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Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 14 July 2009

THE PROSECUTOR

v.

Tharcisse RENZAHU

Case No. ICTR-97-31-T

JUDGEMENT AND SENTENCE

The Prosecution
Jonathan Moses
Katya Melliush
Shamus Mangan

The Defence
François Cantier
Barnabé Nekuie

6/11

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CHAPTER I: INTRODUCTION

1. OVERVIEW

(i) Introduction

1. The accused in this case is Tharcisse Renzaho. During the events in 1994, he was prefect of Kigali-Ville prefecture and had the rank of colonel in the Rwandan army. The Prosecution has charged him with six counts: genocide, or, in the alternative, complicity in genocide, as well as murder and rape, as crimes against humanity and war crimes.

2. The Defence disputes all charges. Renzaho was not in any way involved in the massacres after 6 April 1994; neither directly nor through others. The situation was uncontrollable. He did all he could to stop the violence.¹

(ii) Encouragement of Militia Training

3. The Prosecution has alleged that Renzaho permitted and encouraged the military training of militia groups, at his home in Kanombe and elsewhere, between the middle of 1993 and July 1994. The Defence rejects this and also points to the prefect's obligation to observe neutrality in political matters.

4. The evidence has not established that Renzaho was involved in military training in 1994. He clearly knew that the *Interahamwe* received such training in 1993, and he was in favour of this. However, such knowledge and support does not in itself constitute a crime under the Statute of the Tribunal, and it has not been established that the purpose of the training was to kill Tutsis. The evidence has not shown that Renzaho was involved in planning the genocide.

(iii) Roadblocks

5. There is evidence that Renzaho held several meetings at the Kigali-Ville prefecture office in April 1994. Around 10 April, he convened a meeting that included local officials, such as *bourgmestres* and *conseillers*, and explained that the Inkotanyi or Inyenzi had shot down the President's plane. He instructed those present to erect roadblocks for the purposes of fighting the enemy, and referred to Tutsis as accomplices of the enemy. At this time, Renzaho was aware that Tutsi civilians were being targeted and killed based on their ethnicity.

6. The local officials in attendance followed Renzaho's directives and erected roadblocks in their respective communities within the prefecture and the only reasonable inference is that Renzaho ordered the killings at them as well. Their actions contributed to the slaughter of Tutsis or those identified as Tutsis. Renzaho reiterated his support for these roadblocks during at least one additional meeting that month.

¹ The trial commenced on 8 January 2007 and closed on 6 September 2007. The parties presented 53 witnesses in the course of 49 trial days. Closing arguments were heard on 14 and 15 February 2008. The Chamber pronounced its unanimous judgement on 14 July 2009. The written judgement was filed on 14 August 2009 after the conclusion of the editorial process.

7. The Chamber has considered Renzaho's *communiqués* broadcast on Radio Rwanda during the events. His utterances about roadblocks were not clear. However, he never called for an end to the killing of Tutsi civilians, and calls for peace were usually accompanied by requests that the population continue to remain vigilant and encouragement in the fight against the *Inyenzi* or *Inkotanyi*. Renzaho supported the killings of Tutsi civilians at roadblocks.

(iv) *Distribution of Weapons*

8. The Prosecution alleges that Renzaho distributed weapons to the *Interahamwe* and other militia groups, and that he also ordered weapons distribution. In relation to the first issue, Renzaho's own physical involvement, the main allegations related to the *Hôtel des Diplomates* in Kigali, where he allegedly collected weapons on 7 and 12 April 1994. Only one witness testified about this, and the Chamber has some doubts about these parts of his testimony. Neither has it been established that Renzaho distributed weapons in the night between 6 and 7 April in various sectors in Kigali, on 21 April from Angeline Mukandutiye's house to *Interahamwe*, or in Gitarama prefecture in late April or early May.

9. Turning to ordering of weapons distribution, Renzaho convened a meeting at the Kigali-Ville prefecture office around 16 April where he directed local administrative officials, including *conseillers*, to retrieve firearms from the Ministry of Defence. The officials went to the Ministry and obtained some firearms that were subsequently distributed to persons within their communities.

10. The Chamber is convinced that Renzaho's instructions to retrieve the weapons were accompanied by a further order to distribute them to persons in their communities. Those who ultimately received the firearms subsequently engaged in the killing of Tutsis. Although Renzaho did not give explicit instructions that these weapons be used to further the ongoing killings in Kigali-Ville prefecture, the only reasonable inference to be drawn are that these distributions, within the context of the ongoing killings of Tutsi civilians, demonstrated his support for such activities and contributed substantially to them. The Chamber is also convinced beyond a reasonable doubt that Renzaho gave his instructions with the knowledge that killings of Tutsi civilians would be furthered by this support.

(v) *Facilitation of Movement*

11. The Prosecution argues that Renzaho facilitated movement of the *Interahamwe* who were participating in the killings. It is undisputed that a number of *laissez-passers*, signed by or on behalf of Renzaho, were issued by the Kigali-Ville prefecture office between April and July 1994. There is no direct evidence that they were given specifically to militia, soldiers or gendarmes. Neither is it proven that persons having received such documents committed killings. The possibility that violent groups also received such documents cannot in itself lead to a finding that the *laissez-passer* system facilitated the movement of killers.

12. There is evidence that the prefecture office was involved in the distribution of fuel through the use of coupons or vouchers. The office had some degree of control over who would receive fuel, and a sub-prefect within the prefecture administration was given the task of administering vouchers. At least from 13 April until about 3 May 1994, vouchers signed by the prefect were being used at a petrol station, mainly to provide fuel to the *Interahamwe*. However, the evidence is not strong enough to find criminal responsibility.

(vi) *Killings at Akajagali*

13. The Indictment asserts that, around 9 April 1994, Renzaho led armed *Interahamwe* to an area called Akajagali in Kigali, where they entered houses of Tutsis and killed them. The Prosecution relied on a single witness with relation to this event. In the Chamber's view, the evidence led was insufficient to establish this allegation beyond a reasonable doubt.

(vii) *CELA*

14. During the events in 1994, a large number of Tutsis sought refuge in three sites which were near each other in Kigali. The Chamber has addressed them in turn, starting with the *Centre d'Étude des Langues Africaines*, or CELA. On 22 April, a considerable number of refugees were there. According to the Prosecution, Renzaho was involved in selecting some of them, who were subsequently killed. The Defence submits that he went there to protect persons under threat.

15. The Chamber accepts the evidence of several witnesses that Renzaho supervised a selection process in which *Interahamwe* separated about 40 Tutsis from the other refugees on 22 April 1994. Among those chosen were Charles Rwanga and his sons Wilson and Déglote. In Renzaho's presence, one of the militia leaders gave instructions that they should be taken to one of the mass graves. Renzaho told the remaining refugees to go home. It is clear from the evidence that the approximately 40 persons were subsequently killed and that this was done based on Renzaho's orders.

(viii) *Killings in Nyarugenge*

16. The Indictment states that Renzaho ordered *Interahamwe* to find and kill nine Tutsis, including François Nsengiyumva, Rutiyomba, Kagorora and his two children, Aimable and Emile. The Chamber accepts that, around 28 April 1994, *Interahamwe* killed several Tutsis at the house of an *Interhamwe* leader, including these five persons. According to the only Prosecution witness who testified about this, one of the *Interahamwe* had with him a document that he said was signed by Renzaho and their leader. The Prosecution evidence is insufficient to establish Renzaho's criminal liability for this event.

(ix) *Dismissal of Moderates*

17. The Prosecution maintains that, at the end of April 1994, Renzaho dismissed, among other persons, *conseiller* Célestin Sezibera, because he was believed to be opposed to the killing of Tutsis. Sezibera was then replaced with someone who allegedly supported the killings. The Defence argues that Renzaho was not at the origin of the dismissal and disputes that this was the reason for it.

18. It is undisputed that Renzaho signed Sezibera's dismissal letter, but there is no evidence that he appointed the new *conseiller*. Whether the idea of dismissing Sezibera was initially formulated by Renzaho or at a lower level, for instance the *bourgmestre*, is also unclear. The Chamber has therefore not found any criminal liability in respect of this allegation.

(x) *Saint Paul*

19. Saint Paul pastoral centre was the second place with a large number of mainly Tutsi refugees. The *Interahamwe* carried out several attacks against the Centre from April to June 1994. One of them took place on 14 June. It resulted in the abduction and subsequent killings of about 40 to 50 Tutsis. From early May, Renzaho knew of attacks by *Interahamwe* against refugees there but did not act to stop them. The evidence does not show, however, that he was liable for the attacks, including the one on 14 June.

(xi) *Killing of André Kameya*

20. According to the Indictment, Renzaho ordered the killing of André Kameya, a journalist critical of the Interim Government, on or about 15 June 1994. One witness testified that Kameya was found at Sainte Famille, handed over to a conseiller who was an *Interahamwe* leader, and abducted. He did not see the killing and placed the event in April or May. Another witness did not observe the event, but heard the *conseiller* leader mention the killing between 19 April and mid-May. Once again, the Chamber has found that the evidence is insufficient to sustain a conviction.

(xii) *Sainte Famille*

21. The third site where many refugees sought refuge was the Sainte Famille church. It is undisputed that, on 17 June, shortly after the Rwandan Patriotic Front had evacuated some Tutsi refugees from the Saint Paul Pastoral Centre, the *Interahamwe* attacked and killed refugees at the Sainte Famille church. Again, the question for the Chamber is whether Renzaho was involved.

22. The Chamber finds that the attack started before noon. Renzaho was present before it began, as well as toward its end. An *Interahamwe* read out names of refugees to be killed. Those whose names were called were killed in the church's garden. In addition to these specific individuals, also other Tutsis were killed. The evidence demonstrates that Renzaho played an important part in connection with the commencement and cessation of the operation. Over 100 Tutsi refugees were killed. He was also involved in the removal of the bodies.

(xiii) *Meeting at Hotel Kiyovu*

23. According to the Prosecution, Renzaho attended a meeting close to the Hotel Kiyovu in mid-June 1994. Colonel Théoneste Bagosora and other prominent leaders were also present. Renzaho allegedly identified Tutsis as the enemy and told the participants that they had to defend themselves. Some 20 metres away, four Tutsis were killed with machetes and clubs. Renzaho purportedly witnessed this, and did nothing to prevent these killings.

24. Only one Prosecution witness testified about the meeting. Several issues of credibility arise as to the description of this event. The Chamber does not find that this event has been proven beyond reasonable doubt.

(xiv) *Sexual Violence*

25. During the period between April and July 1994, multiple rapes were committed by *Interahamwe*, soldiers and policemen against Tutsi women and girls at Sainte Famille and various houses in Kigali-Ville. The victims were civilian refugees selected on the basis of their actual or presumed Tutsi ethnicity.

26. The Chamber finds that Renzaho was aware of rapes taking place in his prefecture during this period. The evidence shows that, on separate occasions and in certain specific locations, such as a sector office, he made remarks encouraging the sexual abuse of women. Rape took place following his remarks, and the Chamber finds him criminally responsible.

(xv) *Verdict*

27. The Chamber has found Tharcisse Renzaho responsible pursuant to Articles 6 (1) and 6 (3) of the Statute for killings at roadblocks; the killing of approximately 40 mostly Tutsi men, including Charles, Wilson and Déglote Rwanga, who were removed from CELA on 22 April 1994; and the killing of more than 100 Tutsi refugees, including at least 17 Tutsi men, during an attack at Sainte Famille on 17 June 1994. Renzaho is therefore guilty of genocide, and murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II. Furthermore, he is liable for rapes committed in Nyarugenge sector under Article 6 (3). For these crimes, Renzaho is also guilty of genocide and rape as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II.

(xvi) *Sentencing*

28. The Chamber has considered the gravity of each of the crimes for which Renzaho has been convicted as well as aggravating and mitigating circumstances mentioned by the parties. The Chamber has the discretion to impose a single sentence and chooses to do so. Considering the relevant circumstances, the Chamber sentences Renzaho to a single sentence of life imprisonment. He shall remain in the custody of the Tribunal pending transfer to the state where he will serve his sentence.

2. PRELIMINARY MATTERS

2.1 Notice

2.1.1 Objections to the Form of the Indictment

29. The Defence raises several objections to the form of the Indictment, which were previously decided by Trial Chamber II in its decision of 5 September 2006 ("Defects Decision").² Although the Chamber may consider matters related to notice at the judgement stage of proceedings, it declines to assess issues that were either adjudicated or should properly have been raised during the pre-trial phase of the proceedings.³ Instead, the Chamber generally limits its review to issues which require clarification in light of evidentiary, procedural or legal developments arising during the course of the trial or where the failure to consider an issue might call into question the fairness of the proceedings.⁴

30. A review of the Defence's pre-trial motion concerning defects in the Indictment, filed on 31 March 2006 ("Defects Motion"), and its current submissions demonstrates that it largely recapitulates arguments previously adjudicated.⁵ The Defence's submissions do not identify any clear errors in reasoning warranting wholesale reconsideration of the Defects Decision taken by Trial Chamber II at the pre-trial stage of proceedings.

31. Furthermore, the Defence does not point to any contemporaneous objections made at trial that it lacked notice of any of the evidence which was presented or that it fell outside the scope of the Indictment. The Chamber also cannot identify any such objections with respect to the events which form a basis of Renzaho's convictions. Where timely objections to evidence are not made, the burden shifts to the accused to demonstrate that the ability to prepare his case was materially impaired.⁶ While the Defence asserts that it suffered prejudice from the vagueness in the Indictment, there is no particularised support for the conclusion.⁷

² Defence Closing Brief paras. 70-204; Preliminary Motion on Defects in the Form of the Indictment, 31 March 2006; Decision on Preliminary Motion on Defects in the Form of the Indictment (TC), 5 September 2006.

³ *Simba* Trial Judgement para. 15. See also *Ntagerura et al.* Appeal Judgement para. 55.

⁴ *Simba* Trial Judgement para. 16.

⁵ See, for instance, Defence Closing Brief, para. 105 ("Renzaho reiterates herein the detailed criticisms he made in his preliminary motion of 31 March 2006"); Compare Defects Motion paras. 30-34 and Defence Closing Brief para. 76; Compare Defects Motion para. 58 and Defence Closing Brief paras. 86-87; Compare Defects Motion para. 59 and Defence Closing Brief para. 88; Compare Defects Motion para. 60 and Defence Closing Brief paras. 89-90; Compare Defects Motion para. 61 and Defence Closing Brief paras. 91-92, 95; Compare Defects Motion para. 62 and Defence Closing Brief para. 93; Compare Defects Motion para. 63 and Defence Closing Brief para. 94; Compare Defects Motion paras. 82-90 and Defence Closing Brief paras. 106-114, respectively; Compare Defects Motion paras. 92-95 and Defence Closing Brief para. 116; Compare Defects Motion paras. 96-100, 102-106 and Defence Closing Brief paras. 117-126; Compare Defects Motion paras. 107-118 and Defence Closing Brief paras. 127-138, respectively; Compare Defects Motion para. 119 and Defence Closing Brief paras. 139-140; Compare Defects Motion paras. 120-123 and Defence Closing Brief paras. 141-144, respectively; Compare Defects Motion paras. 124-138 and Defence Closing Brief paras. 145-160, respectively; Compare Defects Motion paras. 140-174 and Defence Closing Brief paras. 161-195, respectively.

⁶ *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 42 ("Where, in such circumstances, there is a resulting defect in the indictment, an accused person who fails to object at trial has the burden of proving on appeal that his ability to prepare his case was materially impaired.").

⁷ Defence Closing Brief paras. 103-104, 195, 204.

32. Even if the Defence did not bear this burden, the Chamber still cannot identify any prejudice with respect to the basis of his convictions. The Indictment is not defective. The Chamber is satisfied that, consistent with the Tribunal's governing jurisprudence,⁸ there is reasonable notice within the scope of the Indictment for all material facts underpinning Renzaho's convictions. Furthermore, a careful consideration of the Defence conduct during the course of the trial and in their final submissions reflect that they have a complete understanding of the case.

2.1.2 Prejudice Due to Variations of the Indictments and Prosecution Witnesses

33. The Defence also submits that amendments to the Indictment and variation of the Prosecution Witness list coupled with the vagueness of the Indictment as a whole prejudiced the Defence.⁹ Amendment of an indictment is allowed under the Rules and is permissible even during the course of trial.¹⁰ The initial indictment, the second that had been submitted by the Prosecution, was confirmed on 15 November 2002.¹¹ Amendments to the indictments were allowed only after careful consideration of whether they would prejudice the Accused.¹² In the present case, the operative Indictment was filed on 16 February 2006, nearly a year before the commencement of the Prosecution case, and the Defence raised no objection to it.¹³ The Prosecution was allowed to add a witness on 16 February 2007 after consideration of the Accused's rights.¹⁴ This process is also envisioned by Rule 73 *bis* (E) of the Rules.

34. Accordingly, the Chamber finds no merit to the argument that pre-trial changes to the Indictment and variations of the Prosecution witnesses have prejudiced the Accused in the preparation of his Defence, in particular in the absence of precise submissions from the Defence concerning prejudice.

2.2 Alleged Denial of a Fair Trial

35. The Defence submits that Renzaho has been denied a fair trial due to the Prosecution's failure to turn over information in violation of Rule 68 of the Rules, the Chamber's strict construction of Rule 92 *bis* of the Rules and its inability to access Defence evidence. The Defence raises several additional concerns that it argues may improperly impact the outcome of the case. The Chamber will address these arguments in turn.¹⁵

⁸ The Chamber recently summarised the general principles governing challenges to notice in the *Bagosora et al.* Trial Judgement paras. 110-116.

⁹ Defence Closing Brief paras. 203-204.

¹⁰ *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment (AC), 19 December 2003, paras. 24, 29.

¹¹ *Décision Portant Confirmation de l'Acte d'Accusation Prescrivant la Non-Divulgarion des Informations Permettant d'Identifier les Témoins qui Figurent dans les Déclarations Desdits Témoins* (TC), 15 November 2002.

¹² Decision on the Prosecutor's Motion for Leave to Amend the Indictment (TC), 18 March 2005, paras. 38-39, 48-49, 52, 54; Decision on the Prosecutor's Application for Leave to Amend the Indictment Pursuant to Rule 50(A) of the Rules of Procedure and Evidence (TC), 13 February 2006, paras. 10-14.

¹³ Decision on the Prosecutor's Application for Leave to Amend the Indictment Pursuant to Rule 50(A) of the Rules of Procedure and Evidence (TC), 13 February 2006, para. 14.

¹⁴ Decision on Prosecution's Motion to Vary Witness List (TC), 16 February 2007, para. 6. The Defence did not object to the Prosecution's request to drop a witness in this decision nor on its decision to drop two witnesses on 1 February 2007. T. 1 February 2007 pp. 40-42.

¹⁵ Defence Closing Brief paras. 205-338; T. 14 February 2008 pp. 24-42.

2.2.1 Rule 68

36. The Defence argues that the Prosecution violated its affirmative and ongoing obligations to disclose exculpatory evidence throughout the trial.¹⁶ It points to the late disclosure of (1) testimony of Witness DAS and a copy of Théoneste Bagosora's passport presented in the *Bagosora et al.* case that are relevant to the Hotel Kiyovu incident; (2) statements of Astérie Nikuze and Dieudonné Nkulikiyinka; (3) evidence related to Kabiligi's alibi presented in the *Bagosora et al.* case allegedly contradicting the testimony of Prosecution Witness AFB; and (4) Father Wenceslas Munyeshyaka's indictment which is inconsistent with Prosecution evidence relating to an attack on CELA on 22 April.¹⁷ The Defence believes that the Prosecution has additional information inconsistent with the evidence it adduced at trial but is unable to identify it.¹⁸

37. The Prosecution does not deny that it possessed the information identified by the Defence. Rather, it suggests that the information is not exculpatory and that the Defence has failed to show any prejudice suffered.¹⁹

38. The Prosecution has a distinct obligation to participate in the process of administering justice by disclosing to the Defence, as required by Rule 68 (A) of the Rules, material which it actually knows "may suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecution evidence".²⁰ The initial determination of what material is exculpatory, which is primarily a facts-based judgement, rests with the Prosecution.²¹ In the context of witness statements, the Appeals Chamber has accepted that determining whether information fits within the definition set forth in Rule 68 (A) of the Rules depends on an evaluation of whether there is any possibility, in light of the submissions of the parties, that the information could be relevant to the defence of the accused.²²

39. To demonstrate the Prosecution is in breach of its obligation to disclose exculpatory material, the Defence must (1) identify specifically the material sought; (2) present a *prima facie* showing of its probable exculpatory nature; and (3) prove that the material requested is in the custody or under the control of the Prosecution.²³ Even where the Defence has satisfied the Chamber that the Prosecution had failed to comply with its Rule 68 obligations, the

¹⁶ Defence Closing Brief paras. 234-249; T. 14 February 2008 pp. 27-30, 42.

¹⁷ Defence Closing Brief paras. 243-247, 249; T. 14 February 2008 pp. 27-30, 60.

¹⁸ Defence Closing Brief paras. 242, 248.

¹⁹ T. 14 February 2008 pp. 3-7.

²⁰ *Karemera et al.*, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, para. 9; *Karemera et al.*, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006, para. 9.

²¹ *Karemera et al.*, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 16.

²² *Prosecutor v. Karemera et al.*, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, para. 12.

²³ *Karemera et al.*, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, para. 9; *Blaškić* Appeal Judgement para. 268, *Karemera et al.*, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 13; *Bagosora et al.*, Decision on the Ntabakuze Motion for Disclosure of Various Categories of Documents Pursuant to Rule 68 (TC), 6 October 2006, para. 2; *Bagosora et al.*, Decision on Disclosure of Materials Relating to Immigration Statements of Defence Witnesses (TC), 27 September 2005, para. 3 ("a request for production of documents has to be sufficiently specific as to the nature of the evidence sought and its being in the possession of the addressee of the request").

Chamber will still examine whether the Defence has actually been prejudiced by such a failure before considering whether a remedy is appropriate.²⁴

(i) *Testimony of Witness DAS and Bagosora's Passport from the Bagosora et al. Trial*

40. The Defence submits that Witness DAS's testimony in *Bagosora et al.* contradicts Witness SAF's testimony in this proceeding, as Witness DAS does not refer to Renzaho's presence at a meeting at the Hotel Kiyovu. Moreover, it argues that Bagosora's passport also impeaches Witness SAF's testimony that Bagosora was present, demonstrating that Bagosora was out of the country at the time. In both instances, Renzaho is not mentioned. The link between the material and its conceivably exculpatory nature as it relates to the Accused is indirect.²⁵ Nonetheless, Rule 68 of the Rules imposes a heavy burden on the Prosecution, who is assumed to be acting as an undivided unit in fulfilling its obligations disclosure obligations.²⁶ A review of Indictment paragraph 19 demonstrates that the Prosecution seeks to convict the Accused based on his participation in a meeting in June at the Hotel Kiyovu attended by at least Renzaho and Bagosora. Both the transcripts and passport copies could be relevant to the defence of the Accused as defined under Rule 68 (A) of the Rules as it tends to undermine the credibility of evidence intended to prove a material fact against him.²⁷

41. However, the Defence has failed to demonstrate any prejudice suffered. The Prosecution's suggestion that it disclosed the material upon the Defence's request is uncontested. Witness SAF was cross-examined extensively based on Witness DAS's testimony.²⁸ Moreover, the Chamber allowed the Defence to admit copies of Bagosora's passport during Renzaho's testimony.²⁹ Given the Chamber's findings in relation to this incident (II.12), the Chamber cannot find that the Accused suffered actual prejudice. The Chamber dismisses the Defence arguments with respect to this information.

(ii) *Pro Justitia Statements of Astérie Nikuze and Dieudonné Nkulikiyinka*

42. The Defence makes no particularised submissions concerning the importance of the *pro justitia* statements to Rwandan authorities of Astérie Nikuze and Dieudonné Nkulikiyinka. A review of Nikuze's statement suggests that she had heard Witness ALG might have brought a paper signed by authorities that prompted the attack on Saint Paul pastoral centre and that she was aware that refugees were at the prefecture office. Nkulikiyinka's *pro justitia* statement indicates that Witness ALG instructed *Interahamwe* to

²⁴ *Nahimana et al.*, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence (AC), 8 December 2006, para. 34; *Rutaganda*, Decisions on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure and Clarification (AC), 8 December 2006, para. 37; *Kajelijeli* Appeal Judgement para. 262.

²⁵ With respect to the testimony of Witness DAS, his failure to mention Renzaho at the meeting does not necessarily mean he was not there. Cf. *Kajelijeli* Appeal Judgement para. 176 ("[T]o suggest that if something were true a witness would have included it in a statement or a confession letter is obviously speculative and, in general, it cannot substantiate a claim that a Trial Chamber erred in assessing the witness's credibility.").

²⁶ *Bagosora et al.*, Decision on Interlocutory Appeals on Witness Protection Orders (AC), 6 October 2005, para. 43.

²⁷ *Karemura et al.*, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008, para. 12.

²⁸ Witness SAF, T. 24 January 2007 pp. 60-65; Defence Exhibit 12 (*Bagosora et al.*, T. 5 November 2003; T. 6 November 2003; T. 7 November 2003).

²⁹ T. 29 August 2007 pp. 62-64; T. 30 August 2007 p. 2; Defence Exhibit 106 (Bagosora's passport).

travel throughout the area and exterminate members of the population and that he signed a document authorising the removal of several refugees from Saint Paul, at which point they were murdered. The statement also suggests that refuge and protection were provided to persons by Renzaho at the prefecture office.

43. The Chamber agrees that the content of Nikuze's and Nkulikiyinka's *pro justitia* statements to Rwandan judicial authorities could be relevant to the defence of the Accused as defined under Rule 68 (A) of the Rules. However, Nkulikiyinka's *pro justitia* statement was disclosed to the Defence on 30 October 2006, prior to the commencement of trial and Witness ALG's testimony in January 2007.³⁰ More importantly, the Defence cross-examined Witness ALG on 15 January 2007 using summaries of statements from Nikuze and Nkulikiyinka that formed a part of Witness ALG's Rwandan judicial record.³¹ The statements were admitted as Defence Exhibit 4. The Chamber finds no material differences between the *pro justitia* statements and the substance of Defence Exhibit 4 as they relate to the ability of the Accused to mount his Defence as it relates to the killings at Saint Paul pastoral centre. Given the findings relating to the attack on Saint Paul pastoral centre (II.9), the record fails to demonstrate that the Accused suffered actual prejudice. Finally, information in the statements suggesting that people took refuge at the prefecture office is hearsay, and cumulative of other evidence in the record (III).

(iii) *Kabiligi Alibi Evidence from the Bagosora et al. Trial*

44. The Defence also suggests that the Prosecution failed to turn over alibi evidence suggesting General Gratien Kabiligi was not present in early April, contradicting Witness AFB's testimony that Renzaho had met Kabiligi on 7 April. The Chamber previously denied a Defence motion to seeking to admit two letters between Egyptian authorities and the Office of the Prosecutor in 2002, suggesting Kabiligi was out of the country that day.³² Renzaho is not mentioned in these letters. Nonetheless, Kabiligi's interactions with Renzaho and presence at the Kigali-Ville prefecture office after 6 April formed a part of the Prosecution case.³³ Kabiligi also featured in Witness AFB's testimony. For the same reasons expressed above, the letters detailing Kabiligi's whereabouts in April should have been disclosed to the Defence.

45. However, the Chamber does not find that the Defence suffered any prejudice. While Witness AFB testified that he saw Kabiligi, the identification was based on information that was provided to him by someone else. Thus, evidence that Kabiligi was not in the country largely goes to the reliability of Witness AFB's source and not Witness AFB (II.3). Finally, the Chamber's findings in relation to events in which Kabiligi featured (II.3) demonstrate that no prejudice was suffered by the Accused.

³⁰ See Letter accompanying Prosecution Disclosures of 30 October 2006; T. 14 February 2008 p. 5. The Prosecutor submits that both statements were provided on 16 January 2007 (para. 4).

³¹ Witness ALG, T. 15 January 2007 pp. 26-31.

³² Decision on Defence Motion to Admit Documents (TC), 12 February 2008. The motion also denied the admission of transcripts of the Prosecutor's closing arguments from the *Bagosora et al.* trial that suggest Kabiligi was out of the country that day, finding that they did not constitute "evidence" under Rule 92 bis (D). Para. 5. Based on the Defence's submissions that the Prosecutor violated its Rule 68 obligations based on its failure to turn over "alibi evidence" (Defence Closing Brief para. 246) or "the document ... whose validity [the Prosecution] recognised" (T. 14 February 2008 p. 29), the Chamber construes this challenge as being limited to the letters referenced in the motion only and not the Prosecution's closing arguments in the *Bagosora et al.* trial.

³³ Prosecution Pre-Trial Brief para. 7; Prosecution opening statements at T. 8 January 2007 p. 3.

(iv) *Wenceslas Munyeshyaka Indictment*

46. Finally, the Defence argues that Prosecution's failure to turn over the indictment for Wenceslas Munyeshyaka, filed in this Tribunal, was in violation of its Rule 68 obligations. It notes that paragraphs 13, 14 and 15 suggest that certain individuals were killed by Munyeshyaka on 13 April at Sainte Famille, while Prosecution evidence suggests that Renzaho is responsible for the deaths of the same individuals during an attack on CELA on 22 April.³⁴ The Prosecution responds that these paragraphs in the Munyeshyaka indictment and the supporting material for them do not identify by name those who were allegedly killed at Sainte Famille. Thus, the Munyeshyaka indictment and its supporting materials are not inconsistent with the evidence that related to the killings at CELA. It also concludes that the Defence has not been prejudiced.³⁵

47. The Munyeshyaka indictment was confidential and first disclosed in June 2007.³⁶ The Prosecution provided it and the supporting statements upon a request by the Defence.³⁷ The indictment was subsequently admitted during the testimony of the Accused.³⁸

48. The Munyeshyaka indictment is not "evidence" but a procedural necessity in order to prosecute the accused. Nonetheless, the office of the Prosecutor is considered as an undivided body. Where another indictment reflects an inconsistent position with the indictment of an accused, particularly in relation to matters as serious as crimes, the Chamber is of the opinion that this material would be relevant to the defence of the accused. This finding is supported by the fact that the indictment confirmation process requires the review of supporting material, which can be used to rebut Prosecution evidence or raise credibility concerns in relation to its witnesses.³⁹ The Defence does not argue that the failure to disclose the supporting materials for paragraphs 13, 14 and 15 amounts to a Rule 68 violation. Nonetheless, the Chamber will consider whether the late disclosure of either, and particularly the statement of Witness AZB referred to by the Prosecution as supporting paragraphs 13, 14 and 15, has prejudiced the Accused.

49. The Chamber disagrees with the Prosecution's submissions. The Munyeshyaka indictment and Witness AZB's statement regarding the deaths of Rose Rwanga's daughters and son on 13 April at Sainte Famille could be viewed as inconsistent with Prosecution evidence that Wilson and Déglote were separated at CELA on 22 April 1994, removed and killed (II.6). Moreover, the indictment and statement reflect that Rwanga's two daughters were killed 13 April at Sainte Famille, and could be viewed as inconsistent with Prosecution evidence that Hyacinthe Rwanga was killed during the 17 June 1994 attack on Sainte Famille (II.11). Thus, the Chamber is convinced that the Munyeshyaka indictment and Witness AZB's statement are relevant to the defence of the Accused as defined under Rule 68 (A) and should have been disclosed.⁴⁰

³⁴ T. 14 February 2008 p. 30.

³⁵ *Id.* p. 6.

³⁶ *Id.* p. 30.

³⁷ T. 29 August 2007 pp. 56-59.

³⁸ T. 30 August 2007 p. 41; Defence Exhibit 105 (indictment of Wenceslas Munyeshyaka of 20 July 2005).

³⁹ See Article 18 of the Statute and Rule 47 of the Rules.

⁴⁰ While the Prosecution may have been limited in disclosing the Munyeshyaka indictment while it remained confidential, it nonetheless could have disclosed Witness AZB's witness statement during that period.

50. Nonetheless, the Chamber is not convinced that the Accused has suffered actual prejudice. The Defence cross-examined Witness ACK with a Rwandan judgment suggesting that Wilson, Charles and Déglote Rwanga were killed at Sainte Famille, raising similar inconsistencies as those that could have been raised based on Witness AZB's statement and the Munyeshyaka indictment.⁴¹ Furthermore, the Chamber has reservations about the ability of Witness AZB to raise doubts in the reliability of the abundant and credible Prosecution evidence establishing that Wilson and Déglote Rwanga were murdered in connection with the 22 April attack on CELA as well as evidence that Hyacinthe Rwanga was killed on 17 June (II.6, 11). Witness AZB was unable to name the victims and she suggested that Rose Rwanga had two daughters while credible evidence in the record demonstrates Rose Rwanga only was only at Sainte Famille with one. In the Chamber's view, differences between Witness AZB's statement and evidence presented at trial raises doubt about the reliability of the Witness AZB's identification of the victims rather than the Prosecution evidence. Notably, the Defence did not call Witness AZB to rebut the Prosecution case. The Chamber cannot find that the Accused suffered prejudice.

51. Finally, the Chamber dismisses the Defence's arguments the Prosecution is in violation of its Rule 68 obligations although it is impossible to identify exculpatory information being withheld. This argument fails to meet the threshold requirement of identifying with specificity the exculpatory material. Moreover, the Prosecution is generally presumed to discharge its obligations under Rule 68 in good faith.⁴²

2.2.2 Rule 92 bis

52. The Defence seeks reconsideration of the Chamber's 28 and 29 August 2007 decisions denying the admission of *pro justitia* statements from Astérie Nikuze and Dieudonné Nkulinkiyinka and an interview of Sixbert Musangamufa of 14 November 2001 and the subsequent summary dated 16 November 2001.⁴³

53. Reconsideration is justified when there have been new circumstances since the filing of the challenged decision that affect the premise of the decision. It is can also be permissible where the impugned decision was erroneous in law or an abuse of discretion.⁴⁴ The Defence's submissions suggest that the Chamber construed the limitations of Rule 92 bis of the Rules too strictly. It does not cite authority for this position or any change in the facts.

54. According to Rule 92 bis (A) of the Rules, a Trial Chamber may admit the evidence of a witness in the form of a written statement instead of oral testimony which goes to the proof of a matter other than the acts and conduct of the accused as charged in the indictment. The Chamber has discussed the contents of Nkulinkiyinka's and Nikuze's *pro justitia* statements above (I.2.2.1.(ii)). Their relevance to the Defence is that they tend to place

⁴¹ Witness ACK, T. 6 March 2007 pp. 57-60.

⁴² *Kordić and Čerkez* Appeal Judgement para. 183 ("the general practice of the International Tribunal is to respect the Prosecution's function in the administration of justice, and the Prosecution execution of that function in good faith"); *Karemera et al.*, Decision on Joseph Nzizorera's Interlocutory Appeal (AC), 28 April 2006, para. 17 ("the Trial Chamber is entitled to assume that the Prosecution is acting in good faith").

⁴³ Defence Closing Brief paras. 250-265. The Chamber denied the admission of the *pro justitia* statements and the investigation documents during the testimony of the Accused. T. 28 August 2007 pp. 27-34 (*pro justitia* statements); T. 29 August 2007 pp. 43-51 (*procès verbal d'interrogatoire de Sixbert Musangamufa*).

⁴⁴ *Ntagerura et al.* Appeal Judgement para. 55; *Bagosora et al.*, Decision on Bagosora Request for Certification or Reconsideration Concerning Admission of Witness B-06's Statement (TC), 8 May 2007, para. 8.

responsibility for the killings at Saint Paul's pastoral centre on Witness ALG, and not Renzaho, as well as show that refuge was provided to persons at the Kigali-Ville prefecture office. Nkulinkiyinka's statement specifically references Renzaho.

55. In the Chamber's view, the documents go towards proof of the acts of the conduct of the accused as charged in the indictment, and cannot be admitted pursuant to Rule 92 *bis* of the Rules.⁴⁵ Their primary purpose is to impeach the testimony of Witness ALG. Nkulinkiyinka's statement was disclosed to the Defence on 30 October 2006 and could have been introduced during Witness ALG's testimony in January 2007.⁴⁶ Moreover, the Defence could have moved to recall Witness ALG on the basis of both statements but it did not. Rule 92 *bis* of the Rules is not a way around this obligation.⁴⁷

56. The Defence also seeks to admit the interview of Sixbert Musangamufa of 14 November 2001 and the subsequent summary dated 16 November 2001 as it raises doubts about the credibility of the criminal allegations made against Wenceslas Munyeshyaka in Rwanda. Munyeshyaka is an alleged member of the Accused's joint criminal enterprise and is implicated in several criminal charges with the Accused.⁴⁸ Once again, the documents go towards the conduct of the Accused, and thus fall outside the parameters of Rule 92 *bis* (A) of the Rules.⁴⁹ The Defence's expressed difficulties in obtaining a witness, which would allow the introduction of the documents, does not alter the outcome. It is incumbent upon the Defence to exhaust all available measures to secure the taking of the witness's testimony.⁵⁰ It has not demonstrated that it has done so in this instance.

2.2.3 Access to Defence Evidence

57. The Defence contends that the death of two witnesses, the refusal of others to testify, and interference by a former Defence investigator, who allegedly discouraged witnesses from testifying, have prevented the Accused from receiving a fair trial.⁵¹ It concludes that the climate in Rwanda prevents witnesses from testifying for the Defence. The Chamber will address these arguments in turn.

(i) Deaths of Prospective Witnesses

58. The Defence submits that the deaths of Renzaho's secretary, Astérie Nikuze, and his driver, Gaspard, have materially impaired its ability to prepare its Defence.⁵² Each of the prospective witnesses died prior to counsel's ability to meet with them, but the Defence argues that such people would tend to know "everything about the daily dealings" of Renzaho.⁵³

⁴⁵ Decision on Defence Motion to Admit Documents, 12 February 2008 para. 4.

⁴⁶ See Letter accompanying Prosecution Disclosures of 30 October 2006; T. 14 February 2008 p. 5.

⁴⁷ *Bagosora et al.*, Decision on Nsengiyumva Motion to Admit Documents as Exhibits (TC), 26 February 2007, para. 8.

⁴⁸ Indictment paras. 6, 20-21, 36-38, 42, 52, 54, 61, 64.

⁴⁹ Decision on Defence Motion to Admit Documents, 12 February 2008, para. 4.

⁵⁰ *Simba* Appeal Judgement para. 41.

⁵¹ Defence Closing Brief paras. 266-293; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) para. 291. para. 291.

⁵² Defence Closing Brief paras. 217, 256, 268-271, 684.

⁵³ *Id.* paras. 267-271; T. 14 February 2008 p. 31.

59. The right of an accused to a fair trial implies the principle of equality of arms between the Prosecution and the Defence.⁵⁴ This principle, in part, is embodied in Article 20 (4)(e) of the Statute. It provides that the Accused has the right "... to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her". However, this right does not apply to conditions outside the control of a court that prevent a party from securing the attendance of certain witnesses.⁵⁵ The untimely death of witnesses is one such instance.⁵⁶

60. Moreover, in the post-trial phase, a remedy is appropriate only where the party has demonstrated material prejudice.⁵⁷ The Defence makes no particularised reference as to what Prosecution evidence Gaspard would have rebutted based on evidence in the record or its independent knowledge of Renzaho's relationship and dealings with him. The Chamber will not consider this argument further.

61. As discussed above, the contents of Nikuze's anticipated evidence was that she had heard Witness ALG might have brought a paper signed by authorities that prompted the attack on Saint Paul's pastoral centre.⁵⁸ Thus, her anticipated evidence tending to show that Witness ALG, and not Renzaho, is culpable for the killings at Saint Paul's pastoral centre, is hearsay and of limited probative value.⁵⁹ Given the Chamber's finding in relation to the event (II.9), it cannot find that Renzaho suffered prejudice due to her absence. Finally, her anticipated evidence that Renzaho provided refuge to displaced persons at the Kigali-Ville prefecture office is also cumulative of other evidence in the record (III.3.1.3). On this basis, the Chamber is unable to determine that the proceedings have been rendered unfair due to the absence of these witnesses.

(ii) *Prospective Witnesses Who Refused to Testify Based on Fear of Reprisals*

62. The Defence next submits that several key witnesses, including Dieudonné Nkulikiyinka and Alexis Bisanukuli refused to testify based on fear of reprisals.⁶⁰ Equality of arms before the Tribunal means that a Chamber shall provide every practicable facility it is capable of granting under the Rules and the Statute when faced with a request by a party for

⁵⁴ *Kayishema and Ruzindana* Appeal Judgement para. 67; *Tadić* Appeal Judgement para. 48.

⁵⁵ *Kayishema and Ruzindana* Appeal Judgement para. 73; *Tadić* Appeal Judgement para. 49.

⁵⁶ According to the Defence submissions, Ms. Astérie Nikuze died after having met with the Rwandan intelligence division and that Gaspard had died while attempting to flee in Rwanda. Defence Closing Brief paras. 269-271; T. 14 February 2008 p. 31. These submissions appear also underpin the Defence's umbrella argument that it cannot receive a fair trial based on interference of witnesses in Rwanda, which is addressed below. The Chamber finds it unnecessary to consider equivocal overtures relating to why these prospective witnesses died.

⁵⁷ See, for instance, *Semanza* Appeal Judgement paras. 69-73; *Kamuhanda* Appeal Judgement para. 12; *Ntagerura et al.*, Trial Judgement para. 30.

⁵⁸ The Defence errantly suggests that Nikuze would be able to rebut Prosecution evidence related to the attack on CELA. Defence Closing Brief para. 375. Her evidence would relate to the attack at Saint Paul based on a review of Defence Exhibit 4 and Nikuze's *pro justitia* statement.

⁵⁹ *Pro justitia* statement of 2 July 1996, p. 2: "Q: Tu ne sais rien en rapport avec le rôle qu'il aurait joué dans les massacres des gens au Saint Paul? R: Il a joué un rôle parce que ce n'est pas possible qu'une autorité comme [lui]... R: Je ne sais pas. J'ai entendu qu'ils ont amené un papier signé par des autorités. Je ne sais pas si c'est [Witness ALG] ou si c'est [another government official]. Ils ont montré ce papier à L'Abbé Célestin... ces tueurs ne pouvaient pas venir enlever les gens sans que [Witness ALG] en soit courant."

⁶⁰ Defence Closing Brief paras. 274-284, 1270; T. 14 February 2008 pp. 31-35, 40. The Chamber discusses Defence submissions as it they relate to Eugène Hantangigaba in the subsection below.

assistance in presenting its case.⁶¹ Provisions under the Statute and the Rules exist to alleviate the difficulties faced by parties by empowering the Chambers to issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of investigation or for the preparation or conduct of trial.⁶² In addition, where such measures have proved to no avail, a Chamber may order that proceedings be adjourned or, if the circumstances so require, that they be stayed.⁶³

63. Where a party raises allegations of witness intimidation, a remedy is appropriate where they are established on the balance of the probabilities.⁶⁴ Furthermore, the Defence bears the burden to exhaust all available measures afforded by the Statute and Rules to obtain the presentation of evidence. Finally, there must be a showing of material prejudice.⁶⁵ Where the evidence has not been obtained due to witness intimidation, the Defence must show how the content of the anticipated evidence relates to specific allegations or charges against the Accused.⁶⁶

64. Evidentiary support for Defence assertions that Dieudonné Nkulikiyinka and Alexis Bisanukuli refused to testify based on fear of reprisals is indirect and vague. Witness HIN testified that the former Defence investigator intimidated him in an attempt to prevent him from appearing for the Accused and suggested that the investigator had done the same to others, including Dieudonné Nkulikiyinka.⁶⁷ The witness's basis for knowledge with respect to these other acts of intimidation is imprecise. In the circumstances, it fails to demonstrate on the balance of the probabilities that intimidation occurred with respect to either witness. On this basis alone, the Chamber could dismiss Defence arguments.

65. Furthermore, the Defence has not sufficiently exhausted the remedies available to it. Based on Defence motions, the Chamber has ordered protective measures to facilitate the appearance of Defence witnesses who feared for their safety and expanded such measures to prolong the concealment of Witness HIN's identity given his refusal to otherwise testify Tribunal.⁶⁸ The Chamber has the authority to issue subpoenas and order the attendance of otherwise reluctant witnesses and enlist the cooperation of the State in assuring their attendance.⁶⁹ The Defence, however, has not sought such assistance from the Chamber to ensure the presentation of evidence from Dieudonné Nkulikiyinka and Alexis Bisanukuli. Once again, this alone would allow the Chamber to dismiss the Defence arguments.

66. Turning to the anticipated substance of the evidence, an examination of the Defence submissions, Defence Exhibit 4 and Dieudonné Nkulikiyinka's *pro justitia* statement, suggest he would testify about Renzaho's responsibility for crimes committed at roadblocks, his involvement in the killings at Saint Paul as well as refuge provided to persons at the Kigali-

⁶¹ *Tadić* Appeal Judgement para. 52.

⁶² *Id.* para. 52; Rule 54 of the Rules.

⁶³ *Tadić* Appeal Judgement para. 52.

⁶⁴ *Simba* Appeal Judgement 41; *Bagosora et al.*, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004, para. 7.

⁶⁵ *Simba* Appeal Judgement 41; *Tadić* Appeal Judgement paras. 52-53, 55-56.

⁶⁶ *Simba* Trial Judgement para. 47; *Bagosora et al.*, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004, para. 10.

⁶⁷ T. 10 July 2007 pp. 20-21.

⁶⁸ Decision on Defence Request for Protective Measures (TC), 12 March 2007; Decision on Defence Request for Special Protective Measures for Witness HIN (TC), 14 June 2007.

⁶⁹ Rule 54 of the Rules; Article 28 of the Statute.

Ville prefecture office.⁷⁰ Nkulikiyinka's anticipated evidence presents an alternative theory of who was responsible for roadblocks; it would suggest that Renzaho's subordinate acted independently in organising *Interahamwe* and instructing them to kill and to provide Renzaho misinformation. While Nkulikiyinka's proposed evidence is unique in singling out Witness ALG in this regard, the Chamber has heard evidence from Defence Witnesses Nyetera, PPO, UT, AIA, GOA, and HIN suggesting that local government officials in Kigali-Ville prefecture organised roadblocks on the orders of others or for reasons unrelated to Renzaho (II.2). Nkulikiyinka's anticipated evidence is cumulative of this evidence and its absence from the proceedings does not amount to material prejudice towards the Accused.

67. Moreover, the Chamber's findings in relation to the attack at Saint Paul (II.9) demonstrate that the Accused has not suffered prejudice due to Nkulikiyinka's absence. Likewise, his evidence related to refuge provided at the prefecture office is cumulative of other evidence (III.3.1.3), and its absence does not result in prejudice to the Accused.

68. Bisanukuli's proposed evidence would relate to meetings held at the Kigali-Ville prefecture office.⁷¹ This would appear to include alleged meetings where Renzaho ordered persons to erect and maintain roadblocks and where he organized the distribution of weapons during a meeting there. Bisanukuli's anticipated evidence about the 8 April meeting would be cumulative of Defence evidence presented by Witnesses AIA and the Chamber finds that no prejudice was suffered due to its absence (II.2). However, the Chamber notes that Bisanukuli's possible first-hand evidence of a subsequent meeting at the prefecture office where Renzaho is alleged to have ordered attendants to retrieve weapons from the Ministry of Defence would be unique. While other Defence witnesses may have been in the vicinity of the prefecture office when this meeting is alleged to have occurred, no such evidence was brought by someone who would have attended such a meeting (II.3). Nonetheless, the proposed substance of Bisanukuli's evidence on this point is non-descript. The Defence merely asserting that Bisanukuli "assisted Mr. Renzaho during all the meetings that were organized at the prefecture".⁷² Other evidence in the record suggests that just because one witness testifies another witness was present during a meeting does not necessarily demonstrate that witness will testify about it.⁷³ Without more, the Chamber cannot conclude that the Accused suffered material prejudice as a result its absence.

(iii) *Absence of Evidence Based on the Interference of a Former Defence Investigator*

69. The Defence also points to its revelation, based on information from Witnesses HIN, NIB and Eugène Hantangigaba, that a former Defence investigator had exerted pressure on them not to testify on Renzaho's behalf and had engaged in similar conduct with other prospective Defence witnesses.⁷⁴ The Registry commenced an investigation into the Defence investigator's alleged interference.⁷⁵ On 30 June 2009, the Registry filed a 33 (B) report

⁷⁰ T. 14 February 2008 p. 32; Defence Exhibit 4 (summary of Rwandan judicial record relating to Witness ALG). Given evidence on the record, the Chamber has some reservation as to how closely Nkulikiyinka would have been able to monitor Renzaho's activities generally. See, for instance, Witness ALG, T. 15 January 2007 pp. 27-28 (noting that Nkulikiyinka was in hiding in the prefecture office in April).

⁷¹ Defence Closing Brief para. 275; T. 14 February 2008 p. 31.

⁷² T. 14 February 2008 p. 31.

⁷³ Compare Witness PPV T. 4 June 2007; T. 5 June 2007 (generally) and Witness AIA, T. 3 July 2007 p. 4.

⁷⁴ Defence Closing Brief paras. 285-290, 292; T. 14 February 2008 pp. 32-35.

⁷⁵ Defence Closing Brief paras. 286, 291; T. 14 February 2008 pp. 34-35.

noting that the appointed investigator had failed to respond to its requests for a final report on the matter.⁷⁶

70. The issue of witness intimidation is one that this Tribunal does not take lightly. Affirmative interference with prospective witnesses can undermine the judicial process. While the burden of proving the charges in the indictment beyond a reasonable doubt rests firmly on the Prosecution, the Defence's ability to present evidence on its behalf is a fundamental tenant of the right to a fair trial.

71. Witness HIN testified that the former Defence investigator intimidated him in an attempt to prevent him from appearing for the Accused and suggested that the investigator had done the same to others, including Dieudonné Nkulikiyinka.⁷⁷ The Defence raised a contemporaneous plea to the Registry that the Defence investigator had similarly interfered with Witness NIB who had come to Arusha but ultimately did not testify.⁷⁸ The Defence also submitted a letter from Eugène Hantangigaba and indicated that the same investigator had invited the individual to testify against Renzaho.⁷⁹

72. Even where allegations of intimidation are established, the Defence must exhaust all available measures to secure the taking of the witness's testimony.⁸⁰ Witness HIN testified on behalf of Renzaho. No submissions suggest that the evidence he provided was incomplete or tainted based on the alleged witness tampering.

73. Turning to Eugène Hantangigaba, no specific submissions were made in relation to the substance of Hantangigaba's intended testimony.⁸¹ A review of his witness statement suggests that his anticipated evidence would be relevant to rebutting evidence concerning the presence of civilian militia at Renzaho's house. Given the relevant findings (II.1), the Defence has failed to demonstrate material prejudice suffered by the Accused.

74. Witness NIB traveled to Arusha under the protection of the Registry, but was dropped as a witness by the Defence after his arrival. Like Hantangigaba, the Defence does not make any submissions regarding which charges the Witness NIB was intended to rebut.⁸² His statement to the Defence investigator suggests that he was unaware of Renzaho having any position within the military hierarchy, and that it would have been difficult for meetings to have been held in Rugenge sector due to constant fighting there.⁸³ NIB's anticipated testimony about the fighting in Rugenge sector is also cumulative of other evidence in the record (II.13). The Chamber is unable to find material prejudice in lieu of the Defence's decision not to have the witness testify.

⁷⁶ Registrar's Submissions under Rule 33 (B) of the Rules on the Final Report of Jean Haguma, 30 June 2009, para. 5.

⁷⁷ T. 10 July 2007 pp. 20-21.

⁷⁸ Letter of 20 June 2007 from the Defence to Registry.

⁷⁹ Letter of 18 October 2007 from the Defence to Registry (attaching letter of Eugène Hantangigaba).

⁸⁰ *Simba* Appeal Judgement para. 41.

⁸¹ Defence Closing Brief para. 288; T. 17 May 2007 pp. 12-13; T. 14 February 2008 pp. 30, 33-35.

⁸² Defence Closing Brief paras. 285, 288; T. 17 May 2007 pp. 12-13; T. 14 February 2008 pp. 30, 33-35.

⁸³ The Chamber is mindful of the Defence's position that Witness NIB's statement, as recorded by their Defence investigator, does not accurately reflect what he had said. Without further submissions from the Defence, however, the Chamber must rely on this statement for its analysis.

(iv) *General Difficulties in Obtaining Evidence from Rwanda*

75. Finally, the Defence notes its inability to obtain evidence from witnesses from Rwanda given the current political climate of threats and intimidation aimed at those otherwise willing to provide testimony in favour of the Accused. It suggests that the protective measures offered by the Tribunal fail to resolve the concerns felt by these individuals, noting in particular that the Rwandan government monitors the Tribunal's operations in Kigali.⁸⁴

76. At the outset, no judicial system can guarantee absolute witness protection.⁸⁵ Nonetheless, the Chamber is sympathetic to the challenges faced by the Defence in obtaining witnesses. This Tribunal has in some instances concluded that the threats facing witnesses may impact the fairness of proceedings transferred from this Tribunal to Rwanda.⁸⁶ However, there are a number of reasons why individuals in Rwanda refuse to testify before the Tribunal. Some evidence on the record suggests that individuals would not testify on behalf of the Defence because of fear of and actual persecution within Rwanda.⁸⁷ However, the record is equivocal as to whether any perceived or actual intimidation of witnesses who have appeared on behalf of the Accused is in fact related to their participation in this proceeding.⁸⁸ Renzaho managed to mount a Defence that involved the attendance of 27 witnesses, five of whom came from Rwanda.⁸⁹ The Defence's challenges concerning the difficulties of securing witnesses from Rwanda, when viewed in light of the entire record, fails to convince the Chamber that this proceeding has been rendered unfair. The Chamber dismisses this argument.

2.2.4 Factors Affecting the Proceedings

77. Articles 12 and 20 of the Statute ensure the right of an accused to a fair hearing before impartial judges, and the ICTY and ICTR have consistently recognised the right to be tried by

⁸⁴ Defence Closing Brief paras. 272-273; T. 8 January 2007 p. 8; T. 17 May 2007 p. 13; T. 29 August 2007 p. 48; T. 14 February 2008 pp. 35-37.

⁸⁵ *Munyakazi*, Decision on Prosecution's Appeal Against Decision on Referral under Rule 11bis (AC), 8 October 2008, para. 38.

⁸⁶ *Munyakazi*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 May 2008, paras. 60-62 affirmed in *Munyakazi*, Decision on Prosecution's Appeal Against Decision on Referral under Rule 11bis (AC), 8 October 2008, paras. 38-39; *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 66-74 affirmed in *Kanyarukiga*, Decision on Prosecution's Appeal Against Decision on Referral under Rule 11bis (AC), 30 October 2008, para. 27; *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 57-64.

⁸⁷ See, for instance, Witness HIN, T. 10 July 2007 p. 19 ("When Defence counsel came to see me, I told him what my occupation was. I told him that I could not come to testify in the Renzaho trial because if I were to go to Arusha, I would be faced with serious security problems. And Mr. President, I must say that some witnesses encountered problems after coming back from Arusha. Some died, others were persecuted, others fled the country.").

⁸⁸ See, for instance, Witness HAL, T. 18 June 2007 pp. 20-22, 33-37, 39-41; Prosecution Exhibit 107 (judgement from Nyamirambo court of first instance) (testifying to his belief that he was arrested and convicted based on his contact with Renzaho's Defence team, but noting that he was arrested five months after his communications with them due to a dispute with an individual that concerned matters unrelated to the Accused); Witness MAI, T. 22 August 2007 pp. 20-21 (testifying that he fled the country for fear of being killed after being "opposed" and "persecuted" based on his relationship with the Accused and for allegedly being an *Interahamwe*).

⁸⁹ T. 14 February 2008 pp. 38-39.

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a tribunal which both appears to be and is in fact genuinely impartial.⁹⁰ There is a general rule that a judge should not only be subjectively free from bias, but also there should be nothing in the surrounding circumstances that gives rise to an appearance of bias.⁹¹ In the instant case, there are no direct allegations of bias, nor any assertions regarding the Chamber's potential inability to fairly assess the evidence. Instead, the Defence challenges the Prosecutorial strategy in choosing whom to investigate and prosecute, and their reliance on witnesses living in Rwanda, particularly those who have been charged or convicted with crimes there.⁹² Additionally, the Defence explains the risks of conviction by association and cautions against the dangers inherent in using confessions and expert testimony.⁹³ Finally, the Defence warns the Chamber that the heinous nature of the crimes committed throughout the genocide and the pressure from the international community should not compel a finding that Renzaho is responsible.⁹⁴

78. Cognizant of the Defence arguments, the Chamber concludes that none have rendered the trial unfair. The Prosecution has broad discretion in relation to the preparation of indictments.⁹⁵ It is not the role of the Chamber or any other government source to dictate a certain trial strategy.⁹⁶ The Chamber acknowledges the concerns raised by the Defence in regard to the question of witness credibility and will consider the merits of each witness in the context of all evidence presented and in light of the entire record. The Chamber is aware of the elements required to establish Renzaho's guilt and has considered the specific risks of accepting testimony offered by the Prosecution witnesses, the use of confessions and "tunnel vision".

⁹⁰ *Furundžija* Appeal Judgement para. 182; *Rutaganda* Appeal Judgement para. 39.

⁹¹ *Karemera et al.*, Decision on the Severance of Andre Rwamakuba and Amendments of the Indictment, Article 20 (4) of the Statute, Rule 82 (b) of the Rules of Procedure and Evidence (TC), 7 December 2004, para. 17, citing *Furundžija* Appeal Judgement para. 182.

⁹² Defence Closing Brief paras. 294-317.

⁹³ *Id.* paras. 334-338.

⁹⁴ *Id.* paras. 318-330.

⁹⁵ *Ndindiliyimana*, Decision on Urgent Oral Motion for a Stay of the Indictment, or in the Alternative a Reference to the Security Council (TC), 26 March 2004, para. 22.

⁹⁶ *Bagosora et al.* Trial Judgement, para. 1999.

3. THARCISSE RENZAHU

79. Tharcisse Renzaho was born on 17 July 1944 in the Kabare-1 sector, Kigarama commune, Kibungo prefecture. He is married and the father of five children. After military training at the *Ecole Supérieure Militaire* (ESM), he graduated in 1970 as a second lieutenant in 1975. Subsequently, he became head of a platoon, and then commander of a company. Renzaho was also an officer of the general staff working in departments that included a combat unit. From 1984 onwards, as a Lieutenant-Colonel, he was appointed study director at ESM.⁹⁷

80. Between 1980 and 1989, Renzaho also underwent further military training in Belgium and Germany. After returning to Rwanda in July 1989, he was made director of the programmes and study department at the Ministry of Defence. On 5 October 1990, he left that position, when President Juvénal Habyarimana appointed him the first prefect of Kigali-Ville prefecture, following its establishment.⁹⁸

81. As prefect, Renzaho was the guarantor of peace and security in Kigali-Ville. He exercised civilian functions but remained a military officer. In July 1992, he was promoted to the rank of colonel.⁹⁹

82. On the morning of 7 April 1994, following the death of President Habyarimana, Renzaho was authorised to join a meeting of senior military command, which was chaired by General-Major Augustin Ndindiliyimana, and appointed to a crisis committee that was set up during that meeting.¹⁰⁰

83. Renzaho left Rwanda in early July 1994. He was arrested on 29 September 2002 in the Democratic Republic of Congo, and was transferred to the UN Detention Facility on 30 September 2002.¹⁰¹

⁹⁷ Prosecution Closing Brief paras. 1, 557; T. 18 May 2007 p. 5; T. 27 August 2007 pp. 1, 3, 5-6.

⁹⁸ Prosecution Closing Brief para. 1; T. 27 August 2007 pp. 4-5.

⁹⁹ T. 27 August 2007 pp. 5-6; T. 29 August 2007 p. 8.

¹⁰⁰ Prosecution Closing Brief para. 6; T. 27 August 2007 pp. 48-56.

¹⁰¹ Defence Closing Brief para. 1291; T. 30 August 2007 pp. 18, 45.

CHAPTER II: FACTUAL SECTION

1. ENCOURAGEMENT OF *INTERAHAMWE* TRAINING, 1993-1994

1.1 Introduction

84. The Prosecution alleges that, between mid-1993 and 17 July 1994, Renzaho regularly permitted and encouraged *Interahamwe* and *Impuzamugambi* groups to meet at his house in Kanombe and elsewhere for the purpose of receiving military training. They killed or caused serious bodily or mental harm to Tutsis between 6 April and 17 July 1994. Reference is made to Witnesses XXY and ALG. The Defence denies the charges and claims that the Prosecution evidence is discredited by the testimony of Witnesses Nyetera, Butera, BOU, ABC, VDD, MAI, HAL and NYT.¹⁰²

1.2 Evidence

Prosecution Witness XXY

85. Witness XXY, a Hutu, was a classmate of Renzaho's son, Jean-François Régis, at a school in Kigali. The school was not far from Renzaho's house in Kanombe. In the first term of 1993-1994, the witness boarded in a dormitory with many other students on campus. In the second, he lived in a student facility in the neighbourhood, close to Renzaho's residence. There were several such facilities. The witness was about two years older than Régis but they sat on the same bench at school.¹⁰³

86. On 3 May 1993, Saint Juvénal's Day, the students at the school were invited to a reception at the home of the President of Rwanda. After the reception, Renzaho asked the students to join the *Interahamwe*. He told those who were already members to prepare a list of other young persons who wanted to join. That day, Jean Lummumba, a student influential in the *Interahamwe*, prepared a long list, as many had expressed such an interest. Lummumba and the dean indicated that they would forward the list to Renzaho. In the witness's estimate, between 300 and 400 of the approximately 1,000 students were already members of the *Interahamwe*. Régis was not present at the reception because he only arrived at the school in September 1993.¹⁰⁴

87. Régis and the witness carried out many activities together at school, belonged to the scouts' movement and played basketball. They had several mutual friends in the same class and studied the same subject. Some of them lodged at the same hostel in Kigali as the witness.¹⁰⁵ Renzaho was already living in his house when Régis came to Kanombe to study in

¹⁰² Indictment paras. 11 and 28; Prosecution Closing Brief paras. 128-141; T. 14 February 2008 pp. 14-15; Defence Closing Brief paras. 869, 871-872, 884-904; T. 14 August 2008 pp. 42-52, 58-59; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 886.1-886.3.

¹⁰³ T. 10 January 2007 pp. 5-6, 18-19, 24-25, 33-35, 42, 45. When referring to the student facilities where he stayed during the second semester, Witness XXY used the word "home" (p. 19). According to Prosecution Exhibit 66 (personal identification sheet), Witness XXY was born in 1974.

¹⁰⁴ T. 10 January 2007 pp. 11-13, 20, 43-44, 50-51. For reasons of consistency, the Chamber has chosen "Lummumba" and not "Lumumba". T. 10 January 2007 p. 13.

¹⁰⁵ T. 10 January 2007 p. 36. Witness XXY used the word "hostel" ("home" in the French transcript, *id.* p. 21), which, in this context, appears to refer to the student facility in which he stayed during the second term. The witness also stated that Régis knew how to drive. *Id.* p. 45.

September 1993. At that juncture, Régis' cousin Mutesi and a house helper also stayed there. Renzaho's wife and the other children moved from Kiyovu to Kanombe in 1994, but the witness did not recall in which month they arrived. Until then, the witness frequented the Renzaho residence almost daily, beginning in November 1993. He could not say exactly how many times he was there between that month and March 1994. Régis visited the witness's residence as well. After the arrival of the entire family, the witness went to Régis's home less often, but still went about every two or three days until late March 1994. He did not know the number or names of Renzaho's other children.¹⁰⁶

88. Before the family moved in, the witness would sometimes see between 50 and 100 *Interahamwe* uniforms being dried on the ground or on ropes in the compound outside Renzaho's house. He did not specify exactly when or how many times he saw the uniforms, but it was at least on two occasions. The *Interahamwe* had a well-known uniform that they would wear to rallies. It was sewn in *kitenge* material and easily identifiable.¹⁰⁷

89. Sometime before Christmas 1993, at about 5.30 p.m., Witness XXY visited Régis to collect books and noticed a bus parked directly in front of Renzaho's residence. Régis explained that the *Interahamwe* were going for training at Mutara. Some of the *Interahamwe* were picking up their belongings to enter the bus. They had sacks of grenades, and some were carrying guns. When Renzaho arrived in a white Renault 21, at about 5.30 p.m., they were taking their seats on the bus. Renzaho waved at them and wished them sound training before the bus took off. The witness never saw Régis participating in *Interahamwe* activities, but could not rule out that he was a member.¹⁰⁸

Prosecution Witness ALG

90. In 1994, Witness ALG, a Hutu, was a member of the MRND party and a high-ranking official in Nyarugenge commune in Kigali-Ville. He testified that, after the advent of multiparty politics in June 1991, Renzaho was no longer chairman of the MRND for the prefecture, but nevertheless continued collaborating with its leaders, including in the military training of *Interahamwe*, the youth wing of the party. The witness noted that as a soldier, Renzaho should not have been a member of any political party.¹⁰⁹

91. Sometime between late February and early March 1993, Renzaho successively summoned groups of *responsables*, commune and sector officials to his office. All of them - about 15 persons - were members of the MRND. The witness went there with four or five officials. Renzaho informed them that the army high command, in consultation with the leadership of the MRND, had decided that the *Interahamwe* would receive covert military training. The purpose was to assist the army in fighting the *Inkotanyi* if the war resumed, and to participate in operations aimed at securing Kigali city. The training would take place in army camps. Renzaho said that the information was confidential and to be kept from the

¹⁰⁶ *Id.* pp. 6-9, 12, 33-34, 36-38, 40-42, 45, 48-49, 51. The transcripts refer to Régis' cousin as "Mutesi". Also Witness NYT used that name, whereas the other witnesses called her "Umutesi".

¹⁰⁷ *Id.* p. 8.

¹⁰⁸ *Id.* pp. 9-10, 50-51. According to Witness XXY, buses from ONATRACOM, the national transportation company, were used to transport the *Interahamwe*. *Id.* P. 9.

¹⁰⁹ *Id.* pp. 56, 73-74; T. 11 January 2007 pp. 6, 8, 72-73; T. 12 January 2007 pp. 22-23; Prosecution Exhibit 67 (personal identification sheet).

public, so that MRND opponents would not know of the programme and be able to undermine it.¹¹⁰

92. The meeting participants later gleaned information about the location of the training camps, such as Gabiro military camp, which at the time was in Mutara,¹¹¹ in Byumba prefecture; Gako army camp in Bugesera sub-prefecture in Kigali-Rural prefecture; and Bigogwe army camp in Gisenyi prefecture. Many persons were being trained, but the witness could not specify the number. The military training of the *Interahamwe* was already underway when the Arusha Accords were signed. At that time, Rwandan law prohibited political parties from having militia.¹¹²

Renzaho

93. Renzaho testified that he had never been involved in recruiting *Interahamwe*, and that he did not do so on 3 May 1993. *Interahamwe* never left from his house by bus, and their clothes were not washed or hung outside his house. After 25 May 1994, there were young people trained to reinforce the army. Even though the Arusha Accords did not allow the arming and training of civilians, some civilians were nevertheless trained to join the Rwandan Armed Forces.¹¹³

Defence Witness ABC

94. Witness ABC, a Hutu, is related to Renzaho. In May 1992, the entire family moved to Kanombe. Régis attended the school there from July 1993 to April 1994. He was never a member of the scout movement. The witness would have known if he had close friends. Classmates visited him at home to do their homework together, but she did not know Witness XXY. Only a student called René sometimes came home with Régis. They were born in the same year, 1981. The Renzaho children were not allowed to have friends who were five or six years older than them. The name of the eldest daughter was Umutesi.¹¹⁴

95. The area behind the house where clothes were washed was not big enough to wash and dry 50 to 100 *Interahamwe* uniforms. The family washed only its own clothes. The witness never saw Renzaho receive or invite *Interahamwe* from September to December 1993. There was no hostel for students in the vicinity of the Renzaho residence.¹¹⁵

Defence Witness VDD

96. Witness VDD, a Hutu related to the Renzaho family, testified that the entire family moved from Kigali-Ville to Kanombe on the same day in May 1992. Their daughter Umutesi had no reason to move to their new home earlier as she was a student at a school just opposite

¹¹⁰ T. 11 January 2007 pp. 6-8; T. 12 January 2007 pp. 22-23.

¹¹¹ Both versions of the transcripts state "Mutara". However, Mutara is in Gisenyi, whereas Mutara is in Gabiro. Witness XXY correctly referred to "Mutara" (above), which the Chamber has decided to use.

¹¹² T. 11 January 2007 p. 6-8; T. 12 January 2007 pp. 19, 22-23. Witness ALG was aware only of the camps where the Kigali *Interahamwe* were trained, but heard that other *Interahamwe* were being trained elsewhere as well. T. 11 January 2007 p. 7.

¹¹³ T. 30 August 2007 pp. 31-32, 33-35, 38 ("I am not aware of what one is referring to as *Interahamwe*."), 42-43; T. 31 August 2007 p. 10; T. 3 September 2007 p. 15.

¹¹⁴ T. 17 May 2007 pp. 29-35, 51-54, 56; Defence Exhibit 42 (personal identification sheet).

¹¹⁵ T. 17 May 2007 pp. 30-31.

the family's residence in Kigali. Régis could not have gone to stay in Kanombe in May 1992, because he only started school there in September that year. *Interahamwe* would not have been allowed into their home.¹¹⁶ The witness could not state with certainty that she had never met Witness XXY, but did not believe that Régis had any friends. She recalled two of Régis' classmates: René and Emmanuel. René would sometimes do homework with Régis at the Renzaho residence and he, like Régis was born in 1981.¹¹⁷

Defence Witness MAI

97. Witness MAI, a Hutu, is related to the Renzaho family. The construction of their home in Kanombe started at the beginning of 1992, and was completed in early 1993. The family relocated there together around June or July 1993. The children, including Jean-François Régis and Umutesi, moved at the same time. The person overseeing the construction of the house lived alone in it from February 1993 until the family arrived. No one else had the key, and he locked the place when he left for work.¹¹⁸

98. Military or militia uniforms could not be washed within the compound while the overseer was living there because there was no water during that time. Militiamen never came to the house from February 1993 onward, and the family did not receive youth belonging to political parties in their home. The witness did not see any of Régis' friends coming to visit. There was no student housing in the neighbourhood near the residence.¹¹⁹

Defence Witness HAL

99. Witness HAL, a Hutu, worked for the Renzaho family. Construction of their house in Kanombe began in 1990 and was completed in 1992. All the members of the family, including Régis, took up residence in Kanombe on the same day in May 1992. The witness helped the family move.¹²⁰ He was often present when the residence was being built but he never saw any *Interahamwe* or their clothing there. There was a very small courtyard at the entrance to the compound. No students were living in that neighbourhood, as all of them stayed at the school, about two kilometres away.¹²¹

100. The witness visited the house daily at 7.00 a.m., carried out various tasks, and returned there at 9.00 p.m. or whenever he was free. In 1993, he was there several times a day, but never observed any *Interahamwe* or a bus parked outside. He watched Régis leave and return each day. He never saw that Régis had friends and thought the boy was too young to have any. Régis was about 12 years old in 1994.¹²²

¹¹⁶ T. 18 May 2007 pp. 5, 9-10, 13; T. 22 May 2007 pp.16.

¹¹⁷ T. 18 May 2007 p. 14; T. 22 May 2007 p. 11-12. Witness VDD was uncertain whether she should characterise René and Emmanuel as "friends" or "classmates" of Régis. (T. 22 May 2007 p. 11). He once spoke to her of another friend who used to come to his house but she did not know that boy (T. 18 May 2007 p. 14).

¹¹⁸ T. 22 August 2007 pp. 6-10; Defence Exhibit 76 (personal identification sheet).

¹¹⁹ T. 22 August 2007 pp. 7, 10, 11 ("the Renzaho family was a respectable family and ... people of such a category [referring to political party youth groups] could not go to their house"), 12-13.

¹²⁰ T. 18 June 2007 pp. 4-7, 31, 42; Defence Exhibit 64 (personal identification sheet).

¹²¹ T. 18 June 2007 pp. 5-8.

¹²² *Id.* pp. 8-10, 19 (mentioning that Régis did not know how to drive), 20, 29.

Defence Witness NYT

101. Witness NYT, a Hutu, was a day student in the same class as Régis and Witness XXY in 1992-1993.¹²³ From September 1992, he often went to visit Régis at Renzaho's house, as the witness had a relative living close by. As of his first visit, Régis and his uncle were living there. At times, the witness also found "Mutesi" or Josiane, or another of the Renzaho children there. Towards the end of December 1992, all the members of the family had moved in. During his third and last year at the school in 1993-1994, he did homework at Régis' house three times a week and sometimes more. The witness also visited on weekends. He did not see *Interahamwe* at the Renzaho house, nor did he see their clothes being washed or dried there. There was a courtyard at the rear of the house.¹²⁴

102. Régis did not do any sports, and was not a member of the scout movement or of a youth wing of any party. Witness NYT did not belong to any youth party. He confirmed that a politically active boy named Lummumba was in the upper class at the school. The witness was Régis' closest friend since childhood. They were the same age, but he could not remember when Régis' birthday was. The witness knew Witness XXY as they were also in the same class at school, but he was not a friend of Régis. If he had been, the witness would have known about it. He never saw Witness XXY at the Renzaho residence, and that Régis would have told him if that person had visited. Régis did not have many friends, but it was possible that a boy named Emmanuel visited the house.¹²⁵

103. Renzaho was not present at the school on 3 May 1993. The Saint Juvénal celebrations consisted of better meals that were shared with teachers and a reception for students and teachers. No speeches were given. The witness never attended any reception at President Habyarimana's house.¹²⁶

Defence Witness Antoine Théophile Nyetera

104. Antoine Théophile Nyetera, a Tutsi, was a history and anthropology researcher in Rwanda during the events in 1994. He left his house only once each month in April, May and June but visitors kept him informed. Based on his general knowledge, Renzaho could not have belonged to any political party because, under the Rwandan constitution, no soldiers could have such membership. The militia only took instruction from their political leaders and depended on the parties that formed them. No prefect gave them favours or had a hand in the development of political youth wings. The witness derived this from a "known fact".¹²⁷

Defence Witness Jean-Baptiste Butera

105. Jean-Baptiste Butera, a Hutu, was the director of the national programme for AIDS control in the Ministry of Public Health in April 1994 and came from Kibungu, the same

¹²³ Although the witness did not testify as to his own ethnicity, his father was Hutu. T. 3 July 2007 p. 32.

¹²⁴ T. 3 July 2007 pp. 24-28, 29 (stating that Régis never knew how to drive), 38-41; Defence Exhibit 67 (personal identification sheet).

¹²⁵ T. 3 July 2007 pp. 26-30, 32-33, 37, 41-43.

¹²⁶ *Id.* pp. 29, 41-42.

¹²⁷ T. 5 July 2007 pp. 18-19, 21-22, 37-40; Defence Exhibit 72 (personal identification sheet). Nyetera (previously Witness BIT) stated that he is a descendant of the Rwandan royal family and lost his wife and children between April and July 1994. T. 5 July 2007 pp. 18, 37-38.

prefecture as Renzaho. He did not believe that the prefect of Kigali-Ville, who was meant to uphold neutrality in matters of politics, had any particular links with the *Interahamwe* militia. Renzaho would have been dismissed if there had been indications that he had special relations with any youth wing of political parties. The Prime Minister could easily have replaced him.¹²⁸

Defence Witness BOU

106. Witness BOU, a Hutu, was a high-ranking employee in a ministry during parts of 1993 and until early April 1994. He testified that Renzaho was bound to be politically neutral as prefect and not have special links with any political party or militia. It was generally being said that *Interahamwe* were trained somewhere in Rwanda, but the witness only heard that from complaining opposition groups at the communal level. There were no such reports in his own commune. Had there been any training of militia at Renzaho's residence, it would have been known.¹²⁹

1.3 Deliberations

107. In seeking to prove that Renzaho permitted and encouraged the *Interahamwe* to receive military training the Prosecution relies on Witness XXY and Witness ALG. This evidence includes events that took place prior to 1994 and hence fall outside the temporal jurisdiction of the Tribunal. It follows from case law, however, that the Chamber may admit such evidence if it is relevant, has probative value and there is no compelling reason to exclude it.¹³⁰

108. Witness XXY's evidence appeared generally coherent and credible. There were no clear inconsistencies between his testimony and a previous statement to Tribunal investigators in December 2000. During cross-examination, the Defence suggested that it was implausible, in view of his young age, that he had been in contact with so many high-ranking persons as listed in the statement.¹³¹ The witness explained his particular background which made this possible, and stated that he only overheard parts of what the dignitaries were saying but had not engaged in conversations with them. The Chamber accepts this explanation.

109. According to Witness XXY, Renzaho encouraged students to join the *Interahamwe* on 3 May 1993, following the reception at President Habyarimana's residence. Defence Witness

¹²⁸ T. 22 May 2007 pp. 67-68; T. 23 May 2007 pp. 13, 17; Defence Exhibit 46 (personal identification sheet). Butera was previously referred to as Witness LAA.

¹²⁹ T. 22 May 2007 pp. 32, 44-45; Defence Exhibit 44 (personal identification sheet). Witness BOU said that the entire country would have been informed of *Interahamwe* training at Renzaho's house. Opposition groups would have published information about it in the press, leading to his removal by the President of the Republic within a few days. T. 22 May 2007 p. 45.

¹³⁰ For example, a Trial Chamber may validly admit and rely on evidence on events prior to 1994 where it aims at clarifying the context in which the crimes occurred, establishing by inference the elements (in particular, an accused's criminal intent) of criminal conduct occurring in 1994, or demonstrating a deliberate pattern of conduct. *Nahimana et al.* Appeal Judgement paras. 315-316; *Bagosora et al.* Judgement para. 358.

¹³¹ The statement, signed on 13 December 2000, was not tendered as an exhibit but the Defence referred to it during the proceedings. It included references to the witness overhearing or observing Fulgence Niyonteze; Monsignor Musabyimana; Mr. Callixte Nsabonimana, Minister of Youth; Mr. Eliezer Niyitegeka, Minister of Information; General Gratien Kabiligi; General Ndindiliyimana, Colonel Bagosora and Major Aloys Ntabakuze. T. 10 January 2007 pp. 46-47. The Chamber notes that these parts of the statement neither refer to Renzaho nor military training.

NYT confirmed that Witness XXY was a student at the school, but said that he did not see Renzaho on that day. In the Chamber's view, these two accounts are not necessarily incompatible. Witness NYT did not attend the reception at the President's home and would therefore not have observed any recruitment by Renzaho there. Moreover, the witness confirmed that Lummumba was a politically active boy at the school, as Witness XXY testified.

110. Witness XXY also testified that a group of *Interahamwe* were in a bus in front of Renzaho's residence and left for training just before Christmas 1993. Their clothes were dried at the compound at least twice between September 1993 and the time that the entire family moved into the house in March 1994. The Defence disputed this and adduced evidence that the witness was not a friend of Régis.

111. All the Defence witnesses except for Witness NYT had some form of family or employment tie to Renzaho. Their testimonies therefore have limited weight. To some extent they contradicted each other with respect to when Régis started school in Kanombe;¹³² the construction of Renzaho's house;¹³³ when the family members moved to Kanombe;¹³⁴ and whether it was possible to wash 50 or more *Interahamwe* uniforms in the Renzaho house compound.¹³⁵ The Chamber accepts that time estimates are difficult many years after the events but finds these differences noteworthy. Furthermore, Witness NYT confirmed Witness XXY's testimony that Régis lived in Kanombe with his uncle before the rest of the family moved in.

112. The Chamber has considered the submission that a friendship between Witness XXY and Régis was unlikely in view of the purported age difference between them. It is clear that the witness was 19-20 years old at the time. Defence evidence suggests that Régis was only about 12-13, whereas Witness XXY considered that the difference was only two years. Régis did not testify, and no birth certificate was provided. Leaving aside the exact age difference, Witness NYT's confirmation that Witness XXY and Régis were in the same class is significant. Therefore, the Chamber accepts that they did homework together from time to time, irrespective of whether they were friends or schoolmates. Witness XXY's credibility is not affected by his inability to remember the names and number of Renzaho's children.¹³⁶

113. Witness XXY's testimony is to a certain extent strengthened by Witness ALG's evidence about Renzaho's alleged meetings between late February and early March 1993, informing attendees of covert military training for *Interahamwe*. This part of Witness ALG's

¹³² Witness ABC referred to July 1993, Witness VDD said it was in September 1992, while Witness HAL stated that Régis joined in the 1993 school year. According to Witness NYT, Régis was at the school in the 1992-1993 school year. It is recalled that Witness XXY said that Régis joined the school in September 1993.

¹³³ Witness HAL testified that work started in 1990 and ended in 1992, while Witness MAI indicated a period from early 1992 to early 1993.

¹³⁴ Witnesses HAL, VDD and ABC stated that the family moved in May 1992, whereas Witness MAI mentioned June or July 1993. Both Witness ABC and Witness MAI said that this coincided with the confirmation of the Renzaho children, yet each witness gave a different month and year for the move.

¹³⁵ Witness HAL testified that the house had a very small courtyard at its entrance, while Witness NYT stated that the courtyard was at the rear.

¹³⁶ The Defence disputes Witness XXY's evidence about where he stayed, that Régis was member of the scout movement, played basketball and knew how to drive. In the Chamber's view, these submissions about collateral matters do not affect the witness's credibility. Similarly, exactly where Witness XXY was living is not important. Some of the discrepancies between the testimonies may stem from the different terms used ("hostel", "home", etc.).

testimony appeared consistent and credible.¹³⁷ Although it does not relate to any specific acts of encouragement by Renzaho it shows that he had inside knowledge and supported military training of the *Interahamwe*.

114. The Chamber is not persuaded by the testimony of Defence Witnesses Nyetera, Butera and ABC to the effect that supporting the *Interhamwe* would have been a violation of a prefect's obligation to maintain neutrality. Although this may have been the legal situation it does not exclude that some prefects may have supported individual parties in reality. Some support for this view is found in a working document elaborated by the MDR steering committee in May 1992. It includes Renzaho's name on a list of persons considered to be in charge of recruiting army and gendarmerie reservists to join the *Interahamwe*.¹³⁸ Renzaho rejected the contents of the document as baseless.¹³⁹ The Chamber notes that the MDR was in opposition to the MRND, and that the document appears to be an expression of political propaganda. It therefore carries limited weight. However, the document does indicate that Renzaho was perceived as being affiliated with a political organisation - the MRND - and in favour of recruitment of *Interahamwe*.¹⁴⁰

115. Having assessed the totality of the evidence, the Chamber is satisfied that Renzaho encouraged students in Kanombe to join the *Interahamwe* in May 1993, and that he encouraged and permitted *Interahamwe* to meet at his house in late 1993 for the purpose of receiving military training. This said, it observes that support to a youth organisation does not in itself constitute a crime under the ICTR Statute. Furthermore, Witnesses XXY and ALG did not testify that Renzaho at that juncture made statements against the Tutsis or that the purpose of the training was to kill Tutsis.

¹³⁷ Witness ALG, who was arrested in Rwanda in 1998 and provisionally released in 2005, was still awaiting trial for genocide when he testified. The Chamber has taken into account that his evidence may have been influenced by a wish to positively affect the proceedings against him in Rwanda (see, for instance, II.2) but does not consider this decisive in the present context.

¹³⁸ Prosecution Exhibit 115 ("*Interahamwe za Muvoma* or The MDR Party Hardliners", Working document for the MDR Steering Committee, dated 14 May 1992 and signed by Dr. Anastase Gasana, Member, MDR Political Bureau. Renzaho is listed in a section entitled "Those charged with recruiting from among the reservists" (pp. 6-7).

¹³⁹ Renzaho testified that Gasana, who had belonged to the MRND party before moving to the MDR, was forced to produce documents of this nature, and that the working document had been presented in Brussels in 1992 during the political parties' negotiations with the RPF. As of 14 May 1992, the government was led by a prime minister from an opposition party, whereas Renzaho himself lacked political support. T. 30 August 2007 pp. 32-33. In the Chamber's view, this does not explain why he should unjustifiably be perceived as involved in recruitment to the *Interahamwe*.

¹⁴⁰ The Chamber has noted the Defence submission that Witness XXY refused to disclose his diary but does not consider this significant. T. 10 January 2007 p. 48 ("I cannot give it to you for you to become privy to all my secrets").

2. ROADBLOCKS IN KIGALI-VILLE PREFECTURE

2.1 Introduction

116. The Indictment alleges that, from 7 April to 17 July 1994, soldiers, gendarmes, militia and demobilised soldiers, under Renzaho's instructions and effective control, constructed and manned roadblocks throughout Kigali-Ville prefecture, including at Gitega and near the ONATRACOM facility. Around 10 April, Renzaho convened a meeting at the Kigali-Ville prefecture office where he ordered local officials to set up roadblocks to identify and kill Tutsis. Furthermore, on diverse dates in April and May 1994, he asked local officials to remain vigilant at roadblocks. He gave instructions to construct and man roadblocks during regular broadcasts on Radio Rwanda. These checkpoints were then used to intercept, identify and kill Tutsis. Reference is made to Witnesses AFB, UB, AWE, ALG, GLJ, Corinne Dufka and Expert Witness Alison Des Forges.¹⁴¹

117. The Defence maintains that the Indictment lacks sufficient detail to provide adequate notice of these allegations. It further argues that Renzaho did not order the establishment of roadblocks, which were spontaneously established by the civilian population. In radio broadcasts, he gave instructions to dismantle roadblocks and denounced persons perpetrating crimes at them. Renzaho lacked the capacity and resources to exert any control over the roadblocks. The Defence relies on Witnesses AIA, PPV, BDC, PPO, HIN, GOA, PGL, Antoine Théophile Nyetera and Expert Witness Bernard Lugan.¹⁴²

2.2 Evidence

Prosecution Witness AFB

118. Witness AFB, a Hutu employee in public service, testified that on 8 April 1994, he and four police officers escorted Renzaho, who was in a different vehicle, as they travelled through Kigali. Between 2.00 p.m. and 3.00 p.m., they passed six roadblocks. Renzaho and his escort experienced no difficulties, probably because he was the highest administrative authority in the prefecture.¹⁴³

119. Renzaho's convoy first went to Rose Karushara's house, in Kimisagara sector, where they saw her at a roadblock together with approximately 20 or 30 *Interahamwe* armed with firearms, clubs, machetes and knives. The witness also observed a group of persons sitting

¹⁴¹ Indictment paras. 7-10, 25-27; Prosecution Closing Brief paras. 32, 46, 55, 75-77, 83, 91, 101-104, 108-127, 129, 152, 154, 162-164, 170, 173, 192-193, 201, 204, 213-214, 228, 253, 264, 276, 302, 317, 325 (b, f), 340-341, 361, 366, 405, 438, 450, 509-519, 521, 523-527, 529; T. 14 February 2008 pp. 14-15, 18-19; T. 15 February 2008 pp. 14-15. The accounts of Witnesses UL, SAF, KBZ, BUO and UI are considered in the Chamber's deliberations but as their testimonies only indirectly relate to Renzaho's conduct concerning roadblocks, they are not summarised in the evidence section.

¹⁴² Defence Closing Brief paras. 9, 11, 28-32, 106-108, 112-121, 133-134, 145-149, 162-164, 303-317, 718-799, 1035-1043, 1111-1128; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 753.1-753.7; T. 17 May 2007 pp. 3-4; T. 14 February 2008 pp. 46-51, 53-58; T. 15 February 2008 pp. 16-18. The Defence also refers to Witnesses UT, BOU, RGI, MAI, KRG, WOW and Jean-Baptiste Butera. Their accounts are considered in the Chamber's deliberations but not included in the evidence section for the reasons indicated in the previous footnote.

¹⁴³ T. 8 January 2007 pp. 69, 86, 88, 94-95; T. 9 January 2007 p. 17; Prosecution Exhibit 64 (personal identification sheet).

nearby on the ground, whom he believed to be Tutsi because the Tutsis were being targeted. Renzaho remained in his vehicle and spoke with Karushara. He then talked with the *Interahamwe* who had gathered around him, telling them to keep doing their work. In the witness's opinion, "[Renzaho] was asking them to kill". The *Interahamwe* requested more weapons and Renzaho agreed to provide them.¹⁴⁴

120. The convoy next stopped at a second roadblock in Nyakabanda sector. Renzaho spoke with the area's recently appointed *conseiller* as well as the armed *Interahamwe* there. The *Interahamwe* asked Renzaho for additional guns, and he promised to obtain them. The witness saw dead bodies as the convoy passed a third roadblock, manned by *Interahamwe* and two Josephite brothers on the road to Nyamirambo near the Josephite monastery. After returning to town, the witness again saw corpses as the convoy passed through a roadblock. It was manned by gendarmes with guns and *Interahamwe* with traditional weapons and located at the Nyamirambo gendarmerie brigade near Club Raffiki and opposite the Petrorwanda petrol station.¹⁴⁵

121. During their trip on 8 April, Renzaho also repeated his instructions to "work" at a roadblock, manned by armed *Interahamwe*, at ONATRACOM near a mosque in Gitega sector. This checkpoint had previously been staffed by soldiers on 7 April. In addition, the witness saw the Gitega *conseiller*, *Interahamwe* and many dead bodies at another roadblock, which the convoy passed near the Gitega sector office. Renzaho agreed to assist the *Interahamwe* at this roadblock dispose of the corpses.¹⁴⁶

122. Around noon on 12 April, Witness AFB and policemen, loaded with weapons, went with Renzaho and Kabiligi to the roadblock near Protais Zigiranyirazo's residence, which was manned by soldiers and *Interahamwe*. Weapons were distributed there. Kabiligi ordered additional distributions. The witness and policemen subsequently gave two or three weapons to whoever identified himself as the chief at roadblocks, including one near Karushara's house in Kimisagara sector, and at roadblocks in Nyakabanda, Nyamirambo and Biryogo sectors. They returned to the prefecture office at about 3.00 p.m., where they found Renzaho.¹⁴⁷

Prosecution Witness UB

123. Witness UB, a Hutu and former local official in Kigali-Ville prefecture, stated that he attended an "extended security meeting" that Renzaho convened at the Kigali-Ville prefecture office on 10 or 11 April 1994. At the meeting, the witness saw the *conseillers* from Kigali-Ville prefecture, *responsables de cellule*, soldiers, police officers, and representatives of the recognised political parties and their youth wings, including the *Interahamwe*. Jean Bizimana, *bourgmestre* of Nyarugenge commune, was not present. Renzaho opened the meeting by stating that the *Inkotanyi* had assassinated President Habyarimana. The *conseillers* informed the prefect about the killing, looting, and raping of Tutsis, and that party officials had erected roadblocks. He instructed them to set up additional roadblocks where they did not exist to confront their enemy, "the Tutsi". After this meeting, roadblocks became

¹⁴⁴ T. 8 January 2007 pp. 86-87; T. 9 January 2007 p. 32.

¹⁴⁵ T. 8 January 2007 pp. 87, 89-90.

¹⁴⁶ *Id.* pp. 86-94.

¹⁴⁷ T. 9 January 2007 pp. 5-9, 17, 20. Evidence about weapons distribution is discussed in greater detail elsewhere (II.3).

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more prevalent and everyone passing through these roadblocks had to show their identity cards. The roadblocks in the witness's neighborhood were used to persecute *Inkotanyi* and their accomplices, the Tutsis.¹⁴⁸

Prosecution Witness AWE

124. Witness AWE, a Hutu, was a local official in Kigali-Ville prefecture. He stayed home after the plane crash until 9 April 1994, when a *communiqué* from Renzaho was broadcast on the radio, summoning a meeting of *conseillers* as well as the *bourgmestre* of Nyarugenge, Jean Bizimana, at the prefecture office. Immediately after the announcement of the President's death, political leaders began setting up roadblocks in Cyahafi.¹⁴⁹

125. The meeting took place in the prefecture's meeting room. *Conseillers*, *bourgmestres* (except for Jean Bizimana), soldiers and some gendarmes attended the meeting. Renzaho explained that the enemy was the RPF as well as their accomplices, which the witness understood to mean the Tutsis. Renzaho then ordered those in attendance to erect more roadblocks in their sectors where there were none to prevent the "*Inyenzi*" or "*Inkotanyi*" from infiltrating the city and joining their accomplices, the Tutsis. In the witness's understanding, the roadblocks intended to restrict the movement of Tutsis so they could be located and killed. He felt that the "most urgent issue" at the meeting was to "implement the plan", which was the genocide. *Conseillers* spoke of the situations in their sectors. After the meeting, the witness directed *responsables de cellule* to establish roadblocks where there were none. He did not personally set up any.¹⁵⁰

Prosecution Witness ALG

126. Witness ALG, a Hutu and local official in Kigali-Ville prefecture in 1994, remained at home after the plane crash until about 12 April 1994, when he received a "*communiqué*" from Renzaho requesting prefecture officials to report to work. He observed gendarmes, civilians, and *Interahamwe* manning various roadblocks. At the prefecture office, Renzaho told the witness that night patrols and roadblocks had been established in order to keep *Inkotanyi* from entering the city. Having left the prefecture office, the witness went through sectors within Nyarugenge commune and saw citizens, *Interahamwe* and soldiers manning roadblocks. Individuals' property was taken and others were killed there. He observed soldiers and policemen manning roadblocks in neighbourhoods around the prefecture office and policemen at a roadblock near its entrance.¹⁵¹

¹⁴⁸ T. 23 January 2007 pp. 8-9, 11-12, 13 (quoted), 14-17; T. 24 January 2007 pp. 2-3, 15-16; Prosecution Exhibit 69 (personal identification sheet). Witness UB had lodged an appeal against his conviction for genocide and was awaiting a determination from the Rwandan Supreme Court when testifying. T. 23 January 2007 p. 2.

¹⁴⁹ T. 31 January 2007 pp. 11-14, 33-35, 37; Prosecution Exhibit 80 (personal identification sheet). Witness AWE was a detainee awaiting to be tried for genocide when he appeared before the Tribunal. T. 31 January 2006 pp. 11-12, 51-52, 54-56.

¹⁵⁰ T. 31 January 2007 pp. 13-14, 17, 35-39, 46, 56-57.

¹⁵¹ T. 10 January 2007 p. 56; T. 11 January 2007 pp. 17, 19-20, 22-24, 29, 43-44; T. 12 January 2007 p. 28; Prosecution Exhibit 67 (personal identification sheet). When testifying, Witness ALG was awaiting trial in Rwanda for his role during the 1994 events. He was accused of genocide. T. 10 January 2007 p. 64. Witness ALG indicated on a map the numerous roadblocks he observed in Nyarugenge commune on 12 April 1994. T. 11 January 2007 pp. 43-44; Prosecution Exhibit 5 (map of Kigali).

127. The witness learned from the *conseillers* of Biryogo, Nyamirambo and Cyahafi sectors and from Pierre Claver Nyirikwaya, *bourgmestre* of Kacyiru commune, that Renzaho had convened meetings on 9 and 11 April. During the meeting of 9 April, Renzaho urged those present to work actively in the fight against the *Inkotanyi*, to sensitise the population, and to set up roadblocks.¹⁵²

128. After 12 April, Renzaho convened three to four additional meetings later that month, which he referred to as "security meetings". Those in attendance, depending on availability, included high-ranking military officials, *conseillers*, *bourgmestres*, prefecture functionaries, militia leaders, including *Interahamwe*, and Kigali-Ville political party officials. Many of the invitees were not members of the "prefectural security council", according to the applicable legislation. Renzaho called for the strengthening of roadblocks and for night patrols to monitor the infiltration of *Inkotanyi*. The witness informed Renzaho of the identities of persons that were committing attacks at various locations but his reports were never acted upon.¹⁵³

Prosecution Witness GLJ

129. Witness GLJ, a Hutu and local official in Kigali-Ville until his dismissal in April 1994, testified that he was present at a meeting convened by Renzaho on the morning of 16 or 17 April at the prefecture office. The gathering was more expansive than a typical "prefectural security council" provided for by the applicable legislation. Those attending included individual representatives of the *conseil urbain* (the *bourgmestres*, *conseillers* and *responsables de cellule* in the prefecture), representatives of the army and the commander of the civil defence program.¹⁵⁴ At least one representative of each *cellule* was present. Renzaho, who was in military attire, passed on the decisions made at a prior meeting to erect roadblocks and to check identity documents of passers-by. Anyone without a document was to be considered an *Inkotanyi* infiltrator, arrested and handed over to the prefecture police or the gendarmerie brigade. According to the witness, it was clear from the discussions at the meeting that Tutsis were being targeted. He was not aware of nor did he attend any previous meeting of this nature.¹⁵⁵

130. After this meeting, every *cellule* erected its own roadblocks and arrested persons who did not have identification papers or appeared to be Tutsis. Killings occurred at these

¹⁵² T. 11 January 2007 pp. 29-32, 41, 67; T. 12 January pp. 28-30.

¹⁵³ T. 11 January 2007 pp. 35-37, 39-41, 67; T. 15 January 2007 pp. 7-14. Prosecution Exhibit 14 (*Loi no. 35/90 22 juin 1990 portant organisation administrative de la préfecture de la ville de Kigali*). Article 17 sets forth the members of "Comité urbain de sécurité". Witness ALG stated that members of the security committee by law who did not attend such meetings included the President of the Tribunal of First Instance and the Public Prosecutor. T. 15 January 2007 pp. 10, 12. The hierarchy of the Kigali-Ville prefecture placed the urban council at the top, followed by the prefect and then the security committee. T. 12 January 2007 p. 7.

¹⁵⁴ Prosecution Exhibit 14 (*Loi no. 35/90 22 juin 1990 portant organisation administrative de la préfecture de la ville de Kigali*). Article 17 sets forth the composition of the "Comité urbain de sécurité", and Article 7 lists the members of the "Conseil urbain". See also Prosecution Exhibit 94A (expert report of Alison Des Forges) p. 11 n. 22.

¹⁵⁵ T. 22 January 2007 pp. 13-14, 18-23, 25-29, 50-52, 54-55; Prosecution Exhibit 68 (personal identification sheet). When testifying, Witness GLJ had been detained in Rwanda for over 12 years, awaiting trial. T. 22 January 2007 p. 13.

checkpoints. The number of roadblocks erected by *Interahamwe* in Nyamirambo sector grew from about six between 7 and 10 April to approximately 30.¹⁵⁶

Prosecution Witness Corinne Dufka

131. Corinne Dufka, an American journalist for Reuters news agency, made three separate trips to Kigali between May and the end of July 1994 while covering the conflict. On her first trip, between 10 and 14 or 15 May, she passed approximately 50 roadblocks which increased in concentration between the Burundian border and Kigali. They were each manned by five or six often inebriated individuals in civilian dress, armed with various different types of guns and traditional weapons. They would search her vehicle, look at her passport and frequently ask if she were Belgian. The encounters were very tense and frightening.¹⁵⁷

132. During Dufka's second trip, from 18 to either 20 or 21 May, an individual at the first major checkpoint in Kigali immediately placed a large pistol to her head and asked if she were Belgian. Dufka also recalled seeing a militiaman in a white doctor's coat splattered with blood and others carrying nail studded clubs still bearing flesh and hair. On this trip, Dufka facilitated her passage through roadblocks by noting that she was reporting on the shelling of a hospital by the RPF.¹⁵⁸

133. On her second trip, Dufka also visited the Sainte Famille church to take pictures of Tutsi refugees inside. Access to the church was guarded by a roadblock manned by eight to 10 men in civilian clothes. When she asked if she could photograph the checkpoint, Father Wenceslas Munyeshyaka demurred and took her to a different, larger one in Kigali, which was manned by around 30 persons and approximately 10 to 15 minutes away but within Kigali. En route, Munyeshyaka easily facilitated their passage through several different roadblocks. Dufka took a number of pictures at the large roadblock, the only one she photographed during her visits, and spoke with Robert Kajuga, whom Munyeshyaka identified as the militia leader. Kajuga told Dufka that they were trying to defend Kigali from the RPF. She smelled alcohol on the militiamen's breath. She also observed one playing with the pin of a grenade as well as others jumping around the roadblock and shouting excitedly.¹⁵⁹

Prosecution Expert Witness Alison Des Forges

134. Alison Des Forges, an expert in Rwanda history, stated that *Interahamwe* and Rwandan army soldiers erected roadblocks in Kigali from 7 April 1994 onwards, and that militia were active in killing civilians. Based on her research, she concluded that administrators were charged with the task of disseminating and enforcing orders, including those related to roadblocks. In her view, the use of an administrative system to disseminate instructions to set up roadblocks is a key factor when analysing the genocide. Unlike the RTLM, Radio Rwanda was the voice of the government, used by prefects and authorities at

¹⁵⁶ T. 22 January 2007 pp. 22-23, 37-38.

¹⁵⁷ T. 30 January 2007 pp. 1-4.

¹⁵⁸ *Id.* pp. 3-5.

¹⁵⁹ *Id.* pp. 8-13, 17, 19-23; Prosecution Exhibit 77 (33 photographs taken by Corinne Dufka). Dufka's third and final trip began on approximately 23 May and she stayed for six weeks. She returned to the Sainte Famille church to take more pictures but did not testify with respect to roadblocks in connection with this visit. See T. 30 January 2007 pp. 13-14, 17-18.

the national level to deliver orders to the population. Renzaho's message on Radio Rwanda on 12 April included a plea to the civilian population to set up roadblocks. Des Forges found this significant. It was a directive to "the most local level" and to those who shared the ideas of the government to cooperate with it by establishing roadblocks to impede passers-by and check identity papers.¹⁶⁰

135. Des Forges commented on a Radio Rwanda broadcast of 18 June during which Renzaho stated that those at roadblocks had to check identity cards in order to prevent RPF infiltrators using Hutu identity cards. In her view, his words acknowledged that Hutu civilians would not encounter the same difficulty at checkpoints as their Tutsi counterparts, and were indicative of the discriminatory intent behind the establishment of roadblocks. The broadcast also illustrated the continued existence of the civil administration throughout the events and Renzaho's knowledge of the violence occurring at roadblocks. For instance, there is a passage where he implores the population to stop robbing traders, merchants and food producers passing through them. She suggested that the lethal force authorities employed to prevent and punish criminal acts such as looting was not used to prevent the killing of Tutsi civilians.¹⁶¹

136. Des Forges also pointed to excerpts from a 6 May interview broadcast on Radio Rwanda, where Renzaho contrasted those with training who could administer roadblocks properly with undisciplined and overzealous civilians who chose to administer roadblocks and kill blindly. The interview showed that he was capable of providing very specific instructions regarding the operation of roadblocks, and that if he wanted to identify those who were at risk, he was capable of doing so.¹⁶²

Renzaho

137. Renzaho testified that he did not order the establishment of roadblocks in Kigali-Ville. The civilian population erected them spontaneously after the announcement of President Habyarimana's death, and he had no means to abolish them. Their purpose was not to massacre Tutsis. On 8 April 1994, he attended a meeting of the crisis committee at about 9.00 a.m., and then – in Renzaho's words – an "urban council" security meeting from 9.30 a.m. until 2.00 p.m. In attendance at the second meeting were: Renzaho, *Bourgmestre* Munyansanga, *Bourgmestre* Pierre Claver Nyirinkwaya, Major Ngirabatware of the *gendarmerie*, and the *conseillers* who were available, including Amri Karekezi and Célestin Sezibera. The head of intelligence at the Ministry of National Defence, Colonel Rutayisire, and other military officers observed the meeting. No members of the political parties

¹⁶⁰ T. 5 March 2007 pp. 7-10, 11 (quoted), 13; T. 6 March pp. 10-11; Prosecution Exhibit 93 (personal identification sheet); Prosecution Exhibit 50 (transcript of Radio Rwanda broadcast on 12 April 1994) p. 9; Prosecution Exhibit 94A (expert report of Alison Des Forges) pp. 10-11.

¹⁶¹ T. 5 March 2007 pp. 12-13, 35-37, 38 (stating that preventing infiltrations at roadblocks was a legitimate use of force only insofar as its aim was to identify a "combatant force", whereas the terms "controlling" or "preventing infiltration", which was used by authorities, covered for the activity of singling out Tutsis on the basis of ethnicity and, in most cases, handing them over to be killed); Prosecution Exhibit 63 (transcript of Radio Rwanda interview with Renzaho, 18 June 1994).

¹⁶² T. 5 March 2007 pp. 44-47; Prosecution Exhibit 55 (transcript of Radio Rwanda interview with Renzaho, 6 May 1994). In the interview, Renzaho described problems of mistaken identification of individuals as *Inyenzi* due to identity cards from neighbouring communes such as Rubongo and Bucyimbi bearing the mark "Register of Citizens". He requested that higher authorities should conduct an investigation to determine any wrongdoing if there was doubt as to the identification card's validity.

attended. The participants discussed how to restore order in the communes. A crisis committee at the prefecture level was established. Of the 250 police officers, only 45 and their commander, Nyamuhimba, were present at the prefecture. Police officers were assigned, among other duties, to assist *conseillers*. With respect to roadblocks, Renzaho "requested that the officials try to control the situation in the *cellules*, in the sectors, in the communes". While no representatives from political parties were present, Renzaho asked communal authorities "to involve all the groups that had any influence on fringes of the society" to maintain local security. He denied that he toured roadblocks on 8 April between 2.00 and 3.00 p.m., as alleged by Witness AFB.¹⁶³

138. After 8 April, Renzaho continued to meet with *bourgmestres* to find out what was happening. He also met with the *bourgmestre* of Nyarugenge commune and his *conseillers* to ensure that actions were being taken to control roadblocks. Members of political parties were not present at these meetings.¹⁶⁴

139. In a *communiqué* broadcast on Radio Rwanda on 10 April, Renzaho asked the population to dismantle roadblocks during the day, but they ignored his request as roadblocks were spreading across the entire city. He learned after 10 April that some persons were using roadblocks to target and kill Tutsis and testified that, in this context, it would have been criminal to establish roadblocks with the purpose of killing innocent Tutsi civilians. In another *communiqué* of 12 April, Renzaho did not address the dismantling of roadblocks as their existence was now widespread, but instead urged civilians to block *Inyenzis* at them and to remain vigilant in carrying out patrols. He acknowledged that he had told people to remain at roadblocks on several occasions, including in another *communiqué* broadcast of 14 April, as they represented the only means of guaranteeing the security of Kigali. The purpose of these instructions was to avoid that the RPF advanced into the city, and that infiltrators were apprehended at roadblocks. Renzaho was unaware of any infiltrators being arrested at roadblocks because he did not receive any such person at the prefecture office. His instructions were repeated in a Radio Rwanda broadcast of 19 April, where he "called, once again, on the residents of Kigali town to step up their efforts in order to ensure their security, manning roadblocks, and conducting night patrols to prevent the enemy infiltrations". Renzaho saw the population with firearms at roadblocks but was unaware of their origins.¹⁶⁵

140. Renzaho issued instructions on the radio for those manning roadblocks to check identity cards as well as *laissez-passers*. Identity cards had been checked at roadblocks in prior conflicts, possibly because identity cards were standardised according to law. His radio instructions on 18 June to check identity cards at roadblocks were issued in the context of a war and were intended to combat the infiltration of enemy agents into Kigali. He denied that this was tantamount to incitement to "hunt down Tutsis". The message was broadcast near the end of the conflict in Kigali and in the midst of a refugee exchange operation between

¹⁶³ T. 27 August 2007 pp. 60 (quoted), 61-65; T. 28 August 2007 pp. 2-3, 8, 9 (quoted), 19; T. 30 August 2007 pp. 3, 27-28, 53, 58, 60; T. 3 September 2007 pp. 21-22. The crisis committee at the prefecture level was composed of Renzaho, sub-prefect Jean-Baptiste Butera, secretary Alexis Bisanukuli and the "*bourgmestre* who was present, and other *bourgmestres* if they could join". T. 28 August 2007 p. 3.

¹⁶⁴ T. 28 August 2007 pp. 13-14, 25-26; T. 30 August 2007 pp. 27-28.

¹⁶⁵ T. 28 August 2007 pp. 11, 13-14, 51-52; T. 30 August 2007 pp. 54, 57-61, 63-64; T. 31 August 2007 pp. 1-2; T. 3 September 2007 pp. 6-7; Prosecution Exhibit 49 (transcript of Radio Rwanda, 11 April 1994, broadcasting *communiqué* dated 10 April 1994) p. 5; Prosecution Exhibit 50 (transcript of Radio Rwanda interview, 12 April 1994) p. 9; Prosecution Exhibit 51 (transcript of Radio Rwanda *communiqué*, 14 April 1994) p. 10; Prosecution Exhibit 52 (transcript of Radio Rwanda *communiqué*, 19 April 1994) pp. 25-26.

both sides, so inciting the population to violence would have been senseless. The checking of identity cards was aimed at ensuring increased vigilance at roadblocks and preventing innocent people from being mistreated. Renzaho acknowledged that it "was possible" that Tutsi civilians were viewed as accomplices to the RPF. He was aware that civilians with Tutsi identity cards or civilians with Tutsi features were being killed at roadblocks and acknowledged it was difficult for them to move around.¹⁶⁶

141. According to Renzaho, he did not know whether he was the most senior governmental official based permanently in Kigali after the interim government left to Gitarama on 12 April. He met with *conseillers* and *bourgmestres* several times between April and July. Renzaho said that he was unaware if *Conseillers* Rose Karushara, Odette Nyirabagenzi or Nyarugenge's primary education inspector, Angeline Mukandituye, played leading roles in *Interahamwe* activities during this period. He was not the unofficial leader of the *Interahamwe* in Kigali and denied meeting with them during this period.¹⁶⁷

Defence Witness AIA

142. Witness AIA was a member of the Kigali-Ville police force. On 8 April 1994, he accompanied *conseiller* Amri Karekezi around 10.00 a.m. to a meeting at the prefecture office. Karekezi had heard a *communiqué* broadcast on the radio that Renzaho was summoning *bourgmestres*, *conseillers* and policemen to the office. The meeting was attended by Biryogo's and Muhima's *conseillers*; Odette Nyirabagenzi, *conseiller* of Rugenge sector; Mbyariyehe, *conseiller* of Nyarugenge sector; Pepe Kale, *conseiller* of Gitega sector; Jean Bizimana, *bourgmestre* of Nyarugenge commune; and between 40 to 45 police officers, including Major Nyamuhimba. The witness did not see the *bourgmestres* of Kicukiro and Kacyiru communes and no *Interahamwe* were present. During the meeting, he heard Renzaho report that killing and looting was occurring, and that those present needed to assist in restoring security and preventing these activities. Renzaho also told the police officers to follow the instructions given by the *conseillers* where they were deployed.¹⁶⁸

143. The witness observed a roadblock in Gitega sector on 8 April. Following an address by the interim Prime Minister Jean Kambanda, Karekezi, who said that he was acting on the instructions of "the government", pointed out specific locations in Biryogo sector where roadblocks should be erected. The address indicated that the *Inkotanyi* had violated the Arusha Accords and that persons were to set up roadblocks to intercept "people who had infiltrated". The population, including *Interahamwe*, administered the checkpoints, and to pass through roadblocks in Biryogo sector, one had to present identification or a government issued authorisation. Once they had been erected, "authorities" issued instructions "to the effect that Tutsis should be arrested and killed". Hutus and other persons who were not identified as Tutsis could pass, whereas those identified as Tutsis at roadblocks were killed. According to the witness, the population was told to seek out "infiltrators" at the roadblocks. He observed the killing of a lieutenant named Mudenge at a roadblock at ONATRACOM, at

¹⁶⁶ T. 29 August 2007 pp. 2, 3-4 (quoted); T. 30 August 2007 pp. 19, 35, 60-61; T. 31 August 2007 pp. 2-6; Prosecution Exhibit 56 (transcript of Radio Rwanda interview, 10 May 1994) p. 12; Prosecution Exhibit 62 (transcript of radio broadcast of 18 June 1994) p. 4.

¹⁶⁷ T. 29 August 2007 p. 60; T. 30 August 2007 pp. 23-24, 27, 35-36, 42-43.

¹⁶⁸ T. 2 July 2007 pp. 21-22, 23 (see erratum), 24, 35, 46, 51, 54; T. 3 July 2007 pp. 4, 17-18; Defence Exhibit 66 (personal identification sheet). Witness AIA was arrested in Rwanda in November 1994, detained for a month during an investigation by Nyamirambo brigade, and released. T. 2 July 2007 p. 46.

the border of Gitega and Biryogo sectors, just after he was identified as an infiltrator on RTLM. The witness was unaware of the *Interahamwe* collaborating with any Kigali-Ville authorities, other than *conseillers* and MRND officials.¹⁶⁹

144. Witness AIA recalled Karekezi attending meetings around 12 April and 16 April at the prefecture office. The witness remained in the parking lot during these meetings, but Karekezi would sometimes brief him on what occurred. On one occasion, Karekezi informed him that Renzaho urged the *conseillers* to stop the killing in the sectors and threatened to kill the *conseillers* if this continued. The witness did not observe the head of the Biryogo *Interahamwe*, Suede Ndayitabi, or any *Interahamwe* attending these meetings at the prefecture office.¹⁷⁰

Defence Witness PPV

145. Witness PPV, a Hutu, worked for the urban police in Kigali-Ville prefecture in 1994. He did not observe a meeting at the prefecture office during which a decision was made to set up roadblocks. No public authority ordered the erection of roadblocks and Renzaho did not request their establishment.¹⁷¹

146. The witness did not hear messages being made over the radio by Renzaho. However, he learned from others who heard these speeches that the prefect had informed the population to remove roadblocks and to stop the violence and looting. Renzaho did not approve of the killings at roadblocks, but the urban police lacked the resources to prevent crimes committed at them, and no specific killers were identified. The population, which had erected roadblocks spontaneously, was furious, and it was not possible to stop them from establishing checkpoints. The strength of the heavily armed militia groups that manned the roadblocks and the limited number of police officers available made it impossible to dismantle them. The witness was often told that people regarded the prefect to be an accomplice because of the messages he was broadcasting and the Tutsi staff working at the prefecture office.¹⁷²

Defence Witness BDC

147. Witness BDC, a Hutu, lived in Kicukiro commune. From 15 April 1994, he began working with the ICRC in Kigali and was briefed on the events that had occurred from 10 April until his arrival. He worked with Philippe Gaillard, the ICRC delegate.¹⁷³

148. Roadblocks appeared to be set up spontaneously and in a disorganised manner. The witness denied Renzaho was in charge of them. Militiamen positioned at them were not affiliated with any political party or Renzaho, although he conceded that those manning roadblocks recognised the authority of *Interahamwe* leader Robert Kajuga. They appeared to be desperate young people under the influence of narcotics and alcohol. These individuals were armed with "bladed" and "automatic" weapons. The persons staffing the roadblocks

¹⁶⁹ T. 2 July 2007 pp. 27, 35-37, 56-58; T. 3 July 2007 pp. 12-13. Witness AIA acknowledged generally that killings in Kigali-Ville prefecture and in Biryogo sector were committed by, among others, prefecture police and gendarmes. T. 3 July 2007 pp. 5-6.

¹⁷⁰ T. 2 July 2007 pp. 31, 35, 40-41, 54-56; T. 3 July 2007 pp. 6-7, 10-11, 17-18.

¹⁷¹ T. 4 June 2007 p. 78; T. 5 June 2007 pp. 12-13; Defence Exhibit 56 (personal identification sheet).

¹⁷² T. 5 June 2007 pp. 14-16, 27, 39-40, 42-44. Witness PPV mentioned checkpoints at Gitikingoni, Gitega and Biryogo as roadblocks it would have been dangerous to attempt to dismantle. T. 5 June 2007 pp. 15-16.

¹⁷³ T. 4 June 2007 pp. 2-4, 7; Defence Exhibit 51 (personal identification sheet).

varied from being very aggressive to allowing passage easily. The witness observed less than 30 police officers, armed with "obsolete" weapons, in Kigali-Ville prefecture. The police would not have been able to overcome the numerous, organised militia who were at various roadblocks.¹⁷⁴

149. Militia removed and killed injured persons being transported by the ICRC at roadblocks and stole food as well. This stemmed in part from RTLM broadcasts suggesting that the Red Cross was transporting "the enemy" disguised as being wounded. The ICRC was perceived as attempting to save "the enemy" and persons the militia had targeted for extermination. Around the end of April, Witness BDC asked Renzaho whether he could help the ICRC move more easily but was told that he did not have authority over the militia. The witness subsequently obtained assistance from *Interahamwe* President Robert Kajuga and his deputy, Rutaganda, which allowed ambulances to move around with less difficulty (II.5.1).¹⁷⁵

Defence Witness PPO

150. Witness PPO, a Hutu, was a senior government official in Kigali-Ville prefecture in 1994. He said that roadblocks were established as early as 7 April. They were disorganised with no person in charge. The youth manning them appeared drunk and were carrying grenades, automatic weapons and knives. These checkpoints were numerous and found as close as 10 metres apart. Tutsis were the primary targets, but there were also Hutu victims. The killings were based on political beliefs, regardless of ethnicity. Renzaho did not have the resources available to put an end to the massacres, as the persons at roadblocks outnumbered the communal police by nearly "100 times" and were better armed.¹⁷⁶

151. The witness's work for the prefecture required him to travel daily from 8.00 a.m. until at least 5.00 p.m. He therefore had little contact with Renzaho. Despite having official documents from Renzaho and moving about with a uniformed police officer armed with a Kalashnikov, he continued to experience difficulties at the roadblocks. He would get through them by flattery and paying the person who approached the vehicle. At a roadblock near the *Banque nationale du Rwanda*, the witness was arrested, subjected to "humiliating acts", and almost beaten. He reported this incident to Renzaho, making him so angry that he stated: "I am fed up with these people. I am fed up with these roadblocks. What am I to do in order to dismantle them? What can I do in order for them to disappear?" Renzaho could not have ordered the erection of roadblocks because, if he had, those manning them would have

¹⁷⁴ T. 4 June 2007 pp. 16 (quoted), 17-18, 19 (quoted), 21, 35, 55-56, 65.

¹⁷⁵ T. 4 June 2007 pp. 17 (quoted), 18-21, 35, 55, 57 (quoted), 58, 64-65. Witness BDC was unsure if the name was Rutaganda or Rutwenga. T. 4 June 2007 p. 57. Witness BDC confirmed that an ICRC report of 15 April 1994 indicated that six individuals were taken from a Red Cross ambulance and killed in front of Rwandan army soldiers. T. 4 June 2007 pp. 50-51; Prosecution Exhibit 105 (Update No. 4 on ICRC Activities in Rwanda, 15 April 1994).

¹⁷⁶ T. 4 July 2007 pp. 63, 69; T. 5 July 2007 pp. 7-8, 48, 49 (quoted), 51-52; Defence Exhibit 71 (personal identification sheet). Witness PPO conceded that the prefecture's administration was able to prevent lootings of businesses in the Kigali-Ville commercial centre until the RPF captured the city and prevented an attack on the prefecture office. T. 5 July 2007 pp. 48-49. In the witness's view, the lack of organisation at roadblocks made it difficult to deal with them. T. 5 July 2007 p. 49. Moreover, it was easier to stop looting because it occurred at fixed, centrally placed locations, and therefore required less manpower to guard. T. 5 July 2007 pp. 49, 52-53.

recognised the authority of documents signed by the prefect and of a police officer, and would have let them pass.¹⁷⁷

Defence Witness HIN

152. Witness HIN, a Hutu, lived in Rugenge sector, Kigali-Ville. On the morning of 7 April 1994, he observed the Presidential Guard visit the house of *Conseiller* Odette Nyirabagenzi. When they left around 11.30 a.m., the *responsable de cellule*, Muvunyi, went to all the houses in the neighbourhood and asked the population to erect roadblocks at specific locations to check the movement of the enemy. Based on this, the witness believed that the Presidential Guard had asked Nyirabagenzi to order roadblocks erected. He saw Nyirabagenzi touring the sector to ensure that roadblocks had been set up and to supervise their establishment. She told people to be vigilant and prevent the movement of Tutsis. The witness did not think that Nyirabagenzi was acting on Renzaho's orders in doing so. Rather, she was following up security measures suggested to her by the Presidential Guard. Nyirabagenzi and Renzaho could not have collaborated with each other, because Renzaho did not agree with the *Interahamwe* and had no authority over them.¹⁷⁸

Defence Witness GOA

153. Witness GOA, a Hutu, was in Nyakabanda sector, in Nyarugenge commune in Kigali, in April 1994. The population set up some roadblocks on their own initiative to intercept RPF infiltrators within Nyamirambo commune. Some were erected with the assistance of officials at the sector and cellule levels. The witness did not observe Renzaho chair any meetings in his neighbourhood while in Kigali, nor did he see or hear anything leading him to believe that those manning the checkpoints were working under Renzaho's orders. At "the Gitega" roadblock, the witness observed "self-declared" roadblock leaders such as Gatete Selemani and Ndanda in the company of, and collaborating with, the *conseiller* of Biryogo sector, Amri Karekezi. Moreover, the witness observed Ntwari and Abdou, who were also "self-declared" roadblock leaders, at the Gitega checkpoint. Roadblocks were initially set up as part of a military strategy, but civilians "committed offences" and "mistreated people" passing through them.¹⁷⁹

Defence Witness PGL

154. Witness PGL, a Hutu employee at the Kigali-Ville prefecture office, testified that Renzaho no longer had any authority during the war in 1994. The population was too angered by Habyarimana's death to follow orders and had established roadblocks on their own initiative. A roadblock in the Rugunga area was manned by civilians who appeared inebriated and in disarray, some firing shots in the air. Because Renzaho had not established the roadblocks in Kigali-Ville, he could not give orders to those manning them. He lacked the means to end the killings, as there were less than 20 police officers available. Renzaho's

¹⁷⁷ T. 5 July 2007 pp. 5-6, 7 (quoted), 8 (quoted), 46, 49-50.

¹⁷⁸ T. 9 July 2007 pp. 64, 66-68; T. 10 July 2007 pp. 25, 36-38; Defence Exhibit 73 (personal identification sheet).

¹⁷⁹ T. 6 June 2007 pp. 44-47, 49 (quoted), 50-51, 53-55; Defence Exhibit 62 (personal identification sheet). It is not clear based on Witness GOA's description of the "Gitega roadblock" and of Karekezi's activities if it was situated in Biryogo sector on the route to Gitega sector or if it is in Gitega. See T. 6 June 2007 pp. 47, 49, 54-55.

words over a radio broadcast on 10 May 1994, informing civilians that the law required them to have their identity cards available to present at roadblocks, did not mean that he ordered those manning roadblocks to check identity cards.¹⁸⁰

Defence Witness Antoine Théophile Nyetera

155. Antoine Théophile Nyetera, a descendant of the Tutsi royal family, lived in Nyamirambo sector in Nyarugenge commune until 4 July 1994. Roadblocks in Nyamirambo sector appeared on 10 April in response to the Prime Minister's speech requesting the population to prevent infiltration of their sectors. The sector *conseiller* and *responsable de cellule* ordered that these roadblocks be set up and chose who would man them. The prefect's message on 12 April was that roadblocks not be set up in a haphazard manner.¹⁸¹

Defence Expert Witness Bernard Lugan

156. Bernard Lugan testified that the population spontaneously erected roadblocks on 7 April 1994 as it prepared to protect itself after UNAMIR's disappearance and the movement of the army's elite units from the city to the war front. Renzaho had no physical means to thwart the roadblocks, so he issued a *communiqué* on 10 April calling for the roadblocks to be dismantled, which the population ignored because "there was a state of complete anarchy and law and order had broken down". In a radio broadcast two days later, Renzaho asked the population to set up roadblocks in certain areas. Lugan explained this change in Renzaho's stance towards roadblocks by stating that the military situation changed on 11 April when the RPF expanded its perimeter and tried to invade the south of Kigali town. This led to two developments: more refugees entered Kigali town, increasing concerns about RPF infiltration; and the Rwandan government feared capture and fled Kigali, leaving Renzaho without any resources to restore public order. Lugan described RPF radio propaganda during the war that announced: "We know everything, completely everything about what you are doing, so we are in there, everywhere." This might have impressed upon Kigali residents the notion that the RPF had infiltrated its soldiers in civilian dress inside of the Rwandan army's perimeter.¹⁸²

2.3 Deliberations

157. It is clear that from 7 April 1994, roadblocks were erected throughout Kigali-Ville. Prosecution and Defence witnesses testified to observing roadblocks manned by soldiers at strategic positions throughout the city.¹⁸³ Both parties also led evidence of roadblocks

¹⁸⁰ T. 6 June 2007 pp. 15, 26-28, 33-34, 37, 39-40; Defence Exhibit 61 (personal identification sheet).

¹⁸¹ T. 5 July 2007 pp. 19, 30-31, 41-42; Defence Exhibit 72 (personal identification sheet). Nyetera, formerly Witness BIT, left for Belgium in October 1994 and obtained political asylum there. T. 5 July 2007 p. 42.

¹⁸² T. 4 September 2007 pp. 13, 14 (quoted), 19-20, 21 (quoted), 23-24; Prosecution Exhibit 49 (transcript of Radio Rwanda broadcast on 11 April 1994) p. 5; Prosecution Exhibit 50 (transcript of Radio Rwanda broadcast) p. 9; Defence Exhibit 110 (expert report of Bernard Lugan).

¹⁸³ In addition to the evidence summarised above, see, for instance, Defence Witness UT, T. 24 May 2007 p. 44 (soldiers erected and administered roadblocks located at the exit of battle zones); Defence Witness PPV, T. 5 June 2007 p. 13 (roadblocks were first established by soldiers in close proximity to their military positions); Defence Witness PPO, T. 5 July 2007 pp. 7, 51 (military roadblocks were erected near army camps and strategic positions); Defence Witness BOU, T. 22 May 2007 p. 40 (soldiers manned a roadblock on a road that led directly to the presidential office); Defence Witness PGL, T. 6 June 2007 p. 26 (soldiers manned a roadblock in Kiyovu near the presidential residence).

established and administered by civilians, frequently referred to as *Interahamwe* or militia.¹⁸⁴ The civilians at these checkpoints were armed with various firearms and traditional weapons, and often appeared inebriated and under the influence of narcotics.¹⁸⁵ Searches were conducted, primarily focusing on the identity cards held by the passers-by as well as their physical appearance. Persons without identification were viewed with suspicion. Those identified as Tutsi, or considered as being in opposition to the groups at the roadblocks, were in many instances taken captive or killed.¹⁸⁶

¹⁸⁴ Reference is made to the testimonies of Witnesses AFB, ALG and AIA, described above, as well as Prosecution Witness GLJ, T. 22 January 2007 pp. 22-23, 55 (observed "more than six" roadblocks set up by *Interahamwe*); Prosecution Witness SAF, T. 24 January 2007 pp. 53-55 (*Interahamwe* armed with guns, machetes and clubs manned roadblocks near the Kiyovu Hotel); Defence Witness PPV, T. 5 June 2007 p. 13 (civilians spontaneously erected roadblocks and were often violent); Defence Witness MAI, T. 22 August 2007 pp. 17, 40 (on 12 April, roadblocks were erected about every 15 metres in Muhima).

¹⁸⁵ As stated above, Witness Corinne Dufka took pictures from a roadblock, which depict several, heavily armed persons. See Prosecution Exhibit 77 (33 photographs taken by Corinne Dufka). Several witnesses commented upon them: Witness UB, T. 23 January 2007 pp. 22-23 (photographs 3, 4 and 11 include persons observed at a roadblock on the border of Gitega and Cyahafi, an *Interahamwe* from Nyakabanda sector, and a roadblock on the border of Kimisagara and Cyahafi sectors, respectively); Witness AFB, T. 8 January 2007 pp. 90, 92-94 (photograph 1 is of a roadblock in front of the Gitega sector office manned by *Interahamwe*); Witness GLJ, T. 22 January 2007 pp. 38-39 (photograph 5 depicts an *Interahamwe* at Gitega roadblock and photograph 8 a woman at that roadblock); Witness AWE, T. 31 January 2007 pp. 29-30 (identifying individuals from Cyahafi sector in photographs 4 and 5, an individual from Gitega sector in 13 and noting photograph 2 is taken in Gitega sector); Defence Witness UT, T. 25 May 2007 pp. 20-21 (photographs 1-14 are pictures of a roadblock in Gitega near the school of the postal services). Other relevant evidence include Defence Witness Jean-Baptiste Butera, T. 23 May 2007 pp. 7-10, 28-30 (those manning a roadblock between Masaka and Bicumbi were armed with machetes and spears and one threw a grenade into a crowd as the witness forced his way through the roadblock in his vehicle); Defence Witness RGI, T. 4 July 2007 pp. 7-8 (civilians at roadblocks were heavily armed, often acquiring weapons illegally from army deserters); Defence Witness MAI, T. 22 August 2007 pp. 17, 29 (those staffing a roadblock in Muhima took beer from the vehicle and drank it). See also the testimonies of Witnesses Dufka, PPO and PGL, summarised above.

¹⁸⁶ Prosecution Witness GLJ, T. 22 January 2007 pp. 18, 22 (persons manning roadblocks asked for identification papers and those appearing to be Tutsis were targeted for killing); Prosecution Witness UB, T. 23 January 2007 pp. 11-12, 15 (observed, for example, several dead bodies of Tutsis at roadblocks in Gitega sector around 10 or 11 April 1994); Prosecution Witness SAF, T. 24 January 2007 p. 29 (Tutsis were targeted at roadblocks); Prosecution Witness UL, T. 9 January 2007 pp. 52-53 (the witness was asked to present his identification at roadblocks on 11 April, saw dead bodies at them and it was common knowledge that Tutsis intercepted at roadblocks were killed); Prosecution Witness ALG, T. 11 January 2007 pp. 20, 24-25, 43 (noticed dead bodies near roadblocks on 12 April and had previously heard that people were being killed at roadblocks); Prosecution Witness KBZ, T. 6 February 2007 pp. 48-52, 57 (in May, men in military uniforms at a roadblock between Kicukiro and Kimihurura sectors took five Tutsi women, without identity cards, to the home of the Kimihurura *conseiller*); Prosecution Witness BUO, T. 26 January 2007 pp. 16-17, 26-27; T. 29 January 2007 pp. 4, 8-9, 37-38 (*Interahamwe* in Rugenge sector manned roadblocks there, together with soldiers and gendarmes, and were tasked with stopping and killing Tutsis and persons without identity cards during the day as well as remaining at the roadblocks at night); Renzaho, T. 30 August 2007 pp. 60-61 (those with identity cards indicating they were Tutsis and those who resembled Tutsis were killed at roadblocks); Defence Witness AIA, T. 2 July 2007 pp. 36-37, 56-58 (persons were required to present identification or government issued authorisation at roadblocks and those identified as Tutsis were killed); Prosecution Witness UI, T. 5 February 2007 pp. 65, 67-68, 72-73 (at least 10 out of about 40 mostly Tutsi refugees were removed from a minibus at a roadblock near an Ethiopian restaurant, shot and killed) and Prosecution Exhibit 7 (9 photographs) photograph 5 (photograph of area where roadblock was situated in front of the Ethiopian restaurant); Defence Witness PPO, T. 5 July 2007 p. 48 (Tutsis were primarily targeted at roadblocks, but Hutus were also killed and the killings were based on political beliefs, regardless of ethnicity); Defence Witness PPV, T. 5 June 2007 pp. 39, 44 (Tutsis and accomplices were killed at roadblocks); Defence Witness BDC, T. 4 June 2007 pp. 52-53, 58, 67 (militia checked identity cards and prevented Tutsis from passing roadblocks safely in Kigali but Tutsis who were able

158. The critical issue for the Chamber concerns Renzaho's relationship to the establishment and administration of roadblocks, and his alleged responsibility for the crimes committed at them. The Prosecution submits that Renzaho's authority over roadblocks and support of those manning them follows from evidence of meetings and radio broadcasts, wherein he ordered the establishment of roadblocks and provided instructions on how to administer them. Renzaho's support for roadblocks and knowledge of the killings occurring at them is based on his tour of them on 8 April and his subsequent orders to have bodies removed from the streets of Kigali. It concludes that Renzaho's explanations are contradictory and that Defence evidence corroborates the Prosecution case.¹⁸⁷

159. The Defence suggests that roadblocks were erected spontaneously and in a disorganised manner, as a result of the insecurity and tension caused by the war, and that Renzaho lacked the capability to control them. The Prosecution evidence regarding Renzaho's orders to erect roadblocks is unreliable. By 11 April, the RPF had nearly surrounded the city, and it was complete confusion. Nonetheless, according to the Defence, Renzaho made requests on 10, 12 and 14 April that civilian roadblocks be removed during the day, and in his broadcasts from 7 April to 6 May he made repeated calls for the killings and criminal activity to stop.¹⁸⁸

160. In assessing Renzaho's alleged responsibility for roadblocks within Kigali-Ville, the Chamber discusses separately evidence of his alleged presence at roadblocks; his purported orders to erect roadblocks; and his responsibility for crimes committed at them.

to demonstrate that they belonged to the militia or embraced the militia ideology were able to survive; estimates suggested that, in April, more than 67,000 bodies had been removed from the streets of Kigali); Defence Witness BOU, T. 22 May 2007 p. 42 (saw dead bodies at a roadblock in Muhima sector manned by militia on 12 April); Defence Witness MAI, T. 22 August 2007 p. 39 (persons who looked like Tutsis would be stopped at roadblocks); Defence Witness WOW, T. 4 July 2007 pp. 54-55, 59 (*Interahamwe* forced people to work at roadblocks, which were used to intercept and kill infiltrators, and those who could not prove their identity were detained and disappeared); Defence Witness TOA, T. 6 September 2007 pp. 3, 5-6, 14-15 (on 10 April, the witness, a Tutsi, avoided passing roadblocks en route to Sainte Famille as people were being killed based on their ethnicity; he observed one approximately 150 metres from Saint Famille). See also Prosecution Witness UL, T. 9 January 2007 pp. 58-59, 61, 64-65, 67-69 (corpses were removed from the streets of Kigali to mass graves on Renzaho's and Casimir Bizimungu's instructions). But see Defence Witness HIN, T. 9 July 2007 pp. 67-69 (no Tutsis were killed at a roadblock he manned in Rugenge sector); Defence Witness KRG, T. 6 June 2007 p. 61, T. 7 June 2007 pp. 11-13 (strangers in the neighborhood or foreigners were intended to be identified at roadblocks, and he was unaware of any individual at his Rugenge sector roadblock being killed); Defence Witness PGL, T. 6 June 2007 p. 27 (the witness saw corpses on minor roads but "never saw corpses at the roadblocks", nor did he see them "on the major roads where roadblocks had been erected"); Defence Witness MAI, T. 22 August 2007 pp. 26-27, 32 (the witness saw an unmanned roadblock in Remera on 9 April and no bodies at it or on the road while travelling from Kanombe through Rebero, Remera, Kicukiro, Gikondo and reaching the prefecture office for Kigali-Ville); Defence Witness RGI, T. 4 July 2007 pp. 5-6, 14, 31-32 (violence was used at roadblocks manned by civilians to loot passers-by; however, the witness was unaware of thousands being killed at roadblocks in Kigali, did not agree that Tutsis were being targeted and killed in Kigali on the basis of their ethnicity, and suggested that those at roadblocks were outlaws, including youth wings of Tutsi political parties). See also oral submissions of Defence counsel T. 15 February 2008 p. 18 ("[T]here were members of the population who spontaneously acted by carrying out patrols and setting up roadblocks. They tried to defend themselves, even though very quickly after that those roadblocks were used to do other things, specifically, committing acts of genocide.").

¹⁸⁷ Prosecution Closing Brief paras. 110-127.

¹⁸⁸ Defence Closing Brief paras. 721-733, 739-753, 752-774; 775-793; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 753.1-753.7.

2.3.1 Presence at Roadblocks on 8 and 12 April

161. In order to establish Renzaho's ties with roadblocks manned by heavily armed militia, including *Interahamwe*, the Prosecution relies on Witness AFB. He testified that, on 8 April 1994, Renzaho toured roadblocks in Kimisagara, Nyakabanda, Nyamirambo and Gitega sectors. His evidence is a first-hand account that is largely consistent with his testimony in the *Zigiranyirazo* trial as well his statement to Tribunal investigators in December 2003.¹⁸⁹

162. This said, only Witness AFB testified that Renzaho went to these roadblocks. The Chamber has elsewhere raised concerns about aspects of this witness's uncorroborated testimony concerning weapons distributions (II.3). In the circumstances, the Chamber views his evidence with caution and will not accept without corroboration of his testimony about Renzaho's specific activities at roadblocks, including his visits to roadblocks in Kimisagara, Nyakabanda, Nyamirambo and Gitega sectors on 8 April 1994, offering assistance and directing those manning them to work. The Chamber's findings related to Renzaho's involvement with roadblocks on 12 April is set forth elsewhere (II.3).

163. Notwithstanding, the Chamber finds Witness AFB's observations about who was manning roadblocks and the state of affairs at them largely credible and convincing. Furthermore, his observations that local authorities were present at roadblocks, that they were used to target Tutsis, and that they were manned by heavily armed militia, including *Interahamwe*, is consistent with other evidence on the record and the Chamber accepts the fundamental features of this testimony. In particular, his evidence about the existence of roadblocks manned by heavily armed *Interahamwe* near the Gitega sector office, finds support both in Corinne Dufka's photographs as well as witness testimony.

2.3.2 Orders to Erect Roadblocks

164. The Prosecution seeks to establish that Renzaho ordered local government officials to establish roadblocks through meetings at the Kigali-Ville prefecture office. Evidence from both parties demonstrates that local government officials, in particular *conseillers* and *responsables des cellules*, supervised the establishment and administration of roadblocks within the prefecture. The Defence evidence, however, suggests that these local government officials were not acting on Renzaho's instructions, but those of, for example, the interim government or military or their own initiative.¹⁹⁰

¹⁸⁹ Defence Defence Exhibit 2B (statement of 22 December 2003) pp. 4-5; Defence Exhibit 1 (*Prosecutor v. Zigiranyirazo*, T. 26 January 2006 pp. 13-17, T. 30 January 2006 pp. 36-37).

¹⁹⁰ Prosecution Witness AFB, T. 8 January 2007 pp. 84, 86-87 (*Interahamwe* manned a roadblock as early as 7 April in the vicinity of Rose Karushara's house; she allegedly provided them weapons from her home and was seen at the roadblock); Prosecution Witness AFB, T. 8 January 2007 pp. 87-94 (observed the Nyakabanda *conseiller* and *Interahamwe* at a roadblock and *Interahamwe* manning a roadblock at the Gitega sector office); Jean-Baptiste Nyetere, T. 5 July 2007 pp. 30-31 (the Nyamirambo sector *conseiller* and *responsable de cellule* ordered that roadblocks be set up and chose who would man them there); Defence Witness PPO, T. 5 July 2007 p. 52 (one or two *conseillers* may have participated in the erection of roadblocks, but the general disorder surrounding them suggested that this was not planned); Defence Witness UT, T. 24 May 2007 pp. 48-49, T. 25 May 2007 pp. 23-24 (militia at roadblocks gave the impression that, for example, *Conseiller* Odette Nyirabagenzi "supported" persons manning a roadblock in Muhima, that *Conseiller* Rose Karusha supported those at a roadblock in Kimisagara, and that *Conseiller* Amri Karekezi supported individuals at roadblocks in Biryogo); Defence Witness PER, T. 23 August 2007 pp. 33-35, 62 (militia manning roadblocks in the neighbourhood around Saint Paul and Sainte Famille "depended on" *Conseiller* Odette Nyaribagenzi and primary school inspector Angeline Mukandutiye. The witness did not see Renzaho in the company of either

165. Having considered the Prosecution and Defence evidence and arguments, the Chamber is convinced that Renzaho ordered the establishment of and support to roadblocks throughout Kigali. This follows first from the evidence of Witnesses UB, AWE, GLJ and ALG who testified about meetings where Renzaho issued such instructions. Second, this conclusion finds support in his public statements over the radio concerning roadblocks. Finally, the evidence concerning the planning of Rwanda's "civil defence" system, in which Renzaho participated, lends further corroboration.

166. With respect to the meetings, Witnesses UB and AWE provided first-hand evidence of Renzaho convening a meeting at the prefecture office around 10 April 1994, and Witness ALG offered a second-hand account. These three witnesses were former local government officials who have been convicted of or charged with crimes in Rwanda relating to the establishment of roadblocks between April and July 1994.¹⁹¹ In addition, Witnesses UB and AWE were detained in the same prison at the time of their testimony.¹⁹² In light of these concerns, the Chamber is mindful of their interests in shifting blame for their actions onto Renzaho as well as the possibility of collusion between Witnesses UB and AWE. It thus views the evidence of these witnesses with appropriate caution.

167. While there are some differences between these witnesses' accounts related to the exact date of the meeting and the participants, the Chamber is convinced that they are not material. With respect to the date, Witness AWE insisted that the meeting occurred on 9 April.¹⁹³ Witness ALG also heard the meeting occurred on 9 April. Witness UB placed the meeting later, on 10 or 11 April. Nonetheless, a close examination of his testimony suggests an earlier date of 9 or 10 April since he further explained that the meeting aligned with the

official and did not hear his name mentioned in connection with them); Defence Witness AIA, T. 2 July 2007 pp. 27, 35; T. 3 July 2007 p. 13 (Amri Karikezi, Biryogo's *conseiller*, pointed out specific locations in Biryogo where roadblocks should be erected on the orders of the interim Prime Minister and not Renzaho); Defence Witness GOA, T. 6 June 2007 pp. 47, 49, 51 (while some civilians set up roadblocks on their own initiative, others did so with the assistance of cellule and sector officials. Roadblock leaders at the Gitega roadblock kept the company of, and collaborated with, the Biryogo *conseiller*, Amri Karekezi); Defence Witness HIN, T. 9 July 2007 pp. 67-68, T. 10 July 2007 pp. 25, 36 (*Conseiller* Odette Nyirabagenzi toured Rugenge sector to supervise roadblocks, telling people to be vigilant and prevent the movement of Tutsis. The checkpoints were set up to kill Tutsis. The witness did not believe that Nyirabagenzi was acting on Renzaho's orders in touring her sector, but rather on security measures suggested to her by the Presidential Guard.); Defence Witness Nyetera, T. 5 July 2007 p. 31 (roadblocks had been set up based on orders of the Prime Minister and not Renzaho).

¹⁹¹ Prosecution Witness UB was convicted and sentenced to death in Rwanda in 1997. His appeal was rejected in 1998 and at the time of his testimony he was awaiting a ruling by the Supreme Court in Rwanda. Witness UB, T. 23 January 2007 pp. 1-4, 62-65; T. 24 January 2007 pp. 7-8, 12, 18, 21-22; Defence Exhibit 11A (Rwandan trial judgment of Witness UB); Defence Exhibit 11B (Rwandan appeal judgement of Witness UB). Witnesses AWE and ALG testified before the Tribunal prior to the commencement of their respective trials in Rwanda, wherein the participation in the erection and administration of roadblocks were relevant to their cases. Witness AWE, T. 31 January 2007 pp. 11-12, 51-52, 54, 56 (awaiting trial but noting that he confessed to establishing roadblocks); Witness ALG, T. 10 January 2007 p. 64 (noting that he had been charged in Rwanda with genocide and had been provisionally released in July 2005); Defence Exhibit 4C (Rwandan judicial dossier for Witness ALG, undated) p. 2, which summarises a witness account that accuses Witness ALG of "having manned *Interahamwe*'s roadblocks and having given them [the *Interahamwe*] instructions to go and kill".

¹⁹² Prosecution Exhibit 69 (personal identification sheet for Witness UB); Prosecution Exhibit 80 (personal identification sheet for Witness AWE).

¹⁹³ See T. 31 January 2007 pp. 34-35; Prosecution Exhibit 49 (transcript of Radio Rwanda, 11 April 1994, broadcasting *communiqué* dated 10 April 1994) p. 5.

swearing-in of the interim government, which occurred on 9 April.¹⁹⁴ Consequently, the main features of the evidence of these three witnesses are compatible with respect to the date of the meeting. It is also sufficiently consistent with paragraph 9 of the Indictment which refers to Renzaho issuing orders concerning roadblocks at a meeting “[o]n or about 10 April 1994”.

168. As to the participants, Witness UB stated that the attendees consisted of *conseillers*, *responsables de cellule*, soldiers, gendarmes, and representatives of political parties and the *Interahamwe*, whereas Witness AWE indicated that the meeting was smaller in nature and was attended only by *conseillers*, *bourgmestres*, senior military officers and some gendarmes. The Chamber considers that these differences are not material and in any case stem from the passage of time. Notably, Witnesses UB and AWE both described attending a meeting where Renzaho explained that roadblocks were meant to confront the “Tutsis” or “*Inyenzi*” and ordered those in attendance to establish more of them. The two witnesses each stated that local *conseillers* reported on the prevailing security situation and that *Bourgmestre* Jean Bizimana did not attend. They indicated that the meeting involved broader participation than a normal prefecture security council meeting.¹⁹⁵ Furthermore, Witness ALG heard about a meeting, occurring around the same time, from the *conseillers* of Biryogo and Cyahafi and *Bourgmestre* Pierre Claver Nyirikwaya of Kacyiru commune. They told him that Renzaho had urged those present to assist in the fight against the *Inkotanyi*, to sensitise the population and to set up roadblocks.

169. In sum, based on the foregoing, the Chamber is convinced that Witnesses UB, AWE, and ALG were referring to the same meeting, which occurred around 10 April 1994.¹⁹⁶ Furthermore, the Chamber is satisfied that these three witnesses provided credible accounts of Renzaho’s order to establish roadblocks, in particular when viewed in context with the relevant circumstantial evidence discussed below.

170. In assessing whether Renzaho held a meeting with local officials and gave instructions to erect and support roadblocks, excerpts from a Radio Rwanda broadcast of a *communiqué* by Renzaho, dated 10 April, are of interest:

Third: Members of the population are prohibited from erecting roadblocks in the city neighbourhoods during the day. Roadblocks may only be set up at night, and such operations must be closely monitored by the security committees operating in the neighbourhoods.

¹⁹⁴ T. 23 January 2007 p. 8 (“Between the 10th and 11th when the government was sworn in, the préfet of Kigali-ville convened a meeting, the meeting that he referred to as extended security meeting.”) (emphasis added); Prosecution Exhibit 94A (expert report of Alison Des Forges) p. 11, noting that the new government was installed on 9 April 1994.

¹⁹⁵ Witness AWE testified that during a second meeting in April 1994, representatives of political parties were present, bringing his evidence more in line with that of Witness UB in relation to this meeting and others (II.3). Additionally, a *communiqué* issued by Renzaho on 14 April also suggests that he met with communal and sector level officials as well as members of political parties. Prosecution Exhibit 51 (transcript of Radio Rwanda *communiqué*, 14 April 1994) pp. 9 (“In the latter days, we held a meeting of authorities at the commune and sector levels”), 10 (“I held a meeting with officials of the political parties at the prefecture and commune levels ... That is why I thank very much the representatives of political parties for the constructive ideas they gave us during that meeting...”). Renzaho, however, denied that he met with political party officials. T. 28 August 2007 p. 52; T. 30 August 2007 pp. 46-47.

¹⁹⁶ Witness GLJ testified that he met with the prefect on 10 April at the prefecture office (II.4.3). He testified that he did not attend a meeting but learned that meetings had purportedly been held before and after he left. T. 22 January 2007 p. 18.

...
Fifth: The *Préfet* once again warns all criminals and asks members of the population to fight the looters, bandits, killers and all other troublemakers. He asks them to be vigilant and to continue to denounce to the authorities criminals who try to infiltrate into their midst.¹⁹⁷

171. Renzaho affirmed that he issued this *communiqué* and explained the relevant passage as follows:

But as regards the control of the roadblocks, I consistently stressed insisted that the communal authorities should be involved and should ensure the proper control to avoid that there be excesses and brutalities by the people manning those roadblocks. I did that in the course of meetings with the *bourgmestres*, and for the *bourgmestre* of Nyarugenge, he'd bring his *conseillers* along. I also did so through my various appeals, messages, *communiqués*.¹⁹⁸

172. In the Chamber's view, the radio broadcast and Renzaho's explanation corroborate the first-hand testimonies of Witness UB and AWE that he gave orders to local authorities to collaborate with residents in erecting roadblocks to intercept *Inkotanyi* or *Inyenzi*, which also included Tutsi civilians. The Chamber reaches this conclusion notwithstanding instructions in the same broadcast to dismantle roadblocks during the day, as well as Renzaho's statement broadcast on 7 April, "appealing to people not to attack each other". Indeed, this previous *communiqué* also anticipated cooperation between the authorities and encouraged civilians to cooperate with "forces of law", to "remain vigilant" and ensure "their homes are well protected and thereby prevent infiltration".¹⁹⁹

173. Radio broadcasts after 11 April provide a similar picture. In an interview given on 12 April, Renzaho gave specific instructions that the population should defend itself, search for *Inyenzi* and erect roadblocks:

"On the streets leading to their quarters, it would be a good thing to block them with road-blocks. They can look after them, choose people they really trust and who have papers and put them there."

The interview also contains references to specific areas of Kigali where, in his view, there was no need for checkpoints during the day because the gendarmerie had established roadblocks there.²⁰⁰

¹⁹⁷ Prosecution Exhibit 49 (transcript of Radio Rwanda, 11 April 1994, broadcasting *communiqué* dated 10 April 1994) p. 5.

¹⁹⁸ Renzaho, T. 28 August 2007 p. 13.

¹⁹⁹ Prosecution Exhibit 48 (transcript of Radio Rwanda, 7 April 1994) p. 2 ("Speaker: Unidentified: The *Préfet* of Kigali-Ville Préfecture is appealing to the inhabitants of Kigali-Ville to comply with the instructions issued by the Ministry of Defence. He is appealing to people not to attack each other, to remain vigilant during this period of adversity, cooperate with the forces of law and order so as to facilitate their task. He is calling on everyone to ensure their homes are well protected and thereby prevent infiltration. This announcement is signed by Tharcisse Renzaho, *Préfet* of Kigali-Ville.").

²⁰⁰ Prosecution Exhibit 50 (transcript of Radio Rwanda interview, 12 April 1994) p. 9 ("We request of them to make patrols within like usual, they ought to come together and look for their traditional tools they are used to and defend themselves. I would like to request of them that now each quarter should try to organise itself and make a communal work within quarters by cutting off bushes, searching empty houses, check out in the nearby

174. Similarly, in a broadcast on 14 April, Renzaho referred to a meeting he had held with representatives of political parties at the prefecture and communal level. He stressed the need to unite, not kill one another but fight against the enemy who had attacked "in our areas", and announced that meeting would be held the following day where the populations would receive clear instructions. He explained that it was not necessary for all citizens to attend as some of them had to conduct patrols, "they have their roadblock they are guarding and at which they must remain".²⁰¹ Renzaho's broadcast on Radio Rwanda on 24 April suggested that *conseillers* would be working with their communities to provide security to the population, through the use of roadblocks.²⁰² Finally, after Renzaho was aware of targeted killings of Tutsis, his broadcasts on 10 May and 18 June focussed on checking the identification of those crossing roadblocks.²⁰³

175. In the Chamber's view, Renzaho's contemporaneous public statements corroborate the direct evidence of Witnesses UB and AWE as well as the hearsay evidence of Witness ALG about the meeting at the prefecture office around 10 April. It is also in conformity with Witness GLJ's evidence about a meeting in the prefecture office around 16 or 17 April wherein Renzaho ordered that roadblocks be established. Furthermore, Witness ALG testified that he attended three to four meetings after 12 April where Renzaho urged the strengthening of roadblocks and that night patrols be conducted to monitor the infiltration of *Inkotanyi*.²⁰⁴

swamp if no *Inyenzi* hid inside. . . . On the streets leading to their quarters, it would be a good thing to block them with road-blocks. They can look after them, choose people they really trust and who have papers and put them there . . . I was told that, on the road Gikondo-Remera, there are roadblocks which have been settled by the population, as the *Gendarmerie* has settled its own roadblocks during the day, they must withdraw those roadblocks and send people to look for food here downtown. They can perhaps settle those road-blocks at night. . . . they can settle those roadblocks on the streets of their quarters in order to control them. I wish them to keep on being courageous, they should not listen to those who said that the town has been captured instead they out to be strong in their own areas, then they shall do the communal work so that no *Inyenzi* can hide there. That's my message to the population.") (emphasis added).

²⁰¹ Prosecution Exhibit 51 (transcript of Radio Rwanda *communiqué*, 14 April 1994) p. 10. The Chamber notes that on p. 11, there are specific references to Nyabugogo and Giticyinyinoni, where, in Renzaho's view, gendarmes, not the population, should establish roadblocks.

²⁰² Prosecution Exhibit 54 (transcript of Radio Rwanda broadcast, 24 April 1994) p. 14 ("A while ago, I was talking about the issue of committees. Those committees will be responsible for assisting the *conseiller* in providing security for the population . . . members of the population must choose those to represent them in the committees which will be responsible for monitoring those . . . manning the roadblocks. . .").

²⁰³ Prosecution Exhibit 56 (transcript of Radio Rwanda interview, 10 May 1994) p. 13 ("Normally papers required at roadblocks are those prescribed by the law and are the following: everyone must, normally, have an identity card which must be presented upon demand."); Prosecution Exhibit 62 (transcript of Radio Rwanda broadcast, 18 June 1994) p. 4 ("Up to now, we have given enough directives on identification documents and I have repeated them on many occasions. The identification document that is requested at the roadblocks is the identity card. The inscriptions on our identity card are described by law, and this has not been amended. I would like to inform members of the population that there is a method the *Inyenzi* use to camouflage themselves. They send spies to the zones that are not under their control. They often use Hutus or other persons who have identity cards bearing the Hutu ethnic inscription because they know that persons labeled as such will not face problems during the checks.").

²⁰⁴ It is recalled that, at the time of their testimony, Witnesses GLJ and ALG had been charged in Rwanda and awaiting trial related to crimes relevant to their involvement with roadblocks in Kigali in 1994. Witness GLJ, T. 22 January 2007 pp. 13-14, 23 (awaiting trial but noting that he confessed to setting up roadblocks on Renzaho's instruction); Witness ALG, T. 10 January 2007 p. 64 (charged with genocide); Defence Exhibit 4 (Rwandan Judicial Dossier for Witness ALG, undated) (reflecting a witness interview accusing Witness ALG of "having manned *Interahamwe*'s roadblocks and having given them [the *Interahamwe*] instructions to go and kill"). The Chamber only relies on their evidence when it is corroborated.

While it is unclear if these witnesses were referring to the same meetings, the message they received consistently emphasised the need to provide support in the administration of roadblocks.

176. Finally, the Chamber considers that Renzaho's involvement in putting in place a civil defence system in Kigali lends further corroboration to the evidence that he ordered the establishment of roadblocks in Kigali. Undisputed evidence reflects that, on 29 March 1994, Renzaho met with Déogratias Nsabimana, the army chief of staff, and Colonel Félicien Muberuka, the commander of the operation sector of Kigali to discuss the implementation of the civil defence plan for Kigali.²⁰⁵ According to the minutes of the meeting, Muberuka would assign "operational *cellules*" to defend their neighbourhood and "to search for and neutralise infiltrators within the various neighbourhoods of the city".²⁰⁶ Renzaho was asked to provide lists of reservists and other "reliable civilians" who would work with soldiers in defending neighbourhoods, which he did on 31 March 1994.²⁰⁷ Documents from May 1994 related to the establishment of the civil defence system in Kigali clearly identify the prefect as a part of the chain of command over civil defence forces.²⁰⁸ Renzaho and other defence witnesses denied that the system was ever implemented.²⁰⁹

177. The Chamber considers that the evidence does not conclusively show when and to what extent the civil defence structure was *formally* put into place. However, there are clear parallels between the planning and preparation of civil defence which occurred prior to 7 April and the proliferation of roadblocks in Kigali after that date. Furthermore, Renzaho's involvement in high level meetings and other activities, such as identifying civilian recruits, concerning the defence of Kigali just days before hostilities resumed between the government forces and the RPF is indicative of his extensive involvement and interest in matters related to complementary civilians efforts to defend the city at the relevant time. Notably, in the various broadcasts mentioned above, Renzaho referred to the roadblocks in Kigali as providing security. In the Chamber's view, the evidence related to plans for the civil defence in Kigali provides circumstantial corroboration that he would have played an important role in such efforts.

178. In assessing this evidence, the Chamber has considered that Renzaho provided a specific accounting for his days from 9 through 11 April, which did not include the meetings described by the Prosecution witnesses.²¹⁰ Furthermore, he and Witness AIA mentioned a meeting that occurred at the Kigali-Ville prefecture office with a similar group of attendees as described by Witnesses UB and AWE. According to their evidence, it occurred on 8 April,

²⁰⁵ Renzaho, T. 27 August 2007 p. 41; Prosecution Exhibit 24 (letter from Déogratias Nsabimana, copied to Renzaho, about civil defence, dated 30 March 1994).

²⁰⁶ Prosecution Exhibit 24 (letter from Déogratias Nsabimana, copied to Renzaho, about civil defence, dated 30 March 1994) para. 4.

²⁰⁷ Renzaho, T. 27 August 2007 p. 41; Prosecution Exhibit 25 (letter from Renzaho to Army Chief of Staff, dated 31 March 1994).

²⁰⁸ Prosecution Exhibit 38 (letter of 25 May 1994 from Edouard Karamera to all prefects), which instructs them to implement the Prime Minister's directives regarding civil defence and includes the frequent follow-up and monitoring of civilian roadblocks; Prosecution Exhibit 37 (letter of 25 May 1994 from Jean Kambanda to all prefects), which suggests that the prefect shall act as the supervisor of civil defence activities in the prefecture and shall chair meetings of prefecture organs in charge of civil defence.

²⁰⁹ See, for instance, Renzaho, T. 27 August 2007 p. 41; Witness PAT, T. 22 August 2007 pp. 74-75; Witness PPV, T. 5 June 2007 pp. 28-29; Witness UT, T. 25 May 2007 p. 4; Witness AIA, T. 2 July 2007 p. 59; Witness PGL, T. 6 June 2007 pp. 28-30, 35-36.

²¹⁰ Renzaho, T. 28 August 2007 pp. 43-47; T. 29 August 2007 pp. 59-60.

and Renzaho did not order the persons present to erect roadblocks. In the Chamber's view, the Defence evidence does not raise doubt that a meeting about roadblocks took place around 10 April. Both Renzaho and Witness AIA testified that Renzaho continued to meet with local officials, including *bourgmestres* and *conseillers*, in the following days.²¹¹ Furthermore, a radio broadcast Renzaho made on 14 April expressly suggests that he had recently met with representatives from the communes and sectors as well as political parties.²¹²

179. In light of the foregoing, the Chamber finds beyond reasonable doubt that around 10 April, Renzaho convened a meeting in the prefecture office, wherein Kigali-Ville *bourgmestres* and *conseillers* as well as other officials discussed the prevailing security situation throughout Kigali-Ville prefecture. During this meeting, Renzaho was alerted to killings of Tutsis and other criminal activities in various Kigali-Ville sectors. Renzaho ordered those in attendance to erect additional roadblocks in areas under their control. Furthermore, during at least one additional meeting in mid-April, Renzaho repeated his instructions that local officials provide support to roadblocks.

2.3.3 Killings Committed at Roadblocks

180. The Chamber finds beyond reasonable doubt that Renzaho made statements to the effect that Tutsis were accomplices of the enemy, *Inyenzi* or *Inkotanyi*. The Chamber accepts that instructions to erect roadblocks in order to fight the *Inyenzi* or *Inkotanyi* were made with the intent mobilise the population against an invading rebel force aimed at deposing the pre-existing regime. However, Renzaho defined the enemy broadly, including Tutsi civilians among them. In the Chamber's view, there is no doubt that Renzaho intended Tutsi civilians to fall within the definition of the enemy or that his message was interpreted to include them.²¹³ His testimony that Tutsis generally were viewed as accomplices to the RPF and his concession that his use of the terms *Inyenzi* and *Inkotanyi* on the radio included reference to Tutsi civilians offers strong circumstantial support for these conclusions.²¹⁴ In so finding, the Chamber has also considered Defence evidence portraying Renzaho as against the killing of Tutsis at roadblocks and distraught or frustrated by the occurrences at them. In the Chamber's view, this, mostly anecdotal, evidence fails to raise doubt in light of the convincing and

²¹¹ Renzaho, T. 28 August 2007 pp. 13, 25-26, T. 3 September 2007 p. 18; Witness AIA, T. 2 July 2007 pp. 31, 40-41, 54-56; T. 3 July 2007 pp. 6-7, 10-12, 17-18. See also Witness UT, 24 May 2007 p. 44 (Renzaho had informed the witness of a meeting of available *bourgmestres* and *conseillers* on 11 April, where the object was to calm people who were engaged in killing).

²¹² Prosecution Exhibit 51 (transcript of Radio Rwanda broadcast on 14 April 1994) pp. 9-10.

²¹³ Witness UB, T. 23 January 2007 p. 12 ("[Renzaho] told us that Habyarimana had been killed, that he was killed by the *Inkotanyi*, and that our enemy that we need to fight was the Tutsi."); Witness AWE, T. 31 January 2007 p. 14 ("He explained to us that the enemy was the RPF that had brought the plane down, as well as the accomplices of the RPF, that is to say, our Tutsi neighbours. He told us that the enemy was not far, that it was very close to us. He explained to us that we were to go to our secteur and set up roadblocks where there were none in order to prevent any infiltration of the town by the *Inyenzi*. He did not want the *Inyenzis* to be able to go and join their accomplices, the Tutsi.").

²¹⁴ T. 30 August 2007 pp. 19 ("Q. Do you accept, Mr. Renzaho, that Tutsi civilians were viewed as accomplices of the RPF? A. Yes, that was possible in the confusion that we were living through."), 54-55 ("Q. ... Now, you will agree with me, also, won't you, Mr. Renzaho, that the Tutsi, in general, were referred to, both by yourselves and others on the radio, as 'Inyenzi-Inkotanyi'? A. It wasn't I who invented the expression. It was adopted after the start of the RPF war, and I think the illusion was clear: Those who were attacking at that time were the same that had attacked in the 60s; thus, there was a heightened... Mr. President: Mr. Renzaho, you have to answer the question. Did you use that term, yes or no, in that way? The Witness: Yes, I used it, as others used it.").

credible accounts by the Prosecution witnesses that Renzaho intended the roadblocks to target Tutsi civilians.

181. The Chamber is also satisfied that local officials – in particular *conseillers* and other local authorities such as *responsables des cellules* – erected additional roadblocks within Kigali-Ville prefecture based on Renzaho's orders and that existing roadblocks manned by *Interahamwe* and civilian militia were shown unequivocal support by local authorities.²¹⁵ Direct evidence related to who actually manned the roadblocks set up by the Prosecution witnesses, and the killings that occurred at them, is limited. Nonetheless, Witness UB's conviction in Rwanda was based in part on his involvement in roadblocks used to target Tutsis and the political opposition.²¹⁶ Likewise, Witness AWE's confession and evidence also supports the conclusion that Tutsis were targeted for killing, particularly after civilians were provided firearms.²¹⁷ Witness GLJ also confirmed that roadblocks were established after having received such orders and that killing occurred at them.²¹⁸ Moreover, when this evidence is viewed in light of all the evidence pointing to the targeted attacks at roadblocks, the Chamber is convinced beyond reasonable doubt that Tutsis, those who were perceived to be Tutsi and individuals identified as members of the opposition were singled out at these roadblocks and killed. This finding considers that other authorities within Kigali, such as the military or interim government, may have also supported such activity, either through Renzaho or with their own parallel efforts. Nonetheless, the Chamber is convinced that Renzaho's instructions reinforced the message that the local authorities' supported roadblocks and substantially contributed to the targeted killings at them.

²¹⁵ Witness UB, T. 23 January 2007 p. 12 ("Q. As a result of what he said, did you set up any roadblocks in your sector? A. After receiving these instructions, you will understand that these instructions were not given only to the *conseillers*. It is obvious that there was an increase in the number of roadblocks all over. Even in places where there were no roadblocks, new ones were erected. And that was the case in my sector, as well."); Witness AWE, T. 31 January 2007 pp. 14, 46 (*responsables de cellule* were directed by the witness to erect roadblocks at strategic locations, which were manned by *Interahamwe*).

²¹⁶ Defence Exhibit 11A (Rwandan trial judgment of Witness UB) p. 28 ("*Attendu que dans la planification du génocide et des massacres et en le mettant en action, après la mort de l'ancien Président du Rwanda, les barrières ont été érigées (montées) dans tout le pays sur instructions des autorités en place et de certain partis politiques pour que les Batutsi que le prenait pour complice des inyenzi (partisans du Front Patriotique Rwandais et les Bahutu qui étaient opposés au régime en place soient recherchés et tués ... Attendu que pour mettre en action le génocide et les massacres, il a distribué les fusils, dans tout son secteur aux miliciens interahamwe ... ces armes (fusils) ont été utilisés pour tuer les gens sur les barrières et pour piller; lui-même ne le nie pas parce qu'il dit que il y a des fusils qu'il a retiré du P.V.K. et les a donné aux responsables*").

²¹⁷ Witness AWE, T. 31 January 2007 pp. 11-12 ("I also admitted that after that meeting – or, rather, in the course of that meeting, it was decided that we had to erect roadblocks, and I myself erected those roadblocks in my secteur."); Witness AWE, T. 31 January 2007 p. 20 (noting that after weapons had been distributed around 12 April, Tutsis were targeted for killing).

²¹⁸ Witness GLJ, T. 22 January 2007 pp. 22-23 ("Q. Well, did you establish roadblocks after receiving these instructions? A. We were with the responsable of the cellule in the meeting. So after the roadblock after the meeting, roadblocks were erected throughout the cellule, in all cellules... Q. Well, from the discussions at the meeting, was it apparent if anything similar had happened at other roadblocks throughout the city, that people had been killed? A. Yes. In the town there were people who were killed at the roadblock. And I explained that at Gitega they nearly killed my driver. And there were, obviously, others who would have been killed at that roadblock ... The witness: ... I admitted that I had the roadblocks to be erected, because there were people who were killed at such roadblocks. I also admitted that because I recognised that there were people who were not able to flee because of the roadblocks, those are part and parcel of my confessions."). See also Witness ALG T. 11 January 2007 pp. 22-25 (testifying to having observed roadblocks in Nyarugenge commune where people were being killed and their property taken after having heard from Renzaho that roadblocks were being established to prevent *Inkotanyi* infiltration in the city).

182. The evidence does not reflect that Renzaho provided explicit orders to kill Tutsis at roadblocks.²¹⁹ Indeed, some of the Prosecution evidence indicates that Renzaho gave orders to have people arrested and that the killings were committed by civilians at roadblocks on their own initiative.²²⁰ The Defence also challenged Witness ALG with a statement from his Rwandan judicial proceedings that he, on his own initiative, organised the killings at roadblocks while instructing *Interahamwe* to feed Renzaho misinformation as to what was happening.²²¹

183. However, Renzaho, by his own admission, was aware of disorder at roadblocks by 8 April and that killings were occurring in all parts of the city.²²² He admitted that, after 10 April, he was aware that people were being killed at roadblocks in Kigali-Ville prefecture based on their ethnicity and political leanings.²²³ In the Chamber's view, the need to hold a meeting as early as 11 April to organise the removal of corpses covering the streets of Kigali leads to the only reasonable conclusion that Renzaho, the administrative head of Kigali-Ville,

²¹⁹ Witness AWE, T. 31 January 2007 p. 14 ("A. He first explained to us under what circumstances the president's plane had been shot down, and he told us that now the enemy was known. He explained to us that the enemy was the RPF that had brought the plane down, as well as the accomplices of the RPF, that is to say, our Tutsi neighbours. He told us that the enemy was not far, that it was very close to us. He explained to us that we were to go to our sector and set up roadblocks where there were none in order to prevent any infiltration of the town by the *Inyenzi*. He did not want the *Inyenzi*s to be able to go and join their accomplices, the Tutsi. And he explained that conflicts among political parties were to stop because now the enemy was known."); Witness AWE, T. 31 January 2007 p. 36 ("A. Regarding the specific orders, the Préfet Renzaho told us that we should set aside our differences – our political differences in the sector. He appealed to us to unite, to identify the enemy and to erect roadblocks in neighbourhoods that did not have them. Q. So, the instructions that you received related to the roadblocks? A. Yes."); Witness UB, T. 23 January 2007 p. 12 ("A. ... And he told us that we should set up new roadblocks in areas where they did not exist ... and that our enemy that we need to fight was the Tutsi."). See also Witness ALG, T. 11 January 2007 p. 41 (Renzaho's urged attendees "to be vigilant. That it was imperative that areas not yet under *Inkotanyi* control be protected so that the *Inkotanyi* would not enter into those areas. So it was necessary to staff roadblocks, carry out night patrols, and the préfet called on the people to provide support to the *Interahamwe* who were helping the soldiers in the front ... Generally, the recommendations set forth at those meetings were the strengthening of the roadblocks, and the conduct of night patrols so as to check the infiltration of the *Inkotanyi*"); Witness ALG, T. 11 January 2007 p. 67 ("Reference has been made to the fact that efforts should be made to check infiltrations into the city. Reference has been made to exterminating people. So, there is reference to stopping people from entering the city and this relates to the meeting that was taking place, to the roadblocks that were set up, and to the fact that people were being killed, the purpose of which was to stop the *Inkotanyi* from infiltrating the city. These are the types of instructions that were issued during the meetings that were held around that time, and it is on that basis that I provided that time frame.").

²²⁰ Witness AWE gave a prior witness statement to Tribunal investigators where he stated: "[i]t should be noted that the primary purpose of such roadblocks was not to systematically kill the Tutsi. It was the population itself which took it upon itself to do so." T. 31 January 2007 p. 38; Defence Exhibit 23 (Statement of 29 November 2003). The witness acknowledged having made this statement and testified that the roadblocks were intended to restrict movement of Tutsis so they could be located and killed. T. 31 January 2007 pp. 38, 56-57. See also Witness GLJ, T. 22 January 2007 p. 22 ("A. The instruction was to erect roadblocks on the road so as to identify passers-by by asking them to show their identification. The préfet said that there were people who were going around the town without identification documents, and those should be the *Inkotanyi* that had infiltrated ... A. During the meeting, the préfet said that those who were arrested had to be handed over to the prefecture police, or the gendarmerie brigade.").

²²¹ Witness ALG, T. 15 January 2007 pp. 26-28; Defence Exhibit 4 (summary of Rwandan judicial proceedings of Witness ALG).

²²² Renzaho, T. 28 August 2007 p. 2.

²²³ Renzaho, *id.* p. 11; T. 30 August 2007 p. 54.

would have been aware of the scale in which killings were occurring before that date.²²⁴ Accordingly, the Chamber is convinced beyond reasonable doubt that Renzaho knew that killings at roadblocks, like elsewhere, targeted Tutsis on an ethnic basis before the meeting where he ordered local officials to erect them around 10 April. In this context, the Chamber finds beyond reasonable doubt that he was aware that the continued killing of Tutsi civilians was a likely outcome when he urged the meetings' attendants to erect additional roadblocks to be manned by those within their communities.

184. In so finding, the Chamber recognises that Renzaho had made public pleas to re-establish order and for killings to come to an end.²²⁵ In some instances, Renzaho threatened to punish severely those engaged in crimes such as rape and looting.²²⁶ However, his messages were broadcast over Radio Rwanda at a time when Kigali, the nation's capital and

²²⁴ Renzaho, T. 28 August 2007 pp. 45-47; T. 29 August 2007 p. 59 (discussing the 11 April meeting with the ICRC at the Kigali-Ville prefecture which focussed, in part, on the removal of the dead); Prosecution Witness UL, T. 9 January 2007 pp. 53-62 (Renzaho ordering the removal of the dead at an 11 April meeting attended by Philippe Gaillard of the ICRC); Prosecution Witness GLJ, T. 22 January 2007 pp. 16-18, 47-50 (the witness attended a meeting on 10 April where Renzaho asked *conseillers* to collect dead bodies); Defence Witness BDC, T. 4 June 2007 pp. 7-8, 10-12 (the witness heard about a meeting on 11 April between Renzaho, the ICRC and government ministries where humanitarian issues such as the burial of corpses were discussed). See also Witness PPV, T. 5 June 2007 p. 42 ("Those persons manned roadblocks, but so did many people. We did not witness the killings. However, the prefect was aware that people were dying.").

²²⁵ Prosecution Exhibit 49 (transcript of Radio Rwanda, 11 April 1994, broadcasting *communiqué* dated 10 April 1994) pp. 5 ("The *Préfet* once again warns all criminals and asks all members of the population to fight the looters, bandits, killers and all other troublemakers. He asks them to be vigilant and to continue to denounce to the authorities the criminals who try to infiltrate into their midst."); Prosecution Exhibit 51 (transcript of Radio Rwanda broadcast on 14 April 1994), 9 ("In the latter days, we held a meeting of authorities at the commune and sector levels. We agreed that they should hold meetings in the localities under their authority to teach citizens that our country needs peace, comfort."), 10 ("I wanted to tell you that about improving security, especially in fightings, lootings, thefts, killings; I held a meeting with the official of political parties at the prefecture and commune levels. That meeting was successful because we shared ideas and found that those in charge of the citizen's problems must do their best to try to make citizens understand that those criminal actions are not the ones that will allow us to win the war."), 11 ("Then I would like that in those meetings, we should take measures bringing peace among the citizens, for stopping definitively those activities of looting and killing."); Prosecution Exhibit 54 (transcript of Radio Rwanda broadcast, 24 April 1994) p. 16 ("... I would like to tell [Rwandans] that they must stop killing their kitty and kin or be divided whereas that is not necessary ... The murders, looting and acts of violence must cease so that Rwandans may strive towards recovering their unity and reorganizing themselves so as to regain their strength. That will enable us to pursue our struggle against those attacking us, disrupting peace and spilling fire and blood in our country."); Defence Exhibit 100 (transcript of Radio Rwanda broadcast, 27 April 1994) p.1 ("*Le préfet de la ville de Kigali, le colonel Tharcisse Renzaho, continue à demander l'arrêt des actes de violence, des actes de pillage et des tueries; il demande que les personnes arrêtées dans la commission de tels actes soient sévèrement punies.*"); Defence Exhibit 101 (transcript of Radio Rwanda broadcast, 6 May 1994) p. 3 ("*On peut dire que telle personne est traitée et n'aime pas son pay. Mais il y a ce qu'on appelle excès de zèle. C'est cet excès de zèle qui fait que certaines gens indisciplinées tuent aveuglement et nous nous dressons énergiquement contre cela. C'est pourquoi les conseillers ont reçu instructions de surveiller les gens qui se sont rendus intouchables et qui font souvent fi des remarques faites par les autres personnes ... Je demande donc que les conseillers remplacement immédiatement de telles personnes qui sont sur les barrières pour les mettre à place qu'il faut; les uns en prison s'il le faut et les autres doivent répondre devant la justice.*").

²²⁶ See, for instance, Prosecution Exhibit 56 (transcript of Radio Rwanda broadcast of 10 May 1994) p. 12 ("It is therefore necessary that directives adopted in this regard are complied with. It is for this reason that we have decided to arrest all those who rape and want to commit criminal acts so as to punish them."); Prosecution Exhibit 63 (transcript of Radio Rwanda broadcast on 18 June 1994) p. 5 ("[T]herefore, when we shall receive information whereby a gang is about to perpetrate acts of looting, we will send this unit that will shoot without warning on the gang in question.").

locus of international attention, was under intense international scrutiny.²²⁷ Given the record before the Chamber, such broadcasts appear to be motivated by a need to restore the government's public image rather than a genuine attempt to control the ethnically targeted killing ravaging the city.²²⁸ His instructions to stop killings and crime also appear directed at halting such activities where they targeted the population that was sympathetic to the government and that Renzaho sought to mobilise against the "enemy". As Expert Witness Alison Des Forges noted, Renzaho was capable of giving precise instructions when there were specific segments of the population for which he had concern. In particular, Des Forges pointed to a Radio Rwanda broadcast on 6 May, where Renzaho raised concerns that individuals from particular communes with identity cards bearing "Register of Citizens" were mistakenly being identified as RPF.²²⁹ She commented:

What I find remarkable about this passage is how concrete and precise it is when it has to do with necessary measures for identifying certain persons who are at risk. To me, this is a significant contrast to those vague and generalised directives issued elsewhere, which ask for people at barriers to be careful. It's clear that, when the prefect wants to be concrete and precise and very careful and exact in delineating certain persons, he certainly is able to do so.²³⁰

Notably, none of Renzaho's pleas called for an end to the attacks on and killings of Tutsi civilians who he knew were dying en masse.²³¹

²²⁷ Prosecution Exhibit 51 (transcript of Radio Rwanda broadcast on 14 April 1994) p. 11 ("I will add that our country needs to have a good image. During this time when the international community seems having to forgotten us, I think it is not good to commit unclear, inexplicable actions because those acts make our government lose their credibility."); Prosecution Exhibit 63 (transcript of Radio Rwanda broadcast on 18 June 1994) p. 6 ("Our image has been tarnished. We are called killers. I don't know what else! But who are the authors of such killings? Is it not the *Inyenzi-Inkotanyi*?"); Prosecution Exhibit 94A (expert report of Alison Des Forges) p. 13, which reads: "As the prefect of Kigali-city, Tharcisse Renzaho was extremely conscious of the need for a 'good image,' for the country, one that rested in large part on what foreigners saw and heard in visiting the national capital."

²²⁸ Witness UB, T. 24 January 2007 pp. 9-10 ("Q. And do you recall that such messages were asking the inhabitants of Kigali to put an end to the killings and the massacres in the city, to dismantle the roadblocks in order to enable members of the population to supply themselves, and also denounced the criminals who were perpetrating such acts? Do you recall having heard such messages, or did you hear anything different? A. The *préfet* gave many messages. He said that people were to stop the killings, but those were only words. That was a way of showing the international community that the *préfet* was condemning the killings. Those were messages which were broadcast on the radio, but the criminal acts continued in the two areas. I heard a message requesting, from the population, that it ensure its own security, whereas the *préfet* was supposed to be responsible for such security. If the *préfet* had already stated that the enemy was the Tutsi, this message was meaningless, because if the *préfet* was asking the members of the population to protect themselves, he was implicitly asking them to kill the Tutsis in their area."); Prosecution Exhibit 94A (expert report of Alison Des Forges) p. 13, which reads: "Throughout the genocide, most authorities called periodically for 'restoring order,' for an end to killings, looting, and other misconduct. Many such pronouncements had no noticeable impact, suggesting that they may have been meant as much for foreign as for Rwandan ears."

²²⁹ Prosecution Exhibit 55 (transcript of Radio Rwanda interview with Renzaho, 6 May 1994) p. 4.

²³⁰ T. 5 March 2007 p. 47.

²³¹ Renzaho, T. 30 August 2007 p. 56 ("Q. Well, Mr. Renzaho, I am suggesting to you that you never, never said on the radio that people should not kill Tutsis simply on the basis of their ethnicity. You, as *préfet*, never sent that message out, did you? A. Mr. Prosecutor, would you give me a little time just to collect my *communiqués* and show them to you? Perhaps not in the present – at the present sitting, but I will show them to you."). This was not followed up by the Defence.

185. As demonstrated above, Renzaho's statements on Radio Rwanda are critical in determining his intent and actions as they relate to roadblocks. Renzaho's testimony and the Defence Closing Brief demonstrate that the Accused he largely accepted as accurate the transcription of these broadcasts.²³² Where he questioned their accuracy, the objections were vague, and, in the Chamber's view, unconvincing given his general acceptance of exculpatory aspects of the same statements.²³³ When assessing the impact of these statements, the Defence evidence, to the extent it strays from the content as set forth in the exhibits, is of limited utility.²³⁴ Prosecution evidence demonstrating that people responded to calls by the prefect to, for example, return to work, suggest that Renzaho's messages on Radio Rwanda were heard.²³⁵

²³² See, for instance, Defence Closing Brief paras. 734-738 (arguing that concerning the contents of Prosecution Exhibits 49-53, 58 and 62, the Prosecution only cited to limited excerpts and failed to place them in context; not that they were inaccurate) 752-774 (pointing to excerpts from Prosecution Exhibits 48-51 and Defence Exhibits 100-101 to demonstrate exculpatory content).

²³³ T. 28 August 2007 pp. 57-58; T. 3 September 2007 pp. 3-4.

²³⁴ Witness PPV, T. 5 June 2007 pp. 27, 40, 43-44 (the witness did not hear messages being made over the radio by Renzaho but testified that the prefect had called for pacification and no one listened); Witness BDC T. 4 June 2007 pp. 59, 64-65 (The witness did not hear Renzaho on the radio calling for the population or militia to establish roadblocks nor did he receive any briefings to that effect from the Red Cross staff who monitored radio broadcasts); Witness Nyetera, T. 5 July 2007 pp. 31, 33, 36-37, 40 (he heard a 12 April radio address by Renzaho that roadblocks should be erected in an orderly manner; although the message was heard by the population, it was ignored); Witness KRG, T. 7 June 2007 p. 10 (on or after 8 April, Radio Rwanda broadcast an official government request for all men and youth throughout the country to ensure security by assisting at roadblocks and joining the night patrols. The witness did not know the person who gave this order, but that "if one did not comply, one ran into problems."); Defence Witness GOA, T. 6 June 2007 pp. 50-51 (he listened to the radio but did not hear Renzaho ask Kigali-Ville inhabitants to set up roadblocks); Witness Butera, T. 23 May 2007 pp. 11-12, 34-35 (on or around 8 April, he heard Renzaho's message on Radio Rwanda telling the population to remain calm and vigilant, and to stay at home; the witness did not hear an 11 April *communiqué* that roadblocks could be erected at night); Witness WOW, T. 4 July 2007 p. 38 (did not hear messages from Renzaho requesting that roadblocks be set up).

²³⁵ See also II.6 and II.9, which discuss Renzaho's 12 April Radio Rwanda broadcast in relation to the clearing of the bushes similar activity carried out around CELA and Saint Paul.

3. DISTRIBUTION OF WEAPONS

3.1 Introduction

186. The Indictment alleges that, between mid-1993 and 17 July 1994, Renzaho distributed weapons and ammunition to members of the *Interahamwe* and *Impuzamugambi*, including at his house in Kanombe. On or about 16 April 1994, at a meeting at the Kigali-Ville prefecture headquarters, he ordered *conseillers* to obtain firearms from the Ministry of Defence to be distributed at the sector level. Those weapons were used by *conseillers* and militia to kill Tutsis. The Prosecution relies on Witnesses AFB, UB, GLJ, AWE, ALG, XXY and BUO.²³⁶ The Defence disputes the allegations and the credibility of these witnesses. Reference is made to Witnesses PPV, AIA and PAT.²³⁷

3.2 Evidence

Prosecution Witness AFB

187. Witness AFB was a Hutu employee in public service. On the morning of 7 April 1994 at around 7.00 a.m., the witness left his home to go to the Biryogo sector office. When he arrived, *Conseiller* Amri Karekezi asked him to take a vehicle with two policemen to the prefecture office. There, the witness observed soldiers, some communal policemen, and members of the *Interahamwe* such as Mugesera and Karim. *Bourgmestres* were also present, including the Reberangondo, the *bourgmestre* of Butamwe commune. Among the *conseillers* the witness noticed were "Stanis" from Gitega sector, Mbyareyehe of a sector he could not recall, and Karekezi, who arrived shortly after the witness. Some time after he arrived, the witness saw Renzaho come out of his office dressed in military uniform and instruct some communal policemen to fetch *Conseiller* Rose Karushara from her house in Kimisagara sector.²³⁸

188. Renzaho left the prefecture office in a Renault with his military driver a few minutes after 9.00 a.m. The witness and four policemen followed in a vehicle just behind until Renzaho's vehicle turned into the Radio Rwanda premises around 9.30 or 10.00 a.m. The witness continued on with the policemen to collect Rose Karushara. When he arrived at her residence, he saw that a roadblock, manned by *Interahamwe*, had been erected outside her compound.²³⁹

²³⁶ Indictment paras. 12, 16, 33; Prosecution Closing Brief paras. 80, 83, 102-103, 128-130, 159-180; T. 14 February 2008 pp. 14-15, 19-20. The Prosecution also refers to Witness BUO, in relation to an alleged weapons distribution immediately before an attack on CELA. This evidence has been summarized elsewhere (II.6) but will be considered here. In a letter of 13 March 2007 to the Defence, the Prosecution conceded that no evidence had been offered in support of para. 18 of the Indictment (alleging that, following a meeting at Bishop Samuel Musabyimana's residence between 7 and 30 May 1994, weapons were distributed to the militia who killed Tutsis).

²³⁷ Defence Closing Brief paras. 870, 874-876, 903, 905-932; T. 14 February 2008 pp. 44-45, 52, 58-59; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 875.1-875.4, 904.1-904.3, 932.1-932.10. The Chamber also considers the evidence of Witness PGL.

²³⁸ T. 8 January 2007 pp. 69-71, 73, 74 (stating "André" instead of "Amri" Karekezi, whereas the French version, *id.* p. 80, contains the correct first name), 75-76, 78; T. 9 January 2007 pp. 20, 23-24; Prosecution Exhibit 64 (personal identification sheet).

²³⁹ T. 8 January 2007 pp. 76, 78, 80-81, 83-85; T. 9 January 2007 pp. 19-20, 22-25, 28-30, 32, 34-35, 37.

189. Witness AFB returned to the prefecture office with Karushara and left her there. Renzaho had already returned to the office, and Karushara and a policeman went inside to tell Renzaho they had arrived. Renzaho exited and the witness accompanied him to the *Hôtel des Diplomates*, whereas Karushara and the numerous Kigali-Ville *conseillers* and *bourgmestres* remained at the prefecture office. From outside the hotel, the witness saw several soldiers, including officers, and a policeman identified one of them as Gratien Kabiligi. Renzaho and some soldiers entered the hotel. At about 10.00 a.m., the soldiers came out of the building and loaded cases of ammunition and about 100 weapons, including Kalashnikov guns, into the witness's vehicle. He and the four policemen then followed Renzaho's car back to the prefecture office, arriving shortly after 10.00 a.m. The weapons and ammunition were offloaded and taken into the office, and those destined for Karushara were loaded into the witness's vehicle. He believed that the other *bourgmestres* and *conseillers* who were there would have received weapons and ammunition.²⁴⁰

190. Karushara, who had been inside the prefecture office, exited and asked a policeman whether weapons had been loaded into her car. The witness drove Karushara with 10 of the weapons back to Kimisagara while Renzaho remained at the prefecture office. The policemen carried the weapons into Karushara's living room. She told the *Interahamwe* who had come there that she was going to distribute weapons, and the witness saw her hand five weapons to those of them who were manning the roadblock outside her house. After Karushara served some food and beer, he went back to the prefecture office, where a policeman handed him a travel authorisation signed by Renzaho, instructing him to return with the vehicle the next morning.²⁴¹

191. Between 2.00 and 3.00 p.m. on 8 April, the witness accompanied Renzaho and the four policemen, who toured roadblocks. They passed the roadblock at Karushara's home Kimisagara sector, a roadblock Nyakabanda sector, two roadblocks in Nyamirambo and two roadblocks in Gitega sector. He promised to provide weapons to *Interahamwe* manning the roadblocks near Karushara's home and the roadblock in Nyakabanda sector. While the witness did not discuss this with Renzaho, he believed Renzaho's purpose was to determine what was being done with weapons that had been distributed.²⁴²

192. On 12 April, at around noon, Witness AFB went from the prefecture office with the same four policemen to the *Hôtel des Diplomates*. At the hotel, a policeman and some soldiers loaded various types of guns into the witness's double cabin Hilux pickup, which had State registration on it, until it was nearly full. The guns included some Kalashnikovs, which appeared to be new. From the hotel, the witness and the policemen followed the vehicle with the person who the witness had been told was Kabiligi, where the guns were offloaded and taken inside at about 2.00 p.m. Almost immediately, they were reloaded into the witness's car, along with other weapons that were taken from the office and from Kabiligi's car. The witness went with Renzaho and Kabiligi in three separate vehicles to the roadblock near Protais Zigiranyirazo's residence, which was at most two or three minutes from the prefecture office. The witness had already accompanied Renzaho to that house on 10 April. The roadblock was manned by soldiers and *Interahamwe*. All but about 20-30 weapons were offloaded. Renzaho was in Zigiranyirazo's house, whereas Kabiligi remained outside.

²⁴⁰ T. 8 January 2007 pp. 80-83; T. 9 January 2007 pp. 27-28, 34-35, 37-39.

²⁴¹ T. 8 January 2007 pp. 82-85; T. 9 January 2008 pp. 28-30, 32, 34-35.

²⁴² T. 8 January 2007 pp. 86-94; T. 9 January 2007 pp. 17, 32; Prosecution Exhibit 77 (photographs by Corrine Dufka).

According to the witness, Renzaho was aware that the weapons were being distributed at the roadblock as that was the “purpose of the mission”.²⁴³

193. Renzaho remained at Zigiranyirazo’s residence. Kabiligi drove towards the Hotel Kiyovu, after having ordered the witness and the policemen to continue. One of the policemen explained that they should distribute weapons to roadblocks and they did so at the one near Rose Karushara’s house in Kimisagara, and at those in Nyakabanda, Nyamirambo and Biryogo sectors. Two to three weapons were given to whoever identified himself as the chief at each roadblock. They returned to the prefecture office at about 3.00 p.m., where they found Renzaho.²⁴⁴

Prosecution Witness UB

194. Witness UB, a Hutu local official in Kigali-Ville prefecture, explained that Renzaho convened several meetings at the prefecture office during the events. On 10 or 11 April 1994, Renzaho chaired what he called an “extended security council meeting”. *Conseillers*, *responsables* of cellules, *Interahamwe*, political party representatives, soldiers and gendarmes were present. The *conseillers* complained about their individual security concerns and that Tutsis were being killed. Renzaho convened a second meeting days later.²⁴⁵ The *conseillers* gave reports during this second meeting about the situation in their respective sectors. They noted that “inhabitants” had firearms, and Witness UB testified that some had been distributed by the political parties. *Conseillers* complained that they, as authorities, did not have any. Renzaho responded that he had consulted with army leaders who had promised to provide the *conseillers* with firearms. He told the *conseillers* to go to the Ministry of Defence to collect the weapons. Jean Bizimana, *bourgmestre* of Nyarugenge commune, was present during this meeting.²⁴⁶

195. After the second meeting, the witness went to the Ministry of Defence accompanied by policemen. He did not believe that Jean Bizimana went with them there and could not recall which of the other *conseillers* went, although there were several. He received five firearms there and distributed them to the *responsables de cellule* in his sector. The witness was also given ammunition. No documents were required to obtain the weapons.²⁴⁷

196. In addition to the weapons that Witness UB supplied, he saw many firearms that had been distributed by representatives of political parties in Biryogo sector. The chairman of the Islamic PDI party in Kigali-Ville prefecture, Djuma Babazinturo, who lived in the Biryogo

²⁴³ T. 8 January 2007 p. 73; T. 9 January 2007 pp. 1-3, 5-9.

²⁴⁴ T. 9 January 2007 pp. 5-9, 17, 20. Witness AFB testified that the policeman said that they should go to roadblocks in Kimisagara, Nyamirambo, Nyakabanda and Gitega sectors but said that went to Biryogo, not Gitega. Compare T. 9 January 2007 p. 5 (mentioning the policeman’s instructions on which roadblocks to visit) and T. 9 January 2007 p. 7 (describing the roadblocks visited).

²⁴⁵ Compare T. 23 January 2007 p. 12 (placing the second meeting “approximately two days” after the first meeting on 10 or 11 April) and T. 24 January 2007 pp. 14-15 (discussing the meeting as occurring on 16 April and going to the Ministry of Defence that day).

²⁴⁶ T. 23 January 2007 pp. 1-2, 4, 8-9, 12-14, 55; T. 24 January 2007 pp. 15-16; Prosecution Exhibit 69 (personal identification sheet). At the time of his testimony, Witness UB was a detainee, awaiting the outcome of an appeal before the Rwandan Supreme Court. His conviction for genocide in 1997 had been confirmed by the appeals court.

²⁴⁷ T. 23 January 2007 pp. 13-14; T. 24 January 2007 p. 15.

sector said that he had obtained them from the prefect and distributed them to the members of the population.²⁴⁸

Prosecution Witness GLJ

197. Witness GLJ was a Hutu local official in Kigali until he was dismissed from his duties in April 1994. He attended a meeting convened and chaired by Renzaho on about 16 or 17 April in the morning. Three *bourgmestres*, the *conseillers* of Kigali town, all the *responsables* of the *cellules*, an army representative, as well as the commander in charge of the civil defence program, were present.²⁴⁹

198. Renzaho, who was in military attire, passed on decisions made by a prior meeting of the security committee.²⁵⁰ He informed those in attendance that weapons should be distributed to members of the population to ensure their security. Renzaho told the attendees to obtain weapons at the Ministry of Defence and provide them to demobilised soldiers and policemen, adding that some could be given to members of the population who knew how to handle weapons. The weapons were to be distributed so that people could take part in security rounds or go to roadblocks.²⁵¹

199. Immediately after the meeting, Witness GLJ went alone with his driver to the Ministry of Defence and received five firearms, and on another unspecified occasion he received five more.²⁵² He distributed them to the population, particularly those manning roadblocks, in the Rebero neighbourhood, Kivugiza *cellule* and neighbouring areas. He recalled that he distributed two weapons in Gatware neighbourhood.²⁵³ No documents were required to collect the weapons, but he had to sign one acknowledging receipt of them. The person in charge of civilian defence, Bivamvagara, was responsible for monitoring how the weapons were used.²⁵⁴

200. A *communiqué* from Renzaho was issued on 10 May, aimed at determining who was in possession of weapons.²⁵⁵ The witness and others also submitted lists of those who had weapons to Renzaho. In the witness's view, the objective of the *communiqué* was to recover the weapons in order to restore security. Based on the reports that had been made to the

²⁴⁸ T. 23 January 2007 p. 14.

²⁴⁹ T. 22 January 2007 pp. 13-15, 18-21, 23, 26-27, 30-31, 50, 58, 61-63; Prosecution Exhibit 68 (personal identification sheet). When testifying, Witness GLJ had been detained in Rwanda for over 12 years. His trial had not yet begun.

²⁵⁰ A more detailed discussion of this security committee meeting is set forth in (II.2).

²⁵¹ T. 22 January 2007 pp. 14, 19, 21-23, 25-29.

²⁵² First, Witness GLJ testified that he received five firearms and subsequently five more. T. 22 January 2007 pp. 19, 21. Later, he seemed to indicate that he obtained all 10 at once. T. 22 January 2007 p. 58.

²⁵³ *Id.* p. 19. See also the French version which appears to be more precise. p. 23 (“*Q. À qui avez-vous remis ces armes à feu? R. Comme je l’ai expliqué, j’ai distribué ces armes à feu dans les cellules voisines de Rebero, c’est-à-dire Nyabitare, où j’ai distribué quatre armes à feu; dans la cellule de Kivugiza, j’en ai distribué deux; et Gatware, j’en ai distribué deux également. Donc, j’ai distribué ces armes auprès des populations qui habitaient aux environs de Rebero.*”)

²⁵⁴ *Id.* pp. 13, 19-21, 26, 29, 32, 57-59. The distribution of 10 weapons formed part of his confession in his Rwandan legal proceedings.

²⁵⁵ Prosecution Exhibit 56 (transcript of Radio Rwanda broadcast of 10 May 1994) p. 12 (“Civil-Defence material belongs to members of the population [...] equitably and appropriately. We have now started to conduct inspections in order to assess the situation. The situation is improving due to the directives we are giving them”).

prefect that there were *Interahamwe* killing people in the sector, he thought that Renzaho would recover the weapons from the *Interahamwe* to restore security. However, no such action was taken.²⁵⁶

Prosecution Witness AWE

201. Witness AWE, a Hutu local official within the Kigali-Ville prefecture and MRND member, attended several meetings in the Kigali-Ville prefecture office. The second of them occurred around 11 April 1994.²⁵⁷ *Bourgmestres, conseillers*, representatives of political parties and soldiers were among those present. Renzaho told those at the meeting to collect firearms at the Ministry of Defence immediately after the meeting and to provide them to former soldiers. He "strictly requested to avoid giving the weapons to the Tutsi". The witness did not go to the Ministry right away, as he was alone without a vehicle and thought he would be unable to transport them.²⁵⁸

202. The next morning, Witness AWE went in a vehicle to the prefecture office and asked Renzaho for the promised weapons, explaining that he had not yet been able to get them. Renzaho called a major at the Ministry of Defence and then told the witness to go there and receive weapons. A soldier at the Ministry gave the witness five weapons – Lee Enfield and Kalashnikov rifles – and ammunition. He did not take any documentation with him and needed only to introduce himself and specify his sector given Renzaho's prior phone call.²⁵⁹

203. Witness AWE took the firearms to the sector office and handed them to members of the sector committee. About 12 persons, including those that had received the weapons, were then called to one or two days' military training in weapons handling. The witness testified that they had been trained to exterminate people. When the recipients returned from training, they first went to the war front but then very soon returned to assist the *Interahamwe*, and immediately started killing Tutsis in large numbers. He reported on the situation to the prefect, but Renzaho never intervened.²⁶⁰

Prosecution Witness ALG

204. Witness ALG, a Hutu, was a local official in Kigali-Ville prefecture and a MRND party member.²⁶¹ He testified that Renzaho convened three or four security meetings in April and May 1994. The witness attended some of them. Government officials, soldiers, political party officials and *Interahamwe* were invited and would attend these meetings, including Angeline Mukandutiye and *Interahamwe* such as Jean Nepomuscene Biziyaremye, Hussein Longo Longo and Sued Nydayitabi. The recommendations made there were almost always the same. Renzaho would call on the participants to provide support to the *Interahamwe* who

²⁵⁶ T. 22 January 2007 p. 58.

²⁵⁷ Witness AWE's evidence relating to the first meeting he attended at the Kigali-Ville prefecture office is set out in (II.2).

²⁵⁸ T. 31 January 2007 pp. 11-13, 17-20, 42, 47-49 (quoted); Prosecution Exhibit 80 (personal identification sheet). Having been arrested in 1996, Witness AWE was at the time of his testimony awaiting trial for genocide in Rwanda.

²⁵⁹ T. 31 January 2007 pp. 18-20, 42, 47.

²⁶⁰ *Id.* pp. 20-21, 26-27, 41, 47-50.

²⁶¹ T. 10 January 2007 pp. 56, 63; T. 12 January 2007 p. 22; Prosecution Exhibit 67 (personal identification sheet). When testifying, Witness ALG was awaiting trial in Rwanda for his role during the 1994 events, including a charge that he distributed weapons in one of the communes. T. 10 January 2007 p. 64.

were helping soldiers "at the front", and it was therefore necessary to give the *Interahamwe* weapons. The *Interahamwe* constantly requested firearms during these meetings. The witness was told by the *Interahamwe* at Angeline Mukandutiye's compound that Renzaho distributed weapons to them, and that *Interahamwe* who needed weapons would go to pick them up at Renzaho's "place".²⁶²

205. A *bourgmestre* and some *conseillers* informed Witness ALG that, on 9 and 11 April 1994, Renzaho summoned them to meetings, and that, at the 9 April meeting, Renzaho promised the *conseillers* that he would forward a request to the Ministry of Defence for weapons to be distributed at various roadblocks. *Conseillers* also informed the witness that, at the 11 April meeting, they learned that Renzaho had arranged for them to collect firearms at the Ministry. They went to the Ministry, led by Jean Baptiste Butera and François Karera. They were also accompanied by national level *Interahamwe* officials, including Maniragaba, who was an influential *Interahamwe* in Kigali town, and Stanlis Simbizi, vice chairman of the CDR party in Kigali prefecture. The *conseillers* gave the weapons, which they had collected to the various heads of the *cellule* committees for distribution to members of the population. The *conseiller* of Cyhafi sector told the witness that each *conseiller* received five weapons.²⁶³

206. On several occasions in May 1994, Witness ALG saw General Kabiligi bring weapons, including new Kalashnikov guns, to the prefecture office. The weapons were distributed directly to the *Interahamwe* and members of the civil defence who Kabiligi had summoned there, after which they would go "to the front". The witness saw Kabiligi show Renzaho the weapons that had been stockpiled in the courtyard of the prefecture office. They were placed in the urban police stocks there and later distributed to the *Interahamwe* who would come to the prefecture office to get them before leaving "for the front". On one occasion, Renzaho asked the witness to accompany Major Bivamvagara, the person in charge of the civil defence service, to Nyakabanda sector and hand five guns to the *conseiller* of that sector. The witness also explained that the prefecture kept "a special stock of weapons" that was meant for use by the various communes, which therefore did not have their own stocks of weapons.²⁶⁴

Prosecution Witness XXY

207. Witness XXY testified that he was a classmate of Renzaho's son, Jean-François Régis, at a school not far from Renzaho's house in Kanombe. Towards the end of April 1994, an *Interahamwe* from their class told the witness that Renzaho had distributed weapons in the night of 6 to 7 April to *Interahamwe* leaders in various sectors of Kigali. Moreover, in early May, the witness saw Renzaho's son in Gitarama. Régis told him that Renzaho had come to Gitarama to distribute weapons. About two weeks later, still in Gitarama, Régis informed the witness that, three days after they had met on the first occasion, his father had come back to

²⁶² T. 11 January 2007 pp. 36, 39-41; T. 15 January 2007 pp. 9-13, 33, 35.

²⁶³ T. 11 January 2007 pp. 29-32; T. 12 January 2007 28-30.

²⁶⁴ T. 10 January 2007 p. 58; T. 11 January 2007 pp. 45-46, 50. Witness ALG stated that Bivamvagara was based in the Ministry of Defence, and the weapons used by the civil defence came from the Rwandan army staff headquarters. The witness also explained that communes within the Kigali-Ville prefecture did not manage their own, autonomous budgets, which were instead also administered at the prefectural level.

Gitarama with weapons to be used in killing the Tutsis, angry that the residents there were doing nothing.²⁶⁵

Prosecution Witness BUO

208. Witness BUO testified that Renzaho distributed weapons to *Interahamwe* at Angeline Mukandutiye's compound immediately prior to the attack at CELA on 21 April 1994 (II.6).

Renzaho

209. Renzaho denied that he distributed weapons, including on 7 April 1994. He did not have a stock of arms at the prefecture office. Renzaho disputed Witness AFB's description of his activities on 7 April as incorrect and unrealistic. Instead, on that date, he went to a meeting of senior military officers at ESM, which began around 10.15 a.m., and was still there at 11.00 a.m. According to Renzaho, Kabiligi was not in Rwanda on 7 April and could therefore not have participated in weapons distribution.²⁶⁶

210. Renzaho did not direct members of the "commune administration" to look for arms from sources other than the prefecture office. He testified that, instead, he could have asked his police service to look for arms if he wanted them to be distributed. However, out of the 250 policemen, not more than 100 had weapons in April 1994, as the prefecture lacked sufficient resources to arm them all. Renzaho had corresponded with the Ministry of Interior, but it had not been able to provide all the weapons needed for the policemen.²⁶⁷

211. In order to obtain weapons, it would have been necessary to write to the Minister of the Interior, who would then contact the Minister of Defence. Renzaho acknowledged writing directly to the Minister of Defence in 1992, asking for a loan of arms and permission to carry the arms for a number of his *conseillers* and *bourgmestres*. He only did so, however, after consulting with the Minister of the Interior. An authorisation to carry the weapons had to be given by a specific department within the Ministry of Defence. The authorisation was given and weapons were lent to *bourgmestres* and *conseillers* for an unspecified period, who were directed to return them once the situation improved.²⁶⁸

212. Renzaho also denied Witness BUO's assertion that he distributed weapons to the *Interahamwe* on 21 April, before the attack at CELA the following day. He did not accompany Colonel Munyakaze to Mukandutiye's house on 21 April. He questioned why Munyakaze would collect him at the prefecture office that day, given his refusal to answer Renzaho's request on 22 April for assistance at CELA.²⁶⁹

²⁶⁵ T. 10 January 2007 pp. 5-6, 13-15. Prosecution Exhibit 66 (personal identification sheet).

²⁶⁶ T. 29 August 2007 pp. 30-32; T. 30 August 2007 pp. 3-4; T. 31 August 2007 p. 11; T. 3 September 2007 pp. 20-21.

²⁶⁷ T. 27 August 2007 pp. 27, 61-62; T. 28 August 2007 pp. 19-20; T. 29 August 2007 p. 30 (quoted); T. 31 August 2007 pp. 11, 13. Renzaho responded to a question of whether he directed "commune administration" officials to collect weapons from locations other than the prefecture office. Given the Prosecution's case against him, the Chamber interprets the request and the response as referring to Kigali-Ville prefecture government officials, including *conseillers*.

²⁶⁸ T. 31 August 2007 pp. 13-15; Prosecution Exhibit 17 (letter of 4 March 1992 from Renzaho to the Minister of Defence).

²⁶⁹ T. 29 August 2007 pp. 9-10; T. 30 August 2007 pp. 3-5.

213. He acknowledged the proliferation of weapons after 6 April. In 1991 and 1992, the Rwandan army had expanded rapidly, the recruits were not sufficiently vetted and criminals were among those who now had access to weapons. Some got involved in banditry. Additionally, these recruits failed to gain the required experience and were undisciplined. The likely sources of arms after 6 April were such soldiers who had deserted from the frontline as well as the RPF, who had been bringing in weapons probably before 1 October 1990. Evidence of heavily armed civilian and militias at roadblocks could be explained by the escalation of hostilities and the presence of soldiers who could not go back to their units and who began participating in killings, rapes and other activities.²⁷⁰

214. Renzaho was confronted with a Radio Rwanda broadcast on 10 May. In it he discussed having met with officials and that “[t]ogether they examined the issue of security for their cellule and deal with distribution and well thought out use of civil-defence materiel at their disposal”. In response, Renzaho denied having distributed weapons “at the prefecture”.²⁷¹

Defence Witness PPV

215. Witness PPV, a Hutu, worked in the communal police, also called the urban police, at the prefecture of Kigali-Ville. The police, placed under the direct control of the prefect, had a total of 100 guns, which, according to the witness, was insufficient. Police officers would return their weapons to the prefecture office in the evening and retrieve them again in the morning. As some officers did not return at night, not all 100 weapons were kept at the prefecture office. Moreover, only about 40 policemen reported to the prefecture office as of 7 April 1994. Those who did not return kept their weapons.²⁷²

216. Although reserve units initially received weapons in order to work with the military to check infiltrations, Witness PPV did not know the provenance of the weapons at roadblocks. He denied that any distribution of arms took place. No weapons were received or given out at the prefecture office, including on 7 April, when he was present. He had no weapon or ammunition stock for distribution.²⁷³

Defence Witness AIA

217. Witness AIA, was a policeman in Kigali-Ville prefecture. His immediate superior was a *conseiller*, with whom he worked in April 1994 and the following months on a nearly 24-hour basis.²⁷⁴ He explained that after work, the police officers would return their weapons to the prefecture office so as to make them available for the next shift. Renzaho provided each

²⁷⁰ T. 27 August 2007 p. 27; T. 29 August 2007 pp. 30-32.

²⁷¹ T. 3 September 2007 pp. 3-4, 5 (quoted); Prosecution Exhibit 56 (transcript of Radio Rwanda broadcast of 10 May 1994), p. 12.

²⁷² T. 4 June 2007 p. 78; T. 5 June 2007 pp. 2-4, 6, 26, 49-50; Defence Exhibit 56 (personal identification sheet).

²⁷³ T. 5 June 2007 pp. 15, 26-27, 43, 46, 48-51. Witness PPV stated that the “PVK did not have any stock of weapons. All the weapons available had been distributed. No weapons were received; no weapons were given out”. Had there been an organisation of a civil defence in Kigali, he would not have been informed of it, as it would have involved the military, the administration and the population, but not the police. T. 5 June 2007 pp. 29, 49-51.

²⁷⁴ T. 2 July 2007 pp. 2, 8-10; T. 3 July 2007 pp. 6, 18-19; Defence Exhibit 66 (personal identification sheet). Witness AIA’s ethnic origin was not specified. Witness AIA was arrested in Rwanda in November 1994, detained for a month during an investigation by Nyamirambo brigade, and released. T. 2 July 2007 p. 46.

sector with five armed policemen, apart from the witness's sector, which had 11 such officers. The police in the prefecture had an inadequate number of guns.²⁷⁵

218. In April 1994, Witness AIA saw his *conseiller* go into the prefecture office for three meetings. The first was on the morning of 8 April. The second meeting took place on or about 12 April and lasted about an hour or an hour and a half. Afterwards, he and the *conseiller* went directly home without obtaining any weapons. After the third meeting, around 16 April, they did not transport any weapons. The witness remained in the car park at the prefecture office during the second two meetings. On other occasions, the *conseiller* went to the prefecture, but remained outside speaking to the refugees and *Bourgmestre* Jean Bizimana of Nyarugenge commune.²⁷⁶

219. Around 12 or 13 April, Rebero Hill had just been captured by the *Inkotanyi*, and fleeing soldiers requested weapons from the *conseiller* to defend themselves. He took the soldiers to Camp Kigali, where one of the commanders gave five guns to the *conseiller* and one to a reservist. The witness was also present when the *conseiller* gave one gun to each cellule and kept the last – a Kalashnikov – in his own house. It was unknown to the witness whether Renzaho was informed of the *conseiller*'s distribution of these weapons, and he was not aware whether the *conseiller* received any weapons from the prefecture. Political parties such as MRND and CDR parties did, however, distribute weapons to the population.²⁷⁷

Defence Witness PAT

220. Witness PAT, a Hutu officer in the Rwandan army, had access to information about weapons stocks and their distribution among the units. As of 6 April 1994, the Rwandan army had insufficient ammunition. Moreover, the army headquarters never had any reserves, weapons or ammunition anywhere other than the army's logistics base. Neither the headquarters nor the logistics base was to be found within the premises of the Ministry of Defence. The army did not have the resources to disarm those at roadblocks who possessed weapons, because it was fighting the RPF.²⁷⁸

221. The distribution of weapons to civilians from the Ministry of Defence on 7 April was unknown to Witness PAT and would have been in his view absurd. The Ministry could not have acquired such weapons, since it took some time to get weapons from the logistics base to the Ministry, and because the army had no weapons stocked there in any case. The Rwandan army logistics base would have required a signed document before a potential client, including the Ministry, was supplied with weapons.²⁷⁹

222. Witness PAT had never visited the premises of the Ministry of Defence, but given his position he would have known, nonetheless, about any weapons distributed there. The normal channels for that process meant that he would have received a message in the event of such a

²⁷⁵ T. 2 July 2007 pp. 4, 6-10, 35-36, 42-43, 46, 52-54; T. 3 July 2007 pp. 2-7, 16-19.

²⁷⁶ T. 2 July 2007 pp. 21-22, 31-32, 35, 41, 54; T. 3 July 2007 pp. 7, 10, 17-18.

²⁷⁷ T. 2 July 2007 pp. 31-34, 52-53.

²⁷⁸ T. 22 August 2007 pp. 45-46, 61-62, 66-69; T. 23 August 2007 pp. 14-15; Defence Exhibit 77 (personal identification sheet); Defence Exhibit 78 (written declaration of 22 August 2007 by Witness PAT to supplement his testimony).

²⁷⁹ T. 22 August 2007 p. 62; T. 23 August 2007 p. 14.

distribution, but he never did. There was no weapons stock to be given to a third party other than the army at a time when the army clearly lacked such weapons.²⁸⁰

223. The administrative process required that weapons held by camps or units were transferred to the army logistics base through a transfer slip. Until early May 1994, Witness PAT was not working in the field. Therefore, if arms came from a military camp to the Ministry of Defence, he would not have been informed of it. Similarly, he would not necessarily have known if weapons had been distributed from Camp Kigali to the sectors. He noted that Camp Kigali had a reconnaissance battalion and that there was no reason that it should distribute weapons to the sectors when it needed such arms itself.²⁸¹

Defence Witness PGL

224. Witness PGL, worked at the Kigali-Ville prefecture office and reported there from 11 April to 3 July. He did not see or hear of weapons being distributed from the prefecture office during the war.²⁸²

3.3 Deliberations

225. Paragraph 12 of the Indictment alleges that Renzaho was involved in distributing weapons to the *Interahamwe* and the *Impuzamugambi* between mid-1993 to 17 July 1994. According to paragraphs 16 and 33, he ordered such distribution during a meeting at the Kigali-Ville prefecture office on or about 16 April 1994. The Chamber will consider first Renzaho's own physical involvement, if any, in weapons distributions and then his alleged orders that they should take place.

3.3.1 Distribution of Weapons

226. The Prosecution's primary evidence of Renzaho's direct involvement in the acquisition and distribution of weapons comes from the testimony of Witness AFB. He offered eyewitness testimony concerning two distinct events. On 7 April 1994, Renzaho allegedly brought weapons and ammunition from the *Hôtel des Diplomates* to the Kigali-Ville prefecture office. Ten of those weapons were given to *Conseiller* Rose Karushara, who on the same day distributed them to *Interahamwe* manning a roadblock near her house. The witness believed that *bourgmestres* and *conseillers* at the prefecture office also received weapons that day.

227. On the second occasion, 12 April, Renzaho purportedly brought weapons from the *Hôtel des Diplomates* to Protais Zigiranyirazo's house, where they were unloaded at a roadblock nearby. While Renzaho remained at that residence, the witness distributed weapons at additional roadblocks in Nyakabanda, Nyamirambo and Biryogo sectors. Renzaho was allegedly aware of this.

228. Witness AFB was the only witness to testify about these two events. His account was precise and largely consistent. The Chamber has noted that in Gacaca proceedings he has admitted establishing a roadblock in 1994.²⁸³ There is no evidence that he has been accused

²⁸⁰ *Id.* pp. 62-64; T. 23 August 2007 pp. 4-5.

²⁸¹ T. 23 August 2007 pp. 4-5, 14-15.

²⁸² T. 6 June 2007 pp. 15, 18, 28, 40.

²⁸³ Witness AFB's involvement in the establishment of a roadblock follows both from his testimony in the *Zigiranyirazo* trial and the present case. See T. 9 January 2007 pp. 36-37 (the witness refusing to answer a

of any wrongdoing in connection with that roadblock,²⁸⁴ and the Chamber does not consider that this affects his credibility.

229. The witness testified that on the morning of 7 April, he brought Rose Karushara from her house to the prefecture office, before going with Renzaho to retrieve weapons from the *Hôtel des Diplomates*. The Defence put to him that in the *Zigiranyirazo* trial, he said that he went to Karushara's residence in the afternoon after weapons had been collected from the *Hôtel des Diplomates*.²⁸⁵ He initially explained that his testimony in the *Zigiranyirazo* case may have been transcribed incorrectly, later concluding that counsel had misread it to him. He also suggested that the significant lapse in time might have caused the mistake.²⁸⁶ While these explanations are not entirely convincing, the Chamber observes that the witness's testimony in the present case is in conformity with his statement to Tribunal investigators in December 2003.²⁸⁷ His testimony in the *Zigiranyirazo* trial about the sequence of the events was not always clear, and the Chamber attaches little weight to these differences.

230. The Chamber has also considered the witness's evidence about Gratien Kabiligi. He testified that a policeman pointed Kabiligi out to him at the *Hôtel des Diplomates* on 7 April. This is not in conformity with his first statement to Tribunal investigators in December 2003, where Kabiligi was identified to him on 12 April.²⁸⁸ According to his second statement of November 2004, which focussed more on Kabiligi, the witness observed him for the first time on 10 April 1994, and Kabiligi was then pointed out a couple of days later.²⁸⁹ In court, the witness explained that the investigators had made a mistake with respect to his November 2004 statement.²⁹⁰ The Chamber accepts that the reference to 10 April may be incorrect, as both the testimony and the first statement only mention visits to the *Hôtel des Diplomates* on 7 and 12 April.

231. The discrepancy between the testimony and the two previous statements about when the witness first observed Kabiligi and described him as involved may be explained by the lapse of time between the events in 1994 and the testimony, or the fact that the witness was confused. Nonetheless, the Defence has pointed out inconsistencies in the Prosecution's position regarding Kabiligi's presence in Rwanda on 7 April, giving rise to concerns about Witness AFB's evidence.²⁹¹

question about whether he had killed anyone), and Defence Exhibit 1 (*Prosecutor v. Zigiranyirazo*, T. 26 January 2006 pp. 36-40; T. 30 January 2006 pp. 35-36).

²⁸⁴ See T. 9 January 2007 p. 42.

²⁸⁵ Defence Exhibit 1 (*Prosecutor v. Zigiranyirazo*, T. 26 January 2006 pp. 9-13; T. 30 January 2006 pp. 8, 36).

²⁸⁶ T. 9 January 2008 pp. 28-30, 32, 34-35.

²⁸⁷ Defence Exhibit 2 (statement of 22 December 2003).

²⁸⁸ *Id.* p. 6: "On 12 April 2004, I drove to the *préfecture* with my van around 7 a.m. Around 8 a.m., I saw Colonel Gratien Kabiligi arrive at the *préfecture* in a Mercedes Benz military jeep. He was accompanied by military escorts in the same car. I never knew Kabiligi before, but the policemen who were with me told me that he was Colonel Gratien Kabiligi."

²⁸⁹ Defence Exhibit 3 (statement of 30 November 2004) p. 3: "I first saw [Kabiligi] at the *Hôtel des Diplomates* on 10 April 1994, but I did not know him then ... When we arrived there, we found several Rwandan Army officers and men in the hotel compound. One of the policemen who was with me went to see an officer who was introduced to me two days thereafter as Colonel Gratien Kabiligi."

²⁹⁰ T. 9 January 2007 pp. 37-39.

²⁹¹ Decision on Defence Motion to Admit Documents (TC), 12 February 2008, paras. 3, 5 citing *Bagosora et al.*, T. 28 May 2007 p. 12 ("Mr. Jallow: ...on the same day, 7 April, the other Accused, Kabiligi, was not in Rwanda. He was outside of Rwanda and while the three other Accused were in Rwanda giving orders and instructions for killings to be carried out, Kabiligi was intent on returning back to Rwanda.").

232. Witness AFB's testimony regarding the timing of the weapons distribution also raises questions. He testified that Renzaho left the prefecture office for Radio Rwanda after 9.00 a.m. and arrived at the Rwandan Radio premises at about 9.30 or 10.00 a.m.²⁹² However, he also testified that he loaded the guns into the vehicle around 10.00 a.m. and returned to the prefecture office shortly after 10.00 a.m. According to the statement of December 2003, however, the witness saw Renzaho come out of his office towards 10.00 a.m. before driving to Radio Rwanda. It also follows from that statement that Rose Karushara and other *conseillers* stayed in Renzaho's office for about an hour before Renzaho left for the *Hôtel des Diplomates*, where the weapons were loaded into the witness's car. This gives rise to further discrepancies about the timing of this event.²⁹³

233. The Chamber is aware that recalling the precise timing of events can be difficult. Witness AFB provided estimates.²⁹⁴ However, the sequence of events is important because Renzaho claimed to be at a meeting of senior military officers at the military academy (ESM) from 10.15 a.m. until 11.00 a.m. Although the Defence did not call witnesses to corroborate this, the Chamber cannot exclude that Renzaho would attend this important meeting in view of the dramatic situation, his position as the prefect of Kigali, and his military rank.²⁹⁵

234. The witness's testimony that Amri Karekezi was at the prefecture office on the morning of 7 April is inconsistent with both Prosecution and Defence evidence.²⁹⁶ Furthermore, his suggestion that *conseillers*, other than Karushara, and *bourgmestres* who were present at the prefecture office that day also obtained weapons and ammunition is unsupported by other Prosecution witnesses. The absence of any corroboration by other witnesses, who, even if not present, likely would have known about weapons being brought to and distributed from the prefecture office that day, raises some doubt. Finally, there is also a lack of clarity concerning other minor aspects of the witness's testimony.²⁹⁷ While the individual impact of each of these inconsistencies is small, their cumulative effect leaves the Chamber with a reasonable doubt about the witness's evidence regarding Renzaho's involvement in obtaining and distributing weapons on 7 April. The Chamber will therefore not rely on Witness AFB's testimony regarding this alleged distribution without corroboration.

²⁹² Witness AFB first said that Renzaho entered the Radio Rwanda compound at about 9.30 a.m. (T. 8 January 2007 p. 78), then, during cross-examination said it was about 10.00 a.m. (T. 9 January 2007 p. 24).

²⁹³ Defence Exhibit 2B (statement of 22 December 2003), pp. 3-4.

²⁹⁴ T. 8 January 2007 p. 83 ("It is just an approximation when I look at the time it took for us to make the trips from the various points, I think it was around ten o'clock, because I remember I had left my home around seven o'clock, that is early in the morning"). The Chamber also notes that one year before he testified, he similarly stated in the *Zigiranyirazo* trial that Renzaho off-loaded weapons from the *Hôtel des Diplomates* around 10.00 a.m. See Defence Exhibit 1 (*Prosecutor v. Zigiranyirazo*, T. 26 January 2006 p. 7).

²⁹⁵ The Chamber is mindful of evidence that ESM was only a short distance from the Kigali-Ville prefecture office. Witness RGI, T. 4 July 2007 p. 23.

²⁹⁶ See Witness UB, T. 23 January 2007 pp. 4-5, 55-62; T. 24 January 2007 pp. 4, 6-7; Witness AIA, T. 2 July 2007 pp. 7, 9-21; T. 3 July 2007 pp. 4-5, 14-18.

²⁹⁷ While Witness AFB testified that the same four policemen accompanied him on all his trips, he said in the *Zigiranyirazo* case that two police officers were in his vehicle and repeated that answer unambiguously several times (*Prosecutor v. Zigiranyirazo*, T. 26 January 2006 p. 7; T. 30 January 2006 pp. 8-9). When this inconsistency was put to him in the present case, he answered that he had clarified that there were four policemen at the end of his testimony in the *Zigiranyirazo* trial. T. 9 January 2007 pp. 17-23. However, there is no such statement in the transcripts of that case.

235. Turning to the weapons distribution on 12 April, Witness AFB's testimony is not corroborated. None of the Prosecution witnesses who were frequenting the Kigali-Ville prefecture office around this time, and who testified that they were directed by Renzaho to go to the Ministry of Defence, supported Witness AFB's testimony regarding the loading, storing and unloading of weapons at the prefecture office during this period. It is true that Witness ALG stated that Kabiligi brought weapons to the prefecture office, which were placed in the urban police stocks and distributed to *Interahamwe* called to the prefecture office. However, his evidence suggests that this occurred in May and, in the Chamber's view, is temporally too remote to corroborate Witness AFB's evidence. The Chamber views Witness ALG's testimony with caution where it is uncorroborated and finds that this evidence is insufficiently reliable to stand on its own. Moreover, Witness PGL, who worked at the prefecture office, generally denied that weapons were distributed from there, although this evidence was general and of limited probative value.

236. Witness XXY's evidence that Renzaho distributed weapons on the night of 6-7 April in various sectors in Kigali and again in late April or early May in Gitarama, does not corroborate Witness AFB's testimony. It is hearsay, obtained from Renzaho's son Régis, and appears unrelated to Witness AFB's evidence. Witness UB's account that he heard Renzaho had delivered weapons to the Chairman of the PDI party who distributed them to members of the population is also uncorroborated hearsay.

237. Witness BUO testified that Renzaho provided weapons to *Interahamwe* on 21 April from Angeline Mukandutiye's house (II.6). Witness ALG heard from *Interahamwe* at Mukandutiye's compound that Renzaho had distributed weapons to them, but he testified that they were distributed from Renzaho's "place" as opposed to Mukandutiye's.²⁹⁸ Witness ALG's evidence is hearsay, imprecise and too different to corroborate Witness BUO's evidence. In light of the Chamber's concerns about Witness ALG's testimony generally (II.2, 9 and 11), it does not consider his evidence on this point reliable.

238. The Chamber also considers a memo prepared by UNAMIR officer Lieutenant-Colonel Frank Claeys concerning a discussion with an informant on 20 January 1994. The report reflects that the informant told Claeys that he had been taken in "a blue Peugeot" of Rwandan army Colonel and Kigali-Ville prefect, Renzaho. The vehicle had been loaded with weapons and the informant was asked to identify persons to whom the weapons should be given.²⁹⁹ The Prosecution submits that the memo corroborates the direct evidence of Renzaho's participation in the distribution of weapons.³⁰⁰ This evidence is hearsay and lacking in detail. The evidence of Renzaho's involvement in the transportation of these weapons is only circumstantial and is temporally remote from the allegations presented by

²⁹⁸ T. 11 January 2007 p. 39 ("But from what one could observe, the *Interahamwe* were at Mukandutiye's compound and who were being trained there, told me that Renzaho used to go there to give them instructions and distribute weapons to them. They also said they enjoyed his backing. *So those who needed weapons would go and pick them up at her place. At his place -- correction.*") (emphasis added).

²⁹⁹ Prosecution Exhibit 21 (memorandum of UNAMIR officer Lieutenant-Colonel Frank Claeys re: discussion with informant on 20 January 1994), which reads: "With a blue Peugeot of a Col of RGF: Terehaho, prefect of KIGALI. He was taken with that car, the weapons were already on board, and he had to design the persons the weapons had to be handed over". (p.1)

³⁰⁰ T. 8 January 2007 p. 42.

Prosecution witnesses in this trial.³⁰¹ In the Chamber's view, it fails to establish that Renzaho was physically involved in this weapons distribution or corroborate other Prosecution evidence of Renzaho's involvement in others.

239. The Chamber concludes that the Prosecution has not proven beyond reasonable doubt that Renzaho distributed weapons on 7 April 1994 to *Interahamwe* manning a roadblock near Karushara's house, and further that, on 12 April, he participated in the distribution of weapons from *Hôtel des Diplomates* and the prefecture office at a roadblock near Zigiranyirazo's house and at other roadblocks in several sectors of Kigali-Ville. Likewise, the evidence of Witnesses ALG, XXY, BUO and UB highlighted in the deliberations above is insufficiently reliable to establish Renzaho's direct involvement in weapons distributions. Notwithstanding, the Chamber finds Witness AFB's observations about who was manning roadblocks and the state of affairs at them largely credible and convincing (II.2). The Prosecution has failed to establish that Renzaho was directly involved in the distribution of weapons distributions to *Interahamwe* and *Impuzamugambi* from mid-1993 to 17 July 1994. Consequently, the Chamber does not find it necessary to revisit whether adequate notice was provided of this allegation.

3.3.2 Orders to Collect Weapons and Distribute Them

240. The Prosecution points to the first-hand evidence of Witnesses UB, AWE and GLJ to support its allegation that around 16 April 1994, Renzaho ordered *conseillers* to collect weapons from the Ministry of Defence and to have them distributed in their sectors to kill Tutsis. Witness ALG also provided second-hand information regarding this incident. As discussed in detail elsewhere, the Chamber views the evidence of each of these witnesses with caution. They have been either convicted of or charged with, crimes in Rwanda that are at issue in this trial. Witnesses UB and AWE were detained in the same prison in Rwanda before arriving in Arusha to testify (II.2). At the same time, the Chamber notes that Witnesses GLJ and AWE had already confessed to their participation in weapons distribution based on the very same facts, reducing any interest they may have in shifting blame to Renzaho.³⁰² Moreover, although Witness UB was awaiting a determination by the Rwandan Supreme Court regarding his conviction, his judicial record reflects that he did not challenge that he had distributed weapons based on Renzaho's instructions.³⁰³

241. Certain inconsistencies emerge between the first-hand accounts of Witnesses UB, AWE and GLJ. For example, Witness AWE's evidence suggests that the instructions to collect weapons were given during a meeting on 11 April, while Witness GLJ stated that this occurred on 16 April. Witness UB's testimony on when the meeting occurred vacillated

³⁰¹ While the 20 January 1994 memorandum states that "distribution of weapons ... started again on an individual basis with ammunition" (p. 1), it is not clear that a distribution took place on the occasion that Renzaho's vehicle was used.

³⁰² Witness GLJ, T. 22 January 2007 pp. 13, 20; Witness AWE, T. 31 January 2007 pp. 11-12.

³⁰³ Defence Exhibit 11B (Rwandan appeal judgement of Witness UB) p. 10 ("*Considérant que le condamné n'a reconnu qu'un seul chef d'infraction: la distribution d'arme sur instruction du Préfet*"). See also Defence Exhibit 11A (Rwandan trial judgment of Witness UB) p. 28 ("*Attendu que pour mettre en action le génocide et les massacres, il a distribué les fusils, dans tout son secteur aux miliciens Interahamwe tels Karimu, Mugesera et Kenedy, ces armes (fusils) ont été utilisés pour tuer les gens sur les barrières et pour piller; lui-même ne le nie pas parce qu'il dit que il y a des fusils qu'il a retiré du P.V.K. et les a donné aux responsables*").

between about two days after 10 or 11 April and 16 April.³⁰⁴ Witness ALG states the instructions were given on 11 April. The Chamber finds that these differences are reasonably explained by the passage of time. Indeed, while the precise date that Renzaho gave these instructions is unclear, Witnesses UB and AWE are consistent that the instructions were given during their second meeting with Renzaho at the prefecture office. This detail is corroborated by the second-hand testimony of Witness ALG. Even Witness GLJ suggests that these instructions were given based on a decision taken during a prior meeting that he did not attend.

242. The Chamber considers the discrepancies regarding what was said at the meeting to be minor. Witness GLJ stated that the instructions regarding weapons were made in conjunction with a call for the attendants to erect roadblocks. Witnesses UB and AWE indicated that Renzaho ordered the erection of roadblocks during a previous meeting (II.2). However, their testimonies are not incompatible with Renzaho repeating the instructions concerning roadblocks when directing individuals to obtain and distribute weapons. In this regard, other evidence suggests that Renzaho repeated instructions regarding roadblocks during several meetings.³⁰⁵

243. There are some differences in witnesses' accounts about the participants at the meeting where Renzaho allegedly ordered attendants to retrieve weapons. In the Chamber's view, they are insignificant and may be explained by the number of meetings the witnesses attended as well as the passing of time since the events. The common elements in their testimony bolster their evidence. The witnesses provided largely consistent descriptions of the number of weapons allotted to each of them and explained that it was not necessary to produce documentation to receive the weapons.

244. An almost contemporaneous report written on 30 March 1994 by the chief of staff of the Rwandan army is of interest in this context. It was addressed to the Minister of Defence and the members of the government and concerns a meeting on 29 March 1994 about the civil defence programme. Renzaho attended the meeting. The report states that the Ministry of Defence and the Ministry of the Interior "will be contacted so as to make weapons available for distribution to selected civilian personnel". Renzaho agreed that he had been seconded to MININTER, but denied that this programme was implemented.³⁰⁶ The Chamber considers that the report offers strong circumstantial corroboration of the consistent Prosecution evidence that local officials would be sent to the Ministry of Defence to obtain weapons to be distributed and, when the totality of this evidence is considered, Renzaho's explanation is not reasonable.

245. The Defence sought to refute the allegation that weapons were distributed by the Ministry of Defence. Witness AIA, who accompanied his *conseiller* to meetings at the prefecture office on about 12 and again on 16 April and remained with him until July, testified that he did not see him collect weapons after leaving the prefecture. He was confronted with a *pro justitia* statement given to Rwandan authorities in November 1996 where, when asked if weapons were given to his *conseiller*, he responded that the *conseiller*

³⁰⁴ Compare T. 23 January 2007 p. 12 (placing the meeting "approximately two days" after the first meeting on 10 or 11 April) and T. 24 January 2007 pp. 15-16 (the witness puts the meeting on 16 April, the same day he went to the Ministry of Defence).

³⁰⁵ See, for instance, Witness ALG, T. 11 January 2007 pp. 41, 67.

³⁰⁶ T. 31 August 2007 pp. 9-11; Prosecution Exhibit 24 (letter of 30 March 1994 from Déogratias Nsabimana to the Minister of Defence) para. 7.

received six firearms from the prefecture authorities that he distributed to his close associates.³⁰⁷ The witness explained the discrepancy by suggesting that the statement was made while being detained and tortured, and that investigators had compelled him to give this answer. He specified that the six guns were received from Camp Kigali.³⁰⁸ The Chamber is not convinced by this. The statement contains questions and answers directly transcribed and is otherwise in conformity with his testimony that the *conseiller* had also received weapons from Camp Kigali. The nature of the inconsistencies, and Witness AIA's explanations for them, throw substantial doubt on the reliability of this part of his testimony. It does not refute the Prosecution evidence on this point.

246. Witness PAT denied that weapons were distributed from the Ministry of Defence. However, he was not posted at the Ministry of Defence and would not have necessarily been informed if arms came from a military camp to the Ministry of Defence or to the sectors.³⁰⁹ Furthermore, his description of the formal procedure for obtaining weapons may have been adhered to under normal circumstances, but the Chamber doubts that it would have been followed rigidly in April 1994. Moreover, the witness's denial that weapons were distributed from the Ministry of Defence could be viewed as self-interested.

247. The Chamber is mindful of the Prosecution and Defence evidence that weapons had been brought into Kigali-Ville from sources other than Renzaho.³¹⁰ It also considers the testimonies of Defence Witnesses PPV and PAT that the urban police and army had insufficient weapons and ammunition. However, this general contention is not sufficient to call into question the credible Prosecution testimonies that Renzaho arranged for weapons to be distributed to local officials. Given his former position, Witness PPV also has an interest in denying that distributions of weapons were made from the weapons stocks within the urban police or channelled through the Kigali-Ville prefecture office. This raises questions about the reliability of his denial.³¹¹ Consequently, the Chamber finds that during a meeting at the prefecture office around 16 April 1994, Renzaho instructed local administration officials, including *conseillers*, to collect weapons from the Ministry of Defence for distribution.

248. According to Witness UB, Renzaho's instructions to obtain weapons appeared to be a direct reaction to the fears expressed by *conseillers* about their own personal security in light of the heavily armed civilian population and killings taking place in their localities. Witness GLJ suggested that the weapons were to be collected and distributed to the members of the population who knew how to handle them to ensure their security. Likewise, Witness AWE testified that Renzaho indicated that the weapons should be given to former soldiers and members of the population trained in handling them, and warned that none should be given to Tutsis. Witness ALG heard that weapons were intended to be distributed at various

³⁰⁷ Prosecution Exhibit 109 (statement of 14 November 1996).

³⁰⁸ T. 2 July 2007 p. 54.

³⁰⁹ T. 22 August 2007 pp. 45, 62 (his office was not within the Ministry of Defence); T. 23 August 2007 p. 14 ("Q. If weapons had been provided to the ministry of defence, the préfectoral office, or anywhere else, that were from military camps throughout Kigali, you would not know about that would you, because you weren't, for that first month or so out in the field? A. No, for the first month I was at my first post, which was rather at the office. But from [sic] if arms came from a military camp to the ministry of defence, it's sure that I wouldn't have been informed.").

³¹⁰ See, for instance, Witness AWE, T. 31 January 2007 pp. 18, 41; Witness UB, T. 23 January 2007 p. 14.

³¹¹ It was also put to Witness PPV that he was wanted in Rwanda as a Category 1 genocide suspect. He denied this. T. 5 June 2007 pp. 53-55.

roadblocks and to the *conseillers*. The evidence of Witnesses GLJ, AWE and ALG that weapons were intended to be distributed is supported by the 30 March report mentioned above. The report states that the Ministry of Defence and Ministry of the Interior would be contacted to make weapons available to "selected civilian personnel" as a facet within a larger scheme to organise a civilian force to fight the perceived enemy.³¹²

249. In the circumstances, the only reasonable conclusion is that these weapons were intended to be a part of the war waged against a broad enemy, which included Tutsi civilians. The Chamber has taken into account Witness UB's evidence implying that Renzaho may have intended the weapons to provide additional security to the local officials and their subordinates. That Renzaho would seek firearms based on the individual safety concerns of local officials is corroborated by his March 1992 letter to the Ministry of Defence addressing this issue directly.³¹³ Nonetheless, the numbers of arms provided, between 5 and 10 to each official, confirms that their intended destination was beyond the individual hands of those who collected them. Moreover, the evidence also demonstrates that the local officials were already being protected by members of the urban police force, who would have themselves been armed.³¹⁴

250. That Renzaho ordered the collection and distribution of weapons among the population is corroborated by the transcript of a Radio Rwanda broadcast of 10 May 1994, where the speaker identified as Renzaho made reference to administrative officials at the sector and *cellule* levels who "deal with the distribution and well thought-out use of civil defence materiel at their disposal". This comment was made in response to an interviewer who told listeners that it was "noticed that those entrusted with materiel, like firearms, are behaving irresponsibly at roadblocks".³¹⁵ Renzaho denied that weapons were distributed "at the prefecture" and explained that the transcriptions could be erroneous, also suggesting that the words were not necessarily his own.³¹⁶ The Chamber finds that his denial fails to address the Prosecution evidence, and that his explanation is unconvincing given prior explicit and implicit acknowledgement that other statements from the same broadcast were his own.³¹⁷ The Chamber accepts, as Renzaho testified, that firearms within the population, including at roadblocks, may have come from other sources other than the prefecture, such as deserting

³¹² Prosecution Exhibit 24 (letter of 30 March 1994 from Déogratias Nsabimana to the Minister of Defence) para. 7.

³¹³ Prosecution Exhibit 17 (letter of 4 March 1992 from Renzaho to the Ministry of Defence), requesting firearms. Witness GLJ testified that "armed bandits" had raised concerns about safety during this period and that his house had been attacked by bandits. Renzaho had accepted the witness's request to ask that the Ministry of Defence to provide him with a firearm. T. 22 January 2007 pp. 32-33.

³¹⁴ See, for instance, Witness PPV, T. 5 June 2007 pp. 2, 4-6. Witness AFB T. 8 January 2007 pp. 71, 73 (two communal police had been sent to pick him up on the morning of 7 April based on the orders of a *conseiller*); Witness ALG, T. 11 January 2007 p. 29 (he heard that Renzaho assigned five communal police to *conseillers* during a 9 April 1994 meeting); Witness GLJ, T. 22 January 2007 pp. 52-53 (policemen were to protect *conseillers* based on the instruction of the prefect); Witness UB, T. 23 January 2007 p. 6 (two police officers were sent by Renzaho to a *conseiller* for protection); Witness AWE, T. 31 January 2007 pp. 18, 38-39, 43 (the police had weapons and two were assigned to a *conseiller* for protection); Witness AIA, T. 2 July 2007 p. 11 (two police officers were assigned to a *conseiller* on the morning of 7 April); Renzaho, T. 27 August 2007 pp. 62, 63 (instructions were given to the urban police commander to send police to *conseillers* to "help them in their work of intervening within the population").

³¹⁵ Prosecution Exhibit 56 (transcript of Radio Rwanda broadcast of 10 May 1994), p. 12.

³¹⁶ T. 3 September 2007 pp. 4-7.

³¹⁷ See T. 28 August 2007 pp. 57-58; T. 3 September 2007 pp. 3-4.

soldiers and gendarmes.³¹⁸ However, such an explanation does not raise doubt in respect of the Prosecution evidence, supported by his contemporaneous statements, which suggests that local officials, with Renzaho's involvement, participated in the distribution of firearms among the population.

251. Based on the foregoing, the Chamber finds that Renzaho's instructions during the meeting on or about 16 April to officials, including *conseillers*, to obtain and distribute firearms were coupled with an additional order that they be provided to select members of the population. Following his orders, several local officials, including *conseillers*, collected weapons and distributed them to people within their communities.

252. The Chamber now turns to Renzaho's intent when he ordered the distribution of weapons. Prosecution witnesses did not testify that Renzaho explicitly ordered that the weapons be used to kill Tutsis civilians during the same meeting. However, he was aware that Tutsi civilians were being singled out and killed throughout Kigali-Ville prefecture when he gave these orders. This follows, in part, from his involvement in organising the removal of corpses from the streets of Kigali as early as 11 April.³¹⁹ During his testimony, he admitted that from 10 April, he was aware that people were being killed at roadblocks in Kigali-Ville prefecture based on their ethnicity and political leanings.³²⁰ During previous meetings around 10 April, attended by many of the same persons, Renzaho had told those in charge of obtaining and distributing the weapons that the enemy was the *Inkotanyi* and *Inyenzi*, which, in the Chamber's view, was interpreted to include Tutsis generally (II.2). The Chamber is convinced that the only reasonable conclusion is that Renzaho gave these orders with the knowledge that the weapons would further the killing campaign and that he intended this.

253. The final question is whether the weapons were actually used in crimes. There is an abundance of evidence suggesting that *Interahamwe* in Kigali-Ville were heavily armed and engaged in the killing of Tutsi civilians, particularly at roadblocks. Nonetheless, the evidence is scant with respect to how these weapons were used. Witness AWE testified that those to whom he gave weapons received brief training and ultimately engaged in the killing of Tutsis. Witness UB's conviction was based in part on killings at roadblocks that also involved his distribution of weapons there.³²¹ Witness GLJ also confessed that he provided weapons to those manning roadblocks and admitted that people were killed at the roadblocks he had erected. The testimony is not precise enough to determine if the weapons were distributed at the roadblocks the witness had erected.³²² In the Chamber's view, this evidence must be considered in light of the prevailing situation, where civilians, supported by local authorities, engaged in widespread killings throughout Kigali-Ville of Tutsis, those perceived to be Tutsis and those identified as the opposition. This distribution formed a distinct part of a plan to mobilise and arm the civilians within their respective communities who would be tasked with fighting a broadly defined enemy, which included these civilians. While the distributions reflected in the testimonies above may not have been the primary sources of weapons that made their way into the hands of those engaged in killings in Kigali-Ville prefecture, the Chamber has no doubt that the act of distributing the weapons demonstrated

³¹⁸ T. 3 September 2007 pp. 4-7.

³¹⁹ T. 28 August 2007 pp. 45-47; T. 29 August 2007 p. 59 (discussing the meeting with the ICRC on 11 April 1994 at the Kigali-Ville prefecture which focussed on the removal of dead bodies). See also II.4.3.

³²⁰ T. 28 August 2007 p. 11; T. 30 August 2007 p. 54.

³²¹ Defence Exhibit 11A (Rwandan trial judgment of Witness UB), p. 28.

³²² T. 22 January 2007 pp. 19, 23, 58-59.

the government's unequivocal support for the killings of Tutsi civilians, and substantially contributed to the slaughter.

4. FACILITATION OF MOVEMENT

4.1 *Laissez-Passers* (Travel Authorisations)

4.1.1 Introduction

254. The Prosecution alleges that, between 6 April and 17 July 1994, Renzaho, or those acting on his behalf, provided permits and *laissez-passers* to enable the movement and equipping of *Interahamwe*, militia, soldiers and gendarmes participating in the killing of Tutsis. It refers to Witnesses ALG, GLJ, UB, UL and AFB.³²³

255. The Defence submits that insufficient notice was provided in relation to this allegation. It concedes that Renzaho issued *laissez-passers* but argues that they were issued to all who applied for them, without distinction. Reference is made to Defence Witnesses UT, PPO, BOU, HIN, PPV, PPG, PGL, BDC, AIA and Jean-Baptiste Butera as well as Prosecution Witness ACS.³²⁴

4.1.2 Evidence

Prosecution Witness ALG

256. Witness ALG, a Hutu, was an administrative official within Kigali-Ville prefecture. Around 12 April 1994, he visited the prefect's office. Renzaho asked him to ensure that the communal office assist with the issuing of *laissez-passers* to all those who wanted to seek refuge outside the Kigali-Ville prefecture. The reason was that this service was no longer available at the prefectoral office due to insufficient staffing there. The witness went to the commune office and immediately began issuing the passes.³²⁵

257. The witness would obtain the *laissez-passer* forms from the prefecture office and collect more whenever necessary. The prefect gave no special instructions with regard to their issuance, except that the money collected as fees for the documents was passed on to the prefecture office. Assisted by a staff member from that office, he issued more than 100 *laissez-passers* a day and signed the forms on behalf of the prefect. The witness and his staff were overwhelmed by the number of people requesting *laissez-passers*. It was still possible for some people to travel without one.³²⁶

258. Around 18 April, the communal office closed, and the witness began issuing *laissez-passers* from the prefecture office. There were two types of such documents. One was issued to individuals so that they could move about, and the other affixed to vehicle windshields to

³²³ Indictment paras. 2(E), 13, 30; Prosecution Closing Brief paras. 142-144, 152-155, 158; T. 14 February 2008 pp. 18-19.

³²⁴ Defence Closing Brief paras. 36-37, 52, 74, 86-99, 112, 116-126, 800-868; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 859, 864.1-864.64. The Chamber has also taken into account the evidence of Defence Witness WOW, see below.

³²⁵ T. 10 January 2007 p. 56; T. 11 January 2007 pp. 19, 22-24; Prosecution Exhibit 67 (personal identification sheet). Witness ALG was imprisoned in Rwanda from 1998 to 2005, then provisionally released, pending his trial, which had yet to take place at the time of his testimony. He was charged with genocide. T. 10 January 2007 p. 64.

³²⁶ T. 11 January 2007 pp. 32-33, 52; T. 12 January 2007 pp. 32-33.

allow movement of vehicles. Both *laissez-passers* were signed by the prefect of Kigali-Ville or by authorised representatives in his absence.³²⁷

259. According to the witness, the *laissez-passer* was regarded as a travel document which authorised people to circulate. It did not, however, guarantee free movement. Those manning roadblocks would sometimes also require an identity card. If the card showed that the bearer was Tutsi, the person could still be killed despite also having a *laissez-passer*.³²⁸

Prosecution Witness GLJ

260. Witness GLJ was a Hutu local official in Kigali-Ville. He explained that in order to travel within or out of Kigali, either on foot or in a vehicle, it was necessary to obtain an authorisation from the prefect. However, in April 1994, it was difficult for Tutsis to get to the prefecture office to obtain travel documents. As they were considered to be accomplices of the enemy, they could neither get through the roadblocks nor move about without being killed.³²⁹

Prosecution Witness UB

261. Witness UB, a Hutu local official in Kigali-Ville prefecture, testified that, in his sector, an identity card was required to pass through roadblocks. Around 12 or 13 April 1994, he attended a meeting chaired by Renzaho at the prefecture office. When *conseillers* expressed their concern in the meeting about people who no longer had their identity cards, they were told that new cards could not be issued to replace those missing. Instead, they would be allowed to issue certificates that listed the bearer's ethnicity and specified that his or her identity card had been lost. The certificates were signed and stamped at the Kigali-Ville prefecture office, because the commune authorities had relocated their operations there. As the highest authority in the prefecture, the prefect also had the power to issue *laissez-passers* for vehicles or individuals. Because Tutsis were accused of collaborating with *Inkotanyi*, they were maltreated at roadblocks. It was therefore not easy for them to get to the sector office to obtain such documents. Hutus, by contrast, could move about freely.³³⁰

Prosecution Witness UL

262. Witness UL, a Hutu, was an employee at a ministry in Kigali-Ville prefecture. When he returned to work on 11 April 1994, he drove to Gikondo to get fuel and continued driving about over three days. At that time, Renzaho issued *laissez-passers* that he had signed to drivers, including the witness. During that period, the witness had no difficulty moving around Kigali. If a person possessed a document bearing Renzaho's signature, he or she could go through any roadblock in Kigali and even roadblocks outside of Kigali. As of 11 April, however, any Tutsi who was intercepted at a roadblock was killed, while those who showed

³²⁷ T. 11 January 2007 pp. 23, 51.

³²⁸ *Id.* pp. 51-52.

³²⁹ T. 22 January 2007 pp. 13, 15, 30-31, 37-38; Prosecution Exhibit 68 (personal identification sheet).

³³⁰ T. 23 January 2007 pp. 1, 8-9, 12, 15; T. 24 January 2007 pp. 16-17; Prosecution Exhibit 69 (personal identification sheet).

identity cards with a "Hutu" entry were allowed through. Even vehicles with *laissez-passers* had to stop at roadblocks, so that the signatures could be checked.³³¹

263. The witness travelled from Kigali to Butare on 22 April. He did not have any difficulty getting through the roadblocks because his vehicle's windshield bore a pass signed by the prefect's office. Such passes were signed at the time the Kigali-Ville prefecture staff began burying bodies in the town, or about 11 April.³³²

Prosecution Witness AFB

264. Witness AFB, a Hutu, was an employee in the Ministry of Justice. On 7 April 1994, a policeman at the prefecture office gave him an authorisation, signed by Renzaho, which made it possible to drive around without being stopped. The witness had been able to move about without problems before receiving it because there were communal policemen in his vehicle. The *Interahamwe* could not stop policemen, particularly in a state-owned vehicle. However, he found it necessary to obtain a travel authorisation in case he drove home on his own without a police escort. After receiving the authorisation, he had no difficulty travelling around Kigali.³³³

Prosecution Witness ACS

265. Witness ACS, a Tutsi, testified that a *laissez-passer* system was instituted by Renzaho following his appointment as prefect in October 1990. At that time, the passes were made mandatory throughout Kigali-Ville prefecture, but were only required for Tutsis in that period. They had to give "very convincing reasons" to apply for the document but, according to the witness, "the Tutsi would never be able to get the pass". When the witness was released after having been arrested as a suspected accomplice of the *Inyenzi*, he could not leave Kigali-Ville without a pass, which, at the time, had to be obtained at the commune office.³³⁴

Renzaho

266. Renzaho testified that he was requiring those passing through roadblocks to show *laissez-passers* as well as identity cards. The Kigali-Ville prefecture did not, however, give preference to any particular group when issuing *laissez-passers*. Anyone who sought assistance from his office was received, with a positive reply given to all such requests. Someone who had a *laissez-passer* was assumed to have met with officials who had granted them the pass. To deal with the large number of persons requesting such documents, Renzaho set up a service area in front of the main entrance. He assigned some of the approximately 150 refugees at the prefecture, who included both Hutus and Tutsis, to assist in issuing the documents. In his testimony, Renzaho agreed that most Tutsis were afraid to move around,

³³¹ T. 9 January 2007 p. 50, 52, 62-63, 69, 72; Prosecution Exhibit 65 (personal identification sheet).

³³² T. 9 January 2007 p. 69.

³³³ T. 8 January 2007 pp. 69, 85; Prosecution Exhibit 64 (personal identification sheet). Witness AFB used the word "authorisation", not "*laissez-passer*", but the reality seems to be the same. He also explained that he possessed another authorisation, also signed by Renzaho, which was issued to him in 1990 in his capacity as a member of the *cellule* committee. Other members of the population had been forbidden to circulate.

³³⁴ T. 30 January 2007 pp. 25-26, 79-80; Prosecution Exhibit 78 (personal identification sheet).

and that, given the situation at the time, it was difficult for them to come to the prefecture to get the travel documents.³³⁵

267. The *laissez-passer* system had always existed in Rwanda in times of crisis and was in place from the beginning of the war in 1990. Following ceasefire negotiations in 1992 and the subsequent signing of the Arusha Accords, the system was abandoned, but then reinstated after the President was killed in April 1994. It was not directed against the Tutsis but served all persons equally, being a protective measure during that time of suspicion. One of the last persons to receive a *laissez-passer* from the prefecture office was the former chairman of the state council, a Tutsi, who came to the office at the end of April 1994. The prefecture found him an escort to Kibuye.³³⁶

Defence Witness UT

268. Witness UT, a Hutu official, worked with Renzaho in the Kigali-Ville prefecture. From 11 April 1994, he travelled widely around Kigali. On several occasions he experienced difficulties getting through roadblocks because his identity card lacked a photograph. When he reported these problems, Renzaho issued an attestation to the witness, signing and stamping the document himself. Renzaho said that it would show that, wherever the witness went, he had been sent by the prefect and was working on his behalf. In spite of this attestation, the witness still ran into many other problems.³³⁷

Defence Witness PPO

269. Witness PPO was a high-ranking government official at the Kigali-Ville prefecture. Sometime between the end of April and early July 1994, the witness was travelling on official mission from the prefect. He was stopped at the roadblock below the National Bank of Rwanda, towards Kiyovu. According to the witness, he was humiliated and almost beaten at the roadblock, even though he also possessed documents signed and stamped by Renzaho.³³⁸

Defence Witness BOU

270. Witness BOU, a Hutu, was a high-ranking employee in the Ministry of Planning. On 9 April 1994, some friends were caught without identification documents at a roadblock near the Presidential Guard quarters. They were Hutus, but had a Tutsi appearance. The witness went to the Kigali-Ville prefecture office and obtained *laissez-passers* for them and himself directly from Renzaho. According to the witness, lacking identification papers at that time was a virtual death sentence. *Laissez-passers* were needed to show that people were from Kigali-Ville and not coming from Uganda or the war front.³³⁹

³³⁵ T. 28 August 2007 pp. 3, 43; T. 29 August 2007 pp. 16-17, 19-20; T. 30 August 2007 pp. 2-6, 60-61; T. 31 August 2007 pp. 2, 5-6; Prosecution Exhibit 63 (radio transcript of 18 June 1994).

³³⁶ T. 29 August 2007 pp. 16-18. Renzaho explained that under the first republic, one could not move from one commune to another without a *laissez-passer*. That system was abolished under the second republic. The Chamber recalls that the first and second republics were from 1961 to 1973 and from 1973 to 1994, respectively. His testimony that the *laissez-passer* system was abolished in 1992 and then reintroduced in April 1994 follows from the French version (T. 29 August 2007 p. 19).

³³⁷ T. 24 May 2007 pp. 20, 26, 29, 46-47; Defence Exhibit 47 (personal identification sheet).

³³⁸ T. 4 July 1997 p. 63; T. 5 July 2007 pp. 5, 7-8.

³³⁹ T. 22 May 2007 pp. 32, 36-38, 49-50; Defence Exhibit 44 (personal identification sheet).

271. A large number of refugees were at the prefecture office. Many of them had fled their homes without their identification papers and were seeking passes. The *laissez-passer* operated as a substitute for an identity card, since a pass was a means of identifying people who were not known and enabled them go through roadblocks more easily.³⁴⁰

Defence Witness HIN

272. Witness HIN, a Hutu, went to the prefecture office on 18 April 1994 to apply for a *laissez-passer*. He wanted to leave Kigali and escape the violence of the *Interahamwe*. Four persons, three Tutsis and a Hutu, accompanied him and also sought *laissez-passers*. The four were able to get through the roadblocks to the prefecture office by claiming that they had a medical emergency and because an armed soldier accompanied them.³⁴¹

273. At the prefecture office, the witness saw Renzaho instructing Jean Bizimana, the *bourgmestre* of Nyarugenge commune, and Alexis Nsabimana, a sub-prefect, to issue the *laissez-passers* and give them to him to sign. The witness also heard Renzaho say to Bizimana that *laissez-passers* should be issued to traders going to get supplies as well as to people fleeing the fighting.³⁴²

274. On that day, the witness and his companions received *laissez-passers*. They found another soldier, with a Hutu appearance, to accompany them back through the roadblocks after leaving the prefecture office. Because it was understood that a Hutu soldier could not be an accomplice of *Inyenzi*, it was not necessary for the group to show their *laissez-passers* on their way back. The witness fled Kigali-Ville the next day, 19 April.³⁴³

275. According to the witness, Renzaho had set up the system of *laissez-passers* to enable members of the population flee Kigali town. Such documents were also issued to traders so that they could bring supplies. When requesting a *laissez-passer*, the applicant could also have listed upon it the names of others accompanying him or her. The person issuing it did not ask if the names were those of a spouse or children or other such details. These documents were given free of charge, with no pre-conditions, and all Tutsis who arrived at the prefecture office were provided with one. However, without a military escort or a civilian Hutu, a Tutsi could not pass the roadblocks to reach the office. Moreover, a *laissez-passer* alone was not sufficient to get out of the city. The *Interahamwe* were at odds with Renzaho and would not accept documents signed by him. They also wanted to know whether the people travelling were Hutu or Tutsi, as the documents did not show the bearer's ethnicity. The *laissez-passer* was therefore not helpful within Kigali, but was useful in other prefectures. According to the witness, if Renzaho was referred to as an accomplice of the *Inyenzi*, it was specifically because he was issuing such passes.³⁴⁴

³⁴⁰ T. 22 May 2007 pp. 38-39, 50.

³⁴¹ T. 10 July 2007 pp. 4-7, 10, 30; Defence Exhibit 73 (personal identification sheet).

³⁴² T. 10 July 2007 pp. 7-8, 10-11, 24. Witness HIN moreover heard another sub-prefect, Jean Butera, suggest that the authorities take food from stores belonging to Tutsis and distribute it to the population. However, Renzaho replied that this would be tantamount to looting, which was not authorised. T. 10 July 2007 pp. 11-12.

³⁴³ *Id.* pp. 9-10, 12, 31.

³⁴⁴ *Id.* pp. 8-10, 30-33.

Defence Witness PPV

276. The witness, a Hutu, worked at the Kigali-Ville prefecture office in 1994. He testified that anyone who bore an identity card showing a Tutsi ethnicity would be marked for death in the early hours of the events at issue, because they were identified with the enemy. However, a *laissez-passer* allowed people to travel safely. Only the Kigali-Ville prefecture provided such documents, and their issuance was an important occupation of the prefect. The witness helped deliver them to all people without distinction. The *laissez-passers* did not mention ethnicity. It contained the name and destination of the applicant. To ensure security, a policeman was provided to escort those who were at risk while travelling.³⁴⁵

277. There was a massive influx of refugees into the prefecture office, requesting *laissez-passers*. Some had lost their identity cards while others wished to conceal their ethnicity. With a *laissez-passer*, they could travel through roadblocks safely, whereas persons without such a document had difficulties.³⁴⁶

Defence Witness PPG

278. The witness, a Hutu, was an administrative employee in April 1994. He went back to work at the Kigali-Ville prefecture office from 20 April and stayed there until July. From April to July 1994, travel documents were no longer issued, and the witness did not believe that anyone went to the Kigali-Ville prefecture office to obtain such documents.³⁴⁷

Defence Witness PGL

279. Witness PGL, a Hutu, was an administrative employee at the Kigali-Ville prefecture who returned to the prefecture office during the second week of April 1994, remaining until early July 1994. On the day he returned, Renzaho asked him to help "save some people", noting that it was only a request, not an order. In furtherance of this request, the witness carried out a specific assignment from his immediate supervisor. He went to certain neighbourhoods under his responsibility and brought back to the prefecture office persons who wanted to leave Kigali-Ville but were afraid to travel alone. Most of them did not have identification papers and were provided by the prefecture office with *laissez-passers* or vehicles to transport them to their places of origin. The documents did not include the ethnic group, but mentioned the bearers' destination and, if they had a vehicle, its number.³⁴⁸

280. The witness helped issue *laissez-passers*, which were signed by the prefect. They were provided without discrimination to anyone who wanted to leave Kigali and went to the prefecture office to apply for one. When issuing such passes, the witness did not ask whether the applicants had identity cards. It was possible to pass through a roadblock by showing any national identification paper that proved that the bearer had not attacked the country in 1990.

³⁴⁵ T. 4 June 2007 p. 78; T. 5 June 2007 pp. 2, 6-7, 44-45; Defence Exhibit 56 (personal identification sheet). The information about the place of destination and the police officer as escort follows from the French version (T. 5 June 2007 p. 8).

³⁴⁶ T. 5 June 2007 pp. 7, 44.

³⁴⁷ T. 18 June 2007 pp. 45, 49, 57-58; T. 19 June 2007 p. 6; Defence Exhibit 65 (personal identification sheet).

³⁴⁸ T. 6 June 2007 pp. 15-20, 23-24, 30, 32; Defence Exhibit 61 (personal identification sheet).

According to the witness, most of those who had attacked then had identity cards from Uganda or foreign passports.³⁴⁹

281. When the witness moved about neighbourhoods where he was known, he had no difficulty getting through roadblocks but he encountered problems elsewhere. On 14 April, he was stopped at a roadblock, where he was asked for money and made to sit on the ground even though he was wearing a jacket that showed his position at the Kigali-Ville prefecture. His captors said they would release him only so that he could inform Renzaho that they would come to the prefecture office and kill both the prefect and the Tutsis whom they accused of sheltering there. At another roadblock, on an unspecified date, the witness was slapped.³⁵⁰

Defence Witness BDC

282. Witness BDC was a Hutu governmental official who worked with a non-governmental organisation in Kigali-Ville. On 25 April, his organisation appointed him to visit Renzaho and convey that its workers had difficulty in circulating through the city. Renzaho said he had no authority over the militia and asked him to negotiate with it directly. At the headquarters of the militia, the witness spoke to Robert Kajuga, its president, and his deputy. They signed and issued a safe conduit document that the witness's organisation members then used to go through roadblocks manned by *Interahamwe*. With those documents, the witness's colleagues had fewer difficulties passing through the roadblocks than before. Regardless of the political parties to which they belonged, the militiamen at roadblocks recognised the authority of Kajuga and his deputies.³⁵¹

Defence Witness AIA

283. Witness AIA was a policeman in Kigali-Ville prefecture and worked with a *conseiller* from 7 April until 4 July 1994. At some roadblocks in the sector to which the witness was assigned, one had to present either an identity card or an attestation that it had been lost. From April to July 1994, officials in that sector issued attestations of loss of identity cards. No other type of official document was issued in that sector.³⁵²

284. The Kigali-Ville prefecture issued other types of documents, including authorisations for vehicles to travel, for supplies, or to evacuate people. When the *conseiller* wanted to evacuate his family, he asked the witness for help, and ultimately used a *laissez-passer* issued

³⁴⁹ T. 6 June 2007 pp. 19-20, 36-37.

³⁵⁰ *Id.* pp. 23, 31-32, 34.

³⁵¹ T. 4 June 2007 pp. 4, 18-21, 35, 55-6; Defence Exhibit 51 (personal identification sheet). Witness BDC explained that his organisation did not need *laissez-passers* from the public authorities to carry out its humanitarian mission. He asked the militia for such documents only as an exceptional remedy in order to save lives. T. 4 June 2007 pp. 20-21. The witness identified Robert Kajuga's deputy as "Rutengwa" but probably meant Rutaganda. T. 4 June 2007 p. 57. In the French version, the witness says "Rutagenwa" but then spelled it "Rutengwa". *Id.* p. 64.

³⁵² T. 2 July 2007 pp. 2, 6, 35-36, 43; Witness AIA was questioned on 1 November 1994 by Nyamirambo brigade about his actions during the events, and was then locked up in a cell for a month while investigations took place, following which he was released. T. 2 July 2007 p. 46. Defence Exhibit 66 (personal identification sheet). The sector attestations were drafted by a secretary and then signed and handed to the applicant by the *conseiller* with whom Witness AIA worked. They bore the seal of the sector. The ethnic origin of the bearer was not mentioned on the document. T. 2 July 2007 pp. 35-37.

by the Kigali-Ville prefecture that enabled the witness's vehicle to move about. The witness also heard, apparently from sources at the prefecture office, that refugees of other prefectures or communes were to be given *laissez-passers* in order to leave Kigali-Ville. The witness did not know whether the ethnicity of the bearer was listed on the latter category of *laissez-passer*.³⁵³

285. Although some Tutsis could circulate in Kigali-Ville, those recognised as Tutsi from their identity cards were killed. The witness noted that some persons obtained *laissez-passers* without going to the prefecture themselves, by sending others.³⁵⁴

Defence Witness Jean-Baptiste Butera

286. Jean-Baptiste Butera, a Hutu, was the national program director for AIDS control at the Ministry of Public Health in Rwanda in April 1994. He left his home in Remera on 8 April and sought refuge in Masaka, in Kigali-Rural prefecture. The witness left Masaka twice between 7 and 28 April, and encountered great difficulty going through roadblocks in Kigali. On one of the occasions, he was attacked and almost killed. He did not have an identity card during the events in 1994. On 28 April, before leaving for Gitarama, he spoke to Renzaho at the Kigali-Ville prefecture office, which he stated was not easy to reach. The prefect said he did not have any control over the roadblocks and warned him to be careful. The witness obtained a travel authorisation in Kanombe in order to go through the roadblocks and leave Kigali. He agreed that the people who had a Tutsi identity card or appearance were in danger of being killed.³⁵⁵

Defence Witness WOW

287. Witness WOW, a Hutu driver, lived in Rugenge sector near CELA in April 1994. In spite of having a *laissez-passer* he encountered difficulties at the roadblocks when driving to Gitarama on 9 April 1994. He had to give money, food or drinks to those manning them.³⁵⁶

4.1.3 Deliberations

288. It is not disputed that Kigali-Ville prefecture office issued *laissez-passers* signed by Renzaho or those acting on his behalf from April to July 1994.³⁵⁷ One example of such a pass, dated 24 May 1994 and signed by Renzaho, was tendered as an exhibit.³⁵⁸ In order to cope with the mass of applications, Renzaho organised a service in front of the prefecture office to issue the passes. It further follows from the credible evidence of Witnesses ALG, UB, UL and AIA that the prefecture office issued two types of *laissez-passers* – one for individuals and one for vehicles.

289. The evidence shows that *laissez-passers* issued by the prefecture office did not automatically guarantee free movement. At roadblocks, the *Interahamwe* would sometimes also ask for identity cards and kill Tutsis, even if they had a travel authorisation. Also, Hutus

³⁵³ T. 2 July 2007 pp. 36-37, 58.

³⁵⁴ *Id.* pp. 58-59.

³⁵⁵ T. 22 May 2007 p. 68; T. 23 May 2007 pp. 5-7, 9-10, 12, 27-28, 30-31; Defence Exhibit 46 (personal identification sheet). He was formerly referred to as Witness LAA.

³⁵⁶ T. 4 July 2007 pp. 36-40; Defence Exhibit 69 (personal identification sheet).

³⁵⁷ Defence Closing Brief paras. 804-820.

³⁵⁸ Prosecution Exhibit 36 (*laissez-passer* for individuals, signed by Renzaho on 24 May 1994).

with *laissez-passers* signed and stamped by Renzaho could be subject to harassment there. Prosecution Witnesses ALG, GLJ and UB as well as Defence Witnesses UT, PPO, BOU, HIN, PGL and WOW gave convincing accounts of such problems. It is further noted that travel documents were to some extent issued by other authorities and even by the *Interahamwe* leadership, as mentioned by Witness BDC. This said, the Chamber finds it established that the possession of a *laissez-passer* from the Kigali-Ville prefecture did facilitate movement within or out of Kigali, as explained by Witnesses ALG, GLJ, UB, UL, AFB and PPV.

290. The main question under paragraphs 13 and 30 of the Indictment is whether the *laissez-passers* were issued in order to facilitate the movement of the *Interahamwe*, militia, soldiers and gendarmerie participating in the killings of Tutsis, as alleged by the Prosecution. The Defence disputes this, arguing that the purpose of these documents was to enable everyone, irrespective of ethnicity, to circulate within or flee Kigali-Ville.

291. The Chamber observes that the *laissez-passers* issued by the Kigali-Ville prefecture office did not list ethnicity. This follows from the example of the pass dated 24 May 1994 and the testimonies of Defence Witnesses PPV, PGL, HIN and AIA. The Prosecution did not lead any evidence to the contrary.³⁵⁹ Consequently, the text of the documents does not show that they facilitated the movement of particular groups, for instance Hutus engaged in killings.

292. Turning now to how the *laissez-passers* were in fact distributed, there is no evidence that Renzaho, or those acting on his behalf, issued them to *Interahamwe*, militia, soldiers or gendarmes. Neither was there any specific showing that persons having received such documents committed killings. The picture that emerges from the totality of the evidence is that they were issued to a large number of persons, both to circulate within or to flee Kigali. Some passes were issued to prefecture officials or civilians who were engaged in assistance missions, for instance to tend to the needs of refugees. The possibility that violent groups also received such documents cannot lead to a finding that the *laissez-passer* system facilitated the movement of killers. It is recalled that the *Interahamwe* frequently remained at roadblocks within their locality (II.2). Finally, there is no evidence demonstrating that they received equipment by persons who had received *laissez-passers*, as alleged in the Indictment.

293. It is clear that the *laissez-passer* system should be viewed in light of the general situation in Kigali from April 1994 onwards, when Tutsis and moderate Hutus were targeted and killed. Witnesses GLJ, UB, Renzaho, HIN and AIA testified that it would be difficult for Tutsis to reach the prefecture office.³⁶⁰ This evidence, which is obviously truthful, indicates that they would also have problems obtaining such documents.³⁶¹ One of the main reasons is

³⁵⁹ Prosecution Witness UB's evidence about attestations listing ethnicity did not refer to *laissez-passers* but to documents issued at the sector level to those who had lost or misplaced their identity cards. They were signed and stamped at the Kigali-Ville prefecture office after the commune offices had relocated there. Furthermore, Witness ACS's evidence that *laissez-passers* in 1990 only were required for Tutsis does not throw light on the situation in 1994. The Chamber sees no need to consider that testimony further.

³⁶⁰ As mentioned above, Witness AIA even testified that some persons obtained *laissez-passers* without going to the prefecture, by sending others.

³⁶¹ In the present context, the Chamber does not find it necessary to discuss whether Tutsis who in fact reached the prefecture office would have obtained a *laissez-passer*. It has noted the evidence that Witness HIN went there with three Tutsis, but also that they were accompanied by an armed soldier and that it is unclear whether Renzaho was aware of their ethnicity. Furthermore, the fact that some Tutsi refugees had managed to seek refuge at the prefecture office does not alter the conclusion that it was difficult to get there.

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that they would be stopped at roadblocks and asked for identity cards and *laissez-passers* (see generally II.2). In a radio interview of 18 June 1994, Renzaho highlighted the need for the youths at roadblocks to check both sets of documents.³⁶² The Chamber accepts that the combination of *laissez-passers*, identity documents and strict control at checkpoints may have made it easier for Tutsis to be targeted. However, this is not the issue under paragraphs 13 and 30 of the Indictment, which focuses on the movement of killers.

294. The Chamber finds that the Prosecution has not proven that, between 6 April and 17 July 1994, Renzaho, or those acting on his behalf, provided permits and *laissez-passers* to enable the movement and equipping of *Interahamwe*, militia, soldiers and gendarmes participating in the killing of Tutsis. In view of this finding, there is no need to consider the Defence submissions that it was prejudiced by alleged lack of specificity in the Indictment.³⁶³

4.2 Fuel Vouchers

4.2.1 Introduction

295. The Prosecution alleges that Renzaho provided bonds (fuel vouchers, coupons) to enable the movement and equipping of the *Interahamwe*, militia, soldiers and gendarmes who killed or caused serious bodily or mental harm to Tutsis between 6 April and 17 July 1994. It also submits that he requisitioned some of the city's fuel supplies. Reference is made to Witnesses UB, GLJ, ALG, AWE, AFB and PPG, and to Defence Witness AIA.³⁶⁴

296. The Defence denies these allegations. Based on the testimony of Witnesses UL, BDC and PPV, it submits that, from April to July 1994, responsibility for issuing fuel vouchers lay with the Ministry of Defence rather than the prefecture office.³⁶⁵

4.2.2 Evidence

Prosecution Witness UB

297. Witness UB, a Hutu local official in Kigali-Ville prefecture, testified that there were two ways to obtain petrol during the events in 1994. From 7 April onwards, some petrol filling stations had been requisitioned by the Kigali prefecture and others by the Rwandan Armed Force headquarters. Accordingly, those who wanted fuel either had to go to the prefecture office to obtain a voucher entitling them to petrol at a filling station, or to Camp Kigali, where they could be served from petrol tanks within the camp.³⁶⁶

Prosecution Witness GLJ

³⁶² Prosecution Exhibit 63 (transcript of radio interview with Renzaho, 18 June 1994); T. 31 August 2007 pp. 2-6.

³⁶³ Defence Closing Brief paras. 801-803.

³⁶⁴ Indictment paras. 13 and 30; Prosecution Closing Brief paras. 146-152, 156-158; T. 14 February 2008 p. 20.

³⁶⁵ Defence Closing Brief paras. 961-984; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 864.1-864.64.

³⁶⁶ T. 23 January 2007 pp. 1, 23; Prosecution Exhibit 69 (personal identification sheet). Witness UB was a detainee at the time of his testimony, awaiting the outcome of an appeal pending before the Supreme Court. His conviction for genocide in 1997 had been confirmed by the Kigali Court of Appeals in 1998. T. 23 January 2007 pp. 1-4, 65.

298. Witness GLJ, a Hutu local official in Kigali-Ville prefecture, stated that, at least until about the end of April 1994, all petrol stations were requisitioned or commandeered by Renzaho. In order to obtain fuel, one had to get an authorisation from the prefecture. The prefect had designated Jean-Baptiste Butera, the sub-prefect in charge of political affairs, to issue fuel coupons.³⁶⁷

Prosecution Witness ALG

299. Witness ALG, a Hutu member of the MRND party and a government official in Kigali-Ville, explained that, after 12 April 1994, it was difficult to obtain fuel in the prefecture. The army had taken over all fuel stations and was giving the *Interahamwe* fuel vouchers. He believed that the prefecture office had also secured an arrangement with a Shell petrol station to obtain fuel. Renzaho gave fuel vouchers to people of his choosing – the service heads of the prefecture office, the *bourgmestres*, the *conseillers* and the *Interahamwe*. The vouchers allowed them to obtain fuel at the Shell station.³⁶⁸

300. Although it was the prefect who issued fuel vouchers, in his absence, Butera, a sub-prefect and head of the administrative and legal affairs service, would issue them. The prefect could also give that power to other heads of services, people from the accounts department, or *bourgmestres*.³⁶⁹

301. The witness reported to Renzaho on an alleged killer named Habyarimana, also known as Kigingi. The prefect summoned Kigingi to his office. On leaving the office, Kigingi warned the witness to be careful and flaunted a fuel voucher that he said Renzaho had just given him. Pointing at the witness, he said: "I am going to get fuel supplies, and I will continue my job, so what are you going to do about me?" Kigingi then left with the *Interahamwe* escort who always accompanied him.³⁷⁰

Prosecution Witness AWE

302. Witness AWE, a Hutu, was a local official within the Kigali-Ville prefecture and occupied a local position in the MRND party. He said that, sometime after 7 April 1994, Renzaho gave the president of the *Interahamwe* 40 litres of petrol.³⁷¹

Prosecution Witness AFB

303. Witness AFB, a Hutu, worked at a court in Kigali-Ville during the events. On 7 April 1994, *conseiller* Karekezi sent the witness to the Kigali-Ville prefecture office. The witness reported to that office and began receiving orders from Renzaho. On 13 April, around 10.00 a.m., Renzaho transferred him to the manager of the Fina petrol station, where he worked for 20 days, until the station's fuel tanks ran dry around 3 May. During this period, the witness

³⁶⁷ T. 22 January 2007 pp. 13-15, 20, 23, 30-31, 61-63, 66; Prosecution Exhibit 68 (personal identification sheet). When testifying, Witness GLJ had been detained in Rwanda for over 12 years, awaiting trial.

³⁶⁸ T. 10 January 2007 pp. 55-56, 63; T. 11 January 2007 pp. 6, 50-51; T. 12 January 2007 p. 22; Prosecution Exhibit 67 (personal identification sheet). At the time of his testimony, Witness ALG was awaiting trial in Rwanda for genocide in relation to his role during the events in 1994. T. 10 January 2007 p. 64.

³⁶⁹ T. 11 January 2007 pp. 10-12; T. 12 January 2007 p. 32.

³⁷⁰ T. 11 January 2007 pp. 56-58.

³⁷¹ T. 31 January 2007 pp. 11-12, 40-41, 51; Prosecution Exhibit 80 (personal identification sheet). When he testified, Witness AWE had been in detention since 1996, awaiting trial for genocide.

saw Renzaho occasionally at the station. It did not sell to the public, but was used mainly to distribute fuel to the *Interahamwe* on the basis of vouchers signed by the prefect, although money was also accepted.³⁷² The witness would overhear the manager requesting those who came to collect fuel to show a document signed by the prefect, and also saw such documentation.³⁷³

Prosecution Witness UL

304. On 11 April 1994, Witness UL, a Hutu employee at a ministry, attended a meeting held at the Kigali-Ville prefecture office. The representative of the Red Cross, Philippe Gaillard, informed the attendees that his organisation would provide fuel for vehicles in connection with an operation clearing the streets of bodies. Later that day, the witness went to Gikondo to collect the fuel there. Subsequently, the vehicles continued to receive fuel there, as the RPF had captured the reservoir in Gatsata.³⁷⁴

Renzaho

305. Renzaho testified that the prefecture did not have fuel for distribution. In "the early days" of the events, the authorities in Kigali lost access to Gatsata, where fuel had been stored. The reason was that the area had been occupied by the RPF. The other fuel stocks were far away in Kibuye.³⁷⁵ The prefect's office was never involved in managing or distributing fuel or authorising quotas. He denied ever having issued a petrol voucher to Kigingi or anyone else. The army took over all the filling stations that still had fuel in the city. An army commission managed and gave out the fuel. Renzaho did not know whether quotas were set, but there were fuel coupons for prefecture vehicles which were redeemed at army fuel stores.³⁷⁶ The prefecture had a logistics commission set up "to supply the city of Kigali". To service the prefecture vehicles, sub-prefect Jean-Baptiste Butera, who was in charge of that commission, went to those persons who managed the fuel stock.³⁷⁷

306. Kigali-Ville was threatened with a major epidemic if actions were not immediately taken to address the situation. To implement ICRC humanitarian activities, a meeting was held at the prefecture office on the morning of 11 April 1994. The Minister of Health, the Minister of Public Works, Mr. Gaillard, who was the representative of the ICRC, his team,

³⁷² T. 9 January 2007 p. 10 ("In fact, [the fuel station] didn't sell to the public, it simply pumped fuel on the basis of vouchers that were signed by the préfet. That is why one can say that it was only every now and then that some people provided money to get fuel from that station. But most often people came with vouchers signed by the préfet to fill up their vehicles at that filling station and most often those vouchers were signed by the préfet") and sealed extract p. (i); Prosecution Exhibit 64 (personal identification sheet).

³⁷³ T. 8 January 2007 pp. 69-71, 73, 86; T. 9 January 2007 pp. 9-10.

³⁷⁴ T. 9 January 2007 pp. 50-53, 55-57, 59-63, 72-73 ("on that very day we went to collect that fuel at Gikondo in the industrial area. And it is from there that we went to fuel up *our vehicles* subsequently"; (italics added); Prosecution Exhibit 65 (personal identification sheet). Witness UL was acquitted of charges, which were not specified. T. 9 January 2007 pp. 51, 71. He was not able to confirm the Defence's suggestion that this took place in June 2002.

³⁷⁵ T. 29 August 2007 p. 18; T. 3 September 2007, p. 12. The Chamber recalls that Gatsata is in Kigali-Ville prefecture.

³⁷⁶ Renzaho did not specify who gave out the coupons or where this took place. T. 29 August 2007 p. 18 ("there were fuel coupons").

³⁷⁷ *Id.* p. 18, see also French version p. 21 ("*les membres qui géraient ce stock*"); T. 30 August p. 42; T. 3 September 2007 pp. 12-14.

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and the prefect were in attendance, with the public sanitation team. The ministers had also convened their own personnel. At the meeting, Gaillard made a presentation on his mission, including the evacuation of the injured and removal of corpses, which the prefecture office supported. Practical questions were addressed, and the ICRC representative decided to provide fuel for the operation.³⁷⁸

Defence Witness BDC

307. Witness BDC, a Hutu government official, worked with the Rwandan Red Cross Society from 15 April 1994.³⁷⁹ The Ministries of Public Health and Public Works convened a meeting at the Kigali-Ville prefecture office on 11 April, during which it was decided to collect bodies from the streets. Neither the prefecture nor the Ministry of Public Works had the necessary fuel for the operation. The ICRC delegate attending the meeting, Philippe Gaillard, made fuel available in view of the state of emergency. The witness explained that the Gatsata depot, the biggest in Rwanda, had come under control by the RPF as of 10 April. Consequently, the government had run out of fuel. He did not hear that Renzaho gave fuel to the militia.³⁸⁰

Defence Witness PPV

308. Witness PPV, a Hutu, worked in the urban police in the Kigali-Ville prefecture. From 7 April 1994, fuel supplies were rationed. He believed that the distribution of fuel was handled, not by the prefecture office but by the Ministry of Defence, which had commandeered petrol stations. To obtain fuel, the prefecture office as well as all other services and vehicle owners had to go to that ministry to obtain vouchers.³⁸¹

Defence Witness PPG

309. Witness PPG, a Hutu, was an employee at the Kigali-Ville prefecture and returned there to work on 20 April 1994. During the period of April to July 1994, the witness believed that the police commander was responsible for the distribution of petrol vouchers.³⁸²

Defence Witness AIA

310. Witness AIA, was a policeman in Kigali-Ville prefecture. His immediate superior was a *conseiller*, with whom he worked from 7 April to 4 July 1994 on a nearly 24-hours basis. He testified that he was not aware that petrol vouchers were issued at the Kigali-Ville

³⁷⁸ T. 28 August 2007 p. 44-46; T. 30 August 2007 p. 7.

³⁷⁹ T. 4 June 2007 pp. 3, 6, 37, 50; Defence Exhibit 51 (personal identification sheet). Witness BDC was not a member of the International Red Cross Committee (ICRC) but of the national Red Cross Society. He explained that in times of armed conflict, the national Red Cross comes under the authority of the international organisation, so he was acting on behalf of the ICRC. T. 4 June 2007 pp. 4, 64.

³⁸⁰ T. 4 June 2007 pp. 4-10, 19-20.

³⁸¹ *Id.* p. 78; T. 5 June 2007 p. 7; Defence Exhibit 56 (personal identification sheet).

³⁸² T. 18 June 2007 pp. 44-45, 48-49, 51; T. 19 June 2007 p. 6; Defence Exhibit 65 (personal identification sheet).

prefecture. The witness obtained fuel from the *conseiller*, who in turn would receive it from a station in town.³⁸³

4.2.3 Deliberations

311. The main question is whether Renzaho provided fuel vouchers to enable the movement and equipping of the *Interahamwe*, militia, soldiers and gendarmes who killed or caused serious bodily or mental harm to Tutsis between 6 April and 17 July 1994.³⁸⁴ The Defence submits that the prefecture office did not have stocks of fuel and did not issue vouchers for fuel or manage fuel distribution in any way.

312. Three of the six Prosecution witnesses gave evidence as to whether the petrol stations in Kigali-Ville had been requisitioned by the authorities. Their testimonies varied. Witness GLJ stated that all stations were requisitioned by the prefecture office. Witness UB said that some petrol stations were taken over by the prefecture office, and others by the army. Witness ALG explained that the prefecture office had an arrangement with a Shell fuel station, but otherwise, the army had taken over fuel stations. All three witnesses were awaiting trial in Rwanda at the time of their testimonies or had their cases on appeal. The Chamber views their testimonies with caution but notes that two of them stated that the prefecture had requisitioned petrol stations.

313. Witness AFB testified that Renzaho ordered him to assist the manager of the Fina station, where vouchers signed by the prefect were used. His evidence was first-hand and appeared credible. The witness did not say that the Fina station had actually been requisitioned by the prefecture office but Renzaho's deployment of the witness there does indicate that he had some level of control over fuel distribution there. Defence Witness PPV believed that the Ministry of Defence had commandeered petrol stations but the Chamber attaches limited weight to his evidence. In view of his particular position and functions in 1994, he would try to reduce his and the prefecture's role in such distribution.³⁸⁵

314. The Chamber does not find it necessary to make a finding as to whether the prefecture office had formally requisitioned petrol stations in Kigali-Ville. It is clear from the evidence, as discussed below, that the office had at least some degree of control over the distribution of fuel through the use of coupons or vouchers.³⁸⁶

315. The Chamber heard considerable evidence about this. According to Witness UB, vouchers could be obtained from the prefecture office or Camp Kigali. Witness GLJ testified that a fuel coupon from the prefecture office was required to procure fuel, and Renzaho had designated Sub-prefect Jean-Baptiste Butera to issue such coupons. Witness ALG confirmed that Butera had this power, at least in the prefect's absence, and stated that Renzaho issued fuel vouchers to people of his choosing (see below). Witness PPG believed that the police commander was responsible for the distribution of petrol vouchers but this does not preclude that vouchers were signed by the prefect. Finally, Witness AFB gave first-hand, fairly

³⁸³ T. 2 July 2007 pp. 2, 8-10, 59; T. 3 July 2007 pp. 18-19; Defence Exhibit 66 (personal identification sheet). His ethnic origin was not specified.

³⁸⁴ The Indictment uses the words "bonds ... to enable the movement" (in French "*délivrance de bons*"). The Pre-Trial Brief refers to "coupons" and "bonds" as well as to the requisition of petrol supplies (paras. 59-60).

³⁸⁵ Witness PPG, T. 19 June 2007 p. 6.

³⁸⁶ The Chamber notes that Witnesses UL and BDC corroborated Renzaho's testimony that the Gatsata fuel reserve had been captured by the RPF in early April. This would increase the need for the authorities to secure sufficient fuel supplies. Requisitioning of petrol stations would be a logical step in such a situation.

detailed, credible evidence that, at least from 13 April until about 3 May 1994, vouchers signed by the prefect were being used at a petrol station in Kigali-Ville.

316. Only Witness PPV stated that distribution of fuel was not handled by the prefecture office, and that the prefecture office had to go to the Ministry of Defence to obtain fuel, including vouchers. As mentioned above, the Chamber considers his testimony with caution in the present context, due to his particular functions.

317. Written evidence corroborates the testimonies of Prosecution witnesses. In a letter of 1 May 1994 to Sub-prefect Jean-Baptiste Butera, Renzaho terminated Butera's role as the prefecture office's liaison agent to the Ministry of Defence concerning the constitution of stocks of fuel and their management. He emphasised that Butera was not allowed to refuse fuel to duly authorised vehicles. Renzaho accepted that he had signed the letter.³⁸⁷ This exhibit reinforces the evidence that the prefecture office decided who would receive fuel, and that Butera was given the task of administering it.

318. Also of significance is a transcript of a radio broadcast from 18 June 1994, where Renzaho stated: "We have therefore asked those in charge of civil defence in the cellules and in the secteurs to issue permits for movement, because these are people who come to see us in order to obtain fuel for use in those vehicles."³⁸⁸ Its authenticity was not disputed by the Defence. By these words, Renzaho clearly attempted to facilitate the distribution of fuel by his administration to at least some persons. This contradicts the idea that the prefecture office had no involvement in the distribution of fuel or issuing of fuel vouchers. The fact that the ICRC provided fuel in connection with the clean-up operation following the meeting on 11 April 1994 does not preclude that the prefecture also gave out fuel vouchers. Renzaho's testimony on who gave out the coupons or where their issuance took place appeared to be fairly evasive or ambiguous. For example, he did not say who gave out the coupons or where but stated that "there were" such coupons.³⁸⁹

319. In light of the foregoing evidence, the Chamber finds that the Prosecution has proven beyond a reasonable doubt that the prefecture office issued fuel vouchers, at least from about mid-April to early May 1994.

320. The remaining question is whether the vouchers were issued to *Interahamwe*, militia, soldiers and gendarmes who killed or caused serious bodily or mental harm to Tutsis in that period.

³⁸⁷ Prosecution Exhibit 34 (letter of 1 May 1994 from Renzaho to Butera), referring to Butera as "*l'agent de liaison de la P.V.K. avec le Ministère de la Défense Nationale*" and mentioning "*la constitution des stocks de vivres et carburant et de leur gestion*".

³⁸⁸ Prosecution Exhibit 62 (transcripts of radio broadcast of 18 June 1994).

³⁸⁹ For instance, T. 29 August 2007 p. 18; T. 3 September 2007 pp. 12-14. During cross-examination concerning Prosecution Exhibit 34 (letter of 1 May 1994), where Renzaho reproaches Butera for not having provided fuel to an ORINFOR vehicle ("*Aujourd'hui par exemple, vous avez refusé de servir du carburant aux véhicules de l'hygiène et de l'ORINFOR alors en service commandé*"). Renzaho was asked if the prefecture was providing fuel to non-prefecture vehicles from other government departments, such as ORINFOR, the national media service. He initially replied "I know of no such case... I never dealt with any such case". When shown the letter, he insisted that it was the army that held the fuel and that the letter did not contradict that idea, adding, "It is possible that official vehicles might come to the prefecture on duty and ask for some fuel. [Butera], as liaison officer, should go to see if there is any fuel at the army to serve the vehicles, to supply the vehicle." See also T. 30 August 2007 p. 38 (Mr. President: "Did [Kajuga] control all *Interahamwe* movements in April 1994, according to what you know? A: Your Honours, I would like to apologise for not answering correctly. First of all, let me say that I am not aware of what one is referring to as *Interahamwe*").

321. Witness ALG testified that Renzaho distributed fuel, *inter alia*, to the *Interahamwe*. He also stated that Kigingi, the alleged killer who was always accompanied by an *Interahamwe* escort, showed the witness a voucher that he said Renzaho had just given him. Although the Chamber views his evidence with caution, it is to some extent corroborated by Witnesses AWE and AFB. Witness AWE stated that, sometime after 7 April 1994, Renzaho gave the president of the *Interahamwe* 40 litres of petrol. This evidence appears to be hearsay. This witness was awaiting trial for genocide at the time of this testimony, so his evidence is also viewed with caution. Witness AFB, however, gave first-hand, credible testimony that, at least from about mid-April to about early May, a Fina station was being used mainly to distribute fuel to *Interahamwe* on the basis of coupons that Renzaho signed. The Chamber accepts that Renzaho was distributing fuel via the use of vouchers to chosen people or groups of people, which included *Interahamwe*.

322. Only Witness ALG testified that a specific person allegedly involved in killings, Kigingi, had received a fuel voucher from Renzaho. No other witnesses gave evidence about particular individuals or about persons who had committed crimes receiving fuel via the vouchers. As noted above, the Chamber views the evidence of Witness ALG with caution and will not accept his testimony on this point without corroboration. Even if the *Interahamwe* were clearly involved in killing and causing serious bodily or mental harm to Tutsis during the period of April to May 1994, the Prosecution has not shown that specific members of the *Interahamwe* who committed such crimes received fuel on the basis of vouchers signed by Renzaho. The Chamber therefore finds that it has not been proven beyond reasonable doubt that *Interahamwe*, militia, soldiers and gendarmes who received fuel, provided or authorised by Renzaho, killed or caused harm to Tutsis, or that Renzaho allocated fuel vouchers with the intention of facilitating such killings or harm.

4.3 Requisitioning of Vehicles

4.3.1 Introduction

323. As part of its contention that Renzaho facilitated movement, the Prosecution alleges that the prefecture office, headed by Renzaho, provided vehicles to the communal authorities. The office also supplied as well as requisitioned vehicles in the course of operations to remove bodies from the streets of Kigali. Reference is made to Witnesses ALG, UL, UB and GLJ.³⁹⁰

324. The Defence does not specifically address the allegation that Renzaho supplied or requisitioned vehicles. It submits that Renzaho participated in the collection of bodies in Kigali-Ville, not with the intention of hiding the killings but because it was a public health issue. Reference is made to the testimonies of Witnesses BDC, GLJ, PGL, PPG and UT.³⁹¹

³⁹⁰ Prosecution Closing Brief paras. 117, 142, 144-145, 158. Prosecution Witness UB also gave relevant evidence (below).

³⁹¹ Defence Closing Brief paras. 329-330; 961-984; T. 14 February 2008 p. 41.

4.3.2 Evidence

Prosecution Witness ALG

325. Witness ALG, a Hutu local official in Kigali-Ville prefecture, testified that the prefecture office was responsible for managing vehicles. It had placed one at the disposition of his commune, and he sometimes used it to move about while working prior to April 1994.³⁹²

Prosecution Witness UL

326. Witness UL, a Hutu employed at a ministry, stated that on 10 April 1994, Renzaho broadcast a directive over the radio, asking state government employees to report to the prefecture office. The next day, the witness went to the ministry, retrieved the government vehicle he usually drove and continued to the prefecture office. Other ministry employees did the same, and he saw many trucks and other machines parked at the office. Along with 80 to 100 other persons, the witness attended a meeting there, chaired by the prefect. The participants were mostly truck drivers, but also included government authorities, such as the prefect of Gisenyi; the Minister of Public Works; Bizimungu, who was the Minister of Public Health; as well as Philippe Gaillard, an ICRC representative.³⁹³

327. Renzaho stated that bodies were strewn all over the city and that the city was "dirty", which in the witness's opinion referred to the presence of the bodies. He instructed truck and bulldozer drivers to dig holes and to collect bodies. Bizimungu told them to start at the Central Hospital of Kigali so that white people would not be able to take pictures there. Renzaho had a white Toyota Hilux on which was written "Préfecture de la Ville Kigali, PVK". During the meeting, he also indicated that the witness would be driving others around town in that vehicle. The meeting started at 9.30 a.m. and lasted for about an hour.³⁹⁴

328. Renzaho designated Ngerageze, the head of the sanitation service at the prefecture office, to give orders to the drivers. Ngerageze instructed the witness to dig mass graves at the Central Hospital, at Nyamirambo cemetery, and at several other locations. He also had an armed policeman directing the witness where to go. At one point, the witness saw a Kigali-Ville prefecture truck, abandoned by its driver, which had broken down while it was still laden with bodies. Vehicles from the prefecture office were used to collect prisoners from the Kigali main prison. The prisoners were dumping bodies into the mass graves that were being prepared. Staff from the Red Cross, Ministry of Health, Ministry of Public Works and the prefecture's sanitation service all participated in the clean-up operation. The witness saw bodies of the wounded and dead being transported in Red Cross vehicles. He learned that the Red Cross had asked Renzaho to assist it in the work of burying bodies.³⁹⁵

³⁹² T. 10 January 2007 pp. 55-56, 64; Prosecution Exhibit 67 (personal identification sheet). At the time of his testimony, Witness ALG was awaiting trial in Rwanda for his role during the events in 1994. T. 10 January 2007 pp. 63-64; T. 15 January 2007 p. 34.

³⁹³ T. 9 January 2007 pp. 50-57, 60-62, 72-75; Prosecution Exhibit 65 (personal identification sheet). Witness UL was acquitted of charges brought against him in relation to the events in Rwanda in 1994. T. 9 January 2007 pp. 51, 71.

³⁹⁴ T. 9 January 2007 pp. 58-59, 62-66, 74.

³⁹⁵ *Id.* pp. 59, 61, 63-69, 73-74.

329. The witness dug mass graves until 22 April 1994. An official in the Ministry of Public Works had made a request to Renzaho that some heavy equipment be placed at his disposal for use in Butare. The witness was assigned to the mission and left Kigali for Butare.³⁹⁶

Prosecution Witness UB

330. Witness UB, a Hutu local official in Kigali-Ville prefecture, said that, on 7 April 1994, he saw about 20 bodies in Rugunga cellule. He recognised several of the bodies, and they were Tutsis. Sometime before noon he telephoned Renzaho to report what he had seen. The prefect told him that the bodies would have to be buried and sent him a pickup truck with a communal policeman on board from the prefecture office. The witness then sent the vehicle to Rugunga to carry bodies to the Nyamirambo cemetery.³⁹⁷ Other vehicles belonging to the prefecture as well as to the Ministry of Public Works were also used to remove bodies and dig mass graves in Kigali-Ville. On 10 or 11 April, Renzaho convened a meeting at the prefecture office. The witness passed through Gitega sector on his way to the meeting, and saw dead bodies of Tutsis at the roadblocks there. Vehicles were taking the bodies away.³⁹⁸

Prosecution Witness GLJ

331. Witness GLJ was a Hutu local official in Kigali-Ville prefecture. On 10 April 1994, he met alone with the prefect, who gave him a truck belonging to the Ministry of Public Works, and instructions to remove bodies (from the streets of Kigali-Ville) and bury them in the cemetery. Renzaho did not explain the reasons for this assignment. Bodies were removed in each sector. He did not know specifically how many or which officials participated in the operation to remove bodies, although likely not all *conseillers* received a vehicle for that task. There were also other services participating in the operation. While he was removing bodies, he saw ICRC vehicles doing the same in Kigali-Ville neighbourhoods. He did not, however, receive any instructions from the ICRC. The witness stopped working on the clean-up operation after two days, when the prefect told him that the municipal council was going to take over.³⁹⁹

Defence Witness BDC

332. Witness BDC, a Hutu government official, worked with the Red Cross Society from 15 April 1994, but was kept informed of the organisation's activities before that date through radio communication. He explained that there was a danger of an epidemic in Kigali-Ville

³⁹⁶ *Id.* pp. 68-69.

³⁹⁷ Witness UB first said that Renzaho sent a "vehicle" (T. 23 January 2007 p. 6) and subsequently "vehicles" (*id.* pp. 58-59). The French transcript only refers to one vehicle (*id.* pp. 6, 62), which is the version chosen in the text.

³⁹⁸ *Id.* pp. 1, 4-6, 8-9, 11-12, 56-59; Prosecution Exhibit 69 (personal identification sheet). Witness UB was a detainee at Kigali Central Prison at the time of his testimony, awaiting the outcome of his appeal before the Supreme Court. T. 23 January 2007 pp. 1-2, 64-65.

³⁹⁹ T. 22 January 2007 pp. 16-18, 47, 64; Prosecution Exhibit 68 (personal identification sheet). When testifying, Witness GLJ had been detained in Rwanda for over 12 years, awaiting trial. T. 22 January 2007 p. 13. Although the witness did not elaborate, he stated that "so whenever someone arrived at the préfecture office, he would be given a vehicle to go and pick up those bodies". *Id.* p. 17.

that could have been even more serious than the number of wounded caused by the militias. It was urgent that corpses be buried.⁴⁰⁰

333. On 10 April, Philippe Gaillard, the ICRC delegate in Kigali, raised the idea of a meeting to discuss humanitarian operations with the Ministers of Public Health and of Public Works. Those ministries then called a meeting, which took place on 11 April. It was “constantly” announced on radio that the two ministries were convening their workers for a meeting at the Kigali prefecture. Between 50 and 80 persons attended, including Gaillard, Renzaho and the ministers. The event took place at the conference room of the Kigali-Ville prefecture office. Renzaho was not involved in convening the meeting but provided the venue at the prefecture office.⁴⁰¹ The witness was not present, but heard the details of the meeting afterwards. He did not accompany any truck that was then used to transport bodies. Subsequently, the prefecture office took over all the sanitation operations.⁴⁰²

Defence Witness PGL

334. Witness PGL, a Hutu, was an employee at the Kigali-Ville prefecture and returned there to work on 11 April 1994. From then, he would meet ICRC staff while he was moving about in the neighbourhoods under his responsibility. He would show them wounded, sick, and dead persons, whom the ICRC staff would pick up in their own vehicles. The ICRC also had the means to make sure that the dead were buried. The witness was on foot and did not have a vehicle that would have enabled him to either pick up patients or transport corpses.⁴⁰³

Defence Witness PPG

335. On 19 April 1994, Witness PPG, a Hutu official, heard a *communiqué* over the radio. It requested certain civil servants, as well as employees of the Red Cross, to go to the office of the prefecture. Having returned to that office from 20 April, his work involved the collection of corpses in the streets of Kigali-Ville. The Red Cross had asked the Ministry of Public Health to assist in this effort. According to the witness, the operation was an urgent matter of public health.⁴⁰⁴

336. The Red Cross had assigned about eight of its own workers to supervise the operation. They gave the witness and others instructions.⁴⁰⁵ There were not more than about 30 civil servants participating in the activity. Moving from area to area, they worked in one group together with the Red Cross staff and used two vehicles in the operation. The first belonged to a trader who had parked his vehicle at the prefecture office, and the second was a truck from MINITRAP. The dead bodies that were picked up were buried in Nyamirambo cemetery. The witness had never heard of any mass graves. The group was engaged in the

⁴⁰⁰ T. 4 June 2007 pp. 3, 6-7, 37, 50; Defence Exhibit 51 (personal identification sheet).

⁴⁰¹ Witness BDC's assertion that Renzaho did not initiate the meeting was in answer to the following question by Defence Counsel: “Witness, did you receive information at the time stating that the collection of bodies was a manoeuvre – or, rather an activity initiated by Mr. Renzaho with the intention of concealing the results of his activity?” T. 4 June 2007 p. 10.

⁴⁰² T. 4 June 2007 pp. 4-6, 7-8, 10-11. Witness BDC did not specify when, exactly, the operation became independent of the Red Cross but it appeared to be towards the end of April 1994.

⁴⁰³ T. 6 June 2007 pp. 15-16, 18, 20; Defence Exhibit 61 (personal identification sheet).

⁴⁰⁴ T. 18 June 2007 pp. 45, 49, 51, 58; Defence Exhibit 65 (personal identification sheet).

⁴⁰⁵ T. 18 June 2007 p. 52; T. 19 June 2007 p. 3.

clean-up operation for half of the month of April, through May and stopped about midway through June 1994.⁴⁰⁶

Defence Witness UT

337. Witness UT, a Hutu official in the Kigali-Ville prefecture testified that the service for sociocultural affairs took part in collecting and burying the bodies of people who had been killed. It collaborated with the Red Cross to come up with ways of preventing epidemics due to the corpses that were strewn about, improvising to find places to bury people. Because the service had limited resources, it requested help from the Ministry of Public Works, which had the necessary vehicles and other equipment that was used to dispose of the bodies. The Red Cross had already been in consultations with the prefect by telephone or other means before the witness arrived at the prefecture on 11 April 1994.⁴⁰⁷

4.3.3 Deliberations

338. In its Closing Brief, the Prosecution refers briefly to vehicles, alleging that Renzaho facilitated the movement of *Interahamwe* and other groups participating in the killings.⁴⁰⁸ Paragraphs 13 and 30 of the Indictment do not specifically mention this element, which is not included in the Pre-Trial Brief. It is clear that the use of vehicles cannot form the basis of a conviction. The Chamber nonetheless finds it useful to address this issue.

339. The first element of the Prosecution submissions is general in nature and relates to the provision of vehicles to administrative (communal) authorities. The Chamber notes that no witness gave incriminating evidence about such assistance.

340. The second contention concerns the prefecture office's ability to supply vehicles for the transportation of prisoners in order to assist in removing and burying bodies from the streets of Kigali, and to requisition vehicles from other government departments. The Defence acknowledges that Renzaho participated in removing bodies in Kigali but emphasises that he never had the intention to hide the evidence from international view. This submission is prompted by a remark in the report of the Prosecution Expert Witness, Alison Des Forges.⁴⁰⁹ The Prosecution Closing Brief does not address this, nor was it put to Renzaho during cross-examination.

341. The evidence confirms that Renzaho directed state government employees to report to the prefecture office through a radio broadcast made on 10 April 1994. The following day, there were many vehicles parked at the prefecture office. Renzaho chaired a meeting at his office and instructed those present, including employees of the Ministries of Public Works

⁴⁰⁶ T. 18 June 2007 pp. 52, 55-58. The Chamber recalls that MINITRAP stands for Ministry of Public Services.

⁴⁰⁷ T. 24 May 2007 pp. 20, 22, 26, 41-42; Defence Exhibit 47 (personal identification sheet).

⁴⁰⁸ Prosecution Closing Brief paras. 144-145.

⁴⁰⁹ Prosecution Exhibit 94 (expert report of Alison Des Forges) p. 13 ("As the prefect of Kigali-city, Tharcisse Renzaho was extremely conscious of the need for a "good image," for the country, one that rested in large part on what foreigners saw and heard in visiting the national capital. According to former prime minister Kambanda, Renzaho directed people to avoid talking about massacres and said that "ministers should always present a good image of the country when talking on the radio rather than what they really saw." Soon after the killing began, Renzaho organized a cleanup of bodies from the city streets, no doubt aware of the bad impression that the proof of killing left on journalists and other foreign visitors. A large amount of resources were devoted to a speedy removal of thousands of bodies and to their burial in an empty field outside the city". (citations omitted)).

and Public Health, to clear bodies from Kigali-Ville. Staff from the prefecture's sanitation unit, the two state ministries and the ICRC participated in the clean-up operation. Prefecture office vehicles also transported prisoners from Kigali main prison to assist. Witness UL gave first-hand, credible and detailed testimony about this, several aspects of which were corroborated by Witnesses UB, GLJ, BDC and PPG.⁴¹⁰

342. The Chamber observes that the removal of bodies from the streets of Kigali would certainly have the effect of improving the international community's impression of the situation.⁴¹¹ However, it would also have the effect of mitigating the public health risk. Therefore, concealment cannot be considered the only reasonable motive for the clean-up operation. The initiative and participation of the ICRC in the task strengthen the notion that hygiene was a significant factor in the decision-making process.⁴¹²

343. That said, the entire operation shows a level of organisation within the Kigali-Ville prefecture, and a degree of co-ordination with other government services as well as the medium of radio that demonstrates Renzaho's control over resources, both human and material, after 6 April 1994. It goes against the idea argued elsewhere by the Defence that, after the President's plane was shot down, total chaos and anarchy reigned in Kigali-Ville, which became uncontrollable, and that the only authority that the prefect had was over the prefecture office staff.⁴¹³

⁴¹⁰ As mentioned in II.4.3, the ICRC provided fuel for the operation.

⁴¹¹ The Chamber does not find it necessary to assess the purported remark by Bizimungu during the meeting on 11 April 1994, as mentioned by Witness UL. Bizimungu is not on trial in the present case and the witness was not cross-examined about this.

⁴¹² The Chamber has noted the Defence submission that viewing the clean-up operation as an attempt to hide the killings from international view would be an example of "tunnel vision" ("the single-minded and overly narrow focus on a particular investigative technique or prosecutorial theory, so as to reasonably colour the evaluation and one's conduct in response to that information"). Defence Closing Brief paras. 321, 327-330.

⁴¹³ Defence Closing Brief paras. 346-348, 757-758, 1159, 1269.

5. KILLINGS AT AKAJAGALI, 8 OR 9 APRIL 1994

5.1 Introduction

344. The Prosecution alleges that, on or about 9 April 1994, Renzaho, while dressed in the uniform of a senior military official, led or accompanied armed *Interahamwe* at Akajagali in Kanombe. The *Interahamwe* entered houses of Tutsis and killed the Tutsis who resided there. Reference is made to Witness DBN.⁴¹⁴ The Defence argues that his uncorroborated testimony is unreliable. It refers to Witnesses MAI, ABC, VDD and AIA.⁴¹⁵

5.2 Evidence

Prosecution Witness DBN

345. Witness DBN, a Tutsi, was in the paracommando battalion in Kanombe in April 1994. He knew Renzaho as a member of that battalion before being appointed prefect of Kigali-Ville prefecture. On 8 or 9 April 1994, the witness left the military camp to deliver supplies to soldiers. At almost noon, he saw Renzaho in a vehicle going towards the Akajagali neighbourhood in Kanombe. The witness followed directly behind Renzaho's white Hilux four-wheel drive vehicle, which carried between 20 and 30 *Interahamwe* wearing *kitenge* uniforms. They were singing, whistling and chanting "*tubatsembe tsembe*", which meant "let's exterminate these *Inyenzi Inkotanyi*".⁴¹⁶

346. Renzaho stopped in Akajagali on a narrow road and the *Interahamwe* alighted. The witness was driving a large truck and had to stop behind. The prefect stood not far from his car, which was about three metres away from the witness's vehicle. Armed with spears, machetes and clubs, the *Interahamwe* went from house to house, entering by force and breaking down doors and windows.⁴¹⁷

347. Witness DBN could not see what the *Interahamwe* were doing inside the houses, but because he was aware of the circumstances at the time, he understood that they were hunting down Tutsis. He knew a number of the Tutsis living in those residences. The witness then observed the *Interahamwe* beat three persons with their clubs, saying that they had just found Tutsis in the houses and that they would have to search all the houses, even the ones with open doors. He was about five to 10 metres away from them.⁴¹⁸

348. Renzaho was standing near his car, watching everything. He moved his vehicle so that the witness could leave, and then remained standing there. The witness went on to make his

⁴¹⁴ Indictment paras. 15, 32; Prosecution Closing Brief paras. 181-191. The Indictment refers to "Kajari", the Prosecution Closing Brief uses "Kajagari" and the Defence Closing Brief, "Akajagari". The Chamber will use the name "Akajagali". T. 1 February 2007 p. 26. See also *Bagosora et al.* Trial Judgement (see, for instance, para. 797).

⁴¹⁵ Defence Closing Brief paras. 583-593. Witness AIA is mentioned in a general section about Renzaho's conduct during the events in 1994 (para. 1273).

⁴¹⁶ T. 29 January 2007 pp. 55-59, 67-69; Prosecution Exhibit 74 (personal identification sheet). Witness DBN believed that Renzaho's Hilux belonged to the Kigali-Ville prefecture because administrative vehicles had different number plates from those belonging to private individuals.

⁴¹⁷ T. 29 January 2007 pp. 60-61, 70-71. Witness DBN made a map of the scene. Prosecution Exhibit 75 (sketch).

⁴¹⁸ *Id.* pp. 61, 71.

food delivery, staying about 10 minutes at the delivery site. On the way back, he used the same road and saw that the *Interahamwe* were still there, moving around in the neighbourhood. Renzaho and his vehicle were in the same place. The witness did not try to learn what had happened to the three persons he had seen being beaten up, but stated that "it was obvious that they would not survive". Renzaho's house was located about 100 metres from the road that goes through the Akajagali neighbourhood.⁴¹⁹

Renzaho

349. Renzaho denied having gone to Kanombe to attack Tutsis in Akajagali on 9 or 10 April 1994. On the morning of 8 April, he took part in a short meeting of what he referred to as the "crisis committee" and then an "urban security council" meeting at the Kigali-Ville prefecture office from about 9.00 a.m. to 2.00 p.m. He went to see his family in Kanombe that afternoon and returned at about 5.00 p.m. On 9 April, he went to the embassy of Zaire at 11.00 a.m. In the afternoon, his family joined him from Kanombe and he helped them settle in at Hotel Kiyovu.⁴²⁰

Defence Witness MAI

350. Witness MAI, a Hutu, is related to the Renzaho family and helped run a business in Kanombe in April 1994. He arrived at Renzaho's Kanombe home on 7 April 1994 and remained there all day on 8 April. The witness, who was sick in bed, did not see Renzaho at home on 8 April, but met him at the Kigali-Ville prefecture office on 9 April. The family arrived there at an unspecified time and remained in Renzaho's office for less than 30 minutes before leaving to take refuge at Hotel Kiyovu.⁴²¹

Defence Witness ABC

351. Witness ABC, a Hutu related to the Renzaho family, stated that the family lived in Kanombe, in Akajagali, about one kilometre away from the military camp in that area. On 8 April 1994, Renzaho came back to his family residence in the afternoon, stayed for a limited time, changed his clothes and left again, dressed in military attire. He did not return that night. According to the witness, Renzaho stayed the night of 8 April at the Kigali-Ville prefecture office.⁴²²

352. The next day, on 9 April, the Renzaho family left Kanombe and arrived at the Kigali-Ville prefecture office around noon. Renzaho and his wife talked there for one to one and a half hours before the family left to seek refuge at Hotel Kiyovu. The witness confirmed that Witness MAI had a shop in the Akajagali neighbourhood.⁴²³

Defence Witness VDD

353. Witness VDD, a Hutu related to the Renzaho family, testified that on 8 April 1994, Renzaho returned for a short time to his house in Kanombe. The family left the house on 9

⁴¹⁹ *Id.* pp. 61-62, 66-67.

⁴²⁰ T. 27 August 2007 pp. 60-61, 63-64; T. 28 August 2007 pp. 8, 43-44; T. 29 August 2007 pp. 60-61.

⁴²¹ T. 22 August 2007 pp. 5-7, 11, 15-16, 23; Defence Exhibit 76 (personal identification sheet).

⁴²² T. 17 May 2007 pp. 26-27, 29-30, 34, 39-40, 42, 56; Defence Exhibit 42 (personal identification sheet).

⁴²³ *Id.* pp. 40-42, 47.

April at noon. They arrived at the Kigali-Ville prefecture office to meet Renzaho at about 12.30 or 13.00 p.m. There, Renzaho's wife spoke with him, and the family then went to Hotel Kiyovu.⁴²⁴

Defence Witness AIA

354. Witness AIA was a member of the Kigali-Ville police force. On 8 April 1994, he attended a meeting chaired by Renzaho at the prefecture office, which started around 10.00 a.m. He did not specify when the meeting ended or what Renzaho did afterwards nor did he testify about Renzaho's whereabouts on 9 April.⁴²⁵

5.3 Deliberations

355. Witness DBN testified that he saw Tutsis being beaten by *Interahamwe* who had accompanied Renzaho in the Akajagali neighbourhood on 8 or 9 April. He was the only witness who described the events. His account is first-hand and generally consistent about Renzaho bringing *Interahamwe* to Akajagali and watching them search houses and severely beat three Tutsis.

356. According to the witness's testimony, he saw Renzaho arrive in Akajagali before noon.⁴²⁶ However, his statement to Tribunal investigators in February 2000 indicates that Renzaho arrived there about 2.00 p.m. The witness explained that he might have been mistaken about the time, but that he did not believe it was 2.00 p.m. because he was making a food delivery that day, which was normally made around midday, in time for the food to be served at 2.00 p.m.⁴²⁷ The Chamber finds the explanation reasonable and considers that the intervening period between the event and his testimony could explain the differences.

357. Of greater concern are inconsistencies between Witness DBN's testimony in this trial and his evidence in the *Bagosora et al.* case in 2004, where he did not refer to the beating of the three persons. Instead, he testified that the *Interahamwe* "did not find anything inside the houses"; that they "went inside those houses and then came out of them"; and that he "did not see them do anything else".⁴²⁸ When this was put to him in the present proceedings, he acknowledged having withheld the information regarding the beatings in his previous testimony, as he did not want that information to be revealed to Renzaho prior to his trial. The witness further explained that he believed that the oath to tell the whole truth before the Chamber meant that he would tell the whole truth only "within the context of that case". He stated, "when I came to testify I understood that I have to testify only about the soldiers who were involved in that case – and that I was going to testify at length on Renzaho in his presence".⁴²⁹

358. The Chamber accepts that Witness DBN may have provided few details in relation to Renzaho's purported role at Akajagali, as he was not the focus of the witness's testimony in the *Bagosora et al.* case. Relatively few questions were asked that dealt directly with

⁴²⁴ T. 18 May 2007 pp. 5, 9, 17-18; T. 22 May 2007 pp. 4, 7.

⁴²⁵ T. 2 July 2007 pp. 6, 21-24, 35, 51, 54; T. 3 July 2007 pp. 4, 17-18; Defence Exhibit 66 (personal identification sheet).

⁴²⁶ T. 29 January 2007 pp. 57, 67.

⁴²⁷ *Id.* pp. 67-68; Defence Exhibit 17 (statement of 25 February 2000).

⁴²⁸ Defence Exhibit 19 (*Prosecutor v. Bagosora et al.*, T. 1 April 2004) p. 59.

⁴²⁹ T. 29 January 2007 pp. 74-75.

Renzaho. Nonetheless, the witness's account in the prior proceedings did not simply omit evidence relevant to Renzaho's culpability but explicitly asserted that the witness did not observe anything occur there.⁴³⁰ This is materially inconsistent with his testimony in the present case as well as his prior statement of February 2000. His explanation for having omitted this significant event involving Renzaho creates doubts about his reliability.⁴³¹

359. The Chamber has assessed the Defence evidence but does not find that it refutes Witness DBN's testimony about the alleged events round noon on 8 or 9 April 1994. Witness AIA stated that Renzaho was in a meeting at 10.00 a.m. at the prefecture office on 8 April, but did not give an account of Renzaho's movements during the remainder of that day or the following day. Witness ABC said that Renzaho returned to his residence in the afternoon of 8 April and stayed for a limited time. Witness VDD also testified that Renzaho came back to the residence briefly on 8 April but did not specify at what time. None of the witnesses saw Renzaho at the Kigali-Ville prefectural office before noon on 9 April.⁴³²

360. Notwithstanding the weaknesses in the Defence evidence, Witness DBN's testimony remains doubtful and is not corroborated.⁴³³

361. Consequently, the Prosecution has failed to prove beyond reasonable doubt that on 8 or 9 April 1994, Renzaho led a group of armed *Interahamwe* to a neighbourhood in Akajagali, where the *Interahamwe* forcibly entered houses and severely beat or killed three Tutsis in his presence. In view of this finding, there is no need to consider the Defence submissions about lack of notice.⁴³⁴

⁴³⁰ Defence Exhibit 17 (statement of 25 February 2000) p. 1: "The *Interahamwe* who were in his vehicle came out of the vehicle, entered the houses of Tutsis and massacred them in the presence of Renzaho."

⁴³¹ Other inconsistencies also emerge drawing into question Witness DBN's alleged first-hand observations. In the *Bagosora et al.* trial, he affirmed that Renzaho was driving slowly by and that the *Interahamwe* only stopped the vehicle and got in *after* they exited the houses: Defence Exhibit 19 (*Prosecutor v. Bagosora et al.*, T. 1 April 2004 p. 60). In the present case, the witness made no mention of the *Interahamwe* getting back in the vehicle; rather, on his way back after the food delivery, he saw Renzaho standing at the same location while the *Interahamwe* were still going from house to house.

⁴³² The Chamber notes some differences among the testimonies of these Defence witnesses: Witness MAI stated that the family remained at the prefectural office for less than 30 minutes, while Witness ABC indicated that the duration was one to one and a half hours. Witness ABC stated that the family saw Renzaho at the prefectural office around noon, while Witness VDD stated it was around 12.30 or 1.00 p.m. The Chamber finds these discrepancies to be minor.

⁴³³ The Chamber notes that in *Bagosora et al.*, the Trial Chamber refused to rely on Witness DBN's evidence where uncorroborated. *Bagosora et al.* Trial Judgement paras. 856, 862-863, 929, 1462-1463, 1582-1585.

⁴³⁴ Although paragraphs 15 and 32 of the Indictment allege only that Tutsis were killed, the Prosecution submits that its Pre-Trial Brief gave clear notice to the Defence that this allegation encompassed the causing of serious bodily or mental harm. (Prosecution Pre-Trial Brief paras. 63-65). However, in light of the finding in the *Karera* Appeal Judgement, a Pre-Trial Brief cannot cure an indictment if, as in this case, it is filed before the indictment (the Pre-trial Brief was filed on 31 October 2005, while the Amended Indictment was filed on 16 February 2006). See *Karera* Appeal Judgement, para. 368.

6. ATTACK AT CELA, 22 APRIL 1994

6.1 Introduction

362. The Indictment states that, between 7 April and 17 July 1994, thousands of Tutsis took refuge in *Centre d'étude de langues africaines* ("CELA"), Saint Paul pastoral centre and Sainte Famille church, which were in immediate proximity to each other. On or about 22 April, Renzaho, while in the company of *Conseiller* Odette Nyirabagenzi, *Interahamwe* leader Angeline Mukandutiye, Father Wenceslas Munyeshyaka, soldiers and *Interahamwe* ordered the removal of about 60 Tutsi men from CELA. He also instigated targeted killings of persons from there, including Charles, Wilson and Déglote Rwanga. His subordinates allegedly took the men away and caused their deaths. On other dates, Renzaho ordered and instigated the murder of many other Tutsis at CELA. The Prosecution relies on Witnesses BUO, UI, ACS, ATQ, HAD, ACK and ALG.⁴³⁵

363. The Defence argues that insufficient notice was provided in the Indictment and that the Prosecution evidence is inconsistent with it. Renzaho went to CELA on 22 April 1994, but his aim was to protect those threatened there. Reference is made to Witnesses WOW, KRG, UT and PPV.⁴³⁶

6.2 Evidence

Prosecution Witness BUO

364. Witness BUO, a Hutu, joined the *Interahamwe* militia in Rugenge sector in Kigali on 8 or 9 April 1994, whose headquarters were at the home of its leader Angeline Mukandutiye. On 21 April, the witness saw Renzaho and Major Laurent Munyakaze arrive at Mukandutiye's house in a Presidential Guard red Hilux pickup truck. They were escorted by around six gendarmes. Renzaho, who was in a black suit, and Munyakaze, in military attire, entered Mukandutiye's house to speak with her. A few firearms, including Kalashnikovs, bullets and grenades, were offloaded from the rear of the pickup into Mukandutiye's house and 12 weapons were distributed to *Interahamwe*. Subsequently, Mukandutiye, in the presence of Renzaho and Mukandutiye, "asked" those present to go to CELA.⁴³⁷

365. Munyakaze and Renzaho were already at CELA when the witness arrived, and Major Patrice Bivamvagara, an officer in the Rwandan army, joined them shortly thereafter.

⁴³⁵ Indictment paras. 20-21, 36-38, 45, 49; Prosecution Closing Brief, paras. 38, 46, 60, 64-65, 102, 166, 238-268, 276, 286, 325, 347-348, 375, 391-406, 512, 515, 518, 524; T. 14 February 2008 pp. 18, 20. In its letter of 13 March of the Defence, the Prosecution conceded that it did not lead evidence relating to attacks on Kadaffi Mosque or the killing of James Rwanga, which are also mentioned in the relevant Indictment paragraphs. See also T. 15 February 2008 p. 11. It also accepted that it did not prove the specific allegation concerning Emmanuel Gihana beyond reasonable doubt. Prosecution Closing Brief para. 398.

⁴³⁶ Defence Closing Brief paras. 9, 12, 15, 42-43, 52, 116, 119, 124-126, 134, 159, 173-174, 180, 183, 375, 439-529, 876-877, 1080-1086, 1196-1206, 1218-1220, 1276; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 452.1, 484.1-3; T. 14 February 2008 pp. 59-61.

⁴³⁷ T. 25 January 2007 pp. 52, 59, 61 (quoted); T. 26 January 2007 pp. 2, 36; T. 29 January 2007 pp. 2, 6-8, 11. Prosecution Exhibit 73 (personal identification sheet). Witness BUO was convicted in Rwanda in 2003 and given a 15 year sentence for his involvement in the genocide. T. 25 January 2007 pp. 56-57; T. 29 January 2007 pp. 40-43. He was in charge of distributing weapons and would note down who took what firearm. T. 25 January 2007 p. 54; T. 26 January 2007 pp. 1, 40.

Renzaho remained at the entrance to CELA in a vehicle with Munyakaze. Bivamvagara gave an order to loot the cars inside the centre's compound. Two gendarmes guarding the entrance refused to allow the *Interahamwe* in and were shot on the orders of an *Interahamwe* leader named Claude. Renzaho, Munyakaze and Bivamvagara were present at this time. No one else was killed. Four vehicles were stolen from CELA. Some were "appropriated from the owners" and the cables of others were cut in order to start them. The vehicles were taken to Mukandutiye's home and later used to ferry victims to be killed or to transport *Interahamwe* during their operations.⁴³⁸

366. On the morning of 22 April, the witness was at Mukandutiye's house with other *Interahamwe*. Renzaho arrived in a military jeep, with a driver and two soldiers. *Conseiller* Odette Nyirabagenzi arrived at the same time. Two pickups, one carrying Major Munyakaze also arrived. Renzaho and Nyirabagenzi entered Mukandutiye's home and met with her for about 15 minutes. When they exited, Mukandutiye gave some instructions to the *Interahamwe* in the presence of Renzaho and Nyirabagenzi, and Renzaho told them to go to CELA and await further orders there. The witness distributed a G3, eight Kalashnikovs and three R4's firearms; others had weapons from the day before. The *Interahamwe*, including Claude, boarded a vehicle and left as did Renzaho, Nyirabagenzi, Mukandutiye and Munyakaze. The witness counted those who had remained to ensure that the headquarters were secured and began walking to CELA between 8.00 or 9.00 a.m.⁴³⁹

367. At CELA, the witness found Renzaho, Mukandutiye, Nyaribagenzi and Major Munyakaze. *Interahamwe* were extracting people from within CELA and separating men, women and children. Renzaho and Munyakaze were with Mukandutiye and Nyirabagenzi in the CELA courtyard. The women, who were familiar with the inhabitants of Rugenge sector, identified persons to be removed. Others were selected if they had Tutsi features. Between 60 and 70, primarily males, were chosen from the 100 or more persons who had sought refuge at CELA. Most of these displaced persons at CELA were Tutsi neighbours of those carrying out the operation. The witness did not see any gendarmes guarding the location that day.⁴⁴⁰

368. The *Interahamwe* beat those who had been selected and forced them to board three vehicles, including a Hiace minibus and a double-cabin Toyota. Mukandutiye, in Renzaho's presence, instructed the witness and *Interahamwe* leader Claude to drive the selected persons to a location referred to as the "CND", which was the house of Straton Iyaremye near the Rugenge sector office.⁴⁴¹ It was understood by this instruction that these persons would be

⁴³⁸ T. 25 January 2007 pp. 54, 62-63; T. 29 January 2007 pp. 10-11, 13-14, 15 (quoted), 23.

⁴³⁹ T. 25 January 2007 p. 55; T. 26 January 2007 pp. 1-3, 11; T. 29 January 2007 pp. 10, 16-18.

⁴⁴⁰ T. 25 January 2007 p. 62; T. 26 January 2007 pp. 3-6; T. 29 January 2007 pp. 16, 19-20, 22-23.

⁴⁴¹ The "CND" was the abbreviation for the Rwandan parliament or the *Conseil National pour le Développement* and was a location where RPF soldiers had been stationed in accordance with the Arusha Accords prior to the 6 April 1994. Several witnesses testified about this, for instance, Tribunal investigator Rajesh Neupane, T. 8 January 2007 p. 34; Witness MW, T. 5 February 2007 pp. 7-8; Witness ALG, T. 11 January 2007 p. 54. However, the parliamentary building was not in Rugenge sector and "CND" was a nickname for an area containing mass graves. See, for instance, Witness ALG, T. 10 January 2007 p. 69, T. 11 January 2007 p. 54 (those removed from CELA were killed at the mass grave in Rugenge sector referred to by *Interahamwe* as the CND); Witness BUO, T. 26 January 2007 pp. 9-10; T. 29 January 2007 p. 23; Prosecution Exhibit 6 (Photographs taken by Tribunal investigator Rajesh Neupane), Photo Book III, photograph 8 (the CND site was next to the Rugenge sector office, at the house of a man called Straton Iyaremye); Witness ACS, T. 30 January 2007 pp. 41, 70 (the CND mass graves were at the home of a man named Iyaremye); Witness HAD, T. 1 February 2007 p. 20 (the mass grave area was called CND because the RPF had once been housed at the Rwandan parliament, and the purpose was to mock the *Inyenzi*); Witness UI, T. 5 February 2007 pp. 68, 73

killed. The witness and Claude passed on the instructions to other *Interahamwe*, including Michel Nkeshimana, Gasigwa, and Fidèle ("Castar") Habimana. Renzaho was present for 40 to 50 minutes and left after those who had been selected were in the vehicles. Jean Bizimana, the *bourgmestre* of Nyarugenge *commune*, arrived after the departure of officials who led the operation. Rose Murorunkwere, the wife of Charles Rwanga, approached Bizimana, asking "Where did you take our husbands?" Bizimana left without answering.⁴⁴²

369. The witness went on foot towards the CND. Along the way, he saw 15 bodies of persons who had been removed from CELA. Among the dead were Charles and Déglote Rwanga, Albert, a driver for ORINFOR, and the two children of Pierre Sebushishi. Upon arriving, the witness observed that those who had been removed from CELA were being shot and placed in a pit with a width of over two metres inside the house. Two persons jumped in to avoid being shot and a grenade was thrown into the pit. None of the 60 to 70 persons extracted from CELA survived that day. The killing concluded around 3.00 p.m. The witness and other *Interahamwe* returned to Mukandutiye's home, reporting that the task had been completed.⁴⁴³

370. Witness BUO did not see Father Wenceslas Munyeshyaka at CELA on 22 April but stated that the priest worked closely with Mukandutiye. He provided information that enabled *Interahamwe* to find and kill Tutsis at different sites, including CELA.⁴⁴⁴

Prosecution Witness UI

371. On 7 April 1994, Witness UI, a Tutsi, sought refuge at CELA. There he found about 200 other men, women and children who had arrived for the same reason. As other persons continued to arrive, there were about 500 refugees at CELA on 22 April. The witness had written their names on a list that he had made after one of the refugees who had worked with human rights organisations advised them to keep such a record.⁴⁴⁵

372. Sometime between 20 and 22 April, soldiers, *Interahamwe* and many inhabitants launched an attack at CELA. The witness estimated that there were more than 600 attackers, who outnumbered the refugees. Before that attack, no one had been killed at CELA. At about 11.00 a.m., the witness was hiding in the chapel when he heard his name being called, and was told that Renzaho was searching for him. He left the chapel with a watchman and a soldier, and joined Renzaho, whom he knew from television and meetings. The prefect was standing at the main entrance of CELA with about 12 soldiers and many *Interahamwe*. The witness noticed four gendarmes in a pickup and Presidential guards in an "Iveco vehicle" on the road. Renzaho told the *Interahamwe* accompanying him not to attack immediately, saying that they were being watched by satellites, so they had to act in an intelligent manner. He

(overheard that refugees taken from CELA would be brought to the CND and identified a house as the mass grave where those who had been killed were placed); Prosecution Exhibit 7 (nine photographs), photographs 6, 7 and 8 (depicting the outside of the house containing the pit in which the dead were placed).

⁴⁴² T. 26 January 2007 pp. 3-4, 5 (quoted), 6, 7 (quoted), 8-11; T. 29 January 2007 pp. 21-23; Prosecution Exhibit 6 (Photographs taken by Tribunal investigator Rajesh Neupane), Photo Book III, photograph 8.

⁴⁴³ T. 25 January 2007 p. 52; T. 26 January 2007 pp. 7-12; T. 29 January 2007 p. 10.

⁴⁴⁴ T. 29 January 2007 pp. 21, 28-30.

⁴⁴⁵ T. 5 February 2007 pp. 52-54, 57-59, 64; T. 6 February 2007 p. 2; Prosecution Exhibit 86 (personal identification sheet).

to be

instructed the *Interahamwe* to choose the ringleaders amongst the refugees to bring them to the Muhima brigade to be tried before a military court.⁴⁴⁶

373. Renzaho asked the witness several questions, including why he was at CELA, why they were hiding *Inyenzi* or *Inkotanyi* there, and why the refugees had fled their homes. The witness denied that *Inyenzi* or *Inkotanyi* were hiding in the centre. During this time, *Interahamwe* were shouting and pushing the witness around, accusing him of lying. He gave Renzaho the list of the refugees who were at CELA, explaining to him that they were all from the neighbourhood and had identity cards.⁴⁴⁷

374. The prefect turned the witness over to a soldier, who said that they had heard that the refugees had dug trenches in CELA. If it was true, he would kill the witness. They went together to the courtyard and along the way, the witness said that he would give the soldier money if he saved him. No trenches were found and the soldier forced the witness to join a group of about 20 refugees who were kneeling within the CELA.

375. The soldier agreed to lead the witness to Saint Paul pastoral centre. They left CELA along OAU Boulevard and about 50 metres from CELA they met a group of women, including Rose Rwanga, who said they had been ordered to return home. The witness warned them that it was unsafe to do so. Someone called out to the soldier asking where the witness was being led and the soldier brought the witness back to the CELA compound. The witness did not look in the direction of where he had previously seen Renzaho and was not aware if he was still there.⁴⁴⁸

376. The witness was made to kneel again with the same group of refugees, this time for about an hour. *Interahamwe* and soldiers forced the group, which had grown to about 40 refugees, almost all Tutsis, to get up. They were placed into a white pickup with gendarmes in it and a minibus driven by and carrying *Interahamwe*. Munyeshyaka demanded and received the CELA keys from the witness once he had been loaded into the pickup. Around 10 to 12 of the attackers accompanied the refugees to the Muhima brigade, about 2 kilometres from CELA. The witness was unaware of anyone being killed at CELA.⁴⁴⁹

377. At the Muhima brigade, located on *Avenue de la Justice*, about 20 gendarmes took charge of the refugees. They placed the group in a cell for a few minutes and then released them to the *Interahamwe*. The refugees were loaded onto the minibus again at around 2.00 p.m. and were driven away, accompanied only by militiamen. Charles Rwanga and his two sons, Wilson and Déglote, Albert, an employee for ORINFOR, the son of Sebushishi and

⁴⁴⁶ T. 5 February 2007 pp. 58-61; T. 6 February 2007 pp. 11-12, 13 (quoted), 21, 26; Prosecution Exhibit 87 (sketch of CELA). Witness UI did not know what Iveco meant. T. 6 February 2007 pp. 13-14.

⁴⁴⁷ T. 5 February 2007 pp. 59-60; T. 6 February 2007 p. 14; Prosecution Exhibit 87 (sketch of CELA) (location 1 on the sketch is where Witness UI spoke with Renzaho (T. 5 February 2007 pp. 69-70)).

⁴⁴⁸ T. 5 February 2007 pp. 60-62; T. 6 February 2007 pp. 14-15, 17-18, 24. Witness UI marked lines on a sketch of the CELA complex to demonstrate the route he and the soldier followed out of CELA and then back into it. T. 6 February 2007 p. 17; Defence Exhibit 27 (sketch of CELA). Prosecution Exhibit 87 (sketch of CELA) (location 4 on the sketch is where the witness was made to kneel with other refugees (T. 5 February 2007 p. 70)).

⁴⁴⁹ T. 5 February 2007 pp. 62, 64-66; T. 6 February 2007 pp. 18-19, 25-26. The son of Sebushishi and two PSD youth wing (*Abakombozi*) members were the only Hutus Witness UI identified among 40 refugees removed from CELA that day. T. 5 February 2007 pp. 65-66.

Emmanuel Semugomwa were with the witness in the vehicle. Renzaho was not present at the brigade.⁴⁵⁰

378. They returned in the direction from which they came, passing CELA. In an area called *Péage*, they were stopped at a roadblock near an Ethiopian restaurant. The militiamen accompanying them told those manning it that they were headed to the "CND". Those at the roadblock asked for some refugees. At least 10, including Charles Rwanga, were killed after being taken out of the minibus, lined up along a hedge and shot. The witness fled in the midst of the killing and continued to hear firing as he ran from the minibus. He was later told that Emmanuel Semugomwa had also managed to escape. The witness also heard that some refugees were shot in the vehicle and that all those killed were thrown in a pit not far from the Rugenge sector office. The bodies were eventually exhumed and some of them identified.⁴⁵¹

Prosecution Witness ACS

379. Witness ACS, a Tutsi, sought refuge at CELA one week after President Habyarimana's death. Between 80 and 100 persons, all of whom were Tutsi, also took refuge at CELA while he was there. On 22 April 1994, a large number of persons from his sector came at about 10.00 a.m. to "weed the bush" around CELA in order to find *Inyenzis*. Renzaho, school inspector Angeline Mukandutiye, *Conseiller* Odette Nyirabagenzi, *Bourgmestre* Jean Bizimana and Father Wenceslas Munyeshyaka arrived, as well as gendarmes, soldiers and *Interahamwe*. The witness could not remember the exact time of Renzaho's arrival, but it was before noon and the weeding had not finished. He had not seen gendarmes at CELA before those who arrived with Renzaho. The prefect arrived in a pick up truck and the witness observed two armoured vehicles.⁴⁵²

380. Renzaho asked those who were in the CELA centre hall to exit, and the refugees assembled in the courtyard. The witness was lined up with the other men. Women and children were also placed into respective lines. Renzaho handed a piece of paper to Mukandutiye, telling her to take whomever she wanted. Mukandutiye began reading out names from it, the first being Charles Rwanga, who was not immediately present. Mukandutiye told Rwanga's sons, Wilson and Déglote, to find their father if they wished their own lives to be spared. The *Interahamwe* eventually found him and made him join the other men. About 40 names were called, among them Vincent Mugiraneza, who was Tutsi. He was directed by Renzaho to go to his vehicle and did so. Other names called included Emmanuel Gihana, Albert, who worked for Radio Rwanda, Christophe Safari, Charles Gahima and Rwigamba. The selected refugees were taken away in a pickup truck in which Renzaho had arrived. Armed *Interahamwe*, including Nkeshimana, Fidèle Castar, Bwanakweri and Faustin Rwagatera, left with the truck. Renzaho did not accompany the vehicle. The operation lasted several hours after Renzaho's arrival and into early afternoon.⁴⁵³

⁴⁵⁰ T. 5 February 2007 pp. 66-68, 74; T. 6 February 2007 pp. 19-20.

⁴⁵¹ T. 5 February 2007 pp. 67-69, 72-73; T. 6 February 2007 p. 21; Prosecution Exhibit 7 (nine photographs), photograph 5 (depicting the location where the roadblock was situated), photographs 6, 7 and 8 (depicting the outside of the house containing the pit in which the bodies of the dead were placed).

⁴⁵² T. 30 January 2007 pp. 28, 31, 33 (quoted), 34-37, 40, 56-57, 60-67; Prosecution Exhibit 78 (personal identification sheet). The English version errantly identifies Father Munyeshyaka as "Wenceslas Rucyaka". Compare T. 30 January 2007 p. 35 (English) and T. 30 January 2007 p. 37 (French). The Chamber relies on the French version.

⁴⁵³ T. 30 January 2007 pp. 35-42, 61, 66, 68-73, 77-78.

381. During the operation, Renzaho ordered the women and the approximately 20 remaining men to go home. He then left, taking Mugiraneza with him. Witness ACS, whose name had not been called, decided he could not seek refuge at Sainte Famille because Munyeshyaka, who managed it, had participated in the attack on CELA. The witness then returned home. Those who remained at CELA were subsequently killed, and CELA survivors who went to Sainte Famille were also killed there, although he did not explain how he came to know this.⁴⁵⁴

382. The witness later heard from a neighbour that those taken away were killed and thrown into a mass grave at the house of a man named Iyaremye. This location had been nicknamed the "CND". He knew that some of the bodies were placed in graves there because he was present when they were later exhumed and identified. The witness did not see Mugiraneza again.⁴⁵⁵

Prosecution Witness ATQ

383. In April 1994, Witness ATQ, a Tutsi, sought refuge with family members at CELA. About 500 refugees came to CELA between 7 and 22 April 1994. Nearly all of them were Tutsis. At about 10.00 a.m. on 22 April, she observed many civilians with machetes weeding the bush around CELA. When she returned to where the refugees were staying, she noticed an *Interahamwe* at the entrance with a grenade in one hand telling persons to exit the centre. She went out with the other women and saw *Interahamwe* with their leader, Angeline Mukandutiye, as well as *Conseiller* Odette Nyirabagenzi.⁴⁵⁶

384. Around 10.30 a.m., Renzaho and *Bourgmestre* Jean Bizimana entered the CELA compound on foot with some gendarmes. The witness also saw two vehicles, one of which was armoured. She did not recognise Renzaho, but heard a woman exclaim that the prefect had arrived. Vincent Mugiraneza, who was near the witness, greeted Renzaho and reminded him that they were classmates. Renzaho responded by saying that, notwithstanding, Mugiraneza was "*Inyenzi*". Mugiraneza was removed from the group by an *Interahamwe* referred to as Fidèle or Castar.⁴⁵⁷

385. Renzaho was present for about two hours, standing with Mukandutiye and the other *Interahamwe* close by him. The witness heard Fidèle (Castar) state that Renzaho had said that women should not be killed but that they were going to kill "young people and men". Various groups were formed within the compound, including one of young men who were placed in front of the CELA buildings, to which Mugiraneza was brought. The witness's group of about 10 individuals was positioned near a garage, which allowed them to overlook the centre. Each time the *Interahamwe* found someone they had been looking for, they would

⁴⁵⁴ T. 30 January 2007 pp. 40-42, 69.

⁴⁵⁵ *Id.* pp. 40-42, 70-71, 73. Witness ACS believed some refugees were killed on the way to the CND, but did not offer further details. T. 30 January 2007 pp. 70, 73.

⁴⁵⁶ T. 31 January 2007 pp. 60-64; T. 1 February 2007 p. 1; Prosecution Exhibit 81 (personal identification sheet). Witness ATQ mistakenly used the name Odette "Mukandutiye". T. 31 January 2007 p. 64. She later clarified that she meant *Conseiller* Odette Nyirabagenzi, whose home was close to the witness's primary school. T. 1 February 2007 p. 1.

⁴⁵⁷ T. 31 January 2007 pp. 64-65, 66 (quoted); T. February 2007 pp. 2-4.

shout. She recalled that a man named Albert was selected. After the *Interahamwe* finished their selection, Renzaho asked everyone to return to their homes, which the witness did.⁴⁵⁸

386. The witness testified that persons were killed at a mass grave from which the bodies were eventually exhumed. She also heard gun shots near her home and learned that two refugees who had been taken from CELA were killed nearby. Subsequently, the witness learned that Renzaho removed Mugiraneza from the group that was later killed.⁴⁵⁹

Prosecution Witness HAD

387. Witness HAD, a Tutsi from Rugenge sector, sought refuge at CELA between 8 and 10 April and remained there until it was attacked on 22 April 1994. A few days earlier, "community work" had been carried out around CELA. Other persons had entered the centre posing as refugees but who were thought to be assessing the number of refugees there. These events led many refugees to believe that there would be an attack. On 22 April, while inside a room, the witness heard shouts that *Interahamwe* had launched an attack. The *Interahamwe* were beating individuals and bringing them outside. The witness was placed next to a garage not far from the CELA entrance. Renzaho arrived around noon and was among *Conseiller* Odette Nyirabagenzi and school inspector Angeline Mukandutiye. There were many *Interahamwe*, including Gisagara, Fidèle Castar, Kivide, as well as gendarmes. She recognised Renzaho from television, and *Interahamwe* told them that they were to listen to the prefect.⁴⁶⁰

388. Renzaho told the *Interahamwe* to separate the women and children from the men. Approximately 40 young Tutsi men were chosen. Among those selected and taken away were Charles Rwanga, his two sons Wilson and Déglote, Charles Gahima and his son, Christophe Safari and Rwigamba. During the selection process, Charles Rwanga's wife pleaded with Renzaho to free her sons. Renzaho replied that if they "had been able to get Rwanga" then they would be freed. All were removed. Renzaho told the women and children to go home, guaranteeing their security, but they protested indicating that it was not safe. This incident lasted for hours.⁴⁶¹

389. Prior to the departure of the 40 refugees who had been selected, the witness observed an *Interahamwe* throw a grenade into a group of persons in the garden. Although she was unsure whether Renzaho was still present, she noted that the garden was some distance from CELA's entrance where Renzaho had been positioned. Approximately 100 individuals died, including a person named Gihana, from the blast.⁴⁶²

390. The witness went to the infirmary in the compound and did not observe the departure of the 40 persons who had been selected. About two hours later, and after hearing gunshots, she saw that the *Interahamwe* came back and looted CELA. Nearly everyone, including

⁴⁵⁸ T. 31 January 2007 pp. 65 (quoted), 66-67, 69; T. 1 February 2007 pp. 2-4. Witness ACQ distinguished soldiers from gendarmes as the former wore blue or green helmets, while the latter had red berets. T. 1 February 2007 p. 2.

⁴⁵⁹ T. 31 January 2007 pp. 67-68; T. 1 February 2007 p. 4.

⁴⁶⁰ T. 1 February 2007 pp. 11, 12 (quoted), 13-14, 18, 21, 29, 32; Prosecution Exhibit 82 (personal identification sheet). Witness HAD testified that Renzaho was present at CELA with the "school inspector" (T. 1 February 2007 p. 12) or "Angeline" (T. 1 February 2007 p. 13). The Chamber has no doubt that in each instance the witness is referring to Angeline Mukandutiye.

⁴⁶¹ T. 1 February 2007 pp. 14-16, 19-21, 30-31.

⁴⁶² *Id.* pp. 20-21, 30-32.

Renzaho, had already left CELA. From her hiding place, she observed *Interahamwe* with a list and heard them say that Rwanda and his children were dead, so their names should be crossed off it. She also heard that "Vincent", whom she believed was Vincent Mugiraneza, had been taken away by Renzaho. From their conversation, she understood that most of the refugees who had left had been killed, gunned down along the road. The witness left CELA at about 3.00 p.m. that afternoon to seek refuge at Sainte Famille. The corpses of many refugees from CELA were eventually exhumed at the mass graves known as "CND", situated below the Rugenge sector office.⁴⁶³

Prosecution Witness ACK

391. Witness ACK and her family sought refuge at CELA from 9 to 22 April 1994. Between 10.30 to 11.00 a.m. on 22 April, *Interahamwe* arrived at CELA. Renzaho was present that day in military uniform, as well as gendarmes. The witness hailed from the same region as Renzaho and had previously met him in person. *Nyumba kumi* (ten household) leaders had previously organised for the bushes to be cleared around the centre. The *Interahamwe* called out names of refugees and directed them to stand near Renzaho. The witness's husband and sons were identified. The husband told Renzaho that they came from the same place, whereas the witness pleaded with Renzaho to take her in place of her children. The prefect responded that he would bring back her children.⁴⁶⁴

392. Renzaho, the gendarmes and the *Interahamwe* said that those who had not been selected should return to their homes. A man at the centre, who was there with Father Wenceslas Munyeshyaka, informed the witness that those who were afraid could go to Sainte Famille instead. She went there with family members who had not been selected. As the witness was leaving, she observed the refugees that had been singled out in the CELA compound and that some were being beaten. Members of her family who had been selected never returned.⁴⁶⁵

Prosecution Witness ALG

393. Witness ALG, a Hutu local official in Kigali-Ville prefecture, testified that, after 7 April 1994, Tutsis fled to CELA to avoid being killed. Around 20 April, a source the witness could no longer recall informed him at the prefecture office that *Interahamwe* had gone to CELA to clear the bush in that area to flush out the *Inkotanyi*. The witness went there with a policeman, believing this action was in preparation for an attack on the refugees there. Renzaho, who the witness believed was coming from the prefecture office, arrived at CELA immediately after the witness. *Bourgmestre* Jean Bizimana was also there.⁴⁶⁶

⁴⁶³ *Id.* pp. 16 (quoted), 17, 20-21, 28, 30, 38-39.

⁴⁶⁴ T. 5 March 2007 pp. 62-67; T. 6 March 2007 pp. 59-60; Prosecution Exhibit 95 (personal identification sheet). Witness ACK testified that "it is Renzaho who took [Vincent Mugiraneza, a Tutsi] along. It is Renzaho who knows where he put him." She did not provide further detail in relation to these statements. T. 6 March 2007 p. 66.

⁴⁶⁵ T. 5 March 2007 pp. 64, 66-67; T. 6 March 2007 pp. 56-57, 67. According to Witness ACK, those who were selected were removed by two vehicles including a Nissan Urvan minibus. T. 5 March 2007 pp. 65-66. The basis for this is not clear as her testimony suggests that she departed from CELA before these individuals were removed from the centre. T. 5 March 2007 p. 66; T. 6 March 2007 p. 67.

⁴⁶⁶ T. 10 January 2007 pp. 55-56, 64; T. 11 January 2007 pp. 52-54; T. 12 January 2007 pp. 35-37; T. 15 January 2007 pp. 5, 14-16; Prosecution Exhibit 67 (personal identification sheet). When testifying, Witness

394. At CELA, the witness saw Angeline Mukandutiye, the school inspector, and *Conseiller* Odette Nyirabagenzi leading the *Interahamwe* who were clearing the bushes with machetes. No gendarmes were present. He heard women refugees at CELA tell Renzaho that they feared for their safety. A group of "young people", some standing and some seated, were in CELA's courtyard. Renzaho decided that the women be moved to Sainte Famille parish, about 200 metres away. The witness accompanied them there. The last group of women from CELA arrived 15 minutes after the witness and informed him that Renzaho had handed over a group of refugees to the *Interahamwe*. Renzaho joined him at Sainte Famille about 20 minutes later. While imprisoned after the events, the witness heard from *Interahamwe* that the refugees had been killed and buried in a mass grave in Rugenge sector known as the CND.⁴⁶⁷

Renzaho

395. Renzaho testified that, on 22 April 1994, a gendarme called to inform him of a security issue at CELA. He asked why the gendarmes had not sought reinforcements from their superiors, and was told that they had contacted Colonel Munyakazi but that he had not come. Renzaho then called Munyakazi while in the presence of the members of the prefectural crisis committee and asked him to intervene, but Munyakazi refused, responding that this problem was the responsibility of the civilian authority.⁴⁶⁸

396. Subsequently, Renzaho went to CELA in his Renault 21 with his driver and two police escorts. He arrived at about 9.00 a.m. and saw a group of about 40 persons, armed with machetes and rifles. They were cutting the grass and clearing around the trees on a hill within the CELA compound. He also observed about seven or eight gendarmes and, further down the hill, the refugees.⁴⁶⁹ After speaking with one of the gendarmes about the situation, Renzaho approached the group of armed persons on the hill and told them that he was the prefect of Kigali town. The group reluctantly gathered around him, and a person whom he did not know asked the others to listen to Renzaho.⁴⁷⁰

397. During consultations with three representatives of the group, Renzaho was informed that they had come to CELA because of an incident which led to the killing of two or three of their members nearby. They believed that some of the persons staying at the centre were armed and had been firing at them. The group demanded either that CELA be secured by people permanently assigned there, or that the refugees be moved to a better-controlled site. Renzaho concluded that the refugees should be transferred to Saint Paul and Sainte Famille, as there were no permanent gendarmes posted at CELA. He told the three representatives that they had discharged their civic duties by handing the situation over to him as a security official, and that they should now all leave the centre. Furthermore, he promised that the

ALG was awaiting trial in Rwanda and charged with genocide for incidents unrelated to the attack at CELA. T. 10 January 2007 p. 64; T. 15 January 2007 p. 34.

⁴⁶⁷ T. 10 January 2007 pp. 61-62; T. 11 January 2007 pp. 53 (quoted), 54 (quoted); T. 12 January 2007 pp. 38-39; T. 15 January 2007 pp. 14-15.

⁴⁶⁸ T. 29 August 2007 pp. 9-10.

⁴⁶⁹ T. 28 August 2007 p. 38; T. 29 August 2007 pp. 24-25, 27; T. 3 September 2007 pp. 23-26. Renzaho said that he later learned that different police officers followed him to the scene, and that other persons may also have been present but that he did not take the time to identify who was there. He also testified that, at the time, he was focussed on the attackers and only later learned that *Bourgmestre* Jean Bizimana was present.

⁴⁷⁰ T. 29 August 2007 pp. 24-26.

refugees would be moved to Saint Paul and Sainte Famille. When the representatives returned to the larger group, one of them relayed Renzaho's words, and the entire group of attackers reluctantly left.⁴⁷¹

398. Renzaho informed some of the refugees that they would be moved to Saint Paul and Sainte Famille. He directed the first group of refugees to leave in his presence, escorted by gendarmes. Once the refugees were underway, he returned to the prefecture office at about 11.00 a.m., believing his work at CELA was done. At the time, Renzaho was not informed of the subsequent CELA incident. He only learned of this allegation later from external sources, which he did not specify.⁴⁷²

399. The accounts by Prosecution witnesses that Renzaho had been involved in sorting the refugees at CELA were rejected by him. He denied having spoken to any refugee individually and had never met Witness UI. Renzaho did not know members of the Rwanga family and only heard of them during the trial. He did know Vincent Mugiraneza, but denied having seen him at CELA on 22 April. Renzaho also stated that he had no special links with *conseiller* Odette Nyirabagenzi and school inspector Angeline Mukandituye. He did not see either of them, Munyeshyaka or any of the other persons mentioned in his Indictment amongst the group of attackers on 22 April.⁴⁷³

Defence Witness WOW

400. Witness WOW, a Hutu, lived in Rugenge sector near CELA in April 1994. He testified that there were refugees at the centre from 7 April. A majority of them were Tutsi and the witness would bring food to friends and neighbours. A majority of the refugees there were Tutsis. The witness denied that an attack occurred at CELA on 21 April, or that Renzaho, who drove a car he recognised, was at Angeline Mukandutiye's house that day.⁴⁷⁴

401. On his way to the market on 22 April, he passed by CELA at about 7.00 a.m. and saw that it was under attack. Gendarmes were trying to push the *Interahamwe* back. The witness left, went to the market and returned around 8.30 a.m. The *Interahamwe* at CELA had increased in numbers and become more violent, stating that they wanted to get the *Inyenzis* who had been firing at them during the night. The gendarmes, using "force", continued to resist them. Standing two or three metres away, he saw between 50 and 60 *Interahamwe* and three gendarmes.⁴⁷⁵

402. Renzaho arrived at CELA with two policemen between 8.30 and 9.00 a.m., and asked the *Interahamwe* what was happening. He tried to discourage them from continuing their attempted attack. After Renzaho spoke with the militiamen, they turned and angrily left, saying that Renzaho himself was an accomplice. On his instructions, the gendarmes called the refugees into the courtyard. The prefect told the refugees that gendarmes would

⁴⁷¹ *Id.* pp. 27-28; T. 3 September 2007 p. 25. Renzaho stated that three persons had allegedly been killed near CELA. The group therefore thought that those staying within the centre must be firing at them.

⁴⁷² T. 29 August 2007 pp. 28-29.

⁴⁷³ *Id.* pp. 26, 29-30, 60 ("Why would I have special links with [*Conseiller* Odette Nyirabagenzi] since there were 19 *conseillers* in the prefecture of Kigali town?"); T. 3 September 2007 pp. 25-28.

⁴⁷⁴ T. 4 July 2007 pp. 35-36, 40-42, 45, 48, 51, 55; Defence Exhibit 69 (personal identification sheet). Witness WOW was detained in Rwanda and acquitted in December 2002. He was released from prison in January 2003. He fled Rwanda in 2005 because he was summoned to appear before a Gacaca court notwithstanding his acquittal. T. 4 July 2007 pp. 48-49, 56-57.

⁴⁷⁵ T. 4 July 2007 pp. 41-42, 43 (quoted), 44-45, 48, 55-56.

accompany them to Sainte Famille or Saint Paul, because he did not believe CELA was safe any longer. At around 10.00 a.m., after speaking with the refugees, Renzaho left with the two policemen in a white Renault 21. The witness, who briefly remained standing on the road, watched gendarmes accompany the refugees out of CELA, and expressed his sympathy to friends who had stayed at the centre. He returned home and the next day heard that *Interahamwe* had circumvented the prefect and killed people at CELA on 23 April. At no point did the witness see Jean Bizimana, Odette Nyirabagenzi or Angeline Mukandutiye. He had heard that Charles Rwanga was killed on 7 April by Presidential Guards but did not actually see Rwanga's body.⁴⁷⁶

Defence Witness KRG

403. Witness KRG, a Hutu, had sought refuge at CELA with Tutsi family members. He returned home from the centre on 8 April 1994 after *Conseiller* Odette Nyirabagenzi told the refugees that houses would be destroyed if no one was found on the premises. Because the witness was a Hutu, he could move about fairly easily and was therefore able to visit his family at the centre every day.⁴⁷⁷

404. The first attack the witness heard about occurred on 22 April at 9.00 a.m. His housemaid came running towards his home and informed him that CELA had been attacked by *Interahamwe*. Five minutes later, he and his friends arrived at the centre in order to evacuate their family members. There, his mother told him that the refugees had been saved by Renzaho, who had driven away the attackers. She also said that Renzaho told the refugees that CELA would close from that day on because it was no longer safe. However, if families felt safe they could return home, while those who did not could go to other centres such as Sainte Famille or Saint Paul. The witness did not see Renzaho or *Interahamwe* during the incident, but heard that Renzaho left CELA immediately after giving the families these options.⁴⁷⁸

405. After 10 minutes at CELA, the witness decided to leave with his family at about 9.20 a.m. Charles Rwanga, his two sons, Déglote and Wilson, their sister Hyacinthe and their mother remained there. At about 3.00 or 4.00 p.m. that day, he learned from some militiamen who were manning a roadblock that the *Interahamwe* had returned to CELA the same day and killed some persons, including Charles Rwanga and his sons. He heard also heard that Rwanga's wife and daughter had been able to take refuge at Sainte Famille.⁴⁷⁹

Defence Witness UT

406. Witness UT, a Hutu, was an official in the Kigali-Ville prefecture and had daily contact with Renzaho from 11 April 1994 until the end of the events. On an unspecified date Renzaho told the witness that he had been forced to go to CELA in mid-April 1994 because he had been told the situation was urgent and his sub-prefect, who would normally respond to

⁴⁷⁶ T. 4 July 2007 pp. 37, 43-46, 51-53, 57-58.

⁴⁷⁷ T. 7 June 2007 pp. pp. 3-4, 6-13; Defence Exhibit 63 (personal identification sheet). Witness KRG was prosecuted and imprisoned in connection with the death of his neighbour's family, the events at CELA, Sainte Famille and Saint Paul. He testified that he was acquitted him of all counts, and he was released from prison in 2003. T. 7 June 2007 pp. 6, 12.

⁴⁷⁸ T. 7 June 2007 pp. 1-4, 9.

⁴⁷⁹ *Id.* pp. 5-6, 9.

such situations, was absent. Renzaho told him that “everything went well” at CELA, but that the situation had to be followed up. A day or two after this conversation, the witness went to Sainte Famille. Father Wenceslas Munyeshyaka, who was in charge there, informed him that Renzaho had made an agreement with the militia who had attacked CELA that the refugees would be moved to a safer area at Sainte Famille. The witness learned however, that some of them had been taken away during the operation, did not reach Sainte Famille and probably had been killed.⁴⁸⁰

Defence Witness PPV

407. Witness PPV worked in the communal police, also called the urban police, at the Kigali-Ville prefecture. He used to go to CELA after work in the evenings, and testified that Renzaho’s receptionist, a Tutsi woman called Asterie Nikuze, had sought refuge there in April 1994. According to the witness, Nikuze returned to the prefecture office on 22 April. At some point, CELA was under threat, but to the best of his recollection, it was not actually attacked. He had heard that Renzaho went there after people in distress there had called on him, but he could not recall whether he himself had gone to CELA on 22 April. The witness said that he would have been surprised to hear that Renzaho had ordered, incited, or even witnessed abductions or killings at CELA, or that anyone was killed or abducted from there. He was not aware of any such incident or involvement by Renzaho, neither at CELA nor elsewhere.⁴⁸¹

6.3 Deliberations

408. In support of its case as charged in the Indictment, the Prosecution led evidence of an attack on CELA on 22 April 1994 where male and female refugees were separated and between 40 and 70 men were removed and killed. Furthermore, one Prosecution witness also testified about Renzaho distributing weapons on 21 April and a subsequent attack against CELA on that day, which resulted in the death of two gendarmes guarding the centre. The Chamber has doubts as to whether the events on 21 April were charged in the Indictment.⁴⁸²

⁴⁸⁰ T. 24 May 2007 pp. 19-20, 22-23, 39, 43, 52, 56; T. 25 May 2007 p. 39; Defence Exhibit 47 (personal identification sheet).

⁴⁸¹ T. 4 June 2007 p. 78; T. 5 June 2007 pp. 10, 30, 52-53, 56; Defence Exhibit 56 (personal identification sheet).

⁴⁸² In its Closing Brief (para. 238-239) the Prosecution submits that Witness BUO’s evidence about distribution of weapons and the ensuing attack on 21 April 1994 fall under para. 21 of the Indictment. The Chamber disagrees, as this paragraph relates to a particular attack where approximately 60 Tutsi men were removed from CELA. This view is supported by a contextual reading of the Indictment. Para. 20 alleges that thousands of Tutsis took refuge in various centres in Kigali-Ville prefecture including CELA, whereas para. 37 states that between 7 April and 17 July 1994 these refugees were subject to various attacks, including those by Renzaho’s subordinates. These paragraphs function as a chapeau paragraphs. Paras. 21, 38, 45 and 49 of the Indictment offer greater specificity, clarifying that the charges against Renzaho relate to an attack on or about 22 April, where soldiers and *Interahamwe* removed and murdered 60 Tutsi men, including Charles, Wilson and Déglote Rwanga. See *Setako* Defects Decision paras. 3-5; *Gacumbitsi* Trial Judgement para. 176 and *Gacumbitsi* Appeal Judgement para. 53. Similarly, para. 12 of the Indictment, which alleges that Renzaho distributed weapons between mid-1993 and 17 July 1994 from his house and elsewhere, is too general to provide sufficient notice for the events on 21 April. Because the Pre-Trial Brief was filed prior to the Indictment, ambiguities in the Indictment cannot be cured by it. *Karera* Appeal Judgement para. 368.

However, it will consider this evidence for context and do so here, given its immediate proximity in time to the 22 April attack against CELA.⁴⁸³

6.3.1 Attack on CELA, 21 April

409. Only Prosecution Witness BUO testified that, around 21 April 1994, Renzaho and Major Laurent Munyakaze distributed weapons to the *Interahamwe* at Angeline Mukandutiye's residence. This was followed by instructions to go to CELA, where, in the company of Renzaho, Munyakaze and Major Patrice Bivamvagara, *Interahamwe* led an attack at the centre. Two gendarmes were shot and killed by the militia, which also stole vehicles from the centre.

410. At the time of his testimony, Witness BUO was incarcerated, serving a 15 year sentence for his participation in crimes during the genocide.⁴⁸⁴ The Chamber views the his testimony with caution as it may have been influenced by a desire to positively impact his circumstances in Rwanda.

411. Differences emerge in the evidence related to the weapons distribution at Mukandutiye's house on 21 April. Witness WOW, who lived near Angeline Mukandutiye, denied observing Renzaho's vehicle at her house that day.⁴⁸⁵ While that testimony was rather general, it nonetheless creates doubt. The Chamber has also considered Witness BUO's account within the context of other incidents where Renzaho allegedly distributed weapons (II.3). This evidence does not support Witness BUO's uncorroborated evidence of Renzaho's involvement at Mukandutiye's residence on 21 April.

412. Turning to the alleged attack on CELA later that day, elements of Witness BUO's testimony raise questions about its reliability. For example, it is unclear who precisely gave the order to the *Interahamwe* to loot the vehicles at the CELA centre.⁴⁸⁶ Of greater significance is that the witness's evidence of this particular attack finds no corroboration, notwithstanding the number of Prosecution witnesses who were refugees at the centre during the relevant period and would have been well placed to observe it. Witness ACS, who arrived at CELA approximately one week prior to 22 April, had no recollection of an incident occurring at CELA the day before 22 April.⁴⁸⁷

413. The Chamber realises that Witness BUO's position among the attackers may have allowed him to see more of what happened at CELA than what was within the view of those who had sought shelter there. The fact that no refugees were attacked also creates a possibility that the incident could have gone unnoticed by them. However, gendarmes were

⁴⁸³ See *Butare* Admissibility Decision para. 15 (evidence not pleaded in the indictment may be admitted and considered to the extent it is relevant to proof of any pleaded allegation).

⁴⁸⁴ T. 25 January 2007 pp. 56-57; T. 29 January 2007 pp. 40-43.

⁴⁸⁵ T. 4 July 2007 p. 48.

⁴⁸⁶ Compare T. 25 January 2007 pp. 62-63 ("*Bivamvagara* told us we had to go and take the vehicles which were at the centre.") (emphasis added) and T. 29 January 2007 p. 13 ("*They* remained in the vehicle and told us to go loot the vehicles at CELA.") (emphasis added). See also Defence Exhibit 16 (statement of 12 September 2006), which reads: "Major Bivamvagara stayed behind and ordered us to take the cars which were parked at CELA..."

⁴⁸⁷ Witness ACS, T. 30 January 2007 pp. 33, 56-57, 62. Witness WOW was also unaware of an attack taking place at CELA on 21 April. T. 4 July 2007 p. 45.

shot and some cars were started after having obtained keys from their owners.⁴⁸⁸ In the Chamber's view, it is surprising that, had such an attack occurred, only one of the six witnesses present at the centre would have testified about it. Moreover, Witnesses ACS, ATQ and UI also denied that gendarmes were providing security for the centre at the time, raising further doubts that any gendarme was killed as alleged by Witness BUO.⁴⁸⁹

414. Consequently, the Chamber finds that it is not proven beyond reasonable doubt that Renzaho was involved in distributing weapons at Angeline Mukandutiye's house on 21 April 1994. Furthermore, the evidence does not demonstrate that an attack occurred at CELA on the same day where *Interahamwe* shot two gendarmes and looted vehicles in Renzaho's presence.

6.3.2 Attack on CELA, 22 April

415. There is no dispute that on or close to 22 April 1994, Renzaho went to CELA, and that male refugees were subsequently removed and killed.⁴⁹⁰ The Prosecution alleges that Renzaho played a role of coordinator among assailants that included *Interahamwe* and possibly soldiers and gendarmes. The Defence submits that Renzaho averted an *Interahamwe* attack and directed refugees to move to safer locations such as Sainte Famille church or Saint Paul pastoral centre. Only after Renzaho left, and without his encouragement or knowledge, did *Interahamwe* kill refugees at CELA.

416. In addition to evidence relating to the distribution of weapons and the ensuing attack on 21 April, discussed above, the Prosecution seeks to establish Renzaho's liability for the attack at CELA on 22 April based on his meeting with *Interahamwe* immediately prior to the attack, his activities at the centre on the morning of the attack, as well as the ultimate extraction and killing of several refugees from CELA. The Chamber will address the evidence in turn.

(i) Meeting at Angeline Mukandutiye's Residence

417. Witness BUO provided the most extensive evidence of Renzaho's cooperation and coordination with *Interahamwe* and others who attacked CELA on 22 April 1994. He testified that, immediately prior to the incident, Renzaho arrived at the house of Angeline Mukandutiye, the school inspector and local *Interahamwe* leader. The prefect was accompanied by *Conseiller* Odette Nyirabagenzi and Major Munyakaze. After Renzaho and Nyirabagenzi met with Mukandutiye inside her residence, instructions were given to *Interahamwe* at the house to go to CELA, and weapons were distributed to them.

418. As discussed above (II.6.3.1), the Chamber views Witness BUO's testimony with caution. His evidence regarding this planning event at Mukandutiye's house is uncorroborated. Elements of the witness's testimony related to who gave instructions at

⁴⁸⁸ T. 29 January 2007 p. 15 ("There were other vehicles which we appropriated from the owners – for those we had the contact keys.").

⁴⁸⁹ Witness ACS, T. 30 January 2007 pp. 62-63; Witness ATQ, T. 1 February 2007 p. 2; Witness UI, T. 6 February 2007 p. 9.

⁴⁹⁰ Witnesses BUO, ACS, ATQ, HAD and ACK described an attack in which refugees were removed from CELA on 22 April 1994. Witnesses ALG and UI testified that the event took place within a day or two of 22 April. Renzaho and Defence Witnesses WOW and KRG stated that Renzaho averted an attack on CELA on 22 April. The Chamber finds that the incident occurred on 22 April.

Mukandutiye's house prior to the attack, while not inconsistent, evolved.⁴⁹¹ His evidence about whether Renzaho arrived in the same vehicle with Nyirabagenzi is confusing.⁴⁹² The Chamber finds these differences immaterial in nature.

419. However, differences between Witness BUO's testimony about Renzaho's whereabouts prior to the 22 April attack and Witness ALG's evidence raise further doubts. Witness ALG went to CELA from the prefecture office. Although uncertain, he believed that Renzaho was at the prefecture office when he received information about CELA and that Renzaho possibly had sent him there.⁴⁹³ According to Witness ALG, Nyirabagenzi and Mukandutiye were leading the *Interahamwe* in clearing the bush at CELA when he arrived there.⁴⁹⁴ In the Chamber's view, this evidence creates doubts about whether Renzaho would have been at Mukandutiye's house with Nyirabagenzi immediately before the attack and had travelled with them to the centre.

420. The Chamber concludes that the Prosecution has failed to demonstrate that Renzaho went to Angeline Mukandutiye's home prior to the attack at CELA on 22 April 1994 and gave orders to armed *Interahamwe* to go to the centre from there.

(ii) *Selection of Tutsis at CELA*

421. As mentioned above, there is no dispute that Renzaho went to CELA on 22 April 1994. Those who had sought refuge and remained there until the attack were primarily Tutsi.⁴⁹⁵ Witness BUO described Renzaho with Major Munyakaze in the courtyard of CELA, while Angeline Mukandutiye and Odette Nyirabagenzi selected between 60 and 70 males out of the approximately 100 refugees at CELA. Witness UI testified that Renzaho stood at entrance of CELA with about 12 soldiers and many *Interahamwe*. The prefect told the

⁴⁹¹ T. 26 January 2007 p. 2 ("A. They spoke in the house, and a few moments later they came out, and Angeline gave us instructions in the presence of Odette Nyirabagenzi and of Tharcisse Renzaho. She told us that we were to go to the CELA centre and that we would be told exactly what we were to do when we would be there. Mr. Renzaho, Tharcisse, was the one who said that."); T. 29 January 2007 p. 17 ("So they entered into Angeline's home and held a meeting. After the meeting, we were ordered to go and attack CELA. Tharcisse Renzaho underscored that we had to go with our weapons. He knew what would happen, and we usually obeyed orders."). See also Defence Exhibit 14A (statement of 12 September 2006) p. 7 ("... Mukandutiye ordered us to go to CELA and await further orders there. Renzaho ordered us to take weapons with us...").

⁴⁹² Compare T. 26 January 2007 pp. 1-2 (testifying the Renzaho and Nyirabagenzi arrived in "a vehicle" with security personnel and a driver); T. 29 January 2009 pp. 17 (testifying that Renzaho arrived with two soldiers and a driver in a military jeep), 18 (ultimately testifying that "[w]e did not check how Nyirabagenzi arrived").

⁴⁹³ T. 11 January 2007 p. 53; T. 12 January 2007 pp. 36-38; T. 15 January 2007 pp. 5, 16.

⁴⁹⁴ T. 11 January 2007 p. 53.

⁴⁹⁵ See, for instance, Witness BUO, T. 26 January 2007 pp. 3 (referring to meeting Tutsi refugees at the CELA centre), 4 ("Most of them were Tutsis ..."); Witness ACS, T. 30 January 2007 p. 40 ("For me, he was a Tutsi, because his family had been exterminated ... All of us at CELA centre were of the same ethnicity."); Witness ATQ, T. 31 January 2007 pp. 60 ("[On 7 April], when we went to [CELA], we were a mixture of Hutus and Tutsis, but some days later, the Hutus understood what was happening and decided to go back home ..."), 61 ("Q. Now, you said that when you first went to CELA, there were lots of people who went with you, and they were a mixture of Hutu and Tutsi. Was that the same as at the 21st of April 1994? A. I told you that the days following our arrival at the place – at that place, people started understanding the situation and the Hutus started moving home ... And I will say that on the 21st, it was no longer a mix of Tutsis and Hutus. Even if there were Hutus, the few Hutus who were at the centre were opponents to the regime. Because as at that date, the people understood the prevailing situation."); Witness ALG, T. 11 January 2007 p. 52 ("The people who sought refuge at CELA were generally Tutsi, Tutsi who were fleeing in order not to be killed."); Witness WOW, T. 4 July 2007 p. 53 ("[T]he majority of people who had sought refuge [at CELA] there were Tutsi.").

to be

Interahamwe not to attack the refugees but to choose the ringleaders amongst them and bring them to the Muhima gendarmerie brigade to be tried before a military court. Witness UI was made to kneel with a group that grew to about 40 refugees who were ultimately removed from the centre.

422. Witness ACS observed Renzaho among Mukandutiye, Nyirabagenzi, Bizimana and Father Wenceslas Munyeshyaka as well as gendarmes, soldiers and *Interahamwe*. Renzaho handed a piece of paper to Mukandutiye, telling her to take whomever she wanted. About 40 names were called, and the individuals were placed in a pick-up truck. Witness ATQ testified that Renzaho stood near Angeline Mukandutiye and other *Interahamwe* as groups were being formed, including a group of young men. She overheard an *Interahamwe* state that Renzaho had said that women should not be killed, but that they were going to kill "young people and men". According to Witness HAD, the prefect was among Nyirabagenzi and Mukandutiye, many *Interahamwe* and gendarmes. Renzaho told the *Interahamwe* to separate the women and children from the men, and approximately 40 young Tutsi men were chosen.

423. Witness ACK saw Renzaho among *Interahamwe* and gendarmes, while *Interahamwe* called out names of refugees and directed them to stand near Renzaho. Witness ALG testified that Renzaho arrived at CELA after Mukandutiye and Nyirabagenzi, who led the *Interahamwe* in clearing the bushes. He observed a group of "young people", some standing and some seated, in CELA's courtyard and later heard that Renzaho had delivered a group of refugees to *Interahamwe*.

424. The Prosecution evidence implicates Renzaho in varying degrees in the separation and extraction of refugees. Notwithstanding any differences, the evidence consistently portrays Renzaho operating as an authority, alongside Nyirabagenzi and Mukandutiye, during the separation process. Witnesses BUO and ACK primarily portrayed Renzaho as overseeing the operation from a distance.⁴⁹⁶ Witnesses ACS and HAD, on the other hand, depicted the prefect as having a much more active role, speaking to refugees and offering instructions to attackers.⁴⁹⁷ Likewise, Witness UI described Renzaho instructing *Interahamwe* to remove

⁴⁹⁶ Witness BUO, T. 29 January 2007 pp. 19-20 ("[Mr. Renzaho and Mr. Munyakaze] were standing in the courtyard of CELA and they did not speak to the refugees since they had come animated with ill intentions. They had arrived there with the objective of committing killings. ... But how could the refugees have talked to them when we were beating them up and when we were leading them to their deaths? The refugees could not even have approached them. We were the ones who were beside them, and we were the ones to sort out those refugees that were to be killed. And let me specify that they had not come there to talk to the refugees. They had come there, rather, to supervise the selection of those among the refugees who were to be put to death. And it was not out of pity that they were there."); Witness ACK, T. 5 March 2007 pp. 63-64 ("... *Interahamwe* came to the centre ... There were gendarmes, as well, and the *Préfet* Renzaho. They called out these children and others and took them further away. I did not see them again ... They were calling out people and asked us to get close to where Mr. Renzaho was standing ...").

⁴⁹⁷ Witness ACS, T. 30 January 2007 pp. 35 ("A. ... After the arrival of the *préfet* at the CELA centre, he asked that all those in the CELA centre hall should get out."), 37 ("Q. Now, Witness, once you were lined up, were did anyone give any instructions or what happened? A. After lining us up, *Préfet* Renzaho personally gave instructions. And I think he remembered that very well. He was the one directing that attack. He had a piece of paper in his hand, which piece of paper he handed to Angeline Mukandutiye, who was a schools inspector for Nyarugenge commune. That list was read out and Renzaho said, 'Take whoever you want.'"); Witness HAD, T. 1 February 2007 p. 14 ("I was not as close as the others. But when I got there, [the prefect] was saying that people had to be sorted out. That women and children had to be put on one side, and young men on the other side.").

ringleaders among the refugees and interrogating the witness.⁴⁹⁸ Witness ATQ did not hear Renzaho but described *Interahamwe* repeating his instructions that women were not to be killed but that they would kill “young people and men”.⁴⁹⁹ The fundamental features of this evidence demonstrate that Renzaho held a position of authority, and at a minimum, oversaw *Interahamwe* and possibly soldiers and gendarmes, in executing this highly coordinated operation directed at separating Tutsi men from women and children.⁵⁰⁰

425. The Defence points to evidence that Renzaho sought to prevent an *Interahamwe* attack on CELA that day by sending refugees to Sainte Famille and Saint Paul. It also led evidence that he was not involved nor was he present during a subsequent attack on refugees who had remained at CELA by *Interahamwe*.

426. In particular, Renzaho and Witness WOW testified that Renzaho confronted *Interahamwe* who had gathered there, that they left after his consultation without removing anyone, and that he directed the remaining refugees to Sainte Famille and Saint Paul and facilitated the transfer of them. According to Witness KRG, he arrived at CELA shortly after 9.00 a.m. on 22 April, where he found his mother. She informed him that Renzaho had driven *Interahamwe* away and told the refugees that they could either return home, or to Sainte Famille or Saint Paul. Furthermore, he testified that there were no *Interahamwe* at the centre when he arrived there shortly after 9.00 a.m., and that he saw Charles Rwanga, his wife, sons and daughters at CELA. Witnesses UT provided a second-hand account that Renzaho successfully facilitated the movement of refugees to Sainte Famille, although he heard that some had been taken away and probably killed.

427. Elements of this evidence are consistent with Prosecution evidence. Witness ALG testified that women at CELA were led to Sainte Famille based on a decision made by Renzaho, and he did not observe anyone else being removed. Likewise, Witnesses ACK and UI suggested that women had left CELA and Witness ACK had gone to Sainte Famille prior to anyone being removed by attackers. Notwithstanding, the Defence evidence fails to meaningfully address the credible, largely consistent and abundant Prosecution evidence suggesting that while Renzaho was ordering certain refugees to leave – women in particular – he was also working in coordination with assailants who were separating males from females.

428. The Chamber views Renzaho’s evidence with scepticism. It appears unconvincing when viewed in light of the entire record. In addition to direct evidence of his involvement in the separation process at Saint Famille, circumstantial evidence supports a finding that Renzaho would participate in and condone the separation process at CELA that day. For example, he claimed to respond to a situation where armed civilians were removing bushes around a centre where refugees gathered. However, less than two weeks earlier, Renzaho

⁴⁹⁸ T. 5 February 2007 pp. 59 (discussing the questions Renzaho asked Witness UI), 59-60 (“When I arrived, the préfet was telling [*Interahamwe*] not to attack the refugees immediately. And I remember that he told them not to help the enemy. He was telling them that everything that was being done was being observed by the satellites and that as a consequence had to act in an intelligent manner. He gave instructions to them and he told them to choose amongst the refugees the ring leaders ... And he said that the ringleaders were to be taken to the Muhima Brigade and be tried before a military court. But, in fact, he was not doing that because he wished to save those who were staying at the centre.”).

⁴⁹⁹ T. 31 January 2007 pp. 65-66 (“After speaking a few words to one another, Fidèle left that group [composed of Angeline Mukandutiye, Renzaho and *Interahamwe*] and moved a few metres away towards us. Then he said, ‘Renzaho has said we should not kill men and women. We are going to kill young people and men.’”).

⁵⁰⁰ Witnesses BUO, ACS, HAD, ATQ, UI and ACK testified that *Interahamwe* and gendarmes were present and participating. Witnesses ACS and UI also testified that soldiers were involved.

expressly called for the public to engage in this very activity in order to confront the *Inyenzi*.⁵⁰¹

429. Witness WOW corroborated Renzaho's evidence that the prefect managed to get them to leave and departed prior to the removal of any refugees. The Chamber recalls that, at the time of his testimony, the witness was a fugitive, having fled from Rwanda after being called before Gacaca proceedings. He explained that he had previously been acquitted through formal proceedings and did not want to face a trial controlled by members of the community.⁵⁰² He was alone in suggesting that Renzaho quelled an *Interahamwe* attack in progress. Moreover, his account that Mukandutiye, Nyirabagenzi and Bizimana were not present during the attack is in stark contrast with several other testimonies. In the Chamber's view, these differences make his reliability doubtful in the present context.

430. Furthermore, the evidence of Defence Witnesses KRG, UT and PPV concerning Renzaho's activities at CELA are second-hand, of limited probative value and does not weaken the Prosecution case.⁵⁰³ For instance, Witness KRG's account, which corroborates the testimony of Renzaho and Witness WOW, does not create doubt when compared to the Prosecution first-hand evidence.

431. Having pointed out weaknesses in the Defence evidence, the Chamber recognises that elements among the Prosecution testimonies differ. For example, witnesses gave different accounts about conversations with prominent personalities during the event.⁵⁰⁴ Evidence concerning the persons in Renzaho's company at CELA shifts.⁵⁰⁵ In the Chamber's view, these differences are immaterial. They may be the result of varying vantage points during a chaotic and traumatic event or the passage of time.

432. Other details, which are of greater importance, are of questionable reliability. For example, Witness BUO omitted any mention of Major Munyakaze's presence at Mukandutiye's house or at the subsequent attack during his examination-in-chief but testified about his presence of both when being cross-examined.⁵⁰⁶ No other witness mentioned Munyakaze's presence.

⁵⁰¹ Prosecution Exhibit 50 (transcript of Radio Rwanda interview, 12 April 1994) p. 9 ("I would like to request of them that now each quarter should try to organise itself and make communal work within the quarters by cutting off bushes, searching empty houses, check out in the nearby swamp if no *Inyenzi* hid inside. They must cut those bushes, check in the gutters, in houses overgrown with weeds.").

⁵⁰² T. 4 July 2007 pp. 48-49, 56-57.

⁵⁰³ In particular, Witness PPV's evidence appears to attempt to distance himself from the attack. His testimony that he was not present at CELA appears to contradict Renzaho's statement of April 1997. T. 3 September 2007 pp. 22-23; Prosecution Exhibit 114 B (statement of 29 April 1997) pp. 11-12.

⁵⁰⁴ The Chamber has considered these differences but will not address them expressly, as they tend to identify protected witnesses.

⁵⁰⁵ Compare Witness BUO, T. 26 January 2007 pp. 3-4, 7; T. 29 January 2007 p. 22 (testifying that *Bourgmestre* Jean Bizimana arrived after Renzaho had departed) and Witnesses ALG, T. 12 January 2007 p. 37 (Bizimana arrived at CELA prior to Renzaho and was present when he was there), Witness ACS, T. 30 January 2007 p. 42 (Bizimana was present with Renzaho), Witness ATQ, T. 31 January 2007 p. 64 (Renzaho and Bizimana entered the CELA compound on foot together); Compare Witnesses UI, T. 5 February 2007 pp. 64-65, Witness ACS, T. 30 January 2007 pp. 35, 68, Witness ACK, T. 5 March 2007 p. 61 (Father Wenceslas Munyeshyaka was present at CELA) and Witness BUO, T. 29 January 2007 p. 21 (did not see Munyeshyaka).

⁵⁰⁶ Compare T. 26 January 2007 pp. 1-2 (Renzaho arrived at Mukandutiye's residence with Nyirabagenzi, his escorts and a driver, without mentioning Munyakaze), pp. 3-5, 7 (describing Renzaho with Mukandutiye and Nyirabagenzi, as well as Jean Bizimana's appearance at CELA, without mentioning Munyakaze) and T. 29 January 2007 p. 16 (Munyakaze was with Renzaho during the attack against CELA and suggesting that he

433. Only Witness HAD testified that a grenade was thrown into a group of refugees at the CELA centre. This evidence was also elicited during cross-examination, based on a statement to Tribunal investigators in August 2000. It states that a grenade was thrown into a "men's group killing about a hundred of them". Her testimony about this incident was imprecise, only identifying one person – Gahina – among the dead.⁵⁰⁷ The reliability of this account is questionable, particularly in light of the fact that well placed Prosecution witnesses did not offer any evidence in corroboration. Furthermore, the Chamber notes that Witness ACS did not mention Renzaho's involvement in the attack at CELA in two statements to Rwandan authorities.⁵⁰⁸

434. In the Chamber's view, frailties among these parts of the Prosecution evidence do not undermine the fundamental features concerning the attack. The Chamber finds it established beyond reasonable doubt that Renzaho was present at CELA on 22 April 1994. Based on the direct and circumstantial evidence, the only reasonable conclusion is that he, by his own actions and through the assistance of Angeline Mukandutiye and Odette Nyirabagenzi, ordered *Interahamwe* to engage in a targeted selection of Tutsi men, who were separated from women and children.

435. Turning to other prominent individuals that allegedly were present, the Chamber has doubts about the nature and extent of Father Wenceslas Munyeshyaka's role. While Witness BUO suggests that Munyeshyaka generally facilitated crimes committed by *Interahamwe*, he did not see him at CELA on 22 April. It is noted that Renzaho also denied he was present. Furthermore, Witnesses UI, ACS and ACK did not provide sufficient detail regarding the nature of his purported involvement or the effect of his presence. As regards *Bourgmestre* Jean Bizimana of Nyarugenge commune, the testimonies of Witnesses BUO, ACS, ATQ and ALG demonstrate that he was at CELA on 22 April.⁵⁰⁹ However, the nature of his participation and the effect of his presence are also unclear.

(ii) *Removal and Killing of Refugees*

436. The Chamber will first consider the removal of refugees from CELA. Witnesses UI and HAD testified that around 40 refugees were forced to leave, Witness UI stated that all but

stated this in his direct examination and in a prior statement), 17 (describing Munyakaze in a pickup at Mukandutiye's home prior to the attack), 19 (Munyakaze was with Renzaho in the CELA courtyard during the separation process). See also Defence Exhibit 14A (statement of 12 September 2006) p. 7 (mentioning Munyakaze's presence at CELA but not at Mukandutiye's home immediately beforehand).

⁵⁰⁷ Defence Exhibit 25B (statement of 22 August 2000) p. 3; T. 1 February 2007 pp. 30-32.

⁵⁰⁸ Witness ACS provided *pro justitia* statements to Rwandan authorities in April of 1998 and March 2003 where he made no mention of Renzaho's involvement in the attack on CELA. Defence Exhibit 20C (statement of 27 April 1998); Defence Exhibit 21C (statement of 20 March 2003). In particular, the April 1998 statement (p. 2) lists 18 individuals, including Odette Nyirabagenzi, and notes that these individuals "killed people in many places, namely, CELA..." On first glance, the witness's omissions regarding that attack and Renzaho's involvement in it are glaring. The questions posed during the April 1998 interview – "Why did you come to the Public Prosecutor's office? A. I came to give evidence against some criminals" and "Q. Which criminals?" – were open-ended and afforded the witness full opportunity to discuss the attack on CELA and Renzaho's participation. He explained that his statements to Rwandan authorities concerned the meetings of a crisis committee and crimes in which Renzaho did not participate. T. 30 January 2007 pp. 75-76. The Chamber accepts that the witness may have believed that the investigations he assisted were unrelated to Renzaho and finds the explanation reasonable.

⁵⁰⁹ Witness WOW's testimony that *Bourgmestre* Jean Bizimana was not present during the attack does not raise reasonable doubt that he was there. Reference is made to other evidence, including the account of Witness ALG.

three were Tutsis, and Witness HAD identified them as young Tutsi men.⁵¹⁰ Witness ACS heard about 40 names called out.⁵¹¹ Witness BUO estimated that around 60 to 70 refugees were removed. According to Witness ACK, 20 persons were taken away, but she had left before those selected were removed.⁵¹² Witness ATQ estimated that 80 to 100 young people were killed as a result of the attack.⁵¹³ The Chamber considers these estimates largely consistent and clearly credible.

437. As regards the victims' identities, Witness ACS stated that Angeline Mukandutiye called out the names of Charles Rwanga, Vincent Mugiraneza, Emmanuel Gihana, Albert, who worked for Radio Rwanda, Christophe Safari, Charles Gahima and Rwigamba. Witness ATQ recalled that a man named Albert had been among those selected by the *Interahamwe*. Witness HAD testified that Charles Rwanga, his two sons Wilson and Déglote, Charles Gahima and his son, Christophe Safari and Rwigamba were taken away. Witness UI said that Charles Rwanga and his two sons, Wilson and Déglote, Albert, an employee for ORINFOR, the son of Sebushishi and Emmanuel Semugomwa were with the witness as the refugees were headed to the CND, but he learned that Semugomwa escaped. Witness ACK's husband and certain children were identified for separation and were never seen by her again. Witness BUO came across the bodies of Charles and Déglote Rwanga, Albert, a driver for ORINFOR, and the two children of Pierre Sebushishi while walking to the CND. Again, the accounts are similar and appear reliable. Also the descriptions of the vehicles ferrying the refugees are consistent.⁵¹⁴

438. There is Defence evidence suggesting that Charles Rwanga and his sons were not among those removed from CELA on that day. In particular, Witness WOW heard that Rwanga had been killed on 7 April, which means weeks before the attack. However, as the witness did not see the alleged 7 April attack or Charles Rwanga's body afterwards, his testimony carries limited weight.⁵¹⁵ Witness ACK was confronted with the Rwanda trial judgement of Alphonse Macumi, which concluded that Macumi "had Charles Rwanga and his children killed ... after having taken them out of Sainte Famille".⁵¹⁶ The witness maintained that they were removed from CELA and not Sainte Famille, expressing the view that this portion of the judgment was incorrect and provided by other persons than her.⁵¹⁷ The Chamber finds her explanation reasonable.⁵¹⁸

439. The consistent first-hand accounts of Witnesses BUO, UI, ACS and HAD, among other evidence, confirm that Charles Rwanga and his children Wilson and Déglote were

⁵¹⁰ Witness UI, T. 5 February 2007 pp. 64-65; Witness HAD, T. 1 February 2007 pp. 14-15.

⁵¹¹ Witness ACS, T. 30 January 2007 pp. 40-41, 59-61, 71-73.

⁵¹² Witness BUO, T. 26 January 2007 pp. 3-6, 10. T. 29 January 2007 pp. 10, 20; Witness ACK, T. 5 March 2007 p. 65.

⁵¹³ T. 31 January 2007 p. 68.

⁵¹⁴ Witness UI and BUO testified that the refugees were removed in a minibus and a pick-up truck. (Witness BUO referred to three vehicles but only described two of them.) According to Witness ACK, the refugees were placed in two vehicles, one being a Nissan Urvan minibus. Witness ACS suggested the refugees were taken away in a pick-up.

⁵¹⁵ T. 4 July 2007 pp. 52-53.

⁵¹⁶ T. 6 March 2007 p. 59; Defence Exhibit 40 (excerpt from Rwandan trial judgement) (emphasis added).

⁵¹⁷ T. 6 March 2007 p. 60.

⁵¹⁸ Defence Witness KRG saw Rwanga and his sons at CELA when he left around 9.20 a.m., but he testified that he later heard that they had been taken away and killed.

among the men identified and removed from CELA during the 22 April attack.⁵¹⁹ Charles Rwanga was killed en route to the CND. According to Witness UI, the refugees were first brought to the Muhima gendarmerie brigade, where they were briefly detained, and then released to the *Interahamwe*, who took them away in a minibus. The Chamber accepts his evidence that along the way, approximately 10 of the refugees, including Charles Rwanga, were removed at a roadblock near an Ethiopian restaurant in the *Péage* and killed. Witness BUO saw his and Déglote Rwanga's corpse on the way to the mass grave called CND, and added that no refugee who had been taken away survived.

440. The Chamber concludes that approximately 40 refugees, most of whom were Tutsi men, were removed from CELA on 22 April 1994. Among those taken away were Charles Rwanga, and his two sons Wilson and Déglote Rwanga. Along the way, Charles and Déglote Rwanga, among others, were killed.⁵²⁰ *Interahamwe* killed all the refugees who were not killed en route or those who had not escaped at that location.⁵²¹

441. No witness heard any explicit order from Renzaho to kill the men who had been separated at CELA. However, Witness BUO's evidence suggests that the order to kill was implicit in the instruction to bring the refugees to the CND that was made by Mukandutiye in Renzaho's presence.⁵²² Witness ATQ's evidence also reflects that *Interahamwe* understood during the separation process that the men would be killed.⁵²³ Witness UI testified that Renzaho ordered that the men be taken to Muhima gendarmerie, making no mention of the CND. However, these instructions reflected a cautionary approach aimed at concealing the activity, namely an "attack" that would prompt attention.⁵²⁴

442. In the Chamber's view, the Prosecution evidence demonstrates that the ultimate goal of the operation was the elimination of the combat aged Tutsi men. Different accounts regarding the precise words used by Renzaho are not significant. Moreover, Witness UI's evidence that the refugees were brought to the Muhima gendarmerie brigade instead of

⁵¹⁹ The Munyeshyaka indictment and supporting materials discussed elsewhere (I.2.2) also fail to raise doubt with respect to the Prosecution evidence.

⁵²⁰ The Chamber finds immaterial that Witness UI testified at least 10 individuals were killed while Witness BUO observed 15 bodies on his way to CND. The difference is minor, the witnesses provided estimates and Witness UI fled from the scene in the midst of the slaughter and before the minibus reached the CND allowing for a larger number of people to be killed.

⁵²¹ Witness BUO's statement that "no one was able to escape" appears to be refer to the refugees that he saw being killed once he had arrived at the CND. T. 26 January 2007 p. 10. In the Chamber's view, this does not conflict with Witness UI's testimony that he and another managed to flee en route to the CND.

⁵²² T. 26 January 2007 p. 5 ("It was decided on the spot that the people were to be selected and driven somewhere and killed. We were told that we were to take them to the place called CND, and we knew what such letters meant, CND. And it was done; there is evidence to that effect. ... When we were instructed to take these people to CND, Angeline Mukandituye was with Renzaho, Tharcisse, when the order was given. So Renzaho was present. Renzaho left after the instructions were given. It was something that had been planned rather, that had been discussed beforehand.").

⁵²³ T. 31 January 2007 pp. 65-66 (an *Interahamwe* during the separation process said "'Renzaho has said we should not kill men and women. We are going to kill young people and men.'").

⁵²⁴ T. 5 February 2007 pp. 59-60 ("When I arrived, the préfet was telling them not to attack the refugees immediately. And I remember that he told them not to help the enemy. He was telling them that everything that was being done was being observed by the satellites and that as a consequence had to act in an intelligent manner. He gave instructions to them and he told them to choose amongst the refugees the ring leaders. That was the word he used. And he said that the ringleaders were to be taken to the Muhima Brigade and be tried before a military court. But, in fact, he was not doing that because he wished to save those who were staying at the centre."), 61.

directly to the mass grave does not, in the Chamber's view, reflect that the plan to kill the men materialised without Renzaho's encouragement or knowledge and after they were removed. The refugees were quickly transferred from within the gendarmerie brigade to the *Interahamwe* who ultimately killed them.

443. In the Chamber's view, the only reasonable conclusion is that orders were given to kill the male refugees removed from CELA. Given the authority exercised by Renzaho during the operation, the Chamber is also convinced that the only reasonable conclusion is that Renzaho gave these orders.

7. KILLINGS IN NYARUGENGE, 28 APRIL 1994

7.1 Introduction

444. The Prosecution alleges that, on or about 28 April 1994, Renzaho ordered members of the *Interahamwe* to Nyarugenge commune to find and kill nine Tutsis, including Francois Nsengiyumva, Rutiyomba, Kagorora and his two sons, Emile and Aimable. The *Interahamwe* killed several Tutsis, including these five. Reference is made to Witnesses GLE and MW.⁵²⁵

445. The Defence denies that Renzaho ordered, instigated or knew of this attack. Only Witness GLE testified about it. Her evidence is not credible and contradicted by Witness HIN.⁵²⁶

7.2 Evidence

Prosecution Witness GLE

446. The day after the President's death, Witness GLE, a Tutsi, sought refuge at the home of Elie Munyankinde, a Tutsi FAR soldier. More than 10 other Tutsi men and women were there when she arrived. On 28 April 1994, *Interahamwe* came to the house. One of the militiamen entered, carrying a firearm, while the others remained outside. The witness was in the living-room at the time. Five Tutsis were killed inside the building: François, Rutiyomba, Kagorora and his two children, Emile and Aimable. A soldier who was present begged the attackers to spare the women and children. Consequently, only men were killed. The witness did not observe the killings of persons who were outside. The *Interahamwe* also attacked Gakwandi's home, which was further down the same road. Gakwandi and his children were killed.⁵²⁷

447. Following the killings inside Munyankinde's house, the witness went out to the courtyard and observed an *Interahamwe* named Leonard Bagabo showing a sheet of paper to the civilians who accompanied him. He said that the paper bore the signatures of Renzaho and school inspector Angeline Mukandutiye, a local *Interahamwe* leader. The witness saw the document, but could not read its contents. At one point she referred to it as "the list".⁵²⁸

448. After the attack, the bodies were thrown into a nearby pit dug by local residents. The witness and other surviving women left Munyankinde's house and saw the corpses being buried there, including those killed at Gakwandi's home. While the witness was standing there, a Presidential Guard soldier came to count the bodies. He said that the witness and the other women should also be thrown into the pit.⁵²⁹

449. Witness GLE's husband was not far from Munyankinde's house at the time. The *Interahamwe* called him after the attack. She saw Bagabo wave the piece of paper, and her husband was then taken away in a vehicle with *Interahamwe* who were carrying machetes,

⁵²⁵ Indictment paras. 46, 50; Prosecution Closing Brief paras. 407-417. The name of the house owner was spelt both "Munyankinde" and "Munyankindi" during the trial. For the sake of consistency, "Munyankinde" will be used here.

⁵²⁶ Defence Closing Brief paras. 568-582.

⁵²⁷ T. 31 January 2007 pp. 1-5; Prosecution Exhibit 79 (personal identification sheet). Witness GLE did not explicitly state when Gakwandi's house was attacked but the context indicates that it was also on 28 April 1994.

⁵²⁸ T. 31 January 2007 pp. 4-5, 9.

⁵²⁹ *Id.* p. 6.

firearms and swords. At that point, he had already been wounded with a sword. After the war was over, the witness heard that he had been taken to Odette Nyirabagenzi and killed with a spear. Two days after the attack on Munyankinde's house, the witness found refuge at the Saint Paul pastoral centre.⁵³⁰

Prosecution Witness MW

450. Witness MW, a Tutsi, sought refuge at Saint Paul on 12 April 1994. On 24 April, over 20 *Interahamwe* attacked the centre. She saw them capture seven refugees and take them away in a pickup truck. The main assailant was Leonard Bagabo, who was also the leader of her *cellule*. Armed with a weapon, he tried to take the witness and her family with him by force, but someone intervened and stopped him. She heard that the seven refugees were killed at a place called CND, in Rugenge sector.⁵³¹

Renzaho

451. When asked about whether he had instigated and participated in an attack on 28 April 1994 at Elie Munyankinde's house, Renzaho testified that he had never been to Munyankinde's house, did not know where he lived, and neither ordered nor led an attack at his house.⁵³²

Defence Witness HIN

452. Witness HIN, a Hutu, testified that 42 persons were killed in an attack at Elie Munyankinde's house. He received no information linking Renzaho to the attack. The witness was not present but heard of the attack in 2006 as he was involved in related Gacaca proceedings which he referred to as the trial of Bagabo without providing further details.⁵³³

7.3 Deliberations

453. The only Prosecution witness who testified about the attack on 28 April 1994 at Elie Munyankinde's house was Witness GLE. She provided a first-hand, consistent account which appeared credible. According to her written statement to Tribunal investigators in May 2000, she found refuge at Saint Paul two weeks after the attack, not two days as in her testimony. When this was put to her, the witness insisted that two days had elapsed, and that she had nowhere to stay for as long as two weeks.⁵³⁴ The Chamber considers that the disparity between her statement and testimony is not major and may have been the result of an error during the interview.

⁵³⁰ *Id.* pp. 5-6, 8-9.

⁵³¹ T. 5 February 2007 pp. 2, 5-9, 24, 28; Prosecution Exhibit 83 (personal identification sheet). Witness MW also testified that Angeline Mukandutiye was a school inspector in Nyarugenge commune, as well as an *Interahamwe* and MRND leader. *Id.* pp. 4, 27.

⁵³² T. 29 August 2007 p. 61.

⁵³³ T. 9 July 2007 pp. 57-61; T. 10 July 2007 pp. 18-19; Defence Exhibit 73 (personal identification sheet). Witness HIN at one point confused the two names Bagabo and Elie Munyankinde, mistakenly creating the name "Bagabo Elie" (T. 9 July 2007 p. 59). He explained that the Gacaca trial began in 2003, and that the appeals judgement was rendered in 2006. The witness also participated in the "information gathering" stage of the case. In accordance with the Decision on Defence Request for Special Protective Measures for Witness HIN (TC), 14 June 2007, the witness's identity was not disclosed to the Prosecution until 10 days before his testimony.

⁵³⁴ T. 31 January 2007 pp. 6, 8-9.

454. The Chamber accepts the witness's evidence that on 28 April, *Interahamwe* killed several Tutsis at Munyankinde's house, including François, Rutiyomba, Kagorora and his two children, Aimable and Emile. It also finds that an *Interahamwe* named Leonard Bagabo was in the courtyard of the house during the attack.⁵³⁵ Witness MW's evidence confirms that Leonard Bagabo was an *Interahamwe* leader.

455. The Chamber considers that Witness HIN testified about the same attack. Although he did not specify the date, the mention of Munyankinde's house and the name Bagabo corroborates Witness GLE's evidence. The fact that Witness GLE mentioned nine victims, whereas Witness HIN said that 42 persons were killed during the attack, is not significant in the circumstances. Witness GLE may have referred to the persons she saw being killed inside the house, while Witness HIN indicated the total number of victims, in accordance with what he learned during the Gacaca proceedings.

456. The crucial question is whether Renzaho was involved in the attack. Witness GLE did not provide information about the content of the document held by Bagabo, other than at one stage referring to it as "the list" and giving hearsay evidence that it bore Renzaho's and Mukandutiye's signatures. She did not see the contents of the document and offered no basis for referring to it as "the list". In light of this, the evidence is not sufficient to establish that the document held by Bagabo contained a list of persons to be killed, signed by Renzaho.⁵³⁶

457. The Chamber finds that the Prosecution has not established beyond reasonable doubt that Renzaho ordered *Interahamwe* to find and kill nine Tutsis on or about 28 April 1994. Furthermore, the factual record is insufficiently precise to establish Renzaho's liability as a superior.

⁵³⁵ Witness GLE's evidence about the attack at Gakwandi's house is not explicitly pleaded in the Indictment. It is unclear how she learned about that attack, and how and by whom it was perpetrated. In these circumstances, the Chamber will not make any findings about that event.

⁵³⁶ In making this finding, the Chamber has taken into account other evidence of lists that were purportedly signed by Renzaho.

8. DISMISSAL OF MODERATE OFFICIALS, END APRIL 1994

8.1 Introduction

458. The Prosecution submits that, on or about 30 April 1994, Renzaho dismissed, among other persons, *Conseiller* Célestin Sezibera, because he believed that Sezibera was opposed to the killing of Tutsis. Renzaho allegedly replaced Sezibera with someone who supported such killings. Reference is made to Witnesses GLJ, ALG and UB.⁵³⁷

459. According to the Defence, Sezibera was dismissed because he had been absent from his post. Renzaho was not responsible for these dismissals, and the allegations are not precise. It relies on Witnesses AIA, PPV, PPO, UT, PGL, VDD and MAI.⁵³⁸

8.2 Evidence

Prosecution Witness GLJ

460. Witness GLJ, a Hutu, was a local official in Kigali-Ville prefecture in April 1994. He testified that, in October 1990, the *conseiller* of Nyamirambo sector, Célestin Sezibera, was investigated as an accomplice of the enemy but continued in his duties. At the time, he was accused of being a Tutsi. Furthermore, some of his family members were living out of the country during that period.⁵³⁹

461. In April 1994, Sezibera made several oral and written reports to Renzaho, to *Bourgmestre* Jean Bizimana of Nyarugenge commune, and to the prefecture office generally, explaining that Tutsi groups were being targeted. He referred specifically to an *Interahamwe* named Kigingi, as well as policemen and gendarmes who were participating in killings in Nyamirambo. There was little or no reaction to the reports, and the killings continued. The police force was managed by the prefect. On one occasion, the gendarmes sent reinforcements in connection with an incident involving a specific family, but then told him that, in the future, he should call the prefect. Sezibera worked for two days in April picking up bodies in Nyamirambo sector and bringing them to the cemetery.⁵⁴⁰

462. The witness was present during a meeting on 30 April 1994. *Bourgmestre* Bizimana gave Sezibera a letter, signed by Renzaho on 29 April. It stated that the prefect was relieving Sezibera from his duties because he "was unable to ensure security". The *bourgmestre* was

⁵³⁷ Indictment paras. 17, 35; Prosecution Closing Brief paras. 216-237, 360-379. The Indictment also refers to the dismissal of *Conseiller* Jean-Baptiste Rudasingwa. In its letter of 13 March 2007 to the Defence, as well as in its Closing Brief para. 227, the Prosecution conceded that it had not called any evidence of his dismissal.

⁵³⁸ Defence Closing Brief paras. 609-688; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) para. 613.1.

⁵³⁹ T. 22 January 2007 pp. 13, 14-15 (no explanation given why family members abroad would cause suspicion; Witness GLJ denying that he was a member of the RPF), 16, 20, 23, 33, 45, 58; Prosecution Exhibit 68 (personal identification sheet). At the time of his testimony, Witness GLJ had been detained in Rwanda for over 12 years, and his trial had not yet begun. T. 22 January 2007 pp. 23, 62-63.

⁵⁴⁰ T. 22 January 2007 pp. 22, 24-25, 29-30, 35-36, 47-48, 52-55. Kigingi (sometimes referred to as Kagingi in the transcripts) was arrested and detained for one day in a military camp, but then released and continued the killings. Witness GLJ did not know who had ordered the arrest. *Id.* p. 55.

requested to implement the decision forthwith. Around this time, Renzaho also dismissed a *responsable de cellule* named Kanimba, who was replaced by a person called Habimana.⁵⁴¹

463. The witness saw Sezibera's dismissal letter, and understood its language to mean that the *conseiller* was being removed as a suspected Tutsi. He gave several reasons for this belief. First, Rwandans usually use indirect language. Second, Kanimba had been relieved from his duties because he was a Tutsi. Given that Sezibera had come under suspicion in 1990, the witness believed that the *conseiller* had been discharged for the same reason as the *responsable de cellule*. Third, many people had written petitions asking that Sezibera be dismissed, accusing him of being a Tutsi, an accomplice, and stating that he "did not allow them to work the way they had to". They further claimed that he had refused to give them weapons but had provided food to persons in hiding. Those complaining included two *responsables de cellule*. The witness stated that Sezibera's identity card bore the letter "H", but killers were always looking for pretexts during that period, and those with Hutu identity cards were not spared.⁵⁴²

464. Jérémie Kaboyi, a member of the MRND, was appointed as Sezibera's replacement on 30 April and remained *conseiller* until Kigali was occupied by the RPF in July 1994. Three days after taking up this position, Kaboyi participated in an attack with Kigingi and other *Interahamwe*. It took place close to the witness's residence and 16 persons were killed.⁵⁴³

Prosecution Witness ALG

465. Witness ALG, a Hutu, was a member of the MRND party and a local official in Nyarugenge commune in Kigali-Ville prefecture. He stated that the *conseiller* of Nyakabanda sector, Emmanuel Kanyandekwe, had a poor relationship with Renzaho as of March 1994. Kanyandekwe had informed the witness that this was because he was a member of the MDR Twagiramungu faction. Those who did not belong to the power factions were accused of being *Inkotanyi* and would go into hiding to avoid being killed. Kanyandekwe was "somewhat" in hiding and did not often appear in public.⁵⁴⁴

466. On 13 April, Renzaho asked *Bourgmestre* Jean Bizimana of Nyarugenge commune to introduce a new *conseiller* for Nyakabanda sector, Grégoire Nyirimanzi. The prefect had just appointed him to replace Kanyandekwe. The next day, Bizimana did as Renzaho had requested. The new *conseiller* had not been well-known as a *responsable* in Nyakabanda cellule but had distinguished himself as an influential *Interahamwe* in the killings.⁵⁴⁵

467. According to the witness, the *bourgmestre* of Kicukiro commune, Evariste Gasamagera, was also dismissed by Renzaho before July 1994, and was similarly not seen in

⁵⁴¹ *Id.* pp. 18-19, 30, 31 (the meeting on 30 April 1994 took place in "our area"), 61. The Chamber notes that the split of the MDR party into MDR-Power and Faustin Twagiramungu's faction is described in Prosecution Exhibit 94A (Genocide in Kigali-City, Expert Opinion by Alison Des Forges) p. 6.

⁵⁴² T. 22 January 2007 pp. 31-32, 61.

⁵⁴³ *Id.* pp. 30-31, 37.

⁵⁴⁴ T. 10 January 2007 pp. 56, 62-63; T. 11 January 2007 pp. 13-14, 34; T. 12 January 2007 p. 22; Prosecution Exhibit 67 (personal identification sheet). Witness ALG was arrested in Rwanda in April 1998, provisionally released in July 2005, and was still awaiting trial when testifying in Arusha. T. 10 January 2007 pp. 64-65.

⁵⁴⁵ T. 10 January 2007 p. 62; T. 11 January 2007 pp. 32-34.

public during that period. The witness could not remember the name of his replacement, but recalled that he was the son of the *conseiller* of Kacyiru sector.⁵⁴⁶

468. *Conseiller* Célestin Sezibera reported to *Bourgmestre* Jean Bizimana. The witness testified that Renzaho dismissed Sezibera before July 1994, without being able to say exactly when, and replaced him with Jérémie Kaboyi. He did not know why Sezibera was dismissed. During his brief tenure as *conseiller*, Kaboyi participated in an attack to kill Tutsis with persons under his orders.⁵⁴⁷

469. Sezibera sought assistance from Bizimana the day after a man named Habyarimana, nicknamed Kigingi, and his gang had killed 24 persons. After Bizimana informed Renzaho of Kigingi's activities, Renzaho summoned Kigingi to his office. When Kigingi left with his *Interahamwe* escort, he saw the witness, warned him to be careful, and implied that Bizimana might be an accomplice of the *Inkotanyi* (II.4.2).⁵⁴⁸ Witness ALG recalled that Renzaho's secretary was a woman named Astérie, but did not mention her ethnicity.⁵⁴⁹

Prosecution Witness UB

470. Witness UB, a Hutu local official in Kigali-Ville prefecture, stated that, in 1994, public servants were dismissed from the prefecture for the sole reason that they were known to be Tutsis. Resident permits and identity cards, which were issued in the sector offices, contained ethnic identification that was accessible to the administrators.⁵⁵⁰

471. *Conseiller* Sezibera in Nyamirambo sector was dismissed on 30 April and replaced, even though he had previously received a consignment of weapons like all other *conseillers*. *Conseiller* Kanyandekwe in Nyakabanda sector, a Tutsi, was discharged between 15 and 20 April, and replaced by a person appointed by the prefect.⁵⁵¹

472. The prefect could suspend all public servants in the prefecture, and he alone had the authority to remove a policeman from his post. The witness personally observed Tutsi policemen in Kigali-Ville prefecture being sent away or dismissed when the killings of Tutsis began in April 1994. He believed that the prefect had discharged them. A Tutsi policeman called Hakorimana was dismissed. After his weapon was taken away, other policemen in the *cellule* killed him. Sezirahiga, the deputy of the Kimisagara *conseiller*, was also discharged and killed in that way. Both he and Hakorimana were sent away during the second week following the death of the President in April 1994. Some of those who came to the prefecture seeking refuge were also turned back, whereupon they were killed.⁵⁵²

⁵⁴⁶ T. 11 January 2007 pp. 49-50.

⁵⁴⁷ *Id.* pp. 48-50.

⁵⁴⁸ *Id.* pp. 56-57.

⁵⁴⁹ T. 12 January 2007 pp. 36-37.

⁵⁵⁰ T. 23 January 2007 pp. 1-2, 8-9, 47-48; T. 24 January 2007 p. 18; Prosecution Exhibit 69 (personal identification sheet). At the time of his testimony, Witness UB was detained in Rwanda, awaiting – for eight years – the result of his second appeal against his 1997 death sentence for genocide. T. 23 January 2007 pp. 1-4.

⁵⁵¹ T. 23 January 2007 pp. 10-11 (two other *conseillers*, from Gikongo and Kagarama, were replaced after 6 April 1994 because they had been killed); T. 24 January 2007 p. 15. Witness UB also testified that, when Renzaho took office in 1990, he dismissed some *conseillers* who were Tutsis during the wave of arrests that took place then. T. 24 January 2009 p. 16.

⁵⁵² T. 23 January 2007 pp. 7-8, 49. Witness UB explained that he did not personally kill Hakorimana, but because he was within the group of the first category of suspects (including leaders), he was convicted of his

Renzaho

473. Renzaho acknowledged that Célestin Sezibera was removed from his position as *conseiller* of Nyarugenge sector at the end of April 1994 in accordance with the Law of 23 November 1963, which governed the administration of communes.⁵⁵³ He was replaced because he “preferred to take shelter at the time when fighting was moving closer to his sector”. It was *Bourgmestre* Jean Bizimana who made the decision to replace him. Renzaho had accepted it because Sezibera was “not available”, but he did not recall the name of Jérémie Kaboyi or whether he had been Sezibera’s replacement.⁵⁵⁴

474. According to Renzaho, he was exercising his “oversight authority” when accepting the decision to replace Sezibera. Where possible, he had replaced *conseillers* who had died between April and July 1994, approving the administrative actions taken by the respective *bourgmestres*.⁵⁵⁵ He did not remember the names of the policemen at the Kigali-Ville prefecture, nor did he know of someone called Hakorimana, nor recall any measure he had taken to dismiss him. He further denied knowing a *responsable de cellule* named Kanimba.⁵⁵⁶

Defence Witness AIA

475. Witness AIA worked closely with one of the *conseillers* during the events. In his view, *Conseiller* Karekezi caused the death of a policeman named Etienne Hakorimana. Karekezi chaired a meeting on 8 April 1994, during which he commented to a *responsable de cellule* that he did not understand how a Tutsi policeman named Hakorimana was still alive after being involved in training Tutsi children to handle weapons. Soon after, Hakorimana was killed by soldiers and *Interahamwe*. The witness heard of his death around 12 April but stated that, up until the day he was killed, Hakorimana had not been dismissed.⁵⁵⁷

476. One day, at Petrorwanda, *Conseiller* Célestin Sezibera met a certain Gervais Dusabemungu, who worked in the legal department in the Kigali-Ville prefecture. There it was known that Dusabemungu was an MRND opponent and had joined the RPF. Karekezi reported this to *Bourgmestre* Bizimana, who asked him to suggest a replacement for both Sezibera and *Conseiller* Kanyandekwe of Nyakabanda. There was no mention of bringing the issue before the prefect. Karekezi went to find the replacements. At the prefecture, he introduced Grégoire Nyirimanzi to Bizimana, who told Grégoire, “you have to exercise caution now that you are in charge of the Nyakabanda sector”.⁵⁵⁸

death (T. 23 January 2007 p. 62). For reasons of consistency, the Chamber has opted to write Hakorimana, not Hakolimana, which also sometimes appears in the transcripts.

⁵⁵³ Prosecution Exhibit 9 (*Codes et Lois du Rwanda*, Volume II).

⁵⁵⁴ T. 29 August 2007 p. 60; T. 30 August 2007 pp. 22-23.

⁵⁵⁵ T. 30 August 2007 pp. 22, 23 (“I approved the acts or the – the moves made by the respective *bourgmestres*”). French version (T. 30 August 2007 p. 24): “J’ai accepté les actes posés par les *bourgmestres* respectifs.”), 25-26.

⁵⁵⁶ T. 28 August 2007 p. 43; T. 30 August 2007 p. 23.

⁵⁵⁷ T. 2 July 2007 pp. 1, 6, 21-27; 46; T. 3 July 2007 p. 1; Defence Exhibit 66 (personal identification sheet). Witness AIA was questioned by Nyamirambo brigade about his actions during the events, locked up in a cell for a month while investigations took place, and then released. T. 2 July 2007 p. 46.

⁵⁵⁸ T. 2 July 2007 pp. 37-40.

Defence Witness PPV

477. Witness PPV, a Hutu, worked in the urban police, which was under the direct control of the prefect. He explained that before 6 April 1994, there were 264 urban police officers working. Six or fewer of them were Tutsis. On 7 April, only about 40 police officers came to the prefecture office. Many could not reach there, others had deserted or were afraid of the curfew, some were not allowed to leave by the local population that wanted to be protected, and some had been killed.⁵⁵⁹

478. The witness was not certain how many of the 40 policemen who came to the prefecture office in April 1994 were Tutsis, but stated that the police commander assigned Tutsi police officers to remain at the prefecture until 3 July because it would have been dangerous for them to perform duties outside of its compound. The witness was not aware that any of the policemen who came to the prefecture office died. The policemen called Hakorimana or Sezirahiga did not come to work on 7 April or later. The witness did not see them again during the events. He believed that Hakorimana was killed at a roadblock during the genocide.⁵⁶⁰

479. The witness recalled three or four Tutsi civil servants at the prefecture office, out of a total of 40 employees. Astérie Nikuze, a Tutsi receptionist at the prefecture, remained there until early July. Gervais Gasamagera, also a Tutsi, was an assistant to a sub-prefect. Renzaho had sent the witness to collect Gasamagera at his home in Nyamirambo, but he could not be found as he was in hiding. The witness later heard that Gasamagera had been severely beaten, although not killed. He also knew of two Tutsi employees in the financial service who had remained at the prefecture office during the events.⁵⁶¹

Defence Witness PPO

480. According to Witness PPO, a Hutu official at the Kigali-Ville prefecture, Astérie Nikuze or Karkuzie (he could not remember her last name) was in charge of typing and archiving at the prefecture office. He did not refer to her ethnicity.⁵⁶²

Defence Witness UT

481. Witness UT, a Hutu official at the Kigali-Ville prefecture, testified that the *Interahamwe* at the roadblocks often mentioned the names of three *conseillers* (Amri Karekezi, Rose Karushara and Odette Nyirabagenzi) who had supported them or influenced them to do bad things. They were not dismissed by the prefect but, during that period, there was no time to appoint or dismiss anyone. At the same time, the witness had heard of the dismissal, on or around 30 April 1994, of *Conseiller* Célestin Sezibera, and said that, if it had occurred, it was because that *conseiller* had not been working for a long time, although he did not specify how long. According to the witness, the prefect had the power to dismiss or at least, to suspend, and could suspend anyone at any time.⁵⁶³

⁵⁵⁹ T. 4 June 2007 p. 78; T. 5 June 2007 pp. 2-4, 34-36, 46; Defence Exhibit 56 (personal identification sheet).

⁵⁶⁰ T. 5 June 2007 pp. 3-4, 35-38, 40-41.

⁵⁶¹ *Id.* pp. 9-10, 55-58.

⁵⁶² T. 4 July 2007 p. 63; T. 5 July 2007 pp. 1, 4, 7; Defence Exhibit 71 (personal identification sheet).

⁵⁶³ T. 24 May 2007 pp. 20-22, 23-24, 39, 47-49; T. 25 May 2007 pp. 11, 23-25; Defence Exhibit 47 (personal identification sheet).

482. At one point during the events, *Bourgmestre* Evariste Gasamagera of Kicukiro commune, was “no longer seen” and said to be missing. The witness further recalled that, after the receptionist failed to return to work at the prefecture office, Astérie, who worked there already, replaced her. He did not mention Astérie’s ethnicity. Between 11 April and 4 July, up to a hundred persons, mainly Tutsis, found refuge at the prefecture office.⁵⁶⁴

Defence Witness PGL

483. Witness PGL, a Hutu local official at the Kigali-Ville prefecture, recalled that Renzaho’s driver was a man named Gaspard but did not mention his ethnicity. He noted that there were many Tutsi employees at the prefecture, and remembered in particular some Tutsi senior civil servants, including the head of the legal affairs division, Gervais Dusabemungu. Renzaho’s secretary, Astérie Nikuze, was also Tutsi. The witness could not remember the others’ names. Renzaho gave all of his staff equal treatment.⁵⁶⁵

Defence Witness VDD

484. Witness VDD, a Hutu related to the prefect, testified that Renzaho did not discriminate against anyone. The parents of those who worked for him were Tutsis as well as Hutus, and his secretary, Astérie, was Tutsi. Renzaho’s behaviour towards the Tutsi members of his own family did not change following the events of 1990.⁵⁶⁶

Defence Witness MAI

485. Witness MAI, a Hutu related to Renzaho, stated that the prefect treated the Tutsi and Hutu members of his family equally. Persons from both groups sought refuge at Renzaho’s house, and his wife gave them food.⁵⁶⁷

8.3 Deliberations

486. The Prosecution alleges that during the events in 1994, Renzaho replaced moderate officials by persons who supported the killings of Tutsis. Its main focus is on the dismissal of *Conseiller* Célestin Sezibera of Nyamirambo sector, who was replaced by Jérémie Kaboye. In the Prosecution’s view, its case is strengthened by other examples, which show a pattern of behaviour. The Defence disputes that Renzaho was behind the dismissal of Sezibera, and submits that Renzaho’s treatment of Tutsis and moderate officials show that the Prosecution’s allegations are baseless.

487. The Chamber recalls that the three Prosecution witnesses who testified about dismissal and replacement – GLJ, ALG, and UB – have all been involved in criminal proceedings in Rwanda. Their evidence is examined with caution, as it may have been influenced by a desire to positively affect their own situation.

488. The Chamber accepts Witness GLJ’s testimony that there was a letter dated 29 April 1994, signed by Renzaho. Leaving aside for the moment whether it was a letter of dismissal or approval (see below), it led to the dismissal of the witness. Renzaho testified that he

⁵⁶⁴ T. 24 May 2007 pp. 25-26, 47, 57-59.

⁵⁶⁵ T. 6 June 2007 pp. 15, 21-25; Defence Exhibit 61 (personal identification sheet).

⁵⁶⁶ T. 18 May 2007 p. 7; T. 22 May 2007 p. 18; Defence Exhibit 43 (personal identification sheet).

⁵⁶⁷ T. 22 August 2007 pp. 5-6, 15-16; Defence Exhibit 76 (personal identification sheet).

approved the *conseiller's* dismissal because of his lack of availability, whereas Witness GLJ said that the letter referred to Sezibera's inability to ensure security. Irrespective of the exact wording, the Chamber finds that the real reason for Sezibera's dismissal was that he was believed to be opposed to the killing of Tutsis, or at least not showing sufficient zeal in a period with on-going massacres.

489. The Chamber makes this finding for several reasons. Witness GLJ's account was consistent, relatively detailed and appeared credible. Leaving aside whether Sezibera, a Hutu, was actually suspected of being a Tutsi, the evidence shows that he was considered a potential accomplice of "the enemy". Witness GLJ's testimony that Sezibera reported killings to the prefect and to *Bourgmestre* Bizimana was corroborated by Witness ALG, who was aware that Witness GLJ made such a report after Kigingi, the *Interahamwe*, had killed 24 persons. Renzaho merely called Kigingi to his office. Furthermore, Defence Witness AIA testified that, on an unspecified date just before Sezibera was dismissed, he was publicly seen with a person known to be an MRND opponent and a member of the RPF. This was reported to the *bourgmestre*.⁵⁶⁸

490. The Chamber has considered Witness GLJ's testimony that Sezibera was active in his administrative duties as a *conseiller* in early April 1994. He attended meetings, for instance one on 16 or 17 April, and another meeting about 28 April; transported or collected bodies around 10 and 11 April; and submitted reports up until he was dismissed. According to Renzaho, Sezibera had not been seen for about two weeks at the end of April, whereas Witness UT had heard that he was no longer working. Even assuming that Sezibera was absent from time to time, this does not refute the Prosecution evidence that he was dismissed because he was considered a "moderate".⁵⁶⁹

491. The Chamber has also taken into account that the person who replaced Sezibera, Jérémie Kaboyi, subsequently worked with the *Interahamwe* to commit killings. Witness GLJ and Witness ALG both testified that, after having been appointed *conseiller*, Kaboyi participated in an attack to kill Tutsis. This said, none of the witnesses testified specifically that he was appointed because he was known to support killings of Tutsis.

492. The Defence submits that Renzaho played a minimal role in the dismissal process and only approved *Bourgmestre* Bizimana's decision. It refers to Article 10 *bis* of the Rwandan Law on Communal Organisation of 23 November 1963.⁵⁷⁰ This provision sets forth a

⁵⁶⁸ Although the Chamber accepts certain parts of Witness AIA's testimony, it recalls that other elements are more doubtful. For instance, during cross-examination, he modified some answers he had given in examination-in-chief, contradicted himself, admitted to having made incorrect statements to Rwandan authorities, and gave testimony that was not in conformity with his prior written statements.

⁵⁶⁹ Renzaho, T. 28 August 2007 p. 38 ("The first [*conseiller* to be replaced] was that of Nyamirambo who was replaced by the *bourgmestre* of Nyarugenge. And I approved because the person had just spent more than two weeks without being seen and we welcomed, we received at the *préfecture* a group of people that came to complain that there was no local authority when the *secteur* was facing a war situation, because this was towards the end of the month of April"); T. 30 August 2007 p. 22 ("[Sezibera] was replaced simply because he preferred to take shelter at the time when fighting was moving closer to his *secteur* and the population moved to protect the *préfecture* [...] I accepted that he be replaced because he was not available"); Witness UT, T. 25 May 2007 p. 24 ("I heard about the dismissal of this *conseiller* who was no longer working. If this dismissal was done, it went without saying because this *conseiller* had not been working for a long time.").

⁵⁷⁰ Prosecution Exhibit 9 (*Codes et Lois du Rwanda*, Volume II). ("Le Conseiller qui devient incapable de remplir sa mission est déchu de ses fonctions. La déchéance est prononcée à l'issue de la procédure ci-après:

dismissal procedure that requires the *bourgmestre* to report on the inability of the *conseiller* to fulfil his duties. He submits the case to the Communal Committee, which provides its opinion to the prefect. The procedure further involves the Prefectoral Committee and the Ministry of the Interior. According to the Defence, Article 10 *bis* illustrates the central position of the *bourgmestre* in the process.

493. Renzaho testified that the dismissal was carried out "within the legal procedure provided for by the law of 1963" and that he only exercised his "oversight authority" in accepting that Sezibera be replaced.⁵⁷¹ However, there is no evidence that all the statutory requirements were complied with. For instance, no witness referred to the Prefectoral Committee or the Ministry, which, according to Article 10 *bis* "shall decide on the matter based on a reasoned decision". The Chamber is not convinced that the legal procedure was followed during the extraordinary circumstances of April 1994.⁵⁷² This said, it is undisputed that Renzaho made a decision as to whether to accept or reject the dismissal. This also follows from the testimonies of Witnesses GLJ, ALG and Renzaho.

494. The Prosecution witnesses emphasised the prefect's general authority in these matters but were less clear as to who initiated the process. Witness ALG testified that he did not know why Sezibera was dismissed. In the Chamber's view, this is a surprising statement, given his position, which raises issues of credibility. Witness UB did not give evidence about how the dismissal proceedings were initiated. Witness GLJ stressed Renzaho's role and said that *Bourgmestre* Bizimana's role was to implement the decision.⁵⁷³ However, in a statement to Rwandan judicial authorities in February 2000, he expressed the view that it was the *bourgmestre* who instigated the dismissal.⁵⁷⁴ The Chamber is aware that the Rwandan interview focussed on Jean Bizimana, not Renzaho. It is nevertheless noteworthy that the witness so clearly emphasised the role of the *bourgmestre* as initiating the dismissal process in his interview, whereas Renzaho was in the forefront in his testimony. This shift in emphasis raises some concern.

Le bourgmestre établit un rapport détaillé sur l'incapacité du Conseiller et en informe le Conseil Communal et l'intéressé qu'il invite à se défendre par écrit endéans quinze jours calendrier.

Le bourgmestre soumet le cas au Comité Communal qui donne son avis après examen du rapport de la défense du Conseiller. Le rapport accompagné de la proposition de déchéance, des moyens de défense du Conseiller et de l'avis du Comité Communal est transmis au Préfet. Celui-ci soumet le cas au Comité Préfectoral qui émet son avis.

La procédure engagée n'est poursuivie aux différents échelons que si les moyens de défense présentés par l'intéressé ne sont pas satisfaisants. Les décisions aux différents échelons doivent se conformer aux avis des organes consultés.

Tout le dossier est transmis au Ministre ayant l'Intérieur dans ses attributions qui statue sur le cas par décision motivée. ").

⁵⁷¹ T. 30 August 2007 pp. 22-23.

⁵⁷² Article 10 *bis* of the Law of 23 November 1963 does not specifically require that the prefect sign the dismissal letter, and no witness testified that Renzaho signed Sezibera's dismissal letter on behalf of a committee. Moreover, Article 10 provides for the *conseiller* in question to defend himself in the course of the dismissal process, and no evidence was given that Sezibera had such an opportunity.

⁵⁷³ T. 22 January 2007 p. 31.

⁵⁷⁴ Defence Exhibit 6 (*pro justitia* statement of 9 February 2000): "The new *Conseiller* was not attending the meeting. However, I was accused of not enforcing security, of sensitising the population to security [sic] and of not preventing the *Inkotanyi* from abducting people at Mumena. The *Bourgmestre* could not have been unaware of such accusations. In my opinion, he was the one who made a report to the *Préfet* so that I would be relieved of my duties."

495. Defence Witness AIA also stressed *Bourgmestre* Bizimana's impact in the process. He testified that *Conseiller* Karekezi reported on Sezibera to Bizimana, who then suggested that Karekezi find a replacement. Although certain credibility issues arise with respect to this witness, his testimony supports the view that Bizimana's role at the initial stage of the dismissal process was quite important. The Chamber finds that there is a lack of clarity about the respective roles of Renzaho and Bizimana in relation to Sezibera's dismissal.

496. There is also some doubt concerning the decision to replace Sezibera with Jérémie Kaboyi. Only Witness ALG testified that Renzaho appointed him as Sezibera's replacement. The Chamber finds, however, that Witness ALG has an interest in placing the responsibility for the replacement decision on Renzaho, and will therefore not rely on his uncorroborated account in this respect. There is no other specific evidence about this. The testimonies about appointment and replacement of other officials, briefly addressed below, does not provide sufficient corroboration. Consequently, the Prosecution has not proven beyond reasonable doubt that it was Renzaho who replaced Sezibera with Kaboyi.⁵⁷⁵

497. The Chamber has taken into account the Prosecution evidence that Sezibera's dismissal formed part of a pattern of behaviour. Three events involved the replacement of other officials who were or may have been moderate: *Conseiller* Kanyandekwe was allegedly replaced by Grégoire Nyirimanzi, an influential *Interahamwe* who distinguished himself in the killings;⁵⁷⁶ the *bourgmestre* of Kicukiro, Evariste Gasamagera, was dismissed;⁵⁷⁷ and a *responsable de cellule* called Kanimba was replaced by a certain Habimana.⁵⁷⁸ Finally, other evidence emerged during the trial about the dismissal, replacement, protection, or equal treatment of other staff, in particular Tutsi urban policemen, and family members. These elements do not affect the Chamber's findings above concerning Célestin Sezibera.

498. The Chamber concludes that at the end of April 1994, Renzaho approved the dismissal of *Conseiller* Célestin Sezibera, who was considered a moderate and as not supportive of the killings in Kigali-Ville prefecture. However, there is no evidence that Renzaho appointed the new *conseiller*, Jérémie Kaboyi, who after taking up his functions participated in killings. It is also unclear whether the idea of dismissal and replacement

⁵⁷⁵ Articles 7 and 8 of Law of 23 November 1963 indicate that *conseillers* are elected, and that the prefect is responsible for presiding over the elections. No reference is made to the appointment or approval of *conseillers*. Prosecution Exhibit 9 (*Codes et Lois du Rwanda*, Volume II). Renzaho's testimony indicates that the person next in line following the election results would be appointed. T. 28 August 2007 p. 38 ("As for the other *conseiller*, Nyakabanda, he fled at the beginning, at the outset. And procedures would have been followed for his replacement by naming from the list of candidates to the municipal election who came next would be appointed. So it's a *bourgmestre* who appointed the replacement of the *conseillers* and all I had to do was to accept.")

⁵⁷⁶ Witness ALG testified that Renzaho was involved in Kanyandekwe's replacement but did not specify who dismissed him. His statement that the prefect had appointed Nyirimanzi was corroborated by Witness UB. Defence Witness AIA, however, stated that it was Bizimana who suggested that Karekezi find a replacement for Kanyandekwe, and he heard no mention of the prefect in the process. As mentioned above Witness ALG has an interest in testifying that it was Renzaho who dismissed and replaced both Sezibera and Kanyandekwe, and the Chamber finds that his evidence carries limited weight. The evidence about this event is not clear.

⁵⁷⁷ The Chamber accepts the testimony of Witness ALG that *Bourgmestre* Evariste Gasamagera was dismissed and not seen in public in the period before his dismissal. Also Witness UT stated that Gasamagera was said to be missing at one point during the war. However, there is no direct evidence that Renzaho decided or approved either the dismissal or the replacement of Gasamagera, that he was a moderate, or that he was replaced with someone who supported the killings.

⁵⁷⁸ There is almost no evidence about the replacement of Kanimba by Habimana.

originally came from Renzaho, or was formulated at a lower administrative level. In the Chamber's view, the evidence of Renzaho's conduct is not sufficient to sustain a conviction.

499. In view of the Chamber's findings, it sees no need to consider the Defence submissions about insufficient notice.

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9. SAINT PAUL PASTORAL CENTRE, APRIL-JUNE 1994

9.1 Introduction

500. The Indictment alleges that, while in the company of Odette Nyirabagenzi and Angeline Mukandutiye, as well as *Interahamwe*, soldiers and gendarmes, Renzaho ordered the removal and murder of 60 Tutsi boys from Saint Paul pastoral centre ("Saint Paul") on or about 14 June 1994. More generally, between 7 April and 17 July 1994, Renzaho's subordinates planned and carried out attacks at various locations in Kigali where Tutsis had sought refuge, including at Saint Paul. Renzaho failed to prevent or punish the perpetrators of any of these acts. Reference is made to Witnesses KZ, ALG, BUO, MW, UI and GLE.⁵⁷⁹

501. The Defence does not contest that an attack took place at Saint Paul on 14 June 1994, but denies that Renzaho was implicated. It refers to Witnesses UT, PER, BDC and WOW.⁵⁸⁰

9.2 Evidence

Prosecution Witness KZ

502. Witness KZ, a Hutu, had a position of authority at Saint Paul pastoral centre in Kigali from mid-April until 17 June 1994. He said that about 1,000 adult refugees, mainly Tutsi, were admitted into the centre during April 1994. By the end of the war, their numbers had grown to about 1,500.⁵⁸¹

503. According to the witness, Wenceslas Munyeshyaka, a priest he had known since 1984, did everything in his power to ensure that the refugees lived in acceptable conditions. Munyeshyaka was in charge of the refugees' safety at both Saint Paul and the Sainte Famille centre and managed to get four gendarmes to provide security at Saint Paul from around 21 April. However, they could not ensure the safety of the refugees against the hundreds of *Interahamwe* who would attack the centre. A priest at Saint Paul named Munyazikwiye had asked for assistance from the Kigali-Ville prefecture. The prefect did not respond favourably to requests, other than to place the sub-prefect in charge of social affairs, Aloys Simpunga, at the disposal of the centre. Simpunga did provide assistance.⁵⁸²

504. Four attacks at Saint Paul were particularly violent and three of them led to casualties. The attackers would come with lists that they would compare with the records kept in the centre. Initially, they looked for specific persons. Subsequently, refugees were only targeted on the basis of their Tutsi appearance.⁵⁸³

505. The first particularly violent attack took place in April, before the gendarmes were posted at the centre. About 50 *Interahamwe* and 150 civilian inhabitants of Rugenge and Muhima *cellules* arrived stating that their purpose was to do communal work. The bush and

⁵⁷⁹ Indictment paras. 20, 22, 36, 37, 39, 57; Prosecution Closing Brief paras. 38, 46, 60, 64, 149-150, 269-299, 322, 325, 335-336, 347, 349, 378, 411, 460-472, 512; T. 14 February 2008 pp. 11-12, 18, 20-21.

⁵⁸⁰ Defence Closing Brief paras. 354-412, 1080-1086; T. 14 February 2008 pp. 61-62; T. 15 February 2008 p. 4.

⁵⁸¹ T. 25 January 2007 pp. 2, 9-10, 21, 36; Prosecution Exhibit 72 (personal identification sheet). The figure of 1,500 excluded the minors there. Witness KZ identified Saint Paul as one of the locations depicted on Prosecution Exhibit 4 (map of CELA, Saint Paul and Sainte Famille). There have been some changes at the site since 1994 but the witness also described the infrastructure during the events. T. 25 January 2007 pp. 4-8.

⁵⁸² T. 25 January 2007 pp. 11-13, 17, 30, 37, 45-46.

⁵⁸³ *Id.* pp. 13, 25, 44-45.

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banana plantation around Saint Paul was cut down by a group of about 200 persons led by the *responsable de cellule* and the leader of the *nyumba kumi* (ten households). A person hiding there was declared to be an *Inkotanyi*. Once the weeding operation was completed the inhabitants returned to their cellules, whereas the *Interahamwe* took seven or eight men from the centre before leaving. The men who were abducted never returned, and the witness believed they were killed.⁵⁸⁴

506. The second attack, at the beginning of May, was carried out by soldiers who the witness heard came from the Muvumba battalion, accompanied by *Interahamwe*. They threw tear gas into the compound to force those who had taken refuge out of it. The soldiers said they were looking for armed persons among the refugees, because inhabitants of the Rugenge sector had complained that refugees from Saint Paul were shooting at them at night. Witness KZ and one of the gendarmes explained to the soldiers that none of the refugees at the centre had weapons, and that there were no enemies there. Although the soldiers were angry and initially singled out the Tutsis, they appeared to accept the words of the witness and eventually left.⁵⁸⁵

507. Following this attack, still at the beginning of May, the witness called the prefecture office and spoke to Renzaho, telling him that Saint Paul was being attacked constantly by *Interahamwe*. The prefect replied that the people there should be instructed to go home. When the witness protested that they would not be safe there, the prefect answered: "Well, if you don't listen to what I'm telling you, then I don't care", and then he "banged the phone", seemingly angry that his instructions were not being obeyed.⁵⁸⁶

508. Sometime in June, a third attack began at 9.00 a.m. It was carried out by *Interahamwe* led by unidentified persons – *conseillers* and a representative of the prefect. The witness learned from the attackers, who were armed and numbered about 300, that they had lists of people to fetch. He saw a separate list of inhabitants for each of the two closest sectors to Saint Paul – Muhima and Rugenge sectors. Most of those on that list were at Saint Paul and came from these two sectors. The list included the names of the seven men who had been taken away in the first attack.⁵⁸⁷

509. Faced with these lists, the witness demanded an arrest warrant, and the attackers left with a gendarme to obtain one. Meanwhile, the witness warned refugees whose names he had seen on the lists to hide. The assailants returned about half an hour later with a document. This time they were accompanied by Lieutenant Iradukunda, wearing the red beret of the gendarmerie. The document was headed "Prefect of Kigali-Ville prefecture" and stated that the witness was to allow Iradukunda to take the listed people to Nyarugenge brigade for interrogation. The document said "PO", or "by order", Jean Bizimana, who had signed on

⁵⁸⁴ *Id.* pp. 13-15, 18, 44-45. Witness KZ explained that the authorities had requested that any centre receiving refugees prepare lists of those arriving for use by the security services, the purpose being to avoid infiltrators. *Id.* p. 21.

⁵⁸⁵ *Id.* pp. 14-16.

⁵⁸⁶ *Id.* pp. 17 ("... and then he banged the phone. ... Before the war in Kigali, people often spoke in Kinyarwanda. But educated people sometimes ... speak a mix of Kinyarwanda and French. But the expression 'je m'en fous', which means 'I don't care, which the préfet said was said in French, 'Je m'en fous'."), 30, 38. Witness KZ testified that the telephone line at Saint Paul was operating at least up until the time that he left the centre on 17 June 1994. The priests could both make and receive phone calls, although phone numbers that began with code 8 could not be reached. *Id.* p. 30.

⁵⁸⁷ *Id.* pp. 14, 18, 21.

behalf of the prefect. Bizimana was the *bourgmestre* of Nyarugenge commune. Iradukunda told the witness that the prefect was absent.⁵⁸⁸

510. While the other attackers remained at the gate, Iradukunda and 30 or 40 attackers went through the rooms with the witness, calling out the 40 to 50 names on the list. The *Interahamwe* became upset when no one responded. They split the refugees, taking out those suspected of being Tutsi based on their physical appearance, and lining them up in front of the building. According to the witness, Iradukunda gauged the situation and realised then that he could not stop the *Interahamwe* from taking refugees, so he left the compound. At that point, the 200 or so attackers who had remained outside invaded Saint Paul. The *Interahamwe* tied up and took away between 30 and 50 young and middle-aged men.⁵⁸⁹

511. One of them was spared by the attackers and later told the witness that he had heard the shots that were fired to kill the other refugees. Jean-Pierre, another of the men, came back at 6.00 p.m. and informed the witness that he had been taken with the others to Rugenge sector office. There he was released because he was Hutu. Jean-Pierre also said that, on his way back, he saw attackers in the company of Renzaho and Angeline Mukandutiye at the Pan Africa hotel. They were celebrating and commending one another because they had been able to kill enemies.⁵⁹⁰

512. The fourth violent attack took place around 8.00 or 9.00 a.m. on 17 June. The RPF ("*Inkotanyi*") had come to Saint Paul the night before, on 16 June, and evacuated most of the approximately 1,500 adult refugees there at dawn, leaving about 50 behind. The witness heard the next day that a gendarme who had tried to resist was killed by the RPF.⁵⁹¹ On the morning of 17 June, *Interahamwe* arrived and threatened to kill the priests who had accommodated those refugees. They killed some of the 50 remaining persons who had not been evacuated the night before. The witness saw two bodies, but was told that there were others who had been killed downhill from the centre. He did not dare call Renzaho for help again, remembering their last conversation. However, Father Munyazikwiye had been a classmate of Renzaho and therefore called him to report that Saint Paul was under attack. Renzaho replied that the priests were all accomplices because they had accommodated the *Inkotanyi* and their accomplices. The priests fled from Saint Paul that day, and the witness heard that other refugees were killed after their departure.⁵⁹²

513. Around 5.30 or 6.00 p.m. on the night that the RPF evacuated people from Saint Paul, the witness met with Renzaho, who was accompanied by UNAMIR troops. He testified that Renzaho promised to evacuate the refugees to areas of their choice, whether controlled by government or RPF troops.⁵⁹³

Prosecution Witness ALG

514. Witness ALG. A Hutu, was an official in the Kigali-Ville prefecture until July 1994. He stated that the only police structure in Kigali-Ville was in the prefecture office. If a

⁵⁸⁸ *Id.* pp. 18-21, 30, 39, 44. The abbreviation "PO" stands for "par ordre". *Id.* p. 22 (French).

⁵⁸⁹ *Id.* pp. 21-25.

⁵⁹⁰ *Id.* pp. 23-24, 40. Witness KZ mentioned that Angeline Mukandutiye was school inspector for Nyarugenge commune and an MRND party leader.

⁵⁹¹ *Id.* pp. 14, 25-28, 39-41, 44.

⁵⁹² *Id.* pp. 26-29. Witness KZ did not know the specific rank of each of the two soldiers.

⁵⁹³ *Id.* pp. 26, 38, 40-41.

bourgmestre wanted to arrest someone, he had to contact the urban police and the prefect. The *bourgmestre* had no authority to sign a warrant of arrest, but any of the heads of the various administrative services at the prefecture could sign documents on the prefect's behalf in his absence.⁵⁹⁴

515. As of 13 June 1994, the witness had not seen Renzaho for several days. He did not know where the prefect was on that day but had heard that he had gone to see his family in Cyangugu. The witness denied that he took advantage of Renzaho's absence to commit crimes. When the prefect was not there, he was replaced by Jean-Baptiste Butera, who was the head of political, legal and administrative affairs at the Kigali-Ville prefecture. The witness also tried unsuccessfully to contact him on 13 and 14 June.⁵⁹⁵

516. Witness ALG stated that, at about 4.00 p.m. on 13 June, *Conseiller* Odette Nyirabagenzi told him that the *Interahamwe* were planning to attack Saint Paul the next day armed with a list of refugees there from Rugenge and Muhima sectors who were believed to be RPF soldiers. Their conversation took place over the phone while the witness was in the prefecture office. She said the names of eight or nine names of RPF combatants were on the list, and also mentioned that she had tried to call Renzaho to inform him about the attack but had been unable to reach him. Bizimana, who was present during the conversation, told her that he would not be present during the attack because his wife had been admitted to a maternity ward. Instead, he wrote a letter asking the brigade commander to intervene and prevent any *Interahamwe* attack at Saint Paul the next day, 14 June. In that message, Bizimana further asked the commander to stop the *Interahamwe* from taking refugees away by assembling and interrogating those refugees.⁵⁹⁶

517. At about 8.00 or 9.00 a.m. the next day, 14 June, the prefect's secretary gave Jean Bizimana a message from Father Célestin Hakizimana at Saint Paul. The priest had first tried without success to reach the prefect by telephone and was seeking assistance because the *Interahamwe* were attacking. The witness arrived at Saint Paul between 9.00 and 10.00 a.m. Jean Bizimana was there. Many *Interahamwe* were assembled both outside and within the premises; those outside were angry and wanted to get in. No-one from the prefecture office entered the premises that day. The witness did not see Father Hakizimana there, but he might nonetheless have been present.⁵⁹⁷

518. When he arrived at the gate of Saint Paul, Witness ALG heard a car horn and saw Renzaho in a vehicle behind him. Renzaho beckoned Jean Bizimana over and asked what was happening. Bizimana explained how he had found out about the impending attack. Renzaho did not appear to be affected in any extraordinary manner by the situation or Bizimana's words. He told him to leave and attend to his wife. As Bizimana left, the witness saw the *Interahamwe* outside the compound go to greet the prefect. They had appeared angry but

⁵⁹⁴ T. 10 January 2007 pp. 55-56, 59, 63; T. 11 January 2007 pp. 11-12; T. 15 January 2007 pp. 17, 22; Prosecution Exhibit 67 (personal identification sheet). When testifying, Witness ALG was awaiting trial in Rwanda for his role during the events in 1994, including this incident. T. 10 January 2007 p. 64.

⁵⁹⁵ T. 10 January 2007 p. 67; T. 11 January 2007 pp. 10-11, 30; T. 15 January 2007 p. 31. Witness ALG noted that a head of service was known as a sub-prefect in other prefectures.

⁵⁹⁶ T. 10 January 2007 pp. 65-66, 69; T. 12 January 2007 pp. 35-36; T. 15 January 2007 pp. 19, 21-22, 25.

⁵⁹⁷ T. 10 January 2007 pp. 66-67; T. 15 January 2007 pp. 17-19, 21, 24.

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calmed down and seemed pleased when they saw Renzaho, who shook hands with some of them. The *Interahamwe* were still greeting him when the witness left.⁵⁹⁸

519. After the events, the witness was detained in Kigali prison with *Interahamwe* who had participated in the attack. They informed him that Renzaho left, while they proceeded to take about 40 refugees from Saint Paul. The *Interahamwe* killed them at a mass grave referred to as the CND near the Rugenge sector office. Although Renzaho had given the impression that he would handle the situation, the witness later concluded that the prefect had given the refugees to the *Interahamwe*.⁵⁹⁹

520. On 17 June, after an RPF raid on Saint Paul, the *Interahamwe* attacked both Saint Paul and Sainte Famille. Many persons were killed. The witness was not present at the attack as he had gone to Gitarama for four days. He only returned to Kigali in the evening of 18 June.⁶⁰⁰

Prosecution Witness BUO

521. On 8 or 9 April 1994, Witness BUO, a Hutu, joined the *Interahamwe* in the Rugenge sector, whose headquarters were at the home of its leader, Angeline Mukandutiye. He remained a member of the militia until July 1994.⁶⁰¹

522. The witness testified that there were two particularly important attacks at Saint Paul in which Renzaho participated. The first was in May. Angeline Mukandutiye and *Conseiller* Odette Nyirabagenzi decided that certain Tutsis sought by the *Interahamwe* should be abducted from Saint Paul and killed. Mukandutiye told the *Interahamwe* about the plan. In order to get access to the persons they wanted to take away, they agreed to claim that there were *Inyenzi* hiding at Saint Paul who were firing at the roadblock during the night. About 50 *Interahamwe* and local residents cleared the bush in the area to find *Inyenzi* who might be hiding there.⁶⁰²

523. Angeline Mukandutiye and Odette Nyirabagenzi were present at Saint Paul during this attack in May. The witness saw Mukandutiye holding a list and recalled four names from it, although he did not notice the total number of names. The two women disagreed on the number of persons to be killed. Nyirabagenzi wanted to include everyone at Saint Paul, while Mukandutiye said that only those on the list should be chosen. Around 11.00 a.m., Renzaho came to Saint Paul bringing a sheet of paper similar to the one that Mukandutiye had. He was there for about 10 minutes, resolved the dispute in favour of Mukandutiye's position, and left immediately afterwards. The two women then told the *Interahamwe* that only those whose names were on the list should be arrested.⁶⁰³

524. The *Interahamwe* selected Tutsis from the list and forced them into vehicles. They were able to sort through the refugees because the Tutsis were the attackers' neighbours and were known. Many were taken but the witness was unable to give a number. Emmanuel

⁵⁹⁸ T. 10 January 2007 pp. 66-69; T. 15 January 2007 pp. 17, 25.

⁵⁹⁹ T. 10 January 2007 pp. 69-70; T. 15 January 2007 pp. 18, 24-25.

⁶⁰⁰ T. 10 January 2007 pp. 69-70.

⁶⁰¹ T. 25 January 2007 pp. 10, 52, 54-58; T. 26 January 2007 pp. 36-38; Prosecution Exhibit 73 (personal identification sheet). Witness BUO was convicted in Rwanda in 2003 and given a 15-year sentence for his involvement in the genocide.

⁶⁰² T. 26 January 2007 pp. 12, 14-16.

⁶⁰³ *Id.* pp. 13, 17-19.

Rukundo and another Saint Paul refugee were placed in a separate vehicle and taken to Rukundo's house, where they were killed. Mukandutiye went home after Rukundo was abducted. As the *Interahamwe* drove away from Saint Paul, they killed the other refugees. The witness said that "there were bodies everywhere".⁶⁰⁴

525. The second major attack took place in June 1994, on the day after the RPF evacuated Tutsis from Saint Paul and Saint Famille. A lieutenant named Cadence, whom the witness described as an "ex-FAR" member, informed the *Interahamwe* that they were to go to Saint Paul and Sainte Famille. Their task was to find and kill the *Inyenzi* who might have remained there, along with their "accomplices", which the witness explained meant the Tutsis. The attack at Saint Paul was launched at 7.00 a.m. There were about 180 assailants, who were assisted by Hutu refugees from Saint Famille. The gendarmes also participated in the attack, led by Major Bivamvagara. Major Munyakaze, Lieutenant Cadence, Nyirabagenzi and Mukandutiye were there along with the *Interahamwe*. The attackers dislodged every Tutsi they could find, in order to kill them. The witness was unable to indicate the number of victims. He learned that some corpses were left at the CND mass grave, at the house of Iyaremye Straton, while "others died on the road". The witness personally saw Renzaho arrive at Saint Paul after the Tutsi refugees had been killed. Bodies were still strewn about the place. Renzaho neither said nor did anything in response.⁶⁰⁵

Prosecution Witness MW

526. Witness MW was a Tutsi refugee at Saint Paul from 12 April 1994. She testified that there were two gendarmes there, but that they could not ensure security against the militia. The centre was attacked several times. Refugees were taken away in two of them. The first of these attacks occurred around 24 April, when many militiamen arrived between 10.00 a.m. and noon. The witness did not know the precise number, but indicated that about 20 *Interahamwe* entered the dormitory and abducted seven persons. The attackers left at around 12.00 or 12.30 p.m. The witness saw a pickup truck leaving the centre with refugees. Célestin Hakizimana, a priest at Saint Paul, and the watchmen there later told her that the seven refugees were killed near Rugenge sector office at a location called the CND. Subsequently, the refugees learned the names of those who had been abducted. Two were Hutus known to have criticised the government, and a third was a Tutsi. The witness heard that *Bourgmestre* Jean Bizimana had come to Saint Paul on 24 April and spoken to Hakizimana, guaranteeing the safety of those who were taken away and saying that nothing would be done to them.⁶⁰⁶

527. Between 9.00 and 10.00 a.m. on 14 June, there was another attack in which about 60 young persons were taken from Saint Paul. The two gendarmes on duty called Father Hakizimana when more than 50 *Interahamwe* arrived with a list of persons. He said to the attackers that the list was not signed and hence not official. A gendarme left with the

⁶⁰⁴ *Id.* pp. 12-14, 16, 19-20.

⁶⁰⁵ *Id.* pp. 12, 25-30. Witness BUO said that Saint Paul and Sainte Famille were virtually at the same location. T. 26 January 2007 p. 31. When the RPF evacuated refugees from Saint Paul in June, "two *Inkotanyi*" and some of the Tutsis being evacuated were killed. *Id.* pp. 26-27.

⁶⁰⁶ T. 5 February 2007 pp. 5-9, 23, 28. Witness MW also referred to another attack on 24 April 1994. It was led by between 10 and 20 soldiers but halted by Father Célestin Hakizimana. *Id.* pp. 6, 9-11. More generally, the witness explained that, throughout the war, Hakizimana tried to negotiate with the civilian authorities to help him ensure the security of the people under his care. *Id.* p. 14. She confirmed that gendarmes wore red berets, while soldiers wore black ones. *Id.* p. 26.

assailants and together, they went in search of a military authority for assistance. The gendarme, however, returned to Saint Paul alone and told the witness that the military officers with whom he spoke had refused to sign the list. An hour and a half or so later, the *Interahamwe* returned in an angry mood and began sorting refugees, separating those who were between 16 and 35 years old. The witness's husband and brother were selected.⁶⁰⁷

528. When the witness tried to negotiate with one of the militiaman to save her family members, he answered that her brother was on his list and showed it to her. She did not see its entire content, or whether her brother's name was actually listed, but observed that it bore an official stamp, the words "the prefect of Kigali-Ville", and was signed. A name beginning with "Re" was visible, but the rest was covered by the stamp. She believed it to be the name of the prefect of Kigali-Ville, Renzaho. Her husband was allowed to go back to the dormitory because an *Interahamwe* saw that he had a Hutu identity card, but her brother was among those abducted and she never saw him again. The witness subsequently learned the names of the refugees taken away and heard they were killed in Rugenge sector, at the "CND" mass grave.⁶⁰⁸

529. On 16 June, Witness MW saw Renzaho arrive at Saint Paul between 9.00 and 11.00 a.m. He came with the *conseiller* of Rugenge, Odette Nyirabagenzi, and many *Interahamwe*, as well as UNAMIR soldiers. It was normal to see civilian authorities with militia during this period. Through a window, the witness saw Renzaho chair a meeting with Father Hakizimana. She heard from other refugees that they were discussing the evacuation of the refugees by UNAMIR. Between 1.00 and 3.00 a.m. in the night of 16 to 17 June, RPF troops evacuated the witness and others, leading them on foot to RPF controlled territory. She heard many explosions and gunfire during the operation. About 20 refugees and one RPF soldier were shot and killed.⁶⁰⁹

Prosecution Witness UI

530. From about 22 April 1994, Witness UI, a Tutsi, sought refuge at Saint Paul, where Father Célestin Hakizimana was in charge. The witness saw *conseiller* Odette Nyirabagenzi there with *Interahamwe* on 14 June, holding a list. About 50 young men were abducted and taken to their deaths. The witness stayed in his room that day and did not go outside. He remained at Saint Paul until 16 June, when, according to the witness, the "*Inkotanyi*" evacuated almost all the refugees.⁶¹⁰

Prosecution Witness GLE

531. Witness GLE, a Tutsi, sought refuge at Saint Paul at the end of April or in early May 1994 until the *Inkotanyi* evacuated her with other refugees one night. Around 13 June, three

⁶⁰⁷ *Id.* pp. 11-13, 15.

⁶⁰⁸ *Id.* pp. 7-8, 14-15, 19-20, 28.

⁶⁰⁹ *Id.* pp. 16-18, 28. Witness MW later heard from other refugees that, during the meeting, the prefect said that the evacuation of Saint Paul refugees by UNAMIR would take place after that of the Sainte Famille refugees. She stated that it was known that the persons at Saint Paul were Hutus or Tutsis who had been directly threatened by militia, whereas at Sainte Famille, the refugees were mixed: some were fleeing the militia but others had left RPF combat zones. The refugees at Saint Paul therefore tried to insist that they be evacuated first, as they were more directly threatened, but Renzaho refused and said they would come second. *Id.* pp. 16-17.

⁶¹⁰ *Id.* pp. 58-59, 69, 75; T. 6 February 2007 p. 7; Prosecution Exhibit 86 (personal identification sheet).

days before the *Inkotanyi* came, *Interahamwe* arrived in uniform, selected a number of young men, and killed them. The witness remained inside the rooms of the centre when the attackers took the men away. She praised the person in charge, Célestin Hakizimana, who did not abandon the refugees but was ready to die with them. The witness believed she would have been killed if she had gone home instead of taking refuge at Saint Paul.⁶¹¹

Renzaho

532. Renzaho was aware that there were refugees at Saint Paul, which was one of the sites where he obtained the assistance of the gendarmerie. He testified that the difficulties of assigning gendarmes to CELA centre on a permanent basis prompted him to ask that the refugees there to be moved to Saint Paul and Sainte Famille.⁶¹²

533. One of Renzaho's assistants, sub-prefect Aloys Simpunga, was responsible for Saint Paul, among other sites. From Simpunga's reports, Renzaho knew that Célestin Hakizimana was the priest in charge of Saint Paul, and that Father Wenceslas Munyeshyaka was in charge of Sainte Famille. He was aware that Munyeshyaka transported provisions and mobilised charity organisations for refugees at Saint Paul, among other places, but he had never met him.⁶¹³

534. Renzaho testified that he had tried unsuccessfully to involve UNAMIR officials in stationing a unit at Saint Paul and Sainte Famille. Gendarmes were at the two sites as of 9 April 1994, but not many were available. Their commanding officer was Iradukunda. The number of gendarmes posted at the sites was not of immediate significance, as the sites were sufficiently far from the battle front and the few gendarmes posted would be enough to ensure supervision and to call for reinforcements in case of crisis. Renzaho stated that war-related incidents occurred at the two sites several times, including shelling on 12 and 16 April, 1 and 3 May, and at night on 16 to 17 June. He learned at about 11.00 a.m. on 17 June 1994 that refugees had been taken from Saint Paul.⁶¹⁴

535. Renzaho denied having made any lists from April to July 1994, and he was not aware that anyone had drawn up a list of persons to be arrested at Saint Paul on 14 June. He did not give instructions to *Bourgmestre* Jean Bizimana that anyone should be arrested on 14 June. The prefect was later informed that Nyirabagenzi, the *conseiller* of the sector, reported to Bizimana on the evening of 13 June that there might be an attack on Sainte Famille. Renzaho speculated that Bizimana forwarded a memo to the gendarmerie to help prevent the attack, otherwise the gendarmes would not have intervened. The officer in charge came to Saint Paul with a number of gendarmes and integrated some of the members of the crowd there into their group before selecting the refugees mentioned on their list. The search, however, yielded nothing and the crowd became unruly. The officer in charge lacked the courage to take control of the situation and ask for reinforcement, and instead, fled the scene.⁶¹⁵

⁶¹¹ T. 31 January 2007 pp. 2, 6-8; Prosecution Exhibit 79 (personal identification sheet).

⁶¹² T. 29 August 2007 pp. 8, 28, 32-34; T. 30 August 2007 p. 19. Renzaho agreed with the contents of Defence Exhibit 103 (Henry Kwami Aniyidoho: *Guns Over Kigali* (1997) pp. 89-90, which describes the trip to Saint Paul and Sainte Famille on 16 June 1994.

⁶¹³ T. 29 August 2007 pp. 34, 36-37, 49; T. 3 September 2007 pp. 31-32, 36-37, 49.

⁶¹⁴ T. 29 August 2007 pp. 34-35, 38-39; T. 3 September 2007 p. 31.

⁶¹⁵ T. 29 August 2007 pp. 39-40.

536. On 14 June, Renzaho was in Cyangugu with his family and likely left to return to Kigali between 8.00 and 9.00 a.m. that morning. When he returned in the evening on 15 June, refugees at the prefecture office told him that people had been kidnapped from Saint Paul on 14 June. According to Renzaho, the refugees were angry at Bizimana because he had not acted responsibly.⁶¹⁶

537. *Bourgmestre* Jean Bizimana confirmed with Renzaho that there had been an incident at Saint Paul but did not provide details. Sub-prefect Aloys Simpunga then informed Renzaho that he had gone to the site on that occasion and regretted the fact that the *bourgmestre* was absent during the event. Renzaho heard that the young refugees who were abducted had been taken to a location and killed. He also saw this information in a UNAMIR document. According to Renzaho, the UN investigation of the incident was inconclusive. He also noted that there was no legal system in place, and that he did not have the time or resources to implement sanctions when questioned why neither *bourgmestres* nor *conseillers* were arrested.⁶¹⁷

538. On the afternoon of 16 June 1994, he went to Saint Paul with the ICRC and the deputy commander of UNAMIR, General Aniyidoho. They reassured the refugees at the two sites that the evacuation, which had been interrupted for some time, would resume the next day. After that, Renzaho left. That evening, two hours later, the RPF shelled the site. According to Renzaho, 1,800 refugees were taken away, but many other persons were killed during the operation. For example, Hutus there were killed with bayonets and knives. The attack ended at dawn on 17 June.⁶¹⁸

539. According to Renzaho, he never received a phone call from anyone asking for help at Saint Paul. He denied that he had been called on the morning of 17 June by Father Paulin Munyazikwiye but acknowledged that he knew him well and that they had attended school together. Had there been such a phone call, Renzaho would not have refused to intervene at Saint Paul. He was not always at the Kigali-Ville prefecture, and there were others to whom such a message could be forwarded. Normally, the message would reach the secretariat of the prefecture, then it would be processed by the crisis committee that was set up after 7 April 1994, and the official in charge would be found, or sub-prefect Simpunga would intervene.⁶¹⁹

Defence Witness UT

540. Witness UT, a Hutu official in the Kigali-Ville prefecture, testified that he had daily contact – morning, afternoon and evening – with Renzaho from 11 April 1994 until the end of the events. In this period, he identified the areas where refugees were gathering and provided assistance to them. He received instructions from and reported to Renzaho regarding the places he visited. The prefect would give him names of those to contact and with whom to work.⁶²⁰

⁶¹⁶ T. 29 August 2007 pp. 19, 41-42, T. 3 September 2007 pp. 26-29, 30.

⁶¹⁷ T. 3 September 2007 pp. 30-31, 42-43.

⁶¹⁸ T. 29 August 2007 pp. 29, 32-33.

⁶¹⁹ *Id.* pp. 36-39. Renzaho was nominated a member of the crisis committee after 7 April 1994, which was set up to manage the situation in the absence of an interim government. According to Renzaho, it had its major missions to establish contact with political parties and to help ensure follow up in the units to make sure that the unit commanders installed discipline. T. 27 August 2007 p. 50-51, 54-55.

⁶²⁰ T. 24 May 2007 p. 20; Defence Exhibit 47 (personal identification sheet).

541. Around 18 April, the witness moved persons who had gathered at Kigali hospital to Sainte Famille and to Saint Paul. There was no police or gendarmerie service that was sufficient to provide security for the refugee sites. Renzaho was unable to obtain the assistance he wanted. He had called gendarmerie officials on several occasions, but in vain, and was told that the gendarmerie forces had gone to the war front to help the soldiers. They only received assistance from Lieutenant Sekamana and four or five gendarmes who were permanently guarding Sainte Famille.⁶²¹

542. Saint Paul became one of the major centres for refugees. The witness had worked with Father Célestin Hakizimana, who was in charge there. He went to Saint Paul three times; at the end of April, in the first half of May, and between 12 and 15 June. He intervened following requests for assistance and at times on his own initiative, and would go to the refugee sites with two or three policemen. Renzaho never went there but delegated that task to the witness. All of his interventions were on the prefect's behalf, irrespective of whether he had been specifically instructed to intervene or not. After 16 June, the witness left to attend family matters in Cyangugu. He returned on the night of 20 June.⁶²²

543. Around mid-June, at about 2.00 p.m., the witness went to Saint Paul after having been advised of an impending attack. He found militiamen brandishing a list of people they wanted to take away. It was signed by *Bourgmestre* Jean Bizimana and had a valid stamp. The *Interahamwe* locked the witness up at Saint Paul until 6.00 p.m., saying that he did not represent the only true authority, which, according to them, was the one controlling the militia. He was able to negotiate with them and "things finally worked out". The witness reported to Renzaho that the militiamen had shown him an official document from Bizimana. After returning from Cyangugu, he learned that the prefect had seriously reprimanded Bizimana for his actions.⁶²³

Defence Witness PER

544. In April 1994, Witness PER, a Hutu, was spending his holiday working at Saint Paul. On 6 April, he was nearing the end of his time there, but because the war then intensified, he remained until 18 June. The witness undertook humanitarian activities at Saint Paul. From 10 April onwards, he also worked closely with Father Wenceslas Munyeshyaka in helping the many refugees at Sainte Famille, where the latter was often the only priest. The two sites adjoined each other, separated by a wall with two small gates in it.⁶²⁴

545. Aloys Simpunga, the sub-prefect in charge of social affairs at Kigali-Ville prefecture, assisted Saint Paul with food, water and medicine. Although the witness slept at Saint Paul, he would go to Sainte Famille around 10.00 or 11.00 a.m. to help Munyeshyaka, and return to Saint Paul around 3.00 or 4.00 p.m. Saint Paul and Sainte Famille were adjoining locations separated by a wall with two small gates. The witness went to Gitarama on 13 June and returned to Kigali on the morning of 15 June.⁶²⁵

⁶²¹ T. 24 May 2007 pp. 7, 19, 29, 32-33, 43-44; T. 25 May 2007 pp. 35, 38-39.

⁶²² T. 25 May 2007 pp. 5-7, 39.

⁶²³ T. 24 May 2007 pp. 47-51; T. 25 May 2007 p. 24.

⁶²⁴ T. 23 August 2007 pp. 27-29, 31-33, 38, 49, 51, 58, 62-63; Defence Exhibit 80 (personal identification sheet).

⁶²⁵ T. 23 August 2007 pp. 31-32, 50-53, 55.

546. In April, those at Saint Paul, including the refugees, cut down the bushes and banana trees in the compound at the demand of the militia. The witness did not see anyone being abducted on that occasion, and the *Interahamwe* did not enter the compound. However, in early May, they overpowered the guard and forced open the gate. They said they were sent by Angeline Mukandutiye and were looking for a man named Rukundo. After speaking briefly with Father Célestin Hakizimana, they went with him to find Rukundo, who they brought out with four or five other refugees. The militiamen forced them into a Hilux vehicle and left.⁶²⁶

547. The witness only saw Renzaho on 16 June. The prefect arrived at Saint Paul with UNAMIR and Red Cross officials, had a discussion with Father Hakizimana, and left. The witness did not speak with him. The RPF came to Saint Paul to liberate Tutsis on the night of 16 June. Two gendarmes died in an exchange of gunfire during the operation. On the morning of 17 June, there was chaos at Saint Paul. When the *Interahamwe* arrived and found that the RPF had taken refugees, they became enraged and looted the centre before going to Sainte Famille at about 9.00 a.m. The witness fled Saint Paul for Sainte Famille early in the morning on 17 June.⁶²⁷

548. According to Witness PER, the telephone line at Saint Paul was cut off at the end of April or beginning of May, and did not work through 17 June, when he left. It was never used to call for help from the authorities because he and Munyeshyaka managed to repel the attacks by themselves and because Simpunga came to see them regularly. The witness never used the phone between 6 April and July 1994.⁶²⁸

549. The witness did not see Renzaho in the company of *Conseiller* Odette Nyirabagenzi and primary school inspector Angeline Mukandutiye, and he was not aware if they had met. He also did not hear anyone mention Renzaho in connection with them. Furthermore, the witness had never heard of any contact between Renzaho and Father Wenceslas Munyeshyaka.⁶²⁹

Defence Witness BDC

550. Witness BDC, a Hutu, worked with a non-governmental organisation in Kigali-Ville and supervised its humanitarian assistance to the Saint Paul and Sainte Famille sites. He agreed that Tutsi refugees were relatively safer in larger groups at sites such as Saint Paul than in their homes. The witness would never have told the Tutsi refugees at Sainte Famille, for example, to go home at the beginning of May, because there were roadblocks every 500 metres across the city in that period. The refugees would have been going straight to their deaths "whether they were Tutsi or not". This difficulty of movement was a serious problem that affected even those who had the resources or ability to travel about.⁶³⁰

⁶²⁶ *Id.* pp. 35-37, 51, 56, 59.

⁶²⁷ *Id.* pp. 34-35, 39-40, 46, 52-54.

⁶²⁸ *Id.* pp. 38-39, 41, 43, 57.

⁶²⁹ *Id.* pp. 33-35, 62.

⁶³⁰ T. 4 June 2007 p. 4; T. 6 June 2007 pp. 14, 59-61; Defence Exhibit 51 (personal identification sheet). The witness did not specifically identify his ethnicity but testified that his identity card bore the letter "H". T. 4 June 2007 pp. 12-13.

Defence Witness WOW

551. Witness WOW, a Hutu, lived in Rugenge sector near the CELA building in April 1994. He worked reluctantly for some days at a roadblock, to avoid paying a fine and being considered an accomplice of the RPF. He recalled that the *Inkotanyi* abducted refugees from Saint Paul and Sainte Famille. The *Interahamwe* became angry and attacked the same centres, led by school inspector Angeline Mukandutiye and *Conseiller* Odette Nyirabagenzi. The witness was not present during these attacks. He never heard that Renzaho took part in them.⁶³¹

9.3 Deliberations

552. The Prosecution led evidence about four main attacks on Saint Paul pastoral centre starting in April, with the last occurring on 17 June 1994. While also assessing the evidence as a whole, the Chamber's analysis will consider the attacks on an individual basis and in chronological order.

9.3.1 Attack in Late April

553. The Prosecution presented two well placed witnesses who provided credible, first-hand accounts of an attack against Saint Paul in late April 1994. Witness KZ described an incident that followed a clearing of plants around the centre. About 50 *Interahamwe* carried out the attack and removed seven or eight individuals. He believed they had been killed. Witness MW corroborated this account, testifying that between 10.00 a.m. and 12.00 p.m. on 24 April, many militiamen came to Saint Paul. About 20 entered its dormitory and removed seven refugees.⁶³²

554. Witness BUO described an attack occurring in May. His account contained several facets that coincided with Witnesses KZ and MW's accounts about the attack in late April.⁶³³ In particular, Witness BUO testified that around 50 *Interahamwe* were involved, that the attack occurred around 11.00 a.m., and that the assailants removed Tutsis before killing them at separate locations. Furthermore, he stated that *Interahamwe* had arranged for inhabitants to clear bushes in the area in order to prevent *Inyenzi* from hiding. No other witness referred to removal of vegetation in May.⁶³⁴ Evidence about the attack on CELA on 22 April also suggests that bushes were being cleared in the vicinity of these two centres in April rather than May (II.6). Finally, Witness BUO's description of the attack differs considerably from

⁶³¹ T. 4 July 2007 pp. 35-36, 39, 46, 48-49, 51, 53, 57; Defence Exhibit 69 (personal identification sheet). Witness WOW was detained in Rwanda, acquitted in December 2002, and released from prison in January 2003. He fled Rwanda in 2005 because he was summoned to appear before a Gacaca court notwithstanding his acquittal. T. 4 July 2007 pp. 48-49, 56-57.

⁶³² Witness KZ did not specify from where the *Interahamwe* removed the refugees and hence may no reference to the dormitory. T. 25 January 2007 pp. 14, 18.

⁶³³ Witness BUO's description appears materially inconsistent with Witness KZ's otherwise credible account regarding an attack in May, which is discussed below. The Prosecution submissions fail to offer any clarification as to whether the May attack described by Witness BUO is the same as the April attack described by Witnesses KZ and MW or is an independent event. See Prosecution Pre-Trial Brief paras. 78-83; Prosecution Closing Brief paras. 269-299; T. 14 February 2008 pp. 11-12, 18, 20-21 (closing arguments). The Defence objected that Witness BUO's evidence regarding the May attack fell outside the scope of the Indictment. T. 14 February 2008 pp. 61-62.

⁶³⁴ Also Defence witness PER testified that bushes were cleared around Saint Paul in April 1994 at the demands of militiamen. He was unaware of anyone being abducted on that occasion.

Witness KZ's account of an attack in May, which involved *Interahamwe* and soldiers, the use of tear gas, and when no refugee was removed.

555. Taking into account that Witness BUO may in fact have been describing the attack in April, the Chamber notes his testimony that it was led by school inspector Angeline Mukandutiye and *Conseiller* Odette Nyirabagenzi. He also said that Renzaho arrived shortly before it commenced with a list. It was used to identify Tutsis, who were ultimately killed. The witness's evidence about the involvement of these three persons is uncorroborated.

556. The Chamber takes the view that the witness's position as an *Interahamwe* participating in the attack could have provided him with a broader overview of what unfolded than, for instance, Witness MW, a Tutsi refugee. This could explain why he observed individuals that were not noticed by her. It is significant, however, that Witness KZ, a Hutu who could move freely about at Saint Paul did not notice any of them, in particular Renzaho.

557. The scale and organisation of the attack may indicate a degree of coordination suggesting that authorities, including the prefect, were involved. Furthermore, on 12 April, Renzaho had given an interview on Radio Rwanda, which called for "communal work within quarters by cutting off bushes" to prevent *Inyenzi* from hiding.⁶³⁵ While this evidence could support an inference that Renzaho or his *de facto* subordinates were involved in the attack on Saint Paul, the absence of credible, direct evidence fails to establish that these inferences are the only reasonable conclusions. It is also recalled that Witness BUO's testimony should be considered with caution, in view of his conviction, and sentence of 15 years' imprisonment for his participation during the events. Under these circumstances, the Chamber does not accept his evidence about the involvement of Renzaho, Mukandutiye and Nyirabagenzi without additional eye-witness testimony.

558. Witness KZ testified that *responsables de cellule* and *nyumba kumi* (ten household) leaders were involved in clearing the bushes. The Prosecution alleges that Renzaho had authority over these persons.⁶³⁶ Renzaho's previous broadcast calling for such actions could also indicate a degree of coordination between local officials and Renzaho. In view of any additional link between the operation and the prefect, it cannot be said that this is the only reasonable inference to be drawn. There are also questions about the extent to which the participation of civilians amounted to a crime. It is not clear that the inhabitants were *Interahamwe*, and they were generally described as leaving once the bushes had been cleared. It has not been established beyond reasonable doubt that they were aware or had reason to know that their involvement in removing vegetation would lead to the selection, removal and ultimately killing of individuals within Saint Paul after they had left. Finally, it is not clear that the act of clearing bushes substantially contributed to such killings.

559. The Chamber finds that an attack occurred at Saint Paul sometime in late April, leading to the abduction of seven or eight persons who had sought refuge there. This attack was launched by *Interahamwe*. The Chamber has taken into account that Renzaho acted in coordination with civilian attackers, including *Interahamwe*, at attacks on CELA and Sainte Famille (II.6 and 11). It has also considered evidence of his alleged role in the civil defence as well as his activities relating to the erection of roadblocks and arming of civilians (II.2 and 3). This shows that Renzaho at times had authority over civilian militia, including

⁶³⁵ Prosecution Exhibit 50 (transcript of Radio Rwanda interview, 12 April 1994) p. 9.

⁶³⁶ Prosecution Closing Brief para. 54.

Interahamwe. However, the Chamber is not convinced that he had constant and continuing authority over them. The uncorroborated evidence implicating him in this particular attack raises considerable doubt as to his involvement in it.⁶³⁷ Consequently, the Chamber has doubts that those carrying out the operation were Renzaho's subordinates at that time, or that he exercised effective control over them. The evidence fails to demonstrate Renzaho's responsibility for the killings.⁶³⁸

9.3.2 Attack in May

560. Witness KZ testified that in the beginning of May, soldiers of the Muvumba battalion attacked Saint Paul using tear gas. They left without taking anyone away. Witness KZ stated that "there was no violence against anyone whatsoever".⁶³⁹ Also in early May, Witness KZ called the prefecture and spoke to Renzaho, appealing to him for assistance in the face of *Interahamwe* attacks on Saint Paul. Renzaho told him to send the refugees home, and hung up the phone when the witness protested that it was unsafe for the refugees to leave.

561. Renzaho denied having received such a call. Defence Witness PER, who was not present at Saint Paul for much of the time in question, testified that the telephone at Saint Paul did not work from about the end of April or early May until 17 June. He, however, never tried to use the telephone there to call for help.

562. The Chamber is persuaded by Witness KZ's testimony about the operation of the telephone line. It appeared coherent, detailed and truthful. Renzaho's denial fails to raise reasonable doubt that he was contacted by Witness KZ and informed of *Interahamwe* attacks. Witness PER's evidence that the phone line at Saint Paul was not operational also carries very little weight relative to Witness KZ's evidence.

563. Nonetheless, the evidence of this attack fails to directly implicate Renzaho or establish criminal conduct for which he could be held liable. The Chamber will revert to its finding concerning the phone call in relation to subsequent attacks.

9.3.3 Attack on 14 June

564. There is no dispute that an attack took place at Saint Paul pastoral centre on 14 June 1994. Over 1,000 persons, mostly Tutsis, had sought refuge there, as explained by Witness

⁶³⁷ Similarly, the Chamber does not find it established beyond reasonable doubt that Odette Nyirabagenzi and Angeline Mukandutiye were criminal participants in this attack.

⁶³⁸ The Chamber has doubts that Renzaho received sufficient notice as it relates to this attack. Paras. 23 and 39 of the Indictment relate to attacks on Saint Paul in June 1994. While the attack in April arguably fall within the scope of paras. 20 and 37, these are chapeau paragraphs (neither paragraph charges Renzaho with an enumerated act under Article 2 of the Statute) used to provide context for more specific charges. See *Setako Defects Decision* paras. 3-5; *Gacumbitsi Trial Judgement* para. 176 and *Gacumbitsi Appeal Judgement* para. 53. A liberal reading of the Indictment, pairing para. 20 with general paras. 11 and 12, or para. 37 with general paras. 28, 29 and 33 could provide notice of the crimes related to paras. 20 and 37. Nonetheless, the date range in paras. 20 and 37 – 7 April to 17 July – remains overly broad and is not narrowed by the other paragraphs. The summary of Witness KZ's anticipated evidence in the Pre-Trial Brief demonstrates that the Prosecution could have pleaded both the timing and nature of the attack with greater precision than that provided, see p. 71 ("In mid-April a group of civilians led by cellule leaders went to St. Paul and took away 7 people who were killed near Rugenge [sector] office."). The Brief was filed on 31 October 2005, whereas the Indictment came into effect on 16 February 2006. Under the circumstances, the Pre-Trial Brief cannot cure the subsequently filed Indictment (which is required to plead all material facts). See *Karera Appeal Judgement*, para. 368.

⁶³⁹ T. 25 January 2007 p. 16.

KZ who had thorough information about the situation. Witnesses KZ, ALG and MW testified that the militia arrived at the centre in the morning. The evidence suggests that there were several hundred attackers.⁶⁴⁰

565. This process resulted in the *Interahamwe* separating refugees with a Tutsi appearance. Around 50 men were abducted from Saint Paul.⁶⁴¹ Witnesses KZ, ALG and MW all heard that those who were removed were killed, and Witnesses ALG and MW were told that this occurred near the mass grave referred to as "CND". Also Witnesses UI and GLE made general remarks that those who were removed were killed, and it is corroborated by a contemporaneous report generated by UNAMIR.⁶⁴²

566. The main issue for the Chamber is whether Renzaho was involved in this event. There is no clear evidence that he ordered the removal of the young men. However, the Prosecution invites the Chamber to find that he is responsible, based on the existence of the prefectural stamp on the arrest warrant presented by a gendarme to Witness KZ; Renzaho's presence at Saint Paul in the morning of 14 June; and his failure to prevent the *Interahamwe* from acting even if it was clear that they wanted to abduct Tutsi refugees. The Chamber will consider these elements in turn while assessing the evidence in its totality.

(i) *Lists and or Arrest Order*

567. According to Witness KZ, Lieutenant Iradukunda from the gendarmerie and the *Interahamwe* had a list that read "PO", or "by order". It was signed by Jean Bizimana, the *bourgmestre* of Nyarugenge *commune*. Persons on the list were to be removed and interrogated at the Nyarugenge gendarmerie brigade. Witness MW, one of the refugees at Saint Paul, suggested that the list, which the militia were using to identify individuals to remove from the centre, was bearing the words "the prefect of Kigali-Ville". She also saw "Re", whereas the rest of the name was covered by a stamp. Defence Witness UT, who arrived at the centre around 2.00 p.m., saw militiamen with a list of individuals to be removed, signed by Jean Bizimana, and with a valid stamp of the prefecture. The first-hand evidence of Witness ALG suggests that Bizimana wrote a letter on 13 June 1994 asking a Nyarugenge brigade commander to prevent an *Interahamwe* attack at Saint Paul on 14 June by assembling those staying at the centre and interrogating them at gendarmerie.⁶⁴³

568. The Chamber accepts the fundamental aspects of the evidence above, namely that at least one gendarme along with *Interahamwe* went to Saint Paul on 14 June.⁶⁴⁴ They carried a document that bore the official stamp of the prefecture and was signed by Jean Bizimana,

⁶⁴⁰ Witness KZ estimated that the number of *Interahamwe* first amounted to about 300, and later that morning increased with another 200, who had been waiting outside Saint Paul.

⁶⁴¹ The estimates of persons taken away varied, see Witness KZ (the *Interahamwe* tied up and took away between 30 and 50 young and middle-aged men), Witness MW (between 56 and 60 person), and Witness UI (50 young men).

⁶⁴² Prosecution Exhibit 40 (UNAMIR inter-office memorandum, 15 June 1994), para. 1 ("As you are aware it appears now that some forty children were slaughtered at Saint Paul yesterday..."). The Chamber notes that paragraph 1 (m) suggests that the incident occurred at Sainte Famille. This appears to be a mistake which may be explained by the immediate proximity of Sainte Famille and Saint Paul.

⁶⁴³ The Defence does not deny that an attack took place at Saint Paul on 14 June 1994; that a list of persons to be killed was circulated at Saint Paul; and that the list bore the official stamp of the Kigali-Ville prefecture. Defence Closing Brief paras. 357, 380.

⁶⁴⁴ The Chamber is satisfied that the slight differences among the Prosecution evidence relating to the date of the attack can reasonably be explained by the passage of time as well as the traumatic nature of the event.

bourgmestre of Nyarugenge *commune*. This document identified individuals to be taken to the Nyarugenge gendarmerie brigade. The gendarme left during the identification process and *Interahamwe* ultimately removed between 30 and 60 individuals who were perceived to be Tutsis and killed them.

(ii) *Renzaho's Presence at Saint Paul*

569. The strongest evidence implicating Renzaho is Witness ALG's testimony that Renzaho was at Saint Paul that morning prior to the ensuing attack. The fact that no other witness placed Renzaho at Saint Paul that day does not in itself raise doubt with respect to Witness ALG's observation. His position outside the centre prior to the attack could have provided him a significantly broader vantage point from which to observe who was among the attackers than those of Witnesses KZ and MW, as well as Defence Witness UT. Nonetheless, at the time of his testimony, Witness ALG was waiting to be tried for genocide in Rwanda, and his alleged role in this massacre, as an official, was part of the factual antecedents in support of the charge.⁶⁴⁵ Given the distinct possibility that the witness may have sought to positively affect the outcome of his trial in Rwanda by deflecting responsibility to Renzaho, the Chamber views his evidence with caution and will not accept it without corroboration.

570. Witness KZ was the only other witness to testify about Renzaho's involvement in this particular attack. Specifically, he heard that Renzaho was seen in the company of the attackers and Angeline Mukandutiye celebrating at the Pan Africa hotel. While the Chamber has elsewhere found Witness KZ reliable, this hearsay evidence fails to establish Renzaho's involvement in the attack or sufficiently corroborate Witness ALG's evidence.

(iii) *Renzaho's Liability for the Actions of Others*

571. Turning to the participated in the attack, the evidence demonstrates that *Interahamwe*, also referred to as militia or militiamen, were the primary attackers who sorted victims, removed and killed them. As mentioned above in connection with the April attack on Saint Paul (II.9.3.1), the Chamber has considered the extensive evidence of Renzaho's coordination and authority over civilian attackers. It is not convinced that he had constant and continuing authority over either *Interahamwe* or civilian militia. The dearth of evidence implicating Renzaho in the 14 June attack raises considerable doubt as to his involvement in it. Furthermore, the Chamber has doubts that those carrying out the operation were Renzaho's subordinates at that time, or that he exercised effective control over them. The evidence fails to demonstrate Renzaho's responsibility for the acts of these attackers.

572. Witness UI observed *Conseiller* Odette Nyirabagenzi with *Interahamwe* holding a list during the attack on 14 June. Witness KZ prefaced his description of that attack by saying that the *Interahamwe* were led by unidentified "*conseillers*". Witness ALG's testimony suggests that Nyirabagenzi, at a minimum, was communicating with the *Interahamwe* planning the attack, using lists of persons from Rugenge and Muhima sectors. His account is corroborated by Witness KZ's testimony that the *Interahamwe* initially came with lists of persons from Rugenge and Muhima. Nonetheless, Witness ALG made no mention of any local officials other than Jean Bizimana and Renzaho being present at Saint Paul on 14 June.

⁶⁴⁵ T. 10 January 2007 p. 64; Defence Exhibit 4 (Rwandan judicial dossier of Witness ALG).

Witness UT also did not identify any local officials other than himself as being present at Saint Paul during this incident.

573. The evidence relating to Odette Nyirabagenzi, and other *conseillers* is limited. According to Witness UI, she was holding a list. Witness KZ's testimony about the actions of unidentified *conseillers* is imprecise. Although the Chamber is aware of Nyirabagenzi's role during other events, it is difficult to establish her exact role here.⁶⁴⁶ Leaving this issue aside, the record remains insufficiently precise to establish Renzaho's liability.

574. There is no evidence demonstrating that Renzaho contributed to the actions of any *conseiller* who might have been present during the 14 June attack. While Renzaho did not have *de jure* authority over *conseillers*, there is evidence that he acted as a *de facto* superior (III). He chaired meetings attended by *conseillers* in April and gave them orders to erect roadblocks as well as obtain weapons for distribution (II.2 and 3). Renzaho supervised Nyirabagenzi in the attack on at CELA on 22 April as well as the attack at Sainte Famille on 17 June (II.6 and 11). However, in relation to the 14 June attack against Saint Paul, the Prosecution evidence creates distance between Renzaho and events leading up to the attack. While Witness ALG heard from Odette Nyirabagenzi on 13 June that the *Interahamwe* were planning to attack Saint Paul, she told the witness that she had been unable to contact Renzaho. Witness ALG, who was posted in the prefecture office around this time, also testified that as of 13 June, he had not seen Renzaho for several days. Indeed, an internal UNAMIR memorandum, dated 14 June, notes that "the prefect has been away for some time" and suspects that Renzaho might not have been aware of what was occurring at Sainte Famille, which is in the immediate vicinity of Saint Paul, on the preceding day.⁶⁴⁷ Renzaho's absence through at least the day before the attack and a rather imprecise record of when he returned Kigali raises questions about Renzaho's knowledge of the event on 14 June.

575. Furthermore, evidence of events after the attack creates doubt as to what Renzaho knew. There is no direct evidence that Renzaho was informed of the involvement of any *conseillers*, including Nyirabagenzi, in the attack. Witness MW's testimony that Renzaho visited Saint Paul on 16 June with Nyirabagenzi, which lends some circumstantial support to the inference that Renzaho had knowledge of her activities around that time, is unsupported. Witness KZ testified that Renzaho was accompanied by UNAMIR troops. Renzaho and Witness PER stated that Renzaho visited Saint Paul with the deputy commander of UNAMIR troops and the ICRC or Red Cross officials. The Chamber has considered its findings that Witness KZ had previously informed Renzaho of *Interahamwe* attacks in April as well as the evidence relating to the attack on Sainte Famille on 17 June. Nonetheless, the record fails to demonstrate that Renzaho knew or should have known of the risk that Nyirabagenzi or any other *conseiller* had been involved in the attack.

576. Turning next to the involvement of Jean Bizimana, the *bourgmestre* for Nyarugenge commune, the Chamber notes that Witness KZ also stated that an unidentified "representative of the prefect" led the *Interahamwe*. While it is unclear if the witness was referring to Bizimana, Witness ALG's testimony undoubtedly demonstrates Bizimana's presence at Saint Paul prior to the attack. Moreover, the testimonies of Witnesses KZ, ALG and UT, in particular, demonstrate that Bizimana signed a document from the prefecture directing

⁶⁴⁶ The Chamber has taken into account its findings concerning Nyirabagenzi relating to CELA and Sainte Famille (II.6 and 11).

⁶⁴⁷ Prosecution Exhibit 40 (UNAMIR inter-office memorandum, 15 June 1994) para. 1 (n).

individuals to be removed from Saint Paul and taken to the Nyarugenge gendarmerie brigade. As Bizimana was the Nyarugenge *bourgmestre*, Renzaho exercised *de jure* authority over him (III). That Renzaho was later made aware of the attack, and in particular, that a document issued by Bizimana was used by the militia to identify refugees, is demonstrated in part by Witness UT's evidence that he informed Renzaho about this.

577. Nonetheless, the Prosecution evidence is equivocal as to whether Bizimana committed a crime for which Renzaho could be held liable as a superior.⁶⁴⁸ Witness ALG testified that Bizimana's correspondence from the prefecture was aimed at preventing an attack on Saint Paul. While Witness ALG has a strong interest in providing exculpatory evidence regarding Bizimana's involvement in this attack, the corroborated testimony that the document signed by Bizimana arrived in the company of a gendarme, who was not necessarily working in coordination with the *Interahamwe*, raises questions about the intent behind the document and its actual function in the attack. Witness KZ testified that Lieutenant Iradukunda of the gendarmerie and the *Interahamwe* returned with the list signed by Bizimana. However, Iradukunda left once he realised that he could not stop the *Interahamwe* from taking refugees. This evidence reflects that the gendarmes were not necessarily working in coordination with the *Interahamwe* who ultimately killed those removed, but may have been acting to avert a humanitarian crisis.

578. In the circumstances, the Chamber is unable to conclude that the list signed by Bizimana was made with the intention that Tutsis at Saint Paul be singled out and killed, or that he did so knowing that his action would further such killings. Moreover, the equivocal nature of the Prosecution evidence concerning Bizimana's actual involvement in the separation and killings raises further doubt as to whether his presence or this document substantially contributed to the ultimate killing.

579. Consequently, the Chamber cannot find any basis upon which to find Renzaho criminally liable for the attack on Saint Paul on 14 June.

9.3.4 Attack on 17 June

580. It follows from the first-hand accounts of Witnesses KZ and BUO, as well as the testimonies of Defence Witnesses PER and WOW that during the night of 16 to 17 June 1994, RPF soldiers removed several persons who had taken refuge at Saint Paul. Witness KZ testified that *Interahamwe* carried out an attack at Saint Paul on 17 June, killing the 50 refugees who had remained at the centre. Witness BUO, who was also present, said the *Interahamwe* involved in the attack were led by Major Bivamvagara, Munyakaze, a former Rwandan army lieutenant named Cadence, *Conseiller* Odette Nyirabagenzi and Angeline Mukandutiye. The attackers dislodged Tutsis that remained and killed them. Defence Witness PER also testified that militiamen arrived at Saint Paul on the morning of 17 June and began looting. Furthermore, Prosecution Witness ALG and Defence Witness WOW heard of an *Interahamwe* attack at Saint Paul (and Sainte Famille) after the RPF removed refugees from Saint Paul, but were not present.

581. The Chamber accepts that on 17 June, the day following the RPF evacuation of refugees at Saint Paul, *Interahamwe* or militiamen attacked the centre and killed those identified as Tutsis who had remained there. As with the attack on 14 June (II.9.3.3), the

⁶⁴⁸ The Chamber uses the term "committed" in its broadest understanding, encompassing any crimes and modes of liability pleaded in relation to this event. See *Blagojević and Jokić* Appeal Judgement paras. 283-284.

Chamber is not convinced that Renzaho had continuing authority of these groups, and the evidence is insufficiently precise to attribute liability to him for their participation in the 17 June attack.

582. Witness BUO was the sole witness to testify that Renzaho came to Saint Paul and of the involvement of Bivamvagara, Munyakaze, Cadence, Nyirabagenzi and Mukandutiye. His testimony suggests that Renzaho arrived at Saint Paul, where bodies were strewn about the centre, and did nothing. Witness KZ, on the other hand, testified that a priest named Paulin Munyazikwiye, who had been a classmate of Renzaho's called him to report the attack. Renzaho allegedly responded that the priests were all accomplices because they had accommodated the *Inkotanyi* and their accomplices.

583. The Prosecution evidence that Renzaho was both present at Saint Paul and received a call in his office during the attack raises concerns about the reliability of the testimonies relating to this event. Moreover, the Chamber views Witness BUO's account with caution, and refuses to accept the precise details of the specific individuals that were engaged in the attack without corroboration. The Chamber does not consider that its findings concerning the attack on Sainte Famille that day offers sufficient corroboration of Witness BUO's evidence about the attack on Saint Paul.⁶⁴⁹

584. The Chamber concludes that there is an insufficient basis to find Renzaho criminally liable for the attack on Saint Paul on 14 June 1994.

⁶⁴⁹ For the reasons set forth in relation to the April attack on Saint Paul, the Chamber has also doubts that Renzaho was provided sufficient notice of the attack there on 17 June 1994. Moreover, it is not convinced that the notice provided for the 17 June attack on Sainte Famille in paras. 23 and 40 of the Indictment is sufficient. Notwithstanding Saint Paul's immediate proximity to Sainte Famille, the Prosecution chose to plead attacks at Saint Paul and Sainte Famille separately. Thus, there are serious concerns as to the consistency of the notice as the Indictment distinguishes attacks at both locations. Finally, a review of Witness KZ's statement attached to the Pre-Trial Brief demonstrates that the Prosecution could have pleaded both the timing and nature of the attack with greater precision than that provided. Pre-Trial Brief p. 71 ("On the night of 16 June, RPF soldiers rescued all but about 40 of the refugees at Saint Paul. The following day, *Interahamwe* went to St. Paul threatening those who remained. One of the priests called Renzaho to ask him to do something to stop the attack. Renzaho refused to intervene and accused the priest of conniving with the enemy."). The Pre-Trial Brief was filed on 31 October 2005, and the Indictment came into effect on 16 February 2006. Under the circumstances, the Pre-Trial Brief cannot cure the subsequently filed Indictment (which is required to plead all material facts). See *Karera* Appeal Judgement, para. 368.

10. KILLING OF ANDRÉ KAMEYA, 15 JUNE 1994

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10.1 Introduction

585. The Prosecution alleges that, on or about 15 June 1994, Renzaho ordered *Conseiller* Odette Nyirabagenzi to kill André Kameya, a journalist who was critical of the Interim Government. Whilst in the company of *Interahamwe*, she found and had André Kameya killed pursuant to Renzaho's orders. Reference is made to Witnesses BUO and AWN.⁶⁵⁰

586. The Defence argues that it has suffered prejudice from vagueness in the Indictment as to the date and place of André Kameya's killing as well as the identities of its perpetrators. Furthermore, the circumstances surrounding his death have not been proven.⁶⁵¹

10.2 Evidence

Prosecution Witness BUO

587. Witness BUO, a Hutu, was an *Interahamwe* leader in Rugenge sector. He worked with Angeline Mukandutiye, a friend of his family, from about 8 April 1994. She was a leader of the *Interahamwe* who had their headquarters at her house. *Conseiller* Odette Nyirabagenzi was a friend of hers and would visit her there.⁶⁵²

588. During the events, it was normal for the *Interahamwe* to go to the Sainte Famille church to search for Tutsis to be killed. One day in April or May, Angeline Mukandutiye had ordered the witness and others to go there to look for Tutsi survivors. He was inside the church building when a man called Michel came in with a photograph of André Kameya and told everyone to look for him. The witness did not know Kameya. He asked Michel on whose orders they were searching for him. Michel referred to Odette Nyirabagenzi.⁶⁵³

589. Kameya was found in the church building among the other refugees. The witness wanted to know to whom he would be handed over. He went to speak to Nyirabagenzi, who was in her car holding a handwritten piece of paper. She showed it to the witness, who saw Kameya's name on it. He was not able to see other names, but noticed Renzaho's name and signature at the bottom. The paper also had some other writing on it that the witness was not able to read. He did not see Nyirabagenzi share the contents of the document with anyone else. They forced Kameya into Nyirabagenzi's vehicle, and it left.⁶⁵⁴

590. The witness did not see the killing of Kameya, but he believed he was dead: Nyirabagenzi was a killer; as a rule, the *Interahamwe* killed Tutsis they captured rather than imprisoning them; and André Kameya was never seen again.⁶⁵⁵

⁶⁵⁰ Indictment paras. 47 and 51; Prosecution Closing Brief paras. 418-429; According to para. 129 of the Prosecution Pre-Trial Brief, André Kameya was the editor-in-chief of the newspaper *Rwanda Rushya*, and vice-president of the *Parti Libéral*.

⁶⁵¹ Defence Closing Brief paras. 108, 116, 182, 185, 530-567.

⁶⁵² T. 25 January 2007 pp. 52-55; T. 26 January 2007 pp. 2, 36-37; Prosecution Exhibit 73 (personal identification sheet). Witness BUO has been detained in Rwanda since 1994. In 2003, he was sentenced to 15 years imprisonment; T. 25 January 2007 p. 57.

⁶⁵³ T. 25 January 2007 p. 54; T. 26 January 2007 pp. 20-22; T. 29 January 2007 pp. 26, 32-33.

⁶⁵⁴ T. 26 January 2007 pp. 22-23; T. 29 January 2007 pp. 26, 32-33.

⁶⁵⁵ T. 26 January 2007 pp. 23-24.

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Prosecution Witness AWN

591. After her home was attacked by *Interahamwe* on 19 April 1994, Witness AWN, a Tutsi from Rugenge sector, sought refuge at the home of *Conseiller* Odette Nyirabagenzi who had been one of her mother's friends. Nyirabagenzi allowed her to remain there for about a month doing household chores. The witness had to leave in mid-May because of a dispute with Nyirabagenzi's sister. One day when preparing food in the kitchen, the witness heard Nyirabagenzi saying that, after a long period of trying to hunt down journalist André Kameya, they had finally succeeded in flushing him out from the *Kinyamateka* newspaper's premises. The *Interahamwe* had tortured Kameya before killing him.⁶⁵⁶

Prosecution Witness KZ

592. Witness KZ, a Hutu, stayed at the Saint Paul pastoral centre during the events in 1994. He explained that *Kinyamateka* was a newspaper belonging to the Catholic Church, and that their offices were downhill from Saint Paul. Saint Paul, Sainte Famille and CELA sites were close to one another.⁶⁵⁷

Renzaho

593. Renzaho testified that he did not know anything about how André Kameya disappeared. He had no special link with Odette Nyirabagenzi, who was one of 19 *conseillers* in Kigali-Ville prefecture.⁶⁵⁸

10.3 Deliberations

594. The Prosecution relies on two witnesses. Witness BUO saw André Kameya's abduction but not his killing, whereas Witness AWN heard from Nyirabagenzi that he had been found and killed. The Chamber views Witness BUO with caution, because he is a convicted *Interahamwe* leader. Witness AWN's testimony is hearsay and is only partially corroborative. This said, the Chamber accepts that Kameya was killed. This also follows from documentary evidence as well the fact that he has not been seen since.⁶⁵⁹

595. The Indictment alleges that Kameya was found and killed "on or about 15 June 1994". Also, the Pre-Trial Brief asserts that he was abducted from Saint Paul by *Interahamwe* on that date and that, on or about 16 June, Nyirabagenzi went to Saint Paul and announced

⁶⁵⁶ T. 5 February 2007 pp. 30-33, 34 ("And judging from the tone of her voice, the *Interahamwe* were actually pleased with the way they had conducted that operation. Because they first tortured the victim by cutting off his limbs."), 35, 42, 46; Prosecution Exhibit 84 (personal identification sheet).

⁶⁵⁷ T. 25 January 2007 pp. 2-3, 5-6, 10, 35; Prosecution Exhibit 72 (personal identification sheet). Witness KZ was shown Prosecution Exhibit 4, a map depicting a square marked "*Kinyamateka* newspaper house" beside the Saint Paul office rooms. He explained that the newspaper moved its offices there only after the war. In 1994, they were located "further on, before you got to Saint Paul centre"; T. 25 January 2007 p. 5.

⁶⁵⁸ T. 29 August 2007 p. 60.

⁶⁵⁹ Witness BUO, T. 26 January 2007 pp. 23 ("I have told you what happened to people who were arrested -- Tutsis who were taken from among other Tutsis. We killed them. We don't put them in prison. If that person were put in prison, we would have seen him again. So, that person could not have been hidden. He was killed. And, they were buried at sites which are well known."), 24 ("No, I did not see his killing. But I know that the person who took him away was a killer -- just as my -- myself, because she is the one who instructed me to kill other persons"); Defence Exhibit 15 (Report from *Reporters Sans Frontières*) p. 21, stating that Kameya was killed by the *Interahamwe* on 15 June 1994.

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that he had been found and killed. In contrast, Witness BUO testified that Kameya was abducted in April or May. However, in his written statement to Tribunal investigators in September 2006, he said that that it was "sometime in June 1994".⁶⁶⁰ Witness AWN heard that he had been killed some time between 19 April and mid-May 1994.⁶⁶¹ It is clear that the evidence about the date of the killing turned out differently at trial than alleged in the Indictment.

596. The location of Kameya's abduction and killing is not specified in the Indictment. The Pre-Trial Brief states that he was taken away from Saint Paul, Witness BUO testified that he was abducted from Sainte Famille, whereas Witness AWN heard that he was flushed out from the *Kinyamateka* offices.⁶⁶² This inconsistency is not significant. It is clear from the record, including Witness KZ's testimony, that the newspaper's offices and Sainte Famille were close to each other in 1994.

597. According to the Indictment, Renzaho ordered Odette Nyirabagenzi to kill Kameya. The Prosecution relies on Witness BUO's testimony that he saw a handwritten document in Nyirabagenzi's hand on the day of the abduction. Kameya's name was written on it, as was Renzaho's name with his signature. The witness did not see other names. It is unclear whether this was a letter, a list, or some other type of document. The witness was not able to read the document, and it has not been clearly established that it contained an order to kill Kameya.

598. There is no other evidence that Renzaho was involved in the killing. As indicated above, the circumstances surrounding this event are to some extent unclear. The Chamber therefore finds that the Prosecution has failed to prove beyond reasonable doubt that on 15 June 1994, Renzaho ordered *Conseiller* Odette Nyirabagenzi to kill André Kameya. In view of this conclusion, there is no need to consider the issue of notice.

⁶⁶⁰ Defence Exhibit 14 (statement of 12 September 2006) p. 9.

⁶⁶¹ Witness AWN made it clear than she was uncertain about the exact timing of certain other events, but was not hesitant about when she stayed at Nyirabagenzi's house and heard about Kameya's death. T. 5 February 2007 p. 46.

⁶⁶² Defence Exhibit 15 (Report from *Reporters Sans Frontières*) p. 21, also states that Kameya was taken from the *Kinyamateka* offices. When Witness BUO was confronted with the report, he maintained that his version of events was accurate. T. 29 January 2007 pp. 33-36.

11. SAINTE FAMILLE, 17 JUNE 1994

11.1 Introduction

599. The Prosecution alleges that, on or about 17 June 1994, while in the company of Odette Nyirabagenzi and Angeline Mukandutiye, Renzaho ordered, instigated or otherwise aided and abetted soldiers, militia and communal police to attack Tutsi refugees at the Sainte Famille church. Many of them were killed. This attack was in retaliation for an RPF operation carried out at Saint Paul pastoral centre the previous evening, and at least 17 Tutsi men were killed. Reference is made to Witnesses KZ, AWX, AWO, ACK, HAD, ATQ, BUO and Corinne Dufka.⁶⁶³

600. The Defence does not dispute that an attack took place on 17 June 1994 at Sainte Famille. However, it relies on Witnesses PER, TOA, BDC and RCB-2 to show that Renzaho was not present at the attack, that there is no link between him and the attackers, and that the Prosecution witnesses are incoherent and inconsistent.⁶⁶⁴

11.2 Evidence

Prosecution Witness KZ

601. In April 1994, Witness KZ, a Hutu, was working at the Saint Paul Pastoral Centre. There were four sites in that area that harboured refugees, including a nearby centre called Sainte Famille. That church was managed by Father Wenceslas Munyeshyaka, who was in charge of security and food. He had friends among the gendarmes and obtained three of them to guard the Sainte Famille church around the third week of April 1994. Munyeshyaka also worked with sub-prefect Aloys Simpunga to get food for the refugees. Even if the witness was not with Munyeshyaka every day from 7 April to 17 June, he noted that the priest did everything in his power for the refugees to live in acceptable conditions. Generally, he did not wish to testify about Munyeshyaka's actions other than what he had personally observed.⁶⁶⁵

602. The witness stated that Sainte Famille and Saint Paul were both attacked on 17 June. He avoided providing details about Sainte Famille, saying, in connection with rapes: "If I were to refer to what happened on the Sainte Famille site, I would probably not be saying – telling the truth. I was on the Saint Paul site and I can only answer questions on what occurred in that centre."⁶⁶⁶

Prosecution Witness AWX

603. Witness AWX, a Tutsi, testified that she fled her family home on 10 or 11 April 1994 and sought refuge at Sainte Famille until the end of the war. The group of refugees included

⁶⁶³ Indictment paras. 20, 23, 36-37, 40, 58, 59-60; Prosecution Closing Brief paras. 300-322; 459, 472-488; 495; T. 14 February 2008 pp. 6, 11-13, 21.

⁶⁶⁴ Defence Closing Brief paras. 413-438; 519-520; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 437.1-437.4; T. 14 February 2008 pp. 60-64.

⁶⁶⁵ T. 25 January 2007 pp. 2, 6, 10, 11-13, 33-37, 39, 45-47; Prosecution Exhibit 72 (personal identification sheet). The four sites mentioned by Witness KZ were Saint Paul, CELA, Saint Teresa of Calcutta and Sainte Famille. T. 25 January 2007 pp. 33-34.

⁶⁶⁶ T. 25 January 2007 pp. 33-34, 42, 44, 45 (quoted).

Tutsis and others. Father Munyeshyaka was a priest based at Sainte Famille. Around 18 June, the witness left Sainte Famille to fetch some water at CELA, which was downhill from Sainte Famille and very close by, about a four minute-walk away. Soldiers came to Sainte Famille that day and shot many people. She saw Renzaho there, standing with soldiers. He was speaking to persons carrying dead bodies in wheelbarrows. She also saw her sister's dead body in a wheelbarrow. The witness believed that this event occurred the day after the *Inkotanyi* abducted refugees from the Saint Paul centre. The *Interahamwe* launched the attack because they were angry. They wore military attire and resembled soldiers.⁶⁶⁷

Prosecution Witness AWO

604. In April 1994, Witness AWO, a Tutsi, was living in Kigali. She was eight months pregnant. Following the President's plane crash on 6 April 1994, she sought refuge with her children at an orphanage run by the Sisters of Saint Teresa of Calcutta, which was just next to her house. She no longer recalled the date but believed it was at least two or more days after the crash.⁶⁶⁸

605. In early or mid-June 1994, the witness went to the Sainte Famille church.⁶⁶⁹ A few days after her arrival, the RPF evacuated some refugees from Saint Paul during the night.⁶⁷⁰ The next morning, she saw Renzaho, Odette Nyirabagenzi and Angeline Mukandutiye arrive at Sainte Famille around 11.00 a.m., armed with pistols. They checked to see who remained there and then left. Afterwards, the witness heard Father Wenceslas Munyeshyaka tell the refugees to "prepare [their] hearts because the time had come" and that the refugees "should sanctify" themselves. He conducted a mass, and then left. Around 11.00 a.m., a great number of *Interahamwe* attackers arrived and killed many people at Sainte Famille. The young men were particularly targeted to prevent them from going to RPF-controlled areas.⁶⁷¹

606. The refugees were told to come out of the church and show their identity cards. At that point, the witness saw Renzaho. He was in an area overlooking the church building and told the *Interahamwe* to kill "many people". The *Interahamwe* descended to the church and started the killings. At some point Renzaho ordered them: "Stop killing. We have killed all

⁶⁶⁷ T. 6 February 2007 pp. 28-29, 31-33, 35, 39, 42-44; Prosecution Exhibit 89 (personal identification sheet). Witness AWO testified that she had previously observed Renzaho at Sainte Famille "around" 24 May 1994 before she was taken away and raped (II.13). T. 6 February 2007 pp. 29-30.

⁶⁶⁸ T. 7 February 2007 pp. 3-7, 16-17; Prosecution Exhibit 91 (personal identification sheet).

⁶⁶⁹ Witness AWO could not state when she arrived at Sainte Famille, but it follows from the context that it was in the first half of June 1994. See T. 7 February 2007 pp. 8-9, 10, 19. The witness arrived at Sainte Famille when "the war was almost over", a few days before the RPF evacuated refugees from the Saint Paul. T. 7 February 2007 pp. 12 (quoted), 23.

⁶⁷⁰ Witness AWO was in very poor condition emotionally and physically at the time of these events, and could not remember when exactly the attack was perpetrated. She recalled, however, that shortly thereafter the RPF took control of the country. T. 7 February 2007 p. 14 ("It was almost towards the end of the war, perhaps in July, because after a while the *Inkotanyi* took over. When they killed all these people, the *Inkotanyi* were already in Gikondo, Rebero and Remera."). In cross-examination, she recalled that she had said the attack might have been in July, "because when the *Inkotanyi* carried their raid out on the Saint Paul centre, the war was drawing to a close". *Id.* p. 23.

⁶⁷¹ T. 7 February 2007 pp. 12-14, 20, 23, 26. Witness AWO used the word "around" ("vers") 11.00 a.m., both in relation to Renzaho's arrival and the commencement of the attack. According to the witness, Angeline Mukandutiye had been telling Renzaho that there were *Inyenzi* in the Sainte Famille church who were causing problems. It is not apparent when this occurred or how the witness learned about it. *Id.* p. 12.

the *Inyenzi*; and you, the women, you should clap because the *Inyenzi* have been exterminated.” The women applauded in order to survive.⁶⁷²

607. Over 100 persons died in the attack. Although Witness AWO could not see behind the church, she stated that even more were killed in that area. After it ended, Renzaho and the *Interahamwe* left. The bodies remained there for a number of days. Father Munyeshyaka asked the refugees to pick up the corpses. He said that those who carried away the bodies would be rewarded by Renzaho. Munyeshyaka also promised that Renzaho would authorise the transfer of those assisting to the Kabuga area. It was said that the corpses would be taken away so that UNAMIR soldiers would not see them. The bodies were placed in the garage of the priests, on a tarpaulin. Subsequently, young persons who had, until then, managed to hide in the garden or in water tanks were taken away in vehicles and killed elsewhere. The witness did not specify who abducted them, but such attacks ended after the RPF takeover of the country.⁶⁷³

Prosecution Witness ACK

608. On 22 April 1994, Witness ACK, a Tutsi, went to seek refuge at the Sainte Famille church with her daughter and her daughter’s cousin. Father Wenceslas Munyeshyaka was in charge of the church and lived there. There were many refugees at the church. *Interahamwe* would come there and insult them. The refugees were afraid and sought help from Munyeshyaka, but he was friendly with the *Interahamwe* and continued to let them in, spoke with them often and allowed them to enter his office.⁶⁷⁴

609. On 16 June, the *Inkotanyi* had come to Saint Paul to find refugees there. In the morning of 17 June, the witness heard Munyeshyaka say that the RPF had taken away the Tutsis, but that the Hutus had died, and that all that would follow would be a consequence of what the refugees’ “kinsmen” had done.⁶⁷⁵

610. On 17 June, at around 11.00 a.m., *Interahamwe* arrived at Sainte Famille and began shooting indiscriminately. Many refugees were killed, including the witness’s daughter. The witness tried to flee from the compound. When she was a few metres from the gate, about 25 or 30 metres from the entrance to the church building, she saw Renzaho standing near the water tank. He was surrounded by many *Interahamwe*. Subsequently, a whistle was blown and the *Interahamwe* stopped the operation. The corpses were placed on stretchers and hidden in the garage.⁶⁷⁶

611. The following day, 18 June, about 12 young men jumped over the fence and came into the church. The witness did not say why. A school inspector named Angeline came the day after that with Munyeshyaka to the church office, had a discussion, and then took the 12 persons away. They were not seen again. The witness said later that Angeline came with

⁶⁷² *Id.* p. 26. It is unclear from Witness AWO’s testimony whether Renzaho was overlooking the church during the entire attack.

⁶⁷³ *Id.* pp. 13, 14 (the French version makes clear that “he” is Renzaho), 23-25.

⁶⁷⁴ T. 5 March 2007 pp. 62-63, 65-67, 69-70; Prosecution Exhibit 95 (personal identification sheet).

⁶⁷⁵ T. 5 March 2007 pp. 70, 71 (“The Father said that RPF troops had taken away the Tutsis, but that the Hutus had died. He added that all that was going to follow as a consequence would be the result of what our kinsmen did.”).

⁶⁷⁶ *Id.* pp. 70-71; T. 6 March 2007 p. 64.

Colonel Munyakazi as well as Nyirabagenzi that day and that Munyakazi arrested the 12 men.⁶⁷⁷ She stayed at Sainte Famille until 24 June 1994.⁶⁷⁸

Prosecution Witness HAD

612. Witness HAD, a Tutsi secondary school student, fled to the Sainte Famille church on 22 April 1994, at around 3.00 p.m. There were many refugees at the church, including Rwanga's wife and her daughter, Hyacinthe Rwanga. Two separate groups of refugees stayed inside the church. The witness's group was near the altar at a place nicknamed "CND" and composed of Tutsis. They had no water or food and were always being watched by gendarmes, *Interahamwe* and the Hutu refugees. Father Munyeshyaka instructed her to hide there. The other group stayed in an area called "Camp Hutu", which was safer.⁶⁷⁹

613. On 17 June, there was an attack on the Sainte Famille church and refugees were killed, including Hyacinthe. Before noon on that morning, the witness and other refugees were told that the prefect was in the church's compound. They went out to check, and saw him walking with Father Munyeshyaka towards the *procure*. The priest was holding a list. She had seen Renzaho previously at the CELA centre. At one stage, the prefect and priest left the compound. The witness did not see Renzaho again that day, but testified that, after he left, he ordered "his dogs" to attack the refugees. That day, the witness saw other officials in the compound as well, including the *conseiller* of Rugenge, Odette Nyirabagenzi, and the inspector, Angeline Mukandutiye.⁶⁸⁰

614. The *Interahamwe* entered the church's compound. One of them read names from the list that Father Munyeshyaka was holding earlier, and those whose names were called were killed in the church's garden. There were also persons killed who were not on the list. Subsequently, the *Interahamwe* entered the church and started shooting at the refugees. They fired at those who had been injured near the altar, and even at a statue of the Virgin Mary, because "she was a Tutsi". After the killings, the *Interahamwe* said that they were seeking revenge because the previous night, the RPF had evacuated some Tutsi refugees from the Saint Paul centre and killed Hutus.⁶⁸¹

⁶⁷⁷ The English and French versions are not quite clear. T. 5 March 2007 p. 72 reads: "Two days later, the one – the person called Angeline, who was an inspector of education – and here let me add that the young people were 12 in number – or, rather, it was the following day that *Angeline Munyakazi* (sic) and the priest came to the office. And even if I don't know the content of their discussion, they nonetheless called the young men, and *Munyakazi* took them with her, and those young persons did not come back again" The French transcript reads: "*Ou c'est plutôt le lendemain qu'Angéline Munyakazi et l'abbé sont venus au bureau, même si je ne connais pas le contenu de leur discussion, ils ont néanmoins appelé ces jeunes hommes. Et Munyakazi les a amenés avec lui et ces jeunes hommes ne sont plus jamais revenus.*" *Id.* p. 79. It appears that something is missing between "Angeline" and "Munyakazi" in both versions. This follows from T. 6 March 2007 p. 66, which reads: "I told you that *Munyakazi* showed up after the 17th, and that he was accompanied by Angeline. They said that some people had shot at them the night before. But, as a matter of fact, they were referring to the 12 young people who had scaled the wall. *Munyakazi* immediately arrested them after the priest brought them or showed them to Munyakazi" (emphasis added). The Chamber accepts that Witness ACK testified that Munyakazi and Angeline Mukandutiye went to the church office after 17 June 1994, together with Nyirabagenzi.

⁶⁷⁸ T. 5 March 2007 p. 67; T. 6 March 2007 pp. 65-66, 71-72.

⁶⁷⁹ T. 1 February 2007 pp. 11, 17, 21-22, 33-34; Prosecution Exhibit 82 (personal identification sheet).

⁶⁸⁰ T. 1 February 2007 pp. 12-14, 22-26, 35. Witness HAD did not give details about the *procure*, but the Chamber notes that the word usually refers to the office or residence of the curator or bursar. It was in the church's compound, between the shop and the garden, near the petrol pump. *Id.* p. 27.

⁶⁸¹ *Id.* pp. 22-25, 35-36.

615. On the day before the attack, 16 June, Munyeshyaka had persuaded Hyacinthe Rwanga to write a list of names by telling her that UNAMIR would evacuate persons she included. The witness had assisted in drawing up the list. She recognised the paper on which it had been written when she saw Munyeshyaka carrying it on 17 June. Moreover, the order of the persons called out was the same as on the list she had put together. Nearly all those mentioned were killed. The witness had placed Hyacinthe's name first on the list. The *Interahamwe* tracked her down and shot her in the head. When they reached her mother's name on the list, they said she could be spared because her children had already died.⁶⁸²

616. The attack lasted all day and many were killed. A policeman eventually arrived and said it was not possible to kill all the Tutsis. He told the Hutus to leave, saying that the church would be destroyed. When the attackers heard that UNAMIR were coming, they shot in the air and retreated. It was evening. The UNAMIR soldiers did not arrive on 17 June. The following day, the dead bodies were piled up.⁶⁸³

617. The witness noticed Munyakazi a day or two after the attack, when he came to Sainte Famille to evacuate some persons. She did not recall seeing him on the day of the attack, but had heard that he was present. As she was not familiar with his appearance, she would not have recognised him. The witness left Sainte Famille for an RPF-controlled area on 20 June.⁶⁸⁴

Prosecution Witness ATQ

618. Around 16 or 17 May 1994, Witness ATQ, a Tutsi, fled to the Sainte Famille church. She was staying in a tent outside the church, in an elevated area. Between 9.00 and 10.00 a.m. on about 16 June, the day after the *Inkotanyi* evacuated some refugees from the Saint Paul centre, she saw Renzaho standing beside Father Munyeshyaka. The witness observed the prefect while she was outside her tent. He was wearing military attire and glasses. She had not seen him previously but someone pointed him out, saying: "That is Renzaho, whom you see there, and we are done for." Renzaho left and, five minutes later, the *Interahamwe* arrived and began shooting at the crowd. She heard gunshots from all directions, and took shelter in the tent. The attack lasted some time, and many persons were killed. An *Interahamwe* ordered the witness to join a group of refugees who were mostly women and children. She saw many bodies on her way to the group, which was not far from the priests' room. The gunshots stopped shortly thereafter.⁶⁸⁵

619. Around noon or 1.00 p.m., Renzaho arrived again with other soldiers and a gendarme named Karemera, who was officially in charge of the security at the Sainte Famille church. The group stopped at the entrance. The witness was sitting on a veranda. Renzaho spoke to two *Interahamwe* named Sese Seko and Cimba, who subsequently told the other *Interahamwe* that "Musee has just ordered us to stop, and that those who were still alive would be killed in due course". Sese Seko fired into the air. He told the refugees that those

⁶⁸² *Id.* pp. 23-25, 35-36 (mentioning that Hyacinthe's mother, who was on the list, was spared because her children had been killed).

⁶⁸³ *Id.* pp. 25, 27, 37-38. Witness HAD explained that persons were killed in the courtyard, on the stairs that led from the *procure* to the presbytery, in the garden and inside the church. *Id.* p. 27.

⁶⁸⁴ *Id.* pp. 21-22, 35.

⁶⁸⁵ T. 31 January 2007 pp. 67-69; T. 1 February 2007 pp. 5-7; Prosecution Exhibit 81 (personal identification sheet).

who remained alive were lucky and asked them to applaud the *Interahamwe* for what they had just done. As the word "Musee" was a term of deference in Kinyarwanda, the witness understood that it most likely referred to Renzaho, who was the most respected person present.⁶⁸⁶

620. The next day, UNAMIR troops came to evacuate refugees, but Munyeshyaka refused to let them in because there were so many bodies in the compound. The day after that, or about 18 June, the witness saw the prefect arrive again at about 5.00 or 6.00 p.m. After he left, young men moved the bodies to the procure.⁶⁸⁷

Prosecution Witness BUO

621. Witness BUO, a Hutu, was a member of the *Interahamwe*, which had headquarters at the home of Angeline Mukandutiye, an *Interahamwe* leader. The *Interahamwe*, including the witness, attacked the Sainte Famille church many times. The most significant attack against that site and the Saint Paul Pastoral Centre took place in June. Many refugees were killed. The witness did not recall the precise day. The attack was carried out following the evacuation of refugees by the RPF on the previous day from Saint Paul and Sainte Famille. The morning after the RPF operation, a lieutenant named Cadence told the *Interahamwe* that they should go to Sainte Famille to find the Inyenzi and their accomplices. The witness explained that, by "accomplices", Cadence meant Tutsis.⁶⁸⁸

622. There were about 180 attackers. Authorities who were present during the attack included Renzaho, Munyakaze, Bivamvagara, Lieutenant Cadence, as well as *Interahamwe* leaders Angeline Mukandutiye and Odette Nyirabagenzi. The witness did not specify whether they were present at the Sainte Famille church or the Saint Paul centre or both, but he stated that the two sites were extremely close to each other.⁶⁸⁹

623. The attack against the Sainte Famille church and Saint Paul commenced at around 7.00 a.m. The assailants first went to CELA and Saint Paul before proceeding to Sainte Famille. Lieutenant Cadence and the president of the witness's *Interahamwe* group in Rugenge, who was called Claude, a former lieutenant, instructed the attackers to shoot into the group of refugees without any pre-selection or sorting process. As they were his leaders, the witness had to obey their instructions. He did not personally fire his weapon, as there were other persons under his orders who were shooting. The witness recognised the corpse of Hyacinthe, Charles Rwanga's daughter.⁶⁹⁰

624. Witness BUO stated that he received instructions from Mukandutiye, and that, "during that period", she and Odette Nyirabagenzi were supported by the prefect. He described Renzaho as "the chief of my chief". Furthermore, Father Wenceslas Munyeshyaka was collaborating closely with Renzaho, particularly concerning the situation at Sainte

⁶⁸⁶ T. 31 January 2007 p. 69; T. 1 February 2007 pp. 1, 5, 7.

⁶⁸⁷ T. 1 February 2007 pp. 6-8.

⁶⁸⁸ T. 25 January 2007 pp. 52, 54-57; T. 26 January 2007 pp. 26-28, 36; T. 29 January 2007 pp. 25, 28, 38; Prosecution Exhibit 73 (personal identification sheet). Witness BUO was convicted in Rwanda in 2003 and given a 15-year sentence for his involvement in the genocide. T. 25 January 2007 pp. 56-57.

⁶⁸⁹ T. 26 January 2007 pp. 12, 25-28, 31 (Saint Paul and Sainte Famille were "virtually at the same place"); T. 29 January 2007 p. 25.

⁶⁹⁰ T. 26 January 2007 pp. 2, 28-32, 35, 54; T. 29 January 2007 pp. 30-32. When the transcripts refer to "Yacinthe" they clearly refer to Hyacinthe Rwanga.

Famille. The priest also worked with the *Interahamwe* by giving information about Tutsis at Sainte Famille and other sites to Angeline Mukandutiye, who was his close friend. Based on that information, the *Interahamwe* searched for the Tutsis. Munyeshyaka also supplied food to the *Interahamwe* attackers and allowed them into the Sainte Famille site.⁶⁹¹

625. The witness had been at Sainte Famille for about 30 minutes when Renzaho arrived, after the killings had stopped. The prefect remained at the church for about an hour. He stood near the water tank and sacristy, about five metres away from the witness, and talked to Munyeshyaka, Nyirabagenzi and Mukandutiye. He looked at three corpses, which were placed in front of him. There were bodies everywhere, and he provided vehicles to remove them. According to the witness, Renzaho was the highest-ranking person present and was aware of everything that was happening.⁶⁹²

Prosecution Witness Corinne Dufka

626. The witness, an American photojournalist, worked with Reuters news agency in 1994. In May that year, she visited Rwanda three times. During those visits, she went to Sainte Famille church three times and took photographs of the refugees there. Her first visit to Sainte Famille was between 18 and 20 May. It was not easy to reach the church, as she had to pass through a checkpoint manned by persons in civilian attire. The witness met with Father Wenceslas, who gave her permission to take photos inside the church. She also spoke briefly to some of the more than 900 refugees. They seemed tense and subdued or afraid of talking. Most of them were in the courtyard behind the church.⁶⁹³

627. During her second visit, on 29 or 30 May at Sainte Famille, a meeting of all the refugees there was being organised. Again, they seemed tense and anxious. She saw three or four persons she believed to be gendarmes milling around the church. She had not seen them on her prior visit.⁶⁹⁴

Renzaho

628. Renzaho testified that he managed to secure some gendarmes to guard Sainte Famille, even though not many were available. They were posted there from around 9 April 1994 and included a commanding officer named Iradukunda. As the site was sufficiently far from the battle front, these few gendarmes would ensure security. If ever a crisis developed, they would be able to call for reinforcements to deal with the threat.⁶⁹⁵

629. According to Renzaho, he went to Sainte Famille only once, in the afternoon of 16 June, with General Aniyidoho from UNAMIR, ICRC representatives, journalists and others. While there, they moved amongst the refugees, trying to comfort them. They told them that

⁶⁹¹ T. 26 January 2007 pp. 30-31, 33, 35; T. 29 January 2007 p. 30.

⁶⁹² T. 26 January 2007 pp. 30 (Munyakaze "took some people from the Sainte Famille parish" and "he even carried some bodies"), 32-33.

⁶⁹³ T. 30 January 2007 pp. 1-3, 5-6, 8-9, 12-14, 17-19; Prosecution Exhibit 76 (personal identification sheet); Prosecution Exhibit 77 (33 photographs taken by Corinne Dufka). The witness explained that she took photographs 17-20 on her first trip to Sainte Famille between 18 and 20 May (T. 30 January 2007 pp. 6-8); photographs 15-16 and 21-23 on her second trip, around 29 or 30 May (p. 14); and photographs 26-32 in June 1994 (p. 15).

⁶⁹⁴ T. 30 January 2007 pp. 6, 14-16, 18, 19.

⁶⁹⁵ T. 29 August 2007 pp. 8, 35-37.

the UNAMIR-assisted evacuations, which had been suspended, would resume the next day.⁶⁹⁶

630. Two hours after their visit, during the night of 16 to 17 June, the RPF heavily shelled the sites of Saint Paul and Sainte Famille. Renzaho said that 1,800 refugees were taken away and many other people were killed, principally at Saint Paul and at a primary school. The attack ended at dawn on 17 June and Renzaho learned of it at about 11.00 a.m. that day. He noted that the RPF killed inhabitants at Saint Paul during their operation "except for their kind, whom they took away with them".⁶⁹⁷

631. Renzaho's assistant, Aloys Simpunga, was in charge of supervising Sainte Famille, visited it every day, and was in "permanent contact" with it. The church was an important site because there were up to 18,000 refugees there. When asked about major events at Sainte Famille that he had been told of at the time, Renzaho stated that "incidents were inevitable, but this could have been avoided". The RPF shelled the site constantly. It was shelled on 12 and 16 April, 1 and 3 May, and during the night of 16 to 17 June. Renzaho wanted UNAMIR to set up a unit at Saint Paul and Sainte Famille and fly their flag there, so that the RPF would realise that there were refugees at the site and refrain from shelling it. No unit was set up, however.⁶⁹⁸

632. Simpunga told Renzaho that Father Wenceslas Munyeshyaka – a young priest – was in charge of Sainte Famille. Renzaho did not know him personally. Munyeshyaka did, however, telephone him once, on 10 April, and told him that a large number of Tutsis fleeing from RPF held areas had come to Saint Famille seeking refuge and were angry because the site was already occupied by others. Renzaho sent "a policeman or two" in response to the call. Later, the priest asked for a vehicle to transport food stocks, and Renzaho asked that Munyeshyaka be assigned one of the trucks in the prefecture.⁶⁹⁹

Defence Witness PER

633. In April 1994, Witness PER, a Hutu, was spending his holiday working at the Saint Paul Pastoral Centre. On 6 April, he was nearing the end of his time there, but because the war then intensified, he remained until 18 June. The witness undertook humanitarian activities at Saint Paul and, from 10 April onwards, he also assisted the priest, Wenceslas Munyeshyaka, in helping the many refugees at Sainte Famille which was next door. The two sites adjoined each other, separated by a wall with two small gates in it. If he used the road around the wall, he would have had to cross a roadblock manned by the militias. There were also other roadblocks in the vicinity.⁷⁰⁰

⁶⁹⁶ *Id.* pp. 33-34. Renzaho testified that the evacuation had been suspended because RPF had fired on a UNAMIR convoy.

⁶⁹⁷ *Id.* p. 33; T. 3 September 2007 pp. 31-32, 33 (where reference is made to Prosecution Exhibit 63 (transcript of Radio Rwanda broadcast on 18 June 1994) p. 6 ("Q. This is what you said, Mr. Renzaho: 'Look at what happened in Kabgayi and here at the Saint Paul pastoral centre where they killed and injured many others. There they killed the inhabitants, except for their kind, whom they took with them.' That's what you said on the 18th of June, isn't it, Mr. Renzaho? A. That is correct. Q. And when you talk about 'their kind', you are talking about Tutsi, aren't you? A. That is correct.")).

⁶⁹⁸ T. 28 August 2007 p. 7; T. 29 August 2007 pp. 34-36, 38.

⁶⁹⁹ T. 29 August 2007 pp. 36-37, 49-50.

⁷⁰⁰ T. 23 August 2007 pp. 27-29, 31-33, 38, 47, 51, 57-58, 61-63; Defence Exhibit 80 (personal identification sheet).

634. The witness would go to Sainte Famille daily between 10.00 and 11.00 a.m., and remain there until 3.00 or 4.00 p.m., and sometimes until the end of the day. He believed it would have been apparent to refugees there that he was working closely with Munyeshyaka, who was often the only priest at that site. There were over 18,000 refugees at the church. He and Munyeshyaka were assisted by the sub-prefect for social affairs of Kigali-Ville prefecture, Aloys Simpunga, who would bring food, water and medicine for the refugees. Five gendarmes were posted at Sainte Famille while he was there. He did not see any soldiers in May 1994.⁷⁰¹

635. During his time at Saint Paul and Sainte Famille, the witness never heard anyone mention Renzaho's name. It was Aloys Simpunga who dealt with prefectural duties. The witness saw Renzaho only once, on 16 June, when he came to Saint Paul with UNAMIR soldiers and Red Cross officials. During the night of 16 to 17 June, the RPF attacked Saint Paul and evacuated some Tutsi refugees there. Militiamen arriving at approximately 9.00 a.m. the following morning heard of this and became enraged. In response, they looted Saint Paul and then attacked Sainte Famille, to where the witness had fled. The refugees could not repel the attackers. Munyeshyaka left to seek help and returned with soldiers at about 10.00 a.m. The prefect was not with them. The soldiers chased the assailants out of Sainte Famille. Calm was restored but some refugees had already been killed. On 17 June, the witness spent the entire day with Munyeshyaka in the presbytery. He saw neither Renzaho, Nyirabagenzi nor Mukandutiye at Sainte Famille on that date. The witness left Kigali on 18 June, and never returned.⁷⁰²

Defence Witness TOA

636. Witness TOA, a Tutsi, sought refuge at Sainte Famille from 10 April to early July 1994. On the way from his home, he passed three roadblocks, the last being about 150 metres from the church. There were around 500 refugees at Sainte Famille, increasing to about 1,000 in April and 4,000 in June. Father Munyeshyaka and his assistants received them. The witness was settled inside the church, to the left of the altar. His estimates of the number of refugees present were based on those that he could see inside the church and in the church garden. Munyeshyaka provided the refugees with food from his stores, and the Red Cross attended to health issues. The witness did not see any authorities visit the site. Other refugees told him, however, that the sub-prefect had come with the Red Cross, bringing food.⁷⁰³

637. During the night of 16 to 17 June, the refugees in Sainte Famille were awakened by firing. At about 8.00 a.m. that morning, the Interahamwe arrived and entered the grounds of the church, firing weapons. The witness took refuge inside the church with his family and stayed there for the duration of the attack, around 20 to 30 minutes. Soldiers then came and told the witness that the attack was over. The Red Cross removed the corpses and tended to the wounded that day. During this attack, the witness did not see Father Munyeshyaka, but he

⁷⁰¹ T. 23 August 2007 pp. 38, 42-45, 47, 49-50.

⁷⁰² T. 23 August 2007 pp. 34-35, 38-42, 52-53, 55-56, 64.

⁷⁰³ T. 6 September 2007 pp. 3, 5-7, 11, 17; Defence Exhibit 111 (personal identification sheet). Witness TOA also mentioned that on 22 April, assailants wearing the *Interahamwe* uniform entered Sainte Famille and identified and abducted between 10 and 15 refugees. The witness saw the refugees being forced into a vehicle and taken away. Afterwards, gendarmes arrived to provide security, and the refugees were not attacked there again. In early May 1994, an RPF shell was fired from the Gisozi area onto Sainte Famille. T. 6 September 2007 pp. 7-9, 15-16.

saw him on the afternoon after it, trying to reassure people. Although he himself did not see Renzaho at Saint Famille at any point during his stay, the witness heard from other refugees that the prefect had come there on 16 June with UNAMIR soldiers. They learned the next morning that the Inkotanyi had taken away refugees from Saint Paul. He believed the 17 June attack was in response to that.⁷⁰⁴

Defence Witness BDC

638. Witness BDC, a Hutu governmental official who worked with a non-governmental organisation, supervised a team of Red Cross relief workers permanently stationed at the Sainte Famille site from mid-May until early July 1994. It was standard procedure for the Red Cross team to log what happened at the site each day, and the witness was given daily reports. He was never informed that Renzaho went to that site or carried out or supervised any massacres, nor did any other source indicate this.⁷⁰⁵

639. On 1 May, Sainte Famille was shelled and 10 to 15 persons were killed. Radio France journalists interviewed Munyeshyaka at the scene. He presented the RPF rebels in a negative light. From then on, he was targeted by the rebels. Early on the morning of 17 June, Red Cross teams assisted several wounded people from Sainte Famille, following an operation to evacuate people there by what the witness described as a "well-organised commando force".⁷⁰⁶

640. Witness BDC saw Renzaho at Sainte Famille only once. Both went there on about 16 June, along with UNAMIR and the ICRC, as part of an official delegation led by General Aniyihondo. He could not say whether Renzaho returned to Sainte Famille on 17 June. The witness had known Renzaho for more than 20 years, and they had been friends since 1986. He met Renzaho more than 10 times between 15 April and early July. The prefect sometimes wore civilian clothes but, more often, military attire. In this period, Renzaho kept the witness informed of what he was doing and the problems that he faced. The witness would come and go as he chose to the prefect's office. Father Munyeshyaka did not know Renzaho personally, but, like everyone else, he knew who he was. Munyeshyaka, who provided a good deal of support for humanitarian work in Kigali-Ville, left Sainte Famille on 5 July.⁷⁰⁷

Defence Witness RCB-2

641. Witness RCB-2, a Hutu, was a junior gendarme in Kigali-Ville prefecture in April 1994. The gendarmerie did not receive orders from the prefect. From the end of May until early July, he patrolled the area that included Sainte Famille church. On 17 June, at about 4.00 or 5.00 a.m., whilst patrolling, he heard gunshots coming from Sainte Famille. At around 6.00 a.m., he and three other gendarmes went to the site. He stayed for about one and a half hours, and saw 15 to 20 corpses and many wounded people there. They were told by residents that RPF troops had arrived, shot the inhabitants of the area and abducted some

⁷⁰⁴ T. 6 September 2007 pp. 9-10, 15.

⁷⁰⁵ T. 4 June 2007 pp. 3-4, 21-23, 37, 68-69; Defence Exhibit 51 (personal identification sheet).

⁷⁰⁶ T. 4 June 2007 pp. 21-25, 70. *Id.* pp. 79-80 (French) makes it clear that it was Munyeshyaka who was interviewed.

⁷⁰⁷ *Id.* pp. 3-8, 18, 21-25, 34-36, 40, 50, 61, 65, 68-70.

persons. Many of the dead had already been buried by their relatives. The witness formed the view that grenades had been used. He did not see Renzaho there that morning.⁷⁰⁸

642. The witness departed around 7.30 a.m., leaving one of his colleagues there.⁷⁰⁹ He did not return to Sainte Famille on that occasion, but sent other gendarmes to the church between 2.00 and 6.00 p.m. to assess the situation. Most refugees had left. None of the gendarmes informed him that Renzaho had gone to Sainte Famille that day, nor did the witness hear of an attack taking place there later that day.⁷¹⁰

643. In the following days, the witness continued to patrol the area around the church. He would circulate between 6.00 and 10.00 a.m., and he sent other gendarmes there from 2.00 to 5.00 or 6.00 p.m. He did not see Renzaho at all between 7 April and early July. If one of his gendarmes had seen Renzaho, he would have been told. He acknowledged, however, that if the prefect had ever needed the gendarmerie, it was his superiors and not him who would have been contacted. The witness did not know about gendarmes who were sent to the Sainte Famille church a few days before 14 June 1994 and insisted he would have known if this occurred.⁷¹¹

11.3 Deliberations

644. From April 1994, many persons sought refuge at the Sainte Famille church in the Kigali-Ville prefecture. The number increased gradually and was more than 1,000 in mid-June. On 17 June 1994, *Interahamwe* attacked the site. A large number of persons were killed.⁷¹² The evidence shows that the attack was carried out in retaliation for an evacuation by the RPF of some Tutsis at the Saint Paul the previous day, during which some Hutus were killed.⁷¹³

645. It is clear that that the attack primarily targeted Tutsis. Witness BUO, an *Interahamwe*, testified that they had been instructed to find the *Inyenzi* and their "accomplices", which meant the Tutsis. Witness HAD stated that an *Interahamwe* shot at a statue of the Virgin Mary, saying that she was a Tutsi. She also overheard a remark made by an arriving policeman to the effect that it was not possible to kill all the Tutsis. According to Witness AWO, young men were particularly targeted to prevent them from going to RPF-

⁷⁰⁸ T. 5 June 2007 pp. 61, 66-67; T. 6 June 2007 pp. 1-6, 11-12 Defence Exhibit 59 (personal identification sheet).

⁷⁰⁹ In both the English and the French version Witness RCB-2 refers to leaving "gendarmes" rather than a single one, but the context makes it clear that he meant one gendarme. T. 6 June 2007 p. 4 (English); *Id.* p. 8 (French).

⁷¹⁰ *Id.* pp. 3-4, 11-12.

⁷¹¹ *Id.* pp. 4-5, 11.

⁷¹² Witness Corinne Dufka estimated that over 900 persons had sought refuge at Sainte Famille in mid-May, whereas Witness TOA indicated 1,000 by the end of April, and 4,000 in June 1994. Witness PER's estimate of 18,000 refugees appears exaggerated. After the attack, Witness AWO observed over 100 dead and said that many more were killed behind the church. Witnesses ACK, HAD, ATQ and BUO all testified that there were many victims. The evidence suggests that the number of victims may be counted in hundreds.

⁷¹³ Witness BUO, who was one of the attackers, confirmed this motive, as well as four of the refugees: Witness AWX (the *Interahamwe* were angry because of the RPF evacuation of refugees from Saint Paul the night before); Witness ACK (Munyeshyaka said that the attack was a consequence of the RPF taking away Tutsis whereas Hutus had died); Witness HAD (heard the attackers claiming revenge on 17 June because Tutsis had killed Hutus); and Witness AWO (the young men at Sainte Famille were particularly targeted to prevent them from going to RPF-controlled areas). Renzaho confirmed that the RPF operation occurred at Saint Paul before the 17 June attack against Sainte Famille.

controlled areas. The attack's character as a form of revenge after the RPF operation the previous day also indicates that the assailants were targeting Tutsis.

646. The main question is whether Renzaho was involved in the attack. Renzaho denied this, explaining that he only visited Sainte Famille with UNAMIR and Red Cross representatives on 16 June. Six Prosecution witnesses testified that they saw him at Sainte Famille on 17 June.⁷¹⁴ Their observations were purportedly made before the attack, as well as towards its end or afterwards.

647. Three of the witnesses stated that they saw Renzaho before the attack commenced. Witness AWO said she observed him arrive around 11.00 a.m., and that subsequently, at a place overlooking the church, he instructed the *Interahamwe* to kill "many people".⁷¹⁵ Witness ATQ first saw him at the church with Father Munyeshyaka at around 9.00 or 10.00 a.m., and indicated that Renzaho left five minutes before the attack commenced. Witness HAD noticed him before noon, walking with Munyeshyaka, who held a list in his hand. She only saw him once that day but said that he ordered "his dogs" to commit the attack. In the Chamber's view, it does not affect the credibility of these witnesses that they provided different times for their observations of Renzaho and as to when the attack commenced. They gave estimates, saw him at different moments as the traumatic event unfolded, and several years have passed since June 1994. Viewed in context, the three testimonies show that Renzaho was at Sainte Famille some time before noon.

648. Witness BUO stated that an attack against both Saint Paul and Sainte Famille began around 7.00 a.m. This is much earlier than the indications given by Witnesses AWC, ATQ and HAD. However, it is undisputed that the two sites were very close, and Witness BUO testified that the attackers, including him, went to Saint Paul before proceeding to Sainte Famille. In the Chamber's view, his account does not discredit those of the three refugees. Moreover, while the Chamber has rejected aspects of Witness BUO's testimony as it relates to the attack on Saint Paul on 17 June and, in particular, Renzaho's presence and involvement in it (II.9), his corroborated evidence of Renzaho's presence at Saint Famille on 17 June lends credence to his testimony in the present context.

649. Turning to observations made around the end or after the attack, Witness AWO testified that Renzaho ordered the assailants to stop killing by saying, "We have killed all the *Inyenzi*". He also told the female refugees to applaud after the attack, which they did. Witness ACK said that she saw Renzaho while killings were still going on. He was standing near the water tank at the entrance to the church, surrounded by *Interahamwe*. The attack subsequently stopped after a whistle was blown. According to Witness HAD, the event ended when the assailants shot in the air. Witness ATQ saw Renzaho again towards the end of the attack, at around noon or 1.00 p.m., instructing the attackers to halt the operation. Like Witness HAD, she said that the attack stopped when an *Interahamwe* shot in the air. She also corroborated Witness AWO's testimony that the survivors were made to applaud. Witness BUO saw Renzaho immediately after the attack, looking at the corpses and speaking with Munyeshyaka.

⁷¹⁴ Witness ACK testified that she saw Renzaho on 18 June 1994 but it is clear from the context that she was mistaken about the date and meant the preceding day.

⁷¹⁵ T. 7 February 2007 p. 13 ("Renzaho was in a place that was overlooking the area, and he was telling the *Interahamwe* to kill – to kill many people. And he would tell us, the [women], to applaud.").

650. These accounts concerning the cessation of the attack are generally consistent. For instance, the fact that two witnesses said that a gunshot was the sign to stop the attack does not exclude that another witness instead remembered a whistle being blown. In this connection, the Chamber points out that guns had been fired during the attack and that a shot at the end would not necessarily be noticed as being a signal. Similarly, Witness HAD's account that the attackers heard that UNAMIR troops were about to arrive and therefore ended the operation is compatible with the evidence that Renzaho gave an order to stop the killing. Different vantage points may explain varying observations.

651. There is also evidence that Renzaho was involved in removing the bodies of the victims. Witness AWX testified that Renzaho was present when dead bodies were carried in wheelbarrows, saying that the corpses had to be buried immediately so the white people would not see them. Witness ATQ testified that she saw Renzaho at the church the day after 17 June at about 5.00 or 6.00 p.m. After he left, young men moved the bodies to the *procure*. Witness BUO observed Renzaho after the killings had stopped when "the bodies were still strewn all over the place". The *Interahamwe* brought out three bodies in front of Renzaho, and he said nothing. He provided vehicles to carry the dead bodies. Witness AWO testified that Munyeshyaka promised that Renzaho would reward those who carried away bodies. The many bodies remained there for a number of days.

652. The Chamber finds that the testimonies of the Prosecution witnesses appeared generally coherent and consistent. They were also mostly in conformity with previous statements the witnesses had given to Tribunal investigators. Some credibility issues require further comments. First, the Chamber recalls that Witness BUO was incarcerated for his role in the genocide, and that his evidence should be considered with caution. However, his testimony about the attack against Sainte Famille on 17 June and Renzaho's presence there appears reliable and is corroborated by other witnesses.⁷¹⁶ Second, the Chamber accepts Witness ACK's explanation why she did not mention Renzaho's presence at Sainte Famille when she testified in national judicial proceedings concerning Munyeshyaka in February 1996.⁷¹⁷ Third, it does not affect Witness HAD's credibility whether she went to Sainte Famille with family members or found them there once she arrived.⁷¹⁸

653. The Chamber will also address some specific points relating to two other witnesses. Witness AWX did not observe the attack at Sainte Famille but was in a house not far away,

⁷¹⁶ Witness BUO stated that he joined the *Interahamwe* in April 1994. His elder brother, who had previously worked with Angeline Mukandutiye, was killed and the witness could not say no when she asked him to join them. T. 25 January 2007 pp. 52-53. However, he later testified that his older brother left Rwanda in April. It was his younger brother who was killed, and this happened in May. When confronted with this inconsistency, the witness explained that he may not have expressed himself correctly or was misunderstood. T. 26 January 2007 pp. 36-38. In the Chamber's view, this contradiction does not discredit his testimony about Renzaho.

⁷¹⁷ Defence Exhibit 41 (*procès-verbal d'audition de partie civile*, dated 14 February 1996). When confronted with the lack of reference to Renzaho in her previous statement, Witness ACK explained: "In this document I was talking about Munyeshyaka. Therefore I did not have to talk about Renzaho, given that I did not know where he was." T. 6 March 2007 pp. 63-64. The Chamber notes that the particular portion of her statement concerning 17 June 1994 clearly focuses on Munyeshyaka's role in connection with a specific killing and accepts her explanation why no mention was made of Renzaho.

⁷¹⁸ Witness HAD testified that she found her family members at Sainte Famille when she sought refuge there, whereas Defence Exhibit 25 (statement to investigators of 9 December 2000) indicates that she arrived with her aunt and cousins. T. 1 February 2007 pp. 33-34. The witness said there might have been a communication problem with the person who took down her statement because they were speaking different languages. The Chamber accepts her explanation.

where she was being raped. She observed Renzaho talking about the need to bury dead bodies on the same day as she saw the corpse of her sister in a wheelbarrow. According to her testimony, this happened around 18 June. In her written statement of February 2005, she indicated that she saw her sister's body two days after 25 June. The Chamber accepts that she had problems recalling dates, in particular in view of her traumatic situation.⁷¹⁹ The statement does not mention Renzaho's name when describing this incident. The witness said that she had given his name to the investigators. In the Chamber's view, this discrepancy does not affect her credibility.⁷²⁰

654. Witness ATQ initially testified that she saw Renzaho at Sainte Famille on two occasions. When the Defence put to her that, according to her statement of August 2000, she had seen him three times over three days, she denied this. She then said that she saw him four times over three different dates at Sainte Famille. The witness further stated that she believed it was in June that she saw him as he passed by on his way to Saint Paul, and then on two other occasions at Sainte Famille, making a total of three times. The Chamber considers this confusion to come from lack of communication and does not hold it against her.⁷²¹

655. Having considered the Prosecution evidence, the Chamber now turns to the Defence witnesses, who all testified that they did not see Renzaho during the attack on 17 June. The Chamber finds that their accounts carry limited weight. Witness PER stated that he was hiding in the presbytery during the entire attack, which explains why he could not see Renzaho.⁷²² He did not see Odette Nyirabagenzi or Angeline Mukandutiye either, who according to several other witnesses were present. Furthermore, unlike the other eyewitnesses, he said that the attack lasted from 9.00 a.m. to around 10.00 a.m., and that Munyeshyaka managed to repel the attackers by calling soldiers. The Chamber recalls that the witness had cooperated closely with him.

656. Witness TOA was hiding inside the church during the attack. He was therefore unable to see what was happening outside, and the Chamber finds his evidence to be of limited value. Witness BDC was not present at the Sainte Famille church on 17 June. Although his medical team was there, the chaotic nature and large-scale of the attack suggests that they may have been unable to observe and report on all aspects of it, including Renzaho's involvement. In particular, they were treating the injured inside the church, and may not have had been able to see all of what occurred outside. Consequently, this testimony also carries limited weight.⁷²³

657. Witness RCB-2 was not at Sainte Famille on 17 June but purportedly heard gunshots from the site at about 4.00 or 5.00 a.m. and saw corpses when he arrived there at 6.00 a.m.,

⁷¹⁹ Witness ATQ explained that given the circumstances, she did not recall the precise date but was sure about the month. It was toward the middle rather than the end of June, as it occurred more than 10 days before the *Inkotanyi* captured Kigali and her return home. T. 6 February 2007 pp. 35, 37 ("You know under such circumstances, it is not easy to remember the dates. We did not write down the dates while we were being threatened with death."), 38; Defence Exhibit 30 (statement of 10 February 2005).

⁷²⁰ T. 6 February 2007 pp. 40-41; Defence Exhibit 30 (statement of 10 February 2005). In the statement, the observation of the sister's body in the wheelbarrow is mentioned very briefly. Renzaho's names appears before and after this event, and it is clear that she saw him several times.

⁷²¹ T. 31 January 2007 p. 68; T. 1 February 2007 pp. 4-7; Defence Exhibit 24 (statement of 9 December 2000).

⁷²² T. 23 August 2007 p. 55 ("Q. So from the time the militia arrived until the end of the attack, you were in the presbytery; is that what we're to understand? A. Yes, I was hidden in the presbytery.").

⁷²³ There are also other issues relating to Witness BDC's testimony. T. 4 June 2007 pp. 37-41. The Chamber does not find it necessary to address them here.

following the RPF attack. He only stayed for an hour and a half. No other witness observed Renzaho there as early as 7.30 a.m. – this testimony therefore has limited significance. The witness seemed to dispute that the attack against Tutsis at Saint Famille took place.⁷²⁴ He even claimed not to have seen a single roadblock from April to July 1994. These are, in the Chamber's view, extraordinary utterances, given the overwhelming evidence showing otherwise (above and II.2).⁷²⁵

658. Having assessed all the evidence and bearing in mind the weaknesses in the Defence testimonies, the Chamber finds that the Prosecution has established beyond reasonable doubt that Renzaho was present sometime before noon before the attack on 17 June 1994 against the Sainte Famille church. He directed the *Interahamwe* to kill "many persons" and later ordered them to stop the attack. He was also present when dead bodies were removed from the site.

659. The evidence that the *Interahamwe* were the attackers is overwhelming. Based on the accounts of Witnesses KZ, HAD, ATQ, Dufka, PER and TOA, the Chamber accepts that gendarmes were present at Sainte Famille but it has not been established that they participated in the attack there on 17 June. Furthermore, although Witness HAD referred to the arrival of a policeman who said that it was not possible to kill all the Tutsis, it does not follow that he, or the police more generally, were involved in the attack. Neither has it been proven that soldiers were amongst the attackers.⁷²⁶

660. The Chamber will now turn to the role of the other prominent individuals allegedly present during the attack. It accepts the first-hand testimonies of Witnesses AWO, HAD and BUO, who all stated that both Odette Nyirabagenzi and Angeline Mukandutiye were present at Sainte Famille on 17 June. Witness AWO testified that the two women arrived there at the same time as Renzaho. This particular observation was not corroborated. No specific evidence was presented that the two were present when Renzaho gave orders for the killings to commence or cease. However, Witness BUO listed them among the authorities who were present during the attack and provided a number of examples of cooperation between them and Renzaho (II.3, 6 and 9). More generally, he stated that he received instructions from Mukandutiye "during that period". However, the Chamber has consistently viewed his evidence regarding the actions of Nyirabagenzi and Mukandutiye and Renzaho's relations with them, cautiously. The Chamber finds that the two women were indeed present at the church on the day of the attack, and they were involved in the operation. This said, the extent of their cooperation with Renzaho and involvement in the attack remains unclear. In particular, it is not evident that they were there when Renzaho gave the orders to start or stop the attack, or that Renzaho had previously coordinated the attack with them.

⁷²⁴ T. 6 June 2007 p. 11 ("Q. So I'm talking of the period after you had left – after 7.30 in the morning, were you told of an attack by militia and gendarmes on Tutsi refugees in Sainte Famille? A. I was never given that information and such an attack never took place"). It is possible that Witness RCB-2, a gendarme, wanted to minimise any role gendarmes may have played.

⁷²⁵ Witness RCB-2 stated that he was patrolling the area around Sainte Famille in June 1994. He initially testified that he saw dead bodies, not only near roadblocks, but also elsewhere. He subsequently contradicted himself, stating that, from April to July 1994, he never saw any bodies near roadblocks, and indeed he never saw any roadblocks at all. T. 6 June 2007 pp. 6-10.

⁷²⁶ The Chamber notes that Witness ATQ stated that Renzaho arrived with other soldiers and a gendarme, and Witness TOA also testified that soldiers came to tell him that the attack was over.

661. Turning to Father Wenceslas Munyeshyaka, it is clear that he was the priest in charge of Sainte Famille from April to July during the events. As mentioned by Prosecution Witness KZ, he obtained three gendarmes to keep guard, cooperated with sub-prefect Simpunga to obtain food for the refugees and ensured acceptable living conditions.⁷²⁷ Defence Witnesses PER, ATO and BDC stressed these humanitarian aspects of his work. Prosecution witnesses provided a different picture, indicating he was on good terms and cooperated with the *Interahamwe* (Witnesses ACK and BUO), was involved in the drawing up of a list (Witness HAD), from which names of targeted persons were subsequently read out (Witnesses AWX and HAD) and played a certain role in connection with the removal of bodies (Witnesses AWO, ATQ and BUO). He was also seen in the company of Renzaho on 17 June (Witness ATQ) as well as Angeline Mukandutiye and Odette Nyarabagenzi (Witnesses ACK and BUO).

662. The testimonies do not allow the Chamber to make a finding about his exact role during the attack. It notes, however, that based on the evidence in the present case, there is evidence that Munyeshyaka was present at Sainte Famille during the attack and provided some assistance.⁷²⁸

663. In conclusion, the Chamber finds that *Interahamwe* attacked the Sainte Famille compound on 17 June 1994, starting some time before noon. Renzaho was present and ordered the *Interahamwe* to attack, and later, to stop the killings. The *Interahamwe* attackers obeyed his instructions. Several hundred Tutsi refugees were killed. The attack was conducted in revenge for the RPF operation the night before, in which a number of refugees were evacuated. Finally, the Chamber has no doubt that at least 17 Tutsi men were among those killed. That such individuals would be targeted is consistent with the fact that the attack was in retaliation to the RPF operation the preceding night. Furthermore, Witness ATQ noted that most of the survivors were women and children. Both she and Witness AWO testified that Renzaho told the survivors to clap when the attack had ended. It is telling that Witness AWO stated that this request was directed specifically to female survivors. The Chamber's finding is strengthened by the fact that during the attack on CELA on 22 April 1994, young men were singled out, taken away and killed (II.6).

⁷²⁷ Prosecution Witness KZ, who stayed at Saint Paul Pastoral Centre, described Father Munyeshyaka's functions in these terms but did not want to testify about his other actions, which he had not observed. The provision of gendarmes and food was also mentioned by Witness TOA.

⁷²⁸ Father Munyeshyaka's working relationship with *Interahamwe* is also reflected in Corinne Dufka's evidence concerning roadblocks (II.2).

12. HOTEL KIYOVU, MID-JUNE 1994

5506

12.1 Introduction

664. The Prosecution alleges that in June 1994, Renzaho, together with Colonel Ephrem Setako and Colonel Bagosora, attended an impromptu meeting at a roadblock near Hotel Kiyovu in Kigali. They instructed those present to kill all Tutsis. A number of Tutsis were killed or detained in Renzaho's presence. Reference is made to Witness SAF.⁷²⁹

665. The Defence submits that the Prosecution evidence is uncorroborated and unreliable. Renzaho was in Cyangugu on the relevant dates and is accused of participating in crimes in other locations on 14, 16 and 17 June 1994.⁷³⁰

12.2 Evidence

Prosecution Witness SAF

666. After the President's death, Witness SAF, a Tutsi, found refuge at Hotel Kiyovu in Kigali. He hid among the plants in the compound. There was a roadblock near the hotel. The witness could not see it from his hiding place, but during the night he heard the *Interahamwe* talking at the roadblock.⁷³¹

667. In mid-June, the *conseiller* of Nyarugenge sector, Mbyariyehe, invited the public to a meeting in the compound of Hotel Kiyovu, saying that an official would talk to the population. Messengers informed the public of the meeting, stating that peace had been restored and no one would be attacked. The witness heard about the meeting from a messenger, who advised him to cover his face. Accordingly, he arrived at the meeting wearing the sleeve of a pullover stretched over his head with two holes cut for his eyes. As this was similar to the manner in which the *Interahamwe* dressed, the witness avoided being recognised as a Tutsi.⁷³²

668. The meeting was held between noon and 1.00 p.m. and only lasted for 20 or 25 minutes. It was short because bullets were fired nearby in Gikondo sector. The witness attended from the beginning until the end. *Conseiller* Mbyariyehe arrived first. Subsequently, Renzaho, Setako, Bagosora and Nsengiyumva came in two four-by-four military camouflage vehicles, accompanied by *Interahamwe* in other cars. Renzaho was wearing a military uniform.⁷³³

669. The *conseiller* announced that the gathering was a pacification meeting. He introduced Renzaho who would chair the meeting. The audience applauded. Renzaho took the floor and urged the Tutsis to emerge from their hiding places and said that "peace would henceforth reign". He then explained that the *Inyenzi* and the Tutsis were the enemy, and that Rwandans had to defend themselves against them. The *Interahamwe* surrounded the crowd and said that they wanted to prevent the *Inyenzi* from causing problems and infiltrating that place. Prior to this event, the witness had seen Renzaho once at the commune office near the

⁷²⁹ Indictment para. 19; Prosecution Closing Brief paras. 192-215; T. 14 February 2008 pp. 4-5.

⁷³⁰ Defence Closing Brief paras. 594-608; T. 14 February 2008 pp. 27-29.

⁷³¹ T. 24 January 2007 pp. 27-30, 49, 54-55; Prosecution Exhibit 71 (personal identification sheet).

⁷³² T. 24 January 2007 pp. 34-37, 56-58.

⁷³³ *Id.* pp. 33-34, 36-37, 40-41, 64.



Saint Michel cathedral, wearing civilian clothes. He also saw his picture regularly in the newspapers. The witness identified Renzaho in court.⁷³⁴

670. Bagosora and Setako spoke subsequently. Setako said that the enemy had attacked the country, and that it was necessary to be vigilant and work together to fight him. Nsengiyumva was introduced as a guest from Gisenyi. There were about 30 participants, excluding the *Interahamwe*. The witness stood at the rear, but at a short distance from the speakers. Most of the participants were Hutu. There were not many Tutsis left in the area, as they had been killed.⁷³⁵

671. During the meeting, Witness SAF saw four Tutsi men being dragged across the tarmac road separating the meeting from the office of the Rwandan Prosecutor. They were killed with nail-studded clubs and machetes about 20 metres from the meeting place. It was broad daylight, and there were no obstacles in the way. Renzaho, Bagosora, Setako and Nsengiyumva could clearly see the killings but did nothing to prevent them. Instead, they were laughing with the *Interahamwe* while watching the event. The killings were committed with the same kind of weapons that Renzaho had previously urged the population to obtain.⁷³⁶ Three or four Tutsis were abducted and taken to the Kigali-Ville prefecture office. They were never seen again, and it was believed that they had been killed. According to the witness, the victims were persons who had come out of hiding to participate at the pacification meeting.⁷³⁷

Renzaho

672. Renzaho testified that around 14 June 1994, the RPF was based on Mburabuturo hill, opposite and 700 metres from Hotel Kiyovu, pointing its weapons at the hotel. Therefore, he could not have gone to the hotel at the time. When giving evidence about his alleged involvement in an attack at the Saint Paul pastoral centre on the same day, Renzaho said that he was in Cyangugu visiting family on 14 June, and did not return to Kigali until the evening of 15 June.⁷³⁸

12.3 Deliberations

673. Only Witness SAF gave evidence about the meeting at the Hotel Kiyovu 1994, where Renzaho allegedly ordered the killing of Tutsis. In court he placed this event in mid-June.⁷³⁹ He said that it took place inside the hotel compound. This is not in conformity with his statement to Tribunal investigators in October 2002, which reflects that it was held at a roadblock directly outside the compound, between the hotel and the Rwandan Prosecutor's office. When this was put to him, the witness denied having told the investigators that the

⁷³⁴ *Id.* pp. 36-37, 40-42, 57, 65-66.

⁷³⁵ *Id.* pp. 37-38, 40, 57, 60.

⁷³⁶ *Id.* pp. 38-40. Renzaho's alleged statement about weapons seems to have been made on an unknown date before the meeting.

⁷³⁷ *Id.* pp. 37, 39-40, 64-65.

⁷³⁸ T. 29 August 2007 pp. 38-39, 41-42, 62.

⁷³⁹ In Defence Exhibit 13 (statement of 31 October 2002), Witness SAF had indicated that the meeting occurred in June, and this was also the time reference in the Indictment and the Pre-Trial Brief (para. 66). He explained that he had difficulties remembering dates in view of the prevailing situation in 1994. His reference to mid-June came after several questions seeking further precision (T. 24 January 2007 p. 56) and does not affect his credibility.

meeting had taken place there. He further insisted that he did not go to that roadblock at all because it was too dangerous.⁷⁴⁰ The Chamber realises that the two locations were close. This inconsistency is therefore not in itself significant. However, his explanation raises some concern. It is surprising that the investigators should make such a mistake, in particular in view of his insistence that he never went to the roadblock.

674. The Defence challenged Witness SAF's evidence that he was wearing a hood at the meeting. He testified that he did so in order to conceal his Tutsi features and that he was not conspicuous as some *Interahamwe* wore similar headgear.⁷⁴¹ The Chamber accepts his explanation in view of the unusual circumstances prevailing at the time. It is also conceivable that the witness was hiding in the hotel compound, as he described.⁷⁴²

675. The Defence disputed Witness SAF's connection with Hotel Kiyovu and pointed out that he did not know the names of the hotel manager or the supervisor, or the number of rooms. It is true that the witness had virtually no knowledge about these matters. However, he was a casual labourer, with no formal education, paid by the day, without a contract. He had only worked at the hotel for a few days before the shooting down of the President's plane.⁷⁴³ After 6 April, the place no longer functioned normally as a hotel.⁷⁴⁴ He further stated that he did not enter the hotel rooms and hence would not be in a position to know their number.⁷⁴⁵

676. According to the witness, Théoneste Bagosora, Ephrem Setako, Renzaho and Anatole Nsengiyumva were present. The last person is not included in his statement. The witness explained that either he forgot to mention Nsengiyumva's presence or the investigator did not write it down. Although the focus of the interview was on Setako, the Chamber considers it unlikely that the investigators would have omitted Nsengiyumva's name, had it been mentioned.⁷⁴⁶ It is possible that the witness forgot to mention him, but the Chamber notes that he did sign the statement.

677. The witness was confronted with the testimony of Witness DAS in the *Bagosora et al.* trial, who described a meeting in June in the courtyard of Hotel Kiyovu without mentioning Renzaho. Witness SAF insisted that Renzaho was there and that he saw him with his own

⁷⁴⁰ Defence Exhibit 13 (statement of 31 October 2002); T. 24 January 2007 pp. 51, 54-56.

⁷⁴¹ T. 24 January 2007 pp. 36-37, 58.

⁷⁴² The Defence submission that there were no bushes around the hotel – situated in the city centre – overlooks that Witness SAF was purportedly hiding among plants within the hotel compound, not rural bushes. T. 24 January 2007 p. 51 (“It is not really the bush. I was referring to the plants or the shrubbery that could be found around the hotel. You were saying that it was a wealthy neighbourhood. A neighbourhood for white people, and there were a lot of plants. I believe everyone is aware that there – there are a lot of plants in Kiyovu”).

⁷⁴³ T. 24 January 2007 pp. 27-28, 47-49.

⁷⁴⁴ *Id.* pp. 50-51.

⁷⁴⁵ *Id.* pp. 49-50. The Defence also argues (Closing Brief para. 608) that Witness SAF “was going to testify before the Gacaca courts about the crimes which took place in other areas, which suggests that he was not stuck in Hotel Kiyovu as he claimed”. The Chamber recalls that although it was very difficult to obtain clear answers about his involvement in the Gacaca proceedings, it finally emerged that he had testified about persons other than Renzaho in Gacaca proceedings at the public prosecutor's headquarters “next to the Nyarugenge central market”. However, this does not provide a sufficient basis to conclude that the witness observed events outside the hotel. T. 24 January 2007 pp. 44-47.

⁷⁴⁶ Defence Exhibit 13 (statement of 31 October 2002). Witness SAF stated that he might have forgotten to mention Anatole Nsengiyumva's name because he was a guest from elsewhere. He also pointed out that he was not given a copy of his statement, which would have made it possible to contact the investigators to have that name included. T. 24 January 2007 p. 59.

eyes.⁷⁴⁷ The Chamber observes that Witness DAS placed the meeting in late June, not in mid-June as argued by the Defence. His description of the meeting also differs in other respects from Witness SAF's account.⁷⁴⁸ The question arises whether the two witnesses described the same meeting.⁷⁴⁹ The Chamber also finds it noteworthy that according to Witness DAS, none of the four meetings in the Hotel Kiyovu area included Renzaho, whereas Bagosora, Nsengiyumva and Setako were present.⁷⁵⁰

678. The Defence also referred to Bagosora's passport, which contains an entry stamp to the Seychelles, dated 4 June, and an exit stamp on 19 June 1994.⁷⁵¹ It is argued that this shows that Bagosora, who allegedly accompanied Renzaho to the meeting in mid-June at Hotel Kiyovu, was not in Rwanda at the time. The Chamber is aware that it is not uncommon to travel without travel documents or using multiple passports. Consequently, a passport may not necessarily provide the complete picture of a person's travels. This said, the document, which appears genuine, does contain stamps indicating that Bagosora could not have been in Kigali around mid-June, which was the witness's best estimate. Even though the Defence chose not to call Bagosora as a witness, the Chamber attaches some weight to this submission.⁷⁵²

679. The Chamber is not convinced by Renzaho's testimony that there could not have been a meeting at Hotel Kiyovu around 14 June because the RPF was shooting at the hotel from the opposite Mburabuturo hill. Witness SAF explained that the exact location of the meeting was chosen so that the participants should not be hit by bullets. It was also kept short because

⁷⁴⁷ T. 24 January 2009 pp. 60-62; Defence Exhibit 12 (*Bagosora et al.* T. 5 November 2003; T. 6 November 2003; T. 7 November 2003).

⁷⁴⁸ Defence Exhibit 12 (*Bagosora et al.* T. 5 November 2003 pp. 48-52). For example, Witness DAS referred to a much larger audience during the meeting in late June (p. 50: "I think all the inhabitants of Kiyovu were there"); he said that the meeting started at 2.00 p.m., not at noon (p. 50); the *conseiller* talked about the need to stop the killings because "international organisations" did not like them (pp. 50-51); after he left, Bagosora disputed what the *conseiller* had just said; about 40 persons were taken to the prefecture office, and over 40 soldiers were present (pp. 51-52). The Chamber adds that there are also important differences between Witness SAF's evidence and Witness DAS's testimony about a meeting in mid-June (T. 5 November 2003 p. 48 and T. 6 November 2003 pp. 36-37). In particular, only Setako came out of the car, not Bagosora or Nsengiyumva. Witness DAS did not mention Renzaho in connection with that meeting.

⁷⁴⁹ In view of this conclusion, the Defence submissions that it suffered prejudice because the Prosecution allegedly violated its Rule 68 obligations will not be considered. See Defence Closing Brief paras. 243-244, 603-604; T. 14 February 2008 pp. 4-5 and 27-29 (closing arguments). See also T. 24 January 2007 pp. 23-25 and *Bagosora et al.*, Decision on Prosecution Motion to Disclose Transcripts from the *Bagosora et al.* Trial, 24 January 2007 (TC).

⁷⁵⁰ *Bagosora et al.* Trial Judgement paras. 1471-1474.

⁷⁵¹ T. 29 August 2007 p. 64; Defence Exhibit 106 (Bagosora's passport), p. 11 (which contains pages 18 and 19 of the passport). The document was tendered during Renzaho's testimony. The Prosecution objected, arguing that the Defence should have called Bagosora as a witness. The Chamber eventually admitted the passport and observed that the parties' submissions would be considered in connection with its deliberations on the weight to be accorded to it. T. 29 August 2007 pp. 62-64.

⁷⁵² In the *Bagosora et al.* case, the Chamber accepted Bagosora's alibi that he was in the Seychelles from 4 to 19 June 1994 (*Bagosora et al.* Trial Judgement paras. 1963-1966), finding that the prosecution had not eliminated the reasonable possibility that he was there.

of the gunshots.⁷⁵³ Furthermore, Renzaho's assertion that he could not have attended the meeting because he was elsewhere, is not persuasive.⁷⁵⁴

680. Although the Chamber is unconvinced by Renzaho's account of why he could not have attended the meeting, certain elements in Witness SAF's testimony raise questions, and his testimony is uncorroborated. Having assessed the totality of the evidence, the Chamber does not find it established beyond reasonable doubt that Renzaho attended a meeting at a roadblock near Hotel Kiyovu in Kigali, instructing those present to kill Tutsis. In view of this finding, the Chamber does not find it necessary to consider the Defence submission about lack of notice.

⁷⁵³ T. 24 January 2007 pp. 33-34, 57, 60, 63-64.

⁷⁵⁴ Renzaho's testimony that he was in Cyangugu on 14 June 1994 does not prevent him from having attended the meeting at the Hotel Kiyovu. Nor is the Prosecution case contradictory in placing him there as well as at Saint Paul on 14 June and at Sainte Famille on 17 June 1994.

13. RAPE AND SEXUAL VIOLENCE, APRIL-JULY 1994

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13.1 Introduction

681. The Prosecution alleges that, between 6 April and 17 July 1994, Tutsi women and girls were raped throughout Kigali-Ville by persons under Renzaho's control, including members of the Rwandan army and the civil defence force, *Interahamwe*, civilian militias, urban police and administrative officials. Between April and June, Father Wenceslas Munyeshyaka and *Interahamwe* forced Tutsi women and girls to provide sexual favours in exchange for their safety at Sainte Famille. This was also done by *Interahamwe*, soldiers and armed civilians, who kept the women at houses in central Kigali. Renzaho knew or had reason to know that crimes were being committed but failed to prevent them or refused to punish the perpetrators. Reference is made to Witnesses AWO, AWN, KBZ, AWX, HAD, AWE, UB and KZ.⁷⁵⁵

682. The Defence submits that the allegations are vague. Renzaho was not aware of such rapes and did not exercise authority over the alleged perpetrators of these crimes. It relies on the testimony of its Witnesses HIN, PER, BDC, TOA, UT and AIA as well as Prosecution Witness KZ.⁷⁵⁶

13.2 Evidence

Prosecution Witness AWO

683. Witness AWO, a Tutsi, was living in Kigali and married with five children. About a day or more after the President's plane crash on 6 April 1994, she sought refuge at an orphanage run by the Sisters of Saint Teresa of Calcutta. One morning, around four days after her arrival, Renzaho came with *Interahamwe* wearing military uniforms and carrying firearms. The refugees were separated into groups of men, women and children. The prefect advised the refugees that peace had been restored and asked them to leave the orphanage because it was overcrowded. He told the assailants not to kill the girls and young women because they would be "food items". The young men were loaded onto a vehicle and taken away. The witness testified that as she was leaving the orphanage and from her home nearby, she observed bodies strewn about the orphanage and that a child named Ndoli had been killed.⁷⁵⁷

684. The witness returned to her home. It had been destroyed, but she was forced to remain there as roadblocks prevented Tutsis from moving about. For a period of seven to eight

⁷⁵⁵ Indictment paras. 41-43, 52-55, 61-65; Prosecution Closing Brief paras. 303, 314-315, 351-359, 360, 370-379, 430-451, 490-495; T. 14 February 2008 pp. 20-22; T. 15 February 2008 pp. 9-12.

⁷⁵⁶ Defence Closing Brief paras. 56, 689-700, 933-960, 1135-1152, 1224-1231, 1232-1252; Defence Exhibit 113 (*complément écrit aux arguments oraux de la défense*) paras. 957.1, 960.1-960.4; T. 14 February 2008 pp. 67-69.

⁷⁵⁷ T. 7 February 2007 pp. 3-10, 16-17, 20, 25; Prosecution Exhibit 91 (personal identification sheet). The attack on the Sisters of Saint Teresa of Calcutta orphanage is not pleaded in the Indictment and was not addressed by the Prosecution in its Closing Brief or during oral submissions. The Chamber considers this evidence only insofar as it provides context for allegations pleaded in the Indictment. See *The Prosecutor v. Arsène Shalom Ntahobali and Pauline Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, para. 15.

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weeks, *Interahamwe*, policemen and soldiers “who lived at Nyirabagenzi’s house” raped her on a daily basis. She testified that she became a “wife” of the *Interahamwe* and believed she was targeted because she was Tutsi. Her attackers often said that they should go and “taste what a Tutsi woman tastes like”.⁷⁵⁸

685. During this period, *Interahamwe* forced the witness to attend meetings that occurred about every three days and were presented as pacification efforts.⁷⁵⁹ They took place at or near *Conseiller* Odette Nyirabagenzi’s house. Renzaho attended a meeting on the road uphill from that house. The only time estimate the witness could provide was that it was after she had returned to her home (“later”). During the meeting, Nyirabagenzi accused her of being an *Inkotanyi*. The prefect intervened and said that the witness should not be killed because she was a woman and was “food for the militiamen”. She was allowed to return to the ruins of her home and continued to be raped there until she fled to Sainte Famille, some seven or eight weeks after her return from the orphanage.⁷⁶⁰

686. The witness was found by nuns, who treated her and took her to Sainte Famille. She was not raped whilst there and explained that no one would come near her because she was badly wounded and covered in flies. Since the events, she has suffered from serious health problems.⁷⁶¹

Prosecution Witness AWN

687. Witness AWN, a 14 year old Tutsi girl, sought refuge at the house of *Conseiller* Odette Nyirabagenzi from 19 April to mid-May 1994 while pretending to be a Hutu. The witness suspected that Nyirabagenzi knew that she was a Tutsi and eventually forced her to leave. After this, the *conseiller*’s brother Munanira took her to his house and tried to rape her. She fended him off with an excuse and persuaded him to return at a later date. He then took her home where she was reunited with her sister. An *Interahamwe* named Matata, who was a family friend, promised to protect her.⁷⁶²

688. About a week later, Matata thwarted Munanira’s initial attempt to abduct the witness. However, a short time later, Nyirabagenzi and Munanira returned to her home, accompanied by policemen and *Interahamwe*. Nyirabagenzi ordered Matata to send the “Tutsi girl” to the sector office. A crowd, including *Interahamwe*, had gathered there. When she arrived with Matata, Munanira and a *responsable de cellule* named Narcisse were also present. Renzaho, wearing military attire, arrived in a camouflage vehicle accompanied by other persons in military uniforms and with firearms. He asked what had happened, and the witness responded that she had refused to “marry” someone. Renzaho replied that it was “time to show Tutsi women, and that the Hutus are strong and can do whatever they wanted to do with them”. He then spoke with Nyirabagenzi and left the sector office. Subsequently, Nyirabagenzi told

⁷⁵⁸ T. 7 February 2007 pp. 6-10, 11 (quoted), 18-19, 22 (quoted).

⁷⁵⁹ Witness AWO testified that the prefect of Kigali-Ville started “organising meetings” on a virtually daily basis, after the attack on the orphanage. *Id.* pp. 6, 18. However, she only saw him at one of those meetings. *Id.* pp. 7, 20, 26.

⁷⁶⁰ *Id.* pp. 6-11, 19-22, 26.

⁷⁶¹ *Id.* pp. 12, 14, 23-25.

⁷⁶² T. 5 February 2007 pp. 30-36, 46; Prosecution Exhibit 84 (personal identification sheet).

Munanira that “she was going to do her best to ensure that this Tutsi girl begs him” to have sex with her. Nyirabagenzi then spoke to Matata and departed.⁷⁶³

689. A few days to two weeks later, Munanira came to the witness’s home, accompanied by *Interahamwe*. They took her and her elder sister to their headquarters close to the SEFA office, near the Hotel Pan Africa. Munanira raped the witness and told the others with him, that they could also “have a taste of a Tutsi woman”. Sese Seko, Bikomago and Gisenyi were among the *Interahamwe* who raped her. At the same time and in the same room, her sister was raped. They were allowed to return home after “some” days. Two or three days later, the witness, her sister and their Tutsi neighbour were taken back to the headquarters and confined there for about three or four weeks, during which time they continued to be raped. Toward the end of June, the girls were transferred by their assailants to Sainte Famille as the headquarters was continuously shelled. They were not raped there, but the witness saw two refugees called Hyacinthe Rwanga and Nyiratunga being led away by Father Wenceslas Munyeshyaka and heard that he had raped them.⁷⁶⁴

Prosecution Witness KBZ

690. On 28 May 1994, Witness KBZ, a Tutsi, fled from Kicukiro to Kimihurura sector with about 50 other refugees. They were stopped at a roadblock. She and about four other Tutsi women who did not have identity cards were separated and taken to outside the home of the Kimihurura *conseiller*. The assailants entered the house and then returned, saying that the *conseiller* had instructed them to ask the prefect what to do with the women.⁷⁶⁵

691. The Tutsi women were placed in an abandoned house in Kimihurura sector that had belonged to a man named Jean-Michel. The next day, the *Interahamwe* informed the witness that the prefect had said that the women should not be killed until after the burial of President Habyarimana. The reason was that the killings were being criticised on the radio. Subsequently, an *Interahamwe* named Jérôme Rwemarika took her to his home and raped her. She returned to the abandoned house. While there, the other women were taken away repeatedly. The witness believed they were raped although they did not talk about it. In early July, she fled to Sainte Famille. Two *Interahamwe* raped her behind the church after she was unable to produce an identification card upon her arrival. No one intervened.⁷⁶⁶

Prosecution Witness AWX

692. Witness AWX, a Tutsi, fled her family home on 10 or 11 April 1994 and sought refuge at Sainte Famille until the end of the war. Around 24 May, while on her way to collect water near the entrance of the Sainte Famille compound, she saw Renzaho arrive at about 2.00 p.m. in a Hilux-type vehicle with armed soldiers on board. She was about 10 paces from

⁷⁶³ T. 5 February 2007 pp. 35-36, 37 (quoted), 38 (quoted), 43-45, 47-48.

⁷⁶⁴ *Id.* pp. 39-42, 46-48. Witness AWN knew that “SEFA” was an acronym but could not identify it. *Id.* p. 39.

⁷⁶⁵ T. 6 February 2007 pp. 48-51, 53, 57; Prosecution Exhibit 90 (personal identification sheet). Witness KBZ testified that she was not aware of whether those at the roadblocks were soldiers or *Interahamwe* but referred to them as *Interahamwe* throughout her testimony. T. 6 February 2007 pp. 48 (“I wouldn’t know whether they were soldiers or *Interahamwe*”), 51-52 (referring to the persons who arrested the group as *Interahamwe*), 52 (identifying those who committed rape as *Interahamwe*), 52-53 (her rapists were *Interahamwe*).

⁷⁶⁶ T. 6 February 2007 pp. 52-58. According to Witness KBZ, Habyarimana had not been buried by the end of May 1994. *Id.* pp. 52-53.

the prefect and heard him tell them to get down and do their "job". The soldiers immediately entered the church. Father Wenceslas Munyeshyaka called the names of Tutsi refugees, using identity cards that he collected from them. He said Renzaho had ordered that all persons whose names were read out should come forward. The witness believed Munyeshyaka was aware of what was to happen as he told the refugees that their "time has come" and "you have to pray". The selected refugees were separated into groups of men and women.⁷⁶⁷

693. Around 5.00 p.m., two soldiers, who had arrived with Renzaho, led the witness, her sister and her cousin away. They were brought to a housing complex in Kiyovu about five minutes' walking distance from Sainte Famille. For two days, a soldier locked the witness within a room where she was raped twice. She heard that he was a member of the Presidential Guard, posted at the residence of Major General Nsabimana. After the second day, the soldier returned her to Sainte Famille, where she was reunited with her sister and cousin. Her sister had been taken by another soldier elsewhere. The witness's sister and cousin were also raped.⁷⁶⁸

694. Around 15 June, the witness and her sister and cousin were abducted by the same soldiers. The witness was brought back to the same house and confined in a room where she was raped for two days. Her sister and cousin were held in different buildings. After two days, the witness returned to Sainte Famille with her cousin but not her sister. When she was fetching water at CELA two days afterwards, she saw her sister's body in a wheelbarrow. The witness heard from other women at Sainte Famille that they were subjected to sexual attacks, and was aware that some subsequently died.⁷⁶⁹

Prosecution Witness HAD

695. Witness HAD, a Tutsi secondary school pupil, went to Sainte Famille on 22 April and remained there until 19 or 20 June 1994. While there, Father Wenceslas Munyeshyaka had made sexual advances towards the witness's Tutsi friend, Hyacinthe Rwanga. One female refugee there had "almost become [Munyeshyaka's] sexual slave during that period", and the witness added that "he would abuse young girls". Without specifying when, the witness testified that *Interahamwe* entered Sainte Famille without difficulty and took girls and women away with them to be raped and executed. On returning to Sainte Famille, one of the females described having been abducted and taken to the Hotel Africa, where she was raped. Another woman, called Cimba, was abducted by an *Interahamwe*, and she ultimately died. Women who avoided rape were fortunate given its prevalence.⁷⁷⁰

⁷⁶⁷ *Id.* pp. 27-30, 34, (quoted), 35, 38 (quoted), 39, 43-44; Prosecution Exhibit 89 (personal identification sheet). Witness AWX testified that "other soldiers had taken the men away and they were killed, because we never saw them again" (p. 29) and that "some people were killed" when describing the process by which those present were separated into groups (p. 30). No further detail was provided.

⁷⁶⁸ T. 6 February 2007 pp. 29-31.

⁷⁶⁹ *Id.* pp. 31-34, 36-38, 42-45. Witness AWX's testimony relating to the event when she saw her sister's body is set forth elsewhere (II.11).

⁷⁷⁰ T. 1 February 2007 pp. 11, 21-24, 27 (quoted); Prosecution Exhibit 82 (personal identification sheet). The English version (p. 28) states "his (*sic*) name was Cimba", and the French version (p. 29) confirms that this was the name of the victim, not the perpetrator.

Prosecution Witness AWE

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696. Witness AWE was a Hutu local official in Kigali-Ville prefecture in April until July 1994. He reported four incidents of rape or sexual assault to *Bourgmestre* Jean Bizimana, providing a copy to Renzaho on each occasion. The witness never received any response from either the *bourgmestre* or the prefect to any of the reports.⁷⁷¹

Prosecution Witness UB

697. Witness UB, a Hutu local official in Kigali, participated in a meeting on 10 or 11 April 1994 that Renzaho convened at the prefecture office. The *conseillers* attending told the prefect that Tutsi wives and daughters were being raped.⁷⁷² In April, May and June 1994, he reported to *Bourgmestre* Jean Bizimana and the prefect on everything that happened in his sector, including the torture and rape of women. Some reports were made in writing, others on the telephone or in the prefect's presence. As head of the police unit, the prefect was in charge of arrests. During those three months, however, no one in the witness's sector was arrested "for even three hours" for those offences.⁷⁷³

Prosecution Witness KZ

698. Witness KZ, a Hutu, worked at Saint Paul pastoral centre in Kigali and was present from mid-April until 17 June 1994. He knew of no rapes committed there in 1994. The witness was unable to answer questions as to whether rape occurred at Sainte Famille because he was not present there.⁷⁷⁴

Renzaho

699. Renzaho testified that, in the period after 6 April 1994, rapes were being committed in neighbourhoods in Kigali by soldiers who had deserted or who could not return to their units due to the chaos reigning at the time. Renzaho disputed having been involved in the attack on the Sisters of Saint Teresa of Calcutta orphanage on 10, 11 or 12 April, suggesting that his presence there would have been impossible given his schedule. He also denied referring to Tutsi women as food. He never heard any complaint concerning rapes, whether committed at Sainte Famille or, more generally, in Kigali, and was not receiving regular reports of Tutsi women being raped. However, he conceded that on 21 April, he had a meeting with the *bourgmestres*, including the *bourgmestre* of Nyarugenge *commune* and possibly his

⁷⁷¹ T. 31 January 2007 pp. 11-12, 21-25, 44, 50-51; Prosecution Exhibit 80 (personal identification sheet). When testifying, Witness AWE had been detained and charged with genocide in Rwanda. T. 31 January 2007 pp. 11-12, 51-52, 54-56.

⁷⁷² Witness UB's testimony about this meeting is discussed in greater detail elsewhere (II.2).

⁷⁷³ T. 23 January 2007 pp. 1-2, 8-9, 12, 19 (quoted); Prosecution Exhibit 69 (personal identification sheet). At the time of his testimony, Witness UB was a detainee, awaiting the outcome of an appeal before the Rwandan Supreme Court. His conviction for genocide in 1997 had been confirmed by the court of appeals. T. 23 January 2007 pp. 1-2. He was cross-examined on the basis of a statement given to Tribunal investigators in September 2004, in which he said that on 7 April 1994, he went to a Catholic training centre for girls where Tutsi girls had been "manhandled and taken hostage by soldiers and *Interahamwe*", and that some were taken home and made "sex slaves". The witness affirmed his statement and said this incident was included in a report to Renzaho. T. 23 January 2007 pp. 59-60.

⁷⁷⁴ T. 25 January 2007 pp. 2, 10, 36, 45; Prosecution Exhibit 72 (personal identification sheet).

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conseillers, where he received some information about rape. He testified that he could not do anything, suggesting that he “would have preferred that individuals be brought to him so he could punish them”. Between April and July 1994, no one was brought before him on charges of rape.⁷⁷⁵

700. Renzaho acknowledged a broadcast of 10 May on Radio Rwanda, wherein he stated “we have decided to arrest all those who rape and want to commit criminal acts so as to punish them. For example, we punished about three people”. In relation to a Radio Rwanda broadcast on 24 April, Renzaho believed that his words, which he could not remember, to “chase ... away” those who came to rape women and children were aimed at neutralising people committing crimes within the population.⁷⁷⁶

Defence Witness HIN

701. Witness HIN, a Hutu, lived in Rugenge sector until 18 April 1994, not far from the home of the *conseiller* of that sector, Odette Nyirabagenzi. Neighbours near the convent of the Sisters of Calcutta told him that an attack took place there between 11 and 14 April 1994, in which *Interahamwe* abducted and killed 12 to 16 persons. The witness did not hear that Renzaho accompanied the attackers, who arrived in an apparently stolen Daihatsu pickup truck without a registration number. Someone of Renzaho’s stature would not have arrived in such a vehicle. From the beginning of the war, the prefect did not have good relations with the *Interahamwe* and could not have asked them to undertake such a mission. Members of the population in Rugenge knew Renzaho and would have mentioned it if he had been present that day.⁷⁷⁷

702. The witness denied allegations that Renzaho held a meeting with Nyirabagenzi between 10 and 14 April in the sector office or near her home. While the witness remained in Rugenge sector from 7 to 18 April, RPF troops had taken positions on Gisozi hill and at Kacyiru and were shelling the area. However, the witness did not visit Nyirabagenzi’s house during this period, and the sector was not shelled every day. He only recalled four houses that were hit by them and noted that Nyirabagenzi’s house was not destroyed. At the beginning of the war, the Rugenge market was open for about an hour a day, but this did not last after shells killed people there.⁷⁷⁸

⁷⁷⁵ T. 29 August 2007 pp. 32, 59; T. 3 September 2007 p. 19 (“Q: No one was arrested for rape under your watch as *préfet* of Kigali between April and July 1994, were they? A. Counsel, I regret to say that nobody was brought before me on charges of rape and then I let them free or tolerated them. The *préfet* is not able – is not a *conseiller*, is not a *chef de cellule*, he is not all of that. So I think we should face the reality of things.”).

⁷⁷⁶ T. 3 September 2007 pp. 3-4, 18-19; Prosecution Exhibit 56 (transcript of Radio Rwanda interview, 10 May 1994) p. 12; Prosecution Exhibit 54 (transcript of Radio Rwanda broadcast, 24 April 1994) p. 15 (“These people who come to rape children and women in the quarters must absolutely be thrown out. Chase them away. Besides, in times like these, do not bother yourself with too many questions. We are saying that you should shoot those who want to interfere with the security of the people. Anyone with a gun should shoot! That is it!”).

⁷⁷⁷ T. 9 July 2007 pp. 64-65, 71; T. 10 July 2007 pp. 1, 3, 12, 17-18, 26, 33, 37, 39; Defence Exhibit 73 (personal identification sheet). Witness HIN first stated that 16 persons had been abducted and then gave the number as 12. See T. 10 July 2007 pp. 3 and 17, respectively.

⁷⁷⁸ T. 9 July 2009 pp. 70-72; T. 10 July 2007 pp. 2, 12, 29-30, 35-36, 39.

Defence Witness PER

703. Witness PER, a Hutu, was at Saint Paul pastoral centre from 6 April to 18 June 1994, where he was a close associate of Father Wenceslas Munyeshyaka. The witness generally went to Sainte Famille around 10.00 or 11.00 a.m. and left at about 3.00 or 4.00 p.m. each day. He did not see or hear of rapes occurring there during this period. According to him, the physical layout of the premises and the condition of its refugees, who numbered more than 18,000 as of 10 April, rendered the commission of such acts implausible. During this period, he only saw Renzaho once, on 16 June, at Saint Paul.⁷⁷⁹

Defence Witness TOA

704. Witness TOA, a Tutsi, left his home on 10 April to seek refuge at Sainte Famille, where he stayed until 4 July 1994. Father Wenceslas Munyeshyaka provided food for the refugees, whereas the Red Cross took care of health issues. The witness did not see Renzaho or any prefecture authorities at the site, but he heard that the sub-prefect visited once, and that the prefect came on 16 June. He was unaware of rapes being perpetrated at Sainte Famille during this period and doubted that it was possible, given the unhygienic and overcrowded conditions prevailing at the time. Further, if rapes had been committed, the victims would have appealed to the ICRC which was present, or "UN journalists" who were there in May. Most of the time, the witness remained inside the church building and could not personally see what was happening outside it. In April, there were about 1,000 refugees within the church, and in June, about 4,000.⁷⁸⁰

Defence Witness UT

705. Witness UT, a Hutu, was a high-ranking government official at the Kigali-Ville prefecture and had daily contact with Renzaho from 11 April 1994 until the end of the events. He read in the press that rapes had occurred at Sainte Famille but never received any such complaints despite being in regular contact with refugees and organisations present there.⁷⁸¹

Defence Witness BDC

706. Witness BDC, a Hutu, worked for the ICRC operation in Kigali-Ville from 15 April 1994. He supervised the Sainte Famille site, where a permanent team of ICRC relief workers assisted from mid-May through July. The witness received daily reports and had no recollection of any cases of rape or sexual assault at Sainte Famille. No report indicated that Renzaho went to that site. He saw the prefect there only once, on 15 or 16 June.⁷⁸²

⁷⁷⁹ T. 23 August 2007 pp. 27-29, 31, 34, 44-45, 49-50, 57-58; Defence Exhibit 80 (personal identification sheet).

⁷⁸⁰ T. 6 September 2007 pp. 3, 5, 7, 10-11, 15-17; Defence Exhibit 111 (personal identification sheet).

⁷⁸¹ T. 24 May 2007 pp. 19-20, 22-23, 39, 43, 56; T. 25 May 2007 pp. 6, 13.

⁷⁸² T. 4 June 2007 pp. 3-4, 21-24, 35-37; Defence Exhibit 51 (personal identification sheet). Witness BDC did not wish to give his ethnicity but testified that he possessed an identity card with the letter "H" on it. T. 4 June 2007 pp. 12-13.

Defence Witness AIA

707. Witness AIA was a policeman in Kigali-Ville prefecture who assisted a *conseiller*. He arrived at his *conseiller*'s house in the morning of 7 April and did not leave his company until 4 July, working on a nearly 24-hour basis. After 8 April, *Interahamwe* and others, including policemen, raped Tutsis. The *conseiller* for whom he worked incited policemen to commit rapes and himself raped a woman who had sought refuge at a local government office. Perpetrators of rape in the sector openly reported on their acts to the *conseiller*, who always responded that Tutsi men should die and "the beautiful Tutsi women should marry other people". The witness was not aware whether the *conseiller* reported the rapes to the prefect.⁷⁸³

13.3 Deliberations

708. The Prosecution's case implicating Renzaho in sexual violence can be divided into four categories: support of rapes in Rugenge sector; responsibility for sexual violence at Sainte Famille; rapes in Kimihurura; and Renzaho's general knowledge of rapes. The Chamber will assess the evidence in turn.

13.3.1 Rugenge Sector

709. Two Tutsi refugees provided first-hand evidence that Renzaho encouraged rapes during meetings in Rugenge sector, attended by *Conseiller* Odette Nyirabagenzi and *Interahamwe*. Witness AWO testified that she was repeatedly raped in the ruins of her home after Renzaho's visit with *Interahamwe* to the Sisters of Saint Teresa of Calcutta orphanage around 10 or 11 April 1994, where he described Tutsi women as "food items".⁷⁸⁴ When the witness was subsequently identified as an "*Inkotanyi*" during the so-called pacification meeting near Nyirabagenzi's home, Renzaho stated that she should not be killed because she was a woman and was "food for the militiamen". Having been forced to attend that meeting by *Interahamwe*, the witness was returned to her house where *Interahamwe*, soldiers and policemen "who lived in Nyirabagenzi's house" continued to rape her until she fled to Sainte Famille, about seven or eight weeks after she left the orphanage for her home.

710. Similarly, Witness AWN was forced to go to the Rugenge sector office around the third or fourth week of May 1994. Among those present were Odette Nyirabagenzi, her brother called Munarira, and *Interahamwe*. When Renzaho, arriving with persons in military attire carrying firearms, heard that the witness had refused Munanira's advances, he said that it was "time to show Tutsi women that the Hutus are strong and can do whatever they wanted to do with them". After he left, Nyirabagenzi subsequently reinforced Renzaho's statement by promising Munanira that she would ensure that the witness would beg to have sex with him. The witness and her sister were then repeatedly raped by Munanira and other *Interahamwe* at their headquarters until they arrived at Sainte Famille three to four weeks later.

⁷⁸³ T. 2 July 2007 pp. 2, 6, 28, 29 (quoted), 31, 43, 50-51; T. 3 July 2007 pp. 14, 18; Defence Exhibit 66 (personal identification sheet). Witness AIA was questioned by Nyamirambo brigade about his actions during the events, and was locked up in a cell for a month while investigations took place. He was then released. *Id.* p. 46.

⁷⁸⁴ The Chamber relies on the French formulation where Witness AWO refers to staying in the "ruins" of her former house rather than "rooms" as in the English transcripts (T. 7 February 2007 pp. 7, 8, 19), as the French ("ruines") is more consistent with her description of the house having been destroyed.

711. Differences in the location, timing and substance of the meetings demonstrate that Witnesses AWO and AWN testified about distinct incidents wherein Renzaho encouraged the rape of Tutsi women. The Chamber assesses the merits of each testimony in sequence.

712. Witness AWO's account was, at times, confusing. Elements of her description of the attack on the orphanage were not coherent.⁷⁸⁵ She also testified that Renzaho organised meetings in Rugenge sector virtually daily, but her basis for saying so was not solid, as she only attended one.⁷⁸⁶ Furthermore, her evidence about when she was sexually assaulted and the sequence of events sometimes lacked clarity.⁷⁸⁷ However, to the extent the witness did not provide testimony in a cohesive, narrative form, this is reasonably explained by the passage of time and the extremely traumatic nature of the events. The witness was raped on a daily basis for nearly eight weeks by several different men, including *Interahamwe*, policemen and soldiers. Given her ethnicity and the prevalence of roadblocks, she was unable to flee. She therefore remained in the ruins of her former home, in an area where there was fighting. Towards the end of her stay there, the witness, who was eight months pregnant, asked one of her attackers to kill her but he refused. Instead he promised to arrange it so that no one else would rape her and stabbed her in the lower abdomen and ankle with a bayonet. As a result of this incident the witness's baby was stillborn. By then, she could no longer close her legs or stand on her feet. The witness still has health problems caused by the assault.⁷⁸⁸

713. Witness AWN stated that she was abducted and raped by Munanira a few days or possibly two weeks after she was forced to meet at the sector office.⁷⁸⁹ The Defence referred to her statement to Tribunal investigators in October 2004, which suggests that the assault took place "one month" after the meeting.⁷⁹⁰ The witness repeatedly explained that she could not remember the date with precision, as 10 years had elapsed between the incident and the time that she was interviewed.⁷⁹¹ The Chamber finds this explanation reasonable and notes that the statement suggests that she was taken away at the end of May. This is generally in conformity with her testimony, which places her abduction in the end of May or early June. Furthermore, and contrary to the Defence assertion, there is no inconsistency between the statement and her testimony as to whether Renzaho arrived at the Rugenge sector office

⁷⁸⁵ For example, when testifying about the raid on the orphanage, Witness AWO said that the *Interahamwe* "were raping us" and that the "young girls were spread all over". *Id.* p. 6. However, when viewed in the context of her entire testimony, it is not clear that she observed rapes of any women there, or that she was raped on that occasion. The evidence rather suggests that the witness was raped once she had returned to her home, and not necessarily by the *Interahamwe* who had arrived earlier with Renzaho at the orphanage. *Id.* pp. 6-8, 10-11, 16-20. This conclusion mirrors the Prosecution's own summary of her anticipated evidence in its Pre-Trial Brief pp. 64-65 (which only refers to rapes after the meeting at *Conseiller* Odette Nyirabagenzi's residence).

⁷⁸⁶ Compare T. 7 February 2007 pp. 6 (Renzaho was organising meetings "on a daily basis virtually"), 18 ("all the meetings"), 19 ("organising a meeting all the time"), 25-26 ("such meetings would take place approximately every three days") and *id.* pp. 7 ("I attended one of those meetings which was organised"), 18, 20 ("Q. Madam Witness, how many meetings did you attend in the presence of Mr. Renzaho? A. I saw him at the convent of the Sisters of Charity, and I saw him at Nyirabagenzi's place on the second occasion, and then I saw him at the Sainte Famille parish, so in all, three times."), 26 ("But, I saw Renzaho only on three occasions [...] But such meetings would be held frequently [...]").

⁷⁸⁷ For instance, *id.* pp. 6, 7-8, 11, 18.

⁷⁸⁸ *Id.* pp. 11, 14, 24.

⁷⁸⁹ T. 5 February 2007 pp. 39 ("when we got home, a few days later, Munanira came again."), 45-46 ("I would say it was a time span of about two weeks"), 46 ("I believe I left the *conseiller's* place in mid-May, and I think Munanira came to look for me at home, perhaps one week afterwards").

⁷⁹⁰ Defence Exhibit 26 (statement of 20 October 2004) p. 4.

⁷⁹¹ T. 5 February 2007 p. 46.

before or after her. The witness reaffirmed her testimony that he arrived later, and the statement does not say otherwise.⁷⁹² Finally, notwithstanding the traumatic nature of the events she described, her testimony appeared measured and unexaggerated. Her explanations for her observations were clear and logical.⁷⁹³

714. Defence Witness HIN suggested that, in view of the RPF shelling in the area, it would have been equivalent to killing people to organise a meeting in Rugenge sector between 7 and 18 April. However, he conceded that such shelling did not occur on a daily basis, that he only knew of four houses being hit, and that Nyirabagenzi's house remained standing at the time of his testimony.⁷⁹⁴ In the Chamber's view, his evidence does not cast doubt on Witnesses AWO and AWN's accounts that meetings indeed took place.

715. The testimonies of the two Prosecution witnesses contained similar elements, in particular that Tutsi women existed to feed or to be handled by Hutus at their discretion. They therefore provide a degree of mutual corroboration. Furthermore, the record as a whole contains circumstantial support for their evidence. In particular, their description of the authority exercised by Renzaho is consistent with other evidence in the case, showing that Renzaho provided instruction to *conseillers* and that his orders were followed (II.2 and 3).

716. The Chamber is satisfied with the identifications of Renzaho by Witnesses AWO and AWN. Their physical descriptions of him were consistent and adequate.⁷⁹⁵ Witness AWN recognised him because he had been pointed out to her as the prefect during *conseiller* elections approximately two years earlier.⁷⁹⁶ Compared to the extensive Prosecution evidence implicating Renzaho in the meetings described by the two witnesses, his denials that he was present during the attack against the orphanage and at subsequent meetings where Tutsi women were referred to as "food", carry limited weight. Although it is clear from the evidence that he attended other meetings and carried out other activities in the same period, this does not raise doubt that he was present at the meetings described by them.

717. Having assessed all the evidence, the Chamber accepts the fundamental aspects of Witness AWO's testimony. During a meeting, which took place after about 10 or 11 April, attended by *Conseiller* Odette Nyaribagenzi and *Interahamwe*, Renzaho said that the witness should not be killed because she was "food for the militiamen". After this instruction, the

⁷⁹² *Id.* pp. 37, 44; Defence Exhibit 26 (statement of 20 October 2004) p. 4 ("Matata and I walked to the secteur office where we met so many people. I later realised that the people were gathered there because information had gone around that I had refused to be married to Munanira, the *conseiller's* brother. [...] It was here that I saw Renzaho, the *préfet* of Kigali, who I knew before the war.") (emphasis added).

⁷⁹³ For instance, T. 5 February 2007 pp. 37 ("At that point, I saw a vehicle arrive, and there were soldiers and the *préfet* of Kigali-Ville in that vehicle. The *préfet* was called Tharcisse Renzaho."), 45 ("I noticed that the people accompanying him were in military attire and were carrying firearms. I don't know whether they were *bona fide* soldiers or otherwise."). See also T. 5 February 2007 p. 43 (her basis for identifying Renzaho even when she was 12 years old as well as her explanation of whether Renzaho arrived in a "military vehicle" or a civilian vehicle with camouflage colouring).

⁷⁹⁴ T. 10 July 2007 pp. 29 ("No, I'm not going to exaggerate. Rugenge was not shelled every day, and the four houses were not shelled on the same day."), 39 ("[Odette's house] is still in existence.").

⁷⁹⁵ Witness AWO, T. 7 February 2007 p. 9 ("A. It was a man who was bald. He had big eyes [...] and I believe he must be quite old today."); Witness AWN, T. 5 February 2007 p. 38 ("He was a stocky man who was wearing spectacles and who was bald.").

⁷⁹⁶ T. 5 February 2007 pp. 38, 43-44.

witness continued to be raped by *Interahamwe*, policemen and soldiers who either lived in Nyirabagenzi's home, or at least, worked in coordination with her.⁷⁹⁷

718. The Chamber also finds the main elements of Witness AWN's testimony established beyond reasonable doubt. In May 1994, she was brought to the Rugenge sector office. Renzaho, accompanied by persons in military attire carrying firearms, stated that it was "time to show Tutsi women that the Hutus are strong and can do whatever they wanted to do with them". After he left, Nyirabagenzi reinforced Renzaho's statement by promising Munanira that she would ensure that the witness would beg to have sex with him. Subsequently the witness was raped repeatedly by Munanira and other *Interahamwe* at their headquarters for three to four weeks. Her sister and Tutsi neighbour were also raped repeatedly there.

13.3.2 Sainte Famille

719. Several Prosecution witnesses testified that women who had sought refuge at Sainte Famille were raped or abused. Witness AWN stated that she saw Father Munyeshyaka lead away two girls called Hyacinthe Rwanga and Nyiratunga when she arrived at Sainte Famille near the end of June. She also heard that he had raped them. According to Witness HAD, Munyeshyaka made sexual advances towards Hyacinthe Rwanga; he had made one female his sex slave; and he would abuse young girls. Witness KBZ, who fled to Sainte Famille in early July, said that she was raped by two *Interahamwe* behind the church when she could not produce an identification card. Witness HAD explained that rape was prevalent during her stay at Sainte Famille from 22 April to around 19 or 20 June 1994, and that *Interahamwe* took girls away to be raped and executed. Witness AWX also gave evidence about rape and mentioned that some women subsequently died.

720. Of these five Tutsi refugees, only Witness AWX suggested that Renzaho played a direct role in an operation at Sainte Famille that resulted in rapes. Around 24 May, she saw him arrive in a vehicle with armed soldiers. He asked them to do their job, and the soldiers entered the church. Father Munyeshyaka called out names of Tutsi refugees and said that Renzaho had ordered those identified to step forward. The selected men and women were separated. Approximately three hours after Renzaho's arrival, the witness, her sister and her cousin were led away by soldiers to a house approximately five minutes away. The witness was locked in a room for two days, where she was raped twice by a soldier. The women were returned to Sainte Famille but then removed by the same soldiers on 15 June and raped again over the course of two days. The witness was released, as well as her cousin, whereas she saw her sister's body around 18 June, while Renzaho was overseeing the burial of corpses after an attack on Sainte Famille that day (II.11).

721. Witness AWX provided the only testimony about Renzaho working in coordination with soldiers and Munyeshyaka in separating Tutsi refugees at Sainte Famille in late May. There are some differences between her evidence and a statement she gave to Tribunal investigators in February 2005. According to the statement, presidential guards removed the witness, her older sister and cousin and kept her in the house for three days (not two), raped her three times (not two), and this was done by two such guards (not one).⁷⁹⁸ In the

⁷⁹⁷ While the Chamber is uncertain as to whether soldiers lived in Nyirabagenzi's home (T. 7 February 2007 p. 22), that policemen lived with Nyirabagenzi is consistent with other evidence on the record that Renzaho deployed members of the urban police force to accompany *conseillers*, and that they did so on a 24 hour basis.

⁷⁹⁸ Compare Defence Exhibit 30A (statement of 10 February 2005) p. 3 and T. 6 February 2007 pp. 30 ("Each would go with her *abductor*") (emphasis added), 31 ("A. The soldier who was taking me there – and [...] when

Chamber's view, these discrepancies do not affect her credibility. Although they describe serious acts, the differing numbers are comparably minor in nature, and may stem from communication problems, or be explained by the traumatic nature of the events and the time that has passed since then.

722. The Chamber considers that the fundamental features of Witness AWX's evidence regarding her abduction from Sainte Famille and subsequent rapes were coherent, compelling and consistent with her prior accounts to Tribunal investigators.⁷⁹⁹ The testimonies of Defence Witnesses PER, TOA, BDC and UT were of a general character and did not discredit her account. Witness PER was not permanently positioned at Sainte Famille. Moreover, given his close working relationship with Father Munyeshyaka, it is not surprising that victims, who at a minimum suspected Munyeshyaka as being involved in sexual assaults, did not confide in him about the abuse they suffered. Witness TOA's opinion – that overcrowding and unhygienic conditions at Sainte Famille would have prevented rapes from occurring there – fails to address the allegations that victims were often removed from Sainte Famille and raped elsewhere. His suggestion that rapes would have been reported to the Red Cross or UN journalists is speculative. Given the vast number of refugees present, the Chamber has doubts that the witness, a man, would have been privy to reports of such a private nature. Witness BDC's testimony about not having received reports of sexual assaults was equivocal.⁸⁰⁰ Moreover, while Witness UT said that he never received complaints about rapes at Sainte Famille, he did read of such claims in the press.

723. Based on the evidence, it is clear that Witness AWX, her sister and cousin were abducted from Sainte Famille by soldiers around 24 May and again about 15 June 1994. The Chamber finds it established that Witness AWX was raped multiple times during these episodes before being released. She was returned to Sainte Famille each time. Regarding the alleged rapes of her cousin and sister, there is no direct evidence. It follows from the witness's testimony that her sister and cousin were raped after having been led away from Sainte Famille, but she did not provide an explicit basis for this view.⁸⁰¹ This said, her first-hand observations of soldiers working in parallel, separating the women from other refugees, and holding them for the same time period, leads to the only reasonable conclusion that her sister and cousin were subject to sexual assaults similar to those suffered by the witness. These two women were of no strategic importance to the military operations being carried out on Sainte Famille or elsewhere. That the sister was seen dead in June, and the cousin contracted AIDS and died in 2001, lend support to this conclusion.

we arrived there, he undressed me and he raped me. He left me inside the room – he would leave me inside the room, he would close it, and he would put it under lock and key, then he would go out and come back again”), 31 (“I was raped twice. Q. And for what period of time were you kept inside this house? A. Two days.”).

⁷⁹⁹ While Witness AWX's February 2005 statement to Tribunal investigators indicates that the second occasion that she was taken away and raped was on 25 June 1994, her testimony was that this occurred around 15 June. Defence Exhibit 30A (statement of 10 February 2005) p. 3. The witness explained that she was unable to provide specific dates. T. 6 February 2007 p. 37. The Chamber finds this explanation reasonable.

⁸⁰⁰ T. 4 June 2007 p. 22 (“Q. During the this period, were you able to see any reports on cases of sexual assault perpetrated in the sites? A. I have no recollection of such specific cases. I heard about – was it because the team was led by [...] a woman who might have had trouble expressing or explaining that? But otherwise I don't think I was aware of any cases of rape or sexual assault.”).

⁸⁰¹ T. 6 February 2007 pp. 29-33. In response to a question about women at Sainte Famille generally, Witness AWX said that they discussed the assaults they had suffered. In view of this, it is likely that the three female relatives also shared such information even if the witness did not explicitly testify to that effect.

724. The question remains whether Renzaho can be found responsible for the rapes of Witness AWX, her sister and her cousin. While the witness's testimony reflects that the soldiers arrived with Renzaho during the operation in May, it also suggests that she, her sister and cousin were removed by these soldiers three hours afterwards. Moreover, her account indicates that Renzaho left quickly after the separation of refugees began, and there is no evidence that the women were removed on his orders or with his knowledge. Similarly, there is no indication that Renzaho was present when the women were taken away in the middle of June.

725. It is also noteworthy that Witness AWX's statement to Tribunal investigators makes no link between Renzaho's alleged role in the attack by *Interahamwe* in May 1994 and the abduction of the witness, her sister and cousin by soldiers. Even though the document reflects that she saw him with military personnel, he is described as instructing the *Interahamwe* to attack, as opposed to soldiers or, more specifically, presidential guards.⁸⁰² The statement does reflect the witness's belief that Renzaho wielded enough power that, had he "ordered perpetrators of rapes and killings to stop they would have obeyed him", but the absence of such a specific link between Renzaho's attack coordinated with *Interahamwe* and the rapes by the soldiers leads to a lack of clarity.⁸⁰³ Given that the evidence fails to demonstrate that Renzaho's participation in separating the refugees led to the witness's alleged rape in May, the Chamber also has reasonable doubt that Renzaho was involved in or aware of the rapes that the witness, her cousin, and her sister, who ultimately died, allegedly suffered in June.⁸⁰⁴

726. The Chamber now turns to Witness KBZ, who testified that she was raped by two *Interahamwe* behind a church when she arrived at Sainte Famille in early July. Her testimony was precise and largely consistent with her prior statement given to Tribunal investigators in August 2004.⁸⁰⁵ The Defence seeks generally to refute the allegation that women were raped at Sainte Famille. As mentioned above, this is not convincing, in view of the solid Prosecution evidence. The Chamber finds that Witness KBZ was indeed raped by two unidentified *Interahamwe* in early July 1994.

727. This said, there is no specific evidence linking this event to Renzaho. No witness observed him at Sainte Famille in July, and there is no indication that he was informed of this incident. Under these circumstances, the Chamber cannot find beyond reasonable doubt that when Witness KBZ was raped by two *Interahamwe* he was specifically involved. In the circumstances, it is not established that Renzaho was involved in this event, that those who committed the rapes were his subordinates, or that Renzaho had sufficient information to establish criminal liability for the crimes.

728. The Chamber has considered the allegations implicating Father Wenceslas Munyeshyaka in rapes and sexual assaults. No witness in the present case provided direct evidence about this. The accounts by Witnesses AWN and HAD were second-hand. Although the Defence testimonies, discussed above, did not fully refute the Prosecution evidence, the

⁸⁰² Defence Exhibit 30A (statement of 10 February 2005) p. 3 ("[...] telling *Interahamwe* to flush out the *Inyenzi* (Tutsis)"; instructing *Interahamwe* "to get out of the vehicle and 'get to work' meaning to kill the Tutsis", whereupon the *Interahamwe* "would start checking identity cards and the killings would start").

⁸⁰³ Defence Exhibit 30A (statement of 10 February 2005) p. 3.

⁸⁰⁴ The Chamber's conclusion with respect to the death of Witness AWX's sister takes into account the evidence and findings relating to the attack on Sainte Famille on 17 June 1994 (II.11).

⁸⁰⁵ Defence Exhibit 31A (statement of 27 August 2004) p. 3.

Chamber does not have a sufficient basis to find that Father Munyeshyaka committed rape or other sexual assaults at Sainte Famille.

13.3.3 Kimihurura Sector

729. Only Witness KBZ testified that she and four other women, who were stopped at a roadblock on 28 May 1994, were taken to the abandoned house of Jean-Michel in Kimihurura sector. This happened after the *Interahamwe* had spoken with the *conseiller* of Kimihurura. According to the militiamen, he had given instructions that they should ask Renzaho what to do with the women. The following day, they said that the prefect had said that they should not be killed until after the burial of President Habyarimana.⁸⁰⁶ An *Interahamwe* called Jérôme Rwemarika then took her to his home and raped her.

730. In the Chamber's view, the witness's account that she was raped appeared coherent and convincing. It was generally consistent with her statement to Tribunal investigators of August 2004. However, her evidence implicating Renzaho was second-hand, provided to her by the *Interahamwe* who kidnapped and raped her. Her August 2004 statement creates further doubt about Renzaho's alleged involvement. Although it reflects that the *conseiller* directed the *Interahamwe* to seek advice from Renzaho before taking action, the statement does not indicate that they did so.⁸⁰⁷ In the Chamber's view, this omission is material.

731. The witness also testified that the other women were taken away from the abandoned house. She believed they were raped although they did not talk about it. This account was second-hand, and her basis for knowledge was insufficiently precise to establish that rape occurred. No information was given about the purported victims and perpetrators, location or time of the crime. Consequently, the evidence is inconclusive.

732. The Chamber concludes that Witness KBZ was raped by an *Interahamwe* in late May 1994. However, it is not established beyond reasonable doubt that Renzaho was involved in this event, that those who committed the rapes were his subordinates, or that Renzaho had sufficient information to be held criminally liable in relation to their acts.

13.3.4 Renzaho's General Knowledge of Rapes

733. In addition to alleging that Renzaho was involved in specific incidents of rape, as addressed above, the Prosecution also seeks to establish his general knowledge of rapes occurring in Kigali-Ville prefecture from April to July 1994. It relies on Witnesses AWE and UB, both local officials, who purportedly shared their reports about rapes in their areas with Renzaho.

734. The Chamber recalls that, when giving evidence, Witness AWE was awaiting trial in Rwanda for genocide, whereas Witness UB's appeal against his genocide conviction was pending. Both were accused of crimes implicating Renzaho and were, at the time of their testimony, detained in the same prison. The Chamber views their evidence with caution as it may be influenced by their desire to distance themselves from responsibility. Defence Witness AIA stated that reports about rapes were not made to Renzaho, but to the *conseiller* for whom the witness worked. This official ignored such reports and even encouraged and

⁸⁰⁶ T. 6 February 2007 p. 52 (the prefect "had told [her abductors] that they were criticising the killings on the radio").

⁸⁰⁷ Defence Exhibit 31A (statement of 27 August 2004) p. 3.

engaged in acts of rape. As mentioned elsewhere (II.3), the Chamber has doubts about the reliability of certain aspects of this witness's account. Nevertheless, the evidentiary situation about the reporting of rape is unclear.

735. Renzaho admitted that, during a meeting on 21 April 1994, he received information about rapes taking place within Kigali-Ville prefecture. His statements on Radio Rwanda on 24 April and 10 May further demonstrate that he had knowledge that rapes were being committed in that area.⁸⁰⁸ The Indictment alleges that he is responsible as a superior for such acts. However, as set forth above (subsections (II.13.3.2) and (II.13.3.3)), the Chamber has doubt that rapes were being committed by Renzaho's subordinates over whom he exercised effective control. Furthermore, and notwithstanding the testimonies summarised here, the overall evidence of Renzaho's knowledge is insufficient to make a finding of criminal liability with respect to general evidence about rape and sexual violence in Kigali-Ville prefecture.

⁸⁰⁸ Prosecution Exhibit 56 (transcript of Radio Rwanda interview, 10 May 1994) p. 12; Prosecution Exhibit 54 (transcript of Radio Rwanda broadcast, 24 April 1994) p. 14. While Renzaho's statements over the radio portray him as being against rape, they fail to raise doubt with respect to the specific events discussed under (13.3.1) above.

CHAPTER III: LEGAL FINDINGS

1. INTRODUCTION

736. The Prosecution has charged Renzaho under Article 6 (1) and (3) of the Statute with genocide, complicity in genocide, crimes against humanity (murder and rape) and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (murder and rape).⁸⁰⁹

737. In its factual findings, the Chamber found that Renzaho participated in the establishment of roadblocks (II.2) and distribution of weapons to civilian authorities (II.3) in Kigali. It also concluded that he was involved in crimes committed at CELA (II.6) and Saint Famille (II.11) and against Tutsi women in Rugenge sector (II.13). In this chapter, the Chamber will address the legal consequences of Renzaho's involvement in these events.

2. CRIMINAL RESPONSIBILITY

2.1 Article 6 (1)

738. "Ordering" requires that a person in a position of authority instruct another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator is required. It is sufficient that there is proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused's order. The authority creating the kind of relationship envisaged under Article 6 (1) of the Statute for ordering may be informal or of a purely temporary nature.⁸¹⁰

739. The Appeals Chamber has held that commission covers, primarily, the physical perpetration of a crime (with criminal intent) or a culpable omission of an act that is mandated by a rule of criminal law.⁸¹¹ "Committing" has also been interpreted to contain three forms of joint criminal enterprise: basic, systemic, and extended.⁸¹² The Prosecution has indicated that it is only pursuing the basic form.⁸¹³ This form of commission requires that all the co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention.⁸¹⁴

740. According to settled jurisprudence, the required *actus reus* for each form of joint criminal enterprise comprises three elements.⁸¹⁵ First, a plurality of persons is required. They need not be organised in a military, political or administrative structure. Second, there must be a common purpose which amounts to or involves the commission of a crime provided for

⁸⁰⁹ The Prosecution is only pursuing Counts IV and Count VI, which charge rape, based on Article 6 (3) of the Statute. The allegations pertaining to sexual violence mentioned under Count I (Genocide) are also charged only under Article 6 (3).

⁸¹⁰ *Bagosora et al.* Trial Judgement para. 2008, citing *Semanza* Appeal Judgement paras. 361, 363.

⁸¹¹ *Nahimana et al.* Appeal Judgement para. 478.

⁸¹² *Simba* Trial Judgement para. 386, citing *Kvočka et al.* Appeal Judgement paras. 82-83; *Ntakirutimana* Appeal Judgement paras. 463-465; *Vasiljević* Appeal Judgement paras. 96-99; *Krnojelac* Appeal Judgement para. 30. See also *Nahimana et al.* Appeal Judgement para. 478.

⁸¹³ Prosecution Closing Brief para. 22.

⁸¹⁴ *Simba* Trial Judgement para. 386, citing *Kvočka et al.* Appeal Judgement para. 82; *Ntakirutimana* Appeal Judgement para. 463; *Vasiljević* Appeal Judgement para. 97; *Krnojelac* Appeal Judgement para. 84.

⁸¹⁵ *Simba* Trial Judgement para. 387, citing *Kvočka et al.* Appeal Judgement para. 96; *Ntakirutimana* Appeal Judgement para. 466; *Vasiljević* Appeal Judgement para. 100; *Krnojelac* Appeal Judgement para. 31.

in the Statute. There is no necessity for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts. Third, the participation of the accused in the common purpose is necessary, which involves the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of the provisions (for example, murder, extermination, torture, or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose. The Appeals Chamber in *Kvočka et al.* provided guidance on distinguishing between joint criminal enterprise and other forms of liability, such as aiding and abetting.⁸¹⁶

741. The required *mens rea* for each form of joint criminal enterprise varies. The basic form of joint criminal enterprise requires the intent to perpetrate a certain crime, this intent being shared by all co-perpetrators.⁸¹⁷ Where the underlying crime requires a special intent, such as discriminatory intent, the accused, as a member of the joint criminal enterprise, must share the special intent.⁸¹⁸

742. The Appeals Chamber has explained that an aider and abetter carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on its commission.⁸¹⁹ The *actus reus* need not serve as condition precedent for the crime and may occur before, during, or after the principal crime has been perpetrated.⁸²⁰ It has also been determined by the Appeals Chamber that the *actus reus* of aiding and abetting may be satisfied by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of a crime.⁸²¹ The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.⁸²² In cases of specific intent crimes such as persecution or genocide, the aider and abetter must know of the principal perpetrator's specific intent.⁸²³

⁸¹⁶ *Simba* Trial Judgement para. 387, citing *Kvočka et al.* Appeal Judgement para. 90 ("Where the aider and abettor only knows that his assistance is helping a single person to commit a single crime, he is only liable for aiding and abetting that crime. This is so even if the principal perpetrator is part of a joint criminal enterprise involving the commission of further crimes. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator."); *Vasiljević* Appeal Judgement para. 102; *Tadić* Appeal Judgement para. 229.

⁸¹⁷ *Simba* Trial Judgement para. 388, citing *Ntakirutimana* Appeal Judgement para. 467; *Vasiljević* Appeal Judgement para. 101; *Krnojelac* Appeal Judgement para. 32.

⁸¹⁸ *Simba* Trial Judgement para. 388, citing *Kvočka et al.* Appeal Judgement paras. 109-110.

⁸¹⁹ *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Simić* Appeal Judgement para. 85; *Blaškić* Appeal Judgement paras. 45-46; *Vasiljević* Appeal Judgement para. 102; *Ntagerura et al.* Appeal Judgement para. 370.

⁸²⁰ *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Blaškić* Appeal Judgement para. 48; *Simić* Appeal Judgement para. 85; *Ntagerura et al.* Appeal Judgement para. 372.

⁸²¹ *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Krstić* Appeal Judgement paras. 137, 138, 144.

⁸²² *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Simić* Appeal Judgement para. 86; *Vasiljević* Appeal Judgement para. 102; *Blaškić* Appeal Judgement para. 46; *Ntagerura et al.* Appeal Judgement para. 370.

⁸²³ *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127. See also *Simić* Appeal Judgement para. 86; *Krstić* Appeal Judgement paras. 140-141.

743. The Chamber will assess these forms of criminal responsibility where relevant in its legal findings.

2.2 Article 6 (3)

2.2.1 Legal Principles

744. The following three elements must be proven to hold a civilian or a military superior criminally responsible pursuant to Article 6 (3) of the Statute for crimes committed by subordinates: (a) the existence of a superior-subordinate relationship; (b) the superior's knowledge or reason to know that the criminal acts were about to be or had been committed by his subordinates; and (c) the superior's failure to take necessary and reasonable measures to prevent such criminal acts or to punish the perpetrator.⁸²⁴

745. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship. The superior must have possessed the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates. The superior must have had effective control over the subordinates at the time the offence was committed. Effective control means the material ability to prevent the commission of the offence or to punish the principal offenders. This requirement is not satisfied by a showing of general influence on the part of the accused.⁸²⁵

746. A superior will be found to have possessed or will be imputed with the requisite *mens rea* sufficient to incur criminal responsibility provided that: (i) the superior had actual knowledge, established through direct or circumstantial evidence, that his subordinates were about to commit, were committing, or had committed, a crime under the Statute; or (ii) the superior possessed information providing notice of the risk of such offences by indicating the need for additional investigations in order to ascertain whether such offences were about to be committed, were being committed, or had been committed by subordinates.⁸²⁶

747. With respect to actual knowledge, relevant factors include: the number, type and scope of illegal acts committed by the subordinates, the time during which the illegal acts occurred, the number and types of troops and logistics involved, the geographical location, whether the occurrence of the acts is widespread, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved, and the location of the superior at the time.⁸²⁷

⁸²⁴ *Bagosora et al.* Trial Judgement para. 2011, citing *Orić* Appeal Judgement para. 18; *Nahimana et al.* Appeal Judgement para. 484; *Gacumbitsi* Appeal Judgement para. 143; *Ntagerura et al.* Trial Judgement para. 627; *Semanza* Trial Judgement para. 400.

⁸²⁵ *Bagosora et al.* Trial Judgement para. 2012, citing *Halilović* Appeal Judgement para. 59; *Gacumbitsi* Appeal Judgement para. 143; *Kajelijeli* Appeal Judgement para. 85; *Ntagerura et al.* Appeal Judgement paras. 341-342; *Ntagerura et al.* Trial Judgement para. 628; *Semanza* Trial Judgement paras. 402, 415.

⁸²⁶ *Bagosora et al.* Trial Judgement para. 2013, citing *Delalić et al.* Appeal Judgement para. 232. See also *Hadžihasanović and Kubura* Appeal Judgement para. 28; *Galić* Appeal Judgement para. 184; *Bagilishema* Appeal Judgement paras. 37, 42; *Ntagerura et al.* Trial Judgement para. 629; *Semanza* Trial Judgement para. 405.

⁸²⁷ *Bagosora et al.* Trial Judgement para. 2014, citing *Delić* Trial Judgement para. 64; *Strugar* Trial Judgement para. 68; *Limaj et al.* Trial Judgement para. 524.

2.2.2 Deliberations

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748. The Indictment alleges that Renzaho as prefect of Kigali-Ville and a colonel in the Rwandan Army had *de jure* and *de facto* control over *bourgmestres*, *conseillers*, *responsables de cellule*, ten-house leaders, administrative personnel, urban police, the Rwandan army, gendarmes, *Interahamwe*, militias, armed civilians as well as the Rwandan armed forces who fell under his command.⁸²⁸

749. Renzaho argues that the Indictment is insufficiently precise in outlining the perpetrators over whom he allegedly had authority. While he concedes his *de jure* authority over *bourgmestres* and the urban police, he contends that the situation in Kigali-Ville had spiralled out of control, that he lacked the means and resources to exercise control over those committing crimes, and that he was unaware of crimes committed by his subordinates.⁸²⁹

750. Renzaho was appointed prefect of Kigali-Ville on 5 October 1990, immediately after an RPF invasion, and remained in that position until July 1994, when he fled Kigali.⁸³⁰ The prefect was the representative of the national government in Kigali-Ville, vested with the authority of the state. His tasks included the maintenance of peace, public order and security of persons and property within the prefecture and ensuring the proper functioning of the prefecture's services.⁸³¹ In addition, Renzaho maintained his position within the Rwandan army throughout his tenure as prefect and was promoted to the rank of colonel in July 1992.⁸³²

751. The Chamber recalls that a superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6 (3) of the Statute.⁸³³ The Indictment identifies Renzaho's subordinates by general category and contains additional specificity in the relevant paragraphs referring to the crimes by providing specific names and further geographical and temporal limitations for broader categories of assailants such as militiamen. In the context of this case, and given the nature of the attacks, the Chamber is not convinced that the Prosecution could have provided more specific identification, in particular in relation to the vast network of roadblocks throughout Kigali.

⁸²⁸ Indictment paras. 2 (A)-(B). The Prosecution conceded that no evidence was adduced in connection with para. 2 (C). Prosecution's letter of 13 March 2007 to the Defence.

⁸²⁹ Defence Closing Brief paras. 4-5, 7-9, 11-13, 17-18, 21-22, 48-65, 71, 74, 86-99, 102, 127-144, 339-353, 443-461, 645-646, 701-717, 741-753, 757-758, 774-793, 937, 945-946, 956-957, 1041, 1065-1067, 1069, 1084-1085, 1089-1090, 1099-1133, 1170, 1175, 1212, 1222, 1227-1231, 1240-1252, 1269.

⁸³⁰ Renzaho, T. 27 August 2007 pp. 5, 10-12 (appointment); Witness UB, T. 23 January 2007 p. 32 (appointment in war).

⁸³¹ Prosecution Exhibit 14 (*Loi portant organisation administrative de la préfecture de la ville de Kigali* of 22 June 1990) Article 25; Prosecution Exhibit 10 (*Décret-loi sur l'organisation et fonctionnement de la préfecture* of 11 March 1975 as modified on 14 August 1978) Articles 8-9.

⁸³² Renzaho, T. 27 August 2007 pp. 5-7, 10; Defence Witness PAT, T. 22 August 2007 p. 53. Renzaho's file remained with the army general staff, and he received his salary from the Ministry of Defence. Renzaho, T. 27 August 2007 pp. 14 ("A. Thank you, Counsel. By virtue of that provision, I remained attached to the ministry of defence with respect to my career file. That is correct."), 32 ("A. No, I had no military function. I did not have any specific military activity, but my name was still on the list of those who were paid by the army every month.").

⁸³³ *Muvunyi* Appeal Judgement para. 55; *Blagojević and Jokić* Appeal Judgement para. 287.

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Accordingly, the Chamber is satisfied that the Indictment provides reasonable notice of the individuals alleged to be Renzaho's subordinates.⁸³⁴

752. Turning to the question of Renzaho's superior responsibility, the Chamber recalls that the main question is whether he exercised effective control over his alleged subordinates.⁸³⁵ In this respect, the Appeals Chamber has stated that *de jure* authority is not synonymous with effective control.⁸³⁶ Furthermore, although a showing of *de jure* authority may suggest the material ability to prevent or punish an offence, its proof is neither necessary nor itself sufficient to prove beyond reasonable doubt that an accused exercised effective control over his subordinates.⁸³⁷ Accordingly, the Chamber has not considered such evidence as decisive in its assessment of Renzaho's authority.

753. The Chamber is satisfied that Renzaho exercised effective control and was a superior over the local officials within his prefecture, including sub-prefects, *bourgmestres*, *conseillers*, *responsables de cellule* and *Nyumba Kumi* (ten-house leaders) as well as prefecture and commune employees such as the urban police. In reaching this conclusion, the Chamber has considered that, by virtue of his position as prefect and with his high military rank, Renzaho was clearly an important and influential authority of the Rwandan government entrusted with the administration of a key strategic location during a time of war. Prior to the events, he participated in discussions concerning the defence of the city, which sketched out a framework for utilising and mobilising local officials in the effort to secure the city (II.2). Although the Chamber cannot be certain as to when and to what extent these plans were put into place, this evidence as well as Renzaho's key role in the process offers strong circumstantial evidence, confirmed by what followed, that in the wake of war all resources of local administration would be effectively placed under the authority of the prefect and local military commanders at least with respect to the government's efforts to combat the "enemy".

754. From the outset of the resumption of hostilities, Renzaho regularly convened and chaired meetings at the prefecture level involving civilian and military officials, where he issued instructions and orders for the maintenance of security, including the erection of roadblocks and the acquisition and distribution of weapons (II.2 and 3). Furthermore, it is also relevant that Renzaho clearly had *de jure* authority over *bourgmestres* and the urban police force.⁸³⁸ The evidence of *de jure* authority is not clear with respect to other categories

⁸³⁴ *Muvunyi* Appeal Judgement para. 56 (subordinates reasonably identified by reference to their affiliation with *École des sous-officiers* in Butare Prefecture, Rwanda); *Ntagerura et al.* Appeal Judgement paras. 140, 141, 153 (subordinates reasonably identified by reference to military camp). See also *Simba* Appeal Judgement paras. 71-72 (finding adequate notice for members of joint criminal enterprise based on identification by broad category, such as *Interahamwe* or gendarmes, and further identification with geographic and temporal details), affirming *Simba* Trial Judgement paras. 392-393.

⁸³⁵ *Orić* Appeal Judgement para. 91.

⁸³⁶ *Id.* para. 91.

⁸³⁷ *Id.* paras. 91-92.

⁸³⁸ See, for instance, Renzaho, T. 28 August 2007 p. 35 (he held *de jure* authority over the *bourgmestres*, at times of peace and war), T. 30 August 2007 p. 21 (as prefect, he had control over the police force in Kigali-Ville prefecture); Witness PPV, T. 4 June 2007 p. 78 (commander of the urban police reported to the prefect); Witness AIA, T. 2 July 2007 p. 50 (the prefect was in charge of the police); Witness ALG, T. 10 January 2007 p. 58 (a *bourgmestre* within Kigali-Ville would report to the prefect); Witness UB, T. 23 January 2007 pp. 6-8, 19 (the prefect was in charge of the police and could dismiss them); Prosecution Exhibit 9 (*Loi sur l'organisation de la commune* of 23 November 1963) Articles 46, 48, 85 (allowing the prefect to take disciplinary measures and propose to the Minister the dismissal of a *bourgmestre* and supplant the authority of the *bourgmestre* or other communal officials); Prosecution Exhibit 14 (*Loi portant organisation administrative*

of subordinates, including *conseillers*.⁸³⁹ As noted above, this is not dispositive. Renzaho issued instructions to the *conseillers* and provided them with urban police as their personal guards.⁸⁴⁰ The *conseillers* were at the front line of organising the local population to man roadblocks and distributed weapons. Moreover, his effective control is reflected by his ultimate supervision of the replacement of local officials under his Kigali-Ville *bourgmestres*, notwithstanding the limitations of the law (II.8). In this context, his suggestion that he lacked the ability to control their actions is without merit.

755. With respect to other categories of possible offenders, such as soldiers and gendarmes, it follows from Renzaho's position as prefect and high military rank that he would have been viewed as an authority and given a measure of deference. In particular, as prefect, he had the legal ability to requisition gendarmes, although they remained under the operational command of their officers.⁸⁴¹ Furthermore, as an army officer, he had the right and duty to enforce compliance with the general rules governing discipline by all soldiers below him in the hierarchy, even where the soldiers were not under his operational authority.⁸⁴² Nonetheless, given his position within the civilian administration, and the formal limitations on his authority over gendarmes, the Chamber is not convinced beyond reasonable doubt that Renzaho's effective control extended to all gendarmes or every army soldier of a lesser rank. Instead, the Chamber must assess his authority over these individuals on a case by case basis.

756. Turning to militiamen, again, the evidence concerning Rwanda's "civil defence" planning lends strong circumstantial support to the conclusion that Renzaho had authority over these assailants, in particular when they were operating as part of the Kigali's defensive efforts or engaged in operations under the authority of or in conjunction with civilian authorities. Nevertheless, the Chamber is mindful of evidence suggesting that these forces

de la prefecture de la ville de Kigali of 22 June 1990) Article 27 (giving the prefect authority over the urban police).

⁸³⁹ The Prosecution suggests that Renzaho's authority over sub-prefects, *conseillers*, *responsables de cellule* and *nyumba kumi* also derives under *Loi sur l'organisation de la commune* of 23 November 1963, Article 59 (placing the *bourgmestre* under the prefect's authority) and Article 60 (communal officials under the *bourgmestre's* authority). No expert testimony was adduced in order to present the precise contours of a prefect's authority as it relates to these officials. Renzaho denied having authority over *conseillers*, for example, pointing in particular to his inability to impose sanctions on them directly. Renzaho, T. 28 August 2007 p. 39, T. 30 August 2007 pp. 25-26; Prosecution Exhibit 9 (*Loi sur l'organisation de la commune* of 23 November 1963) Article 10 *bis*. Jurisprudence in this Tribunal suggests that prefects did not have *de jure* authority over *conseillers* in 1994. *Ntagerura et al.* Trial Judgement, para. 646, citing *Bagilishema* Trial Judgement, para. 166.

⁸⁴⁰ See, for instance, Renzaho, T. 27 August 2007 p. 63 (Renzaho instructed commander Emmanuel Nyamuhimba on 8 April 1994 to deploy police officers to assist *conseillers*); Witness PPV, T. 5 June 2007 pp. 3-5 (Renzaho gave orders on 7 April to dispatch policemen to 19 sectors, who were assigned to *bourgmestres* and *conseillers*); Witness GOA, T. 6 June 2007 p. 54 (the witness saw Biryogo *conseiller* Amri Karekezi in the company of three to four police officers); Witness AIA, T. 2 July 2007 pp. 24-25, T. 3 July 2007 pp. 2-3 (based on Renzaho's instructions on 8 April, five police officers were assigned to each sector, except Biryogo, where 11 were assigned); T. 2 July 2007 pp. 44-45, 50-52, 60; T. 3 July 2007 pp. 7, 16 (police were primarily responsible for protecting *conseillers*); Witness UB, T. 23 January 2007 pp. 6, 62, 64 (police told the witness that they had been sent by the prefect to ensure the security of the *conseiller*).

⁸⁴¹ Renzaho, T. 30 August 2007 p. 21; Prosecution Exhibit 10 (*Decret-loi sur l'organisation et fonctionnement de la prefecture*) Article 11; Prosecution Exhibit 8 (*Decret-Loi sur la creation de la Gendarmerie Nationale de 1974*) Articles 24, 29, 31, 32, 34, 35, 36.

⁸⁴² Prosecution Exhibit 11 (Rules of Discipline of Rwandan army, 13 December 1978) Rule 10.

were hastily assembled and were at times undisciplined.⁸⁴³ Although the material pertaining to Rwanda's civil defence system offers some guidance, there is limited evidence detailing the actual structure and chain of command governing these forces in all instances. The Chamber instead will assess the circumstances on the ground in order to determine whether Renzaho exercised effective control over them in the context of a given incident.

757. Renzaho's knowledge of and failure to prevent and punish the relevant offences will be considered in the Chamber's legal findings for each crime.

3. GENOCIDE

758. Counts I and II of the Indictment charge Renzaho with genocide and complicity to commit genocide under Articles 2 (3)(a) and (e) of the Statute.

3.1 Genocide

3.1.1 Introduction

759. Count I of the Indictment charges Renzaho with genocide under Article 2 (3)(a) of the Statute.⁸⁴⁴

3.1.2 Law

760. To find an accused guilty of the crime of genocide, it must be established that the accused committed any of the enumerated acts in Article 2 (2) with the specific intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity, or religion.⁸⁴⁵ Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.⁸⁴⁶ The perpetrator need not be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive preclude him from having the specific intent to commit genocide.⁸⁴⁷

761. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that can lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include the general context, the perpetration of other culpable acts systematically directed against the same

⁸⁴³ The disorganisation and indiscipline of militia in Kigali-Ville is reflected in the evidence related to roadblocks and Renzaho's contemporaneous Radio Rwanda broadcasts (II.2).

⁸⁴⁴ The Chamber observes that the language under Count 1 on page 4 of the Indictment contains an erroneous reference to Article 2 (3)(b) of the Statute, which corresponds to "conspiracy to commit genocide". The correct reference is Article 2 (3)(a), which refers to "genocide". In the Chamber's view, this appears to be a minor typographical error which does not raise notice concerns. The surrounding text unequivocally states that "Tharcisse Renzaho was responsible for killing or causing serious bodily or mental harm to members of the Ttusi racial or ethnic group". Furthermore, the brief summary of Count 1 on page 2 of the Indictment correctly mentions Article 2 (3)(a) of the Statute.

⁸⁴⁵ *Bagosora et al.* Trial Judgement para. 2115, citing *Nahimana et al.* Appeal Judgement paras. 492, 496, 522-523; *Niyitegeka* Appeal Judgement para. 48; *Gacumbitsi* Appeal Judgement para. 39; *Brđanin* Trial Judgement paras. 681, 695.

⁸⁴⁶ *Bagosora et al.* Trial Judgement para. 2115, citing *Seromba* Appeal Judgement para. 175; *Gacumbitsi* Appeal Judgement para. 44; *Simba* Trial Judgement para. 412; *Semanza* Trial Judgement para. 316.

⁸⁴⁷ *Bagosora et al.* Trial Judgement para. 2115, citing *Simba* Appeal Judgement para. 269, *Ntakirutimana* Appeal Judgement paras. 302-304; *Niyitegeka* Appeal Judgement paras. 48-54; *Krnjelac* Appeal Judgement para. 102, citing *Jelisić* Appeal Judgement para. 49.

group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.⁸⁴⁸

762. The Indictment charges Renzaho with killing and causing serious bodily or mental harm to members of the Tutsi group. It is firmly established that the Tutsi ethnicity is a protected group.⁸⁴⁹ Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group.⁸⁵⁰ The term “causing serious bodily harm” refers to acts of sexual violence, serious acts of physical violence falling short of killing that seriously injure the health, cause disfigurement, or cause any serious injury to the external or internal organs or senses.⁸⁵¹ Serious mental harm refers to more than minor or temporary impairment of mental faculties.⁸⁵² The serious bodily or mental harm, however, need not be an injury that is permanent or irremediable.⁸⁵³ This harm can include crimes of sexual violence, including rape.⁸⁵⁴

3.1.3 Deliberations

(i) Roadblocks and Weapons Distributions

763. In its factual findings, the Chamber determined that, around 10 April 1994, Renzaho ordered local officials to establish roadblocks in Kigali and further reaffirmed his support for roadblocks in subsequent meetings and during various radio broadcasts (II.2). The Chamber concluded that roadblocks were in fact established pursuant to Renzaho’s orders, which were used to identify and intentionally kill Tutsi civilians throughout Kigali.

764. By his orders and public support in relation to roadblocks, Renzaho substantially contributed to the killing of Tutsi civilians at them by further proliferating these instruments of death and lending official sanction to the actions there. Furthermore, the Chamber found that, around 16 April 1994, he facilitated the acquisition of weapons by local officials for distribution amongst the civilian population (II.3). These actions also lended further sanction

⁸⁴⁸ *Bagosora et al.* Trial Judgement para. 2116, citing *Seromba* Appeal Judgement para. 176, referring to *Seromba* Trial Judgement para. 320; *Nahimana et al.* Appeal Judgement paras. 524-525; *Simba* Appeal Judgement para. 264; *Gacumbitsi* Appeal Judgement paras. 40-41; *Rutaganda* Appeal Judgement para. 525; *Semanza* Appeal Judgement para. 262, citing *Jelisić* Appeal Judgement para. 47; *Kayishema and Ruzindana* Appeal Judgement paras. 147-148.

⁸⁴⁹ Prosecution Exhibit 94A (expert report of Alison Des Forges) pp. 1-2 (Tutsis are a recognised ethnic group). Furthermore, every judgement rendered by this Tribunal concerning genocide has recognised that the Tutsi ethnicity is a protected group. *Bagosora et al.* Trial Judgement para. 2117, n. 2338, citing *Karemura et al.*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25; *Semanza* Appeal Judgement para. 192.

⁸⁵⁰ *Bagosora et al.* Trial Judgement para. 2117, citing *Simba* Trial Judgement para. 414, referring to *Kayishema and Ruzindana* Appeal Judgement para. 151.

⁸⁵¹ *Bagosora et al.* Trial Judgement para. 2117, citing *Seromba* Appeal Judgement paras. 46-49; *Ntagerura et al.* Trial Judgement para. 664; *Semanza* Trial Judgement para. 320; *Kayishema and Ruzindana* Trial Judgement para. 110.

⁸⁵² *Bagosora et al.* Trial Judgement para. 2117, citing *Seromba* Appeal Judgement para. 46; *Kajelijeli* Trial Judgement para. 815; *Ntagerura et al.* Trial Judgement para. 664; *Semanza* Trial Judgement paras. 321-322; *Kayishema and Ruzindana* Trial Judgement para. 110.

⁸⁵³ *Bagosora et al.* Trial Judgement para. 2117, citing *Ntagerura et al.* Trial Judgement para. 664; *Semanza* Trial Judgement paras. 320, 322.

⁸⁵⁴ *Bagosora et al.* Trial Judgement para. 2117, citing *Seromba* Appeal Judgement para. 46; *Gacumbitsi* Trial Judgement para. 292; *Akayesu* Trial Judgement paras. 706-707.

and material support to the killings by local officials and members of the population. There is no explicit evidence that Renzaho ordered the killing of Tutsis at roadblocks. However, in view of his authority, his actions in support of roadblocks, their role in the "defence" of the city, their widespread and continuing operation, as well as his order to distribute weapons, the Chamber is convinced that Renzaho must have equally ordered the killings there.⁸⁵⁵

765. Given the nature and purpose of the roadblocks, the systematic nature of the killings there as well as the scale of the crimes, the Chamber has no doubt that the perpetrators of the killings possessed genocidal intent. Furthermore, the Chamber has already determined that Renzaho issued orders to establish roadblocks and made other supportive public statements with full knowledge that crimes were being perpetrated against Tutsi civilians at them. Renzaho's orders to establish roadblocks demonstrated that their purpose was to confront Tutsis. Accordingly, the Chamber is convinced that Renzaho acted with knowledge of the genocidal intent of the assailants at roadblocks, which he shared as well.⁸⁵⁶

766. In sum, the Chamber concludes that Renzaho is responsible for aiding and abetting the killing of Tutsi civilians at roadblocks in Kigali under Article 6 (1) of the Statute by ordering their establishment, sanctioning the conduct at them and through his continued material support for the killings through the distribution of weapons. He is also liable under Article 6 (1) of the Statute for ordering the killings.⁸⁵⁷

767. The Chamber is also convinced that Renzaho bears superior responsibility for these crimes under Article 6 (3) of the Statute. In view of the role played by these roadblocks in the defence efforts of Kigali as well as involvement of local officials in establishing and supervising them, the Chamber is satisfied that those manning them were Renzaho's subordinates. The Chamber accepts that, in some cases, there was a measure of indiscipline at roadblocks, and that some assailants might not have recognised Renzaho's authority in isolated cases. However, Defence and Prosecution evidence demonstrates that *conseillers* and *responsables de cellule* played critical roles in the establishment and oversight of roadblocks throughout Kigali. The Chamber has already determined that these local officials are Renzaho's subordinates over whom he exercised effective control. To the extent Renzaho lacked the material ability to prevent or punish crimes committed by those implementing his orders, it is because he distributed arms to the population and deployed the police force to

⁸⁵⁵ The Appeals Chamber has held that a mode of liability such as ordering can be proven through circumstantial evidence even in the absence of direct evidence of where and when a particular order was issued. See, for example, *Galić* Appeal Judgement paras. 177-178, 389.

⁸⁵⁶ In finding that Renzaho acted with genocidal intent, the Chamber has considered evidence that, from April to July 1994, refugees, including Tutsis, were received at the Kigali-Ville prefecture office and at Renzaho's home. Defence Closing Brief paras. 1265-1292. See also Witness ALG, T. 11 January 2007 pp. 21-23; Witness UT, T. 24 May 2007 pp. 56-59; Witness PGL, T. 6 June 2007 p. 23 (militiamen threatened him, saying that Renzaho was an accomplice of Tutsis); Witness PPV, T. 5 June 2007 pp. 10, 14. In view of Renzaho's conduct and the nature of the crimes, the submissions and evidence do not make this conclusion doubtful. See *Simba* Trial Judgement paras. 417, 418, quoting *Kvočka et al.* Appeal Judgement paras. 232-233.

⁸⁵⁷ The Chamber notes that these facts would also support the conclusion that Renzaho participated in a joint criminal enterprise to kill Tutsis at roadblocks as the crimes involved a plurality of persons named in the Indictment, such as militiamen, local officials, and Renzaho, who shared the requisite genocidal intent. However, the Chamber considers that "ordering", which is also a direct form of responsibility, most appropriately captures the nature of Renzaho's criminal responsibility. In view of the overall gravity of the crimes and the nature of Renzaho's actual involvement, the legal characterization of his actions as ordering and aiding and abetting or as participating in a joint criminal enterprise would not impact the Chamber's sentencing considerations.

protect those who played a fundamental role in their commission – namely his *conseillers*. As noted above, he had full knowledge of the crimes being perpetrated at them. Finally, his failure to prevent them is reflected in his active participation in the crimes committed there.

(ii) CELA

768. Around 22 April 1994, Renzaho was present at CELA (II.6). By his own actions and through the assistance of Angeline Mukandutiye, a school inspector, and *Conseiller* Odette Nyirabagenzi, an *Interahamwe* leader, he ordered *Interahamwe* to separate approximately 40 mostly Tutsi men from women and children and to remove them from the centre. The *Interahamwe* killed most of these men, including Charles Rwanga, and his two sons Wilson and Déglote Rwanga, en route to a mass grave near the Rugenge sector office. The Chamber found that Renzaho ordered the killings.

769. Given the nature of the attack, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group. Renzaho substantially contributed to the attack by ordering the separation and the killings. The large number of Tutsi refugees at CELA, the high proportion of Tutsis among the men removed from the centre, as well as the evidence of the targeting of members of this group in Rwanda at the time clearly shows that the assailants, including Renzaho, possessed genocidal intent.

770. Accordingly, the Chamber concludes that Renzaho is responsible under Article 6 (1) of the Statute for aiding and abetting the killings of approximately 40 Tutsi civilians at CELA around 22 April by ordering their separation. He is further liable under Article 6 (1) of the Statute for ordering the killings.⁸⁵⁸ The Chamber is also convinced that Renzaho bears superior responsibility for these crimes under Article 6 (3) of the Statute. Given the nature of the operation, his general authority, and presence on the ground, the Chamber is satisfied that the *Interahamwe* who killed the Tutsi refugees were Renzaho's subordinates at the time of the attack. As noted above, he had full knowledge of the crimes being perpetrated at them, and his failure to prevent them is reflected in his active participation in them.

(iii) Saint Famille

771. As discussed in detail in its factual findings, on 17 June 1994, the *Interahamwe* attacked the Sainte Famille church killing several hundred Tutsi refugees (II.11). Renzaho was present, and the Chamber has determined that he ordered the *Interahamwe* to attack, and later, to stop the attack.

772. Given the nature of the attack, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group. Renzaho substantially contributed to the killings by ordering the *Interahamwe* to attack. The large number of Tutsi refugees at Saint Famille

⁸⁵⁸ The Chamber notes that these facts would also support the conclusion that Renzaho participated in a joint criminal enterprise to kill the approximately 40 mostly Tutsi men taken from CELA as the crime involved a plurality of persons named in the Indictment, such as militiamen, Mukandutiye, Nyirabagenzi, and Renzaho, who shared the requisite genocidal intent. However, the Chamber considers that "ordering", which is also a direct form of responsibility, most appropriately captures the nature of Renzaho's criminal responsibility. In view of the overall gravity of the crime and the nature of Renzaho's actual involvement, the legal characterisation of his actions as ordering and aiding and abetting or as participating in a joint criminal enterprise would not impact the Chamber's sentencing considerations.

church as well as the evidence of the targeting of members of this group in Rwanda at the time clearly shows that the assailants, including Renzaho, possessed genocidal intent.

773. Accordingly, the Chamber concludes that Renzaho is responsible under Article 6 (1) of the Statute for the killing of hundreds of Tutsi refugees at Saint Famille church on 17 June 1994 by ordering the attack.⁸⁵⁹ The Chamber is also convinced that Renzaho bears superior responsibility for these crimes under Article 6 (3) of the Statute. Given the nature of the operation, his general authority, and presence on the ground, the Chamber is satisfied that the *Interahamwe* who killed the Tutsi refugees were Renzaho's subordinates at the time of the attack. As noted above, he had full knowledge of the crimes being perpetrated at them, and his failure to prevent them is reflected in his active participation in them.

(iv) Sexual Violence

774. In its factual findings, the Chamber found that, at a meeting which occurred after 10 or 11 April 1994, attended by *Conseiller* Odette Nyirabagenzi and *Interahamwe*, Renzaho said that Witness AWO, a Tutsi, should not be killed because she was "food for the militiamen". After this, the witness was repeatedly raped by *Interahamwe*, policemen and soldiers who either lived in Nyaribagenzi's home or worked with her (II.13).

775. In addition, the Chamber concluded that Munanira, an *Interahamwe* and the brother of *Conseiller* Nyirabagenzi, as well as other militiamen, repeatedly raped Witness AWN and her sister, both Tutsis, over the course of several weeks at the assailants' headquarters. This followed an incident at the Rugenge sector office where Renzaho in the presence of Witness AWN, Nyaribagenzi and Munanira stated it was "time to show Tutsi women that the Hutus are strong and can do whatever they wanted to do with them". After Renzaho's departure Nyirabagenzi promised Munanira that she would ensure that the witness would beg to have sex with him (II.13).

776. The Chamber considers that these acts of rape constituted serious bodily or mental harm. Given the witnesses' Tutsi ethnicity, their public identification as such, as well as the extensive evidence of the targeting of other members of the Tutsi group in Kigali at the time, it follows that these rapes were committed with genocidal intent.

777. The Prosecution seeks conviction for these crimes solely through Article 6 (3) of the Statute. The Chamber has concluded that Renzaho is the superior of urban police. Furthermore, in the context of both of these incidents, the Chamber is equally satisfied that Renzaho was the superior of the militiamen. The Chamber observes that they worked closely with *Conseiller* Nyirabagenzi, a de facto subordinate of Renzaho, and in some cases received accommodation from her. Therefore, these militiamen were closely linked with government authorities. In any event, even if the militiamen could not be considered as his subordinates, he would still remain liable for his subordinate *Conseiller* Nyirabagenzi's role in facilitating

⁸⁵⁹ The Chamber notes that these facts would also support the conclusion that Renzaho participated in a joint criminal enterprise to kill the several hundred Tutsi refugees at Saint Famille church as the crime involved a plurality of persons named in the Indictment, such as militiamen, Angeline Mukandutiye, Odette Nyirabagenzi, and Renzaho, who shared the requisite genocidal intent. However, the Chamber considers that "ordering", which is also a direct form of responsibility, most appropriately captures the nature of Renzaho's criminal responsibility. In view of the overall gravity of the crime and the nature of Renzaho's actual involvement, the legal characterisation of his actions as ordering or as participating in a joint criminal enterprise would not impact the Chamber's sentencing considerations.

the crimes. In particular, her acquiescing presence during Renzaho's encouragement of the rapes, as well as her further encouragement and support of the assailants, substantially assisted and thus aided and abetted the crimes. Similarly, the Chamber is also convinced that soldiers who engaged in rapes of Witness AWO were Renzaho's de facto subordinates given his rank, instructions and their attacks on the witness.

778. Renzaho's conduct in relation to both incidents clearly reflected that he had knowledge that the crimes would occur and condoned them. Therefore, there is no question that he failed in his duty to prevent the crimes.

3.1.4 Conclusion

779. The Chamber finds Renzaho guilty of genocide (Count I) under Article 6 (1) by aiding and abetting as well as ordering the killing of Tutsis at roadblocks throughout Kigali from April to July 1994; by aiding and abetting and ordering killings at CELA on 22 April 1994; and by his orders in relation to crimes committed at Saint Famille on 17 June 1994. Renzaho is also liable as a superior for these crimes, which the Chamber will take into account in sentencing in connection with the abuse of his authority. The Chamber further finds Renzaho guilty of genocide (Count I) under Article 6 (3) based on his failure to prevent the rapes of Witnesses AWO and AWN as well as Witness AWN's sister.

3.2 Complicity in Genocide

780. Count II of the Indictment charges Renzaho with complicity in genocide. The Prosecution has indicated that the count of complicity is pleaded in the alternative to Count 1 which charges genocide.⁸⁶⁰ As the Chamber has already entered a conviction for genocide, it finds Renzaho not guilty on this count.

4. CRIMES AGAINST HUMANITY

4.1 Introduction

781. Counts III and IV of the Indictment charge Renzaho with murder and rape as crimes against humanity under Article 3 (a) and (g) of the Statute.

4.2 Widespread and Systematic Attack

782. For an enumerated crime under Article 3 to qualify as a crime against humanity, the Prosecution must prove that there was a widespread or systematic attack against the civilian

⁸⁶⁰ Prosecution Closing Brief para. 380. However, the Prosecution also suggests that the Chamber may convict Renzaho of complicity in genocide for acts which do not amount to aiding and abetting genocide because the level of assistance required for complicity is lower. Prosecution Closing Brief paras. 380, 382, 384. In particular, it contends that for complicity in genocide, the "genocidal act need not be substantial – indeed, Renzaho need only contribute to the offence to a very small extent, for conviction." Prosecution Closing Brief para. 382 (emphasis in original), citing *Akayesu* Trial Judgement paras. 542-543. This view, however, is not correct. The Appeals Chamber has acknowledged an overlap between the material elements of aiding and abetting and complicity. While the Appeals Chamber has acknowledged that complicity may encompass acts broader than aiding and abetting, the only other example it has given is as a "co-perpetrator". Furthermore, contrary to the Prosecution's submissions, it appears that any acts of complicity which could not be characterised as aiding and abetting would require specific intent. See generally *Semanza* Appeal Judgement para. 316; *Ntakirutimana* Appeal Judgement para. 500; *Krstić* Appeal Judgement paras. 139, 142.

population on national, political, ethnic, racial or religious grounds.⁸⁶¹ An attack against a civilian population means the perpetration against that population of a series of acts of violence, or of the kind of mistreatment referred to in sub-paragraph (a) to (i).⁸⁶² Intended to be read as disjunctive elements, "widespread" refers to the large scale nature of the attack and the number of targeted persons, while "systematic" describes the organised nature of the acts of violence and the improbability of their random occurrence.⁸⁶³

783. With respect to the *mens rea*, the perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the attack, but need not share the purpose or goals of the broader attack.⁸⁶⁴ The additional requirement that crimes against humanity have to be committed "on national, political, ethnic, racial or religious grounds" does not mean that a discriminatory *mens rea* must be established.⁸⁶⁵

784. The Chamber has considered the totality of the evidence, in particular concerning the ethnic composition and actual or perceived political leanings of individuals identified at roadblocks or who sought refuge at various sites throughout Kigali. It finds that there were widespread and systematic attacks against the civilian population on ethnic and political grounds between April and July 1994. It is inconceivable that the principal perpetrators of these attacks as well as Renzaho did not know that their actions formed part of this attack. As a high-ranking military officer and senior government official, Renzaho would have been familiar with the situation unfolding both nationally and in areas under his authority. Many of the attacks or massacres were open and notorious. The Chamber has also concluded that Renzaho participated in some of these attacks.

4.3 Murder

4.3.1 Introduction

785. Count III of the Indictment charges Renzaho with murder as a crime against humanity under Article 3 (a) of the Statute.

⁸⁶¹ *Bagosora et al.* Trial Judgement para. 2156, citing *Semanza* Appeal Judgement paras. 326-332, referring to *Akayesu* Trial Judgement para. 578; *Rutaganda* Trial Judgement para. 73; *Akayesu* Appeal Judgement paras. 467, 469; *Ntakirutimana* Appeal Judgement para. 516; *Ntagerura et al.* Trial Judgement paras. 697-698; *Mpambara* Trial Judgement para. 11; *Simba* Trial Judgement para. 421; *Gacumbitsi* Trial Judgement para. 299; *Tadić* Appeal Judgement paras. 248, 255.

⁸⁶² *Bagosora et al.* Trial Judgement para. 2165, citing *Nahimana et al.* Appeal Judgement paras. 915-918; *Kordić and Čerkez* Appeal Judgement para. 666; *Kunarac et al.* Appeal Judgement para. 89; *Kunarac et al.* Trial Judgement para. 415.

⁸⁶³ *Bagosora et al.* Trial Judgement para. 2165, citing *Nahimana et al.* Appeal Judgement para. 920, quoting *Kordić and Čerkez* Appeal Judgement para. 94; *Ntakirutimana* Appeal Judgement para. 516; *Mpambara* Trial Judgement para. 11; *Semanza* Trial Judgement paras. 328-329; *Kunarac et al.* Trial Judgement para. 429; *Kunarac et al.* Appeal Judgement para. 94; *Gacumbitsi* Appeal Judgement para. 101, citing *Gacumbitsi* Trial Judgement para. 299; *Stakić* Appeal Judgement para. 246; *Blaškić* Appeal Judgement para. 101, *Limaj et al.* Trial Judgement para. 180; *Brđanin* Trial Judgement para. 133.

⁸⁶⁴ *Bagosora et al.* Trial Judgement para. 2166, citing *Gacumbitsi* Appeal Judgement paras. 86, 103, referring to *Tadić* Appeal Judgement paras. 251-252; *Galić* Appeal Judgement para. 142; *Semanza* Appeal Judgement paras. 268-269; *Simba* Trial Judgement para. 421; *Kordić and Čerkez* Appeal Judgement para. 99; *Kunarac et al.* Trial Judgement para. 434; *Kunarac et al.* Appeal Judgement para. 102; *Blaškić* Appeal Judgement paras. 124-127.

⁸⁶⁵ *Bagosora et al.* Trial Judgement para. 2166, citing *Akayesu* Trial Judgement paras. 464-469, 595; *Bagilishema* Trial Judgement para. 81.

4.3.2 Law

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786. Murder is the intentional killing of a person without any lawful justification or excuse or the intentional infliction of grievous bodily harm leading to death with knowledge that such harm will likely cause the victim's death.⁸⁶⁶

4.3.3 Deliberations

787. The Prosecution has charged the killing of Charles, Wilson and Déglote Rwanga as murder as a crime against humanity under Article 6 (1) of the Statute. They were among the approximately 40 mostly Tutsi men removed from CELA and killed on 22 April 1994. It also charges as murder under Article 6 (3) of the Statute for the killing of the 40 mostly Tutsi men, including these three individuals.⁸⁶⁷ The Chamber has already determined that the separation, removal and killing of 40 mostly Tutsi refugees, which included these victims, constituted genocide. On the same basis, the Chamber is satisfied that these intentional murders were conducted on ethnic grounds. Some Hutus also were killed during this attack even though it was principally directed at Tutsis. As they formed part of the attack on ethnic grounds they also constitute murder as a crime against humanity.

788. The Chamber has already determined that Renzaho bears responsibility under Article 6 (1) of the Statute for aiding and abetting and ordering these killings and under Article 6 (3) of the Statute as a superior (III.3.1.4).

4.3.4 Conclusion

789. The Chamber finds Renzaho guilty of murder as a crime against humanity, based on Article 6 (1) of the Statute for aiding and abetting and ordering the killings of Charles, Wilson and Déglote Rwanga, who had been removed from CELA on 22 April 1994. It further finds Renzaho guilty of murder as a crime against humanity, as a superior based on Article 6 (3) of the Statute, for the killing of Charles, Wilson and Déglote Rwanga as well as the other mostly Tutsi men removed from CELA on that date.⁸⁶⁸ The Chamber will take into account Renzaho's liability as a superior in sentencing.

⁸⁶⁶ *Bagosora et al.* Trial Judgement para. 2169, citing *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 25; *Karera* Trial Judgement para. 558. The Chamber notes that some Trial Chambers have held that murder requires an element of pre-meditation, not only intent. See, for instance, *Bagilishema* Trial Judgement para. 86; *Ntagerura et al.* Trial Judgement para. 700; *Semanza* Trial Judgement para. 339. In the present case, the Chamber is satisfied that the killings at issue would constitute murder as a crime against humanity under both standards.

⁸⁶⁷ Paragraph 45 of the Indictment, which charges Renzaho with murder under Article 6 (1) of the Statute, states that he is responsible for the "killing of *specific people ... including ... Charles, Wilson and Déglote Rwanga*" (emphasis added). This varies from paragraph 49, seeking to establish Renzaho's liability pursuant to Article 6 (3), which refers to the killings of "*certain persons ... including but not limited to ... Charles, Wilson and Déglote Rwanga*" (emphasis added). The differences between these paragraphs demonstrate that the Prosecution only alleges the murders of the three specified individuals through Article 6 (1), while it seeks conviction for the murders of everyone removed from CELA that day, including the three, under Article 6 (3). As noted previously, the Prosecution abandoned its case with respect to the alleged killings of James Rwanga and Emmanuel Gihana (II.6).

⁸⁶⁸ For the reasons mentioned above, the facts would also support the conclusion that Renzaho participated in a joint criminal enterprise in relation to these killings but the Chamber finds aiding and abetting and ordering the most appropriate forms of liability. In view of the overall gravity of the crime, such a characterisation would not alter the Chamber's sentence.

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4.4 Rape

4.4.1 Introduction

790. Count IV of the Indictment charges Renzaho with rape as a crime against humanity under Article 3 (g) of the Statute.

4.4.2 Law

791. Rape as a crime against humanity requires proof of the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator.⁸⁶⁹ Consent for this purpose must be consent given voluntarily and freely and is assessed within the context of the surrounding circumstances.⁸⁷⁰ Force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape.⁸⁷¹

792. The *mens rea* for rape as a crime against humanity is the intention to effect the prohibited sexual penetration with the knowledge that it occurs without the consent of the victim.⁸⁷²

4.4.3 Deliberations

793. The Prosecution has also charged the crimes committed against Witnesses AWO, AWN and Witness AWN's sister as rape as a crime against humanity. The Chamber has already determined that these rapes constituted serious bodily and mental harm as genocide. On the same basis, the Chamber is satisfied that they were conducted on ethnic grounds. The Chamber has found that Renzaho bears responsibility for these rapes as a superior under Article 6 (3) of the Statute.

4.4.4 Conclusion

794. The Chamber finds Renzaho guilty of rape as a crime against humanity (Count IV) as a superior under Article 6 (3) of the Statute for the crimes committed against Witnesses AWO, AWN and Witness AWN's sister.

5. SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II

5.1 Introduction

795. Counts V and VI of the Indictment charge Renzaho with serious violations of Article 3 Common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 1977 under Articles 4 (a) and 4 (e) of the Statute for murder and rape.

⁸⁶⁹ *Bagosora et al.* Trial Judgement para. 2199, citing *Kunarac et al.* Appeal Judgement paras. 127-128; *Semanza* Trial Judgement para. 344.

⁸⁷⁰ *Bagosora et al.* Trial Judgement para. 2199, citing *Kunarac et al.* Appeal Judgement paras. 127-133; *Semanza* Trial Judgement para. 344.

⁸⁷¹ *Bagosora et al.* Trial Judgement para. 2199, citing *Kunarac et al.* Appeal Judgement para. 129.

⁸⁷² *Bagosora et al.* Trial Judgement para. 2200, citing *Kunarac et al.* Appeal Judgement para. 127; *Semanza* Trial Judgement para. 346.

5.2 Threshold Elements

5.2.1 Law

796. In connection with crimes within the scope of Article 4 of the Statute, the Prosecution must prove, as a threshold matter, the following elements: (1) the existence of a non-international armed conflict; (2) the existence of a nexus between the alleged violation and the armed conflict; and (3) that the victims were not directly taking part in the hostilities at the time of the alleged violation.⁸⁷³

5.2.2 Non-International Armed Conflict

797. There is no dispute that there was an armed conflict of a non-international character between the Rwandan government and the military forces of the RPF.⁸⁷⁴

5.2.3 Nexus

798. A nexus exists between the alleged offence and the non-international armed conflict when the offence is closely related to the hostilities. In determining whether the requisite close relation exists, the jurisprudence of the Tribunal reflects:

[T]he existence of armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit [the offence], his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established ... that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.⁸⁷⁵

799. As reflected in the evidence and previous case law, the ongoing armed conflict between the Rwandan government forces and the RPF, which was identified with the Tutsi ethnic minority in Rwanda and many members of the political opposition, both created the situation and provided a pretext for the extensive killings and other abuses of members of the civilian population. The killings began within hours of the death of President Habyarimana and on the same day the active hostilities resumed between the RPF and government forces.⁸⁷⁶

800. Notably, the Chamber has described the attack at Saint Famille church on 17 June 1994 as retribution for an RPF raid at the nearby Saint Paul centre the preceding night. In addition, the Chamber is mindful of Renzaho's affiliation with the army and his high military

⁸⁷³ *Bagosora et al.* Trial Judgement para. 2229, citing *Akayesu* Appeal Judgement para. 438; *Ntagerura et al.* Trial Judgement para. 766; *Semanza* Trial Judgement para. 512.

⁸⁷⁴ See *Semanza* Appeal Judgement para. 192 ("the Chamber took notice only of general notorious facts not subject to reasonable dispute, including, *inter alia*: ... that there was an armed conflict not of an international character in Rwanda between 1 January 1994 and 17 July 1994 ..."). The Defence disputes only that Renzaho was a combatant fighting on one of the fronts in Kigali. Defence Closing Brief para. 1233.

⁸⁷⁵ *Bagosora et al.* Trial Judgement para. 2231, quoting *Semanza* Trial Judgement para. 517 (quoting *Kunarac et al.* Appeal Judgement para. 58). The *Semanza* Trial Judgement's findings on nexus were affirmed by the Appeals Chamber. See *Semanza* Appeal Judgement para. 369. See also *Rutaganda* Appeal Judgement paras. 569-580, 577-579; *Ntagerura et al.* Trial Judgement para. 793, affirmed by *Ntagerura et al.* Appeal Judgement paras. 427-428.

⁸⁷⁶ *Bagosora et al.* Trial Judgement para. 2232, citing *Semanza* Trial Judgement para. 518, affirmed by *Semanza* Appeal Judgement para. 369.

Arusha, 14 July 2009

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Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

(Seal of the Tribunal)



rank. Furthermore, he described Tutsi women as "food for the militiamen", who were ostensibly engaged in assisting civilian and military authorities in the defence of Kigali.

801. In the Chamber's view, the civilian authorities and assailants were acting in furtherance of the armed conflict or under its guise. Accordingly, the Chamber finds it established that the alleged violations of Articles 4 (a) and 4 (e) of the Statute had the requisite nexus to the armed conflict between Rwandan government forces and the RPF.

5.2.4 Victims

802. At the time of the alleged violations, the victims at Saint Famille church and the women sexually assaulted in Rugenge sector were unarmed civilians who were either murdered at a place of refuge or raped after being abducted. Therefore, the Chamber finds beyond reasonable doubt that the victims of the alleged violations of Articles 4 (a) and 4 (e) of the Statute were not taking active part in the hostilities.

5.3 Murder

5.3.1 Introduction

803. Count V of the Indictment charges Renzaho with murder under Article 4 (a) of the Statute as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

5.3.2 Law

804. Article 4 (a) of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II amounting to: "Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment." The specific violation of murder requires the unlawful, intentional killing of another person.⁸⁷⁷

5.3.3 Deliberations

805. The Prosecution has also charged the killing of at least 17 Tutsi men from Saint Famille on 17 June 1994 as murder as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II. The Chamber has already determined that the killings of hundreds at Sainte Famille that same day constituted genocide. The Chamber is convinced that at least 17 Tutsi men formed part of these executions, and on the same basis, the Chamber is satisfied that these intentional murders also constitute murder under Article 4 (a) of the Statute.⁸⁷⁸

⁸⁷⁷ *Bagosora et al.* Trial Judgement para. 2242, citing *Semanza* Trial Judgement paras. 338, 373; *Ntagerura et al.* Trial Judgement para. 765.

⁸⁷⁸ The Defence concedes that this crime relies on the same material facts that would be used to rely on in establishing the genocide count. Defence Closing Brief para. 1232. This position is consistent with the Prosecution submissions in relation to this crime as found in its Pre-Trial Brief paras. 151-154 and its Closing Brief paras. 459-489.

806. The Chamber has already determined that Renzaho bears responsibility under Article 6 (1) of the Statute for ordering killings at Sainte Famille under Article 6 (3) of the Statute as a superior (III.3.1.4). The conclusion applies with equal force in relation to this count.

5.3.4 Conclusion

807. The Chamber finds Renzaho guilty of murder as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count V) under Article 6 (1) of the Statute for ordering the killing of at least 17 Tutsi men at Saint Famille church on 17 June 1994.⁸⁷⁹ Renzaho is also liable as a superior for these murders, which the Chamber will take into account in sentencing.

5.4 Rape

5.4.1 Introduction

808. Count VI of the Indictment charges Renzaho with rape under Article 4 (e) of the Statute as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

5.4.2 Law

809. Article 4 (e) of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II amounting to: "Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault." Outrages upon personal dignity have been defined as any act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity.⁸⁸⁰ The *mens rea* of the crime requires that the accused knew that his act or omission would have such effect.⁸⁸¹

5.4.3 Deliberations

810. The Prosecution has charged the crimes committed against Witnesses AWO, AWN and Witness AWN's sister as rape as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II. The Chamber has already found that these rapes constituted serious bodily and mental harm as genocide and rape as a crime against humanity. The Chamber has also determined that Renzaho bears responsibility for these rapes as a superior under Article 6 (3) of the Statute.

5.4.4 Conclusion

811. The Chamber finds Renzaho guilty of rape as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count VI) as a superior under Article 6 (3) of the Statute for the crimes committed against Witnesses AWO, AWN and Witness AWN's sister.

⁸⁷⁹ For the reasons mentioned above, the facts would also support the conclusion that Renzaho participated in a joint criminal enterprise in relation to these killings but finds ordering the most appropriate form of liability. In view of the overall gravity of the crime, such a characterisation would not alter the Chamber's sentence.

⁸⁸⁰ *Bagosora et al.* Trial Judgement para. 2250, citing *Kunarac et al.* Appeal Judgement para. 163.

⁸⁸¹ *Bagosora et al.* Trial Judgement para. 2250, citing *Kunarac et al.* Appeal Judgement para. 164.

CHAPTER IV: VERDICT

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812. For the reasons set out in this Judgement, having considered all evidence and arguments, the Trial Chamber unanimously finds Tharcisse Renzaho:

- Count 1: GUILTY of Genocide
- Count 2: NOT GUILTY of Complicity in Genocide
- Count 3: GUILTY of Crimes Against Humanity (Murder)
- Count 4: GUILTY of Crimes Against Humanity (Rape)
- Count 5: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Murder)
- Count 6: GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Rape)



CHAPTER V: SENTENCING

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1. INTRODUCTION

813. Having found Renzaho guilty of genocide, crimes against humanity and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II, the Chamber must determine an appropriate sentence.

814. The penalty imposed should reflect the goals of retribution, deterrence, rehabilitation, and the protection of society. Pursuant to Article 23 of the Statute and Rule 101 of the Rules of Procedure and Evidence, the Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences or totality of the conduct, the individual circumstances of the accused, including aggravating and mitigating circumstances, and the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served.⁸⁸² As pointed out by the Appeals Chamber, these considerations are not exhaustive when determining the appropriate sentence. In addition, the Trial Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.⁸⁸³

2. SUBMISSIONS

815. The Prosecution submits that Renzaho should be sentenced to imprisonment for the remainder of his life. His crimes are so heinous that they place him in the category of the most serious offenders. The Prosecution points to the following aggravating circumstances: his senior position; the breach of his duty to protect the population; his premeditation in committing offences; his direct participation as a perpetrator; the sexual, violent and humiliating nature of his acts and of those who were his subordinates; the vulnerability of the victims; the duration of the offences; the suffering of the victims; his informed and willing participation in the crimes; the number of victims; and the general surrounding circumstances of the case. According to the Prosecution, there are no mitigating circumstances. Reference is also made to the Tribunal's statute and case law as well as penalties imposed in Rwanda for comparable crimes.⁸⁸⁴

816. The Defence submits that Renzaho was a hardworking man from a family of modest means largely comprising Tutsis, who owed his success only to his honesty, rigor and loyalty in serving the State. In particular, he assisted in creating a national commission on political reform in Rwanda dedicated to the promotion of democracy, law, human rights and economic progress. Renzaho sheltered Tutsi refugees at his home and the prefecture office from persecution and militia attacks and tried to arrest wrongdoers, which caused him to be considered by militiamen as an accomplice of the Tutsis.⁸⁸⁵

⁸⁸² Article 23 (1)-(3) and Rule 101 (B)(i)-(iv).

⁸⁸³ *Kajelijeli* Appeal Judgement para. 290. See Rule 101 (C).

⁸⁸⁴ Prosecution Closing Brief paras. 537-560.

⁸⁸⁵ Defence Closing Brief paras. 1460-1499.

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3. DELIBERATIONS

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3.1 Gravity of the Offences

817. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.⁸⁸⁶ When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to individualise penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.⁸⁸⁷

818. In determining an appropriate sentence, the Appeals Chamber has stated that "sentences of like individuals in like cases should be comparable". However, it has also noted the inherent limits to this approach because "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual".⁸⁸⁸

819. The Chamber has determined that by virtue of his position as prefect and with his high military rank, Renzaho was clearly an important and influential authority of the Rwandan government. During the course of the events, he ordered and aided and abetted the killings of Tutsis at roadblocks, aided and abetted and ordered the killings of approximately 40 mostly Tutsi men from CELA and ordered the killings of hundreds of Tutsi refugees at Saint Famille church. In addition, he is liable as a superior for the rapes of Witnesses AWO, AWN and Witness AWN's sister.

820. Under Rwandan law, similar crimes carry the possible penalties of life imprisonment, depending on the nature of the accused's participation.⁸⁸⁹ In this Tribunal, a sentence of life imprisonment is generally reserved those who planned or ordered atrocities as well as the most senior authorities.⁸⁹⁰

⁸⁸⁶ *Bagosora et al.* Trial Judgement para. 2263, citing *Kayishema and Ruzindana* Appeal Judgement para. 367 (quoting Article 1 of the Statute).

⁸⁸⁷ *Bagosora et al.* Trial Judgement para. 2263, citing *Kajelijeli* Appeal Judgement para. 291.

⁸⁸⁸ *Bagosora et al.* Trial Judgement para. 2263, citing *Kvočka et al.* Appeal Judgement para. 681.

⁸⁸⁹ *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (assessing Rwanda's penalty structure); *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25. See also *Semanza* Appeal Judgement para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), quoting *Serushago* Appeal Judgement para. 30; *Dragan Nikolić* Appeal Judgement para. 69.

⁸⁹⁰ *Bagosora et al.* Trial Judgement para. 2270, citing *Musema* Appeal Judgement para. 383 (noting that the leaders and planners of a particular conflict should bear heavier responsibility, with the qualification that the gravity of the offence is the primary consideration in imposing a sentence). Life sentences have been imposed against senior government and military authorities in: *Bagosora et al.* Trial Judgement paras. 2265, 2277 (*Directeur de cabinet* of Ministry of Defence, Commander of Para Commando Battalion, and Commander of Gisenyi Operational Sector); *Ndindabahizi* Trial Judgement paras. 505, 508, 511 (Minister of Finance); *Niyitegeka* Trial Judgement paras. 499, 502 (Minister of Information); *Kambanda* Trial Judgement paras. 44, 61-62 (Prime Minister); *Kamuhanda* Trial Judgement, paras. 6, 764, 770 (Minister of Higher Education and Scientific Research). In several other cases, lower level officials, as well as those who did not hold government positions have received life sentences. See, for instance, *Bagosora et al.* Trial Judgement paras. , 2268, 2268-2269, 2278-2279 (Commander of Para Commando Battalion and Commander of Gisenyi Operational Sector); *Karera* Trial Judgement para. 585 (prefect of Kigali-Rural); *Kayishema and Ruzindana* Trial Judgement (Sentence) p. 8 (Kayishema was prefect of Kibuye); *Gacumbitsi* Appeal Judgement para. 206 (*bourgmestre*);

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821. Renzaho's crimes are grave and resulted in a massive toll of human suffering. Bearing in mind the particular facts surrounding each incident, the Chamber considers that his specific role in each of them would individually warrant the highest sanction and censure comparable to other senior leaders who have received life sentences.

3.2 Individual, Aggravating and Mitigating Circumstances

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822. The Chamber will consider Renzaho's individual circumstances, including aggravating and mitigating factors. Mitigating circumstances need only be established by the balance of the probabilities, while aggravating circumstances need to be proven beyond reasonable doubt.⁸⁹¹ Any particular circumstance that is included as an element of the crime for which the Accused is convicted will not also be considered as an aggravating factor.⁸⁹²

823. The Appeals Chamber has held that an accused's abuse of his superior position or influence may be considered as an aggravating factor.⁸⁹³ In the Chamber's view, Renzaho's abuse of his role as an influential authority and superior in connection with those crimes for which he was convicted under Article 6 (1) of the Statute amounts to an aggravating factor.

824. The Chamber has considered Renzaho's background and individual circumstances. The Chamber is mindful of his lengthy public service to his country prior to the events as well as his submissions concerning assistance to Tutsis. However, it accords these mitigating circumstances very limited weight in view of the gravity of his crimes.

4. CONCLUSION

825. The Chamber has the discretion to impose a single sentence. This practice is usually appropriate where the offences may be characterised as belonging to a single criminal transaction.⁸⁹⁴

826. Considering all the relevant circumstances discussed above, the Chamber
SENTENCES Tharcisse Renzaho to:

LIFE IMPRISONMENT

5. CONSEQUENTIAL ORDERS

827. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

828. Until his transfer to his designated places of imprisonment, Tharcisse Renzaho shall be kept in detention under the present conditions.

829. 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 person nevertheless remaining in detention.

Musema Trial Judgement paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda* Trial Judgement paras. 466-473 (second Vice-president of *Interahamwe* at national level).

⁸⁹¹ *Nahimana et al.* Appeal Judgement para. 1038; *Kajelijeli* Appeal Judgement, para. 294.

⁸⁹² *Ndindabahizi* Appeal Judgement, para. 137.

⁸⁹³ See, for instance, *Simba* Appeal Judgement paras. 284-285.

⁸⁹⁴ *Nahimana et al.* Appeal Judgement paras. 1042-1043; *Simba* Trial Judgement para. 445; *Ndindabahizi* Trial Judgement para. 497.



Arusha, 14 July 2009

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Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

(Seal of the Tribunal)

ANNEX A: PROCEDURAL HISTORY

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1. PRE-TRIAL PROCEEDINGS

830. On 16 July 1997, Judge Laïty Kama ordered the Kenyan authorities to transfer and provisionally detain Tharcisse Renzaho.⁸⁹⁵ He was arrested in the Democratic Republic of the Congo on 29 September 2002, pursuant to an order issued by Judge Andresia Vaz on 27 September 2002.⁸⁹⁶ He was transferred to the UN Detention Facility on 29 September 2002 and made his initial appearance before Judge Vaz on 3 October 2002.

831. The original Indictment of 23 October 2002 charged Renzaho with four counts: genocide, or alternatively, complicity in genocide; extermination as a crime against humanity; and violence to life, health and physical or mental well-being as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto.

832. On 4 November 2002, Judge Erik Møse extended Renzaho's detention for 21 days, pending confirmation of his Indictment.⁸⁹⁷ The Indictment was amended on 11 November 2002 and charged Renzaho with three counts: genocide, or alternatively, complicity in genocide, and murder as a crime against humanity.⁸⁹⁸ On 15 November 2002, Judge Winston Matanzima Maqutu confirmed the Amended Indictment in respect of all three counts alleged, and issued an order confirming the Indictment and for non-disclosure of identifying information in witness statements.⁸⁹⁹ At Renzaho's initial appearance on 21 November 2002, he pleaded not guilty to all three counts.

833. The remaining pre-trial motions were considered by Trial Chamber II. On 25 August 2004, the Chamber denied the Defence motion for Renzaho's immediate release.⁹⁰⁰ It partly granted one Defence motion for disclosure of documents from the Prosecution and dismissed a second Defence motion for documentary disclosure by the Registry.⁹⁰¹

834. The Chamber ordered on 18 March 2005 that Renzaho make a further appearance, having granted the Prosecution motion for leave to amend the Indictment, *inter alia*, to add a count of rape as a crime against humanity and counts of murder and rape as violations of Article 3 Common to the Geneva Conventions of 1914/9, and Additional Protocol II of 1977, and to specify the modes of liability that give rise to Renzaho's alleged responsibility as an

⁸⁹⁵ Order for Transfer and Provisional Detention (TC), 16 July 1997.

⁸⁹⁶ Request for Transfer and Provisional Detention (TC), 26 September 2002; Order for Transfer and Provisional Detention (TC), 27 September 2002.

⁸⁹⁷ Decision on the Prosecutor's Request for the Extension of the Suspect's Detention (TC), 4 November 2002. Judge Møse had earlier granted a Prosecution oral motion to extend Renzaho's provisional detention. T. 29 October 2002 p. 14.

⁸⁹⁸ Order Confirming the Indictment and for Nondisclosure of Identifying Information in Witness Statements, 15 November 2002.

⁸⁹⁹ Order Confirming Indictment and for Nondisclosure of Identifying Information in Witness Statements (TC), 15 November 2002.

⁹⁰⁰ Decision on Tharcisse Renzaho's Motion for His Immediate Release on Grounds of Violations of His Rights under Article 20 of the Statute and Rule 40 (D) of the Rules (TC), 25 August 2004.

⁹⁰¹ *Décision sur la requête de la Défense aux fins de communication de documents* (TC), 19 October 2004 (allowing the time period for the Defence to file a preliminary motion to begin from the date of the decision). See also *Corrigendum de la décision sur la requête de la Défense aux fins de communication de documents en date du 19 octobre 2004* (TC), 22 October 2004; *Décision sur la requête en extrême urgence de la défense aux fins de communication de documents par le greffe* (TC), 21 October 2004 (denying the Defence motion for disclosure).

individual and as a superior.⁹⁰² The Prosecution filed an Amended Indictment dated 1 April 2005. Renzaho made a further appearance on 3 June 2005, and pleaded not guilty to all counts. On 17 August 2005, the Chamber granted in part the Prosecution's motion for protective measures for its witnesses.⁹⁰³

835. The Prosecution was granted leave on 13 February 2006 to amend the Indictment a second time. A further appearance was not required.⁹⁰⁴ The Second Amended Indictment was filed on and dated 16 February 2006. The Chamber denied on 5 September 2006 the Defence preliminary motion on defects in the form of the Indictment.⁹⁰⁵

836. On 12 December 2006, Judge Møse granted a Prosecution request to transfer to the Tribunal five detained witnesses from Rwanda to testify.⁹⁰⁶

2. THE PROSECUTION CASE

837. The trial commenced before Trial Chamber I on 8 January 2007. The Prosecution conducted its case during two trial sessions: from 8 January to 7 February 2007 and from 2 to 6 March 2007. Over the course of 21 trial days, the Prosecution called 26 witnesses, including one expert and one investigator, and tendered 118 exhibits.

838. On 22 January 2007, the Chamber heard arguments from the parties regarding the admissibility of the transcripts of an audio recording, which the Prosecution had provided to the Defence on 6 December 2006, as well as the tape itself, disclosed on 11 January 2007.⁹⁰⁷ The Chamber noted the uncertainty surrounding the provenance of the recording and orally ruled that, although it would not be admitted as an exhibit at that stage, questioning about the tape and its transcripts would be allowed at trial.⁹⁰⁸

839. The Defence withdrew on 23 January 2007 its motion for translation of three documents.⁹⁰⁹ Its request for permission for its investigator Jean-Marie Hakizamungu to be in the courtroom during the closed sessions was granted.⁹¹⁰ On 31 January 2007, the Chamber took note of Defence counsel's reiteration of the objections to the use of the audio recording

⁹⁰² Decision on the Prosecutor's Motion for Leave to Amend the Indictment (TC), 18 March 2005. The same Chamber also declared moot the Defence preliminary motion alleging defects in the form of the Indictment. *Décision sur la requête en exception préjudicielle pour vice de forme de l'acte d'accusation* (TC), 8 April 2005.

⁹⁰³ Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment (TC), 17 August 2005. The Chamber granted in part a Defence motion for withdrawal of that decision, allowing the Defence to file a motion under Rule 75 (I) to rescind, vary or augment the protective measures granted in the decision of 17 August 2005. Decision on Renzaho's Motion to Reconsider the Decision on Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment (TC), 1 November 2005; Decision on Renzaho's Motion on Certification to Appeal the Decision on Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment (TC), 1 November 2005.

⁹⁰⁴ Decision on the Prosecutor's Application for Leave to Amend the Indictment Pursuant to Rule 50 (A) of the Rules of Procedure and Evidence (TC), 13 February 2006.

⁹⁰⁵ Decision on Preliminary Motion on Defects in the Form of the Indictment (TC), 5 September 2006. See also *Décision relative à la demande aux fins de certification d'appel de la décision du 5 septembre 2006 en vertu de l'article 72 (B)* (TC), 25 October 2006.

⁹⁰⁶ Order for Transfer of Five Prosecution Witnesses Pursuant to Rule 90 bis (TC), 12 December 2006. A status conference was also held on 6 December 2006.

⁹⁰⁷ T. 22 January 2007 pp. 1-11.

⁹⁰⁸ *Id.* pp. 39-40.

⁹⁰⁹ T. 23 January 2007 pp. 66-67.

⁹¹⁰ T. 30 January 2007 p. 43.

as evidence and to the admissibility of Witness AWE's will-say statement, which related to the tape. The Prosecution was, however, authorised to play the recording.⁹¹¹

840. During the proceedings on 1 February 2007, the Prosecution stated its intention to withdraw two witnesses.⁹¹² On 14 February, the Chamber granted the Prosecution request for testimony via video-link testimony in light of a witness's ill-health.⁹¹³ The Prosecution motion to remove one witness and add another to its list was granted on 16 February 2007.⁹¹⁴

841. The Defence applied on 2 March 2007 to exclude the testimony of Prosecution Witness Kagame (formerly Witness ADU), submitting that it covered new material facts not included in the Amended Indictment. After hearing arguments from the parties, the Chamber denied the motion, stating that it also would render a written decision in light of the importance of the issue.⁹¹⁵ On 12 March 2007, the Chamber ordered witness protection measures for Defence witnesses.⁹¹⁶ It rendered a written decision on 20 March 2007, denying a Defence motion to exclude Witness Kagame's testimony and granting the Prosecution request to admit as an exhibit the audio recording and its transcription, along with translations thereof. They were found to have sufficient probative value. The Chamber also concluded that the Defence had received sufficient notice to prepare for this issue and for Witness Kagame's testimony. The tape had been adequately authenticated and the manner in which it had been obtained was not problematic.⁹¹⁷

3. THE DEFENCE CASE

842. The Defence case opened before Trial Chamber I on 17 May 2007 and was conducted during two trial sessions: from 17 May to 10 July 2007 and from 22 August to 6 September 2007. During 28 trial days, the Defence called 27 witnesses, including one expert and the Accused, Tharcisse Renzaho. The Defence tendered 113 exhibits.⁹¹⁸

843. On 4 June 2007, the Chamber denied a motion submitted by the Defence for François Karera for access to all confidential material from the Renzaho case because the Karera Defence had already closed its case and the applicant could no longer make submissions or introduce evidence in those proceedings.⁹¹⁹

844. The Chamber granted on 8 June 2007 a request submitted by the Defence for Casimir Bizimungu for disclosure of closed session testimony of Witness UL and ordered that the Bizimungu Defence be bound by the protection orders for that witness in the *Renzaho* trial.⁹²⁰ On 14 June 2007, it granted in part a Defence request for special protective measures for Witness HIN. The Chamber ordered that the witness's identity remain undisclosed until his

⁹¹¹ T. 31 January 2007 pp. 30-31.

⁹¹² T. 1 February 2007 p. 40.

⁹¹³ Decision on Prosecution Request for Video-Link Testimony (TC), 14 February 2007.

⁹¹⁴ Decision on Prosecution Request Motion to Vary Witness List (TC), 16 February 2007.

⁹¹⁵ T. 2 March 2007 pp. 12-25.

⁹¹⁶ Decision on Defence Request for Protective Measures (TC), 12 March 2007.

⁹¹⁷ Decision on Exclusion of Testimony and Admission of Exhibit (TC), 20 March 2007; Decision on Certification for Appeal Concerning Exclusion of Testimony and Admission of Exhibit (TC), 7 May 2007 (denying certification for appeal). After the conclusion of the testimony of the last Prosecution witness, a status conference was held on 6 March 2007.

⁹¹⁸ A status conference was also held on 6 September 2007.

⁹¹⁹ Decision on Karera Defence Motion for Disclosure (TC), 4 June 2007.

⁹²⁰ Decision on Bizimungu Request for Closed Session Testimony (TC), 8 June 2007.

arrival in Arusha, but denied the request in all other respects.⁹²¹ On 27 June 2007, the Chamber authorized video-link testimony for a witness based on his genuinely-held fears for his security.⁹²²

845. During the proceedings on 10 July 2007, the Chamber found moot the Prosecution motion requesting exclusion of Defence evidence and for the Defence to provide a proper list of exhibits and notice of alibi, filed on 11 May 2007. On 12 July 2007, the Chamber granted a Defence request to amend its witness list by adding two witnesses and withdrawing 12 other witnesses as well as a proposed expert witness.⁹²³

846. The Prosecution objected during the proceedings on 23 August 2007 to the scope of examination-in-chief of Witness PER, stating that both it had not received notice of the line of questioning being used by the Defence and that the issue had never been raised during cross-examination of the appropriate Prosecution witness. After deliberation, the Chamber was of the view that the basis of the Defence line of questioning should have been communicated to the Prosecution and should have been raised with the relevant Prosecution witness. Two of the three judges nevertheless decided to allow the line of questioning, taking into consideration that the issue was not put to that Prosecution witness in connection with its general credibility assessments and the overall weighing of the evidence. One judge was in favour of the exclusion of the evidence.⁹²⁴

847. The Chamber noted during the proceedings on 27 August 2007 that the Defence 24 August 2007 motion for disclosure of documents was moot.⁹²⁵ On the following day, 28 August 2007, the Chamber orally granted the Defence motion to add a witness, directing that he not be called before 4 September 2007 in order to give the Prosecution time to prepare.⁹²⁶

848. During the proceedings on 30 August 2007, the Chamber overruled a Prosecution objection to the tendering of the passport of Théoneste Bagosora, but noted that the Prosecution arguments would be considered in deciding the weight to give to that exhibit.⁹²⁷ The Chamber ruled on 3 September 2007 that Defence Witness Bernard Lugan was qualified to testify as an expert in the proceedings.⁹²⁸ On 6 September, after the testimony of the final witness was concluded, the Presiding Judge noted that the Defence case was closed and the proceedings were adjourned until 14 February 2008 for the hearing of closing arguments. A total of 56 witnesses were heard during the course of 49 trial days. A status conference was held immediately afterwards, at which the parties agreed to submit their Closing Briefs simultaneously on 15 November 2007, with closing arguments on 14 and 15 February 2008.

⁹²¹ Decision on Defence Request for Special Protective Measures for Witness HIN (TC), 14 June 2007. This decision was an exception to the 12 March 2007 decision in which the Chamber granted protective measures for Defence witnesses. Decision on Defence Request for Protective Measures (TC), 12 March 2007.

⁹²² Decision on Defence Request for Video-Link Testimony (TC), 27 June 2007.

⁹²³ Decision on Defence Request to Amend Witness List (TC), 12 July 2007. A status conference was also held on 11 July 2007.

⁹²⁴ T. 23 August 2007 pp. 37-43.

⁹²⁵ T. 27 August 2007 p. 2.

⁹²⁶ T. 28 August 2007 pp. 61-62.

⁹²⁷ T. 30 August 2007 p. 2.

⁹²⁸ T. 3 September 2007 p. 58.

4. FURTHER PROCEEDINGS

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849. The parties filed their Closing Briefs on 15 November 2007.⁹²⁹ A Defence motion to admit documents was denied on 12 February 2008 because the documents did not satisfy any of the requirements of the rule governing the proof of facts other than by oral evidence.⁹³⁰ Closing arguments were heard on 14 and 15 February 2008.⁹³¹

850. On 3 April 2008, the Chamber denied a request for disclosure of closed session testimony and sealed exhibits from the Georges Rutaganda Defence, finding that the material requested had no apparent nexus with Rutaganda's case.⁹³²

851. On 30 June 2009, the Registry filed a report under Rule 33 (B) of the Rules noting that the investigator it appointed had failed to respond to its requests for a final report on the allegations that a former Defence investigator was interfering with Defence witnesses.

852. The Chamber pronounced its unanimous judgement on 14 July 2009. It convicted Renzaho for genocide, crimes against humanity and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II, and sentenced him to life imprisonment. The written judgement was filed on 14 August 2009 after the completion of the editorial process.

⁹²⁹ The Defence filed an Amended Closing Brief on 21 January 2008. During the proceedings on 15 February 2008, the Chamber declared moot the Prosecution motion filed on 24 January 2008 to exclude the Defence Amended Closing Brief. It considered, however, that the Amended Brief did not have any status. Instead, it allowed a Defence exhibit that supplemented in writing the Defence closing arguments. T. 14 February 2008 pp. 1-2; T. 15 February 2008 p. 8; Defence Exhibit 113 (*Complément écrit aux arguments oraux de la défense en réponse au mémoire du procureur*).

⁹³⁰ Decision on Defence Motion to Admit Documents (TC), 12 February 2008.

⁹³¹ T. 15 February 2008 p. 8.

⁹³² Decision on Request for Closed Session Testimony and Sealed Exhibits (TC), 3 April 2008. The Chamber denied reconsideration or certification of that decision in its Decision on Rutaganda's Motion for Reconsideration or Alternatively, Certification to Appeal the Decision of 3 April 2008 on Request for Closed Session Testimony and Sealed Exhibits (TC), 13 November 2008.

ANNEX B: CITED MATERIALS AND DEFINED TERMS

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1. JURISPRUDENCE

1.1 ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 (“*Akayesu* Trial Judgement”)

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 (“*Akayesu* Appeal Judgement”)

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001 (“*Bagilishema* Trial Judgement”)

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (AC), 3 July 2002 (“*Bagilishema* Appeal Judgement”)

Bagosora et al.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Disclosure of Materials Relating to Immigration Statements of Defence Witnesses (TC), 27 September 2005

The Prosecutor v. Théoneste Bagosora et al., Case Nos. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals on Witness Protection Orders (AC), 6 October 2005

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-AR73, Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on the Ntabakuze Motion for Disclosure of Various Categories of Documents Pursuant to Rule 68 (TC), 6 October 2006

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Nsengiyumva Motion to Admit Documents as Exhibits (TC), 26 February 2007

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Bagosora Request for Certification or Reconsideration Concerning Admission of Witness B-06’s Statement (TC), 8 May 2007

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-T, Judgement (TC), 18 December 2008 (“Bagosora Trial Judgement”)

Gacumbitsi

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The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 (“Gacumbitsi Trial Judgement”)

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 (“Gacumbitsi Appeal Judgement”)

Gatete

The Prosecutor v. Jean-Baptiste Gatete, Case No. ICTR-2000-61-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda (TC), 17 November 2008

Kajelijeli

The Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-98-44A-T, Judgement and Sentence (TC), 1 December 2003 (“Kajelijeli Trial Judgement”)

Juvénal Kajelijeli v. The Prosecutor, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 (“Kajelijeli Appeal Judgement”)

Kambanda

The Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Judgement and Sentence (TC), 4 September 1998 (“Kambanda Trial Judgement”)

Kamuhanda

The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, Judgement (TC), 22 January 2004 (“Kamuhanda Trial Judgement”)

Jean de Dieu Kamuhanda v. The Prosecutor, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“Kamuhanda Appeal Judgement”)

Kanyarukiga

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-2002-78-R11bis, Decision on Prosecutor’s Request for Referral to the Republic of Rwanda (TC), 6 June 2008

The Prosecutor v. Gaspard Kanyarukiga, Case No. ICTR-2002-78-R11bis, Decision on Prosecution’s Appeal Against Decision on Referral under Rule 11bis (AC), 30 October 2008

Karemera et al.

The Prosecutor v. Edouard Karemera et al., Case No. ICTR-98-44-AR73, Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment (AC), 19 December 2003

The Prosecutor v. Edouard Karemera et al., Case No. ICTR-98-44-PT, Decision on the Severance of Andre Rwamakuba and Amendments of the Indictment, Article 20 (4) of the Statute, Rule 82 (b) of the Rules of Procedure and Evidence (TC), 7 December 2004

The Prosecutor v. Edouard Karemera et al., Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006 **5456**

Karemera et al., Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006

The Prosecutor v. Edouard Karemera et al., Case No. ICTR-98-44-AR73.7, Decision on Interlocutory Appeal Regarding the Role of the Prosecutor's Electronic Disclosure Suite in Discharging Disclosure Obligations (AC), 30 June 2006

The Prosecutor v. Edouard Karemera et al., Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion" (AC), 14 May 2008

Karera

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2. DEFINED TERMS AND ABBREVIATIONS

CDR

Coalition pour la Défense de la République

CELA

Centre d'Étude de Langues Africaines

CND

Conseil National pour le Développement

Also refers to the nickname of a mass grave in Kigali-Ville near the Rugenge sector office

Defence Closing Brief

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-I Defence Final Trial Brief, 15 November 2007

Defence Exhibit 113

Complément écrit aux argument oraux de la défense en réponse mémore du procureur

ESM

École Supérieure Militaire

ICRC

International Committee of the Red Cross

ICTR or Tribunal

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

ICTY

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Indictment

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-I, Second Amended Indictment, 16 February 2006

MDR

Mouvement Démocratique Républicain

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement

OAU

Organisation of African Unity

ONATRACOM

Rwanda National Transport Company

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para. (paras.)

paragraph (paragraphs)

Prosecution Pre-Trial Brief

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-I, The Prosecutor's Pre-Trial Brief, 31 October 2005

Prosecution Closing Brief

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-I, The Prosecutor's Closing Brief, 15 November 2008

PSD

Parti Social Démocrate

RPF

Rwandan (also Rwandese) Patriotic Front

RTL

Radio Télévision Libre des Mille Collines

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

Saint Paul

Saint Paul pastoral centre in Kigali-Ville

Sainte Famille

Sainte Famille church in Kigali-Ville

Statute

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

T.

Transcript

UNAMIR

United Nations Assistance Mission for Rwanda

UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDAICTR-97-31-I
16 - 02-2006
(533bis - 497bis)
Case No. ICTR-97-31-I

THE PROSECUTOR

AGAINST

THARCISSE RENZAHU

SECOND AMENDED INDICTMENT

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR SOUS	
NAME / NOM:	JOHN M. VIYEYEU
SIGNATURE:	14/8/2009 DATE:

2009 FEB 16 P 18

-0112

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

Tharcisse RENZAHO

With:

- Count I - GENOCIDE, pursuant to Articles 2(3)(a), 6(1) and 6(3) of the Statute, or in the alternative,
- Count II - COMPLICITY IN GENOCIDE, pursuant to Articles 2(3)(e), 6(1) and 6(3) of the Statute;
- Count III - MURDER as a CRIME AGAINST HUMANITY, pursuant to Articles 3(a), 6(1) and 6(3) of the Statute;
- Count IV - RAPE as a CRIME AGAINST HUMANITY, pursuant to Articles 3(g) and 6(3) of the Statute;
- Count V - MURDER as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 and Additional Protocol II of 1977, as incorporated pursuant to Articles 4(a), 6(1) and 6(3) of the Statute; and
- Count VI - RAPE as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 and Additional Protocol II of 1977, as incorporated pursuant to Articles 4(e) and 6(3) of the Statute.

II. **THE ACCUSED**

1. **Tharcisse RENZAHO** was born in 1944 in *Gaseta Secteur, Kigarama Commune, Kibungo Préfecture*, Republic of Rwanda.
2. **Tharcisse RENZAHO** was at all times referred to in this indictment:

(A) A senior public official who,

- (i) was *Préfet* of Kigali ville;
- (ii) was Chairman of the Civil Defense Committee for Kigali ville; and
- (iii) consequently had *de jure* and *de facto* control over *bourgmestres, conseillers de secteur, responsables de cellule, nyumbakumi* (ten-house leaders), administrative personnel, *gendarmes*, communal police, *Interahamwe*, militias, and armed civilians in that he could order such persons to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions.

- (B) A Colonel in the *Forces Armées Rwandaises* ("FAR") and as such was a senior military official who had *de jure* and *de facto* control over all armed forces who were under his command in that he could order such persons to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions.
- (C) A member of the crisis committee set up on the night of 6 April 1994 composed of senior military officers, including Major-General Augustin NDINDILYIMANA – Chairman, Colonel Marcel GATSINZI, Colonel Leonidas RUSATIRA, Colonel Balthazar NDENGEYINKA, Colonel Felicien MUBERUKA, Colonel Joseph MURASAMPONGO and Lt. Colonel Ephrem RWABALINDA and as such was a senior military official who had *de jure* and *de facto* control over all armed forces who were under his command in that he could order such persons to commit or to refrain from committing unlawful acts and could discipline or punish them for unlawful acts or omissions.
- (D) A "combatant" pursuant to Articles 1 and 2 of Protocol II Additional to Geneva Conventions of 12 August 1949.
- (E) By virtue of his rank, office and links with prominent figures in the community, and his role as *de facto* Minister of the Interior in Kigali *Préfecture*, any person wishing to leave Kigali *ville* needed an authorization signed by him and therefore his authorization necessarily had influence in other *préfectures*.

III. CHARGES AND CONCISE STATEMENT OF FACTS

- 3. At all times referred to in this indictment there existed in Rwanda a minority racial or ethnic group known as Tutsi, officially identified as such by the government of Rwanda. The majority of the population of Rwanda was comprised of a racial or ethnic group known as the Hutu, also officially identified as such by the government of Rwanda.
- 4. Between 6 April 1994 and 17 July 1994, throughout Rwanda, and in Kigali in particular, *Interahamwe* militias, soldiers of the FAR and armed civilians targeted and attacked the civilian population based on ethnic or racial identification as Tutsi, or perceived sympathies to the Tutsi. During the attacks some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of these attacks, large numbers of ethnically or racially identified Tutsi were killed.
- 5. During the period of 7 April 1994 through 17 July 1994, there existed a non-international armed conflict throughout Rwanda, particularly in Kigali-ville *préfecture*. The belligerents in said non-international armed conflict were the FAR and the Rwandan Patriotic Front ("RPF"). During the relevant period of 7

April 1994 through 4 July 1994, the FAR occupied portions of Kigali-ville, trained and armed the *Interahamwe*; and were supported in the conflict by the *Interahamwe*, the *gendarmerie* and *préfectoral* communal police. During this period, the RPF occupied the eastern stretches of Kacyiru and parts of Kicukiro communes.

Count I: GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Tharcisse RENZAHO** with **GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute, in that on or between the dates of 7 April 1994 and 17 July 1994 throughout Rwanda, particularly in Kigali-ville *Préfecture*, **Tharcisse RENZAHO** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group, including acts of sexual violence, with intent to destroy, in whole or in part, a racial or ethnic group, as such, as outlined in paragraphs 6 through 43.

Alternatively,

Count II: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Tharcisse RENZAHO** with **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute, in that on or between the dates of 7 April 1994 and 17 July 1994 throughout Rwanda, particularly in Kigali-ville *Préfecture*, **Tharcisse RENZAHO** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi racial or ethnic group, including acts of sexual violence, with intent to destroy, in whole or in part, a racial or ethnic group, as such, or with knowledge that other people intended to destroy, in whole or in part, the Tutsi racial or ethnic group, as such, and that his assistance would contribute to the crime of genocide, as outlined in paragraphs 6 through 43.

CONCISE STATEMENT OF FACTS FOR COUNTS I AND II

Individual Criminal Responsibility pursuant to Article 6(1)

6. Pursuant to Article 6(1) of the Statute, the accused, **Tharcisse RENZAHO**, is individually responsible for the crimes of genocide or complicity in genocide because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Tharcisse RENZAHO** ordered those over whom he had command responsibility and control as a result of his position and authority described in paragraph 2 and he instigated and aided and abetted those over whom he did not have command responsibility and control. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of genocide against the Tutsi racial or ethnic group and persons identified as Tutsi or presumed to support

the Tutsi in Kigali *Préfecture* as well as throughout Rwanda. To fulfill this criminal purpose, the accused acted with leaders and members of the FAR, including Colonel Théoneste BAGOSORA and Colonel Ephrem SETAKO and Major NYIRAHAKIZIMANA; the Presidential Guard; the *Interahamwe*, including Odette NYIRABAGENZI, Angeline MUKANDUTIYE and NGERAGEZA; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; other known participants, such as Father Wenceslas MUNYESHYAKA and Bishop Samuel MUSABYIMANA; and other unknown participants, all such actions being taken either directly or through subordinates, for at least the period of mid-1993 through 17 July 1994. The particulars that give rise to the accused's individual criminal responsibility including his participation in this joint criminal enterprise are set forth in paragraphs 7 through 23.

Roadblocks

7. From and after 7 April 1994, **Tharcisse RENZAHO** instructed soldiers, *gendarmes*, militia, local citizens and demobilized soldiers and others to construct and man roadblocks throughout Kigali-ville including those at Gitega and near the Ontracom facility. These soldiers, *gendarmes*, militia, local citizens and demobilized soldiers and others were members of the joint criminal enterprise referred to in paragraph 6 above, who used these roadblocks to intercept, identify and kill Tutsi from 7 April to 17 July 1994. In so doing, **Tharcisse RENZAHO** planned, ordered, instigated, committed or otherwise aided and abetted genocide.
8. On or about 7 April 1994, and regularly thereafter, in broadcasts over Radio Rwanda, **Tharcisse RENZAHO** instructed soldiers, *gendarmes*, militia, local citizens and demobilized soldiers, who were members of the joint criminal enterprise referred to in paragraph 6 above, to construct and to man roadblocks, which, from 7 April to 17 July 1994, were used by them to intercept, identify and kill Tutsi, while allowing movement of commercial goods and the majority Hutu population. In so doing, **Tharcisse RENZAHO** planned, ordered, instigated, committed or otherwise aided and abetted genocide.
9. On or about 10 April 1994, at a meeting at the *Préfecture* office of Kigali-ville, **Tharcisse RENZAHO** ordered *conseillers* and *responsables de cellule* to set up roadblocks, which, from 10 April to 17 July 1994 were used by *conseillers*, *responsables de cellule*, *Interahamwe*, local citizens, *gendarmes*, soldiers and demobilized soldiers, who were members of the joint criminal enterprise referred to in paragraph 6 above to identify and to kill Tutsi. In so doing, **Tharcisse RENZAHO** planned, ordered, instigated, committed or otherwise aided and abetted genocide.

10. On diverse unknown dates in April and May 1994 **Tharcisse RENZAHO** convened a meetings at which he instructed *nyumbakumi, responsables de cellule, conseillers and bourgmestres* to remain vigilant at roadblocks and to make sure that *Inyenzi* do not succeed in hiding among the population. As a consequence of these instructions, Tutsi were intercepted, identified and killed at the roadblocks in Kigali-ville. In convening these meetings and giving these instructions, **Tharcisse RENZAHO** planned, ordered, instigated, committed or otherwise aided and abetted genocide.

The Killing Campaign in Kigali-ville

11. On diverse unknown dates between mid-1993 and 17 July 1994, **Tharcisse RENZAHO** regularly permitted and encouraged *Interahamwe* and *Impuzamugambi* groups to meet at his house in Kanombe and elsewhere for the purpose of receiving military training. These *Interahamwe* and *Impuzamugambi* were members of the joint criminal enterprise referred to in paragraph 6 above, who killed and/or caused serious bodily or mental harm to Tutsi between 6 April and 17 July 1994. By permitting and encouraging the training of *Interahamwe* and *Impuzamugambi* **Tharcisse RENZAHO** planned, instigated, committed or otherwise aided and abetted genocide.
12. On diverse unknown dates between mid-1993 and 17 July 1994, **Tharcisse RENZAHO** distributed weapons and ammunition to members of the *Interahamwe* and *Impuzamugambi* at his house in Kanombe and elsewhere. These *Interahamwe* and *Impuzamugambi* were members of the joint criminal enterprise referred to in paragraph 6 above, who killed and/or caused serious bodily or mental harm to Tutsi between 6 April and 17 July 1994. In so distributing weapons and ammunition **Tharcisse RENZAHO** planned, instigated, committed or otherwise aided and abetted genocide.
13. Between 6 April and 17 July 1994, **Tharcisse RENZAHO** provided and facilitated the provision of bonds, permits, *laissez-passers*, and food to enable the movement and equipping of the *Interahamwe*, militia, soldiers and *gendarmes*. These *Interahamwe*, militia, soldiers and *gendarmes* were members of the joint criminal enterprise referred to in paragraph 6 above, who killed and/or caused serious bodily or mental harm to Tutsi between 6 April and 17 July 1994. By his actions described above **Tharcisse RENZAHO** planned, committed or otherwise aided and abetted genocide.
14. On or about 8 April 1994 **Tharcisse RENZAHO** planned, committed, ordered, instigated or aided and abetted the killing of the Director of the *Banque rwandaise de développement*. He confirmed this to Colonel BAGOSORA, who was a

member of the joint criminal enterprise referred to in paragraph 6 above, by radio on or about that same date.

15. On or about 9 April 1994, **Tharcisse RENZAHO**, while dressed in the military uniform of a senior military official, led armed *Interahamwe* at Kajari in Kanombe. The *Interahamwe*, who were members of the joint criminal enterprise referred to in paragraph 6 above, entered houses of Tutsi and killed the Tutsi who resided there. **Tharcisse RENZAHO** thereby ordered, instigated, committed, or otherwise aided and abetted the killing of the Tutsi.
16. On or about 16 April 1994 at a meeting at the Kigali-ville prefectural headquarters, **Tharcisse RENZAHO** ordered *conseillers* to obtain firearms from the Ministry of Defence to be distributed at the *secteur* level. These weapons were used by *conseillers* and militia, who were members of the joint criminal enterprise referred to in paragraph 6 above, to kill Tutsi, and by so distributing firearms **Tharcisse RENZAHO** planned, instigated, committed or otherwise aided and abetted genocide.
17. On or about 30 April 1994, **Tharcisse RENZAHO** dismissed, among other people, *secteur conseillers* Jean-Baptiste RUDASINGWA and Celestin SEZIBERA, because he believed they were opposed to the killing of Tutsi. By replacing the aforementioned persons with *conseillers* who supported the killing of Tutsi **Tharcisse RENZAHO** aided and abetted this killing.
18. On an unknown date within the period between on or about 7 and 30 May 1994, while at a meeting at Bishop Samuel MUSABYIMANA's residence, **Tharcisse RENZAHO** agreed to supply guns to MUSABYIMANA. **Tharcisse RENZAHO** thereafter during the same period tendered several Kalashnikov rifles, which were delivered by Major NYIRAHAKIZIMANA. Said rifles were distributed among the militias and were used to kill Tutsi, and by providing these rifles **Tharcisse RENZAHO** aided and abetted the killing.
19. In the month of June 1994 **Tharcisse RENZAHO**, together with Colonel Ephrem SETAKO and Colonel BAGOSORA, who were members of the joint criminal enterprise referred to in paragraph 6 above, attended an impromptu meeting at a roadblock near Hotel Kiyovu in Kigali where they instructed those present to kill all Tutsi. A number of Tutsi were then killed.

Specific Sites

20. Between 7 April and 17 July 1994 thousands of Tutsi took refuge in *Centre d'étude des langues africaines* ("CELA"), St. Paul's Pastoral Centre ("St. Paul's") and Ste. Famille Parish Church ("Ste. Famille"). Father Wenceslas

MUNYESHYAKA was in charge of Ste. Famille; Odette NYIRABAGENZI was the *conseiller de secteur* directly under the command and authority of **Tharcisse RENZAH**O; and Angeline MUKANDUTIYE was the school inspector as well as a leader of the *Interahamwe* and in *de facto* control of Bwahirimba *secteur*. MUKANDUTIYE was directly under the command of and accountable to **Tharcisse RENZAH**O.

21. On or about 22 April 1994, while in the company of Odette NYIRABAGENZI and Angeline MUKANDUTIYE, and of Father MUNYESHYAKA, soldiers and *Interahamwe*, who were members of the joint criminal enterprise referred to in paragraph 6 above, **Tharcisse RENZAH**O ordered the removal of approximately sixty Tutsi men from CELA who were taken away and killed by soldiers and *Interahamwe*. By so doing, **Tharcisse RENZAH**O ordered, instigated, committed or otherwise aided and abetted genocide. During other dates unknown, he ordered and instigated the murder of many other Tutsi at CELA.
22. On or about 14 June 1994, while in the company of Odette NYIRABAGENZI and Angeline MUKANDUTIYE, and *Interahamwe*, soldiers, and gendarmes, who were members of the joint criminal enterprise referred to in paragraph 6 above, **Tharcisse RENZAH**O ordered and instigated and committed or otherwise aided and abetted the *Interahamwe*, soldiers and gendarmes to remove sixty Tutsi boys from St. Paul's, and to kill these Tutsi boys.
23. On or about 17 June 1994, while in the company of Odette NYIRABAGENZI and Angeline MUKANDUTIYE, **Tharcisse RENZAH**O ordered and instigated soldiers, militia and communal police, who were members of the joint criminal enterprise referred to in paragraph 6 above, to attack Tutsi who had sought refuge Ste. Famille and many Tutsi were killed.

Criminal Responsibility as a Superior pursuant to Article 6(3)

24. Pursuant to Article 6(3) of the Statute, the accused, **Tharcisse RENZAH**O, is responsible for the crimes of genocide or complicity in genocide because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included the leaders and members of the FAR, including Major NYIRAHAKIZIMANA; the Presidential Guard; the *Interahamwe*, including Odette NYIRABAGENZI, Angeline MUKANDUTIYE and NGERAGEZA; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; other known participants, such as Father Wenceslas MUNYESHYAKA and Bishop Samuel MUSABYIMANA; and other

unknown participants. The particulars that give rise to the accused's individual criminal responsibility pursuant to Article 6(3) are set forth in paragraphs 25 through 43.

Roadblocks

25. From and after 7 April 1994, roadblocks throughout Kigali-ville including at Gitega and near the Ontracom facility were constructed and manned by soldiers, *gendarmes*, militia and demobilized soldiers under the effective control of **Tharcisse RENZAHO**, who used the roadblocks to identify and to kill Tutsi and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
26. On or about 10 April 1994, following a meeting at the *Préfecture* office of Kigali-ville, *conseillers* and *responsables de cellule* who were under the effective control of **Tharcisse RENZAHO**, set up roadblocks and used these roadblocks to identify and to kill Tutsi, and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
27. At diverse unknown dates in April and May 1994 **Tharcisse RENZAHO** convened meetings at which he instructed *nyumbakumi*, *responsables de cellule*, *conseillers* and *bourgmestres* who were under his effective control to remain vigilant at roadblocks and to make sure that *Inyenzi* did not succeed in hiding among the population. As a consequence of these instructions, Tutsi were intercepted, identified and killed at the roadblocks in Kigali-ville, and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.

The Killing Campaign in Kigali-ville

28. At diverse unknown dates between mid-1993 and 17 July 1994, **Tharcisse RENZAHO** permitted *Interahamwe* and *Impuzamugambi* groups to meet at his house in Kanombe and elsewhere for the purpose of receiving military training. These *Interahamwe* and *Impuzamugambi* were under the effective control of **Tharcisse RENZAHO** and between 6 April and 17 July 1994 they killed or caused serious bodily or mental harm to Tutsi. **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
29. At diverse unknown dates between mid-1993 and 17 July 1994, **Tharcisse RENZAHO** distributed weapons and ammunition to members of the

Interahamwe and *Impuzamugambi* at his house in Kanombe and elsewhere. These *Interahamwe* and *Impuzamugambi* were under the effective control of **Tharcisse RENZAHO** and between 6 April and 17 July 1994 they killed or caused serious bodily or mental harm to Tutsi. **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.

30. Between 6 April and 17 July 1994, **Tharcisse RENZAHO** provided and facilitated the provision of bonds, permits, *laissez-passers*, and food to enable the movement and equipping of the *Interahamwe*, militia, soldiers and *gendarmes* who were participating in the killing of Tutsi, and had effective control over them in the sense of having the power to prevent or punish their acts.
31. On 8 April 1994, **Tharcisse RENZAHO** communicated with Colonel BAGOSORA by radio confirming that those under his effective control had killed the manager of the *Banque Rwandaise de Développement*, and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
32. On or about 9 April 1994, **Tharcisse RENZAHO**, while dressed in the military uniform of a senior military official, accompanied armed *Interahamwe* at Kajari in Kanombe. **Tharcisse RENZAHO**'s subordinates in the *Interahamwe* entered houses of Tutsi and killed the Tutsi who resided there in **Tharcisse RENZAHO**'s presence without his objection. **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
33. On or about 16 April 1994 following a meeting at the Kigali-ville prefectural headquarters, *conseillers* under the effective control of **Tharcisse RENZAHO** obtained firearms from the Ministry of Defense to be distributed at the *secteur* level. These weapons were used to kill Tutsi and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
34. On multiple unknown dates between April and July 1994, **Tharcisse RENZAHO** refused or failed to punish *Interahamwe* members under his effective control, command and supervision whom he knew to have participated in the killing of Tutsi and moderate Hutu in Kigali.
35. On or about 30 April 1994, **Tharcisse RENZAHO** dismissed, among other people, *secteur conseillers* Jean-Baptiste RUDASINGWA and Celestin SEZIBERA, because he believed they were opposed to the killing of Tutsi.

Tharcisse RENZAHO replaced the aforementioned persons with *conseillers* who supported the killing of Tutsi, thus showing his effective control over local administrative officials in Kigali-ville.

Specific Sites

36. Between 7 April and 17 July 1994 thousands of Tutsi took refuge in CELA, St. Paul's and Ste. Famille. Father Wenceslas MUNYESHYAKA was in charge of Ste. Famille; Odette NYIRABAGENZI was the *conseiller de secteur* directly under the command and authority of **Tharcisse RENZAHO**; and Angeline MUKANDUTIYE was the school inspector as well as a leader of the *Interahamwe* and in *de facto* control of Bwahirimba *secteur*. MUKANDUTIYE was under the effective control of and accountable to **Tharcisse RENZAHO**.
37. Between 7 April and 17 July 1994, **Tharcisse RENZAHO**'s subordinates, including but not limited to Father MUNYESHYAKA, Odette NYIRABAGENZI and Angeline MUKANDUTIYE, and other *Interahamwe* leaders, planned, prepared, ordered, instigated, and carried out attacks on members of the racial or ethnic Tutsi group in Kigali. These attacks took place at Ste. Famille, St. Paul's, Kadaffi Mosque and CELA, among other places in the Nyarugenge *secteur* and were carried out with intent to kill or cause mental and bodily harm to members of the racial or ethnic Tutsi group in whole or in part. **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
38. On or about 22 April 1994, **Tharcisse RENZAHO**'s subordinates, Odette NYIRABAGENZI, Father MUNYESHYAKA and Angeline MUKANDUTIYE, soldiers and *Interahamwe*, removed and caused the murder of sixty Tutsi men at CELA. During other dates unknown in April, May and June 1994 they removed and caused the murder of many other Tutsi at CELA, and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
39. On or about 14 June 1994, **Tharcisse RENZAHO**'s subordinates, Odette NYIRABAGENZI and Angeline MUKANDUTIYE, and *Interahamwe*, soldiers and gendarmes removed and caused the murder of sixty Tutsi boys from St. Paul's, and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
40. On or about 17 June 1994, **Tharcisse RENZAHO**'s subordinates, including but not limited to Odette NYIRABAGENZI and Angeline MUKANDUTIYE, soldiers, militia and communal police attacked and killed Tutsi who had sought refuge St. Famille, and **Tharcisse RENZAHO** failed or refused to take the

necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.

Sexual Violence

41. Tutsi women were raped by *Interahamwe* militia, soldiers and other individuals under the effective control of **Tharcisse RENZAHO** on April 16 and diverse unknown dates during the months of April, May and June 1994. *Conseillers* under the direct command and authority of **Tharcisse RENZAHO** reported on a regular basis about the rape of Tutsi women by *Interahamwe* militia, soldiers and other individuals under the effective control of **Tharcisse RENZAHO**. **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such rapes or to punish the perpetrators thereof.
42. Father MUNYESHYAKA and *Interahamwe*, under the effective control of **Tharcisse RENZAHO**, compelled Tutsi women to provide them with sexual pleasures in exchange for the woman's safety at Ste. Famille during the period in which Tutsi sought refuge at Ste. Famille in the months of April, May and June 1994. **Tharcisse RENZAHO** knew or had reason to know that these acts were being perpetrated against Tutsi women and he failed or refused to prevent or to punish the perpetrators of these forced sexual acts at Ste. Famille.
43. *Interahamwe*, soldiers, and armed civilians under the effective control of **Tharcisse RENZAHO** maintained Tutsi women at houses in central Kigali, where they compelled the women provide them with sexual pleasures in exchange for the women's safety on diverse unknown dates during the months of April, May and June 1994. **Tharcisse RENZAHO** knew or had reason to know that these acts were being perpetrated against Tutsi women and he failed or refused to prevent or to punish the perpetrators of these forced sexual acts.

Count III: MURDER as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Tharcisse RENZAHO** with **MURDER as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute, in that on and between 6 April and 17 July 1994 throughout Rwanda, particularly in Kigali-ville *Préfecture*, **Tharcisse RENZAHO**, with intent to kill members of the Tutsi racial or ethnic group or persons identified as Tutsi or presumed to support the Tutsi, was responsible for the killing of such persons as part of a widespread or systematic attack against that civilian population on racial, ethnic and political grounds, as set forth in paragraphs 44 through 51.

CONCISE STATEMENT OF FACTS FOR COUNT III

Individual Criminal Responsibility pursuant to Article 6(1)

44. Pursuant to Article 6(1) of the Statute, the accused, **Tharcisse RENZAHO**, is individually responsible for murder as a crime against humanity because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of this crime. With respect to the commission of this crime, **Tharcisse RENZAHO** ordered those over whom he had command responsibility and control as a result of his position and authority described in paragraph 2 and he instigated and aided and abetted those over whom he did not have command responsibility and control. In addition, the accused willfully and knowingly participated in a joint criminal enterprise whose object, purpose and foreseeable outcome was the commission of crimes against humanity against the Tutsi racial or ethnic group and persons identified as Tutsi or presumed to support the Tutsi or to be politically opposed to "Hutu Power" in Kigali *Préfecture* as well as throughout Rwanda on racial, ethnic or political grounds. To fulfill this criminal purpose, the accused acted with leaders and members of the FAR; the Presidential Guard; the *Interahamwe*, such as Odette NYIRABAGENZI; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; other known participants, such as Father Wenceslas MUNYESHYAKA; and other unknown participants, all such actions being taken either directly or through their subordinates for at least the period of 12 April through 15 June 1994. The particulars that give rise to the accused's individual criminal responsibility including his participation in this joint criminal enterprise are set forth in paragraphs 45 through 47.
45. On or about 22 April 1994, in the presence of others, **Tharcisse RENZAHO** selected and ordered and instigated the killing of specific people from CELA; including James, Charles, Wilson and Déglote RWANGA and Emmanuel GIHANA. The aforementioned were killed by *Interahamwe*, soldiers and gendarmes who were members of the joint criminal enterprise referred to in paragraph 44 above, and by his actions described herein **Tharcisse RENZAHO** ordered, instigated, committed or otherwise aided and abetted this murder.
46. On or about 28 April 1994, **Tharcisse RENZAHO** ordered members of the *Interahamwe* to Nyarugenge commune to find and kill nine Tutsi, including Francois NSENGIYUMVA; a man whose name was KAGORORA, as well as his two sons, Emile and Aimable; and a man whose name was RUTUYOMBA. These persons were subsequently killed by the *Interahamwe*, who were members of the joint criminal enterprise referred to in paragraph 44 above, pursuant to **Tharcisse RENZAHO**'s orders. In so doing, **Tharcisse RENZAHO** planned, ordered, instigated, committed or otherwise aided and abetted this murder.
47. On or about 15 June 1994, **Tharcisse RENZAHO** ordered Odette NYIRABAGENZI to kill André KAMEYA, a journalist who was critical of the Interim Government. On or about 15 June 1994, while in the company of *Interahamwe*, Odette NYIRABAGENZI, who was a member of the joint criminal enterprise referred to in paragraph 44 above, found and had André KAMEYA

killed pursuant to **Tharcisse RENZAHO**'s orders. By his actions detailed herein, **Tharcisse RENZAHO** ordered, instigated, committed or otherwise aided and abetted this murder.

Criminal Responsibility as a Superior pursuant to Article 6(3)

48. Pursuant to Article 6(3) of the Statute, the accused, **Tharcisse RENZAHO**, is responsible for the murder as a crime against humanity because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included leaders and members of the FAR; the Presidential Guard; the *Interahamwe*, such as Odette NYIRABAGENZI; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; other known participants, such as Father Wenceslas MUNYESHYAKA; and other unknown participants. The particulars that give rise to the accused's individual criminal responsibility pursuant to Article 6(3) are set forth in paragraphs 49 through 51.
49. On or about 22 April 1994, *Interahamwe* and soldiers under the effective control of **Tharcisse RENZAHO** killed certain persons in refuge at CELA, including but not limited to James, Charles, Wilson and Déglote RWANGA and Emmanuel GIHANA, and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
50. On or about 28 April 1994, members of the *Interahamwe* under effective control of **Tharcisse RENZAHO** went to Nyarugenge commune and found and killed nine Tutsi, including Francois NSENGIYUMVA; a man whose name was KAGORORA, as well as his two sons, Emile and Aimable; and a man whose name was RUTYOMBA and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.
51. On or about 15 June 1994, **Tharcisse RENZAHO**'s subordinates, Odette NYIRABAGENZI and a company of *Interahamwe*, found and killed André KAMEYA, a journalist who was critical of the Interim Government and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.

Count IV: RAPE as a CRIME AGAINST HUMANITY

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Tharcisse RENZAHO** with **RAPE as a CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of the Statute, in that on an between 7 April and 17 July 1994 throughout Rwanda, particularly in Kigali-ville *Préfecture*, **Tharcisse RENZAHO**, members of the Tutsi racial or ethnic group or persons identified as Tutsi were raped by subordinates of **Tharcisse RENZAHO** as part of a widespread or systematic attack against that civilian population on racial and ethnic grounds, as set forth in paragraphs 52 through 55.

CONCISE STATEMENT OF FACTS FOR COUNT IV

Criminal Responsibility as a Superior pursuant to Article 6(3)

- 59.52. Pursuant to Article 6(3) of the Statute, the accused, **Tharcisse RENZAHO**, is responsible for the rape as a crime against humanity because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included leaders and members of the FAR; the Presidential Guard; the *Interahamwe*; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; other known participants, such as Father Wenceslas MUNYESHYAKA; and other unknown participants. The particulars that give rise to the accused's individual criminal responsibility are set forth in paragraphs 53 through 55.
53. Tutsi women were raped by *Interahamwe* militia, soldiers and other individuals under the effective control of **Tharcisse RENZAHO** on April 16 and diverse unknown dates during the months of April, May and June 1994. *Conseillers* under the direct command and authority of **Tharcisse RENZAHO** reported on a regular basis about the rape of Tutsi women by *Interahamwe* militia, soldiers and other individuals under the effective control of **RENZAHO**. **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such rapes or to punish the perpetrators thereof.
54. Father MUNYESHYAKA and *Interahamwe* under the effective control of **Tharcisse RENZAHO** compelled Tutsi women to provide them with sexual pleasures in exchange for the woman's safety at Ste. Famille in the period in which Tutsi sought refuge at Ste. Famille during the months of April, May and June 1994. **Tharcisse RENZAHO** knew or had reason to know that these acts were being perpetrated against Tutsi women and he failed or refused to punish the perpetrators of these forced sexual acts at Ste. Famille.
55. *Interahamwe* soldiers and armed civilians under the effective control of **Tharcisse RENZAHO** maintained Tutsi women at houses in central Kigali, where they compelled the women provide them with sexual pleasures in exchange for the

women's safety on diverse unknown dates during the months of April, May and June 1994. **Tharcisse RENZAHO** knew or had reason to know that these acts were being perpetrated against Tutsi women and he failed or refused to punish the perpetrators of these forced sexual acts.

Count V: MURDER AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Tharcisse RENZAHO** with **MURDER AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977**, a crime stipulated in Article 4(a) of the Statute, in that **Tharcisse RENZAHO** was responsible for the killings of non-combatant Tutsi men and youths during the period 7 April through 17 July 1994 when throughout Rwanda, particularly in Kigali-ville *Préfecture*, there was a non-international armed conflict within the meaning of Articles 1 and 2 of Protocol II Additional to the Geneva Convention of 1949, and the killing of the victims was closely related to the hostilities or committed in conjunction with the armed conflict and the victims were persons taking no part in that conflict; all as is set forth in paragraphs 56 through 60.

CONCISE STATEMENT OF FACTS FOR COUNT V

Individual Criminal Responsibility pursuant to Article 6(1)

56. Pursuant to Article 6(1) of the Statute, the accused, **Tharcisse RENZAHO**, is individually responsible for murder as a violation of Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. With respect to the commission of those crimes, **Tharcisse RENZAHO** ordered those over whom he had command responsibility and control as a result of his position and authority described in paragraph 2 and he instigated and aided and abetted those over whom he did not have command responsibility and control. In addition, the accused participated in a joint criminal enterprise whose object, purpose, and foreseeable outcome was the commission of war crimes against non-combatant members of the Tutsi racial or ethnic group in Kigali *Préfecture* as well as throughout Rwanda. To fulfill this criminal purpose, the accused acted with leaders and members of the FAR; the Presidential Guard; the *Interahamwe*; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; and other known and unknown participants, all such actions being taken either directly or through their subordinates for at least the period of 6 April 1994 through 4 July 1994. The particulars that give rise to the accused's individual criminal responsibility including his participation in this joint criminal enterprise are set forth in paragraphs 57 and 58.

57. Between 16 and 17 June 1994 the RPF fought their way to St. Paul's in Nyarugenge in Kigali-ville and rescued a large number of non-combatant Tutsi.
58. Pursuant to the authority vested in **Tharcisse RENZAHO** as described in paragraph 2, and in retaliation for the actions of the RPF described in paragraph 57, **Tharcisse RENZAHO** on or about 17 June 1994 ordered, instigated or otherwise aided and abetted soldiers of the FAR and *Interahamwe* to take and kill at least seventeen non-combatant Tutsi men from Ste. Famille who had not been rescued by the RPF.

Criminal Responsibility as a Superior pursuant to Article 6(3)

59. Pursuant to Article 6(3) of the Statute, the accused, **Tharcisse RENZAHO**, is responsible for murder as a violation of Article 3 common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included leaders and members of the FAR; the Presidential Guard; the *Interahamwe*; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; and other known and unknown participants. The particulars that give rise to the accused's individual criminal responsibility pursuant to Article 6(3) are set forth in paragraph 60.
60. In retaliation for the actions of the RPF described in paragraph 57, on or about 17 June 1994, soldiers of the FAR and *Interahamwe*, who were subordinates under the effective control of **Tharcisse RENZAHO**, killed at least seventeen non-combatant Tutsi men from Ste. Famille who had not been rescued by the RPF and **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such acts or to punish the perpetrators thereof.

Count VI: RAPE AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949

The Prosecutor of the International Criminal Tribunal for Rwanda charges **Tharcisse RENZAHO** with **RAPE AS A VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOL II OF 1977**, a crime stipulated in Article 4(e) of the Statute, in that **Tharcisse RENZAHO** was responsible for the rape of non-combatant Tutsi women during the period between 7 April and 17 July 1994 when throughout Rwanda, particularly in Kigali-ville *Préfecture*, there was a non-international armed conflict within the meaning of Articles 1 and 2 of Protocol II Additional to the Geneva Convention of 1949, and the raping of the victims was closely related to the hostilities or committed in conjunction with the armed conflict

and the victims were persons taking no part in that conflict; all as set forth in paragraphs 61 through 65.

CONCISE STATEMENT OF FACTS FOR COUNT VI

Criminal Responsibility as a Superior pursuant to Article 6(3)

61. Pursuant to Article 6(3) of the Statute, the accused, **Tharcisse RENZAHO**, is responsible for rape as a violation of Article 3 common to the Geneva Conventions of 1949 and Additional Protocol II of 1977 because specific criminal acts were committed by subordinates of the accused and the accused knew or had reason to know that such subordinates were about to commit such acts before they were committed or that such subordinates had committed such acts and the accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. These subordinates included leaders and members of the FAR; the Presidential Guard; the *Interahamwe*, such as Odette NYIRABAGENZI; the "Civil Defense Forces"; communal police; civilian militias; local administrative officials; other soldiers and militiamen; other known participants, such as Father Wenceslas MUNYESHYAKA; and other unknown participants. The particulars that give rise to the accused's individual criminal responsibility pursuant to Article 6(3) are set forth in paragraphs 62 through 65.
62. During the relevant periods of 7 April 1994 through 4 July 1994, the FAR occupied central areas of Kigali, including Nyarugenge commune and the area around the Ste. Famille Church. The FAR trained and armed the *Interahamwe*, and were supported in the conflict by the *Interahamwe*, the *gendarmerie*, *préfectural* communal police, and armed civilians.
63. Tutsi women were raped by *Interahamwe* militia, soldiers and other individuals under the effective control of **Tharcisse RENZAHO** on April 16 and diverse unknown dates during the months of April, May and June 1994. *Conseillers* under the direct command and authority of **Tharcisse RENZAHO** reported on a regular basis about the rape of Tutsi women by *Interahamwe* militia, soldiers and other individuals under the effective control of **Tharcisse RENZAHO**. **Tharcisse RENZAHO** failed or refused to take the necessary or reasonable measures to prevent such rapes or to punish the perpetrators thereof.
64. Father MUNYESHYAKA and other *Interahamwe* under the effective control of **Tharcisse RENZAHO** compelled Tutsi women to provide them with sexual pleasures in exchange for the woman's safety at Ste. Famille in the period in which Tutsi sought refuge at Ste. Famille during the months of April, May and June 1994. **Tharcisse RENZAHO** knew or had reason to know that these acts

were being perpetrated against Tutsi women and he failed or refused to prevent or punish the perpetrators of these forced sexual acts at Ste. Famille.

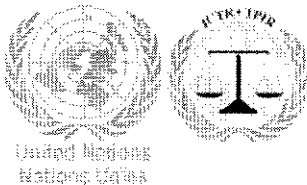
65. *Interahamwe* soldiers and armed civilians under the effective control of **Tharcisse RENZAHO** maintained Tutsi women at houses in central Kigali, where they compelled the women provide them with sexual pleasures in exchange for the women's safety on diverse unknown dates during the months of April, May and June 1994. **Tharcisse RENZAHO** knew or had reason to know that these acts were being perpetrated against Tutsi women and he failed or refused to prevent or punish the perpetrators of these forced sexual acts.

The acts and omissions of **Tharcisse RENZAHO** detailed herein are punishable in pursuant to Articles 22 and 23 of the Statute.

Signed at ARUSHA, Tanzania, this 16th Day of February 2006.


Hassan B. Jallow
Prosecutor





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	☒ Trial Chamber I N. M. Diallo	☐ Trial Chamber II R. N. Kouambo	☐ Trial Chamber III C. K. Hometowu	☐ Appeals Chamber / Arusha F. A. Talon
	☐ Chief, CMS J.-P. Fomété	☐ Deputy Chief, CMS M. Diop	☐ Chief, JPU, CMS M. Diop	☐ Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	☒ Chamber TC I Mose, Egorov, Arrey (names)	☐ Defence (names)	☐ Prosecutor's Office (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. Tharcisse Renzaho			Case Number: ICTR-97-31-T
Dates:	Transmitted: 14 August 2009		Document's date: 14 July 2009	
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Title of Document:	Judgement and Sentence			
Classification Level:		TRIM Document Type:		
☐ Ex-Parte ☐ Strictly Confidential / Under Seal ☐ Confidential ☒ Public		☐ Indictment ☐ Warrant ☐ Correspondence ☐ Submission from non-parties ☐ Decision ☐ Affidavit ☐ Notice of Appeal ☐ Submission from parties ☐ Disclosure ☐ Order ☐ Appeal Book ☐ Accused particulars ☒ Judgement ☐ Motion ☐ Book of Authorities		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☐ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):

☐ English ☐ French ☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	☐ English	☐ French	☐ Kinyarwanda
Translation	in	☐ English	☐ French	☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

☐ English ☐ French ☐ Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

☐ The OTP is overseeing translation. The document is submitted for translation to: ☐ The Language Services Section of the ICTR / Arusha. ☐ The Language Services Section of the ICTR / The Hague. ☐ An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	☐ DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

☐ Top priority	COMMENTS	☐ Required date:
☐ Urgent		☐ Hearing date:
☐ Normal		☐ Other deadlines: