ICTR-96-10-T
ICTR-96-17-T
24-02-2003
(2829 - 2549)

2829
S. Mussa

UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

Or. : Eng.

TRIAL CHAMBER I

Before Judges: Erik Møse, Presiding
Navanethem Pillay
Andrésia Vaz

Registrar: Adama Dieng

Judgement of: 21 February 2003

2003 FEB 24 P 6: 28
ICTR
JUDICIAL RECORDS/ARCHIVES
RECEIVED

THE PROSECUTOR

V.

ELIZAPHAN and GÉRARD NTAKIRUTIMANA

Cases No. ICTR-96-10 & ICTR-96-17-T

JUDGEMENT AND SENTENCE

Counsel for the Defence:

Ramsey Clark
David Jacobs

Counsel for the Prosecution:

Charles Adeogun-Phillips
Wallace Kapaya
Boi-Tia Stevens

INDEX

CHAPTER I: INTRODUCTION 1

1. The International Criminal Tribunal for Rwanda 1

2. Jurisdiction of the Tribunal 1

3. The Indictments 2

4. Statutory Provisions 2

5. Confirmation and Initial Appearance 5

6. Other Pre-Trial Proceedings 6

7. The Trial 7

8. Evidentiary Matters 9

9. The Accused 10

CHAPTER II: FACTUAL FINDINGS 12

1. Introduction 12

2. Specificity of the Indictments 12

2.1 Introduction

2.2 Prosecution

2.3 Defence

2.4 Discussion 14

3. The Mugonero Indictment 19

3.1 Introduction

3.2 Overview of Events from 6 to 15 April 1994

3.3 Appeals to Tutsi to Seek Refuge at Mugonero Complex 23

3.3.1 Prosecution

3.3.2 Defence

3.3.3 Discussion

3.4 Separation of Tutsi from Other Individuals at the Complex 27

3.4.1 Prosecution

3.4.2 Defence

3.4.3 Discussion 29

(a) Attempted Confinement in Ngoma Adventist Church 29

(b) Evacuation and Selective Protection 31
(c) Discharge of Non-Tutsi Patients 34
3.5 Denial of Treatment to Tutsi Patients 39
3.5.1 Prosecution
3.5.2 Defence
3.5.3 Discussion
3.6 Severance of Utilities 44
3.6.1 Prosecution
3.6.2 Defence
3.6.3 Discussion
3.7 Procurement of Gendarmes and Ammunition by Gérard Ntakirutimana 45
3.7.1 Prosecution
3.7.2 Defence
3.7.3 Discussion
3.8 Events Leading up to the Attack in the Morning of 16 April 1994 52
3.8.1 Prosecution
3.8.2 Defence
3.8.3 Discussion 57
(a) The Letter 57
(b) Elizaphan Ntakirutimana's Response to the Letter 59
(c) Did Elizaphan Ntakirutimana Convey Attackers? 62
(d) Did Gérard Ntakirutimana Convey Attackers? 82
(e) Alibi for the Morning of 16 April 1994 (8.00-9.00 a.m.) 83
3.9 General Description of the Attack on 16 April 1994 88
3.9.1 Prosecution
3.9.2 Defence
3.9.3 Discussion
3.10 Attack on Refugees at ESI Chapel 96

3.10.1 Prosecution
3.10.2 Defence
3.10.3 Discussion
3.11 Shooting of Charles Ukobizaba 102
3.11.1 Prosecution
3.11.2 Defence
3.11.3 Discussion
3.11.4 Alibi for the Remainder of 16 April (from 9.00 a.m.) 106
3.11.5 Finding
3.12 Shooting of Witness SS 109
3.12.1 Prosecution
3.12.2 Defence
3.12.3 Discussion
3.13 Shooting of Other Refugees (Kagemana and Macantaraga) 111
3.13.1 Prosecution
3.13.2 Defence
3.13.3 Discussion
3.14 Sighting of Gerard Ntakirutimana in Basement of Hospital 114
3.14.1 Prosecution
3.14.2 Defence
3.14.3 Discussion
3.15 Evidence of Superior Responsibility 121
3.15.1 Prosecution
3.15.2 Defence
3.15.3 Discussion
4. The Bisesero Indictment 124
4.1 Introduction 124
4.2 Overview of Alleged Events in the Bisesero Area from 16 April Through June 1994 125
4.3 The Accused's Alibi for the Period 17 April to July 1994 127
4.3.1 Defence

4.3.2 Prosecution

4.3.3 Discussion

4.4 Shooting of Ignace Rugwizangoga on 17 April 1994 (Witness GG) 154

4.4.1 Prosecution

4.4.2 Defence

4.4.3 Discussion

4.5 Murambi Hill on 18 April and Gitwe Hill after 19 April 1994, Possibly May (Witness FF) 155

4.5.1 Prosecution

4.5.2 Defence

4.5.3 Discussion

4.6 Gitwe Hill, a Number of Days after 17 April 1994 (Witness KK) 158

4.6.1 Prosecution

4.6.2 Defence

4.6.3 Discussion

4.7 Gitwe Primary School, End of April, Beginning of May (Witness HH) 160

4.7.1 Prosecution

4.7.2 Defence

4.7.3 Discussion

4.8 Vicinity of Gitwe Primary School, Early May 1994 (Witness DD) 163

4.8.1 Prosecution

4.8.2 Defence

4.8.3 Discussion

4.9 Gitwe Hill, Middle of May (Witness XX) 165

4.9.1 Prosecution

4.9.2 Defence

4.9.3 Discussion

4.10 Murambi Hill, between May and June 1994 (Witness SS) 166

4.10.1 Prosecution

4.10.2 Defence

4.10.3 Discussion

4.11 Kidashya Hill, between April and June 1994 (Witness FF) 168

4.11.1 Prosecution

4.11.2 Defence

4.11.3 Discussion

4.12 Nyarutovu Cellule and Gitwa Hill, Middle and Second Half of May 1994 (Witness CC) 170

4.12.1 Prosecution

4.12.2 Defence

4.12.3 Discussion

(a) Nyarutovu Cellule

(b) Gitwa Cellule

4.13 Kabatwa and Gitwa Hills, End of May 1994 (Witness KK) 173

4.13.1 Prosecution

4.13.2 Defence

4.13.3 Discussion

4.14 Mubuga Primary School, Middle of May 1994 (Witness GG) 176

4.14.1 Prosecution

4.14.2 Defence

4.14.3 Discussion

4.15 Mubuga Primary School, June 1994 (Witness HH) 177

4.15.1 Prosecution

4.15.2 Defence

4.15.3 Discussion

4.16 Mubuga Primary School, June 1994 (Witness SS) 179

4.16.1 Prosecution

4.16.2 Defence

4.16.3 Discussion

4.17 Muyira (Muhira) Hill, Middle of May 1994 (Witness GG) 181

4.17.1 Prosecution

4.17.2 Defence
4.17.3 Discussion
4.18 Muyira Hill, 13 May 1994 (Witness YY) 183
4.18.1 Prosecution
4.18.2 Defence
4.18.3 Discussion
4.19 Muyira Hill, Dege, 20 May 1994 (Witness II) 184
4.19.1 Prosecution
4.19.2 Defence
4.19.3 Discussion
4.20 Muyira Hill, Ku Cyapa, May or June 1994 (Witness SS) 188
4.20.1 Prosecution
4.20.2 Defence
4.20.3 Discussion
4.21 Muyira Hill and Ku Cyapa, June 1994 (Witness HH) 190
4.21.1 Prosecution
4.21.2 Defence
4.21.3 Discussion
4.22 Mutiti Hill, June 1994 (Witness FF) 192
4.22.1 Prosecution
4.22.2 Defence
4.22.3 Discussion
4.23 Murambi Church, End of April (Witnesses DD, GG, SS, YY) 193
4.23.1 Prosecution
4.23.2 Defence
4.23.3 Discussion 195
(a) Removal of the Church Roof
(b) Killings
4.24 Actions of the Accused at Unspecified Locations in the Bisesero Area (Witnesses YY and HH) 200
4.24.1 Prosecution

4.24.2 Defence
4.24.3 Discussion
4.25 Planning Meetings and Distribution of Weapons, June 1994 202
4.25.1 Prosecution
4.25.2 Defence
4.25.3 Discussion
5. The Alibi 206
6. Character of the Accused Prior to April 1994 206
6.1 Defence
6.1.1 Elizaphan Ntakirutimana
6.1.2 Gérard Ntakirutimana
6.2 Prosecution
6.3 Discussion 208
6.3.1 Elizaphan Ntakirutimana
6.3.2 Gérard Ntakirutimana
7. Was There A Political Campaign to Falsely Incriminate the Accused? 214
7.1 Defence
7.2 Prosecution
7.3 Discussion 216
CHAPTER III: LEGAL FINDINGS 223
1. Preliminary Legal Findings 223
2. The Mugonero Indictment 223
2.1 Count 1A – Genocide 223
2.2 Count 1B – Complicity in Genocide 226
2.3 Count 2 – Conspiracy to Commit Genocide 226
2.4 Count 3 – Crime Against Humanity (Murder) 227
2.5 Count 4 – Crime Against Humanity (Extermination) 229
2.6 Count 5 – Crime Against Humanity (Other Inhumane Acts) 230
2.7 Charges of Individual Criminal Responsibility as a Superior Against Gérard Ntakirutimana 231

3. The Bisesero Indictment **231**
3.1 Count 1 – Genocide 231
3.2 Count 2 – Complicity in Genocide 234
3.3 Count 3 – Conspiracy to Commit Genocide 234
3.4 Count 4 – Crime Against Humanity (Murder) 235
3.5 Count 5 – Crime Against Humanity (Extermination) 236
3.6 Count 6 – Crime Against Humanity (Other Inhumane Acts) 236
3.7 Count 7 - Violations of Common Article 3 and Additional Protocol II 237
4. Legal Issues Raised by the Defence **239**
CHAPTER IV: VERDICT **243**
CHAPTER V: SENTENCING **244**
1. Applicable Provisions **244**
2. Purposes and Principles of Sentencing **244**
3. Submissions of the Parties **246**
3.1 Prosecution
3.2 Defence
4. Discussion **247**
4.1 Elizaphan Ntakirutimana 247
4.1.1 Mitigating Circumstances
4.1.2 Aggravating Circumstances
4.1.3 Conclusion
4.2 Gérard Ntakirutimana 249
4.2.1 Mitigating Circumstances
4.2.2 Aggravating Circumstances
4.2.3 Conclusion
4.3 Sentences Imposed in Other Cases of Relevance to the Present Case 251
5. Imposition of Sentence **252**
5.1 Sentence for Elizaphan Ntakirutimana 252
5.2 Sentence for Gérard Ntakirutimana 253

6. Credit for Time Served and Execution of Sentence **254**

ANNEX I: Indictment ICTR-96-10 (Mugonero)

ANNEX II: Indictment ICTR -96-17 (Bisesero)

ANNEX III: Map of Bisesero (Prosecution Exhibit P7B, p. 5)

ANNEX IV: Index of Abbreviations (Judgements)

CHAPTER I

INTRODUCTION

1. The International Criminal Tribunal for Rwanda

1. This Judgement in the case of *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana* is rendered by Trial Chamber I ("the Chamber") of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judges Erik Møse, presiding, Navanethem Pillay, and Andrésia Vaz.

2. The Tribunal was established by United Nations Security Council Resolution 955 of 8 November 1994,[1] after official UN reports that genocide and other widespread, systematic, and flagrant violations of international humanitarian law had been committed in Rwanda.[2] The Security Council determined that the situation constituted a threat to international peace and security, and that the prosecution of persons responsible for serious violations of international humanitarian law in Rwanda would contribute to the process of national reconciliation and to the restoration and maintenance of peace in the country. Accordingly, and pursuant to Chapter VII of the United Nations Charter, the Security Council established the present Tribunal.

3. The Tribunal is governed by the Statute annexed to Security Council Resolution 955 ("the Statute"), and by the Rules of Procedure and Evidence adopted by the Tribunal's Judges on 5 July 1995 and subsequently amended ("the Rules").[3]

2. Jurisdiction of the Tribunal

4. Under Article 1 of the Statute, the Tribunal is empowered 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 neighbouring States of Rwanda. Article 7 of the Statute limits the Tribunal's temporal jurisdiction to acts committed between 1 January and 31 December 1994.

5. The Tribunal's material jurisdiction is circumscribed by Articles 2, 3, and 4 of the Statute. The Tribunal's personal jurisdiction is limited to natural persons (Article 5) and to the forms of individual criminal responsibility in Article 6. These provisions are reproduced below.

---

[1] UN Doc. S/RES/955(1994).
[2] Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994), UN Doc. S/1994/1125; Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994), UN Doc. S/1994/1405; and Reports of the Special Rapporteur for Rwanda of the UN Commission on Human Rights, UN Doc. S/1994/1157, Annexes I and II.
[3] At the time of writing, the most recent amendment to the Rules was approved on 5 July 2002. The Statute and the Rules are available at the Tribunal's website: <http://www.ictr.org>.

6. Although the Tribunal and national courts have concurrent jurisdiction to prosecute persons suspected of serious violations of international humanitarian law, the Tribunal has primacy over national courts, in accordance with Article 8 of the Statute, and may request a national court to defer to the competence of the Tribunal.

3. The Indictments

7. On 22 February 2001, the Chamber granted the Prosecution's motion for a joint trial pursuant to Rule 48 *bis* of the Rules, in respect of two Indictments:[4]

(i) Indictment no. ICTR-96-10-I, as amended on 27 March 2000 and on 20 October 2000, in the case of Prosecutor v. Elizaphan Ntakirutimana, Gérard Ntakirutimana, and Charles Sikubwabo ("the Mugonero Indictment");

(ii) Indictment no. ICTR-96-17-I, as amended on 7 July 1998, in the case of Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana ("the Bisesero Indictment").

8. The third person named in the ICTR-96-10-I Indictment, Charles Sikubwabo, was at large at the time of writing. At the pre-trial conference on 17 September 2001, the Chamber granted the Prosecution's request to have the charges against Mr. Sikubwabo severed.[5]

9. The Indictments are set out in full in Annexes I and II to this Judgement. They charge the two Accused with genocide, complicity in genocide, conspiracy to commit genocide, crimes against humanity, and with violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.[6]

10. Individual responsibility for the above crimes was brought in both Indictments under Article 6(1) of the Statute. Additionally, the Mugonero Indictment charges Gérard Ntakirutimana with responsibility under Article 6(3) (command responsibility) for all counts except conspiracy to commit genocide. The charges against the Accused are considered in detail in Chapter III of this Judgement.

4. Statutory Provisions

11. The provisions of the Statute defining the crimes and forms of individual criminal responsibility with which the Accused are charged in the Indictments are set out below:[7]

---

[4] Decision of 22 February 2001 on the Prosecutor's Motion to Join the Indictments ICTR 96-10-I and ICTR 96-17-T. This and selected other decisions referred to below are available at the Tribunal's website; see <http://www.ictr.org/ENGLISH/cases/index.htm>.

[5] T. 17 September 2001 p. 45.

[6] The relationship between the Mugonero Indictment and Bisesero Indictment is discussed in greater detail in Chapter II.

[7] The past judgements of the Trial Chambers of this Tribunal contain separate chapters entitled "Applicable Law", summarising the jurisprudence relative to Articles 2 to 6 of the Statute. In the present case the Chamber sees no need to recapitulate the applicable law in a separate chapter; rather, it will confine its discussion of the law to the concrete circumstances of this case and to any legal issues arising from it; see, in particular, Chapter III. For Tribunal judgements see <http://www.ictr.org/ENGLISH/cases/index.htm>.

Article 2: Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

a) Genocide;
b) Conspiracy to commit genocide;
c) Direct and public incitement to commit genocide;
d) Attempt to commit genocide;
e) Complicity in genocide.

Article 3: Crimes against Humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

a) Murder;
b) Extermination;
c) Enslavement;
d) Deportation;
e) Imprisonment;
f) Torture;
g) Rape;
h) Persecutions on political, racial and religious grounds;
i) Other inhumane acts.

Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
b) Collective punishments;
c) Taking of hostages;
d) Acts of terrorism;
e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
f) Pillage;
g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
h) Threats to commit any of the foregoing acts.

Article 5: Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6: Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

12. The elements of the above crimes are set out in Chapter III.

5. Confirmation and Initial Appearance

13. On 20 June 1996, the original ICTR-96-10-I (Mugonero) Indictment was confirmed by Judge Khan.[8] It charged Elizaphan Ntakirutimana, Gérard Ntakirutimana, Obed Ruzindana, and Charles Sikubwabo with genocide, complicity in genocide, conspiracy to commit genocide, and crimes against humanity for their alleged involvement in massacres at Mugonero Complex in Gishyita commune, Kibuye prefecture. By decision of 30 June 1998, addressing a motion by the Defence alleging that the Mugonero Indictment was too vague, the Chamber ordered that the Indictment be amended.[9] On 10 March 2000, the Prosecution moved to amend the Indictment to delete charges against Ruzindana, who had been convicted on a separate indictment. The Chamber granted the Prosecution's request on 27 March 2000.

14. On 7 April 2000, the Prosecution filed another motion for leave to amend the Mugonero Indictment. It requested, *inter alia*, that the first two counts (on genocide and on complicity in genocide) be charged in the alternative rather than cumulatively; and that the alleged individual responsibility of Gérard Ntakirutimana be expanded to include command responsibility for acts of his subordinates, pursuant to Article 6(3) of the Statute. The Chamber granted these requests.[10]

15. The ICTR-96-17-I (Bisesero) Indictment was confirmed by Judge Sekule on 7 September 1996.[11] Elizaphan Ntakirutimana and Gérard Ntakirutimana were thereby jointly charged with genocide, complicity in genocide, conspiracy to commit genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. The Bisesero Indictment dealt with the alleged involvement of the two Accused in massacres in the area of Bisesero, in the Gisovu and Gishyita communes of Kibuye prefecture. By decision of 23 March 1998, concerning a Defence motion challenging the Bisesero Indictment for vagueness, the Chamber ordered that the Indictment be amended.[12]

16. Gérard Ntakirutimana was arrested in the Ivory Coast on 29 October 1996 and transferred to the Tribunal's detention facility in Arusha on 30 November 1996. On 2 December 1996, the Accused made his initial appearance before a Trial Chamber composed of judges Ostrovsky, Aspegren, and Pillay. He pleaded not guilty to the five counts in the Mugonero Indictment and the seven counts in the Bisesero Indictment.[13]

17. The second Accused, Elizaphan Ntakirutimana, was transferred to the Tribunal's detention facility from the United States on 24 March 2000, having failed in his attempt

---

[8] Decision of 20 June 1996 on the Review of the Indictment.
[9] Decision of 30 June 1998 on a Preliminary Motion Filed by Defence Counsel for an Order to Quash Counts 1, 2, 3, and 6 of the Indictment.
[10] Decision of 6 October 2000 on the Prosecutor's Request for Leave to File an Amended Indictment.
[11] Decision of 7 September 1996 on the Review of the Indictment.
[12] Decision of 23 March 1998 on a Preliminary Motion Filed (on 16 April 1997) by Defence Counsel for an Order to Quash Counts 1, 2, 3, 6 and 7 of the Indictment.
[13] T. 2 December 1996 pp. 8 and 14.

to challenge the transfer.[14] His initial appearance was held before Judge Gunawardana, on 31 March 2000; he pleaded not guilty to all counts.[15]

6. Other Pre-Trial Proceedings

18. On 22 August 2000, the Chamber granted the Prosecution's request for witness protection. The decision also granted protection to Defence witnesses.[16]

19. At the pre-trial conference on 2 November 2000, the Prosecution requested leave of the Chamber to bring the Mugonero and Bisesero Indictments within a single trial pursuant to Rule 48 *bis* of the Rules. The basis of this request was that the offences alleged in the Indictments were committed in furtherance of a common transaction and that a single trial would be in the best interests of the administration of justice. On 22 February 2001, the Chamber granted the Prosecution's request.[17]

20. On 28 May 2001, the Prosecution filed a motion for contempt of court allegedly arising from a violation of the Chamber's order of 22 August 2000 relating to witness protection. The Prosecution alleged that a statement of a protected witness in the present case, which was disclosed to the Defence, had subsequently been produced in appeal proceedings in the case of Alfred Musema. On 8 June 2001, the Defence opposed the motion for contempt as an attempt to deny the Accused their rights to prepare a defence, and stated *inter alia* that a witness statement could find its way into the hands of another detainee by numerous means.

21. In another motion, of 5 July 2001, the Defence raised issues pertaining *inter alia* to expert and factual witnesses.

22. In its decision on the two aforementioned motions, dated 16 July 2001, the Chamber emphasised the need to comply with witness protection provisions. However, the Chamber found that in the particular circumstances of the case the breach of the protection order was not serious enough to be tantamount to contempt of court. In relation to the motion of 5 July 2001, the Chamber requested the Prosecution to clarify whether it intended to call expert witnesses and, if so, to communicate forthwith their identity and qualifications to the Defence.[18]

23. By a motion dated 16 June 2001, the Defence for Elizaphan Ntakirutimana requested that the Chamber direct the Registrar to assign Ephrem Gasasira as co-Counsel to lead Counsel Ramsey Clark. On 13 July 2001, the Chamber granted the motion on the

---

[14] See *Elizaphan Ntakirutimana v. Janet Reno et al.*, 184 F.3d 419 (United States Court of Appeal, Fifth Circuit, 5 August 1999); and 528 U.S. 1135 (Supreme Court, 24 January 2000), certiorari denied.
[15] T. 31 March 2000 pp. 13-15 and 27-29.
[16] Decision of 22 August 2000 on Witness Protection.
[17] Decision of 22 February 2001 on the Prosecutor's Motion to Join the Indictments ICTR 96-10-I and ICTR 96-17-T.
[18] Decision of 16 July 2001 on Prosecution Motion for Contempt of Court and on Two Defence Motions for Disclosure Etc.

condition that the Defence produce sufficient additional documentation relating to the candidate's qualifications.[19]

24. On 10 September 2001, the Defence served a notice of alibi pursuant to Rule 67(ii)(a) of the Rules, to the effect that both Accused would seek acquittal on the ground that the Prosecution's evidence failed to establish beyond a reasonable doubt that they were present at the times and places charged. The Prosecution objected to the notice of alibi, alleging that it was vague and provided insufficient particulars.[20] The Chamber ordered the Defence to furnish further particulars not later than the beginning of December 2001.[21]

25. On 10 September 2001, the Defence filed a motion seeking to preclude the Prosecution from adducing at trial any evidence of rape involving the Accused, on the ground that since neither Accused had been indicted for rape, such evidence would be unduly prejudicial. At the pre-trial conference on 17 September 2001, in response to the Chamber's ruling that the court would deal with the witnesses whose statements included evidence of rape in such a way as to avoid unnecessary stigmatisation of the Accused, the Defence withdrew its motion.[22]

7. The Trial

26. On 16 July 2001, the Prosecution filed a Pre-trial Brief pursuant to Rule 73*bis* (B)(i) of the Rules. The Prosecution case opened on 18 September 2001. Nineteen witnesses were heard, comprising 16 protected witnesses, two investigators, and one expert witness. The Prosecution case closed on 2 November 2001, after 27 trial days. The Defence case opened on 4 February 2002, was adjourned on 15 February 2002, recommenced on 10 April 2002, and closed on 10 May 2002.[23] Its total duration was 30 trial days, during which 24 witnesses were heard, including the two Accused. A total of 149 Prosecution and Defence exhibits were admitted. Final briefs were filed by the Prosecution on 11 June 2002 and by the Defence on 24 July 2002. Closing oral arguments were heard on 21 and 22 August 2002. The Chamber prepared the judgement in parallel with hearing two other trials. It was announced orally on 19 February 2003.

27. Several motions were decided in the course of trial. On 28 September 2001, the Defence moved to strike Witness DD from the list of prospective Prosecution witnesses, on the ground that his reconfirmation statement contained a serious allegation not present in his earlier written statement. On 1 October 2001 the Chamber dismissed the motion, noting that witness statements do not purport to give exact and full information about the prospective testimony, and that a testimony often expands upon or provides more detail

[19] Decision of 13 July 2001 on the Motion of the Defence for the Assignment of Co-Counsel for Elizaphan Ntakirutimana. The Registry subsequently concluded that sufficient additional information, as requested in the order, had not been provided.
[20] T. 17 September 2001 pp. 16-18.
[21] Id. pp. 38-39.
[22] Id. pp. 40-44.
[23] Commencement of the Defence case had to be postponed to allow for the replacement of counsel for Gérard Ntakiturimana; see para. 30 below.

than do earlier statements recorded by investigators. Moreover, with the case at an early stage, the Defence had ample opportunity to prepare for cross-examination on the additional allegation.[24]

28. In a motion dated 8 October 2001, the Defence moved to strike in its entirety the testimony of Prosecution Witness YY, on the ground that the witness had made a serious in-court allegation against the two Accused not previously indicated in the Indictments or in the witness's earlier written statement. In its decision of 5 November 2001, the Chamber noted that the Indictment contained a general clause covering allegations of the kind newly made. It found no evidence that the Prosecution knew that the particular allegation would be made. In the Chamber's view, the fact that the witness volunteered unexpected information did not justify the drastic measure of striking his entire testimony. The Chamber noted that the Defence had not requested an extension of time to prepare its cross-examination of the witness; it remained entitled to apply to have the witness recalled; and the presentation of its case was not due to commence until 14 January 2002, more than three months later. The Chamber concluded that it would retain the testimony of the witness and make its own assessment of it.[25]

29. On 22 November 2001, the Chamber decided a Prosecution motion for judicial notice of adjudicated facts pursuant to Rule 94(B) of the Rules. The alleged adjudicated facts included the total number of persons killed in Rwanda in 1994, the existence of a genocidal plan to eliminate the Tutsi ethnic group, and claims relating to serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. The Chamber stated that the term "adjudicated fact" does not refer to judgements made on the basis of guilty pleas or admissions by an accused in other proceedings of the Tribunal. Moreover, only facts in a judgement that is not subject to appeal can be considered "adjudicated". Furthermore, proposed adjudicated facts must "relate" to the matters at issue. Finally, under Rule 94(B), judicial notice is to be taken at the discretion of the Chamber. In striking a balance between the need for judicial economy and the right of an accused to a fair trial, the Chamber held that it would avoid taking judicial notice of, firstly, alleged adjudicated facts that were the subject of reasonable dispute and, secondly, legal characterisations or legal conclusions based on the interpretation of facts. At the time of the decision, the Prosecution had closed its case. The Chamber was not inclined, at that stage of the proceedings, to view judicial notice as having a significant influence on judicial economy. The motion was dismissed.[26]

30. By letter dated 12 December 2001, Mr. Edward Medvene, lead Counsel for Gérard Ntakirutimana, requested permission to withdraw, for medical reasons, from further representation of his client. On 19 December 2001, the Registrar of the Tribunal, upon the advice of the Presiding Judge, withdrew with immediate effect the assignment of Mr. Medvene, assigning in his place Mr. David Jacobs, who fulfilled the Tribunal's

[24] T. 1 October 2001 pp. 149-154.
[25] Decision of 5 November 2001 on the motion of the Defence to strike the testimony of Witness YY.
[26] Decision of 22 November 2001 on the Prosecutor's motion for judicial notice of adjudicated facts.

conditions of assignment and had been formally accepted by Gérard Ntakirutimana.[27] The change of Counsel necessitated postponement of the date of commencement of the Defence case, from 14 January 2002 to 4 February 2002.

31. To summarise the trial phase, a total of 43 Prosecution and Defence witnesses were heard over 57 trial days. Between commencement of the trial, on 18 September 2001, and 10 May 2002 when the last witness was heard, the Trial Chamber rendered five written and seven oral decisions on motions. This relatively low number of motions and corresponding decisions is attributable in part to weekly informal conferences at which issues of concern to the parties were resolved. Efficiency was also improved by the piloting of simultaneous interpretation between Kinyarwanda and the official languages of the Tribunal.

8. Evidentiary Matters

32. In accordance with Rule 89(A) of the Rules, the rules of evidence (which are found in Section 3 of Part 6 of the Rules) govern proceedings before the Trial Chambers. Pursuant to the same rule, the Trial Chambers are not bound by national rules of evidence. When confronted with evidential questions not otherwise provided for by the Rules, the Chamber applied rules of evidence which in its view best favoured a fair determination of the matter before it and which were consonant with the spirit of the Statute and the general principles of law, as authorised by Rule 89(B). The Chamber has taken account of the case law of the Tribunal which has established general principles concerning the assessment of evidence. For example, the *Akayesu* Judgement contains important statements on, *inter alia*, the probative value of evidence; the use of witness statements; the impact of trauma on the testimony of witnesses; problems of interpretation from Kinyarwanda into French and English; and cultural factors affecting the evidence of witnesses.[28] Subsequent case law of the Tribunal has developed principles relating to evidentiary matters, the most recent authority being the Judgement in the case of *Prosecutor v. Ignace Bagilishema*.[29] The Chamber will return to these principles to the extent necessary.

33. Finally, the Chamber notes that hearsay evidence is not inadmissible per se, even when it is not corroborated by direct evidence. The Chamber has considered hearsay evidence with caution, in accordance with Rule 89 of the Rules.[30]

---

[27] Decision of 19 December 2001 on Withdrawal of Mr. Edward Medvene as Lead Counsel of Mr. Gérard Ntakirutimana and Assignment of Mr. David Jacobs as Lead Counsel of Mr. Gérard Ntakirutimana.
[28] *Akayesu* (TC) paras. 130-156. The abbreviation, *Akayesu* (TC) stands for the Judgement rendered by Trial Chamber I of the Tribunal on 2 September 1998 in the Case *The Prosecutor v. Jean-Paul Akayesu*, No. ICTR-96-4-T. This system of abbreviation (name of Accused, Judgement or Sentence, (TC) for Trial Chamber or (AC) for Appeals Chamber) will be adopted each time a Judgement or Sentence of this Tribunal or the ICTY is referred to. Please consult the Index of Abbreviations of Judgements at Annex IV for full quotation and details of the Judgement or Sentence concerned.
[29] *Bagilishema* (TC); see also *Kayishema and Ruzindana* (TC) paras. 65-80; *Rutaganda* (TC) paras. 15-23; and *Musema* (TC) paras. 31-105.
[30] See *Akayesu* (TC) para. 136; confirmed on appeal (*Akayesu* (AC) paras. 284-309).

9. The Accused

34. The following information was compiled from the Accused's own testimony and was not contested by the Prosecution.

35. Elizaphan Ntakirutimana was born in 1924 in Ngoma secteur, Gishyita commune, Kibuye prefecture, Rwanda.[31] He started his schooling in 1939, at the Ngoma mission of the Seventh-Day Adventist (SDA) Church, and became a member of the SDA around that time.[32] After completing primary school in 1946, he gained employment at the mission office, where he also worked as a teacher. On 22 August 1950, he married Lois (Royisi) Nyirahakizimana. He spent a few years teaching in villages in Rwanda and Zaire before joining the Gitwe Seminary in Rwanda in 1953.[33] After graduating from the seminary in 1956, he returned to teach at Ngoma mission, where he also served as the mission's accountant and, for a time, acting president.

36. On 4 August 1961, Elizaphan Ntakirutimana was ordained a pastor. Around 1962 he enrolled in a "leadership" programme at the SDA's Salisbury College in Rhodesia. Following that he went to Nigeria to study accountancy.[34] In 1967 he was elected president of the West Rwanda Association of the SDA, a position he held until 1970. He was to be elected to that post three more times, the last in 1994.[35] During the period 1970-1994, Elizaphan Ntakirutimana served the SDA in various capacities, including as secretary of the Rwanda-Burundi SDA Union (1970-1975), Union director of fundraising and lay activities (1975-1980), treasurer of the Trans-Africa Division (1985-1989), and president of the South Rwanda Association (1989-1993). In 1980 he was elected to the World Conference, the SDA's governing body, but withdrew after eight months as a result of his wife's poor health.[36] In April-July 1994, which is the period covered by the Indictments, Elizaphan Ntakirutimana was president of the West Rwanda Association of the SDA, also known as the West Rwanda "field", and based at the field headquarters in Mugonero Complex, Gishyita commune.[37] The Accused and his wife had eight children, including Gérard Ntakirutimana, of which seven were alive in 2002; four of them earned medical degrees.[38]

37. Gérard Ntakirutimana was born in 1958 in Ngoma secteur, Gishyita commune, Kibuye prefecture, Rwanda. (Both he and his father, Elizaphan Ntakirutimana, stated that their ethnicity was Hutu.[39]) Gérard Ntakirutimana lived in Ngoma until the age of thirteen. After a year in Burundi he returned to Rwanda to attend the SDA's Gitwe Secondary School in Gitarama prefecture. In 1979, on a government scholarship, he attended the University of Butare, from where he graduated with a degree in medicine in

[31] Defence exhibit 1D45.
[32] T. 6 May 2002 pp. 18-20.
[33] Id. pp. 22-23.
[34] Id. pp. 24-30.
[35] Id. p. 41.
[36] Id. pp. 42-51.
[37] Id. pp. 71-73.
[38] Id. pp. 33-40.
[39] Defence exhibits 1D45 and 2D56.

1985.[40] He distinguished himself in his studies and the university retained him on the staff of the Centre for Public Health, where he supervised final-year students at the faculty of medicine. On 1 January 1989, Gérard Ntakirutimana married Ann Nzahumunyurwa. They have three children.[41]

38. In early 1990 the Accused left the University of Butare to continue his education in the United States. He studied English at the University of Illinois and completed a Masters degree in public health at St. Louis, Missouri (1992). After spending a few months in Laredo, Texas, he returned to Rwanda in March 1993 with the intention of assuming his former post at the University of Butare.[42] Finding that the situation in Butare had become "difficult" as a result of the on-going conflict between the government and rebel groups, Gérard Ntakirutimana joined the staff of the SDA's hospital at Mugonero Complex, Gishyita commune, in April 1993. There he worked as a medical doctor under the supervision of the hospital's director, until the latter's departure in April 1994.[43]

[40] T. 8 May 2002 pp. 131-137.
[41] Id. pp. 142-143.
[42] Id. pp. 150-152.
[43] Id. pp. 152-161.

CHAPTER II

FACTUAL FINDINGS

1. Introduction

39. This Chapter contains an assessment of the evidence adduced by the Prosecution in support of its case. The Chamber will consider the specific events alleged in the Mugonero and Bisesero Indictments in approximate chronological order (see II.3 and 4, respectively). In connection with its discussion of the Prosecution evidence the Chamber will take into account the submissions of the Defence concerning the credibility of witnesses who testified against the two Accused. It will also discuss the Accused's alibi in relation to the events in the Indictments.

40. Before doing so, the Chamber will consider whether the Indictments provide the Accused with sufficient information on the nature of the charges against them, as required by the Statute and the Rules of the Tribunal (II.2). This issue was not included in the closing briefs submitted by the parties. The Chamber therefore invited the parties to address the issue during their closing arguments.[44]

41. The remaining components of the Defence case are considered in section II.5 and the following sections. After a brief section on the alibi submissions (II.5) comes the Chamber's assessment of the contention that the allegations against the Accused are totally inconsistent with their previous life and character (II.6). Furthermore, the Defence argues that there was a political campaign against the Accused (II.7).

2. Specificity of the Indictments

2.1 Introduction

42. According to Article 17 (4) of the Statute, an indictment shall contain "a concise statement of the facts and the crime or crimes with which the accused are charged". Similarly, Rule 47 (C) of the Rules provides that an indictment, apart from the name and particulars of the suspect, shall set forth "a concise statement of the facts of the case". It follows from case law that the Prosecution's obligation to set out concisely the facts of its case in the indictment must be interpreted in conjunction with Articles 20 (2) and (4)(a) and (b) of the Statute. These provisions state that, in the determination of any charges against him, an accused is entitled to a fair hearing and, more particularly, to be informed of the nature and cause of the charges against him and to have adequate time and facilities for the preparation of his defence. In the jurisprudence of the *ad hoc* Tribunals, this translates into an obligation on the part of the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven. Hence, the question whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the

[44] T. 21 August 2002 p. 98 and T. 22 August 2002 p. 122.

Prosecution case with enough detail to inform an accused clearly of the charges against him so that he may prepare his defence. Reference is made to the ICTY Appeals Chamber's Judgement in *The Prosecutor v. Kupreskic et al.* (henceforth *Kupreskic*), which was delivered on 23 October 2001, more than a month after the commencement of the trial in the present case.[45]

43. In *Kupreskic*, the Appeals Chamber found that the convictions of two of the Accused were based on material facts not specifically pleaded in the Indictment. Furthermore, it concluded that the defects in the Indictment had not been cured, because timely, clear and consistent information had not been provided to the Accused. The trial was therefore considered unfair in relation to these Accused, and their convictions were overturned. In the present case, some paragraphs of the Mugonero and Bisesero Indictments are rather generally formulated. These paragraphs give rise to the question whether the Indictments were pleaded with sufficient particularity.

2.2 Prosecution

44. Counsel for the Prosecution sought to distinguish the facts dealt with in *Kupreskic* from the facts in the present case. He submitted that the main paragraphs of the Bisesero Indictment allege, firstly, that the two Accused went to Bisesero in April, May and June; secondly, that they went there in convoys of attackers; and thirdly, that they participated in attacks in the Bisesero area. According to the Prosecution, the first two allegations are contained in the Indictment and the supporting material.[46] The Accused had the opportunity to challenge the Indictments at the pre-trial stage, as well as after the close of the Prosecution's case (by way of a motion for acquittal under Rule 98*bis*), but failed to do so. Certain specific allegations, such as the killings at Murambi Church alleged by Witness YY, or the killing of Ignace Rugwizangoga at Murambi Hill alleged by Witness GG,[47] came to the Prosecution's attention just prior to the testimony of the witnesses concerned. In the Prosecution's view, the allegation should not have come as a surprise to the Defence because it follows from paragraph 4.14 of the Bisesero Indictment that the Accused allegedly participated in the killing of refugees.[48]

2.3. Defence

45. Counsel for Elizaphan Ntakirutimana argued that paragraph 91 of *Kupreskic* (which states that where it is practicable for the Prosecution to plead with specificity the identity of the victims, etc., it must do so) impacts on both Indictments, but especially on the Bisesero Indictment. No victims of the killings were identified by name and there was no particularization of the time and place of their commission. Consequently, the Indictment did not provide sufficient information.[49]

---

[45] *Kupreskic* (AC).
[46] T. 22. August 2002 pp. 134-135.
[47] This is not entirely correct. The killing of a certain "Ignace" appears in Annex B to the Pre-trial Brief.
[48] T. 22 August 2002 pp. 135-137.
[49] Id. p. 50.

46. Counsel for Gérard Ntakirutimana submitted that there is no difference in the principles governing ICTY and ICTR indictments. The statutory provisions of the two Tribunals are in this respect substantially the same. Citing particularly paragraphs 114 and 117 of *Kupreskic*, he argued that the Bisesero Indictment did not meet the high standard set for Indictments in *Kupreskic*, as it was vague, wholly lacking in particularity and did not mention places. Names and particulars were not included in either Indictment and were not given to the Defence in sufficient time to enable it to prepare its case.[50]

47. According to Counsel for Gérard Ntakirutimana it follows from *Kupreskic* that the new allegations made by Witnesses YY and GG during their testimony must be excluded. That Judgement established that material facts on which the Prosecution's case is based cannot be allowed to unfold during trial. The Prosecution has to proceed without them. Counsel submitted that the new information had prejudiced the Defence because incriminating evidence had been provided unexpectedly after the hearing of several Prosecution witnesses, who could not be cross-examined anew. The Defence stressed that both Indictments are silent about many events on which the Prosecution led evidence.[51]

48. The Defence made similar observations in its closing brief, although without reference to *Kupreskic*. For example, it was argued that Witnesses YY, DD, KK, VV, and UU "withheld their most extreme testimony for trial to prevent the defense from preparing to counter it."[52] In relation to a certain part of the oral testimony of Witness MM the Defence stated that the introduction of new and critical information was highly improper, violated the Prosecution's legal and ethical obligation to the Tribunal and the Accused, and thereby improperly prejudiced the administration of justice.[53] The Defence submitted that the testimony of every factual witness conflicted with or covered matters not mentioned in prior statements, and that this violated the rights of an accused to be given notice of the charges and the evidence to be presented against him so that he can challenge the charges and prepare his defence.[54]

2.4 Discussion

49. As mentioned above, if follows from the Statute and the Rules that the Prosecution is under an obligation to state the material facts underpinning the charges in the Indictment, but not the evidence by which such material facts are to be proven. In *Kupreskic*, the Appeals Chamber interpreted the Prosecution's obligation in the following way:

> 89. The Appeals Chamber must stress initially that the materiality of a particular fact cannot be decided in the abstract. It is dependent on the nature of the Prosecution case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the

[50] Id. pp. 59-60.
[51] Id. pp. 155-158.
[52] Defense Closing Brief filed 22 July 2002 p. 44; concerning Witness YY see also pp. 122-123.
[53] Id. p. 52. The Brief contains similar statements regarding Witnesses FF (p. 62), HH (pp. 78, 83, 85), and GG (pp. 96, 97).
[54] Id. pp. 163-164.

nature of the alleged criminal conduct charged to the accused. For example, in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail. Obviously, there may be instances where the sheer scale of the alleged crimes "makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes" [footnote omitted].

90. Such would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment. Similarly, an accused may be charged with having participated as a member of a military force in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings and forced removals. In such a case the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of the case in the indictment. Nevertheless, since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so.

...

92. It is of course possible that an indictment may not plead the material facts with the requisite degree of specificity because the necessary information is not in the Prosecution's possession. However, in such a situation, doubt must arise as to whether it is fair to the accused for the trial to proceed. In this connection, the Appeals Chamber emphasises that the Prosecution is expected to know its case before it goes to trial. It is not acceptable for the Prosecution to omit the material aspects of its main allegations in the Indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds. There are, of course, instances in criminal trials where the evidence turns out differently than expected. Such a situation may require the indictment to be amended, an adjournment to be granted, or certain evidence to be excluded as not being within the scope of the indictment.

...

114. The Appeals Chamber notes that, generally, an indictment, as the primary accusatory instrument, must plead with sufficient detail the essential aspect of the Prosecution case. If it fails to do so, it suffers from a material defect. A defective Indictment, in and of itself, may, in certain circumstances cause the Appeals Chamber to reverse a conviction. The Appeals Chamber, however, does not exclude the possibility that, in some instances, a defective indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her. Nevertheless, in light of the factual and legal complexities normally associated with the crimes within the jurisdiction of this Tribunal, there can only be a limited number of cases that fall within that category. ...[55]

50. The Chamber notes that the allegations under consideration by the Appeals Chamber in *Kupreskic* related to the attack on the house of a victim and formed the basis of the verdict of crimes against humanity (persecution). Had the Trial Chamber in that

[55] *Kupreskic* (AC) paras. 89, 90, 92 and 114.

case not concluded that the Prosecution had successfully proven that allegation, the two convictions could not have been sustained. The Appeals Chamber found that the attack constituted a material fact in the Prosecution case against two of the Accused and should have been specifically pleaded in the Indictment.[56] It is further noted that the conviction was made on the basis of the testimony of a single witness.

51. The Indictments in the case concerning Elizaphan and Gérard Ntakirutimana are distinguishable from *Kupreskic*. The allegations include charges of genocide, complicity in genocide, conspiracy to commit genocide and crimes against humanity (murder). The general principles laid down by the Appeals Chamber in *Kupreskic* are, of course, still applicable to the present case.

52. In this connection the Chamber does not accept the Prosecution's submission that the Defence sat on its rights and did not challenge the lack of specificity in the Indictments. Such challenges were in fact made, albeit to an earlier version of the Mugonero Indictment, by a Defence motion filed on 17 April 1997 and decided upon by Trial Chamber II, which included references to a similar decision by Trial Chamber I (differently constituted) concerning the Bisesero Indictment.[57] Moreover, irrespective of previous challenges, the Chamber must apply principles expressed subsequently by the Appeals Chamber.

53. The concise statement of facts of the Mugonero Indictment contains three paragraphs concerning the attack on the Mugonero Complex on 16 April 1994. These paragraphs allege that the two Accused went together in a convoy with armed individuals to the Complex on the morning of that day (4.7) and that the Accused, along with others, participated in the attack which continued throughout the day (4.8). The equivalent provision in the Bisesero Indictment (4.8) adds that the attack continued into the night. Both Indictments allege (4.9) that the attack resulted in hundreds of dead and wounded.

54. According to the first allegation, the two Accused were part of a convoy of armed individuals heading for the Complex in the morning of 16 April 1994. The Chamber considers this description sufficiently precise. The second allegation states that the Accused participated in the attack on that date. This is less precise. It is not alleged that they killed or wounded anyone, nor does it otherwise specify the way in which they allegedly participated in the attack. However, the Chamber does not consider this part of the Indictment vague or so broadly formulated as to hinder the preparation of the Defence case. The attack was particularized to have occurred on a particular date (16 April 1994) and at a specified location (the Mugonero Complex). Large numbers of persons were killed and wounded during the attack. It is the view of the Chamber that the factual allegations in the Indictment, read in conjunction with the charges, provide the Accused with reasonable notice of the Prosecution's case against them. This being said, it follows

---

[56] Id. paras. 99 and 113.

[57] Trial Chamber II, Decision of 30 June 1998 on a Preliminary Motion Filed by Defence Counsel for an Order to Quash Counts 1, 2, 3, and 6 of the Indictment. See also Trial Chamber I, Decision of 23 March 1998 on a Preliminary Motion Filed by Defence Counsel for an Order to Quash Counts 1, 2, 3, 6 and 7 of the Indictment. These decisions predate the clarification provided in *Kupreskic* (AC).

from *Kupreskic* that if the Prosecution was, when it drew up the Indictment, in a position to provide details, it should have done so.[58]

55. The Chamber recalls that, according to *Kupreskic*, the degree of specificity required in indictments depends on the nature of the alleged criminal conduct charged to the accused. There may be instances where "the sheer scale of the alleged crimes" makes it "impracticable" to require a high degree of specificity in such matters as the identity of the victims, the time and place of the events, and the means by which the acts were committed. According to the Appeals Chamber, one example is where the accused participated as a member of a military force "in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings".[59]

56. The statement of facts in the Bisesero Indictment contains six paragraphs (4.11-4.16) concerning attacks in the Bisesero area. According to paragraphs 4.13 and 4.15, the Accused participated in convoys and searched for, attacked, and killed Tutsi persons. However, there is no specification of time, date, location, victims, or other material details concerning any single attack.

57. Previous judgements of the Tribunal have established that there were regular attacks in the Bisesero region from April 1994 through June 1994. The victims were men, women and children who were predominantly Tutsi and who had sought refuge in the Bisesero region. Thousands of Tutsi were killed, injured and maimed.[60] Similar findings follow from the evidence in the present case. In a situation with frequent attacks in the same area it may be difficult for the Prosecution to provide precise evidence, several years after the events, about specific attacks on particular dates against named victims in precise locations. Survivors, who during three months were under great distress and subject to numerous attacks, may have difficulties in recalling the time and place of the alleged crimes as well as the identity of the victims. In such situations the sheer scale of the alleged crimes may well make it impracticable to require a high degree of specificity.

58. As stated above, it follows from *Kupreskic* that if the Prosecution is in a position to provide details, it should do so. In the present case, witness statements containing specific allegations were available to the Prosecution well before the trial. Already on 18 March 1997, the Prosecution disclosed 30 witness statements to Gérard Ntakirutimana. On 10 April 2000, following the co-Accused's surrender, it disclosed 34 witness statements to Elizaphan Ntakirutimana. On 29 August 2000, it disclosed to each Accused 67 statements from 41 witnesses. By 20 February 2001, the Prosecution had disclosed at least 83 statements from 51 witnesses.[61] Understandably, the Accused were not in a position to know precisely which statements were being relied upon by the Prosecution. However the central point is that the Prosecution had in its possession a

[58] *Kupreskic* (AC) paras. 89, 90 and 95.
[59] Id. para. 90 (quoted above).
[60] See *Kayishema and Ruzindana* (TC) paras. 405 *et seq.*, and *Musema* (TC) para. 363 with further references.
[61] Annex A to Prosecution's Response to Defence Motions for Dismissal or for Disclosure and Investigations by the Prosecution, 20 March 2001.

wealth of detailed evidence, which it had disclosed to the Defence in a timely fashion, concerning times, locations, and victims, from which to draw for the purpose of reducing the imprecision in the Indictments.

59. The question as to whether the Indictments in the present case are defective depends on a concrete assessment of each allegation and involves a comparison of the material that was available to the Prosecution before the trial and the evidence adduced at trial. The Chamber will address this question further by way of a careful examination of the particularity of each specific allegation in connection with the events where this issue arises. It is also important to recall that even if an indictment is considered defective, this may, in some cases, be cured by provision to the Defence of timely, clear, and consistent information detailing the factual basis of the charges. It follows from *Kupreskic* that in light of the factual and legal complexities normally associated with the crimes within the jurisdiction of the Tribunal, there can only be a limited number of cases that fall within that category. In *Kupreskic*, in order to assess whether the Accused were sufficiently informed of the charges, the Appeals Chamber considered disclosed evidence, the information conveyed in the Prosecution's Pre-trial Brief and knowledge acquired during trial.[62] The Trial Chamber is of the view that a similar approach should be adopted in the present case. It recalls that the *Kupreskic* Judgement, which clarified the legal situation, was handed down after the commencement of the trial and almost at the end of the Prosecution's case.

60. The Prosecution's Pre-trial Brief was submitted on 26 July 2001. The trial commenced on 18 September 2001. The Brief contains three paragraphs on the Mugonero Complex attack of 16 April 1994. The first alleges that a convoy of attackers went to the Complex "in vehicles belonging to Pastor Ntakirutimana and others". It does not specifically allege that either Accused was in the convoy. Of particular interest is the third paragraph, which claims that the two Accused were present during the attack, that Elizaphan Ntakirutimana was "present" at the killing of Pastor Sebihe, and that Gérard Ntakirutimana "personally killed" several Tutsi persons, of whom Ukobizaba and Kajongi are the two referred to by name. The approximate time, location, and manner in which the named persons were allegedly killed are not discussed. The Chamber notes that in some respects the Brief provides more details than the Mugonero Indictment.

61. The events in Bisesero are covered by four paragraphs in the Pre-trial Brief. It is alleged that convoys of armed attackers including the two Accused regularly went to Bisesero; that Elizaphan Ntakirutimana ordered two persons to kill an unnamed witness, who was later spared; and that the same Accused "pointed out hiding Tutsi for the attackers to kill". In contrast with the Bisesero Indictment (para. 4.15), these paragraphs do not allege that either Accused killed anyone in Bisesero. In the Chamber's opinion, the Brief provides only limited supplementary details.

---

[62] *Kupreskic* (AC) para. 124. See also paras. 114-120. The Appeals Chamber considered to what extent the Accused was given appropriate notice by prior disclosure of witness statements or through the Prosecution's opening statement.

62. Annex B to the Pre-trial Brief was filed on 15 August 2001, one month prior to commencement of the trial. It consists of summaries of the statements of 21 witnesses whom the Prosecution intended to call at trial. Sixteen of those persons testified. The Chamber observes that the Prosecution, in drawing up these summaries, selected from each witness statement the material allegations it hoped to elicit during testimony, cross-referenced them to paragraphs of the Indictments, and appended the Annex to its Pre-trial Brief. The Defence was entitled to conclude that the allegations in the Annex were the allegations it would have to meet at trial.

63. The information provided by Annex B illustrates that it was not impracticable for the Prosecution to have been more specific. However, bearing in mind that the details were excerpted from statements long disclosed to the Defence, the Chamber holds the view that any defects in the Indictments were cured by the notice given in Annex B of the Pre-trial Brief, and that no unfairness will be suffered by allowing the Prosecution's allegations at the date on which Annex B was filed. Consequently, the Chamber will consider material allegations, supplementing those in the Indictments, which have been provided through the Pre-trial Brief and knowledge acquired during trial, in order to determine the criminal liability of the Accused, but will be cautious in considering allegations where no, or late, notice was given to the Defence. A final determination will be made below in connection with the specific events where the issue of prior notice arises. In this context, the Chamber recalls that in *Kupreskic* the Appeals Chamber did not accept disclosure of new allegations that was made approximately one and a half weeks prior to trial and less than a month prior to the witness's testimony in court. According to the Appeals Chamber, it could not be excluded that the ability of the two Accused in the case to prepare their defence, in particular the cross-examination of the witness, was prejudiced by the fact that disclosure took place so close to the commencement of the trial and to the testimony of the witness in court.[63]

3. Allegations Relating to the Mugonero Indictment

3.1 Introduction

64. As mentioned, the Mugonero Indictment deals mainly with events that occurred at the Mugonero Complex on 16 April 1994. The Complex was run by the Seventh Day Adventist Association and was situated in Ngoma secteur, Gishyita commune, Kibuye prefecture. In 1994, the main buildings in the Complex were a nursing school (usually referred to as the "école des infirmières or ESI), a chapel used by students and staff of the school, the office of the President of the West Rwanda Association ("the field office"), and the hospital.[64] Within the Complex in 1994 there were also residential buildings, including the residence of Gérard Ntakirutimana, which was situated near the main entrance to the Complex, opposite the field office.

---

[63] Id. para. 120.
[64] Most of the information in this section comes from Exhibit P2, Sketch A, B and C, and Part IV: Transcripts of video of 7 November 2000; T. 18 and 19 September 2001 (investigator Tony Lucassen); and T. 9 May 2002 (Gérard Ntakirutimana).

65. In April 1994, the hospital consisted of several buildings, including the main hospital building, the main pharmacy, a building containing a dispensary and consultation rooms, a building which housed single employees, a building used as a ward for patients with infectious diseases and as a storage area, a building where the patients with infectious diseases were admitted, a boys' dormitory under the responsibility of the nursing school, and an administrative block. Between these buildings were lawns.

66. The main hospital building was a two-storey structure. The lower floor included the delivery room, the maternity room, and two surgical theatres. A consultation room used by Gérard Ntakirutimana was on the upper floor.

67. About one kilometre to the north of the Complex was the main Ngoma Adventist Church. Approximately two kilometres south of the Complex was the Esapan Secondary School. The school was established by Adventist parents living in the Ngoma area.

68. Below follow the relevant paragraphs of the Mugonero Indictment. They are almost identical to the equivalent paragraphs in the Bisesero Indictment concerning the events in the Mugonero Complex, and the numbering of the paragraphs is the same. Differences, if any, are indicated. The two Indictments are appended to the Judgement.

3.2 Overview of Events from 6 to 15 April 1994

> 4.1 During the events referred to in this Indictment, Rwanda was divided into eleven Prefectures, one of which was Kibuye. [Each Prefecture was governed by a Prefect. The Prefectures were further divided into communes, each of which was governed by a Burgomaster. The Burgomaster was the representative of the executive power in the communes and was in charge of the governmental functions within the commune.][65]
>
> 4.2 During the events referred to in the Indictment, Tutsis were identified as members of an ethnic or racial group.
>
> 4.3 On April 6, 1994, the plane transporting President Juvenal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and murders of civilians began soon thereafter throughout Rwanda.[66]
>
> 4.4 During the month of April 1994, a large number of men, women and children from various places sought shelter from the attacks, which were taking place throughout Kibuye Prefecture. Many assembled inside Mugonero Complex, which consisted of several buildings, including a church, an infirmary and a hospital (hereinafter referred to as "the Mugonero Complex"). The majority of these men, women and children were Tutsi and were unarmed.[67]

69. On 6 April 1994, President Juvénal Habyarimana of Rwanda was killed when the plane in which he was traveling was shot down over Kigali. Radio broadcasts informed

[65] The words in brackets do not appear in para. 4.1 of the Bisesero Indictment.
[66] Para. 4.3 of the Bisesero Indictment refers to "killings" instead of "murders" in the second sentence.
[67] Para. 4.4 of the Bisesero Indictment contains some insignificant differences.

the population of Kibuye of the death of the President on 7 April and requested that people stay at home. Witness FF and Gérard Ntakirutimana recalled incidents of soldiers in the streets beating people who did not remain at home. The security situation deteriorated as houses in the area were burnt down or their roofs removed.[68] Both Witness 8 and Witness 6 testified to sleeping outdoors for fear of attacks on houses.

70. Over the next few days the violence in Kibuye escalated. Royisi Ntakirutimana gave evidence that there were disturbances in the commune of Rwamatamu during which houses were burnt, Witness XX testified that people were killed in Rwamatamu, Witness CC reported killing in the Bisesero secteur, and Witness FF heard reports of people being killed in Gishyita, Gisovu, and Rwamatamu communes. On 9 April there was an attack at the house of Jean Nkuranga, director of the ESI Nursing School, during which a night-watchman was killed.[69]

71. Around 9 April, refugees from the surrounding areas began to arrive at the Complex. Estimates provided by the witnesses as to the number of refugees vary considerably. Witness 32 testified that on 9 April about 100 persons had arrived. Witness 7 indicated between 100 and 200 refugees were there by 11 April, and Ann Nzahumunyurwa testified that on this date, between 200 and 300 refugees had sought refuge at the Complex. Gérard Ntakirutimana stated that on 12 April about 1,300 people had gathered there. Witness PP did not provide an estimate but said that "the buildings of the hospital were full of people. The surrounding bushes or woods were filled with people. The church, itself, was full." Witness 5 stated that by 14 April there were 2,000 refugees at the Complex, Witness FF testified that there were 5,000 refugees not including the wounded, Witness HH put the number at approximately 5,000 to 6,000, and Witness KK gave a number of 6,000. Witness MM said that there were between 8,000 and 12,000 refugees at the Complex, and Witnesses YY and XX estimated the number to be 50,000.

72. On 10 April, Oscar Giordano, the director of Mugonero Hospital, and his wife Eugenie Giordano left Mugonero with a United Nations escort.[70] Over the next few days increasing numbers of injured were received at the hospital.[71] Most of these patients were young males, who were suffering from wounds caused by bladed weapons.[72] Also on 10 April, at least two gendarmes arrived at the Complex and remained there.[73] Most of the witnesses testified they believed, at that time, that the gendarmes were at the Complex to protect them.[74] Over the next few days many members of the staff at the field office, the ESI, and the hospital stopped coming to work.[75]

---

[68] T. 20 September 2001 p. 119; T. 19 September 2001 p. 43; T. 14 February 2002 p. 72.
[69] T. 25 April 2002 pp. 58, 146; T. 26 April 2002 pp. 4-5; T. 2 May 2002 p. 46; T. 2 May 2002 pp. 47-48; T. 11 April 2002 pp. 104-105; T. 11 April 2002 p. 105; T. 9 May 2002 pp. 40-42; T. 24 April 2002 pp. 30, 61, 191; T. 6 May 2002 pp. 118-119.
[70] T. 6 May 2002 p. 116.
[71] T. 22 October 2001 p. 8; T. 1 October 2001 p. 8; T. 17 April 2002 p. 28.
[72] T. 9 May 2002 pp. 58, 84-87.
[73] T. 9 May 2002 p. 51; T. 6 May 2002 pp. 124-125.
[74] T. 28 September 2001 p. 11; T. 1 October 2001 p. 79; T. 30 October 2001 p. 80; T. 25 September 2001 p. 97; T. 26 September 2001 p. 78; T. 27 September 2001 p. 143. Witnesses GG (T. 20 September 2001 p.

73. Several witnesses testified about an event which occurred on or around 13 April when a mob attempted to attack the Complex but was repelled. The attackers consisted of approximately 200 people who came from the direction of the trading centre armed with traditional weapons.[76] Several witnesses testified that one of the attackers was injured when the attack was repelled.[77]

74. The Chamber notes that the information contained in paragraph 4.1 of both Indictments on Rwandan administrative structures was admitted by the Defence. The Chamber also accepts, on the basis of previous Tribunal findings, that bourgmestres were the representatives of executive power and in charge of governmental functions in the commune.[78]

75. In relation to paragraph 4.2 of both Indictments the Chamber has already found no relevant disagreement between the parties that, in 1994 in Rwanda, Tutsi were perceived as members of an ethnic group.[79]

76. The Chamber takes note that the Defence admitted the first sentence of paragraph 4.3 of the Indictments (the shooting down of the plane). Based on the evidence summarized above and previous judgements, the Chamber also accepts that murders of civilians began soon after the plane crash, including in the area of Kibuye prefecture.

77. The evidence in the present case also supports the finding that a large number of men, women and children sought shelter from the attacks, and that "many" assembled at the Mugonero Complex (paragraph 4.4 of both Indictments). The Chamber does not consider it necessary to decide on the exact number. However, based on the evidence the number was many hundreds, even thousands, of people. The evidence suggests that the great majority of refugees at the Complex were Tutsi, but that they were not exclusively so. Witnesses YY, PP, and XX mentioned the presence of Hutu wives of Tutsi men. Witnesses YY and HH referred to two Hutu families being at the Complex prior to the attack of 16 April. Witnesses XX and FF recognised a small number of Hutu, including Hutu men with Tutsi wives. Witnesses FF and HH allowed that other Hutu refugees may have been present in addition to those they recognized. Witness GG knew of only one Hutu refugee at the Complex. Consequently, the Chamber finds in conformity with paragraph 4.4 of the Indictments that the majority of the men, women and children at the Complex were Tutsi. It follows from the evidence in the present case that the majority were unarmed; see in particular 3.8 and 3.9 below.

---

130) and KK (T. 3 October 2001 pp. 89-90) both testified that they did not believe that the gendarmes were at the Complex to protect them.

[75] T. 6 May 2002 p. 133; T. 16 April 2002 pp. 99-100, 113; T. 17 April 2002 p. 29.

[76] T. 26 September 2001 p. 13; T. 27 September 2001 pp. 1-2, 5-6.

[77] T. 2 October 2001 p. 61; T. 2 October 2001 p. 61; T. 24 April 2002 p. 75, 77-79; T. 9 May 2002 pp. 71-73; T. 10 May 2002 p. 34.

[78] See for instance *Akayesu* (TC) paras. 54 and 77 and *Bagilishema* (TC) para. 228.

[79] Decision of 22 November 2001 on the Prosecution's motion for judicial notice of adjudicated facts, paras. 11-13, 50.

3.3 Appeals to Tutsi to Seek Refuge at the Mugonero Complex

4.5 Many of those men, women and children who sought refuge in the Mugonero Complex did so because Elizaphan Ntakirutimana instructed them to go there.

3.3.1 Prosecution

78. The Prosecution's case is that in the days following the outbreak of attacks, Elizaphan Ntakirutimana raised the hopes of refugees who had gathered at the Mugonero Complex by assuring them that security at the Complex would be enhanced. He procured gendarmes from Kibuye town ostensibly to guard the refugees. The presence of gendarmes at the Complex was significant in convincing Tutsi to accept refuge there. The Prosecution relies for this proposition on the evidence of Witnesses MM, SS, and FF, and further submits that the evidence of Witness HH that he saw the gendarmes who formerly guarded the Complex take part in the attack on 16 April bolsters the Prosecution's case.[80]

79. In particular, following the arrival of gendarmes at the Complex, Elizaphan Ntakirutimana summoned back to Mugonero several staff members of the association who had gone into hiding elsewhere, promising them security. Four Tutsi staff who foresaw the danger and decided not to remain at the Complex were Jean Nkuranga (Director of the Nursing School), Ezekiel Ruhigisha (Head of Maintenance at the Nursing School), Seth Sebihe (a Pastor attached to the Nursing School), and Issacar Kajongi (the Hospital Treasurer). They all left Mugonero because they knew that as educated Tutsi they would be prime targets. Elizaphan Ntakirutimana, having noticed their absence, sent messengers to ask them to return, disclaiming any responsibility for their welfare outside the Complex. These four Tutsi returned and were later killed.[81]

3.3.2 Defence

80. The Defence submits that the testimony of all witnesses, both for the Prosecution and the Defence, shows that people sought refuge at the Complex as they had in past times of violence. There was no testimony that the Accused encouraged Tutsi or Hutu to flock to Mugonero. All the evidence shows that both Hutu and Tutsi sought refuge at the Complex in the first days and none needed to be encouraged.[82]

81. The Defence underscores Elizaphan Ntakirutimana's concern for the safety of his Tutsi colleagues. On 15 April, Elizaphan Ntakirutimana went to the Complex to find his treasurer Kajongi. He warned him that security had seriously deteriorated and that he should alert all pastors and, through them, the people. At the Complex he found Kajongi's wife. Witness FF claimed that the Accused asked Kajongi's wife to summon him to the Complex. The Defence rejects her interpretation. Elizaphan Ntakirutimana went to the Complex on 15 April because he wanted the pastors to know he thought the Complex was no longer safe and that all who could find a safer place should flee.[83]

---

[80] Prosecution Closing Brief paras. 49-68.
[81] Id. paras. 69-92; T. 21 August 2002 p. 148.
[82] Defence Closing Brief p. 22; T. 22 August 2002 p. 3.
[83] Defence Closing Brief p. 204.

82. The Defence denies that the Director of the Nursing School, Jean Nkuranga, returned to the Complex upon the advice of Elizaphan Ntakirutimana.[84] Witness MM testified that Nkuranga returned to the Complex by 12 April. The Defence suggests that this is a fabrication to cast Elizaphan Ntakirutimana in a poor light. The Accused and Nkuranga were in fact close friends and worked together in the same office. His wife and children were taken to Gisovu by Gérard Ntakirutimana for safety. The Defence argues that the Prosecution's thesis is inconsistent. Having failed to provide evidence that hordes of refugees were lured to the Complex by the Accused, the Prosecution falls back on the evidence of Witness VV, who testified that Elizaphan Ntakirutimana sent envoys to bring Nkuranga back on 14 April. However the testimony of Witness VV cannot be reconciled with the accounts of Witnesses MM and HH.[85]

3.3.3 Discussion

83. The question at issue is whether "many ... men, women and children" took refuge at the Complex because they were "instructed" to do so by Elizaphan Ntakirutimana.

84. The Prosecution's evidence suggests that most persons who sought refuge at the Mugonero Complex in the days after 6 April 1994 did so because they believed that at the Complex they would be relatively safe;[86] because they had taken refuge there on past occasions of unrest;[87] because relatives already at the Complex assured them that it was safe to join them;[88] or because they did not know what else to do at the time.[89]

85. Witness MM was the only witness to allege that gendarmes stationed at the Complex inquired after and went looking for certain persons "who held important positions in the hospital".[90] There was no suggestion by the witness that Elizaphan Ntakirutimana instructed the gendarmes to look for those individuals. There was a small number of gendarmes at the Complex during the period 7 to 15 April. According to Witnesses FF, HH, KK, and YY, there were three; according to GG, two; MM did not specify the number. The gendarmes said that they had come to ensure security at the Complex. They were given food and other provisions by hospital staff.

86. Only Witness SS provided evidence of a connection between the Accused and the gendarmes. The witness testified that while at first there was no security at the Complex, on an unspecified date he saw Elizaphan Ntakirutimana bring two gendarmes on the back of his pickup. Witness FF allegedly overheard the Accused say that he would ask for

[84] T. 22 August 2002 p. 3.
[85] Id. pp. 31-32.
[86] Witness FF, T. 1 October 2001 pp. 2, 96; Witness GG, T. 20 September 2001 pp. 120-121, T. 24 September 2001 p. 91; Witness HH, T. 25 September 2001 p. 91; T. 26 September 2001 p. 75, T. 27 September 2001 pp. 99-100; Witness XX, T. 19 October 2001 p. 13.
[87] Witness MM, T. 19 September 2001 pp. 44-45, T. 29 September 2001 p. 27; Witness HH, T. 25 September 2001 pp. 140-141; Witness PP, T. 5 October 2001 pp. 64-65, 99-100, 105; Witness SS, T. 31 October 2001 p. 41.
[88] Witness PP, T. 8 October 2001 pp. 5, 98.
[89] Witness DD, T. 24 October 2001 pp. 17, 24-25, 92-93.
[90] T. 20 September 2001 pp. 61-65.

more "soldiers" to be brought to the Complex to reinforce those who were already there. There is little evidence that the refugees felt threatened or otherwise oppressed by the presence of the gendarmes. Witnesses FF, SS, and HH indicated that the gendarmes were well received by the refugees. Only Witness KK presented any evidence of a sinister role for the gendarmes prior to 16 April, namely their alleged attendance at a meeting on 13 April, which involved Gérard Ntakirutimana and communal officials, after which the gendarmes asked refugees to hand over their traditional weapons. There is some evidence to indicate that there were security breaches at the Complex in the days prior to 16 April (see 3.2). Witness YY said that around 14 April the refugees were attacked by a group of civilians led by Mika Muhimana, Charles Sikubwabo, and Gisambo. They were repelled by the gendarmes who shot in their direction. Some confirmation of this incident was offered by Witness XX and perhaps also by Witness FF, but Witness KK denied the incident. Witness HH described an attack (possibly the same one) in which about 200 assailants attempted to attack the Complex on 14 or 15 April, but he said that no fighting resulted.

87. The Chamber does not find sufficient basis to conclude that the gendarmes were used by the Accused to lure Tutsi to the Complex. However, other evidence indicates that half a dozen or so Tutsi persons sought refuge at the Complex upon the advice of the Accused.

88. Witness HH testified that Elizaphan Ntakirutimana at one point inquired after persons not present at the Complex. The Accused told the witness and others to find the absent persons and tell them to assemble at the Complex. "And he told us that: 'I think the best thing for those people would be for them to come here instead of staying in their homes or elsewhere, because ... they might be harmed, and if anything happens to them when they're outside this complex then I would not be responsible for that'."[91] Witness HH testified that he passed Elizaphan Ntakirutimana's message on to Jean Nkuranga and Josué Rubambana. The same message was, according to the witness, conveyed by a different (unidentified) messenger to two other persons, Issacar Kajongi and his younger brother Ezekiel Ruhigisha. The latter two were already at the Complex when Witness HH returned (on 12 or 13 April) with Nkuranga and Rubambana.[92]

89. Witness VV, who some time after 6 April had taken refuge at Gitwe Hill, testified that she was present when a Tutsi person named Segikware, accompanied by two young Tutsi men, one named Rubambana (who, according to the witness, was Nkuranga's younger brother) and the other having the first name of Witness HH, came on behalf of Elizaphan Ntakirutimana to ask Nkuranga and Ruhigisha to return to the Complex where their safety could be ensured. Nkuranga and Ruhigisha duly left Gitwe Hill for the Complex.[93] Witness VV's account differs from that of Witness HH in some respects, in particular from the latter's claim that he delivered the Accused's message to Nkuranga and Rubambana, not Nkuranga and Ruhigisha.

---

[91] T. 25 September 2001 pp. 98-99; T. 27 September 2001 pp. 140-141.
[92] T. 25 September 2001 pp. 100-102, 105-106; T. 26 September 2001 pp. 79-80; T. 27 September 2001 pp. 99-101, 148.
[93] T. 4 October 2001 pp. 87-90.

90. According to Witness FF, the person who brought Issacar Kajongi to the Complex was Kajongi's wife. The witness testified that she was in the company of Kajongi's wife on 15 April when Elizaphan Ntakirutimana asked Kajongi's wife to go and fetch her husband who apparently was hiding in Witness FF's house. On receiving the Accused's message, Kajongi joined the other refugees at the Complex.[94]

91. Witness MM testified that Kajongi was one of four persons who came to the Complex on Elizaphan Ntakirutimana's advice. The other three included Charles Ukobizaba and Witness MM's older brother.[95] The witness claimed, more generally, that "it was mostly Gérard Ntakirutimana and Pastor Ntakirutimana who would send messages to people who had sought refuge in the hills. These were messages which were mostly destined for those who worked in the hospital. They were being asked to come back to the hospital, that the hospital was under guard, that the place was safe."[96]

92. Of other witnesses testifying on this matter, Witness KK said that one Segikware had mentioned to him that Elizaphan Ntakirutimana had asked him to bring Nkuranga and Ruhigisha to the Complex, where there was better security.[97] (This accords at a basic level with Witness VV's account.) A similar account was given by Witness DD, who testified that the messengers had been Segikware and a person whose first name was that of Witness HH. He added that "it was necessary to go and call Ruhigisha and Nkuranga because, according to Pastor Ntakirutimana, there was security at the Mugonero Complex and that these two people could, therefore, come back".[98] Witness DD did not clarify how he had obtained this information. Witness YY testified merely that Elizaphan Ntakirutimana had sent a message with Segikware to unspecified persons in Bisesero asking them to return.[99]

93. In summary, taking the Prosecution's evidence at face value, it would seem that five men (Nkuranga, Rubambana, Kajongi, Ruhigisha, and Ukobizaba) and perhaps a few other persons, who were left unnamed by Witnesses MM and YY, went to the Complex upon Elizaphan Ntakirutimana's advice. It should be noted that hundreds of refugees had assembled at the Complex by 16 April (see 3.2 above). There is no doubt from the evidence that the Complex was considered a *relatively* safe place in the days after 6 April; as Witness MM testified: "I can say there was some kind of safety. I made my father and even my mother come. And I'm the one who brought these individuals".[100]

94. In view of the above, the Prosecution's evidence does not support the allegation that "many" men, women, and children took refuge at Mugonero Complex prior to 16 April pursuant to "instructions" of the Accused. There are no women or children among the five named individuals referred to above, all of whom were employees at the

[94] T. 28 September 2001 pp. 14-15, 19-20; T. 1 October 2001 pp. 84, 87, 95.
[95] T. 20 September 2001 pp. 93-95; T. 19 September p. 48.
[96] T. 19 September 2001 pp. 47-48.
[97] T. 4 October 2001 pp. 52-53, 55.
[98] T. 23 October 2001 pp. 139-140.
[99] T. 3 October 2001 p. 57.
[100] T. 20 September 2001 p. 64.

Complex (and the Esapan School).[101] It appears that they were encouraged by Elizaphan Ntakirutimana to return there for their own safety, rather than "instructed". It therefore follows that paragraph 4.5 of the Indictments has not been substantiated.

95. In view of the Prosecution's submissions, the Chamber also observes that the evidence does not support a finding that Elizaphan Ntakirutimana wanted those persons to return to the Complex so that they would be killed. There is no evidence that the Accused participated in meetings with persons who were seen during the attack of 16 April. It is also recalled that the Prosecution conceded during its closing arguments that there was no evidence that either Accused had exercised any political activity or had any political affiliation (see 6.1.4 and 6.1.5 below). The Chamber also observes that a letter of 15 April written by the refugees to Elizaphan Ntakirutimana (see below 3.8) supports the view that at this juncture the refugees were unaware of any previous activity that might link the Accused to any planning or conspiracy. The letter contained a request for help and was written in a tone of great respect. Finally, the Chamber observes that there is no evidence that the refugees were prevented from leaving the Complex (see discussion under 3.4.3 below).

3.4 Separation of Tutsi from Other Individuals at the Complex

> 4.6 After the men, women and children gathered in the Mugonero Complex, Gérard Ntakirutimana and others separated the Tutsi individuals from the others. Those who were not Tutsi were allowed to leave the Mugonero Complex.

3.4.1 Prosecution

96. The Prosecution submits that in preparation for the attack on 16 April 1994, Elizaphan and Gérard Ntakirutimana attempted to confine all the refugees scattered in and around the various buildings of the Complex to the main Ngoma Adventist Church. Preparatory acts from 11 April included the attempt to disarm any refugees who happened to have weapons in their possession.[102]

97. According to the Prosecution, the separation of Tutsi from other individuals took several forms. On or about 11 April, senior Hutu employees evacuated their families to Gisovu, and in the following days other Hutu employees moved to houses belonging to the Esapan School, which were situated outside the Complex. Moreover, Elizaphan and Gérard Ntakirutimana consistently discriminated between Hutu and Tutsi and only protected Hutu persons or Tutsi women married to Hutu men or to foreigners. According to the Prosecution, there is no evidence of protection afforded to any Tutsi pastor at the Complex or to other Tutsi employees of the association or the hospital.[103]

98. The Prosecution further argues that in furtherance of the preparation for the attack on Tutsi refugees at the Complex, non-Tutsi patients at the Mugonero Hospital were discharged by Gérard Ntakirutimana during the period 11 to 15 April. On 15 April, the

[101] With regard to the Esapan School, see para. 67 above.
[102] Prosecution Closing Brief paras. 97-106.
[103] Id. para. 107-118.

Accused ordered the separation of Tutsi and non-Tutsi patients and thereafter ordered the confinement of Tutsi patients to the basement of the hospital. Information on ethnicity in the medical files facilitated the separation of Tutsi from other individuals. It is the Prosecution's case that no non-Tutsi patient remained at the hospital by the time of the attack on 16 April. The patients and nurses who remained at the hospital after 14 April were all Tutsi.[104]

3.4.2 Defence

99. The Defence denies that the Accused attempted to confine Tutsi persons to the main Ngoma Adventist Church or to the hospital's basement. It is submitted that Gérard Ntakirutimana never separated patients or otherwise discriminated on the basis of ethnicity. The Accused continued to treat patients at Mugonero Hospital until 14 April. He behaved at all times in accord with his character and vocation. He had spent the year prior to April 1994 working in an area with a large Tutsi population, treating mostly Tutsi patients, and working with mostly Tutsi staff. Gérard Ntakirutimana testified that throughout the period patients were being treated and were discharged on the basis of their medical condition and not for any other reason. Fearing for his safety after having been warned by a gendarme, Gérard Ntakirutimana left the hospital on the afternoon of 14 April and did not return the next day.

100. The Defence submits that Witnesses FF and XX testified that there were both Hutu and Tutsi patients at the hospital on 15 April. There were families of mixed ethnicity at the Complex, according to some of the evidence, up until 16 April. Ethnicity was not recorded in hospital files.[105]

3.4.3 Discussion

101. Paragraph 4.6 of both Indictments contains two sentences, the first alleging separation of Tutsi from other individuals, the second providing that non-Tutsi were allowed to leave. The second sentence could imply that Tutsi were not allowed to leave the Complex. The Chamber has not found sufficient evidence for such a proposition. Witness testimonies suggest that the refugees were not confined to the Complex, other than by the dangerous circumstances prevailing on the outside. Witness MM maintained that the refugees had to obtain the gendarmes' permission before leaving the Complex, but he said that this was out of a concern to protect the refugees.[106] Similarly, although Witness KK said that the refugees were "not allowed" to leave, he then explained that what prevented the refugees from leaving was the widespread violence outside the Complex.[107] Witness SS said that although at first he could come and go from the Complex, fear subsequently kept him from going out. He added that no gendarme ever prevented him from leaving.[108] Witnesses GG, YY, and HH periodically left the Complex

[104] Id. para. 119-134.
[105] Defence Closing Brief pp. 199-200; T. 22 August 2002 p. 40.
[106] T. 20 September 2001 p. 102.
[107] T. 4 October 2001 pp. 54, 60.
[108] T. 30 October 2001 p. 82.

to search for food, to graze cattle, or for other reasons.[109] Therefore, the evidence does not support the Prosecution's assertions that the refugees were not allowed to leave the Complex, or that Elizaphan and Gérard Ntakirutimana were responsible for their confinement.

102. The Prosecution has argued that there were several forms of separation. The Chamber will address each form independently. It also observes that paragraph 4.6 of both Indictments refers to "Gérard Ntakirutimana and others", whereas Elizaphan Ntakirutimana is not mentioned.

(a) Attempted Confinement in the Ngoma Adventist Church

103. The Prosecution contends that the two Accused attempted to confine the Tutsi in the Ngoma Adventist Church, also referred to as the parent church ("*église mère*"), and relies on the testimonies of Witnesses MM, HH, and KK to prove this contention.

Witness MM

104. Witness MM said that between 12 and 16 April, "we were constantly asked to move, and we saw that it was becoming more persistent as time went by".[110] He testified that Gérard Ntakirutimana and Mathias Ngirinshuti, the chief of personnel at the hospital, would often come to the hospital and behave as if they were in charge of it. They asked him and other refugees "on several occasions" to leave the hospital and go to the main Church, because the hospital was meant for treating patients.[111] Witness MM gave two reasons why he and the other refugees refused to go to the main church. He said they believed that transferring them from the hospital to another area was one way of concentrating them in one place and this was dangerous. Secondly, they did not want to leave a place with several buildings and plenty of space, and where there were basic utilities, such as water and electricity, for a smaller place where their survival would have been more difficult.[112] Instead, the refugees "accepted" to move from the first floor to the ground floor.[113] The witness said that "it was Gérard, that is the management of the hospital, that decided to close [the first] floor".[114] (See (c) below about this allegation.)

Witness HH

105. Witness HH said that between 12 and 14 April, Gérard Ntakirutimana asked refugees at the Complex "several times" to leave the hospital area and go to the Adventist church twenty minutes' walk away. According to the witness, the reason the Accused

[109] T. 20 September 2001 p. 123 (GG); T. 1 October 2001 p. 133 (YY); T. 25 September 2001 pp. 114-117 (HH).
[110] T. 19 September 2001 p. 60.
[111] T. 19 September 2001 p. 50; T. 20 September 2001 pp. 55-58.
[112] T. 19 September 2001 p. 59.
[113] Id. p. 52; T. 20 September 2001 pp. 43-47.
[114] T. 19 September 2001 p. 57.

gave was that the refugees' livestock were "soiling the hospital".[115] The refugees refused to go to the church: "We could see that killers had come and stopped near the church, but did not go further because there were not many of them." The refugees did not obey because they felt safer at the Complex. Because of the isolation of the main church, they "decided to remain at the complex because we felt safe there and administrators of the complex were there".[116] The Chamber notes that in his written statement of 2 April 1996 the witness explained to investigators that Gérard Ntakirutimana asked the refugees to leave the hospital on 11 April.

Witness KK

106. Witness KK claimed that on 14 April he recognized Elizaphan and Gérard Ntakirutimana among the people who came to tell the refugees to leave the Complex. According to the witness, Gérard Ntakirutimana said: "Leave this place. Go to the church on the other side". Ngoma Adventist Church was ten minutes' walk away.[117] No reason was given.[118] Witness KK told investigators that Gérard Ntakirutimana wanted the refugees to leave because they interfered with his work, but in his testimony the witness did not confirm this. "Even if he sent away the refugees, it was not because he wanted to continue his work. Because where he was working, where the patients were, there were no refugees."[119] The witness said that no refugee followed the instruction because the Ngoma Church was too cold and not big enough to accommodate all of them.[120]

Other Witnesses

107. Three other witnesses also provided relevant evidence. Witness XX did not personally hear Gérard Ntakirutimana request the refugees to leave the hospital and go to the *église mère*, but she said that this was what "went around amongst the refugees".[121] Defence Witness 7, however, was not aware that Gérard Ntakirutimana had ever told Tutsi patients or refugees to relocate from the hospital to the main church, or to any church.[122] She left her post at Mugonero Hospital on 11 April 1994 and did not return until May 1994.[123] Defence Witness 32 testified that "Dr. Gérard asked nobody to leave the hospital. Each person left the hospital of their own volition." Witness 32 stopped going to work on 12 April.[124]

108. The Chamber observes that Gérard Ntakirutimana denied ever having asked anyone to leave the hospital.[125] However, as mentioned above, three Prosecution

[115] T. 25 September 2001 pp. 92-94; T. 26 September 2001 pp. 72-73; T. 27 September 2001 pp. 92 and 141.
[116] T. 25 September 2001 p. 96; T. 26 September 2001 p. 77.
[117] T. 3 October 2001 pp. 94-96; T. 4 October 2001 p. 58.
[118] T. 5 October 2001 p. 50.
[119] T. 4 October 2001 pp. 56-57.
[120] T. 3 October 2001 pp. 96-97.
[121] T. 22 October 2001 p. 51.
[122] T. 12 February 2002 p. 15.
[123] Id. pp. 13-14.
[124] T. 16 April 2002 p. 88.
[125] T. 9 May 2002 p. 106.

witnesses testified that they heard him ask the refugees to move to the main church outside the Complex. According to Witnesses MM and HH, the Accused gave as reasons that the hospital was meant for treating patients and that the livestock of the refugees was soiling the hospital. The reason mentioned by Witness HH is in conformity with his written statement to investigators of 2 April 1996. Witness KK testified that Gérard Ntakirutimana gave no explanation. The Chamber notes, however, that in his written statement of 15 November 1999, Witness KK recalled that the Accused said that he needed the hospital to be vacated for him to continue his work. The Chamber sees no reason to doubt that this was Witness KK's explanation to the investigators. The Chamber finds that Gérard Ntakirutimana did request the refugees to leave for the Ngoma Church.

109. According to the witnesses, Gérard Ntakirutimana made such requests sometime during the period between 12 to 16 April. It follows from the overview provided above (see 3.2) that during this period the large number of refugees at the Complex increased from approximately 1,300 to an even greater number of persons. Several buildings were full, including the hospital and the church. Under these circumstances the reasons given by the Accused for moving the refugees out of the Complex are plausible. However, the Prosecution's case is that these requests were made for the purpose of separating the Tutsi from the Hutu with a view to preparing for the attack of 16 April. The Chamber cannot make this inference on the existing evidence. The Chamber also observes that its findings in relation to the Prosecution's other allegations regarding paragraph 4.6 of both Indictments do not support the Prosecution's contention.

110. As stated above, Elizaphan Ntakirutimana is not mentioned in paragraph 4.6 of the Indictments. In its Closing Brief the Prosecution argues that Elizaphan Ntakirutimana also requested that the refugees move to the *église mère*. The Chamber notes that there is no evidentiary basis for this allegation.

(b) Evacuation and Selective Protection

111. The Prosecution argues that on or about 11 April, senior Hutu employees at the Complex, including Gérard Ntakirutimana, Mathias Ngirinshuti, Defence Witness 5 and others evacuated their families to Gisovu. The Chamber notes that this is not in dispute between the parties. Ann Nzahumunyurwa, wife of Gérard Ntakirutimana, testified that she was informed that the security situation at Gisovu was still acceptable, and on 11 April, around 5 p.m., Gérard Ntakirutimana drove her, their children, and a number of other persons, including Mathias Ngirinshuti and Witness 5, to Gisovu. Gérard Ntakirutimana did not stay in Gisovu but returned to Mugonero the same day.[126] He testified that on 11 April he took his family to Gisovu, believing that it would be more secure. Among the persons he took along were Ngirinshuti and Ngirinshuti's family; he left them at the house of the bourgmestre of Gisovu, Ndimbati.[127] He also took along the wife of Jean Nkuranga, who was a Tutsi, and her three children. The Accused acknowledged that on the way to Gisovu he had been stopped at a roadblock where

[126] T. 11 April 2002 pp. 119-123, 128, 131; T. 12 April 2002 pp. 65-73.
[127] T. 9 May 2002 pp. 58-64; T. 10 May 2002 pp. 123-124.

Ndimbati had asked him: "I hope you have not brought any Inkotanyi into the commune".[128]

112. Another Defence witness, Witness 24, went to Gisovu on 10 April.[129] Several other people arrived in the course of the next three days, including the wives and children of pastors Gakwerere and Ushizimpumu, Defence Witnesses 5 and 21, and Enos Kagaba.[130] Witness 24 testified also to the arrival of a child named Emmanuel, son of Jean Nkuranga and Clémentine, on 12 April.[131] The witness was told by a person with whom she was staying in Gisovu, that it was Gérard Ntakirutimana's wife who had brought the child Emmanuel to Gisovu.[132] Other Defence witnesses testifying about the trip to Gisovu were Witness 5,[133] Witness 22 (the wife of Witness 5),[134] and Witness 21.[135]

113. In its Closing Brief the Prosecution argues that Hutu were provided shelter in houses outside the Complex. Reference is made to Witness SS, who allegedly observed Elizaphan Ntakirutimana and "Rusudoka" (Pastor Gakwerere's nickname) heading for the Esapan School at the time when the witness had become aware that all Hutu pastors had gone to seek refuge at that location.[136] The Prosecution also submitted that from 11 April, Witness 5 moved into a house belonging to the Esapan School, and that Witness 32, also a Hutu, stayed in that house with other Hutu from 12 April. The Prosecution pointed out that this house was close to Elizaphan Ntakirutimana's residence. Furthermore, the Prosecution referred to the Tutsi wife and children of Pastor Issacar Ntakirutimana, a Hutu not related to the Accused, who were provided shelter by Elizaphan Ntakirutimana at the Complex. In the Prosecution's view, the fact that the Accused protected only Hutu and Tutsi married to Hutu is particularly evidenced by the fact that on 16 April the group in Elizaphan and Gérard Ntakirutimana's vehicles heading for Gishyita was uniquely Hutu. The Prosecution claims that Rachel Germaine - according to the Defence a Tutsi - was in fact Belgian. The Chamber notes Royisi Ntakirutimana's explanation that "[t]here were no Tutsi. Those who went with us were those who were close to us". She later added she did not know the ethnicity of Rachel Germaine: "she could have been Tutsi but she was of mixed race".[137]

114. In addition to the evidence referred to by the Prosecution in its Closing Brief, the Chamber recalls that Witness HH mentioned two events involving two Hutu refugees whom Gérard Ntakirutimana advised to leave. One event related to Gakwerere, a preacher. The Accused arrived, accompanied by Mathias Ngirinshuti who was responsible for personnel at the Complex and was related to Nbarubukeye.[138] The

[128] T. 10 May 2002 p. 4.
[129] Defence exhibit 1D30.
[130] Defence exhibit 1D31; T. 25 April 2002 pp. 101-102.
[131] T. 25 April 2002 pp. 73-74.
[132] Id. pp. 78-79.
[133] T. 2 May 2002 pp. 67-76; T. 3 May 2002 pp. 20-23; Defence exhibit 1D44.
[134] T. 30 April 2002 pp. 154-159; 211-212.
[135] T. 23 April 2002 pp. 71-77; Defence exhibit 1D25.
[136] T. 31 October 2001 p. 101.
[137] T. 10 April 2002 p. 170; T. 11 April 2002 p. 3.
[138] T. 25 September 2001 p. 112.

Accused "told the Hutus to leave this place because they did not share the same problems as the other refugees".[139] The witness said that Gakwerere accepted this and left, after having stayed only one night at the Complex. This episode occurred before 14 April. The second incident involved Nbarubukeye, who, according to the witness, was either a preacher or a teacher. Witness HH explained that Nbarubukeye stayed until the morning of 16 April: "[W]hen Mathias and Gérard came and asked him to leave, they had given him conditions; namely, that he should leave his [Tutsi] wife" behind. The witness did not say how he obtained this information. He said that Nbarubukeye left with his wife at about 9.30 a.m., after Mathias Ngirinshuti came to him and said: "This time you must get out because things are getting difficult." Ngirinshuti told Nbarubukeye that he could take his wife with him "and she could die elsewhere".[140]

115. Witness YY testified that Elizaphan Ntakirutimana advised two Hutu families to leave the Complex. In the first instance, the Accused told pastor Gakwerere, his wife and children, who were all Hutu, to leave the Complex prior to the attack.[141] According to the witness, Gakwerere left the Complex "at least two or three days before" 16 April 1994: "He was somewhere in the complex at the hospital. We saw Ntakirutimana approach. They spoke and then we saw Pastor Gakwerere leave together with his family."[142] The witness testified that he did not hear the conversation. The second episode mentioned by the witness was when Elizaphan Ntakirutimana gave the same advice to a Hutu woman and her children. Witness YY said that he saw Elizaphan Ntakirutimana approach the woman who then left the Complex. Again, he did not overhear the discussion they had.[143]

116. On the basis of the evidence summarized above, the Chamber finds that some senior Hutu employees, including Gérard Ntakirutimana, evacuated their families from the Complex a few days before 16 April. The Prosecution claims that this particular evacuation shows how Gérard Ntakirutimana, by removing Hutu persons from the Complex, effectively separated Tutsi individuals from others. However, the Accused also took on board Clémentine, a Tutsi woman married to Jean Nkuranga (a Tutsi who was director at the ESI Nursing School), and her three children. In view of this particular evacuation, the Chamber does not find support for the Prosecution's allegation.

117. The submission that Gérard Ntakirutimana advised Hutu personnel to leave is supported by the testimony of Witness HH, who testified that Mathias Ngirinshuti and Gérard Ntakirutimana approached Gakwerere and Nbarubukeye about leaving. Taken at face value, these incidents, as described by the witness, do not provide sufficient basis for concluding that the aim of the Accused was to separate the Hutu from the Tutsi as part of the preparations for the attack. According to the witness, Nbarubukeye was first asked to leave his Tutsi wife behind. Witness HH did not say how he learned this information. Later Nbarubukeye was allowed to take his wife with him. The remark that "she could

[139] T. 25 September 2001 p. 108; T. 26 September 2001 pp. 83-84.
[140] T. 25 September 2001 pp. 107-111.
[141] T. 2 October 2001 pp. 8-9.
[142] T. 2 October 2001 pp. 15-16; T. 3 October 2001 pp. 58-59.
[143] T. 2 October 2001 pp. 16-19.

die elsewhere" was allegedly uttered by Ngirinshuti, not by Gérard Ntakirutimana, and at a time when there is no evidence that the Accused was present.

118. In its Closing Brief the Prosecution submitted that Elizaphan Ntakirutimana provided shelter to various Hutu. As stated above, the Accused is not mentioned in paragraph 4.6 of either Indictment. But, in view of the submissions, the Chamber notes that there is no evidence that he made arrangements for Witnesses 5 and 32 to move into the house in his neighbourhood belonging to the Esapan School. The assistance to the family of Pastor Issacar Ntakirutimana was of benefit to a Tutsi woman, albeit married to a Hutu, and does not give a basis for general conclusions of selective protection. As for the advice which, according to Witness YY, Elizaphan Ntakirutimana gave to pastor Gakwerere and to a Hutu woman with children, the Chamber observes that the witness did not overhear the conversations.

119. According to the Prosecution, preparations for the attack did not include only the separation of Tutsi from other individuals but also attempts to disarm any refugees who had weapons in their possession. The Prosecution refers to Witness KK, who testified that gendarmes guarding the Complex informed him of a meeting that took place in the main Ngoma Adventist Church on 13 April. Gérard Ntakirutimana, bourgmestre Charles Sikubwabo, and the Conseiller of Gishyita (Mika Muhimana) and of Ngoma (Abel Bahunde) were among the leaders at the meeting. Following the meeting, the gendarmes gathered the refugees and told them to hand over their traditional weapons.[144]

120. The Chamber observes that Witness KK, who was then 16 years old, did not attend the meeting of 13 April. He testified that he saw Charles Sikubwabo and Gérard Ntakirutimana going to the meeting, but his knowledge about their discussions came from the gendarmes. Consequently, this part of Witness KK's testimony is hearsay. Witness YY testified that around 13 April he saw Gérard Ntakirutimana and the bourgmestre heading for a meeting at the main Mugonero Adventist Church; following the meeting, traditional weapons were collected from the refugees at the Complex by the gendarmes.[145] The witness did not receive any information from the gendarmes about the substance of the meeting, but the Chamber notes that Witness YY's testimony corroborates the observation made by Witness KK. However, the evidence provided by these two witnesses is not directly related to the issue of evacuation and selective protection of the refugees. The Chamber sees no need to make a finding at his point but notes these two testimonies as part of the general context in the days preceding the attack on 16 April.

(c) Discharge of Non-Tutsi Patients

121. The Prosecution argues that in furtherance of preparations for the attack at the Complex Gérard Ntakirutimana discharged non-Tutsi patients from the Mugonero Hospital, separated Tutsi from non-Tutsi patients, and ordered the confinement of Tutsi

[144] T. 3 October 2001 pp. 90-94. Witness KK's statement of 15 April 1999 was more extensive on this point than the testimony.
[145] T. 3 October pp. 90-94.

patients to the basement of the hospital. In its Closing Brief, the Prosecution referred to the testimonies of Witnesses FF, DD, and XX. Accordingly, the Chamber will first summarize their evidence.

Witness FF

122. Witness FF testified that Hutu patients began to leave the hospital on 7 April and continued to leave until 15 April.[146] She testified that from 7 April onwards, Gérard Ntakirutimana gradually discharged Hutu patients without explaining why he was doing so. On 15 April, the witness heard the Accused say "openly" that all Hutu patients should leave.[147] She testified that Gérard Ntakirutimana and the chief of personnel, Mathias Ngirinshuti, "visited the patients on the basis of their medical records. They asked the Hutus to leave and gave them medicines to take ... home." The witness stated that as of 15 April there were more than 70 patients at Mugonero Hospital, of whom there were "more than 20" Hutu and "a bit more than 50" Tutsi. The last group of Hutu patients, numbering more than twenty, left on 15 April.[148] Witness FF said that all Hutu patients were able to leave because they "could move about and they could go home, and they took with them the medicine that they needed".[149] Mathias Ngirinshuti and Gérard Ntakirutimana then directed that the remaining patients be moved to the ground floor on or after 15 April (see below).

Witness DD

123. Witness DD, who knew Gérard Ntakirutimana,[150] saw him around 14 April at Mugonero Hospital. The witness was in the hospital's courtyard. He heard the Accused speak: "There were many ill patients, and he said that the Hutus who were ill, as well as the Zaireans, should leave the hospital and go home." The witness estimated that about 30 patients then left. He knew that the Rwandan citizens who left were Hutu, just by looking at them.[151] The witness was asked why Gérard Ntakirutimana should make such an announcement in the courtyard: "All the patients in the hospital were not seriously ill. Some of them were out in the courtyard, and he spoke to those ones. And he said if amongst them there were Hutu patients, they could go home."[152]

Witness XX

124. Witness XX said she had known Gérard Ntakirutimana since 1993 when he came to Mugonero Hospital as a physician.[153] She testified that as of 9 April there were Hutu and Tutsi as well as Zairean patients at the hospital. She was not certain about the proportion of Tutsi patients to Hutu patients, but believed that the majority of patients

[146] T. 1 October 2001 p. 74.
[147] T. 28 September 2001 p. 33; T. 1 October 2001 pp. 74-75.
[148] T. 28 September 2001 pp. 23, 29, 33-35.
[149] T. 1 October 2001 p. 105.
[150] T. 24 October 2001 pp. 3-5.
[151] T. 23 October 2001 pp. 97-101.
[152] T. 24 October 2001 p. 29.
[153] T. 19 October 2001 p. 8.

were Tutsi: "During that period, the number of Tutsi patients increased because we received wounded people from the areas where the killings had started." She heard it said that Gérard Ntakirutimana made an "announcement", possibly between 10 and 12 April, that all Hutu and foreigners should leave the hospital: "[P]eople came and told us that Dr. Gérard had said that all the Hutus and strangers should leave, and they told me that since an announcement like that one had been made, it meant that something abnormal would happen, something nobody thought about".[154] She added that following the announcement, "the number of patients in the hospital reduced remarkably", and that the remaining patients were put into one building, whereas usually they had occupied two buildings. She testified that "around the 15th of April there were neither Hutus nor foreigners or strangers at the hospital".[155]

125. Like Witnesses FF, DD and XX, Witness MM testified that in the week following 9 April, all Hutu patients left the hospital.[156]

126. The Defence disputes the allegations against Gérard Ntakirutimana. Witness 7 stated that she was not aware that Gérard Ntakirutimana had ever attempted to separate Hutu patients from Tutsi patients, or Hutu refugees from Tutsi refugees. Nor was she aware that the Accused had ever told Hutu patients to leave the hospital during this period.[157] The testimony of Defence Witness 32 was that she "never heard Dr. Gérard asking people to leave the hospital, be they patients or employees."[158]

127. In relation to Witness FF, the Defence argues in its Closing Brief that she offered no significant or credible testimony of a criminal act committed by either Accused.[159] The Chamber is of the view that her account of the conditions at the Complex prior to the attack on 16 April and of her experiences on this day was consistent. She did not appear evasive during cross-examination. She had previously given five statements to investigators, of which four related to the present case.[160] Her testimony was generally in conformity with her previous statements to investigators (see below).

128. As part of its arguments against Witness FF's credibility, the Defence submits that the witness did not claim in any of her previous statements to have seen Elizaphan or Gérard Ntakirutimana at the Complex on 16 April. The Chamber does not consider this

---

[154] French version reads : "Et, ils m'ont dit que, comme une telle annonce avait été faite, c'est qu'une chose anormale allait se passer à l'hôpital – une chose à laquelle personne n'avait pensé." (T. 22 October 2001 p. 7)
[155] T. 22 October 2001 pp. 5-8.
[156] T. 20 September 2001 p. 46.
[157] T. 12 February 2002 pp. 12-13, 166-167.
[158] T. 16 April 2002 p. 89.
[159] Defence Closing Brief pp. 55-63.
[160] The first statement of 10 October 1995, is a general account of events at the Complex and Bisesero. The second, dated 14 November 1995, consists of responses to questions about Gérard Ntakirutimana. The third declaration of 10 April 1996 gives a description of the events at the Complex and in Bisesero. The fourth statement, signed on 21 October 1999, begins with the witness declaring that she had not been asked about rape or sexual offences in previous interviews. However, the interview provided no such information but contains another account of the Complex and Bisesero events. The fifth statement, dated 14 November 1998, relates to Alfred Musema and makes no reference to either Accused in the present case.

significant in the present context but notes that this follows also from her testimony. The Defence also argues that Witness FF's credibility is weakened because she gave different versions about which vehicles she observed on 16 April. The Chamber disagrees. In her first three statements, the witness claimed to have seen vehicles belonging to Elizaphan Ntakirutimana, Gérard Ntakirutimana and the hospital. In her fourth statement, she said that the vehicles belonged to the hospital, Gérard Ntakirutimana and a businessman named Antoine. According to her testimony, she observed the car of Elizaphan Ntakirutimana, a white pickup belonging to the hospital which "Gérard had taken", and a vehicle belonging to a businessman, which "Ruzindana had taken". The Chamber does not consider these differences significant. The Chamber observes that it follows from three of her statements and her testimony that she saw the vehicles of the two Accused conveying attackers on the morning of 16 April, but that she saw neither of them in person on that date.[161]

129. The Defence submits that Witness FF was part of a "campaign", allegedly orchestrated by Assiel Kabera, the prefect of Kibuye in 1995, against the two Accused (see generally below, II.7). The Chamber does not consider this argument to be convincing. It is true that Witness FF appeared in a video, probably filmed sometime in April 1995, which shows coffins in the chapel and contains allegations against the Accused. However the witness denied ever having discussed the events of 1994 with Kabera, and explained that the film was created by the sub-prefect of Ngoma. The fact that she was interviewed as one of those who experienced the attack on 16 April for a film made in connection with the burial of bodies does not undermine her credibility. Furthermore, neither the fact that Witness FF was interviewed by African Rights nor the substance of her statements to that human rights organization supports the Defence contention that she was part of a campaign against the Accused.

130. The Defence also emphasizes that Witness FF's credibility is doubtful because she has over the years inflated the role played by Gérard Ntakirutimana in the attacks in Bisesero. This claim will be considered in connection with the specific events in Bisesero. In the Chamber's view the witness's account of the events in Bisesero does not affect her credibility concerning the discharge of Tutsi patients in the days before 16 April.

131. In relation to Witness XX, the Defence argues that her claims concerning Elizaphan and Gérard Ntakirutimana were minor, vague and not believable.[162] The Chamber notes that the witness made two statements to investigators, dated 14 November 1995 and 24 October 1999, respectively. In the present context it will focus on her evidence concerning the Mugonero Complex. The Chamber notes that her testimony about Gérard Ntakirutimana's announcement that all Hutu and foreign patients should go home is hearsay. The episode is also reflected in her first prior statement: "All the patients were crammed in the basement of the main building, both Hutu and Tutsi, but the

[161] The Defence states that in a video filmed probably in April 1995 Witness FF stated: "Some of the vehicles belonged to the hospital. The other one was his [the Pastor's] car." See exhibit 1D41A and Defence Closing Brief p. 58. The Chamber does not consider this formulation as a discrepancy.
[162] Defence Closing Brief pp. 70-75.

Hutu were asked to leave around 12 April." Gérard Ntakirutimana's name is not explicitly mentioned, but her brief statement contains several references to him as a prominent figure at the hospital during the events in 1994, and the Chamber does not consider this omission significant. During the second interview, the witness did not mention the announcement but said that "influential personalities evacuated their families because they knew" that the refugees at the Complex would be massacred. The Chamber concludes that Witness XX's statements and testimony are consistent on this point.

132. In conformity with her previous statements, Witness XX testified that she did not see either Elizaphan or Gérard Ntakirutimana on 16 April.[163] Her testimony concerning the leading role of Gérard Ntakirutimana at the hospital was also consistent with past statements. More specifically, she said that word went around among the refugees that he had asked them to leave the hospital and go to the Ngoma Adventist Church.[164] This hearsay evidence is corroborated by other witnesses (see above). Her testimony that there were about 50,000 refugees at the Complex is inflated but she explained that this figure was only "an approximate one".[165] The Chamber accepts her explanation and observes that the witness was clearly in distress when recounting her experience. The Chamber disagrees with the Defence that Witness XX's credibility is weakened by the testimony of Witness YY, providing the same estimated number of refugees. The evidence given by the two witnesses differed in some respects, precluding a possible inference of collusion. The Chamber considers Witness XX's testimony concerning the Mugonero Complex to be credible irrespective of her testimony relating to Bisesero.

133. Turning now to Witness DD, the Defence argues that the radical changes in his testimony, compared to his statement of 11 November 1999 to investigators and his reconfirmation statements of 28 July and 22 October 2001, render his evidence unbelievable.[166] The Chamber will also discuss the credibility of the witness elsewhere. In the present context, the Chamber observes that the alleged announcement to discharge Hutu patients was not included in any of his previous statements. When questioned about this issue, the witness answered that he had spoken about the announcement, but that the investigators "forgot to mention it" in his statement.[167] Having observed Witness DD in court, where he was extensively questioned about the announcement, the Chamber accepts that this may have been omitted during the recording of the interview, and further observes that the witness cannot read. Several minor differences between his written statement and his testimony indicate that communication between the witness and the

[163] T. 22 October 2001 p. 40. According to her statement of 14 November 1995, she saw Obed Ruzindana who "was obviously the leader". She also observed the vehicles of Gérard Ntakirutimana, "his father and one belonging to the hospital". This version is in conformity with the testimony of other witnesses (see 3.8.3 (d) and (e)). It should be noted that the French version, which was signed by the witness, is slightly different from the English translation: "J'ai vu *en outre* 3 vehicules, celui de Geral[d] Ntakirutimana, celui de son pere et celui de l'hopital" (italics added). The statement of 24 October 1999 refers to "several vehicles".
[164] T. 22 October 2001 p. 51.
[165] Id. p. 92.
[166] Defence Closing Brief pp. 133-138.
[167] T. 24 October p. 25.

investigators was not optimal.[168] The Chamber also notes that Witness DD's testimony about the announcement corresponds to testimonies given by other witnesses.

134. On the basis of these testimonies and having considered the submissions of the Defence, the Chamber finds that Witnesses FF and DD heard Gérard Ntakirutimana say that the Hutu patients should leave the hospital. The evidence suggests that this was done in connection with visits to the patients (Witness FF) and in the courtyard in relation to patients that were gathered there (Witness DD). The witnesses provided a similar estimate of the number of Hutu patients who left following the announcement. This direct evidence is corroborated by Witness XX, who did not hear the Accused make any announcement, but who learnt of it from others. The testimony of Witness MM that, in the week following 9 April, all Hutu patients left the hospital is consistent with the Chamber's finding. The evidence suggests that Gérard Ntakirutimana's announcements were made between 10 and 13 April, as there were no more Hutu or foreign patients left at the hospital after that date. It is true that Defence Witnesses 7 and 32 testified that there had been no separation of patients on the basis of ethnicity, but it is to be observed that these witnesses stopped reporting to work at the hospital as early as 11 and 12 April, respectively.[169]

135. The Chamber does not find it necessary to determine whether the ethnicity of patients was recorded in their files in order to reach the conclusion above.

136. On the basis of evidence provided by Witness FF, the Prosecution also argues that Gérard Ntakirutimana and other officials at the hospital closed down some of the hospital rooms and "crowded" (or "confined") the patients into the basement of the two-storey building. The Chamber notes that the evidence in this respect is limited. There is no indication that any person was prevented from leaving the hospital basement or any other part of the Complex (see above). The Chamber also recalls Witness MM's testimony that the refugees agreed to move to the ground floor of the hospital (above). Accordingly, the Chamber is not in a position to make any finding in this respect.

3.5 Denial of Treatment to Tutsi Patients

3.5.1 Prosecution

137. The Prosecution alleges that on or about 13 April, Gérard Ntakirutimana and Mathias Ngirinshuti closed the medical store and the main ward at the hospital. The Prosecution also submits that on or about 15 April, a day before the attack at the Complex, wounded Tutsi who were taken to the hospital by the Red Cross for treatment were denied treatment by the Accused, who locked the medicine storage room at the

[168] See, for instance, the formulation that "there were many white men" in his first statement, third para., compared to his testimony (T. 24 October 2001 pp. 18-19); statement, fifth para.: "I decided to run to the church, which I found closed, then I proceeded to the surgical ward", compared to T. 24 October 2001 pp. 38-41; statement, fifth para.: "I was standing in front of Mugonero nursing school", compared to T. 24 October 2001 pp. 34-35; statement, sixth para.: "We were hiding in one of the surgical wardrooms" compared to T. 24 October 2001 pp. 69-72.
[169] T. 12 February 2002 pp. 13-14; T. 16 April 2002 pp. 85-87.

hospital and claimed that there were no materials for treating the wounded.[170] These allegations are not contained in the Indictment, but are included in Annex B of the Pre-trial Brief.[171]

138. The Prosecution argues that Gérard Ntakirutimana was well aware of the likely consequences of denying medical treatment at a time when the evidence suggests that wounded Tutsi, having survived attacks in other communes, had come to the Complex seeking shelter and treatment. The Accused could not provide any explanation as to why he decided to abandon the hospital on 14 April, other than that he was asked to leave by gendarmes and he did not question them.[172]

3.5.2 Defence

139. The Defence rejects the contention that Gérard Ntakirutimana withheld medical care from Tutsi patients by locking away medical supplies, or that he otherwise refused to treat Tutsi patients. According to the Defence, the Accused continued to treat unknown wounded patients, who most probably were Tutsi, up until 14 April. It follows from the testimony of Witnesses 7, 32, and 11 that ethnicity was not recorded in hospital files, contrary to the Prosecution's submissions.

140. Gérard Ntakirutimana was in no position to withhold medicines from patients, according to the Defence. Etienne Niyomugabo, a Tutsi, was in charge of the surgical department, and it was he who had the keys to the surgical rooms and operating theatres. Ezekiel Ruhigisha, also a Tutsi, had a master key to all hospital locks. As for Witness FF's testimony that the Accused refused to treat wounded Tutsi who arrived in Red Cross vehicles, this was refuted by Witness 11's evidence that the Red Cross did not transport patients and had no such vehicles available in the entire prefecture.[173]

3.5.3 Discussion

141. The Prosecution relies primarily on the testimony of Witness FF. Accordingly, the Chamber will first summarize her testimony, as well as the testimonies of the other witnesses.

Witness FF

142. At the time of the events in question, Witness FF was employed at Mugonero Hospital. She testified that around 7 or 8 April Mathias Ngirinshuti, who was in charge of personnel at the hospital, gave every hospital employee an identification card to make it

---

[170] Prosecution Closing Brief paras. 135-152.
[171] See also the Prosecution's opening statement (T. 18 September 2001 p. 15): "It is the Prosecution's case that on or about 13 April 1994, Gérard Ntakirutimana and Mathias Ngirinshuti, the chief of personnel at the hospital, closed the medical store and the main ward at the hospital." And "on or about 15 April 1994, a day before the attacks at the complex, wounded Tutsi who were taken to the hospital by the Red Cross for treatment were denied treatment by Dr. Ntakirutimana".
[172] Prosecution Closing Brief paras. 135-152.
[173] Defence Closing Brief pp. 199-203; T. 22 August 2002 p. 104.

easier for them to get to work, and that after the arrival of the gendarmes the various hospital employees kept working as usual.[174] The witness testified that from 7 to 15 April Gérard Ntakirutimana was present at the hospital complex, but not working in the surgery unit. "He was visiting the patients ... normally, and he worked only during the daytime; I never saw him work at night."[175]

143. The witness testified that in the course of the week leading up to 14 April a number of Tutsi wounded by shrapnel were brought to the hospital by the Red Cross.[176] Gérard Ntakirutimana allegedly denied them treatment.[177] "When the wounded started coming in from communes which were afflicted by violence, he stopped working. He closed the surgery and said that he did not have the tools and necessary equipment in order to treat Tutsis."[178] Witness FF heard the Accused say this while she was receiving wounded patients in the lower level of the main hospital building, in the room next to the surgery unit.[179] She was unable to remember the date when the Accused allegedly made the remark.[180] However she indicated that it was on the day "he closed that part of the hospital and went to Gisovu to his brother-in-law, in the company of his wife." The witness testified that the Accused came back late, whereas his wife remained in Gisovu. According to the witness, it was a weekday, closer to 15 April than 6 April; the Accused had already stopped working at this time.[181]

144. Witness FF further testified that Gérard Ntakirutimana "did not participate in the rounds up to the 15th because he left prior to that ... he participated in the rounds for some days, and then he stopped".[182] The nurses continued working "in whatever way they could using makeshift means", until 15 April, trying to help those who had been wounded by shrapnel.[183] Witness FF maintained that the nurses washed the patients and had "some medication, some material in stock; for instance they would have some sutures which they would use in the stitching."[184]

145. According to Witness FF, the medical supplies were kept in a building next to the hospital, as well as in a room inside the hospital. "When there was no more medicine I would go into the place where the stocks were kept in the company of the head of stocktaking and he [Gérard Ntakirutimana] was the one who gave me the medication I needed." The witness maintained that "the two places were locked. Had they been open, there wouldn't have been any problem". She stated that the Accused "had the keys [to both stocks] because he was the one who locked up the surgery room and he took the keys with him".[185] She denied that Etienne Niyomugabo had a key to this room: "The

[174] T. 1 October 2001 pp. 1-2.
[175] Id. p. 14.
[176] Id. p. 8.
[177] Id. pp. 101, 105.
[178] T. 28 September 2001 p. 22; T. 1 October 2001 p. 100.
[179] T. 1 October 2001 pp. 30-31.
[180] Id. p. 101.
[181] T. 28 September 2001 pp. 31-34.
[182] T. 1 October 2001 pp. 12-13.
[183] T. 28 September 2001 pp. 22-23, 32.
[184] T. 1 October 2001 p. 119.
[185] Id. pp. 115-119.

keys for the surgery room were with the doctor because he was in charge of that room. Etienne worked as his assistant, because he was a nurse ... he was just supporting the doctor who was actually overall in charge of the surgery room ... Normally it was not Etienne who kept the keys, except at times he could be given the keys when he had to go and fetch something from the room."[186]

146. Without indicating the date on which she had last checked the stocks, Witness FF said that it seemed to her that the medication in stock was sufficient to treat patients until 15 April 1994. But she also testified that Etienne would "use the little material that was in stock, but he didn't have authority to go into the surgical ward or room because he didn't have the keys. Furthermore, he didn't have enough suture material to be able to do the stitching ... he didn't have access to the surgery and he was stitching them up in the hospital ward".[187] The pharmacy held no materials for stitching, only tablets and syringes.[188]

Witness XX

147. Witness XX, who in 1994 was employed at the Mugonero Hospital, claimed to have seen Gérard Ntakirutimana at the hospital from 9 April onwards, although not on 13, 14, or 15 April: "He no longer lived in ... his house which was near the hospital. We did not even see his car around, and it was said that he was living at his father's."[189] The witness testified that prior to 13 April, "we used the medication available at the hospital". During the period of the Accused's absence, a message was sent by Etienne Niyomugabo requesting Gérard Ntakirutimana "to come and make medication available". Niyomugabo was "the highest authority amongst the hospital employees", according to the witness, and was "the supervising nurse". Witness XX said that upon being asked for medication, Gérard Ntakirutimana "said that he had no medication for the Tutsis". The witness further stated: "At the time, the stock he had was locked up, and he was the only official who had remained, and he never came back to find out our fate." Witness XX indicated that they nevertheless used what was available at the hospital, but that the stock was depleted.[190]

Other Witnesses

148. Defence Witness 7, an employee at Mugonero Hospital from January 1994 through 11 April 1994, and then again from May to July 1994, testified, "I never heard a patient complain about Dr. Gérard, so I think his attitude towards the patients was good, generally speaking". As to whether the Accused ever discriminated between Tutsi and Hutu, the witness said, "I never saw any such thing and I never heard anyone make mention of any such thing".[191] The Chamber notes that this witness was not present during the period which is relevant in this context.

---

[186] Id. p. 6.
[187] Id. p. 115-118.
[188] Id. pp. 102-103.
[189] T. 22 October 2001 pp. 97-99.
[190] The quotes in this para. are from T. 22 October 2001 pp. 99-101.
[191] T. 11 February 2002 p. 224. Defence Witness 32, referred to in the Prosecution's Closing Brief, did not testify specifically on the subject of denial of treatment.

149. Gérard Ntakirutimana testified that during the period 11 to 14 April, persons with wounds requiring surgical treatment arrived in numbers at Mugonero Hospital. He surmised that they were mostly Tutsi: "It's difficult for me to say, and this is because we weren't checking on the identity of the wounded. That wasn't our problem at all. ... a patient came, we did what we could do; we didn't try to find out whether this or that. But given the situation ... that prevailed at the time, I believe that most of the people were Tutsis."[192] The Accused testified that Etienne Niyomugabo, who was the nurse responsible for the surgery, had keys to the surgery rooms.[193] Gérard Ntakirutimana denied that he ever refused to treat a patient prior to 14 April, the date on which gendarmes directed him to leave the hospital because of increasing lack of security.[194]

150. The Chamber observes that the witnesses were uncertain of the date when Gérard Ntakirutimana allegedly denied treatment to Tutsi patients. Witness FF testified that the Accused continued visiting the patients "normally", up until 15 April. Yet, she stated that when the Accused commented about a lack of tools and equipment for Tutsi, he had already stopped working. Witness FF was uncertain about the date on which this remark was made. She testified that it was made on the day when Gérard Ntakirutimana drove his wife to Gisovu, which was 11 April (see 3.4.3(b)). Witness XX said that she did not see the Accused from 13 to 15 April. The Accused said that he left for security reasons on 14 April. In light of all testimonies heard, the Chamber finds that the Accused left the hospital on 14 April.

151. Whether Gérard Ntakirutimana not only left the hospital, but also denied treatment to Tutsi patients by locking away the medical supplies is unclear. It follows from the findings in the previous section that most of the patients at the hospital towards the end of that second week were Tutsi. The evidence suggests that there were few medical supplies left at Mugonero Hospital during this period. Numerous patients were arriving. Witness FF testified that there was no stitching material in the pharmacy, only tablets and syringes. There is no evidence before the Chamber as to the actual amount of stock remaining in the pharmacy and in the surgery unit.[195] Under these circumstances a remark by the Accused to the effect that he lacked the necessary means to treat Tutsi arriving at the hospital with shrapnel wounds (according to Witness FF), or that he had no medication for Tutsi (according to Witness XX), is not in itself conclusive evidence of any discriminatory intent. Consequently, the Chamber must exercise caution when interpreting this alleged remark, which only Witness FF testified to having heard. Witness XX's testimony was hearsay. Furthermore, the Chamber notes that Witnesses FF and XX testified that after Gérard Ntakirutimana left, the staff made use of available medication. Hence, even after the Accused's departure, some material was available.

---

[192] T. 9 May 2002 p. 87.
[193] Id. pp. 26-27.
[194] Id. pp. 80-82, 88.
[195] Witness FF testified that it "seemed to me that the medication in stock was sufficient, and it's the Interahamwe who looted the medication after they had killed the people" (T. 1 October 2001 p. 118). This evidence is not convincing.

152. In view of the insufficient evidence, the Chamber will not make a finding against the Accused that he denied treatment or medical supplies to Tutsi patients. Moreover, there is no need to consider whether only Gérard Ntakirutimana kept the keys to both stocks, as stated by Witnesses FF and XX, or whether also Etienne Niyomugabo, the supervising nurse at the surgery, and Ezekiel Ruhigisha, the person in charge of the technical services, had keys, as suggested by the Defence.

153. This being said, the Chamber notes that Gérard Ntakirutimana acknowledges that he departed the hospital leaving the Tutsi patients behind. He explained that the gendarmes had directed him to leave because of increasing lack of security. The Chamber is aware that the security situation was difficult and that, for instance, Oscar Giordano left a few days earlier. However, in the Chamber's view it is difficult to imagine why the Accused was at particular risk, compared with the remaining persons. According to his own explanation, he did not return to the hospital to inquire as to the condition of patients and staff. The overall situation leaves the Chamber with the impression that the Accused simply abandoned the Tutsi patients. This behaviour is not in conformity with the general picture painted by the Defence of the Accused as a medical doctor who cared for his patients. The members of his staff, who were mainly Tutsi, were also left behind. The Chamber notes these elements as part of the general context.

3.6 Severance of Utilities

3.6.1 Prosecution

154. It is the Prosecution's case that on or about 14 April, Gérard Ntakirutimana cut off utility supplies to the Complex, leaving several thousands of refugees without water, electricity, and other basic sanitary supplies. This allegation is not mentioned in the Indictment. The Prosecution further submits that utility supplies were often disconnected at locations where Tutsi persons were gathered prior to their being attacked.[196]

3.6.2 Defence

155. There are no specific submissions by the Defence about this allegation. However, it follows implicitly from its general submissions and explicitly from the cross-examination of Witness MM that the Defence disputes this allegation.[197]

3.6.3 Discussion

156. Witness MM testified that between 12 and 16 April, water supply and telephone connections were disconnected at the Complex. He saw that the water supply had been

[196] Prosecution Closing Brief paras. 153-155; T. 21 August 2002 p. 14.
[197] T. 20 September 2001 p. 71: "Q: Now, isn't it true that the way the water supply works, if one were to cut off the water supply to stop water from coming into the hospital area, it would also prevent water from coming into the complex generally, to the homes, for example, of Dr. Gérard, or the Pastor, or anybody else that lived in Mugonero? All water would be off; isn't that true? - A: That is true, but there was a reservoir so that they could have water for a long time. – Q: Well, the reservoir was where, sir? A: It all depended on the houses. The doctors' residences were equipped with tanks, but the employees did not have any."

disconnected at a location on a hill where he passed when escaping from the Complex on 16 April. The witness stated that during the night of 13 April, Ezekiel Ruhigisha, a Tutsi who was in charge of technical services at the hospital, told him that he had secretly gone to find out why the water had been cut off and was told by someone else that Gérard Ntakirutimana had given orders to that effect. Ruhigisha had repaired the pipes, but the water was disconnected a second time.[198] Witness FF said that pipes carrying water to the hospital had been destroyed, but it was not established how the witness knew this.[199]

157. The Chamber observes that Witness MM did not hear the Accused give orders to cut off the water, but based his testimony on information from Ruhigisha, who had been told by an unidentified person that the Accused had done so. The information is therefore based on hearsay. There is no other evidence to connect the Accused to the alleged act.

158. The allegation that Gérard Ntakirutimana ordered the disconnection of the hospital's telephones, so that Tutsi there should not communicate with the "Inkotanyi", is also based only on hearsay (the son of Abel Bahunde, conseiller of Ngoma Secteur, allegedly told Witness MM), and involves speculation by Witness MM.[200]

159. The Chamber finds that the allegation that Gérard Ntakirutimana cut off utility supplies (water and telephone) to the Complex is not supported by sufficient evidence.

3.7 Procurement of Gendarmes and Ammunition by Gérard Ntakirutimana

3.7.1 Prosecution

160. According to the Prosecution, Gérard Ntakirutimana procured gendarmes and ammunition.[201] The Prosecution submits that the Accused went to the gendarmerie camp in Kibuye town for the first time early in the afternoon of 15 April 1994 in the hospital vehicle. Witness OO testified that the Accused asked to see the commander of the camp, claiming to have a prior appointment. He then met with 2nd Lieutenant Ndagijimana for about an hour. Witness OO testified that the Accused returned to the camp an hour later, accompanied by four armed soldiers dressed in camouflage. On this occasion the Accused met with Lieutenant Masengesho and was later joined by Obed Ruzindana. The meeting lasted three hours, following which the witness overheard the participants say that they had an other appointment at the camp the following day. The Prosecution notes that no witness corroborated Gérard Ntakirutimana's claim that on 15 April he remained at his father's house and did not venture out.[202]

161. The Prosecution alleges that on the next day, 16 April, between 6.30 and 7.30 a.m., Gérard Ntakirutimana returned to the gendarmerie camp driving a white pick-up. Witness OO saw ten Interahamwe in the back of the vehicle dressed in uniforms and

[198] T. 19 September 2001 pp. 66-68.
[199] T. 1 October 2001 p. 120.
[200] T. 19 September 2001 pp. 72-73.
[201] This allegation is not mentioned in the summary of facts in the Indictment, but referred to in Annex B of the Pre-trial Brief.
[202] Prosecution Closing Brief paras. 157-160.

banana leaves and wearing feathers on their head. The Accused told the witness that he had an appointment with 2nd Lieutenant Ndagijimana about flushing out the Tutsi living in the hospital and the church, which the Accused could not achieve without military assistance. Witness OO testified that two officers and between 15 and 30 gendarmes, together with the Accused, departed the camp in three vehicles, after having requisitioned two cases of ammunition and consumed two cases of beer.[203] The gendarmes returned around 5 p.m., informing the witness that they had launched an attack against Tutsi at Mugonero. The witness was also told that Gérard Ntakirutimana had been very helpful to the gendarmes in the course of the attack, as he knew the premises well and knew where the Tutsi were hiding. He had invited the gendarmes to return to search the dead bodies for money.[204]

162. It is the Prosecution's case that Gérard Ntakirutimana left Mugonero for the gendarmerie camp in the hospital vehicle between 5.30 and 6.30 a.m. on the morning of 16 April and did not return until sometime after 7.30 a.m. This, in the Prosecution's view, accounts for why Defence Witnesses 16 and Royisi Nyirahakizimana, Elizaphan Ntakirutimana's wife, did not mention seeing the Accused at his father's residence early that morning. The first time Witness Nyirahakizimana saw Gérard Ntakirutimana on 16 April was sometime after 8 a.m., as they prepared to leave for Gishyita.[205]

163. In its oral arguments the Prosecution submitted that two "scenarios" are possible: Gérard Ntakirutimana could either have remained in Kibuye town on the evening of 15 April, mindful of the fact that he had an appointment the following day, or he could have returned to Mugonero. In any case the critical point is that there is no positive sighting of the Accused in Mugonero between noon on 15 April and 8.30 a.m. the next day. As for his alleged trip to Gishyita early in the morning of 16 April, this is not mentioned in Gérard Ntakirutimana's summary of expected testimony or in the notice of alibi of 10 September 2001. Nor does the summary of the expected testimony of Witness Nyirahakizimana mention her son going to Gishyita that morning.[206]

164. The Prosecution addressed the Defence's argument that no witness at the Complex saw Interahamwe in banana leaves and feathers, and that therefore Witness OO's sighting of Gérard Ntakirutimana in the company of persons dressed in that fashion cannot have been accurate. The Prosecution responds that Defence Witness 25 testified that he saw attackers, so dressed, on 16 April at the Complex. This evidence, in the Prosecution's view, corroborates Witness OO's testimony by supplying a "nexus" between events at the gendarmerie camp and events at the Complex.[207]

165. The Prosecution also contends that Witness KK saw three convoys of vehicles arrive at the Complex on 16 April and did not see Gérard Ntakirutimana in the first two convoys; he saw him only in the third convoy at 8.30 a.m. Witness HH also placed

[203] Id. paras. 168-170.
[204] Id. paras. 281-283.
[205] Id. para. 486.
[206] T. 21 August 2002 pp. 31-33.
[207] Id. pp. 34-36.

Gérard Ntakirutimana in a convoy at 8.30 a.m.; Witness PP saw him with his father at around 9.00 a.m. This, according to the Prosecution, is consistent with the evidence of Witness OO, as that witness saw the Accused at the gendarmerie camp between 6 a.m. and 7 a.m. Prosecution exhibit P7 shows the distance between Kibuye town and Mugonero to be 25 to 27 kilometres, or 45 minutes to an hour by car.[208]

166. As to Witness OO's ability to identify Gérard Ntakirutimana, the Prosecution submits that he had known the Accused for about three or four months prior to seeing him at the gendarmerie camp. He had visited the hospital and had received treatment from the Accused twice. In addition, Witness OO's duty at the camp was to ascertain the identity of people entering. He was able to account for the ten Interahamwe in Gérard Ntakirutimana's vehicle because he counted them. He also testified that he maintained a log book in which he would often write down information about vehicles entering the camp.[209]

3.7.2 Defence

167. The Defence submits that the fact that Witness OO had been in prison in Rwanda for seven years at the time of his testimony undermines his credibility.[210] During cross-examination the Defence suggested that the witness was testifying against the Accused in the expectation that he would gain an early release from the Rwandan authorities.[211]

168. The Defence further submits that Witness OO's evidence is inconsistent. He testified that the first time he saw Gérard Ntakirutimana was some time before the 18 April 1994 attack at Gatwaro Stadium, which, he said, took place after the transfer of Major Jabo to Kigali. In the Musema case Witness OO testified that Jabo was still present in Kibuye during the stadium attack. And in his statement to investigators the witness said that Jabo left with 50 or 60 gendarmes three days after that attack. This inconsistency casts serious doubt on the truthfulness of his allegations.[212]

169. The Defence refers to Witness OO's testimony that the third time he saw the Accused at the gendarmerie camp in Kibuye town was between 6.30 and 7.30 a.m. on 16 April. The Defence notes the witness's admission that the chronology of events in his prior statement is problematic: "[o]ne would think the paragraphs were put upside down", according to the witness. Witness OO testified that the Interahamwe brought by the Accused to the camp that morning were dressed in banana leaves and wore feathers on their heads. He also testified that Gérard Ntakirutimana departed the camp together with a khaki-coloured minibus and a blue Daihatsu pick-up in which gendarmes were transported. The Defence submits that no Prosecution witness at the Complex claimed to have seen a khaki-coloured minibus, a blue Daihatsu pick-up, or Interahamwe in banana leaves and feathers.[213]

---

[208] Id. pp. 36-38.
[209] Id. pp. 49-50.
[210] Defence Closing Brief p. 104.
[211] T. 1 November 2001 pp. 191-192.
[212] Defence Closing Brief pp. 105-106.
[213] Id. pp. 106-109.

170. The Defence case is that Gérard Ntakirutimana did not leave his father's residence at any time between the afternoon of 14 April and the morning of 16 April.[214] The Defence submits that the two Accused left Ngoma on the occasion of their first trip to Gishyita on 16 April at around 6.15 a.m., that they departed Gishyita for Mugonero between 7.10 and 7.30 a.m., and that they returned to Elizaphan Ntakirutimana's house before 8.00 a.m. At 8.05 a.m. a gendarme directed them to leave immediately, whereupon they set off for Gishyita for the second time that morning. They arrived in Gishyita between 8.30 and 9.30 a.m. The Defence relies on the evidence of Witnesses 16 and Ann Nyirahakizimana, in addition to that of the Accused, to refute the allegation that Gérard Ntakirutimana was in Kibuye town that morning.[215]

171. In its oral submissions, the Defence questioned why the two Accused, if they were involved in planning the attack at the Complex, went to Gishyita on the morning of 16 April. The Defence argues that the Prosecution, to support this allegation, latterly proposed that the purpose of the first trip to Gishyita was not to intercede with the bourgmestre but to transport attackers to Mugonero. The Defence maintains that it is illogical to suggest that the two Accused waited until the last moment to evacuate their family and others, and that Gérard Ntakirutimana somehow managed to transport gendarmes from Kibuye town to the Complex in the morning of 16 April, evacuate the group to Gishyita, then return to Mugonero to take part in the attack.[216]

3.7.3 Discussion

172. The Mugonero Indictment does not allege that Gérard Ntakirutimana acquired weapons, ammunition, and gendarmes from the gendarmerie camp in Kibuye town for the purposes of the attack at the Complex on 16 April. However, the Prosecution's Pre-trial Brief makes the following allegation: "Between 10 and 16 April 1994, Dr. Gérard Ntakirutimana frequently visited the Kibuye Gendarme[rie] camp headquarters from where he procured arms, ammunition and gendarmes, for purposes of launching an attack on Tutsi refugees gathered at the Mugonero complex."[217] Therefore the Accused had sufficient notice of this allegation.

173. The Chamber found Witness OO to be a credible witness. In April 1994, he was a gendarme with the rank of sergeant at the Kibuye town camp of the gendarmerie.[218] At the time of his testimony, and since 1994, the witness was, according to his account, in detention awaiting trial (not "in prison", as the Defence states). The witness testified: "I am accused of having kept people in my home who subsequently died. I am also accused of giving a pistol to a young man who was a civilian."[219] There is no evidence to contradict Witness OO's account in this regard. Given the presumption of innocence

[214] Id. p. 203; T. 22 August 2002 pp. 83-84
[215] Defence Closing Brief pp. 108-109.
[216] T. 22 August 2002 pp. 66-67.
[217] Prosecutor's Pre-trial Brief filed 16 July 2001 para. 11.
[218] T. 1 November 2001 pp. 136, 140.
[219] Id. pp. 188-191.

enjoyed by a detained person awaiting trial, the Chamber will not draw any adverse inference against Witness OO on account of his status as a detainee.

174. Witness OO stated that at some point before 18 April 1994, or alternatively before 14 April 1994, the then gendarmerie commander Jabo was transferred out of the camp because he opposed the killing of Tutsi refugees who at the time were streaming into Kibuye town and gathering in the town's stadium and in other public spaces. Jabo's successor, Lieutenant Masengesho, "collaborated with the Interahamwe, the préfet and the préfectural administration in general". Witness OO claimed to have seen prefect Kayishema come to the camp on "several" occasions after Jabo's departure. Other individuals visited the camp during this time, including Eliezer Niyitegeka and Aloys Ndimbati (respectively, Minister of Information and bourgmestre of Gisovu Commune, according to the witness), Obed Ruzindana, Alfred Musema, and Gérard Ntakirutimana (whom the witness described as a doctor at Mugonero Hospital).[220]

175. The witness estimated that he saw Gérard Ntakirutimana at the camp on at least four occasions (for the fourth occasion, see II.4.10, below). The first occasion was between 1.00 and 2.00 p.m. on a day in April 1994, prior to the 18th (it may be inferred from the witness's later comments that it was on 15 April). The Accused came in a white pickup and asked to see the commander of the camp. The witness told him to wait. "And he told me that he could not wait because he had already spoken to the commander on the telephone, telling him that he was coming to see him". The vehicle had writing on its side indicating that it belonged to Mugonero Hospital.[221]

176. Because the commander of the camp was not present, the Accused did not stay. When he returned again he was with four soldiers. They were in the rear part of the pickup and were armed. The Accused met with Lieutenant Masengesho. The witness testified that he did not know what they discussed, but at the time they separated, he heard them mention an appointment the next day. During the course of the meeting between Lieutenant Masengesho and the Accused, which took place in the former's office, Ruzindana arrived in a green pickup. When Witness OO reported the new arrival to the two men, "Dr. Ntakirutimana told me, 'Let him in; he has the same problems as we do'." The Accused, Ruzindana, and Masengesho departed the camp at the same time on that day, between 5.00 and 6.00 p.m. The meeting lasted about three hours.[222]

177. Witness OO saw the Accused return to the camp the following morning, between 6.30 and 7.30 a.m.[223] This was on 16 April 1994.[224] "He came with people I would describe as Interahamwe ... They were wearing the Interahamwe uniform. They had feathers on their head, with banana leaves around them. They carried machetes, spears and clubs. There were ten of them. They were singing and shouting, and when they got

[220] T. 1 November 2001 pp. 142-145 (in which Ndimbati's name is spelt Ndambatye – According to the French Transcript however, the Witness did spell the bourgmestre's name as "Ndimbati", T. 1 November 2001 (Fr) p. 162) ; See also T. 2 November 2001 pp. 48-49.
[221] T. 1 November 2001 p. 149-152.
[222] Id. pp. 150-157.
[223] T. 1 November 2001 pp. 158-160; T. 2 November 2001 pp. 64, 73.
[224] T. 1 November 2001 p. 167; T. 2 November 2001 p. 109.

close to the camp they asked for weapons and ammunition, saying that the gendarmes were not up to the task. ... they did that after shooting in the air twice." Some of these Interahamwe also had "Kalashnikovs".[225] They said they wanted the arms and munitions because the gendarmes had "failed"; the witness did not know exactly what they meant by this.[226] Gérard Ntakirutimana asked the witness where 2nd Lieutenant Ndagijimana was and added that he had an appointment with him to go "to beat the Tutsis who were in the hospital, in the church and even in the [hospital] store."[227] The Accused said that he required military assistance for this purpose.

178. Witness OO could not remember what the Accused was wearing at the time but he did recall that he was not armed.[228] Second Lieutenant Ndagijimana asked a corporal named Nkunzurwanda to fetch two cases of ammunition. The witness said that he did not know how many rounds were in the cases. "They also asked for two cases of beer, and they served themselves before they left. And while they were there, a khaki-coloured minibus with a yellow licence plate, showing that it belonged to the state, came up followed by a blue Daihatsu which belonged to [a] trader".[229] The gendarmes got into the Daihatsu and the minibus and the Interahamwe got into the Accused's vehicle, followed by 2nd Lieutenant Ndagijimana and Rwabukumba, another 2nd Lieutenant. The witness estimated that between 15 and 30 gendarmes boarded the two vehicles. He named several of them.[230]

179. The gendarmes returned to the camp around 5.00 p.m. the same day. Witness OO approached a gendarme called Nizeyimana to ask what had happened: "[H]e told me that they had just launched an attack against the Tutsis in Mugonero, that the Tutsis were in the church at the hospital and also in the hospital store. He went on to say that, even if the work had not been completed, they had at least done good work. He said that Dr. Ntakirutimana had asked them to come back and search the dead bodies for money and that if the gendarmes continued to take part in such operations, they [would] be appropriately remunerated." Witness OO's informant allegedly told him that Gérard Ntakirutimana was present during the attack: "He did not spare praise when he talked about Dr. Gérard, saying he had helped him a lot, [b]ecause he knew the plan of the premises and he said there were refugees in the store and that had it not been for his knowledge of the premises, they would not have been able to find them."[231]

180. Several inconsistencies between the chronology of events as represented in Witness OO's statement of 6-11 August 1998 and his testimony before the Chamber, including the date of departure of Jabo, were addressed by the witness: "When the investigators were questioning me they were taking down notes and when they went to

---

[225] T. 1 November 2001 pp. 158-161.
[226] T. 2 November 2001 pp. 71-73.
[227] T. 1 November 2001 pp. 161-162, 165; T. 2 November 2001 p. 71. The French transcripts read: "Et il m'a dit qu'ils venaient de lancer une attaque contre les Tutsis à Mugonero, que ces Tutsis se trouvaient à l'intérieur de l'église, à l'hôpital, ainsi que dans la cave de l'hôpital" (p. 187).
[228] T. 2 November 2001 pp. 102-103.
[229] T. 1 November 2001 pp. 162-163; T. 2 November 2001 90-91.
[230] T. 1 November 2001 p. 164.
[231] T. 1 November 2001 pp. 164-167; T. 2 November 2001 pp. 62-63, 74-77.

type out my statement ... they did not maintain the chronology of events. And I did not have the opportunity to read that over with them to be able to correct that error." He added: "I signed the statement all right ... And I said to myself that even if there was a problem with the statement, I was going to solve it since I would be present [before the Trial Chamber] myself."[232] The Chamber accepts this explanation of the witness and concludes that the inconsistencies are not so material as to affect the substance of his testimony.

181. The witness was asked if he had re-read his prior statement to refresh his memory. He answered that he did not have to do so "because the facts I am testifying on are facts which are well known to me".[233]

182. Witness OO was the only witness to allege that Gérard Ntakirutimana went to the gendarmerie camp to procure arms and gendarmes for the attack at Mugonero on 16 April. Witness OO testified that two vehicles described as a khaki-coloured minibus and a blue Daihatsu drove 15 to 30 gendarmes out of the camp. The vehicle driven by the Accused transported ten Interahamwe. As discussed below (II.3.8), witnesses based at the Complex alleged that Gérard Ntakirutimana came to the Complex carrying persons in his vehicle variously described as Interahamwe, gendarmes, soldiers, and attackers. The description of the vehicles do not conform to the description given by Witness OO.

183. The Chamber does not consider it important that no Prosecution witness testified about seeing the arrival of the convoy of vehicles and persons that departed the gendarmerie camp on the morning of 16 April. Witness OO did not claim to know from his own experience what happened to the convoy after its departure. He relied rather on indirect evidence, provided by the gendarme Nizeyimana, as to what the gendarmes (or at least some of the gendarmes) did after they left the camp. This does not diminish the reliability of the observations made by this witness in relation to the afternoon of 15 April and the morning of 16 April.

184. The Chamber gives no credence to Gérard Ntakirutimana's alibi that he was at his father's house throughout the afternoon of 15 April and accompanied his father to Gishyita on the morning of 16 April, namely, at the time when Witness OO places him at the gendarmerie camp. The Chamber finds it noteworthy that the Defence was unable to lead any evidence, except for Gérard Ntakirutimana's own claim,[234] to prove that he remained at his father's house on the afternoon of 15 April and that he was there also in the early morning of 16 April. As discussed below under 3.8.3 (e), only Elizaphan Ntakirutimana supported his son's claim to have traveled with him to Gishyita between 6.30 and 7.30 a.m on 16 April. The Chamber gives no credence to Elizaphan Ntakirutimana's testimony in this regard. (The evidence concerning the first trip to Gishyita is examined below.) Defence Witness 16, who was Elizaphan Ntakirutimana's housekeeper, said that he did not see Gérard Ntakirutimana at his father's house on the

[232] T. 2 November 2001 pp. 54-55, 59.
[233] Id. p. 3 (closed session).
[234] T. 9 May 2002 p. 90; T. 10 May 2002 pp. 35-37.

morning of 16 April 1994: "I did not see him there. I saw only the pastor."[235] (The witness also seemed to suggest that Gérard Ntakirutimana had left his father's house already on 15 April 1994.[236]) Defence Witness 9, a cattle herder, arrived at the house around 7 a.m. on 16 April: "I met [Elizaphan Ntakirutimana] in the company of his wife in the morning." The witness said that they "were getting ready to board the vehicle."[237] He also saw Defence Witness 16, but did not see Gérard Ntakirutimana. Witness Nyirahakizimana, wife of Elizaphan Ntakirutimana, described her activities at the house early on 16 April without mentioning her son. She did see the hospital vehicle (which was usually driven by Gérard Ntakirutimana) parked on the road outside the compound of her house, but that was around 8 a.m.[238]

185. The Chamber has also considered the other submissions of the Defence about alleged discrepancies but does not find that they affect the credibility of the witness.

186. For the above reasons, the Chamber accepts Witness OO's evidence and finds that Gérard Ntakirutimana attended a meeting with the commander of the gendarmerie camp and Obed Ruzindana in Kibuye town on the afternoon of 15 April. The Chamber also finds that on the morning of 16 April, between 6.30 and 7.30 a.m., Gérard Ntakirutimana returned to the gendarmerie camp. In his vehicle he was carrying Interahamwe who told Witness OO that they were in need of arms and ammunition. Gérard Ntakirutimana announced that he had an appointment with the commander of the camp to go "to beat the Tutsis who were in the hospital, in the church". The Accused departed shortly thereafter, taking with him the Interahamwe with whom he arrived, and accompanied by a number of gendarmes in two other vehicles who had been provisioned with boxes of ammunition. Later that day, one of the gendarmes reported to the witness that he and Gérard Ntakirutimana had taken part in an attack against Tutsi persons at the Mugonero Complex.

3.8 Events Leading Up to the Attack on 16 April 1994

187. The relevant part of the Mugonero Indictment reads:

> 4.7 On or about the morning of 16 April 1994, a convoy, consisting of several vehicles followed by a large number of individuals armed with weapons went to the Mugonero Complex. Individuals in the convoy included, among others, Elizaphan Ntakirutimana, Gérard Ntakirutimana & Charles Sikubwabo, members of the National Gendarmerie, communal police, militia and civilians.[239]

---

[235] T. 14 February 2002 pp. 20, 53-54.
[236] Id. pp. 50-52.
[237] T. 30 April 2002 pp. 89-90.
[238] T. 10 April 2002 pp. 40, 44.
[239] The Bisesero Indictment para. 4.7 is virtually identical, but does not contain any reference to Charles Sikubwabo.

4.8 The individuals in the convoy, including Elizaphan Ntakirutimana, Gérard Ntakirutimana & Charles Sikubwabo, participated in an attack on the men, women and children in the Mugonero Complex, which continued throughout the day.[240]

4.9 The attack resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge at the Complex.[241]

4.12 Before all of the above mentioned attacks, Gérard Ntakirutimana knew or had reason to know that his subordinates, including various employees of the Mugonero Hospital under his authority and control, were about to participate in attacks on the men, women, and children, and did not take necessary and reasonable measures to prevent such attacks. In addition, after the attacks, Gérard Ntakirutimana did not punish the perpetrators.

3.8.1 Prosecution

188. The Prosecution's case is that the two Accused participated "in one form or the other" in the attack that took place at Mugonero Complex on 16 April, acting in concert with several local authorities, law enforcement agents, members of the "Hutu militia", and other armed civilians.[242] The attack involved planning at the highest level, confirmed by the presence of local authorities during the attack.[243]

189. The Prosecution does not dispute Elizaphan Ntakirutimana's claim that between 5.30 and 6.00 a.m. on 16 April gendarmes brought him the letter shown at Appendix 5 of Prosecution exhibit P2.[244] The Prosecution nevertheless maintains that the Accused had knowledge of the imminent attack at the Complex prior to receiving the letter. While the Prosecution concedes that Elizaphan Ntakirutimana made the trip to visit bourgmestre Charles Sikubwabo, it claims that the Accused went to the bourgmestre's residence, not his office, and that the purpose of the visit was not to deliver a message on behalf of the pastors but to arrange for the evacuation and accommodation of Hutu colleagues and relatives of the Accused.

190. The Prosecution argued that Elizaphan Ntakirutimana left for Gishyita with two gendarmes, having come to the Complex sometime after 6.00 a.m. The gendarmes acted as escorts. The primary purpose of the Accused's visit to Gishyita was to convey attackers from that location to Mugonero Complex in readiness for an attack that morning. That was the role that Elizaphan Ntakirutimana had been assigned to play in the events of 16 April, a role consistent with his age and one that facilitated, in no small measure, the attack on refugees at the Complex.[245]

---

[240] The Bisesero Indictment para. 4.8 is almost identical; there is no reference to Charles Sikubwabo, and the sentence continues with the words "and into the night".
[241] The Bisesero Indictment contains an insignificant difference.
[242] T. 21 August 2002 p. 15.
[243] Id. p. 81.
[244] Prosecution Closing Brief paras. 451, 480.
[245] T. 21 August 2002 pp. 18-19, 54.

191. The Prosecution does not dispute that Elizaphan Ntakirutimana replied to the pastors' letter, whether orally or in writing, asking gendarmes to deliver the reply to the pastors at the Complex. However, the Prosecution contends that the reply was given at 6.00 a.m. that morning, when the Accused first stopped at the Complex to collect gendarmes on his way to Gishyita.[246]

192. In Gishyita, while Elizaphan Ntakirutimana conversed with Sikubwabo, armed attackers boarded his vehicle so that by 6.30 or 6.40 a.m., according to the Prosecution, the Accused with the attackers in his vehicle and in the company of two other vehicles with attackers on board, including Sikubwabo, departed Gishyita for the five-kilometre journey back to Mugonero. The staging area at Mugonero was the Kabahinyuza market, just outside the Complex and close to Elizaphan Ntakirutimana's residence. At that location the Accused discharged his cargo of attackers, who waited for other convoys to arrive. They were out of the view of the refugees gathered at the Complex.[247]

193. It is the Prosecution's case that after returning to Mugonero from Gishyita with armed attackers, Elizaphan Ntakirutimana made his way to the Complex where he was seen by Witness SS talking with Jean Nkuranga. He then went to the ESI Chapel and demanded that Pastor Sebihe surrender to him the chapel's keys. From there he headed home to prepare for the evacuation to Gishyita. The Prosecution submits that this pre-arranged evacuation included Hutu colleagues and relatives of the Accused and no persons who were unknown to the Accused. The Prosecution rejects as incredible the Accused's claim that no one had given them permission to stay at the CCDFP in Gishyita, a ploy designed simply to diminish their relationship with the bourgmestre, Sikubwabo. The Prosecution concedes that Elizaphan Ntakirutimana remained at Gishyita on 16 April, this being consistent with the fact that no Prosecution witness claimed to have seen him in the course of the attack at the Complex.[248]

194. The Prosecution disputes that Gérard Ntakirutimana accompanied his father on the first trip to Gishyita on the morning of 16 April.[249] Instead, Gérard Ntakirutimana drove to the gendarmerie camp in Kibuye town (see submissions under 3.7). The Prosecution points out that neither the alibi notices nor the Defence summaries of the expected testimony of the Accused stated that Gérard Ntakirutimana accompanied his father on that first trip to Gishyita. No other Defence witnesses corroborated this claim by the Accused. Moreover, the accounts of the two Accused are not consistent, one saying that Gérard Ntakirutimana waited for his father on the veranda of the commune office, the other that he waited in his car. The Prosecution submits that Gérard Ntakirutimana returned from Kibuye town sometime after 7.30 a.m. on 16 April, which explains why neither Royisi Nyirahakizimana nor Witness 16 saw him at his father's residence early that morning.[250]

---

[246] Id. pp. 24-25.
[247] Id. pp. 22-24.
[248] Prosecution Closing Brief paras. 463 ff., 481 ff.
[249] Id. paras. 453 ff.; T. 21 August 2002 pp. 24-25.
[250] Id. para. 486.

195. Thus the Prosecution does not accept that Gérard Ntakirutimana was with his father, or indeed in Mugonero, on 16 April any time before 8.30 a.m. It submits that, given that Witness OO saw the Accused at the gendarmerie camp between 6.00 and 7.00 a.m., and given that the distance between Kibuye town and Mugonero is some 25 to 27 kilometres, if the Accused had left the camp at 7.30 a.m. he would be at the Complex by 8.30 a.m., or by 9.00 a.m. at the latest, which matches the time Prosecution witnesses first saw him at the Complex.[251]

196. The Prosecution does not dispute that Gérard Ntakirutimana was involved in the evacuation of family and colleagues to Gishyita.[252] However, it is the Prosecution's case that he returned to Mugonero Complex sometime after 9.30 a.m., together with Pastor Gakwerere, Pastor Ushizimpumu, Mathias Ngirinshuti, and others. The reason Gérard Ntakirutimana assisted with the evacuation to Gishyita was that there was a shortage of vehicles and his was needed to convey the Accused's relatives and friends.[253]

197. The Prosecution submits that there were two waves of attacks at the Complex on 16 April. There was an initial wave, which was repelled by the refugees, and there was the main attack.[254] As to the prelude to the main attack, the Prosecution contends that the two Accused were seen in a convoy of vehicles among armed attackers arriving at the Complex. The attackers arrived in several groups, some by car, others on foot, between 7.00 and 9.00 a.m. The vehicles ferried the attackers from a variety of locations: Gishyita, in the case of Elizaphan Ntakirutimana; Kibuye, in the case of Gérard Ntakirutimana. Six witnesses testified to seeing Gérard Ntakirutimana at the Complex with attackers: YY, DD, HH, GG, PP, and KK.[255] The Prosecution submits that the use of PP's vehicle by Obed Ruzindana is indicative of the fact that Gérard Ntakirutimana acted in concert with Ruzindana and other influential authorities in Gishyita in the execution of a plan to exterminate the Tutsi at Mugonero. It also submits that, shortly after 9.00 a.m., the two Accused moved their vehicles from the proximity of the field office. This had to be done to avoid damage during the initial attacks. The Accused then headed to Elizaphan Ntakirutimana's residence shortly after 9.05 or 9.10 a.m. to carry out the evacuation of family and friends.[256]

198. The Prosecution argues that the Accused needed to place the time of their departure from Mugonero on the morning of 16 April at 8 a.m. because such timing allowed them to contradict the evidence of the witnesses who testified to having seen them arrive with attackers in a convoy of vehicles between 7.00 and 9.00 a.m. However, Defence Witness 32 saw the Accused arrive in Gishyita at 9.30 a.m. This account of the time suggests that they cannot have left Mugonero at 8 a.m. for it is unlikely that it would have taken them one-and-a-half hours to drive a distance of five kilometres. Even Witness 32, who walked to Gishyita, made it there in less time. According to the Prosecution, the fact that the Accused had items thrown at them as they drove past the

[251] Prosecution exhibit P7; T. 21 August 2002 pp. 24-25, 36.
[252] Prosecution Closing Brief paras. 495, 498.
[253] T. 21 August 2002 p. 65.
[254] Id. pp. 69-70.
[255] Id. pp. 39-42.
[256] Id. p. 53.

Complex suggests that they departed the Complex after the initial attacks had commenced, that is, after 9.00 a.m.[257]

199. When Gérard Ntakirutimana and others returned from Gishyita to Mugonero after 9.30 a.m., they actively participated in the attack on Tutsi refugees at the Complex. According to the Prosecution, Witness YY established that Gérard Ntakirutimana shot and killed Kagemana and Macantaraga. Witnesses GG and HH established that he shot and killed Charles Ukobizaba somewhere in the hospital courtyard. Witness SS testified that the Accused shot at him sometime in the afternoon of 16 April. And three witnesses, DD, MM, and YY, testified that some time after the attacks had ceased, in the evening of 16 April, Gérard Ntakirutimana and others walked among the slain refugees in the hospital building pointing torches at their faces to identify who was dead and who was still alive. According to the Prosecution, they were taking stock.[258]

3.8.2 Defence

200. According to the Defence, between 5.00 and 6.30 a.m. on 16 April, gendarmes brought Elizaphan Ntakirutimana two letters, one addressed to him personally and the other to the bourgmestre of Gishyita. Elizaphan Ntakirutimana awakened his son, Gérard, and told him about the letter. Royisi Nyirahakizimana was still asleep. Gérard Ntakirutimana moved the hospital vehicle, which was blocking his father's car, parked it outside the house compound, and drove his father and the gendarme who had brought the letter to Gishyita. They arrived at the bureau communal between 6.30 and 7.00 a.m. They waited for the bourgmestre, who came around 7.00 a.m. Elizaphan Ntakirutimana pleaded with him about the refugees, but he did not change his position. Between five and 15 minutes later Elizaphan Ntakirutimana returned to the car where Gérard Ntakirutimana was waiting. They arrived back in Mugonero before 8.00 a.m. and stopped at the field office. There Elizaphan Ntakirutimana wrote a letter to the pastors, informing them regretfully that his intercession with the bourgmestre had been unsuccessful. He gave his reply to the gendarme to deliver, for as he explained it was the gendarmes who brought the original letter so it was they who would deliver the answer. Elizaphan Ntakirutimana saw armed and angry people in the Complex below the nursing school. Both Accused returned to Elizaphan Ntakirutimana's house shortly before 8 a.m.[259]

201. Soon after, four gendarmes arrived at Elizaphan Ntakirutimana's house and spoke to Gérard Ntakirutimana, urging him to leave immediately. The Defence argues that this visit exacerbated the Accused's sense of insecurity stemming from surrounding violence, fears of a new war, the flight of foreign workers, the pastors' letter, and many other unsettling recent events. Therefore, upon receiving the gendarmes' direction to leave, Gérard Ntakirutimana felt he had to comply. He went to get the hospital vehicle which was parked outside the compound, while Elizaphan Ntakirutimana, his wife, and Witness 16 packed some goods into the other car, which within minutes of the order to leave was driven out onto the road. The two vehicles paused momentarily on the road while

[257] Id. pp. 55-58.
[258] Id. pp. 69-78.
[259] Defence Closing Brief pp. 204ff.

neighbours and other persons, including friends and colleagues who had earlier taken refuge in the vicinity of the commercial centre where there was greater security, climbed on board. The Defence maintains that the flight to Gishyita was not planned but happened on the spur of the moment. None of those fleeing had made preparations or brought any luggage, except for meagre provisions as were immediately at hand. The vehicles, driven by the two Accused, headed for Gishyita because it was common during times of unrest to seek refuge in administrative and other public buildings.[260]

202. According to the Defence, the two Accused and their passengers set out for Gishyita at approximately 8.00 a.m. or shortly before that time. Along the way they encountered an angry crowd at Mugonero Complex and a tree-trunk blocking the road. Stones and other objects were thrown at them by the crowd. Twenty to thirty minutes later the two vehicles arrived in Gishyita. No one was there to greet them. They waited for some time before an "office boy" came with keys to open up the place where they were to stay. They entered the CCDFP building around 9.30 a.m. The two Accused did not leave Gishyita again on 16 April. In the middle of the morning, at about the time they were let into the CCDFP, the Accused began to hear distant explosions and people shouting and saw people running away from the location of the Mugonero Complex. Later in the day they saw people dressed in rags pass by with loot from the hospital.[261]

203. The Defence submits that the Prosecution has conceded that the two Accused went to Gishyita with family members and others in the morning of 16 April. The Defence contends that if the Accused had prior knowledge of the planned attack they would not have waited until the last minute for the evacuation. It also contends that there was insufficient time for Gérard Ntakirutimana to have driven to and from Kibuye town (as suggested by Witness OO) and to have been back in time for the flight to Gishyita.[262]

204. The Defence's submissions as to why the testimony of Prosecution witnesses should not be believed will be considered by the Chamber in the course of the following discussion.

3.8.3 Discussion

(a) The Letter

205. It is undisputed between the parties that in the afternoon or evening of 15 April 1994, Tutsi pastors at the Complex wrote a letter to Elizaphan Ntakirutimana, in which they informed him that they had heard that they would be killed the following day. They asked him to intervene on their behalf by contacting the bourgmestre of Gishyita, Charles Sikubwabo. The letter was written in Kinyarwanda. A copy of the letter was entered into evidence by the Prosecution.[263] The English translation reads:

---

[260] Id. pp. 211ff.
[261] Id. pp. 221ff.
[262] Id. pp. 217ff.
[263] Appendix A5 of Prosecution exhibit P2; T. 18 September 2001 pp. 96-98. The Prosecutor obtained the letter from Mr. Philip Gourevitch, an author and staff writer at the New Yorker magazine, who had received it from Elizaphan Ntakirutmana during an interview in Laredo, Texas, USA on 25 September

Ngoma 15/04/1994

Dear our leader,
Pastor Ntakirutimana Elizaphan,

How are you.
We wish you to be strong in all these problems we are facing.

We wish to inform you that we have heard that tomorrow we shall die with our families. We therefore request you to intervene on our behalf and talk with the Mayor. We believe and with the help of God who entrusted you the leadership of this flock which is going to be destroyed. Your intervention will be highly appreciated, the same way as Jews were saved by Esther.

We should appreciate if you would contact the Mayor as soon as possible.

We give honour to you.

1. Pastor Semugeshi Ezekiel (signed)
2. Pastor Rucondo Isaka (signed)
3. Pastor Rwanyabuto (signed)
4. Pastor Seromba Eliezer (signed)
5. Pastor Sebihe Seth (signed)
6. Pastor Gakwaya Jérôme (signed)
7. Mwalimu Zigirinshuti Ezekias (signed)[264]

206. Five Prosecution witnesses (MM, YY, GG, HH, SS) testified about this letter.[265] According to their evidence, it was prepared in the afternoon or evening of 15 April 1994, read out to the refugees in the ESI Chapel and later given to a gendarme to deliver to Elizaphan Ntakirutimana. It is undisputed that all seven signatories were Tutsi. The letter was written with the knowledge that an attack had been planned against them. Witness HH testified that the refugees were informed by one of the gendarmes around 14 April that the Complex was going to be attacked on 14 or 15 April, or on 16 April 1994 at the latest.[266] The three gendarmes said that they were not in a position to defend such a large number of people. Witness YY testified that he and others were aware of an attack before 16 April 1994, without specifying how long before.[267]

1996. Mr. Gourevitch subsequently referred to this letter in his book *We wish to inform you that tomorrow we will be killed with our families. Stories from Rwanda* (1998). The interview and excerpts from the book were produced as Prosecution exhibits P42 A and B.

[264] The quotation is from the English translation provided by the Prosecution (see previous footnote). Some minor errors in the exhibited English translation of the letter have been corrected. The spelling of names varies slightly from the original letter. The word "Mwalimu" (No. 7) means "teacher". The letter was also interpreted orally in court, see T. 6 May 2002 pp. 155-156.

[265] In cross-examination, Witness GG referred also to an earlier letter with similar content, written and sent to Elizaphan Ntakirutimana on 14 April 1994. A person named Assiel delivered this earlier letter (T. 24 September 2001 pp. 108-110, 116-117). No other witness testified that two letters with similar content were sent to Elizaphan Ntakirutimana on separate days.

[266] T. 25 September 2001 pp. 112, 117; T. 26 September 2001 p. 77.

[267] T. 1 October 2001 p. 128.

207. Witnesses YY, GG and SS explained that the letter was written to Elizaphan Ntakutimana because he knew Charles Sikubwabo's father, a Hutu pastor. Together the two pastors could plead for the refugees.[268] Witness MM testified that the letter was written to the Accused because he had cared for his congregation and his pastors, irrespective of whether they were Hutu or Tutsi. As a respected and important person he "would have found ways and means of evacuating people over the lake in order for them to go to Zaire".[269]

(b) Elizaphan Ntakirutimana's Response to the Letter

208. The Prosecution submits that the letter from the Tutsi pastors was brought by gendarmes to Elizaphan Ntakirutimana in the morning of 16 April 1994, between 5.30 and 6.00 a.m.[270] It is also undisputed that he went to Gishyita that morning. Consequently, the Chamber accepts the Accused's testimony that he left his home about 6.15 a.m. and arrived in Gishyita to see bourgmestre Charles Sikubwabo shortly after 6.30 a.m. It also accepts that he was accompanied by at least one gendarme. (Whether he was accompanied by his son will be discussed in connection with the allegations against Gérard Ntakirutimana, see below.)

209. While it is the Prosecution's view that Elizaphan Ntakirutimana met with the bourgmestre that morning it argues that they met at the bourgmestre's residence, not in his office. The submissions are that 16 April was a Saturday and hence a Sabbath according to the Seventh Day Adventists, not a normal working day. The bourgmestre was an Adventist. According to the Prosecution, it is unlikely that Elizaphan Ntakirutimana would wait for someone who had no reason to be at work on a Sabbath.[271]

210. Elizaphan Ntakirutimana testified that the letter shattered him and that he started to tremble. At 6.15 a.m. he left with his son and a gendarme for Gishyita and waited at the bourgmestre's office from 6.35 or 6.40 a.m. The Accused stated that the bourgmestre came at 7.00 a.m.:

> He came at seven and we gave him the letter. After reading it, before he said anything to me, he shook his head. He said, "I can do nothing. There is no government; there is no authority; I have no power." I said to him, "Charles, these are relatives, relatives of your people. Are you going to allow them to die like that? They are going to die innocently, and you are going to let them die like that, and you are the leader. That's the situation which your relatives or people are in and you're going to have to face the consequences".[272]

---

[268] Witness YY (T. 1 October 2001 pp. 128, 130); Witness GG (T. 24 September 2001 pp. 92-93); Witness HH (T. 25 September 2001 p. 113; T. 26 September 2001 p. 88).
[269] T. 20 September 2001 pp. 98-99.
[270] Prosecution Closing Brief paras. 163 and 451.
[271] Id. para. 459. (In the last sentence the word "not" seems to be lacking.) See also T. 21 August 2002 p. 21.
[272] T. 6 May 2002 pp. 160-161.

211. The Accused explained that the brief conversation in Sikubwabo's office lasted until 7.10 a.m. Both men remained standing during the meeting. Gérard Ntakirutimana and the gendarme waited outside. The watchman of the communal office was also outside. Other employees had not yet arrived.[273]

212. The Chamber considers it of limited importance whether the meeting between Elizaphan Ntakirutimana and the bourgmestre took place in the communal office or at the bourgmestre's residence. It observes, however, that the Prosecution has not adduced any evidence to support its claim. Only the two Accused testified about the meeting. Their version was that the meeting took place in the bourgmestre's office.

213. According to the Prosecution, the purpose of the meeting was not to deliver the message from the Tutsi refugees, but rather to arrange for the evacuation and subsequent accommodation of Elizaphan Ntakirutimana's family and Hutu colleagues. A second purpose, according to the Prosecution, was to convey attackers to the Mugonero Complex in readiness for an attack that morning.[274] The Chamber observes that two persons, Elizaphan Ntakirutimana and Charles Sikubwabo, are said to have been present during the meeting. The only evidence available at trial was Elizaphan Ntakirutimana's testimony. The Chamber will not speculate or draw the inferences suggested by the Prosecution concerning the alleged substance of the conversation. Consequently, the Chamber accepts the Accused's version.

214. Elizaphan Ntakirutimana testified that on his way back to the Complex, around 7.30 a.m., he was still trembling. He went to his office with the gendarme and wrote a note for the pastors while his son waited outside:

> I told them that the bourgmestre categorically refused and that was why I was very sad, but I couldn't do anything. But God who is almighty knows what he was going to do. I said that you pastors have not sinned against God and that you are in his hands.[275]

215. Gérard Ntakirutimana also testified that the response was written in the field office on the morning of 16 April 1994 and handed over to gendarmes.[276] The Prosecution does not dispute that Elizaphan Ntakirutimana replied to the letter from the Tutsi pastors, but leaves open whether the response was written or oral. No written response was available at trial. The Prosecution witnesses who testified that they were at the Complex before and during the attack gave conflicting evidence as to when they received Elizaphan Ntakirutimana's reply, and whether it was written or oral. Three witnesses (HH, MM, and YY) stated that the reply was received already on 15 April 1994. One of them said that it was in writing, another said that the reply was oral, and the third witness did not know.[277] Prosecution Witness GG, however, testified that he heard Pastor Sebihe, together with his pastor colleagues, read the written response aloud in

[273] Id. p. 165.
[274] T. 21 August 2002 pp. 19-20.
[275] T. 7 May 2002 pp. 165-66.
[276] T. 9 May 2002 pp. 96-97.
[277] Witness HH (hearsay), T. 25 September 2001 pp. 115-116; Witness MM (hearsay), T. 20 September 2001 p. 104; Witness YY, T. 1 October 2001 pp. 130-131 and 2 October 2001 pp. 57-58.

public, on the morning of 16 April 1994.[278] The Chamber observes that there is considerable evidence in support of the testimony of the Accused that the response was written and accepts this version of events.

216. The parties disagree as to when Elizaphan Ntakirutimana wrote his reply. As mentioned above, the Defence submits that the Accused wrote the letter after his return from Gishyita. The Prosecution argues that the reply was dispatched before the trip, at about 6.00 a.m. The Chamber observes that the Prosecution witnesses did not provide a precise time as to when the refugees received the reply. Consequently, the Chamber accepts the testimony of the Accused.

217. As to the substance of the reply, the evidence lacks clarity. Witness GG, who testified that he heard Pastor Sebihe read out the reply in the morning of 16 April 1994, said that the reply was "that our fate [had] been sealed and that everything was over with us".[279] Witness HH stated that on 15 April, Elizaphan Ntakirutimana "had replied that he could not do anything for them and that their time was up ... that they were left to their own devices".[280] He also said that according to those who received the reply the message was that they were "going to die", but he added that he could not know whether this was the actual content of the message or the interpretation of the person who told him.[281] Witness MM testified that on 15 April, "the Pastor had replied in the negative ... he had said that he could do nothing".[282] The witness also stated that "the reply did not say that we should prepare to die the next day. The response was that he could do nothing; he had no way of helping us."[283] Witness YY, who gave evidence that the gendarmes delivered the reply on 15 April and did not know whether it was written or oral, stated that, according to the pastors, the reply said "that we would die the following day". He testified that the Accused had replied "that we should pray and put ourselves into the hands of God".[284] The Chamber finds that the evidence about the substance of the reply does not provide a sufficient basis to conclude that Elizaphan Ntakirutimana condoned or supported the attack of 16 April 1994.[285]

218. This being said, the Chamber notes that the Accused chose to send the reply to the Tutsi refugees through gendarmes instead of answering them in person. When asked about this he answered that in view of the angry, armed refugees in the vicinity he did not dare to deliver his reply personally:

---

[278] T. 20 September 2001 pp. 130-132 and T. 24 September 2001 p. 96.
[279] T. 20 September 2001 p. 132.
[280] T. 25 September 2001 pp. 115-116.
[281] T. 27 September 2001 p. 144.
[282] T. 19 September 2001 p. 81; T. 20 September 2001 p. 103.
[283] T. 20 September 2001 p. 101.
[284] T. 1 October 2001 p. 131.
[285] Consequently, the Chamber does not find sufficient evidence to agree with Counsel for the Prosecution, who in his opening statement said that "Pastor Ntakirutimana's response was contained in a brief, heartless letter which stated: There is nothing I can do for you. All you can do is to prepare to die, for your time has come, or words to that effect" (T. 18 September 2001 pp. 17-18.)

> If I were to go there to give them a negative reply ... I thought that they could treat me in the same way as they would have treated the bourgmestre had they been able to get a hold of him.[286]

219. The Chamber does not find this explanation plausible. The Accused was a pastor and had occupied several important positions within the organization of the Seventh Day Adventists, including the post he held in April 1994 of President of the West Rwanda Field. It is clear from the evidence that this placed him in a position of high authority at the Mugonero Complex. The letter from the Tutsi pastors addressed him with the words "Dear ... leader" and stated that God had entrusted him with "the leadership of this flock".[287] The letter was written in a tone of great respect. It is difficult to understand why the Tutsi pastors and the other refugees would have turned against him – a man of authority - if he personally had conveyed the bourgmestre's negative response. The letter was a cry for help. A person with the Accused's authority and responsibility would be expected to visit his flock in such a time of distress and to convey the answer directly. Regarding the possibility that the negative message might have provoked aggression towards the Accused, the Chamber observes that the Accused had at that juncture at least one or two armed gendarmes at his disposal and would have little to fear.

220. These observations do not in themselves provide a sufficient basis for drawing the conclusion that the Accused accepted or supported the attacks. A person may, in particular in moments of distress or chaos, make decisions that, with the benefit of hindsight, appear misguided. But the Chamber notes that the Accused distanced himself from his Tutsi pastors and his flock, which is significant in the general context of the morning of 16 April 1994.

221. It is the Prosecution's case that the Accused had knowledge of the attack prior to receipt of the letter on the morning of 16 April 1994, that he conveyed attackers to the Complex and that he participated in the attack. The Chamber did not conclude that Elizaphan Ntakirutimana had previous knowledge, in connection with its discussion of whether he advised Tutsi and Hutu to seek refuge at or leave the Complex, respectively (3.3 and 3.4). The two remaining issues will be discussed below.

(c) Did Elizaphan Ntakirutimana Convey Attackers?

222. A main allegation in the Mugonero Indictment is paragraph 4.7, according to which a convoy of several vehicles, followed by a large number of individuals armed with weapons, went to the Mugonero Complex. It is alleged that individuals in that convoy included, among others, the two Accused and Charles Sikubwabo, members of the gendarmerie, communal police, militia and civilians. This allegation can be divided into two stages: the transport of attackers from Gishyita to the Kabahinyuza trading centre close to the Complex; and the transport of attackers from the trading centre and surrounding areas to the Mugonero Complex.

---

[286] T. 7 May 2002 pp. 166-167.
[287] See 3.8.3 (a), where the letter is quoted in its entirety.

223. It is the Prosecution's case that Elizaphan Ntakirutimana conveyed attackers from Gishyita to the Mugonero Complex on the morning of 16 April 1994. The Prosecution submits that the Accused's meeting with the bourgmestre lasted just enough time to gather people and board them on the Accused's vehicle under the supervision of the two gendarmes that had escorted him there. Then he left Gishyita for the five-kilometre journey back to Mugonero, in a convoy of three vehicles, one of which was driven by Sikubwabo. According to the Prosecution, the meeting point was the Kabahinyuza trading centre, close to the Accused's residence.[288] The Defence rejects these submissions.

224. The Chamber observes that there is no evidence in the case that attackers were assembled and boarded onto vehicles in Gishyita. Furthermore, none of the witnesses observed attackers being transported from Gishyita to Mugonero. Consequently, there is no basis for the Prosecution's allegation. Even if some witnesses saw Elizaphan Ntakirutimana later with attackers (see below) this does not provide a sufficient basis for concluding that he transported attackers from Gishyita. The possibility that the attackers may have gathered at the trading centre close to the residence of the Accused is of limited significance.

225. The second question is whether Elizaphan Ntakirutimana conveyed attackers to the Complex on the morning of 16 April 1994. Below the Chamber will assess the testimony of the seven witnesses that testified about this period. It will then consider Elizaphan Ntakirutimana's alibi for the relevant period.

Witness MM

226. Witness MM testified that attackers arrived at the Complex at around 8 a.m. on 16 April 1994.[289] They consisted of Hutu farmers, members of the CDR party, Interahamwe in uniforms made out of kitenge cloth, soldiers, Gishyita policemen, military reservists, and gendarmes.[290] Witness MM saw Elizaphan Ntakirutimana bring four or five gendarmes to the Complex in his car, which he said was a beech-coloured Toyota Hilux pickup. They were in military clothing and red berets and were carrying firearms. The gendarmes included those who had previously watched over the refugees. According to the witness, Elizaphan Ntakirutimana was in the front cabin at the steering wheel. Other cars followed that of the Accused.[291] Apart from Elizaphan Ntakirutimana and the gendarmes, Witness MM did not see anybody else in the Accused's car.[292]

227. According to Witness MM, the Accused stopped at the intersection of the road leading to the hospital and the road towards his residence. The gendarmes alighted and started shooting at the people who were there, as well as at those who were close to the

[288] T. 21 August 2002 p. 22.
[289] T. 19 September 2001 pp. 114, 135.
[290] T. 20 September 2001 pp. 65-66.
[291] T. 19 September 2001 pp. 82-88.
[292] Id. p. 140.

office of the association and the nursing school.[293] The witness was in the workshop near the main hospital building, at a distance he estimated as between 50 and 100 metres from Elizaphan Ntakirutimana's vehicle, when he saw it coming up the road to the Complex.[294] At the time he saw the gendarmes descend from the Accused's vehicle the witness had moved towards the parking lot of the hospital.[295] After the attackers alighted, Elizaphan Ntakirutimana drove away, past Gérard Ntakirutimana's house, taking the road towards Gishyita.[296] At that point, Witness MM allegedly saw FAR soldiers who also started shooting.[297] Witness MM did not see Elizaphan Ntakirutimana at any other time on 16 April 1994.[298]

228. The Chamber notes that Witness MM observed Elizaphan Ntakirutimana in daylight at a distance of 50 to 100 metres. This distance does not render identification unreliable, even if the Accused was at the steering wheel of his car. The witness observed him from two different positions, the workshop and the parking lot. Witness MM gave consistent evidence and appeared credible in court. His testimony relating to Elizaphan Ntakirutimana was generally in conformity with his previous statements to investigators. Some minor discrepancies between his first and second statements can be explained by translation or communication problems.[299] It is true that there is a discrepancy between the statements and the testimony concerning the role of Gérard Ntakirutimana on 16 April 1996. However, in the Chamber's view, this discrepancy does not reduce the credibility of his testimony relating to Elizaphan Ntakirutimana.

229. The Defence has submitted that Witness MM acted in concert with other witnesses to falsely incriminate the two Accused and has drawn the Chambers attention to the fact that he was the brother of a victim of the 1994 events.[300] The Chamber does not find this argument convincing. Many witnesses appearing before the Tribunal have lost close relatives. Witness MM did not appear biased or emotional. For instance, he testified that Elizaphan Ntakirutimana did not discriminate against Tutsi prior to the events of April 1994.[301] Moreover, he stated that Gérard Ntakirutimana took a number of persons, including a Tutsi woman, Clémentine, and her children to Gisovu on 11 April 2001 for their safety.[302] Furthermore, the Chamber is not persuaded by the Defence contention that Witness MM is biased because of his appearance in a "propaganda" video filmed in 1995 at the Mugonero Complex (see more generally II.7).

---

[293] Id. pp. 88, 141.
[294] Id. pp. 87, 135-140.
[295] Id. pp. 139-140.
[296] Id. pp. 83, 89, 140-141.
[297] Id. pp. 88-89, 142.
[298] Id. pp. 93, 141.
[299] Witness MM's statements were dated 12 September 1995, 11 April 1996 and 15 April 1996. The first statement does not state explicitly that he conveyed attackers in his car, but that "soldiers" came behind him in other vehicles. The second statement refers to four or five "soldiers" in the back of his car, as testified to during the trial (consistently referred to as "gendarmes" during his evidence). The Chamber notes that Witness MM's testimony was also generally in conformity with his statement to African Rights, Charge Sheet No. 3 (exhibit P29 and 1D5).
[300] Defence Brief pp. 46-55.
[301] T. 20 September 2001 p. 98.
[302] Id. pp. 88-89.

Witness GG

230. Witness GG testified that on 16 April 1994 he saw Elizaphan Ntakirutimana arrive in his car at the Complex as part of the second wave of attackers; he also saw Ruzindana, Mika, Sikubwabo, and "other Interahamwe" arrive at that time.[303] The second attack started "a short time before midday".[304] Witness GG claimed to have observed the arriving attackers from a distance of about 30 metres; "it was near enough for me to hear what they were saying". Elizaphan Ntakirutimana was driving a white Hilux with shiny coloured stripes.[305] The witness said he knew the car, for the Accused was his neighbour. The Accused was transporting Interahamwe in the rear hold of the Hilux. According to the witness, some of the attackers wore military uniforms with red berets, but others did not wear military uniforms. Witness GG saw another person sitting in the enclosed part of the vehicle together with the Accused. The second vehicle he saw belonged to Ruzindana. The witness testified that the vehicles stopped before Elizaphan Ntakirutimana's office. When the attackers realized that the refugees were throwing stones they moved the vehicles and went elsewhere.[306]

231. The Chamber notes that Witness GG allegedly saw Elizaphan Ntakirutimana at the steering wheel from a relatively short distance - 30 metres - in daylight. It accepts that the witness recognized the Accused's white car, which he knew because the Accused was his neighbour. The fact that the witness also mentioned that there were coloured stripes on the vehicle, without specifying, for example, the size of the stripes, has limited significance. Likewise, the fact that Witness GG characterized the passengers on board the Accused vehicle as being "Interahamwe", of whom only some wore uniforms with red berets, does not constitute a significant discrepancy from the testimony of, for instance, Witness MM, who observed only gendarmes with uniforms and red berets in the back rear of the vehicle. Such variations can be explained by the circumstances surrounding the events and the elapsed time. The Defence argued that the witness's recognition of Elizaphan Ntakirutimana's vehicle is unreliable because he said that the word "Hilux" was written on it despite the fact that he could not read. However, it follows from the testimony that the witness was relying on what people had told him about the make of the vehicle.[307]

232. The witness linked the time of the observation to "the second wave" of attackers or "a short time before midday". He also stated that the attack started "when the sun had risen for quite some time".[308] These expressions are imprecise. The Chamber notes that in his first statement to investigators, dated 30 June 1996, Witness GG estimated the time at 9.00 a.m. Based on the available evidence, the Chamber finds that the witness made his observation on the morning of 16 April 1994, but is unable to reach any firm conclusion as to exact time of the observation on the basis of Witness GG's evidence alone.

---

[303] T. 20 September 2001 pp. 135-136; T. 24 September 2001 pp. 36-37, 97.
[304] T. 24 September 2001 p. 100.
[305] T. 20 September 2001 pp. 138-139.
[306] Id. pp. 136, 140-142.
[307] T. 24 September 2001 pp. 165-167; Defence Closing Brief p. 93.
[308] Id. pp. 99-100.

233. The Defence submits that the Chamber should disregard the testimony of Witness GG because in the *Kayishema and Ruzindana* judgement the Trial Chamber found the same witness (then testifying under pseudonym FF) unreliable.[309] The present Chamber notes that the testimony of the witness in *Kayishema and Ruzindana* was not relevant to the present case and did not relate to Elizaphan and Gérard Ntakirutimana. On these reasons alone the Defence arguments fail. But even more importantly in relation to the Defence contention is the fact that only one element of the testimony of the witness was rejected in *Kayishema and Ruzindana*. The reason was that the Trial Chamber was not satisfied that he had a clear view of the events at Muyira Hill from the peak of Gitwa Hill, a distance of about three kilometres (para. 426). Consequently, the finding of that Trial Chamber related to the reliability of that particular observation, not the general credibility of the witness. In relation to all other events the Trial Chamber in *Kayishema and Ruzindana* found the witness credible.[310]

234. The Chamber has also considered the discrepancies alleged by the Defence between Witness GG's testimony and previous statements to investigators.[311] It follows from his written statement of 30 June 1996 that the refugees sent two letters to Elizaphan Ntakirutimana, on 14 and 16 April, respectively. In his testimony the witness indicated that the letters were sent on 14 April and on "the eve of the Sabbath" (which in the context means 15 April).[312] Another difference is that, in the same written statement, Witness GG said that Elizaphan Ntakirutimana replied to both letters, whereas he testified that the Accused responded only to the second letter. Witness GG was examined extensively about these two letters and maintained that the refugees did not receive any response to the letter of 14 April. He stated that the second letter was written on 15 April and that Elizaphan Ntakirutimana replied on 16 April.[313] The Chamber accepts that the statement to investigators contains a mistake, as claimed by the witness. The Chamber notes that the witness cannot read and has little academic education. It is true that Witness GG was the only witness who testified about a letter of 14 April. However, even if he should be mistaken on this point, the Chamber does not find that this renders him an unreliable witness whose observation of Elizaphan Ntakirutimana in the morning of 16 April 1994 should be doubted.

235. It is also pointed out by the Defence that Witness GG's statement of 30 June 1996 contained allegations that he saw Elizaphan Ntakirutimana shooting at people. This incident was not mentioned in his testimony.[314] The Chamber clearly accords greater

[309] Defence Closing Brief pp. 92-93. In fact, the Defence is revisiting its motion of 24 September 2001 to strike the testimony of Witness GG because of his testimony in the previous case. The Chamber rejected the motion (T. 24 September 2001 pp. 48-54).
[310] *Kayishema and Ruzindana* (TC) paras. 414, 456, 461 and 466, where Witness FF was considered credible.
[311] Defence Closing Brief pp. 93-97. Witness GG gave three statements to investigators, dated 30 June 1996, 10 July 1996 and 12 November 1999. The second and third statements concern the identification of Elizaphan Ntakirutimana and sexual crimes, respectively.
[312] It is not correct that Witness GG testified to "a third letter" as stated in the Defence Closing Brief at p. 94.
[313] T. 24 September 2001 pp. 108-121; T. 25 September 2001 pp. 60-65.
[314] Defence Closing Brief p. 94.

weight to evidence given by the witness under a sworn declaration in court. The witness testified generally that the attackers were shooting.[315] He was not asked whether he saw Elizaphan Ntakirutimana shoot at people, or to comment on his claims in the statement about the role of the Accused. Under these circumstances, the Chamber is unable to conclude that there is a contradiction between the testimony and the earlier statement.

236. The Defence argues that Witness GG is unreliable because his testimony contained incriminating evidence about the second Accused, Gérard Ntakirutimana, which did not appear in his earlier statements.[316] However, the Chamber observes that the statement of 30 June 1996 contains a general declaration that the witness saw Gérard Ntakirutimana killing people, including Charles Ukobizaba, during the attack at the Mugonero Complex. The statement also includes two general remarks about Gérard Ntakirutimana being present amongst attackers at various locations in the Bisesero area. Consequently, the Defence submissions fail. Whether the Chamber can make use of new evidence, about which the Defence has not had prior notice, is a different question and will be discussed in connection with the specific events (see generally II.2.4). The same is true of new allegations made by Witness GG against Elizaphan Ntakirutimana, who is also mentioned in the statement as having participated in attacks in the Bisesero area.

237. According to the Defence, Witness GG is not a credible witness because he knew Assiel Kabera and was even related to him (see generally II.7).[317] The witness denied the Defence's contention that he was a relative of Kabera, and there is no evidence to support this claim. It may well be, as contended by the Defence, that Defence Witness 9 observed the witness during a meeting with Kabera in early 1995. However, this does not contradict the testimony of Witness GG, who during cross-examination answered that he had known Kabera "for a long time" and that they had met several times, but that they had not discussed "the war".[318] No evidence is available about the substance of the discussions at the alleged meeting in 1995. The Chamber does not find any basis for the submission that the witness was deeply involved in a political campaign against the two Accused. Similarly, it is of limited significance that Witness GG was interviewed by African Rights. Many victims were interviewed by human rights organisations after the events in 1994.

238. On the basis of the above considerations, and having assessed his testimony, the Chamber finds that Witness GG is a credible witness. The Chamber accepts that the witness saw Elizaphan Ntakirutimana drive to the Mugonero Complex in the morning of 16 April with attackers in the hold of his vehicle.

---

[315] T. 20 September 2001 p. 143.
[316] Defence Closing Brief pp. 95-97.
[317] Id. pp. 91-92, 97-98.
[318] T. 25 September 2001 pp. 50-54. The witness claimed not to know whether Assiel Kabera was member of the organization Ibuka.

Witness PP

239. Witness PP testified that the attack on 16 April 1994 commenced around 9.00 a.m. There were a large number of assailants, mostly civilians, but also a number of gendarmes wearing red berets. Some of the attackers came in vehicles.[319] The witness said that he was "very far" from the arriving vehicles and did not know their number, but he recognized the communal vehicle in which he saw bourgmestre Sikubwabo, the car of Elizaphan Ntakirutimana, and Obed Ruzindana who was driving the witness's own vehicle (see below).[320]

240. Witness PP said he was standing in front of the hospital, in the hospital's parking lot, when he saw Elizaphan Ntakirutimana's vehicle. It was "two or three hundred metres" away from the witness, parked very close to the Accused's office.[321] He described it as a "not very white" Hilux pickup. Elizaphan Ntakirutimana was standing next to his car.[322] The Accused had a small or medium-size firearm, of the kind that can be carried on the belt, according to the witness. He was unable to describe it further.[323] This was at the time when the attackers had just arrived, at around 9.00 a.m. or a few minutes after. Witness PP did not see Elizaphan Ntakirutimana again on 16 April 1994.[324] There were no buildings between him and the Accused. Moreover, the events took place a long time ago and the distance of 200-300 metres "was only an approximation, and it's possible that the distance was in fact less." The witness stated that even though he was in the parking lot of the hospital the vehicles were not so far away that he could not recognize them or persons inside them.[325]

241. Witness PP explained why Ruzindana was using the witness's car. On 7 April 1994, Witness PP travelled to the Complex in his white Toyota Stout pick-up. Gérard Ntakirutimana gave him permission to place it in the hospital garage, and the witness left his car keys with him.[326] The witness made this request because, according to him, Gérard Ntakirutimana was the medical officer responsible for the hospital, and because on past occasions when there was violence, refugees usually felt safe at the hospital.[327] Witness PP wished to have his vehicle concealed because he was concerned that it would be recognised, and hence that his whereabouts would become known, especially to Mika Muhimana, who had come looking for him at the Complex.[328] He speculated that Gérard Ntakirutimana had given Ruzindana the vehicle, but he did not know this for a fact.[329]

---

[319] T. 8 October 2001 pp. 12-16.
[320] Id. pp. 16, 115.
[321] Id. pp. 18, 25, 75.
[322] The witness did not remember how the Accused was dressed; T. 8 October 2001 p. 79.
[323] T. 8 October 2001 pp. 19-23, 123-124.
[324] Id. pp. 20, 22, 24.
[325] Id. p. 77, 115, 120.
[326] Id. pp. 36-37.
[327] Id. 2001 p. 49.
[328] Id. pp. 54-55.
[329] Id. pp. 38-42, 61- 62.

242. The Chamber observes that Witness PP estimated the distance between himself and Elizaphan Ntakirutimana to be about 200-300 metres. When asked how he could be confident about his observation at that distance he answered that the distance could have been less, and insisted that he had seen the Accused. The Chamber notes that the witness claimed to have seen the Accused once he had got out of his vehicle, that he knew the Accused well and that the observation was made in broad daylight. It also accepts that the witness recognized the Accused's vehicle, in addition to his own car and the communal vehicle. According to the Defence, it follows from the Prosecution's sketch of the layout of the Complex that if the witness were standing at the parking lot in front of the hospital building, there were several buildings obstructing the view towards Elizaphan Ntakirutimana's office.[330] When cross-examined about this, the witness emphasized that there were no buildings between him and the Accused. The Chamber observes that, according to the sketch, the parking lot covers a considerable area. It does not follow from the evidence that Witness PP was standing "close to the hospital" and therefore behind buildings, as argued by the Defence. His observation was corroborated by other witnesses.

243. Witness PP gave five written statements to investigators before he testified. According to the Defence, the timing and circumstances of the statements make it clear that the witness was part of a political effort to charge and convict Elizaphan and Gérard Ntakirutimana.[331] The Chamber does not share this view. According to the witness's first statement, dated 18 October 1995, the attack at the Mugonero Complex occurred on Saturday 16 April 1994. The witness listed bourgmestre Sikubwabo, Ruzindana and Conseiller Mika Muhimana as leaders and stated that Elizaphan Ntakirutimana was also present and armed with a gun. Gérard Ntakirutimana, "formerly a friend", was mentioned briefly because he had the keys to Witness PP's car. The Chamber does not agree with the Defence that this statement implies that the witness did not consider Gérard Ntakirutimana as one of the attackers at Mugonero. He mentioned this Accused very briefly immediately after having listed attackers. The witness also mentioned the car keys, which he explained fully in court. The parts of the statement relating to Bisesero do not mention Elizaphan or Gérard Ntakirutimana as participants in the attacks there. The Chamber observes, however, that the questions posed by the investigators focused on Kayishema and Ruzindana, and that the witness was asked whether he had seen the prefect, the bourgmestre and "other leaders" in Bisesero. The statement does not contain any questions specifically about the two Accused in the present case.

244. The second statement of 4 April 1996 also referred to attacks at Mugonero and in Bisesero. Elizaphan and Gérard Ntakirutimana are mentioned together with Sikubwabo and certain other bourgmestres and conseillers in relation to the attack at the Complex. Ruzindana was described as the chief leading that attack. The date is not explicitly mentioned.[332] Regarding Bisesero it is briefly added that he saw "only" the cars of the two Accused there. In his third statement of 4 May 1996 he states that the correct date of

[330] Defence Closing Brief pp. 68-69 and Exhibit P2.
[331] Defence Closing Brief pp. 63-67, 69-70.
[332] In his third statement (below) he corrected a declaration in the second statement, which could be interpreted as if the attack took place on 13 April, and specified that it occurred on 16 April 1994.

the Mugonero attack is 16 April 1994. The interview is mainly concerned with the role of Elizaphan Ntakirutimana. Consequently, it is not surprising that his role and influence are emphasized in that statement. It does not cover only Mugonero, but also Bisesero, where Elizaphan Ntakirutimana is alleged to have been driving in his car, shooting at people.

245. The fourth statement of 24 September 1998 focused on Ruzindana's most active associates in Bisesero. Elizaphan and Gérard Ntakirutimana were listed among the leaders. The fifth statement of 13 February 2000 also contains a brief reference to both Accused in connection with the Mugonero attacks, but focuses primarily on Mika Muhimana.

246. On the basis of a careful reading of Witness PP's five written statements, the Chamber finds that they are consistent. Variations between them can be explained by the questions asked by investigators. There are no important discrepancies between the statements and the testimony of the witness. It cannot be held against him that he was not asked any questions in court about the involvement of the two Accused in Bisesero. The other observations in the Defence Closing Brief do not alter the Chamber's view, including the submissions relating to the video that was made in 1995 (allegedly as part of a "campaign" against the Accused, see generally II.7).[333]

247. On this basis the Chamber considers Witness PP as a credible witness. Cross-examination did not undermine his account or his character. The Chamber concludes that he saw Elizaphan Ntakirutimana amongst the attackers at the Mugonero Complex on Saturday 16 April 1994 at around 9.00 a.m., prior to the commencement of the attack.

Witness HH

248. Witness HH testified to seeing attackers arrive at the Complex in the morning of 16 April 1994. He said that the killings started between 8.30 and 9.30 a.m.[334] The first attackers to arrive were lightly armed. The refugees were able to defend themselves and repelled this group. Later, the attackers came back and were stronger.[335] Witness HH saw the arriving attackers from his hiding place behind a wall of a small building next to Elizaphan Ntakirutimana's office, at a distance the witness estimated at 13 or 14 metres.[336] They consisted of "civilians, farmers or traders, and amongst them, there were former soldiers who had been demobilized, either because of bad conduct or because they had retired from the army".[337] Some of the former soldiers were armed with guns, while the civilians were armed with traditional weapons such as machetes, clubs, and spears.[338]

249. The witness stated that six vehicles arrived at the Complex. He recognized the cars of Elizaphan Ntakirutimana, Gérard Ntakirutimana, the hospital vehicle (a Toyota Stout), Obed Ruzindana's vehicle, a fifth vehicle said to belong to Ruzindana (although

[333] The Chamber notes that Witness PP did not give any interview to African Rights (exhibit P29 and 1D5).
[334] T. 25 September 2001 p. 110.
[335] Id. p. 119; T. 26 September 2001 p. 13.
[336] T. 25 September 2001 pp. 123-124; T. 27 September 2001 pp. 113-115, 116-117, 121-122.
[337] T. 25 September 2001 p. 136.
[338] Id. pp. 119, 137.

the witness was not sure that he was in fact the owner), and the Gishyita commune vehicle, an open-backed white Toyota.[339] The vehicles, which arrived at different times,[340] parked in front of Elizaphan Ntakirutimana's office. The witness identified the office in a photograph shown to him.[341] Witness HH said that with the exception of the hospital vehicle, which he saw only after it was already parked, the rest were conveying attackers. Using the carrying capacity of the vehicles as his reference (rather than what he saw and counted) he estimated that between 100 and 120 attackers were being transported.[342] The Gishyita commune vehicle conveyed gendarmes and soldiers.[343]

250. According to Witness HH, Elizaphan Ntakirutimana's vehicle was a white Toyota Hilux. It came from the direction of the main Kibuye-Cyangugu road and was driven by Elizaphan Ntakirutimana himself.[344] The witness could not tell whether there were other people in the driver's cabin, as the Accused was the only person he saw coming out of the cabin. In the hold of the Accused's car were between 15 and 20 persons.[345] They included gendarmes and "civilians who had received military training" in military clothing, including some who were friends of the witness. The attackers were armed with firearms, machetes, clubs, and other kinds of weapons. The civilians wore black berets. The gendarmes wore red berets and some were in military uniforms of several mixed colours; other gendarmes were in khaki-coloured clothing.[346] Elizaphan Ntakirutimana remained standing beside his car in front of his office.[347] The witness did not see the Accused again on 16 April 1994.[348]

251. The Chamber observes that Witness HH, like Witness GG, maintains that there were two waves of attackers, the first, lightly armed, having been repelled by the refugees. According to Witness HH, the assailants commenced the main attack between 8.30 and 9.30 a.m. This is in conformity with the time indicated by other witnesses. Witness HH claims to have seen the main wave of arriving attackers at a distance of about 13-14 metres from his hiding place behind a small wall next to Elizaphan Ntakirutimana's office. He explained that he was so close because he had been entrusted the task of determining from which direction the attackers were coming, so that the refugees could flee. The Chamber notes that this witness appears to have been very well placed to observe the events. He claimed to have seen six vehicles, two of which, that of Elizaphan Ntakirutimana and the commune vehicle, were also mentioned by several other witnesses, who also alleged that Obed Ruzindana arrived in a vehicle (his own or that belonging to Witness PP). This evidence is also in conformity with the testimony of several other witnesses that the drivers parked the vehicles in front of Elizaphan Ntakirutimana's office. As for the other vehicles, the evidence of the other witnesses is

[339] Id. T. 25 September 2001 pp. 119-120, 137; T. 27 September 2001 pp. 7-8.
[340] T. 25 September 2001 p. 133.
[341] Prosecution exhibit P2, Photograph 7; T. 27 September 2001 pp. 116, 119-120, 121.
[342] T. 25 September 2001 p. 135; T. 27 September 2001 p. 147.
[343] Id. pp. 146-147.
[344] T. 25 September 2001 p. 121; T. 27 September 2001 pp. 111-112, 115-116.
[345] T. 25 September 2001 pp. 122, 125; T. 27 September 2001 p. 113.
[346] T. 25 September 2001 pp. 121, 126-128.
[347] Id. p. 128; T. 26 September 2001 pp. 14, 22; T. 27 September 2001 pp. 111-112.
[348] T. 26 September 2001 p. 22; T. 27 September 2001 p. 112.

limited, but the Chamber notes that the witness explained that the vehicles did not arrive at the same time.[349]

252. Of particular importance is Witness HH's observation of Elizaphan Ntakirutimana standing beside his vehicle. As stated above, he estimated the distance between them to be 13-14 metres. This is powerful evidence that Elizaphan Ntakirutimana conveyed attackers to the Complex on 16 April. It is corroborated by other witnesses of whom some also observed the Accused standing next to his vehicle.

253. The Defence disputes the reliability of Witness HH.[350] It points out that his cousin, who was given as a contact person in his written statement of 2 April 1996 to investigators, was a brother of Assiel Kabera (see II.7). The Chamber notes that when the witness was cross-examined whether he was "blood-related" to Kabera, he first answered in the negative but then immediately said that they were "related".[351] He then explained that he had known Kabera for a long time. He stated that he had heard Kabera on the radio but recalled seeing him no more than three times after June 1994 (probably not in 1994, possibly in 1995 but not in 1996).[352] The Chamber recalls that Kabera was prefect of Kibuye at the time and therefore a prominent public figure. There is no evidence that Witness HH and Kabera actually held conversations relating to the present case. Consequently, the Chamber has no basis for concluding that the limited contact, if any, the witness had with Kabera had any influence whatsoever on his written statement or his testimony.

254. The Chamber notes that Witness HH's brief allegations in the "Charge Sheet" published by African Rights were not touched upon by either party during his testimony.[353] Similarly, the witness denied having knowingly talked to any representative of the organization Ibuka, and there is no evidence that he ever discussed matters relating to the Accused with members of the RPF, as suggested by the Defence.[354] There is, in other words, no support for the Defence contention that Witness HH was part of a political "campaign" to falsely convict and accuse the two Accused (see more generally II.7). Witness HH in his written statement mentioned that Witness MM was at that time living in Kigali, but this reference alone cannot possibly support the contention by the Defence that these witnesses cooperated with the aim of incriminating the Accused.

255. According to the Defence, Witness HH's testimony is "riddled with improbability, inconsistencies, contradictions and completely new claims".[355] The Chamber disagrees. For the most part the testimony is consistent with his previous statement. However, some discrepancies call for further scrutiny. In particular, unlike the

---

[349] T. 25 September 2001 p. 132-134.
[350] Defence Closing Brief pp. 75-86.
[351] T. 27 September 2001pp. 132-133. The French expressions are "des liens de sang" and "liens de parenté" (p. 116).
[352] T. 27 September 2001 pp. 131-136, 138-139. It follows from the French version (pp. 116-117) that he "saw" Kabera, not that he "met" him.
[353] Exhibit P 29 and 1D5.
[354] T. 27 September 2001 pp. 136-137.
[355] Defence Closing Brief pp. 76.

testimony, the statement does not contain any allegation that Elizaphan Ntakirutimana conveyed attackers on 16 April 1994. When the witness was asked to explain this omission, he answered: "This statement doesn't come from me, and if it did come from me, it was not properly transcribed, since I did see the pastor-president."[356] Moreover, he explained the absence of reference in his prior statement of 2 April 1996 to the vehicles of the two Accused and to the Gishyita commune vehicle by saying that, at the time, he was answering only questions that were put to him.[357] Furthermore, he addressed the absence of any mention in his prior statement of Gérard Ntakirutimana transporting attackers to the Complex in the following terms: "You should not think that three months of events could be recorded on a document of a few pages"; and "if at a certain point in time I spoke about the presence of Gérard without mentioning his vehicle, then it's because I was not asked how he got there".[358]

256. While the Chamber does not find Witness HH's responses to questions concerning the content of his prior statement entirely satisfactory, those responses are in the Chamber's view not sufficient to cast doubt on his testimony. The statement does place Gérard Ntakirutimana among the persons preparing for the attack. The Accused is mentioned in connection with looting of the hospital and confiscation of Witness PP's vehicle "shortly before the massacres".[359] The statement continues:

> As soon as they finished, Obed Ruzindana gave the order to attack us. It must have been 9 o'clock in the morning, which is only an estimate, because I did not have a watch. The attackers were very many. There were more than 20 soldiers, reservist[s] and Hutu population. Among others ... [five named persons] and Doctor Gérard Ntakirutimana were armed with guns. It was Obed Ruzindana who transported the soldiers in his vehicle. I saw Ruzindana lift his hand and direct the attackers to different places. He could easily see the other refugees and myself. He directed the assailants toward[s] us.

257. In the Chamber's view, it follows clearly from the quoted text that during the interview Witness HH did not exhaustively list all attackers or vehicles conveying assailants. Apparently, Ruzindana's vehicle was mentioned because he was observed transporting soldiers. Furthermore, he was perceived to be a leader of the attack. Ruzindana's prominent role is corroborated by the testimony of other witnesses. This follows also from the *Kayishema and Ruzindana* Judgement.[360] In the Chamber's view it does not reduce the credibility of Witness HH that the statement provides less information about Elizaphan and Gérard Ntakirutimana than his testimony. Witness HH's account of Elizaphan Ntakirutimana's actions conforms with that of other witnesses.

258. Witness HH testified that he did not know who was driving the hospital vehicle, but that he did know that Gérard Ntakirutimana was driving his own vehicle, a Peugot

---

[356] T. 27 September 2001 p. 113.
[357] T. 26 September 2001 pp. 108-110.
[358] Id. p. 111.
[359] During his testimony Witness HH was not asked whether he had seen Gérard Ntakirutimana looting the hospital before the attack or about the alleged confiscation of Witness PP's car. Consequently, the Chamber cannot consider these as discrepancies which reduce his credibility, as suggested in the Defence Closing Brief pp. 76-77.
[360] *Kayishema and Ruzindana* (TC) paras. 543-545.

pickup.[361] No other witnesses testified to seeing Gérard Ntakirutimana's personal vehicle arrive at the Complex on 16 April. Witnesses YY and KK mentioned seeing the hospital vehicle arrive, and the latter alleged that Gérard Ntakirutimana was driving this vehicle. The Accused's wife, Ann, testified that her husband had informed her that his personal vehicle had a mechanical problem and that he had taken it to the garage of a person named Pinto. On 16 April, while it was still at Pinto's garage, the car was damaged in the fighting when a grenade was thrown in its direction.[362] Gérard Ntakirutimana confirmed his wife's evidence.[363] In view of the above, there arises a doubt as to whether Witness HH correctly identified the vehicle driven by Gérard Ntakirutimana. However, this does not render the rest of his evidence unreliable.

259. According to the written statement, the refugees wrote the letter requesting protection on 15 April 1994 "to pastor Ntakirutimana, to Doctor Gérard Ntakirutimana and to bourgmestre Sikubwabo". It is the view of the Defence that again Witness HH is unreliable, because no other witness ever alleged that there was a letter written to Gérard Ntakirutimana. When cross-examined about this matter, the witness explained that the reference to Gérard Ntakirutimana was a mistake, either because he did not express himself clearly or because the investigators misunderstood what he was saying. He could neither confirm nor exclude that the letter contained any reference to Gérard Ntakirutimana, as he had not read the letter himself.[364] The Chamber considers that this reference in the statement has been adequately clarified by HH and does not affect the credibility of the witness.[365]

260. In the Chamber's view, Witness HH gave the impression of a credible witness during examination and cross-examination. The Chamber observes generally that it gives higher consideration to sworn witness testimony before it than prior statements. The Chamber also notes that the witness's statement was about "the massacres which took place at the hospital in Mugonero" generally, and not specifically about the two Accused. Therefore, the Chamber does not accept that what amounts to omissions from the statement can substantially reduce the weight of Witness HH's testimony. The Chamber has also determined that the alleged discrepancies between the statement and the testimony have no bearing on the witness's reliability. Consequently, the Chamber finds that, around 9.00 a.m. on the day of the attack, from a short distance, Witness HH saw Elizaphan Ntakirutimana arrive at the Complex transporting attackers. The submissions of the Defence concerning the alleged killing of Charles Ukobizaba and Esdras, which

[361] T. 25 September 2001 pp. 124, 129.
[362] T. 11 April 2002 p. 137; T. 12 April 2002 p. 16; T. 15 April 2002 p. 14.
[363] T. 9 May 2002 pp. 64-65, 130.
[364] T. 26 September 2001 pp. 85-91.
[365] A mistake of a different nature is found in the English version of the transcripts, according to which the refugees' purpose in writing the letter was to ensure that Elizaphan Ntakirutimana consulted "with his two sons who were in charge of the hospital" and that they would then contact the bourgmestre (T. 25 September 2001 p. 113; Defence Closing Brief pp. 79-80). Clearly, the French version has been wrongly translated into English ("L'objectif était de faire en sorte que le pasteur Ntakirutimana discute avec son fils - les deux personnes étant responsables du complexe -, et que de cette discussion, il pouvait contacter le bourgmestre ..."; p. 126 of the French transcripts).

also concern the credibility of Witness HH, will be considered below (see 3.11 and 4.7, respectively).

Witness KK

261. Witness KK, who was 16 years old during the events in 1994, testified that early in the morning of 16 April the last prayers were led by Pastor Sebihe in the chapel of the ESI Nursing School.[366] The witness left the chapel just before 6.00 a.m. He encountered gendarmes outside the chapel, one of whom informed him that the refugees were going to be attacked during the day and suggested that the witness leave. However, Witness KK and those with him stayed and gathered stones for their defence.[367] From his position at the nursing school (ESI) just before 7.00 a.m., the witness saw two vehicles, one driven by Obed Ruzindana, the other driven by bourgmestre Charles Sikubwabo, who was accompanied by Conseiller Mika Muhimana, and a motorcycle ridden by a gendarme. They were coming from a branch of the main Kibuye-Cyangugu Road, climbing past the home of Elizaphan Ntakirutimana, in the direction of the Kabahinyuza trading centre, along the road on the lower side of the hospital.[368]

262. Between 7.00 and 7.30 a.m., the witness saw the vehicles returning; the vehicle of Elizaphan Ntakirutimana, driven by the Accused himself, was among them.[369] On board with the Accused were a communal worker from Gishyita commune (Daniel, son of the Ngoma conseiller) who had a gun in his belt; Habimana (also known as Nyamwanga) who also had a gun in his belt; one Ngabonzima; two gendarmes, who Witness KK could not identify, as their berets were covering their faces; and two other persons who Witness KK also did not recognise.[370] The witness said that some of the people on board the other vehicles were wearing red trousers and red shirts, others were in white, and some were armed.[371] Witness KK claimed that there were about 10 to 15 people in Ruzindana's vehicle and, while he did not recognize any of them, they included Interahamwe, gendarmes, and persons in military uniform carrying firearms.[372] In the vehicle driven by Sikubwabo, Witness KK was able to recognise two police officers by their uniforms, as well as two other persons standing in the back of the car.[373]

263. At around 8.30 a.m., approximately thirty minutes after seeing the group of vehicles return from the Kabahinyuza centre, Witness KK, still from his position at the nursing school, saw the same group of vehicles approaching from a branch off the main road leading up to the Complex. Elizaphan Ntakirutimana's vehicle was in front. It was followed by the hospital vehicle, driven by Gérard Ntakirutimana. Two trucks belonging

[366] T. 3 October 2001 pp. 97-99.
[367] T. 3 October 2001 p. 100; T. 4 October 2001 pp. 59, 65, 69-71.
[368] T. 3 October 2001 pp. 101-103, 110, 113; T. 4 October 2001 pp. 70-71, 77; T. 5 October 2001 pp. 10-11.
[369] T. 3 October 2001 pp. 104-105, 111-114; T. 4 October 2001 p. 71; T. 5 October 2001 pp. 10, 13-18.
[370] T. 3 October 2001 pp. 105-107, 114; T. 5 October 2001 pp. 17, 26.
[371] T. 3 October 2001 p. 108.
[372] T. 3 October 2001 p. 107; T. 4 October 2001 p. 76; T. 5 October 2001 pp. 19-20.
[373] T. 3 October 2001 p. 108; T. 5 October 2001 p. 21.

to the COLAS road-construction company had also joined the group.[374] The trucks were "full" of Interahamwe and police officers; the other vehicles, including Gérard Ntakirutimana's, were transporting armed Interahamwe and soldiers.[375] Witness KK testified to seeing Elizaphan Ntakirutimana next at the ESI Chapel (see 3.10.3 below).[376] The witness went to the chapel at around 9.00 or 9.30 a.m.

264. The Chamber observes that, according to Witness KK, he was at the ESI Nursing School when he first saw the two vehicles and the motorcycle heading in the direction of the trading centre just before 7.00 a.m. Ruzindana drove one of the vehicles. According to the witness, it belonged to a person with the same profession and first name as Witness PP.[377] Sikubwabo drove the other car in which the witness observed Muhimana. Between 7.00 and 7.30 a.m. they returned in the company of Elizaphan Ntakirutimana, who was driving his own car. The witness testified that two of the persons in the rear of the Accused's vehicle were armed; he could not see whether the other passengers had weapons. He maintained that he made his three observations of the Accused from a place near the ESI Nursing School, and that the road passed very close to the school.[378] The available material does not allow the Chamber to form an opinion on the distance between Witness KK and Elizaphan Ntakirutimana's car, as the witness was not able to use the sketch (exhibit P2).

265. Submissions of the Defence concerning the credibility of Witness KK are considered elsewhere also. However, one passage in the witness's written statement is of relevance in this context:

> At around 8 a.m. I was standing outside the ESI Church near the eucalyptus trees when I saw Obed Ruzindana's car driving in the direction of Pastor Ntakirutimana's house. I saw a motorcycle driven by a gendarme armed with a gun and I saw Mika Muhimana and Charles Sikubwabo in a car. The gendarme and the vehicle with Mika Muhimana and Charles Sikubwabo stopped in front of Dr. Gérard Ntakirutimana's house and they all went inside.
>
> Around thirty minutes later Obed Ruzindana came back from the direction of Ngoma commune. Pastor Ntakirutimana was in the car with him. They drove to Dr. Gérard Ntakirutimana's house. Charles Sikubwabo, Mika Muhimana and Dr. Gérard Ntakirutimana were standing outside the house. They all left in their cars in the direction of Gishyita.

---

[374] T. 3 October 2001 pp. 104-105, 113-115; T. 4 October 2001 p. 71; T. 5 October 2001 pp. 10-11, 17.
[375] T. 3 October 2001 pp. 104, 109, 115.
[376] T. 4 October 2001 p. 65.
[377] This part of the testimony would seem to corroborate the testimony of Witness PP. The Chamber notes, however, that in Witness KK's written statement of 15 November 1999 the vehicle is described as "Ruzindana's car". This may be a mistake or a mere simplification (also during his testimony he used that expression on one occasion even though he had explained that the owner of the car was someone other than Ruzindana).
[378] T. 4 October 2001 pp. 71-72 ("not in the same place"), 77-79 (first sighting of two cars and motorcycle, observed from eucalyptus tree at ESI); T. 5 October 2001 pp. 18-19 (sighting including Elizaphan Ntakirutimana's vehicle).

266. The Chamber agrees with the Defence that these portions of the statement differ from the testimony of Witness KK.[379] The Chamber is of the view that the variation in time is of little significance (8.00 instead of 7.00-7.30 a.m.), in view of the lapse of time since the events. It notes that in his testimony the witness did not mention the visit of three persons to Gérard Ntakirutimana's house before Ruzindana allegedly came to the house with Elizaphan Ntakirutimana. The Chamber does not hold this against the witness as he was not questioned about this discrepancy, but still finds it noteworthy that nowhere in his testimony did he make any reference to Gérard Ntakirutimana's house. However, of some concern in relation to the credibility of the witness is the declaration that Elizaphan Ntakirutimana was in Ruzindana's car when they returned from the trading centre, whereas in his testimony, the witness said clearly that the Accused was driving his own car.

267. The Chamber finds that the testimony of Witness KK corroborates the evidence provided by other witnesses that Elizaphan Ntakirutimana was conveying attackers. However, it will not place great weight on Witness KK's testimony because of doubts created by the discrepancies between the testimony and his previous statement.

Witness YY

268. Witness YY testified that between 7.30 and 8.00 a.m. on 16 April, Obed Ruzindana arrived at the Complex in a white Toyota pickup. The witness was standing close to the road "going towards Ngoma centre where Ntakirutimana lives". Ruzindana parked his vehicle. "The gendarmes were called, and they left with him."[380] At another point in his testimony Witness YY described what would seem to be the same incident, stating there was also another car which belonged to bourgmestre Charles Sikubwabo, in which the witness saw Conseiller Mika Muhimana. The vehicles headed with the gendarmes to Elizaphan Ntakirutimana's house.[381] It was about 8.00 a.m. and the witness was standing near the hospital building, about 250 metres away from the scene he was observing.[382] "When you are at the Mugonero Hospital, you can clearly see the road leaving the hospital towards Ngoma centre. Now, when they left the hospital, they went towards Ntakirutimana's house, and proof of that is that when they came back, they were in the company of Ntakirutimana."[383]

269. As suggested in the last sentence, a short time after the above incident, Witness YY saw a number of persons arrive at the Complex in vehicles. He was able to identify a vehicle belonging to a "trader", as well as the Gishyita commune vehicle, the hospital vehicle, and Elizaphan Ntakirutimana's vehicle.[384] Sikubwabo and Muhimana were aboard the commune vehicle, according to the witness. Ruzindana was aboard the trader's vehicle. The car driven by Elizaphan Ntakirutimana was a white or whitish

[379] Defence Closing Brief pp. 148-149.
[380] T. 2 October 2001 pp. 63-64.
[381] T. 1 October 2001 pp. 134-136.
[382] Id. p. 135; T. 2 October 2001 p. 68.
[383] T. 2 October 2001 p. 70.
[384] T. 1 October 2001 p. 140. The reference to the owner of the vehicle would seem to corroborate Witness PP's testimony.

Hilux. Witness YY claimed to have seen three gendarmes in it. "At the back of the [Accused's] vehicle there were many people. In fact, that is the vehicle which brought back the gendarmes who had earlier been taken away by Ruzindana's vehicle. ... The approximate number of people at the back of that vehicle was not less than 20." The witness at that point was about twenty metres away from the Accused's car but was unable to determine if anyone was riding with the Accused in the front cabin.[385] The Accused was unarmed.[386] This was the only time Witness YY saw Elizaphan Ntakirutimana on 16 April 1994.[387]

270. The Chamber observes that Witness YY claims to have seen the trader's car driven by Obed Ruzindana, the commune vehicle with Charles Sikubwabo at the steering wheel (in the company of Mika Muhimana) and Elizaphan Ntakirutimana's car driven by the Accused himself. They were conveying attackers a short time after 8 a.m. The witness claims to have been approximately 20 metres away from the Accused's car, in whose rear section he saw at least twenty persons, including three gendarmes. The testimony is generally in conformity with the evidence provided by other witnesses, and the observation was made at a relatively short distance.

271. The Defence challenged the credibility of Witness YY,[388] and made reference, in particular, to the witness's only statement to investigators of 25 October 1999, which is said to contain numerous discrepancies in comparison to his testimony. While the questions put to the witness are not reproduced in his three-page statement, it can be inferred that he was asked to describe the attacks, at both the Mugonero Complex and Bisesero, and name persons connected with the attacks.

272. Witness YY's statement mentions Elizaphan Ntakirutimana as the recipient of a letter written by the pastors at the Complex. Gendarmes allegedly conveyed the Accused's reply at around 9.00 p.m. on 15 April (as mentioned above, at 3.8.3(b), this timing of the reply, which was also reflected in Witness YY's testimony, deviates from the evidence generally given in the case). The statement then explains that on the morning of 16 April Ruzindana arrived in a white Toyota pickup with six soldiers and six civilians and collected the gendarmes at the Complex. A few minutes later "thousands of thousands" of armed attackers surrounded the Complex. "Many attackers gathered near Pastor Ntakirutimana's office." For about 30 minutes the refugees managed to resist them. The statement continues:

> Immediately Ruzindana's car came full of soldiers they were about twelve in number, all armed with guns. Behind that car I saw Mika Muhimana and Sikubwabo Charles. They came with trained Interahamwe who were having guns. Other Interahamwe who were not trained had machetes and clubs. They started opening fire at us.

273. It is noteworthy that this part of the statement does not contain any information that Elizaphan or Gérard Ntakirutimana played any role in connection with the attack.

[385] T. 1 October 2001 pp. 141-145; T. 2 October 2001 pp. 72-74.
[386] T. 3 October 2001 pp. 74-75.
[387] T. 2 October 2001 pp. 19-20.
[388] Defence Closing Brief pp. 113-123.

There is no reference to Elizaphan Ntakirutimana's vehicle or the hospital vehicle conveying attackers. (Sikubwabo and Muhimana are mentioned, but not their vehicle.) However, the last paragraph of the statement, after a long description of events in Bisesero, contains the following declaration:

> I saw Dr. Gérard Ntakirutimana in all attacks when I was at Mugonero complex and Bisesero hill. I saw him running after refugees and shooting them. Also, I saw Pastor Elizaphan Ntakirutimana on several occasions. He was armed with a gun. All the time I saw him he was transporting killers in his car. I also saw him when supervising Interahamwe to take off the iron sheets of Murambi Adventist Church. The church was used by refugees to take shelter during the night. While hiding on Bisesero hills I saw dead bodies without hands.

274. This passage seems to indicate that at the end of the interview Witness YY was specifically asked about the two Accused. He stated that he had seen Elizaphan Ntakirutimana "on several occasions", and that "all the time" the witness saw him he was "transporting killers". The declarations are very general and may include the attack at the Mugonero Complex. The Chamber notes in this connection that the reference in the passage to Gérard Ntakirutimana includes the Mugonero attack. Consequently, even if it is somewhat remarkable that the events testified about are not summarized in the statement, the Chamber finds that this lack of detail does not in itself reduce the reliability of his oral testimony.

275. In this context the Chamber makes a more general observation. As mentioned above, the Defence submits that the two Accused were subject to a "political campaign" which started in connection with the video recorded in 1995 (see generally II.7). Witness YY is said to have led a "second wave of politically motivated witnesses". The Chamber notes that Witness YY's statement of 25 October 1999 was drawn up about four and a half years after the video. This does not support the Defence theory of an organized campaign. Secondly, if the witness's intention was to incriminate Elizaphan and Gérard Ntakirutimana it could be expected that he would have emphasized, if not embellished, their central role in his statement. However, as observed above, Witness YY only mentions the Accused in passing and at the end of the statement, possibly after having been asked specific questions about them. Thirdly, it is true that Witnesses DD, KK and VV named Witness YY as their contact person, whereas Witness YY designated Witness KK for that purpose. However, at the time he gave his statement Witness YY held public office at the local level and, consequently, was easy to contact. Finally, the Chamber notes that there is no evidence to support the Defence contention that Witness YY comes from the ranks of the RPA and has fabricated evidence with any RPF agents.

276. The Chamber finds that the testimony of Witness YY supports the allegation that Elizaphan Ntakirutimana transported attackers on 16 April 1994 to the Mugonero Complex in the company of Obed Ruzindana and Charles Sikubwabo. Other parts of Witness YY's testimony relating to Mugonero will be assessed elsewhere (see, for instance 3.10.3).

Witness SS

277. Witness SS saw Elizaphan Ntakirutimana three times on 16 April 1994 prior to the attack. On the first occasion, sometime after 6.00 a.m., the Accused came alone to the Complex in his vehicle and collected two gendarmes from the parking lot of the Mugonero Complex: "He did not spend a long time. He took the gendarmes and they left."[389] Witness SS was standing close to the hospital parking lot.[390] They left along the road to Gishyita.[391]

278. The witness saw Elizaphan Ntakirutimana for the second time less than an hour and a half later, when the Accused returned with the two gendarmes.[392] On this occasion, from his position below the hospital laboratory, Witness SS saw the Accused stop and speak "for a while" with Nkuranga near the hospital car park, after which he saw the Accused get into his vehicle and leave. Later Nkuranga told the witness that the Accused had said "that we were going to be killed on that day". Pressed for more detail on what was said, Witness SS responded: "We did not need too many details because it had already been rumoured that we were going to be killed on that day ... All he told us was the decision to kill us had been reached." Witness SS added that "all the people who spoke to the gendarmes upon their return learned from the gendarmes that a decision had been reached: The decision to kill us on that day."[393]

279. Witness SS saw Elizaphan Ntakirutimana for the third time "less than one hour" after seeing him with Nkuranga. The witness was at the field office when he saw the Accused pass in a car, about six metres away. He was accompanied by "Mathias" Gakwerere, a Hutu pastor, whom he had "just picked up ... from his home near the parent church".[394] In later testimony, Witness SS explained this assumption: "I saw them come together from that direction, and I thought that they were coming from his house together because I saw them together in the vehicle."[395] He said that Elizaphan Ntakirutimana drove in his car with "Mathias" in the direction of Esapan Secondary School. He thought they were going to Esapan for safety because on the morning of 16 April 1994 he had heard reports that all Hutu pastors residing in the vicinity had sought refuge at the school.[396]

280. As will be discussed elsewhere (3.12.3, 4.10.3, 4.16.3), the Chamber considers Witness SS to be a credible witness. It observes that he did not see Elizaphan Ntakirutimana convey attackers, but notes that his version of the events contradicts the testimony of Elizaphan Ntakirutimana that immediately after returning from Gishyita he wrote the response to the refugees, returned to his house and headed for Gishyita with his family and friends.

---

[389] T. 30 October 2001 pp. 82-83, 88; T. 31 October 2001 pp. 95-96.
[390] Id. p. 136.
[391] T. 30 October 2001 p. 89; T. 31 October 2001 p. 95.
[392] T. 30 Oct. 2001 p. 89; T. 31 Oct. 2001 p. 96.
[393] T. 30 October 2001 pp. 90-93; T. 31 October 2001 p. 98.
[394] T. 30 October 2001 pp. 95-100; T. 31 October 2001 p. 101.
[395] T. 31 October 2001 p. 101.
[396] T. 30 October 2001 pp. 97-103; T. 31 October 2001 p. 103.

Concluding Observations about the Witnesses' Testimonies Concerning Elizaphan Ntakirutimana

281. The Chamber observes that seven Prosecution witnesses (MM, GG, PP, HH, KK, YY, and SS) testified that they saw Elizaphan Ntakirutimana driving his car within the area of the Mugonero Complex on the morning of 16 April 1994, albeit at various locations and times. Six of these witnesses (all except SS) allegedly observed him transporting attackers. Five out of seven Prosecution witnesses testified that Elizaphan Ntakirutimana was driving his white or whitish Toyota Hilux pickup in the morning of the attack. Of the remaining two witnesses, Witness GG stated that it was white with shining coloured stripes, whereas Witness MM testified that it was beech coloured.[397] As explained above, the Chamber does not consider these differences, taken together, to be significant.

282. The six witnesses allegedly saw Elizaphan Ntakirutimana's car with other vehicles. Five of the witnesses (GG, PP, HH, KK, YY) saw the car Ruzindana was driving (three of them said that the car belonged to the trader). Four of them observed the communal vehicle (PP, HH, KK, YY). Two of them also saw the hospital vehicle (see below). The witnesses gave similar, but not identical accounts about the attackers that were in the rear of Elizaphan Ntakirutimana's vehicle. Witness MM mentioned four-five gendarmes with uniform and red berets; Witness HH observed between 15 and 20 persons including gendarmes and civilians in military clothing; Witness GG referred to Interahamwe, some in military uniforms with red berets, others without uniforms; Witness KK was able to identify two gendarmes, two armed civilians and two other persons; and Witness YY claimed to have seen not fewer than 20 persons including three gendarmes. Witness PP did not particularize the attackers, but he saw the Accused standing next to his own vehicle after it was parked very close to his office.

283. While there are some variations among the witnesses, the Chamber finds that they corroborate one another in material respects. The differences may be explained by the passage of time, observations made at different stages of the transport, and differing personal knowledge of the attackers (with the exception of the leaders, two witnesses were able to identify named individuals or previous friends). The witnesses were not observing from a common vantage point or time. The Chamber therefore concludes that there is considerable evidence in support of the Prosecution's case that Elizaphan Ntakirutimana conveyed attackers to the Mugonero Complex on the morning of 16 April 1994.

284. The Chamber also notes that Witness SS saw Elizaphan Ntakirutimana on 16 April 1994 at Mugonero in his vehicle in the company of two gendarmes and conversing with Jean Nkuranga near the car park at a time when refugees had gathered because of the rumour that impending killings on that day was rife. Seen in the context of the many persons that were killed, including Nkuranga, the evidence of Witness SS provides corroboration of Elizaphan Ntakirutimana's activities.

---

[397] T. 19 September 2001 p. 85 (Witness MM); T. 20 September 2001 pp. 138-141 (Witness GG).

285. The Chamber does not find sufficient evidence that Elizaphan Ntakirutimana was wearing a gun at the time when the vehicles transported attackers. Only Witness PP testified about this, and his observation was made from a considerable distance. The Chamber will make its finding as to whether the Accused conveyed attackers after having considered his alibi for this period (see 3.8.3 (e) below).

(d) Did Gérard Ntakirutimana Convey attackers?

286. Six witnesses alleged that they saw Gérard Ntakirutimana at the Complex on the morning of 16 April 1994 prior to or during the commencement of the attack. Witness HH testified that he saw Gérard Ntakirutimana come to the Complex that morning conveying attackers in his white Peugeot pickup.[398] As mentioned under 3.8.3 (c) above, the Chamber is not convinced that his observation is accurate. No other witness testified to seeing Gérard Ntakirutimana drive his Peugeot to the Complex.[399]

287. Witness KK testified that at around 8.30 a.m. on 16 April, from his position near the ESI Nursing School he saw a group of cars coming towards the Complex. Elizaphan Ntakirutimana's vehicle was in front; it was followed by the hospital vehicle, driven by Gérard Ntakirutimana, and two trucks belonging to the COLAS road-construction company.[400] The vehicle driven by Gérard Ntakirutimana was transporting armed Interahamwe and soldiers.[401] The witness explained the lack of any mention in his prior statement of 2 April 1996 of Gérard Ntakirutimana driving a car on the morning of 16 April, saying that the investigators did not ask him a question on that point.[402] As the Chamber noted earlier, the distance between the witness and the group of cars when he made his observation of Gérard Ntakirutimana is unclear. These factors create some doubt and the Chamber will not place great reliance on Witness KK's testimony on this point (see above).

288. Witness PP testified that he first saw Gérard Ntakirutimana on 16 April with Elizaphan Ntakirutimana, who was standing by his vehicle, 200 or 300 metres away from the witness.[403] "The Pastor and his son, Gérard, came in the same car, in the Pastor's car, because on that day, I did not see the Doctor's car and even if it came, he must have left it somewhere else, but I did not see it".[404] This declaration indicates that the witness seemed to draw an inference from his observation of Elizaphan and Gérard Ntakirutimana concerning the way in which the latter arrived. This creates doubts as to whether Witness PP actually saw Gérard Ntakirutimana in a vehicle and, consequently, whether he was conveying attackers. The Chamber notes that no other witness testified that Gérard Ntakirutimana arrived in his father's car.

---

[398] T. 25 September 2001 p. 129.
[399] T. 26 September 2001 pp. 102, 111.
[400] T. 3 October 2001 pp. 104-105, 113, 115; T. 4 October 2001 p. 71; T. 5 October 2001 pp. 10-11, 17.
[401] T. 3 October 2001 pp. 104, 109, 115.
[402] T. 4 October 2001 p. 80.
[403] T. 8 October 2001 p. 27.
[404] Id. p. 123.

289. The remaining three witnesses did not claim that Gérard Ntakirutimana conveyed attackers. Witness YY testified that he saw Gérard Ntakirutimana at the Complex "right from the beginning; I saw him when the attackers arrived. He was amongst those who participated in the attack. He was armed with a gun and he would shoot at us." The witness confirmed that he saw the Accused "as soon as the vehicles reached the location and as soon as they started to shoot at people". He did not know in which vehicle Gérard Ntakirutimana had arrived.[405]

290. Another witness, DD, testified that an attack on refugees at the Complex commenced early in the morning of 16 April. Among the assailants the witness recognized Gérard Ntakirutimana, armed with a big gun.[406] The witness was positioned close to the hospital.[407] Later in his testimony, when he was asked about the first time he had seen Gérard Ntakirutimana on 16 April, the witness did not mention this incident.[408]

291. Finally, Witness GG claimed to have seen Gérard Ntakirutimana twice on 16 April. On the first occasion the Accused was with Mathias Ngirinshuti and Enos Kagaba: "They were placing the attackers in such a way that they surrounded the hospital."[409] The witness did not supply further details or mention a vehicle in this connection (For the second occasion, see 3.11.3).

292. The Chamber finds that of the six witnesses who allegedly saw Gérard Ntakirutimana prior to or during the commencement of the attack only three, Witnesses HH, KK and PP, claimed that he arrived in a vehicle. These witnesses gave three different versions of how he arrived (in his own car, in his father's car, in the hospital car), and there are some doubts relating to two of these observations. The evidence does not provide a sufficiently detailed or coherent picture to conclude beyond a reasonable doubt that Gérard Ntakirutimana conveyed attackers to the Complex on the morning of 16 April 1994.

(e) Alibi for the Morning of 16 April (8.00 to 9.00 a.m.)

293. The Chamber has considered and dismissed Gérard Ntakirutimana's alibi for the early morning of 16 April, that is, the period 6.30 to 7.30 a.m., approximately (see II.3.7). The next alibi period, which concerns both Accused, is between 8.00 and 9.00 a.m. of the same day, when Prosecution witnesses place the Accused at the Complex, conveying attackers (in the case of Elizaphan Ntakirutimana) or being present among attackers (in the case of Gérard Ntakirutimana).

294. It follows from case law that when the Defence relies on alibi, the Prosecution must prove, beyond a reasonable doubt, that the accused was present and committed the crimes for which he is charged and thereby discredit the alibi. If the alibi is reasonably

[405] T. 2 October 2001 p. 21.
[406] T. 23 October 2001 pp. 79-83.
[407] Id. p. 93; T. 24 October 2001 pp. 32-33.
[408] T. 24 October 2001 p. 32.
[409] T. 24 September 2001 p. 125.

possibly true, it must be successful. Seven Defence witnesses gave testimony relevant to the alibi period in question. They included the two Accused, who testified last.

295. Witness 16 was Elizaphan Ntakirutimana's housekeeper. The witness testified that around 7.00 a.m. on 16 April he was summoned by Elizaphan Ntakirutimana: "I went to the living room and he told me: take this mattress and this bag, which contained clothing, and he asked me to put them in a vehicle", namely a Hilux which was parked at its usual location inside the compound. The witness proceeded to put the items in the back of the car. "After that, they came out and [Elizaphan Ntakirutimana] told me to stay at home and informed me that they were going to the commune office", in Gishyita. Witness 16 opened the gates of the compound and Elizaphan Ntakirutimana drove off with his wife on the seat beside him. It was a few minutes after 7.00 a.m., according to the witness.[410] He did not see Gérard Ntakirutimana on the morning of 16 April.[411]

296. The time given by Witness 16 for the departure of the Accused and his wife cannot be accepted. There is no dispute that Elizaphan Ntakirutimana first went to Gishyita (without his wife) early in the morning of 16 April (see above). According to the Accused's own account, he did not return to Mugonero from that first trip until around 7.30 a.m.

297. Witness 9 testified that on 16 April, at 7.00 a.m., he arrived at Elizaphan Ntakirutimana's house to take the Accused's cattle. "When we arrived we didn't immediately take the cows. We greeted those who were there. We tarried around for a while". The witness claimed that he left the compound at 7.30 a.m. In the course of that half hour, Witness 9, who was accompanied by his father, conversed with Witness 16; he testified that he saw no one else at the compound. When it was pointed out to the witness that a summary of a statement he had given to Defence investigators indicated that he had seen Elizaphan Ntakirutimana at his house on the morning of 16 April, Witness 9 explained that a long time had passed and his memory had failed him. He then gave this account: "On the 16th, the Sabbath day, as I explained to the investigators and as I am going to repeat to you … I met [Elizaphan Ntakirutimana] in the company of his wife in the morning." "I greeted them. … They were getting ready to board the vehicle." Except for greetings, no other words were exchanged between the witness and the Accused. The witness departed with the herd, leaving his father behind with the Accused.[412]

298. Witness 9's evidence on this point, even if it were to be accepted, does not establish the time at which Elizaphan Ntakirutimana finally left his residence with his wife to make the journey to Gishyita. Therefore this witness does not provide either Accused with an alibi for the 8.00-9.00 a.m. period.

[410] T. 13 February 2002 pp. 144, 147-150; T. 14 February 2002 pp. 21-22, 25-29.
[411] T. 14 February 2002 pp. 20, 53-54.
[412] T. 30 April 2002 pp. 82-91, 93.

299. Witness 4 testified that on 16 April, "between five and eight o'clock in the morning"[413], he, his family, and several others, including hospital employees – in total, between 20 and 30 persons – boarded two vehicles and set out for Gishyita township.[414] Later, the witness said: "I do not recall the time. In any event, we left before 8 o'clock."[415] The witness boarded "the hospital vehicle", a white Toyota Stout.[416] It was parked in front of Elizaphan Ntakirutimana's house.[417] Gérard Ntakirutimana drove this vehicle to Gishyita.[418] The second vehicle, which was close by, belonged to Elizaphan Ntakirutimana.[419] According to the witness, it took the two vehicles 20 to 30 minutes to reach Gishyita. There the group, including the two Accused, took shelter in a large empty building, about 50 metres' distance from the Gishyita bureau communal. Witness 4 testified that neither Accused left the vicinity of that building on 16 April 1994.[420]

300. Taken at face value, and without reference to the testimony of other Defence witnesses, Witness 4's testimony may offer both Accused an alibi for the 8.00-9.00 a.m. period. However, Witness 4 was remarkably uncertain about the time the two vehicles departed for Gishyita, saying only that they were boarded sometime in a three-hour period, between 5.00 and 8.00 a.m., and that actual departure was before 8.00 a.m. The Chamber does not find it plausible that Witness 4 should be so uncertain about the boarding time yet so certain about the upper limit of the departure time.

301. Witness 32 testified that "on the 16th, when I got up … my father came and told me that we had to go to Gishyita. … He told us that people had informed him that the hospital was going to be attacked". The witness left the house in which he was staying (next door to that of Elizaphan Ntakirutimana) at 7.00 a.m., and with his brother went on foot to Gishyita, where they arrived at 8.00 a.m. Other members of his family joined them later.[421] Witness 32 testified that at 9.30 a.m. "I saw the vehicle belonging to Pastor Elizaphan Ntakirutimana and the hospital vehicle in which his son was. And they came with other people, some of them in the front part of the vehicle and others in the rear."[422] These other people included Elizaphan Ntakirutimana's wife and Witness 4.[423] "I was standing at the Gishyita centre, and when I saw the vehicles go towards the communal office, my older brother and I went to see where they were."[424]

302. It follows from the evidence in the case that in April 1994 the drive from Mugonero to Gishyita took 30 minutes, at most, to complete. Therefore, Witness 32's

---

[413] T. 7 February 2002 p. 73. The witness answered as follows: "When I say it was in the morning, I mean as from seven … between five in the morning and seven." Q: Between five and seven in the morning?" A: "To be more precise, let's say it was between five and eight o'clock in the morning."
[414] Id. pp. 61, 63-66, 68-69, 169-172.
[415] Id. p. 159.
[416] T. 7 February 2002 pp. 66, 175; T. 11 February 2002 pp. 27-28.
[417] T. 7 February 2002 pp. 67, 163-164; T. 11 February 2002 pp. 10-11, 21-22.
[418] T. 7 February 2002 p. 72.
[419] Id. pp. 69, 72; T. 8 February 2002 pp. 10-12; T. 11 February 2002 pp. 11-12.
[420] T. 7 February 2002 pp. 83-84, 86-87; T. 8 February 2002 pp. 17-23.
[421] T. 16 April 2002 pp. 115-117; T. 17 April 2002 pp. 44, 54-55.
[422] T. 16 April 2002 p. 118.
[423] Id. pp. 118-119; Defence exhibit 2D28 (names of persons on board vehicles to Gishyita).
[424] T. 16 April 2002 p. 128.

testimony does not provide the Accused with an alibi for the relevant period. Moreover, it undermines Witness 4's assertion that the two vehicles left Mugonero for Gishyita before 8.00 a.m. and does not accord with Witness 16's account of a 7.00 a.m. departure.

303. Royisi Nyirahakizimana, wife of Elizaphan Ntakirutimana, testified that when her husband returned home from Gishyita in the morning of 16 April he informed her that they were leaving Mugonero and instructed her to pack.[425] The reason for their leaving was that "we were aware that the situation was not good", later adding that it was because the gendarmes had said that they could no longer provide protection.[426] According to the witness, the gendarmes informed Elizaphan Ntakirutimana of this around 8.00 a.m.[427] The witness packed cooking implements and mattresses, which their housekeeper (Witness 16) loaded into the rear part of Elizaphan Ntakirutimana's Hilux, which was parked in the compound. (It is not clear if the packing took place before or after the gendarmes spoke with the Accused.) When the loading had been completed, her husband "took the vehicle out of the compound and stopped further above because he wanted to provide me with space to be able to climb into the vehicle." Elizaphan Ntakirutimana then pulled up in front of the hospital vehicle, which was parked further down the road. Other persons began to board the two cars at this stage. Approximately eight people got into the back of their car; she could not recall how many boarded the hospital vehicle.[428] The cars allegedly left for Gishyita at 8.00 a.m., although the witness specified that "it is [only] on our way that we took the position to go to Gishyita". She saw many people by the roadside along the way." After having gone some distance towards the main road ... we had stones thrown at us". The drive to Gishyita took half an hour. At 9.30 a.m. "we went into a building which was used as a reception room when there were visitors", and which was located "six metres" away from the bureau communal.[429] "We were there waiting. We could not have immediate access to the building because we had not prepared that." The group entered the building when watchmen opened it up for them.[430]

304. The Chamber notes that Royisi Nyirahakizimana changed her account of events from one day of testimony to the next, first alleging that her husband informed her, as soon as he returned from his first trip to Gishyita, that they were leaving Mugonero and instructed her to pack, then alleging that gendarmes came, around 8.00 a.m., and informed her husband that they could no longer provide protection and that they should leave. It also notes that her evidence of a 8.00 a.m. departure contradicts the 7.00 a.m. departure mentioned by her housekeeper, Witness 16, as well as the account of Witness 9. Moreover, her testimony that both the decision and the departure took place around 8.00 a.m. does not allow for the intervening time when she said that objects were packed and loaded into the car and passengers picked up.

305. Gérard Ntakirutimana testified that "a few minutes" after he and his father returned from their trip to Gishyita (a contention already rejected by the Chamber)

[425] T. 10 April 2002 p. 38; T. 11 April 2002 p. 15.
[426] T. 10 April 2002 p. 38, 164; T. 11 April 2002 pp. 20-22.
[427] T. 11 April 2002 p. 26.
[428] T. 10 April 2002 pp. 39-40, 44-45.
[429] Id. pp. 48-52, 55-56, T. 11 April 2002 p. 7.
[430] T. 10 April 2002 p. 166; T. 11 April 2002 p. 10.

"someone knocked at the door … And what I saw was a gendarme. In fact, it was the other gendarme who had brought the three gendarmes that we saw on the 10th … he told me, 'You have to leave, you have to leave immediately.' … He said, 'Yes, yes, you leave right away.' He didn't even tell us where we should be going. … So, right away, I went back into my father's compound and I said to my father that there was a gendarme who was saying that we must leave. So it's at that point in time that we began to put together the few belongings we had in order to leave." The gendarme did not explain why they had to leave at short notice, and the Accused did not ask for an explanation. The Accused's parents loaded some items onto Elizaphan Ntakirutimana's vehicle, then the latter "drove from the compound, and what I did was to take the hospital vehicle which was parked outside, opposite a building which was quite close by our place. … There were people who were there who had sought refuge with neighbours. … So when they saw us come out, they were surprised, and they said, 'Can we leave together with you?', and we said, 'Well, if you can find room, why not? Just get on and let's go.'" It was around 8.00 a.m.[431] "At the junction on the road from Kabahinyuza centre and the road going to the hospital … there were many people, many young refugee men, and they started to throw stones [and] bits of wood on our vehicles."[432]m

306. The Chamber observes that Gérard Ntakirutimana's account of being at his father's house was supported by his father but not by his mother. No other witness observed him at the house on that morning. Witnesses 4 and 32 said that he was driving the vehicle on its way to Gishyita. Moreover, whereas Gérard Ntakirutimana's evidence was that the gendarmes spoke with him, his mother testified that they informed Elizaphan Ntakirutimana. The Chamber observes also that she said that the gendarmes informed her husband "around 8.00 a.m.", whereas Gérard Ntakirutimana testified that he spoke with the gendarmes "a few minutes" after he and his father returned from their trip to Gishyita.

307. Elizaphan Ntakirutimana testified that five minutes or so after he and his son returned from Gishyita, Gérard Ntakirutimana informed his parents that a gendarme at the door had said: "[G]o away from here. Leave this place immediately". The gendarme had not given a reason for his instruction. Elizaphan Ntakirutimana asked his wife to load some essentials into the car, which she did with Witness 16's assistance, and they left. About eight other people came aboard the vehicle outside of the compound. His son was in the hospital car, following behind. "I went on the road towards Gishyita. I passed by the bureau communal. … There was another building next door, and I parked my vehicle between the two buildings."[433] It was between 8.30 and 9.30 a.m. Authorization to stay at a building belonging to the commune was not obtained from the communal authorities; rather, a "messenger" came by and said they could place their belongings there.[434]

308. The Chamber observes that Elizaphan Ntakirutimana was not clear as to the time of his final departure for Gishyita. He testified that the group arrived in Gishyita between 8.30 and 9.30 a.m., which does not exclude the possibility that the group departed Ngoma

[431] T. 9 May 2002 pp. 99-102.
[432] Id. p. 104; T. 10 May 2002 pp. 48-50.
[433] T. 6 May 2002 pp. 73, 169-176.
[434] T. 7 May 2002 pp. 5, 10.

as late as 9.00 a.m. The Chamber is thus left with six testimonies on which to find that an alibi has been made out: Defence Witness 4's dubiously confident assertion that departure was before 8.00 a.m.; Witness 32's claim that he saw the group arrive in Gishyita at 9.30 a.m.; Witness 16's account of a departure at 7.00; Gérard Ntakirutimana's evidence of a departure around 8.00 a.m.; Elizaphan Ntakirutimana's wife's allegation that the group left Ngoma at 8.00 a.m. but was not admitted into the building before 9.30 a.m.; and Elizaphan Ntakirutimana's testimony that arrival in Gishyita was between 8.30 and 9.30 a.m.

309. The Chamber does not find that this evidence, considered together with the evidence of Prosecution witnesses, raises a reasonable possibility that the two Accused were not present in the vicinity of the Mugonero Complex between 8.00 and 9.00 a.m. on 16 April.

310. Having thus concluded, with reference to paras. 283-285 in 3.8.3 (c) above, the Chamber finds that Elizaphan Ntakirutimana conveyed attackers to the Mugonero Complex on the morning of 16 April 1994.

3.9 General Description of the Attack

> 4.8 The individuals in the convoy, including Elizaphan Ntakirutimana, Gérard Ntakirutimana & Charles Sikubwabo, participated in an attack on the men, women and children in the Mugonero Complex, which continued throughout the day.[435]
>
> 4.9 The attack resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge at the Complex.[436]

3.9.1 Prosecution

311. The Prosecution submitted that the "interim government" formed following the death of the President of Rwanda on 6 April 1994 adopted a policy which called upon the country's Hutu majority ethnic group to murder everyone in the Tutsi minority. The mass killings throughout Rwanda followed.

312. In support of its case that a genocide ("a single genocide") aimed at the extermination of the Tutsi population was committed in Rwanda between April and June 1994, the Prosecution cites the *Akayesu* Judgement's finding to that effect. The Prosecution also relies on *Akayesu* for its argument that the genocide was meticulously organized and that the Tutsi were targeted because they were Tutsi and not because they were fighters for the Rwandan Patriotic Front (RPF). The Prosecution accepts the view expressed in the *Kayishema and Ruzindana* Judgement that while a plan is not an element of genocide, it is "not easy" to carry out a genocide without a plan. It further relies on that Judgement for the view that, given the magnitude of the underlying crimes, it is virtually

[435] Para. 4.8 of the Bisesero Indictment makes no reference to Charles Sikubwabo and adds the words "and into the night" at the end of the sentence.
[436] The Bisesero Indictment is virtually identical.

impossible for genocide to be committed without some involvement on the part of the state.

313. The Prosecution submits that the attack at the Mugonero Complex was part of a pattern of attacks being executed in other locations in Kibuye at around 16 April 1994, such as at Mubuga Church, Home St. Jean, and Gatwaro Stadium. Refugees arriving at those locations found gendarmes present. The gendarmes controlled the congregation, maintained law and order, and, in some cases, prevented refugees from leaving by warning of possible attacks outside those supposedly safe locations. Utility supplies were often disconnected prior to the attacks. The massacres were carried out by law enforcement agents, including gendarmes and communal policemen. They were joined by Hutu militia known as Interahamwe. More importantly, according to the Prosecution, the attacks were perpetrated under the watchful eye of local authorities and prominent Hutu civilians, who participated to a greater or lesser extent.[437]

314. The Prosecution's case is that Gérard and Elizaphan Ntakirutimana were needed at Mugonero to keep the refugees there. Their presence at Mugonero made the refugees feel secure. As was the case elsewhere in Kibuye, certain individuals who were locally powerful masterminded, supervised, and encouraged the commission of attacks in their localities. Thus Alfred Musema dealt with Gisovu; Clement Kayishema "took care of" Gitesi commune, and Charles Sikubwabo "dealt with" Gishyita, which was also the Accused's home territory. The Accused had to "take care" of Mugonero, according to the plan.[438]

315. As to the number of people killed on 16 April, the Prosecution relies primarily on Witness QQ. He testified that in March 1995, when he returned to Mugonero, he saw masses of bodies thinly covered with soil, remains of bodies scattered in dormitories, classrooms, toilets, and on the lawns of the Complex. There were also mass graves. The witness participated in the burial of the bodies lying about and in the reburial of bodies exhumed from the mass graves. He believed that all the bodies belonged to Tutsi, as it was his view that only Tutsi were targeted in 1994. The witness testified that the remains were put in forty coffins measuring about three metres long and one metre wide. He estimated that between 7,000 and 8,000 bodies were reburied. The Prosecution notes that when asked to explain how he arrived at those figures, Witness QQ said: "if you were to look at the size of the coffin, and during the burial at least 10 people would lift a coffin. And I would say there would be 150 skeletons in each coffin. So if you take 150 and you multiply by 45 you see you come to ... 6,650... But there were other bodies ... which were found in the graves which were not ... exhumed. Therefore, one can make an estimate of between 6,000 to 7,000, given my calculations".[439]

[437] T. 21 August 2002 pp. 5-14.
[438] T. 22 August 2002 pp. 125-126.
[439] Prosecution Closing Brief paras. 290-297; T. 18 October 2001 p. 16.

316. The Prosecution rejects as "preposterous" what it understands as the Defence theory that the attackers were bandits who took advantage of the President's death to loot or to settle old scores.[440]

3.9.2 Defence

317. The Defence argues that the true nature of the Rwandan conflict was political not ethnic and relies on the testimony of Witness Faustin Twagiramungu, who was chosen as Prime Minister in the Broad Based Transitional Government under the Arusha Accords and was Prime Minister in the new RPF-controlled government set up on 19 July 1994. According to the Defence, the witness testified forcefully that the continuing struggle for political control between the RPF and the government of Rwanda was the overwhelming cause of the 1994 conflict. He described the destabilization of Rwanda caused by the major invasions of the country by the RPF in 1990 and 1993 which created more than a million internal exiles and rendered the country almost ungovernable.[441] The government was incapable under these conditions of protecting the people, who were victimized by criminal gangs, were vulnerable to insurgencies, and suffered from fear and insecurity brought about by the history of RPF invasions. Witness Twagiramungu expressed the opinion that more Hutu than Tutsi may have been killed in the 1990-1994 period.[442] The Defence emphasizes the injustice that would result to the people of Rwanda were the Tribunal to reinforce the "fiction" propagated by the RPF that the conflict was caused by simple ethnic hatred, with one group intending to annihilate the other.[443] The Defence also relies on the testimony of Father Serge de Souter, who the Defence considers a pre-eminent scholar on Rwanda, in support of its view that the struggle in Rwanda was political.

318. With respect to the events in and around Ngoma, the Defence's position is that, following the death of the President, fear, banditry, and general violence gripped the region. Hutu and Tutsi alike spontaneously sought refuge at Mugonero Complex. [The Defence cites evidence that some of them were armed and may not have had peaceful intentions.[444]] Patrol groups were formed comprising both Tutsi and Hutu. On 10 April, Gérard Ntakirutimana telephoned the authorities in Kibuye town to report a grenade attack against the house of Jean Nkuranga, a Tutsi, and to ask for gendarmes to be sent to restore security.[445] On 11 April, Gérard Ntakirutimana drove his wife and children, as well as a Tutsi woman and her children, to Gisovu for safety. On the night of 12 April, persons armed with firearms attacked shops at the Kabahinyuza centre. They were repulsed and disarmed by gendarmes. When a mob attempted to attack the hospital on 13 April, Gérard Ntakirutimana assisted a gendarme to chase the mob away.[446] On 15 April, Elizaphan Ntakirutimana witnessed another act of violence at the Kabahinyuza centre. This drove him to warn Issacar Kajongi, a Tutsi, of the poor security situation. He asked

[440] T. 21 August 2002 pp. 5-6.
[441] T. 22 August 2002 pp. 70-71.
[442] T. 4 February 2002 pp. 164-165.
[443] Defence Closing Brief pp. 172-174; T. 22 August 2002 pp. 7-8.
[444] Defence Closing Brief p. 186.
[445] Id. pp. 188-189.
[446] Id. pp. 197-199.

Kajongi to alert all the pastors, and through them the people.[447] Also on 15 April, local thugs, including a well-known criminal known as Reuben, had been boasting of their intentions to mount attacks against the Complex.[448]

319. In this period, according to the Defence, when there was a breakdown of state authority, neither Accused had any authority to suppress the violence. With a million refugees having lost their homes and livelihood as a result of the RPF invasion, with news that the President had been killed, with no possibility of the Arusha Accords going forward, unplanned and chaotic violence was inevitable.[449]

320. The Defence submits that the Prosecution was precluded from relying on facts proven in other cases and about which no evidence was led in the present case.[450]

3.9.3 Discussion

321. The Chamber will consider the evidence given by Prosecution and Defence witnesses on the methods and nature of the attack on 16 April, as well as on the number of persons killed at the Complex in the course of the day.

322. Witness GG was not able to give a time for the commencement of the attack except that it got underway on the morning of 16 April. The attackers consisted of civilians armed with traditional weapons. There was some defence put up by refugees hurling stones. The attack continued until nightfall, according to the witness. Those who had taken refuge in the hospital's buildings were tracked down and killed there. Witness GG (like Witnesses MM and DD) survived by hiding among dead bodies and pretending to be dead.[451]

323. Witness HH testified that the attack began between 8.30 and 9.30 a.m. He spoke of a defence put up by the refugees, and claimed that he himself used pieces of wood as well as stones for this purpose. When the defence failed, some refugees sought refuge in buildings of the hospital while others fled to nearby hills. In the early hours of 17 April the attack had died down.[452]

324. Witness FF saw "soldiers" on board vehicles and Interahamwe on foot arrive at the Complex at 9.00 a.m. The latter were armed with spears and other traditional weapons and were chanting. The killings progressed from open areas to the ESI Chapel, and thence to the hospital, where grenades were used by the attackers. Witness FF left the Complex in the early hours of 17 April, when fighting had ceased.[453]

---

[447] Id. pp. 203-204.
[448] Id. p. 215. The deteriorating security situation and its consequences are also reviewed on pp. 211-213.
[449] T. 22 August 2002 pp. 73-74; pp. 152-153.
[450] Id. p. 69.
[451] T. 20 and 24 September 2001.
[452] T. 25, 26 and 27 September 2001.
[453] T. 28 September and 1 October 2001.

325. Witness YY testified that the attack started at around 9.00 a.m. It was launched by Hutu with traditional weapons. The attackers were briefly repulsed by the refugees, who defended themselves with stones, but the attackers came back in greater numbers.[454] Another Prosecution witness, Witness SS, said that the attack commenced some time in the morning. The witness threw stones at the attackers, then fled the Complex for Gitwe Hill.[455] Witness MM continued to defend himself with stones over an extended period of time. The attack ended, according to him, at around 10 p.m.[456] Witness PP also made reference to the refugees' resistance. He suggested that the attack concluded some time before 10 p.m. on 16 April.[457]

326. Defence Witness 8 was at her house on 16 April, about 50 minutes' walk from the Complex. From there she had a view of Esapan Secondary School, though not of the Complex. In the afternoon the witness saw people ("bandits"), coming from the direction of Esapan, pass along the road in front of her house. They were carrying beds, mattresses and chairs.[458]

327. On 16 April, Defence Witness 5 was in a house belonging to Esapan. On his way to church people warned him not to go there. He turned and heard people shouting; later, grenade explosions and shooting were audible. He stayed in the house because, as he said, many people had run away, others were screaming, people were being slain, and it was frightening.[459]

328. On 16 April, Defence Witness 7 was living in Mpembe Secteur, at some distance from the Complex. At about midday she saw people passing on the road carrying objects (bed, mattresses) which had been looted from the hospital. She also observed other persons who had in their hands machetes or clubs.[460]

329. Defence Witness 6 was also in Mpembe. Early in the morning of 16 April he heard people pass by and was told that on other hills people could be seen going toward Ngoma. The witness later heard explosions from the direction of Mugonero. He could see people carrying objects (beds, mattresses) looted from the hospital. They were angry, influenced by drugs and armed with machetes and weapons. Among them were two robbers of some notoriety, Alexis and Sekagarama (nicknamed Rucekeli). The group returning from Mugonero in the afternoon and evening was very large; it "took an hour to pass by where we were".[461] Witness 6 went back to Ngoma around 18 April: "Everywhere we went by, we realised that where there had been Tutsi houses most of them had been destroyed. The houses which were covered by grass had been burnt down. We could see people who were carrying iron sheets which had been removed from roofs,

[454] T. 1 October 2001.
[455] T. 30 and 31 October 2001.
[456] T. 19 September 2001.
[457] T. 8 October 2001.
[458] T. 14 February 2002.
[459] T. 2 May 2002.
[460] T. 12 February 2002.
[461] T. 24 April 2002 p. 94.

from schools and from places where people had fled."[462] The witness later added: "I also saw houses belonging to Hutus which were destroyed. For instance, at the Mugonero Hospital or in the neighbourhood of the field and in the residences of the workers all the houses had been looted and doors had been broken down." The witness further stated: "It was the Tutsis who were targeted in particular. They were a specific target but there were also other people who were targeted."[463]

330. Between 10.00 a.m. and noon on 16 April, Defence Witness 32, who was at the CCDFP building in Gishyita, heard noises from the direction of Mugonero (shouting and noises that resembled those "made by iron sheets"). Around 4.30 p.m., the witness saw a large number of people coming from Mugonero carrying looted property (for instance mattresses). They were also carrying spears and machetes.[464] He stated that the hospital had been attacked by "bandits of the same calibre as Reuben".[465]

331. On 16 April, around 10.00 a.m., Defence Witness 9 was minding a herd of cattle about 15-minute walk from the Complex. He claimed not to have heard any gunshots or explosions or cries from the direction of the Complex (which was out of sight) but rather to have heard people gathered in the hospital area "singing the same songs we sung in church", and in particular "You are the Lord's Army".[466]

332. Gérard Ntakirutimana testified that on the morning of 16 April, from his location at the CCDFP building in Gishyita, he saw people being chased from the Complex. (It is not clear who these people were, or who was chasing them.) Some time later, between 10.30 and 11.30 a.m., "we could hear explosions such as grenade explosions. They were really very, very loud powerful explosions ... These noises continued until about 2 p.m., and at around 3:00 in the afternoon the noises had significantly diminished." "In the afternoon we also saw people who were leaving Mugonero ... some of them who were going towards Kigarama, others were going towards Gishyita and the neighbouring hills. They were carrying belongings on their heads – mattresses, sacks, things like that ... which they were taking away from the hospital. ... the mattresses belonging to the hospital ... are covered by plastic sheets, and one could recognise the hospital mattresses because of these waxed cloths that covered them". They were "peasants and mostly very able-bodied young people. I would say that that's what they were, and I could see that [their clothes were] in tatters, so one could even call them vagabonds". The Accused did not indicate the distance from which he was able to observe this degree of detail, except that he was afraid to get near them.[467] In later testimony, the Accused distinguished three categories of perpetrators: "There were people who were attacking others for political reasons. ... There were others who were attacking people to enrich themselves, to take over their wealth. And there was yet another group that was attacking others who wanted

[462] Id. p. 100.
[463] T. 25 April 2002 pp. 16-18.
[464] T. 16 April 2002 pp. 120-123.
[465] T. 17 April 2002 p. 36.
[466] T. 30 April 2002 pp. 42-44, 76-80.
[467] T. 9 May 2002 pp. 109-113.

to take advantage of the crisis, the confusion to attack people for ethnic reasons. So there was that inter-ethnic conflict as well, which was part of the war."[468]

333. Elizaphan Ntakirutimana testified that from his location close to the CCDFP building in Gishyita, around 11.00 a.m. on 16 April, "I could see people going up towards Ngoma, launching attacks. I could see other people who were going towards Magarama ... I heard something like grenade explosions, and all these things made me afraid. So I said to myself that people were being decimated." And: "I saw people running at th[e] West Rwanda school. I could hear explosions, and ... I was seeing people running helter-skelter."[469]

334. From the above evidence of Prosecution and Defence witnesses it follows that the allegation in the Indictments that on 16 April 1994 there was a general attack on refugees at the Complex which "continued throughout the day and into the night" (as worded in the Bisesero Indictment) has been made out. Large numbers of attackers assembled from many directions and attacked the refugees using traditional weapons, firearms, and grenades. Many engaged in looting towards the end of the attack.

335. It follows from the evidence that the persons killed included the following named individuals: Pastor Sebihe, Pastor Semugeshi, Ukobizaba, Kajongi, Nkuranga, three members of Witness MM's family, four members of Witness KK's family, Kagemana, Macantaraga, Iminadad, seven members of Witness YY's family, Ruhigisha, Nkuranga's younger brother, Evelyn and four other women in hiding with Witness FF, one of Witness SS's brothers, more than five members of Witness PP's family, and three or more members of Witness DD's family. It is also clear that many persons were wounded, for instance the following identified persons: Witness KK, Witness XX, three persons with whom Witness YY was hiding, Witness YY's father, Segikware, and Witness FF. (The Chamber did not receive information about the ethnicity of each of these individuals, but is left with the clear impression that most of them were Tutsi.) In addition, Witness MM estimated that he hid in a room containing up to 30 bodies. Gérard Ntakirutimana stated that there were four or five dead bodies in the vicinity of a Tutsi child he rescued, but he did not know who they were.[470]

336. This evidence of about 70 killed and eight wounded must be augmented by the other evidence on record concerning refugees being killed or bodies lying on the grounds and in the buildings of the Complex. Defence witnesses also gave an indication of the large number of persons killed on 16 April. Witness Nataki saw signs of two mass graves, one approximately 50 metres from the field office, the other on the hospital grounds. He did not know how many bodies they contained.[471] On 20 April, Witness 5 walked from Esapan School to the field office at the Complex: "from [a]far I saw, in front of the field, a pile of dead bodies and there were tractors which were in readiness to dig the graves so that the bodies could be buried in front of the ... field office". The pile

[468] T. 10 May 2002 pp. 20-21.
[469] T. 7 May 2002 pp. 11-13.
[470] T. 9 May 2002 pp. 119-120.
[471] T. 5 Feb. 2002 pp. 227-228.

consisted of about fifty bodies.[472] Elizaphan Ntakirutimana saw a "very big grave", three by four metres across, in front of the field office.[473] He saw another grave which could have contained one or two bodies near the primary school.[474] Gérard Ntakirutimana testified that, towards the end of April 1994, the burial of the bodies at the Complex had already begun, "and I saw that there was a mass grave in front of the ... office of the association. And there was also another mass grave by the parking lot".[475]

337. From the above evidence of Prosecution and Defence witnesses, the Chamber concludes that while it is not possible to be exact about the number of casualties, eye-witness evidence indicates hundreds of dead and a large number of wounded as a consequence of the attack on 16 April.[476] This finding is consistent with the allegation in the Indictments that the attack resulted in "hundreds of deaths and a large number of wounded". The casualty estimates based on alleged exhumations of mass graves at the Complex supports this finding. The Chamber sees no need to analyze this evidence further.[477] It follows that paragraph 4.9 of the Indictments has been made out.

338. Regarding the ethnic identity of the persons who were killed and wounded, the Chamber refers to the evidence above and recalls the following evidence. Witness MM identified all but one of the refugees as Tutsi. At an unspecified date prior to the attack on 16 April this person of Hutu ethnicity was evacuated.[478] According to Witness HH, almost all the refugees were Tutsi, with the exception of two Hutu (Jose Nbarubukeye and Manasse Gakwerere) who both worked at the Complex and had come with their families. The witness conceded that among the refugees there were Hutu whom he did not know. Witness YY described the refugees as Tutsi who had gone to the Complex to seek refuge, and said that there were some Hutu women among them who were married to Tutsi. Two Hutu families left before the attack on 16 April. The witness said that there were Hutu refugees at the Complex also during the attack, although at least some of them were asked by the attackers to leave.

339. Witness PP testified that the majority of the refugees at the Complex were Tutsi, except for Hutu women married to Tutsi men. Witness GG knew of only one Hutu (Nbarubukeye) who had sought refuge at the Complex with his family. Similar evidence was given by Witness SS, who said that Hutu pastors went to Esapan Secondary School with their families. Witness XX recognized a few Hutu, including a man who had a Tutsi

---

[472] T. 2 May 2002 p. 98; T. 3 May 2002 pp. 38-41.
[473] T. 7 May 2002 pp. 29-30.
[474] T. 8 May 2002 p. 29.
[475] T. 9 May 2002 p. 129.
[476] Gérard Ntakirutimana stated that by 12 April there were 1,300 refugees at the Complex, T. 9 May 2002 p. 105. According to Defence Witness 5 there were 2,000 refugees gathered there by 14 April, T. 2 May 2002 p. 86.
[477] See testimonies of Witnesses HH and QQ. The Chamber is not convinced by the estimates made by Witness QQ, which ranged from 6,650 to 8,000 bodies. He was a lay person with no claimed expertise in dating mass graves or distinguishing and counting victims on the basis of their decomposed remains. His estimates appear to be based on the number of coffins used and, more critically, on the number of people required to lift a coffin after it had been filled. Nevertheless, his evidence did establish mass graves and large number of skeletons at the Mugonero Complex.
[478] T. 20 September 2001 p. 96.

wife. Witness FF knew only two Hutu who were there with their families. She added that it was possible that there were other Hutu at the Complex, but that she could only speak about the people she recognized and saw at the location she was at.

340. On the basis of the evidence considered above, the Chamber finds that the majority of the persons who sought refuge at the Complex up to 16 April were Tutsi. The Chamber also finds that the overwhelming majority of the refugees who were killed and wounded during the attack at the Complex on 16 April were Tutsi. Accordingly, the Chamber finds that Tutsi refugees were targeted solely on the basis of their ethnic group.

3.10 Attack on Refugees at ESI Chapel

3.10.1 Prosecution

341. It is the Prosecution's case that the Accused were involved in the attack on the refugees at the ESI Chapel. This is not referred to in the Indictments, but dealt with in Annex B of the Pre-trial Brief. According to the Prosecution Elizaphan Ntakirutimana went to the ESI Chapel around 9.00 a.m. on 16 April, demanded the keys to the chapel from Pastor Seth Sebihe, threatening to make an example of him. The Prosecution relies primarily on Witness KK, who was in the chapel. (The witness said the event occurred around 10.00 a.m., but according to the Prosecution's oral submissions he must have been mistaken as to time.) After the Accused left, the attack at the Complex commenced. Elizaphan Ntakirutimana headed to his residence to prepare for the evacuation to Gishyita.[479] In relation to the events at the ESI Chapel the Prosecution refers also to the testimonies of Witnesses DD, YY, and SS. [480]

3.10.2 Defence

342. The Defence rejects the above allegations, contending that the two Accused departed for Gishyita at around 8.00 a.m. on 16 April and did not return to Mugonero again on that day.[481] According to the Defence, Witness KK is not a credible witness. In relation to the event at the ESI Chapel there is a contradiction between his testimony and his written statement to investigators, according to which it was Mika Muhimana, not Elizaphan Ntakirutimana, who said that they should start with Pastor Sebihe as an example. This, according to the Defence, shows that the witness tried to "demonize" the Accused. The Defence rejects the witness's assertion that the attack on the refugees at the ESI Chapel began at 10 a.m. and continued until dark, alleging that it conflicts with all other descriptions.[482]

3.10.3 Discussion

343. The Chamber will first summarize the testimonies of the witnesses, in particular that of Witness KK.

---

[479] Prosecution Closing Brief paras. 179-182, 226, 463; T. 21 August 2002 pp. 30-31, 38.
[480] Id. paras. 220 (DD); 225 and 271 (YY); 241 (SS).
[481] Defence Closing Brief pp. 221ff.
[482] Id. pp. 149-151.

Witness KK

344. The witness testified that after the commencement of the attack he went to the ESI Chapel at around 9.00 or 9.30 a.m. on 16 April.[483] There he saw Elizaphan Ntakirutimana, Charles Sikubwabo, Mika Muhimana, and Interahamwe carrying firearms; they included Daniel the son of the Conseiller Bahunde, Ngabonzima, and Nyamwanga. These persons entered the chapel, though not all came through the same door. (It is not clear whether they entered at the same time.) Witness KK specified that Elizaphan Ntakirutimana entered through the side door at the left of the building. Sikubwabo said that "any Hutus who have come in here by mistake" or "Hutu women ... married to Tutsis" should leave the chapel. In response, one Josiah left the chapel with his Tutsi wife and children, as did a woman leaving her children and Tutsi husband behind. (As to whether Elizaphan Ntakirutimana was in the church at this stage, the witness did not answer clearly.)[484]

345. Witness KK testified that, following the above incident, at around 10.00 a.m., Elizaphan Ntakirutimana went up to Pastor Sebihe and said: "Give me the keys because your hour has come". Pastor Sebihe came down from the podium, threw the keys towards the Accused and then went into a small room in the chapel and closed the door behind him. Muhimana then approached Elizaphan Ntakirutimana, and the latter said: "Let's start with this one first so that he can be seen as an example." The Accused and Muhimana then knocked on the door of the room where Pastor Sebihe was, but he refused to open. So they forced the door "with the guns that they had; the door broke down, so they brought out Pastor Sebihe to ... where pastors normally stand when they preach at the altar". Witness KK conceded that he had told investigators that Muhimana was the one who broke down the door with the butt of his gun, affirming this later in his testimony: "It was Mika who was carrying a gun, and he is the one who hit the door". He maintained that, nevertheless, Muhimana and Elizaphan Ntakirutimana were "standing together" at the time the door was forced open. Witness KK was able to see all this and hear what was said from his seat in the first pew of the church; he was thus "quite close" to Elizaphan Ntakirutimana, Muhimana, and Pastor Sebihe.[485]

346. According to Witness KK the Accused then left the chapel through a side door while Muhimana exited through the main door.[486] Witness KK heard Muhimana tell Sikubwabo: "I think that we need to start"; and Sikubwabo then told the attackers surrounding the area to "start to work and to work hard so that no one escapes". From his position by the door of the chapel, Witness KK heard Elizaphan Ntakirutimana, who was outside, tell Gérard Ntakirutimana to "go up so that those who are in the hospital cannot flee or get away". Witness KK explained why he had not given this information before to

[483] T. 3 October p. 116; T. 4 October 2001 p. 65.
[484] T. 3 October 2001 pp. 116-117; T. 5 October 2001 pp. 31-33.
[485] T. 3 October 2001 pp. 119-123; T. 5 October 2001 pp. 34-35.
[486] T. 3 October 2001 p. 120; T. 5 October 2001 pp. 36-37.

the investigators: "They wanted to know if I had seen Ntakirutimana. They didn't ask me anything about Gérard."[487]

347. The attack at the chapel proceeded, according to the witness, with attackers throwing grenades and firing shots at the doors of the chapel; they then entered the chapel and shot at people inside, including Witness KK, who took a bullet in the arm. The witness smeared himself with blood so as to make the attackers believe he was dead. After the shooting ceased, assailants armed with traditional weapons "finished off the wounded and they clubbed the children". The witness said that the attack continued throughout the day, and that gunshots could be heard until after nightfall, at which time the attackers said: "Let's leave. We will come back tomorrow to finish off those who are not yet dead." Witness KK testified that he left the chapel during the night of the attack.[488]

Other Witnesses

348. Witness DD testified that as soon as the killings began on the Sabbath morning, "we ran … towards the church, and it's there that I saw Kagaba and Mathias. Mathias was making Mbarubukeye … a Hutu, and who was married to a Tutsi woman … as well as his children and his wife … come out". Because Mbarubukeye's wife was Tutsi, he was refusing to leave the school chapel. Nonetheless, according to the witness, Mbarubukeye and his family eventually left. "It was also at that time that a woman from Mpemba was brought out. … She had Hutu children. I believe her husband was Hutu. … That man wasn't living in Rwanda at the time".[489] Later, Witness DD said: "I did not go close to the church. I saw the killers at work. They were killing people, getting people out of the church, and I changed directions and I went elsewhere."[490]

349. Witness YY testified as to a number of Hutu women who, along with members of their families and other refugees, sought refuge at the ESI Chapel after the attack had commenced. He witnessed the following event, which he timed to between 2.00 and 3.00 p.m.: "When the refugees got into the various buildings, the bourgmestre of the commune, Mr. Sikubwabo, came. He stopped at the entrance of the chapel and said that if there is a Hutu in this building, he should come out. … I knew seven women who all came out, with the exception of one of them who refused to come out, saying that if her husband and her children were going to be killed, she was going to die with them." According to Witness YY, the six Hutu women who finally left the chapel left their children behind because, being of Tutsi fathers, they were considered Tutsi and would have been killed on the spot by the attackers. The witness, who was not inside the chapel at the time, added that he had not actually heard Sikubwabo issue the instruction to the Hutu refugees inside the chapel: "I could not hear him because I could not get closer to

[487] T. 3 October 2001 pp. 120-124; T. 4 October 2001 pp. 125-126; T. 5 October 2001 pp. 50-51.
[488] T. 3 October 2001 pp. 121-123; T. 4 October 2001 pp. 4, 65-66.
[489] T. 23 October 2001 pp. 94-97; also pp. 44-45.
[490] T. 24 October 2001 pp. 39, 46.

him. If I had tried to do so, he would have killed me." The witness did not see the alleged attack on the chapel take place.[491]

350. Another witness, Witness SS, testified that, having realized that stones were not effective against the attackers, he decided to run away. He testified that he tried to enter the ESI Chapel but saw that people were being killed there too. He changed direction and fled into a forest.[492]

351. After having reviewed the evidence, the Chamber observes that Witnesses KK, DD and YY all testified about attempts to evacuate Hutu from the chapel. Witnesses KK and YY said that Sikubwabo instructed Hutu persons to leave the chapel (the former witness timing the incident to the morning, the latter to the afternoon). Witness DD said that Enos Kagaba and Mathias Ngirinshuti did the same. The Chamber accepts this evidence.

352. Regarding the role of the two Accused, the Chamber notes that only Witness KK testified that he saw both the Accused at the ESI Chapel on 16 April. The Chamber does not regard it as significant that neither Witness YY nor Witness DD mentioned either Accused in connection with the chapel. These two witnesses testified that they were passing by the chapel or observing from a distance. Witness KK, on the other hand, testified that he was inside the chapel and that he had a good view of the events which he described. The Chamber's finding as to the presence of the two Accused therefore depends on Witness KK's testimony alone.

353. Before addressing Witness KK's evidence, the Chamber observes that Witness YY's testimony does not correspond to his written statement of 25 October 1999, which contains the following passages:

> We tried to defend ourselves but we were defeated and many people were immediately killed. Some people r[a]n into the hospital rooms and others went in the church. Sikubwabo came into the church and said, if there is any Hutu, he should come out of the church. Some women who were married to Tutsi men and housemaids who were working to Tutsi hospital staffs [sic] came out. There after they thr[e]w grenades into the church. Those who survived were killed by machetes. I survived because I hi[d] under dead bodies. The church was full of refugees, about four thousand in all.
>
> Late in the night, I went out of the church. I passed near the hospital I heard my father calling me. He was seriously injured. I met few survivors who helped me to carry him to Bisesero hills. ...

354. This statement appears to locate the witness inside the church, attributes his survival to his having hid under dead bodies, presumably inside the church, and suggests that he remained in that position until nightfall when he left the church, heading in the direction of the hospital where he found his father. However, Witness YY testified that he

[491] T. 2 October 2001 pp. 3-6, 10-11.
[492] Prosecution Closing Brief para. 241.

himself was not inside the chapel at the time, and he did not actually hear Sikubwabo issue the instruction to the Hutu refugees inside the chapel. Nor did the witness see the alleged attack on the chapel take place. Witness YY testified that "from the time when they attacked in the morning up to the time when I ran to go and seek refuge at the hospital ... I continually saw Gérard Ntakirutimana". The witness indicated this period of observation of the Accused as extending from 9.00 a.m. to 2 or 3 p.m.[493] "I could see him because the place where we were located in an attempt to protect ourselves was not covered, there were no bushes. ... So I could see when we were throwing stones at them, and when we were trying to hide behind these trees, but I could see him, because since he was shooting, he wasn't hiding himself."[494]

355. All this suggests that Witness YY was not in any church and was not hiding under any dead bodies. Rather he was out in the open, hiding behind trees, and stoning the attackers when he could. Witness YY testified that after *passing by* the chapel, he sought refuge in the hospital: "It is the main building of the hospital I'm referring to, but it was in a small room below, near the theatre."[495] "We stayed in the small room which I referred to. The attackers continued to kill and at one point in time they got to the room where we were. They tried to open the door, but we prevented them from doing so. And they attacked us with tear gas, but we survived. They even tried to shoot below the door and one of the men who was with us was shot [in] the ankle, but we stayed inside the room, and during the night the attackers left."[496] Thus, according to this account, Witness YY remained with another five refugees in a locked room in the hospital basement from about 2 or 3 p.m. until about 10 or 11 p.m.[497] Again, this account does not correspond with the assertion in his written statement that he survived by hiding under dead bodies.

356. Witness YY was asked to explain why, in his October 1999 statement, he said that he had sought refuge in the church and not the hospital. He answered: "I would say that the person who took down the statement was mistaken because I said I ran past there but I didn't go in because the attackers were there; I continued and I went and sought refuge inside the hospital."[498] Referring to those who took his statement: "there is a confusion between the church and the hospital. I was talking about the hospital and they put down the church".[499] He later added that his written statement, which was brought to him for signature in early December 1999, had not been read back to him.[500] He also said: "If there is a passage in Kinyarwanda saying that that is a complete and truthful statement, I signed it because I trusted them. I didn't think that they would change what I said."[501] However, as the witness admitted in cross-examination, he also signed every page of the written statement. And under a section at the end of the document headed "Interpreter Certification", there appears a signed declaration by the interpreter stating: "I have orally

[493] T. 2 October 2001 pp. 23, 24.
[494] Id. p. 61.
[495] Id. p. 10; pp. 116-126.
[496] Id. p. 12.
[497] T. 2 October 2001 p. 73; T. 3 October 2001 pp 3-4.
[498] T. 2 October 2001 pp. 13, 79-83.
[499] Id. p. 83.
[500] T. 3 October 2001 pp. 48-50.
[501] Id. p. 51.

translated the above statement from the [E]nglish language into the [K]inyarwanda language in the presence of [Witness YY] who assured me that he/she had heard and understood my translation ...".

357. The Chamber is not entirely satisfied with the explanation given by Witness YY about this material inconsistency and notes this as part of its general assessment of this Witness.[502] This does not have any impact on its findings in the present section, as Witness YY did not see the Accused at the ESI Chapel. However, the Chamber notes this discrepancy as part of its general assessment of Witness YY's credibility.

358. Turning now to Witness KK, who claimed to have seen Elizaphan Ntakirutimana at the ESI Chapel at 10.00 a.m., the Chamber notes the Prosecution's submission that the witness must have been mistaken as to the time, because at that point the attack at the Complex had already begun, and the Prosecution does not allege that Elizaphan Ntakirutimana participated in the attack. The Prosecution therefore submits that Witness KK was describing an incident that occurred at 9.00 a.m.

359. In his testimony, Witness KK was not asked to describe the attack. The focus was on his sightings of the vehicles, which arrived with attackers, see 3.8.3 (d) above. The Chamber recalls the witness's testimony that around 8.30 a.m. he was near the ESI Nursing School when he saw a convoy of cars moving along a road, at an unspecified distance. Witness KK was then invited to describe the alleged events at the chapel, set out above, starting with the assertion that he arrived at the chapel at around 9.00 or 9.30 a.m. Moreover, in his statement of 15 November 1999, Witness KK declared:

> When they surrounded the Mugonero Complex on the 16th April 1994 they were chanting a song, "We are the Hutu we are here. Let us exterminate them." The attackers started shooting at us when they reached Pastor Ntakirutimana's office. We went to meet them and tried to push them back by throwing stones. We pushed the attackers back twice but on the third occasion they used machine guns and many of us were killed. When we saw that many were killed we decided to fall back. Many were killed instantly and those that weren't were finished off by the civilian population with their machetes. We tried to defend ourselves but we were not successful. We took refuge in the ESI Church.

360. The statement then continues with the incident inside the chapel, which was testified to and is summarized above. It is clear from the November 1999 statement that Witness KK fled to the ESI Chapel to take cover from an attack that was already well underway. Under these circumstances, the evidence suggests that the events in the chapel clearly took place after 9.00 a.m. and does not support the Prosecution's theory that the witness was wrong about the time. The witness testified that it was half an hour to an hour after reaching the chapel that he saw Elizaphan Ntakirutimana enter the building (see above). Witness KK was the only witness to claim that he saw him after the attack at the Complex had commenced. Moreover, there is no evidence, apart from Witness KK's testimony, placing Elizaphan Ntakirutimana in the proximity of the chapel at any time during the morning of 16 April, see generally 3.8.3 (d). The problem with the exact timing, combined with the lack of corroboration, call for extreme caution. Therefore, the

[502] See also Defence Closing Brief pp. 119-120.

Chamber is not in a position to find beyond a reasonable doubt that Elizaphan Ntakirutimana was involved in the episode at the ESI Chapel.

361. Finally, while in his statement Witness KK declared that "I saw Pastor Ntakirutimana and Dr. Ntakirutimana come to the small side door at the front left-hand side of the Church", in his testimony the witness alleged that he had heard Elizaphan Ntakirutimana, who was outside the chapel, tell Gérard Ntakirutimana to head for the hospital "so that those [there] cannot flee or get away". The witness did not claim, in the course of his testimony, to have *seen* Gérard Ntakirutimana at the chapel, so it is not clear to the Chamber on what basis the witness assumed that Elizaphan Ntakirutimana was directing the alleged statement to his son. In these circumstances, the Chamber declines to find Gérard Ntakirutimana present at the ESI Chapel prior to the attack there.

3.11 Shooting of Charles Ukobizaba

3.11.1 Prosecution

362. The Prosecution submits that in the course of the attack at the Complex on 16 April, Gérard Ntakirutimana shot and killed Charles Ukobizaba, the hospital accountant.[503] The Prosecution relies on the testimonies of Witnesses HH and GG and submits that these two witnesses are reliable. Their testimonies are mutually corroborative in material respects and are in conformity with their previous statements.[504]

3.11.2 Defence

363. According to the Defence, the evidence of Witnesses GG and HH is not credible. There are discrepancies between their testimonies and their previous statements to investigators, as well as contradictions between the testimonies of the two witnesses. The Defence argues that these witnesses form part of a political campaign against the two Accused. The Defence also submits that the only other Prosecution witnesses claiming to have seen Gérard Ntakirutimana at the Complex in the course of the attack on 16 April, namely Witnesses YY and SS, placed him at different locations during the time period when Ukobizaba is said to have been shot (i.e. around noon). Moreover, it follows from the evidence of several Defence witnesses that Gérard Ntakirutimana was in Gishyita township at around noon on 16 April.[505]

3.11.3 Discussion

364. The allegation that Gérard Ntakirutimana shot Charles Ukobizaba, a Tutsi who was the hospital accountant, relies on the testimony of Witnesses GG and HH. The Chamber will first summarize the testimony of the witnesses referred to by the parties.

---

[503] This event falls within the general allegations in paras. 4.8 and 4.9 in the statement of facts in the Indictments, but is not specifically mentioned.
[504] Prosecution's Closing Brief paras. 253-258 and 260-262; T. 21 August 2002 pp. 73-76.
[505] Defence Closing Brief pp. 80-83, 95-96. (The Defence made no oral submissions on Ukobizaba.)

Witness GG

365. Witness GG testified that he saw Gérard Ntakirutimana shoot Ukobizaba in the hospital courtyard. Although the witness was unsure as to the time of day the incident occurred, he said it was in the middle of the day, "when there was a lot of sunshine". Upon returning from the chapel, Witness GG heard the Accused call out to Ukobizaba. Gérard Ntakirutimana was alone at the time, and he was carrying a pistol. He shot Ukobizaba in the chest, and the victim fell on his back. He then took a set of keys from Ukobizaba's waist belt. Following this, the witness "immediately" went to hide in the surgery room and did not see anything that happened subsequently.[506]

Witness HH

366. Witness HH testified that between noon and 1 p.m., from the "big room" of one of the buildings belonging to the hospital, which faced Ukobizaba's office, he saw Ukobizaba standing with Gérard Ntakirutimana about 20 metres away, in the hospital courtyard, near the parking lot.[507] The witness estimated that Ukobizaba was between 15 and 20 metres from the main entrance to the building housing his office. He testified that the Accused and Ukobizaba were facing and talking to each other, although the witness could not hear what they were saying. The Accused had a pistol. Witness HH saw Ukobizaba give something to Gérard Ntakirutimana, which the witness presumed was the key to the victim's office. The witness testified that he observed Ukobizaba standing still for a very short time before he heard a gunshot and saw Ukobizaba fall, although he later said he did not know how many times Ukobizaba was shot. Witness HH concluded that it was Gérard Ntakirutimana who shot Ukobizaba "because there was nobody else near or close by to these people, and ... I had just seen Dr. Ntakirutimana with a gun, and he was aiming at him".[508] At the time Ukobizaba was shot, there were other persons in the hospital courtyard, according to the witness, who were also engaged in killing refugees, but those others were not shooting when Ukobizaba was shot. However, Witness HH did hear gunshots at the time of the incident, although he was not clear whether they came from far away or from nearby buildings. He testified that the Accused was dressed in training clothes worn over a T-shirt. After shooting the Accused headed in the direction of the victim's office. The witness did not know why the Accused had gone to Ukobizaba's office, though he testified that when he visited the office at night after the killings had stopped he found it ransacked.[509]

Other Witnesses

367. Witness YY testified that he saw the Accused shooting at people between 8 a.m. and 2.00 or 3.00 p.m.[510] Witness SS claimed to have seen Gérard Ntakirutimana shooting

[506] T. 20 September 2001 pp. 143-146; T. 24 September 2001 pp. 124-153.
[507] The witness identified the building as H 10 on Sketch B of exhibit P2, but was not sure that this was the building where he hid. He also referred to photographs 24 and 25 in the same exhibit. See T. 25 September 2001 pp. 141-149; T. 26 September 2001 pp. 3-4.
[508] T. 26 September 2001 pp. 8-9.
[509] Id. pp. 6-11 ; T. 27 September 2001 pp. 18-57, 148-149, 151-153.
[510] T. 2 October 2001 pp. 23-24.

at him in the forest some time before noon, on the eastern side of the Complex.[511] The Defence submits also that Gérard Ntakirutimana was in Gishyita township at around noon on 16 April and refers to the testimonies of Witnesses 25, 4, 32, Nyirahakizimana, and the two Accused. Their testimonies will be considered in connection with the alibi of the Accused (see below).

368. The Chamber notes that there are some minor discrepancies between the testimonies of Witnesses GG and HH. For example, while Witness GG testified that the Accused shot the victim, then took the keys from him, Witness HH maintained that: "The Doctor asked the accountant to give him the keys and then he shot him."[512]

369. The Chamber further notes that in his written statement of 20 June 1996 Witness GG gave a different account of how the Accused shot the victim. ("I saw that they were holding the accountant of the hospital. … After that I saw that Dr. Gérard Ntakirutimana killed Ukobizaba with a gun.") Moreover, Witness GG testified that he was in the open when he witnessed the shooting, then went to hide, whereas his statement suggests that he observed the incident through a window. In court, the witness distanced himself from his prior statement, saying that it must have been recorded improperly. After having observed the witness giving evidence the Chamber accepts his testimony that he was in the open air when he observed the event and that no one held Ukobizaba before he was killed. It notes that the witness maintained that the shooting took place before the keys were taken away.[513]

370. As for Witness HH, the Chamber notes that in his written statement of 2 April 1996, he observed the Accused shoot the victim from a hiding place in the "ceiling of the last hospital building". In apparent contrast, during testimony he said that he had witnessed the shooting from the room in this building prior to hiding in the ceiling. Witness HH testified that there had been a misunderstanding on the part of the investigators, not inconsistency on his part.[514] The witness was cross-examined extensively on this issue. He explained that he hid in the building from around noon on 16 April to 2 a.m. on 17 April, that some of his observations were made through the perforated holes in the ceiling, whereas other observations, including the shooting of Ukobizaba, were made from the ground floor. The Chamber has assessed the testimony of Witness HH carefully and does not consider that the declaration in the written statement reduces the credibility of this part of his testimony. Moreover, the Chamber is not persuaded by the Defence's submission that it is unlikely that Witness HH would be able to see, from the specified window in the building he identified, the area where he claims the shooting took place. The witness insisted that nothing obstructed his view, and the incident took place in the hospital courtyard and not in the parking lot.

---

[511] T. 30 October 2001, in particular pp. 108-116.
[512] T. 27 September 2001 p. 148.
[513] According to Witness GG's statement, dated 30 June 1996, Ukobizaba was shot *after* the keys were taken away. This version, which investigators recorded closer to the event, is in conformity with Witness HH's testimony.
[514] T. 27 September 2001 pp. 20-23, 26.

371. The Chamber finds that even if there are some variations between the accounts of Witnesses GG and HH, there are overwhelming and convincing similarities that cannot be overlooked. Both witnesses are in agreement as to the approximate time of day (around noon) and location of the shooting (the hospital courtyard); both witnessed the Accused with a pistol immediately before the shooting; both maintained that the Accused was not in the company of any third person at the time; both observed the Accused and the victim in close proximity to one another, facing each other; both saw the Accused shoot the victim while facing him; and both saw the Accused take a set of keys or other objects from the victim. The observational conditions were good: the event happened in daylight and the Accused and the victim were known to the witnesses.

372. In the Chamber's view, minor differences in the two witnesses' accounts of the Ukobizaba incident do nothing to detract from the striking corroboration. The Defence, while claiming that Gérard Ntakirutimana was in Gishyita at the time of this incident, does not contest that the hospital accountant, Ukobizaba, was shot and killed around noon at the hospital on 16 April 1994.

373. In the Chamber's view, the testimonies of Witnesses GG and HH concerning the killing of Ukobizaba appeared credible. Other issues relating to the credibility of Witness HH do not reduce his credibility in the present context.[515] In assessing the credibility of Witness GG, the Chamber is aware that a number of allegations, mainly relating to Bisesero, were brought up by the witness during his testimony and not mentioned in his previous statements. These issues are discussed elsewhere.[516] In the present context the Chamber observes that the number of new allegations are likely the fault of the scope of the investigator's questions and should not be a significant factor in determining this witness's credibility. Any minor variations that were present in his written statements were adequately explained by the witness at trial and appeared reasonable, in light of the circumstances surrounding these events, difficulties with translation, and the elapsed time. Whether the Chamber can make use of new evidence, about which the Defence has not had prior notice, is a different question and will be discussed below. Overall, Witness GG remained consistent in his description of events given under solemn declaration and was able to describe his proximity to the Accused (albeit without always being precise as to the distance) when asked about the events at the Complex, Murambi, and Muyira.

---

[515] See 3.4.3 (a) concerning Gérard Ntakirutimana telling refugees to go to the main church; 3.4.3 (c) about Witness HH hearing him tell Hutu refuges to leave the hospital complex; 3.8.3 (c) and (d) regarding both Accused arriving at the Complex in their vehicles transporting attackers, and 3.14 relating to Gérard Ntakirutimana in the hospital area at nightfall. Reference is made, in particular, to the general discussion in Section 3.8.3(c), paras. 253-260. As to events that occurred after 16 April 1994, see 4.7 (Gitwe Hill, end of April/beginning of May 1994 and shooting of Esdras by Gérard Ntakirutimana); 4.15 (Mubuga School), and 4.21 (Muyira Hill and Kucyapa).

[516] See 3.8.3 (a) and (b) (appeal for intervention made by several pastors and Elizaphan Ntakirutimana's reply in the morning of 16 April 1994); 3.8.3 (d) (arrival of Elizaphan Ntakirutimana with a group of attackers; see, in particular, the general observations at paras. 230-238). In respect of events after 16 April, see 4.4 (Murambi, shooting of Ignace Rugwizangoga), 4.14 (Mubuga Primary School, shooting of Thomas Habayo), and 4.17 (Muyira Hill) and 4.23 (Murambi Church roof removal).

374. Before making a final finding the Chamber will consider Gérard Ntakirutimana's account that he remained in Gishyita throughout 16 April.

3.11.4 Alibi for the Remainder of 16 April 1994 (from 9.00 a.m.)

375. As discussed above (see 3.8), the Prosecution conceded that Elizaphan Ntakirutimana left the Complex before the attack commenced. The Prosecution also conceded that Gérard Ntakirutimana drove with his father, other members of his family, and a number of other persons to Gishyita township, where they took shelter in the CCDFP building. However, the Prosecution's case is that Gérard Ntakirutimana returned to the Complex "sometime after 9.30 a.m." on 16 April. The Prosecution alleges that other "Hutu employees" also returned to the Complex after 9.30 a.m., including pastor Gakwerere, pastor Ushizimpumu, and Mathias Ngirinshuti.[517]

376. The above concessions by the Prosecution imply that if Gérard Ntakirutimana took part in the attack at the Complex, it was not until "sometime after 9.30 a.m.", when he allegedly returned to the Complex from Gishyita. Therefore, the Accused's alibi for the remainder of 16 April (for his alibi concerning the early morning of that day, see 3.8.3(e) above) need only cover the period from "sometime after 9.30 a.m." onwards.

377. Gérard Ntakirutimana testified that after arriving in Gishyita he remained there throughout the day.[518] He also claimed to have remained in Gishyita on 17 April. It was only the next day, 18 April, that he went to Mugonero to assess the situation.[519] The evidence of other Defence witnesses has been introduced in support of this alibi.

378. Witness 4 testified that he travelled with the two Accused and others to Gishyita on 16 April. There the group took shelter in a communal building.[520] Neither Accused left the vicinity of that building on 16 April, according to the witness. More generally, the witness testified that he saw Elizaphan Ntakirutimana and Gérard Ntakirutimana "every day": "it would be a good number of times. I saw them all of the time. ... We were always together." He claimed that neither Accused left the vicinity of the communal building in Gishyita before the end of April 1994. Moreover, "I saw the vehicles [of the Accused] there all of the time".[521] The Chamber notes that Witness 4 was incorrect to claim that Gérard Ntakirutimana never left the vicinity of Gishyita township until the end of April. According to the Accused, he left Gishyita for short periods of time, taking his vehicle, the first such departure occurring on 18 April.[522] Other Defence evidence contradicts Witness 4. Therefore, the Chamber finds Witness 4 to have given unreliable testimony. The witness did not testify to the amount of time he allegedly spent with Gérard Ntakirutimana on 16 April. There is a complete lack of detail on this point. In the Chamber's view, Witness 4's testimony does not create a reasonable possibility that

[517] Prosecution's Closing Brief para. 498.
[518] T. 9 May 2002 pp. 112-113.
[519] Id. p. 116.
[520] T. 7 Feb. 2002 pp. 83-84; T. 8 Feb. 2002 pp. 17-23.
[521] T. 7 Feb. 2002 pp. 85-87.
[522] T. 9 May 2002 pp. 120-140.

Gérard Ntakirutimana remained in Gishyita throughout the remainder of the day of 16 April.

379. Witness 32 testified that he stayed in the CCDFP building in Gishyita with the two Accused and 20 to 30 other persons from 16 April until the end of the month.[523] "I saw Pastor Ntakirutimana and his son every day. We were together every day in Gishyita."[524] "They never left that place, if my memory does not fail me."[525] The witness also spent time with his friends: "Sometimes when we got bored sitting in one place for a long time, young as we were, we moved around, we went to the centre [of Gishyita] and we returned."[526] Later he conceded that he simply did not know whether Gérard Ntakirutimana had ever left Gishyita during this period.[527] In the Chamber's opinion, Witness 32's testimony does not support Gérard Ntakirutimana's alibi for 16 April.

380. Royisi Nyirahakizimana, wife of Elizaphan Ntakirutimana, testified that the group with whom she had left Mugonero stayed in the Gishyita "reception hall" for two weeks, from 16 April until the end of the month.[528] During that time, other than cooking outdoors, no one went much further than the "threshold at the door".[529] She testified that she saw Gérard Ntakirutimana every day during the two weeks.[530] However, she also conceded that he left Gishyita twice to get food. The Accused was absent also on a third occasion, for thirty minutes to an hour on an unspecified day "about a week after the war started", when "a soldier came and took him along in a vehicle".[531] Witness Nyirahakizimana did not specifically address Gérard Ntakirutimana's whereabouts on 16 April; therefore no reasonable doubt is raised by the testimony of this witness.

381. Elizaphan Ntakirutimana testified that he remained in Gishyita until the group's departure at the end of the month.[532] During the period 16 April to 27, 28, or 29 April 1994, "Gérard went to Ngoma in order to look for provisions there. He went ... with two pastors who went ... for the same purpose"; and "Gérard once again went to Ngoma". The witness said: "I do not remember when he left; however, I do remember that he came back with two young boys whom he had found near the bodies of their mothers. ... It was a few days after our arrival in Gishyita."[533] "The first time he brought provisions and brought the children, and then he left for the second time ... to bring provisions. And after that he did not leave again."[534] Both trips took place in the first week after their arrival in Gishyita.[535] Like his wife, Elizaphan Ntakirutimana did not specifically address

[523] T. 16 Apr. 2002 pp. 124-125.
[524] Id. p. 127.
[525] T. 16 Apr. 2002 p. 133; T. 17 Apr. 2002 pp. 73-74.
[526] T. 16 Apr. 2002 pp. 126-127.
[527] T. 17 Apr. 2002 p. 71.
[528] T. 10 Apr. 2002 pp. 54, 79.
[529] Id. p. 62.
[530] Id. p. 68.
[531] Id. pp. 71-73, 77-78.
[532] T. 7 May 2002 p. 134.
[533] Id. pp. 20-22.
[534] Id. pp. 23-24.
[535] Id. pp. 25-26.

Gérard Ntakirutimana's whereabouts on 16 April; therefore no reasonable doubt is raised by his testimony either.

382. Witness 25 testified that on 15 April he drove from his village to Kibuye town.[536] The next day, around noon, he left the town to return to his village.[537] Reaching Gishyita township between 1.00 and 1.30 p.m., he was stopped at a roadblock and then permitted to proceed, but the witness did not leave immediately. He saw the two Accused, pastors Gakwerere and Ushizimupumu, as well as other people he knew: "[I]t was on the Sabbath, which is a day for prayers. ... So, I was surprised to see more than two pastors at the commune office on the Sabbath."[538] The witness further specified that he had seen those persons from a distance of between 80 and 100 metres.[539] He claimed to have continued to observe them over a period of a few minutes, before going on his way.[540] He explained why he did not approach the group which included the two Accused: "I had consumed some alcohol. That is forbidden in our religion. Therefore, I did not want the pastors to know that I had been drinking."[541] Under the circumstances described, the Chamber finds Witness 25's alleged observation of Gérard Ntakirutimana at Gishyita between 1.00 and 1.30 p.m. on 16 April to be unreliable.

383. There is no other evidence to support Gérard Ntakirutimana's claim that he did not leave Gishyita for the remainder of 16 April. The Chamber does not find that the Accused's word on this matter makes it reasonably possibly true that he was not at the Complex at the time when Witnesses GG and HH placed him there.

3.11.5 Finding

384. On the basis of the evidence adduced by the Prosecution and having considered the submission of alibi for 16 April after 9.00 a.m. the Chamber finds that Gérard Ntakirutimana killed Charles Ukobizaba by shooting him from a short distance in the chest in the Mugonero Hospital courtyard around midday on 16 April 1994.[542] The fact that the Accused was observed in other locations by Witness YY (between 8.00 a.m. and 2.00 or 3.00 p.m.) and SS (some time before noon) does not exclude his presence during the shooting of Ukobizaba.

---

[536] T. 15 Feb. 2002 pp. 14-15.
[537] Id. pp. 16-17.
[538] Id. pp. 18-19.
[539] Id. pp. 20, 23. CCDFP is the acronym for "Centre communal de développement et de formation permanente" – see T. 12 Feb. 2002 p. 47 (Witness 7).
[540] T. 15 Feb. 2002 pp. 24-25.
[541] Defence exhibit 2D14.
[542] Note that Witness MM confirmed that Ukobizaba was one of the persons mentioned by Gérard Ntakirutimana as being dead, when the Accused was passing through the hospital basement in the evening of 16 April 1994, T. 20 September 2001 p. 67.

3.12 Shooting of Witness SS[543]

3.12.1 Prosecution

385. The Prosecution's case is that on the afternoon of 16 April Witness SS went from the ESI Chapel past the girls' dormitory and into a forest looking for safety. Upon entering the forest he came across Gérard Ntakirutimana in the company of other armed attackers, some of whom he was able to identify. The witness testified that he was shot at by the Accused as he ran away. He was not, in view of the circumstances, able to estimate the distance between himself and the Accused, explaining that he was not in a state of mind to take such measurements. The Prosecution submits that this explanation is reasonable and notes the witness's claim that the trees of the forest did not block his view and that the witness knew the Accused well.[544]

3.12.2 Defence

386. The Defence submits that Witness SS's testimony is not believable. His evidence was contradictory. He testified first that none of the thirty attackers he saw with Gérard Ntakirutimana had guns, then stated that they were armed with "guns, machetes and clubs" and after questions finally asserted that those chasing him were armed with traditional weapons.

387. The Defence also observes that, according to Witness SS's account, he was running for his life through a forest. In order to bolster his story, the witness testified that after he was shot at he saw the Accused's gun smoking; this is how he claimed to have been certain that it was the Accused who shot at him. However, in an interview with African Rights published ten months before his first interview with Prosecution investigators, Witness SS made no mention of this incident with Gérard Ntakirutimana or indeed of the Accused's presence at the Complex on 16 April. The Defence argues that Witness SS is not credible and maintains that Gérard Ntakirutimana was in Gishyita at the time of the attack.[545]

3.12.3 Discussion

388. Witness SS described how he fled the Complex before noon on 16 April. He wanted to go into the "church" where people had been killed but there were assailants there. The witness decided to turn and pass by the ESI's girl's dormitory into a forest. At first he was alone in the forest and heading towards Kukanyinya (ten minutes' walk from the Complex). Then he came across Gérard Ntakirutimana.[546] The witness was not able to estimate the distance between himself and the Accused either in metres or by the number of trees separating them:[547] "I cannot give you an estimate using this room, because there

[543] This event falls under paras. 4.8 and 4.9 of the Indictments. It is not explicitly mentioned in the Indictment, but is referred to in the Pre-trial Brief.
[544] Prosecution Closing Brief paras. 238-244; T. 21 August 2002 p. 76.
[545] Defence Closing Brief pp. 161-162.
[546] T. 30 October 2001 pp. 108-109, 112-116, 121; T. 31 October 2001 pp. 58-59, 63-64, 66-67.
[547] T. 31 October 2001 p. 68.

are no trees, there are no bushes in this room. It's impossible for me." He explained that "[a]t that point in time I wasn't in a state of mind of being able to judge distance because I was fleeing."[548]

389. Witness SS testified that the Accused was in front of a large group of attackers among whom he recognized one Ngabonzima and an artist named Jacques.[549] They were coming from the direction of Kukanyinya and heading for the Complex. Witness SS said that he saw Gérard Ntakirutimana's "face and I recognised him". He testified that the trees did not block his view "but I was going through the trees because I was fleeing, and I was trying to hide behind the trees while I was looking ... to ensure that there was no danger which could surprise me ... the trees were not very close together and one could run very easily through the forest". The Accused was holding a gun in his hand. It was "a long gun because I could see that gun from a distance", but he did not have time to see whether the other two men he recognized were armed.[550] He could not remember what the Accused was wearing.[551]

390. The witness faced the attackers only briefly: "I just took a look at them ... and ... I turned left and fled".[552] As he was running, Gérard Ntakirutimana allegedly shot at him but missed, forcing him to change direction; the witness turned left and reached a place known as Mubyisi before going to Nganzo and on to Gitwe Hill.[553] Questioned as to why he believed the Accused was the one who shot at him, Witness SS replied: "My testimony is that I saw his gun smoking after he shot. I never said that I saw the other assailants carrying ... guns."[554] In reference to his prior statement of 18 December 2000, according to which he saw that the attackers had, in plural, "guns, machetes and clubs", Witness SS explained: "I was saying that the attackers had guns because Dr. Gérard was carrying a gun".[555] His prior statement to investigators gave a distance of approximately 40 metres between himself and the Accused at the time of the shooting. The witness explained that the investigators conducting the interview were seated by a window: "I showed them outside the window ... the approximate distance. That was much easier because I was showing them somewhere outside. In our situation now we are in a room and it is more difficult."[556]

391. Witness SS said he had known Gérard Ntakirutimana for a long time. "I knew that he was a doctor at the hospital and that he was the son of Elizaphan Ntakirutimana. ... I would say that I had seen him many times because there is a place through which he passed when he was going to work and that's where I would see him." The witness would also see the Accused at the hospital when members of his family went there for treatment,

[548] T. 30 October 2001 p. 111-112, 116-117.
[549] Id. pp. 109-111; T. 31 October 2001 pp. 63-64, 69-70.
[550] T. 30 October 2001 pp. 111-117; T. 31 October 2001 pp. 59, 70-71.
[551] T. 30 October 2001 p. 146.
[552] T. 31 October 2001 p. 70.
[553] T. 30 October 2001 pp. 108-109, 112, 114-116, 120-121; T. 31 October 2001 pp. 57-58, 64, 70, 72.
[554] T. 31 October 2001 pp. 72-73.
[555] Id. p. 75.
[556] T. 30 October 2001 p. 118; T. 31 October 2001 p. 68.

although he himself was never treated by the Accused.[557] The Chamber accepts that Witness SS knew Gérard Ntakirutimana by sight.

392. The Chamber observes that Witness SS did not claim to have seen Gérard Ntakirutimana shoot at him. The witness's testimony is that after coming upon the Accused in a forest, allegedly leading a group of attackers, Witness SS "turned ... and fled" through the trees. As he was running, he was shot at. The witness's prior statement contains the words: "I saw he [the Accused] shot at me." But that was not the witness's testimony in court, where his account was that after a shot was fired he glimpsed back and saw the Accused's weapon "smoking". At that point the witness would have been more than 40 metres' distance from the Accused. The Chamber is not convinced beyond a reasonable doubt that the evidence shows that Gérard Ntakirutimana shot at Witness SS, even if the witness insisted that the Accused was the only person in the group armed with a gun. The witness did not claim he saw the Accused aiming at him with his gun. Nor did he describe what other persons in the group were doing at the time the shot was fired. The Chamber is not persuaded that the witness reliably observed "smoke" coming from the Accused's gun.

393. It follows that the Prosecution has not proved that Gérard Ntakirutimana shot at Witness SS. However, the Chamber is convinced, on the basis of the observation made by Witness SS, that the Accused participated in the attack, that he was armed and that he was in the company of other armed attackers. This finding falls under paragraph 4.8 of the Indictment, according to which the Accused is alleged to have participated in the attack at the Mugonero Complex on 16 April.

3.13 Shooting of Other Refugees (Kagemana and Macantaraga)

3.13.1 Prosecution

394. The Prosecution relied on Witness YY's testimony that on 16 April 1994 he saw Gérard Ntakirutimana shoot one Kagemana at the Complex. The witness testified that Kagemana did not die immediately, but was transferred to the hospital and killed there. The Prosecution further submits that Witness YY saw Gérard Ntakirutimana shoot and kill one Macantaraga. Both victims were Tutsi.[558]

395. In its oral submissions the Prosecution observed that when Witness YY was cross-examined on his omission to refer to this event in his prior statement, he explained that during his interview with investigators he was mostly asked questions about Mika Muhimana. Only at the trial was he asked for names of persons killed by Gérard Ntakirutimana. The Prosecution reiterated its position that a witness is not precluded from testifying to an event which he or she did not mention in a prior statement, nor should this be taken to mean that the witness is unreliable.[559]

[557] T. 30 October 2001 pp. 109-110; T. 31 October 2001 pp. 14-15.
[558] Prosecution Closing Brief para. 277.
[559] T. 21 August 2002 pp. 70-73.

3.13.2 Defence

396. The Defence submitted that the Prosecution did not inform Gérard Ntakirutimana before trial that Witness YY would testify that the Accused shot and killed Kagemana and Macantaraga at the Complex on 16 April. This lack of notice constitutes a violation of the rights of the Accused to be informed in detail about allegations against him.[560]

397. The Defence made no further submissions on this particular event. According to the alibi evidence led by the Defence, Gérard Ntakirutimana went to Gishyita township at around 8.00 a.m. on 16 April and did not return to Mugonero that day.

3.13.3 Discussion

398. Witness YY testified that, on 16 April, from the time when the attack started in the morning up until the time when he "ran to go and seek refuge at the hospital" he "continually" saw Gérard Ntakirutimana. The witness indicated that he observed the Accused from 9.00 a.m. to 2.00 or 3.00 p.m.[561] "I could see him because the place where we were located in an attempt to protect ourselves was not covered, there were no bushes. ... So I could see when we were throwing stones at them, and when we were trying to hide behind these trees, but I could see him, because since he was shooting, he wasn't hiding himself."[562] He explained that the Accused was wearing a white hat, a white T-shirt on which was written "ADRA", white shorts and white sandals. The witness stated that the weapon the Accused was carrying was of "medium" size, 85 centimetres or one metre long.[563]

399. Witness YY said that he recognized several people shot by Gérard Ntakirutimana: "There was, for instance, a man known as Kagemana. ... This person was shot at, but he did not die immediately and he was moved to the hospital where ... he was killed later. There's another person who was shot at ... known as Macantaraga ... and many others." Macantaraga died. All were Tutsi. "I was present and I saw him do it." While other attackers with guns were physically proximate to the Accused, they "were not in the same line of fire. They were shooting in other directions. This is how I came to see that it was Gérard who had shot at these people, because they were in the line of fire he was aiming at."[564]

400. Witness GG testified that he was in "room three" of the main hospital building, when he saw attackers with traditional weapons kill refugees.[565] The witness went from there to the surgery unit. Upon entering the delivery room, he saw dead bodies, including two on the delivery table: Kagemana, who had been shot in the stomach, and one

[560] Defence Closing Brief p. 123.
[561] T. 2 October 2001 pp. 23-24.
[562] T. 3 October 2001 p. 61.
[563] T. 2 October 2001 pp. 24-25; T. 3 October 2001 p. 62.
[564] T. 2 October 2001 pp. 25-26, 28-29.
[565] T. 20 September 2001 p. 146; T. 24 September 2001 p. 144.

Iminadad.[566] Neither Witness GG nor Witness YY provided the first name or any other identifying information about the person each called Kagemana.

401. The Chamber notes that the shooting of Kagemana and Macantaraga was not mentioned either in the Indictment, the Pre-trial Brief or the witness's statement. This raises the issue whether the Defence received sufficient notice of the allegation. The requirements concerning the specificity of Indictments have been discussed generally above (see 3.2).

402. The Chamber recalls that the Mugonero Indictment does not allege that Gérard Ntakirutimana killed named persons, but states (paragraphs 4.8 and 4.9) that he participated in an attack in which large numbers were killed or wounded. The Prosecution's Pre-trial Brief states that "Gérard Ntakirutimana personally killed several Tutsi individuals including the hospital accountant, Charles Ukobizaba, and one Kajongi". Annex B to that brief includes a summary of the expected testimony of Witness YY. It states that the "attackers" on 16 April "included Dr. Gérard Ntakirutimana, Pastor Elizaphan Ntakirutimana, Charles Sikubwabo, Mika Muhimana, gendarmes, Interahamwe and armed Hutu civilians". Annex B does not contain an allegation that Gérard Ntakirutimana shot Kagemana or Macantaraga. Witness YY's prior statement of October 1999 indicates that "many people were immediately killed" after the commencement of the attack, and that the witness saw Gérard Ntakirutimana "in all attacks when I was at Mugonero complex and Bisesero hill. I saw him running after refugees and shooting them." In its opening statement the Prosecution did not mention Kagemana or Macantaraga, but alleged that Gérard Ntakirutimana "orchestrated the assaults at the complex by leading groups of attackers and directing them to attack refugees in both the church and in the basement of the hospital; personally, [he] shot and murdered Tutsi refugees"; and that two witnesses "saw Gérard Ntakirutimana kill Charles Ukobizaba, the hospital accountant".[567]

403. Under these circumstances, the Chamber holds the view that the Defence did receive notice of allegations that Gérard Ntakirutimana killed persons, in addition to Ukobizaba, during the attack on 16 April. It is true, however, that the Accused was not informed about the identity of the two victims until Witness YY gave his testimony. The question is whether the Chamber is precluded from considering this allegation because the Accused was informed too late. The Chamber observes that there is no indication that the Prosecution was in possession of material about these named individuals. Consequently, it was in no position to provide such details. It also recalls that, according to *Kupreskic*, the sheer scale of the alleged crimes may make it impracticable to require a high degree of specificity in such matters as, for instance, the identity of the victims. Unlike *Kupreskic*, Witness YY's testimony concerning the shooting of Kagemana and Macantaraga was not a dramatic transformation of the Prosecution's case but was simply an instance of the witness recalling the identity of two specific victims during the attack. The Defence could have asked for more time for cross-examination or recalled witnesses,

[566] T. 19 September 2001 pp. 146, 147.
[567] T. 18 September 2001 pp. 21, 40.

and had sufficient time to investigate these precise allegations prior to the commencement of the Defence case.

404. Having found that it is not precluded from examining the incident of Kagemana and Macantaraga because of lack of notice to the Defence, the Chamber finds on the basis of Witness YY's testimony that Gérard Ntakirutimana participated in attacks on 16 April, as alleged in paragraph 4.8 of the Indictment, and that he shot at refugees. (The Chamber has rejected Gérard Ntakirutimana's alibi from 9.00 a.m. on 16 April, see 3.11.4).However, there is not sufficient evidence to conclude that the Accused killed the persons mentioned by the witness. It follows clearly from the testimony that Kagemana was killed later by unknown persons at the hospital. Moreover, Witness YY did not provide sufficient detail to establish that it was actually Gérard Ntakirutimana who killed Macantaraga.

3.14 Sighting of Gérard Ntakirutimana in the Basement of the Hospital

3.14.1 Prosecution

405. The Prosecution contends that Gérard Ntakirutimana was seen at the Complex late on 16 April taking stock of the persons killed at the hospital. For this it principally relies on Witnesses MM and DD. While the allegation is not referred to in the Indictment, some reference to it is included in the Pre-trial Brief. The Prosecution also relies on Witnesses HH and YY to support the hospital sightings.[568] In its oral submissions the Prosecution argues that the evidence of Witnesses MM, DD, YY, and HH indicates that at some stage after the attacks had stopped, in the early or late evening of 16 April, Gérard Ntakirutimana and others came walking among dead bodies, aiming their torches at the those lying dead and injured, trying to identify who were still alive. Witnesses MM and DD were located in the same area and gave essentially the same account. Witness YY, also positioned in the basement, overheard the event but from his hiding spot, and was not able to recognise those present. Witness HH observed the event but from a different perspective. According to the Prosecution, Gérard Ntakirutimana and his companions were taking stock. The purpose of the exercise was to leave no one to tell the tale, which meant that everyone had to be accounted for.[569]

3.14.2 Defence

406. The Defence case is that the two Accused left Mugonero on 16 April before the fighting began and did not return to Mugonero on that day.[570] According to the Defence, Witness MM's evidence is unreliable. In his three prior statements and in the "propaganda video" (exhibit 1D41A) he did not mention Gérard Ntakirutimana in relation to 16 April. In his April 1996 statement Witness MM stated that it was Obed Ruzindana who walked among the cadavers in the hospital room where the witness was located. Reconfirmation statements requested by the Defence were not produced. The

[568] Prosecution Closing Brief paras. 245-249, 227-236, 259, 272-275.
[569] T. 21 August 2002 pp. 77-79.
[570] Defence Closing Brief pp. 82-83.

Defence contends that the Prosecution had prior knowledge of this new allegation; otherwise the witness would not have been asked at trial if he had seen Gérard Ntakirutimana on 16 April at the Complex.[571]

407. The Defence argues that the evidence of Witnesses HH and DD should be wholly rejected because it lacks credibility. The Defence does not specifically address the witnesses' allegations pertaining to the hospital basement.[572] As for Witness YY, the Defence disputes that he was present at the Complex at all on 16 April, implying that all his allegations concerning that day were fabricated. In his testimony, Witness YY stated that he could not enter the church so he sought refuge in the hospital where he hid in a small room near the surgery unit. Yet in his October 1999 statement, the witness claimed to have survived by hiding under corpses in the church.[573]

3.14.3 Discussion

408. The Chamber will first summarize the evidence of the four witnesses relied on by the Prosecution.

Witness MM

409. Witness MM testified that he did not see Gérard Ntakirutimana during the attacks, and that he never said that the Accused had participated in the attack on the Complex.[574] However, the witness claimed to have seen Gérard Ntakirutimana on the night of 16 April in the company of Ruzindana, Mika, and Sikubwabo, walking in the corridor of the lower floor of the main hospital building among bodies.[575] The witness had been lying on his back under the delivery table in the maternity room since 4.00 or 5.00 p.m.[576] Bodies were lying on top of the delivery table.[577] According to the witness, there was a distance of less than five metres between him and the Accused.[578] The witness did not indicate the orientation of his body in relation to the doorway but said that he was "looking towards the corridor".[579] The lights in the corridor were on. He was not able to describe the Accused's clothing: "[I]t was in semi-darkness; I couldn't see very clearly what his clothes [were]".[580]

410. According to Witness MM, Gérard Ntakirutimana was "sort of drawing up a list saying 'such-and-such person is dead. Such-and-such person is dead. We've found his body, but we don't know where such-and-such person is.'"[581] They were referring to

[571] Id. pp. 50-52.
[572] Id. pp. 75-86, 133-138.
[573] Id. pp. 119-120; T. 22 August 2002 pp. 44-45.
[574] T. 20 September 2001 p. 34.
[575] T. 19 September 2001 pp. 95, 104, 107
[576] Id. pp. 148-149; 20 September 2001 p. 114.
[577] T. 19 September 2001 pp. 105, 113-114, 146, 148; T. 20 September 2001 p. 114.
[578] T. 19 September 2001 p. 111.
[579] T. 20 September 2001 p. 114.
[580] T. 19 September 2001 pp. 106, 113.
[581] Id. p. 104.

"important people" who worked at Mugonero Hospital.[582] The witness said he remained in the maternity room until sometime between 11.00 p.m. and midnight.[583]

411. Witness MM did not mention Gérard Ntakirutimana in connection with the attack of 16 April in his prior statements.[584] The statement of 11 April 1996 states that the witness did not see Sikubwabo after 10.00 a.m. on 16 April. The witness acknowledged that he had made this declaration.[585] The statement also indicates that the witness heard Mika and Ruzindana "take an inventory of the cadavers with great satisfaction, while citing the names of some of the dead", including the name of the treasurer Issacar Kajongi.[586] The witness attempted to explain the absence of reference to Gérard Ntakirutimana in relation to this event, saying that the investigators asked him about Ruzindana and Mika, not about the Accused.[587]

412. The witness also testified that, just before he entered the maternity room, he and Kajongi were together, at which moment Kajongi was shot in his foot: "He fell, and I immediately went into the room."[588] The witness's statement of 15 July 1996 makes reference to machete blows to Kajongi but not that he was shot. In the course of his testimony, Witness MM reiterated the claim made in the prior statement, that Kajongi was "finished" with machete blows.[589]

Witness DD

413. Witness DD testified that in the course of the attack on 16 April he went to the basement of the two-storey hospital building to hide among bodies.[590] He entered through the door leading directly to the basement: "I went straight ahead, in front of me. … Along both sides of the corridor were patients' rooms … The doors were open, and the rooms were full of people. … I was in the corridor, close to the entrance to the operating theatre. … I was not in a room." The witness continued: "I was next to the room which was attached to the surgical ward, but I could see into that room."[591] "I lay down facing the operation room. There were other rooms near me and I could see what was happening in that place."[592] The witness described how he ended up covered with bodies: "We went into this building as we fled the attackers … attackers pursued us into the building and were killing us, using bullets and clubs. And when they hit someone and the victim fell, you would fall down with the victim and that victim would fall upon you. At that time when it happened to me I held myself still so that I wouldn't be noticed."[593]

---

[582] Id. p. 107.
[583] Id. p. 156.
[584] Id. p. 100.
[585] T. 20 September 2001 p. 69.
[586] Id. pp. 67-68.
[587] Id. p. 112.
[588] T. 19 September 2001 p. 153; T. 20 September 2001 pp. 75-76.
[589] T. 20 September 2001 pp. 79-80.
[590] T. 23 October 2001 pp. 103, 105, 107.
[591] Id. pp. 107-108.
[592] Id. pp. 105-106.
[593] Id. pp. 110-111; T. 24 October 2001 pp. 57-61.

414. Witness DD testified that he was lying on his side.[594] Two bodies were on top of him and his eyes were "wide open".[595] It was from this position that the witness claimed to have seen, "a very long time" after he had entered the building, "towards evening", Gérard Ntakirutimana "with the others. They were moving about amongst the bodies and those who were dying."[596] "It was still a bit light. ... all the windows had been broken; but when these people came in they had torches, but it was still a little bit light."[597] There was no electricity (and by implication no artificial lighting), according to the witness.[598] The Accused was carrying a gun; "he was in the company of Mika and an old man known as Kanyabungo, who was with his sons. ... Together with him, there were a lot of other people. They had torches and they were moving about and they were saying that there were still some people who hadn't died, and I could hear and see all this."[599] Witness DD estimated that he saw the Accused from a distance of less than two metres: "The distance between us was very short. There were just heaps of bodies between us." The Accused "stayed there briefly, and then they took off".[600]

415. Later in his testimony Witness DD added: "He was wearing ordinary clothes. He did not get into any room. He stood there close to the door which leads to the surgery room. ... I did not see him using the gun. ... He stood there and then he left."[601] And: "he remained standing near a room there. He was waiting for people ... because when they came out, they all went away together. ... All I heard him say was, 'Come and get out; be fast'. And they left with him." (The witness said that the Accused's words were directed at Mika and Kanyabungo.[602]) Much later, at around 1.00 a.m. on 17 April, when it had become quiet, the witness left the Complex for Murambi.[603]

416. Witness DD repeatedly insisted during his testimony that he did not wish to be held to the content of prior statements he had made to Prosecution investigators; rather, his testimony was to be regarded as the authoritative account.[604] At the same time, the witness confirmed that the first of his two statements (dated 11 November 1999) was read back to him in Kinyarwanda and that he had signed each page.[605]

Other Witnesses

417. Witness YY testified that on 16 April he sought refuge in the hospital main building "in a small room below, near the theatre."[606] The attackers continued to kill and at one point, they reached the room where he and the other refugees were hiding. The attackers

[594] T. 23 October 2001 p. 111; T. 24 October 2001 p. 62.
[595] T. 25 October 2001 pp. 95-96.
[596] T. 23 October 2001 pp. 103-104, 109.
[597] Id. p. 104; T. 24 October 2001 pp. 55-56, 64-66.
[598] T. 25 October 2001 p. 90.
[599] T. 23 October 2001 pp. 106, 114.
[600] Id. pp. 119-120.
[601] T. 25 October 2001 p. 90.
[602] Id. pp. 96-97.
[603] T. 23 October 2001 p. 120.
[604] T. 24 October 2001 pp. 19-22, 38, 47, 51, 73-75, 78, 86, 88, 90; T. 25 October 2001 pp. 69-70.
[605] T. 24 October 2001 p. 22.
[606] T. 2 October 2001 p. 10; pp. 116-126.

tried to open the door, but the refugees prevented them from doing so. The attackers shot at the refugees through the lower part of the door and one of the refugees was shot in the ankle. However, the refugees remained in the room, and during the night the attackers left.[607] Witness YY remained in that room from about 2.00 or 3.00 p.m. until about 10.00 or 11.00 p.m. With him were another five refugees.[608]

418. Witness YY testified that the hospital room became darker as night fell, and when pressed to explain how nightfall could have been noticed in a basement room with no windows, the witness put it down to the disappearance of a ray of light that at first came in under the door. "Between 8:30 and 9:30 p.m., there were people who walked past the corridor where we were. I heard their voices and they were using something that gave light. They were looking at bodies of people and they were saying this is so-and-so's body, and they were wondering whether this was this person's body or that person's body."[609] The witness was able to leave the Complex between 10.00 and 11.00 p.m. on 16 April, by which time the attack had ended.[610]

419. Witness HH testified that he saw Gérard Ntakirutimana at the hospital at nightfall. He had come down from the ceiling where he had been hiding to see what was happening outside.[611] "There were some attackers who were going from room to room looking ... for survivors. This is how come I was able to see Dr. Gérard Ntakirutimana passing near the laundry place. He entered the main building of the hospital, and he was ... accompanied by some other people and they were searching in these rooms ... of the building."[612] Later in his testimony, he said: "I didn't say that I saw Dr. Gérard enter the main building. I said that I saw him on the way towards the main building. But I saw him, rather, go into ... another smaller building, not the main building." He did not see what happened inside the small building; he only heard shots. He said that when the Accused left the smaller building he took the path leading to the main building of the hospital. Witness HH did not see Gérard Ntakirutimana's ultimate destination, nor did he see him do "anything whatsoever". The witness indicated the timing of the incident to have been "still during the day".[613]

420. The Chamber notes that four witnesses gave evidence relating to the incident in the hospital basement. One of them, Witness YY, did not mention the Accused in connection with this event. The witness said that around 9.00 p.m. he heard voices from the corridor in the hospital's basement. The persons "were using something that gave light" and were talking about the bodies before them in the corridor. Therefore, the evidence of Witness YY at most confirms that a group of persons talking about dead bodies passed through the hospital's basement sometime after nightfall on 16 April.

---

[607] T. 2 October 2001 p. 12.
[608] Id. p. 73; T. 3 October 2001 pp. 3-4.
[609] T. 3 October 2001 pp. 5-9.
[610] T. 2 October 2001 p. 30.
[611] T. 26 September 2001 pp. 16-17, 23.
[612] Id. pp. 17-18.
[613] Id. pp. 23-24.

421. Witness HH's testimony is relevant insofar as he claimed to have seen Gérard Ntakirutimana enter the main hospital building at nightfall. However, there is very little information about this alleged observation, such as the distance of the witness from the person he saw, the direction the person was facing, etc. The Chamber will therefore exercise caution in relation to the evidence provided by this witness. It is noted that Witness HH made no reference to this event in his prior statement.

422. Two of the four witnesses testified that they observed Gérard Ntakirutimana in the hospital basement. The Chamber will first consider the evidence of Witness MM, who claimed he saw Gérard Ntakirutimana with Ruzindana, Mika, and Sikubwabo in the corridor outside the maternity room, at a distance of less than five metres; the Accused was talking about persons who were dead or missing. The witness was lying on his back on the floor of the maternity room pretending to be dead. It was night, and the lights in the corridor were on. Witness MM did not provide any details about the Accused's appearance.

423. The Chamber recalls that Witness MM gave three statements to investigators. The first two describe the events on 16 April. In the statement of 12 September 1995 there is no reference to any stock-taking of dead bodies in the hospital basement and no mention of Gérard Ntakirutimana at Mugonero, only of his father conveying attackers. Gérard Ntakirutimana is, however, mentioned in connection with Bisesero. The second interview, dated 11 April 1996, contains the following passage:

> I saw Obed Ruzindana among the attackers. It was he who directed the killings. He even encouraged the destruction of the hospital, because he claimed that he had the money to build another one. I saw him throw tear gas. Then, I also saw him move among the cadavers in the room where I was located. He had a pistol in his hand and was accompanied by the Conseiller of the Gishyita sector, Mikka, who carried a rifle. I heard them take an inventory of the cadavers with great satisfaction, while citing the names of some of the dead, such as the hospital accountant, Charles Ukobizaba; the treasurer, Issacar Kajongi; the director, Jean Nkuranga; pastor Seth Sebihe; pastor Ezéchiel Semugeshi. They continued to look for the bodies of persons of interest to them, including the secretary, Amos Karera; the nurse, Etienne Niyomugabo; and particularly the businessman, Antoine Nzamurambaho. ...[614]

424. The Chamber observes that, in the statement, Gérard Ntakirutimana is not included among the persons alleged to have made an inventory of dead bodies. His name is not mentioned in any incident that allegedly took place on 16 April, whereas his father is again said to have transported attackers on that date. The statement only makes reference to Gérard Ntakirutimana in connection with incidents at the Mugonero Complex on 9 and 10 April and in Bisesero from 17 April onwards. When Witness MM was asked why he had not mentioned Gérard Ntakirutimana in connection with the event in the hospital basement, he answered that the investigators asked him about Ruzindana and Mika, later about the CDR, then about Elizaphan Ntakirutimana. He also explained that the investigators did not give witnesses time to tell what they know, and that even his

[614] The spelling and typography in the citation as well as the sequence of first names and surnames have been adapted to the style of the present Judgement.

testimony did not contain everything he knew. Asked why Gérard Ntakirutimana was mentioned in the same statement three paragraphs later the witness stressed that he was telling the truth.

425. The Chamber accepts that statements to investigators do not always give the full account of the events and are influenced by factors such as the time available for the interview, the questions asked by investigators, and communication problems. However, in relation to Witness MM's statement of 11 April 1996, his answer was not entirely convincing. The statement contains an introductory paragraph, according to which the witness "will tell ... everything" he witnessed during the massacres in Ngoma, Gitwe, and Bisesero. Its structure is mainly chronological and does not focus on specific individuals. The CDR is mentioned in the beginning and the middle of the statement. Elizaphan Ntakirutimana is mentioned before Ruzindana and Mika. Also the references to Gérard Ntakirutimana appear in chronological order in connection with 9, 10, 17 and 18 April.

426. The text of the statement gives the impression that the witness was answering a question about persons, possibly leaders, who participated in the attacks on 16 April. It follows both from the witness's testimony and his statements that he did not see Gérard Ntakirutimana during the attacks on that date. This would explain why the witness did not include the Accused in the passage about the basement. However, the response of the witness was different. Under these circumstances, and in view of the fact that the passage about the hospital basement was recorded with considerable detail, the Chamber will place limited reliance on this part of the testimony even if it generally considers Witness MM a credible witness, see 3.8.3 (d).

427. The Chamber will now consider the testimony of Witness DD, who testified that he was lying on his side in the corridor of the basement, close to the entrance to the operating theatre. Two corpses were on top of him. His eyes were open. Though it was evening there was still natural light in the corridor. The lights were not on. From a distance of less than two metres, Witness DD claimed to have seen the Accused, wearing "ordinary clothes" and armed with a gun, in the company of Mika Muhimana, one Kanyabungo, and many others. The persons Witness DD claimed to have seen had torches. "They" were saying that some people had not yet died. Witness DD heard the Accused speak once only, when he told Muhimana and Kanyabungo: "Come and get out; be fast". The Chamber notes that Witness DD's statement of 11 April 1999 also refers to dead bodies and the witness's observation of Muhimana, Gérard Ntakirutimana and Kanyabungo and his two sons. There are some differences between the statement and the testimony but there is no need to pursue them here.

428. Witness DD claimed to have seen Gérard Ntakirutimana from a short distance (less than two metres). The Chamber notes, however, that, according to Witness DD's account, the persons passing through the corridor were using torches to see in the semi-darkness and they were actively looking for persons still alive. Even if Witness DD had had the courage to stare at such persons from a distance of less than two metres, the Chamber is not convinced beyond a reasonable doubt that the witness would have had a

clear view of the faces of persons shining torches toward the ground where he lay. There is evidence that Witness DD knew of Gérard Ntakirutimana ("I know that he worked at the hospital. It was said that he was a doctor. I'm not sure what his functions were"),[615] but not that he was familiar with him or even knew him personally. For these reasons the Chamber is not convinced beyond a reasonable doubt that Witness DD could recognize Gérard Ntakirutimana in semi-darkness, or from his voice when the Accused is said to have uttered, "Come and get out; be fast".

429. The Chamber notes that the testimonies of Witnesses MM and DD both refer to Gérard Ntakirutimana allegedly being seen in the hospital basement at nightfall on 16 April. The witnesses were in close proximity. However, there are also significant differences between the two accounts. According to Witness DD, Gérard Ntakirutimana did not engage in a discussion about persons killed (as alleged by Witness MM), but uttered a brief instruction. More importantly, Witness DD did not mention seeing Ruzindana and Sikubwabo; and he said that the lights in the corridor were off, contradicting Witness MM who, moreover, did not mention any torches. Furthermore, as already indicated, the Chamber cannot overlook the extreme conditions under which both witnesses made their observations, under dead bodies, at nightfall. Under these circumstances the Chamber must exercise caution in its assessment of the evidence.

430. In previous sections the Chamber has found that Gérard Ntakirutimana procured arms and ammunition from the gendarmerie camp in Kibuye (3.7), participated in armed attacks at the Complex on 16 April and killed named individuals during those attacks (3.11-3.13). However, for the reasons explained above, the Chamber has not found sufficient evidence to conclude beyond a reasonable doubt that Gérard Ntakirutimana took stock of dead bodies in the hospital basement at nightfall on 16 April.

3.15 Evidence of Superior Responsibility

> 4.12 Before all of the above mentioned attacks, Gérard Ntakirutimana knew or had reason to know that his subordinates, including various employees of the Mugonero Hospital under his authority and control, were about to participate in attacks on the men, women, and children, and did not take necessary and reasonable measures to prevent such attacks. In addition, after the attacks, Gérard Ntakirutimana did not punish the perpetrators.[616]

3.15.1 Prosecution

431. It is the Prosecution's case that following the departure of Dr Giordano and his wife from Mugonero Hospital on or about 10 April, Gérard Ntakirutimana took charge of the operations and administration of the hospital and acted as a de facto director until his departure from Rwanda in July 1994. In view of the Accused's testimony that Dr Giordano did not inform him who would act as director, the Prosecution submits that it is immaterial whether a formal offer of appointment was made to the Accused because his conduct during the period manifested all the powers and functions of director. The

[615] T. 23 October 2001 p. 82.
[616] The Bisesero Indictment does not contain any paragraph relating to command responsibility.

Prosecution submits that Gérard Ntakirutimana attended a meeting of 3 May in Kibuye town in his capacity as the de facto director of Mugonero Hospital.[617]

432. The Prosecution argues, in particular, that Gérard Ntakirutimana had effective control over Mathias Ngirinshuti, the director of personnel at the hospital. This can be surmised from evidence concerning the attack on 16 April. The Prosecution relies on Witnesses GG, YY, HH, and DD. It follows from the Prosecution's Closing Brief that the allegation of Gérard Ntakirutimana's superior responsibility for acts of subordinates primarily relates to crimes said to have been committed by Ngirinshuti at the Complex on 16 April. This follows also from the Prosecution's final oral submissions.[618]

3.15.2 Defence

433. The Defence denies the Prosecution's claim that Gérard Ntakirutimana "had both *de facto* and *de jure* authority over Mathias Ngirinshuti, Kagaba and Elizaphan Gakwere during the period 9th to 30th April 1994" and that it was within the Accused's power to prevent these subordinates from attacking Tutsi refugees gathered within the Complex on 16 April. The Accused was only a doctor at the hospital. The Defence submits that Enos Kagaba was a director of studies under Jean Nkuranga at the ESI Nursing School, Manasse Gakwerere was a pastor and one of the three directors under Elizaphan Ntakirutimana at the SDA, and Mathias Ngirinshuti was the director of personnel at the hospital and independent of, if not higher in administrative authority, than Gérard Ntakirutimana. The Defence contends that there is no evidence to suggest that the Accused had any authority over the three named persons.[619]

3.15.3 Discussion

434. It is established case law that civilian leaders may incur responsibility in relation to acts committed by their subordinates or other persons under their "effective control".[620] In the present case, this implies that the Prosecution must prove that Gérard Ntakirutimana had "effective control" over Mathias Ngirinshuti (and any other persons) before it can argue that the Accused should be held responsible for Ngirinshuti's actions (or the actions of any other persons). The Prosecution acknowledged this during its final oral submissions.[621]

435. Evidence suggests that Gérard Ntakirutimana took charge of the hospital after Giordano's departure. Witness XX testified that the Accused "immediately" became the "necessary" replacement and "took over the responsibilities as medical director". She identified the Accused as being the person "in charge" of the hospital during the period 7 to 16 April.[622] Witness FF stated that prior to the events of April, Dr Giordano acted as the surgeon at the hospital, while Gérard Ntakirutimana was a consulting physician only.

---

[617] Prosecution Closing Brief paras. 763-769.
[618] Id. paras. 304-306, 1073-1078, 1089-1093; T. 22 August 2002 pp. 139-141.
[619] Defence Closing Brief pp. 24, 192-193; T. 22 August 2002 pp. 79-80.
[620] *Delalic* (AC) paras. 196-198. *Bagilishema* (AC) paras. 49-62.
[621] T. 22 August 2002 p. 140.
[622] T. 19 October 2001 pp. 9-10.

After the former's departure, "it was Dr. Gérard who was responsible for all these tasks".[623] The evidence of Witness MM was that it was the Accused and Ngirinshuti "who seem[ed] to be in charge of the hospital. And on several occasions, they asked us to leave the hospital because they said it was a place where they were supposed to be treating patients."[624] The Accused testified that there were no hospital staff under his direction: "When I did the hospital rounds I would have the nurses who would mention examinations to be given or the medication to be given, so I didn't supervise anyone. Even with the nurses, they were under Ngirinshuti, Mathias, who was the chief of personnel."[625]

436. The Chamber observes that even if the evidence established that in the days leading up to 16 April Gérard Ntakirutimana assumed the directorship of the hospital (whether or not by way of formal appointment), this would not, alone, demonstrate that he had effective control over Ngirinshuti or other hospital staff. Conversely, the fact that Gérard Ntakirutimana was not in any kind of administrative relationship with Enos Kagaba (who was an employee of the nursing school) does not in itself preclude that he had effective control over Kagaba. Regard must be had to the evidence adduced.

437. In the present case there is very little evidence about Gérard Ntakirutimana's relationship with Mathias Ngirinshuti, and certainly not enough to establish beyond a reasonable doubt that the latter was under the effective control of the former. It is not established whether Ngirinshuti was acting on his own, or under another person's control, or as another person's accomplice, or in some other capacity. Witness HH testified that among the attackers at the Complex on 16 April he saw Gérard Ntakirutimana "accompanied by" Ngirinshuti.[626] He also identified Enos Kagaba, a teacher at the nursing school, as one of the attackers.[627] Witness YY recognised staff of the Complex among the attackers: Kagaba, Ngirinshuti (whom he mistakenly identified as a "doctor" at the hospital), Pastor Gakwerere, and Pastor Ushizimpumu.[628] Witness DD testified that among the attackers on 16 April he saw Gérard Ntakirutimana and Kagaba, both armed, and Ngirinshuti, who was unarmed.[629] The witness also alleged that Kagaba and Ngirinshuti were together at the ESI Chapel, when Ngirinshuti was asking a Hutu person to leave the chapel.[630] Witness GG claimed he saw Gérard Ntakirutimana in the company of Ngirinshuti and Kagaba: "They were placing the attackers in such a way that they surrounded the hospital."[631] None of these witnesses provided any information that Gérard Ntakirutimana had control, let alone effective control, over the other named persons.

---

[623] T. 28 September 2001 p. 22.
[624] T. 19 September 2001 p. 50; T. 20 September 2001 p. 56.
[625] T. 8 May 2002 p. 198.
[626] T. 25 September 2001 p. 108.
[627] T. 26 September 2001 p. 14; T. 27 September 2001 p. 6.
[628] T. 2 October 2001 pp. 29-30.
[629] T. 23 October 2001 pp. 80-83; T. 24 October 2001 pp. 42-43.
[630] T. 23 October 2001 pp. 93-95; T. 24 October 2001 p. 37.
[631] Id. p. 125.

438. In view of the fact that the Prosecution has failed to prove that Gérard Ntakirutimana had effective control over any person during the period up to and including 16 April 1994 and even thereafter, the Chamber does not find it necessary to consider evidence in relation to the other elements of superior responsibility.

4 The Bisesero Indictment

4.1 Introduction

439. Above (II.3) the Chamber considered events relating to the Mugonero Complex (paragraphs 4.4 to 4.9 and 4.12 of the Mugonero Indictment) as well as certain general issues common to the Mugonero and the Bisesero Indictments (paragraphs 4.1 to 4.3 of both Indictments). Below (II.4) follows the Chamber's discussion of allegations against the Accused relating to the Bisesero area of Kibuye prefecture (hereinafter "Bisesero") throughout the months of April to June 1994. These events are covered by paragraph 4.10 to 4.16 of the Mugonero Indictment and paragraph 4.10 of the Bisesero Indictment. As a general rule, the events are discussed in chronological order. In some instances, incidents alleged to have occurred at the same location or in close proximity were considered together, for practical purposes.

440. The Bisesero area consists of parts of Gishyita and Gisovu communes. It follows from the evidence in the case that the Bisesero area does not have distinct borders, or that persons residing within the area do not define it uniformly.[632] The term "Bisesero" is used also to refer to Bisesero secteur or Bisesero cellule, both of which are in Gisovu commune. The main feature of the Bisesero area is its hills. There are very few level areas. The average altitude of the whole area is between 1,500 and 2,500 metres above sea level. It is a relatively wet area with several streams in the hills and rivers in the valleys. The vegetation consists of small-scale farming crops, forests, and areas of scrub. A map of the Bisesero area with sites of relevance to the present case is attached as Annex III).[633]

441. The Chamber will revert to these locations in connection with the specific events considered below. In the present context it notes that the remains of the Murambi Church (marked as number 1 on the Bisesero area map) are situated about four kilometres, or 40 minutes by car, from the Mugonero Complex, along a very rough road. The distance is only two kilometres in a straight line. From Murambi Hill, from a position of 100 metres to one side of the church, the Complex can be seen clearly.[634] Witness Baghel specified that, in 2000, the church had four outer walls, no roof, no door frame, and that weeds and scrub were growing in what once was the inside of the church. The witness estimated that the structure was five metres wide and ten metres long.[635]

---

[632] See, in particular, T. 18 September 2001 pp. 234, 251.
[633] See map was provided as Prosecution Exhibit P7, see Part I, Map of the Bisesero Area (1988). Most of the information in this para.comes from Prosecution Witness Tony Lucassen, ICTR investigator, see T. 18 September 2001 pp. 234-248, 255, 257; T. 19 September 2001 pp. 23-24, 29-30.
[634] T. 18 September 2001 pp. 90-92, 138.
[635] Id. pp. 161, 163.

442. There are another three kilometres by road from Murambi to neighbouring Gitwe Hill (number 2 on the map), about 600 metres in a straight line.[636] According to some local residents, interviewed by Witness Lucassen, Gitwe Hill lies outside the Bisesero area.[637] From Gitwe Hill, Ngoma secteur and the buildings of Mugonero Complex are visible, although not distinctly.[638]

443. The sites in this case which are most distant from the Mugonero Complex include Mubuga Primary School (number 23 on the map), which lies 10 or 12 kilometres by road from the Complex, and five kilometres in a straight line.[639] It is situated about 50 metres back from the road.[640] Two roads branching off the main Gishyita-Gisovu road lead to the school, about six kilometres down each road. Mutiti Adventist Church (number 25 on the map) is surrounded by a forest at a distance of about 50 metres.[641] Finally, Uwingabo and Muyira Hills (numbers 14 and 18, respectively) are about six kilometres in a straight line from Mugonero Complex.[642]

4.2 Overview of Alleged Events in the Bisesero Area From 16 April Through June 1994

444. The Bisesero Indictment reads as follows:

> 4.10 Many of those who survived the massacres at Mugonero Complex fled to the surrounding areas, one of which was the area known as Bisesero.
>
> 4.11 The area known as Bisesero spans the two communes of Gishyita and Gisovu in Kibuye Prefecture. From April through June 1994, hundreds of men, women and children sought refuge in various locations in Bisesero. These men, women and children were predominantly Tutsis and were seeking refuge from attacks on Tutsis which had occurred throughout the Prefecture of Kibuye. The majority of these men, women and children were unarmed.
>
> 4.12 From April through June 1994, convoys of a large number of individuals armed with various weapons went to the area of Bisesero. Individuals in the convoy included, among others, Élizaphan Ntakirutimana and Gérard Ntakirutimana, members of the National Gendarmerie, communal police, militia and civilians.
>
> 4.13 The individuals in the convoys, including Élizaphan Ntakirutimana and Gérard Ntakirutimana, participated in the attacks on the men, women and children in the area of Bisesero which continued almost on a daily basis for several months.
>
> 4.14 The attacks resulted in hundreds of deaths and a large number of wounded among the men, women and children who sought a refuge in Bisesero.

---

[636] Id. pp. 94, 256.
[637] Id. pp. 236-237.
[638] T. 18 September 2001 pp. 150, 237; T. 19 September pp. 17, 23.
[639] Id. p. 5.
[640] T. 18 September 2001 p. 260; T. 19 September 2001 pp. 25-26.
[641] T. 18 September 2001 p. 265.
[642] T. 19 September 2001 p. 11.

> 4.15 During the months of these attacks, individuals, including Élizaphan Ntakirutimana and Gérard Ntakirutimana, searched for and attacked Tutsi survivors and others, killing or causing serious bodily and mental harm to them.

445. The Mugonero Indictment contains one paragraph of relevance in the present context:

> 4.10 During the months that followed the attack on the Complex, Elizaphan Ntakirutimana, Gérard Ntakirutimana & Charles Sikubwabo, searched for and attacked Tutsi survivors and others, killing and causing serious bodily or mental harm to them.

The Chamber observes that paragraph 4.10 of the Mugonero Indictment is covered by the more specific paragraphs 4.10 to 4.15 in the Bisesero Indictment and will focus on the latter.

446. The Chamber finds that the evidence in the present case supports the general description in the Indictment that many persons sought refuge in the Bisesero area. Most witnesses, both from the Mugonero Complex and elsewhere, testified that they arrived in Bisesero in the days following 16 April 1994.[643] It is difficult to estimate the total number of refugees. However, on the basis of the evidence, the Chamber finds that a large number of men, women and children who were predominantly Tutsi sought refuge in the area of Bisesero from April through June 1994. Some witnesses estimated the number of refugees to be in the thousands.[644] Moreover, Witnesses KK, YY, GG, HH, FF referred to dozens, hundreds, "many" or "very many" refugees at specific locations within the area of Bisesero at different points in time.[645]

447. The evidence in the present case also supports the findings that there was widespread violence in the area of Bisesero between April and June 1994, that the attacks against Tutsi occurred almost on a daily basis. Witnesses XX, II, and HH testified about daily attacks, and Witness HH stated that very few attacks did not result in loss of life.[646] Several of the witnesses testified that the number of victims of the attacks was high.[647] Based on the totality of the evidence, the Chamber finds that the majority of the victims

---

[643] T. 19 September 2001 p. 120; T. 20 September 2001 pp. 149-150; T. 26 September 2001 p. 29; T. 2 October 2001 p. 32; T. 4 October 2001 pp. 4-5; T. 22 October 2001 pp. 37-38; T. 23 October 2001 p. 120; T. 30 October 2001 p. 122.

[644] Witnesses XX and Witnesses FF even mentioned the number of 30,000 and 50,000, respectively, see T. 22 October 2001 p. 12 and T. 28 September 2001 p. 71.

[645] T. 4 October 2001 pp. 16, 18; T. 3 October 2001 p. 16; T. 25 September 2001 pp. 6, 13; T. 26 September 2001 p. 30; T. 28 September 2001 pp. 66, 69, 71.

[646] T. 22 October 2001 pp. 38, 41-42, 108; T. 26 September 2001 pp. 49-50.

[647] Bisesero survivors testified upon attacks which claimed "many" lives of refugees at Gitwe Primary School in early May 1994 (DD, T. 23 October 2001 p. 138), at Mubuga Primary School at the end of June 1994 (SS, T. 30 October 2001 pp. 140-142); at Rwiramba, nearby Muyira Hill, in mid-May 1994 (GG, T. 24 September 2001 p. 30); at Muyira Hill on an unspecified day (FF, T. 28 September 2001 p. 73), during night attacks against houses in Bisesero where Tutsi refugees were seeking shelter (YY, T. 2 October 2001 pp. 102, 104). Asked whether he saw the bodies of the refugees who died during an attack at Muyira Hill, Witness YY specified that they looked like "grass on the hills" (T. 2 October 2001 p. 53, read in the light of T. in French at p. 63: "lorsqu'on regardait les corps, on semblait regarder les herbes sur la colline, dans la brousse").

were Tutsi. The attackers consisted of Interahamwe, gendarmes, soldiers, and civilians. The Interahamwe, gendarmes, and soldiers were usually armed with guns and wore uniforms. The civilians were usually armed with clubs, machetes, bows, arrows, spears, hoes, knives, sharpened bamboo sticks, and other traditional weapons.[648] Some of the attackers arrived in vehicles; others came on foot.[649]

448. The Chamber observes that its findings are in conformity with the conclusions in previous case law of this Tribunal. The Trial Chamber in *Musema* found that regular attacks occurred in the Bisesero region from 9 April 1994 until about 30 June 1994, and that thousands of Tutsi were killed, injured and maimed there. In *Kayishema and Ruzindana*, the Trial Chamber found that thousands were killed in the Bisesero area between April and June 1994.[650]

449. Before considering the specific Bisesero-related allegations against both Accused the Chamber will address their alibi for the relevant period.[651]

4.3 The Accused's Alibi for the Period 17 April to July 1994

4.3.1 Defence

450. The Defence submits that the allegations made by Prosecution witnesses were generally vague as to time and place. The Defence further submits that while it is not possible to provide alibi evidence for the Accused to account for every hour of every day between April and July 1994, the cumulative effect of all Defence testimony concerning the whereabouts of Elizaphan and Gérard Ntakirutimana is to exclude their presence at Murambi or Bisesero. The Defence argues that it would have been impossible for either Accused to slip away unnoticed at any time between April and July 1994, travel to Bisesero and return undetected. The number of credible witnesses who saw the two Accused regularly at Mugonero during that period of time and their explicit testimonies concerning the few occasions that either Accused left Mugonero do not afford time or opportunity for the Accused to have engaged in the activities alleged.[652]

451. The Defence case is that the two Accused stayed in Gishyita from 17 April until their return to Mugonero at the end of April. Elizaphan Ntakirutimana was unwell during this period, and depressed by the events at Mugonero, over which he had no control. He never left Gishyita at all. Gérard Ntakirutimana also remained in Gishyita from 17 April, until the end of April, except on two occasions when he went on short trips to Mugonero and on one other occasion when he was approached by a soldier who commandeered his vehicle and made the Accused go with him to retrieve a body, eventually forcing the Accused to drive him and other soldiers all the way to Kibuye town.[653] Defence witnesses

[648] T. 26 September 2001 pp. 34, 42, 58; T. 28 September 2001 pp. 66-67; T. 4 October 2001 pp. 8-10; T. 22 October 2001 pp. 18-20; T. 30 October 2001 p. 132.
[649] T. 26 September 2001 p. 31; T. 4 October 2001 pp. 8-10; T. 22 October 2001 p. 14.
[650] *Kayishema and Ruzindana* (TC) para. 471; *Musema* (TC) para. 363.
[651] See, on the context and general allegations, Prosecution Closing Brief at pp. 86-90.
[652] Defence Closing Brief pp. 182-183.
[653] Id. pp. 226-228.

who lived in Gishyita during the period in question either confirmed these particular absences or stated that in their experience neither Accused left Gishyita at all (demonstrating how unusual those few absences were). Defence witnesses who made unannounced visits to Gishyita during this time testified, without exception, that both Accused were present.[654]

452. The Defence maintains that at no time while in Gishyita did any public authority or political or military figure, apart from soldiers who commandeered the hospital vehicle, visit either accused. In particular, Obed Ruzindana was not a visitor in Gishyita. The Defence denies that Royisi Nyirahakizimana testified to having regularly seen Ruzindana in Gishyita. Rather, according to the Defence, she never saw him in Gishyita but saw him passing by her house on his way to "the centre", meaning the Kabahinyuza centre. She did not "change her story", as alleged by the Prosecution.[655]

453. In this connection, the Defence submits that the purported prior statement made by Rachelle Germaine (see below) should be afforded no weight because the Prosecution did not introduce this witness in its case-in-chief, when her statement could have been tested under cross-examination. As it stands, the alleged statement by Rachelle Germaine is unverified and is unreliable hearsay. According to the Defence, the Trial Chamber has received no evidence on which to find that this statement was, in fact, made by the purported author or that it was impossible for Rachelle Germaine to be present to testify before the Chamber. The conclusion to be drawn, asserts the Defence, is that the witness, if called to testify, would have contradicted the purported prior statement. Moreover, the Prosecution had possession of the alleged statement before the commencement of trial. To enter the statement into evidence, without calling the purported author to testify before the Chamber, the Prosecution could have made an application under Rule 89, and if the application were granted, the Defence could have had the opportunity, before the commencement of its case, to prepare a full answer and defence. Instead, the Prosecution effectively re-opened its case, during the last stages of the Defence case. That the document in question was disclosed prior to trial is immaterial. At the closure of the Prosecution's case, the Defence should be assured that the Prosecution's case is closed, and that no new Prosecution witnesses will be called or evidence introduced.[656]

454. The Defence case is that Elizaphan Ntakirutimana spent the first period after his return to Mugonero putting the field office back in order. From 4 May onwards he went back to his former daily routine: going to his office five or six days a week between 6.00 and 7.00 a.m., returning home for breakfast, then back to his office, then back home for lunch around midday, returning to his office around 2.00 p.m., where he remained until 4.30 or 5.00 p.m. He spent evenings with his wife and often with his sons Jérôme and Gérard. Due to a chronic ailment he was obliged to take medicine at regular intervals. He left Mugonero on one or two trips to Kibuye town, and on other occasions to visit Adventist churches in Rubengera, Gihombo in Rwamatamu, Mpembe, Mubuga, and Cyangugu during May and June. Elizaphan Ntakirutimana would usually lead Sabbath

[654] Id. pp. 228-230.
[655] Id. pp. 230-231.
[656] Id. pp. 233-234.

services at the *église mère* in Ngoma, but on some Sabbaths he would preach at other churches. According to the Defence, these were the only occasions when he left Mugonero. He was never in Bisesero. The cumulative evidence provided by Elizaphan Ntakirutimana and his family members, including his wife, his sons, his daughter-in-law, his household-help Witness 16, his co-worker Witness 5, and other members of the Adventist community who were in Mugonero from April through July 1994, clearly demonstrates, according to the Defence, that Elizaphan Ntakirutimana never went to Bisesero, or near the Murambi Church, Gitwe, or Gitwe Hill during the period from May to July 1994, and that he did not commit any of the atrocities ascribed to him.[657]

455. In relation to Gérard Ntakirutimana, the Defence submits that upon returning to Mugonero and finding the hospital looted and damaged the Accused organized a clean-up which lasted approximately two weeks. Following that, around the middle of May, the hospital partially resumed operations. From then on, Gérard Ntakirutimana worked at the hospital, Monday to Saturday, maintaining a disciplined schedule which started at 7.00 a.m. when he left home for work. He would return home for lunch around noon and again go back to work at 2.00 p.m. In the evenings, after work, he would read at home and spend time with his wife and children. He was the only doctor at the hospital and was always on call. When not at work he remained home so that he could be found easily. On Sabbaths he regularly attended church at Mugonero. Some Defence witnesses testified that on occasion Gérard Ntakirutimana left Mugonero to purchase medicine, go to the market, fetch his brother, or repair the water system. Except for these very brief departures, well defined and well known to the Accused's family and co-workers, the Accused was always at Mugonero. For instance, Witness 11 found him at Mugonero Hospital when he travelled there on an unannounced visit from Kibuye town in May.[658]

456. In short, according to the Defence, Gérard Ntakirutimana could not possibly have been in the places alleged by Prosecution witnesses, committing the crimes alleged. Not only are those allegations completely inconsistent with the life and work of the doctor, they are also wholly impossible on the evidence. He had neither motive nor opportunity. When the alibi evidence from those who lived with, worked with, were associated with, or otherwise came into contact with Gérard Ntakirutimana is read in its entirety, it follows that the Accused was, during the period from May to July, working at the clinic, or praying in church, or remaining at home, for such a proportion of the time in question that it is not credible to contemplate that he was committing the acts alleged.[659]

4.3.2 Prosecution

457. The Prosecution notes the admissions by Defence witnesses that Gérard Ntakirutimana was absent from Gishyita at various times in the two-week period after 16 April.[660] However, the Prosecution submits that Gérard Ntakirutimana was absent more often than he admitted. In support of this argument, it relies on a statement purportedly

[657] Id. pp. 234-241.
[658] Id. pp. 241-253.
[659] Id. p. 254.
[660] See generally Prosecution's Closing Brief paras. 563-589.

made by one Rachelle Germaine, and allegedly taken by Prosecution investigators on 28 November 1995. The Prosecution submits that Germaine, who travelled to Gishyita with the two Accused on 16 April, declared in that document: "I used to see Mr. Ruzindana come pick him up very often in Gishyita to go to a destination I did not know."[661]

458. In relation to Royisi Nyirahakizimana, wife of Elizaphan Ntakirutimana, the Prosecution argues that she appeared to be "fumbling" when she testified that no one left the CCDFP building in Gishyita for the entire two weeks she was there; yet later she changed her story and stated that Gérard Ntakirutimana and other people had, in fact, left on occasion. Again she testified that she saw Obed Ruzindana quite often at the CCDFP. Under cross-examination, she changed her story and said that she used to see him at Mugonero and not at Gishyita. In any case she does not provide a "watertight" alibi for her son for the two-week period.[662]

459. The Prosecution's general submission in relation to the alibi for the period 17 April to the end of that month is that Gérard Ntakirutimana admittedly left Gishyita on occasion and that no Defence witness observed the two Accused for the duration of their stay in Gishyita. Therefore, their alibi evidence for the Gishyita period is "not tight". The fact that some Defence witnesses maintained that both Accused always remained in Gishyita, whereas others testified that Gérard Ntakirutimana did leave, shows that the testimony of the former witnesses is unreliable.[663]

460. The Prosecution submits that Elizaphan Ntakirutimana "could not have had much to do to keep him in Mugonero" after he returned there at the end of April. The Accused exaggerated the damage done to the field office on and after 16 April. The Prosecution thus implies that the Accused had plenty of time available to participate in the Bisesero attacks. Elizaphan Ntakirutimana also admitted that he travelled out of Mugonero on various occasions during the period from May to July 1994. So did Gérard Ntakirutimana.[664]

461. The Prosecution refers to evidence of other Defence witnesses that the two Accused periodically left Mugonero from May to July.[665] The Prosecution also notes that the various alibi witnesses were not in the presence of the two Accused except for limited periods of time; outside those times the witnesses could have only *assumed* that they knew the whereabouts of the two Accused.[666] Most of the witnesses did not travel with the Accused on their frequent excursions.

462. Moreover, according to the Prosecution, many of the Defence witnesses cannot be considered reliable.[667] They were relations, close friends, or former employees of the Accused who were likely to benefit from shielding the Accused from criminal

[661] Id. paras. 551 and 552
[662] Id. paras. 560-562.
[663] Id. paras. 563-573, 580, 590.
[664] Id. paras. 541, 594-598, 604, 608, 612, 614.
[665] Id. paras. 618, 620, 626, 629, 631, 650, 651, 691, 696-699, 714-723, 727, 732.
[666] Id. paras. 619, 621, 632, 636, 639, 667, 670, 730, 735, 749.
[667] Id. paras. 633, 648, 660, 737-739, 745,754

responsibility. They thus may have had a motive to give false testimony.[668] It is further submitted that the relevant locations in Bisesero were approximately 20 to 25 kilometres from Mugonero and that day trips would have more than sufficed for the Accused to reach massacre sites and return to Mugonero.[669] The Prosecution concludes that the Accused's alibi for the period from May to July is "flawed" and "porous" and that it does not cast any doubt on the evidence of Prosecution witnesses.[670]

4.3.3 Discussion

463. The Chamber reiterates that an accused who raises an alibi is merely denying that he or she was in a position to commit the crime with which he or she is charged. By raising the issue, an accused simply requires the Prosecution to eliminate the reasonable possibility that the alibi is true.[671]

464. Prosecution witnesses alleged that they saw:

(i) Gérard Ntakirutimana, at Murambi on 17 April (GG), at Murambi Hill/Ruronzi around 19 April (FF), at Gitwe Hill in April or May (FF), at Kidashya Hill between April and June (FF), at Gitwe Hill "before" 15 May (DD), at Rwiramba near Muyira Hill in mid-May (GG), at Muyira Hill "before" 15 June (HH), at Mubuga School towards the end of June (SS), and at Mutiti Hill in June (FF);

(ii) Elizaphan Ntakirutimana, at Nyarutovu Cellule in mid-May (CC), at Nyarutovu around the third week of May (CC), at Dege/Muyira Hill on 20 May (II), at Murambi Hill between May and June (SS), at Kucyapa between May and June (SS), at Kucyapa in June (HH), and his car (though not the Accused himself) at Murambi Church "a few days after" 16 April;

(iii) Both Accused together, at Murambi Hill "a number of days after" 17 April (KK), at Murambi Church towards the end of April (GG), at Murambi Church at the end of April or beginning of May (YY), at Gitwe Hill at the end of April or beginning of May (HH), at Murambi Church in early May (DD), at Muyira Hill on 13 May (YY), at an unspecified location in Bisesero on 14 May (YY), on a Hill opposite Gitwe Hill in mid-May (XX), at Mubuga School in mid-May (GG), at Kabatwa Hill towards the end of May (KK), and at Mubuga School in June (HH).

465. Apart from Murambi, the other named locations were in Bisesero. The Chamber notes that in most cases the witnesses were not able to date their observations precisely. Witnesses GG, DD, SS, and YY appeared to be referring to one and the same incident when they testified about the removal of the roof of Murambi Church (see 4.23). It is possible that other observations by two or more witnesses concern one and the same incident, but the evidence is not sufficient for a finding on this point. If the individual observations are considered as referring to separate incidents, Gérard Ntakirutimana was allegedly seen seven times in the Bisesero area in the April-June period, Elizaphan

[668] Id. para. 758.
[669] Id. para. 759.
[670] Id. para. 622; T. 21 August 2002 pp. 93-97 and 137-146.
[671] See, for example, *Kunarac* (TC) paras. 463, 625; *Kayishema and Ruzindana* (AC) para. 106; *Musema* (TC) para. 200; *Vasiljevic* (TC) para. 15.

Ntakirutimana was seen in Bisesero five times, and the two Accused were seen there together seven times. This is not counting sightings at Murambi.

466. Therefore, the question for the Chamber is whether the Accused's alibi evidence, considered in conjunction with the Prosecution's evidence, raises a reasonable possibility that the two Accused, or either of them, was not at Murambi or Bisesero at the times alleged, for the simple reason, as the Defence would have it, they were not at Murambi or in Bisesero *at all* during the relevant period.

467. The Chamber is aware of the difficulty for the Defence where the allegations against the Accused are not always precise as to date and time and where an alibi is put forth for a period as long as three months. Nevertheless the Chamber observes that there were many gaps in the Accused's alibi, detailed below. Moreover, the Chamber does not accept much of the evidence of the alibi witnesses. All the alibi witnesses were friends or acquaintances of the Accused, and the Chamber believes that there was a degree of fabrication on the part of most of these witnesses in an endeavour to assist the Accused. The Chamber also notes that the two Accused chose to testify at the very end of the case, and thus did so with the benefit of having heard the evidence presented by the other Defence witnesses. The Chamber has taken this factor into account in considering the weight to be accorded to the evidence given by the Accused.

468. A final general observation is that some of the evidence that was introduced by the Defence referred to the whereabouts of the two Accused on specific dates. However, most of the evidence was intended to prove the Accused's daily routine. The possible value of establishing a strict daily routine for the Accused is that any deviation from that routine would most likely be noticed by those living and working in close association with them.

(a) The Gishyita period: 17 April to end of April 1994

469. Seven Defence witnesses (4, 32, 16, 7, 6, 12, and 5), the wife of Elizaphan Ntakirutimana, and the two Accused, provided evidence concerning the Gishyita period of the alibi.

470. Witness 4, son of a colleague of the two Accused, testified that during the Gishyita period he saw Elizaphan Ntakirutimana and Gérard Ntakirutimana "every day": "it would be a good number of times. I saw them all of the time. ... We were always together." Witness 4 testified that neither Accused left the vicinity of the communal building in Gishyita before the end of April 1994. Moreover, "I saw the vehicles [of the Accused] there all of the time". The witness described the mood of Elizaphan Ntakirutimana: "I was able to notice that Pastor Ntakirutimana did not know what to do. He seemed to me to be sad." As for Gérard Ntakirutimana: "I didn't see Gérard do anything. He sat there, not knowing what to do. In a word, I would say that he gave me the impression of a sad person who was just sitting there."[672]

[672] T. 7 February 2002 p. 85-87, 90.

471. Witness 32, son of another colleague of the two Accused, testified that during the Gishyita period he saw the two Accused every day. "We were together every day in Gishyita." "They never left that place, if my memory does not fail me." The witness also spent time with his friends: "Sometimes when we got bored sitting in one place for a long time, young as we were, we moved around, we went to the centre [of Gishyita] and we returned." Later he conceded that he simply did not know whether Gérard Ntakirutimana had ever left Gishyita during this period.[673]

472. Royisi Nyirahakizimana, wife of Elizaphan Ntakirutimana, testified that her husband, who was not in good health, did not move beyond the immediate vicinity of the communal hall for the whole of the Gishyita period. She saw him there every day: "he could sit down, read a book, or lie down". She testified that she also saw Gérard Ntakirutimana every day during the two weeks. He left Gishyita twice to get food, once alone, and the second time "in the company of pastors and their children".[674] On the first occasion, the Accused went to Ngoma to fetch milk from his father's house: "It did not take time. The milk was ready when he got there. ... He returned immediately."[675] On the second occasion, Gérard Ntakirutimana was gone approximately one hour.[676] He was also absent on a third occasion, for thirty minutes to an hour on an unspecified day "about a week after the war started", when "a soldier came and took him along in a vehicle".[677] The witness had not asked her son where he had been taken.[678]

473. Witness 16, who was Elizaphan Ntakirutimana's housekeeper, was visited by Gérard Ntakirutimana on 18 April. He arrived between 9.00 and 9.30 a.m. in the hospital vehicle; he explained that he had come from the communal office. He instructed the witness to deliver milk and food to the communal office. He left taking some foodstuffs with him. His visit had lasted about two hours.[679] Two days after this visit, at around 10.00 a.m., Witness 16 left Elizaphan Ntakirutimana's house with a load of milk and potatoes and headed for Gishyita.[680] There, he saw Gérard, Elizaphan and Royisi Ntakirutimana among other individuals and delivered the food and milk he add brought prior to going back to Ngoma between 1.40 and 2.00 p.m. on the same day.[681] He went back to Gishyita two days later, and then again on another occasion (or possibly two), at intervals of two days, to bring milk.[682] He gave few details concerning these subsequent visits.[683]

474. Witness 7, a Mugonero Hospital employee in 1994, testified that on 19 April she went to Gishyita's communal office to replace her lost identity card. There she saw

---

[673] T. 16 April 2002 pp. 126-127, 133; T. 17 April 2002 p. 71-74.
[674] T. 10 April 2002 pp. 65-66-68, 71.
[675] Id. p. 168; T. 11 April 2002 p. 11.
[676] T. 10 April 2002 pp. 71-72, 168-169.
[677] Id. pp. 72-73, 77-78.
[678] Id. p. 76.
[679] T. 13 February 2002 pp. 152-153; T. 14 February 2002 pp. 33-37, 56.
[680] T. 13 February 2002 pp. 154-155; T. 14 February 2002 p. 40.
[681] T. 13 February 2002 p. 159-160.
[682] Id. p. 163; T. 14 February 2002 p. 40
[683] Id. pp. 54-56.

Gérard Ntakirutimana at the CCDFP building, in the company of Elizaphan Ntakirutimana and others. None of the persons whom she saw was armed.[684] Elizaphan Ntakirutimana seemed to be in deep thought and very sad. Witness 7 had a brief conversation with Gérard Ntakirutimana, who also looked sad; "He said what happened in Ngoma was sad, that people had been killed, that the hospital had been destroyed and looted. He said he was overwhelmed by what was happening." Witness 7 agreed to assist Gérard Ntakirutimana to make the hospital operational again. She testified that she was in the presence of the two Accused from noon until 2.00 p.m. on 19 April. Thereafter she returned to her cellule.[685]

475. Witness 6, brother of Witness 7, testified that he went to Gishyita "around the 22nd and 23rd" of April, although his testimony shows that he was not sure about the dates. He found the two Accused at the CCDFP building. His reason for going to Gishyita was, "I became curious and I wanted to go and see them. Apart from that, there's no other reason". He heard Elizaphan Ntakirutimana speak about his church: "He was saying that in Ngoma there had been looting and people had been killed. … He was saying that there had been very few pastors left and it was possible that the Tutsi pastors had been killed or had fled. He was saying that, in our church, we had lost many of our faithful." Moreover, "the pastor as well as the other pastors who were with him were saying that we the young people should remain at home and try to sensitize the faithful and tell them not to participate in these things, that Christians who had followed the church's teachings, we should tell whomsoever we meet that they shouldn't participate in these things" Among the people listening was Gérard Ntakirutimana. No one was armed. Witness 6 said he had arrived in Gishyita in the afternoon and stayed for one or two hours, then returned to Ngoma.[686]

476. Witness 12 testified t hat on 15 April his parents sent him to borrow Elizaphan Ntakirutimana's bull.[687] The witness later heard that the Accused and his family had sought refuge at the communal office in Gishyita. On "the Sabbath which followed the week during which I had gone to fetch the bull" (by inference, on 23 April), Witness 12 was sent to Elizaphan Ntakirutimana to ask about returning the animal.[688] When he got to Gishyita, around 11.00 a.m., he saw the two Accused. Elizaphan Ntakirutimana told him that he had not brought his livestock with him and that he should inform his father to keep the bull until the situation returned to normal. The witness spent about 30 minutes with Elizaphan Ntakirutimana; he did not speak with any other persons he saw there; and, having accomplished his mission, he left.[689]

477. Witness 5, a colleague of Elizaphan Ntakirutimana, testified that he went to Gishyita "on Sunday or on the following day … after the Sabbath following the Sabbath of the 16th" (by inference, 24 or 25 April 1994). He found the two Accused there. Elizaphan Ntakirutimana "said that he did not know exactly when he would be able to go

[684] T. 12 February 2002 pp. 43-48, 61, 63, 216-218.
[685] Id. pp. 49-54.
[686] T. 24 April 2002 pp. 102-103, 107-112; T. 25 April 2002 pp. 25.
[687] T. 13 February 2002 pp. 24-34, 60-68.
[688] Id. pp. 40-42, 77-88.
[689] Id. pp. 42-47; Defence exhibit 1D16.

back. However ... in our conversation he told me that he was thinking about ways of relaunching the activities of the mission." Gérard Ntakirutimana spoke of his desire to restore hospital services. Witness 5 remained in Gishyita from around 11.30 a.m. until "the evening".[690]

478. Elizaphan Ntakirutimana testified that during the Gishyita period Gérard left Gishyita twice in the first week after their arrival. The first time, Gérard went to Ngoma with two pastors to look for provisions. The second time, he also went to Ngoma. His father remembered that, on the second occasion, he came back with two young boys whom he had found near the bodies of their mothers, and that this was a few days after their arrival in Gishyita. After this occasion, Gérard did not leave Gishyita again, according to his father.[691] The Accused maintained that he never left Gishyita or the immediate surroundings of the CCDFP building until his return to Mugonero at the end of April: "I wasn't well; I was sad. I wasn't capable of doing much. I was reading the Bible and I was praying."[692]

479. Gérard Ntakirutimana testified that on 17 April he remained in Gishyita.[693] The next day, 18 April 1994, "I went to Mugonero to see what the situation was like there. I took that opportunity to pass by my father's house to collect some provisions".[694] From there the Accused allegedly drove to the hospital; "I saw dead bodies which were quite close to the parking lot on the lower side, and by these bodies I found two little boys."[695] He stated that the two children stayed with him in Gishyita for a week, approximately, during which time he became concerned about their safety: "I was told that I shouldn't be keeping these children there because they were Tutsis."[696] And so after about a week (the Accused did not further specify the date, except to say that it was during their second week in Gishyita), he took them back to Mugonero. At another time, when the Accused was in Gishyita, he was approached by a soldier: "This was towards the end of the first week ... And this was after the meal at lunchtime, and we were just in front of the CCDFP, and suddenly I saw a soldier arrive, and this was a second lieutenant. He told me, 'Come, come with me; come with me in your vehicle' ... So we went down from the CCDFP, and when we got to the main road, which comes from Kibuye and goes to Cyangugu, I found another group of soldiers who had another vehicle ... In the other vehicle there were about eight gendarmes ... Some came into my vehicle, the vehicle I was driving, and then they said, 'Let's go'. So they pointed the direction where I should go. The other one went in front of us and he said, 'You follow us'. ... For about 15 minutes, 20 minutes, something like that. We took the road going to Gishyita, and there's another road branching, going to Bisesero. We took that road and continued about 20 minutes, and they told me to stop, so I stopped. About six gendarmes got off the vehicle and left. I was with about two gendarmes. ... After about something like 30 minutes they came back ... with, I would say, a body, a dead body that was wrapped

[690] T. 2 May 2002 pp. 109-115.
[691] T. 7 May 2002 p. 20-26.
[692] Id. pp. 16, 17, 134.
[693] T. 9 May 2002 p. 116.
[694] Id. p. 116.
[695] Id. pp. 118-119; T. 10 May 2002 pp. 84-85.
[696] T. 9 May 2002 p. 127

in a covering, and they loaded it on my pickup. And then we turned around, and when we got to the junction between the road which comes from Bisesero and the main road, the soldiers who were in the other vehicle got on my vehicle and told me to take them to Kibuye. With the dead body and the small group of soldiers we went to Kibuye."[697] The Accused did not specify the date of this incident or the parts of Bisesero he went through or what he saw along the way. At Kibuye town the Accused was directed to the camp of the Gendarmerie, where the gendarmes unloaded the body from his car; he then drove back to Gishyita.[698] The whole episode lasted from 1.00 to 5.00 p.m.[699] The Accused stated that he did not know why he had been approached for this mission.[700] He testified that except for the times mentioned above he was never absent from Gishyita.[701]

480. Gérard Ntakirutimana's testimony is contradicted by Witness 4 and 32, who said that the two Accused and their vehicles never left Gishyita during the period in question. Apart from the Accused, the only other witness for the whole Gishyita period is his mother Royisi Nyirahakizimana, wife of Elizaphan Ntakirutimana. She claimed that the third time her son was absent from Gishyita was when a soldier took him away for half an hour to an hour, not four hours as testified by Gérard Ntakirutimana. The Chamber is thus presented with varying versions of the alibi giving rise to the distinct possibility that Witness 4 and 32 and Royisi Nyirahakizimana were either not aware of all of Gérard Ntakirutimana's movements or were minimising his absences to assist his defence. The Chamber does not find Royisi Nyirahakizimana's testimony on the two Accused's whereabouts credible. Her claim that her husband was ill during the Gishyita period was not corroborated by Witnesses 16, 7, 6, 12, or 5, who made day-trips to Gishyita. The evidence of these witnesses does not create a reasonable possibility that the two Accused were always in Gishyita outside the times when the five witnesses visited. It is admitted, after all, that Gérard Ntakirutimana left Gishyita three times. No Defence witness accompanied the Accused on any of these outings, one of which was to Bisesero. The Chamber finds that the two Accused had the opportunity and the means to leave Gishyita during the period they lived there. The evidence does not raise a reasonable possibility that they were not at those locations in Murambi and Bisesero where Prosecution witnesses testify to having seen them in April.

(b) The Mugonero period: End of April to July 1994

481. Thirteen Defence witnesses (4, 32, 5, 22, 16, 9, 8, 25, 24, 21, 23, 7, and 6), not counting the two Accused and their close family members, gave evidence broadly covering the Mugonero period of the alibi. In addition, Witness 11 gave evidence on two specific segments of the period. This evidence is summarized and evaluated in the paragraphs that follow.

---

[697] Id. pp. 130-133.
[698] Id. pp. 135-136.
[699] Id. p. 140.
[700] Id. p. 135; T. 10 May 2002 pp. 86-88.
[701] T. 9 May 2002 p. 138; T. 10 May 2002 pp. 88-89.

482. Witness 4 testified that after returning from Gishyita he observed the hospital staff re-establish the hospital services and that he stayed at Mugonero, without ever leaving the place, until he fled to Zaire in mid-July 1994.[702] He testified that during that period he saw the two Accused "all of the time … I only saw them at their place of work, when I walked around, when I went to the hospital; for example, I often saw Gérard at the hospital. And the same was true when I went to the field office. I saw the Pastor, especially since I lived in the vicinity." [703] As for Gérard Ntakirutimana, "I used to see him both in the morning and in the afternoon … Almost every day of the week."[704] Also, "I took a walk all the time. When I reached the hospital I would see the doctor."[705] Also, "there was not a single day which went by without me seeing him."[706] Witness 4 saw the Accused, for example, "in the consultation room"; however, the witness added, "I do not recall where the room was located" and, "I only passed through. I did not pay attention to that kind of detail."[707] On the Sabbath the witness would see the two Accused at the Ngoma Church.[708] The witness later clarified that he had not attended church on every Sabbath during this period: "I went … about three times a month. … it would mean that during that period I went to church six to seven times."[709] Nevertheless, even on those occasions when he did not attend, he would see the two Accused return from church, for he lived close to Gérard Ntakirutimana's house throughout the May-July 1994 period.[710] Witness 4 said he never saw either Accused armed with a weapon or in the company of armed men.[711]

483. In the Chamber's opinion, Witness 4's claim that he saw the two Accused all of the time is improbably exaggerated. The witness did not provide a plausible explanation about why he spent as much time as he claims walking in the grounds of the Complex, noticing the Accused's presence many times each day. His account was lacking in detail.

484. Witness 32 testified that when he returned to Mugonero at the end of April he took part in the clean-up of the hospital, which commenced after about three days and lasted about two weeks.[712] "I would go there every day except on Saturdays. … In the morning I would arrive at eight … Each time that I went to participate in the hospital's clean-up operation I would see Dr. Gérard. … During this period of time … we'd clean up the hospital until about noon and then we would go home … when we were told we could leave, sometimes he would leave before me, sometimes he would leave after me. … It wasn't always the same".[713] After cleaning had been completed, by mid-May, ten to 20 employees returned to work and limited services resumed.[714] There were few patients

[702] T. 7 February 2002 pp. 94, 100-101; T. 8 February 2002 p. 65.
[703] T. 8 February 2002 p. 95.
[704] Id. p. 53.
[705] Id. p. 64.
[706] Id. p. 69.
[707] Id. pp. 56-63.
[708] T. 7 February 2002 p. 96.
[709] T. 8 February 2002 pp. 36-37.
[710] Id. pp. 38-43, 87-88; Prosecution exhibits P35 and P36.
[711] T. 7 February 2002 pp. 99-100.
[712] T. 16 April 2002 pp. 137, 139.
[713] Id. pp. 142-143; T. 17 April 2002 p. 33.
[714] T. 16 April 2002 pp. 144-146.

compared with earlier times: "The dispensary wouldn't have more than 20 patients, and to that you would add approximately five inpatients."[715] Surgery cases were sent to Kibuye town.[716] Witness 32 described his dayshift hours: "I would go to work at 7:00 and ... I would, first of all, go to prayers." The witness would always see Gérard Ntakirutimana at morning prayers.[717] "After prayers I would go to my department [then] I would go for lunch at noon and come back at 2 p.m. I worked from 2 p.m. to 4:30 p.m. and at 4:30 p.m. someone was to come and replace us."[718] "I would say that Dr. Gérard worked day and night. By that I mean, he was working every day from 7 o'clock and he would go for lunch at noon to return at 2 p.m. And if there was a problem during the night, it was Dr. Gérard who would be called upon because he was the only one."[719] Even when Witness 32 was on night shift, and did not see the Accused during the day, the witness knew that Gérard Ntakirutimana had been at work that day because he recognized the Accused's handwriting on the patient treatment sheets.[720] However, the witness did also have regular days off, when he would not go to the hospital.[721] And he did not rule out that Gérard Ntakirutimana had travelled to Kibuye town during the period between May and July 1994 to acquire medicines.[722] During this period he also saw Elizaphan Ntakirutimana at church or at the field office.[723] The witness stated that he never saw either Accused carrying arms or associating with armed men.[724]

485. The Chamber finds Witness 32's evidence also to be exaggerated, and therefore unreliable. In any case it is clear from the witness's testimony that there were large chunks of time when he did not see the Accused, for example, when he was on night shift or off work. The Chamber notes its earlier observation that Witness 4 and 32 are overzealous in minimizing the absence of the Accused.

486. Witness 5 testified that Elizaphan Ntakirutimana's first day back at work after the Gishyita period was 2 May and that, "[t]he pastor was always there, every day."[725] "According to our timetable at the field, we would work five days a week, apart from public holidays or on the Sabbath day, and on Sundays we didn't work either."[726] In May-July, Elizaphan Ntakirutimana would "sometimes ... go to visit other churches, sometimes also he would go to attend meetings, and since it was difficult to obtain fuel, sometimes he would go to fetch petrol from Kibuye and he would come back. Other times he would go and preach on the Sabbath day."[727] He estimated "that it was eight days altogether in total when he wasn't at Ngoma ... from the second of May until the time we fled" and "we can add to these eight days the Sabbath days on which he went to

[715] Id. p. 151; T. 17 April 2002 pp. 42-43, 60-61.
[716] T. 16 April 2002 p. 152; T. 17 April 2002 pp. 81-83.
[717] T. 16 April 2002 p. 152.
[718] Id. p. 148.
[719] Id. p. 150; T. 17 April 2002 pp. 40-42.
[720] T. 16 April 2002 pp. 150-151.
[721] T. 17 April 2002 pp. 75-77.
[722] Id. pp. 83-85.
[723] T. 16 April 2002 pp. 165-166.
[724] Id. p. 165.
[725] T. 2 May 2002 pp. 125-126.
[726] Id. p. 128.
[727] Id. p. 129.

preach elsewhere".[728] Witness 5 would also see Gérard Ntakirutimana during May-July: "I would see him at times pass at the hospital, sometimes I would see him go to work, but ... most of the times that I saw him was when he came to pray at the church."[729] The witness claimed to have seen him on nine Sabbaths during that period.[730]

487. The Chamber notes that it is clear from Witness 5's testimony that Elizaphan Ntakirutimana left the Mugonero vicinity on numerous occasions during the Mugonero period. Only once did Witness 5 accompany the Accused. The witness did not provide a concrete alibi for Gérard Ntakirutimana.

488. Witness 22, wife of Witness 5, returned to Mugonero in the first week of May. She testified to seeing Gérard Ntakirutimana at church "on all the Sabbath days." She added that, on one Sabbath the Accused called on the congregation to return property taken from the church and to assist him with the cleanup of the hospital.[731] "I would also see the pastor at the church, but I wouldn't see him on all the Sabbath days because pastors had programs of preaching elsewhere, and when he had travelled he wouldn't come to pray there. But when he came to pray at the parent church, I would see him."[732] The witness would see the two Accused on various other occasions. Concerning Gérard Ntakirutimana, "I wouldn't say that I spoke with him after what happened at Mugonero. We didn't have time to chat or discuss, but I would see him at home. I would see him when he went from his home to go to work."[733] Witness 22's observations of Gérard Ntakirutimana were not regular. "Sometimes there would be weeks ... which went by without me seeing him."[734] Her observations of Elizaphan Ntakirutimana were not precise as to time. For example: "the pastor would come from time to time to go round the school [where the witness worked] and the chapel. Other days he would come and greet the teachers and he would go in. And I would also see him from time to time at the office when I went to see my husband."[735] The witness testified that she had never seen either Accused in possession of a weapon or associating with armed men, nor had she heard such a thing said about them.[736]

489. Witness 22 does not significantly contribute to the Accused's alibi for the Mugonero period. She admitted that Elizaphan Ntakirutimana traveled, and that he was not always present at Sabbath services. It appears she saw Gérard Ntakirutimana only very irregularly.

490. Witness 16 testified that upon his return to Mugonero Elizaphan Ntakirutimana took up his former routine. However, the witness did indicate variations: "he would come

---

[728] Id. pp. 133-134; T. 3 May 2002 p. 62.
[729] Id. pp. 139-140.
[730] Id. p. 143.
[731] T. 30 April 2002 pp. 167-168, 172-173.
[732] Id. p. 172.
[733] Id. p. 177.
[734] Id. p. 181; ("je ne le voyais qu'une seule fois par semaine, ou même, quelquefois, il y a des semaines qui se passaient sans que je ne l'ai vu"; p. 196).
[735] Id. pp. 183, 185, 188.
[736] Id. pp. 196-198.

home for lunch except on days when he went out ... to far-away areas for meetings as part of his church activities".[737] "And before leaving in the morning he would tell us not to wait for him for lunch because he would be travelling to far-away areas as part of his religious duties."[738] Also, "[o]n some of the Sabbath days he would go to the Ngoma Church. On other days of the Sabbath he would go to other churches located in the Ngoma area".[739] Moreover, the witness would regularly visit his parents for brief periods, during which he would be absent from Elizaphan Ntakirutimana's house.[740] Witness 16 testified that he would see Gérard Ntakirutimana three or four times a week. "He used to come to the house. ... In the afternoons on the Sabbath he would come and eat with members of the family. On other occasions I would see him when I went to their home".[741] (Later the witness also stated that Gérard Ntakirutimana would overnight at his father's house on "many nights".[742]) The witness knew of no weapons in his employer's house and did not see Elizaphan Gérard Ntakirutimana with any kind of weapon.[743]

491. The Chamber notes that Witness 16 referred to Elizaphan Ntakirutimana's travels to "far-away areas". The witness did not accompany the Accused on his travels. He saw Gérard Ntakirutimana periodically. The Chamber does not find that Witness 16's evidence amounts to a strong alibi for the Mugonero period.

492. Witness 9, a student in 1994, testified that he would take his father's herd out to pasture in the neighbourhood of his house, which was outside the Complex, from the end of April until early July. He did not claim to have seen the two Accused in the course of cleaning activities. However, during the period from May to July, he went to church four times, for prayers from 8:30 to midday, beginning with the first Sabbath in May. He saw the two Accused and their families at church on those occasions.[744]

493. Witness 8, a relative of the Ntakirutimana family, testified that, at the start of the second week of May, she moved into Gérard Ntakirutimana's house, to take care of his children.[745] She remained there until July.[746] She provided an account of the daily routine in the household, of church services, Bible studies and work and meal times.[747] Gérard Ntakirutimana's daily work schedule, according to Witness 8, was that he would leave for work between 7.00 and 8.00 a.m. every day except Saturday.[748] He returned home for lunch at noon or 1.00 p.m. and went back to work at 2.00 p.m.[749] He would finish work and be home by 4.30 p.m. "every day". He would never go out at night.[750] The witness

[737] T. 13 February 2002 p. 168; see also Id. p. 167.
[738] Id. pp. 173-174; T. 14 February 2002 pp. 47-48.
[739] Id. p. 168.
[740] T. 14 February 2002 p. 44.
[741] T. 13 February 2002 p. 172; see also T. 14 February 2002 pp. 44-45.
[742] Id. p. 50.
[743] T. 13 February 2002 p. 179.
[744] T. 29 April 2002 pp. 29-32, 36, 39-40; T. 30 April 2002 p. 48, Defence exhibit 2D36.
[745] T. 14 February 2002 pp. 79-80, 135.
[746] Id. pp. 65, 78, 80.
[747] T. 14 February2002 pp. 81, 83-86, 151, 153, 171.
[748] Id. p. 92.
[749] Id. pp. 93, 146.
[750] Id. p. 97.

testified that Gérard Ntakirutimana did not own a gun and she had never seen him carrying one.[751] She testified that she saw Elizaphan Ntakirutimana from time to time.[752]

494. The Chamber believes that Witness 8's evidence does not advance the alibi outside the times she observed the Accused. She was categorical that Gérard Ntakirutimana never left the house at night. Yet Witness 32 stated that Gérard Ntakirutimana was on night call at the hospital. Her evidence in this regard was also contradicted by Witness 24. Even if Gérard Ntakirutimana did abide by the daily timetable described by Witness 8, she only assumed that the Accused was at work during the hours when he was not at home.

495. Witness 25 testified that one afternoon in the first week of May 1994, when his daughter was ill, the witness went to Mugonero Hospital. (Later in his testimony the witness said: "or, otherwise it would be at the end of April. I don't really remember very well what time of year it was".) Gérard Ntakirutimana gave the witness medicine, which he obtained from his house. He did not ask the witness for money. Witness 25 also met Elizaphan Ntakirutimana, who was driving a vehicle. They had a conversation: "The last thing he told me is as follows: he said only God can save us." In addition to this encounter with the two Accused in the first week of May, Witness 25 saw Gérard and Elizaphan Ntakirutimana at other times in May-July, but provided scant details concerning these meetings.[753] He added: "I have never, never in all my life seen Pastor Ntakirutimana or his son Gérard carrying anything that can be described as a weapon".[754] Witness 25's sightings do not exclude the possibility of the Accused's presence outside Mugonero as alleged by Prosecution witnesses.

496. Witness 24, daughter of a colleague of the two Accused, testified that she returned to Mugonero "during the first week of May. Witness 24 testified to seeing both Accused during the period of May to July. While at Gloria's house, she often saw Gérard Ntakirutimana going to, or returning from work, "and sometimes he visited us at home. And I saw him in the evening when he came and conversed with my father and others."[755] She claimed to have seen both Accused "each time that I went to church" during the period from May to July, claiming that she went to church every Sabbath without fail.[756] In summary, she testified that on average she would see Elizaphan Ntakirutimana five times a week and Gérard Ntakirutimana six times a week over the period in question.[757] According to the witness, neither Accused ever left the area of Mugonero: "I did not hear it said on any occasion during any day that they were not there."[758]

---

[751] Id. pp. 95-98.
[752] Id. p. 148.
[753] T. 15 February 2002 pp. 38-51.
[754] Id. p. 62.
[755] T. 25 April 2002 pp. 88, 110-113, 157.
[756] Id. pp. 119-120.
[757] Id. pp. 129, 158-160.
[758] Id. pp. 129-130.

497. The Chamber finds Witness 24's evidence to be exaggerated and unreliable. It is contradicted by other Defence evidence, for instance Jerôme Nataki's evidence, that Elizaphan Ntakirutimana was not present at every Sabbath service conducted in Mugonero during the period, as well as Witness 8's evidence that Gérard Ntakirutimana was home at 4.30 p.m every day and never went out at night.

498. Witness 21, son of a colleague of the two Accused, testified that he returned to Mugonero in early May.[759] He moved into Gloria's house, which was located near the house of Gérard Ntakirutimana and was close to the field office. During the ensuing two-week period, he would see Dr. Gérard every morning when he was going to work, and when he went back home for lunch in the afternoon, and in the evening. He would also see Elizaphan Ntakirutimana at the field office or as the Accused went to, or returned from work, as well as at church on the Sabbath.[760] From the middle of May until the beginning of June the witness lived at the house of Enos Kagaba, where he began minding his father's cattle.[761] The witness indicated that he would see both Accused when grazing the cattle.[762] However, he provided few details about the circumstances in which he saw them.[763] In the beginning of June, Witness 21 moved for a third time to a house "very close to the hospital" and remained there until he left the country in mid-July.[764] Also at that time the witness returned to school at Esapan, leaving his house at 7.00 a.m. and returning from school at 5.00 p.m. (The school was thirty minutes' walk from Mugonero.) He would return to Mugonero for lunch.[765] When walking to school he "could either take the road that went close by the hospital; otherwise … the one which went below the hospital". He would see "Dr. Gérard where we lived in the white people's quarters. I would see him when he was going to work or coming back home." From mid-May to mid-July he would see both Accused at church on the Sabbath.[766] He added that even on those Saturdays when he did not attend church he sometimes saw both Accused "when they came out of the church".[767] "When I was grazing the herd close by the church or in the surroundings of the church I could see them, because … I would be close by the path that they would follow … when they came back from church".[768] From early May until mid-July the witness would see Gérard Ntakirutimana about five days per week, including on the Sabbath, and on those days he would sometimes see the Accused more than once a day. During the same period he would see Elizaphan Ntakirutimana an average of three days per week, and "sometimes … three times a day".[769] He would see him at the field office, at the church, and at the mill which was "in front of his [the Accused's] house".[770] The witness testified that he never saw either Accused leave Mugonero. Nor did he see either of them with weapons or in the company of soldiers or

[759] T. 23 April 2002 pp. 91-92, 95-96, 108, 120.
[760] Id. p. 122-123.
[761] Id. pp. 110, 113-114.
[762] Id. p. 125-126.
[763] Id. p. 161; T. 24 April 2002 p. 6.
[764] T. 23 April 2002 pp. 115, 119-120.
[765] Id. pp. 115, 164-167.
[766] Id. pp. 121-124.
[767] Id. p. 171.
[768] T. 24 April 2002 p. 6.
[769] T. 23 April 2002 pp. 125-127.
[770] Id. p. 121.

armed persons. He also did not see any armed persons heading for the Bisesero area or any wounded being brought to the Complex.[771]

499. The Chamber finds Witness 21's evidence to be exaggerated and unreliable.

500. Witness 23, son of a colleague of the two Accused, testified that, beginning in early June, he taught at the ESI Nursing School for three weeks, two days per week, from 8.00 a.m. to noon; but he could not recall on which weekdays he taught.[772] From mid-May to July, he would visit the hospital four to five times a week.[773] This he would do even on days when he was not teaching, because "it was a place I loved to go".[774] He would go to the "old dispensary" of the hospital to play table tennis.[775] He would visit Gérard Ntakirutimana and various hospital employees, including a relative.[776] Gérard Ntakirutimana was at the hospital and was working most of the time when the witness went to the hospital.[777] He would speak to the Accused about the condition of the hospital and the difficulties in treating patients. The witness attended Sabbath services at the *église mère* three times between mid-May and mid-July and saw Gérard and Elizaphan Ntakirutimana on all three occasions. He would visit Gérard Ntakirutimana at home and come across the Accused "on the road". He also saw Elizaphan Ntakirutimana and spoke with him on various occasions between mid-May and July. He claimed never to have seen either Accused go to Bisesero nor to have heard of them going to Bisesero.[778]

501. The Chamber finds Witness 23's evidence to be exaggerated and unreliable. He gave no plausible explanation why he would visit the hospital with such frequency and provided no account of the times when the Accused themselves acknowledged leaving Mugonero.

502. Witness 7 testified that at the end of April she saw the two Accused and others returning in vehicles from Gishyita to the Complex. Also, at the end of that month the witness attended a Sabbath service at the Mugonero Adventist Church, at which Gérard Ntakirutimana spoke: "he told the population that what had happened was abominable and should not be repeated. He urged everyone who had hospital property, whether they had bought it or taken it, they should return it."[779] Witness 7 assisted in the hospital clean-up operations in the second week of May. During this restoration period, the witness would go to work in the morning and return home at noon or 1.00 p.m. She would see Gérard Ntakirutimana at the hospital every day.[780] Once the hospital re-opened and it was functioning, Witness 7 worked at the hospital six days per week, from mid-May until July. She would set off to work at 7.30 a.m., take a break at noon, return to

[771] Id. pp. 129-131, 171-173; T. 24 April 2002 pp. 18-19.
[772] T. 22 April 2002 pp. 87-88, 118-119, 125.
[773] Id. p. 69.
[774] T. 23 April 2002 p. 14.
[775] T. 22 April 2002 p. 121.
[776] Id. pp. 70-73; Defence exhibits 2D40, 2D34.
[777] Id. p. 79.
[778] Id. p. 80-82, 84-86, 88, 92.
[779] T. 12 February 2002 pp. 56-60.
[780] Id. pp. 68-71.

work at 2.00 p.m., and finish her shift at 4.30 or 5.00 p.m.[781] She testified that from mid-May onwards there were prayer sessions every day at the hospital before work. About 30 to 40 persons attended, including, "quite often", Gérard Ntakirutimana.[782] During this period, according to the witness, the hospital would receive between 15 and 40 patients a day. Depending on their condition, some of the patients would be sent to see the Accused. From her office she could see the corridor leading to the office where the Accused would see his patients.[783] The witness claimed to have been aware of the Accused's presence at the hospital during working hours and also to have known when he was absent.[784] "He left on one occasion ... and he told us that he was going to the health office in order to ask for medical assistance. At another time he went to retrieve medication which the members of the population were selling at the Mugonero market. He also left another time and on that occasion I went with him. And he went to fetch money that BORNEFONDEN owed the hospital."[785] "I think that he was absent from the hospital ... fewer than six times altogether, including the times I have already mentioned."[786] She never saw Gérard Ntakirutimana armed or associating with armed men.[787] As for Elizaphan Ntakirutimana, she saw him "almost every day" in the Field office during the period from May to July.[788] "Every day, each time that I went to work or when I came back from work I would pass by ... the pastor's office", and that is where she would see him.[789] She heard him preach at the *église mère* in Ngoma,[790] Gérard Ntakirutimana attended these services. Sabbath services would run from 8.00 a.m. to 1.00 or 2.00 p.m.[791] The witness never saw Elizaphan Ntakirutimana carrying arms or in the company of armed men.[792]

503. Witness 7 noted Gérard Ntakirutimana's absence from the hospital "fewer than six times altogether". The witness accompanied the Accused on only one trip away from the hospital. The Chamber does not believe the witness's testimony that the Accused was present at the hospital at all other times during working hours, or that the witness saw Elizaphan Ntakirutimana at the field office every day.

504. Witness 6 testified that he visited Mugonero Hospital on the first day it resumed operations, in the second half of May. "I remember that on the first day that I went back ... I went to clean the pharmacy".[793] He was taken there by Gérard Ntakirutimana and would continue to see the Accused on those days (not specified) when the witness was engaged in cleaning the pharmacy.[794] A few days later, on a Wednesday, the Accused

[781] Id. pp. 77-78.
[782] Id. pp. 73-74.
[783] Id. pp. 79-81, 173.
[784] Id. pp. 78, 181-182.
[785] Id. pp. 78-79.
[786] Id. pp. 79, 214-215.
[787] Id. p. 93.
[788] Id. pp. 82-83, 181-182.
[789] Id. p. 83.
[790] Id. pp. 84, 215-216.
[791] Id. pp. 198-199.
[792] Id. p. 84.
[793] T. 24 April 2002 p. 118.
[794] Id. p. 128.

asked the witness to accompany him to a place known as Muramba to visit a person who reputedly sold medicines stolen from the hospital.[795] They did not find anything there, and went to Mugonero market: "There is some medication that we found there ... We were looking for antibiotics and antimalarial tablets".[796] Witness 6 testified that he remained unemployed during the period from May to July. "At least three times a week" he would pass by the hospital to request work or to visit people he knew. On those days he would see Gérard Ntakirutimana going about his tasks at the hospital: "I said that I would see him, but that doesn't mean that I would see him each time I went to the hospital. ... most of the times when I went to the hospital I would see him. As for the workload of hospital staff: "There was a great deal of work to be done, and when I went to the hospital it wasn't always possible for me to see the employees I was looking for. One could see many patients who were waiting to go into the consulting room ... to be seen by [Gérard Ntakirutimana]."[797] The witness also had occasion to visit the field office where he assisted Kagaba, the nursing school director, to reorganize his office and school files; there he saw Elizaphan Ntakirutimana.[798] On several occasions he heard sounds of fighting from the direction of Bisesero.[799] He testified that he did not see or hear of either Accused going to Bisesero during the period from May to July.[800] Nor did he see or hear of their owning or carrying any kind of weapon or their mixing with armed men.[801]

505. Witness 6 testifies to seeing Gérard Ntakirutimana go about his tasks at the hospital on those days he saw him. The Chamber finds that his evidence does not significantly contribute to Elizaphan Ntakirutimana's and Gérard Ntakirutimana's alibi for the period.

506. The above-mentioned witnesses addressed the Mugonero period as a whole. In addition to their evidence, Witness 11, who was a senior health administrator in Kibuye prefecture in 1994, testified that he attended a meeting in Kibuye town on 3 May at "around 11 a.m., midday". The chairperson of the meeting was Prime Minister Kambanda. Gérard Ntakirutimana was present.[802] After the meeting, the witness and the Accused spoke for only a few minutes because people were waiting for the Accused to go back to Mugonero. Regarding the purpose of the meeting, the witness said: "The people were reminded how they should behave, they were not to tear one another apart, and that our enemy was not the Tutsi or the Hutu; rather, our enemy was the RPF collaborator."[803] Witness 11 testified to having met with the Accused again two or three weeks later: "He had come to talk to me about difficulties that he was facing ... especially with regard to the equipment which had been stolen." The witness gave the Accused a microscope and sterilization materials. "I promised him that I would go and see him in the coming days to

[795] Id., 131.
[796] Id. p. 131; see also Id. pp. 129-130.
[797] Id. pp. 133-136.
[798] Id. pp. 143-145; T. 25 April 2002 p. 17.
[799] T. 24 April 2002 pp. 137-138.
[800] Id. pp. 140-141.
[801] Id. pp. 169-170.
[802] T. 26 April 2002 pp. 39-41.
[803] Id. pp. 48-49, 120.

provide him with further assistance." [804] Witness 11 did so "ten or so days" later.[805] He maintained in his testimony that the date was sometime in May, at "the end of the second week or at the beginning of the third week."[806] "I took ten beds and ten mattresses, as well as medication … I did this because he had been courageous enough to want to have the hospital resume its operation in these difficult times."[807] The witness arrived at Mugonero Hospital around noon; Gérard Ntakirutimana, wearing a doctor's coat and stethoscope, came out to greet him. They offloaded the provisions and the witness, who was in a hurry, returned "immediately" to Kibuye town.[808]

507. The evidence presented by Witness 11 establishes an alibi for Gérard Ntakirutimana for three to four hours on 3 May and corroborates Gérard Ntakirutimana's testimony with regard to his efforts to restore the Hospital.

508. The Chamber will now turn to the evidence provided by Elizaphan and Gérard Ntakirutimana and their close family members about the whereabouts of the Accused during the Mugonero period. As stated above, the fact that both Accused chose to testify last in their defence has been taken into account by the Chamber when considering the weight of their evidence.

509. Witness Nataki, brother of Gérard Ntakirutimana, testified that he arrived in Mugonero around 10 May, brought by Gérard Ntakirutimana from Gikongoro.[809] He moved into his father's house, where he remained until mid-July.[810] The house was located in the commercial centre of Ngoma, about 500 meters from where Gérard Ntakirutimana lived.[811] He saw his father at home on 10 May.[812] He further described Elizaphan Ntakirutimana's daily activities and routine during the period from May to July. He testified to seeing his father "in the morning when he was leaving, and … [at] his place of work not everyday, but … very often around 11, 12".[813] Moreover, "almost everyday, I would go to the hospital to see my brother who was working over there and … sometimes go to my father's office".[814] These were not pre-arranged or announced visits, for there was no telephone; he never found his father absent from his office.[815] On the Sabbath, Elizaphan Ntakirutimana preached "at church at Mugonero, but he was most of the time going in the churches surrounding Mugonero".[816] The witness's father had a Toyota pickup which he "always" left at home on weekdays. He used the vehicle "mostly on Saturdays because he would go to the surrounding churches with other pastors to

[804] Id. pp. 52-53.
[805] Id. pp. 53, 113-114.
[806] Id. p. 57.
[807] Id. pp. 53-54, 84-85.
[808] Id. pp. 57-58, 117-118.
[809] T. 5 February 2002 pp. 150-151, 219.
[810] Id. p. 157.
[811] Id. pp. 158, 220-221.
[812] Id. pp. 159, 222.
[813] Id. p. 234.
[814] Id. p. 163.
[815] T. 6 February 2002 p. 17.
[816] T. 5 February 2002 p. 159.

preach".[817] He visited the parishes of "Kigarama, Gishyita, [and] the surrounding parishes around Ngoma" (the witness could not recall the names of other parishes, or the number of parishes in the area). He testified that on those occasions his father left "around eight, nine in the morning" and returned "in the afternoon, like four, five". He estimated that his father spent a total of only two or three Saturdays in Mugonero between May and July.[818] On two occasions at the end of May or the beginning of June, the witness accompanied his father to Kibuye town to run errands.[819] Regarding Gérard Ntakirutimana, Witness Nataki "was seeing him everyday" during daytime at unannounced visits.[820] The witness testified that Gérard Ntakirutimana was always at the clinic on such occasions.[821] Sometimes the witness would have lunch with his brother or help him with clean-up activities. Gérard Ntakirutimana worked six days a week and attended church with his father on Saturdays. Witness Nataki testified that Gérard Ntakirutimana generally walked between home and work but occasionally used the hospital vehicle. The witness said that his brother, when treating patients with serious injuries, "would mostly try to stabilize them and take them to Kibuye".[822] The Accused transported the patients to town in a pickup.[823] Witness Nataki could not remember the number of such trips.[824] One day between mid-May and June, the witness accompanied his brother in the hospital vehicle to Kibuye town to collect medical supplies that the Red Cross was distributing.[825] He testified that he heard gunshots in Bisesero in May but did not know who were involved in the shooting.[826] He "never saw or heard" either Accused going into Bisesero in May-July.[827] He said that, as far as he knew, during the period from May to July, neither Accused owned a gun, and he had never seen either of them with a gun. Moreover, no one carrying arms ever visited Gérard Ntakirutimana, and his brother was never in the company of armed individuals. The witness had never seen either Accused attend any meetings with armed men.[828]

510. In the Chamber's view, Witness Nataki went to great lengths to cast his father and brother in the best light. He was guarded and evasive on many matters. For example, the Chamber finds it difficult to believe that the witness knew nothing about who were involved in the shooting heard coming from the direction of Bisesero. The Chamber notes Witness Nataki's testimony that his father was absent from Mugonero every Saturday except two or three, between May and July. The witness did not accompany his father on these trips. It is also evident from Witness Nataki's testimony that his brother Gérard travelled on numerous occasions out of Mugonero and that the witness was not always aware of his brother's destination (though he assumed it was Kibuye town). The

[817] Id. pp. 163-164, 167-168.
[818] Id. pp. 236-237.
[819] Id. pp. 166-168, 249-250.
[820] Id. p. 170, 255; T. 6 February 2002 p. 18.
[821] T. 6 February 2002 p. 18.
[822] T. 5 February 2002 p. 170-173, 177.
[823] T. 6 February 2002 p. 25.
[824] T. 5 February 2002 pp. 177, 260.
[825] Id. pp. 175-176, 257.
[826] T. 6 February 2002 pp. 4-5.
[827] T. 5 February 2002 p. 198.
[828] Id. p. 186-188.

witness's testimony, therefore, does not provide an alibi for the times that Elizaphan Ntakirutimana and Gérard Ntakirutimana travelled out of Mugonero.

511. Royisi Nyirahakizimana testified that her husband, Elizaphan Ntakirutimana, remained at home on the first day of their return to Mugonero, as he had been feeling ill for some time.[829]

512. Once, in May, according to the witness, her husband travelled to Gihombo in Rwamatamu "to go and see what the situation was like there". He returned the same day.[830] The witness saw Elizaphan Ntakirutimana several times a day in May; when he left for work at 7.00 a.m.; when "he would come back to the house at around 8:00 in order to take some tea" and his medicine; at midday when he came home for lunch and rest before returning to the office at 2.00 p.m.; and when he finally returned home at 4.00 p.m.[831] She stated that Elizaphan Ntakirutimana returned home after church and remain there for the rest of the day. He "wouldn't go anywhere on the Sabbath day, unless he was invited to a church in order to preach".[832] The witness testified that, except for two occasions, she saw her husband every day in June and July, as he followed his daily schedule, as described above for the month of May. On both occasions, the Accused left Mugonero with colleagues, to preach in other areas. On the first occasion, he travelled to Rubengera approximately in the middle of June. On the second occasion, in the first week of July, he went to Cyangugu where he spent the night.[833] The trips to Rwamatamu and Rubengera were on Saturdays, and to Cyangugu, on a workday. "Apart form those three trips, I do not think that he went far from the complex." And, with greater certainty: "I also know, myself that he never left the area apart from the occasions of trips that I mentioned". The witness said that Elizaphan Ntakirutimana's practice was to inform her if he was about to travel. She had never seen the Accused return home looking as if he had been in the bush.[834]

513. The Chamber notes that the evidence presented by the Defence, considered above, suggests that Elizaphan Ntakirutimana left Mugonero during the Mugonero period many more times than his wife allowed in her testimony. It is noted, from her own evidence, that Elizaphan Ntakirutimana had not told her of his trip to Gishyita before he undertook the travel.

514. As for Gérard Ntakirutimana, Witness Nyirahakizimana testified that, starting from the last days of April, she saw him at his home "early in the morning or late after work ... otherwise, I would see him before he would go to the hospital".[835] She testified that her son's house was a 15-minute walk from her home.[836] During May she would see the Accused when she passed by his house, "when I went to the church very early in the

[829] T. 10 April 2002 p. 90.
[830] Id. pp. 94, 107-108.
[831] Id. pp. 94-97, 179.
[832] Id. p. 98.
[833] Id. pp. 99, 103-105, 107-108.
[834] Id. pp. 108-112.
[835] Id. p. 126.
[836] T. 11 April 2002 p. 36.

mornings, and I would see him when I came back from the church at around seven ... already dressed and ... going to the hospital".[837] In May she attended church twice a week, on Thursdays and Saturdays.[838] She saw Gérard Ntakirutimana on the Sabbath for one hour of church service in the morning. His son came to her house on the Sabbath at around 2.00 p.m. to share a meal.[839] The witness also went to her son's house approximately twice a week to visit or to collect vegetables.[840] Gérard Ntakirutimana stopped by her house twice a week in May. The witness also saw him on two unspecified days in May, when he went to pick up his children from her home.[841] He also came to her house two or three times in June to see his brother Jérôme.[842] The witness never went to Mugonero Hospital after returning from Gishyita, and therefore did not see Gérard Ntakirutimana at work.[843] She stated that the Accused left Mugonero once in June for "about an hour" with Jérôme and a plumber to repair water pipes.[844] The witness also referred to an occasion when he travelled with Jérôme to Kibuye town. She could not recall the precise date except that it was in June or July.[845] She testified that no one ever suggested to her that Gérard Ntakirutimana participated in violent acts.[846]

515. The Chamber notes that Royisi Nyirahakizimana appears to have had little direct knowledge of Gérard Ntakirutimana's whereabouts, except when they met at their respective homes or at church. It is also noted that Gérard Ntakirutimana did not work on Saturdays and could not have been dressed to go to the hospital as assumed by his mother (see preceding paragraph).

516. Ann Nzahumunyurwa, the wife of Gérard Ntakirutimana, testified that on the day after their return to Mugonero, "a meeting was announced on the radio. It was scheduled to take place in Kibuye, and everybody who could make it to the place was invited."[847] Elizaphan Ntakirutimana and her husband both attended the meeting, according to the witness.[848] They returned from the meeting at around 3.00 p.m. on the same day.[849] On the first Sabbath of the month of May (which the witness agreed would have been 7 May), her husband made an appeal to church-goers to assist him in cleaning up the hospital.[850] During the clean-up period, which continued until the middle of May, Gérard Ntakirutimana was present at the hospital six days per week. From the middle of May

[837] T. 10 April 2002 p. 128-130.
[838] Id. p. 133.
[839] Id. pp. 186-188.
[840] Id. p. 130, 151-152.
[841] Id. pp. 135-139.
[842] Id. p. 145, 152.
[843] Id. pp. 123, 126.
[844] Id. pp. 141-142.
[845] Id. p. 181-182.
[846] Id. p. 153.
[847] T. 12 April 2002 p. 2.
[848] Id. pp. 2-3; T. 15 April 2002 p. 18.
[849] T. 12 April 2002 p. 3.
[850] T. 11 April 2002 pp. 156-158, 162-163.

"the hospital was functioning more or less as a dispensary".[851] The witness described Gérard Ntakirutimana's routine from the middle of May onwards.[852]

517. Ann Nzahumunyurwa described her own work schedule for the period. She continued to work four days per week at the Esapan Secondary School, leaving home around 10.00 a.m., returning for lunch, then working again at Esapan until 5.30 p.m.[853] From time to time, during the period from May to July, Gérard Ntakirutimana would leave the hospital to acquire equipment and medicines.[854] The Accused regularly visited the market, which reopened about a week after his return to Mugonero.[855] The witness estimated that her husband went there twice in May and twice in June.[856] The Accused also travelled to Kibuye town at the end of May or the beginning of June, and to Cyangugu with Elizaphan Ntakirutimana in June, to acquire medicine, according to the witness.[857] Gérard Ntakirutimana left Mugonero also around the end of May to bring his brother Jérôme from Gikongoro.[858]

518. As for her father-in-law, Witness Nzahumunyurwa claimed to have seen him "each time he was going to work" during the period from May to July.[859] She claimed to have seen Elizaphan Ntakirutimana also every Sabbath during the same period at the Ngoma *église mère*.[860] "After the service on Sabbath day sometimes we.... went to visit Dr. Gérard's parents."[861] The witness added that her husband never owned or carried a gun, and she had never seen her husband associate with armed men.[862]

519. As was the case with other Defence witnesses, Ann Nzahumunyurwa sought to establish that the daily life of the two Accused conformed to an unchanging pattern of work and church which unfolded according to a precise timetable. But also like other witnesses, Ann Nzahumunyurwa referred to exceptions to and deviations from the pattern. The Chamber observes that the cumulative effect of exceptions and deviations is such that finally the Accused's alibi for the Mugonero period comes down to the following proposition: the two Accused were at their respective workplaces on weekdays, and at church on the Sabbath -- except when they were not. This does not amount to much of an alibi. In any case, Ann Nzahumunyurwa, on her own account, worked almost full-time at Esapan Secondary School, which was some distance from the Complex, for much of the Mugonero period, so she could have had little direct knowledge of the day-time activities of the two Accused. Moreover, other Defence witnesses contradict her contention that Elizaphan Ntakirutimana was in Mugonero every Sabbath during the period.

---

[851] Id. pp. 166-168.
[852] Id. pp. 170-171, 172-174, T.12 April 2002 pp 19-20.
[853] Id. pp. 20-34.
[854] T. 11 April 2002 p. 161.
[855] Id. p. 163.
[856] T. 15 April 2002 p. 16.
[857] T. 11 April 2002 pp. 156-158, 175; T. 15 April 2002 pp. 17-18.
[858] T. 11 April 2002 pp. 174-175.
[859] T. 12 April 2002 p. 6.
[860] Id. pp. 9-11.
[861] Id. p. 12; T. 15 April 2002 pp. 20-23.
[862] T. 12 April 2002 pp. 14-15.

520. Finally, the Chamber turns to the testimony of the two Accused.

521. Elizaphan Ntakirutimana testified that the group that had sought shelter in Gishyita returned to Mugonero at around 10 a.m. on a day towards the end of April. On the day of his return, between 11.00 and 11.30 a.m., the Accused went to his office, which he found destroyed, then returned to his house, where he remained for the rest of the day.[863] He preached at the *église mère* on the last Sabbath of the month, i.e. on 30 April.[864] In the following week and a half, the Accused worked to refurbish the field office and collected and refiled scattered documents.[865] After 3 May, "I started to go back to work regularly ... I would leave the house at 6:00 or 7:00 in the morning and when I got to the office. I would read my bible and I would pray alone. At 7 o'clock, the other workers would get to their offices, we would pray together. ... I looked out for a mason and a carpenter so that they could come and repair the doors, the shelves. ... At midday, I would go back to the house and I had medicines with me in my coat pocket. So, I would take my lunch, I would rest for some time, then I would go back to work."[866] "As I worked, I planned my activities, my visits to the districts. I would plan how I would collect money within the unions so that we could purchase furniture." The Accused would leave the field office in the afternoon between 4.30 and 5.00 p.m. He claimed he would work six days per week, from Sunday to Friday.[867]

522. While Elizaphan Ntakirutimana claimed to have been sick during the Gishyita and Mugonero periods, there is very little evidence to support this view. The Accused did not name his ailment. The Chamber observes that whatever the condition he might have had, it did not seem to prevent him, according to his own account, from going to work six times per week, or traveling to places outside Mugonero.

523. Elizaphan Ntakirutimana testified also in support of his co-Accused. He claimed to have seen Gérard Ntakirutimana very often between the end of April and mid-July: "I used to see him all the time when I was in the offices of the department heads or in front of the threshold of the office; I used to see him go to work or go back home. Sometimes he would come to the house in order to visit us. Sometimes his wife would prepare food and would bring the food home and all of us would share the meal."[868]

524. Elizaphan Ntakirutimana further testified that during the Mugonero period he would usually lead Sabbath services at the *église mère* in Ngoma. "Normally, [church services] would begin at 8 a.m. and we would finish at noon."[869] Sometime in May or June, the Accused went to Rubengera to visit a Seventh-Day Adventist Church and School.[870] On 3 May, the Accused, his son Gérard, and (possibly) Enos Kagaba, went to a

[863] T. 7 May 2002 pp. 28-31.
[864] Id. p. 16.
[865] Id. p. 32; T. 8 May 2002 pp. 49-52.
[866] T. 7 May 2002 pp. 51-52.
[867] Id. pp. 76-78.
[868] Id. p. 96.
[869] Id. p. 69.
[870] Id. p. 63.

meeting in Kibuye town, held at the office of the prefecture and attended by civil and political leaders in the area. The Accused left after about an hour because the balance of the meeting was restricted to government officials.[871] "Towards the end of May", the Accused, with Gérard Ntakirutimana, "went to Cyangugu to see ... whether ... pastor [Joseph Rukirumirami] was still alive. ... I found him alive and I met other pastors there, too. I asked them about news from the native areas ... I spent the night there and I came back the next morning." He also preached on that occasion and spoke "with leaders ... about the new policies to be adopted." One morning in June, Elizaphan Ntakirutimana paid a short visit to Nyakanyinya Primary School, in Gihombo Hill, Rwamatamu commune, 17 kilometres from Mugonero, "to ask whether there were still orphans or workers who were still alive. ... they responded in the negative. So, I went to [Abel Furere, the assistant bourgmestre]. He told me that he didn't know either. I was in the company of Kagoyire ... At noon, I was already back at Mugonero."[872] Towards the end of June, the Accused went for a second time to Cyangugu, with Pastor Gakwerere. There, he met with the SDA head of Weyeye district and the leaders he had seen during his last visit. The purpose of this trip was to enquire about the fate of pastors who had disappeared. He spent the night at the Inyenyeru Hotel in Cyangugu and returned to Ngoma the next day. In the beginning of July, Elizaphan Ntakirutimana departed Mugonero again in the company of Kagoyire, who had sought refuge at his home, to visit Mubuga Church in the Mpembe district, located approximately at 11 kilometres from Mugonero. His objective was to see whether Eram Nturagarira, whom he had appointed head of the SDA district that year, was still alive. "I did not find anyone alive in that place. ... It had not been a prayer day. ... it did not take me the whole day".[873] The Accused mentioned also going to "Mpembe which is about seven kilometres from Ngoma", where he preached either at the end of June or the beginning of July. He had gone there in the company, again, of Kagoyire who preached that day too. They left Mugonero at 8.00 a.m. and were back at around 1.00 p.m.[874]

525. The testimony of Elizaphan Ntakirutimana confirms the testimony of a number of other Defence witnesses, namely, that he was frequently absent from Mugonero during the Mugonero period of the alibi.

526. The last Defence witness, Gérard Ntakirutimana, described the state of the hospital upon his return from Gishyita: "I went to the hospital, and they had taken practically everything. It was ... desolation. ... they had destroyed almost all the buildings: the dispensary, the main building, the basement ... [Windows] had been broken. There was no mattress remaining at the hospital. Everything that people could take with them easily ... was taken away."[875] He began to restore the hospital: "I asked people who came to pray at the church to come and help us by cleaning the hospital ... It was in the main church. I also made announcements that were posted up in places where many people could see them asking people to bring back stolen equipment".[876] "The

[871] Id. pp. 33, 34, 144, 145; T. 8 May 2002 pp. 32-36.
[872] T. 7 May 2002 pp. 52-58.
[873] Id. pp. 64-66.
[874] Id. pp. 67-69.
[875] T. 9 May 2002 p. 146.
[876] Id. p. 149.

clean-up of the hospital started at the beginning of the month of May and it continued, and towards the middle of the month of May we could receive patients at the dispensary, and then gradually we were able to organise a maternity wing". During this period, "I was there every day, except on one occasion when I went to Gikongoro in order to bring my younger brother, but most times I was there. From Monday to Friday I was there. … On Sundays … I was at my house. … in particular, I tried to repair my car that had been damaged."[877] Regular working hours were restored, the working day beginning with early prayers led by Pastor Ushizimpumu. However, during the period from May to July, "I was the only doctor there. I was always on call." And so, "after my work, I would go back home and I would stay at home with my wife. I had to be … at home so that anybody who needed me could find me there easily."[878]

527. Gérard Ntakirutimana further testified that in this period the hospital did not have drivers for the vehicles; "for example, if there was a case that needed surgery, I could not perform surgery. If there was a need for a Caesarean operation, I had to refer the case to Kibuye, and I had to, personally, drive the person to Kibuye". (He did not indicate how many times he had driven patients to Kibuye town.) Patients received at the hospital once operations resumed "were patients who had malaria, gastric problems, respiratory diseases, which were the normal diseases, except that at times we would also receive people who had been attacked". There were few hospital staff during the period from May to July. Besides the Accused, there were four nurses (compared with 15 nurses before) and some support staff. As to the number of patients received, he declared, "[A]t the beginning … we had very few patients. But towards the end, the number of patients increased. So I could say that, on average, we could receive 20, 30 patients a day."[879]

528. Gérard Ntakirutimana would attend church at Mugonero every Sabbath with Elizaphan Ntakirutimana – although the latter would at times "go to other churches which were near Mugonero".[880] He testified that he attended a meeting in Kibuye town on 3 May: "it was announced that representatives of departments, be they private, public or religious, should be there at the meeting. That is how I came to be able to go there with my father" – and with Enos Kagaba. The Accused departed Kibuye town after one or one and a half hours, while the meeting was still underway.[881] He testified, "[T]owards the middle of the month of May when the Mugonero market was reopened, I went there to buy medicine and then I was able to go to Kibuye in order to inform the health authorities there of the situation and the problems that we faced at Mugonero, and I asked them for assistance".[882] Gérard Ntakirutimana said he went to Cyangugu towards the end of June to acquire medicine; he spent a night there and returned to Mugonero the following day.[883]

---

[877] Id. pp. 152-153.
[878] Id. pp. 153-157.
[879] Id. pp. 156-161.
[880] Id. p. 157.
[881] Id. pp. 142-143, 145.
[882] Id. p. 151.
[883] Id. p. 156.

529. The Chamber has considered all the alibi evidence introduced by the Defence, both witness-by-witness and as a whole. The Chamber has strong doubts about the sincerity of many Defence witnesses, who presented an implausibly sanitized account of the times, with life at Mugonero existing in a kind of vacuum, isolated from the events in Bisesero except for the occasional report of gunfire which disturbed the local peace. The Accused, their families, and friends apparently resumed the normalcy of their pre-April lives, going and coming from work at fixed hours, attending church regularly, never seeing or associating with any armed men, and almost never interacting with the governmental authorities, despite the massive attack at the Complex on 16 April, the subsequent fighting in the neighbouring district of Bisesero, the overall breakdown of law and order and the fact that Rwanda was at war.

530. In the end, the Chamber need only consider whether the alibi evidence creates a reasonable possibility that the Accused were not at locations at Murambi and Bisesero at certain times alleged by Prosecution witnesses, as summarized at the beginning of this discussion. The Chamber finds that no such reasonable possibility has been established. During the period in question, both Accused frequently travelled – in each other's company, alone, or in the company of others – to destinations outside of Mugonero, about which there is little direct evidence other than the words of the Accused.

4.4 Shooting of Ignace Rugwizangoga on 17 April 1994 (Witness GG)

4.4.1 Prosecution

531. This event is not mentioned in the Prosecution Closing Brief, but was addressed in oral submissions. Witness GG testified that on Sunday, 17 April 1994, he saw Gérard Ntakirutimana among a group of attackers chasing Tutsi refugees down Murambi Hill. The Accused shot at Tutsi refugees with a firearm and killed Ignace Rugwizangoga. The Prosecution acknowledges that this incident was not mentioned in any of Witness GG's prior statements but argues that the Tribunal places greater weight on in-court testimony than on prior statements. Under the circumstances, it is reasonable that investigators did not ask the witness about this incident.[884]

4.4.2 Defence

532. The Defence objects to the late notice of this allegation and argues that the shooting of Ignace Rugwizangoga was never referred to in Witness GG's three prior statements. His evidence in this respect is uncorroborated. According to the Defence, the testimony of the witness was incredible and untruthful, as shown in *Kayishema and Ruzindana*. Further, Witness GG's evidence was fabricated as part of a political campaign orchestrated against the Accused.[885] The Defence recalls that, prior to Witness GG's cross-examination in the present case, it had moved for the striking of his testimony in its entirety but the motion was dismissed by the Chamber.[886]

[884] T. 21 August 2002 pp. 104-105.
[885] Defence Closing Brief pp. pp. 91-98, in particular p. 96; T. 22 August 2002 pp. 155-157.
[886] T. 24 September 2001 pp. 48-54.

4.4.3 Discussion

533. The Chamber observes that during the examination-in-chief Witness GG testified about the removal of the roof at Murambi Church at the end of April (4.23 below) but did not mention the shooting of Ignace Rugwizangoga. Asked by the Prosecution whether he saw any of the Accused again in that area after the removal of the church roof the witness answered in the negative.[887] During cross-examination the witness confirmed that after 16 April he only saw Gérard Ntakirutimana on three occasions, once at Murambi, once at Mubuga and once at Muyira. Counsel for the Defence then put to Witness GG that he had never seen the Accused shoot someone named "Ignace". The witness answered that he saw Gérard Ntakirutimana shoot Ignace Rugwizangoga in Murambi on Sunday 17 April 1994, the day after the attack at the Complex. The witness was with others who left Mugonero Hospital at night and went to Murambi together. On the following day, Gérard Ntakirutimana came with some Interahamwe and chased them down Murambi hill. When Ignace Rugwizangoga tried to hide in the bush, Gérard Ntakirutimana tried to stop him and made him go backwards into a small forest, where he shot and killed him.[888]

534. The Chamber notes that the shooting of Ignace Rugwizangoga came into evidence because the Defence referred to a certain "Ignace" during its cross-examination. This individual was mentioned in Annex B of the Pre-trial Brief as part of Witness GG's anticipated testimony (see 2.4). Under these circumstances, the Defence cannot complain of insufficient notice of the event.

535. The Chamber considers Witness GG as generally credible and rejects the Defence arguments relating to his testimony in *Kayishema and Ruzindana*. It also rejects the argument that the witness was part of a political campaign (see Discussion at paras. 233-238 under 3.8.3.(c) and II.7). In the Chamber's view, his credibility is not affected by the fact that he only mentioned the shooting of Ignace Rugwizangoga during cross-examination. The examination-in-chief focused on the removal of the Murambi Church roof, an event which took place later, and the witness explained that he had forgotten the shooting. However, the Chamber notes that the evidence of Gérard Ntakirutimana's alleged killing of Ignace Rugwizangoga was not led by the Prosecution and contained limited details about the conditions of observation during the alleged shooting and killing. Consequently, the Chamber is not satisfied beyond a reasonable doubt that on 17 April 1994 in Murambi, Gérard Ntakirutimana shot and killed Ignace Rugwizangoga.

4.5 Murambi Hill on 18 April and Gitwe Hill after 19 April, Possibly May 1994 (Witness FF)

4.5.1 Prosecution

536. In its Closing Brief the Prosecution recalls briefly that Witness FF sought refuge at Murambi Hill on 18 April and at Gitwe Hill on 19 April 1994. Its oral submissions

[887] Id. p. 11.
[888] T. 24 September 2001 pp. 62-67.

focused on the witness's subsequent observations of Gérard Ntakirutimana at Gitwe Hill and her credibility.[889]

4.5.2 Defence

537. The Defence contends generally that Witness FF is a participant in political campaign against both Accused and that her testimony was not credible. This specific event was not included in her first written statement or in her testimony in *Musema*. Only her second statement mentions any role by Gérard Ntakirutimana in Bisesero. According to her third statement the incident took place in June, whereas she testified that it occurred in May. The Defence submits that the witness's testimony about Gitwe Hill was manufactured as it is improbable that the refugees would have acted as she claimed and exposed themselves to gunfire. Her version reveals an animus towards Gérard Ntakirutimana.[890]

4.5.3 Discussion

538. Witness FF testified that around 18 April 1994, quite late in the morning, but before noon, she and other refugees were attacked at Murambi Hill by, amongst others, Gérard Ntakirutimana. He was accompanied by Mathias Ngirinshuti. The Accused arrived in the hospital vehicle, from which he alighted and walked towards a group of Interahamwe. The witness was a short distance away, hiding in a bush close to a water source. Gérard Ntakirutimana was wearing shorts and a long coat, and he was carrying a gun, strapped to his shoulder. Gérard Ntakirutimana, Mathias Ngirinshuti, and the many Interahamwe accompanying them, ran after Tutsi who were on the hill. The witness could hear gunshots, but could not identify the persons firing the guns. The witness remained in hiding until 4.00 p.m., when the attackers left.[891] It was suggested to her that the location of the water source she referred to was not at Murambi Hill but at Ruronzi. She clarified that these two areas were in the same place and that she meant the area of Murambi, which comprises Ruronzi.[892]

539. The following day, on 19 April 1994, Witness FF went to Gitwe Hill where she encountered another group of Tutsi refugees, some of whom were Mugonero Hospital employees who had survived the killings at the Complex. One day in April or possibly May 1994, Witness FF saw Gérard Ntakirutimana amongst attackers at Gitwe Hill. The witness said that he was using the vehicle that he normally drove. At the time of the attack, the witness and other refugees were higher up the hill than the Accused and the attackers. The former hospital employees called him and asked him: "You, the son of a pastor, you are associating with these killers?" Gérard Ntakirutimana said: "Stop; stop where you are and I am going to prove to you that I am the son of a pastor.". He then started to shoot at them. They ran and went around the hill.[893] Witness FF claimed to

[889] Prosecution Closing Brief paras. 310 and 323; T. 21 August 2002 pp. 104-111.
[890] Defence Closing Brief pp. 55-63, in particular pp. 60-61.
[891] T. 28 September 2001 pp. 52-56.
[892] T. 1 October 2001 pp. 29-30.
[893] T. 28 September 2001 pp. 56-60; T. 1 October 2001 pp. 45-48.

have been together with the person who said this to the Accused. The Accused was not the only one who had a gun; many other people were shooting. She could not identify who were shot as many people were shooting at the time.[894] Witness FF explained that she said in her statement of 10 April 1996 that she could not describe the attack because they were being attacked by different persons from different communes.[895] She could not be specific about the date of the Gitwe Hill attack, placing it sometime in April or May.[896] About the discrepancy between her testimony and her statement dated 15 November 1999, where she stated that the incident took place in June, she said that this was not what she told the investigators.[897]

540. The Chamber notes that the Indictment alleges that attacks were carried out in the area of Bisesero, wherein Murambi and Gitwe Hills are located, thereby putting the Defence on notice of these allegations. Moreover, it follows from the summary in Annex B that Witness FF observed several attacks between April and June 1994 in the hills of Bisesero, including in Murambi and Gitwe Hills where she saw Gérard Ntakirutimana. Some indications were also given in her written statements. In court, the witness was able to provide some details when asked questions but could not provide the date of her observation at Gitwe Hill. The Chamber considers that the Defence received sufficient notice of the allegation (see 2.4).

541. The Chamber has no basis to conclude that other witnesses testified about the two specific sightings of Gérard Ntakirutimana at Murambi and Gitwe Hills. Witness FF's testimony is therefore uncorroborated. The Chamber found her credible in relation to events at the Mugonero Complex (see 3.4.3 (c) at paras. 127-130). In relation to Bisesero, the Chamber notes that already her first written statement of 10 October 1995 included Dr. Gérard among attackers in Bisesero ("I saw Dr. Gérard Ntakirutimana in the hills also.") Her second, third and fourth statements were more explicit.[898] Consequently, from October 1995 and in her testimony the witness has consistently stated that Gérard Ntakirutimana participated in Bisesero attacks and shot at people.

542. In the Chamber's view, the information about Bisesero in Witness FF's written statements and in her testimony does not indicate that she formed part of a campaign to ensure his conviction. On some occasions, the witness avoided incriminating him because she was uncertain as to whether she had sufficient basis to involve him. She appeared credible in the courtroom. The Chamber accepts her account of the remarks uttered by a refugee when he observed the son of a pastor among the attackers. Her explanations of

---

[894] T. 1 October 2001 pp. 46-48.
[895] Id. pp. 49-50, 57-58.
[896] Id. pp. 38, 55.
[897] Id. p. 57.
[898] According to Witness FF's second statement of 14 November 1995, Gérard Ntakirutimana "had a gun and was shooting people from the top of a hill" in the company of, among others, Mathias Ngirinshuti. The witness "saw him several times". It follows from her third statement of 10 April 1996 that she saw Gérard Ntakirutimana in "several attacks in Bisesero. He was always armed with a rifle and in company with Mathias Ngirinshuti", and she saw him in "one attack actually shooting at people". The fourth statement of 21 October 1999, which provides most details, refers to two Bisesero events, one in Murambi and one close to "spring of water" near Gitwe Primary School Gitwe (including the exchange between the Accused and the refugees about him being the son of a pastor).

minor differences between her testimony and her previous statements appeared plausible.[899] Consequently, the Chamber accepts Witness FF's testimony about events in Bisesero.

543. The Chamber finds that on or about 18 April 1994 Gérard Ntakirutimana was with Interahamwe in Murambi Hill pursuing and attacking Tutsi refugees. The Chamber, also finds that in the last part of April or possibly in May, Gérard Ntakirutimana was with attackers in Gitwe Hill where he shot at refugees.

4.6 Gitwe Hill, a Number of Days after 17 April 1994 (Witness KK)

4.6.1 Prosecution

544. The Prosecution relies on Witness KK, who testified that a number of days after 17 April 1994 he saw Elizaphan and Gérard Ntakirutimana driving their vehicles in a convoy near Gitwe Hill. The vehicles transported attackers, who attacked Tutsi refugees. In its oral submissions the Prosecution argued that Witness KK was credible and that lack of references to Gérard Ntakirutimana in the witness's written statement to investigators was of no significance.[900]

4.6.2 Defence

545. The Defence argues generally that Witness KK's testimony was fabricated as part of a politically motivated campaign against the Accused. In relation to this specific event the Defence submits that his prior written statement does not mention that Gérard Ntakirutimana was present at any attack at Gitwe Hill.[901]

4.6.3 Discussion

546. Witness KK testified that he arrived at Gitwe Hill early in the morning of 17 April 1994. He remained there for a "few days". The witness observed a daytime attack which occurred "a number of days" after his arrival in the area but it was "not yet the end of the month of April". He saw Elizaphan Ntakirutimana driving his Toyota Hilux; the hospital vehicle, a white Toyota, driven by Gérard Ntakirutimana; a Toyota owned by a Gishyita trader, driven by Ruzindana; and the Gishyita commune vehicle, driven by Charles Sikubwabo. The cars went up towards Murambi and parked about 100 metres from where Witness KK and the other refugees were. The witness said that all the vehicles were transporting Interahamwe and soldiers carrying guns, except for the communal vehicle which was transporting armed police officers and Interahamwe. He noticed that Elizaphan Ntakirutimana was wearing a black suit and was not carrying a weapon; Gérard Ntakirutimana was wearing white shorts, a white T-shirt, and a white hat, and was carrying a "big SMG gun". After the cars parked, "the occupants ... continued to trek

[899] See, for instance, above about her fourth statement, which dated the Gitwe Hill event to June and her explanation of why in her third statement she said that she could not describe one specific attack.
[900] T. 21 August 2002 pp. 111-112. The event was not included in the Prosecution's Closing Brief.
[901] Defence Closing Brief pp. 144-153, in particular p. 151.

towards where we were". The attackers "surrounded us and started shooting on the men and women". This was before noon; the shooting intensified at around 12.30 p.m. It lasted for about three hours. At around 6.00 p.m., the witness saw the cars, with the attackers on board, leaving.[902] Questioned as to the lack of reference in his written statement to an incident at Murambi Hill involving Gérard Ntakirutimana, the witness responded: "That question was not put to me".[903]

547. Regarding the issue whether the Defence was given sufficient notice the Chamber recalls that the Bisesero Indictment does not mention this event specifically but states generally that the two Accused participated in attacks in the area of Bisesero during the months of April through June "almost on a daily basis" (see 2.4). According to the Prosecution's Pre-trial Brief, Witness KK "saw pastor Ntakirutimana, Dr Gérard and Sikubwabo at the hills, in the company of attackers, almost daily." Witness KK's only written statement to investigators, dated 15 November 1999, contains an explicit reference to an event at Kabatwa Hill (see 4.13) and a general statement that attackers, including the two Accused, would come to "the hills" every day. Gitwe Hill is not specifically referred to. However, the Defence knew before the trial started that Witness KK would allege that the Accused participated in several attacks. During his testimony the witness indicated the time and location of the attack at Gitwe Hill but he could only provide limited details. The Chamber has no information that the Prosecution was in possession of the information concerning the incident at Gitwe Hill before the trial started. In the Chamber's view, this is an example where the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity and considers that the Defence received sufficient notice.

548. Turning to the reliability of Witness KK's testimony, the Chamber is convinced that he observed the attack at Gitwe Hill and the cars he mentioned. The question at issue is the identification of the two Accused. He explained that he observed them from his hiding place about 100 metres from where the cars were parked. Even if it is quite possible to recognize persons at such a distance there is a need to exercise caution, in particular because Witness KK's testimony is uncorroborated.[904] Apart from the fact that it was broad daylight, there is no information about the conditions of observation, whether the witness had a clear line of sight, etc. The Chamber notes that he was able to describe the clothing of the two persons he described but this is not in itself sufficient. Later in his testimony, he stated that the attackers trekked towards him and that they surrounded them. However, it does not follow from the testimony that he observed the two Accused at a closer distance than 100 meters. He did not claim to have seen either of the Accused shooting at the refugees and did not otherwise specify the role that the Accused played in the attack after the vehicles had arrived. Lack of particulars such as these leaves room for doubt. The Chamber finds that the Prosecution has not proved beyond a reasonable doubt that Witness KK saw Elizaphan Ntakirutimana and Gérard Ntakirutimana during the attack at Gitwe Hill.

---

[902] T. 4 October 2001 pp. 5-13.
[903] Id. pp. 126, 128-129.
[904] See generally *Kupreskic* (AC) paras. 33-41.

549. The Chamber adds that this finding does not affect the general credibility of Witness KK, which is also discussed elsewhere (see 3.8.3 (c) paras. 261-267, 3.11.3, 4.13.3 and 4.6.3). In particular, the Chamber does not consider it significant that he did not mention the specific attack at Gitwe Hill to the investigators. It follows generally from his written statement that the witness observed numerous attacks in the Bisesero area and that he saw Elizaphan and Gérard Ntakirutimana on many occasions.[905]

4.7 Gitwe Primary School, End of April, Beginning of May 1994 (Witness HH)

4.7.1 Prosecution

550. The testimony of Witness HH concerning the two Accused's alleged role at Gitwe Primary School is not mentioned in the Prosecution's Closing Brief, which contains only a brief reference to the witness spending the nights at the school together with other refugees. Its oral submissions contained no reference to this school. However, the Prosecution emphasized that it stands by everything the Prosecution witnesses have said and that everything that is in the transcripts is part of its case, irrespective of whether an event has been mentioned in its Closing Brief or oral submissions, which only include a selection of the evidence.[906]

4.7.2 Defence

551. The Defence submits, in general, that Witness HH is not credible and that his testimony against the Accused is part of a political campaign mounted against them. His credibility is affected in relation to all Bisesero and Murambi related allegations. In respect of the alleged attack at Gitwe, the Defence submits that it is not credible that, more than six years after the events, the witness could specify the name of a victim allegedly shot by Gérard Ntakirutimana, namely Esdras who was the son of pastor Munyandinda. The witness' prior statement to investigators contradicts this allegation. Witness HH's testimony is uncorroborated.[907]

4.7.3 Discussion

552. Witness HH arrived at Gitwe hill in the morning of 17 April and stayed there until the end of May. Refugees would overnight in the classrooms of Gitwe primary school, located at the lower part of the hill; at other times they hid in the forests. Some refugees stayed with local inhabitants. Witness HH claimed to have seen the two Accused at Gitwe Hill on an unspecified day towards the end of April or beginning of May. There were many refugees at the school at the time. The two Accused came from the direction of Murambi Hill. They did not drive all the way to the school, rather they parked their

---

[905] The statement contains the following general formulation: "Every day the Interahamwe would come to the hills around 7 a.m. or 8 a.m. Our daily routine was to run from hill to hill to avoid being captured. Those that were caught were killed immediately. Mika Muhimana, Charles Sikubwabo , Pastor Ntakirutimana and Dr. Ntakirutimana would come with the attackers every day." (The quotation has been aligned to the writing style in this Judgement.)
[906] Prosecution Closing Brief para. 313 ; T. 21 August 2002 pp. 134-135.
[907] Defence Closing Brief pp. 75-86, in particular p. 83.

cars in a valley which the witness could not see, and ascended on foot.[908] Other attackers involved in this incident came from the secteurs of Muramba, Mpembe, and Gishyita, and from Gisovu commune. The witness recognized the following persons: Sebahire, a policeman from Gisovu; Musema, director of a factory; Ernest, a teacher; the presiding judge of the Gishyita court; Amiel Nyirnkindi; and Ngerageze, the assistant bourgmestre.[909]

553. The witness testified that when he and the other refugees saw the attackers approach, they left the school, ascended the hill, and prepared themselves for the attack. The attackers were carrying clubs, machetes, and other traditional weapons; some were carrying firearms. The refugees threw stones and parts of trees at them; a few of the refugees had spears and sickles. In the course of fighting, the refugees were driven further up the hill; "eventually, they removed us from that place".[910] Gérard Ntakirutimana was among the advancing attackers.[911] Elizaphan Ntakirutimana "was far behind the others". The witness did not claim to have seen the latter reach the location of the fighting, nor did he see him kill anybody.[912]

554. Witness HH alleged that Gérard Ntakirutimana shot one Esdras, a Tutsi aged 35 to 40 years, who worked at a nutritional centre and whose father was Pastor Munyandinda.[913] He did not know Esdras's surname. The incident occurred sometime before 1.00 p.m. The witness said that Gérard Ntakirutimana had used a "big gun", larger than the gun he had seen him use at the Mugonero Complex. Witness HH was above a cliff, about eight to ten metres from Gérard Ntakirutimana and less than four metres from Esdras. The witness said that when the Accused shot Esdras, they were facing each other and there was a distance of eight to ten metres between them.[914] The refugees were still fighting the attackers, and not yet fleeing. When Esdras was shot, he had been throwing stones. The witness could not state how many shots had been fired by the Accused at Esdras. Upon seeing Esdras fall, Witness HH ran away. "All of us fled and he [Gérard Ntakirutimana] continued firing at us". There were other people in the vicinity at the time, but it would have been "impossible for anybody else to shoot him [Esdras] without me seeing him".[915]

555. Witness HH explained the absence of reference to the killing of Esdras in his written statement of 2 April 1996 and his reconfirmation statement of 25 July 2001: "I know that I spoke about Esdras. However, I'm not sure whether I mentioned that name in the first or the second statement. ... it should be pointed out that the statements may vary depending on the questions put to me."[916] The witness also said: "It is also possible that

[908] T. 26 September 2001 pp. 28-30, 44-45.
[909] T. 26 September 2001 p. 31; T. 27 September 2001 p. 61.
[910] T. 26 September 2001 pp. 30-42.
[911] Id. pp. 36-37.
[912] Id. p. 31, 45.
[913] Id. pp. 37, 41.
[914] Id. pp. 38-39, 43-44.
[915] T. 26 September 2001 pp. 37-40.
[916] T. 27 September 2001 p. 69.

such a question was put to me, but I was taken by surprise to the point that I did not give such information."[917]

556. The Chamber observes that Witness HH did not see Elizaphan Ntakirutimana participate in the attack. His only observation of the Accused was before the attack was underway. The witness merely explained that the Accused was "far behind" the attackers. There is no information about the distance between the witness and the Accused, whether he had a clear line of sight, etc. This testimony is uncorroborated. Consequently, the Chamber does not find that the Prosecution has established beyond a reasonable doubt that Elizaphan Ntakirutimana was present during this attack in the vicinity of Gitwe Primary School. This finding does not reduce the credibility of Witness HH.[918]

557. Regarding the issue whether Gérard Ntakirutimana was given sufficient notice, the Chamber recalls that the Bisesero Indictment does not mention this event specifically but states generally that the two Accused participated in almost daily attacks in the area of Bisesero during the months of April through June (see 2.4). The summary of Witness HH's testimony in Annex B of the Pre-trial Brief does not refer to this event at Gitwe Hill. However, Witness HH's written statement to investigators, dated 2 April 1996, contains a reference to three attacks at Gitwe after 20 April 1994 and gives a description of the same attack as the one testified to by the witness during the trial. According to the statement, Gérard Ntakirutimana had a gun in his hand during the attack, and he was among the persons in Gitwe "who chased after us to kill us". This statement was disclosed to the Defence on 10 April 2000 and on 29 August 2000 in redacted and unredacted form respectively.

558. Consequently, the Defence knew well before the commencement of the trial that Witness HH would allege that, about the end of April 1994, Gérard Ntakirutimana participated in an attack at Gitwe Hill where people were killed. During his testimony the witness was not able to provide more precise information about the location and time of the attack. The important new element was his reference to a specific victim, Esdras. This information was not available to the Prosecution before the witness gave his testimony. Under these circumstances, the Chamber finds it difficult to disregard the evidence about Gérard Ntakirutimana's participation in the attack. There was no transformation of the Prosecution's case. In the Chamber's view, this is an example of a situation where the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crime. Consequently, the Chamber considers that the Defence received sufficient notice of Gérard Ntakirutimana's participation in the attack and that it is not precluded from finding that he killed one particular individual if the evidence is considered credible.

---

[917] T. 26 September 2001 p. 37.

[918] The Chamber has noted that Witness HH's statements of 2 April 1996 contains the following formulation: "In Bisesero, I did not see pastor Ntakirutimana among the group of attackers from Ngoma." In his statement of 25 July 2001 and in court the witness denied that he had ever said that. In the Chamber's view, this has no significance in relation to the present event. It follows from the statement of 2 April 1996 that Elizaphan Ntakirutimana "was also present in Gitwe" and held something in his hand which "resembled a gun. I did not see him kill, but I believe that his role was to look for people's hiding places and to show them to the killers".

559. The Chamber considers Witness HH as generally credible (see 3.8.3 (c) paras 253-260, 3.11.3 paras. 370-373, 3.14.3 and 4.21.3) and does not accept the Defence submission that he formed part of a campaign against the Accused. In the present context, the Chamber accepts that Witness HH saw Gérard Ntakirutimana participate in the attack. The witness observed him at a short distance and in broad daylight. His testimony was in conformity with his statement of 2 April 1996, two years after the event. As for the shooting and killing of Esdras, the Chamber is aware that the statement contains the formulation that "it was difficult to see who killed who". However, this general sentence follows immediately after a passage specifically about the Accused, who "was among the persons who chased after us to kill us". This is in conformity with his testimony. Consequently, the Chamber finds that during the attack Gérard Ntakirutimana shot and killed one Esdras.

4.8 Vicinity of Gitwe Primary School, Early May 1994 (Witness DD)

4.8.1 Prosecution

560. The Prosecution's Closing Brief does not refer to Witness DD's testimony about Gérard Ntakirutimana's alleged role during an attack at Gitwe Hill in the first half of May 1994. In its oral submissions the Prosecution mentioned this event, which includes the killing of two persons, as an example of evidence which was part and parcel of the Indictment and could be relied upon at trial notwithstanding the Appeals Chamber's finding in *Kupreskic*.[919]

4.8.2 Defence

561. The Defence opposes the lack of notice of these allegations and notes that this issue was raised at trial, only one day after the Prosecution disclosed Witness DD's reconfirmation statement of 22 October 2001 containing the new allegations.

562. According to the Defence, Witness DD is not credible. The radical changes in the three written statements given before his testimony makes it unbelievable. Particularly striking were the variations concerning his allegations, not mentioned in the first statement, that his wife, children, uncle and a child were killed at Mubuga Primary School, first by one Accused, then by the other. In relation to the present event, the Defence submits that the Chamber should not rely on his evidence that Gérard Ntakirutimana killed two persons at Gitwe hill, an allegation which was not mentioned in his first statement.[920]

[919] T. 22 August 2002 p. 137. The allegation of the killings first appeared in Witness DD's reconfirmation statement of 28 July 2001 (see below).
[920] Defence Closing Brief pp. 133-138, in particular p. 137, see also p. 83.

4.8.3 Discussion

563. Witness DD referred to an attack in the vicinity of Gitwe Primary School in the beginning of May and in any case before 15 May 1994. He testified that he saw Gérard Ntakirutimana in the company of many persons "armed with machetes, clubs and who were doing their job". The Accused was leading the attack "because he was ... physically in front of the others". He was the only one with a gun.[921] He was wearing white shorts.[922] Witness DD alleged that the Accused shot at one Pastor Munyandinda, a Tutsi. "Munyandinda was in front of him. He was certainly not far from him. And he was the very first person that he dealt with". Munyandinda was going up the hill when he encountered the Accused, who was heading down. Munyandinda's daughter, Erina, who was proximate to her father, was allegedly also "attacked" by the Accused (the witness did not specify what was done to Erina).[923] The witness claimed to have observed these events from a distance of about six metres. He did not know if Gérard Ntakirutimana had attacked anyone else that day. He fled, later returning to the scene of the attack, where he found many dead.[924]

564. Neither the Indictment nor the Prosecution's Pre-trial Brief make reference to the alleged attack at Gitwe school or the assault on Pastor Munyandinda and his daughter Erina. Annex B of the Pre-trial Brief, in summarizing Witness DD's expected evidence, states only that the witness sought refuge at the Gitwe Adventist Church, where he allegedly saw Elizaphan Ntakirutimana direct the removal of the church's roof. There is no mention of Gérard Ntakirutimana in connection with Bisesero. This is true also of the witness's statement of 11 November 1999. The only place where the relevant in-court allegation is forecast is in Witness DD's reconfirmation statement of 28 July 2001. There he claims to have seen Gérard Ntakirutimana, in the vicinity of Gitwe Primary School, shoot and kill Pastor Munyandinda and his daughter.[925] This statement was disclosed to the Defence on 16 September 2001.

565. The Chamber observes that when the Prosecution received the reconfirmation statement of 28 July 2001 it had available new information about a specific event involving two identified victims at a specific location. The trial started on 18 September 2001. Consequently, the Prosecution was in a position to provide details by filing a motion for the amendment of the Indictment, which is the primary accusatory instrument (see generally 2.4). Moreover, Annex B of the Pre-trial Brief, which was filed on 15 August 2001, approximately three weeks after the reconfirmation statement was taken, makes no reference to Witness DD's allegations concerning Gitwe Primary

[921] T. 23 October 2001 pp. 132-135.
[922] Id. p. 135; T. 24 October 2001 pp. 80-81, T. 25 October 2001 p. 91.
[923] T. 23 October 2001 p. 132, 134, 136-137; T. 25 October 2001 p. 91.
[924] T. 23 October 2001 p. 133, 138.
[925] The relevant para. reads: "I want to add to my statement that one day, I was about 75 meters up from Gitwe Primary School on Gitwe Hill. From there I saw Doctor Gérard near a dead tree at about the same height. I saw that he shot and killed Pastor Munyandinda, who was close to me. I also saw that Doctor Gérard shot and killed Munyandinda's daughter, a girl called Erina. Erina was shot a little bit down from me on the hill. Many more people were shot by Doctor Gérard on that day, but I cannot recall their names. I fled and could see no more."

School, even though that statement not only reconfirmed but also supplemented the earlier statement of 11 November 1999, in which there was no mention of Gérard Ntakirutimana in the area of Bisesero. Finally, the Chamber notes that the allegations in question were absent also from the Prosecution's opening statement. Under these circumstances, the Chamber does not find that Gérard Ntakirutimana received sufficient notice about the allegations against him relating to an attack in early May 1994 in the vicinity of Gitwe Primary School.

4.9 Gitwe Hill, Middle of May (Witness XX)

4.9.1 Prosecution

566. The Prosecution did not refer specifically to Witness XX's allegation in its Closing Brief or oral submission but stated generally that it stands by the testimonies of the Prosecution witnesses.[926]

4.9.2 Defence

567. The Defence submits that Witness XX's claims concerning the two Accused are minor, vague and not believable. She did not see them at the Mugonero Complex on 16 April 1994 and her testimony about them at Bisesero is negligible, if believed. She formed part of the campaign against the Accused. There were several inconsistencies between her prior statements and her testimony at trial. Of all the witnesses who testified, she evidenced the effects of trauma most dramatically. According to the Defence, this makes the reliability of her evidence very difficult to evaluate. Her observation of the Accused from the hill opposite Gitwe Hill is not reliable.[927]

4.9.3 Discussion

568. Witness XX testified that, one morning in the middle of May 1994, she observed both Accused among attackers at the occasion of one of the most serious attacks she had survived in Bisesero. At the time of the sighting, she was at the top of a hill opposite Gitwe Hill with other Tutsi refugees. As was usual, they stood there to see where attackers were coming from. At around 8.00 a.m. that morning, she saw from a distance both Accused, on the road, alight from the vehicle they had come in. The Accused were with a group of many attackers who had been brought in many vehicles or had come on foot. Among them were many *Interahamwes*. The witness recognised one Ngabonzima and "other regional authorities", such as conseiller Mika Muhimana and bourgmestre Charles Sikubwabo. Among the vehicles, she recognized the white hospital pick-up with large black lettering on the side, in which, she specified, Gérard Ntakirutimana "usually came to the attacks with". She also saw the vehicle which belonged to a trader which had been seized by the attackers.

---

[926] T. 22 August 2002 pp. 134-135.
[927] Defense Closing Brief pp. 70-75, in particular pp. 73-74, see also p. 15.

569. As far as Witness XX could tell, Élizaphan Ntakirutimana was not armed, but Gérard Ntakirutimana was carrying a long gun on his shoulder. She specified that all the other attackers were armed and that all the "important" persons were carrying guns. The attackers were holding a kind of meeting prior to the attack. The witness observed that scene for 1 to 5 minutes prior to hiding in a marshy area immediately after hearing the first gunshots. She remained in hiding during the rest of the attack, which ended at about 5.00 p.m that day.[928]

570. The Chamber is convinced that Witness XX is a survivor who witnessed several attacks in the Bisesero area. It also accepts that one morning in the middle of May 1994 she observed vehicles arriving with attackers. The crucial question is the reliability of the witness's alleged observation of the two Accused. It follows from her testimony that she did not see them during the attack but only in connection with the arrival of the vehicles. The witness estimated the distance to be "not very far" and "quite close"; it was a distance at which it was possible to recognize a person. Asked to be more precise she said that "as the crows flies it would be about one kilometre" or 1,000 meters.

571. The Chamber is aware that because of the density of hills in the area of Bisesero it may be possible to observe events at another hill. It also realizes that Witness XX did not purport to give precise information about the distance between her and the two Accused. However, her estimate of about one kilometer creates a doubt as to the reliability of her observation, even if she knew Elizaphan and Gérard Ntakirutimana well. She could not describe their clothes but recalled that Gérard Ntakirutimana had a long gun. This is a not a distinctive feature as several persons had weapons during the attack. Moreover, it is not quite clear for how long she was able to observe the persons involved. The witness testimony, that it was "for approximately between one to five minutes", appears vague. Her observation was made under stressful conditions, immediately before an attack, and she had already experienced many attacks. Her testimony concerning this event is uncorroborated. Under these circumstances the Chamber does not find, beyond a reasonable doubt, that the Witness XX observed the two Accused at Gitwe Hill in the middle of May 1994.

572. The Chamber adds that its finding is based on doubts about Witness XX's ability to recognize the two Accused at the indicated distance and does not affect her overall credibility, which is discussed elsewhere.

4.10 Murambi Hill, between May and June 1994 (Witness SS)

4.10.1 Prosecution

573. The Prosecution relies on the testimony of Witness SS, who stated that he saw Elizaphan Ntakirutimana among attackers at Murambi Hill between May and June 1994. The Prosecution's Closing Brief and oral submissions do not refer to this event.

4.10.2 Defence

[928] T. 22 October 2001 pp. 9-22; 33-44; 73-76; 83-86 and 92.

574. As mentioned previously, the Defence disputes the general credibility of Witness SS. This specific event at Murambi Hill is not mentioned in the Defence Closing Brief or in its oral submissions.[929] However, it follows from the cross-examination of Witness SS that the Defence disputes also this part of his testimony (see below).

4.10.3 Discussion

575. Witness SS declared that he saw Élizaphan Ntakirutimana between May and June 1994, at Murambi Hill. The witness was among a group of Tutsi refugees on the run. They realized that the road was blocked and decided to head for Lake Kivu to "commit suicide". While the group was about to cross a road in the Murambi area, the witness saw Élizaphan Ntakirutimana's vehicle at a distance of eight metres. According to the witness, the Accused saw their group, stopped his vehicle and alighted. Witness SS saw him clearly. There were many attackers with him, some carrying guns and others armed with machetes. They started chasing the Tutsi refugees while singing songs in Kinyarwanda about exterminating the Tutsi. After about a minute, as the witness was fleeing, he turned around. He was still very close to the road. He saw Élizaphan Ntakirutimana standing close to his vehicle parked beside the road. He was able to see his face. Among the attackers that day, he recognised, besides the Accused, one Samuel, whom he described as a Hutu and the son of one Serinda. At one point, the attackers started shooting on the fleeing refugees. The witness heard a number of them cry out. He saw the attackers go up to them and strike them with machetes. There were cries and victims died. The witness hid in a valley and did not see Elizaphan Ntakirutimana during that attack. However, he heard attackers nearby saying that Pastor Ntakirutimana had said that God had ordered that the Tutsi should be killed and exterminated.[930]

576. The Chamber notes that this particular event is not mentioned in the Indictment or in the Pre-trial Brief. However, the summary of Witness SS's testimony in Annex B to the Brief, filed on 15 August 2000, contains a reference to this event. The Chamber notes that the event was also described in his statement to investigators of 18 December 2000. It is the view of the Chamber that the Defence had sufficient notice of this allegation.

577. As mentioned above, the Chamber found Witness SS to be generally credible.[931] The observational conditions were good. It was daylight, the witness first saw the Accused parking his car while and alight from it. The Accused stood approximately eight meters away from him. From that distance the witness also saw a group of armed individuals alight from Elizaphan Ntakirutimana's vehicle, thus leaving no doubt as to his involvement in the transportation of these attackers. The Chamber also observes that the witness heard the attackers, who had been transported by the Accused, sang songs about exterminating the Tutsi while chasing the group of refugees. The witness then caught sight of the Accused standing by his car about a minute after he started running to escape the attackers who were by then chasing him and other refugees, while looking back at

[929] Defence Closing Brief pp. 158-163.
[930] T. 30 October 2001 pp. 126-133; T. 31 October 2001 pp. 118-124.
[931] See, in particular, 3.8.3 (c), 3.12.3, 4.10.3, 4.16.3, 4.20.3.

them when he was still close to the road. The witness saw the Accused's face. The Chamber observes that Witness SS, who was a student at the ESI Nursing School, knew the Accused.[932]

578. During cross-examination, the Defence put to Witness SS that, although he declared that he was close-by the road where Elizaphan Ntakirutimana parked his vehicle, he did not hear the vehicle approaching. The witness replied that this was because he was walking amidst a thick banana plantation, on dry banana tree leaves, the noise of his steps covering that of the car. The Chamber accepts this account as well as his explanation that he did not mention this fact during the Prosecution's direct examination because that question was not put to him.[933] However, the Chamber does not rely on the witness's account that Elizaphan Ntakirutimana had uttered words to the effect that God ordered that the Tutsi should be killed and exterminated. The witness did not hear the Accused make such a remark.

579. The testimony of Witness SS is uncorroborated. However, he appeared consistent throughout his testimony about this event, which was in conformity with his statement to investigators of 18 December 2000. The fact that this statement was given more than six years after the events does not reduce his credibility. Consequently, the Chamber finds that one day in May or June 1994, Elizaphan Ntakirutimana transported armed attackers who were chasing Tutsi survivors at Murambi Hill.

4.11 Kidashya Hill, between April and June (Witness FF)

4.11.1 Prosecution

580. It is the Prosecution's case that Witness FF saw Gérard Ntakirutimana transport attackers in the hospital vehicle along the road that runs from Mugonero Hospital through Kidashya Hills to Gisovu. When he saw Tutsi refugees he stopped the vehicle to chase and shoot at them. In the Prosecution's view the witness is credible even if she did not mention this specific attack in any of her previous statements to investigators.[934]

4.11.2 Defence

581. The Defence disputes the general credibility of Witness FF and argues that she was part of a propaganda campaign against both Accused. In relation to this event the Defence points out that it was not included in any of her statements and that she had not mentioned being at Kidashya Hill when she testified in *Musema*.[935]

---

[932] See also T. 30 October 2001 pp. 143-144.
[933] T. 31 October 2001 pp. 121-124.
[934] Prosecutor's Closing Brief paras. 323-234.
[935] Defence Closing Brief pp. 55-63, in particular pp. 61-62.

4.11.3 Discussion

582. Witness FF testified that she remained in Murambi and Gitwe for about two days but did not remember the month in which she arrived in the Bisesero hills.[936] Before arriving in Bisesero, sometime between April and June 1994, she saw Gérard Ntakirutimana at Kidashya Hill, Gitabura secteur, where there were many people seeking refuge on all the different hills. From Kidashya Hill, she saw Gérard Ntakirutimana's vehicle ascending the road leading to Mugonero Hospital and Gisovu through Kidashya Hill. She saw him carrying a gun. Among other persons in the company of the Accused the witness recognised Mathias Ngirinshuti, chief of personnel at the Mugonero Hospital, and one Ndayisaba, who was inspector at Mugonero Primary School. The Interahamwe peasants were armed with spears, machetes, clubs, sharpened bamboo sticks and firearms. Whenever they saw a group of Tutsi, they would stop the vehicle, and would chase the Tutsi and shoot at them. She explained that the hills were close enough to each other so that she could recognize him on the next hill. According to the witness, Gérard Ntakirutimana was dressed in a long coat and shorts.[937]

583. The Chamber notes that the Indictment alleges that Gérard Ntakirutimana participated in attacks in the area of Bisesero, in which Kidashya Hill is located. That hill is not explicitly mentioned in the Indictment, in the Pre-trial Brief or in the summary of Witness FF's evidence in the annex to that Brief. Four of Witness FF's five statements to investigators placed Gérard Ntakirutimana in Bisesero, participating in attacks. The precise reference to Kidashya Hill appeared in Witness FF's testimony and was not available to the Prosecution before the trial started. The Chamber finds that Defence had sufficient notice of the allegation in view of the sheer scale of killings in the hills of Bisesero.

584. The Chamber considers Witness FF generally credible. In relation to the present event, she was able to describe the clothes of Gérard Ntakirutimana and identify two persons with whom he arrived. She was not able to give precise information about distance between her and the Accused but stressed that she was at a distance such that one would be able to recognize individuals. They were in an area of small hills where it was possible to recognize persons on a neighbouring hill. Witness FF's testimony is plausible to the Chamber.

585. It is true, as argued by the Defence, that Witness FF did not mention Kidashya Hill specifically in any of her prior written statements.[938] However, as mentioned above she told investigators in four of her statements that she saw Gérard Ntakirutimana on several occasions in Bisesero. The Chamber considers her identification of Kidashya Hill as a result of more extensive and precise questioning during her testimony. The fact that she said in one of her statements that it was difficult for her to describe one specific attack in Bisesero does not affect her credibility. The witness explained that the investigators did not ask her specifically about the location of the attack.

---

[936] T. 1 October 2001 pp. 35-38.
[937] T. 28 September 2001 pp. 60-68.
[938] T. 1 October 2001 p. 22.

586. Consequently, the Chamber finds that sometime between April and June 1994, Gérard Ntakirutimana was in Kidashya Hill transporting armed attackers, and that he participated in chasing and shooting at Tutsi refugees in the hills.

4.12 Nyarutovu Cellule and Gitwa Hill in Middle and Second Half of May (Witness CC)

4.12.1 Prosecution

587. On the basis of Witness CC's testimony the Prosecution submits that, in the middle of May 1994, Elizaphan Ntakirutimana transported attackers in his vehicle near the Gishyita-Gisovu road in Nyarutovu cellule and instructed them to search for refugees. He was also seen in the second half of May 1994 at Gitwa Hill in the company of armed attackers, close-by his vehicle, acting as their leader. In the Prosecution's view, Witness CC was a credible witness. Inconsistencies between his testimony and prior statements to investigators were not significant.[939]

4.12.2 Defence

588. The Defence contends that Witness CC's testimony is insignificant and incredible. He claimed to have seen the Accused very briefly on only two occasions as opposed to the four referred to in his prior statement. In respect of the event at Gitwa Hill, he did not see the Accused do anything. The witness was not credible because of discrepancies between his testimony and his prior statements and in view of his evidence in *Kayishema and Ruzindana*.[940]

4.12.3 Discussion

(a) Nyarutovu Cellule

589. Witness CC testified about an event which took place one morning in mid-May 1994 at around 11.00 a.m. in Nyarutovu cellule, which is close to Gitwa Hill in the Bisesero area. He and other Tutsi refugees were fleeing from attackers when he decided to take cover in bushes. From his hiding place, he saw Elizaphan Ntakirutimana's off-white vehicle approaching down the Gishyita-Gisovu road. Interahamwe in white uniforms and soldiers in military uniforms, all of them carrying guns, machetes, spears, and nail-embedded clubs, descended from the rear hold. The Accused came out of the front cabin. He was unarmed. The witness then heard him address the attackers, pointing at fleeing refugees and saying: "There they are!" The attackers then chased these refugees, singing "Exterminate them; look for them everywhere; kill them; and get it over with, in all the forests." The witness explained that he observed this scene from his hiding

[939] Prosecution Closing Brief paras. 330, 339, 341; T. 21 August 2002 pp. 117-119.
[940] Defence Closing Brief pp. 86-91.

place at a distance of approximately 100 meters and for a couple of minutes or so, before he went further down the hill to hide in other bushes.[941]

590. This incident is not specifically mentioned in the Indictment but is summarized as part of Witness CC's anticipated evidence in Annex B of the Prosecution's Pre-trial Brief.[942] The Brief was filed about a month and three weeks prior to the witness' testimony and about six months prior to the opening of the Defence Case. The event is also described in his statement to investigators of 12 June 1996, which was disclosed to the Defence on 29 August 2000. The Chamber is of the view that the Defence received sufficient and timely notice (see para. 2.4 above).

591. Regarding the credibility of Witness CC, the Chamber notes that he testified about two events in the Bisesero area. His testimony was generally consistent. The Defence has referred the Chamber to alleged discrepancies with his prior statement. The Chamber is not convinced by these submissions. It is true that his written statement of 12 June 1996 did not include Elizaphan Ntakirutimana in a list of ten attackers he had seen in Bisesero. However, it follows clearly from the wording of the statement that the list was not exhaustive.[943] Later the witness stated to investigators that he saw the Accused "at least" four times in Bisesero and describes an event "on the road between Gishyita and Gisovu". This clearly refers to his sighting of the Accused at Nyarutovu. Similarly, in the Chamber's view it does not affect the credibility of the witness that his statement describes the attackers in the vehicle as armed civilians whereas in court he testified that they were armed Interahamwe and soldiers. The same statement's general description of attackers in Bisesero included soldiers, civilians, Interahamwe and policemen.

592. Witness CC testified that he was not able to identify the make of Elizaphan Ntakirutimana's vehicle because he did not know how to read. The Defence points out that in his statement of 1996 he described it as a Toyota pick-up. The Chamber notes that the witness described the Accused's car in a way which corresponded to the description by other witnesses who observed it on other occasions.

593. According to the statement, Witness CC said that the daily attacks in Bisesero started almost every day at 4.00 a.m., whereas in court he denied having said this to investigators. The Defence observes the difference to his testimony in *Kayishema and Ruzindana* where he testified that the attacks started at 9.00 a.m. The Chamber does not find this significant and notes that during cross-examination in the present case the witness stated that the attackers would not come at any fixed moments in time and would arrive at 7.00, 8.00 or 9.00 a.m. Similarly, the Defence submissions about Witness CC's

---

[941] T. 9 October 2001 pp. 10-17, 42, 53-57, 68-70.
[942] Witness CC's summary of expected evidence reads: "The witness will testify further that on one occasion, he saw the Pastor on the road between Gishyita and Gisovu in his white Toyota pick-up. In the car were armed civilians. When the car stopped the Pastor and the attackers disembarked. The Pastor pointed out groups of Tutsi refugees to the attackers. The attackers went to the said refugees and killed them." (Italics omitted.)
[943] This follows in particular from the following formulation: "Almost every day there were attacks on us. There were many attackers. I saw many, many attackers. ... I recognized the following persons among the attackers" (followed by the list of ten names, italics added).

different estimates of the distances between his home and Ngoma Church and Muyira Hill, respectively, do not relate to the involvement of the Accused and are of little importance.

594. The Chamber recalls that Witness CC made his observation in broad daylight for two minutes. He testified that he had known Elizaphan Ntakirutimana since 1977, having seen him at the church in Gisiza where the Accused came during religious gatherings, and from the Adventist church in Ngoma secteur. It is quite possible to recognize a person at a distance of about 100 meters. Even if the witness was not able to describe the clothes worn by the Accused he explained that he was not armed, that he came out of his vehicle, and that he heard the Accused's statement quoted above. There is no evidence that there were any persons or vegetation between the witness and the Accused that may have obstructed his view. In his written statement of 12 June 1996 to investigators he stated that he was standing on the slope of a mountain and could see the Accused and his car with the armed civilians very clearly. His evidence was coherent and consistent with the written statement. The Chamber accordingly finds that Elizaphan Ntakirutimana brought armed attackers in the rear hold of his vehicle to Nyarutovu Hill one day in the middle of May 1994, and that the group was searching for Tutsi refugees and chasing them. Furthermore, the Chamber finds that, at this occasion, Elizaphan Ntakirutimana pointed out the fleeing refugees to the attackers who then chased these refugees singing "Exterminate them; look for them everywhere; kill them; and get it over with, in all the forests."

(b) Gitwa Cellule

595. Witness CC testified about seeing Elizaphan Ntakirutimana in the company of individuals he described as assailants carrying guns in the second half of May 1994, about a week after his first sighting of the Accused in Nyarutovu cellule. This occurred in Gitwa cellule, about ten-minute walk from Nyarutovu. The witness estimated that he was about 50 metres away from the Accused when he saw him. There were trees and bushes in between. The sighting lasted a few moments. He further saw the Accused's vehicle, which was parked. He left a moment afterwards and went to hide in other bushes. Elizaphan Ntakirutimana was not carrying a gun, but he was, according to the witness, "leading the attackers". He specified that: "He didn't do anything, as such; but he came with the attackers and the attackers were coming to … work".[944]

596. This event is not specifically referred to in the Indictment. However, Annex B of the Prosecution's Pre-trial Brief gives a summary of Witness CC's testimony which includes four sightings of Elizaphan Ntakirutimana in Bisesero, and reference to the facts that on all occasions the witness saw the Accused with attackers and that he directed them to attack Tutsi refugees. Even though the date and place of this particular sighting were not specified, the Chamber finds that the Defence received timely and sufficient notice of the present allegation, considering the sheer scale of the massacres (see generally 2.4).

[944] T. 9 October 2001 pp. 17-20, 62, 72-73.

597. As already noted, the Chamber found Witness CC to be generally consistent and reliable. It is true that in his prior statement of 12 June 1996 he did not mention seeing Elizaphan Ntakirutimana at Gitwa cellule. However, the general formulation according to which the witness saw the Accused at least four times during the attacks in the Bisesero area could well include the incident at Gitwa. The witness testified that he did mention this incident to the investigators but that they may not have put it down.

598. Even though the witness declared that there were trees and bushes between him and the Accused, the Chamber notes that the distance between Elizaphan Ntakirutimana and him, at the time of the observation, was not far -- about 50 meters -- and conforms to a positive identification of the Accused. The Chamber is therefore satisfied beyond a reasonable doubt that Elizaphan Ntakirutimana was present among armed attackers at the occasion of an attack against Tutsi refugees at Gitwa cellule, and that his car was parked nearby. Although this evidence is limited in respect of the Accused's exact role or conduct in connection with the attack, it corroborates other sightings of the Accused in Bisesero, in the company of attackers, during the time-period relevant to the Bisesero Indictment.

4.13 Kabatwa and Gitwa Hills, End of May 1994 (Witness KK)

4.13.1 Prosecution

599. The Prosecution, relying on Witness KK, alleges that both Accused were seen as part of a convoy of attackers at Kabatwa Hill, Nyarutovu cellule, at the end of May 1994 and that Elizaphan Ntakirutimana was later observed close to his vehicle between Gitwa and Kabatwa Hills with attackers, where he instructed them to attack refugees.[945]

4.13.2 Defence

600. The Defence submits generally that Witness KK's allegations are not credible and part of a campaign against the Accused. In relation to the incident at Kabatwa Hill, the Defence points out discrepancies between his evidence and his written statement of 15 November 1999.[946]

4.13.3 Discussion

601. Witness KK testified that, one day before noon towards the end of May 1994 he saw several cars following each other at Kabatwa Hill, Nyarutovu cellule. The distance between the vehicles was about 10 meters. The vehicles were approaching from where he stood, hiding with a group of 31 Tutsi refugees. He observed the vehicle of bourgmestre Charles Sikubwabo, Elizaphan Ntakirutimana's Toyota Hilux, the Mugonero Hospital vehicle driven by Gérard Ntakirutimana, and another vehicle which the witness did not describe further. Armed individuals were aboard the vehicles, some of which stopped at a place called Ngendombu, and others at Kabatwa, below the Gitwa road. About 20 metres

[945] Prosecution Closing Brief paras. 334-337; T. 21 August 2002 p. 112.
[946] Defence Closing Brief pp. 144-153, in particular pp. 151-152.

away from the witness, he saw attackers climb down the cars (the witness did not specify which cars these were among those he previously saw), searching for Tutsi refugees hiding in the bushes and shooting at them. The witness described the assailants as Hutu individuals carrying machetes and clubs. Among them, he recognised the conseiller of Gishyita commune Mika Muhimana.

602. The shooting lasted for about four hours. During the attack Witness KK and other Tutsi refugees climbed up and reached the Gitwa road. On Gitwa Hill, on the other side of the road, he saw, 20 meters away, individuals he described as Hutu harvesting peas and placing them in Elizaphan Ntakirutimana's vehicle. Mika Muhimana was standing nearby, shooting at refugees. The witness testified that Elizaphan Ntakirutimana saw their group and shouted to "soldiers" who were above the Accused on the hill: "there they are, down below. Catch them". The soldiers then chased the group of refugees, shooting at them. They threw a grenade which wounded the witness in the leg and arm and killed three others. At this stage, the witness hid further down the hill. He specified that the attack at Kabatwa hill lasted the whole day.[947]

603. According to the testimony of Witness KK it was broad daylight when he saw Elizaphan Ntakirutimana's car arriving towards Kabatwa Hill, on the Gitwa road, transporting armed individuals, 20 meters away from him. Although he did not testify to seeing the Accused driving it, he did see him in the afternoon that day during an attack on neighbouring Gitwa Hill close by his vehicle. According to the witness, this observation also took place from a relatively short distance, about 20 meters from Elizaphan Ntakirutimana's vehicle, the Accused standing nearby his car. The witness heard him tell attackers nearby to "catch" the Tutsi refugees. Witness KK was able to provide precise details about the scene of the incident, such as the position of Elizaphan Ntakirutimana's vehicle and the fact that it was being loaded with peas.

604. The Chamber will now consider whether this part of the testimony of Witness KK is credible. Certain aspects of his credibility have been discussed elsewhere.[948] The Chamber does not accept the Defence submissions that the witness formed part of a campaign against the Accused. It does not consider it important that the witness only acquired knowledge to identify weapons after the events in 1994, apparently during training sessions in 1998. Furthermore, the Chamber accepts that the Witness KK knew Elizaphan Ntakirutimana. He testified that he was very young, only 12 years old, when he first saw the Accused about 1990 but he observed him not only on two occasions at the church but also on other occasions "during other assemblies of the faithful". The Chamber does not consider it significant that the witness had problems during his testimony to identify the exact periods during which he saw the Accused. It has also considered the other Defence submissions concerning the general credibility of Witness KK and does not consider that they cast reasonable doubt on the evidence of the witness.

[947] T. 4 October 2001 pp. 14-25; T. 5 October 2001 pp. 39-49.
[948] See, in particular, 3.8.3 (c), 3.10.3, 4.6.3, 4.13.3.

605. In the present context, the Defence submits, in particular, that Witness KK's account of this event is inconsistent with his prior statement of 15 November 1999. In particular, the Defence argues that in his prior statement the witness declared that he was at Kabatwa towards the end of April and that the attack during which he saw the Accused's car being loaded with peas took place around the 4 May, whereas in court he estimated the date to be at the end of May. The Chamber notes that during his testimony the witness was not asked to explain this difference. It further observes that Witness KK's testimony included dramatic events that he experienced during a period of about 90 days.

606. The Defence also points out that in his prior statement the witness attributed the sighting of the group of Tutsi refugees on Kabatwa Hill to a group of attackers on the hill opposite Elizaphan Ntakirutimana's car, and that it was these attackers (and not Elizaphan Ntakirutimana as testified in court) who then shouted, "Catch them; catch them" prior to chasing them down the hill.[949] Under cross-examination, Witness KK explained that what he said was "not properly taken down" and "not exactly what [he] said."[950] The Chamber notes that, in general, the other details in the witness's statement relating to this incident are consistent with those given in his testimony, and accepts the explanation given by the witness about the inconsistency.

607. On the basis of Witness KK's credible testimony, the Chamber finds that Elizaphan Ntakirutimana participated in a convoy of vehicles carrying armed attackers to Kabatwa Hill at the end of May 1994, and that, later on that day, at neighbouring Gitwa Hill, he pointed out the whereabouts of Tutsi refugees to attackers who attacked the refugees causing injury to Witness KK.

608. Turning to Witness KK's sighting of Gérard Ntakirutimana at Kabatwa Hill, the Chamber observes that the witness did not mention him in connection with this event in his prior statement. The Chamber accepts his explanation that he was only answering questions about given individuals which did not include the Accused.[951] It also notes his general remark in the statement that he would come with the attackers to the Bisesero area "every day". However, considering that the witness provided no details as to Gérard Ntakirutimana's presence and role, if any, at Kabatwa Hill (other than that he arrived in the hospital vehicle), Chamber finds that the Prosecution has not proved beyond a reasonable doubt that Gérard Ntakirutimana was present at Kabatwa Hill.

---

[949] The relevant passage of the witness' written statement of 15 November 1999 reads: "Meanwhile Pastor Ntakirutimana was standing near his car which was parked near Sikubwabo's car. Mika Muhimana was standing near him. He was supervising a group of Interahamwe who were harvesting a field of green peas and placing them in the Pastor's car. On the hill opposite, there was another group of attackers. They saw us and shouted, "Catch them; catch them". Then a group of military came down the hill after us. I was with thirty-one (31) other refugees. Charles Sikubwabo was on an opposite hill far from his car."
[950] T. 5 October 2001 p. 46.
[951] T. 4 October 2001 p. 127.

4.14 Mubuga Primary School, Middle of May 1994 (Witness GG)

4.14.1 Prosecution

609. Relying on Witness GG, the Prosecution submits that both Accused participated in attacks perpetrated against Tutsi refugees at or near Mubuga Primary School in the vicinity of Gitwa Hill in May 1994. During this period Elizaphan Ntakirutimana allegedly shot and killed a Tutsi called Thomas Habayo. The Prosecution does not consider it significant that none of Witness GG's three prior statements mention this killing, and it stresses the primary importance of evidence given in court. Witness GG testified that he had told investigators about Habayo and the Prosecution submits that the witness "should not be blamed for omissions done by other persons".[952]

4.14.2 Defence

610. The Defence objects generally to Witness GG's credibility. The witness is part of the campaign against the Accused and her evidence is fabricated. More specifically, it is submitted that Witness GG never mentioned this episode in any of his statements. The Defence also argues that when the witness testified about Mubuga School in *Kayishema and Ruzindana* he did not claim that any of the Accused were present.[953]

4.14.3 Discussion

611. The Chamber notes that Witnesses HH and SS also testified that they saw both Accused or only Gérard Ntakirutimana participate in attacks against Tutsi refugees at Mubuga Primary School in June 1994 (see 4.15 and 4.16 below). Witness GG said that the event considered in the present section (4.14) took part in the middle of May 1994. Moreover, there are certain variations between the three testimonies. The Chamber will therefore consider these attacks at Mubuga Primary School as three separate events dealt with in uncorroborated testimonies.[954] Also Witness DD mentioned an event relating to Mubuga Primary School. He stated first that one of the Accused, then that the other Accused shot and killed his wife and two children. The Prosecution chose not to rely on this evidence, and this incident is therefore not part of the Prosecution case. The event was mainly used by the Defence in its argument against the credibility of this witness (see 4.8 above).

612. Witness GG testified that around the middle of May 1994, he saw Elizaphan Ntakirutimana arrive at Mubuga School in his Hilux vehicle and Gérard Ntakirutimana in the hospital vehicle. They were in a convoy which included two buses. All vehicles transported attackers. They were parked less than ten metres away from a tree where the witness was roasting potatoes. Elizaphan Ntakirutimana was holding a firearm. The attackers were also armed. At the time, about 30 refugees were sheltered at the school. The attackers started to sing "Let us exterminate them" and proceeded to kill people until

[952] Prosecution Closing Brief paras. 342-345; T. 21 August 2002 pp. 119-120.
[953] Defence Closing Brief pp. 91-98, in particular pp. 96-97.
[954] Some witnesses use the name "Mumubuga" or Mu Mubuga". This is not significant.

the evening. According to the witness, Gérard Ntakirutimana was directing the attackers and told them to search in the bushes for refugees in hiding. At one point during the attack, one Thomas Habayo, a young man who had been hiding on the lower side of the road, was flushed out of his hiding place by the Interahamwe. Trying to escape, he ran by Elizaphan Ntakirutimana's vehicle. Witness GG declared that, seeing Habayo, Elizaphan Ntakirutimana took out his gun and shot him. In the evening the witness returned to the school premises together with some other refugees and buried the victim's body.[955]

613. The Chamber observes that neither the Indictment nor the Prosecution's Pre-trial Brief makes reference to this attack at Mubuga School or to the killing of Thomas Habayo. None of Witness GG's three statements to Prosecution investigators specifically relates to this incident. The summary of Witness GG's anticipated evidence in Annex B of the Pre-trial Brief only indicates that the witness often saw Elizaphan and Gérard Ntakirutimana and the Prefect in "Mumubuga" between April and June 94, without further particularization. In its opening statement the Prosecution made no reference to the attack at Mubuga School or to the killing of Habayo.

614. It is the Chamber's view that the Defence for Elizaphan Ntakirutimana did not receive sufficient notice that Witness GG would allege that the Accused shot and killed Thomas Habayo at Mubuga Primary School in mid-May 1994. It consequently disregards the witness's testimony of the killing of Habayo by Elizaphan Ntakirutimana. The Chamber however finds, on the basis of Witness GG's evidence, that Elizaphan Ntakirutimana was present in the midst of the killing of Tutsi at Mubuga in mid-May, that he was in his vehicle transporting armed attackers as part of a convoy which included two buses, all carrying armed attackers. The attackers sang "Let us exterminate them" and proceeded to kill people until the evening.

615. In relation to Gérard Ntakirutimana the Chamber notes the paucity of evidence and finds that the Prosecution has not proved beyond a reasonable doubt that he participated in the same attack at Mubuga Primary School.

4.15 Mubuga Primary School, June 1994 (Witness HH)

4.15.1 Prosecution

616. The Prosecution submits that both Accused participated in attacks against Tutsi refugees at Mubuga Primary School also in June 1994. Reference is made to Witness HH, who according to the Prosecution is reliable because he observed the Accused at a short distance. There were no obstacles to prevent identification.[956]

4.15.2 Defence

617. The Defence alleges generally that Witness HH formed part of a campaign against the Accused. In respect of this event, the witness did not testify to have seen either of the

[955] T. 24 September 2001 pp. 11-25; T. 25 September 2001 pp. 6-45.
[956] Prosecution Closing Brief para. 327; T. 21 August 2001 pp. 115-116.

Accused actually participate in the attack. He could not say whether Elizaphan Ntakirutimana had a gun or not. Witness HH contradicted evidence by several Defence witnesses that weapons were never kept in family houses. According to the Defence, there were discrepancies between his testimony and his witness statement.[957]

4.15.3 Discussion

618. Witness HH testified that between the end of May and 15 June 1994 he occasionally stayed in the vicinity of Mubuga Primary School while he sought refuge in Bisesero. One day in June, he observed an attack against Tutsi refugees who sought shelter at the school. Among the attackers, who mostly carried machetes and clubs but also firearms, he saw the two Accused. Gérard Ntakirutimana was carrying a gun. Regarding Elizaphan Ntakirutimana, the witness first declared that he could not clearly see whether he was armed, then that he could see that he had a weapon in his suit, but that he did not know what this weapon was. Witness HH testified that while he was hiding he observed Elizaphan Ntakirutimana from a distance of "about" 30 meters. The witness did not see either Accused kill anyone at Mubuga School but saw "lots of bodies" strewn in the school yard.[958]

619. The Chamber notes that Witness HH did not see either Accused kill anyone. Regarding Elizaphan Ntakirutimana, he estimated the distance between himself and the Accused to be "about 30 meters". Yet, he also stated that the Accused was "far away", that the distance was "quite long" and first said that he did not know whether he could estimate it but would say that it was "above 30 meters".[959] He also said that he was not able to see clearly what the Accused was carrying "because he was far". The Chamber is left with the impression that the distance may have been considerable. Moreover, even if the witness stated that there were no obstacles between him and Elizaphan Ntakirutimana it follows from his testimony that there were persons moving about and "at one point … when there was nobody" between them he could see the Accused. It is unclear how long the witness observed him. The Chamber is aware that it was broad daylight but also recalls the stressful conditions under which the observations was made. Consequently, it does not find beyond a reasonable doubt that Witness HH observed Elizaphan Ntakirutimana participating in the attack at Mubuga Primary School in June 1994.

620. Turning now to Witness HH's alleged observation of Gérard Ntakirutimana, the Chamber notes that the evidence concerning his presence and role in the attack is even sparser than that given in respect of his father. The witness simply testified that he could see Gérard Ntakirutimana and that he was armed. No further information was given about the distance between the witness and the Accused or the type of weapon he was carrying. The Chamber has considered the witness's reconfirmation statement of 25 July 2001, where reference is made to an undated incident at Mubuga Primary School. According to

[957] Defence Closing Brief pp. 75-86, in particular pp. 84-85.
[958] T. 26 September 2001 pp. 45-48, 57-65; T. 27 September 2001 p. 126.
[959] T. 26 September 2001 p. 60. The French version reads (p. 69): "Il y avait une assez longue distance entre moi et le pasteur, je ne sais pas comment l'estimer, mais je pense qu'elle était supérieure à 30 mètres. Q: Avez-vous dit: "supérieure à 30 mètres"? A: "Oui, aux environs, il s'agit d'une estimation."

the statement, the witness made his observation at a distance of about 100 metres.[960] Such a distance would not necessarily preclude a reliable identification of the Accused. However, Witness HH did not specify whether his view of the Accused was generally unobstructed. The Chamber is therefore not satisfied beyond a reasonable doubt that the witness observed Gérard Ntakirutimana during this attack at Mubuga Primary School.

4.16 Mubuga Primary School, June 1994 (Witness SS)

4.16.1 Prosecution

621. Witness SS testified about an attack against Tutsi refugees at Mubuga School in June 1994 and stated that Gérard Ntakirutimana was among the participants. During its oral submissions the Prosecution argued that the witness was credible and his observation reliable.[961]

4.16.2 Defence

622. The Defence submits generally that Witness SS is part of a campaign against the Accused. In respect of this event the Defence points out that according to his testimony he did not know how the Accused and the other attackers arrived at Mubuga, and that he did not see any vehicles, despite his claim that he was near the classrooms when he observed the alleged attack.[962]

4.16.2 Discussion

623. Witness SS testified that one day in June 1994, towards dawn, he went to hide in bushes near Mubuga School after having slept at the school premises. Later, before 10.30 a.m., he saw between 20 and 60 attackers approach the school on foot. He did not see any vehicles and did not know how the attackers had arrived. According to the witness, Gérard Ntakirutimana was in front of the attackers and carried a weapon, which he described as a "long gun". He saw the Accused shoot at Tutsi refugees within the school from the door of the classroom, and at some others trying to flee through the school windows. The witness then saw him pursue refugees who were trying to flee from the school. After the attackers' departure, Witness SS returned to find "many dead bodies, stacked one on top of the other" both inside and outside the school buildings.[963]

624. The Chamber notes that in Annex B of its Pre-trial Brief, filed on 15 August 2001, the Prosecution indicated that Witness SS would testify that he saw Gérard Ntakirutimana after the attack at the Mugonero Complex, attacking Tutsi individuals

---

[960] The relevant passage of this statement reads: "When I had seen them [which appears to refer to the two Accused, Ruzindana and Mika], I was in front of one of the classrooms. I saw them at a distance of about 100 metres." It follows from the statement that the two Accused were with "a lot of attackers".
[961] There is no reference to this event in the Prosecution Closing Brief or in its Closing arguments of 21 August 2002. However, the Prosecution declared that it relied on all evidence led against the Accused. (T. 21 August 2002 p. 134).
[962] Defence Closing Brief pp. 158-163, in particular pp. 162-163.
[963] T. 30 October 2001 pp. 139-146; T. 31 October 2001 pp. 76-86 and 92.

hiding in Mubuga in the Bisesero area. Moreover, according to the witness's written statement of 18 December 2000 the Accused chased Tutsi refugees and shot at them "Mu Mubuga" Primary School. The Chamber accordingly finds that the Defence received sufficient notice about this event.

625. The Chamber has accepted that Witness SS knew Gérard Ntakirutimana and was able to recognize him during the events from April to June 1994. It considers the witness generally credible (see 3.8.3 (d) and 3.12.3). In relation to the present event, the Chamber notes that the witness observed the Accused during an attack which took place in the middle of the morning. The witness said that the distance between him and the attackers was "not that much" but wider than the distance of the court room. The Chamber accepts that the witness observed the Accused even though he was not able to estimate the distance between them at the time of his observation.[964] The witness specified that Gérard Ntakirutimana was standing in front of the group of 20 to 60 attackers, and that he saw that the Accused was carrying a long gun. Moreover, Witness SS observed the Accused shooting at refugees when he was at the door of the classroom and subsequently pursuing them. The witness observed the attackers from the bushes where he remained because he was afraid to be seen if he left his hiding place. The Chamber does not consider it significant that the witness was unable to recall how the Accused was dressed.

626. During cross-examination the Defence pointed out that Witness SS's prior statement of 18 December 2000 does not indicate that he saw Gérard Ntakirutimana kill anyone at Mubuga Primary School. The witness answered that a question to this effect was not put to him by the investigators, and that he was only asked "whether I saw him".[965] In the Chamber's view, this does not affect the credibility of the witness. It is noted that according to his statement he saw the Accused "shooting at the people hiding in the school".

627. Finally, the Chamber does not consider it significant that Witness SS did not see the attackers, including the Accused, arriving in vehicles before the attack, and that he did not observe their vehicles being parked by the school during the attack. Even if vehicles were observed in the vicinity of the school on other occasions (see 4.14, Witness GG), the reliability of Witness SS is not affected. The Chamber recalls that Witness HH made no reference to seeing vehicles during the attack at Mubuga School (see 4.15).

628. On the basis of the evidence provided by Witness SS, the Chamber finds that Gérard Ntakirutimana participated in an attack at Mubuga Primary School in June 1994 and shot at Tutsi refugees. He was leading a group of 20 to 60 attackers and carrying a long gun. He and the attackers shot at Tutsi refugees within the school and Tutsi fleeing through school windows and thereafter pursued the fleeing refugees. Many bodies were left both inside and outside the school.

[964] According to Witness SS's witness statement of 18 December 2000 the distance was about 40 meters.
[965] T. 31 October 2001 p. 88.

4.17 Muyira (Muhira) Hill, Middle of May (Witness GG)

4.17.1 Prosecution

629. The Prosecution submits that in mid-May 1994, Witness GG saw Gérard Ntakirutimana leading attackers in Muyira Hill during an assault launched against Tutsi refugees.[966]

4.17.2 Defence

630. The Defence generally objects, in regard of all Muyira-related allegations, that they did not have sufficient prior notice to meet the particular issues brought by the witnesses in the course of their testimony in court. As far as Witness GG is concerned, the Defence submits that he is part of a campaign against the Accused. More specifically, the Defence contends that this event is not mentioned in any of the witness' prior statements or in his testimony in the *Kayishema* case.[967]

4.17.3 Discussion

631. Witness GG testified that, one day in mid-May 1994, he saw Gérard Ntakirutimana at a place called Rwiramba in Bisesero. Gérard Ntakirutimana was arriving in his vehicle. A number of other vehicles, including buses, were part of the convoy approaching Muyira Hill. All the vehicles were full of individuals armed with clubs and machetes chanting, "Let's exterminate them; let us flush them out of all the bushes; let us flush them out of all the caves." The attackers left their vehicles at the bottom of Muyira Hill and moved up the slope flushing out refugees along the way. Individuals he described as the leaders, among whom the Accused, sent the other attackers to pursue the refugees up a steep hill called Rugona. Gérard Ntakirutimana was seen with Clément Kayishema, Obed Ruzindana, Charles Sikubwabo, Musema, Mika Muhimana, and Aloys Ndimbati. The witness specified that many people were killed as a result of this attack.[968]

632. The Chamber will first consider whether the Defence received sufficient notice. Except for the event at Murambi Church, the Indictment is silent as to the places in Bisesero where the Accused allegedly participated in attacks, or the specific dates when they supposedly took place. This is true also in respect of the present event at Muyira Hill, which is located in Bisesero. The summary of Witness GG's anticipated evidence in Annex B of the Prosecution Pre-trial Brief refers to several locations in Bisesero but does not specifically indicate that the witness was expected to testify to events at Muyira. His statement of 20 June 1996 to investigators contains a general formulation according to which the witness saw Gérard Ntakirutimana "many times" in Bisesero. His two other prior statements of 10 July 1996 and 12 November 1999 do not refer to events in that area.

---

[966] Prosecutor's Closing Brief para. 347.
[967] Defence Closing Brief pp. 91-98, in particular p. 97.
[968] T. 24 September 2001 p. 26-38.

633. This being said, the Chamber observes that Witness HH's prior statement of 25 July 2001, which was disclosed to the Defence prior to trial, refers to Gérard Ntakirutimana as having participated in an attack on Muyira Hill (spelt Muhira in the statement). It also follows from the summary of Witness HH's anticipated evidence in Annex B of the Pre-trial Brief that the Prosecutor would rely on this witness to allege that Gérard Ntakirutimana participated in various attacks in Bisesero. Muyira Hill is located in the Bisesero area. Furthermore, during its opening statement the Prosecution announced that the "evidence will prove that Elizaphan and Gérard Ntakirutimana caused the death of Tutsis ... at numerous places in Bisesero including Muyira ...".[969] The Chamber is of the view that the Defence had sufficient notice of this allegation.

634. The Chamber found Witness GG generally credible and dismissed the Defence allegation that he was part of a political campaign against the Accused (see, in particular 3.8.3 (c) and (d), 4.4). In respect of this specific event, the Chamber does not consider it significant that the witness did not give the specific locality of Muyira Hill as a place where he saw Gérard Ntakirutimana participating in an attack but rather stated in his first statement of 20 June 1996 that he saw Gérard Ntakirutimana "many times" in Bisesero. His two subsequent interviews with investigators only dealt with the attack at the Mugonero Complex and his identification of Elizaphan Ntakirutimana. The witness further explained in court that he had mentioned the incident but that the investigators may not have written it down.[970]

635. There is evidence of numerous attacks occurring over a period of time in the hills of Bisesero. As will be seen below, Witnesses HH, CC and YY also testified about attacks on Muyira Hill, albeit at other time-period or with different details. The Chamber accepted their evidence. There is therefore corroborative evidence that Gérard Ntakirutimana was in the company of leaders named by Witness GG. The Chamber accordingly finds that sometime in mid-May 1994 in Muyira Hill, Gérard Ntakirutimana led armed attackers in an attack on Tutsi refugees, as a result of which many Tutsi were killed.

636. Witness GG observed the Accused for the second time when the attackers alighted from their vehicles and started chasing the refugees. He declared: "We were not at a fixed place because we were on the run. People were coming across each other's path. They were running away from people who were trying to kill you."[971] The witness did not specifically describe the Accused, and he did not say whether he was armed or not. There is very little information concerning his alleged actions at the time. On the other hand, the evidence before the Chamber corroborates such a sighting of the Accused participating in attacks against Tutsi refugees at Bisesero and, specifically in Muyira Hill (as will be seen below). The Chamber accordingly finds that Gérard Ntakirutimana took part in the attack. On the basis of the evidence, the Chamber is not convinced that the Accused was one of the leaders of the attack at Muyira Hill. The witness did not mention

[969] T. 28 September 2001 p. 33.
[970] T. 24 September 2001 p. 90.
[971] Id. pp. 32-33.

why he considered the Accused to be a leader. He explained that, while attackers chased a group of refugees up a steep hill called Rugona, "the ... leaders didn't take the trouble of going there. They sent ... people, who were armed with clubs and machetes; whereas, they, the leaders, remained comfortably at the top of the hill."[972] The leaders held positions of authority, such as a prefect. Gérard Ntakirutimana's association with such persons persuades the Chamber that he was acting with knowledge of the widespread attack against the Tutsi. However, there is no evidence that the Accused issued any orders or had effective control over the attackers.

4.18 Muyira Hill, 13 May 1994 (Witness YY)

4.18.1 Prosecution

637. The Prosecution relies on Witness YY's evidence in support of its allegation that Elizaphan and Gérard Ntakirutimana participated in attacks against Tutsi refugees on Muyira Hill on 13 and 14 May 1994. The witness made his observation under good conditions and his testimony is credible. In a prior written statement he mentioned seeing Gérard during attacks in the Bisesero area generally, even though the present event was not specifically mentioned.[973]

4.18.2 Defence

638. As mentioned previously, the Defence disputes the general credibility of Witness YY. In respect of this event, it is submitted that the Defence did not receive notice that the witness would allege that the Accused participated in an attack on Muyira Hill. A similar objection is made in respect of the date of the attack and in relation to the specific allegation that Gérard Ntakirutimana killed the wife of one Nzamwita. According to the Defence, this constitutes a violation of the rights of the Accused to be informed in detail of the charges against them.[974]

4.18.3 Discussion

639. Witness YY testified that he saw Gérard Ntakirutimana at "large scale attacks on the 13th and 14th of May on the Bisesero hills." He particularly described that of 13 May 1994, during which he saw Elizaphan Ntakirutimana and Gérard Ntakirutimana's vehicles parked at Ku Cyapa, between Gishyita and Gisovu communes, with numerous other vehicles. These had come earlier in the morning than usual. He did not see who was at the steering wheel when they arrived. Elizaphan Ntakirutimana was standing, unarmed, next to his car at Kucyapa. The witness was on top of Muyira Hill when he saw Gérard Ntakirutimana, at 50 meters distance at the bottom of the hill, in front of a group of attackers, shooting at refugees. He specifically saw him shoot at the wife of one Nzamwita who was passing on stones to the witness and other refugees who tried to oppose some resistance to the attackers. The witness stated that she was killed, that he

[972] Id. p. 38.
[973] Prosecution Closing Brief paras. 352-358; T. 21 August 2002 p. 122.
[974] Defence Closing Brief p. 123.

saw her being hit and falling in front of him. The group of refugees then ran away amidst gunshots and grenade explosions, while the wounded were "finished off" by machetes, spears and hoes. He identified the two Accused as the leaders of the attack, along with bourgmestre Ndimbati (heading a group of attackers from Gisovu), Eliézer Niyitegeka, Alfred Musema, Charles Sikubwabo, Obed Ruzindana and Mika Muhimana.[975]

640. The Chamber has previously found this witness to be generally credible. As already indicated, the Chamber considers that the Defence received sufficient notice that they would have to meet allegations relating to both Accused's participation in attacks against Tutsi refugees at Muyira Hill. The fact that the information received did not specify the exact date at which the present attack was alleged to have occurred does not, in the Chamber's view, justify a dismissal of the entire allegation.

641. As to Witness YY's other evidence in respect of Gérard Ntakirutimana's involvement in the attack of 13 May 1994 at Muyira Hill, the Chamber notes that the observational conditions were good and particularly conclusive. The witness observed the Accused shooting at refugees with a gun as he was standing above him and while the Accused was in front of the group of attackers climbing the hill, at a distance of 50 meters in daylight. The witness did not specify the distance at which he was from Elizaphan Ntakirutimana when he saw him at Kucyapa, nearby Muyira, where the attackers had parked their vehicles.

642. Consequently, the Chamber finds that Gérard Ntakirutimana participated in the attack against Tutsi refugees at Muyira Hill on 13 May 1994 and that he shot and killed the wife of one Nzamwita, a Tutsi civilian. However, it is not satisfied beyond reasonable doubt that Witness YY positively identified Elizaphan Ntakirutimana in Ku Cyapa from where he stood on Muyira Hill.

4.19 Muyira Hill (Dege), 20 May 1994 (Witness II)

4.19.1 Prosecution

643. The Prosecution relies on Witness II and argues that Elizaphan Ntakirutimana played a leading role during an attack against Tutsi refugees on Muyira Hill on 20 May 1994. It is submitted that the witness was reliable and his testimony in conformity with his prior written statement to investigators. The initial failure of the witness to identify the Accused in court should not be held against his credibility. His explanation was plausible and subsequently he identified the Accused in the courtroom. The fact that someone bearing the witness's name gave an interview to African Rights does not affect the credibility of the witness.[976]

4.19.2 Defence

[975] T. 2 October 2001 pp. 42-44, 48-53, 89; T. 3 October 2001 pp. 64-65, 75-77. See also Fr. T. 2 October 2001 pp. 60-61.
[976] Prosecution Closing Brief paras. 359-370; T. 21 August 2002 p. 128.

644. Defence submits that Witness II was untruthful. He was unable to identify Elizaphan Ntakirutimana in court when first requested to do so. He contradicted himself as to whether Elizaphan Ntakirutimana could see rapes being perpetrated on Tutsi women by attackers. The witness did not say to investigators that any of the women had been killed after the rape. He denied having given an interview to African Rights, in which he allegedly gave another account of a sighting of Elizaphan Ntakirutimana in June. This is not in conformity with his declaration that he saw the Accused only once in Bisesero.[977]

4.19.3 Discussion

645. Witness II sought refuge in Bisesero after 7 April through May 1994. He testified that on 20 May 1994 he saw Elizaphan Ntakirutimana among attackers at Dege, which is part of Muyira Hill in the area of Bisesero. He testified that he was hiding in a bush with three women when Interahamwe discovered them. A Twa was among the group of attackers. He seriously injured him to the left of the head and to the chest with a spear, and to his hips by a sword. The four captives were taken to the Gisovu-Gishyita road. There he saw Elizaphan Ntakirutimana standing very close to his vehicle, dressed in a black suit and wearing spectacles. The women were then taken approximately 15 meters away and raped, out of view of the witness, by the bourgmestre of Gisovu commune and by Alfred Musema. Two of the women were killed. At one point, the Accused addressed one of the attackers, a Hutu called Rwambimbi who knew the witness, telling him to kill the witness and to take him lower down "so that there wasn't any stench around the place where they were parking their vehicles." The Accused allegedly also said: "Take him further away. Don't waste your bullets on him and go and cut him up." Rwambimbi and the Twa took the witness away. Rwambimbi promised a goat to the Twa so that the witness could be spared. The witness was advised to scream out, pretending that he was being killed.[978] Later he sought refuge in a hole until the arrival of the French, who brought him to Ngoma for medical treatment.

646. The Prosecutor does not allege that Elizaphan Ntakirutimana was complicit, aided or abetted in connection with the rapes of the three captured women.[979] The Chamber observes, however, that the testimony of Witness II does not give any basis to conclude that the Accused saw or was in any way involved in these acts. He was close to his car and there was a distance of about 15 meters to the place where the women were brought. Furthermore, the witness explained that there was a number of trees which blocked the view in the area. The questions the Chamber is confronted with are whether it is satisfied beyond a reasonable doubt that the Accused participated in the attack, and that he ordered Rwambimbi to kill the witness.

647. Witness II testified that he had known Elizaphan Ntakirutimana from the "age of reason", the age where he could tell the difference between one thing and another, and

---

[977] Defence Closing Brief pp. 153-157 and 173-174.
[978] T. 22 October 2001 pp. 106-112, 116, 122-129; T. 23 October 2001 pp. 7, 32-33.
[979] During the Pre-Trial Conference, the Prosecution clarified that, "the issue of rape would not arise in the testimony of our witnesses. I do not intend to lead any evidence, neither do my colleagues, of rape". (T. 17 February 2001 p. 42 - closed session). The Prosecutor confirmed this during Witness II's testimony. See 22 October 2001 p. 121.

recognize people. He further stated that the Accused had been his pastor and that he had baptized him in 1986. However, at the end of his first day in court Witness II failed to identify Elizaphan Ntakirutimana.[980] The following day, the witness explained that he had been suffering from problems with his eyes due to the length of his testimony on the first day.[981] On the third trial day, he correctly identified Elizaphan Ntakirutimana and explained further that, at the time of the first attempt at identifying the Accused, the latter was ducking his head "but when we all stood up, I recognised him. I said that to the interpreter but the President had already closed the session."[982] Having observed the witness the Chamber does not consider that the episode on the first day of his testimony affects his credibility. The Chamber accepts Witness II's explanation.

648. Turning now to the reliability of the testimony the Chamber notes that Witness II was aggressive and obstructive, especially during cross-examination. Having observed him in the courtroom the Chamber is convinced that he is a Bisesero survivor and that the events have left traces. His emotions during his testimony should be seen in this light and are not indicative of untruthfulness. The witness was consistent in describing what he knew and observed. He did not want to speak of events he had not personally seen but merely heard about, for example, the allegation in his written statement that the Accused was present at all the attacks at Bisesero.[983] It is true that he emphasized that Elizaphan Ntakirutimana was a powerful person and had a case to answer but it is not the impression of the Chamber that he sought to incriminate him to a wider extent than what followed from the witness's own observations.

649. The observational conditions appear to have been good. According to Witness II he was standing close to Elizaphan Ntakirutimana and at hearing distance from him.[984] His line of vision was unobstructed, since he testified that he was on the Gishyita-Gisovu road and that the Accused was standing on the road, nearby his vehicle. It was broad daylight. His account is generally consistent with his prior witness statement of 28 January 2000. He distanced himself from his prior statement in respect of the dates given for attacks other than that of 20 May. The Chamber considers these discrepancies as minor (notably the fact that, when he and the three women he had been hiding with were discovered by the Interahamwe, he was hit by one Twa and not several individuals, as his statement reads, or the fact that he did not see the Accused in his vehicle, but outside of it).

650. Prior to his appearance in the present case the witness testified before the Appeals Chamber in *Musema* about the rape of a woman by Mika Muhimana during an attack against Tutsi refugees on Muyira Hill on 13 May 1994. In the present case, the Defence suggested to him that he was in fact referring to the same attack of 13 May. The witness maintained that these events were not the same, explaining that he was sure about the date of 20 May 1994 because he heard the Accused ask Ndimbati what day it was and

[980] T. 22 October 2001 p. 132.
[981] T. 23 October 2001 p. 2.
[982] T. 25 October 2001 p. 39.
[983] T. 22 October 2001 p. 110.
[984] Id. p. 123.

that the response was 20 May. According to the witness, the Accused then said that they had to hurry as the French were going to arrive soon.[985]

651. The Chamber has considered this explanation carefully. It notes Witness II's statement that the refugees had lost their sense of time, and that his only basis for dating the present event to 20 May is the remark allegedly uttered by Elizaphan Ntakirutimana. On the other hand, it is a matter of public record that Operation Turquoise reached Kibuye only at the end of June 1994. Under these circumstances, the Chamber has to assess whether it appears credible that the Accused, over a month prior to the arrival of the French battalion, would be aware that this would happen. The Chamber finds it surprising that the Accused would be in a position to make such a statement so early. It is also puzzling, as the Defence submits, that the Accused should ask for the date in the midst of an attack and that the witness should overhear the conversation, thereby being in a position to remember the date of one specific attack in the Bisesero area. This creates a certain doubt in the Chamber's mind.

652. The Defence disputes the credibility of Witness II on the basis of an interview he allegedly gave to African Rights in November 1999. Excerpts of such an interview are found in a document published on 1 February 2001.[986] In that document the person who is being interviewed gives an account of an encounter with Elizaphan Ntakirutimana, Obed Ruzindana and other attackers in mid-June 1994. According to the interviewed person they offered medical supplies to the refugees, who feared an ambush and tried to attack, encircle and capture the attackers. The following day the attackers came back with a "huge horde of killers". This interview, if given by Witness II, would contradict the witness' testimony that he saw the Accused only once on 20 May in Bisesero.

653. In court, the witness denied that he had ever given such a statement. He explained that the person interviewed could have been someone from the same area as his and bearing the same name. Both his secteur and commune were quite big. He added that in June 1994, he had left Rwanda for Ngoma in Zaire and was being treated there after having been evacuated by the French, and that he only returned to Rwanda on 3 July 1994.[987] The Chamber notes his complete denial and the possibility of a namesake having given the interview but finds his explanation about Ngoma confusing. As mentioned above, the French arrived in Kibuye at the end of June. This implies that the witness was still in Bisesero until that time.

654. The Chamber notes that the witness and the person interviewed by African Rights bear the same first name and surname, are both farmers from Bisesero born in the same year, and both sustained a machete wound to the left of the head. These are striking similarities. On the other hand, it has not been provided with the full statement of the person interviewed by African Rights. Neither does it have clear and conclusive evidence

[985] T. 23 October 2001 pp. 18-19.
[986] "Charge Sheet No. 3 Elizaphan Ntakirutimana U.S. Supreme Court Supports Extradition to Arusha", Defence Exhibit 1D5 (under seal).
[987] T. 25 October 2001 pp. 9 and 13. See also T. 23 October 2001 pp. 19-20.

that Witness II and the person interviewed by African Rights are the same person. Still, the evidence is not quite clear.

655. The Chamber accepts that Witness II was present during an attack at Muyira Hill involving the killing of women and that the order was given to kill him. It is, however, not certain that the witness account is correct in all details. The Chamber observes that the witness made his alleged observation of Elizaphan Ntakirutimana after having been seriously wounded. He then spent several weeks in Bisesero, hiding in a hole and in miserable condition. The account of the conversation between the Accused and Ndimbati about the date of 20 May as well as the interview in the African Rights publication with someone having striking similarities with Witness II are quite surprising elements. The witness explained that his memory had been affected by the events and the injuries he sustained as a result. His testimony is uncorroborated. Under these circumstances, the Chamber is not in a position to conclude beyond a reasonable doubt that Elizaphan Ntakirutimana participated and behaved as alleged by the Prosecution during this attack at Muyira Hill (Dege).

4.20 Muyira Hill, Ku Cyapa (Witness SS)

4.20.1 Prosecution

656. According to Witness SS, Elizaphan Ntakirutimana was at Ku Cyapa near Muyira Hill one day in May or June 1994. On that day there was a wide-scale attack against the Tutsi refugees gathered in this area of Bisesero. The Prosecution did not make any explicit reference to this event in its Closing Brief or oral submissions.

4.20.2 Defence

657. The Defence objects to all allegations in respect of Muyira Hill and maintain its general objections to Witness SS' credibility. No further submissions were made in respect of this part of the witness's testimony.[988]

4.20.3 Discussion

658. Witness SS testified that he saw Elizaphan Ntakirutimana nearby Muyira one day in May or June 1994, not long after the incident he testified upon at Murambi (see 4.10 above). Before noon on that day, the witness was on his way from a place called Kazirandimwe, and preparing to cross the Gishyita-Gisovu road in the direction of Muyira Hill when, at a distance of approximately 14 or 15 metres, he saw Elizaphan Ntakirutimana in his single cabin Hilux, parking the vehicle at Ku Cyapa. The witness saw other vehicles following that of the Accused. He first saw Obed Ruzindana's car (but not Ruzindana). He then saw, at a distance, two big green buses which were full of attackers and had just passed the house of one Kwakambanda, towards Ku Cyapa where the Accused was parking his vehicle. The witness did not see many attackers in the

[988] Defence Closing Brief pp. 158-163.

vehicles of the Accused or Ruzindana but explained that attackers were on their way in buses, climbing the hill.

659. The witness did not remain to ascertain whether the Accused got out of the car once it was parked. He explained that he had no other option but to immediately flee, towards Muyira Hill. Once there, he saw "a lot of individuals" standing nearby the parked vehicles of the Accused and Ruzindana in Ku Cyapa. They were too far for him to be able to identify any of them. The buses were parked further behind in Ku Cyapa, at a place he could not see very well. The witness confirmed that, on the day of the sighting, there was a wide-scale attack launched in that area of Bisesero.[989]

660. The Chamber has already found Witness SS to be generally credible.[990] In relation to the present event his testimony was quite consistent and his answers appeared truthful. The Chamber considers his observation reliable. The witness saw the Accused's car from not more than 15 meters before noon in full daylight. He was able to describe the vehicle. His prior written statement of 18 December 2000 generally conforms to his account in court, save for minor details. For instance, according to the statement the witness saw Elizaphan Ntakirutimana "going in the vehicle". During cross-examination the Defence understood this to mean that Witness SS declared to investigators that he had seen the Accused boarding the vehicle. The witness maintained that he had not said so to the investigators and insisted that he had only declared that he had seen the Accused driving his vehicle and parking it. The Chamber accepts the explanation of the witness. Furthermore, he gave details which are in conformity with other evidence, such as the arrival of big buses carrying attackers, the fact that the vehicles parked at Ku Cyapa prior to the attack on the Muyira Hill area, and that attackers assembled near the vehicles prior to the attack.

661. Witness SS did not provide any description of the persons in the vehicles of the Accused or Ruzindana, for instance whether they were armed. Furthermore, the witness observed Elizaphan Ntakirutimana driving his vehicle but did not see him do anything. In the Chamber's view the evidence must be viewed in context. It follows from the evidence in the case that vehicles were often followed by buses with attackers. Moreover, on the day that Witness SS made his observation there was, according to the witness, a wide-scale attack at Ku Cyapa. He said that the buses were transporting persons who were "perpetrators of the genocide". Consequently, the Chamber finds that one day in May or June the Accused was seen arriving at Ku Cyapa in a vehicle followed by two buses of attackers. The Chamber is convinced that the Accused was part of a convoy which included attackers. The evidence establishes that these attackers among others participated in the killing of a large number of Tutsi. Witness SS declared: "On that day the killings were beyond comprehension, and that is the day most people were killed."

[989] T. 30 October 2001 pp. 134-138; T. 31 October 2001 pp. 124-132.
[990] See 3.8.3 (c), 3.12.3, 4.10.3, 4.16.3, 4.20.3

4.21 Muyira Hill and Ku Cyapa, June 1994 (Witness HH)

4.21.1 Prosecution

662. Relying on Witness HH, the Prosecution alleges that one day in June 1994 Gérard Ntakirutimana was seen on Muyira Hill carrying a big firearm, firing on Tutsi refugees in the company of other attackers armed with traditional weapons. On another day, the witness observed Elizaphan Ntakirutimana at Ku Cyapa near Muyira Hill. The Prosecution argues that omissions or absence of information in the testimony compared to the witness's prior statements to investigators do not affect his credibility.[991]

4.21.2 Defence

663. Generally, the Defence submits that Witness HH was part of a campaign against the Accused. In respect of the present event, the Defence submits that in his prior statements the witness never mentioned that he saw Gérard Ntakirutimana at Muyira Hill. It is further submitted that the witness admitted in court that he did not see Gérard Ntakirutimana fire at anyone at Muyira Hill. According to the Defence, the witness's account of his sightings of Elizaphan Ntakirutimana at Muyira Hill and in Bisesero in general are in contradiction with his first statement, which reads: "In Bisesero, I did not see Pastor Ntakirutimana among the group of attackers from Ngoma."[992]

4.21. 3 Discussion

664. Witness HH testified that he stayed at Muyira Hill at certain times between the end of May and 15 June. One day in June he was with other refugees on the side of Muyira Hill, throwing stones at several groups of advancing attackers, each with a leader. There he saw Gérard Ntakirutimana, who carried a big firearm and fired it as he approached the refugees. The Accused was heading a group of attackers. The rest of the group remained slightly behind because they were waiting for the refugees to start running away to advance.[993] Witness HH further declared generally that he saw Elizaphan Ntakirutimana once near Ku Cyapa, at some point after his sighting of the Accused at Mubuga School, which he dated to June 1994 (see 4.15 above).[994]

665. The Defence objects on the basis of lack of notice because there is no reference in any of Witness HH's prior statements that he saw Gérard Ntakirutimana at Muyira Hill. The Chamber notes that the Accused was mentioned while the witness sought refuge for about one month at Gitwe Hill but not in the following period in Bisesero. It follows from the anticipated summary of the witness's testimony in Annex B to the Pre-trial Brief that in "May 1994 he fled to Bisesero where he saw that Dr. Gérard Ntakirutimana" and other persons "for[m] part of the contingent of attackers who attacked them almost daily between then and June 94". The Annex was filed on 15 August 2001. Consequently, the

[991] Prosecution Closing Brief para. 348-350; T. 21 August 2002 p. 121.
[992] Defence Closing Brief pp. 75-86, in particular p. 85.
[993] T. 26 September 2001 pp. 45-48, 58, 64-70.
[994] T. 27 September 2001 pp. 126-127.

Defence knew that it would be alleged that the Accused committed attacks in the area of Bisesero, where Muyira Hill is located. Moreover, Witness HH's reconfirmation statement of 25 July 2001, which was disclosed to the Defence on 14 September 2001, specifically refers to Witness HH's observation of Gérard Ntakirutimana "attacking us with a rifle" at Muhira Hill, "at some stage". Witness HH gave testimony on 25 to 27 September 2001. It follows that the Defence was aware that Witness HH would allege specifically that Gérard Ntakirutimana was involved in an attack at Muyira (spelt Muhira) Hill from May 1994 onwards. The Chamber is of the view that the Defence received sufficient notice (see generally 2.4).

666. The Chamber has previously found this witness to be credible.[995] This conclusion extends to his account of the present event. In the Chamber's view it is not significant that Gérard Ntakirutimana, who was mentioned elsewhere in the statement of 2 April 1996, was not listed among the attackers in Bisesero. It is noted that the Accused was included in the witness's reconfirmation statement.

667. Turning to the conditions during which Witness HH made his observations the Chamber observes that in court he testified that the Accused stood at about 40 meters away from him.[996] The formulation in his reconfirmation estimates the distance to "less than 100 meters". The witness further testified that this distance was "long", which also suggests that it may have been greater than 40 meters.[997] However, even assuming that the distance between the witness and the Accused was in fact between these two estimates, the witness was standing in the front line of refugees throwing stones at the assailants, above the armed individuals advancing towards the group, whereas the Accused was heading the group of attackers. The witness further declared that there was nothing in the way between him and the Accused. The observation was made in broad daylight. The witness knew the Accused and identified him in court. The Chamber accepts that the witness saw Gérard Ntakirutimana during the attack.

668. The Defence rightly notes that the witness declared, "I cannot say that he [Gérard Ntakirutimana] was the one who was shooting at us [the refugees]".[998] In the Chamber's view, this statement does not cast doubt on the Accused's participation in this attack. The fact that the Accused may have been firing elsewhere than at the group of refugees comprising the Accused does not mean that the Accused did not participate in the attack. The witness stated unambiguously that the Accused was heading the attackers, armed with a gun. The Chamber accordingly finds that, one day in June 1994, Gérard Ntakirutimana headed a group of armed attackers at Muyira Hill. He carried a gun and shot at Tutsi refugees. It is however noted that there is no evidence that the Accused killed anyone.

---

[995] See particularly 3.8.3 (c), 4.7, 4.15, 4.24.
[996] T. 26 September 2001 p. 66.
[997] The witness specified that "This was a long distance because they were still in the valley when they started shooting". T. 26 September 2001 p. 66.
[998] See Witness HH in T. 26 September 2001 p. 68.

669. Regarding Witness HH's sighting of Elizaphan Ntakirutimana at Ku Cyapa, the Chamber notes that this evidence was provided during cross-examination and only mentioned very briefly. No further information was given. Accordingly, the Chamber disregards this part of the evidence.[999]

4.22 Mutiti Hill, June 1994 (Witness FF)

4.22.1 Prosecution

670. The Prosecution's case is that Witness FF saw Gérard Ntakirutimana in the company of Interahamwe in the Mutiti area around June 1994, when he entered an Adventist church previously occupied by Tutsi refugees. Subsequently, she saw Gérard Ntakirutimana and the Interahamwe shoot at these Tutsi refugees. The witness explained that this event is not mentioned in her prior written statements because she had not been asked about it.[1000]

4.22.2 Defence

671. The Defence submits that Witness FF is part of a propaganda campaign against both Accused. This incident was not mentioned to investigators or when she testified in *Musema*. Her testimony is not credible.[1001]

4.22.3 Discussion

672. Witness FF testified that she arrived at Mutiti Hill in June 1994 where she saw Gérard Ntakirutimana with many Interahamwe. From her position close to a church, she observed these attackers in a forest below the church. They were looking for refugees hiding in the church. In order to seek refuge from these attackers, Witness FF and other refugees went to the back of the church, crossed the road and entered a big forest by the road. She stated that there was a big group of refugees at Mutiti, but could not provide an estimate of the number. The witness testified that Gérard Ntakirutimana was carrying a firearm and that he and the Interahamwe were shooting at the refugees. She later clarified that she did not actually see him shoot at the refugees, as she was fleeing with the others at the time and could not identify who was shooting at them.[1002]

673. The Chamber recalls that it generally found Witness FF to be a credible witness, and that it rejected the Defence submissions that Witness FF is part of a campaign against the Accused.[1003] With respect to the present event, the Chamber accepts the witness's explanation that she had not mentioned this incident before because she was not asked about it. Her testimony in court was clear and consistent and was not shaken under cross-

---

[999] Witness HH's reconfirmation statement of 25 July 2001 contained only one sentence ("I saw Past[or] Elizaphan Ntakirutimana also approaching to attack us, but he was more far").
[1000] Prosecution Closing Brief paras. 325-326.
[1001] Defence Closing Brief pp. 55-63, in particular p. 62.
[1002] T. 28 September 2001 pp. 68-72; T. 1 October 2001 pp. 120-121.
[1003] See particularly 3.4.3 (c), II.7

examination. The Chamber accordingly finds that Witness FF is credible also in the present context.

674. The Chamber notes that the Indictment alleges that attacks were carried out in the area of Bisesero, in which Mutiti Hill is located. In Annex B to the Pre-trial Brief, the summary of her anticipated testimony makes reference "several attacks between April and June 1994 in the hills of Bisesero, including Rwakamena, Muyira, Murambi and Gitwe hills" where she saw Gérard Ntakirutimana. It follows from her four prior statements that she observed the Accused participating in attacks several or many times. In court she expanded on the details and specific locations when asked to do so. There is therefore no issue of a lack of notice to the Defence. The Chamber accordingly finds that, sometime in June 1994, Gérard Ntakirutimana was at Mutiti Hill with Interahamwe and that they shot at refugees in a forest by a church.

4.23 Murambi Church, End of April (Witnesses DD, GG, SS, YY)

> 4.16 At one point during this time period, Elizaphan Ntakirutimana was in Murambi within the area of Bisesero. Elizaphan Ntakirutimana went to a church located in Murambi where many Tutsis were seeking refuge from the ongoing massacres. Elizaphan Ntakirutimana ordered the attackers to destroy the roof of this church so that it could no longer be used as a hiding place for the Tutsis.

4.23.1 Prosecution

675. The Prosecution contends that Witnesses GG, DD, SS, and YY are unanimous that, at one point in time in the second half of April 1994 or in early May 1994, both Accused participated in the removal of the Murambi Church roof in Bisesero. It is the Prosecution's case that these witnesses led conclusive evidence that the Accused arrived at Murambi Church in one or two vehicles full of attackers, after which Elizaphan Ntakirutimana ordered the attackers to climb onto the roof, remove the iron sheeting and place it in his car. It is submitted that Gérard Ntakirutimana was present at the scene and that he transported attackers in the Mugonero Hospital vehicle. The Prosecution further submits that the removal of the church roof was part of an attack against the Tutsi refugees in the vicinity of the church and aimed at denying them a shelter from rain, snakes or any nocturnal danger. This, according to the Prosecutor, "goes to genocidal intent" of the perpetrators' removal of the roof. Thus is excluded any other interpretation for this action, for instance, that those involved in the removal of the roof sought to prevent the roof from being stolen by thieves or thugs.[1004]

676. The Prosecutor further relies on Witness YY's testimony that immediately before the removal of the church roof, from his hiding place in a forest close to the church, he saw both Accused inside the church shooting with guns at Tutsi refugees sheltered there, who had been too weak to run away when the attackers arrived. Witness YY could not see which of the Accused had killed whom, but he did see Elizaphan Ntakirutimana shooting a pregnant woman from Nyacyiabo who was unable to move because her feet

[1004] T. 22 August 2002 pp. 132-133.

were swollen. After the attack, the witness identified the body of a child called Antoine, who had been his neighbour, and the body of a man called Vianney Ntaganira.[1005]

4.23.2 Defence

677. The Defence objects to the lack of notice of the allegation that Gérard Ntakirutimana was present during the removal of the Murambi Church roof would be made. The Defence also objects to the Prosecution's failure to provide notice of the allegation that the two Accused shot and killed Tutsi refugees at Murambi Church.[1006]

678. The Defence contends that Witness DD's testimony was fabricated and should have been withdrawn by the Prosecutor. The Prosecution's decision not to rely on the witness's allegation that Elizaphan Ntakirutimana killed the witness's wife and child at Mubuga School constitutes an implicit acknowledgement that Witness DD was lying.[1007] The Defence further challenges the credibility of Witness SS, noting that he indicated to investigators that the distance at which he observed Elizaphan Ntakirutimana was 250 metres.[1008]

679. In respect of Witness YY's allegation of a shooting committed by both Accused at Murambi Church, the Defence questions how the witness could have mentioned the removal of the church's iron roof sheets in his prior statement and not the dramatic episode of both Accused's shooting at the refugees in the church. It is also argued that in his prior statement, the witness never placed Gérard Ntakirutimana at Murambi Church. Moreover, the witness gave different estimates of the distance he was from the road nearby the church. Thus, the Defence expresses doubt about the witness's ability to identify the Accused and maintains that his description of the shooting was exaggerated. None of the other three witnesses to the event (Witnesses DD, SS and GG) testified about murders committed by the Accused at Murambi Church. The Defence concludes that Witness YY's testimony of murder, which revealed ignorance of people, places and events, is uncorroborated and should not be relied upon by the Chamber.[1009]

680. The Defence further refers to a statement given by Witness UU to investigators on 10 November 1999, according to which Gérard Ntakirutimana prepared and participated in attacks on Murambi in June 1994. This account contradicts the Prosecution's theory that the attacks on Murambi occurred at the end of April or in May 1994.[1010] The Prosecutor responds that Witness UU's prior statement is in accord with the Prosecution's case and that Witness FF, among other witnesses, testified that attacks were indeed perpetrated between April and June 1994 at Murambi Hill.[1011]

[1005] Prosecution Closing Brief para. 372-390; T. 21 August 2002 pp. 100-107.
[1006] T. 22 August 2002 pp. 6 and 7.
[1007] Defence Closing Brief pp. 24-26, 133-135.
[1008] Id. pp. 158-163, in particular p. 159.
[1009] Defence Closing Brief pp. 117-118; T. 22 August 2002 pp. 46-48.
[1010] Id. p. 131.
[1011] T. 21 August 2002 p. 107.

681. In any event, the Defence argues, should the Chamber consider that the evidence establishes the Accused's participation in the removal of the church roof, the Prosecution has not proved that the removal was a criminal act as such under the Statute. Furthermore, the Defence contends, the Prosecutor has not proved that the removal of the roof was part of an attack against Tutsi refugees.[1012]

4.23.3 Discussion

(a) Removal of the Church Roof

Witness GG

682. Witness GG testified that one morning towards the end of April 1994 he saw the two Accused arrive at Murambi Church in Elizaphan Ntakirutimana's Hilux vehicle, with other people in the back. They walked around the church before Elizaphan Ntakirutimana told the individuals accompanying him "to go up and remove the roof of the church so that Tutsis can no longer find a place from where they can shelter from the rain." At the time, Tutsi refugees were in fact using the church as a shelter. He described Elizaphan Ntakirutimana as wearing a jacket, trousers, a shirt, and spectacles. Gérard Ntakirutimana was wearing a white T-shirt and white shorts.[1013] Pursuant to Elizaphan Ntakirutimana's order, the iron sheets of the roof were removed and taken away, together with the windows. The witness observed the event at quite some distance but he could see and hear what was said.[1014] He thought that Elizaphan Ntakirutimana then took the iron sheets to his home.[1015] The Chamber found Witness GG to be a credible witness (see 3.8.3 (d)).

Witness DD

683. Witness DD testified that he stayed at Murambi Hill from 17 April 1994 until early May 1994, during which time the Adventist Church in which he had sought refuge came under attack.[1016] The attack occurred sometime before noon. Gérard Ntakirutimana and Elizaphan Ntakirutimana arrived in two vehicles full of Interahamwe armed with machetes, clubs, and spears. Elizaphan Ntakirutimana drove his white Hilux, which was followed by the hospital vehicle, a Toyota van, driven by Gérard Ntakirutimana.[1017] The vehicles came from the direction of Ngoma.

684. Witness DD left the church and fled across a brook to a pine forest nearby, about 12 metres away, from which he had an unobstructed view of the church.[1018] The vehicles parked close to the church, about 4.5 metres from its entrance. Elizaphan Ntakirutimana stood close to his vehicle nearby the church. He ordered the twenty or more persons who

[1012] Defence Closing Brief pp. 24-25; T. 22 August 2001 pp. 6, 145.
[1013] T. 24 September 2001 pp. 4-10.
[1014] In his written statement of 30 June 1996 the witness estimated the distance to be about 20 meters.
[1015] Id. pp. 163, 165.
[1016] T. 23 October 2001 pp. 120-121.
[1017] T. 25 October 2001 pp. 75-76.
[1018] T. 23 October 2001 pp. 123-124, 127-128.

had come in his vehicle to remove the sheeting of the church's roof.[1019] The witness observed the entire operation, until the attackers departed with the roofing material, which was placed in one of the vehicles.[1020] The Chamber has accepted the credibility of this witness in some other respects, and also finds him credible in the present context. It does not consider it significant that he was unable to identify Murambi Church on Photograph No. 55 in Prosecution Exhibit No. 2 when it was presented to him during his testimony. The witness was able to describe the church, and he was not used to identifying photographs.[1021]

Witness SS

685. Witness SS reached Gitwe Hill during daytime on 16 April 1994. He was at a place above the primary school. He testified that before noon on a certain day in April 1994, a few days after the attack at the Complex, the assailants went on to attack Murambi. Witness SS could not identify individuals, but he saw Elizaphan Ntakirutimana's vehicle stop near the church.[1022] He declared that he observed the scene from "a short distance"[1023] (in later testimony, he declared that the distance was average[1024]), on a small hill below Gitwe Hill facing Murambi Church. He saw the people in the vehicle proceed to climb the roof of the church to remove the iron sheets.[1025] The witness left immediately thereafter.

686. The Chamber generally found Witness SS to be credible (see 3.8.3 (d) and 3.12.3 above). In respect of this event, the Chamber observes that in the witness's previous written statement the investigators assessed the distance he had to run before he looked back at the attackers to about 250 meters.[1026] The Chamber accepts the witness's explanation that this was a mere estimate. In court he described the distance first as "short", then as "average, ... not very far, nor very short, but the distance was such that one wouldn't be able to recognize somebody from that distance".[1027] This is in conformity with his written statement, according to which he did not see Elizaphan Ntakirutimana, but recognized his car. Considering that Witness SS declared that he was standing on a small hill overlooking Murambi Church and that the sighting occurred one morning before noon in broad daylight, the Chamber is satisfied that he was in a position to identify the Accused's vehicle which was known to the witness and to observe individuals removing the Church roof. Witness SS's prior statement does not contradict his testimony in court in this respect.

[1019] Id. pp. 121-122.
[1020] T. 25 October 2001 p. 71.
[1021] T. 24 September 2001 pp. 6-7 and T. 25 October 2001 pp. 64-68.
[1022] T. 31 October 2001 p. 104.
[1023] T. 30 October 2001 p. 125. The French version p. 144 reads: "La distance n'était pas grande".
[1024] T. 31 October 2001 p. 106.
[1025] T. 30 October 2001 pp. 123, 124-125.
[1026] The statement reads: "When we had run a distance like the one from here to the road over there (*investigators: we estimate this to be a distance of about 250 meters*), we looked back. We saw many attackers."
[1027] T. 31 October 2001 p. 106.

687. Witness YY testified that he reached Murambi Church around 3.00 a.m. on 17 April 1994. Other refugees, all Tutsi, were sheltered there.[1028] The witness testified that one day towards the end of April or beginning of May 1994, between 8 and 9.00 a.m., Elizaphan Ntakirutimana's vehicle arrived. At the time, 50 to 70 refugees were sheltered in the church, with more refugees inside surrounding buildings, without roofs. There were approximately 150 refugees in the vicinity of the church.[1029] When the vehicle arrived, the refugees started running away. The witness hid in a forest close to the church, about 30 metres away. He hid there for about three hours. Both Accused shot at the refugees (see (b) below), after which the people with Gérard Ntakirutimana and Elizaphan Ntakirutimana climbed up the roof of the church, removed the iron sheets and placed the sheets in Elizaphan Ntakirutimana's vehicle, which was the same vehicle he had seen on the morning of the attack at Mugonero Complex.[1030] The vehicle then returned along the road on which it came. Witness YY's opinion was that the roof was removed to deny shelter to refugees.[1031] The Chamber has accepted Witness YY's testimony in relation to several events. In the present context, the Chamber notes that his observation of the two Accused in connection with the removal of the church roof is corroborated by three other witnesses. The fact that only he, among witnesses who testified about this incident, witnessed the shooting (see (b) below), does not render his account implausible, insofar as each as each witness observed the scene from a different vantage point and for a different length of time.

688. The Chamber notes that paragraph 4.16 is the only section of the Indictment which specifically refers to Murambi and, in particular, to the removal of a church roof. The paragraph mentions Elizaphan Ntakirutimana only. There is no mention of Gérard Ntakirutimana. The question at issue is whether this lack of notice was cured by subsequent timely, clear and consistent information (see 2.4 above). The event at Murambi Church is referred to in the Prosecution's Pre-trial Brief and its Annex B. Paragraphs 16 and 17 of the Brief read as follows:

> ... Some of the refugees who survived the attack at the Mugonero Complex on 16 April 1994, escaped to the Seventh Day Adventist Church, located at Murambi, around Gitwe hill. Dr, Gérard Ntakirutimana and Pastor Elizaphan Ntakirutimana conveyed attackers and personally pursued the refugees at this location. Several refugees were either wounded or killed by Dr. Gérard Ntakirutimana.
>
> ... Some of these killings were done in the presence of Pastor Elizaphan Nakirutimana. In the course of the said attacks and killings Pastor Elizaphan Ntakirutimana ordered the destruction of the roof of the Seventh Day Adventist church at Murambi and ordered that the iron sheets there from, be loaded in his vehicle.

689. Annex B of the Pre-trial Brief referred to Gérard Ntakirutimana in the summary of Witness GG's testimony. That summary was based on the witness's statement to investigators of 30 June 1996, which was disclosed to the Defence on 10 April and

[1028] T. 2 October 2001 pp. 32-33.
[1029] T. 3 October 2001 p. 16.
[1030] T. 2 October 2001 p. 36.
[1031] Id. pp. 40-41.

29 August 2000 (in redacted and unredacted form, respectively). However, the previous statements of Witness DD, SS, and YY and the summaries in the Pre-trial Brief of their testimonies made no reference to Gérard Ntakirutimana in connection with the Murambi Church. Moreover, Witness DD included the Accused in this event only in his third statement, produced the day before he commenced his testimony.

690. The Chamber observes that the removal of the roof was a specific allegation of which the Prosecution had knowledge since Witness GG gave his statement to investigators in 1996. This is not a situation where "the sheer scale of the alleged crimes" makes it "impracticable" to require a high degree of specificity about the means by which the acts were committed. That the Indictment did not allege that Gérard Ntakirutimana was present, only Elizaphan Ntakirutimana, is a more serious case of lack of notice than omissions relating to details of acts alleged. Therefore, and in view of its general discussion under 2.4 above, the Chamber finds that there was insufficient notice to the Defence that it would be alleged that Gérard Ntakirutimana was present at Murambi Church.

691. As for the involvement of Elizaphan Ntakirutimana in the removal of the church roof, the Chamber notes that Witnesses DD, GG and YY all identified him as having participated in the removal of the roof, and Witnesses DD and GG testified that he personally gave the order for the removal. Witness SS's testimony regarding his sighting of Elizaphan Ntakirutimana's vehicle supports the other witnesses' testimonies. Witnesses GG and YY testified that the church was being used by Tutsi refugees as a shelter, and Witness DD testified that he was himself seeking refuge in the church at the time. The witnesses concur that this incident took place between 17 April 1994 and early May 1994. Witnesses GG and YY saw the iron sheets being removed and placed in Elizaphan Ntakirutimana's car while Witness DD saw the sheeting being placed in one of the two cars. The Chamber finds that there is evidence, beyond a reasonable doubt, that sometime between 17 April and early May 1994, Elizaphan Ntakirutimana was in Murambi within the area of Bisesero, that he went to a church in Murambi where many Tutsi were seeking refuge and that he ordered attackers to destroy the roof of the church.

692. The Chamber will proceed to consider the issue of the criminal character of this act and, specifically, whether the Prosecution has established beyond a reasonable doubt that the destruction of the roof was done "so that it could no longer be used as a hiding place for the Tutsis" (paragraph 4.16 of the Indictment). Witness GG testified that he heard Elizaphan Ntakirutimana say that the purpose of the removal of the roof was to deny the Tutsi refugees a shelter. Witnesses GG and YY testified that the church was indeed being used by Tutsi refugees as a shelter, and Witness DD testified that he was himself seeking refuge in the church at the time.

693. The Chamber notes that this act of removing the roof left the Tutsis unprotected from the elements and visible to attackers. The Chamber has considered other reasonable interpretations of this act; for instance, that Elizaphan Ntakirutimana took the iron sheets for himself or removed them to prevent looting. However, if he had been concerned about possible theft of the roof, it could be postulated that he would also have removed the roof

sheeting from his own home or from Ngoma Church, and it is difficult to understand why the Accused would concern himself with the protection of property at a time when lives were in danger. He must have been aware that there were people seeking shelter inside the church. Also of note is Witness DD's description of the individuals who arrived at the church in the Accused's vehicles, as Interahamwe armed with machetes, clubs, and spears. Of further note is that all four witnesses were consistent in their descriptions of the individuals referred-to above as attackers or in characterizing the incident as an attack. Furthermore, the witnesses consistently related how those hiding in the church or its vicinity fled upon sight of the approaching attackers. The Chamber is therefore satisfied that those taking part in these events, including Elizaphan Ntakirutimana, could not have had peaceful intentions. In light of the above, and having regard to the context of the events in Rwanda at the relevant time, the Chamber rejects any other interpretations of the act of removal of the roof or of the transportation of the individuals involved. The Chamber accordingly finds that Elizaphan Ntakirutimana conveyed attackers to Murambi Church and ordered the removal of the church roof so that it could no longer be used as a hiding place for Tutsi. In so doing, he facilitated the hunting down and killing of the Tutsi refugees hiding nearby Murambi Church in Bisesero.

(b) Killings at the Church

694. Witness YY testified that the two Accused were armed with guns at the church. Both Accused and the individual accompanying them shot at the refugees who could not flee, for example, children, the wounded and some women who were weak. A total of about ten refugees were too weak to flee. The witness testified that he saw Elizaphan Ntakirutimana shoot refugees in the church. In particular, Witness YY stated that Elizaphan Ntakirutimana shot the following persons: a pregnant woman who was a native of Nyacyiabo, a child named Antoine who was the witness's neighbour and a man called Ntaganira. However, the witness later said that he could not be certain of the identity of the individuals killed by Elizaphan Ntakirutimana.[1032] Once the attackers left, he and other refugees came out of hiding and went to the church, where they saw the bodies of people who had been killed.[1033]

695. Paragraph 4.16 of the Bisesero Indictment, which is the only reference to Murambi Church in the Indictment, addresses the removal of the church roof. It does not include any allegation that both Accused killed Tutsi refugees on this occasion. Paragraphs 4.13 and 4.15 of the Indictment refer generally to the two Accused's participation in almost daily attacks against the Tutsi population in Bisesero. These paragraphs further refer to their searching for and attacking members of that population, their killing or causing them serious bodily and mental harm, without further detail. Even if Murambi Church is considered to be within the Bisesero area the Chamber finds that the Prosecution's omission of allegations of killing in paragraph 4.16 constitutes a failure to provide proper notice to the Defence.

[1032] T. 2 October 2001 p. 37-38; T. 3 October 2001 pp. 66-67.
[1033] T. 3 October 2001 p. 27.

696. Turning now to the issue of whether this defect in the Bisesero Indictment was subsequently cured by timely, clear and consistent information (see 2.4 above), the Chamber recalls the wording of paragraph 16 of the Prosecution's Pre-trial Brief, which states that both Accused "conveyed attackers and personally pursued the refugees" at Murambi Church, and that "[s]everal refugees were either wounded or killed" by Gérard Ntakirutimana. According to paragraph 17 of the Brief, "[s]ome of these killings were done in the presence of Elizaphan Ntakirutimana", who "in the course of the said attacks and killings" ordered the destruction of the church roof. Witness YY's prior statement of 25 October 1999 to Prosecution investigators contains a general paragraph concerning both Accused (quoted at para. 273 above).[1034] The witness stated that he saw Gérard Ntakirutimana "in all attacks" when he was at "Bisesero hill", running after refugees and shooting at them. Elizaphan Ntakirutimana was seen "on several occasions", armed with a gun, transporting killers in his car, and the witness "also saw him when supervising Interahamwe to take off the iron sheets of Murambi Adventist Church".

697. The Chamber concludes that neither the Pre-trial Brief nor Witness YY's previous statement contains any explicit allegation that Elizaphan Ntakirutimana killed persons at Murambi Church. This was first raised by Witness YY during his testimony. Consequently, the defect in the Indictment was not cured by subsequent timely notice.

698. With respect to Gérard Ntakirutimana, the Chamber found above that there was insufficient notice that it would be alleged that Gérard Ntakirutimana was present at the removal of the Murambi Church roof. Moreover, as stated above, paragraph 4.16 did not contain any allegation that he killed anyone on that occasion. This was an important omission. The proper way to add such allegations would have been for the Prosecution to seek an amendment of the Indictment, which is the principal accusatory instrument against the Accused (see 2.4). The addition of these allegations in paragraph 16 of the Pre-trial Brief amounted to a transformation of the Prosecution's case against Gérard Ntakirutimana in relation to the event at Murambi Church. Consequently, the Chamber does not consider that the defect in the Indictment was cured by the notice in the Pre-trial Brief.

4.24. Actions of the Accused at Unspecified Locations in the Bisesero Area

4.24.1 Prosecution

699. Prosecution Witnesses YY and HH testified about attacks involving Gérard Ntakirutimana at unspecified locations in Bisesero. The Prosecution did not refer in its written or oral submissions to Witness YY's allegations in this regard, it did refer to Witness HH's testimony that attacks were launched at Bisesero almost everyday and that he saw Gérard Ntakirutimana with a firearm each time there was an attack at Bisesero.[1035]

[1034] The unredacted statement was disclosed on 29 August 2000. The redacted version was disclosed prior to that date.
[1035] Prosecution Closing Brief p. 65.

4.24.2 Defence

700. The Defence, while denying that Gérard Ntakirutimana took part in any fighting at Bisesero, did not respond specifically to the allegations of Witnesses YY or HH on these points, except to state that Witness HH spoke proudly of losses on the attackers' side as well, and of "kamikaze" attacks by the refugees.[1036]

4.24.3 Discussion

701. Witness YY testified about attacks directed against houses without roofs in the Bisesero area. Occasionally, he saw Gérard Ntakirutimana amongst the attackers who came at night. The witness listed nighttime attacks in Murambi on the houses of Ngendahayo where nine people were killed, of Habimana, and of Kanyamiganda where 14 people were killed. Attacks that occurred in the day were launched from Gisovu and the attackers would leave from Murambi. He testified that at Murambi Church, the attackers called out to some of the refugees that they knew and told them to go and eat the spoilt meat which was at Habimana's house, referring to the flesh of persons that they had killed there. When asked why he had not mentioned these incidents before, the witness answered that he had not been asked the relevant questions.[1037]

702. Witness HH stayed in various parts of Bisesero, including Muyira Hill, Mumubuga and Kucyiha, until 15 June 1994. He testified that during his stay in the region, attacks took place almost everyday. There were very few days when they were attacked that loss of life did not result. Refugees were armed with traditional weapons like spears, machetes and stones, and later obtained guns that were abandoned by the attackers, but the magazines had already been removed by the attackers. The witness said that he saw both Accused where the refugees were but saw only Gérard Ntakirutimana involved in actual fighting. He saw him with a firearm each time there was an attack in Bisesero. As for Elizaphan Ntakirutimana, the witness claimed to have seen him only twice in Bisesero: at Mubuga School and at Ku Cyapa. When asked why he had not mentioned these incidents before, the witness answered that the questions had not been put to him.[1038]

703. The Chamber accepts Witnesses YY and HH's explanation that they did not mention these events before as these specific questions were not put to them. Their testimony in court was consistent under cross-examination, and the Chamber finds that Witnesses YY and HH are credible.

704. The Indictment alleges that attacks were carried out in various locations in the area of Bisesero almost on a daily basis for several months. In their statements, Witnesses YY and HH mentioned seeing both Accused during attacks in Bisesero and later expanded on the details when asked to do so in court. The Defence therefore had

[1036] Defence Closing Brief p. 86.
[1037] T. 2 October 2001 pp. 102-108.
[1038] T. 26 September 2001 pp. 47-56; T. 27 September 2001 pp. 126-128.

sufficient notice that such allegations would be made. The Chamber accordingly finds that Gérard Ntakirutimana participated in attacks in Bisesero.

4.25 Planning Meetings and Distribution of Weapons, June 1994 (Witness UU)

4.25.1 Prosecution

705. The Prosecution submits that in June 1994 Gérard Ntakirutimana attended meetings where attacks against Tutsi in Bisesero were coordinated and arms were distributed for this purpose. The Prosecution relies mainly on Witness UU and additionally on Witness OO.[1039]

706. In oral arguments the Prosecution submitted that Witness UU's testimony regarding attacks in Murambi in June 1994 accords with the Prosecution's theory of the case, as Witness FF testified that attacks in Murambi took place between April and June 1994. In addition, paragraph 4.16 of the Indictment indicates that the Murambi attacks occurred during this period.[1040]

4.25.2 Defence

707. The Defence submits that Witness UU is not credible for the following reasons. The witness claimed not to be a member of the RPF nor its supporter, nor to have any political affiliation. However, he repeatedly placed himself in dangerous situations, taking risks only an RPF spy would take. The Defence refers to Defence Witness 21's testimony that he and Witness UU were classmates at Esapan school and that the latter was politically partisan, bragging openly that he was an RPF supporter. The witness claimed to have made miraculous escapes from hazardous situations, to have participated in an attack in Bisesero and to have attended meetings in Kibuye town in mid-June in the presence of Interahamwe and other persons who could have recognized him as a Tutsi.

708. The Defence notes that in Witness UU's lengthy prior statement he does not state that Gérard Ntakirutimana made a request for firearms at the meeting of 10 June 1994, or that the Accused was wearing white shorts, or that Niyitegeka made a sketch on the blackboard. The Defence notes that the witness explained that he recalled certain facts after being asked to testify.[1041]

709. The Defence's general submissions as to Witness OO were considered earlier (II.3.7.3). In relation to the specific allegation that Witness OO saw Gérard Ntakirutimana attend a meeting at the prefectural office in Kibuye town in June 1994, the Defence argues that the witness was inconsistent when he testified that Prefect Kayishema did not attend that meeting, in contradiction with his prior statement and his testimony in the *Musema* case. The Defence notes that Witness OO referred to only one

[1039] Prosecutor's Closing Brief paras. 391-408.
[1040] T. 21 August 2002 p. 107.
[1041] Defence Closing Brief pp. 123-133; see also p. 115.

public meeting, at which Gérard Ntakirutimana said nothing, without any mention of the other June meetings alleged by Witness UU.[1042]

4.25.3 Discussion

710. Witness UU testified that he knew Gérard Ntakirutimana from about 1992-1993 in his capacity as a doctor. Prior to April 1994, he would see Gérard Ntakirutimana between three and five times per week at the Mugonero Hospital.[1043] Gérard Ntakirutimana was thus known to the witness prior to the events of June 1994 discussed below.

711. Witness UU testified about having attended three meetings convened in Kibuye town in June 1994. The first took place around 10 June in the conference room of the prefectural office. He attended with Omar and another friend. To disguise himself, he wore a military cap, dark glasses, and an overcoat. The meeting started between 10.00 and 11.00 a.m. It was attended by Interahamwe and various officials, including Prefect Kayishema, Ruzindana (a trader), Musema (the manager of Gisovu tea factory), Eliézer Niyitegeka (a member of parliament and government minister), Gérard Ntakirutimana, and the bourgmestres of the communes surrounding Bisesero, seated in the front row. More than 50 other persons were present, and some gathered outside the conference room because there was not enough room for them inside. The witness was positioned towards the back of the room, about 25 to 40 metres from the front row. Ruzindana took the floor and explained to the participants that the meeting was aimed at evaluating their progress in killing Tutsi in the Bisesero area and to decide what still needed to be done to finish that task. Gérard Ntakirutimana also took the floor, saying that the problem they faced in completing the work was that they had insufficient guns and ammunition. Like other speakers at the meeting, Gérard Ntakirutimana spoke through a microphone connected to loudspeakers. Witness UU estimated that he observed Gérard Ntakirutimana from a distance of 20 to 30 metres. When the meeting ended, between 1.30 and 3.00 p.m., Gérard Ntakirutimana left in a white Toyota pickup belonging to the Mugonero Hospital.[1044]

712. Witness UU testified about a second meeting that took place about a week later at the same venue. It also started between 10.00 and 11.00 a.m. and lasted about four hours. The same officials who attended the first meeting also attended the second. Many other persons, including Interahamwe, were present, inside and outside the room. Gérard Ntakirutimana was carrying a long gun. The objective of the second meeting was to distribute firearms, a task that was performed by Niyitegeka and Ruzindana. Gérard Ntakirutimana received weapons for the area of Murambi. Gérard Ntakirutimana was at the front of the room and the distance separating him from Witness UU was roughly the same as at the first meeting. Gérard Ntakirutimana was dressed in white shorts and a white shirt. Witness UU heard Gérard Ntakirutimana speak with Ruzindana's younger brother and say that the weapons that they had obtained were insufficient. Niyitegeka

[1042] Id. pp. 111-112.
[1043] T. 25 October 2001 p. 108.
[1044] T. 25 October 2001 pp. 115-129; T. 29 October 2001 pp. 84-95.

then announced a programme of attacks that were to be launched the following day. He drew a circle on the board and within that circle he wrote the word "Bisesero". Using this circle he indicated where the attacks by different groups of attackers should start, and the leaders of the various groups of attackers. Gérard Ntakirutimana was named as a member of the "Ngoma group", which included Enos Kagaba and Mathias Ngirinshuti and was to attack Murambi. On his way out of the room, the witness was able to study the blackboard closely, for five to ten minutes as there was a bottleneck around the exit and also because he did not want to move away from his friend Omar. Witness UU read on the board that Gérard Ntakirutimana was one of the leaders of the attackers, and saw that Gérard Ntakirutimana would take the floor whenever he wanted, leading the witness to conclude that Gérard Ntakirutimana held an influential leadership role.[1045]

713. The third meeting at which Witness UU saw Gérard Ntakirutimana was held in the canteen of the prefectural office around 18 June 1994 at dusk. The objective of that meeting was to recapitulate the events. Gérard Ntakirutimana and all the leaders of the attacks were in the canteen. Witness UU was outside, about a metre away from the canteen windows, which were open and free of curtains. The distance between himself and Gérard Ntakirutimana was 3 to 5 metres. He heard Gérard Ntakirutimana make the following pronouncement in French, then repeat it in Kinyarwanda: "The thorns must be uprooted because, otherwise, they will grow again and can kill you or disable you. There should be no pity for Tutsi women and children because they are the ones who will reproduce in future, and we will be faced with the exact same problems that we are having now." Gérard Ntakirutimana said that the results of the Murambi attack were satisfactory. Towards the end of the meeting, Niyitegeka announced that it was necessary to go back to Bisesero to kill the survivors. Witness UU then saw Gérard Ntakirutimana go to a canteen window and announce to certain persons outside that the attacks would continue the next day at the same time.[1046]

714. The Chamber notes that this allegation was not contained in the Indictment but was referred to in the anticipated evidence of Witness UU in Annex B of the Pre-trial Brief. Therefore any lack of notice would be cured as indicated above (see 2.4).

715. With respect to Defence's submission that it was incredible the witness would put himself in such dangerous situations, the Chamber considers that in extraordinary times, when the risk of death to a person is very high, his claim to have taken extraordinary steps to survive cannot be treated as inherently implausible. Whatever its relevance, there is no evidence that Witness UU was associated with the RPF. With respect to Defence Witness 21's allegation that Witness UU bragged about the RPF, the Chamber considers that while this might suggest that Witness UU supported the RPF, it certainly is not evidence that he was an agent of the organization in 1994. Witness 21's evidence about Witness UU allegedly bragging of RPF was not put to Witness UU in cross-examination. Thus, given the circumstances in which Witness UU found himself, the Chamber does not agree with the Defence that it is implausible that he chose to conceal himself by associating with people who might have killed him had they realized his true identity.

[1045] T. 29 October 2001 pp. 5-38; pp. 106-108; T. 30 October 2001 pp. 54-55.
[1046] T. 29 October 2001 pp. 30-51.

Risky though the strategy was, the witness calculated that it was a strategy that would keep him alive at a time when Tutsi choosing other methods of concealment or escape were also at great risk. Witness UU was not unassisted in his strategy, for he relied on friends and past associates, who advised him that he would attract attention should he remain in houses, and that in order to avoid such attention he should associate with young Hutu or Interahamwe. His Hutu protector Omar actively directed this scheme to keep the witness beyond suspicion.

716. Regarding Witness UU's prior statement made in November 1999, which does not contain certain allegations made against Gérard Ntakirutimana during his testimony, the Chamber accepts the witness's explanation that he had just recalled these facts. The Chamber considers the discrepancies to be inconsequential and they do not contain new allegations, merely additional details that emerged in response to questions asked in court. The Chamber has considered all the discrepancies, although it does not see the need to address each of them individually. None of them can be said to be so material as to diminish the witness's credibility or reliability. The Chamber observes that Witness UU gave a consistent account in his evidence-in-chief and cross-examination. He was subjected to thorough cross-examination, from which he emerged as a credible witness in the Chamber's view.

717. Witness OO testified to seeing Gérard Ntakirutimana towards the end of June 1994, not at the camp of the Gendarmerie, but at a naval post near Lake Kivu, which post was near the prefectural office. He saw Gérard Ntakirutimana among about 400 people in cars heading for the office, some in civilian attire and others in military clothes, with various types of weapons and dancing and singing "Let's exterminate them. Let's eliminate them from the forests. We will exterminate them, we will conquer them". Witness OO followed the crowd. He testified that at the prefectural office, Eliézer Niyitegeka, Minister of Information, took the floor and spoke through a loud-speaker. According to the witness, he said that they should continue to work together and that they had already done a good job. He thanked them, but said they should continue and double their efforts in order to continue the work. The meeting lasted from about 2.00 to 6.00 p.m.[1047]

718. Although this evidence does not establish that Witness OO saw Gérard Ntakirutimana at one of the meetings referred to by Witness UU, it provides additional evidence that Gérard Ntakirutimana attended a meeting in June 1994 at which the Bisesero attacks were discussed and encouraged.

719. Gérard Ntakirutimana does not have a specific alibi for any date in June 1994. His general alibi for the period was assessed in section 4.3 above, where the Chamber concluded that the evidence presented in support of the alibi does not make it reasonably possibly true that the Accused was not present in Kibuye town or in Bisesero at the times alleged.

[1047] T. 1 November 2001 pp. 175-184; T. 2 November 2001 p. 95-97.

720. On the basis of the above discussion, the Chamber finds that Witness UU knew Gérard Ntakirutimana and was in a position to identify him. The Chamber also finds that the Accused attended three meetings in Kibuye town, held between 10 and 18 June 1994 (approximately), at which he made statements about the need to eliminate all Tutsi and called for more arms and ammunition. The details are set out in the discussion above. At those meetings Gérard Ntakirutimana also participated in the distribution of weapons, discussed the planning of attacks at Bisesero, was assigned a role in such an attack, and reported back on its success. Witness UU's evidence, taken together with the whole of Witness OO's evidence (see, in particular, II.3.7 above) leads the Chamber to conclude that Gérard Ntakirutimana played a prominent role in some attacks in Bisesero during the period of April to June 1994.

5. Alibi

721. An important part of the Defence case is that the two Accused have alibi for the periods where they are alleged to have committed criminal offences. In connection with these allegations the Chamber discussed whether the Accused had alibi for the morning of 16 April, see 3.8.3 (e); for the remainder of 16 April, see 3.11.4; and from 17 April to July 1994, see 4.3.

6. Character of the Accused prior to April 1994

6.1 Defence

722. Throughout the case, the Defence emphasized that the Accused were persons of high moral character and reputation, and that the accusations against them are totally inconsistent with their previous life and character. According to the Defence, their character "must be weighed against the inflated, erratic and false charges against them".[1048] For this reason, the Chamber will consider the evidence on good character and its significance, if any, in weighing the evidence adduced by the Prosecution against the Accused.

723. According to the Defence, the Accused have devoted their lives to pastoral care and medicine. They have consistently avoided any political affiliation or activity. When violence broke out in April 1994, the Accused's good character prevailed and their conduct remained consistent. They shunned the fighting but also worked fervently to re-establish pastoral and medical services that had been destroyed in the violence. Below the Chamber will consider the submissions on the Accused's character and reputation prior to the events of April 1994. Evidence concerning the conduct of the Accused during the period April-July 1994 will be examined later (II.4 and 5).

6.1.1 Elizaphan Ntakirutimana

724. The Defence submits that for fifty years, Elizaphan Ntakirutimana served the Seventh Day Adventist Church (SDA) as a teacher, office worker, accountant, treasurer,

[1048] Defence Closing Brief p. 1.

auditor and Gospel Minister. He was elected President of the Church in West Rwanda and South Rwanda a total of four times. He was known as a moderate man, a conciliator. Not a single Prosecution witness alleged that he had ever evidenced any bias against Tutsi before April 1994. Of Witness GG, who testified that the Accused had always been a "wicked" man, the Defence points out that the witness provided no evidence to support his claim. Leaders who served in the SDA in Africa have spoken highly of Elizaphan Ntakirutimana's character and reputation. The Chamber heard testimonies and was provided with written statements to this effect (see 2.3).

725. In support of Elizaphan Ntakirutimana's good character the Defence also relies on the testimony of Faustin Twagiramungu, Prime Minister Designate in the Broad Based Transition Government under the Arusha Accords, who served as Prime Minister from July until August 1994. Reference is also made to a sealed affidavit by Defence Witness 33, who did not testify. According to the Defence, this witness, who for a period in April 1994 managed to save many lives in Kigali, "praised Pastor Ntakirutimana's character".[1049]

6.1.2 Gérard Ntakirutimana

726. The Defence submits that the life of the Accused is "anchored by three unshakable rocks"; devotion to family, to religion and to his calling as a physician. He was a brilliant student, religious, and his close friends included both Hutu and Tutsi. According to the Defence, the officiating minister at Gérard Ntakirutimana's wedding in 1989 was Pastor Amon Iyamuremye, a Tutsi; his best man, Augustine Mutijima, was a Tutsi; and one of his groomsmen, Josué Kayijaho (brother of Assiel Kabera), was also a Tutsi.

727. After having obtained his Master's degree in the United States, Gérard Ntakirutimana declined to practice his profession there because his goal in life was to practice medicine in his own country. In Rwanda, he was attracted by the vision of integrated health care expounded by Dr Oscar Giordano, director of the Mugonero Hospital in Ngoma. Thus, the Defence submits, "Dr. Gérard decided to go to Mugonero, an area where the population is mostly Tutsi, to a hospital where the staff was mostly Tutsi, in order to embark on a project to provide preventative holistic medicine to the community. He did this not for power, or wealth, but to care for and work with Rwandans as a doctor." According to the Defence, the accusations against Gérard Ntakirutimana are totally inconsistent with his life and character.[1050]

6.2 Prosecution

[1049] Defence Closing Brief pp. 1-6. The person shown as Witness 33 on the list of Defence witnesses produced an affidavit which was submitted by the Defence on 23 July 2002, as part of a documents entitled "Defence Closing Brief. Confidential Sealed Exhibits". The Prosecution had no objections to their admission, see T.22 August 2002 p. 121. According to the affidavit, the two Accused were never involved in politics and did not have the authority or means to prevent the loss of lives in Mugonero in April 1994, see Defence exhibit ID52(B).
[1050] Defence Closing Brief pp. 6-12. The quotes are from pp. 11-12.

728. The Prosecution argues that character evidence is irrelevant in this case and that it has had no intention of making the character of accused persons an issue.[1051] The Prosecution witnesses testified to criminal involvement or participation by the Accused. During the closing arguments, the Prosecution conceded that it had not been able to demonstrate that the two Accused had any political affiliation or were politically active.[1052]

6.3 Discussion

6.3.1 Introduction

729. While evidence of prior good character is commonly taken into account at the sentencing stage, its acknowledgment at earlier stages of judicial reasoning is rare. In a decision in the case of *The Prosecutor v. Kupreskic et al.*, the ICTY Trial Chamber stated:

> .... generally speaking, evidence of the accused's character prior to the events for which he is indicted before the International Tribunal is not a relevant issue inasmuch as (a) by their nature as crimes committed in the context of widespread violence and during a national or international emergency, war crimes and crimes against humanity may be committed by persons with no prior convictions or history of violence, and that consequently evidence of prior good, or bad, conduct on the part of the accused before the armed conflict began is rarely of any probative value before the International Tribunal, and (b) as a general principle of criminal law, evidence as to the character of an accused is generally inadmissible to show the accused's propensity to act in conformity therewith...[1053]

730. In its judgement in the same case, the Trial Chamber, before considering the case involving each accused, stated that "due weight" had been given in each case to the fact that all the Accused were of good character and had called evidence to this effect. Five of the Accused were convicted by the Trial Chamber.[1054]

731. At the ICTR, one judgement contains an explicit discussion of the significance of previous good character. In *Bagilishema*, the Trial Chamber quoted the above statement in *Kupreskic* and stated:

> The present Chamber concurs with the above statement, particularly in the context of serious violations of international humanitarian law, where evidence of prior good character is of little or no probative value. However, were such evidence shown to be

---

[1051] Prosecution's Sentencing Brief para. 56.
[1052] T. 21 August 2002 pp. 50-51. In its opening statement, the Prosecution alleged that Elizaphan Ntakiturimana was a key figure in the opposition party, the MDR (T 18 September 2001 p. 9).
[1053] Decision of 17 February 1990 on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque* (TC), in *The Prosecutor v. Zoran Kupreskic et al.*, Case No. IT-95-16-T (ICTY Trial Chamber II).
[1054] *Kupreskic* (TC). In para. 339, previous good character was one of several factors that the Trial Chamber "kept at the forefront of its consideration". This was recalled in paras. 372, 421 and 462, before the Chamber went on to find that five of the six Accused had committed criminal acts. (In the Appeals Chamber, three of the five Accused were acquitted because of defects in the Indictments (see II.3) and lack of evidence.

particularly probative to the charges at hand, then the burden will be upon the Prosecutor to dispel any resulting doubts there may be regarding its case.[1055]

732. The Chamber concurs with the above statements. Case law at the ICTR has illustrated that persons with no criminal record or who showed no previous animosity or hostile attitude towards the Tutsi population before 1994 nonetheless committed crimes in Rwanda from April to July 1994.[1056] But as indicated in the two statements quoted above, this does not mean that previous good character is necessarily without any significance whatsoever. In the present case, the Defence has stressed that the previous good conduct of the Accused is of particular relevance. The Chamber will therefore examine the probative value of the evidence.

6.3.1 Elizaphan Ntakirutimana

733. Several witnesses testified about the good character of Elizaphan Ntakirutimana. Defence Witness Merle Mills was president of the Trans-Africa Division of the Seventh-Day Adventist Church from 1966 to 1980.[1057] He testified that as a core policy, the SDA "believes in and promotes the concept of separation of church and state, which means that the church does not involve itself with politics".[1058] The witness described Elizaphan Ntakirutimana as "one of our most capable leaders among the Africans".[1059] The Accused occupied several leadership positions within the organization of the church, including field president and auditor in the union. His re-election to various leadership positions indicated a track record consistent with the core policies of the church.[1060] Witness Mills never received complaints about Elizaphan Ntakirutimana violating church doctrine on anti-discrimination. The Pastor was "held in high esteem and did his job well".[1061] The witness also emphasised that the Accused did not become involved in politics during the 14 years the witness was president of the Trans-Africa Division.[1062] Witness Mills had not seen Elizaphan Ntakirutimana since leaving Rwanda in 1980.[1063]

734. Shortly prior to his testimony, Witness Mills had asked several Seventh-Day Adventists who had worked with the Accused over the years for their "opinion of their

---

[1055] *Bagilishema* (TC) para. 116.
[1056] See, for instance, *Akayesu* (TC), according to which the Accused was considered a man of high morals and integrity, appeared to have the trust of the local community and was considered a father-figure of the commune (paras. 53 and 55). The significance of previous good character in relation to the question of guilt was not an explicit issue in the Judgement, the Chamber having found that Akayesu had changed course and chose to collaborate with the genocidal campaign against Tutsi. In *Ruggiu* (TC), the Chamber considered as a mitigating for the purposes of sentencing, that the Accused had no previous criminal record and that, until he committed the acts to which he pleaded guilty, "had always conducted himself as an honest and respectable citizen" (paras. 59-60). It also accepted that "the accused was a person of good character imbued with ideals before he became involved in the events in Rwanda" (para. 67).
[1057] T. 15 April 2002 pp. 150-152.
[1058] Id. p. 158
[1059] Id. p. 170.
[1060] Id. pp. 170-171.
[1061] Id. p. 174.
[1062] Id. p. 177.
[1063] Id. p. 229.

relationship to Pastor Ntakirutimana, if he still held true to the principles of the church and its policies".[1064] Six such statements were received by the Chamber.[1065]

735. The first statement is from Pastor Robert G. Peck, who was Rwanda Union Mission President from 1984 to 1990. When he arrived in Kigali, Elizaphan Ntakirutimana was doing auditing work for the Rwandan Union Mission. When he found irregularities, he showed courage irrespective of the workers ethnical affiliation (Hutu or Tutsi). Because of his adherence to principle, he was appointed to the post of mission President at Mugonero. He was "truthful, honest, fair, and reliable". His character was "impeccable and above reproach". To Mr. Peck's knowledge, the Accused continued as a trusted worker for years after his departure in December of 1990.[1066]

736. Mr. DeWitt S. Williams was president of the Central African Union from 1979 to 1982, when he lived in Burundi with responsibility for that country and Rwanda. Elizaphan Ntakirutimana was then president of the North Rwanda Field. According to the statement of Mr. Williams, Elizaphan Ntakirutimana was "always a kind Christian gentleman" who worked well with the Hutu and the Tutsi. Mr. Williams never saw him make any distinction between them, or heard anyone speak about him discriminating against another person. The Accused was nominated several times for his position as president. He was a "loyal Christian, faithful church member, and kind father and husband".[1067]

737. Mr. Don H. Thomas, who became acquainted with Elizaphan Ntakirutimana around 1958, wrote that over the years the Accused built "a reputation of honesty, fairness and dedication to his work". When Mr. Thomas worked in Rwanda in 1960 he observed that, in a time of political and social strife when "the majority Hutu began to discriminate against anyone suspected of being Tutsi", the Accused remained aloof from this unrest and the ensuing violence. During the period 1990-1993, when Mr. Thomas was treasurer of the African-Indian Ocean Division. On a number of occasions he observed the Accused participating as a field president at executive meetings in Kigali. He never perceived anything which would indicate that Elizaphan Ntakirutimana was involved in the politics of the time. The Division had to deal with a number of serious issues involving discrimination and even killing of Tutsi students at its university college in Bugoyi, but "never once did the name of Ntakirutimana surface as having been party to, or sympathetic towards, the violence meted out by Hutu mobs and the militia against defenseless Tutsis". According to the statement, Elizaphan Ntakirutimana "served His Lord faithfully all his working life, loving his fellow men regardless of their ethnicity".[1068]

738. Mr. Burton Wendell was auditor of the Rwanda-Burundi Mission for eleven years and had contact with the Accused many times, in particular during Union committees and

[1064] Id. pp. 179-180.
[1065] Defence exhibit 1 D21 (1)-(6).
[1066] Defence exhibit 1D21(1).
[1067] Defence exhibit 1D21(2).
[1068] Defence exhibit 1D21(3).

the annual Field year-end committees. According to Mr. Wendell's statement, he never heard a word from the national workers complaining about any "Hutu-Tutsi bias".[1069] Witness Mills recalled Mr. Wendell stating orally to him that he marveled how Elizaphan Ntakirutimana got along with the ethnic groups.[1070]

739. Mr. Harvey L. Sauder, who first met Elizaphan Ntakirutimana in August 1973, and worked with him several weeks each year for five years thereafter, wrote that "I never once found him to be guilty of any ethnic bias toward his fellow workers and their congregations". In the hundreds of hours they traveled together the Accused "never once allied himself to any political party or ethnic group but always considered himself a servant of God and his church". Mr. Sauder considered Elizaphan Ntakirutimana one of the most outstanding pastors in the Rwanda field.[1071]

740. The Chamber was also provided with a letter from Pastor Barry Burton to Ms Janet Reno, United States Attorney General, written on 30 September 1999, before the Accused was transferred to the ICTR. In the 1950s and 60s, Mr. Burton was a missionary and an internal auditor of the SDA in Rwanda and became rather well acquainted with Elizaphan Ntakirutimana. In the letter, Mr. Burton wrote that "[h]aving observed this man in action in the past and realizing historically that he has never during the past forty or so years taken sides in the constant upheavals in that unfortunate country, it is impossible for me to entertain under any circumstances the thought that he might be guilty of the charges that have been brought against him."[1072]

741. Apart from Witness Mills, other Defence witnesses spoke favourably of Elizaphan Ntakirutimana's prior character. According to Witness 23, "politics was something which was taboo" to him.[1073] The Accused appointed to church posts individuals belonging to both ethnic groups.[1074] Witness 7 testified that the Accused was not a member or supporter of any political party.[1075] He "was a respected man, firstly, because he was a member of the clergy. Secondly, he was an elderly person".[1076] According to Witness 4, both Accused "had very good relations with the[ir] neighbours. They were people who were very devoted in their work and they were very proper, upright in everything they did."[1077]

742. Several Prosecution witnesses, all Tutsi, also gave a positive account of the Accused prior to April 1994. Witness QQ testified that Elizaphan Ntakirutimana was "a respected man".[1078] In Witness MM's view, "everybody had great respect" for Elizaphan

---

[1069] Defence exhibit 1D21(4). Witness Mills could not recall when Mr. Wendell was the auditor of the Rwanda-Burundi Union Mission (T. 15 April 2002 pp. 198-200).
[1070] T. 15 April 2002 pp. 184-185.
[1071] Defence exhibit 1D21(5).
[1072] Defence exhibit 1D21(6).
[1073] T. 22 April 2002 p. 101.
[1074] Id. p. 103.
[1075] T. 12 February 2002 p. 87.
[1076] Id. pp. 88-89.
[1077] T. 7 February 2002 pp. 14-15.
[1078] T. 18 October 2001 p. 49.

Ntakirutimana prior to the alleged events.[1079] Witness XX agreed that the Accused was a "very respected person".[1080] Witness FF confirmed that her and Elizaphan Ntakirutimana's families had been very close, and that the families "trusted and respected each other and were friends".[1081] She also confirmed that Issacar Kajongi, a Tutsi relative of the witness, was a particularly close friend of Elizaphan Ntakirutimana before the war.[1082] Witness HH testified that he did not know of any conflict between Elizaphan Ntakirutimana or Gérard Ntakirutimana and Tutsi people prior to April 1994.[1083]

743. Witness II said that Elizaphan Ntakirutimana "was our pastor, and he taught me religion ... I knew him since I got to the age of reason ... besides, he is the one who baptized me."[1084] (The witness was 34 years' old at the time of his baptism in 1986.[1085]) He also stated that the Pastor was "someone in whom we had placed a great deal of hope. We had thought that he was going to protect us. He had educated us, brought us up as a parent and he taught us in his church." But at the same time the witness said that the Pastor was someone who "participated in all the major meetings and would even meet with the president".[1086] This could be interpreted as an indication of political activity. In later questioning, however, it transpired that the remark about the president was without foundation.[1087] In the Chamber's view, and in view of their context, the remarks of the witness must be interpreted as a way of expressing that the Accused was an influential personality.

744. Witness GG agreed that prior to the death of President Habyarimana, Elizaphan Ntakirutimana was a respected man. But he also testified, without giving reasons, that the Accused "was a wicked man. He had been a wicked man for a long time".[1088] When asked about the basis for this statement, he made an allegation against the Accused which related to April 1994.[1089] The testimony was not clear, and the allegation is not part of the Prosecution's case. The Chamber also notes that according to the statement of the witness to investigators on 30 June 1996 his view was that the people trusted the Accused. Consequently, the Chamber disregards this part of Witness GG's testimony.

745. Finally, the Chamber has noted the letter dated 15 April 1994, addressed to the Accused by the Tutsi pastors who had taken refuge at the Complex (see 3.8.3 for the full text).[1090] It is written in a tone of great respect. Apparently, its authors believed that, even in those very tense and dangerous times, Elizaphan Ntakirutimana would intervene to the

---

[1079] T. 19 September 2001 p. 124.
[1080] T. 22 October 2001 p. 27.
[1081] T. 1 October 2001 pp. 79-80.
[1082] Id. p. 80.
[1083] T. 26 September 2001 p. 76.
[1084] T. 22 October 2001 p. 107.
[1085] T. 25 October 2001 pp. 25-26.
[1086] T. 22 October 2001 pp. 130-131.
[1087] T. 25. October 2001 pp. 32-35.
[1088] T. 24 September 2001 p. 160.
[1089] Id. pp. 157-162. (During cross-examination, the witness alleged that Elizaphan Ntakirutimana sent his older brother's son to kill a certain Isaac Nbarubukeye. No further details were provided.)
[1090] Prosecution exhibit P2, Appendix A5; T. 18 September 2001 pp. 96-98.

extent he could to save them. The letter was preserved by the Accused, who handed a copy of it to a journalist years later.

746. On the basis of the available evidence, the Chamber accepts that until the outbreak of the events in April 1994, Elizaphan Ntakirutimana, then 70 years of age, was considered a trusted and respected religious leader. There is evidence that prior to that time he did not show any ethnic bias, even in periods of Hutu-Tutsi conflict. Furthermore, and as conceded by the Prosecutor, no evidence has been led that he was ever engaged in politics or had any political affiliation.[1091]

747. The Defence stressed that Elizaphan Ntakirutimana, being a prominent member of the Seventh-Day Adventist Church, could not have acted as alleged by the Prosecution. The Chamber notes, however, that it follows from estimates led by the Defence that thousands of Church members participated in the killings. Therefore, even religious, devout followers, may change in critical times.[1092]

6.3.3 Gérard Ntakirutimana

748. Prosecution Witness PP testified about the good character of Gérard Ntakirutimana. The witness, a Tutsi, regularly visited the Mugonero Hospital for treatment, at which times he would see Gérard Ntakirutimana.[1093] The witness specified that both he and his family were treated by the Accused on a number of occasions. The Accused would always treat him and his family with care, concern, and respect: "I think that generally that is the responsibility of every physician, and he did that. ... If you decide to go and see him, it is because you have trust in him."[1094]

749. Several Defence witnesses spoke highly of Gérard Ntakirutimana. Witness 11 studied medicine with the Accused at the University of Butare.[1095] "He was someone full of integrity, and he is among the category of persons that were referred to as 'the gents' of the university. Even during his studies and after he became a doctor, he didn't do anything that would tarnish his image."[1096] Gérard Ntakirutimana taught at the University of Butare while Witness 23 was in attendance.[1097] According to the witness, he was a lecturer that many students respected and admired.[1098] Witness 7 testified that Gérard Ntakirutimana was not affiliated with any political party and was not involved in politics.[1099] He said of the Accused that "I wouldn't consider him as a man with authority

---

[1091] In *Charge Sheet No. 3*, a publication of 1 February 2000 which was produced by African Rights in connection with the surrender of Elizaphan Ntakirutimana from the United States to the Tribunal, one person interviewed by the organization said that the Pastor was a politician, used to participate in MDR meetings and received visits from politicians. Another person said that he never went to any political rallies, but received MDR propagandists (p. 4; Exhibit P 29, 1.D5). No such evidence was led at trial.
[1092] T. 15 April 2002 pp. 210-211.
[1093] T. 5 October 2001 p. 59.
[1094] T. 8 October 2001 pp. 47-48.
[1095] T. 26 April 2002 p. 23.
[1096] Id. p. 61.
[1097] T. 22 April 2002 pp. 25 and 29.
[1098] Id. p. 31.
[1099] T. 12 February 2002 pp. 92-93 and 197-198.

within the community because ... he had been there for less than a year."[1100] The witness said he had never heard Gérard Ntakirutimana express any animosity towards Tutsi.[1101]

750. The Chamber accepts that Gérard Ntakirutimana was a person of good character prior to the events in question. [It has attached due weight to this factor when assessing the evidence in support of the allegations against him.] The Chamber has also noted the evidence by the Defence that the Accused had close Tutsi friends and decided not to remain in the United States but to go home to Rwanda and practice medicine in Mugonero.

7. Was There A Political Campaign to Falsely Incriminate the Accused?

7.1 Defence

751. The Defence claims that the two Accused are victims of an "organized propaganda effort" that took root in Rwanda in late 1994, seeking to falsely incriminate the Accused for political gain. Witnesses GG and FF, among others, were agents of that campaign, which was conceived and directed by persons close to the new, RPF-controlled government.[1102]

752. The Defence relies, firstly, on Witness 9, who testified that one Assiel Kabera, a politician who became Prefect of Kibuye under the new government, together with his brother Josue Kayijaho, was instrumental in establishing the survivors' organization IBUKA. According to the Defence, Witness 9 remained in Rwanda for several months after July 1994. Between November 1994 and March 1995, the witness personally observed that Assiel Kabera, Witnesses GG and FF, and others participated in "political meetings" to secure indictments against the Accused. The witness also saw a man being beaten because he refused to make false accusations against Gérard Ntakirutimana.[1103]

753. The Defence relies, in addition, on the testimony of Witness 31 that, in late 1994, Assiel Kabera provided the Minister of Justice in Kigali with a list of people from his region to be accused of genocide, "but without any documentation to support the claim". Other officials also supplied such lists to the Minister, but never was a list supported by any documentation. The final list, typed by Witness 31, was used by the Minister at a press conference in the Netherlands for the purpose of soliciting international support for Rwanda's effort to pursue those it claimed had committed genocide. While Witness 31 did not claim that the Accused's names were on the final list, or even on Kabera's earlier list, the Defence contends that this evidence proves that the lists "were a purely political means of attacking enemies of the RPF".[1104]

[1100] T. 12 February 2002 pp. 90-91.
[1101] Id. p. 94.
[1102] See, generally, Defence Closing Brief pp. 33-44; and T. 22 August 2002 pp. 1-118.
[1103] Id. pp. 180-181; T. 22 August 2002 pp. 22-23.
[1104] Defence Closing Brief p. 34.

754. The Defence relies, thirdly, on a film (exhibit 1D41A) narrated by Assiel Kabera. It submits that the film was made "probably" in April 1995 at the time of the reburial of bodies at Mugonero Complex. This event was described by Witness QQ, who testified that it was filmed.[1105] The film opens inside the ESI Chapel at Mugonero, and the narrator, Assiel Kabera, declares that people who had gathered at the Chapel were killed in the presence "of the president of the Field, Ntakirutimana" (exhibit 1D41B). Moments later the narrator mentions the name of Witness FF, who appears and speaks to the camera. Witness MM also appears and speaks. (A translation of what they said was not tended; the Defence relied only on the narrator's words in the first 70 seconds of the film.) While reference is made in the opening of the film to Elizaphan Ntakirutimana, no mention is made in the film to Gérard Ntakirutimana. Yet the Defence concludes that the film is political propaganda, unsupported by evidence, intended to defame and secure the prosecution of the two Accused.[1106]

755. Fourthly, the Defence cites a publication (exhibit P29) by the human rights organization African Rights, dated 1 February 2000 and entitled "Charge Sheet No. 3: Elizaphan Ntakirutimana". The Defence states that "[t]he pamphlet is a crude attempt to smear Pastor Ntakirutimana and Dr. Gerard with false inflammatory propaganda. The entire magazine reeks with propaganda against the accused."[1107] The Defence does not provide examples of the alleged "propaganda", although it does point out that a number of Prosecution witnesses were interviewed by African Rights, and refers to excerpts from the publication in which allegations are made against Elizaphan Ntakirutimana. The Defence finds it significant that a number of Prosecution witnesses were interviewed by African Rights around the same time as they were interviewed by Prosecution investigators. The Defence submits that African Rights "worked closely with IBUKA and the RPF and was part of the campaign to secure the convictions" of the two Accused.[1108]

756. The Defence further argues that Prosecution witnesses were coached to lie. For example, the Defence submits that alleged inconsistencies in the evidence of Witness DD "clearly show that he was under pressure by someone to make claims that were not true" as part of a "politically motivated effort".[1109] "Prejudice" by certain other witnesses establishes that they were part of the campaign. "Why would it be otherwise?", asks the Defence.[1110] Elsewhere, however, the Defence sees signs of a campaign, not in inconsistencies, but in the "uniformity" of evidence and "tactics" of certain witnesses: "The relationship among these witnesses [YY, UU, DD, VV, KK, II, SS, and XX], the striking similarities in their statements and their tactics, disclosed a concerted and directed political effort to convict [the Accused] with wildly concocted stories."[1111] As an illustration of the reasoning behind this proposition, the Defence claims that "[Witness] YY could only be a public authority with the approval of the RPF, if not by its actual appointment. He probably served in the RPA. He obviously headed a group of witnesses

[1105] However, Witness 9 dated the film to "after July" 1995: T. 29 April 2002 pp. 162-163.
[1106] Defence Closing Brief pp. 36-37.
[1107] Id. p. 40.
[1108] Id. p. 42.
[1109] Id. p. 138.
[1110] Defence Closing Brief p. 36.
[1111] Id. p. 44.

intended to convict [the two Accused] by false testimony, several of whom, including YY, UU and KK appear to have been soldiers."[1112]

7.2 Prosecution

757. While the Prosecution does not directly or systematically refute this propaganda argument advanced by the Defence, it is clear that the Prosecution sees no merit in it. For example, the Prosecution stated in closing arguments:

> The Defence would have you believe that many of the Prosecution witnesses are propaganda tools of the Rwandan government or have been put up to provide testimony by pressure groups and NGOs such as Avega and Ibuka. Well, I submit to Your Honours that if that is indeed the case, you will be amazed at the sort of evidence that people that fit such a description have given before this Court about these two accused persons. One such evidence is testifying that all the soldiers had done on the evening of the 16th was walk around dead bodies. We submit to Your Honours that is simply not the sort of account that witnesses who are all out to implicate accused persons give in criminal trials. This is what they saw, and they simply testified to what they saw. One of such witnesses is Witness MM. He's highly criticised by the Defence for being a propaganda tool. Well, all he says is that he saw Gérard looking around dead bodies.[1113]

7.3 Discussion

758. In the Chamber's opinion, the Defence argument of an organised propaganda effort directed against the Accused could succeed only if the Defence were able to demonstrate that it is reasonably possibly true that the Prosecution's witnesses, whether as leaders or as persons coerced, were participants in a campaign to falsely incriminate the Accused, for whatever reasons.

759. The Chamber observes, however, that such demonstration cannot proceed simply from evidence that there were persons in Rwanda who made criminal allegations against the Accused or who sought out potential witnesses to consolidate evidence in establishing an organised propaganda program directed against the Accused, or to initiate prosecution against the Accused. For the Defence to succeed, it must produce reliable evidence tending to show that there was, first, a campaign of deceit against the Accused, intended to ascribe to them crimes which they did not commit and, second, that that campaign influenced the case mounted by the Prosecutor.

760. Addressing first the testimony of Witness 9, the Chamber will consider whether the Defence submissions meet this two-fold test.

761. Witness 9 testified that in early 1994 he was a student at the ESI Nursing School in Mugonero where he began teaching in September 1994.[1114] At that time, Witness QQ

[1112] Id. p. 44.
[1113] T. 21 August 2002 p. 77.
[1114] T. 29 April 2002 pp. 9-10 and 49-50.

was the director of the school.[1115] Witness 9 remained in his teaching post until March 1995 but also engaged in trade.[1116] He testified that he saw the Prefect of Kibuye, Assiel Kabera, four times between November 1994 and March 1995.[1117] On these occasions, Kabera held meetings with Witnesses FF and GG, among others, at the Ngoma Commercial Centre.[1118] Witness 9 saw people gather for the meetings, but he did not personally attend any meeting. He testified as follows:

> A. Yes, I was disturbed about the holding of these meetings.
> Q. And did you come to learn what it was they were talking about and planning to do?
> A. Yes.
> Q. Can you tell us what that was?
> A. *They had planned the arrest of people they did not like, people the[y] were not happy with within that region.*
> Q. And how did you–you saw the meetings, but how did you come to learn what they–what they were about?
> A. After drinking, some people came and threatened us and told us about their plan.
> Q. What people came and threatened you after they were drinking, and what did they say?[1119]
>
> [At this point it transpired that only one person came to threaten Witness 9. This person was neither Witness FF nor Witness GG.]
>
> Q. Can you tell us what he did; what his work or position was; who he was?
> A. He was a farmer, a breeder.
> Q. And was he–approximately how old do you think he was?
> A. Over 30.
> Q. Was he a well-known person?
> A. No.
> Q. And I believe you have said he had been drinking. Do you know where and what he had been drinking?
> A. Yes.
> Q. Please tell us.
> A. He was drinking a local beer called urwagwa...
> Q. And what did this person who is the second name under No. 2 [of exhibit 1D37] say to you on that occasion?
> A. He said that we had to give him money to go and buy beer, and that if we did not do so, he would do what he had done to others to us, and he cited the name of the old man, Pastor Elizaphan Ntakirutimana.
> ...
> A. I did not understand what he meant very well because I had not heard anything about the pastor on the radio or read anything for that matter.[1120]

[1115] Id. p. 53.
[1116] Id. pp. 53-54.
[1117] Id. pp. 59-62.
[1118] Id. pp. 56, 63-81; and exhibit 1D37.
[1119] T. 29 April 2002 p. 83, emphasis added.
[1120] Id. pp. 86-88; T. 29 April 2002 p. 68.

762. Witness 9 was then asked if he knew what was discussed at the meetings. He replied: "I'm in no position to know what was discussed during those four meetings for the simple reason that I did not attend any of them."[1121] Counsel for the Defence repeated the question, and the witness then said: "I told you that the idea was to arrest people they were not happy with, and that indeed happened, at least for a number of them."[1122]

763. In addition to the four closed meetings, Witness 9 testified about a public meeting he attended in March 1995. Witness FF was present.[1123] Certain people from Kigali also participated.[1124] Three names were discussed at the meeting: Pierre Rudasimbukanwa, Gérard Muhayimana, and one Samuel. It appears, from the witness's testimony, that the purpose of the meeting was to submit accusations against individuals who had committed crimes in 1994, and to compile "lists" of such persons.[1125] Some were then arrested: "What I'm saying in regard to this matter is that it was necessary and that these persons should be accused so that the guilt or otherwise could be established. In other instances, some of these persons who were blaming the person who has been accused, after the accusation, the person was transferred from Ngoma prison to Kibuye prison."[1126]

764. Finally, Witness 9 referred to one Edison Munyamulinda who had been assaulted in September 1994.[1127] "He said that [the beating] was because he had not accepted that his name be on the list of persons who were to accuse other persons."[1128] Witness 9 alleged that Munyamulinda had been asked to accuse Gérard Ntakirutimana, but he stated that he did not know who had solicited the accusation.[1129] Witness 9, when asked again about this incident on the second day of testimony, offered a different explanation of the assault on Munyamulinda: "Now, coming to details, the fact that he was beaten up in public, that was not told to me because I myself was present at the spot. Now, as for what he told me regarding the reason for his beating, he told me that because the person whom he had wronged had pardoned him in public, but later on he was beaten up in public using the same pretext."[1130]

765. For the purposes of this section only, the Chamber will suppose that Witness 9 is credible and that his evidence is reliable. Yet, even on the basis of this assumption, Witness 9's evidence, considered in isolation, does not tend to show that there was a campaign of deceit against the Accused and, *ipso facto*, it does not show that such a campaign influenced the case mounted by the Prosecutor.

766. Witness 9 asserted that the objective of the four meetings attended by Kabera and Witnesses FF and GG was to plan "the arrest of people they did not like, people the[y]

[1121] T. 29 April 2002 p. 95.
[1122] Id. p. 96.
[1123] Id. p. 111.
[1124] Id. pp. 101-102.
[1125] Id. pp. 108-110, 112-113.
[1126] Id. p. 114.
[1127] Id. p. 119.
[1128] Id. p. 118.
[1129] Id. p. 118.
[1130] T. 30 April 2002 p. 69.

were not happy with within that region". Yet, this alleged purpose of the meeting would seem to exclude the two Accused, who had left the country in July 1994. Even if Elizaphan Ntakirutimana were a target, there is very little to suggest a campaign of deceit. The only evidence suggesting a possible false accusation against Gérard is the reported threat uttered by the man seeking to obtain beer (who prior to this incident had spent about thirty minutes drinking at the bar, according to the witness[1131]), namely that if Witness 9 did not give him money to buy beer, "he would do what he had done to others to us", as he had done to Elizaphan Ntakirutimana. This reported remark suggests that accusations leveled against the Accused at the meeting (supposing they had been) were groundless. A vague suggestion of false accusation does not, in the Chamber's opinion, amount to a reasonable probability that the Accused was a victim of a propaganda campaign.

767. The assault on Munyamulinda occurred, according to the witness, in September 1994, and therefore is not connected, from the witness's own account, with the four Kabera meetings, the first of which was held in November 1994. Indeed, no connection has been asserted between Munyamulinda and Witnesses FF and GG, who are reported to have attended the Kabera meetings. Munyamulinda was not a Prosecution witness. He may have been pressured to accuse Gérard Ntakirutimana (Witness 9 did not say "*falsely*" accuse). Yet, the accusation by one individual does not demonstrate a reasonable possibility that there was a *campaign* against the Accused -- that is, more than an isolated act of coercion. In any case, the decisive consideration is that the Munyamulinda incident reveals no connection with the Prosecution's case, leaving the second arm of the test unfulfilled.

768. As a final word, the Chamber sees nothing remarkable in the suggestion that, shortly after the events of 1994, meetings were convened by authorities at which lists of suspects were drawn up with the help of ordinary citizens. Assuming Witness 9's evidence is true, the Chamber is not inclined to find, on this basis, that there may have been a campaign of deceit against the two Accused which influenced the Prosecution's case.

769. The Chamber will now consider the evidence of Witness 31. According to her testimony, the witness first joined the Rwandan Ministry of Justice in 1991.[1132] Sometime after 19 July 1994, she held a position close to the Minister of Justice.[1133] One day, she met with Assiel Kabera, the Prefect of Kibuye, who was visiting the Minister.[1134] Kabera handed her a file with a list of names which she glanced at briefly: "When I opened it, I saw the title 'Lists of génocidaire[s]'."[1135] Later that day, the Minister gave Witness 31 a larger file, containing the papers from Kabera, amongst others, and asked her to type the list of names.[1136] The witness testified that, when typing the list, she could not distinguish which papers were Kabera's. They "all had almost the same title, with a few differences:

[1131] T. 30 April 2002 p. 67.
[1132] T. 15 April 2002 p. 48.
[1133] Id. pp. 68-69, 71.
[1134] Id. pp. 73-77, 80.
[1135] Id. pp. 81-82.
[1136] Id. pp. 82-83.

'Lists of génocidaire[s]', or 'Lists of people who were involved in genocide', 'who killed', 'who raped', 'who looted', 'those who ate cows'."[1137]

770. The information from the list about each individual was limited to basic identification details. "He had asked me to add a last column where the charges would be placed. ... I did not know what charge to put there because there were different titles, so I turned around and asked him the question. He reflected for a while, and he said to me, 'It's true, it's odd. We should not do that because that is the prosecutor's job.' Then he told me, 'Remove that last column and put one title, A list of alleged génocidaires', which is what I did."[1138] Witness 31 further testified that the list which she typed consisted of names she recognised: "former authorities, ministers, members of parliament, secretaries-general, people who are known for their duties in the ministry, former préfets, soldiers, former soldiers".[1139] She did not claim to have noticed the names of the two Accused. She faxed the list to the Minister who, in the meantime, had travelled to the Netherlands to raise funds for the judicial infrastructure and to seek international cooperation in the arrest of persons whose names appeared on the list.[1140] At the end of her testimony, Witness 31 was asked if she knew whether Kabera had been dismissed from his position as prefect following accusations that he had falsely imprisoned citizens of Kibuye prefecture. She answered, simply, that she did not know.[1141] The witness did not claim or even suggest that Kabera or anyone else had falsely accused a listed person.

771. The Chamber observes that the Defence contention, that the evidence presented by Witness 31 proves the lists to be "a purely political means of attacking enemies of the RPF", is completely unfounded. There is no indication that the list from Assiel Kabera was the product of a campaign of false incrimination; there is no evidence connecting Kabera's list to the two Accused; and there is no evidence that the compilation of lists by the Rwandan Minister of Justice in late 1994, as described by Witness 31, has somehow tainted subsequent investigations by the Prosecutor of the Tribunal. Therefore, the second argument of the Defence also fails to raise doubt.

772. The third argument raised by the Defence concerns the film of which the opening sequence is apparently narrated by Assiel Kabera. The narrator is heard to say, according to a translation provided by the Defence, that persons gathered at the ESI Chapel were killed in the presence of Elizaphan Ntakirutimana. The camera then pans to Witness FF, who appears to give an interview in Kinyarwanda. No translation of the witness's words was provided. The Defence submits that the film is a propaganda instrument. However, the testimony of Witness 9 undermines that claim. This Defence witness testified to having viewed the film just prior to his testimony. [1142] He stated that one of the interviewees in the film, when asked what Elizaphan Ntakirutimana had done, "replied by saying that, Pastor Ntakirutimana had done nothing in regard to the events of 1994, that

[1137] Id. p. 83.
[1138] Id. pp. 85-86.
[1139] Id. pp. 87-88.
[1140] Id. p. 92.
[1141] Id. p. 137.
[1142] T. 29 April 2002 pp. 136-155.

he had no role during those events."[1143] The Chamber observes that, had the film really been intended as part of a smear campaign directed against the Accused, this interview would not have been included.

773. Even assuming that Assiel Kabera alleged in this film that Elizaphan Ntakirutimana participated in killings at Mugonero, and invited Witness FF to speak on the subject in the film, this does not in any way amount to evidence of a campaign of false incrimination. Insofar as no other evidence has been adduced on the purpose of the film, the Chamber concludes that the Defence has failed to make a case that the testimony of Witness FF, and by inference the Prosecutor's allegations, were tainted by a campaign of deceit in which Assiel Kabera assumed a role.

774. The remaining arguments of the Defence also fail to raise a doubt. The fact that the organization African Rights published its interviews with persons who later testified for the Prosecutor in this case does not indicate a campaign of deceit against the Accused. Nor does the publication indicate an intent to ascribe to the Accused crimes which they did not commit. Nor does it reasonably suggest that the case mounted by the Prosecutor has been tainted by any such campaign. Inconsistencies in the testimony of witnesses, which the Chamber has evaluated in this chapter, are a common feature of trials and may bear on the credibility of a witness. However, in this instance, the Defence has not shown that any alleged inconsistency is symptomatic of a concerted effort to fabricate evidence against the Accused.

775. In closing arguments, the Defence was asked why the two Accused, in particular, should be the targets of a political campaign. The answer was entirely speculative:

> it's very hard for anybody, and certainly for us to know—I know they find it still hard to believe; who and why? But I think clearly it has to do—in part at least, and I believe in a very major part—[with] the overall attack on the churches ... We know what happened where ten bishops and the archbishop were killed one day [in 1994] by RPF soldiers ... The Adventist church is the second largest church ... in Rwanda. ... A new government that represented a very small minority of the people ... not the kind that can win in a democratic election ... And the churches would be independent. ... So I have to think that it was primarily the church and it had to mean, too, that at least the pastor was seen as an independent human being, not manipula[ble], not coercible, not conformist, a moderate and a conciliator and a peaceful man but not one that would participate in violence or repression or anything like that. And then why Gérard? In part, I think, because it's a very neat way of getting at a father and a very cruel way of getting at a father, and in part, perhaps ... that they saw him as younger and stronger and more vigorous and a greater threat in the future than his father might be. I go back to say that the two were targeted is undeniable and we'd have to ask those who targeted them why...[1144]

776. The Defence includes a similar speculative argument in its Closing Brief: "The RPF needed to eliminate all Church leadership from 1994 to maintain even its precarious control of Rwanda."[1145] However, neither in its final argument nor elsewhere

[1143] Id. p. 156; see also pp. 30 April 2002 pp. 96-97 and exhibit 1D40.
[1144] T. 22 August 2002 pp. 143-145.
[1145] Defence Closing Brief p. 19.

in its case does the Defence offer an explanation why the RPF would initiate a campaign of false accusations against a church leader who was not, apparently, politically active at any time prior to leaving the country in July 1994, and who is not alleged to have posed a threat to the regime thereafter.

777. In conclusion, the arguments advanced by the Defence under this section, taken individually or collectively, fail to create a reasonable possibility that the Accused were subject to a campaign of false incrimination, having any bearing on this case.

CHAPTER III

LEGAL FINDINGS

778. In the present Chapter, the Chamber will make legal findings based on the factual findings made above in Chapter II. The Chapter is divided into two main sections. One deals with the Mugonero Indictment (Section 2) and the other, with the Bisesero Indictment (Section 3). In addition, the Chamber will address preliminary issues (Section 1) and some legal issues raised by the Defence (Section 4).

1. Preliminary Issues

779. Prior to addressing the legal findings on the specific counts alleged in the Mugonero Indictment, the Chamber will make preliminary legal findings applicable to all counts alleged in both Indictments against the two Accused.

780. It is not disputed that in Rwanda in 1994, the Tutsi were perceived as members of an ethnic group (see II.3.2, para. 75).

781. It is admitted by the Defence that, on 6 April 1994, the plane transporting President Juvénal Habyarimana of Rwanda was shot down as it approached Kigali Airport, Rwanda. The Chamber accepts that soon after this incident, attacks and murders of civilians began, including in Kibuye Prefecture (see II.3.2, para. 76).

782. The Chamber notes that the alibi raised by the two Accused was found not to raise a reasonable possibility that the Accused were not present during the events alleged in the Mugonero Indictment (see II.3.7, II.3.8.3(e) and II.3.11.4 above) and the Bisesero Indictment (see II.4.3 above).

2. Mugonero Indictment

2.1 Count 1A – Genocide

783. Count 1A of the Mugonero Indictment charges both Accused with genocide pursuant to Article 2(3)(a) of the Statute. The Indictment alleges that during the month of April 1994, in Gishyita commune, Kibuye Prefecture, the Accused are responsible for the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group, as such, and have thereby committed genocide.

784. The elements of genocide within the meaning of Article 2 of the Statute are well established.[1146] In order for a conviction on this count to be entered, the Chamber must find that the following two elements have been proved beyond a reasonable doubt:

[1146] See e.g. *Kayishema and Ruzindana* (AC) paras. 135-173.

(i) That Elizaphan Ntakirutimana or Gérard Ntakirutimana killed or caused serious bodily or mental harm to members of an ethnic or racial group;[1147] and

(ii) That the killing or causing of serious bodily or mental harm was committed with intent to destroy, in whole or in part, that ethnic or racial group, as such.

785. The Chamber found that a large number of men, women and children, the majority unarmed Tutsi, sought shelter from violence and attacks around Mugonero in the days following 6 April 1994 and that many assembled at the Mugonero Complex for that purpose. The Chamber further found that the attack of 16 April at the Complex, which lasted throughout the day and into the night, claimed hundreds of lives among the refugees at the Complex and left many wounded. It further found that the attack specifically targeted the Tutsi population -- irrespective of age or sex -- for the sole reason of their ethnicity. In the Chamber's view, the massive and systematic character of the attack and ensuing onslaught, as described above, leaves no doubt as to the fact that the violent assault proceeded on the basis of an intent to destroy, in its whole, the Tutsi population at the Complex.[1148]

Elizaphan Ntakirutimana

786. Article 6(1) of the Statute provides that:

> "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime."

787. The elements of "aiding and abetting" within the meaning of Article 6(1) are well established.[1149] In order for the Chamber to enter a conviction on this count, it must find that the following three elements have been proved beyond a reasonable doubt:

(i) That Elizaphan Ntakirutimana provided to persons practical assistance ("aiding"), or facilitated the commission of the crime by being sympathetic thereto ("abetting");[1150]

(ii) That the act of aiding or abetting contributed substantially to the commission of the crime of genocide; and

(iii) That the Accused provided such assistance or encouragement with the intent to commit genocide, that is, the intent to destroy, in whole or in part, an ethnic or racial group, as such.

788. At para. 310 in Section II.3.8.3 (e) above (see also paras. 283-285 in II.3.8.3(c)), the Chamber found that Elizaphan Ntakirutimana conveyed armed attackers to the Mugonero Complex in his vehicle on the morning of 16 April 1994, and that these

---

[1147] Other acts are deliberately inflicting conditions of life calculated to bring about the group's physical destruction, preventing births within the group, and forcibly transferring children of the group to another. The Statute also includes "national" or "religious" groups, but this is not part of the Prosecution's case.

[1148] See in particular II.3.2 paras. 69-77, II.3.9.3 paras. 334-339, II.3.10.3 para. 350.

[1149] See *Akayesu* (TC) paras. 484-485; *Furundzija* (AC) paras. 124-127.

[1150] Either "aiding" or "abetting" alone would suffice for this count, see *Akayesu* (TC) para. 484.

attackers proceeded to kill Tutsi refugees at the Complex. Considering his position of authority in the community as a senior pastor, the Chamber finds that his act of personally driving armed attackers in his own vehicle to the scene of the attack, his association with these armed attackers, and his presence at the scene of the attack at the Complex, constituted practical assistance and encouragement to these attackers, which substantially contributed to the commission of the crime of genocide by these attackers.

789. From his presence and actions in relation to the attack at the Complex, from the letter he received on the eve of the attack, in which the Tutsi Pastors plead for his assistance adding, "tomorrow we shall die with our families", Elizaphan Ntakirutimana knew that Tutsi, in particular, were being targeted for attack, and that by transporting attackers to the Complex, he would be assisting in the attack against the Tutsi. The Chamber has also taken into account his actions in Bisesero, for instance, transporting armed attackers to various parts of Bisesero and pointing out Tutsi refugees to the armed attackers who then attacked these refugees, and ordering attackers to remove the roof of Murambi Church so that it could not be used as a hiding-place for Tutsi. Based on the totality of the evidence before it, the Chamber finds that Elizaphan Ntakirutimana had the requisite intent to commit genocide, that is, the intent to destroy, in whole the Tutsi ethnic group.

790. The Chamber finds that, in conveying armed attackers to the Complex, Elizaphan Ntakirutimana is individually criminally responsible for aiding and abetting in the killing and causing of serious bodily or mental harm to the Tutsi refugees at the Complex on 16 April 1994, pursuant to Article 6(1) of the Statute. Accordingly, the Chamber finds that Elizaphan Ntakirutimana is guilty of genocide as charged in Count 1A of the Mugonero Indictment.

Gérard Ntakirutimana

791. The Chamber found, in II.3.13.3 above, that Gérard Ntakirutimana participated in attacks on 16 April 1994 at the Complex and shot at refugees. Whilst participating in the attack on the refugees at the Complex, Gérard Ntakirutimana killed Charles Ukobizaba by shooting him in his chest, from a short distance, in Mugonero Hospital courtyard around midday on 16 April 1994 (see II.3.11.5 above). Gérard Ntakirutimana also procured ammunition and gendarmes for the attack on the Complex (see II.3.7.3 above). In addition, he participated in the attack on Witness SS (a refugee in the Complex), during which time he was armed and in the company of other armed attackers (see II.3.12.3 above).

792. The Chamber recalls that Charles Ukobizaba, Witness SS, and finds that the refugees whom Gérard Ntakirutimana shot at in the Complex were of the Tutsi ethnic group.

793. Considering his killing of Charles Ukobizaba and his shooting at Tutsi refugees at the Complex, his participation in this attack, including procuring ammunition and gendarmes for the attack, together with his killing of Esdras, son of Munyandinda (a Tutsi) and shooting at Tutsi refugees during attacks in various parts of Bisesero, the Chamber finds that Gérard Ntakirutimana had the requisite intent to destroy, in whole, the Tutsi ethnic group.

794. The Chamber finds that in killing Charles Ukobizaba and shooting at the refugees, Gérard Ntakirutimana is individually criminally responsible for the death of Charles Ukobizaba, pursuant to Article 6(1) of the Statute.

795. Accordingly, the Chamber finds that Gérard Ntakirutimana is guilty of genocide as charged in Count 1A of the Mugonero Indictment.

2.2 Count 1B – Complicity in Genocide

796. In light of the finding above in relation to Count 1A, the alternative Count 1B – Complicity in Genocide, ceases to apply with respect to both Elizaphan Ntakirutimana and Gérard Ntakirutimana.

2.3 Count 2 – Conspiracy to Commit Genocide

797. Count 2 of the Mugonero Indictment charges both Accused with conspiracy to commit genocide pursuant to Article 2(3)(b) of the Statute. The Indictment alleges that during the month of April 1994, in Gishyita commune, Kibuye Prefecture, both Accused did conspire, with each other and with Charles Sikubwabo, to kill or cause serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, an ethnic or racial group, as such, and have thereby committed conspiracy to commit genocide.

798. In the Tribunal's judgements to date there have been one conviction and one acquittal on conspiracy to commit genocide. The conviction was in the Kambanda Judgement, which followed a guilty plea. The law relating to conspiracy has so far been considered only in the *Musema* Judgement (paras. 184-198), in which the Accused was acquitted on the conspiracy count. The Trial Chamber *inter alia* concluded that "conspiracy to commit genocide is to be defined as an agreement between two or more persons to commit the crime of genocide" (para. 191).

799. The Chamber notes that the Prosecution's case is that the two Accused and Charles Sikubwabo conspired "with each other" to commit genocide. In order for the Chamber to enter a conviction on this count, it must find that the following two elements have been proved beyond a reasonable doubt:

(i) That Elizaphan Ntakirutimana and Gérard Ntakirutimana agreed between themselves and Charles Sikubwabo to commit genocide, that is, to kill or cause serious bodily or mental harm to members of an ethnic or racial group; and

(ii) That the killing or causing of serious bodily or mental harm was committed with intent to destroy, in whole or in part, that ethnic or racial group, as such.

800. It was found, in II.3.3.3 above, that Elizaphan Ntakirutimana did not participate in meetings with persons who were seen during the attack of 16 April. The Chamber also observed that the letter of 15 April written by the refugees to Elizaphan Ntakirutimana indicates that the refugees were unaware of any previous activity that might link the Accused to any planning or conspiracy. In II.3.7.3 above, the Chamber found that Gérard Ntakirutimana attended a meeting with the commander of the gendarmerie camp and Obed Ruzindana in Kibuye town on the afternoon of 15 April, but the substance of the meeting is not known. Further, neither Elizaphan Ntakirutimana nor Charles Sikubwabo is alleged to have been present, or proved to have collaborated or come to an agreement with Gérard Ntakirutimana, to commit genocide. The Chamber is unable, based on the evidence, to draw any inference that the two Accused were part of a plan, together with Charles Sikubwabo, to commit genocide.

801. Therefore, the Chamber does not find that Elizaphan Ntakirutimana or Gérard Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a conspiracy to commit genocide. Accordingly, the Chamber finds that Elizaphan Ntakirutimana and Gérard Ntakirutimana are not guilty of conspiracy to commit genocide as charged in Count 2 of the Mugonero Indictment.

2.4 Count 3 – Crime Against Humanity (Murder)

802. Count 3 of the Mugonero Indictment charges both Accused with a crime against humanity (murder) pursuant to Article 3(a) of the Statute. The Indictment alleges that during the month of April 1994, in Gishyita commune, Kibuye Prefecture, both Accused are responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds and have thereby committed a crime against humanity (murder).

803. The elements of a crime against humanity within the meaning of Article 3 of the Statute are well established.[1151] In order for the Chamber to enter a conviction on this count, it must find that the following three elements have been proved beyond a reasonable doubt:

(i) That there was, at the relevant time, a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds;

(ii) That Elizaphan Ntakirutimana or Gérard Ntakirutimana murdered one or more civilians; and

(iii) That the Accused knew that their act or acts of murder were part of the widespread or systematic attack against civilians on discriminatory grounds, although the Accused need not have any discriminatory intent.

[1151] See eg. *Akayesu* (AC) paras. 447-469; *Bagilishema* (TC) paras. 72-95.

804. The act must be committed as part of a widespread or systematic attack, and need not be a part of both. "Widespread" is defined as massive or large-scale, involving many victims; "systematic" refers to an organized pattern of conduct, not a mere random occurrence.[1152]

Elizaphan Ntakirutimana

805. The Chamber is not satisfied that Elizaphan Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a crime against humanity (murder). Accordingly, the Chamber finds that Elizaphan Ntakirutimana is not guilty of a crime against humanity (murder) as charged in Count 3 of the Mugonero Indictment.

Gérard Ntakirutimana

806. In II.3.11.5 above, the Chamber found that Gérard Ntakirutimana killed Charles Ukobizaba, a civilian Tutsi, during the attack at the Mugonero Complex on 16 April 1994.

807. The Chamber finds that there was a widespread and systematic attack against the civilian Tutsi population at the Complex on 16 April 1994, in which Tutsi refugees, in particular, were repeatedly attacked throughout the day and into the night by many groups of armed attackers arriving one after the other, leaving many hundreds of Tutsi killed and wounded. The Chamber finds that the conduct of Gérard Ntakirutimana formed part of this attack.

808. Given Gérard Ntakirutimana's participation in the attack against Tutsi, his shooting of Tutsi refugees at the Complex, his procurement of ammunition and gendarmes for the attack and his association with the armed attackers, the Chamber finds that in killing Charles Ukobizaba, Gérard Ntakirutimana had the requisite intent to kill him and knew that it was part of a widespread and systematic attack against the civilian Tutsi population on ethnic grounds.

809. The Chamber finds that in killing Charles Ukobizaba, Gérard Ntakirutimana is individually criminally responsible for his death, pursuant to Article 6(1) of the Statute.

810. The killing of Charles Ukobizaba constitutes murder committed as part of a widespread and systematic attack on the civilian Tutsi population on ethnic grounds and as such constitutes a crime against humanity. Accordingly, the Chamber finds that Gérard Ntakirutimana is guilty of a crime against humanity (murder) as charged in Count 3 of the Mugonero Indictment.

[1152] See eg. *Akayesu* (TC) paras. 579-580.

2.5 Count 4 – Crime Against Humanity (Extermination)

811. Count 4 of the Mugonero Indictment charges both Accused with a crime against humanity (extermination) pursuant to Article 3(b) of the Statute. The Indictment alleges that during the month of April 1994, in Gishyita commune, Kibuye Prefecture, both Accused are responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds and have thereby committed a crime against humanity (extermination).

812. In order for the Chamber to enter a conviction on this count, it must find that the following three elements have been proved beyond a reasonable doubt:

(i) That there was, at the relevant time, a widespread or systematic attack against a civilian population on political, ethnic or racial grounds;

(ii) That Elizaphan Ntakirutimana or Gérard Ntakirutimana participated in the extermination of individuals; and

(iii) That the Accused knew that their act or acts of extermination were part of the widespread or systematic attack against civilians on discriminatory grounds, although the Accused need not have any discriminatory intent.

813. The Chamber notes that in *Akayesu*, extermination was defined as "a crime which by its very nature is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction, which is not required for murder."[1153] *Akayesu* further noted that an element of the offence is the "killing of certain named or described persons".[1154] The Trial Chamber in *Vasiljevic* held that extermination would be found where the Accused were responsible for the deaths of a large number of individuals, even if their part therein was remote or indirect.[1155] *Vasiljevic* took the view that extermination "supposes the taking of a large number of lives."[1156]

814. The Chamber found above the killing of only one named or described individual, that is, Charles Ukobizaba. The Chamber is not persuaded that the element of "mass destruction" or "the taking of a large number of lives" has been established in relation to the Accused, or that the Accused were responsible for the mass killing of named or described individuals. There is insufficient evidence as to a large number of individuals killed as a result of the Accused's actions. Therefore, the Chamber is not satisfied that

---

[1153] Para. 591.

[1154] Para. 592. This definition was not subject to appeal in *Akayesu*, and has since been followed in *Musema* (TC) and *Rutaganda* (TC) (pending appeal).

[1155] Para. 227. The discussion states in para. 222: "It is worth noting that in none of the reviewed cases were minor figures charged with "extermination" as a crime against humanity. Those who were charged with that criminal offence did in fact exercise authority or power over many other individuals or did otherwise have the capacity to be instrumental in the killing of a large number of individuals. Those, such as executioners, who were not in such position but who had participated in the killing of one or a number of individuals were generally charged with murder or related offences whilst the charge of "extermination" seems to have been limited to individuals who, by reason of either their position or authority, could decide upon the fate or had control over a large number of individuals."

[1156] Para. 232.

Elizaphan Ntakirutimana or Gérard Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a crime against humanity (extermination). Accordingly, the Chamber finds that Elizaphan Ntakirutimana and Gérard Ntakirutimana are not guilty of a crime against humanity (extermination) as charged in Count 4 of the Mugonero Indictment.

2.6 Count 5 – Crime Against Humanity (Other Inhumane Acts)

815. Count 5 of the Mugonero Indictment charges both Accused with a crime against humanity (other inhumane acts) pursuant to Article 3(i) of the Statute. The Indictment alleges that during the month of April 1994, in Gishyita commune, Kibuye Prefecture, both Accused did commit other inhumane acts, including but not limited to, the causing of serious bodily harm, the causing of serious mental harm and the persistent searching for and killing of individuals in the months following the attack, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds and have thereby committed a crime against humanity (other inhumane acts).

816. In order for the Chamber to enter a conviction on this count, it must find that the following three elements have been proved beyond a reasonable doubt:

(i) That there was, at the relevant time, a widespread or systematic attack against a civilian population on political, ethnic or racial grounds;

(ii) That Elizaphan Ntakirutimana or Gérard Ntakirutimana committed acts of similar seriousness to the other acts enumerated in the Article against civilians, such as would cause serious physical or mental suffering or constitute a serious attack on human dignity; and

(iii) That the Accused knew that their other inhumane acts were part of the widespread or systematic attack against civilians on discriminatory grounds, although the Accused need not have any discriminatory intent.[1157]

817. The Chamber notes that the Prosecution submits that Gérard Ntakirutimana's acts of closing the medical store, denying treatment to Tutsi patients and cutting off utility supplies constitute "other inhumane acts". The Prosecution submits that Elizaphan Ntakirutimana is responsible for these acts by virtue of his position as head of the Complex. However, the Chamber did not find these allegations to have been proved (see II.3.5 and II.3.6 above).

818. Therefore, the Chamber does not find that Elizaphan Ntakirutimana or Gérard Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a crime against humanity (other inhumane acts). Accordingly, the Chamber finds that Elizaphan Ntakirutimana and Gérard Ntakirutimana are not guilty of a crime against humanity (other inhumane acts) as charged in Count 5 of the Mugonero Indictment.

[1157] See *Bagilishema* (TC) paras. 91-92.

2.7 Charges Against Gérard Ntakirutimana of Individual Criminal Responsibility as a Superior

819. Gérard Ntakirutimana is additionally charged pursuant to Article 6(3) of the Statute with individual criminal responsibility as a superior with respect to Counts 1A, 1B, 3, 4 and 5 of the Mugonero Indictment. Article 6(3) provides that civilian leaders may incur criminal responsibility for acts committed by their subordinates or others under their "effective control",[1158] although the control exercised need not be of the same nature as that exercised by a military commander.[1159]

820. For Gérard Ntakirutimana to be held criminally responsible under Article 6(3), the Prosecution has to prove beyond a reasonable doubt that Gérard Ntakirutimana had "effective control" over persons at the relevant time, like Mathias Ngirinshuti.

821. As discussed in II.3.15.3 above, there is some evidence that Gérard Ntakirutimana took charge of Mugonero Hospital in the days before 16 April 1994 and even thereafter. Additionally, there is evidence that Gérard Ntakirutimana played a prominent role during some attacks at Bisesero during the period April to June 1994. However, it does not follow from any of the testimonies that Gérard Ntakirutimana had effective control over any person. In particular, there is little evidence on the capacity in which Mathias Ngirinshuti was acting, whether alone or pursuant to another's orders.

822. Therefore, the Chamber did not find that Gérard Ntakirutimana had effective control over any person during the period up to and including 16 April 1994 or thereafter. In view of the fact that the Prosecution has failed to prove that Gérard Ntakirutimana had effective control over any person in the relevant period, the Chamber does not find it necessary to consider evidence going to the other elements of individual criminal responsibility under Article 6(3) of the Statute. Accordingly, the Chamber finds that Gérard Ntakirutimana did not incur individual criminal responsibility as a superior as charged in Counts 1A, 1B, 3, 4 and 5 of the Mugonero Indictment.

3. The Bisesero Indictment

823. The Chamber will proceed to make legal findings on the specific counts alleged in the Bisesero Indictment.

3.1 Count 1 – Genocide

824. Count 1 of the Bisesero Indictment charges both Accused with genocide pursuant to Article 2(3)(a) of the Statute. The Indictment alleges that during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, the Accused are responsible for the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed genocide.

[1158] See *Delalic* (AC) paras. 196-198.
[1159] See *Bagilishema* (AC) paras. 54-56.

825. The elements of the offence were dealt with in paragraph 784 above.

826. In Section II.4 above, the Chamber found that a large number of men, women and children, who were predominantly Tutsi, sought refuge in the area of Bisesero from April through June 1994, where there was widespread violence during that period, in the form of attacks targeting this population on an almost daily basis. Witnesses heard attackers singing songs referring to the extermination of the Tutsi. The Chamber concludes that these attacks were carried out with the specific intent to destroy in whole the Tutsi population in Bisesero, for the sole reason of its ethnicity.[1160]

Elizaphan Ntakirutimana

827. The elements of Article 6(1), in relation to aiding and abetting, have been considered in paras. 786 and 787 above.

828. The Chamber has previously made the following findings:

(i) Sometime between 17 April and early May 1994, Elizaphan Ntakirutimana conveyed attackers to Murambi Church and ordered the removal of the church roof so that it could no longer be used as a hiding place for the Tutsi, and in so doing, he facilitated the hunting down and the killing of the Tutsi refugees hiding in Murambi Church in Bisesero (see II.4.23.3 (a) above);

(ii) One day in the middle of May 1994, Elizaphan Ntakirutimana brought armed attackers in the rear hold of his vehicle to Nyarutovu Hill, and the group was searching for Tutsi refugees and chasing them. Elizaphan Ntakirutimana pointed out the fleeing refugees to the attackers who then chased these refugees singing: "Exterminate them; look for them everywhere; kill them; and get it over with, in all the forests" (see II.4.12.3 above);

(iii) At the end of May 1994, Elizaphan Ntakirutimana participated in a convoy of vehicles carrying armed attackers to Kabatwa Hill, and later the same day, at neighbouring Gitwa Hill, he pointed out the whereabouts of Tutsi refugees to attackers who attacked the refugees, causing injury to Witness KK (see II.4.13.3 above);

(iv) In mid-May, Elizaphan Ntakirutimana was present in the midst of the killing of Tutsi individuals at Mubuga, the Accused was in his vehicle transporting armed attackers as part of a convoy which included two buses, all carrying armed attackers, the attackers sang "Let us exterminate them" and proceeded to kill people until the evening. (see II. 4.14.3 above);

(v) One day in May or June 1994, Elizaphan Ntakirutimana transported armed attackers who were chasing Tutsi survivors at Murambi Hill (see II.4.10.3 above);

(vi) One day in May or June 1994, Elizaphan Ntakirutimana arrived at Ku Cyapa in a vehicle followed by two buses of attackers and he was part of a convoy, which included attackers (see II.4.20.3 above).

[1160] See, II.4.4 to 4.25 in conjunction with II.4.2 *supra*.

829. By transporting attackers in his vehicle to the scene of the attacks, instructing them to pursue Tutsi refugees and pointing out the locations of Tutsi refugees in Bisesero, Elizaphan Ntakirutimana provided practical assistance and encouragement to the armed attackers, which substantially contributed to the commission of the crime of genocide by these attackers, as established at para. 826 above.

830. From his presence and participation in attacks in Bisesero, from the fact that at certain occasions, he was present when attackers he had conveyed set upon chasing Tutsi refugees nearby, singing songs about exterminating the Tutsi, Elizaphan Ntakirutimana knew that Tutsi in particular were being targeted for attack, and that by transporting armed attackers to Bisesero and pointing out Tutsi refugees to the attackers, he would be assisting in the killing of the Tutsi in Bisesero. The Chamber has also taken into account his act of conveying to the Mugonero Complex attackers who proceeded to kill Tutsi. Having considered all the evidence, the Chamber finds that Elizaphan Ntakirutimana had the requisite intent to commit genocide, that is, the intent to destroy, in whole, the Tutsi ethnic group.

831. The Chamber finds that, in conveying armed attackers to Bisesero and in acting as described above, Elizaphan Ntakirutimana is individually criminally responsible for aiding and abetting in the killing and causing of serious bodily or mental harm to Tutsi in Bisesero, pursuant to Article 6(1) of the Statute. Accordingly, the Chamber finds that Elizaphan Ntakirutimana is guilty of genocide as charged in Count 1 of the Bisesero Indictment.

Gérard Ntakirutimana

832. The Chamber has previously made the following findings:

(i) On or about 18 April 1994, Gérard Ntakirutimana was with Interahamwe at Murambi Hill pursuing and attacking Tutsi refugees (see II.4.5.3 above);

(ii) In the last part of April or possibly in May, Gérard Ntakirutimana was with attackers at Gitwe Hill where he shot at refugees (see II.4.5.3 above);

(iii) Around the end of April to the beginning of May 1994, Gérard Ntakirutimana shot and killed one Esdras during an attack at Gitwe Primary School (see II.4.7.3 above);

(iv) On 13 May 1994, Gérard Ntakirutimana participated in the attack against Tutsi refugees at Muyira Hill and shot and killed the wife of one Nzamwita (see II.4.18.3 above);

(v) Sometime in mid-May 1994, at Muyira Hill, Gérard Ntakirutimana took part in an attack on Tutsi refugees (see II.4.17.3 above);

(vi) Sometime between April and June 1994, Gérard Ntakirutimana was in Kidashya Hill transporting attackers, and he participated in chasing and shooting at Tutsi refugees in the hills (see II.4.11.3 above);

(vii) In June 1994, Gérard Ntakirutimana participated in an attack at Mubuga Primary School and shot at Tutsi refugees (see II.4.16.3 above);

(viii) One day in June 1994, Gérard Ntakirutimana headed a group of armed attackers at Muyira Hill, where he shot at Tutsi refugees (see II.4.21.3 above);

(ix) Sometime in June 1994, Gérard Ntakirutimana was at Mutiti Hill with Interahamwe where they shot at refugees in a forest by a church (see II.4.22.3 above); and

(x) During the period April to June 1994, Gérard Ntakirutimana participated in attacks in Bisesero (see II.4.24.3 above);

833. The Chamber found that Esdras, the wife of Nzamwita and the refugees whom Gérard Ntakirutimana shot at in Bisesero were of the Tutsi ethnic group.

834. The Chamber finds that in shooting and killing Esdras and the wife of Nzamwita, in pursuing and shooting at the refugees, in transporting and leading armed attackers in the attacks, and considering his participation in attacks against Tutsi refugees in Mugonero Complex, in particular his murder of Charles Ukobizaba, Gérard Ntakirutimana had the requisite intent to destroy, in whole, the Tutsi ethnic group.

835. In shooting at the refugees and participating in the attacks, Gérard Ntakirutimana is individually criminally responsible for the death of Esdras and the wife of Nzamwita, and the harm caused to these Tutsi refugees, pursuant to Article 6(1) of the Statute.

836. Accordingly, the Chamber finds that Gérard Ntakirutimana is guilty of genocide as charged in Count 1 of the Bisesero Indictment.

3.2 Count 2 – Complicity in Genocide

837. In light of the finding above in relation to Count 1, the alternative Count 2 – Complicity in genocide, ceases to apply with respect to Elizaphan Ntakirutimana and Gérard Ntakirutimana.

3.3 Count 3 – Conspiracy to Commit Genocide

838. Count 3 of the Bisesero Indictment charges both Accused with conspiracy to commit genocide pursuant to Article 2(3)(b) of the Statute. The Indictment alleges that during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, the Accused did conspire with each other to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed conspiracy to commit genocide.

839. The elements of the offence were dealt with in paras. 798 and 799 above.

840. The Chamber notes that the Prosecution's case is that the two Accused conspired "with each other" to commit genocide. In II.4.25.3 above, the Chamber found that Gérard Ntakirutimana attended three meetings in Kibuye town, held between 10 and 18 June 1994 (approximately), at which he made statements about the need to eliminate all Tutsi

and called for more arms and ammunition. At those meetings Gérard Ntakirutimana also participated in the distribution of weapons, discussed the planning of attacks at Bisesero, was assigned a role in such an attack, and reported back on its success. It is not alleged that Elizaphan Ntakirutimana was present at those meetings, or proved that he collaborated with or entered into an agreement with Gérard Ntakirutimana, to commit genocide. Consequently, the Chamber is unable, based on the evidence, to draw any inference that the two Accused conspired with each other to commit genocide.

841. Therefore, the Chamber does not find that Elizaphan Ntakirutimana or Gérard Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a conspiracy to commit genocide. Accordingly, the Chamber finds that Elizaphan Ntakirutimana and Gérard Ntakirutimana are not guilty of conspiracy to commit genocide as charged in Count 3 of the Bisesero Indictment.

3.4 Count 4 – Crime Against Humanity (Murder)

842. Count 4 of the Bisesero Indictment charges both Accused with a crime against humanity (murder) pursuant to Article 3(a) of the Statute. The Indictment alleges that during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, the Accused are responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and have thereby committed a crime against humanity (murder).

843. The elements of the offence were dealt with in paras. 803 and 804 above.

Elizaphan Ntakirutimana

844. The Chamber is not satisfied that Elizaphan Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a crime against humanity (murder). Accordingly, the Chamber finds that the Prosecution has not proved that Elizaphan Ntakirutimana is guilty of a crime against humanity (murder) as charged in Count 4 of the Bisesero Indictment.

Gérard Ntakirutimana

845. The Chamber found that Gérard Ntakirutimana killed Esdras, a civilian Tutsi, at Gitwe Primary School during the attacks in Bisesero (see II.4.7.3 above).

846. The Chamber found that Gérard Ntakirutimana shot and killed the wife of Nzamwita, also a civilian Tutsi, whilst participating in the attack against Tutsi refugees at Muyira Hill on 13 May 1994.

847. The Chamber found that there was a widespread and systematic attack against the civilian Tutsi population in Bisesero, in which Tutsi refugees were attacked almost

everyday over a period of time from April 1994 to June 1994 by groups of armed attackers, leaving many, possibly thousands, of Tutsi killed and wounded. The Chamber finds that the conduct of Gérard Ntakirutimana formed part of this attack.

848. Considering Gérard Ntakirutimana's participation in the attacks against Tutsi refugees in Bisesero by pursuing and shooting at them, and leading armed attackers in attacks against them, the Chamber finds that in killing Esdras and the wife of Nzamwita, Gérard Ntakirutimana had the requisite intent to kill them and knew that it was part of a widespread and systematic attack against the civilian Tutsi population on ethnic grounds.

849. In killing Esdras and the wife of Nzamwita, Gérard Ntakirutimana is individually criminally responsible for their deaths, pursuant to Article 6(1) of the Statute. The killings of Esdras and the wife of Nzamwita constitute murders committed as part of a widespread and systematic attack on the civilian Tutsi population on ethnic grounds and as such, constitute crimes against humanity. Accordingly, the Chamber finds that Gérard Ntakirutimana is guilty of crimes against humanity (murder) as charged in Count 4 of the Bisesero Indictment.

3.5 Count 5 – Crime Against Humanity (Extermination)

850. Count 5 of the Bisesero Indictment charges both Accused with a crime against humanity (extermination) pursuant to Article 3(b) of the Statute. The Indictment alleges that during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, the Accused are responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, and have thereby committed a crime against humanity (extermination).

851. The elements of the offence were dealt with in paras. 812 and 813 above.

852. The Chamber found above the killing of only two named or described individuals, that is, the killings of Esdras and the wife of Nzamwita, by Gérard Ntakirutimana. The Chamber is not persuaded that the element of "mass destruction" or "the taking of a large number of lives" has been established in relation to the Accused, or that the Accused were responsible for the mass killing of named or described individuals. There is insufficient evidence as to a large number of individuals killed as a result of the Accused's actions. The Chamber is not satisfied that Elizaphan Ntakirutimana or Gérard Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a crime against humanity (extermination). Accordingly, the Chamber finds that Elizaphan Ntakirutimana and Gérard Ntakirutimana are not guilty of a crime against humanity (extermination) as charged in Count 5 of the Bisesero Indictment.

3.6 Count 6 – Crime Against Humanity (Other Inhumane Acts)

853. Count 6 of the Bisesero Indictment charges both Accused with a crime against humanity (other inhumane acts) pursuant to Article 3(i) of the Statute. The Indictment alleges that during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, the Accused did commit other inhumane acts, including the causing of serious bodily harm, the causing of serious mental harm and the persistent searching for and killing of individuals in the Bisesero area, as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, and have thereby committed a crime against humanity (other inhumane acts).

854. The elements of the offence were dealt with in paragraph 816 above.

855. The Prosecution submits that the act of removal of the Murambi Church roof by the two Accused constitutes an "other inhumane act". The Chamber found that there was insufficient notice to Gérard Ntakirutimana that he would be alleged to have been present at Murambi Church, and the allegation was consequently disregarded (see II.4.23.3 above). As for Elizaphan Ntakirutimana, the Chamber found that he conveyed attackers to the scene and ordered them to remove the roof so that Tutsi could not use the church as a hiding-place, and that this act facilitated the hunting down and killing of the refugees. However it has not been proved that this act resulted in serious physical or mental suffering, or amounted to a serious attack on human dignity, of the refugees. Further, the Chamber is not satisfied that this act amounts to an act of similar seriousness to other enumerated acts in the Article.

856. Therefore, the Chamber does not find that Elizaphan Ntakirutimana or Gérard Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of a crime against humanity (other inhumane acts). Accordingly, the Chamber finds that Elizaphan Ntakirutimana and Gérard Ntakirutimana are not guilty of a crime against humanity (other inhumane acts) as charged in Count 6 of the Bisesero Indictment.

3.7 Count 7 - Violations of Common Article 3 and Additional Protocol II

857. Count 7 of the Bisesero Indictment charges both Accused with serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Article 4(a) of the Statute. The Indictment alleges that during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, the Accused are responsible for violence to life, health and physical or mental well-being of persons, including murder and serious bodily and mental harm, and have thereby committed serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereof.

858. In order for the Chamber to enter a conviction on this count, it must find that the following elements have been proved beyond a reasonable doubt:

(i) That Elizaphan Ntakirutimana or Gérard Ntakirutimana committed violence to life, health and physical or mental well-being, in particular murder and cruel treatment, of persons not taking an active part in hostilities;

(ii) That the alleged act or acts were committed in the context of an internal armed conflict; and

(iii) That there is a nexus between the alleged act or acts and the armed conflict.

859. The provision seeks to protect persons not taking an active part in the hostilities in armed conflicts not of an international character, and the statement "violence to life, health and physical or mental well-being of persons" encompasses, at least, acts such as murder and cruel treatment.

860. To date, no findings of guilt have been made on this provision by the Tribunal. In the ICTY, in *Vasiljevic*, it was held that customary international law does not provide a sufficiently precise definition of a crime under this provision. Therefore, based on the principle of *nullum crimen sine lege*, the Accused was acquitted on this count in *Vasiljevic* (paragraphs 193-204).

861. Apart from the lack of clarity about this provision, the Chamber is not satisfied that the settled elements of the offence, such as the existence of a nexus between the alleged act or acts and the armed conflict, have been proved in the present case. Therefore, the Chamber does not find that Elizaphan Ntakirutimana or Gérard Ntakirutimana planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation and execution of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. Accordingly, the Chamber finds that Elizaphan Ntakirutimana and Gérard Ntakirutimana are not guilty of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II as charged in Count 7 of the Bisesero Indictment.

3.8 Cumulative Charges/Convictions

862. Finally, the Chamber will address the issue of cumulative charges and convictions, which is applicable to both Indictments.

863. Cumulative charging is generally permissible, as it is not possible to determine which charges will be proven against an Accused prior to the presentation of the evidence.[1161]

864. Cumulative convictions are permissible only if the crimes involved comprise materially distinct elements.[1162] In this case, Gérard Ntakirutimana is guilty of genocide and a crime against humanity (murder). The Chamber considers that the two offences comprise materially distinct elements. For example, the *mens rea* of genocide is the intent to destroy, in whole or in part, an ethnic or racial group, which element is not required for

[1161] See eg. *Musema* (AC) paras. 346-370.
[1162] *Id.*; *Delalic* (AC) para. 400.

a crime against humanity. The *mens rea* of a crime against humanity (murder) is the knowledge that the murder is part of a widespread or systematic attack against a civilian population on discriminatory grounds. Accordingly, convictions on both counts will be entered against Gérard Ntakirutimana.

4. Legal Issues Raised By the Defence

865. Section V of the Defence Closing Brief is entitled "The Defence Renews its Motion to Dismiss the Indictment".[1163] The reference is to a motion filed on 26 February 2001,[1164] which was heard and dismissed by oral decision on 2 April 2001.[1165] Section V of the Brief reproduces all but one of the seven subheadings of the earlier motion. It asks the Chamber to reconsider its decision in light of "new evidence and experiences". The Chamber considers Section V to be not a separate motion appended to the Brief but a set of arguments for acquittal forming part of the Brief. Neither Party specifically referred to Section V in its oral closing arguments.

866. Under the subheading "A trial under existing circumstances will violate the fundamental rights of the accused to present their defence and confront witnesses against them", the Defence maintains that it faced "enormous difficulty" finding witnesses and was unable to obtain a single witness from within Rwanda. The Chamber would have given this argument serious consideration had the Defence supplied any evidence that witnesses it had located were intimidated by the Rwandan authorities or otherwise improperly prevented from coming to Arusha to testify for the Defence. No such evidence was put before the Chamber. Instead, Section V states that:

> Pastor Ntakirutimana and Dr. Gerard insisted that no one be placed in jeopardy because they were contacted, or testified for the defence. Some alibi witnesses were in prison and the risk to them if called to testify was too great. Others were in Mugonero, but the danger of even approaching them directly was too great ... Others were in Kigali, Gisovu, Gishyita, Kibuye Ville, but again no direct approach could be safely made. The defence had a right to the testimony of such witnesses which was violated by the Government of Rwanda.[1166]

867. The above remarks assume that potential Defence witnesses who are so much as contacted by the Defence are immediately put in danger. If there is a factual basis to this assumption it is not stated in Section V. The Defence nevertheless concedes that it did make contact through intermediaries with two "very important" potential witnesses who "agreed to testify in Arusha if conditions for their security [in Rwanda] could be arranged".[1167] The Tribunal has a specialized witness-protection program for Defence witnesses. Section V provides no evidence that the Defence attempted to utilize this program to arrange for the on-going safety of these two potential witnesses.

[1163] See pp. 256-268 of the Brief.
[1164] Motion to Dismiss or in the Alternative Supplemental Motion for the Production and Disclosure of Evidence and Other Discovery Materials.
[1165] T. 2 April 2001 pp. 126-136.
[1166] Defence Closing Brief p. 257.
[1167] Id. p. 258.

868. Section V also complains about the unavailability of certain Defence witnesses from outside Rwanda, such as Dr Giordano who, according to the Defence, was unable to travel out of Madagascar because of the political crisis there. The Chamber observes that both Prosecution and Defence will not always succeed in securing the attendance of witnesses from all parts of the world. In the present case, the Defence was able to have admitted as exhibits three affidavits from witnesses who for various reasons were unable to travel to Arusha.[1168]

869. The final argument of the Defence under the first subheading is that it was "deprived of the right" to obtain evidence from within Rwanda to prove that the Rwandan Patriotic Front, the Rwandan victims' organisation IBUKA, the human rights organisation African Rights, and others, "framed a political case" against the two Accused.[1169] As the Defence does not claim that it even attempted to obtain the evidence it alludes to from the aforementioned sources, the Chamber finds no merit in the argument.

870. Under the second subheading the Defence alleges that the Tribunal has not indicted a single official of the Rwandan Patriotic Front, the Rwandan Patriotic Army, the present government of Rwanda, or a person of Tutsi ethnicity. This supposedly shows the Tribunal's "discriminatory purpose", which is to "inflict victors justice" on the surviving leadership and military of the former government of Rwanda.[1170] The Chamber understands the argument of the Defence, which is very sketchy, to be a complaint about selective prosecution. This topic has been dealt with by the Appeals Chamber of the ICTY in its Judgement in the *Delalic* Case.1171

871. Article 15(2) of the Statute requires the Prosecutor to act independently and prevents her from seeking or receiving instructions from a government or any other source. According to the standard articulated by the ICTY Appeals Chamber in *Delalic*, where an appellant alleges selective prosecution he or she must demonstrate that the Prosecutor improperly exercised her prosecutorial discretion in relation to the appellant himself or herself.[1172] It follows that the Accused in the present case must show that the Prosecutor's decision to prosecute them or to continue their prosecution was based on impermissible motives, such as ethnicity or political affiliation, and that she failed to prosecute similarly situated suspects of different ethnicity or political affiliation. In view of the failure of the Defence to adduce any evidence to establish that the Prosecutor had a discriminatory or otherwise unlawful or improper motive in indicting or continuing to prosecute the Accused, the Chamber does not find it necessary to consider the additional question of whether there were other similarly situated persons who were not prosecuted or against whom prosecutions were discontinued.

[1168] See id. p. 259 and exhibits 1D52 (A), (B), and (C).
[1169] Defence Closing Brief p. 259.
[1170] Id. p. 260.
[1171] *Delalic* (AC), Part X, Selective Prosecution.
[1172] Id. paras. 607, 611.

872. The third subheading relates mainly to the administration of the Tribunal. Allegations having to do with bureaucratic impediments, late payment of fees, and mismanagement of protected witnesses should have been referred to the Registrar, if anyone. They do not demonstrate any resulting disadvantage or unfairness in the presentation of the Defence case. The Chamber will briefly address two other issues under this subheading.

873. The first concerns Mr. Ephrem Gasasira, who was Elizaphan Ntakirutimana's preferred candidate for co-counsel. Mr. Gasasira was not appointed to the post, because the Defence was unable to provide the Registrar with adequate proof that the candidate "had acted as visiting professor at a certain level and with sufficient regularity" over a minimum period of ten years at academic institutions, which according to the Chamber would have satisfied the relevant condition of appointment in Rule 45 of the Rules then in force.[1173] The Defence disparages the "acceptance of patently false information from the Justice Minister of Rwanda concerning the teaching record of Judge Gasasira at the National University and Judges' College [in Rwanda]", yet provides no evidence that the information was inaccurate, let alone falsified.[1174]

874. The Defence questions the quality of translations at the Tribunal. In particular, "[c]ourtroom translation was a constant concern and frequent problem in this case, assuming the best efforts and intentions of all. All too frequently, difficulty with translation caused uncertainty as to what a witness said, or meant."[1175] The Chamber observes that simultaneous interpretation from Kinyarwanda through French into English, though inherently difficult, generally proceeds smoothly. The Defence multilingual assistant, who switched between the channels, periodically intervened through his Counsel to propose corrections to the interpretation. In the interests of an accurate record the Chamber always gave consideration to those interventions. The Kinyarwanda channel is recorded and the soundtrack is available to the Parties. The concern of the Defence about occasions on which undetected errors "may have been made" which gave a wrong, or misleading meaning to the witnesses' actual words, does not establish that the record of the proceedings contains any significant error.[1176]

875. The last subheading of Section V of the Defence Closing Brief, entitled "The Charter of the United Nations Does Not Empower the Security Council to Establish any Criminal Court", revisits the issue of the Tribunal's legality, already dealt with in the Chamber's decision of 2 April 2001.[1177] The Chamber is not persuaded that the additional remarks of the Defence on the subject require it to reconsider its decision.

[1173] Decision of 13 July 2001 on the Motion of the Defence for the Assignment of Co-counsel for Elizaphan Ntakirutimana, para. 19.
[1174] Defence Closing Brief p. 261.
[1175] Id. p. 265.
[1176] Id. p. 265.
[1177] T. 2 April 2001 pp. 126-130.

876. In conclusion, the arguments given by the Defence in its "renewal of its motion to dismiss the indictment", viewed whether individually or collectively, fail to demonstrate any unfairness justifying the relief sought by the Defence, or any relief.

CHAPTER IV

VERDICT

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments,

THE CHAMBER unanimously finds as follows:

877. In respect of Elizaphan Ntakirutimana:

(i) Count 1A Mugonero & Count 1 Bisesero: GUILTY of Genocide;

(ii) Count 1B Mugonero & Count 2 Bisesero: NOT GUILTY of Complicity in Genocide;

(iii) Count 2 Mugonero & Count 3 Bisesero: NOT GUILTY of Conspiracy to Commit Genocide;

(iv) Count 3 Mugonero & Count 4 Bisesero: NOT GUILTY of Crimes Against Humanity (Murder);

(v) Count 4 Mugonero & Count 5 Bisesero: NOT GUILTY of Crimes Against Humanity (Extermination).

(vi) Count 5 Mugonero & Count 6 Bisesero: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts).

(vii) Count 7 Bisesero: NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

878. In respect of Gérard Ntakirutimana:

(i) Count 1A Mugonero & Count 1 Bisesero: GUILTY of Genocide;

(ii) Count 1B Mugonero & Count 2 Bisesero: NOT GUILTY of Complicity in Genocide;

(iii) Count 2 Mugonero & Count 3 Bisesero: NOT GUILTY of Conspiracy to Commit Genocide;

(iv) Count 3 Mugonero & Count 4 Bisesero: GUILTY of Crimes Against Humanity (Murder);

(v) Count 4 Mugonero & Count 5 Bisesero: NOT GUILTY of Crimes Against Humanity (Extermination);

(vi) Count 5 Mugonero & Count 6 Bisesero: NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts);

(vii) Count 7 (Bisesero): NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

CHAPTER V

SENTENCING

1. Applicable Provisions

879. The provisions of the Statute and the Rules relevant to the Chamber's consideration of an appropriate sentence for the Accused are Articles 22, 23 and 26 of the Statute and Rules 102, 103 and 104 of the Rules.

880. Pursuant to Article 23 of the Statute and Rule 101(A) of the Rules, the Tribunal may impose only a term of imprisonment on the person convicted, up to and including imprisonment for the remainder of that person's life, and the restitution of property or proceeds acquired by criminal conduct.

2. Purposes and Principles of Sentencing

881. Both Accused have been found guilty of genocide and crimes against humanity. These crimes are of an utmost gravity; they are shocking to the conscience of mankind, in view of the fundamental human values deliberately negated by their perpetrators and the sufferings inflicted. These crimes threaten not only the foundations of the society in which they are perpetrated but also those of the international community as a whole.

882. The gravity of the offences shall therefore be reflected primarily in the Chamber's decision on the sentence to be inflicted upon the Accused, in order to serve such primary purposes as retribution, deterrence, protection of society, stigmatization and public reprobation of international crimes. General deterrence is particularly emphasized in this respect, so as to demonstrate "that the international community [is] not ready to tolerate serious violations of international humanitarian law and human rights".[1178]

883. Article 23 of the Statute and Rule 101(B) of the Rules also require that the individual circumstances of the Accused and the existence of any aggravating and mitigating circumstances in their case be thoroughly considered. Application of these principles allows the Chamber to fulfill its "overriding obligation to individualize [the] penalty", with the aim that the sentence be proportional to the gravity of the offence and the degree of responsibility of the offender.[1179]

884. The Chamber emphasizes in this context the importance of the principle of gradation in sentencing, which enables the Tribunals to distinguish between crimes which are of the most heinous nature, and those which, although reprehensible and deserving severe penalty, should not receive the highest penalties. The imposition of the highest penalties upon those at the upper end of the sentencing scale, such as those who planned or ordered atrocities, or those who committed crimes with especial zeal or sadism,

[1178] *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66.
[1179] *Delalic* (AC) para. 717; *Akayesu* (AC) para. 407.

enables the Chamber to punish, deter, and consequently stigmatize those crimes at a level that corresponds to their overall magnitude and reflects the extent of the suffering inflicted upon the victims.[1180]

885. This principle is apparent in the relevant dispositions of the Rwandan Criminal Code and the practice of the Rwandan courts in respect of sentencing, which the Chamber duly considered in its decision. Specific reference is made, in this regard, to the different categories of *génocidaires* or perpetrators of other crimes against humanity and the corresponding sentences to be imposed by the courts of Rwanda in their respect in the the Rwandan Organic Law on the Organization of Prosecutions for Offences constituting Genocide or Crimes against Humanity, committed since 1 October 1990. These range from a death sentence to life imprisonment or a term of imprisonment, depending on the criminal behaviour considered and the existence or not of aggravating circumstances such as the convicted persons' positions as leaders, the particular cruelty with which their crimes were committed, or their being found guilty of sexual violence.[1181]

886. Article 23 of the Statute and Rule 101(A) of the Rules are consonant with the principle of gradation in sentencing. They provide for flexibility in the determination of the sentence to be imposed. Thus, individuals convicted of genocide, of crimes against humanity or of Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II pursuant to Articles 2, 3 or 4 of the Statute may each face the highest sentence if the circumstances of the case, after assessment of any individual and mitigating factors, are deemed to require it. By the same token, not all persons convicted of genocide, to name but the "crime of the crimes", are bound to serve the highest sentence.

887. Bearing the above considerations in mind, regard will be had to a further purpose of the sentence, that of a possible rehabilitation of the convicted person.[1182]

[1180] The principle of gradation in sentencing was first acknowledged in the ICTY as reflecting the relative role of the individual accused in the overall context of the conflict. See *Delalic* (AC) para. 849 and *Aleksovski* (AC) para. 184. It was endorsed by the Appeals Chamber in the *Musema* (AC) paras. 381 and 382.

[1181] See Organic Law No. 8/96 of 30 August 1996, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996. The full text of the Organic Law is available on the official Website of the Embassy of the Republic of Rwanda in Washington, D.C at <http://www.rwandemb.org/prosecution/law.htm>. Prior to the Organic Law, including in 1994, the relevant law in force was the Rwandan Penal Code of 18 August 1977. Under the Code, the penalty for murder was life imprisonment, or death in cases involving premeditation or ambush (Article 311 and 312, respectively). While Rwanda ratified the Genocide Convention on 12 February 1975, the Code does not list genocide or crimes against humanity as separate criminal categories. *See* Code Pénal (18 August 1977), in Filip Reyntjens and Jan Gorus (eds.), *Codes et Lois du Rwanda* (Butare: Université Nationale du Rwanda, 1995).

[1182] *Blaskic* (TC) para. 761; *Kunarac* (TC) para. 836; *Serushago* (TC) para. 39; *Kayishema and Ruzindana* (TC) para. 2, upheld in *Kayishema and Ruzindana* (AC) para. 389 and 390.

3. Submissions of the Parties

3.1 Prosecution

888. In its Sentencing Brief, the Prosecution submits that the extreme gravity of the crimes committed by the Accused calls for a high sentence, especially, considering the following aggravating circumstances, *inter alia*:

(i) As for Elizaphan Ntakirutimana, he was the overall head of the Mugonero complex and was respected as an "intermediary between the people and God"; he personally ferried attackers to the Complex as well as the Bisesero area; he is responsible for the destruction of the roof of the Murambi Church where Tutsi persons sought refuge. Finally, after the events, he decided to flee Rwanda and failed to perform any burials for the Tutsi killed, or to hold a remembrance service for the dead.

(ii) As for Gérard Ntakirutimana, the Accused was the *de facto* head of the Mugonero Hospital between 10 and 17 April 1994 as well as a respected person in the community; he took part in meetings to plan the attack on the Complex; he discharged Hutu patients from the hospital just prior to the attack; he went to the Kibuye gendarmerie camp to procure weapons for the attack; he personally took part in the attack on the Complex as well as in the attacks in Bisesero; after the events, he decided to flee Rwanda and failed to perform any burials for the Tutsi killed or to hold a remembrance service for the dead.

889. The Prosecution maintains that there are no mitigating circumstances. Neither Gérard Ntakirutimana nor Elizaphan Ntakirutimana co-operated with the Prosecutor, nor have they shown that in the commission of these crimes they were merely following orders. Also, while character evidence is irrelevant to this case, the Accused have not shown any remorse for their crimes (although it is acknowledged that a Trial Chamber may consider evidence of background, character, prior criminal acts, and any other information that it deems relevant in determining an appropriate sentence).

890. The Prosecution concludes that both of the Accused fall under Category 1 of Rwanda's Organic Law and that they would have received the death penalty if they had been tried and convicted in Rwanda; that a separate sentence should be applied for each of the counts on which the Accused have been found guilty and, finally, that they should each serve the more severe sentence, imprisonment for the remainder of their natural lives.[1183]

3.2 Defence

891. The Defence made no specific submissions on sentencing. Its case being that the Prosecution failed to prove the guilt of the Accused and that the Accused are innocent of the charges against them, the Defence requests that the Accused be set free. The Defence also called several witnesses and submitted many statements of friends and colleagues,

[1183] Prosecutor's Sentencing Brief of 4 July 2002 para. 44-57, 67, 81, 85.

who emphasised the good character of both Accused, their integrity, and the services that they rendered to the community. It is further submitted that Elizaphan Ntakirutimana's life work was dedicated to saving souls and his son's, to healing the sick and saving lives. Furthermore, both Accused testified about their many years of dedication to church and community. Finally, it is submitted that neither of the Accused was in a position to prevent or stop the massacres, and that they were themselves victims who became refugees.[1184]

4. Discussion

892. The Chamber has already noted the gravity of the crimes of which the Accused have been found guilty. It now turns to the personal and individual circumstances of the Accused, prior to reviewing the practice of the Tribunal in respect of sentences in cases with similarities to the present one.

893. The Chamber recalls at the outset the general principle that only matters proved a beyond a reasonable doubt against the Accused are to be considered against them at the sentencing stage. This principle extends to the assessment of any aggravating factors.[1185] Another standard applies to the Chamber's assessment of mitigating factors. These shall be taken into consideration if established on a balance of probabilities.[1186] Also, the Chamber agrees with the *Vasiljevic* Trial Chamber of the ICTY that a particular circumstance shall not be retained as aggravating if it is included as an element of the crime in consideration.[1187]

4.1 Elizaphan Ntakirutimana

894. It is recalled that Elizaphan Ntakirutimana was born in 1924 in Ngoma sector, Gishyita commune, Kibuye prefecture, Rwanda.

(a) Mitigating Circumstances

895. The Chamber has found that the Accused was a highly respected personality within the Seventh-Day Adventist Church of the West-Rwanda Field and beyond, in the Kibuye prefecture. It heard and reviewed moving testimony from colleagues and supervisors of the Accused within the Seventh-Day Adventist Church. This evidence consistently described the Pastor's exemplary life as a church leader, a highly religious and tolerant person, who did not show ethnic bias, even in times of unrest and ethnic

---

[1184] See T. 22 August 2002 pp. 57 and 58 and Defence Closing Brief pp. 1-12.
[1185] *Delalic* (AC) para. 763; *Vasiljevic* (TC) para. 272.
[1186] *Kunarac* (TC) para. 857, *Sikirica* (TC) para. 110; *Vasiljevic* (TC) para. 272.
[1187] Specifically, the *Vasiljevic* Trial Chamber ruled that the perpetrator's discriminatory intent in the commission of the crime "can only [constitute an aggravating factor] where the crime for which an accused is convicted does not include a discriminatory state of mind as an element." Hence, one's discriminatory intent was not deemed an aggravating factor in respect of a count of persecution considered as a crime against humanity (Article 5(h) of the ICTY Statute). It was however considered an aggravating factor in respect of a count of murder considered as a violation of the laws and customs of war (Article 3 of the ICTY Statute). *Vasiljevic* (TC) para. 277-278.

tension, for over half a century. Significantly, one such colleague praised "a faithful and honest worker who manifested courage in confronting irregularities with workers of either tribal affiliation" while an other described Pastor Ntakirutimana as "a kind Christian gentleman", an outstanding worker whom he found to be fair and trustworthy, whom he never saw lose his temper, who "worked well with the Hutus and the Tutsis" and whom he never saw making any distinction in their respect. As already stated, the Chamber accepts this evidence and finds that Elizaphan Ntakirutimana was essentially a person of good moral character until the events of April to July 1994 during which he was swept along with many Rwandans into criminal conduct.[1188]

896. The family situation of the Accused has been taken into account (Elizaphan Ntakirutimana is married with eight children of whom seven were alive in 2002).

897. In respect of his conduct during the events of 1994, the Chamber has considered that Elizaphan Ntakirutimana did not play a leading role in the attacks. He did not personally participate in these killings, nor was he found to have fired on refugees or even to have carried a weapon.

898. Finally, 78 years of age at the time of sentencing, the Accused has spent more than four years in detention. His wife, among other witnesses, has testified about his frail health, due to a condition from which he has suffered for years. His poor health was evident throughout the trial proceedings. Considered together, the Chamber finds that these are important mitigating circumstances in Elizaphan Ntakirutimana's case.

(b) Aggravating Circumstances:

899. The Chamber now turns to the circumstances considered as aggravating in the Accused's case.

900. As a highly respected personality and a man wielding certain authority within the Seventh-Day Adventist Church of the West-Rwanda Field and in the Kibuye prefecture, the Accused was deemed to have abused the trust placed in him.

901. The letter written to him by the Tutsi Pastors on behalf of the refugees at the Mugonero Complex was found, among other evidence, to be a symbol of his perceived authority among the general population. It is recalled that the Mugonero refugees trusted that, on the eve of the attack, Pastor Ntakirutimana would intercede in their favor before a municipal authority such as bourgmestre Sikubwabo, and that his intervention could prove instrumental in saving their lives.

[1188] In the words of, respectively, Robert Peck, former President of the Union Mission of the Seventh-Day Adventist Church in Rwanda from 1984 to 1990 and Pastor De Witt S. Williams, former President of the Central Africa Union of the Church from 1979 to 1982. This correspondence is included in Defence Exhibit 1D21. See also II.6 *supra* (Character of the Accused Prior to April 1994) and particularly the Chamber's findings at II.6.3.1.

902. Many among the refugees at the Mugonero Complex on 16 April 1994 were parishioners and pastors of the West-Rwanda Field of the Seventh Day Adventist Church for which Pastor Ntakirutimana was responsible. These persons were in his care. They were his "flock", to recall the wording of the Pastors' letter. On his return from Gishyita, he failed to go in person before the Pastors and the refugees to inform them of the bourgmestre's negative response to their plea. As noted earlier, the Accused thus distanced himself from his Tutsi pastors and his flock in the hour of their need.[1189] This, which may be characterised as dishonourable for a man of the cloth, was considered as an aggravating factor.

903. Later, on the same day, he further abused the trust the refugees placed in him by conveying individuals, whom he knew were set upon attacking them, to the Complex. The same abuse of trust was considered an aggravating circumstance in respect to his association with attackers in Bisesero.

904. Furthermore, considering his authority, as emphasized above, his presence at the scene of the attack against the Complex, not to mention his association with the *génocidaires* he ferried in his own vehicle, could only have been construed by the attackers as an approval of their actions, if not an incitement thereto. The same circumstance was considered aggravating in respect of the Accused's involvement in attacks launched on Tutsi refugees in Bisesero.

905. Another aggravating circumstance in respect of his association in the attack of 16 April 1994 is that the Mugonero Complex was considered a safe haven. Similarly, in Bisesero, he was found to have associated himself with attacks against a church and schools or other buildings where the Tutsi refugees were seeking shelter.

(c) Conclusion

906. Having reviewed all circumstances in the Accused's case, individual, mitigating and aggravating, the Chamber declares itself sympathetic to the individual and mitigating circumstances of Elizaphan Ntakirutimana. Special weight has been given, in reaching its decision on the sentence, to his age, his state of health, his past good character and public service.

4.2 Gérard Ntakirutama

907. The Chamber now turns to the Accused Gérard Ntakirutimana, born in 1958 in Ngoma sector, Gishyita commune, Kibuye prefecture, Rwanda.

[1189] See *supra* II.3.8.3 (b).

(a) Mitigating Circumstances

908. The Chamber notes that, at the time of sentencing, the Accused was 44 years old, that he is married and that he has three children. To his credit, the Accused did not profess or show ethnic bias prior to the events. Furthermore, the Chamber has made statements on his good character.[1190] The Chamber particularly bears in mind how, during his testimony, Gérard Ntakirutimana related what prompted his return to Rwanda in 1993, namely his hope to contribute to development and to promote peace within his country. However, these considerations do not detract from the fact that, in times of ethnic bias and tension in the prefecture, he associated with the *génocidaires* in his area and became one of them. These circumstances were accordingly deemed to carry little weight.

909. The Chamber further considered as mitigating factors the following actions of the Accused, which were not contradicted by the Prosecutor, in April and May 1994:

(i) The night of 7 April 1994, the Accused provided shelter in his house to the wife, daughter and two grandchildren of Israël Nsengimana, a Tutsi colleague and friend of his;[1191]

(ii) On 8 April 1994, he proposed to Catherine, his Tutsi house-help, to stay in their family home, as he feared for her security;[1192]

(iii) A few days before 16 April 1994, he drove Clémentine, the Tutsi wife of Jean Nkuranga, himself a Tutsi and the director of the ESI Nursing School, to Gisovu, and their children, as part of the evacuation from the Complex of families of senior Hutu employees;[1193]

(iv) During an entire week, while in Gishyita, he took in his care two orphaned and injured Tutsi children he had found among scattered bodies, nearby the Mugonero Hospital, on 18 April 1994.[1194]

(b) Aggravating Circumstances

910. Turning now to the aggravating circumstances in the Accused's case, the Chamber notes that, although not to the same extent as his father, Gérard Ntakirutimana was a prominent personality in the Mugonero area. A doctor, he was one of the few individuals in his area of origin to have achieved a higher education and one of the rare schooled in Western universities. It is particularly egregious that, as a medical doctor, he took lives instead of saving them. He was accordingly found to have abused the trust placed in him in committing the crimes of which he was found guilty.

[1190] See II.6.3.2 *supra*.
[1191] See T. 9 May 2002 pp. 33-34 (Gérard Ntakirutimana); T. 11 April 2002 pp. 76-77 and 97-98 (Ann Nzahumunyurwa).
[1192] See T. 9 May 2002 pp. 33-36 (Gérard Ntakirutimana) and T. 11 April 2002 pp. 76 and 77 (Ann Nzahumunyurwa).
[1193] See para. 116 *supra*.
[1194] T. 9 May 2002 pp. 118-119 and 124-127; T. 10 May 2002 pp. 84-85. Gérard Ntakirutimana's testimony was corroborated by his mother, Royisi Ntakirutimana (T. 11 April 2002 p. 5), and his father (T. 7 May 2002 pp. 21-24).

911. Furthermore, in several instances the Accused was found to have led attackers against Tutsi refugees.

912. Other aggravating circumstances taken into consideration are: that his crimes were committed with unabated zeal over a lengthy period of time (approximately two months and a half); that he personally shot at Tutsi refugees and that he thus directly and personally contributed to the sheer death toll among the mainly defenseless Tutsi population at the Mugonero Complex and in Bisesero (as evidenced in the case of Charles Ukobizaba, Esdras and the wife of Nzamwita); that he participated in the attack against a safe haven such as the Mugonero Complex, including the very hospital in which he was a doctor, not to mention the specific attacks in Bisesero of which he was found guilty, that targeted schools and other buildings in which refugees sought nightly shelter.

(c) Conclusion

913. Having reviewed all circumstances in the Accused's case, individual, mitigating and aggravating, the Chamber finds that the aggravating circumstances outweigh the mitigating circumstances in Gérard Ntakirutimana's case.

4.3 Sentences Imposed in Other Cases of the Tribunal of Relevance to the Present Case

914. Clément Kayishema, the former Prefect of Kibuye Prefecture, Alfred Musema, the former Director of the Gisovu Tea Factory in the Kibuye Prefecture, and Obed Ruzindana, a successful businessman from Kibuye, have been convicted and sentenced by the Tribunal for genocide and (as far as Alfred Musema is concerned) crimes against humanity, committed against the mainly Tutsi population in Bisesero or elsewhere in the Kibuye prefecture between April and June 1994. Clément Kayishema and Alfred Musema are serving sentences of imprisonment for the remainder of their lives, while Obed Ruzindana was sentenced to 25 years of imprisonment. Their names often resurfaced in the testimony of witnesses when describing attacks during which they saw the Accused in the present case.

915. Kayishema, Musema and Ruzindana were all found guilty, *inter alia*, of leading assailants against Tutsi refugees in Bisesero and of personally attacking and of firing on these refugees. The gravity of their direct involvement in the execution of genocide or crimes against humanity does not compare with the crimes retained against Elizaphan Ntakirutimana in this Chamber's Verdict. The particular individual, mitigating and aggravating circumstances in the sentencing of these three Accused, as well as the balance struck by the concerned Chambers, after weighing all circumstances, are also distinct. The Chamber, accordingly, has determined that the sentencing in the cases of Kayishema, Musema and Ruzindana should have little import on the present decision regarding the sentence for Elizaphan Ntakirutimana.

916. The crimes of which they were found guilty do compare, in some respects, to those retained against Gérard Ntakirutimana in the Verdict. The Accused, like Alfred Musema, Clément Kayishema and Obed Ruzindana, was found to have led attackers in the Bisesero hills and to have personally shot at Tutsi refugees. However, among other considerations, Clément Kayishema's position of authority as Prefect of the Kibuye Prefecture was held not to compare with the Accused Gérard Ntakirutimana's circumstances. Similarly, the Chamber notes that Alfred Musema was found guilty of both direct responsibility under Article 6(1) of the Statute and command responsibility under Article 6(3) of the Statute for his effective control over actions of employees of the Gisovu Tea Factory in Bisesero. Gérard Ntakirutimana, on the other hand, was found guilty of his crimes pursuant to Article 6(1) of the Statute only. Furthermore, Alfred Musema was found by the concerned Trial Chamber to have assumed leadership during attacks to a wider extent than Gérard Ntakirutimana. Lastly, Obed Ruzindana's case was deemed to have more similarity to that of the Accused, even though not in all respects and with altogether differing individual, mitigating and aggravating circumstances.

5. Imposition of Sentence

917. As a preliminary matter, the Chamber notes the well-established practice in this Tribunal and the ICTY, as confirmed by their respective Appeals Chambers, which have confirmed that Rule 87(C) and Rule 101(C) of the Rules are worded with sufficient liberality for a single sentence to be imposed on the Accused.[1195] The Chamber recalls that, even where the crimes may be characterized in different ways, the imposition of a single sentence will usually be appropriate in cases in which the offences may be recognized as belonging to a single criminal transaction.[1196] However, the decision whether to impose a single sentence is left entirely to the discretion of the Chamber, so long as the fundamental consideration in imposing sentence is the totality of the criminal conduct of the accused.[1197]

918. **FOR THE FOREGOING REASONS**, having considered all of the evidence and the arguments of the parties, the Statute, and the Rules, the Trial Chamber imposes sentence as follows, delivering its decision in public, *inter partes* and in the first instance, and noting the general practice regarding sentencing in Rwanda,

5.1 Sentence for Elizaphan Ntakirutimana

919. Elizaphan Ntakirutimana was found guilty of Genocide (Count 1A of the Mugonero Indictment and Count 1 of the Bisesero Indictment).

920. Elizaphan Ntakirutimana was found not guilty of:

(i) Complicity in genocide (Count 1B Mugonero Indictment and Count 2 of the Bisesero Indictment);

[1195] *Kambanda* (AC) para. 103; *Kunarac* (AC) para. 344.
[1196] *Blaskic* (TC) para. 807; *Krstic* (TC) para. 725.
[1197] *Delalic* (AC) para. 771; *Kunarac* (AC) para. 343.

(ii) Conspiracy to commit genocide (Count 2 of the Mugonero Indictment and Count 3 of the Bisesero Indictment);

(iii) Murder considered as a crime against humanity (Count 3 of the Mugonero Indictment and Count 4 of the Bisesero Indictment);

(iv) Extermination considered as a crime against humanity (Count 4 of the Mugonero Indictment and Count 5 of the Bisesero Indictment);

(v) Other inhumane acts considered as a crime against humanity (Count 5 of the Mugonero Indictment and Count 6 of the Bisesero Indictment);

(vi) Serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto(Count 7 of the Bisesero Indictment).

921. For the crime upon which conviction was entered against the Accused, the Chamber **SENTENCES** Elizaphan Ntakirutimana to:

IMPRISONMENT FOR 10 YEARS.

5.2 Sentence for Gérard Ntakirutimana

922. Gérard Ntakirutimana has been found guilty of:

(i) Genocide (Count 1A of the Mugonero Indictment and Count 1 of the Bisesero Indictment);

(ii) Murder considered as a crime against humanity (Count 3 of the Mugonero Indictment and Count 4 of the Bisesero Indictment);

923. Gérard Ntakirutimana has been found not guilty of:

(i) Complicity in genocide (Count 1B Mugonero Indictment and Count 2 of the Bisesero Indictment

(ii) Conspiracy to commit genocide (Count 2 of the Mugonero Indictment and Count 3 of the Bisesero Indictment);

(iii) Extermination considered as a crime against humanity (Count 4 of the Mugonero Indictment and Count 5 of the Bisesero Indictment);

(iv) Other inhumane acts considered as a crime against humanity (Count 5 of the Mugonero Indictment and Count 6 of the Bisesero Indictment);

(v) Serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto (Count 7 of the Bisesero Indictment).

924. For the crimes upon which conviction was entered against the Accused, the Chamber **SENTENCES** Gérard Ntakirutimana to:

IMPRISONMENT FOR 25 YEARS

2566

6. Credit for Time Served and Execution of Sentence

924. Elizaphan Ntakirutimana was first arrested in Texas, USA, on 29 September 1996. He was subsequently released and then rearrested on 26 February 1998. He was transferred to the Tribunal on 24 March 2000 and has been detained in the United Nations Detention Facilities at Arusha (UNDF) ever since.

925. Gérard Ntakirutimana was arrested on 29 October 1996 in the Ivory Coast and transferred to the Tribunal on 30 November 1996. He has since his transfer been detained in the UNDF.

926. Pursuant to Rules 101(D) and 102(A) of the Rules, the sentences imposed upon the Accused shall begin to run from today. The full amount of time spent in custody by Elizaphan Ntakirutimana and Gérard Ntakirutimana pending their surrender to the Tribunal and while detained in the UNDF shall be deducted from the time to be served by them.

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

928. Until their transfer to their designated place or places of imprisonment, Elizaphan and Gérard Ntakirutimana shall be kept in detention under the present conditions.

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

Arusha,

21 February 2003

Erik Møse
Presiding Judge

Navanethem Pillay
Judge

Andrésia Vaz
Judge

(Seal of the Tribunal)

2565

ANNEX I

Indictment ICTR-96-10 (Mugonero)

96-10-0146

ICTR-96-10-I
(598-594)
29:03:2000

598
Kach.

2564

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE No. ICTR-96-10-T

2000 MAR 29 P 4:52
ICTR COURT REGISTRY RECEIVED

THE PROSECUTOR OF THE TRIBUNAL
AGAINST
ELIZAPHAN NTAKIRUTIMANA, GERARD NTAKIRUTIMANA, & CHARLES SIKUBWABO

INDICTMENT
(Amended pursuant to the Order of 27 March 2000)

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda ("the Statute of the Tribunal" charges:

ELIZAPHAN NTAKIRUTIMANA
GERARD NTAKIRUTIMANA
CHARLES SIKUBWABO

with **GENOCIDE, COMPLICITY IN GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY** as set forth below:

2. The present indictment charges persons responsible for serious violations of international humanitarian law committed in the Territory of Rwanda during the month of April 1994 at Mugonero Complex in Gishyita commune, Kibuye Prefecture, where hundreds of men, women and children were killed and a large number of persons wounded.

3. THE ACCUSED

3.1 **Elizaphan Ntakirutimana** is believed to have been born in 1924 in Ngoma sector, Gishyita commune, Kibuye Prefecture. During the time of the events referred to in this indictment, he was the Pastor of the Seventh Day Adventist Church in Mugonero.

3.2 **Gerard Ntakirutimana** is believed to have been born in 1957 in Ngoma sector, Gishyita commune, Kibuye Prefecture. During the time of the

events referred to in this indictment, he was a physician at Mugonero hospital.

3.3 **Charles Sikubwabo** is believed to have been in the early mid-1940s in Gishyita sector, Gishyita commune, Kibuye Prefecture. During the time of the events referred to in this indictment, he was the Burgomaster of Gishyita commune.

4. A CONCISE STATEMENT OF FACTS

4.1 During the events referred to in this indictment, Rwanda was divided into eleven Prefectures, one of which was Kibuye. Each Prefecture was governed by a Prefect. The Prefectures were further divided into communes, each of which was governed by a Burgomaster. The Burgomaster was the representative of the executive power in the communes and was in charge of the governmental functions within the commune.

4.2 During the events referred to in the indictment, Tutsis were identified as members of an ethnic or racial group.

4.3 On April 6, 1994, the plane transporting President Juvenal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and murders of civilians began soon thereafter throughout Rwanda.

4.4 During the month of April 1994, a large number of men, women and children from various places sought shelter from the attacks, which were taking place throughout Kibuye Prefecture. Many assembled inside Mugonero Complex, which consisted of several buildings, including a church, an infirmary and a hospital (hereinafter referred to as "the Mugonero Complex"). The majority of these men, women and children were Tutsi and were unarmed.

4.5 Many of those men, women and children who sought refuge in the Mugonero Complex did so because **Elizaphan Ntakirutimana** instructed them to go there.

4.6 After the men, women and children gathered in the Mugonero Complex, **Gerard Ntakirutimana** and others separated the Tutsi individuals from the others. Those who were not Tutsi were allowed to leave the Mugonero Complex.

4.7 On or about the morning of 16 April 1994, a convoy, consisting of several vehicles followed by a large number of individuals armed with weapons went to the Mugonero Complex. Individuals in the convoy included,

among others, **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo,** members of the National Gendarmerie, communal police, militia and civilians.

4.8 The individuals in the convoy, including **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo,** participated in an attack on the men, women and children in the Mugonero Complex, which continued throughout the day.

4.9 The attack resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge at the Complex.

4.10 During the months that followed the attack on the Complex, **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo,** searched for an attacked Tutsi survivors and others, killing and causing serious bodily or mental harm to them.

4.11 Before the attack on the Complex, **Charles Sikubwabo** knew or had reason to know that his surbodinates, including members of the National Gendarmerie and communal police under his control, were about to participate in the attack on the men, women, and children, and did not take necessary and reasonable measures to prevent the attack. In addition, after the attack, **Charles Sikubwabo** did not punish the perpetrators.

5. CHARGES

By their acts in relation to the events referred to above, each of the accused are individually responsible for the crimes alleged below pursuant to Article 6(1) of the Tribunal Statute. In addition or alternatively, **Charles Sikubwabo,** in his capacity as Burgomaster, is individually responsible as a superior for the acts of his surbodinates for the crimes alleged below pursuant to Article 6(3) of the Statute of the Tribunal.

Count 1: **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo,** during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **GENOCIDE** as recognized by Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 2: **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo** during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, were complicit in the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **COMPLICITY IN GENOCIDE** as recognized by Article 2(3)(e) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 3: **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo,** during the month of April 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, did conspire, with each other, to kill and cause of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **CONSPIRACY TO COMMIT GENOCIDE** as recognized by Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

Count 4: **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo,** during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the murder of civilians, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds and have thereby committed **CRIME AGAINST HUMANITY** as recognized by Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal

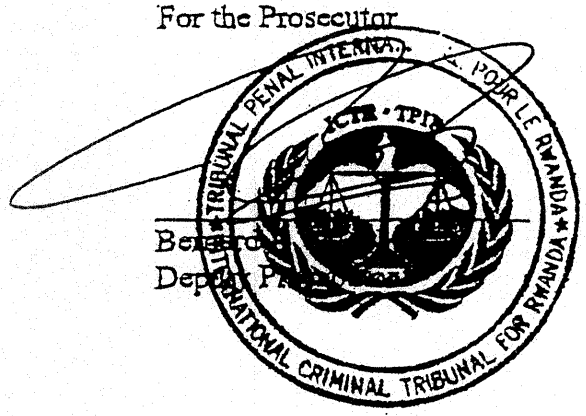
Count 5: **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo** during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the extermination of civilians, as part of a widespread and systematic attack against a civilian population or political, ethnic or racial grounds and have thereby committed **CRIME AGAINST HUMANITY** as recognized by Article 3(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal

Count 6: **Elizaphan Ntakirutimana, Gerard Ntakirutimana & Charles Sikubwabo,** during the month of April 1994, in Gishyita commune, Kibuye Prefecture, in the Territory of Rwanda, did commit other inhumane acts, including but not limited to, the causing of serious bodily harm, the causing of serious mental harm and the persistent searching for and killing of individuals in the months following the attack, as part of a widespread and

systematic attack against a civilian population or political, ethnic or racial grounds and have thereby committed **CRIME AGAINST HUMANITY** as recognized by Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

AT ARUSHA, THIS TWENTY-NINTH DAY OF MARCH 2000

For the Prosecutor



Bernard
Deputy P

ANNEX II

Indictment ICTR -96-17 (Bisesero)

ICTR-96-17-T 0006
17-4-98
(300 – 296)

300

ICTR
CRIMINAL REGISTRY
RECEIVED

1998 APR 17 P 12:49

2558

INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE NO: ICTR 96-17-T

THE PROSECUTOR
OF THE TRIBUNAL

AGAINST

ELIZAPHAN NTAKIRUTIMANA
GERARD NTAKIRUTIMANA

AMENDED INDICTMENT

1. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to her authority under Article 17 of the Statute of the International Criminal Tribunal for Rwanda ("the Statute of the Tribunal") charges:

ELIZAPHAN NTAKIRUTIMANA
GERARD NTAKIRUTIMANA

with **GENOCIDE, COMPLICITY IN GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY** and **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II** as set forth below.

2. The present indictment charges persons responsible for serious violations of international humanitarian law committed in the Territory of Rwanda during the months of April through June 1994 in the area known as Bisesero in Gishyita and Gisovu communes, Kibuye Prefecture, where hundreds of men, women and children were killed and a large number of persons wounded.

3. THE ACCUSED

3.1 **Elizaphan Ntakirutimana** is believed to have been born in 1924 in Ngoma sector, Gishyita commune, Kibuye Prefecture. During the time of the events referred to this indictment, he was the Pastor of the Seventh day

Adventist Church in Mugonero, which is located in Kibuye Prefecture. He is currently in the custody of the United States of America.

3.2 **Gerard Ntakirutimana** is believed to have been born in 1957 in Ngoma sector, Gishyita commune, Kibuye Prefecture. During the time of the events referred to in this indictment, he was a physician at Mugonero hospital. He is currently in the custody of the International Criminal Tribunal for Rwanda.

4. A CONCISE STATEMENT OF FACTS

4.1 During the events referred to in this indictment, Rwanda was divided into eleven Prefectures, one of which was Kibuye.

4.2 During the events referred to in the indictment, Tutsis were identified as members of an ethnic or racial group.

4.3 On April 6, 1994, the plane transporting President Juvenal Habyarimana of Rwanda crashed on its approach to Kigali airport, Rwanda. Attacks and killings of civilians began soon thereafter throughout Rwanda.

4.4 During the month of April 1994, a large number of men, women and children from various places within Kibuye Prefecture sought shelter from attacks which were taking place throughout this area. Many assembled inside Mugonero Complex, which consisted of several buildings, including a church, an infirmary and hospital, (hereinafter referred to as the "Mugonero Complex"). The majority of these men, women and children were Tutsi and were unarmed.

4.5 Many of those men, women and children who sought refuge in the Mugonero Complex did so because **Elizaphan Ntakirutimana** instructed them to go there.

4.6 After the man, women and children gathered in the Mugonero Complex, **Gerard Ntakirutimana** and others separated Tutsi individuals from the others. Those who were not Tutsi were allowed to leave the Mugonero Complex.

4.7. On or about morning of 16 April 1994, a convoy, consisting of several vehicles followed by a large number of individuals armed with weapons went to the Mugonero Complex. Individuals in the convoy included, among others **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, members of the National Gendarmerie, communal police, militia and civilians.

4.8 The individuals in the convoy, including **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, participated in an attack on the men, women and children in the Mugonero Complex which continued throughout the day and into the night.

4.9 The attack resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge at the Mugonero Complex.

4.10 Many of those who survived the massacre at Mugonero Complex fled to the surrounding areas, one of which was the area known as Bisesero.

4.11 The area known as Bisesero spans the two communes of Gishyita and Gisovu in Kibuye Prefecture. From April through June 1994, hundreds of men, women, and children sought refuge in various locations in Bisesero. These men, women and children were predominantly Tutsis and were seeking refuge from attacks on Tutsis which had occurred throughout the Prefecture of Kibuye. The majority of these men, women and children were unarmed.

4.12 From April through June 1994, convoys of a large number of individuals armed with various weapons went to the area of Bisesero. Individuals in the convoy included, among others, **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana,** members of the National Gendarmerie, communal police, militia and civilians.

4.13 The individuals in the convoys, including **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, participated in attacks on the men, women and children in the area of Bisesero which continued almost on a daily basis for several months.

4.14 The attacks resulted in hundreds of deaths and a large number of wounded among the men, women and children who had sought refuge in Bisesero.

4.15 During the months of these attacks, individuals, including **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, searched for and attacked Tutsi survivors and others, killing or causing serious bodily or mental harm to them.

4.16 At one point during this time period, **Elizaphan Ntakirutimana** was in Murambi within the area of Bisesero. **Elizaphan Ntakirutimana** went to a church located in Murambi where many Tutsis were seeking refuge from the ongoing massacres. **Elizaphan Ntakirutimana** ordered the attackers to destroy the roof of this church so that it could no longer be used as a hiding place for the Tutsis.

5. CHARGES

By their acts in relation to the events referred to above, each of the accused are individually responsible for the crimes alleged below pursuant to Article 6(1) of the Tribunal Statute.

Count 1: **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the killings and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **GENOCIDE** in violation or Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 2: **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, were complicit in the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **COMPLICITY IN GENOCIDE** in violation of Article 2(3)(e) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 3: **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, did conspire with each other to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such, and have thereby committed **CONSPIRACY TO COMMIT GENOCIDE** in violation of Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 4: **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the murder of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and have thereby committed a **CRIME AGAINST HUMANITY** in violation of Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 5: **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, are responsible for the extermination of civilians, as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, and have thereby committed a **CRIME AGAINST HUMANITY** in violation of Article 3(b) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 6: **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, during the months of April through June 1994; in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, did commit other inhumane acts, including the causing of serious bodily harm, the causing of serious mental harm and the persistent searching for and killing of individuals in the Bisesero area, as part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds, and have thereby committed a **CRIME AGAINST HUMANITY** in violation of Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal;

Count 7: **Elizaphan Ntakirutimana** and **Gerard Ntakirutimana**, during the months of April through June 1994, in the area known as Bisesero, in Gishyita and Gisovu communes, Kibuye Prefecture, in the Territory of Rwanda, did commit or order others to commit, violence to life, health and physical and mental well-being of persons, including murder and serious bodily and mental harm, and have thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II** thereof, as recognized by Article 4(a) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

17 April 1998
Arusha, Tanzania

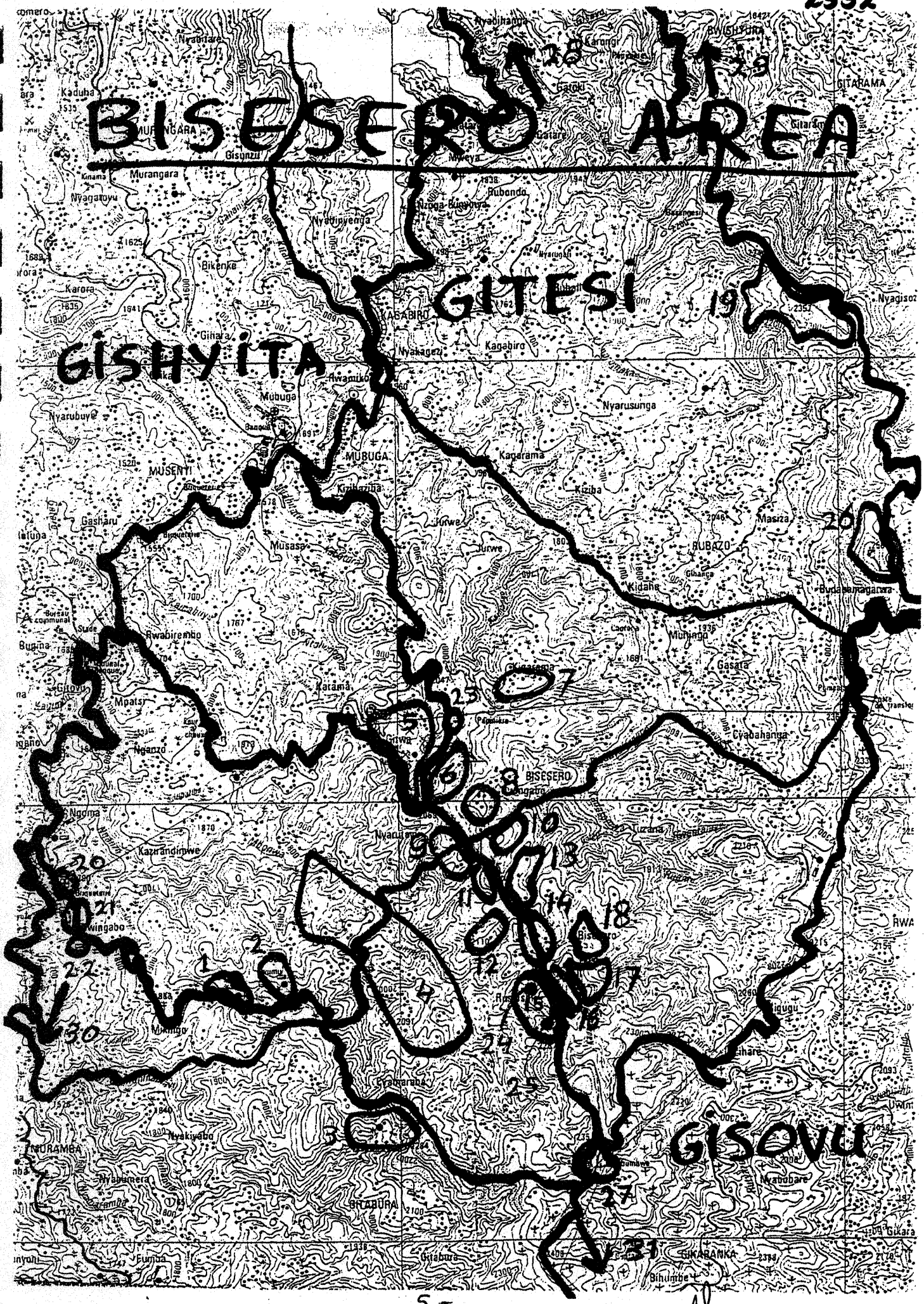
For the Prosecutor

JK Stewart

Mr. James K. Stewart

ANNEX III

Map of Bisesero (Prosecution Exhibit P7B, p. 5)


BISESERO AREA
GITESI
GISHYITA
GISOVU
MUBUGA
KAGABIRO
MUSENYI
RUBAZO
BISESERO
KARONGI
RWISHYURA
GITARAMA
MURAMBA
GISHYITA
GIKARANKA

ANNEX IV

Index of Abbreviations (Judgements)

ANNEX IV

2550

INDEX OF ABBREVIATIONS FOR JUDGEMENTS

1. ICTR Judgements

1.1 ICTR Appeals Chamber

The Prosecutor v. Omar Serushago, Case No. ICTR-98-39-A, Judgement on Appeal, 6 April 2000	*Serushago* (AC)
The Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-A, Judgement on Appeal, 19 October 2000	*Kambanda* (AC)
The Prosecutor v. Jean Paul Akayesu, Case No. ICTR-96-4-A, Judgement on Appeal, 1 June 2001	*Akayesu* (AC)
Clément Kayishema and Obed Ruzindana v. The Prosecutor, Case No. ICTR-95-1-A, Judgement on Appeal, 1 June 2001	*Kayishema and Ruzindana* (AC)
The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-A, Judgement on Appeal, 16 November 2001	*Musema* (AC)
The Prosecutor v. Ignace Bagilishema, Case. ICTR-95-1A-A, Motifs de l'Arrêt [du 3 juillet 2002], 13 décembre 2002 (Reasons for the Judgement delivered orally on 3 July 2002, English translation pending as of writing of this Judgement)	*Bagilishema* (AC)

1.2 ICTR Trial Chambers

The Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Trial Chamber I, Judgement and Sentence, 4 September 1998	*Kambanda* (TC)
The Prosecutor v. Georges Ruggiu, Case No. ICTR-97-32-I, Trial Chamber I, Judgement and Sentence,1 June 2000	*Ruggiu* (TC)
The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Trial Chamber I, Judgement and Sentence, 27 January 2000	*Musema* (TC)
The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Trial Chamber II, Judgement, 21 May 1999	*Kayishema and Ruzindana* (TC)
The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Trial Chamber I, Judgment, 2 September 1998	*Akayesu* (TC)
The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Trial Chamber I, Judgement, 7 June 2001	*Bagilishema* (TC)

2. ICTY Judgements

2549

2.1 ICTY Appeals Chamber

The Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1, Judgement on Appeal, 24 March 2000	*Aleksovski* (AC)
The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landžo, Case No. IT-96-21, Judgement on Appeal, 20 February 2001	*Delalic* (AC)
The Prosecutor v. Dusko Tadic, Case No. IT-94-1, Judgement in Sentencing Appeals, 26 January 2000	*Tadic* Sentencing (AC)
The Prosecutor v. Dragoljub Kunarac, Radomir Kovac, Zoran Vukovic, Case No. IT-96-23 and Case No. IT-96-23/1, Judgement on Appeal, 12 June 2002	*Kunarac* (AC)
The Prosecutor v. Furundzija, Case No. I IT-95-17/1-A, Judgement, 21 July 2000	*Furundzija* (AC)

2.2 ICTY Trial Chambers

The Prosecutor v. Drazen Erdemovic, Case No. IT-96-22, Trial Chamber II, Sentencing Judgement, 29 November 1996	*Erdemovic* (TC)
The Prosecutor v. Radislav Krstic, Case No. IT-98-33, Trial Chamber I, Judgement, 2 August 2001	*Krstic* (TC)
The Prosecutor v. Zoran Kupreskic, Mirjan Kupreskic, Vlatko Kupreskic, Drago Josipovic, Dragan Papic, Vladimir Santic, Case No. IT-95-16, Trial Chamber II, Judgement, 14 January 2000	*Kupreskic* (TC)
The Prosecutor v. Tihomir Blaskic, Case No. IT-95-14, Trial Chamber I, Judgement, 3 March 2000	*Blaskic* (TC)
The Prosecutor v. Milorad Krnojelac, Case No. IT-97-25, Trial Chamber II, Judgment, 15 March 2002	*Krnojelac* (TC)
The Prosecutor v. Dragoljub Kunarac, Radomir Kovac, Zoran Vukovic, Case No. IT-96-23 and Case No. IT-96-23/1, Trial Chamber II, Judgement, 22 February 2001	*Kunarac* (TC)
The Prosecutor v. Goran Jelisic, Case No. IT-95-10, Trial Chamber I, Judgement, 14 December 1999	*Jelisic* (TC)
The Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-T, Trial Chamber II, Judgment, 29 November 2002	*Vasiljevic* (TC)
The Prosecutor v. Stevan Todorovic, Case No. IT-95-9/1, Trial Chamber I, Sentencing Judgement, 31 July 2001	*Todorovic* (TC)
The Prosecutor v. Dusko Sikirica, Damir Dosen, Dragan Kolundzija, Case No. IT-95-8-S, Trial Chamber III, Sentencing Judgment, 13 November 2001	*Sikirica* (TC)

48

TRANSMISSION SHEET FOR OFFICIAL FILING OF DOCUMENTS WITH CMS

(Art. 27 of the Directive for the Registry, Court Management Section, International Criminal Tribunal for Rwanda)

To:	☐ Chief, CMS J.-P. Fomété	☒ Trial Chamber I K. Afanđe	☐ Trial Chamber II R. Kouambo	☐ Trial Chamber III F. Talon	☐ Appeals Officer F. Talon /A. N'Gum
From:	☒ Chamber Wohlfahrt Stéphane (name)	☐ Defence (name)	☐ Prosecutor's Office (name)	☐ Other: (name)	
Case Name:	The Prosecutor vs. Elizaphan & Gérard Ntakirutimana		**Case Number:**	ICTR96-10-T & ICTR96-17-T	
Date:	Transmitted: 24 Février 2003	Document's date: 21 Février 2003		No. of Pages: 281	
Original / Transl.	Document is a(n): ☒ ORIGINAL: **Fill sections below** ☒ Eng ☐ Fr ☐ Kinyarwanda		☐ TRANSLATION into ☐ Eng ☐ Fr ☐ Kinyar. (original was filed on)		
Doc. Title	Judgement & Sentence				

Classification Level: ☐ Strictly Confidential / Under Seal ☐ Confidential ☒ Public	**TRIM Doc Type:** ☐ Indictment ☐ Warrant ☐ Order ☐ Motion ☒ Judgement ☐ Decision ☐ Correspondence ☐ Disclosure ☐ Submission from parties ☐ Submission from non-parties ☐ Affidavit ☐ Accused particulars ☐ Notice of Appeal ☐ Appeal Book ☐ Book of Authorities

TRANSLATION STATUS ON DATE OF FILING OF ORIGINAL (completed by Chamber / Filing Party)

No action required by CMS regarding translations:	**Please take action with regard to translation:**
☐ Filing Party/Chamber **hereby submits BOTH the original and the translation to CMS for filing**	☒ Party/Chambers hereby submits the original, and will **NOT** oversee translation.
☐ Filing Party/Chamber **will be** submitting translation to CMS in due course, details are provided below. **Fill in the boxes below.**	**Ignore the boxes below.** Contact person: Stéphane Wohlfahrt (5379) ☐ Reference material is provided in annex to facilitate translation

☐ Chamber ☐ OTP is over-seeing translation. (copy of translation requisition slip is attached for reference) Name of contact person: The document is submitted for translation in: ☐ Arusha ☐ Kigali ☐ The Hague		☐ Defence is overseeing translation: Name of contact person: The document is submitted to the following accredited translation service (Translation fees will be submitted to LDFMS): Name of service: Address: Email / tel / fax:
Target Language: ☐ English ☐ French ☐ Kinyarwanda	☐ Number of Pages ☐ Expected date of translation:	Translation received by CMS on:

ICTR RECORDS/ARCHIVES RECEIVED 2003 FEB 24 P 4: 28

FOR OFFICIAL USE ONLY (TRIM DATA ENTRY / TRANSLATION PRIORITISATION)		
☐ Top Priority	(prioritisation to be completed by CMS in consultation with Chambers / LCSS) **COMMENTS**	☐ Required Date:
☐ Urgent		☐ Hearing Date:
☐ Normal		☐ Other deadlines: