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**TRIAL CHAMBER III**

**Before Judges:** Inés Mónica Weinberg de Roca, Presiding  
Florence Rita Arrey  
Robert Fremr

**Registrar:** Adama Dieng

**Judgement of:** 2 December 2008

**THE PROSECUTOR**

v.

**Simon BIKINDI**

**Case No. ICTR-01-72-T**

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## CHAPTER I: INTRODUCTION

### 1. THE TRIBUNAL AND ITS JURISDICTION

1. The Judgement in the case of *The Prosecutor v. Simon Bikindi* is issued by Trial Chamber III of the International Criminal Tribunal for Rwanda ("Tribunal" or "ICTR"), composed of Judges Inés Mónica Weinberg de Roca, presiding, Florence Rita Arrey and Robert Fremr ("Chamber").

2. The Tribunal is governed by its Statute ("Statute"), annexed to Security Council Resolution 955,<sup>1</sup> and by its Rules of Procedure and Evidence ("Rules").<sup>2</sup>

3. Pursuant to the Statute, 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.<sup>3</sup> Its jurisdiction is limited to genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 and Additional Protocol II thereto of 8 June 1977, committed between 1 January 1994 and 31 December 1994.<sup>4</sup>

### 2. THE ACCUSED

4. Simon Bikindi ("Bikindi" or "Accused"), a Rwandan citizen, was born on 28 September 1954 in Rwerere *commune*, Gisenyi *préfecture*, Rwanda. In 1994, he was a composer and singer and worked at the Ministry of Youth and Association Movements of the Government of Rwanda.<sup>5</sup>

### 3. THE INDICTMENT

5. Under the second amended Indictment of 15 June 2005 ("Indictment"),<sup>6</sup> the Prosecution charges Bikindi with six counts pursuant to Articles 2 and 3 of the Statute: conspiracy to commit genocide; genocide or, alternatively, complicity in genocide; direct and public incitement to commit genocide; murder as a crime against humanity; and persecution as a crime against humanity. The Prosecution charges Bikindi under Articles 6(1) and 6(3) of the Statute for genocide and murder as a crime against humanity. Bikindi's criminal liability is sought only under Article 6(1) of the Statute for the charges of conspiracy to commit genocide, complicity in genocide, direct and public incitement to commit genocide and persecution as a crime against humanity.

<sup>1</sup> UN Doc. S/RES/955 (1994), 8 November 1994.

<sup>2</sup> The Rules were originally adopted on 5 July 1995 and were last amended on 14 March 2008.

<sup>3</sup> Articles 1 and 5 of the Statute.

<sup>4</sup> Articles 1, 2, 3, 4 and 7 of the Statute.

<sup>5</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-I, Statement of Matters Not in Dispute Pursuant to Rule 73bis(B)(ii), 25 July 2006 ("Defence Statement of Matters Not in Dispute"); Bikindi, T. 2 November 2007, p. 11. The Chamber notes that the Minister of Youth and Association Movements has also been referred to by the Prosecution, the Defence and witnesses as the Minister of Youth and Sports. For the purposes of this Judgement, the Chamber will use "Minister of Youth and Association Movements" as the official designation, as found in Exhibit P87, *Arrêté du Premier Ministre N° 08/02 du 28 août 1992 portant organisation des services de l'Administration centrale, Ministère de la Jeunesse et du Mouvement associatif*, pp. K0239355-K0239359.

<sup>6</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-I, Amended Indictment Pursuant to Decisions of Trial Chamber III of 11 May 2005 and 10 June 2005, 15 June 2005.

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#### 4. SUMMARY OF PROCEDURAL HISTORY

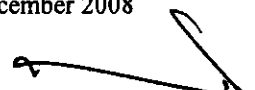
6. The initial indictment against Bikindi was confirmed on 5 July 2001. Bikindi was arrested in The Netherlands on 12 July 2001 and transferred to the Tribunal on 27 March 2002. The present trial commenced on 18 September 2006 with the Prosecution case and the Defence concluded its case on 7 November 2007. Closing Arguments were heard on 26 May 2008. Over the course of sixty-one trial days, fifty-seven witnesses were heard. The Prosecution called twenty witnesses, including two expert witnesses in thirty-two trial days. During twenty-nine trial days, the Defence called thirty-seven witnesses, including an expert witness and Bikindi. The procedural history of this case is set out in full in Annex I to the Judgement.

#### 5. OVERVIEW OF THE CASE

7. The Prosecution alleges that, following the death of President Habyarimana up to July 1994, a campaign of violence was unleashed against the Tutsi population of Rwanda particularly in Kigali-ville and Gisenyi *préfectures*. The Prosecution submits that the scope and systematic nature of the violence and the massacres of Tutsi that took place indicate the existence of a strategic and coordinated campaign to destroy the Tutsi at national level.

8. The Prosecution alleges that Bikindi participated in this campaign through his musical compositions and by speeches which he made at public gatherings that incited and promoted hatred and violence against Tutsi. According to the Prosecution, Bikindi collaborated with government figures, leading figures of the *Mouvement républicain national pour la démocratie et le développement* (MRND), of the *Interahamwe* and of the *Coalition pour la défense de la République* (CDR), as well as with the RTLM (*Radio Télévision Libre des Mille Collines*) and persons responsible for media programming, to disseminate anti-Tutsi ideology and encourage the genocide. Further, the Prosecution alleges that Bikindi participated in military training of *Interahamwe*, encouraged the militias to target the Tutsi population for attack and was responsible for specific attacks and killings perpetrated in Gisenyi *préfecture*, by virtue of his direct participation or his command over *Interahamwe*, particularly *Interahamwe* members of the *Irindiro* ballet, and civilian militias.

9. The Defence contends that Bikindi was not a political man, but a musician whose songs did not incite discrimination or violence against Tutsi. It argues that Bikindi did not take part in the anti-Tutsi campaign through his songs or speeches and did not participate in any of the killings or attacks alleged in the Indictment. The Defence also argues that Bikindi had no authority over the *Interahamwe* and no influence over the Government, the MRND, the CDR or the RTLM.



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## CHAPTER II: FACTUAL FINDINGS

### 1. PRELIMINARY MATTERS

#### 1.1. Allegations on which Evidence was not Presented

10. During the status conference held on 15 May 2007, the Prosecution acknowledged that Bikindi was not in Rwanda from 4 April through to approximately 12 June 1994 and clarified that it was not pursuing any allegations regarding Bikindi's "physical acts" during that period.<sup>7</sup> Accordingly, the Prosecution withdrew the allegations set out in paragraphs 30(k) and 47(g) of the Indictment that in early April 1994 Bikindi arrived in Kicukiro *commune* on a bus with about 20 *Interahamwe*, and participated there in the killing of an unnamed wealthy Tutsi.<sup>8</sup>

11. At the close of the trial, the Prosecution conceded that it had not presented any evidence concerning the allegation set out in paragraphs 24, 30(e), 45 and 47(b) of the Indictment regarding the killing of a group of Tutsi women escaping to Zaire.<sup>9</sup> In addition, the Chamber agrees with the Defence observation in its Closing Brief that the Prosecution has not adduced evidence in support of the allegations in paragraphs 30(i), 38 and 44 of the Indictment regarding the attack on the Gatenga Youth Center in February 1994 or the killing of an unnamed wealthy Tutsi businessman in Nyamyumba *commune* in June 1994.<sup>10</sup> Furthermore, the Chamber observes that the Prosecution has not led evidence on the allegation in paragraph 37 of the Indictment that Bikindi advocated the extermination of the Tutsi over the public radio air-waves, an allegation the Prosecution did not mention during Closing Arguments or in its Closing Brief. The Chamber summarily dismisses these allegations which will therefore not be addressed in the following sections of the Judgement.

#### 1.2. Alleged Defects in the Indictment

12. The Defence submits that the allegations regarding the killings of Stanislas Gasasira and Karasira cannot constitute the basis for a conviction since they are not specified in the Indictment.<sup>11</sup> In this respect, the Chamber recalls that the related issue of whether the evidence led by the Prosecution on these two allegations should be excluded has already been adjudicated.<sup>12</sup> The Chamber points out that the Defence moved to exclude the evidence concerning these allegations a full six months after the evidence was heard, and then failed to raise proper objections to the form of the Indictment before the end of the trial.<sup>13</sup> However, in light of the Accused's fundamental right to be informed of the charges against him and to be afforded adequate time for the preparation of his defence provided for

<sup>7</sup> T. 15 May 2007, pp. 17-18.

<sup>8</sup> T. 15 May 2007, pp. 16-18.

<sup>9</sup> Closing Arguments, T. 26 May 2008, p. 37.

<sup>10</sup> Defence Closing Brief, public version, 30 April 2008 ("Defence Closing Brief"), paras. 777, 871, 891(j) and 893. See also *Requête aux fins d'acquiescement de Simon Bikindi en vertu de l'article 98 bis du Règlement de Procédure et de Preuve*, 15 March 2007, para. 132; Closing Arguments, T. 26 May 2008, p. 27.

<sup>11</sup> Defence Closing Brief, paras. 653, 675, 794-795, 876; Closing Arguments, T. 26 May 2008, pp. 20-21.

<sup>12</sup> Decision on the Defence *Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation*, 26 June 2007 ("Decision on Exclusion of Evidence").

<sup>13</sup> Although the evidence was heard in October 2006 (Witness BKW was heard from 16 to 19 October 2006, Witness AHP on 19 and 20 October 2006), the motion for exclusion of evidence was only filed on 25 April 2007 (*Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation*, 25 April 2007). See also T. 25 October 2007, p. 55.

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in Articles 20(4)(a) and (b) of the Statute, the Chamber will address the issue, notwithstanding the failure of the Defence to raise the matter in a timely fashion.

13. The Prosecution acknowledges that the killings of Gasasira and of Karasira and his family are not specifically alleged in the Indictment. While the Prosecution argued in its Closing Brief that both allegations fall under paragraph 47(e) of the Indictment,<sup>14</sup> it submitted during Closing Arguments that "the evidence relating to [...] Bikindi's role in the killing of Tutsi applies to Gasasira and Karasira, and that is in relation to paragraphs 19 and 20 of the Indictment."<sup>15</sup>

14. Paragraph 47(e) of the Indictment reads as follows:

(e) In early July 1994, **Simon BIKINDI** in the company of Interahamwe to whom he gave orders, transported three Tutsi women to the Commune Rouge where they were killed.

In this paragraph, the Prosecution unambiguously pleads a specific allegation which does not encompass the killings of Gasasira and Karasira.

15. Paragraphs 19 and 20 of the Indictment, which relate to the count of genocide, read:

19. During the events referred to in this indictment, particularly from 6 April 1994 through the first days of July 1994, *Interahamwe* militias engaged in a campaign of extermination against Rwanda's Tutsi population. Hundreds of thousands of Tutsi men, women and children were killed.

20. **Simon BIKINDI**, among others, planned, instigated and prepared such killings by recruiting members for the *Interahamwe* militias, organizing and participating in military training for *Interahamwe* militias, indoctrinating *Interahamwe* militias with anti-Tutsi ideology and by engaging in a propaganda campaign to characterize civilian Tutsi citizens of Rwanda as accomplices of an invading enemy, and by specifically encouraging the militias to target the Tutsi population for attack, as set out in paragraphs 21-30 below.

16. Whereas paragraphs 22 to 30 of the Indictment allege specific incidents, paragraph 21, referred to in paragraph 20, contains general allegations:

21. During June and early July 1994, particularly in Gisenyi *préfecture*, **Simon BIKINDI** led, participated in, instigated and incited a campaign of violence against civilian Tutsis and against Hutus perceived to be politically opposed to the MRND and MRND-aligned political parties, resulting in numerous deaths.

17. Paragraph 21 explicitly alleges that Bikindi participated in a campaign of violence against civilian Tutsi resulting in numerous deaths: a campaign which could include the killings of Gasasira and Karasira and his family. Yet, the Prosecution failed to particularise the underlying incidents. By framing the charge in such a general manner, the Prosecution failed to fulfil its obligation to provide Bikindi with a description of the charges against him with sufficient particularity to enable him to prepare his defence.<sup>16</sup> Unacceptably vague, paragraph 21 does not provide sufficient notice to Bikindi that he was charged with the killings of Gasasira and Karasira and his family. Accordingly, the Chamber finds the Indictment to be defective in this respect.

<sup>14</sup> Prosecution's Final Trial Brief, 25 April 2008 ("Prosecution Closing Brief"), para. 667.

<sup>15</sup> Closing Arguments, T. 26 May 2008, p. 35.

<sup>16</sup> Cf. *Ntagerura et al.*, Judgement (AC), para. 121.



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18. The Chamber must then determine whether the vagueness of the charge in paragraph 21 of the Indictment was subsequently cured by the Prosecution through the provision of timely, clear and consistent information detailing the factual basis underpinning the charges against Bikindi.<sup>17</sup>

19. Although the Prosecution failed to provide the necessary information in its Pre-Trial Brief,<sup>18</sup> the Chamber notes that clear reference was made to the killings of Gasasira and Karasira and his family in the Summary of Anticipated Testimony of Prosecution Witnesses, filed on 14 August 2006.<sup>19</sup> In this document, the Prosecution specified that Witness AHP would testify about the killing in June 1994 of a Tutsi named Stanislas Gasasira, who was ordered out of a vehicle in which Bikindi was sitting, and then shot dead after Bikindi drove away.<sup>20</sup> The Summary also specified that Witness BKW would testify that on 16 June 1994, he, Bikindi and Sibomana shot dead Karasira and seven members of his family,<sup>21</sup> including his wife.<sup>22</sup> Both testimonies were intended to support paragraph 21 of the Indictment, among others.<sup>23</sup> The Chamber also notes that the written statement of Witness AHP recounting Gasasira's killing was disclosed to the Defence on 28 September 2005 in redacted form and on 11 July 2006 in unredacted form,<sup>24</sup> and that a written statement of Witness BKW referring to the killing of Karasira and his family was disclosed on 11 July 2006 in unredacted form.<sup>25</sup> Witness AHP's written statement, while not specifying the name of the victims, also contains an account of the killings of Karasira and other Tutsi.<sup>26</sup>

20. The Chamber is of the opinion that the Summary of Anticipated Testimony of Prosecution Witnesses, together with the written statements of Witnesses AHP and BKW, provided timely, clear and consistent information sufficient to put Bikindi on notice that the Prosecution intended to charge him with genocide on the basis of the aforementioned killings. Further, the Chamber observes that the Defence did not raise any objection at the time of the testimony of Witnesses AHP and BKW. The Defence cross-examined both witnesses at

<sup>17</sup> Cf. *Muvunyi*, Judgement (AC), para. 20; *Nahimana et al.*, Judgement (AC), para. 325; *Ntagerura et al.*, Judgement (AC), paras. 28, 126.

<sup>18</sup> See The Prosecutor's Final [sic] Trial Brief Pursuant to Article 73bis(B)(i) of the Rules of Procedure and Evidence, 16 August 2006 ("Prosecution Pre-Trial Brief"), para. 32.

<sup>19</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Filing of Witness Summaries and Points in the Indictment on Which each Witness Will Testify (Rule 73bis(B)(iv)(a) and (b)), 14 August 2006 ("Summaries of Anticipated Testimony of Prosecution Witnesses").

<sup>20</sup> Summaries of Anticipated Testimony of Prosecution Witnesses, Witness AHP, p. 6, para. 7. See also Decision on Exclusion of Evidence, para. 17.

<sup>21</sup> While the *Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation* of 25 April 2007 and the Decision on Exclusion of Evidence refer to the killings of Karasira and eight members of his family, the Chamber notes that both the summary of Witness BKW's anticipated testimony and his statement of 15 February 2005 (appended to the 11 July 2006 Disclosure referred to below) refer to the killings of Karasira and seven other persons.

<sup>22</sup> Summaries of Anticipated Testimony of Prosecution Witnesses, Witness BKW, p. 39, para. 7. See also Decision on Exclusion of Evidence, para. 11.

<sup>23</sup> Summaries of Anticipated Testimony of Prosecution Witnesses, Witness AHP, p. 5, and Witness BKW, p. 37.

<sup>24</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: "Disclosure of Redacted Witness Statements", 28 September 2005 ("28 September 2005 Disclosure"), Witness AHP's written statement dated 18-19 June 2002; *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: "Rule 66 A (II) Disclosure", 11 July 2006 ("11 July 2006 Disclosure"), Witness AHP's written Statement dated 18 and 19 June 2002 enclosed together with other statements on a CD-Rom. See also Decision on Exclusion of Evidence, para. 17.

<sup>25</sup> 11 July 2006 Disclosure, Witness BKW's written statement dated 15 February 2005. See also Decision on Exclusion of Evidence, para. 11.

<sup>26</sup> 28 September 2005 Disclosure, Witness AHP's written statement dated 18-19 June 2002; 11 July 2006 Disclosure, Witness AHP's written statement dated 18-19 June 2002. See also Decision on Exclusion of Evidence, para. 12.

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length on these incidents,<sup>27</sup> and called witnesses who testified specifically on these events.<sup>28</sup> As mentioned above, the Defence motion for the exclusion of evidence was filed on 25 April 2007, six months after the testimonies of these two witnesses. The Chamber is therefore convinced that Bikindi received timely, clear and consistent notice that he would have to defend himself against the allegations pertaining to the killings of Gasasira and Karasira and his family, and that the preparation of his defence has not been materially impaired.

21. In light of the foregoing, the Chamber finds that the Prosecution's failure to specify the killings of Gasasira and Karasira and his family in the Indictment did not prejudice Bikindi's ability to defend himself against these charges. Accordingly, the Chamber will proceed to make factual findings on these allegations.

### 1.3. Alibi

22. On 7 September 2006, the Defence filed a notice of alibi pursuant to Rule 67(A)(ii)(a) of the Rules, in which it stated that "at the time of the crimes alleged in the Indictment" Bikindi "was resident in Belgium, the United Kingdom and the Democratic Republic of Congo (formerly Zaire)."<sup>29</sup> In response, the Prosecution argued that the information provided in the Notice of Alibi was "so general" that it was "unable to meaningfully investigate the alibi".<sup>30</sup> In its reply, the Defence mentioned certain evidence on which it intended to rely in support of the alibi.<sup>31</sup>

23. Before the commencement of its case, the Defence requested disclosure of a letter from the Prosecution, dated 20 September 2006, addressed to Defence Counsel representing Protais Zigiranyirazo (an accused before the Tribunal), in which the Prosecution allegedly admitted that Bikindi was outside of Rwanda from 4 April to approximately 12 June 1994 ("Letter of 20 September 2006").<sup>32</sup> Simultaneous to the request for disclosure, the Defence proposed an agreement with the Prosecution to recognise as a fact not in dispute that Bikindi was not in Rwanda between 4 April and 12 June 1994. The Defence stated that if such an agreement were made, it would not call witnesses in relation to this period of the alibi.<sup>33</sup> The same day, the Prosecution disclosed its Letter of 20 September 2006 to the Defence, in which it "concede[d] that Simon Bikindi left Rwanda on 4 April 1994 and returned via Gisenyi, around 12 June 1994."<sup>34</sup>

<sup>27</sup> Witness BKW, T. 18 October 2006, pp. 15, 26-36 and T. 19 October 2006, pp. 6-13; Witness AHP, T. 19 October 2006, p. 34 and T. 20 October 2006, pp. 2-5.

<sup>28</sup> Defence Witness WQK, T. 26 September 2007, pp. 17-20 (examination-in-chief), 35 (re-examination); Defence Witness RH, T. 25 October 2007, pp. 50-58 (examination-in-chief); Defence Witness Dominique Munyangoga, T. 7 November 2007, pp. 5-6 (examination-in-chief), 12-14 (re-examination).

<sup>29</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-PT, Notice of Defence of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 7 September 2006 ("Notice of Alibi"), para. 2.

<sup>30</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-PT, Prosecution Response to Defence Notice of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 11 September 2006, para. 5. See also *ibid.*, para. 8.

<sup>31</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-PT, Defence Reply to the Prosecution Response to Defence of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 15 September 2006.

<sup>32</sup> Letter from Jean de Dieu Momo to William Egbe, subject: "*Demande de communication d'une pièce et Accord réciproque sur les points non litigieux*", 27 April 2007.

<sup>33</sup> *Idem.*

<sup>34</sup> Letter from William Egbe to Jean de Dieu Momo, subject: "Your request dated 27 April 2007", 27 April 2007, attaching the Prosecution Letter of 20 September 2006. The Letter of 20 September 2006 was admitted as Exhibit D85 on 18 October 2007 (T. 18 October 2007, p. 11).

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24. The issue of alibi was discussed during the status conference held on 15 May 2007. The Defence made it clear that if the Prosecution would not be pursuing the charge related to Bikindi's alleged participation in an incident in Kicukiro in April 1994,<sup>35</sup> there was "no need for the evidence which ha[d] been categorised as alibi."<sup>36</sup> As the Prosecution clarified that it was not pursuing any allegation regarding Bikindi for that period, the Defence confirmed that there was no longer any issue of alibi.<sup>37</sup> As a result, the Defence abandoned its argument that Bikindi was away from Rwanda during the whole period of the crimes charged in the Indictment.<sup>38</sup>

25. The Chamber will therefore not address the issue of alibi any further and notes that the fact that Bikindi left Rwanda on 4 April 1994 and returned to Gisenyi, Rwanda, via Zaire (now Democratic Republic of the Congo) around 12 June 1994 is not in dispute.<sup>39</sup>

#### 1.4. Temporal Jurisdiction

26. The Chamber is mindful that it has jurisdiction only in respect of crimes committed between 1 January and 31 December 1994, which means that the acts or omissions of the Accused establishing his responsibility under any of the modes of liability referred to in Article 6(1) and (3) of the Statute must have occurred in 1994.<sup>40</sup> In this respect, the Appeals Chamber recently clarified that, "even where [a criminal] conduct commenced before 1994 and continued during that year, a conviction may be based only on that part of such conduct having occurred in 1994."<sup>41</sup>

27. However, the provisions of the Statute relating to the Tribunal's temporal jurisdiction do not preclude the Chamber from admitting and considering evidence concerning events that occurred prior to 1994 where, for example, the purpose of such evidence is to (i) clarify a given context; (ii) establish by inference the elements of criminal conduct occurring in 1994; or (iii) demonstrate a deliberate pattern of conduct.<sup>42</sup>

28. In the present case, as will appear in the following sections, the Chamber has admitted, considered and relied on considerable evidence relating to pre-1994 acts as means of clarifying the context and establishing by inference certain elements of Bikindi's conduct in 1994, notably his *mens rea*. The Chamber emphasises that none of its factual findings concerning Bikindi's criminal conduct before 1994 will form the basis for a conviction.

#### 1.5. Evaluation of Evidence

##### *General Principles*

29. The Chamber has considered each piece of evidence in light of the totality of the evidence admitted at trial. It emphasises that it has duly considered and given appropriate weight to *all* the evidence, even if not expressly referred to in the Judgement. The evidence was assessed in accordance with the Statute, the Rules, and the jurisprudence of the Tribunal. When no guidance was found in these sources, the Chamber has decided matters of evidence

<sup>35</sup> Indictment, para. 47(g).

<sup>36</sup> T. 15 May 2007, p. 15.

<sup>37</sup> T. 15 May 2007, pp. 15-18.

<sup>38</sup> T. 15 May 2007, pp. 16-18.

<sup>39</sup> See also Defence Closing Brief, paras. 18, 41, 270 and 566; Prosecution Closing Brief, para. 391.

<sup>40</sup> Articles 1 and 7 of the Statute. See *Nahimana et al.*, Judgement (AC), para. 313.

<sup>41</sup> *Nahimana et al.*, Judgement (AC), para. 317.

<sup>42</sup> *Nahimana et al.*, Judgement (AC), para. 315.

in such a way as would best favour a fair determination of the case in consonance with the spirit of the Statute and the general principles of law.<sup>43</sup>

### *Burden and Standard of Proof*

30. Pursuant to Article 20(3) of the Statute, an accused shall be presumed innocent until proven guilty. This presumption places on the Prosecution the burden of establishing the guilt of the accused, a burden which remains on the Prosecution throughout the entire trial. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proven beyond reasonable doubt.<sup>44</sup> Accordingly, the Chamber determined whether it was satisfied that every element of the crime charged and of the mode of liability and any fact indispensable for a conviction were proven beyond reasonable doubt by the Prosecution.<sup>45</sup> In so doing, it has been necessary on certain occasions for the Chamber to draw inferences from circumstantial evidence. In such cases, the Chamber drew the *only* reasonable conclusion available from the evidence.<sup>46</sup> Where there was another conclusion reasonably open from that evidence inconsistent with the guilt of the Accused, the Chamber did not enter a finding of guilt.

### *Viva Voce Evidence*

31. When evaluating *viva voce* evidence, the Chamber considered various factors, including the witnesses' demeanour in court, the plausibility and clarity of their testimony, and whether there were contradictions or inconsistencies within their testimony or between their testimony and their prior statements relied upon in court or admitted as exhibits. It also considered the individual circumstances of the witnesses, including their role in the events in question, their relationship with the Accused and whether the witnesses would have an underlying motive to give a certain version of the events.

32. The Chamber recognises that a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court. Therefore, lack of precision or minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and a prior statement, was not regarded in general as necessarily discrediting their evidence. When deciding not to rely on certain aspects of a witness's testimony, the Chamber nevertheless sometimes relied on other parts of the testimony deemed to be reliable and credible.

33. The Chamber also recalls that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>47</sup> However, when only one witness presented evidence on a particular incident, the Chamber examined the evidence with particular care before accepting it as a sufficient basis for finding guilt.

34. Applying these criteria, the Trial Chamber assessed the testimony of Witness BKW, a former motorcycle taxi-driver sentenced to death for his participation in the genocide,<sup>48</sup> with great caution. Not only is the witness an alleged accomplice to Bikindi, but he also admitted lying to a court in Rwanda and hiding the truth from Tribunal investigators.<sup>49</sup> Prosecution and

<sup>43</sup> Rule 89(B) of the Rules.

<sup>44</sup> Rule 87(A) of the Rules.

<sup>45</sup> See *Ntagerura et al.*, Judgement (AC), para. 174.

<sup>46</sup> See *Ntagerura et al.*, Judgement (AC), paras. 304 and 306, referring to *Čelebići*, Judgement (AC), para. 458.

<sup>47</sup> See, e.g., *Muvunyi*, Judgement (AC), para. 128; *Seromba*, Judgement (AC), para. 79.

<sup>48</sup> Witness BKW, T. 16 October 2006, pp. 40-42.

<sup>49</sup> Witness BKW, T. 16 October 2006, p. 42; 19 October 2006, p. 10.

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Defence Counsel both pointed out that the witness denied having killed anyone when testifying before the Tribunal in the *Nahimana et al.* case,<sup>50</sup> although he testified to the contrary in the present case.<sup>51</sup> As set out in following sections, the Trial Chamber found portions of his testimony to be largely unreliable.<sup>52</sup> Consequently, the Chamber relied on Witness BKW's evidence only insofar as it corroborated, or was corroborated by, other reliable and credible evidence and never as the sole basis for a finding of guilt.

35. The Chamber has also considered Witness KRQ's testimony that, while detained in Gisenyi Prison, sometime between 2003 and 2004, he and four co-detainees were taken to the Rwandan public prosecutor's office and asked by an employee of that office to level accusations against Bikindi.<sup>53</sup> However, in the absence of any corroboration of this serious accusation proffered by a witness with a criminal record, the Chamber has accorded no weight to the witness's assertion.

#### *Expert Witnesses*

36. When assessing and weighing the evidence of the expert witnesses, the Chamber considered factors such as the professional competence of the expert, the position held by the expert, the scope of his expertise, the methodologies used, the credibility of the findings made in light of these factors and other evidence, and the relevance and reliability of their evidence.

#### *Documentary Evidence*

37. Factors such as authenticity and proof of authorship assumed the greatest importance in the Chamber's assessment of the weight to be attached to individual pieces of documentary evidence.

#### *Interpretation and Transcription*

38. In a number of instances, the Chamber identified discrepancies between the French and English versions of the transcripts of testimonies given in Kinyarwanda. In those instances, because the testimonies given in Kinyarwanda were first interpreted in French, and then from French to English before being transcribed in English, the Chamber relied on the French version of the transcripts as more accurate. When in doubt, the Chamber resorted to the original testimony in Kinyarwanda with the assistance of the Tribunal's Languages Support Section.

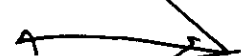
39. The Chamber also took into account that, as a result of translation and transcription, names of individuals or locations given by witnesses which were similar, but not identical, may actually have referred to the same place or person.

<sup>50</sup> Witness BKW, 19 October 2006, pp. 3, 10, referring to *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-96-11-T, T. 4 September 2001, p. 25.

<sup>51</sup> Witness BKW, T. 19 October 2006, pp. 3, 10.

<sup>52</sup> See *infra* paras. 99-100, 316-317.

<sup>53</sup> Witness KRQ, T. 4 October 2007, pp. 5-7, 14, 19.



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## 2. WELL-KNOWN COMPOSER, SINGER AND LEADER OF THE IRINDIRO BALLET

40. The Prosecution alleges that Bikindi was a well-known composer and singer of popular music who founded and directed the *Irindiro* ballet.<sup>54</sup> It further alleges that members of the *Irindiro* ballet were *Interahamwe* or CDR members,<sup>55</sup> who, as a result of the mobilising effect of Bikindi's music, were recruited into the *Interahamwe*, participated in military training and subsequently killed Tutsi.<sup>56</sup>

41. It is not disputed that Bikindi was a well-known singer, composer, member,<sup>57</sup> and leader of the *Irindiro* ballet.<sup>58</sup> The Chamber accepts the evidence that the ballet was composed of approximately 50 artists<sup>59</sup> of different ethnicities, including many Tutsi,<sup>60</sup> against whom Bikindi did not discriminate.<sup>61</sup> The ballet included dancers, singers and drummers, and had a varied repertoire of traditional songs and dances.<sup>62</sup> Bikindi testified that the ballet was created in 1987 and formally established as a private profit making association in 1989.<sup>63</sup> He explained that it was organised as an association, of which he was elected President and which had a Committee comprising other members.<sup>64</sup> He asserted that the decisions concerning the troupe's performances were taken by the Committee and then put to the general assembly of the ballet.<sup>65</sup> Defence witnesses confirmed that the Committee was in charge of coordinating the activities of the ballet.<sup>66</sup> In its Closing Brief, the Defence referred to Bikindi as the manager of the ballet.<sup>67</sup> Based on the evidence before it, the Chamber is unable, however, to clearly delineate the responsibilities of Bikindi from that of the Committee.<sup>68</sup>

<sup>54</sup> Indictment, Preamble II and para. 30(c).

<sup>55</sup> Indictment, para. 30(c).

<sup>56</sup> Indictment, para. 16.

<sup>57</sup> Defence Statement of Matters Not in Dispute; Bikindi, T. 1 November 2007, pp. 44-45; Defence Closing Brief, paras. 1, 512, 836.

<sup>58</sup> Bikindi, T. 5 November 2007, p. 40; Defence Closing Brief, para. 4.

<sup>59</sup> Exhibit P59(B), Leaflet of the *Irindiro* Ballet; Witness JCH, T. 9 October 2007, p. 30.

<sup>60</sup> Angeline Mukabanana, T. 2 October 2007, p. 19; Witness KMS, T. 1 October 2007, pp. 7-8; Witness JCH, T. 9 October 2007, p. 30; Witness DZS, T. 24 September 2007, pp. 12-13, 25-26, T. 24 September 2007, pp. 12-13 and p. i (extract); T. 24 September 2007, p. 26 and p. iii (extract - the Chamber notes that the reference to "Pale" in the extract should read "ballet").

<sup>61</sup> Witness DZS, T. 24 September 2007, pp. 12-14, T. 24 September 2007, pp. 12-13 and p. i (extract); Witness DVR, T. 27 September 2007, p. 15; Witness AQH, T. 3 October 2007, pp. 14-15; Witness KMS, T. 1 October 2007, p. 44; Witness CQR, T. 10 October 2007, pp. 6-9, 14.

<sup>62</sup> Exhibit P59(B), Leaflet of the *Irindiro* Ballet.

<sup>63</sup> Bikindi, T. 1 November 2007, pp. 44, 45. See also Witness KMS, T. 1 October 2007, pp. 6, 36; Witness JCH, T. 9 October 2007, pp. 28-30.

<sup>64</sup> Bikindi, T. 1 November 2007, pp. 44, 45; T. 2 November 2007, p. 18.

<sup>65</sup> Bikindi, T. 1 November 2007, p. 45 and T. 2 November 2007, p. 18. See also Witness KMS, T. 1 October 2007, pp. 6-7; Witness JCH, T. 9 October 2007, p. 30.

<sup>66</sup> Witness JCH, T. 9 October 2007, p. 30; Witness KMS, T. 1 October 2007, pp. 6-7; Apolline Uwimana, T. 8 October 2007, p. 25; Witness TIER, T. 16 October 2007, p. 35.

<sup>67</sup> Defence Closing Brief, para. 214.

<sup>68</sup> Witness KMS, T. 1 October 2007, p. 42. See also the following in respect of Bikindi's leadership role: Witness KMS, T. 1 October 2007, p. 6; Witness JCH, T. 9 October 2007, p. 19; Witness AQH, T. 3 October 2007, p. 15; Witness RVH2, T. 29 October 2007, p. 5; Witness AJY, T. 27 September 2006, pp. 35, 39 and T. 28 September 2006, pp. 4, 5, 6; Witness AJS, T. 29 September 2006, p. 38 and T. 2 October 2006, p. 6; Witness BKW, T. 17 October 2006, pp. 6, 36; Exhibit P92, Letter of Minister of Youth and Association Movements to the Belgian Ambassador, dated 22 March 1994; Exhibit P93, Letter of the Minister of Youth and Association Movements to the Consul of Great Britain and Northern Ireland, dated

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42. Prosecution Witness AJS testified that some members of the *Irindiro* ballet were also members of the *Interahamwe*.<sup>69</sup> This was corroborated by Witnesses BKW, AJY, AHP and BUY,<sup>70</sup> some of whom named specific individuals as members of both the *Irindiro* ballet and the *Interahamwe*.<sup>71</sup>

43. The Chamber also notes that a number of witnesses identified an individual in a photograph exhibit, who it appears may be wearing the *Interahamwe* attire, as a member of the *Irindiro* ballet.<sup>72</sup> While the outfit this individual was wearing may be that of the *Interahamwe*, no evidence confirmed that this member of the ballet was an *Interahamwe*. The Chamber will therefore not rely on that photograph to find that ballet members were *Interahamwe*. Similarly, the Chamber finds the fact that an *Irindiro* member wore the *Interahamwe* cap during a meeting at Amahoro Stadium is insufficient to conclude that he could actually be considered *Interahamwe*.<sup>73</sup>

44. Bikindi denied that some of his ballet members were also *Interahamwe*,<sup>74</sup> as did Defence Witnesses JCH, TIER and CQK.<sup>75</sup> Defence Witnesses CQK, JCH, QUTI and Angeline Mukabanana gave the names of specific ballet members who they denied were *Interahamwe*.<sup>76</sup>

45. The Chamber notes that Defence Witnesses JCH, TIER, CQK (members of the *Irindiro* ballet),<sup>77</sup> QUTI and Angeline Mukabanana all had close personal relationships with Bikindi. Like Bikindi, Witnesses JCH, TIER and CQK may have had reasons to deny that members of their ballet may have belonged to a movement accused of having played a significant role in the genocide. Moreover, Witnesses JCH and CQK had particular motive to deny that members of the *Irindiro* were *Interahamwe* as they both testified that they had been accused of being *Interahamwe* and imprisoned.<sup>78</sup> As a result, the Chamber viewed the testimonies of these witnesses on the matter with caution.

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22 March 1994. Angeline Mukabana, Bikindi's second wife, referred to the ballet as Bikindi's (T. 2 October 2007, p. 31).

<sup>69</sup> Witness AJS, T. 29 September 2006, p. 38.

<sup>70</sup> Witness BKW, T. 16 October 2006, p. 44 and T. 17 October 2006, pp. 14-15; Witness AJY, T. 27 September 2006, pp. 37, 39; Witness BUY, 19 February 2007, p. 43; Witness AHP, 19 October 2006, pp. 18-19, 24.

<sup>71</sup> Witness AHP, 19 October 2006, pp. 18-19, 24; Witness BKW, 18 October 2006, p. 15; Witness AJY, 27 September 2006, p. 39.

<sup>72</sup> Witness JCH, T. 9 October 2007, pp. 21-22, referring to Exhibit D73, Photograph of Bikindi and two others hanging off a bus (taken from a book); Witness CQR, 10 October 2007, p. 9; Bikindi, T. 2 November 2007, p. 21 referring to Exhibit P86, Photograph of Bikindi and two others hanging off a bus (taken from a book and the same than Exhibit D73); Angeline Mukabanana, T. 2 October 2007, p. 19 (The Chamber finds that although the name is spelt slightly differently in the transcripts, they refer to the same person, any discrepancy being a spelling mistake).

<sup>73</sup> See Exhibit P31, Video of Bikindi and the *Irindiro* ballet performing at an MRND rally at Amahoro Stadium, which Bikindi identified from a still photograph (Exhibit P79) taken from the video as occurring in 1992 (T. 2 November 2007, pp. 15-20). The Chamber notes the testimony of *Irindiro* members that they often wore the colours of the party they performed for (Witness JCH, T. 9 October 2007, pp. 17, 44; Witness KMS, T. 1 October 2007, pp. 14-16; Witness TIER, T. 16 October 2007, pp. 19; Witness DUC, T. 28 September 2007, pp. 9, 10).

<sup>74</sup> Bikindi, T. 2 November 2007, pp. 16, 24.

<sup>75</sup> Witness CQK, T. 10 October 2007, pp. 48-49; Witness JCH, T. 9 October 2007, p. 31; Witness TIER, T. 16 October 2007, p. 16.

<sup>76</sup> Witness CQK, T. 10 October 2007, pp. 36, 41, 49; Witness QUTI, T. 27 September 2007, pp. 44-45; Witness JCH, T. 9 October 2007, pp. 14, 30-31; Angeline Mukabanana, T. 2 October 2007, pp. 19, 22.

<sup>77</sup> Witness JCH, T. 9 October 2007, p. 28; Witness TIER, 16 October 2007, p. 35; Witness CQK, T. 10 October 2007, p. 49.

<sup>78</sup> Witness CQK, T. 10 October 2007, pp. 35-36, 41, 49; Witness JCH, T. 9 October 2007, pp. 11, 14, 38-39.

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46. In contrast, the Chamber has no reason to question the credibility of Witness AJS on the matter. His testimony was reliable, coherent and corroborated by Witnesses BKW, AJY, AHP and BUY. In reaching this conclusion about Witness AJS, the Chamber has considered the Defence challenges to his evidence but finds that they concern minor aspects of his testimony and do not affect its substance or his credibility.<sup>79</sup> As discussed in other sections of the Judgement,<sup>80</sup> the Chamber has concerns regarding the reliability and credibility of Witnesses BKW, AJY, AHP and BUY. However, it finds that it can rely upon them in relation to this general allegation, as they corroborate not only each other, but particularly the reliable testimony of Witness AJS that some members of the ballet were *Interahamwe*. The evidence of Witnesses BKW, AJY and AHP about the specific ballet members who were alleged to be *Interahamwe* will, if necessary, be discussed together with the witnesses' evidence on the participation of those ballet members in the crimes specifically alleged in the Indictment.

47. Based on Witness AJS's testimony, as corroborated by Witnesses BKW, AJY, AHP, and BUY, the Chamber finds that some members of the *Irindiro* ballet were members of the *Interahamwe*. However, the Chamber notes that the Prosecution failed to adduce evidence in support of its allegation that *Irindiro* members joined the *Interahamwe* as a result of the mobilising effect of Bikindi's music. Nor did the Prosecution lead any evidence on whether some ballet members were also members of the CDR.

48. The Chamber will discuss the evidence on the alleged participation of members of the *Irindiro* ballet in the crimes charged, as well as the evidence adduced in support of the allegation that Bikindi's music played a role in motivating *Irindiro* or *Interahamwe* members to participate in military training and kill Tutsi in subsequent sections of this Judgement. The extent of Bikindi's authority over the *Irindiro* ballet and its members will, if necessary, be discussed in the section of the Judgement addressing Bikindi's criminal responsibility under Articles 6(1) and 6(3) of the Statute.

### 3. COLLABORATION WITH GOVERNMENT FIGURES, MRND AND CDR PARTIES

49. The Prosecution alleges that Bikindi agreed or collaborated with President Habyarimana, Minister of Youth and Association Movements Callixte Nzabonimana ("Minister"), and national leaders of the MRND to militarise and indoctrinate the MRND youth wing, the *Interahamwe*, with anti-Tutsi ideology and to disseminate anti-Tutsi propaganda.<sup>81</sup> The Prosecution also alleges that Bikindi participated in the campaign "to defeat the enemy militarily" by conducting MRND membership drives<sup>82</sup> and performed at political gatherings of the MRND and CDR political parties in different parts of Rwanda.<sup>83</sup>

50. Before examining the evidence led on these allegations, the Chamber notes that the Prosecution failed to lead any evidence substantiating a number of related allegations. First, the Prosecution led no evidence that Bikindi agreed or collaborated with MRND-aligned military leaders, such as Théoneste Bagosora or George Rutaganda, to militarise and indoctrinate the *Interahamwe* with anti-Tutsi ideology, and to disseminate

<sup>79</sup> Defence Closing Brief, pp. 75-82.

<sup>80</sup> See *supra* and *infra* paras. 34, 99-100 and 316-317 (Witness BKW); paras. 160 and 330 (Witness AJY); paras. 163-167 and 296 (Witness BUY); paras. 306-308 and 318 (Witness AHP).

<sup>81</sup> Indictment, paras. 3, 7, 12, 13. See also *ibid.*, paras. 30 and 32.

<sup>82</sup> Indictment, para. 7.

<sup>83</sup> Indictment, paras. 13, 32.



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anti-Tutsi propaganda.<sup>84</sup> Neither did the Prosecution adduce any evidence that Bikindi organised and rehearsed his compositions with youth groups at the *commune* level in late 1993 and early 1994 with the financial support of the Minister, with money being paid to the youth groups.<sup>85</sup> Similarly, the Prosecution failed to produce evidence that Callixte Nzabonimana, in his capacity as Minister, authorised and sponsored recording of Bikindi's musical compositions, through, and at, the Ministry of Youth and Association Movements ("Ministry") in Kigali.<sup>86</sup> Lastly, the Prosecution did not adduce evidence in support of its allegation that Bikindi consulted President Habyarimana, Minister Nzabonimana and MRND-aligned military authorities on his song lyrics.<sup>87</sup> The Chamber therefore summarily dismisses these allegations.

### 3.1. Collaboration with President Habyarimana

51. Prosecution Witness BKW is the sole witness who testified that Bikindi was close to President Habyarimana. When asked how he knew they were very close, Witness BKW stated that he, Bikindi and Habyarimana were natives of Gisenyi.<sup>88</sup> The Prosecution also entered into evidence a copy of a photo showing Bikindi shaking hands with President Habyarimana.<sup>89</sup> The Chamber is of the view that the photo does not in any way demonstrate that Bikindi collaborated with the President.

52. In light of Witness BKW's doubtful credibility,<sup>90</sup> and in the absence of any other evidence, the Chamber finds that the Prosecution has not proven that Bikindi agreed or collaborated with President Habyarimana for any specific purpose.

### 3.2. Collaboration with Minister of Youth and Association Movements

53. As noted earlier, the Prosecution has not presented evidence in support of some of its allegations about Bikindi's collaboration with Callixte Nzabonimana. The Prosecution attempted to prove the broader allegation of this collaboration with evidence that the Minister authorised and sponsored rehearsal of the *Irindiro* ballet through and at the Ministry, and that the Minister sponsored a private European tour of the ballet.

54. Although Bikindi denied that the ballet as a whole trained at the Ministry, he admitted that the choreographers and their trainers did train there.<sup>91</sup> He explained that it was not an exclusive arrangement; other groups also used the Ministry premises to train including the *Impala* Orchestra and the National Ballet.<sup>92</sup> Bikindi stated that in 1993, the Minister had granted him permission to use the Ministry premises for the choreographers of the *Imbonezamihiho* group, and thereafter, since he already had the key, he simply requested authorisation from the Director General of Sports.<sup>93</sup> He testified that the rest of the ballet trained at Amaharo Stadium having been granted permission to do so by the Ministry.<sup>94</sup>

<sup>84</sup> Indictment, para. 3.

<sup>85</sup> Indictment, para. 12.

<sup>86</sup> Indictment, para 12.

<sup>87</sup> Indictment, para 13.

<sup>88</sup> Witness BKW, T. 17 October 2006, pp. 36-37.

<sup>89</sup> Exhibit P104, Photograph of Bikindi shaking hands with President Habyarimana. The Chamber recalls its oral decision to exclude the text on the photograph which purported to state when and where the photograph was taken (T. 1 November 2007, pp. 67-69).

<sup>90</sup> See *supra* para. 34.

<sup>91</sup> Witness Bikindi, T. 2 November 2007, pp. 11-12; Defence Closing Brief, para. 266.

<sup>92</sup> Witness Bikindi, T. 2 November 2007, p. 11; T. 5 November 2007, p. 30.

<sup>93</sup> Witness Bikindi, T. 2 November 2007, pp. 11-12.

<sup>94</sup> Witness Bikindi, T. 2 November 2007, p. 12.

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Defence Witness CQR, a member of the *Irindiro* ballet, testified she attended ballet training sessions at the Ministry and did not see the Minister or any other senior official coming to see how the ballet was performing.<sup>95</sup> This was corroborated by Angeline Mukabanana, Bikindi's second wife, who gave evidence that Bikindi trained the *Irindiro* artists in the backyard of the ministerial building.<sup>96</sup> Defence Witnesses KMS and JCH, both members of the ballet, denied that rehearsals were held at the Ministry,<sup>97</sup> and Witness KMS added that they rehearsed at the Amahoro Stadium.<sup>98</sup>

55. The Chamber concludes, based on Bikindi's own admission, that some members of the *Irindiro* ballet, namely the trainers, trained at the Ministry. However, the Prosecution did not lead any evidence that this was authorised or sponsored by the Minister himself. Rather, according to Bikindi's testimony, authorisation was received from a different individual, the Director General of Sports.

56. Regarding the *Irindiro* troupe's European tour departing Rwanda on 4 April 1994 allegedly sponsored by Callixte Nzabonimana in his capacity as Minister, the Prosecution adduced two letters from Callixte Nzabonimana to the Belgian ambassador and UK consul, respectively, requesting visas for the *Irindiro* ballet in his official capacity.<sup>99</sup>

57. The Defence asserts that the letters were necessary for visa arrangements only and do not support the Prosecution's claim that the visit was a ministry or government mission as the Minister was the normal and official channel for dealing with embassies.<sup>100</sup> Bikindi acknowledged that the Ministry played a very important role in the *Irindiro* ballet's private tour of Europe, but testified that this was standard procedure to go via the Minister to obtain a visa for such a trip.<sup>101</sup> Bikindi stated that the Ministry did not provide any funding for the trip; rather he obtained a loan from Bacar Bank.<sup>102</sup> The existence of the loan was confirmed by his first wife, Apolline Uwimana, who testified that she signed the papers to obtain it.<sup>103</sup>

58. Although it is clear that Callixte Nzabonimana played an important role in the visa application, the Chamber accepts Bikindi's evidence that this was the normal and official procedure. The Chamber does not accept that the letters demonstrate that the government was sponsoring the tour. While couching the application in the spirit of cultural exchange between the countries, there is no suggestion in either letter that the *Irindiro* ballet was sponsored or financially supported by the Rwandan Government.

59. As an employee of the Ministry and a popular artist, Bikindi necessarily collaborated with the Minister to some extent. However, the Chamber finds that the Prosecution has failed to prove that Callixte Nzabonimana, in his capacity as Minister, collaborated with Bikindi for any anti-Tutsi purpose.

<sup>95</sup> Witness CQR, T. 10 October 2007, pp. 2, 13.

<sup>96</sup> Witness Angeline Mukabanana, T. 2 October 2007, pp. 31-32, 37.

<sup>97</sup> Witness JCH, T. 9 October 2007, pp. 14, 49; Witness KMS, T. 1 October 2007, pp. 6, 36.

<sup>98</sup> Witness KMS, T. 1 October 2007, p. 36.

<sup>99</sup> Exhibit P92, Letter of Minister of Youth and Association Movements to the Belgian Ambassador, dated 22 March 1994; Exhibit P93, Letter of the Minister of Youth and Association Movements to the Consul of Great Britain and Northern Ireland, dated 22 March 1994. See Bikindi, T. 1 November 2007, pp. 2, 3; T. 2 November 2007, p. 14; Prosecution Closing Brief, para. 945.

<sup>100</sup> Defence Closing Brief, para. 265.

<sup>101</sup> Bikindi, T. 1 November 2007, pp. 2, 3; T. 2 November 2007, p. 14. Bikindi testified that the Ministry of Youth encouraged cultural promotion and to this end supported and became involved in trips of other groups such as *Amasimbi N'amakombe*.

<sup>102</sup> Bikindi, T. 1 November 2007, p. 3.

<sup>103</sup> Apolline Uwimana, T. 8 October 2007, p. 33.

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### 3.3. Collaboration with National Leaders of the MRND

60. To support its allegation that Bikindi agreed or collaborated with leading figures in the national leadership of the MRND, such as Mathieu Ndirumpatse, André Ntagerura and Joseph Nzirorera, to militarise and indoctrinate the MRND youth wing,<sup>104</sup> the Prosecution called witnesses who testified that he was often seen in the company of MRND leaders during MRND political events such as rallies.

61. Prosecution Witness BGH, an economics journalist for ORINFOR (Rwandan Office of Information), who attended MRND demonstrations as a journalist for an international press agency,<sup>105</sup> testified that she saw Bikindi attend three political demonstrations organised by the MRND in 1993. During such demonstrations she often saw Bikindi talking to leaders such as Mathieu Ndirorera (Executive Secretary of the MRND) and Jean Habyarimana (MRND official in Kigali). Also present at these meetings were Mathieu Ndirumpatse (national President of the MRND), Édouard Karemera (first Vice-President of the MRND), Ferdinand Nahimana (a well-known member of the MRND), and MRND ministers, and it was clear to her that Bikindi knew them well.<sup>106</sup> However, the witness testified that she could not get close enough to them to hear what they were saying.<sup>107</sup>

62. Witness BGH stated that she also saw Bikindi at an MRND demonstration at Nyamirambo Stadium towards the end of 1992, beginning of 1993. He was discussing something with the MRND officials in Kigali, as well as those at the national level.<sup>108</sup> She testified that Jean Habyarimana, Mathieu Ndirumpatse, Joseph Nzirorera, Édouard Karemera, and other ministers and "heavyweights" who belonged to the MRND party were present.<sup>109</sup>

63. Witness BGH further testified that on one occasion Édouard Karemera publicly congratulated Bikindi for the support he was providing through his compositions. She testified that Karemera congratulated Bikindi because the officials of the MRND shared the same ideas as Bikindi and, consequently they used Bikindi in order to propagate their ideology through his compositions.<sup>110</sup> The Prosecution entered into evidence an RTLTM transcript of this address, dated 16 January 1994, in which Karemera states that all the MRND militants like Bikindi, and goes on to praise Bikindi, which reads in its relevant part:

Bikindi whom you know. Haa! Even the Inkotanyi (sic) know him, even all the soldiers know him. Hmmm... Bikindi is well known [...] All the MRND militants like him. [...]

Dear militants, the Irindiro troupe has just reminded me of Bikindi's talent. It has enabled me to remember this song which praises the heroic deeds of the Rwandan Armed Forces [...] Dear militants, brothers and sisters, I would like to request you to help thank Simon Bikindi for the significant contribution he has made to Rwandans but especially in a particular way to the members of the MRND through the numerous and rational advice which he has been giving. Assist me therefore to thank him (Applause).<sup>111</sup>

64. The Prosecution also entered into evidence a video and transcript of an MRND rally at Nyamirambo Stadium in late 1993 at which Bikindi was accompanied by important

<sup>104</sup> Indictment, paras. 3 and 30.

<sup>105</sup> Witness BGH, T. 4 October 2006, p. 28.

<sup>106</sup> Witness BGH, T. 2 October 2006, pp. 40-41.

<sup>107</sup> Witness BGH, T. 4 October 2006, p. 25.

<sup>108</sup> Witness BGH, T. 3 October 2006, p. 2; T. 4 October 2006, p. 31.

<sup>109</sup> Witness BGH, T. 3 October 2006, p. 3.

<sup>110</sup> Witness BGH, T. 3 October 2006, pp. 29-30.

<sup>111</sup> Exhibit P47, Transcript of RTLTM Broadcast of 16 January 1994, pp. 5-6.

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MRND figures.<sup>112</sup> Following a speech by President Habyarimana, Bikindi made a short speech, punctuated with a song, celebrating the victories of the MRND and *Interahamwe*.<sup>113</sup> The Chamber observes that his role appeared to be that of an entertainer, performing a motivational animation session for the audience.

65. In addition, the Prosecution alleges that Bikindi's close relationship with MRND leaders was evident through witness testimony that he stayed at the *Méridien* Hotel in Gisenyi when he returned to Rwanda in June 1994, the hotel where authority figures were staying.<sup>114</sup> Bikindi himself denied having ever spent a night at the *Méridien* Hotel, but stated that he went to the Palm Beach Hotel three times in 1994.<sup>115</sup>

66. Prosecution Witness BKW testified that on the day they went into exile, he saw Bikindi in the company of members of the interim government and high ranking officers, including General Augustin Bizimungu, Anatole Nsengiyumva, Major Juvénal Bahufite, Édouard Karemera, Hassan Ngeze, Joseph Nzirorera and Major Kabera.<sup>116</sup>

67. The Defence called witnesses who rejected the claim that Bikindi was seen with MRND leaders. Apolline Uwimana testified that Bikindi was not friends with any politicians.<sup>117</sup> While she was not constantly with her husband she had never seen him with André Ntagerura, George Rutaganda or Robert Kajuga. She added that she had never seen senior MRND officials such as Mathieu Ndirumpatse or Joseph Nzirorera prior to seeing them in the United Nations Detention Facility in Arusha.<sup>118</sup> She also testified, as corroborated by Witnesses TIER and DZS, that she did not see Bikindi in the company of politicians during the period they were in Nyundo,<sup>119</sup> or when in exile in the Mugunga camp in Zaire.<sup>120</sup>

68. The Defence witnesses' testimony that they did not see Bikindi in the company of politicians may be true. However, the Chamber notes that these witnesses were not at Bikindi's side at all times and therefore were not in a position to state with any certainty that Bikindi was not close to leading MRND politicians. The Chamber is also mindful of Apolline Uwimana's possible self-interest to distance her husband from the allegations proffered by the Prosecution. The Chamber finds the evidence of Witness BGH to be coherent and articulate and has no reason to doubt its veracity. The Chamber rejects the Defence challenges to Witness BGH's evidence,<sup>121</sup> insofar as it believes that the minor inconsistencies identified in her testimony can be attributed to the passage of time and do not negatively impact her credibility.

<sup>112</sup> Exhibit P30(E), Transcript (undated), pp. 1-2, admitted with Exhibit P30, a video of the same meeting in Nyamirambo stadium, dated 7 November 1993 in script at the beginning of the video, admitted into evidence at T. 18 September 2006, p. 24 ("Transcript of 7 November 1993 MRND Meeting in Nyamirambo"). See also T. 25 September 2006, p. 2 and T. 3 October 2006, p. 21.

<sup>113</sup> Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo, pp. 1-2.

<sup>114</sup> Witness AEY, T. 12 October 2006, pp. 4, 31; Witness RH, T. 25 October 2007, p. 48 and T. 26 October 2007, pp. 8-9, 14.

<sup>115</sup> Bikindi, T. 5 November 2007, pp. 15-16, 35-36. On his third visit, Bikindi testified that the hotel was closed. Regarding the distance between the two, Bikindi confirmed the two hotels were side by side (T. 5 November 2007, p. 34), Witness RH estimated that it would take approximately two to three minutes walking at normal speed to reach the Hotel Palm Beach from the *Méridien* Hotel (T. 26 October 2007, p. 14), and during the site visit, the Chamber observed that the two hotels were no more than 150 metres apart.

<sup>116</sup> Witness BKW, T. 17 October 2006, p. 36.

<sup>117</sup> Apolline Uwimana, T. 8 October 2007, p. 32.

<sup>118</sup> Apolline Uwimana, T. 8 October 2007, p. 18.

<sup>119</sup> See *infra* para. 278.

<sup>120</sup> Apolline Uwimana, T. 8 October 2007, pp. 25, 31; Witness DZS, T. 24 September 2007, pp. 15, 22; Witness TIER, T. 16 October 2007, p. 34.

<sup>121</sup> See Defence Closing Brief, paras. 171-172.

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69. The Chamber considers that, even if it were to rely on Witnesses RH and AEY's evidence that Bikindi stayed at the *Méridien* Hotel, where they stated that other authority figures stayed, this would not be a sufficient basis to conclude that Bikindi had a close relationship with them. Likewise, Witness BKW's evidence that he saw Bikindi with important political leaders on his way to exile is insufficient to prove any collaboration between them.

70. Witness BGH's testimony, together with Karemera's praising, clearly suggests that Bikindi was perceived as an important and influential member of the MRND and was familiar with MRND leaders. This is supported by Bikindi speaking at an MRND rally in Kivumu in 1993,<sup>122</sup> an MRND rally at Nyamirambo Stadium in 1993 where he was accompanied by important MRND figures,<sup>123</sup> and confirmed by the perception of many witnesses.<sup>124</sup>

71. The Chamber is not convinced by the Defence argument that Bikindi's inability to comment on the MRND Statute supported its position that Bikindi was not an influential MRND member. The Chamber notes that when asked by Defence Counsel whether he was "familiar with the statute of the MRND". Bikindi replied that he was "very familiar". He was also able to provide the motto of the party.<sup>125</sup> Nor does the Chamber find that Bikindi's testimony that he was not present at meetings in 1991 when changes were made to the MRND Statute precludes him from being seen as an influential member of the party. Finally, the Chamber is not persuaded by the Defence assertion that it is significant that Bikindi was not in attendance and was unable to say anything about the meeting at Nyamirambo Stadium at the end of 1993 when Hutu power was allegedly born.<sup>126</sup> In the Chamber's opinion, it is not essential for an individual to attend every MRND rally to be perceived to be an important MRND figure.

72. Although the Chamber is unable to conclude that Bikindi had any official role in the party,<sup>127</sup> it finds that he was perceived to be an influential member of the MRND and was familiar with important MRND figures. Based on his participation and address at the Kivumu meeting in 1993,<sup>128</sup> his speech at the meeting held in Nyamirambo in November 1993, Karemera's praising and Witness BGH's evidence, the Chamber is convinced that Bikindi approved the dissemination of anti-Tutsi propaganda by the MRND and its leaders. As discussed under the section on Bikindi's Musical Compositions, Bikindi himself participated in the anti-Tutsi propaganda campaign. However, the evidence adduced at trial does not prove beyond reasonable doubt the Prosecution's allegation that Bikindi specifically *agreed*

<sup>122</sup> See *infra* para. 141.

<sup>123</sup> Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo, pp. 1-2.

<sup>124</sup> See the reliable testimony of Witness AJS corroborated by Witnesses AJY, ALQ, AHP, BUY and BKW: Witness AJS, T. 29 September 2006, p. 9; Witness AJY, T. 27 September 2006, p. 30 and T. 28 September 2006, pp. 37-38; Witness ALQ, T. 13 October 2006, p. 38 and T. 16 October 2006, p. 2, 3; Witness AHP, T. 19 October 2006, p. 17; Witness BUY, T. 19 February 2007, p. 44; Witness BKW, T. 17 October 2006, p. 37.

<sup>125</sup> Bikindi, T. 1 November 2007, p. 11.

<sup>126</sup> Bikindi, T. 1 November 2007, pp. 13-14.

<sup>127</sup> Bikindi (T. 1 November 2007, pp. 11, 53) and two Defence witnesses testified he had no official role in the MRND party (Charles Zilimwabagabo, T. 22 October 2007, p. 15, and Apolline Uwimana, T. 8 October 2007, p. 18). The Chamber accepts that their testimony is supported by four MRND documents which do not contain Bikindi's name: Exhibit D123, Manifesto, Programme and Statutes of the *Mouvement Républicain National pour la Démocratie et le Développement* (MRND), September 1991; Exhibit D10, *Liste des élus dans les Comités préfectoraux*, dated 12 February 1992; Exhibit D112, *Les Membres du Comité préfectoral du MRND-Gisenyi*, undated; and Exhibit D113, MRND National Committee Elections Report, undated. See Defence Closing Brief, para. 11.

<sup>128</sup> See *infra* para. 141.

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or *collaborated* with leading MRND figures for such a purpose. While the evidence shows that Bikindi was close to them, it does not establish the nature or extent of their association.

73. Accordingly, the Chamber finds that the Prosecution failed to prove beyond reasonable doubt that Bikindi agreed or collaborated with MRND leaders to militarise or indoctrinate the *Interahamwe* with anti-Tutsi ideology, or to disseminate anti-Tutsi propaganda.

### 3.4. Conducting MRND Membership Drives

74. The Prosecution alleges that Bikindi participated in the campaign to defeat the enemy militarily by conducting MRND membership drives at the end of 1993 and the beginning of 1994.<sup>129</sup>

75. Witness ALQ testified that Bikindi was responsible for campaigning for the MRND so that it could obtain members.<sup>130</sup> The witness explained that at rallies Bikindi was involved in sensitising members of the population to recruit MRND members, and took whatever time was required to explain the nature of the MRND regime and its objectives and the evil or pain that the Tutsi had brought upon the Hutu.<sup>131</sup> He stated that when the "MRND realized that it might lose in the political arena, Bikindi began to show how the Tutsi were wicked. He therefore began to sensitise the people so that they could hate the Tutsi. [...] [H]is objective, in fact, was to recruit members for the MRND party."<sup>132</sup> Witness ALQ gave specific examples of rallies at Gikongoro and Kibungo in 1992 or 1993 which he claimed were membership drives.<sup>133</sup> He testified that when Bikindi began to sing songs at these rallies, those who refused to join the MRND were beaten up and seriously wounded.<sup>134</sup>

76. Witness ALQ's evidence of Bikindi's involvement in recruiting MRND members was corroborated by Witness BHI, who testified that Bikindi campaigned on behalf of the MRND at political rallies.<sup>135</sup> Witness BHI stated that Bikindi was in charge of "sensibilisation or mobilisation" for the MRND across the country.<sup>136</sup> He was, the witness said, "waging propaganda for the MRND [...] so that the MRND could have members".<sup>137</sup>

77. Bikindi denied that he was seen by people, including top members of the government in 1994, senior military officials, the *Interahamwe* leadership, and civil administrators, as being an effective mobiliser of the Hutu population.<sup>138</sup> Witness KMS also denied that Bikindi campaigned for the MRND, testifying that if she heard that someone said that, she would say that such a person were "a liar in the sense that I was always in the presence of Bikindi."<sup>139</sup>

78. The Chamber notes that the evidence of Witness ALQ, a former minibus taxi-driver whose conviction and sentence to life imprisonment was under appeal at the time of his testimony,<sup>140</sup> contains significant inconsistencies which leave the Chamber with doubts as to

<sup>129</sup> Indictment, para. 7.

<sup>130</sup> Witness ALQ, T. 13 October 2006, p. 38; T. 16 October 2006, p. 2.

<sup>131</sup> Witness ALQ, T. 16 October 2006, p. 4 (French).

<sup>132</sup> Witness ALQ, T. 13 October 2006, p. 38.

<sup>133</sup> Witness ALQ, T. 16 October 2006, pp. 5, 6, 8, 14, 19.

<sup>134</sup> Witness ALQ, T. 16 October 2006, p. 25.

<sup>135</sup> Witness BHI, T. 12 October 2006, p. 40.

<sup>136</sup> Witness BHI, T. 13 October 2006, p. 11.

<sup>137</sup> Witness BHI, T. 13 October 2006, p. 5.

<sup>138</sup> Bikindi, T. 2 November 2007, pp. 30-31.

<sup>139</sup> Witness KMS, T. 1 October 2007, p. 21.

<sup>140</sup> Witness ALQ, T. 13 October 2006, p. 33; T. 16 October 2006, p. 29.

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his credibility. Of particular concern are the witness's inconsistencies regarding his membership of the *Interahamwe*,<sup>141</sup> his presence in Nyundo,<sup>142</sup> and Bikindi's participation in military training.<sup>143</sup> The Chamber also emphasises that although in his testimony he incriminates Bikindi for his participation in killings in Gisenyi in June 1994,<sup>144</sup> the witness admitted that he had not previously mentioned Bikindi in relation to incidents in Gisenyi during that period to any Rwandan or Tribunal investigators.<sup>145</sup> The Chamber is therefore hesitant to rely on Witness ALQ's testimony without sufficient corroboration.

79. The Chamber also has some concerns regarding the veracity of the evidence of Witness BHI, a former *Interahamwe* who was convicted in Rwanda and sentenced to life imprisonment for his participation in the genocide,<sup>146</sup> as it would appear that he is particularly intent on implicating Bikindi. In response to a question about whether Bikindi was at an MRND rally in Ruhengeri in 1991, Witness BHI testified that Bikindi attended all MRND meetings in the *préfecture* as he was in charge of "sensibilisation or mobilization" for the MRND across the country and if the Defence believed the contrary, it should prove it.<sup>147</sup> However, when challenged regarding a previous statement he had given to Tribunal investigators in which he stated that he did not attend all the MRND rallies, but saw video footage of them at Hassan Ngeze's home,<sup>148</sup> the witness blamed the inconsistency on the passage of time.<sup>149</sup> The Chamber views this as an example of a tendency of Witness BHI to stress Bikindi's guilt at any opportunity, such as repeatedly stating without prompting that it was Bikindi's songs that incited the *Interahamwe* to kill.<sup>150</sup> This leaves the Chamber with doubt as to the credibility of Witness BHI's testimony.

80. The Chamber concludes that the fact that Witnesses ALQ and BHI corroborate each other in some respects is not enough to overcome the strong reservations it has regarding their credibility. In light of the evidence before it, the Chamber concludes that the Prosecution has failed to prove that Bikindi conducted MRND membership drives at the end of 1993 and beginning of 1994.

<sup>141</sup> Witness ALQ positively answered the question about whether he was an *Interahamwe* (T. 13 October 2006, p. 18). However, when confronted with his prior testimony in the *Bagosora et al.* case that he denied ever being an *Interahamwe*, the witness stated, "You know, it is very difficult to acknowledge that one had been an *Interahamwe*. As a matter of fact, what I did was to transport the *Interahamwe*, but I was not an *Interahamwe*, as such" (T. 16 October 2006, p. 30). See also Exhibit D28/2, Transcript in *The Prosecutor v. Bagosora et al.* case, dated 30 June 2003, p. 5 (closed session) and Exhibit D28/3, Transcript in the *The Prosecutor v. Bagosora et al.* case, dated 1 July 2003, pp. 66-67.

<sup>142</sup> Witness ALQ first testified that he personally saw Bikindi in Nyundo "with [his] very own eyes" (T. 16 October 2006, p. 23). However, when confronted with contradictory testimony he made before the *Bagosora et al.* Trial Chamber (Exhibit D28/4, Transcript in *The Prosecutor v. Bagosora et al.* case, dated 17 October 2005, p. 24 (closed session)), the witness testified that he had never been there (T. 16 October 2006, pp. 23, 24, 28).

<sup>143</sup> See *infra* para. 101.

<sup>144</sup> Witness ALQ, T. 16 October 2006, pp. 23-25.

<sup>145</sup> Witness ALQ, T. 16 October 2006, p. 30. The Chamber notes that the witness explained that he testified in some eight to nine cases before the Tribunal.

<sup>146</sup> Witness BHI, T. 12 October 2006, p. 40; T. 13 October 2006, p. 21.

<sup>147</sup> Witness BHI, T. 13 October 2006, p. 11.

<sup>148</sup> Exhibit D24/1, Witness BHI's written statement dated 3 and 7 March 2001.

<sup>149</sup> Witness BHI, 13 October 2006, pp. 12-13.

<sup>150</sup> Witness BHI, T. 13 October 2006, pp. 4, 21-22, 29.

### 3.5. Performing at MRND and CDR Political Gatherings

81. The Prosecution alleges that Bikindi regularly performed his musical compositions at large MRND and CDR party functions in various stadiums in Rwanda, including Ruhengeri, Cyasamakamba, Nyamirambo, Cyangugu, Umuganda, Rubona in Bicumbi *commune*, Ruyenzi in Gitarama *commune*, in late 1992 and 1993, and in the Kigali and Gisenyi *préfectures* at the beginning of 1994.<sup>151</sup> Before turning to its analysis of the evidence on the matter, the Chamber recalls that it has excluded certain portions of witnesses' evidence of rallies Bikindi is alleged to have attended in a previous decision which, accordingly, have been disregarded.<sup>152</sup>

82. The Defence does not dispute that Bikindi attended rallies of a political nature in his capacity as a musician and as the manager of a musical group.<sup>153</sup> Witnesses TIER, KMS, CQK, and JCH, all members of the *Irindiro* ballet, testified that the ballet performed at MRND rallies attended by important MRND political figures.<sup>154</sup> Witnesses DUC, TIER, CQK, KMS and JCH testified that this was not an exclusive arrangement, explaining that the *Irindiro* and Bikindi performed for other political parties including the PSD, the Parerwa Party, and the MDR.<sup>155</sup> Bikindi denied that the *Irindiro* was at the service of the MRND.<sup>156</sup> While the *Irindiro* ballet performed primarily for the MRND, other political parties occasionally solicited its services. In light of the evidence adduced, the Chamber considers that it is clear that the ballet was not exclusively an organ for the MRND to utilise.

83. The Chamber also notes that there is reliable evidence that Bikindi composed a song for the MRND which was occasionally performed by the *Irindiro* ballet at MRND gatherings.<sup>157</sup>

84. When Exhibit P47, a transcript of an RTLTM broadcast of a rally in which Karemera praised Bikindi, was shown to the Accused, he admitted he had attended the rally, but stated that he had not heard Karemera's speech as he was in the changing rooms waiting to be informed that in the next few minutes the *Irindiro* troupe would perform.<sup>158</sup> The Chamber finds that this rally occurred in Nyamirambo Stadium in the first two weeks of 1994 given the content of the speeches made.<sup>159</sup> The Chamber notes that there was no evidence of which songs Bikindi performed.

<sup>151</sup> Indictment, paras. 13 and 32.

<sup>152</sup> Decision on Exclusion of Evidence. In this Decision, the Chamber excluded the following evidence: Prosecution Witness BHB's evidence related to a meeting in Ngororero in 1993 (para 24); Witnesses BKW and BUY's evidence in relation to a meeting in Kabaya (paras. 28, 30); Witnesses BKW and BUY's evidence on a meeting in Butare (para. 34).

<sup>153</sup> Defence Closing Brief, para. 214.

<sup>154</sup> Witness TIER, T. 16 October 2007, p. 35; Witness KMS, T. 1 October 2007, pp. 13, 17-19; Witness CQK, T. 10 October 2007, p. 52; Witness JCH, T. 9 October 2007, pp. 17-18, 28; Witness DUC, T. 27 September 2007, p. 50 and T. 28 September 2007, pp. 2, 4, 9.

<sup>155</sup> Witness TIER, T. 16 October 2007, p. 21; Witness CQK, T. 10 October 2007, p. 52; Witness KMS, T. 1 October 2007, pp. 13-16, 38; Witness DUC, T. 27 September 2007, p. 52; Witness JCH, T. 9 October 2007, pp. 18, 43-44.

<sup>156</sup> Bikindi, T. 2 November 2007, p. 11.

<sup>157</sup> Witness KMS, T. 1 October 2007, p. 37; Witness JCH, T. 9 October 2007, p. 17; Exhibit P4, Transcript of RTLTM Broadcast of 3-4 January 1994, p. 12.

<sup>158</sup> Bikindi, T. 2 November 2007, pp. 45-49.

<sup>159</sup> In Exhibit P47, the Chamber notes that in the introduction to the broadcast, Noel Hitimana, RTLTM journalist, stated that the speeches were delivered at the Nyamirambo regional stadium. The Chamber further notes a few indications in the transcript that the rally occurred sometime between 1 January and 15 January 1994. Firstly, on page 4, the same RTLTM journalist, Noel Hitimana, stated that he heard the speakers who took the floor at the stadium saying "Happy New Year!" Secondly, on page 6, Karemera speaks of a letter which was dated



85. Based on the evidence of Defence Witnesses WUH and HZTX, the Chamber finds that Bikindi also performed at an MRND meeting at a football field in Musya *cellule*, Vumwe *secteur*, Kigarama *commune*, Kibungo *préfecture* in 1993,<sup>160</sup> and at an MRND rally in Ruhengeri in 1992.<sup>161</sup> Bikindi and *Irindiro* ballet's performances at MRND rallies are also substantiated by video footage showing them performing at Amaharo Stadium at an MRND rally in 1992.<sup>162</sup>

86. As discussed in the preliminary section, the Chamber will not rely on Witness BKW's evidence in the absence of reliable corroboration, and therefore rejects his uncorroborated evidence that Bikindi performed at a CDR rally in Gisenyi in 1993.<sup>163</sup> Similarly, due to the reservations the Chamber has about Witness ALQ's credibility,<sup>164</sup> the Chamber will not rely on his uncorroborated evidence that Bikindi was present at a meeting in Gikongoro in 1992/1993.<sup>165</sup> Further, the fact that Witnesses ALQ and BKW corroborated each other as to Bikindi's participation at an MRND rally held in a stadium in Cyasemakamba, Kibungo, in 1993,<sup>166</sup> is not sufficient in the Chamber's opinion to overcome the doubt the Chamber has as to the veracity of their testimony, especially in light of Defence Witness AJH's testimony that Bikindi did not attend that meeting.<sup>167</sup> The Chamber will not rely on their evidence to find that Bikindi attended a rally in Cyasemakamba in 1993.

87. Although the Prosecution has not proven that Bikindi performed in all the locations mentioned in the Indictment, the Chamber finds that it has proven that Bikindi performed with his troupe at MRND rallies, in particular at MRND rallies in Ruhengeri and at the Amaharo Stadium in 1992, and at a football field in Kibungo *préfecture* and in the Nyamirambo Stadium in 1993. The Chamber further finds that Bikindi performed at an MRND rally in January 1994 in Nyamirambo Stadium. There was no reliable evidence, however, that Bikindi performed at any other rally in Rwanda in 1994. Bikindi's participation in political gatherings as a prelude to or a motivating factor in anti-Tutsi violence will be addressed in a subsequent section. While the *Irindiro* was not exclusively performing for the MRND, the Chamber considers that the evidence establishes that the ballet was regularly hired by the MRND which demonstrates a certain closeness between the ballet and the political party.

"9 December last year in 1993". In this respect, the Chamber notes that, although Defence Witness DUC testified that there were no *Irindiro* performances in 1994, he also stated that he attended no rallies during 1994 as he had a problem with his foot (T. 28 September 2007, p. 4). Therefore, the Chamber views his categorical statement with skepticism as he was likely not performing with the ballet given his foot injury, and would likely not have been aware of every performance that year.

<sup>160</sup> Witness WUH, T. 2 October 2007, pp. 62-66. The witness testified that there were many folklore groups at the rally including Bikindi and the *Irindiro* ballet.

<sup>161</sup> Witness HZTX, T. 25 September 2007, pp. 69, 72.

<sup>162</sup> Exhibit P31, Video of Bikindi and the *Irindiro* ballet performing at an MRND rally at Amahoro Stadium, which Bikindi identified from a still photograph (Exhibit P79) taken from the video as occurring in 1992 (T. 2 November 2007, pp. 15-20).

<sup>163</sup> Witness BKW, T. 17 October 2006, pp. 3-4; T. 18 October 2006, p. 5.

<sup>164</sup> See *supra* para. 78 and *infra* paras. 101 and 376.

<sup>165</sup> Witness ALQ, T. 16 October 2006, pp. 5-6, 18, 25.

<sup>166</sup> Witness ALQ, T. 16 October 2006, pp. 6-8, 14, 19, 25; Witness BKW, T. 17 October 2006, p. 22 and T. 18 October 2006, p. 5.

<sup>167</sup> Witness AJH, T. 2 October 2007, pp. 47-53. The witness testified that he lived approximately some 150 meters away from the Cyasemakamba stadium and that he did not know of any other rallies there in 1993.

### 3.6. Conclusion

88. In light of the above, the Chamber finds that the Prosecution has not proven that Bikindi collaborated with those alleged to militarise and indoctrinate the MRND youth wing, the *Interahamwe*, with anti-Tutsi ideology and to disseminate anti-Tutsi propaganda. Specifically, the Chamber finds no evidence that Bikindi collaborated with President Habyarimana in any way. The only specific collaboration proven between Minister Callixte Nzabonimana and Bikindi was some routine assistance with European visas. The Chamber notes that some evidence was adduced of possible collaboration between Bikindi and national leaders of the MRND, in that he was seen at political gatherings for the MRND, took the floor at two MRND meetings in 1993 and was praised by national MRND leader Karemera, but considers that this evidence does not establish that Bikindi agreed or collaborated with them for the purposes alleged by the Prosecution. The Prosecution also failed to prove that Bikindi conducted membership drives for the MRND, or that he collaborated with the CDR party.

## 4. RELATIONSHIP WITH *INTERAHAMWE*

### 4.1. Association with *Interahamwe* Leading Figures

89. The Prosecution alleges that Bikindi agreed or collaborated with national *Interahamwe* leader Robert Kajuga, among others, to militarise *Interahamwe* militias, indoctrinate them with anti-Tutsi ideology and disseminate anti-Tutsi propaganda and, more generally, alleges that Bikindi was closely associated with *Interahamwe* leading figures.<sup>168</sup>

90. Prosecution Witness ALQ is the sole witness who testified seeing Bikindi in the presence of Robert Kajuga, national chairman of the *Interahamwe*.<sup>169</sup> Given its concerns about the reliability of his testimony discussed in other sections,<sup>170</sup> the Chamber declines to rely on Witness ALQ in the absence of reliable corroboration.

91. The Chamber notes the evidence of Bikindi making a speech at an MRND meeting in Nyamirambo on 7 November 1993, followed by a speech by Robert Kajuga.<sup>171</sup> While this shows that Bikindi certainly knew Kajuga, it does not prove that he was closely associated to him. The Chamber finds that this is insufficient to demonstrate that Bikindi agreed or collaborated with Kajuga for the purposes described by the Prosecution.

92. The Chamber does not accept Witness BKW's uncorroborated evidence that Bikindi usually met with Hassan Gitoki, alleged vice-chairman of the *Interahamwe* at the *préfectoral* level, or that Bikindi spoke with him about rallying young people to fight the *Inyenzi*, and carried out attacks in his company.<sup>172</sup> Further, while Bikindi admitted that he knew Bernard

<sup>168</sup> Indictment, paras. 3 and 30.

<sup>169</sup> Witness ALQ, T. 13 October 2006, pp. 34-37; T. 16 October 2006, pp. 2, 5.

<sup>170</sup> See *supra* paras. 78 and *infra* paras. 101 and 376.

<sup>171</sup> Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo, pp. 1-2.

<sup>172</sup> Witness BKW, T. 17 October 2006, pp. 16-19, 33. The Chamber notes that the witness also referred to Hassan Gitoki as an MRND vice-chairman (T. 17 October 2006, p. 11). Defence Witness HZTX referred to Hassan Gitoki as the MRND chairman in Gisenyi (T. 25 September 2007, pp. 84, 85 and T. 26 September 2006, p. 2). The Chamber further notes that Hassan Gitoki is listed as Head of the *Interahamwe* in Gisenyi in Exhibit D127, Report by Massamba Ndiaye, "*Histoire des Interahamwe*", Annex 2 "*Liste des chefs des Interahamwe par préfecture*", p. 31. As to Witness BKW's credibility, see *supra* para. 34.

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Munyagishari,<sup>173</sup> an *Interahamwe* leader in Gisenyi, with whom he was allegedly seen on different occasions,<sup>174</sup> the Prosecution failed to establish the nature of their relationship.

93. In the absence of further evidence, the Chamber finds that the Prosecution failed to establish that Bikindi agreed or collaborated with *Interahamwe* leaders to militarise *Interahamwe* militias, indoctrinate them with anti-Tutsi ideology and disseminate anti-Tutsi propaganda or was *closely* associated with *Interahamwe* leading figures.<sup>175</sup>

#### 4.2. Participation in Recruitment and Military Training of *Interahamwe*

94. The Prosecution also alleges that Bikindi participated in the recruitment and military training of *Interahamwe* militias as part of a plan to mobilise civilian militias to destroy the Tutsi.<sup>176</sup> In particular, the Prosecution contends that Bikindi participated in the recruitment and military training of *Interahamwe* in Mutara in late 1993 and, on several occasions, in Kigali-ville in January 1994 with French Soldiers at Club Jali.<sup>177</sup>

95. The Chamber first notes that the Prosecution has not adduced evidence in support of its allegation that Bikindi participated in the military training of *Interahamwe* at Club Jali, in Kigali-ville, in January 1994.

96. Prosecution Witness BKW testified that Bikindi participated in the military training of a selected group of *Interahamwe* by French soldiers in Gabiro, Mutara region, around 1992-1993.<sup>178</sup>

97. Prosecution Witness ALQ testified to being hired by Robert Kajuga and Bikindi many times in 1992 to provide transport for the *Interahamwe*.<sup>179</sup> He explained that Bikindi tried to identify *Interahamwe* for military training and that Bikindi transported them to the training locations. The witness stated that training took place at different locations, and that he drove them, for example, to Kanombe or Gatenga in Kigali town.<sup>180</sup> The witness further declared that Bikindi provided equipment, materials and money for the military training, but that he never actually saw Bikindi at any training location.<sup>181</sup>

98. The existence of a military training centre in Gabiro, Mutara region, was confirmed by Defence Witness Jean Berchmans Hakorimana, a former Rwandan military member,<sup>182</sup> who explained that he had received training there from the French.<sup>183</sup> However, he stated that the Gabiro training centre was reserved uniquely for the military and that no *Interahamwe* were trained there.<sup>184</sup>

<sup>173</sup> Bikindi, 1 November 2007, p. 20.

<sup>174</sup> Witness BUY, T. 19 February 2007, p. 28; Witness AEY, T. 12 October 2006, p. 31.

<sup>175</sup> The Chamber has not considered Witness BUY's testimony on Bikindi's participation at a meeting held in Butare relied upon by the Prosecution in its Closing Brief as a result of its decision to exclude this part of Witness BUY's evidence: Decision on Exclusion of Evidence, para. 34.

<sup>176</sup> Indictment, paras. 16, 20 and 43.

<sup>177</sup> Indictment, paras. 7, 8 and 30(b). The Chamber considers the reference to Club "Jaly" in the Indictment and the Prosecution Pre-Trial Brief to be a spelling mistake.

<sup>178</sup> Witness BKW, T. 17 October 2006, pp. 6-7; T. 18 October 2006, pp. 6-7. Witness BKW's testimony is unclear as to the year the training took place. At T. 17 October 2006, p. 6, he specified "between 1992 and 1993", at T. 18 October 2006, p. 6, he mentioned "beginning the end of 1991 up until 1992".

<sup>179</sup> Witness ALQ, T. 13 October 2006, pp. 33, 37; T. 16 October 2006, pp. 8, 16, 21.

<sup>180</sup> Witness ALQ, T. 16 October 2006, pp. 3-4.

<sup>181</sup> Witness ALQ, T. 16 October 2006, pp. 4-5.

<sup>182</sup> Jean Berchmans Hakorimana, T. 11 October 2007, p. 6; Exhibit D79, Jean Berchmans Hakorimana's Personal Information Sheet.

<sup>183</sup> Jean Berchmans Hakorimana, T. 11 October 2007, pp. 16, 19.

<sup>184</sup> Jean Berchmans Hakorimana, T. 11 October 2007, p. 6.

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99. Witness BKW testified that he never went to Gabiro. When asked how he knew of the military training of *Interahamwe* that took place at Gabiro, he first explained that some of his *Interahamwe* neighbours took part in the training, and that one could see at rallies how members of *Irindiro* who were also *Interahamwe* were trained by the way they performed on stage. He further stated that the military training took place in secret and that nobody talked about it openly.<sup>185</sup> It is only upon the insistence of the Prosecution Counsel that Witness BKW testified that he overheard Bikindi say to one of his neighbours, Hassan Gitoki, that Bikindi received French military training in Gabiro.<sup>186</sup> The witness was also unclear as to Bikindi's exact role in the military training: he testified that Bikindi provided military training to young people in Gabiro,<sup>187</sup> and that he overheard that Bikindi had received military training from the French.<sup>188</sup>

100. The Chamber therefore has some doubts about Witness BKW's testimony on Bikindi's involvement in military training. Considering the witness's questionable credibility,<sup>189</sup> the Chamber does not accept Witness BKW's uncorroborated hearsay evidence as proving Bikindi's involvement in military training in Gabiro, Mutara region.

101. In the Chamber's view, Witness ALQ's testimony is not a sufficient basis either to conclude that Bikindi participated in military training or recruited *Interahamwe*. As pointed out above, Witness ALQ first testified that Bikindi transported the *Interahamwe* to the location for training, yet later testified as to never seeing him at the training location. In a statement of June 2000, the witness declared to Tribunal investigators that he did not know whether Bikindi was involved in the training of *Interahamwe* in Kanombe.<sup>190</sup> The witness's inconsistency on such an important matter raises questions about the reliability of his testimony. In the absence of any corroboration, the Chamber considers it cannot rely on this part of Witness ALQ's testimony.

102. Further, the Chamber considers Prosecution Witness AJS's evidence that in 1993 armed *Interahamwe* and members of the *Irindiro* troupe would assemble close to his house and Bikindi's house and board buses to be transported to Bugesera where there was a forest in which military training took place<sup>191</sup> to be wholly inconclusive as to Bikindi's role in such military training.

103. The Chamber concludes that the Prosecution has not proven that Bikindi participated in recruitment and military training of *Interahamwe*.

#### 4.3. Authority over the *Interahamwe*

104. The Prosecution does not argue that Bikindi was an executive member of the *Interahamwe* movement but that he had some control over them.<sup>192</sup>

105. Prosecution witnesses testified that they saw Bikindi with *Interahamwe*,<sup>193</sup> among them members of his own ballet.<sup>194</sup> Witness BGH testified that she saw Bikindi wearing the

<sup>185</sup> Witness BKW, T. 17 October 2006, pp. 14-17; T. 18 October 2006, pp. 6-7.

<sup>186</sup> Witness BKW, T. 17 October 2006, pp. 17-19; T. 19 October 2006, p. 14.

<sup>187</sup> Witness BKW, T. 17 October 2006, pp. 6, 14-15; T. 18 October 2006, p. 6.

<sup>188</sup> Witness BKW, T. 17 October 2006, p. 19; T. 19 October 2006, p. 14.

<sup>189</sup> See *supra* para. 34.

<sup>190</sup> Exhibit D26/1, Witness ALQ's written statement dated 27 June 2000 (under seal), p. 4. See also Witness ALQ, T. 16 October 2006, p. 26.

<sup>191</sup> Witness AJS, T. 29 September 2006, pp. 9-10, 12-13, relied upon by the Prosecution in its Closing Brief, paras. 281 and 298.

<sup>192</sup> Prosecution Closing Brief, para. 274.

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*Interahamwe* attire.<sup>195</sup> There is also evidence of Bikindi making a speech at Nyamirambo Stadium on 7 November 1993, praising the MRND and the *Interahamwe* and singing "We, the *Interahamwe*, have won! We have Won!"<sup>196</sup> Further, witnesses testified that Bikindi was accompanied by *Interahamwe* bodyguards on various occasions.<sup>197</sup>

106. Bikindi declared that he had never been an *Interahamwe*, confirmed by Defence Witnesses CQR, JCH and Angeline Mukabanana.<sup>198</sup> Bikindi further denied having any influence or authority over the *Interahamwe*.<sup>199</sup> Other Defence witnesses testified that they never saw Bikindi in the company of *Interahamwe*.<sup>200</sup>

107. The Chamber considers that whether Bikindi was actually an *Interahamwe* or not is of little importance in the circumstances of the case. What matters is that while he did not hold any official position within the youth movement, the evidence establishes that in Rwanda in 1994, Bikindi was held in very high esteem by the *Interahamwe* and considered to be an important figure and a man of authority in the movement. This was in part due to his popularity as a talented artist, but also because he was perceived to be an important and influential MRND member and was familiar with important MRND figures.<sup>201</sup> Bikindi's influence over the *Interahamwe* is exemplified by his ability to have the belongings of his neighbour Claudine, which had been stolen by *Interahamwe*, given back to her.<sup>202</sup> The Chamber considers that Bikindi and the Defence witnesses who testified to the contrary do not raise a doubt in this respect.

108. However, due to the reservations the Chamber has on the credibility of the witnesses who testified to that effect, the Chamber does not find that there is reliable evidence that Bikindi was accompanied by *Interahamwe* bodyguards on various occasions.<sup>203</sup>

<sup>193</sup> Witness BGH, T. 2 October 2006, p. 38; Witness AKJ, T. 20 September 2006, p. 50; Witness BHB, 20 September 2006, pp. 23, 27, 29; Witness AKK, T. 22 September 2006, pp. 4-6.

<sup>194</sup> See *supra* para. 47.

<sup>195</sup> Witness BGH, T. 2 October 2006, p. 39.

<sup>196</sup> Exhibit P30(E), Transcript of 7 November 1993 MRND meeting in Nyamirambo, p. 2 (emphasis added). See *supra* note 112.

<sup>197</sup> Witness AEY, T. 12 October 2006, p. 4; Witness AHP, T. 19 October 2006, p. 19; Witness AJZ, T. 25 September 2006, p. 43; Witness BHI, T. 13 October 2006, pp. 2-3; Witness BUY, T. 19 February 2007, p. 20.

<sup>198</sup> Bikindi, T. 1 November 2007, p. 17; Witness CQR, T. 9 October 2007, p. 64; Witness JCH, T. 9 October 2007, p. 31; Angeline Mukabanana, T. 2 October 2007, p. 18.

<sup>199</sup> Bikindi, T. 5 November 2007, p. 32.

<sup>200</sup> Witness CQK, T. 10 October 2007, p. 54; Nelson Muhirwa, T. 10 October 2007, p. 26; Apolline Uwimana, T. 8 October 2007, p. 25; Witness DZS, T. 24 September 2007, p. 15.

<sup>201</sup> Witness AJS, T. 29 September 2006, pp. 11-12; Witness AJY, T. 27 September 2006, pp. 32, 34-37 and T. 28 September 2006, p. 4; Witness AJZ, T. 26 September 2006, p. 9; Witness AEY, T. 12 October 2006, pp. 4, 12, 32-33; Witness BHI, 13 October 2006, pp. 5, 17-18; Witness BKW, T. 16 October 2006, p. 44, T. 17 October 2006, pp. 6, 17, 22, 33 and T. 18 October 2006, p. 15; Witness AHP, 19 October 2006, p. 17; Witness BUY, T. 19 February 2007, pp. 14 and 28; Exhibit P30(E), Transcript of 7 November 1993 MRND meeting in Nyamirambo, p. 1. The Chamber considers that the fact that Bikindi's name does not appear in the document prepared by Massamba Ndiaye entitled "*Histoire des Interahamwe*" (admitted as Exhibit D127) does not preclude the Chamber's conclusion.

<sup>202</sup> Witness AQH, T. 3 October 2007, pp. 16-17; Apolline Uwimana, T. 8 October 2007, pp. 38-39; Bikindi, T. 2 November 2007, pp. 24-25 and T. 5 November 2007, pp. 31-32.

<sup>203</sup> The Chamber refers to its findings on the credibility of these witnesses at paras. 153-155 (Witness AEY), 306-308 and 318 (Witness AHP), 127-132 and 329 (Witness AJZ), 79 and 354-355 (Witness BHI), 163-167 and 296 (Witness BUY). Because the witnesses testified to different occasions where they saw Bikindi accompanied by *Interahamwe* bodyguards (or escorted by *Interahamwe*), the Chamber does not consider that they corroborate each other.

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109. The Chamber also dismisses the Prosecution's allegation that *Interahamwe* guarded Bikindi's bar in Gatenga *secteur*, Kigali.<sup>204</sup> The bar referred to was actually the bar of Bikindi's wife, Apolline Uwimana.<sup>205</sup> While Prosecution Witness AJS testified that the main clients were *Interahamwe*,<sup>206</sup> which was denied by Bikindi and Defence witnesses, including Apolline Uwimana,<sup>207</sup> no evidence was adduced by the Prosecution indicating that the bar was guarded by *Interahamwe*.

110. The Chamber will, if necessary, discuss the exact nature of Bikindi's influence over the *Interahamwe* and the legal contours of their relationship in the section of the Judgement addressing Bikindi's criminal responsibility under Articles 6(1) and 6(3) of the Statute.

#### 4.4. Conclusion

111. In light of the above, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Bikindi agreed or collaborated with national *Interahamwe* leaders to militarise *Interahamwe* militias, indoctrinate them with anti-Tutsi ideology and disseminate anti-Tutsi propaganda or that he was closely associated with *Interahamwe* leading figures. The Chamber finds that the Prosecution has also failed to prove that Bikindi participated in the recruitment and military training of *Interahamwe* militias as part of a plan to mobilise civilian militias to destroy the Tutsi. However, it finds that Bikindi was considered to be an important figure and a man of authority in the youth movement.

### 5. RELATIONSHIP WITH RTLM AND RADIO RWANDA

#### 5.1. Background to RTLM

112. The Prosecution alleges that the *Radio Télévision Libre des Mille collines* ("RTLM") was created as a vehicle for anti-Tutsi propaganda, with a media programming objective of sensitising and inciting the listening public to target and commit violent acts against Tutsi, extolling Hutu solidarity, and targeting the Tutsi as accomplices of the enemy.<sup>208</sup>

113. The Prosecution did not adduce evidence in support of its allegation that RTLM was created as a vehicle for anti-Tutsi propaganda. It limited itself to introducing the founding document of RTLM, which stated in its preamble that RTLM's purpose was to facilitate the circulation of diverse ideas and objective news reporting and listed as its mandate a number of goals such as collecting and disseminating information, educating, encouraging pluralist democracy or organising cultural events.<sup>209</sup>

114. However, upon reading of the transcripts of RTLM broadcasts admitted into evidence, the Chamber finds that RTLM clearly and effectively disseminated anti-Tutsi propaganda as early as the end of 1993. Listeners were asked to be vigilant against *Inkotanyi* and *Inyenzi*,<sup>210</sup>

<sup>204</sup> Indictment, para. 30(j).

<sup>205</sup> Witness AJS, T. 29 September 2006, pp. 10, 19-20; Witness QUTI, T. 27 September 2007, p. 28; Angeline Mukabana, T. 1 October 2007, pp. 71-73; Witness AQH, T. 3 October 2007, p. 3; Apolline Uwimana, T. 8 October 2007, pp. 15-16, 38; Bikindi, T. 2 November 2007, pp. 24-25.

<sup>206</sup> Witness AJS, T. 29 September 2006, pp. 10-11.

<sup>207</sup> Apolline Uwimana, T. 8 October 2007, pp. 16-17, 38; Witness AQH, T. 3 October 2007, p. 5; Angeline Mukabana, T. 1 October 2007, pp. 71-73. See also Bikindi, T. 2 November 2007, p. 25.

<sup>208</sup> Indictment, paras. 9 and 10.

<sup>209</sup> Exhibit P41(F), *Statuts de la RTLM*, pp. 1-2. The Chamber notes that this purpose is not in dispute: Defence Statement of Matters not in Dispute, p. 1.

<sup>210</sup> Including Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, p. 10 ("Many soldiers, in the company of *Inyenzi*, *Inyenzi* who are Rwandan refugees, because they are the ones who come to show the

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and Hutu to unite against the “Tutsi threat”.<sup>211</sup> A reading of the RTLM transcripts reveals assimilation between the *Inkotanyi* – designation used for the “enemy”, the Rwandan Patriotic Front (RPF) – and, on some occasions, the Tutsi ethnic group. It also reveals that the derogatory term “*Inyenzi*”, meaning cockroach, was used for the assailants and, more generally, the Tutsi ethnic group. From April to June 1994, RTLM journalists called on listeners to seek out and take up arms against *Inkotanyi* and *Inyenzi*, the RPF, and its “accomplices”, the Tutsi ethnic group.<sup>212</sup> The Chamber also accepts the reliable evidence of Witness BHJ, who testified that journalists on RTLM would explain the need to search for and locate the *Inkotanyi* and their accomplices, even broadcasting locations where “*Inyenzi*” could be found.<sup>213</sup>

115. Although the Chamber is unable to find that RTLM was *created* for the purpose of anti-Tutsi propaganda, the Chamber finds, on the basis of the transcripts of RTLM broadcasts surveyed from the years 1993 and 1994, that RTLM was a vehicle for anti-Tutsi propaganda as early as the end of 1993.

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soldiers the houses of their Hutu neighbours, and tell them which ones to kill...”); Exhibit P25(F), Transcript of RTLM Broadcast of 29-30 November 1993, pp. 12, 23, 24; Exhibit P16, Transcript of RTLM Broadcast of 21 February 1994, p. 5; Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, pp. 17, 18; Exhibit P26(F), Transcript of RTLM Broadcast of 13 April 1994, p. 3; Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, p. K0111155; Exhibit P11, Transcript of RTLM Broadcast of 15 April 1994, p. K0198355 (“in these bad times, we should rather be vigilant...because the enemy is always infiltrating”); Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994, p. 10 (“*qu’ils ne se laissent pas courtiser par les Inkotanyi qui les invitent à demander pardon. En effet, aucun Interahamwe, aucun Hutu, ne peut demander pardon à ces voyous de Tutsis.*”); Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, p. 19 (“when they [*Bene Sebahinzi*] have realised that their common enemy is called the *Inkotanyi*, the *Inyenzi-Inkotanyi*, together with their accomplices and armies, then there will be no more *Inkotanyi* in this country”); Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 20.

<sup>211</sup> For example, see Exhibit P25(F), Transcript of RTLM Broadcast of 29-30 November 1993, pp. 8-9; Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, pp. 13 (“*On constate alors que le FPR s’attache opiniâtement au facteur ethnique pour privilégier les Tutsis et accaparer tout le pouvoir avec ce groupe ethnique*”), p. 15 (“*Les gens devraient [...] plutôt prendre des mesures appropriées pour que le pouvoir n’échappe pas au peuple majoritaire au profit des Tutsis. Nous ne sommes pas contre le partage du pouvoir mais je ne pense pas que les Hutus peuvent accepter que les Tutsis accaparent ce pouvoir, et être à nouveau soumis au régime du fouet et des corvées.*”); Exhibit P17(F), Transcript of RTLM Broadcast of 22 March 1994, p. 16; Exhibit P27(F), Transcript of RTLM Broadcast of 3-4 April 1994, p. K0198766 (“*Ce sont les Tutsi qui nous attirent les problèmes.*”); Exhibit P14(F), Transcript of RTLM Broadcast of 14 April 1994, p. 6 (“*Imaginez-vous que ces Tutsis qui ne sont que 15% de la population croient qu’ils peuvent chasser du pouvoir 85% de la population.*”); Exhibit P21(F), Transcript of RTLM Broadcast of 28 May 1994, p. 6; Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 32 (“*nous savons que les Inyenzi tendent toujours des pièges aux Hutus pour les diviser et parvenir à prendre le pouvoir à leur insu. Cela n’aura pas lieu parce que ces ruses ont été découvertes.*”). See also Exhibit P23(F), Transcript of RTLM Broadcast of 28 December 1993, p. 22 (“*Je voudrais demander à la RTLM de cesser de diffuser des émissions visant à semer la discorde parmi les frères.*”).

<sup>212</sup> Including Exhibit P6(F), Transcript of RTLM Broadcast of 16 April 1994, pp. 5-6, 8; Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994, p. 20 (“*Que le gouvernement nous cherche du matériel pour exterminer les Inkotanyi. Nous les vaincrons coûte que coûte, il n’y a aucun doute.*”); Exhibit P19(F), Transcript of RTLM Broadcast of 18 May 1994, pp. 17-18; Exhibit P21(F), Transcript of RTLM Broadcast of 28 May 1994, p. 4 (“*Nous allons bientôt avoir de munitions et vous écraser. Vous regretterez alors pourquoi vous êtes venus. Vous dites que vous allez exterminer tous les Hutus. [...] Si un Tutsi tue un Hutu...tous les Tutsis, estimés à environ un million, seront exterminés et il restera six millions de Hutus. Je me demande le groupe ethnique qui sera alors exterminé*”), pp. 32-33; Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 27.

<sup>213</sup> Witness BHJ, T. 10 October 2006, pp. 26, 27; T. 11 October 2006, p. 41.

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## 5.2. Collaboration with RTLM and Radio Rwanda

116. The Prosecution alleges that Bikindi collaborated with various officials to launch RTLM.<sup>214</sup> It further alleges that Bikindi made his songs available to RTLM for broadcast in late 1993,<sup>215</sup> and that under Rwandan legislation governing author's rights, Bikindi had a right to forbid or enjoin public broadcasts of his compositions.<sup>216</sup>

117. The Prosecution introduced documentary evidence establishing that Bikindi was involved in launching RTLM, together with 49 other individuals.<sup>217</sup> Bikindi also testified that he was a minor shareholder, only holding a share of 5,000 Rwandan Francs, and insisted that this gave him no authority over programming whatsoever.<sup>218</sup> He explained that his motivation for becoming a shareholder in RTLM was in order to secure advertising for himself and his friend André Sebanani.<sup>219</sup>

118. The Prosecution concedes that it did not produce evidence to show that Bikindi made his songs available to RTLM for broadcast in late 1993 but alleges that "it is implied."<sup>220</sup> The Chamber notes that Bikindi was not questioned about this allegation.<sup>221</sup> He nonetheless testified that the government owned radio station, Radio Rwanda, asked for his authorisation to use *Twasezereye*. He explained that he signed a form, and Radio Rwanda became "almost like an owner" of the song, and that he only received his requested copyright protection of the song in 1994.<sup>222</sup> Witness JCH testified that there was no link between Bikindi and the playing of his songs on the radio, as most songs were recorded on tapes which were easily accessible.<sup>223</sup> The Chamber fails to see how the Prosecution's allegation may necessarily be inferred.

119. Transcripts of RTLM broadcasts admitted into evidence only reveal that Bikindi was interviewed twice by RTLM journalist Gaspard Gahigi to discuss Rwandan politics, in December 1993 and January 1994. During both interviews, Bikindi supported President Habyarimana and vigorously criticised Faustin Twagiramungu, who was designated the Prime Minister of Rwanda by the Arusha Accords of 4 August 1993.<sup>224</sup> However, nothing in these interviews shows that Bikindi had any kind of authority over the radio programming or over RTLM in general.<sup>225</sup> Witness BHH's testimony that Bikindi sometimes made comments

<sup>214</sup> Indictment, para. 9. The officials named in the Indictment were Ferdinand Nahimana, Jean-Bosco Barayagwiza, Félicien Kabuga, André Ntagerura, Juvénal Habyarimana, Georges Rutaganda, Callixte Nzabonimana, Joseph Serugendo and Joseph Nzirorera.

<sup>215</sup> Indictment, para. 13.

<sup>216</sup> Indictment, para. 41.

<sup>217</sup> Exhibit P41(F), *Statuts de la RTLM*, p. 11, No. 33.

<sup>218</sup> Bikindi, T. 31 October 2007, p. 64. The Chamber was unable to find Bikindi's name among the names of RTLM shareholders listed in Exhibit P42(F), *Situation du compte RTLM au 25 août 1993 et Liste des actionnaires*.

<sup>219</sup> Bikindi, T. 31 October 2007, pp. 63, 64.

<sup>220</sup> Closing Arguments, T. 26 May 2008, p. 11.

<sup>221</sup> The Defence alluded to this allegation, asking Bikindi "Once your songs are in the possession of a radio station, do you have any control over those songs once they are in the possession of the radio station?" Bikindi responded "Not at all. I take part neither in the choice nor in the broadcast of any of my songs" (T. 31 October 2007, p. 62).

<sup>222</sup> Bikindi, T. 31 October 2007, p. 62.

<sup>223</sup> Witness JCH, T. 9 October 2007, p. 54.

<sup>224</sup> Exhibit P2(F), Transcript of RTLM Broadcast of 31 December 1993, pp. 2-5; Exhibit P4(F), Transcript of RTLM Broadcast of 3-4 January 1994, pp. 7-12. Bikindi denied that he made political statements in radio interviews, insisting he was only asking for peace between the three Rwandan ethnic groups (T. 5 November 2007, p. 9). A reading of the transcripts of the interviews contradicts Bikindi's assertion.

<sup>225</sup> The Chamber notes that on 2 April 1994, RTLM journalist Kantano mentioned that Bikindi had come to the RTLM to tell him that he was in danger of death, which he could not understand because, as a singer, he had not

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on the radio about party ideology, and on the political activities of his party is equally inconclusive in this respect.<sup>226</sup> Although Bikindi testified that, as a shareholder, he had "far easier access to the radio", he denied having any control over it.<sup>227</sup>

120. With respect to Bikindi's alleged right to forbid the broadcasts, the Chamber notes that the Rwandan legislation referred to by the Prosecution is not properly before the Chamber, as it was only appended to its Closing Brief and its admission into evidence was denied by the Chamber.<sup>228</sup> In relation thereto, the Prosecution argues that Bikindi's failure to protest against the manner RTLM used his artistic work shows that he and journalists from RTLM were acting pursuant to the common purpose of inciting hatred and violence against the RPF and the civilian Tutsi population.<sup>229</sup> The Chamber considers that this is not the only reasonable inference that may be drawn from Bikindi's silence. The fact that he consented to or approved of the manner in which his music was used does not establish that he specifically agreed with RTLM for that purpose.

121. The Prosecution further alleges that Bikindi recorded his compositions at the studios of Radio Rwanda with assistance from Joseph Serugendo.<sup>230</sup> The Chamber accepts Bikindi's testimony that he recorded *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* in 1993 at *Audiotex*, a private studio owned by either a Mr. Munyemana or André Sebanani.<sup>231</sup> Defence witnesses who were members of his *Irindiro* ballet, corroborated this,<sup>232</sup> and one stated that no recording was ever made at the studios of Radio Rwanda.<sup>233</sup> While Bikindi testified that he had a relationship with a civil servant by the name of André Sebanani at Radio Rwanda, it was a relationship based on a shared business interest in advertising.<sup>234</sup>

### 5.3. Conclusion

122. On the basis of the transcripts of RTLM broadcasts from 1993 and 1994, the Chamber finds beyond reasonable doubt that RTLM was a vehicle for anti-Tutsi propaganda as of at least the end of 1993. However, the Prosecution did not establish that RTLM was created for such a purpose. Similarly, the Prosecution failed to prove that Bikindi recorded his compositions at Radio Rwanda studios, that he made his songs available to RTLM for broadcast in late 1993, or that under Rwandan legislation, he had a right to forbid or enjoin public broadcasts of his compositions. The Chamber finds that Bikindi's involvement in launching RTLM with 49 other individuals, and his minor shareholding in RTLM which gave him no control over programming, and his interviews on RTLM, are insufficient proof of a close association with any of the officials named in the Indictment.<sup>235</sup> The Chamber further

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done harm to anyone (Exhibit P48, Transcript of RTLM Broadcast of 2 April 1994, p. K0147062). The Chamber finds this incident inconclusive as to Bikindi's position or authority over the RTLM.

<sup>226</sup> Witness BHH, T. 20 February 2007, p. 16.

<sup>227</sup> Bikindi, T. 31 October 2007, p. 64.

<sup>228</sup> Prosecution Closing Brief, para. 936, footnote 695 and Annex 4. See Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008.

<sup>229</sup> Closing Arguments, T. 26 May 2008, p. 16.

<sup>230</sup> Indictment, para. 13.

<sup>231</sup> Bikindi, T. 31 October 2007, pp. 31-32, 59. The Chamber notes that Cyprien Ngendahimana testified that André Sebanani owned Audiotex (T. 17 October 2007, p. 12).

<sup>232</sup> Witness TIER, T. 16 October 2007, p. 20; Witness KMS, T. 1 October 2007, p. 34. Specifically, Witness KMS testified that the recording was conducted "at Munyemana's", at a studio "located closed to a shop called Audiotex".

<sup>233</sup> Witness KMS, T. 1 October 2007, p. 35.

<sup>234</sup> Bikindi, T. 31 October 2007, pp. 32, 63, 64.

<sup>235</sup> The officials named in paragraph 9 of the Indictment were Ferdinand Nahimana, Jean-Bosco Barayagwiza, Félicien Kabuga, André Ntagerura, Juvénal Habyarimana, Georges Rutaganda, Callixte Nzabonimana, Joseph

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finds that there is no evidence of Bikindi's control or influence over the programming of RTLM or Radio Rwanda or over the two radio stations in general.

## 6. PARTICIPATION IN POLITICAL GATHERINGS

123. The Prosecution alleges that Bikindi participated in the anti-Tutsi campaign by attending public gatherings between 1990 and 1994 where he addressed the audience and performed his musical compositions extolling Hutu solidarity and encouraging anti-Tutsi violence. The Prosecution also alleges that Bikindi made specific exhortations to "work" at public gatherings, a coded reference advocating the extermination of Tutsi.<sup>236</sup>

### 6.1. Participation in Public Gatherings as a Prelude to or Motivating Factor in Anti-Tutsi Violence

124. The Prosecution specifically alleges that from 1990 to 1994, Bikindi addressed public gatherings and performed musical compositions extolling Hutu solidarity and characterising Tutsi as enslavers of Hutu.<sup>237</sup> The Prosecution further alleges that Bikindi's animations at MRND meetings and rallies in late 1993, early 1994 and June 1994 were often a prelude to or a motivating factor in anti-Tutsi violence against individuals and property in the vicinity of the public gatherings, both leading up to the meetings and immediately thereafter.<sup>238</sup> After considering the two specific meetings alleged, one in Umuganda Stadium, Gisenyi, in June 1994,<sup>239</sup> and another at a football ground in Kivumu *secteur*, Nyamyumba *commune*, Gisenyi *préfecture* in 1993,<sup>240</sup> the Chamber will consider other meetings and rallies that were not specifically alleged in the Indictment but on which evidence was led.

#### 6.1.1 MRND Meeting in Umuganda Stadium in Gisenyi, mid-late June 1994

125. The Prosecution alleges that in mid-late June 1994, Bikindi addressed an MRND meeting at Umuganda Stadium in Gisenyi where he publicly stated that "Hutus should know who the enemy is, and that the enemy is the Tutsi" and that "Hutus should hunt and search for the Tutsis and kill them." Following the meeting, the Prosecution alleges, there was an intensive search for Tutsi, as a result of which Tutsi were killed, including Ancilla and her daughter.<sup>241</sup>

126. Prosecution Witness AJZ, a Hutu from Rugerero, Rubavu *commune*, is the only witness to place Bikindi at an MRND rally in Umuganda Stadium around this time. Witness AJZ testified that he saw Bikindi address an MRND rally at Umuganda Stadium for approximately five minutes, having gone there to meet a friend who owed him money.<sup>242</sup> He

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Serugendo and Joseph Nzirorera. The Chamber also notes that four of these men were mentioned on page 2 of the Indictment as "persons responsible for media programming and operations".

<sup>236</sup> Indictment, paras. 23, 33, 34, 35, 36, 48.

<sup>237</sup> Indictment, para. 48. *See also ibid.*, paras. 13 and 32, referring specifically to gatherings in Ruhengeri, Cyasamakamba, Nyamirambo, Umuganda, Cyangugu, Rubona, Bicumbi *commune* and in Ruyenzi, Gitarama *commune*.

<sup>238</sup> Indictment, para. 33.

<sup>239</sup> Indictment, paras. 23 and 33.

<sup>240</sup> Indictment, para. 33.

<sup>241</sup> Indictment, paras. 23 and 33.

<sup>242</sup> Witness AJZ, T. 27 September 2006, p. 11. The Chamber notes that the Prosecution alleged this event as a "meeting", but the witness testified it was a "rally". Based on the specificity of the allegation, regarding the time, place and events alleged, as well as a possible translation confusion between meeting and rally, the Chamber is not convinced this discrepancy is an issue.

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testified that Bikindi, *préfet* Zilimwabagabo, Major Kabera and a man nicknamed "Gisimba" were at the rally. According to Witness AJZ, there were *Interahamwe*, people wearing MRND uniforms and caps and others in military uniforms and some people carrying firearms. He testified that Bikindi addressed the crowd, saying that Tutsi should be looked for and eliminated because they were the enemies of Rwanda.<sup>243</sup> While this witness also gave evidence regarding the search for and killing of Ancilla,<sup>244</sup> he did not testify as to any causal link between the two events as pleaded in the Indictment.

127. Due to significant discrepancies in his evidence, the Chamber questions Witness AJZ's overall credibility. The Chamber first notes the witness's confusion as to dates. He initially testified, in line with his previous written statements, that the Umuganda rally was held in June 1994.<sup>245</sup> However, under cross-examination, he stated that it occurred later, around 20 July.<sup>246</sup> This testimony contradicts his previous written statements, in which he indicated that he was in exile from 10 to 20 July in one and 10 to 30 July in the other.<sup>247</sup> The witnesses' confusion was even more striking in respect of the date of Ancilla's death.<sup>248</sup> When challenged about this confusion AJZ stated that he no longer remembered the dates and that all he knew for sure was that Ancilla died in July, on approximately 20 July before he went into exile around 25 July.<sup>249</sup> Although the Chamber accepts that so many years after an event it is understandable that a witness may be confused as to the exact dates, it is of the opinion that Witness AJZ's confusion is so extensive that the lapse of time cannot entirely excuse it.

128. Further, the witness contradicted himself in respect of the dates he manned the roadblock at Rugerero referred to by the Prosecution as part of a different allegation.<sup>250</sup> He testified that he had begun manning the roadblock approximately two weeks before Bikindi passed through it towards the end of June 1994.<sup>251</sup> Under cross-examination, the witness was presented with one of his previous statements to Tribunal investigators in which he stated that "[a]round 20 April 1994, whilst I was under guard duty with seven other

<sup>243</sup> Witness AJZ, T. 26 September 2006, p. 11.

<sup>244</sup> Witness AJZ, T. 26 September 2006, pp. 10-14.

<sup>245</sup> Witness AJZ responds to the question from the Prosecution: "At any point in June of 1994, were you aware of any MRND meeting at Umuganda Stadium in Gisenyi?" in the affirmative stating "Yes, there was a rally which was held in that place" (Witness AJZ, T. 26 September 2006, p. 10); Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 4; Exhibit D8, Witness AJZ's will-say statement dated 23 September 2006 (under seal), para. 12.

<sup>246</sup> Witness AJZ, T. 27 September 2006, p. 11.

<sup>247</sup> Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 2; Exhibit D8, Witness AJZ's will-say statement dated 23 September 2006 (under seal), p. 2.

<sup>248</sup> Specifically, in cross examination, the witness testified that Ancilla died one week and three days before they fled to Zaire, at the end of July (T. 26 September 2006, p. 24). However, in re-examination, the Witness testified that she died a few days before he fled to Zaire. When then immediately asked by the Prosecution to clarify how many days before his exile Ancilla died, he repeated his initial testimony that it was a week and three days. In response to a question from the Prosecution that accordingly Ancilla's death would have been around the beginning of July, based on the fact that the witness had testified that he went into exile on 10 July, the witness disagreed and said it would have been the middle of the month around 15 or 17 July. He then testified that he could not clearly remember the date he had given to the Tribunal investigators regarding when he fled into exile (between 10-30 July 1994 in Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 2; 10-20 July 1994 in Exhibit D7, Witness AJZ's written statement dated 17 May 2001 (under seal), p. 2) as he made the statements a long time ago. He could only provide approximations and all he knew was that he left for Zaire in July (T. 27 September 2006, pp. 17-18).

<sup>249</sup> Witness AJZ, T. 27 September 2006, p. 18.

<sup>250</sup> See *infra* para. 329.

<sup>251</sup> Witness AJZ, T. 25 September 2006, pp. 42, 44.

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*Interahamwe* at the roadblock in our *secteur* Rugerero".<sup>252</sup> The witness confirmed his statement that he had manned the roadblock in both April and June.<sup>253</sup>

129. Of particular concern to the Chamber is also Witness AJZ's contradiction regarding the timing of Bikindi's speech on the events of 1959. The witness first testified that Bikindi referred to 1959 as a means to encourage *Interahamwe* at the Ruregero roadblock to kill Tutsi in Nyamyumba,<sup>254</sup> an incident which allegedly occurred "well before the incident concerning Ancilla".<sup>255</sup> This is in conformity with what the witness had declared when interviewed on 9 and 11 May 2001.<sup>256</sup> However, in his will-say statement prepared three days before his testimony, the witness had declared "It was [when Ancilla was killed that Bikindi] mentioned the Tutsi had fled in 1959 [...]. In my statement I appear to suggest these remarks were before the raid on Nyamyumba, but this is not so."<sup>257</sup> When confronted with this inconsistency, Witness AJZ confirmed that he told the Prosecution that Bikindi's statement about 1959 was made before the raid on Nyamyumba.<sup>258</sup> He then testified that the remarks about 1959 were made on the way to Nyamyumba and after the death of Ancilla.<sup>259</sup>

130. Other aspects of Witness AJZ's testimony are also troubling. For example, although the witness declared he was a member of the PL (*Parti Libéral*), he testified that he had never attended any meeting and was incapable of saying what the initials PL stood for or naming the party's president or vice-president.<sup>260</sup> To Tribunal investigators, he said that he was a member of the PL from 1992,<sup>261</sup> yet he testified that he joined this party in 1993.<sup>262</sup> Confronted with this inconsistency, the witness said that he could not remember very well.<sup>263</sup> Further, Witness AJZ testified that on the Sunday following Habyarimana's death he prayed at home and that was all he did that day. However, he then agreed that he had made a statement to Tribunal investigators that on 10 April 1994, the Sunday immediately after Habyarimana's death, he had gone to the *communal* office to deliver a letter. He then testified that the *communal* office was not open on Sundays.<sup>264</sup> The witness was also confused as to whether he knew the make of the car Bikindi and the *Interahamwe* used to travel to Nyamyumba.<sup>265</sup> The Chamber is also not convinced by the witness's explanation as to why he has not yet testified about Ancilla's death before the Gacaca courts, which was that he will speak there "when the time comes."<sup>266</sup>

<sup>252</sup> Exhibit D7, Witness AJZ's written statement dated 17 May 2001 (under seal), p. 3.

<sup>253</sup> Witness AJZ, T. 26 September 2006, p. 37; T. 27 September 2006, p. 22.

<sup>254</sup> Witness AJZ, T. 26 September 2006, pp. 7, 14.

<sup>255</sup> Witness AJZ, T. 26 September 2006, p. 7.

<sup>256</sup> Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), pp. 3-4.

<sup>257</sup> Exhibit D8, Witness AJZ's will-say statement dated 23 September 2006 (under seal), para. 13.

<sup>258</sup> Witness AJZ, T. 26 September 2006, p. 17.

<sup>259</sup> Witness AJZ, T. 27 September 2006, pp. 18-19.

<sup>260</sup> Witness AJZ, T. 26 September 2006, pp. 22-23.

<sup>261</sup> Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 2; Exhibit D7, Witness AJZ's written statement dated 17 May 2001 (under seal), p. 3.

<sup>262</sup> Witness AJZ, T. 26 September 2006, p. 22.

<sup>263</sup> Witness AJZ, T. 26 September 2006, pp. 22-23.

<sup>264</sup> Witness AJZ, T. 26 September 2006, p. 37, with reference to Exhibit D7, Witness AJZ's written statement dated 17 May 2001 (under seal), p. 3.

<sup>265</sup> When asked whether he knew what the make of the car that Bikindi had with him at the roadblock in Rugerero, witness AJZ said that he did not know the various makes of vehicles, he knew it was red, but couldn't tell what kind of vehicle it was or its make (T. 26 September 2006, p. 33). He then testified in response to a question about who was driving the other vehicle he thought was there that "I did not know the people driving those vehicles, be it the yellow Nissan vehicle or the red vehicle" (T. 26 September 2006, p. 33).

<sup>266</sup> Witness AJZ, T. 26 September 2006, pp. 25, 31. The Chamber notes that that the witness testified that he knew that investigations were still ongoing with respect to the death of Ancilla.

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131. While the Chamber believes that some of these inconsistencies may be explained by the witness's obvious desire to distance himself from the crimes committed in 1994,<sup>267</sup> it remains that most of the unexplained inconsistencies discussed above are significant enough to affect the witness's credibility.

132. In view of Witness AJZ's questionable credibility, the Chamber declines to accept his testimony without corroboration. As a result, the Chamber finds it unnecessary to discuss Bikindi's categorical denials of ever going to Umuganda Stadium in 1994,<sup>268</sup> or of ever having delivered a political speech to the population,<sup>269</sup> Defence Witness Charles Zilimwabagabo's evidence that Bikindi did not attend the only meeting that was held at Umuganda Stadium on 16 June 1994,<sup>270</sup> or Witness RH's evidence that there was no meeting held there in June 1994.<sup>271</sup>

133. The Chamber concludes that the Prosecution has not proven its allegation that in mid-late June 1994, Bikindi addressed an MRND meeting at Umuganda Stadium in Gisenyi, as a result of which Tutsi were killed.

### 6.1.2 Meeting in Kivumu, 1993

134. The Prosecution alleges that in 1993, Bikindi performed at a football ground in Kivumu *secteur*, Nyamyumba *commune*, Gisenyi *préfecture*.<sup>272</sup>

135. Prosecution Witness AKJ testified that he saw Bikindi for the first time at an MRND political rally held at a football field in Kivumu *secteur*, Nyamyumba *commune*, Gisenyi *préfecture*, around 15 May 1993. Bikindi was accompanied by the former *bourgmestre* of Nyamyumba *commune*, Faustin Bagango, and Wellars Banzi, all three of whom spoke at the rally. The witness said that only Hutu attended the rally.<sup>273</sup> According to Witness AKJ, Bikindi addressed the crowd saying "[y]ou know this well: you must exterminate or get rid of these serpents which are among you." He explained that "serpents" was a reference to the Tutsi who must be killed. Witness AKJ testified that Bikindi was very clear about who the enemy of the Hutu was. He said: You must not be mistaken, "[y]our enemies are the Tutsis; your enemies are the Tutsis."<sup>274</sup> When the rally ended, a cassette of Bikindi's music was played through an amplifier fixed on a car. The songs included *Twasezereye* and everyone danced for about 15 minutes before going home.<sup>275</sup> When asked if Bikindi's address and music provoked any reaction in the crowd, the witness responded that as they were already used to his music, it did not mean anything new to them.<sup>276</sup> The witness testified that no one

<sup>267</sup> The Chamber notes in this respect the witness's fierce denial of ever being an *Interahamwe* although he manned a roadblock (T. 27 September 2006, p. 20) and his statement that nobody was killed at the roadblock while he was on duty (T. 25 September 2006, p. 44; Exhibit D8, Witness AJY's Will-Say Statement, dated 23 September 2006 (under seal), para. 3.

<sup>268</sup> Bikindi, T. 1 November 2007, pp. 9-10.

<sup>269</sup> Bikindi, T. 1 November 2007, pp. 9-10.

<sup>270</sup> Charles Zilimwabagabo, T. 22 October 2007, pp. 11-12.

<sup>271</sup> Witness RH, T. 25 October 2007, p. 40; T. 26 October 2007, pp. 2-3.

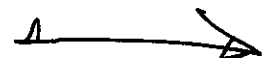
<sup>272</sup> Indictment, para. 33.

<sup>273</sup> Witness AKJ, T. 20 September 2006, pp. 47-48; T. 21 September 2006, pp. 2, 17-19, 24.

<sup>274</sup> Witness AKJ, T. 20 September 2006, p. 48; T. 21 September, p. 23.

<sup>275</sup> Witness AKJ, T. 20 September 2006, pp. 48-50; T. 21 September, pp. 20-21. The Chamber notes that the witness testified that the songs also included *Nanga Abahutu* and *Bene Sebahinzi*, but that according to Bikindi's testimony, this would not be possible as these songs were only recorded in studio months later in August 1993. The Chamber is of the view, however, that this confusion as to which songs were broadcast does not harm the witness' overall credibility on this incident.

<sup>276</sup> Witness AKJ, T. 21 September 2006, p. 2.



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was killed at this rally, but that the members of the *Interahamwe* who were present later killed people during the genocide.<sup>277</sup>

136. In its assessment of this witness's credibility, the Chamber recalls that during the cross-examination much confusion was created regarding the date of the rally. However, the Chamber attributes this solely to the method of questioning used by Defence Counsel,<sup>278</sup> and accordingly does not consider that this witness's credibility was harmed by this. The Chamber found no reason to doubt the reliability of this eye witness, or his credibility which was consistent throughout his testimony.

137. Prosecution Witness AKK also testified that he saw Bikindi at a rally organised by the MRND and CDR in Kivumu, formerly Nyamyumba *commune*, in 1993.<sup>279</sup> In his statement to Tribunal investigators, the witness stated that it was held at the football ground.<sup>280</sup> Local MRND officials, *Interahamwe* leaders, a Colonel, probably Colonel Gahimano, and Bikindi were present. AKK testified that when these individuals arrived he was still at the venue of the rally but then moved about 500 metres away. However, as megaphones were used, he said he could hear everything.<sup>281</sup> Bikindi began by greeting MRND and CDR members who were present. He asked them "to pool forces or to be united as descendants of Sebahinzi, and that the enemy was the Tutsi whom they had to fight with the last bit of energy. He went on to say that Tutsi had come from Ethiopia – or, from Abyssinia and that consequently the way back for them was well known; that is, the way back to their home, that is, river Nyabarongo." According to Witness AKK, Bikindi meant that the Tutsi was a snake and if a Hutu were to be found with a Tutsi, the Hutu should do everything possible to kill the Tutsi and "to kill a snake you strike a snake on the head".<sup>282</sup> The witness also testified that Bikindi did not sing live, but his music was played on cassette.<sup>283</sup>

138. The Defence challenges the credibility of Witness AKK in two regards. Firstly, it questions how he could have heard what was taking place as he was 500 metres away.<sup>284</sup> However, the Chamber is satisfied with the witness's explanation that he could hear as megaphones were used. Secondly, it argues that the speech about sending the Tutsi back to Ethiopia is usually attributed to Léon Mugesera alone and that it had caused a sensation. If Bikindi had also used that speech, it contends that one would have expected an equally strong reaction but points out that none was recorded.<sup>285</sup> The Chamber finds that this argument is too speculative to affect how the Chamber views this witness's credibility.

139. The Chamber has observed a discrepancy between the witness's prior statement to Tribunal investigators and his testimony in relation to whether Bikindi specifically advocated killing Tutsi. It was put to the witness that contrary to his testimony that Bikindi openly talked about killing, in his witness statement he said simply that Bikindi stated it was

<sup>277</sup> Witness AKJ, T. 21 September 2006, p. 20.

<sup>278</sup> Witness AKJ, T. 21 September 2006, pp. 17-19. As the Presiding Judge expressed to Defence Counsel, "You have achieved, Mr. Momo, to have us all confused. We don't know whether you are speaking about '93, or '94; whether it was May '93 or May '94, or June '93 or June '94. We are lost; Prosecution's lost; the witness is lost, so with this line of cross-examination you are not discrediting the witness, but confusing all of us" (T. 21 September 2006, p. 18) and "Counsel this has been a very misleading cross-examination" (T. 21 September 2006, p. 19).

<sup>279</sup> Witness AKK, T. 22 September 2006, pp. 3-4, 7.

<sup>280</sup> Exhibit D5, Witness AKK's written statement of 5 and 8 May 2001 (under seal), p. 3.

<sup>281</sup> Witness AKK, T. 22 September 2006, pp. 3-4, 7.

<sup>282</sup> Witness AKK, T. 22 September 2006, p. 4.

<sup>283</sup> Witness AKK, T. 22 September 2006, p. 6.

<sup>284</sup> Defence Closing Brief, para. 103.

<sup>285</sup> Defence Closing Brief, para. 103.

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necessary "to send [the Tutsi] back".<sup>286</sup> However, the Chamber is satisfied with Witness AKK's clarification that Bikindi went on to explain what he meant when he said that those people should be sent back home, and that in Kinyarwanda, the message could be understood. The witness stated that if a person was thrown into the river Nyabarongo, that person would drown and the body would be carried to a certain destination. The witness added that people had been thrown into the river and into Lake Kivu.<sup>287</sup>

140. The Chamber recalls Bikindi's denial of ever having delivered a political speech to the population.<sup>288</sup> He further testified that at the rallies he attended he only sang songs.<sup>289</sup> However, given Bikindi's self-interest to distance himself from the Prosecution's accusations and in light of the Prosecution evidence, the Chamber will not accord much weight to his denial. The Chamber also considered the evidence of ballet members Defence Witnesses KMS, DUC and JCH that Bikindi did not give any political speeches at the political rallies they attended.<sup>290</sup> Witness KMS testified further that he never heard anyone asking Tutsi to hate Hutu or Hutu to hate Tutsi at any of the rallies he attended.<sup>291</sup> Given that it is not alleged that the *Irindiro* troupe was present at the meeting in Kivumu, their testimonies do not assist the Chamber in its assessment. Similarly, Witness JCH's testimony that he never heard Bikindi deliver a speech, be it on radio or at a public assembly,<sup>292</sup> is not a sufficient basis of knowledge for the Chamber to make any finding regarding Bikindi's activity at the meeting.

141. The Chamber considers that while there are factual differences in the testimony of these two witnesses, as Witness AKJ specified that it is an MRND rally and Witness AKK said it was an MRND/CDR rally, and both witnesses did not mention the same attendees, their testimonies corroborate each other sufficiently for the Chamber to conclude that both witnesses are testifying about the same rally. The Chamber accepts their reliable accounts as establishing beyond reasonable doubt that Bikindi, along with dignitaries, attended an MRND political rally at a football field in Kivumu in 1993. Based on their evidence, the Chamber further finds beyond reasonable doubt that Bikindi addressed the audience advocating that they must kill the Tutsi, who he referred to as serpents, and that his music was played on cassette.

142. However, the Chamber finds that it has not been established that anti-Tutsi violence occurred in the vicinity of the rally either immediately before or after it. Although Witness AKK testified that upon verification it was noticed that people had been thrown into the river, into pits and into Lake Kivu, he gave no indication of when this occurred and whether it was as a consequence of the rally. Moreover, Witness AKJ specifically stated that no one was killed at the rally.

<sup>286</sup> Exhibit D5, Witness AKK's written statement of 5 and 8 May 2001 (under seal), p. 3 ("You know that the minority population are the Tutsis. We have to work quickly and send them back through the river Nyabarongo to Ethiopia from where they came from.")

<sup>287</sup> T. 22 September 2006, pp. 5-6 and Exhibit D5, p. 3. The Chamber has also observed slight differences between the witness's prior statement and his testimony in court regarding whether Wellars Banzi was also present and where he exactly moved away to. The Chamber finds that these differences, which were not raised by the Defence, only reflect differences in the level of detail and do not affect the witness's credibility.

<sup>288</sup> Bikindi, T. 1 November 2007, pp. 9-10.

<sup>289</sup> Bikindi, T. 1 November 2007, p. 42.

<sup>290</sup> Witness DUC, T. 27. September 2007, pp. 50, 53; Witness KMS, T. 1 October 2007, pp. 6, 18; Witness JCH, T. 9 October 2007, pp. 16, 32.

<sup>291</sup> Witness KMS, T. 1 October 2007, p. 45.

<sup>292</sup> Witness JCH, T. 9 October 2007, p. 32.

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### 6.1.3 Other Political Gatherings

143. Before turning to its assessment of the evidence adduced on the other political gatherings which Bikindi allegedly attended,<sup>293</sup> the Chamber recalls that it has excluded certain portions of witness' testimonies relating to Bikindi's attendance at specific meetings. Accordingly, these portions have been disregarded.<sup>294</sup>

#### 6.1.3.1 CDR Meeting at MRND *Palais* in Kigali, early 1994

144. Prosecution Witness AKE, a football player in 1994,<sup>295</sup> testified that Bikindi attended a CDR meeting at the MRND *Palais* in Kigali in January 1994. The witness was not present at the meeting for long as he was in a hurry changing into his football attire prior to playing at the Amahoro Stadium.

145. Witness AKE admitted he did not hear everything, but testified that he heard Bikindi speak while passing close by him on his way to the toilet. He testified that Bikindi addressed the rally "saying that [the members] should be careful because the enemy had infiltrated among them." Witness AKE understood that the enemy Bikindi was referring to was the Tutsi and his message was that Hutu should take revenge and kill the Tutsi.<sup>296</sup> He knew it was Bikindi speaking as all those with him and those at that meeting told him so.<sup>297</sup>

146. The Defence challenged the witness's credibility based on his assertion that his football team used the MRND *Palais* as a changing location rather than the Amahoro Stadium. The Defence pointed out that the match was held at Amahoro Stadium, which had perfectly well equipped changing facilities, including showers, and was located three to four kilometres away from the MRND *Palais*.<sup>298</sup> The witness explained that he played for the Mukura team, based in Butare, and that when the team arrived in Kigali, they first visited a restaurant, and then went to the MRND *Palais* to change, in order to arrive at the stadium later already wearing their sports attire.<sup>299</sup> He stated there was a garden at that location where teams usually met, changed, spent time getting ready, and left for the football pitch 30 minutes before the game. The witness stated that the teams ordinarily arrived at the field already dressed in their sports attire.<sup>300</sup> The Chamber finds this arrangement puzzling.

147. The Chamber observes a contradiction in the witness's evidence regarding the date of the rally. Witness AKE first stated that he thought the rally occurred in January 1994, but speculated that Bikindi had spoken of enemy infiltration because of the death of Katumba, an important figure of the CDR party,<sup>301</sup> which he believed occurred sometime in February.<sup>302</sup> When later challenged by the Defence, who suggested that Katumba died in March, the witness replied that he had always said that he could not be specific in respect of dates and that what he mentioned was an approximation. The Chamber is mindful of the stress that the

<sup>293</sup> Indictment, paras. 13, 32, 33.

<sup>294</sup> Decision on Exclusion of Evidence, paras. 24, 28, 30 and 34. In this Decision, the Chamber excluded the following evidence: Prosecution Witness BHB's evidence relating to a meeting in Ngororero in 1993; Witnesses BKW and BUY's evidence in relation to a meeting in Kabaya; Witnesses BKW and BUY's evidence on a meeting in Butare.

<sup>295</sup> Exhibit P62, Witness AKE's Personal Information Sheet (under seal).

<sup>296</sup> Witness AKE, T. 5 October 2006, pp. 36-37; T. 9 October 2006, p. 7.

<sup>297</sup> Witness AKE, T. 5 October 2006, pp. 35-37.

<sup>298</sup> Witness AKE, T. 9 October 2006, pp. 5-6. See also Defence Closing Brief, para. 181.

<sup>299</sup> Witness AKE, T. 9 October 2006, pp. 5-6.

<sup>300</sup> Witness AKE, T. 9 October 2006, pp. 6-7.

<sup>301</sup> Witness AKE, T. 5 October 2006, pp. 34, 36; T. 9 October 2006, p. 5.

<sup>302</sup> Witness AKE, T. 5 October 2006, pp. 35-36.



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witness must have been under in 1994, and the time that has elapsed since then, but has difficulty explaining his inability to remember the month the meeting took place in spite of the fact that he dated it with Katumba's death.

148. The Chamber is also concerned by the witness's testimony on what Bikindi allegedly stated at the meeting. The witness initially stated that Bikindi "was saying that [the members] should be careful because the enemy had infiltrated among them", yet only a few questions later, when asked what Bikindi said, he replied "But I have always told you, he said that the Hutu should take revenge and kill the Tutsis. That's all I heard him say."<sup>303</sup> The Chamber notes that this significant discrepancy between his recounting of Bikindi's speeches was not explained.

149. Given these concerns, the Chamber considers that it cannot rely on the uncorroborated testimony of this one witness to make a factual finding beyond reasonable doubt. It therefore finds that the Prosecution has not proven beyond reasonable doubt that Bikindi made anti-Tutsi utterances at a CDR rally in the MRND *Palais*, Kigali in early 1994.

### 6.1.3.2 Demonstration in Kigali, early 1994

150. Witness AHP testified to Bikindi's presence at a demonstration in Kigali in early 1994 that took place following the death of Martin Bucyana.<sup>304</sup> The witness asserted that at that demonstration, Bikindi and other members of the MRND were chasing, or hunting down, members of opposition parties because those other parties were close to the RPF and opposed to the MRND.<sup>305</sup> He stated that those who were caught were beaten up, and that Bikindi, as well as two members of the ballet, Serumveru and Kizito, were all carrying firearms.<sup>306</sup>

151. Given the Chamber's concerns regarding the credibility of Witness AHP,<sup>307</sup> the Chamber will not rely on his uncorroborated evidence that Bikindi attended a demonstration in Kigali in early 1994 during which violence was committed.

### 6.1.3.3 Rally in Cyasamakamba, 1994

152. In its Closing Brief, the Prosecution points to the evidence of Prosecution Witness AEY in support of its allegation that Bikindi attended a rally in Cyasamakamba in 1994 at which his songs were played.<sup>308</sup>

153. The Chamber notes significant inconsistencies between Witness AEY's testimony and his previous statement to Tribunal investigators in respect of this incident. Although Witness AEY, a Hutu driver in 1994,<sup>309</sup> testified that he attended the rally for four hours,<sup>310</sup> in his previous statement he stated that he did not attend the rally but simply transported people to it and then immediately returned to Kigali.<sup>311</sup> To explain this contradiction, the witness testified that they went to attend the rally but then returned to Kigali to collect more people as there

<sup>303</sup> Witness AKE, T. 5 October 2006, pp. 36, 37.

<sup>304</sup> Witness AHP, T. 19 October 2006, p. 23. The Prosecution alleges that it "is within public knowledge that Bucyana died in February of 1994" (Closing Arguments, T. 26 May 2008, p. 13). See Prosecution Closing Brief, para. 1042.

<sup>305</sup> Witness AHP, T. 19 October 2006, pp. 23-24.

<sup>306</sup> Witness AHP, T. 19 October 2006, p. 24.

<sup>307</sup> See *infra* paras. 306-308, 318.

<sup>308</sup> Prosecution Closing Brief, para. 1040.

<sup>309</sup> Exhibit P65, Witness AEY's Personal Information Sheet (under seal).

<sup>310</sup> Witness AEY, T. 12 October 2006, p. 15.

<sup>311</sup> Exhibit D22, Witness AEY's witness statement of 11 October 2005 (under seal), p. 4.



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were not enough at the rally. When they reached the venue of the rally it was finished.<sup>312</sup> The Chamber is not convinced by his explanation.

154. Moreover, in his testimony, the witness stated that what happened at Cyasamakamba was too horrible to talk about. He then proceeded to explain that following the rally, the *Interahamwe*, including himself, were furious and, under Bikindi's leadership, killed many people to avenge Gatabazi's death.<sup>313</sup> In stark contrast, the witness did not mention any deaths taking place following the rally in his prior statement.<sup>314</sup> This discrepancy appears to the Chamber to be more than a mere oversight, particularly in light of the alleged scale of the killing that took place.

155. It is the Chamber's opinion that these inconsistencies are so serious as to call the credibility of this witness in relation to this incident into question. In the absence of reliable corroboration, the Chamber does not accept Witness AEY's evidence that Bikindi attended a rally in Cyasamakamba in 1994 where his songs were played.

#### 6.1.3.4 Rally in Nyamirambo Stadium in Kigali, early 1994

156. The Chamber recalls that in the previous section on Collaboration with MRND, it found that a rally occurred in Nyamirambo Stadium, Kigali, in the first two weeks of 1994.<sup>315</sup> The Chamber recalls that on the basis of the documentary evidence adduced,<sup>316</sup> it found that Bikindi was praised at that rally while preparing to perform for those assembled. However, there is no evidence of which songs Bikindi performed, nor that he addressed the audience with a speech.

#### 6.1.3.5 MRND Rally in Nyamirambo Stadium in Kigali, 7 November 1993

157. The Prosecution entered into evidence both a video and a transcript of Bikindi speaking at an MRND rally in 1993.<sup>317</sup> The preliminary script identifying the content of the video as an MRND meeting in Kigali on 7 November 1993,<sup>318</sup> and a reading of the accompanying transcript, showed that immediately following an address from President Habyarimana, Bikindi spoke to the audience, praising the victory of the MRND, punctuated with some singing that it was no longer a secret that the *Interahamwe* had won.<sup>319</sup> Immediately after Bikindi's animation, Joseph Nzirorera spoke, followed by Bonaventure Habimana, Édouard Karemera and Robert Kajuga.<sup>320</sup>

158. Based on this documentary evidence, the Chamber finds that Bikindi addressed an MRND meeting at a stadium in Kigali on 7 November 1993, praising the success of both the MRND and the *Interahamwe*. While his address shows adherence to the MRND policy and certainly constitutes propaganda for the MRND and the *Interahamwe*, the Chamber considers that it cannot be characterised as anti-Tutsi propaganda. Further, the Chamber notes that there is no evidence that Bikindi's animation at that meeting was a prelude to or a motivating factor to anti-Tutsi violence.

<sup>312</sup> Witness AEY, T. 12 October 2006, pp. 15-16.

<sup>313</sup> Witness AEY, T. 12 October 2006, pp. 10-11.

<sup>314</sup> Exhibit D22, Witness AEY's witness statement of 11 October 2005 (under seal).

<sup>315</sup> See *supra* para. 84.

<sup>316</sup> Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994.

<sup>317</sup> Exhibit P30(E), Transcript of 7 November 1993 MRND Meeting in Nyamirambo. See *supra* note 112.

<sup>318</sup> Exhibit P30, video of 7 November 1993 MRND Meeting in Nyamirambo, script appears within the first 45 seconds of the video.

<sup>319</sup> Exhibit P30(E), pp. 1-2.

<sup>320</sup> Exhibit P30(E), pp. 2, 5, 7, 11.

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### 6.1.3.6 Rally in Rubavu, 1993

159. Prosecution Witness AJY, a Hutu driver from Gisenyi,<sup>321</sup> testified that he attended three MRND meetings at which Bikindi was present, including one at Rubavu *commune* in May 1993 at which Bikindi spoke at length, saying "Rwandan citizens rise up. Let us all arise and fight the enemy, the Tutsi. Let us fight the enemy, the snake".<sup>322</sup> The witness added that Bikindi said other things he could now remember but which may not be in his statement. He added that Bikindi had stated that "if perchance there were any Tutsis at the meeting, they should denounce themselves and be expelled from the meeting".<sup>323</sup>

160. The Chamber views the testimony of Witness AJY with caution given the witness's criminal past.<sup>324</sup> Discrepancies between the witness's testimony and his prior statement to Tribunal investigators leaves the Chamber with some doubts as to his credibility. In 2001, the witness declared to Tribunal investigators that he first saw Bikindi in 1981 at Rwerere *commune* where he was staying and that he used to play football at the playground which was near Bikindi's house.<sup>325</sup> However, in court, the witness testified that he lived in Rubavu, a *commune* approximately eight kilometres by road from Rwerere.<sup>326</sup> When confronted with the fact that Bikindi was abroad from 1980 to 1982 and that he could not have actually seen him in 1981, the witness only stated that he believed 1981 was only an approximation and that he knew Bikindi from the 1980s.<sup>327</sup> Given the specificity of the witness's prior statement, the Chamber is not convinced by his explanation. Additionally the Chamber notes its concern that the witness was using a crib sheet containing names and lyrics of songs while giving testimony, which may suggest that he wanted to ensure he named certain individuals and recited certain lyrics.<sup>328</sup>

161. Although the Chamber did not find any inconsistencies in the evidence of this eye witness on the rally held at Rubavu *commune* in 1993, the Chamber hesitates to rely on his testimony without corroboration. Accordingly, the Chamber does not accept his evidence as establishing that Bikindi attended and addressed this rally calling on Rwandans to fight the Tutsi enemy.

### 6.1.3.7 MRND Meeting at MRND Palais in Gisenyi, 1993

162. Prosecution Witness BUY testified that Bikindi attended an MRND meeting at 7:30 a.m. on 3 March 1993 at the MRND Palais, Gisenyi, at which leaders of the CDR and MRND parties, as well as members of the *Interahamwe* and *Impuzamugambi* were present.<sup>329</sup> Witness BUY testified that Bikindi held the meeting and played a very important role in it. He stated that Bikindi said that the purpose of the meeting was to give the members instructions and prepare them for the rallies that would be held in Ngoma and Butare. Bikindi told them about the evil nature of Tutsi and briefly described the enemy, *i.e.* any Tutsi who would oppose them, and urged them to fight against such enemies with the utmost energy.

<sup>321</sup> Exhibit P58, Witness AEY's Personal Information Sheet (under seal).

<sup>322</sup> Witness AJY, T. 27 September 2006, pp. 30, 31, 37; T. 28 September 2006, p. 5: the other two meetings were held at Cyanzarwe on an unknown date and at Umuganda stadium in 1994 after the death of Gatabazi.

<sup>323</sup> Witness AJY, T. 27 September 2006, p. 30.

<sup>324</sup> Witness AJY, T. 28 September 2006, pp. 13-17, 22.

<sup>325</sup> Exhibit D16/1, Witness AJY's written statement dated 17 April and 4 May 2001 (under seal), p. 3.

<sup>326</sup> Witness AJY, T. 28 September 2006, pp. 11, 12.

<sup>327</sup> Witness AJY, T. 28 September 2006, p. 13. As to Bikindi's absence from Rwanda at this period, *see also* Exhibit D9(F), *Attestation de l'Institut Panafricain pour le Développement*.

<sup>328</sup> Witness AJY, T. 27 September 2006, pp. 27-28; Exhibit D13, Notes of Prosecution Witness AJY.

<sup>329</sup> Witness BUY, T. 19 February 2007, pp. 11-12, 41.

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The witness added that at the end of the meeting they were given grenades and bayonets, and that Bikindi played a role in the distribution of these weapons.<sup>330</sup>

163. The Chamber has viewed Witness BUY's evidence with caution as he is a former *Interahamwe* convicted of genocide and currently serving a life sentence.<sup>331</sup> At the time of his testimony he was waiting to see if he would be afforded any penal relief for changing his original innocent plea to guilty.<sup>332</sup>

164. The Chamber has serious doubts about Witness BUY's credibility given the inconsistencies between his testimony and prior written statements. In his statement to Tribunal investigators in 2001, he said that he had been in the Rwandan army in early 1994, having been recruited in 1993 and provided details as to his activities within the army.<sup>333</sup> However, in his 2006 statement, he admitted he had been detained in Gisenyi Prison for a period ending in February 1994.<sup>334</sup> The witness later testified that he worked at Gisenyi Prison as a driver's aide during the genocide,<sup>335</sup> and denied ever having said he was a registered soldier, insisting that he had stated that he was part of a militia group, the *Interahamwe*.<sup>336</sup>

165. Witness BUY queried the authenticity of his written statement from 2001.<sup>337</sup> While he recognised his signature (although he could not read the content as it was in French), he stated that the Court should not rely on it as it mistakenly recorded the group to which he belonged and that he was based in a military camp.<sup>338</sup> When asked how he could have undergone military training and at the same time been a driver's aide at Gisenyi Prison, he said that he was not based at the military camp in Gisenyi, but went there to train for a couple of hours each day and then would go home and be free to carry out other activities.<sup>339</sup> The Chamber is not convinced by the witness's explanation which contradicts his prior statements as to his activity at the time.

166. Moreover, as the Defence pointed out, this witness had also previously given a statement to the Rwandan Courts that he was employed as a guard at Warrant Officer Bizimana's compound during the genocide in 1994 and did not leave his residence.<sup>340</sup> In court he denied that he had been a watchman and attempted to explain the discrepancy by saying that Warrant Officer Bizimana had lent his home to him which was why he said he was a watchman.<sup>341</sup>

167. The Chamber is of the view that these discrepancies, taken together, render the witness's evidence doubtful. In the absence of corroboration, the Chamber does not find that Witness BUY's evidence supports the Prosecution's allegation.

<sup>330</sup> Witness BUY, T. 19 February 2007, pp. 13-14, 28.

<sup>331</sup> Witness BUY, T. 19 February 2007, pp. 5, 7, 31 (closed session).

<sup>332</sup> Witness BUY, T. 19 February 2007, p. 5 (closed session).

<sup>333</sup> Exhibit D37, Witness BUY's written statement dated 6, 8 and 9 June 2001 (under seal and French).

<sup>334</sup> Exhibit D39, Witness BUY's written statement dated 24 October 2006 (under seal and French).

<sup>335</sup> Witness BUY, T. 19 February 2007, p. 20.

<sup>336</sup> Witness BUY, T. 19 February 2007, pp. 34-36.

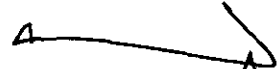
<sup>337</sup> Witness BUY, T. 19 February 2007, p. 34.

<sup>338</sup> Witness BUY, T. 19 February 2007, pp. 34-35.

<sup>339</sup> Witness BUY, T. 19 February 2007, pp. 37, 50.

<sup>340</sup> Exhibit D38, Witness BUY's Deposition to the Ministry of Justice, Rwanda, dated 4 February 2000 (under seal); Witness BUY, T. 19 February 2007, p. 45.

<sup>341</sup> Witness BUY, T. 19 February 2007, p. 45.



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### 6.1.3.8 Rally in Ruhengeri, 1992

168. Prosecution Witness BKW testified that, in May or June 1992, he attended an MRND rally in Ruhengeri where Bikindi, President Habyarimana, Wellars Banzi and Casimir Bizimungu were present.<sup>342</sup> Bikindi was allegedly wearing the MRND uniform and a T-shirt bearing the effigy of President Habyarimana in a *kitenge* costume and was asked to introduce his *Interahamwe*.<sup>343</sup> According to the witness, Wellars Banzi talked about how cruel the Tutsi were and then Bikindi and his troupe performed.<sup>344</sup> The witness stated that Bikindi demonstrated how acrobatic the *Interahamwe* were, showing that they had received such good training that they could not be tracked down and caught, if one were running after them.<sup>345</sup> He testified that, after the rally, "so much cruelty was exerted" on the Tutsi: Tutsi of Ruhengeri were persecuted, especially *Ababogwe* of Ruhengeri.<sup>346</sup>

169. Prosecution Witness ALQ testified that he was hired to take *Interahamwe* to the MRND rally in Ruhengeri.<sup>347</sup> The witness did not testify about what, if anything, Bikindi did at the rally.

170. Defence witness HZTX testified that Bikindi attended an MRND meeting at Ruhengeri in 1992 in the capacity of a musician.<sup>348</sup> He said that Bikindi did not deliver any speeches at the meeting, which were all made by the politicians. Bikindi had been invited as an artist to provide entertainment for the meeting with his dance group and attended solely to perform with his group.<sup>349</sup> Similarly, ballet members Witnesses KMS, DUC and JCH testified that Bikindi did not give any political speeches at the political rallies they attended.<sup>350</sup>

171. Although Witnesses ALQ and HZTX corroborate Witness BKW's testimony as to the presence of Bikindi at an MRND meeting in Ruhengeri in 1992, Witness BKW's evidence remains uncorroborated regarding Bikindi's activities there or the persecutions which took place afterwards. Recalling its reservations about Witness BKW's credibility, the Chamber does not consider that the Prosecution has proven that Bikindi attended this rally in a capacity other than a musician, or that the meeting was followed by violence perpetrated against Tutsi.

### 6.1.3.9 Rally at Umuganda Stadium in Gisenyi, 1992

172. Prosecution Witness BUY testified that Bikindi was present at an MRND meeting at Umuganda Stadium in Gisenyi in 1992. He stated that he attended the meeting as an *Interahamwe*, as *Interahamwe* had been invited to this rally to receive instructions from their leaders.<sup>351</sup> According to the witness, there were approximately 3000 participants at the meeting including Charles Zilimwabagabo (*Préfet* of Gisenyi), Bernard Munyagashari (leader of the *Interahamwe* in Gisenyi *préfecture*), and CDR leader Hassan Ngeze.<sup>352</sup>

<sup>342</sup> Witness BKW, T. 17 October 2006, pp. 2, 15, 22; T. 18 October 2006, pp. 3, 5.

<sup>343</sup> Witness BKW, T. 17 October 2006, p. 22.

<sup>344</sup> Witness BKW, T. 17 October 2006, p. 15.

<sup>345</sup> Witness BKW, T. 17 October 2006, p. 23.

<sup>346</sup> Witness BKW, T. 17 October 2006, pp. 22-23.

<sup>347</sup> Witness ALQ, T. 16 October 2006, pp. 3, 5, 8.

<sup>348</sup> Witness HZTX, T. 25 September 2007, pp. 69, 72.

<sup>349</sup> Witness HZTX, T. 25 September 2007, p. 72.

<sup>350</sup> Witness DUC, T. 27. September 2007, pp. 53, 56; Witness KMS, T. 1. October 2007, p. 18; Witness JCH, T. 9 October 2007, p. 32.

<sup>351</sup> Witness BUY, T. 19 February 2007, pp. 8-9.

<sup>352</sup> Witness BUY, T. 19 February 2007, pp. 8-9, 11, 30.

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173. The witness testified that after the leaders of the *Interahamwe* had spoken to the crowd, Bikindi took the floor and addressed the gathering regarding the nature of the Tutsi who he said were wicked. The witness stated that Bikindi added that "the Tutsi was an accomplice of the *Inkotanyi*" and that they should be vigilant as the Tutsi were infiltrating the area, disguised as farmers or domestic workers, and that they should prevent such infiltrations.<sup>353</sup>

174. Although Prosecution Witness AKK testified that he saw Bikindi performing his songs at Umuganda Stadium in 1992,<sup>354</sup> the Chamber is not convinced that the event Witness AKK was referring to was the same political event that Witness BUY testified about, as he did not describe it as a rally, in contrast to the Kivumu rally which he referred to repeatedly as "the rally".<sup>355</sup>

175. Although he did not attend, Prosecution Witness BHJ testified that he knew of an MRND rally which took place at Umuganda Stadium in Gisenyi before the war where Juvénal Habyarimana was the guest of honour.<sup>356</sup> In the Chamber's opinion, the lack of specificity regarding the date of the rally together with the lack of a positive identification of Bikindi prevents the Chamber from concluding that it is the same rally that Witness BUY testified about.

176. The Chamber recalls its findings above at paragraphs 163 to 167 seriously questioning the reliability of witness BUY's evidence in general. In the absence of corroboration, the Chamber does not find that Witness BUY's testimony on this 1992 meeting proves or supports the Prosecution's allegation.

## 6.2. Bikindi's Specific Exhortations to "Work"

177. The Prosecution alleges that Bikindi publicly addressed party adherents with exhortations to "work", a coded reference advocating the extermination of Tutsi, at an MRND rally at Umuganda Stadium in February 1994 and at a CDR meeting in March 1994.<sup>357</sup>

### 6.2.1 MRND Rally at Umuganda Stadium in Gisenyi, February 1994

178. The Prosecution alleges that in February 1994, shortly after the assassinations of Martin Bucyana and Félicien Gatabazi, Bikindi addressed an MRND meeting at Umuganda Stadium and told the population to take their clubs, machetes and other weapons and look for the *Inyenzi* and kill them.<sup>358</sup>

179. Prosecution Witness AJY testified that he attended an MRND meeting in 1994 at Umuganda stadium after the deaths of Gatabazi and Bucyana, who were killed between 1993 and 1994, at which Bikindi was present. He testified that he could not be more specific as it happened a long time ago.<sup>359</sup> Questioned on the fact that he had previously declared to Tribunal investigators that the meeting took place in 1994, the witness acknowledged that the

<sup>353</sup> Witness BUY, T. 19 February 2007, pp. 11, 30.

<sup>354</sup> Witness AKK, T. 22 September 2006, pp. 3, 6.

<sup>355</sup> Witness AKK, T. 22 September 2006, p. 7 ("the first time I saw Bikindi was at the Umuganda stadium in 1992. The second time I saw him was at the rally.").

<sup>356</sup> Witness BHJ, T. 10 October 2006, p. 11.

<sup>357</sup> Indictment, paras. 34, 35 and 36.

<sup>358</sup> Indictment, paras. 34 and 35.

<sup>359</sup> Witness AJY, T. 28 September 2006, p. 37.

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meeting was between 1993 and 1994 and repeated that he could not be specific as it was a long time ago. Immediately after, he repeated that the rally was in 1994.<sup>360</sup>

180. Bikindi categorically denied ever going to Umuganda Stadium in 1994.<sup>361</sup> Defence Witness JTX placed Bikindi at a rally at Umuganda Stadium in 1994 prior to the genocide, but did not give any specificity regarding the date of the meeting or any detail regarding what happened at the meeting.<sup>362</sup>

181. The Chamber notes the confusion in Witness AJY's testimony regarding the date of this rally. More significantly, neither Witnesses AJY nor JTX gave any evidence regarding the content of this rally except to say that Bikindi was present. Accordingly, the Chamber finds that the Prosecution has failed to adduce any evidence regarding the alleged criminal acts of Bikindi at this meeting.

### 6.2.2 CDR Meeting, March 1994

182. The Prosecution alleges that in March 1994 Bikindi addressed a CDR meeting and encouraged those in attendance to work and kill those opposed to the CDR and MRND.<sup>363</sup> As the Prosecution did not adduce any evidence of this meeting, the Chamber dismisses the allegation without considering it any further.

### 6.3. Conclusion

183. The Chamber has concluded above that Bikindi performed at MRND and CDR political gatherings. As to the specific allegation that Bikindi performed musical compositions extolling Hutu solidarity and that his participation at political gatherings was a prelude to or a motivating factor in anti-Tutsi violence, the Chamber finds that the Prosecution has proven beyond reasonable doubt that Bikindi attended a political meeting in a football field in Kivumu in Rwanda in 1993 at which he encouraged anti-Tutsi violence through speech and at which his music was played on cassette. The Prosecution has not proven, however, that this meeting led to anti-Tutsi violence immediately thereafter. The Chamber also finds that, whereas the Prosecution has proven that Bikindi addressed an MRND meeting in Nyamirambo on 7 November 1993 praising the success of both the MRND and the *Interahamwe*, it failed to prove that Bikindi's address constituted anti-Tutsi propaganda or was a prelude to or a motivating factor in anti-Tutsi violence. Similarly, although the Prosecution has proven that Bikindi was praised at a rally at Nyamirambo Stadium in early 1994 while preparing to perform for those assembled, there was no evidence as to which songs Bikindi performed or that he addressed the audience with a speech. Accordingly, the Chamber finds that the Prosecution has failed to prove that Bikindi's actions at that meeting in early 1994 constituted anti-Tutsi propaganda or were a motivating factor in anti-Tutsi violence.

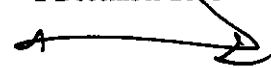
184. The Prosecution has also failed to prove that Bikindi attended an MRND meeting at Umuganda Stadium in June 1994, or that Bikindi publicly addressed MRND and CDR adherents with exhortations to work, a coded reference advocating the extermination of the Tutsi, at an MRND meeting at Umuganda Stadium in February 1994 or a CDR meeting in March 1994.

<sup>360</sup> Witness AJY, T. 2 October 2006, p. 2. The Chamber notes that the transcript mistakenly refers to this as the testimony of Witness AJS.

<sup>361</sup> Bikindi, T. 1 November 2007, pp. 9-10.

<sup>362</sup> Witness JTX, T. 25 September 2007, p. 33.

<sup>363</sup> Indictment, paras. 34 and 36.



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185. Given its conclusions above, the Chamber has not found it necessary to address the issue of whether the meetings that allegedly took place in 1994 not specifically alleged in the Indictment could have formed the basis for a conviction.

## 7. SONGS

186. Bikindi is alleged to have participated in the genocide by composing songs extolling Hutu solidarity and encouraging ethnic hatred and the attacking and killing of Tutsi, which were then deployed in a propaganda campaign to target the Tutsi as the enemy and to sensitise and incite the listening public to target and commit acts of violence against the Tutsi.

### 7.1. Meaning and Interpretation of the Songs

187. The Prosecution alleges that from 1990 to 1994, Bikindi composed and recorded musical compositions manipulating the politics and history of Rwanda to promote Hutu solidarity, extolling such solidarity, characterising Tutsi as Hutu enslavers, enemies or enemy accomplices by blaming the enemy for the problems of Rwanda, by continuously making references to the 1959 Revolution and its gains by the *rubanda ngamwinshi* and by supporting the Bahutu Ten Commandments, and inciting ethnic hatred and people to attack and kill Tutsi. The Prosecution refers to three specific musical compositions in the Indictment: *Twasezereye* ("We Said Good Bye to the Feudal Regime"), *Nanga Abahutu* ("I Hate These Hutu") and *Bene Sebahinzi* ("The Sons of the Father of the Cultivators"). The Prosecution specifically alleges that *Twasezereye* was a public call for Hutu solidarity in opposition to the Arusha Accords, and that *Nanga Abahutu* and *Bene Sebahinzi* encouraged Hutu solidarity against a common foe.<sup>364</sup>

#### 7.1.1 Preliminary Matters

##### 7.1.1.1 Titles

188. There is a dispute over the titles of the three songs referred to in the Indictment. Prosecution expert witnesses in linguistics Jean de Dieu Karangwa and Gamaliel Mbonimana ("Prosecution Experts") selected the titles *Twasezereye ingoma ya cyami* ("We Said Goodbye to the Monarchy"), *Nanga Abahutu* ("I Hate the Hutu") and *Bene Sebahinzi* ("Descendants of the Father of Farmers") based on the frequency of these words in the songs, although they admitted that the words appearing most often in *Twasezereye ya cyami* were *Mukumyabiri N'itanu* ("25 Years of Independence").<sup>365</sup> The Chamber notes that the Prosecution adopted two of these titles in the Indictment and Pre-Trial Brief, shortening the third from *Twasezereye ingoma ya cyami* to *Twasezereye*.<sup>366</sup>

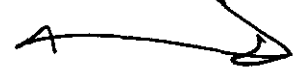
189. Both Bikindi and the Defence expert witness in linguistics, Eugène Shimamungu ("Defence Expert"),<sup>367</sup> explained that *Twasezereye ingoma ya cyami* was called simply

<sup>364</sup> Indictment, paras. 10, 14, 16, 31, 40, 41 and 48.

<sup>365</sup> Prosecution Expert Karangwa, T. 15 February 2007, p. 39. Jean de Dieu Karangwa ("Prosecution Expert Karangwa") was qualified as an expert in linguistics by the Chamber on 13 February 2007 (T. 13 February 2007, p. 6) and Gamaliel Mbonimana ("Prosecution Expert Mbonimana") on 16 February 2007 (T. 16 February 2007, p. 31). Their co-authored expert report was admitted as Exhibit P73.

<sup>366</sup> Indictment, para 40; Prosecution Pre-Trial Brief, para. 52.

<sup>367</sup> Eugène Shimamungu was qualified as an expert in Kinyarwanda language, lexicography and terminography on 23 October 2007 (T. 23 October 2007, p. 53) His expert report was admitted as Exhibit D117(F).





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*Twasezereye* ("We Said Goodbye"),<sup>368</sup> and insisted that *Nanga Abahutu* was called *Akabyutso* ("The Awakening")<sup>369</sup> and that *Bene Sebahinzi* was called *Intabaza* ("The Alert").<sup>370</sup> Two former members of the ballet testified they did not recognise *Nanga Abahutu* and *Bene Sebahinzi* as the titles of songs by Simon Bikindi.<sup>371</sup> *Twasezereye* was referred to as *Dusezeze ingoma ya cyami* ("We Say Goodbye to the Monarchy") by Radio Rwanda,<sup>372</sup> and *Ibuka itanu ni icyenda* ("Remember '59") by a Prosecution witness.<sup>373</sup>

190. The Chamber is of the view that in the determination of the meanings of the songs, the titles are less important than the texts themselves. The Chamber notes that both titles preferred by the Prosecution and Defence appear as lyrics in the songs. The only relevance of the titles, in the Chamber's view, would be to infer the author's intent of the overall meaning of the song,<sup>374</sup> and the Chamber will take this into consideration at that stage. In the Judgement, for the sake of symmetry with the Indictment, the Chamber will refer to the three songs by the titles selected by the Prosecution.

### 7.1.1.2 Translations

191. The Chamber notes the numerous translations of Bikindi's three alleged songs. The Chamber has considered the translations of the Prosecution Experts,<sup>375</sup> the Defence Expert,<sup>376</sup> of Bikindi himself,<sup>377</sup> and of the Tribunal Language Service Section.<sup>378</sup> The Chamber has also considered the translation of *Nanga Abahutu* in a transcription of an RTLM broadcast.<sup>379</sup>

192. The Chamber notes some discrepancies between the translations: words<sup>380</sup> and metaphors were translated differently,<sup>381</sup> small errors were found in some,<sup>382</sup> and some

<sup>368</sup> Exhibit D117(F), Defence Expert Report, p. 26; Bikindi, T. 31 October 2007, pp. 15, 44.

<sup>369</sup> Exhibit D117(F), Defence Expert Report, pp. 26, 51; Bikindi, T. 2 November 2007, p. 41; Exhibit P52(F), Analysis and translation of "*Intabaza*" by Simon Bikindi, p. KA022674.

<sup>370</sup> Exhibit D117(F), Defence Expert Report, pp. 26, 65; Bikindi, T. 2 November 2007, p. 41; Exhibit P52(F), Analysis and translation of "*Intabaza*" by Simon Bikindi, p. KA022674.

<sup>371</sup> *Nanga Abahutu*: Witness DUC, T. 27 September 2007, p. 61; Witness TIER, T. 16 October 2007, pp. 36, 37; *Bene Sebahinzi*: Witness DUC, T. 27 September 2007, p. 61.

<sup>372</sup> See Exhibits P74 and P98, Translation by Prosecution Expert Karangwa (same document entered twice); Prosecution Expert Karangwa, T. 13 February 2007, p. 10.

<sup>373</sup> Witness AJY, T. 27 September 2006, p. 29.

<sup>374</sup> The Chamber notes that the Defence Expert raised this point, that the title reflects what the author intended as the main idea of the song (Exhibit D117(F), Defence Expert Report, p. 25; T. 23 October 2007, p. 55).

<sup>375</sup> Exhibit P73, Prosecution Experts Report.

<sup>376</sup> Exhibit D117(F), Defence Expert Report. The Chamber notes that the Defence Expert received a copy of Bikindi's lyrics from the Defence which he then compared with his translation from listening to the CD (T. 23 October 2007, p. 54).

<sup>377</sup> Exhibit P52(F), Analysis and translation of "*Intabaza*" by Simon Bikindi.

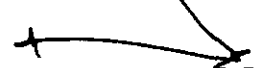
<sup>378</sup> Exhibit D33, Translation of *Twasezereye* [We Bade Farewell to the Monarchy]; Exhibit D35, Translation of *Akabyutso* ("The Awakening") and *Intabaza* ("Alert").

<sup>379</sup> Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993.

<sup>380</sup> For example, in translations of *Nanga Abahutu*, "idiot" in Exhibit D35, was "deaf" in Exhibit P73; "stimulate heroes" in D35, was "arouse victory" in P73. Some of these discrepancies may be explained in that according to Prosecution Expert Karangwa, he and his co-author provided certain words instead of leaving that part of the analysis blank, but admitted that perhaps it would have been better to write 'inaudible' rather than guess at the word (T. 14 February 2007, p. 26).

<sup>381</sup> For example, in translations of *Bene Sebahinzi*, the same Kinyarwanda metaphor was translated to "He dreamt of cows with hearts covered with wart" in Exhibit D35, and to "He dreamt that cows were eating cooked sorghum on the covers of baskets" in Exhibit P73.

<sup>382</sup> Regarding *Twasezereye*, Prosecution Expert Karangwa admitted he had made a typographical error with respect to the word "ingiri", but insisted this did not change the main message of the song (T. 14 February 2007, p. 27 and T. 15 February 2007, pp. 52- 53).



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versions had extra verses.<sup>383</sup> The Chamber considered all of the translations in its analysis, and found little difference when considering the overall message, as words and passages must be considered within the framework of the rest of the lyrics.<sup>384</sup> As the Chamber pointed out during the trial, a sentence taken out of context could have a very different meaning than when considered in the context of the rest of the song in which it is situated, and in the context of Rwanda during the time the song was composed, recorded and disseminated.<sup>385</sup> In this respect, the Chamber acknowledges that, as for any translation, the translation into French or English of the songs may not be able to convey some very subtle nuance that existed in Kinyarwanda.<sup>386</sup> In the circumstances, the Chamber has therefore paid particular attention to the interpretations given by listeners who testified in court.

### 7.1.1.3 Dates Composed

193. In the Indictment, the Prosecution alleges that *Twasezereye* was composed in 1987.<sup>387</sup> Bikindi testified that *Twasezereye* was composed in 1986, first recorded in January 1987 during a competition to commemorate the 25<sup>th</sup> anniversary of Rwandan independence, and later recorded in a studio in 1993 as part of an album.<sup>388</sup>

194. Although the Prosecution does not state when Bikindi composed the other two songs alleged in the Indictment, Bikindi stated that he composed *Nanga Abahutu* sometime between March and May of 1993, and completed *Bene Sebahinzi* about a month and a half later.<sup>389</sup> He stated that he entered the studio in June 1993, and had recorded these two songs by the end of August 1993 as part of an album titled *Mbwirabumva*.<sup>390</sup>

### 7.1.1.4 Score and Background Music

195. The Chamber notes that several witnesses highlighted the background music of the songs, for example, the accompanying sitar,<sup>391</sup> the mixed Rwandan-Congolese rhythm<sup>392</sup> and the accompanying traditional dance.<sup>393</sup> Many witnesses spoke positively of his music, describing it as captivating,<sup>394</sup> catchy,<sup>395</sup> having good rhythm<sup>396</sup> and melody,<sup>397</sup> and making listeners want to dance.<sup>398</sup>

<sup>383</sup> For example, the translation of *Twasezereye* in Exhibit D33 had three verses not included in Exhibit P73 (the last two verses on page 1, and the first on page 2).

<sup>384</sup> See, for example, Bikindi, T. 31 October 2007, p. 39; Prosecution Expert Karangwa, T. 15 February 2007, p. 26; Prosecution Expert Mbonimana, T. 16 February 2007, pp. 30-31.

<sup>385</sup> T. 15 February 2007, p. 21.

<sup>386</sup> See Exhibit P52, Analysis and translation of "*Intabaza*" by Simon Bikindi, p. KA022674.

<sup>387</sup> Indictment, para. 40.

<sup>388</sup> Bikindi, T. 31 October 2007, p. 15. See also Exhibit D117(F), Defence Expert Report, p. 30.

<sup>389</sup> Bikindi, T. 31 October 2007, pp. 32, 33. The Chamber also notes that Bikindi definitively admits that he is the author of these two songs on T. 2 November 2007, p. 41.

<sup>390</sup> Bikindi, T. 31 October 2007, pp. 50-51. "*Mbwirabumva*" has been written many different ways in the transcripts of these proceedings, but was spelt "*Mbwirabumva*" in Exhibit P52, Analysis and translation of "*Intabaza*" by Simon Bikindi, p. KA022674, in Exhibit D124, *Indilimbo za Bikindi Simon (Les chansons de Simon Bikindi)*, p. 60 and in both Experts Reports.

<sup>391</sup> Witness AEY, T. 12 October 2006, p. 29; Prosecution Expert Karangwa, T. 13 February 2007, p. 27.

<sup>392</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 42.

<sup>393</sup> Cyprien Ngendahimana, T. 17 October 2007, p. 13.

<sup>394</sup> Witness BHH, T. 20 February 2007, pp. 11, 22; Prosecution Expert Karangwa, T. 13 February 2007, p. 42.

<sup>395</sup> Witness BGH, T. 4 October 2006, p. 15.

<sup>396</sup> Witness AJY, T. 27 September 2006, p. 29; Prosecution Expert Karangwa, T. 13 February 2007, p. 15.

<sup>397</sup> Witness BHH, T. 20 February 2007, pp. 11, 22.

<sup>398</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 11, 15. See also Exhibit P72, Excerpts from *Rwanda, Les médias du génocide*, Jean-Pierre Chrétien (dir.), pp. 341-342.

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196. While the Chamber does not doubt Bikindi is a talented and popular musician, the Chamber is less interested in the score than the lyrics of his compositions. While the Defence argued that the principal purpose of a song is usually entertainment based on melody and rhythm, and need not even have a message,<sup>399</sup> the Chamber finds that, if anything, emphasising the popularity of the songs may have the effect of assisting the Prosecution's case regarding their impact.

#### 7.1.1.5 Poetic Language

197. Prosecution Expert Karangwa testified that Bikindi's songs were couched in poetic language, referring to the realm of the spoken and unspoken in Kinyarwanda.<sup>400</sup> Regarding *Bene Sebahinzi*, for example, the Prosecution Experts stated that Bikindi used the *ibisigo* language liberally, effectively using poetry to convey things not easily understood.<sup>401</sup> The Chamber notes that the Defence Expert appeared to disagree, stating, "[t]he text is clear. It is not poetic. It is prose indicating what the author's intent is."<sup>402</sup>

198. However, numerous witnesses corroborated the Prosecution Experts' analysis, testifying that Bikindi's lyrics were "indirect",<sup>403</sup> poetic,<sup>404</sup> and filled with "metaphors",<sup>405</sup> "imagery",<sup>406</sup> and "allusions".<sup>407</sup> Witnesses testified that the language used was a "sophisticated",<sup>408</sup> "complicated"<sup>409</sup> and literary high form of Kinyarwanda.<sup>410</sup> Witness AEY stated that foreigners would not be able to understand their meaning, as even Rwandans sometimes have difficulty understanding what Bikindi is saying.<sup>411</sup> Witness BGH testified that if one did not have a mastery of the language they might not understand certain words.<sup>412</sup>

199. Four witnesses testified, however, that even though Bikindi used indirect language, his message was clear to them. When asked if he knew of a song of Bikindi's which says that Tutsi were to be exterminated, Witness AKJ answered that he did not hear such an express message, as metaphors were used.<sup>413</sup> Witness BHI stated that even if the word "Tutsi" did not appear in the lyrics of those songs, through the imagery and the metaphors, one could understand just as well, as the Hutu were the majority and the Tutsi the minority.<sup>414</sup> Witness BGH testified that although the songs were "composed in quite a sophisticated type of Kinyarwanda ... [that] everybody knows very well what they – the message transmitted by

<sup>399</sup> Defence Closing Brief, para. 282; Exhibit D117(F), Defence Expert Report, p. 5.

<sup>400</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 11, 37.

<sup>401</sup> Exhibit P73, Prosecution Experts Report, p. 17.

<sup>402</sup> Defence Expert Shimamungu, T. 24 October 2007, p. 26.

<sup>403</sup> Witness BKW, T. 18 October 2006, p. 11.

<sup>404</sup> Cyprien Ngendahimana, T. 17 October 2007, pp. 13, 14.

<sup>405</sup> Witness AKJ, T. 21 September 2006, p. 21; Witness BGH, T. 4 October 2006, pp. 9, 15; Witness BHI, T. 13 October 2006, p. 30.

<sup>406</sup> Witness AEY, T. 12 October 2006, p. 26 and T. 13 October 2006, pp. 29-30; Witness BHJ, T. 10 October 2006, p. 12; Witness AKJ, T. 20 September 2006, p. 49; Witness AHP, T. 20 October 2006, p. 8.

<sup>407</sup> Witness AEY, T. 12 October 2006, p. 8; Witness BGH, T. 4 October 2006, pp. 6, 15, 16.

<sup>408</sup> Witness AJZ, T. 27 September 2006, p. 6; Witness BGH, T. 4 October 2006, p. 15; Witness BHJ, T. 10 October 2006, p. 31.

<sup>409</sup> Witness AEY, T. 12 October 2006, pp. 7, 9, 26.

<sup>410</sup> Witness BGH, T. 4 October 2006, p. 15; Witness BHJ, T. 10 October 2006, p. 12.

<sup>411</sup> Witness AEY, T. 12 October 2006, pp. 7, 26.

<sup>412</sup> Witness BGH, T. 4 October 2006, p. 6.

<sup>413</sup> Witness AKJ, T. 21 September 2006, p. 21.

<sup>414</sup> Witness BHI, T. 13 October 2006, p. 30.

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those songs is.”<sup>415</sup> Witness BHH stated that even with “stylistic nuances” and references to “Rwandan legend”, the “essential message was properly understood.”<sup>416</sup>

#### 7.1.1.6 Other Songs

200. Bikindi stated that the Prosecution only chose three songs out of dozens he composed, and that all his songs should be considered to represent his overall intention at the time.<sup>417</sup>

201. However, the evidence adduced by the Defence on Bikindi’s other songs is not necessarily favourable to Bikindi’s case. While there was evidence that Bikindi composed wedding songs,<sup>418</sup> and a song to celebrate Christmas and the New Year,<sup>419</sup> he also composed a series of eight “war songs” from 1991.<sup>420</sup> Bikindi stated he created an album titled *Imbarirwakunesha* in 1991 and/or 1992, encouraging “our” soldiers in the battlefield to fight the RPF.<sup>421</sup> A number of witnesses testified to knowledge of these songs,<sup>422</sup> including one that incited a witness and other *Interahamwe* to kill.<sup>423</sup> Another witness testified that Bikindi composed and sang a song welcoming the French into Rwanda at the end of June 1994.<sup>424</sup>

202. Two witnesses also mentioned a song which praised the MRND<sup>425</sup> called *MRND ishyaka rya banyarwanda*,<sup>426</sup> the refrain of which was: “MRND. Yes, MRND, the party of Rwandans. MRND, militating in favour of democracy. MRND, a party in favour of peace and development of the masses. We will all join MRND.”<sup>427</sup> Witness WUH testified that although he could not recall the titles of the songs sung by Bikindi’s *Irindiro* ballet, he knew they were a form of propaganda for the party.<sup>428</sup>

203. Bikindi stated that he composed *Amahoro* in the fall of 1993. Sung into the trial record, this song was essentially a repetition of the word “peace”.<sup>429</sup> The Chamber will be

<sup>415</sup> Witness BGH, T. 4 October 2006, p. 15.

<sup>416</sup> Witness BHH, T. 20 February 2007, p. 11.

<sup>417</sup> Bikindi, T. 31 October 2007, pp. 57, 58.

<sup>418</sup> Bikindi, T. 2 November 2007, p. 10; Witness JCH, T. 9 October 2007, pp. 36, 55; Cyprien Ngendahimana, T. 17 October 2007, p. 14; Witness BHH, T. 20 February 2007, p. 25; Witness BHJ, T. 11 October 2006, p. 40. See also Exhibit D599B), Leaflet of the *Irindiro* ballet; Exhibit D117(F), Defence Expert Report, Annex 1, pp. 68-69; and Exhibit D124, *Indilimbo za Bikindi Simon (Les chansons de Simon Bikindi)*.

<sup>419</sup> Cyprien Ngendahimana, T. 17 October 2007, p. 14.

<sup>420</sup> Defence Expert Shimamungu, T. 24 October 2007, p. 44; Exhibit D117(F), Defence Expert Report, pp. 68-69.

<sup>421</sup> Bikindi, T. 31 October 2007, pp. 54-55; Exhibit D117(F), Defence Expert Report, Annex 1, pp. 68-69; and Exhibit D124, *Indilimbo za Bikindi Simon (Les chansons de Simon Bikindi)*.

<sup>422</sup> Witness JCH testified that *Imparikwakunesha*, *Imparirwashema*, *Ibishashi*, and *Amashahi* (an instrumental version of *Ibishahi*) were songs recorded to boost the morale of the soldiers (T. 9 October 2007, pp. 33-34.) Witness KMS also mentioned songs composed and sung which praised government soldiers (T. 1 October 2007, p. 37), and Witness BHH mentioned some “war songs” as well (Witness BHH, T. 20 February 2007, p. 8).

<sup>423</sup> Witness AEY testified that he also remembered a song intended for the Rwandan army, and that after listening to it, he and others perpetrated killings because the song explained how wicked the Tutsi were, and AEY and the other *Interahamwe* had understood the danger involved and they “had to do what [they] had to do” (T. 12 October 2006, p. 9).

<sup>424</sup> Witness BHJ testified that Bikindi therefore composed a song which said: “Long live the French, long live the Rwandans.” The witness testified that Bikindi taught the song to all the inhabitants of his town, around the end of June, when the French arrived (T. 11 October 2006, pp. 40-41).

<sup>425</sup> Witness KMS, T. 1 October 2007, p. 37; Witness JCH, T. 9 October 2007, p. 17.

<sup>426</sup> Witness KMS, T. 1 October 2007, p. 37.

<sup>427</sup> Witness JCH, T. 9 October 2007, p. 17.

<sup>428</sup> Witness WUH, T. 2 October 2007, pp. 70, 71.

<sup>429</sup> Bikindi, T. 31 October 2007, pp. 34, 35, 36. The Chamber notes that Bikindi’s first wife testified about this song as well: Apolline Uwimana, T. 8 October 2007, p. 32. See also Exhibit D117(F), Defence Expert Report, Annex 1, p. 69.

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discussing how peace and democracy were interpreted in 1993 and 1994 in Rwanda in the conclusion to this section.

204. Bikindi also composed *Mbwirabumva* ("Word to the Wise") in the fall of 1993.<sup>430</sup> In this song, Bikindi asks his audience, "Did you understand me earlier", and he is answered, "yes".<sup>431</sup> The Chamber notes that *Mbwirabumva* was included in an album, titled *Mbwirabumva*, with *Nanga Abahutu* ("I Hate the Hutu") followed by *Mbwirabumva* on side A, and *Bene Sebahinzi* ("Descendants of the Father of Farmers") followed by *Mbwirabumva* again on side B.<sup>432</sup> The Chamber is of the view that this song merely reinforces the messages of the preceding songs. The Chamber also notes that a number of witnesses testified that this song referred to the historical Tutsi domination of Hutu.<sup>433</sup> However, the Chamber will not consider these allegations in great detail, as the song was not specifically pleaded in the Indictment. Moreover, this song appears to mirror the lyrics of the other three songs specifically alleged.

205. Lastly, Bikindi's four songs, *Les mendiants de la paix* ("Beggars of Peace"), *Merci* ("Thank You"), *A Better World* and *Les enfants de la guerre* ("Children of War"),<sup>434</sup> were all composed in exile or after 1994,<sup>435</sup> and cannot really enlighten the Chamber as to Bikindi's intention at the time he allegedly committed the crimes he is charged with. The Chamber notes that intentions can change, especially in exile after genocide.

### 7.1.2 *Twasezereye, Nanga Abahutu, and Bene Sebahinzi*

206. The following section examines the interpretation of the three specific songs alleged in the Indictment, *Twasezereye*, *Nanga Abahutu*, and *Bene Sebahinzi*. After summarising the evidence adduced on each song in the following three sub-sections, the Chamber will state its conclusions at the end of this section.

207. Regarding the themes of these three songs, Prosecution Expert Karangwa testified that the message of the songs was to appeal to Hutu to subscribe to stereotypes and caricatures of the past regarding relations between the Hutu and Tutsi ethnic groups.<sup>436</sup> Prosecution witnesses highlighted the central theme as one of division.<sup>437</sup>

208. In contrast, the Defence Expert gave his opinion that the themes of the songs were not about ethnic hatred, but instead related to democracy and republic.<sup>438</sup> Bikindi stated his songs taught harmony,<sup>439</sup> and were meant to return his country to peace.<sup>440</sup> Witness JCH testified that the three songs alleged were about peace and democracy.<sup>441</sup> Bikindi's second wife

<sup>430</sup> Bikindi, T. 31 October 2007, p. 34.

<sup>431</sup> Bikindi, T. 31 October 2007, p. 34.

<sup>432</sup> Bikindi, T. 31 October 2007, pp. 50, 51.

<sup>433</sup> Witness AHP, T. 19 October 2006, pp. 26-27; T. 20 October 2006, pp. 8, 9; Witness BKW, T. 18 October 2006, pp. 12-13; Witness AEY, T. 12 October 2006, p. 25; Witness BHI, T. 13 October 2006, pp. 3, 4, 29-30.

<sup>434</sup> Exhibit D. 125, Lyrics of *A Better World* and *Les enfants de la guerre*. Performed in trial by Bikindi: T. 1 November 2007, pp. 35-36.

<sup>435</sup> Bikindi, T. 1 November 2007, pp. 33-34. See also Exhibit D117(F), Defence Expert Report, Annex 1, p. 69.

<sup>436</sup> Exhibit P73, Prosecution Experts Report, p. 23.

<sup>437</sup> Witness AJY, T. 28 September 2006, p. 29; Witness AJZ, T. 25 September 2006, p. 48; Witness AKJ, T. 20 September 2006, p. 49, this was in relation specifically to *Nanga Abahutu* and *Bene Sebahinzi*.

<sup>438</sup> Defence Expert Shimamungu, T. 25 October 2007, p. 4; Exhibit D117(F), Defence Expert Report, p. 29.

<sup>439</sup> Bikindi, T. 6 November 2007, p. 2.

<sup>440</sup> Bikindi, T. 5 November 2007, p. 10.

<sup>441</sup> Witness JCH, T. 9 October 2007, p. 45.



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testified that all of her husband's songs were aimed at promoting peace.<sup>442</sup> Antoine Nyetera testified that the songs reflected the past.<sup>443</sup>

#### 7.1.2.1 *Twasezereye*

209. The Prosecution Experts interpreted *Twasezereye* to be a rallying call for unity among Hutu by reminding them of a past of subservience to the Tutsi. They stated that the central theme is the praise of the benefits of independence for the Rwandan people, and mentioned it was composed for the commemoration of the 25<sup>th</sup> anniversary of national independence.<sup>444</sup> They also noted that the first verse of the refrain, and his chosen title, *Twasezereye ingoma ya cyami*, translates to "We bade farewell to the monarchy".<sup>445</sup> Bikindi is not saying goodbye to the colonial regime, but to the monarchy or feudal regime, which Prosecution Expert Karangwa testified were associated with Tutsi domination.<sup>446</sup> The Prosecution Expert noted that the song devotes one line to practices chiefly ascribed to colonialism, namely the whip and hard labour, but dwells at length for two or three stanzas on the ills and injustices of the Tutsi dominated feudal system.<sup>447</sup> He states that such disproportionate treatment suggests that the excesses of the Tutsi regime are more abhorrent to Rwandans and Hutu in particular than colonisation.<sup>448</sup> Given that the country was faced with an external Tutsi threat, the theme of the feudo-monarchical scarecrow served to unify the Hutu.<sup>449</sup>

210. The Prosecution Experts also noted that the lyrics include reference to the 1959 Revolution which led to Rwandan independence by referring to two important figures in the Revolution, Kayinbanda and Mbonyumutwa, as a way to rally all Hutu.<sup>450</sup> By making reference to Habyarimana in the song, he is elevated to the rank of a hero of independence.<sup>451</sup>

211. Prosecution Expert Mbonimana asserted that referring to the Hutu genitals adorning the Kalinga drum, an emblem of the Tutsi, and stating that the Tutsi were at the doors of the country, ready to do what they did in the past, was an invitation to hate and kill.<sup>452</sup> The Prosecution Experts asserted that it was obvious that listening to *Twasezereye*, part of the Hutu population believed that if the *Inkotanyi* prevailed the monarchy would return, and that therefore the Hutu had to strike first.<sup>453</sup> The Prosecution Experts stated that the message of this song was clear and understood by Rwandans, and would incite hatred.<sup>454</sup>

<sup>442</sup> Angeline Mukabanana, T. 2 October 2007, p. 23.

<sup>443</sup> Antoine Nyetera, T. 5 October 2007, p. 30.

<sup>444</sup> Exhibit P73, Prosecution Experts Report, p. 11.

<sup>445</sup> Exhibit P73, Prosecution Experts Report, p. 20.

<sup>446</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 15 and T. 14 February 2007, p. 13; Exhibit P73, Prosecution Experts Report, p. 10.

<sup>447</sup> Exhibit P73, Prosecution Experts Report, pp. 10, 19. See also Prosecution Expert Karangwa T. 15 February 2007, p. 45.

<sup>448</sup> Exhibit P73, Prosecution Experts Report, p. 10.

<sup>449</sup> Exhibit P73, Prosecution Experts Report, pp. 11-12.

<sup>450</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 15, 18, 25-26.

<sup>451</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 18.

<sup>452</sup> Prosecution Expert Mbonimana, T. 16 February 2007, p. 26.

<sup>453</sup> Exhibit P73, Prosecution Experts Report, p. 23.

<sup>454</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 21; Exhibit P73, Prosecution Experts Report, p. 22.

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212. In addition, the Prosecution adduced some documentary evidence of transcripts of RTLM broadcasts that commented on the interpretation of *Twasezereye*. On 21 March 1994, an unidentified speaker on RTLM played *Twasezereye*, and followed up by stating:

Consequently, the people are being asked to be vigilant, the enemy is still the same, brandishing the same spear; his plan to shed blood remains the same [...]. This requires a proper identification of the enemy, for he keeps disguising himself. Nevertheless, he is still the same. I would therefore like to dedicate this new song to the Rwandan Armed Forces [and to] all Rwandans committed to peace and democracy. Here is the music.<sup>455</sup>

213. Although a number of Prosecution witnesses testified that this song was about independence,<sup>456</sup> and referred to bidding farewell to the colonial system,<sup>457</sup> many more asserted that the song was about the monarchy.<sup>458</sup> Witnesses gave evidence that the monarchy in Rwanda was associated with the Tutsi.<sup>459</sup> Numerous witnesses gave evidence on the historical practices associated with this period and detailed in the song, namely forced labour, being whipped or flogged, giving gifts to the King and being "under the yoke".<sup>460</sup> One witness stated that this song was about ethnic discrimination and sewed seeds of discord between the Hutu and the Tutsi,<sup>461</sup> another stated that the message of the song was hatred between the Hutu and Tutsi.<sup>462</sup> A number of witnesses testified that the song warned against the restoration of a Tutsi monarchy.<sup>463</sup>

214. In contrast, the Defence Expert interpreted *Twasezereye* as a celebration of independence for all Rwandans. The Defence Expert postulated that Bikindi chose the shorter title of the song, *Twasezereye*, to relate not only to the monarchy but to the feudal and colonial regimes as well. The Defence Expert asserted that the feudal period was not dominated by all Tutsi, but by two Tutsi clans, and that there were also Hutu kings during this period. He also asserted that Habyarimana, Kayibanda and Mbonyumutwa were not symbols of Hutu solidarity, but the main players in the independence movement. He therefore disputed that the feudal/monarchical period is associated with Tutsi, testifying that when laypeople hear these terms, they think of exploitation generally. In his opinion, *Twasezereye* could not incite hatred.<sup>464</sup>

<sup>455</sup> Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, pp. 17, 18.

<sup>456</sup> Witness BHI, T. 13 October 2006, p. 4; BHH, T. 20 February 2007, p. 8.

<sup>457</sup> Witness AJZ, T. 25 September 2006, p. 46; Witness AEY, T. 12 October 2006, pp. 5-6; Witness BGH, T. 2 October 2006, p. 32; Witness ALP, T. 18 September 2006, p. 36; T. 19 September 2006, p. 22.

<sup>458</sup> Witness AJZ, T. 25 September 2006, p. 46; Witness AEY, T. 12 October 2006, pp. 5-6; Witness AKJ, T. 20 September 2006, p. 49; Witness BHI, T. 13 October 2006, p. 4; Witness BGH, T. 2 October 2006, p. 32; Witness BHH, T. 20 February 2007, p. 8; Witness ALP, T. 19 September 2006, pp. 31-32; Witness AJY, T. 27 September 2006, p. 29.

<sup>459</sup> Witness AKJ, T. 20 September 2006, p. 49; Witness AEY, T. 12 October 2006, p. 27; Witness BGH, T. 2 October 2006, p. 32; Witness BHH, T. 20 February 2007, p. 8; Witness ALP, T. 18 September 2006, p. 36. A few even appeared to associate the colonial period with Tutsi (Witness AJZ, T. 25 September 2006, p. 46; Witness AEY, T. 12 October 2006, pp. 5-6).

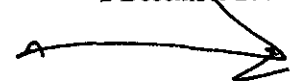
<sup>460</sup> Witness AJY, T. 27 September 2006, pp. 26-27, 29; Witness AEY, T. 12 October 2006, pp. 26-27; Witness AKJ, T. 20 September 2006, p. 49; Witness BGH, T. 2 October 2006, p. 32; Witness BHH, T. 20 February 2007, pp. 20, 32; Witness ALP, T. 19 September 2006, pp. 25-26, 32-36; Witness AJZ, T. 25 September 2006, p. 46.

<sup>461</sup> Witness AJZ, T. 27 September 2006, p. 6.

<sup>462</sup> Witness AKJ, T. 20 September 2006, p. 50.

<sup>463</sup> Witness AEY, T. 12 October 2006, pp. 5-6, 8, 26-27; Witness BHH, T. 20 February 2007, pp. 8-10, 20; Witness ALP, T. 18 September 2006, p. 36.

<sup>464</sup> Defence Expert Shimamungu, T. 23 October 2007, p. 62, T. 24 October 2007, p. 6-8 and T. 25 October 2007, pp. 9, 10, 18. See also Exhibit D117(F), Defence Expert Report, pp. 30, 44-47.



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215. Bikindi focused on the inspiration for *Twasezereye*, namely the competition to select a song for the 25<sup>th</sup> anniversary of Rwandan independence (Silver Jubilee) on 1 July 1987. He pointed out that a jury of six, including Prosecution Expert Mbonimana, had selected this song.<sup>465</sup> Bikindi testified that he intended the message in his song to be “never again” to three regimes: monarchical feudalism, colonialism and mass slavery.<sup>466</sup> He pointed out that the chorus, repeated throughout the song, discusses feudalism, colonialism, democracy and independence.<sup>467</sup> Bikindi denied that the monarchy was only associated with Tutsi.<sup>468</sup> He stated that he referred to the white shield in this song as a symbol of peace.<sup>469</sup>

216. Four Defence witnesses gave evidence on the meaning of this song. All four focussed on the theme of celebrating Rwanda’s independence;<sup>470</sup> one testified that this song referred to a farewell to *both* the colonial and feudal-monarchical periods,<sup>471</sup> and three testified it referred *only* to the monarchy led by the Tutsi.<sup>472</sup> Two witnesses gave details of the historical practices associated with these periods, including the *Ikiboko* whip; one associated it with the colonial period,<sup>473</sup> the other with the monarchy.<sup>474</sup> One interpreted the song to say that these times of hardship should not happen again;<sup>475</sup> another denied that the song warned people that if the Tutsi returned to Rwanda, those monarchical days would return.<sup>476</sup>

#### 7.1.2.2 *Nanga Abahutu*

217. Prosecution Expert Karangwa asserted that the general message of *Nanga Abahutu* was unity among the Hutu, or to forget about their division and unite against the Tutsi.<sup>477</sup> The song detailed the misfortunes that befall those who do not heed the message for unity.<sup>478</sup>

218. Prosecution Expert Karangwa stated that the song advocates hatred of five categories of Hutu who were friends with the Tutsi: Hutu who have forsaken their Hutu identity by becoming Tutsi for employment or education advantages (the *Ibyhuture*); Hutu who despise other Hutu; Hutu who are greedy and live off bribes from Tutsi; Hutu who are naïve and engage in war on the side of the Tutsi without any awareness of what is really at stake; and Hutu who, when a Hutu makes a mistake, does not correct him by taking him aside, ensuring the unity of the Hutu.<sup>479</sup>

<sup>465</sup> Bikindi, T. 31 October 2007, pp. 22-23 and T. 1 November 2007, p. 44. See also Prosecution Expert Mbonimana, T. 16 February 2007, p. 7. Although when asked about this, Prosecution Expert Mbonimana stated that he had had his reservations then, but had been outnumbered by the other five panel members.

<sup>466</sup> Bikindi, T. 31 October 2007, pp. 22-23.

<sup>467</sup> Bikindi, T. 31 October 2007, p. 24.

<sup>468</sup> Bikindi, T. 31 October 2007, p. 23.

<sup>469</sup> Bikindi, T. 31 October 2007, pp. 25-26.

<sup>470</sup> Witness XVBR, T. 26 September 2007, pp. 41-42; Witness DUC, T. 27 September 2007, pp. 60-61; Cyprien Ngendahimana, T. 17 October 2007, p. 14; Angeline Mukabanana, T. 2 October 2007, p. 10.

<sup>471</sup> Witness XVBR, T. 26 September 2007, p. 41.

<sup>472</sup> Witness DUC, T. 28 September 2007, p. 7; Cyprien Ngendahimana, T. 17 October 2007, p. 22; Angeline Mukabanana, T. 2 October 2007, pp. 23, 29.

<sup>473</sup> Witness XVBR stated the *Ikiboko* whip was associated with the colonial period (T. 26 September 2007, p. 49).

<sup>474</sup> Angeline Mukabanana stated that the whip was associated with monarchical period (T. 2 October 2007, p. 23).

<sup>475</sup> Witness DUC, T. 28 September 2007, p. 7.

<sup>476</sup> Angeline Mukabanana, T. 2 October 2007, p. 39.

<sup>477</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 41.

<sup>478</sup> Exhibit P73, Prosecution Experts Report, p. 13.

<sup>479</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 29-32; Exhibit P73, Prosecution Experts Report, p. 13.



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219. Prosecution Expert Karangwa referred to the verse “As for me, I hate the Hutu, these Hutu who do not remember, who do not remember the saying you must deal with Ruhande by killing Mpandahande”, as reminding the Hutu of the evil deeds that the Tutsi carried out against the Hutu sub-chief Mpandahande of Ruhande. The Prosecution Experts stated that referring to the assassination of historical Hutu figures imputed to Tutsi monarchs had the effect of socially stereotyping the Tutsi as the common enemy of the Hutu.<sup>480</sup> Prosecution Expert Mbonimana stated that recurrently repeating that the Hutu were killed in Rwanda’s expansion had the effect of exacerbating hatred, and pushing people to act.<sup>481</sup>

220. Prosecution Expert Karangwa pointed out that the song title insisted upon by Bikindi, “The Awakening”, matched the title of the Hassan Ngeze’s newspaper, in that *Kangura* translates into “Awake”.<sup>482</sup> He also pointed out similarities in language between *Nanga Abahutu* and the Bahutu Ten Commandments published in the inflammatory newspaper *Kangura*, particularly Commandments 1, 4, 8, 9 and 10.<sup>483</sup>

221. Prosecution Expert Karangwa testified to the significance of the use of the word “*mbwirabumva*” fourteen times in this song, which translates as “a word to the wise”, and strengthens the importance or significance of the message which the author wants to convey to the audience.<sup>484</sup> He concluded that within the political context of 1992, 1993 and 1994, it was his opinion that *Nanga Abahutu* unambiguously encouraged killings.<sup>485</sup>

222. The Prosecution adduced documentary evidence of transcripts of RTLM broadcasts that commented on the interpretation of *Nanga Abahutu*. For example, on 29 October 1993, the journalist Noël Hitimana spoke on RTLM, stating that in *Nanga Abahutu*, Bikindi gives a word to the wise. Noël Hitimana stated that if people had been listening, there would not be problems in Burundi, described as a historical battle of assassinations of Hutu and Tutsi leaders, with the Hutu fairing poorly.<sup>486</sup> In early 1994, André Ntagerura was broadcast on RTLM, and during a diatribe against Prime Minister Agathe Uwilingiyimana, he stated “[f]ellow militants, someone mentioned the clear-sightedness and intelligence of Bikindi alias ‘I speak to the wise’”.<sup>487</sup>

<sup>480</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 40; Exhibit P73, Prosecution Experts Report, p. 17.

<sup>481</sup> Prosecution Expert Mbonimana, T. 16 February 2007, pp. 26-27.

<sup>482</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 35.

<sup>483</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 33-35; Exhibit P73, Prosecution Experts Report, pp. 4-16. For example, Commandment 1 of the Bahutu Ten Commandments states that every *Muhutu* should know that *Umututsikazi* (Tutsi girl or woman) is working on behalf of her Tutsi ethnic group, and that as a result any *Muhutu* who marries an *Umututsikazi* or takes an *Umututsikazi* as concubine, or makes an *Umututsikazi* his secretary or protégée, is a traitor. Similarly in *Nanga Abahutu*, Bikindi declares that he hates the *Ibyihutse* and Hutu who have renounced their Hutu identity, and that *Kangura* states that every *Muhutu* should know that every *Mututsi* is dishonest in business, and the *Muhutu*’s only concern is the supremacy of his ethnic group. Therefore, any *Muhutu* who makes business alliances with the *Batutsi*; invests his money or that of the state in the firm of an *Mututsi* or who does *Batutsi* favours in his business is a traitor. In the song Bikindi states that he hates Hutu who engage in relations with Tutsi in the context of pastoral clientelism (*ubuhake*). See Exhibit P53, Appeal to the Conscience of the Bahutu, Excerpts from *Kangura* No. 6, December 1990, listing the Ten Commandments.

<sup>484</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 32.

<sup>485</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 40.

<sup>486</sup> Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, pp. 4-5.

<sup>487</sup> Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994, p. 13.



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223. A week after the genocide began, another journalist on RTLM, Gaspard Gahigi referred to "*Mbwira abumva*" (an often repeated lyric from *Nanga Abahutu*, and also a separate song), stating that:

Bikindi said: "Mbwira abumva" (I talk to those who understand) in a song that we often play here at RTLM. I think that Rwandans have understood what Shyirambere Barahinyura told them [...] that they should cooperate with the Army and the Army should give you arms so that you could confront the Inkotanyi [...]<sup>488</sup>

224. Witness BGH testified that on one occasion, she heard Valérie Bemeriki, a journalist on RTLM, say that Kanyarengwe, the Hutu chairman of the RPF, was having Hutu who were fighting alongside the RPF-*Inkotanyi* killed. The witness testified that she then played Bikindi's song *Nanga Abahutu*, to say that she hated the Hutu who were killing their Hutu brothers.<sup>489</sup>

225. Numerous Prosecution witnesses recalled categories of hated Hutu from the song.<sup>490</sup> Witness BHJ testified that Bikindi was only addressing his song to Hutu, for if Bikindi had been talking to all Rwandans, he would have said, "I hate Rwandans who do this and that".<sup>491</sup> Some testified that the song called for Hutu unity.<sup>492</sup>

226. Witness BHH testified that *Nanga Abahutu* was the highest level of encouragement to ethnic radicalism, as it heaped guilt on the Tutsi, who were considered to be the source of the problems in the country.<sup>493</sup> Witness AJS testified that this song encouraged Hutu to kill Tutsi, and stated the song functioned as an *Intabaza*, or drum, which historically when beaten, would encourage all to take up a spear or a bow and go to the front, as the country was under attack.<sup>494</sup> Witness BHJ testified that he read the very popular *Kangura* newspaper, and that it carried messages that were similar to the messages in Bikindi's songs.<sup>495</sup>

227. The Defence Expert interpreted the song as describing a chaotic situation, and as calling on the majority population to stop quarrelling and killing each other, and prepare for war. He interpreted the lyrics about the hated Hutu through a lens of political regionalism within Rwanda, specifically tensions between the north and south, stating he did not see Tutsi targeted in the song in any way, or even referred to.<sup>496</sup>

<sup>488</sup> Exhibit P11, Transcript of RTLM Broadcast of 15 April 1994, p. K0198354.

<sup>489</sup> Witness BGH, T. 3 October 2006, p. 31; T. 5 October 2006, p. 4. See also Exhibit P13(F), transcript of RTLM Broadcast of 14 June 1994, p. 5.

<sup>490</sup> Witness AJY, T. 28 September 2006, pp. 29-32; Witness AJZ, T. 27 September 2006, p. 10; Witness AEY, T. 12 October 2006, pp. 8-9; Witness AJS, T. 29 September 2006, pp. 8, 32-35; Witness AKJ, T. 20 September 2006, p. 49 and T. 21 September 2006, p. 22; Witness BGH, T. 2 October 2006, p. 35 and T. 5 October 2006, pp. 16-17; Witness BHJ, T. 10 October 2006, pp. 23-24, 26 and T. 11 October 2006, pp. 10, 14-16; Witness BHH, T. 20 February 2007, p. 35; Witness ALP, T. 18 September 2006, p. 39.

<sup>491</sup> Witness BHJ, T. 10 October 2006, p. 26.

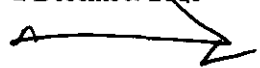
<sup>492</sup> Witness AJS, T. 29 September 2006, pp. 32-35; Witness BGH, T. 2 October 2006, p. 35.

<sup>493</sup> Witness BHH, T. 20 February 2007, p. 35.

<sup>494</sup> Witness AJS, T. 29 September 2006, pp. 32-35.

<sup>495</sup> Witness BHJ, T. 10 October 2006, pp. 32-33.

<sup>496</sup> Defence Expert Shimamungu, T. 24 October 2007, pp. 10-13, 20. Specifically, he interpreted "Hutus [...] who exclude other Hutus", "Stupid Hutu" and Hutu "tearing at each others throats" to be referring to those who supported regionalism, which encouraged the problems with political power sharing between the north and south. He interpreted "Hutus who think themselves superior", "Greedy Hutu" and "Hutu who try to enrich themselves" to be politicians, and "Those who engage in battle" as Hutu who fight the RPF. Following this theme, he also interpreted "People entering into battles or wars without knowing the motive" to be referring to those who thought the RPF was going to hold elections, when they were actually seizing power by force.



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228. Further, the Defence Expert asserted that the song condemned the behaviour of some Hutu, and did not incite the killing of Tutsi by the Rwandan population, since the song only addressed Hutu. The Defence Expert added that the Hutu Ten Commandments were not the inspiration for *Nanga Abahutu*, as the former was addressed to all Rwandans, and the latter only to Hutu.<sup>497</sup>

229. Bikindi stated that he did not intend *Nanga Abahutu* to advocate hatred, but was more akin to smacking a small child to stop him from misbehaving, as he was a patriot and could see the trouble his country was falling into. Bikindi stated the only unity he intended the song to call for was the unity of all Rwandans, be they Hutu, Tutsi or Twa.<sup>498</sup> When questioned about his interpretation of the word "*Ibyihutur*", Bikindi referred to the close relationships he had with Tutsi, including his wife, various friends, neighbours and ballet members.<sup>499</sup>

230. Bikindi denied knowledge of the existence of either *Nanga Abapamehut*, or the Ten Commandments when he composed *Nanga Abahutu* and *Bene Sebahinzi*. He said he was not a reader of *Kangura*, and that neither were on his mind during composition.<sup>500</sup>

231. Bikindi's first wife, Apolline Uwimana testified that Bikindi's intention in writing *Nanga Abahutu* was to call on people to return to peace and security and to live in peace with one another.<sup>501</sup> Bikindi's second wife, Angeline Mukabanana testified that *Nanga Abahutu* should not be interpreted literally because Bikindi himself was Hutu; that what Bikindi meant was that he hated people who were greedy, not polite and people who wanted to kill one another, or people who wanted to engage in conflicts.<sup>502</sup>

232. Antoine Nyetera interpreted the song as condemning a situation in which part of the population is allied with an enemy promising heaven and paradise, the enemy of yesterday and today, as demonstrated by the line in the song, "I am against Hutus who act in greed with the enemy because of promises, because of amounts of money paid."<sup>503</sup>

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"Washing dirty laundry within the family" was said to refer to Hutu joining together to fight an external aggressor.

<sup>497</sup> Defence Expert Shimamungu, T. 24 October 2007, pp. 10, 19, 29-30; T. 25 October 2007, pp. 8, 31. See also Exhibit D117(F), Defence Expert Report, pp. 32, 51-52.

<sup>498</sup> Bikindi, T. 31 October 2007, pp. 42-47, 49-50; T. 2 November 2007, pp. 41-42. He stated that what he meant with the expression "The Hutu who is bought for coin and even kills a Hutu" was the stupid cruelty of killing your own family, and suggested that a better interpretation for the word "*ubuhake*" was sycophancy rather than clientalism, in that people were going between political parties for money and had lost the idea of honour and individual personality.

<sup>499</sup> Bikindi, T. 31 October 2007, p. 42.

<sup>500</sup> Bikindi, T. 31 October 2007, p. 50; T. 2 November 2007, p. 40.

<sup>501</sup> Apolline Uwimana, T. 8 October 2007, p. 14.

<sup>502</sup> Angeline Mukabanana, T. 2 October 2007, p. 24.

<sup>503</sup> Antoine Nyetera, T. 5 October 2007, p. 14.

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### 7.1.2.3 *Bene Sebahinzi*

233. The Prosecution Experts stated that the title of the song, *Bene Sebahinzi*, translated to descendants of the father of farmers/cultivators, which, interpreted in context, means Hutu.<sup>504</sup> They found that the song implicitly refers to Tutsi, in that the Tutsi was represented by the *Umizimu*, the evil spirit depicted in the song, which attacked from the outside, and used its craftiness to transform itself into a woman, a girl, a brother-in-law, a child, a farmer or a wolf.<sup>505</sup> Prosecution Expert Karangwa asserted that this spirit represented the RPF, or Tutsi, in the collective memory of Rwandans.<sup>506</sup> He explained that "snake" was a word used to describe the Tutsi at that time, as was "*insoka*", a cunning animal.<sup>507</sup> He declared that the song detailed a number of problems, and then offered the antidote, or solution, of union among the *bahutu*, or Hutu unity.<sup>508</sup>

234. Prosecution Expert Karangwa reported that Bikindi's commitment to MRND and CDR ideology appears strongly in both *Nanga Abahutu* and *Bene Sebahinzi*, with *Bene Sebahinzi* referencing both the CDR youth wing<sup>509</sup> and the CDR motto.<sup>510</sup>

235. When it was suggested that *Bene Sebahinzi* was about peace, Prosecution Expert Karangwa stated that if Bikindi really intended peace for all Rwandans, why did he only refer to *Sebahinzi*, why not also *Sebatutsi* and *Sebatwa*. He further said that in *Bene Sebahinzi*, the references to *Inyambarabishahu*, a Tutsi king who wore the genital organs of defeated Hutu kings, and references to kings who have died, would remind the listener of their killers, the Tutsi.<sup>511</sup> Prosecution Expert Mbonimana testified that when people are reminded that the genitals of Hutu were used to decorate the *Kalinga* drum, considered an emblem of the Tutsi,<sup>512</sup> and when it is stated that the Tutsi are at the doors of the country to do what they did in the past, it is an invitation not only to hate, but also to kill people, especially given the surrounding context of war and genocide.<sup>513</sup>

236. Prosecution Expert Karangwa interpreted the main message of this song to be calling on Hutu to unite to fight the RPF. He stated that the song reminds Hutu that the majority must prevail, and in a specific excerpt states that the RPF cannot win, even with weapons. In his opinion, the message of *Bene Sebahinzi* would clearly be understood as a warning against neighbour infiltration; that there could be no other interpretation as the words are clear.

<sup>504</sup> Exhibit P73, Prosecution Experts Report, p. 18; Prosecution Expert Karangwa, T. 13 February 2007, pp. 42-44 and T. 15 February 2007, pp. 5-6. When asked whether the title actually referred to all Rwandan farmers, as they comprise 90 to 95% of the population, Prosecution Expert Karangwa disagreed, stating that while *bahinzi* does translate to mean "farmers", the use of the preceding word "*bene*" (descendants) could only mean, in context, Hutu.

<sup>505</sup> Exhibit P73, Prosecution Experts Report, pp. 18-19; Prosecution Expert Karangwa, T. 13 February 2007, p. 48.

<sup>506</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 48.

<sup>507</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 46-47.

<sup>508</sup> Prosecution Expert Karangwa, T. 15 February 2007, p. 23.

<sup>509</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 13, 50 and T. 15 February 2007, pp. 46-48. Prosecution Expert Karangwa asserted that the word *Impuzamugambi* in the song not only referred to its literal translation (persons with the same objectives), but also referred to the militia wing of the CDR, a Hutu extremist party which advocated Hutu power.

<sup>510</sup> Prosecution Expert Karangwa, T. 13 February 2007, p. 12: The lyric "*Bene sebahinzi, Murimaso -- turimaso*" translates into English as "*Let us be ready, let us be vigilant*", which is also the CDR motto.

<sup>511</sup> Prosecution Expert Karangwa, T. 13 February 2007, 45-46, 49 and T. 15 February 2007, p. 22

<sup>512</sup> Prosecution Expert Mbonimana, T. 16 February 2007, p. 26.

<sup>513</sup> Prosecution Expert Mbonimana, T. 16 February 2007, p. 26.

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According to him, the message of *Bene Sebahinzi* incited killings within the context of the events of 1993-1994 in Rwanda.<sup>514</sup>

237. The Prosecution adduced documentary evidence of transcripts of RTLM broadcasts commenting on *Bene Sebahinzi*. In late 1993, RTLM broadcast an interview discussing the situation in Burundi and the advances of the RPF, concluding that Rwanda would be divided into two, creating a "Tutsi land". During the broadcast, listeners were asked to be vigilant and *Bene Sebahinzi* was mentioned as putting Rwandans on notice to be vigilant.<sup>515</sup> On 2 March 1994, Valérie Bemmeriki invited people to listen the "*chansons des Hutus*" while warning people of the risk of Tutsi seizing power and of Hutu again being victims of the whip and forced labour. She ended her speech by saying:

*Nous remercions Monsieur Simon Bikindi pour cette chanson très instructive et nous lui demandons de poursuivre son travail de composition des chansons de ce genre qui éduquent le peuple majoritaire, en vue de lui permettre de prendre des mesures susceptibles de prévenir ce genre de situation.*<sup>516</sup>

238. On 14 April 1994, the journalist Kantano Habimana used the language of Bikindi's song, stating on RTLM, "You, sons of *Sebahinzi* [...], unite and stand alert so that no enemy can intrude upon you. [...] You sons of *Sebahinzi*, unite and be vigilant."<sup>517</sup>

239. A month into the genocide, the interpretations were becoming more inflammatory. On 17 May 1994, the RTLM journalist Kantano Habimana stated that *Bene Sebahinzi* predicted the future, telling its audience that once the sons of farmers unite and realise their common enemies are the RPF and the cockroaches (*Inyenzi*), there will be no more *Inkotanyi* in Rwanda, as they will have been exterminated:

Now, let us allow BIKINDI to predict the future of the *Inkotanyi* and to tell them the fate awaiting them once the sons of SEBAHINZI unite and fight them. It is obvious that once the *Bene SEBAHINZI* [...] will have stopped quarrelling among themselves, when they will have realised that their common enemy is called the *Inkotanyi*, the *Inyenzi-Inkotanyi*, together with their accomplices and armies, then there will be no more *Inkotanyi* in this country. When you see the way they are dying, you could think that they resurrect! They think that they resurrect, but they are mistaken. They are vanishing, gradually, as the bombs land on them, as they continue to be killed like rats. [...] They will find themselves surrounded by only SEBAHINZI's sons, angry and ready to settle scores. [...] BIKINDI will in a short while tell you what will happen in future by saying: "The day there will be reconciliation among SEBAHINZI's children, when they will no longer listen to your orders designed to confuse them, then you, the *Inkotanyi*, shall disappear". But it seems pointless advising those *Inkotanyi*. We better let them lead themselves into extermination.

[P]lease listen to BIKINDI's advice to the *Inkotanyi*. He is warning them that they will all be wiped out, come what may, because all the sons of SEBAHINZI are closely watching whatever has to do with the *Inkotanyi*, fighting them and hunting them down. That is what is happening now, and the *Inkotanyi* are on the verge of extinction.<sup>518</sup>

<sup>514</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 14, 53.

<sup>515</sup> Exhibit P28, Transcript of RTLM Broadcast of 24 November 1993, p. 4.

<sup>516</sup> Exhibit P8(F), Transcript of RTLM Broadcast of 2 March 1994, p. 15.

<sup>517</sup> Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, pp. K011153, K011155. See also Exhibit P6, Transcript of RTLM Broadcast of 16 April 1994, pp. 8-9, where Bene Sebahinzi punctuates "*restez fermes dans la lutte*".

<sup>518</sup> Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, pp. 19-20, 22.

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240. On 3 June 1994, RTLM broadcast *Bene Sebahinzi* with a comment saying that the song called all sons of *Sebahinzi* so that, together, they defeat the *Inyenzi Inkotanyi*:

... à cause des complices qu'il y avait, c'était impossible de faire passer la très belle chanson qui appelait tous les enfants de SEBAHINZI (enfants des hutus) pour qu'ils puissent vaincre les Inyenzi Inkotanyi.<sup>519</sup>

241. Witness BGH testified that on one undated occasion, one or two verses of *Bene Sebahinzi* were played, then stopped and an announcer stated, "You, the descendants of *Sebahinzi*, you are the ones being talked to; be vigilant; get rid of the enemy; continue to work".<sup>520</sup>

242. Witnesses testified that *Bene Sebahinzi* referred to the Hutu, who were traditionally farmers,<sup>521</sup> and that the word "*Kalinga*" refers to the *Kalinga* drum, which was adorned with the genitals of the descendants of *Sebahinzi*.<sup>522</sup> Witness BGH stated that the word "*Kalinga*" is a very loaded word in terms of the history of Rwanda, having great significance, as it is emblematic of the monarchy.<sup>523</sup> Many witnesses testified that by invoking this history, the song warned that the monarchy might be reintroduced.<sup>524</sup> Witness BGH stated that Rwandans hearing this message would understand that that drum was going to come back to Rwanda. It was some kind of warning.<sup>525</sup>

243. Witnesses BHH and BHJ testified that the reference to democratic elections in the songs related to the right of the Hutu majority to choose their leaders.<sup>526</sup>

244. The Defence Expert stated that *Bene Sebahinzi* referred to all Rwandan farmers, irrespective of ethnicity, and interpreted the song to be calling on people to *stop* the conflict. He interpreted this *Umuzimu* spirit tearing up Rwandan society to represent the bad behaviour of all Rwandans under critical conditions, and suggested that the song was asking them to behave better.<sup>527</sup> He interpreted "the enemy" to be the RPF<sup>528</sup> and the solution to Rwanda's problems to be democracy.<sup>529</sup> In his view, the reference to the drum with attached genital organs in *Bene Sebahinzi* was an innocent celebration of the end of the feudal monarchy.<sup>530</sup> He interpreted *Bene Sebahinzi* to be dedicated to all farming Rwandans,<sup>531</sup> and concluded that there was no intention in the song to incite the hatred of Tutsi.<sup>532</sup>

<sup>519</sup> Exhibit P9(F), Transcript of RTLM Broadcast of 3 June 1994, p. K0143785.

<sup>520</sup> Witness BGH, T. 3 October 2006, p. 28.

<sup>521</sup> Witness AKJ, T. 20 September 2006, p. 49; Witness AEY, T. 12 October 2006, p. 29; Witness AIJ, T. 25 September 2006, pp. 46-47; Witness BKW, T. 17 October 2006 p. 27; Witness BGH, T. 2 October 2006, p. 33; Witness BHH, T. 20 February 2007, p. 14; Witness BHJ, T. 10 October 2006, p. 12 and T. 11 October 2006, pp. 42-43; Witness ALP, T. 18 September 2006, pp. 34-35.

<sup>522</sup> Witness AEY, T. 12 October 2006, p. 30; Witness BGH, T. 4 October 2006, p. 6; Witness BHJ, T. 10 October 2006, p. 16.

<sup>523</sup> Witness BGH, T. 4 October 2006, p. 6.

<sup>524</sup> Witness BKW, T. 18 October 2006, pp. 10-11; Witness BGH, T. 2 October 2006, p. 34; Witness BHJ, T. 10 October 2006, p. 16; Witness ALP, T. 18 September 2006, p. 35.

<sup>525</sup> Witness BGH, T. 2 October 2006, p. 34.

<sup>526</sup> Witness BHH, T. 20 February 2007, pp. 31-32; Witness BHJ, T. 11 October 2006, pp. 21-22.

<sup>527</sup> Defence Expert Shimamungu, T. 24 October 2007, pp. 21, 22, 25; Exhibit D117(F), Defence Expert Report, pp. 32-33.

<sup>528</sup> Defence Expert Shimamungu, T. 25 October 2007, pp. 18-19; Exhibit D117(F), Defence Expert Report, pp. 65-67. See also Bikindi, T. 2 November 2007, pp. 3, 5.

<sup>529</sup> Defence Expert Shimamungu, T. 24 October 2007, p. 25.

<sup>530</sup> Defence Expert Shimamungu, T. 24 October 2007, p. 29.

<sup>531</sup> Defence Expert Shimamungu, T. 24 October 2007, p. 21.

<sup>532</sup> Defence Expert Shimamungu, T. 24 October 2007, p. 31.

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245. Bikindi stated that *Bene Sebahinzi* referred to all Rwandan farmers, as 95% of all Rwandans are farmers. He asserted that his intention was to speak to all three ethnic groups in Rwanda, stating the only unity he called for was of the three groups.<sup>533</sup> When questioned about the comments made on RTLM by a journalist who stated that *Bene Sebahinzi* meant that the Hutu should stop tearing themselves apart, Bikindi insisted he was referring to all three ethnic groups.<sup>534</sup> Regarding the references to the 1959 Revolution, Bikindi stated that it was not just the Hutu who benefited, but all three ethnic groups, as all three were subjected to atrocities.<sup>535</sup>

246. Apolline Uwimana testified that this song had the same message as *Nanga Abahutu*, that of urging the population to work towards peace and understanding.<sup>536</sup> Angeline Mukabanana stated that *Bene Sebahinzi* referred to the masses killing one another, and offered a remedy of love and understanding between the Hutu, Tutsi and Twa as the same people. After quoting the Bible: "A prophet is not accepted in his own country", Witness Mukabanana stated that if the Rwandans had understood the message, the killings would not have been committed in 1994.<sup>537</sup> Antoine Nyetera testified that *Bene Sebahinzi* was a song calling on the people to unite, not to be divided and not to tear each other apart.<sup>538</sup>

### 7.1.3 Conclusion

247. The Chamber is of the view that one cannot properly interpret Bikindi's songs without considering the cultural, historical and political context in which they were composed and disseminated. In its assessment, the Chamber has therefore taken into consideration the Rwandan poetic tradition of spoken and unspoken Kinyarwanda asserted by Prosecution Expert Karangwa,<sup>539</sup> which further supports its finding that although Bikindi's songs were filled with metaphors and imagery, their message was clearly understood.<sup>540</sup> The fact that Rwanda has suffered from ethnic division throughout the second half of the twentieth century is not controversial. The worsening of the conflict with the RPF at the beginning of the 1990's marked an upsurge of political and ethnic tensions in the country.<sup>541</sup> At that time in Rwanda, Tutsi were considered by many as accomplices of the so-called *Inkotanyi*.<sup>542</sup> The Chamber notes that *Nanga Abahutu* and *Bene Sebahinzi* were composed, and *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* were recorded and disseminated in this context of rising ethnic tension.

248. Although the historical references in the songs were accurate, the Chamber notes the context in which Bikindi referred to them.<sup>543</sup> Reminding people what happened during the monarchy, referring to events before 1959 against a backdrop of highly politicised

<sup>533</sup> Bikindi, T. 2 November 2007, p. 41; Exhibit P52(F), Analysis and translation of "Intabaza" by Simon Bikindi.

<sup>534</sup> Bikindi, T. 5 November 2007, p. 3.

<sup>535</sup> Bikindi, T. 5 November 2007, p. 8.

<sup>536</sup> Apolline Uwimana, T. 8 October 2007, p. 14.

<sup>537</sup> Angeline Mukabanana, T. 2 October 2007, pp. 22-23.

<sup>538</sup> Antoine Nyetera, T. 5 October 2007, p. 9.

<sup>539</sup> Prosecution Expert Karangwa, T. 13 February 2007, pp. 11, 37.

<sup>540</sup> See *supra* paras. 197-199.

<sup>541</sup> See, for instance, Witness BHH, T. 20 February 2007, p. 38; Witness DUC, T. 28 September 2007, p. 7; Witness AJZ, T. 25 September 2006, pp. 45-46.

<sup>542</sup> See Exhibit P3, Transcript of RTLM broadcast of 17 May 1994, p. 19; Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, p. 10; Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, p. 1; Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, p. 5; Witness DUC, T. 28 September 2007, p. 7; Witness AJZ, T. 25 September 2006, pp. 45-46; Witness AQH, T. 3 October 2007, p. 30.

<sup>543</sup> Prosecution Expert Karangwa, T. 14 February 2007, p. 34.

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propaganda and inter-ethnic relationships already fragile and precarious due to those historical realities,<sup>544</sup> is not neutral in the Chamber's opinion.

249. While the Chamber considers it possible that two qualified experts could analyse the same text and arrive at different interpretations, given the context of historical ethnic differentiation and subjugation, and surrounding ethnic tension preceding the terrible events of 1994, the Chamber accepts the interpretation of Bikindi's songs offered by the experts called by the Prosecution that Bikindi's songs referred to relations between Hutu and Tutsi, painting Tutsi in a negative light and that *Nanga Abahutu* and *Bene Sebahinzi* in particular advocated Hutu unity against a common foe and incited ethnic hatred.<sup>545</sup>

250. The Chamber notes that this interpretation is supported by how Bikindi's songs were interpreted by journalists on RTLM. If the songs were as innocent as portrayed by the Defence, they could not have been used in the manner they were. The Chamber heard no evidence of RTLM journalists commenting on Bikindi's other songs, such as wedding songs, because they did not fit into RTLM's agenda at the time. This interpretation is further confirmed by numerous witnesses called by the Prosecution, who all testified that their understanding of the songs was anti-Tutsi and pro-Hutu.

251. The Chamber finds that the Defence evidence does not raise a reasonable doubt about this interpretation, in that the few witnesses who testified on the meaning of the songs stated they were about peace and democracy. The Chamber is of the view that these words must be understood and interpreted in the context of the time. The Chamber heard convincing evidence that when peace was referred to in the 1990-1994 period, it meant fighting off the RPF invasion in order to return to peace. Similarly, when democracy was referred to in the same period, it meant rejecting the power sharing arrangement proposed by the Arusha Accords, which would have given the Tutsi more power than their percentage of the population would arguably merit. Broadcasts on RTLM in early 1994 stated ominously that "We shall at all cost obtain the democracy we are hoping for".<sup>546</sup> RTLM, which, as the Chamber found, was a vehicle for anti-Tutsi propaganda,<sup>547</sup> asked for peace and democracy in the same breath as asking its listeners to hunt and kill *Inkotanyi* and *Inyenzi*. Thus the Chamber finds that in the years leading up to the genocide, these words were loaded with meaning, fitting within a pro-Hutu ideology of Rwanda for Hutu by advocating elections in an ethnically divided country where the vast majority of the population was of one ethnicity.

252. Also, the Chamber does not believe Bikindi's assertion that the songs preached harmony. *Twasezereye* essentially documented a past of monarchical and colonial domination along ethnic lines, *Nanga Abahutu* discussed various types of people to be hated, and *Bene Sebahinzi* warned of the dangers of a cunning, external infiltrator.

253. Moreover, the Chamber notes how the songs inspired action. Witness BHI testified that he and other *Interahamwe* interpreted Bikindi's songs as a warning that the Tutsi were going to return and subjugate the Hutu once again, and thus encouraged him and other *Interahamwe* to kill during the genocide.<sup>548</sup> Witness BGH testified that she heard inhabitants of Gikongoro singing *Bene Sebahinzi* while they bore machetes and held their radio handsets. Members of the population knew the song by heart, and when they perpetrated those crimes, they would sing the songs, and say that they were furious and wanted to avenge the deaths of

<sup>544</sup> See Witness BHH, T. 20 February 2007, pp. 22, 30.

<sup>545</sup> See also Exhibit P72, Excerpts from *Rwanda, Les médias du génocide*, Jean-Pierre Chrétien (dir.), p. 344.

<sup>546</sup> Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994, p. 5 (emphasis added).

<sup>547</sup> See *supra* para. 115.

<sup>548</sup> Witness BHI, T. 13 October 2006, pp. 4, 29.



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their relatives.<sup>549</sup> Similarly, Witness AJY testified that once the message was understood and fully grasped, Rwandans arose, knowing they had been attacked by the enemy for whom they used to carry on the palanquin and for whom they had worked in the past without remuneration, woke up and looked for accomplices and Tutsi, in order to kill them.<sup>550</sup> Witness BHH testified that he could sense the feeling of hatred inspired in the population as a result of this song.<sup>551</sup> Many witnesses testified that *Bene Sebahinzi* specifically called on Hutu to unite to fight the Tutsi, that it had "rallying power", and incited people to kill and exterminate.<sup>552</sup> Witness AEY confirmed that what he learned from those songs amounted to nothing other than involvement in the killings or incitement to kill.<sup>553</sup> Witness JCH testified that the three songs alleged served to boost the morale of the troops.<sup>554</sup> Despite reservations on his credibility,<sup>555</sup> the Chamber believes Witness BHI that he and the *Interahamwe* drank and listened to those songs, boosting their morale and they would then search for and kill Tutsi.<sup>556</sup> Although the Defence Expert categorically stated that none of the three songs could incite hatred, he admitted that that the songs were distorted and the message badly interpreted.<sup>557</sup>

254. In conclusion, after having considered all of the evidence, the Chamber finds beyond reasonable doubt that the Prosecution has proven that *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* manipulated the history of Rwanda to extol Hutu solidarity. It further finds that *Nanga Abahutu* and *Bene Sebahinzi* characterised Tutsi as Hutu enslavers, enemies or enemy accomplices, blamed the enemy for the problems in Rwanda, encouraged Hutu solidarity against a common foe, the Tutsi, and finally supported the spirit of the Bahutu Ten Commandments published in *Kangura*. Although the evidence does not establish Bikindi's intention in composing *Twasezereye* in 1987 for the purpose of celebrating the Silver Jubilee of Rwandan Independence, the only reasonable inference in the Chamber's opinion is that Bikindi composed *Nanga Abahutu* and *Bene Sebahinzi* with the specific intention to disseminate pro-Hutu ideology and anti-Tutsi propaganda, and thus to encourage ethnic hatred.

255. As will be discussed in more detail in the following section, the evidence also shows that *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* were deployed in a propaganda campaign in 1994 in Rwanda to incite people to attack and kill Tutsi. However, the Chamber does not find that there is sufficient evidence to conclude beyond reasonable doubt that Bikindi composed these songs with the specific intention to incite such attacks and killings, even if they were used to that effect in 1994. In the same vein, the Chamber does not find that *Twasezereye*, a song composed before the Arusha Accords and selected for the twenty-fifth anniversary of Rwandan independence in 1987, was in itself a public call for Hutu solidarity in opposition to the Arusha Accords, even though it was later used as such.

<sup>549</sup> Witness BGH, T. 2 October 2006, p. 37.

<sup>550</sup> Witness AJY, T. 27 September 2006, p. 29.

<sup>551</sup> Witness BHH, T. 20 February 2007, p. 30.

<sup>552</sup> Witness AEY, T. 12 October 2006, p. 30; Witness BKW, T. 18 October 2006, pp. 10-11; Witness BGH, T. 2 October 2006, pp. 32-33; Witness BHJ, T. 10 October 2006, p. 12; Witness BHH, T. 20 February 2007, p. 15.

<sup>553</sup> Witness AEY, T. 12 October 2006, p. 9.

<sup>554</sup> Witness JCH, T. 9 October 2007, p. 45.

<sup>555</sup> See *supra* para. 79 and *infra* paras. 354-355, 359.

<sup>556</sup> Witness BHI, T. 13 October 2006, p. 4.

<sup>557</sup> Defence Expert Shimamungu, T. 25 October 2007, p. 8.

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## 7.2. Deployment of the Songs

256. The Prosecution alleges generally that Bikindi's musical compositions were deployed in a propaganda campaign to target the Tutsi as the enemy and to sensitize and incite the listening public to target and commit acts of violence against the Tutsi.<sup>558</sup> As evidence of this deployment, the Prosecution points to radio broadcasts, specifically alleging that Radio Rwanda and RTLM repeatedly broadcast *Twasezereye* in 1992 and 1993 and that RTLM repeatedly broadcast other compositions from Bikindi, notably *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi*.<sup>559</sup> The Prosecution alleges that between April and July 1994 in particular, RTLM broadcast Bikindi's compositions repeatedly throughout the day, and that *Nanga Abahutu* and *Bene Sebahinzi* received intense airplay.<sup>560</sup>

257. Based primarily on consistent evidence from many factual witnesses, the Chamber finds that Bikindi's compositions, in particular *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi*, were played repeatedly on RTLM and Radio Rwanda in 1992, 1993 and the first half of 1994.<sup>561</sup> The Chamber also finds that *Nanga Abahutu* and *Bene Sebahinzi* were played even more frequently during the genocide.<sup>562</sup>

258. Regarding the impact of the songs played on the radio, Prosecution Expert Karangwa testified that songs are more effective in a culture with an oral tradition.<sup>563</sup> When expanded to radio broadcasts, he considered a song a "highly efficient tool" of propaganda, in part due to the fact that radio plays an important role in Rwanda's oral tradition.<sup>564</sup> The Defence Expert testified that a radio broadcast throughout the entire territory would have a far more considerable impact than a public performance.<sup>565</sup> Witness BHH testified that the African population, and the Rwandan population in particular, has the tendency to respect what is broadcast on government radio stations which stand as official sources. He added that people

<sup>558</sup> Indictment, paras. 31, 40 and 41.

<sup>559</sup> Indictment, paras. 40 and 41.

<sup>560</sup> Indictment, para. 14.

<sup>561</sup> Apolline Uwimana, T. 8 October 2007, p. 40; Witness CQR, T. 10 October 2007, p. 9; Witness BKW, T. 18 October 2006, p. 9; Witness AJZ, T. 27 September 2006, p. 5; Witness BGH, T. 2 October 2006, pp. 32, 36 and T. 4 October 2006, p. 15; Witness BHH, T. 20 February 2007, pp. 10, 15, 36; Witness BHJ, T. 11 October 2006, pp. 20, 26; Witness ALP, T. 19 September 2006, pp. 21, 23; Witness JCH, T. 9 October 2007, p. 46 (French); Bikindi, T. 31 October 2007, p. 61. See also, e.g., Exhibit P23(F), Transcript of RTLM Broadcast of 28 December 1993, p. 10; Exhibit P12(F), Transcript of RTLM Broadcast of 25 October 1993, p. 6; Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, pp. 15, 38; Exhibit P18(F), Transcript of RTLM Broadcast of 23 March 1994, pp. K0375482, K0375501-K0375502; Exhibit P14(F), Transcript of RTLM Broadcast of 14 April 1994, p. 19; Exhibit P6(F), Transcript of RTLM Broadcast of 16 April 1994, pp. 9, 14, 37; Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994, pp. 7, 17; Exhibit P19(F), Transcript of RTLM Broadcast of 18 May 1994, p. 26; Exhibit P13(F), Transcript of RTLM Broadcast of 14 June 1994, p. K0146602; Exhibit P14(F), Transcript of RTLM Broadcast of 14 April 1994, p. 19; Exhibit P13(F), Transcript of RTLM Broadcast of 14 June 1994, p. 5. The transcripts of RTLM Broadcasts admitted into evidence also show that listeners were used to requesting Bikindi's songs: see, e.g., Exhibit P18(F), Transcript of RTLM Broadcast of 23 March 1994, pp. K0375502; Exhibit P12(F), Transcript of RTLM Broadcast of 25 October 1993, pp. 6, 16.

<sup>562</sup> Witness BGH, T. 2 October 2006, p. 36 and T. 4 October 2006, p. 15; Witness BHH, T. 20 February 2007, p. 10; Witness BHJ, T. 10 October 2006, p. 26. In relation to Radio Rwanda, see also Exhibit P9(F), Transcript of RTLM Broadcast of 3 June 1994, p. K0143785 ("*c'était impossible de faire passer la très belle chanson qui appelait tous les enfants de Sebahinzi (enfants des Hutus) pour qu'ils puissent vaincre les Inyenzi Inkotanyi. Ces jours si vous entendez que la radio rivale [Radio Rwanda], elle n'est plus rivale. Depuis qu'elle est devenue radio frère, elle fait passer cette chanson, elle n'est plus l'exclusivité de la RTLM*"). See also Exhibit P72, Excerpts from *Rwanda, Les médias du génocide*, Jean-Pierre Chrétien (dir.), p. 344.

<sup>563</sup> Prosecution Expert Karangwa, T. 14 February 2007, p. 8.

<sup>564</sup> Prosecution Expert Karangwa, T. 14 February 2007, pp. 3, 8.

<sup>565</sup> Defence Expert Shimamungu, T. 25 October 2007, p. 26.

tend to think that what is broadcast on the national radio station has a legal force or some kind of authority.<sup>566</sup>

259. The Prosecution further alleges that RTLM's anti-Tutsi broadcasts were often punctuated by Bikindi's musical compositions.<sup>567</sup>

260. The Prosecution adduced many transcripts of RTLM broadcasts, including broadcasts in which journalists and other speakers interpreted the message of Bikindi's songs,<sup>568</sup> complimented Bikindi,<sup>569</sup> repeated his lyrics "*Mbwirabumva*" and "*Bene Sebahinzi*" to reinforce their messages,<sup>570</sup> and stated that if listeners had heeded Bikindi's message long ago, problems such as the historical ethnic difficulties in Burundi would never have arisen.<sup>571</sup> The Chamber considered the content of these broadcasts in greater detail in the preceding section on the meaning of each song.

261. Some witnesses provided general information about these broadcasted commentaries, not specific to one of the three alleged songs. For example, Witness BGH testified that they included instructions to kill the Tutsi, and asserted there was a link between the journalists' commentary and Bikindi's songs in that the message was the same.<sup>572</sup> She stated that the journalists used Bikindi's songs to support their message.<sup>573</sup> Witness BHH testified that journalists on RTLM started to provide interpretations of Bikindi's songs in 1993 and more frequently in 1994.<sup>574</sup> He added that the comments of the journalists ensured the message was properly understood by members of the population, and requested that recommendations were followed.<sup>575</sup> Witness ALP testified that Radio Rwanda and RTLM broadcast Bikindi's songs in order to boost the morale of Hutu.<sup>576</sup> Bikindi asserted that he did not hear any commentaries inciting hatred against Tutsi accompanying his songs on the radio from January to April 1994,<sup>577</sup> but qualified his statement that he did not listen to Radio Rwanda and RTLM much in June or July 1994 as he preferred to listen to the BBC, RFI, the Vatican Radio and a South African station.<sup>578</sup>

<sup>566</sup> Witness BHH, T. 20 February 2007, p. 13.

<sup>567</sup> Indictment, paras. 10 and 41.

<sup>568</sup> For example, see Exhibit P16, Transcript of RTLM Broadcast of 21 March 1994, pp. 17, 18; Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, pp. 4 and 5, in which journalist Noël Hitimana interpreted the message of Bikindi's *Nanga Abahutu*; Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, pp. 19, 20, 22, in which journalist Kantano Habimana interpreted the message of Bikindi's *Bene Sebahinzi*; Exhibit P19(F), Transcript of RTLM Broadcast of 18 May 1994, pp. 26-27.

<sup>569</sup> Exhibit P47, Transcript of RTLM Broadcast of 16 January 1994, p. 13; Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, pp. 15, 35.

<sup>570</sup> Exhibit P8(F), Transcript of RTLM Broadcast of 3 March 1994, p. 35; Exhibit P26(F), Transcript of RTLM Broadcast of 13 April 1994, p. 3; Exhibit P10, Transcript of RTLM Broadcast of 14 April 1994, p. K0111155; Exhibit P11, Transcript of RTLM Broadcast of 15 April 1994, p. K0198354; Exhibit P6(F), Transcript of RTLM Broadcast of 16 April 1994, p. 8; Exhibit P20(F), Transcript of RTLM Broadcast of 15 May 1994, p. 15; Exhibit P3, Transcript of RTLM Broadcast of 17 May 1994, pp. 19-20; Exhibit P21(F), Transcript of RTLM Broadcast of 18 May 1994, p. 6; Exhibit P22(F), Transcript of RTLM Broadcast of 10 June 1994, p. 33.

<sup>571</sup> Exhibit P5, Transcript of RTLM Broadcast of 29 October 1993, pp. 4, 5.

<sup>572</sup> Witness BGH, T. 2 October 2006, pp. 36-37.

<sup>573</sup> Witness BGH, T. 2 October 2006, p. 37.

<sup>574</sup> Witness BHH, T. 20 February 2007, p. 41.

<sup>575</sup> Witness BHH, T. 20 February 2007, pp. 10-11.

<sup>576</sup> Witness ALP, 18 September 2006, p. 35.

<sup>577</sup> Bikindi, T. 31 October 2007, pp. 61-63.

<sup>578</sup> Bikindi, T. 31 October 2007, p. 62. However the Chamber notes that when interviewed by Gaspard Gahigi for the RTLM, Bikindi declared that he was a listener of the RTLM: P2(F), Transcript of RTLM Broadcast of 31 December 1993, p. 3.

262. Based on the transcripts of the RTLM broadcasts and the witnesses' testimony discussed above, the Chamber finds that the Prosecution has proven beyond reasonable doubt that anti-Tutsi broadcasts on RTLM were often punctuated by Bikindi's musical compositions. However, there is no evidence of Bikindi providing interpretations of his songs on the radio. In fact, Prosecution Witness BHH testified that he did not hear Bikindi commenting on his songs on air.<sup>579</sup> Furthermore, there is no evidence that Bikindi played any role in the broadcasting of his songs. The Chamber indeed recalls that the Prosecution failed to prove that Bikindi had any control or influence over the programming of RTLM or Radio Rwanda. In addition, the Chamber finds that there is no evidence of Bikindi performing or disseminating the alleged songs in 1994 in Rwanda.<sup>580</sup>

263. In light of the evidence before it, the Chamber finds beyond reasonable doubt that Bikindi's alleged songs were deployed in a propaganda campaign to target the Tutsi as the enemy and to sensitise and incite the listening public to target and commit acts of violence against the Tutsi. However, there is no evidence that Bikindi played a role in the dissemination or deployment of his three songs in 1994.

### 7.3. Conclusion

264. The Chamber finds that *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* manipulated the history of Rwanda to extol Hutu solidarity and that *Nanga Abahutu* and *Bene Sebahinzi* were composed to disseminate anti-Tutsi propaganda and encourage ethnic hatred. In the context of rising ethnic tension in Rwanda during the early 1990s leading to the genocide, *Twasezereye* was later used as a vehicle for anti-Tutsi propaganda. In light of the inflammatory content of RTLM journalists' commentary accompanying the repeated broadcasting of Bikindi's songs and the testimonial evidence, the Chamber finds that Bikindi's songs were used by RTLM in a propaganda campaign to promote contempt for and hatred of the Tutsi population and incite the listening public to target and commit acts of violence against Tutsi. The Chamber concludes that in 1994 in Rwanda, Bikindi's three songs were indisputably used to fan the flames of ethnic hatred, resentment and fear of the Tutsi. Given Rwanda's oral tradition and the popularity of RTLM at the time, the Chamber finds that these broadcasts of Bikindi's songs had an amplifying effect on the genocide. Bikindi's criminal responsibility for the composition, recording and dissemination of these songs will be discussed in the Chapter on Legal Findings.

## 8. USE OF PUBLIC ADDRESS SYSTEM ON VEHICLE

265. The Prosecution alleges that in 1993 and in February, March and late June 1994, Bikindi used a vehicle outfitted with a public address system to broadcast his musical compositions, notably within Gisenyi town, Rwerere *commune* and Gisenyi *préfecture*.<sup>581</sup>

266. Further, the Prosecution alleges that in late June 1994 in Gisenyi *préfecture* Bikindi operated a vehicle outfitted with a public address system, leading a caravan of *Interahamwe* on the main road between Kivumu and Kayove *communes*, announcing "The majority population, it's you, the Hutu I am talking to. You know the minority population is the Tutsi. Exterminate quickly the remaining ones."<sup>582</sup>

<sup>579</sup> Witness BHH, T. 20 February 2007, p. 16.

<sup>580</sup> See *supra* paras. 84, 122 156, 183 and *infra* para. 281.

<sup>581</sup> Indictment, paras. 32 and 39.

<sup>582</sup> Indictment, para. 39. See also *ibid.*, para. 30(h).

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### 8.1. Road between Kivumu and Kayove, June 1994

267. Two Prosecution witnesses, AKK and AKJ, testified about the allegation that Bikindi played music and made statements from a vehicle outfitted with a public address system on the road between Kivumu and Kayove in June 1994. Witness AKK was a Hutu and former student who was unemployed and living with his parents in Kivumu during the genocide.<sup>583</sup> Witness AKJ was a Hutu farmer who traded groundnuts during the genocide.<sup>584</sup> The Chamber recalls that it accepted their evidence regarding Bikindi's presence and statements at a rally in Kivumu in 1993.

268. Witness AKK testified that he saw Bikindi in June 1994, in a vehicle, as part of a convoy heading towards Kayove. Witness AKK lived close to the road and saw buses full of *Interahamwe*, blowing whistles and making lots of noise with clubs and firearms. Bikindi was in a vehicle outfitted with a loudspeaker, over which songs were being broadcast with intermittent statements by Bikindi. Witness AKK stated that Bikindi was not singing that day, as cassettes of his songs were being used. Witness AKK heard Bikindi say "You sons of *Sebahinzi*, who are the majority, I am speaking to you, you know that the Tutsi are minority. Rise up and look everywhere possible and do not spare anybody." Witness AKK interpreted this to mean that although some Tutsi had already been killed, others were hiding and Bikindi was calling on people to do all that was necessary to eliminate the Tutsi. The witness also testified that on the way back from Kayove, Bikindi stopped at a roadblock and met with leaders of the local *Interahamwe* where he insisted, "you see, when you hide a snake in your house, you can expect to face the consequences." After Bikindi left the roadblock, members of the surrounding population and the *Interahamwe* intensified their search for Tutsi, using the assistance of dogs and going into homes to flush out those still hiding. Witness AKK stated that a number of people were subsequently killed, including Father Gatore and Kalisa.<sup>585</sup>

269. Witness AKJ testified that he saw Bikindi towards the end of June 1994 around 1:30 p.m. or 2 p.m. in a convoy of vehicles returning from a rally in Kayove. Witness AKJ testified that Bikindi was in the front passenger seat of a vehicle outfitted with loudspeakers. Witness AKJ explained that there were three others in the car with him, Apollinaire, a serving soldier, who was driving, and two others in the back seat, Boniface, a demobilised soldier, and another person whom Witness AKJ did not know. Bikindi's car, he said, was at the front of a convoy, consisting of two ONATRACOM buses, carrying people in MRND uniforms and *Interahamwe*. He recognised Bikindi in an MRND uniform. Witness AKJ heard Bikindi ask over a loudspeaker "Have you killed the Tutsis here?" and whether they had killed the "snakes." He also heard Bikindi's songs being played as the vehicles moved on. Witness AKJ testified that at that time he was standing three metres from the road, and that Bikindi was in the passenger side, nearest to Witness AKJ on the road. He added that he could see the passengers clearly as the vehicle was moving so slowly that there was no dust.<sup>586</sup>

<sup>583</sup> Exhibit P40, Witness AKK's Personal Information Sheet (under seal); Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), pp. 1, 3, 4.

<sup>584</sup> Witness AKJ, T. 21 September 2006, p. 4; Exhibit P39, Witness AKJ's Personal Information Sheet (under seal).

<sup>585</sup> Witness AKK, T. 22 September 2006, pp. 4-6, 8-9.

<sup>586</sup> Witness AKJ, T. 20 September 2006, pp. 50, 51; T. 21 September 2006, pp. 16, 17, 25, 26. The Chamber notes that there was some confusion in translation between the English transcript of "megaphone" at T. 20 September 2006, p. 51, and "*haut-parleurs*" in the French transcript at T. 20 September 2006, p. 60 (French).

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270. The Defence challenged Witness AKK's credibility by pointing out alleged discrepancies between his prior statement to Tribunal investigators and his testimony. First, the Defence referred to Witness AKK's prior statement that he used to accompany Bikindi's cousin, Colette, and other students to see Bikindi perform at the Umuganda Stadium in 1992.<sup>587</sup> The Chamber observes that there is no contradiction between the witness's prior statement and his testimony in this respect; Witness AKK was consistent about seeing Bikindi for the first time at Umuganda Stadium in 1992.<sup>588</sup> The fact that he did not specifically mention accompanying Colette to the Stadium in court does not undermine his testimony.

271. Secondly, the Defence pointed out that Witness AKK did not mention that Tutsi were being referred to as snakes in his prior statement.<sup>589</sup> In this respect, the Chamber notes that the witness had mentioned that he saw Bikindi on his way back from Kayove in his prior statement.<sup>590</sup> In the Chamber's opinion, the fact that he did not specifically mention Bikindi's statement at the roadblock in 2001 does not call into question his credibility insofar as it constitutes additional details to the witness's main allegation, namely that Bikindi incited people to kill on his way to Kayove.

272. Thirdly, while Witness AKK's prior statement put his sighting of Bikindi on the Kivumu-Kayove road in early June 1994 and the killing of Father Gatore at the end of June 1994,<sup>591</sup> he testified that Father Gatore was killed the day after he saw Bikindi on the Kivumu-Kayove road in June 1994.<sup>592</sup> Reading the witness's prior statement as a whole, the Chamber considers that the reference to "early June 1994" may have been a translation mistake from Kinyarwanda to English during the interview since the witness recounted having heard of Father Gatore's death "after [the Kivumu-Kayove road] incident" in a way which clearly implied that Father Gatore's death occurred consequently. Read as such, Witness AKK's statement is consistent with Witness AKJ's testimony which places Bikindi's anti-Tutsi utterances towards the end of June 1994. The Chamber observes that the witness remained consistent as to the chronology of both incidents throughout his testimony. The Chamber further finds that the doubt raised by the Defence as to when Father Gatore was actually killed does not discredit Witness AKK's first-hand and articulate evidence on Bikindi's exhortation to kill Tutsi on his way to Kayove.<sup>593</sup>

273. Lastly, the Defence challenged Witness AKK in that although he testified about the death of Kalisa, a Tutsi who was killed at the same time as Father Gatore, this victim was not mentioned in Witness AKK's prior statement.<sup>594</sup> When asked about this omission, the witness explained that there would not have been enough time to provide a list of all the victims who had been killed, and proceeded to name more victims.<sup>595</sup> The Chamber finds this explanation convincing.

274. As regards Witness AKJ, the Chamber notes a slight confusion as to the date the incident occurred, which the Chamber attributes to the manner and style of questioning by

<sup>587</sup> Witness AKK, T. 22 September 2006, pp. 8-9 (French).

<sup>588</sup> Witness AKK, T. 22 September 2006, pp. 8-9 (French); Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), p. 3.

<sup>589</sup> Witness AKK, T. 22 September 2006, p. 9 (French).

<sup>590</sup> Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), p. 4.

<sup>591</sup> Exhibit D5, Witness AKK's written statement dated 5 and 8 May 2001 (under seal), pp. 3-4.

<sup>592</sup> Witness AKK, T. 22 September 2006, pp. 8-9.

<sup>593</sup> See *infra* para. 334.

<sup>594</sup> Witness AKK, T. 22 September 2006, p. 9.

<sup>595</sup> Witness AKK, T. 22 September 2006, p. 9.

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Defence Counsel.<sup>596</sup> Accordingly the Chamber does not consider this confusion to have harmed Witness AKJ's credibility.

275. The Chamber notes that while Witness AKK testified that Bikindi made statements through loudspeakers on the drive to Kayove, Witness AKJ testified on events occurring on the drive returning from Kayove. Given that the witnesses testified about different moments of the drive, they heard different comments. Witness AKK heard Bikindi say "you sons of *Sebahinzi*, who are the majority, I am speaking to you, you know that the Tutsi are minority. Rise up and look everywhere possible and do not spare anybody."<sup>597</sup> Witness AKJ heard Bikindi ask "Have you killed the Tutsis here?" and whether they had killed the "snakes."<sup>598</sup>

276. Despite the witnesses seeing Bikindi at different times on the journey between Kivumu and Kayove, the Chamber finds that their testimony corroborates each other on key points. Both witnesses put Bikindi in a vehicle with loudspeakers making anti-Tutsi utterances in a convoy of buses filled with *Interahamwe* on the road between Kivumu and Kayove in June 1994.<sup>599</sup> Witness AKJ specified that the incident took place at the end of June 1994. Both witnesses were able to recognise Bikindi as they had seen him before.<sup>600</sup>

277. The Defence Witnesses did not succeed in raising a reasonable doubt regarding the Prosecution evidence.

278. Defence Witnesses DVR, QUTI, KMS and Apolline Uwimana all testified that from when he returned to Rwanda in mid-late June 1994 until he left in exile in mid-July, Bikindi stayed with members of his family at the home of an individual called Marc in Nyundo, Gisenyi.<sup>601</sup> With the exception of Witness KMS who testified that Bikindi spent the entire day at home,<sup>602</sup> all testified that he spent the majority of time at Marc's house, only leaving occasionally to exercise,<sup>603</sup> visit *Irindiro* ballet members,<sup>604</sup> or take his injured daughter to the hospital.<sup>605</sup> Witness DVR added that when he went out he would not go very far and would always return before 5 p.m.<sup>606</sup> Witness QUTI testified that he would always sleep at Marc's house at night.<sup>607</sup> Defence Witnesses TIER and CQK also testified that when he returned to Rwanda towards the end of June 1994 Bikindi stayed in Nyundo, Witness TIER specifying that it was at Marc's house.<sup>608</sup> Witness TIER testified that he only left the house to

<sup>596</sup> Witness AKJ, T. 21 September 2006, pp. 17-19. See *supra* note 278.

<sup>597</sup> Witness AKK, T. 22 September 2006, p. 5.

<sup>598</sup> Witness AKJ, T. 20 September 2006, p. 50.

<sup>599</sup> Witness AKK, T. 22 September 2006, pp. 4-6, 8; Witness AKJ, T. 20 September 2006, pp. 50, 51 and T. 21 September 2006, pp. 16, 17, 25, 26.

<sup>600</sup> Witness AKK, T. 22 September 2006, pp. 3-4; Witness AKJ, T. 20 September 2006, pp. 47, 48, 50 and T. 21 September 2006, p. 26.

<sup>601</sup> Witness DVR, T. 26 September 2007, p. 69 and T. 27 September 2007, pp. 9, 14; Witness QUTI, T. 27 September 2007, pp. 31-32, 43-44; Apolline Uwimana, T. 8 October 2007, pp. 19-20, 39. See also Witness ALQ, T. 16 October 2006, p. 23. Witness KMS testified that Bikindi stayed at Patricie's house (T. 1. October 2007, p. 23 (French)), who Witness QUTI testified was Marc's wife (T. 27 September 2007, p. 31). The Chamber notes that Witness QUTI refers to Patricie as Patrice, which the Chamber finds is a transcription mistake.

<sup>602</sup> Witness KMS, T. 1 October 2007, p. 25.

<sup>603</sup> Witness DVR, T. 27 September 2007, pp. 4-5, 14-15.

<sup>604</sup> Witness QUTI, T. 27 September 2007, pp. 32-33; Apolline Uwimana, T. 8 October 2007, pp. 23, 25, 26, 39. See also Witness DZS who testified that Bikindi would visit [them] daily to bring them food (T. 24 September 2007, p. 10 (closed session), p. 12 (extract), and pp. 14-15).

<sup>605</sup> Apolline Uwimana, T. 8 October 2007, pp. 23, 39.

<sup>606</sup> Witness DVR, T. 27 September 2007, pp. 4-5, 14-15.

<sup>607</sup> Witness DVR, T. 27 September 2007, p. 32.

<sup>608</sup> Witness TIER, 16 October 2007, pp. 11, 33-34; Witness CQK, T. 10 October 2007, p. 57.

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visit *Irindiro* ballet members which he did very often.<sup>609</sup> Witness CQK testified that once in Nyundo, Bikindi no longer moved about due to the prevailing atmosphere of insecurity.<sup>610</sup> Bikindi testified that while he did move around in June and July 1994, he did not have great liberty of movement.<sup>611</sup>

279. The Chamber observes that each of these Defence witnesses had a close personal relationship with Bikindi. While these relationships do not invalidate their testimonies, it does suggest that they may have a motive to testify in a manner favourable to the Accused. More concretely, none of them were in a position to be able to account for Bikindi's every move during the time he was allegedly staying at Marc's house. Witness DVR went to work at the maternity health centre in Nyundo every morning and acknowledged that she could not account for Bikindi's activities while at work.<sup>612</sup> His first wife, Apolline Uwimana, testified that Bikindi went out alone, albeit infrequently,<sup>613</sup> and Witness QUTI said that she did not accompany Bikindi at all times when he left the house. Witness KMS was not living at Marc's house and did not see Bikindi on a daily basis; he would only go and visit him in the evenings when he was free.<sup>614</sup> Similarly, Witnesses TIER and CQK did not live in Marc's house with Bikindi.<sup>615</sup> Therefore, none of these witnesses was in a position to confirm authoritatively what Bikindi did when he went out.

280. Witness HZTX testified that he had not personally seen Bikindi in such a vehicle in Gisenyi.<sup>616</sup> This, however, does not mean that the event did not occur. Similarly, although Witness KMS, a member of the *Irindiro* Ballet, testified that he had not personally seen Bikindi in the *Kitenge* fabric of the MRND colours outside any performance venues,<sup>617</sup> the Chamber does not think it likely that Witness KMS was always with Bikindi in June 1994. Angelina Mukabanana testified that Bikindi had only one vehicle, a beige coloured Peugeot 305, which was not fitted with any loudspeakers and was the only vehicle she knew that Bikindi owned.<sup>618</sup> However, the Chamber notes that no evidence was adduced on whether the vehicle Bikindi was seen in was his own.<sup>619</sup> Finally, the Chamber does not believe Bikindi's denial of driving around Gisenyi in such a vehicle with a public address system playing his songs in light of the convincing evidence of Witnesses AKK and AKJ.<sup>620</sup>

281. For the reasons above, the Chamber finds that the Prosecution has proven beyond reasonable doubt that towards the end of June 1994, in Gisenyi *préfecture*, Bikindi travelled on the main road between Kivumu and Kayove in a convoy of *Interahamwe* and broadcast songs, including his own, using a vehicle outfitted with a public address system. When heading towards Kayove, Bikindi used the public address system to state that the majority population, the Hutu, should rise up to exterminate the minority, the Tutsi. On his way back, Bikindi used the same system to ask if people had been killing Tutsi, who were referred to as

<sup>609</sup> Witness TIER, 16 October 2007, pp. 11, 33-35.

<sup>610</sup> Witness CQK, T. 10 October 2007, p. 57.

<sup>611</sup> Bikindi, T. 5 November 2007, p. 11.

<sup>612</sup> Witness DVR, T. 27 September 2007, pp. 18-19.

<sup>613</sup> Apolline Uwimana, T. 8 October 2007, pp. 25, 39.

<sup>614</sup> Witness KMS, T. 1 October 2007, pp. 24-25.

<sup>615</sup> Witness CQK, T. 10 October 2007, p. 57; Witness TIER, 16 October 2007, pp. 11, 34.

<sup>616</sup> Witness HZTX, T. 26 September 2007, pp. 3-4.

<sup>617</sup> Witness KMS, T. 1 October 2007, pp. 6, 23.

<sup>618</sup> Angelina Mukabanana, T. 2 October 2007, p. 24.

<sup>619</sup> The Chamber notes that, although the Prosecution alleges in paragraph 30(h) of the Indictment that the vehicle outfitted with a public address system was Bikindi's, it did not allege that the vehicle was his in paragraph 39 of the Indictment containing the charge related to this incident. The Chamber considers that this ambiguity is harmless in the circumstances of the case.

<sup>620</sup> Bikindi, T. 31 October 2007, p. 64; T. 5 November 2007, p. 17.



snakes. Although Witness AKJ testified that Bikindi's vehicle was at the front of the convoy on the way back from Kayove, the evidence is not conclusive as to whether Bikindi led the convoy of *Interahamwe*. Likewise, the evidence is inconclusive as to which songs Bikindi broadcast from the vehicle.

## 8.2. Kigali, 1993

282. Witness BGH testified to attending three political demonstrations in 1993 organised by the MRND which Bikindi also attended. At these demonstrations were vehicles fitted with loudspeakers which drove along beside the demonstrators. She testified that the vehicles were used to broadcast Bikindi's songs, and that people would often sing along.<sup>621</sup> She added that she saw Bikindi at these demonstrations in Kigali aboard a Suzuki vehicle equipped with loudspeakers which were playing his songs.<sup>622</sup>

283. She also stated that when Bikindi would visit her neighbour, he would park his Suzuki vehicle outfitted with loudspeakers, which was playing songs. She stated that she found it so odd that he would drive around through a neighbourhood in a car outfitted with an amplifier playing songs when there was no rally occurring.<sup>623</sup>

284. The Chamber found Witness BGH a straightforward, clear and consistent witness and finds no reason to doubt her testimony regarding Bikindi's use of a public address system on a vehicle to broadcast his songs in Kigali in 1993.<sup>624</sup> The Chamber nevertheless observes that the witness's evidence is inconclusive as to which songs Bikindi broadcast from his vehicle.

## 8.3. Conclusion

285. Based on the credible and convincing evidence of Witnesses AKK and AKJ, the Chamber finds that the Prosecution has proven beyond reasonable doubt that in late June 1994, in Gisenyi *préfecture*, Bikindi travelled on the main road between Kivumu and Kayove, in a vehicle outfitted with a public address system as part of a convoy of *Interahamwe*. The Chamber finds that Bikindi's songs were played through loudspeakers and that Bikindi made exhortations to kill Tutsi.

286. The Chamber also relies on the testimony of Witness BGH to find that the Prosecution has proven beyond reasonable doubt that in 1993, Bikindi used a public address system mounted on a vehicle to broadcast his songs in Kigali.

287. The Chamber finds, however, that the Prosecution failed to prove other instances of Bikindi using a vehicle outfitted with a public address system to broadcast his musical compositions.<sup>625</sup>

<sup>621</sup> Witness BGH, T. 2 October 2006, p. 40; T. 3 October 2006, pp. 2, 3.

<sup>622</sup> Witness BGH, T. 4 October 2006, p. 34.

<sup>623</sup> Witness BGH, T. 4 October 2006, p. 26.

<sup>624</sup> See the section on political gatherings for an extended analysis of credibility for Witness BGH.

<sup>625</sup> Witness BUY testified to seeing a four-vehicle convoy on the way to Butare including Bikindi in a private vehicle with a megaphone attached broadcasting *Nanga Abahutu* and *Twasezereye* among other songs through loudspeakers (T. 19 February 2007, pp. 14, 15, 42). Given the reservations the Chamber has on Witness BUY's credibility, the Chamber would decline to rely on his testimony without reliable corroboration. The Chamber also notes that while Witness BHJ testified to seeing a vehicle outfitted with a megaphone used to broadcast Bikindi's songs before the genocide, the witness did not mention seeing Bikindi within the convoy, just members of the *Irindiro* troupe (T. 10 October 2006, p. 11). The Chamber refers to Witness KMS's testimony that, on some occasions, the troupe performed without Bikindi (T. 1 October 2007, p. 18).

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## 9. ATTACKS AND KILLINGS

### 9.1. Killings at the Gisenyi Prison

288. The Prosecution alleges that in June 1994 Bikindi went to Gisenyi Prison with Hassan Ngeze, Major Kabera, Prison Director Gasirabo and more than ten bodyguards. It is alleged that the prison guard Rukara called out the names of 12 prisoners who came out of their cells and that Bikindi then asked Gasirabo why the 12 were still alive while in Kigali all Tutsi had been killed. Ngeze allegedly asked the Tutsi prisoners to raise their hands, and ten of the prisoners who were Tutsi did. It is alleged that Bikindi then read out the names of Tutsi prisoners from a list, starting with Matabaro and Kayibanda who then came forward and were hit on the back of the head with an axe by one of Bikindi's bodyguards and died. It is alleged that Bikindi's bodyguards then killed eight of the other people on the list, all Tutsi, with bayonets.<sup>626</sup>

289. In support of its allegation, the Prosecution relies on Prosecution Witnesses ALP and BUY. Witness ALP was an inmate at Gisenyi Prison at the time of the alleged murders and Witness BUY is a former *Interahamwe* serving a life sentence for genocide who testified he was working at the prison as a driver's aide at the time of the alleged murders.<sup>627</sup>

290. Witness ALP gave evidence that Bikindi came to Gisenyi Prison between 8-18 June 1994 with several people, including Hassan Ngeze, Major Kabera, Prison Director Gasirabo, and a number of soldiers.<sup>628</sup> The witness stated that 12 prisoners whose names were on a list were called by Rukara, the prison guard, to come outside the prison. He explained that he was called outside because his name was on the list. He testified that, once the group of 12 were outside the prison, Bikindi took the list from Rukara and asked all the Tutsi in the group to raise their hands. All those on the list, save for himself and Ayirwanda (both of whom survived), raised their hands. The witness testified that Bikindi asked, "How come these Tutsi are still here, whereas Tutsi have been killed everywhere else?" and subsequently began to read out names from the list. According to Witness ALP, Matabaro was the first to be called and when he moved close to Bikindi a soldier hit him on the back of the head with a small axe and he died. Bikindi called Kayibanda's name and the same thing happened to him.<sup>629</sup> When Bikindi called a third name, Major Kabera said that they needed to act quickly and go to Ruhengeri and Bikindi agreed. The witness testified that the soldiers then killed the remaining Tutsi with bayonets. He stated that he then helped dump five of the bodies into the septic pit and that the remaining five were put into a Daihatsu pick-up truck to be taken to Ruriba.<sup>630</sup>

291. Witness BUY recalled that Bikindi came to Gisenyi Prison in mid-June 1994 with *Interahamwe* in a convoy with Major Kabera, *préfet* Charles Zilimwabagabo, Hassan Ngeze and ten Tutsi prisoners from Ruhengeri Prison.<sup>631</sup> The Tutsi prisoners were unloaded and kept separate from the other prisoners. The witness testified that Kabera had a list that he gave to Bikindi who passed it on to the Prison Director, Gasirabo, who then called one person forward. That person was hit with a small axe. A second person called forward was also hit with an axe. The witness said Bikindi then addressed the soldiers, "What are you waiting for

<sup>626</sup> Indictment, paras. 25 and 47(c).

<sup>627</sup> Witness ALP, T. 18 September 2006, p. 41; Witness BUY, T. 19 February 2007, pp. 5-6 (closed session), 20, 33.

<sup>628</sup> Witness ALP, T. 18 September 2006, pp. 34, 44, 46; T. 19 September 2006, p. 39.

<sup>629</sup> Witness ALP, T. 18 September 2006, pp. 46-48.

<sup>630</sup> Witness ALP, T. 18 September 2006, pp. 48-49; T. 20 September 2006, p. 14.

<sup>631</sup> Witness BUY, T. 19 February 2007, p. 20.

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to kill these *Inyenzis*? Normally, they should already have been killed.”<sup>632</sup> According to the witness the soldiers then shot the Tutsi and finished them off with knives and bayonets. Five or six of the bodies were then dumped in the septic tanks and the remainder were loaded onto a vehicle and taken to Commune rouge. The witness stated that before the vehicle left, Bikindi asked if there were any other Tutsi in the prison to kill. Gasirabo replied that there were not and Bikindi and the others then left.<sup>633</sup>

292. The Chamber is concerned about several aspects of Witness ALP’s testimony. It observes that the witness was particularly defensive when asked why he was in prison in 1994, initially refusing to answer and never confirming that it was for theft.<sup>634</sup> Upon the insistence of Defence Lead Counsel, he explained that he was charged with illegally exporting a motorcycle to Zaire.<sup>635</sup> When Defence Counsel put to him that he had previously told Tribunal investigators that he fled to Zaire in July 1994, Witness ALP denied ever crossing the border between Rwanda and Zaire.<sup>636</sup> However, shortly thereafter, he stated that he was born in Zaire.<sup>637</sup> The Chamber is not entirely convinced by his explanation that by saying he had never been to Zaire he meant that he did not flee Rwanda in 1994.<sup>638</sup> In addition, the Chamber notes that the witness denied seeing Bikindi at any time other than that day at Gisenyi Prison, including in photos, pictures or video clips.<sup>639</sup> However, his will-say statement taken ten days before his court appearance is evidence of the contrary.<sup>640</sup>

293. The Chamber is also concerned by Witness ALP’s apparent desire to incriminate Bikindi. For example, although RTLM was created in 1993 and Bikindi never worked there,<sup>641</sup> Witness ALP testified that Bikindi worked at RTLM in 1991 and was on its Steering Committee.<sup>642</sup> He insisted that Bikindi’s songs were often broadcast on the radio and that they clearly encouraged the elimination of the Tutsi ethnic group, but was evasive when answering questions about when he heard the songs on the radio and was unable to remember any lyrics.<sup>643</sup> With respect to his behaviour in court, the witness had to be reminded more than once by the Chamber that it was not up to him to tell the parties what they could or could not ask and was asked to answer the questions without comment.<sup>644</sup> The Chamber is also

<sup>632</sup> Witness BUY, T. 19 February 2007, pp. 20-21.

<sup>633</sup> Witness BUY, T. 19 February 2007, pp. 21-22.

<sup>634</sup> Witness ALP, T. 18 September 2006, p. 41 (“I had been convicted of a matter which is now behind me and I do not know whether you want to revisit that issue. I think we are dealing with Bikindi’s case here and not my case. [...] I have come to be a witness in the Bikindi case, so please put questions to me about Bikindi’s case about which I am a witness. And I think that the ICTR does not have jurisdiction over my case”); T. 19 September 2006, p. 12 (“I would like to explain to you that I was in prison following an offence which I had committed in 1989. [...] I was convicted following the commission of that offence, but I do not believe that I’m here before the Chamber to speak of the details of that offence. I think that I’m here in order to speak about the statement which I have made [...]. Consequently, I don’t think it is interesting for us to dig up these events, more so because it is not relevant to the trial at hand.”).

<sup>635</sup> Witness ALP, T. 19 September 2006, p. 12 (“I bought a motorcycle and I took it to the Congo, illegally”).

<sup>636</sup> Witness ALP, T. 19 September 2006, p. 14, referring to Witness ALP’s written statement dated 9 May 2002 (under seal). The Chamber notes that the Defence did not request that the statement be admitted into the record.

<sup>637</sup> Witness ALP, T. 19 September 2006, p. 14 (“I have never been to Zaire”); T. 20 September 2006, p. 8 (closed session) (“I was born in Katanga in Zaire.”)

<sup>638</sup> Witness ALP, T. 20 September 2006, p. 8 (closed session).

<sup>639</sup> Witness ALP, T. 19 September 2006, pp. 35-37.

<sup>640</sup> Exhibit D1, Witness ALP’s will-say statement dated 9 September 2006 (under seal), para. 5 (“I identify the man in red as Bikindi at video 414 at 16.33 mins.”)

<sup>641</sup> See *supra* Section on Collaboration with RTLM.

<sup>642</sup> Witness ALP, T. 18 September 2006, p. 35; T. 19 September 2006, p. 11.

<sup>643</sup> Witness ALP, T. 18 September 2006, p. 40; T. 19 September 2006, pp. 15-19, 20-22.

<sup>644</sup> When asked his highest level of education, Witness ALP stated, “I believe that this is not a relevant question. My level of education really does not matter. Why don’t you put questions to me about my statement on the Bikindi case?” The Presiding Judge replied, “It is not for you to tell us what the parties can ask you.”

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troubled by Witness ALP's insistence throughout his testimony that he was not telling lies but the truth.<sup>645</sup>

294. The Chamber also finds some aspects of Witness ALP's testimony with respect to the incident at Gisenyi Prison problematic. In particular, as highlighted by the Defence, while the witness told Tribunal investigators in 2002 that all the bodies were buried in the septic pit, he testified that only five were buried there and the rest were taken to Ruriba.<sup>646</sup> There was also an internal contradiction in his testimony. Initially he stated that Bikindi had asked Rukara to "hand over" the list of names but later said that he "snatched it" from him.<sup>647</sup> The Chamber also notes the witness's confusion as to whether the ten prisoners were killed by Bikindi's "bodyguards" or by "soldiers".<sup>648</sup>

295. Taken as a whole, Witness ALP's behaviour in court, the inconsistencies within his evidence and the degree of confusion in his testimony cast doubt on his credibility.

296. Similarly, the Chamber has reservations about the credibility of Witness BUY. In addition to the problems identified in the section above on Participation in Political Gatherings,<sup>649</sup> the Chamber has identified inconsistencies in his evidence regarding the incident at Gisenyi Prison. In a prior statement to Tribunal investigators, Witness BUY stated that he arrived at the prison at the same time as Bikindi's convoy, having come from a different area, and found a group of ten Tutsi prisoners already sitting in the prison courtyard.<sup>650</sup> However, he testified that he saw the Tutsi prisoners arrive at the prison in the same convoy as Bikindi, as they were being transferred from Ruhengeri Prison.<sup>651</sup> Witness BUY did not acknowledge the contradiction but, in response to the Prosecution's attempt to clarify the matter, he explained that he first saw the Tutsi when they were already sitting on

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(T. 19 September 2006, p. 7). When the witness declared "I realise that Counsel cross-examining me is moving away from the subject, the crux of the matter that we are looking at [...]. Very well. I was convicted following the commission of that offence, but I do not believe that I'm here before the Chamber to speak of the details of that offence. I think that I'm here in order to speak about the statement which I have made and I wish to thank you on that note", the Presiding Judge replied "Please answer the question" (T. 19 September 2006, p. 12). When asked when he first heard Bikindi's songs, the witness stated "I do not remember the year in which that song was – was composed. The composer himself might be in a better position to know the year. [...] I notice that Mr. Bikindi's counsel has not often understood the explanations I have provided in answer to his questions. So I would rather advise him to focus on one point and clear it. [...] I had no particular interest in taking note of that year. But the author of that song may know the year, because it is in his best interest to do so; personally, I do not know." The Presiding Judge replied, "Mr. Witness, we already told you once that you're here to answer questions not to tell us what questions you want to answer, and how the questions should be put to you. So, please, refrain from making comments and answer the question." (19 September 2006, p. 16). When asked if he had seen Bikindi after the prison incident, Witness ALP stated, "Yesterday, I provided sufficient explanation to this matter. [...] That is why I want to repeat the same answer, and I would not like counsel to repeat the questions to which I have already provided answers" to which Judge Arrey replied, "[Defence Counsel] has a duty to cross-examine you, so even if you have given the answer yesterday, you have to repeat the answer again. [...] Please, just continue to answer." (T. 19 February, p. 34). *See also* Witness ALP, T. 19 September 2006, pp. 12 and 39.

<sup>645</sup> Witness ALP, T. 18 September 2006, pp. 35, 44, 48, 51; T. 19 September 2006, pp. 13, 19, 21, 32, 33, 34.

<sup>646</sup> Witness ALP, T. 18 September 2006, p. 49; T. 20 September 2006, p. 10, referring to Witness ALP's written statement dated 9 May 2002. *See also* T. 20 September 2006, p. 13 (French), for the complete interpretation of the witness's answers

<sup>647</sup> Witness ALP, T. 18 September 2006, pp. 46, 48.

<sup>648</sup> Witness ALP, T. 18 September 2006, pp. 47-49; T. 19 September 2006, p. 39; T. 20 February 2006, p. 14.

<sup>649</sup> *See supra* paras. 163-167.

<sup>650</sup> Exhibit D39(F), Witness BUY's written statement dated 24 October 2006 (under seal), p. 4, referred to at T. 19 February 2007, pp. 56-57. The witness acknowledged that he signed the statement after it was translated to him in Kinyarwanda (T. 19 February 2007, pp. 58-59).

<sup>651</sup> Witness BUY, T. 19 February 2007, pp. 20, 48, 56.

the ground as he did not see them being pulled from the vehicle.<sup>652</sup> The Chamber does not find that this clarification explains the contradiction in his evidence as to whether the Tutsi prisoners arrived at the prison with Bikindi's convoy or were already there. The Chamber is also concerned that this witness only mentioned the incident at Gisenyi Prison to Tribunal investigators in 2006, despite having given a statement to investigators in 2000.<sup>653</sup>

297. In considering the evidence of both witnesses, the Chamber notes that they corroborate each other in certain respects. However, there are also a number of significant inconsistencies between them. One of the most significant inconsistencies is whether the Tutsi prisoners were already at the prison when Bikindi arrived as testified to by Witness ALP, or if they came in his convoy. Witness ALP stated that they were called out of the general prison population because their names were on a list. Witness ALP was called because his name was the same as a Tutsi who was on the list. He stated that eight of them had been transferred from Kigali Prison but did not specify when they had been transferred.<sup>654</sup> If Witness BUY's version of events was accurate and the prisoners had arrived at the same time as Bikindi and they were not integrated with the general prison population, then Witness ALP would not have been called to be part of the group of 12 that were taken outside. The two witnesses also differed on which prison the Tutsi had been transferred from, with Witness ALP saying it was Kigali Prison and Witness BUY, Ruhengeri Prison.<sup>655</sup> Witness BUY also stated that *préfet* Charles Zilimwabagabo came in the convoy with Bikindi but Witness ALP did not say that he was present.<sup>656</sup> In addition, Witness ALP testified that there was a gate at the prison entrance in contrast to Witness BUY who denied the existence of a gate, testifying that there was simply a cord that was used to block the entrance.<sup>657</sup>

298. With regard to the killings, Witness ALP stated that Bikindi called out the names of the first two Tutsi who were killed whereas Witness BUY stated that it was Gasirabo, the Prison Director.<sup>658</sup> Witness ALP recalled Bikindi asking, "How come these Tutsis are still here, whereas Tutsis have been killed everywhere else?" before any of the Tutsi had been killed.<sup>659</sup> Witness BUY remembered Bikindi making a similar statement, but only after the first two Tutsi had been killed.<sup>660</sup> The two witnesses also differed on how the remaining eight Tutsi prisoners were killed, with Witness ALP stating they were killed with bayonets and Witness BUY stating they were shot and then finished off with knives and bayonets.<sup>661</sup> Finally, the two witnesses differed on the location where the bodies that were not buried in the septic pit were taken. Witness ALP said the bodies were taken to Ruriba, while Witness BUY said they were taken to Commune rouge.<sup>662</sup>

299. The Defence submits that the presence of Major Kabera and Hassan Ngeze at the prison was questionable. However, the Chamber is not persuaded with its argument that Ngeze's presence was questionable simply as he was not charged with this incident at the

<sup>652</sup> Witness BUY, T. 19 February 2007, pp. 57, 61-62.

<sup>653</sup> Exhibit D37, Witness BUY's written statement dated 6, 8, 9 June 2000 (under seal); Exhibit D39(F), Witness BUY's written statement dated 24 October 2006 (under seal).

<sup>654</sup> Witness ALP, T. 18 September 2006, p. 46.

<sup>655</sup> Witness ALP, T. 18 September 2006, p. 46; Witness BUY, T. 19 February 2007, p. 20.

<sup>656</sup> Witness BUY, T. 19 February 2007, p. 20.

<sup>657</sup> Witness BUY, T. 19 February 2007, pp. 20, 24, 47, 56; Witness ALP, T. 18 September 2006, p. 46 and T. 20 September 2006, p. 9.

<sup>658</sup> Witness ALP, T. 18 September 2006, p. 48; Witness BUY, T. 19 February 2007, p. 21.

<sup>659</sup> Witness ALP, T. 18 September 2006, p. 47.

<sup>660</sup> Witness BUY recalled Bikindi saying, "What are you waiting for to kill these *Inyenzis*? Normally, they should already have been killed." (T. 19 February, 2007, p. 21).

<sup>661</sup> Witness ALP, T. 18 September 2006, pp. 48-49; Witness BUY, T. 19 February 2007, p. 21.

<sup>662</sup> Witness ALP, T. 18 September 2006, p. 49; Witness BUY, T. 19 February 2007, pp. 21-22.

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Tribunal.<sup>663</sup> It is similarly not convinced by the argument that as Major Kabera was stationed in Byumba it is unlikely that he was at the prison.<sup>664</sup>

300. One Defence witness testified regarding the killing of Tutsi prisoners at Gisenyi Prison. Witness ASQ1, a detainee at the prison in 1994,<sup>665</sup> stated that 30 Tutsi prisoners were killed at the prison but that the incident occurred on 29 April 1994.<sup>666</sup> He described an incident where 37 detainees, 30 of whom were Tutsi, had been transferred from Kigali Prison to Gisenyi Prison and shortly thereafter the prisoners heard a rumour that the Tutsi outside the prison had started killing people. In response, the Gisenyi prisoners then proceeded to kill the 30 Tutsi transfer prisoners with tree trunks the day after they arrived.<sup>667</sup> The witness stated that the incident in April was the only time Tutsi were killed in the prison, and that "[n]o authority – no dignitary came to that prison during [1994]."<sup>668</sup> He testified that he was saddened when he heard that people have been saying that Bikindi came to the prison. He added that in 2000, inmates were unfairly denouncing people and implied they were doing so to have their sentences reduced.<sup>669</sup>

301. Defence witness Charles Zilimwabagabo, then *préfet* of Gisenyi, testified that he never heard about the killing of Tutsi at Gisenyi Prison, he never saw Bikindi while he was *préfet*, he never went to the prison and he never saw Kabera in Gisenyi.<sup>670</sup> Bikindi also denied ever going to Gisenyi Prison.<sup>671</sup>

302. The Chamber concludes that the fact that the Prosecution witnesses corroborate each other in some respects is not enough to overcome the reservations that it has regarding their credibility. Moreover, the number of inconsistencies and contradictions both in and between their evidence leaves the Chamber with some doubt as to the veracity of their accounts of the incident, notwithstanding the Defence evidence which the Chamber finds unconvincing and inconclusive.

303. Accordingly, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraphs 25 and 47(c) of the Indictment.

## 9.2. Killing of Gasasira

304. Although not clearly pleaded in the Indictment, the Prosecution alleges that Bikindi is responsible for the murder of a Tutsi named Stanislas Gasasira in June 1994. The Chamber found above that the Prosecution's failure to specify the killing of Gasasira in the Indictment

<sup>663</sup> Defence Closing Brief, para. 474.

<sup>664</sup> Witness ALP, T. 20 September 2006, pp. 11-12; Defence Closing Brief, para. 474. The Chamber has examined the document referred to by the Defence and notes that it concerns the situation of officers on 1 March 1994 and, therefore, is of no assistance in determining where Major Kabera was in June of that year as the situation in Rwanda had changed so much in between those dates: Exhibit D122, *Situation Officiers Armée Rwandaise, Minadef*, dated 5 March 1994.

<sup>665</sup> Witness ASQ1, T. 5 October 2007, pp. 34-35, 41-42; Exhibit D68, Witness ASQ1's Personal Information Sheet (under seal). The witness testified returning to prison in 1996 charged with genocide and being acquitted by the Gacaca courts.

<sup>666</sup> Witness ASQ1, T. 5 October 2007, pp. 35-36.

<sup>667</sup> Witness ASQ1, T. 5 October 2007, pp. 35-36.

<sup>668</sup> Witness ASQ1, T. 5 October 2007, p. 39.

<sup>669</sup> Witness ASQ1, T. 5 October 2007, p. 40.

<sup>670</sup> Charles Zilimwabagabo, T. 22 October 2007, pp. 6, 8, 25-26, 27-28 and 35. Though the Chamber notes that the witness also testified that as *préfet* of Gisenyi he was supposed to be informed of what was happening in all the *communes* of his *préfecture* but it was not the case (T. 22 October 2007, p. 20).

<sup>671</sup> Bikindi, T. 1 November 2007, p. 7.

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did not actually prejudice Bikindi's ability to defend himself against the charge<sup>672</sup> and will now proceed to make its factual findings on the allegation.

305. Witness AHP, a former *Interahamwe* who took part in killings in 1994 and was in prison at the time of his testimony,<sup>673</sup> is the sole Prosecution witness who testified about the alleged killing of Stanislas Gasasira. He testified that in June 1994, Gasasira was arrested at a roadblock, put in a Hiace minibus that Bikindi was driving and taken to Commune rouge. There, Bikindi ordered that Gasasira be killed and subsequently shot at him. According to the witness, Gasasira did not die and was finished off by Asiel Rusagara in Bikindi's presence.<sup>674</sup> Witness AHP explained that he had followed the minibus from the roadblock to Commune rouge out of curiosity and got to learn the name of the victim by seeing a badge that was found when the latter was searched before being killed.<sup>675</sup> He testified that Gasasira was a worker with the National Printing Press of Rwanda.<sup>676</sup>

306. The Defence correctly pointed out some major inconsistencies between Witness AHP's prior statements to Tribunal investigators and his actual testimony. First, the Defence underlined that the witness had previously declared that he did not know what Bikindi did in Gisenyi in June and July 1994.<sup>677</sup> Secondly, while the witness testified at trial that Gasasira was asked to stop at the roadblock, taken out of his vehicle and put in a minibus that Bikindi was driving,<sup>678</sup> he had previously told Tribunal investigators that the minibus in which Gasasira was went through the roadblock without stopping, making no mention of the conditions of Gasasira's arrest at the roadblock.<sup>679</sup> Thirdly, the Defence pointed out that, in a prior statement, Witness AHP suggested that Bikindi did not shoot Gasasira but instead left as soon as Gasasira was taken out of the minibus and Bikindi heard the gunshots of Asiel Rusagara shooting Gasasira while he was leaving with Lieutenant Eustache. In this statement, the witness specified that Gasasira died immediately.<sup>680</sup>

307. Witness AHP did not explain these inconsistencies other than to say that all the information he gave was apparently not entirely recorded in his statements.<sup>681</sup> Nonetheless, he acknowledged signing the statements.<sup>682</sup> Given the nature of the inconsistencies, the

<sup>672</sup> See *supra* para. 21.

<sup>673</sup> Witness AHP, T. 19 October 2006, pp. 16 and 25; Exhibit P70, Witness AHP's Personal Information Sheet (under seal).

<sup>674</sup> Witness AHP, T. 19 October 2006, p. 21; T. 20 October 2006, p. 4.

<sup>675</sup> Witness AHP, T. 19 October 2006, pp. 21, 40; T. 20 October 2006, pp. 3-4.

<sup>676</sup> Witness AHP, T. 19 October 2006, p. 21.

<sup>677</sup> Witness AHP, T. 19 October 2006, p. 34, with reference to Exhibit D29/1, Witness AHP's written statement dated 7 February and 3 March 2001 (under seal). See also Defence Closing Brief, para. 657.

<sup>678</sup> Witness AHP, T. 19 October 2006, p. 40.

<sup>679</sup> See Witness AHP, T. 20 October 2006, pp. 2-3, with reference to Exhibit D29/2, Witness AHP's written statement dated 18 and 19 June 2002 (under seal), which reads in relevant part: "Just as I was seated at that roadblock together with other people [...] we saw a red Toyota hiace minibus which passed through the roadblock without stopping at that roadblock. The Toyota Hi-ace took the road to commune rouge and myself together with other people who were at the roadblock we ran following that vehicle and we saw the vehicle stopping at commune rouge. As we arrived at where the vehicle had stopped I saw Simon Bikindi, Emmanuel Nshogozabahizi and Lieutenant Eustache coming out of that toyota hiace. I also saw one Tutsi man who was lying inside the vehicle and the three told him to come out of the vehicle."

<sup>680</sup> See Witness AHP, T. 20 October 2006, p. 4, with reference to Exhibit D29/2, Witness AHP's written statement dated 18 and 19 June 2002 (under seal), which reads in relevant part: "As soon as Gasasira was taken out of the Toyota hiace Bikindi and Lieutenant Eustache left and went away and as they were leaving that place Asiel Rusagara shot Gasasira dead using a gun and he died immediately. Bikindi and Lieutenant Eustache heard the gunshots because they were just leaving when Gasasira was shot dead." See also Defence Closing Brief, para. 663.

<sup>681</sup> Witness AHP, T. 19 October 2006, p. 34. See also *ibid.*, p. 38 regarding a different allegation.

<sup>682</sup> Witness AHP, T. 19 October 2006, p. 29.

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Chamber finds this explanation unconvincing. In addition, the Chamber notes that, in response to a question from the Defence regarding the discrepancy between his testimony and his 2002 statement about the circumstances of Gasasira's arrest at the roadblock, Witness AHP recounted a third and new version of the incident.<sup>683</sup>

308. In the Chamber's view, these inconsistencies call into question the reliability and credibility of Witness AHP's testimony. The Chamber is particularly concerned with the unexplained discrepancy regarding Bikindi's alleged criminal conduct at Commune rouge. In this respect, the Chamber recalls that the allegation of which Bikindi was given notice by the Prosecution was that Gasasira was shot dead after Bikindi drove away.<sup>684</sup> The testimony of Witness AHP does not support this allegation.

309. The evidence given by the three Defence witnesses who testified on the matter does not shed any light on the incident. Witness RH stated that he heard of a Stanislas Gasasira who died before the genocide,<sup>685</sup> whereas Witness WQK, who was eight years old during the events, gave hearsay evidence that Kivenge killed Stanislas Gasasira at Commune rouge in June 1994 and brought the victim's identity card home.<sup>686</sup> Dominique Munyangoga's testimony was inconclusive as to whether a Stanislas Gasasira ever worked for the National Printing Press of Rwanda.<sup>687</sup>

310. In light of the foregoing, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Bikindi participated in the killing of Stanislas Gasasira.

### 9.3. Killing of Karasira

311. Although not clearly pleaded in the Indictment, the Prosecution alleges that Bikindi is responsible for the murder of a Tutsi named Karasira and seven members of his family. The Chamber found above that the Prosecution's failure to specify the killing of Karasira and his family in the Indictment did not actually prejudice Bikindi's ability to defend himself against the charge<sup>688</sup> and will now turn to make its factual findings on the allegation.

312. Two Prosecution witnesses testified about the alleged incident: Witness BKW, a former motorcycle taxi-driver and alleged accomplice to Bikindi sentenced to death for his participation in the genocide,<sup>689</sup> and Witness AHP, a former *Interahamwe*, who took part in killings.<sup>690</sup> At the time of their testimony, both witnesses were detained at the same prison in

<sup>683</sup> In his Statement dated 18 and 19 June 2002, Witness AHP declared that the Hiace minibus passed through the roadblock without stopping to go to Commune rouge (Exhibit D29/2). In court, the witness first explained that, at the roadblock, Gasasira was asked to stop and then taken out of his vehicle and put into the Hiace minibus, which was driven by Bikindi (T. 19 October 2006, p. 40 and T. 20 October 2006, p. 2). When confronted with this inconsistency, Witness AHP explained that Gasasira's vehicle went through the roadblock without stopping but that it was stopped at one point, about 50 meters from the roadblock (T. 20 October 2006, pp. 2-3). Upon the insistence of Defence Counsel about the fact that he had previously declared that it was the minibus which went through the roadblock without stopping, Witness AHP explained that after Karasira was put in the Hiace minibus, the minibus could not stop because the "attackers were afraid that others may intervene to free that person who had been arrested" (T. 20 October 2006, p. 4).

<sup>684</sup> See *supra* para. 19.

<sup>685</sup> Witness RH, T. 25 October 2007, p. 58.

<sup>686</sup> Witness WQK, T. 26 September 2007, pp. 19-20, 28-29, 33.

<sup>687</sup> Dominique Munyangoga, T. 7 November 2007, pp. 5 ("[Stanislas Gasasira] was not an employee of the Rwandan printing press at the time when I was head of the printing press [from March 1986 to October 1991]. But subsequently, I don't know."), 8-10, 14.

<sup>688</sup> See *supra* para. 21.

<sup>689</sup> See *supra* para. 34.

<sup>690</sup> See *supra* para. 305.



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Gisenyi.<sup>691</sup> The Chamber recalls that it has treated Witness BKW's evidence with great caution and has already expressed doubts as to the credibility of Witness AHP's testimony.<sup>692</sup>

313. Witness BKW testified that in mid-June 1994 between 11 a.m. and 12 p.m., while repairing his motorcycle close to the roadside, he saw Bikindi with Hyacinthe Rafiki, Faziri Hakizimana, Jean-Bosco Sibomana (*Conseiller* of Byahi) and Hassan Ngeze going to Karasira's house after Christiane Mukarugaba pointed it out to them. The witness explained that after they knocked on the door he suddenly saw some women. Then, Bikindi and Sibomana called the witness to ask him to bring a vehicle. Witness BKW said that, with his gun, he forced someone to bring a green Daihatsu belonging to the *maïserie* of Mukamira. Bikindi was wearing a military uniform and a khaki beret and was carrying a Kalashnikov and a pistol which he used on that occasion. Then they took Karasira and eight other persons, most of whom were women, in the Daihatsu to Commune rouge where they were killed with bullets by Bikindi, Sibomana, an *Interahamwe* named Signola and himself. According to Witness BKW, Bikindi and Sibomana were in charge of the killing group.<sup>693</sup>

314. Witness AHP partly corroborated Witness BKW's evidence. He testified that in June 1994, between 11 a.m. and 12 p.m., he was at a location known as Amadepo and saw Bikindi, Hassan Sibomana, *Signora* and BKW pulling eight people from a residence, taking them in a Daihatsu on which was written "*maïserie*", and driving them to Commune rouge. Witness AHP said he followed them out of curiosity and witnessed the eight people being killed. According to him, Bikindi fired at someone who fell down, saying that he no longer wanted to hear any mention of Tutsi. The witness explained that he heard that the victims were members of Karasira's family.<sup>694</sup> Differing from Witness BKW, Witness AHP stated that Bikindi was on the road waiting for the group which had entered the residence to return,<sup>695</sup> and that BKW went along with the Daihatsu only after the vehicle drove onto the main road and after dropping off his motorcycle and parking it at a neighbouring house.<sup>696</sup>

315. The Defence raised several challenges to Witness BKW's credibility with respect to this specific allegation. First, the Defence pointed out a discrepancy between Witness BKW's testimony and his statement to Tribunal investigators of 15 February 2005 regarding whether Karasira had a kiosk. The witness explained that Karasira did not have a kiosk and that it must have been a mistranslation, which the Chamber finds plausible.<sup>697</sup>

316. The Defence also underlined the witness's confusion as to the number of people taken with Karasira to Commune rouge and their identity.<sup>698</sup> During his testimony, the witness referred to both the killing of *eight* people in total and to the killing of Karasira and *eight* others.<sup>699</sup> Regarding their identity, he stated that Karasira was taken with eight other people, most of whom were women, but also that he was taken with a small boy and a small girl.<sup>700</sup>

<sup>691</sup> Witness BKW, T. 19 October 2006, p. 7; Exhibit D31, List of names presented to Witness BKW (under seal).

<sup>692</sup> See *supra* para. 34.

<sup>693</sup> Witness BKW, T. 17 October 2006, pp. 31, 34-35; T. 18 October 2006, pp. 26-27. See also Witness BKW, T. 17 October 2006, pp. 37-38 (French) and T. 18 October 2006, p. 31 (French).

<sup>694</sup> Witness AHP, T. 19 October 2006, pp. 19-20, 34-36.

<sup>695</sup> Witness AHP, T. 19 October 2006, pp. 35-36.

<sup>696</sup> Witness AHP, T. 19 October 2006, pp. 38-39.

<sup>697</sup> Witness BKW, T. 18 October 2006, pp. 27-28, with reference to Exhibit D32/2, Witness BKW's written statement dated 15 February 2005 (under seal).

<sup>698</sup> Witness BKW, T. 18 October 2006, pp. 27-32.

<sup>699</sup> Witness BKW, T. 16 October 2006, p. 40: "I participated in killing eight people in Kabuyi"; T. 17 October 2006, p. 34: "Karasira was killed with eight other persons, most of whom were women".

<sup>700</sup> Witness BKW, T. 17 October 2006, p. 37 (French): "*nous avons embarqué ces Tutsis, Karasira, un enfant et une petite fille... un petit garçon et une petite fille.*"

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During cross-examination, the witness explained that eight people were killed, including Karasira, his son Nazinda who was about 12 or 13 years old, and his daughter, and that the other five were elderly women.<sup>701</sup> He added that he supposed Karasira's wife was amongst the women who were killed because no one remained in the house.<sup>702</sup> The Chamber notes the witness's inconsistency as to the presence of a "small" girl. It also observes that, in his 2005 statement, the witness declared that the people taken to Commune rouge were "Karasira, his child Nazinda, a boy about 11 or 12, the wife of Karasira, and five old women. One among them was Karasira's sister."<sup>703</sup> No mention was made of Karasira's daughter.

317. Other differences between Witness BKW's testimony and some of his prior statements to Tribunal investigators or differences within his testimony, warrant close consideration. According to his 2005 statement and his testimony before the Tribunal in the *Bizimungu et al.* case on 2 March 2005, Witness BKW followed Bikindi and others to Commune rouge on his motorcycle,<sup>704</sup> whereas before this Chamber, he unequivocally testified that he left for Commune rouge in the same vehicle as Bikindi.<sup>705</sup> When this contradiction was put to him, the witness tried to explain that he was riding his motorcycle when Bikindi and the others were going to the CDR offices, before the victims were pulled out of the house.<sup>706</sup> This feeble explanation and the witness's insistence that he is telling the truth in this trial are unsatisfying in the Chamber's opinion.<sup>707</sup> Of concern to the Chamber is also the fact that although Witness BKW had testified that Bikindi, Sibomana and Signola left Commune rouge each going in his own direction,<sup>708</sup> during cross-examination, he said that they came back to Karasira's house quickly, and that, from there, he left on his motorcycle.<sup>709</sup>

318. With respect to Witness AHP, the Chamber recalls that the witness had previously declared not knowing what Bikindi did in Gisenyi in June and July 1994.<sup>710</sup> In connection with the present event, the Chamber notes the witness's confusion as to what he actually witnessed at Karasira's house and as to Bikindi's conduct there.<sup>711</sup> The fact that he had previously suggested in his statement of 19 and 20 June 2002 that he was not present in Commune rouge when the alleged victims were killed casts additional doubt on the credibility of his testimony.<sup>712</sup> The witness's explanation that everything he said to Tribunal investigators was not recorded *in extenso* does not convince the Chamber.<sup>713</sup>

<sup>701</sup> Witness BKW, T. 18 October 2006, pp. 28, 30. The witness also referred to a young girl who was about 18 years of age, whom one might think was Karasira's daughter (T. 18 October 2006, p. 30).

<sup>702</sup> Witness BKW, T. 18 October 2006, p. 32.

<sup>703</sup> Exhibit D32/2, Witness BKW's written statement dated 15 February 2005 (under seal), p. 3.

<sup>704</sup> Exhibit D32/2, Witness BKW's written statement dated 15 February 2005 (under seal), p. 3; *The Prosecutor v. Bizimungu et al.*, Case No. ICTR 99-50-T, T. 2 March 2005, p. 60, cited by the Defence at T. 18 October 2006, pp. 34-35.

<sup>705</sup> Witness BKW, T. 17 October 2006, p. 35; T. 18 October 2006, pp. 33-34.

<sup>706</sup> Witness BKW, T. 18 October 2006, p. 33.

<sup>707</sup> Witness BKW, T. 18 October 2006, p. 35.

<sup>708</sup> Witness BKW, T. 17 October 2006, p. 35.

<sup>709</sup> Witness BKW, T. 18 October 2006, p. 33.

<sup>710</sup> See *supra*, para. 306.

<sup>711</sup> Witness AHP, T. 19 October 2006, pp. 19, 37-38. See also Exhibit D29/2, Witness AHP's written statement dated 19 and 20 June 2002 (under seal).

<sup>712</sup> Exhibit D29/2, Witness AHP's written statement dated 19 and 20 June 2002 (under seal): "I concluded that the Tutsis who were crying inside the daihatsu had been taken to commune rouge and that they were going there to be killed because once any Tutsi was taken by *conseiller* Sibomana everybody knew that that person or people was/were going there to be killed and could never be seen again."

<sup>713</sup> Witness AHP, T. 19 October 2006, p. 38.

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319. Though Witnesses BKW and AHP corroborated each other on a number of issues, there are some differences in their accounts as to whether Bikindi visited the CDR offices upon arrival;<sup>714</sup> Bikindi's role when the victims were taken away;<sup>715</sup> who was present when the victims were taken away;<sup>716</sup> Witness BKW's role and whether he was having his motorcycle repaired;<sup>717</sup> and whether Bikindi carried a Kalashnikov.<sup>718</sup> Viewed in the context of the inconsistencies in each witness's account of the incident discussed above, these differences raise serious doubts as to the veracity of the evidence given by Witnesses BKW and AHP.

320. The Chamber considers that the evidence of Witnesses BKW and AHP is not sufficiently reliable or credible to ground a finding of fact beyond reasonable doubt. In the absence of any further reliable corroboration, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Bikindi is responsible for the murder of a Tutsi named Karasira and seven other Tutsi.

#### 9.4. Incident at Rugerero Roadblock and Killings in Nyamyumba

321. The Prosecution alleges that sometime in mid-late June 1994, Bikindi announced to *Interahamwe* at a roadblock in Gisenyi-town that they should search for Tutsi and kill them and that Hutu helping Tutsi to flee to Zaire should also be killed. It is alleged that after uttering these words, Bikindi led a caravan of armed *Interahamwe*, including Colonel Buregeya and Noël, to Nyamyumba *commune* and killed Tutsi residents and pillaged their belongings.<sup>719</sup>

322. Under another part of the Indictment, the Prosecution alleges that in June 1994, in Rugerero *secteur*, Rubavu *commune*, Bikindi ordered *Interahamwe* to kill all Tutsi in Nyamyumba, and specifically ordered the killing of Kabayiza, a Tutsi man staying in Kivumu *secteur*, as well as Father Thaddée Gatore and two other priests whose names are

<sup>714</sup> Witness BKW, T. 17 October 2006, p. 31 ("I saw [Bikindi] at the CDR offices. [...] and all these people were in the CDR offices.") and T. 18 October 2006, p. 33; Witness AHP, T. 19 October 2006, p. 19 ("I saw a vehicle arrive in which Bikindi was seated. The car came to a halt and there was another vehicle on which was written 'maiserie' and he was in company of the *conseiller* of Byahi *secteur* as well as one Signora.") and p. 35 ("Bikindi, Simon, was in a taxi which was parked along the road close to that location where the Daihatsu vehicle had passed by. So Bikindi left the taxi and entered the Daihatsu vehicle.").

<sup>715</sup> Witness BKW, T. 17 October 2006, p. 34 ("Then they went to [Karasira's] house and Bikindi was in *Conseiller* Fazil's (as interpreted) company [...]. The house was closed. They knocked at the door.") and T. 18 October 2006, pp. 26-27 ("Conseiller Sibomana and Bikindi were the first to call me so that I could go and fetch a vehicle of the Daihatsu type. They asked me to do that because they had just discovered a large number of people in that house"); Witness AHP, T. 19 October 2006, p. 35 ("Bikindi, Simon, was in a taxi which was parked along the road close to that location where the Daihatsu vehicle had passed by. So Bikindi left the taxi and entered the Daihatsu vehicle. [...] Bikindi was close to the road waiting for them to come back. I did not say that Bikindi was part of the group that entered the residence. He was waiting on the road, and then took off with those people").

<sup>716</sup> While Witness BKW places "Signola" only at Commune rouge, Witness AHP testified that he saw one "Sinyola" or "Signora" at Karasira's house. See Witness BKW, T. 17 October 2006, pp. 31, 34, 35; Witness AHP, T. 19 October 2006, pp. 19, 35, 38, 39.

<sup>717</sup> Witness BKW, T. 17 October 2006, p. 34 ("I was repairing my motorcycle close to the roadside") and T. 18 October 2006, p. 33 ("I went to have my motorcycle repaired close by Mr. Karasira's house [...] I was repairing my motorcycle at that place"); Witness AHP, T. 19 October 2006, p. 38 ("I saw [BKW] on the motorcycle behind [the Daihatsu], carrying a gun") and p. 39 ("Then the vehicle stopped and [BKW] dropped off his motorcycle, parked it in a neighbouring house, and then went along with the vehicle").

<sup>718</sup> Witness BKW, T. 17 October 2006, p. 35 ("[Bikindi] was carrying a Kalashnikov and a pistol, and on that particular occasion, he used his pistol"); Witness AHP, T. 19 October 2006, p. 20 ("Bikindi was present, he had a pistol and he was wearing a military uniform").

<sup>719</sup> Indictment, paras. 22, 30(d) and 47(a).

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unknown. Bikindi allegedly told the group of *Interahamwe* that he himself was going with them to kill Tutsi in Nyamyumba. The Prosecution alleges that Bikindi, Colonel Buregeya, Noël and a group of *Interahamwe* left for Nyamyumba. Upon their return, the Prosecution contends that Noël reported to the other *Interahamwe* who were left behind that they had exterminated all Tutsi in Nyamyumba.<sup>720</sup>

323. From its arguments at trial and the evidence it presented, the Chamber understands that the Prosecution's case is that these two allegations constitute the same incident. The Chamber recalls that the Prosecution is expected to lay down the allegations against an accused in the indictment in the most clear and comprehensive way possible so that the accused may understand the charges against him. The Chamber considers that the Prosecution failed to do so in the present instance. However, the Prosecution's confused way of pleading these allegations did not undermine the fairness of the trial in the Chamber's view. A careful review of the record reveals that the Defence – which did not raise the issue – understood the nature of the charge and was not impaired in its ability to prepare its case.<sup>721</sup> The Chamber will therefore proceed to examine the allegations, in support of which the Prosecution relies on Prosecution Witnesses AJZ, AJY and BKW.

324. Witness AJZ testified that at the end of June 1994, *Interahamwe* from Nyamyumba commune came to the roadblock he was manning in Rugerero to seek assistance from Rugerero *Interahamwe* to fight Tutsi resistance in Nyamyumba.<sup>722</sup> He explained that a meeting was held at the roadblock during which Bikindi encouraged the *Interahamwe* to provide the requested assistance by referring to the 1959 events and explaining that there was a need to exterminate Tutsi as they were attacking Rwanda.<sup>723</sup> Subsequently, around 5 p.m., Bikindi left for Nyamyumba with Noël, Pascal and Col. Buregeya in a red vehicle, accompanied by approximately 20 armed *Interahamwe* and a yellow Nissan bearing the inscription 'MRND'.<sup>724</sup> Witness AJZ further testified that he remained at the roadblock and did not go to Nyamyumba. He was still at the roadblock when Bikindi and the rest of the group returned at approximately 8 p.m. on the same day, in the same vehicles. The vehicles were loaded with goods that were looted from Tutsi. The witness added that some cows also looted from Nyamyumba were later brought to the roadblock.<sup>725</sup> According to him, after he left, a quarrel broke out during the sharing of the loot as a result of which several *Interahamwe* were killed.<sup>726</sup> The witness stated that Bikindi said that it was shameful, that *Interahamwe* should control themselves and that it was not good to appear undignified in the eyes of the people.<sup>727</sup> The witness specified that although he did not go to Nyamyumba, he

<sup>720</sup> Indictment, para. 47(h).

<sup>721</sup> The Defence cross-examined all Prosecution witnesses testifying on this allegation at length and called witnesses to testify on the incident. Cross-examinations and examinations-in-chief demonstrate the good level of preparation by the Defence, which understood paragraphs 22, 30(d), 47(a) and 47(h) of the Indictment as pleading one and the same incident: see *Defence Motion for Judgment of Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence*, 15 March 2007, paras. 29, 40; *Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation*, 15 March 2007, paras. 171-174; Defence Closing Brief, p. 155 and paras. 562-624.

<sup>722</sup> Witness AJZ, T. 26 September 2006, p. 7.

<sup>723</sup> Witness AJZ, T. 26 September 2006, p. 7. See also *ibid.*, pp. 14, 17-18.

<sup>724</sup> Witness AJZ, T. 26 September 2006, pp. 7, 8, 38; T. 27 September 2006, p. 3.

<sup>725</sup> Witness AJZ, T. 26 September 2006, pp. 8, 38; T. 27 September 2006, pp. 2-3.

<sup>726</sup> Witness AJZ, T. 26 September 2006, pp. 8-9; T. 27 September 2006, p. 4.

<sup>727</sup> Witness AJZ, T. 26 September 2006, p. 9. See also *ibid.*, p. 10: "From what I got to learn, it was Pascal, Noël and Bikindi who were to have the lion's share of the loot".

heard shots being fired from there, and that the following day *Interahamwe* at the roadblock said that they had killed Tutsi who had initially resisted.<sup>728</sup>

325. Witness AJZ's testimony was partially corroborated by Witness AJY. Witness AJY testified that in late June 1994, the day after he first saw Bikindi, someone from Nyamyumba came to a roadblock in Rugerero to explain that Tutsi were hiding at Kivumu parish in Nyamyumba.<sup>729</sup> Bikindi allegedly asked, "Who are those Tutsis who are still alive?" and told his *Interahamwe* at the roadblock that there were people hiding in Nyamyumba and that they should rise and go there.<sup>730</sup> The witness explained that following a decision by Bikindi and Buregeya, Bikindi and *Interahamwe*, including Noël, Nokori, Paulin, Serumveri, Pascal and Chari, then left for Nyamyumba in two vehicles, a red Peugeot 305 and a yellow Nissan truck.<sup>731</sup> He testified that they said they were going there to kill Tutsi. Witness AJY remained at the roadblock. He said they carried out their mission in Nyamyumba, notably by killing Father Gatore and Kabayiza. At night, when they returned to the roadblock, Bikindi's vehicle was loaded with looted material. Witness AJY also saw cows arriving the next morning. He further testified that two *Interahamwe*, Paulin and Nokori, were killed in a dispute over the booty and that Bikindi made a statement asking why *Interahamwe* were killing each other instead of killing Tutsi.<sup>732</sup> Witness AJY further testified that, when they came back from Nyamyumba, Bikindi and the *Interahamwe* informed people at the roadblock that they had killed Father Gatore from Nyundo parish.<sup>733</sup> Bikindi, the witness said, had the identity cards of Gatore and Kabayiza<sup>734</sup> and said that "[t]his should be an example, that any Hutu who will be taken unawares while hiding a Tutsi was going to be faced with the same fate as were Gatore and Kabayiza."<sup>735</sup>

326. Witness BKW also partly corroborated Witness AJZ's evidence. He testified that towards the end of June 1994, around the 26, he heard Bikindi saying at the bar of the hotel *La colombe* that he was going to Nyamyumba to kill Tutsi priests in Kivumu and that, subsequently, Bikindi left for Nyamyumba accompanied by Paulin, Nokori, Serumveri and Kizito.<sup>736</sup> Witness BKW explained that he did not go to Nyamyumba but that he heard Bikindi saying to Hassan Gitoki how they had gone through the Rugerero roadblock and killed people in Nyamyumba.<sup>737</sup> The witness stated that Bikindi also explained that a quarrel about the property they had looted broke out at the roadblock, following which Paulin and Nokori were killed with bullets. Bikindi allegedly brought calm to the situation.<sup>738</sup> Witness BKW further testified that he heard Bikindi saying to Hassan Gitoki that priests had been killed and later learnt that Fathers Gatore and Vianney had been killed and that the property of one 'Kamwabahizi' had been looted.<sup>739</sup>

<sup>728</sup> Witness AJZ, T. 26 September 2006, p. 10.

<sup>729</sup> Witness AJY, T. 27 September 2006, pp. 32, 36.

<sup>730</sup> Witness AJY, T. 27 September 2006, p. 32.

<sup>731</sup> Witness AJY, T. 27 September 2006, pp. 32-34, 37; T. 2 October 2006, pp. 5, 7.

<sup>732</sup> Witness AJY, T. 27 September 2006, pp. 34-36; T. 2 October 2006, pp. 9, 18.

<sup>733</sup> Witness AJY, T. 27 September 2006, pp. 34, 36; T. 2 October 2006, p. 9.

<sup>734</sup> Witness AJY, T. 27 September 2006, p. 36; T. 28 September 2006, p. 6; T. 2 October 2006, p. 8.

<sup>735</sup> Witness AJY, T. 27 September 2006, p. 36.

<sup>736</sup> Witness BKW, T. 17 October 2006, pp. 31-32; T. 18 October 2006, pp. 15, 20-21, 24.

<sup>737</sup> Witness BKW, T. 17 October 2006, pp. 32-33; T. 18 October 2006, pp. 16-17, 19, 24. See also T. 17 October 2006, p. 36 (French).

<sup>738</sup> Witness BKW, T. 17 October 2006, p. 33; T. 18 October 2006, p. 25.

<sup>739</sup> Witness BKW, T. 17 October 2006, pp. 32-33; T. 18 September 2006, pp. 17, 19. The Chamber notes that the name of the individual whose property was looted was spelt in four different ways in both French and English versions of the transcripts: "Kanyabahizi" and 'Kanywabahizi' in the French transcripts, "Kamwabahizi" and "Colonel Bahizi" in the English transcripts.

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327. With respect to the death of Father Gatore, Prosecution Witness AKK testified that the priest was killed in June 1994 by members of the population the day after Bikindi publicly exhorted people to kill Tutsi on the Kayove-Kivumu road.<sup>740</sup> He testified that he was not an eye-witness to the killing, but learnt about it the same day from the killers who were boasting about it.<sup>741</sup>

328. As discussed in other sections of this Judgement, the Chamber has reservations about the credibility of Witnesses AJZ, AJY and BKW as parts of their evidence have not been accepted as sufficiently reliable or credible to support some of the Prosecution's allegations.<sup>742</sup>

329. With respect to Witness AJZ's testimony on this specific allegation, the Chamber recalls that Witness AJZ was inconsistent concerning when he started to man the roadblock and contradicted himself as to when exactly Bikindi made a remark about 1959.<sup>743</sup> The Chamber further notes that the witness was confused during his testimony regarding the number of *Interahamwe* who allegedly accompanied Bikindi to Nyamyumba and that the information he gave in court differs from that which he gave to Tribunal investigators in 2001.<sup>744</sup> In addition, the Chamber finds it unrealistic that from Rugerero, Witness AJZ heard shots being fired in Nyamyumba,<sup>745</sup> given the distance between the two locations.<sup>746</sup> The Chamber further notes that whereas he suggested in a prior statement that he was present when the quarrel over the booty took place, the witness testified at trial that he had left the location at the time.<sup>747</sup> Of interest to the Chamber is the fact that Kizito, one of the *Interahamwe* the witness said was killed at the roadblock, was alive when the witness appeared before the Tribunal.

330. In addition to the inconsistencies identified in Witness AJY's evidence discussed in the section on Participation in Political Gatherings,<sup>748</sup> the Chamber notes that his testimony contradicted his prior statement to Tribunal investigators as to when Bikindi came back from Nyamyumba.<sup>749</sup> The Chamber further observes that the witness had never mentioned the identity cards of Gatore and Kabayiza in his prior statements to Tribunal investigators.<sup>750</sup>

<sup>740</sup> Witness AKK, T. 22 September 2006, pp. 5-6, 8-9. See also T. 22 September 2006, p. 6 (French).

<sup>741</sup> Witness AKK, T. 22 September 2006, pp. 15, 24.

<sup>742</sup> See *supra* and *infra* paras. 52, 86, 92, 100, 171, 225, 312, 315-317, 373 (Witness BKW); paras. 127-132, 328-329, 331, 335, 342-350 (Witness AJZ); paras. 160-161, 179, 181, 328, 330-331, 335, 342-350 (Witness AJY).

<sup>743</sup> See *supra* paras. 128-129.

<sup>744</sup> See Witness AJZ, T. 26 September 2006, p. 8 where the witness referred to approximately 20 *Interahamwe* (including *Interahamwe* from Nyamyumba) going to Nyamyumba with Bikindi, Noël and Pascal, and pp. 38-39 where the witness mentioned ten *Interahamwe* in the Nissan and Bikindi, Noël and Col. Buregeya in the red vehicle; Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 3, in which the witness referred to six *Interahamwe* accompanying Bikindi, Noël and Col. Buregeya and made no reference to *Interahamwe* from Nyamyumba.

<sup>745</sup> Witness AJZ, T. 26 September 2006, p. 10.

<sup>746</sup> See Witness AJZ, T. 26 September 2006, p. 39; Exhibit P37, Map of Gisenyi, p. 7.

<sup>747</sup> Witness AJZ, T. 27 September 2006, p. 4, with reference to Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2005 (under seal), p. 4.

<sup>748</sup> See *supra* paras. 160-161.

<sup>749</sup> Exhibit D16/1, Witness AJY's written statement dated 17 April and 4 May 2001 (under seal), p. 4, in which the witness declared that Bikindi and the group came back the following day. The Chamber notes that this inconsistency has not been put to the witness in court.

<sup>750</sup> Exhibit D16/1, Witness AJY's written statement dated 17 April and 4 May 2001 (under seal); Exhibit D16/2, Witness AJY's written statement dated 17 July 2001 (under seal). The Chamber notes that this inconsistency has not been put to the witness in court. The Chamber also notes that the Defence challenges the credibility of Witnesses AJY and AJZ on the basis of their statement that Bikindi was coming from Kigali (Witness AJZ,

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331. Despite the corroboration on certain aspects, there remain inconsistencies between the Prosecution witnesses' evidence. The most significant inconsistency relates to the time of day the incident occurred. While Witness AJZ testified that Bikindi left for Nyamyumba around 5 p.m., Witness AJY thought that it was around 9 or 10 a.m. and Witness BKW around 11 a.m.<sup>751</sup> Further, Witness AJZ testified that he believed that Paulin, Kizito and Serumveri were the *Interahamwe* killed at the roadblock and that Pascal was the one who killed them. A few minutes later, however, the witness denied ever citing three names and was adamant he had only mentioned two names.<sup>752</sup> Witnesses AJY and BKW named Paulin and Nokori as the victims of the quarrel and Witness AJY testified that Nokori killed Paulin and that Nokori was also shot.<sup>753</sup> Regarding the cars, Witness BKW explained clearly that Bikindi left for Nyamyumba in a Volkswagen, while Witness AJY consistently referred to a Peugeot.<sup>754</sup>

332. Bikindi testified that he never set foot in Nyamyumba *commune* in 1994, although he acknowledged passing through the Rugerero roadblock that year.<sup>755</sup> He also claimed that he never took part in a campaign to kill Tutsi.<sup>756</sup> Witness CQK, who allegedly went to Nyamyumba with Bikindi, denied ever going to Nyamyumba, which was too insecure at the time, or to the Rugerero roadblock. The witness also stated that there were no vehicles available at the time.<sup>757</sup> Given their alleged implication in the crimes, the Chamber does not accord much weight to Bikindi's and CQK's evidence on the matter. The fact that Witness TIER, another alleged *Interahamwe* mentioned in relation to the killings at Nyamyumba, has allegedly never been charged with killings in Gisenyi is inconclusive in the Chamber's opinion.<sup>758</sup>

333. With respect to the killing of the priests, Shadrack Bizimana, a former Rwandan judge, testified that although he could not remember the exact date he was sure that Father Thaddée Gatore, as well as Father Vénuste Nsengiyumva and Ildephonse Kabayiza were killed in April 1994. He also explained that when those deaths were discussed at Gacaca meetings, no mention was made of Bikindi.<sup>759</sup> Witness XUV, a former *Interahamwe*,<sup>760</sup> stated that he witnessed the killing of Father Gatore on 13 April 1994 and had never heard of Bikindi's involvement.<sup>761</sup> He also witnessed the killing of Father Vénuste and similarly denied that Bikindi played any role in it.<sup>762</sup> He also corroborated Shadrack Bizimana's

T. 26 September 2006, pp. 33, 34, 35; Witness AJY, T. 27 September 2006, pp. 34, 35, 36) on the ground that Bikindi came back to Rwanda to Gisenyi from Zaire (Defence Closing Brief, paras 527, 540; Closing Arguments, T. 26 May 2008, pp. 25-26). In this respect, the Chamber notes that during his interview to the Dutch authorities, Bikindi himself declared that he travelled from Kigali to Gisenyi through Ruhengeri in June 1994, which renders the witnesses' impression that Bikindi was fleeing from Kigali credible: see Exhibit P51, Reports of Interviews before the Dutch Immigration and Naturalisation Service, p. 13.

<sup>751</sup> Witness AJZ, T. 26 September 2006, pp. 8, 38; Witness AJY, T. 27 September 2006, p. 33 and T. 2 October 2006, p. 7; Witness BKW, T. 18 October 2006, p. 21.

<sup>752</sup> Witness AJZ, T. 26 September 2006, p. 9 and T. 27 September 2006, p. 4 (French).

<sup>753</sup> Witness AJY, T. 27 September 2006, p. 34 and T. 2 October 2006, p. 18; Witness BKW, T. 17 October 2006, p. 33 and T. 18 October 2006, p. 25.

<sup>754</sup> Witness BKW, T. 18 October 2006, p. 15; Witness AJY, T. 27 September 2006, pp. 32-33, 37 and T. 2 October 2006, p. 5.

<sup>755</sup> Bikindi, T. 1 November 2007, pp. 7 and 10.

<sup>756</sup> Bikindi, T. 5 November 2007, p. 19.

<sup>757</sup> Witness CQK, T. 10 October 2007, pp. 42-43, 53, 56. The Chamber notes that Witness CQK's statement regarding the unavailability of vehicles at the time is contradicted by Defence Witness DZS's testimony that Bikindi drove her in his vehicle at the end of June 1994 (T. 24 September 2007, p. 14).

<sup>758</sup> Witness TIER, T. 16 October 2007, p. 7.

<sup>759</sup> Shadrack Bizimana, T. 16 October 2007, pp. 50, 52-56, 58-61, 71.

<sup>760</sup> Witness XUV, T. 8 October 2007, p. 50.

<sup>761</sup> Witness XUV, T. 8 October 2007, pp. 56-58.

<sup>762</sup> Witness XUV, T. 8 October 2007, pp. 54-56.

evidence that Kabayiza was killed in April 1994 close to Ndayazi's house after hitting Gaspard with his machete.<sup>763</sup> Witness XUV further testified that he had not been present when Kabayiza was killed but that he had not heard of Bikindi's involvement in his death.<sup>764</sup> Although the Chamber considers the Report of Massacres at Nyundo in Period April 1994 – admitted as Exhibit D111 – of limited probative value because of the reservations it has about its authenticity and chain of custody, it notes that the report mentions April 1994 as the date of Thaddée Gatore's death.<sup>765</sup>

334. The Chamber is mindful that there are inconsistencies between the testimonies of Witness XUV and Shadrack Bizimana,<sup>766</sup> and that the latter testified as to what he was told or what he heard at Gacaca proceedings. However, having considered the evidence in its totality, the Chamber finds that the Defence evidence on Father Gatore and Kabayiza's deaths raises a reasonable doubt as to whether they were actually killed in June 1994. The Chamber recalls that none of the Prosecution witnesses were eye witnesses to the deaths. While the Chamber has no reason to question the credibility of Witness AKK that Gatore died in June 1994, it considers that the doubt raised by the Defence as to when Father Gatore was killed must weigh in favour of the Accused.

335. Although Witnesses AJZ, AJY and BKW corroborate each other on certain matters regarding the incident at the Rugerero roadblock, the Chamber observes inconsistencies between their evidence and recalls the serious reservations it has on their overall credibility. Considered together with the doubt raised by the Defence concerning Father Gatore and Kabayiza's deaths it does not allow the Chamber to conclude that their evidence proves the Prosecution's allegations beyond reasonable doubt.

336. For the foregoing reasons, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegations set out in paragraphs 22, 30(d), 47(a) and (h) of the Indictment.

### 9.5. Rape and Killing of Ancilla

337. The Prosecution alleges that following a meeting held at Umuganda Stadium there was an intensive search for Tutsi, as a result of which Ancilla, a Tutsi woman, and her 4-year-old daughter were killed.<sup>767</sup> The Prosecution contends that Noël and Pascal, two of the *Interahamwe* to whom Bikindi gave orders, discovered that Ancilla had been hiding in the ceiling of her home in Murara, Rubavu *commune*. It is alleged that Bikindi said that she was one of the people fighting Hutu and that she should be killed, and that Bikindi was present when Noël and Pascal took her away. The Prosecution alleges that Noël and Pascal killed Ancilla and her daughter, and buried them in a shallow grave.<sup>768</sup>

338. It is also alleged that Sendegeya, another *Interahamwe*, boasted after the killing of Ancilla that he had always dreamt of "sleeping" with a Tutsi woman and that now "his dream had come true". The Prosecution contends that Bikindi stood on the road by Ancilla's house to ensure his orders were carried out. It further contends that, by ordering the *Interahamwe* under his effective control to commit these acts of violence and by staying on the side of the

<sup>763</sup> Witness XUV, T. 8 October 2007, pp. 51-52; Shadrack Bizimana, T. 16 October 2007, pp. 53, 55-56, 60.

<sup>764</sup> Witness XUV, T. 8 October 2007, pp. 51-53.

<sup>765</sup> Exhibit D111, Report of Massacres at Nyundo in Period April 94, UNAMIR, dated 14 October 1994. Regarding the chain of custody, see Defence Investigator Froduald Serugendo, T. 18 October 2007, pp. 71-77.

<sup>766</sup> The Chamber refers, *inter alia*, to inconsistencies regarding the individuals involved, the exact circumstances and locations of the killings.

<sup>767</sup> Indictment, para. 23.

<sup>768</sup> Indictment, paras. 28, 30(g), 46 and 47(f).



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road to ensure his orders were followed, Bikindi was aware or ought to have been aware of the acts of rape and sexual violence committed against Ancilla.<sup>769</sup>

339. As a preliminary matter, the Chamber notes that the Prosecution, in the course of its Indictment, places this incident in mid-late June 1994 after the rally at Umuganda Stadium,<sup>770</sup> in early July 1994,<sup>771</sup> in late June 1994<sup>772</sup> and in early June 1994.<sup>773</sup> The same confusion was reiterated in the Prosecution Pre-Trial Brief.<sup>774</sup> During its Opening Statement, the Prosecution stated that Ancilla's murder occurred following a meeting at Umuganda Stadium in June 1994 during which Bikindi allegedly addressed the audience.<sup>775</sup> In its Closing Brief, the Prosecution placed Ancilla's killing in late June or early July 1994.<sup>776</sup> The Defence did not raise the issue during the trial, and although it noted the inconsistencies in the Indictment in its Closing Brief, it did not claim any prejudice.<sup>777</sup> Nevertheless, if it were to find that the Prosecution has proven its allegation beyond reasonable doubt, the Chamber would verify that Bikindi's ability to defend himself has not been materially impaired by the Prosecution's failure to date the incident with the requisite degree of consistency and specificity before entering a finding of guilt.

340. Prosecution Witness AJZ testified that Bikindi was in the company of members of his troupe, including Noël, when an *Interahamwe* known as Kabulimbo came to tell them that an *Inyenzi*, Ancilla, a nurse, had been discovered in hiding. The *Interahamwe* allegedly went there, beat up her husband and then took Ancilla out from the ceiling where she was hiding to the road where Bikindi was.<sup>778</sup> According to Witness AJZ, Bikindi said: "There is no other solution, you must go and kill her."<sup>779</sup> Bikindi and Noël, the witness said, took Ancilla and her 4-year-old daughter to a field next to Mirasano's farm. They were killed with clubs and sharp objects.<sup>780</sup> Witness AJZ insisted he was an eye-witness to the killing.<sup>781</sup>

341. Prosecution Witness AJY testified that he saw Kabulimbo tell Bikindi and his *Interahamwe* at the Rugerero roadblock that a Tutsi woman, Ancilla, had returned to her home from her hiding place. He stated that Bikindi and the *Interahamwe* then went to Ancilla's house, where they beat her husband and raped her before taking her outside. The witness said that in the meantime, he came down from the roadblock. He learnt about Ancilla's rape from those who had just come out of her house, in particular Sendegeya, who said that he had just realised his dream to sleep with a Tutsi woman. Witness AJY testified that, in response to her attempt to persuade the group to spare the child she was carrying on her back, Bikindi said that children of *Inyenzi* should not be spared. The witness stated that Ancilla and her child were subsequently killed, and that the following day he and others buried the bodies.<sup>782</sup>

<sup>769</sup> Indictment, para. 29.

<sup>770</sup> Indictment, para. 23.

<sup>771</sup> Indictment, paras. 28, 46 and 47(f).

<sup>772</sup> Indictment, para. 29.

<sup>773</sup> Indictment, para. 30(g).

<sup>774</sup> Prosecution Pre-Trial Brief, paras. 34, 39, 40, 41(g), 58, 59(f).

<sup>775</sup> Opening Statement, T. 18 September 2006, pp. 4-5.

<sup>776</sup> Prosecution Closing Brief, paras. 547, 548, 577, 826.

<sup>777</sup> Defence Closing Brief, para. 518.

<sup>778</sup> Witness AJZ, T. 26 September 2006, pp. 6, 12-14, 25.

<sup>779</sup> Witness AJZ, T. 26 September 2006, p. 14.

<sup>780</sup> Witness AJZ, T. 26 September 2006, pp. 12, 13, 25.

<sup>781</sup> Witness AJZ, T. 26 September 2006, pp. 12, 13.

<sup>782</sup> Witness AJY, T. 28 September 2006, pp. 3-5, 7 (French).

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342. The Chamber recalls that it has already found Witnesses AJZ's and AJY's testimony to be doubtful.<sup>783</sup> As to this incident, the Chamber cannot but emphasise Witness AJZ's major inconsistencies with respect to the date the incident occurred. The witness first testified that Ancilla died in July, shortly before he fled to Zaire, about two weeks after the Nyamyumba incident, which he placed three days to the end of June.<sup>784</sup> Then he testified that she died one week and three days before he fled to Zaire at the end of July.<sup>785</sup> In response to a question from the Prosecution that accordingly Ancilla's death would have been around the beginning of July, based on the fact that the witness had testified that he went into exile on 10 July, the witness disagreed and said it would have been the middle of the month around 15 or 17 July.<sup>786</sup> When questioned by the Prosecution on this apparent confusion in the dates he had been testifying about, the witness stated that he no longer remembered the dates and that all he knew for sure was that Ancilla died in July before he went into exile that same month. He then ventured to estimate that perhaps Ancilla died on 20 July and that they went into exile on 25 July, stressing that this was only an approximation.<sup>787</sup> In a prior statement, the witness had declared to Tribunal investigators that the killing occurred at the beginning of July 1994.<sup>788</sup>

343. The Chamber is also concerned with Witness AJZ's confusing statement regarding the role of one Kazahoro in the incident. Although he gave the evidence summarised above as to the sequence of events, he also explained that "[t]he next day, in the morning" an *Interahamwe* known as Kazahoro saw Ancilla and said that the time had come for nurses to go harvest sweet potatoes and testified that "[t]hat is the time at which she was taken away and killed in Mirasano's farm".<sup>789</sup>

344. In addition to what has already been discussed above,<sup>790</sup> the Chamber is surprised that, despite knowing that no light had been shed on the death of Ancilla before the Gacaca courts and that investigations were still ongoing, Witness AJZ did not feel the need to provide the evidence he offered to this Tribunal in relation to Bikindi's involvement in her death. The witness's explanation that "there is still time" and that he will accuse Bikindi before Gacaca courts "when the time comes" is somewhat puzzling.<sup>791</sup>

345. There are also significant discrepancies between the accounts of the incident provided by the Prosecution witnesses. In particular, the evidence of Witnesses AJZ and AJY is contradictory as to whether Ancilla was raped before she was killed. Witness AJY testified that he learnt that Ancilla had been raped immediately afterwards from those who had just come out of her house.<sup>792</sup> Witness AJZ, allegedly present when Ancilla was taken out from her house, did not even allude to Ancilla's rape. The Chamber finds it difficult to accept the witnesses' discrepancy on such a significant matter.

346. While both witnesses were alleged eye-witnesses to Ancilla being brought out of her house, their testimony differed on other significant aspects. One stated that Bikindi came into the house with the rest of the group, the other testified that Bikindi was outside on the road. One stated that Ancilla attempted to save her child, the other did not. One testified that

<sup>783</sup> See *supra* paras. 127-132 and 160.

<sup>784</sup> Witness AJZ, T. 26 September 2006, pp. 6-7.

<sup>785</sup> Witness AJZ, T. 26 September 2006, p. 24; T. 27 September 2006, p. 17.

<sup>786</sup> Witness AJZ, T. 27 September 2006, p. 17.

<sup>787</sup> Witness AJZ, T. 27 September 2006, p. 18.

<sup>788</sup> Exhibit D6, Witness AJZ's written statement dated 9 and 11 May 2001 (under seal), p. 4.

<sup>789</sup> Witness AJZ, T. 26 September 2006, p. 13.

<sup>790</sup> See *supra* paras. 127-132.

<sup>791</sup> Witness AJZ, T. 26 September 2006, pp. 25, 31-32.

<sup>792</sup> Witness AJY, T. 28 September 2006, p. 4.

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Bikindi and Noël took Ancilla and her child to be killed, the other only stated that Ancilla and her child were subsequently killed.<sup>793</sup> One suggested it occurred in the morning,<sup>794</sup> the other in the evening.<sup>795</sup>

347. In further support of its allegation, the Prosecution entered Bikindi's "personal file" from the Rugerero *cellule* Gacaca court into the record as Exhibit P80. This document dated 9 March 2005 is signed by seven judges and indicates that Bikindi was suspected of participating in the murder of Ancilla and her child.<sup>796</sup> Kabulimbo is mentioned therein as one of the co-perpetrators. The Defence also adduced as Exhibit D110 an alleged attestation from members of the same Rugerero *cellule* Gacaca court obtained by Co-Counsel Momo, which contains a list of those who participated in Ancilla's death. Bikindi is not listed among them, but Kabulimbo is.<sup>797</sup> The attestation is neither signed nor stamped and the Chamber questions the probative value of Co-Counsel Momo's *affidavit* attached therewith.

348. The Chamber observes that Exhibits P80 and D110 referred to different people as officials of the court. Whatever the authenticity and reliability of those two exhibits may be, the Chamber considers that the mere fact that the allegation brought before the Tribunal is also the subject of proceedings in Rwanda is not sufficient for a proof beyond reasonable doubt that the Accused indeed participated in the crime with which he is charged. Even considered together with the questionable evidence of Witnesses AJZ and AJY, Exhibit P80 does not prove Bikindi's responsibility in the killing of Ancilla and her daughter.

349. In assessing the Prosecution's evidence, the Chamber has also considered the evidence given by Witnesses DFA and JTX related to the killing of Ancilla, which it found to be of very limited probative value.<sup>798</sup>

350. The Chamber has no doubt that Ancilla was killed during the genocide. However, given the serious reservations the Chamber has on the credibility of Witnesses AJY and AJZ and the divergence in their accounts of the incident, the Chamber does not find that their evidence, even considered in light of Exhibit P80, prove beyond reasonable doubt that Bikindi, Noël or anyone under Bikindi's command participated in the killing or rape of Ancilla or the killing of her daughter as alleged by the Prosecution in paragraphs 23, 28, 29, 30(g), 46 and 47(f) of the Indictment.

#### 9.6. Killings at Camp Scout

351. The Prosecution alleges that, at the end of June 1994, Bikindi established a roadblock at Camp Scout near the Pentecostal church on the way to Commune rouge, Gisenyi, where several Tutsi were massacred. It argues that Bikindi was in charge of that roadblock and provided orders to the *Interahamwe* manning it. Specifically, it is alleged that Bikindi came to the roadblock several times, exercised effective control over the *Interahamwe* manning it,

<sup>793</sup> See *supra* paras. 340, 341.

<sup>794</sup> Witness AJZ, T. 26 September 2006, p. 13.

<sup>795</sup> Witness AJY, T. 28 September 2006, p. 3.

<sup>796</sup> Exhibit P80, "Accused's Personal File", Simon Bikindi, Gacaca Courts National Service, Rugerero *cellule*, Rugerero *secteur*, Rubavu *commune*, dated 9 March 2005.

<sup>797</sup> Exhibit D110, *Attestation* dated 22 December 2006 with *Affidavit* from Co-Counsel Momo dated 30 September 2007.

<sup>798</sup> The Chamber notes that Witness JTX's evidence (T. 25 September 2007) suffers from many inconsistencies and that Witness DFA's accusation of bribing against Witness AJY and others was unsubstantiated (T. 24 September 2007, pp. 55-58, 65-66). In addition, as regards the killing of Ancilla, Witness DFA only testified as to what she heard, or not heard, at Gacaca proceedings (T. 24 September 2007, pp. 60, 62, 65). In light of its conclusion on the Prosecution's evidence, the Chamber does not find it necessary to discuss their evidence any further.



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gave them orders to kill Tutsi and knew, or ought to have known, that several Tutsi had been killed at this roadblock as a result of his orders.<sup>799</sup>

352. In support of this allegation, the Prosecution relies solely on Prosecution Witness BHI, a former *Interahamwe* who was convicted in Rwanda and sentenced to life imprisonment for his participation in the genocide.<sup>800</sup> The Chamber has already expressed reservations about the veracity of this witness's evidence.<sup>801</sup> In the circumstances, the Chamber considered Witness BHI's testimony on this allegation with particular caution.

353. During cross-examination, Witness BHI stated that when Bikindi fled from Kigali to Gisenyi, he arrived in Gisenyi with many *Interahamwe*. The witness testified that, between June and July 1994, Bikindi set up his own roadblock with *Interahamwe* at Camp Scout in order to stop enemies infiltrating the camp. According to the witness, Bikindi often came to the roadblock to interact with "his own *Interahamwe*". He explained that the roadblock was set up at Camp Scout because the *Interahamwe* who had come along with Bikindi lived there.<sup>802</sup> Witness BHI asserted that *Interahamwe* killed Tutsi at this roadblock.<sup>803</sup>

354. The Chamber notes that the witness gave different accounts as to when the roadblock was manned. After first saying that the roadblock was manned night and day,<sup>804</sup> Witness BHI declared that the roadblock – a piece of wood which was placed across the road – was only manned at night.<sup>805</sup>

355. Witness BHI would have had good reason to know about the erection of such a roadblock, given that he allegedly lived close by and transported corpses of people killed there.<sup>806</sup> However, the Chamber is concerned by the vagueness of his testimony as to when the roadblock was mounted<sup>807</sup> and as to the killings which allegedly took place there.<sup>808</sup> Together with the inconsistency within the witness's testimony as to when the roadblock was manned, this vagueness leaves the Chamber with some doubt as to the reliability of this part of Witness BHI's testimony.

356. Witness BHI's evidence on the allegation is not corroborated by any other witness or documentary evidence. On the contrary, Defence witnesses HZTX, RH and FLV testified that there was never any roadblock at Camp Scout.<sup>809</sup> The Chamber is not convinced by the

<sup>799</sup> Indictment, paras. 26, 30(f) and 47(d).

<sup>800</sup> Witness BHI, T. 12 October 2006, p. 40; T. 13 October 2006, pp. 18, 21-22. See also Exhibit D25(F), *Prononcé du Jugement, Chambre spécialisée du Tribunal de première instance de Gisenyi*, dated 25 May 2001 (under seal), pp. 90-91, 93, 94-95. The Chamber notes that the witness's name is spelt slightly differently in Exhibit D25(F).

<sup>801</sup> See *supra* para. 79.

<sup>802</sup> Witness BHI, T. 13 October 2006, pp. 17-18, 23-24.

<sup>803</sup> Witness BHI, T. 13 October 2006, pp. 18, 24.

<sup>804</sup> Witness BHI, T. 13 October 2006, p. 17 ("[...] it was manned by at least five *Interahamwe*, and sometimes at night there would be up to 10 or 15 *Interahamwe* manning the roadblock"), p. 23 ("It was a roadblock which was manned night and day").

<sup>805</sup> Witness BHI, T. 13 October 2006, p. 24 ("A moment ago I said that this roadblock was manned at night. [...] So it was a roadblock which was manned at night, and during the day, it was not there.").

<sup>806</sup> Witness BHI, T. 13 October 2006, p. 18.

<sup>807</sup> See Witness BHI, T. 13 October 2006, p. 18 ("I do not remember the date. However, you have clearly understood that I gave an approximate time frame, that is between June and July, but I cannot be more specific about the dates").

<sup>808</sup> See Witness BHI, T. 13 October 2006, pp. 18 ("[...] whenever the *Interahamwe* killed somebody or killed people at the roadblock after it had been mounted [...]. Personally, I did carry or transport the dead bodies of persons who had been killed at that roadblock"), p. 24 ("When Hutus came to that roadblock, they were allowed to move on, and if it was realised that the person was a Tutsi, the person was killed.").

<sup>809</sup> Witness FLV, T. 24 September 2007, pp. 79, 82 and T. 25 September 2007, p. ii (extract); Witness HZTX, T. 25 September 2007, pp. 66-67; Witness RH, T. 25 October 2007, p. 48.

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Prosecution's argument that Witnesses HZTX and RH could not have seen the roadblock because they passed the location only in the day and that the roadblock was only mounted at night. The Chamber observes that, on that issue, the witness, in line with his prior declaration to Tribunal investigators, first clearly stated that the roadblock was manned during day and night.<sup>810</sup> Although the Chamber considers portions of these witnesses' testimony with circumspection,<sup>811</sup> the Chamber finds that their evidence further undermines Witness BHI's evidence. In the absence of reliable corroboration, the Chamber does not accept Witness BHI's evidence on this allegation.

357. As a result, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraphs 26, 30(f) and 47(d) of the Indictment.

#### 9.7. Killing of Three Tutsi Women at Commune rouge

358. The Prosecution alleges that in early July 1994, Bikindi, in the company of *Interahamwe* to whom he gave orders, transported three Tutsi women by removing them from a compound in Gacuba *cellule* in Gisenyi and driving them in his car to Commune rouge where they were killed by the *Interahamwe*. The Prosecution further alleges that by transporting these women to Commune rouge where he knew that they would be killed as other Tutsi were being killed at the same location, the Accused planned, instigated, and aided and abetted their killings.<sup>812</sup>

359. In support of its allegation, the Prosecution relies solely on Prosecution Witness BHI's testimony, about which the Chamber has already expressed certain reservations.<sup>813</sup>

360. Witness BHI testified that he saw Bikindi in June 1994 at the crossroad between the road leading to the customs and the road leading to Commune rouge with three or four *Interahamwe* who were ensuring his security, two of whom were Kivumbi and Djuma Kamuwe, also known as Macuho. He recounted that, at the time he saw them, they were in a white Mitsubishi driven by Bikindi together with three women that were being beaten by Bikindi's bodyguards. The three women, the witness said, were being taken to Commune rouge where Tutsi were killed. The witness concluded that they were killed there.<sup>814</sup>

361. The location known as Commune rouge in 1994 was a cemetery in Gisenyi where Tutsi were taken to be killed and where bodies of dead Tutsi were disposed of. Based on corroborative evidence, the Chamber is satisfied that Tutsi taken to Commune rouge were likely not to come back alive.<sup>815</sup>

<sup>810</sup> Witness BHI, T. 13 October 2006, pp. 17, 23; Exhibit D24/2, Witness BHI's written statement dated 14 May and 16-17 April 2002 (under seal): "At any one moment about 5 *interahamwe* militias manned the roadblock during the day but in the evening the number increase up to 10."

<sup>811</sup> The Chamber refers in particular to Witness HZTX's statement that Bikindi was not in Gisenyi in June and July 1994 (T. 25 September 2007, pp. 66, 72, 86 and 87) and to the fact that Witness RH declared that he had not met anyone from the Defence team present in court before his testimony although Bikindi's Lead Counsel, Mr. O'Shea, told the court that he had met the witness the night before the testimony in the safe house (T. 25 October 2007, pp. 66, 73 and T. 26 October 2007, p. 20). The Chamber is also mindful that Witness FLV only testified to what he had heard, or not heard, during Gacaca proceedings.

<sup>812</sup> Indictment, paras. 27 and 47(e).

<sup>813</sup> See *supra* paras. 79, 353-355.

<sup>814</sup> Witness BHI, T. 12 October 2006, pp. 40-41; T. 13 October 2006, pp. 3, 20-22 (French).

<sup>815</sup> Witness AEY, T. 12 October 2006, p. 11; Witness BHI, T. 12 October 2006, p. 41 and T. 13 October 2006, pp. 3, 21; Witness BKW, T. 17 October 2006, p. 35 and T. 18 October 2006, p. 31; Witness AHP, T. 19 October 2006, p. 21; Witness HZTX, T. 25 September 2007, pp. 65-67; Witness ASQ1, T. 5 October 2007, p. 36; Charles Zilimwabagabo, T. 22 October 2007, p. 24; Witness RH, T. 25 October 2007, pp. 41, 42, 43, 47 and T. 26 October 2007, p. 6.

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362. However, the Chamber notes that Witness BHI did not give evidence as to whether the three women were actually taken to Commune rouge. His assertion is merely based on his observation from the sidewalk of the crossroad next to the Pentecostal church where he saw Bikindi's vehicle stop.<sup>816</sup> As duly pointed out by the Defence, from the Pentecostal Church, there were other possible destinations than Commune rouge.<sup>817</sup> The witness's assertion that the women were killed is not substantiated in any way.

363. In the Chamber's view, Witness BHI's evidence does not establish that Bikindi drove three Tutsi women to Commune rouge where they were killed. The Chamber also observes that nothing in the witness's testimony supports the allegation set out in the Indictment that the three women were removed from a compound in *Gacuba cellule* in Gisenyi. Further, whereas the Prosecution alleges that the incident took place in early July 1994, the witness recounted the alleged incident in response to the Prosecution's inquiry as to who Bikindi was with when he saw him in June 1994 in Gisenyi.<sup>818</sup>

364. Accordingly, the Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraphs 27 and 47(e) of the Indictment.

### 9.8. Sexual Violence against Tutsi Women in Rubavu

365. Under paragraph 29 of the Indictment, the Prosecution alleges that Bikindi is responsible for the acts of sexual violence committed by *Interahamwe* against Tutsi women in the course of the execution of his orders to kill all Tutsi in Rubavu area.

366. The Chamber observes that, save for the specific incident concerning Ancilla discussed above, the Prosecution failed to adduce evidence in support of its allegation. Accordingly, the Chamber dismisses this allegation without discussing it any further.

## 10. EXILE IN ZAIRE

367. The Prosecution alleges that Bikindi continued to demonstrate his anti-Tutsi stance while in exile in Zaire between July 1994 and early 1995 by composing and performing anti-Tutsi songs and by collaborating with ex-FAR military leaders and former MRND-aligned government officials to continue the anti-Tutsi campaign as a means to regain power.<sup>819</sup> The Prosecution argues that this suggests Bikindi's continuous adherence to the policy of genocide against the Tutsi population.<sup>820</sup>

368. The Chamber finds that Bikindi went into exile in Zaire (now Democratic Republic of the Congo) on 14 July 1994.<sup>821</sup> He eventually established himself in the Mugunga refugee camp with his family, members of the *Irindiro* ballet and a few other people.<sup>822</sup> There,

<sup>816</sup> Witness BHI, T. 13 October 2006, p. 22 (French).

<sup>817</sup> Defence Closing Brief, para. 639. The Chamber bases its conclusion on the observation it made during the site visit that took place from 14 to 18 April 2008.

<sup>818</sup> Witness BHI, T. 13 October 2006, pp. 2-3.

<sup>819</sup> Indictment, para. 17.

<sup>820</sup> Prosecution Closing Brief, para. 991.

<sup>821</sup> Bikindi, T. 5 November 2007, pp. 16, 35-36; Exhibit P51, Reports of Interviews before the Dutch Immigration and Naturalisation Service, p. K02028836.

<sup>822</sup> Witness ALQ, T. 16 October 2006, p. 11; Witness AHP, T. 19 October 2006, p. 28; Witness BUY, T. 19 February 2007, p. 26; Witness BHI, T. 13 October 2006, p. 15; Witness DZS, T. 24 September 2007, pp. 18, 22; Witness HZTX, T. 25 September 2007, pp. 69, 77, 79, 88; Witness QUTI, T. 27 September 2007, pp. 27, 34, 44; Witness KMS, T. 1 October 2007, pp. 29-30; Witness DQR, T. 1 October 2007, pp. 53-54, pp. 59-60; Apolline Uwimana, T. 8 October 2007, pp. 28, 30; Witness JCH, T. 9 October 2007, p. 36; Witness CQR, T. 9

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Bikindi worked for an NGO and performed with his troupe in a hall that had been built in the camp.<sup>823</sup> Attendance at concerts was subject to a fee.<sup>824</sup>

369. In support of its allegation that Bikindi continued to participate in the anti-Tutsi campaign in Zaire, the Prosecution relies on Prosecution Witnesses ALQ, AHP, and BUY. Witness ALQ testified that, while in exile, he saw Bikindi at Abdu Selemani's house, Selemani being the alleged treasurer of the *Interahamwe*.<sup>825</sup> The witness also explained that when Bikindi arrived in Goma with military officers he used to collaborate with in Rwanda, they started collecting money to purchase weapons to attack Rwanda and created a militia designed to kill people in Rwanda from Zaire.<sup>826</sup> The witness stated that, while in the camp, Bikindi composed a new song entitled *Rwigere Urumpe*, in which Bikindi was addressing Tutsi occupying Rwanda to whom he was saying that this situation would last only a while as Rwanda would be handed back to the Hutu.<sup>827</sup> The witness also explained that the money raised from Bikindi's performances was used to purchase weapons with a view to returning to Rwanda to kill people and that he is the one who personally transported the weapons from Goma to the refugee camp.<sup>828</sup> Witness AHP testified that the proceeds of the hall's inaugural concert organised on 9 January 1995 were supposed to be given to the RDR (Republican Rally for Democracy in Rwanda) for the purchase of weapons so that Rwanda could be attacked.<sup>829</sup> Witness BUY testified that, while in Mugunga camp, he saw Bikindi in the company of Captain Bizumuremyi at the location where they were undergoing military training. Witness BUY said that they encouraged them to continue the training in order to be able to launch an attack and free Rwanda.<sup>830</sup>

370. The Chamber has also considered Witness BKW's evidence that, on his way to exile, Bikindi was accompanied by members of the interim government and high ranking officers including General Augustin Bizimungu, Anatole Nsengiyumva, Major Kabera, Major Juvénal Bahufite, Joseph Nzirorera, Édouard Karemera and Hassan Ngeze,<sup>831</sup> as well as Witness BHI's evidence that, in the camp, Bikindi changed the theme of his songs and was now singing about returning to Rwanda.<sup>832</sup>

371. Defence Witnesses described a different picture of Bikindi's activities while in the Mugunga camp. Witness DZS and Apolline Uwimana testified that they never saw him interacting with *Interahamwe* or politicians there,<sup>833</sup> and Witnesses QUTI, HZTX, Jean Berchmans Hakorimana and Nelson Muhirwa testified that they never heard about

October 2007, pp. 62, 64, 66, 68; Nelson Muhirwa, T. 10 October 2007, pp. 32-33; Bikindi, T. 1 November 2007, p. 21.

<sup>823</sup> Witness ALQ, T. 16 October 2006, p. 12; Witness AHP, T. 19 October 2006, p. 28; Witness BHI, T. 10 October 2006, p. 11 and T. 11 October 2006, p. 4; Witness DZS, T. 24 September 2007, pp. 18, 20; Witness HZTX, T. 25 September 2007, pp. 69, 77; Witness JCH, 9 October 2007, p. 37; Witness KMS, T. 1 October 2007, p. 32; Witness DQR, T. 1 October 2007, p. 61; Apolline Uwimana, T. 8 October 2007, p. 30; Witness CQR, T. 9 October 2007, p. 63.

<sup>824</sup> Witness ALQ, T. 16 October 2006, p. 13; Witness AHP, T. 19 October 2006, p. 28; Witness DZS, T. 24 September 2007, p. 20; Witness KMS, T. 1 October 2007, p. 34; Witness BUY, T. 19 February 2007, p. 26.

<sup>825</sup> Witness ALQ, T. 16 October 2006, pp. 11, 26.

<sup>826</sup> Witness ALQ, T. 16 October 2006, p. 12 (French).

<sup>827</sup> Witness ALQ, T. 16 October 2006, p. 12.

<sup>828</sup> Witness ALQ, T. 16 October 2006, pp. 11, 13, 25.

<sup>829</sup> Witness AHP, T. 19 October 2006, p. 28.

<sup>830</sup> Witness BUY, T. 19 February 2007, p. 26.

<sup>831</sup> Witness BKW, T. 17 October 2006, p. 36.

<sup>832</sup> Witness BHI, T. 13 October 2006, pp. 15-16.

<sup>833</sup> Witness DZS, T. 24 September 2007, p. 21; Apolline Uwimana, T. 8 October 2007, p. 31.

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Bikindi's involvement in military training.<sup>834</sup> Several Defence Witnesses also specified that, while in the camp, Bikindi lived and worked with Tutsi.<sup>835</sup>

372. As to the performances given by Bikindi and his troupe in the camp, Witness KMS testified that they were the same as before and that the troupe carried on singing the songs sung beforehand.<sup>836</sup> Witnesses KMS, CQR and Apolline Uwimana testified that the concerts performed depicted traditional weddings and Rwandan culture.<sup>837</sup> Prosecution Witness BHJ likewise testified that he attended a concert in the refugee camp at which Bikindi talked about traditional wedding ceremonies.<sup>838</sup> Witnesses DZS, KMS and Apolline Uwimana also testified to the fact that the money raised during the performances was shared within the troupe to meet everyone's needs and that a certain amount was kept aside to buy equipment for upcoming performances.<sup>839</sup>

373. Given the Chamber's reservations about the reliability of their evidence on allegations discussed above, the Chamber has assessed the testimony of Witnesses ALQ, AHP, BKW and BUY on Bikindi's activities while in exile with particular caution.<sup>840</sup> The Chamber was also mindful that most of the Defence witnesses providing evidence on Bikindi's stay in Mugunga camp have, or had, a close relationship with Bikindi.

374. The Chamber considers that Witness BKW's uncorroborated evidence about Bikindi's alleged presence with leading political or military figures on his way to exile is inconclusive as to a possible collaboration with them to continue the anti-Tutsi campaign. Likewise, while testifying to seeing Bikindi at Abdu Selemani's house, Witness ALQ did not provide any details as to the nature of their relationship or the content of the discussion they may have had when meeting. Nor are the Defence witnesses' assertions that they did not hear about Bikindi's involvement with politicians or in military training sufficient to make any findings concerning Bikindi's activities at the relevant time.

375. Considering the doubts it already expressed as to the credibility of Witness ALQ, the Chamber does not accept his uncorroborated evidence that Bikindi created a militia to kill people in Rwanda or composed the song *Rwigere Urumpe*. Similarly, in the absence of reliable corroboration, the Chamber does not accept Witness BUY's testimony that Bikindi encouraged him and others to continue their military training.

376. The Chamber observes that the Prosecution did not specifically allege that the money collected at Bikindi's concerts in exile was used to purchase weapons. Notwithstanding this, although Witness AHP corroborated Witness ALQ's testimony on this allegation, the Chamber's doubts as to the credibility of both witnesses are so serious that it declines to rely on their evidence without further reliable corroboration. Moreover, the Chamber was particularly concerned with the zealous manner in which Witness ALQ told the court about

<sup>834</sup> Witness QUTI, T. 27 September 2007, p. 34; Witness HZTX, T. 25 September 2007, p. 79; Jean Berchmans Hakorimana, T. 11 October 2007, pp. 9-10.

<sup>835</sup> Witness DZS, T. 24 September 2007, p. 20; Witness KMS, T. 1 October 2007, pp. 30-33; Apolline Uwimana, T. 8 October 2007, p. 30; Witness CQR, T. 9 October 2007, pp. 66, 68; Witness JCH, T. 9 October 2007, pp. 36-37.

<sup>836</sup> Witness KMS, T. 1 October 2007, p. 33.

<sup>837</sup> Witness KMS, T. 1 October 2007, pp. 32-33; Witness CQR, T. 9 October 2007, p. 63 and T. 10 October 2007, p. 12; Apolline Uwimana, T. 8 October 2007, p. 31.

<sup>838</sup> Witness BHJ, T. 10 October 2006, p. 11; T. 11 October 2006, p. 4.

<sup>839</sup> Witness DZS, T. 24 September 2007, pp. 19-20; Apolline Uwimana, T. 8 October 2007, p. 31; Witness KMS, T. 1 October 2007, p. 34.

<sup>840</sup> See *supra* paras. 79, 352 and 354-356 (Witness BHI), para. 34 (Witness BKW), paras. 78 and 101 (Witness ALQ), paras. 306-308 and 318 (Witness AHP), paras. 163-167 and 296 (Witness BUY).



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this activity, introducing it with the words "The wickedness and criminal mind of Bikindi did not only end in Rwanda."<sup>841</sup>

377. The Chamber finds that the Prosecution has not proven beyond reasonable doubt the allegation contained in paragraph 17 of the Indictment related to Bikindi's activities or stance while in exile in Zaire.

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<sup>841</sup> Witness ALQ, T. 16 October 2006, p. 11

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### CHAPTER III: FREEDOM OF EXPRESSION BEFORE THE TRIBUNAL

378. Simon Bikindi has been charged with offences based upon acts of expression, namely musical compositions, musical disseminations using a vehicle outfitted with a public address system, as well as musical performances and speeches given both in person and broadcast over the radio.<sup>842</sup> In this chapter, the Chamber will consider the customary international law on freedom of expression and the restrictions on this right before discussing how the law as discussed relates to the charges against Bikindi, specifically whether certain forms of expression are criminalised under the Statute.

#### 1. FREEDOM OF EXPRESSION, THE RIGHT AND ITS LIMITS

379. There is a right to freedom of expression under customary international law. This is demonstrated by numerous international instruments which incorporate the right to freedom of expression, the widespread integration of such protections into domestic legal systems and the dispositions of numerous international, regional, and domestic courts that have interpreted such a right. Notably, all of the following international and regional instruments contain provisions protecting freedom of expression: the Universal Declaration of Human Rights ("UDHR");<sup>843</sup> the International Covenant on Civil and Political Rights ("ICCPR");<sup>844</sup> the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD");<sup>845</sup> the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR");<sup>846</sup> the American Convention on Human Rights ("ACHR");<sup>847</sup> and the African Charter on Human and Peoples' Rights ("ACHPR").<sup>848</sup> These provisions have been widely incorporated into numerous domestic legal systems, and there exists widespread domestic jurisprudence supporting the right to freedom of expression.<sup>849</sup>

380. However, this right is not absolute. It is restricted by the very same conventions and international instruments that provide for it. For example, the UDHR states that everyone should be free from incitement to discrimination.<sup>850</sup> Similarly, the ICCPR prohibits war propaganda, as well as the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence,<sup>851</sup> and the CERD aims to outlaw all forms of expression that explicitly lead to discrimination.<sup>852</sup> Each of the regional conventions mentioned above also restrict the freedom of expression: the ECHR recognises that there are "duties and responsibilities" that accompany the freedom of expression and thus limit its

<sup>842</sup> Indictment, paras. 31-41, 48.

<sup>843</sup> Universal Declaration of Human Rights, A/RES/217, 10 December 1948, second paragraph of the Preamble and Article 19. While not binding, this Declaration is considered evidence of customary international law.

<sup>844</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, Article 19.

<sup>845</sup> International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No.14), U.N. Doc A/6014 (1966), 660 U.N.T.S. 195, Article 5. See also United Nations Declaration on the Elimination of All Forms of Racial Discrimination, G.A. res. 1904 (XVIII), 20 November 1963, Article 9.

<sup>846</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222, 312 ETS 5, as amended by Protocol No. 11 of 11 May 1994, Article 10(1).

<sup>847</sup> American Convention on Human Rights, 22 November 1969, 1144 U.N.T.S. 123, Article 13(1).

<sup>848</sup> African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5; 1520 U.N.T.S. 217, Article 9.

<sup>849</sup> The Chamber finds it unnecessary for the purposes of this Judgement to exhaustively recite the jurisprudence based upon these provisions to support the fairly uncontroversial principle described herein.

<sup>850</sup> UDHR, Article 7.

<sup>851</sup> ICCPR, Article 20.

<sup>852</sup> CERD, Article 4.

application;<sup>853</sup> the ACHR allows for legal liability regarding acts that harm the rights or reputations of others, or that threaten the protection of national security, public order, or public health or morals and considers as offences punishable by law any propaganda for war and advocacy of national, racial or religious hatred that constitute incitements to lawless violence;<sup>854</sup> and the ACHPR restricts the right to that which is "within the law".<sup>855</sup> The Chamber notes that the restrictions on this right have been interpreted in the jurisprudence of the various adjudicating bodies created from the international<sup>856</sup> and regional instruments above.<sup>857</sup> The Chamber also notes that a large number of countries have banned the advocacy of discriminatory hate in their domestic legislation.<sup>858</sup>

381. Prohibited expression can take different forms including incitement to hatred alone, to discrimination, or to violence. Given the varied approaches cited above, for the purposes of this Judgement the Chamber will use "hate speech" as an umbrella term for these forms of expression.

382. Hate speech is not criminalised *per se* under the Statute of the Tribunal, and the Chamber recognises the importance of protecting the right to freedom of expression. Protecting free expression is widely considered to allow for open debate on societal values, encourage artistic and scholarly endeavours, and lead to freedom of conscience and self-fulfilment. Due to such benefits, freedom of expression is widely considered to be the very foundation of successful democracies. In fact, a failure to protect expression may allow repressive regimes to flourish.<sup>859</sup>

383. Nevertheless, the Chamber is of the opinion that there is a discernable hierarchy of expression, one which requires the Chamber to treat different forms of expression differently. Whereas most forms of expression clearly remain within the limits of the legality, others are unequivocally of a criminal nature and should be sanctioned as such.

384. The Chamber considers that international definitions of expression and speech are broad enough to include artistic expression such as songs. Expression has been defined as the

<sup>853</sup> ECHR, Article 10(2).

<sup>854</sup> ACHR, Articles 13(2) and (5).

<sup>855</sup> ACHPR, Article 9(2). *See also* Articles 27(2), 28.

<sup>856</sup> *See, for example, the following jurisprudence from the Human Rights Committee on Articles 19 and 20(2) of the ICCPR: Ross v. Canada, Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997 (2000), Views of 18 October 2000; J.R.T. and the W.G. Party v. Canada, Communication No. 104/1981, UN Doc. CCPR/C/OP/2 at 25 (1984), Decision on admissibility of 6 April 1983; Faurisson v. France, Communication No. 550/1993, UN Doc. CCPR/C/58/D/550/1993 (1996), Views of 8 November 1996. See also the following jurisprudence from the Committee on the Elimination of Racial Discrimination on Article 14 of the CERD: Hagan v. Australia, Communication No. 26/2002, CERD/C/62/D/26/2002 (2003); L.K. v. The Netherlands, Communication No. 4/1991, CERD/C/42/D/4/1991 (1993).*

<sup>857</sup> *See, for example, the following jurisprudence from the European Court of Human Rights on Article 10 of the ECHR: Arslan v. Turkey, Application No. 23462/94, Judgement of 8 July 1999; Sürek and Özdemir v. Turkey, Application No. 23927/94, 24277/94, Judgement of 8 July 1999; Incal v. Turkey, Application No. 22678/93, Judgement of 9 June 1998; Zana v. Turkey, Application No. 19854/91, Judgement of 25 November 1997; Jersild v. Denmark, Application No. 15890/89, Judgement of 22 August 1994. See also the following jurisprudence from the Inter-American Court on Article 13 of the ACHR: Olmedo Bustos et al. case, Judgement of 5 February 2001, Inter-Am. Ct. H.R. (Ser. C.) No. 73 (2001). See also the following from the African Commission on Human and Peoples' Rights on Article 9(2): Amnesty International v. Zambia, Communication No. 212/98 (1999); Constitutional Rights Project and Civil Liberties Organization v. Nigeria, Communication No. 102/93 (1998).*

<sup>858</sup> *See Nahimana et al., Judgement (TC), para. 1075, citing legislation banning hate speech from Germany, Vietnam, Russia, Finland, Ireland, Ukraine, Iceland, Monaco, Slovenia and China.*

<sup>859</sup> *Cf. Nahimana et al., Judgement (AC), Partly Dissenting Opinion of Judge Meron, para. 10: "overly permissive interpretations of incitement can and do lead to the criminalization of political dissent."*

freedom to “impart information and ideas”,<sup>860</sup> “either orally, in writing or in print, in the form of art, or through any other media of his choice”,<sup>861</sup> and “express and disseminate his opinions”.<sup>862</sup> The speech prohibited has been defined broadly as “propaganda”,<sup>863</sup> “advocacy of [...] hatred”,<sup>864</sup> and the “dissemination of ideas”.<sup>865</sup> The Chamber therefore considers that the words accompanying a score of music are comparable from a legal perspective to the words used in a speech.

## 2. CRIMINALISATION UNDER THE STATUTE

385. The Prosecution alleges that Bikindi’s music and speeches constitute a gross and blatant violation of international norms on incitement to discrimination and violence.<sup>866</sup> The Chamber, however, is not concerned with the violation of general international legal principles, but whether an accused has committed the crimes with which he has been charged, and over which the Tribunal has jurisdiction.

386. The Chamber will therefore consider whether and how hate speech can constitute the crimes of direct and public incitement to commit genocide and persecution as a crime against humanity. The Chamber notes that under certain circumstances, a song or speech could be considered participation in a crime such as genocide or murder through aiding or abetting, inciting or even ordering the crime or evidence of conspiracy to commit genocide. However, the Chamber will not address this issue here, as this section is concerned with whether hate speech can constitute the *actus reus* of a crime in itself.

### 2.1. Hate Speech and Direct and Public Incitement to Commit Genocide

387. In order to be considered direct and public incitement to commit genocide, a speech must be a public and direct appeal to commit an act referred to in Article 2(2) of the Statute; it must be more than a vague or indirect suggestion.<sup>867</sup> To determine whether a speech rises to the level of direct and public incitement to commit genocide, context is the principal consideration,<sup>868</sup> specifically: the cultural and linguistic content; the political and community affiliation of the author; its audience; and how the message was understood by its intended audience, *i.e.* whether the members of the audience to whom the message was directed understood its implication.<sup>869</sup> A direct appeal to genocide may be implicit; it need not explicitly call for extermination, but could nonetheless constitute direct and public incitement to commit genocide in a particular context.<sup>870</sup>

<sup>860</sup> UDHR, Article 19; ICCPR, Article 19(2); ECHR, Article 10(1); ACHR, Article 13(1).

<sup>861</sup> ICCPR, Article 19(2); ACHR, Article 13(1).

<sup>862</sup> ACHPR, Article 9(2).

<sup>863</sup> CERD, Article 4.

<sup>864</sup> ICCPR, Article 20(2); ACHR, Article 13(5).

<sup>865</sup> CERD, Article 4(a).

<sup>866</sup> See Prosecution Closing Brief, paras. 240, 246.

<sup>867</sup> *Nahimana et al.*, Judgement (AC), para. 692, affirming *Kajelijeli*, Judgement (TC), para. 852, and *Akayesu*, Judgement (TC), para. 557. See also Report of the International Law Commission on the work of its Forty-Eight Session to the General Assembly, 51 UN ORGA, Supp. No. 10, UN Doc. A/51/10 (1996), Draft Code of Crimes Against the Peace and Security of Mankind, Article 2(3)(f), p. 26: “The element of direct incitement requires specifically urging another individual to take immediate criminal action rather than merely making a vague or indirect suggestion.”

<sup>868</sup> *Nahimana et al.*, Judgement (AC), paras. 701, 715.

<sup>869</sup> *Nahimana et al.*, Judgement (AC), paras. 700, 711, and 713; *Niyitegeka*, Judgement (TC), para. 431; *Akayesu*, Judgement, (TC), paras. 557-558.

<sup>870</sup> *Nahimana et al.*, Judgement (AC), para. 703.

388. While most direct and public incitements to commit genocide would be preceded or accompanied by hate speech, only the former, which actually calls for genocide, is punishable under Article 2(3)(c) of the Statute.<sup>871</sup> The *travaux préparatoires* of the Genocide Convention supports this conclusion as the Genocide Convention was only intended to criminalise direct appeals to commit acts of genocide and not all forms of incitement to hatred.<sup>872</sup>

389. Depending on the nature of the message conveyed and the circumstances, the Chamber does not exclude the possibility that songs may constitute direct and public incitement to commit genocide.<sup>873</sup>

## 2.2. Hate Speech and Persecution as a Crime against Humanity

390. In contrast to the crime of direct and public incitement to commit genocide above, hate speech that does not directly call for genocide may, in certain contexts, constitute persecution as a crime against humanity.

391. The crime of persecution consists of an act or omission that discriminates in fact and that denies or infringes upon a fundamental right laid down in international customary or treaty law, and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics.<sup>874</sup>

392. Underlying acts of persecution need not be considered crimes in international law.<sup>875</sup> For example, harassment, humiliation, psychological abuse,<sup>876</sup> as well as denial of the rights of employment, freedom of movement, proper judicial process, and proper medical care have been recognised as underlying acts of persecution.<sup>877</sup> It follows that it is not necessary to find that certain hate speech was in and of itself a crime under international law in order to regard such a speech as an underlying act of persecution. The Chamber is satisfied that hate speech may in certain circumstances constitute a violation of fundamental rights, namely a violation

<sup>871</sup> *Nahimana et al.*, Judgement (AC), para. 692.

<sup>872</sup> See *Travaux préparatoires* of the Genocide Convention, UN ORGA, 6<sup>th</sup> Committee, 3<sup>rd</sup> Session, 86<sup>th</sup> meeting, UN Doc. A/C.6/3/CR. 86, 28 October 1948, pp. 244-248, and UN ORGA, 6<sup>th</sup> Committee, 3<sup>rd</sup> Session, 87<sup>th</sup> meeting, UN Doc. A/C.6/3/CR. 87, 29 October 1948, pp. 248-254.

<sup>873</sup> The Chamber notes that the language used in the Tribunal's jurisprudence on direct and public incitement to commit genocide, referring to a "direct appeal" and a "message" is broad enough to include song within incitement. The Chamber also notes the convictions in the *Nahimana et al.* trial for direct and public incitement to commit genocide were based on different media of speech, namely radio (RTL programming) and print (*Kangura* newspaper). The Chamber emphasises the inclusive wording of Article 2(3)(f) of the Draft Code of Crimes Against the Peace and Security of Mankind according to which public incitement is characterised by a call for criminal action to a number of individuals in a public place or to members of the general public at large: Report of the International Law Commission to the General Assembly, 51 U.N. ORGA Supp. (No. 10), at 26, U.N. Doc. A/51/10 (1996). Lastly, the Chamber observes that in paragraph 283 of its Closing Brief, the Defence recognised that a song could incite killing if the composer's requisite intention to do so was clearly evident in the song.

<sup>874</sup> *Nahimana et al.*, Judgement (AC), para. 985, citing *Krnojelac*, Judgement (AC), para. 185 (citing with approval *Krnojelac*, Judgement (TC), para. 431); *Simić*, Judgement (AC), para. 177; *Stakić*, Judgement (AC), para. 327-328; *Kvočka et al.*, Judgement (AC), para. 320.

<sup>875</sup> The Chamber notes that although two judgements from the ICTY Appeals Chamber have stated that the underlying act of persecution must be considered a crime at international law (*Blaškić*, Judgement (AC), para. 139; *Kordić and Čerkez*, Judgement (AC), para. 103), this is inconsistent with more recent case law of the ICTR and ICTY Appeals Chambers (*Nahimana et al.*, Judgement (AC), para. 985; *Brdanin*, Judgement (AC), para. 296; *Kvočka et al.*, Judgement (AC), para. 323).

<sup>876</sup> *Kvočka et al.*, Judgement (AC), para. 325.

<sup>877</sup> *Brdanin*, Judgement (AC), paras. 295-297.

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of the right to respect for dignity when that speech incites to hate and discrimination,<sup>878</sup> or a violation of the right to security when it incites to violence.<sup>879</sup>

393. The Appeals Chamber recently recalled that the underlying acts of persecution, whether considered in isolation or in conjunction with other acts, must be of equal gravity to the crimes listed under Article 3 of the Statute.<sup>880</sup> It also held that hate speeches may be considered of equal gravity to the crimes listed under Article 3 of the Statute if they occur as part of a larger campaign of persecution.<sup>881</sup> In its determination, the Appeals Chamber considered the cumulative effect of all the underlying acts of the crime of persecution, namely the cumulative effect of the hate speeches and the direct calls to commit genocide broadcast in the context of a campaign of anti-Tutsi violence.<sup>882</sup>

394. The question remains as to whether hate speech occurring in isolation could be considered to be of equal gravity to the other crimes listed under Article 3.<sup>883</sup> In such a scenario, the hate speech would occur without any other underlying acts of persecution, and as such, would be the only act discriminating against the group. However, given that a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds would have to be established in order to support a conviction for persecution under the Tribunal's Statute, the Chamber considers that the same facts that would lead it to find the existence of such an attack could also support a finding of many other underlying acts of persecution, as both must be committed on discriminatory grounds.<sup>884</sup>

395. Finally, depending on the message conveyed and the context, the Chamber does not exclude the possibility that songs may constitute persecution as a crime against humanity.<sup>885</sup>

<sup>878</sup> *Nahimana et al.*, Judgement (AC), para. 986, citing the UDHR, the Preamble of which expressly refers to the recognition of dignity inherent to all human beings, while the Articles set out its various aspects. See also *Kvočka et al.*, Judgement (AC), paras. 323-325, in which the Appeals Chamber found that violations to human dignity (harassment, humiliation, and psychological abuse) could, if sufficiently serious, constitute acts of persecution.

<sup>879</sup> *Nahimana et al.*, Judgement (AC), para. 986, citing Article 3 of the UDHR ("Everyone has the right to life, liberty and security of the person").

<sup>880</sup> *Nahimana et al.*, Judgement (AC), paras. 985, 987. See also *Brđanin*, Judgement (AC), para. 296; *Simić*, Judgement (AC), para. 177; *Kvočka et al.*, Judgement (AC), para. 321.

<sup>881</sup> See *Nahimana et al.*, Judgement (AC), paras. 985, 987.

<sup>882</sup> *Nahimana et al.*, Judgement (AC), para. 987.

<sup>883</sup> The Chamber notes that the Appeals Chamber alluded to this issue in *Nahimana et al.*, Judgement (AC), para. 987: "The Appeals Chamber is of the view that it is not necessary to decide here whether, in themselves, mere hate speeches not inciting violence against the members of a group are of a level of gravity equivalent to that for other crimes against humanity."

<sup>884</sup> While the Chamber acknowledges a conceivable scenario in which the victims of the widespread or systematic attack differed based on discriminatory grounds from those targeted in the act of persecution (if the widespread or systematic attack were committed on national grounds, this would differ from the three grounds on which persecution may be committed, namely political, racial or religious grounds), the Chamber deems it unnecessary to discuss such a scenario in great detail given the circumstances of the cases of which the Tribunal is seised.

<sup>885</sup> The Chamber notes the definition of persecution is broad enough to include music, as the *actus reus* of persecution is merely defined as an act or omission which discriminates in fact and which denies or infringes upon a fundamental right. See also the *Nahimana et al.*, Judgement (TC), paragraph 1081 in which Ferdinand Nahimana was convicted of persecution based on the programming of the radio station, RTLM, under Articles 6(1) and 6(3) (only Article 6(3) liability affirmed by the Appeals Chamber).

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### 3. CONCLUSION

396. The Chamber appreciates the precarious nature of restricting speech and discouraging political opinion through the criminalisation of certain kinds of expression. Although the Statute does not criminalise acts of expression *per se*, the inclusion of expressive acts within the underlying elements of the crimes under the jurisdiction of the Tribunal comes close to having such an effect. However, the Chamber is of the opinion that there is a discernable hierarchy of expression, one which requires the Chamber to treat different forms of expression differently. In fact, because of the serious nature of the crimes involved – persecution as a crime against humanity and direct and public incitement to commit genocide – it would be injudicious for the Chamber to treat the seeds of such grievous acts in the same fashion as any other act of expression, especially when accompanying a recognisable campaign of ongoing persecution or genocide.

397. While there is murky ground between some forms of expression, at some point, in the words of Judge Shahabuddeen, “[n]o margin of delicate appreciation is involved.”<sup>886</sup> There are cases that are made up of simple criminality, in which the perpetrators know what they are doing and why they are doing it.<sup>887</sup> These are the cases that will be punished under the Statute, no less.

<sup>886</sup> *Nahimana et al.*, Judgement (AC), Partly Dissenting Opinion of Judge Shahabuddeen, para. 73.

<sup>887</sup> *Nahimana et al.*, Judgement (AC), Partly Dissenting Opinion of Judge Shahabuddeen, para. 73.

## CHAPTER IV: LEGAL FINDINGS

## 1. PRELIMINARY MATTER: JOINT CRIMINAL ENTERPRISE

398. Although not specifically pleaded in the Indictment, the Prosecution alleges in its Pre-Trial Brief that Bikindi is criminally responsible pursuant to Article 6(1) based upon his alleged participation in a joint criminal enterprise to eliminate Tutsi.<sup>888</sup> The Chamber emphasises that when it intends to rely on joint criminal enterprise responsibility, the Prosecution must specifically plead this mode of liability in the indictment.<sup>889</sup> Although joint criminal enterprise is a means of "committing", it is insufficient for the Prosecution to merely make broad reference to Article 6(1) of the Statute,<sup>890</sup> as the Prosecution does in the Indictment. The Chamber finds the Indictment defective in this respect.

399. Nonetheless, the Chamber notes that the Prosecution did provide some notice to the Defence before the commencement of the trial that this specific mode of liability was being alleged. In its Pre-Trial Brief,<sup>891</sup> the Prosecution clearly specified that its theory was that Bikindi participated in a joint criminal enterprise to destroy the Tutsi.<sup>892</sup> It clearly and consistently indicated the identity of the participants,<sup>893</sup> the nature of Bikindi's participation in the enterprise<sup>894</sup> and the period over which the enterprise was said to have existed.<sup>895</sup>

400. As to the category of joint criminal enterprise alleged, the Prosecution stated that it intended to rely on all categories of joint criminal enterprise.<sup>896</sup> In this respect, the Chamber recalls that cumulative charging is allowed under the Statute on the basis that "prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven."<sup>897</sup> In the present case, the Chamber considers that the Prosecution was clearly in a position to determine with more specificity which category of joint criminal enterprise it would rely on; the Prosecution cannot reasonably argue that it intends to rely on the second category of joint criminal enterprise in a case where it does not even allege the existence of a system of ill-treatment. The Chamber is of the view that by pleading all three categories of joint criminal enterprise, the Prosecution

<sup>888</sup> Prosecution Pre-Trial Brief, paras. 65-68, 117-126. See also Closing Arguments, T. 26 May 2008, pp. 4, 37.

<sup>889</sup> *Simić*, Judgement (AC), para. 22; *Ntagerura et al.*, Judgement (AC), para. 24; *Kvočka et al.*, Judgement (AC), para. 42.

<sup>890</sup> *Simić*, Judgement (AC), para. 22; *Simba*, Judgement (TC), para. 389; *Ntagerura et al.*, Judgement (AC), para. 24; *Kvočka et al.*, Judgement (AC), para. 42.

<sup>891</sup> The Chamber notes that notice of the allegation of participation in a joint criminal enterprise was already given by the Prosecution in its preliminary Pre-Trial Brief filed on 17 July 2006: *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, The Prosecutor's Preliminary Pre-Trial Brief Pursuant to Article 73bis (B)(i) of the Rules of Procedure and Evidence, paras. 65-67.

<sup>892</sup> Prosecution Pre-Trial Brief, paras. 65-68, 117-126. See also *ibid.*, paras. 244, 250.

<sup>893</sup> Prosecution Pre-Trial Brief, paras. 118, 120.

<sup>894</sup> The Prosecution made clear that Bikindi's participation in the joint criminal enterprise encompasses the specific criminal acts pleaded in the Indictment: Prosecution Pre-Trial Brief, paras. 69-71, 118, 119, 122-126. See the argument by the Defence regarding the nature of Bikindi's participation in the joint criminal enterprise: Closing Arguments, T. 26 May 2008, para. 41, l. 23-25: "we submit that the submissions that [the Prosecution] has made today about acquiescence do not match the nature of the joint criminal enterprise as set out in the Indictment. In our submission, if an accused is going to be found guilty of a joint criminal enterprise by omission, then it is fair and proper that the indictment explain that. This indictment does not." In this respect, the Chamber notes that, in its Pre-Trial Brief, the Prosecution did not plead Bikindi's participation through omission proper but only through affirmative acts or tacit encouragement (Prosecution Pre-Trial Brief, paras. 69, 126).

<sup>895</sup> Prosecution Pre-Trial Brief, para. 118.

<sup>896</sup> Prosecution Pre-Trial Brief, para. 104. See also *ibid.*, para. 66.

<sup>897</sup> *Simba*, Judgement (AC), para. 276, referring to *Kupreskić et al.*, Judgement (AC), paras 385-386. See also *Ntagerura et al.*, Judgement (AC), para. 158.



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failed to properly inform Bikindi as to which form of joint criminal enterprise was being alleged.<sup>898</sup>

401. The Chamber considers it unnecessary to discuss whether the Prosecution's failure to properly plead joint criminal enterprise actually materially impaired Bikindi's ability to prepare his defence, as it considers that the Prosecution has failed to establish the existence of the joint criminal enterprise alleged.

402. Although it has found that Bikindi was close to MRND leaders and was considered as an important figure in the *Interahamwe* movement, the Chamber has concluded that the Prosecution failed to prove that he collaborated or agreed with government figures or MRND, CDR or *Interahamwe* leaders to disseminate anti-Tutsi propaganda. The Chamber further finds that there is no basis in the evidence for a finding beyond reasonable doubt that Bikindi shared a common plan with the individuals identified by the Prosecution in the Indictment and the Prosecution Pre-Trial Brief to destroy or eliminate the Tutsi ethnic group. There is no evidence in the record of any specific meeting, rally or conversation where the plan or design to destroy the Tutsi would have been formed or discussed. The Chamber has found above that Bikindi addressed the crowd at a meeting in Kivumu in 1993 advocating that Tutsi be killed. However, nothing in the evidence suggests that Bikindi collaborated or agreed with others to do so. While it would be reasonable to infer that Bikindi had discussed his speech with the organisers – which may imply that they had agreed to incite people to commit genocide – it is not the only reasonable inference that can be drawn from the circumstances of the case. For instance, it could also be reasonable to consider that Bikindi made a spontaneous and unplanned statement during his performance. The Chamber also notes that even if it were to find that Bikindi's exhortation at the Kivumu meeting in 1993 evidenced the existence of a joint criminal enterprise, it would not prove beyond reasonable doubt that such an enterprise existed in 1994. There is neither direct nor indirect evidence that the alleged joint criminal enterprise existed in 1994.

403. At this juncture, the Chamber wishes to state the following: whereas the Prosecution is entitled to charge an accused with all modes of liability provided for in the Statute,<sup>899</sup> the Chamber stresses that the Prosecution is expected to know its case before proceeding to trial. The Prosecution may not rely on the Chamber's authority to choose the appropriate legal characterisation of the accused's conduct, as it does in the present case,<sup>900</sup> to justify its failure to only plead the mode(s) of liability which reflects the accused's conduct and on which it intends to adduce evidence.

## 2. CONSPIRACY TO COMMIT GENOCIDE (COUNT 1)

404. Under Count 1, the Prosecution charges Bikindi with conspiracy to commit genocide pursuant to Articles 2(3)(b) and 6(1) of the Statute.<sup>901</sup>

405. Conspiracy to commit genocide is defined as "an agreement between two or more persons to commit the crime of genocide".<sup>902</sup> The existence of such an agreement constitutes the *actus reus* of the crime. The agreement need not be formal.<sup>903</sup> It can be proved by

<sup>898</sup> See *Simba*, Judgement (AC), para. 63; *Simić*, Judgement (AC), para. 22; *Ntagerura et al.*, Judgement (AC), para. 24.

<sup>899</sup> See *Nahimana et al.*, Judgement (AC), para. 483; *Ndindabahizi*, Judgement (AC), para. 122.

<sup>900</sup> Prosecution Pre-Trial Brief, para. 75; Prosecution Closing Brief, paras. 296, 382; Closing Arguments, T. 26 May 2008, p. 38.

<sup>901</sup> Indictment, p. 2.

<sup>902</sup> See, e.g., *Seromba*, Judgement (AC), paras. 218, 221.

<sup>903</sup> *Nahimana et al.*, Judgement (AC), para. 898.

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evidence of meetings to plan genocide, but it can also be inferred from other evidence,<sup>904</sup> such as the conduct of the conspirators or their concerted or coordinated action.<sup>905</sup> The individuals in the agreement must have the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such.<sup>906</sup> As an inchoate crime, conspiracy to commit genocide is punishable even if the crime of genocide has not actually been committed.<sup>907</sup>

406. The Chamber has found above that the Prosecution failed to prove its allegation that Bikindi agreed or collaborated with President Habyarimana, Callixte Nzabonimana, *Interahamwe* leaders, MRND leaders or persons responsible for media programming to militarise the MRND youth wing or indoctrinate *Interahamwe* militias with anti-Tutsi ideology and to disseminate anti-Tutsi propaganda. In any event, the Chamber notes that even if it had found that Bikindi had collaborated with MRND leaders to disseminate anti-Tutsi propaganda, it would not have been sufficient to prove beyond reasonable doubt that Bikindi agreed with them to commit genocide. The Chamber considers that agreeing to disseminate ethnic hatred against a protected group does not go as far as agreeing to the destruction, in whole or in part, of that group.

407. In the absence of any evidence that Bikindi agreed with any of the individuals named in the Indictment to commit genocide, the Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that Bikindi conspired with others to commit genocide and, consequently, failed to establish Bikindi's criminal responsibility under Articles 2(3)(b) and 6(1) of the Statute for conspiracy to commit genocide. The Chamber finds Bikindi not guilty on Count 1 of the Indictment.

### 3. GENOCIDE (COUNT 2)

408. Under Count 2, the Prosecution charges Bikindi with genocide pursuant to Articles 2(3)(a), 6(1) and 6(3) of the Statute on the basis of his responsibility for killing or causing 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, as such.<sup>908</sup>

409. A person commits the crime of genocide if he commits one of the enumerated acts in Article 2(2) of the Statute with the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such ("genocidal intent").<sup>909</sup> Even if an accused has not "committed" genocide himself, his responsibility may be established under any one of the modes of liability provided for in Articles 6(1) and 6(3) of the Statute.<sup>910</sup> The *mens rea* varies accordingly. For instance, the requisite knowledge for aiding and abetting genocide is knowledge of the genocidal intent of the principal perpetrator(s).<sup>911</sup> Where an accused is charged with having planned, instigated, ordered or aided and abetted the commission of genocide pursuant to Article 6(1) of the Statute, the Prosecution must establish that the accused's acts or omissions substantially contributed to the commission of acts of genocide.<sup>912</sup>

<sup>904</sup> See, e.g., *Seromba*, Judgement (AC), para. 221.

<sup>905</sup> *Nahimana et al.*, Judgement (AC), paras. 896, 897.

<sup>906</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 896.

<sup>907</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 720; 98bis Decision, para. 16.

<sup>908</sup> Indictment, p. 6.

<sup>909</sup> *Nahimana et al.*, Judgement (AC), para. 492.

<sup>910</sup> See, e.g., *Nahimana et al.*, Judgement (AC), paras. 492, 523.

<sup>911</sup> See, e.g., *Ntakirutimana*, Judgement (AC), paras. 364, 501, 508; *Krstić*, Judgement (AC), para. 140.

<sup>912</sup> *Nahimana et al.*, Judgement (AC), para. 492.

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410. To establish Bikindi's criminal responsibility for genocide, the Prosecution relies on paragraphs 1 to 30 of the Indictment. The Chamber has found above that the Prosecution failed to prove Bikindi's participation in any of the killings or infliction of serious bodily or mental harm to members of the Tutsi ethnic group alleged under these paragraphs.

411. The Chamber has found beyond reasonable doubt that Bikindi travelled on the main road between Kivumu and Kayove in a convoy of *Interahamwe* and made anti-Tutsi statements using a vehicle outfitted with a public address system. These facts are set out under Count 2 in paragraph 30 of the Indictment, together with other facts designed to "demonstrate" "Simon Bikindi's command of the *Interahamwe*". Due to the way the Prosecution pleaded these facts, the Chamber considers that it unambiguously intended to rely on them to establish Bikindi's superior responsibility over the *Interahamwe*, and not as independent charges of genocide. The Chamber finds that Bikindi was not charged with genocide based on these facts. In contrast, Bikindi's criminal activity on the Kivumu-Kayove road is clearly and unequivocally charged under Count 4. The Chamber will therefore discuss whether Bikindi incur criminal liability for his acts on the Kivumu-Kayove road under the count of direct and public incitement to commit genocide.

412. In addition, the Chamber finds that the Prosecution has failed to establish that Bikindi's alleged subordinates – *Interahamwe*, civilian militias or members of the *Irindiro* ballet – participated in the criminal acts alleged. As a result, the Chamber considers it unnecessary to discuss whether Bikindi was the *de jure* or *de facto* superior of those alleged to be his subordinates.

413. As regards to Article 6(3) liability, the Chamber emphasises that the Prosecution's allegation that Bikindi could be held criminally liable for the crimes committed by the "Hutu population"<sup>913</sup> lacks merit in fact and in law. Whereas the power or authority over subordinates does not necessarily arise from official or formal appointment,<sup>914</sup> the existence of a superior-subordinate relationship is required for the purposes of Article 6(3) of the Statute. The Chamber acknowledges that an accused may have sufficient influence or authority over a community to have an ability to prevent or punish outside a superior-subordinate relationship. However, this would not make him a superior in the sense of Article 6(3) of the Statute *vis-à-vis* any perpetrator from that community.<sup>915</sup>

414. Therefore, the Chamber finds that the Prosecution has failed to establish Bikindi's criminal responsibility under Articles 2(3)(a), 6(1) or 6(3) of the Statute for genocide. The Chamber finds Bikindi not guilty on Count 2 of the Indictment.

#### 4. COMPLICITY IN GENOCIDE (COUNT 3)

415. In the alternative to genocide (Count 2), the Prosecution charges Bikindi with complicity in genocide pursuant to Articles 2(3)(e) and 6(1) of the Statute.<sup>916</sup>

416. For the same reasons as elaborated above for the count of genocide, the Chamber finds that the Prosecution failed to establish Bikindi's criminal responsibility under Articles 2(3)(e) and 6(1) of the Statute for complicity in genocide. The Chamber finds Bikindi not guilty on Count 3 of the Indictment.

<sup>913</sup> Prosecution Pre-Trial Brief, paras. 165, 166, 173; Prosecution Closing Brief, paras. 760, 761, 763, 768, 807.

<sup>914</sup> See, e.g., *Halilović*, Judgement (AC), para. 59; *Gacumbitsi*, Judgement (AC), paras. 143, 182.

<sup>915</sup> See *Halilović*, Judgement (AC), para. 59.

<sup>916</sup> Indictment, pp. 6-7.

## 5. DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE (COUNT 4)

417. Under Count 4, the Prosecution charges Bikindi with direct and public incitement to commit genocide pursuant to Articles 2(3)(c) and 6(1) of the Statute.<sup>917</sup>

418. The Trial Chamber considers that the allegation at paragraph 7(d) of the Prosecution Pre-Trial Brief that Bikindi was charged with direct and public incitement to commit genocide under Article 6(3) of the Statute for his responsibility as a superior constitutes a new charge which, to be considered as validly made, would have required the Prosecution to seek leave to amend the Indictment.<sup>918</sup> Accordingly, the Chamber considers that Bikindi is not charged under Count 4 pursuant to Article 6(3) of the Statute.

419. A person commits the crime of direct and public incitement to commit genocide if he directly and publicly incites the commission of genocide with the intent to directly and publicly incite others to commit genocide, which presupposes a genocidal intent.<sup>919</sup> As an inchoate crime, public and direct incitement to commit genocide is punishable even if no act of genocide has resulted therefrom.<sup>920</sup>

420. In the absence of direct evidence, the genocidal intent may be inferred from relevant facts and circumstances of a case,<sup>921</sup> such as the overall context in which the crime occurred, the systematic targeting of the victims on account of their membership of a protected group, the exclusion of members of other groups, the scale and scope of the atrocities committed, the frequency of destructive and discriminatory acts, or the political doctrine that gave rise to the acts referred to.<sup>922</sup>

421. Based on its factual findings as to the meaning of the songs *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi*, the Chamber concludes that none of these three songs constitute direct and public incitement to commit genocide *per se*. The Chamber also recalls that it has found above that the Prosecution failed to prove that Bikindi played any role in the dissemination or deployment of these songs in 1994.

422. The Chamber has found that the Prosecution proved beyond reasonable doubt that towards the end of June 1994, in Gisenyi *préfecture*, Bikindi travelled on the main road between Kivumu and Kayove as part of a convoy of *Interahamwe*, in a vehicle outfitted with a public address system broadcasting songs, including Bikindi's. When heading towards Kayove, Bikindi used the public address system to state that the majority population, the Hutu, should rise up to exterminate the minority, the Tutsi. On his way back, Bikindi used the same system to ask if people had been killing Tutsi, who he referred to as snakes.

423. The Chamber finds that both statements, broadcast over loudspeaker, were made publicly. The Chamber also finds that Bikindi's call on "the majority" to "rise up and look everywhere possible" and not to "spare anybody" immediately referring to the Tutsi as the minority unequivocally constitutes a direct call to destroy the Tutsi ethnic group.<sup>923</sup> Similarly, the Chamber considers that Bikindi's address to the population on his way back from Kayove, asking "Have you killed the Tutsis here?" and whether they had killed the "snakes"

<sup>917</sup> Indictment, p. 11.

<sup>918</sup> See *Nahimana et al.*, Judgement (AC), para. 325; *Ntagerura et al.*, Judgement (AC), para. 32.

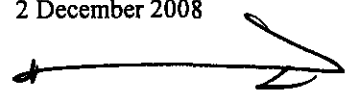
<sup>919</sup> *Nahimana et al.*, Judgement (AC), para. 677.

<sup>920</sup> See, e.g., *Nahimana et al.*, Judgement (AC), paras. 678, 720.

<sup>921</sup> See, e.g., *Seromba*, Judgement (AC), para. 176.

<sup>922</sup> See, e.g., *Seromba*, Judgement (AC), para. 176, citing *Seromba*, Judgement (TC), para. 320.

<sup>923</sup> It is not disputed in the present case that Tutsi are members of a protected group under Article 2 of the Statute.



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is a direct call to kill Tutsi, pejoratively referred to as snakes. In the Chamber's view, it is inconceivable that, in the context of widespread killings of the Tutsi population that prevailed in June 1994 in Rwanda, the audience to whom the message was directed, namely those standing on the road, could not have immediately understood its meaning and implication. The Chamber therefore finds that Bikindi's statements through loudspeakers on the main road between Kivumu and Kayove constitute direct and public incitement to commit genocide.

424. Based on the words he proffered and the manner he disseminated his message, the Chamber finds that Bikindi deliberately, directly and publicly incited the commission of genocide with the specific intent to destroy the Tutsi ethnic group.

425. In reaching its conclusion, the Chamber has considered the evidence that Bikindi's second wife was Tutsi, and that he lived and worked with Tutsi on good terms. It has also considered the evidence that Bikindi assisted some Tutsi during the genocide while in Nyundo and supported some Tutsi while in exile in Zaire. However, the Chamber is of the view that Bikindi's direct and public address on the Kivumu-Kayove road leaves no doubt as to his genocidal intent at the time. Bikindi could not have been unaware of the targeting of Tutsi throughout Rwanda, including Gisenyi *préfecture*, at the time, a targeting that he had encouraged in the past by exhorting people to kill Tutsi in 1993 in Kivumu. Likewise, he could not have been unaware of the impact that his words would have on the audience, the words of a well-known and popular artist, an authoritative figure for the *Interahamwe* and a man perceived as an influential member of the MRND.

426. For the foregoing reasons, the Chamber finds beyond reasonable doubt that Bikindi is criminally responsible under Articles 2(3)(c) and 6(1) of the Statute as a principal perpetrator based on his exhortations to kill Tutsi on the main road between Kivumu and Kayove towards the end of June 1994. The Chamber finds Bikindi guilty on Count 4 of the Indictment for direct and public incitement to commit genocide.

## 6. CRIME AGAINST HUMANITY - MURDER (COUNT 5)

427. Under Count 5, the Prosecution charges Bikindi with murder as a crime against humanity pursuant to Articles 3(a), 6(1) and 6(3) of the Statute.<sup>924</sup>

428. For an enumerated crime under Article 3 of the Statute to constitute a crime against humanity, the Prosecution must prove that there was a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.<sup>925</sup>

429. Murder requires proof of the following three elements: (1) the death of a victim; (2) that the death was the result of an act or an omission of the perpetrator; and (3) that the perpetrator, at the time of the act or omission, intended to kill the victim or, in the absence of such a specific intent, knew that death was a probable consequence of the act or omission.<sup>926</sup>

430. It is not disputed in this case that a genocide characterised by widespread killings of Tutsi civilians occurred from April to July 1994 in Rwanda.<sup>927</sup> The Chamber considers it unnecessary to discuss in more detail whether the *chapeau* requirements for Article 3 are met in light of its conclusions below.

<sup>924</sup> Indictment, pp. 13-17.

<sup>925</sup> *Ntakirutimana*, Judgement (AC), para. 516.

<sup>926</sup> See *Kvočka et al.*, Judgement (AC), para. 261. See also *Mrkšić et al.* Judgement (TC), para 486.

<sup>927</sup> See, e.g., Defence Opening Statement, T. 24 September 2007, pp. 4, 5; Defence Closing Brief, paras. 3, 889, 903; Closing Arguments, T. 26 May 2008, p. 19.

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431. To establish Bikindi's criminal responsibility for murder as a crime against humanity, the Prosecution relies on paragraphs 42 to 47 of the Indictment. The Chamber has found above that the Prosecution failed to prove Bikindi's participation in any of the murders alleged under these paragraphs. The Chamber further finds that the Prosecution has failed to establish that Bikindi's alleged subordinates participated in the criminal acts alleged.

432. Therefore, the Chamber finds that the Prosecution has failed to establish Bikindi's criminal responsibility under Articles 3(a), 6(1) or 6(3) of the Statute for murder as a crime against humanity. The Chamber finds Bikindi not guilty on Count 5 of the Indictment.

## 7. CRIME AGAINST HUMANITY - PERSECUTION (COUNT 6)

433. Under Count 6, the Prosecution charges Bikindi with persecution as a crime against humanity pursuant to Articles 3(h) and 6(1) of the Statute. Although the Indictment is unclear as to the exact nature of the underlying act of persecution alleged, the Chamber understands that the Prosecution charges Bikindi with aiding and abetting the persecution of Tutsi through the dissemination of his songs, in particular through airplay on RTL. M.

434. The Trial Chamber considers that the allegation at paragraph 244 of the Prosecution Pre-Trial Brief that Bikindi was charged with persecution pursuant to Article 6(3) of the Statute for his responsibility as a superior constitutes a new charge which, to be considered as validly made, would have required the Prosecution to seek leave to amend the Indictment.<sup>928</sup>

435. The crime of persecution consists of an act or omission which discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law, and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics. The underlying acts of persecution, whether considered in isolation or in conjunction with other acts,<sup>929</sup> must be of equal gravity to the crimes listed under Article 3 of the Statute.<sup>930</sup> For details on the criminalisation of hate speech, the Chamber refers to its analysis under Chapter III of this Judgement.

436. The Chamber has found above that the Prosecution proved beyond reasonable doubt that Bikindi's songs *Nanga Abahutu* and *Bene Sebahinzi* extolled Hutu solidarity against a common foe, characterised Tutsi as Hutu enslavers, enemies or enemy accomplices and were composed with the specific intention to disseminate pro-Hutu ideology and anti-Tutsi propaganda, and to encourage ethnic hatred. It has also found that *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* were deployed in 1994 in Rwanda in a propaganda campaign to promote contempt for and hatred of the Tutsi population and to incite the listening public to target and commit acts of violence against the Tutsi.

437. Whereas there is evidence that Bikindi composed, recorded and performed *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* before 1994, there is no evidence of him performing or disseminating them in 1994. The Chamber has found that Bikindi performed in January 1994 at an MRND meeting in Kigali and broadcast some of his songs from a vehicle outfitted with a public address system towards the end of June 1994 on the main road between Kivumu and Kayove. However, nothing in the evidence suggests that Bikindi performed or played the specific songs alleged at that meeting or through the public address system.

<sup>928</sup> See *Nahimana et al.*, Judgement (AC), para. 325; *Ntagerura et al.*, Judgement (AC), para. 32.

<sup>929</sup> See *Nahimana et al.*, Judgement (AC), para. 987.

<sup>930</sup> See, e.g., *Nahimana et al.*, Judgement (AC), para. 985.

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438. Further, the evidence does not establish that Bikindi's relationship with RTLM allowed him any influence or control over the broadcasting of his songs on the radio. While Bikindi was interviewed on RTLM in January 1994, the transcripts of the broadcast show that none of the specific songs alleged were played or discussed. His interview was limited to discussing the political situation at the time.

439. The Prosecution argues that Bikindi "acquiesced in the manner in which RTLM used his songs to promote death and destruction".<sup>931</sup> Mere "acquiescence" is not sufficient to entail criminal responsibility in international criminal law. In the present case, the Prosecution has failed to prove that Bikindi's alleged acquiescence amounted to tacit approval or encouragement which had a substantial effect on the perpetration of the alleged crime.<sup>932</sup> The Chamber also recalls that to hold an accused criminally responsible for his omissions, it must be proven that he failed to fulfil a legal duty to act mandated by a rule of criminal law.<sup>933</sup> The Prosecution has failed to prove that Bikindi had a duty in law to stop the broadcast of his musical compositions.

440. The Chamber concludes that the Prosecution has failed to prove beyond reasonable doubt that Bikindi disseminated, in one way or another, or played a role in the deployment of *Twasezereye*, *Nanga Abahutu* and *Bene Sebahinzi* in 1994. Therefore, the Chamber finds that the Prosecution has failed to establish Bikindi's criminal responsibility under Articles 3(h) and 6(1) of the Statute for aiding and abetting persecution as a crime against humanity. The Chamber finds Bikindi not guilty on Count 6 of the Indictment.

<sup>931</sup> Closing Arguments, T. 26 May 2008, p. 14. See also Prosecution Closing Brief, paras. 943-944.

<sup>932</sup> For the law applicable to aiding and abetting by tacit approval or encouragement, see *Orić*, Judgement (AC), para. 42; *Brđanin*, Judgement (AC), para. 273; *Kayishema and Ruzindana*, Judgement (AC), paras. 201-202. For aiding and abetting in general, see *Muvunyi*, Judgement (AC), para. 79.

<sup>933</sup> *Nahimana et al.*, Judgement (AC), para. 478. On the issue, see also *Orić*, Judgement (AC), para. 42; *Tadić*, Judgement (AC), para. 188.

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## CHAPTER V: VERDICT

441. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Chamber finds unanimously in respect of Simon Bikindi as follows:

- Count 1: **NOT GUILTY** of Conspiracy to Commit Genocide
- Count 2: **NOT GUILTY** of Genocide
- Count 3: **NOT GUILTY** of Complicity in Genocide
- Count 4: **GUILTY** of Direct and Public Incitement to Commit Genocide
- Count 5: **NOT GUILTY** of Murder as a Crime against Humanity
- Count 6: **NOT GUILTY** of Persecution as a Crime against Humanity



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## CHAPTER VI: SENTENCE

### 1. INTRODUCTION

442. Having found Simon Bikindi guilty on Count 4 of the Indictment for direct and public incitement to commit genocide, the Chamber must determine the appropriate sentence.

443. A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or for the remainder of his life.<sup>934</sup> The penalty imposed should reflect the aims of retribution, deterrence and to a lesser extent rehabilitation.<sup>935</sup> The Trial Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, the gravity of the offences (the gravity of the crimes of which the accused has been convicted and the form or degree of responsibility for these crimes) and the individual circumstances of the convicted person, including aggravating and mitigating circumstances. In addition, the Trial Chamber shall ensure that any penalty imposed by a court of any State on the accused for the same act has already been served,<sup>936</sup> and shall credit the accused for any time spent in detention pending his surrender to the Tribunal and during trial.<sup>937</sup>

### 2. DETERMINATION OF THE SENTENCE

444. The Prosecution submits that the appropriate penalty is life imprisonment.<sup>938</sup> The Defence submits that Bikindi should be acquitted on every count.<sup>939</sup>

445. All crimes under the Tribunal's Statute are serious violations of international humanitarian law. Trial Chambers are vested with a broad discretion in determining the appropriate sentence due to their obligation to individualise the penalties to fit the circumstances of the convicted person and reflect the gravity of the crime.<sup>940</sup>

#### 2.1. Gravity of the Offence

446. The Chamber has found Bikindi guilty of direct and public incitement to commit genocide based on his public exhortations to kill Tutsi in a vehicle outfitted with a public address system on the main road between Kivumu and Kayove in late June 1994. Bikindi was the principle perpetrator of this crime.

447. The Chamber has considered that under Rwandan law, genocide carries the possible penalty of life imprisonment, or life imprisonment with special provisions, depending on the nature of the accused's participation.<sup>941</sup> The Chamber has also considered the general sentencing practice at the Tribunal, paying particular attention to the *Kajelijeli* and *Ruggiu* Trial Judgements in which Juvénal Kajelijeli and Georges Ruggiu were convicted for direct and public incitement to commit genocide and sentenced for that offence to 15 and 12 years'

<sup>934</sup> Rule 101(A) of the Rules.

<sup>935</sup> See *Nahimana et al.*, Judgement (AC), para. 1057; *Stakić*, Judgement (AC), para 402.

<sup>936</sup> Articles 23(1) and 23(2) of the Statute and Rule 101(B) of the Rules.

<sup>937</sup> Rule 101(C) of the Rules.

<sup>938</sup> Prosecution Closing Brief, para. 1089; Closing Arguments, T. 26 May 2008, pp. 39, 40.

<sup>939</sup> Defence Closing Brief, para. 905.

<sup>940</sup> *Seromba*, Judgement (AC), para. 228.

<sup>941</sup> Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996, as amended by Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty.

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imprisonment respectively.<sup>942</sup> However, the Chamber has found the comparison with those two cases of very limited assistance given the different circumstances of this case.

448. Genocide is, by definition, a crime of the most serious gravity which affects the very foundations of society and shocks the conscience of humanity. Directly and publicly inciting others to commit that crime is, in the Chamber's opinion, of similar gravity. The Chamber has taken this into account in determining the sentence.

## 2.2. Individual Circumstances of the Accused

449. The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. While aggravating circumstances need to be proven beyond reasonable doubt, mitigating circumstances need only be established on a "balance of probabilities".<sup>943</sup>

### 2.2.1 Aggravating Circumstances

450. The Prosecution argues that the aggravating circumstances in this case include: Bikindi's position as a well-known composer and talented musician with a close association to the powers in Rwanda that mattered and the breach of this trust; his premeditation; his direct participation as a perpetrator; the violent and humiliating nature of his acts and the vulnerability of his victims; the duration of the offences and the suffering of his victims.<sup>944</sup> The Defence made no submissions on aggravating circumstances.

451. The Chamber notes Bikindi's stature in Rwandan society as a well-known and popular artist perceived to be an influential member of the MRND and an important figure in the *Interahamwe* as discussed in Chapter II of the Judgement. The Chamber considers that the influence he derived from his status made it likely that others would follow his exhortations. The Chamber considers that Bikindi abused his stature by using his influence to incite genocide. The Chamber finds this to be an aggravating factor.

452. The Chamber has already taken into consideration Bikindi's form of participation in assessing the gravity of the offence. The Chamber finds that the other factors submitted by the Prosecution were not proven beyond reasonable doubt.

### 2.2.2 Mitigating Circumstances

453. The Defence submits that the Chamber should consider the following mitigating circumstances in the determination of Bikindi's sentence, that: Bikindi came from a family of modest means and simple existence; he is a man of exceptional talent particularly in the musical arena; he composed songs asking for peace; his position at the Ministry of Youth and Association Movements was not political; he has made an enormous contribution to Rwanda through his musical talent; he contributed to Rwanda's development by bringing commercial "dynamic publicity" to the country; and that he proposed the creation of a junior ballet to help street children in Rwanda.<sup>945</sup> In particular, the Defence emphasises that he had a good relationship with Tutsi, a number of whom he assisted during the genocide.<sup>946</sup>

<sup>942</sup> *Kajelijeli*, Judgement (TC), para. 968; *Ruggiu*, Judgement (TC), p. 19.

<sup>943</sup> *Simba*, Judgement (AC), para. 328; *Nahimana et al.*, Judgement (AC), para. 1038.

<sup>944</sup> Prosecution Closing Brief, paras. 1089, 1103, 1105, 1107-1118; Closing Arguments, T. 26 May 2008, pp. 38-40.

<sup>945</sup> Defence Closing Brief, paras. 906-922.

<sup>946</sup> Defence Closing Brief, para. 920; Closing Arguments, T. 26 May 2008, p. 42.

454. The Prosecution asserts that there are no mitigating circumstances in the case, specifically pointing out that Bikindi did not voluntarily surrender, nor has he shown any remorse or acknowledged any guilt.<sup>947</sup>

455. Exercising its discretion, the Chamber considers that Bikindi's talent and his contribution to Rwandan culture do not mitigate his guilt. To the contrary, they evidence Bikindi's stature in Rwanda in 1994, which he abused by adding his voice to the anti-Tutsi campaign.

456. Further, Bikindi's modest origins, his non-political position at the Ministry of Youth and Association Movements and his entrepreneurial "dynamic publicity" carry no weight in relation to sentencing in the Chamber's opinion. Likewise, the Chamber does not consider that Bikindi's composition of songs asking for peace are mitigating factors given that he also composed songs with the opposite intention and effect. Bikindi's proposal to create a junior ballet to help street children in Rwanda is insufficient in the Chamber's view to demonstrate Bikindi's good character and will not be accorded any weight in relation to sentencing.

457. Finally, the Chamber finds that Bikindi's good relationship with Tutsi and the assistance he provided to some Tutsi before and during the genocide does not warrant mitigation. The Chamber considers that Bikindi's good relationship with some Tutsi neighbours and Tutsi members of his ballet is not significant and shall not have any bearing on sentencing in this case. The Chamber also observes that Bikindi only provided selective assistance to Tutsi during the genocide, namely Tutsi in his circle, such as the members of his troupe. Such selective assistance is not decisive in the Chamber's view. The Chamber also notes that, while Bikindi took care of a young Tutsi orphan during his exile in Zaire, by the individual's own admission, Bikindi was not aware of her ethnicity.<sup>948</sup>

458. The Chamber therefore concludes that there are no mitigating circumstances that should be taken into account in the determination of the sentence.

### **2.3. Credit for Time Served**

459. Bikindi was originally arrested in Leiden, The Netherlands, on 12 June 2001, and transferred to the Tribunal by the Dutch authorities on 27 March 2002. He has been detained in custody since 12 June 2001, first in The Netherlands, and then at the United Nations Detention Facility in Arusha, Tanzania. Pursuant to Rule 101(C) of the Rules, Bikindi is therefore entitled to credit for time served as of 12 June 2001.

<sup>947</sup> Prosecution Closing Brief, paras. 1089, 1105, 1119-1124.

<sup>948</sup> Witness DQR, T. 1 October 2007, p. 56.

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### 3. CONCLUSION

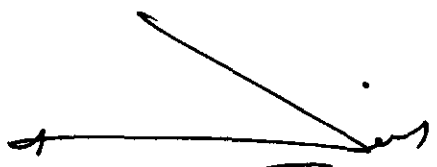
460. Considering all the relevant circumstances discussed above and having ensured that the Accused is not being punished twice for the same offence, the Chamber sentences Simon Bikindi for direct and public incitement to commit genocide to

#### FIFTEEN (15) YEARS OF IMPRISONMENT

461. This sentence shall be enforced immediately and, pursuant to Rule 101(C) of the Rules, Simon Bikindi shall receive credit for the time served as of 12 June 2001.

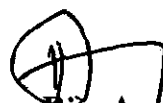
462. In accordance with Rules 102(A) and 103 of the Rules, Bikindi shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

Signed on 1 December 2008 and delivered on 2 December 2008 in Arusha, Tanzania.



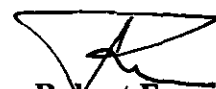
**Inés Mónica Weinberg de Roca**

**Presiding Judge**



**Florence Rita Arrey**

**Judge**



**Robert Fremr**

**Judge**

[Seal of the Tribunal]



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## ANNEX A – PROCEDURAL HISTORY

### 1. PRE-TRIAL PHASE

1. On 5 July 2001, Judge Pavel Dolenc confirmed five counts and dismissed without prejudice one count of the initial indictment dated 27 June 2001,<sup>1</sup> and issued a Warrant of Arrest and Order for Transfer and Detention of Simon Bikindi.<sup>2</sup>
2. On 10 July 2001, Judge Pavel Dolenc issued an order of non-disclosure until the indictment had been served on the Accused, and granted a number of protective measures to Prosecution witnesses, including the use of pseudonyms and redacted witness statements.<sup>3</sup>
3. Bikindi was arrested on 12 July 2001 in Leiden, The Netherlands, and was transferred to the United Nations Detention Facility in Arusha, Tanzania, on 27 March 2002.<sup>4</sup> The Accused made his initial appearance before Judge Pavel Dolenc on 4 April 2002 and entered a plea of not guilty to all five counts of the indictment: conspiracy to commit genocide, genocide, direct and public incitement to commit genocide and murder and persecution as crimes against humanity.<sup>5</sup> Mr. Wilfred Nderitu was appointed as Counsel for Bikindi on 25 November 2002.<sup>6</sup>
4. On 22 September 2003, Trial Chamber III granted in part a Defence motion filed on 30 July 2003, challenging the temporal jurisdiction of the Tribunal and objecting to the form of the indictment, and in part a Prosecution motion, filed on 7 August 2003, seeking leave to file an amended indictment.<sup>7</sup> In accordance with the Chamber's decision, on 22 October 2003, the Prosecution filed an amended indictment, which included the alternative count of complicity in genocide.<sup>8</sup>
5. On 8 March 2004, the Accused made a further appearance before Judge Lloyd G. Williams who rendered an oral decision denying the Defence submission that the amended indictment and the pleas in relation to it were invalid because the indictment had not been confirmed.<sup>9</sup> The Accused pleaded not guilty to all six counts in the amended indictment, including the alternative count of complicity in genocide.<sup>10</sup>
6. On 24 March 2004, Trial Chamber III denied an urgent Defence application for a stay of proceedings and accordingly a suspension of the 30 day period for filing preliminary

<sup>1</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Confirmation of Indictment, 5 July 2001.

<sup>2</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, 5 July 2001.

<sup>3</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Order for Non-Disclosure, 10 July 2001.

<sup>4</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Letter of Confirmation of the takeover of Bikindi prepared by Dutch *Koninklijke Marechaussee*, 27 March 2002; Prosecution Closing Brief, para.5.

<sup>5</sup> Initial Appearance, T. 4 April 2002, pp. 38-43.

<sup>6</sup> Letter from Didier Daniel Preira, Deputy Chief, OIC Defence Counsel Management Section, ICTR, to Mr Wilfred Nderitu, 25 November 2002; See also, Statement of Availability by Wilfred N. Nderitu dated 27 November 2002.

<sup>7</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Decision on the Defence Motion Challenging the Temporal Jurisdiction of the Tribunal and Objecting to the Form of the Indictment and on the Prosecutor's Motion Seeking Leave to File and Amended Indictment, 22 September 2003.

<sup>8</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, The Prosecutor's Submission of the Amended Indictment pursuant to the Decision of 22 September 2003, 22 October 2003.

<sup>9</sup> Further Initial Appearance, T. 8 March 2004, pp. 2-4.

<sup>10</sup> Further Initial Appearance, T. 8 March 2004, pp. 17-20.

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motions, pursuant to Rule 50(C) of the Rules.<sup>11</sup> In the same Decision, Trial Chamber III ordered the Defence to file any further preliminary motions within the prescribed time limit.

7. On 11 May 2005, Trial Chamber III dismissed the Defence motion of 5 April 2004, objecting to the form of the indictment and challenging the legality of the plea based on it, entered on 8 March 2004. The chamber recalled its two previous decisions denying both motions related to the indictment and the plea, and dismissed the present motion as the issues were already *res judicata*.<sup>12</sup> In the same decision, the chamber ordered the Prosecution to file a second amended indictment containing the particulars ordered in its decision of 22 September 2003, and ordered the Prosecution to withdraw the two submissions of particulars filed on 22 October 2003 and 1 February 2005, because there were new allegations for which no leave to amend the indictment was granted.

8. On 15 June 2005, the Prosecution filed a second amended indictment pursuant to the Decisions of 11 May 2005 and 10 June 2005 charging Bikindi with conspiracy to commit genocide; genocide, or in the alternative, complicity in genocide; direct and public incitement to commit genocide; and murder and persecution as crimes against humanity.<sup>13</sup>

9. On 11 August 2005, Bikindi made a further initial appearance before Judge Dennis Byron.<sup>14</sup> Bikindi pleaded not guilty to all six counts of the Indictment.<sup>15</sup>

10. Four Status Conferences were held respectively on 11 August 2005, 12 January 2006, 18 January 2006 and 5 July 2006 at which Trial Chamber III addressed various matters in preparation for the trial, including the health of the Accused, disclosure issues, and various pending motions.<sup>16</sup>

11. On 7 June 2006, Trial Chamber III granted in part a Prosecution motion for protective measures for witnesses filed on 12 September 2005, and issued an interim order that the Witness and Victim Support Section consult with each potential Prosecution witness seeking protective measures about the necessity of such measures.<sup>17</sup>

12. On 17 July 2006, the Prosecution filed a Preliminary Pre-Trial Brief.<sup>18</sup> On 16 August 2006 the Prosecution filed its Pre-Trial Brief.<sup>19</sup>

13. On 20 July 2006, the Prosecution Expert Report was filed.<sup>20</sup> On 25 July 2006, the Defence filed a Statement of Matters Not in Dispute pursuant to Rule 73 bis (b)(ii).<sup>21</sup>

<sup>11</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Decision on Defence Urgent Application for Stay of Proceedings and for Suspension of the 30-day Period Pursuant to Rule 50(C) of the Rules of Procedure and Evidence, 24 March 2004.

<sup>12</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-PT, Decision on the Amended Indictment and the Taking of Plea Based on the Said Indictment, 11 May 2005, p. 3.

<sup>13</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Amended Indictment, 15 June 2005, Pursuant to Decisions of Trial Chamber III of 11 May 2005 and 10 June 2005.

<sup>14</sup> Further Initial Appearance, 11 August 2005.

<sup>15</sup> Status Conference, T. 11 August 2005, pp. 7-8.

<sup>16</sup> Status Conferences: T. 11 August 2005, T. 12 January 2006, T. 18 January 2006, T. 5 July 2006.

<sup>17</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-PT, Decision on the Prosecutor's Motion for Protective Measures, 7 June 2006.

<sup>18</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, The Prosecutor's Preliminary Pre-Trial Brief pursuant to Article 73 bis (B)(i) of the Rules of Procedure and Evidence, 17 July 2006.

<sup>19</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, The Prosecutor's Final [sic] Trial Brief Pursuant to Article 73 bis (B)(i) of the Rules of Procedure and Evidence, 16 August 2006.

<sup>20</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Expert Report, 20 July 2006.

<sup>21</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Statement of Matters Not in Dispute Pursuant to Rule 73 bis (b)(ii), 25 July 2006.

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14. On 14 September 2006, Trial Chamber III granted a Prosecution motion for the transfer of detained witnesses and protective measures for Prosecution witnesses.<sup>22</sup>

15. In an oral decision on 18 September 2006, Trial Chamber III denied a Defence motion, filed on 2 August 2006, challenging the Prosecution's Preliminary Pre-Trial Brief. It held that the additional particulars contained in the Pre-Trial Brief, which had been filed before the Defence motion on the Preliminary Pre-Trial Brief was decided, did not constitute new charges. Instead, they were new facts that underpinned existing charges already made in the Indictment. Consequently these new facts did not amount to wholly new charges and so were held to be relevant and acceptable.<sup>23</sup>

## 2. TRIAL PHASE

16. The trial commenced on 18 September 2006, before Trial Chamber III composed of Judges Inés Mónica Weinberg de Roca, Presiding, Florence Rita Arrey and Robert Fremr. In the course of 61 trial days, a total of 57 witnesses were heard and 234 exhibits admitted.

### *Prosecution case*

17. The Prosecution conducted its case in two trial sessions: from 18 September to 20 October 2006 and from 12 February to 22 February 2007. Over the course of 32 trial days, the Prosecution called 20 witnesses, including two expert witnesses, and tendered 165 exhibits. A Status Conference was held on 4 December 2006 to discuss the scheduling of the case.<sup>24</sup>

18. On 5 February 2007, the Chamber granted a Prosecution motion for protective measures, transfer of a detained witness, and, variation of the witness list, the amended list to be filed by 9 February 2007.<sup>25</sup>

19. The Prosecution concluded its case on 22 February 2007.

### *Assignment of Counsel*

20. On 29 March 2007, the Registrar granted the Accused's request to withdraw Mr. Wilfred Nderitu as Lead Counsel for Bikindi.<sup>26</sup> The Accused argued he had lost confidence in Lead Counsel as a result of a total breakdown in communication. The Registrar granted Bikindi's application with the reasoning that the Lead Counsel's actions and behaviour did not necessarily translate into mischief, but had nevertheless affected the necessary trust which had to exist between counsel and his client. On 9 May 2007, Mr. Andreas O'Shea was appointed as Lead Counsel.<sup>27</sup> Co-counsel did not change.

<sup>22</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-PT, Decision on Transfer of Detained Witnesses and Protective Measures for Prosecution Witnesses, 14 September 2006.

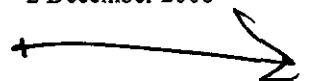
<sup>23</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Oral Decision, T. 18 September 2006, pp. 27-28 referring to *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Defence Motion Challenging the Prosecutor's Preliminary Pre-Trial Brief, 3 August 2006. (The transcript refers to the Defence Motion having been filed on 2 August 2006, whereas it was actually filed on 3 August 2006.),

<sup>24</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Status Conference, T. 4 December 2006.

<sup>25</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on Motion for Protective Measures, Variation of the Witness List, and Transfer of Detained Witness BUY, 5 February 2007.

<sup>26</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision Withdrawing the Assignment of Mr. Wilfred N. Nderitu as Lead Counsel for the Accused Simon Bikindi, 29 March 2007, filed on 30 March 2007.

<sup>27</sup> Letter of Assignment to represent the Accused Simon Bikindi, Ref: ICTR/JUD-11-5-2-06/1379/IE, 9 May 2007.



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**Defence Case**

21. On 15 May 2007, a Status Conference was held in order to set a date for the Defence case and to determine dates for filing of documents required pursuant to Rule 73 *ter* (B).<sup>28</sup> The Chamber noted that the Defence case was originally scheduled to commence on 11 June 2007, and that a motion for extension of time by two months to file documents and delay the start of proceedings had been filed by the Defence.<sup>29</sup> Considering the issues encountered following the change in Lead Counsel the Chamber stated that there was no possibility of resuming the trial before 20 August 2007.<sup>30</sup> Mr O'Shea also informed the Chamber that the Defence had no intention of filing a Pre-Defence Brief and the Chamber indicated it would not insist on the Defence filing one.<sup>31</sup>

22. On 26 June 2007, the Chamber denied the Defence motion for a Judgement of Acquittal, which had been filed on 15 March 2007.<sup>32</sup>

23. On 26 June 2007, the Chamber ordered that the Defence case would be heard from 24 September to 9 November 2007. It ordered the Defence to file the following by 24 July 2007: admissions by the parties and a statement of other facts not in dispute; a statement of contested matters of fact and law; its proposed witness list including the name or pseudonym of each witness, the points in the Indictment about which each witness was expected to testify, the summary of facts on which each witness was expected to testify, and the estimated duration of the length of examination of each witness.<sup>33</sup>

24. Also on 26 June 2007, the Chamber granted, in part, a Defence motion requesting that the Chamber exclude certain evidence led by the Prosecution, on the basis that the evidence referred to allegations not included in the Indictment. The Chamber declared inadmissible the testimony of Witness BHB in relation to the Accused's presence at an alleged meeting in Ngororero and the testimonies of Witnesses BKW and BUY in relation to the Accused's presence at alleged meetings in Kabaya and Butare.<sup>34</sup>

25. On 2 August 2007, the Chamber granted a Defence motion seeking leave to redact identifying information for certain witnesses, filed on 24 July 2007.<sup>35</sup> The Chamber ordered that protective measures for certain witnesses, granted in its Decision of 14 February 2007 be applied. It further requested the Defence to decrease the total number of witnesses to be called and to file a revised witness list by 13 August 2007. Finally, the Chamber ordered the Defence to disclose non-redacted witness statements and identifying information of all the witnesses to be called 21 days before the beginning of the Defence case.

26. On 10 August 2007, the Chamber denied a Defence motion for extension of time to file a revised witness list.<sup>36</sup>

<sup>28</sup> Status Conference, T. 15 May 2007.

<sup>29</sup> Status Conference, T. 15 May 2007, p. 2.

<sup>30</sup> Status Conference, T. 15 May 2007, p. 6.

<sup>31</sup> Status Conference, T. 15 May 2007, p. 9.

<sup>32</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on Defence Motion for Judgement of Acquittal, Rule 98 bis of the Rules of Procedure and Evidence, 26 June 2007.

<sup>33</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Scheduling Order, Rule 54 of the Rules of Procedure and Evidence, 26 June 2007.

<sup>34</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on the *Defence Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation*, 26 June 2007.

<sup>35</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on the Defence Motion to File Proposed List of Witnesses and Statement of Agreed and Contested Matters of Facts and Law, 2 August 2007.

<sup>36</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on the Defence Motion for an Extension of Time to File Revised List, 10 August 2007.



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27. On 5 September 2007, the Chamber denied the Defence motion to add Witnesses RH, RVH2 and RQH to its list of witnesses, and its motion for protective measures. The Chamber noted that the Defence did not observe the Chamber's Directive of 2 August 2007, for whilst it may have reduced the overall number of witnesses, it added three new witnesses.<sup>37</sup> On the same day the Chamber denied a Defence motion for the testimony of Witness DIH to be made via a video link as the Defence had not proved the inability of the witness to come to Arusha to testify.<sup>38</sup>

28. On 24 September 2007, the Chamber rendered an oral decision ordering the Defence to reduce its total number of witnesses from the 42 scheduled at that point.<sup>39</sup>

29. The Defence case commenced on 24 September 2007. In the course of 29 trial days, the Defence called 37 witnesses, including Bikindi and one expert witness. The Defence tendered 69 exhibits.

30. On 1 October 2007, the Chamber granted a Defence motion to issue subpoenas to Witnesses DUR and FIV, but denying the request in respect of Witness JIH ordering that his testimony be taken by video link.<sup>40</sup> On 3 October 2007 the Defence Expert Report was filed.<sup>41</sup>

31. The Defence concluded its case on 7 November 2007.

### **Site Visit**

32. At the Status Conference held on 8 November 2007, the parties informed the Chamber that in their joint opinion a site visit was necessary. The Chamber requested that the parties file a joint itinerary by 15 November 2007.<sup>42</sup> On 6 December 2007 the Chamber granted the Defence request for a site visit in Rwanda and requested the President of the Tribunal to authorise the Chamber's exercise of its function away from the seat of the Tribunal.<sup>43</sup> On 12 March 2008 the President authorised the site visit in Rwanda from 14 to 18 April 2008 in accordance with the Chamber's decision.<sup>44</sup>

### **3. FURTHER PROCEEDINGS**

33. The parties filed their Closing Briefs on 25 April 2008. Closing Arguments were heard on 26 May 2008. On 27 May 2008 the Chamber dismissed a Defence request for judicial notice pursuant to Rule 94 of the Rules and a Prosecution request for the admission of evidence.<sup>45</sup>

<sup>37</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Scheduling Order and Decision on Motion for Protective Measures for Witnesses, 5 September 2007.

<sup>38</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on Defence Motion for Testimony of Witness DIH via Video Link, 5 September 2007.

<sup>39</sup> Oral Decision – Order on Reducing the Total Number of Defence Witnesses, T. 24 September 2007, p. 2.

<sup>40</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on *Ex Parte* and Confidential Application for Subpoenas, 1 October 2007.

<sup>41</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Expert Report of Dr. Eugene Shimamungu, 3 October 2007.

<sup>42</sup> Status Conference, T. 8 November 2007, p. 3

<sup>43</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on Defence Motion for Judicial View of the *Locus in Quo*, 6 December 2007.

<sup>44</sup> *The Prosecution v. Simon Bikindi*, Case No. ICTR-01-72-R4, Decision Authorizing the Site Visit in Rwanda, 12 March 2008.

<sup>45</sup> *The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008.

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## ANNEX B – GLOSSARY

### 1. LIST OF DEFINED TERMS, ACRONYMS AND ABBREVIATIONS

*According to Rule 2(B), of the Rules of Procedure and Evidence, the masculine shall include the feminine and the singular the plural, and vice-versa.*

<b>ACHR</b>	American Convention on Human Rights, 22 November 1969, 1144 U.N.T.S. 123
<b>ACHPR</b>	African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5; 1520 U.N.T.S. 217
<b>CDR</b>	<i>Coalition pour la défense de la République</i> (Coalition for the Defence of the Republic)
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res 2106 (XX), Annex, 20 U.N. GAOR Supp. (No.14), U.N. Doc A/6014 (1966), 660 U.N.T.S. 195
<b>Chamber (or Trial Chamber)</b>	Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judges Inés Mónica Weinberg de Roca, presiding, Florence Rita Arrey and Robert Fremr
<b>Defence Closing Brief</b>	<i>The Prosecutor v. Simon Bikindi</i> , Case No. ICTR-2001-72-T, Defence Closing Brief, public version, 30 April 2008
<b>ECHR</b>	Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222, 312 ETS 5, as amended by Protocol No. 11 of 11 May 1994
<b>Genocide Convention</b>	Convention on the Prevention and Punishment of the Crime of Genocide, adopted by resolution 260 (III) A of the UN General Assembly, 9 December 1948
<b>ICCPR</b>	International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171
<b>ICTY</b>	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 927 of 25 May 1993
<b>Indictment</b>	<i>The Prosecutor v. Simon Bikindi</i> , Case No. ICTR-01-72-I, Amended Indictment Pursuant To Decisions of Trial Chamber III of 11 May 2005 and 10 June 2005, 15 June 2005

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<b>MRND</b>	<i>Mouvement révolutionnaire national pour le développement</i> (National Revolutionary Movement for Development)
<b>Notice of Alibi</b>	<i>The Prosecutor v. Simon Bikindi</i> , Case No. ICTR-2001-72-PT, Notice of Defence of Alibi Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence, 7 September 2006
<b>ORINFOR</b>	Rwandan Office of Information
<b>Prosecution Closing Brief</b>	<i>The Prosecutor v. Simon Bikindi</i> , Case No. ICTR-2001-72-T, Prosecution's Final Trial Brief, 25 April 2008
<b>Prosecution Pre-Trial Brief</b>	<i>The Prosecutor v. Simon Bikindi</i> , Case No. ICTR-2001-72-I, Prosecutor's Final [sic] Trial Brief Pursuant to Article 73bis(B)(i) of the Rules of Procedure and Evidence, Prosecution Pre-Trial Brief, 16 August 2006
<b>UNAMIR</b>	United Nations Assistance Mission for Rwanda
<b>RPF</b>	Rwandan Patriotic Front
<b>RTL</b>	<i>Radio Télévision Libre des Mille Collines</i>
<b>Rules</b>	Rules of Procedure and Evidence of the Tribunal, adopted pursuant to Article 14 of the Statute
<b>Statute</b>	The Statute of the Tribunal adopted by Security Council Resolution 955 of 8 November 1994
<b>Summaries of Anticipated Testimony of Prosecution Witnesses</b>	<i>The Prosecutor v. Simon Bikindi</i> , Case No. ICTR-2001-72-I, Filing of Witness Summaries and Points in the Indictment on Which each Witness Will Testify (Rule 73bis(B)(iv)(a) and (b)), 14 August 2006
<b>T.</b>	Transcript of the Trial Chamber hearings (English Version)
<b>T. (French)</b>	Transcript of the Trial Chamber hearings (French Version)
<b>Tribunal (or ICTR)</b>	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other such Violations Committed in the Territory of Neighboring States between 1 January 1994 and 31 December 1994, established by Security Council resolution 955 of 8 November 1994

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**UDHR**

Universal Declaration of Human Rights, A/RES/217, 10 December 1948

**11 July 2006 Disclosure**

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: "Rule 66A(II) Disclosure", 11 July 2006

**28 September 2006 Disclosure**

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-I, Interoffice Memorandum from the Prosecution, subject: "Disclosure of Redacted Witness Statements", 28 September 2005

**2. JURISPRUDENCE**

**ICTR**

**AKAYESU**

*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("Akayesu, Judgement (TC)")

**BIKINDI**

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on the Defence Requête en exclusion des éléments de preuve produits par l'Accusation pour établir des faits non contenus dans l'Acte d'accusation, 26 June 2007 ("Decision on Exclusion of Evidence")

*The Prosecutor v. Simon Bikindi*, Case No. ICTR-2001-72-T, Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008

**GACUMBITSI**

*Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("Gacumbitsi, Judgement (AC)")

**KAJELIJELI**

*The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgment and Sentence, 1 December 2003 ("Kajelijeli, Judgement (TC)")

**KAMUHANDA**

*Jean De Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-A, Judgement, 19 September 2005 ("Kamuhanda, Judgement (AC)")

**KARERA**

*The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Judgement and Sentence, 7 December 2007 ("Karera, Judgement (TC)")

**KAYISHEMA AND RUZINDANA**

*The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001 ("Kayishema and Ruzindana, Judgement (AC)")

1300

**MUVUNYI**

*Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Judgement, 29 August 2008 (“*Muvunyi*, Judgement (AC)”)

**NAHIMANA *et al.***

*The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 (“*Nahimana et al.*, Judgement (TC)”)

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

**NDINDABAHIZI**

*Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement, 16 January 2007 (“*Ndindabahizi*, Judgement (AC)”)

**NIYITEGEKA**

*The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement and Sentence, 16 May 2003 (“*Niyitegeka*, Judgement (TC)”)

**NTAGERURA *et al.***

*The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR-99-46-A, Judgement, 7 July 2006 (“*Ntagerura et al.*, Judgement (AC)”)

**NTAKIRUTIMANA**

*The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004 (“*Ntakirutimana*, Judgement (AC)”)

**RUGGIU**

*The Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Judgement and Sentence, 1 June 2000 (“*Ruggiu*, Judgement (TC)”)

**SEROMBA**

*The Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Judgement, 12 March 2008 (“*Seromba*, Judgement (AC)”)

**SIMBA**

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

*Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Appeal Judgement, 27 November 2007 (“*Simba*, Judgement (AC)”)

ICTY

1299

**BLAŠKIĆ**

*Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("Blaškić, Judgement (AC)")

**BRĐANIN**

*Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Judgement, 3 April 2007 ("Brđanin, Judgement (AC)")

**ČELEBIĆI**

*Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "Pavo"), Hazim Delić and Esad Landžo (aka "Zenga")*, Case No. IT-96-21-A, Judgement, 20 February 2001 ("Čelebići, Judgement (AC)")

**HALILOVIĆ**

*Prosecutor v. Sefer Halilović*, Case No. IT-01-48-A, Judgement, 16 October 2007 ("Halilović, Judgement (AC)")

**KORDIĆ and ČERKEZ**

*Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004 ("Kordić and Čerkez, Judgement (AC)")

**KUPRESKIĆ *et al.***

*Prosecutor v. Zoran Kupreskić, Mirjan Kupreskić, Vlatko Kupreskić, Drago Josipović, Vladimir Šantić*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("Kupreskić *et al.*, Judgement (AC)")

**KRNOJELAC**

*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 ("Krnojelac, Judgement (TC)")

*Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003 ("Krnojelac, Judgement (AC)")

**KRSTIĆ**

*Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004 ("Krstić, Judgement (AC)")

**KVOČKA *et al.***

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

1298

**MRKŠIĆ *et al.***

*Prosecutor v. Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin*, Case No. IT-95-13/1-T, Judgement, 27 September 2007 ("*Mrkšić et al.*, Judgement (TC)")

**ORIĆ**

*Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Judgement, 3 July 2008 ("*Orić*, Judgement (AC)")

**SIMIĆ**

*Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement, 28 November 2006 ("*Simić*, Judgement (AC)")

**STAKIĆ**

*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Stakić*, Judgement (AC)")

**TADIĆ**

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić*, Judgement (AC)")

**European Court of Human Rights**

*Arslan v. Turkey*, Application No. 23462/94, Judgement, 8 July 1999

*Incal v. Turkey*, Application No. 22678/93, Judgement, 9 June 1998

*Jersild v. Denmark*, Application No. 15890/89, Judgement, 22 August 1994

*Sürek and Özdemir v. Turkey*, Application No 23927/94, 24277/94, Judgement, 8 July 1999

*Zana v. Turkey*, Application No. 19854/91, Judgement, 25 November 1997

**African Commission on Human and Peoples' Rights**

*Amnesty International v. Zambia*, Communication No. 212/98 (1999)

*Constitutional Rights Project and Civil Liberties Organization v. Nigeria*, Communication No. 102/93 (1998)

**Human Rights Committee**

*Faurisson v. France*, Communication No. 550/1993, UN Doc. CCPR/C/58/D/550/1993, 8 November 1996

*J.R.T. and the W.G. Party v. Canada*, Communication No. 104/1981, UN Doc. CCPR/C/OP/2 (1984), 6 April 1983

1297

*Ross v. Canada*, Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997,  
18 October 2000

**Inter-American Court of Human Rights**

*Olmedo Bustos et al.*, Judgment, 5 February 2001, Inter-Am Ct. H.R. (Ser. C) No. 73 (2001)

**Committee on the Elimination of Racial Discrimination**

*Hagan v. Australia*, Communication No. 26/2002, CERD/C/62/D/26/2002 (2003)

*L.K. v. The Netherlands*, Communication No. 4/1991, CERD/C/42/D/4/1991 (1993)

**3. OTHER MATERIAL**

Report of the International Law Commission on the Work of its Forty-Eighth Session to the General Assembly, 51 U.N. ORGA, Supplement No.10, U.N. Doc. A/51/10 (1996), Draft Code of Crimes against the Peace and Security of Mankind

Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996, as amended by Organic Law No. 31/2007 of 25/07/2007 relating to the Abolition of the Death Penalty