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ICTR-2001-66-T
25-9-2007
(4596 – 4471)

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UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER

Case No. ICTR-2001-66-I

ENGLISH
Original: FRENCH

Before: Andrésia Vaz, presiding
Karin Hökborg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 13 December 2006

THE PROSECUTOR

v.

ATHANASE SEROMBA

JUDGEMENT

Office of the Prosecutor:
Silvana Arbia
Jonathan Moses
Gregory Townsend
Althea Alexis-Windsor
Tolulope Olowoye

Counsel for the Defence:
Patrice Monthé
Barnabé Nekuie
Sarah Ngo Bihegué

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CHAPTER I: INTRODUCTION

1. This Judgement is rendered by Trial Chamber III (the "Chamber") of the International Criminal Tribunal for Rwanda (the "Tribunal"), composed of Judge Andrésia Vaz, presiding, Judge Karin Hökborg and Judge Gberdao Gustave Kam, in the case of the *Prosecutor v. Athanase Seromba* .

2. The Tribunal is governed by its Statute (the "Statute")[1] annexed to Security Council Resolution 955, and by its Rules of Procedure and Evidence (the "Rules").[2]

3. The Tribunal has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States. Its jurisdiction is limited to acts of genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II,[3] committed between 1 January 1994 and 31 December 1994.[4]

4. The Chamber recalls that in the present case, it has already taken judicial notice of the fact that widespread killings occurred in Rwanda in 1994,[5] and that this fact is no longer subject to reasonable dispute. The Chamber further recalls that it has also taken judicial notice of the fact that during the events referred to in this Indictment, Tutsi, Hutu and Twa were identified as ethnic or racial groups.[6]

5. In addition, it notes that the Appeal Chamber recently stated in *Karemera* that the genocide perpetrated in Rwanda is a fact of common knowledge.[7] The Trial Chamber nevertheless emphasizes that taking judicial notice of facts of common knowledge does not relieve the Prosecution of its burden to prove that the Accused was criminally responsible for the specific events alleged in the Indictment.[8]

6. The Accused, Athanase Seromba, was born in 1963 in Rutziro *commune*, Kibuye *préfecture*, Rwanda. Trained at the Nyakibanda major seminary,[9] he was ordained a priest in July 1993.[10] In April 1994, he was a priest in Nyange parish, Kivumu *commune*.

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[1] United Nations Document S/RES/955 (1994), 8 November 1994.
[2] The Rules were adopted on 5 July 1995 by the Judges of the Tribunal and amended most recently on 7 June 2005. The Statute and the Rules are available on the Tribunal site: www.ictr.org.
[3] Articles 2, 3 and 4 of the Statute.
[4] Article 1 of the Statute.
[5] Decision on Prosecutor's Motion for Judicial Notice, 14 July 2005, p. 7.
[6] *Idem.*
[7] *The Prosecutor v. Édouard Karemera et al.,* ICTR-98-44-T, Decision on Prosecutor's Interlocutory Appeal on Judicial Notice (Appeal Chamber), 16 June 2006, para. 35.
[8] *Ibid.*, para. 37.
[9] Transcript, 20 April 2006, p. 6 (closed session).
[10] Letter of the Accused to the Archbishop of Florence (Exhibit P-8).

7. In the Indictment dated 8 June 2001 (the "Indictment"), registered with the Tribunal Registry on 5 July 2001,[11] the Prosecutor preferred four charges against Athanase Seromba:

8. Count 1: Genocide:[12] The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase Seromba with genocide, a crime stipulated in Article 2(3)(a) of the Statute, in that on or between 6 April 1994 and 20 April 1994, in Kivumu *commune*, Kibuye *préfecture*, Rwanda, Seromba was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population, with intent to destroy, in whole or in part, a racial or ethnic group; and pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts, in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

9. Count 2: Complicity in genocide:[13] The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase Seromba of complicity in genocide, a crime stipulated in Article 2(3)(e) of the Statute, in that on or between the dates of 6 April 1994 and 20 April 1994, in Kivumu *commune*, Kibuye *préfecture*, Rwanda, Athanase Seromba was an accomplice to the killing or causing serious bodily or mental harm to members of the Tutsi population, committed with intent to destroy, in whole or in part, a racial or ethnic group; and pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts, in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

10. Count 3: Conspiracy to commit genocide:[14] The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase Seromba of conspiracy to commit genocide, a crime stipulated in Article 2(3)(b) of the Statute, in that on or between 6 April 1994 and 20 April 1994, in Kivumu *commune*, Kibuye *préfecture*, Rwanda, Athanase Seromba, a priest responsible for Nyange Parish, did agree with Grégoire Ndahimana, *bourgmestre* of Kivumu *commune*, Fulgence Kayishema, a police inspector of Kivumu *commune*, Télesphore Ndungutse, Gaspard Kanyikuriga and other persons not known to the Prosecution, to kill or cause serious bodily or mental harm to members of the Tutsi population, with intent to destroy, in whole or in part, a racial or ethnic group; and pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts, in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

11. Count 4: Crimes against humanity (extermination):[15] The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase Seromba with extermination as crime against humanity as stipulated in Article 3(b) of the Statute, in that on or between 7 April 1994 and 20 April 1994, in Kibuye *préfecture*, Rwanda, Athanase Seromba was responsible for killing

[11] The French version of the Indictment was filed with the Registry of the Tribunal on 9 July 2001.
[12] Indictment, p. 2.
[13] Indictment, p. 3.
[14] Indictment, p. 11.
[15] Indictment, p. 15.

persons, or causing persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds; and pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts, in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

12. The full text of the Indictment is attached to this Judgement.[16]

13. The Accused, Athanase Seromba, who went into exile in Florence, Italy, surrendered to the authorities of the Tribunal on 6 February 2002 without the warrant of arrest[17] issued by the Tribunal against him being executed by the Italian authorities who had received notification thereof on 10 July 2001.[18] The Accused made his initial appearance before Justice Navanethem Pillay on 8 February 2002 and entered a plea of not guilty.[19] His trial started on 20 September 2004 and was ended on 27 June 2006.[20]

[16] See Annex III: Indictment.
[17] *Seromba,* Decision on the Prosecutor's Ex Parte Request for Search, Seizure, Arrest and Transfer, 3 July 2001; *Seromba,* Warrant of Arrest and Order for Transfer, 4 July 2001.
[18] See letter of the Italian Justice Ministry dated 11 July 2001 addressed to the Registrar of the International Criminal Tribunal for Rwanda.
[19] Transcript, 8 February 2002, p. 16 (open session).
[20] See Annex I: History of proceedings.

CHAPTER II: FACTUAL FINDINGS

1. PRELIMINARY MATTERS

1.1 Defects in the Indictment

1.1.1 The Law applicable to motions on defects in the form of the Indictment

14. The Chamber notes that under Article 72 of the Rules of Procedure and Evidence, defects in the form of the Indictment must, in principle be raised during the pre-trial phase of the proceedings,[21] unless leave is granted by the Chamber to a party to do so at a later stage in the proceedings.

15. In the present case, the Chamber finds that the Defence failed to comply with the aforementioned procedural requirement by alleging defects in the Indictment in its final trial brief, i.e. after the close of hearing, rather than during the pre-trial phase. The Chamber further notes that until the close of hearing, the Defence neither sought nor obtained leave from the Trial Chamber to file an application alleging defects in the form of the Indictment.

16. The Chamber recalls that, as to whether a trial chamber may, after the close of hearing, rule that an indictment was defective, the Appeals Chamber stated in *Ntagerura* that it could not do so without first giving the parties the opportunity to be heard, which entails reopening the hearing.[22]

17. In view of the foregoing, the Chamber is of the opinion that an amendment of a defective indictment may be allowed even at the stage of deliberations of the Trial Chamber only if the Trial Chamber has first ordered a reopening of the hearing. Consequently, the Chamber considers that the issue here is to determine whether the Defence arguments submitted in support of its allegations of defects in the Indictment are such as would justify an amendment of the Indictment for the sake of fairness of the trial. In such a case, the Chamber would have to reopen the hearing.

[21] *Simba*, Trial Judgement, 13 December 2005, para. 15.

[22] *Ntagerura*, Appeal Judgement, 7 July 2006, para. 55: "In the present matter, the Appeals Chamber considers that, once the Trial Chamber decided to reconsider its pre-trial decisions relating to the specificity of the Indictments at the stage of deliberations, it should have interrupted the deliberation process and reopened the hearings. At such an advance stage of the proceedings, after all the evidence had been heard and the parties had made their final submissions, the Prosecution could not move to amend the Indictment. On the other hand, reopening the hearings would have allowed the Prosecution to try to convince the Trial Chamber of the correctness of its initial pre-trial decisions on the form of the Indictment, or to argue that any defects had since been remedied. The Appeals Chamber finds that the Trial Chamber erred in remaining silent on its decision to find the abovementionned parts of the Indictments defective until the rendering of the Trial Judgement. "

18. In addressing this issue, the Chamber will examine in turn the arguments advanced by the Defence in its final trial brief,[23] even if that may appear redundant.

1.1.2 Examination of Defence arguments

The Defence allegations with respect to paragraph 5 of the Indictment

19. The Chamber notes the Defence submission that the Prosecutor merely states that Athanase Seromba, "a priest responsible for Nyange parish [...] and others not unknown to the Prosecution", prepared and executed a plan of extermination of the Tutsi population, without specifying the nature of the said plan, the date and location of its conception, the persons who allegedly conceived it, the methods used to execute it, or the exact role allegedly played by the Accused in its conception, elaboration and execution.

20. The Chamber also notes the Defence allegation that, by merely stating that after the death of the Rwandan President on 6 April 1994 attacks were perpetrated against the Tutsi in Kivumu *commune*, causing the death of several of them, the Prosecutor does not provide sufficient information as to identify the perpetrators of the attacks, the planners of the attacks, the location where such attacks occurred, the manner in which they were executed or even as to whether Athanase Seromba participated in them.

21. The Chamber considers the aforementioned Defence allegations irrelevant, as the issues raised have been pleaded with sufficient particularity. The Court consequently finds that these allegations fail to prove the existence of defects in the Indictment.

The other Defence allegations

22. The Defence also alleged a lack of precision in paragraphs 7, 8, 11, 14, 15, 16 and 17 of the Indictment which alleged respectively that: the Accused drew up a list of refugees; several meetings were held, and the Accused attended them; the Accused expelled Tutsi employees from the parish; the doors of the church were closed; and a meeting was held on 14 April 1994. On these different points, the Chamber considers that the Defence allegations are unfounded, insofar as the material facts are set forth both in the Indictment and in the Prosecutor's pre-trial brief which was disclosed to the Defence in a timely manner, to enable the Defence to prepare for trial.

1.1.3 Findings of the Chamber

23. In view of the foregoing, the Chamber considers that the arguments raised by the Defence do not permit the conclusion that the Indictment contains defects that might have warranted an

[23] Defence Closing Argument, pp. 40-42.

amendment. The Chamber therefore dismisses the Defence allegations that the Indictment is defective and accordingly, finds that there are no grounds for reopening the hearing.

1.2 Evidence of the good character of the Accused

24. In its final trial brief, the Defence submitted that evidence of the good character of an accused may be relevant in determining whether the accused could have committed the crimes with which he is charged.[24] The Prosecution did not contest this point.

25. It is the Chamber's opinion that the evidence to be considered during deliberations, for determining probative value, is, in principle, the evidence which the parties presented at the hearing, in accordance with the provisions of Rules 89 to 98 *bis*.

26. The Chamber notes that evidence of the good character of the accused prior to the events for which he is indicted is, generally, of limited probative value in international criminal law.[25] Rather, evidence of prior good character is taken into consideration at the time of sentencing.[26] The Chamber, however, observes that such evidence may be relevant if it is shown to be particularly probative in relation to the charges against the accused.[27]

27. In the present case, the Chamber finds that the Defence only adduced evidence of the Accused's good character after the hearing had been declared closed, thus making of impossible for the Prosecution to present arguments on this point. Furthermore, the Chamber finds that by merely submitting that the Accused's conduct had "[...] had never been viewed with disfavour by the faithful of Nyange parish prior to the events of 6 April 1994 [...]",[28] the Defence has failed to show that evidence of the Accused's good character is particularly probative to the charges against him.

28. In view of the foregoing, the Chamber will not accept evidence of the Accused's good character at this stage, but will possibly take it into consideration at the time of sentencing.

1.3 General allegations in the Indictment

29. The Chamber finds that judicial notice has already been taken of the facts alleged in paragraph 1 of the Indictment, namely, that the population of Rwanda was divided into three ethnic groups: Tutsi, Hutu and Twa.[29] The Chamber therefore, considers it to be a general allegation.

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[24] Defence Final Trial Brief, p. 6.
[25] *Kupreškic*, Decision on evidence of the good character of the accused and the Defence of *tu quoque* (Ch.), 17 February 1999, para. (i).
[26] *Kambanda*, Trial Judgement , 4 September 1998, para. 34.
[27] *Bagilishema*, Trial Judgement, 7 June 2001, para. 116.
[28] Defence Final Trial Brief, p. 7.
[29] Decision on the Prosecutor's Motion for Judicial Notice, 14 July 2005, p. 7.

30. The Chamber finds that paragraph 24 of the Indictment only provides a general description of the attacks against refugees and the intentions of the attackers, without charging Accused Athanase Seromba with any specific act or event. Consequently, the Chamber considers this allegation to be general.

31. The Chamber finds that the arrival of a bus, alleged in paragraph 18 of the Indictment, is of no relevance to the crimes charged against Accused Athanase Seromba. Consequently, the Chamber considers it to be a general allegation.

32. The Chamber finds that the allegations made in paragraphs 5, 33, 34, 35 and 45 of the Indictment allude to a plan of extermination involving the Accused, even though he is not charged with any specific act. Consequently, the Chamber considers them as general allegations.

33. The Chamber finds that the allegation in paragraph 32 of the Indictment that the Accused embezzled all the assets of the parish is not supported by evidence. Consequently, the Chamber considers it to be a general allegation.

34. The Chamber finds that the allegation contained in paragraph 50 of the Indictment falls within the general context of the events which occurred in Nyange in April 1994. Consequently, the Chamber considers it to be a general allegation.

35. In view of the foregoing, the Chamber does not deem it necessary to consider such allegations in its factual findings.

2. KIVUMU *COMMUNE*, NYANGE PARISH AND THE DUTIES EXERCISED BY THE ACCUSED

36. Kivumu *commune* is located in Kibuye *préfecture*, Republic of Rwanda.[30] In 1994, this *commune* had a population of about 53,000 inhabitants, including approximately 6,000 Tutsi.[31]

37. Nyange parish is located in Nyange *secteur*, Kivumu *commune*. The Nyange church measured 55 metres x 19 metres (55m x 19m).[32] The church had a seating capacity of at least 1,500.[33]

[30] Transcript, 27 September 2004, ppF-6 (open session), *Preliminary report on identification of sites of the genocide and massacres that took place in Rwanda from April-July 1994* (P-4), pp. 138 and 165, Kibuye map (P-1) and annotated Kibuye map (P-1B).

[31] Witness FE56 testified that the population of Kivumu *commune* stood at 53,000 (Transcript, 4 April 2006, p. 28 (closed session)). Witness FE27 testified that during the 1993 census, 55,000 persons were resident in Kivumu, including approximately 6,000 Tutsi (Statement of Witness FE27 before Tribunal investigators on 14 September 2000 (P.-41), p. 3).

[32] *Preliminary report on identification of sites of the genocide and massacres that took place in Rwanda from April-July 1994* (P-4), p. 166.

38. The Chamber notes that at the time of events referred to in the Indictment, Athanase Seromba was a priest in Nyange parish, where he had been assigned as a vicar.[34] Several witnesses testified that the parish priest of Nyange, Father Straton, had already left this parish at the time of the events which occurred during April 1994.[35] These same witnesses also testified that Seromba had assumed the daily management of the parish, while waiting to take up his duties in the parish of Crête Zaïre Nil, where he had been posted since 17 March 1994.[36] The Chamber further notes, in light of those testimonies and the factual findings made above, that Seromba acted in a number of ways which show that he was responsible for the daily management of Nyange parish during the April 1994 events.[37] Accordlingly, the Chamber is of the view that Accused Seromba was acting as Nyange parish priest during the April 1994 events.

3. EVENTS FROM 6 TO 10 APRIL 1994 IN KIVUMU *COMMUNE*

3.1 The Indictment

39. The Indictment alleges as follows:

> "6. After the death of the Rwandan President, on 6 April 1994, attacks against the Tutsi began at KIVUMU *commune*, causing the deaths of some Tutsi civilians, including Grégoire NDAKUBANA, Martin KARAKEZI and Thomas MWENDEZI.
>
> 7. To escape the attacks directed against them, Tutsis from the different sectors of KIVUMU commune fled their homes to seek refuge in public buildings and churches, including the Nyange church. The *Bourgmestre* and communal police gathered and transported the refugees from the different sectors of KIVUMU *commune* to Nyange parish.
>
> 8. Athanase SEROMBA questioned the refugees transferred to the Parish about those not yet present, then noted the names of the remaining refugees on a list he gave to the *Bourgmestre* Grégoire NDAHIMANA for the purpose of looking for and bringing them to the Parish.

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[33] The estimates of witnesses are: CBK: 3,000 (Transcript of 19 October 2004, p. 8 (closed session)); CNJ: 1,400 (Transcript, 25 January 2005, p. 31 (open session)); CBT: 2,000 (Transcript, 7 October 2004, p. 3 (closed session)); CF23: between 1,200 and 2,000 (Transcript, 3 April 2006, pp. 1- 2 (open session)); FE32: between 1,500 and 2,000 persons (Transcript, 6 April 2006, p. 16 (open session)); FE27: 1,500 (Transcript, 23 March 2006, p. 64 (closed session)).

[34] See Letter of 17 March 1994 from the Bishop of Nyundo to Father Athanase Seromba (Exhibit D-5).

[35] See YAT: Transcript, 30 September 2004, pp. 19 and 21 (open session); CBI: Transcript, 4 October 2004, pp. 23 (open session); BZ4: Transcript, 1 November 2005, p. 56 (open session); CF23: Transcript, 3 April 2006, pp. 5 (open session); PA1: Transcript, 20 April 2006, p. 7 (closed session).

[36] See Exhibit D-5.

[37] See CDL: Transcript, 19 January 2005, pp. 8, 14 and 19 (open session); CBK: Transcript, 20 October 2004, p. 7 (closed session); CF23: Transcript, 31 March 2006, pp. 36-37 (closed session), Transcript, 3 April 2006, pp. 5-6 (open session); BZ4: Transcript, 1 November 2005, pp. 57 (open session). See findings of the Chamber in Section 4.3.2.

9. A Tutsi named Alexis KARAKE, his wife and his children (more than six) were brought from Gakoma cellule to Nyange church through that list.

[...]

39. On or about 12 April 1994, the *Bourgmestre* Grégoire NDAHIMANA ordered members of the communal police to search for Tutsi civilians from the list prepared by Athanase SEROMBA, as described above, and bring them to the church."

3.2 The allegation that attacks were perpetrated against the Tutsi in Kivumu *commune*, resulting in the death of certain Tutsi civilians, including Grégoire Ndakubana, Martin Karekezi and Thomas Mwendezi

3.2.1 The evidence

Prosecution witnesses

40. Witness CDL, a Hutu,[38] testified that in the night of 7 to 8 April 1994, an attack led by Ndungutse was launched against the Ndakubana Tutsi family.[39] CDL further testified that in the night of 9 to 10 April 1994 at Nyange centre, a trader and an agricultural monitor named Martin were killed.[40] Lastly the witness testified that communal authorities, namely the *Bourgmestre*, the IPJ (judicial police inspector) and other communal officials violated the very law that they were supposed to enforce.[41]

41. Witness CBJ, a Tutsi,[42] stated that the massacres which occurred in Murambi *cellule* where he resided, commenced on 7 April 1994. He also explained that in the night of 7 April 1994, members of the Rudakubana family were killed by a teacher named Télesphore Ndungutse. He further testified that between 7 and 9 April 1994, Martin, a Tutsi who hailed from Ngobagoba *secteur*, Gasake *commune* was killed during an attack launched by a businessman, Gaspard Kanyarukiga.[43]

42. Witness CBN, a Tutsi,[44] testified that a certain Thomas was killed during the attacks against the Tutsi shortly after the death of the President.[45]

Defence witnesses

[38] Witness information sheet (P-19).
[39] Transcript, 19 January 2005, pp. 7-8 and 40 (open session).
[40] Transcript, 19 January 2005, p. 7 (open session).
[41] Transcript, 19 January 2005, pp. 45-47 (open session).
[42] Witness information sheet (P-15).
[43] Transcript, 13 October 2004, p. 8 (open session).
[44] Witness information sheet (P-16).
[45] Transcript, 15 October 2004, p. 51 (open session).

43. Witnesses FE31, FE13, FE56 and CF14 testified that Hutu assailants attacked the Ndakubana Tutsi family.[46] FE13 and CF14 stated *inter alia* that following this incident, insecurity increased throughout the *commune* in the night of 7 to 8 April 1994.[47] They further explained that during the same night, family members of Thomas Mwendezi, a Tutsi, were killed during an attack in Kigali *secteur.*[48]

3.2.2 Findings of the Chamber

44. The Chamber finds the testimonies of Witnesses CDL, CBJ and CBN to be credible with regard to the murder of Ndakubana. Not only are they consistent, they are also corroborated by the evidence of Defence witnesses. Consequently, the Chamber finds that it has been proven beyond a reasonable doubt that attacks were perpetrated against the Tutsi in Kivumu *commune*, resulting in the death of some of them, including Grégoire Ndakubana, Martin Karakezi and Thomas Mwendezi.

3.3 The allegation that Tutsi sought refuge in public buildings and churches, including the Nyange church.

3.3.1 The evidence

Prosecution witnesses

45. Witnesses YAU, a Tutsi woman,[49] and CBS, a Tutsi man,[50] testified that upon arriving at the church on 12 April 1994, they found other refugees there, the majority of whom were Tutsi.[51]

46. Witness CBI, a Tutsi,[52] testified that several persons arrived at the parish on board vehicles, including a white Toyota driven by a certain Yohana or Jean, also called Jigoma.[53] The witness also testified that some officials were involved in transporting refugees to the parish. Some of the officials he cited were Grégoire Ndahimana, Clément Kayishema, Gaspard Kanyarukiga and Télesphore Ndungutse.[54]

[46] FE31: Transcript, 29 March 2006, p. 11 (closed session); FE13: Transcript, 7 April 2006, p. 17 (closed session); FE56: Transcript, 4 April 2006, p. 43 (open session); CF14: Transcript, 16 November 2005, p. 27 (close session).
[47] Transcript, 7 April 2006, p. 17 (closed session); Transcript, 16 November 2005, p. 27 (closed session).
[48] Transcript, 7 April 2006, p. 17 (closed session); Transcript, 16 November 2005, p. 27 (closed session).
[49] Witness information sheet (p-9).
[50] Witness information sheet (p-12).
[51] Transcript, 29 September 2004, p. 12 (open session); Transcript, 5 October 2004, pp. 8-9 (open session).
[52] Witness information sheet (p-11).
[53] Transcript, 4 October 2004, p. 28 (open session).
[54] Transcript, 1 October 2004, pp. 41-42 (open session)

47. Witness CBN, a Tutsi,[55] stated that he sought refuge in Nyange church as from 12 April 1994.[56] He added that several persons arrived at the parish on board a vehicle belonging to a certain Rwamasirabo.[57]

48. Witness CBJ[58] testified that he found Tutsi refugees at Nyange parish upon his arrival there on 10 April 1994. He further testified that in the evening of 10 April 1994, Athanase Seromba asked a night watchman named Canisius Habiyambere and the major seminarian, Apollinaire Hakizimana, to count the refugees who were going to spend the night there. Lastly, Witness CBJ testified that these were 48 of them.[59]

49. Witness CBK, a Hutu,[60] explained that Tutsi who were attacked by the Hutu sought refuge in Nyange parish, which they considered to be a "safe haven". He further stated that the first refugees arrived in the parish on or about 8 April 1994.[61]

50. Witness CDL, a Hutu,[62] testified that the Tutsi willingly sought refuge at the Nyange parish or at the communal office.[63]

Defence witnesses

51. Witness BZ3, a Hutu,[64] testified that he met refugees in Nyange church when she attended the morning mass on 11 April 1994.[65] The witness also stated that the refugees also attended the mass,[66] adding that they were not many.[67] According to the witness, the Tutsi sought refuge in the church because the Hutu were burning down their houses.[68] Witness BZ3 also testified that she saw refugees heading towards the communal office while returning home after mass.[69] She added that when they arrived there, they were directed towards the church.[70] Lastly the witness testified that she saw several persons being led to the communal office on board a vehicle belonging to Aloys Rwamasirabo and driven by Jigoma.[71]

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[55] Witness information sheet (P-16).
[56] Transcript, 15 October 2004, p. 40 (open session).
[57] Transcript, 15 October 2004, p. 58 (open session).
[58] See Section 3.2.1.
[59] Transcript, 13 October 2004, p. 10 (open session).
[60] Transcript, 19 October 2004, p. 6 (closed session); Witness information sheet (P-17).
[61] Transcript, 19 October 2004, p. 73 (open session).
[62] See Section 3.2.1.
[63] Transcript, 19 January 2005, p. 47 (open session).
[64] Transcript, 8 November 2005, p. 29 (open session).
[65] Transcript, 31 October 2005, p. 44 (open session).
[66] Transcript, 8 November 2005, p. 27 (open session).
[67] Transcript, 31 October 2005, p. 45 (open session).
[68] Transcript, 31 October 2005, p. 45 (open session).
[69] Transcript, 31 October 2005, p. 45 (open session).
[70] Transcript, 31 October 2005, p. 45 (open session).
[71] Transcript, 8 November 2005, p. 22 (open session).

52. Witness CF14, a Hutu,[72] testified that he saw no refugees at the communal office on 12 April 1994, but however did learn that the *bourgmestre* had "transported" other persons very early that morning to the parish.[73]

53. Witness FE32, a Hutu,[74] explained that Tutsi fled to the church as soon as they noticed that they were being persecuted.[75] He further explained that Tutsi sought refuge in Nyange church because they believed that this location could secure them protection against attacks as in the past. Lastly, the witness testified that the Tutsi went to the church on their own volition[76].

3.3.2 Findings of the Chamber

54. The Chamber finds that all the statements of both Prosecution and Defence witnesses are consistent with respect to the fact that Tutsi who lived in Kivumu *commune* voluntarily sought refuge in public buildings, such as the communal office, or in churches, including the Nyange parish church. The Chamber therefore considers that this fact has been established beyond all reasonable doubt.

3.4 The allegation that Athanase Seromba provided the *Bourgmestre* of the *commune* with a list of Tutsi for the purpose of looking for and bringing them to Nyange church

3.4.1 The evidence

Prosecution witness

55. Witness CBI[77] stated that he gave to Athanase Seromba, at his request, the names of several persons of the Tutsi ethnic group who lived in Nyange and who were not present at the parish. He also testified that the Accused prepared a list which he subsequently handed to Grégoire Ndahimana, the *bourgmestre* of the *commune*.[78] Some of the names Witness CBI testified to having disclosed to Seromba are Antoine Karake, Aloys Rwemera and those of his family members: Épimaque Ruratsire and Vénust Ryanyundo.[79] The witness further testified that on 13 April 1994, Antoine Karake arrived at Nyange church on board a vehicle that had been confiscated.[80]

[72] See Section 3.2.1.
[73] Transcript, 16 November 2005, pp. 40 and 42 (closed session).
[74] See Section 3.2.1.
[75] Transcript, 29 March 2006, p. 8 (open session); Transcript, 29 March 2006, p. 163 (closed session).
[76] Transcript, 29 March 2006, p. 17 (closed session).
[77] See Section 3.3.1.
[78] Transcript, 4 October 2004, p. 7 (open session).
[79] Transcript, 4 October 2004, p. 7 (open session).
[80] Transcript, 1 October 2004, p. 46 (open session).

56. During cross-examination, Witness CBI testified that he arrived at Nyange church on Tuesday, 12 April 1994 in the evening,[81] adding that he found approximately 1,000 persons there who had come to seek refuge. He also stated that he met Athanase Seromba the day following his arrival and that Athanase Seromba asked him if there were still persons remaining in certain *secteurs* of the *commune*. The witness stated that he answered in the affirmative, disclosing the names of certain persons.[82] Asked by Defence Counsel how the witness have determined that these persons were not in a crowd that he had himself estimated at around 1,000 persons, the witness responded that there was a difference between "counting people and recognising them", adding subsequently that he had noticed that these persons were absent simply because he knew them.[83]

Defence witnesses

57. Witness PA1, a Hutu,[84] testified that he arrived in Nyange parish on Sunday, 10 April 1994.[85] He stated that he had never heard about a list of persons of Tutsi origin.[86]

58. Witness FE32 is a Hutu who testified openly as Anastase Nkinamubanzi. He stated that during the events of April 1994, he was working for the Astaldi company, which was responsible for the construction of the Rubengera-Gisenyi road.[87] He also stated that the driver of the bulldozer which demolished Nyange church.[88] He testified that he was a Rwandan court sentenced him to life imprisonment for this act.[89] Finally, the witness testified that a Tutsi list never existed.[90]

59. Witness FE27, a Hutu,[91] testified that he was not aware of the existence of any list of persons prepared by Athanase Seromba, adding that if such a list existed he would have been informed of it.[92]

3.4.2 Findings of the Chamber

60. The Chamber notes that Witness CBI is the only Prosecution witness who testified that Athanase Seromba prepared a list of Tutsi which he allegedly handed to the *bourgmestre,* so that the Tutsi could be sought out and brought to Nyange parish. The Chamber finds implausible

[81] Transcript, 4 October 2004, p. 27 (open session).
[82] Transcript, 4 October 2004, p. 30 (open session).
[83] Transcript, 4 October 2004, pp. 30-31 (open session).
[84] Transcript, 20 April 2006, p. 38 (closed session).
[85] Transcript, 20 April 2006, p. 7 (closed session).
[86] Transcript, 20 April 2006, p. 26 (closed session).
[87] Transcript, 28 March 2006, p. 25 (open session).
[88] Transcript, 28 March 2006, p. 35 (open session).
[89] Transcript, 5 April 2006, p. 30 (open session).
[90] Transcript, 28 March 2006, p. 55 (open session).
[91] Transcript, 23 March 2006, pp. 38 and 54 (closed session).
[92] Transcript, 23 March 2006, p. 27 (open session).

Witness CBI's testimony that upon arrival in Nyange parish on 12 April 1994, he could immediately determine the absence of 10 people from a crowd of 1,000 persons. In fact, the witness merely stated that he noticed the absence of these persons simply because he knew them, even however specifying the observations or reasons that must have led him to such a conclusion. The Chamber therefore finds that Witness CBI is not credible. Accordingly, the Chamber finds that the Prosecution has not established beyond a reasonable doubt that Athanase Seromba prepared a list which he handed to the *bourgmestre* in order to seek out the persons on the list and bring them to Nyange parish.

4. THE EVENTS OF 10 TO 11 APRIL 1994

4.1 The Indictment

61. The Indictment alleges as follows:

> "10. On or about 10 April 1994, several important meetings were held at the Parish of Nyange and the communal office. Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others not known to the Prosecutor attended these meetings.
>
> 11. During these said meetings, it was decided to request Kibuye prefecture for gendarmes, to gather all Tutsi civilians of KIVUMU commune at Nyange church to exterminate them
>
> [...]
>
> 36. On or about 10 April 1994, several important meetings were held at the Parish of Nyange and the communal office. Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others not known to the Prosecution attended these meetings.
>
> 37. During these said meetings, they decided to request Kibuye prefecture for gendarmes, to gather all Tutsi civilians of Kivumu commune at Nyange church to exterminate them."

4.2 The 10 April 1994 Meeting

4.2.1 The evidence

Prosecution witness

62. Witness YAT, a Tutsi,[93] testified that a parish council meeting was held at the presbytery on or about 10 April 1994,[94] which was attended by Athanase Seromba, Kabwana, *Bourgmestre*

[93] Witness information sheet (P-10).
[94] Transcript, 29 September 2004, p. 49 (open session).

Ndahimana, Criminal Investigation Police Inspector, Fulgence Kayishema, Inspector Aloys Uwoyiremye and other members of the parish council.[95] He explained that it was an extraordinary meeting held to address the state of insecurity that prevailed in the *commune* following the death of President Habyarimana and the attacks being perpetrated against the Tutsi.[96] Witness YAT also testified that during the meeting Seromba stated his opinion that President Habyarimana had been killed by the *Inkotanyi* and that the issue of persons killed was a political problem which did not fall within the jurisdiction of the parish council as such.[97] The witness also stated that that parish council meeting was the last he attended.[98]

63. Witness YAT further stated that Fulgence Kayishema informed him on 11 April 1994 that a meeting was held on 10 April 1994 in Nyange parish during which the decision to kill Tutsi was taken. He added that Kanyarukiga, Athanase Seromba, *Bourgmestre* Ndahimana and Kayishema were present at the meeting.[99]

Defence witness

64. Witness FE27 testified that during the meeting of 11 April 1994, *Bourgmestre* Grégoire Ndahimana stated that he met with Athanase Seromba the day before this meeting and that Seromba had spoken to him of Tutsi who had sought refuge in Nyange church.[100]

4.2.2 Findings of the Chamber

65. The Chamber notes that the Defence has not adduced any evidence to contradict Witness YAT's testimony that a parish council meeting was held in Nyange church on 10 April 1994. In fact, Defence Witness FE27 in no way contradicted Witness YAT when he testified to having heard the *bourgmestre* inform participants in the 11 April 1994 meeting that he had met with Athanase Seromba the previous day, i.e. 10 April 1994. The Chamber is of the view that such a meeting could been part of the 10 April 1994 parish council meeting referred to by Witness YAT, who testified that he was a member of the council, a point which was not challenged by the Defence. The Chambe also finds that details provided by Witness YAT about the meeting are consistent. The Chamber therefore considers his testimony that a parish council meeting was held on 10 April 1994 to be credible. However, Witness YAT's testimony that a second meeting was held on 10 April 1994 in Nyange parish cannot be deemed credible, as the information which was disclosed to him is not supported by any other evidence. Finally, as regards Witness FE27, who did not testify specifically about the parish council meeting of 10 April 1994, the Chamber nevertheless finds his testimony that a meeting was held at the parish on 10 April 1994 to be credible, as it is corroborated by that of Witness YAT.

[95] Transcript, 29 September 2004, p. 49 (open session).
[96] Transcript, 29 September 2004, p. 49 (open session).
[97] Transcript, 29 September 2004, pp. 48-49 (open session); Transcript, 30 September 2004, p. 22 (open session).
[98] Transcript, 30 September 2004, p. 22 (open session).
[99] Transcript, 29 September 2004, p. 49 (open session).
[100] Transcript, 23 March 2006, p. 22 (closed session).

66. In view of the foregoing, the Chamber finds that the Prosecution has established beyond a reasonable doubt that a parish council meeting was held on 10 April 1994 in Nyange parish in which Witness YAT, Athanase Seromba and other persons participated.

4.3 The 11 April 1994 Meeting at the Communal Office

4.3.1 The evidence

Prosecution witnesses

67. Witness CNJ, a Hutu,[101] testified that his uncle informed him that a meeting was held at the communal office on 11 April 1994, during which decisions were taken, including the decision to assemble the Tutsi at the Nyange church.[102] He also testified that since he did not attend the meetings, he was not in a position to state precisely when the decision to destroy the church had been taken.[103]

68. Witness CDL, a Hutu,[104] explained that security committee meetings were held in the communal office or at the parish, adding that the meetings were held regularly at the instance of the *bourgmestre*.[105] He also stated that department heads and religious authorities were invited to participate in the meetings.[106] The witness finally stated that Athanase Seromba participated in the 11 April 1994 meeting of the security committee.[107]

Defence witnesses

69. Witness FE13 stated that the 11 April 1994 meeting was chaired by *Bourgmestre* Grégoire Ndahimana,[108] who informed those in attendance that the meeting would be dealing with security issues and the fate of Tutsi refugees.[109] He added that only an exceptional situation could justify the holding of any such meeting.[110] The witness further explained that, in general, meetings dealing with security issues were also attended by *conseillers de secteur*, who were to convey recommendations to the authorities,[111] the *IPJ* (Criminal Investigations Officer) in charge of security in the *commune* and the president of the *canton tribunal*.[112] He also mentioned that

[101] Transcript, 24 January 2005, p. 31 (open session); Witness information sheet témoin (P-24).
[102] Transcript, 24 January 2005, p. 27 (closed session).
[103] Transcript, 25 January 2005, p. 18 (open session).
[104] See Section 3.2.1.
[105] Transcript, 19 January 2005, p. 19 (closed session).
[106] Transcript, 19 January 2005, pp. 8- 9 (closed session).
[107] Transcript, 19 January 2005, p. 51 (open session).
[108] Transcript, 12 April 2006, cross-examination, p. 19 (open session).
[109] Transcript, 7 April 2006, p. 21 (open session).
[110] Transcript, 7 April 2006, p. 18 (closed session).
[111] *Idem.*
[112] *Idem.*

many Tutsi, including Charles Mugenzi, head of the Nyange health centre, Boniface Gatare, a youth counsellor in the *commune* and Lambert Gatare, a political party official, also attended the meeting.[113] Finally, Witness FE13 stated that decisions taken at the meeting include the decision to assemble Tutsi refugees at Nyange parish[114] and to make a request for military reinforcements from Kibuye *prefecture*.[115]

70. Witness FE27, a Hutu,[116] testified that he attended the meeting of 11 April 1994, held in the communal office. He indicated that this meeting, which usually dealt with problems related to the economic development of the *commune*, was transformed into a security committee meeting on the initiative of the *bourgmestre*.[117] The witness added that Athanase Seromba did not participate in this meeting.[118] He further stated that during the meeting *Bourgmestre* Ndahimana read out a letter sent to him by Seromba, in which the latter informed him that he would not attend, but would adhere to the decisions the meeting would take.

71. Witness CF23, a Hutu,[119] testified that the 11 April 1994 meeting was convened by the *bourgmestre* of the *commune*, Ndahimana. He added that the purpose of this meeting was to review the situation, to take all the necessary measures to stop the killings and lastly to discuss the organisation of receiving refugees into Nyange parish.[120] He indicated that Tutsi, including Charles Mugenzi and Boniface Gatare, actively participated in this meeting.[121] The witness emphasised that participants in this meeting were opposed to the killings. He also stated that Athanase Seromba did not attend the meeting, but had written a letter to the *bourgmestre* which was read out at the meeting.[122] In that letter, the witness continued, Seromba asked the *commune* authorities to ensure the protection of refugees, as well as their food supply, suggesting to the authorities that they solicit the assistance of the Caritas. Finally, Witness CF23 explained that at the end of the meeting, the *bourgmestre* requested gendarme reinforcement from Kibuye *préfecture* as had been recommended to him by those in attendance.[123]

4.3.2 Findings of the Chamber

72. The Chamber finds that the testimonies of CNJ and CDL are not reliable. It notes that CNJ's testimony is hearsay. As to CDL, the Chamber observes that nothing in his testimony shows that he personally attended the meeting of 11 April 1994. In fact, when Counsel for the Defence put a question to him with respect to the 13 April 1994 meeting, the witness stated as

[113] Transcript, 7 April 2006, pp. 19-20 (closed session).
[114] *Idem.*
[115] Transcript, 7 April 2006, p. 21 (open session).
[116] See Section 3.2.1.
[117] Transcript, 7 April 2006, p. 19 (closed session).
[118] Transcript, 7 April 2006, p. 22 (open session).
[119] Transcript, 30 March 2006, pp. 9-10 (closed session); Witness information sheet (D-74).
[120] Transcript, 31 March 2006, (closed session), p. 3.
[121] *Idem.*
[122] Transcript, 31 March 2006, p. 5 (closed session).
[123] Transcript, 31 March 2006, p. 10 (open session).

follows: "I think that I have already said in my testimony there are certain events which I heard and saw myself, [...] and other events that were reported to me; in particular, this meeting".[124] Furthermore, the witness was unable to state convincingly why he failed to mention the presence of the clergy in his prior statements, whereas he does so in his testimony before the Chamber. In fact, when asked by Counsel for the Defence why he did not mention, before the Rwandan courts, the names of the clergy when he was giving the names of participants in security meetings, the witness stated that when he began to testify in 1999, he was unable to "say everything in one go because at the time it was not easy to understand the reasons and to say the whole truth".[125]

73. Witnesses FE27 and CF23 cannot be considered credible on this point, as their testimonies are inconsistent with their prior statements. With respect to FE27, the Chamber notes that in his 25 January 2002 statement, he stated: "Father Seromba also attended the meeting for the issue of gathering of the refugees at the church to ensure their security was considered".[126] The witness confirmed that he signed the prior statement and made the statements therein.[127] On the other hand, he admitted that he lied to members of the "truth" committee "because they were telling me that if I were to say that Father Seromba was at the meeting I was going to be released".[128] As for CF23, the Chamber notes that in his 14 August 2002 pre-trial statement, this witness stated as follows: "[...] several persons attended that meeting, I remember recognising [...] Reverend Father Seromba [...]".[129] The witness testified that he had only signed the last page of his 14 August 2002 statement, even though his signature appears on each of the pages of the statement.[130] The witness also challenged the validity of the statement, pointing out that the excerpts which were read out to him did not reflect what he had said and that he gave credence only to the documents he wrote himself, such as his confessional statements.[131] Finally, the witness stated at trial that he had referred to Seromba's letter in his statement to the investigators of the Tribunal. The Chamber notes, however, that such reference is not contained in the statements.[132]

74. The Chamber finds Witness FE13 credible because of the duties he performed at the *commune,*[133] his presence at the meeting and the account he gave of the meeting. Moreover, FE13's testimony concerning the reading of the letter from Athanase Seromba during the meeting has been corroborated by the testimonies of Witnesses FE27 and CF23.

[124] Transcript, 19 January 2005, p. 54 (open session).
[125] Transcript, 19 January 2005, pp. 53-54 (open session).
[126] Statement of Witness FE27 to the "truth" committee on 25 January 2002 (P-42), p. 2.
[127] Transcript, 24 March 2006, p. 17 (closed session).
[128] Transcript, 24 March 2006, p. 18 (closed session).
[129] Statement of Witness CF23 to investigators of the Tribunal on 14 August 2002 (P-49), p. 3.
[130] Transcript, 3 April 2006, p. 27 (closed session).
[131] Transcript, 3 April 2006, pp. 30-31 (closed session).
[132] Transcript, 3 April 2006, p. 12 (closed session).
[133] Transcript, 7 April 2006, p. 11 (closed session), p. 23 (open session), p. 35 (closed session); Witness information sheet (D-86).

75. In view of the foregoing, the Chamber finds that it has been proven beyond a reasonable doubt that a meeting known as "security meeting", was held in the communal office on 11 April 1994. It finds, however that it has not been established beyond a reasonable doubt that Athanase Seromba attended this meeting.

4.4 Arrival at Nyange church of gendarmes coming from Kibuye *préfecture*

4.4.1 The evidence

Prosecution witness

76. Witness CDL, a Hutu,[134] testified that he saw gendarmes on 10 or 11 April 1994. He stated that he was unaware of the circumstances surrounding the arrival of the gendarmes, who according to him, came together with the *bourgmestre*. The witness also testified that he did not know whether the gendarmes had come at the request of Athanase Seromba. He did, however, remark that a gendarme was constantly at Seromba's side during the April 1994 events.[135]

Defence witnesses

77. Witness FE55, a Hutu,[136] testified that during the 11 April 1994 meeting, the decision was taken to seek gendarme reinforcements from Kibuye *préfecture* to ensure the security of refugees in Nyange parish.[137]

78. Witness BZ1, a Hutu,[138] testified that there were about four armed gendarmes stationed at the parish. He further testified that the gendarmes arrived there on or about 13 April 1994, shortly before the situation worsened.[139]

79. Witness PA1[140] testified that four gendarmes arrived in Nyange parish on Tuesday, 12 April 1994.[141]

4.4.2 Findings of the Chamber

80. The Chamber notes that the statements of Prosecution Witness CDL and Defence Witnesses FE55, BZ1 and PA1 are consistent with respect to the presence of gendarmes in Nyange parish at the time of the April 1994 events, although they differ slightly as to the date of arrival on the location. The Chamber further notes that Witness FE55 also stated that the arrival

[134] See Section 3.2.1.
[135] Transcript, 19 January 2005, p. 71 (open session).
[136] Statement of Witness FE55 to Tribunal investigators on 13 March 2003 (P-61), p. 1.
[137] Transcript, 12 April 2006, p. 42 (open session).
[138] Transcript, 10 November 2005, p. 30 (open session).
[139] Transcript, 2 November 2005, pp. 66-67 (open session).
[140] See Section 3.4.1.
[141] Transcript, 20 April 2006, p. 16 (closed session).

of the gendarmes was the result of a decision taken at the 11 April 1994 meeting, referred to as a "security meeting". This contention is corroborated by Witness FE13 and CF23 in their respective testimonies.[142]

81. In view of the foregoing, the Trial Chamber finds that CDL, FE55 and BZ1 are credible witnesses. Consequently, the Chamber considers that it has been established beyond a reasonable doubt that on 11 April 1994 gendarmes from Kibuye *préfecture* arrived at Nyange church.

5. EVENTS OF 12 TO 14 APRIL 1994 AT NYANGE PARISH

5.1 The Indictment

82. The Indictment alleges as follows:

> 12. From about 12 April 1994, refugees were confined by the gendarmes and surrounded by the militiamen and *Interahamwe* armed with traditional and conventional weapons. Father Athanase SEROMBA did prevent the refugees from taking food and instructed the gendarmes to shoot any "*Inyenzi*" (reference to Tutsi) who tried to take some food from the Presbytere or the parish banana groves. He refused to celebrate mass for them and stressed that he didn't want to do that for the *Inyenzi*.
>
> 13. On or about 12 April 1994, Father Athanase SEROMBA expelled from the Parish four Tutsi employees (Alex, Félécien, Gasore and Patrice). He forced them to leave the parish, while *Interahamwe* and militiamen were beginning the attacks against refugees of the parish.
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> 14. Father Athanase SEROMBA knew that removing the employees would cause their death. In fact, only one of them (Patrice) was able to return to the parish, seriously wounded, which did not prevent Athanase SEROMBA from preventing his access to the church. He was killed by the *Interahamwe* and the militiamen
>
> [...]
>
> 38. On or about 12 April 1994, Father SEROMBA chaired a meeting in his parish office, with, among others, Grégoire NDAHIMANA and Fulgence KAYISHEMA. Immediately after this meeting, Fulgence KAYISHEMA said that KAYIRANGA (a prosperous Tutsi businessman) must be found and brought to the church.
>
> 40. The second step of the plan consisted of keeping the refugees inside the church, surrounding the Church with *Interahamwe* and militiamen and inflicting on the refugees conditions of life calculated to weaken them physically. The plan also included regular attacks by *Interahamwe* and militiamen of the refugees to defeat their endurance.

[142] See Section 4.3.1.

41. To this end, from about 12 April 1994, gendarmes confined the refugees at the Nyange church, which was surrounded by *Interahamwe* and the militiamen.

42. Athanase SEROMBA prevented the refugees from having access to sanitary places in the parish or from taking food, ordering gendarmes to shoot any *Inyenzi* who tried to take food from the Presbytere or the banana groves of the parish.

43. On or about 12 April 1994, in the afternoon, Father Athanase SEROMBA chaired a meeting with Grégoire NDAHIMANA and Fulgence KAYISHEMA. Soon after, the *bourgmestre* NDAHIMANA declared, "*We choose the richest to be killed, the others can go back to their houses*"

5.2 Encirclement of refugees by militia and *Interahamwe* armed with traditional and conventional weapons

5.2.1 The evidence

Prosecution witnesses

83. Witness CBS[143] testified that the church was surrounded by gendarmes.[144] Witness CBK[145] testified that the church was encircled by attackers.[146]

Defence witnesses

84. Witness PA1[147] testified that the evening of 11 April 1994, "a lot of people" surrounded the church where the refugees were.[148] Witness FE56, a Hutu,[149] testified that Kayishema had Nyange church surrounded by "people".[150] He further testified added that soldiers were positioned near the doors of the presbytery, in order to block the entrance.[151]

5.2.2 Findings of the Chamber

85. The Trial Chamber notes that, with the exception of Witness CBS who testified that only gendarmes surrounded the church, the fact that from 12 April 1994, militiamen and other *Interahamwe* surrounded Nyange church where the refugees were confined is corroborated both by Prosecution Witness CKB and Defence Witnesses PA1 and FE56. Consequently, the Chamber considers this fact established beyond a reasonable doubt.

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[143] See Section 3.3.1.
[144] Transcript, 5 October 2004, p. 9 (open session).
[145] See Section 3.3.1.
[146] Transcript of19 October 2004, pp. 19-20 (closed session)
[147] See Section 3.4.1.
[148] Transcript, 20 April 2006, p. 14 (closed session).
[149] See Section 3.2.1.
[150] Transcript, 3 April 2006, p. 54 (closed session).
[151] Transcript, 3 April 2006, p. 54 (closed session).

5.3 Athanase Seromba's order prohibiting the refugees from seeking food in the banana plantation of the parish and his alleged order to gendarmes to shoot any *"Inyenzi"* who attempted to pick any bananas

5.3.1 The evidence

Prosecution witnesses

86. Witness CBS[152] stated on three occasions that Athanase Seromba prevented the refugees from getting food from the parish banana plantation.[153] He explained, *inter alia,* that on Wednesday, 13 April 1994, some teachers, who were among the Tutsi refugees, asked for food from Seromba, but Seromba refused to give it to them. Following this refusal, certain refugees went on their own initiative into the banana plantation of the parish to harvest bananas, which they roasted in the parish courtyard.[154] The witness further explained that upon seeing the refugees, Seromba prohibited them from returning to the banana plantation and also gave orders to the gendarmes to shoot at any refugee who ventured there, treating the refugees as *"Inyenzi"*. Finally the witness stated that he was near Seromba when the latter made these remarks.[155]

87. Witness CBJ[156] also testified that the refugees had asked Athanase Seromba for food and that Seromba refused to give it to them. He also explained that he, together with other refugees, went to harvest bananas in the parish banana plantation. When Seromba saw the bananas, he became angry and scolded them for not showing him respect by going into the banana plantation. Seromba then addressed the gendarmes in these terms: "Whoever goes back to the banana plantation to cut the bananas, you should shoot at the persons."[157]

88. Witness CBN, a Tutsi,[158] stated on two occasions that Athanase Seromba prohibited refugees from getting food from the banana plantation on 14 April 1994, adding that Seromba ordered the gendarmes to shoot at any refugee who returned there.[159]

Defence witness

89. Witness CF23[160] stated twice during his testimony that Athanase Seromba never prohibited refugees from entering the banana plantation and that he saw refugees in the banana

[152] See Section 3.3.1.
[153] Transcript, 5 October 2004, pp. 10 and 18-19 (open session); Transcript of 6 October 2004, pp. 29-30 (open session).
[154] Transcript, 6 October 2004, p. 30 (open session).
[155] Transcript, 5 October 2004, p. 19 (open session).
[156] See Section 3.3.1.
[157] Transcript, 11 October 2004, p. 54 (open session).
[158] See Section 3.3.1.
[159] Transcript, 15 October 2004, p. 43 (open session); Transcript, 18 October 2004, p. 3 (open session).
[160] See Section 4.3.1.

plantation when he personally went there on 13 April 1994.[161] He also testified that, on the same date, he spotted refugees moving about freely in the churchyard and even going to cut bananas.[162] The witness finally stated that he was not present on the location on 14 April 1994.[163]

5.3.2 Findings of the Trial Chamber

90. The Trial Chamber considers Witness CBS' description of the location and the banana plantations to be reliable.[164] Furthermore, his testimony at cross-examination is consistent with his testimony-in-chief. Moreover, there are not any major inconsistencies between his prior statements and his testimony before the Trial Chamber.[165] In this regard, the Trial Chamber considers that the failure to mention the events in issue in his 14 February 1999 statement[166] cannot be perceived as an inconsistency, insofar as no question on the said events was put to him at the time he made the statement. Furthermore, the Trial Chamber notes that the witness was at the location at the time the events occurred. From the foregoing, the Chamber finds Witness CBS reliable both with respect to the prohibition and the order that Seromba allegedly gave to the gendarmes.

91. The Chamber finds that Witness CBJ is also reliable on these two points. In fact, it finds no contradiction between the prior statements of the witness and his testimony before the Chamber. In this regard, that the events in issue are not mentioned in the statements the witness made on 23 March 1997[167] and 24 June 1997[168] can be explained by the fact that no question in relation thereto was put to him at the time he made the statements. The Chamber observes that only minor inconsistencies relating to the number of Hutu attackers,[169] the number of Tutsi refugees in the church[170] and the number of Tutsi in Kivumu *commune*[171] were noted, and are not such as would impugn the credibility of witness CBJ.

[161] Transcript, 31 March 2006, p. 24 (open session).
[162] Transcript, 3 April 2006, p. 15 (closed session).
[163] Transcript, 3 April 2006, p. 15 (closed session).
[164] Transcript, 6 October 2004, p. 31 (open session).
[165] There is a minor inconsistency between the witness's testimony and his 17 August 2000 statement (Statement of witness CBS to Tribunal investigators on 17 August 2000 (Statement not tendered as Prosecution exhibit)), p. 3; read out to the witness: Transcript, 6 October 2004 p. 28 (open session). In his statement, the witness states that refugees had delegated a group of teachers to go and ask for food from Athanase Seromba, whereas in his testimony, the witness testified that it was the teachers who took the initiative to meet Seromba. During cross-examination, Counsel for the Defence asked the witness to explain this inconsistency, referring erroneously to the statement of 15 November 1995. The witness then explained that there was a transcription error, adding that the refugees had never sent a delegation and that the teachers themselves took the initiative to meet the priest (Transcript, 6 October 2004, pp. 27-29 (open session)).
[166] Statement of Witness CBS to the Rwandan judicial authorities on 14 October 1999 (D-19).
[167] Statement of Witness CBJ to Tribunal investigators on 23 March 1997 (D-26).
[168] Statement of Witness CBJ to Tribunal investigators on 24 June 1997 (D-25).
[169] Transcript, 13 October 2004, pp. 31-32 (open session).
[170] Transcript, 13 October 2004, pp. 10, 12 and 15 (open session).
[171] Transcript, 13 October 2004, pp. 14-15 (open session).

92. The Trial Chamber also considers that the contradictory testimony given by Witness FE36[172] does not impugn the credibility of Witness CBJ. No question was put to Witness CBJ on FE36's account of the events. The Chamber also notes that Witness FE36 is not credible, as he admits having lied before the Chamber.[173] In this connection, the Chamber notes, in particular, that Witness FE36 testified that CBJ stated that his entire family had been killed, whereas CBJ had, in fact, only stated that certain members of his family were dead.[174]

93. The Trial Chamber considers that the testimony of CBN is not reliable on this point. What the witness said during his examination contradicts a statement made on 17 August 2000.[175] In the statement, the witness on the contrary claimed that the prohibition against entering the banana plantation was made by a gendarme in the presence of Athanase Seromba. Furthermore, the discussion between Seromba and the gendarmes allegedly did not take place in front of the church but in the banana plantation. The witness testified that the true account was that given before the Trial Chamber, and that the earlier account is the result of a misunderstanding, as it was Seromba who gave the order not to go into the banana plantation, which order was subsequently repeated by the gendarme.[176]

94. With respect to Defence Witness CF23, the Chamber notes that he acknowledged not having been present at the location on 14 April 1994. Moreover, the Chamber finds the witness's testimony that the refugees could move freely between the churchyard and the banana plantation to be hardly consistent with reality, especially as on 13 April 1994, the day he alleges to have witnessed this event, the church was already surrounded by numerous militiamen and other *Interahamwe*, whose violent attacks on the previous days justified the choice of the church as a sanctuary for refugees. In the light of the foregoing observations, the Chamber finds that Witness CF23 is not credible.

95. In view of the foregoing, the Trial Chamber finds that it has been proven beyond a reasonable doubt that between 13 and 14 April 1994, Athanase Seromba prohibited refugees from going into the Parish banana plantation to get food, and that he also ordered gendarmes to shoot at any refugees who ventured there.

96. The Chamber finds on the other hand that the Prosecutor did not adduce evidence in support of the allegation that Seromba prohibited Tutsi refugees from getting food at the presbytery. The Chamber therefore finds that this fact was not proved beyond a reasonable doubt.

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[172] Transcript, 21 November 2005, pp. 17-19 (closed session).
[173] Transcript, 28 November 2005, pp. 4 and 6 (closed session). *Seromba*, Decision on Defence Motion for an Investigation into the Circumstances and Actual Causes Underlying Retracting by Witness FE36, 20 April 2006.
[174] FE36: Transcript, 28 November 2005, p. 7 (closed session); CBJ: Transcript, 15 October 2004, p. 48 (open session).
[175] Statement of Witness CBN to Tribunal investigators on 17 August 2000 (statement not submitted as Prosecution exhibit), p. 3; read out to the witness: Transcript, 18 October 2004, p. 3 (open session).
[176] Transcript, 18 October 2004, pp. 3-4 (open session).

5.4 Refusal of Athanase Seromba to celebrate mass for "*Inyenzi*"

5.4.1 The evidence

Prosecution witnesses

97. Witness CBN[177] testified that on 14 April 1994 Athanase Seromba was approached by several Tutsi refugees, including some teachers, namely Bonera, Ruteghesa and Rwakayiro, who asked him to celebrate a mass for them.[178] The witness further testified that Athanase Seromba refused to celebrate the mass, arguing that he couldn't "waste his time".[179] The witness also explained that such refusal went against the wishes of the refugees who wanted the mass to be said.[180] He further explained that a Tutsi refugee then announced to other refugees that they should pray together, as Seromba had refused to say a mass for them.[181] Finally, the witness stated that Seromba was in front of the church when he expressed his refusal.[182]

98. Witness CBI[183] testified that, on or about 13 April 1994, Athanase Seromba entered the church to remove chalices, which he took to the presbytery, "on the first floor of his residential quarters".[184]

99. Furthermore, Witness CBJ[185] testified that there was no mass celebrated in Nyange parish on Sunday, 10 April 1994, explaining that it was not possible to celebrate mass because the "situation was rather critical".[186] The witness also testified that on 14 April 1994, Athanase Seromba removed priests' cassocks and chalices filled with communion from the church. Finally, the witness stated that he learned subsequently that Seromba had taken the objects with him to the presbytery.[187]

100. Witness CBK[188] testified that masses were celebrated in the old meeting hall during the events which occurred in Nyange parish in April 1994.[189]

[177] See Section 3.3.1.
[178] Transcript, 15 October 2004, pp. 60-61 (open session).
[179] Transcript, 15 October 2004, p. 41 (open session).
[180] Transcript, 18 October 2004, p. 1 (open session).
[181] Transcript, 18 October 2004, p. 49 (closed session).
[182] Transcript, 15 October 2004, p. 60 (open session).
[183] See Section 3.3.1.
[184] Transcript, 1 October 2004, p. 42 (open session).
[185] See Section 3.2.1.
[186] Transcript, 13 October 2004, p. 15 (open session)
[187] Transcript, 12 October 2004, p. 3 (open session).
[188] See Section 3.3.1.
[189] Transcript, 20 October 2004, p. 45 (closed session).

Defence witness

101. Witness PA1[190] testified that as of 11 April 1994, the decision was taken to no longer celebrate mass in Nyange church because of the huge number of refugees and the presence of animals there, adding that masses were celebrated in the oratory, located in the presbytery.[191]

102. When Counsel for the Defence asked if the removal by Athanase Seromba of Communion hosts and sacerdotal ornaments had met with resistance on the part of the refugees, Witness PA1 answered: "There were no problems whatsoever. We believe that the sacrament is something that is highly respected by Catholics, and the sacred vases could not have stayed there because of the respect due to such ornaments. So there was no opposition. We believed it was our mission to have all our sacraments respected and put them in a safe place."[192]

5.4.2 Findings of the Chamber

103. The Chamber finds Witness CBN credible. There are only minor inconsistencies between his trial testimony and prior statements as to the exact location where Athanase Seromba expressed his refusal to celebrate the mass[193] and what he said on this occasion.[194] The Trial Chamber does not consider such inconsistencies to be crucial, given the lapse of time since the occurrence of the events, on the one hand, and the numerous references by witnesses to Seromba's refusal to celebrate mass for Tutsi refugees.[195]

104. Moreover, the Chamber notes that Witnesses CBI, CBJ and CBK testified that Athanase Seromba removed objects that are useful for celebrating mass between 10 and 13 April 1994.

105. The Chamber considers that the testimony of PA1, member of a religious order, clearly shows that from 11 April 1994, no mass was celebrated in Nyange church. On this point, Witness PA1 is corroborated by Witness CBI, as the Trial Chamber considers it in significance that CBI, unlike PA1, gave the date of the decision to no longer celebrate mass in church as being rather 10 April 1994. The Chamber considers, therefore, that these two witnesses are credible on this point. The Chamber is also of the view that Witness PA1 is credible with respect to the fact that sacred objects (Communion hosts and sacerdotal ornaments) were removed from the church.

106. That the refugees did not put up any resistance, as asserted by Witness PA1, to the removal by Seromba of sacred objects does not, in the opinion of the Chamber, exclude in any way the possibility that the refugees requested that a mass be said for them. In this regard, the

[190] Transcript, 20 April 2006, p. 38 (closed session).
[191] Transcript, 20 April 2006, p.11 (closed session).
[192] Transcript, 20 April 2006, p.11 (closed session).
[193] Transcript, 20 April 2006, p. 60 (open session).
[194] Transcript, 15 October 2004, pp. 61-62 (open session).
[195] Transcript, 18 October 2004, p. 3 (open session).

Chamber is aware of the fact that Tutsi refugees in Nyange church knew that they were in constant danger of death during the events of April 1994, given that members of their ethnic group were being persecuted throughout the Rwandan territory. Under these circumstances, the Chamber considers it highly probable that the most fervent among them could have requested that Seromba celebrate a mass for them. The Chamber further considers that Seromba's removal of sacred objects could be interpreted as a denial of the refugees' request, particularly in view of the fact that he continued to celebrate mass in the oratory as from 11 April 1994. Consequently, the Chamber finds Witness CBN credible as to his testimony that refugees presented a mass request to Seromba which he turned down.

107. In view of the foregoing, the Trial Chamber finds that it has been established beyond a reasonable doubt that Athanase Seromba refused to celebrate mass for Tutsi refugees in Nyange church.

5.5 Dismissal of four Tutsi employees (Alex, Félécien, Gasore and Patrice) from the parish by Athanase Seromba and the death of Patrice who was refused access to the presbytery by Seromba

5.5.1 The evidence

Prosecution witness

108. Witness CBK[196] testified that after the death of the Rwandan President, Alex, Félécien, Gasore and Patrice, all of whom were Tutsi and employees in Nyange parish, told him that they had been suspended from work by Athanase Seromba, whereupon they left the parish.[197]

109. Witness CBK explained that these employees returned to the parish on 13 April 1994, but were turned back by Athanase Seromba, who informed them that there was no refuge for them there.[198] The witness also observed that the security situation had worsened considerably, such that any Tutsi who went outside ran the risk of being killed.[199] He further testified that he saw Patrice in the rear courtyard of the presbytery, wounded in both the arms and the legs, adding that he approached Seromba and asked him to help Patrice. According to the witness, Seromba refused; rather, he asked Patrice to leave the premises. Noticing that Patrice delayed complying with his order, Seromba asked the gendarmes to forcefully expel him. Finally, the witness testified that he subsequently saw the lifeless body of Patrice in the rear courtyard of the presbytery.[200]

[196] See Section 3.3.1.
[197] Transcript, 19 October 2004, pp. 7, 14 and 15 (closed session).
[198] Transcript, 19 October 2004, p. 15 (closed session).
[199] Transcript, 19 October 2004, p. 15 (closed session).
[200] Transcript, 19 October 2004, pp. 15-16 (closed session).

Defence witness

110. Witness NA1, born of Hutu and Tutsi parents,[201] testified that he arrived at Nyange church on 15 April 1994.[202] He also indicated that he had previously worked in Nyange parish between 1992 and 1993.[203] The witness explained that when he returned to this parish in April 1994, he observed that none of the employees of the parish had been dismissed. He added that he met Alexis on site, who even greeted him.[204]

111. During cross-examination, Witness NA1 explained, *inter alia*, that he had no idea which employees were to be found among the refugees. He also stated that he was not there to take a census of the parish,[205] nor was he in any position to know who was an employee of the parish and who was not.[206]

5.5.2 Findings of the Trial Chamber

112. The Trial Chamber finds Witness CBK credible. No contradiction exists between his testimony and his prior statements. The Chamber also considers witness CBK's account of how athanase Seromba turned back Tutsi employees to be consistent and plausible, particularly in view of the circumstances which prevailed in Nyange parish in April 1994.

113. Furthermore, the Chamber is of the view that NA1's is not reliable on this point. The Chamber notes that Witness NA1 only arrived in Nyange parish on 15 April 1994 and, therefore, could not properly testify on events he did not witness. Furthermore, it observes that the witness spoke in general terms, as his testimony focussed simply on staff changes which were made between the time he left Nyange in 1993 and when he returned in April 1994. Finally, as the witness himself admits, he was in no position to identify employees present at the time he arrived at the church, due to the very large number of refugees and attackers that were on the premises.[207]

114. In view of the foregoing, the Trial Chamber finds that it has been proved beyond a reasonable doubt that on 13 April 1994, art the time when the security situation in Kivumu *commune* had become precarious, Athanase Seromba dismissed four Tutsi employees from the parish, including a certain Patrice, who, upon returning the following day, was killed by attackers after having been turned back from the presbytery by Seromba.

[201] Transcript, 7 December 2005, p. 75 (closed session).
[202] Transcript, 7 December 2005, pp. 15-16 (closed session).
[203] Transcript, 7 December 2005, pp. 10-12 (closed session).
[204] Transcript, 7 December 2005, p. 19 (closed session).
[205] Transcript, 7 December 2005, p. 19 (closed session).
[206] Transcript, 7 December 2005, p. 10 (closed session).
[207] Transcript, 7 December 2005, p. 21 (closed session); Transcript, 8 December 2005, p. 13 (closed session).

5.6 The meeting in the parish office on 12 April 1994

5.6.1 The evidence

Prosecution witness

115. Witness CBJ[208] testified that on 12 April 1994, he saw Athanase Seromba engaged in discussion on the balcony of the "second floor" of the presbytery with Grégoire Ndahimana, Gaspard Kanyarukiga, Fulgence Kayishema and Télesphore Ndungutse.[209] He added that the discussion lasted between 15 and 20 minutes.[210] He finally stated that these persons did not go into any room or hall to hold discussions.[211]

5.6.2 Findings of the Chamber

116. The Chamber finds that CBJ's testimony is insufficient to prove that a meeting presided over by Seromba took place in the parish office on 12 April 1994. Accordingly, the Chamber finds that the Prosecution has not proved this fact beyond a reasonable doubt.

6. EVENTS OF 14 TO 15 APRIL 1994 IN NYANGE PARISH

6.1 The Indictment

117. The Indictment alleges as follows:

> "15. On or about 13 April 1994, the *Interahamwe* and militiamen surrounding the parish, launched an attack against the refugees in the church. The refugees defended themselves by pushing the attackers out of the church, to a place named "*la statue de la Sainte Vierge*". The attackers in turn, threw a grenade causing many deaths between the refugees. The survivors quickly tried to return to the Church, but Father Athanase SEROMBA ordered that all doors be closed, leaving many refugees (about 30) outside to be killed.
>
> 16. On or about 14 April 1994, in the afternoon, Father SEROMBA met Fulgence KAYISHEMA and Gaspard KANYARUKIGA in his Parish office. Soon afterwards, Fulgence KAYISHEMA went to bring some fuel, using one of the KIVUMU commune official vehicles. That fuel was used by the *Interahamwe* and militiamen to burn down the church, while the gendarmes and members of the communal police threw grenades.
>
> 17. On that same day, Athanase SEROMBA chaired a meeting in his Parish Office with Fulgence KAYISHEMA, Grégoire NDAHIMANA, Gaspard KANYARUKIRA and

[208] See Section 3.2.1.
[209] Transcript, 11 October 2004, p. 51 (open session).
[210] Transcript, 11 October 2004, p. 53 (open session).
[211] Transcript, 11 October 2004, p. 52 (open session).

others unknown to the Prosecution. Immediately after this meeting, following a request by refugees for protection, *bourgmestre* Grégoire NDAHIMANA replied that this war was caused by the *Inyenzi* who killed the President.

18. On or about 15 April, a bus transporting armed *Interahamwe* and a priest named KAYIRANGWA, arrived in Nyange parish, from KIBUYE prefecture. Soon thereafter, Father SEROMBA held a meeting with priest KAYIRANGWA, Fulgence KAYISHEMA, KANYARUKIGA and others unknown to the Prosecution.

19. After this meeting, Father Athanase SEROMBA ordered the *Interahamwe* and militiamen to launch attacks to kill the Tutsi, beginning with the intellectuals. Following his orders, an attack was launched against the refugees by the *Interahamwe*, militiamen, gendarmes and communal police officers, equipped with traditional weapons and firearms, causing the deaths of numerous refugees.

20. On or about 15 April, in the afternoon, the attacks intensified against the refugees of the Church. The *Interahamwe* and militiamen attacked with traditional arms, and poured fuel through the roof of the church, while gendarmes and communal police officers launched grenades and killed the refugees.

21. During these attacks, Father SEROMBA handed over to the gendarmes a Tutsi teacher named GATARE who was killed immediately. This act encouraged and motivated the attackers.

22. Again during these attacks, some refugees left the church for the Presbytere. Father SEROMBA found them and informed gendarmes about their hiding place. Immediately thereafter, they were attacked and killed. Among the victims were two Tutsi women (Alexia and Meriam).

[...]

25. During the attacks described above, Athanase SEROMBA, Grégoire NDAHIMANA, Fulgence KAYISHEMA, Télesphore NDUNGUTSE, Judge Joseph HABIYAMBERE, assistant *bourgmestre* Védaste MUPENDE, and other authorities not known to the Prosecution, were supervising the massacres.

[...]

44. On or about 13 April 1994, the *Interahamwe* and militiamen surrounding the parish launched an attack against the refugees in the church, killing about 30 refugees.

[...]

46. The massive attack against the Tutsi refugees was conducted on or about 15 April 1994 under the supervision of Father SEROMBA, Fulgence KAYISHEMA, Grégoire NDAHIMANA, Télesphore NDUNGUTSE, Gaspard KANYIRUKIGA and others unknown to the Prosecution.

[...]

48. On or about 13 April, the *Interahamwe* and militiamen surrounding the parish launched an attack against the refugees in the church. The attackers having been pushed away and out of the church, to a placed named "la statue de la Sainte Vièrge". The attackers threw a grenade causing many deaths among the refugees. The survivors quickly tried to return to the church, but Father Athanase SEROMBA ordered that all doors be closed, leaving many refugees outside (about 30) to be killed.

6.2 The attack against Nyange church followed by resistance from the refugees countered by the throwing of grenades by the attackers

6.2.1 The evidence

Prosecution witnesses

118. Witnesses CNJ,[212] CBR,[213] CBJ,[214] CDK,[215] CBS[216] and CDL[217] stated that a confrontation took place between the attackers and Tutsi refugees in the morning of 15 April 1994, near the Caritas restaurant. They, *inter alia,* explained that the assailants attacked the refugees with stones and traditional weapons, and that the refugees managed to push them back right up to the Codecoki. The attackers only regained control when a reservist named Théophile Rukara climbed on the roof of a house and began throwing grenades, wounding and killing many Tutsi refugees. The refugees then retreated towards Nyange church in order to avoid fighting the attackers.[218] Witness CBR, in particular, added that communal officials, including Ndahimana, Fulgence Kayishema, Habiyambere, Védaste Muraginabugabo and Gaspard Kanyarukiga[219] were present at the scene of fighting and encouraged the attackers to attack the refugees.[220]

Defence witnesses

119. Witnesses FE31,[221] BZ14,[222] BZ1[223] and BZ4[224] stated that grenades were thrown at Tutsi refugees during the attack which occurred in the morning of 15 April 1994. They also mentioned

[212] See Section 3.3.1.
[213] Transcript, 20 January 2005, p. 45 (open session); Witness information sheet (P-23).
[214] See Section 3.2.1.
[215] Witness information sheet (P-14); Transcript, 7 October 2004, pp. 77-78 (closed session).
[216] See Section 3.3.1.
[217] See Section 3.2.1.
[218] CNJ: Transcript, 24 January 2005, p. 16 (open session); CBR: Transcript, 20 January 2005, p. 37 (open session); CBJ: Transcript, 12 October 2004, pp. 5-6 (open session); CDK: Transcript, 7 October 2004, pp. 60-61 (open session) and Transcript, 11 October 2004, p. 15 (open session); CBS: Transcript, 5 October 2004, p. 20 (open session); CDL: Transcript, 19 January 2005, p. 48 (open session).
[219] Transcript, 20 January 2005, p. 37 (open session).
[220] Transcript, 20 January 2005, p. 37 (open session).
[221] See Section 3.2.1.

that following the grenade attack, which left some of them dead, the refugees fell back and barricaded themselves inside the church to better protect themselves.[225]

6.2.2 Findings of the Chamber

120. The Trial Chamber notes that Prosecution and Defence witnesses alike confirmed that in the morning of 15 April 1994, an attack was launched against Tutsi refugees which met with stiff resistance, and that the attackers subsequently used grenades, causing the death of several refugees. The Chamber therefore finds that these facts have been proven beyond a reasonable doubt.

6.3 The order given by Athanase Seromba to shut the doors of the church, leaving about 30 refugees outside to be killed

6.3.1 The evidence

Prosecution witnesses

121. Witness CBJ[226] testified that in the evening of 14 April 1994, Athanase Seromba, accompanied by gendarmes, asked Tutsi refugees to go inside the church, and then locked them inside.[227] He also testified that the following morning, Seromba, still accompanied by gendarmes, returned to open the doors of the church.[228] Witness CBJ also explained that during the attacks of 15 April 1994, the Tutsi refugees themselves took the decision to barricade themselves inside, abandoning outside the church some people "who did not succeed to do so", and so they were killed.[229]

122. Witnesses CBK,[230] CDL[231] and CNJ testified that during the attack of 15 April 1994, the refugees barricaded themselves inside the church for protection.[232]

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[222] Transcript, 1 November 2005, p. 42 (open session).
[223] See Section 4.4.1.
[224] Transcript, 1 November 2005, pp. 52-54 (open session).
[225] FE31: Transcript, 29 March 2006, pp. 18-19 and 23 (closed session); Transcript, 29 March 2006, p. 48 (open session); BZ1: Transcript, 2 November 2005, pp. 57-58 (open session); BZ14: Transcript, 1 November 2005, p. 22 (open session) and Transcript, 1 November 2005, p. 28 (open session); BZ4: Transcript, 1 November 2005, pp. 58-60 (open session).
[226] See Section 3.2.1.
[227] Transcript, 12 October 2004, pp. 2-4 (open session); Transcript, 13 October 2004, pp. 36-37 (open session).
[228] Transcript, 12 October 2004, p. 10 (open session); Transcript, 13 October 2004, p. 41 (open session).
[229] Transcript, 13 October 2004, p. 42 (open session).
[230] See Section 3.3.1.
[231] See Section 3.2.1.
[232] CBK: Transcript, 19 October 2004, p. 24 (closed session); CDL: Transcript, 19 January 2005, p. 23 (open session); CNJ: Transcript, 24 January 2000, p. 41 (open session).

Defence witnesses

123. Witnesses BZ4,[233] FE56,[234] BZ14[235] and FE34[236] testified that following the attacks of 15 April 1994, the refugees retreated towards the church and barricaded themselves inside.[237]

6.3.2 Findings of the Chamber

124. The Chamber notes that both the Indictment and the Prosecutor's pre-trial brief contain the allegation that Athanase Seromba ordered that the church doors be locked, leaving about 30 refugees outside, who were then killed. The Chamber notes, however, that these two pleadings are inconsistent as to the date of the events. While the Indictment alleges that the events occurred on or about 13 April 1994, the pre-trial brief refers to 14 April 1994.

125. The Chamber, moreover, considers that although Witness CBJ alleges that Athanase Seromba locked the doors of the church in the evening of 14 April 1994 and opened them again in the morning of 15 April 1994, he does not blame Seromba for the death of the Tutsi refugees who were killed on account of the fact that they could not gain access to the inside of the closed church. The Chamber also notes that the same witness testified that on 15 April 1994, refugees who were already inside the church took the decision to barricade themselves, abandoning some of their own who were left outside at the mercy of the attackers. The Chamber finally notes that Prosecution and Defence witnesses alike confirm the fact that it was the refugees themselves who took the decision to barricade the doors of the church on 15 April 1994.

126. In the light of the foregoing, the Trial Chamber is of the view that the available evidence is consistent with respect to the dates of the events and the sequence thereof. The Chamber therefore finds that the Prosecution has not proved beyond a reasonable doubt that Athanase Seromba locked the doors of the church, leaving outside approximately 30 refugees who were subsequently killed.

6.4 That Athanase Seromba held meetings with communal authorities and other persons unknown to the Prosecutor

6.4.1 The evidence

[233] See Section 6.2.1.
[234] See Section 3.2.1.
[235] See Section 6.2.1.
[236] Transcript, 30 March 2006, p. 7 (closed session).
[237] BZ4: Transcript, 1 November 2005, pp. 58-60 (open session); FE56: Transcript, 3 April 2006, p. 56 (closed session); BZ14: Transcript, 1 November 2005, pp. 22, 26 and 28 (open session); FE34: Transcript, 30 March 2006, p. 51 (open session).

Prosecution witnesses

127. Witness CBI[238] testified that several communal authorities, including Fulgence Kayishema, regularly came to the church while he was still there, adding that the authorities visited Athanase Seromba[239] to seek information on what was happening in the rear courtyard of the presbytery.[240] During cross-examination, Witness CBI stated that the meetings which planned the "killing" of Tutsi were also being held at Seromba's home.[241] Questioned by Defence Counsel as to what he meant by "meeting", the witness responded in these terms: "And you can conclude that it was a meeting when people are together."[242]

128. Witness CBJ[243] testified that the gendarmes, after discussing with Athanase Seromba, travelled to the Codecoki, in the centre of Nyange. He added that when Athanase Seromba returned to the presbytery after the Codecoki meeting, the *Interahamwe*, armed with spears, machetes, swords and bamboo pickets, began killing refugees.[244] He further testified that a meeting was held on 14 April 1994 in Nyange parish which was attended by Seromba, *Bourgmestre* Grégoire Ndahimana, Criminal Investigations Officer Fulgence Kayishema, Télesphore Ndungutse, the businessman Gaspard Kanyarukiga, Brigadier Christophe Mbakirirehe and other persons whom the witness stated he was unable to identify.[245] The witness explained that he observed the holding of this meeting from the church tower where he was with members of the charismatic group.[246] During cross-examination, Witness CBJ reiterated that participants in this meeting planned the killing of Tutsi.

129. Witness CDK[247] testified that he spotted Athanase Seromba in the vicinity of the church, in the company of Fulgence Kayishema, Grégoire Ndahimana, Gaspard Kanyarukiga and Télesphore Ndungutse.[248] The witness also stated that he saw them emerge at approximately 11 a.m. from the office of the Codecoki where they had just held a meeting. The witness testified that he did not participate in the meeting, adding that he was in front of Gaspard Kanyarukiga's pharmacy at the time of this event.[249] He finally stated that after the meeting, Athanase Seromba returned in the direction of the church, accompanied by Grégoire Ndahimana, Fulgence Kayishema and Télesphore Ndungutse, while Gaspard Kanyarukiga rejoined the population gathered near the statue where they were waiting for him.[250]

[238] See Section 3.3.1.
[239] Transcript, 4 October 2004, p. 14.
[240] Transcript, 4 October 2004, p. 16.
[241] Transcript, 4 October 2004, p. 65.
[242] Transcript, 4 October 2004, p. 65 (open session).
[243] See Section 3.2.1.
[244] Transcript, 12 October 2004, pp. 5-6 (open session).
[245] Transcript, 12 October 2004, p. 4 (open session).
[246] Transcript, 12 October 2004, p. 32 (closed session).
[247] See Section 6.2.1.
[248] Transcript, 11 October 2004, p. 11 (open session).
[249] Transcript, 11 October 2004, pp. 12-13 (open session).
[250] Transcript, 7 October 2004, pp. 60-61 (open session).

130. Witness CBK[251] testified that between 13 and 16 April 1994, Athanase Seromba organised several meetings in Nyange parish attended by Gaspard Kanyarukiga, Fulgence Kayishema, Grégoire Ndahimana, Ndungutse and Rushema. The witness also testified that the meetings were often held in a room located "on the upper floor of the presbytery building".[252]

131. Witness CBN[253] stated that he saw Athanase Seromba welcome several authorities including *Bourgmestre* Ndahimana, Kanyarukiga and Criminal Investigations Officer Kayishema.[254] Witness CBN also testified that he was informed that communal *conseillers* held meetings.[255]

132. Witness CBS[256] alleged that the authorities had come to Nyange parish to meet Athanase Seromba. Among them, the witness cited *Bourgmestre* Ndahimana, Criminal Investigations Officer Kayishema, Brigadier Mbakirirehe, a teacher, Télesphore Ndungutse, and a businessman, Kanyarukiga.[257]

Defence witnesses

133. Witness PA1[258] testified that no meeting was held at the presbytery by Athanase Seromba and the communal authorities for the purpose of exterminating the refugees.[259] He pointed out he, together with other religious persons, had asked Seromba to contact the *bourgmestre* so as to be apprised of the situation which prevailed in Nyange parish on Friday, 15 April 1994. On his return from this mission, Seromba explained to them that he could not meet the *bourgmestre,* as he was absent attending a burial.[260] Witness PA1 further testified that Grégoire Ndahimana and Fulgence Kayishema came to the parish in the evening. The witness stated that the clergymen asked the authorities to tell them what to do with the corpes strewn in the churchyard.[261] The *bourgmestre* then promised to send bulldozers the following day to bury the bodies.[262] The witness finally testified that it was not possible that Seromba could organise these meetings without him knowing about it, since they were always together.[263]

[251] See Section 3.3.1.
[252] Transcript, 19 October 2004, pp. 16-17 (closed session).
[253] See Section 3.3.1.
[254] Transcript, 15 October 2004, pp. 44-45(open session).
[255] Transcript, 15 October 2004, p. 55 (open session).
[256] See Section 3.3.1.
[257] Transcript, 5 October 2004, p. 19 (open session).
[258] See Section 3.4.1.
[259] Transcript, 20 April 2006, p. 18 (closed session).
[260] Transcript, 20 April 2006, p. 23 (closed session).
[261] Transcript, 20 April 2006, p. 24 (closed session).
[262] Transcript, 20 April 2006, p. 24 (closed session).
[263] Transcript, 20 April 2006, p. 31 (closed session).

134. Witness BZ3[264] stated that there was no "relationship" between Athanase Seromba and the authorities.[265] He furthermore stated that he had never heard of any meetings between Seromba, Fulgence Kayishema, Grégoire Ndahimana and Télesphore Ndungutse prior to 16 April 1994.[266]

135. Witness CF23[267] testified that meetings of Nyange *commune* were always held at the communal office[268] and that he was always kept informed of them. He also added that no meeting of the communal authorities took place in Nyange parish. He furthermore indicated that no official meeting of the communal authorities had on its agenda the extermination of the Tutsi.[269]

6.4.2 Findings of the Chamber

136. The Chamber finds that the statements of Prosecution Witnesses CBI, CBJ, CBK, CDK and CBS are consistent with respect to the fact that Athanase Seromba held meetings or discussions with the communal authorities. In this regard, it notes that the testimony of Defence Witness PA1 corroborates the testimony of these witnesses when he states, *inter alia,* that Seromba had been asked to contact the *bourgmestre* to find a solution concerning the corpes that were strew all over the church courtyard. The Chamber, however, considers that the testimonies of CBI, CBJ, CBK, CDK and CBS do not lead to the conclusion that any meeting attended by Seromba or any discussion he may have had with the communal authorities was for the purpose of planning the extermination of the Tutsi. In fact, none of these witnesses participated in such meetings or discussions. Therefore, the Chamber considers that reference by some of them to an extermination plan is nothing more than a reflection of their own opinions.

137. The Chamber notes that Witness PA1 was heard on 8 October 2003 within the framework of a Letter Rogatory. At the hearing, the witness admitted that he was not always with Athanase Seromba at the presbytery, adding that it was highly probable that certain persons came to the presbytery without him being informed.[270] The Chamber finds this statement inconsistent with PA1's testimony that he was always alongside Seromba. The Chamber therefore concludes that this witness is not credible.

138. The Chamber is also of the view that the testimonies of BZ3 and CBN are not reliable, as they are hearsay.

[264] Transcript, 8 November 2005, p. 29 (open session).
[265] Transcript, 31 October 2005, p. 49 (open session).
[266] Transcript, 8 November 2005, p. 23 (open session).
[267] See Section 4.3.1.
[268] Transcript, 31 March 2006, p. 20 (open session).
[269] Transcript, 31 March 2006, p. 10 (open session).
[270] Statement, WItness PA1 as part of the Letter Rogatory on 8 October 2003 (D-90), p. 4.

139. The Chamber also considers that the evidence given by Witness CF23 is not probative, as he recounts that meetings were held by the communal authorities in the *commune* office, without any reference to the presence of Athanase Seromba at the meetings.

140. In view of the foregoing, the Trial Chamber finds that the Prosecution has established beyond a reasonable doubt that meetings or discussions were held between Athanase Seromba and *commune* authorities. On the other hand, the Chamber finds that it has not been established beyond a reasonable doubt that the purpose of the meetings or discussions was to plan the extermination of the Tutsi.

6.5 That Athanase Seromba ordered the *Interahamwe* and militia to attack refugees

6.5.1 The evidence

Prosecution witnesses

141. Witness CDK[271] testified that he saw Gaspard Kanyarukiga, Télesphore Ndungutse and Fulgence Kayishema give orders and instructions to the attackers on 15 April 1994.[272]

142. Witness CBR[273] testified that Athanase Seromba was not the one leading the attackers on 15 April 1994. However, he added that before the attackers received any instructions from the authorities, the latter first held discussions with Seromba. He stated however that he was not privy to the discussions.[274] The witness also testified that Fulgence Kayishema stated that it was necessary to attack the *Inyenzi* who were located in Nyange church.[275]

143. Witness CNJ[276] testified that when he arrived in Nyange parish with his group, Fulgence Kayishema and Grégoire Ndahimana welcomed them. They told them to cover themselves with banana leaves to distinguish themselves from the Tutsi. The witness further testified that Fulgence Kayishema directed them to a location where they were to assist others in fighting the Tutsi.[277] Witness CNJ admitted that they were pushed back as far as the pharmacy belonging to Kanyarukiga. Kayishema then told them to go back up and throw stones at the Tutsi.[278]

144. Witness YAU[279] testified that when the *Interahamwe* arrived in the courtyard of the church, Athanase Seromba told them not to attack the refugees immediately, as there were few of

[271] See Section 6.2.1.
[272] Transcript, 11 October 2004, p. 3 (open session).
[273] See Section 6.2.1.
[274] Transcript, 24 January 2005, p. 4 (open session).
[275] Transcript, 20 January 2005, pp. 36-37 (open session).
[276] See Section 3.3.1.
[277] Transcript, 24 January 2005, p. 15 (open session).
[278] Transcript, 24 January 2005, p. 16 (open session).
[279] See Section 3.3.1.

them.[280] Seromba allegedly told them to stop the fighting because, in his words, "you are in inadequate numbers".[281] The witness further testified that Seromba ordered the *Interahamwe* to start by killing the intellectuals.[282] Furthermore, he claimed that during the same day, Seromba addressed an *Interahamwe* woman, saying to her: "find all these people who are hiding in here and take them out and kill them!".[283]

Defence witnesses

145. Witness NA1[284] testified that during the 15 April 1994 attack, Athanase Seromba was always with him and other persons in the presbytery. He also stated that while they were in the living room of the presbytery, Kayiranga came to inform them about the massacre of refugees who remained outside the buildings.[285]

146. Witness BZ1[286] testified that, on 15 April 1994, the attackers were led by communal authorities, including the *bourgmestre*, the Criminal Investigations Officer and an MRND official, who worked in close collaboration with these authorities. He stated that he at no time saw Athanase Seromba or other clergymen on 15 April 1994.[287]

147. Witness FE31[288] testified that he arrived at Nyange church in the morning of 15 April 1994, between 10 a.m. and 10.30 a.m.[289] The witness stated that he saw Fulgence Kayishema, a communal police officer, a businessman, Anastase Rushema, Léonard Abayisenga, Théophile Rukura, Boniface Kabalisa, Ephrem Nzabigerageza and other persons holding a meeting, but did not hear what they discussed.[290] He, furthermore, indicated that these persons were leading the attack.[291] Witness FE31 also stated that Athanase Seromba was not present at this meeting,[292] as he did not see him at the location that day.[293] The witness stated, *inter alia,* as follows: "We were [*sic*] attacked because we were incited to do so by the authorities ... [Seromba] could not be attacked and be leading the attack, whereas he was targeted by the assailants."[294]

[280] Transcript, 30 September 2004, p. 77 (closed session).
[281] Transcript, 29 September 2004, p. 17 (open session).
[282] Transcript, 1 October 2004, p. 2 (open session).
[283] Transcript, 29 September 2004, p. 21 (open session).
[284] See Section 5.5.1.
[285] Transcript, 7 December 2005, p. 22 (closed session).
[286] See Section 4.4.1.
[287] Transcript, 2 November 2005, p. 59 (open session).
[288] See Section 3.2.1.
[289] Transcript, 29 March 2006, p. 19 (closed session).
[290] Transcript, 29 March 2006, p. 48 (open session).
[291] Transcript, 29 March 2006, p. 23 (closed session).
[292] Transcript, 29 March 2006, p. 22 (closed session).
[293] Transcript, 29 March 2006, pp. 25 and 28 (open session).
[294] Transcript, 29 March 2006, p. 28 (open session).

148. Witness FE36[295] testified that Télesphore Ndungutse was behind the killings perpetrated in Nyange parish.[296]

149. Witness FE55[297] testified that on 15 April 1994, Gaspard Kanyarukiga solicited the recruitment of persons from Kibilira "to attack the church". He also allegedly stated that everything had to be done to kill the Tutsi, including destroying the church, if necessary.[298] The witness finally testified that on the same day he saw Fulgence Kayishema distributing whistles from his vehicle, inciting the Hutu to kill Tutsi refugees in Nyange parish.[299]

150. Witness FE56[300] explained that on 15 April 1994, Fulgence Kayishema wanted to expel the refugees from the church. The witness also stated that Télesphore Ndungutse gave him a watering can containing fuel and ordered him to spray it on the windows of the church.[301] According to the witness, the objective was to frighten the refugees, so that they would be forced to come out of the church, which was surrounded on the orders of Fulgence Kayishema.[302] The witness testified that Télesphore Ndungutse and Fulgence Kayishema supervised the attacks.[303] He explained that these persons went to negotiate with Astaldi company to obtain trucks for the transport of attackers from Kibilira to Nyange parish.[304] Witness FE56 finally testified that he did not see Athanase Seromba in Nyange parish on 15 April 1994.[305]

6.5.2 Findings of the Chamber

151. The Chamber notes that Witness YAU is the sole Prosecution witness who stated that Seromba ordered *Interahamwe* to start by killing Tutsi intellectuals on 15 April 1995. The Chamber observes, however, that the circumstances under which this witness may have heard Athanase Seromba give such an order do not clearly emerge from his testimony. Consequently, the Chamber finds that Witness YAU is not reliable.

152. The Chamber notes that the testimonies of CDK, CBR, CNJ, NA1, BZ1, FE31, FE36, FE55 and FE56 are consistent with respect to the fact that it was the communal authorities who led the attackers, made up of *Interahamwe* and militiamen, and gave them orders to attack the refugees.

[295] Transcript, 21 November 2005, p. 6 (closed session).
[296] Transcript, 21 November 2005, p. 21 (closed session).
[297] See Section 4.4.1.
[298] Transcript, 12 April 2006, pp. 41-43 (open session).
[299] Transcript, 12 April 2006, p. 50 (open session).
[300] See Section 3.2.1.
[301] Transcript, 3 April 2006, p. 54 (closed session).
[302] Transcript, 3 April 2006, p. 54 (closed session).
[303] Transcript, 3 April 2006, p. 55 (closed session); Transcript, 3 April 2006, p. 58 (closed session); Transcript, 4 April 2006, p. 6 (open session).
[304] Transcript, 3 April 2006, p. 57 (closed session).
[305] Transcript, 3 April 2006, p. 58 (closed session).

153. In view of the foregoing, the Chamber finds that the Prosecution has not proved beyond a reasonable doubt that Athanase Seromba ordered the *Interahamwe* and militiamen to attack the refugees.

6.6 That the *Interahamwe* and militia, assisted by gendarmes and communal police officers, launched attacks against the refugees and attempted to burn down the Nyange church

6.6.1 The evidence

Prosecution witnesses

154. Witness CBI[306] testified that on 15 April 1994, most of the assailants were carrying traditional weapons, while their leaders were carrying guns.[307] He also testified that this attack caused numerous deaths among the refugees, leaving the church courtyard strewn with their dead bodies.[308]

155. Witness CBR[309] testified that the attacks continued in the afternoon of 15 April 1994,[310] adding that the attackers attempted to burn down the church by spraying it with petrol and using banana leaves and "sticks of dynamite".[311]

156. Witness CDK[312] stated that another attack occurred during the afternoon of 15 April 1994, while the church was still surrounded by the attackers. He testified that communal police officers and gendarmes opened fire in the direction of the church and attempted to burn it down using gasoline and dynamite.[313] Finally, the witness estimated that more than 100 persons were killed in that attack.[314]

157. Witness CBK[315] testified that on 15 April 1994 there was a "large scale" attack against refugees in Nyange church. The witness stated that the attackers had increased in number and were armed with spears, machetes, small hoes and sharpened and wooden sticks. He added that the refugees defended themselves using stones and were forced to barricade themselves inside the church to protect themselves. The witness also testified that Fulgence Kayishema, Télesphore

[306] See Section 3.3.1.
[307] Transcript, 4 October 2004, p. 11 (open session).
[308] Transcript, 4 October 2004, p. 12 (open session).
[309] See Section 6.2.1.
[310] Transcript, 20 January 2005, p. 38 (open session).
[311] Transcript, 20 January 2005, pp. 40-41 (open session).
[312] See Section 6.2.1.
[313] Transcript, 7 October 2004, pp. 62-63 (open session).
[314] Transcript, 7 October 2004, p. 63 (open session).
[315] See Section 3.3.1.

Ndungutse and Grégoire Ndahimana attempted to burn down the church by spraying petrol on it and throwing grenades against the doors.[316]

158. Witness CBT[317] testified that during the 15 April 1994 attack, Faustin sprayed petrol on the church, adding that the attackers climbed on the roof of the church from where a grenade was thrown.[318]

159. Witness CDL[319] testified that during the 15 April 1994 attack, the objective of the attackers was to enter the church. He explained, *inter alia,* that they initially attempted to break down the doors of the church using dynamite and that when they failed, they unsuccessfully tried to burn it down using gasoline.[320]

6.6.2 Findings of the Chamber

160. The Chamber finds that all the testimonies of Prosecution witnesses are consistent with respect to the fact that the attackers launched an attack against the refugees in Nyange church on 15 April 1994 and that they also attempted to burn down the church on the same day.

161. The Chamber notes that the Defence adduced no evidence to refute this allegation.

162. In view of the foregoing, the Trial Chamber finds that the Prosecutor has proved beyond a reasonable doubt that on 15 April 1994, the *Interahamwe* and militiamen, assisted by gendarmes and communal police officers, launched attacks against Tutsi refugees and attempted to burn down Nyange church.

6.7 Supervision of the attacks by Athanase Seromba

6.7.1 The evidence

Prosecution witnesses

163. Witness CDL[321] testified that Athanase Seromba was present at the 15 April 1994 attack and that he was standing in front of the parish secretariat.[322] The witness further testified added that he saw Seromba again later in the day when Seromba was standing in front of the priest's residence.[323] The witness also stated that Seromba advised the attackers to attack Tutsi who were

[316] Transcript, 19 October 2004, pp. 20-24 (closed session).
[317] Witness information sheet (P-13).
[318] Transcript, 6 October 2004, pp. 61-62 (open session).
[319] See Section 3.2.1.
[320] Transcript, 19 January 2005, pp. 23-24 (open session).
[321] See Section 3.2.1.
[322] Transcript, 19 January 2005, pp. 18-19 (closed session).
[323] Transcript, 19 January 2005, p. 19 (closed session).

inside the church rather than those who were inside the presbytery.[324] The witness furthermore stated that the *bourgmestre* and Ndungutse informed him that they had discussed with Seromba, who wanted them to bury the numerous bodies strewn all over the church courtyard. In fact, Witness CDL stated, *inter alia*, as follows: "So Father Seromba deemed it necessary to first bury the bodies and then to resume the killings afterwards."[325] The witness explained that Seromba did nothing to protect the refugees.[326]

164. Witness CBR[327] explained that during the 15 April 1994 attack, when there were no longer any refugees outside the church, the attackers wanted to attack the refugees hidden in the presbytery courtyard. He testified that Kayishema and Ndungutse led these attacks. He stated that Seromba and the gendarmes prevented the attackers from entering the presbytery courtyard. He explained that Kayishema and Ndungutse held a discussion with Seromba and subsequently told the attackers that Seromba had asked them to stop the killings and to "first" remove the bodies and debris lying on the ground. The witness alleged that Seromba made the following remarks: "Listen, look around, first of all, clear this filth." He also stated that Kayishema and Ndungutse uttered the following remarks: "Seromba did not even allow us to enter the courtyard of the presbytery before we removed the filth." The witness furthermore indicated that he was standing 10 metres away from Kayishema, Ndungutse and Seromba when they were discussing. He also stated that the numerous bodies were removed in less than an hour, using a bulldozer belonging to Astaldi company. He alleged that Seromba did nothing to protect the refugees or to oppose the attack.[328] During cross-examination, Witness CBR confirmed that he had personally heard Seromba refer to the bodies as filth.[329] The witness further testified that the attacks resumed after the bodies had been removed.[330] Finally, he testified that he never saw Seromba lead the attackers on 15 April 1994 or 16 April 1994, while indicating that "before the authorities gave us any instructions, whatsoever, they had to discuss with the pastor".[331]

165. Witness CNJ[332] stated that during the 15 April 1994 attack, the attackers pursued the refugees who were trying to hide in the presbytery and that Athanase Seromba prevented them, saying "first of all, remove the dead bodies that were in front of the secretariat". The witness stated that he personally heard Seromba utter these words,[333] and that the attacks resumed after the bodies had been removed. Witness CNJ stated as follows: "We removed the dead bodies, and afterwards we went into the back courtyard, the place where he was stopping us from entering before we removed the dead bodies."[334]

[324] Transcript, 19 January 2005, p. 65 (open session).
[325] Transcript, 19 January 2005, p. 65 (open session).
[326] Transcript, 19 January 2005, p. 19 (closed session).
[327] See Section 6.2.1.
[328] Transcript, 20 January 2005, pp. 38-39 and 52-54 (open session).
[329] Transcript, 24 January 2005, p. 3 (open session).
[330] Transcript, 20 January 2005, p. 40 (open session).
[331] Transcript, 24 January 2005, p. 4 (open session).
[332] See Section 3.3.1.
[333] Transcript, 24 January 2005, p. 17 (open session).
[334] Transcript, 24 January 2005, p. 18 (open session).

166. Witness CBJ[335] explained that following the 15 April 1994 attacks, Athanase Seromba congratulated some of the assailants by throwing down bottles of beer to them from the "second floor" of the presbytery. The witness testified that he saw Seromba later in the evening at the secretariat, holding a discussion with the *Interahamwe* and the gendarmes. Seromba allegedly asked them to bring a mechanical digger to remove the bodies strewn on the ground in front of the church.[336] Witness CBJ furthermore testified that when the killings began on 15 April 1994, he saw Seromba on the "second floor" of the presbytery, in the company of Édouard Nturiye, Emmanuel Kayiranga and the *grand séminariste* Apollinaire Hakizimana watching the massacres that were taking place.[337]

167. Witness CDK[338] testified that he saw Athanase Seromba in company with Kanyarukiga and Kayishema in Nyange parish towards 2 p.m. The witness explained that the three of them were standing in front of the office of the Parish secretariat and that he was at a short distance from them at that time.[339]

Defence witnesses

168. Witness BZ1[340] testified that he never saw Athanase Seromba at the time the attacks were perpetrated in the church up until the collapse of the bell tower.[341] He claimed to have seen Seromba for the last time during a mass celebration which took place on 11 April 1994.[342]

169. Witness BZ4[343] stated that he never saw Athanase Seromba in the company of the attackers.[344] The witness also testified that he did not see Seromba on 15 and 16 April 1994.[345]

170. Witness FE31[346] testified that he did not see Athanase Seromba at the locus of the 15 April 1994 attack[347]. The witness stated that the assailants attacked Seromba and that Seromba could not have led an attack, whereas he was himself being targeted by the assailants[348].

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[335] See Section 3.2.1.
[336] Transcript, 12 October 2004, p. 6 (open session).
[337] Transcript, 13 October 2004, p. 45 (open session).
[338] See Section 6.2.1.
[339] Transcript, 7 October 2004, p. 62 (open session).
[340] Transcript, 10 November 2005, p. 30 (open session).
[341] Transcript, 2 November 2005, p. 64 (open session).
[342] Transcript, 2 November 2005, p. 64 (open session).
[343] See Section 6.2.1.
[344] Transcript, 1 November 2005, pp. 59 and 60 (open session).
[345] Transcript, 10 November 2005, p. 8 (open session).
[346] See Section 3.2.1.
[347] Transcript, 29 March 2006, pp. 25, 28 and 55 (open session).
[348] Transcript, 29 March 2006, pp. 28 and 31-32 (open session).

171. Witness FE35[349] testified that he did not see the priest during the 15 April 1994 attack. He stated that he only saw employees of the *commune* and members of the general public.[350]

172. Witness PA1[351] stated that he did not come out of the presbytery following the attacks which occurred upon the arrival of the bus on 15 April 1994. The witness testified that Seromba came out outraged by the fact that "people" were being killed. He added that he did not remember the time during which Seromba remained outside the presbytery.[352] He explained that he witnessed a meeting between Seromba, Kariramba, Kayiranga, Nturiye, the *bourgmestre* and Kayishema during which the question of numerous bodies which were strewn on the ground in the parish courtyard was being addressed. The witness stated, *inter alia*, that the priest requested the *bourgmestre* "to do something" with a view to burying the bodies. The *bourgmestre* then told them that he would contact the person in charge of the site in order to obtain a bulldozer for that purpose.[353]

173. Witness YA1, a Hutu,[354] testified that he saw no clergymen on 15 April 1994.[355]

174. Witness NA1[356] explained that on 15 April 1994, at approximately 6 p.m., the priests met in the presbytery and asked Athanase Seromba to contact the *bourgmestre* of the *commune* and inform him of the progress of events. The witness stated that when Seromba returned to the presbytery, he explained that he was unable to meet the *bourgmestre*, as the latter had gone to attend a burial.[357] Witness NA1 furthermore stated that he learned later in the evening that the *bourgmestre* had come to the parish that same evening and that he had told the priest that on the following day he would take necessary measures to bury the bodies. The witness finally stated that he did not attend this meeting, and therefore, did not see the *bourgmestre* in the parish during the evening of 15 April 1994.[358]

6.7.2 Findings of the Chamber

175. The Chamber notes that the testimony of Witness CDL is hearsay. Consequently, his allegations that Athanase Seromba ordered assailants to attack the refugees inside the church and to remove the bodies prior to resuming the killings are not credible.

176. In view of the foregoing, the Chamber finds that the Prosecution has not proved beyond a reasonable doubt that Athanase Seromba supervised the 15 April 1994 attacks in Nyange parish.

[349] Transcript, 22 November 2005, p. 29 (closed session).
[350] Transcript, 22 November 2005, p. 18 (closed session).
[351] Transcript, 20 April 2006, p. 38 (closed session).
[352] Transcript, 21 April 2006, p. 13 (closed session).
[353] Transcript, 21 April 2006, p. 15 (closed session).
[354] See Section 6.2.1.
[355] Transcript, 14 November 2005, p. 37 (open session).
[356] See Section 5.5.1.
[357] Transcript, 7 December 2005, pp. 28-29 (closed session).
[358] Transcript, 7 December 2005, pp. 28-29 (closed session).

177. The Chamber notes, furthermore, that three Prosecution witness, Witnesses CDL, CBR and CNJ stated in similar testimonies that, during the 15 April 1994 attack, Athanase Seromba prevented attackers from entering the courtyard of the presbytery where refugees were hiding. Witness CDL explained, *inter alia*, that Seromba held discussions with the *bourgmestre* and Ndungutse, while Witness CBR referred rather to a meeting between Seromba, Kayishema and Ndungutse. Witness CNJ claimed that Seromba personally addressed the attackers.

178. The Chamber notes that Witness CDL's evidence on the content of the meeting is hearsay, whereas Witnesses CBR and CNJ stated that they personally heard the remarks made by Athanase Seromba. Contrary to the first two witnesses, CNJ did not state that Seromba referred to the bodies as filth. Furthermore, Witnesses CBR and CNJ alleged that the massacres resumed after the bodies had been removed.

179. The Chamber considers Witness CBR to be credible. In fact, during cross-examination, Witness CBR confirmed what he had said in the examination-in-chief.[359] Counsel for the Defence challenged Witness CBR on his assertions that he heard Kayishema and Ndungutse say that Athanase Seromba had asked for the bodies to be removed and that he had personally heard Seromba say these words.[360] Witness CBR explained that there was no discrepancy between the two assertions. He stated that he heard the priest utter those words and that the authorities conveyed to the attackers what the priest had told them.[361]

180. Witness CNJ gave a consistent account of the events which occurred on 15 April 1994, except with respect to the time of his arrival at the location[362]. The Chamber finds that no evidence casts doubt on the credibility of his factual evidence.

181. Witness CBJ also stated that Athanase Seromba requested that the bodies be removed, although he estimated this event as having occurred in the evening of 15 April 1994. No other evidence supports his own evidence that Seromba congratulated the assailants. The Chamber therefore declines to admit CBJ's evidence on this point.

182. The Chamber finds that the evidence given by CBR, CBJ, CBI and CDK is consistent with respect to the presence of Athanase Seromba on the site during the 15 April 1994 attacks.

183. The Chamber finds that BZ1's evidence on this point is not reliable. In fact, after first declaring in the examination-in-chief that he had not seen Athanase Seromba on 15 April 1994, the witness subsequently admitted during cross-examination the following: "At any rate, I am telling you that these people were speaking to him. I can't say that I certainly saw him, but when

[359] Transcript, 24 January 2005, p. 2 (open session).
[360] Transcript, 24 January 2005, p. 2 (open session).
[361] Transcript, 24 January 2005, p. 3 (open session).
[362] Transcript, 24 January 2005, pp. 55-56 (open session).

they were speaking to him, I could hear what they were saying. In fact, I could say I had a glance of him..."[363]

184. The Trial Chamber finds the testimony of BZ4 unreliable, as he testified that he did not stay in Nyange parish for a long time on 15 April 1994.[364]

185. The Chamber holds that Witness FE31 is not credible on this point. In fact, after first declaring that Athanase Seromba was not present during the 15 April 1994 attack, he subsequently stated that the assailants attacked Seromba. However no other witness stated that Seromba was attacked on 15 April 1994.

186. Furthermore, the Chamber notes that Witness F31 stated that he arrived at the church at approximately 10.30 a.m.,[365] went to the statue of the Virgin Mary, and then returned to the church courtyard, where he remained only for 10 minutes, without going inside the presbytery.[366] The Chamber points out that the witness claimed in his previous statements that he was not present in Nyange parish on 15 April 1994. In fact, during cross-examination, the Prosecutor read out Question 6, appearing on the statement made by the witness to the Rwandan authorities on 14 January 2000 as follows: "You are accused of having participated in the bloody attack on the church. That was in broad daylight, and many people saw you. What is your response?" The Chamber notes that the witness answered as follows: "It is a pure lie. I never went there."[367] The Prosecutor also read out the answer which the witness gave to Question 7 as follows: "I never went to the church. If I had gone there, people would have seen me."[368] The Prosecutor finally read out to Witness FE31 an excerpt from his statement to the Rwandan authorities on 19 November 1999: "What are your grounds of defence in respect of the acts for which you are accused by the legal officer?; Answer: I did not commit these offences. I stayed in the house. I did not go anywhere. I did not go to the church."[369] In view of the foregoing, the Chamber finds that Witness FE31's statements are inconsistent.[370]

187. The Chamber also finds Witness FE35 unreliable, having stated that he did not see Athanase Seromba during the attacks. Incidentally, the Chamber notes that his evidence that he left the church sometime between 1 and 4 p.m. is vague.[371]

[363] Transcript, 10 November 2005, p. 20 (open session).
[364] Transcript, 9 November 2005, pp. 48-49 (open session).
[365] Transcript, 29 March 2006, p. 47 (open session).
[366] Transcript, 29 March 2006, pp. 52-53 (open session).
[367] Statement of Witness FE31 to the Rwandan judicial authorities on 14 January 2000 (P-45), p. 1, read out to the witness: Transcript, 29 March 2006, p. 65 (open session).
[368] Statement of Witness FE31 to the Rwandan judicial authorities on 14 January 2000 (P-45), p. 2, read out to the witness: Transcript, 29 March 2006, p. 66 (open session).
[369] Statement of Witness FE31 to the Rwandan judicial authorities on 19 November 1999 (P-46), p. 1, read out to the witness: Transcript, 29 March 2006, p. 68 (open session).
[370] Transcript, 29 March 2006, pp. 65-68 (open session).
[371] Transcript, 23 November 2005, p. 28 (closed session).

188. The Chamber considers PA1's evidence inconclusive. In fact, he testified on what Athanase Seromba did or said when he left the presbytery, even though he did not follow Seromba to personally ascertain his conduct. The Chamber therefore finds PA1's evidence unreliable.

189. The Chamber also considers NA1's evidence to be inconclusive, as he did not attend the meeting during which the *bourgmestre* allegedly promised the priests, in the evening of 15 April 1994, that he would bring in some bulldozers to remove the bodies.

190. The Chamber considers that Witness YA1 is not credible. In fact, his testimony is full of contradictions: at times he claims to have been present at the 15 April 1994 events, standing near the statue of the Virgin Mary. On other occasions, he states that he did not go to the parish on 15 April 1994.[372]

191. In view of the foregoing, the Trial Chamber finds that it has been proven beyond a reasonable doubt that on 15 April 1994, Athanase Seromba asked the assailants, who were preparing to attack the Tutsi in the presbytery courtyard, to stop the killings and to first remove the bodies. The Chamber also finds that the attacks against Tutsi refugees resumed after the bodies had been removed.

6.8 That numerous Tutsi refugees, including the teacher called Gatare, and two Tutsi female refugees, Alexia and Meriam, were killed.

6.8.1 The evidence

Prosecution witnesses

192. Witness CBT[373] testified that around noon, on 15 April 1994, he saw Athanase Seromba on the staircase, in front of the secretariat, in the company of a teacher called Anicet Gatare.[374] The witness stated that Seromba accompanied Anicet Gatare up to the door of the secretariat where he handed him over to three gendarmes who were on duty. He further stated that the gendarmes took away Anicet Gatare and killed him with one bullet.[375] He explained that during this incident, Seromba was on the veranda of the parish secretariat.[376] He also testified that after handing over Anicet Gatare to the gendarmes, Seromba returned to the "inner courtyard".[377]

[372] Transcript, 14 November 2005, p. 28 (open session).
[373] See Section 6.3.1.
[374] Transcript, 7 October 2004, p. 31 (open session).
[375] Transcript, 6 October 2004, pp. 58-59 (open session).
[376] Transcript, 6 October 2004, p. 59 (open session). Witness CBT identified Prosecution Exhibit P3-1 as being a photograph of the office in question.
[377] Transcript, 7 October 2004, p. 41 (open session).

193. Witness CBJ[378] testified that he knew Meriam during his sojourn at Nyange church from 10 to 16 April 1994. He added that Meriam was among a group of privileged Tutsi to whom Athanase Seromba had provided accommodation inside the presbytery until 14 April 1994. The witness also pointed out that following the 14 April 1994 meeting, the purpose of which, in his view, was to plan the killing of Tutsi, all the persons to whom accommodation had been provided in the presbytery were sent away by Seromba.[379] He also testified that the refugees came out after the doors of the church were opened on the morning of 15 April 1994. Among other things, he recounted how Meriam returned to the presbytery to avoid the *Interahamwe* who had started attacking the refugees. Witness CBJ furthermore explained that these attacks occurred between 1 p.m. and 3 p.m., and that Seromba, once again, sent away all the persons of Tutsi origin, including Meriam, who were in the rear courtyard of the presbytery. He further recounted how Meriam was "beaten up" in front of the secretariat and dragged on the ground up to the front of the church by Muringanyi while Fulgence Kayishema held her by the head and was banging it against the ground in the courtyard.[380] The witness stated that he personally saw the naked, mortal remains of Meriam.[381] He also stated that on the same day, at approximately 7 p.m., he heard Seromba call his night watchman, Canisius Habiyambere, and order him to search the rear courtyard of the presbytery to see whether any Tutsi were hidden there.[382] Finally, Witness CBJ testified that he saw a gendarme in front of the corridor near the ground floor shoot Anicet Gatare at point-blank range who, struck by a bullet in the chest, died thereafter.[383]

194. Witness CBK[384] testified that he saw numerous victims among whom he was able to identify Adrienne, a religious novice from Nyinawajambo *commune*, Anicet Gatare, a teacher, Boniface Gatare, a youth counsellor in Kivumu *commune* and Kanamugire, a *MINITRAP* employee.[385] The witness stated that Anicet Gatare was killed by gendarmes on 13 April 1994. He recounted how he learned from gendarmes that Anicet Gatare had offered them money so as to be killed by shooting, as he did not want to be killed with a machete.[386] Witness CBK also stated that Fulgence Kayishema killed Meriam by banging her head against bricks,[387] while Seromba, who was present on site, did nothing to prevent the killing.[388]

[378] See Section 3.2.1.
[379] Transcript, 12 October 2004, pp. 9-10 (open session).
[380] Transcript, 12 October 2004, pp. 10-11 (open session).
[381] Transcript 12 October 2004, p. 10 (open session).
[382] Transcript, 12 October 2004, p. 12 (open session); Transcript, 13 October 2004, p. 46 (open session).
[383] Transcript, 12 October 2004, pp. 10-11 (open session).
[384] See Section 3.3.1.
[385] Transcript, 19 October 2004, p. 32 (closed session).
[386] Transcript, 19 October 2004, p. 33 (closed session).
[387] Transcript, 19 October 2004, p. 35 (closed session).
[388] Transcript, 19 October 2004, p. 35 (closed session).

Defence witnesses

195. Witness BZ1[389] testified that when Anicet Gatare saw the attackers arriving, he asked a gendarme to kill him in order to avoid an atrocious death. He testified that the attackers accused Athanase Seromba of complicity with the *Inkotanyi* because he did not want to hand over persons found in the parish to the attackers.[390]

196. Witness BZ2[391] testified that he learned that many persons, including his friend, Meriam and a teacher named Anicet Gatare had died in Nyange parish.[392]

197. Witness FE31[393] testified that he was told that Anicet Gatare asked the gendarmes to shoot him, to avoid death by machete. The witness also stated that he was unaware that he had been handed over to the gendarmes, adding that the attackers found Anicet Gatare on site and killed him by striking him with a machete.[394]

198. Witness FE55[395] testified that Meriam and Anicet Gatare were killed on Friday, 15 April 1994.[396]

6.8.2 Findings of the Chamber

199. The Chamber notes that Witnesses CBT, CBJ, CBK, BZ2 and FE55 confirmed the death of Tutsi refugees Anicet Gatare and Meriam. The Chamber further notes that Witnesses BZ1 and FE31 only referred to the death of Anicet Gatare. The Trial Chamber finally observes that no witness in the present matter made reference to the death of Alexia. Consequently, the Chamber is of the view that the murders of Meriam and Anicet Gatare have been proved beyond a reasonable doubt.

200. With respect to the murder of Anicet Gatare, the Chamber notes that the statements of Witnesses CBT and CBJ are not consistent as to the circumstances of his death. The Trial Chamber, however, accepts the evidence of Witnesses CBK, BZ1 and FE31 that Anicet Gatare was killed by a gendarme who agreed to shoot him in exchange for a sum of money, so as to avoid being killed with a machete.

201. With respect to the murder of Meriam, the Chamber accepts CBJ's testimony that Athanase Seromba turned back several refugees from the presbytery, including Meriam, and that Meriam was subsequently killed by the attackers. The Chamber finds CBJ's testimony credible.

[389] See Section 4.4.1.
[390] Transcript, 2 November 2005, p. 65 (open session).
[391] Transcript, 2 November 2005, pp. 79 and 81 (open session).
[392] Transcript, 7 November 2005, p. 7 (open session).
[393] See Section 3.2.1.
[394] Transcript, 12 April 2006, p. 43 (open session).
[395] See Section 4.4.1.
[396] Transcript, 29 March 2006, p. 26 (open session).

The Chamber further observes that Witness CBK gave a consistent account of the circumstances surrounding the death of Meriam. The Chamber finds this witness credible.

202. In the light of the foregoing, the Trial Chamber finds that the Prosecution has not proven beyond a reasonable doubt that Athanase Seromba handed over Anicet Gatare to the gendarmes. The Trial Chamber is, however, of the view that it has been proved beyond a reasonable doubt that Seromba turned back several refugees, including Meriam, from the presbytery.

7. EVENTS OF 16 APRIL 1994 IN NYANGE PARISH

7.1 The Indictment

203. The Indictment alleges as follows:

> "23. Many refugees were killed during these attacks. A bulldozer was used by three employees of Astaldi company (Mitima, Maurice and Flanbeau) to remove the numerous corpses of the victims from the Church. Two additional drivers were requested from Fulgence KAYISHEMA to complete the removal. One of them, Evarist RWAMASIRABO, who had refused to participate, was killed immediately.
>
> [...]
>
> 26. When the corpses of victims were removed from the church, Védaste MUPENDE ordered the driver (Athanase alias 2000) to demolish the Church. The latter refused since the church was the house of God.
>
> 27. Immediately thereafter, Védaste MUPENDE, Fulgence KAYISHEMA and Grégoire NDAHIMANA requested the intervention of Athanase SEROMBA, who came and ordered Athanase alias 2000 to destroy the church, telling him that Hutu people were numerous and could build another one.
>
> 28. Athanase bulldozed the church and its roof collapsed, killing more than 2,000 Tutsi refugees gathered inside. The few survivors were attacked by the *Interahamwe*, anxious to finish them off.
>
> 29. On or about 16 April 1994, after the destruction of the church, the authorities held a meeting in the Parish. Soon after, Father SEROMBA ordered the *Interahamwe* to clean the "rubbish". The bodies of victims were placed into common graves.
>
> 30. The transfer of corpses into common graves took about two days, under the supervision of Athanase SEROMBA, Fulgence KAYISHEMA, Grégoire NDAHIMANA and others unknown to the Prosecution.
>
> [...]

47. After the complete destruction of the church, Father Athanase SEROMBA met with Fulgence KAYISHEMA, Grégoire NDAHIMANA, Gaspard KANYIRUKIGA and the drivers of the caterpillar bulldozer and sat drinking beer together.

[...]

49. On or about 15 April 1994, Father Athanase SEROMBA ordered or planned, abetted and encouraged the destruction of the church with more than 2,000 Tutsi trapped inside, causing their deaths.

7.2 The presence of a bulldozer in the church courtyard

7.2.1 The evidence

Prosecution witnesses

204. Witnesses CBK,[397] CDK[398] and CBT[399] mentioned the presence of a bulldozer in Nyange parish.[400] Witnesses CBJ,[401] CBR[402] and CDL,[403] for their part, testified to the presence of two bulldozers.[404]

Defence witnesses

205. Witnesses BZ1,[405] BZ3,[406] BZ4,[407] BZ14,[408] CF14,[409] CF23,[410] FE27,[411] FE32,[412] PA1[413] and YA1[414] testified to the presence of a bulldozer at Nyange church.[415] Witnesses FE35,[416] FE34,[417] FE56[418] and NA1[419] rather testified that there were two bulldozers there.[420]

[397] See Section 3.3.1.
[398] See Section 6.2.1.
[399] See Section 6.6.1.
[400] CBK: Transcript, 19 October 2004, p. 30 (closed session); CDK: Transcript, 7 October 2004, p. 63 (open session); CB: Transcript, 6 October 2004, p. 64 (open session).
[401] See Section 3.2.1.
[402] See Section 6.2.1.
[403] See Section 3.2.1.
[404] CBJ: Transcript, 12 October 2004, p. 11 (open session); CBR: Transcript, 20 January 2005, pp. 38-39 (open session); CDL: Transcript, 19 January 2005, p. 22 (closed session).
[405] See Section 4.4.1.
[406] See Section 4.4.1.
[407] See Section 6.2.1.
[408] See Section 6.2.1.
[409] See Section 3.2.1.
[410] See Section 4.3.1.
[411] See Section 3.4.1.
[412] See Section 3.4.1.
[413] See Section 3.4.1.
[414] See Section 6.2.1.
[415] BZ1: Transcript, 2 November 2005, p. 60 (open session); BZ3: Transcript, 31 October 2005, p. 55 (open session); BZ4: Transcript, 2 November 2005, pp. 4-5 (open session); BZ14: Transcript, 1 November 2005, pp. 31-32

7.2.2 Findings of the Chamber

206. The Chamber notes that 13 witnesses testified to having seen a bulldozer at Nyange church, while 7 others mentioned the presence of two bulldozers. It is the Chamber's opinion that the discrepancy between the witness accounts is due to the difficulty they had in identifying the type of vehicles present at Nyange church. The Chamber therefore finds that the Prosecution has proved beyond a reasonable doubt that there was at least one bulldozer at Nyange church on 16 April 1994.

7.3 Murder of Driver Evarist Rwamasirabo

7.3.1 The evidence

Defence witnesses

207. Witness FE32, one of the drivers of the bulldozer that demolished Nyange church,[421] testified that on 16 April 1994, towards 9.30 a.m., Fulgence Kayishema visited him at his home.[422] He explained that Fulgence Kayishema was looking for drivers of Astaldi company and asked them why they were so reluctant to "help the others". The witness further recounted how they answered to him that they had not come to kill "people". He stated that Fulgence Kayishema harassed them and that they were forcefully led to the church by gendarmes.[423] The witness testified that Kayishema told them that they had to help the "others" to bury the bodies. The witness explained that following a quarrel, a gendarme shot Evariste Ntahomvukiye in the head, causing his death.[424] The witness explained that this murder occurred on the Gitarama main road leading up to the church, between the statue of the Virgin Mary and[425] the *Caritas* main office.[426]

(open session); CF14: Transcript, 17 November 2005, pp. 16-17 (closed session); CF23: Transcript, 31 March 2006, p. 24 (open session); FE27: Transcript, 23 March 2006, p. 28 (open session); FE32: Transcript, 5 April 2006, p. 15 (open session); PA1: Transcript, 21 April 2006, p. 16 (closed session); YA1: Transcript, 14 November 2005, p. 8 (closed session).

[416] See Section 6.7.1.
[417] See Section 6.3.1.
[418] See Section 3.2.1.
[419] See Section 5.5.1.
[420] FE35: Transcript, 22 November 2005, pp. 19, 20 and 24 (closed session); FE34: Transcript, 30 March 2006, p. 19 (open session); FE56: Transcript, 4 April 2006, p. 13 (open session); NA1: Transcript, 7 December 2005, p. 38 (closed session).
[421] See Section 3.4.1.
[422] Transcript, 28 March 2006, p. 28 (open session).
[423] Transcript, 28 March 2006, p. 29 (open session).
[424] Transcript, 28 March 2006, p. 31 (open session).
[425] Transcript, 6 April 2006, p. 1 (open session).
[426] Transcript, 6 April 2006, p. 2 (open session).

7.3.2 Findings of the Chamber

208. The Chamber considers that Witness FE32 is not credible on this point. In fact, the Chamber notes that he is the only witness who made mention of this murder, whereas it occurred in a public place. Furthermore, the Chamber observes that the witness showed an inclination to use the alleged death of Evariste Ntahomvukiye to support the argument that he only demolished the church under duress.

209. In view of the foregoing, the Chamber considers that the Prosecution has not established the murder of Evarist Rwamasirabo.

7.4 The order given by Athanase Seromba to demolish the church

7.4.1 The evidence

Prosecution witnesses

210. Witness CBJ[427] testified that a meeting was held at the Codekoki on 16 April 1994, attended by Athanase Seromba, Businessman Gaspard Kanyarukiga, Criminal Investigations Officer Fulgence Kayishema, a teacher, Télesphore Ndungutse, Judge Habyambere, Businessman François Gashugi and many others who worked with these persons. He explained that the attackers who stood close by the Codekoki building were waiting for the signal to launch attacks,[428] adding that he observed this meeting while he was in the church bell tower[429]. Witness CBJ stated that he saw Seromba in front of the office of the priest's secretariat at the time when the bulldozers started to move on 16 April 1994. He also testified that he saw *Interahamwe* and the bulldozer driver, Anastase, penetrate into the courtyard of the presbytery and re-emerge. He stated that he was witness to discussions between Anastase and Seromba, an account of which he gives as follows:

> "[...] he spoke to him saying, 'Really, father, do you accept that I should destroy this church?' I saw Father Athanase Seromba nod. The driver spoke to him again, to Father Seromba. And then for a third time, 'Father, do you accept that I should destroy this church', and Father Seromba answered in these words, 'Unless you, yourselves, are *Inyensi*, destroy it. All we want is to get rid of the *Inyenzi*. As for the rest of it, we the Hutus are many. If we get rid of the *Inyenzi*, we will build another church. We will build a new church'."[430]

[427] See Section 3.2.1.
[428] Transcript, 12 October 2004, p. 14 (closed session).
[429] Transcript, 12 October 2004, p. 31 (closed session).
[430] Transcript, 12 October 2004, p. 18 (open session).

211. Witness CBJ explained that following this meeting, he saw Athanase Seromba pull out an object from his pocket and hand it to the bulldozer driver. The driver then started demolishing the church.[431]

212. Witness CBK[432] testified that he saw Athanase Seromba, Kayishema, Ndahimana, Kanyarukiga and other persons holding a meeting at the secretariat in the morning of 16 April 1994. He testified that he heard Kayishema say that the church tower had to be destroyed because there were Tutsi intellectuals hiding there. He mentioned that he was at least three metres away from the place where the meeting was being held. He explained that after this conversation, Seromba and those persons climbed to the "upper floor of the building".[433]

213. Furthermore, Witness CBK stated that the bulldozer driver was called Anastase, and that Athanase Seromba was present when he arrived with the bulldozer. On four occasions, he related the following conversation between the driver and Seromba:

> "[...] he asked Father Seromba thrice: 'Should we destroy this church?' And then Father Seromba answered, 'Destroy the church. We, the Hutu, are many in number and, furthermore, in the house of God. Demons have gotten in there ... that we, the Hutus, were many in number and that we were going to build another'".[434]
>
> "Anastase asked Seromba: 'Do you want me to destroy this church?' And he put the question to him three times. And he told him, 'Destroy it.' [...] Furthermore, he stated that: 'We, the Hutus, are many and we can build another church'."[435]
>
> "[...] the driver who came to destroy the church asked him on three occasions, three times, if he should destroy the church. Now, he said, 'Destroy it!'".[436]
>
> "It was Anastase who asked Father Seromba whether the church would be destroyed. and Seromba told him: 'you can destroy it. There are many of us. We can rebuild it. When there are demons in the church, it should be destroyed'."[437]

214. According to witness CBK, the ex-*bourgmestre* of Gisovu *commune*, the Criminal Investigations Officer of the *commune*, the deputies of the *bourgmestre* and the communal police officers of Kivumu *commune* were present during this conversation. The driver then began demolishing the church. The witness further stated that Athanase Seromba did nothing to prevent the demolition of the church. At the time when the church was being destroyed, the witness was with Seromba in front of the church secretariat. He testified that he told Seromba that he was

[431] Transcript, 12 October 2004, p. 18 (open session).
[432] See Section 3.3.1.
[433] Transcript, 19 October 2004, pp. 17-18 (closed session).
[434] Transcript, 19 October 2004, pp. 28-29 (closed session).
[435] Transcript, 20 October 2004, p. 17 (closed session).
[436] Transcript, 19 October 2004, p. 45 (closed session).
[437] Transcript, 20 October 2004, p. 19 (closed session).

afraid, and that Seromba reassured him by saying that only the Tutsi were targets of these killings.[438]

215. Furthermore, Witness CBK testified that it was Kayishema who gave the order to bring in the bulldozer.[439] The witness alleges that Athanase Seromba was responsible for the destruction of the church, considering the comments that he made to the bulldozer driver.[440] He stated that he saw Seromba watching the killings that continued after the collapse of the church tower.[441]

216. Witness CNJ[442] testified that Athanase Seromba collaborated with the attackers, although he did not give the order to destroy the church.[443] He also referred to the comments that the authorities made in relation to Seromba and the destruction of the church: "Seromba was coming, that was to decide as to whether the church was going to be totally destroyed or whether he had another solution, to enable people to get into the church".[444] He explained that after this conversation, Kayishema went to the rear of the church, close to the presbytery, and returned five minutes later accompanied by Seromba. According to the witness, Seromba approached the bulldozer and greeted the authorities who were standing close to it. The witness explained that Kayishema gave the bulldozer driver the order in the presence of Seromba, to start destroying the church. The witness specified that he was approximately two metres away from the scene. Seromba then said to the driver: "Watch out, make sure the wall doesn't fall on you." He stated that he was standing approximately four metres away from Seromba when Seromba said those words. He testified that these events occurred between 9 a.m. and 10 a.m.[445] The witness finally stated that on 16 April 1994, Seromba moved forward with the authorities to follow the movements of the bulldozers as they were destroying the church.[446]

217. Witness CDL[447] testified that he was witness to a discussion between the *bourgmestre* and Athanase Seromba in the morning of 16 April 1994, towards 7.30 a.m. He explained that after the discussion, the *bourgmestre* held conversations with other *commune* authorities, including Ndungutse, Habiyambere, Kayishema and police officers and reservists. He further explained that various authorities took the decision to use bulldozers to destroy the church, and that, subsequently, these authorities went to see Seromba who was standing in front of the secretariat and told him that they no longer had any means, other than the bulldozers, to destroy the church, so as to reach the refugees. Seromba then said to them: "If you have no other means, bring the bulldozers then, and destroy the church." The witness stated that he was not far from

[438] Transcript, 19 October 2004, pp. 28-29 (closed session).
[439] Transcript, 20 October 2004, p. 18 (closed session).
[440] Transcript, 19 October 2004, p. 45 (closed session).
[441] Transcript, 19 October 2004, p. 29 (closed session).
[442] See Section 3.3.1.
[443] Transcript, 24 January 2005, pp. 21-23 and 49-51 (open session).
[444] Transcript, 24 January 2005, p. 44 (open session).
[445] Transcript, 24 January 2005, pp. 21-23 (open session).
[446] Transcript, 24 January 2005, pp. 21-23 and 49-51 (open session).
[447] See Section 3.2.1.

the place where Seromba said those words.[448] He explained that the decision to destroy the church had been taken by these authorities and that Seromba accepted the decision.[449]

218. Witness CDL further testified that Athanase Seromba advised bulldozer drivers to start demolishing the church from the side of the sacristy.[450] The witness also reported the following: "As I have already said, he was showing the fragile or weak part that one needed to start in order to kill the Tutsis, and he was talking – they were talking with the father. Nothing was done without his consent. At least, he did not show any desire to come to the assistance of the refugees in question".[451]

219. Witness CBR[452] testified that on 16 April 1994 he saw Ndahimana, Kayishema, Kanyarukiga, Ndungutse, Habiyambere and Murangwabugabo, enter the courtyard of the presbytery and emerge from there several moments later in the company of Athanase Seromba.[453] The witness stated that Athanase Seromba was not the one leading the attackers on 16 April 1994, adding that: "[b]efore the authorities gave us any instructions, whatsoever, they had to discuss with the pastor. I couldn't tell you what they were saying because they were on one side. So our authorities, the leaders, before they gave us any instructions, they had to speak with the father, be it on the 15th or the 16th. Before we did anything whatsoever, the authorities had to speak with the father."[454]

Defence witnesses

220. Witness FE32, the bulldozer driver who demolished the Nyange church,[455] testified that Védaste Murangwabugabo and Anastase Rushema led the operations on 16 April 1994. He stated that it was Kayishema, and not Athanase Seromba, who forced him to demolish the church. He explained that he reiterated to Rushema on three occasions that it was forbidden to destroy a church. The witness explained that went ahead to demolish the church after having been threatened with death. He testified that when he had started destroying the church, Seromba actually ran up to complain to Rushema, saying: "I forbad you yesterday to kill people here and you have just demolished the church." The witness stated that he did not see Seromba again during the destruction of the church. According to him, Seromba was powerless in the face of such a situation.[456] The witness also mentioned that he was not informed of any meeting during which the decision to bring the bulldozers was taken, adding, finally, that he was a "mere driver", and could not be aware of the holding of any such meeting.[457]

[448] Transcript, 19 January 2005, pp. 25-27 (open session).
[449] Transcript, 19 January 2005, p. 28 (open session).
[450] Transcript, 19 January 2005, p. 28 (open session).
[451] Transcript, 19 January 2005, p. 29 (open session).
[452] See Section 6.2.1.
[453] Transcript, 20 January 2005, p. 42 (open session).
[454] Transcript, 24 January 2005, p. 4 (open session).
[455] See Section 3.4.1.
[456] Transcript, 28 March 2006, pp. 34-35 (open session).
[457] Transcript, 28 March 2006, p. 49 (open session).

221. Witness BZ1, a Hutu,[458] stated that he never saw Athanase Seromba from the moment when the attacks were perpetrated at the church up until the collapse of the bell tower.[459] He stated that he saw Seromba for the last time when Seromba said mass on 11 April 1994, and that he no longer saw him thereafter.[460]

222. Furthermore, Witness BZ1 stated that he arrived at the scene when the bulldozer was destroying the bell tower. According to him, the bulldozer had been brought to bury the bodies that were lying there. Subsequently, the objective of bringing the bulldozers was changed; it was, now, to demolish the church.[461] The witness claimed that it was the communal authorities, namely Kayishema, Ndungutse and Ndahimana who sent for a bulldozer on day the church was destroyed.[462] The witness testified to having heard the following: "the people said, '[t]here were people inside the church. We can get to them [*sic*]. So a decision was made to demolish the church. The order was given to the bulldozer driver to demolish the church'."[463]

223. Furthermore Witness BZ1 denies having joined the group of attackers during the attacks against the Tutsi and the destruction of the church. He testified that he went to the location to attend the tragic events which were occurring there.[464] He stated that he did not see Athanase Seromba on 15 and 16 April 1994.[465]

224. Witness BZ4[466] stated that he arrived at Nyange parish on the morning of 16 April 1994, more specifically at the Nyange commercial centre.[467] He testified that he heard that people held a discussion and thought that the bulldozer could be used for the destruction of the church. The witness further testified that Fulgence Kayishema was cited as the person who had asked the driver, Nteziryayo, to use the bulldozer to destroy the church where the refugees were hiding.[468]

225. Witness BZ4 stated that he saw neither Athanase Seromba nor any other cleric at the scene when the church was being destroyed, and that he never heard that it was Seromba who had ordered the destruction of the church.[469] He added that he left the location after the destruction of the church.[470] He also mentioned that he did not see Seromba on 15 and 16 April 1994.[471]

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[458] Transcript, 10 November 2005, p. 30 (open session).
[459] Transcript, 2 November 2005, p. 64 (open session).
[460] Transcript, 2 November 2005, p. 64 (open session).
[461] Transcript, 10 November 2005, p. 30 (open session).
[462] Transcript, 10 November 2005, p. 29 (open session).
[463] Transcript, 10 November 2005, p. 30 (open session).
[464] Transcript, 10 November 2005, p. 30 (open session).
[465] Transcript, 10 November 2005, p. 30 (open session).
[466] See Section 6.2.1.
[467] Transcript, 2 November 2005, pp. 4-5 (open session).
[468] Transcript, 2 November 2005, p. 6 (open session).
[469] Transcript, 2 November 2005, p. 6 (open session).
[470] Transcript, 2 November 2005, p. 6 (open session).
[471] Transcript, 10 November 2005, p. 8 (open session).

226. The witness further stated that he arrived at the scene during the morning, but could not give the exact time of his arrival, or that of the bulldozer at the church. The witness, however, added that he was present at the location when the bulldozer arrived.[472] He testified that he travelled to Nyange on the day the church was demolished in order to see how the situation was unfolding, adding that he did not participate in the attacks.[473]

227. Witness CF23[474] stated that the bulldozer was driven by Anastase Nkinamubanzi and other *Zaïrois* drivers.[475] He stated that Anastase Rushema and Ndungutse were co-ordinating the demolition activities.[476] The witness testified that by the time he arrived at the church its destruction was already underway, adding that he remained there for only a few minutes, before deciding to return home.[477]

228. Witness FE35, a Hutu,[478] testified that he had never heard that Athanase Seromba had met with communal authorities to plan the demolition of the church.[479] The witness further testified that the bulldozer drivers had been requisitioned by Anastase Kayishema, Télesphore Ndungutse and the police officers and that they were working under orders from them.[480] The witness pointed out that the "leaders" of the attackers did not act in concert with Athanase Seromba.[481] In the opinion of Witness FE35, Seromba did not order the destruction of the church and never supported the attackers who destroyed the church. The witness emphasized that Seromba did not play any role in the massacres perpetrated in Nyange[482] and that he never saw him at the church when it was being destroyed.[483]

229. Furthermore, Witness FE35 explained that Kayishema, Anastase Rushema and Ndahimana escorted the bulldozers and were at he scene supervising the destruction of the church.[484]

230. Witness PA1[485] explained that at the time destruction of the church had commenced, the priests, including Athanase Seromba were in the presbytery. He testified that the heard "a very loud noise" and subsequently realized that the church was being destroyed. He further explained

[472] Transcript, 10 November 2005, p. 3 (open session).
[473] Transcript, 10 November 2005, pp. 3-4 (open session).
[474] See Section 4.3.1.
[475] Transcript, 31 March 2006, p. 24 (open session).
[476] Transcript, 31 March 2006, p. 25 (open session).
[477] Transcript, 31 March 2006, p. 24 (open session); Transcript, 3 April 2006, p. 24 (closed session).
[478] Transcript, 22 November 2005, p. 29 (closed session).
[479] Transcript, 22 November 2005, p. 20 (closed session).
[480] Transcript, 22 November 2005, p. 20 (closed session).
[481] Transcript, 22 November 2005, p. 21 (closed session).
[482] Transcript, 22 November 2005, p. 23 (closed session).
[483] Transcript, 22 November 2005, p. 23 (closed session).
[484] Transcript, 23 November 2005, p. 32 (closed session).
[485] See Section 3.4.1.

that Seromba immediately came out of the presbytery, furious.[486] Witness PA1 finally stated that he did not see Seromba issue any order to destroy the church.[487]

231. Witness NA1[488] testified that on 16 April 1994, towards 8 a.m., he went to the refectory and noticed that there were attackers who had surrounded the church and a tractor that was removing the bodies. The witness also stated that later on, he heard a noise and saw dust rising. At that moment, curious to know what was going on, the priests went up to the upper floor. The witness added that the priests observed the destruction of the church without making any comments.[489]

232. Furthermore, Witness NA1 testified that the clergymen subsequently approached the gendarmes to ask them to salvage the situation. The gendarmes responded that they were not in sufficient numbers to confront the attackers and that they had no orders to shoot at people.[490]

7.4.2 Findings of the Chamber

233. The Trial Chamber considers Witness CBJ credible[491] on the point under discussion. In fact, there is no contradiction between his testimony and his prior statement. Furthermore, in his statement made before the Rwandan judicial authorities on 24 June 1997, the witness accused Anastase Rushema, but made no allusion either to Athanase Seromba or to the destruction of the church in an in-depth manner, merely stating that Seromba collaborated with Rushema in the attacks of 15 and 16 April 1994.[492] In another statement made before the Rwandan judicial authorities on 25 March 1997, Witness CBJ, in response to the question as to who perpetrated the killings and destroyed the church, stated that "Abbot Seromba ... also played a role".[493]

234. The Chamber considers that Witness CBJ is also credible as to two alleged events namely that Seromba and other persons held a meeting on 16 April 1994 and that Seromba handed an object to the bulldozer driver. The Chamber, however, considers his testimony on the remarks Seromba made to the bulldozer driver not to be reliable, because of his location at the time the remarks were made. In fact, the Chamber finds that from the church tower, it was physically impossible to hear the conversation between Seromba and the bulldozer driver at the parish secretariat, given the distance separating the two locations.[494]

[486] Transcript, 20 April 2006, pp. 25-26 and 28 (closed session).
[487] Transcript, 20 April 2006, p. 29 (closed session).
[488] See Section 5.5.1.
[489] Transcript, 7 December 2005, pp. 26, 28 and 31 (closed session).
[490] Transcript, 7 December 2005, pp. 31-32 (closed session).
[491] For a discussion on the general credibility of Witness CBJ, see Section 5.3.2.
[492] Statement of Witness CBJ to Rwandan authorities on 24 June 1997 (D-25), pp. 1-2.
[493] Statement of Witness CBJ to Rwandan authorities on 25 March 1997 (D-26), p. 2.
[494] Investigator Rémy Sahiri stated that the distance separating the presbytery from the principal entrance to the Nyange church was 48 metres (Transcript, 27 September 2004, p. 12, open session). Although Witness Rémy Sahiri did not specify the distance between the secretariat and the church, the Trial Chamber is of the view, on the basis of

235. The Chamber finds Witness CBK credible, notwithstanding a discrepancy between his 15 August 2000 statement and his in-court testimony on the identity of the bulldozer driver. In fact, Witness CBK testified that the bulldozer was driven by Anastase.[495] However, when challenged by Counsel for the Defence on his 15 August 2000 statement wherein he alleged that Flambeau, a Zaïrois, was the "bulldozer driver",[496] the witness responded that he actually meant to say that "Flambeau oversaw the road construction", and that "it was Anastase who drove the bulldozer".[497] In the Chamber's view, the discrepancy concerning the identity of the victims does not discredit the evidence of the witness, particularly in the light of the testimonies of Witnesses FE32 and CF23 who referred to the presence of several Zaïrois drivers[498] and, more specifically, the testimony of Witness FE32 that he was replaced by another driver during the destruction of the church.[499] Finally, with respect to the allegations by the witness concerning Athanase Seromba, the witness consistently referred to Anastase as being the bulldozer driver.

236. The Chamber also considers Witness CBK to be credible as regards a meeting allegedly held on the morning of 16 April 1994 and attended by Athanase Seromba and other persons. During that meeting, Kayishema allegedly said that it was necessary to destroy the church tower in order to kill Tutsi intellectuals hiding inside. The Chamber also finds the witness credible with respect to the conversation between the bulldozer driver and Seromba in the course of which the driver asked Seromba three times whether he should destroy the church. Seromba allegedly responded in the affirmative. The testimony of the witness is plausible, given that he was very close to the persons in question when these events occurred.

237. The Trial Chamber considers that Witness CNJ is not credible. In fact, during cross-examination, Counsel for the Defence pointed out that in four different prior statements Witness CNJ declared that he arrived after the demolition of the church had begun. The witness provided no convincing explanation for these contradictions, merely claiming that the statements were occasionally false, occasionally incomplete or drafted under duress or with a view to financial compensation.[500]

Prosecution Exhibit P-02, representing a layout of the premises, that the distance separating the secretariat from the church is approximately the same as that extending from the presbytery to the entrance to the parish.

[495] Transcript, 20 October 2004, p. 18 (closed session).

[496] Statement of Witness CBK to Tribunal investigators on 15 August 2000 (statement not filed as exhibit), p. 5, read to the witness: Transcript, 20 October 2004, p. 18 (closed session).

[497] Transcript, 20 October 2004, p. 19 (closed session).

[498] FE32: Transcript, 28 March 2006, pp. 30-31 (open session); CF23: Transcript, 31 March 2006, p. 24 (open session).

[499] Transcript, 28 March 2006, p. 38 (open session).

[500] Information supplement to the file concerning confession and guilty plea of 28 December 1998 (D-39), read back to the witness: Transcript, 24 January 2005, p. 58 (open session); Confession of guilt of the witness on 21 August 2000 (D-40B), read back to the witness : Transcript, 24 January 2005, pp. 2 and 62 (open session); 27 May 2001 witness statement (D-41), read back to the witness: Transcript, 25 January 2005, p. 15 (open session).

238. The Chamber considers Witness CDL to be credible. In fact, it notes that there are no inconsistencies in his testimony. Furthermore, the Chamber has no doubt about the witness's presence at the discussions that he referred to in his testimony. The Chamber further notes that Counsel for the Defence raised only one omission – a trivial discrepancy between CDL's testimony and the letter he wrote to the Rwandan authorities on 16 April 1999.[501] Thus, Counsel for the Defence pointed out to the witness that in that letter, the witness made no mention of the fact that the *bourgmestre* had met with Athanase Seromba before giving the signal of the attacks. The witness responded that he did not provide all particulars in his prior statements, as he did not deem it necessary at the time.[502] In this same statement (letter), the witness however stated the following: "At about ten o'clock, the *bourgmestre*, the IPJ and the gendarmes agreed with Seromba to demolish the church".[503]

239. The Chamber considers that Witness CDL is also credible as to two other alleged events: first, the meeting held by Athanase Seromba, Kayishema, Ndahimana, Kanyarukiga, Habarugira and other persons, during which Seromba approved the decision to destroy the church, saying: "If you have no other means of doing it, bring these bulldozers and destroy the church", and secondly, the advice that Seromba gave to the drivers concerning the fragile side of the church.

240. The Chamber finds that Witness CBR is credible. Defence Counsel raised two points during cross-examination which are insufficient to impugn the credibility of the witness because of the explanations that he subsequently provided. More particularly, Defence Counsel challenged Witness CBR on the statement he made on 29 August 2000 in which he declared as follows: "After noticing that the attacks launched by the *bourgmestre* were not sufficiently efficient, the group with the *bourgmestre* went towards the presbytery to meet with Father Seromba: Ndahimana, Muraginabugabo, Kayishema, Ndungutse, Habarigira, Kanyarukiga, Habyambere."[504] Defence Counsel then put to the witness that he had previously stated that he saw Seromba only once on 16 April 1994. The witness explained that on 16 April 1994, the persons whose names he mentioned went to the presbytery and upon their return from there, they started shooting at the church.[505]

241. Counsel for the Defence then read out another part of Witness CBR's statement of 29 August 2000 wherein he stated as follows: "After the entire church had collapsed the authorities held a meeting with Father Seromba, after which I heard him ordering the removal of the rubbish in front of his house -- by "rubbish", he meant the bodies of the refugees."[506]

[501] Letter of Witness CDL to Rwandan authorities dated 16 April 1999 (statement not filed as exhibit), p. 3; read back to the witness: Transcript, 20 January 2005, p. 4 (open session).
[502] Transcript, 20 January 2005, p. 5 (open session).
[503] Letter of Witness CDL to Rwandan authorities dated 16 April 1999 (statement not filed as exhibit), p. 3; read back to the witness: Transcript, 20 January 2005, p. 4 (open session).
[504] Statement of Witness CBR to *Tribunal investigators on* 29 August 2000, (statement not filed as exhibit), p. 4; read back to the witness: Transcript, 20 January 2005, p. 59 (open session).
[505] Transcript, 20 January 2005, p. 61 (open session).
[506] Statement of Witness CBR to Tribunal investigators on 29 August 2000, (statement not filed as exhibit), p. 4; read back to the witness: Transcript, 20 January 2005, p. 61 (open session).

Defence Counsel then asked Witness CBR whether this statement did not mean that he saw Seromba after the church had been destroyed. The witness answered in the negative.[507] He stated that he saw Seromba on the morning of 16 April 1994 and did not see him thereafter. The witness recalled having returned home after the collapse of the church. He averred that Seromba uttered these remarks on "getting rid of the rubbish" on 15 April 1994 and that the meeting was held on 15 April 1994 and not 16 April 1994. Witness CBR claimed that there was a confusion of dates in the transcription of his statement made in Kinyarwanda.[508]

242. In view of the foregoing, the Chamber considers that Witness CBR is also credible with respect to another event: the discussions and meetings between Athanase Seromba and the authorities on 16 April 1994.

243. The Chamber finds that Defence Witness FE32 is not credible as to the events of 16 April 1994, due to the numerous contradictions in his testimony and prior statements on the one hand, as well as between his testimony and his prior statements on the other hand. Here, the Chamber will mention only the most serious contradictions.

244. In the African Rights Information Bulletin No. 2, Witness FE32 stated:

> "Father Seromba who was in favour of that solution said the following: 'They should be destroyed so that we can get rid of the enemy. When the enemy was no longer there we can build another'.
> Anastase refused to bulldoze the church but he said Seromba made him afraid. Father Seromba said the following: 'There are many Christians abroad. That church -- this church will be rebuilt in three days'."[509]

245. Witness FE32 asserted that these statements were untrue, insisting that the Rwandan authorities refuse to admit that he was forced to bulldoze the church.[510]

246. In a statement to Rwandan authorities on 27 August 1996, Witness FE32 stated as follows:

> "They ordered me to destroy this church, and let me add that the priest of this parish, by the name Seromba, was there, and he said nothing with regard to the demolition of the church. I carried out the orders in order to save my life. Apart from those soldiers, IPJ Kayishema, as well as the priest of the said parish, Seromba – no one else was on the

[507] Transcript, 20 January 2005, p. 61 (open session).
[508] Transcript, 20 January 2005, pp. 62-63 (open session).
[509] *Information bulletin No. 2 of African Rights* (P-5), p. 15; read back to the witness: Transcript, 5 April 2006, p. 20 (open session).
[510] Transcript, 5 April 2006, p. 21 (open session).

> spot. I performed that duty over a three day period and he was watching over me so as to prevent me from escaping – they were watching so as to prevent me from escaping".[511]

247. Witness FE32 specified that he made this statement under duress to "save my skin".[512]

248. In a statement to Rwandan authorities on 19 April 1995, Witness FE32 identified "Seromba the parish priest of Nyange parish" as one of his collaborators. He stated that Athanase Seromba was present when Kayishema, the *bourgmestre*, and the presiding judge of the canton tribunal ordered him to bring in the bulldozer.[513] The witness did not contest the validity of this document and the information contained therein, except the entries related to Seromba. He explained that he made this statement under duress.[514]

249. In a statement to Rwandan authorities on 22 July 1997, Witness FE32 stated as follows: "When I asked Kayishema what was going to happen now that people had been killed in that church, that he went to rear courtyard of the presbyterian with Father Seromba: The priest asked me to destroy the church and added that they were going to build another one. I put the following question to him, 'Are we going to destroy the house of God?' And he replied, 'Destroy it. We will build another one'."[515] Witness FE32 explained that he made this statement "in order to please some people who wanted me to implicate Father Seromba".[516]

250. In a statement made to Tribunal investigators on 27 July 2000, Witness FE32 stated that he initially refused to demolish the church, that the authorities then went to the presbytery and returned accompanied by Athanase Seromba, who directly addressed him in the following terms: "It has been decided that indeed has to be destroyed. We shall build another one."[517] Commenting on this excerpt, Witness FE32 explained that the Tribunal investigators had their own objectives in relying solely on statements made to the Rwandan authorities which, he claimed, were obtained under duress.[518] Another excerpt from this statement was read to the witness, wherein the witness stated that after having demolished the right wall near the bell tower, Seromba approached him and said: "Destroy all those walls. Nothing must be left standing."[519]

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[511] Statement of Witness FE32 to the Rwandan judicial authorities on 27 August 1996 (D-77), p. 2, read back to the witness: Transcript, 5 April 2006, p. 37 (open session).
[512] Transcript, 5 April 2006, p. 38 (open session).
[513] Statement of Witness FE32 to the Rwandan judicial authorities on 19 April 1995 (P-54), p. 1; read back to the witness: Transcript, 6 April 2006, p. 14 (open session).
[514] Transcript, 6 April 2006, p. 14 (open session).
[515] Statement of Witness FE32 to the Rwandan judicial authorities on 22 July 1997 (D-82), p. 5; read back to the witness: Transcript, 6 April 2006, p. 15 (open session).
[516] Transcript, 6 April 2006, p. 16 (open session).
[517] Statement of Witness FE32 to Tribunal investigators on 27 July 2000 (P-55), p. 5, read back to the witness: Transcript, 6 April 2006, p. 29 (open session).
[518] *Transcript, 6 April 2006, pp. 29-30 (open session).*
[519] Statement of Witness FE32 to Tribunal investigators on 27 July 2000 (P-55), p. 5, read back to the witness: Transcript, 6 April 2006, pp. 30-31 (open session).

251. Witness FE32 admitted to having signed the statement, but stated that Tribunal investigators did not first read it back to him and made that the interpreters were not trustworthy.[520] The statement the witness made to Tribunal investigators on 4 April 2002, which included his 27 July 2000 statement, was shown to him. The 4 April 2002 statement indicated that the 27 July 2000 statement of the witness was read back to him and that he made no changes to it.[521] The witness explained that Tribunal investigators had forced him to sign the statement and refused to allow him to make the slightest change.[522] A confirmation of his 4 April 2002 statement dated 11 February 2003,[523] which indicated that the investigators had read back to him his 4 April 2002 statement, to which he made a change which was recorded in the final version, was shown to him. This is acknowledged by the witness.[524] The Chamber notes that this negates the witness' allegations that Tribunal investigators refused to make any amendments to his statements.

252. In his letter to the Supreme Court of Rwanda, written on 7 November 2001,[525] Witness FE32 stated as follows:

> "The truth admitted before the court in which I still stand by up to today, is that I demolished the church with a bulldozer in execution of the order issued by the *commune* and church leaders at the time."[526]
>
> "On the 15th April 1994, they had me and my friend Everiste Ntahokiriye – Kigali, Byumba brought in order to destroy the church but we refused. Immediately they killed him, my friend, on the spot. Having witnessed that, I felt weak and carried out their orders. They just had Father Seromba brought in, and later informed us that that was the decision that had been taken."[527]
>
> "The Court did not pay any attention to the statements made by the Prosecution witness who testified that he saw IPJ, Kayishema, when he brought me and forced me to demolish the church. I refused to comply until the arrival of Father Seromba. After that the church was destroyed."[528]

[520] Transcript, 6 April 2006, pp. 21-24 (open session).
[521] Statement of Witness FE32 to Tribunal investigators on 4 April 2002 (D-80), p.3, read back to the witness: Transcript, 6 April 2006, p. 21 (open session).
[522] 6 April 2006 Transcripts, p. 24 (open session).
[523] Confirmation of Witness FE32 of his 4 April 2002 statement on 11 February 2003 (P-56); read back to the witness: Transcript, 6 April 2006, p. 25 (open session).
[524] Transcript, 6 April 2006, p. 26 (open session).
[525] A signed version of this letter was filed with the Trial Chamber as Exhibit C-1.
[526] Letter from Witness FE32 to the Supreme Court of Rwanda dated 7 November 2001 (P-57), p. 2, read back to the witness: Transcript, 6 April 2006, p. 35 (open session).
[527] Letter from Witness FE32 to the Supreme Court of Rwanda dated 7 November 2001 (P-57), p. 2, read back to the witness: Transcript, 6 April 2006, p. 38 (open session).
[528] Letter from Witness FE32 to the Supreme Court of Rwanda dated 7 November 2001 (P-57), pp. 3-4, read back to the witness: Transcript, 6 April 2006, p. 40 (open session).

253. The witness refused to comment on this letter, merely insisting that his request had been rejected by the Supreme Court of Rwanda.[529] He then stated that he wrote this letter with the assistance of another person, but that an error had slipped into it.[530]

254. Witness FE32 was unable to provide explanations as to the numerous contradictions between his testimony before the Chamber and the remarks he made before African Rights, on the one hand, and Rwandan authorities and Tribunal investigators on the other, over a period of 10 years. Nor could he provide any explanation for the contradictions which are still to be found in his letter to the Supreme Court of Rwanda.

255. With respect to Defence claims that the witness acted under duress, the Chamber recalls that it is up to the Defence to adduce evidence of duress.[531] In the present case, the Chamber considers that the Defence has not adduced any evidence to show that the prior statements of Witness FE32 were obtained under duress. The Chamber notes that the witness was inconsistent in his explanations on the occasions when he did not refuse to provide one. Furthermore, the Chamber notes that the witness had never previously stated that he had been tortured or that he gave any statements under duress, either before Tribunal investigators or those of the Defence. Finally, the Chamber notes that in the course of his testimony, in response to a question from the Prosecution concerning the letter he sent to the Supreme Court of Rwanda, the witness stated: "Why does the Prosecutor continue to rely on this document? In my opinion – in my opinion this document has no value. You are coercing me – you are bringing pressure to bear on me. Just like when you appear before Rwandan courts, I believe there is also the form of coercion."[532] In view of the numerous contradictions in this witness' statements, the Trial Chamber holds that the excerpt is insufficient to establish that he may have suffered any form of duress.

256. The Chamber also notes that Witness FE32 appears to be a witness seeking to exculpate Athanase Seromba. Thus, to justify his decision to testify as a Defence witness and not as a Prosecution witness, as previously envisaged, Witness FE32 stated: "[...] Life is short on earth. And I didn't want to be on bad terms with my God."[533]

257. In view of the foregoing, the Chamber finds that the testimony of Witness FE32 concerning the events which occurred on 16 April 1994 is not credible.

258. The Chamber finds that Witness BZ1's evidence is not conclusive. He expressed himself in general terms, and his claim that he did not see Athanase Seromba on 15 and 16 April 1994 is insufficient to establish that Seromba was not present at the scenes of the events. Indeed, it is even possible that the witness did not see Seromba in the huge crowd at the church. Incidentally, the witness only arrived on site after the demolition of the church had begun. Finally, Witness

[529] Transcript, 6 April 2006, pp. 35-36 (open session).
[530] Transcript, 6 April 2006, p. 38 (open session).
[531] *Bagosora*, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004, paras. 8-10.
[532] Transcript, 6 April 2006, p. 39 (open session).
[533] Transcript, 5 April 2006, p. 58 (open session).

BZ1's testimony about the persons who brought the bulldozer constitutes hearsay and, as such, is of little probative value.

259. The Chamber finds that the testimony of Witness BZ4 is not conclusive. In fact, the witness expressed himself in general terms, and his testimony lacks precision with respect to the sequence of the events. For instance, he was unable to give the exact time of his arrival or the arrival of the bulldozer at the church on 16 April 1994.[534] The assertion that he did not see Athanase Seromba on 15 or 16 April 1994 is insufficient to establish that Seromba was not present at the scene of the events. Indeed, it is even well possible that the witness did not spot Seromba in the huge crowd which had gathered at the church.[535] Finally, Witness BZ4's assertions about the persons who brought the bulldozer constitute hearsay and, as such, have little probative value.

260. The Chamber considers that Witness CF23 is not credible. The Chamber notes that when this witness arrived in the vicinity of the church, the destruction of the church was already underway. Consequently, the Chamber attaches no weight to his testimony concerning the events which occurred on 16 April 1994 at Nyange church.

261. The Chamber finds that the testimony of Witness FE35 is not credible. The Chamber notes that the witness expressed himself in general terms, and that there were many inconsistencies between his testimony and prior statements.[536]

262. The Trial Chamber finds that Witness PA1 is not credible. The Chamber notes that his testimony and prior statements as to the events of 16 April 1994 contain many contradictions. For example, in his statement to the Defence on 27 January 2005,[537] the witness did not mention the fact that Athanase Seromba was furious when he left the presbytery, whereas he made this assertion in his testimony.[538] The Prosecution read out to the witness an excerpt from his 27 January 2005 statement where the witness stated that the priests did not dare to approach the attackers.[539] The Prosecutor pointed out that this contradicted the testimony of the witness, who nevertheless asserted that Seromba went outside. To justify this omission, the witness merely stated that it was nothing more than an involuntary memory lapse,[540] adding that in the phrase "we did not dare approach", there is no reference to any particular moment, but was merely trying to describe the situation that prevailed. The witness, once again, referred to the powerlessness of the priests in the face of such a situation. He reiterated that Seromba emerged from the presbytery expressing his anger and incomprehension.[541]

[534] Transcript, 10 November 2005, p. 3 (open session).
[535] Transcript, 2 November 2005, p. 6 (open session).
[536] Transcript, 23 November 2005, pp. 12, 15-24 and 32-34 (closed session).
[537] Statement of Witness PA1 to Defence Counsel on 27 January 2005 (P-62).
[538] Transcript, 21 April 2006, p. 16 (closed session).
[539] Statement of Witness PA1 to Defence Counsel on 27 January 2005 (P-62), p. 4: read back to the witness: Transcript, 21 April 2006, p. 17 (closed session).
[540] Transcript, 21 April 2006, p. 17 (closed session).
[541] Transcript, 21 April 2006, pp. 17-19 (closed session).

263. Witness PA1 was also examined as to the content of his 8 October 2003 statement. Counsel for the Prosecution read out the following excerpt to the witness: "Question: 'What did the attackers do?' Answer: 'They entered the house of the priest and they asked Seromba why he kept me by his side. For they considered me to be a Tutsi because of my appearance but Seromba replied to them that I was a Hutu.'"[542] The witness confirmed that the content of the excerpt corresponded to what he had said before the Chamber.[543] Counsel for the Prosecution read out a second excerpt to the witness: "Each time the authorities came to the presbytery to find out the attitude to adopt in the face of these problems."[544] The witness stated that that statement was false.[545] Counsel read out a third excerpt to the witness: "Question: 'Are you in a position to confirm that those people never came to the presbytery without your knowledge?' Answer: 'It is possible that they came without my knowledge since I was hiding and I was not always outside the room to see what was happening.'"...[546] The witness stated that this was a summary of what he said and that his intention was to explain to the investigators that "It is as if we were linked by some umbrical cord. I wasn't really with him all times".[547] Counsel for the Prosecution read out a fourth excerpt to the witness: "Question: 'Was the *bourgmestre* physically present during the trench digging?' Answer: 'I do not know, since I did not see the machine. As far as I am concerned, I remained shut up in my room.'"[548] The witness declared the statement to be false.[549] The Trial Chamber considers all of the witness' explanations to be implausible.

264. Finally, the Chamber notes that Witness PA1 admitted that he did not go out with Athanase Seromba and was not in direct contact with him at that time. Therefore, he could not have heard the remarks that Seromba made outside the presbytery at the time the church was being destroyed.[550]

265. The Chamber finds that Witness NA1 is not credible. His account of the events of 16 April 1994 contains many contradictions. For instance, in his 9 December 1996 statement, the witness stated: "It is Seromba who played a role in the killings. However, I do not accuse him of any particular offence, but I saw him moving about with the authorities."[551] Commenting on this portion of his statement, Witness NA1 merely stated that his answers were being oriented towards a particular goal and that, in any event, the Rwandan authorities wrote down whatever

[542] Statement of Witness PA1 to the Rogatory Commission on 8 October 2003 (D-90), p. 3.
[543] Transcript, 21 April 2006, p. 26 (closed session).
[544] Statement of Witness PA1 to the Rogatory Commission on 8 October 2003 (D-90), p. 5.
[545] Transcript, 21 April 2006, p. 27 (closed session).
[546] Statement of Witness PA1 to the Rogatory Commission on 8 October 2003 (D-90), p. 5.
[547] Transcript, 21 April 2006, p. 27 (closed session).
[548] Statement of Witness PA1 to the Rogatory Commission on 8 October 2003 (D-90), p. 5.
[549] Transcript, 21 April 2006, p. 30 (closed session).
[550] Transcript, 21 April 2006, p. 19 (closed session).
[551] Statement of Witness NA1 to the Rwandan judicial authorities on 9 December 1996 (P-37), p.1, read back to the witness: Transcript, 7 December 2005, p. 83 (closed session).

they wanted. He added that at the time he made this statement, he wanted to save his skin and that it was important not to forget the context in Rwanda in 1996.[552]

266. The Chamber notes contradictions in Witness NA1's testimony as to the order to bring in the bulldozer. In the course of his in-court testimony, the witness testified that Athanase Seromba never asked "people" to collect the bodies. The witness claimed to have learned that the bulldozer was there, and that the *bourgmestre* had said that he was going to send in a bulldozer to remove the bodies.[553] The Prosecutor challenged the witness on his 9 December 1996 statement in which he mentioned that the following day, Seromba asked people to collect the bodies, but that they refused, and that it was at that time that *bourgmestre* Ndahimana and Seromba ordered that a bulldozer be brought in to remove the bodies.[554] The witness responded that this statement should be understood in the context within which his trial was conducted. He furthermore stated that the document was poorly punctuated and that this shows that the person who examined him did so with a specific aim in mind.[555] The witness stated: "[...] Father Seromba asked the people to collect the bodies, but they refused. *Bourgmestre* Grégoire decided to bring in the bulldozer to evacuate the bodies. When I speak of Grégoire, they always insert Seromba because they wanted me to accuse Seromba".[556] The witness explained that he had actually stated that they asked Seromba to go and see the *bourgmestre*, but that he was not personally present when the decision to remove the bodies was being taken.[557]

267. In view of the foregoing, the Chamber finds that the Prosecution has not proved beyond a reasonable doubt that Athanase Seromba personally gave the order to destroy the church.

268. The Chamber, however, finds that the Prosecution has proved beyond a reasonable doubt that Athanase Seromba was informed by the authorities of their decision to destroy the church and that he accepted the decision.

269. The Chamber also finds that the Prosecution has established beyond a reasonable doubt that Athanase Seromba said such words to bulldozer driver FE32 as would encourage him to destroy the church. The Chamber notes that when bulldozer driver FE32 received the order from the authorities to destroy the church, he asked Seromba whether he should destroy the church. Seromba answered in the affirmative, assuring to the witness that Hutu would be able to build it again. Furthermore, the Trial Chamber finds that Seromba gave advice to the bulldozer drivers concerning the fragile side of the church.

[552] Transcript, 7 December 2005, pp. 83-85 (closed session).
[553] Transcript, 8 December 2005, p. 14 (closed session).
[554] Statement of Witness NA1 to the Rwandan authorities on 11 November 1996 (P-38), pp. 3-4, read back to the witness: Transcript, 8 December 2005, p. 16 (closed session).
[555] Transcript, 8 December 2005, p. 17 (closed session).
[556] Transcript, 8 December 2005, p. 17 (closed session).
[557] Transcript, 8 December 2005, pp. 17-18 (closed session).

7.5 Destruction of Nyange church using the bulldozer thus causing the death of at least 1,500 persons

7.5.1 The evidence

Prosecution witnesses

270. Witness CBR[558] testified that the destruction of Nyange church began at about 10 a.m. on 16 April 1994. He explained that the walls were demolished first, and that the tower eventually collapsed at about 5 p.m.[559]

271. Witness CBJ[560] testified that he was in the church tower on 16 April 1994. The witness also claimed that demolition of the church began at about 3 p.m. and lasted three hours.[561] He estimated the number of persons who perished in the demolition at more than 1,500.[562]

272. Witness CBK[563] testified that he was in front of the secretariat when the church was being destroyed. He claimed that its destruction began at about 10 a.m. and that the tower was the last part of the building to collapse.[564]

273. Witness CDL[565] testified that he was on the site when the church was being destroyed. He claimed that he saw two bulldozers destroy the church and the tower at about 10 a.m. He also alleged that on 15 April 1994, there were between 1,500 and 2,000 refugees gathered in the parish[566] and estimated that approximately 1,500 persons were killed in the destruction of Nyange church.[567]

274. Witness CBI[568] estimated that approximately 2,000 refugees were at the church when he arrived there, adding that this number rose to 5,000 persons.[569]

275. Witness CBS[570] testified that when he arrived at Nyange church on 12 April 1994, there were approximately 2,000 persons on the site.[571]

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[558] See Section 6.2.1.
[559] Transcript, 20 January 2005, p. 42 (open session).
[560] See Section 3.2.1.
[561] Transcript, 14 October 2004, pp. 26-27 (closed session).
[562] Transcript, 12 October 2004, p. 19 (open session).
[563] See Section 3.3.1.
[564] Transcript, 19 October 2004, pp. 28-29 (closed session).
[565] See Section 3.2.1.
[566] Transcript, 19 January 2005, p. 11 (open session).
[567] Transcript, 19 January 2005, p. 28 (open session).
[568] See Section 3.3.1.
[569] Transcript, 4 October 2004, p. 8 (open session).
[570] See Section 3.3.1.
[571] Transcript, 5 October 2004, p. 9 (open session).

276. Witness CNJ[572] estimated the number of persons killed at approximately 2,000.[573] He explained that between 15[574] and 16[575] April 1994 nearly 2,000 Tutsi were killed.[576]

277. Witness CBN[577] estimated the number of Tutsi refugees gathered at the church on 15 April 1994 to be 2,000.[578]

Defence witnesses

278. Witness FE32[579] testified that the destruction of the church began at about 10.30 a.m. on 16 April 1994 and ended at about 3 p.m. or 4 p.m.[580] He explained that there were no refugee survivors of the destruction of the church,[581] and that there were "fewer than" 2,000 persons inside the church at the time of its destruction.[582]

279. Witness BZ1[583] testified to having seen the bulldozer demolish the church and the bell tower. The witness added that the destruction of the church lasted between three and five hours and that the bell tower collapsed at about 3 p.m.[584] He also claimed that following the collapse of the bell tower, he left the site, adding that he did not see "any other refugees on the site".[585]

280. Witness BZ8[586] testified that in April 1994, he was living in Kivumu *commune*.[587] The witness claimed that he watched the destruction of the church from a distance. He explained that the machine arrived and began to destroy the rear walls of the church.[588] He further explained that the entire church building did not collapse immediately and that the bell tower was only destroyed the following day.[589] Finally, he stated that he was not sure about the dates.[590]

281. Witness FE35[591] testified that part of the wall of the church building was destroyed first, followed by the other part. He added that the bell tower collapsed at about noon.[592]

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[572] See Section 3.3.1.
[573] Transcript, 24 January 2005, p. 16 (open session).
[574] Transcript, 24 January 2005, p. 16 (open session).
[575] Transcript, 24 January 2005, p. 25 (open session).
[576] Transcript, 24 January 2005, p. 25 (open session).
[577] See Section 3.3.1.
[578] Transcript, 15 October 2004, p. 46 (open session).
[579] See Section 3.4.1.
[580] Transcript, 28 March 2006, pp. 37-38 (open session).
[581] Transcript, 28 March 2006, p. 40 (open session).
[582] Transcript, 28 March 2006, pp. 40-41 (open session).
[583] Transcript, 10 November 2005, p. 30 (open session).
[584] Transcript, 2 November 2005, pp. 62-64 (open session).
[585] Transcript, 2 November 2005, p. 67 (open session).
[586] Transcript, 15 November 2005, p. 43 (open session).
[587] Transcript, 15 November 2005, p. 28 (open session).
[588] Transcript, 15 November 2005, p. 37 (open session).
[589] Transcript, 15 November 2005, p. 39 (open session).
[590] Transcript, 16 November 2005, p. 2 (open session)
[591] See Section 6.7.1.

7.5.2 Findings of the Chamber

282. The Chamber notes that Witness Rémy Sahiri, an investigator with the Office of the Prosecutor,[593] prepared a report titled *Rapport préliminaire d'identification des sites du génocide et des massacres d'avril-juillet 1994 au Rwanda* [Preliminary report identifying the sites of Genocide and Massacres in April-July 1994 in Rwanda]. In the report, he stated that Nyange church was destroyed.[594] He also submitted to the Chamber an album of photographs showing the location of Nyange parish and the ruins of the former church.[595]

283. The Chamber finds both Prosecution and Defence witnesses to be credible. In fact, all of them gave consistent evidence with respect to the fact that Nyange church was destroyed on 16 April 1994, using a bulldozer.

284. In view of the foregoing, the Chamber finds that the Prosecution has proved beyond a reasonable doubt that Nyange church was destroyed on 16 April 1994, using a bulldozer.

285. The Chamber further notes that the body of evidence points to the fact that the destruction of the church resulted in the death of many Tutsi refugees who had sought refuge there, with some witnesses estimating the number of victims to be 1,500, while others put it at 2,000. In this regard, the Chamber recalls its findings that Nyange church had a holding capacity of at least 1,500 persons.[596] This leads to the conclusion that on 16 April 1994, the destruction of Nyange church resulted in the death of at least 1,500 refugees who had sought refuge there to flee from the attacks of the assailants.

7.6 The order given by Athanase Seromba to bury the bodies

7.6.1 The evidence

Defence witnesses

286. Witness FE35[597] testified that after the demolition of the church, Athanase Seromba did not hold any meeting in the parish with the communal authorities. He averred that after the destruction of Nyange church, trucks from ASTALDI company buried the bodies of the victims in a mass grave which had been dug in the banana plantation owned by the priests.[598] The

[592] Transcript, 22 November 2005, pp. 20-21 (closed session).
[593] Transcript, 27 September 2004, p. 5 (open session).
[594] Preliminary report identifying the sites of genocide and massacres in April-July 1994 in Rwanda (P-4), p. 166.
[595] Exhibit P2-7.
[596] See Section 2.
[597] See Section 6.7.1.
[598] Transcript, 22 November 2005, p. 24 (closed session).

witness stated that it was not Seromba who gave the order to bury the bodies. He explained that Kayishema, in the company of Ndahimana, gave the order to the *Interahamwe*.[599]

287. Witness FE32[600] testified that he buried in a mass grave the bodies of persons killed when the church was destroyed.[601]

288. Witness FE34[602] testified that the graves were dug using a bulldozer which had been brought there for the purpose of burying the bodies of persons killed as a result of the destruction of Nyange church.[603] He asserted that it was the *bourgmestre* who gave the order to bury the bodies, although he admitted that he did not hear him give the order.[604]

289. Witness FE13[605] testified that a bulldozer that was on the site on 16 April 1994 was used to dig a grave in which the bodies of victims of the destruction of the church were buried.[606]

7.6.2 Findings of the Chamber

290. The Chamber notes that the Prosecution has not produced any evidence in support of the above allegation. The Chamber further notes that no Defence witness gave evidence to the effect that Athanase Seromba gave the order to bury the bodies after the destruction of the church.[607] In fact, the witnesses aver that this order came from the authorities. In the light of the foregoing, the Chamber considers that the Prosecution has not proved this fact beyond a reasonable doubt.

7.7 The meeting between Athanase Seromba and the authorities after the demolition of the church

7.7.1 The evidence

Prosecution witness

291. Witness CBK[608] stated that after the 16 April 1994 massacres, Athanase Seromba, Fulgence Kayishema, Colonel Nzapfakumunsi, Gaspard Kanyarukiga, Grégoire Ndahimana,

[599] Transcript, 22 November 2005, p. 24 (closed session).
[600] See Section 2.
[601] Transcript, 6 April 2006, pp. 10-12 (open session).
[602] See Section 6.3.1.
[603] Transcript, 30 March 2006, p. 17 (open session).
[604] Transcript, 30 March 2006, p. 50 (open session)
[605] See Section 3.2.1.
[606] Transcript, 7 April 2006, p. 29 (open session).
[607] CBR is the only Prosecution witness who claims to have heard Athanase Seromba order that the "rubbish" be removed from the church courtyard during a meeting held on 16 April 1994. However, during cross-examination, he stated that this meeting was held in the parish on 15 April and not on 16 April 1994 (Transcript, 20 January 2005, pp. 62-63 (open session)).
[608] See Section 3.3.1.

Anastase Rushema and Télésphore Ndungutse met upstairs in the presbytery building to drink banana beer and wine.[609] The witness added that Seromba was standing on the "upper floor" of the presbytery building and was distributing beer to the attackers who were in the rear courtyard of the presbytery. He testified that there was a party atmosphere on this occasion and that all the persons there were satisfied with the massacre that had just been perpetrated.[610]

Defence witnesses

292. Witness FE32[611] testified that he neither saw Athanase Seromba drink nor rejoice at the destruction of the church, adding that he did not receive any beer from Seromba.[612]

293. Witness PA1[613] testified that it was impossible that Athanase Seromba rewarded those who demolished the church by giving them beer.[614] The witness stated that he did not see anyone come to thank Seromba for the destruction of the church, and considered it as inconceivable: "And the state in which he was, his frame of mind, I don't think anybody could dare approach him [...]."[615] He finally stated that the person who demolished the church did not receive any remuneration.[616]

7.7.2 Findings of the Chamber

294. The Chamber is of the view that the testimony of CBK is not reliable on this point. In fact, he is the only witness who claims that Athanase Seromba rejoiced at the destruction of the church. The Chamber considers that there subsists a reasonable doubt as to the veracity of the account given by Witness CBK.

295. The Chamber finds that Witnesses FE32 and PA1 are not credible. In fact, their testimonies are nothing but a reflection of their personal opinions.

296. In view of the foregoing, the Chamber finds that the Prosecution has not proved beyond a reasonable doubt that Athanase Seromba celebrated the destruction of the church in the company of other persons.

[609] Transcript, 19 October 2004, pp. 41-42 (closed session).
[610] Transcript, 19 October 2004, pp. 31-32 (closed session).
[611] See Section 3.4.1.
[612] Transcript, 28 March 2006, p. 48 (open session).
[613] See Section 3.4.1.
[614] Transcript, 20 April 2006, pp. 28-29 (closed session).
[615] Transcript, 20 April 2006, p. 29 (closed session).
[616] Transcript, 20 April 2006, p 30 (closed session).

CHAPTER III: LEGAL FINDINGS OF THE TRIAL CHAMBER

297. In setting out its legal findings, the Chamber will rely on the factual findings set forth in Chapter II above.

298. The Indictment contains four counts: genocide, complicity in genocide, conspiracy to commit genocide and crimes against humanity (extermination).

299. The first two counts of the Indictment, that is genocide and complicity in genocide, are alternative counts, whereas Counts 1, 3 and 4 are cumulative. Consequently, the Chamber will consider whether the Prosecution has adduced evidence of the Accused's liability under each of the counts.

1. Mode of participation in the crimes

1.1 The Indictment

300. The Indictment charges the Accused with criminal liability under Article 6(1) of the Statute which provides as follows: "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime."

1.2 Applicable law

301. The different modes of participation set forth in Article 6(1) include a number of acts for which the Accused incurs individual criminal responsibility under the counts charged against him. The different modes of participation in an offence referred to in Article 6(1) of the Statute are briefly set out below:

302. Participation by "committing" means the direct physical or personal participation of the accused in the perpretation of a crime or the culpable omission of an act that was mandated by a rule of criminal law.[617]

303. Participation by "planning" presupposes that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.[618] With respect to this mode of participation, the Prosecution must demonstrate that the level of participation of the accused was substantial[619] and that the planning was a material element in the commission of the crime.[620]

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[617] *Krstić*, Judgement (TC), 2 August 2001, para. 601; *Kayishema*, Judgement (AC), 1 June 2001, para. 187.
[618] *Akayesu*, Judgement (TC), 2 September 1998, para. 480.
[619] *Bagilishema*, Judgement (TC), 7 June 2001, para. 30: "The level of participation must be substantial, such as formulating a criminal plan or endorsing a plan proposed by another."
[620] *Krstić*, Case No. IT-98-33, Judgement (TC), 2 August 2001, para. 601.

304. Participation by "instigating" implies urging or encouraging another person to commit a crime.[621] Proof of this mode of participation requires the Prosecution to establish that the instigation was a factor element substantially contributing to the conduct of another person committing the crime. It is, however, not mandatory to prove that the crime would not have been committed without the intervention of the accused.[622]

305. Participation by "ordering" presupposes that a person in a position of authority orders another person to commit an offence. This mode of participation implies the existence of a superior-subordinate relationship between the person who gives the order and the one who executes it.[623] A formal superior-subordinate relationship is, however, not required.[624] A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship involving an accused's effective control over the direct perpetrators.[625]

306. The requisite *mens rea* for the four modes of responsibility referred to above is the direct intent of the perpetrator in relation to his own planning, instigating, or ordering.[626]

307. Participation by "aiding and abetting" refers to any act of assistance or support in the commission of the crime.[627] Such mode of participation may take the form of tangible assistance, or verbal statements. It may also consist in the mere presence of the accused at the scene of the crime, conceptualized in the theory of the "approving spectator".[628] Aiding and abetting must have a substantial effect on the commission of the crime, but does not necessarily constitute an indispensable element, i.e. a *conditio sine qua non*, of the crime.[629] Except in the case of the "approving spectator", assistance may be provided prior to or during the commission of the crime, and it is not necessary for the person providing assistance to be present during the commission of the crime.[630]

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[621] *Bagilishema*, Judgement (TC), 7 June 2001, para. 30; *Krstić*, Case No. IT-98-33, Judgement (TC), 2 August 2001, para. 601.

[622] *Bagilishema*, Judgement (TC), 7 June 2001, para. 30: "By urging or encouraging another person to commit a crime, the instigator may contribute substantially to the commission of the crime. Proof is required of a causal connection between the instigation and the *actus reus* of the crime." *Akayesu*, Judgement (TC), 2 September 1998, paras. 478-482.

[623] *Bagilishema*, Judgement (TC), 7 June 2001, para. 30; *Akayesu*, Judgement (TC), 2 September 1998, para. 483; *Rutaganda*, Judgement (TC), 6 December 1999, para. 39.

[624] *Kordić* Judgement (AC), 17 December 2004, para. 28.

[625] *Semanza* Judgement, para. 415.

[626] *Kordić* Judgement (AC), 17 December 2004, paras. 26-29.

[627] *Bagilishema* Judgement (TC), 7 June 2001, para. 33; *Akayesu* Judgement (TC), 2 September 1998, para. 484; *Kayishema* Judgement (AC), 1 June 2001, para. 186; *Kayishema* Judgement (TC), 21 May 1999, paras. 200-202.

[628] *Kayishema* Judgement (AC), 1 June 2001, paras. 201-202; *Kayishema*, Judgement (TC), 21 May 1999, para. 198;

[629] *Bagilishema*, Judgement (TC), 7 June 2001, para. 33; *Furundñija*, Case No. IT-95-17/1-T, Judgement (TC), 10 December 1998, paras. 209-226.

[630] *Bagilishema*, Judgement (TC), 7 June 2001, para. 33; *Rutaganda*, Judgement (TC), 6 December 1999, para. 43; *Kayishema*, Judgement (TC), 21 May 1999, para. 200; *Akayesu*, Judgement (TC), 2 September 1998, para. 484.

308. In the case of the "approving spectator", the mere presence of the accused at the scene of the crime is insufficient in itself to establish that he has aided and abetted the commission of the crime, unless it is shown to have a significant legitimizing or encouraging effect on the actions of the principal offender.[631] The criminal responsibility of the "approving spectator" is incurred only where he is actually present at the scene of the crime or, at the very least, in the immediate vicinity of the scene of the crime, such that his presence is interpreted by the principal perpetrator of the crime as an approval of his conduct.[632] The authority of the accused constitutes an important factor in assessing of the impact of the accused's presence.[633]

309. The *mens rea* of aiding and abetting requires that the accused be aware that his conduct would contribute substantially to the commission of the *actus reus* of the offence or that the perpetration of the crime would be the possible and foreseeable result of his conduct.[634] The accused must be aware of the essential elements of the crime, including the *mens rea* of the principal offender. It is not necessary, however, that the accused share the *mens rea* of the principal offender.[635]

310. The requisite *mens rea* in the more specific case of the "approving spectator" is for the accused to know that his presence would be seen by the perpetrator of the crime as encouragement or support.[636] The *mens rea* of the approving spectator may be deduced from the circumstances, and may include prior concomitant behaviour, for instance allowing crimes to go unpunished or providing verbal encouragement to commit such crimes.[637]

1.3 Findings of the Chamber as to the mode of participation of the Accused in the offences charged against him

The mode of participation of the Accused in the offences charged against him

311. On the basis of its factual findings, the Trial Chamber considers that Accused Athanase Seromba can incur criminal responsibility only for his participation by aiding and abetting in the offences for which he may be convicted.

[631] *Krnojelac*, Judgement (TC), 15 March 2002, para. 89; *Bagilishema*, Judgement (TC), 7 June 2001, para. 36.
[632] *Aleksovski*, Case No. IT-95-14/1, Judgement (TC), 25 June 1999, paras. 64 and 65.
[633] *Aleksovski*, Case No. IT-95-14/1, Judgement (TC), 25 June 1999, para. 65. See also the following cases: *Aleksovski*, Case No. IT-95-14/1, Judgement (TC), 25 June 1999, paras. 64-65; *Tadić*, Case No. IT-94-1, Judgement (TC), 7 May 1997, para. 690; *Akayesu*, Judgement (TC), 2 September 1998, para. 693 and *Furundñija*, Case No. IT-95-17/1-T, Judgement (TC), 10 December 1998, para. 274.
[634] *Bagilishema*, Judgement (TC), 7 June 2001, para. 32; *Furundñija*, Case No. IT-95-17/1-T, Judgement (TC), 10 December 1998, para. 246.
[635] *Krnojelac*, Judgement (TC), 15 March 2002, para. 90; *Krnojelac*, Judgement (AC.), 17 September 2003, para. 52; *Ntakirutimana*, Case No. ICTR-96-10, Judgement (AC.), 13 December 2004, paras. 500-502; *Krstić*, Case No. IT-98-33, Judgement (AC.), 19 April 2004, paras. 134-140.
[636] *Bagilishema*, Judgement (TC), 7 June 2001, para. 36.
[637] *Bagilishema*, Judgement (TC), 7 June 2001, para. 36.

312. The Chamber finds that the Prosecution has not proved beyond reasonable doubt that Seromba planned or committed the massacres of Tutsi refugees.[638] With respect to participation by instigating or by ordering, the Prosecution has not proved that Athanase Seromba had the specific genocidal intent or *dolus specialisis* to incur liability under these two modes of participation. More specifically, in relation to ordering, the Chamber finds that the Prosecution has not established that Accused Athanase Seromba exercised effective control over the principal perpetrators of the crimes.

Exclusion of the theory of the approving spectator in the present case

313. The Chamber notes in the instant case that, in its Final Trial Brief, the Defence advanced arguments on the theory of the *approving spectator*.[639] The Chamber, however, notes that neither the Indictment nor the Prosecutor's Pre-Trial Brief refers to the theory of the *approving spectator*. It therefore deduces that the Prosecutor had no intention of arguing this form of participation in relation to the charges against Accused Athanase Seromba. Consequently, the Chamber will not consider the theory of the *approving spectator* in its findings.

2. Count 1 – Genocide

2.1 The Indictment

314. In the Indictment, the Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase Seromba with genocide, pursuant to Article 2(3)(a) of the Statute, in that on or between 6 April 1994 and 20 April 1994, in Kivumu *commune*, Kibuye *préfecture*, Rwanda, Athanase Seromba was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population, committed with intent to destroy, in whole or in part, a racial or ethnic group.

2.2 Applicable law

315. Article 2(2) of the Statute[640] provides that:

> Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) killing members of the group;
> (b) causing bodily or mental harm to members of the group;

[638] See Chapter II, Sections 3.4, 4.2, 4.3, 5.6, 6.3, 6.4, 6.5, 6.7 and 7.4. See also Chapter III, Section 4.2.
[639] Defence Final Brief, pp. 25-28.
[640] The definition of genocide, as given in Article 2 of the Statute of the Tribunal, is culled from Articles 2 and 3 of the Convention for the Prevention and Punishment of the Crime of Genocide. Rwanda signed this Convention but declared it was not bound by Article 9 of the Convention (on this point see the Legislative Decree of 12 February 1975, *Journal Officiel de la République Rwandaise*, 1975, p. 230).

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.

316. The constituent elements of the crime of genocide are: first, that one of the acts listed under Article 2(2) of the Statute was committed; secondly, that this act was committed against a specifically targeted national, ethnic, racial or religious group, as such, and thirdly, that the act was committed with intent to destroy, in whole or in part, the targeted group.

317. In the Indictment, the Prosecutor charges the Accused, *inter alia*, with acts of killing and causing serious bodily or mental harm to members of the group. In its analysis in relation to each of these acts, the Chamber will rely on the definition to be found in the relevant jurisprudence. Thus, in *Musema*, the Trial Chamber defined "killing" as "homicide committed with intent to cause death".[641] With respect to "causing serious bodily or mental harm", the Trial Chamber, in *Kayishema*, held that the phrase could be construed to include "harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses".[642] "Serious mental harm" entails more than minor or temporary impairment to mental faculties.[643] It includes, but is not limited to, acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution.[644] It need not, however, entail permanent or irremediable harm.[645]

318. As for the notion of "members of the group" which represents belonging to a group, case-law considers this from a subjective standpoint, holding that the victim is perceived by the perpetrator of the crime as belonging to the group targeted for destruction.[646] The determination of the targeted group is to be made on a case-by-case basis.[647]

319. Genocide is distinct from other crimes because it requires a special intent: an accused may not be convicted for the crime of genocide unless it is established that he committed one of the acts listed in Article 2(2) of the Statute with specific intent to destroy, in whole or in part, a particular protected group. The notion "destruction of the group" means "the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group".[648] There is no numeric

[641] *Musema*, Judgement (TC), 27 January 2000, para. 155.
[642] *Kayishema*, Judgement (TC), 21 May 1999, para. 109.
[643] *Kayishema*, Judgement (TC), 21 May 1999, para. 110.
[644] *Musema*, Judgement (TC), 27 January 2000, para. 156.
[645] *Musema*, Judgement (TC), 27 January 2000, para. 156.
[646] *Rutaganda*, Judgement (TC), 6 December 1999, para. 56; *Musema*, Judgement (TC), 27 January 2000, para. 155; *Semanza*, Judgement (TC), 15 May 2003, para. 317.
[647] *Semanza*, Judgement (TC), 15 May 2003, para. 317.
[648] Report of the International Law Commission on the Work of its Forty-Eighth Session, 6 May-26 July 1996, Official documents of the UN General Assembly, suppl. No 10, p. 90, (A/51/10) (1996). See *Semanza*, Judgement (TC.), 15 May 2003, para. 315.

threshold of victims necessary to establish genocide.[649] To establish specific genocidal intent, it is not necessary to prove that the perpetrator intended to achieve the complete annihilation of a group throughout the world,[650] but, at least, to destroy a substantial part thereof.[651]

320. In the light of the Tribunal's jurisprudence, the specific intent of genocide may be inferred from certain facts or indicia, including but not limited to (a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) the repetition of destructive and discriminatory acts and (i) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.[652]

2.3 Findings of the Chamber

321. Paragraphs 1 to 32 of the Indictment concisely set out the allegations relating to the charge of genocide. The Chamber has already discussed these allegations in Chapter II, Sections 3, 4, 5, 6 and 7 under its factual findings.

322. In the light of its factual findings, the Chamber considers that the Prosecution has not proved beyond a reasonable doubt that Athanase Seromba planned, instigated, ordered or committed massacres against Tutsi refugees in Nyange.[653] The Chamber, however, finds that Athanase Seromba, by his words and actions on 12, 14, 15 and 16 April 1994, aided and abetted in the commission of murders and causing serious bodily or mental harm to the Tutsi who had sought refuge in Nyange church during the events covered in the Indictment.

2.3.1 Causing serious bodily or mental harm to members of the Tutsi ethnic group.

The actus reus *in relation to causing serious bodily or mental harm to the refugees in Nyange church*

323. With respect to paragraph 12 of the Indictment, the Chamber finds that Athanase Seromba prohibited the refugees from getting food from the banana plantation belonging to the

[649] *Semanza*, Judgement (TC), 15 May 2003, para. 316.
[650] *Kayishema*, Judgement (TC), 21 May 1999, para. 95.
[651] *Semanza*, Judgement (TC), 15 May 2003, para. 316.
[652] *Akayesu*, Judgement (TC), 2 September 1998, paras. 523-524; *Kayishema*, Judgement (TC), 21 May 1999, paras. 93-94; *Musema*, Judgement (TC), 27 January 2000, para. 166; *Rutaganda*, Judgement (TC), 6 December 1999, paras. 60-62; *Bagilishema*, Judgement (TC), 7 June 2001, paras. 62-63.
[653] See Chapter II, Sections 3.4, 4.2, 4.3, 5.6, 6.3, 6.4, 6.5, 6.7 and 7.4; see also Chapter III, Section 4.2.

parish and that he ordered gendarmes to shoot at any refugees found there.[654] The Chamber further finds that Seromba refused to celebrate mass for the Tutsi in Nyange church.[655]

324. With respect to paragraphs 13 and 14 of the Indictment, the Chamber finds that on 13 April 1994, at a time when the security situation in Kivumu *commune* had become precarious, Athanase Seromba turned four Tutsi employees out of the parish, including a certain Patrice, who returned the next day and was killed by attackers after, once again, being turned back from the presbytery.[656]

325. With respect to paragraph 22 of the Indictment, the Chamber finds that Seromba turned out several refugees from the presbytery, including Meriam, who was subsequently killed by the attackers.[657]

326. It is the Chamber's opinion that Seromba's order prohibiting refugees from getting food from the banana plantation, his refusal to celebrate mass in Nyange church, and his decision to expel employees and Tutsi refugees from the parish and the presbytery facilitated the perpetration of acts causing serious mental harm to the Tutsi refugees in Nyange church. Indeed, the Chamber considers that when the Tutsi sought refuge in Nyange church, they were very vulnerable, having previously been the target of numerous attacks.[658] Furthermore, Nyange church, where the refugees had sought refuge and thought they could be protected from the attacks, had been surrounded by militiamen and *Interahamwe* since 12 April 1994.[659] It would therefore appear that the refugees in Nyange church lived in a constant state of anxiety, inasmuch as they knew that their lives, and those of relatives were under constant threat. The Chamber is convinced that by adopting such a line of conduct, Seromba contributed substantially to the commission of acts causing serious mental harm to Tutsi refugees in Nyange church.

327. The Chamber also finds that the order by Athanase Seromba prohibiting refugees from getting food from the banana plantation facilitated the perpetration of acts causing serious bodily harm to the refugees. Indeed, on 14 April 1994, the refugees lacked food and had very limited access to basic foodstuffs from the outside, due to the encirclement of the church. Under such circumstances, Seromba's refusal to allow the refugees to get food from the banana plantation substantially contributed to their physical weakening, as they were deprived of food. The Chamber is satisfied that by his conduct, Seromba substantially contributed towards the commission of acts causing serious bodily harm to the Tutsi refugees in Nyange church.

[654] See Chapter II, Section 5.3.
[655] See Chapter II, Section 5.5.
[656] See Chapter II, Section 5.5.
[657] See Chapter II, Section 6.8.
[658] See Chapter II, Section 3.2.
[659] See Chapter II, Section 5.2.

328. In the light of the foregoing, the Chamber finds that the *actus reus* of the assistance provided by the Accused in the commission of acts causing serious bodily or mental harm to refugees in Nyange church has been proved beyond a reasonable doubt.

The mens rea *of Accused Athanase Seromba in relation to causing serious bodily or mental harm to refugees in Nyange church*

329. The Chamber is convinced that Athanase Seromba could not have been unaware that his prohibition of refugees from getting food from the banana plantation, his refusal to celebrate mass for them and the expulsion of employees and Tutsi refugees would certainly have a negative impact on the morale of the refugees who were faced with an extremely difficult situation related to the persecutions which they had been suffering during the events of April 1994.

330. The Chamber is also satisfied that Athanase Seromba knew that the refugees lacked food.[660] The Chamber therefore considers that he was fully aware that his refusal to allow the refugees to get food from the banana plantation would substantially contribute towards weakening them physically.

331. In view of the foregoing, the Chamber is satisfied that the Prosecution has proved beyond a reasonable doubt the *mens rea* of the Accused's assistance in the commission of acts causing serious bodily or mental harm to the refugees in Nyange church.

2.3.2 Killing members of the Tutsi group

The actus reus *in relation to the killing of Tutsi refugees in Nyange church*

332. With respect to paragraphs 13, 14 and 22 of the Indictment, discussed earlier, the Chamber found that Athanase Seromba turned employees and Tutsi refugees out of Nyange parish.[661] It is the Chamber's opinion that, by so acting, Seromba assisted in the killing of several Tutsi refugees, including Patrice and Meriam.

333. With respect to paragraphs 24 and 25 of the Indictment, the Chamber finds that on 15 April 1994, Athanase Seromba requested assailants, who were getting ready to attack the Tutsi refugees gathered in the presbytery courtyard, to stop the killings and collect the bodies that were strewn throughout the church yard. The Chamber also finds that the attacks against Tutsi refugees resumed after the bodies had been removed.[662] However, the Chamber finds that it has not been proved beyond reasonable doubt that this request constitutes aiding or abetting in the killing of Tutsi refugees.

[660] See Chapter II, Section 5.3.
[661] See Chapter II, Sections 5.5 and 6.8.
[662] See Chapter II, Section 6.7.

334. With respect to paragraphs 26 and 27 of the Indictment, the Chamber finds that Athanase Seromba held discussions with the communal authorities and accepted their decision to destroy the church. The Chamber also concludes that Seromba spoke with the bulldozer driver and said certain words to him which encouraged him to destroy the church. Lastly, the Chamber finds that Seromba even gave advice to the bulldozer driver as to the fragile side of the church building.[663] The Chamber is satisfied that by adopting such a line of conduct, Seromba substantially contributed to the destruction of the Nyange church, causing the death of more than 1,500 Tutsi refugees.

335. In view of the foregoing, the Chamber is satisfied beyond a reasonable doubt that the Accused had committed the *actus reus* of aiding and abetting killing of refugees in Nyange church.

The mens rea *of Accused Athanase Seromba in relation to the killing of Tutsi refugees in Nyange church*

336. The Chamber is satisfied that, given the security situation which prevailed in Nyange parish, Athanase Seromba could not have been unaware that by turning refugees out of the presbytery, he was substantially contributing to their being killed by the attackers.

337. Furthermore, the Chamber is of the view that Athanase Seromba could not have been unaware of the legitimising effect that his words would have on the actions of the communal authorities and the bulldozer driver. The Chamber is also of the view that Seromba knew perfectly well that his approval of the decision by the authorities to destroy Nyange church and his words of encouragement to the bulldozer driver would contribute substantially towards the destruction of the church and the death of the numerous refugees trapped inside.

338. In view of the foregoing, the Chamber is satisfied that the *mens rea* of the Accused in aiding and abetting the killing of refugees in Nyange church has been proved beyond reasonable doubt.

2.3.3 The constituent elements of genocide

339. The Chamber considers as established that the Tutsi constituted an ethnic group in Kivumu *commune* at the time of the events referred to in the Indictment[664] and that they were therefore a protected group within the meaning of Article 2(2).

340. The Chamber also considers that it is beyond dispute that during the events of April 1994 in Nyange church, the attackers and other *Interahamwe* militiamen committed murders of Tutsi refugees in Nyange church and caused serious bodily or mental harm to them on ethnic grounds, with the intent to destroy them, in whole or in part, as an ethnic group.

[663] See Chapter II, Section 7.4.
[664] Decision on Prosecution Motion for Judicial Notice, 14 July 2005.

341. The Chamber finds that, in his capacity as the priest in charge of Nyange parish during the events of April 1994, and given the situation which prevailed throughout Rwanda, the attacks he personally witnessed[665] and the words he heard or uttered,[666] Accused Athanase Seromba could not have been unaware of the intention of the attackers and other *Interahamwe* militiamen to commit acts of genocide against Tutsi refugees in Nyange parish.

342. Consequently, the Chamber finds it established that Accused Athanase Seromba aided and abetted the crime of genocide as alleged in Count 1 of the Indictment.

3. Count 2 – Complicity in genocide

343. Count 2 is alternative to Count 1 of the Indictment.[667] Hence, having already found the Accused guilty of genocide under Count 1 of the Indictment, the Chamber will not consider the count of complicity in genocide and therefore dismisses it.

4. Count 3 – Conspiracy to commit genocide

4.1 The Indictment

344. The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase Seromba with conspiracy to commit genocide pursuant to Article 2(3)(b) of the Statute, in that on or between 6 and 20 April 1994, in Kivumu *préfecture*, Rwanda, Seromba did agree with Grégoire Ndahimana, *bourgmestre* of Kivumu *commune*, Fulgence Kayishema, police inspector of Kivumu *commune*, Télesphore Ndungutse, Gaspard Kanyarukiga and other persons not known to the Prosecutor, to kill or to cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group.

4.2 Applicable law

345. The Chamber relies on the Tribunal's jurisprudence which defines conspiracy to commit genocide as "an agreement between two or more persons to commit the crime of genocide".[668] Thus, the essential element of the crime of conspiracy to commit genocide is "the act of conspiracy itself, in other words, the process ("*procédé*") of conspiracy [...] and not its result".[669]

346. The Chamber also notes that in *Nahimana*, the Appeals Chamber held that conspiracy to commit genocide can be inferred from coordinated actions of individuals who have a common

[665] See Chapter II, Sections 6.7-6.8.
[666] See Chapter II, Section 7.4.
[667] *Akayesu*, Judgement (TC), 2 September 1998, para. 532.
[668] *Musema*, Judgement (TC), 27 January 2000, para. 191.
[669] *Musema*, Judgement (TC), 27 January 2000, para. 193.

purpose and are acting within a unified framework.[670] Also in *Niyitegeka*, the Chamber inferred the existence of conspiracy to commit genocide from the participation by the Accused in meetings held for the purpose of planning the massacre of Tutsi, his words and the leadership he exercised during those meetings, his involvement in the planning of attacks against the Tutsi and his role in the distribution of weapons to the attackers.[671]

347. The *mens rea* of the crime of conspiracy to commit genocide is the same as the intent required for the crime of genocide, and rests on the specific intent to commit genocide.[672]

4.3 Findings of the Chamber

348. Paragraphs 33 to 47 of the Indictment set forth concise allegations relating to the count of conspiracy to commit genocide. The Chamber discussed the allegations mainly in sections 3, 4, 5, 6 and 7 of Chapter II dealing with its factual findings. This part of the Indictment describes the three-phase plan, drawn up for the extermination of the Tutsi in Kivumu *commune*. This part also alleges that Athanase Seromba prepared a list of Tutsi to be sought, that he prohibited the refugees from getting food from the presbytery or banana plantation, refused to celebrate mass and that he supervised the massacre of refugees.

349. The Trial Chamber held in its factual findings that the Prosecution has not established beyond a reasonable doubt that Athanase Seromba participated in meetings with the communal authorities on 11[673] and 12 April 1994.[674] The Chamber also found that it has not been established beyond a reasonable doubt that Accused Seromba held meetings with the communal authorities on 10,[675] 15[676] and 16[677] April 1994 for the purpose of planning the extermination of Tutsi refugees in Nyange parish.

350. Furthermore, the Chamber finds that the Prosecution has not established beyond a reasonable doubt that Athanase Seromba prepared a list of Tutsi sought after,[678] or that he ordered or supervised the attack against the refugees on 15 April 1994[679] or that he ordered the destruction of Nyange church on 16 April 1994.[680] As regards the facts established against Seromba, such as prohibiting the refugees from getting food from the banana plantation, or refusing to celebrate mass, the Chamber is of the view that these facts, in and of themselves, are not sufficient to establish the existence of a conspiracy to commit genocide.

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[670] *Nahimana*, Judgement (TC), 3 December 2003, para. 1047.
[671] *Niyitegeka*, Judgement (TC), 16 May 2003, paras. 427-248.
[672] *Musema*, Judgement (TC), 27 January 2000, para. 192.
[673] See Chapter II, Section 4.3.
[674] See Chapter II, Section 5.6.
[675] See Chapter II, Section 4.2.
[676] See Chapter II, Section 6.4.
[677] See Chapter II, Section 7.4.
[678] See Chapter II, Section 3.4.
[679] See Chapter II, Sections 6.5 and 6.7
[680] See Chapter II, Section 7.4.

351. Consequently, the Chamber finds that the Prosecution thus has not proved beyond a reasonable doubt that Athanase Seromba conspired with other persons to commit genocide as alleged in Count 3 of the Indictment.

5. Count 4 – Crime against humanity (extermination)

5.1 The Indictment

352. The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase Seromba with Extermination as a crime against humanity, as stipulated in Article 3(b) of the Statute, in that on or between the dates of 7 April 1994 and 20 April 1994, in Kibuye *préfecture*, Rwanda, Athanase Seromba was responsible for killing persons or causing persons to be killed during mass killing events as part of a widespread or systematic attack against the civilian population on political, ethnic or racial grounds.

5.2 Applicable law

353. Article 3 of the Statute provides that:

> The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:
>
> (a) Murder;
> (b) Extermination;
> (c) Enslavement;
> (d) Deportation;
> (e) Imprisonment;
> (f) Torture;
> (g) Rape;
> (h) Persecutions on political, racial and religious grounds;
> (i) Other inhumane acts.

354. Article 3 of the Statute, which deals with crimes against humanity, contains a general element that is applicable to all the acts listed therein: perpetration of any of those acts by an accused will constitute a crime against humanity only if it was committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

355. The concept of attack, within the meaning of Article 3, refers to any unlawful act, or event or series of events, of the kind listed in Article 3 of the Statute.[681]

356. This attack must be widespread or systematic.[682] In practice, these two criteria tend to overlap.[683] "Widespread" may be defined as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.[684] "Systematic" may be defined as thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources.[685] The existence of a policy or plan may be evidentially relevant, in that it may be useful in establishing that the attack in question was widespread or systematic, but it should not be considered as a separate element of the crime.[686]

357. It is in not a requirement that the criminal act must, in and of itself, be widespread or systematic. A single murder may constitute a crime against humanity if it is perpetrated within the context of a widespread or systematic attack.[687]

358. The attack must be directed against a civilian population, i.e. "people who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms and those persons placed *hors de combat* by sickness, wounds, detention or any other cause".[688] The presence of certain non-civilians in this group does not change its civilian character.[689]

359. The attack against a civilian population must have been committed with discriminatory intent. That is, it must have been committed against a population "on national, political, ethnic, racial or religious grounds". This qualifier characterises only the nature of the attack in general and not the criminal intent of the accused.[690]

360. There must be a nexus between the criminal act and the attack.[691] The accused must have acted with knowledge of the broader context of the attack and knowledge that his acts formed part of a widespread or systematic attack against a civilian population.[692]

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[681] *Semanza*, Judgement (TC), 15 May 2003, para. 327; *Musema*, Judgement (TC), 27 January 2000, para. 205; *Rutaganda*, Judgement (TC), 6 December 1999, para. 70; *Akayesu*, Judgement (TC), 2 September 1998, para. 581.
[682] *Akayesu*, Judgement (TC), 2 September 1998, para. 579.
[683] *Bagilishema*, Judgement (TC), 7 June 2001, para. 77.
[684] *Akayesu*, Judgement (TC), 2 September 1998, para. 580.
[685] *Akayesu*, Judgement (TC), 2 September 1998, para. 580.
[686] *Semanza*, Judgement (TC), 15 May 2003, para. 329.
[687] *Akayesu*, Judgement (TC), 2 September 1998, para. 580; *Tadić*, Case No. IT-94-1, Judgement (TC), 7 May 1997, para. 649.
[688] *Akayesu*, Judgement (TC), 2 September 1998, para. 582.
[689] *Bagilishema*, Judgement (TC), 7 June 2001, para. 79; *Tadić*, Case No. IT-94-1, Judgement (TC), 7 May 1997, para. 638.
[690] *Bagilishema*, Judgement (TC), 7 June 2001, para. 81; *Akayesu*, Judgement (TC), 2 September 1998, para. 469; *Kayishema*, Judgement (TC), 21 May 1999, paras. 133-134.
[691] *Tadić*, Case No. IT-94-1, Judgement (AC), 15 July 1999, para. 271.

361. In the Indictment, the Prosecutor charges the Accused with a crime listed under Article 3, namely "extermination". By its legal description, the crime of extermination requires proof that the accused participated in a widespread or systematic massacre, or in subjecting a widespread number of people to conditions of living that would inevitably lead to death.[693] Extermination differs from murder or killing in that it requires an element of mass destruction of life,[694] without, however, any suggestion of a numerical minimum.[695] The *mens rea* for extermination is intent to commit or participate in a mass killing.[696]

5.3 Findings of the Chamber

362. Paragraphs 48 to 50 of the Indictment set forth concise allegations relating to the count of crime against humanity. The Chamber has already discussed these allegations in Sections 5, 6 and 7 of Chapter II dealing with its factual findings.

363. With respect to paragraph 48 of the Indictment, the Chamber finds that the Prosecutor has failed to establish that Athanase Seromba ordered the closure of the church doors so as to expose the Tutsi refugees inside Nyange church to death.[697] Consequently, the Chamber finds that Seromba incurs no responsibility for that act.

Actus reus *in relation to the destruction of Nyange church*

364. With respect to paragraph 49 of the Indictment, the Trial Chamber finds that Athanase Seromba held discussions with the authorities and accepted their decision to destroy the church. The Chamber further found that Seromba also discussed with the bulldozer driver and said words which encouraged him to destroy the church. The Chamber finally found that Seromba even gave advice to the bulldozer driver concerning the fragile side of the church.[698] The Chamber is satisfied that by his conduct, Seromba substantially contributed to the destruction of Nyange church.

365. The Chamber is of the view that the destruction of the church, which resulted in the death of 1,500 Tutsi refugees,[699] constitutes the crime of extermination within the meaning of Article 3 of the Statute.

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[692] *Semanza*, Judgement (TC), 15 May 2003, para. 332.
[693] *Ntakirutimana*, Judgement (AC), 13 December 2004, para. 522; *Ndindabahizi*, Judgement (TC), 15 July 2004, para. 480.
[694] *Ntakirutimana*, Judgement (AC), 13 December 2004, para. 516; *Ndindabahizi*, Judgement (TC), 15 July 2004, para. 479 ; *Semanza*, Judgement (TC), 15 May 2003, para. 340.
[695] *Ntakirutimana*, Judgement (AC), 13 December 2004, para. 516.
[696] *Ntagerura*, Judgement (TC), 25 February 2004, para. 701; *Ntakirutimana*, Judgement (AC), 13 December 2004, para. 522.
[697] See Chapter II, Section 6.3.
[698] See Chapter II, Section 7.4.
[699] See Chapter II, Section 7.5.

366. In view of the foregoing, the Chamber is satisfied beyond reasonable doubt that the Accused aided and abetted the crime of extermination of the Tutsi refugees at Nyange church.

Mens rea *of Athanase Seromba in relation to the destruction of Nyange church*

367. The Chamber further finds that Athanase Seromba could not have been unaware of the legitimising effect his words would have on the actions of the communal authorities and the bulldozer driver. Furthermore, the Chamber finds that Seromba knew perfectly well that his approval of the authorities' decision to destroy Nyange church and his encouraging words to the bulldozer driver, would substantially contribute to the destruction of the church and the death of the numerous refugees inside.

368. In view of the foregoing, the Chamber finds that the Accused's *mens rea* in aiding and abetting the crime of extermination of Tutsi refugees at Nyange church has been proven beyond reasonable doubt.

The constituent elements of crime against humanity

369. The Chamber finds that the conditions required for the commission of crime against humanity have been satisfied in this case. Indeed, the Chamber is satisfied that there were attacks against the Tutsi in Kivumu *commune* in April 1994.[700] The attack which culminated in the destruction of Nyange church on 16 April 1994 was "widespread" in the sense that it was massive, carried out collectively and directed against a multiplicity of victims. The attack was also "systematic" inasmuch as the factual findings tend to show that it was thoroughly organized and followed a regular pattern, starting with the surrounding of the church on 12 April 1994 up to its destruction on 16 April 1994, coupled with the intensification of the attacks against the refugees on 14 and 15 April 1994. Lastly, the Chamber finds that the attack was directed against the Tutsi civilian population that had sought refuge in Nyange church on discriminatory grounds.

370. Furthermore, the Chamber finds that Accused Athanase Seromba had knowledge of the widespread and systematic nature of the attack and the underlying discriminatory grounds. The Chamber is satisfied that Seromba also knew that the crime of extermination committed against the Tutsi refugees was part of that attack.

371. Accordingly, the Chamber considers that it has been proved beyond reasonable doubt that Accused Athanase Seromba committed a crime against humanity (extermination), as alleged in Count 4 of the Indictment.

[700] See Chapter II, Section 3.2.

CHAPTER IV: VERDICT

372. For the reasons set out in this Judgement, the Chamber unanimously finds as follows:

Count 1: Genocide	**GUILTY**
Count 2: Complicity in genocide	**DISMISSED**
Count 3: Conspiracy to commit genocide	**NOT GUILTY**
Count 4: Crimes against humanity (extermination)	**GUILTY**

CHAPTER V: SENTENCE

1. INTRODUCTION

373. Having found Accused Athanase Seromba guilty of genocide and crime against humanity (extermination) by aiding and abetting, the Chamber now considers the appropriate sentence.

374. In its Final Trial Brief, the Prosecution requested the Chamber to sentence Athanase Seromba to concurrent life sentences for each of the counts of the Indictment where the Chamber found him guilty.[701] The Prosecution highlighted the gravity of the crimes and the aggravating circumstances that the Chamber should take into account in determining sentence.

375. In its final brief, the Defence made no submission with respect to sentence. It stated that the Accused had a good reputation and was respected by Hutu and Tutsi parishioners of Nyange prior to the events of 6 April 1994.[702]

2. APPLICABLE LAW

376. The Chamber has unfettered discretion in sentencing persons found guilty of crimes falling within its jurisdiction.[703] The Chamber recalls that the aims of sentencing are retribution, deterrence, reprobation, rehabilitation, national reconciliation, protection of society and restoration of peace.

377. In the determination of sentence the Chamber is governed by the following legal provisions: Article 23 of the Statute and Rule 101 of the Rules.

378. Under Article 23 of the Statute, the Chamber, in imposing sentence, shall have recourse to the general practice regarding prison sentences in the courts of Rwanda (Article 23(1)) and take into account the gravity of the offence and the individual circumstances of the convicted person (Article 23(2)). Pursuant to Rule 101(B) of the Rules, the Chamber must also take into account the following factors:

(i) Any aggravating circumstances;
(ii) Any mitigating circumstances, including the substantial co-operation with the Prosecutor by the convicted person before or after conviction;
(iii) The general practice regarding prison sentences in the courts of Rwanda;
(iv) The extent to which any penalty imposed by a court of any state on a convicted person for the same act has already been served (...)

[701] Prosecutor's Final Trial Brief, para. 692.
[702] *Conclusions finales de la Défense*, p. 7.
[703] See *Ruggiu*, Judgement (TC), 1 June 2000, para. 52; *Kambanda*, ICTR-97-23-S, Judgement (TC), 4 September 1998, para. 11.

379. The Chamber considers that in imposing sentence, it may also take into account any other factor which fully reflects the circumstances of the case.[704]

3. FINDINGS OF THE CHAMBER

3.1 Gravity of the offences

380. The Chamber notes that in its Final Trial Brief, the Prosecution argued that the crimes committed by Accused Athanase Seromba are serious.[705] In support of this argument, the Prosecution asserts that Athanas Seromba acted with premeditation,[706] and without constraint.[707]

381. The Chamber recalls that an evaluation of the gravity of offences is based on the crimes charged against the accused, that is, the individual circumstances under which the offences were committed, and not on a hierarchy of crimes.[708]

382. The Chamber notes that in this case the Prosecutor did not prove beyond a reasonable doubt that Accused Athanase Seromba either planned or ordered, as a principal, the commission of the offences for which he has been found guilty. Nor does the Trial Chamber accept the argument of premeditation advanced by the Prosecutor. Lastly, the Trial Chamber considers that the Accused did not act under duress when he approved that the church be destroyed using the bulldozer. Accordingly, the Trial Chamber concludes that the offences of genocide and crimes against humanity by aiding and abetting for which Accused Athanase Seromba has been found guilty are of the most extreme gravity.

3.2 Individual circumstances of the Accused

383. The Chamber recalls that the individual circumstances of the accused are perceived in the jurisprudence of the *ad hoc* tribunals as a factor for individualizing the penalty.[709] The Chamber further considers that individual circumstances should be understood to be any personal circumstance of the accused which may either aggravate or mitigate sentence.

384. The Chamber further notes that the Prosecution submitted in its Final Trial Brief that nothing in the individual circumstances of Athanase Seromba mitigates the gravity of the crimes charged against him.

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[704] See *Rutaganda*, Judgement (TC), 6 December 1999, para. 454.
[705] Prosecutor's Final Trial Brief, para. 651.
[706] Prosecutor's Final Trial Brief, paras. 672 (p. 138).
[707] Prosecutor's Final Trial Brief, para. 652.
[708] *Mucić*, Judgement (TC), 16 November 1996, para. 1226; *Kayishema*, Judgement (AC), 1 June 2001, para. 367.
[709] For a list of factors to take into account in the individualisation of the sentence, see: *Kambanda*, Judgement (TC), 4 September 1998, para. 29; *Erdemović*, Judgement (TC), 29 November 1996, para. 44.

385. The Chamber notes that Accused Athanase Seromba was ordained priest on 18 July 1993.[710] It is the Chamber's opinion that his training as a priest and his experience within the church should have enabled him to understand the reprehensible nature of his conduct during the events.

386. The Chamber notes, moreover, that Accused Athanase Seromba was present at Nyange church only at the end of the summer or early autumn 1993.[711] The Chamber further notes that Athanas Seromba was only a curate in Nyange parish during the April 1994 events, and was put in charge of the parish because there was no parish priest there.[712]

3.3 Aggravating circumstances

387. In its Final Trial Brief, the Prosecution cited several aggravating circumstances. The Prosecution cited the fact that Athanase Seromba was known in Nyange community,[713] that he was directly involved in the massacre of Tutsi.[714] The Prosecution also averred that the Accused betrayed the trust of his parishioners.[715] The Prosecution pointed out that the crimes committed during the events of April 1994 in Nyange parish were accompanied by excessive violence and the victims went through humiliation[716] and a lot of suffering before dying.[717]

388. The Chamber recalls that aggravating circumstances must be proved beyond a reasonable doubt.[718] A particular circumstance shall not be retained as aggravating if it is included as an element of the crime in question.[719]

389. The Chamber will, in this case, examine as aggravating circumstances the status of the Accused and betrayal of the trust placed in him by the Tutsi refugees,[720] as well as the flight of the Accused after the destruction of the church.

Status of the Accused and betrayal of trust

390. The Chamber recalls that Athanase Seromba, a Catholic priest, was in charge of Nyange parish at the time of the events referred to in the Indictment.[721] The Accused was known and

[710] See letter dated 18 May 1993 from the Bishop of Nyundo to Athanase Seromba (D-10).
[711] See, *inter alia*, Witness CBK: Transcript, 19 October 2004, p. 8 (closed session); Witness CBJ: Transcript, 12 October 2004, pp. 26-27 (open session); Witness FE27: Transcript, 23 March 2006, p. 11 (closed session).
[712] See Section 2.
[713] Prosecutor's Final Trial Brief, para. 658.
[714] Prosecutor's Final Trial Brief, paras. 665-666.
[715] Prosecutor's Final Trial Brief, paras. 657-671.
[716] Prosecutor's Final Trial Brief, para 675.
[717] Prosecutor's Final Trial Brief, para. 676.
[718] Judgement (TC), para. 693; *Ndindabahazi*, Judgement (TC), 15 July 2004, para. 502.
[719] *Blagojević & Jokić*, Judgement (TC), 17 January 2005, para. 849; *Ndindabahazi*, Judgement (TC), 15 July 2004, para. 502; *Ntakirutimana*, Judgement (TC), 21 February 2003, para. 893.
[720] *Ndindabahazi*, Judgement (TC), 15 July 2004, para. 508 ; *Ntakirutimana*, Judgement (TC), 21 February 2003, paras. 899-902; *Nahimana*, Judgement (TC), 3 December 2003, para. 1099.

respected in the Catholic community of Nyange. The Chamber recalls that it has been established that many Tutsi from Kivumu *commune* sought refuge in Nyange church in order to escape attack.[722] The Chamber considers as an aggravating circumstance the fact that the Accused took no concrete action whatsoever to earn the trust of those persons who believed they were safe by seeking refuge at Nyange parish. Consequently, the Chamber finds that the status of the Accused and betrayal of trust constitute aggravating circumstances.

Flight of the Accused after destruction of church

391. The Chamber notes that it is not in contention that the Accused used an identity other than his own to go into exile in Italy, as attested to by the passport issued to him by the then Zaïrian authorities.[723] The Chamber notes, however, that other priests who were with the Accused at Nyange church during the events of April 1994 did not adopt this stratagem. Furthermore, these priests who remained in Rwanda were even prosecuted, but all of them were acquitted.[724] Therefore, the Chamber finds that the flight of Athanase Seromba represents an aggravating circumstance.

3.4 Mitigating circumstances

392. In its Final Trial Brief, the Prosecution submitted that Athanase Seromba should not benefit from any mitigating circumstance, as his surrender was not "voluntary", and as he did not cooperate with the Prosecutor, but rather obstructed the proceedings throughout the trial. The Prosecution added that the Accused has shown no remorse for the role he played in the commission of the crimes charged. Finally, the Prosecutor stressed that no evidence of the Accused's good conduct before and after the crimes charged against him has been adduced.[725]

393. In its Final Trial Brief, the Defence submitted that the Accused had a good reputation and was respected by both Hutu and Tutsi parishioners of Nyange prior to the events of April 1994.[726]

394. The Chamber recalls that mitigating circumstances have to be proved on a balance of probabilities.[727] The weight to be attached to mitigating circumstances is a matter of discretion for the Trial Chamber.[728] In the instant case, the Chamber will discuss the following points: the

[721] See Chapter II, Section 2.
[722] See Chapter II, Section 3.3.
[723] See the following exhibits: Italian immigration document of Athanase Sumba Bura (P-6) and Zaïrian passport of Athanase Sumba Bura (P-7).
[724] See Rwandan court files disclosed by the Prosecutor.
[725] Prosecutor's Final Trial Brief, paras. 682-685.
[726] *Conclusions finales de la Défense*, p. 7.
[727] See, e.g., *Niyitegeka*, Judgement (TC), 16 May 2003, para. 488; *Ntakirutimana*, Judgement (TC), 21 February 2003, para. 893.
[728] *Kambanda*, Judgement (AC), 19 October 2000, para. 124.

good reputation of the Accused prior to the events, voluntary surrender of the Accused and the age of the Accused.

Athanase Seromba's good reputation prior to the events of April 1994 in Nyange parish

395. Evidence of Athanase Seromba's good reputation was provided by several Prosecution and Defence witnesses. Such witnesses include CBJ,[729] CBK,[730] BR1,[731] BZ1[732] and BZ4[733] who testified that, as a priest, Athanase Seromba was respected by the public. Accordingly, the Chamber finds that this fact constitutes a mitigating circumstance in determining the sentence to be imposed on the Accused.

Surrender of the Accused

396. The Prosecutor argues that Athanase Seromba's surrender cannot be considered as a mitigating circumstance, as it was not voluntary.[734] The Prosecutor contends that the Accused surrendered only once his arrest by the Italian authorities became imminent.[735] The Prosecutor further submits that if indeed the Accused surrendered, his surrender does not constitute a mitigating circumstance, because it does not meet the criteria set forth in the *Babić* Judgement.[736]

397. The Chamber notes that voluntary surrender of an accused may constitute a mitigating circumstance.[737] The Chamber considers that the circumstances and time frames surrounding the surrender of the accused must be assessed on a case by case basis. Thus, for example, in *Blaškić*, the fact that the accused surrendered only after having prepared his defence,[738] and in *Simić*, the fact that the accused surrendered three years after the surrender of other individuals in the same circumstances, limited the mitigating effect of those surrenders.[739] The Chamber notes, on the contrary, that in *Babić*, the voluntary surrender of the accused was considered as a mitigating circumstance because it happened "soon after the confirmation of an indictment against him",[740] while in *Plavšić*, the voluntary surrender of the accused to the Tribunal's authorities 20 days after having learned about the Indictment, was considered as a mitigating circumstance.[741]

[729] Transcript, 12 October 2004, p. 23 (closed session).
[730] Transcript, 19 October 2004, p. 46 (closed session).
[731] Transcript, 25 November 2005, p. 36 (open session).
[732] Transcript, 2 November 2005, p. 71 (open session).
[733] Transcript, 2 November 2005, p. 7 (open session).
[734] Prosecutor's Final Trial Brief, paras. 677-683; Transcript, 28 June 2006, p. 42 (open session).
[735] Prosecutor's Final Trial Brief, paras. 682-683.
[736] *Babić*, Judgement (TC), 29 June 2004, paras. 85-86.
[737] *Serushago*, Judgement (TC), 6 April 2000, para. 24.
[738] *Blaškić*, Judgement (TC), 3 March 2000, para. 776.
[739] *Simić*, Judgement (TC), 17 October 2003, para. 1086.
[740] *Babić*, Judgement (TC), 29 June 2004, para. 86.
[741] *Plavšić*, Judgement (TC), 27 February 2003, paras. 82 to 84.

398. In this case, the Chamber notes that Accused Athanase Seromba surrendered to the authorities of the Tribunal on 6 February 2002, without the arrest warrant issued against him being executed by the Italian authorities.[742] The Chamber finds this to be a voluntary surrender and, therefore, considers the voluntary surrender of the Accused as a mitigating circumstance in determining the sentence.

The young age of the Accused

399. The Chamber notes the relatively young age of Accused Athanase Seromba, who was 31 years old at the time of the events,[743] and the possibility of his rehabilitation.

3.5 Sentence

The general practice regarding prison sentences in Rwanda

400. The Chamber notes that the Rwandan law of 26 January 2001[744] classifies persons prosecuted for aiding and abetting the genocide and crime against humanity in category 1(b): "(b) Persons who acted in positions of authority at the national, provincial or district level, in political parties, the army, religious organizations or the militiamen, and who committed or encouraged others to commit such crimes".

401. The Chamber also notes that Rwanda, like other countries that have incorporated genocide or crimes against humanity in their domestic law, has provided very severe penalties for these crimes.[745]

402. The Trial Chamber recalls, however, that Rwandan law and sentences passed by the Rwandan courts are to be used only as a reference,[746] since such reference is but one of the factors that must be taken into account in determining sentence.[747] In fact, the Tribunal can only

[742] *Seromba*, Decision on the Prosecutor's Ex-Parte Request for Search, Seizure, Arrest and Transfer, 3 July 2001; *Seromba*, Warrant of Arrest and Order for Transfer, 4 July 2001; see letter dated 11 July 2001 from the Italian Justice Ministry to the Registrar of the International Criminal Tribunal for Rwanda.

[743] See the following exhibits: Italian immigration document for Athanase Sumba Bura (P-6) and Zaïrian passport for Athanase Sumba Bura (P-7) which certify that the Accused was born in 1963.

[744] Article 51 of Organic Law No. 40/2000 of 26/01/2001 Setting up Gacaca Jurisdictions and Organizing Prosecutions for Offences Constituting Genocide or Crimes Against Humanity Committed between 1 October 1990 and 31 December 1994.

[745] "Defendants coming within the first category who did not want to have recourse to the confession and guilt plea procedure within conditions set in Article 56 of this organic law or whose confession and guilt plea have been rejected, incur a death penalty or life imprisonment. Defendants who have made recourse to the confession and guild plea procedure within conditions provided for in Article 56 of this organic law are sentenced to imprisonment ranging from 25 years to life imprisonment". Article 68 of Organic Law No. 40/2000 of 26/01/2001 setting up Gacaca Jurisdictions and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed between October 1, 1990 and December 31, 1994.

[746] Article 23(1) of the Statute and Article 101(B)(iii) of the Rules.

[747] *Kambanda*, Judgement (TC), 4 September 1998, para. 23.

impose on the Accused a sentence of imprisonment for the remainder of his life and not the death sentence, which is applied in Rwanda.[748]

403. Furthermore, the Chamber notes that direct participation of an accused in crimes committed generally attracts a higher sentence than criminal participation by way of aiding and abetting the commission of the crimes.[749] Thus, a sentence of life imprisonment is generally imposed upon persons who directly planned or ordered the criminal acts, particularly those who clearly had authority and influence at the time the crimes were committed, as well as those who participated in those crimes with particular zeal or sadism.[750]

Multiple sentences

404. Under Rule 101(C) of the Rules, the Chamber has discretion to determine whether the sentences it has passed are to be served consecutively or concurrently.[751] In this regard, the Chamber recalls that the Appeals Chamber held that "nothing in the Statute or Rules expressly states that a Chamber must impose a separate sentence for each count on which an accused is convicted".[752] The Chamber further notes that in *Blaškić*, the Appeals Chamber held *inter alia* as follows: "The crimes ascribed to the accused have been characterised in several distinct ways but form part of a single set of crimes committed in a given geographic region during a relatively extended time-span ... In light of this overall consistency, the Trial Chamber finds that there is reason to impose a single sentence for all the crimes of which the accused has been found guilty".[753]

Credit for time served

405. Accused Athanase Seromba surrendered to the Tribunal's authorities on 6 February 2002. Consequently, the Chamber will grant him credit for the period spent in custody from the date of his arrest to the date of this Judgement, pursuant to Article 101(D) of the Rules of Procedure and Evidence.

[748] The Chamber notes in this regard that Rwanda is currently considering abolishing the death penalty.
[749] See *Semanza*, Judgement (AC), 20 May 2005, para. 388.
[750] *Muhimana*, Judgement (TC), 28 April 2005, paras. 604-616; *Musema*, Judgement (AC), 16 November 2001, para. 383.
[751] *Kambanda*, Judgement (AC), 19 October 2000, para. 102.
[752] *Kambanda*, Judgement (AC), 19 October 2000, para. 102.
[753] Ibid., paras. 109-10.

CHAPTER VI: DISPOSITION

FOR THE FOREGOING REASONS, the Trial Chamber, delivering this judgement in public, inter parties and in the first instance, pursuant to the Statute and the Rules of Procedure and Evidence;

HAVING CONSIDERED all of the evidence and arguments of the parties;

HAVING FOUND Athanase Seromba **GUILTY** of the crime of genocide and crime against humanity (extermination);

SENTENCES Athanase Seromba to a single sentence of fifteen (15) years imprisonment;

RULES that this sentence shall be enforced immediately;

RULES that pursuant to Rule 101(D) of the Rules, the time that Athanase Seromba spent in custody, calculated from the date of his surrender on 6 February 2002, and any additional period spent in custody, pending a decision to appeal, shall be deducted from this sentence;

RULES that pursuant to Rule 103 of the Rules, Athanase Seromba shall remain in the custody of the Tribunal until the necessary arrangements have been made for his transfer to the State where he shall serve his sentence.

Done at Arusha, this Wednesday, 13 December 2006.

[Signed]	[Signed]	[Signed]
Andrésia Vaz Presiding Judge	Karin Hökborg Judge	Gustave G. Kam Judge

ANNEX I: PROCEDURAL BACKGROUND

1. Pre-trial phase

1. The Indictment against Athanase Seromba was filed by the Prosecutor on 8 June 2001 and confirmed on 3 July 2001 by Judge Lloyd Williams, subject to the correction of grammatical and typographical errors.[754] Following a request by the Prosecutor, the Presiding Judge also ordered the non-disclosure to the public, the media or to the suspect of the names of the witnesses and suspects identified in the supporting materials that accompagnied the Indictment or any other information that might permit their identification.

2. On 4 July 2001, Judge Lloyd Williams issued a warrant of arrest against the Accused.[755] On 10 July 2001, in execution of the order for transfer issued by the said Judge, the Registrar of the Tribunal transmitted the warrant of arrest and the Indictment to the Italian Minister of Justice.

3. On 6 February 2002, the Accused surrendered to the authorities of the Tribunal and was placed in detention. The Accused made his initial appearance before Judge Navanethem Pillay on 8 February 2002 and entered a plea of not guilty to each of the counts in the Indictment.[756] On 12 February 2002, the Prosecutor served a first request for interview on the Accused.

4. On 14 May 2002, the Prosecutor filed a motion for protective measures for witnesses.

5. In a motion filed on 3 June 2002, the Prosecutor requested the President of the Tribunal to authorize the Trial Chamber to exercise its functions away from the seat of the Tribunal and to hold the trial of the Accused in Rwanda.[757] On 20 June 2002, Judge Navanethem Pillay postponed making a decision on the matter until the Registrar assigned a Defence Counsel for the Accused.[758]

6. On 10 September 2002, the Prosecutor filed an addendum to his motion for witness protection measures.

7. On 3 March 2003, the Registrar assigned Mr. Alfred Pognon as Lead Counsel for the Defence.

8. On 17 April 2003, the Prosecutor wrote a letter to the Defence inviting the Accused to review the evidence.

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[754] *Seromba*, "Decision on the Prosecutor's Ex Parte Request for Search, Seizure, Arrest and Transfer", 4 July 2001 (Judge Lloyd G. Williams asked the Prosecutor to correct paragraphs 2, 5, 8, 11, 17, 19, 25, 28, 32, 33, 35, 38, 39, 40, 43, 48 and Count 4 of the Indictment).
[755] *Seromba*, Warrant of Arrest and Order for Transfer, 4 July 2001.
[756] Transcript, 8 February 2002, p. 16 (open session).
[757] *Seromba*, Office of the Prosecutor, "Prosecutor's Motion for Trial in Rwanda", 3 June 2002.
[758] *Seromba*, Interoffice Memorandum from Judge Navanethem Pillay to Prosecutor Carla Del Ponte, 20 June 2002.

9. On 2 May 2003, the Defence filed a motion to annul or withdraw the Indictment, on the grounds that the Prosecutor's failure to question the suspect before issuing an indictment against him amounted to a procedural defect invalidating the Indictment.

10. On 30 June 2003, Judge Erik Møse granted the Prosecutor's motion for protective measures for victims and witnesses, ordering the Prosecution to disclose any unredacted witness statements 21 days prior to resumption of the trial.[759]

11. On 8 January 2004, the Prosecutor withdrew his motion for trial in Rwanda.[760]

12. On 13 January 2004, the Trial Chamber, sitting in the person of Judge Erik Møse, dismissed the Defence motion to annul or withdraw the Indictment,[761] and ruled that neither the Statute nor the Rules required the Prosecution to interview a suspect prior to indicting.

13. A status conference to assess progress of the preparation for commencement of the trial was also held on 13 January 2004. The Chamber invited the Prosecutionr to file its Pre-Trial Brief.[762] The Defence submitted that it would be ready only in September 2004.[763]

14. On 14 January 2004, Judge Erik Møse granted the Prosecutor's request to withdraw its motion for trial in Rwanda.[764]

15. On 20 January 2004, the Prosecutor filed the initial version of his Pre-Trial Brief.

16. On 20 August 2004, the Prosecution disclosed its list of exhibits to the Defence.

17. On 27 August 2004, the Prosecutor filed the final version of the Pre-Trial Brief. Exhibits were filed on 30 August 2004. A corrigendum to the Pre-Trial Brief was filed on 7 September 2004. On 15 September 2004, other exhibits were filed, as well as the order of appearance of Prosecution witnesses.

18. A pre-trial conference was held on 20 September 2004. The Chamber noted the absence of the Accused at that conference.[765] The Prosecution stated that it had fully discharged its pre-trial obligations, in particular with respect to disclosure of materials to the Defence.[766] The

[759] *Seromba*, "Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses", 30 June 2003.
[760] *Seromba*, Office of the Prosecutor, "Request by the Prosecutor to Withdraw Motion for Trial in Rwanda", 8 January 2004.
[761] *Seromba*, "Decision on the Defence Motions to Annul or Withdraw the Indictment", 13 January 2004.
[762] Transcript, 13 January 2004, p. 21 (closed session).
[763] *Ibid.*, p. 26 (closed session).
[764] *Seromba*, Decision on the "Prosecution Request to Withdraw its Motion for Trial in Rwanda", 14 January 2004.
[765] Transcript, 20 September 2004, Pre-Trial Conference, p. 2 (open session).
[766] *Ibid.*, pp. 3-4 (open session).

Defence requested that the Prosecution disclose to it the witness statements referred to in decisions of the Rwandan courts and filed by the Prosecution.[767]

2. Trial phase

19. The trial of the Accused commenced on 20 September 2004. The Accused participated in a strike ation called by some accused persons of the Tribunal and so did not attend the first three days of the trial. Defence Counsel, Messrs. Pognon and Monthé, explained that their client had asked them not to represent him during the strike.[768] The Chamber ruled that the Accused's instructions did not amount to a termination of the Defence Counsel's assignment to represent the Accused and ordered them to continue to represent the Accused for as long as he refused to appear before the Chamber.[769] After stating that they could not represent the Accused without his authorization, the Defence Counsel left the court room, thus compelling the Chamber to adjourn the trial until 27 September, that date on which they returned.

20. In letters dated 24 September 2004 and 27 September 2004 respectively, Defence Counsel and the Accused, as well as the *Association des avocats de la défense* (*ADAD*), in an application to appear as *amicus curiae*, requested the Chamber to reconsider its Oral Decision of 21 September 2004. The Chamber dismissed this first motion, having concluded that the warning of 21 September 2004 did not constitute a sanction,[770] and that the decision to warn Counsel was well-founded in law, falling within its inherent powers to direct and control the proceedings and, therefore, is not open to any challenge, even in the face of special circumstances.[771] With respect to the *ADAD* application, the Chamber refused to authorize the association to appear as *amicus curiae*, having found that the Brief submitted by *ADAD* raised no such relevant issues as would enlighten the Chamber.[772]

21. The Chamber heard 15 Prosecution witnesses: 12 witnesses from 27 September to 22 October 2004 and 3 witnesses from 19 January to 25 January 2005, the date the Prosecution closed its case.

22. On 20 January 2005, the Defence filed a motion for protective measures for witnesses.

23. A status conference was held on 25 January 2005. The Chamber requested the Defence to file its list of witnesses as quickly as possible and ordered that the trial resume on 1 March 2005.[773]

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[767] *Ibid.*, p. 8 (open session).
[768] Transcript, 20 September 2004, Trial, p. 2 (open session); *Seromba*, Transcript, 21 September 2004, p. 1 (open session).
[769] Transcript, 21 September 2004, p. 3 (open session).
[770] *Seromba, Décision sur les requêtes en annulation de sanction et en intervention en qualité* d'amicus curiae, 22 October 2004, para. 14.
[771] *Ibid.*, para. 18.
[772] *Ibid.*, para. 21.
[773] Transcript, 25 January 2004, Status Conference, p. 13 (open session).

24. On 31 January 2005, the Chamber rendered a decision authorizing protective measures for the Defence witnesses and ordered the Defence to disclose unredacted statements of its witnesses 21 days prior to the resumption of trial.[774]

25. On 9 February 2005, the Defence filed a motion for extension of the time-limit for disclosing the unredacted statements of its witnesses, and another motion for the same purpose on 17 February 2005. On 1 March 2005, the Chamber ordered the Defence to file, no later than 14 March 2005, its Pre-Defence Brief, the complete and precise list of witnesses which it intended to call to testify, a summary of facts and the estimated length of the testimony of each witness.[775] The Chamber adjourned the trial to 4 April 2005 for the commencement of the Defence case.[776]

26. On 11 March 2005, the Defence filed a new motion for further extensions. During a status conference held on 5 April 2005, the Trial Chamber postponed resumption of the trial to 10 May 2005 and ordered the Defence to file its Pre-Defence Brief, the summaries and the statements of its witnesses within the prescribed time-limit, so that the trial could resume on 10 May 2005.[777]

27. On 9 April 2005, the Accused sent a letter to his Lead Counsel, Mr. Pognon, stating that he no longer wanted to be represented by him because he had lost confidence in him.

28. On 13 April 2005, the Chamber ordered the Defence to disclose to the Prosecution the unredacted statements of its witnesses no later than 21 days prior to resumption of trial.[778]

29. On 15 April 2005, the Accused wrote to the Registrar requesting the withdrawal of the assignment of his Lead Counsel, Mr. Pognon. On 18 April 2005, Mr. Pognon agreed to step down and to withdraw immediately.

30. On 19 April 2005, the Defence filed a Pre-Defence Brief, but did not comply with the orders for disclosure of unredacted Defence witness statements.

31. On 10 May 2005, given the withdrawal of Mr. Pognon and the absence of Mr. Monthé, the Chamber decided to adjourn the trial *sine die*.[779]

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[774] *Seromba, Décision relative à la requête aux fins de prescription de mesures de protection des témoins de la Défense*, 31 January 2005.
[775] *Seromba, Décision relative à la requête de la Défense aux fins de délai*, 1 March 2005, para. 21.
[776] *Ibid.*, para. 20.
[777] Transcript, 5 April 2005, Pre-Trial Conference, p. 19.
[778] *Seromba, Décision relative à la requête du Procureur aux fins de communication des déclarations des témoins de la Défense*, 13 April 2005.
[779] Transcript, 10 May 2005, p. 22 (open session).

32. On 19 May 2005, the Chamber directed the Registrar to respond, no later than 27 May 2005, to the Accused's Motion of 15 April 2005 concerning the assignment of a new counsel.[780] On 20 May 2005, the Registrar withdrew the assignment of the Lead Counsel,[781] and on 8 June 2005, assigned Mr. Monthé in his place.

33. On 23 June 2005, the Defence filed a motion to withdraw the Pre-Defence Brief filed by the previous Lead Counsel.

34. During the status conference held on 24 June 2005, the Chamber granted the Defence's request for adjournment and set the date of 31 October 2005 for resumption of trial.[782]

35. In a 7 July 2005 Decision,[783] the Chamber authorized the Defence to file a new Pre-Defence Brief and ruled that the Defence motion for withdrawal of the 19 April 2005 Preliminary Brief was without merit. The Chamber also authorized the Prosecution to inspect the exhibits that the Defence intended to rely on, at least 21 days prior to the commencement of the Defence case. The Chamber ordered the Defence to disclose its new Preliminary Brief and the unredacted statements of its witnesses to the Prosecution at least 21 days prior to the resumption of trial, as well as the redacted and unredacted statements of Defence witnesses at least 60 days and 21 days respectively prior to the resumption of the trial.

36. On 10 October 2005, the Defence filed a new Pre-Defence Brief, which was subsequently amended on 19 October 2005. On 25 and 27 October 2005, the Defence filed the statements of its witnesses without disclosing their identity. On 28 October 2005, the Defence filed the order of appearance of the Defence witnesses, without disclosing their identity.

37. On 31 October 2005, the Defence opened its case.

38. On 16 December 2005, the Chamber rendered five decisions: a decision setting 13 February 2006 as the date of resumption of the trial;[784] a decision ordering the transfer of detained witnesses to Arusha;[785] a decision ordering the opening of an investigation into the retraction of testimony by Witness FE36;[786] a decision ordering the opening of an investigation into the request for long-term protection measures for Witnesses FE36, FE35 and CF14;[787] and a

[780] *Seromba*, Order, 19 May 2005, p. 19.
[781] *Seromba*, Registrar, Decision to withdraw the assignment of Mr. Alfred Pognon as Counsel for Athanase Seromba, 20 May 2005.
[782] Transcript, 24 June 2005, Status Conference, p. 8.
[783] *Seromba, Décision relative à la fixation d'une date de reprise du procès*, 7 July 2005.
[784] *Seromba, Décision portant fixation de la date de reprise du procès au 13 février 2006*, 16 December 2005.
[785] *Seromba, Ordonnance relative à la requête de la Défense aux fins du transfert des témoins détenus*, 16 December 2005.
[786] *Seromba, Décision relative à la requête de la Défense aux fins de voir ordonner l'ouverture d'une enquête sur les circonstances et les causes réelles de rétraction du témoin portant le pseudonyme FE36*, 16 December 2005.
[787] *Seromba, Décision relative à la requête de la Défense aux fins de voir ordonner des mesures de protection à long terme à l'égard des témoins de la Défense portant les pseudonyme CF14, FE35 et FE36*, 16 December 2005.

decision ordering the Prosecution to disclose to the Defence, through the Witnesses and Victims Support Section, the identity and addresses of certain witnesses whom it no longer intended to call and authorising the Defence to enter into contact with some of those witnesses.[788]

39. In a memorandum dated 7 February 2006, the President of the Tribunal postponed the date of resumption of the trial to 23 March 2006.

40. On 7 March 2006, the Defence filed a motion to add Witnesses PS1 and PS2 to its witness list and to drop witnesses CF3 and FE25.

41. The Defence resumed presentation of its evidence on 23 March 2006.

42. On 24 March 2006, the Chamber granted the motion to add Witnesses PS1 and PS2 to the list of Defence witnesses.[789]

43. On 29 March 2006, the Chamber granted the Prosecution's motion for sites visit in Rwanda.[790] From 8 to 11 April 2006, the Chamber, the Defence, the Prosecutor and the Registrar visited sites in Kivumu, Rwanda.

44. On 12 April 2006, the Defence dropped Witnesses CF4 and CF13 from its list of witnesses and modified the order of appearance of Witnesses PA1, PS1, PS2 and the Accused. The Chamber adjourned the trial to 18 April 2006.[791]

45. On 18 April 2006, the Defence dropped PS1 from its witness list and informed the Chamber that Witness PS2 could not testify in Arusha before May 2006.[792]

46. On 20 April 2006, the Chamber granted the Defence motion for the deposition of witness PS2 to be taken by means of a video-conference.[793]

47. On 21 April 2006, the Chamber ordered the Accused to testify on 24 April 2006[794] and authorized the parties to send representatives to South Africa for the deposition of Witness PS2 by video-link.[795]

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[788] *Seromba, Décision relative à la Requête aux fins d'obtenir la divulgation de l'identité et de l'adresse des témoins de l'accusation CAN, CNY, CBW, CNV, CBX, CNP, CNE, CNI, CNO, [...] non retenus sur la liste finale du Procureur et l'autorisation de prendre contact avec ces derniers*, 16 December 2005.
[789] Transcript, 24 March 2006, p. 39 (open session).
[790] *Seromba*, Decision on the "Prosecutor's Motion for Site Visits in Rwanda", 29 March 2006.
[791] Transcript, 12 April 2006, pp. 55-57 (open session).
[792] Transcript, 18 April 2006, p. 1 (open session).
[793] *Seromba*, Decision on the "Defence Motion for the Deposition of Witness PS2 to be Taken by Video-Conference", 20 April 2006.
[794] Transcript, 21 April 2006, p. 1 (closed session).
[795] *Ibid.*, p. 42 (closed session).

48. On 21 April 2006, the Defence argued that the Accused could not testify before Witness PS2's deposition is given and requested the Chamber to reconsider its Oral Decision of 21 April 2006.[796] The Chamber dismissed the Defence request, given that its 21 April 2006 Decision violated neither Article 20 of the Statute nor Rule 85 of the Rules, and that it had not forced the Accused to testify against his will, but had simply reversed the order of appearance of Witness PS2 and the Accused in order to meet the deadline for the close of the Defence case.[797] The Chamber also dismissed the Defence's request for certification for appeal of that Decision.[798]

49. The Defence, subsequently, filed a motion with the Bureau of the Tribunal for disqualification of the Judges of the Trial Chamber. On 25 April 2006, the Bureau dismissed the Defence motion.[799]

50. The trial resumed on 26 April 2006. The Defence disclosed that it was appealing the decision of the Bureau and asked that the trial be adjourned pending a decision by the Appeal Chamber.[800] The Chamber dismissed the Defence motion to adjourn the proceedings.[801] With the Defence having refused to examine Witness PS2, the Chamber held that it had waived its right to examine the witness.[802] The Chamber adjourned the proceedings to the following day to enable the Accused to be present at the hearing.[803]

51. On 27 April 2006, the Defence declared that the Accused had decided not to attend the proceedings until the Appeal Chamber ruled on the Defence appeal against the Bureau's decision on the disqualification motion.[804] The Trial Chamber concluded that the Defence had waived its right to examine the Accused and, therefore there was no other witness to be heard, and that the Defence had closed its case. The Chamber ordered that the Prosecutor's Final Brief be filed no later than 26 May 2006, that of the Defence no later than 16 June 2006, and that the parties should present their closing arguments on 27 June 2006.[805]

52. On 22 May 2006, the Appeal Chamber dismissed the Defence appeal against the decision of the Bureau of the Tribunal on the motion for disqualification.[806]

53. On 5 June 2006, the Defence filed a motion for extention of the time-limit for the filing of its Closing Brief on 22 June 2006. The Chamber granted that motion on 8 June 2006.[807]

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[796] Transcript, 24 April 2006, pp. 1-2 (open session).
[797] *Ibid.*, pp. 6-7 (open session).
[798] *Ibid.*, p. 7 (open session).
[799] *Seromba*, Decision on Motion for Disqualification of Judges, 25 April 2006.
[800] Transcript, 26 April 2006, p. 4 (open session).
[801] *Ibid.*, p. 7 (open session).
[802] *Ibid.*, p. 8 (open session).
[803] *Ibid.*, p. 20 (open session).
[804] Transcript, 27 April 2006, p. 3 (open session).
[805] *Ibid.*, p. 5 (open session).
[806] *Seromba*, Decision on Interlocutory Appeal of a Bureau Decision, 22 May 2006.

54. The Prosecutionr filed its Closing Brief on 26 May 2006, while the Defence filed its own Brief on 22 June 2006. The Defence also filed a corrigendum to its Closing Brief on 26 June 2006.

55. The parties presented their closing arguments on 27 and 28 June 2006.

56. On 28 June 2006, the Chamber granted the Prosecutor's motion to exclude as out of time the corrigendum to the Defence Final Trial Brief and ordered its exclusion from the proceedings.[808]

[807] *Seromba*, Decision on "Defence Motion for an Extension [of Time] to file the Final Trial Brief", 8 June 2006.
[808] *Seromba*, Decision on "Prosecutor's Extremely Urgent Motion to Exclude as Out of Time the Corrigendum to the Defence Final Trial Brief (Reasons for the Oral Decision of 27 June 2006)", 28 June 2006.

ANNEX II: LIST OF SOURCES CITED AND ABBREVIATIONS

A. List of Judgements

Long form	*Short form*
The Prosecutor v. Akayesu, Case No. ICTR-96-4, Judgement (TC), 2 September 1998.	*Akayesu*, Judgement (TC), 2 September 1998.
Prosecutor v. Babić, Case No. IT-03-72-S, Judgement (TC), 29 June 2004.	*Babić*, Judgement (TC), 29 June 2004.
The Prosecutor v. Bagilishema, Case No. ICTR-95-1, Judgement (TC), 7 June 2001.	*Bagilishema*, Judgement (TC), 7 June 2001.
Prosecutor v. Blagojević & Jokić, Case No. IT-02-60-T, Judgement (TC), 17 January 2005.	*Blagojevic & Jokić*, Judgement (TC), 17 January 2005.
Prosecutor v. Blaškić, Case No. IT-95-14, Judgement (TC), 3 March 2000.	*Blaškić*, Judgement (TC), 3 March 2000.
Prosecutor v. Erdemović, Case No. IT-96-22, Judgement (TC), 29 November 1996.	*Erdemović*, Judgement (TC), 29 November 1996.
The Prosecutor v. Kambanda, Case No. ICTR-97-23-S, Judgement (TC), 4 September 1998.	*Kambanda*, Judgement (TC), 4 September 1998.
The Prosecutor v. Kambanda, Case No. ICTR-97-23-S, Judgement (AC), 19 October 2000.	*Kambanda*, Judgement (AC), 19 October 2000.
The Prosecutor v. Kayishema, Case No. ICTR-95-1, Judgement (TC), 21 May 1999.	*The Prosecutor v. Kayishema*, Case No. ICTR-95-1, Judgement (TC), 21 May 1999.
The Prosecutor v. Kayishema, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001.	*Kayishema*, Judgement (AC), 1 June 2001.
Prosecutor v. Kordić, Case No. IT-95-14/2, Judgement (AC), 17 December 2004.	*Kordić*, Case No. IT-95-14/2, Judgement (AC), 17 December 2004.
Prosecutor v. Krnojelać, Case No. IT-97-25, Judgement (TC), 15 March 2002.	*Krnojelać*, Judgement (TC), 15 March 2002.
Prosecutor v. Krnojelać, Case No. IT-97-25, Judgement (AC), 17 September 2003.	*Krnojelać*, Judgement (AC), 17 September 2003.
Prosecutor v. Krstić, Case No. IT-98-33, Judgement (TC), 2 August 2001.	*Krstić*, Judgement (TC), 2 August 2001.

The Prosecutor v. Mucić, Case No. no IT-96-21, Judgement (TC), 16 November 1996.	*Mucić*, Judgement (TC), 16 November 1996.
The Prosecutor v. Muhimana, Case No. ICTR-95-1, Judgement (TC), 28 April 2005.	*Muhimana*, Judgement (TC), 28 April 2005.
The Prosecutor v. Musema, Case No. ICTR-96-13, Judgement (TC), 27 January 2000.	*Musema*, Judgement (TC), 27 January 2000.
The Prosecutor v. Musema, Case No. ICTR-96-13-T, Judgement (AC), 16 November 2001.	*Musema*, Judgement (AC), 16 November 2001.
The Prosecutor v. Nahimana, Case No. ICTR-99-52-T, Judgement (TC), 3 December 2003.	*Nahimana*, Judgement (TC), 3 December 2003.
The Prosecutor v. Ndindabahizi, Case No. ICTR-2001-71-T, Judgement (TC), 15 July 2004.	*Ndindabahizi*, Judgement (TC), 15 July 2004.
The Prosecutor v. Niyitegeka, Case No. ICTR-96-14, Judgement (TC), 16 May 2003.	*Niyitegeka*, Judgement (TC), 16 May 2003.
The Prosecutor v. Ntagerura, Case No. ICTR-99-46-T, Judgement (TC), 25 February 2004.	*Ntagerura*, Judgement (TC), 25 February 2004.
The Prosecutor v. Ntagerura, Case No. ICTR-99-46-T, Judgement (AC), 7 July 2006.	*Ntagerura*, Judgement (AC), 7 July 2006.
Prosecutor v. Plavšić, Case No. IT-00-39, Judgement (TC), 27 February 2003.	*Plavšić*, Judgement (TC), 27 February 2003.
The Prosecutor v. Ruggiu, Case No. ICTR-97-32-I, Judgement (TC), 1 June 2000.	*Ruggiu*, Judgement (TC), 1 June 2000.
The Prosecutor v. Rutaganda, Case No. ICTR-96-3, Judgement (TC), 6 December 1999.	*Rutaganda*, Judgement (TC), 6 December 1999.
The Prosecutor v. Semanza, Case No. ICTR-97-20-T, Judgement (TC), 15 May 2003.	*Semanza*, Judgement (TC), 15 May 2003.
The Prosecutor v. Semanza, Case No. ICTR-97-20-T, Judgement (AC), 20 May 2005.	*Semanza*, Judgement (AC), 20 May 2005.
The Prosecutor v. Serushago, Case No. ICTR-98-39-A, Judgement (TC), 6 April 2000.	*Serushago*, Judgement (TC), 6 April 2000.
The Prosecutor v. Simba, Case No. ICTR-01-76,	*Simba*, Judgement (TC), 13 December 2005.

Prosecutor v. Simić, Case No. IT-95-9/2-S, Judgement (TC), 17 October 2002.	*Simić*, Judgement (TC), 17 October 2002.
Prosecutor v. Tadić, Case No. IT-94-1, Judgement (AC), 15 July 1999.	*Tadić*, Judgement (AC), 15 July 1999.

B. List of decisions and orders

Long form	*Short form*
The Prosecutor v. *Bagosora et al.*, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004.	*Bagosora*, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004.
The Prosecutor v. Karemera et al., Case No. ICTR-98-44-AR73(C), Decision on Interlocutory Appeal of the Prosecutor's Decision on Judicial Notice (AC), 16 June 2006.	*Karemera*, Decision on Interlocutory Appeal of the Prosecutor's Decision on Judicial Notice (AC), 16 June 2006.
Prosecutor v. Kupreškić, Case No. IT-95-16, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque* (TC), 17 February 1999.	*Kupreškić*, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque* (TC), 17 February 1999.
The Prosecutor v. Seromba, Case No. ICTR-2001-66-I, Decision on the Prosecutor's *Ex Parte* Request for Search, Seizure, Arrest and Transfer, 3 July 2001.	*Seromba*, Decision on the Prosecutor's *Ex Parte* Request for Search, Seizure, Arrest and Transfer, 3 July 2001.
The Prosecutor v. Seromba, Case No. ICTR-2001-66-I, Warrant of Arrest and Order for Transfer, 4 July 2001.	*Seromba*, Warrant of Arrest and Order for Transfer, 4 July 2001.
The Prosecutor v. Seromba, Case No. ICTR-2001-66-I, *Décision relative à la requête de la Défense aux fins de voir ordonner l'ouverture d'une enquête sur les circonstances et les courses réelles de retraction du témoins portent le pseudonyme FE36*, 20 April 2006.	*Seromba, Décision relative à la requête de la Défense aux pris de voir ordonner l'ouverture d'une enquête sur les circonstances et les causes réelles de retraction du témoin portent le pseudonyme FE36*, 20 April 2006.

C. List of Rwandan laws

- *Décret-loi du 12 février 1975*, *Journal Officiel de la République Rwandaise*, 1975.

- Organic Law No. 40/2000 of 26 January 2001 Setting up "Gacaca Jurisdictions" and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity committed between October 1, 1990 and December 31, 1994.

D. Other document

- United Nations Report of the International Law Commission on the Work of its Forty-Eighth Session, 6 May to 26 July 1996, General Assembly Official Record, Fifty-First Session, Supplement No. 10, p. 90, (A/51/10) (1996).

E. List of abbreviations

Long form	*Short form*
Association des avocats de la Défense	*ADAD*
Trial Chamber III	Chamber
United Nations Security Council	Security Council
United Nations	UN
Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda	Rules
Statute of the International Criminal Tribunal for Rwanda	Statute
International Criminal Tribunal for Rwanda	Tribunal
Trial Chamber	TC
Appeals Chamber	AC

ANNEX III: THE INDICTMENT

ICTR-2001-66-I
5-7-2001
(118 - 111)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-2001-66-I

THE PROSECUTOR

AGAINST

Athanase SEROMBA

INDICTMENT

I. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute of the Tribunal") charges:

Athanase SEROMBA

with **GENOCIDE**; or in the alternative **COMPLICITY IN GENOCIDE**; **CONSPIRACY TO COMMIT GENOCIDE**; and **CRIMES AGAINST HUMANITY** for **EXTERMINATION**; offenses stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below.

II. THE ACCUSED:

Father **Athanase SEROMBA** was born at Rutziro commune, KIBUYE préfectue, Rwanda. He was a catholic priest at the parish of Nyange, located in sector Nyange, KIVUMU commune, KIBUYE préfecture.

III. CHARGES, *including a* CONCISE STATEMENT OF FACTS:

Count 1: GENOCIDE:

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Athanase SEROMBA** with *GENOCIDE, a crime stipulated in Article 2(3)(a) of the Statute*, in that on or between the dates of 6 April 1994 and 20 April 1994, in KIVUMU commune, KIBUYE *préfecture,* Rwanda, Athanase SEROMBA was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, a racial or ethnic group;

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

Or alternatively

Count 2: COMPLICITY IN GENOCIDE:

The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase SEROMBA **with *COMPLICITY IN GENOCIDE, a crime stipulated in Article 2(3)(e) of the Statute,*** in that on or between the dates of 6 April 1994 and 20 April 1994 in KIVUMU commune, KIBUYE *prefecture,* Rwanda, Athanase SEROMBA was an accomplice to the killing or causing serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, a racial or ethnic group.

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

Concise statements of facts for Count 1 and Count 2

1. During the events referred to in this indictment, Tutsi, Hutu, and Twa were identified as ethnic or racial groups.

2. KIVUMU is one of the communes of KIBUYE préfecture, Republic of Rwanda. During the events described in this indictment it was a commune with a large concentration of Hutu resident, nearly 50,000 Hutu and only 6000 Tutsi.

3. The Nyange Parish was located in Nyange sector, KIVUMU commune, KIBUYE préfecture. Its Church (Nyange Church) had a seating capacity for 1500 persons.

4. During the events referred to in this indictment, Father Athanase SEROMBA was the parish priest, in charge of the Parish of Nyange.

5. During the events referred to in this indictment, Athanase SEROMBA, a priest responsible for Nyange Parish, Grégoire NDAHIMANA, the *bourgmestre* of KIVUMU commune; Fulgence KAYISHEMA, a police inspector of KIVUMU commune and others not known to the Prosecution, prepared and executed a plan of extermination of the Tutsi population.

6. After the death of the Rwandan President, on 6 April 1994, attacks against the Tutsi began at KIVUMU commune, causing the deaths of some Tutsi civilians, including, Grégoire NDAKUBANA, Martin KARAKEZI and Thomas MWENDEZI.

7. To escape the attacks directed against them, Tutsis from the different sectors of KIVUMU commune, fled their homes to seek refuge in public buildings

and Churches, including the Nyange Church. The *bourgmestre* and communal police gathered and transported the refugees from the different sectors of KIVUMU commune to Nyange Parish.

8. Athanase SEROMBA questioned the refugees transferred to the Parish about those not yet present, then noted the names of the remaining refugees on a list he gave to the bourgmestre Grégoire NDAHIMANA for the purpose of looking for and bringing them to the Parish.

9. A Tutsi named Alexis KARAKE, his wife and his children (more than six) were brought from Gakoma cellule to Nyange Church through that list.

10. On or about 10 April 1994, several important meetings were held at the Parish of Nyange and the communal office. Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others not known to the Prosecutor attended these meetings.

11. During the said meetings it was decided to request Kibuye prefecture for gendarmes, to gather all Tutsi civilians of KIVUMU commune at Nyange Church in order to exterminate them.

12. From about 12 April 1994, refugees were confined by the gendarmes and surrounded by the militia and Interahamwe armed with traditional and conventional weapons. Father Athanase SEROMBA did prevent the refugees from taking food and instructed the gendarmes to shoot any "Inyenzi" (reference to Tutsi) who tried to take some food from the *Presbytere* or the Parish banana groves. He refused to celebrate mass for them and stressed that he didn't want to do that for the Inyenzi.

13. On or about 12 April 1994, Father Athanase SEROMBA expelled from the Parish four Tutsi employees (Alex, Félécien, Gasore, and Patrice). He forced them to leave the Parish, while Interahamwe and militia were beginning the attacks against refugees of the Parish.

14. Father Athanase SEROMBA knew that removing the employees would cause their death. In fact, only one (Patrice) of these people was able to return to the Parish, having been gravely wounded, but Athanase SEROMBA prevented him from entering the Church. He was killed by the Interahamwe and the militia.

15. On or about 13 April 1994, the Interahamwe and the militia surrounding the Parish, launched an attack against the refugees in the Church. The refugees defended themselves by pushing the attackers out of the Church, to a place named "*la statue de la Sainte Vièrge*". The attackers in turn, threw a grenade causing many deaths among the refugees. The survivors quickly tried to return to the Church, but Father Athanase SEROMBA ordered that all doors be closed, leaving many refugees (about 30) outside to be killed.

16. On or about 14 April 1994, in the afternoon, Father SEROMBA met Fulgence KAYISHEMA and Gaspard KANYARUKIGA in his Parish Office. Soon afterwards, Fulgence KAYISHEMA went to bring some fuel, using one

of the KIVUMU commune officila vehicles. That fuel was used by the Interahamwe and the militia to burn down the Church, while the gendarmes and members of the communal police launched grenades.

17. On that same day, Athanase SEROMBA chaired a meeting in his Parish Office with Fulgence KAYISHEMA, Grégoire NDAHIMANA, Gaspard KANYARUKIRA and others unknown to the Prosecution. Immediately after this meeting, following a request from the refugees for protection, the *bourgmestre* Grégoire NDAHIMANA replied that this war was caused by the Inyenzi who killed the President.

18. On or about 15 April 1994, a bus transporting armed Interahamwe and a priest named KAYIRANGWA arrived at Nyange Parish, from KIBUYE préfecture. Soon thereafter, father SEROMBA held a meeting with priest KAYIRANGWA, Fulgence KAYISHEMA, KANYARUKIGA and others unknown to the Prosecution.

19. After this meeting, Father Athanase SEROMBA ordered the Interahamwe and the militia to launch attacks to kill the Tutsi, beginning with the intellectuals. Following his orders, an attack was launched against the refugees by the Interahamwe, militia, gendarmes and communal police, armed with traditional weapons and firearms, causing the deaths of numerous refugees.

20. On or about 15 April 1994, in the afternoon, the attacks intensified against the refugees of the Church. The Interahamwe and the militias attacked with traditional arms and poured fuel through the roof of the Church, while gendarmes and communal police launched grenades and killed the refugees.

21. During these attacks, Father SEROMBA handed over to the gendarmes a refugee, a Tutsi teacher named GATARE who was killed immediately. This event encouraged and motived the attackers.

22. Again during these attacks, some refugees left the Church for the *Presbytere*. Father SEROMBA found them and informed gendarmes about their hiding place. Immediately thereafter, they were attacked and killed. Among the victims were two Tutsi women (Alexia and Meriam).

23. Many refugees were killed during these attacks. A bulldozer was used by three employees of Astaldi company (Mitima, Maurice and Flanbeau,) to remove the numerous corpses of the victims from the Church. Two additional drivers were requested from Fulgence KAYISHEMA to complete the removal. One of them, Evarist RWAMASIRABO, who had refused to participate was killed immediately.

24. In the meantime Interahamwe, militias, gendarmes and communal police, continued their attacks but were unable to kill all the refugees in the Church.

25. During the attacks described above, Athanase SEROMBA, Grégoire NDAHIMANA, Fulgence KAYISHEMA, Télesphore NDUNGUTSE, Judge

Joseph HABIYAMBERE, assistant *bourgmestre* Védaste MUPENDE and other authorities not known to the Prosecution, were supervising the massacres.

26. When the corpses of victims were removed from the Church, Védaste MUPENDE ordered the driver (Athanase alias 2000) to demolish the Church. The latter refused since the Church was the house of God.

27. Immediately thereafter, Védaste MUPENDE, Fulgence KAYISHEMA and Grégoire NDAHIMANA requested the intervention of Athanase SEROMBA, who came and ordered Athanase alias 2000 to destroy the Church, telling him that Hutu people were numerous and could build another one.

28. Athanase bulldozed the Church and its roof crashed killing more than 2000 Tutsi refugees gathered inside. The few survivors were attacked by the Interahamwe, anxious to finish them off.

29. On or about 16 April 1994, after the destruction of the Church, the authorities held a meeting in the Parish. Soon after, Father SEROMBA ordered the Interahamwe to clean the "rubbish". The corpses of victims were placed into common graves.

30. The transfer of corpses into common graves took about two days, under the supervision of Athanase SEROMBA, Fulgence KAYISHEMA, Grègoire NDAHIMMANA and others unknown to the Prosecution.

31. After the destruction of the Church, almost all the Tutsi population of KIVUMU was killed, and in July 1994, there was no Tutsi known in KIVUMU commune.

32. Before leaving Rwanda, Athanase SEROMBA embezzled all assets of the Parish, including a car.

Count 3: CONSPIRACY TO COMMIT GENOCIDE:

The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase SEROMBA with ***CONSPIRACY TO COMMIT GENOCIDE,*** *a crime stipulated in Article 2(3)(b) of the Statute,* in that on or between the dates of 6 April 1994 and 20 April 1994, in KIVUMU *prefecture*, Rwanda, Athanase SEROMBA a priest responsible for Nyange Parish, did agree with Grégoire NDAHIMANA, *bourgmestre* of Kivumu commune, Fulgence KAYISHEMA, a police inspector of Kivumu commune, Télesphore NDUNGUTSE, Gaspard KANYIKURIGA and other persons not known to the Prosecution, to kill or cause serious bodily or mental harm to 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 virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

33. Father Athanase SEROMBA, Grégoire NDAHIMANA, Fulgence KAYISHEMA, Télesphore NDUNGUTSE, and Gaspard KANYIKURIGA did agree to kill the Tutsi ethnic group, and established a plan or a common scheme to execute the extermination of Tutsi in KIVUMU commune.

34. They held regular meetings at Nyange Parish and the communal office, between the dates of 6 April 1994 and 20 April 1994. During these meetings, they did agree on a common strategy to kill and exterminate all Tutsi in the KIVUMU commune.

35. This plan was carried out following three main actions. First to force Tutsi civilians of KIVUMU commune to leave their homes and take refuge in Nyange Church. For this purpose between 7 and 10 April 1994 local authorities and members of communal police launched attacks against Tutsi in their houses, resulting in the killing of some civilians, and forcing the survivors to take refuge in Nyange Church.

36. On or about 10 April 1994, several important meetings were held at the Parish of Nyange and the communal office. Athanase SEROMBA, Fulgence KAYISHEMA, Gaspard KANYARUKIGA and others not known to the Prosecution attended these meetings.

37. During these said meetings they decided to request Kibuye prefecture for gendarmes, to gather all Tutsi civilians of Kivumu commune at Nyange Church to exterminate them.

38. On or about 12 April 1994, Father SEROMBA chaired a meeting in his Parish Office with, among others, Grégoire NDAHIMANA, and Fulgence KAYISHEMA. Immediately after this meeting, Fulgence KAYISHEMA said that KAYIRANGA (a prosperous Tutsi businessman) must be found and brougth to the Church.

39. On or about 12 April 1994, the bourgmestre Grégoire NDAHIMANA ordered members of the communal police to search for Tutsi civilians, from the list prepared by Athanase SEROMBA, as described above, and bring them to the Church.

40. The second step of the plan consisted of keeping the refugees inside the Church, surrounding the Church with Interahamwe and militias and inflicting on the refugees conditions of life calculated to weaken them physically. The plan also included regular attacks by Interahamwe and militias against the refugees to defeat their endurance.

41. To this end from about 12 April 1994, the gendarmes confined the refugees at the Nyange Church, which was surrounded by the Interahamwe and the militias.

42. Athanase SEROMBA prevented the refugees from having access to sanitary places in the Parish and from taking food, ordering the gendarmes to shoot any

"Inyenzi" who tried to take food from the *Presbytere* or the banana groves of the Parish.

43. On or about 12 April 1994, in the afternoon, Father Athanase SEROMBA chaired a meeting with Grégoire NDAHIMANA and Fulgence KAYISHEMA. Soon after the *bourgmestre* NDAHIMANA said, "*We choose the richest to be killed, the others can go back to their houses*".

44. On or about 13 April 1994, Interahamwe and militias surrounding the Parish, launched an attack against the refugees in the Church, killing about 30 refugees.

45. The third and final step of the plan consisted in assembling a consistent number of killers, including Hutu civilians, to kill all the refugees. That was done with the demolition of the Church, using a caterpillar Bulldozer with more than 2000 Tutsi civilians trapped inside the Church as described above.

46. The massive attack against the Tutsi refugees was conducted on or about 15 April 1994, under the supervision of Father SEROMBA, Fulgence KAYISHEMA, Grégoire NDAHIMANA, Télesphore NDUNGUTSE, Gaspard KANYIRUKIGA and others unknown to the Prosecution.

47. After the complete destruction of the Church, Father Athanase SEROMBA, met with Fulgence KAYISHEMA, Grégoire NDAHIMANA, Gaspard KANYIRUKIGA and the drivers of the caterpillar bulldozer and sat drinking beer togeter.

Count 4: EXTERMINATION as a CRIME AGAINST HUMANITY.

The Prosecutor of the International Criminal Tribunal for Rwanda charges Athanase SEROMBA with ***EXTERMINATION as a CRIME AGAINST HUMANITY***, *as stipulated in Article 3(b) of the Statute*, in that on or between the dates of 7 April 1944 and 20 April 1994, in KIBUYE *préfecture*, Rwanda, Athanase SEROMBA was responsible for killing persons, or causing persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged.

48. On or about 13 April 1994, the Interahamwe and the militia surrounding the Parish, launched an attack against the refugees in the Church. The attackers having been pushed away and out of the Church, to a place named " *la statue de la Sainte Vièrge*". The attackers threw a grenade causing many deaths among the refugees. The survivors quickly tried to return to the Church, but Father Athanase SEROMBA ordered that all doors be closed, leaving many refugees outside (about 30) to be killed.

49. On or about 15 April 1994, Father Athanase SEROMBA ordered or planned abetted and encouraged the destruction of the Church with more than 2000 Tutsi trapped inside causing their deaths.

50. After the destruction of the Church, most of the Tutsi from KIVUMU commune were killed, and in July 1994, there was no Tutsi Known in KIVUMU commune.

The acts and omissions of Athanase SEROMBA detailed herein are punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Dated in Arusha: this 8 day of June 2001

Carla Del Ponte
Prosecutor

THE PROSECUTOR ICTR • TPIR

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
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PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA

Date:	**27 September 2007**	Case Name / *Affaire:*	**The Prosecutor vs.**	**Athanase SEROMBA**
		Case No /*Affaire No.*:	**ICTR-01-66-T**	

To: *A:*

		received by / *reçu par:*	ALO:	received by / *reçu par*
☐	TC1			
☐	Judge E. Møse, President	.....	☐	.....
☒	Judge J. R. Reddy	.....	☐	.....
☐	Judge S. A. Egorov	.....	☐	.....
☒	Judge F. R. Arrey *(Karera)*	.....	☐	.....
☒	....., SLO	.....	☐	
☒	C. Gosnell, Co-ordinator			
☐				
☐	TC2			
☒	Judge W. H. Sekule	.....	☐	.....
☐	Judge A. Ramaroson	.....	☐	.....
☐	Judge K. R. Khan *(Bizimungu et al.)*	.....	☐	.....
☒	Judge A. J. N. de Silva	.....	☐	.....
☒	Judge S. B. Bossa *(Nyiramasuhuku et al.)*	.....	☐	.....
☐	Judge L. G. Muthoga *(Bizimungu et al.)*	.....	☐	.....
☒	Judge F. R. Arrey *(Muvunyi)*	.....	☐	.....
☒	Judge E. F. Short *(Bizimungu et al.)*	.....	☐	.....
☒	Judge T. Hikmet *(Ndindiliyimana et al.)*	.....	☐	.....
☐	Judge S. K. Park *(Ndindiliyimana et al.)*	.....	☐	.....
☐	....., SLO	.....	☐	.....
☐	A. Leroy, Co-ordinator	.....		
☒	A. Marong *(Ndindiliyimana et al.)*	.....		
☐		.....		
☒	**TC3**			
☒	**Judge A. Vaz** *(Seromba)*	.....	☐	P. Mathiam.....
☐	**Judge I. M. Weinberg de Roca** *(Zigiranyirazo)*	.....	☐	C. Rassi.....
☐	**Judge K. R. Khan**	.....	☐	M. Knowlan.....
☐	**Judge D. C. M. Byron**	.....	☐	J. Greenspoon.....
☐	**Judge L. G. Muthoga** *(Zigiranyirazo)*	.....	☐	P. Mathiam .....
☐	**Judge F. R. Arrey** *(Rukundo)*	.....	☐	S. Unnikrishnan.....
☒	**Judge E. F. Short** *(Karemera et al.)*	.....	☐	K. Ardault.....
☒	**Judge G. G. Kam** *(Seromba, Karemera et al. & Rwamakuba)*	.....	☐	C. Duffy.....
☒	E. O'Donnell, SLO	.....	☐	N. Ferraro.....
☒	**C. Denis, Co-ordinator** *(Karemera et al. & Rwamakuba)*	.....	☐	M. I. Mbadinga.....
☐	**H. Gogo, Co-ordinator** *(Seromba)*	.....		

☒ ***OTP / BUREAU DU PROCUREUR***
☐ Senior Trial Attorney in charge of case: **S. Arbia** received by .....

☒ **DEFENSE** 27.09.2007.
☐ Accused / *Accusé*: **A. Seromba** complete / *remplir* " CMS4 FORM"
☐ Lead Counsel / *Conseil Principal* **P. Monthe**
☒ In / à Arusha Arusha ..... (signature) ☒ by fax complete / *remplir* " CMS3bis FORM"
☒ Co-Counsel / *Conseil Adjoint*: **B. Nekuie**
☒ In / à Arusha Arusha ..... (signature) ☐ by fax complete / *remplir* " CMS3bis FORM"

All Decisions: ☒ Appeals Chamber Unit, The Hague ☐ S. Chenault, Jurist Linguist
All Decisions & Important Public Documents: ☐ Press & Public Affairs ☐ Legal Library

From: *De:* ☒ J.-P. Fomété (Chief, CMS) ☒ N. Diallo (TC1) ☒ R. Kouambo (TC2) ☒ C. Hometowu (TC3) ☒ F. A. Talon (Appeals/Team IV)

Cc: ☐ A. Dieng ☒ A. Miller, OLA, NY ☒ D. Registrar ☒ M. Niang ☐ S. Menon ☒ S. van Driessche
☐ WVSS ☐ Spokesperson ☒ E. O'Donnell ■ DCDMS ☒ P. Enow

Subject *Objet:* **Kindly find attached the following document(s) / *Veuillez trouver en annexe le(s) document(s) suivant(s):***

Documents name / *titre du document*	Date Filed / *Date enregistrée*	Pages
JUDGEMENT	**25/09/2007**	**126**