witness further testified that during her stay at TRAFIPRO, she was raped twice by soldiers wearing camouflage uniforms.[2008] She stated that the first rape took place about three days after she came to TRAFIPRO and was committed by three soldiers near the military barracks.[2009] The second rape took place two days after the first rape[2010] and was committed by two soldiers at the same location as the first rape.[2011] She added that both rapes took place during the day.[2012]

Prosecution Witness DBE

1112. Witness DBE, a Tutsi, lived in Murambi *cellule* in 1994.[2013] She testified that she went to TRAFIPRO in mid-May seeking refuge from the attacks against Tutsi in the area.[2014] When she arrived at TRAFIPRO, she found many other Tutsi including some of her relatives who had sought refuge there.[2015] The witness estimated that she spent more than one month there.[2016]

1113. The witness stated that during her time at TRAFIPRO, "[S]everal incidents happened. People were killed, young men, young girls. The attackers could come at any time and kill refugees. They would come, take refugees, and take them and kill them."[2017] The witness recalled that the attackers were both soldiers and *Interahamwe*.[2018] Two days after arriving at TRAFIPRO, the witness saw soldiers and *Interahamwe* kill her 15-year-old son Harerimana in broad daylight. She also witnessed a number of other killings, including the killing of a man named Mugoboka.[2019] She stated that the attackers came every day and at varying times to take refugees away and kill them.[2020]

1114. The witness further testified that she was raped several times during her stay at TRAFIPRO.[2021] On one occasion, six armed soldiers took the witness and five other women into a nearby wood and raped them.[2022] After the rapes, she recalled the soldiers pushing them roughly and telling them to go back to where they had come from.[2023]

1115. The witness also gave evidence regarding an incident when soldiers took the witness and other women outside TRAFIPRO in order to rape them, but the soldiers ceased their attack against the women after seeing a white man who worked for the Red Cross drive in the area. The witness and the other women then returned to TRAFIPRO.[2024]

[2008] T. 26 January 2006, pp. 41, 43.
[2009] T. 26 January 2006, p. 41.
[2010] T. 26 January 2006, pp. 41-42.
[2011] T. 26 January 2006, p. 42.
[2012] T. 26 January 2006, p. 43.
[2013] T. 4 April 2005, p. 46, 49.
[2014] T. 30 March 2005, pp. 48-57; T. 31 March 2005, p. 49.
[2015] T. 30 March 2005, pp. 60-61.
[2016] T. 30 March 2005, p. 61.
[2017] T. 30 March 2005, p. 61.
[2018] T. 30 March 2005, p. 62.
[2019] T. 30 March 2005, pp. 61-62.
[2020] T. 30 March 2005, p. 64.
[2021] T. 30 March 2005, p. 64.
[2022] T. 30 March 2005, pp. 64-65.
[2023] T. 30 March 2005, p. 65.
[2024] T. 30 March 2005, pp. 63-65.

1116. On another occasion, soldiers again took the witness and other women to the woods and raped them. The witness was herself raped twice by soldiers. She recalled one soldier stating, "The God of the Tutsis has abandoned or forsaken you. I don't know how you are still alive and what you are doing here".[2025] The soldier also stated, "[Y]ou Tutsi women are not dying like the men because you have something to offer men" and "[a]t any rate, you ought to be sent back to your home, Abyssinia."[2026] The witness stated that on this occasion she saw one female refugee raped and killed by a soldier who stabbed her between the legs.[2027] The witness also stated, "Whenever we went to the small wood we would find bodies".[2028] On the third occasion that she was raped in the wood, the witness saw corpses in the woods with their hands tied.[2029]

1117. On each of the three occasions, the witness knew that the assailants were soldiers because they were wearing military camouflage uniforms with ponchos over the top and black berets with insignia on the side. She also stated that the soldiers were carrying firearms and grenades.[2030] In some cases, the women were raped by both soldiers and *Interahamwe;* the soldiers would rape the women first and then hand them over to the *Interahamwe* who would also rape them.[2031]

1118. After the third rape incident, soldiers and *Interahamwe* continued to launch attacks against the refugees at TRAFIPRO.[2032] The witness recalled that Prime Minister Kambanda came to TRAFIPRO one morning and that following his visit, soldiers and *Interahamwe* launched a large-scale attack against the refugees at TRAFIPRO, resulting in a number of deaths.[2033] The witness also described an incident when the refugees killed an *Interahamwe* in self-defence and then soldiers and *Interahamwe* attacked the refugees, resulting in the death of between 20 and 30 people.[2034] The soldiers and *Interahamwe* also broke the tap so that the refugees no longer had a source of water.[2035]

1119. The witness and other refugees finally left TRAFIPRO when the RPF or *Inkotanyi* arrived and the refugees were able to pass through the barbed wire fence of the compound and run away.[2036]

[2025] T. 30 March 2005, p. 65.
[2026] T. 4 April 2005, p. 8
[2027] T. 30 March 2005, p. 66; T. 4 April 2005, pp. 12-13.
[2028] T. 30 March 2005, p. 66.
[2029] T. 4 April 2005, p. 9.
[2030] T. 30 March 2005, pp. 62-66.
[2031] T. 30 March 2005, pp. 65-66.
[2032] T. 30 March 2005, p. 67.
[2033] T. 4 April 2005, p. 14. The witness initially testified that the attack took place on the same day as Kambanda's visit, but later in her testimony she stated that the attack took place nearly a week after the visit. The witness claimed that she had obviously forgotten the date on which the incident occurred. *See* T. 4 April 2005, p. 41.
[2034] T. 30 March 2005, pp. 68-69.
[2035] T. 30 March 2005, p. 68.
[2036] T. 30 March 2005, p. 70; T. 4 April 2005, p. 12.

Prosecution Witness DBD

1120. Witness DBD, a Tutsi, lived in Murambi *cellule* in 1994.[2037] She testified that she sought refuge at TRAFIPRO sometime in late April or May 1994 and she stayed there for approximately two weeks.[2038] The witness stated that the refugees at TRAFIPRO were all Tutsi and that the conditions there were inhumane. There was no water or food, and the unsanitary conditions led to many deaths from cholera and dysentery.[2039]

1121. The witness explained that during her stay at TRAFIPRO, she saw armed soldiers remove adults and children from the area. This would happen between three and five times per day. She stated that the soldiers "came relentlessly" to take people away and that most of those people never came back. Some women would return but the men who were selected were shot dead on the spot.[2040]

1122. The witness recalled that a few days after her arrival at TRAFIPRO, Prime Minister Kambanda along with Bishop Thaddée Nsengiyumva of Kabgayi visited TRAFIPRO. After their visit, there was a large attack on the refugees during which soldiers and *Interahamwe* killed many people. The witness recalled that "the attackers fired at [the refugees] throughout the night. And in the morning they killed a lot of people who were within the complex."[2041]

1123. Witness DBD testified that she was raped on two occasions while she was at TRAFIPRO. The first time, a soldier selected the witness and then handed her over to three other soldiers who took her to a wooded area. Two of the soldiers then raped the witness at gunpoint while beating and taunting her. The second time, she was attempting to purchase a few items from the store when a soldier and two *Interahamwe* grabbed her and beat her with gun butts and pieces of wood. The soldier then raped the witness.[2042]

1124. Witness DBD testified that the refugees at the TRAFIPRO compound were "liberated" by the RPF on 2 June 1994.[2043]

4.4.1.5.3 Deliberations

4.4.1.5.3.1 Charles Lwanga Church, 9 to 10 June 1994

1125. In support of its allegation that soldiers under the command of Bizimungu perpetrated acts of violence toward Tutsi civilians at Charles Lwanga Church on 9 or 10 June 1994, the Prosecution relies solely on the evidence of Witness DBJ.

1126. Having considered the evidence of Witness DBJ, the Chamber is satisfied that *Interahamwe* attacked the refugees at Charles Lwanga Church on either 9 or 10 June 1994. The Chamber is also satisfied that the attack led to the killing of some of the civilians at the church, including an aged member of the Josephite Brotherhood named Pierre Cacamumakuba.[2044] In addition, Witness DBJ's evidence establishes that members of the

[2037] T. 5 April 2005, p. 6 (ICS).
[2038] *See* T. 5 April 2005, p. 11 (ICS); T. 4 April 2005, pp. 66-71.
[2039] T. 4 April 2005, p. 71.
[2040] T. 4 April 2005, pp. 70-71.
[2041] T. 4 April 2005, pp. 14-15, 72; T. 5 April 2005, pp. 33-35.
[2042] T. 4 April 2005, pp. 72-73.
[2043] T. 4 April 2005, p. 12; T. 5 April 2005, p. 28.
[2044] T. 29 August 2005, p. 39.

Interahamwe, led by a notorious *Interahamwe* known as Kigingi, abducted Tutsi women and children refugees and drove them in the direction of Mount Kigali. However, the Prosecution presented no further evidence on the fate of those refugees.

1127. The Chamber will now consider whether soldiers were involved in the attack against Tutsi refugees at the church. The Chamber recalls that Witness DBJ did not ascribe any role to soldiers in the physical perpetration of the attack. In response to a question from the Defence as to whether soldiers had any role in the attack, the witness stated, "[I]t was people that I will refer to as the *Interahamwe* who attacked the St. Charles Lwanga Parish."[2045] The Chamber notes that Witness DBJ made generic comments to the effect that during attacks by *Interahamwe* in 1994, soldiers and *gendarmes* would arrive at the scene of the attack, "perhaps, to ensure the smooth functioning of the operation."[2046] The witness further stated that soldiers and *gendarmes* did not take any measures to avert such attacks, but only "witnessed what was going on."[2047] Apart from testifying that soldiers were present outside the church at the time, the witness did not impute to soldiers any role in the physical execution of the attack.

1128. The Chamber notes that it has little evidence regarding the circumstances that led to the intervention of the soldiers at Charles Lwanga Church. The Chamber also recalls that Witness DBJ testified that Colonel Munyakazi, the highest ranking officer among the *gendarmes* and soldiers present at the church, protected him and other members of the Brotherhood from being attacked by *Interahamwe* during the events of 9 or 10 June 1994 at the church. The witness testified:

> [A]s far as I am concerned, [Colonel Munyakazi] did one thing for me and for the brothers, my colleagues who were with me. He helped us to cross the Kigina roadblock, even if there was a minor dispute at the roadblock. He, therefore, saved us, so to speak. Another witness could come here and tell you that the Colonel did not conduct himself properly because there were no survivors in the vehicle that ferried the people. So as far as I am concerned, he saved my life. But someone else may say that he participated in those atrocious acts.[2048]

1129. Witness DBJ's evidence that soldiers did not take part in the physical perpetration of the attack at the church, together with the paucity of evidence regarding the circumstances surrounding the soldiers' intervention at the church and the role of Colonel Munyakazi in saving the witness and his colleagues despite stiff resistance from the *Interahamwe,* leave the Chamber with grave doubts that the mere presence of soldiers at the church during the attack suggests that they participated or supported the attack against the refugees by *Interahamwe.* The Chamber is therefore not satisfied that soldiers under the command of Bizimungu were implicated in the crimes that were committed against Tutsi civilians at the Charles Lwanga Church on either 9 or 10 June 1994.

[2045] T. 31 August 2005, p. 51.
[2046] T. 29 August 2005, p. 38.
[2047] T. 29 August 2005, p. 39.
[2048] T. 31 August 2005, pp. 52-53.

4.4.1.5.3.2 Josephite Brothers Compound, 8 April and 7 June 1994

1130. In support of its allegation that soldiers under the command of Bizimungu perpetrated acts of violence toward Tutsi civilians at the Josephite Brothers compound on 8 April and 7 June 1994, the Prosecution relies solely on the evidence of Witness DBJ.

4.4.1.5.3.2.1 Attack Against Tutsi Civilians at the Josephite Brothers Compound, 8 April 1994

1131. Witness DBJ is the only witness to have testified about the events at the Josephite Brothers compound on 8 April 1994. He testified that soldiers in collaboration with *Interahamwe* killed and injured a large number of Tutsi civilians at the compound.[2049] At the time, there were between 200 and 250 civilians, mainly Tutsi, who had sought refuge at the compound.[2050] The witness also testified that in the course of the attack at the compound, a soldier raped a Tutsi refugee girl.[2051]

1132. Having assessed Witness DBJ's testimony, the Chamber is satisfied that he gave a firsthand and a largely consistent account of the events that transpired at the Josephite Brothers compound on 8 April 1994.

1133. In determining the veracity of Witness DBJ's testimony, the Chamber has carefully weighed the submissions raised by the Defence to discredit his evidence. The witness was cross-examined at considerable length regarding his description of the clothes worn by the young male assailants who collaborated with soldiers in attacking civilians at the Josephite Brothers compound on 8 April. The Defence also sought to impugn the reliability of Witness DBJ's evidence that soldiers of the Rwandan Army participated in the attack at the compound.

1134. The Defence submits that contrary to Witness DBJ's evidence that the young male assailants were mainly dressed in civilian clothes but that a few of them wore pieces of military uniform, in his pre-trial statement dated 28 July 1999, the witness stated that those assailants were dressed in complete military uniforms.[2052] More significantly, the Defence referred to Witness DBJ's evidence in the *Bagosora et al.* proceedings given on 25 November 2003, in which he stated that while at the beginning of the events of 1994 one could distinguish between soldiers and *Interahamwe* based on their dress, that distinction became difficult to draw with the passage of time since *Interahamwe* also began to wear complete military uniforms.[2053] According to the Defence, the fact that the witness stated in his pre-trial statement that the young male assailants were dressed in complete military uniforms, together with the witness's own admission that he could not distinguish soldiers from the militia based on their clothing, raises doubts about the reliability of Witness DBJ's identification of some of the assailants at the Josephite Brothers compound as soldiers.

1135. Having reviewed Witness DBJ's evidence before this Chamber and his pre-trial statement, the Chamber is not satisfied that there is a discrepancy between his testimony and his pre-trial statement regarding the appearance of the assailants during the attack of 8 April

[2049] T. 29 August 2005, pp. 16-17.
[2050] T. 29 August 2005, p. 11.
[2051] T. 29 August 2005, p. 14.
[2052] T. 30 August 2005, pp. 20-23, 26-28.
[2053] T. 31 August 2005, pp. 26-28.

at the Josephite Brothers compound. The Chamber notes that in both instances, the witness was consistent that the majority of the young male assailants, unlike soldiers, were dressed in civilian clothes but that some wore pieces of military uniform such as shirts or trousers. The witness also distinguished the two sets of assailants based on their weapons. He stated that while the young male assailants were mainly armed with traditional weapons, the soldiers were armed with firearms. Furthermore, the Chamber notes that the witness did not diverge from this position despite being subjected to a lengthy and repetitive cross-examination.[2054] The suggestion that the witness's testimony on this issue varies from his pre-trial statement lacks merit.

1136. The Chamber is also not persuaded by the argument that Witness DBJ's testimony in the *Bagosora et al.* proceedings that he could not distinguish between soldiers and *Interahamwe* based on their clothing raises doubts about the reliability of his evidence that soldiers participated in the attack at the Josephite Brothers compound. Having reviewed the transcripts of his evidence in that trial, the Chamber is not satisfied that this aspect of his evidence in the *Bagosora et al.* proceedings has any bearing on the events that he witnessed at the Josephite Brothers compound on 8 April 1994. His evidence is drawn from his observations of the situation at roadblocks in Kigali in June 1994. He testified that he saw *Interahamwe* dressed in complete military uniforms in the month of June as he passed through a roadblock on his way to St. Famille coming from St. Charles Lwanga Church.[2055] It was at that stage that he found it difficult to distinguish militia from soldiers. However, his evidence of the events at the Josephite Brothers compound on 8 April 1994 is quite clear that soldiers appeared visibly distinct from the young male assailants during the attack at the compound. Having reviewed the entirety of his evidence, the Chamber is satisfied that the witness could reliably distinguish soldiers from the young male assailants given the marked difference in their appearances. His evidence that soldiers were involved in that attack is therefore grounded on a reliable basis of knowledge.

1137. The Chamber has also considered the other submissions raised by the Defence in an attempt to impugn Witness DBJ's credibility. The Defence referred to a number of discrepancies between Witness DBJ's evidence before this Chamber and his evidence given in the *Bagosora et al.* proceedings on 23, 24 and 25 November 2003, and also his pre-trial statement dated 28 July 1999. These variances relate to the duration of the attack at the Josephite Brothers compound on 8 April 1994,[2056] whether the perpetrators of the attack were acting at the behest of a known commander, [2057] Witness DBJ's vantage point when the attack started,[2058] the manner in which the attack unfolded,[2059] and whether the assailants inspected the identity cards of the people at the compound prior to the attack.[2060] Having assessed these variances, the Chamber does not consider them to be of such a significant weight that they diminish the overall credibility of Witness DBJ's testimony regarding the events at the compound.

[2054] T. 30 August 2005, pp. 20-23, 26-28.
[2055] T. 31 August 2005, p. 28.
[2056] T. 30 August 2005, pp. 45-46.
[2057] T. 30 August 2005, pp. 32-36; T. 31 August 2005, pp. 30-31.
[2058] T. 30 August 2005, pp. 23, 29-30, 36, 42-44.
[2059] T. 30 August 2005, pp. 37-41.
[2060] T. 31 August 2005, pp. 8-13.

1138. The Chamber recalls that Witness DBJ gave evidence that during the attack of 8 April 1994, one of the soldiers raped a female refugee aged about 20.[2061] The witness gave evidence that on the following day, he saw the dead body of the girl but had no information on who killed her.[2062]

1139. The witness was cross-examined at length regarding his vantage point as he witnessed the alleged rape. According to the Defence, the witness testified that he saw the soldier rape the girl as he passed by the building where the soldier had taken the girl. However, in his pre-trial statement dated 28 July 1999, the witness stated that he observed the alleged rape while he was seated in the Josephite Brothers compound.[2063] The witness explained that the discrepancy may have resulted from a misunderstanding between himself and the investigators of the Tribunal. In particular, he stated that the investigators may have misconstrued his statement that the soldier ordered the girl to strip while at the compound to mean that he raped her at that compound.[2064] The Chamber accepts this as a plausible explanation of the discrepancy between the witness's evidence and his pre-trial statement.

1140. Having considered Witness DBJ's evidence, the Chamber is satisfied that the witness gave a credible account that a soldier raped a young girl during the attack at the Josephite Brothers compound on 8 April 1994.

1141. The Chamber therefore finds that the Prosecution has proved beyond reasonable doubt that soldiers of the Rwandan Army committed crimes against Tutsi civilians at the Josephite Brothers compound on 8 April 1994 as alleged in paragraphs 68 and 69 of the Indictment.

1142. The Chamber notes, however, that the crimes alleged at the Josephite Brothers compound on 8 April 1994 took place before Bizimungu became Chief of Staff of the Rwandan Army and therefore fall outside the time period prescribed in paragraphs 68 through 70 of the Indictment. Consequently, the Chamber will not consider these allegations in assessing Bizimungu's superior responsibility for genocide.

4.4.1.5.3.2.2 Attack Against Tutsi Civilians at Josephite Brothers Compound, 7 June 1994

1143. Prosecution Witness DBJ testified that on 7 June 1994, a group of about 15 to 20 soldiers arrived at the Josephite Brothers compound, removed approximately 100 Tutsi civilians from the compound and killed them at a location within the immediate vicinity of the compound.[2065] The majority of the victims were Tutsi civilians who had sought refuge at the Josephite Brothers compound, as well as a few members of the Brotherhood. Having considered his evidence, the Chamber is satisfied that the witness gave a firsthand and consistent account of the events that occurred at the compound on 7 June 1994.

1144. In assessing the credibility of Witness DBJ's testimony on these events, the Chamber has also considered the submissions made by the Defence on the credibility of his testimony. The Chamber recalls that the Defence objected to the evidence of Witness DBJ on the basis that it was not drawn from the witness's own direct observations of the events that transpired

[2061] T. 29 August 2005, p. 14.
[2062] T. 29 August 2005, p. 14.
[2063] T. 30 August 2005, pp. 58-61.
[2064] T. 30 August 2005, p. 60.
[2065] T. 29 August 2005, pp. 26-27, 30, 32-33.

at the Josephite Brothers compound but was instead drawn from a second source.[2066] The Chamber is not persuaded that the fact that some details of the witness's testimony are drawn from information that was relayed to him by a survivor of the attack diminishes the credibility of his evidence.

1145. The Chamber finds that a careful review of Witness DBJ's evidence in its entirety provides a plausible basis for the inference that soldiers killed Tutsi civilians at the Josephite Brothers compound on 7 June 1994. The Chamber notes that the witness's evidence that he saw soldiers at the compound on the day of the attack, his observation of the absence of the refugees from the compound shortly after the arrival of the soldiers, and his observation of the dead bodies of two members of the Brotherhood inside the compound on the day of the attack,[2067] when considered in concert with his evidence that a mass grave was discovered at the location where he was informed that the killings had occurred, and his identification of the dead bodies of some of his colleagues among the remains that were exhumed from that grave,[2068] leave the Chamber with no doubt regarding the veracity of Witness DBJ's evidence that soldiers killed Tutsi civilians at the Josephite Brothers compound on 7 June 1994. For these reasons, the fact that the witness did not directly observe the removal and killing of the civilians by soldiers does not discredit his evidence regarding the events at the Josephite Brothers compound.

1146. In his evidence regarding the events at the Josephite Brothers compound, Bizimungu suggested that the killings of people at religious centres such as the Josephite Brotherhood may have been caused by the killing of prominent Hutu leaders of the Catholic Church in Kabgayi in June by soldiers of the RPF. He added that some of these attacks may have been perpetrated by assailants who were dressed in military uniforms but who were in fact not soldiers of the Rwandan Army.[2069] Bizimungu further testified that following the fall of Camp Kanombe on 21 May 1994, many people were seen wearing uniforms of the Rwandan Army but were in fact not members of the army.[2070] The Chamber is not satisfied that these general remarks by Bizimungu raise any doubts regarding Witness DBJ's firsthand and detailed account of the events that transpired at the compound on 7 June 1994.

1147. Having considered the entirety of Witness DBJ's evidence, the Chamber is satisfied that the Prosecution has established beyond reasonable doubt that soldiers of the Rwandan Army killed about a hundred Tutsi civilians at the Josephite Brothers compound on 7 June 1994.

4.4.1.5.3.3 ETO-Nyanza

1148. In support of its allegation that soldiers under the command of Bizimungu perpetrated acts of violence toward Tutsi civilians at ETO-Nyanza on 11 April 1994, the Prosecution relies solely on the evidence of Witness AR.

[2066] T. 29 August 2005, pp. 27-31.
[2067] The witness testified that he saw the dead bodies of two members of the Brotherhood, namely, Kayitera and the 89 year old Rwahiga, inside the compound of the Josephite Brotherhood in the immediate aftermath of the attack of 7 June 1994. *See* T. 29 August 2005, p. 35.
[2068] T. 29 August 2005, pp. 33, 35.
[2069] T. 11 December 2007, p. 40.
[2070] T. 11 December 2007, p. 40.

1149. The Chamber recalls that Witness AR gave evidence that about 2,000 to 3,000 civilians sought refuge at the ETO complex in Kigali following the death of President Habyarimana on 6 April 1994.[2071] He further testified that a group of Belgian UNAMIR soldiers guarded the refugees at the complex.[2072] On 11 April, those UNAMIR soldiers withdrew from ETO.[2073] Shortly thereafter, *Interahamwe* and soldiers of the Rwandan Army arrived at ETO and attacked those refugees.

1150. The witness testified that following the attack, a large number of those refugees, approximately 2,000 to 3,000, including the witness, fled the ETO complex and headed towards the Amahoro Stadium where they thought they would be protected by UNAMIR soldiers based at the stadium.[2074] However, those refugees were intercepted by soldiers and *Interahamwe* and marched to Nyanza Hill, where they were subjected to a prolonged attack leading to the death of a large number of those refugees.[2075]

1151. Having evaluated Witness AR's evidence, the Chamber is satisfied that the witness provided a consistent and credible account that a large number of Tutsi civilians who had sought refuge at the ETO complex were marched by soldiers and *Interahamwe* to Nyanza Hill and killed on 11 April 1994. His evidence is also corroborated in significant respects by the evidence of Prosecution Witness Dallaire, the then force commander of UNAMIR. Dallaire testified that on 11 April, members of the Belgian detachment of UNAMIR who were stationed at the ETO complex withdrew and left approximately 4,000 refugees at ETO without any protection.[2076] The witness testified that he was later informed that almost 2,400 of those refugees were subsequently led to Nyanza Hill and killed on the same day.[2077]

1152. In reaching this finding, the Chamber has carefully evaluated the alternative accounts of these events advanced by the Defence seeking to absolve Rwandan government forces of responsibility for the killings of Tutsi civilians at Nyanza Hill on 11 April 1994. According to the Defence for Bizimungu, the civilians who were killed at Nyanza Hill on 11 April were not Tutsi refugees from ETO as alleged by the Prosecution; rather, they were members of the Hutu ethnic group.[2078] The Defence further submits that the killings at Nyanza Hill on 11 April were perpetrated by RPF soldiers rather than soldiers of the Rwandan Army.[2079] The Defence also submits that the Nyanza Hill area was in fact under the control of the RPF at the time these killings occurred.[2080]

1153. In addition, the Defence argues that the fact that Nyanza Hill was not featured in the inventory of massacre sites prepared by the Ministry of High Education and Culture of the RPF-led government, together with the fact that no reference was made to the killings of Tutsi civilians at Nyanza Hill by soldiers of the Rwandan Army before Rutaganda was indicted by this Tribunal in 1996, suggests that the allegation that Rwandan government forces committed these killings in April 1994 is a fabrication by the RPF-led government

[2071] T. 21 September 2005, pp. 32-33, 35-36, 85.
[2072] T. 21 September 2005, pp. 32-33.
[2073] T. 21 September 2005, pp. 35, 65, 67.
[2074] T. 21 September 2005, pp. 36-37.
[2075] T. 21 September 2005, pp. 40-43, 48.
[2076] T. 6 December 2006, p. 10.
[2077] T. 6 December 2006, p. 10.
[2078] T. 6 December 2006, pp. 8-9.
[2079] T. 6 December 2006, pp. 8-9.
[2080] T. 6 December 2006, p. 8.

designed to incriminate members of the former Rwandan government forces.[2081] The Chamber notes that apart from a few references to a book on the events in Rwanda in 1994, the Defence did not adduce any direct evidence to support its contentions regarding the events at ETO and Nyanza Hill on 11 April 1994.

1154. The Chamber is not persuaded by the above submissions of the Defence. The suggestion that the killings at Nyanza Hill on 11 April were committed by the RPF is difficult to accept in light of Witness AR's firsthand identification of the assailants as soldiers of the Rwandan Army based on their uniforms,[2082] his sighting of Colonel Bagosora, the *directeur de cabinet* at the Ministry of Defence, as the refugees from ETO were being marched towards Nyanza Hill,[2083] the involvement of *Interahamwe* in the attack,[2084] and his evidence that RPF soldiers arrived at the hill on 13 April and rescued the witness and other survivors of the attack.[2085] The Chamber does not accept the contravening submissions of the Defence regarding the events at Nyanza Hill in light of Witness AR's credible and firsthand evidence implicating soldiers of the Rwandan Army in the crimes committed at Nyanza Hill on 11 April. His evidence that Tutsi refugees from Nyanza Hill were among the victims of these crimes is significantly corroborated by the evidence of Witness Dallaire.

1155. For these reasons, the Chamber accepts the testimony of Prosecution Witnesses AR and Dallaire that soldiers of the Rwandan Army killed approximately 2,400 Tutsi civilians at Nyanza Hill on 11 April 1994. The Chamber further observes that the manner in which about 2,000 to 3,000 Tutsi refugees were marched to Nyanza Hill and subjected to a protracted gun attack by soldiers, leading to the killing of thousands of those refugees, leaves the Chamber with the distinct impression that this was an organised operation rather than spontaneous actions of miscreant soldiers acting independently of the orders and knowledge of the army's command. This finding is further reinforced by Witness AR's evidence that Bagosora observed the assailants as they marched the refugees to Nyanza Hill.[2086]

1156. The Chamber is therefore satisfied that the Prosecution has proved beyond reasonable doubt the allegation relating to the events at the ETO complex and Nyanza Hill on 11 April 1994.

1157. However, the Chamber notes that the crimes alleged at ETO-Nyanza on 11 April 1994 took place before Bizimungu became Chief of Staff of the Rwandan Army and therefore fall outside the time period prescribed in paragraphs 68-70 of the Indictment. Consequently, the Chamber will not consider these allegations in assessing Bizimungu's superior responsibility for genocide.

4.4.1.5.3.4 *Centre Hospitalier de Kigali*, April to June 1994

1158. In support of its allegation that soldiers under the command of Bizimungu perpetrated acts of violence toward Tutsi civilians at CHK from April to June 1994, the Prosecution relies on the evidence of Witnesses ZA and DAR.

[2081] T. 6 December 2006, pp. 8, 10.
[2082] T. 21 September 2005, pp. 36-37.
[2083] T. 21 September 2005, pp. 39-40, 41; T. 22 September 2005, pp. 2-4.
[2084] T. 21 September 2005, pp. 43, 48.
[2085] T. 21 September 2005, pp. 49, 54.
[2086] T. 21 September 2005, pp. 39-41; T. 22 September 2005, p. 8.

1159. The Chamber notes that both Witnesses ZA and DAR claimed to have been present at CHK during the months of April and May 1994. According to these witnesses, the entrance to CHK was controlled by soldiers throughout this period. The evidence of these witnesses suggests that these soldiers not only controlled the entrance but also committed crimes against Tutsi civilians. Witness ZA testified that as she entered CHK on 10 April 1994, she saw soldiers leading out a group of young men and beating them up.[2087] However, there is no indication in her evidence that soldiers who were positioned at the entrance of CHK on 10 April either killed the civilians or caused them serious bodily and mental harm as suggested in paragraph 69 of the Indictment.

1160. In his pre-trial statement dated 23 March 1999, Witness DAR stated that he "witnessed the arrest of many people ... the majority of those persons arrested at this roadblock were killed at the entrance of CHK ... others were brought into the hospital and killed at the mortuary."[2088] However, in his live testimony before the Chamber, the witness stated categorically that he did not observe any killings of civilians by soldiers during the period that he stayed at CHK.[2089] Having weighed the evidence of Witnesses ZA and DAR, the Chamber is not satisfied that there is a sound evidentiary basis to find that soldiers who controlled the entrance to CHK committed the crimes alleged in paragraphs 68 to 70 of the Indictment.

1161. The Chamber will now address the claims by Witnesses ZA and DAR that soldiers who were present inside the compound of CHK during April and May 1994 abducted, raped and killed Tutsi civilians.[2090] Even if the Chamber were to accept that soldiers were present at CHK for reasons unrelated to medical treatment, it is not satisfied that the evidence adduced by the Prosecution, for reasons set out below, demonstrates reliably that those soldiers perpetrated crimes against Tutsi civilians at CHK.

1162. Witness DAR testified that on 8 April 1994, he saw armed soldiers and *Interahamwe* leading a group of about 100 Tutsi civilians in the direction of the maternity ward of CHK. He later learned through a fellow employee of CHK named Jean Paul, who was among those civilians, that they were led towards one of the morgues at CHK and attacked by the *Interahamwe,* leading to the deaths of a number of civilians.[2091] The witness further testified that the dead bodies of the victims of that attack were left lying outside the morgue.

1163. The Chamber is not satisfied that Witness DAR's evidence offers sufficient proof that about 100 Tutsi civilians were killed at CHK on 8 April by soldiers and *Interahamwe*. There is no suggestion that the witness observed the killings of those civilians as they unfolded outside one of CHK's morgues.[2092] Moreover, the Chamber is not satisfied that Witness DAR's evidence provides a conclusive link between the dead bodies that he claimed to have seen outside the morgue and the civilians who were allegedly killed on 8 April. The witness did not see those dead bodies on 8 April, nor does he remember the day that he saw them.[2093] The Chamber notes that in direct examination, the witness testified that the majority of the civilians whom he claimed to have seen being marched by soldiers and *Interahamwe* in the

[2087] T. 24 May 2006, p. 15 (ICS).
[2088] See Witness DAR's statement, dated 23 March 1999, pp. 3-6.
[2089] T. 4 May 2006, p. 33.
[2090] T. 24 May 2006, pp. 19-20 (ICS).
[2091] T. 3 May 2006, pp. 72-73; T. 4 May 2006, pp. 36-44.
[2092] T. 4 May 2006, p. 43.
[2093] T. 3 May 2006, pp. 73-74.

morning of 8 April at CHK were brought from outside as opposed to being patients abducted from the hospital.[2094]

1164. However, in cross-examination, the witness testified that after seeing the dead bodies outside one of CHK's morgues, he inquired about their identity and was told that they belonged to patients who had been abducted from the paediatric ward as opposed to civilians brought from outside.[2095] This evidence raises the possibility that the bodies that he allegedly saw outside the morgue may not have belonged to the civilians whom he had seen being marched by soldiers and *Interahamwe* on 8 April, since he claimed that this group of civilians was brought from outside CHK as opposed to being patients abducted from the paediatric ward. The fact that he inquired about the identity of those corpses is in itself suggestive of his lack of knowledge of their identity.

1165. The tentative nature of his claim that those bodies belonged to the civilians who were captured on 8 April is further compounded by the evidence of Witness Nyiramondo, a nurse at CHK during the relevant period, that members of the Red Cross and health and sanitation units brought dead bodies to CHK's morgues during that period.[2096]

1166. The lack of direct evidence of the killings of about 100 Tutsi civilians at CHK, coupled with Witness DAR's inability to demonstrate a plausible nexus between the dead bodies that he claimed to have seen and the alleged killings of civilians on 8 April, leaves the Chamber reluctant to accept his evidence that soldiers and *Interahamwe* killed a group of about 100 Tutsi civilians at CHK on 8 April in the absence of corroboration by reliable evidence.

1167. The Chamber recalls that both Witnesses DAR and ZA testified about the existence of lists of Tutsi civilians at CHK. They further testified that Tutsi civilians whose names were on those lists were abducted and later killed at CHK. Even if the Chamber were to accept the claims of these witnesses regarding the existence of lists of Tutsi civilians who were to be killed at CHK, the Chamber is not satisfied that the existence of such lists *per se* provides dispositive proof that Tutsi civilians who were featured on those lists were in fact abducted and killed at CHK.

1168. Witness ZA testified that on a number of occasions while working at the maternity ward at CHK, she observed armed soldiers noting down the bed numbers of some of the patients at that ward. She was later informed by other patients at the ward that soldiers only recorded the bed numbers of Tutsi patients and that they assured Hutu patients of their security.[2097] Thereafter, the patients whose details had been recorded by the soldiers went missing and were not seen again.[2098] The witness also testified that she was informed of similar disappearances of Tutsi patients by nurses working in other wards.[2099]

1169. Having weighed Witness ZA's evidence, the Chamber is not satisfied that it offers sufficient proof that soldiers killed Tutsi patients whose details they had recorded at the maternity ward at CHK. Apart from observing soldiers noting down the bed numbers of some

[2094] T. 4 May 2006, p. 43.
[2095] T. 11 May 2006, pp. 26-27.
[2096] T. 15 July 2008, p. 9.
[2097] T. 24 May 2006, p. 21 (ICS).
[2098] T. 24 May 2006, p. 19 (ICS).
[2099] T. 24 May 2006, p. 23 (ICS).

of the patients at the maternity ward, the witness presented no evidence suggesting that she observed the abduction or killing of Tutsi patients who were receiving treatment at that ward.[2100] While the disappearance of the patients may lead to the suggestion that they had been killed by the soldiers, the Chamber is not satisfied that this is the only reasonable inference open from Witness ZA's evidence. The Chamber is therefore reluctant to accept Witness ZA's claims regarding the killing of Tutsi patients by soldiers in the absence of corroboration by reliable evidence.

1170. Witness DAR testified that an army officer known as Lieutenant Pierre collaborated with the head nurse at CHK, Stephanie Ndayambaje, in abducting and killing Tutsi patients at the hospital.[2101] The witness further testified that these abductions and killings were conducted based on the lists of Tutsi civilians compiled by Ndayambaje and then given to Pierre.[2102]

1171. Having reviewed Witness DAR's evidence, the Chamber is not satisfied that it is probative that Tutsi civilians were abducted and killed at CHK during April and May 1994. His evidence of these abductions and killings is contradictory and unclear. At some points during his testimony, the witness gave the impression that he directly witnessed the abductions of Tutsi patients by Pierre and Ndayambaje from the wards of CHK.[2103] However, a careful review of the entirety of his evidence suggests otherwise. The Chamber recalls that in cross-examination, the witness testified that he was informed that the two were abducting patients from the wards, as opposed to directly observing them abduct those patients.[2104] The Chamber is unwilling to rely solely on his evidence given the lack of clear indication that he witnessed the abductions of patients and his own admission that he did not witness the killings of the patients who were allegedly removed from the wards.

1172. The Chamber has considered whether the evidence of Witness ZA, who also testified about abductions and killings of Tutsi patients at CHK, corroborates the evidence of Witness DAR. Having done so, the Chamber is not satisfied that her insufficiently detailed evidence corroborates Witness DAR's evidence. Furthermore, the Chamber notes that Witness ZA, unlike Witness DAR, did not at any point suggest that these abductions were led by Lieutenant Pierre and Stephanie Ndayambaje, the head nurse at CHK.

1173. For similar reasons, the Chamber does not accept Witness DAR's indirect and uncorroborated evidence regarding the killing of Chantal Uwicyeza at CHK by Pierre and Ndayambaje.[2105]

1174. In regard to the allegations of rape, the Chamber recalls that Witness DAR is the only Prosecution witness to have testified about rapes perpetrated by soldiers against Tutsi girls at CHK.[2106] The witness admitted that he did not witness the rapes, nor was he informed by any of the victims of their ordeal at the hands of the soldiers at CHK.[2107] His evidence on the rapes by soldiers is based entirely on his observations of the sad demeanour of the Tutsi girls

[2100] T. 24 May 2006, p. 58.
[2101] T. 10 May 2006, pp. 3-4.
[2102] T. 10 May 2006, pp. 4-5.
[2103] T. 3 May 2006, p. 74; T. 4 May 2006, pp. 10-11; T. 10 May 2006, p. 4.
[2104] T. 10 May 2006, pp. 3-4.
[2105] The witness admitted that he did not observe the killing of Chantal Uwicyeza. *See* T. 3 May 2006, p. 73.
[2106] T. 4 May 2006, pp. 3, 5, 8.
[2107] T. 11 May 2006, pp. 27-28.

when they returned to CHK after having been abducted by soldiers.[2108] The Chamber is not satisfied that Witness DAR's *post hoc* inferences based on the demeanour of those girls alone are sufficient to support a finding beyond reasonable doubt that soldiers committed rapes against Tutsi girls at CHK.

1175. Furthermore, the Chamber has serious concerns about the overall credibility of Witness DAR in light of his claim that he was not aware of the arrival of the dead bodies of the Belgian UNAMIR soldiers at CHK in the evening of 7 April 1994.[2109] The Chamber finds it inexplicable that the witness, who claims to have been present at CHK for a period of five to six weeks starting from 7 April and who also testified that he was informed of numerous events of a lesser gravity occurring at CHK at the time, would not have heard of the arrival of the bodies of the Belgian soldiers at CHK in the evening of 7 April and their removal in the afternoon of 8 April.

1176. The Chamber also notes that Witnesses DAR and ZA provided largely indirect evidence on the events at CHK. Furthermore, Witness DAR's evidence is in many respects inconsistent with his pre-trial statement dated 23 March 1999.[2110] Given the indirect and limited evidence of these witnesses, the Chamber has refrained from accepting their evidence in the absence of corroboration. The need for corroboration is rendered even more acute in light of the contravening evidence elicited from Defence witnesses. Of these witnesses, the Chamber has found the evidence of Witnesses UKL, S3 and Nyiramondo to be more salient given the extensive duration of their presence or the frequency of their visits to CHK.

1177. For these reasons, the Chamber is not satisfied that the Prosecution has adduced sufficient evidence to prove that soldiers under the command of Bizimungu committed crimes against Tutsi civilians at CHK from April to June 1994.

4.4.1.5.3.5 *École des Sciences Infirmières* de Kabgayi

1178. In support of its allegation that soldiers under the command of Bizimungu perpetrated acts of violence toward Tutsi civilians at ESI between April and June 1994, the Prosecution relies solely on the evidence of Witness EZ.

1179. Witness EZ testified that she arrived at ESI around 18 April and stayed there for approximately one month.[2111] The Chamber notes that the Indictment alleges that soldiers committed killings and rapes at ESI from April to June 1994. However, the testimony of Witness EZ suggests that she was only present at ESI during the months of April and May. As Witness EZ was the only witness to testify about killings and rapes at ESI, the Chamber finds that the Prosecution did not lead any evidence of such crimes at ESI during June 1994.

1180. The witness testified that during her stay at ESI, soldiers and *Interahamwe* came on a regular basis and took refugees away. The refugees who were removed never returned to ESI. She also testified to having seen *Interahamwe* wearing the clothes of refugees who had been taken away from ESI. Among the abducted refugees were four persons who were known to her and whom she had not seen since the events in question. Based on these factors, the witness concluded that the refugees who were abducted from ESI were killed. In addition, the

[2108] T. 4 May 2006, p. 18.
[2109] T. 11 May 2006, pp. 5-12.
[2110] Defence Exhibit 104(a)(b), under seal.
[2111] T. 5 October 2005, pp. 9-14, 16, 60.

witness testified to having observed the killing of some of the refugees "between the place where [the refugees] were and the toilets".[2112] The witness also saw soldiers rape and then kill a female refugee in front of "everybody" inside ESI.[2113]

1181. Witness EZ's evidence regarding the selection and removal of refugees from ESI and the killing of refugees within the ESI compound was largely consistent and the Chamber considers it to be credible. Based on her eyewitness account, the Chamber is satisfied that Rwandan soldiers killed a number of refugees within the ESI compound. The Chamber is also satisfied that her evidence supports the inference that the refugees who were removed from ESI were eventually killed by soldiers and *Interahamwe*. Given their role in the abduction of these refugees, the Chamber finds that soldiers either killed the refugees outside ESI or handed the refugees over to *Interahamwe,* who then killed them.

1182. The Chamber recalls that Witness EZ also testified that soldiers regularly and repeatedly raped female Tutsi refugees. The overwhelming majority of the victims were raped in the nearby woods, but some were raped inside the ESI compound. The witness was herself raped by soldiers on a number of occasions during her stay at ESI during April and May 1994. She also witnessed the rape of numerous other women and girls during that period, and she was able to identify four of those women and girls by name.

1183. During cross-examination, counsel for the Defence questioned Witness EZ on the reasons why she failed to report the rapes to the doctor whom she claims to have visited twice while she was at ESI.[2114] The witness explained that reporting those incidents of rape would not have done anything to improve the situation at ESI.[2115] In the Chamber's view, the reasons why a victim might fail to report a crime can be manifold. Considering the chaotic situation at ESI and in Rwanda at large when these incidents took place, the fact that the perpetrators remained at ESI along with the witness, and the physical and psychological damage suffered by rape victims, the Chamber considers the witness's explanation for her failure to report these rapes to be plausible. The Chamber finds that the witness's failure to report these rapes does not undermine the credibility of her eyewitness account of the events at ESI and her own personal experience. The Chamber therefore considers this Defence submission to be without merit.

1184. For these reasons, the Chamber finds that soldiers raped a number of Tutsi refugee women at ESI and in the nearby woods during April and May 1994.

4.4.1.5.3.6 Musambira *Commune* Office and Dispensary

1185. In support of its allegation that soldiers under the command of Bizimungu perpetrated acts of violence toward Tutsi civilians at the Musambira *commune* office and dispensary in April and May 1994, the Prosecution relies on the evidence of Witnesses DBA, DBH and DBB.

1186. The Chamber notes that Witness DBA sought refuge at the Musambira dispensary and surrounding areas soon after her flight from her home following the President's death on 6 April 1994. The witness stated that a number of soldiers took her and other female refugees

[2112] T. 5 October 2005, pp. 17-18.
[2113] T. 5 October 2005, p. 15; T. 6 October 2005, p. 28.
[2114] T. 6 October 2005, pp. 26-28. *See also* Bizimungu Closing Brief, para. 1020.
[2115] T. 6 October 2005, pp. 27-28.

from the Musambira dispensary and then raped them nearby. Witness DBA's evidence was largely consistent and the Chamber finds it to be credible. However, the incidents that she described took place before Bizimungu assumed the position as Chief of Staff of the Rwandan Army and therefore fall outside the time period prescribed in paragraphs 68 to 70 of the Indictment. Consequently, the Chamber will not consider the testimony of Witness DBA in assessing Bizimungu's superior responsibility for genocide.

1187. The Chamber will now turn its attention to the evidence of Prosecution Witnesses DBH and DBB, who testified to crimes committed by soldiers of the Rwandan Army at Musambira *commune* office and dispensary during late April and May 1994, when Bizimungu was Chief of Staff of the Rwandan Army.

1188. Witness DBH stated that following the President's death on 6 April, she hid in a banana plantation for approximately one week before seeking refuge at the Musambira *commune* office. The Chamber infers from this evidence that Witness DBH arrived at the Musambira *commune* office on or around 14 April. The witness recalled that soon after she arrived, *Interahamwe* and soldiers killed a large number of male Tutsi refugees at the *commune* office, and the survivors of the massacre, mainly women and children, were then forced to bury the dead bodies in a mass grave located close to the *commune* office. Witness DBH estimated that they buried between 7,000 and 8,000 bodies.[2116] While the Chamber considers it unlikely that the number of victims was as high as that estimated by Witness DBH, the Chamber is satisfied that a large number of Tutsi were killed in the manner described by the witness. She also testified that she was subsequently raped by soldiers on two occasions at the *commune* office and that a number of other women were also raped by soldiers.

1189. The Chamber recalls that the Defence raised concerns regarding the witness's admitted membership of the IBUKA organisation. According to the Defence, this organisation arranged for witnesses to testify and more importantly to collude with each other before testifying before the Tribunal, and therefore the witness's membership of this organisation diminishes her credibility. The Chamber notes that the witness was less than forthcoming in her responses regarding her affiliation to this organisation. However, the Chamber is not convinced that a witness's membership of IBUKA in itself is a sufficient reason for doubting the credibility of his or her account in the absence of credible evidence that members of that organisation had sought to interfere with witnesses in this Tribunal. The Chamber is unwilling to cast aside Witness DBH's firsthand evidence on the basis of unsubstantiated assertions by the Defence. The Chamber therefore concludes that the evidence of Witness DBH is credible.

1190. Witness DBB also testified to violent acts committed against Tutsi refugees at the Musambira *commune* office. Specifically, she testified to an incident sometime around mid-April where *Interahamwe* led by a man named Abdulhamane and policemen killed Tutsi. She later fled to the Musambira dispensary, where she witnessed soldiers killing refugees who were attempting to escape an attack by *Interahamwe*. Witness DBB's account of these incidents was consistent and the Chamber considers it to be credible. That said, the Chamber notes that Witness DBB testified that the killings of Tutsi refugees at the Musambira *commune* office were perpetrated by *Interahamwe* and policemen but not soldiers. Therefore, the Chamber will not hold Bizimungu accountable as a superior for these crimes in relation to

[2116] T. 20 June 2005, p. 7.

the allegations of genocide in paragraphs 68 to 70 of the Indictment. However, the witness did provide reliable and credible evidence implicating soldiers in killings committed against the refugees at Musambira dispensary.

1191. The Chamber has considered the submissions raised by the Defence seeking to impugn Witness DBB's credibility. In particular, the Defence contends that Witness DBB's initial denial of knowing Witness DBH is evidence of collusion between these two witnesses. While the Chamber acknowledges that Witness DBB gave inconsistent testimony regarding her relationship with Witness DBH, the Chamber is not persuaded that the fact that these witnesses may have known each other suggests that they colluded to provide false testimony against Bizimungu. The Defence also points to the variances in Witness DBB's testimony regarding the number of people at the Gaserge roadblock. The Chamber notes that this variance may plausibly be explained by the difficulties of recalling traumatic events in precise detail years after those events occurred. The Chamber therefore finds that these submissions do not undermine the credibility of Witness DBB.

1192. Having carefully considered the evidence in its totality, the Chamber finds that Rwandan soldiers committed killings at the Musambira *commune* office and dispensary in Gitarama *préfecture* during April and May 1994. The Chamber also finds that soldiers committed rapes at the Musambira *commune* office during this period.

4.4.1.5.3.7 TRAFIPRO, April and May 1994

1193. In support of its allegation that soldiers under the command of Bizimungu perpetrated acts of violence toward Tutsi civilians at TRAFIPRO during April and May 1994, the Prosecution relies on the evidence of Witnesses DBE, DBD and DBB.

1194. Witness DBE testified that she arrived at TRAFIPRO in mid-May and remained there for approximately one month. She recalled that during her stay at TRAFIPRO, soldiers raped and murdered a number of Tutsi refugees there. Witness DBE was herself raped on several occasions and she witnessed a number of killings, including that of her 15-year-old son. She also testified that soldiers came to TRAFIPRO regularly to select and remove refugees to be killed. Her evidence is corroborated by Witnesses DBD and DBB, who also testified about rapes and killings perpetrated by soldiers at TRAFIPRO during this period. Witnesses DBD and DBB were both raped by soldiers on two occasions at TRAFIPRO. Both witnesses also saw soldiers come to TRAFIPRO each day to select and remove Tutsi refugees, and both witnesses testified that the selected refugees did not generally return. According to Witness DBD, "Some women would return but the men who were selected were shot dead on the spot."[2117] The Chamber notes in particular that Witnesses DBD and DBE provided corroborative evidence in relation to the visit of Prime Minister Kambanda at TRAFIPRO and the large-scale attack on Tutsi refugees shortly thereafter. The Chamber considers this corroboration to be indicative of the truthfulness of the witnesses' testimony.

1195. The Chamber has also considered the Defence submissions in relation to these witnesses. In regard to Witness DBB, the Chamber had already found this witness to be credible when discussing her evidence on the events at the Musambira dispensary. In regard to Witness DBD, the Defence argues that the witness's failure to report the alleged rapes to officials undermines her credibility. For the reasons outlined above in relation to Witness EZ,

[2117] T. 4 April 2005, pp. 70-71.

the Chamber rejects this argument in its entirety. The Defence also contends that the inconsistency between Witness DBD's pre-trial statement and her testimony regarding the identity of the assailants who raped her on the second occasion while at TRAFIPRO undermines the credibility of her testimony. The Chamber is not persuaded by this submission. The Chamber finds that Witness DBD was consistent both in her pre-trial statements and her in-court testimony that soldiers raped Tutsi refugees, including herself, at TRAFIPRO. The fact that the witness also implicated *Interahamwe* in these rapes does not diminish the credibility of her evidence in relation to soldiers' participation in these rapes.

1196. Therefore, the Chamber finds that there is clear and corroborated evidence that proves beyond reasonable doubt that Rwandan soldiers committed systematic acts of violence, namely killings and rapes, against Tutsi refugees at the TRAFIPRO complex during April and May 1994.

4.4.1.5.3.8 Bizimungu's Superior Responsibility

1197. The Chamber is satisfied beyond reasonable doubt that soldiers under the command of Bizimungu committed rapes and killings against Tutsi civilians at the Josephite Brothers compound in Kigali on 7 June 1994 and at the Musambira dispensary and *commune* office, ESI and TRAFIPRO in Gitarama during April and May 1994. The Chamber is also satisfied that *Interahamwe* militiamen were implicated in the killings of Tutsi civilians at ESI and the Musambira dispensary and *commune* office.[2118] The Chamber will now consider whether Bizimungu knew or had reason to know that his subordinates had committed or were about to commit these crimes. The Chamber will consider the full contours of Bizimungu's superior responsibility in the legal findings section of the Judgement.

1198. The ICTY Trial Chamber in the *Čelebići* case identified the following *indicia* as being relevant in determining whether a superior must have possessed the requisite knowledge of offences committed or about to be committed by his subordinates:

(i) The number of illegal acts;
(ii) The type of illegal acts;
(iii) The scope of illegal acts;
(iv) The time during which the illegal acts occurred;
(v) The number and type of troops involved;
(vi) The logistics involved, if any;
(vii) The geographical location of the acts;
(viii) The widespread occurrence of the acts;
(ix) The tactical tempo of operations;
(x) The *modus operandi* of similar illegal acts;
(xi) The officers and staff involved; and
(xii) The location of the commander at the time.[2119]

[2118] The Chamber notes that paragraphs 68 and 69 of the Indictment, in relation to genocide, allege that crimes were committed at these locations by soldiers under the command of Bizimungu. However, paragraphs 86 and 87 of the Indictment, in relation to murder as a crime against humanity, allege that soldiers acting in conjunction with *Interahamwe* committed killings at ESI and the Musambira *commune* office and dispensary. The extent of Bizimungu's control over *Interahamwe* is discussed in the legal findings section of the Judgement.
[2119] *Čelebići* Trial Judgement, para. 386.

1199. Regarding the question of whether Bizimungu had reason to know of the crimes committed by his subordinates, the Appeals Chamber has made it clear that the information available to the accused does not need to provide specific details about the unlawful acts committed or about to be committed by his subordinates.[2120] Rather, the test for whether an accused had reason to know of the crimes is "whether, in the circumstances of a case, a superior possessed information *that was sufficiently alarming* to put him on notice of the risk that similar crimes might subsequently be carried out by subordinates and justify further inquiry."[2121]

1200. At the outset, the Chamber recalls that Bizimungu acknowledged in his testimony that between April and July 1994, he received situation reports (SITREPs) twice daily from all Rwandan Army units across the country. He further testified that those SITREPs contained information not only about the hostilities between the Rwandan Army and the RPF, but also about the security situation affecting the civilian population of the relevant area.[2122]

1201. In addition to this general information, the Chamber notes that the evidence elicited from Prosecution witnesses on the events at the Josephite Brothers compound, the Musambira *commune* office and dispensary, ESI and TRAFIPRO, together with Bizimungu's own evidence on these events, yields a number of circumstantial *indicia* suggesting that Bizimungu knew or had reason to know that his subordinates were involved in the crimes committed at those locations. The Chamber will now examine the relevant *indicia* in relation to each location.

4.4.1.5.3.9 Crimes in Gitarama *Préfecture* During April and May 1994

1202. Having reviewed the evidence of Prosecution Witness EZ regarding the crimes that were perpetrated against Tutsi refugees at ESI, the Chamber is satisfied that these crimes were committed on a regular basis throughout April and May 1994. Her evidence also suggests that Akayesu, the *bourgmestre* of Taba *commune,* who appeared to have a rapport with the soldiers at ESI, together with a member of parliament named Ruvugama as well as Sixbert Ndayambaje, who was the former *bourgmestre* of Runda *commune,* visited ESI during April or May. Both Akayesu and Ndayambaje went to ESI bearing lists of names. Witness EZ's evidence suggests that Akayesu removed some of the refugees whose names were featured on his lists; however, there is no evidence that Ndayambaje removed any of the refugees from ESI.[2123] The Chamber considers the fact that the crimes at ESI were committed on a regular basis, the involvement of local officials such as Akayesu, and the use of lists to strongly suggest that these were not random or isolated incidents but were in fact organised and systematic crimes. The Chamber finds it difficult to accept that crimes of this scale and regularity would not have been brought to Bizimungu's attention in the daily SITREPs that he admitted to receiving from his units located in that area.

1203. Having weighed the evidence of Witness DBH regarding the crimes committed against Tutsi civilians at the Musambira *commune* office and dispensary, the Chamber is satisfied that the *modus operandi* of these crimes evinces a clear degree of organisation. Furthermore, the fact that the victims were buried in a large grave and in three large pits

[2120] *See Čelebići* Appeal Judgement, para. 238; *Bagilishema* Appeal Judgement, para. 42; *Krnojelac* Appeal Judgement, para. 155; Media Appeal Judgement, para. 791; *Strugar* Appeal Judgement, para. 298.
[2121] *Hadžihasanović* Appeal Judgement, para. 30; *Strugar* Appeal Judgement, para. 301 (emphasis added).
[2122] T. 13 December 2007, pp. 29-30.
[2123] T. 5 October 2005, p. 16.

suggests that the killings of the Tutsi refugees at both the Musambira *commune* office and dispensary were of a large scale. The Chamber also notes that these attacks occurred at places of public significance such as the *commune* office and the dispensary. The Chamber finds it difficult to accept that crimes of this scale, with obvious implications for general security, would not have been brought to his attention through the daily SITREP that he admitted to receiving at the time.

1204. Based on the firsthand evidence of Witnesses DBB, DBD and DBE, the Chamber is satisfied that soldiers abducted and killed Tutsi refugees at the TRAFIPRO Centre on a regular basis throughout April and May 1994. These witnesses also stated that soldiers regularly raped women and girls at the Centre. The manner in which these crimes were committed at TRAFIPRO suggests that they were organised rather than random or sporadic acts of errant soldiers. The fact that a large number of Tutsi civilians at TRAFIPRO were killed by soldiers and *Interahamwe* in the immediate aftermath of Prime Minister's Kambanda's visit reinforces the Chamber's finding regarding the organised nature of these attacks and the attitude of the authorities to these crimes.

1205. In view of the factors outlined above, the Chamber considers it highly unlikely that the number, scope and gravity of the breaches committed by soldiers at the Musambira *commune* office and dispensary, ESI and TRAFIPRO would have eluded Bizimungu's notice. The Chamber notes that these locations were in Gitarama town rather than in the remote hinterland of the Gitarama *préfecture*. The fact that Bizimungu knew, as he conceded in his testimony, that a large number of civilians had sought refuge in various locations in Gitarama during April and May 1994 heightens the possibility that he knew or had notice of the crimes committed by soldiers under his command in parts of Gitarama where large number of Tutsi refugees had congregated.[2124] Having considered these factors, combined with Bizimungu's own admission that he received daily SITREPs from all army units in the field, the Chamber is satisfied that Bizimungu knew or had reason to know of the crimes committed by his subordinates at ESI, TRAFIPRO and the Musambira *commune* office and dispensary in Gitarama.

4.4.1.5.3.10Crimes at the Josephite Brothers Compound on 7 June 1994

1206. The Chamber has found that about 200 to 250 Tutsi civilians sought refuge at the Josephite Brothers Compound following the death of the President on 6 April 1994. Rwandan soldiers attacked and killed up to 100 of those refugees on 7 June, and a mass grave was later discovered containing the bodies of some of the victims of that attack. The Chamber has considered the scale of the killings committed by soldiers at the compound on 7 June, particularly given the fact that the killings took place in Kigali, where Bizimungu was based, as a plausible indication of Bizimungu's notice of these crimes.[2125]

1207. Furthermore, in assessing Bizimungu's knowledge of the events at the Josephite Brothers compound, the Chamber has placed considerable weight on Bizimungu's own evidence that following the killings of senior Hutu Catholic Church leaders in Kabgayi by RPF soldiers during the first week of June 1994, he received information suggesting that civilians who had sought refuge at various religious centres in Kigali were attacked and that

[2124] T. 13 December 2007, pp. 17, 34.
[2125] The ICTY Trial Chamber emphasised the importance of the Accused's geographical proximity to the site of the offences. *See Aleksovski* Trial Judgement, para. 80.

some of the assailants who perpetrated those attacks were dressed in military uniforms.[2126] The Chamber considers that given his knowledge of reprisal attacks against Tutsi civilians at religious centres in Kigali in early June 1994, it is inconceivable that he would not have known of large-scale killings of Tutsi civilians by soldiers at the Josephite Brothers compound, a religious centre. The fact that he knew that the assailants who carried out these reprisal attacks were dressed in military uniforms is a strong indication that some of the assailants were in fact his subordinates. There is no suggestion in the evidence that Bizimungu carried out any investigation to ascertain whether those assailants were in fact members of his force.

1208. The evidence also suggests that the attack that led to the killings at the Josephite Brothers compound on 7 June was organised rather than spontaneous conduct of errant soldiers. The Chamber notes that about 15 to 20 soldiers were implicated in these killings. Shortly after the attack, soldiers occupied the premises of the Brotherhood with a view to using the premises for military purposes. The fact that the premises were occupied shortly after the killings leads to the reasonable inference that the two incidents were linked. The Chamber heard evidence from Witness WG that St. André College, which is close to the Josephite Brothers compound, was also occupied by a large number of soldiers in May 1994. The number of soldiers involved in this attack and the considerable number of civilians killed, together with the fact that the Josephite Brothers compound was commandeered by soldiers of the Rwandan Army shortly after the killings, suggest that the killings were organised and known to the hierarchy of the army. The Chamber does not accept that lower echelon soldiers would have killed a large number of civilians at the Josephite Brotherhood and occupied the premises without the orders and knowledge of their commanders. The Chamber considers the organised nature of the attack at the Josephite Brothers compound to be an indication of Bizimungu's knowledge or reason to know of the implication of his subordinates in these crimes.

1209. Having considered the evidence canvassed above, the Chamber is satisfied beyond reasonable doubt that Bizimungu knew or at least had reason to know of the involvement of soldiers of the Rwandan Army in the killings of Tutsi civilians at the Josephite Brothers compound on 7 June. The Chamber finds it difficult to believe that an attack of this magnitude committed against Tutsi members of a religious congregation and other Tutsi refugees in Kigali would not have been reported in the situation reports that Bizimungu admitted to receiving during this period.

4.4.1.5.3.11 Exhibits Tendered by the Prosecution

1210. The Chamber considers that the above findings are bolstered by certain exhibits tendered by the Prosecution, which suggest that Bizimungu was approached by the United States government representatives and international organisations asking him to intervene to stop the massacres that were taking place in areas controlled by his forces. While the Chamber has considered all exhibits tendered by the Prosecution, the Chamber will only discuss those exhibits that it considers to contain pertinent information on Bizimungu's knowledge or reason to know of the crimes underlying the allegation of superior responsibility against him.

[2126] T. 11 December 2007, p. 40; T. 14 December 2007, pp. 23-24.

1211. The Chamber has considered Prosecution Exhibit 189, which is a press release by Anthony Lake, the former National Security Adviser to the United States President, dated 22 April 1994. In this press release, Lake called on Rwandan military leaders, including Bizimungu, to intervene to prevent the mass killings of civilians that were going on in Rwanda at the time. The Chamber has also considered Prosecution Exhibit 187, which is a press release by Human Rights Watch dated 18 May 1994 documenting the significant role of soldiers in the massacres that were committed in Rwanda during the period from April to July 1994. The report further identifies Bizimungu as one of the military officers capable of halting the massacres.[2127] The Chamber recalls that in cross-examination, Bizimungu testified that the views expressed in these documents were not a correct reflection of the events that unfolded in Rwanda at the time. Bizimungu claimed that human rights activists Alison Des Forges and Monique Mujawayaria, who were biased in favour of the RPF, gave officials of the United States Government such as Lake a distorted view of the situation that prevailed in Rwanda. Bizimungu also lamented the fact that these officials pinned all the blame on him for what was happening in Rwanda and overlooked other senior officials of the Rwandan government.[2128]

1212. The Chamber has also reviewed Prosecution Exhibits 191 and 192, which are United States Government declassified documents referring to telephone conversations between Prudence Bushnell, the then United States Deputy Secretary of States for African Affairs, and Bizimungu regarding the killings of civilians in Rwanda in 1994. These documents indicate that Bushnell spoke with Bizimungu over the phone on two occasions and requested him to intervene to stop the killings of civilians. The first conversation took place on 27 April 1994. Among other things, Bushnell informed Bizimungu that the United States Government was looking to him personally in his capacity as Chief of Staff of the Army to restore order in Rwanda and stop the killings. In his response to Bushnell's request, Bizimungu stated that it was difficult for him to restore order within the country while the hostilities between his forces and the RPF were continuing. Bizimungu requested Bushnell to get the RPF to agree to a ceasefire and he stated that once the RPF agreed to a ceasefire, he would only require 48 hours to restore order.[2129]

1213. On 12 May 1994, Bushnell repeated her request to Bizimungu to stop the killings in Rwanda. Bizimungu is alleged to have reiterated that he would require a cessation of hostilities between his forces and the RPF before he could restore order and prevent the killings. Bushnell then suggested to Bizimungu that as a gesture of goodwill, he should consider freeing the refugees at the *Hotel Mille Collines* in Kigali and at Cyangugu Stadium. Bizimungu responded that he had no way of contacting Cyangugu.[2130] In the course of this conversation, Bizimungu expressed his misgivings that he was being singled out for criticism and that calls to restore order were being almost exclusively directed towards him rather than to other members of the government who were in control of the country. Bizimungu also reportedly told Bushnell that the allegations that his forces were committing massacres were lies fabricated by the RPF and by human rights activist Monique Mujawamaria.[2131] The Chamber notes that Bizimungu did not dispute the fact that he had telephone conversations with Bushnell on the dates suggested in these exhibits.

[2127] T. 12 December 2007, p. 67.
[2128] T. 12 December 2007, pp. 66-69.
[2129] Prosecution Exhibit 192.
[2130] Prosecution Exhibit 191.
[2131] T. 12 December 2007, pp. 57-59.

1214. The Chamber notes that these telephone conversations between Bushnell and Bizimungu are also the subject of another United States Government declassified document tendered into evidence as Prosecution Exhibit 193. The Chamber considers that this document corroborates the contents of Prosecution Exhibits 191 and 192. In his comments on this document, Bizimungu reiterated his claim that the views of the United States Government officials as reflected in Exhibit 193 were based on distorted views of the Rwandan crisis that they had received from Monique Mujawamaria and Alison Des Forges, who were biased in favour of the RPF.[2132]

1215. The Chamber has also reviewed Prosecution Exhibit 194, which is a report of a meeting between Bizimungu and José Ayala-Lasso, the then UN High Commissioner for Human Rights, during the latter's visit to Rwanda on 11-12 May 1994. According to the report, Bizimungu admitted in the course of his conversation with Ayala-Lasso that forces linked to the Rwandan government had committed massacres against Tutsi civilians and he expressed regret for the soldiers' role in what he characterised as "excesses" ("*débordements*"). The report further suggests that Bizimungu informed Ayala-Lasso that the atrocities had been precipitated by anger resulting from the death of President Habyarimana. Bizimungu is also reported as saying that the RPF and a particular detachment of UNAMIR were responsible for the death of the President and that Bizimungu's forces were incapable of controlling the unrest.

1216. The Chamber recalls that in cross-examination, Bizimungu admitted that he met with Ayala-Lasso on 12 May 1994.[2133] Bizimungu testified that Ayala-Lasso's visit was an indication that "the horror of what was occurring in Rwanda was calling for the attention of those throughout the world".[2134] Bizimungu admitted that during this meeting with Ayala-Lasso, he (Bizimungu) expressed regret for the excesses committed by certain soldiers under his command. Bizimungu stated:

> [Ayala-Lasso] came; we spoke. I believe we are the 12th. But I know what events occurred at Camp Kigali. I know that my predecessor talked to me about certain soldiers within the Presidential Guard. An investigation was not led, but certain soldiers within the Presidential Guard were talked about. ... However, I do not know, precisely, what happened elsewhere. I have not identified the individuals. I say that, yes, some soldiers within the armed forces regrettably took ... allegedly took part in the killings. I have said this; I confirm it.[2135]

1217. However, Bizimungu emphasised that the report did not ascribe to him any role in those crimes. Bizimungu testified:

> However, there is an important point that differs in nature from what we've just said. [Ayala-Lasso] does not say [in his report] that Bizimungu is responsible for the killings, he says that I regret them and that I recognised certain facts.[2136]

1218. The Chamber notes that in Bizimungu's evidence on his knowledge of the crimes committed by soldiers, he expressly acknowledged that he knew on 12 May 1994 that his subordinates may have committed crimes against civilians. He suggested, however, that any

[2132] T. 12 December 2007, pp. 67-69.
[2133] T. 7 December 2007, pp. 5-7; T. 12 December 2007, p. 55.
[2134] T. 13 December 2007, p. 39.
[2135] T. 12 December 2007, p. 55.
[2136] T. 12 December 2007, p. 55.

crimes committed by Rwandan soldiers were isolated incidents rather than widespread or systematic crimes. When asked by Prosecution counsel whether he acknowledged "that forces linked to the government of Rwanda participated in large-scale killing of Tutsis between April and July 1994 in Rwanda", Bizimungu rejected that proposition. He stated, "[S]oldiers of the Rwandan Army, to my knowledge, did not take part in the killings. So I cannot confirm this fact. Maybe some individual or others might have killed ... But going to attack? Well, I do not know."[2137] Instead, Bizimungu claimed that it was RPF soldiers disguised as soldiers of the Rwandan Army who perpetrated killings against civilians in order to tarnish the image of forces under his command.[2138]

1219. Having reviewed the exhibits referred to above, the Chamber is satisfied that their cumulative weight provides probative evidence that Bizimungu knew or had reason to know that soldiers under his command had committed or were about to commit crimes. While the Chamber accepts that these reports did not furnish Bizimungu with specific information implicating soldiers in the crimes committed at the various locations identified in the Indictment, the reports nevertheless contained information that should have alerted him to the prospect that his subordinates had committed or were about to commit crimes similar to those underlying the Indictment against him. At a minimum, the numerous complaints from representatives of the United States Government, the UN and Human Rights Watch would have indicated to a responsible commander a need for further investigation in order to ascertain whether offences were being committed or were about to be committed by his subordinates.

1220. The Chamber finds that despite having knowledge or reason to know of the crimes committed by his subordinates at the Josephite Brothers compound in Kigali on 7 June 1994 and at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama during April and May 1994, Bizimungu failed to take necessary and reasonable measures to prevent those crimes or punish the perpetrators.

4.4.2 *Ndindiliyimana*

4.4.2.1 Killing of Tutsi by *Gendarmes* in Nyaruhengeri, Including at Kansi Parish, and the Provision of a Grenade to *Interahamwe* by *Gendarmes* at Ndindiliyimana's Residence

4.4.2.1.1 Introduction

1221. The Indictment alleges that on 20, 21 and 22 April 1994, massacres committed in Nyaruhengeri "were orchestrated and supervised by *gendarmes* assigned to guard Augustin Ndindiliyimana's family". Specifically, the Indictment alleges that these *gendarmes* "provided weapons and fuel to the killers who caused the death of over a thousand people in Nyaruhengeri and its vicinity, particularly in Kansi Parish where more than 10,000 Tutsi had sought refuge".[2139] The Indictment further alleges that *gendarmes* guarding Ndindiliyimana's residence provided two grenades to an *Interahamwe* militiaman called Kajuga with the order to use them against Tutsi. It is alleged that Kajuga subsequently used these grenades in an attack against Tutsi who had gathered at the Nyaruhengeri *secteur* office, and that the attack injured several Tutsi including "blowing off both legs" of a Tutsi man named Adolphe

[2137] T. 12 December 2007, pp. 56-57.
[2138] T. 12 December 2007, p. 55.
[2139] Indictment, para. 73.

Karakesi.[2140] The Indictment alleges that Ndindiliyimana bears superior responsibility for these crimes.[2141]

1222. The above allegations raise issues relevant to the proper pleading of the Indictment. Accordingly, the Chamber will deal with these issues at the outset before considering the evidence presented by the Prosecution and the Defence.

1223. The Chamber finds that the Indictment specifically identifies the orchestrators and supervisors of the massacres in Nyaruhengeri as being *gendarmes* "assigned to guard" Ndindiliyimana's residence. Furthermore, the relevant sections of the Prosecution Pre-Trial[2142] and Closing Briefs[2143] as well as questions posed by the Prosecution during cross-examination of Defence witnesses confirm that it was the Prosecution's intention to demonstrate that Ndindiliyimana is criminally responsible, pursuant to Article 6(3) of the Statute, for crimes committed by the *gendarmes* "assigned to guard" his Nyaruhengeri residence.[2144] Notwithstanding this, the Chamber finds that the Prosecution also led evidence suggesting that *gendarmes* other than those assigned to guard Ndindiliyimana's residence, as well as Presidential Guards and *Interahamwe*, participated in the attacks and massacres in Nyaruhengeri.

1224. The Chamber recalls that "charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused [and that it is only exceptionally that defects in an indictment] may be cured ... [by providing] the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge".[2145]

1225. In this instance, the Chamber finds that in identifying the orchestrators and supervisors of the crimes in Nyaruhengeri as being *gendarmes* "assigned to guard" Ndindiliyimana's residence, the Prosecution drafted its Indictment very precisely and narrowly. Ndindiliyimana, therefore, only had notice of crimes committed by these specific *gendarmes*. It follows that evidence suggesting that *gendarmes* other than those assigned to guard Ndindiliyimana's residence participated in the massacres at Kansi Parish may not be used as a basis for establishing criminal responsibility pursuant to Article 6(3) of the Statute.[2146]

1226. Accordingly, the Chamber will now turn its attention to assessing whether the Prosecution has proved beyond reasonable doubt whether *gendarmes* "assigned to guard" Ndindiliyimana's residence orchestrated and supervised the massacres in Nyaruhengeri and whether Ndindiliyimana is criminally responsible as a superior for these crimes.

[2140] Indictment, paras. 74-75.
[2141] Indictment, para. 61.
[2142] Pre-Trial Brief, para. 92 ("the massacre of over one thousand Tutsi refugees, on 20, 21 and 22 April 1994 at Kansi church (Nyaruhengeri), by *gendarmes*, assigned to guard Augustin Ndindiliyimana's family, and *Interahamwe*").
[2143] Pre-Trial Brief, para. 773: "The Prosecution submits that the evidence demonstrates beyond any reasonable doubt that *those gendarmes assigned to protect the family and home of ... Ndindiliyimana* participated in the terrible crimes at Nyaruhengeri." (emphasis added)
[2144] T. 23 June 2008, p. 26; T. 2 June 2008, p. 24.
[2145] *Muvunyi* Appeal Judgement, paras. 18, 20.
[2146] *Muvunyi* Appeal Judgement, paras. 33-47, holding that it was improper for the Trial Chamber to consider the role played by ESO Camp soldiers where the Indictment specifically identified the perpetrators to be soldiers from the Ngoma Camp.

4.4.2.1.2 Kansi Parish

4.4.2.1.2.1 Evidence

4.4.2.1.2.1.1 Prosecution Evidence

Prosecution Witness GFM

1227. Witness GFM, a Tutsi, testified that he was a survivor of the attack at Kansi Parish that commenced on 21 April 1994. On 19 April, he took refuge at Kansi Parish from attacks by Hutu and *Interahamwe* militia. When the witness arrived at the parish, he saw approximately 10,000 other Tutsi civilians who had fled from various neighbouring regions.[2147] Following his arrival, Hutu and *Interahamwe* carrying traditional weapons surrounded the Tutsi refugees at the parish.[2148] The *bourgmestre* of the *commune*, Charles Kabeza, then arrived and "promised to send police officers" to ensure the safety of the Tutsi refugees. Shortly thereafter, two armed police officers wearing military uniforms and yellow berets arrived at the parish and remained there during the night of 19 April.[2149]

1228. On 20 April, four more police officers arrived at the parish.[2150] This was followed by the arrival of a red vehicle carrying six *gendarmes* wearing camouflage military uniforms and red berets. The six *gendarmes* spoke briefly to the police officers and then left. The police officers remained at the parish.[2151]

1229. On 21 April, at around 2.00 p.m., Witness GFM observed that the same six *gendarmes* whom he had seen the previous day returned to the parish and met with the police officers who were already there. The *gendarmes* and the police officers then began to attack the parish and opened fire and threw grenades at the Tutsi taking refuge there. The Hutu and *Interahamwe* who had surrounded the parish attacked fleeing Tutsi refugees with their machetes.[2152] According to the witness, the Tutsi were unable to defend themselves. The witness managed to escape but others, including several members of his family, were killed in the attack.[2153]

Prosecution Witness GFS

1230. Witness GFS was a neighbour of Ndindiliyimana in Nyaruhengeri *commune*. She had known Ndindiliyimana since 1983 and testified that prior to 6 April 1994, relations between the two of them were good. She explained that her house was situated approximately 30 metres from Ndindiliyimana's residence.[2154]

1231. Shortly before Easter in 1994, the witness observed Ndindiliyimana arrive at his Nyaruhengeri residence together with members of his family and five to six *gendarmes*.[2155] At some point after Easter, Ndindiliyimana returned to Kigali. His family, however, remained

[2147] T. 19 September 2005, p. 55 (ICS).
[2148] T. 19 September 2005, pp. 54-55 (ICS).
[2149] T. 19 September 2005, pp. 55-57 (ICS).
[2150] T. 19 September 2005, p. 57.
[2151] T. 19 September 2005, p. 55 (ICS).
[2152] T. 19 September 2005, pp. 58-59.
[2153] T. 19 September 2005, pp. 58-59.
[2154] T. 27 September 2004, p. 19.
[2155] T. 27 September 2004, p. 35; T. 28 September 2004, pp. 38-39.

at the residence in Nyaruhengeri guarded by the five to six *gendarmes* who had arrived with them.[2156]

1232. Witness GFS testified that between 6 and 21 April 1994, there was no violence in Nyaruhengeri *commune* and that the violence first commenced on 21 April with the attack on Tutsi at Kansi Parish.[2157] In the afternoon of 21 April, the witness saw two "whitish" vehicles travelling at high speed towards Ndindiliyimana's residence. One of the vehicles was carrying around 20 *gendarmes* who were wearing military uniforms. The other vehicle was carrying armed civilians who the witness believed were *Interahamwe*.[2158] Witness GFS saw these *gendarmes* stop at Ndindiliyimana's residence. The witness subsequently learned from an *Interahamwe* member that these *gendarmes*, together with the *gendarmes* who were guarding the residence, then distributed weapons to *Interahamwe* and that those were the weapons that were "used during [the] massacres". The witness did not, however, witness this distribution of weapons herself.[2159]

1233. After a brief period, the 20 *gendarmes* and the *Interahamwe* who had recently arrived, together with the *gendarmes* guarding Ndindiliyimana's residence, boarded the vehicles and drove away in the direction of Kansi Parish. The witness then heard the sound of gunshots and a grenade explosion coming from the direction of Kansi Parish, which was approximately two and a half kilometres away.[2160] The witness testified that she did not witness the attack at Kansi Parish. However, "someone who was able to flee or escape those massacres" went to her house after the attack and explained to her how Tutsi had been attacked.[2161]

Prosecution Witness FAV

1234. Witness FAV lived in Giyambo *cellule* in Nyaruhengeri.[2162] He testified that he had known Ndindiliyimana since he was a child and that they had been neighbours.[2163] He recalled that prior to Easter in 1994, there were no *gendarmes* stationed at Ndindiliyimana's Nyaruhengeri residence. However, during Easter he witnessed Ndindiliyimana's family arrive in Nyaruhengeri together with six *gendarmes*.[2164] Following the death of President Habyarimana, the witness observed more *gendarmes* arrive, taking the total number of *gendarmes* stationed at Ndindiliyimana's residence from six to twenty.[2165]

1235. The witness testified that from 15 April, people from Nyakizu, Lunyinya, Ngishavu and Kigembe *communes* began gathering at Kansi Parish to take refuge there.[2166] He explained that between 15 and 18 April, houses of Tutsi residents were burned down and *gendarmes* distributed gasoline to people for this purpose.[2167]

[2156] T. 27 September 2004, p. 35; T. 28 September 2004, p. 38.
[2157] T. 27 September 2004, p. 16; T. 28 September 2004, p. 47.
[2158] T. 27 September 2004, pp. 18, 23; T. 28 September 2004, pp. 40-43.
[2159] T. 27 September 2004, pp. 22, 27, 33; T. 28 September 2004, pp. 39, 51.
[2160] T. 27 September 2004, p. 23; T. 28 September 2004, pp. 42, 49.
[2161] T. 27 September 2004, p. 23.
[2162] T. 21 September 2004, p. 29.
[2163] T. 21 September 2004, p. 17.
[2164] T. 21 September 2004, pp. 25-26.
[2165] T. 21 September 2004, p. 26.
[2166] T. 21 September 2004, p. 16.
[2167] T. 21 September 2004, pp. 28-29.

1236. Between 3.00 and 4.00 p.m. on 21 April 1994 (the day that the Kansi Parish massacre commenced), the witness was standing with a group of people on the road near Ndindiliyimana's residence when a Pajero vehicle carrying members of the Presidential Guard and a Hilux vehicle carrying *Interahamwe* approached them.[2168] The Presidential Guards asked the group for directions to Ndindiliyimana's residence, and a member of the group (Ignace Habimana) directed them to Ndindiliyimana's residence. During this conversation, the witness heard *Interahamwe* inform the Presidential Guards that the witness and his group were Tutsi. He then heard the Presidential Guards say: "Let us first go to Kansi; we will solve their problem … later on";[2169] and "Leave them alone for now".[2170] The Presidential Guards and *Interahamwe* then drove away towards Ndindiliyimana's house.

1237. Witness FAV testified that the distance from where he was standing to Ndindiliyimana's house was between 150 to 200 metres.[2171] When the Presidential Guards and *Interahamwe* drove away, the witness and his group followed them towards Ndindiliyimana's residence until they were less than ten metres away.[2172] The witness saw that some of the Presidential Guards were carrying firearms when they arrived at the house.[2173] The Presidential Guards and *Interahamwe* then collected firearms and grenades from the *gendarmes* guarding Ndindiliyimana's house. The Presidential Guards and *Interahamwe,* together with the *gendarmes* guarding Ndindiliyimana's house and Ndindiliyimana's wife, then boarded three vehicles: a Pajero, a red double-cabin Hilux and another Hilux at Ndindiliyimana's house. The group then drove away in the direction of Kansi Parish.[2174] The witness estimated that the group numbered approximately 50 people in total.[2175]

1238. The witness explained that approximately 15 to 20 minutes after the *gendarmes*, Presidential Guards and *Interahamwe* left Ndindiliyimana's residence, he heard the sound of gunshots coming from the direction of Kansi Parish.[2176] He testified that he did not witness any attack at Kansi Parish himself, but that at approximately 6.00 p.m. he was at his home when he was visited by some people who had escaped from the attack at the parish. The witness was told that "those who had been at Ndindiliyimana's house, police and soldiers had attacked [them], had opened fire".[2177] He also testified that the killings at Kansi Parish lasted approximately one week.[2178]

Prosecution Witness ANC

1239. Witness ANC testified that he worked for Ndindiliyimana from April until June 1994, providing both security for Ndindiliyimana's residence and personal security for

[2168] T. 23 September 2004, p. 31.
[2169] T. 23 September 2004, p. 31.
[2170] T. 23 September 2004, p. 33.
[2171] T. 23 September 2004, p. 67.
[2172] T. 23 September 2004, p. 32.
[2173] T. 23 September 2004, p. 30.
[2174] T. 21 September 2004, p. 31; T. 23 September 2004, pp. 30-33, 42-43.
[2175] T. 23 September 2004, p. 30.
[2176] T. 21 September 2004, pp. 29-31.
[2177] T. 21 September 2004, p. 31.
[2178] T. 23 September 2004, p. 43.

Ndindiliyimana as part of his escort.[2179] He stated that on or after 15 April, he accompanied Ndindiliyimana as his escort on three separate missions.[2180]

1240. The witness testified that on his third mission, he accompanied Ndindiliyimana on a trip to Nyaruhengeri.[2181] On their way, they stopped at a roadblock close to Kansi Parish where they saw "many" refugees.[2182] The roadblock was being manned by *Interahamwe* and there were other *gendarmes* in the vicinity. The *Interahamwe* informed them that Tutsi had taken refuge in the parish.[2183] The witness testified that upon hearing this, Ndindiliyimana informed the *Interahamwe* that "he didn't want people [at Kansi Parish]". The witness and Ndindiliyimana then continued on to Ndindiliyimana's Nyaruhengeri residence.[2184]

1241. When they arrived at Ndindiliyimana's house, the witness saw *gendarmes* there. The witness spent the night at Ndindiliyimana's house (in the garage) and then left with Ndindiliyimana the next morning in order to return to Kigali.[2185] On their way back, they drove past Kansi Parish. Witness ANC explained that although the car they were travelling in was "driving fast", he could see that "on either side of the road there were corpses lying here and there".[2186] He also testified that they stopped a short distance from Kansi Parish and asked people who were in the area what had happened. They were informed that people "were trying to find a way to remove the corpses".[2187] The witness and Ndindiliyimana then returned to Kigali.

Prosecution Witness GFT

1242. Witness GFT lived in Nyaruhengeri and was married to a Tutsi. She had known Ndindiliyimana since her childhood.[2188] In April 1994, she saw Ndindiliyimana's wife and children arrive in Nyaruhengeri. The witness testified that they came for Easter and that they were accompanied by *gendarmes* who were wearing red berets. The witness did not, however, see Ndindiliyimana.[2189]

1243. The witness claimed that she visited Ndindiliyimana's Nyaruhengeri house on three occasions in April 1994 in order to help one of Ndindiliyimana's children who was suffering from malaria. She testified that *gendarmes* were at Ndindiliyimana's house on the occasions she visited[2190] and that "at the beginning of the month of April, there were about six

[2179] T. 29 May 2006, pp. 45-46.
[2180] T. 29 May 2006, pp. 46, 49, 55-56. The first mission took place on or around 15 April 1994, when they went to the MRND headquarters in Kimihurura. The second mission took place the following day, when the witness escorted Ndindiliyimana to the government headquarters in Murambi, Gitarama, stayed there for around two days and then returned to Kigali. Witness ANC's final mission also took place during April, sometime after the second mission, when he escorted Ndindiliyimana to the government headquarters in Gitarama before travelling to the *gendarme* camp at Nyanza and then to Ndindiliyimana's house in Nyaruhengeri.
[2181] T. 29 May 2006, pp. 47, 60.
[2182] T. 29 May 2006, p. 60.
[2183] T. 29 May 2006, p. 60.
[2184] T. 29 May 2006, p. 60.
[2185] T. 29 May 2006, pp. 47, 60-61; T. 30 May 2006, pp. 1-2.
[2186] T. 30 May 2006, p. 1.
[2187] T. 30 May 2006, p. 1.
[2188] T. 10 January 2005, p. 18.
[2189] T. 10 January 2005, p. 18.
[2190] T. 10 January 2005, p. 19.

gendarmes ... but later the number increased ... [and] there were about 20 approximately."[2191]

1244. Witness GFT explained that there had been no violence in Nyaruhengeri *commune* immediately following the death of the President[2192] and that violence in the area first broke out in Kabilizi around 16 April, when some of the houses were set on fire. Witness GFT also "found out" that refugees from Gishyamvu and Gikongoro had begun to gather at Kansi Parish and that on 21 April, the refugees who were at Kansi had been killed.[2193] The witness did not claim to have personally witnessed either of these events.

4.4.2.1.2.1.2 Defence Evidence

The Accused Ndindiliyimana

1245. Ndindiliyimana testified that he visited his home in Nyaruhengeri three times following the death of President Habyarimana. He claimed that he did not have direct contact with his family in Nyaruhengeri and that he first visited his home there on 15 April 1994. When he arrived at his home, he found three *gendarmes* of which he had had no prior knowledge. These *gendarmes* had been "gathered" and organised by his wife. Ndindiliyimana testified that on this occasion, he concluded that there was no threat to his home and that he left the next morning to return to Kigali.[2194]

1246. Ndindiliyimana next visited his home in Nyaruhengeri on 22 April. He explained that a day earlier, on 21 April, a broadcast had been made over Radio Muhabura claiming that "Ndindiliyimana had been killed".[2195] He therefore travelled to his home in Nyaruhengeri to reassure his family that he was still alive. On his way, Ndindiliyimana stopped at the *École des sous officiers* ("ESO") in Butare. There he was informed that his home was on fire and was "under threat".[2196]

1247. Ndindiliyimana explained that there were two routes one could travel from Butare to his home in Nyaruhengeri. There was a longer route using the road going to Bujumbura, which passed by Kansi Parish, or a shorter route via Rango centre.[2197] On this occasion, he took the shorter of the two routes home and therefore did not pass by Kansi Parish.[2198] On his way home, Ndindiliyimana stopped at the house of the *bourgmestre* Charles Kabeza, where he met with Kabeza and his wife. They informed him that "people were being killed ... [and that] the situation was very serious. The RPF was launching attacks, and people were embarking on reprisals."[2199] He was also informed that "the Barundi had killed people who were at Kansi".[2200]

1248. Ndindiliyimana then returned home. On this occasion, he did not stay long and he instructed his family members that the situation was very serious and that it was absolutely

[2191] T. 10 January 2005, pp. 32, 58.
[2192] T. 10 January 2005, p. 17.
[2193] T. 10 January 2005, pp. 17, 20, 54.
[2194] T. 17 June 2008, pp. 66-67; T. 20 June 2008, p. 60.
[2195] T. 18 June 2008, p. 13.
[2196] T. 18 June 2008, pp. 18-20.
[2197] T. 18 June 2008, pp. 28-29.
[2198] T. 18 June 2008, p. 20.
[2199] T. 18 June 2008, p. 20.
[2200] T. 23 June 2008, p. 26.

necessary for them to leave the area. Ndindiliyimana then left and went to Gitarama.[2201] Ndindiliyimana explained that his family members realised that the situation was dangerous and therefore left the area.[2202]

1249. Notwithstanding the above, Ndindiliyimana testified that on 3 May, he visited his home in Nyaruhengeri a third time and that his family was still there. On this occasion, he met a nun called Formelatta who was staying at his house. Formelatta told him what had happened at Kansi Parish. This prompted Ndindiliyimana to visit Kansi Parish, which he saw had been damaged.[2203]

1250. After spending the night at home, Ndindiliyimana again returned to Kigali.[2204] He refuted all assertions that *gendarmes* guarding his Nyaruhengeri residence had participated in any attacks at Kansi Parish and claimed that had this been the case he "would have known".[2205]

Ndindiliyimana Defence Witness CBP48

1251. Witness CBP48 testified that he lived approximately 600 metres away from Ndindiliyimana's Nyaruhengeri residence and that he would often visit an individual who lived approximately 20 metres from Ndindiliyimana's house. Following the death of President Habyarimana, the witness saw between three and four *gendarmes* at Ndindiliyimana's house.[2206]

1252. Witness CBP48 learned of the killings that took place at Kansi Parish from *Gacaca* hearings. Specifically, he learned that "Buvumo and Rusagara went to Kansi to kill the inhabitants of Kansi and they did so in collaboration with the neighbours of the Kansi inhabitants". Furthermore, "a former soldier arrived and lobbed a grenade into the group of refugees … [after which] the attackers used their machetes and clubs to attack" the refugees at Kansi Parish.[2207]

1253. The witness explained that the distance between Kansi Parish and Ndindiliyimana's house was two kilometres. He refuted assertions that *gendarmes* guarding Ndindiliyimana's Nyaruhengeri residence participated in the attacks at Kansi Parish. He also refuted the claim that *gendarmes* guarding Ndindiliyimana's house distributed petrol and weapons for the purpose of killing Tutsi and that on 21 April, Presidential Guards and *Interahamwe* visited Ndindiliyimana's Nyaruhengeri residence in order to engage in killings in the area.[2208]

Ndindiliyimana Defence Witness CBP44

1254. Following the death of the President, Witness CBP44 went to Kansi to live with members of his family.[2209] He recalled that some two weeks after the President's death,

[2201] T. 18 June 2008, p. 21.
[2202] T. 18 June 2008, p. 30.
[2203] T. 18 June 2008, p. 51.
[2204] T. 18 June 2008, pp. 51-53.
[2205] T. 23 June 2008, p. 26.
[2206] T. 5 February 2008, pp. 38-39, 55 (ICS).
[2207] T. 5 February 2008, pp. 46, 56 (ICS).
[2208] T. 5 February 2008, pp. 41, 46, 53, 56 (ICS).
[2209] T. 14 February 2008, p. 61.

refugees from Gikongoro, Nyakizu and Kigali began gathering at Kansi Parish together with their cattle and personal effects. There were approximately 1,000 to 2,000 refugees.[2210]

1255. Witness CBP44 testified that on 20 April, there was a hostile atmosphere and he saw a group of youths heading towards Kansi Parish. These youths were armed with grenades and machetes and were making comments that suggested that they were going to Kansi Parish in order to steal cattle from the refugees there.[2211] As a result, on 21 April, the witness went to Kibilizi to inform the authorities of the developments in Kansi. He returned to Kansi the next day (on 22 April). On his way back, he stopped at a local shop from where he could see Kansi Parish in the distance. The witness testified that he was able to see what was happening at Kansi Parish and that he heard the sound of gunshots and grenades exploding. He also heard other people say that the refugees had been "attacked ... cut up ... and shot at" by residents of Kigembe.[2212] According to Witness CBP44, the attack at Kansi occurred at around 10.00 a.m. on 22 April.[2213]

1256. In the morning of 23 April, Witness CBP44 went to Kansi Parish. There he saw "an enormous number" of dead bodies and "attackers" who were "finishing" those who were not yet dead.[2214] The witness claimed that the people who attacked Kansi Parish came from Kansi, Gishamvu, Nyakizu, Gikongoro, Kigembe and other places. He did not see *gendarmes* assigned to guard Ndindiliyimana's residence participate in the attacks at Kansi Parish.[2215]

1257. Witness CBP44 refuted assertions that *gendarmes* distributed petrol or weapons for the purpose of killing Tutsi. He explained that prior to the events at Kansi Parish, there were no problems in the area.[2216] Lastly, he testified that he did not remember hearing anybody say that *gendarmes* were involved in the attack at Kansi and that he himself did not see any *gendarmes* participate in the attack.[2217]

Ndindiliyimana Defence Witness CBP77

1258. Defence Witness CBP77 lived in Nyaruhengeri.[2218] On 15 April 1994, he saw Tutsi refugees gathering in Kansi Parish.[2219] He estimated that there were approximately 1,000 Tutsi refugees there and he explained that the refugees had with them their personal belongings as well as their livestock.[2220]

1259. At approximately 11.00 a.m. on 21 April, Witness CBP77 together with a group of about 300 Hutu attempted to steal the personal possessions of the Tutsi refugees at Kansi Parish. He explained, however, that because the group of Hutu was outnumbered their attempt failed.[2221]

[2210] T. 14 February 2008, pp. 62, 73.
[2211] T. 14 February 2008, pp. 62-63, 72.
[2212] T. 14 February 2008, pp. 63, 65.
[2213] T. 14 February 2008, pp. 63, 75.
[2214] T. 14 February 2008, p. 63.
[2215] T. 14 February 2008, pp. 64-65.
[2216] T. 14 February 2008, pp. 64-65, 67, 72, 80.
[2217] T. 14 February 2008, p. 65.
[2218] T. 14 February 2008, pp. 31, 38.
[2219] T. 14 February 2008, pp. 2, 20.
[2220] T. 14 February 2008, pp. 3-4.
[2221] T. 14 February 2008, pp. 4, 24, 30.

1260. The following day, 22 April, Witness CBP77 joined a much larger group of approximately 3,000 Hutu from surrounding areas and went to Kansi Parish. Members of the Hutu group were armed with clubs, machetes and sticks. He stated that the Tutsi refugees attempted to defend themselves by throwing stones at the Hutu crowd.[2222]

1261. The witness testified that between 10.00 and 11.00 a.m. on 22 April, a former soldier whom he knew as Nzabambarirwa arrived at Kansi Parish together with six Burundian refugees. Nzabambarirwa and his group were armed with rifles and grenades.[2223] Nzabambarirwa informed the Hutu crowd that Radio Muhabura had announced that Nyaruhengeri had been attacked by the RPF. Nzabambarirwa then launched a grenade at the Tutsi refugees in Kansi Parish and the Hutu crowd began attacking the refugees.[2224] The witness claimed that once this attack began, he was initially prevented from leaving by the crowd of Hutu and that it was not until an hour later when the shooting had stopped that he was able to leave and return home. He described seeing many dead bodies lying in the area.[2225]

1262. On 22 April, Witness CBP77 returned to Kansi Parish in order to loot the property of the Tutsi refugees who had been killed the day before.[2226] He testified that at no time during the Kansi Parish attack did he see *gendarmes* participate in the attacks against Tutsi refugees.[2227]

Ndindiliyimana Defence Witness Marie Nakure

1263. Witness Marie Nakure is the wife of Augustin Ndindiliyimana.[2228] In 1994, Marie Nakure went to their family home in Nyaruhengeri for the Easter period. She testified that Ndindiliyimana did not accompany her.[2229]

1264. Following the death of President Habyarimana, Marie Nakure travelled to Butare. There she met the Butare *gendarmerie* commander, Habyarabatuma, who arranged for three *gendarmes* to be sent to guard her house in Nyaruhengeri.[2230]

1265. Initially, Marie Nakure stated that Ndindiliyimana visited Nyaruhengeri twice after the President's death. The first occasion was around 15 April and the second was on 22 April. She was not, however, sure of the exact dates and confirmed that in a prior statement she had claimed that Ndindiliyimana had visited Nyaruhengeri in early May.[2231]

1266. Marie Nakure also acknowledged that in a prior statement she had said that "people were fleeing to Kansi Parish". She refuted assertions that *gendarmes* guarding her Nyaruhengeri home participated in any attacks against Tutsi.[2232]

[2222] T. 14 February 2008, pp. 5, 24, 34, 52.
[2223] T. 14 February 2008, pp. 4-5, 24.
[2224] T. 14 February 2008, pp. 5-6, 39.
[2225] T. 14 February 2008, pp. 6, 33, 37.
[2226] T. 14 February 2008, pp. 7, 24.
[2227] T. 14 February 2008, pp. 6, 25.
[2228] T. 2 June 2008, p. 3.
[2229] T. 2 June 2008, p. 5.
[2230] T. 2 June 2008, pp. 6-7, 22, 29.
[2231] T. 2 June 2008, pp. 7, 10, 16, 20, 21.
[2232] T. 2 June 2008, pp. 13-14, 24-25, 27.

Ndindiliyimana Defence Witness Leon Ngarukiye

1267. Witness Leon Ngarukiye visited his family home in Kansi on 1 June 1994.[2233] He testified that following his return, his father informed him that a group of Burundians from Kigembe and Gishavu had killed Tutsi at Kansi Parish. These groups had gone to Kansi Parish in order to loot property and cattle.[2234]

Ndindiliyimana Defence Witness CBP15

1268. Witness CBP15 testified that she was related to Ndindiliyimana.[2235] She claimed that Ndindiliyimana's family arrived in Nyaruhengeri around 6 April 1994 and that she did not see Ndindiliyimana in Nyaruhengeri until June 1994.[2236]

1269. Following the death of the President, Witness CBP15 saw three *gendarmes* at Ndindiliyimana's residence. She explained that "[e]very now and then" she would go to the residence and that at no point did she see any weapons being carried by any of the *gendarmes* stationed there.[2237]

1270. Witness CBP15 testified that the massacres in Nyaruhengeri began around 22 April, but she stated that she did not see the perpetrators of the attacks at Kansi Parish.[2238]

4.4.2.1.2.2 Deliberations

1271. There is no dispute that Tutsi refugees were killed at Kansi Parish. There is further no dispute that during April 1994, *gendarmes* were assigned to guard Ndindiliyimana's Nyaruhengeri residence (although the number of *gendarmes* is disputed). The key issue to be decided is whether there is a nexus between the *gendarmes* assigned to guard Ndindiliyimana's residence and the attack at Kansi Parish.

1272. In support of the allegation, the Prosecution relies on Witnesses GFM, GFS, FAV and ANC. The Chamber will now consider the evidence of these witnesses in assessing whether Ndindiliyimana was aware of the presence of the refugees at Kansi Parish in April 1994, the number of refugees that were present, the date of the attack at the parish and, finally, the identity of the perpetrators and the involvement of *gendarmes* in that attack.

4.4.2.1.2.2.1 Ndindiliyimana's Awareness of Refugees at Kansi Parish

1273. The Chamber recalls that Prosecution Witness ANC testified that he accompanied Ndindiliyimana on a visit to Nyaruhengeri sometime after 15 April. Witness ANC further testified that when Ndindiliyimana's convoy was travelling to Nyaruhengeri on this occasion, they saw refugees at Kansi Parish. For reasons already discussed in relation to the allegations set out in paragraph 53 of the Indictment, the Chamber finds that Witness ANC's testimony lacks credibility.

[2233] T. 13 February 2008, p. 16.
[2234] T. 13 February 2008, p. 21.
[2235] T. 5 February 2008, p. 4 (ICS).
[2236] T. 5 February 2008, p. 6 (ICS).
[2237] T. 5 February 2008, pp. 5, 27 (ICS).
[2238] T. 5 February 2008, pp. 27, 29-30 (ICS).

1274. Based on Ndindiliyimana's own admission, the Chamber finds that Ndindiliyimana travelled to Nyaruhengeri in April and May 1994. However, he disputes that he was ever aware of the situation at Kansi Parish. He attributes his lack of awareness to the fact that when he travelled to Nyaruhengeri in April and May 1994, he used a shortcut that did not pass by Kansi Parish.

1275. The Chamber finds Ndindiliyimana's claimed lack of awareness not credible. The Chamber finds that Nyaruhengeri *commune* covers a small area and that it is highly unlikely that a large-scale gathering of refugees in such an environment would have escaped the notice of those visiting the area. This is supported by the evidence of Defence Witness CBP77, who claimed that he went to Nyaruhengeri on 15 April and "saw that refugees had come from Gikongoro" to Kansi Parish.[2239] The Chamber therefore finds that Ndindiliyimana was aware that refugees had gathered at Kansi Parish.

4.4.2.1.2.2.2 The Number of Tutsi Refugees at Kansi Parish

1276. Prosecution Witness GFM provided the only firsthand account from a victim of the attack at Kansi Parish. His evidence was unchallenged by the Defence out of protest. The Defence objected to the hearing being held in closed session and claimed that they did not have a complete copy of a "report" made by the witness relating to Ndindiliyimana. Specifically, the Defence claimed that Witness GFM had originally said that the report was three pages long, but the French version of his statement said that the report was five pages long.[2240] The Defence claimed that it was therefore unable to cross-examine the witness and reserved the right to do so at a later stage.

1277. In response to the Defence's complaint, the Prosecution confirmed that in his statement, Witness GFM had indeed claimed that he had "drawn up" a report. The Prosecution further indicated that it had requested and received what was claimed by Witness GFM to be this "report" and that this document was then translated and disclosed to the Defence.[2241] The Defence's complaint, therefore, is that the witness provided differing information as to the exact length of this report in his statement.

1278. The Chamber finds that the Prosecution complied with its disclosure obligations and that the Defence had no valid reasons for not cross-examining this witness. The Chamber further finds that any issue the Defence may have had in relation to the page-count of this "report" could have been dealt with in cross-examination.

1279. The Chamber finds that Witness GFM's evidence is largely convincing and consistent with his prior statements to the Tribunal investigators. Accordingly, the Chamber finds that there is no reason to doubt the credibility of Witness GFM. On the contrary, his evidence is corroborated to varying degrees by other Prosecution witnesses as well as Defence witnesses. The degree to which Witness GFM's evidence is corroborated is set out in further detail below.

[2239] T. 14 February 2008, p. 2. *See also* T. 14 February 2008, p. 62 (Defence Witness CBP44 claimed that the second week following the death of the President, he noticed the arrival of refugees at Kansi Parish).
[2240] T. 19 September 2005, p. 26.
[2241] T. 19 September 2005, pp. 26-27.

1280. Witness GFM testified that a significant number of Tutsi refugees from neighbouring *communes* gathered at Kansi Parish prior to 21 April 1994.[2242] This is corroborated by Prosecution Witnesses GFS,[2243] GFT and FAV[2244] as well as Defence Witnesses CBP44,[2245] CBP77[2246] and Marie Nakure.[2247]

1281. Each witness provided a different account of the number of refugees that had gathered at Kansi Parish: Witness GFM estimated that he saw some 10,000 Tutsi refugees; Witness FAV stated that he later exhumed some 10,000 bodies from Kansi Parish;[2248] Witness CBP44 estimated there to be between 1,000 and 2,000 Tutsi refugees;[2249] and Witness CBP77 estimated there to be around 1,000 Tutsi refugees.[2250] The Chamber is of the view that the exact number of refugees is immaterial for the purpose of establishing criminal responsibility and finds that the passage of time may have had an effect on the ability of the witnesses to provide an accurate estimate of the number of Tutsi refugees at Kansi Parish. Notwithstanding this difficulty, the Chamber finds that several thousand Tutsi refugees had gathered at Kansi Parish prior to 21 April 1994.

4.4.2.1.2.2.3 Date of the Attack at Kansi Parish

1282. Witness GFM was clear that the attack at Kansi Parish occurred at around 2.00 p.m. on 21 April 1994.[2251] Witness GFT also claimed that the attack at Kansi occurred around 20 or 21 April. Neither Witness GFS nor FAV was present during the attack at Kansi Parish. However, both of these witnesses claimed to have heard the sounds of gunshots and grenades coming from the direction of Kansi Parish on 21 April. Witness GFS described that she heard such sounds in the afternoon,[2252] while Witness FAV claimed that the attack started between 3.00 and 4.00 p.m.[2253]

1283. An analysis of the evidence reveals that there is also some corroborating Defence evidence that dates the attack at Kansi Parish to 21 April 1994. Witness CBP44 described that he saw youths armed with grenades and machetes heading towards Kansi on 20 April. Witness CBP44 was not present on 21 April and is unable to shed light on whether the attack at Kansi commenced on that date. However, Witness CBP44 testified that on 22 April, attacks at Kansi Parish were still taking place. Witness CBP77 testified that he was part of a group that unsuccessfully attacked refugees at Kansi Parish in the morning of 21 April. He testified that the main attack at Kansi Parish occurred in the morning of 22 April. While Witness CBP77's evidence does not provide corroborating evidence that the thrust of the attack at Kansi Parish was on 21 April, he does agree with other witnesses that 21 April was the date on which the attack commenced.

[2242] T. 19 September 2004, pp. 54-55.
[2243] T. 27 September 2004, p. 18 ("the killings were triggered off by the massacre of the refugees that had taken refuge at the parish, and they had taken refuge in the schoolrooms of the primary school"); T. 28 September 2004, p. 47 ("in Kansi people who had gone there to seek refuge had been killed").
[2244] T. 21 September 2004, pp. 27-28; T. 23 September 2004, p. 4.
[2245] T. 14 February 2008, pp. 62, 73.
[2246] T. 14 February 2008, p. 4.
[2247] T. 2 June 2008, pp. 13-14, 24-25, 27.
[2248] T. 21 September 2004, p. 33.
[2249] T. 14 February 2008, pp. 62, 73.
[2250] T. 14 February 2008, p. 4.
[2251] T. 19 September 2004, pp. 58-59.
[2252] T. 27 September 2004, pp. 18, 23.
[2253] T. 23 September 2004, p. 31.

1284. In light of the above, the Chamber is satisfied that the attack at Kansi Parish commenced in the afternoon of 21 April 1994 and continued on to the next day.

4.4.2.1.2.2.4 Involvement of *Gendarmes* Guarding Ndindiliyimana's Nyaruhengeri Residence in the Attack at Kansi Parish

1285. The Chamber has already noted that the Indictment,[2254] in relation to the alleged crimes committed in Nyaruhengeri, was framed narrowly in that the Prosecution specifically identified the orchestrators and supervisors of the attacks at Kansi Parish as *gendarmes* assigned to guard Ndindiliyimana's residence in Nyaruhengeri.[2255] It has already been conceded by the Defence that there were *gendarmes* guarding Ndindiliyimana's Nyaruhengeri residence following the death of President Habyarimana.[2256] Furthermore, Ndindiliyimana himself has accepted that if *gendarmes* guarding his residence had participated in the attack at Kansi Parish "he would have known".[2257] Therefore, the key question that must be considered when determining whether to attribute criminal responsibility to Ndindiliyimana for the attack at Kansi Parish is whether *gendarmes* assigned to guard his Nyaruhengeri residence were in any way involved in the attacks at Kansi Parish, either directly or through the provision of weapons to individuals who did participate in the attack.

1286. The Chamber finds that Prosecution Witness GFM provided unchallenged and credible evidence that the attack at Kansi Parish was committed by *Interahamwe* armed with traditional weapons, together with approximately six police officers and six *gendarmes*. Witness GFM recalled that the *gendarmes* who participated in the attack at Kansi Parish arrived on 21 April in a vehicle. The Chamber finds that although Witness GFM implicated *gendarmes* in the attack at Kansi Parish, he provided no direct evidence allowing the Chamber to conclude that the *gendarmes* who participated in the attack at Kansi Parish were those *gendarmes* assigned to guard Ndindiliyimana's Nyaruhengeri residence. Witness GFM's evidence alone, therefore, is insufficient to find that *gendarmes* assigned to guard Ndindiliyimana's residence participated in the attack at Kansi Parish.

1287. In considering whether there is any supporting evidence linking the *gendarmes* guarding Ndindiliyimana's residence with the *gendarmes* that participated in the attacks at Kansi, Prosecution Witnesses GFS and FAV are crucial.

1288. Witness GFS provided a credible account that following the death of President Habyarimana, she saw that six *gendarmes* were stationed at Ndindiliyimana's house.[2258] On 21 April, she witnessed two vehicles carrying *gendarmes* and *Interahamwe* visit Ndindiliyimana's Nyaruhengeri residence for a short period. Witness GFS then expressly testified that she saw the six *gendarmes* stationed at Ndindiliyimana's residence, together with the *gendarmes* and *Interahamwe* who had just arrived, board the vehicles and drive away in the direction of Kansi Parish.[2259] She subsequently heard the sound of gunshots

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[2254] This is consistent with the Pre-Trial Brief, the evidence presented at trial and the Prosecution Closing Brief.
[2255] Indictment, para. 73.
[2256] T. 17 June 2008, pp. 66-67; T. 20 June 2008, p. 60; T. 2 June 2008, pp. 6-7, 22, 29.
[2257] T. 23 June 2008, p. 26.
[2258] T. 27 September 2004, p. 35; T. 28 September 2004, pp. 38-39.
[2259] T. 27 September 2004, p. 23 ("As I said, some vehicles arrived, they were speeding. They were bringing more *gendarmes* to Ndindiliyimana's house. They were with *Interahamwe*. They stopped for a while at Ndindiliyimana's house. I don't know where they were coming from. Perhaps they were coming from Butare.

coming from the direction of Kansi Parish. Witness GFS further testified that the *gendarmes* who had arrived at Ndindiliyimana's residence in the vehicles distributed weapons to *Interahamwe*.[2260] Witness GFS did not personally witness *gendarmes* at Ndindiliyimana's house distribute any weapons. She did, however, testify that she was later told that the *gendarmes* guarding Ndindiliyimana's Nyaruhengeri residence were providing weapons for the purpose of killing Tutsi.[2261]

1289. The Chamber finds that Witness GFS's evidence is credible and corroborated by Witness GFT, who testified that at the beginning of April 1994 she saw six *gendarmes* stationed at Ndindiliyimana's Nyaruhengeri residence and that this number subsequently grew to 20 *gendarmes*. This is also consistent with the evidence of Witness FAV, who testified that around Easter 1994, there were six *gendarmes* stationed at Ndindiliyimana's house and that this number grew to 20 following the death of President Habyarimana.

1290. Witness FAV also corroborates Witness GFS to the extent that on 21 April, vehicles carrying members of the Presidential Guard and *Interahamwe* visited Ndindiliyimana's Nyaruhengeri residence. Witness FAV suggested that *gendarmes* guarding Ndindiliyimana's residence distributed weapons, after which a group of approximately 50 people, including the *gendarmes* guarding Ndindiliyimana's residence and Ndindiliyimana's wife, went towards Kansi Parish.[2262]

1291. The Chamber finds Witness FAV's evidence credible to the extent that it corroborates evidence given by Witnesses GFS and GFT that on 21 April *gendarmes* in a vehicle visited Ndindiliyimana's house, that those *gendarmes* distributed weapons and, crucially, that those *gendarmes* boarded a vehicle and drove away towards Kansi Parish. The Chamber further notes that Witness FAV's evidence is consistent with evidence provided by Witness GFM to the extent that a vehicle carrying *gendarmes* was involved in the attack at Kansi Parish.

1292. In light of the above, the Chamber is satisfied that on 21 April, *gendarmes* guarding Ndindiliyimana's residence were involved in the attack at Kansi Parish, both directly and also indirectly through the provision of weapons and assistance to *Interahamwe* who participated in the attack at the parish.

1293. The Chamber, in arriving at its conclusion, has also considered the Defence evidence. The Defence has not presented any evidence that contradicts the Chamber's findings. Defence Witnesses CBP44 and Leon Ngarukiye were not present on 21 April during the attack at Kansi Parish. Furthermore, Witness CBP77, who was present during the attack, testified that there were some 4,000 people involved in the attack at Kansi Parish. The Chamber finds that Witness CBP77's evidence does not rule out the participation of *gendarmes* in such an environment.

4.4.2.1.2.2.5 Ndindiliyimana's Superior Responsibility

1294. The Chamber will now determine whether Ndindiliyimana knew or had reason to know that his subordinates had committed or were about to commit these crimes. The

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So they stopped for a short while, and we saw the *gendarmes* at Ndindiliyimana's house. They got into the vehicles, and they all left towards Kansi.").

[2260] T. 27 September 2004, p. 22.

[2261] T. 27 September 2004, pp. 27, 33; T. 28 September 2005, pp. 39, 51.

[2262] T. 23 September 2004, pp. 32-33.

Chamber will consider the full contours of Ndindiliyimana's superior responsibility in the legal findings section of the Judgement.The Chamber notes that Ndindiliyimana himself testified that he visited Nyaruhengeri around 22 April, one day after the massacre. Although he claimed that he did not pass by Kansi Parish on his visit to Nyaruhengeri, the Chamber finds it hard to believe that an attack of this magnitude would not have come to his attention. This finding is compounded by Ndindiliyimana's admission that had *gendarmes* guarding his residence participated in the attack at Kansi Parish, "he would have known".[2263]

1295. The Chamber therefore finds that the Prosecution has proved beyond reasonable doubt that *gendarmes* guarding Ndindiliyimana's Nyaruhengeri residence were involved in the attack at Kansi Parish and that Ndindiliyimana was aware of the involvement of those *gendarmes* in the attack. Despite his knowledge, there is no evidence that Ndindiliyimana took any measures to address the crimes committed by his subordinates at Kansi Parish.

4.4.2.1.3 Provision of Two Grenades to an *Interahamwe* Militiaman Called Kajuga

4.4.2.1.3.1 Evidence

4.4.2.1.3.1.1 Prosecution Evidence

Prosecution Witness GFT

1296. Witness GFT was a nurse by profession.[2264] She testified that she visited Ndindiliyimana's residence on three occasions in April 1994 in order to treat Ndindiliyimana's child who had contracted malaria. On one of these occasions, the witness saw a man she knew as Kajuga visit. She testified that Kajuga was a former soldier and that she saw him have a conversation with one of the *gendarmes* who was guarding Ndindiliyimana's residence. She explained that following this exchange, she saw the *gendarme* go into the house and return with an object "that looked like an avocado pear".[2265]

1297. Witness GFT concluded that the object given to Kajuga was a grenade. She testified that she had not seen a grenade before and that she drew this conclusion because, subsequent to that day, she "saw people hanging … grenade[s] around their waists, and [she] realised that it looked like the object [she] saw at that time".[2266]

1298. In the morning of 22 April, following the massacre at Kansi Parish, Witness GFT together with her husband and children went to the *secteur* office in Nyaruhengeri. This was in order to get help from the *conseiller*. When she arrived, she saw approximately 100 other people there including her brother-in-law. The witness testified that at some point a grenade was thrown among the group of people who had gathered at the *secteur* office, but she did not see who threw the grenade because at the time of the attack she was in the middle of the group that had gathered at the *secteur* office. The witness claimed that she was later informed by "others" that it was Kajuga who had thrown the grenade at them.[2267]

[2263] T. 23 June 2008, p. 26.
[2264] T. 10 January 2005, p. 15 (ICS).
[2265] T. 10 January 2005, pp. 19-20, 70-72.
[2266] T. 10 January 2005, p. 20.
[2267] T. 10 January 2005, pp. 20-21, 73-74.

1299. Witness GFT described in various ways what happened next. First, the witness testified that she ran into a nearby sorghum field and that the assailants followed those who were running away and killed many of them.[2268] Second, she stated that the people at the *secteur* office "scattered" and "fled in separate directions", and the witness was separated from her husband.[2269] Third, the witness saw that her brother-in-law's leg had been severely injured. She testified, "[W]e found crutches for him not far from [the *secteur* office] and that he could totter along in order to flee … we used bits of cloth to make a bandage and he was able to set off with difficulty".[2270] Finally, she stated that she did not witness the events but that she "met survivors who told [her] what [had] happened after the grenade was thrown".[2271]

1300. Witness GFT explained that she eventually went to hide at the house of a friend called Joseph Kagenza, who lived very close to Ndindiliyimana's residence.[2272]

Prosecution Witness FAV

1301. Witness FAV testified that Kajuga received a grenade from *gendarmes* at Ndindiliyimana's residence and that the grenade was then thrown at the *secteur* office. Witness FAV did not specify how he learned of this, although he stated that Kajuga himself claimed that he had received the grenade at Ndindiliyimana's house.[2273] The witness also claimed that prior to the genocide other people had received grenades from Ndindiliyimana's residence.[2274]

Prosecution Witness GFR

1302. For reasons set out in Chapter III of the Judgement, the Chamber has not considered Prosecution Witness GFR's evidence in arriving at its conclusions.

4.4.2.1.3.1.2 Defence Evidence

Ndindiliyimana Defence Witness CBP44

1303. Witness CBP44 testified that she believed Kajuga to be a "a bandit or a rogue" who had been guilty of several murders in the region or in the area at that time.[2275]

4.4.2.1.3.2 Deliberations

1304. In assessing the allegations in paragraphs 74 and 75 of the Indictment, the Chamber will first consider whether *gendarmes* guarding Ndindiliyimana's residence gave two grenades to the *Interahamwe* member Kajuga and ordered him to kill Tutsi, before considering whether Kajuga then threw a grenade at a crowd of Tutsi who had gathered at the *secteur* office in Nyaruhengeri.

[2268] T. 10 January 2005, p. 21.
[2269] T. 10 January 2005, p. 22.
[2270] T. 10 January 2005, pp. 73-74.
[2271] T. 11 January 2005, p. 4.
[2272] T. 10 January 2005, p. 21.
[2273] T. 21 September 2004, p. 25.
[2274] T. 21 September 2004, p. 25.
[2275] T. 14 February 2008, p. 66.

4.4.2.1.3.2.1 Provision of Two Grenades to Kajuga

1305. Witness GFT testified that she saw *gendarmes* at Ndindiliyimana's residence give Kajuga an "avocado pear" shaped object. The Chamber finds that this is an accurate description of a grenade. However, the witness admitted that she did not have any knowledge of what a grenade looked like at the time she saw *gendarmes* guarding Ndindiliyimana's residence give the object to Kajuga. The witness's claim that the "avocado pear" shaped object was in fact a grenade was therefore made in hindsight. This failure to identify the object at the material time leads the Chamber to conclude that while the "avocado pear" shaped object described by Witness GFT might have been a grenade, this fact has not been proved beyond reasonable doubt.

1306. The Chamber further finds that even if it is accepted that Witness GFT did see *gendarmes* give Kajuga a grenade, her evidence is still insufficient to prove beyond reasonable doubt that Kajuga was ordered to use grenades against Tutsi and that he did in fact throw a grenade at Tutsi who had gathered at the *secteur* office. This is because Witness GFT's evidence implicating Kajuga is based solely on tenuous hearsay evidence, the source of which is unknown.

1307. The Chamber therefore finds that Witness GFT's evidence on its own is not sufficient to prove beyond reasonable doubt that *gendarmes* guarding Ndindiliyimana's residence gave grenades to Kajuga and that those grenades were then used to harm Tutsi at the *secteur* office.

4.4.2.1.3.2.2 Order by *Gendarmes* to Kill Tutsi

1308. The Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that *gendarmes* guarding Ndindiliyimana's residence "ordered" Kajuga to kill Tutsi. Witness GFT did not claim to have heard what was allegedly said between *gendarmes* guarding Ndindiliyimana's residence and Kajuga, nor is there any evidence linking the alleged criminal conduct of Kajuga in Nyaruhengeri to an "order" given by *gendarmes* guarding Ndindiliyimana's residence.

4.4.2.1.3.2.3 Kajuga's Grenade Attack on the *Secteur* Office in Nyaruhengeri

1309. Witness GFT was clear that she did not see who perpetrated the attack on the *secteur* office. Rather, her claim that Kajuga threw a grenade at the *secteur* office is based upon information and an identification of Kajuga by "others". Witness GFT did not specify who exactly informed her of Kajuga's involvement. Furthermore, she did not provide any information that would allow the Chamber to conclude that those "others" who told her of Kajuga's involvement had a basis for positively identifying Kajuga as being involved in the attack at the *secteur* office in Nyaruhengeri. In short, very little identification evidence was led by the Prosecution, with the exception of the testimony of Witness GFR whose evidence the Chamber has excluded.[2276]

1310. The Chamber also finds that Witness GFT failed to provide a clear and single account of the events immediately after the grenade attack. Witness GFT initially described people, including herself, fleeing for their lives as they were being chased and killed. She then

[2276] See Chapter III of the Judgement.

explained that she had time to bandage the leg of her brother-in-law who she claimed was severely injured by the grenade. Finally, she claimed that she waited at the scene of the attack until a pair of crutches was brought for her brother-in-law, although she later claimed that she only knew about these events because she met survivors who subsequently who told her what happened.[2277]

1311. While the Chamber finds that Witness GFT's evidence establishes that an attack did take place at the *secteur* office, the Chamber is not satisfied beyond reasonable doubt that it was Kajuga who threw the grenade at a crowd of Tutsi at the *secteur* office in Nyaruhengeri. The Chamber is also not satisfied beyond reasonable doubt that those who perpetrated the attack at the *secteur* office in Nyaruhengeri did so under orders of *gendarmes* guarding Ndindiliyimana's residence.

4.4.2.1.3.2.4 Conclusion

1312. In light of the above, the Chamber finds that the Prosecution has proved beyond reasonable doubt that *gendarmes* residing at Ndindiliyimana's residence participated in the attacks at Kansi Parish, but it has not proved that those *gendarmes* were implicated in an alleged grenade attack by Kajuga on a crowd of Tutsi at the *secteur* office in Nyaruhengeri.

4.4.2.2 The Killing of Tutsi Refugees by *Gendarmes* at Saint André College in Nyamirambo, Kigali

4.4.2.2.1 Introduction

1313. The Indictment alleges that on or about 13 April 1994, *gendarmes* from the Nyamirambo unit, accompanied by *Interahamwe*, attacked St. André College in Kigali, where hundreds of people, mainly Tutsi, had sought refuge between 7 and 8 April 1994. It is alleged that after checking their identities, the attackers selected and killed all of the Tutsi men outside the college. It is further alleged that the *gendarmes* involved in the attack were under Augustin Ndindiliyimana's command.[2278] The Indictment alleges that Ndindiliyimana bears superior responsibility for these crimes.[2279]

4.4.2.2.2 Evidence

1314. To support the above allegation, the Prosecution relies on the evidence of Witnesses WG and CGB. The Defence denies the allegations and refers to the evidence of Witnesses CBP 72, CBP 46 and Ndindiliyimana.

[2277] T. 11 January 2005, p. 4.
[2278] Indictment, para. 76.
[2279] Indictment, para. 61.

4.4.2.2.2.1 Prosecution Evidence

Prosecution Witness WG

1315. Witness WG was an employee of St. André College in April 1994.[2280] He testified that on 8 April 1994, a few dozen people fleeing an attack by soldiers and *Interahamwe* at the nearby St. Charles Lwanga Church sought refuge at the college.[2281]

1316. Witness WG testified that between 4.30 and 4.55 p.m. on 13 April, he heard gun shots, grenade explosions and distressful screams.[2282] A short while later, two *gendarmes* arrived at his room and spoke with the witness.[2283] The *gendarmes* interrogated him as to why he had given sanctuary to people whom they considered to be accomplices of the enemy.[2284] The witness testified that he understood the reference to accomplices of the enemy to mean members of the Tutsi ethnic group, who were widely perceived at the time to be collaborating with the RPF.[2285]

1317. The witness testified that those *gendarmes* then led him to the compound in front of the nursing department of the college, where they had gathered all the refugees.[2286] At the compound, the witness found other *gendarmes* and *Interahamwe*. The witness observed that *gendarmes* and *Interahamwe* had shot through the windows of the building where the refugees were housed at the college and had also shot some of the refugees.[2287] According to the witness, the assailants only stopped shooting at the refugees once they had assembled all of them at the compound. Thereafter, they inspected the identity cards of the refugees in order to identify the Tutsi among them.[2288] The witness testified that he pleaded with the *gendarmes* not to harm women and children refugees at the compound and that due to his intervention, *gendarmes* only checked the identity cards of male refugees.[2289]

1318. Following the inspection of the identity cards, the *gendarmes* selected several dozen male refugees and informed the witness that they intended to take them to the nearby Nyamirambo territorial brigade of the *Gendarmerie* for further interrogation.[2290] The witness testified that once the *gendarmes* had left with those refugees, he returned to his room. However, about 10 minutes later, he heard gunshots coming from the direction of the entrance gate to the college.[2291] The witness immediately went to the entrance gate and found that a number of the refugees who were taken by the *gendarmes* had been killed.[2292] However, a few of those refugees, namely, Musonera, Frederic, Achille Karita, Jean Bosco Rutaganda and Theophile Rubata, had survived the attack.[2293] Witness WG further testified that he was informed by those survivors that *gendarmes* had led them to the entrance gate of

[2280] T. 6 June 2005, p. 31 (ICS).
[2281] T. 6 June 2005, p. 34.
[2282] T. 6 June 2005, p. 36.
[2283] T. 6 June 2005, p. 36.
[2284] T. 6 June 2005, pp. 35-37.
[2285] T. 6 June 2005, pp. 35-38.
[2286] T. 6 June 2005, p. 37.
[2287] T. 6 June 2005, p. 37.
[2288] T. 6 June 2005, pp. 37-38.
[2289] T. 6 June 2005, p. 37.
[2290] T. 6 June 2005, pp. 37-38.
[2291] T. 6 June 2005, p. 38.
[2292] T. 6 June 2005, p. 38.
[2293] T. 6 June 2005, pp. 38-39.

the college and asked the *Interahamwe* to attack them with machetes.[2294] They further informed him that *gendarmes* had shot at the refugees who attempted to escape the attack by the *Interahamwe*.[2295]

1319. The witness testified that the *gendarmes* who had attacked the refugees at the college on 13 April 1994 were based at the Nyamirambo brigade of the *Gendarmerie*, which was situated less than a hundred metres away from St. André College.[2296] The witness testified that those *gendarmes* were familiar to him since he had seen them during his visits to the brigade in the course of his two years' residence in the Nyamirambo neighbourhood.[2297] The witness also stated that during the attack at the college, those *gendarmes* were dressed in the official uniforms of the *Gendarmerie,* which he described as light green uniforms and red berets.[2298]

1320. The witness testified that during their incursion into the college on 13 April 1994, the *gendarmes* were led by a Second Lieutenant from the Nyamirambo brigade who was also familiar to him.[2299] The witness further stated that he was informed by *gendarmes* guarding the St. Paul pastoral centre that the officer leading the *gendarmes* who had attacked the refugees at the college had a rank of Second Lieutenant.[2300]

1321. On 14 April 1994, the witness called the Deputy Chief of Staff of the army and requested him to assist in protecting the refugees at the college from being attacked.[2301] According to the witness, he made his request to an officer named Marcel; however, he did not know him personally nor his exact rank.[2302] The witness added that the reason that he decided to call the Deputy Chief of Staff for assistance with security at the college was that he had learned that Marcel was an *alumnus* of St. André College and that he was therefore likely to respond favourably to his plea.[2303]

1322. The witness testified that following his request, *gendarmes* were sent to the college to protect the refugees there. The witness observed that those were the same *gendarmes* who had attacked the refugees at the college on 13 April 1994.[2304] However, he subsequently learned that those *gendarmes* did in fact protect the refugees from being attacked by the *Interahamwe*.[2305]

1323. On 14 April 1994, members of the RPF arrived at the college and evacuated the majority of the refugees.[2306] The witness testified that only five people remained at the college following that operation.[2307] The witness further testified that after the capture of Kigali by RPF forces in July 1994, he met two of the former refugees from the college,

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[2294] T. 6 June 2005, p. 38.
[2295] T. 6 June 2005, p. 38.
[2296] T. 6 June 2005, pp. 32, 36.
[2297] T. 6 June 2005, p. 36.
[2298] T. 6 June 2005, p. 36.
[2299] T. 6 June 2005, pp. 36-37.
[2300] T. 6 June 2005, p. 36.
[2301] T. 6 June 2005, p. 40.
[2302] T. 6 June 2005, p. 40.
[2303] T. 6 June 2005, p. 40.
[2304] T. 6 June 2005, p. 40.
[2305] T. 6 June 2005, p. 40.
[2306] T. 6 June 2005, p. 41.
[2307] T. 6 June 2005, p. 42.

namely, Oralie and Valérie Kanarama, who informed him that they had been evacuated from the college by the RPF operatives on 14 April 1994.[2308]

Prosecution Witness GCB

1324. Prosecution Witness GCB, a Tutsi, testified that following the deterioration of security in Kigali after the death of President Habyarimana, he sought refuge at St. André College from 8 April to 14 April 1994.[2309] He recalled that on 8 April, the refugees at the college numbered a few hundred people.[2310] The majority of those refugees were Tutsi but there were also some Hutu who were supporters of the opposition parties.[2311]

1325. On 13 April 1994, around 4.00 p.m., while in the upper part of the nursing department building at St. André College where most of the refugees were housed, the witness heard gunshots, grenade explosions and people screaming.[2312] Shortly thereafter, some *gendarmes* came to the part of the building where the witness was staying and ordered all the refugees there to assemble in the courtyard in front of the building.[2313] Witness GCB testified that those *gendarmes* were armed and were dressed in the official uniforms of the *Gendarmerie,* including the distinctive red berets embossed with the *Gendarmerie* insignia.[2314]

1326. As he was heading to the courtyard, the witness claimed that he saw a number of dead bodies.[2315] In the courtyard, the *gendarmes* ordered the refugees to lie down and later ordered them to stand up.[2316] However, only about 20 refugees managed to stand up because most of them were too injured to stand.[2317]

1327. The witness testified that while at the courtyard, the leader of the *gendarmes* ordered one of them to attack the refugees who were still lying down with a grenade launcher known as a STRIM.[2318] Subsequently, one of the *gendarmes* attacked refugees using the STRIM and the courtyard was covered by a pall of smoke.[2319] Witness GCB described the STRIM as being composed of a gun and a club-like object attached to the barrel of the gun.[2320]

1328. Witness GCB testified that *gendarmes* later selected about 20 male refugees, including himself, and led them out of the compound of the college. The witness further testified that when they reached the entrance gate to the college, they were ordered by *gendarmes* to lie down along the road that runs from the Court of Appeal to St. Charles Lwanga Church.[2321] While they were lying on the ground, one of the *gendarmes* shot at each one of them from a close range.[2322] However, the witness testified that as the attack unfolded,

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[2308] T. 6 June 2005, p. 41.
[2309] T. 14 September 2005, pp. 55, 60.
[2310] T. 14 September 2005, p. 57.
[2311] T. 14 September 2005, p. 57.
[2312] T. 14 September 2005, p. 62.
[2313] T. 14 September 2005, p. 62.
[2314] T. 14 September 2005, pp. 50, 62; T. 19 September 2005, p. 2.
[2315] T. 14 September 2005, pp. 62-63.
[2316] T. 14 September 2005, pp. 62-63.
[2317] T. 14 September 2005, pp. 63-65.
[2318] T. 14 September 2005, pp. 64-65.
[2319] T. 14 September 2005, pp. 64-65.
[2320] T. 15 September 2005, p. 50.
[2321] T. 14 September 2005, pp. 65-66.
[2322] T. 14 September 2005, pp. 65-66.

he lost consciousness and vision and could not see what was going on around him.[2323] For these reasons, the witness could not tell the number of times that he was shot or the extent of the injuries that were inflicted on him during the attack.

1329. The witness testified that the *gendarmes* then ordered the *Interahamwe* to kill the refugees who had survived the gun attack.[2324] Witness GCB gave evidence that a member of the *Interahamwe* noted that he was still alive and struck him on the nape of his neck with an axe and left him thinking that he was dead.[2325]

1330. According to the witness, several hundred refugees were killed during the attack at St. André College on 13 April 1994.[2326] He further testified that most of them were killed inside the college compound.[2327] According to the witness, the attack against the refugees was carried out by six *gendarmes* in collaboration with *Interahamwe*.[2328]

4.4.2.2.2.2 Defence Evidence

Defence Witness CBP 72

1331. Witness CBP 72 was a *gendarme* based at the Nyamirambo brigade of the *Gendarmerie* in April 1994.[2329] From 7 April to 12 May 1994, he claimed that he drove the commander of the Nyamirambo brigade as he patrolled various locations in the Nyamirambo area where *gendarmes* were stationed as guards.[2330] The witness also testified that the patrols were conducted every day on an hourly basis throughout the day until nightfall.[2331]

1332. Witness CBP 72 testified that St. André College was situated between 800 metres and one kilometre from the Nyamirambo brigade.[2332] Given the proximity of the college to the brigade, they regularly stopped at St. André College during their patrols.[2333] However, neither the witness nor the commander entered the compound of the college during these visits, they only stopped at the entrance gate of the college where the commander had brief conversations with the *gendarmes* stationed there.[2334]

1333. Based on his observations during these visits, Witness CBP 72 disputed the allegations raised by Witnesses WG and GCB that *gendarmes* killed Tutsi civilians at St. André College. He testified that *gendarmes* were stationed at St. André College to protect the people who had sought refuge there. The *gendarmes* also repulsed a number of attacks

[2323] T. 14 September 2005, p. 66.
[2324] T. 14 September 2005, p. 66.
[2325] T. 14 September 2005, p. 66.
[2326] T. 15 September 2005, p. 4.
[2327] T. 15 September 2005, p. 4.
[2328] T. 14 September 2005, p. 63.
[2329] T. 26 February 2008, p. 6.
[2330] T. 26 February 2008, pp. 21, 23.
[2331] T. 26 February 2008, pp. 23-24.
[2332] T. 26 February 2008, p. 11.
[2333] T. 26 February 2008, p. 11.
[2334] T. 26 February 2008, p. 11.

against the refugees by *Interahamwe*.[2335] The witness was resolute that due to the presence of *gendarmes*, none of the refugees at St. André College were killed.[2336]

1334. Witness CBP 72 also disputed Prosecution Witness GCB's claim that *gendarmes* attacked the refugees at St. André College on 13 April 1994 using a STRIM gun. According to the witness, the STRIM was only used by soldiers engaged at the war front and was not available to *gendarmes*.[2337]

Defence Witness CBP 46

1335. Witness CBP 46 was an officer of the *Gendarmerie* based at Camp Muhima in Kigali in April 1994.[2338] He testified that the *gendarmerie* did not have STRIM guns and that it is therefore unlikely that *gendarmes* would have used that weapon to attack the refugees at St. André College on 13 April 1994.[2339] According to Witness CBP 46, the *gendarmerie* only had teargas grenades, which were used by a specific unit of the *gendarmerie* known as the Jali Intervention Unit.[2340]

The Accused Ndindiliyimana

1336. Ndindiliyimana disputed the allegations made by Prosecution Witnesses WG and GCB that *gendarmes* killed Tutsi refugees at St. André College on 13 April 1994. Ndindiliyimana testified that contrary to their allegations, *gendarmes* were posted at St. André College and protected Tutsi refugees there.[2341]

1337. According to Ndindiliyimana, from 13 April 1994, members of the RPF conducted a number of evacuation operations in various places in Kigali, including St. André College, where a number of people had sought refuge from the degenerating security situation in the city.[2342] Ndindiliyimana gave evidence that the RPF rescued their members and sympathisers who were among those refugees and evacuated them to areas under their control.[2343]

1338. Ndindiliyimana testified that on 14 April 1994, he held a meeting with members of his General Staff and discussed possible responses to the RPF evacuation operations in Kigali.[2344] Ndindiliyimana testified that he resolved not to resist the RPF operations in order to save the lives of refugees who were in danger of being killed.[2345] Accordingly, he instructed *gendarmes* not to resist such operations.[2346] According to Ndindiliyimana, *gendarmes* complied with his order and did not resist the evacuation of refugees from St. André College by RPF operatives.[2347]

[2335] T. 26 February 2008, p. 18.
[2336] T. 26 February 2008, pp. 21, 23.
[2337] T. 26 February 2008, p. 11.
[2338] T. 28 January 2008, p. 3.
[2339] T. 28 January 2008, pp. 26-28.
[2340] T. 28 January 2008, pp. 26-28.
[2341] T. 18 June 2008, pp. 37-38.
[2342] T. 18 June 2008, p. 38.
[2343] T. 18 June 2008, p. 38.
[2344] T. 18 June 2008, p. 38.
[2345] T. 18 June 2008, p. 38.
[2346] T. 18 June 2008, p. 38.
[2347] T. 18 June 2008, p. 38.

1339. Ndindiliyimana also testified that he was aware that Prosecution Witness WG had requested the *gendarmerie* to provide security at St. André college.[2348] However, he explained that Witness WG's request to the *gendarmerie* was motivated by a desire to dispel any suspicions on the part of the Rwandan authorities that he condoned the RPF evacuation of refugees from the college.[2349]

4.4.2.2.3 Deliberations

4.4.2.2.3.1 The Role of *Gendarmes* in the Killing of Tutsi Refugees at St. André College

1340. Both Prosecution Witnesses WG and GCB testified that *gendarmes* in collaboration with *Interahamwe* were involved in the attack that led to the killings of Tutsi refugees at St. André College in Nyamirambo, Kigali, on 13 April 1994. Witness WG testified that he was familiar with the *gendarmes* who perpetrated the attack at the college. He further stated that those *gendarmes* were based at the nearby Nyamirambo brigade of the *Gendarmerie,* where he had seen them during his visits to that brigade in the course of his two years' residence in the Nyamirambo area.[2350]

1341. The Chamber notes that it is not contested by any of the parties that the Nyamirambo brigade was located in relative proximity to St. André College, where Witness WG was based. Witness WG's evidence that he was familiar with those *gendarmes*, when considered in concert with his evidence and that of Witness GCB that those *gendarmes* were clad in the official uniforms of the *gendarmerie*, which they described as light green uniforms with red berets, supports the finding that *gendarmes* participated in the killings of Tutsi civilians at the college.[2351]

1342. The Chamber has carefully considered the submissions raised by the Defence seeking to impugn the credibility of Prosecution Witnesses WG and GCB. With respect to Witness WG, the Chamber notes that the Defence sought to undermine his credibility by referring to the evidence of Witnesses DH 90 and DH 91 in the *Bagosora et al.* proceedings regarding the events that transpired at St. André College on 13 April 1994. The Defence suggests that Witness WG's account of the events at the college is contradicted by the evidence of those witnesses in important respects. The Chamber recalls that Witness WG conceded that he had regular contact with Witnesses DH 90 and DH 91, who were based at the nearby St. Charles Lwanga Church in April 1994.

1343. According to the Defence, contrary to the testimony of Witness WG, *gendarmes* did not attack refugees at St. André College on 13 April 1994. The only incident of note that occurred at the college on 13 April was the evacuation of refugees from the college by RPF operatives. Witness WG's evidence is therefore an implausible attempt to falsely impute to *gendarmes* responsibility for the actions of RPF operatives at the college. To support its submission, the Defence refers to the evidence of Witness DH 91 in the *Bagosora et al.* proceedings that he was informed by Witness WG that members of the RPF had carried out a raid at the college on the night of 13 April and taken all the refugees away from the college.[2352] Witness DH 91 further testified that Witness WG appeared dishevelled and

[2348] T. 18 June 2008, p. 38.
[2349] T. 18 June 2008, p. 38.
[2350] T. 6 June 2005, pp. 36-37.
[2351] T. 19 September 2005, p. 2.
[2352] T. 7 June 2005, pp. 16, 17; Defence Exhibit 50.

informed him that he had spent the night in the "bush" because of the RPF operation at the college.[2353]

1344. The Chamber is not persuaded that the above submission of the Defence impairs the credibility of Witness WG. A careful review of the transcripts of Witness DH 91's testimony in *Bagosora et al.*, which were tendered into evidence in this case, shows that Witness DH 91 did not testify conclusively that the RPF operation at the college occurred on 13 April 1994. Rather, his evidence suggests that the operation occurred either on the night of 13 to 14 April or 14 to 15 April 1994. In particular, the Chamber refers to his evidence that by the end of May 1994, only two individuals remained since "the others had left during an RPF raid in the night of 14 to 15 April".[2354] The Chamber therefore considers that there is a material discrepancy between the evidence of Witness WG and that of Witness DH 91 with respect to the date on which the RPF operation occurred at the college.

1345. Secondly, the Chamber notes that the evidence of Witness WG is that the *gendarmes* attacked the Tutsi refugees at the college between 4.30 and 4.55 p.m. on 13 April 1994.[2355] The transcripts of Witness DH 91's testimony in *Bagosora et al.*, upon which the Defence relies in order to impugn the evidence of Witness WG, suggest that the RPF operation to evacuate the refugees from the college occurred during the night.[2356] Furthermore, the evidence of Witness WG in this trial and the transcripts of the testimony of Witnesses DH 90 and DH 91 in *Bagosora et al.* contain no suggestion that the RPF operation at the college resulted in the killings of any of the refugees. The Chamber recalls that Witnesses DH 90 and DH 91 only testified that they noted the absence of refugees from the college after the RPF operation.[2357] Given the varied time at which the two incidents are alleged to have occurred, and more significantly, the lack of evidence that the RPF operation at the college led to killings of refugees, the Chamber finds the Defence submission to the effect that Witness WG sought to falsely attribute to *gendarmes* responsibility for crimes that were committed by members of the RPF to be untenable.

1346. The Defence also submits that the evidence of Witness WG that *gendarmes* killed Tutsi refugees at St. André College is contradicted by Witness DH 90's testimony in the *Bagosora et al.* proceedings testified that the refugees at the college were attacked by a band of lawless youths rather than *gendarmes* or soldiers.[2358]

1347. The Chamber notes that while Witness DH 90 did indeed testify that the killings at the college were committed by a band of lawless youths, he was reluctant to ascribe to those youths exclusive responsibility for that attack. The witness explained that since he was not a direct witness to the events that unfolded at the college on 13 April 1994, he was not in a position to rule out the possibility that *gendarmes* or soldiers may have collaborated with *Interahamwe* in attacking the refugees at the college.[2359] The Chamber does not therefore accept the Defence submission that Witness DH 90 absolved *gendarmes* of responsibility for the killings of Tutsi civilians at the college on 13 April 1994.

[2353] T. 7 June 2005, p. 16; Defence Exhibit 50.
[2354] T. 7 June 2005, p. 17; Defence Exhibit 50.
[2355] T. 6 June 2005, p. 36.
[2356] T. 7 June 2005, p. 16; Defence Exhibit 50.
[2357] Defence Exhibit 50.
[2358] T. 7 June 2005, p. 21.
[2359] Defence Exhibit 50.

1348. The Defence also sought to impugn the credibility of Witness WG by suggesting that his evidence was motivated by a desire to mollify the authorities in Rwanda so that they would forego possible criminal charges against him for a genocide-related crime.[2360] In support of this submission, the Defence made reference to a passage in a *pro justitia* statement given by Prosecution Witness GLJ to the Rwandan judiciary, in which Witness GLJ was asked about the attempt by Witness WG to kill the children of a person named Francois Gasakera.[2361] The Chamber is not satisfied that the passage in this *pro justitia* statement provides a firm basis for the inference that the witness was likely to face charges in Rwanda at the time that he gave his testimony. Given the weakness of the evidence adduced by the Defence to support its contention, the Chamber is unwilling to conclude that Witness WG's testimony was motivated by improper motives.

1349. The Chamber therefore concludes that Witness WG gave credible and firsthand evidence of the killing of Tutsi refugees at St. André College by *gendarmes* from the Nyamirambo brigade. The credibility of his evidence was not impaired during the cross-examination by the Defence.

1350. Turning now to the evidence of Prosecution Witness GCB, the Chamber is satisfied that the witness gave firsthand and credible testimony of the role of *gendarmes* in the killings of Tutsi civilians at St. André College on 13 April 1994. The Chamber also finds that, despite some variations, his evidence is corroborated in important respects by the eyewitness testimony of Witness WG.

1351. In cross-examination, Defence counsel argued that Witness GCB's evidence regarding the events at the college was contradicted by the evidence of Witness WG. In particular, the Defence argued that Witness GCB, in contradiction to Witness WG, testified that *gendarmes* killed the refugees inside the compound of St. André College.[2362] The Chamber is not satisfied that the evidence of these Prosecution witnesses supports the contention advanced by the Defence. The Chamber recalls that Witness WG testified that the assailants shot at some of the refugees inside the college immediately after their arrival.[2363] His evidence provides a sound basis for the inference that some of the refugees were killed inside the college. The Chamber does not therefore accept that his evidence contradicts the evidence of Witness GCB, and it dismisses this submission by the Defence.

1352. Notwithstanding the above, the Chamber has considerable misgivings about Witness GCB's claim that the attack of 13 April 1994 led to the killings of hundreds of refugees at the college.[2364] According to Witness WG, a few dozen refugees arrived at the college on 8 April 1994.[2365] He did not indicate in his testimony that the number of those refugees rose considerably between 8 April and 13 April 1994. Witness WG's evidence clearly suggests that the number of refugees at the college was considerably lower than that suggested by Witness GCB. Given his close monitoring of the refugee situation at the college, the Chamber considers Witness WG's estimate of a few dozen refugees present at the college to be more reliable. The Chamber cannot therefore accept the evidence of Witness GCB that the attack of 13 April led to the death of several hundred civilians.

[2360] T. 7 June 2005, pp. 3-7, 33.
[2361] T. 7 June 2005, p. 33.
[2362] T. 15 September 2005, pp. 69-71.
[2363] T. 6 June 2005, p. 37.
[2364] T. 15 September 2005, p. 4.
[2365] T. 6 June 2005, p. 34.

1353. The Chamber notes that Witness GCB was subjected to a lengthy cross-examination regarding the claim in his pre-trial statement that a *gendarme* shot him five times in his left hand during the attack at St. André College on 13 April 1994. The Defence contended that the scars on the witness's left hand do not support his claim that he was indeed shot five times on his hand using a military weapon loaded with high velocity bullets fired from close range.[2366] The witness did not deny the fact that he made the above claim during his interview by the investigators of the Tribunal.

1354. The Chamber observes that in cross-examination on the above issue, the witness at times sought to affirm the veracity of his claim as recorded in the pre-trial statement and at times appeared to disown any knowledge of the details of the attack that was inflicted on him.[2367] The witness explained that, during the attack, he lost consciousness after he discovered that the person next to him had been shot and that he could not see because he had lost his spectacles and his eyes were filled with dust. For these reasons, he could not tell the number of times that he was shot by a *gendarme* or the extent of the injuries that were inflicted on him during that attack.[2368]

1355. Having weighed Witness GCB's evidence, the Chamber does not consider his inability to recall with sufficient clarity the details of the attack that was inflicted on him at St. André College to undermine his evidence. His uncertainty can be plausibly explained by the intensity of the attack. Furthermore, the Chamber is in no doubt that the witness was shot by a *gendarme* during the attack against the refugees at St. André College on 13 April 1994. This finding is corroborated by the eyewitness account of Witness WG.[2369] However, the Chamber finds it difficult to understand why the witness, who claims not to have any knowledge of the exact details of the attack that he suffered at the college, informed the investigators of the Tribunal that he was shot five times. Given the difficulties that pervade this aspect of his evidence, the Chamber is unable to accept that Witness GCB was shot five times on his left hand.

1356. The Defence also challenged Witness GCB's testimony that, during the attack at St. André College, *gendarmes* attacked the refugees using a weapon known as a STRIM gun. The Defence contends that the UNAMIR inventory of the weapons available to forces operating in Rwanda at the time indicates that the *gendarmerie* did not have STRIM weapons.[2370] The Defence also relies on the evidence of Witness CBP 46, a former officer in the *gendarmerie*, who testified that the *Gendarmerie* did not possess such weapons.

1357. The Defence additionally contends that, even if one were to accept Witness GCB's evidence that *gendarmes* attacked the refugees using a STRIM, his account of the manner in which the weapon was used by those *gendarmes* raises doubts about his claim. The Defence claims that it is difficult to countenance that *gendarmes* would have fired the STRIM, which is a grenade launcher, in an open compound. Such a manoeuvre would have had fatal consequences for the *gendarmes*.[2371]

[2366] T. 15 September 2005, pp. 55-56.
[2367] T. 15 September 2005, pp. 56-61.
[2368] T. 14 September 2005, p. 66; T. 15 September 2005, p. 59.
[2369] T. 6 June 2005, p. 38.
[2370] T. 14 September 2005, pp. 64-65, T. 15 September 2005, p. 51.
[2371] T. 15 September 2005, pp. 53-55.

1358. The Chamber is not satisfied that the UNAMIR inventory provides proof that the *gendarmerie* did not have STRIM guns in its arsenal. Furthermore, the Chamber was not offered any evidence on the methodology that was employed to compile the UNAMIR inventory. The lack of such information makes it difficult to determine its reliability. Additionally, the Chamber's reluctance to accord definitive weight to the above inventory is compounded by the evidence of Witness KJ, a *gendarme* based in Kibuye in April 1994, who testified that STRIM guns were available to *gendarmes* at the time.[2372] The Chamber therefore accepts that it is a reasonable possibility that *gendarmes* may have been armed with STRIM weapons during the period pertinent to the Indictment.

1359. Notwithstanding the above finding, the Chamber has doubts as to whether *gendarmes* did in fact use a STRIM to attack the refugees at the college. The Chamber finds it inconceivable that the *gendarmes* would have fired a grenade launcher in an open compound without any cover, as suggested by Witness GCB. Furthermore, the Chamber finds it infeasible that *gendarmes* would have sought to use that weapon to attack only the refugees who were lying down in the compound. The Chamber observes that had such an attack occurred, it is highly unlikely that Witness WG would have overlooked it during his detailed testimony on the events that transpired at the college on 13 April 1994. For the foregoing reasons, the Chamber is extremely reluctant to accept Witness GCB's claim that *gendarmes* attacked the refugees at the college using a STRIM weapon.

1360. The Chamber now turns to the evidence of Defence witnesses. The Chamber recalls that Witness CBP 72, a *gendarme* based at the Nyamirambo brigade of the *gendarmerie*, denied the allegations by Witnesses WG and GCB that *gendarmes* killed Tutsi refugees at St. André College on 13 April 1994. His contravening evidence is drawn from the observations he made during his alleged visits to the college in the course of regular patrols that he claimed to have conducted in the Nyamirambo area during April and May 1994. According to the witness, *gendarmes* posted at St. André College protected the refugees there and repelled a number of attacks against them by *Interahamwe*.[2373] The Chamber notes that his evidence is supported by the testimony of Ndindiliyimana.[2374]

1361. The Chamber recalls that it has heard firsthand and credible evidence from Witnesses WG and GCB that, prior to 14 April 1994, there were no *gendarmes* stationed at the college to protect the refugees.[2375] According to Witness WG, *gendarmes* were only assigned to the college following a request that he made to the Army Headquarters for security at the college on 14 April 1994.[2376] He subsequently learned that those *gendarmes* did in fact protect the refugees at the college.[2377] In light of the firsthand evidence of Witness WG, the Chamber is reluctant to accept the claims by Witness CBP 72 and Ndindiliyimana that there were *gendarmes* posted at the college prior to 15 April 1994 and that those *gendarmes* protected the refugees there. Their evidence does not therefore negate the credibility of Witnesses WG and GCB's accounts regarding the role of *gendarmes* in the killing of Tutsi civilians at the college on 13 April 1994.

[2372] T. 27 March 2006, pp. 29-30.
[2373] T. 25 February 2008, pp. 12, 18, 21, 23.
[2374] T. 18 June 2008, p. 38.
[2375] T. 6 June 2005, p. 40; T. 14 September 2005, p. 60.
[2376] T. 6 June 2005, p. 40.
[2377] T. 6 June 2005, p. 40.

1362. Furthermore, the Chamber notes that the fact that members of the RPF carried out a successful evacuation of a large number of refugees from St. André College on 14 April 1994 without any resistance reinforces its finding above that there were no *gendarmes* stationed at the college before 14 April 1994.[2378]

1363. Even if the Chamber were to accept that Witness CBP 72 visited the college in the month of April 1994, the fact that his visits lasted for only a short period of time suggests that the attack may have occurred at the college without his knowledge. The Chamber recalls his testimony that during his stops at the college in the course of patrol, neither the commander nor the witness entered the college; they only stopped at the entrance gate where the commander had a brief conversation with the *gendarmes* stationed there.[2379] In light of this admission, the Chamber does not consider Witness CBP 72's evidence to provide a decisive basis for negating the eyewitness accounts of Witnesses WG and GCB.

1364. In his brief testimony on the events at St. André College, Ndindiliyimana denied the allegations of Witnesses WG and GCB that *gendarmes* killed Tutsi civilians at that location on 13 April 1994.[2380] Ndindiliyimana claimed that, contrary to their accusations, *gendarmes* protected the refugees at the college.[2381] The Chamber is not satisfied that sparsely detailed denials by Ndindiliyimana are sufficient to cast doubt on the credible and eyewitness accounts of Prosecution Witnesses WG and GCB regarding the role of *gendarmes* in the attack against Tutsi civilians at the college on 13 April 1994. The Chamber therefore does not accept the evidence of Ndindiliyimana.

1365. Having considered the entirety of the evidence available to it, the Chamber is satisfied beyond reasonable doubt that *gendarmes* from the Nyamirambo brigade acting in collaboration with *Interahamwe*, killed Tutsi civilians at St. André College on 13 April 1994.

4.4.2.2.3.2 Ndindiliyimana's Superior Responsibility

1366. The Chamber will now determine whether Ndindiliyimana knew or had reason to know that his subordinates had committed or were about to commit these crimes. The Chamber will consider the full contours of Ndindiliyimana's superior responsibility in the legal findings section of the Judgement.

1367. The Chamber notes that the Prosecution did not adduce direct evidence to prove that Ndindiliyimana knew or had reason to know of the implication of *gendarmes* in the crimes that were committed against Tutsi refugees at St. André College. However, the Prosecution submits that Ndindiliyimana's knowledge of these crimes can be inferred from his testimony that he received regular reports from his units throughout the country. The Prosecution further submits that Ndindiliyimana's testimony that he was aware of a request made by Witness WG for assistance with security at the college is indicative of the fact that he kept himself abreast of events at the college. Given his knowledge, it is implausible that Ndindiliyimana would not have known of the killings of Tutsi civilians at the college by

[2378] T. 25 February 2008, p. 13.
[2379] T. 25 February 2008, p. 11.
[2380] T. 18 June 2008, p. 38.
[2381] T. 18 June 2008, p. 38.

gendarmes around the time that Witness WG is alleged to have made the request for assistance.[2382]

1368. The Chamber is not satisfied that Ndindiliyimana's admission that he received situation reports at the time of the events pleaded in the Indictment, by itself, provides a sound basis for ascribing to him notice of the involvement of *gendarmes* in the crimes that are alleged to have occurred at St. André College. As none of these situation reports were in fact tendered into evidence, the Chamber is unable to find that the reports contained information that would have put Ndindiliyimana on notice of the prospect that *gendarmes* may have committed crimes at the college.

1369. The Chamber recalls that Ndindiliyimana gave evidence that that he was aware that Witness WG had made a request to the *gendarmerie* to provide security at the college. His evidence is not clear as to how he came to learn of this fact. Irrespective of the source of his knowledge, the Chamber considers that his knowledge of the request made by Witness WG indicates that he was aware of the involvement of *gendarmes* in the crimes that were committed against Tutsi civilians at St. André College.

1370. In his evidence, Ndindiliyimana denied that Witness WG's request was prompted by security concerns at the college. According to Ndindiliyimana, the request by Witness WG was a ploy designed to avert perception on the part of the Rwandan authorities that Witness WG was complicit in the RPF operation to evacuate refugees from the college. The Chamber is not persuaded by the testimony of Ndindiliyimana regarding the motives that prompted Witness WG to make that request. Having weighed the evidence available to it, the Chamber is satisfied that it was the degenerating security situation at the college, exemplified by the events of 13 April 1994, that led the witness to make that request. This being the case, the Chamber finds it difficult to believe that Ndindiliyimana would have known of the request made by Witness WG and yet failed to know of the situation that prompted Witness WG's call for the authorities to intervene at the college.

1371. The Chamber further notes that there are other indications in the evidence that Ndindiliyimana kept abreast of the events that unfolded at the college in April 1994. The Chamber recalls his evidence that he was aware of the attempts by the RPF to evacuate its partisans who were among the refugees who had gathered in various places in Kigali, including St. André College.[2383] Ndindiliyimana testified that these operations started from 13 April 1994.[2384] Ndindiliyimana further testified that during a meeting with members of his immediate staff held after his return to Kigali on 14 April, he discussed and explored feasible responses to these operations.[2385] The Chamber has heard concordant evidence from both Prosecution and Defence witnesses that the RPF evacuated a large number of refugees from the college on 14 April. There is no evidence that members of the RPF carried out further evacuation operations at the college after 14 April 1994.

1372. The fact that the *gendarmes* who attacked the refugees at the college were led by a Second Lieutenant from the Nyamirambo brigade of the *Gendarmerie* suggests that the assailants were operating in an organised manner and within the orders and knowledge of

[2382] Prosecution Closing Brief, pp. 171-172.
[2383] T. 18 June 2008, p. 38.
[2384] T. 18 June 2008, p. 38.
[2385] T. 18 June 2008, p. 38.

their immediate commanders.[2386] The attack by *gendarmes* and *Interahamwe* at the college on 13 April 1994 also led to the killing and injury of a significant number of refugees at the college. In light of his knowledge of the events that unfolded at the college, as is suggested by his awareness of the request made by Witness WG and the RPF operation there, the Chamber finds it difficult to believe that Ndindiliyimana would not have known of the organised killing of a number of Tutsi civilians at the college by *gendarmes*. It strains credulity to believe that Ndindiliyimana, who was aware of less notable events at the college such as the request made by Witness WG, would have failed to know of an incident of this magnitude.

1373. The Chamber is therefore satisfied that Ndindiliyimana knew or at least had information at his disposal that alerted him to the strong prospect that his subordinates may have committed crimes against Tutsi civilians at St. André College on 13 April 1994. The fact that Ndindiliyimana denied that *gendarmes* perpetrated such crimes at the college indicates that he did not take any measures to address the crimes committed by his subordinates.

4.4.2.3 Killing of Tutsi from CELA by *Gendarmes* and *Interahamwe*

4.4.2.3.1 Introduction

1374. The Indictment alleges that "on or about 22 April 1994, a group of about 60 Tutsi was selected at CELA, where they had sought refuge, and led to the Muhima *gendarmerie* unit purportedly for questioning. In fact, the *gendarmes* instead of questioning them handed them over to *Interahamwe* militiamen who killed them on the road leading to the CND. Not more than five people survived that massacre. Those *gendarmes* were under Augustin Ndindiliyimana's command".[2387] The Indictment alleges that Ndindiliyimana bears superior responsibility for these crimes.[2388]

4.4.2.3.2 Evidence

4.4.2.3.2.1 Prosecution Evidence

Prosecution Witness ATW

1375. Witness ATW, a Tutsi, sought refuge at CELA from 7 to 20 April 1994.[2389] He testified that on 20 April, around 11.00 a.m., the witness was informed by one of the other refugees that a large number of assailants had gathered at CELA and were about to attack them.[2390] Half an hour later, one of the guards at CELA informed him that Francis Renzaho, the *préfet* of Kigali, had arrived at CELA and wanted to speak with him.[2391]

1376. Witness ATW testified that while on his way to meet with *Préfet* Renzaho, he noted that a group of about 600 *Interahamwe* armed with guns, grenades and traditional weapons, together with about 10 to 12 soldiers, had surrounded CELA.[2392] The witness also testified to

[2386] T. 6 June 2005, pp. 36-37.
[2387] Indictment, para. 77.
[2388] Indictment, para. 61.
[2389] T. 12 June 2006, pp. 18, 20, 58.
[2390] T. 12 June 2006, pp. 22-23.
[2391] T. 12 June 2006, pp. 19-20, 22.
[2392] T. 12 June 2006, pp. 22-23.

having seen a group of *gendarmes* at CELA as he went to speak with Renzaho.[2393] The witness stated that during the conversation, Renzaho questioned him as to whether there were any RPF collaborators among the people who had sought refuge at CELA.[2394] The witness denied that accomplices of the RPF were being sheltered at CELA.[2395]

1377. The witness also testified to having heard *Préfet* Renzaho inform the *Interahamwe* at CELA that members of the international community were following the events unfolding in Rwanda through satellite media. Renzaho therefore urged the *Interahamwe* to desist from actions that would tarnish the image of the Rwandan government internationally.[2396] Renzaho then dissuaded the *Interahamwe* from attacking the refugees at CELA and instead requested that they identify the refugees whom they perceived to be RPF collaborators and take them to Muhima Brigade of the *Gendarmerie* for further interrogation. Renzaho also told the *Interahamwe* that in the event that any of those refugees were found to have collaborated with the RPF, they would be tried before a military tribunal.[2397]

1378. Following Renzaho's suggestions, the *Interahamwe* proceeded to identify about 40 mainly Tutsi civilians, including the witness, and took them to Muhima Brigade of the *Gendarmerie*. The witness stated that the *Interahamwe* who selected those refugees came from areas in the vicinity of CELA.[2398] After their selection, the refugees were driven to Muhima Brigade of the *Gendarmerie* aboard a minibus driven by *Interahamwe* and a double cabin pick-up driven by a *gendarme* who was dressed in the official uniform of the *Gendarmerie*. Four additional *gendarmes* rode in the vehicle.[2399] According to the witness, Renzaho did not accompany them when they were taken to Muhima *gendarmerie* station.[2400]

1379. The witness testified that once they arrived at Muhima Brigade, they were received by about eight *gendarmes* who detained them in a room for approximately five minutes.[2401] The *gendarmes* then ordered them to leave the room, and both the *gendarmes* and *Interahamwe* ordered them to board a minibus that was parked at the brigade.[2402]

1380. The *Interahamwe* then drove the refugees in the direction of the Rugege *secteur* office. However, their vehicle was stopped at a roadblock manned by *Interahamwe* armed with guns. The roadblock was situated about 70 metres from the tarred road leading to the Rugege *secteur* office.[2403] Witness ATW recalled that the *Interahamwe* manning the roadblock ordered the refugees to disembark from the vehicle, and the refugees were then shot at as they alighted from the vehicle.[2404] The witness testified that he escaped from the attack after the *Interahamwe* had killed 10 individuals and he fled towards St. Paul Centre, where he stayed from 20 April to 17 June 1994.[2405]

[2393] T. 13 June 2006, p. 19.
[2394] T. 12 June 2006, p. 25.
[2395] T. 12 June 2006, p. 25.
[2396] T. 12 June 2006, pp. 25-26; T. 13 June 2006, p. 23.
[2397] T. 12 June 2006, pp. 25-26; T. 13 June 2006, p. 23.
[2398] T. 12 June 2006, p. 27.
[2399] T. 12 June 2006, pp. 29-30.
[2400] T. 12 June 2006, p. 30.
[2401] T. 12 June 2006, pp. 29-30.
[2402] T. 12 June 2006, p. 30.
[2403] T. 12 June 2006, p. 30.
[2404] T. 12 June 2006, p. 31.
[2405] T. 12 June 2006, pp. 31, 34.

4.4.2.3.2.2 Defence Evidence

Defence Witness CBP 62

1381. Witness CBP 62 was an officer of the *Gendarmerie* deployed at Muhima Brigade in May 1994. He denied that refugees from CELA were detained at Muhima Brigade.[2406] He further testified that during his deployment at the brigade, he gave firm instructions to *gendarmes* not to allow members of militia or criminal gangs to enter the brigade.[2407]

The Accused Ndindiliyimana

1382. Ndindiliyimana disputed the account given by Witness ATW regarding the events that took place at CELA in April 1994.[2408] He testified that he was informed that on 21 April, a large number of people had gathered at CELA in order to attack the refugees there whom they suspected of being armed members of the RPF. He also testified that he was informed that the *gendarmes* who guarded the refugees at CELA were overwhelmed by the assailants and that the *gendarmes* requested the intervention of the *préfet* of Kigali, Renzaho. Ndindiliyimana was further informed that *Préfet* Renzaho did eventually arrive at CELA and managed to restore order.[2409]

1383. Ndindiliyimana testified that at the prompting of the assailants at CELA, a search was carried out in order to ascertain whether the refugees there were armed, and it was discovered that some of them were. According to Ndindiliyimana, the weapons were then confiscated and the refugees at CELA were transferred to the St. Paul Centre where they were guarded by *gendarmes*.[2410]

4.4.2.3.3 Deliberations

4.4.2.3.3.1 The Abduction and Killing of Tutsi Civilians from CELA

1384. The Chamber notes that Witness ATW gave a firsthand and consistent account of the removal of about 40 mainly Tutsi refugees from CELA, their brief detention at the Muhima Brigade of the *Gendarmerie* and their subsequent killing by *Interahamwe* on 20 April 1994. Witness ATW testified that the removal of those civilians from CELA was done at the behest of *Préfet* Renzaho, who directed the *Interahamwe* to identify the refugees whom they considered to be collaborators of the RPF and take them to Muhima Brigade for further questioning. At Muhima Brigade, the refugees were briefly detained by eight *gendarmes* and later released to the same *Interahamwe,* who then drove them in the direction of Rugege. At some point during their journey, the refugees were attacked and a number of them were killed by *Interahamwe* manning a roadblock.

1385. In considering the credibility of Witness ATW's account of the events pleaded in paragraph 77 of the Indictment, the Chamber has carefully considered the submissions of the Defence. In one of its submissions, the Defence questioned the plausibility of Witness ATW's evidence that he heard one of the *Interahamwe* who had abducted the refugees from

[2406] T. 27 May 2008, pp. 6, 42 (ICS).
[2407] T. 27 May 2008, p. 42 (ICS).
[2408] T. 18 June 2008, pp. 42-43.
[2409] T. 18 June 2008, p. 42.
[2410] T. 18 June 2008, p. 42.

CELA state that they intended to take the refugees to the CND. The Defence argued that it is inconceivable that the *Interahamwe* would have taken those civilians to the CND, which was at the time occupied by a battalion of the RPF and which was also the seat of the Rwandan National Assembly.

1386. The Chamber notes that contrary to the Defence rendition of Witness ATW's evidence, the witness testified that *Interahamwe* used the acronym "CND" to denote a place in Kigali where they killed Tutsi civilians during the genocide of 1994. His evidence is clear that the place in question was not the building where the Rwandan National Assembly was housed and where the RPF battalion in Kigali was based at the time. The Chamber therefore considers this aspect of Witness ATW's evidence to be plausible.[2411]

1387. The Chamber recalls that Witness ATW was cross-examined quite extensively on variances between his testimony and his account of the events that transpired at CELA featured in a publication of a human rights organisation dated April 1994.[2412] Having weighed the divergences between Witness ATW's evidence and his statement in that publication, the Chamber does not find them to be of such gravity that they undermine the credibility of his evidence. Furthermore, the Chamber finds that these variances can plausibly be explained by the difficulties of recollecting precise details several years after the occurrence of the events and the traumatic nature of the events. For these reasons, the Chamber does not consider that these variances undermine the credibility of Witness ATW.

1388. The Chamber also recalls that Witness ATW was questioned about contradictions between his oral evidence and his pre-trial statement regarding the manner in which the events at CELA unfolded. The Chamber notes that Witness ATW vacillated between two positions. On the one hand, the witness suggested that the refugees at CELA were attacked by the assailants prior to the arrival of *Préfet* Renzaho at CELA, and on the other hand he testified that the assailants were about to attack the refugees but were dissuaded from doing so by *Préfet* Renzaho. While this discrepancy was never adequately explained, the Chamber does not consider his lack of clarity on this issue to corrode his overall credibility regarding the events at CELA. The Chamber further finds that Witness ATW's lack of clarity on this issue can reasonably be explained by the stressful nature of the events and the considerable lapse of time between the events and his testimony.

1389. The Defence further submitted that Witness ATW had links with the RPF and could not therefore be expected to give an impartial account of the events that transpired at CELA. The Defence contended that Witness ATW's association with the RPF is evidenced by the fact that he travelled to Butaro *commune* in 1993, which was under RPF control at the time.[2413] The Defence also asserted that the fact that the witness was armed with a loaded pistol while at CELA further suggests that he had received military training with the RPF. According to the Defence, it is difficult to countenance that a witness with no prior experience using weapons would have been able to handle a loaded pistol and use it to repulse assailants attacking the refugees at CELA.

1390. The Chamber is not satisfied that it has been provided with cogent evidence proving that the witness was in fact an operative of the RPF at the time of the events. Furthermore, in

[2411] T. 12 June 2006, pp. 28-29, 31-32.
[2412] T. 13 June 2006, pp. 53, 57-59 (ICS); T. 13 June 2006, pp. 85, 87.
[2413] T. 13 June 2006, p. 84.

the Chamber's view, the fact that the witness may have had links with the RPF should not *a priori* lead to the rejection of his evidence for lack of impartiality, and the Chamber fails to discern any bias in Witness ATW's evidence.

1391. The Chamber has also weighed the testimony of Ndindiliyimana. He testified that, contrary to the evidence of Witness ATW, none of the refugees at CELA were killed.[2414] Ndindiliyimana gave evidence that he was informed that a large number of assailants had assembled at CELA in order to attack the refugees there whom they suspected of being armed collaborators of the RPF.[2415] He further testified that at the prompting of those assailants, a search was carried out at CELA and weapons were discovered and confiscated.[2416] Subsequently, the refugees at CELA were transferred to the St. Paul Centre were they were protected by *gendarmes*. Ndindiliyimana also stated that he was informed that at some point during the events at CELA, *gendarmes* who were stationed there were overwhelmed by the assailants and the *gendarmes* requested *Préfet* Renzaho to intervene. Ndindiliyimana testified that Renzaho did eventually intervene and managed to restore order at CELA.

1392. The Chamber notes that some aspects of Ndindiliyimana's evidence are confirmed by the evidence of Witness ATW. They both agree that a large number of assailants surrounded the refugees at CELA and intended to attack them. They also agree that during the events at CELA, *Préfet* Renzaho arrived. However, they disagree on how the fraught situation at CELA was finally resolved and on the role of Renzaho during the events in question.

1393. Given the large number of assailants amassed at CELA and the previous *Interahamwe* attacks that had been repelled by the refugees at CELA, some of whom were armed, the Chamber finds it difficult to believe Ndindiliyimana's claim that the fraught situation was resolved without any detriment to the refugees.

1394. The possibility that *Préfet* Renzaho would have averted any adverse action against the refugees is difficult to accept given that there is no suggestion that he arrived at CELA with a force capable of preventing a large number of *Interahamwe* from taking action against the refugees. The claim that the refugees were transferred *en masse* from CELA to St. Paul is also difficult to accept in the absence of any explanation of how the transfer of a large number of people was executed. Given the lack of information supporting Ndindiliyimana's claims on how the situation at CELA was resolved, the Chamber prefers the firsthand evidence of Witness ATW over the evidence of Ndindiliyimana on this point.

1395. The Chamber is satisfied based on the evidence of Witness ATW that 40 civilians, the overwhelming majority of whom were of Tutsi ethnicity, were removed from CELA on the instruction of *Préfet* Renzaho and taken to Muhima Brigade of the *Gendarmerie* ostensibly for further questioning. The Chamber will now determine the conduct of *gendarmes* at Muhima Brigade towards those civilians before turning to consider Ndindiliyimana's knowledge or reason to know of their conduct.

[2414] T. 18 June 2008, p. 43.
[2415] T. 18 June 2008, p. 42.
[2416] T. 18 June 2008, p. 42.

4.4.2.3.3.2 The Role of *Gendarmes* in the Events that Led to the Killing of Tutsi Civilians Abducted from CELA

1396. The Chamber recalls the evidence of Witness ATW that *Interahamwe* acting at the behest of *Préfet* Renzaho identified about 40 mainly Tutsi civilians from CELA, where they had sought refuge, and took them to Muhima *Gendarmerie* brigade ostensibly for further questioning. At Muhima Brigade, the refugees were detained for a few minutes by *gendarmes* stationed at that brigade and then ordered to board a minibus. The refugees were driven away from Muhima Brigade in the direction of Rugege *secteur*. At some point during their journey, they were stopped at a roadblock manned by a different set of *Interahamwe* who then killed about 10 of those refugees.

1397. The Chamber has considered the evidence of Defence Witness CBP 62, who was an officer of the *Gendarmerie* at the time of the events. The witness disputed the evidence of Witness ATW that on 20 April 1994, 40 civilians who were removed from CELA were briefly detained at Muhima *Gendarmerie* brigade before they were turned over to *Interahamwe,* who subsequently killed some of them.[2417] Having weighed his evidence, the Chamber is not satisfied that the testimony of Witness CBP 62, who was away from the brigade during the relevant period, is sufficient to undermine the firsthand evidence of Witness ATW. Witness CBP 62 testified that from 7 April to early May he was deployed at Camp Kacyiru where he was involved in the effort to repel RPF attacks against that camp.[2418] He was only transferred from Camp Kacyiru to Muhima Brigade in the month of May 1994.[2419] Witness CBP 62's evidence does not therefore raise doubts about the veracity of Witness ATW's account of the events that transpired at Muhima Brigade on 20 April 1994.

1398. Based on the firsthand evidence of Witness ATW, the Chamber is satisfied that the Tutsi civilians who were removed from CELA were taken to Muhima Brigade where they were briefly detained before being turned over to *Interahamwe*. The Chamber recalls that the civilians were handed over to the same *Interahamwe* who had earlier removed them from CELA. The Chamber also believes Witness ATW's evidence that those civilians were taken towards Rugege where at least 10 of them were killed by *Interahamwe* at a roadblock.

1399. The Chamber is satisfied that the *gendarmes* at Muhima Brigade must have been aware of the context in which those refugees were removed from CELA and brought to the brigade. In the Chamber's view, the *gendarmes* must have known that the refugees were suspected of being accomplices of the RPF and that they had been found with weapons. The Chamber also finds that the *gendarmes* must have been aware of the prominent and widely-publicised role of the *Interahamwe* in the killing of Tutsi civilians on the pretext that they were accomplices of the RPF. Given the *gendarmes'* knowledge of these circumstances, the Chamber considers that they must have been aware of the strong likelihood that the *Interahamwe* would kill the refugees if the *gendarmes* were to hand the refugees over to the *Interahamwe*.

1400. Having found that *gendarmes* at Muhima Brigade were complicit in the crimes committed against Tutsi civilians who were removed from CELA on 20 April 1994, the Chamber will now determine whether the evidence is sufficient to find Ndindiliyimana

[2417] T. 27 May 2008, p. 42 (ICS).
[2418] T. 27 May 2008, p. 40 (ICS).
[2419] T. 27 May 2008, p. 41.

criminally responsible as a superior pursuant to Article 6(3) of the Statute for the role of *gendarmes* in these crimes.

4.4.2.3.3.3 Ndindiliyimana's Superior Responsibility

1401. The Chamber will now determine whether Ndindiliyimana knew or had reason to know that his subordinates had committed or were about to commit these crimes. The Chamber will consider the full contours of Ndindiliyimana's superior responsibility in the legal findings section of the Judgement.

1402. The Chamber notes that the Prosecution did not lead direct evidence to prove that Ndindiliyimana had knowledge of the role of the *gendarmes* at Muhima Brigade. However, the Prosecution submits that Ndindiliyimana's knowledge of these events can be inferred from his testimony that he was aware of the events that unfolded at CELA and his admission that he received intelligence reports concerning events at CELA.[2420]

1403. The Chamber recalls that Ndindiliyimana testified to having been aware of the fact that a large number of assailants had gathered at CELA intending to attack the refugees there on suspicion that they were armed accomplices of the RPF. Ndindiliyimana also admitted that he knew of *Préfet* Renzaho's intervention at CELA during the events, as well as admitting that he knew that a search was conducted at CELA during the events and that some of the refugees were found to be armed. Their weapons were confiscated and the refugees were transferred to St.. Paul Centre where they were protected by *gendarmes*.

1404. Having reviewed the evidence on the events at CELA, the Chamber is not satisfied that the fact that Ndindiliyimana had information, albeit limited, on the events that transpired at CELA is sufficient to conclude that he knew or had reason to know of the complicity of the *gendarmes* at Muhima Brigade in the eventual killing of the refugees who were abducted from CELA.

1405. The Chamber notes that Ndindiliyimana's overall command of the *Gendarmerie* suggests some distance from the daily operations of the various *gendarmerie* brigades in Rwanda. In light of this fact, the Chamber cannot automatically assume that he would have been aware of the myriad actions of lower echelon *gendarmes* in various brigades in Rwanda in the absence of sufficient evidence to that effect. This fact, taken in concert with the wide occurrence of events similar to the one pleaded in paragraph 77 of the Indictment, leaves the Chamber with considerable reservations regarding the Prosecution's claim that Ndindiliyimana was aware of the events at Muhima Brigade. The fact that Ndindiliyimana admitted in general terms to having received SITREPs from his units around the country does not dispel the Chamber's reservations. Ndindiliyimana's admission that he received SITREPs, in the absence of additional evidence, is insufficient to ground a definitive finding that Ndindiliyimana knew or had reason to know of the events at Muhima Brigade.

1406. Consequently, the Chamber finds that the Prosecution has not adduced sufficient evidence to prove that Ndindiliyimana had knowledge or reason to know of the role of his subordinates at Muhima Brigade in the sequence of events that led to the killings of the Tutsi refugees who had earlier been abducted from CELA.

[2420] Prosecution Closing Brief, pp. 173-174.

4.5 Murder as a Crime Against Humanity

4.5.1 *Introduction*

1407. Count 4 of the Indictment charges all four Accused with murder as a crime against humanity pursuant to Article 3(a) of the Statute. In support of the allegations of murder as a crime against humanity set out in paragraphs 82 to 91 of the Indictment against Bizimungu, the Prosecution relies upon the same underlying conduct and evidence that it led in relation to the allegations of genocide (and complicity in genocide in the alternative) pleaded in paragraphs 68 and 69 of the Indictment against Bizimungu.

1408. In its factual findings for genocide, the Chamber set out in detail the evidence that underlies the allegations of killings at ETO-Nyanza,[2421] CHK,[2422] Charles Lwanga Church,[2423] the Josephite Brothers compound,[2424] ESI/Kabgayi Primary School,[2425] Musambira *commune* office and dispensary,[2426] and TRAFIPRO.[2427] The Chamber will not repeat that evidence in its factual findings for murder as a crime against humanity. The Chamber found that of all the factual allegations relating to these seven crime sites, only four allegations have been proved beyond reasonable doubt in relation to the crime of genocide. These are the killings at the Josephite Brothers compound on 7 June 1994 and the killings at ESI/Kabgayi Primary School, the Musambira *commune* office and dispensary, and TRAFIPRO during April and May 1994. In the legal findings section of the Judgement, the Chamber will analyse whether the evidence relating to these four allegations supports the charge of murder as a crime against humanity in addition to the charge of genocide as alleged by the Prosecution.

1409. The Chamber notes that paragraphs 83 and 108 of the Indictment allege that Bizimungu, Nzuwonemeye and Sagahutu are responsible as superiors for killings of Tutsi civilians committed by soldiers of the RECCE Battalion at CHK. In its factual findings for genocide, the Chamber found that the Prosecution had not presented sufficient evidence to prove that soldiers of the Rwandan Army murdered Tutsi civilians at CHK. It follows from this finding that the allegations of murder as a crime against humanity in paragraphs 83 and 108 of the Indictment have not been proved beyond reasonable doubt against Bizimungu, Nzuwonemeye and Sagahutu.

1410. The Chamber will now consider the remaining allegations of murder as a crime against humanity set out in Count 4 of the Indictment.

[2421] Indictment, para. 82.
[2422] Indictment, para. 83.
[2423] Indictment, para. 84.
[2424] Indictment, para. 85.
[2425] Indictment, para. 86.
[2426] Indictment, para. 87.
[2427] Indictment, para. 88.

4.5.2 *Bizimungu*

4.5.2.1 Killing of Four Tutsi by Militiamen at Ruhengeri Agronomic Centre

4.5.2.1.1 Introduction

1411. The Indictment alleges that between 11 and 14 April 1994, Augustin Bizimungu went to a roadblock located near the Ruhengeri Agronomic Centre with four bound Tutsi in the rear cabin of his vehicle. It is alleged that soldiers escorting Bizimungu were "stamping" on the four Tutsi, that Bizimungu asked the *Interahamwe* who were manning the roadblock to kill the four Tutsi, and that the *Interahamwe* complied with Bizimungu's request.[2428]

4.5.2.1.2 Evidence

4.5.2.1.2.1 Prosecution Evidence

Prosecution Witness GFA

1412. Witness GFA was a member of the *Interahamwe* in Mukingo *commune* from 1991 to 1994.[2429] The witness met Bizimungu at a number of meetings at the house of Nzirorera's mother and at other meetings during 1992 and 1993.[2430] He testified that he knew Bizimungu "very well".[2431]

1413. On 9 April 1994, the *Interahamwe* set up three roadblocks in the Busogo *secteur*, including one on the main road downhill from the agriculture and livestock breeding school (the *Institut supérieur d'agronomie et d'élevage*, or ISAE).[2432] Witness GFA testified that these roadblocks were set up to seek out the Tutsi "enemy".[2433] At the roadblocks, the witness and his fellow *Interahamwe* would check the identity cards of passers-by and kill any Tutsi among them. They would also kill anyone who did not have an identity card because they suspected them of being accomplices of the RPF or *Inkotanyi*.[2434] The witness testified that he would go to all three roadblocks on a daily basis because of his position in the *Interahamwe*.[2435] These roadblocks were removed four days after they were established.[2436]

1414. Around 10 or 11 April 1994, Witness GFA met Bizimungu at the ISAE Busogo roadblock.[2437] The witness identified Witness GFC as being among the *Interahamwe* present at the roadblock at that time.[2438] Witness GFA testified that Bizimungu arrived in a camouflage-coloured Land Rover jeep with around five soldiers in the back of the vehicle.[2439] Bizimungu asked the *Interahamwe* to "look at these *Inkotanyi*" in the rear or the jeep.[2440] The witness did this and saw that there were three or four Tutsi lying down in the vehicle and that

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[2428] Indictment, para. 81.
[2429] T. 30 January 2006, pp. 61-62; T. 1 February 2006, p. 30 (ICS).
[2430] T. 30 January 2006, pp. 58, 71.
[2431] T. 31 January 2006, p. 60.
[2432] T. 31 January 2006, pp. 8-9.
[2433] T. 31 January 2006, p. 8.
[2434] T. 31 January 2006, p. 8.
[2435] T. 31 January 2006, p. 8.
[2436] T. 31 January 2006, p. 9.
[2437] T. 31 January 2006, p. 12.
[2438] T. 31 January 2006, p. 11; Prosecution Exhibit 77.
[2439] T. 31 January 2006, pp. 12-13.
[2440] T. 31 January 2006, p. 13.

the Tutsi were being "trampled [on] by the soldiers."[2441] Bizimungu ordered his soldiers to remove the Tutsi from the back of the jeep and hand them over to the *Interahamwe* at the roadblock. Bizimungu told the witness that the *Interahamwe* should decide the fate of the Tutsi. Bizimungu then left.[2442] As soon as the soldiers had handed over the Tutsi, Witness GFA and his fellow *Interahamwe* started slapping them and hitting them with clubs. The witness testified that an *Interahamwe* member known as Musafiri then shot and killed the four Tutsi.[2443]

Prosecution Witness GFC

1415. Witness GFC was a member of the *Interahamwe* in 1994.[2444] He testified that he knew Bizimungu and that in 1993, Bizimungu was the operational sector commander in Ruhengeri *préfecture*.[2445]

1416. Following the death of President Habyarimana on 7 April 1994, Witness GFC together with other *Interahamwe* manned the roadblock located near the ISAE, between the Gahanga and Rwangeri areas. While at this roadblock, they intercepted any Tutsi who passed by and handed them over to soldiers from the military position at Rubaka, after which the Tutsi were never seen again.[2446]

1417. Witness GFC testified that on or around 14 April 1994, after the killing of a large number of Tutsi at the ISAE Busogo roadblock,[2447] Bizimungu and around six soldier escorts arrived at the roadblock aboard a military jeep with four Tutsi in the back of the vehicle.[2448] Witness GFC stated, "Bizimungu's batmen were trampling upon [the four Tutsi]".[2449] Bizimungu told Witness GFC and the other *Interahamwe* who were at the roadblock, "Take care of these people, eliminate them, and I don't want to see them again when I come back this way."[2450]

1418. The witness recalled that Alexis Rukundo, the vice chairman of the *Interahamwe* in his *commune*,[2451] shot one of the Tutsi in the presence of Bizimungu, at which point Bizimungu left in his vehicle.[2452] Another individual, whom the witness knew as Bararwerekana, shot another Tutsi.[2453] The *Interahamwe* then beat the remaining Tutsi with clubs and sticks.[2454] Witness GFC testified that he participated in the beating of one of the victims using a stick.[2455] *Interahamwe* together with local residents then buried the bodies.[2456]

[2441] T. 31 January 2006, p. 13.
[2442] T. 31 January 2006, p. 13.
[2443] T. 31 January 2006, p. 14.
[2444] T. 1 March 2005, p. 12.
[2445] T. 1 March 2005, p. 21.
[2446] T. 1 March 2005, pp. 26-27.
[2447] T. 7 March 2005, p. 61. In his first statement of 29 October 2002, Witness GFC gave an approximate date of on or about 14 April 1994. In cross-examination, the witness was unable to recall the exact date, but stated that "it was after the killing of the large number of people that I referred to that Bizimungu brought these four persons".
[2448] T. 1 March 2005, p. 27; T. 8 March 2005, p. 21.
[2449] T. 1 March 2005, p. 27.
[2450] T. 1 March 2005, p. 27.
[2451] T. 1 March 2005, p. 13.
[2452] T. 1 March 2005, p. 27.
[2453] T. 1 March 2005, p. 27.
[2454] T. 1 March 2005, p. 27.
[2455] T. 8 March 2005, p. 9.

Witness GFC stated, "If Bizimungu had not brought [the Tutsi to the roadblock], we would not have seen them, much less kill[ed] them. It is therefore Bizimungu who incited us to kill those four persons."[2457]

4.5.2.1.2.2 Defence Evidence

The Accused Bizimungu

1419. Bizimungu denied that he visited the ISAE Busogo roadblock between 8 and 11 April 1994 with four Tutsi in the back of his vehicle.[2458] He stated that he was involved in other activities at that time and in any case he was travelling in a red pickup rather than a jeep. Bizimungu further stated, "I never brought somebody to be walked over by members of my escort."[2459]

Defence Witness CBP99

1420. Witness CBP99 raised accusations of fabrication against certain witnesses, including Prosecution Witnesses GFC and GFA. Witness CBP99 was arrested on 16 December 1997 and detained for more than six years, mainly in Ruhengeri Prison, before he was released without charge on 23 January 2003.[2460] He testified that Rwandan prosecutors encouraged detainees at Ruhengeri Prison to falsely incriminate former officials.[2461] Specifically, the prosecutors gave the detainees a list of names of high-profile accused individuals, including Augustin Bizimungu, and pressured the detainees to implicate those individuals.[2462]

1421. During Witness CBP99's time in Ruhengeri Prison, he was in regular contact with Witnesses GFA, GFC and GFV.[2463] Witness CBP99 testified that these three witnesses collaborated to falsely implicate Bizimungu in criminal acts. The witness stated, "[Witness GFA] was the one who attempted to organise the co-accused with a view to preparing scenarios that might be sold, in inverted commas, to the *Gacaca* jurisdiction and also before the various courts."[2464] According to Witness CBP99, these three witnesses told him that Bizimungu was not in fact involved in their criminal activities. Witness CBP99 testified, "[GFC, GFA and GFV] all confided in me, saying that Augustin Bizimungu was never present at any of the locations where they had acted, and that he was never part of the preparatory work for their actions."[2465]

[2456] T. 8 March 2005, p. 8.
[2457] T. 3 March 2005, p. 10.
[2458] Defence Counsel mistakenly put it to Bizimungu that paragraph 81 of the Indictment alleged that the killing of four Tutsi at the ISAE Busogo roadblock took place between 8 and 11 April 1994, when in fact the Indictment alleges that those killings took place between 11 and 14 April 1994: T. 11 December 2007, p. 25.
[2459] T. 11 December 2007, p. 27.
[2460] T. 3 March 2008, pp. 38-63.
[2461] T. 3 March 2008, pp. 45, 57-58.
[2462] T. 3 March 2008, pp. 45-58.
[2463] T. 3 March 2008, pp. 65, 77.
[2464] T. 3 March 2008, pp. 65, 77.
[2465] T. 3 March 2008, pp. 58, 77.

Defence Witness DB11-2

1422. Witness DB11-2 is a relative of Prosecution Witness GFA.[2466] Witness DB11-2 testified that Witness GFA was not an *Interahamwe* in 1994, "in view of the fact that he was still a student",[2467] and that he did not undergo any military training.[2468]

1423. Witness DB11-2 followed *Gacaca* proceedings closely in his area and was never absent from the hearings. No mention was ever made during *Gacaca* proceedings of the killing of four Tutsi at a roadblock at ISAE Busogo.[2469] The witness expressed the view that there was never any roadblock at the ISAE Busogo site and that the alleged killing of four Tutsi never took place. According to the witness, "If the incident had occurred, it would have been revealed. It would have been stated before the *Gacaca* courts".[2470]

1424. Witness DB11-2 further testified that while he was in Ruhengeri Prison, employees of the Ruhengeri public prosecutor's office visited and asked him to testify at the ICTR against Nzirorera and Zigiranyirazo. The prosecutors told him that if he agreed to testify before the ICTR, they would tell him what to say and then he would be released.[2471] According to the witness, the prosecutors made the same offer to several other detainees, and those who accepted were removed from the general prison population and told what they should say before the Tribunal.[2472] The witness refused because he did not want to testify on matters that were unknown to him and because he was focused on his own case.[2473]

Defence Witness DE9-7

1425. Witness DE9-7 worked at the ISAE Busogo.[2474] The witness went to the ISAE regularly during April 1994, and when he arrived each morning the staff would inform him of what had transpired during the previous night.[2475]

1426. Witness DE9-7 saw a roadblock near the ISAE on the way to Busugo in the morning of 7 April 1994. He testified that the individuals manning the roadblock were armed with clubs.[2476] He asked the individuals to move the roadblock so that they were not close to the compound of the ISAE, and within approximately 30 minutes they had dismantled the roadblock and moved it away.[2477] The witness testified that he was not aware of the killing of four Tutsi at the ISAE Busogo roadblock[2478] or of the burial of their bodies nearby.[2479]

[2466] T. 12 June 2007, p. 3 (ICS).
[2467] T. 12 June 2007, pp. 35-36 (ICS).
[2468] T. 12 June 2007, pp. 40-42 (ICS).
[2469] T. 12 June 2007, pp. 43-44 (ICS).
[2470] T. 12 June 2007, p. 44 (ICS).
[2471] T. 12 June 2007, p. 42 (ICS).
[2472] T. 12 June 2007, p. 43 (ICS).
[2473] T. 13 June 2007, p. 16 (ICS).
[2474] T. 6 June 2007, pp. 23-24 (ICS).
[2475] T. 6 June 2007, pp. 40-41 (ICS).
[2476] T. 6 June 2007, pp. 39-40 (ICS).
[2477] T. 6 June 2007, pp. 39-40 (ICS).
[2478] T. 6 June 2007, pp. 40-41 (ICS).
[2479] T. 6 June 2007, p. 7.

4.5.2.1.3 Deliberations

1427. The Prosecution relies exclusively on the evidence of Witnesses GFA and GFC to support the allegation in paragraph 81 of the Indictment regarding the killing of four Tutsi at the ISAE Busogo roadblock in Ruhengeri *préfecture*. Because they are accomplice witnesses, the Chamber will consider their testimony with caution.

Witness GFA

1428. Before this Chamber, Witness GFA gave a detailed account of Bizimungu's role in the killing of four Tutsi at the ISAE roadblock, as alleged in paragraph 81 of the Indictment. However, after his testimony before this Chamber, the witness was recalled in the *Karemera et al.* trial, where he specifically recanted his earlier testimony regarding Bizimungu's role in the killing of the four Tutsi at the roadblock near ISAE.[2480] In Chapter III of this Judgement, the Chamber set out in detail the background to Witness GFA's recantation in the *Karemera et al.* trial and the relevant events that have occurred since that recantation. The Chamber considers that this clear recantation renders his evidence on this particular incident unreliable. The Chamber therefore excludes any consideration of Witness GFA's evidence in this regard.

Witness GFC

1429. The Chamber's rejection of Witness GFA's evidence in relation to the killing of four Tutsi at the ISAE Busogo roadblock leaves only the testimony of Witness GFC in support of this allegation against Bizimungu. The Chamber recalls that Witness GFC gave a firsthand account of Bizimungu ordering the killing of the four Tutsi at the roadblock. His evidence seemed largely consistent with his account of this incident given in his pre-trial statements. As Witness GFC is the key witness in relation to this allegation, the Chamber will set out in detail its assessment of his credibility.

1430. The Chamber notes that Witness GFC was arrested and detained in Ruhengeri Prison in 1996 and accused of genocide.[2481] Following his release, the witness denied participation in the genocide before the Rwandan prosecutors.[2482] On 29 October 2002, ICTR investigators met with Witness GFC at Ruhengeri Prison, and the witness provided a detailed statement in which he confessed to having committed acts of genocide.[2483] On 30 October 2002, the witness confessed to the Rwandan authorities that he had committed acts of genocide,[2484] and he was provisionally released from prison on 29 January 2003.[2485] At the time of his testimony, the witness was awaiting sentencing by the *Gacaca* courts.[2486]

1431. The Defence raised a number of submissions challenging Witness GFC's credibility. In particular, the Chamber recalls the Defence submission that Witness GFC lacks credibility in light of the false statements that he gave to Rwandan prosecutors prior to his confession on 30 October 2002 and the circumstances surrounding his statements to Rwandan prosecutors

[2480] Defence Exhibit 689A.
[2481] T. 1 March 2005, pp. 8-9 (ICS).
[2482] T. 2 March 2005, p. 36.
[2483] T. 2 March 2005, p. 16; T. 3 March 2005, pp. 5-7.
[2484] T. 1 March 2005, p. 9 (ICS).
[2485] T. 2 March 2005, p. 19.
[2486] T. 3 March 2005, p. 39.

and ICTR investigators during 2002 and 2003.[2487] In cross-examination, Defence counsel for Bizimungu noted that it was a remarkable coincidence that Witness GFC confessed to Rwandan prosecutors the day after his meeting with ICTR investigators on 29 October 2002, given the witness's claim that he had made his decision to confess several weeks earlier on 25 September 2002.[2488] Defence counsel suggested that the witness had heard that co-detainees were making deals with the ICTR and that he asked to meet with ICTR investigators to see if he could secure a deal himself.[2489] Counsel further suggested that it was only once Witness GFC had secured certain guarantees from the ICTR investigators that he decided to confess to the Rwandan prosecutors.[2490] The witness refuted these assertions and maintained that it was after 25 September 2002, when the Rwandan authorities explained the benefits of confession, that he decided to confess in order to "appease his conscience".[2491]

1432. The Chamber has carefully considered the Defence submission regarding Witness GFC's pre-trial statements and does not find that submission, by itself, to negate the credibility of his testimony. The Chamber is satisfied with the witness's explanations for his initial denial of any involvement in the genocide. The Chamber notes that the witness gave two reasons for his decision to confess to his crimes in 2002: that he wanted to appease his conscience and that he had learned of the advantages of a confession, namely that it might lead to a reduction in sentence and the avoidance of the death penalty.[2492] The Chamber considers these explanations to be credible. Furthermore, given the immense personal significance of the witness's decision to confess, the Chamber considers it plausible that he waited six weeks before providing his confessional statements to ICTR investigators and then to Rwandan prosecutors the following day. Therefore, the Chamber does not consider that the circumstances surrounding his pre-trial statements impair his credibility.

1433. The Defence also sought to impugn the credibility of Witness GFC by pointing out that the witness described Bizimungu's role in ordering the killing of four Tutsi at the ISAE roadblock in his first statement to ICTR investigators on 29 October 2002, but the witness did not mention this incident in his first confessional statement to Rwandan prosecutors the following day. The witness explained this difference by stating that his confession to the Rwandan prosecutors related only to his own participation in the crimes, and therefore it did not refer to Bizimungu.[2493] The Chamber considers this explanation reasonable. Thus, the Chamber does not consider that the variances between his statements impair his credibility.

1434. Notwithstanding the above, the Chamber is reluctant to rely on the evidence of Witness GFC, who is a confessed accomplice in the alleged killings at the ISAE Busogo roadblock, in the absence of credible corroborating evidence. At the time of his testimony before this Chamber, the witness was on provisional release from prison in Rwanda and was awaiting sentencing by the *Gacaca* courts.[2494] The witness had a vested interest in inculpating Bizimungu in these killings and thereby minimising his own participation. In these circumstances, the Chamber finds that it is precarious to ground a finding of fact regarding the alleged killings at the ISAE Busogo roadblock solely on the uncorroborated evidence of

[2487] Bizimungu Closing Brief, paras. 776-780.
[2488] T. 2 March 2005, p. 16; T. 3 March 2005, pp. 5-7.
[2489] T. 3 March 2005, p. 5.
[2490] T. 3 March 2005, pp. 5-7, 18.
[2491] T. 2 March 2005, pp. 41-43; T. 3 March 2005, pp. 3-7; T. 7 March 2005, pp. 21-22.
[2492] T. 2 March 2005, pp. 41-43; T. 3 March 2005, pp. 3-7; T. 7 March 2005, pp. 21-22.
[2493] T. 3 March 2005, pp. 9, 29.
[2494] T. 3 March 2005, p. 39.

Witness GFC, a confessed accomplice. Accordingly, the Chamber finds that the Prosecution has not proved beyond reasonable doubt that Bizimungu bears responsibility for the killing of four Tutsi at the ISAE Busogo roadblock in Ruhengeri *préfecture*.

4.5.2.2 Abduction and Killing of Tutsi by Soldiers and *Interahamwe* in Butare

4.5.2.2.1 Introduction

1435. The Indictment alleges that in Butare starting on 19 April 1994, soldiers from the Rwandan Army and *Interahamwe* abducted and killed many civilians from the *préfecture* office, the Episcopal Church of Rwanda (EER), Gishamvu Church and Nyumba Parish.[2495] The Indictment also alleges that in Butare starting on 19 April 1994, soldiers from the Rwandan Army and *Interahamwe* went on a regular basis to the *préfecture* office, EER, Gishamvu Church and Nyumba Parish to abduct female refugees and rape them. It is alleged that these rapes were often accompanied by humiliating and degrading treatment.[2496] The Indictment alleges that Bizimungu bears superior responsibility for these crimes.[2497]

4.5.2.2.2 Evidence

Prosecution Witness LN

1436. Witness LN lived in Butare from 27 April to 12 June 1994.[2498] During that period, he observed that many people had sought refuge at the Butare *préfecture* office.[2499] The witness testified that at the *préfecture* office, "the people were saying that rape incidents were very frequent and that they happened in full view of everybody."[2500] Sometime between 27 April and 15 May 1994, the witness saw a man, possibly a member of the *Interahamwe*, rape a young female refugee aged less than 13 in the open space in front of the *préfecture* office.[2501] Witness LN stated that the incident occurred in broad daylight and "in full view of everybody".[2502] No one expressed disapproval or sought to prevent the man from raping the girl, including the soldiers who were present at the scene of the attack.[2503] The witness subsequently heard that other children who had sought refuge at the *préfecture* office were also victims of rape.[2504]

Prosecution Witness QBP

1437. Witness QBP, a Tutsi, lived in Butare *préfecture* in 1994. In late May 1994, following attacks during which three of her children were killed, the witness and her remaining four

[2495] Indictment, para. 89.
[2496] Indictment, para. 116.
[2497] Indictment, paras. 78, 110.
[2498] T. 12 September 2005, p. 40 (ICS); T. 12 September 2005, p. 79.
[2499] T. 12 September 2005, p. 82.
[2500] T. 12 September 2005, p. 82.
[2501] T. 12 September 2005, pp. 82-83.
[2502] T. 12 September 2005, p. 82.
[2503] T. 12 September 2005, p. 83.
[2504] T. 12 September 2005, p. 83.

children sought refuge at the Butare *préfecture* office.[2505] When she arrived at the *préfecture* office, she was informed that the Tutsi refugees had moved to EER.[2506]

1438. Witness QBP immediately went to EER, where there were around six classrooms full of Tutsi refugees. She stayed there for a period of one to two weeks.[2507] During that time, soldiers and *Interahamwe* came regularly to EER and killed refugees.[2508] Witness QBP testified, "The soldiers and the *Interahamwe* would come during the daytime when we had come out of the classrooms and then they would take – or grab the men."[2509] At one point, the witness saw soldiers kill seven male refugees in front of classrooms.[2510]

1439. In addition, Witness QBP testified that soldiers and *Interahamwe* came to EER both day and night and took female refugees away to rape them. When the girls returned to EER, the witness observed that they were "in a pitiful state" and they had difficulty walking.[2511] The witness recalled that a young girl named Suzanne, who was the daughter of the witness's neighbour, was abducted by the *Interahamwe*. When Suzanne returned the following day, she was crying and she could hardly walk.[2512] At one point, Witness QBP gave one of her children to Suzanne to hold so that the rapists would leave her alone, but this ploy did not work and the rapists continued to take Suzanne away to rape her.[2513] The witness added that Suzanne's sisters also suffered the same atrocities.[2514]

1440. The EER pastor told the refugees that they had to leave EER, so they moved to the Butare *préfecture* office.[2515] Witness QBP testified that assailants came to the *préfecture* office at night to rape the female refugees.[2516] One night, Minister Pauline Nyiramasuhuko arrived with her son Shalom. They were accompanied by a number of soldiers wearing camouflage uniforms and other people unknown to the witness.[2517] Nyiramasuhuko asked the soldiers at the *préfecture* office, "Are these the remaining accomplices?" Nyiramasuhuko then told them, "[T]hese young Tutsi girls were arrogant, so the time has come for them to be raped, so you have to seize this opportunity." On that instruction, the soldiers and *Interahamwe* attacked the refugees and started raping them.[2518] Soldiers raped three daughters of the witness's neighbour, Mathias, and then took the three girls, including Suzanne, to their parents' house in Ndora *commune*, where they were killed by *Interahamwe*.[2519] The witness also heard from other people that some refugees had been taken in a big van to a place called Kabutare to be killed on the orders of Nyiramasuhuko.[2520]

[2505] T. 5 September 2005, p. 36; Defence Exhibit 54, p. 5.
[2506] T. 5 September 2005, p. 40.
[2507] T. 5 September 2005, p. 41.
[2508] T. 5 September 2005, pp. 41-42.
[2509] T. 5 September 2005, p. 42.
[2510] T. 5 September 2005, p. 44.
[2511] T. 5 September 2005, p. 45.
[2512] T. 5 September 2005, p. 45; T. 6 September 2005, p. 83.
[2513] T. 5 September 2005, p. 45.
[2514] T. 6 September 2005, p. 84.
[2515] T. 5 September 2005, p. 45.
[2516] T. 7 September 2005, p. 34.
[2517] T. 5 September 2005, pp. 52-53; T. 7 September 2005, p. 34.
[2518] Defence Exhibit 54, p. 5; T. 5 September 2005, pp. 52-53.
[2519] Defence Exhibit 54, p. 5.
[2520] Defence Exhibit 54, p. 5.

1441. The following day, the *préfet* told the refugees to leave the Butare *préfecture* office.[2521] The refugees were then driven aboard a bus owned by ONATRACOM to Rango Forest, accompanied by *Bourgmestre* Kanyabashi and one *Interahamwe*.[2522] When they arrived at the forest, each refugee was given a hoe and told to dig their own grave.[2523] The *Interahamwe* asked the refugees to assemble, but the refugees hid behind the trees in the forest.[2524] The witness testified that the impending attack by the *Interahamwe* was foiled when RPF *Inkotanyi* soldiers arrived and the *Interahamwe* subsequently fled.[2525] Those soldiers then took the refugees to another location.[2526]

Prosecution Witness XY

1442. Witness XY, a Tutsi, lived with her family in Butare town in April 1994.[2527] On 22 April 1994, following an attack on her house during which her father and brother were killed, the witness fled to the University Hospital in Butare.[2528] The witness testified that about two weeks after her arrival at the hospital, she and approximately 800 other refugees were relocated to the Butare *préfecture* office.[2529]

1443. The witness stayed at the *préfecture* office for about three weeks, together with a large number of Tutsi refugees.[2530] During that period, soldiers and *Interahamwe* came to the *préfecture* office every day and night to pick up male and female refugees.[2531] The witness identified the soldiers by their military uniforms, military boots and black berets.[2532]

1444. Witness XY testified that on one occasion she saw two soldiers and three *Interahamwe* take her friend Marie and other refugees from the *préfecture* office. When Marie returned the following morning, she was fully dressed but her clothes were dirty and she was wounded on her head.[2533] Marie told the witness that she had been raped in the woods in Rwabayanga, "near the pit where bodies were being thrown", and that the people who were taken away at the same time as Marie were killed in the Rwabayanga woods.[2534]

1445. Numerous other female refugees were taken by soldiers and subsequently returned to the *préfecture* office. Witness XY testified, "The soldiers took their victims ... to the woods and raped them but the victims came back and they did not fail to tell us what had happened."[2535] Some of the girls came back wounded from the attacks.[2536]

[2521] Defence Exhibit 54, p. 5; T. 5 September 2005, p. 79.
[2522] T. 5 September 2005, pp. 79-81.
[2523] T. 5 September 2005, p. 80.
[2524] T. 5 September 2005, p. 81.
[2525] T. 5 September 2005, p. 81.
[2526] T. 5 September 2005, pp. 81-82.
[2527] T. 13 March 2006, p. 7.
[2528] T. 13 March 2006, pp. 7-8.
[2529] T. 13 March 2006, pp. 9-10.
[2530] T. 13 March 2006, pp. 11-12; T. 15 March 2006, p. 3.
[2531] T. 13 March 2006, p. 11.
[2532] T. 13 March 2006, pp. 11-12.
[2533] T. 13 March 2006, pp. 12-13; T. 15 March 2006, pp. 6-9, 11.
[2534] T. 15 March 2006, p. 6; T. 13 March 2006, pp. 11-13.
[2535] T. 14 March 2006, p. 39.
[2536] T. 15 March 2006, p. 4.

1446. Witness XY and other refugees were subsequently transferred to EER by soldiers who were the *préfet's* bodyguards.[2537] She estimated that there were approximately 200 refugees at EER.[2538] The witness testified that rapes and abductions were committed at EER by soldiers in collaboration with *Interahamwe*.[2539] Soldiers came to EER on a daily basis to rape women and girls, but the *Interahamwe* came less frequently.[2540]

1447. The witness was herself raped by a soldier about three weeks after she arrived at EER.[2541] She testified that she was sitting with a group of young girls when a soldier approached them and asked the witness if her name was XY.[2542] The soldier took her into the woods about 300 metres from the group and raped her while hitting her and calling her a "wicked *Inyenzi*".[2543] The witness stayed at EER for another week after this incident.[2544]

4.5.2.2.3 Deliberations

1448. Based on the evidence of Prosecution Witnesses LN, XY and QBP, the Chamber finds that several hundred Tutsi civilians sought refuge at the *préfecture* office and EER in Butare during late April and May 1994. The Chamber will now address the allegations of murder before turning to address the allegations of rape and humiliating and degrading treatment at the Butare *préfecture* office and EER. The Chamber notes that the Indictment also alleges that soldiers and *Interahamwe* committed abductions, murders and rapes at Gishamvu Church and Nyumba Parish in Butare *préfecture*. However, the Prosecution did not lead any evidence regarding the alleged crimes at those locations.

4.5.2.2.3.1 Abduction and Murder of Refugees at the Butare *Préfecture* Office and EER

1449. Witnesses XY and QBP both testified about the abduction and murder of refugees at the *préfecture* office and EER in Butare. At the *préfecture* office, Witness XY saw soldiers and *Interahamwe* take her friend Marie and other refugees away, and when Marie returned she told Witness XY that the other refugees had been killed in the Rwabayanga woods.[2545] Witness QBP testified about an incident when Minister Nyiramasuhuko came to the *préfecture* office and a number of refugees were subsequently taken away and killed by soldiers and *Interahamwe*. Three of the victims were Witness QBP's neighbours.[2546] Similarly, at EER, Witnesses XY and QBP both saw soldiers and *Interahamwe* take away male refugees,[2547] and at one point Witness QBP saw soldiers kill seven male refugees.[2548] The evidence of Witnesses XY and QBP regarding the abduction and killing of refugees in Butare *préfecture* was broadly consistent, and the Chamber considers it to be credible.

[2537] T. 13 March 2006, p. 13.
[2538] T. 15 March 2006, p. 10.
[2539] T. 13 March 2006, p. 14.
[2540] T. 13 March 2006, p. 18.
[2541] T. 13 March 2006, p. 15.
[2542] T. 13 March 2006, p. 15.
[2543] T. 13 March 2006, pp. 15-17; T. 14 March 2006, pp. 46-47.
[2544] T. 13 March 2006, p. 17.
[2545] T. 15 March 2006, p. 6; T. 13 March 2006, pp. 12-13.
[2546] Defence Exhibit 54, p. 5.
[2547] T. 5 September 2005, p. 42; T. 13 March 2006, p. 14.
[2548] T. 5 September 2005, p. 45.

4.5.2.2.3.2 Rape of Female Refugees at the Butare *Préfecture* Office and EER

1450. Witnesses LN, XY and QBP all testified about rapes committed against female refugees at the Butare *préfecture* office during late April and May 1994. Witness XY testified that soldiers and *Interahamwe* came to the *préfecture* office every day and night to pick up refugees.[2549] The female refugees subsequently returned, often wounded, and told the other refugees that they had been raped.[2550] Witness XY saw soldiers and *Interahamwe* take her friend Marie from the *préfecture* office, and when Marie returned she was wounded in the head and she told Witness XY that soldiers had raped her in the woods nearby.[2551] Similarly, Witness QBP testified that assailants came to the *préfecture* office at night to rape the female refugees.[2552] She also testified about an incident when Minister Nyiramasuhuko came to the office and, on Nyiramasuhuko's instructions, soldiers and *Interahamwe* raped a number of refugees.[2553] Witness LN testified that he witnessed the rape of a young female refugee in broad daylight in front of the *préfecture* office, in full view of a number of soldiers.[2554]

1451. Witnesses XY and QBP also testified that soldiers and *Interahamwe* raped a number of female refugees at EER during late April and May 1994.[2555] Witness XY was herself raped by a soldier about three weeks after she arrived at EER.[2556] Witness QBP saw a number of girls taken out of EER by soldiers and *Interahamwe*, and when they returned they were "in a pitiful state" and they had difficulty walking.[2557] Three of the rape victims, including a girl named Suzanne, were the daughters of Witness QBP's neighbour.[2558]

1452. The Chamber notes that the evidence of Witnesses XY, QBP and LN regarding the rapes of female refugees in Butare *préfecture* is broadly consistent and the Chamber considers it to be credible.

4.5.2.2.3.3 Bizimungu's Superior Responsibility

1453. In his testimony before the Chamber, Bizimungu knew or had reason to know of the implication of his subordinates in the rapes and murders committed at the *préfecture* office and EER in Butare, starting on 19 April 1994. The Chamber will consider the full contours of Bizimungu's superior responsibility in the legal findings section of the Judgement.

1454. The Chamber recalls that the Prosecution presented a number of documents showing that Bizimungu was alerted to the dire situation in Rwanda at large and to crimes committed against Tutsi civilians in other parts of Rwanda. For example, the Prosecution tendered a report of the UN High Commissioner for Human Rights, José Ayala-Lasso, regarding his mission to Rwanda from 11 to 12 May 1994. Lasso's report states, "General Bizimungu

[2549] T. 13 March 2006, pp. 11-12.
[2550] T. 13 March 2006, p. 11; T. 14 March 2006, p. 39; T. 15 March 2006, p. 4.
[2551] T. 13 March 2006, p. 12; T. 15 March 2006, pp. 6-9, 11.
[2552] T. 7 September 2005, p. 34.
[2553] Defence Exhibit 54; T. 5 September 2005, pp. 52-53.
[2554] T. 12 September 2005, pp. 82-83.
[2555] T. 13 March 2006, p. 14.
[2556] T. 13 March 2006, p. 15.
[2557] T. 5 September 2005, p. 45.
[2558] T. 5 September 2005, p. 45; T. 6 September 2005, pp. 83-84.

recognized the fact, and expressed regret, that massacres had been committed by forces linked to the Government which he termed as excesses ('*débordements*')."[2559]

1455. In his testimony before this Chamber, Bizimungu acknowledged that between April and July 1994, he received situation reports (SITREPs) twice daily from all Rwandan Army units across the country. The Prosecution presented no evidence regarding the content of those SITREPs. However, Bizimungu admitted that the SITREPs contained information not only about the hostilities between the Rwandan Army and the RPF, but also about the security situation affecting the civilian population of the relevant area.[2560] In relation to Butare, Bizimungu testified:

> [I]n Butare there were events which unfortunately occurred when I was taking up my post as chief of staff. On the 19th I arrived in Kigali. No, in fact I arrived on the 18th, and on the 19th I took over command. So, in Butare there were disturbances and unfortunately, I received reports, but I wasn't told whether such and such a soldier was implicated, but I received reports from soldiers who were on location.[2561]

1456. In addition to Bizimungu's admission set out above, the Chamber will now consider whether it has circumstantial evidence suggesting that Bizimungu in fact knew that his subordinates had committed or were about to commit crimes similar to those alleged in paragraphs 89 and 116 of the Indictment.

1457. The Chamber notes that the crimes established by the testimony of Prosecution Witnesses LN, XY and QBP were committed on a regular basis from mid-April until early June 1994. Rwandan soldiers were present at the Butare *préfecture* office and EER throughout this period, and many soldiers were themselves perpetrators of the crimes. Based on the evidence of these Prosecution witnesses, the Chamber is satisfied that soldiers committed these crimes in a systematic manner. Furthermore, these crimes were committed in premises owned by the government and religious organisations, often in broad daylight and in open locations. During one of these incidents, Pauline Nyiramasuhuko, a minister of the interim government, arrived at the *préfecture* office and incited soldiers to rape the refugees.[2562] In the view of the Chamber, these factors indicate that the crimes that underpin the alleged superior responsibility of Bizimungu were a coordinated series of events as opposed to random crimes.

1458. Having carefully weighed these factors, together with Bizimungu's admission that he received information about "disturbances" that "unfortunately" occurred in Butare at that time, the Chamber is satisfied that Bizimungu must have known of the crimes alleged in paragraphs 89 and 116 of the Indictment. At the very least, Bizimungu certainly possessed information that was sufficiently alarming to put him on notice of the risk that crimes of this nature might be carried out by his subordinates in Butare, thus necessitating further

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[2559] Prosecution Exhibit 194, p. 8. *See also* Prosecution Exhibit 186; Prosecution Exhibit 187; Prosecution Exhibit 191; Prosecution Exhibit 192; Prosecution Exhibit 193; Prosecution Exhibit 195; Prosecution Exhibit 196; Prosecution Exhibit 206.
[2560] T. 13 December 2007, pp. 29-30.
[2561] T. 14 December 2007, p. 24.
[2562] T. 5 September 2005, pp. 52-53; T. 7 September 2005, p. 36.

inquiry.[2563] Nonetheless, the Chamber finds that Bizimungu did not take reasonable and necessary measures to prevent these crimes or to punish the perpetrators.

4.5.2.3 Abduction and Killing of Tutsi by Soldiers and *Interahamwe* in Gisenyi

4.5.2.3.1 Introduction

1459. The Indictment alleges that on 7 April 1994, Anatole Nsengiyumva (the military commander of Gisenyi) held a meeting at Camp Gisenyi and ordered "certain political leaders, local authorities and militiamen ... to kill all RPF accomplices and Tutsi." The Indictment further alleges that Anatole Nsengiyumva "ordered his subordinates to distribute rifles and grenades to militiamen" and that between April and July 1994 militiamen acting under those orders "tracked down, abducted and killed several members of the Tutsi and moderate Hutu population of Gisenyi."[2564] The Indictment alleges that Bizimungu bears superior responsibility for these crimes.[2565]

4.5.2.3.2 Evidence

Prosecution Witness DO

1460. Witness DO testified that in 1994 he was a taxi driver living in Gisenyi.[2566] On 7 April 1994, the witness drove a soldier named Captain Bizumuremyi together with a number of other soldiers, *Interahamwe* leaders and *conseillers* to Camp Gisenyi, where they attended a meeting with the camp commander Colonel Anatole Nsengiyumva.[2567] The witness did not take part in the meeting but he was situated close to where the meeting was held.[2568]

1461. When the participants emerged from the meeting, the witness was close enough to hear Nsengiyumva ask Bizumuremyi to provide the *Interahamwe* with the equipment that they needed "to do their job". The witness also heard Nsengiyumva ask the participants to "distribute ammunition and grenades equipment".[2569] Bizumuremyi then went about distributing firearms, ammunition and grenades to the *Interahamwe* and soldiers who were present, in accordance with Nsengiyumva's instructions. The *Interahamwe* and soldiers formed a number of groups in order to distribute the weapons in Gisenyi town.[2570] The witness was assigned to be the driver for a group consisting of three soldiers and a number of *Interahamwe*.[2571]

[2563] *Hadžihasanović* Appeal Judgement, para. 30; *Strugar* Appeal Judgement, para. 301. *See Čelebići* Appeal Judgement, para. 238 (The Appeals Chamber has made it clear in a number of cases that the information available to the Accused does not need to provide specific details about the unlawful acts committed or about to be committed by his subordinates); *Bagilishema* Appeal Judgement, para. 42; *Krnojelac* Appeal Judgement, para. 155; Media Appeal Judgement, para. 791; *Strugar* Appeal Judgement, para. 298.
[2564] Indictment, para. 90.
[2565] Indictment, para. 78.
[2566] T. 11 May 2006, p. 32 (ICS).
[2567] T. 11 May 2006, pp. 44-46.
[2568] T. 11 May 2006, p. 47.
[2569] T. 11 May 2006, p. 47.
[2570] T. 11 May 2006, pp. 47-48, 58.
[2571] T. 11 May 2006, pp. 58-59.

1462. The witness also testified that the participants emerged from the meeting carrying "lists of people who should be killed on that day."[2572] The list that was given to the witness's group contained about 40 to 45 names of Tutsi and Hutu persons who were to be killed. The leader of the witness's group told the witness that the lists had been drawn up in advance by Nsengiyumva "and his corroborators".[2573] According to the witness, "We had to kill the enemy of the country. And by the word, 'enemy', we were to understand all Tutsi."[2574]

1463. The witness and his group left Camp Gisenyi armed with grenades, pistols and Kalashnikovs as well as traditional weapons.[2575] They drove first to Bugoyi *cellule*, where they killed a Tutsi teacher whose name was on their list together with his daughter.[2576] They also killed a Hutu businessman who they claimed was an accomplice of the Tutsi.[2577] They took the body of the Hutu man to the cemetery located towards the north of Gisenyi town, which became known as *"commune rouge"* because of the killings that took place there during the genocide.[2578] They then travelled to Munduha *cellule*, where soldiers in their group shot and killed a man. The witness's group encountered another group of assailants and together they attacked two Tutsi using machetes.[2579] One of those victims subsequently died from his wounds. Next, the group travelled to Gibunyi *cellule*, where they met another group of assailants and together they killed a Tutsi businessman on their list.[2580] The group then killed a Tutsi businesswoman on their list together with her daughter in Kivumo *cellule*.[2581] Finally, the group killed a Hutu man in Buguye *cellule*.[2582]

1464. Later in the afternoon, the witness returned to Camp Gisenyi, where Nsengiyumva had convened a meeting of the heads of the various groups.[2583] During the meeting, Nsengiyumva stated, "I learned that some people are trying to hide the enemy of Rwanda, and I warn you that anybody who tries to do that once again, shall be killed, together with the person they tried to hide ... In particular, I would like to warn the *conseiller du secteur* of Gisenyi that if these people continue ... to hide the enemy, we will punish them."[2584] Following the meeting, the witness and his group "carried on with the killings."[2585]

1465. On 8 and 9 April, the witness picked up corpses from Camp Gisenyi and took them to the *"commune rouge"* cemetery.[2586] At some point, the witness encountered Nsengiyumva at *commune rouge*, where Nsengiyumva could see people being killed.[2587]

[2572] T. 11 May 2006, p. 48; T. 16 May 2006, p. 5.
[2573] T. 16 May 2006, pp. 5-9.
[2574] T. 11 May 2006, p. 48.
[2575] T. 11 May 2006, pp. 58-59.
[2576] T. 11 May 2006, pp. 59-60.
[2577] T. 11 May 2006, pp. 60-65.
[2578] T. 11 May 2006, pp. 61-62.
[2579] T. 11 May 2006, pp. 65-67; T. 16 May 2006, p. 37.
[2580] T. 11 May 2006, pp. 70-71.
[2581] T. 11 May 2006, pp. 71-72.
[2582] T. 11 May 2006, pp. 72-74.
[2583] T. 11 May 2006, p. 74.
[2584] T. 11 May 2006, p. 74.
[2585] T. 11 May 2006, p. 74.
[2586] T. 15 May 2006, pp. 8, 15.
[2587] T. 17 May 2006, p. 5.

Prosecution Witness OX

1466. Witness OX testified that on 7 April 1994, he saw Colonel Anatole Nsengiyumva, the commander of Camp Gisenyi, with a soldier named Bizimuremyi and a large number of *Interahamwe* leaders at the Gisenyi bus station.[2588] While at the bus station, he saw Bizumuremyi distributing firearms and grenades to *Interahamwe*.[2589]

Prosecution Witness Isaie Murashi

1467. Witness Murashi was a member of the Rwandan parliament living in Gisenyi *préfecture* in April 1994.[2590] He testified that the Rwandan authorities distributed weapons to *Interahamwe* and other civilians in Gisenyi from late 1992 onwards.[2591] At some point during that period, Anatole Nsengiyumva became the operational sector commander in Gisenyi and he was also widely considered to be "the coordinator of the *Interahamwe*" in the area.[2592]

1468. During the weeks preceding the death of the President, Witness Murashi heard from a parish priest in Gisenyi, Father Augustin Ntagara, that lists of individuals to be killed were circulating in Gisenyi and that the witness's name was included on those lists.[2593] The witness heard about the death of the President in the morning of 7 April 1994, and he and his family then sought refuge in the Nyundo seminary.[2594] Later in the afternoon, the witness heard reports of people being killed at Rwambura Parish in Gisenyi. He phoned Father Ntagara, who was in Gisenyi, who told him that following a meeting attended by Anatole Nsengiyumva and *Interahamwe* at the Gisenyi taxi park in the morning of 7 April, *Interahamwe* had started to kill Tutsi.[2595] Shortly after the witness's conversation with Father Ntagara, *Interahamwe* attacked the parish where the witness and his family had taken refuge and killed a number of people.[2596]

1469. After the *Interahamwe* had left, the witness and his family moved to a nearby chapel.[2597] The *Interahamwe* returned that evening and attacked the chapel, killing a number of people including the witness's four children.[2598] The witness moved to the Nyundo cathedral, where he found his wife who had been seriously injured in the attack. The following day, a group of *Interahamwe* led by a Rwandan soldier named Lieutenant Eugene attacked the cathedral.[2599] This was followed by another *Interahamwe* attack on 9 April, during which a number of people were killed including the witness's wife.[2600] Subsequently, the witness was able to escape from the cathedral by posing as a priest.[2601] He later learned

[2588] T. 14 June 2006, pp. 7-8.
[2589] T. 14 June 2006, pp. 8, 66.
[2590] T. 7 September 2006, p. 3.
[2591] T. 7 September 2006, pp. 25-28.
[2592] T. 7 September 2006, pp. 28, 43, 62.
[2593] T. 7 September 2006, pp. 36-37.
[2594] T. 7 September 2006, pp. 37-38.
[2595] T. 7 September 2006, pp. 38-39, 43-44, 62.
[2596] T. 7 September 2006, p. 39.
[2597] T. 7 September 2006, pp. 39, 41.
[2598] T. 7 September 2006, pp. 39-41.
[2599] T. 7 September 2006, pp. 52, 54.
[2600] T. 7 September 2006, p. 54.
[2601] T. 7 September 2006, p. 56.

from a local nun named Sister Fayda that Anatole Nsengiyumva had been moving around Nyundo while the witness and his wife were in the cathedral in Nyundo.[2602]

4.5.2.3.3 Deliberations

1470. The Chamber recalls the testimony of Witness DO that Nsengiyumva held a meeting at Camp Gisenyi on 7 April 1994. After the meeting, the witness heard Nsengiyumva order Captain Bizumuremyi to provide *Interahamwe* with the equipment they needed "to do their job". He also testified that the soldiers and *Interahamwe* who had attended the meeting were provided with lists bearing the names of Hutu and Tutsi individuals who were to be killed. Witness DO's evidence regarding the meeting held at Camp Gisenyi and the activities of Anatole Nsengiyumva during that meeting is not corroborated by the evidence of other Prosecution witnesses.

1471. The Chamber notes that Prosecution Witnesses OX and Murashi gave evidence regarding the killings of civilians in Gisenyi. However, their evidence does not reliably implicate Nsengiyumva in those crimes. Witness Murashi testified that he heard from Father Ntagara that *Interahamwe* had started the killings of Tutsi in Gisenyi after their meeting with Nsengiyumva at a "taxi park" in the morning of 7 April, but Murashi's evidence provides no details of that meeting. Witness OX testified that he witnessed Nsengiyumva's subordinate, Bizimuremye, distributing firearms to *Interahamwe* at the Gisenyi bus station on 7 April, but his evidence lacks any suggestion that Nsengiyumva was present during that meeting. Given that the evidence provided by Witnesses OX and Murashi fails to implicate Anatole Nsengiyumva either in the distribution of weapons to *Interahamwe* or in the crimes that were committed by them, the Chamber finds that the charge contained in paragraph 90 of the Indictment stands or falls on the evidence of Witness DO.

1472. The Chamber recalls that at the time of his testimony, Witness DO was convicted and sentenced to life in prison in Rwanda for his role in genocide-related crimes and was in custody pending his appeal.[2603] Given Witness DO's complicity in the crimes that underlie the charge of superior responsibility against Bizimungu and his desire to exculpate himself, the Chamber will consider his testimony with caution.

1473. The Chamber further recalls that there are a number of significant discrepancies between Witness DO's pre-trial statements, his evidence before the Chamber and the account that he gave during his trial before the Rwandan courts.[2604] In particular, before the Rwandan courts the witness failed to mention significant aspects of his evidence presented to the Chamber such as his visit to Camp Gisenyi in the morning of 7 April 1994, where Nsengiyumva is alleged to have held a meeting with soldiers and *Interahamwe*, as well as the distribution of lists of people to be killed and the provision of weapons to *Interahamwe* immediately following the meeting at the military camp. Contrary to his pre-trial statements and his oral evidence, the witness's statements to the Rwandan courts suggest that he started driving only at around 1.30 p.m. on 7 April rather than in the morning of that day.[2605]

1474. When confronted with these discrepancies, the witness explained that during the Rwandan trials, "[W]e were afraid to tell the truth because we feared that we would be

[2602] T. 7 September 2006, p. 62.
[2603] T. 11 May 2006, pp. 32-36 (ICS).
[2604] Defence Exhibit 110.
[2605] T. 15 May 2006, pp. 49-50.

handed down heavy sentences in relation to the atrocities committed against Tutsis ... If I hadn't lied I would have been handed down the death sentence."[2606] While the Chamber accepts this as a plausible explanation for the witness's general failure to tell the truth before the Rwandan courts, it is not sufficient to account for the above discrepancies.

1475. The Chamber recalls that Witness DO stated before the Rwandan courts that he drove assailants to several locations in Gisenyi starting on 7 April and that those people killed Tutsi.[2607] However, his statement contains no reference to the events at Camp Gisenyi in the morning of 7 April. The Chamber finds this omission to be noteworthy given the importance that the witness accorded to the events at Camp Gisenyi when testifying before this Tribunal about the attacks on Tutsi in Gisenyi. His failure to disclose the information regarding events at the camp is not plausibly explained by his desire to avoid the prospect of a harsh sentence given his admission that he drove the assailants to various locations where they committed atrocities against Tutsi civilians. The Chamber therefore finds that this discrepancy between his statement to the Rwandan courts and his account to the Tribunal raises doubts about this aspect of his evidence.

1476. The Chamber also notes that Witness DO previously testified before this Tribunal in the *Bagosora et al.* case in relation to the events in Gisenyi *préfecture*. During that trial, the *Bagosora et al.* Trial Chamber made a finding that "Witness DO did not give a correct account about whether he had met with members of the Prosecution before commencing his testimony".[2608] The witness was cross-examined on the reasons that led him to deny meeting with members of the Prosecution prior to his testimony in the *Bagosora et al.* trial, and the witness responded that he had not known the names of the Prosecutors in question.[2609] The Chamber notes that it is not bound by findings of other trial chambers and it must make its own independent findings based on the evidence adduced in this case. That said, the Chamber is not convinced by the explanation that Witness DO put forward in cross-examination before this Chamber and finds that this raises further doubts about his credibility.

1477. For these reasons, the Chamber is unwilling to rely exclusively on the contradictory and uncorroborated evidence of Witness DO to substantiate the allegation in paragraph 90 of the Indictment. Accordingly, the Chamber finds that the Prosecution has not proved this charge beyond reasonable doubt.

4.5.2.4 Abduction and Killing of Tutsi by Soldiers and *Interahamwe* in Cyangugu

4.5.2.4.1 Introduction

1478. The Indictment alleges that during the months of April and May 1994 in Cyangugu *préfecture*, members of the Tutsi population who were being hunted down in their *communes* sought refuge at Cyangugu Stadium, as well as in the Camp Nyarushishi compound. It is alleged that soldiers from the Rwandan Army and *Interahamwe* abducted and killed many of those civilian refugees.[2610] The Indictment also alleges that during the months of April and May 1994 in Cyangugu *préfecture*, soldiers from the Rwandan Army and *Interahamwe* regularly abducted Tutsi refugee women at Cyangugu Stadium and raped them and "assaulted

[2606] T. 15 May 2006, pp. 49, 65; T. 11 May 2006, pp. 34-35.
[2607] T. 15 May 2006, pp. 49-50.
[2608] T. 15 May 2006, pp. 27-31; Defence Exhibit 115; *Bagosora* Decision on Alleged False Testimony.
[2609] T. 15 May 2006, pp. 27, 29.
[2610] Indictment, para. 91.

them morally".[2611] The Indictment alleges that Bizimungu bears superior responsibility for these crimes.[2612]

4.5.2.4.2 Evidence

4.5.2.4.2.1 Prosecution Evidence

Prosecution Witness LBC

1479. Witness LBC, a Tutsi, went to Cyangugu Stadium between 20 and 30 April 1994.[2613] The witness testified that she thought she would be protected at the stadium because she had heard that other Tutsi, including members of her family, had sought refuge there.[2614] She estimated that there were approximately 4,000 refugees at the stadium when she first arrived.[2615] She saw soldiers guarding the entrance to the stadium as well as a number of *gendarmes* wearing red berets.[2616]

1480. A girl named Fifi told the witness that the soldiers on guard wanted to see her but that she should not go because they would rape her.[2617] The witness then learned from other refugees that many women were being raped by soldiers at the stadium.[2618] Upon hearing about the rapes, the witness fled the stadium through a hole in a door[2619] and sought refuge in the home of a Hutu acquaintance named André, who is no longer alive.[2620] She stayed at André's house for three days, but then left because he said that soldiers or *gendarmes* had told him that they had seen her at his house.[2621]

1481. The witness returned to the stadium and stayed there until May 1994.[2622] She testified that during her stay at the stadium, she was raped on several occasions by soldiers guarding the stadium.[2623] She also claimed to have witnessed soldiers guarding the stadium rape a number of other women.[2624]

1482. Witness LBC further testified that *Préfet* Bagambiki and Lieutenant Imanishimwe regularly visited the stadium and that they were always accompanied by soldiers who wore military uniforms and black berets.[2625] The witness stated, "The officials would come with a

[2611] Indictment, para. 117.
[2612] Indictment, paras. 78, 110..
[2613] T. 10 October 2005, pp. 7, 45. The witness initially testified that she arrived at the stadium between 20 and 24 April, but when asked again in cross-examination, she stated that she arrived between 24 and 30 April.
[2614] T. 10 October 2005, pp. 7, 41-42, 47-48.
[2615] T. 10 October 2005, p. 7.
[2616] T. 10 October 2005, pp. 11-12.
[2617] T. 10 October 2005, pp. 11, 69.
[2618] T. 10 October 2005, pp. 11-12.
[2619] T. 10 October 2005, pp. 72-73.
[2620] T. 10 October 2005, pp. 13-14.
[2621] T. 10 October 2005, pp. 14, 71-72. In her testimony in chief, the witness referred to "soldiers", but during cross-examination she referred to "*gendarmes*".
[2622] T. 10 October 2005, p. 14.
[2623] T. 10 October 2005, pp. 13, 70. During cross-examination, the witness stated that when she was first interviewed by ICTR investigators, she did not tell them about the rape because she was not brave enough at that time.
[2624] T. 10 October 2005, pp. 11-12.
[2625] T. 10 October 2005, pp. 8, 10-11, 54, 61-62.

list, a list which contained names of persons who had been reported on."[2626] The *préfet* and the Lieutenant would gather Tutsi men whose names were on that list and take them away.[2627] The witness saw a number of her Tutsi neighbours and acquaintances taken away from the stadium and she has not seen them since.[2628]

1483. The witness was told that on the penultimate occasion when the *préfet* and the Lieutenant came to the stadium, the Cyangugu Bishop Thadée Ntihinyurwa arrived and spoke to the two men. After this conversation, the *préfet* and the Lieutenant left without taking any refugees. The witness later heard from other refugees that a refugee in the stadium had called Bishop Ntihinyurwa to inform him that the authorities were on their way.[2629]

1484. On the last occasion when the *préfet* and the Lieutenant came to the stadium, the witness heard from other refugees that the guards disconnected the telephone line to prevent the refugees from making telephone calls.[2630] The witness had not seen any telephone lines at the stadium prior to that time, but she had been told by other refugees that telephone lines existed.[2631]

1485. On or about 10 May 1994, some of the refugees attempted to flee to the Democratic Republic of the Congo ("DRC") because they were exhausted by the daily removal of people.[2632] The witness testified that the soldiers guarding the main entrance tried to prevent the refugees from leaving, but the refugees forced their way out of the stadium.[2633] When the refugees reached the Cyangugu Prison, they came across a group of soldiers who shot at the refugees.[2634] The witness and other refugees ran back towards the stadium. Near the stadium entrance, they encountered *Interahamwe* who hacked a number of refugees to death with machetes.[2635] The witness saw her mother killed by *Interahamwe* outside the stadium.[2636]

1486. Following this incident, the witness stayed in the stadium until Lieutenant Imanishimwe told the refugees that they had to go to another place where they would be settled.[2637] The witness and the other refugees were then transported in buses to Camp Nyarushishi in the Cyangugu *préfecture*.[2638]

[2626] T. 10 October 2005, p. 8.
[2627] T. 10 October 2005, pp. 8, 10, 54, 61-62.
[2628] T. 10 October 2005, p. 10.
[2629] T. 10 October 2005, pp. 9, 53.
[2630] T. 10 October 2005, pp. 9, 67-68.
[2631] T. 10 October 2005, pp. 67-69.
[2632] T. 10 October 2005, p. 15.
[2633] T. 10 October 2005, p. 78.
[2634] T. 10 October 2005, p. 15.
[2635] T. 10 October 2005, p. 15.
[2636] T. 10 October 2005, pp. 19, 80. In cross-examination, when asked why she did not mention that her mother was killed in her first statement to ICTR investigators, the witness stated that the interview did not last long enough for her to provide all the details of her account.
[2637] T. 10 October 2005, p. 15.
[2638] T. 10 October 2005, pp. 15-16, 79-80.

Prosecution Witness LAV

1487. Witness LAV, a Tutsi, arrived at Cyangugu Stadium in mid-April 1994.[2639] When she arrived at the stadium, she saw that all the stands and the football pitch were full of people.[2640]

1488. The witness stayed at Cyangugu Stadium for one to one and a half months.[2641] During this period, soldiers and *Interahamwe* would come to select men and remove them from the stadium using a list of names.[2642] The witness testified that the soldiers were wearing black berets and military uniform, while the *Interahamwe* were wearing uniforms sewn in green *kitenge* cloth with the inscription "MRND".[2643] The witness identified a number of men who were removed in this way, namely, Bernard Nkata, Ananea Gatake, Joseph Karemera, Augustin Kubwayo and a man named Benoit.[2644] The men who were removed from the stadium were not seen alive again.[2645] The witness testified that the families of some of the men, whom she knew personally, found their remains in 2000 and that she took part in the burial of those remains.[2646]

1489. During her time at the stadium, Witness LAV also saw soldiers and *Interahamwe* select female refugees, take them out of the stadium and then bring them back inside again.[2647] The witness observed that the women were walking normally when they left the stadium. However, "When they came back their gait had changed. They were walking with their legs opened. They were walking with their thighs open as if they were infirm."[2648] The witness testified that "those who engaged in these removals would do this both daytime and nighttime".[2649] The witness also saw *Préfet* Bagambiki take a number of female refugees outside the stadium and then bring them back again, including a young girl named Mariana.[2650]

1490. The witness subsequently spoke to some of these women and they told her that soldiers had raped them outside the stadium.[2651] The witness provided the names of four young girls who told her that they had been raped in this way, namely Mukantiwali, Mado Mukayiranga, Fifi and Umulisa.[2652] One woman told the witness that soldiers had taken her to some buildings located behind the stadium and ordered her at gunpoint to remove her clothes and lie down on the ground.[2653] The witness herself was not raped during this time.[2654]

[2639] T. 23 June 2005, pp. 44-46.
[2640] T. 23 June 2005, p. 46.
[2641] T. 27 June 2005, p. 10.
[2642] T. 23 June 2005, p. 46; T. 27 June 2005, pp. 8-9.
[2643] T. 23 June 2005, p. 35.
[2644] T. 27 June 2005, p. 9.
[2645] T. 27 June 2005, p. 10.
[2646] T. 27 June 2005, pp. 10-11.
[2647] T. 23 June 2005, pp. 53-54.
[2648] T. 27 June 2005, p. 6.
[2649] T. 27 June 2005, p. 6.
[2650] T. 27 June 2005, pp. 49-53.
[2651] T. 27 June 2005, p. 5.
[2652] T. 27 June 2005, p. 7.
[2653] T. 27 June 2005, p. 6.
[2654] T. 28 June 2005, p. 44.

1491. The witness testified that during her time at the stadium, employees of the Catholic organisation *Caritas* brought food to the refugees there.[2655] She also recalled that employees of the Red Cross came and evacuated the dying refugees and removed the dead bodies.[2656] The witness did not tell these individuals about the rapes and murders that were taking place at the stadium because she did not think they could help the refugees.[2657]

1492. In cross-examination, Defence counsel challenged the witness as to the presence of *Interahamwe* and soldiers inside the stadium. She confirmed that uniformed soldiers were inside the stadium, but she could not recall whether *Interahamwe* were inside or outside the stadium.[2658]

1493. At one point, some of the refugees at the stadium attempted to flee to the DRC.[2659] A large number of refugees left the stadium before dawn. On their way to the border, the refugees encountered *Interahamwe* and soldiers who attacked them.[2660] The witness testified that she was in front of the Cyangugu Prison during the attack, less than five minutes from the stadium on foot. She saw a number of refugees killed at that location. Other refugees subsequently told her that refugees had also been killed close to the border.[2661]

1494. Witness LAV returned to the stadium together with other refugees who had not travelled far.[2662] Once back in the stadium, the refugees were told that they were going to be taken far from the camp because they were making the town dirty.[2663] A large number of soldiers surrounded the stadium and loaded the refugees onto buses. The soldiers were hitting the refugees and poking them with their guns.[2664] The witness and the other refugees were then taken to another camp in the forest at Nyarushishi.[2665]

1495. The witness stayed in Camp Nyarushishi for between one and one and a half months. During that time, she saw soldiers select and remove Tutsi men from the camp. The men who were removed were not seen again.[2666] She testified that she believed that the soldiers took the men in order to "kill them".[2667]

1496. Witness LAV also testified that a number of Tutsi women, including a woman named Mado Mukayiranga, told her that they had been raped by soldiers in the plastic shelters at the camp.[2668] Some of the women who had been raped warned the witness, "If you see soldiers approaching the makeshift shelters, try and hide … do your best to hide because they can do to you what they are doing to us."[2669]

[2655] T. 28 June 2005, pp. 41-42.
[2656] T. 28 June 2005, pp. 43-44.
[2657] T. 28 June 2005, pp. 49-50.
[2658] T. 28 June 2005, p. 48.
[2659] T. 27 June 2005, p. 11.
[2660] T. 27 June 2005, p. 19.
[2661] T. 27 June 2005, p. 19.
[2662] T. 27 June 2005, p. 12.
[2663] T. 27 June 2005, p. 19.
[2664] T. 27 June 2005, p. 20.
[2665] T. 27 June 2005, p. 20.
[2666] T. 27 June 2005, p. 22.
[2667] T. 27 June 2005, p. 21.
[2668] T. 27 June 2005, pp. 21-22.
[2669] T. 27 June 2005, p. 21.

Prosecution Witness DEA

1497. Witness DEA, a Tutsi, arrived at Cyangugu Stadium on 17 or 18 April 1994. When he arrived, he saw that *gendarmes* were guarding the gates to the stadium and that there were around 3,000 to 4,000 persons inside the stadium.[2670]

1498. The witness testified that the day after his arrival, *Préfet* Bagambiki came to the stadium accompanied by *gendarmes* and soldiers. The *préfet* read out the names of approximately 30 Tutsi men from a list, and the soldiers and *gendarmes* then took those men outside the stadium.[2671] Witness DEA explained that there was a telephone at the stadium and that, when these men were removed, the witness saw one of the refugees head towards the telephone. Shortly afterwards, a bishop named Thadde arrived at the stadium.[2672] The Bishop observed that the men had been taken away, and then he left. The men who had been taken away did not return.[2673]

1499. Witness DEA recalled that the soldiers later came back and removed another four men from the stadium, including a man the witness recognised named Georges who worked in the Cyangugu Department of Public Prosecution.[2674] The witness once again saw a refugee head towards the telephone, and moments later Bishop Thadde arrived at the stadium.[2675] The witness testified that the Bishop asked the *préfet* and the soldiers what they were going to do with the men who had been taken out of the stadium, and they told him that the men were going to be interviewed and then brought back. Those four men subsequently returned to the stadium.[2676] Witness DEA later saw a soldier disconnect the telephone line.[2677]

1500. The soldiers and *gendarmes* returned to the stadium and selected another 30 men, including the witness, this time without mentioning their names.[2678] The soldiers and *gendarmes* took the witness and the other selected men outside the stadium and ordered them to go to Gatandara on foot.[2679] As the men were walking towards Gatandara, a *gendarme* arrived aboard a Land Rover and ordered the soldiers and *gendarmes* to take the men back to the stadium. The men turned around and started walking towards the stadium. After the *gendarme* had left in his vehicle, the soldiers and *gendarmes* once again told the men to go to Gatandara. On the way, the soldiers and *gendarmes* were beating the men and ordering them to walk more quickly.[2680]

1501. When the refugees arrived at Gatandara, they found a roadblock manned by *Interahamwe*.[2681] The *Interahamwe* said that they wanted to start killing the refugees, but the soldiers and *gendarmes* told them to wait. The soldiers and *gendarmes* told the refugees to

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[2670] T. 27 September 2005, pp. 82-83.
[2671] T. 27 September 2005, pp. 83-84; T. 28 September 2005, pp. 3-4, 43.
[2672] T. 28 September 2005, pp. 4, 47.
[2673] T. 28 September 2005, p. 4.
[2674] T. 28 September 2005, pp. 4, 46-47.
[2675] T. 28 September 2005, p. 47.
[2676] T. 28 September 2005, pp. 4, 49.
[2677] T. 28 September 2005, pp. 5, 49. The witness testified that the telephone was located in a small room at the stadium, and he was near the room at the time. The door to the room was open and the witness saw a soldier severe the telephone line using his hands.
[2678] T. 28 September 2005, p. 5.
[2679] T. 28 September 2005, pp. 5-6.
[2680] T. 28 September 2005, pp. 6, 8.
[2681] T. 28 September 2005, pp. 8, 50-51.

hand over all of their possessions, and the refugees gave them their watches and money. Witness DEA handed over 5,000 Rwandan francs, some documents and a watch.[2682] The refugees were then placed into two lines and the soldiers ordered the *Interahamwe* "to start cutting them up".[2683] The soldiers stood around the refugees as the *Interahamwe* started killing them.[2684] The witness testified, "I saw people who were in front of me being cut up. I realised that I was going to suffer the same fate, and at that time, I decided to run. And the others who were with me ran."[2685]

1502. The witness and the other men ran towards Gatandara River. An armed soldier started chasing the witness and he heard grenade explosions and sounds of gunfire. The witness threw himself into the river, where he hid behind some bushes. At that point it was around 7.00 p.m. and it was getting dark.[2686]

1503. The witness estimated that it was after midnight when he came out of the river. As he had nowhere else to go, he went back to Cyangugu Stadium. The witness was afraid of passing through the entrance where the *gendarmes* were stationed, so he scaled the wall on the side of the stadium.[2687] He found a number of refugees, including his parents, inside the stadium. He did not meet the men who had been with him at Gatandara, except for one man named Mugabo.[2688] The witness thought that the other men who had left with him had been killed.[2689]

1504. Witness DEA saw the *gendarmes* and soldiers return to remove other men from the stadium.[2690] At one point, the witness saw a soldier pointing at him and speaking to a *gendarme,* who then started to approach the witness. The witness fled and hid in the crowd, borrowing a jacket and a cap to disguise himself from the *gendarme*.[2691]

1505. After approximately one week, the witness left the stadium because he was afraid of being found.[2692] He hid in a friend's house for a few days, but was discovered by *Interahamwe* who said they were going to kill him.[2693] The witness managed to escape and hid in the forest for approximately one week. He then returned to the stadium because he had nowhere else to go.[2694] After his return to the stadium, the witness did not see any further selection of persons to be taken outside.[2695]

1506. Sometime later, the *préfet* came to the stadium and told the refugees that they had to go to Nyarushishi. At that point, Witness DEA estimated that they had been at Cyangugu Stadium for between two and three months.[2696] The witness and other refugees were

[2682] T. 28 September 2005, p. 8.
[2683] T. 28 September 2005, p. 8.
[2684] T. 28 September 2005, pp. 8-9.
[2685] T. 28 September 2005, p. 8.
[2686] T. 28 September 2005, pp. 8-9.
[2687] T. 28 September 2005, pp. 9, 52-53.
[2688] T. 28 September 2005, p. 9.
[2689] T. 28 September 2005, p. 10.
[2690] T. 28 September 2005, pp. 10-11.
[2691] T. 28 September 2005, pp. 10, 53-56.
[2692] T. 28 September 2005, pp. 11, 57.
[2693] T. 28 September 2005, pp. 11-13, 58-61.
[2694] T. 28 September 2005, p. 14.
[2695] T. 28 September 2005, p. 15.
[2696] T. 28 September 2005, p. 15.

transported to Nyarushishi in ONATRACOM buses escorted by soldiers.[2697] When the witness arrived at Nyarushishi, he observed that there were *gendarmes* guarding the camp and that there were a large number of refugees inside.[2698] He remained in the camp until the end of July.[2699]

4.5.2.4.2.2 Defence Evidence

The Accused Bizimungu

1507. During cross-examination, Prosecution counsel referred Bizimungu to Prosecution Exhibit 191, a United States declassified document dated 13 May 1994. The document contains the content of a conversation between Bizimungu and Prudence Bushnell, the Assistant Secretary of State for African Affairs in the United States Government. During that conversation, Bushnell advised Bizimungu that the United States Government would hold him, Colonel Bagosora and the President of Rwanda personally accountable for whatever happened to the people who had sought refuge from the massacres in Rwanda, including those individuals in Cyangugu Stadium. Bizimungu responded by listing a number of reasons why he was powerless to control events in Rwanda. In response to Bizimungu's claim that a ceasefire was needed for him to restore order, Bushnell suggested that he release everyone in Cyangugu Stadium as a gesture of the Rwandan government's sincere intentions. Bizimungu retorted that he had no communications with Cyangugu and that he could only communicate by telephone with the outside world.[2700]

1508. When confronted with this document in cross-examination, Bizimungu stated, "The Cyangugu Stadium—we knew that there were more than 5,000 persons at the Cyangugu Stadium. Although I may not know the exact number of people who were in Cyangugu, I did not know who they were, but all I knew was that there was no problem with those people because they were held in a refugee – in a camp for displaced persons."[2701]

4.5.2.4.3 Deliberations

1509. Based on the evidence of Prosecution Witnesses LBC, LAV, DEA and Bizimungu himself, the Chamber finds that following the death of President Habyarimana on 6 April 1994, approximately 4,000 to 5,000 Tutsi civilians sought refuge at Cyangugu Stadium from the violence against Tutsi in their areas.[2702] The Chamber will now determine whether refugees at Cyangugu Stadium were abducted and killed, as alleged in paragraph 91 of the Indictment, and then whether refugees were raped at the stadium, as alleged in paragraph 117.

[2697] T. 28 September 2005, pp. 14-15.
[2698] T. 28 September 2005, p. 15.
[2699] T. 28 September 2005, pp. 17, 81-82.
[2700] Prosecution Exhibit 191; T. 13 December 2007, pp. 52-53.
[2701] T. 13 December 2007, p. 53.
[2702] T. 27 September 2005, p. 83; T. 10 October 2005, p. 7; T. 13 December 2007, p. 53.

4.5.2.4.3.1 Abduction and Killing of Refugees at Cyangugu Stadium

1510. Prosecution Witnesses LBC, LAV and DEA gave first hand accounts of a number of instances when uniformed soldiers came to Cyangugu Stadium and selected Tutsi men from among the refugees using a list of names, after which the selected men were removed.[2703] The witnesses' evidence regarding the removal of Tutsi men from the stadium was largely consistent and the Chamber finds it to be credible.

1511. Notwithstanding the above finding, the Chamber notes that there are certain discrepancies between the accounts of the three witnesses regarding the involvement of *Interahamwe* and *gendarmes* in the removal of Tutsi men from the stadium. In particular, Witness LAV testified that *Interahamwe* assisted with the removal process,[2704] whereas Witness DEA testified that *gendarmes* were involved but he did not implicate the *Interahamwe*.[2705] Witness LBC explicitly stated that *gendarmes* were not involved in the removal of Tutsi men from the stadium.[2706]

1512. Regarding the role of *Interahamwe* inside the stadium, the Prosecution alleges that both soldiers and *Interahamwe* abducted and killed civilians who had taken refuge at Cyangugu Stadium.[2707] The Chamber notes that Witness LAV did not mention the presence of *Interahamwe* inside the stadium in the statement that she gave to ICTR investigators in 1999.[2708] The Chamber also recalls the equivocal response of Witness LAV when cross-examined about the presence of *Interahamwe* inside the stadium.[2709] The witness's uncertainty on this point contrasted with her insistence that soldiers of the Rwandan Armed Forces were present inside the stadium.[2710] Given that Witness LAV's testimony was not corroborated on this point, the Chamber considers that there is not sufficient credible and reliable evidence to find that *Interahamwe* assisted with the removal of Tutsi men from the stadium. The Chamber accepts, however, that *Interahamwe* were present in the immediate environs of the stadium.

1513. The Chamber will now assess the Prosecution evidence regarding the killing of Tutsi male refugees who were removed from the stadium.[2711] The Chamber notes that Witness DEA was the only witness to provide a first-hand account of what happened to the men after they were removed from the stadium. He testified that soldiers and *gendarmes* took him and 29 other men from the stadium to a roadblock manned by *Interahamwe* at Gatandara, where the soldiers and *gendarmes* took the refugees' possessions and then ordered the *Interahamwe* to kill them.[2712] The *Interahamwe* killed some of the men in front of the witness, but he managed to escape.[2713]

[2703] T. 23 June 2005, p. 46; T. 27 June 2005, pp. 8-9; T. 27 September 2005, pp. 83-84; T. 28 September 2005, pp. 3-4, 43; T. 10 October 2005, pp. 8, 10-11, 54, 57, 61-62.
[2704] T. 23 June 2005, p. 46; T. 27 June 2005, pp. 8-9.
[2705] T. 27 September 2005, pp. 83-84; T. 28 September 2005, pp. 3-4, 43.
[2706] T. 10 October 2005, p. 73.
[2707] Indictment, para. 91.
[2708] T. 28 June 2005, p. 48.
[2709] T. 28 June 2005, p. 48.
[2710] T. 28 June 2005, pp. 48-49.
[2711] T. 27 June 2005, p. 10; T. 28 September 2005, p. 4; T. 10 October 2005, p. 10.
[2712] T. 28 September 2005, pp. 5-8.
[2713] T. 28 September 2005, pp. 8-9.

1514. In the view of the Chamber, Witness DEA tended to exaggerate some aspects of his testimony, particularly when describing his numerous close escapes from death. The Chamber notes, however, that his testimony is corroborated in important respects by the testimony of Witnesses LBC and LAV.[2714] Regarding events inside the stadium, all three witnesses testified that soldiers would select Tutsi men from among the refugees using a list of names, after which the selected men were removed from the stadium. Witnesses DEA and LBC both testified about an incident when the refugees telephoned the Cyangugu Bishop, who then came to the stadium.[2715] Witnesses DEA and LBC also testified that the telephone lines at the stadium were subsequently disconnected.[2716] Regarding what happened to the Tutsi men who were removed from the stadium, the Chamber considers that the evidence of Witnesses LAV and LBC corroborates Witness DEA's testimony. Witnesses LAV and LBC both testified that the men who were removed from the stadium were never seen again. Some of the selected men were their acquaintances. Witness LAV identified five of the men whom she knew personally. She testified that remains of some of the men were discovered by their families in 2000, and that she took part in the burial of those remains.[2717] In view of this strong corroboration of Witness DEA's evidence, the Chamber finds that his embellishment of some aspects of his account does not in itself impair the overall credibility of his testimony.

1515. The Defence notes that Witness DEA previously testified before this Tribunal in the *Ntagerura et al.* case against three Accused, including *Préfet* Bagambiki, in relation to the events at Cyangugu Stadium and surrounding areas.[2718] The Bizimungu Defence emphasises that the Trial Chamber in that case did not find Witness DEA to be a credible and reliable witness and that it considered his testimony to be exaggerated.[2719] The Defence submits that this Chamber should adopt the same position as the Trial Chamber in the *Ntagerura et al.* case. The Chamber is not persuaded by this submission. This Chamber makes its own independent findings based on evidence tendered in this case. It is not bound by findings of other trial chambers and it must not merely accept the credibility assessments of a previous trial chamber.

1516. Based on the evidence of Prosecution witnesses, the Chamber is satisfied that on numerous occasions male Tutsi refugees were removed from the stadium by soldiers and then killed by soldiers and *Interahamwe*. The eyewitness account of Witness DEA, taken in conjunction with the evidence of Witnesses LAV and LBC that the refugees who were led out of the stadium by the soldiers were never seen again, leads the Chamber to conclude that the only reasonable inference is that those refugees were killed by soldiers and *Interahamwe*. The Chamber is satisfied that the Prosecution witnesses' claim that the refugees who were removed from the stadium were never seen again is predicated on a reliable basis of knowledge. The three Prosecution witnesses were natives of Cyangugu and were acquainted with some of the victims.

1517. The Chamber recalls that Witnesses LBC and LAV also testified about an incident that took place when the refugees tried to leave Cyangugu Stadium to go to the DRC.

[2714] This stands in contrast to the *Ntagerura et al.* case, where the witness's testimony regarding the events in the Kamarampaka stadium was not corroborated. *See Ntagerura et al.* Trial Judgement, para. 327.
[2715] T. 28 September 2005, pp. 4, 47; T. 10 October 2005, p. 53.
[2716] T. 28 September 2005, pp. 5, 49; T. 10 October 2005, p. 9.
[2717] T. 27 June 2005, pp. 10-11.
[2718] T. 28 September 2005, p. 30.
[2719] T. 28 September 2005, pp. 31, 34.

Witness LBC estimated that this occurred on or about 10 May 1994,[2720] whereas Witness LAV did not provide a specific date. Both witnesses testified that on their way to the DRC the refugees encountered *Interahamwe* who hacked a number of refugees to death.[2721] Witness LBC saw her mother killed by *Interahamwe* just outside the stadium.[2722] The witnesses' accounts of this incident were broadly consistent, and the Chamber considers that this bolsters the witnesses' credibility.

4.5.2.4.3.2 Rapes at Cyangugu Stadium

1518. Witnesses LBC and LAV testified about a number of incidents where soldiers selected female refugees at Cyangugu Stadium, took them outside and raped them, and then brought them back inside the stadium.[2723] Witness LBC testified that she was raped more than once by soldiers guarding the stadium[2724] and that she personally saw a number of other women being raped by those soldiers.[2725]

1519. The Chamber considers that Witnesses LBC and LAV provided consistent and credible evidence concerning the rapes committed by soldiers at the stadium. Both witnesses referred to a girl named Fifi,[2726] and Witness LAV provided the names of three other women who she said were also rape victims.[2727] Based on the evidence of these two witnesses, the Chamber finds that soldiers raped a number of Tutsi refugee women at Cyangugu Stadium during April and May 1994.

1520. Regarding the involvement of *Interahamwe* in the rapes, the Chamber recalls that Witness LAV initially testified that both soldiers and *Interahamwe* took women outside the stadium and then brought them back in again.[2728] For the remainder of her testimony, however, the witness described only the role of soldiers in raping women at the stadium, without repeating her earlier statement about the role of *Interahamwe* in those rapes.[2729] When asked whether women at the stadium were raped by "other civilians apart from the soldiers", the witness responded, "No, just soldiers did that."[2730] The Chamber also recalls that Witness LAV did not mention the presence of *Interahamwe* inside the stadium in her statement to ICTR investigators in 1999[2731] and that she appeared uncertain when cross-examined on this point.[2732] Given that Witness LBC did not testify about rapes committed by *Interahamwe* in the stadium and that the testimony of Witness LAV appeared equivocal on this point, the Chamber considers that there is insufficient evidence to find that *Interahamwe* raped women at Cyangugu Stadium.

[2720] T. 10 October 2005, pp. 15, 78.
[2721] T. 27 June 2005, p. 19; T. 10 October 2005, p. 15.
[2722] T. 10 October 2005, p. 19.
[2723] T. 10 October 2005, pp. 11-12.
[2724] T. 10 October 2005, p. 13.
[2725] T. 10 October 2005, pp. 11-12.
[2726] T. 27 June 2005, p. 7; T. 10 October 2005, pp. 11, 69.
[2727] T. 27 June 2005, p. 7.
[2728] T. 23 June 2005, pp. 53-54.
[2729] T. 27 June 2005, pp. 5-7.
[2730] T. 27 June 2005, p. 7.
[2731] T. 28 June 2005, p. 48.
[2732] T. 28 June 2005, p. 48.

4.5.2.4.3.3 Abduction and Killing of Refugees from the Nyarushishi Camp Compound

1521. The three Prosecution witnesses also testified that at some point they were transferred from Cyangugu Stadium to Camp Nyarushishi compound. Witness LAV testified that, during her time at Camp Nyarushishi, soldiers would select and remove Tutsi men from the camp and the selected men did not return.[2733] The Chamber recalls that neither Witness LBC nor Witness DEA gave evidence regarding the selection and removal of men from Camp Nyarushishi.

1522. The Chamber notes that the time period of the allegation in paragraph 91 of the Indictment is limited to April and May 1994. Witness LAV estimated that the refugees were transferred from Cyangugu Stadium to Camp Nyarushishi in mid- to late May 1994[2734] and she testified that she remained at Camp Nyarushishi for one to one and a half months thereafter.[2735] Witness LBC did not specify when the refugees were transferred, but she stated that it was after the killings that took place outside the stadium on our around 10 May 1994.[2736] Witness DEA testified that he arrived at Cyangugu Stadium on 17 or 18 April[2737] and he estimated that he was transferred to Camp Nyarushishi approximately two to three months later.[2738]

1523. In view of the uncertainty regarding the date on which the refugees were transferred to Camp Nyarushishi, the vagueness of Witness LAV's testimony regarding the selection and removal of men from the camp, and the lack of corroboration on this point, the Chamber considers that there is not sufficient evidence to find that soldiers and *Interahamwe* selected and removed men from Camp Nyarushishi in the course of April and May 1994.

4.5.2.4.3.4 Bizimungu's Superior Responsibility

1524. The Chamber will now determine whether Bizimungu knew or had reason to know of the role of his subordinates in the crimes committed against Tutsi refugees at Cyangugu Stadium. The Chamber will consider the full contours of Bizimungu's superior responsibility in the legal findings section of the Judgement.

1525. The Chamber notes that on 13 May 1994, Bizimungu had a telephone conversation with Prudence Bushnell. During that conversation, Bushnell expressed concern for the welfare of the refugees at the stadium and advised Bizimungu that the United States Government would hold him personally accountable for whatever happened to those refugees.[2739] In the view of the Chamber, this conversation put Bizimungu on notice that his subordinates had committed crimes against refugees at the stadium.

1526. The Chamber recalls that Bizimungu acknowledged in cross-examination that he knew in May 1994 that there were about 5,000 refugees at the stadium.[2740] The Chamber

[2733] T. 27 June 2005, pp. 21-22.
[2734] T. 23 June 2005, p. 38; T. 27 June 2005, p. 21. Witness LAV testified that she arrived at the stadium around 15 April 1994 and she estimated that she was transferred to the Nyarushishi camp approximately one to one and a half months later.
[2735] T. 27 June 2005, p. 21.
[2736] T. 10 October 2005, pp. 14-15, 78.
[2737] T. 27 September 2005, p. 82.
[2738] T. 28 September 2005, p. 15.
[2739] Prosecution Exhibit 191.
[2740] T. 13 December 2007, p. 53.

considers that the large number of refugees present at the stadium, the scale and systematic nature of the crimes committed against those refugees, and the presence of soldiers of the Rwandan Army provide further evidence that Bizimungu knew or had reason to know about the crimes that were committed at the stadium.

1527. The Defence submits that Bizimungu was never informed of the crimes committed at Cyangugu Stadium and was therefore unable to take the necessary measures to punish the perpetrators.[2741] The Defence further submits that the international organisations that were present at the stadium, most notably the Red Cross and *Caritas*, never alerted Army Headquarters about the crimes committed by the soldiers.[2742] In support of this submission, the Defence points to Witness LAV's testimony that she did not report the rapes and murders to the Red Cross and *Caritas* employees present at the stadium.[2743] The Defence also points to Witness LBC's testimony that neither she nor the other women who were raped at the stadium had the courage to mention the rapes to anyone at the time.[2744]

1528. The Chamber is not persuaded by the submissions of the Defence. As the Chamber noted earlier in the Judgement, the failure of the rape victims to report the crimes is understandable given the situation at the time, particularly the fact that the perpetrators were still present at the stadium. In the view of the Chamber, Bizimungu's telephone conversation with Bushnell on 13 May 1994, considered together with evidence of the large number of refugees at the stadium, the scale and systematic nature of the crimes committed against those refugees, and the presence of Rwandan soldiers, show that Bizimungu knew or had reason to know about the crimes that were committed against refugees at the stadium. Nonetheless the Chamber finds that Bizimungu did not take reasonable and necessary measures to prevent the crimes or to punish the perpetrators.

4.5.3 *Ndindiliyimana*

4.5.3.1 Killing of Ignace Habimana and Célestin Munyanshagore in Nyaruhengeri

4.5.3.1.1 Introduction

1529. The Indictment alleges that on 5 May 1994, Ndindiliyimana ordered that two Tutsi men called Ignace Habimana and Célestin Munyanshagore be killed. It is alleged that this order was then carried out by a group of *Interahamwe* that included Pierre Kajuga.[2745]

4.5.3.1.2 Evidence

4.5.3.1.2.1 Prosecution Evidence

Prosecution Witness GFR

1530. For reasons already set out in Chapter III of the Judgement, the Chamber has excluded Prosecution Witness GFR's evidence in arriving at its conclusions.

[2741] Bizimungu Closing Brief, para. 1094.
[2742] Bizimungu Closing Brief, para. 1094.
[2743] T. 28 June 2005, pp. 49-50.
[2744] T. 10 October 2005, pp. 69-70.
[2745] Indictment, paras. 78, 93.

Prosecution Witness FAV

1531. Witness FAV testified that he knew both Ignace Habimana and Célestin Munyanshagore and that both of them were Tutsi. He explained that after 21 April 1994, Habimana and Munyanshagore went into hiding. Witness FAV provided differing accounts as to the location of their hideout. Initially, he claimed that they both took refuge in the house of Kaleinijabo's mother, that their hideout was not far from the place where he himself was hiding, and that he would meet Habimana and Munyanshagore at night.[2746] Witness FAV later stated that "these two persons were hiding at my maternal grandfather's place".[2747] He also testified that "the two men would go to Kalinijabo's place or be at my grandfather's house".[2748] Finally, the witness stated, "Ignace and Célestin first lived at Hakizayezu's place. Ignace and Célestin hid in Hakizayezu's home and it was six metres away from where I was hiding".[2749]

1532. Witness FAV testified that on 5 May, Ndindiliyimana visited Kabeza, who was the *bourgmestre* of Nyaruhengeri. According to the witness, Ndindiliyimana instructed Kabeza to track down and kill Ignace Habimana and Célestin Munyanshagore.[2750] The witness claimed that he saw Ndindiliyimana in Nyaruhengeri on 5 May "riding a ... Pajero vehicle".[2751] However, the witness was not present when Ndindiliyimana visited Kabeza.

1533. When asked how he knew of the order given by Ndindiliyimana, Witness FAV explained that he heard *Interahamwe* openly talking about it while he was "lying down in a sorghum field".[2752] The witness claimed that he heard the attackers say "that they have come to look [for] Ignace and Célestin and ... Ndindiliyimana has instructed that these people be killed".[2753] In addition, the witness claimed that he subsequently learned of Ndindiliyimana's order to kill Ignace Habimana and Célestin Munyanshagore because "those who committed those murders have confessed [to] having committed those crimes, and they have indicated the name of the person who gave them the orders to do so".[2754]

1534. The witness then testified that on 5 May, *Interahamwe* visited Hakizayezu at his home and informed him of Ndindiliyimana's order to kill Ignace Habimana and Célestin Munyanshagore.[2755] The witness explained that at the time this conversation took place, he was hiding in a sorghum field situated about six metres away from Hakizayezu's house and could therefore overhear the conversation between Hakizayezu and the *Interahamwe*.[2756] He explained that the bean field had stalks that were 40 to 45 centimetres high and that he would hold his breath when the *Interahamwe* were around so that they did not see or hear him.[2757]

1535. Witness FAV provided differing accounts as to the number of *Interahamwe* who came to Hakizayezu's house to look for Ignace Habimana and Célestin Munyanshagore , as well as

[2746] T. 21 September 2004, p. 33.
[2747] T. 23 September 2004, pp. 51-52.
[2748] T. 23 September 2004, p. 56.
[2749] T. 23 September 2004, p. 59.
[2750] T. 21 September 2004, pp. 33-34.
[2751] T. 23 September 2004, p. 55.
[2752] T. 21 September 2004, p. 34; T. 23 September 2004, pp. 51-53, 56.
[2753] T. 23 September 2004, pp. 53, 55.
[2754] T. 23 September 2004, p. 55.
[2755] T. 23 September 2004, pp. 57-58, 64.
[2756] T. 21 September 2004, p. 34; T. 23 September 2004, p. 53.
[2757] T. 23 September 2004, pp. 58-59, 62-63.

differing accounts as to the identity of those *Interahamwe*. For example, the witness stated, "The *Interahamwe* came looking for them in the company of somebody, whose name we didn't mention; namely Gilbert and Hakizayezu".[2758] He then testified, "Ignace and Célestin were picked up by two men".[2759] He also claimed that three men named Kajuga, Gasper Gubanana and Rubamenpasa "went and killed these two people".[2760] Finally, he suggested that he "saw five *Interahamwe*", including Kajuga and Gilbert Kabilizi, come and look for Habimana and Munyanshagore.[2761]

1536. He testified that at some unspecified point in time, Ignace Habimana and Célestin Munyanshagore left their hiding place and returned to their houses at the suggestion of Hakizayezu.[2762]

1537. The witness then provided specific details in relation to the killing of Ignace Habimana. It is unclear, however, how he came to learn these details. The witness explained that Habimana returned home and hid in the ceiling of his house. He testified that Habimana's attackers were beating Habimana's wife and that this prompted Habimana to reveal himself and say, "If you are looking for me, here I am. You can arrest me rather than beat up my wife". Habimana was then killed.[2763] The witness did not provide detailed evidence in relation to the manner in which Célestin Munyanshagore was killed.

Prosecution Witness GFS

1538. Witness GFS was a relative of Célestin Munyanshagore.[2764] She testified that on 22 April 1994, she fled the violence in Nyaruhengeri and went to Ndora *commune* in Gisagara, where she remained until the end of May.[2765] While in Gisagara, the witness heard that Munyanshagore had been killed by "people of Nyaruhengeri that worked in Gisagara". She testified that Munyanshagore was hiding in the house of his friend Augustin Hakizayezu when he was killed around 5 May. She did not, however, know the circumstances of his death.[2766]

1539. At the end of May (sometime after 22 May), Witness GFS returned to Nyaruhengeri in order to resume work.[2767] Her evidence in this regard was different from her prior written statement, which stated, "In early May 1994, I heard that [Célestin Munyanshagore] was killed on May 5th; so I returned to my *commune*".[2768] The witness explained this difference by claiming that her prior written statement was wrong and that she did not agree with everything that was contained in it.[2769]

[2758] T. 21 September 2004, p. 33.
[2759] T. 23 September 2004, p. 53.
[2760] T. 21 September 2004, pp. 33-34; T. 23 September 2004, p. 52.
[2761] T. 23 September 2004, pp. 61, 63.
[2762] T. 21 September 2004, pp. 33-34.
[2763] T. 21 September 2004, p. 34.
[2764] T. 27 September 2004, pp. 19, 26.
[2765] T. 27 September 2004, pp. 23-24; T. 29 September 2004, pp. 15, 20.
[2766] T. 27 September 2004, p. 36; T. 27 September 2004, pp. 44, 46-47 (ICS); T. 16 February 2009, p. 40; T. 29 September 2004, p. 23.
[2767] T. 28 September 2004, pp. 43-44; T. 29 September 2004, pp. 15-17.
[2768] Defence Exhibit 2; T. 29 September 2004, p. 20.
[2769] T. 28 September 2004, pp. 43-44, 48-50.

1540. After returning to Nyaruhengeri, the witness was informed by Kabeza's wife about the circumstances of Célestin Munyanshagore's death.[2770] Kabeza's wife informed her that Ndindiliyimana, who thought that Kabeza was hiding Munyanshagore, had come to their house looking angry and asked Kabeza to give up Munyanshagore so that he could be killed like other Tutsi.[2771] Ndindiliyimana further threatened to treat Kabeza as an "*Inkotanyi* accomplice" unless he complied with that order.[2772]

1541. According to the witness, Kabeza's wife claimed to have been present when Ndindiliyimana ordered Kabeza to surrender Célestin Munyanshagore.[2773] Kabeza's wife also informed Witness GFS that Kabeza knew that Munyanshagore was hiding at the house of Augustin Hakizayesu and that following Ndindiliyimana's order, Kabeza sent a message to Hakizayesu requesting him to surrender Munyanshagore.[2774] Following Kabeza's order, Munyanshagore together with Ignace Habimana were ousted from Hakizayesu's house and killed.[2775] The witness stated that she believed that Munyanshagore was killed "because he was a Tutsi".[2776] However, she was "surprised" to learn that Ndindiliyimana "personally went to look for [Célestin Munyanshagore]".[2777]

1542. She also testified that at the end of the war, other neighbours corroborated the story recounted to her by Kabeza's wife. This included the wife of Ignace Habimana, who confirmed that both Munyanshagore and Habimana had been taken from Hakizayesu's house to Habimana's house, where they "were killed" in the "presence" of Habimana's wife.[2778]

Prosecution Witness GFT

1543. Witness GFT was a relative of Ignace Habimana. She testified that on 22 April, following the grenade attack at the *secteur* office in Nyaruhengeri, she went to hide at her friend Joseph Kagenza's house.[2779] She claimed that Habimana and Célestin Munyanshagore went to hide in the house of a person known as Augustin Hakizayesu.[2780]

1544. On 3 May, Hakizayezu visited Witness GFT at Kagenza's house and told her that she could return to her family home where Ignace Habimana was and that Hakizayezu would ensure their safety.[2781] Consequently, the witness returned to her home.

1545. On 5 May, Hakizayezu once again contacted the witness and asked her to call Munyanshagore and Habimana. Hakizayezu then met Munyanshagore and Habimana in an alley between the two houses and told them that they should find another place to hide because Ndindiliyimana had given an order for them to be killed.[2782] Following this

[2770] T. 29 September 2004, pp. 23-25.
[2771] T. 27 September 2004, pp. 44-46 (ICS).
[2772] T. 27 September 2004, p. 44 (ICS).
[2773] T. 27 September 2004, pp. 45-46 (ICS).
[2774] T. 27 September 2004, pp. 44-46 (ICS).
[2775] T. 27 September 2004, pp. 45-47 (ICS).
[2776] T. 28 September 2004, p. 32.
[2777] T. 28 September 2004, p. 32.
[2778] T. 27 September 2004, p. 47 (ICS).
[2779] T. 10 January 2005, p. 21.
[2780] T. 10 January 2005, pp. 22, 27.
[2781] T. 10 January 2005, pp. 27-28.
[2782] T. 10 January 2005, p. 28.

information, Habimana hid in the ceiling of his house. Munyanshagore went to hide in a nearby unused house and the witness went to hide in her neighbour Ntangorane's house.[2783]

1546. Witness GFT testified that at some point in the afternoon of 5 May, Kajuga arrived at the house where the witness was hiding and demanded that she inform him of the whereabouts of Habimana. Kajuga also informed the witness that Hakizayesu had received an order from Ndindiliyimana for Habimana and Munyanshagore to be killed.[2784]

1547. The witness provided two accounts of what happened after this encounter with Kajuga. Initially, she claimed that Kajuga forcibly took her to a sorghum field where she saw the dead body of Munyanshagore and took her back to her home. In cross-examination, however, she clarified that Kajuga forcibly took her and that they first passed by her house before he led her to the dead body of Munyanshagore. There the witness and Kajuga met the "murderous accomplices" who informed them that Munyanshagore had been chased over a fence before being killed. The witness recalled that Kajuga was armed when he came to the home.[2785]

1548. The witness was then taken back to her house where a group of about 15 people had gathered.[2786] There, Kajuga kicked the door of the house open and searched for Habimana but could not find him. Kajuga then began to beat Habimana's wife. This prompted Habimana to come out of his hiding place and reveal himself.[2787]

1549. The witness testified that thereafter, Habimana was attacked by Kajuga and the group of approximately 15 other people who had gathered at the house.[2788] While they were attacking him, the witness managed to escape and again went to hide in the house of Kagenza.[2789] She testified that she was later informed by her neigbours that Habimana had been killed.[2790]

1550. Around 7 May, one of Witness GFT's neighbours told her that a decision had been made to kill her. This prompted the witness to go to Ndindiliyimana's house. She explained that she had a good relationship with Ndindiliyimana's wife and family, and she therefore believed that they would help her. After going to Ndindiliyimana's house, the witness spoke to Ndindiliyimana's wife and informed her that her life was at risk. The witness testified that she did not speak about Ignace Habimana's death because it was "common knowledge" and because it was "very painful" for her. According to the witness, Ndindiliyimana's wife did indeed help her.[2791]

1551. When asked why she believed that Ndindiliyimana's family would help her in light of the fact that she had previously been told that Ndindiliyimana had ordered the death of Ignace Habimana, Witness GFT testified that she did not believe those rumours about

[2783] T. 10 January 2005, p. 29.
[2784] T. 10 January 2005, p. 29.
[2785] T. 10 January 2005, pp. 29, 45-46.
[2786] T. 10 January 2005, pp. 29-30, 45-46.
[2787] T. 10 January 2005, pp. 29, 45-46.
[2788] T. 10 January 2005, p. 29.
[2789] T. 10 January 2005, pp. 29-30.
[2790] T. 10 January 2005, p. 30.
[2791] T. 10 January 2005, pp. 30-31, 38, 41-43, 51.

Ndindiliyimana and was "not convinced because those events were reported to me by someone else".[2792]

1552. In June, the witness returned to her home. She testified that after her return, she heard further accounts from others in Nyaruhengeri that Ndindiliyimana had himself gone to look for Célestin Munyanshagore and Ignace Habimana.[2793]

Prosecution Witness ANB

1553. Witness ANB, a Tutsi, testified that from around 15 April 1994, she went to stay with Kabeza at his house in Nyaruhengeri.[2794] According to the witness, on 24 or 25 April she saw Ndindiliyimana visit Kabeza at his house. Kabeza's wife was also present in the house at the time.[2795]

1554. The witness explained that Ndindiliyimana and Kabeza went into the living room, after which Ndindiliyimana accused Kabeza of "hiding Tutsis". Kabeza responded by claiming that "he was not hiding any Tutsis". This scared the witness and prompted her to hide in a wardrobe. She claimed that she "could hear the conversation ... I was listening with no difficulty to the conversation".[2796] The witness testified that Ndindiliyimana did not say anything else and she heard him leave the house a few minutes later.[2797] The next day, she went to hide at the house of Kabeza's brother, where she remained until the end of June.[2798]

4.5.3.1.2.2 Defence Evidence

The Accused Ndindiliyimana

1555. Ndindiliyimana testified that on 22 April 1994, he returned to his home in Nyaruhengeri.[2799] On his way home, he went to see Charles Kabeza who was the *bourgmestre* of Nyaruhengeri. Ndindiliyimana claimed that he arrived at Kabeza's house when it was dark.[2800] There, Ndindiliyimana met Kabeza's wife who informed him that "people were being killed". Ndindiliyimana then met Kabeza who informed him that "the situation was very serious [and that the] RPF was launching attacks, and people were embarking on reprisals."[2801] Ndindiliyimana claimed that he instructed Kabeza to "try to manage that situation".[2802] He then briefly returned to his family before leaving Nyaruhengeri.

1556. Ndindiliyimana next visited Nyaruhengeri on 3 May. On this occasion, he stayed with his family for one night and returned to Kigali the next day.[2803] Ndindiliyimana testified that he knew Ignace Habimana and Célestin Munyanshagore but at no time was he informed by

[2792] T. 10 January 2005, pp. 34, 36.
[2793] T. 10 January 2005, p. 37.
[2794] T. 7 February 2005, pp. 21-22.
[2795] T. 8 February 2005, pp. 13, 17-18.
[2796] T. 7 February 2005, pp. 22-23; T. 8 February 2005, pp. 15-17, 21-22, 25.
[2797] T. 7 February 2005, pp. 22-23; T. 8 February 2005, pp. 18, 25.
[2798] T. 7 February 2005, p. 24.
[2799] T. 18 June 2008, pp. 18-21.
[2800] T. 18 June 2008, p. 20.
[2801] T. 18 June 2008, pp. 20-21.
[2802] T. 18 June 2008, pp. 20-21.
[2803] T. 18 June 2008, pp. 51-53.

Kabeza that they had been killed. He claimed that he only learned of their death while he was in exile in Europe.[2804]

Defence Witness CBP44

1557. Witness CBP44 testified that he knew Ignace Habimana and Célestin Munyanshagore.[2805] He stated that he was informed, although it is unclear by whom, that Habimana and Munyanshagore had been in hiding together and that Pierre Kajuga had killed both men in order to steal from them. According to the witness, Kajuga was "a bandit or a rogue who had been guilty of several murders in the region".[2806] The witness had never heard that Ndindiliyimana was involved in the killing of Habimana or Munyanshagore.[2807]

Defence Witness Marie Nakure

1558. Witness Marie Nakure testified that she was in Nyaruhengeri following the President's death on 6 April 1994 and remained there until early May.[2808] The witness knew both Ignace Habimana and Célestin Munyanshagore as well as both of their wives.[2809]

1559. Witness Nakure testified that she knew that both Ignace Habimana and Célestin Munyanshagore had been killed. She explained that a relative of Habimana's informed her that Habimana had been killed by "bandits from Burundi" and other assailants. The witness was also informed that the assailants had threatened to kill Habimana's wife unless she told them where he was hiding. This threat prompted Habimana to reveal himself.[2810]

1560. Witness Nakure did not explain how she came to learn of the death of Célestin Munyanshagore. Furthermore, she claimed that allegations that her husband was implicated in the murder of Munyanshagore and Ignace Habimana were "lies". In support, she recounted a story in which she claimed that following the death of the two men, Habimana's older brother helped her to flee the country. She claimed that this would not have happened had there been rumours that her husband had given orders to kill the two men.[2811]

Defence Witness CBP78

1561. Witness CBP78 testified that he knew Ignace Habimana "very well" and that he also knew Célestin Munyanshagore.[2812] He recalled that he learned of Habimana and Munyanshagore's death from three sources. First, around 5 May 1994, the witness "heard people" say that Habimana had been hiding at home and that he had been taken from his home and killed. The witness also heard that Munyanshagore had been "hunted down and flushed out of the same hiding point as Ignace" and that he had been killed in a banana

[2804] T. 23 June 2008, pp. 26-27.
[2805] T. 14 February 2008, pp. 65-66.
[2806] T. 14 February 2008, p. 66.
[2807] T. 14 February 2008, p. 66.
[2808] T. 2 June 2008, p. 14.
[2809] T. 2 June 2008, pp. 10-11.
[2810] T. 2 June 2008, pp. 10-11, 29.
[2811] T. 2 June 2008, pp. 11-13.
[2812] T. 18 February 2008, pp. 26-28.

plantation.[2813] After hearing this, the witness took his bicycle and went to Habimana's house where he saw that Habimana had been buried in a pit formerly used for maturing bananas.[2814]

1562. Second, the witness stated that he obtained information from the *Gacaca* proceedings and that he learned that Célestin Munyanshagore had been killed by a person called Nkabara.[2815]

1563. Finally, the witness testified that he knew the wife of Ignace Habimana and claimed that he lived with her in a refugee camp in Burundi. According to the witness, Habimana's wife informed him that both men had initially hid in the house of Charles Kabeza, who was the *bourgmestre* of Nyaruhengeri *commune*. He was further informed that persons called Hakizayezu and Kajuga had wanted to "do away" with the two men in order to steal their motorcycles and that Habimana had been killed with a knife.[2816]

1564. Witness CBP78 had never heard that Ndindiliyimana or *gendarmes* at Ndindiliyimana's house were implicated in the killings of Habimana and Munyanshagore, and he testified that no such allegations were made in the *Gacaca* proceedings that he was aware of.[2817] However, in cross-examination, the witness appeared to admit that he heard that Hakizayezu had asked Kajuga to kill Habimana on the order of Ndindiliyimana.[2818]

1565. In cross-examination, the witness was shown statements he made in relation to separate proceedings in Rwanda as well as other documents suggesting that he was not in Nyaruhengeri when Ignace Habimana and Célestin Munyanshagore were killed. Those statements suggested that the witness left Nyaruhengeri on 21 April and did not return until the middle or end of May.[2819] The witness denied this and claimed that he left Nyaruhengeri on 21 April but returned two days later on 23 April 1994.[2820]

Defence Witness CBP15

1566. Witness CBP15 was a relative of Ndindiliyimana.[2821] She testified that Célestin Munyanshagore's wife gave evidence regarding her husband's death at *Gacaca* hearings. The witness was present when Munyanshagore's wife gave this evidence. According to the witness, at no time did Munyanshagore's wife implicate Ndindiliyimana in the death of her husband.[2822]

1567. Witness CBP15 recalled that at the *Gacaca* hearings, she learned that Munyanshagore had been hiding "with some old ladies" and that "Hakizayezu" had informed Munyanshagore that people were looking for him. The witness also learned that Munyanshagore was killed in May 1994 because he was a Tutsi.[2823]

[2813] T. 18 February 2008, pp. 29-30.
[2814] T. 18 February 2008, pp. 29-30; T. 25 February 2008, pp. 14-16.
[2815] T. 18 February 2008, p. 30.
[2816] T. 18 February 2008, pp. 29-31.
[2817] T. 18 February 2008, pp. 30, 32.
[2818] T. 18 February 2008, pp. 34.
[2819] T. 21 February 2008, pp. 81, 93, 97, 101-102; T. 25 February 2008, p. 2.
[2820] T. 21 February 2008, pp. 81, 97; T. 25 February 2008, p. 2.
[2821] T. 5 February 2008, p. 3 (ICS).
[2822] T. 5 February 2008, pp. 9-11, 33 (ICS).
[2823] T. 5 February 2008, pp. 10-11 (ICS).

1568. The witness further testified that she knew the wife of Ignace Habimana and that following the onset of violence, she hid with Habimana's wife at a friend's house and then at her own house. The witness could not remember the date on which Habimana was killed. However, Habimana's wife informed her that a man known as Kajuga had killed him. The witness described Kajuga as having a "bad reputation".[2824] The witness stated that: "He was someone who was ill-disciplined and mean to others".[2825] The witness also testified that Habimana's wife gave evidence in relation to the death of her husband at *Gacaca* hearings, but at no time did Habimana's wife implicate Ndindiliyimana in the death of the witness's husband.[2826]

4.5.3.1.3 Deliberations

1569. The Chamber notes that there is no dispute that Ignace Habimana and Célestin Munyanshagore were murdered around 5 May 1994. However, the parties disagree on whether Ndindiliyimana was implicated in the killings of these two individuals.

1570. Prosecution Witnesses FAV, GFS and GFT all claimed that they heard or were informed by others that in early May 1994, Ndindiliyimana visited the house of Charles Kabeza, the *bourgmestre* of Nyaruhengeri *commune,* and ordered the killings of Ignace Habimana and Célestin Munyanshagore because of their Tutsi ethnicity. Having considered their evidence, the Chamber is unwilling to find Ndindiliyimana culpable for the killings of Habimana and Munyashongore based solely on the hearsay evidence of these witnesses.

1571. The Chamber has considered whether the evidence provided by Prosecution Witness ANB, who claimed to have been present when Ndindiliyimana is alleged to have ordered that Habimana and Munyashongore be killed, corroborates the indirect evidence of Witnesses FAV, GFS and GFT. The Chamber notes that despite her claim that she could hear the conversation between Ndindiliyimana and Kabeza with relative ease,[2827] her evidence lacks any suggestion that she heard Ndindiliyimana order Kabeza to have Habimana and Munyanshagore killed.[2828] The Chamber therefore finds that Witness ANB's evidence does not corroborate the hearsay evidence of Witnesses FAV, GFS and GFT implicating Ndindiliyimana in the killings of Habimana and Munyashongore.

1572. The Chamber also finds that Witness GFT's evidence generates further doubt about the claims made by Prosecution witnesses that Ndindiliyimana ordered the killings of Ignace Habimana and Célestin Munyanshagore. Witness GFT testified that shortly after the killing of Habimana, she went to Ndindiliyimana's residence in Nyaruhengeri where she was assisted by Ndindiliyimana's wife. The witness stated that at the time, she did not believe the suggestion that Ndindiliyimana had ordered the killing of Habimana.[2829]

1573. The Chamber finds it difficult to believe that the witness would have gone to Ndindiliyimana's house and sought assistance from his family had it been widely believed in the Nyaruhengeri area that Ndindiliyimana was implicated in the killing of her relative Ignace Habimana. Had that been the case, the natural reaction of Witness GFT would have been to

[2824] T. 14 February 2008, p. 66.
[2825] T. 5 February 2008, pp. 11-13, 31 (ICS).
[2826] T. 5 February 2008, pp. 12-13 (ICS).
[2827] T. 7 February 2005, pp. 22-23; T. 8 February 2005, pp. 15-17, 21-22, 25.
[2828] T. 7 February 2005, p. 22.
[2829] T. 10 January 2005, pp. 34, 36.

avoid contact with anyone close to Ndindiliyimana, least of all Ndindiliyimana's wife, because this would have placed Witness GFT at risk. This aspect of Witness GFT's evidence raises further doubts about the veracity of the Prosecution witnesses' claims that Ndindiliyimana ordered the killings of Habimana and Munyanshagore.

1574. In addition to the weaknesses of the Prosecution evidence noted above, the Chamber finds that Witness FAV embellished and exaggerated his testimony. This helps to explain the myriad inconsistencies in his evidence. The Chamber recalls that Witness FAV provided inconsistent accounts in relation to the location of Ignace Habimana and Célestin Munyanshagore's hideout, the manner in which he was informed about the meeting and conversation between Ndindiliyimana and Charles Kabeza, the location of his hideout, and the number and identity of the assailants who attacked Habimana and Munyanshagore.

1575. Given the limited and contradictory evidence provided by Prosecution witnesses regarding this allegation, the Chamber is not satisfied that the Prosecution has proved beyond reasonable doubt that Ndindiliyimana ordered the killings of Ignace Habimana and Célestin Munyanshagore and that the two men were killed as a result.

4.5.3.2 Killing of Civilians by *Interahamwe* at a Roadblock Near Camp Kacyiru

4.5.3.2.1 Introduction

1576. The Indictment alleges that in the month of April 1994, militiamen under the supervision of two non-commission officers ("NCOs") from the *Gendarmerie* "erected a roadblock near Camp Kacyiru, the Headquarters of the *Gendarmerie*." The Indictment further alleges that several Tutsi as well as some Hutu who had all "come to seek refuge at the camp" were handed over to the militiamen by the *gendarmes* and then killed at the roadblock.[2830]

4.5.3.2.2 Evidence

Prosecution Witness KF

1577. Witness KF was a member of the *Gendarmerie* based at Camp Kacyiru in April 1994.[2831] She testified that on 16 April 1994, she observed a roadblock situated approximately 200 metres from the camp manned by *Interahamwe*.[2832] According to the witness, the *Interahamwe* at the roadblock were armed with clubs, firearms and machetes.[2833] The *Interahamwe* wore "dirty clothes"; one wore a beret and others wore military trousers and camouflage uniforms.[2834]

1578. The witness testified that she did not see members of the civilian population in the immediate vicinity of the roadblock. She expressed the view that it was unlikely that members of the civilian population would have moved around in the area near Camp Kacyiru.[2835]

[2830] Indictment, para. 96.
[2831] T. 17 January 2006, pp. 8, 10 (ICS).
[2832] T. 17 January 2006, pp. 21-22.
[2833] T. 17 January 2006, p. 22.
[2834] T. 17 January 2006, p. 22.
[2835] T. 17 January 2006, p. 22.

1579. Regarding the relationship between *gendarmes* and *Interahamwe*, the witness stated, "[T]here was cooperation between the *Interahamwes* within the camp and those outside the camp as well as between *gendarmes* working with them and who were in fact coordinating, or representing them."[2836]

4.5.3.2.3 Deliberations

1580. The Chamber notes that Witness KF is the only Prosecution witness to have testified on the events pleaded in paragraph 96 of the Indictment. Having reviewed the evidence of Witness KF, the Chamber finds that it is not sufficient to prove the Prosecution's allegation. While Witness KF's evidence suggests that *Interahamwe* manned a roadblock in the vicinity of Camp Kacyiru where she was based, there is no suggestion that those *Interahamwe* operated the roadblock under the supervision of two NCO *gendarmes* from the camp. Furthermore, her evidence contains no suggestion that several Tutsi as well as some Hutu who had sought refuge at the camp were handed over by *gendarmes* to the *Interahamwe* at that roadblock and then killed, as alleged in paragraph 96 of the Indictment.[2837]

1581. The Chamber notes that there is a suggestion in Witness KF's testimony that *gendarmes* within the camp coordinated the activities of *Interahamwe* in the area.[2838] The Chamber finds that this suggestion on its own is insufficient to implicate *gendarmes* in the crimes that may have been committed by *Interahamwe* at the roadblock in question.

1582. For these reasons, the Chamber is not satisfied that the testimony of Witness KF, by itself, is sufficient to prove beyond reasonable doubt the allegation contained in paragraph 96 of the Indictment.

4.5.3.3 Killing of Gahoki

4.5.3.3.1 Introduction

1583. The Indictment alleges that in late April 1994 *gendarmes* who were based at Ndindiliyimana's Nyaruhengeri residence, together with Ndindiliyimana's uncle Antoine Bisomimbwa, killed a local Tutsi tradesman known as Gahoki and stole his motorcycle.[2839] The Indictment alleges that Ndindiliyimana bears superior responsibility for this crime.[2840]

4.5.3.3.2 Evidence

4.5.3.3.2.1 Prosecution Evidence

Prosecution Witness GFR

1584. For reasons set out in Chapter III of the Judgement, the Chamber has not considered Prosecution Witness GFR's evidence in arriving at its conclusions.

[2836] T. 17 January 2006, p. 29.
[2837] Indictment, para. 96.
[2838] T. 17 January 2006, p. 29.
[2839] Indictment, para. 99. The Chamber notes that references to Gahoki in the transcripts are also spelled "Gashogi" and "Gashugi". These names are used interchangeably to refer to the same person.
[2840] Indictment, para. 78.

Prosecution Witness GFT

1585. Witness GFT testified that on 22 April 1994, she went to hide at her friend Joseph Kagenza's house. She explained that Kagenza's house neighboured the house of Ndindiliyimana's uncle, Antoine Bisomimbwa, who was the *conseiller* of Nyaruhengeri.[2841]

1586. On an unspecified date, while at Kagenza's house, Witness GFT saw a man she knew as Nepomucéne Kimonyo visit Bisomimbwa. The witness claimed that she heard Kimonyo inform Bisomimbwa that "members of the Mudoboli population had refused to kill [a man called] Gashugi".[2842]

1587. Witness GFT then saw Bisomimbwa leave his house on a bicycle and go into Ndindiliyimana's residence in Nyaruhengeri. The witness stated that she could see what was happening from Kagenza's house.[2843] Subsequently, the witness saw Bisomimbwa leave Ndindiliyimana's residence together with three *gendarmes*. The group then headed in the direction of "Gashugi's house". Shortly thereafter, the witness heard the sound of a gun being fired.[2844]

1588. Witness GFT testified that she was not sure what happened at Gashugi's house.[2845] She explained, however, that she was later informed that people had gone to Gashugi's house to loot his possessions.[2846] She was also told by her neighbours that *gendarmes* had taken Gashugi to the *secteur* office and killed him.[2847] She testified that she did not know exactly who killed Gashugi, but that he had been arrested by a *gendarme* who took him to the *secteur* office where he was killed.[2848] Witness GFT stated that she later saw *gendarmes* who had been stationed at Ndindiliyimana's house riding Gashugi's motorcycle.[2849]

4.5.3.3.2.2 Defence Evidence

Ndindiliyimana Defence Witness CBP44

1589. Witness CBP44 testified that he knew Gashugi as a trader in the area and that he was informed by "someone" whom he met in Kibilizi that Gashugi had been killed. Specifically, the witness was told that the same group of people who had killed Ignace Habimana, Célestin Munyanshagore and a person named Theobald had sought out Gashugi at his house and killed him because they wanted to steal his motorcycle. The witness later saw Theobald driving Gashugi's motorcycle in the area.[2850]

Ndindiliyimana Defence Witness CBP15

1590. Witness CBP15 testified that she learned at *Gacaca* hearings that a man named Kajuga was among the assailants who had killed Gashugi, but she was not certain who was

[2841] T. 10 January 2005, p. 22.
[2842] T. 10 January 2005, p. 23; T. 11 January 2005, p. 10.
[2843] T. 10 January 2005, pp. 23-24; T. 11 January 2005, pp. 10-11.
[2844] T. 10 January 2005, pp. 23-24; T. 11 January 2005, pp. 10-11.
[2845] T. 10 January 2005, p. 24.
[2846] T. 10 January 2005, p. 27.
[2847] T. 10 January 2005, p. 27.
[2848] T. 10 January 2005, p. 27.
[2849] T. 10 January 2005, p. 27.
[2850] T. 14 February 2008, pp. 66-67.

the ultimate perpetrator. Furthermore, she stated that at no time did she hear of the involvement of *gendarmes* in this killing.[2851]

1591. Witness CBP15 recalled that following the onset of violence in Nyaruhengeri, she hid with Prosecution Witness GFT first at Kagenza's house and then later at Witness CBP15's own house.[2852] Witness CBP15 rejected claims by Witness GFT that one could see what was happening at Ndindiliyimana's residence from Kagenza's house. On the contrary, Witness CBP15 stated, "It was not possible to see Ndindiliyimana's residence in view of the fact that there was a banana plantation between the two houses [and] ... there were other houses located between [the two houses]".[2853]

4.5.3.3.3 Deliberations

1592. In assessing the allegation in paragraph 99 of the Indictment, the Chamber will first consider whether Gashugi was murdered, before turning to the question of whether *gendarmes* guarding Ndindiliyimana's Nyaruhengeri residence were involved in Gashugi's murder.

1593. Prosecution Witness GFT and Defence Witness CBP15 agree that following the onset of violence in Nyaruhengeri, they heard that a local Tutsi trader called Gashugi was murdered. The Chamber rejects the Defence submission that there is no evidence that Gashugi was killed. The Chamber finds that the evidence provided by these two witnesses establishes beyond reasonable doubt that a Tutsi trader named Gashugi was in fact killed in Nyaruhengeri. The key question, therefore, is whether Gashugi was killed by *gendarmes* guarding Ndindiliyimana's Nyaruhengeri residence.

1594. The Chamber notes that the Prosecution evidence regarding the murder of Gashugi is limited to hearsay and circumstantial evidence given by Witness GFT. Specifically, the Prosecution relies upon the following evidence: (i) the witness being informed by others that Gashugi was killed; (ii) the witness seeing *gendarmes* from Ndindiliyimana's Nyaruhengeri residence walking in the direction of Gashugi's house; (iii) the witness hearing a gun being fired shortly thereafter;[2854] and (iv) the witness subsequently seeing *gendarmes* using Gashugi's motorcycle.

1595. The Chamber has already set out its approach when assessing hearsay evidence. In this instance, the Chamber considers that the circumstantial evidence provided by Witness GFT, even if accepted as true, is insufficient to corroborate what is in the Chamber's view tenuous hearsay evidence. In addition, the Chamber finds Witness GFT's concession that she did not know "who exactly" killed Gashugi raises further doubts about her evidence on this point.

1596. For these reasons, the Prosecution has failed to prove beyond reasonable doubt that *gendarmes* guarding Ndindiliyimana's Nyaruhengeri residence killed Gashugi. An analysis of the Defence evidence is, therefore, unnecessary.

[2851] T. 5 February 2008, pp. 13-14 (ICS).
[2852] T. 5 February 2008, pp. 11-13, 31 (ICS).
[2853] T. 5 February 2008, p. 18 (ICS).
[2854] The Chamber notes that if this evidence was intended to imply that Gashugi was killed by gunshot at his home, it is in conflict with Witness GFT's testimony that he was later killed at the *secteur* office.

4.5.3.4 The Killing of Aloys Niyoyita and Phocus Kananeri by *Gendarmes* in Kigali

4.5.3.4.1 Introduction

1597. The Indictment alleges that in early May 1994, *gendarmes* under the command of Augustin Ndindiliyimana killed Aloys Niyoyita, a Tutsi civilian and a member of the Liberal Party.[2855] The Indictment further alleges that in early May 1994, *gendarmes* under Ndindiliyimana's command killed Phocus Kananeri, a Tutsi civilian, inside his house.[2856] The Indictment alleges that Ndindiliyimana bears superior responsibility for these crimes.[2857]

4.5.3.4.2 Evidence

Prosecution Witness GLJ

1598. Witness GLJ was a resident of Kigali town in 1994.[2858] He testified that he was informed by local residents in his neighbourhood that a *gendarme* known as Morokore was responsible for the death of Phocus Kananeri, a Tutsi civilian who was his neighbour.[2859] The witness stated that Kananeri was killed around the first week of May 1994. The witness claimed to have seen the slain body of Kananeri lying in front of his house shortly after he was killed.[2860]

1599. Witness GLJ testified that Morokore was for a considerable period posted as a guard at the house of Froduald Karamira, a prominent politician allied with the MDR. The witness regularly saw Morokore at Karamira's house while on his way to his workplace.[2861]

1600. The witness also testified to having been informed that Morokore was in pursuit of a child called Kanamugira, who lived at Kananeri's house.[2862] Upon receiving this information, the witness immediately left in order to inform people who lived uphill from Kananeri's house to intercept Morokore.[2863] The witness claimed that he pursued Morokore for a distance of 150 metres from the witness's house and halted his pursuit at a place near the Electrogaz building, where he found the dead body of Kanamugira.[2864]

1601. Witness GLJ also testified about the killing of his neighbour Aloys Niyoyita, a Tutsi politician affiliated with the PL party. According to the witness, Niyoyita was a self-employed lawyer who was expected to become the Minister of Justice in the transitional government that was to be established under the Arusha Accords.[2865]

1602. Witness GLJ recalled that around the last week of April or first week of May 1994, he was informed by members of Karerangabo's family, who were Niyoyita's immediate

[2855] Indictment, para. 100.
[2856] Indictment, para. 101.
[2857] Indictment, para. 78.
[2858] T. 14 June 2005, p. 33-34 (ICS).
[2859] T. 15 June 2005, pp. 40, 42.
[2860] T. 15 June 2005, pp. 40-41.
[2861] T. 15 June 2005, pp. 40, 42.
[2862] T. 15 June 2005, p. 40.
[2863] T. 15 June 2005, pp. 40-41.
[2864] T. 15 June 2005, pp. 41-42.
[2865] T. 15 June 2005, p. 43.

neighbours, that the latter had been killed by two *gendarmes*.[2866] The witness's informants claimed to have seen the *gendarmes* who had killed Niyoyita.[2867] Upon receiving this information, the witness visited Niyoyita's house and found members of the Red Cross retrieving Niyoyita's dead body from the house.[2868]

4.5.3.4.3 Deliberations

1603. The Chamber accepts that Niyoyita and Kananeri were killed between April and May 1994, based on Witness GLJ's firsthand observation of their dead bodies in the immediate aftermath of their killing. However, the Chamber is not satisfied that Witness GLJ's evidence reliably establishes that *gendarmes* were responsible for these killings.

1604. The Chamber recalls that at the time that he gave his testimony, Witness GLJ was in detention in Rwanda where he was accused of participation in genocide-related crimes in 1994.[2869] The witness also admitted to having provided weapons to the assailants who killed two Tutsi civilians during the events of 1994.[2870] The Chamber has therefore evaluated his testimony with caution.

1605. Furthermore, the Chamber notes that Witness GLJ's evidence regarding the killing of Niyoyita is drawn from information that was relayed to him by members of Karerangabo's family.[2871] His evidence is not clear as to whether his informants actually witnessed the killing of Niyoyita or whether they simply saw *gendarmes* near Niyoyita's house at the time. Furthermore, the Chamber is not satisfied that there is sufficient evidence suggesting that the identification by Witness GLJ's neighbour of the assailants as *gendarmes* is predicated on a reliable basis of knowledge. The witness did not indicate whether that identification was based on either extraneous markings such as uniforms worn by the assailants or on prior familiarity with those assailants. For these reasons, the Chamber is not satisfied that Witness GLJ's limited evidence is sufficient to find that Niyoyita was in fact killed by *gendarmes*.

1606. Similarly, the Chamber notes that Witness GLJ's evidence that Phocus Kananeri was killed by a *gendarme* known as Morokore is also drawn from information that he received from unidentified local residents who had gathered at Kananeri's house shortly after he was killed.[2872] While the Chamber accepts that the witness may have been acquainted with Morokore, the witness did not claim to have seen Morokore in the area around Kananeri's residence on the day that he was killed. Although the witness claimed to have pursued Morokore after the latter had allegedly killed Kananeri, the witness did not state that he actually saw Morokore in the course of his pursuit. The Chamber is not persuaded that the limited and uncorroborated evidence of Witness GLJ is sufficient to support a finding that a *gendarme* known as Morokore was responsible for the killing of Kananeri.

1607. The Chamber therefore finds that the Prosecution has failed to prove beyond reasonable doubt the allegations described in paragraphs 100 and 101 of the Indictment.

[2866] T. 15 June 2005, pp. 43-44.
[2867] T. 15 June 2005, p. 43.
[2868] T. 15 June 2005, p. 44.
[2869] T. 14 June 2005, pp. 32-33 (ICS).
[2870] T. 14 June 2005, p. 33 (ICS).
[2871] T. 15 June 2005, pp. 43-44.
[2872] T. 15 June 2005, pp. 40, 42.

4.5.3.5 Killing of Tutsi by *Gendarmes* at a Roadblock in Nyamirambo

4.5.3.5.1 Introduction

1608. The Indictment alleges that "in April 1994, at Nyamirambo, *gendarmes* under the command of Augustin Ndindiliyimana occupied one of the many roadblocks erected in that *secteur*. They would check the ethnic origin of the passers-by at the roadblock by examining their identity cards. Anyone who was of Tutsi origin or was suspected of belonging to that ethnic group was summarily executed. The executioners would then invariably accuse their victims of being 'Inkotanyi accomplices'."[2873] The Indictment alleges that Ndindiliyimana bears superior responsibility for these crime.[2874]

4.5.3.5.2 Evidence

Prosecution Witness GLJ

1609. Witness GLJ, a local official in Kigali town, testified that he attended a meeting convened by the *préfet* of Kigali, Renzaho, on 10 April 1994.[2875] While on his way to the meeting and on his way back to his residence after the meeting, the witness was stopped at a number of roadblocks, one of which was situated near the Belgian school controlled by *gendarmes*.[2876]

1610. Between 10 and 20 April, Witness GLJ attended another meeting held at *Préfet* Renzaho's office.[2877] During this meeting, the *préfet* informed the officials attending the meeting that the security council of Kigali had instructed them to establish roadblocks in areas under their control.[2878] The *préfet* also informed the attendees that they were required by the Council to collect guns from the Ministry of Defence in order to distribute them to the individuals who were expected to control the roadblocks.[2879] The witness explained that the rationale behind the establishment of the roadblocks was to intercept and thwart the activities of the RPF infiltrators.[2880]

1611. In compliance with the instructions given by the *préfet* at the meeting, Witness GLJ established roadblocks in every *cellule* in Nyamirambo *secteur*.[2881] According to the witness, members of the Tutsi ethnic group who passed through these roadblocks were arrested and killed.[2882]

Prosecution Witness DA

1612. Witness DA was a member of the RECCE Battalion in April 1994.[2883] He testified that on 7 April 1994, he accompanied Sagahutu on a trip around Kigali town. In the course of

[2873] Indictment, para. 102.
[2874] Indictment, para. 78.
[2875] T. 15 June 2005, pp. 1-3.
[2876] T. 15 June 2005, pp. 2-3, 5-8.
[2877] T. 15 June 2005, p. 11.
[2878] T. 15 June 2005, p. 17.
[2879] T. 15 June 2005, p. 17.
[2880] T. 15 June 2005, p. 26.
[2881] T. 15 June 2005, p. 26.
[2882] T. 15 June 2005, p. 30.
[2883] T. 11 January 2005, pp. 26-28.

their journey, they stopped at a number of roadblocks where Sagahutu distributed guns to *Interahamwe* who were stationed there.[2884] The witness further testified that armed soldiers and *gendarmes* were also present at these roadblocks.[2885]

1613. One of these roadblocks was located at the junction of the road leading from Nyamirambo to CHK.[2886] The witness recalled that in addition to *Interahamwe*, about four to five soldiers from Camp Kigali and about two *gendarmes* from Camp Muhima were present at the roadblock when the witness stopped.[2887] The soldiers and *gendarmes* were armed with R4 rifles and light automatic machine guns, while the *Interahamwe* were armed with rifles and traditional weapons such as clubs, bludgeons and knives.[2888] The witness testified that they did not spend a great deal of time at this roadblock as they were in a hurry to proceed to other areas in Kigali. However, while at the roadblock, he noted that members of the population who passed by were asked to present their identity cards.[2889] He also observed that a group of civilians whom he believed to be Tutsi had been gathered on the side of the roadblock. He further noted a number of bodies lying in the immediate vicinity; some of those bodies appeared to be alive while about 20 appeared to be dead.[2890]

1614. Witness DA testified that they also stopped at a roadblock near the ONATRACOM building. Like the previous roadblock, the witness noted the presence of armed soldiers, *gendarmes* and *Interahamwe* at this roadblock.[2891] The witness testified that civilians who passed by the roadblock were also asked to present their identity cards.[2892] He observed that a number of civilians whom he believed to be Tutsi were ordered to stand on the side of the roadblock once their identity cards had been checked.[2893] He also saw a pile of dead bodies lying on the side of the roadblock.[2894] In line with his earlier testimony, the witness believed that the victims at this roadblock were Tutsi.[2895]

1615. The witness recalled that in the course of this trip, he observed a number of smaller roadblocks in the Nyamirambo area.[2896] One of these roadblocks was situated near the Nyamirambo Mosque.[2897]

Prosecution Witness DY

1616. Witness DY was a soldier attached to Squadron C of the RECCE battalion.[2898] He testified that between 15 and 20 April 1994, he was assigned to work as a bodyguard to Brigadier General Gratien Kabiligi, who was a G3 officer in the army's General Staff in charge of military operations.[2899] During this period, the witness escorted Kabiligi to Mount

[2884] T. 12 January 2005, pp. 9-10.
[2885] T. 12 January 2005, pp. 9-11.
[2886] T. 12 January 2005, pp. 10, 13.
[2887] T. 12 January 2005, pp. 10-11.
[2888] T. 12 January 2005, p. 11.
[2889] T. 12 January 2005, p. 15.
[2890] T. 12 January 2005, pp. 11-12.
[2891] T. 12 January 2005, pp. 14-15.
[2892] T. 12 January 2005, p. 15.
[2893] T. 12 January 2005, p. 14.
[2894] T. 12 January 2005, pp. 14-15.
[2895] T. 12 January 2005, pp. 14-15.
[2896] T. 12 January 2005, p. 16.
[2897] T. 12 January 2005, p. 16.
[2898] T. 23 January 2006, pp. 27-28.
[2899] T. 23 January 2006, p. 69.

Kigali. In the course of this trip, they passed through the Nyamirambo area where he observed a number of roadblocks, mainly controlled by *Interahamwe*.[2900] These roadblocks were situated in various places including near the Nyamirambo brigade of the *Gendarmerie*, near the Nyamirambo filling station, at a place called Cosmos, at a place called Cemutawi, at another place opposite the stadium and at a place called Terminus.[2901] At the last roadblock, the witness observed *Interahamwe* and soldiers, and he also noted a number of dead bodies lying on the side of the road.[2902]

4.5.3.5.3 Deliberations

1617. The Chamber notes that at the time that Witness GLJ gave his testimony, he was detained in Rwanda on accusations that he was involved in genocide-related crimes in 1994.[2903] Given his alleged complicity in the crimes underpinning the Indictment against the Accused, the Chamber has weighed his evidence with caution.

1618. Having carefully reviewed the evidence of Witness GLJ, the Chamber finds that it lacks any suggestion that *gendarmes* who controlled the roadblock located near the Belgian school in Kigali on 7 April perpetrated crimes against Tutsi civilians. His evidence also lacks any suggestion that *gendarmes* were implicated in the crimes that were committed at any of the roadblocks that he claimed to have established in the Nyamirambo *secteur* pursuant to *Préfet* Renzaho's instructions.[2904] His evidence is clear that these roadblocks were controlled by *Interahamwe* rather than *gendarmes*.[2905] For these reasons, the Chamber finds that Witness GLJ's evidence does not support the Prosecution's allegation described in paragraph 102 of the Indictment.

1619. The Chamber recalls that Witness DA testified to having seen *gendarmes* as well as soldiers and *Interahamwe* at various roadblocks in Kigali, including in Nyamirambo *secteur*. His evidence suggests that Tutsi civilians who passed through these roadblocks were identified and killed. In particular, the Chamber recalls Witness DA's testimony that he saw a number of dead bodies lying on the side of these roadblocks.[2906]

1620. However, the Chamber is not satisfied that his evidence establishes that *gendarmes* were involved in perpetrating these crimes. Although he claimed that a few *gendarmes* were present during his brief stops at these roadblocks, Witness DA's evidence fails to link *gendarmes* to the crimes committed there. The lack of direct evidence linking *gendarmes* to these crimes, the brevity of Witness DA's stops at the roadblocks, and the simultaneous presence of soldiers and *Interahamwe* leave the Chamber with doubts as to whether *gendarmes* were implicated in the crimes that were committed at these roadblocks on 7 April 1994.

1621. The Chamber has also reviewed Witness DY's evidence, but finds that it lacks any suggestion that *gendarmes* perpetrated crimes at any of the roadblocks that he observed in the

[2900] T. 23 January 2006, p. 75.
[2901] T. 23 January 2006, p. 75.
[2902] T. 23 January 2006, p. 75.
[2903] T. 14 June 2005, pp. 32-33 (ICS).
[2904] T. 15 June 2005, pp. 26, 30.
[2905] T. 15 June 2005, p. 3.
[2906] T. 12 January 2005, pp. 11-12.

Nyamirambo area as he was travelling to Mount Kigali in the company of General Kabiligi in April 1994.[2907]

1622. For these reasons, the Chamber is not satisfied that the Prosecution has adduced sufficient evidence to prove beyond reasonable doubt the allegation described in paragraph 102 of the Indictment.

4.5.4 *Nzuwonemeye and Sagahutu*

4.5.4.1 Killing of Prime Minister Agathe Uwilingiyimana

4.5.4.1.1 Introduction

1623. The Indictment alleges that on 7 April 1994, elements of the RECCE Battalion under the command of Major Nzuwonemeye and Captain Sagahutu, "acting in concert with members of the Presidential Guard and *Interahamwe* militiamen hunted down, tortured and killed Prime Minister Agathe Uwilingiyimana ... [and] three members of [her] entourage".[2908] The Indictment alleges that Nzuwonemeye and Sagahutu bear direct responsibility and superior responsibility for this crime.[2909]

4.5.4.1.2 Prosecution Evidence

Prosecution Witness DA

1624. Witness DA was a soldier of the RECCE Battalion in April 1994. He testified that shortly after the plane carrying President Habyarimana was shot down on 6 April 1994, he attended an assembly of approximately 300 to 350 RECCE Battalion soldiers held at their Headquarters within Camp Kigali.[2910] Nzuwonemeye, the battalion commander, addressed the assembled soldiers.[2911] The witness testified that Sagahutu also attended the assembly.[2912] In his address, Nzuwonemeye informed the soldiers that "the President's plane had been shot down ... and that the soldiers should remain on stand-by".[2913] Nzuwonemeye also stated that "the Prime Minister would have to answer for this accident" and ordered that "vehicles ... be brought out to block the roads leading to the Prime Minister's residence".[2914]

1625. Thereafter, four armoured vehicles belonging to the RECCE Battalion were sent to the residence of the Prime Minister under the leadership of Warrant Officer (W.O.) Bizimungu in order to block access to the Prime Minister's residence, as ordered by Nzuwonemeye. Other soldiers who were also part of this mission included drivers Sindikubwabo and Semakuba, as well as a gunner named Corporal "Afrika".[2915] According to

[2907] T. 23 January 2006, p. 75.
[2908] Indictment, para. 103.
[2909] Indictment, para. 78.
[2910] T. 11 January 2005, pp. 38-39.
[2911] T. 11 January 2005, p. 39.
[2912] T. 11 January 2005, p. 39.
[2913] T. 11 January 2005, p. 40.
[2914] T. 11 January 2005, p. 40.
[2915] In some parts of the transcript, this name is spelled "Africa". For consistency, the Chamber will use "Afrika" throughout this Judgement.

the witness, W.O. Bizimungu sent a radio message to inform Nzuwonemeye and Sagahutu that the armoured vehicles had arrived at the Prime Minister's residence.[2916]

1626. The witness testified that while standing next to a vehicle equipped with a radio communication set[2917] in the early morning of 7 April, he overheard a radio exchange between Sagahutu and W.O. Bizimungu[2918] in which the latter informed Sagahutu that Belgian UNAMIR soldiers were attempting to gain access to the Prime Minister's residence and asked whether he should grant them access to the residence.[2919] The witness recalled that in the course of the exchange, Nzuwonemeye intervened and responded to W.O. Bizimungu's query by stating that the Belgians should be allowed to enter the residence but that they should not leave the residence with anything.[2920] Witness DA heard a second radio message in which W.O. Bizimungu indicated that Belgian soldiers had already entered the Prime Minister's residence and that he had started shooting in the direction of the residence.[2921]

1627. The witness testified to having heard a third message in which W.O. Bizimungu said that Presidential Guard soldiers had also entered the residence of the Prime Minister looking for the Prime Minister but could not find her. However, they found a man whom they killed.[2922] The witness stated that Nzuwonemeye and Sagahutu responded to W.O. Bizimungu's radio message by asking him why he had not yet finished the "operation" that had began early in the morning and informing him about "other operations" that remained to be carried out.[2923] Witness DA also heard a fourth radio message in which Nzuwonemeye ordered RECCE Battalion soldiers guarding the National Radio Station not to allow anyone to enter the Station.[2924]

1628. At about 8.00 a.m. on 7 April, on the orders of Sagahutu, Witness DA drove to the residence of the Prime Minister in order to deliver ammunition and a radio set to W.O. Bizimungu.[2925] Witness DA delivered the ammunition to W.O. Bizimungu, who was in an armoured vehicle parked at the junction of the roads leading to the National Bank of Rwanda and the Prime Minister's residence.[2926] The witness specified that the vehicle was located approximately 10 metres away from the junction with its cannon pointed towards the Prime Minister's residence.[2927] From this position, Witness DA saw between 8 and 11 unarmed Belgian UNAMIR soldiers exiting the residence with their hands in the air.[2928] He also saw those soldiers being searched by soldiers of the Rwandan Army units based at Camp Kigali

[2916] T. 11 January 2005, pp. 40-44.
[2917] T. 11 January 2005, pp. 50-51.
[2918] The Chamber notes that paragraphs 106 and 107 of the Indictment refer to "Sergeant Major Bizimungu", but that throughout the trial all Parties were in agreement that this individual was the same as the "Warrant Officer Bizimungu" referred to by several Prosecution and Defence witnesses.
[2919] T. 11 January 2005, pp. 48-51 ("Q: What time did you hear that conversation, if you recall? A: At about dawn, very early in the morning. It was dawn.").
[2920] T. 11 January 2005, pp. 49-51
[2921] T. 11 January 2005, pp. 51-53.
[2922] T. 11 January 2005, p. 53.
[2923] T. 11 January 2005, p. 53.
[2924] T. 11 January 2005, p. 55.
[2925] T. 11 January 2005, p. 56.
[2926] T. 11 January 2005, p. 58.
[2927] T. 11 January 2005, p. 58.
[2928] T. 11 January 2005, pp. 58-59.

and Presidential Guard soldiers.[2929] Thereafter, the Belgian soldiers were ordered to board a minibus driven by W.O. Kanuma.[2930] Witness DA later learned that the Belgian soldiers were taken to Camp Kigali.[2931] Witness DA returned to Camp Kigali after delivering the ammunition to W.O. Bizimungu.[2932]

1629. Sometime between 11.00 a.m. and 12.00 noon on 7 April, Witness DA escorted Sagahutu to the Prime Minister's residence.[2933] Upon arrival, they met W.O. Bizimungu who gave Sagahutu a piece of paper containing what the witness believed was a speech that the Prime Minister was expected to deliver at the time.[2934]

1630. Witness DA also saw the naked body of the Prime Minister lying on the road outside the front gate of the Prime Minister's residence.[2935] The witness stated that the body was riddled with bullet wounds.[2936] He also noticed that an empty Fanta bottle had been thrust into her genitals. Sagahutu removed the bottle from the Prime Minister's dead body and threw it on the side of the road.[2937]

1631. Witness DA testified to having heard Sagahutu report to Nzuwonemeye via radio that he had seen the Prime Minister's dead body.[2938] The witness stated that at the instruction of Sagahutu, he and another RECCE soldier transported the dead body of the Prime Minister from her residence to Kanombe military hospital.[2939]

Prosecution Witness HP

1632. Witness HP was a soldier attached to Squadron A of the RECCE Battalion in April 1994.[2940] On 6 April 1994, shortly after 8.00 p.m., the witness attended an assembly convened by Sagahutu at which the latter addressed the soldiers and told them to be alert and wait for further instructions.[2941] Following Sagahutu's instructions at the assembly, four armoured vehicles under the leadership of W.O. Bizimungu left Camp Kigali between 12.30 and 1.00 a.m. on 7 April and were deployed to President Habyarimana's residence in the Kiyovu neighbourhood of Kigali.[2942]

1633. Later that day, at about 6.00 a.m., while standing about two to three metres away from Sagahutu in the parking lot,[2943] Witness HP heard W.O. Bizimungu inform Sagahutu over the radio that UNAMIR soldiers had arrived at the Prime Minister's residence and were

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[2929] T. 11 January 2005, pp. 59-60. Witness DA explained later that the soldiers he saw at Camp Kigali included some from the senior military academy, RECCE Battalion, Huye Battalion and Presidential Guard. He estimated that there were 80 to 100 soldiers at the Prime Minister's residence that morning. *See* T. 11 January 2005, p. 61.
[2930] T. 11 January 2005, p. 61.
[2931] T. 11 January 2005, pp. 61, 65.
[2932] T. 11 January 2005, p. 65.
[2933] T. 12 January 2005, p. 8.
[2934] T. 12 January 2005, p. 8.
[2935] T. 12 January 2005, pp. 23, 27-28.
[2936] T. 12 January 2005, p. 23.
[2937] T. 12 January 2005, pp. 23-24.
[2938] T. 12 January 2005, p. 30.
[2939] T. 12 January 2005, p. 28.
[2940] T. 9 May 2005, pp. 11-12 (ICS).
[2941] T. 9 May 2005, p. 16; T. 10 May 2005, pp. 32-34.
[2942] T. 9 May 2005, pp. 18-19, 41.
[2943] T. 9 May 2005, p. 20.

shooting.[2944] In reply, Sagahutu told W.O. Bizimungu that they should shoot back if they were attacked.[2945]

1634. Between 9.00 and 9.30 a.m., Witness HP was again standing about three metres away from Sagahutu, who was seated on a jeep parked at the parking lot in front of his office.[2946] The witness heard W.O. Bizimungu inform Sagahutu over the radio that they had found Prime Minister Agathe Uwilingiyimana. W.O. Bizimungu then asked Sagahutu whether he should take her to Camp Kigali. Sagahutu responded, "Why do you want to bring her here? What do you want to do?"[2947]

1635. Between 12.00 and 1.00 p.m., Witness HP left Camp Kigali in order to supply food to RECCE Battalion soldiers who were deployed outside the camp, including W.O. Bizimungu who was at the Prime Minister's residence.[2948] There, the witness saw W.O. Bizimungu standing along the road, about 20 metres away from the Prime Minister's residence. He also saw between 40 and 50 soldiers at the residence, including Presidential Guard soldiers.[2949] Witness HP testified that W.O. Bizimungu stated that they had found the "bitch" they were looking for and asked the witness to go inside the Prime Minister's residence and see for himself.[2950] When the witness entered the premises, he saw four dead bodies including that of Prime Minister Agathe Uwilingiyimana, her husband and another individual. The witness explained that the victims had bullet wounds on various parts of their bodies including the mouth, abdomen and head.[2951] Thereafter, at about 1.30 p.m., Witness HP returned to Camp Kigali.[2952]

1636. At about 4.00 or 4.30 p.m., Witness HP again left the camp to take "provisions" to W.O. Bizimungu and the soldiers at the Prime Minister's residence. Upon arrival, he saw UNAMIR troops in armoured cars trying to get into the residence and W.O. Bizimungu and the other soldiers trying to prevent the UNAMIR troops from doing so.[2953] The witness then heard W.O. Bizimungu ask Sagahutu via radio whether he should allow the UNAMIR troops to enter the residence and whether they should remove the dead bodies from the residence. Sagahutu instructed W.O. Bizimungu to "load the bodies on to a vehicle and take them to Kanombe".[2954] W.O. Bizimungu then ordered Witness HP to load the bodies onto his vehicle and take them to Kanombe. The witness refused and returned to Camp Kigali.[2955] Upon his return to the camp, Sagahutu ordered him to go to the Prime Minister's residence and transport the bodies to Kanombe military hospital.[2956] Consequently, the witness transported

[2944] T. 9 May 2005, p. 20. Witness HP clarified that W.O. Bizimungu sent this message from a radio set mounted on his armoured vehicle and that Sagahutu replied through a P13 radio fitted on a jeep parked in front of his office.
[2945] T. 9 May 2005, pp. 36, 42; T. 10 May 2005, p. 9.
[2946] T. 9 May 2005, p. 21.
[2947] T. 9 May 2005, pp. 21, 39; T. 10 May 2005, p. 11.
[2948] T. 9 May 2005, pp. 21-22.
[2949] T. 9 May 2005, p. 22.
[2950] T. 9 May 2005, pp. 22, 43.
[2951] T. 9 May 2005, pp. 22-23.
[2952] T. 9 May 2005, p. 24.
[2953] T. 9 May 2005, p. 24.
[2954] T. 9 May 2005, p. 24.
[2955] T. 9 May 2005, pp. 24-25; T. 10 May 2005, pp. 16-18.
[2956] T. 9 May 2005, p. 25.

the bodies from the Prime Minister's residence to the morgue at Kanombe military hospital and returned to Camp Kigali.[2957]

Prosecution Witness AWC

1637. Witness AWC was a member of the RECCE Battalion stationed at Camp Kigali in April 1994.[2958] On 6 April 1994, between 10.00 and 11.00 p.m., the witness was at home when he learned over the radio that President Habyarimana's plane had crashed. Following the news, the witness left his home and went to his office at Camp Kigali.[2959] While in his office, Witness AWC received a telephone call from Colonel Bagosora, who asked the witness to inform Nzuwonemeye that he was invited to join a meeting that was to be held at the Rwandan Army Headquarters.[2960] Since Nzuwonemeye was present at the camp, the witness called him so that he could attend to Bagosora's call.[2961] According to the witness, Nzuwonemeye spoke to Bagosora and then left his office and headed towards the location of the meeting.[2962] Nzuwonemeye returned to his office at Camp Kigali approximately between 4.00 and 5.00 a.m.[2963]

1638. Following his return from the meeting at Army Headquarters, Nzuwonemeye convened a meeting with the RECCE Battalion squadron leaders. The witness estimated that the meeting lasted a few minutes.[2964] The witness further testified that sometime after the meeting with his squadron commanders, Nzuwonemeye summoned Sagahutu into his office and ordered him to take measures to reinforce the Presidential Guards who were stationed at Prime Minister Agathe Uwilingiyimana's house.[2965] The witness then heard Sagahutu issue orders over the Motorola radio for two armoured vehicles that were deployed at Radio Rwanda to head towards the Prime Minister's residence in order to reinforce the Presidential Guards there.[2966]

1639. Approximately an hour later, Witness AWC heard the sound of gunfire and was later informed by soldiers that the gunfire had been caused by RECCE Battalion soldiers using their armoured vehicles to fire at the Belgian soldiers who were positioned at the Prime Minister's residence.[2967]

1640. The witness testified that on 7 April, at around 3.00 p.m., he boarded a jeep driven by Witness HP to the Prime Minister's residence in order to see what was happening. Witness AWC stated that when he arrived at the Prime Minister's residence, he saw a dead body lying in the yard and he was told that it belonged to the Prime Minister's brother.[2968] Witness AWC

[2957] T. 9 May 2005, pp. 25-26.
[2958] T. 18 January 2006, p. 24 (ICS).
[2959] T. 18 January 2006, p. 28.
[2960] T. 18 January 2006, p. 29.
[2961] T. 18 January 2006, p. 29.
[2962] T. 18 January 2006, pp. 29-30.
[2963] T. 18 January 2006, pp. 28-30 (Witness AWC was unable to provide exact timings of events: "I will reiterate that it really is difficult for me to remember the times, but if I were to give you an estimate -- I'm sorry, it's only an estimate, it was between 4.00 and 5.00 a.m., so it is not precise. This is just an estimate.").
[2964] T. 18 January 2006, p. 30.
[2965] T. 18 January 2006, p. 31. Witness AWC explained that his office was situated opposite Nzuwonemeye's office and that he was able to hear the conversation between Nzuwonemeye and Sagahutu because Nzuwonemeye's office door was left open.
[2966] T. 18 January 2006, pp. 31-32.
[2967] T. 18 January 2006, p. 32.
[2968] T. 19 January 2006, pp. 51-52.

did not enter the Prime Minister's residence but was told that the bodies of the Prime Minister and her husband "were inside the house".[2969]

1641. Witness AWC further testified that at the Prime Minister's residence, he met the drivers of the RECCE armoured vehicles who were originally deployed at the President's residence in Kiyovu and also at Radio Rwanda.[2970] Among them was a man named "Afrika", a crew member of the armoured vehicle stationed at the President's residence at Kiyovu. The witness further testified that Afrika gave him information about the shooting at the Prime Minister's residence and about the movement of armoured vehicles from Radio Rwanda and Kiyovu to the Prime Minister's residence.[2971]

Prosecution Witness ALN

1642. Witness ALN was a member of the RECCE Battalion stationed at Camp Kigali in April 1994.[2972] On 7 April 1994, between 5.00 and 6.00 a.m., Witness ALN testified that he was situated approximately two metres away from Sagahutu and Nzuwonemeye who were at the entrance to the latter's office, when he overheard Nzuwonemeye order Sagahutu to send two armoured vehicles to the Prime Minister's residence in order to reinforce the Presidential Guard soldiers who were already there.[2973] The witness further testified that the purpose of the additional deployment to the Prime Minister's residence was to ensure that the Prime Minister did not flee, and if necessary to kill her.[2974]

1643. In response to Nzuwonemeye's instructions, Sagahutu immediately ordered the deployment of two RECCE Battalion armoured vehicles that were positioned opposite Nzuwonemeye's office to the Prime Minster's residence.[2975] The witness testified that later that day, the RECCE Battalion soldiers who were asked to deploy those armoured vehicles made a radio call confirming that they had arrived at the Prime Minister's residence, although the witness did not specify how he knew of this radio call.[2976]

1644. Witness ALN also testified that he was present when Nzuwonemeye attended a meeting of officers of the Rwandan Armed Forces, which started at about 9.30 a.m.[2977] During that meeting, Witness ALN stayed by a vehicle in the parking lot next to the conference room at ESM.[2978] While at the parking lot, the witness heard gunshots coming from the direction of the Prime Minister's residence, which was located a short distance away from ESM.[2979] Shortly thereafter, approximately between 9.50 and 10.00 a.m.,[2980] Nzuwonemeye came out of the meeting and took a Motorola radio from the vehicle by which

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[2969] T. 19 January 2006, p. 51.
[2970] T. 19 January 2006, p. 48.
[2971] T. 19 January 2006, p. 48.
[2972] T. 29 September 2004, pp. 38-39.
[2973] T. 30 September 2004, pp. 33-37. *See also* T. 29 September 2004, pp. 44-46; T. 30 September 2004, pp. 35-37; T. 5 October 2004, pp. 19, 23.
[2974] T. 29 September 2004, p. 45; T. 30 September 2004, p. 35; T. 5 October 2004, pp. 20-22.
[2975] The armoured vehicles deployed were MR60 and MR90 vehicles. T. 5 October 2004, pp. 20-21. *See also* T. 29 September 2004, pp. 45-46; T. 30 September 2004, p. 37; T. 4 October 2004, p. 30; T. 5 October 2004, pp. 20-21.
[2976] T. 30 September 2004, p. 36.
[2977] T. 29 September 2004, pp. 50-51.
[2978] T. 29 September 2004, p. 50.
[2979] T. 4 October 2004, p. 30.
[2980] T. 29 September 2004, p. 52.

Witness ALN was standing.[2981] According to the witness, Nzuwonemeye then called RECCE Battalion soldiers from Squadron A who had an armoured vehicle stationed at the Prime Minister's residence and asked them whether they had located her. The soldiers responded that the Prime Minister had been killed.[2982] Witness ALN testified that he was approximately two metres away from Nzuwonemeye when he overhead the latter's conversation.[2983] Thereafter, Nzuwonemeye returned to the venue of the meeting.[2984]

Prosecution Witness AP

1645. Witness AP was a soldier attached to the RECCE Battalion in April 1994.[2985] He testified to having attended an assembly of RECCE Battalion soldiers held at Camp Kigali following the death of President Habyarimana on 6 April 1994. The assembly commenced around 10.00 p.m. and lasted for about 30 minutes. Nzuwonemeye addressed the assembled soldiers and informed them that the President's plane had crashed and that "the plane ... [had been] attacked by the *Inyenzi*; that is the Tutsi."[2986] Nzuwonemeye then ordered the soldiers to collect their weapons and remain alert and wait for further instructions.[2987]

1646. Approximately one hour later, the witness heard noises suggesting that armoured vehicles were leaving the camp. Witness AP did not see the vehicles leaving, but believed them to be armoured vehicles from the engine noise.[2988] Witness AP was later told by another RECCE soldier that he had seen armoured vehicles leaving the camp that night.[2989]

Prosecution Witness DY

1647. Witness DY was a soldier in the RECCE Battalion in 1994.[2990] The witness testified that he attended an assembly of RECCE Battalion soldiers at Camp Kigali on the night of 6 April 1994.[2991] Both Nzuwonemeye and Sagahutu attended the assembly.[2992] Nzuwonemeye addressed the soldiers and told them that "the President's plane had been shot down by *Inyenzi*."[2993]

1648. Shortly thereafter, the witness saw a warrant officer arrive at the assembly ground and inform Nzuwonemeye that there was a telephone call for him from the Army Headquarters.[2994] Witness DY was standing about three metres away from Nzuwonemeye at this time. The witness recalled that Nzuwonemeye left the assembly ground in order to

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[2981] T. 29 September 2004, p. 51; T. 5 October 2004, p. 48.
[2982] T. 5 October 2004, p. 48. *See also* T. 29 September 2004, p. 51; T. 4 October 2004, p. 30; T. 5 October 2004, p. 24.
[2983] T. 29 September 2004, p. 51.
[2984] T. 29 September 2004, p. 51; T. 5 October 2004, p. 48.
[2985] T. 7 September 2005, p. 72 (ICS).
[2986] T. 7 September 2005, p. 75.
[2987] T. 7 September 2005, p. 75.
[2988] T. 7 September 2005, p. 78.
[2989] T. 7 September 2005, p. 78.
[2990] T. 23 January 2006, pp. 27-28.
[2991] T. 23 January 2006, p. 35.
[2992] T. 23 January 2006, p. 35.
[2993] T. 23 January 2006, p. 35; T. 24 January 2006, p. 61.
[2994] T. 23 January 2006, p. 36.

answer the telephone call. Shortly thereafter, Nzuwonemeye returned and informed Sagahutu that he was going to attend a meeting at the Army Headquarters.[2995]

1649. Witness DY also testified that at about 3.00 p.m. on 7 April, while at the RECCE Headquarters at Camp Kigali, he was informed by Corporal "Afrika" that he had gone to Prime Minister Agathe Uwilingiyimana's residence and undressed the Prime Minister and shot her.[2996]

Prosecution Witness ANK/XAF

1650. Witness ANK/XAF, a soldier in the RECCE Battalion in April 1994, testified that at about 11.00 a.m. on 7 April 1994, he met with Corporal Fiachre "Afrika" and other soldiers in the parking lot in front of the battalion commander's office at Camp Kigali.[2997] The witness had known Afrika, who was an armoured vehicle gunner and a member of Squadron A of RECCE, since 1989.[2998] The witness testified that Afrika told the witness in a boastful manner that he had killed Prime Minister Agathe Uwilingiyimana. Afrika also told him that the Prime Minister had offered to give him money to spare her life but that he had refused and shot her to death.[2999]

Prosecution Witness DCK

1651. Witness DCK was a soldier attached to the Music Company based at Camp Kigali in April 1994.[3000] The witness testified that between 9.00 and 10.00 p.m. on 6 April 1994, following an assembly at Camp Kigali, he saw vehicles belonging to the RECCE Battalion leaving the camp.[3001]

1652. The witness testified that on 7 April 1994, between 9.00 and 10.00 a.m., he was told by soldiers of the RECCE battalion, including one "Afrika", that they had killed Prime Minister Agathe Uwilingiyimana.[3002] They also informed him about the killing of other senior government or political figures including Kavaruganda who was President of the Supreme Court, Frederic Nzamurambaho, Landouald Ndasingwa, and Félicien Ngango and added that they were searching for one Twagiramungu.[3003] The witness testified that the soldiers harped on the role in these killings "again and again, and boasted of their exploits."[3004]

Prosecution Witness DP

1653. Witness DP was a member of the Para Commando battalion stationed at Camp Kanombe in April 1994.[3005] He testified that on 7 April 1994, he was at Kanombe hospital when the dead bodies of Prime Minister Agathe Uwilingiyimana and two other men were

[2995] T. 23 January 2006, p. 36.
[2996] T. 23 January 2006, p. 42; T. 25 January 2006, p. 13.
[2997] T. 31 August 2005, pp. 76-77 (ICS); T. 1 September 2005, pp. 17-18.
[2998] T. 1 September 2005, p. 17.
[2999] T. 1 September 2005, p. 18; T. 2 September 2005, p. 8.
[3000] T. 8 March 2005, pp. 30-31 (ICS), p. 33.
[3001] T. 9 March 2005, p. 3.
[3002] T. 9 March 2005, pp. 3-4.
[3003] T. 9 March 2005, pp. 4-5.
[3004] T. 9 March 2005, p. 51.
[3005] T. 22 September 2005, p. 45 (ICS).

brought in a "Silver Mark" jeep driven by a soldier of the RECCE Battalion whom he knew well, accompanied by three or four other soldiers of the RECCE battalion.[3006] The witness later learned that one of the bodies was that of the Prime Minister's husband.[3007] Later, the witness saw the Prime Minister's body in the morgue and noticed that she had been shot in the forehead.[3008]

Prosecution Witness LN

1654. Witness LN was a soldier attached to the Medical company at Camp Kanombe in April 1994.[3009] He testified that on 7 April 1994, while at Kanombe, the commander of the Medical company, Lieutenant Colonel Baransaritse, told him and other soldiers that the Prime Minister's dead body had just been brought to the mortuary at Kanombe hospital and invited them to go and view it.[3010]

1655. The witness testified that Baransaritse also informed him that he had been present when the Prime Minister was attacked at her residence.[3011] Baransaritse told the witness that a platoon of ESM soldiers had initially attacked the Prime Minister's residence but were repelled by Belgian UNAMIR soldiers.[3012] Baransaritse further informed him that the Prime Minister was eventually killed once the assailants were reinforced by a company of RECCE Battalion soldiers led by Captain Sagahutu.[3013]

Prosecution Witness Roméo Dallaire

1656. Witness Dallaire testified that in the evening of 6 April 1994, Prime Minister Agathe Uwilingiyimana called him over the phone and informed him that the plane carrying President Habyarimana had crashed.[3014] At around 10.00 p.m., Dallaire received another telephone call from Prime Minister Agathe Uwilingiyimana who informed him that she could not contact MRND ministers.[3015] At around 11.30 p.m. or 12.00 midnight, Dallaire received another telephone call from Prime Minister Agathe Uwilingiyimana in which she expressed her grave concern in light of the fact that she could not contact members of the transitional government led by her.[3016] In the course of this conversation, they also discussed the rapidly deteriorating situation and the possibility of the Prime Minister making a radio address to the nation the following morning in order to reassure the population that "a political leadership structure" was in place.[3017] Dallaire added that at approximately 3.00 or 4.00 a.m., he spoke to the Prime Minister again. At this time, he was negotiating with the government radio station to allow the Prime Minister to make a radio announcement.[3018]

[3006] T. 22 September 2005, p. 72.
[3007] T. 22 September 2005, p. 73.
[3008] T. 22 September 2005, p. 73.
[3009] T. 12 September 2005, p. 39 (ICS).
[3010] T. 12 September 2005, p. 70.
[3011] T. 12 September 2005, pp. 70-71; T. 14 September 2005, p. 24.
[3012] T. 12 September 2005, p. 70; T. 14 September 2005, p. 26.
[3013] T. 12 September 2005, p. 70; T. 14 September 2005, pp. 25-26.
[3014] T. 20 November 2006, p. 51.
[3015] T. 20 November 2006, p. 51.
[3016] T. 20 November 2006, p. 52.
[3017] T. 20 November 2006, p. 52.
[3018] T. 20 November 2006, p. 52.

1657. In the morning of 7 April, while on his way to a meeting of the officers of the Rwandan Armed Forces at ESM, Dallaire received reports that a "VIP" was in the UNDP compound. Upon receiving this information, he went to the UNDP Headquarters but could not locate anyone there. He then proceeded to ESM to attend the meeting.[3019] Dallaire testified that he left the ESM meeting at about 12.00 noon and went to the Ministry of Defence.[3020] From there, he called the UNAMIR Headquarters and was informed that Prime Minister Agathe Uwilingiyimana was at the UNDP compound (not the Headquarters). Dallaire therefore drove to the UNDP compound where he found a Senegalese UNAMIR Captain and about 20 "very hysterical … staff."[3021] While at the compound, Dallaire was informed that Prime Minister Agathe Uwilingiyimana and her husband had sought refuge in the compound earlier that morning. He was further informed that Presidential Guard soldiers had come to the compound and killed the Prime Minister and her husband.[3022]

Prosecution Expert Witness Alison Des Forges

1658. Expert Witness Des Forges testified that according to her review of the Belgian and Rwandan judicial documents, Captain Hategekimana and a "more junior officer" from ESM were directly responsible for killing the Prime Minister.[3023]

4.5.4.1.3 Defence Evidence

4.5.4.1.3.1 Nzuwonemeye Defence Witnesses

Nzuwonemeye Defence Witness Kwesi Doe

1659. Witness Kwesi Doe was a member of the Ghanaian contingent of UNAMIR. In April 1994, the witness and four other members of that contingent were assigned to provide security for Prime Minister Agathe Uwilingiyimana.[3024] The witness testified that five to ten Rwandan *gendarmes* were also assigned to guard the Prime Minister.[3025]

1660. Witness Doe recalled that between 4.30 and 5.30 a.m. on 7 April 1994, Belgian soldiers arrived at the Prime Minister's residence aboard four cars and knocked on the door in a bid to contact the Prime Minister, but she did not respond.[3026] The Belgian soldiers parked two jeeps outside and two inside the Prime Minister's compound and waited for about two or three hours.[3027]

1661. Between 8.00 and 9.00 a.m. on 7 April,[3028] Rwandan Army soldiers entered the residence and fired small arms. At the same time, the witness saw *gendarmes* who were assigned to provide security to the Prime Minister cut through the barbed wire fence at the back of the Prime Minister's residence in order to allow her and her family to escape to a

[3019] T. 22 November 2006, p. 26.
[3020] T. 20 November 2006, p. 58.
[3021] T. 20 November 2006, p. 59.
[3022] T. 20 November 2006, p. 59.
[3023] T. 11 October 2006, p. 32.
[3024] T. 8 July 2008, p. 51.
[3025] T. 8 July 2008, pp. 51-52.
[3026] T. 8 July 2008, p. 58.
[3027] T. 8 July 2008, p. 58.
[3028] T. 8 July 2008, p. 69.

neighbouring residence.[3029] The Rwandan soldiers ordered the Belgian and Ghanaian soldiers of UNAMIR to put down their arms and get into a white minibus that was parked on the road outside the residence.[3030] The witness testified that they were then driven to Camp Kigali.[3031]

1662. While at the Prime Minister's residence, the witness did not see any armoured vehicles around the residence or any roadblocks along the road.[3032] However, the witness added that from his position inside the Prime Minister's residence, he could not see outside the residence.[3033]

Nzuwonemeye Defence Witness Sandow Zambulugu

1663. Witness Sandow Zambulugu, a Ghanaian UNAMIR soldier assigned to protect Prime Minister Agathe Uwilingiyimana,[3034] testified that on 6 April 1994, he was on sentry duty at the entrance gate of the Prime Minister's residence.[3035]

1664. Witness Zambulugu stated that in the course of his duties at the residence on the night of 6 April, he did not see any armoured vehicles around the residence.[3036] Around 5.00 to 6.00 a.m. on 7 April, the witness again went outside where he saw a new roadblock some 60 to 70 metres away from the Prime Minister's main gate. The witness described this as a "snap" roadblock, not a deliberate check, and stated that this was the first time that he had noticed the roadblock.[3037]

1665. A few minutes later, Belgian UNAMIR soldiers arrived at the residence aboard four jeeps. They parked two of the vehicles in the yard and the other two in front of the gate.[3038] The witness heard the Belgian soldiers tell the guard commander of the Ghanaian troops that they wanted to see the Prime Minister, and then the Belgians proceeded to knock on her door. However, the Prime Minister did not answer.[3039] Shortly thereafter, Witness Zambulugu saw *gendarmes* who were assigned to protect the Prime Minister cut the barbed wire on the left side of the residence and leave the residence together with the Prime Minister, her husband and two of her children.[3040]

1666. About 15 minutes after the Belgian soldiers arrived at the residence, the witness saw between 10 and 20 Rwandan Army soldiers enter the Prime Minister's residence. The Prime Minister had by then left her residence. The Rwandan Army soldiers asked the Belgian and Ghanaian soldiers to drop their weapons and get into a minibus that was waiting outside the gate.[3041] The witness and the other UNAMIR soldiers were then driven to Camp Kigali. On

[3029] T. 8 July 2008, p. 60.
[3030] T. 8 July 2008, pp. 59-60.
[3031] T. 8 July 2008, p. 64.
[3032] T. 8 July 2008, pp. 60, 64, 71.
[3033] T. 8 July 2008, p. 58.
[3034] T. 8 July 2008, p. 77.
[3035] T. 8 July 2008, pp. 79-80.
[3036] T. 8 July 2008, pp. 80-81.
[3037] T. 8 July 2008, p. 92.
[3038] T. 8 July 2008, p. 82.
[3039] T. 8 July 2008, p. 82.
[3040] T. 8 July 2008, pp. 83-84.
[3041] T. 8 July 2008, pp. 82-85.

their way out, Witness Zambulugu did not see any armoured vehicles or roadblocks around the residence.[3042]

Nzuwonemeye Defence Witness DE8-10/F9

1667. Witness DE8-10/F9 was a senior military officer in the Rwandan Army in April 1994.[3043] He testified that on 7 April 1994, on three occasions between 6.00 a.m. and 10.00 a.m.,[3044] he drove on *Avenue de l'Armée*, which is parallel to the street on which the Prime Minister's residence is located (Paul VI Avenue) approximately 60 metres from the Prime Minister's residence.[3045] According to the witness, it is not possible to view the Prime Minister's residence from that road.[3046] However, at no time during any of his trips on that road did he hear any gunshots in the area of the Prime Minister's house. He further stated that the security situation in Kiyovu neighbourhood, where the Prime Minister's residence was located, was calm and normal, and that he did not see any roadblocks in the vicinity of her residence.[3047]

1668. Witness DE8-10/F9 explained that sometime after 10.00 a.m. on 7 April, he attended a meeting at ESM which was chaired by Colonel Bagosora and attended by General Dallaire. Approximately 60 other Rwandan officers were present, including Ndindiliyimana.[3048] During the meeting, the witness heard gunshots coming from the direction of the Prime Minister's residence.[3049] The witness stated that he did not see Nzuwonemeye during the meeting,[3050] but saw him after the meeting standing near a light armoured vehicle parked at the back entrance to ESM.[3051]

Nzuwonemeye Defence Witness Y1

1669. Witness Y1 was a senior military officer in the Rwandan Army in April 1994.[3052] He testified that he first learned about the death of Prime Minister Agathe Uwilingiyimana from his driver on 7 April 1994. Later that evening, he telephoned Colonel Marcel Gatsinzi who confirmed the death of the Prime Minister.[3053] On 8 April, Witness Y1 was told by a senior Rwandan Army officer at Camp Kanombe that the Prime Minister's body had been brought to the Kanombe mortuary.[3054]

1670. With respect to radio communications, Witness Y1 testified that his unit had a total of about 40 Motorola radio sets, which they used to communicate with unit commanders throughout the Kigali operational sector. This included the commander of the RECCE Battalion, who also had a Motorola radio.[3055] According to the witness, the Motorola radios

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[3042] T. 8 July 2008, pp. 86-87.
[3043] T. 10 May 2007, pp. 8-9 (ICS).
[3044] T. 10 May 2007, pp. 26, 29, 31-32.
[3045] T. 10 May 2007, p. 26.
[3046] T. 11 May 2007, p. 9.
[3047] T. 10 May 2007, pp. 27, 32-33; T. 11 May 2007, p. 18.
[3048] T. 10 May 2007, pp. 32-33, 35.
[3049] T. 11 May 2007, pp. 69-70.
[3050] T. 10 May 2007, p. 34.
[3051] T. 10 May 2007, p. 35.
[3052] T. 25 June 2008, p. 5 (ICS); Defence Exhibit 527, under seal.
[3053] T. 25 June 2008, p. 17.
[3054] T. 25 June 2008, p. 17.
[3055] T. 25 June 2008, p. 15.

had six channels, but from 8 April 1994, they could only use one channel because their relay station at Kimihurura had been destroyed as a result of shelling by the RPF. He added that the Motorola radios were of poor quality and that anyone with the same equipment, including subordinates, could listen to or otherwise hear their messages.[3056] In fact, according to Witness Y1, the subordinates were listening to the radio messages on a permanent basis because unit commanders were busy with other responsibilities and each commander had a soldier to handle his radio, monitor messages and give the radio to the commander where necessary.[3057]

Nzuwonemeye Defence Witness B13/CBP7

1671. Witness B13/CBP7 was a senior *gendarmerie* officer in Rwanda in 1994.[3058] He attended the meeting of the officers of the Rwandan Armed Forces convened shortly after the death of President Habyarimana on the night of 6 April 1994. According to the witness, Nzuwonemeye did not attend this meeting.[3059]

1672. Witness B13/CBP7 testified to having attended another meeting with officers of the Rwandan Armed Forces, including Ndindiliyimana and Nzuwonemeye, held at ESM on 7 April.[3060] The meeting started at about 10.00 a.m. and was chaired by Colonel Bagosora.[3061] The witness testified that General Dallaire also attended the meeting but arrived shortly after it had started. Dallaire addressed the gathered officers but did not mention the fact that he had visited the UNDP compound before attending the meeting, nor did he refer to any telephone conversation between himself and the Prime Minister the previous night.[3062] The witness further testified that the participants in the meeting were not informed about the death of Prime Minister Agathe Uwilingiyimana during the meeting.[3063] The witness claimed to have learned of the Prime Minister's death at about 1.00 p.m. after the meeting at ESM had ended. He was later informed that she had been killed by the Presidential Guard soldiers.[3064]

Nzuwonemeye Defence Witness Ntivuguruzwa

1673. Witness Ntivuguruzwa was a member of the *Gendarmerie's* Security company, which had the responsibility of protecting high profile politicians in Rwanda. He was assigned to protect Prime Minister Agathe Uwilingiyimana in April 1994.[3065] According to the witness, a

[3056] T. 25 June 2008, p. 15.
[3057] T. 25 June 2008, pp. 15-16 (Witness Y1 explained this procedure as follows: "[A]n operational commander, or the commander of a unit, according to military procedure, has a person at his disposal who holds the radio set. Since the commander is always moving around, he's not always available to listen to the radio set. And this is why in the different army posts there is one individual who cooperates with the commander, the operational commander, and, when there is a call, that person gives the set to the commander for him to be able to answer.").
[3058] T. 7 July 2008, p. 18 (ICS).
[3059] T. 7 July 2008, pp. 25-26 (ICS).
[3060] T. 7 July 2008, pp. 26-27 (ICS).
[3061] T. 7 July 2008, pp. 26-27 (ICS).
[3062] T. 7 July 2008, p. 33 (ICS).
[3063] T. 7 July 2008, p. 29 (ICS).
[3064] T. 7 July 2008, p. 29 (ICS).
[3065] T. 16 July 2008, pp. 4-5.

group of ten *gendarmes* as well UNAMIR soldiers were assigned to protect the Prime Minister.[3066]

1674. Witness Ntivuguruzwa testified that while carrying out his duties at the Prime Minister's residence on the night of 6 April 1994, he did not see any armoured vehicles approach the residence.[3067] He did, however, notice a roadblock that had been set up about 100 metres away from the residence on the lower side of ESM.[3068] The roadblock was manned by approximately 11 persons whom the witness believed were soldiers who were studying at ESM.[3069]

1675. At around 5.00 a.m. on 7 April, while on guard at the entrance of the Prime Minister's residence, approximately ten "white" UNAMIR soldiers arrived at the residence aboard four UNAMIR escort jeeps.[3070] The witness believed that the Belgian soldiers had skirmished with the ESM students who manned the roadblock referred to above. The Belgians parked two of their jeeps inside the residence immediately after they arrived.[3071] The other two jeeps remained outside the residence.[3072] At the time, the witness did not see any armoured vehicles in the direction of ESM or on the avenue leading to the President's residence.[3073]

1676. At around 8.00 or 8.30 a.m., Witness Ntivuguruzwa was informed by his guard commander, Sergeant Major Gasamaza, that members of the Presidential Guard were killing opposition politicians in Kimihurura and that the Prime Minister must be evacuated.[3074] Six *gendarmes*, including Gasamaza, were assigned to evacuate the Prime Minister while four *gendarmes*, including the witness, were assigned to remain at the Prime Minister's residence.[3075]

1677. At around 9.30 a.m., the witness heard gunshots and saw approximately 35 to 50 soldiers, some of whom were armed, enter the Prime Minister's residence.[3076] Some of those soldiers were members of the Presidential Guard.[3077] Thereafter, those soldiers disarmed the *gendarmes* and UNAMIR soldiers, and entered the residence leaving three soldiers to guard the witness and the other disarmed *gendarmes* and UNAMIR soldiers.[3078] The witness testified that at no point in time did he see any armoured vehicles in the vicinity of the Prime Minister's residence.[3079]

1678. At around 10.30 a.m., a white minibus with army registration numbers arrived at the Prime Minister's residence and the Ghanaian and other UNAMIR soldiers were instructed to board that vehicle.[3080] The witness and other *gendarmes* remained at the residence under

[3066] T. 16 July 2008, pp. 8, 11-12, 20. Witness Ntivuguruzwa testified that the UNAMIR contingent of soldiers consisted of approximately five Ghanaian soldiers.
[3067] T. 16 July 2008, p. 11.
[3068] T. 16 July 2008, pp. 11, 16.
[3069] T. 16 July 2008, pp. 12, 43, 49.
[3070] T. 16 July 2008, pp. 12, 19.
[3071] T. 16 July 2008, pp. 23-24.
[3072] T. 16 July 2008, p. 20.
[3073] T. 16 July 2008, p. 12.
[3074] T. 16 July 2008, pp. 13, 15.
[3075] T. 16 July 2008, p. 15.
[3076] T. 16 July 2008, pp. 16, 32.
[3077] T. 16 July 2008, p. 32.
[3078] T. 16 July 2008, p. 16.
[3079] T. 16 July 2008, p. 18.
[3080] T. 16 July 2008, pp. 16-17.

guard but escaped once the Prime Minister was found and returned to Camp Kacyiru, where they were based.[3081] On the way to Kacyiru, the witness saw an armoured vehicle stationed at the National Bank of Rwanda.[3082]

Nzuwonemeye Defence Witness Deo Munyaneza

1679. Witness Deo Munyaneza was a student at ESM in April 1994.[3083] He testified that on 7 April 1994, at around 5.00 a.m., he heard the sound of gunshots coming from around Paul VI Avenue. The witness walked in the direction from which the gunfire came.[3084] As he did so, he did not see any armoured vehicles in the vicinity of ESM.[3085] The witness then stopped at a roadblock on Paul VI Avenue, which had been set up by soldiers from Camp Kigali together with armed students from ESM.[3086] The witness was informed by the soldiers at the roadblock that they had fired shots in the air because UNAMIR peacekeepers had broken through the roadblock.[3087]

1680. Approximately three hours later, about 10 soldiers of the Presidential Guard, led by Captain Hategekimana, arrived at the junction of Paul VI and Nyarugungu Avenues not far from the roadblock.[3088] Hategekimana and his men were very angry and said that they wanted to see Prime Minister Agathe Uwilingiyimana as she was one of the causes of President Habyarimana's death.[3089] A soldier called Jean Claude, whom the witness knew, was among the group of soldiers led by Hategekimana. Jean Claude informed the witness that "Hategekimana and his group were trying to get Agathe Uwilingiyimana".[3090] Witness Munyaneza and about 30 other ESM students then joined the soldiers and advanced towards the Prime Minister's residence. The soldiers were firing in the air towards the roof of the Prime Minister's residence.[3091] Witness Munyaneza testified that on their way to the Prime Minister's residence, he did not see any armoured vehicles.[3092]

1681. Upon arrival at the Prime Minister's residence, the soldiers led by Hategekimana ordered the soldiers guarding the residence to lay down their weapons. They then entered the compound and ordered the UNAMIR soldiers to lay down their weapons. Witness Munyaneza testified that he saw two UNAMIR vehicles parked outside the gate and that upon entering the residence, he saw 13 or 14 UNAMIR soldiers who had been disarmed.[3093]

1682. Thereafter, a Rwandan Army major arrived at the residence and asked the soldiers led by Hategekimana not to threaten the UNAMIR soldiers. The major suggested that the UNAMIR soldiers be handed over to him so that he could take them to his superior officers.

[3081] T. 16 July 2008, p. 17.
[3082] T. 16 July 2008, p. 18.
[3083] T. 9 July 2008, p. 67.
[3084] T. 9 July 2008, p. 74.
[3085] T. 9 July 2008, p. 74.
[3086] T. 9 July 2008, pp. 74-75.
[3087] T. 9 July 2008, p. 74.
[3088] T. 9 July 2008, p. 75.
[3089] T. 9 July 2008, p. 76.
[3090] T. 9 July 2008, p. 75.
[3091] T. 9 July 2008, p. 76.
[3092] T. 9 July 2008, p. 76-77.
[3093] T. 9 July 2008, p. 78.

The UNAMIR soldiers were then taken away by the major, while Hategekimana and his men continued their search for the Prime Minister.[3094]

1683. Subsequently, Witness Munyaneza heard people shouting that they had found the Prime Minister in the building behind her residence.[3095] The Prime Minister was then brought back to her house. Some of the soldiers referred to her as an "accomplice" and others taunted her by saying that they would "take her to the CND so that she would be able to take an oath."[3096] Witness Munyaneza testified that an ESM student called David shot the Prime Minister using his personal weapon.[3097] The witness was standing about three to four metres away from the Prime Minister when she was killed.[3098] He estimated that the Prime Minister was shot between 10.00 and 10.30 a.m.[3099]

Nzuwonemeye Defence Witness N1

1684. Witness N1 was a senior military officer in Rwanda in 1994.[3100] He testified that he travelled around the area near the residence of the Prime Minister in the morning of 7 April 1994. However, he did not see any armoured vehicles during his travels in that area except for one light armoured vehicle parked at ESM.[3101]

Nzuwonemeye Defence Witness Adrian Havugimana

1685. Witness Havugimana was a member of the Infantry company of the RECCE Battalion in 1994.[3102] He testified that in the night of 6 April 1994, he attended an assembly of soldiers at Camp Kigali.[3103] After the assembly, Havugimana collected his weapon and went to the office of Nzuwonemeye.[3104] Thereafter, the witness remained awake outside Nzuwonemeye's office throughout the night of 6 April 1994. The witness stated that Nzuwonemeye briefly left his office about four times during the night to inspect his soldiers and then returned to his office.[3105] The witness further testified that during the night, Captain Sagahutu, Captain Dukuzumuremyi, Lieutenant Baziramwabo, Second Lieutenant Rwangoga and Chief W.O. Shumbusho arrived at Nzuwonemeye's office and had a meeting with Nzuwonemeye.[3106]

1686. On the same night, the witness saw four armoured vehicles belonging to Squadron A led by Sagahutu leave Camp Kigali. He was later informed by an unidentified individual that the armoured vehicles were sent out to protect the Radio Rwanda station.[3107]

1687. At about 6.00 or 7.00 a.m. on 7 April 1994, Witness Havugimana saw Nzuwonemeye leaving his office in a light armoured vehicle ("VBL") driven by Sergeant Major

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[3094] T. 9 July 2008, pp. 78-79.
[3095] T. 9 July 2008, p. 79.
[3096] T. 9 July 2008, p. 80.
[3097] T. 9 July 2008, p. 80.
[3098] T. 9 July 2008, p. 81.
[3099] T. 9 July 2008, p. 81.
[3100] T. 8 September 2008, pp. 7-8 (ICS).
[3101] T. 8 September 2008, pp. 16-21.
[3102] T. 14 July 2008, p. 4.
[3103] T. 14 July 2008, pp. 5-6.
[3104] T. 14 July 2008, p. 6.
[3105] T. 14 July 2008, pp. 7, 23.
[3106] T. 14 July 2008, p. 7.
[3107] T. 14 July 2008, pp. 7-8.

Ndyanabo.[3108] At approximately 8.00 a.m., the witness went to Nzuwonemeye's house. The journey from Camp Kigali to Nzuwonemeye's house took between 8 and 10 minutes. Upon arrival, Witness Havugimana saw the VBL driven by Ndyanabo. Nzuwonemeye came out of his house and ordered Witnesses Havugimana to be responsible for the safety and security of his family and residence. Nzuwonemeye then left aboard the VBL.[3109]

Nzuwonemeye Defence Witness NGT

1688. Defence Witness NGT, a soldier in the RECCE Battalion in 1994, testified that the RECCE Battalion was assigned to protect sensitive areas in Kigali such as Radio Rwanda, the State House, the Presidential residence and the National Bank of Rwanda.[3110] The witness was mostly assigned to guard the State House and Radio Rwanda.[3111] According to the witness, there were three armoured vehicles deployed at the State House, two deployed to guard Radio Rwanda and one deployed to the National Bank.[3112]

Nzuwonemeye Defence Witness K4

1689. Witness K4 worked at the Headquarters of the RECCE Battalion at Camp Kigali in April 1994.[3113] The witness testified that Nzuwonemeye could not deploy RECCE squadrons without the authorisation of the Chief of Staff of the Rwandan Army.[3114] The witness also stated that neither "junior officer[s] …, subordinate officer[s] … no[r] other units" could hear orders that were communicated by the battalion commander unless they were closely located to the person receiving the order over the radio affixed to the vehicle. In particular, Witness K4 disagreed with Prosecution Witness DA's assertion that a soldier could listen in on conversations using alternative radios mounted in vehicles and on "walkie-talkies."[3115] Witness K4 further told the Chamber that in 1994, the RECCE Battalion possessed only one freestanding Motorola radio, which was used by Nzuwonemeye to communicate with other commanders or the operations centre. Other RECCE Battalion soldiers did not have their own personal radio equipment and used the radio sets that were affixed to RECCE vehicles.[3116]

1690. The witness also testified about Nzuwonemeye's conduct at Camp Kigali on the night of 6 April 1994. According to the witness, Nzuwonemeye arrived at the camp sometime between 9.30 and 10.00 p.m. and spoke to RECCE Battalion soldiers in front of his office.[3117] Thereafter, Nzuwonemeye held a meeting in his office with Sagahutu, Dukumuremya [*sic*], Baziramwabo and the Regimental Sergeant Major, the leaders of RECCE Battalion squadrons. Witness K4 disputed Prosecution Witness ALN's evidence that one could hear the conversation between the participants of this meeting from the parking lot in front of the RECCE Battalion Headquarters.[3118] After the meeting, Sagahutu left Camp Kigali with

[3108] T. 14 July 2008, p. 8.
[3109] T. 14 July 2008, pp. 9-10.
[3110] T. 14 July 2008, pp. 10-14.
[3110] T. 23 September 2008, p. 28.
[3111] T. 23 September 2008, pp. 29-30.
[3112] T. 23 September 2008, p. 28.
[3113] T. 30 June 2008, p. 4 (ICS).
[3114] T. 30 June 2008, p. 9.
[3115] T. 30 June 2008, pp. 23-24, 51.
[3116] T. 30 June 2008, pp. 23, 47, 51.
[3117] T. 30 June 2008, pp. 10-12. Witness K4 explained that he had been told by a messenger that Nzuwonemeye "was telling the soldiers that they should be on standby so that they could intervene if such a need arose".
[3118] T. 30 June 2008, pp. 11, 13-14.

members of his squadron in order to protect sensitive areas in Kigali. Witness K4 did not see him return to the camp throughout 6 and 7 April. The witness disputed Prosecution Witness ALN's evidence that Nzuwonemeye ordered Sagahutu to send armoured vehicles to the Prime Minister's residence.[3119]

1691. Witness K4 further testified that he and Nzuwonemeye remained at the RECCE Battalion throughout the night of 6 to 7 April. At about 6.30 a.m. on 7 April, Nzuwonemeye told the witness that he was going home to prepare for a meeting to be held at ESM later that morning, and that Captain Dukumuremya (sic) would be in charge of the battalion. Nzuwonemeye was driven home in a light armoured vehicle by Sergeant Major Ndyanabo.[3120]

Nzuwonemeye Defence Witness TCB1

1692. Witness TCB1 was a soldier with the Signals company of the Rwandan Army in 1994.[3121] In April 1994, the witness carried out various missions, including monitoring the Motorola radio network within the Kigali operational sector so as to ensure the quality of its signals. He also installed communication/signals equipment on armoured vehicles or command jeeps, and inspected or carried out repairs to the radio networks of other operational sectors.[3122]

1693. Witness TCB1 testified that the RECCE Battalion had a transmission or signals centre, which was used to listen in on communications. The battalion used the MX340 transmitter to listen to messages on the OPS network and the HF372 to communicate with leaders of its squadrons and companies. The company commanders in the RECCE Battalion used TRC352 radios, while the platoon commanders had TRVP213.[3123]

1694. According to Witness TCB1, only the commander of the RECCE Battalion had a Motorola radio, which he used to communicate with the General Staff Headquarters, and an HF transmitter to communicate with the squadron commanders who also had HF transmitters.[3124] Squadron commanders used VHF radios to communicate with the platoon commanders.[3125] Witness TCB1 testified that no other member of the RECCE Battalion could listen to communications sent from the commander's Motorola radio because he was the only one who had that type of radio within the battalion.[3126]

1695. The witness testified that RECCE Battalion commanders could not listen in to communications between a squadron commander and a section chief because they had no access to the radio networks used by the commanders of those units. According to the witness, the battalion commander could not have direct radio contact with subordinates below the squadron commanders.[3127]

Nzuwonemeye Expert Witness Thomas Kubic

[3119] T. 30 June 2008, pp. 15-17, 21.
[3120] T. 30 June 2008, pp. 16, 18-19.
[3121] T. 29 September 2008, p. 6.
[3122] T. 29 September 2008, p. 7.
[3123] T. 29 September 2008, p. 25.
[3124] T. 29 September 2008, pp. 26-27.
[3125] T. 29 September 2008, pp. 26-27.
[3126] T. 29 September 2008, p. 32.
[3127] T. 29 September 2008, p. 33.

1696. Defence Expert Witness Thomas Kubic testified that he carried out investigations on two sites in Kigali, namely Camp Kigali and the Prime Minister's residence.[3128]

1697. According to Kubic, the investigation that he carried out at the residence of the Prime Minister does not support the contention that the residence was subjected to a gun attack, either from small or large calibre weapons. He further testified that his investigation did not yield any physical evidence or trace on any part of the residence suggesting that it came under such an attack. Furthermore, there was no evidence suggesting that the building had been repaired following such an attack beyond normal repair due to water damage or something similarly minimal.[3129]

1698. Kubic also testified that one could not view the residence from a distance of 300 metres away because the view was obstructed by other houses on the street. It is even more difficult to see the Prime Minister's residence from the intersection of *Avenue de la Jeunesse* and *Avenue Paul VI*.[3130] For this reason, an armoured vehicle located at that intersection would not have had a clear line of fire to be able to attack the Prime Minister's residence effectively.[3131]

The Accused Nzuwonemeye

1699. Nzuwonemeye testified that at some point during the meeting held at ESM in the morning of 7 April, he heard the sound of gunfire.[3132] The gunfire led the participants at the meeting to think that the ESM building was under attack.[3133] Colonel Bagosora asked Colonel Rusatira and an officer of the Rwandan Army to see what was happening. Nzuwonemeye stated, "[S]ome minutes later, Colonel Rusatira [returned and] said that maybe it was simply a volley of shots which had accidentally been fired by soldiers".[3134] Nzuwonemeye testified that while participating in the meeting at ESM, he did not receive any information suggesting that the Prime Minister had been killed.[3135]

1700. Nzuwonemeye testified that after the meeting, he met Colonel Nubaha who told him that there were rumours circulating that the Prime Minister had been murdered by Presidential Guards and students at ESM.[3136]

1701. Nzuwonemeye denied the allegations levelled against him by the Prosecution that he told soldiers under his command that the Prime Minister was responsible for the death of President Habyarimana. He also denied that he ordered armoured vehicles to be sent to block access into the Prime Minister's residence or that he ordered Sagahutu to takes measures leading to the assassination of the Prime Minister.[3137] He further denied having been informed that the Prime Minister was expected to deliver a radio address.[3138]

[3128] T. 23 June 2008, p. 73.
[3129] T. 24 June 2008, p. 29.
[3130] T. 24 June 2008, pp. 31-33.
[3131] T. 24 June 2008, pp. 34, 49.
[3132] T. 6 October 2008, p. 59.
[3133] T. 6 October 2008, p. 59.
[3134] T. 6 October 2008, p. 60.
[3135] T. 6 October 2008, p. 60.
[3136] T. 6 October 2008, p. 62; T. 7 October 2008, p. 4.
[3137] T. 6 October 2008, p. 42.
[3138] T. 8 October 2008, pp. 22, 33.

1702. According to Nzuwonemeye, it was widely believed after 7 April 1994 in Rwanda that soldiers of the Presidential Guard, the FAR and students at ESM were responsible for killing the Prime Minister.[3139] Nzuwonemeye also claimed to have heard at the time a communiqué aired over the radio by the Chief of Staff of the Rwandan Army, Colonel Gatsinzi, that unruly soldiers of the Presidential Guard were responsible for the death of the Prime Minister.[3140]

1703. Nzuwonemeye testified that given the different radio sets that were used within the RECCE battalion, it was not technically possible for him to overhear radio communication between Sagahutu and his subordinates.[3141] He further testified that at no time during the period relevant to the events pleaded in the Indictment did he receive reports indicating that Sagahutu was implicated in criminal activities.[3142]

4.5.4.1.3.2 Sagahutu Defence Witnesses

Sagahutu Defence Witness UDS

1704. Witness UDS was an officer of the RECCE Battalion in April 1994.[3143] He testified about the communication system in the RECCE battalion. According to the witness, the battalion commander communicated with his squadron commanders using a shortwave radio called TRC352,[3144] while squadron commanders communicated with platoon heads using VP213 radio, which operated on the FM band.[3145] He further testified that squadron commanders had two different types of radios that enabled them to communicate with the battalion commander on the one hand and with platoon heads on the other. In turn, platoon heads used FM radios to communicate with soldiers under their command, but used a different frequency from the one used to communicate with squadron commanders. According to the witness, squadron commanders could not directly communicate with members of sections or crews of armoured vehicles since they had no radio access to members of those units.[3146]

Sagahutu Defence Witness CSS

1705. Witness CSS, a member of Squadron A of the RECCE battalion, testified that Nzuwonemeye and Sagahutu communicated in codes that made it difficult for outsiders to decipher the contents of their communication.[3147]

1706. Witness CSS testified that no member of Squadron A went to the Prime Minister's house in the morning of 7 April 1994. However, the witness conceded that he was not present

[3139] T. 7 October 2008, p. 8.
[3140] T. 6 October 2008, p. 22.
[3141] T. 7 October 2008, pp. 13, 65-66.
[3142] T. 7 October 2008, p. 25.
[3143] T. 27 October 2008, p. 37 (ICS).
[3144] T. 27 October 2008, p. 44 (ICS). *See also* Defence Exhibit 599.
[3145] T. 27 October 2008, p. 44 (ICS).
[3146] T. 27 October 2008, p. 44 (ICS).
[3147] T. 23 October 2008, pp. 41, 58-59.

at the Prime Minister's residence when she was killed.[3148] The witness later learned that soldiers of the Presidential Guard were responsible for the death of the Prime Minister.[3149]

Sagahutu Defence Witness RNS

1707. Witness RNS, a soldier of the Rwandan Army in April 1994, testified that on 7 April 1994, between 2.00 and 3.00 p.m. while at Camp Kanombe, he saw a double-cabin Volkswagen pick-up vehicle arrive at the camp. Aboard that vehicle was Colonel Hitimana from ESM and other soldiers. The witness was informed that the vehicle had brought the dead body of Prime Minister Agathe Uwilingiyimana to the camp, but he did not actually see the body.[3150]

Sagahutu Defence Witness Habimana

1708. Witness Habimana was a platoon leader within the RECCE Battalion in 1994.[3151] He denied that an assembly of RECCE Battalion soldiers was convened at Camp Kigali on the night of 6 April 1994 and he also denied seeing Sagahutu at Camp Kigali on that night.[3152]

The Accused Sagahutu

1709. Sagahutu testified that no members of his unit were involved in killing the Prime Minister.[3153] He further testified that the area where the Prime Minister's residence was located did not fall within the area that he was required to defend following the death of President Habyarimana.[3154] Sagahutu stated that he heard about the death of the Prime Minister in the afternoon of 7 April 1994. He was told that some people who were at Camp Kigali had gone to the "Prime Minister's [residence], and in the melee, the Prime Minister had been murdered".[3155]

1710. Sagahutu testified that it was implausible that members of the RECCE Battalion would have been ordered to carry out a mission such as killing the Prime Minister, since such missions did not fall within the remit of the battalion's duties.[3156] He also denied having informed Nzuwonemeye over the radio on 7 April 1994 that everyone had been killed except for Prime Minister Agathe Uwilingiyimana and Faustin Twagiramungu.[3157]

1711. Sagahutu also denied that he instructed a corporal from the RECCE Battalion to transport the dead body of the Prime Minister to Kanombe military hospital. He testified that, in fact, he was informed while in Rwanda by Chief W.O. Ntahomkiye that her dead body had been transported from her residence to Kanombe military hospital by a senior officer serving at ESM.[3158]

[3148] T. 23 October 2008, p. 44.
[3149] T. 23 October 2008, p. 44.
[3150] T. 28 October 2008, pp. 11-12.
[3151] T. 13 November 2008, p. 3.
[3152] T. 13 November 2008, p. 6.
[3153] T. 1 December 2008, p. 16.
[3154] T. 1 December 2008, p. 47; T. 2 December 2008, p. 12; T. 3 December 2008, p. 35.
[3155] T. 1 December 2008, p. 16.
[3156] T. 1 December 2008, p. 47.
[3157] T. 1 December 2008, pp. 47-48.
[3158] T. 1 December 2008, p. 17.

1712. According to Sagahutu, Witness DA, who claimed to have carried out errands to the residence of the Prime Minister, was an orderly who occasionally drove Sagahutu's civilian vehicle, but he did not drive a military vehicle.[3159] Sagahutu also disputed claims by Prosecution witnesses that Corporal Afrika was involved in the attack against the Prime Minister in the morning of 7 April 1994. According to Sagahutu, Corporal Afrika was a gunner on an AML 90 vehicle who was stationed at the *Milles Collines* crossroads at the time of the killing of the Prime Minister and never left that position.[3160]

4.5.4.1.4 Deliberations

1713. The Chamber notes that the Defence does not contest the fact that Prime Minister Agathe Uwilingiyimana was killed in the morning of 7 April 1994 by soldiers of the Rwandan Army. However, the Defence contests the Prosecution's allegation that RECCE Battalion soldiers under the command of Nzuwonemeye and Sagahutu took part in the attack that led to the death of the Prime Minister.

1714. The Chamber will now consider whether the Prosecution has adduced sufficient evidence to establish that RECCE Battalion soldiers acting at the behest of Nzuwonemeye and Sagahutu did in fact take part in the killing of Prime Minister Agathe Uwilingiyimana. The Chamber will first consider whether Nzuwonemeye and Sagahutu ordered RECCE Battalion armoured vehicles to the Prime Minister's residence in the morning of 7 April 1994. The Chamber will then consider whether RECCE Battalion soldiers participated in the attack at the Prime Minister's residence and the role that Nzuwonemeye and Sagahutu played during that attack.

4.5.4.1.4.1 Order by Nzuwonemeye and Sagahutu to Deploy RECCE Armoured Vehicles to the Residence

1715. The Chamber has heard evidence from Witnesses AWC and ALN that early in the morning of 7 April, they heard Nzuwonemeye instruct Sagahutu to deploy armoured vehicles to the residence of the Prime Minister. Specifically, the Chamber recalls that Witness AWC testified that early in the morning of 7 April, he heard Nzuwonemeye order Sagahutu to send RECCE Battalion soldiers to reinforce Presidential Guard units who were at the Prime Minister's residence. He also testified that he heard Sagahutu send a radio message ordering two armoured vehicles located at Radio Rwanda to be deployed at the Prime Minister's residence and that he subsequently heard gunfire, which he later learned was from RECCE Battalion soldiers and directed toward Belgian UNAMIR forces positioned at the Prime Minister's residence.[3161] The Chamber recalls that Witness ALN testified that on 7 April, at about 6.30 a.m. while at Camp Kigali, he heard Nzuwonemeye order Sagahutu to send two armoured vehicles to support the Presidential Guard soldiers at the Prime Minister's residence. Witness ALN added that in compliance with this order, Sagahutu deployed two armoured vehicles from the camp.[3162] Witness ALN also heard a radio call from the RECCE armoured vehicles confirming that they had arrived at the Prime Minister's residence later that day.[3163]

[3159] T. 3 December 2008, p. 5.
[3160] T. 2 December 2008, pp. 17-18.
[3161] T. 18 January 2006, pp. 31-32.
[3162] T. 29 September 2004, p. 45; T. 30 September 2004, p. 35; T. 5 October 2004, p. 20.
[3163] T. 30 September 2004, p. 36.

1716. The Chamber has carefully reviewed the evidence and submissions adduced by the Defence in a bid to impugn the credibility of Witnesses ALN and AWC's evidence discussed above. In particular, the Chamber has heard evidence from a number of Defence Witnesses disputing Witness ALN's claim to have been present at Camp Kigali. The Chamber notes that the evidence of these witnesses does not contravene Witness ALN's testimony that he was present at Camp Kigali at 6.30 a.m., when he heard Nzuwonemeye order Sagahutu to deploy armoured vehicles to reinforce the Presidential Guard soldiers at the Prime Minister's residence. Their evidence therefore does not impair the credibility of Witness ALN on this point.

1717. The Chamber has also considered the discrepancy between the evidence of Witnesses AWC and ALN regarding the location from which RECCE Battalion armoured vehicles were deployed to the residence of the Prime Minister. Whereas Witness AWC testified that the armoured vehicles were sent from Radio Rwanda, Witness ALN testified that they were sent from RECCE Headquarters at Camp Kigali. The Chamber is not satisfied that the mere fact that these witnesses gave a slightly different account of the location from which the armoured vehicles were deployed impairs their overall credibility in light the fact that their evidence converges in important respects. Furthermore, the Chamber finds that this discrepancy can reasonably be explained by the time lapse between 1994 and the dates of the witnesses' testimony.

1718. In assessing whether Nzuwonemeye and Sagahutu ordered RECCE Battalion armoured vehicles to the Prime Minister's residence in the morning of 7 April, the Chamber has considered the evidence of Prosecution Witness Dallaire that the Prime Minister intended to make a radio address to the nation that morning in order to calm fears and reassure the population that a political leadership structure remained in place. This is corroborated by the evidence of Defence Witness Marchal, who testified that Dallaire instructed him to deploy a contingent of UNAMIR soldiers to escort the Prime Minister to make a radio address at about 5.30 a.m. on 7 April.[3164] Marchal therefore sent Belgian UNAMIR soldiers to the residence of the Prime Minister. The evidence suggests that members of the RECCE Battalion attempted to prevent the Belgian soldiers from reaching the residence of the Prime Minister. However, the Belgian soldiers eventually arrived at the residence where they were later disarmed by Rwandan Army soldiers, taken to Camp Kigali and eventually killed. In the Chamber's view, it is a reasonable inference from this evidence that Nzuwonemeye may have ordered Sagahutu to reinforce the Presidential Guard soldiers at the residence of the Prime Minister in order to prevent her from reaching the radio station where she was expected to deliver a radio speech calling for calm in the country.

1719. Based on the evidence set out above, the Chamber is satisfied that early in the morning of 7 April 1994, Nzuwonemeye and Sagahutu ordered RECCE Battalion armoured vehicles to deploy to the Prime Minister's residence in order to reinforce the Presidential Guard soldiers present at that location.

4.5.4.1.4.2 Involvement of RECCE Battalion Soldiers in the Attack at the Residence

1720. The Chamber will now consider the evidence of Prosecution witnesses implicating RECCE Battalion soldiers in the attack that led to the death of the Prime Minister at her residence. The Chamber recalls that Prosecution Witnesses DA and HP provided eyewitness

[3164] T. 17 January 2008, pp. 49, 59, 61, 66.

testimony that RECCE Battalion soldiers were involved in the attack that led to the killing of the Prime Minister. In particular, these witnesses provided corroborating evidence that a RECCE armoured unit led by W.O. Bizimungu and including Corporal Fiacre "Afrika" was located on Paul VI Avenue, within close proximity of the Prime Minister's residence, on the night of 6 to 7 April 1994. Both Witnesses DA and HP claimed to have taken "supplies" to W.O. Bizimungu at this location on 7 April. According to these witnesses, this unit collaborated with other Rwandan Army soldiers in attacking the Prime Minister at her residence. After the attack, both witnesses claimed to have seen the Prime Minister's dead body and transported her dead body to Kanombe hospital on the order of Sagahutu.

1721. The Defence submits that Witness DA's claim to have visited the Prime Minister's residence during the events is difficult to accept in light of the fact that the witness failed to notice a number of incidents at the residence.[3165] In particular, the Defence points to Witness DA's failure to see Ghanaian soldiers of UNAMIR who, as the evidence suggests, were present at the residence of the Prime Minister early in the morning of 7 April; his failure to see that at least one of the Belgian soldiers retained his weapon while other UNAMIR soldiers had been disarmed by Rwandan soldiers, loaded on a bus and taken from the Prime Minister's residence to Camp Kigali; his failure to correctly identify the person who drove the bus that took the UNAMIR soldiers from the Prime Minister's residence to Camp Kigali; and finally, the fact that he allegedly saw two UNAMIR jeeps at the Prime Minister's residence whereas all other witnesses testified that the Belgians arrived in four vehicles.

1722. The Chamber is not persuaded that the witness's failure to notice these facts renders his evidence not credible. The incidents that the witness allegedly failed to notice are not of such weight that they can be deemed to affect his overall credibility. Given the chaotic circumstances at the Prime Minister's residence that morning and the lapse of time between the events and the witness's testimony, it is difficult to expect the witness to recall the events that transpired at the Prime Minister's residence in exhaustive detail.

1723. The Defence also submits that Witness DA's pre-trial statement contains no reference to his alleged trip to the Prime Minister's residence in the morning of 7 April, nor does the statement mention that he saw Belgian soldiers being taken away from the residence. During cross-examination, Witness DA explained that he in fact mentioned these issues during his interview but that Defence Exhibit 7 is a short version of a much longer document, and that the Belgians who interviewed him chose to leave out certain aspects of his story. The Chamber is not convinced by this explanation. The Chamber finds that since the Belgian investigation was directed at ascertaining the circumstances surrounding the death of members of the Belgian UNAMIR contingent, it is unlikely that the investigators would have overlooked Witness DA's account of the removal of Belgian soldiers from the residence of the Prime Minister had he in fact referred to this incident. In the view of the Chamber, the fact that Witness DA's alleged trip to the Prime Minister's residence is not mentioned in his statement suggests that the witness did not speak about it during his interview, thereby suggesting fabrication.

1724. The Chamber also notes that there are other significant variances between Witness DA's statement and his testimony. For example, in his testimony, the witness claimed that Nzuwonemeye ordered armoured vehicles to be deployed to block the road leading to the

[3165] *See* Sagahutu Closing Brief, paras. 479-506; Nzuwonemeye Closing Brief, paras. 424, 543-552, 565-571, 608-614.

Prime Minister's house. However, in his pre-trial statement, the witness claimed that he heard a radio message that armoured vehicles of the RECCE Battalion and Presidential Guard had surrounded the residence. Furthermore, in his statement, Witness DA indicated that after returning from patrol with Sagahutu on 7 April at about 9.30 a.m., he heard a radio conversation in which W.O. Bizimungu told Nzuwonemeye that he had gone to the Prime Minister's house but could not find her and that he would return to that location to search for her. His statement contains no suggestion that he visited the Prime Minister's residence, or that he saw W.O. Bizimungu's armoured vehicle parked at the junction leading to the residence, or that he saw the Prime Minister's dead body. The Chamber finds that these inconsistencies between Witness DA's pre-trial statement and his sworn testimony raise doubts about the veracity of his account of the events surrounding the death of Prime Minister Agathe Uwilingiyimana. In light of these discrepancies, the Chamber will only accept Witness DA's testimony about these events where it is corroborated by other reliable evidence.

1725. The Chamber will now consider the Defence submissions regarding the credibility of Witness HP. The Chamber recalls the Defence submission that this witness lacks credibility because he was evasive in his answers regarding time and also because his evidence diverged from that of Witness DA regarding the position of W.O. Bizimungu's armoured vehicle, the location of the Prime Minister's dead body within her residence, and the identity of the soldiers who transported the body to Kanombe military hospital.[3166]

1726. The Chamber is not persuaded that Witness HP's failure to provide specific information on the timing of the events that he claimed to have witnessed vitiates the credibility of his evidence. The Chamber accepts as plausible the explanations advanced by the witness to explain his difficulties in giving precise time information. The witness stated that he only gave estimates about time because he had no way of recalling the timing since he was not wearing a watch in April 1994.[3167] More significantly, the Chamber finds that given the difficulty of the events about which he testified and the considerable time lapse between the events and the dates of his testimony, it is unreasonable to expect the witness to provide precise information regarding the timing of the events forming the subject of his testimony.

1727. Contrary to the submissions of the Defence, the Chamber is not satisfied that there is significant divergence between the evidence of Witnesses HP and DA regarding the location of W.O. Bizimungu's armoured vehicle when they saw him in the morning of 7 April 1994. The Chamber notes that both witnesses gave concordant evidence that they found W.O. Bizimungu's armoured vehicle stationed in close proximity to the Prime Minister's residence. Similarly, the Chamber is not persuaded that the fact that Witnesses DA and HP gave different accounts of the position of the Prime Minister's dead body inside her residence renders their evidence unreliable. The Chamber considers that this difference is of marginal weight and is plausibly explained by the fact that these witnesses visited the residence at different times and that the Prime Minister's body may have been moved between their visits.

1728. The Chamber has also considered the Defence submission that the presence of Witnesses HP and DA at the Prime Minister's residence is called into question in light of the fact that Witness HP was unable to recall whether he saw Witness DA at the time that the

[3166] *See* Sagahutu Closing Brief, paras. 507-519; Nzuwonemeye Closing Brief, paras. 425, 529; T. 9 May 2005; T. 10 May 2005.
[3167] T. 9 May 2005, p. 35.

dead body of the Prime Minister was transported from her residence to Kanombe hospital. The Chamber is not convinced by this submission. The Chamber recalls that Witness HP did not exclude the possibility that Witness DA may have been present at the residence when the dead body of the Prime Minister was being transported to Kanombe. Given the significant time that has elapsed between 1994 and the time when these witnesses testified, it is unlikely that Witness HP would be able to recall the names of everyone who was at the residence when the Prime Minister's dead body was being transported away.

1729. The evidence of Witnesses DA and HP regarding the involvement of RECCE Battalion soldiers such as Corporal "Afrika" in this attack is corroborated to some extent by the indirect evidence of Witnesses DY, ANK/XAF and DCK, who testified that on 7 April at Camp Kigali, they heard Corporal "Afrika", who was known to them as a member of Squadron A of the RECCE battalion, boasting about his participation and that of other RECCE Battalion soldiers in the killing of the Prime Minister. The Chamber recalls that the Defence argued that Witness DY's evidence about the boastful remarks made by Afrika regarding his role in the killing of the Prime Minister is inconsistent with his pre-trial statement, in which he declared that he did not know anything about the attack on the Prime Minister's residence.[3168] During cross-examination, Witness DY did not attempt to explain the contradiction but maintained that his evidence was based on what he had heard.[3169] The Chamber notes that Witness DY's claim in his statement that he did not have direct knowledge of the attack on the Prime Minister's residence is consistent with his testimony before the Chamber. Furthermore, the Chamber recalls that Prosecution Witnesses ANK/XAF and DCK also testified to having heard Afrika make remarks similar to that reported by Witness DY in his testimony before the Chamber. For these reasons, the Chamber is not satisfied that this submission by the Defence casts doubt on the testimony of Witness DY.

1730. The Chamber recalls that Witnesses HP and DA, both members of the RECCE battalion, testified that they were involved in transporting the dead body of the Prime Minister from her residence to Kanombe hospital on the orders of Sagahutu. The Chamber considers that their concordant evidence about the transportation of the Prime Minister's dead body reinforces the credibility of their claim to have visited the Prime Minister's residence at the time. This evidence also supports the view that the Accused were closely involved in the events that led to the killing of the Prime Minister.

1731. Witness HP's evidence that he transported the Prime Minister's body to Kanombe from Paul VI Avenue sometime between 4.00 and 4.30 p.m. is corroborated by the evidence of Witness DP, who testified that while at Camp Kanombe at about 5.30 p.m. on 7 April, he witnessed the arrival of a RECCE Battalion jeep carrying the dead body of the Prime Minister. He further testified that the vehicle was driven by a RECCE soldier whom he had personally known for many years. The Chamber notes that the Defence called Witness RNS in order to discredit the evidence of Witnesses HP and DP regarding the transportation of the Prime Minister's dead body to Kanombe hospital. Witness RNS testified that while at Camp Kanombe between 2.00 and 3.00 p.m. on 7 April, he witnessed the arrival of Colonel Hitimana from ESM and other soldiers aboard a double-cabin Volkswagen pick-up vehicle. The witness heard that Hitimana's vehicle had brought the dead body of the Prime Minister,

[3168] Nzuwonemeye Closing Brief, para. 564.
[3169] T. 24 January 2006, p. 50.

but he did not actually see the bodies that were brought in the vehicle.[3170] Having weighed Witness RNS's account of events, the Chamber is not satisfied that his hearsay evidence is sufficient to discredit the firsthand and corroborated account of Prosecution Witnesses HP and DA.

1732. In addition to the Prosecution witnesses discussed above, the Chamber has considered the evidence of Prosecution Witness LN that Lieutenant Colonel Baransaritse told him and other soldiers at Camp Kanombe that the Prime Minister had been killed by a platoon of ESM soldiers with the support of RECCE Battalion soldiers led by Sagahutu. Witness LN is the only witness who testified that Baransaritse and Sagahutu were present and directly participated in the attack on the Prime Minister. Given that Witness LN's hearsay evidence is not corroborated by other evidence before the Chamber and in fact contradicts the direct evidence of other witnesses whom the Chamber has found to be credible, the Chamber does not accept Witness LN's evidence on this point.

1733. In assessing whether RECCE Battalion soldiers acting on the orders of Nzuwonemeye and Sagahutu were involved in the killing of the Prime Minister, the Chamber has carefully weighed the accounts advanced by the Defence suggesting that the Prime Minister was killed by soldiers other than those of the RECCE battalion. According to the Defence, the evidence of Prosecution Witnesses Dallaire and Des Forges indicates that the Prime Minister was killed by Presidential Guards and/or soldiers from ESM. In light of the firsthand and credible evidence elicited from other Prosecution witnesses implicating RECCE Battalion soldiers in the killing of the Prime Minister, the Chamber is unwilling to absolve RECCE Battalion soldiers of any responsibility for the killing based on the indirect evidence of Des Forges and Dallaire. Furthermore, the evidence of Des Forges and Dallaire is not necessarily inconsistent with the Prosecution case that the Prime Minister was killed by soldiers of various units of the Rwandan Army including those of the RECCE battalion. The Prosecution does not contend that her killing was perpetrated exclusively by soldiers under the command of Nzuwonemeye and Sagahutu.

1734. Similarly, the testimony of Defence Witness Munyaneza that a student from ESM shot the Prime Minister with his personal weapon does not absolve Nzuwonemeye and Sagahutu from criminal responsibility for this crime. The Chamber considers that the killing of the Prime Minister was a well-coordinated operation involving soldiers from various units of the Rwandan Army, including members of the RECCE Battalion led by Nzuwonemeye and Sagahutu. As detailed above, the Prosecution evidence suggests that Nzuwonemeye and Sagahutu directed their subordinates to take part in the operation that led to the death of the Prime Minister. The fact that the fatal blow that led to the death of the Prime Minister may have been inflicted by a soldier from another unit of the Rwandan Army does not negate the culpability of the Accused and their subordinates for their role in the operation that led to her death.

1735. The Chamber is also not satisfied that Defence Witnesses Kwesi Doe, Sandow Zambulugu, Munyaneza and Ntivuguruzwa's testimony that they did not see any armoured vehicles located at the junction of the roads leading to the National Bank of Rwanda and Paul VI Avenue prior to the killing of the Prime Minister raises doubts about the involvement of W.O. Bizimungu, Corporal "Afrika" and possibly other RECCE Battalion soldiers in the attack that led to the death of the Prime Minister. Based on the evidence on record and the

[3170] T. 28 October 2008, pp. 11-12.

Chamber's observations during the site visit, the Chamber considers that these Defence witnesses who were located at the entrance gate of the Prime Minister's residence would not have been able to see armoured vehicles located at the junction of the roads leading to the National Bank of Rwanda and Paul VI Avenue, a distance of approximately 150 to 200 metres. The evidence of these Defence witnesses does not therefore impair the credibility of Prosecution witnesses' evidence that on the orders of Nzuwonemeye and Sagahutu, RECCE Battalion armoured vehicles were deployed to the Prime Minister's residence and that members of that battalion were involved in the attack that led to the death of the Prime Minister.

1736. Similarly, it is the Chamber's view that the evidence of Defence Witnesses DE8-10/F9 and N1 that they went through *Avenue de L'armée*, which is parallel to Paul VI Avenue, in the morning of 7 April but did not detect anything unusual or abnormal fails to raise a doubt in regard to the Prosecution case. Neither Witness DE8-10/F9 nor N1 actually drove or walked on Paul VI Avenue that morning. Therefore, the Chamber considers that their broad assertions of normality are at best speculative.

1737. The Chamber has also considered Defence Expert Witness Kubic's testimony that his examination of the Prime Minister's residence showed no physical evidence that it was struck by gunfire, and that an armoured vehicle located near the junction of the roads leading to the National Bank of Rwanda and the Prime Minister's residence would not have had a clear line of fire to the residence. The Chamber is not persuaded that the results of Kubic's investigations cast doubt on the Prosecution evidence that the Prime Minister was shot to death by soldiers of the Rwandan Army including members of the RECCE battalion. The Chamber recalls that Witnesses DA and HP testified that they saw the Prime Minister's dead body with bullet wounds. Kubic's evidence regarding the physical condition of the Prime Minister's residence has little bearing on the events that transpired at the Prime Minister's residence on 7 April 1994.

1738. The Chamber has also considered the evidence of Defence Witnesses UDS and CSS disputing the involvement of RECCE Battalion soldiers in the attack that led to the death of the Prime Minister. The Chamber notes that these witnesses conceded that they were not present at the residence of the Prime Minister at the time that she was killed. The Chamber is therefore unwilling to discard the firsthand and corroborated evidence of Prosecution witnesses implicating RECCE Battalion soldiers in the death of the Prime Minister in favour of the hearsay evidence of Witnesses UDS and CSS.

1739. Finally, the Chamber has reviewed Nzuwonemeye and Sagahutu's evidence that W.O. Bizimungu and other crew of the RECCE armoured vehicles could not have been present at the attack on the Prime Minister's residence because they were tasked with the responsibility of protecting other important sites in Kigali from 6 to 7 April. In the view of the Chamber, the fact that RECCE Battalion soldiers had been tasked with defending important sites near the Prime Minister's residence does not in itself preclude their involvement in the death of the Prime minister at her residence on 7 April, as established by the firsthand and credible evidence elicited from a number of Prosecution witnesses. In the absence of cogent evidence to the contrary, the Chamber is unwilling to cast aside the credible and firsthand evidence of Prosecution witnesses based on this submission advanced by the Accused.

1740. The Chamber notes that it has heard credible evidence from Prosecution Witnesses DA and HP suggesting that, following the deployment of RECCE Battalion armoured

vehicles at the residence of the Prime Minister, Nzuwonemeye and Sagahutu kept themselves abreast of the events unfolding at the residence before and after the Prime Minister's death through radio communication with their subordinates, especially W.O. Bizimungu who led the armoured vehicles unit deployed at the residence. The Chamber has set out this evidence in detail in its summary of the evidence and need not repeat it at this stage. The Chamber is satisfied that both Nzuwonemeye and Sagahutu maintained contact with their subordinates who were at the residence of the Prime Minister, both before and after she was killed, and issued directives of an operational nature to their subordinates in the course of their communication with them. Based on these exchanges, the Chamber is satisfied that both Nzuwonemeye and Sagahutu ordered and were implicated to a significant extent in the events that led to the death of the Prime Minister.

1741. In reaching this finding, the Chamber has not relied upon the evidence of Witness ALN that at some point during the meeting held at ESM in the morning of 7 April he heard gunfire emanating from the direction of the Prime Minister's residence. Witness ALN testified that shortly thereafter, Nzuwonemeye emerged out of the venue of the meeting and used a Motorola radio that was mounted on the witness's vehicle to call the crew of the RECCE Battalion armoured vehicle. In his message, Nzuwonemeye inquired if the Prime Minister had been found. The person to whom Nzuwonemeye was speaking replied that they had found and killed the Prime Minister.[3171] The Chamber notes that it has heard a considerable amount of evidence casting doubt on Witness ALN's testimony on this point. Having reviewed this evidence, the Chamber has doubts about Witness ALN's evidence that he saw Nzuwonemeye communicate by radio with RECCE armoured units located at the Prime Minister's residence while attending the meeting at ESM in the morning of 7 April.

1742. The Chamber has also considered whether the evidence of Defence witnesses, especially TCB1, regarding the radio communication system that was used by members of the RECCE Battalion raises doubts about claims made by Prosecution witnesses regarding the implication of Nzuwonemeye and Sagahutu in the killing of the Prime Minister. The Defence submits that the Prosecution witnesses should not be believed because they testified that the messages they heard from W.O. Bizimungu to Nzuwonemeye and Sagahutu were from a Motorola radio and that this was impossible given that only Nzuwonemeye had this type of radio within the RECCE battalion.[3172] Contrary to this submission, the Chamber notes that it has received strong evidence that Motorola radios were used for communications throughout the Kigali operational sector and other combat zones. The RECCE Battalion was located within the Kigali operational sector and was engaged in active combat operations in 1994. It is therefore reasonable to assume that the battalion utilised Motorola radios for the purpose of their wartime communications. From the evidence of both Defence Witnesses TCB1 and Y1, it is clear that communications within the Motorola network were not very secure; anyone with similar equipment could listen to communications on that network. Indeed, Defence Witness Y1 testified that subordinates routinely listened to such radio communications either because they handled their superior officers' radios or simply, according to Witness TCB1, because they were equipped with the same type of radio and could listen to the conversations, although they could not participate in the discussions.[3173] In light of this evidence, the Chamber finds it to be a reasonable possibility that Prosecution

[3171] T. 5 October 2004, pp. 24, 48; T. 29 September 2004, pp. 51-52; T. 5 October 2004, p. 24; T. 4 October 2004, p. 30.
[3172] Nzuwonemeye Closing Brief, paras. 235-247; Sagahutu Closing Brief, paras. 291-292, 296-311.
[3173] T. 25 June 2008, pp. 15-16; T. 29 September 2008, pp. 20-21.

Witnesses DA, HP and AWC would have been able to overhear various radio communications between W.O. Bizimungu and the Accused persons.

1743. Even assuming that the Defence submission is correct that combat units could not communicate directly with the battalion commander, the Chamber is not satisfied that this negates the fact that Nzuwonemeye received information through Sagahutu of the events that led to the death of the Prime Minister. The Chamber is convinced beyond reasonable doubt that while at the Prime Minister's residence, W.O. Bizimungu maintained regular radio contact with Sagahutu, his immediate superior. The Defence does not contend that there is any technical impediment to radio communications between Sagahutu as squadron head and W.O. Bizimungu who was directly under his command. This is clear from Witness TCB1's evidence that squadron commanders communicated with their platoons and sections using VHF radios.[3174] Given that the order to deploy the armoured vehicles to the Prime Minister's residence emanated from Nzuwonemeye, the Chamber considers it implausible that Sagahutu would not have kept Nzuwonemeye regularly informed of the information he received from his subordinates at the Prime Minister's residence. The Chamber recalls that the evidence adduced by the Defence does not challenge the fact that Sagahutu as a squadron commander could communicate with Nzuwonemeye, the RECCE Battalion commander.

1744. Having considered the entirety of the evidence relevant to these events, the Chamber finds that not only did Nzuwonemeye order Sagahutu to deploy RECCE troops to reinforce Presidential Guard units at the Prime Minister's residence, an order with which Sagahutu complied, but that Nzuwonemeye and Sagahutu were kept fully informed of the activities of their subordinates at the residence, sent supplies to those subordinates and issued operational instructions to them. The involvement of Nzuwonemeye and Sagahutu, senior officers of the RECCE battalion, and the fact that they kept themselves abreast of the events unfolding at the Prime Minister's residence before and after she was killed suggests in the strongest possible manner that the killing of the Prime Minister was an organised operation. The evidence precludes any suggestion that the RECCE Battalion soldiers who participated in the killing of the Prime Minister were acting outside the orders and knowledge of the two Accused in their capacity as commanders of this battalion.

1745. The Chamber is therefore satisfied that the Prosecution has proved beyond reasonable doubt that Nzuwonemeye and Sagahutu bear both direct and superior responsibility for the killing of the Prime Minister on 7 April 1994.

4.5.4.2 Killing of Belgian UNAMIR Soldiers

4.5.4.2.1 Introduction

1746. The Indictment alleges that in the morning of 7 April 1994, soldiers of the RECCE Battalion, who were under the command of Nzuwonemeye and Sagahutu and assisted by elements from the Presidential Guard, arrested ten Belgian UNAMIR soldiers from the residence of Prime Minister Agathe Uwilingiyimana, disarmed them, and took them to Camp Kigali where they were killed and mutilated by soldiers from the RECCE Battalion, the Presidential Guard and the Music Company.[3175] The Indictment further alleges that throughout the morning of 7 April, Sergeant Major Bizimungu, who led the RECCE

[3174] T. 29 September 2008, pp. 26-27.
[3175] Indictment, para. 105.

Battalion unit that participated in the arrest of the peacekeepers, remained in radio contact with Sagahutu.[3176] The Indictment alleges that Nzuwonemeye and Sagahutu bear superior responsibility for these crimes.[3177]

4.5.4.2.2 Evidence

4.5.4.2.2.1 Prosecution Evidence

Prosecution Witness AWC

1747. Witness AWC, a member of the RECCE Battalion in April 1994, testified that at about 9.00 a.m. on 7 April 1994, he saw Rwandan Army soldiers surrounding Belgian soldiers at Camp Kigali. Another Rwandan soldier informed Witness AWC that Major Ntuyahaga, who was standing close by, had brought the Belgians to the camp. Witness AWC was also shown the minibus in which the Belgians were said to have arrived.[3178] Witness AWC testified that the crowd of Rwandan soldiers consisted of injured and convalescent soldiers as well as several other soldiers who appeared to have left their posts. Several Rwandan officers were also present, including Major Gaston Lyamuremye, and the witness saw Major Ntuyahaga "speak to those officers explaining to them why those Belgians were present."[3179]

1748. Witness AWC testified that the Rwandan soldiers then began to attack the Belgians. The officer on duty did not request any intervention, and the witness observed other Rwandan Army officers leaving. The witness felt threatened and so he also left the area.[3180] In cross-examination, Witness AWC stated that due to the type of soldiers present and the departure of officers from the scene, he was under the impression that the soldiers were in mutiny.[3181]

1749. Witness AWC testified that later in the morning, Corporal Masonga, who was a member of the secretariat of the RECCE Battalion,[3182] entered the office close to the witness and stated, "[T]hey are killing those people."[3183] Later, Corporal Nzeyimana, a marksman from Squadron A and Captain Sagahutu's driver, found Sagahutu and told him that "there were some Belgian soldiers who had just been killed and some who had put up resistance".[3184] In reply, Witness AWC said that Sagahutu ordered "that they should all be killed because they had put up resistance."[3185] Witness AWC testified that he was told that a Lieutenant had retreated into a "house" and had not yet been killed.[3186] As a result of

[3176] Indictment, para. 106.
[3177] Indictment, para. 78.
[3178] T. 18 January 2006, p. 33; T. 20 January 2006, p. 3.
[3179] T. 19 January 2006, p. 16.
[3180] T. 18 January 2006, pp. 33-34; T. 19 January 2006, pp. 13, 16; T. 20 January 2006, p. 3.
[3181] T. 20 January 2006, p. 2 (This statement was made as a result of a leading question from Defence counsel, who first suggested the notion of mutiny: "Q: Let's deal with the facts, Witness. From your observation, did this gathering of soldiers not bear a closer resemblance to the military mutiny?").
[3182] T. 18 January 2006, p. 25 (ICS).
[3183] T. 20 January 2006, p. 5.
[3184] T. 18 January 2006, pp. 34-35; T. 20 January 2006, p. 3.
[3185] T. 18 January 2006, p. 34. *See also* T. 19 January 2006, p. 14, where Witness AWC said that Sagahutu ordered the killing of the Belgian soldier who had put up resistance.
[3186] T. 19 January 2006, p. 14.

Sagahutu's orders, at around 11.00 a.m. Corporal Nzeyimana entered Sagahutu's office, took a multiple grenade launcher (MGL) and left.[3187]

1750. The witness left his office for the mess at around 12.00 noon and returned at 1.30 p.m.[3188] Between 3.00 and 4.00 p.m., Corporal Nzeyimana and Corporal Masonga returned to the witness's office where Masonga reported that they had killed all the Belgians and had therefore "completed their mission".[3189] Masonga further told Witness AWC that he had opened fire on the building but had not achieved his objective. As a result, Nzeyimana and another unknown soldier used a ladder to climb into the building and kill the remaining Belgian soldier.[3190]

Witness DA

1751. Witness DA was a member of the RECCE Battalion in 1994.[3191] He testified that at about 8.00 a.m. on 7 April 1994 Sagahutu sent him to make a delivery to the Prime Minister's residence.[3192] Upon arrival at the residence, Witness DA saw between 8 and 11 unarmed Belgian UNAMIR soldiers coming out of the residence with their hands in the air.[3193] The Belgians were searched by soldiers who came from units within Camp Kigali and elements of the Presidential Guard.[3194] The Belgian troops were placed on board a Coaster minibus driven by W.O. Kanuma. Witness DA later found out that the Belgian soldiers were then taken to Camp Kigali.[3195]

1752. Witness DA returned to Camp Kigali after the delivery at the Prime Minister's residence. Upon arrival, however, he found that he could not enter the camp through the main entrance because a crowd of soldiers had gathered.[3196] He saw white people sitting on the ground without their shoes or uniforms. The witness entered the camp through another gate and then walked from a RECCE Battalion building towards the main gate.[3197] There he observed about eight Belgian UNAMIR troops sitting on the ground being kicked and beaten with crutches by disabled Rwandan soldiers. Because of the large number of soldiers attacking them, the Belgian troops who were sitting on the ground could not defend themselves and merely pleaded with their attackers.[3198]

1753. Witness DA also observed that Rwandan soldiers were shooting at two Belgian soldiers who were inside a building and that those Belgians were firing back.[3199] He testified that Rwandan soldiers threw grenades at the two Belgian soldiers inside the building and then

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[3187] T. 18 January 2006, p. 34; T. 20 January 2006, pp. 3-5.
[3188] T. 18 January 2006, p. 35; T. 20 January 2006, p. 3.
[3189] T. 19 January 2006, p. 14.
[3190] T. 20 January 2006, p. 6.
[3191] T. 11 January 2005, p. 28 (ICS).
[3192] T. 11 January 2005, p. 56.
[3193] T. 11 January 2005, pp. 58-59.
[3194] T. 11 January 2005, pp. 59-60. Witness DA later explained that the soldiers he saw at Camp Kigali included some from the senior military academy, RECCE Battalion, Huye Battalion and the Presidential Guard. He estimated that there were approximately 80 to 100 soldiers at the Prime Minister's residence that morning. *See* T. 11 January 2005, p. 61.
[3195] T. 11 January 2005, p. 61.
[3196] T. 11 January 2005, p. 65.
[3197] T. 11 January 2005, pp. 65-66.
[3198] T. 11 January 2005, p. 66.
[3199] T. 11 January 2005, p. 66.

used a grenade launcher to kill them.[3200] Although Witness DA was not present when the grenade launcher was used, upon his arrival he saw a soldier from the Huye Battalion carrying that weapon and he also noticed that the roof of the building had collapsed.[3201] The witness observed the scene at the camp for about 20 minutes before leaving.[3202]

1754. Witness DA explained that when he arrived at Camp Kigali that morning, the Belgian soldiers had been under attack for some time.[3203] He saw Major Nubaha, commander of Camp Kigali, and several RECCE Battalion soldiers at the entrance of Camp Kigali during the attack on the Belgian soldiers.[3204] The witness testified that by 3.00 p.m. all the Belgian soldiers had been killed.[3205]

Witness DCK

1755. Witness DCK was a soldier with the Music Company based at Camp Kigali in 1994. He testified that throughout the night of 6 April 1994, he was positioned near a wall in Camp Kigali close to Paul VI Avenue.[3206] At about 12.00 noon on 7 April, soldiers who had brought food to Witness DCK and his colleagues informed him that Belgian soldiers had been killed at the camp entrance.[3207] At about 2.00 p.m., Witness DCK went to the camp entrance to see what had happened.[3208] Upon arrival, he saw the dead bodies of about eight Belgian UNAMIR soldiers in front of the UNAMIR office at Camp Kigali. Some of the bodies had open wounds on their faces, and at least one skull had been split open.[3209] Approximately 50 Rwandan soldiers from all units in Camp Kigali, including the RECCE Battalion, the Music Company and the Headquarters Company, were standing around the dead bodies "looking on".[3210] Witness DCK learned from the other soldiers present that the Belgian soldiers were attacked by "wounded soldiers" with crutches, gun butts and knives.[3211] According to Witness DCK, the dead Belgian soldiers were wearing UNAMIR military uniforms and bullet proof vests.[3212]

1756. Witness DCK also saw that there were other Belgian soldiers shooting from inside the UNAMIR building.[3213] During this gunfire exchange, Witness DCK saw a Rwandan soldier who he was told came from the RECCE Battalion bring out a grenade launcher and fire six grenades into the UNAMIR building. A few minutes later the shooting from inside the building stopped.[3214] Corporal Nzeyimana, who was Sagahutu's driver, then looked into the building and told the other soldiers "[I]t's over", meaning that the last Belgian soldier had died.[3215] Witness DCK tried to enter the building but could not do so due to heavy tear gas

[3200] T. 11 January 2005, pp. 70-71.
[3201] T. 11 January 2005, pp. 71-72.
[3202] T. 11 January 2005, p. 69.
[3203] T. 11 January 2005, pp. 69-70.
[3204] T. 11 January 2005, p. 67.
[3205] T. 11 January 2009, p. 69.
[3206] T. 8 March 2005, p. 58; T. 9 March 2005, p. 3.
[3207] T. 9 March 2005, p. 7.
[3208] T. 9 March 2005, p. 7; T. 10 March 2005, pp. 6-7.
[3209] T. 9 March 2005, pp. 7-8.
[3210] T. 9 March 2005, p. 8.
[3211] T. 8 March 2005, p. 8.
[3212] T. 9 March 2005, p. 8.
[3213] T. 9 March 2005, pp. 8-9.
[3214] T. 9 March 2005, p. 9.
[3215] T. 9 March 2005, p. 9; T. 9 March 2005, p. 10.

smoke. However, he observed from the door that the Belgian soldiers were dead.[3216] He also observed that the wall of the building was riddled with bullets and that the two windows were damaged by gunfire.[3217]

1757. During cross-examination, Witness DCK confirmed that other soldiers at Camp Kigali informed him that senior officers at the camp had tried to stop the attack on the Belgian soldiers but had been threatened by Rwandan soldiers.[3218] The witness added that the situation "was that of total disorder."[3219]

Witness DY

1758. Prosecution Witness DY testified that at about 8.00 a.m. on 7 April 1994, he was informed by Corporal Afrika, a member of the RECCE Battalion,[3220] that Belgian soldiers were killed at Camp Kigali.[3221] At about 10.00 a.m. that morning, he heard sustained gunfire and went towards the office of the Camp Kigali commander.[3222] Upon arrival, he saw the bodies of nine Belgian soldiers lying on the ground.[3223] He also saw a large number of Rwandan soldiers from various units, including wounded or invalid soldiers.[3224] Witness DY further noticed that one of the Belgian soldiers was "in the office" talking to Lieutenant Colonel Jean-Marie Vianney Ndahimana and Lieutenant Colonel Nubaha of the Rwandan Army.[3225] The witness, who was standing approximately 15 metres away, could not hear what they were saying. Shortly thereafter, he saw the two Rwandan officers leave the Belgian soldier in the office.[3226] Witness DY also saw Major Ntuyahaga on the scene and heard him tell W.O. Sebuhira that he was the one who had brought the Belgian soldiers to the camp. The witness also heard Ntuyahaga say in reference to the Belgian soldier in the office, "Don't let that one get away either."[3227] After Ntuyahaga's remarks, Rwandan soldiers began firing at the building into which the Belgian soldier had retreated. Immediately after the shooting started, Witness DY left the scene and returned to the RECCE Battalion Headquarters. The witness estimated that he spent about 30 minutes at the site where the Belgians were attacked.[3228]

Witness ANK/XAF

1759. Witness ANK/XAF was a member of the RECCE Battalion in April 1994.[3229] He testified that at about 10.00 a.m. on 7 April 1994, he was informed by a soldier named Nkurikiyinka[3230] that unarmed UNAMIR troops at Camp Kigali were being killed because they were being accused of having shot down the presidential plane.[3231] Nkurikiyinka told the

[3216] T. 9 March 2005, p. 10.
[3217] T. 9 March 2005, p. 9.
[3218] T. 10 March 2005, p. 11.
[3219] T. 10 March 2005, pp. 14-15.
[3220] T. 23 January 2006, p. 46; T. 25 January 2006, p. 6.
[3221] T. 23 October 2006, p. 39.
[3222] T. 23 October 2006, p. 39; T. 24 October 2006, p. 45.
[3223] T. 23 October 2006, p. 39; T. 24 October 2006, p. 46.
[3224] T. 23 October 2006, pp. 39-40.
[3225] T. 23 October 2006, p. 40; T. 24 January 2006, p. 46.
[3226] T. 23 October 2006, p. 41.
[3227] T. 23 October 2006, p. 41.
[3228] T. 23 October 2006, p. 41.
[3229] T. 31 August 2005, pp. 81-82.
[3230] He is also referred to as "Nkurinkiika". T. 5 September 2005, p. 3.
[3231] T. 1 September 2005, p. 7; T. 2 September 2005, p. 5.

witness that he had seen the UNAMIR soldiers in Major Ntuyahaga's vehicle. Witness ANK/XAF subsequently went to the office at Camp Kigali in order to see what was happening.[3232]

1760. Upon arrival at the office, Witness ANK/XAF observed four white UNAMIR soldiers being beaten with crutches by approximately five disabled soldiers of the headquarters unit.[3233] The Rwandan soldiers were accusing the UNAMIR soldiers of having shot down President Habyarimana's plane.[3234] Two of the UNAMIR troops were already dead from blows to the head when the witness arrived, while the other two who were still alive were begging the Rwandan soldiers to spare them.[3235] Between 70 and 100 other Rwandan soldiers were trying to prevent the UNAMIR soldiers from escaping[3236] and were also attempting to get other UNAMIR troops hiding in the building, including white soldiers as well as soldiers who the witness thought were Bangladeshi,[3237] to come out so that they could kill them.[3238] Two UNAMIR soldiers tried to escape, but they were both shot down, one of them by a soldier with a submachine gun guarding the entrance to the camp.[3239] When the "Bangladeshi" UNAMIR troops came out of the building, two white UNAMIR soldiers also came out trying to hide behind them.[3240] The "Bangladeshi" soldiers were allowed to escape from the camp on foot, but the able-bodied soldiers caught up with the white soldiers and pushed them onto the ground, allowing the disabled soldiers to hit them to death with their crutches.[3241]

1761. According to Witness ANK/XAF several officers, including Colonel Nubaha, Major Ntuyahaga, Captain Ndangurura and Lieutenant Munana, were present at the UNAMIR office in Camp Kigali when the Belgian soldiers were being killed.[3242] He testified that none of them tried to prevent or stop the killings.[3243] Major Ntuyahaga, who had brought the UNAMIR soldiers to Camp Kigali, told the officers that the soldiers were being killed because they had shot down President Habyarimana's plane.[3244]

1762. After watching the incident for between 10 and 30 minutes, Witness ANK/XAF saw a Rwandan soldier try to remove the remaining UNAMIR soldiers from the building by force, because they refused to exit the building after they saw their colleagues being killed.[3245] The witness testified that a UNAMIR soldier killed the Rwandan soldier by hitting him with his elbow. The UNAMIR soldier then took the Rwandan soldier's gun, hid behind the door of the building and began to fire at everyone outside, injuring several soldiers. The crowd then fled

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[3232] T. 1 September 2005, p. 7.
[3233] T. 1 September 2005, pp. 7-8, 63.
[3234] T. 1 September 2005, pp. 8, 63.
[3235] T. 1 September 2005, pp. 7-8.
[3236] T. 1 September 2005, pp. 7-8.
[3237] In cross-examination, it was put to the witness that he saw Ghanaians and not Bangladeshis that day in Camp Kigali. Following questioning by Defence Counsel and the Chamber, Witness ANK/XAF admitted that he could not distinguish the skin colour of the Bangladeshis from those who come from other countries in Africa. *See* T. 2 September 2005, pp. 31, 45.
[3238] T. 1 September 2005, pp. 8-9.
[3239] T. 1 September 2005, p. 8.
[3240] T. 1 September 2005, pp. 8-9.
[3241] T. 1 September 2005, pp. 8-9; T. 5 September 2005, p. 3.
[3242] T. 1 September 2005, p. 9.
[3243] T. 1 September 2005, pp. 9, 58-63.
[3244] T. 1 September 2005, p. 9.
[3245] T. 1 September 2005, p. 9; T. 2 September 2005, p. 7; T. 5 September 2005, p. 21.

to take cover. Witness ANK/XAF left the camp and immediately proceeded to the transport depot of the RECCE Battalion.[3246]

1763. Later that day, Witness ANK/XAF was at the transport depot where he saw Major Ntuyahaga enter Nzuwonemeye's office.[3247] After a very brief period, Ntuyahaga and Nzuwonemeye left the office and stood talking near Ntuyahaga's vehicle.[3248] Shortly thereafter, two soldiers of Squadron C of the RECCE Battalion armed with an MGL gun,[3249] as well as Ntuyahaga and two soldier escorts, got into the vehicle and drove away in the direction of Camp Kigali where the UNAMIR soldiers had been killed.[3250]

1764. Witness ANK/XAF testified that a few moments later, at approximately 4.00 p.m., he heard an unfamiliar gun sound. Arriving at the scene of the gunfire, he saw big bullet holes in the walls of the building in which the UNAMIR soldiers had been hiding. Witness ANK/XAF and the others present at the scene recognised the holes as having been caused by the MGLs as well as another submachine gun.[3251] Witness ANK/XAF was unable to see what was in the office; however, a Rwandan soldier went inside and dragged out the bodies of two UNAMIR troops who had wounds to their heads and lower limbs. The soldier then removed their boots, flak jackets and identification papers, placed them next to the bodies of the other deceased UNAMIR soldiers and covered them with tarpaulin.[3252] Witness ANK/XAF testified that 10 UNAMIR soldiers in total were killed on that day.[3253]

Witness ALN

1765. Witness ALN was a member of the RECCE Battalion in April 1994. He testified that in the morning of 7 April 1994 Nzuwonemeye sent him to his home, which was approximately 80 metres from Camp Kigali.[3254] The witness stated that as he drove out of Camp Kigali around 6.30 a.m., he observed ten Belgian soldiers arriving from the Kiyovu area.[3255] The Belgian soldiers were forced to remove their shoes and were also being beaten with gun butts by Rwandan soldiers.[3256] The witness overheard the Rwandan soldiers saying that the Belgians were suspected of being involved in the downing of the President's plane.[3257] Witness ALN observed that some of the Rwandan soldiers appeared to be injured.[3258] He added that as he arrived at Camp Kigali, he observed that two of the Belgian soldiers were already dead.[3259] Neither Nzuwonemeye nor Sagahutu was present at that stage.[3260]

[3246] T. 1 September 2005, pp. 9-10.
[3247] T. 1 September 2005, pp. 10-11.
[3248] T. 1 September 2005, p. 10.
[3249] The witness described the MGL as a grenade launcher, a short gun with a circular-shaped magazine, which could contain between 6 and 12 grenades. T. 1 September 2005, p. 11.
[3250] T. 1 September 2005, pp. 10-12.
[3251] T. 1 September 2005, p. 12; T. 2 September 2005, p. 7.
[3252] T. 1 September 2005, pp. 12-13.
[3253] T. 1 September 2005, p. 13.
[3254] T. 29 September 2004, pp. 47-48.
[3255] T. 29 September 2004, p. 47; T. 30 September 2004, pp. 22-23, 30; T. 5 October 2004, pp. 27-28.
[3256] T. 29 September 2004, p. 47; T. 30 September 2004, pp. 22-23, 27; T. 5 October 2004, pp. 27-28.
[3257] T. 29 September 2004, p. 47; T. 30 September 2004, pp. 24-25.
[3258] T. 30 September 2004, p. 24.
[3259] T. 29 September 2004, p. 47; T. 4 October 2004, p. 31.
[3260] T. 29 September 2004, p. 48.

1766. Witness ALN testified that on his return from Nzuwonemeye's home he saw Nzuwonemeye, Sagahutu, Colonel Nubaha (the commander of Camp Kigali) and other General Staff officers watching the Rwandan soldiers beating the Belgian soldiers to death.[3261] Witness ALN stated that eight Belgian soldiers and two Rwandan soldiers were dead,[3262] and he recalled seeing a ninth Belgian soldier killed.[3263]

1767. Witness ALN recalled that when the tenth Belgian soldier arrived, he grabbed a rifle from a Rwandan soldier and shot another soldier. He then retreated into a building approximately two metres away, close to the camp commander's office.[3264] Witness ALN stated that he was close by when Major Nzuwonemeye ordered Captain Sagahutu to bring an armoured vehicle to kill the remaining Belgian solider.[3265]

1768. Witness ALN stated that he watched as Sagahutu executed Nzuwonemeye's order. The armoured vehicle was positioned approximately ten metres from the building containing the Belgian soldier, and the mounted machine guns were used to shoot at the building.[3266] The camp commander then ordered a Rwandan soldier to use a rocket launcher to shoot at the building to ensure that the Belgian soldier was dead.[3267] After the rocket launcher was used, Witness ALN recalled that a Rwandan soldier went inside the building to make sure the Belgian soldier was dead.[3268] Witness ALN estimated that the whole incident occurred before 12.00 noon.[3269]

1769. Nzuwonemeye then ordered Witness ALN to drive him to a meeting at ESM.[3270] Witness ALN stated that as Commander of one of the most important battalions in Rwanda, Nzuwonemeye held the respect of many and as such he could have stopped the killing of the soldiers if he wanted to.[3271]

Witness General Roméo Dallaire

1770. Witness Dallaire testified that on his way to ESM in the morning of 7 April, he saw from the second gate of Camp Kigali what looked like two individuals in Belgian soldier uniforms lying on the ground in the compound.[3272] He requested that his vehicle stop to investigate but the driver of the vehicle, an officer of the Rwandan Armed Forces, refused because there was too much chaos and risk in the camp. The driver continued about 100 to 150 metres further to ESM.[3273] Dallaire estimated that he entered the meeting at ESM at around 11.00 a.m., after it had already commenced. Colonel Bagosora was chairing the

[3261] T. 29 September 2004, p. 48; T. 30 September 2004, pp. 24, 27-28; T. 4 October 2004, p. 31; T. 5 October 2004, pp. 29, 35-36, 39; T. 6 October 2004, p. 6.
[3262] T. 29 September 2004, p. 48; T. 5 October 2004, p. 29.
[3263] T. 29 September 2004, pp. 48-49; T. 4 October 2004, p. 33.
[3264] T. 29 September 2004, pp. 48-49; 30 September 2004, pp. 26-27 ; T. 4 October 2004, p. 33.
[3265] T. 29 September 2004, p. 49; T. 5 October 2004, pp. 35-36.
[3266] T. 29 September 2004, p. 49; T. 30 September 2004, pp. 27-28.
[3267] Witness ALN stated that Lieutenant Colonel Nubaha was the Kigali Camp Commander. T. 29 September 2004, p. 49.
[3268] T. 29 September 2004, p. 49; T. 5 October 2004, p. 46.
[3269] T. 29 September 2004, p. 50.
[3270] T. 29 September 2004, p. 50; T. 30 September 2004, p. 32; T. 5 October 2004, p. 46.
[3271] T. 5 October 2004, p. 36.
[3272] T. 22 November 2006, p. 15.
[3273] T. 22 November 2006, p. 16.

meeting and the vast majority of the general command structure of the Rwandan Army was present.[3274]

1771. On several occasions during the afternoon, Dallaire requested information on his missing troops at Camp Kigali. He was told that those troops were working to stop the riots and regain control of the camp, and that he was not to intervene.[3275] At 10.00 p.m., after the Crisis Committee meeting, Dallaire was told by the Ndindiliyimana that the Belgian soldiers were at the Kigali hospital. Dallaire, Ndindiliyimana and a number of other officers walked to the hospital, from where they were directed to the morgue.[3276] Outside the morgue, Dallaire saw the bodies of the dead Belgian soldiers, many of them half-naked, piled together in a gruesome fashion.[3277] Dallaire testified that Ndindiliyimana and the other Rwandan officers were visibly shocked at the state of affairs. Dallaire ordered that the bodies be properly laid out to be picked up the next day. He then returned to his headquarters with an escort offered by Ndindiliyimana, who showed concern for his safety.[3278]

1772. Dallaire subsequently ordered a board of enquiry into the deaths of the Belgian soldiers. The board concluded that some of the officers at Camp Kigali had tried to persuade the Rwandan soldiers to disperse and stop the massacres, but their attempts were in vain. Dallaire testified that he had also received this information verbally from other sources.[3279] He acknowledged that it was possible that the attacks against the Belgians were carried out by mutinous soldiers at Camp Kigali.[3280]

4.5.4.2.2.2 Defence Evidence

4.5.4.2.2.2.1 Nzuwonemeye Defence Evidence

Witness F5

1773. Witness F5 was an officer in the Rwandan Army General Staff in Camp Kigali in 1994.[3281] He testified that at approximately 8.00 a.m. on 7 April 1994, Witness F5 left Camp Kigali in order to attend to a family matter at CHK.[3282] He returned to Camp Kigali between 9.00 a.m. and 9.30 a.m.[3283] Upon his return, he saw a large crowd gathered at the entrance to the camp, and he saw that Rwandan soldiers had surrounded a group of "blue helmets".[3284] Witness F5 stated that there was a rumour spreading through Camp Kigali at that time that Belgian soldiers were responsible for shooting down the President's plane.[3285] The witness heard that the peacekeepers had arrived at Camp Kigali with Major Ntuyahaga from the Prime Minister's residence.[3286]

[3274] T. 22 November 2006, p. 17.
[3275] T. 21 November 2006, p. 14.
[3276] T. 21 November 2006, pp. 14-15.
[3277] T. 21 November 2006, p. 15.
[3278] T. 21 November 2006, p. 15.
[3279] T. 22 November 2006, p. 22.
[3280] T. 22 November 2006, p. 23.
[3281] T. 9 July 2008, p. 3 (ICS).
[3282] T. 9 July 2008, p. 8.
[3283] T. 9 July 2008, pp. 8, 15.
[3284] T. 9 July 2008, pp. 8-10.
[3285] T. 9 July 2008, pp. 12, 57.
[3286] T. 9 July 2008, pp. 56, 59.

1774. According to Witness F5, the crowd surrounding the blue berets consisted of soldiers disabled by the war as well as other active soldiers from Camp Kigali, including some from his unit.[3287] The group of blue berets consisted of white and black soldiers. He recalled that there were Ghanaians and Togolese UNAMIR soldiers present at the camp at the time. The witness remained with the crowd for a few minutes before heading to his office.[3288]

1775. At his office, Witness F5 received a phone call from Captain Nyararwimo from the General Staff asking about the crowd at the camp entrance. Witness F5 explained that Rwandan soldiers had surrounded the blue helmets in front of the UNAMIR office.[3289] Captain Nyararwimo asked Witness F5 to go to the site and do his best to disband the soldiers. The witness duly complied and went back to the crowd.[3290]

1776. Witness F5 together with a number of non-commissioned officers attempted to tell the Rwandan soldiers not to harm the blue helmets. However, the witness soon realised that the situation was becoming more complex, so he went back to his office to call the General Staff.[3291] He explained to Captain Nyararwimo from the General Staff that the situation had become worse and requested that the General Staff intervene.[3292] A UNAMIR Captain joined the witness in his office to help explain the situation to the General Staff.[3293]

1777. Witness F5 returned to the crowd after a few minutes. Shortly thereafter, two senior officers, Lieutenant Colonel Ndahimana and Colonel Kanyandekwe, arrived and tried to break up the crowd.[3294] Witness F5 testified that the crowd was uncontrollable because the soldiers were disobeying orders from everyone.[3295] Kanyandekwe tried to explain that the UNAMIR soldiers were not to be harmed.[3296] While Kanyandekwe was addressing the crowd, a soldier shot at the wall behind him.[3297] As a result, the senior officers felt threatened as they too were becoming targets.[3298] Witness F5 also recalled officers Kagango and Sebutiyongera trying to intervene.[3299] He estimated that the senior officers remained at the site for about 30 minutes.[3300]

1778. Witness F5 testified that during the attack on the Belgian soldiers, the Ghanaian soldiers were taken away through the crowd to ESM.[3301] One Belgian soldier retreated into the UNAMIR office, where he located a machine gun and started firing into the crowd. Some of the soldiers in the crowd were injured and some fled.[3302] Witness F5 stated that he left the scene to go to his office after the UNAMIR soldier shot into the crowd, but he understood

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[3287] T. 9 July 2008, pp. 11-12, 23.
[3288] T. 9 July 2008, p. 16.
[3289] T. 9 July 2008, pp. 10, 16.
[3290] T. 9 July 2008, p. 10.
[3291] T. 9 July 2008, pp. 10, 16, 51.
[3292] T. 9 July 2008, pp. 10-11, 19, 51, 53. No military reinforcement came.
[3293] T. 9 July 2008, pp. 10-11.
[3294] T. 9 July 2008, pp. 10-11, 15, 17-18, 21. Colonel Kanyandekwe worked at the G3 office, and Colonel Ndahimana worked at the base of the Rwandan Army.
[3295] T. 9 July 2008, pp. 13, 53.
[3296] T. 9 July 2008, pp. 10-11.
[3297] Witness F5 could not identify the soldier who shot at the officer. *See* T. 9 July 2008, p. 52.
[3298] T. 9 July 2008, pp. 10-11.
[3299] T. 9 July 2008, p. 11.
[3300] T. 9 July 2008, pp. 19, 53-54. Witness F5 stated that no bugle or alarm was sounded as he did not have them at his disposal, nor were shots fired into the air to disperse the crowd.
[3301] T. 9 July 2008, p. 13.
[3302] T. 9 July 2008, pp. 14, 54-55.

that a group of soldiers continued to shoot at the Belgian contingent and others attempted to lob grenades into the UNAMIR building.[3303] According to the witness the incident ended before 12.00 noon when the last Belgian soldier died.[3304]

Witness Y1

1779. Witness Y1 was a senior Rwandan Army officer in 1994. He testified that he learned of the death of the 10 Belgian UNAMIR soldiers in the evening of 7 April 1994 when he entered Camp Kigali and saw their corpses.[3305] Major Nubaha, the Camp Kigali commander, told Witness Y1 that it was Major Ntuyahaga who had brought the Belgians to the camp.[3306] The witness was told that Ntuyahaga had been driving past the Prime Minister's residence when the UNAMIR troops requested that he transport them to the UNAMIR post at Camp Kigali. As the Belgians exited from the vehicle and entered the camp, a Rwandan soldier at the guard post reportedly said that "those are the Belgian soldiers who have killed the President of the Republic."[3307] The witness was told that other Rwandan soldiers, including the war-wounded, then attacked the Belgians with clubs, batons, weapons and grenades.[3308]

1780. According to Witness Y1, the Rwandan soldiers "were in mutiny". The witness stated: "officers who attempted to stop them from attacking the 10 Belgian soldiers were driven off, and some almost lost their lives."[3309] The witness was informed that the officers who tried to stop the attack included Major Nubaha the camp commander, Major Ndahimana, the Logistics and Services commander, and Major Kanyandekwe, G3 in charge of training operations.[3310]

1781. Witness Y1 testified that he did not know the exact time the Belgians were killed, but assumed it was between 10.00 a.m. and late evening on 7 April 1994 when he, Nzuwonemeye, and other senior military officers were attending a meeting at ESM.[3311] He further testified that those attending the meeting were at no time informed about the killing of the Belgians or the events at Camp Kigali. However, Witness Y1 noticed that during the meeting, Major Nubaha came in and spoke privately to Colonel Bagosora, but he did not know what Nubaha had said.[3312]

Witness D1

1782. Witness D1 was attached to the General Staff Company at Camp Kigali in April 1994.[3313] At about 7.00 a.m. on 7 April, Witness D1 left his office to shower and eat breakfast at his quarters inside Camp Kigali.[3314] As he passed the guard post near the camp entrance, he saw a group of soldiers gathered on the tarmac near the gate.[3315] Witness D1 returned to his

[3303] T. 9 July 2008, pp. 14, 54-55.
[3304] T. 9 July 2008, p. 14.
[3305] T. 25 June 2008, p. 37.
[3306] T. 25 June 2008, pp. 37-38.
[3307] T. 25 June 2008, p. 38.
[3308] T. 25 June 2008, p. 38.
[3309] T. 25 June 2008, p. 38.
[3310] T. 25 June 2008, pp. 38-39.
[3311] T. 25 June 2008, p. 39.
[3312] T. 25 June 2008, p. 39.
[3313] T. 9 September 2008, pp. 8-9 (ICS).
[3314] T. 9 September 2008, pp. 12-13.
[3315] T. 9 September 2008, p. 13.

office at about 8.00 a.m. At around 9.00 a.m., he heard noise coming from the direction of Camp Kigali. The noise intensified at about 9.30 a.m.[3316] At this point he left his office and went towards the camp entrance to find out what was happening.[3317] Upon arrival, he saw about four to six UNAMIR soldiers in uniform lying on the ground. The UNAMIR soldiers had been surrounded and were being beaten by handicapped Rwandan soldiers using crutches and pieces of wood.[3318]

1783. At the scene, Witness D1 saw Lieutenant Munana, head of the Headquarters Company, and an officer named Sebutiyongera. These two officers unsuccessfully tried to stop the attack on the UNAMIR soldiers. According to Witness D1, the more the officers tried to dissuade the Rwandan soldiers, the more furious the soldiers became.[3319] Witness D1 also observed Rwandan soldiers on the tarmac exchanging fire with two UNAMIR soldiers who were inside a room.[3320] At approximately 10.00 a.m., Colonels Kanyandekwe and Nahimana arrived and tried to stop the attack on the UNAMIR soldiers.[3321] In response, the Rwandan soldiers told the officers: "These people killed our President. They have just killed another soldier right here, and you want to stop us from killing them?"[3322] A Rwandan soldier then began shooting at the roof and the two Colonels retreated.[3323] The Rwandan soldiers retreated to a position behind a tree and continued to exchange fire with the UNAMIR troops inside the room.[3324] Witness D1 ran to safety towards his office and continued to observe the events from behind a wall for between 30 and 60 minutes.[3325]

1784. Witness D1 testified that around 11.00 a.m., Colonel Nubaha, commander of Camp Kigali, addressed the crowd of Rwandan soldiers and asked them to calm down.[3326] Again, the soldiers replied that the UNAMIR troops had killed the President and that Nubaha should not "try and save their lives."[3327] At this point, the Rwandan soldiers threw grenades into the room holding the UNAMIR troops and Nubaha withdrew from the location. The Rwandan soldiers continued firing and throwing grenades into the building until the shooting from inside the room had stopped.[3328] Witness D1 testified that the attack on the Belgian soldiers ended around 12.00 noon.[3329]

1785. Witness D1 further explained that in addition to the handicapped soldiers, he saw "able-bodied" soldiers among the crowd. He said he recognised some of the disabled soldiers as well as men from the General Staff and Services Company.[3330] According to Witness D1, most of the soldiers who were armed during the attack on the UNAMIR soldiers came from

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[3316] T. 9 September 2008, p. 15.
[3317] T. 9 September 2008, p. 15.
[3318] T. 9 September 2008, pp. 15, 21.
[3319] T. 9 September 2008, p. 15
[3320] T. 9 September 2008, p. 15.
[3321] T. 9 September 2008, pp. 15, 17.
[3322] T. 9 September 2008, p. 15.
[3323] T. 9 September 2008, p. 15.
[3324] T. 9 September 2008, p. 15.
[3325] T. 9 September 2008, pp. 15, 17, 28.
[3326] T. 9 September 2008, pp. 15, 17.
[3327] T. 9 September 2008, pp. 15-16.
[3328] T. 9 September 2005, pp. 15-16.
[3329] T. 9 September 2008, p. 21.
[3330] T. 9 September 2008, pp. 18-19. The witness wrote down three names of soldiers whom he recognised. These names are contained in Defence Exhibit 558, under seal.

the General Staff and Services Battalion.[3331] The witness testified that he knew Nzuwonemeye but did not see him at scene of the attack, nor did he see any armoured vehicle at that location.[3332]

Witness Luc Marchal

1786. Witness Marchal testified that at around 6.00 a.m. on 7 April 1994, he was informed that Rwandan radio had announced that the Belgians were responsible for shooting down the President's plane.[3333] This information spread quickly throughout Kigali, and Marchal was aware that the Belgian soldiers could become targets.[3334]

1787. Marchal testified that he only heard that the Belgian soldiers were assassinated after the fact.[3335] Based on the reports and dossiers that he received after the incident, Marchal agreed with General Dallaire's description of the killers of the Belgian UNAMIR soldiers as "crazed Rwandan Army rogue elements".[3336] Marchal added that he himself had referred to those soldiers as mutinous elements.[3337] He also testified that he was tried and acquitted by a military court in Belgium for negligence in connection with the killing of the ten Belgian troops.[3338]

Witness Laetitia Umulisa

1788. Witness Laetitia Umulisa is the wife of Nzuwonemeye.[3339] She testified that on 6 April 1994, she worked as a secretary at the Prosecutor's office of the Kigali Appeals Court and lived with her family in the UN Quarters near Camp Kigali.[3340] On that day, Nzuwonemeye returned home from work at about 6.00 p.m.[3341] At approximately 9.00 p.m., the witness heard a radio announcement that the President's plane had been shot down.[3342] Shortly thereafter, Nzuwonemeye left for his office at Camp Kigali and did not return until 7.00 a.m. the next morning.[3343] Ndyanabo, a RECCE Battalion driver, waited for Nzuwonemeye to take a short rest at his home and then drove him from the house at about 9.30 a.m. to attend a meeting at ESM.[3344]

Witness Doe Kwesi

1789. Witness Doe Kwesi was a member of the Ghanaian UNAMIR contingent assigned to provide security for Prime Minister Agathe Uwilingiyimana in April 1994.[3345] Between 8.00 and 9.00 a.m. on 7 April 1994,[3346] Rwandan government soldiers firing small arms in the air

[3331] T. 9 September 2008, p. 25.
[3332] T. 9 September 2008, p. 21.
[3333] T. 17 January 2008, p. 50.
[3334] T. 17 January 2008, p. 50.
[3335] T. 18 January 2008, p. 50.
[3336] T. 18 January 2008, pp. 50-51. *See also* Defence Exhibit 327.
[3337] T. 18 January 2008, p. 50.
[3338] T. 16 January 2008, p. 25; T. 17 January 2008, p. 60; T. 21 January 2008, p. 2.
[3339] T. 22 September 2008, p. 6.
[3340] T. 22 September 2008, pp. 7, 26-27.
[3341] T. 22 September 2008, p. 7.
[3342] T. 22 September 2008, p. 8.
[3343] T. 22 September 2008, pp. 8-9.
[3344] T. 22 September 2008, pp. 9-10, 22.
[3345] T. 8 July 2008, p. 51.
[3346] T. 8 July 2008, p. 69.

entered the front gate of the residence, ordered the Belgians and Ghanaians to put down their arms and packed all 15 UNAMIR soldiers into a white minibus which then took them to Camp Kigali.[3347]

1790. Witness Kwesi explained that after entering Camp Kigali, members of his unit and the Belgians alighted from the minibus and were ordered to sit down.[3348] The witness observed that there was a vehicle parked in front of the Camp Kigali gate and a Togolese UN military observer was also present.[3349] According to Witness Kwesi, while the Ghanaian and Belgian soldiers were sitting they were suddenly attacked by Rwandan soldiers from the camp with fists, gun butts and iron bars.[3350] As a result of the violent onslaught, four Belgian soldiers collapsed before the UN Togolese observer ushered the remaining group into the gate guards' resting room.[3351] Witness Kwesi further explained that although the UN observer locked the door and attempted to block the entrance, the Rwandan soldiers forced the observer to leave, fired through the windows and succeeded in shooting one of the Belgian soldiers at close range.[3352] Witness Kwesi and his colleagues had to lie down on the ground in order to avoid being hit by gunfire.[3353] At this point, a soldier identified as Aloys appeared through the window and directed the Ghanaians, along with the UN observer, to go to the office of the camp commander located about 10 to 30 metres away.[3354] The commander provided a vehicle which then took the Ghanaians to the UNAMIR Headquarters.[3355]

1791. Witness Kwesi testified he did not hear or see anyone issuing orders to the attacking soldiers, who appeared to be uncontrollable and acting on their own.[3356] He added that the soldiers were dressed in army uniforms and fired small-arms.[3357] He later learned that the Belgian soldiers they had left behind had all been killed.[3358]

Witness Zambulugu Sandow

1792. Witness Zambulugu Sandow was a Ghanaian UNAMIR soldier assigned to protect the Prime Minister in 1994.[3359] He testified that on 7 April 1994, he was on sentry duty at the entrance gate of the Prime Minister's residence.[3360] Early in the morning he saw Belgian UNAMIR soldiers arrive in four jeeps.[3361] About 15 minutes later, he saw between 10 and 20 Rwandan soldiers enter the residence. These soldiers ordered the Belgian and Ghanaian soldiers to drop their weapons and marched them to a minivan that was waiting outside the gate, which then took them to Camp Kigali.[3362]

[3347] T. 8 July 2008, pp. 59-60, 64.
[3348] T. 8 July 2008, p. 64.
[3349] T. 8 July 2008, p. 64.
[3350] T. 8 July 2008, p. 64.
[3351] T. 8 July 2008, pp. 64-65.
[3352] T. 8 July 2008, p. 65.
[3353] T. 8 July 2008, p. 65.
[3354] T. 8 July 2008, p. 65-66.
[3355] T. 8 July 2008, p. 66.
[3356] T. 8 July 2008, pp. 65-66, 74.
[3357] T. 8 July 2008, p. 66.
[3358] T. 8 July 2008, p. 66.
[3359] T. 8 July 2008, p. 77.
[3360] T. 8 July 2008, pp. 79-80.
[3361] T. 8 July 2008, p. 82.
[3362] T. 8 July 2008, pp. 82-87.

1793. Upon arrival at Camp Kigali, the Belgians and Ghanaians were ordered to sit down and were attacked by Rwandan soldiers in the camp armed with "AK rifles" and stones.[3363] Four Belgians collapsed as a result of the attack while the other UNAMIR soldiers took shelter in a nearby restroom.[3364] According to Witness Sandow, while the soldiers were in the restroom a disabled Rwandan soldier in a wheelchair entered the room and shot and killed a Belgian soldier at close range.[3365] Following this shooting, a senior Rwandan Army officer came and sent all the attacking soldiers from the room and locked the door.[3366] After some time, another person asked the Ghanaians to come forward. Witness Sandow and his compatriots followed him and later saw a UN military observer named Apedo, who took them to a safe place within Camp Kigali.[3367] The witness explained that as they moved, he heard a lot of small arms fire coming from the direction of the camp gate.[3368]

Witness Ntivuguruzwa

1794. Witness Ntivuguruzwa was a member of the Security Company assigned to protect Prime Minister Agathe Uwilingiyimana in April 1994.[3369] He testified that on 6 April 1994, there were 10 *gendarmes* guarding the Prime Minister's residence.[3370] There were also around five Ghanaian UNAMIR soldiers assigned to guard the Prime Minister.[3371] At around 5.00 a.m. on 7 April, white UNAMIR soldiers arrived at the Prime Minister's residence in four jeeps.[3372] Later that morning, at around 10.30 a.m., soldiers of the Presidential Guard arrived at the premises, firing shots into the air, and told the *gendarmes* to put down their weapons. They then entered the compound and disarmed the Ghanaian and white UNAMIR soldiers.[3373] Shortly thereafter, a white minibus with army registration numbers arrived at the Prime Minister's residence. An unidentified Major was in the minibus, along with a driver. The major told the UNAMIR soldiers to board the minibus which, then drove off.[3374]

Witness B1/BB13/CBP7

1795. Witness B1/BB13/CBP7 was a senior *Gendarmerie* officer in Rwanda in 1994.[3375] He testified that he attended a meeting at ESM on 7 April 1994, which started at about 10.00 a.m. and was chaired by Colonel Bagosora. Ndindiliyimana, Nzuwonemeye and General Dallaire also attended.[3376] The witness testified that during the meeting on 7 April, they were not informed of the killing of the Belgian soldiers and Dallaire did not mention anything about his men being in trouble at Camp Kigali.[3377] However, as the meeting went on, he heard gunfire coming from outside the building.[3378] The witness testified that the meeting

[3363] T. 8 July 2008, p. 87.
[3364] T. 8 July 2008, p. 87.
[3365] T. 8 July 2008, p. 87.
[3366] T. 8 July 2008, pp. 87-88.
[3367] T. 8 July 2008, p. 88.
[3368] T. 8 July 2008, p. 88.
[3369] T. 16 July 2008, pp. 4-5.
[3370] T. 16 July 2008, p. 8.
[3371] T. 16 July 2008, p. 20.
[3372] T. 16 July 2008, pp. 11-12, 23.
[3373] T. 16 July 2008, p. 16.
[3374] T. 16 July 2008, pp. 16-17, 54.
[3375] T. 7 July 2008, p. 17 (ICS).
[3376] T. 7 July 2008, pp. 26-27 (ICS).
[3377] T. 7 July 2009, pp. 29, 33 (ICS).
[3378] T. 7 July 2008, p. 33 (ICS).

ended around 12.30 p.m.[3379] and that he subsequently learned that the Belgian soldiers had been attacked by disabled Rwandan soldiers at Camp Kigali who were acting on rumours spread by RTLM that the Belgians were responsible for shooting down President Habyarimana's plane.[3380]

Witness DE8-19/F8

1796. Witness DE8-19/F8 was a retired senior officer of the Rwandan Armed Forces in 1994.[3381] He testified that an MGL is a multiple grenade launcher. He explained that the Rwandan Army obtained MGLs after the weapons embargo was lifted on Rwanda in 1990.[3382] However, he stated that at the time of his departure in June 1992, the RECCE Battalion did not possess any MGLs.[3383]

Witness F10

1797. Witness F10 was a technical assistant for equipment with the Rwandan Armed Forces in 1994.[3384] He testified that the RECCE Battalion never possessed MGLs.[3385] Furthermore, in his opinion such a weapon would not be useful to a battalion like the RECCE Battalion and would not have been used.[3386] He also confirmed that the RECCE Battalion did not possess AK-47 rifles.[3387]

Witness DE8-10/F9

1798. Witness DE8-10/F9 was a senior officer in the Rwandan Armed Forces in 1994.[3388] He testified that he arrived at ESM sometime after 10.00 a.m. on 7 April 1994 for a meeting that was chaired by Colonel Bagosora and attended by General Dallaire. There were approximately 60 other Rwandan officers present at the meeting, including Ndindiliyimana and Nzuwonemeye.[3389] After the meeting, Witness DE8-10/F9 walked back to Army Headquarters.[3390]

1799. Witness DE8-10/F9 testified that as he approached Camp Kigali, he could hear people shouting. He saw a group of Rwandan soldiers surrounding white UNAMIR soldiers with two UNAMIR soldiers lying on the ground.[3391] The witness stopped and observed the scene for a short time before proceeding to his office at Army Headquarters.[3392] He saw Lieutenant Colonels Nubaha and Kanyandekwe, along with several officers, struggling to disperse the club-wielding soldiers who were attempting to attack the remaining Belgian soldiers.[3393] However, he testified that he did not see Nzuwonemeye or Colonel Murasapongo at this

[3379] T. 7 July 2008, p. 28 (ICS).
[3380] T. 7 July 2008, p. 30 (ICS).
[3381] T. 5 November 2007, p. 8 (ICS).
[3382] T. 7 November 2007, pp. 44-45 (ICS).
[3383] T. 7 November 2007, p. 45 (ICS).
[3384] T. 24 October 2008, p. 5 (ICS).
[3385] T. 24 October 2008, pp. 8-9.
[3386] T. 24 October 2008, pp. 16, 18.
[3387] T. 24 October 2008, p. 9.
[3388] T. 10 May 2007, p. 8 (ICS).
[3389] T. 10 May 2007, pp. 32-33, 35.
[3390] T. 10 May 2007, p. 35.
[3391] T. 10 May 2007, p. 35.
[3392] T. 10 May 2007, p. 35.
[3393] T. 10 May 2007, p. 36.

scene.[3394] The witness further testified that he was informed that the Rwandan soldiers suspected the Belgian soldiers of killing President Habyarimana.[3395] At Army Headquarters, he learned that Major Ntuyaga [*sic*] had brought the Belgian soldiers to Camp Kigali.[3396] He also stated that the Commander of Camp Kigali was responsible for maintaining security and discipline within the camp.[3397]

1800. Witness DE8-10/F9 testified that he was aware of a letter dated 9 April 1994 and signed by General Gatsinzi,[3398] which requested details of the murder of the Belgian UNAMIR soldiers.[3399] The witness explained that the letter was addressed to the commander of the AL base because Lieutenant Colonel Nubaha had been transferred from his former position of Camp Kigali commander following the killing of his wife and children by RPF soldiers on 7 April.[3400] He testified that Nzuwonemeye was not copied in the letter and therefore could not have received it.[3401] He explained, however, that if a report had informed Nzuwonemeye that soldiers of the RECCE Battalion were involved in killing the Belgians, he would have had to initiate an investigation.[3402]

Witness UKL

1801. Witness UKL, an employee at the *Centre Hôspitalier de Kigali* (CHK), testified that he was aware of the arrival of dead white soldiers at CHK between 2.00 p.m. and 4.00 p.m. on 7 April 1994.[3403] The witness stated that he was unsure how the bodies were brought to CHK but they were placed outside the hospital morgue.[3404] Witness UKL could not recall why the bodies were outside rather than inside the morgue.[3405] He also could not recall whether the soldiers were in uniform or exactly how many bodies there were.[3406] The witness stated it was his understanding that the soldiers died in combat fighting government forces.[3407]

Witness SGD

1802. Witness SGD was a senior military officer assigned to the Music Company in 1994.[3408] He testified that he arrived at Camp Kigali at about 10.30 a.m. on 7 April and noticed that he could not enter at the main entrance because a large number of rowdy soldiers had gathered there.[3409] Therefore, he used the staff headquarters entrance to get to his office.[3410] While at the office, Witness SGD was told by his deputy that "some white soldiers" were fighting with Rwandan soldiers because the "white soldiers" were thought to

[3394] T. 10 May 2007, p. 36.
[3395] T. 10 May 2007, p. 36.
[3396] T. 10 May 2007, p. 37.
[3397] T. 10 May 2007, p. 37.
[3398] Defence Exhibit 234.
[3399] T. 10 May 2007, p. 38.
[3400] T. 10 May 2007, pp. 38-39.
[3401] T. 10 May 2007, p. 39.
[3402] T. 10 May 2007, p. 39.
[3403] T. 1 July 2008, p. 25.
[3404] T. 1 July 2008, p. 50.
[3405] T. 1 July 2008, pp. 25, 50.
[3406] T. 1 July 2008, p. 26.
[3407] T. 1 July 2008, p. 26.
[3408] T. 14 July 2008, p. 31 (ICS).
[3409] T. 14 July 2008, p. 36.
[3410] T. 14 July 2008, pp. 35-36.

have been involved in the attack on the Presidential plane.[3411] Witness SGD and his colleagues chose to stay at their base because they were told that the situation was dangerous and that senior Rwandan officers, including Colonels Nubaha, Kanyandekwe and Ndahimana, who had attempted to intervene, had been threatened with death.[3412] According to Witness SGD, the incident involving the UNAMIR soldiers ended at about 12.00 noon when he heard that the Belgian soldiers had been killed.[3413] The witness stated that he did not see Nzuwonemeye, Sagahutu or any armoured vehicles at the entrance of Camp Kigali during the fighting.[3414] He testified, however, that Lieutenant Munana, the commander of the Headquarters Company, was present.[3415]

Witness B1/BB1

1803. Witness B1/BB1 worked at CHK during April 1994 until the evacuation of the hospital at the end of May 1994.[3416] She testified that she heard that the bodies of Belgian UNAMIR soldiers were brought to the hospital's morgue on 8 April and taken away the same evening. She did not know the number of dead bodies, who brought the bodies into the morgue, who took the bodies away or whether Belgian officers arrived at the morgue to view the bodies.[3417]

Expert Witness Kubic

1804. Witness Kubic is an expert in forensic science, firearms and crime scene reconstruction.[3418] He was asked by the Defence to provide his opinion as to whether photographs taken by Belgian investigators of the UNAMIR building in which the Belgian soldiers were killed could indicate what type of weapons were discharged and fired at the building and he was also asked whether it was possible for an armoured vehicle to have fired large calibre weapons from 10 metres away considering the amount of damage done to the building.[3419]

1805. Witness Kubic explained that the UNAMIR building has a concrete floor and hollow-core cement walls with a stucco finish.[3420] From Kubic's evaluation of the holes in the building, he concluded that although they looked quite large, the holes were actually small because a portion of the structure had collapsed due to the force of the projectile, giving the impression of larger holes. He concluded that the holes were caused by a 30-calibre or 7.62 millimetre round, which was confirmed by the finding of residue still inside one of the holes.[3421] He further concluded that due to the patterns of marks left by the impact of gunfire

[3411] T. 14 July 2008, pp. 36-37, 47.
[3412] T. 14 July 2008, pp. 36-37, 48.
[3413] T. 14 July 2008, p. 38.
[3414] T. 14 July 2008, pp. 38, 42.
[3415] T. 14 July 2008, p. 51.
[3416] T. 15 July 2008, pp. 31, 34. This witness testified openly under her name Providence Nyiramondo. For the sake of brevity the Chamber will use her assigned pseudonym throughout this Judgement. She was a common witness for Nzuwonemeye and Sagahutu.
[3417] T. 15 July 2008, pp. 15-16.
[3418] T. 23 June 2008, pp. 68-70.
[3419] T. 23 June 2008, pp. 72-73.
[3420] T. 24 June 2008, pp. 4-5.
[3421] T. 24 June 2008, pp. 5-6.

on the wall, the gunfire did not originate from a fixed machine gun mount, but from a regular machine gun.[3422]

1806. Witness Kubic testified that there were four areas on the UNAMIR building that showed the probable impact of a grenade. He stated that none of the explosions that took place outside the building actually penetrated the building. [3423] According to Kubic, only one small hole penetrated both sides of the western wall. If the explosive round had been used on that wall, there would have been a large amount of damage. Therefore he concluded that a large-calibre weapon was not used on the western wall.[3424] He further supported this conclusion by explaining that mortars could not have been used on the building due to the distance of the building and the projectile nature of mortars, as well as the risk to the person dropping a mortar from such a short distance.[3425]

1807. Witness Kubic concluded from subsequent experiments in the United States that the 7.62 millimetre NATO-type round would have penetrated both sides of the walls. He also concluded from both the offsite experiments and the onsite evidence that there was no indication that the impacts were made by projectiles launched from an AML60 or an AML90 armoured vehicle, and in any case that this would not have been possible. Upon questioning from the Bench, Kubic added that it would have been possible, however, for a soldier to have fired a weapon from inside an armoured vehicle, through a port. It was Kubic's impression that the weapons inside the vehicles would have been FAL weapons and there was no indication that those were used in this case.[3426]

1808. As part of his investigation, Witness Kubic examined the holes of the UNAMIR building quite extensively and recovered at least eight jacketed and non-jacketed fragments of bullets from 30-calibre or 7.62 rounds. They recovered no rounds from 9-millimetre handguns, but could not be sure that such weapons were not used due to the lack of penetration into the walls.[3427] Several tests and reconstructions were done in the United States following the visit to assist in making these determinations.[3428]

1809. Witness Kubic agreed that his findings indicated that other than the one bullet hole found, nothing else that hit the outside walls, including an MGL launched grenade, assault rifles or machine gun fire, penetrated through the interior of the building where the Belgian soldiers were located.[3429] He further agreed that the marks left by the impact of gunfire on the wall could have indicated rapid fire on the building, especially due to what appeared to be poor marksmanship.[3430]

1810. Witness Kubic testified that he could not make any conclusions about the roof or the ceiling because they had been replaced subsequent to the events.[3431] He also testified that the roof had to be replaced because there were large holes and damage to it, which were seen in the pictures from the separate Belgian investigation. The pictures show light inside the

[3422] T. 24 June 2008, pp. 7, 10.
[3423] T. 24 June 2008, p. 8.
[3424] T. 24 June 2008, pp. 9-10.
[3425] T. 24 June 2008, p. 10.
[3426] T. 24 June 2008, p. 12.
[3427] T. 24 June 2008, pp. 13-14, 36-37, 63.
[3428] T. 24 June 2008, pp. 13-15.
[3429] T. 24 June 2008, pp. 16-17.
[3430] T. 24 June 2008, pp. 37-38.
[3431] T. 24 June 2008, p. 17.

building, which led the witness to conclude that there was a large hole in the roof, although no actual damage can be seen in the photos.[3432]

1811. Regarding the inside of the building, Witness Kubic testified that most of the shooting came through the windows and struck the blackboard, on the southern wall.[3433] He concluded that the gunfire came from the west, primarily from the northwest with at least one shot fired from the southwest through the window at an angle.[3434] He testified that a 9-millimetre, a 7.62 millimetre or even rocks could have broken the glass.[3435]

1812. Witness Kubic testified that the damage to the northeast corner of the room was caused by hand-thrown grenade detonations.[3436] From his investigation of the trajectories, Kubic's conclusion was that the grenades were thrown through the roof, which must have been open.[3437] He testified that it was not very likely that a grenade launched by an MGL could have created the damage to the northeast corner of the room due to the trajectory and the damage to the floor.[3438] He added that this could have only happened if the grenade was launched from 70 metres away, the roof was already damaged and one of those rounds fell through the hole. He believed that this did not happen as the shooters were having difficulty firing shots through a window from close range and therefore would not have had the ability to launch grenades through a hole in the roof from 70 metres away.[3439]

1813. Witness Kubic testified that upon reading the autopsy conclusions, he found nothing inconsistent with what he had found at the sites and the subsequent conclusions in his report.[3440] He concluded that grenades launched outside the building, as opposed to hand-thrown grenades, were not the cause of the Belgians deaths.[3441] The grenades detonated in the UNAMIR building were hand-thrown and not launched grenades.[3442]

1814. Ultimately, Witness Kubic presented the following conclusions to the Chamber. First, there is no evidence indicating that any weapons, machine guns, mounted machine guns or heavier armaments were fired from a distance of approximately 10 metres from an armoured vehicle at the UNAMIR building.[3443] Second, the damage to the UNAMIR building was caused by small arms fire, likely to be AK-47 type ammunition.[3444]

[3432] T. 24 June 2008, pp. 55-56.
[3433] T. 24 June 2008, p. 18.
[3434] T. 24 June 2008, pp. 18-19. Kubic explained the process of reaching his conclusions at p. 20 of the transcript.
[3435] T. 24 June 2008, p. 24.
[3436] T. 24 June 2008, pp. 18, 64.
[3437] T. 24 June 2008, pp. 21-24.
[3438] T. 24 June 2008, pp. 24-25, 64.
[3439] T. 24 June 2008, pp. 66-67.
[3440] T. 24 June 2008, pp. 26, 34.
[3441] T. 24 June 2008, pp. 24-25.
[3442] T. 24 June 2008, p. 34.
[3443] T. 24 June 2008, p. 34.
[3444] T. 24 June 2008, p. 34.

The Accused Nzuwonemeye

1815. Nzuwonemeye stated that he commanded the RECCE Battalion from November 1993 to July 1994.[3445] He estimated that on 7 April 1994 there were approximately 150 to 200 RECCE Battalion soldiers present in Camp Kigali.[3446] He explained that no other companies or units were under his control on that day and that security for the camp was the responsibility of camp commander Colonel Nubaha.[3447]

1816. Nzuwonemeye confirmed that in the evening of 6 April 1994, he was invited to attend a meeting at ESM at 10.00 a.m. the next day.[3448] On 7 April, between 5.30 a.m. and 6.30 a.m., Nzuwonemeye asked for and subsequently received a situation report from Sagahutu, who had been sent to guard sensitive points in Kigali the previous evening.[3449] At 6.30 a.m., Sergeant Major Ndyanabo drove Nzuwonemeye from his office to his home. Having changed and rested, Nzuwonemeye then departed for the ESM meeting at approximately 9.30 a.m.[3450] He testified that on his way to the meeting, he decided to go into Kigali, in particular to the area defended by his squadron.[3451] He stopped just past the *École belge* as he saw Sagahutu's vehicle parked nearby. Sagahutu came over and they had a conversation.[3452]

1817. Nzuwonemeye confirmed that he attended the meeting at ESM and that it finished between 12.00 noon and 12.30 p.m.[3453] After the ESM meeting, Nzuwonemeye's driver, Sergeant Major Nyadabwa, told him that he had heard gunshots coming from the direction of Camp Kigali. Nzuwonemeye therefore decided to go straight to the camp, but he avoided going directly to the guard post as he was told that there were problems there. Instead, he crossed ESM, went behind the guard post, passed by the parade ground and continued up to the RECCE Battalion.[3454]

1818. On his way back to Camp Kigali, Nzuwonemeye met the camp commander Colonel Nubaha at the basketball field located below the guard post where the camp duty officer worked.[3455] Nzuwonemeye explained that Nubaha was walking up and down, deep in thought. Nzuwonemeye asked Nubaha why he was there. Nubaha replied that soldiers, particularly disabled soldiers of the Headquarters Company under his command, had

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[3445] T. 6 October 2008, p. 3.
[3446] Nzuwonemeye stated that at the time, one third of the RECCE Battalion was on leave, Squadron C was at Rambura and Squadron A was defending sensitive locations. *See* T. 6 October 2008, p. 20.
[3447] T. 6 October 2008, p. 37.
[3448] T. 6 October 2008, p. 48.
[3449] T. 6 October 2008, pp. 48-49. Nzuwonemeye testified that he sent Sagahutu out in the evening of 6 April 1994 to defend sensitive locations as a result of learning of the Prime Minister's death.
[3450] T. 6 October 2008, pp. 49, 51.
[3451] *See* T. 6 October 2008, p. 52 (Nzuwonemeye stated: "So I left my home, went through Gitega, and on to a private clinic called Bon Samaritain or Good Samaritan. I turned right and took the road between the *Lycée de Notre Dame de Citeaux* or the *École Belge* or the Belgian school. And at the top of that road I turned left, went behind Radio Rwanda, continued behind the presidency of the republic, in front and went past the ministry of posts, and in front of the Rwandan national parks authority, in front of a service station which at the time was called Shell. I went in front of the ministry of foreign affairs, and then the ministry of finance, and went on. I passed in front of Radio Rwanda, between Radio Rwanda and the embassy of the United States of America, and I continued right to the SONARWA company, the national insurance company of Rwanda, and then I turned right. At the end of that road was the ESM. I entered into the ESM where the meeting had to take place.").
[3452] T. 6 October 2008, p. 52.
[3453] T. 6 October 2008, p. 60.
[3454] T. 6 October 2008, pp. 60-61; T. 8 October 2008, pp. 41-44.
[3455] T. 6 October 2008, pp. 60-61.

murdered Belgian blue helmets. Nubaha told Nzuwonemeye that, as far as he was concerned, there was a mutiny because most of the persons who took part in the killings were his own soldiers who had refused to obey him. Nubaha added that when the Belgian soldiers were dropped off at Camp Kigali, it was rumoured that they had shot down President Habyarimana's plane.[3456]

1819. Nzuwonemeye testified that he asked Nubaha a number of questions, including "why, when he came to talk with Colonel Bagosora, he did not make the information known to everybody so that we could intervene." Nubaha replied that his non-commissioned officers "did everything possible" to control the Rwandan soldiers who were attacking the Belgians, and that he, who before then was respected by everybody, "could do nothing".[3457] Nubaha told Nzuwonemeye that he went to ESM to inform Bagosora of the situation and that the latter stated that he would "find out about the situation himself". However, Bagosora did not show up. Finally, Nubaha told Nzuwonemeye, "When I came back to the guard post unfortunately all the Belgians had been killed."[3458] Nzuwonemeye testified that after this conversation, he and Nubaha went to the Camp Kigali guard post together.[3459]

1820. On arrival at the guard post with Nubaha, Nzuwonemeye saw ten dead Belgian soldiers: eight outside and two in the room that UNAMIR used as an office, as well as one dead Rwandan solider. Nubaha told Nzuwonemeye that the Belgian soldiers had been taken there by Major Ntuyahaga from the Prime Minister's residence.[3460] Nzuwonemeye recalled other officers passing by and trying to obtain information about the situation. Colonel Ndahimana, who was the commander of the base, assisted in carrying the bodies that were outside into the UNAMIR office.[3461] Rwandan soldiers were shouting and trying to stop him from putting the corpses of the eight soldiers in the office.[3462] Nzuwonemeye estimated that he remained there for 40 minutes.[3463]

1821. Once back at the RECCE Battalion, Nzuwonemeye asked officers what they knew of the killings. The officers stated that as far as they knew, RECCE Battalion soldiers did not take part in the mutiny.[3464] Nzuwonemeye then called the General Staff, the services squadron and the infantry to ask what had happened. He was told that they had heard gunshots at the guard post and were told that they could do nothing because soldiers of the ESO Company were in mutiny.[3465]

1822. Finally, Nzuwonemeye testified that he did not receive any order from either the General Staff or the commander of Camp Kigali to assess the security or intervene in the security of the Belgian soldiers, nor did he hear any noise coming from Camp Kigali while at ESM.[3466] Nzuwonemeye also denied that the RECCE Battalion possessed MGLs.[3467] According to Nzuwonemeye, although infantry in the RECCE Battalion were used to protect

[3456] T. 6 October 2008, p. 62.
[3457] T. 6 October 2008, pp. 62-63.
[3458] T. 6 October 2008, pp. 62-63.
[3459] T. 6 October 2008, pp. 62-63.
[3460] T. 6 October 2008, p. 63.
[3461] T. 6 October 2008, p. 63.
[3462] T. 8 October 2008, p. 45.
[3463] T. 6 October 2008, p. 63.
[3464] T. 6 October 2008, p. 64.
[3465] T. 6 October 2008, p. 64.
[3466] T. 6 October 2008, p. 65; T. 8 October 2008, p. 41.
[3467] T. 6 October 2008, p. 19; T. 7 October 2008, pp. 29-30, 54.

the armoured vehicles, the Battalion was not equipped with MGLs because they were given as a priority to units at the frontline and there were not enough to supply to the RECCE Battalion.[3468]

4.5.4.2.2.2.2 Sagahutu Defence Evidence

Witness CSS

1823. Witness CSS was a member of Squadron A of the RECCE Battalion in 1994. He testified that in the morning of 7 April 1994 he was at the RECCE transport depot and did not leave that area until 8 April.[3469] On 7 April, before 2.00 p.m., while stationed at the RECCE transport depot, he heard gunshots from the entrance to Camp Kigali. At around 3.00 p.m., people bringing supplies told him that Belgian soldiers had been shot at the camp.[3470] Witness CSS testified that he could not see the entrance to Camp Kigali from the RECCE transport depot as there were several obstacles blocking the view.[3471]

1824. On 8 April, at around 11.00 a.m., Witness CSS was part of Sagahutu's convoy that went to the mortuary at CHK where the bodies of the Belgian soldiers lay. He stated that Sagahutu was accompanied by a Belgian Lieutenant Colonel who looked at the bodies and took pictures.[3472] The bodies were then loaded into an ambulance and Sagahutu's convoy headed for Kiyovu.[3473]

1825. Witness CSS testified that no weapons were stored in Sagahutu's office.[3474] He recalled seeing an MGL in Mutara but denied that the RECCE Battalion possessed MGLs.[3475]

Witness UDS

1826. Witness UDS was a senior military officer attached to the RECCE Battalion in 1994.[3476] He testified that he was absent from the camp when the Belgian UNAMIR soldiers were killed.[3477] He received information, however, that the Belgians were killed by invalid soldiers at the guard post who thought the Belgians were responsible for shooting down the President's plane.[3478] Witness UDS further testified that his squadron had pistols, FAL rifles and UZI machine guns, but not MGLs. He said they did not need MGLs because they had more powerful machine guns that could fire at long distances.[3479] They also had jeeps and light armoured vehicles.[3480] The weapons were kept in a weapons store located near the assembly area. He added that at no point were weapons kept in the office.[3481]

[3468] T. 7 October 2008, pp. 64-65.
[3469] T. 24 October 2008, p. 27.
[3470] T. 24 October 2008, p. 27.
[3471] T. 23 October 2008, p. 32.
[3472] T. 23 October 2008, pp. 35-36, 38.
[3473] T. 23 October 2008, p. 36.
[3474] T. 23 October 2008, p. 41.
[3475] T. 23 October 2008, pp. 41-42, 47.
[3476] T. 27 October 2008, p. 37 (ICS).
[3477] T. 27 October 2008, p. 69 (ICS).
[3478] T. 27 October 2008, p. 70 (ICS).
[3479] T. 27 October 2008, pp. 48-49 (ICS).
[3480] T. 27 October 2008, p. 49 (ICS).
[3481] T. 27 October 2008, p. 49 (ICS).

Witness Faustin Habimana

1827. Witness Faustin Habimana was a platoon leader attached to the RECCE Battalion in 1994.[3482] Upon hearing the news of the Presidential plane crash on 6 April 1994, Witness Habimana immediately went to Camp Kigali and arrived there at about 9.30 p.m. He reported to Lieutenant Baziramwabo, who ordered him to stand by and wait for further instructions.[3483]

1828. On 7 April, Witness Habimana remained on standby at RECCE Headquarters in Camp Kigali.[3484] At about 10.00 a.m. he heard gunshots and was later informed that those shots were fired at Belgian UNAMIR soldiers. The witness did not go to the site of the attack.[3485]

1829. During cross-examination, Witness Habimana confirmed that the RECCE Battalion had a small armoury in which its weapons were stored.[3486] He explained that the Battalion had armoured vehicles, anti-tank missiles and various types of rifles, but denied that they had MGLs.[3487]

Witness Mathieu Setabaruka

1830. Witness Mathieu Setabaruka was a Sergeant Major in the Rwandan Army working in the printing press at Rwandan Army Headquarters and based at Camp Kigali.[3488] He confirmed that in April 1994, Lieutenant Nubaha was Camp Kigali commander and Second Lieutenant Munana was Nubaha's deputy. In his role as deputy, Munana was in charge of the administration of the headquarters.[3489]

1831. Witness Setabaruka stated that on the night of 6 April 1994, he was at the non-commissioned officers' mess in Camp Kigali. At approximately 8.30 p.m., he heard a number of explosions coming from the Kanombe area. Following the explosions, the witness heard the camp bugle sound.[3490] He rushed out of the mess to a pre-determined spot within the camp, where he was joined by other members of his unit.[3491] Soon after assembling, Second Lieutenant Munana and a member of UNAMIR arrived at the weapons store. The UNAMIR soldier gave the store keys to Munana, who unlocked the camp's weapons store.[3492] Munana told the soldiers to collect their weapons and go to their positions, and the witness and the other soldiers obeyed this order.[3493]

1832. Setabaruka testified that he spent the night of 6 April guarding his position in the southern part of Camp Kigali.[3494] In the morning of 7 April, at around 9.00 a.m., he was at his

[3482] T. 13 November 2008, p. 3.
[3483] T. 13 November 2008, pp. 5-6.
[3484] T. 13 November 2008, p. 6.
[3485] T. 13 November 2008, pp. 7-8.
[3486] T. 13 November 2008, pp. 23-24.
[3487] T. 13 November 2008, p. 26.
[3488] T. 10 July 2008, pp. 48-49.
[3489] T. 10 July 2008, p. 49.
[3490] T. 10 July 2008, pp. 49-50; T. 11 July 2008, p. 4.
[3491] T. 10 July 2008, p. 50; T. 11 July 2008, pp. 4, 27.
[3492] T. 10 July 2008, p. 50; T. 11 July 2008, pp. 8-9.
[3493] T. 10 July 2008, p. 50; T. 11 July 2008, p. 8.
[3494] T. 10 July 2008, p. 50; T. 11 July 2008, p. 9.

position when he heard gunshots "here and there". As Munana was not present and the witness was the most senior soldier in his platoon, he decided to collect information about the situation. He appointed another soldier in charge of the position and then went to the camp duty office, where he found the head of his platoon and officers Sebutiyongera and Kagango.[3495] After a brief discussion lasting approximately ten minutes, the witness observed the crossbar at the entrance to Camp Kigali open and a white vehicle enter, head towards the General Staff area and park.[3496] The witness confirmed that all entrances to Camp Kigali are guarded.[3497]

1833. Setabaruka observed that the door of the vehicle opened from the inside and a number of soldiers alighted from the vehicle.[3498] The witness was standing in front of the guard post, about 40 metres away. He estimated there were at least 10 men in uniform. There were both white and black soldiers, and all were wearing military jackets and UN insignia armbands.[3499] The witness did not see any soldiers exit the vehicle wearing Rwandan Army uniform.[3500] He believed that the bus was driven by a Rwandan soldier, but the driver of the vehicle did not get out the vehicle.[3501]

1834. Setabaruka testified that there were a number of Rwandan soldiers in the vicinity of the guard office when the vehicle arrived at the camp.[3502] Armed members of the Huye Battalion formed the majority of the crowd, and there were also a number of wounded soldiers and members of the General Staff who did not have weapons.[3503] The Rwandan soldiers were standing in front of the white soldiers when the witness heard someone say, "They are those who killed the President", to which someone else replied, "Well, they should be shot."[3504] The witness was unable to identify the individuals who made these statements.[3505]

1835. The white soldiers then sat down and the wounded Rwandan soldiers began beating them with crutches, canes and stones.[3506] Setabaruka did not hear anyone give orders to attack the white soldiers.[3507] He recalled that Second Lieutenant Munana arrived just as the attack started, but Colonel Nubaha was not present.[3508] The witness stated that he and his fellow officers, including Munana, tried to stop the attack but the soldiers refused to listen.[3509] The senior warrant officer was hit on his back with a cane because he was trying to prevent the Rwandan soldiers from harming the white soldiers. Someone in the crowd of Rwandan soldiers stated, "Why are you preventing us from killing them, because they are those who killed our president?"[3510] The witness described the attack by the Rwandan soldiers as a

[3495] T. 10 July 2008, p. 51; T. 11 July 2008, pp. 9-10.
[3496] T. 10 July 2008, p. 51; T. 11 July 2008, pp. 9, 11-12.
[3497] T. 10 July 2008, p. 67; T. 10 July 2008, p. 67.
[3498] T. 10 July 2008, p. 63; T. 11 July 2008, pp. 11-12.
[3499] T. 11 July 2008, p. 11.
[3500] T. 11 July 2008, p. 12.
[3501] T. 11 July 2008, p. 12.
[3502] T. 11 July 2008, p. 11.
[3503] T. 11 July 2008, pp. 12-13.
[3504] T. 10 July 2008, pp. 51-52.
[3505] T. 10 July 2008, pp. 58-59.
[3506] T. 10 July 2008, p. 52.
[3507] T. 10 July 2008, p. 55.
[3508] T. 11 July 2008, p. 15.
[3509] T. 10 July 2008, pp. 53-54; T. 11 July 2008, pp. 15, 19.
[3510] T. 10 July 2008, pp. 51-52.

"collective action" with a "unanimous attitude",[3511] and he described the Rwandan soldiers as "mutineers".[3512]

1836. Setabaruka stated that when they came under attack, some of the UN soldiers headed towards the Camp Kigali UNAMIR building, entered the building and closed the door while the Rwandan soldiers continued to attack. An estimated four or five white soldiers remained on the ground, but the witness could not tell whether these soldiers were dead or alive.[3513] The witness testified that a corporal from General Staff, who worked in signals, went and opened the door of the UNAMIR building and invited the UN soldiers to come out. The witness then observed the black UN soldiers exit the building through a window.[3514] Once out of the building, the black soldiers went into the ESM Camp via the road between the building and the guardroom.[3515] The witness then recalled the Rwandan corporal from General Staff at the door of the UNAMIR building inviting the white soldiers to come out. A few moments later, the witness heard the corporal shouting "I am dead. I am dead. Help."[3516] The witness did not know what happened to the corporal other than hearing him scream for help.[3517]

1837. The armed Rwandan soldiers began shooting at the UNAMIR building, and the white soldiers inside the building shot back. Realising that the white soldiers were armed, the Rwandan soldiers moved back. The witness overheard the Rwandan soldiers saying that those in the house had killed their colleague.[3518] The Rwandan soldiers subsequently fired many bullets at the UNAMIR building.[3519] At approximately 9.30 a.m., Colonel Ndahimana and Colonel Kanyandekwe arrived and tried to intervene, but the Rwandan soldiers continued firing on the UNAMIR building. Bullets passed above the heads of Ndahimana and Kanyandekwe, who were forced to flee.[3520] The witness believed that he was also under attack and he therefore fled to his original position guarding the south side of Camp Kigali. He recalled hearing further gunshots on his journey back to his position and then hearing grenade explosions and gunshots until 12.00 noon.[3521] Later on, at around 3.00 p.m., the witness received a visit from Sergeant Major Twajembere, who told him that all the white soldiers had been killed.[3522]

1838. Setabaruka testified that he did not see any armoured vehicles present with the crowd at Camp Kigali.[3523] Although the witness knew most of the members of the RECCE Battalion by sight, he did not see any of them at the scene of the attack when the events took place.[3524]

[3511] T. 10 July 2008, p. 59.
[3512] T. 11 July 2008, p. 26.
[3513] T. 10 July 2008, p. 52.
[3514] T. 10 July 2008, pp. 52, 65-66. The witness stated he was opposite the guard room at an estimated 15 metres away when the Rwandan soldier entered the UNAMIR building.
[3515] T. 10 July 2008, p. 60.
[3516] T. 10 July 2008, pp. 51-52.
[3517] T. 10 July 2008, pp. 65-66.
[3518] T. 10 July 2008, pp. 51-52. The witness did see any Rwandan soldier shooting through the window of the UNAMIR office. *See* T. 10 July 2008, p. 64; T. 10 July 2008, pp. 64-65.
[3519] T. 10 July 2008, pp. 63-64.
[3520] T. 10 July 2008, pp. 52-53, 62-63.
[3521] T. 10 July 2008, pp. 52-53.
[3522] T. 10 July 2008, pp. 52-53.
[3523] T. 10 July 2008, p. 54.
[3524] T. 10 July 2008, p. 55; T. 11 July 2008, p. 22.

The witness further testified that he knew Major Nzuwonemeye and Captain Sagahutu, but he did not see either individual at Camp Kigali in the morning of 7 April.[3525]

Witness CBAS

1839. Witness CBAS worked for the Rwandan Ministry of Defence in 1994.[3526] He testified that at about 8.30 a.m. on 7 April 1994, he saw a number of white UNAMIR soldiers arrive at Camp Kigali.[3527] Witness CBAS was told that Major Ntuyahaga, who was standing nearby, had brought the UNAMIR soldiers to Camp Kigali in a white minibus, and the witness saw the last two of the UNAMIR soldiers exit the bus.[3528] The witness was not able to count the number of white UNAMIR soldiers, but he recalled that there were not less than five.[3529] He also saw a number of dark-skinned UNAMIR soldiers at the camp, but he testified that "sometime later I didn't see them anymore."[3530]

1840. Witness CBAS saw Ntuyahaga take one of the white UNAMIR soldiers into the UNAMIR office.[3531] The witness heard rumours that this was the group's leader and that he had shot down the President's plane.[3532] The UNAMIR soldier that Ntuyahaga took into his office was armed with a pistol, but the rest of the UNAMIR soldiers did not have weapons.[3533]

1841. The witness testified that the Rwandan soldiers made the UNAMIR soldiers sit down, after which the Rwandan soldiers threw rocks at them and beat them with sticks.[3534] Ntuyahaga asked the Rwandan soldiers to stop the attack, but they did not listen.[3535] The Rwandan soldiers threatened Ntuyahaga so he left and walked towards the General Staff office, while the Rwandan soldiers continued the attack.[3536] The witness testified that the Rwandan soldiers attacking the UNAMIR soldiers were mostly people who had been wounded in war, but some of them were healthy and active.[3537]

1842. When the witness was leaving Camp Kigali, he saw Corporal Ndangamyambi go into the office where Ntuyahaga had taken the UNAMIR soldier.[3538] The UNAMIR soldier pulled Ndangamyambi by his uniform into the office and shot him with his pistol, possibly killing him. This made the Rwandan soldiers outside angry and they started firing their own weapons.[3539] The witness then left but he noted that the situation was tense and he heard many shots fired.[3540]

[3525] T. 10 July 2008, pp. 55, 68.
[3526] T. 4 November 2008, p. 6 (ICS).
[3527] T. 4 November 2008, p. 11.
[3528] T. 4 November 2008, p. 14.
[3529] T. 4 November 2008, p. 18.
[3530] T. 4 November 2008, p. 15.
[3531] T. 4 November 2008, pp. 14-15.
[3532] T. 4 November 2008, p. 14.
[3533] T. 4 November 2008, p. 18.
[3534] T. 4 November 2008, p. 14.
[3535] T. 4 November 2008, p. 14.
[3536] T. 4 November 2008, pp. 14-15.
[3537] T. 4 November 2008, p. 15.
[3538] T. 4 November 2008, p. 16.
[3539] T. 4 November 2008, p. 16.
[3540] T. 4 November 2008, p. 16.

1843. Witness CBAS further testified that when he arrived at Camp Kigali in the morning of 7 April, the Rwandan soldiers were armed because they had forced open the armoury and retrieved their weapons.[3541] While he was there, the witness did not see Sagahutu at the entrance of Camp Kigali, nor did he see an armoured vehicle at that location.[3542]

The Accused Bizimungu

1844. Bizimungu testified that on 18 April 1994, having just taken over command of the Rwandan Army, he received a briefing from General Gatsinzi on the killing of the Belgian soldiers. Bizimungu stated that Gatsinzi did not go into any details, simply telling him that the Belgian soldiers had been murdered within Camp Kigali by mutineering soldiers. Gatsinzi also told Bizimungu that an investigation was underway in order to determine what had happened.[3543]

1845. Bizimungu testified that in the morning of 19 April, Gatsinzi showed him a number of documents including a letter he had written to some officers connected to the killings.[3544] The letter was dated 9 April 1994 and was addressed to the commander of the AR base (the base of the Rwandan Army) and copied to the Minister of National Defence and to the commander of Camp Kigali and the QG Company. The subject was "Assassination of Belgian soldiers of the UNAMIR". The letter was signed by General Gatsinzi, Chief of Staff of the Rwandan Army. The document was "minuted" to G1 MEMAR, indicating that a copy of this document was found at the G1. The base commander to whom the letter was addressed was Lieutenant Colonel Nubaha, who had been the commander of Camp Kigali at the time of the events.[3545]

1846. Bizimungu recalled the Rwandan Army high command transferring Nubaha from the command of Camp Kigali to AR base between 8 and 9 April 1994.[3546] Bizimungu testified that the Chief of Staff decided to transfer Nubaha because he had run into problems when the Belgians were killed at Camp Kigali. According to Bizimungu, the letter is important as it states:

> On the 7th of April, while you were commander of Kigali camp and the QG company, Belgian soldiers of the UNAMIR were savagely massacred in front of your office, and their dead bodies were not evacuated to the C CMSK.[3547] In the afternoon, six other Belgian soldiers who had barricaded themselves up in some location within the Kigali camp were also killed by grenades. Please provide further details on this tragic incident which may tarnish our relations with the United Nations and with the Kingdom of Belgium.[3548]

1847. Bizimungu testified that following the killings, Colonel Murasampongo at G1 began leading an investigation with a view to ascertaining what had happened. In addition, a second investigation was underway to enable the commander of Camp Kigali to give his version of events. Bizimungu explained that the command would have then taken measures to establish

[3541] T. 4 November 2008, p. 15.
[3542] T. 4 November 2008, pp. 16-17.
[3543] T. 11 December 2007, pp. 46-47.
[3544] T. 11 December 2007, p. 47; Defence Exhibit 234.
[3545] T. 11 December 2007, p. 47.
[3546] T. 11 December 2007, pp. 47-48.
[3547] Bizimungu testified that C CMSK stood for the Kanombe hospital. *See* T. 11 December 2007, pp. 47-48.
[3548] Defence Exhibit 234; T. 11 December 2007, pp. 47-48.

whether there had been any disciplinary shortcomings and, if so, it would have taken disciplinary measures.

1848. In addition, the G1 (in charge of administration) was tasked with organising a commission so that the killings could be analysed and so that the G1 could hear from Colonel Nubaha, independently of the explanation requested from him by the General Staff.[3549] Bizimungu testified that the G1's investigation commenced, but since he left Kigali and arrived in the Congo, the investigation never reached a conclusion.[3550] Bizimungu added that once in the refugee camps in Zaire, Colonel Murasampongo attempted to fill in the gaps within the file.[3551] Bizimungu stated that he does not contest the fact that Rwandan soldiers killed the blue berets.[3552]

The Accused Ndindiliyimana

1849. Ndindiliyimana testified that he attended a meeting at ESM from 10.00 a.m. until around 12.30 p.m. on 7 April 1994. At around 10.45 a.m., the commanding officer of Camp Kigali, Colonel Nubaha, entered the meeting room and had a brief discussion with Colonel Bagosora. Ndindiliyimana could hear their conversation. According to Ndindiliyimana, Nubaha stated, "Colonel this situation is tense at the Camp", to which Bagosora replied, "Go and calm the situation. Immediately [after] the meeting is over I will come and see." Nubaha then left while Bagosora continued the meeting.[3553] General Dallaire subsequently entered the meeting room and sat next to Bagosora. Around 10 to 15 minutes later, they heard the sound of gunfire lasting a couple of seconds, and everyone stood up to see what was happening. Ndindiliyimana saw an African blue helmet running in the direction of ESM. Those in charge of security at ESM went to see what was happening while the others continued their meeting.[3554]

1850. Later that day at 6.00 p.m., Ndindiliyimana held another meeting at ESM to appeal for assistance in order to defend the *Gendarmerie*.[3555] Following the meeting, General Dallaire told Ndindiliyimana that he had not yet been able to locate his men at Camp Kigali. Ndindiliyimana called Colonel Murasampongo, the interim Chief of Staff, and asked him why Dallaire's men had not been handed back to him. Murasampongo replied that they were at the mortuary.[3556] Ndindiliyimana, Dallaire and other officers went to Kigali hospital, from where they were directed to the mortuary. Behind the clinic they saw the dead bodies of the Belgian blue berets. Ndindiliyimana told Dallaire to take his escort to return home while Ndindiliyimana organised for the bodies to be properly wrapped and laid out.[3557]

[3549] T. 11 December 2007, p. 48.
[3550] T. 11 December 2007, pp. 48-49.
[3551] T. 11 December 2007, p. 49.
[3552] T. 12 December 2007, p. 50.
[3553] T. 17 June 2008, p. 36.
[3554] T. 17 June 2008, pp. 35-36.
[3555] T. 17 June 2008, p. 41.
[3556] T. 17 June 2008, p. 42.
[3557] T. 17 June 2008, pp. 42-43.

The Accused Sagahutu

1851. Sagahutu testified that in the morning of 7 April 1994, he went home from his command post in town to eat breakfast at his apartment in Camp Kigali. After breakfast, at around 8.00 a.m., he returned to his command post with his men. He left after 1.00 p.m. to pick up his wife, who was an officer at the Army Staff Command, for lunch and then learned what had happened to the Belgian soldiers at Camp Kigali.[3558] His wife told him that there had been sporadic shooting outside her office. He later learned the source of the shooting from KIBAT reports.[3559] He claimed that his men were never present at the location where the Belgian blue berets were killed.[3560] Sagahutu was in regular contact with the members of his squad who were located at the transport depot base but he was never told that these men were present at the scene of the Belgian peacekeepers' murders.[3561]

1852. Sagahutu testified that based on the information circulating at the time, the Belgian soldiers were not killed because they came from Belgium; rather they were attacked by disabled soldiers who thought that they were responsible for President Habyarimana's death.[3562] He testified that his battalion had MGLs, but his squadron did not use that weapon.[3563]

4.5.4.2.3 Deliberations

4.5.4.2.3.1 Introduction

1853. Having considered the evidence in its totality, the Chamber is satisfied that in the morning of 7 April 1994, ten UNAMIR soldiers of Belgian nationality were murdered at Camp Kigali. The evidence before the Chamber supports the following chronology of events.

1854. Between 8.00 a.m. and 9.00 a.m. on 7 April, approximately 15 Belgian and Ghanaian UNAMIR soldiers present at the Prime Minister's residence were disarmed, arrested and conveyed to Camp Kigali in a vehicle driven by Major Ntuyahaga, a Rwandan soldier.[3564] At approximately 9.00 a.m., the vehicle was driven into Camp Kigali and parked close to the office used by the UNAMIR mission (the "UNAMIR building"), which is located near the entrance gate of the camp. A large number of Rwandan soldiers from different units within Camp Kigali, as well as injured and disabled soldiers, were present when the vehicle arrived.[3565]

1855. Having disembarked, the UNAMIR soldiers were forced to sit on the floor and were then attacked by Rwandan soldiers using a variety of crude instruments including canes, rifle butts and rocks. From the evidence before the Chamber, it appears that the attack was triggered by the Rwandan soldiers' belief, due to announcements made on the radio and

[3558] T. 1 December 2008, pp. 11-13.
[3559] T. 1 December 2008, pp. 13-14; T. 3 December 2008, pp. 29-30.
[3560] T. 1 December 2008, p. 15.
[3561] T. 1 December 2008, p. 44; T. 3 December 2008, pp. 31-32.
[3562] T. 1 December 2008, p. 46.
[3563] T. 2 December 2008, pp. 19-20.
[3564] T. 9 July 2008, p. 56; T. 9 July 2008, p. 59; T. 25 June 2008, pp. 37-38; T. 18 January 2006, p. 33.
[3565] The identity of the soldiers involved is discussed below in further detail.

rumours within Camp Kigali, that the Belgians were responsible for shooting down the President's plane.[3566] This attack led to the death of between six and eight Belgian soldiers.

1856. Between two and four Belgian soldiers together with five Ghanaian soldiers were able to retreat into the UNAMIR building. As the attack on that building unfolded, the Rwandan soldiers allowed the Ghanaian soldiers to leave the UNAMIR building and subsequently to leave the camp. This left only the Belgian soldiers under attack. In coming to this conclusion, the Chamber finds credible the evidence of Kwesi Doe and Zambulugu Sandow that Rwandan soldiers allowed Captain Apedo, a UNAMIR police officer, to take them away from the scene of the attack. The Chamber sees no reason for these Defence witnesses to lie to the Chamber about the manner in which they escaped from the attack at Camp Kigali. The Chamber further finds that the evidence of Defence Witness F5 confirmed the presence of Ghanaian soldiers. In light of this clear and consistent Defence evidence, the Chamber cannot believe the evidence of Prosecution Witness ANK/XAF that it was UNAMIR Bangladeshi troops who were allowed to leave the scene of the attack, particularly since Witness ANK/XAF admitted in cross-examination that he could not distinguish the skin colour of the Bangladeshis from those who come from countries in Africa.[3567]

1857. The evidence suggests that once in the UNAMIR building, the Belgian soldiers were able to obtain a weapon, which they then used to fire at the Rwandan soldiers in order to repel the attack. This led to the death of at least one Rwandan soldier. Consequently, the Rwandan soldiers renewed and intensified their attack. It further appears from the evidence that a number of Rwandan Army officers unsuccessfully attempted to quell the crowd and dissuade the Rwandan soldiers from attacking the Belgians. In the end, Rwandan soldiers used a combination of weaponry to kill the remaining Belgian soldiers in the UNAMIR building. This brought the total number of dead Belgian soldiers to 10—in other words, the entire group that had been sent to the Prime Minister's residence early in the morning of 7 April and subsequently brought to Camp Kigali in the minibus driven by Major Ntuyahaga.

1858. The Chamber will now consider whether RECCE Battalion soldiers participated in the attack on the Belgian soldiers and, if so, whether Nzuwonemeye and/or Sagahutu played any role in that crime.

4.5.4.2.3.2 Participation of RECCE Battalion Soldiers in the Attack

1859. There is no dispute that RECCE Battalion soldiers were present at the scene of the killings at various times during the morning of 7 April.[3568] The Chamber is not satisfied, however, that the mere presence of RECCE Battalion soldiers is enough to indicate their participation in the attack against the Belgian UNAMIR soldiers.

[3566] *See, e.g.*, T. 17 January 2008, p. 50. The evidence of Defence Witness Luc Marchal that at around 6.00 a.m. on 7 April 1994, he was informed that Rwandan radio had announced that the Belgians were responsible for shooting down the President's plane,. Similarly, Prosecution Witnesses ANK/XAF and ALN both testified that the Belgian soldiers were attacked because of a rumour that they were involved in the downing of the President's plane. More generally, the evidence of Defence Witnesses Doe and Sandow that they were allowed to leave during the attack lends credibility to the suggestion that the UNAMIR soldiers were targeted not for being part of the United Nations mission but rather because they were Belgian.

[3567] T. 2 September 2005, pp. 31, 45.

[3568] T. 18 January 2006, p. 33; T. 20 January 2006, p. 3; T. 11 January 2005, pp. 38-39; T. 23 January 2006, p. 39; T. 24 January 2006, p. 46; T. 2 September 2005, p. 5; T. 29 September 2004, p. 47; T. 9 March 2005, p. 8.

1860. The Chamber recalls that Prosecution Witness DCK explicitly linked at least two RECCE Battalion soldiers with the attack. First, Witness DCK testified that he saw a soldier, who he was later told came from the RECCE Battalion, bring out a MGL and fire six grenades into the UNAMIR building into which the Belgians had retreated.[3569] The Chamber notes that the identification of the unnamed soldier as a RECCE soldier was not made by Witness DCK but by an unidentified person. Given that this constitutes hearsay evidence and that the identification was made in an atmosphere of violence and insecurity, the Chamber considers this evidence with caution. That said, the Chamber notes that Witness DCK's evidence regarding the RECCE soldier and the use of an MGL is corroborated by the evidence of Prosecution Witnesses AWC and ANK/XAF, who both testified that an MGL was taken from the RECCE Battalion although they name different people as the source of that weapon.[3570]

1861. Second, Witness DCK identified another RECCE soldier, Corporal Nzeyimana, whom the witness claims to have known quite well as Sagahutu's driver. According to Witness DCK, Nzeyimana went and looked into the UNAMIR building and stated to the attacking Rwandan soldiers, "[I]t's over", which confirmed that the last Belgian soldier in the building had died.[3571] The Chamber observes that there is no doubt about Nzeyimana's membership of the RECCE Battalion in 1994 and his position as Sagahutu's driver. Indeed, Sagahutu himself admitted these facts when he testified before the Chamber. This lends credence to Witness DCK's identification of Corporal Nzeyimana as a member of RECCE battalion and Sagahutu's driver.

1862. Witness DCK's evidence regarding Nzeyimana's role and the use of the MGL by another RECCE soldier is also consistent with Witness AWC's testimony that it was Nzeyimana and Corporal Masonga, another RECCE soldier, who took an MGL from Sagahutu's office in order to kill the Belgian soldiers who were reportedly putting up resistance at the entrance of Camp Kigali. Considering Witness AWC's functions in 1994, the Chamber finds that he was very well situated to know the identity of Nzeyimana and Masonga.[3572] While Witness AWC's account regarding the role of Nzeyimana and Masonga in the death of the remaining Belgian soldiers differs slightly from Witness DCK's explanation, both witnesses are consistent that these two RECCE Battalion soldiers used the MGL to fire at the Belgians and that Nzeyimana then climbed over a wall either to inflict the final deadly blow (according to Witness AWC) or to confirm that the last Belgian soldier had been killed (according to Witness DCK). The Chamber is less concerned about the minute details of how the Belgian soldiers were killed than about the role and identity of the persons who were responsible for that unlawful act. Therefore, the Chamber finds that the slight difference in the evidence of Witnesses DCK and AWC does not detract from the fact that they both testified to the direct participation of at least two RECCE Battalion soldiers in the attack on the Belgian UNAMIR soldiers.

1863. Having found that the Prosecution evidence shows that at least two RECCE Battalion soldiers actively participated in the attack on the Belgian soldiers at Camp Kigali, the

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[3569] T. 9 March 2005, p. 9.
[3570] The evidence of Witnesses AWC and ANK/XAF regarding the source of the MGL is discussed in more detail below.
[3571] T. 9 March 2005, p. 9; T. 9 March 2005, p. 10.
[3572] For reasons relating to witness protection, the Chamber will not refer explicitly to the function that Witness AWC performed in 1994.

Chamber will now consider whether the Defence evidence raises any doubt about the participation of those soldiers.

1864. A number of Defence witnesses testified that disabled and war-wounded Rwandan soldiers from the General Staff Company were responsible for the attack on the Belgian soldiers.[3573] The Defence evidence was also directed at showing that the RECCE Battalion did not have MGLs in its arsenal,[3574] that many senior Rwandan Army officers including the camp commander Colonel Nuhaba unsuccessfully attempted to stop the attack on the Belgians,[3575] and finally that neither Nzuwonemeye nor Sagahutu was present during the attack.[3576]

1865. Having carefully reviewed the evidence outlined above, the Chamber considers that the attack on the Belgian soldiers effectively took place in two phases. The first phase was the attack on the whole UNAMIR group using a variety of crude instruments including canes, rifle butts and rocks.[3577] The Chamber is satisfied that this initial attack was launched by Rwandan soldiers from several units within Camp Kigali. Prominent among these attackers was a group of war-wounded soldiers from the General Staff Company. As a result of this initial attack, at least six Belgian soldiers were killed while between two and four Belgian soldiers, despite suffering injuries, managed to retreat into the UNAMIR building along with five Ghanaian soldiers.

1866. The attack then moved into a second phase, during which the Ghanaians were allowed to leave while Rwandan soldiers began lobbing grenades and firing small arms onto the UNAMIR building in which the Belgians were sheltering. The Chamber believes that this second phase of the attack could not have been perpetrated exclusively by war-wounded soldiers. Rather, at this stage, many healthy and active Rwandan soldiers became involved. The Chamber therefore finds that the Defence evidence regarding the role of the wounded soldiers does not cast doubt on the Prosecution evidence regarding the involvement of RECCE Battalion soldiers as well as other unidentified active soldiers from various units within Camp Kigali.

1867. With respect to the weapons used during the second phase of the attack, the Chamber has considered the expert opinion of Prosecution Witness Kubic, based on his examination of the scene of the attack and pictures of the UNAMIR building, that hand-held grenades were used to attack the inside of the building whereas launched grenades such as those used in MGLs were the likely cause of some of the damage to the outside of the building. The Chamber accepts Kubic's expert opinion, which is consistent with the evidence of Prosecution Witnesses AWC, DCK and DA regarding the presence of an MGL at the scene of the attack. The evidence of expert Kubic is also consistent with the autopsy reports on the Belgian soldiers, which found that six of the Belgian soldiers appeared to have succumbed to

[3573] See in particular Defence Witnesses F5, D1, Y1, B1/BB13/CBP7, UDS, Setabaruka, CBAS and the Accused Nzuwonemeye and Sagahutu.
[3574] See the evidence of Defence Witnesses F8, F10, CSS, UDS, Habimana, Nzuwonemeye. *Cf.* the Accused Sagahutu testified that RECCE had MGLs, but not Squadron A, which he commanded.
[3575] See evidence of Defence Witnesses F5, D1, Luc Marchal, DE8-10/F9, Y1, SGD and Nzuwonemeye.
[3576] See the evidence of Defence Witnesses D1, SGD, Nzuwonemeye and Sagahutu.
[3577] Defence Exhibit 517.

injuries as a result of beatings while the remaining four soldiers died as a result of probable grenade explosions.[3578]

1868. Furthermore, Kubic's conclusion that the damage to the UNAMIR building was caused by small arms fire, likely from AK-47 type ammunition, 30 calibre or 7.62 millimetre guns and MGLs, is consistent with the Chamber's own observations during the site visit. The Chamber observed that the UNAMIR building is located close to the entrance gate of Camp Kigali. Visible on the exterior wall of the building are multiple large and small bullet holes, which appeared to have been inflicted by automatic small arms fire and possibly grenades. The Chamber also observed that the interior wall of one of the rooms shows several small bullet holes which appeared to have been caused by the explosive impact of small projectiles. Finally, the Chamber observed that a new roof seemed to have been constructed for the building and, upon inquiry, was informed by attendants at the Belgian memorial that the Kingdom of Belgium had financed the construction of the new roof after the former one was destroyed in 1994. The construction of a new roof is also supported by the expert evidence of Witness Kubic.

1869. Based on the evidence of Kubic, Prosecution Witnesses AWC, ANK/XAF and DCK, as well as the autopsy reports and the Chamber's own observations during the site visit, the Chamber is satisfied that one of the weapons used during the second phase of the attack on the Belgian soldiers was an MGL. The Chamber finds that Kubic's evidence and its own observations rule out the possibility that either a rocket launcher or armoured vehicle was used to fire at the Belgians holed up in the UNAMIR building, as testified by Witness ALN. The Chamber will therefore not rely on this aspect of Witness ALN's evidence.

1870. With respect to the source of the MGL, Prosecution Witnesses AWC and ANK/XAF both testified that an MGL was taken from the RECCE Battalion, but they name different people as the source of that weapon. Witness AWC stated that the MGL was taken from Sagahutu's office by RECCE Corporals Nzeyimana and Masonga,[3579] whereas ANK/XAF testified that the MGL was taken from Nzuwonemeye's office by two soldiers of RECCE Squadron C, who then left together with Major Ntuyahaga in the direction of the Camp Kigali entrance.[3580] Therefore both Witnesses AWC and ANK/XAF are consistent that the weapon came from the highest echelons of the RECCE Battalion, but they are inconsistent as to the precise source of that weapon. The Chamber will consider the inconsistencies between the evidence of these two witnesses below in assessing the responsibility of Nzuwonemeye and Sagahutu.

1871. The Chamber recalls that while Nzuwonemeye and the majority of Defence witnesses denied that MGLs were part of the RECCE Battalion's arsenal, Prosecution Witness AWC testified that the Battalion did indeed have such a weapon in 1994. Sagahutu also testified that the RECCE Battalion did have MGLs in its arsenal, but he denied that Squadron A, which he commanded, had such weapons. Based on the evidence of Prosecution Witness AWC and Sagahutu, the Chamber is satisfied that the RECCE Battalion had MGLs in its arsenal. The availability of this weapon within the RECCE Battalion lends credence to the claim by Prosecution witnesses that RECCE Battalion soldiers used an MGL during the attack against Belgian soldiers at Camp Kigali. Sagahutu's denial that Squadron A had MGLs

[3578] Defence Exhibit 517.
[3579] T. 18 January 2006, p. 34; T. 20 January 2006, pp. 3-5.
[3580] T. 1 September 2005, pp. 10-11.

does not discredit the corroborated evidence of Prosecution Witnesses AWC and ANK/XAF that such a weapon was collected from the RECCE Battalion and used during the attack on the Belgian soldiers. Accordingly, the Defence evidence denying the existence of MGLs within the RECCE Battalion fails to raise a reasonable doubt with regard to the Prosecution evidence.

1872. Having considered the totality of the Prosecution and Defence evidence, the Chamber is satisfied that one of the weapons used during the attack on the Belgian soldiers was an MGL and that this weapon came from a RECCE office at Camp Kigali. The Chamber will now consider the question of whether Nzuwonemeye and Sagahutu played any role in the attack or whether they had any knowledge of the attack upon which they should have acted.

4.5.4.2.3.3 Superior Responsibility of Nzuwonemeye and Sagahutu

1873. The Chamber will now consider whether Nzuwonemeye and Sagahutu knew or had reason to know that their subordinates had committed or were about to commit these crimes. The Chamber will consider the full contours of their superior responsibility in the legal findings section of the Judgement.

1874. The Chamber notes that none of the witnesses testified that they received orders from either Nzuwonemeye or Sagahutu to participate in the killings. However, three Prosecution witnesses provided testimony that potentially links the Accused with the attack: Witnesses AWC, ANK/XAF and ALN.

1875. Prosecution Witness ALN is the only witness who testified to the presence of both Accused at the scene of the attack. However, for the reasons given below, the Chamber does not believe the evidence of Witness ALN on this point. The Chamber is equally unconvinced about Witness ALN's uncorroborated evidence that while at the scene of the attack, Nzuwonemeye ordered Sagahutu to bring an armoured vehicle to be used to fire on the Belgians inside the UNAMIR building. This evidence is even less credible considering that Prosecution Witnesses AWC, DA, DY and ANK/XAF, who were all RECCE Battalion soldiers and could easily identify Nzuwonemeye and Sagahutu, did not testify to seeing them at that location. The same considerations go to discredit Witness ALN's uncorroborated evidence regarding an alleged order from Colonel Nubaha to use a rocket launcher after the armoured vehicle had fired onto the UNAMIR building. The fact that Defence Witness Umulisa testified that Witness ALN was with her at another location for most of the day on 7 April, while coming from a self-interested witness, adds to the Chamber's doubts about Witness ALN's evidence. Finally, the expert evidence of expert Kubic regarding the unlikelihood of an armoured vehicle being used to fire onto the UNAMIR building from a distance of ten metres further reinforces the Chamber's concerns. In sum, the Chamber finds that the aspects of Witness ALN's evidence regarding the armoured vehicle, the rocket launcher, and the presence of Nzuwonemeye and Sagahutu at the scene of the attack on the Belgians are not credible.

1876. Contrary to Witness ALN's evidence, the Chamber is satisfied from the evidence of various Prosecution and Defence witnesses that Nzuwonemeye left Camp Kigali for a meeting at ESM at about 9.30 a.m. and returned to the camp after 12.00 noon on 7 April. The Chamber has not heard any convincing Prosecution evidence that Sagahutu was present at the entrance of Camp Kigali when the Belgians were brought in or during the course of the attack

on them. However, as discussed below, Witness AWC testified that Sagahutu was present in his office within the RECCE Headquarters at some point during the attack.

1877. The Chamber will now consider the evidence linking the Accused to the MGL that was used in the attack against the Belgian soldiers. While the Chamber recalls its finding that the MGL came from a RECCE office at Camp Kigali, it also notes the inconsistencies between the evidence of Prosecution Witnesses ANK/XAF and AWC in regard to the exact provenance of the MGL. Witness ANK/XAF testified that he saw two RECCE Squadron C soldiers take the MGL from Nzuwonemeye's office, whereas Witness AWC testified that he saw Corporal Nzeyimana, a member of RECCE Squadron A, and Corporal Masonga, who worked at the RECCE secretariat, take the MGL from Sagahutu's office. Witness AWC also testified to hearing Nzeyimana expressly inform Sagahutu of the attack on the Belgian soldiers, to which Sagahutu replied that the Belgian soldiers who were resisting must be killed. Finally, Witness AWC stated that Masonga informed him later in the afternoon of 7 April that they had "completed their mission", which was to kill all the Belgian soldiers.

1878. The Chamber is therefore presented with testimony from two witnesses who remain consistent on the provision of an MGL and the fact that it came from the RECCE Battalion, but inconsistent on the precise source of that weapon. The Chamber has carefully considered the evidence of Witnesses AWC and ANK/XAF, and it finds the evidence of AWC to be more credible for the following reasons.

1879. First, the timing of events put forward by Witness AWC is consistent with the totality of the evidence. Witness AWC stated that the initial conversation between Nzeyimana, Masonga and Sagahutu took place in the morning and that Nzeyimana then left with the MGL around 11.00 a.m. This timing is consistent with the Chamber's finding that the attack on the Belgians took place approximately between 9.00 a.m. and 12.30 p.m. In contrast, Witness ANK/XAF places the incident at around 4.00 p.m., which is inconsistent with the evidence of most other witnesses who testified about this issue.

1880. Second, the Chamber finds that the identification evidence provided by Witness AWC is more convincing than that provided by Witness ANK/XAF. The Chamber notes that Witness AWC identified by name both Sagahutu and the two RECCE Battalion soldiers, Corporals Masonga and Nzeyimana, who reported the attack to Sagahutu and who then took away the MGLs. This stands in contrast to Witness ANK/XAF, who stated that two unnamed RECCE Squadron C soldiers took away the MGL shortly after he saw Nzuwonemeye speaking to Major Ntuyahaga. The Chamber also notes the proximity of Witness AWC's office to that of Sagahutu, placing him in a good position to see and hear the events.[3581] Witness ANK/XAF's identification of Nzuwonemeye, Ntuyahaga and the alleged two soldiers from Squadron C took place from his position in the Transport Depot, which was further away than Witness AWC's position when he identified Sagahutu. The Chamber also notes that, at the time of the incident, Witness AWC held a position within the RECCE Battalion that enabled him to interact closely with the senior RECCE commanders and soldiers, and he testified that he knew Masonga well. Although as a RECCE soldier Witness ANK/XAF was also expected to know Nzuwonemeye quite well, the reliability of his

[3581] T. 18 January 2006, p. 34. Witness AWC testified, "My office and Sagahutu's were located very close to each other. ... As soon as I saw the RECCE battalion troops rushing over, I went and stood on the threshold of the door because my office door was opposite that of the RECCE battalion. Between us, there was a distance of about eight or nine metres, ... So I was standing by my office door, I could see them and hear what they were saying."

identification is undermined by the greater distance between the two men, the circumstances that prevailed at the camp at the time and the fact that Witness ANK/XAF did not name the Squadron C soldiers who allegedly took away the MGL. The Chamber therefore finds the identification by Witness AWC of Sagahutu and Corporals Masonga and Nzeyimana to be the more credible.

1881. Finally, the Chamber considers the evidence of Witness AWC to be more credible than the evidence of Witness ANK/XAF due to the corroboration provided by Prosecution Witness DCK regarding the presence of Corporal Nzeyimana at the scene of the attack. The Chamber considers that Witness DCK's evidence corroborates the evidence of Witness AWC that Corporal Nzeyimana was actively involved in the attack on the Belgian soldiers. Sagahutu confirmed that Nzeyimana was his driver and therefore would have ordinarily been under his direct command at the time.

1882. The Chamber has considered the testimony of Witness DA that it was a soldier from the Huye Battalion who was carrying an MGL when he arrived at the scene.[3582] The Chamber finds that this is not a material inconsistency. Witness DA was clear in his evidence that he was not present when the MGL was fired during the attack and he was not able to identify the Huye Battalion soldier he claimed he saw with the MGL. In the view of the Chamber, the fact the Witness DA saw this weapon with an unnamed Huye Battalion soldier does not detract from Witness AWC's clear evidence that two identified RECCE Battalion soldiers who were personally well known to him took that weapon to the scene of the attack on the Belgians.

1883. The Chamber has also considered the Defence submission that Sagahutu would not have kept an MGL in his office because there was a weapons store at Camp Kigali. The Chamber has heard evidence from several witnesses that after the President's plane crashed the previous evening, the weapons stores within Camp Kigali were opened and the soldiers were issued with weapons in order to defend the camp and other operational areas in Kigali. In this context, the Chamber accepts that Sagahutu or another member of the RECCE Battalion could have obtained an MGL. Indeed, the prevailing security situation required soldiers within the camp to have convenient access to their weapons. Therefore it is plausible, in the Chamber's view, that an MGL or other type of weapon may have been found within the offices of Squadron A.

1884. The Chamber finds incredible Sagahutu's explanation that on 7 April he not only went home to eat breakfast and lunch, but only learned of the death of the Belgians after 1.00 p.m. when he went to pick up his wife from her workplace at the Army Staff command. The seemingly routine activities described by Sagahutu contrast sharply with the momentous and horrific events that took place at Camp Kigali on 7 April 1994.

1885. For the above reasons, the Chamber finds Witness AWC's evidence to be credible and discounts the majority of Witness ANK/XAF's evidence. The Chamber therefore finds that RECCE Corporals Nzeyimana and Masonga participated in the attack on the Belgian soldiers and that Sagahutu issued orders to Nzeyimana to counter any Belgian resistance and to kill those putting up such resistance. The Chamber further finds that Sagahutu either provided or

[3582] T. 11 January 2005, pp. 71-72.

knew that Nzeyimana took an MGL from his office to the scene of the attack on the UNAMIR building.[3583]

1886. Finally, the Chamber has considered the evidence of several witnesses that officers of the Rwandan Army, including the Camp Kigali commander Colonel Nubaha, unsuccessfully tried to stop the attack on the Belgians. A number of witnesses also testified that the environment at the camp was chaotic and that the Rwandan soldiers who were attacking the Belgians appeared to be in mutiny.[3584] Prosecution Witness Dallaire and Defence Witness Marchal both agreed, based on the information that they received after the incident, that the killers of the Belgian soldiers were "crazed Rwandan Army rogue elements" who may have been in mutiny.[3585] The Chamber believes that the environment at Camp Kigali was chaotic and that Nubaha and other senior officers attempted to dissuade the Rwandan soldiers from attacking the Belgians. However, Sagahutu was not among the officers who tried to stop the attack. In the Chamber's view, the efforts by Nubaha and his colleagues to stop the attack do not detract from the Prosecution evidence that Sagahutu supplied the MGL or gave approval for it to be used in the attack on the Belgian soldiers who were in the UNAMIR building.

1887. It follows that the Prosecution has proved beyond reasonable doubt that RECCE Battalion soldiers participated in the attack and killing of at least two Belgian soldiers at Camp Kigali on 7 April 1994 and that Sagahutu provided those RECCE Battalion soldiers with a weapon or consented to them taking a weapon from his office for that purpose.

1888. With regard to Nzuwonemeye, the Chamber notes that it has no evidence before it of his direct participation in the attack. Nzuwonemeye admitted that he learned about the killings of the Belgian soldiers on his return to Camp Kigali from the meeting at ESM on 7 April. However, he denied that RECCE Battalion soldiers were involved in those killings.

1889. Having carefully reviewed the evidence before it, the Chamber finds that Nzuwonemeye had reason to know of the involvement of RECCE Battalion soldiers in the attack. In reaching this finding, the Chamber has considered, among other factors, the short distance between Nzuwonemeye's office and the location in Camp Kigali where the Belgian soldiers were killed; the fact that the attack involved soldiers from various units based at Camp Kigali; Nzuwonemeye's presence at the camp for at least two hours during the attack; the use of an MGL from the RECCE Battalion's arsenal in the attack; and the normal command, control and reporting structures within the RECCE Battalion. The Chamber recalls Nzuwonemeye's testimony that he asked officers if any RECCE Battalion soldiers had been involved and received a negative response.[3586] In light of the active involvement of RECCE Battalion soldiers in the attack against the Belgians, the Chamber considers Nzuwonemeye's explanation to be unlikely. Even if the Chamber were to believe this explanation, it does not consider that Nzuwomeye's actions constitute a sufficient enough investigation to absolve him of his obligation to investigate the matter and punish those perpetrators under his command. The Chamber therefore finds that Nzuwonemeye failed in his duty to punish the crimes committed by RECCE Battalion soldiers under his command.

[3583] T. 20 January 2006, pp. 3-5; T. 19 January 2006, p. 1; T. 18 January 2006, p. 34.
[3584] T. 20 January 2006, p. 2; T. 25 June 2008, p. 38; T. 11 July 2008, p. 26; T. 6 October 2008, p. 62; T. 11 December 2007, pp. 46-47.
[3585] T. 18 January 2008, pp. 50-51; 22 November 2006, p. 23; Defence Exhibit 327.
[3586] T. 6 October 2008, p. 64.

4.6 Extermination as a Crime Against Humanity

1890. Count 5 of the Indictment charges Bizimungu and Ndindiliyimana with extermination as a crime against humanity pursuant to Article 3(b) of the Statute. In support of this charge, the Prosecution relies upon the same underlying conduct and evidence that it led in relation to allegations of genocide and murder as a crime against humanity pleaded in paragraphs 73, 82, 84, 85, 89, 90 and 102 of the Indictment. [3587] The Indictment therefore charges Bizimungu and Ndindiliyimana cumulatively for genocide, murder as a crime against humanity and extermination as a crime against humanity.

1891. The Chamber has set out the law applicable to cumulative convictions in the legal findings section of the Judgement. It suffices to say that it is permissible to hold an accused criminally responsible for multiple crimes based on the same underlying conduct only where each crime may be distinguished by a materially distinct element. In this instance, cumulative convictions may be entered for the crimes of genocide and extermination. The same is not true for murder as a crime against humanity and extermination as a crime against humanity.

1892. The Chamber notes that of all the factual allegations that underpin the charge of extermination as a crime against humanity proffered against the Accused, only three allegations have been proved beyond reasonable doubt in relation to either the crime of genocide or the crime of murder as a crime against humanity. These are the killings at Kansi Parish;[3588] the killings at the Josephite Brothers compound in Kigali;[3589] and the killings in Butare.[3590]

1893. The Chamber will not repeat its factual findings at this point. The Chamber will consider whether its factual findings, and the evidence underlying those findings, also give rise to convictions for extermination as a crime against humanity in the legal findings section of the Judgement.

4.7 Rape as a Crime against Humanity

1894. Count 6 of the Indictment charges Bizimungu, Nzuwonemeye and Sagahutu with rape as a crime against humanity pursuant to Article 3(g) of the Statute. In support of the allegations of rape as a crime against humanity set out in paragraphs 111 to 117 of the Indictment, the Prosecution relies upon the same underlying conduct and evidence that it led in relation to the allegations of genocide (and complicity in genocide in the alternative) and murder as a crime against humanity.

1895. The Chamber notes that the allegations against Bizimungu of rape as a crime against humanity in Butare[3591] and Cyangugu[3592] are closely related to the allegations of murder as a crime against humanity at those locations.[3593] Accordingly, the Chamber considered the allegations of rape in Butare and Cyangugu in conjunction with the corresponding allegations

[3587] Indictment, para. 109.
[3588] Indictment, para. 73.
[3589] Indictment, para. 85.
[3590] Indictment, para. 89.
[3591] Indictment, para. 116.
[3592] Indictment, para. 117.
[3593] Indictment, paras. 89 and 91.

of murder in its factual findings for murder as a crime against humanity.[3594] As set out in that section, the Chamber has found that the allegations of rapes at the *préfecture* office and EER in Butare and the allegations of rapes at Cyangugu Stadium have been proved beyond reasonable doubt against Bizimungu.

1896. In its factual findings for genocide, the Chamber set out in detail the evidence that underlies the allegations against Bizimungu of rapes committed at CHK in Kigali,[3595] ESI/Kabgayi Primary School,[3596] Musambira *commune* office and dispensary,[3597] and TRAFIPRO[3598] in Gitarama. The Chamber will not repeat that evidence at this point. The Chamber found that the allegations of rapes at ESI/Kabgayi Primary School, the Musambira *commune* office and dispensary, and TRAFIPRO have been proved beyond reasonable doubt in relation to the charges of genocide against Bizimungu.

1897. The Chamber notes that paragraph 112 of the Indictment alleges that Bizimungu, Nzuwonemeye and Sagahutu are responsible as superiors for rapes committed by soldiers of the RECCE Battalion against Tutsi women at CHK. In its factual findings for genocide, the Chamber found that the Prosecution had not presented sufficient evidence to prove that soldiers of the Rwandan Army committed rapes against Tutsi women at CHK. It follows from this finding that the allegation of rape as a crime against humanity in paragraph 112 of the Indictment has not been proved beyond reasonable doubt against Bizimungu, Nzuwonemeye and Sagahutu.

1898. The Chamber also considered, in its factual findings for genocide, the allegation of rapes at the Kicukiro *conseiller's* office. The Chamber found that the Prosecution presented no evidence to support this allegation.[3599]

1899. Therefore, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegations against Bizimungu of rape as a crime against humanity at ESI/Kabgayi Primary School, Musambira *commune* office and dispensary, and TRAFIPRO in Gitarama, at the *préfecture* office and EER in Butare, and at Cyangugu Stadium. The Chamber will analyse Bizimungu's superior responsibility for these crimes in detail in the legal findings section of the Judgement.

4.8 Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II

4.8.1 *Introduction*

1900. Count 7 of the Indictment charges Bizimungu and Ndindiliyimana with murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 4(a) of the Statute. In support of this charge, the Prosecution relies upon the same underlying conduct and evidence that it led in relation to the allegations of genocide and murder as a crime against humanity.

[3594] See the factual findings for murder as a crime against humanity.
[3595] Indictment, para. 112.
[3596] Indictment, para. 113.
[3597] Indictment, para. 114.
[3598] Indictment, para. 115.
[3599] Indictment, para. 111.

1901. The specific incidents that underlie this charge are pleaded in paragraphs 66, 76, 77, 86-88, 90 and 102-108 of the Indictment.[3600] The Chamber has already set out the evidence adduced by the parties relating to these incidents in its factual findings for genocide and murder as a crime against humanity. It will not repeat that evidence at this point.

4.8.2 *Allegations Considered in the Chamber's Factual Findings for Genocide and Crimes Against Humanity*

1902. In its factual findings for genocide and murder as a crime against humanity, the Chamber found Bizimungu responsible pursuant to Article 6(3) of the Statute for the killings at ESI, TRAFIPRO and the Musambira *commune* office and dispensary in Gitarama during April and May 1994.[3601] The Chamber also found Ndindiliyimana responsible pursuant to Article 6(3) for the killings of Tutsi civilians by *gendarmes* at St. André College on 13 April 1994.[3602]

1903. In its factual findings for murder as a crime against humanity, the Chamber found Nzuwonemeye and Sagahutu responsible pursuant to Article 6(1) for ordering and aiding and abetting the killing of Prime Minister Agathe Uwilingiyimana on 7 April 1994.[3603] The Chamber also found both Accused criminally responsible as superiors pursuant to Article 6(3) for the role of their subordinates in this crime.

1904. In regard to the allegation against Nzuwonemeye and Sagahutu pleaded in paragraph 105 of the Indictment, which relates to the killings of the Belgian UNAMIR soldiers on 7 April 1994, the Chamber found both Accused responsible as superiors pursuant to Article 6(3) of the Statute for the role of their subordinates in this crime.

4.8.3 *Responsibility of Nzuwonemeye and Sagahutu under Article 6(1) for the Killings of the Belgian Soldiers*

1905. The Chamber notes that Count 7 of the Indictment (murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II) alleges that Nzuwonemeye and Sagahutu are responsible for the killings of the Belgian soldiers under both Article 6(1) and Article 6(3) of the Statute.[3604] In line with the Indictment, the Chamber will now consider whether the two Accused can be held responsible under Article 6(1) for the killings of the Belgian soldiers under Count 7 of the Indictment (murder as a violation of Article 3 common to the Geneva Conventions and Additional Protocol II).

1906. The Chamber has found that on 7 April 1994, soldiers from the RECCE Battalion under the command of Nzuwonemeye and Sagahutu participated in the attack on the Belgian UNAMIR soldiers at Camp Kigali. This attack eventually led to the death of the Belgian soldiers. The Chamber has not heard any evidence of Nzuwonemeye's direct involvement in the attack on the Belgians either by issuing orders or instructions or by providing assistance or encouragement to the direct perpetrators of the attack. The Chamber therefore concludes that there is no basis for holding Nzuwonemeye responsible under Article 6(1) in respect to this crime.

[3600] Indictment, para. 118.
[3601] Indictment, paras. 68-70, 86-88.
[3602] Indictment, para. 76.
[3603] Indictment, paras. 103-104, 105-108.
[3604] Indictment, para. 118.

1907. With respect to Sagahutu, the Chamber has found that on 7 April, while at the RECCE Headquarters at Camp Kigali, Corporals Nizeyimana and Masonga reported to Sagahutu that there was an ongoing attack against Belgian soldiers near the entrance gate to Camp Kigali and that those soldiers were resisting the attack. In response, Sagahutu instructed them to put down the resistance, and in his presence these two soldiers took a MGL from his office in order to participate in the attack in which the Belgian soldiers were killed. The Chamber therefore finds that Sagahutu ordered the attack on the Belgians and aided and abetted the direct perpetrators of the crime.

4.9 Rape as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II

1908. Count 8 of the Indictment charges Bizimungu, Nzuwonemeye and Sagahutu with rape as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 4(e) of the Statute. In support of this charge, the Prosecution relies upon the same underlying conduct and evidence that it led in relation to the allegations of genocide and rape as a crime against humanity.

1909. The specific incidents that underlie this charge are pleaded in paragraphs 111 to 117 of the Indictment.[3605] The Chamber has already set out the evidence relating to these incidents in its factual findings for genocide and rape as a crime against humanity, and it will not repeat that evidence at this point. In the legal findings section of the Judgement, the Chamber will analyse whether this evidence supports the charges of rape as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, in addition to the charges of genocide and rape as a crime against humanity as alleged by the Prosecution.

[3605] Indictment, para. 119.

CHAPTER V: LEGAL FINDINGS

1910. The Prosecution has charged Bizimungu, Ndindiliyimana, Sagahutu and Nzuwonemeye with conspiracy to commit genocide, genocide, complicity in genocide, crimes against humanity (murder, extermination and rape) and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II (murder and rape, humiliating and degrading treatment). The Indictment includes both charges of direct responsibility under Article 6(1) and charges of superior responsibility under Article 6(3) of the Statute.

5.1 Legal Principles

5.1.1 *Direct Responsibility Under Article 6(1)*

1911. Article 6(1) of the Statute provides that a person who plans, instigates, orders, commits or otherwise aids and abets in the planning, preparation or execution of a crime referred to in Articles 2 to 4 shall be individually responsible. In the present case, the Chamber considers that only ordering, committing, and aiding and abetting are relevant to the crimes under review. The Chamber will now consider each of these forms of participation before determining which form of participation best reflects the conduct of the Accused in question.

1912. "Ordering" requires that a person in a position of authority instruct another to commit an offence. Unlike superior responsibility under Article 6(3), "ordering" does not require a superior-subordinate relationship between the accused and the perpetrator of the crime. The accused will incur responsibility if the Prosecution proves that he holds a position of authority, which may be informal or of a purely temporary nature, and that he used that authority to compel another to commit a crime.[3606]

1913. "Committing" covers the direct and physical perpetration of a crime (with criminal intent) or a culpable omission of an act that is mandated by a rule of criminal law, and participation in a joint criminal enterprise.[3607]

1914. "Instigating" implies an *actus reus* of prompting another person to commit an offence. The Prosecution must prove that the acts of the accused contributed substantially to the commission of the crime, but they need not be a condition precedent for its commission. The *mens rea* is the intent to instigate another person to commit a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.[3608]

[3606] Media Appeal Judgement, para. 481; *Ntagerura et al.* Appeal Judgement, para. 365; *Semanza* Appeal Judgement, paras. 361, 363 ; *Bagosora et al.* Trial Judgement, para. 2008.

[3607] Media Appeal Judgement, para. 478; *Gacumbitsi* Appeal Judgement, para. 60. *But see Seromba* Appeal Judgement, para. 161, holding that in the context of genocide, "committing" goes beyond direct and physical perpetration of the crime, and includes those situations in which the actions of the accused "were as much an integral part of the genocide as were the killings [they] enabled." In that case, Seromba was found to have committed genocide because he approved and embraced as his own the decision to commit the crime. *See also Gacumbitsi* Appeal Judgement, para. 60, holding that in the context of genocide, "direct and physical perpetration" need not mean physical killing.

[3608] Media Appeal Judgement, paras. 480, 660; *Ndindabahizi* Appeal Judgement, para. 117.

1915. "Aiding and abetting" requires that the Prosecution prove that the accused committed acts specifically aimed at assisting, encouraging or lending moral support for the perpetration of a specific crime, and that this support had a substantial effect on the perpetration of the crime. The *actus reus* need not serve as a condition precedent for the crime and may occur before, during or after the principal crime has been perpetrated.[3609] The Appeals Chamber has held that the *actus reus* of aiding and abetting may, in certain circumstances, be perpetrated through an omission, or by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of the crime.[3610] The *mens rea* for aiding and abetting is knowledge that the acts performed assist in the commission of the specific crime of the principal perpetrator.[3611] In cases of specific intent crimes such as persecution or genocide, the aider and abettor must know of the principal perpetrator's specific intent.[3612]

1916. The Chamber will assess these forms of liability where relevant in its legal findings.

5.1.2 *Superior Responsibility Under Article 6(3)*

1917. The Appeals Chamber has explained that for an accused to be held responsible under Article 6(3) of the Statute for a crime within the jurisdiction of the Tribunal, the Prosecution must prove that: (a) the accused was a *de jure* or *de facto* superior of the perpetrator of the crime and had effective control over this subordinate; (b) the accused knew or had reason to know that the crime was going to be committed or had been committed; and (c) the accused did not take necessary and reasonable measures to prevent or punish the commission of the crime by a subordinate.[3613]

1918. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship. The superior must have the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates. At the time that the offence is committed, the superior must have had effective control in terms of the material ability to prevent the commission of the offence or to punish the principal offenders. Effective control is not satisfied by a showing of general influence on the part of the accused.[3614]

1919. The *mens rea* for superior responsibility under Article 6(3) exists where the Prosecution proves that: (i) the superior had actual knowledge, established through direct or circumstantial evidence, that his subordinates had committed or were about to commit a crime under the statute; or (ii) the superior had reason to know that his subordinates had committed or were about to commit a crime under the statute.

[3609] *Blagojević and Jokić* Appeal Judgement, para. 127; *Blaškić* Appeal Judgement, para. 48; *Simić* Appeal Judgement, para. 85; *Ntagerura et al.* Appeal Judgement, para. 372.

[3610] *Ntagerura et al.* Appeal Judgement, para. 370; *Blagojević and Jokić* Appeal Judgement, para. 127; *Bagosora et al.* Trial Judgement, para. 2009.

[3611] *Ntagerura et al.* Appeal Judgement, para. 370 ; *Simić* Appeal Judgement, para. 86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras. 45, 46.

[3612] *Blagojević and Jokić* Appeal Judgement, para. 127, *citing Simić* Appeal Judgement, para. 86; *Krstić* Appeal Judgement, paras. 140-141.

[3613] Media Appeal Judgement, para. 484; *Gacumbitsi* Appeal Judgement, para. 143; *Bagosora et al.* Trial Judgement, para. 2011.

[3614] *Ntagerura et al.* Appeal Judgement, para. 341 ; *Kajelijeli* Appeal Judgement, paras. 84, 85; *Bagosora et al.* Trial Judgement, para. 2012.

1920. In determining whether an accused possessed actual knowledge of the role of his subordinates in the crime, the Chamber may consider the following factors: the number, type and scope of illegal acts committed by the subordinates; the time during which the illegal acts occurred; the number, type of troops and logistics involved; the geographical location of the acts; whether the acts were widespread; the tactical tempo of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the superior at the time.[3615]

1921. In determining whether an accused had reason to know of the role of his subordinates in the crime, the test is "whether, in the circumstances of a case, a superior possessed information *that was sufficiently alarming* to put him on notice of the risk that similar crimes might subsequently be carried out by subordinates and justify further inquiry."[3616] The Appeals Chamber has made it clear in a number of cases that the information available to the accused does not need to provide specific details about the unlawful acts committed or about to be committed by his subordinates.[3617] However, the Appeals Chamber has emphasised that it is "necessary to make a distinction between the fact that the Accused had information about the general situation that prevailed in Rwanda at the time, and the fact that he had in his possession general information which put him on notice that his subordinates might commit crimes."[3618]

5.2 Augustin Ndindiliyimana's Superior Responsibility

5.2.1 *Authority: General Considerations*

1922. The Indictment alleges that Ndindiliyimana was Chief of Staff of the *Gendarmerie* at the time of the events in question and that he exercised authority over the entire *Gendarmerie* and had disciplinary power over all *gendarmes*, even when the latter were on temporary detachment.[3619] The Defence acknowledges that Ndindiliyimana was Chief of Staff of the *Gendarmerie* during the events in question. However, the Defence submits that Ndindiliyimana did not have effective command and control of the *Gendarmerie* after hostilities with the RPF resumed on the night of 6 April 1994, when operational command over the majority of *gendarmerie* units was transferred to the Rwandan Army and Ndindiliyimana was left with only administrative and disciplinary powers over the *gendarmes* in those units.[3620]

5.2.2 *De Jure Authority*

1923. Ndindiliyimana was appointed Chief of Staff of the *Gendarmerie* by presidential order in June 1992 and took up that position in September 1992.[3621] He remained Chief of

[3615] *Ntagerura et al.* Trial Judgement, para. 648; *Bagosora et al.* Trial Judgement, para. 2014.
[3616] *Hadžihasanović* Appeal Judgement, para. 30; *Strugar* Appeal Judgement, para. 301 (emphasis added).
[3617] *See Čelebići* Appeal Judgement, para. 238; *Bagilishema* Appeal Judgement, para. 42; *Krnojelac* Appeal Judgement, para. 155; Media Appeal Judgement, para. 791; *Strugar* Appeal Judgement, para. 298. *See also Bagosora et al.* Trial Judgement, para. 2013; *Ntagerura et al.* Trial Judgement, para. 629.
[3618] *Bagilishema* Appeal Judgement, para. 42.
[3619] Indictment, para. 6.
[3620] Ndindiliyimana Closing Brief, paras. 166-168.
[3621] T. 16 June 2008, p. 38.

Staff until 5 June 1994, when he was relieved of his post and appointed ambassador to Germany.[3622] Ndindiliyimana left Rwanda in mid-June.[3623]

1924. The legislative decree of 23 January 1974 entitled "Creation of the *Gendarmerie*" set out the organisation and functions of the *Gendarmerie*.[3624] Pursuant to that decree, the Chief of Staff was the head of the *Gendarmerie*, but the *Gendarmerie* was under the supervisory authority of the Ministry of Defence. The primary function of the *Gendarmerie* was to maintain public law and order and to enforce the laws in force in Rwanda.[3625] However, Article 47 of the decree provided that, in times of war, the *Gendarmerie* "participates in the defence of the territory" as determined by the Minister of Defence.[3626]

1925. In times of war, the participation of the *Gendarmerie* in the defence of territory was triggered by an order of the Minister of Defence to the Chief of Staff of the *Gendarmerie*. This effectively transferred operational command over the selected *gendarmerie* units from the Chief of Staff of the *Gendarmerie* to the Chief of Staff of the Rwandan Army. Those *gendarmerie* units thus became operational units within the Rwandan Army, and took their orders from the Chief of Staff of the army. The *Gendarmerie* retained authority over the units deployed to assist the army with regard to administrative and disciplinary matters.[3627] Those *gendarmerie* units that were not deployed to assist the army in combat remained under the full command of the Chief of Staff of the *Gendarmerie* and continued to fulfil the *Gendarmerie's* primary function of maintaining public law and order and enforcing the laws in force in Rwanda.[3628]

1926. A number of Prosecution and Defence witnesses testified that following the RPF attacks of 7 April 1994, *gendarmerie* units were placed under the operational command of the Rwandan Army. Prosecution Witness General Roméo Dallaire testified that after 7 April, the country was "reverting to a war footing again ... the command of the *Gendarmerie* was reverting to the command of the army".[3629] Prosecution Expert Witness Alison Des Forges likewise testified that a number of *gendarmerie* units were integrated into the regular army command following the resumption of hostilities on 7 April.[3630] Defence Witness Luc

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[3622] T. 18 June 2008, p. 68.
[3623] T. 18 June 2008, pp. 71-72.
[3624] Defence Exhibit 305.
[3625] Defence Exhibit 305, article 3.
[3626] Defence Exhibit 305, article 47. *See also* Indictment, para. 20; Prosecution Closing Brief, para. 60; Ndindiliyimana Closing Brief, paras. 116, 230; T. 23 June 2008, pp. 11-13; T. 25 January 2008, pp. 12, 42; 10 T June 2008, p. 28; T. 23 January 2008, pp. 30, 32 (ICS).
[3627] T. 17 January 2008, pp. 53-54; T. 23 January 2008, p. 46 (ICS); T. 28 January 2008, p. 6; T. 18 February 2009, pp. 10, 48-50; T. 10 June 2008, p. 28; T. 23 June 2008, pp. 11-13; Ndindiliyimana Closing Brief, para. 255; Chamber's Exhibit 12A, pp. 11-12. Chamber's Exhibits 6 through 17 were admitted into evidence on 12 April 2011 pursuant to its Decision on the Admission of Written Statements Disclosed by the Prosecutor Pursuant to Rule 68(1) of the Rules of Procedure and Evidence (with Strictly Confidential Annex). The Chamber notes that the exculpatory statements were disclosed by the Prosecution pursuant to Rule 68 after the trial had finished. In this regard, the Chamber recalls that a Trial Chamber may, where the Prosecution's violation of its disclosure obligation is so extensive or occurs at such a late stage of the proceedings that it would violate the right of the accused to trial without undue delay, or where it would be impossible or impractical to recall Prosecution witnesses without effectively re-opening the case in its entirety, opt to draw reasonable inferences from the disclosed material at the stage of its definitive evaluation of the evidence. *See Orić* Decision on Ongoing Complaints, para. 35.
[3628] T. 28 January 2008, p. 43; T. 23 June 2008, pp. 11-13; Ndindiliyimana Closing Brief, para. 123.
[3629] T. 6 December 2006, p. 50.
[3630] T. 11 October 2006, p. 56.

Marchal, who was commander of the UNAMIR Kigali *secteur,* confirmed that Ndindiliyimana no longer had operational command over the majority of *gendarmerie* units after 7 April.[3631] Colonel Léonidas Rusatira, a senior Rwandan Army officer, Witness CBP46, a *gendarmerie* unit commander in Kigali, and Witness CBP63, who worked closely with Ndindiliyimana in the *Gendarmerie* in 1994, also confirmed that a number of *gendarmerie* units passed under the operational command of the army following the RPF attacks of 7 April.[3632]

1927. AA-2, who was an officer in the General Staff of the *Gendarmerie* and the liaison to UNAMIR, stated that Ndindiliyimana's powers were "whittled down" after 7 April. According to AA-2, "all *gendarmerie* units in Kigali were turned into combat units and placed under army operations control." On the other hand, AA-2 stated that Ndindiliyimana maintained control and authority over the *gendarmes* who were not in combat zones.[3633] AA-5, the commanding officer of the Kigali *Gendarmerie* group, confirmed that most of the *gendarmes* in Kigali were sent to the war front, despite the fact that Kigali was the most "difficult" *secteur* in terms of maintaining law and order.[3634] He further testified that after 7 April, from the operational standpoint his *gendarmerie* unit was under the General Staff of the Army and their "boss" was the commander of operations for Kigali town. However, from the administrative standpoint, they still took orders from the *Gendarmerie*.[3635] Nzapfakumunsi added that the staff commander of the *Gendarmerie* retained disciplinary powers over the Kigali *gendarmes* after 7 April.[3636]

1928. AA-3, who was a *gendarme* in Butare, stated that on 21 April 1994, the Ministry of Defence ordered 100 *gendarmes* from Butare to report to Kigali to fight against the RPF, leaving only 50 *gendarmes* in Butare.[3637] AA-9, who was also a *gendarme* in Butare, similarly testified that *gendarmes* from Butare were sent to Kigali to fight the RPF.[3638] This was confirmed by Witnesses Nzapfakumunsi,[3639] B13,[3640] CBP67[3641] and Ndindiliyimana himself,[3642] all of whom testified that two companies of the *Gendarmerie* from Kibuye and Butare were requested to reinforce the defence of Camp Kacyiru against the RPF onslaught.

1929. There is no doubt that as Chief of Staff of the *Gendarmerie,* Ndindiliyimana had *de jure* authority over the entire *Gendarmerie.* However, based on the evidence outlined above, the Chamber is satisfied that operational command over the majority of *gendarmerie* units was transferred to the Rwandan Army following the RPF attacks of 7 April 1994. As a result, the scope of Ndindiliyimana's *de jure* authority over the majority of *gendarmerie* units was dramatically reduced. In particular, the Chamber finds that after 7 April, Ndindiliyimana no longer had operational command over the *gendarmes* who had been deployed to assist the

[3631] T. 17 January 2008, pp. 53-54.
[3632] Chamber's Exhibit 16A, p. 15; T. 28 January 2008, pp. 25, 48; T. 23 January 2008, pp. 46-47 (ICS); T. 24 January 2008, pp. 43-44 (ICS).
[3633] Chamber's Exhibit 12A, p. 11; Chamber's Exhibit 7A, p. 8.
[3634] Chamber's Exhibit 10A, pp. 12-13.
[3635] T. 18 February 2009, pp. 10, 48.
[3636] T. 18 February 2009, pp. 49-50.
[3637] Chamber's Exhibit 8A, p. 3.
[3638] Chamber's Exhibit 17A, p. 6.
[3639] T. 18 February 2009, p. 16.
[3640] T. 7 July 2008, p. 48 (ICS).
[3641] T. 6 February 2008, p. 41.
[3642] T. 18 June 2008, pp. 23-25.

army, although he retained *de jure* authority over those *gendarmes* with regard to administrative and disciplinary matters.

1930. Ndindiliyimana retained full *de jure* authority over the *gendarmes* who were not deployed to assist the army in combat. In this regard, Ndindiliyimana estimated that after 7 April, he retained full command over approximately 200 *gendarmes* (100 men in Kigali and 100 men in the rest of the country). The remainder of the *gendarmes* were engaged in battle under the operational command of the Rwandan Army.[3643]

5.2.3 *De Facto Authority*

1931. In his capacity as Chief of Staff of the *Gendarmerie,* Ndindiliyimana attended a number of meetings with Rwandan military and government officials, UNAMIR representatives and foreign diplomats during the period from 6 April 1994 until he was relieved of his post on 5 June 1994. It is clear from Ndindiliyimana's activities during this period that he was in fact leading and representing the *Gendarmerie* and that he was considered by senior military and government officials, both within Rwanda and in the international community, to be the most appropriate person to do so.

1932. While there is no doubt that Ndindiliyimana continued to act as the head of the *Gendarmerie* following the death of the President on 6 April 1994, the Chamber considers that his actual authority over the *gendarmes* was dramatically reduced after that time. In assessing Ndindiliyimana's *de facto* authority, the Chamber will first consider his authority over those *gendarmes* who had been deployed to assist the Army in combat, before considering Ndindiliyimana's authority over those *gendarmes* who remained under his full *de jure* command and control.

5.2.3.1 *Gendarmes* Deployed to Assist the Army in Combat

1933. The evidence before the Chamber shows that the transfer of operational command over the majority of *gendarmerie* units to the Rwandan Army effectively removed Ndindiliyimana's material ability to exercise day-to-day and operational control over those units after 7 April 1994. In this regard, Defence Witness Luc Marchal testified:

> [W]ith the exception of very few *gendarmerie* units, most *gendarmerie* units went under military command for reasons of coordination and optimal use of the means available. So, in concrete terms, that means that the chief of general staff of the *gendarmerie* was in a fraction of a moment in the blink of an eye, was stripped of his means of command. And because of operational procedures, all his commanding officers passed under the orders of a different structure and, therefore, did react *de facto*. He has no further orders to give his men who are now under another command. That was the situation at the time of resumption of hostilities [on 7 April].[3644]

1934. Similarly, General Dallaire stated that it was clear that after 7 April, most of the *gendarmes* in Rwanda "were no more really under [Ndindiliyimana's] command, except some elements in general security around the country".[3645]

[3643] T. 23 June 2008, pp. 11-13; Ndindiliyimana Closing Brief, para. 103.
[3644] T. 17 January 2008, p. 54.
[3645] T. 6 December 2006, p. 51.

1935. The Chamber further notes that although Ndindiliyimana retained *de jure* disciplinary authority over the *gendarmes* who had been deployed to assist the army, his actual ability to punish those *gendarmes* was conditional upon the matter first being reported to the operational commander (of the army) in the field, before being reported to the higher command within the army, and finally being reported to Ndindiliyimana.

1936. Having considered the evidence in its entirety, the Chamber finds that after 7 April 1994, Ndindiliyimana no longer had effective control over the majority of *gendarmes* who had been transferred under the operational command of the Rwandan Army to engage in combat against the RPF.

5.2.3.2 *Gendarmes* Not Deployed to Assist the Army in Combat

1937. Turning to the *gendarmes* who were not deployed to assist the army and who therefore remained under Ndindiliyimana's *de jure* operational command, the Chamber notes that Ndindiliyimana's actual ability to control those *gendarmes* decreased significantly as the war progressed. In particular, there is a significant body of evidence suggesting that the *Gendarmerie* suffered from a serious lack of resources, that it faced grave difficulties in communication and that it was infiltrated by rogue elements. Many of these problems predated April 1994[3646] but were exacerbated by the onset of the conflict.

1938. Defence Witnesses Colonel Luc Marchal and CBP63 testified that the *gendarmes* under Ndindiliyimana's command suffered from a serious lack of means and of troops.[3647] The lack of available *gendarmes* rendered it impossible for the General Staff to provide reinforcements.[3648] According to Witness CBP63, the *gendarmes* were particularly hampered by a shortage of vehicles and communications equipment.[3649]

1939. Ndindiliyimana testified that the *gendarmerie* command faced difficulties in communicating with units on the ground. He conceded that throughout April, he received regular reports from the *gendarmerie* units based in other *préfectures,* but he stated that those reports were often contradictory.[3650] Reports from small units were irregular and often reached him belatedly. Ndindiliyimana stated, "The situation worsened as the war evolved."[3651] The *Gendarmerie's* most important installation in Kigali, Camp Kacyiru, which served as the logistical hub of the *Gendarmerie,* came under sustained RPF attack from 9 April. Ndindiliyimana was forced to move his Headquarters to Kimihurura. In addition, the territorial unit of Remera, also in Kigali, was completely overrun by the RPF. The wireless transmission facilities at the General Staff office were destroyed, telephone lines were cut off, and the *Gendarmerie's* Alcatel system was shut down at Camp Kacyiru. Ndindiliyimana stated that the *gendarmerie* command could still get messages through the KAKI wireless system. However, "[A]part from that wireless or radio system in the camp that the army had, those who were at the border, those who were with members of the population in the parishes, in Shyangi, in Nyarushishi, well, those officers could not communicate with their

[3646] T. 25 January 2008, p. 5 (ICS); T. 5 March 2008, p. 6; Defence Exhibit 153, paras. 97-103.
[3647] T. 17 January 2008, pp. 51, 54; T. 23 January 2008, pp. 46-47 (ICS); T. 24 January 2008, pp. 43-44 (ICS).
[3648] T. 23 January 2008, p. 47 (ICS).
[3649] T. 23 January 2008, pp. 33-37 (ICS).
[3650] T. 17 June 2008, p. 65; Chamber's Exhibit 12A, pp. 11-12. AA-2, a senior *gendarmerie* officer and the liaison to UNAMIR, confirmed that the *gendarmerie* general staff continued to receive reports from *gendarmerie* units in the field after 7 April 1994.
[3651] T. 23 June 2008, p. 9.

commanding officer." Ndindiliyimana testified, "[T]here weren't really any means of communication between those small units operating on the ground and the command post."[3652]

1940. This is corroborated by Witness Nzapfakumunsi, who was a Lieutenant Colonel based at Camp Kacyiru from April to July 1994. He stated:

> [W]ith the situation of 6th April, first, we had lost all contact with the staff command of the *Gendarmerie*, for purposes of logistics of personnel. So communication with the *Gendarmerie* staff command was done by -- by couriers, by *gendarmes* that we sent to carry the messages. But before communication with the *Gendarmerie* staff command was done through an Alcatel network. Now, when the RPF took Mount Kigali the network broke down, so nothing was left. And then our signal station did not work again at the camp. First, there was no current. Then the building, as such, had been shelled, so it was no longer working. So there was communication with the *Gendarmerie* staff command. Now, with the operational command, we had communication by means of a portable post, a portable handset, Motorola, I believe. The only means of communication by radio, that was the only one. And that was our only link to military operations in Kigali, that was all.[3653]

1941. Witness CBP62, an officer who worked in the General Staff of the *Gendarmerie* in Kigali, confirmed that the RPF attacked Camp Kacyiru on 9 April and that the territorial camp in Remera subsequently fell.[3654] Witness CBP62 also testified to a breakdown of communication within the *Gendarmerie*, with the result that the General Staff could not reach some of its units.[3655]

1942. Ndindiliyimana further testified that during late April and most of May, the *gendarmerie* command and General Staff made a number of trips to the field in order to identify and resolve problems in various *préfectures*.[3656] Ndindiliyimana recalled that on 15 April, he travelled to Butare and met with the unit commander Habyarabatuma, who informed him that the *gendarmes* were trying to intervene but that it was difficult as they did not have enough resources.[3657] Ndindiliyimana also stated that in early to mid-May he visited Kibuye[3658] and Gitarama[3659] *préfectures* twice and Butare[3660] and Cyangugu[3661] *préfectures* once.

1943. In response to the information that he received, Ndindiliyimana set up a small team in April 1994 to conduct "investigations into the massacres, into the killings, and to all acts of violence, criminal acts and so forth".[3662] Ndindiliyimana testified, "[W]e set up a group which moved about, visiting units to see what was happening and then report to the general staff ... and the chief of staff would also visit troops on the ground and make his own

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[3652] T. 18 June 2008, pp. 48-49.
[3653] T. 18 February 2009, p. 27.
[3654] T. 27 May 2008, pp. 36-37 (ICS).
[3655] T. 27 May 2008, pp. 36-37, 57 (ICS).
[3656] T. 18 June 2008, p. 47.
[3657] T. 17 June 2008, p. 66.
[3658] T. 18 June 2008, pp. 50, 59.
[3659] T. 18 June 2008, pp. 53, 59.
[3660] T. 18 June 2008, p. 51.
[3661] T. 18 June 2008, p. 56.
[3662] T. 17 June 2008, p. 66.

assessment."[3663] Ndindiliyimana recalled that he was aware of three *gendarmes* who had participated in the massacres, and he had those three men arrested in Kigali for their involvement in the killings. Ndindiliyimana stated that besides those three men, he did not have any evidence indicating the involvement of *gendarmes* in the killings.[3664]

1944. General Dallaire testified that by mid to late April, Ndindiliyimana "essentially didn't have a command left". Dallaire described Ndindiliyimana as "sort of like a floater. He did the Crisis Committee and then he bounced around".[3665] Dallaire also testified that in the areas out of the operational area, such as in certain parts of Kigali, Dallaire had the impression that the *Gendarmerie* included "rogue elements, or deserters, or people just using the uniforms at the time". Dallaire stated, "It didn't look structured in any way".[3666] Dallaire also testified that he had been told that the *Gendarmerie* had been infiltrated by extremists, which made it difficult for the *Gendarmerie* to act as a counter force to extremists.[3667] Nzapfakumunsi confirmed that there were rogue elements in the *Gendarmerie*, referring to reports of two NCOs defecting from Camp Kacyiru and then participating in massacres.[3668]

1945. AA-6, a *gendarmerie* officer and director of external security, attended a meeting of the *gendarmerie* General Staff chaired by Ndindiliyimana in late May or early June 1994. According to AA-6, Ndindiliyimana "appeared to be powerless" with regard to the situation in Rwanda. AA-6 stated, "The officers denounced the fact that the *gendarmes* and soldiers manned the roadblocks with the *Interahamwe*."[3669]

1946. The Chamber accepts that Ndindiliyimana suffered from a lack of resources during the events in question, that he faced difficulties in communicating with *gendarmerie* units operating on the ground, and that his force was infiltrated by extremists and rogue elements. The Chamber is also satisfied that Ndindiliyimana's material ability to control the *gendarmes* under his command decreased as the war progressed. In these circumstances, the Chamber acknowledges that Ndindiliyimana did not exercise effective control over all *gendarmes* under his *de jure* operational command from April to June 1994. Rather, the Chamber finds that Ndindiliyimana's material ability to prevent and/or punish crimes committed by *gendarmes* under his *de jure* operational command varied considerably between different *gendarmerie* units.

1947. That said, the Chamber finds that Ndindiliyimana did exercise *de facto* authority over the *gendarmes* who committed the crimes alleged in paragraphs 73 and 76 of the Indictment. As noted above, the Chamber has found that the attack at Kansi Parish in Nyaruhengeri on 21 and 22 April 1994 was carried out by *gendarmes* who were guarding Ndindiliyimana's residence in Nyaruhengeri. The *gendarmes* guarding Ndindiliyimana's residence were "gathered" by Ndindiliyimana's wife.[3670] Ndindiliyimana himself admitted that "he would have known" had those *gendarmes* participated in the attack at Kansi Parish. In these circumstances, the Chamber considers that Ndindiliyimana had *de facto* authority over the *gendarmes* in question.

[3663] T. 17 June 2008, p. 66.
[3664] T. 23 June 2008, p. 21.
[3665] T. 6 December 2006, p. 59.
[3666] T. 6 December 2006, p. 58.
[3667] T. 6 December 2006, p. 50.
[3668] Chamber's Exhibit 10A, p. 11.
[3669] Chamber's Exhibit 14A, pp. 4-5.
[3670] T. 20 June 2008, p. 60.

1948. The Chamber is also satisfied that Ndindiliyimana had *de facto* authority over the *gendarmes* who were implicated in the killings of Tutsi refugees at St. André College on 13 April 1994. These killings took place in Kigali, where Ndindiliyimana spent a large proportion of his time. Ndindiliyimana admitted that he received reports from his General Staff regarding events at St. André College and that he issued orders to his subordinates operating at that location around the time of the attack.[3671] Ndindiliyimana also testified that he was aware that Prosecution Witness WG, a priest, had previously requested the *Gendarmerie* for protection at St. André College.[3672] The Chamber finds that in light of the fact that Ndindiliyimana received information and issued orders to his subordinates regarding St. André College, he maintained command and control over the *gendarmes* operating at that location.

5.2.4 *Superior – Subordinate Relationship*

1949. The *gendarmes* implicated in the killings at Kansi Parish and St. André College all belonged to units under the operational command of the *Gendarmerie*. Their operations entailed a degree of organisation. It follows from Ndindiliyimana's position as Chief of Staff of the *Gendarmerie* that the *gendarmes* in question were his subordinates under his effective control.

5.2.5 *Knowledge*

1950. The Chamber acknowledges that Ndindiliyimana faced difficulties communicating with some *gendarmerie* units on the ground, particularly during May and June 1994, and that he was not always able to obtain information about the activities of all *gendarmes* around the country. However, based on the evidence before it, the Chamber is satisfied beyond reasonable doubt that Ndindiliyimana knew or had reason to know that *gendarmes* under his command had committed the crimes alleged in paragraphs 73 and 76 of the Indictment.

1951. With regard to the *gendarmes* guarding his family home in Nyaruhengeri, as discussed above, Ndindiliyimana admitted that he "would have known" had those *gendarmes* participated in the attack at Kansi Parish. The Chamber has also found that Ndindiliyimana was aware of the gathering of Tutsi refugees at Kansi Parish following his two visits on 15 April and on 22 April. With regard to the crimes at St. André College on 13 April, Ndindiliyimana indicated in his testimony that he received information regarding *gendarmes'* activities at the college in early April. In light of these admissions, it is reasonable to infer that Ndindiliyimana knew or had reason to know of the crimes that were committed by *gendarmes* at those locations.

1952. The Chamber finds, however, that there is no evidence indicating that Ndindiliyimana knew or had reason to know in advance that crimes were about to be committed at Kansi Parish or St. André College.

[3671] T. 18 June 2008, p. 38.
[3672] T. 18 June 2008, p. 38.

5.2.6 *Failure to Punish*

1953. There is a significant body of evidence before the Chamber suggesting that Ndindiliyimana took measures to stop the killings in Rwanda using the resources that were available to him at the time, particularly during April 1994. A number of witnesses also testified that Ndindiliyimana was known as a moderate Hutu who advocated for the Arusha Accords and cooperated with UNAMIR. The Chamber will consider the evidence of Ndindiliyimana's general efforts to prevent and/or punish killings when determining the appropriate sentence. At this point, the Chamber will limit its analysis to the question of whether Ndindiliyimana took measures that were necessary and reasonable to punish the crimes committed by his subordinates at Kansi Parish and St. André College.

1954. In assessing whether Ndindiliyimana failed in his duty to punish these crimes, the Chamber must bear in mind the degree of effective control that he in fact exercised over his subordinates at the time – that is, his material ability to punish the crimes.[3673] The Chamber notes that although a superior is not obliged to perform the impossible, he is obliged to take all measures that are within his material possibility.[3674]

1955. The Chamber recognises that Ndindiliyimana had a relatively small window of opportunity in which to punish the *gendarmes* who committed crimes at Kansi Parish and St. André College. The Chamber also recognises that Ndindiliyimana faced a shortage of resources and did not always have the full support of the government, and this made it more difficult for him to punish his subordinates effectively. Notwithstanding these difficulties, the Chamber considers that he retained the material ability to take at least basic measures to punish the *gendarmes* under his effective control who committed the crimes at Kansi Parish and St. André College.

1956. The Chamber notes that there is no evidence that Ndindiliyimana took any measures to punish the *gendarmes* under his effective control who committed the crimes at Kansi Parish and St. André College. Accordingly, the Chamber finds that Ndindiliyimana failed in his duty to punish these crimes.

5.3 Augustin Bizimungu's Superior Responsibility

5.3.1 *Authority : General Observations*

1957. The Indictment alleges that Bizimungu was appointed Chief of Staff of the Rwandan Army on 16 April 1994. The Indictment further alleges that during his tenure as Chief of Staff, Bizimungu exercised authority over soldiers of the Rwandan Army and members of the *Interahamwe*. The Defence acknowledges that Bizimungu was appointed Chief of Staff of the Rwandan Army on 16 April and took up that post on 19 April 1994.[3675] However, the Defence submits that Bizimungu's authority was considerably affected by the ongoing combat with the RPF, the lack of adequate resources and other adverse factors resulting from the war situation.[3676] The Defence further submits that as long as hostilities with the RPF continued, there was very little that Bizimungu could do to prevent and punish crimes.[3677]

[3673] *Milutinović et al.* Trial Judgement, para. 122.
[3674] *Blagojević and Jokić* Trial Judgement, para. 793.
[3675] T. 4 December 2007, p. 5; T. 13 December 2007, p. 4.
[3676] T. 12 December 2007, p. 64.
[3677] T. 13 December 2007, pp. 30-33.

Bizimungu also claimed that his primary mission was to prosecute the war against the RPF and that maintenance of order was the responsibility of the *Gendarmerie* and other institutions of the government, although he acknowledged that the *Gendarmerie* was unable to fulfil that function because most of its units were engaged in the war against the RPF.[3678]

1958. The Prosecution strongly disputes Bizimungu's claim that he could not prevent and/or punish the crimes charged in the Indictment against him without the cessation of hostilities with the RPF. The Prosecution maintains that despite the ongoing combat with the RPF, there were a number of measures available to Bizimungu to prevent and punish crimes. Therefore, the Prosecution argues, his claim that he needed a ceasefire before he could invoke those measures is not sufficient to absolve him of criminal culpability as a superior.[3679]

5.3.2 *Retroactive Command Responsibility*

1959. The Chamber notes that some of the crimes underlying the charges of superior responsibility against Bizimungu are alleged to have been committed by soldiers and *Interahamwe* prior to Bizimungu's appointment to the position of Chief of Staff of the Rwandan Army on 16 April 1994 and his assumption of office on 19 April 1994. Of those underlying factual allegations, the Chamber has found that only two have been proved beyond reasonable doubt: these are the killings of Tutsi civilians committed by soldiers and *Interahamwe* at the Josephite Brothers compound on 8 April 1994;[3680] and the killings of Tutsi civilians committed by soldiers and *Interahamwe* at the ETO complex at Nyanza Hill ("ETO-Nyanza") on 11 April 1994.[3681]

1960. While the Chamber is not satisfied beyond reasonable doubt that Bizimungu knew or had reason to know of the crimes committed by soldiers and *Interahamwe* at the Josephite Brothers compound on 8 April, the Chamber is convinced that Bizimungu knew or had reason to know of the killings of Tutsi civilians, most of whom were refugees, by soldiers and *Interahamwe* at ETO-Nyanza on 11 April 1994. The manner in which thousands of Tutsi civilians were marched to Nyanza Hill and subjected to a protracted gun attack, the possible involvement of Colonel Bagosora (then the *Chef de Cabinet* at the Ministry of Defence), the number of victims (approximately 2,400 Tutsi civilians) and the fact that these killings were partly triggered by the withdrawal of the Belgian detachment of UNAMIR from Rwanda, combine to leave the Chamber satisfied beyond reasonable doubt that Bizimungu knew or had reason to know of the involvement of his subordinates in the killings at ETO-Nyanza.

1961. Nonetheless, the Chamber does not find Bizimungu guilty of the crimes committed at ETO-Nyanza on 11 April 1994 because the current jurisprudence precludes finding a superior responsible for failing to punish crimes that were committed before he assumed the position of command over the perpetrators. The Appeals Chamber's decision in *Hadžihasanović et al.* emphasises that there must be a temporal coincidence between a superior's exercise of effective control, or lack thereof, and the time when the crimes in relation to which he is charged were committed.[3682]

[3678] T. 12 December 2007, p. 64.
[3679] Prosecution Closing Brief, paras. 1501-1524.
[3680] Indictment, para. 69.
[3681] Indictment, paras. 69, 82.
[3682] *Hadžihasanović et al.* Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility.

1962. In the view of the Chamber, the position that a superior should not be held criminally responsible for failing to punish crimes that were committed by his subordinates before the commencement of his command has the potential to undermine the interests that the doctrine of superior responsibility seeks to protect. The insistence upon a temporal concurrence between a superior's effective control and the time when the crimes were committed conflates the distinct duties of prevention and punishment into a unitary obligation. While the duty to prevent presupposes that a superior has the material ability to prevent the crimes of his subordinates proscribed under the Statute of the Tribunal, the Chamber is not persuaded that a superior's duty to punish his subordinates for committing such crimes requires him to be vested with effective control at the time when the crimes were committed. Therefore, a superior's duty to punish crimes does not necessarily require coincidence in time between his effective control and the commission of the crimes in relation to which he is charged.

1963. This argument is particularly persuasive in situations where the commission of crimes occurs shortly before the superior assumes command. A superior who is informed of his subordinates' commission of crimes proscribed under the Statute should be required to punish the perpetrators provided that he has the material ability to do so. The requirement of a temporal coincidence between a superior's effective control and the commission of crimes is likely to allow superiors to escape criminal sanction for the role of their subordinates in the commission of grave crimes, even where the superiors knew or had reason to know of those crimes and had the material ability to punish the perpetrators.

1964. The limitations of the current jurisprudence on retroactive command responsibility are particularly clear in this case. The killings of thousands of Tutsi civilians at ETO-Nyanza occurred approximately one week before Bizimungu assumed command over the Rwandan Army as Chief of Staff. There is no suggestion that Bizimungu could have prevented the commission of the killings at ETO-Nyanza because there is no evidence that he had prior knowledge of plans to commit those crimes. However, the evidence is clear that Bizimungu knew or had reason to know of the crimes that had been committed by his subordinates at ETO-Nyanza on 11 April and had the material ability to punish the perpetrators of those crimes. That Bizimungu's failure to sanction his subordinates who killed thousands of Tutsi civilians is not a punishable offence is a sharp indictment of the jurisprudence on retroactive command responsibility as it currently stands.

5.3.3 *De Jure Authority*

1965. It is not disputed by the parties in this trial that Bizimungu was simultaneously appointed Chief of Staff of the Rwandan Army and promoted to the rank of Major General on 16 April 1994[3683] and that he took up his position as Chief of Staff on 19 April 1994.[3684] Bizimungu occupied that position until mid-July 1994, when he fled to the former Zaire following the Rwandan government's defeat by the RPF.

1966. While occupying the position of Chief of Staff, Bizimungu was legally authorised to exercise overall command over soldiers of the Rwandan Army. The Chamber is therefore satisfied that during his tenure as Chief of Staff, Bizimungu exercised *de jure* authority over soldiers of the Rwandan Army who were legally considered to be his subordinates.

[3683] T. 4 December 2007, p. 5.
[3684] T. 13 December 2007, p. 4.

5.3.4 *De Facto Authority*

1967. In addition to exercising *de jure* authority over soldiers of the Rwandan Army, the Chamber is satisfied that Bizimungu, while Chief of Staff, exercised *de facto* authority over soldiers of the Rwandan Army as well as members of the *Interahamwe* who collaborated with those soldiers in committing the crimes underlying the charges against him.

1968. A review of the evidence indicates that Bizimungu was a well-trained officer with substantial experience in command of the Army.[3685] Prior to becoming the Chief of Staff of the Rwandan Army in April 1994, Bizimungu occupied a number of operational and high-profile advisory positions. Among those positions was his role as the commander of the Ruhengeri Para Commando Battalion and his responsibility for the Ruhengeri operational sector.[3686] While occupying those positions, Bizimungu played a significant role in commanding the Rwandan government forces during the war against the RPF.

1969. In addition, Bizimungu was appointed to serve in a number of important commissions during his career in the Rwandan Army. The Chamber recalls Bizimungu's evidence that he was appointed to serve as a member of a military committee that was charged with the responsibility of assessing the political and military situation that prevailed in Rwanda in 1992.[3687] This committee was established by James Gasana, who was the Minister of Defence at the time. The Chamber also notes that Bizimungu represented the Rwandan Army in the high command council that was established to oversee the process of forming a new Army composed of both FAR and RPF forces under the auspices of the Arusha Accords.[3688] This council was composed of officers from both the Rwandan Army and the RPF.[3689]

1970. Bizimungu's ability and power as a commander are also evidenced by the accounts given by a number of Defence witnesses who worked with him at the time. In particular, the Chamber recalls the evidence of Defence Witness Silas Gatambiye, who testified that Bizimungu was held in high regard among the soldiers because he was considered to be a good commander.[3690] Witness Gatambiye's testimony regarding the considerable deference that soldiers accorded Bizimungu as a commander is corroborated by the evidence of Defence Witnesses DB15-6,[3691] DB8-19[3692] and DE4-33.[3693] The considerable reputation of Bizimungu as a commander is also supported by Rwandan Minister of Defence, James Gasana, who described Bizimungu in his book as "a highly respected officer, who distinguished himself at the front, and who has the respect of the troops and the population."[3694]

1971. Bizimungu's competence as a commander is also demonstrated by his account, which is corroborated to a significant extent by excerpts of Gasana's book that were tendered into evidence in this trial, that at the end of 1992 he was appointed by the council of ministers, at

[3685] T. 4 December 2007, pp. 2-5.
[3686] T. 4 December 2007, p. 5.
[3687] T. 4 December 2007, p. 6; T. 5 December 2007, p. 36.
[3688] T. 6 December 2007, pp. 10-12.
[3689] T. 6 December 2007, pp. 11-12.
[3690] T. 16 April 2007, p. 77.
[3691] T. 30 October 2007, p. 28.
[3692] T. 5 November 2007, pp. 12-13 (ICS).
[3693] T. 16 May 2007, p. 10.
[3694] T. 5 December 2007, pp. 51-52.

the request of President Habyarimana, to become a military advisor in the Office of the President. However, Gasana opposed his appointment to that position because his removal from operational engagements at the war front was likely to affect the Rwandan Army's ability to fight the RPF in the event that hostilities resumed. At Gasana's insistence, Bizimungu was retained in his position as the commander of the Ruhengeri operational sector.[3695]

1972. Further demonstrating his authority, as Chief of Staff of the Rwandan Army Bizimungu represented the interim government in a number of meetings with various international figures who visited Rwanda after the resumption of hostilities between the FAR and the RPF. There is clear evidence that Bizimungu met with José Ayala-Lasso, the UN High Commissioner for Human Rights, in the company of General Roméo Dallaire during Ayala-Lasso's visit to Rwanda on 12 May 1994.[3696] Bizimungu testified that he accompanied Ayala-Lasso during a visit to *Hôtel des Mille Collines,* where a number of people had sought refuge from the violence. Bizimungu also met with Bernard Kouchner, a French humanitarian of considerable international standing, during the latter's visit to Rwanda.[3697] On 24 May, Bizimungu met Shaharyar Khan, the UN Secretary General's Special Envoy to Rwanda, who was accompanied by a senior officer from the DPKO.[3698] According to Bizimungu, the objective of Khan's visit was to get the parties to the Rwandan conflict to agree to a ceasefire.[3699]

1973. The Chamber notes that the extent of Bizimungu's authority is clear from his evidence that he had full power to negotiate a ceasefire with the RPF.[3700] Bizimungu further testified that following Shaharyar Khan's visit, plans were made to negotiate a ceasefire. Bizimungu gave evidence that he took part, together with the Minister of Defence, in the deliberations that led to the designation of the officers who were to lead the Rwandan government forces' delegation in the negotiations for a ceasefire with the RPF.[3701] The Chamber considers this to be indicative of his actual authority at the time.

1974. Bizimungu's prominence is also inferable from the fact that he was sought out by a number of important personalities in order to put an end to the massacres. For example, the Chamber recalls that Prudence Bushnell, the United States Deputy Secretary of State for African Affairs, personally contacted Bizimungu and asked him to prevent the massacres of civilians in Rwanda.[3702]

1975. The evidence also suggests that General Roméo Dallaire, the force commander of UNAMIR, sought the assistance of Bizimungu in resolving a number of problems such as the evacuation and exchange of refugees between the government forces and the RPF. In particular, the Chamber refers to Bizimungu's own evidence regarding Dallaire's

[3695] Defence Exhibit 177; T. 4 December 2007, p. 6.
[3696] T. 12 December 2007, pp. 54-55.
[3697] *See* T. 21 November 2006, p. 48.
[3698] T. 7 December 2007, p. 6.
[3699] T. 7 December 2007, p. 9.
[3700] T. 7 December 2007, p. 10.
[3701] T. 7 December 2007, p. 9.
[3702] Prosecution Exhibit 191; Prosecution Exhibit 192.

consultations with him concerning the evacuation of about 60 refugees from *Hôtel des Mille Collines* in May 1994.[3703]

1976. The evidence before the Chamber suggests that Bizimungu had a considerable role in leading the combat operations against the RPF and that the Minister of Defence deferred to his recommendations on issues that had a significant bearing on those operations. In this regard, the Chamber refers to Bizimungu's evidence that he recommended to the Minister of Defence to suspend a number of senior officers whom he considered to be militarily incompetent, which is discussed in detail below.

1977. Having considered the evidence reviewed above, the Chamber finds that Bizimungu exercised *de facto* authority over soldiers of the Rwandan Army during his tenure as Chief of Staff in 1994.

1978. In addition to exercising *de facto* authority over soldiers of the Rwandan Army, the Chamber is satisfied that Bizimungu exercised similar authority over members of the *Interahamwe*.

1979. The Chamber recalls that Bizimungu denied that he had *de facto* authority over members of the *Interahamwe*. However, the evidence elicited from Prosecution witnesses, taken in concert with documentary evidence, strongly suggests that Bizimungu exercised considerable authority over members of the *Interahamwe* during his tenure as Chief of Staff of the Rwandan Army. The Chamber has heard substantial evidence regarding the role of the Rwandan Army in training and providing arms to the civil defence programs. The evidence suggests that these civilian structures were initially established in order to reinforce the Army in its campaign against the RPF, but that they later morphed into structures that were used in the genocide against Tutsi. In particular, the Chamber refers to the evidence of Expert Witness Des Forges[3704] and Prosecution Exhibits 210, 208, 211 and 212. The Chamber has imparted particular weight to Prosecution Exhibit 208, a record of an interview between Jean Kambanda, the former Prime Minister in the Rwandan interim government, and the investigators of the Tribunal, in which Kambanda stated that youth wings affiliated with the MRND and CDR parties were provided with military training by the Rwandan Army.

1980. A review of Prosecution Exhibits 201 and 202 indicates the authority that Bizimungu wielded over members of the *Interahamwe*. Prosecution Exhibit 201 is a report of a meeting chaired by Bizimungu that was attended by a number of senior officers of FAR. The meeting was held in Goma, in the former Zaire, between 29 March and 3 April 1994. A review of the report suggests that the attendees at the meeting, who were discussing the reorganisation of the FAR, considered the possibility of integrating *Interahamwe* into the reorganised Army. Prosecution Exhibit 202 is a report of a meeting of members of the high command of the exiled Rwandan Army held from 2 to 6 September 1994 in Goma. This report was sent by Bizimungu to the President of the exiled Rwandan government. A review of this report also suggests that the inclusion of the *Interahamwe* within the newly reorganised Army was considered by the officers attending this meeting.

1981. Bizimungu's authority over members of the *Interahamwe* is also supported by the evidence of Witness Dallaire that between April and July 1994, many of his contacts with the

[3703] T. 6 December 2007, p. 54.
[3704] T. 18 September 2006; T. 20 September 2006; Prosecution Exhibit 107.

national leaders of the *Interahamwe* were organised through the intermediary of Bizimungu.[3705] Dallaire further testified that at the time, he observed that soldiers of the Rwandan Army and members of the *Interahamwe* fought alongside each other and also manned checkpoints jointly.[3706]

1982. The fact that Bizimungu had the material ability to restrain members of the *Interahamwe* is also demonstrated by his own account of his intervention at *Hôtel des Mille Collines* following a report of an attack by *Interahamwe* against the refugees at the hotel on 17 June.[3707] Following his arrival at the hotel, Bizimungu ordered the assailants, who were armed, to halt their attack against the people at the hotel or he would shoot at them.[3708] His evidence suggests that the assailants complied with his orders and ceased the attack.[3709]

1983. Based on the evidence discussed above, the Chamber is satisfied beyond reasonable doubt that Bizimungu exercised authority over soldiers and *Interahamwe* during the period that he served as Chief of Staff of the Rwandan Army. The Chamber finds that he had the material ability to prevent Rwandan Army soldiers and *Interahamwe* from committing, or to punish them for having committed, the crimes forming the basis of the charges against him.

5.3.5 *Superior–Subordinate Relationship*

1984. Having weighed the evidence adduced in this trial, the Chamber is satisfied beyond reasonable doubt that soldiers of the Rwandan Army and members of the *Interahamwe* under Bizimungu's effective control were responsible for committing the crimes underlying his responsibility as a superior.

1985. In arriving at this conclusion, the Chamber has considered Bizimungu's submissions seeking to impugn the evidence of Prosecution witnesses who testified that the perpetrators of these crimes were his subordinates. Recalling his evidence in broad terms, the Chamber notes that Bizimungu denied that civilians were massacred during the period that he served as the Chief of Staff of the Rwandan Army.[3710] To the extent that he conceded that crimes were committed against civilians, Bizimungu stated that those crimes were not committed by soldiers under his command, but were instead committed by assailants purporting to be soldiers of the Rwandan Army by dressing in the uniforms of those soldiers.[3711] Bizimungu also claimed that RPF soldiers dressed in Rwandan Army uniforms committed crimes against civilians in order to tarnish the image of his force.[3712] He further stated that gangs, taking advantage of the dissolution of the governing structures at the time, also committed crimes against civilians.[3713]

1986. The Chamber is not persuaded by Bizimungu's submissions. The Chamber recalls that Bizimungu presented no evidence to support his contentions seeking to absolve his subordinates of the crimes committed against civilians. In the absence of such evidence,

[3705] T. 21 November 2007, p. 41.
[3706] T. 21 November 2006, p. 54.
[3707] T. 7 December 2007, pp. 12-16.
[3708] T. 7 December 2007, pp. 13-17.
[3709] T. 7 December 2007, p. 15.
[3710] T. 13 December 2007, p. 18.
[3711] T. 12 December 2007, p. 49; T. 13 December 2007, p. 18.
[3712] T. 12 December 2007, p. 55.
[3713] T. 12 December 2007, p. 49; T. 13 December 2007, p. 18.

Bizimungu's bare submissions cannot impugn the credible and firsthand evidence of Prosecution witnesses who identified the perpetrators of these crimes as members of the Rwandan Army acting in conjunction with *Interahamwe*. The Chamber is satisfied that the evidence of these Prosecution witnesses, most of whom were victims of these crimes, provides a clear evidentiary basis for a finding beyond reasonable doubt that the perpetrators of the crimes underlying Bizimungu's culpability as a superior were soldiers of the Rwandan Army and members of the *Interahamwe*.

5.3.6 *Knowledge*

1987. Based on the evidence before it, the Chamber is satisfied beyond reasonable doubt that Bizimungu knew or had reason to know that his subordinates had committed or were about to commit crimes at the Josephite Brothers in Kigali on 7 June 1994, at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama during April and May 1994, at the *préfecture* office and EER in Butare after 19 April 1994 and at Cyangugu Stadium after 19 April 1994.

1988. The accounts offered by Prosecution witnesses regarding the crimes committed by soldiers and *Interahamwe* against Tutsi civilians at these locations contain a number of circumstantial *indicia* supporting the inference that Bizimungu must have known of these crimes. These include the *modus operandi* of the commission of the crimes, the wide scale and frequency of the crimes, the number of people killed, and the fact that the crimes were committed against Tutsi civilians who had gathered at schools, churches, medical centres, stadiums and the offices of local authorities, all of which are located in areas that are not geographically remote. This circumstantial evidence indicates that the crimes were not random acts of errant soldiers and militia unknown to the authorities, but were in fact organised and systematic crimes.

1989. The Chamber also recalls that Bizimungu admitted in his testimony that during his tenure as Chief of Staff of the Rwandan Army, he received SITREPs from his units on a daily basis.[3714]

1990. In relation to the crimes committed at the Josephite Brothers in Kigali on 7 June 1994, the Chamber has found Bizimungu's admissions that he was aware of reprisal attacks against civilians who had gathered at religious centres in Kigali in early June 1994, and that some of the perpetrators of those attacks were dressed in military uniforms, to be a probative indication of his knowledge or notice of those crimes. Similarly, in relation to the crimes committed against Tutsi refugees at the *préfecture* office and EER in Butare, the Chamber recalls Bizimungu's admission that he received information about "disturbances" that "unfortunately" occurred in Butare at that time.

1991. In relation to the crimes committed at Cyangugu Stadium, the Chamber recalls that the plight of the Tutsi civilians who were detained at the stadium was brought to Bizimungu's attention by Prudence Bushnell during her telephone conversation with Bizimungu in May 1994. Finally, in relation to the crimes committed at the Musambira *commune* office and dispensary, ESI and TRAFIPRO in Gitarama, the Chamber notes that these crimes were committed on a regular basis throughout April and May 1994. The Chamber finds it difficult

[3714] T. 13 December 2007, p. 29.

to believe that crimes of this scale and frequency would not have been reported to Bizimungu in the daily SITREPs that he received at the time.

1992. Given the manner in which these crimes were committed and the means of communication available to him, the Chamber finds it implausible that Bizimungu would not have been aware or at least had notice of the strong prospect that his subordinates were implicated in these crimes.

1993. The Chamber notes that its finding that Bizimungu knew or had reason to know of the implication of soldiers in these crime is further reinforced by its review of a number of exhibits tendered into evidence by the Prosecution. The Chamber considered these exhibits in detail in its discussion of the allegations pleaded in paragraphs 68 to 70 of the Indictment. The Chamber will not repeat that analysis in this section of the Judgement. It suffices to note that the Chamber found these exhibits, which include excerpts from reports by Human Rights Watch written at the time of the events and records of conversations and meetings between Bizimungu and representatives of the United States government and the UN, to be indicative of Bizimungu's knowledge or reason to know of the implication of his subordinates in the crimes in relation to which he is charged.

5.3.7 *Failure to Prevent Crimes or Punish the Perpetrators*

1994. Based on the evidence adduced in this trial, the Chamber is satisfied that Bizimungu, despite his effective control over soldiers and *Interahamwe*, failed to prevent the crimes detailed above or to punish his subordinates for their role in those crimes. In reaching this finding, the Chamber has considered Bizimungu's claim that his material ability to prevent and punish crimes was considerably affected by the ongoing combat with the RPF and other adverse factors related to the war.

1995. The Chamber notes that a determination of a superior's failure to prevent the commission of crimes or punish its perpetrators is not an objective test drawn in the abstract. Rather, the Chamber must consider the actual situation of the commander and the means available to him at the time when the underlying crimes were committed.

1996. The Chamber recalls that Bizimungu claimed repeatedly during his testimony that due to the ongoing combat with the RPF, it was difficult for him to prevent and punish crimes.[3715] He testified that his situation was further exacerbated by desertions from the Army and a lack of reserve troops,[3716] and that the availability of adequate reserves would have allowed *gendarmerie* units, most of which were deployed to the war front, to be relieved from combat engagements and to resume their normal duties of maintaining order.[3717] Bizimungu also claimed that his means of communication and the number of staff available to him diminished as the war progressed.[3718] He testified that this confluence of factors impaired his ability to exercise command with respect to the crimes that were being committed against civilians. He claimed, therefore, that a cessation of hostilities was necessary for him to effectively restore order; however, the RPF refused to agree to a ceasefire.

[3715] T. 13 December 2007, pp. 31-32.
[3716] T. 12 December 2007, pp. 64-66.
[3717] T. 7 December 2007, p. 3; T. 11 December 2007, pp. 35-36.
[3718] T. 11 December 2007, p. 41.

1997. While the Chamber has considered the impact of the prevailing situation on Bizimungu's exercise of effective control over Rwandan Army soldiers and *Interahamwe*, it is not persuaded that the ongoing war with the RPF negated his material ability to prevent and/or punish the crimes underlying the charges against him to the extent that he could not reasonably be expected to address those crimes. In terms of resources, the Chamber recalls that Bizimungu admitted in the course of his testimony that as of April 1994, the forces under his command numbered between 39,000 and 40,000 soldiers.[3719] Not all of those troops were engaged in combat operations against the RPF. For example, Bizimungu admitted that in Cyangugu he had troops that were not engaged in combat.[3720]

1998. In addition, the fact that Bizimungu managed to suspend a number of senior officers of the Rwandan Army while serving as Chief of Staff indicates that he had the material ability to prevent and punish crimes. The Chamber recalls Bizimungu's evidence that on his recommendations, the Minister of Defence suspended Nkundiye, who was the Mutara operational sector commander, and Colonels Ndendinga and Munyamegama.[3721] According to Bizimungu, he proposed the suspension of those officers in order to stabilise the command structure and ensure disciplinary control over his subordinates.[3722] He also testified that around 18 or 19 May 1994, he requested the Minister of Defence to appoint Colonel Ndindingira to become the commander of the Mugesera operational sector.[3723] However, Bizimungu later requested the suspension of Ndindingira because the latter had failed to stabilise the situation in Mugesera and had disobeyed Bizimungu's specific operational instructions.[3724]

1999. The Chamber has also taken note of Bizimungu's evidence that following reports that soldiers in Bugesera had committed unlawful acts, he proposed that the officer in command of those soldiers be suspended, and subsequently that officer was, in fact, replaced.[3725] The Chamber considers this evidence to be a telling indication of Bizimungu's ability to prevent and/or punish the crimes that underlie the charges against him.

2000. The fact that representatives of the UN, the United States government and Human Rights Watch considered Bizimungu to be capable of halting the massacres in Rwanda reinforces the Chamber's finding. The Chamber has already considered the evidence regarding the meetings between Bizimungu and these international figures in other parts of the Judgement. The Chamber finds it unlikely that these high-profile representatives would have directed their requests for the cessation of the massacres against civilians to Bizimungu unless they thought he was capable of acting on their requests.

2001. Further evidencing Bizimungu's material ability to prevent and punish crimes are his intervention at the *Hôtel des Mille Collines*, discussed above,[3726] his issuance of firm instructions via telegram to the commander of the Gisenyi operational sector to arrange for the evacuation of clergymen to Goma following reports that those clergymen were being held

[3719] T. 13 December 2007, pp. 1-2.
[3720] T. 12 December 2007, pp. 84-85.
[3721] T. 11 December 2007, p. 39.
[3722] T. 11 December 2007, p. 39.
[3723] T. 13 December 2007, p. 26.
[3724] T. 13 December 2007, p. 26.
[3725] T. 12 December 2007, p. 75.
[3726] T. 7 December 2007, pp. 12-15.

against their wishes in Gisenyi,[3727] and his issuance of instructions via telegram to the Camp Bigogwe commander to stop plans to attack Tutsi civilians who had sought refuge at the camp.[3728]

2002. Bizimungu's intervention to stop Lieutenant Colonel Sebahire, the commander of the Rulindo operational sector, from being ousted from his position on account of his rumoured links with the RPF also adds weight to the Chamber's finding that Bizimungu had the material ability to prevent and punish crimes.[3729] Due to Bizimungu's intervention, Sebahire remained in his position as the operational sector commander.[3730]

2003. Based on the evidence set out above, the Chamber is not persuaded that Bizimungu's material ability to prevent and punish crimes was substantially affected due to the war with the RPF. His own testimony strongly suggests that he had the ability to prevent the large-scale killings committed by soldiers and *Interahamwe*. Having reviewed the entirety of his evidence, the Chamber considers that Bizimungu's failure to prevent or punish the crimes underlying the charges against him may be explained by his culpable indifference to Tutsi lives and his decision to relegate the protection of civilian lives to a position of less importance than the prosecution of the war against the RPF.

2004. His order of priorities is clearly evidenced by the selective manner in which he chose to wield his considerable authority. The Chamber notes that while Bizimungu was willing to take the necessary steps to get a number of senior officers suspended because of operational lapses while prosecuting the war, he was unwilling to employ his authority to restrain his subordinates or sanction them for crimes committed against Tutsi civilians. His evidence suggests that he refrained from adopting stern disciplinary measures against his subordinates because of concerns that such action would have negative consequences for his effort to fight the RPF.

2005. This tendency is exemplified by Bizimungu's explanations for his failure to take any action against Major Mpiranya, the commander of the Presidential Guard, whose subordinates were accused of perpetrating the killing of a number of high-profile Rwandan politicians. Bizimungu himself admitted to having known of the implication of Presidential Guard soldiers in crimes.[3731] Bizimungu testified that he refrained from taking any action against Mpiranya, who was engaged in combat against the RPF at the time, because of concerns that such action may have had a negative effect on the war campaign against the RPF.[3732] In his evidence, Bizimungu intimated that Mpiranya was likely to face disciplinary measures after the end of the war.[3733] However, Prosecution Exhibit 202, a report of a meeting of former officers of the Rwandan Armed Forces chaired by Bizimungu in September 1994 while in exile in the former Zaire, indicates that Mpiranya was included in the reorganised Rwandan Armed Forces led by Bizimungu and that he was actually assigned some responsibilities within that force.

[3727] T. 13 December 2007, p. 58.
[3728] T. 13 December 2007, p. 58.
[3729] T. 13 December 2007, pp. 25-26.
[3730] T. 13 December 2007, p. 26.
[3731] T. 6 December 2007, p. 25.
[3732] T. 13 December 2007, p. 24.
[3733] T. 13 December 2007, p. 25.

2006. The Chamber further recalls that Bizimungu stated, "People died, Prime Minister Agathe died, blue berets died, other people died ... do you really think that one could have a grip over such impunity, over such acts? ... we are fighting ... when somebody is killed, you don't look around you, he is dead. You carry on".[3734] In the Chamber's opinion, this is a clear indication that he viewed the protection of civilian lives as less important than military considerations. The Chamber considers that the protection of civilian lives cannot simply be subordinated to other considerations, military or otherwise. Even in a desperate situation, the protection of civilians is of fundamental importance. As stated above, the Chamber is not satisfied the ongoing war with the RPF negated Bizimungu's material ability to prevent and punish crimes to such an extent that he could not reasonably be expected to take measures to protect civilian lives. Under these circumstances, the Chamber finds no plausible explanation for Bizimungu's gross failure to honour his duties as a commander other than his disregard for civilian lives.

2007. Bizimungu's implausible assessment of the situation in Rwanda at the time of the events relevant to the charges in the Indictment is indicative of his indifference to the lives of Tutsi civilians. The Chamber recalls that in the face of a considerable body of evidence to the contrary, Bizimungu asserted that although there were sporadic killings on some days during his tenure as the Chief of Staff of the Rwandan Army, it would be incorrect to "make the generalisation" that those killings were continuous and connected massacres.[3735] He testified that allegations of massacres committed by his subordinates were lies concocted by the RPF and its allies,[3736] and he characterised the massacres of Tutsi civilians as "on and off killings that took place here and there" and nothing more than "a situation of unrest in which some people perished".[3737]

2008. In assessing Bizimungu's superior responsibility, the Chamber has considered the measures that Bizimungu claimed to have taken in order to stop the killings. In particular, the Chamber recalls his evidence that on 22 April 1994, a few days after he took up his post as Chief of Staff of the Army, he issued a radio broadcast addressed to soldiers and civilians calling for the maintenance of order.[3738] Bizimungu also claimed to have sent a letter on 1 May 1994 to the Minister of Defence emphasising the need to address the disturbances that were occurring in the country.[3739] Bizimungu further testified to having repeatedly asked the Prime Minister to intervene to get the political parties to restrain their respective militias, especially the *Interahamwe*, from committing crimes.[3740] In support of this contention, Bizimungu's Defence Counsel referred to a document authored by Jean Kambanda in which the latter confirms having been requested repeatedly by Bizimungu and General Kabiligi to urge the political parties to stop the *Interahamwe* from killing civilians in the country.[3741] Bizimungu also claimed to have sent telegrams and issued written instructions to various units of the Army emphasising the importance of maintaining discipline.[3742]

[3734] T. 13 December 2007, p. 24.
[3735] T. 14 December 2007, pp. 22-23.
[3736] T. 12 December 2007, pp 58-59, 68-69.
[3737] T. 13 December 2007, pp. 18, 31.
[3738] T. 11 December 2007, pp. 34-35.
[3739] T. 11 December 2007, p. 35.
[3740] T. 11 December 2007, p. 35.
[3741] T. 11 December 2007, p. 36.
[3742] T. 13 December 2007, p. 27.

2009. The Chamber notes that international law does not provide a detailed list of preventive mechanisms or modes of punishment that a superior is bound to adopt in order to fulfil his duties. The law only requires that a superior adopt measures that are necessary and reasonable in order to prevent or punish crimes committed by his subordinates. A determination of what constitutes necessary and reasonable measures in a specific case will depend on the circumstances of that case, and in particular on the extent of the superior's material ability to take action to prevent or punish crimes.[3743]

2010. After careful consideration, the Chamber is not satisfied that the measures that Bizimungu purported to have taken are sufficient to relieve him of criminal responsibility as a superior. Given the scale of the crimes committed by his subordinates, the means available to him and the extent of his authority as suggested by the evidence, the Chamber finds that it was open to Bizimungu to adopt additional measures in order to avert the large-scale crimes committed against Tutsi civilians and/or to punish the perpetrators of those crimes who were his subordinates. The Chamber therefore considers that the measures adopted by Bizimungu fall far below what could be deemed necessary and reasonable given the means available to him.

2011. The insufficiency of the measures adopted by Bizimungu is demonstrated by the fact that none of the measures that he claims to have taken included disciplinary or punitive actions against his subordinates for their implication in crimes. His refusal to punish the offenders must have been viewed by his subordinates as implicit acquiescence on the part of the Army's high command in their crimes. In the view of the Chamber, this would have greatly diminished the force of the numerous orders and instructions that Bizimungu claimed to have issued to his troops regarding discipline.

2012. For reasons articulated above, the Chamber is satisfied that Bizimungu had the material ability to prevent and/or punish crimes. Nonetheless, he failed to honour his obligations as a commander.

5.4 François-Xavier Nzuwonemeye's Superior Responsibility

5.4.1 *Authority: General Considerations*

2013. The Indictment alleges that François-Xavier Nzuwonemeye was a Major in the Rwandan Army and commander of the RECCE Battalion at the time of the events and that he exercised authority over all units of the battalion.[3744] Nzuwonemeye's Defence concedes that he was appointed commander of the RECCE Battalion in November 1993 and continued to hold that position during the period covered by the Indictment.[3745] The Defence further concedes that squadron and unit commanders with the RECCE Battalion were answerable to the battalion commander.[3746] However, the Defence submits that the RECCE Battalion was under the operational and administrative command of the Chief of Staff of the Rwandan Army, from whom Nzuwonemeye received orders and to whom he reported. In addition, the Defence argues that the RECCE Battalion commander was under the command of the

[3743] *Blaškić* Trial Judgement, para. 302; *Aleksovski* Trial Judgement, para. 78; *Strugar* Trial Judgement, para. 378.
[3744] Indictment, paras. 8-9, 21.
[3745] Nzuwonemeye Closing Brief, para. 3.
[3746] Nzuwonemeye Closing Brief, para. 201.

operational sector commander for Kigali and reported to the commander of Camp Kigali for matters dealing with activities within the camp.[3747]

5.4.2 *De Jure Authority*

2014. It is common ground between the parties that Nzuwonemeye assumed the position of commander of the RECCE Battalion in November 1993 and continued to hold it until July 1994. By Nzuwonemeye's own admission, the battalion consisted of approximately 350 to 400 soldiers divided into three squadrons (A, B, and C) and two companies (a general staff and services company and an infantry company) when hostilities broke out on 6 April 1994. As a specialised unit of the Rwandan Army, the battalion used armoured vehicles as combat weapons and was directly responsible for supporting the Rwandan Army in its war against the RPF. The battalion also served as the vanguard of the army at the battlefront, collected military intelligence and controlled strategic points in Kigali. Considering the mission assigned to it, the RECCE Battalion was regarded as a specialised force comprised of soldiers with exemplary discipline.[3748] It is clear that as commander of the RECCE Battalion, Nzuwonemeye had *de jure* authority over that force.

5.4.3 *De Facto Authority*

2015. The evidence before the Chamber demonstrates that Nzuwonemeye in fact acted as a person of authority over members of the RECCE Battalion during the events in question. On the night of 6 to 7 April, soon after the death of the President, Nzuwonemeye attended a meeting of senior military officers at the Army Headquarters in his capacity as RECCE commander. The next day, Nzuwonemeye again attended a meeting of the most senior officers of the Rwandan Armed Forces at ESM. Nzuwonemeye testified that before his departure for the ESM meeting in the morning of 7 April, he instructed Captain Dukuzumuremyi to be in charge of the battalion. In the Chamber's view, Nzuwonemeye was not only formally appointed as RECCE Battalion commander, but was also recognised by his peers as the legitimate head and representative of the battalion.

2016. Furthermore, the Chamber believes the evidence of several Prosecution witnesses that soon after the presidential plane crashed on 6 April, Nzuwonemeye convened and addressed an assembly of RECCE Battalion soldiers within Camp Kigali, informed the troops about the death of the President and issued operational instructions to his squadron commanders. Later that evening, after returning from the meeting at the Army Headquarters, Nzuwonemeye met in his office with squadron commanders of the RECCE Battalion, including Sagahutu. Among other things, he ordered Sagahutu to ensure protection of the sensitive points within Kigali. This order was carried out with the deployment of several RECCE armoured vehicles from the camp that evening. Early in the morning of 7 April, Nzuwonemeye ordered the re-deployment of RECCE armoured vehicles from sensitive points such as Radio Rwanda to reinforce Presidential Guard troops at the residence of the Prime Minister. This order, which was given to Sagahutu in the latter's capacity as head of Squadron A, was also carried out. By his own admission, Nzuwonemeye also received a SITREP from Sagahutu on 7 April indicating that his instructions regarding protection of the sensitive points had been carried out. In addition, on the basis of Nzuwonemeye's instructions, Prosecution Witness ALN and

[3747] Nzuwonemeye Closing Brief, para. 200.
[3748] Nzuwonemeye Closing Brief, paras. 204, 207, 260.

Defence Witness LLO were deployed to provide protection to Nzuwonemeye's family and subsequently escorted them from Kigali on 11 April 1994.

2017. Based on the factors outlined above, the Chamber finds that Nzuwonemeye exercised *de facto* authority over all members of the RECCE Battalion from 6 to 7 April; he issued instructions to his subordinates, including Sagahutu, the instructions were carried out and reports were sent back to him in his capacity as commander.

5.4.4 *Superior – Subordinate Relationship*

2018. The Chamber has found that on 6 April 1994, on the basis of an order issued by Nzuwonemeye to Sagahutu, a RECCE Battalion armoured unit under the leadership of Warrant Officer Boniface Bizimungu and including Corporal Fiacre Afrika was deployed to protect sensitive points in Kigali City. Subsequently, in compliance with a further order from Nzuwonemeye, Sagahutu instructed this unit to move towards the Prime Minister's residence so as to support Presidential Guard soldiers located there. The Chamber has heard convincing and corroborated evidence that this unit collaborated with Presidential Guard and other Rwandan soldiers to attack and kill Prime Minister Agathe Uwilingiyimana. The Chamber is satisfied that the RECCE Battalion soldiers who directly or indirectly participated in the attack on the Prime Minister, including W.O. Bizimungu, Corporal Afrika and Captain Sagahutu, were subordinates of Nzuwonemeye on 6 to 7 April 1994.

2019. The Chamber recalls that within a few hours after the death of the Prime Minister, a group of Belgian UNAMIR soldiers were brutally murdered at Camp Kigali. The evidence demonstrates that several RECCE Battalion soldiers were present during this attack and that at least two RECCE Battalion soldiers, namely Nzeyimana and Masonga, directly participated in the attack and killing of the Belgian soldiers who were holed up in the UNAMIR building. Nzeyimana and Masonga were armed with a MGL taken from Sagahutu's office with Sagahutu's consent and instruction to kill Belgian soldiers who were putting up resistance at the entrance of Camp Kigali. The Chamber is satisfied that Nzeyimana, Masonga and Sagahutu were all RECCE Battalion soldiers on 7 April 1994 and therefore subordinates of Nzuwonemeye.

5.4.5 *Knowledge*

2020. The Chamber is satisfied that Nzuwonemeye had actual knowledge that his subordinates were about to commit or had committed a crime with respect to the death of Prime Minister. This conclusion is borne out by the organised nature of the deployment of RECCE troops to the vicinity of Prime Minister Agathe Uwilingiyimana's residence on Nzuwonemeye's instructions, the regular communication between W.O. Bizimungu and senior RECCE officers including Sagahutu throughout the attack, as well as the supply of food and materials from RECCE Headquarters to W.O. Bizimungu while he was at the Prime Minister's residence. The Chamber is satisfied that the involvement of RECCE Battalion soldiers in such an organised operation required authorisation from the highest levels of the battalion.

2021. Regarding the killings of the Belgian soldiers, the Chamber finds that Nzuwonemeye had reason to know that RECCE Battalion soldiers had participated in that crime. The Chamber has found that Nzuwonemeye attended the ESM meeting of senior military officers in the morning of 7 April between 10.00 a.m. and 12.30 p.m., after which he returned to

Camp Kigali. Based on his own testimony, he took the longer route through ESM which, as the Chamber found earlier, would have placed him at Camp Kigali sometime between 12.40 and 12.45 p.m. The Chamber also found that the attack on the Belgian soldiers lasted from about 9.00 or 9.30 a.m. until about 2.30 or 3.00 p.m. on 7 April. In particular, the crucial second phase of the attack, which involved RECCE Battalion soldiers firing heavy weapons into the UNAMIR building, took place between 2.00 and 3.00 p.m. By this time, Nzuwonemeye had returned to his office from ESM.

2022. The Chamber notes that Nzuwonemeye does not deny that he knew of the killings of the Belgian soldiers at Camp Kigali on 7 April 1994. He only denied the involvement of his subordinates in those killings.

2023. Nzuwonemeye told the Chamber that upon his arrival at the camp, he tried but failed to contact Captain Dukuzumuremyi, whom he had left in charge of the battalion. He then made inquiries to the General Staff and Services Company, but was not told about the involvement of RECCE Battalion soldiers in the attack on the Belgians. In the view of the Chamber, the fact that he inquired about the involvement of RECCE Battalion soldiers in the killings is itself an indication of his notice of the possibility that they were implicated in those killings. Given the short distance between Nzuwonemeye's office and the location in Camp Kigali where the Belgian soldiers were killed; the fact that the attack involved soldiers from various units based at Camp Kigali; Nzuwonemeye's presence at the camp for at least two hours during the attack; the use of an MGL from the RECCE Battalion's arsenal in the attack; as well as the normal command, control and reporting structures within the RECCE Battalion, the Chamber is satisfied that Nzuwonemeye had reason to know about the participation of RECCE Battalion soldiers in that attack.

5.4.6 *Failure to Prevent or Punish*

2024. The Chamber has concluded that the attack on the Prime Minister was a highly organised military operation. The participation of RECCE Battalion soldiers in that operation required authorisation of the highest levels of the battalion. As battalion commander, Nzuwonemeye failed to prevent his subordinates from committing this crime or to punish them thereafter. Considering the material and human resources at his disposal as RECCE commander, the disciplinary reputation of RECCE Battalion soldiers, and the fact that all his orders were dutifully obeyed by Sagahutu and other RECCE Battalion soldiers, the Chamber considers that Nzuwonemeye had the material ability to prevent or punish this crime but failed to do so.

2025. Regarding the killing of the Belgian soldiers, the Chamber has found that members of the RECCE Battalion were present during the first phase of the attack and actively participated in the second phase of the attack. The Chamber is not satisfied that Nzuwonemeye took sufficient measures to punish those RECCE members who were involved in the killings.

5.5 Innocent Sagahutu's Superior Responsibility

5.5.1 *Authority: General Considerations*

2026. The Indictment alleges that Captain Innocent Sagahutu was second-in-command of the RECCE Battalion and commander of Company A.[3749] It is further alleged that in these capacities, he exercised authority over all units in the battalion.[3750] The Defence concedes that Sagahutu commanded Squadron A of the RECCE Battalion at the time of the events relevant to the Indictment, but it disputes that he was second-in-command or acting battalion commander.[3751]

5.5.2 *De Jure Authority*

2027. The Chamber has considered the Prosecution evidence regarding Sagahutu's alleged position as second-in-command of RECCE, but is not convinced that such a position existed within the battalion. Evidence from Prosecution Witnesses DA, HP and ANK/XAF that Sagahutu acted, deputised for or replaced the battalion commander in the latter's absence is inconclusive on the issue. On the other hand, both Nzuwonemeye and Defence Expert Witness Bernard Lugan clearly testified that the position of second-in-command never existed within the RECCE Battalion and that Sagahutu only had authority over soldiers of Squadron A.[3752] Moreover, Defence Exhibit 3, which lists the officers of the Rwandan Army as of 5 March 1994, indicates that the position of second-in-command did not exist in the RECCE Battalion's organisational hierarchy. The Chamber therefore finds that the Prosecution has failed to prove beyond reasonable doubt that Sagahutu held the position of second-in-command or acting commander of the RECCE Battalion.

2028. The Chamber, however, finds that Sagahutu exercised *de jure* authority over members of Squadron A of the RECCE Battalion.

5.5.3 *De Facto Authority*

2029. The evidence shows that on 6 April, Sagahutu ordered elements of Squadron A to deploy to sensitive points within Kigali city. In particular, it is clear that Sagahutu carried out orders from Nzuwonemeye to deploy RECCE armoured units to protect specific locations in the Kiyovu neighbourhood of Kigali including Radio Rwanda, the National Bank of Rwanda, the National Telecommunications Centre and the President's office. One such unit from Squadron A was led by W.O. Boniface Bizimungu and included corporal Fiacre Afrika, a gunner. On Sagahutu's instructions, this unit was initially deployed to the *Milles Collines* Junction, near Radio Rwanda, and subsequently to Paul VI Avenue, within close proximity of the Prime Minister's residence. There is other evidence showing Sagahutu's *de facto* authority over Squadron A soldiers: on his instructions, Witnesses DA and HP took ammunition, food and other supplies to W.O. Bizimungu during the latter's deployment on Paul VI Avenue; Sagahutu gave operational instructions to Bizimungu regarding, *inter alia,*

[3749] The Chamber notes that although the Indictment refers to Sagahutu as head of "Company A", it is common ground among Prosecution and Defence witnesses that Sagahutu was head of Squadron A. As discussed previously, the RECCE Battalion was made up of three squadrons (A, B, C) and two companies (the Infantry Company and the General Staff and Services Company).
[3750] Indictment, paras. 11, 12.
[3751] Nzuwonemeye Closing Brief, paras. 86-91, 131-141.
[3752] T. 7 October 2008, pp. 25, 26; T. 26 November 2008, pp. 71-75; Defence Exhibit 663, pp. 52-57.

whether to allow Belgian soldiers access to the Prime Minister's residence; and significantly, following the Prime Minister's arrest, Bizimungu asked Sagahutu whether she should be taken to Camp Kigali. Finally, it was on the basis of Sagahutu's orders that RECCE Battalion soldiers removed the Prime Minister's body from her residence to Kanombe Hospital on 7 April 1994. The Chamber therefore finds that Sagahutu had *de facto* authority over RECCE Battalion soldiers from Squadron A who participated in killing the Prime Minister. The Chamber has clear evidence of multiple operational orders issued by him that were dutifully obeyed by his subordinates.

2030. Regarding the killing of the Belgian soldiers, the Chamber is again satisfied that Sagahutu had *de facto* authority over Corporals Nzeyimana and Masonga, two RECCE Battalion soldiers who were directly involved in the final assault on the Belgians. The Chamber accepts the Prosecution evidence that Sagahutu was present when these two soldiers took the MGL from his office to attack the Belgians. The Chamber is also satisfied that he specifically instructed them to put down any resistance from the Belgians. Sagahutu's presence at the RECCE office at the time the MGL was taken, his consent to their participation in the attack, as well as his specific instructions to the principal perpetrators (which were acted upon), demonstrate his *de facto* authority over these soldiers.

5.5.4 *Superior – Subordinate Relationship*

2031. The Chamber is satisfied from the totality of evidence that W.O. Bizimungu led a unit of Squadron A soldiers located on Paul VI Avenue from 6 to 7 April. This unit collaborated with the Presidential Guard and other Rwandan Army elements to attack and kill the Prime Minister. The direct perpetrators of that crime were therefore subordinates of Sagahutu.

2032. Regarding the killing of the Belgian soldiers, the Chamber has no doubt that Corporal Nzeyimana and Masonga were also subordinates of Sagahutu. By his own admission, Sagahutu told the Chamber that Nzeyimana was a marksman within Squadron A and often acted as Sagahutu's driver. This places Nzeyimana in a direct superior-subordinate relationship with Sagahutu. Similarly, it is clear that Corporal Masonga worked as an orderly in the Secretariat of the RECCE Battalion. While it is unclear whether he was specifically assigned to Squadron A, the Chamber is satisfied that his position at the RECCE Secretariat, combined with the fact that he received and acted upon specific instructions from Sagahutu on 7 April, placed him in a superior-subordinate relationship with Sagahutu.

5.5.5 *Knowledge*

2033. The Chamber is satisfied beyond reasonable doubt that Sagahutu had actual knowledge that his subordinates were about to commit or had committed a crime regarding Prime Minister Agathe Uwilingiyimana. First, Sagahutu gave the order for W.O. Bizimungu's unit to redeploy from Radio Rwanda to a position near the Prime Minister's residence on Paul VI Avenue, and to collaborate with the Presidential Guard in attacking the Prime Minister. Subsequently, when Belgian UNAMIR soldiers were on their way to the Prime Minister's residence, Sagahutu was informed about their arrival by W.O. Bizimungu who sought his instructions on whether to allow the Belgians through. Most importantly, after the Prime Minister was arrested, Sagahutu was informed by W.O. Bizimungu who again requested his permission to bring the Prime Minister to Camp Kigali. To this question, Sagahutu gave the rhetorical answer, "[T]o do what?" Shortly thereafter, the Prime Minister

was killed. Finally, Sagahutu saw the Prime Minister's dead body at her residence on 7 April and arranged for its removal from there to Kanombe hospital.

2034. The Chamber is also satisfied that Sagahutu had direct knowledge of the involvement of Squadron A soldiers in the killing of the Belgian soldiers. Sagahutu was present, gave Corporals Nzeyimana and Masonga permission to take the MGL, and specifically instructed them to put down the alleged Belgian resistance.

5.5.6 *Failure to Prevent or Punish*

2035. The killing of the Prime Minister resulted from a highly organised and specifically authorised military operation involving elements of the RECCE Battalion, especially the Squadron A unit headed by W.O. Bizimungu. Members of this unit could not have participated in the killing of such a senior political figure without the permission of their superiors. Sagahutu failed to prevent his subordinates from committing this crime and failed to punish them thereafter. Similarly, Sagahutu failed to prevent the killing of the Belgian UNAMIR soldiers or to punish his subordinates who participated in that crime.

5.6 Cumulative Convictions

5.6.1 *Introduction*

2036. The Chamber notes that Count 5 of the Indictment charging extermination as a crime against humanity and Count 7 charging murder as a war crime[3753] are based on the same underlying conduct and allegations relied on by the Prosecution in support of Count 2 charging genocide and Count 4 charging murder as a crime against humanity. Similarly, Count 8 of the Indictment charging rape as a war crime is based upon the same underlying conduct and allegations relied on by the Prosecution in support of Count 6 charging rape as a crime against humanity. This practice is referred to as cumulative charging.

2037. It is well established in the Tribunals' jurisprudence that multiple criminal convictions may be entered under different statutory provisions on the basis of the same conduct only if each of those statutory provisions has a materially distinct element not contained in the other. For this purpose, an element is materially distinct from another if it requires proof of a fact not required by the other element.[3754] Where this test is not met, a conviction will be entered only under the more specific provision. The more specific offence subsumes the less specific offence because the commission of the former necessarily entails the commission of the latter.[3755] The Chamber will now consider whether it may enter cumulative convictions for the killings charged in Counts 2, 4, 5 and 7 and for the rapes charged in Counts 6 and 7 of the Indictment.

[3753] The term "war crimes" is used broadly to encompass violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.
[3754] *Čelebići* Appeal Judgement, para. 412.
[3755] *Popović et al.* Trial Judgement, para. 2111, *citing Galić* Appeal Judgement, para. 163; *Krstić* Appeal Judgement, para. 218.

5.6.2 *Murder as a Crime Against Humanity and Extermination as a Crime Against Humanity*

2038. The crimes against humanity of murder and extermination (Counts 4 and 5) are treated as distinct crimes under Article 3(a) and 3(b) of the Statute. The Chamber recalls that it is not permissible to convict an accused of both murder and extermination as crimes against humanity based on the same set of facts.[3756] This is because murder as a crime against humanity does not contain a materially distinct element from extermination. It is well established that the elements of murder are subsumed by the crime of extermination as a crime against humanity and are thus not materially distinct. It follows that where the crimes against humanity of murder and extermination have been cumulatively charged, the Chamber will only enter a conviction under the more specific provision.

5.6.3 *Genocide and Extermination as a Crime Against Humanity*

2039. The crimes of genocide (Count 2) and extermination as a crime against humanity (Count 5) are treated as distinct crimes by Article 2(3)(a) and Article (3)(b) of the Statute. It is well established that genocide and crimes against humanity contain materially distinct elements.[3757] The materially distinct element of genocide is the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group.[3758] The materially distinct element of a crime against humanity is the requirement that the crime was committed as part of a widespread or systematic attack against a civilian population.[3759] Convictions for both genocide and crimes against humanity are therefore permissible even where both crimes are based on the same underlying conduct.[3760]

5.6.4 *War Crimes and Crimes Against Humanity*

2040. War crimes (Counts 7 and 8) and crimes against humanity (Counts 4 to 6) are treated as distinct crimes by Articles 3 and 4 of the Statute. The Chamber recalls that war crimes and crimes against humanity contain materially distinct elements.[3761] The materially distinct element of a war crime is the existence of a nexus between the alleged crime and the armed conflict, satisfying the requirements of Common Article 3 of the Geneva Conventions and Article 1 of Additional Protocol II.[3762] The materially distinct element of a crime against humanity is the requirement that the crime was committed as part of a widespread or systematic attack against a civilian population.[3763] Convictions for both war crimes and

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[3756] *Ntakirutimana* Appeal Judgement, para. 542, *citing Kayishema and Ruzindana* Trial Judgement, paras. 647-650; *Rutaganda* Trial Judgement, para. 422; *Musema* Trial Judgement, para. 957; *Semanza* Trial Judgement, paras. 500-505.
[3757] *Kordić and Čerkez* Appeal Judgement, para. 1033; *Semanza* Appeal Judgement, para. 368.
[3758] *Semanza* Appeal Judgement, para. 368.
[3759] *Ntakirutimana* Appeal Judgement, para. 542, *citing Musema* Appeal Judgement, para. 366. *See also* Media Appeal Judgement, para. 1029; *Ntagerura et al.* Appeal Judgement, para. 426; *Semanza* Appeal Judgement, para. 318.
[3760] *Ntakirutimana* Appeal Judgement para. 542, *citing Musema* Appeal Judgement, para. 370.
[3761] *Semanza* Appeal Judgement, para. 368.
[3762] *Semanza* Appeal Judgement, para. 368.
[3763] *Ntakirutimana* Appeal Judgement, para. 542, *citing Musema* Appeal Judgement, para. 366. *See also* Media Appeal Judgement, para. 1029; *Ntagerura et al.* Appeal Judgement, para. 426; *Semanza* Appeal Judgement, para. 318.

crimes against humanity are therefore permissible even where crimes are based on the same conduct.[3764]

5.6.5 *War Crimes and Genocide*

2041. War crimes (Counts 7 and 8) and genocide (Count 2) are treated as distinct crimes by Articles 4 and 2 of the Statute. It is well established that war crimes and genocide contain materially distinct elements.[3765] The materially distinct element of a war crime is the existence of a nexus between the alleged crime and the armed conflict, satisfying the requirements of Common Article 3 of the Geneva Conventions and Article 1 of Additional Protocol II.[3766] The materially distinct element of genocide is the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Convictions for both war crimes and genocide are therefore permissible even where both crimes are based on the same conduct.[3767]

5.7 Count 1: Conspiracy to Commit Genocide

5.7.1 *Introduction*

2042. Count 1 of the Indictment charges all four Accused with conspiracy to commit genocide pursuant to Article 2(3)(b) of the Statute.[3768] It is alleged that all four Accused are criminally responsible pursuant to Article 6(1) because they "decided and executed a common scheme" with their co-Accused and others listed in paragraph 22 of the Indictment to "destroy, in whole or in part, the Tutsi ethnic group which was one of the component elements of the Rwandan population".[3769]

2043. In support of the charge of conspiracy, the Prosecution does not rely on direct evidence of the conspiracy itself. Instead, it relies on several alleged events and circumstantial evidence that it argues evince the existence of the conspiracy. In particular, the Prosecution contends that the "visible components" of the conspiracy to commit genocide included defining the Tutsi ethnic group as the enemy, the "incitement to hatred and vindication of ethnically motivated crimes", the training and arming of militia groups, the establishment of lists of people to be eliminated, opposition to the Arusha Accords and the refusal to restore order once massacres had begun.[3770]

2044. The Defence challenges the charge of conspiracy by arguing that the Indictment improperly pleads conspiracy to commit genocide and fails to identify an agreement to conspire.[3771] Furthermore, the Defence denies that the Accused were part of any conspiracy to commit genocide.[3772] The Defence also maintains that the Prosecution failed to tender any credible evidence, "visible" or otherwise, of such an agreement during the trial, and that the Prosecution employs alleged facts and circumstances to improperly infer an agreement

[3764] *Ntakirutimana* Appeal Judgement, para. 542, *citing Musema* Appeal Judgement, para. 370.
[3765] *Semanza* Appeal Judgement, para. 368.
[3766] *Semanza* Appeal Judgement, para. 368.
[3767] *Ntakirutimana* Appeal Judgement, para. 542, *citing Musema* Appeal Judgement, para. 370.
[3768] Indictment, para. 22.
[3769] Indictment, para. 22.
[3770] Indictment, paras. 22, 25.
[3771] Ndindiliyimana Closing Brief, para. 9.
[3772] Bizimungu Closing Brief, para. 39.

through concerted action when other reasonable explanations exist.[3773] The Defence therefore argues that the necessary elements of conspiracy to commit genocide have not been met and that this failure compels an acquittal on Count 1.

5.7.2 *Law*

2045. Conspiracy to commit genocide is "an agreement between two or more persons to commit the crime of genocide".[3774] As an inchoate crime, conspiracy to commit genocide is punishable even if the crime of genocide has not been committed.

2046. The *actus reus* of the crime is "an agreement between individuals to commit genocide".[3775] The agreement need not be formal.[3776] An agreement may be proved by direct evidence of the conspiracy itself, such as evidence of planning meetings for the genocide, or may be inferred from circumstantial evidence.[3777] The concerted or coordinated action of a group of individuals may also constitute evidence of an agreement. The qualifiers "concerted or coordinated" are important: it is not sufficient to simply show similarity of conduct.[3778] In certain cases the existence of a conspiracy to commit genocide between individuals controlling institutions could be inferred from the interaction between these institutions.[3779] When based on circumstantial evidence, the finding of a conspiracy must be the only reasonable inference based on the totality of the evidence.[3780]

2047. The Chamber notes that a number of the alleged events relied on by the Prosecution to show a conspiracy took place prior to 1994. The Chamber recalls that the Statute precludes the conviction of an accused for offences that occured outside the Tribunal's temporal jurisdiction of 1 January to 31 December 1994. Nonetheless, it is now well established that evidence of events prior to 1994 may be considered if such evidence is relevant and of probative value and there is no compelling reason to exclude it. Such evidence can be relevant to: clarifying a given context; establishing by inference the elements (in particular, criminal intent) of criminal conduct occurring in 1994; and demonstrating a deliberate pattern of conduct.[3781] In this instance, the Accused are charged with a conspiracy that was alleged to be of a continuing nature. It is alleged that the conspiracy commenced prior to 1994 and continued into that year, culminating in the commission of the acts contemplated by the conspiracy. Therefore, evidence of a conspiracy prior to 1994 is admissible.

2048. In addition to the *actus reus*, conspiracy to commit genocide requires that an accused possess the requisite *mens rea*. The members of a conspiracy must be "aware of its existence, their participation in it, and its role in furtherance of their common purpose [to commit genocide]".[3782] The accused must also possess the *mens rea* for genocide, that is the specific

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[3773] Ndindiliyimana Closing Brief, para. 10.
[3774] *Seromba* Appeal Judgement, paras. 218, 221; Media Appeal Judgement, para. 894; *Ntagerura et al.* Appeal Judgement, para. 92; *Kajelijeli* Trial Judgement, para. 787; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana* Trial Judgement, para. 798; *Musema* Trial Judgement, para. 191.
[3775] *Seromba* Appeal Judgement, para. 221; Media Appeal Judgement, para. 896.
[3776] *Bikindi* Trial Judgement, para. 405; Media Appeal Judgement, para. 898.
[3777] *Seromba* Appeal Judgement, para. 221; Media Appeal Judgement, para. 896.
[3778] Media Appeal Judgement, paras. 896-897.
[3779] Media Appeal Judgement, para. 907.
[3780] *Seromba* Appeal Judgement, para. 221; Media Appeal Judgement, para. 896.
[3781] Media Appeal Judgement, paras. 313, 315-316. In that case, the Appeals Chamber did consider pre-1994 evidence in assessing whether a conspiracy existed. Media Appeal Judgement, paras. 905, 908.
[3782] Media Trial Judgement, para. 1047.

intent to destroy in whole or in part a national, ethnic, racial or religious group as such.[3783] An in-depth analysis of the *mens rea* for genocide can be found below, in the Chamber's legal findings for genocide.

5.7.3 *Deliberations*

2049. The Chamber's legal analysis in respect of the charge of conspiracy to commit genocide is limited to considering whether the Prosecution has proved beyond reasonable doubt that the four Accused conspired to commit genocide with some or all of the individuals listed in paragraph 22 of the Indictment.

2050. An analysis of paragraphs 22 and 23 of the Indictment as well as the Prosecution Pre-Trial Brief and opening statement suggests that "in late 1990" and following an attack by the Rwandan Patriotic Front, "Hutu military officers in positions of authority ... conceived the idea that the neutralization, indeed even the extermination of the Tutsi ... would be the best approach". The Chamber therefore finds that the Prosecution's conspiracy allegation is that at some point after 1990, a conspiracy to commit genocide against the Tutsi existed, and that at some point after 1990, the four Accused were part of that conspiracy.

2051. In relation to the participants in the alleged conspiracy, paragraph 22 lists a number of individuals with whom the four Accused are alleged to have conspired. However, there is only limited evidence on record with respect to many of the named individuals. The Chamber recalls that there is no requirement that it be proved that all of the Accused conspired together. It suffices that the Prosecution establish beyond reasonable doubt that they conspired with at least one other named person to commit genocide.

2052. The Chamber notes that the Prosecution did not adduce any direct evidence of the conspiracy itself. Rather, the Prosecution's case is built on circumstantial evidence. The Prosecution submits that the only reasonable inference that may be drawn from the evidence is that there was a conspiracy to commit genocide and that the four Accused, as demonstrated by their speeches and conduct, were part of that conspiracy. The Chamber emphasises that the Prosecution's reliance on circumstantial evidence is not a bar to a finding that a conspiracy existed or that the four Accused are criminally culpable. The key question that must be answered is whether any of the "visible components" of the conspiracy as proved by the Prosecution, either individually or collectively, allow any reasonable inference other than the involvement of the Accused in such a conspiracy. The Chamber will now summarise the "visible components" underpinning the allegation of conspiracy to commit genocide.

5.7.3.1 The Enemy Commission Document

2053. The Prosecution alleges that the depiction of Tutsi in their entirety as enemies or accomplices of the "enemy" in the ENI Document, together with the measures proposed in the ENI Document to address the threat posed by the Tutsi, provide evidence of a conspiracy to commit genocide. The Prosecution further alleges that the Rwandan military elites, including the Accused in this case, subscribed and supported the anti-Tutsi ideology expressed in the ENI Document. The Chamber concluded that this was not proved beyond reasonable doubt. Moreover, there is no evidence that any of the Accused served on the

[3783] *Seromba* Appeal Judgement, para. 175.

Enemy Commission, nor is there any evidence to suggest that any of the Accused authored the ENI Document or disseminated it to their respective units.

5.7.3.2 Provision of Military Training and Distribution of Weapons to Militia

2054. The Prosecution alleges that between 1992 and 1994, political and military authorities including Augustin Bizimungu and Innocent Sagahutu provided military training and weapons to *Interahamwe* militiamen. Following analysis of the facts, the Chamber concluded that it is satisfied beyond reasonable doubt that the Rwandan military and civilian authorities did indeed provide such training and weapons. Furthermore, both Bizimungu and Sagahutu played key roles in these activities.

2055. However, when viewed against the backdrop of war that prevailed in Rwanda from 1 October 1990, the Chamber found that a large number of *Interahamwe* and other civilians received such training and weapons as part of Rwanda's civilian self-defence programme that took place between 1992 and 1994. Consequently, it was not proved beyond reasonable doubt that the only reasonable inference based on the totality of the evidence is that the provision of military training and weapons during this period was pursuant to a conspiracy to commit genocide. The possibility remains that both Accused were acting independently in the interests of civil defence.

5.7.3.3 Meetings to Devise Strategies for Exterminating Tutsi

2056. The Prosecution alleges that between 1992 and 1994, Augustin Bizimungu participated in several meetings and gatherings at which he devised with others a strategy for fighting the Tutsi enemy and also informed others that he did not want to see Tutsi alive. The Chamber found that certain allegations in the Indictment were defective for lack of specificity. Furthermore, the Prosecution failed to prove beyond reasonable doubt that the only reasonable inference to be drawn from the evidence is that the purpose of any alleged meetings or comments made at those meetings was to further a conspiracy to commit genocide. For example, it is conceivable that the purpose of the alleged meetings related to civilian defence issues or to the shooting down of the President's plane.

5.7.3.4 Opposition to the Successful Implementation of the Arusha Accords

2057. The Prosecution alleges that the Accused opposed and obstructed the implementation of the Arusha Accords consecrating the return to peace and institutionalised power-sharing between the various political and/or military factions. Specifically, the Prosecution alleges that Ndindiliyimana took part in a meeting at the MRND Headquarters to oppose the disarmament program that was included in the Arusha Accords and took measures calculated to compromise the effectiveness of the Kigali Weapons Security Area (KWSA). The Prosecution also alleges that Nzuwonemeye hid RECCE armoured vehicles during UNAMIR weapons inspections. The Chamber found that the Prosecution presented no evidence in support of the allegation that Ndindiliyimana participated in a meeting at the MRND Headquarters. The Chamber also found that the Prosecution failed to prove beyond reasonable doubt that Ndindiliyimana took measures calculated to compromise the effectiveness of the KWSA.

2058. In relation to Nzuwonemeye, the Chamber found that RECCE armoured vehicles were indeed hidden in an attempt to evade UNAMIR inspections. However, opposition to the

Arusha Accords or acts expressing such opposition, such as evading UNAMIR inspections by hiding vehicles, is not in and of itself evidence of a conspiracy. The Chamber found that the Prosecution failed to prove beyond reasonable doubt that the only reasonable inference to be drawn from the evidence is that there was conspiracy to commit genocide. The evidence could have equally allowed for alternative inferences.

5.7.3.5 Transfer of *Gendarmerie* Unit Commanders Opposed to the Massacres

2059. The Prosecution alleges that Ndindiliyimana transferred *gendarmerie* unit commanders to the frontline because they did not participate in the massacres against Tutsi and did not share the anti-Tutsi ideology. It is also alleged that Ndindiliyimana issued *laissez-passers* to *Interahamwe* to enable them to massacre Tutsi. The Chamber found that the Prosecution did not adduce credible and corroborated evidence in support of these allegations and therefore failed to prove them beyond reasonable doubt.

5.7.3.6 Formation of the Crisis Committee, the Interim Government and Killing of "Moderate" Political Leaders and Belgian UNAMIR Peacekeepers

2060. The Prosecution alleges that following the death of the President, Ndindiliyimana chaired the Military Crisis Committee and also supported the establishment of an interim government comprised of Hutu extremists. It is also alleged that Ndindiliyimana failed to intervene in the killing of ten Belgian UNAMIR soldiers and that this was motivated by his desire to provoke the withdrawal of Belgian soldiers and thereby remove an obstacle to the conspiracy to commit genocide. The Chamber found that the Prosecution failed to adduce credible and consistent evidence proving any of these allegations beyond reasonable doubt. It was not proved that Ndindiliyimana was appointed chairman of the Crisis Committee. It was further not proved that Ndindiliyimana had any significant role in the establishment of the interim government or that he was aware that Belgian soldiers were being killed. On the contrary, the Chamber concluded that the evidence on record suggested that Ndindiliyimana was worried about the withdrawal of Belgian soldiers from Rwanda.

2061. The Prosecution also alleges that Ndindiliyimana failed in his duty to protect politicians who were allied with opposition parties and who were expected to take prominent positions in the broad-based transitional government. In relation to this allegation, the Chamber found that Ndindiliyimana was aware that politicians were being killed. However, it was not proved that Ndindiliyimana or his subordinates were complicit in the killings or that the killings were in any way part of a conspiracy to commit genocide to which Ndindiliyimana was party. Rather, the evidence suggested that Ndindiliyimana and *gendarmes* tried to forewarn certain politicians and were overwhelmed by the situation.

5.7.3.7 Allegations Related to *Radio Télévision Libre de Milles Collines*

2062. The Prosecution submits that RTLM regularly broadcast anti-Tutsi messages. It alleges that Sagahutu purchased shares in RTLM and encouraged other soldiers to do so. The Prosecution also alleges that Ndindiliyimana avoided investigating the criminal offences committed by journalists at RTLM. The Prosecution contends that these actions are indicative of a larger conspiracy to commit genocide of which the two Accused were part. The Chamber found that the Prosecution failed to prove this allegation against Ndindiliyimana. The Chamber also concluded that Sagahutu did purchase shares in RTLM. Purchasing RTLM shares or encouraging others to do so is not, however, direct evidence of a conspiracy to

commit genocide. Furthermore, it was not proved beyond reasonable doubt that the only reasonable inference that could be drawn from the evidence is that these actions were carried out pursuant to a conspiracy. It is quite possible that Sagahutu was acting independently.

5.7.3.8 The Killing of the Prime Minister and Belgian UNAMIR Soldiers

2063. The Chamber has found Nzuwonemeye and Sagahutu guilty of crimes against humanity for the killings of Prime Minister Agathe Uwilingiyimana and the 10 Belgian soldiers who had been assigned to escort her. The Prosecution submits that evidence of these killings together with comments made by Nzuwonemeye allows the Chamber to infer Nzuwonemeye's and Sagahutu's participation in a conspiracy to commit genocide. It is submitted that the killings were part of the plan and were committed in order to remove obstacles to the genocide.

2064. The Chamber notes that the killing of the Prime Minister and the second phase of the attack against the 10 Belgian soldiers required a level of sophistication and organisation. However, the Chamber found the Prosecution's submissions that these acts were evidence of a conspiracy to be without merit. The evidence in this instance is circumstantial in nature. A finding of conspiracy to commit genocide based on this evidence must, therefore, be the only reasonable inference that could be drawn. The Chamber cannot rule out the possibility that the killings were triggered by the assassination of President Habyarimana and were not part of a pre-conceived conspiracy to commit genocide. Consequently, the Chamber is not satisfied that the only reasonable inference that may be drawn is that these killings were committed pursuant to a conspiracy to commit genocide.

5.7.3.9 Augustin Bizimungu's Anti-Tutsi Remarks and Conduct

2065. The Prosecution alleges that following 6 April 1994, Bizimungu made several remarks encouraging and praising militiamen who had killed Tutsi. Specifically, the Prosecution alleges that Bizimungu congratulated a *conseiller* of Mukamira for killing Tutsi, and that he attended meetings held on 7 and 8 April and on or about 18 and 21 May, at which he praised and encouraged militiamen who had killed Tutsi. The Chamber found that the Prosecution failed to prove beyond reasonable doubt that Bizimungu congratulated the *conseiller* of Mukamira. There is also insufficient evidence to prove beyond reasonable doubt that Bizimungu made anti-Tutsi remarks at meetings held on 8 April and on or about 18 May. However, the Chamber did find that Bizimungu made anti-Tutsi remarks at meetings held on 7 April and on or about 21 May. Notwithstanding these findings, the Prosecution failed to prove beyond reasonable doubt that the only reasonable inference to be drawn from this evidence is that these remarks were made pursuant to a conspiracy. As the Chamber has explained, it is quite possible that the meeting on 7 April was called spontaneously following the death of the President and that the substance of the meeting related to the prevailing situation rather than a plan to destroy in whole or in part the Tutsi ethnic group. Similarly, comments made on or about 21 May, such as those that urged soldiers to keep up the fighting, were consistent with Bizimungu's role as Chief of Staff and were potentially made to boost the morale of soldiers fighting the RPF.

2066. The Prosecution also alleges that between mid-April and late June, Bizimungu deliberately abstained from ensuring that the Rwandan Army under his command restored order and further that he refused to stop the killings following a request from the United States Department of State. The Chamber found that the Prosecution failed to prove certain

elements of these allegations beyond reasonable doubt, and in some cases failed to adduce any evidence at all. However, the Chamber did find that Bizimungu failed to prevent or punish soldiers under his command from committing atrocities. The Chamber also found that a telephone conversation between Bizimungu and the United States Department of State did take place. Notwithstanding these findings, the Chamber found that the Prosecution failed to prove beyond reasonable doubt that the only reasonable inference to be drawn from the evidence is that there was conspiracy to commit genocide.

5.7.4 *Conclusion*

2067. It is undisputed that following the death of the President on 6 April 1994, Rwanda descended into a tragic situation that resulted in massacres of Tutsi civilians. There is no doubt that some of these killings required a certain level of coordination, planning and sophistication. For this reason, the Chamber cannot rule out the possibility of the existence of plans to commit genocide.

2068. However, the Chamber emphasises that the key question in relation to this charge is whether the "visible components" as alleged by the Prosecution prove beyond reasonable doubt that a conspiracy to commit genocide did exist and that the four Accused were party to this conspiracy. For this purpose, the Chamber emphasises that no direct evidence of the existence of a conspiracy was ever adduced. The Chamber is therefore confronted with circumstantial evidence and may only convict where a conspiracy to commit genocide of which the four Accused were part is the only reasonable inference.

2069. As discussed above, the Chamber has already found that no "visible component" individually allows it to conclude that the only reasonable inference that could be drawn is that there was a conspiracy to commit genocide and that the four Accused were part of that conspiracy. The Chamber has now considered the totality of evidence and the cumulative effect of all proven "visible components". The Chamber finds that while certain elements proved by the Prosecution could collectively be suggestive of a conspiracy to commit genocide, they are also consistent with reasonable alternative explanations. For example, in the context of an ongoing war with the RPF, the "visible components" are arguably consistent with a political and military power struggle against the RPF. The Chamber also finds that while the evidence in this case implicates the Accused to varying degrees in the massacres, the evidence does not demonstrate beyond reasonable doubt that any of the four Accused were party to a conspiracy to commit genocide as set out in paragraph 22 of the Indictment.

2070. Consequently, the Chamber concludes that the Prosecution has not proved beyond reasonable doubt that the only reasonable inference to be drawn from the evidence is that there was a conspiracy to commit genocide. The Prosecution has also failed to prove beyond reasonable doubt that the four Accused conspired among themselves or with others to commit genocide.

5.8 Counts 2 and 3: Genocide and Complicity in Genocide

5.8.1 *Introduction*

2071. Count 2 of the Indictment charges Augustin Bizimungu and Augustin Ndindiliyimana with genocide pursuant to Article 2(3)(a) of the Statute. The Prosecution alleges that pursuant to both Article 6(1) and Article 6(3), the two Accused are criminally responsible for causing

serious bodily or mental harm and killing members of the Tutsi population. It is further alleged that these acts of violence were committed against the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group.

2072. These crimes are also charged in the alternative under Count 3 as complicity in genocide pursuant to Article 2(3)(e) of the Statute.

5.8.2 *Law*

2073. It is well established that in order to find an accused guilty of genocide, it must be established that the accused committed at least one 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.[3784] Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.[3785] 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.[3786]

2074. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that lead beyond 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 of a protected group, or the repetition of destructive and discriminatory acts.[3787]

2075. The Chamber recalls that killing members of a group pursuant to Article 2(2)(a) of the Statute requires a showing that the principal perpetrator intentionally killed one or more members of the group.[3788] For this purpose, it is firmly established in the jurisprudence of this Tribunal that the Tutsi ethnicity is a protected group.[3789]

2076. The Chamber further recalls that pursuant to Article 2(2)(b) of the Statute, a conviction for genocide may be based on causing serious bodily or mental harm to members of a group. The Appeals Chamber has noted that the term "serious bodily or mental harm" is

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[3784] *Bagosora et al.* Trial Judgement, para. 2115, *citing* Media Appeal Judgement, paras. 492, 496, 522-523; *Gacumbitsi* Appeal Judgement, para. 39; *Brđanin* Trial Judgement, paras. 681, 695.
[3785] *Bagosora et al.* Trial Judgement, para. 2115, *citing Seromba* Appeal Judgement, para. 175; *Gacumbitsi* Appeal Judgement, para. 44; *Simba* Trial Judgement, para. 412; *Semanza* Trial Judgement, para. 316.
[3786] *Bagosora et al.* Trial Judgement, para. 2115, *citing Simba* Appeal Judgement, para. 269; *Ntakirutimana* Appeal Judgement, paras. 302-304; *Niyitegeka* Appeal Judgement, para. 53; *Krnojelac* Appeal Judgement, para. 102, *referring to Jelisić* Appeal Judgement, para. 49.
[3787] *Bagosora et al.* Trial Judgement, para. 2116, *citing Seromba* Appeal Judgement, para. 176, referring to *Seromba* Trial Judgement, para. 320; Media 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.
[3788] *Bagosora et al.* Trial Judgement, para. 2117, *citing Simba* Trial Judgement, para. 414, referring to *Kayishema and Ruzindana* Appeal Judgement, para. 151.
[3789] *Bagosora et al.* Trial Judgement, para. 2117.

not defined in the Statute.[3790] However, the term "causing serious bodily harm" refers to acts of "sexual violence" and "serious physical violence" falling short of killing that seriously damage the health, disfigure or cause any serious injury to the external or internal organs or senses.[3791] According to the Appeals Chamber, "the quintessential examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs."[3792] Serious mental harm refers to "more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat".[3793] The serious bodily or mental harm need not be an injury that is permanent or irremediable.[3794] This harm can include crimes of sexual violence, including rape.[3795] To support a conviction for genocide, the bodily or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.[3796]

5.8.3 *Deliberations*

5.8.3.1 Massacres in Nyaruhengeri: Kansi Parish, 20, 21 and 22 April

2077. It is undisputed that in the days leading up to 21 April 1994, a significant number of Tutsi refugees from neighbouring *communes* gathered at Kansi Parish. There is also no dispute that Tutsi refugees were killed at Kansi Parish.

2078. On 21 April, *gendarmes* who were guarding Ndindiliyimana's residence in Nyaruhengeri distributed weapons to *Interahamwe* and accompanied other *gendarmes* and *Interahamwe* to Kansi Parish. Thereafter, the *gendarmes* attacked and killed refugees who were there. This attack continued on 22 April.

2079. Given the manner in which these attacks unfolded, the Chamber finds that the *gendarmes* guarding Ndindiliyimana's residence intentionally killed members of the Tutsi ethnic group. In view of the large number of Tutsi victims and the manner of the attack, including the distribution of weapons to *Interahamwe* in advance of the attack, the only reasonable conclusion is that the *gendarmes* who physically perpetrated these attacks possessed the specific intent to destroy, in whole or in substantial part, the Tutsi group.

2080. In light of Ndindiliyimana's admission that had *gendarmes* guarding his residence participated in the attack at Kansi Parish, "he would have known", and given his awareness of the gathering of Tutsi refugees at Kansi Parish following his two visits on 15 April and on

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[3790] *Seromba* Appeal Judgement, para. 46. *See also Kayishema and Ruzindana* Trial Judgement, paras. 111, 113, holding "that 'causing serious mental harm' should be interpreted on a case-by-case basis in light of the relevant jurisprudence."

[3791] *Bagosora et al.* Trial Judgement, para. 2117, *citing Seromba* Appeal Judgement, paras. 46-49; *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, para. 320, *citing Kayishema and Ruzindana* Trial Judgement, para. 110.

[3792] *Seromba* Appeal Judgement, para. 46.

[3793] *Seromba* Appeal Judgement para. 46, *citing Kajelijeli* Trial Judgement, para. 815, *citing Kayishema and Ruzindana* Trial Judgement, para. 110; *Semanza* Trial Judgement, para. 321.

[3794] *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, paras. 320, 322.

[3795] *Seromba* Appeal Judgement, para. 46; *Gacumbitsi* Trial Judgement, para. 292; *Akayesu* Trial Judgement, paras. 706-707.

[3796] *Seromba* Appeal Judgement, para. 46, *citing Kajelijeli* Trial Judgement, para. 184; *Krajišnik* Trial Judgement, para. 851; Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May - 26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 91, UN Doc. A/51/10 (1996).

22 April, the Chamber has found that Ndindiliyimana bears superior responsibility for these crimes. Given the circumstances of the attacks, described above, the Chamber is satisfied that Ndindiliyimana was aware of the *gendarmes'* genocidal intent.

5.8.3.2 Massacres in Kigali: St. André College, 13 April 1994

2081. Between 7 and 8 April 1994, hundreds of people, mainly Tutsi, sought refuge at St. André College in Kigali. On or about 13 April 1994, *gendarmes* from the Nyamirarnbo brigade acting in collaboration with *Interahamwe* selected Tutsi men from the college and then killed those men outside.

2082. The Chamber finds that, given the nature of the attacks, the assailants intentionally killed members of the Tutsi ethnic group. The number of Tutsi victims at the college and the deliberate selection of Tutsi men based on their identity cards, considered in conjunction with the extensive evidence concerning the targeting of Tutsi in Rwanda, show that the assailants who physically perpetrated these attacks possessed the specific intent to destroy, in whole or in substantial part, the Tutsi group.

2083. The fact that the *gendarmes* who attacked the refugees at St. André College were led by a Second Lieutenant from the Nyamirambo brigade of the *Gendarmerie* suggests that the assailants were operating in an organised manner and within the orders and knowledge of their immediate commanders. The Chamber has concluded that Ndindiliyimana acted as their superior. Ndindiliyimana admitted that he received reports from his General Staff and issued orders to his subordinates regarding events at St. André College around the time that these crimes were committed.

2084. The Chamber has found that Ndindiliyimana bears superior responsibility for the crimes committed by *gendarmes* at St. André College. Given the circumstances surrounding the attacks at the college, the Chamber is satisfied that Ndindiliyimana was aware of the perpetrators' genocidal intent.

5.8.4 *Conclusion: Count 2*

2085. Pursuant to Article 6(3) of the Statute, the Chamber finds Augustin Ndindiliyimana guilty of the crime of genocide committed at Kansi Parish and St. André College.

5.8.5 *Conclusion: Count 3*

2086. Count 3 of the Indictment charges both Bizimungu and Ndindiliyimana with complicity in genocide in the alternative. In light of the Chamber's finding in relation to genocide under Count 2, the Chamber makes no finding in relation to the charges of complicity in genocide.

5.9 Counts 4, 5 and 6: Crimes Against Humanity

5.9.1 *Introduction*

2087. Counts 4, 5 and 6 of the Indictment charge the Accused with murder, persecution and rape as crimes against humanity pursuant to Article 3(a), (b) and (g) of the Statute.

5.9.2 *Widespread or Systematic Attack*

2088. In order to secure a conviction for a crime listed under Article 3 of the Statute, the Prosecution must prove that the crimes were committed as part of a widespread or systematic attack against the civilian population on national, political, ethnic, racial or religious grounds.[3797] An "attack" against a civilian population means the perpetration against that population of a series of acts of violence or of the kind of mistreatment referred to in sub-paragraph (a) to (i).[3798] "Widespread" refers to the large-scale nature of the attack and the number of targeted persons, while "systematic" describes the organised nature of the acts of violence and the improbability of their random occurrence.[3799] The requirements of "widespread" or "systematic" are disjunctive elements, such that proof of either element suffices for liability.[3800]

2089. The *mens rea* for crimes against humanity is that the perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the attack, but need not share the purpose or goals of the broader attack.[3801] The additional requirement that crimes against humanity be committed "on national, political, ethnic, racial or religious grounds" does not mean that a discriminatory *mens rea* must be established.[3802]

2090. The Chamber has considered the totality of the evidence before it, particularly the evidence concerning the ethnic composition of the individuals who were killed or who sought refuge at various locations in Rwanda, as well as the actual or perceived political leanings of many of those killed or singled out at roadblocks during the events in this case. The Chamber is satisfied that widespread and systematic attacks were launched against members of the civilian population in Rwanda on ethnic and political grounds following the death of President Habyarimana. As high-ranking military officers, the Accused would have been familiar with the situation both nationally and in areas under their control. Considering the highly organised and broad-based nature of the attacks on civilians, it is inconceivable that the Accused and the principal perpetrators did not know that their actions formed part of the larger attacks.

[3797] *Bagosora et al.* Trial Judgement, para. 2165, *citing Semanza* Appeal Judgement, paras. 326-332; *Akayesu* Appeal Judgement, paras. 467, 469; *Ntakirutimana,* Appeal Judgement, para. 516.

[3798] Media Appeal Judgement, paras. 915-918; *Kordić and Čerkez* Appeal Judgement, para. 666; *Kunarac et al.* Appeal Judgement, para. 89; *Kunarac et al.* Trial Judgement, para. 415.

[3799] Media Appeal Judgement, para. 920, *quoting Kordić and Čerkez* Appeal Judgement, para. 94; *Mpambara* Trial Judgement, para. 11; *Semanza* Trial Judgement, paras. 328-329; *Kunarac et al.* Trial Judgement, paras. 428-429; *Kunarac et al.* Appeal Judgement, para. 94; *Gacumbitsi* Appeal Judgement, para. 101, *citing Gacumbitsi* Trial Judgement, para. 299; *Stakić* Appeal Judgement, para. 246; *Blaškić* Appeal Judgement, para. 101; *Limaj et al.* Trial Judgement, para. 180.

[3800] *Setako* Trial Judgement, para. 476; *Bagosora et al.* Trial Judgement, para. 2165; Media Appeal Judgement, para. 920.

[3801] *Bagosora et al.* Trial Judgement, para. 2166, *citing Gacumbitsi* Appeal Judgement, paras. 86, 103; *Galić* Appeal Judgement, para. 142; *Simba* Trial Judgement, para. 421; *Kordić and Čerkez* Appeal Judgement, para. 99; *Kunarac et al.* Trial Judgement, para. 434; *Kunarac et al.* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras. 124-127.

[3802] *Bagosora et al.* Trial Judgement, para. 2166, *citing Akayesu* Trial Judgement, paras. 464-469, 595; *Bagilishema* Trial Judgement, para. 81.

5.9.3 *Count 4: Murder*

5.9.3.1 Introduction

2091. Count 4 of the Indictment charges the Accused with murder as a crime against humanity under Article 3(a) of the Statute.

5.9.3.2 Law

2092. Murder is the intentional killing of a person without any lawful justification or excuse or the intentional infliction of grievous bodily harm leading to death with knowledge that such harm will likely cause the victim's death.[3803]

5.9.3.3 Deliberations

5.9.3.3.1 Killing of Prime Minister Agathe Uwilingiyimana

2093. The Chamber has found that on 7 April 1994, RECCE Battalion soldiers under the command of Nzuwonemeye and Sagahutu participated in the attack on and killing of Prime Minister Agathe Uwilingiyimana. The killing of the Prime Minister was an organised military operation carried out with the authorisation of senior military officers. Specifically, the involvement of an armoured unit from the RECCE Battalion was ordered by Nzuwonemeye and carried out by Sagahutu. Throughout the attack, Nzuwonemeye and Sagahutu remained in contact with the troops on the ground, sending them supplies and issuing operational instructions. Based on the evidence before it, the Chamber finds that Nzuwonemeye and Sagahutu are responsible under Article 6(1) of the Statute for ordering the killing of the Prime Minister and also aiding and abetting the direct perpetrators.

2094. The Chamber has also concluded that both Nzuwonemeye and Sagahutu bear superior responsibility for this killing under Article 6(3). The direct perpetrators and the Accused were aware that this killing formed part of a systematic attack against the civilian population on political grounds.

2095. Having found there is a basis for finding Nzuwonemeye and Sagahutu guilty under both Articles 6(1) and 6(3) for the killing of the Prime Minister, the Chamber will only enter a conviction under Article 6(1) and will consider their command responsibility in determining an appropriate sentence.

5.9.3.3.2 Killing of the Belgian Soldiers

2096. The Chamber has found that on 7 April 1994, RECCE Battalion soldiers under the command of Nzuwonemeye and Sagahutu participated in the attack on and killing of UNAMIR soldiers belonging to the Belgian contingent at Camp Kigali. The Belgian peacekeepers had been dispatched to escort Prime Minister Agathe Uwilingiyimana to Radio Rwanda during an attack on her residence by Rwandan soldiers. The evidence demonstrates that the mandate of the UNAMIR peacekeeping force under Chapter VI of the UN Charter did not include active combat. Moreover, it is clear that in the morning of 7 April, the Belgian

[3803] *Bagosora et al.* Trial Judgement, para. 2169; *Karera* Trial Judgement, para. 558. *See also Bagilishema* Trial Judgement, para. 86; *Ntagerura et al.* Trial Judgement, para. 700; *Semanza* Trial Judgement, para. 339 requiring an element of pre-meditation.

soldiers were disarmed and taken to Camp Kigali where they were brutally murdered. The Chamber is satisfied, therefore, that at the time of the attack the victims could not be considered combatants.[3804]

2097. The Belgian peacekeepers were arrested and disarmed during the course of an attack on the Prime Minister, which was clearly part of the broader attack against the civilian population on political grounds. Furthermore, various witnesses testified that there were widespread rumours within Camp Kigali on 6 and 7 April that the Belgians were responsible for shooting down President Habyarimana's plane and that the attack on them was, at least initially, provoked by this erroneous belief. It is therefore clear that the killing of the peacekeepers formed part of the widespread and systematic attack on political and ethnic grounds.

2098. The Chamber has not heard any evidence of Nzuwonemeye's direct involvement in the attack on the Belgian soldiers. Although Nzuwonemeye was not present at Camp Kigali during the attack, he admitted to learning about the killings on his return from the meeting at ESM around 12.00 noon. The Chamber has found that Nzuwonemeye bears superior responsibility under Article 6(3) for failing to punish the crimes committed by his subordinates against the Belgian peacekeepers under Article 6(3). The direct perpetrators and Nzuwonemeye were aware that these attacks formed part of a widespread and systematic attack against the civilian population on ethnic and political grounds.

2099. Regarding Sagahutu, the Chamber has found that on 7 April 1994, while at the RECCE Headquarters, Corporals Nzeyimana and Masonga reported to Sagahutu that Belgian soldiers were putting up a resistance in the UNAMIR building. Sagahutu instructed them to put down the resistance, and in his presence the two soldiers took a MGL from his office and went to participate in the attack during which the remaining Belgian soldiers were killed. Based on this evidence, the Chamber has found that Sagahutu bears superior responsibility for the crimes committed against the Belgian peacekeepers under Article 6(3). The direct perpetrators and Bizimungu were aware that these attacks formed part of a widespread and systematic attack against the civilian population on ethnic and political grounds.

5.9.3.3.3 Killing at the Josephite Brothers Compound

2100. On or about 7 June 1994, soldiers from the Rwandan Army surrounded the Josephite Brothers compound in Kigali. The soldiers forced those who were inside the house to come outside and shot them.

2101. The Chamber has concluded that Bizimungu bears responsibility for the killings of the Josephite Brothers in Kigali as a superior under Article 6(3). The direct perpetrators and Bizimungu were aware that these killings formed part of a widespread and systematic attack against the civilian population on ethnic and political grounds.

[3804] *See Martić* Appeal Judgement, paras. 302, 313 (referring to Article 5 of the ICTY Statute concerning crimes against humanity). In the *Martić* case, the Appeals Chamber determined that the definition of civilians contained in Article 50 of Additional Protocol I reflects the definition of civilian for the purpose of applying crimes against humanity. The term civilian in that context does not include persons *hors de combat*. The Appeals Chamber held that, according to the Statute, a person *hors de combat may be the victim of an act amounting to a crime against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population.*

5.9.3.3.4 Killings at the *Préfecture* Office and Episcopal Church of Rwanda in Butare

2102. During late April and May 1994, several hundred Tutsi civilians sought refuge at the *préfecture* office and the Episcopal Church of Rwanda (EER) in Butare *préfecture*. The Chamber has found that soldiers and *Interahamwe* abducted and killed many of the refugees at these locations during this period.

2103. It has also concluded that Bizimungu bears responsibility for the crimes committed at the Butare *préfecture* office and EER as a superior under Article 6(3). The direct perpetrators and Bizimungu were aware that these killings formed part of a widespread and systematic attack against the civilian population on ethnic and political grounds.

5.9.3.3.5 Killings at Cyangugu Stadium

2104. Following the death of President Habyarimana on 6 April 1994, approximately 4,000 to 5,000 members of the civilian Tutsi population sought refuge at Cyangugu Stadium. The Chamber has found that on numerous occasions during April and May 1994, male Tutsi refugees were removed from Cyangugu Stadium by soldiers and then killed by soldiers and *Interahamwe*.

2105. The Chamber has also concluded that Bizimungu bears responsibility for the crimes committed at Cyangugu Stadium as a superior under Article 6(3). The direct perpetrators and Bizimungu were aware that these attacks formed part of a widespread and systematic attack against the civilian population on ethnic and political grounds.

5.9.3.4 Conclusion

5.9.3.4.1 Bizimungu

2106. The Chamber finds Bizimungu guilty of murder as a crime against humanity as a superior under Article 6(3) for the killings at the Josephite Brothers compound in Kigali on 7 June 1994, the killings committed at Cyangugu Stadium during April and May 1994, and the killings committed at the *préfecture* office and EER in Butare after 19 April 1994.

5.9.3.4.2 Nzuwonemeye

2107. The Chamber finds Nzuwonemeye guilty under Article 6(1) for ordering and for aiding and abetting murder as a crime against humanity in respect of the killing of Prime Minister Agathe Uwilingiyimana on 7 April 1994. Nzuwonemeye's superior responsibility under Article 6(3) will be considered in sentencing. The Chamber also finds Nzuwonemeye guilty under Article 6(3) for murder as a crime against humanity in respect of the killing of the Belgian soldiers at Camp Kigali on 7 April 1994.

5.9.3.4.3 Sagahutu

2108. The Chamber finds Sagahutu guilty under Article 6(1) for ordering and aiding and abetting the murder of Prime Minister Agathe Uwilingiyimana as a crime against humanity. Sagahutu's superior responsibility for this crime will be considered in sentencing. In addition, the Chamber finds Sagahutu guilty under Article 6(3) for murder as a crime against humanity in respect of the killing of the Belgian soldiers at Camp Kigali.

5.9.4 *Count 5: Extermination*

5.9.4.1 Introduction

2109. Count 5 of the Indictment charges Ndindiliyimana and Bizimungu with extermination as a crime against humanity under Article 3(b) of the Statute.

5.9.4.2 Law

2110. The crime of extermination requires large-scale killing or the subjection to conditions of life calculated to kill members of any civilian population.[3805] The *actus reus* consists of any act, omission or combination thereof that contributes directly or indirectly to the killing of a large number of individuals.[3806] Although extermination is the act of killing a large number of people, such a designation does not suggest that a numerical minimum must be reached.[3807] 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 death.[3808] The perpetrator must be aware of the "broader context" of their participation, but need not share the underlying rationale or goals of the killings.[3809]

5.9.4.3 Deliberations

5.9.4.3.1 Killings at Kansi Parish

2111. The evidence relied on in support of this allegation is set out in the Chamber's factual findings for genocide. The Chamber recalls that the Prosecution proved beyond reasonable doubt that on 21 April 1994, thousands of Tutsi civilians were killed at Kansi Parish. The Prosecution also proved that *gendarmes* residing at Ndindiliyimana's Nyaruhengeri residence were directly involved in the large scale killing. In light of the manner in which the attacks unfolded, it was proved beyond reasonable doubt that the *gendarmes* guarding Ndindiliyimana's residence intended to kill civilians taking refuge at the parish on a massive scale. It was further proved that Ndindiliyimana bore superior criminal responsibility for these crimes pursuant to Article 6(3) of the Statute.

2112. The Chamber finds that the elements required to enter a conviction for extermination, namely the direct or indirect killing of a large number of individuals and the intention to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their death, are fulfilled. The Chamber therefore finds Ndindiliyimana criminally responsible as a superior for extermination as a crime against humanity in addition to the crime of genocide. The direct perpetrators and Ndindiliyimana were aware that the

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[3805] *Simba* Trial Judgement, para. 422, *citing Ntakirutimana*, Appeal Judgement, para. 522; *Ndindabahizi* Trial Judgement, para. 480.
[3806] *Bagosora et al.* Trial Judgement, para. 2191, *citing Seromba* Appeal Judgement, para. 189; *Ndindabahizi* Appeal Judgement, para. 123.
[3807] *Bagosora et al.* Trial Judgement, para. 2191; *citing Brđanin* Appeal Judgement, para. 470; *Gacumbitsi* Appeal Judgement, para 86; *Ntakirutimana* Appeal Judgement, para. 522; *Simba* Trial Judgement, para. 422; *Seromba* Appleals Judgement, paras. 268-269.
[3808] *Bagosora et al.* Trial Judgement, para. 2191, *citing Brđanin* Appeal Judgement, para. 476; *Stakić* Appeal Judgement, paras. 259-260; *Gacumbitsi* Appeal Judgement, para. 86l; *Ntakirutimana* Appeal Judgement, para. 522.
[3809] *Simba* Trial Judgement, para. 421, *citing Ndindabahizi* Trial Judgement, para. 478; *Semanza* Trial Judgement, para. 332; *Semanza* Appeal Judgement, para. 268-269.

killings at Kansi Parish formed part of a widespread and systematic attack against the population on ethnic and political grounds.

5.9.4.3.2 Killings at the Josephite Brothers Compound in Kigali

2113. The evidence relied on in support of this allegation is set out in the Chamber's factual findings for genocide. As discussed above, the Prosecution proved beyond reasonable doubt that on 7 June 1994, soldiers of the *Forces Armées Rwandaises* killed civilians at the Josephite Brothers compound. The Chamber recalls that credible evidence was adduced proving beyond reasonable doubt that the killings at the Josephite Brothers compound were committed on a large scale and that a mass grave was subsequently discovered. The Chamber has already found that the evidence led by the Prosecution is sufficient to sustain convictions for genocide and murder as a crime against humanity pursuant to Article 6(3) of the Statute. The Chamber recalls that while it is possible to enter cumulative convictions for the crimes of genocide and extermination, it is not possible to enter cumulative convictions for both murder and extermination.

2114. Given the large number of victims, the Chamber finds that a conviction for extermination may be entered against Bizimungu. Upon consideration, the Chamber finds it more appropriate to hold Bizimungu guilty of the crime of extermination as a crime against humanity rather than murder as a crime against humanity.

2115. The Chamber therefore finds Bizimungu criminally responsible pursuant to Article 6(3) of the Statute for extermination as a crime against humanity in addition to the crime of genocide for crimes that were committed by soldiers at the Josephite Brothers compound.

5.9.4.3.3 Killings in Butare

2116. The evidence relied on in support of this allegation is set out in the Chamber's factual findings for murder as a crime against humanity. The Chamber recalls that the Prosecution proved beyond reasonable doubt that refugees at the *préfecture* office and EER in Butare were taken away and killed by soldiers and *Interahamwe*. It was also proved beyond reasonable doubt that Bizimungu bore superior criminal responsibility for these crimes pursuant to Article 6(3) of the Statute.

2117. However, while the evidence permits a conviction for murder as a crime against humanity, it is insufficient to enter a conviction for extermination as a crime against humanity. The Chamber recalls that no numerical threshold is required for the crime of extermination. However, a key element for the crime of extermination is the act of killing a large number of people. In this instance the Chamber finds that the Prosecution failed to establish that the proven killings were committed on a large scale.

2118. The Chamber finds that the only evidence available about the abduction and murder of refugees at the *préfecture* office and EER in Butare is Witness XY's testimony that she was told that refugees had been killed in the Rwabayanga woods and Witness QBP's evidence that a number of refugees were taken away and that she saw soldiers kill seven male refugees.[3810] Witnesses XY and QBP provided little insight as to the scale of the murders. As a result, the evidence available is too vague and insufficient to make a finding that the

[3810] T. 5 September 2005, p. 44.

killings in Butare were committed on a large scale. The Chamber will not, therefore, enter a conviction for extermination as a crime against humanity but will enter a conviction for these crimes under Count 4 (murder as a crime against humanity) of the Indictment.

5.9.4.4 Conclusion

5.9.4.4.1 Ndindiliyimana

2119. The Chamber finds Ndindiliyimana guilty of extermination as a crime against humanity as a superior under Article 6(3) for the mass killings committed at Kansi Parish.

5.9.4.4.2 Bizimungu

2120. The Chamber finds Bizimungu guilty of extermination as a crime against humanity as a superior under Article 6(3) for killings at the Josephite Brothers compound.

5.9.5 *Count 6: Rape*

5.9.5.1 Introduction

2121. Count 6 of the Indictment charges Bizimungu, Nzuwonemeye and Sagahutu with rape as a crime against humanity under Article (3)(g) of the Statute.

5.9.5.2 Law

2122. Rape as a crime against humanity requires proof of the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator.[3811] Consent for this purpose must be consent given voluntarily and freely and is assessed within the context of the surrounding circumstances.[3812] Force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape.[3813]

2123. The *mens rea* for rape as a crime against humanity is the intention to effect the prohibited sexual penetration with the knowledge that it occurs without the consent of the victim.[3814]

5.9.5.3 Deliberations

2124. Following the death of President Habyarimana on 6 April 1994, approximately 4,000 to 5,000 members of the civilian Tutsi population sought refuge at Cyangugu Stadium. The Chamber has found that soldiers raped a number of Tutsi refugee women at Cyangugu Stadium during April and May 1994.

2125. In addition, several hundred Tutsi civilians sought refuge at the *préfecture* office and EER in Butare during late April and May 1994. The Chamber has found that soldiers and *Interahamwe* raped a number of female refugees at these locations during this period.

[3811] *Kunarac et al.* Appeal Judgement, paras. 127-128; *Semanza* Trial Judgement, para. 344.
[3812] *Kunarac et al.* Appeal Judgement, paras. 127-133; *Semanza* Trial Judgement, para. 344.
[3813] *Kunarac et al.* Appeal Judgement, para. 129.
[3814] *Kunarac et al.* Appeal Judgement, para. 127; *Semanza* Trial Judgement, para. 346.

2126. Given the circumstances surrounding these attacks, it is clear that there was no consent for these acts of sexual violence and that the perpetrators would have been aware of this fact. The Chamber has determined that the crimes at these locations were committed as part of a widespread and systematic attack on ethnic and political grounds.

2127. The Chamber has also concluded that Bizimungu bears superior responsibility for these crimes under Article 6(3). As noted above, the direct perpetrators and the Accused were aware that these attacks formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds.

5.9.5.4 Conclusion

5.9.5.4.1 Bizimungu

2128. The Chamber finds Bizimungu guilty of rape as a crime against humanity as a superior under Article 6(3) for the rapes committed at Cyangugu Stadium during April and May 1994, and at the *préfecture* office and EER in Butare.

5.10 Counts 7 and 8: Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

5.10.1 *Introduction*

2129. Count 7 of the Indictment charges the four Accused with murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 4(a) of the Statute. Count 8 charges Bizimungu, Nzuwonemeye and Sagahutu with rape as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 4(e) of the Statute.

5.10.2 *Law*

5.10.2.1 Threshold Requirements

2130. Article 4 of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II. In order for a crime to fall within the scope of Article 4, the Prosecution must prove, as a threshold matter, the following elements: (1) the existence of a non-international armed conflict at the time of the commission of the alleged breach; (2) the existence of a nexus between the alleged breach and the armed conflict; and (3) that the victims were not direct participants to the armed conflict.[3815]

5.10.2.1.1 Non-International Armed Conflict

2131. The Prosecution must establish beyond reasonable doubt that an armed conflict existed at the time the alleged violation was committed. The jurisprudence establishes that "an armed conflict exists whenever there is a resort to armed force between States or

[3815] *Akayesu* Appeal Judgement, para. 438; *Bagosora et al.* Trial Judgement, para. 2229; *Ntagerura et al.* Trial Judgement, para. 766; *Kamuhanda* Appeal Judgement, para. 737; *Renzaho* Trial Judgement, para. 796.

protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."[3816]

2132. The Chamber notes that the existence of a non-international armed conflict between the Rwandan government and forces of the RPF between 1 January 1994 and 17 July 1994 is a judicially recognised fact not subject to reasonable dispute.[3817] Accordingly, the Chamber has taken judicial notice of the existence of a non-international armed conflict during this period.[3818] The Chamber therefore finds, for the purpose of assessing the threshold requirements of Article 4 of the Statute, that a non-international armed conflict existed during the period relevant to the events underlying the Indictment against the Accused.

5.10.2.1.2 Nexus Between the Alleged Violation and the Armed Conflict

2133. A nexus exists between the armed conflict and the alleged offence when the offence is "closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict."[3819] In this regard, the Appeals Chamber has stated:

> The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, 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.[3820]

2134. The evidence before the Chamber shows that open hostilities between the Rwandan government forces and the RPF began on 7 April 1994, when the RPF troops moved out of their barracks at the CND, and continued until July 1994. The Chamber notes that the RPF was identified with the Tutsi minority and with many members of the political opposition in Rwanda. The evidence adduced during this trial, as well as the previous jurisprudence of this Tribunal, makes it clear that the armed conflict between the Rwandan government forces and the RPF created the environment and provided a pretext for the extensive killings and other abuses of members of the civilian population, particularly Tutsi.[3821] The killings began on 7 April 1994 within hours of the death of President Habyarimana, and hostilities resumed between the RPF and government forces later that day.[3822]

[3816] *Tadić* Appeal Judgement, para. 70; *Kunarac et al.* Appeal Judgement, para. 56; *Stakić* Appeal Judgement, para. 568; *Semanza* Trial Judgement, paras. 355-356; *Krstić* Appeal Judgement, para. 481; *Musema* Trial Judgement, paras. 247-248.

[3817] *Renzaho* Trial Judgement, para. 797. *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 ...").

[3818] *See* Chapter II.

[3819] *Renzaho* Trial Judgement, para. 798; *Tadić* Appeal Judgement, para. 70; *Semanza* Appeal Judgement, para. 369; *Rutaganda* Appeal Judgement, paras. 569-571; *Kunarac* Appeal Judgement, para. 55; *Akayesu* Appeal Judgement, para. 438.

[3820] *Bagosora et al.* Trial Judgement, para. 2231; *Semanza* Trial Judgement, para. 517, *quoting Kunarac et al.* Appeal Judgement, para. 58.

[3821] *Renzaho* Trial Judgement, para. 799; *Bagosora et al.* Trial Judgement para. 2232, *citing Semanza* Trial Judgement, para. 518, *affirmed by Semanza* Appeal Judgement, para. 369.

[3822] *Setako* Trial Judgement, para. 486; *Bagosora et al.* Trial Judgement, para. 2232, *citing* Semanza Trial Judgement para. 518, *affirmed by* Semanza Appeal Judgement, para. 369.

2135. The Chamber has found that the main perpetrators of the crimes against Tutsi were Rwandan Army soldiers, often acting in conjunction with militia groups. The main victims were non-combatant civilians. Many Tutsi civilians were killed at places of refuge, such as religious sites and schools, or at roadblocks while fleeing the hostilities or other attacks. In regard to the crimes committed at roadblocks, the Chamber notes that a large number of militiamen were armed and trained by military authorities and then dispatched to roadblocks ostensibly to defend against RPF operatives in the area. In some cases, the pretext of the killings at roadblocks and places of refuge was to identify RPF infiltrators.

2136. The Chamber is satisfied that the killings of the Prime Minister and the Belgian soldiers were closely related to the conflict between Rwandan government forces and the RPF. Both the Prime Minister and the Belgian soldiers were killed by Rwandan government soldiers in Kigali in the morning of 7 April 1994, within a few hours after the death of the country's President. The hostilities between Rwandan government forces and the RPF resumed later that day.

2137. The Chamber has previously stated that Prime Minister Agathe Uwilingiyimana was a prominent opposition member of the government. The evidence shows that at the time of the attack on her residence, the Prime Minister was planning to go to Radio Rwanda in order to address the population, urge them to remain calm and reassure them that despite the President's death a political leadership structure remained in place in the country. The Chamber considers that an address of this nature by the Prime Minister, broadcast on national radio at such a crucial time, could have substantially calmed the situation in the country. Instead, hostilities between the Rwandan government forces and the RPF resumed later that day in Kigali. The organised nature of the attack on the Prime Minister has led the Chamber to conclude that it was a military operation planned and executed by forces of the Rwandan Army. According to the Defence evidence, Rwandan government soldiers taunted the Prime Minister after her arrest on 7 April and told her that she would be taken to the CND in order to take an oath. The Chamber finds this to be a veiled reference to the seat of the Rwandan Parliament, where both government and opposition members were meant to sit pursuant to the transitional government institutions agreed upon under the Arusha Accords, as well as the Kigali base of the RPF forces. Therefore, the Chamber considers that the armed conflict between government forces and the RPF not only provided a pretext for government soldiers to kill the opposition Prime Minister, but it also provided the context of hostility and lawlessness within which that crime was committed.

2138. The Belgian peacekeepers were killed at Camp Kigali after they had first been disarmed in the course of the attack on the Prime Minister's residence earlier that day. The evidence shows that at the time of their arrest, the Belgian soldiers had been sent to the Prime Minister's residence in order to escort her to Radio Rwanda, where she intended to address the population to call for calm. Moreover, at the time of the attack on the Belgian soldiers, there were widespread rumours among the assailants at Camp Kigali that the Belgians were responsible for shooting down the President's plane. The downing of the President's plane in the evening of 6 April 1994 was clearly a catalyst for the escalation of hostilities between the government forces and the RPF the following day.

2139. In the Chamber's view, the Accused and the other military and civilian assailants who committed these crimes were acting in furtherance of the armed conflict or under its guise. Accordingly, the Chamber finds that the alleged violations of Articles 4(a) and (e) of the

Statute had the requisite nexus to the armed conflict between Rwandan government forces and the RPF.

5.10.2.1.3 Victims Not Taking a Direct Part in Hostilities

2140. The Chamber notes that the victims of the crimes alleged in the Indictment were primarily unarmed civilians who were attacked either in their homes, at places of refuge such as religious sites and schools, or at roadblocks while fleeing the violence. No evidence was adduced at trial showing that the victims used violence or resisted in a way that would negate their non-combatant status.

2141. It is clear that Prime Minister Agathe Uwilingiyimana was a civilian member of the transitional government who was not taking any part in hostilities between the government and RPF forces at the time that she was killed by Rwandan soldiers. In regard to the killing of the Belgian UNAMIR soldiers, the Chamber notes that the mandate of the UNAMIR peacekeeping force under Chapter VI of the UN Charter did not include active combat. In the morning of 7 April, the Belgian soldiers were disarmed before being taken to Camp Kigali where they were brutally murdered. The fact that one of the Belgians was able to obtain a weapon and use it for self-defence during the attack does not alter the non-combatant status of the Belgian soldiers.

2142. Accordingly, the Chamber finds that it has been established beyond reasonable doubt that the victims of the alleged violations of Articles 4(a) and (e) of the Statute were not taking an active part in the hostilities.

5.10.3 *Count 7: Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II*

5.10.3.1 Introduction

2143. Count 7 of the Indictment charges the four Accused with murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 4(a) of the Statute.

5.10.3.2 Law

2144. Article 4(a) of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II amounting to: "Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment." Murder is the unlawful, intentional killing of a human being.[3823] There is no requirement that the killing be premeditated, only that the killing be intentional.[3824]

[3823] *Bagosora et al.* Trial Judgement, para. 2242.
[3824] *Ntagerura et al.* Trial Judgement, para. 765; *Semanza* Trial Judgement, para. 373.

5.10.3.3 Deliberations

2145. As set out in the legal findings for genocide and murder as a crime against humanity, the Chamber has found Bizimungu responsible under Article 6(3) for the killings at ESI, TRAFIPRO and the Musambira *commune* office and dispensary in Gitarama *préfecture* during April and May 1994, among other crimes. The Chamber has found Ndindiliyimana responsible under Article 6(3) for the killings at St. André College on 13 April 1994, among other crimes.

2146. In regard to Nzuwonemeye and Sagahutu, the Chamber has found both Accused responsible under Article 6(1) for ordering and aiding and abetting the killing of Prime Minister Agathe Uwilingiyimana on 7 April 1994. The Chamber has also found both Accused responsible as superiors under Article 6(3) for this crime. Having found that there is a basis for finding Nzuwonemeye and Sagahutu guilty under both Article 6(1) and Article 6(3) for the killing of the Prime Minister, the Chamber will only enter a conviction under Article 6(1) as it considers that this mode of liability most accurately reflects their roles in this crime. The Chamber will consider their superior responsibility in sentencing. In addition, the Chamber has found Nzuwonemeye and Sagahutu responsible under Article 6(3) for the killings of the Belgian UNAMIR soldiers on 7 April 1994.

2147. It follows that the killings of the Prime Minister and the Belgian UNAMIR soldiers also amount to murder under Article 4(a) of the Statute. As discussed above, it is clear from the circumstances of these attacks that the perpetrators were aware that the victims were not taking an active part in the hostilities. Furthermore, each of these crimes had a nexus to the non-international armed conflict between the Rwandan government and the RPF.

2148. The Chamber notes that Count 7 of the Indictment (murder as a violation of Article 3 common to the Geneva Conventions and Additional Protocol II) alleges that Nzuwonemeye and Sagahutu are responsible for the killings of the Belgian soldiers under both Article 6(1) and Article 6(3) of the Statute.[3825] In its legal findings for Count 4 (murder as a crime against humanity), the Chamber found both Accused responsible under Article 6(3) for murder as a crime against humanity for the killings of the Belgian soldiers. In line with the Indictment, the Chamber will now consider whether the two Accused can be held responsible under Article 6(1) for murder as a violation of Article 3 common to the Geneva Conventions and Additional Protocol II for the killings of the Belgian soldiers.

2149. The Chamber has found that on 7 April 1994, soldiers from the RECCE Battalion under the command of Nzuwonemeye and Sagahutu participated in the attack on the Belgian UNAMIR soldiers at Camp Kigali. This attack eventually led to the death of the Belgian soldiers. The Chamber has not heard any evidence of Nzuwonemeye's direct involvement in the attack on the Belgian soldiers either by issuing orders or instructions or by providing assistance or encouragement to the direct perpetrators of the attack. The Chamber therefore concludes that there is no basis for holding Nzuwonemeye responsible under Article 6(1) for this crime.

2150. With respect to Sagahutu, the Chamber has found that on 7 April, while at the RECCE Headquarters at Camp Kigali, Corporals Nizeyimana and Masonga reported to Sagahutu that there was an ongoing attack against Belgian soldiers near the entrance gate to

[3825] Indictment, para. 118.

Camp Kigali and that those soldiers were resisting the attack. In response, Sagahutu instructed them to put down the resistance, and in his presence these two soldiers took a MGL from his office to participate in the attack on the Belgian soldiers. The Chamber therefore finds that Sagahutu ordered the attack on the Belgians and aided and abetted the direct perpetrators of the crime.

2151. Having found that there is a basis for finding Sagahutu guilty under both Article 6(1) and Article 6(3) for the killings of the Belgian soldiers, the Chamber will only enter a conviction against Sagahutu under Article 6(1) as it considers that this mode of liability most accurately reflects his role in this crime. The Chamber will consider his superior responsibility as an aggravating factor when determining his sentence.

5.10.3.4 Conclusions

5.10.3.4.1 Ndindiliyimana

2152. The Chamber finds Ndindiliyimana guilty under Article 6(3) of the Statute for violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for the murder of Tutsi refugees at St. André College.

5.10.3.4.2 Bizimungu

2153. The Chamber finds Bizimungu guilty under Article 6(3) of the Statute for violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for the murder of Tutsi refugees at ESI, TRAFIPRO and the Musambira *commune* office and dispensary.

5.10.3.4.3 Nzuwonemeye

2154. The Chamber finds Nzuwonemeye guilty under Article 6(1) of the Statute for violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for the murder of Prime Minister Agathe Uwilingiyimana.

2155. The Chamber also finds Nzuwonemeye guilty under Article 6(3) of the Statute for violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for the murder of the Belgian UNAMIR soldiers.

5.10.3.4.4 Sagahutu

2156. The Chamber finds Sagahutu guilty under Article 6(1) of the Statute for violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for the murder of Prime Minister Agathe Uwilingiyimana.

2157. The Chamber also finds Sagahutu guilty under Article 6(1) of the Statute for violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for the murder of the Belgian UNAMIR soldiers.

5.10.4 *Count 8: Rape as a Violation of Article 3 Article 3 common to the Geneva Conventions and Additional Protocol II*

5.10.4.1 Introduction

2158. Count 8 of the Indictment charges Bizimungu, Nzuwonemeye and Sagahutu with rape as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 4(e) of the Statute.

5.10.4.2 Law

2159. Article 4(e) of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II amounting to: "Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault." The elements of rape as a war crime under Article 4(e) are the same as those required for rape as a crime against humanity, discussed above.[3826]

5.10.4.3 Deliberations

2160. In its legal findings for genocide and rape as a crime against humanity, the Chamber has found Bizimungu responsible as a superior under Article 6(3) for the rape of women at ESI, TRAFIPRO and the Musambira *commune* office and dispensary in Gitarama during April and May 1994, at the *préfecture* office and EER in Butare starting on 19 April 1994 and at Cyangugu Stadium during April and May 1994.

2161. It follows that these rapes also amount to rape under Article 4(e) of the Statute. As discussed above, it is clear from the circumstances of these attacks that the perpetrators were aware that the victims were not taking an active part in the hostilities. Furthermore, each of these crimes had a nexus to the non-international armed conflict between the Rwandan government and the RPF.

5.10.4.4 Conclusions

5.10.4.4.1 Bizimungu

2162. The Chamber finds Bizimungu guilty under Article 6(3) of the Statute for violations of Article 3 common to the Geneva Conventions and Additional Protocol II for the rape of women at ESI, TRAFIPRO and the Musambira *commune* office and dispensary in Gitarama during April and May 1994, at the *préfecture* office and EER in Butare starting on 19 April 1994 and at Cyangugu Stadium during April and May 1994.

[3826] *Musema* Appeal Judgement, para. 285.

CHAPTER VI: VERDICT

2163. For the reasons set out in this Judgement, and having considered all the evidence adduced at trial and the Parties' arguments, the Chamber finds:

Augustin Ndindiliyimana

Count 1: *Not Guilty* of Conspiracy to Commit Genocide;

Count 2: *Guilty* of Genocide;

Count 3: *Dismisses* the charge of Complicity in Genocide;

Count 4: *Guilty* of Murder as a Crime Against Humanity;

Count 5: *Guilty* of Extermination as a Crime Against Humanity; and

Count 7: *Guilty* of Murder as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

Augustin Bizimungu

Count 1: *Not Guilty* of Conspiracy to Commit Genocide;

Count 2: *Guilty* of Genocide;

Count 3: *Dismisses* the charge of Complicity in Genocide;

Count 4: *Guilty* of Murder as a Crime Against Humanity;

Count 5: *Guilty* of Extermination as a Crime Against Humanity;

Count 6: *Guilty* of Rape as a Crime Against Humanity;

Count 7: *Guilty* of Murder as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; and

Count 8: *Guilty* of Rape as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

François-Xavier Nzuwonemeye

Count 1: *Not Guilty* of Conspiracy to Commit Genocide;

Count 4: *Guilty* of Murder as a Crime Against Humanity;

Count 6: *Not Guilty* of Rape as a Crime Against Humanity;

Count 7: *Guilty* of Murder as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; and

Count 8: *Not Guilty* of Rape as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

Innocent Sagahutu

Count 1: *Not Guilty* of Conspiracy to Commit Genocide;

Count 4: *Guilty* of Murder as a Crime Against Humanity;

Count 6: *Not Guilty* of Rape as a Crime Against Humanity;

Count 7: *Guilty* of Murder as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; and

Count 8: *Not Guilty* of Rape as a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II.

CHAPTER VII: SENTENCING

7.1 Introduction

2164. Having found the Accused criminally responsible for the crimes discussed above, the Chamber must now determine an appropriate sentence for each Accused. For this purpose, Article 23(2) of the Statute provides that when imposing sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. Additionally, Rule 101 of the Rules provides that the Trial Chamber shall, in determining the sentence, take into account any aggravating or mitigating circumstances, including substantial cooperation with the Prosecution by the convicted person before or after conviction. Lastly, general practice regarding prison sentences in the courts of Rwanda shall be observed.

7.2 Submissions

7.2.1 *Prosecution*

2165. The Prosecution submits that the four Accused are charged with crimes of the utmost gravity and that this should be reflected in the sentences imposed.[3827] The Prosecution requests that the Chamber impose a sentence of life imprisonment for each of the four Accused.[3828] The Chamber will now summarise the aggravating factors that the Prosecution submits in respect to each Accused.

7.2.1.1 Bizimungu

2166. The Prosecution refers to several factors that they claim aggravate the culpability of Bizimungu. These are Bizimungu's position as the highest military authority in active service from 19 April to 17 July 1994; the increase and spread of the genocide after Bizimungu's appointment to Chief of Staff of the Rwandan Army; his past acts of violence against Tutsi in Ruhengeri; the influence he commanded over the Army and his failure or refusal to use it to halt the genocide; and his influence in his community and the fact that this constituted a clear betrayal of the trust that the people had placed in him.[3829] Additionally, the Prosecution contends that Bizimungu's resentment towards Tutsi was conceived at a very young age, as suggested by his own evidence regarding his childhood memories of his relationship with Tutsi, his use of derogatory terms when referring to Tutsi in his dissertation at the Military Academy in Belgium in 1984, and his refusal to acknowledge the genocide of the Tutsi.[3830] The Prosecution also points to the premeditated nature of Bizimungu's crimes[3831] and his absence of remorse.[3832]

7.2.1.2 Ndindiliyimana

2167. The Prosecution submits that as Chief of Staff of the *Gendarmerie*, Ndindiliyimana enjoyed the trust and respect of his fellow senior officers and troops. According to the

[3827] Prosecution Closing Brief, paras. 1665-1667.
[3828] Prosecution Closing Brief, para. 1709.
[3829] Prosecution Closing Brief, paras. 1668-1672.
[3830] Prosecution Closing Brief, paras. 1287-1289, 1704.
[3831] Prosecution Closing Brief, para. 1704.
[3832] Prosecution Closing Brief, para. 1705.

Prosecution, Ndindiliyimana had the capacity to exert great influence over *gendarmerie* officers and troops, and yet he failed to use that influence to protect Tutsi; instead, "he used this authority to further the genocidal agenda of the former Rwandan government and armed forces". The Prosecution further contends that Ndindiliyimana used the trust he had engendered with General Dallaire and other UNAMIR officers to mislead them in respect to the true objectives and goals of the new government and the armed forces. The Prosecution submits that "most aggravating is the significant contributing factor the actions of the *gendarmes* in 1994 must have had on the flourishing culture of impunity in Rwanda."[3833] In addition, the Prosecution points to the premeditated nature of Ndindiliyimana's crimes[3834] and his absence of remorse.[3835]

7.2.1.3 Nzuwonemeye

2168. The Prosecution submits that Nzuwonemeye, who was the commander of one of the most specialised and well-equipped units of the Rwandan Army, had sufficient human and material resources to save many human lives but instead used those means only to look after the security of his own family and friends. According to the Prosecution, when his battalion assembled at Camp Kigali in the night of 6 April 1994 following the announcement of the death of the President, Nzuwonemeye had already decided the fate of the Prime Minister whom he openly accused of being responsible for the President's death in complicity with the Tutsi.[3836] The Prosecution also points to the premeditated nature of Nzuwonemeye's crimes[3837] and his absence of remorse.[3838]

7.2.1.4 Sagahutu

2169. The Prosecution submits that Sagahutu, who was commander of Squadron A of the RECCE Battalion and also the most senior field officer holding the highest rank within the battalion after Nzuwonemeye, failed to use the personnel and resources at his disposal to save human lives. Instead, the Prosecution submits that Sagahutu used the means available to him to further various crimes.[3839] The Prosecution also points to the premeditated nature of Sagahutu's crimes[3840] and his absence of remorse.[3841]

7.2.2 *Defence*

7.2.2.1 Bizimungu

2170. In its Closing Brief, the Defence submits that before determining Bizimungu's sentence, the Chamber should conduct a pre-sentence hearing.[3842] In this regard, the Chamber notes that Rule 86(C) of the Rules states that sentencing submissions shall be addressed in closing arguments. The Chamber therefore finds that the Defence for Bizimungu failed to make any sentencing submissions.

[3833] Prosecution Closing Brief, paras. 1673-1693.
[3834] Prosecution Closing Brief, para. 1704.
[3835] Prosecution Closing Brief, para. 1705.
[3836] Prosecution Closing Brief, para. 1694.
[3837] Prosecution Closing Brief, para. 1704.
[3838] Prosecution Closing Brief, para. 1705.
[3839] Prosecution Closing Brief, para. 1695.
[3840] Prosecution Closing Brief, para. 1704.
[3841] Prosecution Closing Brief, para. 1705.
[3842] Bizimungu Closing Brief, paras. 1174-1177.

2171. Although the Bizimungu Defence Closing Brief contains no sentencing submissions, the Chamber has considered the factors set out elsewhere in the brief in assessing Bizimungu's sentence. In particular, the Defence submits that Bizimungu made concerted efforts to prevent the killings of civilians and restore peace. The Defence refers to the fact that Bizimungu made repeated requests to halt the conflict between ethnic groups in Rwanda, that he undertook dangerous missions in order to save lives, and that he collaborated with General Dallaire, the commander of UNAMIR, to restore peace in Rwanda.[3843]

7.2.2.2 Ndindiliyimana

2172. The Ndindiliyimana Defence submits that Ndindiliyimana is a man of integrity who served his country with honour and dignity, and whom a number of witnesses described as moderate, trustworthy, competent, professional and cooperative. According to the Defence, Ndindiliyimana supported the Arusha Accords and cooperated with UNAMIR throughout the events of 1994. He took positive measures within his power to oppose the political forces that supported the genocide, at times risking his own safety to do so, and he was eventually relieved of his post as a result of his refusal to cooperate with extremists. Ndindiliyimana tried to exert his personal and professional influence to stop killings and he saved the lives of a number of Tutsi civilians.[3844]

7.2.2.3 Nzuwonemeye

2173. The Nzuwonemeye Defence submits that during his tenure as commander of the RECCE Battalion, Nzuwonemeye neither discriminated against nor exhibited animosity toward members of the Tutsi ethnic group within the battalion. Furthermore, the Defence submits that Nzuwonemeye favoured the implementation of the Arusha Accords and had begun to implement the provisions of the Accords with respect to the RECCE Battalion. The Defence draws the Chamber's attention to Nzuwonemeye's good character and the fact that he has no previous criminal convictions and "has exhibited good conduct and character while in detention at the United Nations Detention Facility ("UNDF")."[3845]

7.2.2.4 Sagahutu

2174. The Sagahutu Defence submits that Sagahutu is a man of good character and it points to the testimony of various witnesses who stated that Sagahutu was a disciplined officer who had a reputation for being brave, valiant, trustworthy, courageous, respectful, kind and not prejudiced. The Defence asks the Chamber to consider the evidence of several witnesses who testified to Sagahutu's good deeds following the resumption of hostilities with the RPF on 6 April 1994. These good deeds included assisting in the evacuation of the Belgian Ambassador, intervening to protect Belgian soldiers at a Belgian School, helping Tutsi and Hutu to evacuate, assisting refugees with services and resources, protecting a convoy of Belgian soldiers and successfully conducting an operation against looting in Kigali town.[3846]

[3843] Bizimungu Closing Brief, paras. 1164-1172.
[3844] Ndindiliyimana Closing Brief, paras. 596-606.
[3845] Nzuwonemeye Closing Brief, pp. 182-184.
[3846] Sagahutu Closing Brief, paras. 561-591.

7.3 Deliberations

2175. Under Article 1 of the Statute, the Tribunal is vested with the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda. The penalty imposed should reflect the aims of retribution, deterrence and, to a lesser extent, rehabilitation.[3847] In determining the penalty to be accorded to the Accused, the Chamber has taken into account the general practice regarding prison sentences in the courts of Rwanda, the gravity of the offences (the gravity of the crimes of which the Accused have been convicted and the form or degree of responsibility for these crimes) and the individual circumstances of the convicted person.[3848] The Chamber has also considered the Appeals Chamber's direction that "sentences of like individuals in like cases should be comparable."[3849] However, it has noted the inherent limits to this approach because "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual."[3850] Having considered sentencing practice in this Tribunal, the Chamber notes that a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities as well as the most senior authorities.[3851]

2176. The Chamber also recalls that in determining the penalty to be accorded to the Accused, it must take into account any aggravating and mitigating circumstances.[3852] For this purpose, aggravating circumstances must be proved beyond reasonable doubt while mitigating circumstances must be proved on a balance of probabilities.[3853] The Chamber has broad discretion in determining what constitutes mitigating circumstances and the weight to be accorded to those circumstances.[3854] Proof of mitigating circumstances does not automatically entitle the accused to a "credit" in the determination of the sentence; it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination.[3855]

7.3.1 *Bizimungu*

7.3.1.1 Gravity of Offences

2177. The Chamber has determined that on or about 7 April 1994, Bizimungu attended a meeting at the home of Nzirorera's mother. During the meeting, Bizimungu made a speech in which he instructed those present to start killing all the Tutsi. Some of the persons present at the meeting then went to Byangabo market where, based on the contents of the meeting, they implored the gathered audience to begin killing Tutsi. As a direct result, *Interahamwe* began a killing spree including in the *secteur* of Rwankeri. The Chamber found that Bizimungu had a substantial effect on the outcome of the killings by making a speech that was acted upon by participants at the meeting. He is therefore guilty of aiding and abetting the killings in Rwankeri.

[3847] Media Appeal Judgement, para. 1057; *Stakić* Appeal Judgement, para. 402.
[3848] *Bikindi* Trial Judgement, para. 443.
[3849] *Kvočka et al.* Appeal Judgement, para. 681.
[3850] *Kvočka et al.* Appeal Judgement, para. 681.
[3851] *Musema* Appeal Judgement, para. 383.
[3852] *Serushago* Appeal Judgement, para. 23; *Ntaregura et al.* Appeal Judgement, para. 430.
[3853] *Kajelijeli* Appeal Judgement, para. 294; *Serugendo* Trial Judgement, para. 40; *Bisengimana* Trial Judgement, para. 111; *Simba* Trial Judgement, para. 438; *Kalimanzira* Trial Judgement, para. 748.
[3854] *Kalimanzira* Trial Judgement, para. 748.
[3855] *Niyitegeka* Appeal Judgement, para. 267.

2178. In addition, the Chamber has found that from mid-April to late June 1994, while Bizimungu was Chief of Staff of the Rwandan Army, soldiers and *Interahamwe* militia under his effective control killed a large number of Tutsi in various parts of Rwanda. In particular, the Chamber found that killings occurred at the Josephite Brothers compound on 7 June 1994, at ESI, TRAFIPRO and the Musambira *commune* office and dispensary in Gitarama during April and May 1994, at the *préfecture* office and EER in Butare starting on 19 April 1994, and at Cyangugu Stadium during April and May 1994. The Chamber has also found soldiers and *Interahamwe* under the control of Bizimungu responsible for multiple instances of rapes of Tutsi women between the months of April and June 1994. These rapes took place at ESI, TRAFIPRO and the Musambira *commune* office and dispensary in Gitarama *préfecture*, at the *préfecture* office and EER in Butare, and at Cyangugu Stadium. The Chamber has found that Bizimungu knew or had reason to know that his subordinates were about to commit or had committed these crimes. His multiple failures to prevent or punish these atrocities constitute grave breaches of his superior responsibility.

7.3.1.2 Aggravating Factors

2179. The Chamber finds that the influence that Bizimungu derived from his position and status in Rwanda made it likely that others would follow his example.[3856] Had Bizimungu used his influence to reign in the troops under his control, this would have substantially mitigated the slaughter taking place in Rwanda. The Chamber finds that Bizimungu's failure to take action to halt the killing of Tutsi civilians, as required by his superior position, is an aggravating factor.

2180. The Chamber notes that following Bizimungu's promotion to Chief of Staff, the killings in Rwanda did not slow down, but actually accelerated in certain regions of the country. This acceleration could be explained, at least in part, by his refusal to address the killings. It is clear from Bizimungu's own evidence that he was focused on waging war against the RPF and was not concerned about the killings of civilians. His obstinate refusal to stop the killings is further evidenced by his failure to heed the persistent calls on him from representatives of foreign governments and international organisations to take action to protect the Tutsi. His indifference to the killings was so extreme that one might reasonably conclude that he saw the killings of Tutsi to be an extension of the war against the RPF.

7.3.1.3 Mitigating Factors

2181. The Chamber has carefully considered and weighed the mitigating factors put forward by the Bizimungu Defence. However, the Chamber finds that several of the mitigating factors have not been proved on the balance of probabilities. For example, the Chamber considers that Bizimungu's repeated actions and inactions during the relevant events in 1994 stand in stark contrast to his claim that he was committed to peace.

2182. That said, the Chamber recognises that Bizimungu exercised his command in a context marked by understaffing, desertions and difficulties in communication. The Chamber also recalls that General Dallaire gave evidence that Bizimungu lacked the experience necessary to run the General Staff of the Army. In addition, the Chamber has considered the

[3856] The Appeals Chamber has held that an accused's abuse of his superior position or influence may be considered as an aggravating factor. *See Simba* Appeal Judgement, paras. 284-285.

testimony of character witnesses who testified for Bizimungu, as well as his marriage and children, which lend credence to the possibility of rehabilitation if released.

7.3.1.4 Sentencing Consideration

2183. Having considered the totality of the circumstances, the Chamber finds that the gravity of Bizimungu's crimes and the aggravating factors greatly outweigh any mitigating factors. The Chamber recognises that Bizimungu had an exemplary education and military background, as set out in Chapter I of the Judgement. Bizimungu was in a position to use his personal ability, education and military experience to stop the killings of Tutsi. However, the Chamber considers that Bizimungu not only failed to take action to halt the killings of Tutsi, but in fact endorsed and actively encouraged the genocide in 1994. In exercising its discretion, the Chamber has imposed a sentence to reflect this.

7.3.2 *Ndindiliyimana*

7.3.2.1 Gravity of Offences

2184. The Chamber has found that *gendarmes* assigned to guard Ndindiliyimana's family home in Nyaruhengeri, acting in conjunction with other *gendarmes* and *Interahamwe*, perpetrated killings against a large number of Tutsi at Kansi Parish in Nyaruhengeri on 21 and 22 April 1994. The Chamber has also determined that Ndindiliyimana exercised effective control over the *gendarmes* who were guarding his residence in Nyaruhengeri. In his evidence, Ndindiliyimana admitted that his wife had personally "gathered" the *gendarmes* who were guarding his home and that "he would have known" had those *gendarmes* participated in the attack at Kansi Parish. The Chamber has found that Ndindiliyimana knew or had reason to know of the killings of Tutsi civilians at Kansi Parish that were committed by *gendarmes* assigned to guard his home. Nonetheless, there is no evidence that Ndindiliyimana took any measures to punish the *gendarmes* who were involved in the killings at the parish.

2185. In regard to the killings of Tutsi refugees at St. André College, the Chamber has found that *gendarmes* from the Nyamirambo brigade acting in collaboration with *Interahamwe* killed Tutsi civilians at St. André College on or around 13 April 1994. The Chamber is satisfied that Ndindiliyimana exercised control over the *gendarmes* who perpetrated the killings at St. André College. The Chamber is also satisfied, based on the evidence of Witness WG and Ndindiliyimana himself, that Ndindiliyimana knew or at least had reason to know that his subordinates had committed crimes against Tutsi civilians at St. André College. Nonetheless, there is no evidence that Ndindiliyimana took any measures to punish the *gendarmes* who were involved in the killings at the college.

2186. The Chamber recalls that criminal responsibility for these crimes is attributed to Ndindiliyimana based solely on a failure to punish killings that his subordinates had already committed. There is no evidence on record demonstrating that he knew or had reason to know in advance that his subordinates were about to commit crimes at Kansi Parish and St. André College. For this purpose, the Chamber recalls that the "duty to prevent and the duty to punish are separable".[3857]

[3857] *Hadžihasanović et al.* Command Responsibility Appeal, para. 55.

7.3.2.2 Aggravating Factors

2187. Ndindiliyimana has been convicted pursuant to Article 6(3) of the Statute as a result of his failure to punish his subordinates. In this regard, the Chamber notes that Ndindiliyimana's role as Chief of Staff of the *Gendarmerie* carried a duty to protect and serve the people of Rwanda.

2188. The Chamber has also assessed the other aggravating factors put forward by the Prosecution, but it finds that they have not been proved beyond reasonable doubt. For example, the Chamber finds that the evidence does not support the Prosecution's submissions that "the possibility of losing his position and authority … motivated Ndindiliyimana to oppose the peace process";[3858] that "the only way to maintain his place was to plan, promote, order and facilitate the extermination of the Tutsi and Hutu opposition population of Rwanda";[3859] that "he used the trust he had engendered with General Dallaire and other UNAMIR officers to mislead him respecting the true objectives and goals of the new government and the armed forces";[3860] and that "he used this authority to further the genocidal agenda of the former Rwandan government and armed forces".[3861]

7.3.2.3 Mitigating Factors

2189. In mitigation, the Chamber has considered the background and individual circumstances of Ndindiliyimana, with particular reference to the mitigating factors submitted by the Defence. The Chamber has carefully reviewed the submissions regarding Ndindiliyimana's character, his reputation as a political moderate who attempted to oppose extremist forces, his support for the Arusha Accords, his cooperation with UNAMIR, and his attempts to stop the killings and to save the lives of Tutsi during the events of 1994. The Chamber has also assessed the degree of control that Ndindiliyimana actually exercised over the *gendarmes* in Rwanda between April and June 1994, in particular his material ability to prevent and punish crimes. For this purpose, the Chamber has examined evidence suggesting that Ndindiliyimana was politically sidelined and even threatened in the lead-up to the termination of his post as Chief of Staff of the *Gendarmerie* in June 1994. In addition to the events of 1994, the Chamber has closely examined the circumstances of Ndindiliyimana's indictment and arrest by this Tribunal and the conduct of the Prosecution during his trial.

2190. For the reasons set out below, the Chamber finds that several mitigating factors relating to Ndindiliyimana have been proved on the balance of probabilities. When considered together, these factors carry considerable weight. The Chamber considers that these circumstances are unique and distinguish Ndindiliyimana from the other Accused in this case and indeed from other Accused who have come before this Tribunal. The Chamber will now set out in detail its analysis of the background and individual circumstances of Ndindiliyimana as relevant to the determination of his sentence.

[3858] Prosecution Closing Brief, para. 1675.
[3859] Prosecution Closing Brief, para. 1680.
[3860] Prosecution Closing Brief, para. 1683.
[3861] Prosecution Closing Brief, para. 1685.

7.3.2.3.1 Prosecutorial Conduct Towards Ndindiliyimana

2191. The Defence submits that Ndindiliyimana's indictment and arrest "were motivated by political reasons".[3862] The Chamber recalls that before this Chamber, the Defence stated that the Prosecution made every effort to encourage Ndindiliyimana to testify against Colonel Bagosora, but Ndindiliyimana refused.[3863] The Prosecution did not deny this. Following his initial refusal to testify, the Prosecution produced a far-reaching Indictment charging Ndindiliyimana with a number of crimes pursuant to Article 6(1) of the Statute. Most of those charges were eventually dropped. The Defence further alleges that the Prosecution made repeated offers during the trial to drop the charges against Ndindiliyimana if he would agree to testify against Bagosora, but Ndindiliyimana repeatedly refused.[3864]

2192. The Chamber also recalls that the Prosecution disclosed a large quantity of exculpatory material to Ndindiliyimana at a very late stage of the trial and, in some cases, after the trial had concluded. The most recent disclosure of exculpatory material was on 18 March 2011. Many of these documents are highly relevant to the case against Ndindiliyimana and had been in the possession of the Prosecution for a number of years before they were disclosed.

2193. On 22 September 2008, the Chamber ruled that the Prosecution had violated its disclosure obligations under Rule 68 of the Rules with respect to a large number of documents that were in its possession and ordered the Prosecution to immediately disclose the relevant documents to the Defence. The Chamber also ruled that the Prosecution's failure to disclose this material, whether it was deliberate or due to negligence, caused prejudice to Ndindiliyimana. In particular, the Chamber found that the material may have been useful to Ndindiliyimana's Defence counsel in cross-examining other Prosecution witnesses who had appeared before the Chamber during the trial, and it may have helped to identify additional Defence witnesses at an earlier stage of proceedings.[3865]

2194. The Chamber recalls that "[u]nder the jurisprudence of this Tribunal, where ... [it is] found ... that an accused's rights have been violated, but not egregiously so, it ... [may] reduce the accused's sentence if the accused is found guilty at trial".[3866] In accordance with the established jurisprudence, the Chamber has taken the Prosecution's violations of Ndindiliyimana's rights into account when considering his sentence.[3867]

2195. The Chamber emphasises, however, that even if it did not consider the Prosecution's violations of Ndindiliyimana's rights as a mitigating factor, there exist several compelling mitigating circumstances that are in the Chamber's view sufficient to impose the sentence determined by the Chamber. These are discussed in detail below.

[3862] Ndindiliyimana Closing Brief, para. 3.
[3863] Ndindiliyimana Closing Statement; T. 16 January 2008, pp. 11-12.
[3864] Ndindiliyimana Closing Statement; T. 16 January 2008, pp. 11-12.
[3865] *Ndindiliyimana* Decision on Prosecutor's Disclosure Obligations.
[3866] *Kajelijeli* Appeal Judgement, para. 255.
[3867] The Appeals Chamber has held in a number of cases that violations of an accused's fair trial rights may be taken into consideration as mitigating factors in sentencing. *See Kajelijeli* Appeal Judgement, paras. 323-324; *Semanza* Appeal Judgement, paras. 325-328; Media Appeal Judgement, paras. 1072-1075.

7.3.2.3.2 Ndindiliyimana's Control Over the *Gendarmes*

2196. In its legal findings for Ndindiliyimana's superior responsibility, the Chamber has found that as Chief of Staff of the *Gendarmerie,* Ndindiliyimana had *de jure* authority over the entire *Gendarmerie*. However, the scope of his *de jure* authority over the *gendarmes* was significantly reduced after the resumption of hostilities with the RPF on 7 April 1994, when operational command over the majority of *gendarmerie* units was transferred to the General Staff of the Rwandan Army. The Chamber notes that once *gendarmerie* units were deployed to assist the army, Ndindiliyimana lost his *de jure* authority to instruct or issue orders to those units in the field. Ndindiliyimana did, however, retain *de jure* authority over those *gendarmes* in regard to administrative and disciplinary matters. He also retained full *de jure* authority over the *gendarmes* who were not deployed to assist the army.

2197. The Chamber has also found that Ndindiliyimana's *de facto* authority over the *gendarmes* was significantly reduced after 7 April 1994. First, the transfer of operational command over the majority of *gendarmerie* units to the Rwandan Army effectively removed Ndindiliyimana's material ability to control those units after 7 April. Consequently, the Chamber has found that Ndindiliyimana did not exercise effective control over those *gendarmerie* units that were deployed to assist the army in combat.

2198. Second, while the *gendarmerie* units that were not deployed to assist the army remained under Ndindiliyimana's command, his actual ability to control those *gendarmes* decreased significantly as the war progressed. In particular, the Chamber is satisfied based on the evidence that Ndindiliyimana suffered from a serious lack of resources, that he faced difficulties in communicating with *gendarmerie* units operating on the ground, and that his force was infiltrated by extremists and rogue elements. The Chamber has found that Ndindiliyimana did not in fact exercise effective control over all *gendarmes* under his *de jure* command from April to June 1994. Rather, the Chamber considers that Ndindiliyimana's material ability to prevent and/or punish crimes committed by *gendarmes* under his command varied considerably between different *gendarmerie* units. However, this finding does not affect the Chamber's determination that Ndindiliyimana did in fact exercise effective control over *gendarmes* who committed killings at Kansi Parish in Nyaruhengeri and St. André College in Kigali.

7.3.2.3.3 Evidence that Ndindiliyimana was a Political Moderate Who Supported the Arusha Accords and Cooperated with UNAMIR

2199. There is considerable evidence that Ndindiliyimana was known as a moderate Hutu who opposed extremist elements, advocated for the Arusha Accords and cooperated with UNAMIR during the events of 1994. In this regard, the Chamber will now consider the evidence of Ndindiliyimana's conduct prior to April 1994, the events immediately following the death of the President on 6 April 1994 and finally the evidence of Ndindiliyimana's general support for UNAMIR and the Arusha Accords between April and June 1994.

2200. A number of witnesses testified to Ndindiliyimana's support for the Arusha Accords and UNAMIR prior to April 1994. Defence Witness Luc Marchal, who was the commander of the UNAMIR units in Kigali *secteur*, testified that Ndindiliyimana played an important role in the negotiation and drafting of the KWSA in late 1993.[3868] Marchal also stated that

[3868] T. 16 January 2008, pp. 42-44.

Ndindiliyimana was fully supportive of the KWSA and that he issued "very clear orders and instructions" to all *gendarmerie* units in December 1993 regarding the implementation of the KWSA.[3869] Marchal noted that on 28 December 1993, the *Gendarmerie* played a crucial role in the success of "operation clean corridor", which led to the installation of the RPF battalion and its representatives in Kigali. This operation entailed close coordination between UNAMIR and officers of the *Gendarmerie* General Staff, and Marchal stated that Ndindiliyimana "must have given orders and instructions in relation thereto".[3870] According to Marchal, during January and February 1994, Ndindiliyimana "really devoted much effort to achieving the peace process" and not only "compl[ied] to the letter" with the KWSA, "but also with the spirit".[3871]

2201. Defence Witness André Vincent, who was a Belgian Lieutenant-Colonel in the Belgian military cooperation programme in Rwanda in 1994, testified that during the negotiations of the Arusha Accords, Ndindiliyimana "was in favour of implementing the Arusha Accords. He must have understood that it was the only way out of the crisis for Rwanda."[3872] Vincent also stated that "the *Gendarmerie* cooperated fully with UNAMIR in the implementation of the [Arusha Accords], fully, indeed. Whatever assistance UNAMIR sought ... from the *Gendarmerie* ... was granted."[3873]

2202. According to Inspector-General Mahundi, the Tanzanian police commander and former head of INTERPOL for Africa, Ndindiliyimana

> was expecting the two sides, political leaders of the two sides, having agreed to come to a table and to negotiate their conflict and finding a solution to their conflict. He was very much hopeful that that negotiation is likely to end up successfully. And if they successfully finish their negotiation, he was very much hoping that at the end of the negotiation there would definitely – each side would not like to abandon their forces completely. They would definitely need these forces to be integrated and form one, which will continue to save their country.[3874]

2203. Defence Witness CBP63 testified about a meeting held on 16 November 1993 between senior commanders of UNAMIR and the *Gendarmerie*, during which Ndindiliyimana made a speech explaining how the *Gendarmerie* would be integrated into the new force in line with the Arusha Accords.[3875] Defence Witness Claudien Ndagijimana, who was a Lieutenant in the *Gendarmerie,* testified that his unit received orders from Ndindiliyimana to prepare the troops "in the spirit of the Accords".[3876] He also stated that the *Gendarmerie* hoped for peace and was happy about UNAMIR's arrival.[3877] Similarly, AA-9 stated that before April 1994, Ndindiliyimana went to Butare and "addressed all the *gendarmes* and discussed the Arusha Accords, saying that it was necessary to reconcile with

[3869] T. 16 January 2008, p. 61.
[3870] T. 16 January 2008, pp. 65-67. Dallaire confirmed that the *Gendarmerie* played a key role in operation clean corridor. *See* T. 6 December 2006, p. 46.
[3871] T. 17 January 2008, p. 60.
[3872] T. 10 June 2008, p. 19.
[3873] T. 10 June 2008, p. 20.
[3874] T. 5 March 2008, p. 8.
[3875] T. 23 January 2008, pp. 37-38 (ICS).
[3876] T. 5 June 2008, p. 7.
[3877] T. 5 June 2008, p. 9.

the RPF soldiers and incorporate them. He also said that the undisciplined elements should leave the *Gendarmerie.*"[3878]

2204. Belgian Ambassador Swinnen testified that Ndindiliyimana was supportive of the Arusha Accords and of a stronger exercise of UNAMIR's mandate.[3879] Swinnen stated that he had no doubt about Ndindiliyimana's commitment to reconciliation at the time.[3880]

2205. Ndindiliyimana testified that during late 1993 and 1994, he considered the Arusha Accords to be the only viable way to achieve peace[3881] and that his view was that "the Arusha Accords needed to be implemented at all costs".[3882] He therefore went to see the President on 17 February 1994 with his entire General Staff.[3883] They told the President, "[Y]ou need to implement the Arusha Peace Accords." They also tried to tell the President that they were headed for catastrophe and wanted him to do something. However, Ndindiliyimana stated, "[B]y the time we left, we were not hopeful that what we had called for was going to happen ... So we left quietly, silently, wondering what was going to happen."[3884]

2206. In assessing the cooperation between the *Gendarmerie* and UNAMIR between March and April 1994, Ndindiliyimana stated, "We spared no effort to convince UNAMIR and to demonstrate our good faith in the search for a solution for proper accomplishment of the mission of UNAMIR."[3885] However, Ndindiliyimana testified that the *Gendarmerie* was experiencing serious problems during this period.[3886] During March 1994, Ndindiliyimana appealed for help from other countries, particularly Belgium and France, but he was unsuccessful. He returned to Kigali around 24 March "to continue to try to see how the Accords [could] be implemented, because we had no other choice."[3887]

2207. Based on the evidence outlined above, the Chamber is satisfied that Ndindiliyimana was in favour of implementing the Arusha Accords and cooperating closely with UNAMIR prior to April 1994.

2208. Ndindiliyimana's continuing support for the Arusha Accords after that time is evidenced in particular by his comments during meetings held between 6 and 8 April. In this regard, the Chamber recalls that Prosecution Expert Witness Alison Des Forges testified, "In the early days of April, it appears that General Ndindiliyimana made efforts to organise some form of opposition, in meetings was in opposition to Bagosora and in addition made efforts to save lives."[3888] According to Des Forges, at the crisis committee meeting in the evening of 7 April, Ndindiliyimana, Gatsinzi and Rusatira "made some plans for bringing the Presidential

[3878] Chamber's Exhibit 17 A, p. 7.
[3879] T. 22 October 2008, pp. 8-11, 26.
[3880] T. 22 October 2008, p. 31.
[3881] T. 16 June 2008, p. 57; T. 25 January 2008, p. 5 (ICS); T. 10 June 2008, p. 19.
[3882] T. 16 June 2008, pp. 62-64.
[3883] T. 16 June 2008, pp. 60-61.
[3884] T. 16 June 2008, pp. 62-64.
[3885] T. 16 June 2008, p. 60.
[3886] T. 16 June 2008, p. 61.
[3887] T. 16 June 2008, pp. 64-66.
[3888] T. 11 October 2006, p. 55.

Guard under control and setting up the government based on Arusha Accords."[3889] She also testified that Ndindiliyimana was seen as an opponent to the people in power.[3890]

2209. The Chamber notes that the Expert Report by Des Forges tendered in this trial differs significantly from her Expert Report tendered in the *Bagosora et al.* ("Military I") trial. In particular, Des Forges's Expert Report in this case omitted a significant amount of material that was exculpatory to Ndindiliyimana.[3891] The Chamber recalls that Counsel for Ndindiliyimana cross-examined Des Forges extensively about the differences between the two reports and the reasons for those differences.[3892] Des Forges responded:

> The request to prepare a report for this trial was not particularly specific and the original request was that I confine my report to the period ending in the early months of 1994. So I had not, in fact, originally intended to include anything about the period after April. When this was reconsidered, I, rather, quickly wrote the final section without going back to refer to the previous texts that I had written related to this period. I think that probably accounts for it. I did not intend any ... what shall I say ... any change in position, and it would be wrong to suppose that there had been a change of position in the evaluation that I made of General Ndindiliyimana's conduct in those early days, which are, in fact, the only period of which I have substantial information.[3893]

2210. The Chamber is troubled that the Prosecution's Expert Witness would exclude highly exculpatory material regarding one of the Accused from her expert report to the Chamber in this case, particularly when the excluded information had been included in a previous expert report by the witness in the Military I case. The Chamber relies on expert witnesses for their specialised knowledge within a field, and thus they have a special duty to inform the Chamber of relevant facts. The Chamber recalls that expert witnesses are "obliged to testify with the utmost neutrality and with scientific objectivity."[3894]

2211. Defence Witness Luc Marchal, the Commander of the UNAMIR Kigali *secteur*, testified about the meeting held at Army Headquarters in the evening of 6 April 1994. He stated that the meeting was "very full of goodwill as concerns the Arusha Accords. And it was summarised by General Ndindiliyimana on behalf of all those officers in attendance."[3895] Balthazar Ndengeyinka, an RPA Officer and Technical Advisor to the MINADEF, stated that two factions developed at the meeting, with Bagosora trying to impose a military government and others wanting a solution in line with the Arusha Accords. Ndindiliyimana was fully in favour of complying with the Arusha Accords and wanted a meeting with UN Special Representative Booh-Booh.[3896]

2212. A number of witnesses also testified about the meeting held at ESM in the morning of 7 April 1994, at which Ndindiliyimana expressed support for the Arusha Accords and opposed Bagosora's extreme stance. Jean Marie Vianney Nzapfakumunsi, the commanding officer of the Kigali *gendarmerie* group, stated that two sides emerged at the meeting; the

[3889] T. 11 October 2006, p. 57.
[3890] T. 12 October 2006, p. 7.
[3891] Prosecution Exhibit 107.
[3892] T. 11 October 2006.
[3893] T. 11 October 2006, pp. 55-56.
[3894] Media Appeal Judgement, para. 199 (internal quotations omitted).
[3895] T. 17 January 2008, pp. 46-47.
[3896] Chamber's Exhibit 9A, p. 4; T. 17 June 2008, p. 22.

side favouring the implementation of the Arusha Accords was led by Ndindiliyimana.[3897] In a similar vein, AA-10, who was in charge of the *Gendarmerie* VIP protection unit, stated that Bagosora essentially wanted a *coup d'etat* whereas Ndindiliyimana said that it was necessary to calm the members of the Presidential Guard and to bring together the political leaders.[3898] This is corroborated by the evidence of Ndindiliyimana himself.[3899]

2213. Belgian Ambassador Swinnen testified that on 7 April, Ndindiliyimana pleaded with Swinnen not to evacuate the Belgian forces and people. Swinnen stated that it was a highly emotional conversation, which he found to be very credible.[3900] Des Forges expressed the view that this conversation between Ndindiliyimana and Swinnen revealed a sincere desire on the part of Ndindiliyimana for the international forces to remain in Rwanda, and she stated this may have been due to Ndindiliyimana's concerns for his own safety as well as the safety of "people of a different ethnic group".[3901]

2214. Ndindiliyimana testified that in the evening of 7 April, he accompanied Dallaire to the Kigali Hospital and then the morgue, where they found the corpses of the Belgian peacekeepers. Ndindiliyimana stated that he provided Dallaire with his personal escort and arranged for the bodies to be properly wrapped.[3902] Dallaire testified that Ndindiliyimana was visibly shocked at the sight of the corpses. Dallaire confirmed that Ndindiliyimana gave Dallaire his personal escort after the killing of the Belgians.[3903] Likewise, AA-7 stated that Ndindiliyimana arranged for the bodies of the dead soldiers to be washed, and that Ndindiliyimana also appointed and paid people to make the remains decent.[3904]

2215. In the night of 7 to 8 April 1994, there was a meeting of the crisis committee at ESM. AA-7 stated that Ndindiliyimana ultimately chaired the meeting while Bagosora sulked and did not really participate.[3905] This is corroborated by Ndindiliyimana[3906] and also by Des Forges, who testified that at this meeting Bagosora "wished to assert his predominance ... and was refused, and instead General Ndindiliyimana took the chair of the committee."[3907] According to AA-7, "[D]ecisions at the meeting were taken to see how to restore discipline within the Presidential Guard and facilitate contact between high-ranking government officials, politicians and the RPF with the help of UNAMIR, in order to form a transitional government within the framework of the Arusha Peace Accords."[3908] AA-7 also stated, "Thanks to the intervention of General Ndindiliyimana ... the government finally agreed that the FAR military commander would meet the RPF military commander."[3909] The Chamber considers that this evidence shows that, contrary to the Prosecution's allegations, Ndindiliyimana in his chairmanship of the crisis committee was in favour of forming a government in line with the Arusha Accords and was in favour of a peaceful resolution of the conflict between the Rwandan Armed Forces and the RPF.

[3897] T. 18 February 2009, p. 31; Chamber's Exhibit 10A, p. 10.
[3898] Chamber's Exhibit 11, p. 6.
[3899] T. 20 June 2008, p. 70.
[3900] T. 22 October 2008, pp. 10-11, 13.
[3901] T. 12 October 2006, p. 19.
[3902] T. 17 June 2008, pp. 42-43.
[3903] T. 21 November 2006, p. 15.
[3904] Chamber's Exhibit 15A, p. 3.
[3905] Chamber's Exhibit 15A, p. 3.
[3906] T. 20 June 2008, p. 70.
[3907] T. 20 October 2006, p. 47; T. 20 October 2006, p. 54.
[3908] Chamber's Exhibit 15A, p. 3.
[3909] Chamber's Exhibit 15A, p. 3.

2216. The Chamber also recalls the testimony of Defence Witness François Nzabahimana, who stated that Ndindiliyimana went to see President Sindikubwabo on 9 April and told him, "[W]e should try to put an end to these killings." Ndindiliyimana also told the President that he should address the nation in order to stop the massacres.[3910]

2217. In addition to the specific accounts of events following the President's death outlined above, the Chamber recalls that a number of witnesses testified about Ndindiliyimana's general support for the Arusha Accords and UNAMIR during the events of 1994.[3911] Both Prosecution Witnesses Dallaire and Des Forges testified that Ndindiliyimana facilitated UNAMIR search operations and cooperated with peacekeeping efforts.[3912] Defence Witness CBP7, a high-ranking officer in the *Gendarmerie,* testified that the *gendarmes* worked very closely with UNAMIR to carry out joint patrols, particularly the Kigali group, which occupied the most sensitive points in the capital city.[3913] AA-2 stated that a platoon of *gendarmes* was sent to the *Hotel des Milles Collines* to assist the UNAMIR unit there.[3914] Defence Witness CBP63, who worked very closely with Ndindiliyimana in 1994, testified that the *Gendarmerie* worked collaboratively with UNAMIR and that it was "a frank and honest collaboration which unfolded smoothly".[3915] Witness CBP63 also stated that Ndindiliyimana fully supported the 12 May 1994 ceasefire proposal by UNAMIR, which included proposals to disarm the population and dismantle roadblocks.[3916] Similarly, Defence Witness CBP62 described Ndindiliyimana as a "man of dialogue".[3917]

2218. Regarding the communiqué from the Rwandan Armed Forces command office dated 12 April 1994 calling for a ceasefire with the RPF, Ndindiliyimana stated that he agreed with the content of the document and conveyed that opinion to Colonel Gatsinzi. Ndindiliyimana also expressed his support to Dallaire. On 13 April, Ndindiliyimana asked the government to endorse the initiative taken by the armed forces.[3918] AA-7 confirmed that Ndindiliyimana supported the communiqué.[3919] This is corroborated by the testimony of Des Forges, who stated that "Ndindiliyimana was said to have supported the [communiqué of 12 April 1994] but did not sign it."[3920] Dallaire testified that Ndindiliyimana told him that he supported the communiqué and would have signed it had he been in Kigali at the time;[3921] however, Ndindiliyimana told Dallaire that "he'd been stuck in Butare helping some Tutsis escape from the country and hadn't been able to get back in time to sign."[3922]

2219. Ndindiliyimana also testified about a letter dated 17 April, which he prepared jointly with Colonel Gatsinzi. The letter contained proposals from the Rwandan Armed Forces to the RPF.[3923] Ndindiliyimana envisaged the integration of the Rwandan Armed Forces, the RPF and UNAMIR with a view to carrying out joint operations against wrongdoers and criminals.

[3910] T. 3 June 2008, pp. 29-30.
[3911] *See* T. 23 January 2008, pp. 37-38 (ICS); T. 5 June 2008, pp. 7, 9; Chamber's Exhibit 17A, p. 7.
[3912] T. 11 October 2006, pp. 55-56; T. 6 December 2006, pp. 43, 53, 56.
[3913] T. 7 July 2008, p. 42 (ICS).
[3914] Chamber's Exhibit 12A, p. 11.
[3915] T. 23 January 2008, pp. 37-38 (ICS).
[3916] T. 25 January 2008, pp. 7-8 (ICS).
[3917] T. 27 May 2008, p. 16 (ICS); T. 5 March 2008, p. 8.
[3918] T. 17 June 2008, pp. 59-61; Defence Exhibit 230.
[3919] Chamber's Exhibit 15A. *See also* T. 6 December 2006, p. 59.
[3920] T. 11 October 2006, pp. 61-62.
[3921] T. 6 December 2006, p. 59.
[3922] T. 6 December 2006, p. 57.
[3923] Defence Exhibit 210.

Ndindiliyimana stated, "Be it on our side or on the RPF side, we needed judicial and administrative investigations in the cases of all people killed … These were concrete actions and these were actions which cannot be categorised as just empty words or lies." At that time, Ndindiliyimana thought that peace, security and maintenance of law and order could not be restored without the implementation of these conditions.[3924]

2220. Ndindiliyimana testified that he remained in contact with Dallaire until he left the country in mid-June. On 16 May, they had just completed the new protocol and were awaiting the new UN force of 5,500 soldiers. Ndindiliyimana tried to recruit new *gendarmes* to work with the new UN force. Ndindiliyimana testified, "I continued working with Dallaire and we still had hope, the hope of attaining peace, or at least of saving people's lives by creating a protection area where people could be brought together and, therefore, be safe from being killed."[3925]

2221. Throughout these events, the *Gendarmerie* under Ndindiliyimana's leadership had a significant number of Tutsi in its ranks. The Chamber also notes that Ndindiliyimana's own personal secretary was a Tutsi.[3926]

2222. The Chamber is satisfied that the evidence outlined above proves that Ndindiliyimana was a political moderate who supported the Arusha Accords and cooperated with UNAMIR. The actions taken by Ndindiliyimana demonstrate that he had a desire for the restoration of peace and was concerned for the safety of the population.

7.3.2.3.4 Evidence that Ndindiliyimana was Sidelined and Threatened

2223. The Chamber notes that there is a significant body of evidence showing that Ndindiliyimana was politically sidelined and even threatened in the weeks leading up to the termination of his post in early June 1994. Fidèle Uwizeye, the *préfet* of Gitarama, stated that he attended a meeting in Gitarama on 14 or 15 April at which Ndindiliyimana and Colonel Rusatira addressed political leaders. Uwizeye stated, "The two military officers said that they had a message from some army leaders. They wanted the massacre of people to end, because the army could only feel strong if the people themselves were strong and united." Rusatira in turn painted a very bleak picture of the military situation and asked the politicians to negotiate a cease-fire. According to Uwizeye, the politicians merely castigated the fear expressed by Ndindiliyimana and Rusatira while glorifying the intervention of the *Interahamwe*.[3927]

2224. Ndindiliyimana testified that on 22 April, he went with the Gitarama *préfet* and Colonel Rusatira to a meeting with the government in Gitarama. Ndindiliyimana called on the government to increase its efforts towards the pacification of the country.[3928] Des Forges discussed this meeting of 22 April in her book, "Leave None to Tell the Story". Des Forges wrote that Rusatira and Ndindiliyimana went to Gitarama on 22 April "to try to convince officials of the interim government and political party leaders that the genocide was destroying the morale of the troops … they argued that the slaughter was 'a prelude to

[3924] T. 17 June 2008, pp. 63-64.
[3925] T. 18 June 2008, p. 62.
[3926] *See* T. 18 June 2008, pp. 31-33; T. 13 October 2006, p. 17; Defence Exhibit 507.
[3927] Chamber's Exhibit 13A, p. 8.
[3928] T. 18 June 2008, pp. 17-18.

defeat'."[3929] Ndindiliyimana further testified that in the evening of 22 April, he met with the President and the Minister of Defence in Gitarama regarding the breakdown of peace in the country. They had "a rather stormy meeting, during which people demonstrated high levels of animosity."[3930]

2225. Ndindiliyimana stated that after 22 April, "[t]here were several events which took on, say, something like a defiance of the *Gendarmerie*, wariness or suspicion of the Chief of Staff of the *Gendarmerie*."[3931] According to Ndindiliyimana, people made it clear that they "felt that the *Gendarmerie* should be abolished".[3932]

2226. On 26 April, Édouard Karemera sent Ndindiliyimana a letter criticising certain aspects of his conduct, particularly the fact that he had Tutsi as part of his personal entourage, and stating that it was Ndindiliyimana's responsibility to take over by leading a group of officers who were in favour of change. Karemera expressed concern about Ndindiliyimana's personal security and stated that he wished to put an end to any "misunderstanding" between Ndindiliyimana and the Minister of Defence. Ndindiliyimana testified that the difficulties between him and the Minister of Defence did not end with Karemera's letter; rather, they were on the rise.[3933] Des Forges interpreted Karemera's letter to Ndindiliyimana as "very threatening". Des Forges stated:

> I would read this clearly as a threat, as a very threatening letter, to General Ndindiliyimana saying, "You need to get on board with the programme. You need to stop the representations you've been making to us. You need to more publicly demonstrate your support for what's going on, and you need to do something about these people who were supposed to be Tutsi who are part of your personal staff". So I think it's important to appreciate the pressure that was being brought to bear by a person who has no official responsibility, but who is an extraordinarily powerful figure at this time.[3934]

2227. In the view of the Chamber, the letter from Karemera corroborates the testimony of Ndindiliyimana and Des Forges regarding the meeting with members of the government on 22 April. Specifically, the letter suggests that members of the government were unhappy with the presentations made by Ndindiliyimana and Rusatira at the meeting, and that the relationship between Ndindiliyimana and Bizimana, the Minister for Defence, was particularly strained. Based on this evidence, the Chamber is satisfied that Ndindiliyimana did not have the support of the government at that time.

2228. Ndindiliyimana testified that on or around 15 May, he met with the Prime Minister to tell him as follows: "What you see, what you hear about the *Gendarmerie* and about myself, what do you intend to do about it? What are we? What are we doing?" The Prime Minister replied, "I've heard people who felt that the *Gendarmerie* should be abolished. I know that you're facing problems." People in the Prime Minister's office were telling Ndindiliyimana that it was "rather delicate" and that he "had to be careful". Ndindiliyimana realised that the Prime Minister's warning was serious as he knew "what happens to people who are described

[3929] T. 11 October 2006, pp. 58-59.
[3930] T. 18 June 2008, p. 21.
[3931] T. 18 June 2008, p. 30.
[3932] T. 18 June 2008, p. 31.
[3933] T. 18 June 2008, pp. 31-33; Defence Exhibit 507.
[3934] T. 13 October 2006, p. 17.

as accomplices". At the same time, another *gendarmerie* officer had received similar threats. Ndindiliyimana testified that he was afraid.[3935]

2229. AA-6 stated that in late May or early June, Ndindiliyimana summoned him, together with Karangwa, and informed them that a list of officers to be eliminated had been submitted to President Sindikubwabo; on that list appeared, among others, the names of Rutayisire, Karangwa and Ndindiliyimana. AA-6 stated, "The Chief of Staff told us to take the matter seriously, to establish a list of trusted *gendarmes* for the protection of the General Staff and to be on our guard."[3936] Similarly, AA-2 stated that Ndindiliyimana summoned him and Rutayisire to Ndindiliyimana's office early in the morning "one day". Ndindiliyimana informed the officers that President Sindikubwabo had shown him a list of officers to be eliminated and that Ndindiliyimana, Rutayisire and Karangwa were all on that list. Ndindiliyimana said he was "wary". According to AA-2, it was alleged that the MRND had proposed that the *Gendarmerie* be dissolved and be replaced by the *Interahamwe* because they were more efficient.[3937]

2230. Ndindiliyimana testified that on 5 June, he attended a meeting chaired by the Prime Minister at the Army General Staff office. The Minister of Defence, the Minister of the Interior, the heads of the General Staff and the *secteur* commanders were all present at the meeting. The Prime Minister announced that he had decided to replace the *gendarmerie* Chief of Staff with Colonel Muberuka, and Ndindiliyimana was appointed ambassador to Bonn. With that decision, Ndindiliyimana's career came to an end.[3938] Ndindiliyimana left the country in mid-June.[3939]

2231. Considering the totality of the events of 1994, Ndindiliyimana explained:

> I wanted peace in a situation of conflict; political conflict, war conflict, that neutral stance which was taken in order to be able to bring opposing groups together. First of all, is not an easy stance to take. And, secondly, it is not a stance that allows the neutral person to be easily accepted by one or the other of the conflicting parties, particularly when the problem has been solved in one way or the other.[3940]

2232. The fact that Ndindiliyimana was marginalised and ultimately forced out is also evident from Dallaire's statement before the Belgian Commission of Inquiry into the killing of the Belgian UNAMIR soldiers. Dallaire stated, "During the war, [Ndindiliyimana] saved a number of the Rwandans and was always as responsible as possible to the [UNAMIR] force commander ... [Ndindiliyimana] fled in late June as extremists were eliminating suspected moderates, and he was being targeted." Dallaire confirmed this statement in his testimony before this Chamber.[3941]

2233. Further demonstrating that he was not an extremist who encouraged the killings, Ndindiliyimana testified that in August or September 1994, Dallaire contacted him and asked

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[3935] T. 18 June 2008, p. 60.
[3936] Chamber's Exhibit 14A, p. 4.
[3937] Chamber's Exhibit 7A, 6 November 1997, p. 9; *see also* Chamber's Exhibit 12A, p. 12.
[3938] T. 18 June 2008, p. 68.
[3939] T. 18 June 2008, pp. 71-72.
[3940] T. 19 June 2008, p. 7.
[3941] T. 6 December 2006, p. 43.

him to join the RPF along with Colonel Rusatira, Colonel Gatsinzi and a large number of *gendarmes*.[3942]

2234. Based on the evidence outlined above, the Chamber is satisfied that Ndindiliyimana did not have the support of the Rwandan Government and that he was marginalised and threatened due to his moderate stance in the lead-up to his departure from Rwanda in mid-June 1994. The Chamber notes that it has convicted Ndindiliyimana based on his failure to punish crimes committed by his subordinates at Kansi Parish and St. André College in April 1994. The Chamber recognises that Ndindiliyimana's lack of governmental support during the time of the events underlying his convictions would have hampered his material ability to punish the perpetrators.

7.3.2.3.5 Evidence of Ndindiliyimana's Efforts to Save Tutsi and Prevent or Punish Killings

2235. In assessing Ndindiliyimana's sentence, the Chamber will also consider as mitigating factors any measures that he took to save Tutsi and to prevent or punish killings during the genocide in 1994. In this regard, Des Forges testified "General Ndindiliyimana saved the lives of a number of people ... I am sure that he did, in fact, save lives."[3943] Des Forges also stated that Ndindiliyimana tried to persuade journalists from RTLM and Radio Rwanda to stop calling for violence against Tutsi and discrediting military officers opposed to the genocide.[3944]

2236. Witness CBL104, who was one of Ndindiliyimana's drivers, stated that Ndindiliyimana saved the life of a Tutsi army major named Kambanda at a roadblock between Nyabugogo and Gitikinyoni, and that Ndindiliyimana then took Kambanda to Gitarama to a hotel owned by a Tutsi. According to CBL104, this was only one of "many" examples of Ndindiliyimana saving Tutsi lives.[3945] AA-1, a demobilized *gendarme* and driver, stated that in May 1994, Ndindiliyimana decided of his own volition to evacuate the Kigali population to Gitarama.[3946] He also testified that Ndindiliyimana stationed *gendarmes* at the *Hôtel Tourisme Sport* in Gitarama in order to protect the Tutsi hiding there.[3947] Witness CPL101, a *gendarme* in Ndindiliyimana's escort, confirmed that *gendarmes* were stationed at the *Hôtel Tourisme Sport*.[3948] The Chamber also heard evidence from Antoine Nemeyabahizi, the *hôtelier* of the *Hôtel Tourisme Sport* in Gitarama, who testified that Ndindiliyimana left *gendarmes* to protect Tutsi civilians who were hidden in the hotel.[3949] This evidence was confirmed by other members of Ndindiliyimana's escort such as Witness CBL104.[3950]

2237. Ndindiliyimana testified that on 22 April, he addressed the nation in a radio interview and called on the population "to abstain from killing members of the population, because this might encourage the enemy."[3951] Ndindiliyimana also stated that he protected a number of

[3942] T. 19 June 2008, pp. 5-7.
[3943] T. 13 October 2006, pp. 17-18.
[3944] T. 11 October 2006, p. 60.
[3945] T. 4 June 2008, p. 11 (ICS).
[3946] Chamber's Exhibit 6, p. 4.
[3947] Chamber's Exhibit 6, p. 5.
[3948] T. 18 February 2008, pp. 66-67, 71-77.
[3949] T. 22 January 2008, pp. 41-42.
[3950] T. 4 June 2008, p. 12 (ICS).
[3951] T. 18 June 2008, p. 15; Defence Exhibit 504.

Tutsi at his own home, including Tutsi women, clergy and 20 to 30 orphans.[3952] Witness CBP63 testified that these nuns and priests were evacuated to Gitarama along with 37 orphans.[3953] Witnesses CBP15 and CBP48 confirmed that Ndindiliyimana housed Tutsi in his home in Nyaruhengeri.[3954]

2238. Dallaire testified to a private meeting with Ndindiliyimana on 20 May, during which Ndindiliyimana discussed rescuing and saving Tutsi and how to combat the killings at roadblocks.[3955] Ndindiliyimana stated that he and Dallaire "had a number of meetings to try and find a solution to the issue of the members of the population who were dying like flies because we desired to find a way to peace."[3956] In short, Ndindiliyimana stated, "[W]e tried to do what we could with the resources available".[3957]

2239. Regarding the investigation and punishment of killings, Ndindiliyimana testified that in April 1994 he set up a small team to conduct "investigations into the massacres, into the killings, and to all acts of violence, criminal acts and so forth".[3958] Ndindiliyimana explained, "[W]e set up a group which moved about, visiting units to see what was happening and then report to the general staff … and the Chief of Staff would also visit troops on the ground and make his own assessment."[3959] Ndindiliyimana stated that he was aware of three *gendarmes* who had participated in the massacres and that he had those three men arrested in Kigali for their involvement in the killings. According to Ndindiliyimana, these types of measures, as well as his calls for calm, were not well received by the population and by some hostile politicians. Besides those three men, Ndindiliyimana stated that they did not have any evidence indicating the involvement of *gendarmes* in the killings.[3960]

2240. Based on the evidence outlined above, the Chamber is satisfied that Ndindiliyimana did take measures to save lives and did in fact save the lives of Tutsi civilians. His actions are consistent with his desire for the restoration of peace.

7.3.2.4 Sentencing Consideration

2241. The Chamber has carefully examined the evidence that Ndindiliyimana was known as a moderate Hutu who advocated for the Arusha Accords and cooperated with UNAMIR. A number of Prosecution and Defence witnesses testified that Ndindiliyimana faced serious difficulties in attempting to exercise control over the *gendarmes* throughout Rwanda and that he did in fact take measures to prevent or punish crimes against Tutsi, particularly during April 1994. As the genocide progressed, Ndindiliyimana was sidelined and even threatened by his political opponents. He was relieved of his post on 5 June and he left the country in mid-June 1994.

2242. The Chamber further recalls that Ndindiliyimana has been convicted pursuant to Article 6(3) of the Statute as a result of his failure to punish his subordinates. In this regard,

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[3952] T. 18 June 2008, pp. 43-44. Prosecution Witness ANC testified that he visited Ndindiliyimana's house in Nyaruhengeri in mid-April 1994 and he "saw young men and girls come out." *See* T. 29 May 2006, pp. 60-61.
[3953] T. 23 January 2008, pp. 44-45 (ICS).
[3954] T. 5 February 2008, p. 14 (ICS); T. 5 February 2008, p. 14 (ICS).
[3955] T. 6 December 2006, pp. 60-61.
[3956] T. 17 June 2008, p. 69; T. 23 January 2008, p. 46 (ICS).
[3957] T. 23 June 2008, pp. 11-13.
[3958] T. 17 June 2008, p. 66.
[3959] T. 17 June 2008, p. 66.
[3960] T. 23 June 2008, p. 21.

the Chamber recognises that Ndindiliyimana had limited resources to investigate and punish crimes by his subordinates and that he had a very narrow window of time during which he was in a position to do so.

2243. As noted above, the Chamber considers that these mitigating factors distinguish Ndindiliyimana from the other Accused in this case and from other Accused that have come before this Tribunal. The sentence imposed reflects this difference notwithstanding the gravity of Ndindiliyimana's crimes.

7.3.3 *Nzuwonemeye*

7.3.3.1 Gravity of Offences

2244. The Chamber has determined that on 7 April 1994, RECCE Battalion soldiers under the command of Nzuwonemeye participated in the attack on and killing of Prime Minister Agathe Uwilingiyimana. Nzuwonemeye ordered RECCE troops to reinforce Presidential Guard soldiers at the Prime Minister's residence, and was kept fully informed via radio communications of events as they unfolded at the residence. The Chamber has found that Nzuwonemeye bears both direct responsibility under Article 6(1) and superior responsibility under Article 6(3) for this crime. However, the Chamber has chosen to convict Nzuwonemeye pursuant to Article 6(1) because it considers that this form of liability more accurately reflects his role in this crime. The Chamber will consider Nzuwonemeye's superior responsibility in determining an appropriate sentence.[3961]

2245. The Chamber has also found Nzuwonemeye guilty under Article 6(3) for his role in failing to punish the killing of the Belgian soldiers at Camp Kigali on 7 April. The Chamber found that Nzuwonemeye had reason to know of the involvement of his subordinates in the killings of the Belgian soldiers but failed to punish them for those killings.

7.3.3.2 Aggravating Factors

2246. In aggravation, the Chamber has considered Nzuwonemeye's role as a superior and leader of the RECCE Battalion, and the fact that he abused that position of authority.[3962]

2247. The killing of the Prime Minister, a figurehead of the Rwandan government, carried particular symbolic weight and removed opposition to the ensuing genocide and other crimes that ultimately occurred. The Chamber also considers aggravating the calculated and premeditated nature of the killing of the Prime Minister. This is evidenced by the fact that the operation took place over a number of hours and required the movement of troops, equipment, provisions and ammunition.

2248. Finally, the Chamber finds aggravating Nzuwonemeye's lack of remorse for the crimes, his continual denial of his role in the crimes and his failure to apologise for his actions.[3963]

[3961] Media Appeal Judgement, para. 487 ("When, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both Articles and the accused could be found [responsible] under both provisions, the Trial Chamber should rather enter a conviction on the basis of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating circumstance.").
[3962] *Kamuhanda* Appeal Judgement, para. 347.

7.3.3.3 Mitigating Factors

2249. The Chamber has already discussed the background and individual circumstances of Nzuwonemeye in Chapter I of the Judgement. In considering an appropriate sentence, the Chamber has considered the mitigating factors submitted by the Defence. In particular, it has considered the Defence evidence of Nzuwonemeye's good character,[3964] including witness testimony describing him as a humanist, a decent person[3965], devoted, honest, sociable, courageous[3966] and balanced.[3967]

2250. In regard to Nzuwonemeye's treatment of Tutsi in the RECCE Battalion, the Chamber recalls that Prosecution Witness DY, a Tutsi soldier in the RECCE Battalion, testified that although he was Tutsi, a fact known to Nzuwonemeye and to his fellow soldiers, Nzuwonemeye "had the same confidence in [him] as he had in other members of his unit."[3968] The Chamber has also considered the testimony of Witness Y2, stated that he never heard of Tutsi in the RECCE Battalion being discriminated against and that everyone was treated equally.[3969] Similarly, Witness NGT testified that Nzuwonemeye did not discriminate against Tutsi in the RECCE Battalion,[3970] and Witnesses F10[3971] and DB8-19[3972] both testified that they never observed any anti-Tutsi sentiments from Nzuwonemeye. In addition, Witness K4 stated that he never saw Nzuwonemeye with a list of Tutsi to be eliminated.[3973]

2251. The Chamber has also reviewed the evidence regarding Nzuwonemeye's attitude toward the Arusha Accords. In particular, the Chamber recalls the testimony of Witness F10 that Nzuwonemeye was relieved and happy when he thought there would be national reconciliation and that he had begun planning the process of training RPF soldiers to be integrated into the army.[3974] The Chamber also recalls the evidence of Nzuwonemeye himself that he was "wholeheartedly for the implementation of the Accords".[3975]

[3963] *Rutaganda* Appeal Judgement, para. 590 ("The other factors which weighed in favour of a heavier penalty were that the Appellant ... never showed remorse for the commission of the crimes.").
[3964] T. 6 November 2007, p. 39 (ICS).
[3965] T. 7 July 2008, p. 20 (ICS). Witness B13 stated that Nzuwonemeye is a "humanist" and a "decent person" who does not have a negative attitude towards any group of people.
[3966] T. 6 November 2007, p. 39 (ICS) (Witness F8 stated that Nzuwonemeye was "discrete, devoted, honest, sociable, ... energetic and ... courageous" as well as "very professional and ... a man of good character").
[3967] T. 24 October 2008, p. 6 (ICS) (Witness F10 testified that Nzuwonemeye was "a very balanced person, [and] a very calm person" who was pleased with the reconciliation that was taking place in Rwanda); T. 25 June 2008, p. 9 (Witness Y1 testified that Nzuwonemeye was a "very sociable officer, reserved, who did not want any problem with anyone ... [h]e like talking to his colleagues, respected his superiors" and was sociable, and a friendly and exemplary officer); T. 11 December 2007, p. 44 (co-Accused Bizimungu testified that his assessment of Nzuwonemeye was "very positive" and that "he was an intelligent, available, disciplined and very respectful officer"); T. 19 June 2008, p. 31 (co-Accused Ndindiliyimana testified that Nzuwonemeye was a "very good cadet officer", "a very balanced young man", and a "conscientious officer" who was appreciated by many).
[3968] T. 24 January 2006, pp. 16-17; Prosecution Exhibit 74.
[3969] T. 15 September 2008, p. 12.
[3970] T. 23 September 2008, p. 8.
[3971] T. 24 October 2008, p. 7 (ICS).
[3972] T. 7 November 2007, p. 35 (ICS).
[3973] T. 30 June 2008, p. 26.
[3974] T. 24 October 2008, p. 10.
[3975] T. 7 October 2008, p. 30.

7.3.3.4 Sentencing Consideration

2252. The Chamber has carefully considered the mitigating factors set out above. However, it finds that they have little impact when weighed against Nzuwonemeye's direct responsibility under Article 6(1) and the aggravating factors of the crimes attributed to him.

7.3.4 *Sagahutu*

7.3.4.1 Gravity of Offences

2253. The Chamber recalls that Sagahutu was the commander of Squadron A of the RECCE Battalion. On 7 April 1994, acting on instructions from Nzuwonemeye, Sagahutu sent armoured vehicles and troops to the Prime Minister's residence. Sagahutu then maintained frequent radio contact with RECCE Battalion soldiers at the residence of the Prime Minister, particularly W.O. Bizimungu. Sagahutu instructed W.O. Bizimungu that the Belgians should be allowed to enter the Prime Minister's residence but that they should not leave the residence with anything, and that RECCE Battalion soldiers should shoot back at the Belgians if attacked. He was therefore fully informed of the operation that resulted in the Prime Minister's assassination.

2254. The Chamber recalls that the Prosecution charges Sagahutu with both direct responsibility under Article 6(1) and superior responsibility under Article 6(3) for the killing of the Prime Minister. The Chamber has chosen to convict Sagahutu under Article 6(1) because it considers that this form of liability more accurately reflects his role in this crime. The Chamber will consider Sagahutu's command responsibility in determining an appropriate sentence.[3976]

2255. The Chamber has also found that on 7 April 1994, RECCE Battalion soldiers under Sagahutu's command participated in arresting, disarming, killing and mutilating Belgian UNAMIR soldiers. The members of the UNAMIR force were first beaten by war-wounded soldiers with a variety of instruments including canes, rifle butts and rocks, resulting in the death of at least six UNAMIR peacekeepers. RECCE Battalion soldiers were present during this attack, but the Chamber is not satisfied beyond reasonable doubt that they participated in it. Those Belgian UNAMIR soldiers who escaped this attack sought refuge in a nearby building, where they too were ultimately killed by a combination of weaponry including firearms and grenades. The Chamber is satisfied that RECCE Battalion soldiers participated in this phase of the attack. Furthermore, Sagahutu was personally informed of this attack and gave orders that the RECCE Battalion soldiers should counter any UNAMIR resistance. The Chamber has found that an MGL used in the attack came from Sagahutu's office and that Sagahutu was aware that it was to be used to attack the UNAMIR soldiers.

2256. The Chamber recalls that the Prosecution charges Sagahutu with both direct responsibility under Article 6(1) and superior responsibility under Article 6(3) for murder as a war crime in relation to the killings of the Belgian soldiers. In addition, the Prosecution charges Sagahutu with superior responsibility under Article 6(3) for murder as a crime against humanity in relation to these killings. The Chamber has convicted Sagahutu under

[3976] Media Appeal Judgement, paras. 487 ("When, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both Articles and the accused could be found [responsible] under both provisions, the Trial Chamber should rather enter a conviction on the basis of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating circumstance.").

Article 6(1) for murder as a war crime for his role in ordering as well as aiding and abetting the killing of the Belgian soldiers at Camp Kigali on 7 April. In addition, in line with the Indictment, the Chamber has convicted Sagahutu as a superior under Article 6(3) for failing to prevent or punish these crimes.

7.3.4.2 Aggravating Factors

2257. As aggravating circumstances, the Chamber considers Sagahutu's role as a superior and leader of Company A of the RECCE Battalion who gave orders relating to the killings of the Prime Minister and the UNAMIR soldiers.[3977] Sagahutu could have used his influence and position of authority to prevent these crimes. Instead, he ordered armoured vehicles to move to the Prime Minister's residence and ordered RECCE Battalion soldiers to return fire if attacked and to counter forcefully any UNAMIR resistance. Soldiers at the Prime Minister's residence sought his guidance as to transporting the Prime Minister and as to allowing UNAMIR soldiers into the Prime Minister's residence. It stands to reason that in a unit as specialised and disciplined as the RECCE Battalion, actions would not have been taken without the permission of the company commander and that, conversely, Sagahutu's authority would have gone a long way had he taken measures to prevent these crimes.

2258. The Chamber finds that the identities of the victims enhance the penalty that should be applied. The killings of the Prime Minister, a figurehead of the Rwandan government, and the UNAMIR peacekeepers, international representatives ensuring adherence to the Arusha Accords, carried particular symbolic weight and removed impediments to the genocide and other crimes that ultimately occurred. It is additionally aggravating that the UNAMIR peacekeepers were sent to Rwanda by the UN Security Council under its Chapter VI peacekeeping authority and were engaged in protecting the Prime Minister under that authority at the time of their capture.

2259. The Chamber also considers aggravating the calculated and premeditated nature of both the killing of the Prime Minister and the killing of the Belgian soldiers. This is evidenced by the fact that both operations took place over a number of hours and required the movement of troops, equipment, provisions and ammunition.

2260. The Chamber further notes as aggravating circumstances the particular sadism with which the Prime Minister's body was violated and Sagahutu's lack of remorse.[3978]

7.3.4.3 Mitigating Factors

2261. The Chamber has already discussed Sagahutu's background and individual circumstances in Chapter I of the Judgement. The Chamber takes note of the mitigating factors submitted by the Defence. In particular, the Chamber recalls the evidence that

[3977] Media Appeal Judgement, paras. 487-488 ("When, for the same count and the same set of facts, the accused's responsibility is pleaded pursuant to both Articles and the accused could be found [responsible] under both provisions, the Trial Chamber should rather enter a conviction on the basis of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating circumstance."); *Karera* Trial Judgement, para. 583 ("Life imprisonment [has] ... been imposed on those at a lower level who planned or ordered atrocities or if they participated in the crimes with particular zeal or sadism.").
[3978] *Rutaganda* Appeal Judgement, para. 590 ("The other factors which weighed in favour of a heavier penalty were that the Appellant ... never showed remorse for the commission of the crimes.").

Sagahutu was a disciplined officer[3979] who was one of the best commanders in the Army[3980] and was brave, valiant, trustworthy, courageous,[3981] respectful,[3982] kind[3983] and not prejudiced.[3984]

2262. The Chamber also recalls that a number of witnesses testified to Sagahutu's good deeds during the war. In particular, Sagahutu's co-Accused Nzuwonemeye testified that Sagahutu assisted in the evacuation of the Belgian ambassador, intervened to protect Belgian soldiers at a Belgian school, and successfully conducted an operation against looting in Kigali town.[3985] Witness CSS recounted an episode where, at risk to personal safety, Sagahutu prevented citizens from attacking a convoy of Belgian soldiers and cleared a roadblock so that the convoy could continue.[3986] Witness SMS testified that Sagahutu rescued a boy named Rashid whom he had discovered next to the boy's dead mother. Rashid subsequently lived with Sagahutu's family in Bukavu.[3987] Additionally, a number of witnesses testified that Sagahutu helped Tutsi and Hutu to evacuate and assisted refugees with services and resources.[3988]

7.3.4.4 Sentencing Consideration

2263. The Chamber has considered the evidence regarding Sagahutu's character and his selective assistance to some of those in need during the course of the war.[3989] However, the Chamber finds that these mitigating factors have little impact when weighed against Sagahutu's direct responsibility under Article 6(1) and the aggravating factors of the crimes attributed to him.

[3979] T. 7 October 2008, pp. 26-27.
[3980] T. 24 October 2008, p. 14 (ICS).
[3981] T. 13 November 2008, p. 16; T. 10 November 2008, p. 52; T. 11 November 2008, p. 21.
[3982] T. 23 October 2008, pp. 43, 45.
[3983] T. 30 October 2008, p. 62.
[3984] T. 23 October 2008, pp. 43, 45.
[3985] T. 7 October 2008, pp. 26-27.
[3986] T. 23 October 2008, p. 36.
[3987] T. 10 November 2008, pp. 48-49.
[3988] T. 30 October 2008, pp. 57-62 (Witness RTS testified that Sagahutu helped him and a group, comprised of both Hutu and Tutsi, to evacuate Rwanda); T. 11 November 2008, pp. 20-21 (Witness Théophile Twagiramungu testified that he was in contact with Sagahutu regarding evacuating persons from Kigali in April or May 1994, that Sagahutu helped both Hutu and Tutsi to evacuate, and that he met a man named Rubayiza in September 1994 who was a Tutsi that Sagahutu had helped escape); T. 17 November 2008, pp. 36-37 (Witness Emmanuel Nsanzubuhoro testified that Sagahutu protected the family of Rubayiza even though he knew that Rubayiza was a supporter of the RPF); T. 22 October 2008, pp. 70-72; Prosecution Exhibit 586 (Witness RVS, a Tutsi, testified that men were coming to shoot him at the house he was hiding at and Sagahutu transported him to safety at Sagahutu's army house in Camp Kigali, knowing he was a Tutsi. The Witness spent two months there.); T. 17 November 2008, pp. 6-12 (Witness FSS testified that Sagahutu helped the Witness and others, both Hutus and Tutsi, including one Rubayiza, to evacuate and later to retrieve their possessions from Kigali. The Witness also saw Sagahutu in Nairobi in December 1997 and learned that Sagahutu had been assisting refugees there and gave the Witness $50).
[3989] *Nzabirinda* Trial Judgement, para. 77; *Bagosora et al.* Trial Judgement, para. 2273.

7.4 Conclusion

2264. The Chamber has the discretion to impose a single sentence "[w]here the crimes ascribed to an accused, regardless of their characterisation, form part of a single set of crimes committed in a given geographic region during a specific time period."[3990] The Chamber notes that the convictions for genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II are based largely on the same underlying criminal acts.

2265. Considering all the relevant circumstances discussed above:

2266. The Chamber SENTENCES Augustin Bizimungu to 30 years imprisonment. Augustin Bizimungu shall receive credit for the time served since he was arrested in Angola on 2 August 2002.

2267. The Chamber notes that Ndindiliyimana has spent just over 11 years in custody since he was arrested in Belgium on 28 January 2000. The Chamber decides that the sentence to be imposed on Ndindiliyimana is commensurate with the time he has already spent in custody to date. The Chamber therefore SENTENCES Ndindiliyimana to time served.

2268. The Chamber SENTENCES François-Xavier Nzuwonemeye to 20 years imprisonment. François-Xavier Nzuwonemeye shall receive credit for the time served since he was arrested in France on 15 February 2000.

2269. The Chamber SENTENCES Innocent Sagahutu to 20 years imprisonment. Innocent Sagahutu shall receive credit for the time served since he was arrested in Denmark on 15 February 2000.

7.4.1 *Consequential Order*

2270. Augustin Bizimungu, François-Xavier Nzuwonemeye and Innocent Sagahutu shall serve their sentences 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 the designation by the Registrar. Pending their transfer, Bizimungu, Nzuwonemeye and Sagahutu shall be kept at the UNDF under their current terms of detention.

2271. Pursuant to Rule 102(B) of the Rules, upon notice of appeal by the Parties, the sentences of Bizimungu, Nzuwonemeye and Sagahutu shall be stayed until the Appeals Chamber renders a final decision or judgement. Bizimungu, Nzuwonemeye and Sagahutu shall remain in detention pending the conclusion of the appeals process.

2272. The Chamber has sentenced Ndindiliyimana to time served and orders his immediate release.

2273. The Chamber requests that the Registry make the necessary arrangements.

[3990] Media Appeal Judgement, paras. 1042-1043, *quoting Kambanda*, paras. 110-112.

17 May 2011. Done in English.

Asoka de Silva	Tagrid Hikmet	Seon Ki Park
Presiding Judge	Judge	Judge

(Seal of the Tribunal)

PARTIALLY DISSENTING OPINION OF JUDGE PARK

1. With due respect, I disagree with the majority of the Chamber in its finding that the Prosecution has failed to adduce sufficient evidence to prove that Ndindiliyimana knew or had reason to know of the implication of his subordinates in the events that led to the killing of some members of a group of about 40 civilians, mainly of Tutsi ethnicity, by *Interahamwe*.[3991]

2. Like the majority of the Chamber, I accept the firsthand and credible account of Witness ATW of the events that led to the killing of a number of Tutsi civilians who were abducted from CELA. I also share the majority's finding regarding the complicity of *gendarmes* at Muhima brigade in the killing of those civilians.

3. However, I disagree with the majority's conclusion that Ndindiliyimana had no reason to know of the risk that those civilians might be killed in the event that *gendarmes* under his command failed to protect them. In my view, Ndindiliyimana's own account of the events at CELA indicates that he must have been aware of the fact that a group of Tutsi civilians were removed from CELA and taken to the Muhima *Gendarmerie* brigade for questioning on their ties with the RPF at the behest of *préfet* Renzaho.

4. In reaching this finding, I have placed particular weight on Ndindiliyimana's admitted knowledge of the presence of a large number of assailants at CELA who intended to attack the refugees on the suspicion that some of the refugees were accomplices of the RPF. I have also considered his admission that he knew of the intervention of *préfet* Renzaho at CELA shortly after the assailants had gathered there. Ndindiliyimana further testified that a search was conducted at CELA and weapons were found among the refugees. Witness ATW, himself a Tutsi refugee at CELA, confirmed that some of the refugees at CELA were armed and used those arms to repulse attacks by *Interahamwe* prior to 20 April 1994. In my view, the fact that those refugees were found to be armed would have reinforced the belief of the assailants that they were in fact armed members of the RPF.

5. Against this backdrop, I agree with the majority that Ndindiliyimana's account of how the fraught situation at CELA was resolved is implausible. Ndindiliyimana's claim that those refugees were transferred to St. Paul, where they were protected by *gendarmes*, is an unconvincing attempt to disavow knowledge of the removal and detention of the civilians at CELA.

6. I am therefore convinced that given his knowledge of the events that transpired at CELA, Ndindiliyimana must have been aware of the removal and transfer of those civilians from CELA to Muhima *Gendarmerie* brigade. I recall Ndindiliyimana testifying that he was aware of the presence of *gendarmes* at CELA during the attack. Witness ATW also testified to having seen *gendarmes* at CELA after the arrival of Renzaho. His evidence of the presence of *gendarmes* at CELA during the events in question further heightens the possibility of their involvement in removing those civilians from CELA to Muhima brigade.

[3991] Indictment, para. 77.

7. This being the case, Ndindiliyimana must have been aware of the grave risk that the Tutsi civilians who were transferred from CELA to Muhima *Gendarmerie* brigade by *Interahamwe* might be killed in the event that *gendarmes* failed to protect them. The fact that those civilians were accused of being armed accomplices of the RPF compounded the risk of them being killed. Ndindiliyimana must have been aware of the prominent and widely-publicised role of the *Interahamwe* in the killing of Tutsi civilians mainly on the ground that they were accomplices of the RPF. This leads me to conclude that Ndindiliyimana was on notice of the strong prospect that civilians who were transferred from CELA to Muhima brigade might be killed by *Interahamwe* in the event that *gendarmes* at Muhima brigade failed to protect them.

8. In reaching this conclusion, I have deferred to the insightful findings of the Appeals Chamber in *Čelebići,* which held that even general information in the possession of the commander that would put him on notice of possible unlawful acts by his subordinates would be sufficient.[3992] This information does not need to provide specific details about unlawful acts committed or about to be committed; the information need only be "sufficient to justify further inquiry."[3993] In other words, the information need not be such that, by itself, it would be sufficient to compel the conclusion of the existence of such crimes, but it must be sufficiently clear and alarming to indicate the strong likelihood that the offences charged had been or were about to be committed in order to trigger the commander's duty to act.[3994] Thus, the fact that Ndindiliyimana did not have dispositive information on the eventual killing of the Tutsi refugees by *Interahamwe* at Rugege does not negate the attribution of notice for the purposes of superior responsibility.

9. In view of the information available to Ndindiliyimana alerting him about the strong prospect that the civilians who were abducted from CELA and taken to Muhima brigade might be killed in the event that they were not protected by the *gendarmes* at the brigade, he should have carried out or ordered further investigation to determine whether *gendarmes* under his command may have been complicit in the killing of those Tutsi civilians by *Interahamwe*. The information available to Ndindiliyimana was of a nature that, at a minimum, should have "indicated to any reasonable commander a need for additional investigation in order to ascertain whether offences were being committed or were about to be committed by his subordinates."[3995] The fact that he denied that any of the Tutsi refugees at CELA were killed on or about 22 April 1994 indicates that he did not carry out any investigation to determine the role of his subordinates in the killing of the Tutsi civilians who were removed from CELA.

10. I also recall that Ndindiliyimana testified to having received regular SITREPs from his units in the field throughout April 1994. According to Ndindiliyimana, these SITREPs contained "information on the situation that prevailed in the *préfecture* where [the *Gendarmerie*] had [its] units".[3996] I find it implausible that an event such as the detention of a group of about 40 mainly Tutsi civilians would not have been reported to Ndindiliyimana in the SITREPs that he received at the time. This further bolsters my conclusion that he had

[3992] Čelebići Appeal Judgement, para. 238; *see also Halilović* Trial Judgement, para. 68.
[3993] Čelebići Appeal Judgement, para. 238; *Kordić and Čerkez* Trial Judgement, para. 437; *Halilović* Trial Judgement, para. 68.
[3994] *Kordic* Trial Judgement, para. 437, *Strugar* Trial Judgement, paras. 369-370; *Čelebići* Trial Judgement, para. 393; CDF Trial Judgement, para. 244; AFRC Trial Judgement, para. 794.
[3995] *Galić* Trial Judgement, para. 706
[3996] T. 23 June 2008, p. 9, confirming his testimony in *Bagambiki,* T. 17 February 2003, p. 69.

reason to know that his subordinates might have been complicit in the killing of the Tutsi civilians who were abducted from CELA.

11. I would therefore conclude that the Prosecution has proved beyond reasonable doubt that Ndindiliyimana had a reason to know of the implication of *gendarmes* at Muhima brigade in the events that led to the killing of Tutsi civilians who were abducted from CELA on or about 22 April 1994.

17 May 2011. Done in English.

Seon Ki Park

Judge

ANNEX A: PROCEDURAL HISTORY

1) The Tribunal and Its Jurisdiction

1. The Judgement in the case of *The Prosecutor v. Ndindiliyimana, et al.* is issued by Trial Chamber II ("the Chamber") of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge Asoka De Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park.

2. The UN Security Council established the Tribunal after official UN reports indicated that genocide and widespread, systematic and flagrant violations of international humanitarian law had been committed in Rwanda.[3997] The Security Council determined that this situation constituted a threat to international peace and security; resolved to put an end to such crimes and to bring to justice the persons responsible for them; and expressed conviction that the prosecution of such persons would contribute to the process of national reconciliation and to the restoration of peace. Consequently, on 8 November 1994, the Security Council acting under Chapter VII of the UN Charter adopted Resolution 955 establishing the Tribunal.[3998]

3. The Tribunal is governed by the Statute annexed to UN Security Council Resolution 955 ("the Statute") and by its Rules of Procedure and Evidence ("the Rules").[3999]

4. The Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the Republic of Rwanda, and Rwandan citizens responsible for such violations committed in the territory of neighbouring States.[4000] Articles 2, 3 and 4 of the Statute provide the Tribunal with subject-matter jurisdiction over acts of genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. The Tribunal's temporal jurisdiction is limited by Article 1 of the Statute to acts committed between 1 January 1994 and 31 December 1994.

2) Pre-Trial Phase

5. On 28 January 2000, Judge Laïty Kama confirmed an Indictment dated 20 January 2000 against Augustin Ndindiliyimana, Augustin Bizimungu, Protais Mpiranya, François-Xavier Nzuwonemeye, and Innocent Sagahutu, and ordered that Count 3, Complicity in Genocide, should not be charged concurrently with Count 2, genocide, but should be amended and pleaded as an alternative to Count 2. The Chamber also issued an order of non-disclosure of the Indictment until it had been served on all the Accused.[4001]

[3997] UNSG Report on Rwanda, 1994/924; Expert Report Pursuant UNSC Resolution 935, 1994/1125; Special Rapporteur Reports, 1994/1157, Annexes I and II.
[3998] UN Doc. S/RES/955 (1994).
[3999] Originally adopted by the Judges of the Tribunal on 5 July 1995, the Rules were last amended on 21st May 2005 during the Fifthteenth Plenary Session. The Statute and the Rules are available at the Tribunal's website: <http://www.ictr.org>.
[4000] Articles 1, 5 of the Statute.
[4001] *Ndindiliyimana* Decision Confirming the Indictment.

3) Arrests and Initial Appearances of the Accused

a) Ndindiliyimana

6. On 28 January 2000, Judge Kama issued a Warrant of Arrest and Order for Transfer and Detention against Augustin Ndindiliyimana.[4002]

7. Augustin Ndindiliyimana was arrested on 29 January 2000 in Belgium and transferred from Belgium to the UNDF in Arusha, Tanzania on 22 April 2000.[4003] He made his initial appearance before Judge Pavel Dolenc on 27 April 2000 and entered a plea of not guilty.

b) Bizimungu

8. On 12 April 2002, Judge Pavel Dolenc issued a Warrant of Arrest and Order of Transfer and Detention against Augustin Bizimungu.

9. Augustin Bizimungu was arrested on 2 August 2002 in Angola and transferred to the UNDF in Arusha, Tanzania on 14 August 2002[4004] He made his initial appearance before Judge Pavel Dolenc on 21 August 2002 and entered a plea of not guilty.

c) Nzuwonemeye

10. On 2 February 2000, Judge Kama issued a Warrant of Arrest and Order for Transfer and Detention against François-Xavier Nzuwonemeye.[4005]

11. François-Xavier Nzuwonemeye was arrested in France on 15 February 2000 and transferred to the UNDF in Arusha, Tanzania on 23 May 2000.[4006] He made his initial appearance on 25 May 2000 before Judge Pavel Dolenc and entered a plea of not guilty.

d) Sagahutu

12. On 2 February 2000, Judge Kama issued a Warrant of Arrest and Order for Transfer and Detention against Innocent Sagahutu.[4007]

13. Innocent Sagahutu was arrested on 15 February 2000 in Denmark and transferred to the UNDF on 24 November 2000.[4008] He made his initial appearance before Judge Mehmet Güney on 28 November 2000 and entered a plea of not guilty.

4) Other Pre-Trial Proceedings

14. On 19 October 2000, Trial Chamber II denied a purportedly preliminary motion brought by the Defence for Ndindiliyimana.[4009] In its motion, the Defence for Ndindiliyimana

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[4002] *Ndindiliyimana* Warrant of Arrest for Ndindiliyimana.
[4003] ICTR Detainees—Status on 16 August 2005.
[4004] ICTR Detainees—Status on 16 August 2005.
[4005] *Ndindiliyimana* Warrant of Arrest for Nzuwonemeye.
[4006] ICTR Detainees—Status on 16 August 2005.
[4007] *Ndindiliyimana* Warrant of Arrest for Sagahutu.
[4008] ICTR Detainees—Status on 16 August 2005.

submitted that the Tribunal lacked jurisdiction over Ndindiliyimana as the underlying issues had already been examined by the Belgian *Commission de Recours des Réfugiés*. Therefore, the Defence submitted that the impending trial would contravene the prohibition of double jeopardy as set out in Article 9(2) of the Statute. The Defence further submitted that the trial would violate the principle of *res judicata*, which precludes the re-litigation of the same issues in order to prevent inconsistent findings on the same issues, and that the Indictment against Ndindiliyimana was defective. The Defence further argued that the Prosecution had violated its disclosure obligations and had therefore materially prejudiced Ndindiliyimana's fair trial rights to be informed of the charges against him.

15. In its Decision, the Chamber refused to consider the motion as a preliminary motion within the meaning of Rule 72 of the Rules on the ground that the time for filing such motions had elapsed and Ndindiliyimana failed to show good cause for not filing the motion within time. Consequently, the Chamber addressed the issues raised in this motion under Rule 73. With respect to the Defence arguments that the Chamber lacked jurisdiction, the Chamber found that the proceedings against Ndindiliyimana in this Tribunal did not violate the prohibition against double jeopardy set out in Rule 9(2) of the Rules since he was neither charged with any crime brought before the Tribunal in the asylum proceedings before the Belgian Commission, nor convicted of any crimes as the commission lacked criminal jurisdiction. The Chamber also found that the impending trial against Ndindiliyimana before the Tribunal did not contravene the doctrine of *res judicata* since the parties before the Tribunal and the Commission were not the same. As to the defects in the Indictment, the Chamber found that the consideration of defects in the form of the Indictment was time-barred, and to the extent that some of the alleged defects were not defects in the form of the Indictment but rather defects in the Indictment itself the Chamber concluded that the Defence could broach these issues in the course of the trial.[4010]

16. On 10 April 2002, the Chamber composed of Judges William Sekule, presiding, William C. Matanzima Makutu and Arlette Ramaroson, denied the Defence for Ndindiliyimana's request for the immediate release of the Accused and stay of all charges against him on the basis that the Prosecution had not complied with its disclosure obligations and that the evidence disclosed at that time lacked probative value and was inadmissible.[4011] On 16 April 2002, the Chamber issued a corrigendum to the above decision.[4012]

17. On 25 September 2002, the Chamber partially granted a preliminary motion brought by the Defence for Sagahutu and ordered the Prosecution to delete the introductory phrase before each count and to mention in each count only the specific paragraphs that directly concern the allegations against the Accused throughout the Indictment. The Chamber found that several paragraphs of the Indictment lacked specificity and ordered that they be clarified if the Prosecution intended to rely on them. Moreover, the Chamber ordered the Prosecution to amend Count 1 of the Indictment so as to complete the phrase "conspired with others" and to precisely indicate the names of some of the co-conspirators of the Accused. The Chamber also ordered the Prosecution to verify the official position occupied by Sagahutu at the time of the events. The Chamber rejected the remainder of the Defence requests.[4013] On 23 March

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[4009] *Ndindiliyimana* Decision on Urgent Motion to Stay Indictment.
[4010] *Ndindiliyimana* Decision on Urgent Motion to Stay Indictment.
[4011] *Ndindiliyimana* Decision on Motion for Immediate Release.
[4012] *Ndindiliyimana* Corrigendum to Decision on Motion for Immediate Release.
[4013] *Ndindiliyimana* Decision on Sagahutu's Preliminary Motion.

2003, the Appeals Chamber denied the Defence for Sagahutu's request for leave to appeal the Trial Chamber's refusal to grant the request for provisional release of the Accused.[4014] The Appeals Chamber reasoned that the Defence for Sagahutu had failed to demonstrate good cause within the meaning of Rule 65(D) of the Rules which requires a party seeking leave to appeal a Trial Chamber's refusal to grant a request for provisional release to show that the Trial Chamber may have erred in making its impugned decision.

18. On 12 December 2002, the Chamber denied a preliminary motion brought by the Defence for Nzuwonemeye, noting that many of the issues raised in this motion had been addressed in its 25 September 2002 Decision regarding Sagahutu's preliminary motions.[4015]

19. On 26 March 2004, Trial Chamber II granted the Prosecution leave to amend the Indictment and decided that the Defence should be granted a further appearance in accordance with Rule 62 in order to enter a new plea on the new charges pursuant to Rule 50(B).[4016] On 30 April 2004, all the Accused made further appearances before Judge Arlette Ramaroson and pleaded not guilty to the new charges pleaded in the Amended Indictment. Ndindiliyimana refrained from entering a plea and the Chamber entered a plea of not guilty pursuant to Rule 62(A)(iii) of the Rules. The rest of the Accused pleaded not guilty to all counts. The Chamber suggested the date of 20 September 2004 for the commencement of the trial.

20. On 26 March 2004, the Chamber denied the Defence for Ndindiliyimana's urgent oral motion for a stay of the Indictment, or in the alternative, a reference to the Security Council.[4017] The Chamber reasoned that the Defence for Ndindiliyimana had failed to meet its burden of showing the Prosecution's impermissible motive in indicting and prosecuting the Accused.

21. On 10 June 2004, the President of the Tribunal, Judge Erik Møse, declined the application by the Defence for Bizimungu for review of the Registrar's decision denying the assignment of Emmanuel Rwirangira as an investigator for the Defence for Bizimungu.[4018] The President stated that the Registrar's exercise of discretion in this instance was not unreasonable or based on extraneous factors and had not therefore prejudiced the rights of the Accused.

22. On 15 July 2004, the Chamber ordered the Prosecution to make a few typographical revisions to the Amended Indictment and denied the rest of Bizimungu's preliminary motions.[4019]

23. On 20 August 2004, the Chamber granted the Prosecution's request to sever Protais Mpiranya from the impending trial of Ndindiliyimana, Bizimungu, Nzuwonemeye and Sagahutu in view of the fact that he remained at-large. The Chamber reasoned that the severance of Mpiranya from the trial was warranted in order to safeguard the rights of the

[4014] *Ndindiliyimana* Decision on Sagahutu's Leave to Appeal.
[4015] *Ndindiliyimana* Decision on Sagahutu's Preliminary Motion.
[4016] *Ndindiliyimana* Decision on Prosecution Rule 50 Motion.
[4017] *Ndindiliyimana* Decision on Urgent Oral Motion to Stay Indictment.
[4018] *Ndindiliyimana* Decision on Assignment of Rwirangira.
[4019] *Ndindiliyimana* Decision on Bizimungu's Preliminary Motion.

remaining Accused.[4020] The Prosecution filed an Amended Indictment reflecting this change on 23 August 2004.

24. On 16 September 2004, the Chamber partially granted the Defence for Nzuwonemeye's request for the disclosure of the prior statements of Prosecution Witness General Dallaire and ordered the Prosecution to disclose the transcripts of his previous testimony before the Tribunal. With respect to the Defence submissions regarding the Pre-Trial Brief, the Chamber referred those issues to the Pre-trial conference to be held under Rule 73*bis* of the Rules. The Chamber further requested the Defence to specify, if it so desired, the nature and the legal basis of its request for the disclosure of the statements of Witnesses XXN, AN and DBQ.[4021]

5) The Indictment of 23 August 2004

a) Ndindiliyimana

25. The Indictment, as amended on 23 August 2004, charges Augustin Ndindiliyimana with six counts: conspiracy to commit genocide (Count 1) pursuant to Article 6(1) of the Statute; genocide (Count 2), or alternatively complicity in genocide (Count 3) pursuant to Articles 6(1) and 6(3) of the Statute; murder as a crime against humanity (Count 4) pursuant to Articles 6(1) and 6(3) of the Statute; extermination as a crime against humanity (Count 5) pursuant to Article 6(3) of the Statute; and murder as a violation of Article 3 common to the Geneva Conventions and Additional Protocol II (Count 7) pursuant to Articles 6(1) and 6(3) of the Statute.

26. The Indictment alleges that in his capacity as Chief of Staff of the *Gendarmerie nationale*, Augustin Ndindiliyimana exercised authority and disciplinary power over all *gendarmes*.

b) Bizimungu

27. The Indictment, as amended on 23 August 2004, charges Augustin Bizimungu with eight counts: conspiracy to commit genocide (Count 1) pursuant to Article 6(1) of the Statute; genocide (Count 2), or alternatively complicity in genocide (Count 3) pursuant to Articles 6(1) and 6(3) of the Statute; murder as a crime against humanity (Count 4) pursuant to Articles 6(1) and 6(3) of the Statute; extermination as a crime against humanity (Count 5) pursuant to Article 6(3) of the Statute; rape as a crime against humanity (Count 6) pursuant to Article 6(3) of the Statute; murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7) pursuant to Articles 6(1) and 6(3) of the Statute; and rape, humiliating and degrading treatment as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 6(3) of the Statute.

28. The Indictment alleges that in his capacity as Chief of Staff of the Rwandan Army, Augustin Bizimungu exercised authority over all soldiers in the Army.

[4020] *Ndindiliyimana* Decision on Motion for Separate Trial.
[4021] *Ndindiliyimana* Decision on Rule 73 Motion.

c) Nzuwonemeye

29. The Indictment, as amended on 23 August 2004, charges François-Xavier Nzuwonemeye with five counts: conspiracy to commit genocide (Count 1) pursuant to Article 6(1) of the Statute; murder as a crime against humanity (Count 4) pursuant to Articles 6(1) and 6(3) of the Statute; rape as a crime against humanity (Count 6) pursuant to Article 6(3) of the Statute; murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7) pursuant to Articles 6(1) and 6(3) of the Statute; and rape, humiliating and degrading treatment, as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 6(3) of the Statute.

30. The Indictment alleges that in his capacity as Commander of the RECCE Battalion of the Rwandan Army, François-Xavier Nzuwonemeye exercised authority over all the soldiers within that battalion.

d) Sagahutu

31. The Indictment, as amended on 23 August 2004, charges Innocent Sagahutu with five counts: conspiracy to commit genocide (Count 1) pursuant to Article 6(1) of the Statute; murder as a crime against humanity (Count 4) pursuant to Articles 6(1) and 6(3) of the Statute; rape as a crime against humanity (Count 6) pursuant to Article 6(3) of the Statute; murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7) pursuant to Articles 6(1) and 6(3) of the Statute; and rape, humiliating and degrading treatment, as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 6(3) of the Statute.

32. The Indictment alleges that in his capacity as Second-in-Command or acting commander of the RECCE Battalion, Innocent Sagahutu exercised authority over all soldiers in the Battalion.

6) Trial Phase

33. On 17 September 2004, a pre-trial conference and a status conference were held where, *inter alia*, the Chamber confirmed 20 September 2004 as the scheduled date for the commencement of the trial. The Prosecution filed its Pre-Trial Brief on 17 June 2004.

34. On 20 September 2004, the trial began before Trial Chamber II. In the course of 395 trial days, the Chamber heard a total of 216 witnesses, 72 for the Prosecution and 144 for the Defence.

35. On 24 September 2004, the Chamber denied motions by the Defence for Bizimungu, Ndindiliyimana and Nzuwonemeye alleging the Prosecutions's failure to comply with its disclosure obligations pursuant to Rule 66 and discriminatory exercise of its prosecutorial discretion.[4022] The Chamber found that the Prosecution had complied with its Rule 66 disclosure obligation and that the Defence had not substantiated its claim that the Prosecution had abused its prosecutorial discretion. It therefore denied requests for the stay of the proceedings against any of the Accused, adjournment of the trial and the transfer of Ndindiliyimana to a national jurisdiction for trial. On 6 April 2005, the Chamber denied the Defence for Ndindiliyimana's request for certification to appeal the Chamber's decision

[4022] *Ndindiliyimana* Decision on Motions for Stay of Proceedings.

dated 24 September 2004 dismissing Ndindiliyimana's request for transfer of his trial to a national jurisdiction.[4023]

36. On 7 October 2004, the Registrar withdrew the assignment of Michel Crossier as Lead Counsel for the Accused Augustin Bizimungu. [4024] On 12 October 2004, the Registrar withdrew the assignment of Antoine Berraud as Co-Counsel for François-Xavier Nzuwonemeye.[4025] On 26 January 2005, the Registrar withdrew the assignment of Didier Patry as Co-Counsel for Innocent Sagahutu.[4026] On 21 April 2005, the Registrar withdrew the assignment of Andre Ferran as Lead Counsel for François-Xavier Nzuwonemeye.[4027]

37. At a status conference held on 11 October 2004 following the withdrawal of Lead Counsel for Bizimungu, the Chamber granted the Defence request to adjourn the proceedings for two months to allow Bizimungu's new Lead Counsel to prepare for the Defence.[4028]

38. On 25 January 2005, the Chamber denied the Defence for Bizimungu's motion for certification to appeal its Decision dated 3 November 2004.[4029] The Chamber reasoned that the arguments advanced by the Defence were either similar to those pleaded in its motion that led to the impugned Decision or that they relate to grounds of appeal that were premature and irrelevant.

39. On 11 February 2005, the Chamber granted the Prosecution's motions to add Witnesses XXQ, ATZ and AWC to its witness list and remove seven others, noting that this variance promoted judicial economy and would not prejudice the Accused.[4030] On 21 September 2005, the Chamber granted another Prosecution Motion to replace deceased Witness HM with Witness ATW, to add Witness ANC, and withdraw Witnesses DAO, IG, CE, QZ, DAY and BA.[4031] On 26 October 2005, the Chamber dismissed the Defence for Ndindiliyimana's request for certification to appeal the Chamber's decision rendered on 21 September 2005, which gave the Prosecution leave to vary its witness list pursuant to Rule 73*bis*(E).[4032]

40. On 1 April 2005, the Chamber granted the Defence for Bizimungu's urgent motion pursuant to Rule 73 of the Rules opposing the Prosecution's objection to a question raised by the Defence during cross examination of a Prosecution witness on the basis that the information it sought to elicit was privileged.[4033] The Chamber held that a Prosecution witness is not a client of the Prosecution, and therefore the privilege provided for under Rule 97 does not apply to the relationship between the Prosecution and its witnesses. The Chamber specified that the Defence could cross-examine a Prosecution witness about pre-testimony meetings with the Prosecution provided that such cross-examination was limited to the number of preparatory meetings, the dates of the meetings and the duration of the meetings.

[4023] *Ndindiliyimana* Decision on Ndindiliyimana's Request for Appeal.
[4024] *Ndindiliyimana* Decision on Withdrawal of Croisser.
[4025] *Ndindiliyimana* Decision on Withdrawal of Berraud.
[4026] *Ndindiliyimana* Decision on Withdrawal of Patry.
[4027] *Ndindiliyimana* Decision on Withdrawal of Ferran.
[4028] T. 11 October 2004, pp. 14, 15.
[4029] *Ndindiliyimana* Decision on Defence Request to Appeal.
[4030] *Ndindiliyimana* Decision on Prosecution Rule 73 Motion.
[4031] *Ndindiliyimana* Decision on Prosecution 9 August Rule 73 Motion.
[4032] *Ndindiliyimana* Decision on Request to Appeal 21 September Decision.
[4033] *Ndindiliyimana* Decision on Urgent Motion to Deny Prosecution Objection.

41. On 13 May 2005, the Chamber denied the Defence for Sagahutu's Motion for the exclusion of the testimony of Prosecution Witnesses LMC, DX, BB, GS, CJ and GFO on the basis that their proposed testimony concerns the Co-Accused Mpiranya, who was severed from the trial by the Chamber's order of 20 August 2004.[4034] After reviewing the Amended Indictment of 23 August 2004, the Pre-Trial Brief and the witness summaries, the Chamber concluded that it was premature to exclude the testimony of these witnesses on the basis of the fact that they were originally listed to testify against the formerly Co-Accused Mpiranya. On 9 June 2005, the Chamber denied the Defence for Sagahutu's request for certification to appeal the above decision.[4035]

42. On 24 November 2005, the Chamber denied the Defence for Bizimungu's motion opposing the admissibility of the testimonies of Prosecution Witnesses LMC, DX/ANM, BB, GS, CJ/ANL and GFO and its request for the Chamber to reconsider its Decision of 13 May 2005.[4036] The Chamber reasoned that the Defence for Bizimungu had failed to raise valid reasons that might lead the Chamber to reconsider its impugned Decision.

43. On 17 May 2005, the Chamber denied the Defence for Bizimungu's motion for the withdrawal of the testimony of Prosecution Witnesses GFD and AOE until the Defence had been furnished with complete disclosure of documents arising from judicial proceedings in Rwanda.[4037]

44. On 10 June 2005, the Chamber denied the Defence for Bizimungu's request for certification to appeal the Chamber's oral ruling of 10 May 2005 denying its request to exclude the testimonies of Prosecution Witnesses GFD, GFV and AOE, order an adjournment due to the Defence's inability to conduct valid cross-examinations or postpone the hearing of their testimonies until the Defence had concluded its investigations.[4038]

45. On 30 June 2005, the Chamber denied the Defence for Bizimungu's motion for certification to appeal the Chamber's oral decision dated 8 June 2005.[4039] The Chamber based its denial of the motion on the ground that granting certification to appeal its impugned decision would not materially advance the proceedings and that its oral decision did not adversely impinge on the fairness of the proceedings, since it ordered the exclusion of aspects of the testimony of Witness AOE that advert to facts not pleaded in the Indictment and declared that evidence relating to events in 1993 and the charge of conspiracy to commit genocide would be taken into consideration at a later stage "only if the Prosecution establishes the existence of a conspiracy in 1994."[4040]

46. On 1 July 2005, the Chamber denied the Defence for Ndindiliyimana's request for certification to appeal the Chamber's Decision dated 13 June 2005, which dismissed its request for a citation for contempt of a journalist of Radio Rwanda for publishing the names of protected witnesses.[4041] The Chamber also issued a warning to the Lead Counsel for

[4034] *Ndindiliyimana* Decision on Motion for Exclusion of Witnesses.
[4035] *Ndindiliyimana* Decision on Request to Appeal 13 May Decision.
[4036] *Ndindiliyimana* Decision on Motion in Opposition to Testimonies.
[4037] *Ndindiliyimana* Decision on Motion to Withdraw Appearances.
[4038] *Ndindiliyimana* Decision on Motion to Appeal 10 May Ruling.
[4039] *Ndindiliyimana* Decision on Request to Appeal 8 June Decision.
[4040] *Ndindiliyimana* Decision on Request to Appeal 8 June Decision.
[4041] *Ndindiliyimana* Decision on Appeal of Citation for Contempt.

Ndindiliyimana, Christopher Black, for using improper and disrespectful language in the above motion.

47. On 18 August 2005, the Chamber granted the Prosecution's non-contentious motion for the transfer of Witnesses ANH, DR, HAF and AOF, who were in detention or under court supervision in Rwanda pursuant to Rule 90*bis* of the Rules.[4042]

48. On 7 September 2005, the Chamber ordered that the testimony of Prosecution Witness AOG or 006 should be heard via closed video link from The Hague. The Chamber further ordered that documents relating to the Witness's current place of residence and new identity should not be disclosed.[4043]

49. On 21 September 2005, the Chamber granted the Prosecution motion to replace the recently deceased Prosecution Witness HM with Witness ATW and the addition of Witness ANC to its list. The Chamber also allowed the Prosecution to withdraw Witnesses DAO, IG, CE, QZ, DAY and BA from its witness list.[4044]

50. On 10 October 2005, the Chamber denied Nzuwonemeye's motion for reconsideration of its oral decision of 14 September 2005 on the admissibility of the testimony of Witness XXO in the *Bagosora et al.* trial into evidence.[4045]

51. On 13 October 2005, the Registrar of the Tribunal found Co-Counsel for Ndindiliyimana, Tiphaine Dickson, to have breached her terms of engagement under Rule 45*ter* of the Rules in failing to appear before the Tribunal in reasonable time as specified by the Registrar. The Registrar therefore withdrew her assignment as Co-Counsel for the Accused and further ordered that her name be struck off the list provided under Rule 45(A) of the Rules.[4046] On 23 November 2005, the Registrar varied his Decision dated 13 October 2005 regarding the withdrawal of Tiphaine Dickson as Co-Counsel for Ndindiliyimana.[4047] On 1 March 2005, the President of the Tribunal, Judge Erik Møse, found the application for review of the decision of the Registrar to withdraw the assignment of Dickson dated 13 October 2005 to be moot in light of the Registrar's revised decision dated 25 November 2005.[4048]

52. On 13 October 2005, pursuant to Article 19 of the Directive, the Registrar withdrew the assignment of Danielle Girard as Co-Counsel for Francois Xavier Nzuwonemeye.[4049]

53. On 28 October 2005, the Chamber denied two Motions by the Defence for Bizimungu seeking the exclusion of the testimony of Prosecution Witnesses TN and AP on the grounds that their testimony lacked relevance, that it referred to facts not pleaded in the Indictment and that its probative value was outweighed by its prejudicial effect.[4050] The Chamber found the testimony of these witnesses to be relevant and to have probative value, and that the Defence for Bizimungu had sufficient notice of the content of the prospective testimony of

[4042] *Ndindiliyimana* Decision on Motion for Rule 90 Transfer of Witnesses.
[4043] *Ndindiliyimana* Decision on Motion for Additional Protective Measures.
[4044] *Ndindiliyimana* Decision on Prosecution 9 August Rule 73 Motion.
[4045] *Ndindiliyimana* Decision on Motion for Reconsideration of 14 September Decision.
[4046] *Ndindiliyimana* Decision on Withdrawal of Dickson.
[4047] *Ndindiliyimana* Decision Varying Withdrawal of Dickson.
[4048] *Ndindiliyimana* Decision on Review of 13 October Decision.
[4049] *Ndindiliyimana* Decision on Withdrawal of Girard.
[4050] *Ndindiliyimana* Decision on Motion to Exclude Witness TN.

the witness. On 16 November 2005, the Chamber denied the Defence for Bizimungu's request for certification to appeal the above decisions.[4051]

54. On 9 November 2005, the Chamber granted the Defence for Nzuwonemeye's *ex parte* and confidential motion seeking the cooperation of the Kingdom of Belgium. [4052]

55. On 2 December 2005, the Chamber denied the Defence for Bizimungu's motion opposing the admissibility of a part of the proposed testimony of Witness AOF because it relates to matters not pleaded in the Indictment and facts that are outside the temporal jurisdiction of the Tribunal.[4053] The Chamber held that the proposed testimony of Witness AOF was admissible since it did not support a new allegation not pleaded in the Indictment but merely stated a new material fact underpinning an already existing charge. The Chamber also held that the evidence of Witness AOF alluding to events that took place outside the temporal jurisdiction of the Tribunal was admissible for the limited purpose of establishing conspiratorial conduct that inexorably continued into 1994. On 13 March 2006, the Chamber denied the Defence for Bizimungu's request for certification to appeal the above decision.[4054]

56. On 6 December 2005, the Chamber granted in part the Prosecution's motion requesting the Chamber to take judicial notice of the existence of the legislative and executive documents during the temporal jurisdiction of the Tribunal.[4055] The Chamber reasoned that since it had no knowledge of whether the provisions contained in the documents were applicable in Rwanda during the relevant period, it could not take judicial notice of the applicability of those provisions. The Chamber therefore denied the request to take into judicial notice that the legal provisions contained in the documents in question were applicable in Rwanda in 1994.

57. On 14 December 2005, Judge Asoka De Silva denied the Prosecution's *ex parte* motion requesting the transfer of detained witnesses or witnesses placed under court supervision.[4056] The Chamber denied the Prosecution's request for the transfer of the detained witnesses on the basis that the mandatory provisions of Rule 90*bis*(B) had not been satisfied.

58. On 13 February 2006, the Chamber granted the Defence for Nzuwonemeye's motion requesting the Chamber to issue an order for the cooperation and assistance of the Government of Ghana in order to facilitate an interview with prospective Defence witnesses.[4057] On the same day, the Chamber granted the Defence for Nzuwonemeye's motions requesting the cooperation of the Governments of The Netherlands and Togo.[4058]

59. On 27 February 2006, the Chamber denied the Defence for Bizimungu's request for certification to appeal the Chamber's oral decision of 2 February 2006 admitting into evidence part of Witness GFA's confessional statement before Rwandan authorities.[4059]

[4051] *Ndindiliyimana* Decision on Motion to Appeal 28 October Decisions.
[4052] *Ndindiliyimana* Decision on Motion for Cooperation of Belgium.
[4053] *Ndindiliyimana* Decision on Motion in Opposition to Witness AOF.
[4054] *Ndindiliyimana* Decision on Motion to Appeal 2 December Decision.
[4055] *Ndindiliyimana* Decision on Motion for Judicial Notice.
[4056] *Ndindiliyimana* Decision on Motion for Rule 54 Transfer of Witnesses.
[4057] *Ndindiliyimana* Decision on Motion for Cooperation of Ghana.
[4058] *Ndindiliyimana* Decision on Motion for Cooperation of The Netherlands.
[4059] *Ndindiliyimana* Decision on Motion to Appeal 2 February Decision.

60. On 30 March 2006, the Chamber denied the Defence for Nzuwonemeye's request for the Chamber to exclude parts of Witness AOG's testimony on facts that are not pleaded in the Indictment.[4060] The Chamber stated that despite the fact that the objectionable parts of Witness AOG's testimony were not sufficiently pleaded in the Indictment against the Accused, the Defence for Nzuwonemeye was given adequate notice of these facts through subsequent disclosure.

61. On 13 April 2006, the Chamber ordered Witnesses DO, ANF, XXQ and GFQ to be transferred temporarily to the UNDF in Arusha for a period not exceeding three months, with effect from 20 April 2006.[4061]

62. On 7 June 2006, the Chamber granted the request by the Defence for Nzuwonemeye for the Chamber to issue an order for the cooperation and assistance of the Kingdom of Belgium in order to facilitate an interview with prospective Defence witnesses in Belgium.[4062]

63. On 15 June 2006, the Chamber dismissed the Defence for Ndindiliyimana's urgent motion to prohibit the Prosecution from leading evidence through Witness ANF on facts that are not in the Indictment against the Accused.[4063] The Chamber stated that despite the fact that the allegations described in the statement of Witness ANF were not pleaded in the Indictment against Ndindiliyimana with the requisite specificity, the defect in the indictment with respect to those allegations had been cured through subsequent disclosure. On 14 July 2006, the Chamber denied the Defence for Ndindiliyimana's request for certification to appeal the above decision.[4064]

64. On 14 July 2006, the Chamber denied the Defence for Nzuwonemeye's request for disclosure of all the documents mentioned in the footnotes of the expert report authored by Alison Des Forges.[4065] The Chamber reasoned that Rule 94*bis* is addressed to the parties and that witnesses, be they factual or expert, are not party to the proceedings and are therefore under no disclosure obligations. The Chamber also held that the disclosure of the expert report more than three months prior to the expected date of the expert's testimony was sufficient for the Defence to prepare for cross-examination and to guarantee the rights of the Accused under Article 20(4)(e).

65. On 23 August 2006, the Chamber granted the Prosecution's extremely urgent *ex parte* motion for the transfer of detained Witness ANF pursuant to Rule 90*bis* of the Rules.[4066]

66. On 15 September 2006, the Chamber denied the Prosecution's request for Witness Dallaire to give testimony via video-link because no good reason had been adduced in support of the inability of the witness to testify in person.[4067] On 20 October 2006, on account of information about the ill health of Witness Dallaire, the Chamber reconsidered the above

[4060] *Ndindiliyimana* Decision on Motion to Exclude Witness AOG.
[4061] *Ndindiliyimana* 13 April Decision on Motion for Transfer of Witnesses.
[4062] *Ndindiliyimana* Decision on Nzuwonemeye's Motion under Article 28 for Cooperation of Belgium.
[4063] *Ndindiliyimana* Decision on Urgent Motion to Prohibit Evidence of Witness ANF.
[4064] *Ndindiliyimana* Decision on Motion for Appeal of 15 June Decision.
[4065] *Ndindiliyimana* Decision on Request for Disclosure of Des Forges Sources.
[4066] *Ndindiliyimana* Decision on Urgent Motion for Transfer of Witness ANF.
[4067] *Ndindiliyimana* Decision on Dallaire.

Decision and allowed Witness Dallaire to give testimony via video-link.[4068] On 3 November 2006, the Chamber granted the Prosecution's request to vary the dates on which the testimony of Witness Dallaire was expected to be heard as indicated in the Scheduling Order specified in its Decision of 20 October 2006.[4069] On 7 November 2006, the Chamber denied the requests by the Defence for Ndindiliyimana and Bizimungu for certification to appeal the Chamber's Decision of 20 October 2006 on the grounds that the Defence had not satisfied the criteria for certification to appeal delineated in Rule 73(B).[4070] On 17 November 2006, the Chamber denied the requests by the Defence for Ndindiliyimana, Bizimungu and Sagahutu for certification to appeal the Chamber's variation of the Scheduling Order indicated in its Decision of 3 November 2006.[4071]

67. On 6 October 2006, the Chamber denied the Defence for Sagahutu's request for a site visit to Rwanda on the ground that such a visit was not appropriate at that stage of the proceedings.[4072] On the same day, the Chamber granted the Prosecution's request for a subpoena to be issued to Annonciata Kavaruganda. The Chamber was satisfied that the Prosecution had made reasonable attempts to obtain the voluntary cooperation of the witness but had been unsuccessful, and that given her unique and special knowledge of the events that led to the abduction and the eventual murder of her husband, her testimony would materially assist the Prosecution case and would also be necessary and appropriate for the conduct and the fairness of the trial.[4073]

68. On 20 October 2006, the Chamber denied the Defence for Nzuwonemeye's motion to reconsider its oral decision of 21 September 2006 in which it admitted into evidence two documents tendered by the Prosecution in the course of its examination-in-chief of Witness Alison Des Forges. The Defence submitted that the provenance and authenticity of the documents were questionable, and requested the exclusion of the documents on the ground that they were not authentic. However, the Chamber noted that the authenticity of evidence, while important in the Chamber's assessment of weight at the end of the trial, is not a criterion for admissibility. The Chamber further recalled that the provisions of Rule 89(C) impart the Chamber with wide discretion to admit any relevant evidence it deems to have probative value.[4074]

69. On 26 January 2007, the Registrar withdrew the assignment of Hamuly Rety as Co-Counsel for Francois Xavier Nzuwonemeye pursuant to Article 19(A)(ii) of the Directive.[4075]

70. On 31 January 2007, the Chamber granted in part the Defence for Nzuwonemeye's *ex parte* motion for restitution and other appropriate relief due to the adverse effect that the disclosure to all the parties in the trial by the Registry of documents relating to the interviews of two Defence witnesses conducted by the Defence for Nzuwonemeye has had on its ability to conduct its defence, the integrity of the proceedings and the rights of the Accused to a fair trial.[4076] The Chamber accepted the Registry's explanation that the disclosure was

[4068] *Ndindiliyimana* Decision on Reconsideration of Dallaire Decision.
[4069] *Ndindiliyimana* Decision on Urgent Motion for Rescheduling Order.
[4070] *Ndindiliyimana* Decision on Request to Appeal 20 October Decision.
[4071] *Ndindiliyimana* Decision on Request for Reconsideration of Rescheduling Order.
[4072] *Ndindiliyimana* Decision on Motion for Site Visit.
[4073] *Ndindiliyimana* Decision on Motion for Subpoena.
[4074] *Ndindiliyimana* Decision on Motion to Exclude Des Forges Testimony.
[4075] *Ndindiliyimana* Decision on Withdrawal of Rety.
[4076] *Ndindiliyimana* Decision on Motion for Restitution.

inadvertent. The Chamber ordered the parties to whom the confidential documents had been inadvertently disclosed to return the documents to the Registry and to desist from making electronic or hard copies of the documents and using them for any purpose in the proceedings before the Chamber without its prior approval. The Chamber denied the Defence for Nzuwonemeye's request to terminate the proceedings and to order the immediate release of Nzuwonemeye on the basis that the remedies were inappropriate and disproportionate since the Defence had not demonstrated that Nzuwonemeye had suffered material prejudice such that he could not conduct a proper defence.

71. On 5 February 2007, the Chamber granted the Defence for Bizimungu's motion for additional time to file a reply to the Prosecution's response to its motion for judgement of acquittal under Rule 98*bis*.[4077]

72. On 16 February 2007, the Chamber issued a Scheduling Order following the pre-defence conference held on 15 February 2007.[4078] On 13 March 2007, the Chamber granted in part the Defence for Bizimungu's motion to reconsider the Chamber's Scheduling Order dated 16 February 2007 and allowed the Defence for Bizimungu to file the list of its first 15 witnesses by 15 March 2007 and to file the remainder of its prospective witnesses by 16 April 2007.[4079]

73. On 20 March 2007, the Chamber issued a Decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98*bis*. In its Decision, the Chamber entered a judgement of acquittal for Ndindiliyimana for complicity in genocide (Count 3) and murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(1) of the Statute (Count 7). The Chamber also entered a judgement of acquittal for Bizimungu for extermination as crime against humanity under 6(1) of the Statute (Count 5) and murder as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II under Article 6(1) of the Statute (Count 7). It denied the Defence motions in all other respects.[4080] On 18 June 2007, the Chamber issued a corrigendum to the above decision in which it corrected typographical errors but did not alter the substance of its decision.[4081]

74. On 23 March 2007, the Chamber granted the Prosecution's motion to unseal and disclose to the Canadian authorities the closed session transcripts of Witness ANA.[4082]

75. On 3 April 2007, the Chamber denied the Defence for Bizimungu's request to recall Prosecution Witness AOE in order to cross-examine him further on the basis of a document annexed to his guilty plea before the Rwandan authorities on July 2003, which the witness mentioned during his testimony before the Chamber.[4083] The Chamber reasoned that the Defence had not satisfied the criteria governing the recall of witnesses as articulated in the Tribunal's jurisprudence.

[4077] *Ndindiliyimana* Decision on Extremely Urgent Motion for Additional Time.
[4078] *Ndindiliyimana* 15 February Scheduling Order.
[4079] *Ndindiliyimana* Decision on Motion Reconsideration of Scheduling Order.
[4080] *Ndindiliyimana* Decision on Defence Rule 98 Motions.
[4081] *Ndindiliyimana* Corrigendum on Decision on Defence Rule 98 Motions.
[4082] *Ndindiliyimana* Decision on Motion Witness ANA.
[4083] *Ndindiliyimana* Decision on Motion Recall Witness AOE.

76. On 17 April 2007, the Chamber granted the Prosecution's urgent motion for the disclosure of additional identifying information relating to Defence witnesses.[4084] The Defence for Bizimungu was ordered to disclose the following information about each witness it intended to call no later than 21 days before the date the witness is scheduled to testify: their full names and those of their parents; assigned pseudonym; date and place of birth; current residence; religion; and occupation today as well as in 1994.

77. On 24 April 2007, the Chamber denied the Defence for Nzuwonemeye's request for certification to appeal the Chamber's Rule 98*bis* Decision.[4085] The Chamber found that the Defence for Nzuwonemeye had not satisfied the criteria for certification to appeal the impugned decision.

78. On 7 May 2007, the Chamber granted the Defence for Nzuwonemeye's request to allow it to examine-in-chief Bizimungu Witnesses DE4-16 and DE8-10 who were also listed as Nzuwonemeye's Witnesses B5 and F9.[4086]

79. On 10 May 2007, the Chamber dismissed the Defence for Bizimungu's request for certification to appeal the Chamber's decision denying the Defence request to recall Prosecution Witness AOE for further cross-examination.[4087]

80. On 11 May 2007, the Chamber issued a *proprio motu* order and took note of the Registrar's submissions that the time stipulated in the Chamber's Scheduling Order of 16 February 2007 was inadequate to allow the Defence for Bizimungu and the Registry to organise and facilitate the timely appearance of witnesses.[4088] The Chamber also denied the Defence for Bizimungu's submissions on the prejudicial effect devolving from the time frame stipulated in the above Scheduling Order and the request to hold a status conference to discuss the commencement of the next trial session. The Chamber also issued a warning to Counsel for Bizimungu, Gilles St. Laurent, for addressing the Chamber in improper language and directed the Registry to deny him fees for his submissions regarding the Chamber's Scheduling Order of 16 February 2007.

81. On 16 May 2007, the Chamber denied the Prosecution motion challenging the expected testimony of Witness DE4-30 on the basis that, despite being a factual witness, his prospective testimony was expected to advert to issues that required specialised expertise and skill. [4089] The Chamber ruled that as a factual witness, the testimony of Witness DE4-30 would be limited in scope and he would be prohibited from offering opinions or referring to matters that required specialised expertise or skill.

82. On 17 May 2007, the Registrar withdrew the assignment of Patrick De Wolf as Co-Counsel for Ndindiliyimana pursuant to Article 19(A)(i) of the Directive.[4090]

[4084] *Ndindiliyimana* Decision on Urgent Motion for Disclosure of Defence Witnesses.
[4085] *Ndindiliyimana* Decision on Request to Appeal Rule 98 Decision.
[4086] *Ndindiliyimana* Decision on Urgent Motion to Examine Bizimungu Witnesses.
[4087] *Ndindiliyimana* Decision on Motion to Appeal Witness AOE Decision.
[4088] *Ndindiliyimana Proprio Motu* Order.
[4089] *Ndindiliyimana* Decision on Motion Opposing Witness DE4-30.
[4090] *Ndindiliyimana* Decision on Withdrawal of De Wolf.

83. On 19 June 2007, the Chamber issued a Scheduling Order following a status conference held on 18 June 2007, at which the completion of the Bizimungu Defence case and other trial-related matters pertaining to the Defence cases were considered.[4091]

84. On 25 July 2007, the Chamber granted a motion by the Defence for Nzuwonemeye requesting the Chamber to reconsider its oral decision of 11 May 2007 in which it admitted into evidence Prosecution Exhibits 132 (the plea agreement between the office of the Prosecution and Georges Ruggiu) and 135 (the investigation report of the Belgian police dated 1 December 1997). The Chamber was satisfied that the Defence for Nzuwonemeye had demonstrated sufficient grounds to warrant the reconsideration of its oral ruling of 11 July 2007 and therefore ordered the Registry to expunge the exhibits from the record.[4092]

85. On 11 September 2007, the Chamber granted in part Nzuwonemeye's motion requesting the clarification of any changes between the original decision pursuant to Rule 98*bis* and the corrigendum, the circumstances of the drafting of the memorandum attached to the corrigendum, the identity of its author and the reasons for submitting an unsigned copy. The Defence stated that the clarifications were necessary in order to determine whether the Accused had suffered any prejudice[4093] The Chamber stated that the corrigendum did not alter the substance of its original decision on the Rule 98*bis* motions for acquittal filed by the Defence and that the memorandum was an administrative letter and had no bearing on the Chamber's clarification of the content of the corrigendum.

86. On 23 October 2007, the Chamber granted in part the Defence for Bizimungu's request to vary its witness list and authorised it to add Witnesses DE8-1, DB15-8, DB15-9, DB8-7, DB11-26, DA9-10, DB11-35, DB11-12, DB11-37, DE11-4, DB11-39 and DA5-5 to its witness list, and withdraw Witnesses DA7-2, DE8-12, DE4-5, DE4-11, DE4-15, DB11-18, DE14-1, DE4-9, DA10-1, DE4-40 and DC4-1 from the witness list.[4094]

87. On 26 October 2007, the Chamber granted Defence for Bizimungu's extremely urgent motion to contact and meet with Prosecution Witness GAP.[4095]

88. On 31 October 2007, the Chamber issued a Scheduling Order in which it addressed a number of issues pertaining to the Defence case.[4096] On the same day, the Chamber granted the Defence for Bizimungu's request to have Witnesses DC2-2 and DE8-6 testify via video link from their respective locations.[4097] On 2 November 2007, the Chamber denied the request by the Defence for Bizimungu for Witness DE4-12 to give testimony via video link.[4098] On 9 November 2007, the Chamber denied the request by the Defence for Bizimungu for Witness DE11-4 to testify via video link.[4099]

89. On 30 November 2007, the Chamber issued a *proprio motu* Decision in which it clarified its oral ruling of 12 November 2007 regarding the contact of witnesses called by the

[4091] *Ndindiliyimana* 18 June Scheduling Order.
[4092] *Ndindiliyimana* Decision on Motion for Reconsideration of 11 May Decision.
[4093] *Ndindiliyimana* Decision on Motion for Clarificiation.
[4094] *Ndindiliyimana* Decision on Bizimungu Witness Variance.
[4095] *Ndindiliyimana* Decision on Extremely Urgent Motion to Meet Witness GAP.
[4096] *Ndindiliyimana* 31 October Scheduling Order.
[4097] *Ndindiliyimana* Decision on Witnesses DC2-2 and DE8-6.
[4098] *Ndindiliyimana* Decision on Witness DE4-12.
[4099] *Ndindiliyimana* Decision on Witness DE11-4.

Defence for Bizimungu by other Defence teams prior to their testimonies.[4100] On 6 February 2008, the Chamber denied the Defence for Ndindiliyimana's request for certification to appeal the Chamber's *proprio motu* decision of 30 November 2007.[4101]

90. On 14 December 2007, the Chamber granted the Defence for Ndindiliyimana's motion requesting the cooperation of the Kingdom of Belgium in order to facilitate the appearance of Witnesses CBP3 and CBP4 for testimony.[4102]

91. On 31 January 2008, the Chamber granted the Defence for Nzuwonemeye's request to vary its witness list.[4103]

92. On 14 February 2008, the Chamber denied the Defence for Bizimungu's motion seeking the admission into evidence 27 ID documents that were marked for identification during the testimony of Prosecution Witness Alison Des Forges.[4104] The Chamber reasoned that the Defence had not established that the documents were sufficiently reliable and relevant to warrant their admission as exhibits.

93. On 29 February 2008, the Chamber dismissed the Defence for Nzuwonemeye's motions requesting the Chamber to dismiss some of the allegations in the Indictment against Nzuwonemeye on the ground that they were defectively pleaded. The Chamber based its dismissal of the Defence motions on the ground that, in accordance with Rule 72(A)(ii), issues of defects in the Indictment must be raised in a preliminary motion filed within 30 days after the disclosure by the Prosecution of all the materials envisaged in Rule 66(A)(ii). The Chamber was not satisfied that the Defence for Nzuwonemeye had shown good cause for its non-compliance with the time limit and had therefore forfeited its right to raise a preliminary motion as stipulated in Rule 72(F). With respect to the Defence request for the Prosecution to disclose all exculpatory information at its disposal, the Chamber stated that such request was obviated by the fact that it had already ordered the Prosecution, on two occasions, to disclose to the Defence all exculpatory material in its custody or control by 29 February 2008.[4105]

94. On 7 March 2008, the Chamber issued a Scheduling Order following the status conference held on 5 and 6 March 2008, at which several matters pertaining to the progress of the trial were discussed.[4106]

95. On 16 May 2008, the Chamber ordered the Witnesses and Victims Support Section (WVSS) to clarify the whereabouts of Witness GFA and to inform the Chamber within seven days after the Interim Order was issued.[4107] The Chamber's Interim Order was issued in response to Bizimungu's motion requesting the Chamber's permission to meet with Prosecution Witness GFA and to ensure his continued presence in Arusha.

96. On 22 May 2008, the Chamber granted the Defence for Ndindiliyimana's request for the temporary transfer of Witness CBP70 from Rwanda to the UNDF in Arusha.[4108] On the

[4100] *Ndindiliyimana Proprio Motu* Decision on 12 November Ruling.
[4101] *Ndindiliyimana* Decision on 30 November *Proprio Motu* Decision.
[4102] *Ndindiliyimana* Decision on Cooperation of Belgium and Witnesses CBP3 and CBP4.
[4103] *Ndindiliyimana* Decision on Nzuwonemeye Witness Variance.
[4104] *Ndindiliyimana* Decision on Motion to Admit Des Forges Documents.
[4105] *Ndindiliyimana* Decision on Motion to Address in Form of Indictment.
[4106] *Ndindiliyimana* 7 March Scheduling Order.
[4107] *Ndindiliyimana* Interim Order Regarding Witness GFA.
[4108] *Ndindiliyimana* Decision on Motion for Transfer of Witness CBP 70.

same day, the Chamber denied the Defence for Nzuwonemeye's request for certification to appeal the Chamber's decision of 29 February 2008.[4109]

97. On 23 May 2008, the Chamber ordered the Defence teams for Bizimungu, Ndindiliyimana, and Nzuwonemeye to file the alleged exculpatory documents relevant to its case contained in the materials disclosed by the Prosecution on 29 February 2008.[4110] The Chamber reasoned that it was necessary for it to review the alleged exculpatory materials in full in order to make an informed decision on the Defence motions about the Prosecution's violation of its Rule 68 disclosure obligation. The Chamber further ordered the Prosecution to file confidentially for the exclusive review of the Chamber the unredacted versions of the alleged exculpatory documents referred to in the Defence Motions, including the 39 pages of RPF materials mentioned in Nzuwonemeye's Motion and documents numbered R0000280-283 and R0000299-302 referred to in Sagahutu's Motion. The Chamber also warned the Prosecution and the Defence for Ndindiliyimana to ensure that they file their pleadings within the time frame stipulated by the Rules or by the Chamber[4111]

98. On 26 May 2008, the Chamber granted the Defence for Sagahutu's request to vary its witness list.[4112] On 11 July 2008, the Chamber partially granted Sagahutu's second request to vary his witness list and ordered the Defence for Sagahutu to reduce its witness list and to file its revised witness list by 1 August 2008.[4113]

99. On 27 May 2008, the Chamber denied the Defence for Nzuwonemeye's request for a site visit to Rwanda on the basis that such a visit would be most appropriately conducted after the conclusion of the evidentiary phase of the trial.[4114]

100. On 9 June 2008, the Chamber granted in part the Defence for Nzuwonemeye's extremely urgent and confidential motion for the Chamber's authorisation for Witnesses Y2, S2, Y3, F10 and F11 to be heard via video-link.[4115] The Chamber denied the Defence request for Witnesses Y3, F10 and F11 to be heard via video-link because the Defence had failed to support its submissions about the witnesses' security concerns with adequate documentation. On 16 July 2008, the Chamber reconsidered the Decision and directed the Registry to make the necessary arrangements for Witnesses F10 and F11 to testify via video-link from a suitable location in Europe on or after 15 September 2008.[4116]

101. On 4 July 2008, the Chamber denied the Defence for Nzuwonemeye's motion for the exclusion of evidence elicited from Prosecution witnesses because they referred to acts not pleaded in the Indictment against Nzuwonemeye.[4117]

102. On 10 July 2008, the Chamber instructed the Prosecution to file written submissions on the identified unredacted witness statements it had disclosed to the Chamber on an *ex parte* and confidential basis by the close of business on 11 July 2008.[4118] The Prosecution

[4109] *Ndindiliyimana* Decision on Request to Appeal 29 February Decision.
[4110] *Ndindiliyimana* Decision on Defence Disclosure Motions.
[4111] *Ndindiliyimana* Decision on Defence Disclosure Motions.
[4112] *Ndindiliyimana* Decision on Sagahutu Witness Variance.
[4113] *Ndindiliyimana* Decision on Second Sagahutu Witness Variance.
[4114] *Ndindiliyimana* Decision on Nzuwonemeye's Motion for Site Visit.
[4115] *Ndindiliyimana* Decision on Witnesses Y1, S2, Y3, F10 and F11.
[4116] *Ndindiliyimana* Decision on Motion for Reconsideration of 9 June Decision.
[4117] *Ndindiliyimana* Decision on Motion to Exclude Acts not Pleaded.
[4118] *Ndindiliyimana* Confidential Order on RPF Materials.

requested that if the Chamber intended to order the disclosure of those statements to the Defence, the Prosecution should be provided with an opportunity to be heard *in camera* prior to the issuance of such order. On 14 July 2008, the Chamber denied the Prosecution's request for an additional 10 days to file its submissions on the witness statements and instructed the Prosecution to file its written submissions on an *ex parte* and confidential basis by the close of business on 15 July 2008.[4119]

103. On 15 July 2008, the Chamber denied the Defence for Nzuwonemeye's supplemental motion alleging defects in the form of the indictment against the Accused.[4120] The Chamber found the motion to be frivolous and instructed the Registry to withhold payment of fees and costs associated with this motion.

104. On 17 July 2008, the Chamber granted Ndindiliyimana's request for a named witness to be heard via video link.[4121] On 18 September 2008, the Chamber issued a corrigendum to this Decision and ordered the Registrar to reclassify the Decision as confidential to be kept under seal.[4122] On 22 August 2008, the Chamber granted Sagahutu's request for Expert Witness Helmut Strizek to be heard by the Chamber via video link.[4123]

105. On 12 August 2008, the Chamber ordered the Defence teams to file submissions within seven days on whether the Belgian files were disclosed to them by the Prosecution in redacted or unredacted format.[4124] The Chamber reasoned that in order for it to properly consider the Defence motions claiming that the Prosecution had breached its Rule 68 disclosure obligation, it was necessary to ascertain whether the "Belgian files" were disclosed in redacted or unredacted format by the Prosecution in its pre-trial disclosure.

106. On 9 September 2008, the Chamber granted the Defence for Nzuwonemeye's request to replace Witness STH with Witness TCB1 and to withdraw Witnesses NU6, EGN, S2, YKP, REO and F11 from its witness list.[4125]

107. On 16 September 2008, the Chamber issued a Scheduling Order requesting the Defence for Nzuwonemeye to complete its case by 10 October 2008; and the Defence for Sagahutu to present its entire case between 20 October 2008 and 5 December 2008 and to make disclosures to the parties and WVSS of all relevant information of the additional witnesses it intends to call.[4126]

108. On 22 September 2008, the Chamber partially granted Defence Motions alleging that the Prosecution had violated its disclosure obligations pursuant to Rule 68. Consequently, the Chamber ordered the Prosecution to disclose to the Defence a number of documents in unredacted format with immediate effect. The Chamber further ordered that any Defence team that so wished could file a motion requesting the recall of identified Prosecution witnesses or additional defence witnesses as a remedy for the prejudice caused to the Accused as a result of the Prosecution's violation of its Rule 68 disclosure obligations.

[4119] *Ndindiliyimana* Confidential Order on Additional Time.
[4120] *Ndindiliyimana* Decision on Supplemental Motions on Defects.
[4121] *Ndindiliyimana* Decision on Witness Michel Robardey.
[4122] *Ndindiliyimana* Corrigendum on Witness Robardey Decision.
[4123] *Ndindiliyimana* Decision on Witness Helmut Strizek.
[4124] *Ndindiliyimana* Interim Order on Disclosure of Exculpatory Material.
[4125] *Ndindiliyimana* Decision on Second Nzuwonemeye Witness Variance.
[4126] *Ndindiliyimana* 16 September Scheduling Order.

Moreover, the Chamber reprimanded the Prosecution for lack of diligence for failing to disclose the exculpatory statements and directed the Registry to serve the Decision on the Prosecutor in person.[4127] On 24 October 2008, the Chamber varied the Decision above and acknowledged that the Prosecution had disclosed earlier some of the statements contained in confidential Annex 3 appended to the Decision. The Chamber therefore deemed the Prosecution's disclosure of 29 February 2008 to be in compliance with its Decision of 22 September 2008.[4128]

109. On 23 October 2008, the Chamber denied in part a Prosecution motion alleging lack of requisite expertise of Defence Witnesses Bernard Lugan and Helmut Strizek and the irrelevance of their prospective testimony. However, the Chamber granted the Prosecution request to cross-examine those witnesses on the contents of their expert reports.[4129]

110. On 4 November 2008 the Defence for Bizimungu filed a Motion requesting the Chamber to admit into evidence closed and open session trial transcripts and exhibits of Witness GFA/BTH's testimony given in the *Karemera et al.* case between 10 and 17 April 2008.[4130] On 13 November 2008, the Chamber noted that Annexes I to IV were not filed with the Defence Motion.[4131] On 4 December 2008, the Chamber partially granted the Defence for Bizimungu's motion seeking the admission into evidence of transcripts, identification documents and exhibits of Witness BTH in the *Karemera et al.* case pursuant to Rule 92*bis*. The Chamber ordered, pursuant to Rules 89(C) and 92*bis*(D) of the Rules, that all transcripts of Witness GFA/BTH's testimony in the *Karemera et al.* proceedings, which were listed in Confidential Annex 2 of the Decision dated 4 December 2008, should be admitted into evidence. The Chamber denied the Defence Motion seeking admission of the Identification Documents listed in Confidential Annex 1 to that Decision.[4132]

111. On 3 December 2008, the Chamber granted the Defence for Nzuwonemeye's request to replace Witness B2 with Witness K3. The Chamber also issued a warning to the Lead Counsel for Nzuwonemeye pursuant to Rule 46(A) of the Rules for misleading the Chamber when he stated that Witness K3 had never been withdrawn from the witness list when in fact K3 had.[4133]

112. On 4 December 2008, the Chamber partially granted the Defence for Ndindiliyimana's request to recall identified Prosecution witnesses and call additional witnesses as a remedy for the Prosecution's breach of its Rule 68 obligation to disclose exculpatory material.[4134] The Chamber allowed the Defence for Ndindiliyimana to recall Prosecution Witnesses FAV, GFS, GFR and KF for further cross-examination on the points delineated in its Decision and ordered the Parties not to contact any of the recalled witnesses prior to their appearance before the court. The Chamber also allowed the Defence for Ndindiliyimana to call Witnesses JH, JVN, CR, FU and JDT as additional witnesses and ordered the Prosecution to provide the contact details of those witnesses as well as those identified for recall. On 12 April 2011, the Chamber admitted into evidence 12 of the

[4127] *Ndindiliyimana* Decision on Prosecution Disclosure Obligations.
[4128] *Ndindiliyimana* Decision on Motion to Vary Disclosure Obligations Decision.
[4129] *Ndindiliyimana* Decision on Objections to Expert Witnesses Lugan and Strizek.
[4130] *Ndindiliyimana* Decision on Witness GFA/BTH.
[4131] *Ndindiliyimana* Interim Order on Witness BTH.
[4132] *Ndindiliyimana* Decision on Motion to Admit Evidence of Witness BTH.
[4133] *Ndindiliyimana* Decision on Third Nzuwonemeye Witness Variance.
[4134] *Ndindiliyimana* Decision on Ndindiliyimana's Motion to Recall Identified Witnesses.

exculpatory statements that were disclosed by the Prosecution pursuant to Rule 68. The Chamber considered that Rules 89(C) and 92*bis* do not militate against the Chamber's discretion to admit the exculpatory materials into evidence in order to ameliorate the prejudice suffered by Ndindiliyimana as a result of the Prosecution's late disclosure.[4135]

113. On 4 December 2008, the Chamber partially granted the Defence for Bizimungu and Nzuwonemeye's motions requesting the recall of Prosecution witnesses and to call additional witnesses as a remedy for the Prosecution's violation of its disclosure obligation pursuant to Rule 68. With respect to Nzuwonemeye's request, the Chamber allowed the recall of Prosecution Witness ALN and DCK for further cross-examination and to call Witnesses CN, JPF and JVN as additional witnesses. It denied the Defence for Bizimungu's request to call DB11-30 and DE8-40 as additional witnesses.[4136]

114. On 4 December 2008, the Chamber also issued a Scheduling Order in which it ordered Prosecution and Defence teams to file their Closing Briefs simultaneously by 31 March 2009; that the Prosecution Closing Brief shall not exceed 400 pages (including annexes); that the Defence Closing Briefs for Bizimungu and Ndindiliyimana shall not exceed 250 pages (including annexes); and that Defence Closing Briefs for Nzuwonemeye and Sagahutu shall not exceed 200 pages (including annexes). The Chamber also ordered that the site visit to Rwanda would take place from 6 to 9 April 2009 and that the final oral arguments would be made on 24, 25 and 26 of June 2009.[4137]

115. On 9 February 2009, the Chamber issued a *proprio motu* Order authorising the temporary transfer of Witness JH from Rwanda to the UNDF in Arusha, Tanzania and requested the cooperation of the Governments of Tanzania and Rwanda in implementing its Order. In addition, the Chamber ordered Witnesses FU and KF to testify via video-link from a secure location in Rwanda.[4138]

116. On 16 February 2009, the Chamber denied the Defence for Nzuwonemeye's motion requesting the Chamber to reconsider its Decision of 4 December 2008 in which it denied the Defence request to recall Prosecution witnesses and to call additional witnesses as a remedy for the Prosecution's breach of its Rule 68 disclosure obligation.[4139] The Chamber based its denial on the fact that the Defence had failed to show good cause to warrant reconsideration of the Decision of 4 December 2008. The Chamber granted the Defence request to correct an erroneously translated portion of Witness CN's statement in that Decision.

117. On 18 February 2009, the Chamber denied the Defence for Bizimungu's motion requesting the Chamber to order the Prosecution to disclose a *Gacaca* judgement relating to Witness AOE/SDA that was admitted as a sealed exhibit in *Prosecutor v. Ephrem Setako.*[4140] The Chamber directed the Defence to make an application to the Trial Chamber trying the matter of the *Prosecutor v. Setako* for authorisation to access the *Gacaca* judgement in

[4135] *Ndindiliyimana* Decision on Admission of Written Statements.
[4136] *Ndindiliyimana* Decision on Nzuwonemeye and Bizimungu's Motions to Recall Identified Witnesses.
[4137] The dates of the site visit were later changed to 13-18 April 2009.The parties filed submissions requesting the Chamber to re-schedule the date of the site visit in light of the difficulties of conducting a site visit in Rwanda during the week starting from 6 April. See the letter from the Court Management section addressed to the parties titled " Site Visit-New Dates", dated 26 February 2009.
[4138] *Ndindiliyimana Proprio Motu* Order for Transfer of Detained Witness.
[4139] *Ndindiliyimana* Decision on Nzuwonemeye's Motion for Reconsideration.
[4140] *Ndindiliyimana* Decision on Motion for Reparation.

question pursuant to Rule 75(G) of the Rules. The Chamber also directed the Prosecution to review whether the *Gacaca* judgement is at its disposal and, if necessary, to disclose the document to the Defence pursuant to Rule 68 of the Rules. The Chamber rejected the Prosecution's submission that since the *Gacaca* judgement was under seal, its exact contents were unknown to it. The Chamber reasoned that since the judgement was tendered into evidence as a sealed exhibit in a proceeding before a Trial Chamber by the Prosecution, the Prosecution could not therefore claim that it was unaware of the existence of the judgement. The Chamber further stated that the Prosecution's failure to acknowledge possession of the *Gacaca* judgement defeats the purpose of its Rule 68 disclosure obligation and amounted to an obstruction of the proceedings. The Chamber therefore issued a warning to the Prosecution pursuant to Rule 46(A) of the Rules for the obstruction of the proceedings.[4141] On 18 March 2009, the Chamber denied a Prosecution motion requesting the reconsideration of the above Decision with respect to the warning.[4142]

118. On 20 February 2009, the Chamber denied the Prosecution request to call as a witness a former Colonel of the Rwanda Armed Forces in order to rebut the testimony of Nzuwonemeye that the Colonel telephoned him on the night of 6 April 1994 and instructed him to deploy soldiers under his command in order to defend strategic sites in Kigali.[4143] The Chamber denied the request on the ground that the Prosecution intended to use the prospective evidence of the Colonel for the purpose of impeaching the credibility of Nzuwonemeye rather than addressing the allegations in paragraph 34 of the Indictment.

119. On 25 February 2009, the Chamber denied Ndindiliyimana's second motion alleging violations by the Prosecution of its disclosure obligations pursuant to Rule 68.[4144] The Chamber reasoned that the statements referred to in the Defence motion were not exculpatory within Rule 68 of the Rules and therefore the Prosecution could not be held to have breached its Rule 68 Disclosure obligation with respect to those statements. Consequently, the Chamber dismissed the Defence requests to stay all the charges against Ndindiliyimana and order his immediate release.

120. On 9 March 2009, the Chamber partially granted the motions filed by the Prosecution and the Defence teams for Ndindiliyimana, Nzuwonemeye and Sagahutu relating to the locations of the site visit in Rwanda. The Chamber requested the President of the Tribunal to authorise it to exercise its function away from the Seat of the Tribunal pursuant to Rule 4 of the Rules.[4145] On the same day, the Chamber granted the Defence for Nzuwonemeye's request to lift the seal that had been placed on the transcript of Prosecution Witness AP's testimony of 8 September 2005 and to distribute the transcripts exclusively to the Parties and the Chamber in this case.[4146]

121. On 18 March 2009, the Chamber partially granted Bizimungu's request to extend the page limits for its Closing Brief from 250 pages to 300 pages. The Chamber reasoned that the

[4141] *Ndindiliyimana* Decision on Motion for Reparation.
[4142] *Ndindiliyimana* Decision on Motion for Reconsideration of 18 February Decision.
[4143] *Ndindiliyimana* Decision on Motion to Call Rebuttal Evidence.
[4144] *Ndindiliyimana* Decision on Second Motion for Disclosure Violations.
[4145] *Ndindiliyimana* Decision on Locations for the Site Visit to Rwanda.
[4146] *Ndindiliyimana* Decision on Locations for Site Visit.

extension was warranted since Bizimungu faced the highest number of allegations and had called the highest number of witnesses among the Defence teams.[4147]

122. On 20 March 2009, the Chamber granted the Defence for Nzuwonemeye's request seeking the admission into evidence of the exculpatory portions of the statement of CN.[4148] The Chamber reasoned that in light of the unknown whereabouts of CN and the unavailability for testifying of Prosecution Witness ALN, who was to be recalled as a remedy of the Prosecution's violation of its Rule 68 disclosure obligation, it was necessary to admit the entirety of CN's statement for the limited purpose of assessing the credibility of Prosecution Witness ALN's testimony.[4149]

123. On 31 March 2009, the Prosecution and the Defence teams filed their Closing Briefs. On 7 May 2009, the Chamber granted the Defence for Nzuwonemeye's request to file a corrigendum to its Closing Brief.[4150] On 28 May 2009, the Chamber partially granted the Defence for Bizimungu's request to file a corrigendum to his Closing Brief.[4151] On 19 June 2009, the Chamber denied the Defence for Nzuwonemeye's motion opposing the Prosecution's request to file a corrigendum to its Closing Brief.[4152]

124. On 6 April 2009, the Chamber granted leave to the Prosecution to file four additional pages to its Closing Brief, and accepted the Brief filed on 31 March 2009 as properly filed pursuant to the Chamber's Scheduling Order dated 4 December 2008.[4153]

125. On 14 May 2009, the Chamber rendered a Decision in which it explained the reasons underlying its oral ruling of 14 April 2009 denying Bizimungu's Motion for the exclusion of the Prosecution's submissions regarding the site visit to Rwanda. In its Decision, the Chamber expressed its disapproval of the Prosecution's persistent failure to comply with its instructions.[4154]

126. On 9 June 2009, the Chamber granted Nzirorera's Defence Motion and ordered that the protective measures granted to Witness DB15-11 in this case do not apply to her testimony in the *Prosecutor v. Karemera et al.* case.[4155]

127. On 6 July 2009, the Chamber issued an interim order in response to the Defence for Bizimungu's motion for *ex parte* disclosure of a contested document under Rule 68. The Chamber directed the Prosecution to file the contested document, numbered K0459316-K0459324, *ex parte* with an official English translation by 13 June 2009.[4156]

128. On 16 July 2009, the Chamber denied Joseph Nzirorera's motions to vary protective measures for Witnesses DB11-11 and CBP99. The Chamber also decided *proprio motu* to

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[4147] *Ndindiliyimana* Decision on Request for Additional Pages.
[4148] *Ndindiliyimana* Decision on Admission of CN's Statement.
[4149] *Ndindiliyimana* Decision on Admission of CN's Statement.
[4150] *Ndindiliyimana* Decision on Nzuwonemeye's Request to File Corrigendum.
[4151] *Ndindiliyimana* Decision on Bizimungu's Request to File Corrigendum.
[4152] *Ndindiliyimana* Decision on Motion Opposing Prosecution Corrigendum.
[4153] *Ndindiliyimana* Decision on Prosecution Motion for Additional Pages.
[4154] *Ndindiliyimana* Reasons for Denying Site Visit Motion.
[4155] *Ndindiliyimana* Decision on Witness DB15-11 Protective Measures.
[4156] *Ndindiliyimana* Interim Order for Disclosure of Contested Document.

reconsider its Decision of 9 June 2009 granting the variation of the protective measures for Witness DB15-11 pursuant to Rule 75 of the Rules.[4157]

129. On 4 August 2009, the Chamber rendered a Decision on the Defence for Ndindiliyimana's motion requesting to admit a letter as an exhibit pursuant to Rule 92*bis* for the purpose of evaluating Witness GFR's credibility, or alternatively to allow the parties to take a deposition from Witness GFR in order to establish the veracity of the letter. The Chamber held that the existence of Witness GFR's alleged letter, containing an admission that he gave false testimony against Ndindiliyimana, constitutes a strong ground for ordering an investigation under Rule 91(B). The Chamber directed the Registrar to appoint an *amicus curiae* to investigate Witness GFR's current whereabouts, whether Witness GFR wrote the letter and if so, to assess Witness GFR's willingness to return to the Tribunal to testify under oath. Additionally, the Chamber directed the *amicus curiae* to report findings to the Chamber within 60 days of the issuance of the Decision. Finally, the Chamber ordered all parties to provide any and all assistance to the *amicus curiae* to ensure a full and proper investigative report.[4158]

130. On 31 August 2009, the Chamber partially granted the Defence for Bizimungu's Motion for Disclosure of a contested document. The Chamber found that the Prosecution had violated its Rule 68 obligation and it therefore directed the Registry to disclose the document and its English and French translations to all parties and to assign it a number as a Chambers Exhibit. The Chamber denied the motion in all other respects.[4159]

131. On 9 September 2009, the Chamber granted the Nzirorera Defence's Renewed Motion for Variation of Protective Measures for Witnesses DB15-11, DC2-5 and CBP99 pursuant to Rule 75 of the Rules. The Chamber ordered that the protective measures granted to Witnesses DB15-11, DC2-5, and CBP99 in this case did not apply to their testimony in the *Prosecutor v. Karemera et al.* case.[4160]

132. On 19 October 2009, the Chamber issued an Interim Order on the report of the *Amicus Curiae* regarding the alleged recantation of the Prosecution's Witness GFR. The Chamber directed the Registrar to disclose the report to the parties on a confidential basis. The Chamber also ordered the parties to file any submissions regarding the report no later than seven days from the date of the Order. The Chamber noted that it would issue further orders as it deemed necessary after receiving the parties' submissions.[4161]

133. On 19 November 2009, the Chamber issued an Interim Order to ascertain the identity of Witness GFR pursuant to Rule 54 of the Rules. The Chamber directed the Registrar to ascertain whether the person whom the *Amicus Curiae* met was in fact Witness GFR and, if positively identified, to determine the circumstances under which the Defence Counsel came into contact with Witness GFR and how the Lead Counsel came into possession of the alleged letter in question. The Chamber also ordered all parties to fully cooperate with the Registrar and the Witnesses and Victims Support Section in carrying out this Order. The Chamber further directed the Registrar to report findings to the Chamber within 30 days of

[4157] *Ndindiliyimana* Decision on Witness DC2-5 and CBP99 Protective Measures.
[4158] *Ndindiliyimana* Decision on Witness Recantation.
[4159] *Ndindiliyimana* Decision on Bizimungu's Motion for Disclosure of Contested Document.
[4160] *Ndindiliyimana* Decision on Variation of Protective Measures.
[4161] *Ndindiliyimana* Interim Order on Recantation of Witness GFR.

the date of the order and noted that the Chamber would issue subsequent orders as it deemed necessary upon reviewing the report.[4162]

7) Further Proceedings

134. The parties presented their final oral arguments before the Chamber from 24 to 26 June 2009.

135. On 10 February 2010, the Chamber granted a Defence motion requesting the admission of three documents related to Prosecution Witness GFR's recantation of the evidence he gave at trial, which had been subject to a number of interim orders identified above. The documents admitted by the Chamber included the letter authored by Witness GFR recanting his testimony, a report by an *amicus curiae* ordered by the Chamber and the submissions of the Registrar.[4163]

136. On 13 October 2010, the Chamber issued a Decision granting a motion by the Defence for Bizimungu requesting the admission into evidence of the transcripts from the *Karemera et al.* trial featuring the testimony of Witness GAP, the evidence admitted during that testimony as well as a transcript of an audio recording between Witness GAP and Counsel Peter Robinson from 18 November 2009.[4164]

137. On 8 March 2011, the Chamber issued a Scheduling Order for the delivery of the Judgement and Sentence on 17 May 2011.[4165]

138. On 24 May 2011 the Chamber issued an Order pursuant to Rule 91(C)(ii) of the Rules requesting the Registrar to appoint an *amicus curiae* to prosecute Prosecution Witness GFR for false testimony.[4166]

[4162] *Ndindiliyimana* Interim Order on Identity of Witness GFR.
[4163] *Ndindiliyimana* Decision on Witness GFR's Recantation.
[4164] *Ndindiliyimana* Decision on Motion for Admission of Witness GAP's Evidence.
[4165] *Ndindiliyimana* Scheduling Order for Delivery of Judgement.
[4166] *Ndindiliyimana* Order to Prosecute Witness GFR.

ANNEX B: CITED MATERIALS AND DEFINED TERMS

a) Jurisprudence

i) ICTR

Akayesu

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

Bagilishema

Prosecutor v. Bagilishema, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001 ("*Bagilishema* Trial Judgement").

Prosecutor v. Bagilishema, Case No. ICTR-95-1A-A, Judgement (Reasons) (AC), 3 July 2002 ("*Bagilishema* Appeal Judgement").

Bagosora et al.

Prosecutor v. Bagosora et al., Case No. ICTR 98-41-AR73, Judgement and Sentence (TC), 18 December 2008 ("*Bagosora* Trial Judgement").

Prosecutor v. Bagosora et al., Case No. ICTR 98-41-T, Decision on Defence Request for an Investigation Into Alleged False Testimony of Witness DO, 3 October 2003 ("*Bagosora* Decision on Alleged False Testimony").

Bikindi

Prosecutor v. Bikindi, Case No. ICTR-01-72-T, Judgement (TC), 2 December 2008 ("*Bikindi* Trial Judgement").

Bisengimana

Prosecutor v. Bisengimana, Case No. ICTR-00-60, Judgement (TC), 13 April 2006 ("*Bisengimana* Trial Judgement").

Bizimungu et al.

Prosecutor v. Bizimungu et al., Case No. ICTR-99-50-T, Decision on Jérôme-Clément Bicamumpaka's Motions to Meet with Prosecution Witnesses GFA and GKB, 5 December 2007 ("*Bizimungu* Motion to Meet Prosecution Witnesses").

Prosecutor v. Bizimungu et al., Case No. ICTR-99-50-T, Decision on Jérôme-Clément Bicamumpaka's Motion Requesting Recall of Prosecution Witness GFA; Disclosure of Exculpatory Material; and to Meet with Witness GFA, 21 April 2008 ("*Bizimungu* Motion to Recall Prosecution Witness GFA").

Prosecutor v. Bizimungu et al., Case No. ICTR-99-50-T, Decision on Jérôme-Clément Bicamumpaka's Motion Requesting Recall of Prosecution Witness GAP, 5 March 2009 ("*Bizimungu* Motion to Recall Prosecution Witness GAP").

Gacumbitsi

Gacumbitsi v. Prosecutor, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 ("*Gacumbitsi* Appeal Judgement").

Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 ("*Gacumbitsi* Trial Judgement").

Kajelijeli

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

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

Kalimanzira

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

Kamuhanda

Prosecutor v. Kamuhanda, Case No. ICTR-99-54-A, Judgement (AC), 19 September 2005 ("*Kamuhanda* Appeal Judgement").

Prosecutor v. Kamuhanda, Case No. ICTR-99-54-T, Judgement (TC), 22 January 2004 ("*Kamuhanda* Trial Judgement").

Kayishema and Ruzindana

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

Prosecutor v. Kayishema and Ruzindana, Case No. ICTR-95-I-T, Judgement (TC), 21 May 1999 ("*Kayishema and Ruzindana* Trial Judgement").

Karemera

Prosecutor v. Karemera et al, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal on Judicial Notice (AC), 16 June 2006 ("*Karemera* Interlocutory Appeal on Judicial Notice").

Prosecutor v. Karemera et al., Case No. ICTR-98-44-T, Decision on Prosecutor's Confidential Motion to Investigate BTH for False Testimony (Rules 54 and 91(B) of the Rules of Procedure and Evidence), 14 May 2008 ("*Karemera* Decision on Prosecutor's Confidential Motion").

Prosecutor v. Karemera et al., Case No. ICTR-98-44-T, Final Report of *Amicus Curiae* of the Investigations into the False Testimony of Prosecution Witness BTH/GFA in *The Prosecutor v. Édouard Karemera et al.* and *Prosecutor v. Casimir Bizimungu et al.*, 17 April 2009 ("*Karemera Amicus Report*").

Prosecutor v. Karemera et al., Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's and the Prosecutor's Appeals of Decision not to Prosecute Witness BTH for False Testimony (AC), 16 February 2010 ("*Karemera* Decision not to Prosecute").

Prosecutor v. Karemera et al., Case No. ICTR-98-44-T, Decision on Remand Following Appeal Chamber's Decision of 16 February 2010, 18 May 2010 ("*Karemera* Decision on Remand").

Prosecutor v. Karemera et al., Case No. ICTR-98-44-T, Decision on the Preliminary Motions by the Defence of Joseph Nzirorera, Édouard Karemera, André Rwamakuba and Mathieu Ngirumpatse Challenging Jurisdiction in Relation to Joint Criminal Enterprise, 11 May 2004 ("*Karemera* Decision on Defence Preliminary Motions").

Karera

Prosecutor v. Karera, Case No. ICTR-01-74-T, Judgement (TC), 7 December 2007 ("*Karera* Trial Judgement").

Mpambara

Prosecutor v. Mpambara, Case No. ICTR-01-65-T, Judgement (TC), 11 September 2006 ("*Mpambara* Trial Judgement").

Muhimana

Muhimana v. Prosecutor, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 ("*Muhimana* Appeal Judgement").

Musema

Prosecutor v. Musema, Case No. ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000 ("*Musema* Trial Judgement").

The Prosecutor v. Musema, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 ("*Musema* Appeal Judgement").

Muvunyi

Muvunyi v. Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 ("*Muvunyi* Appeal Judgement").

Prosecutor v. Muvunyi, Case No. ICTR-00-55A-T, Judgement (TC), 11 February 2010 ("*Muvunyi* Trial Judgement").

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

Nahimana et al.

Nahimana et al. v. Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 ("Media Appeal Judgement").

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Prosecutor v. Ntagerura et al., Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 ("*Ntagerura et al.* Appeal Judgement").

Ntakirutimana

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Rukundo

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Seromba

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Serushago

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Setako

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Simba

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

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ii) ICTY

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Čelebići

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Galić

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Prosecutor v. Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("*Kvočka et al.* Appeal Judgement").

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Martić

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Milutinović

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Simić

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Stakić

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Strugar

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Tadić

Prosecutor v. Tadić, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 ("*Tadić* Appeal Judgement").

Vasiljević

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iii) Special Court for Sierra Leone

Fofana and Kondewa

Prosecutor v. Fofana and Kondewa, Case No. SCSL-04-14-T, Judgement (TC), 2 August 2007 ("CDF Trial Judgement").

Brima et al.

Prosecutor v. Brima et al., Case No. SCSL-04-16-T, Judgement (TC), 20 June 2007 ("AFRC Trial Judgement").

b) Defined Terms and Abbreviations

Arusha Accords

The Arusha Accords were a set of five accords (or protocols) signed in Arusha, Tanzania on August 4, 1993, by the Rwandan Government and the Rwandan Patriotic Front, designed to implement a power-sharing arrangement through a broad-based transitional government.

Bizimungu Closing Brief

Prosecutor v. Ndindiliyimana et al., Case No. ICTR-2000-56-T, Final Trial Brief Filed by General Augustin Bizimungu Pursuant to Rule 86(B) of the Rules of Procedure and Evidence, 31 March 2009.

Bourgmestre

Mayor of a *commune*.

CDR

Coalition pour la Défense de la République. A Rwandan Political Party associated with Juvénal Habyarimana and the MRND.

Cellule

A political and administrative subdivision of a *secteur*.

Commune

Apolitical and administrative subdivision of a *préfecture*.

DRC

Democratic Republic of the Congo.

ESM

École supérieure militaire. A military academy in Kigali.

ESO

École des sous officiers. A military academy in Butare.

Gendarmerie nationale

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.

Gendarme

An officer of the *Gendarmerie*.

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.

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.

Impuzamugambi

"Those who have the same/single goal"; a Hutu militia controlled by the leadership of the CDR.

Indictment

Prosecutor v. Ndindiliyimana et al., Case No. ICTR-2000-56-T, Amended Indictment, 23 August 2004.

Inkotanyi

RPF soldiers and/or members. Sometimes used to refer to Tutsi or Hutus who were accused of being RPF accomplices.

Interahamwe

Name for youth wing of MRND. Sometimes used to refer to Hutus who were involved in the genocide, irrespective of party membership.

Inyenzi

Kinyarwanda word for "cockroach." Sometimes used to refer to Tutsi in general.

Kalashnikov / AK-47

Assault rifle developed in the Soviet Union.

Kigali Weapons Security Area (KWSA)

Designated zone in Kigali that. as part of UNAMIR's mandate, monitored and controlled the possession of weapons and the movement of combatants.

MDR

Mouvement Démocratique Républicain. A Rwandan political party in the parliamentary minority prior to April 1994.

MGL

Multiple Grenade Launcher.

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement. A Rwandan political party led by Juvénal Habyarimana.

n.

Footnote.

Ndindiliyimana Closing Brief

Prosecutor v. Ndindiliyimana et al., Case No. ICTR-2000-56-T, Final Arguments of Augustin Ndindiliyimana, 31 March 2009.

Nzuwonemeye Closing Brief

Prosecutor v. Ndindiliyimana et al., Case No. ICTR-2000-56-T, Final Trial Brief Filed by François-Xavier Nzuwonemeye Pursuant to Rule 86(B) of the Rules of Procedure and Evidence, 31 March 2009.

p. (pp.)

Page (pages).

para. (paras.)

Paragraph (paragraphs).

PL

Parti Libéral. A Rwandan political party in the parliamentary minority prior to April 1994.

Presidential Guard

An elite unit in the Rwandan Army.

PSD

Parti Social Démocrate. A Rwandan political party in the parliamentary minority prior to April 1994.

Prefect

An individual responsible for the administration of a *préfecture*.

Préfecture

A territorial and administrative unit in Rwanda.

Prosecution Closing Brief

The Prosecutor v. Ndindiliyimana et al., Case No. ICTR-2000-56-T, Prosecutor's Closing Brief, 31 March 2009.

Prosecution Pre-Trial Brief

The Prosecutor v. Ndindiliyimana, et al., Case No. ICTR-2000-56-T, Prosecutor's Pre-Trial Brief Pursuant to Rule 73bis of the Rules of Procedure and Evidence, 17 June 2004.

R-4

Assault rifle produced by Denel Land Systems.

RAF

Rwandan Armed Forces.

Reconnaissance Battalion (RECCE)

An elite unit in the Rwandan Army.

RPF

Rwandan (also Rwandese) Patriotic Front.

RTLM

Radio Télévision Libre des Milles Collines. A radio station based in Kigali.

Rules

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

Sagahutu Closing Brief

The Prosecutor v. Ndindiliyimana et al., Case No. ICTR-2000-56-T, Captain Sagahutu's Closing Brief, 31 March 2009.

Secteur

A political and administrative subdivision of a *commune*.

Statute

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

T.

Transcript.

UNAMIR

United Nations Assistance Mission for Rwanda.

VBL

Véhicule Blindé Léger or "Light armoured vehicle" which was developed in France.

ANNEX C: INDICTMENT

ICTR-00-56-I
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UNITED NATIONS

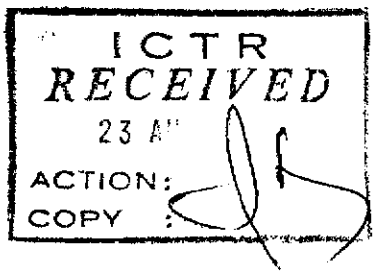
International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994

Case No. ICTR- 2000-56-I

Date :

ENGLISH

Original : FRENCH



THE PROSECUTOR
vs.
AUGUSTIN BIZIMUNGU
AUGUSTIN NDINDILIYIMANA
FRANÇOIS-XAVIER NZUWONEMEYE
INNOCENT SAGAHUTU

AMENDED INDICTMENT
(Joinder)

The Prosecutor of the International Criminal Tribunal for Rwanda, by virtue of the power vested in him under Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute of the Tribunal") charges:

AUGUSTIN BIZIMUNGU, AUGUSTIN NDINDILIYIMANA, FRANÇOIS-XAVIER NZUWONEMEYE and INNOCENT SAGAHUTU

with **CONSPIRACY TO COMMIT GENOCIDE, GENOCIDE** or in the alternative, **COMPLICITY IN GENOCIDE, CRIMES AGAINST HUMANITY,** and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II,** offences punishable under Articles 2, 3, 4, 22 and 23 of the Statute of the Tribunal and under Rwandan Criminal Law, to the extent that the latter is not contrary to the Statute of the Tribunal.

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I. THE ACCUSED

Augustin Bizimungu

1. **Augustin Bizimungu** was born on 28 August 1952 in Mukaranje *commune*, Byumba *préfecture*, Rwanda.

2. At the time of the events referred to in this indictment, **Augustin Bizimungu** held the post of Chief of Staff of the Rwandan Army. He was appointed to that post on 16 April 1994 and was promoted to the rank of Major-General at the same time. Previously, he had been the Commander of Military Operations in Ruhengeri *préfecture*.

3. In his capacity as Chief of Staff of the Rwandan Army, **Augustin Bizimungu** exercised authority over all soldiers in the Rwandan Army.

Augustin Ndindiliyimana

4. **Augustin Ndindiliyimana** was born in 1943, in Nyaruhengeri *commune*, Butare *préfecture*, Rwanda.

5. At the time of the events referred to in this indictment, **Augustin Ndindiliyimana** held the post of Chief of Staff of the *Gendarmerie nationale*. He was appointed to that post on 2 September 1992.

6. In his capacity as Chief of Staff of the *Gendarmerie nationale*, **Augustin Ndindiliyimana** exercised authority over the entire *Gendarmerie nationale* and had disciplinary power over all *gendarmes*, even when the latter were on temporary detachment.

François-Xavier Nzuwonemeye

7. **François-Xavier Nzuwonemeye** was born on 30 August 1955 in Kigali-rural *préfecture*, Rwanda.

8. At the time of the events referred to in this indictment, **François-Xavier Nzuwonemeye** held the post of Commander of the Reconnaissance Battalion (RECCE) within the Rwandan Army.

9. In his capacity as Commander of the Reconnaissance Battalion of the Rwandan Army, **François-Xavier Nzuwonemeye** exercised authority over all the units of that Battalion.

Innocent Sagahutu

10. **Innocent Sagahutu** was born in Cyangugu *préfecture*, Rwanda.

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11. At the time of the events referred to in this indictment, **Innocent Sagahutu** held the post of Second-in-Command of the Reconnaissance Battalion (RECCE) within the Rwandan Army and of company commander of A Company of the said Battalion. He held the rank of Captain.

12. In his capacity as Second-in-Command or Acting Commander of the Reconnaissance Battalion of the Rwandan Army, Innocent Sagahutu exercised authority over all the units of that Battalion.

II. THE MILITARY POWER STRUCTURE

13. The *Forces armées rwandaises* (FAR) was composed of the *Armée rwandaise*(AR) and the *Gendarmerie nationale* (GN).

14. The *Forces armées rwandaises* did not have a unified general staff. They were supervised by the Minister of Defence, under the direct authority of the President of the Republic, the Commander-in-Chief of the *Forces armées rwandaises*.

15. Both the Chief of Staff of the Rwandan Army and that of the *Gendarmerie nationale* were each assisted by four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

16. Regarding the Army, the territory of Rwanda was divided into various sectors of military operations. Each sector was headed by a military commander. The troops were divided into companies and units within each sector. There were several elite units in the Rwandan Army, including the Presidential Guard, the Para-Commando Battalion and the Reconnaissance Battalion.

17. According to the laws in force in Rwanda in 1994, the Rwandan Army was responsible for defending the national territory and, if necessary, cooperating with the *Gendarmerie nationale* in maintaining public order (see *ordonnance législative no.R85/25 du10 mai 1962 portant création de l'Armée rwandaise*) [Legislative Ordinance No. R85/25 of 10 May 1962 relating to the establishment of the Rwandan Army].

18. The *Gendarmerie nationale* was, for its part, responsible for maintaining public law and order and enforcing the laws in force in Rwanda. Its members were assigned to public security territorial companies and brigades (see *Décret-Loi du 23 janvier 1974 portant création de l'Armée rwandaise*) [Legislative decree of 23 January 1974 relating to the establishment of the *Gendarmerie*].

19. As of 1973, in Rwanda, the *Gendarmerie* had replaced the National Police force which had been abolished and integrated into the National Army (see *Arrêté Présidentiel no. 86/08 du 26 juin 1973 portant intégration de la Police dans l'Armée rwandaise*) [Presidential Decree No. 86/08 of 26 June 1973 relating to the integration of the Police force into the Rwandan Army].

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20. Each of the military forces (Army and *Gendarmerie*) could, following well defined procedures, when necessary, join forces in order to fulfill its public service mandate (see *Décret-Loi du 23 janvier 1974 supra)* [Legislative decree of 23 January 1974, *supra*].

21. Under law, officers of the Rwandan Army had the duty to enforce general rules of discipline in respect of all soldiers under their authority, even those who were not members of their units (see *Arrêté Présidentiel no. 413/02 du 13 décembre 1978 modifié, portant Règlement de discipline des Forces armées rwandaises*) [Amended Presidential Decree No. 413/02 of 13 December 1978 establishing the Rules of Discipline of the Rwandan Armed Forces].

III. CHARGES, including a CONCISE STATEMENT OF THE FACTS:

COUNT 1: CONSPIRACY TO COMMIT GENOCIDE

22. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye** and **Innocent Sagahutu** with **Conspiracy to Commit Genocide**, an offence punishable under Article 2 (3) (b) of the Statute, in that, before 6 April 1994, and, after the tragic death of President Juvénal Habyarimana, between 6 April and July 1994, in Rwanda, **Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu** decided and executed a common scheme with some or all of the following: Presidents Juvénal Habyarimana and Théodore Sindikubwabo, Prime Minister Jean Kambanda, Defence Minister Augustin Bizimana, General Déogratias Nsabimana, Colonels Théoneste Bagosora, Gratien Kabiligi and Anatole Nsengiyumva, Major Aloys Ntabakuze, Major Protais Mpiranya, the MRND Chairman and officials, Mathieu Ngirumpatse, Joseph Nzirorera and Juvénal Kajelijeli, *Préfet*-Colonel Tharcisse Renzaho, Nyaruhengeri *Bourgmestre* Charles Kabeza, Joseph Kanyabashi from Butare, and numerous other administrators, soldiers and civilians who espoused their cause to destroy, in whole or in part, the Tutsi ethnic group which was one of the component elements of the Rwandan population;

Pursuant to Article 6(1) of the Statute: either by their acts or obstinate refusal to mobilise the *Forces armées rwandaises* to fulfill their legal mandate to maintain and safeguard public peace, the Accused, in concert with the other actors mentioned above, planned, incited, ordered, committed, or otherwise, aided and abetted the planning, preparation or execution of the planned extermination of the Tutsi ethnic group, as follows:

23. In late 1990, after the massive attack launched inside Rwandan territory by the Rwandan Patriotic Front (RPF) – a politico-military movement which recruited its members essentially from the Tutsi of the diaspora – Government officials from the *Mouvement Républicain National pour la Démocratie et le Développement* (MRND) and a number of Hutu military officers in positions of authority in the *Forces armées rwandaises* had conceived the idea that the neutralization, indeed even the extermination of the Tutsi population of Rwanda would be

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the best approach in order to defeat the invaders and, by the same stroke, prevent the sharing of power, which seemed increasingly inevitable, given the configuration of forces at the time.

24. Between 1991 and July 1994, that radical doctrine steadily gained in consistency, focusing on specific objectives and adopting bellicose plans of action that heralded exclusion.

25. The visible components of the strategy for perpetrating the genocide were as follows: the definition of the enemy by the most senior officials of the Habyarimana regime, incitement to hatred and the vindication of ethnically motivated crimes by the elite who claimed to be the "conscience of the Hutu", without any judicial measures whatsoever, the training of MRND *Interahamwe* militiamen and the distribution of weapons to them by elements of the *Forces armées rwandaises*, the establishment, by senior military officers, of lists of people to be eliminated, the numerous obstructions to the implementation of the Arusha Accords consecrating the return to peace and institutionalised power-sharing between the various political and/or military factions, the deliberate refusal, after the massacres of the civilian population had begun, to restore order, to quell the upheaval and to seek out the perpetrators.

a. Preparation for the genocide

26. In the above context, in December 1991, Juvénal Habyarimana, then Commander-in-Chief of the *Forces armées rwandaises* and Head of State, set up a military commission to formulate a plan to defeat the enemy militarily, in the media and politically. That commission, in whose deliberations Théoneste Bagosora and Anatole Nsengiyumva took part, issued a report in which the enemy was defined as: '*... le Tutsi de l'intérieur ou de l'extérieur, extrémiste et nostalgique du pouvoir, qui n'a jamais reconnu et ne reconnaît toujours pas les acquis de la révolution sociale de 1959 et qui cherche à reconquérir le pouvoir par tous les moyens, y compris par les armes*" [Tutsi from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms.] The document specified that the enemy was being recruited from amongst the Tutsi inside the country, the Hutu who were dissatisfied with the present regime and foreigners married to Tutsi women. The then Chief of Staff of the Rwandan Army, Déogratias Nsabimana, ordered that extracts from the commission report be circulated among the troops.

27. In the course of 1992, 1993 and 1994, the political and military authorities, including Théoneste Bagosora, **Augustin Bizimungu** and Protais Mpiranya, provided military training and weapons to MRND *Interahamwe* militiamen. The training took place in Ruhengeri, Cyangugu, Gisenyi, Butare *préfectures* and in Mutara *secteur*. The training sites were the Gako, Gabiro, Mukamira and Bigogwe military camps.

28. To legitimize, if necessary, the process, President Juvénal Habyarimana declared in 1993 in Ruhengeri that the *Interahamwe* had to be equipped so that, come the right time, "*ils descendent*" [they should swing into action].

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29. At the same time, in Ruhengeri, between 1992 and 1994, **Augustin Bizimungu**, accompanied by Juvénal Kajelijeli and others, regularly took part in meetings that were generally held on Saturdays at the home of Joseph Nzirorera, the MRND National Secretary. The purpose of the meetings was to devise a strategy for fighting the Tutsi enemy.

30. In January 1993, **Augustin Bizimungu**, in his capacity as Commander of Ruhengeri Operational sector, while addressing his troops, stated that the enemy was known and the enemy was the Tutsi, thereby echoing the speech made by President Habyarimana and the doctrine professed by senior officers in the Army.

31. **Augustin Bizimungu** reiterated that statement in February 1994 when he declared that if the RPF attacked Rwanda again, he did not want to see one Tutsi alive in his sector of operations.

32. During the same period preceding the genocide, on 7 January 1994, **Augustin Ndindiliyimana** and other influential MRND members participated in a meeting at the MRND headquarters in Kigali to oppose the disarmament program that was included in the Arusha Accords and which was to be supervised by the United Nations Mission (UNAMIR). It was decided at the meeting to resist by all possible means the implementation of the program and to hide weapons at various locations in Kigali.

33. Furthermore, in early 1994, due to the proliferation of weapons in Kigali-city *préfecture*, UNAMIR put in place a disarmament program entitled Kigali Weapon Security Area (KWSA). Concurrently, in cooperation with the Chief of Staff of the *Gendarmerie*, **Augustin Ndindiliyimana**, UNAMIR organized search operations in Kigali. The effectiveness of the operations was compromised by **Augustin Ndindiliyimana** who gave information on the search targets to Mathieu Ngirumpatse, MRND Chairman. The latter passed the information on to his *Interahamwe* militiamen.

34. In January and February 1994, Major **François-Xavier Nzuwonemeye**, in keeping with the same dissimulation strategy as **Ndindiliyimana,** had about 20 armoured vehicles and about ten jeeps equipped with machine guns, belonging to the Reconnaissance Battalion, hidden in Gisenyi and at certain of President Habyarimana's residences in Kiyovu and Rambura. Early in the morning of 7 April 1994, those vehicles were brought back to Kigali to assist the ground troops charged with tracking down the civilian population.

35. Moreover, on 5 January 1994, at the swearing-in ceremony of the Broad-Based Transitional Government in Kigali, the *Interahamwe* organized a demonstration in cooperation with members of the Presidential Guard. On that occasion, Major Protais Mpiranya, despite several attempts by UNAMIR to negotiate with him, prevented access by political opponents or a significant number of them into the premises of the CND. In the end, only President Juvénal Habyarimana was sworn in on that day and the Broad-Based Transitional Government provided for in the Arusha Accords never came into being.

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36. In this regard, it should also be noted that, when Radio Télévision Libre des Milles Collines (RTLM), of sad memory, was founded, **Innocent Sagahutu** subscribed a certain number of shares in that company and blatantly campaigned among the *Forces armées rwandaises* to encourage the buying of shares in that new media organ which advocated total war against the Tutsi.

37. Lastly, although incitement to ethnic or racial hatred and violence against the Tutsi were rife in the broadcasts of that radio station, **Augustin Ndindiliyimana,** the highest ranking judicial police officer in Rwanda, for his part, avoided investigating or ordering any judicial probe whatsoever of the journalists who were, on a daily basis, committing criminal offences (incitement to ethnic or racial hatred and violence)...

b. <u>Acts associated with Genocide</u>

38. On 7 April 1994, in Kigali, elements of the Reconnaissance Battalion commanded by **François-Xavier Nzuwonemeye** and **Innocent Sagahutu,** in concert with elements of the Presidential Guard commanded by Protais Mpiranya, killed the Prime Minister of the Transitional Government, Agatha Uwilingiyimana, and the ten Belgian UNAMIR soldiers who had been assigned to escort her. The Prime Minister had intended to go to the radio station to address the nation and forewarn the various protagonists about engaging in excesses and to make an appeal for calm. Those murders, and others, annihilated several obstacles that stood in the way of the genocide.

39. Shortly before those murders were committed, **François-Xavier Nzuwonemeye,** had assembled his troops at Kigali military camp and informed them of the death of President Juvénal Habyarimana and that of the Chief of Staff of the Rwandan Army, Déogratias Nsabimana. In his address, **François-Xavier Nzuwonemeye** identified the enemy as the RPF; he also called on his troops to eliminate all its accomplices within the country before taking on the enemy.

40. Between 7 and 11 April 1994, elements of the Presidential Guard commanded by Protais Mpiranya assassinated many Rwandan political figures, including Boniface Ngulinzira, the Minister of Foreign Affairs of the out-going Government, who was the main architect of the Arusha Accords. RTLM announced the death of Minister Ngulinzira in the following terms: "*nous avons exterminé tous les complices du FPR; Boniface Ngulinzira n'ira plus vendre le pays au profit du FPR, à Arusha. Les Accords de paix ne sont plus que des chiffons de papier, comme l'avait prédit notre papa Habyarimana*" [we have exterminated all the accomplices of the RPF; Boniface Ngulinzira will no longer go and sell the country to the RPF in Arusha. The Peace Accords are now only scraps of paper, as our father, Habyarimana, had predicted].

41. In Kigali, in April and May 1994, **Innocent Sagahutu** and Protais Mpiranya distributed weapons on several occasions to fanaticized militiamen, whose criminal activities were well known to them, while asking them to persevere in the undertaking to exterminate the Rwandan

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Tutsi.

42. In Butare, on or about 19 April 1994, the interim President, Théodore Sindikubwabo, gave a speech at a public rally, advocating nothing less than ethnic cleansing. After the message had been delivered, elements of the Presidential Guard, commanded by Protais Mpiranya, set out to concretize that sinister scheme by murdering several thousand Tutsi in Butare and the vicinity.

43. In Gitarama, on or about 21 April 1994, the Prime Minister of the interim Government, Jean Kambanda, praised RTLM, knowing full well that that radio station was calling for the extermination of the Tutsi and their supposed accomplices. At the time, he described the radio station as the "*arme indispensable pour combattre l'ennemi*" [indispensable weapon for fighting the enemy].

44. **Augustin Ndindiliyimana** and **Augustin Bizimungu** were not uninvolved in all this.

45. On 7 April 1994, following the death of President Juvénal Habyarimana and the Chief of Staff of the Rwandan Army, Major General Déogratias Nsabimana, Major **Augustin Ndindiliyimana**, the highest ranking officer in active service in the Rwandan Army, was appointed by his peers to chair the Military Crisis Committee which was to fill the power vacuum, pending the establishment of new institutions.

46. **Augustin Ndindiliyimana** and Théoneste Bagosora, in full agreement, supported the institution of an interim Government composed solely of Hutu extremists.

47. On 7 April 1994, between 10 a.m. and 1 p.m., the Military Crisis Committee met at the *École Supérieure Militaire* (ESM), about 50 meters from Kigali camp. In the course of the meeting, Commander Nubaha of Kigali camp came and informed **Augustin Ndindiliyimana** and Théoneste Bagosora who were chairing the meeting that Rwandan soldiers were killing Belgian UNAMIR soldiers. **Augustin Ndindiliyimana** and Théoneste Bagosora allowed the meeting to continue without taking the slightest action either directly or through the intermediary of the commanders whose subordinates were implicated in the killings. Hence, the assassination of the ten soldiers from the Belgian contingent, the largest in the UN peacekeeping mission, and the withdrawal of the Belgian contingent as of 11 April 1994.

48. Between 7 and 11 April 1994, elements of the Presidential Guard, the Reconnaissance Battalion and *Interahamwe* militiamen murdered or sought to murder all political figures in the opposition who had been designated to occupy prominent positions in the Broad-Based Transitional Government which was to be put in place pursuant to the Arusha Accords. The Prime Minister of the Transitional Government who was in office until 7 April, Agathe Uwilingiyimana, Ministers Frédéric Nzamurambaho, Faustin Rucogoza, Landouald Ndasingwa, Boniface Ngulinzira as well as the President of the Constitutional Court, Joseph Kavaruganda, were among the unfortunate victims.

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49. Although the *Gendarmerie* which he commanded was responsible for protecting the said authorities, and although he had been informed of the threat to the lives of those political figures, well before the events, **Augustin Ndindiliyimana** took no adequate steps to protect them from being killed; nor did he in any way reorganize the security system after the first massacres were committed.

50. The murder of the Belgian soldiers prompted the withdrawal of the Belgian contingent; the murder of political figures who supported the implementation of the Arusha Accords had created an institutional vacuum which was perniciously filled by **Augustin Ndindiliyimana** and Théoneste Bagosora. Two major obstacles to the spread and continuation of the massacres were thus removed.

51. In April 1994, **Augustin Ndindiliyimana** had Majors Cyriaque Habyarimana and Jabo, who had refused to be involved with the massacres in Butare and Kibuye, transferred to the frontline.

52. From April to June 1994, **Augustin Ndindiliyimana**, Chief of Staff of the *Gendarmerie*, issued many *laissez-passer* to *Interahamwe* leaders to enable them to scour the country and coordinate the massacres of the Tutsi population.

53. From April to June 1994, General **Augustin Ndindiliyimana** received daily situation reports (SITREPS) from his troops, notably during meetings held at the *Gendarmerie* headquarters at Kacyiru camp. Those reports indicated the scale and scope of the massacres being perpetrated against the civilian population. Moreoever, he went to various *préfectures* to assess the situation. Although he had at his disposal several *Gendarmerie* units not involved in combat to defend Rwandan territory, **Augustin Ndindiliyimana**, Chief of Staff of the *Gendarmerie* who, under law, was responsible for maintaining public order, and protecting people and their property, took no significant action to quell the upheaval or to seek out the perpetrators.

54. On 7 April 1994, in Ruhengeri, **Augustin Bizimungu** congratulated a *Conseiller* of Mukamira *secteur* for successfully tracking down Tutsi and encouraged him to continue his work in "*exterminant les petits cancrelats*" [exterminating the small cockroaches].

55. During the morning of 7 April 1994, **Augustin Bizimungu** went to Joseph Nzirorera's house in Ruhengeri and told MRND militants that "*l'heure est venue de mettre en pratique les recommendations qui vous avaient été faites. Je viens de m'entretenir au telephone avec Nzirorera et nous avons convenu que vous devez commencer à tuer tous les Tutsis. Commencez par vos quartiers respectifs, avant de vous déplacer dans les autres endroits de la commune ...*" [the time has come to put into practice the recommendations made to you. I have just been talking on the phone with Nzirorera and we have agreed that you should start killing all the Tutsi. Start with your respective neighbourhoods before moving into the other areas of the commune...]. He then assured them that weapons had been placed at their disposal at the Ruhehe armoury and he promised to provide them with fuel for burning the homes of Tutsi. The following day he made good his promise by distributing fuel in Cyohoha-Rukeri in the company

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of Lieutenant Mburuburengero.

56. On 8 April 1994, at a meeting in Ruhengeri attended by over 700 people, **Augustin Bizimungu** castigated the *Inkotanyi* calling them perpetrators of genocide and urging the audience to follow the example of the *Interahamwe* in Mukingo *commune* whose performance he praised: over 200 Tutsi killed in Busogo parish. He then called for the murder of all the Tutsi.

57. On or about 18 May 1994, **Augustin Bizimungu** took part in a meeting during which the military hierarchy of which he was a member praised the performance of the militiamen and underscored the need to better arm them.

58. On or about 21 May 1994, **Augustin Bizimungu** visited Remera-Rukoma Hospital where he congratulated the militiamen who had just killed about ten people at the hospital and in its vicinity, and he asked them to double their vigilance in hunting down the Tutsi.

59. From mid-April to late June 1994, while the genocide was being perpetrated, **Augustin Bizimungu** deliberately abstained from ensuring that the Rwandan Army, which was under his command, fulfilled its duty to restore order, as required by Rwandan laws and regulations.

60. In May 1994, when the US State Department approached him, asking that he put an end to the killings, **Augustin Bizimungu** refused to take any action whatsoever. His response to the American diplomat was: "*faites cesser les bombardements du FPR, et je m'engage à arrêter les tueries*" [Tell the RPF to stop the bombings and I will undertake to stop the killings].

COUNT 2: GENOCIDE

61. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu** and **Augustin Ndindiliyimana** with **Genocide**, an offence punishable under Article 2.2 (a) and (b), 2.3 (a) of the Statute, in that in 1994, in Rwanda, **Augustin Bizimungu** and **Augustin Ndindiliyimana** were responsible for killing and causing serious bodily or mental harm, committed by soldiers, gendarmes and *Interahamwe* and *Impuzamugambi* militiamen, against members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group;

Pursuant to Article 6(1) of the Statute: by their acts referred to in paragraphs 63 to 66, 71 and 72 below, in that the Accused, **Augustin Bizimungu** and **Augustin Ndindiliyimana** planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the said crimes; **and**

Pursuant to Article 6(3) of the Statute: in that the Accused knew or had reason to know that their subordinates had committed or were about to commit the acts referred to in paragraphs 67 to 70, 73 to 77 below, and did not take the reasonable and necessary measures to prevent such acts or to punish the perpetrators thereof.

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ALTERNATIVELY TO COUNT 2

COUNT 3: COMPLICITY IN GENOCIDE

62. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu** and **Augustin Ndindiliyimana** with **Complicity in Genocide**, an offence punishable by Article 2 (3) (e) of the Statute, in that in ordering, providing the means, aiding and abetting, the Accused knowingly assisted the perpetrators of the crimes referred to in paragraphs 63 to 66, 71 and 72, as follows:

AUGUSTIN BIZIMUNGU

63. On or about 7 April 1994, following the speech made to them by **Augustin Bizimungu** in Joseph Nzirorera's home, cited in paragraph 55 above, the MRND *Interahamwe* militiamen killed 150 Tutsi in Rwankeri *secteur*, in Ruhengeri, and, on the same day, under the supervision of soldiers from Kanombe and Bigogwe camps, which were under the authority of **Augustin Bizimungu**, participated in the attack in which more than 200 Tutsi were killed in Busogo Parish.

64. On or about 8 April 1994, **Augustin Bizimungu,** accompanied by *Sous-Préfet* Nzanana, went to meet the said group of militiamen, and asked them to prepare to intervene at the Ruhengeri Court of Appeal where Tutsi, who, according to him, were destined for extermination, had sought refuge.

65. Those militiamen, and others, went to meet **Augustin Bizimungu** on or about 14 April, shortly before 12 noon, in front of the building in which the "refugees" had sought refuge. **Augustin Bizimungu** pointed to the building and withdrew after the first grenade was thrown. Over 100 people were killed at that location following the said attack. In the evening, **Augustin Bizimungu** had broadcast an announcement on the radio, alleging that the refugees had died under RPF bombs.

66. On 16 June 1994, at a meeting held at EGENA, **Augustin Bizimungu** told militiamen to set up roadblocks to unmask the *Inkotanyi* who had hidden among Hutu fleeing the combat zones. As a result of those orders, a large number of Tutsi civilians and Hutu mistaken for Tutsi were killed in that area in the following hours and days.

67. On 7 April 1994, Lieutenant Mburuburengero of Mukamira camp, subordinate to **Augustin Bizimungu**, told a group of militiamen to exterminate the Tutsi in Ruhengeri. As a result of that order, and by dint of the weapons and fuel provided by the soldiers, 60 to 70 Tutsi were killed in the morning in the Byangabo neighbourhood, after their houses had been set aflame in order to flush them out.

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68. Finally, from mid-April to late June 1994, while **Augustin Bizimungu** was exercising his functions as Chief of Staff of the Rwandan Army, soldiers under his command committed murders and caused serious bodily or mental harm to many Tutsi, with the intent to destroy, in whole or in part, the Tutsi ethnic group, at places in Kigali, Gitarama, Butare, Gisenyi, Cyangugu, Kibuye and Ruhengeri.

69. Such acts of violence were specifically observed at Charles Lwanga Church on 8 and 10 June 1994; at the Josephite Brothers compound, on 8 April and 7 June 1994; at ETO-Nyanza, on 11 April 1994; at the *Centre Hospitalier de Kigali*, during the months of April, May and June 1994; at the Kicukiro *conseiller*'s office, during the months of April and May 1994; at Kabgayi Primary School, from April to June 1994; a the Musambira *commune* office and Dispensary, in April and May 1994; at TRAFIPRO, in April and May 1994; in Butare, from 19 April to late June 1994; in Gisenyi, Kibuye and Ruhengeri, during the months of April, May and June 1994.

70. Although he knew or had reason to know – in view of the intelligence resources at his disposal – that his subordinates were about to commit or had committed such acts of violence, **Augustin Bizimungu** did not take any of the necessary and reasonable steps to prevent the said crimes and he did not at any time use his statutory powers to punish the perpetrators or to institute proceedings against them.

AUGUSTIN NDINDILIYIMANA

71. On or about 15 April 1994, **Augustin Ndindiliyimana** went to Kabakubwa hill accompanied by Colonel Tharcisse Muvunyi and instructed the latter to make sure that all the Tutsi refugees who had gathered there were killed within 24 hours. As a result of those instructions, the following day, Joseph Kanyabashi, Colonels Muvunyi and Alphonse Nteziryayo mobilised a number of youths in Butare to go and fulfill that vile task. That day, between 3 p.m. and 6 p.m., several hundred Tutsi refugees were murdered on Kabakubwa hill.

72. Around late May or early June 1994, **Augustin Ndindiliyimana,** accompanied by Nzabirinda, also known as Biroto, and *gendarmes,* led six Tutsi civilians to the outskirts of Butare. When they got there, very near a bridge, he drew his gun and shot and killed two of them - a woman and her baby - leaving his companions to kill the four others. **Augustin Ndindiliyimana** later urged those present to treat all Tutsi in the same way so as to prevent them from giving their testimony to future investigators from the international community.

73. On 20, 21 and 22 April 1994, many massacres were committed in Nyaruhengeri *commune* while **Augustin Ndindiliyimana** was present there. Those massacres, which were orchestrated and supervised by *gendarmes* assigned to guard **Augustin Ndindiliyimana**'s family; they provided weapons and fuel to the killers who caused the death of over a thousand people in Nyaruhengeri and its vicinity, particularly in Kansi Church where more than 10,000 Tutsi had sought refuge.

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74. On or about 21 April 1994, gendarmes on duty at **Augustin Ndindiliyimana**'s residence opposite Nyaruhengeri gave two grenades to an *Interahamwe* militiaman known as Kajuga Pierre and told him to use them to exterminate the Tutsi. The grenades were handed over quite openly, during the day, at **Augustin Ndindiliyimana**'s residence, where his wife and children were living.

75. On or about 22 April 1994, Pierre Kajuga threw a grenade into the Nyaruhengeri *secteur* office where many Tutsi had sought refuge, blowing off both legs of Adolphe Karakesi and wounding many other refugees.

76. On or about 13 April 1994, *gendarmes* from the Nyamirambo unit, accompanied by militiamen, attacked Saint-André College, in Kigali, where hundreds of people, mainly Tutsi, had sought refuge between 7 and 8 April 1994. After checking their identity, the attackers selected all the Tutsi men and killed them outside the college. The said *gendarmes* were under **Augustin Ndindiliyimana**'s command.

77. On or about 22 April 1994, a group of about 60 Tutsi was selected at the CELA, where they had sought refuge, and led to the Muhima *Gendarmerie* unit purportedly for questioning. In fact, the *gendarmes*, instead of questioning them, handed them over to *Interahamwe* militiamen who killed them on the road leading to the CND. Not more than five people survived that massacre. Those *gendarmes* were under **Augustin Ndindiliyimana**'s command.

COUNT 4: CRIMES AGAINST HUMANITY (Murder)

78. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu** with Murder, as a Crime against Humanity, an offence punishable under Article (3) (a) of the Statute, in that, in 1994, in Rwanda, **Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu** were responsible for several murders committed against Rwandan nationals, as part of widespread or systematic attacks against a civilian population, on national, political, ethnic, racial or religious grounds; in that also, at the same time and place, **François-Xavier Nzuwonemeye and Innocent Sagahutu** were responsible for the murder of ten UNAMIR peacekeeping troops, whose mandate did not include combat and who were, moreover, disarmed, during the same attacks led against the victims on national, racial or ethnic grounds;

Pursuant to Article 6(1) of the Statute: by their individual acts, the Accused planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes referred to in paragraphs 79, 80 and 81, 92 and 93, 103 and 107 below; **and**

Pursuant to Article 6(3) of the Statute: because the Accused knew or had reason to know that soldiers under their command or civilians obeying their orders had committed or were about to commit the crimes referred to in paragraphs 82 to 91, 94 to 102, 103 to 108 below, and did not

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take the reasonable and necessary measures to prevent such crimes or to punish the perpetrators thereof.

AUGUSTIN BIZIMUNGU

79. On or about 7 April 1994, **Augustin Bizimungu**, Commander of Military Operations in Ruhengeri *préfecture*, was informed that massacres of the civilian population had begun and that several civilians had sought refuge at Ruhengeri military camp. He ordered his subordinates to chase the civilians out of the camp and prevent them in the future from coming in. As he left the camp, two civilians begged him for his assistance; he ordered that they be pushed away and armed civilians executed them in his presence. Finally, as he was continuing on his way, that same group of armed civilians set upon a group of women and children and massacred them in front of **Augustin Bizimungu,** who took no action whatsoever.

80. On or about 7 April 1994, in a complex near Rwankeri, **Augustin Bizimungu** came across militiamen busy killing refugees and he vigorously encouraged them. During that attack, the militiamen had found a young women in her twenties, hidden under the roof of a building, **Augustin Bizimungu** asked that she be burnt alive and watched the unbearable scene. **Augustin Bizimungu** then rewarded the militiamen with money for what they had done.

81. Between 11 and 14 April 1994, **Augustin Bizimungu** went to a roadblock located near the Ruhengeri Agronomic centre with four bound Tutsi in the rear cabin of his vehicle that the soldiers of his escort were stamping on without restraint. **Augustin Bizimungu** asked the militiamen manning the roadblock to do their duty by killing the four Tutsi. The militiamen complied.

82. As of 7 April 1994, in Kigali, thousands of civilians had sought refuge at the *Ecole Technique Officielle* (ETO) in order to place themselves under the protection of the UNAMIR Belgian contingent. On 11 April 1994, immediately after the Belgian contingent withdrew, soldiers from the Presidential Guard and the Para-commando battalion, assisted by militiamen, lead the refugees in the direction of Nyanza on a two-kilometre forced march, after which they massacred several thousands of civilians: men, women, the elderly and children.

83. Right from the beginning of the massacres, the *Centre hospitalier de Kigali* (CHK) took in many injured Tutsi from the various districts of the city. Soldiers from the Reconnaissance battalion guarded the hospital. On several occasions, those soldiers selected Tutsi patients and killed them on the spot. Moreover, a list of Tutsi staff members was drawn up and several of them were killed.

84. On 10 June 1994, at the Charles Lwanga church in Kigali, soldiers from the Rwandan Army and militiamen forced the refugees hiding there into trucks. They took the refugees in the direction of Rwampara and executed them along the way.

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85. On or about 7 June 1994, soldiers from the Rwandan Army surrounded the house of the Josephite brothers in Kigali, they made those who were inside come out and shot them.

86. Between April and June 1994, several persons sought refuge at Kabgayi primary school in Gitarama *préfecture*. Throughout this whole period, soldiers from the Rwandan Army and *Interahamwe* abducted and killed young boys who had sought refuge at that location.

87. In April and May 1994, a large number of civilians sought refuge at Musambira *commune* office and dispensary, in Gitarama *préfecture*. During that period, soldiers from the Rwandan Army and militiamen abducted and killed several Tutsi men and young boys who had sought refuge at that location.

88. In April and May 1994, thousands of civilians gathered in the TRAFIPRO compound in Gitarama in order to protect themselves from ethnic violence that was rampant in the region. Throughout that period, soldiers from the Rwandan Army abducted and killed several Tutsi men and young boys who had sought refuge at that location.

89. In Butare, starting on 19 April 1994, soldiers from the Rwandan Army and *Interahamwe* abducted and killed many civilians from the *préfecture* office, the Episcopal church of Rwanda (EER), Gishamvu church and Nyumba parish.

90. In Gisenyi, on 7 April 1994, Anatole Nsengiyumva, the military area commander, ordered certain political leaders, local authorities and militiamen to assemble at the military camp. Anatole Nsengiyumva addressed the gathering, ordering all present to kill all RPF accomplices and all Tutsi, after which Anatole Nsengiyumva ordered his subordinates to distribute rifles and grenades to the militiamen that were present. Thus, between April and July 1994, militiamen acting under the orders of Anatole Nsengiyumva tracked down, abducted and killed several members of the Tutsi and moderate Hutu population of Gisenyi.

91. In Cyangugu *préfecture*, in the course of April and May 1994, members of the Tutsi population who were being hunted down in their *communes* sought refuge at Kamarampaka stadium, as well as in the Nyarushishi camp compound. During this period, soldiers from the Rwandan Army and *Interahamwe* abducted and killed many of those civilian refugees.

AUGUSTIN NDINDILIYIMANA

92. Towards the end of April 1994, **Augustin Ndindiliyimana**, accompanied by armed back-up troops, went to a compound in Butare where civilian Tutsis had sought refuge. One Nzabirinda was amongst those accompanying him and he called out the names of 12 ill-fated persons who were immediately led to the banks of the Cyamwakiza River and killed. On this occasion, **Augustin Ndindiliyimana** killed four of the persons thus abducted with an assault rifle.

93. On 5 May 1994, in Nyaruhengeri, a group of *Interahamwe* including Pierre Kajuga went to the

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residence of Ignace Habimana and killed the latter, as well as Célestin Munyanshagore, following orders the murderers claimed to have received from **Augustin Ndindiliyimana**.

94. On or about 7 April 1994, in Kigali, *gendarmes* under the command of **Augustin Ndindiliyimana**, accompanied by *Interahamwe*, went to Kabeza where they killed Gerard Kalinditwari and the members of his family composed of seven to eight persons. Those persons were killed because they were Tutsi.

95. On or about 8 April 1994, a group of *gendarmes* under the command of **Augustin Ndindiliyimana**, led by Sergeant Major Come, went to Kabeza led by an *Interahamwe* militiaman and massacred a Rwandan civilian answering to the name Kanamugire and all of the members of his family.

96. In the month of April 1994, militiamen erected a roadblock near Kacyiru Camp, the headquarters of the *Gendarmerie*. At the roadblock, which was supervised by two NCO *gendarmes*, the militiamen killed several Tutsi as well as some Hutu who had come to seek refuge at the camp and whom the *gendarmes* had handed over to them.

97. Towards the end of April, on the orders of Appollinaire Biganiro, commander of the Gisenyi *gendarmerie* unit, and a subordinate of **Augustin Ndindiliyimana**, Omar Serushago, Bernard Munyagishari, Thomas Mugiraneza, one Damas and others, went to Rwandex, a company located in Gisenyi, to abduct and kill the Tutsi who had sought refuge there. When they arrived, they beat to death a man of Tutsi origin who attempted to dissuade them from so doing. Subsequently, they abducted four persons of Tutsi origin, identified by *gendarmes* present at that location, and took them to the cemetery where they were executed.

98. Still towards the end of April, on the orders of the same Apollinaire Biganiro, Omar Serushago, Thomas Mugiraneza, Bernard Munyagishari, Hassan Gitoki, Damas and Michel Abuba went to the military camp to collect several Tutsi civilians detained at the *gendarmerie* unit's gaol. With the assistance of the guards who were present at that location and a few *Interahamwe*, they led some ten Tutsi to the place called "*commune rouge*" and executed them there.

99. In the last few days of April 1994, Antoine Bisonimbwa, **Augustin Ndindiliyimana**'s uncle, was informed that the people of Nyaruhengeri refused to kill Gahoki, a Tutsi tradesman. He went to the residence of **Augustin Ndindiliyimana**, to collect three *gendarmes* who went to kill the tradesman. After killing him, the *gendarmes* seized the motorcycle belonging to the deceased and took it to the residence of **Augustin Ndindiliyimana** to be used in their daily movements.

100. In Kigali, in early May 1994, *gendarmes* under the command of **Augustin Ndindiliyimana** killed Aloys Niyoyita, a Tutsi civilian, member of the Liberal Party.

101. In Kigali, in early May 1994, *gendarmes* under the command of **Augustin Ndindiliyimana**

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killed Phocus Kananeri, a Tutsi civilian, inside his house.

102. In Kigali, in April 1994, at Nyamirambo, *gendarmes* under the command of **Augustin Ndindiliyimana** occupied one of the many roadblocks erected in that *secteur*. They would check the ethnic origin of the passers-by at the roadblock by examining their identity cards. Anyone who was of Tutsi origin or was suspected of belonging to that ethnic group was summarily executed. The executioners would then invariably accuse their victims of being "*Inkotanyi* accomplices".

FRANÇOIS-XAVIER NZUWONEMEYE AND INNOCENT SAGAHUTU

103. During the morning of 7 April 1994, elements of the Reconnaissance battalion under the command of **François-Xavier Nzuwonemeye** and led by **Innocent Sagahutu**, acting in concert with members of the Presidential Guard and *Interahamwe* militiamen hunted down, tortured and killed Prime Minister Agathe Uwilingiyimana. They also killed three members of the Prime Minister's entourage, including her husband.

104. Shortly before the Prime Minister was murdered Captain **Innocent Sagahutu** informed his hierarchical supervisor, **François-Xavier Nzuwonemeye**, by radio that "*tous avaient été déjà tués à l'exception de Agathe Uwilingiyimana et de Faustin Twagiramungu*" [everyone had already been killed except Agathe Uwilingiyimana and Faustin Twagiramungu].

105. During the morning of 7 April 1994, ten UNAMIR Belgian peacekeepers were arrested at the residence of Agathe Uwilingiyimana by soldiers from the Reconnaissance battalion under the command of **François-Xavier Nzuwonemeye** and led by **Innocent Sagahutu**, assisted by their colleagues from the Presidential Guard. After being disarmed, the Belgian peacekeepers were led to Kigali Camp where they were horribly killed and mutilated by an unleashed horde composed of soldiers from the Reconnaissance Battalion, the Presidential Guard and the Music Company.

106. During the whole of that morning of 7 April, Sergent Major Bizimungu who led the Reconnaissance battalion unit that had participated in the arrest of the peacekeepers had remained in radio contact with Captain **Innocent Sagahutu**.

107. Thus, when at the beginning of the morning of 7 April, the NCO asked Captain **Innocent Sagahutu** what he should do if the Belgian soldiers were to resist the arrest of the Prime Minister, he was ordered to use his armoured vehicles if that were to be the case. Later that same day when Sergeant Major Bizimungu asked **Innocent Sagahutu** if Prime Minister Agathe Uwilingiyimana should be taken to Kigali Camp he answered scathingly "*pour quoi faire?*" [what for?]. Thereupon Prime Minister Agathe Uwilingiyimana was killed.

108. In Kigali, as soon as the massacres began in April 1994, the *Centre hospitalier de Kigali* (CHK) took in many Tutsi who were injured or simply refugees from the various districts of the

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city. Soldiers from the Reconnaissance battalion under the command of **François-Xavier** Nzuwonemeye and belonging to the A squad led by **Innocent Sagahutu** guarded the hospital. On several occasions, those soldiers selected patients or refugees and killed them there. Moreover, a list of Tutsi staff members was drawn up and several of them were killed

COUNT 5: CRIMES AGAINST HUMANITY (Extermination)

109. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu** and **Augustin Ndindiliyimana** with Extermination, as a Crime against Humanity, an offence punishable under Article (3) (b) of the Statute, in that, in 1994, in Rwanda, **Augustin Bizimungu** and **Augustin Ndindiliyimana** were responsible for murders committed on a large scale against the Rwandan civilian population, as part of widespread or systematic attacks, on ethnic, racial or political grounds;

Pursuant to Article 6(1) of the Statute: the Accused **Augustin** Bizimungu by his acts planned, incited to commit, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes referred to in paragraph 79 above; **and**

Pursuant to Article 6(3) of the Statute: in that the Accused **Augustin Bizimungu** and **Augustin Ndindiliyimana** knew or had reason to know that soldiers under their command or militiamen obeying their orders had committed or were about to commit the crimes referred to in the paragraphs 82, 84, 85, 89, 90, 73 and 102 above and did not take reasonable and necessary measures to prevent such crimes or to punish the perpetrators thereof.

COUNT 6: CRIMES AGAINST HUMANITY (Rape)

110. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu, François-Xavier Nzuwonemeye** and **Innocent Sagahutu** with Rape, as a Crime against Humanity, an offence punishable under Article (3) (g) of the Statute, in that, in 1994, in Rwanda, **Augustin Bizimungu, François-Xavier Nzuwonemeye** and **Innocent Sagahutu** were responsible for several rapes committed against Tutsi civilians by soldiers under their command or by civilians over whom they had authority, as part of widespread or systematic attacks against a civilian population, on national, racial, ethnic, or political grounds, as follows:

Pursuant to Article 6(3) of the Statute: in that the Accused knew or had reason to know that their subordinates had committed or were about to commit the rapes referred to in paragraphs 111 to 117, in respect of **Augustin Bizimungu**, in paragraph 112 in respect of **Innocent Sagahutu** and **François-Xavier Nzuwonemeye**, and did not take reasonable and necessary measures to prevent such crimes or to punish the perpetrators thereof.

111. In April and May 1994, soldiers from the Rwandan Army went daily to the office of the *conseiller* of Kicukiro in Kigali, to abduct Tutsi women and young girls whom they raped in the vicinity of the office.

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112. During the months of April, May and June 1994, soldiers from the A squad of the Reconnaissance battalion, led by **Innocent Sagahutu** and under the command of Major **François-Xavier Nzuwonemeye,** who guarded the *Centre hospitalier de Kigali*, and their *Interahamwe* accomplices abducted several Tutsi women from the hospital who had come to seek treatment or simply to seek refuge; they raped them or mistreated them. Those rapes often took place inside the kiosks at the entrance to the hospital.

113. Between April and June 1994, several persons sought refuge at Kabgayi primary school in Gitarama *préfecture*. Throughout that period, soldiers from the Rwandan Army and *Interahamwe* militiamen selected and abducted Tutsi women and young girls that they took to the rooms reserved for injured soldiers or in nearby places and woods where they raped them.

114. In April and May 1994, at the Musambira *commune* office and dispensary, in Gitarama *préfecture*, soldiers from the Rwandan Army and militiamen frequently abducted Tutsi women and young girls to take them to nearby places and woods where they raped them. Those rapes were often accompanied by humiliating and degrading treatment.

115. In April and May 1994, at the Trafipro centre in Gitarama, soldiers from the Rwandan Army and militiamen abducted Tutsi women that they led to neighbouring places where they raped them. Those rapes were often accompanied by humiliating and degrading treatment.

116. In Butare, starting on 19 April 1994, soldiers from the Rwandan Army and *Interahamwe* militiamen went on a regular basis to the *préfecture* office, to the Episcopal church of Rwanda (EER), to Gishamvu church and Nyumba parish to abduct the female refugees and rape them. Those rapes were often accompanied by humiliating and degrading treatment.

117. In Cyangugu, during the months of April and May 1994, soldiers from the Rwandan Army and *Interahamwe* regularly abducted Tutsi refugee women at Kamarampaka stadium and raped them and assaulted them morally.

COUNT 7: VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II (Murder)

118. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye** and **Innocent Sagahutu** with Murder, as a violation of Article 3 common to the Geneva conventions and Additional Protocol II, an offence punishable under Article (4) (a) of the Statute, in that, in the course of 1994 in Rwanda, soldiers under their command or civilians over which they had authority committed, in the context of a non-international armed conflict opposing the *Forces armées régulières du Rwanda* (FAR) to the *Front patriotique rwandais* (FPR), and in direct relation to that conflict, many murders of members of the Rwandan civilian population who were not participating in the hostilities; moreover, at the same place and time, soldiers under the

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command of **François-Xavier Nzuwonemeye** and **Innocent Sagahutu** killed ten Belgian UNAMIR peacekeepers, whose mandate did not include combat (see Chapter 6 of the United Nations Charter), whom moreover were disarmed, allegedly because there was collusion between the Kingdom of Belgium and the Rwandan Patriotic Front;

Pursuant to Article 6(1) of the Statute: by virtue of their acts, the Accused planned, incited to commit, ordered, or otherwise aided and abetted the planning or execution of the crimes referred to in paragraphs 66, 92 and 103 to 107 above; **and**

Pursuant to Article 6(3) of the Statute: in that the Accused knew or had reason to know that their subordinates had committed or were about to commit the crimes referred to in paragraphs 86 to 88 and 90, 76, 77 and 102, 103 to 108 above, and in that they did not take reasonable and necessary measures to prevent such crimes from being committed or to punish the perpetrators thereof.

COUNT 8: VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II (Rape, humiliating and degrading treatment)

119. The Prosecutor of the International Criminal Tribunal for Rwanda charges **Augustin Bizimungu, François-Xavier Nzuwonemeye** and **Innocent Sagahutu** with Rape, and other humiliating and degrading treatment, an offence punishable under Article 3 common to the Geneva Conventions and Additional Protocol II, under Article 4 (e) of the Statute, in that, in 1994, in Rwanda, soldiers from the Rwandan Army, under their authority, in concert with militiamen, raped several Tutsi civilian women, in the context of a non-international armed conflict inasmuch as those Rwandan civilians were categorized by their tormentors as being virtual members of the RPF or accomplices of that movement;

Pursuant to Article 6(3) of the Statute: in that the Accused knew or had reason to know that their subordinates had committed or were about to commit the rapes referred to in paragraphs 111 to 117, in respect of **Augustin Bizimungu**, and 112, in respect of **François-Xavier Nzuwonemeye** and **Innocent Sagahutu,** and did not take reasonable and necessary measures to prevent such crimes or to punish the perpetrators thereof.

Done at Arusha (Tanzania) August 23, 2004

The Prosecutor
Hassan Bubacar Jallow

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COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	☐ Trial Chamber I N. M. Diallo	☒ Trial Chamber II R. N. Kouambo	☐ Trial Chamber III C. K. Hometowu	
	☒ OIC, JLSD P. Besnier	☐ OIC, JPU C. K. Hometowu	☐ F. A. Talon (Appeals/Team IV)	☐ Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	☒ Chamber II **Hussein Mohamud** (names)	☐ Defence (names)	☐ Prosecutor's Office (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. **Augustin Ndindilyimana et al**		**Case Number:** ICTR--2000-56-T	
Dates:	Transmitted: **17 June 2011**		Document's date: **17 May 2011**	
No. of Pages:	**580 (Incl. this sheet)**	**Original Language:** ☒ English	☐ French	☐ Kinyarwanda
Title of Document:	**Judgement and Sentence**			

Classification Level:
☐ Ex Parte
☐ Strictly Confidential / Under Seal
☐ Confidential
☒ Public WITH ANNEX D STRICTLY CONFIDENTIAL

TRIM Document Type:

☐ Indictment	☐ Warrant	☐ Correspondence	☐ Submission from non-parties
☐ Decision	☐ Affidavit	☐ Notice of Appeal	☐ Submission from parties
☐ Disclosure	☐ Order	☐ Appeal Book	☐ Accused particulars
☒ Judgement	☐ Motion	☐ Book of Authorities	

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

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CMS SHALL NOT take any action regarding translation.
☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	☒ English	☐ French	☐ Kinyarwanda
Translation	in	☐ English	☐ French	☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.
☐ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):
☐ English ☐ French ☐ Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

☐ **The OTP** is overseeing translation.
The document is submitted for translation to:
☐ The Language Services Section of the ICTR / Arusha.
☐ The Language Services Section of the ICTR / The Hague.
☐ An accredited service for translation; see details below:
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The document is submitted to an accredited service for translation (fees will be submitted to DCDMS):
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

☒ Top priority	**COMMENTS**	☐ Required date:
☐ Urgent		☐ Hearing date:
☒ Normal		☐ Other deadlines: