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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER I

Before Judges: Florence Rita Arrey, Presiding
Mparany Mamy Richard Rajohnson
Aydin Sefa Akay

Registrar: Adama Dieng

Date: 5 July 2010

THE PROSECUTOR

v.

Yussuf MUNYAKAZI

Case No. ICTR-97-36A-T

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JUDGEMENT AND SENTENCE

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CHAPTER 1: INTRODUCTION

1. OVERVIEW

(i) Introduction

1. The case before this Chamber concerns Yussuf Munyakazi, who hails from Rwamatamu *commune*, Kibuye *préfecture*, Rwanda. In 1994, he was a farmer in Bugarama *commune*, Cyangugu *préfecture*. Based on his alleged acts in Cyangugu *préfecture*, the Prosecution charged Munyakazi with three counts under the Statute of the Tribunal: genocide, or alternatively complicity in genocide, and extermination as a crime against humanity. The Defence disputed all the charges.

2. The trial commenced on 22 April 2009 and ended on 15 October 2009, after 19 trial days. The Prosecution called 11 witnesses over the course of seven trial days, and the Defence called 20 witnesses, including the Accused, over 12 trial days. The Closing Briefs were submitted on 16 December 2009, and the closing arguments were heard on 28 January 2010.

(ii) Alibi

3. Munyakazi offered two alibis, one for 16 April 1994, the day he is alleged to have participated in the attack on Nyamasheke Parish; the second for 29 and 30 April 1994, the days on which he is alleged to have participated in attacks on Shangi and Mibilizi Parishes. The Trial Chamber found that both alibis were not credible.

(iii) Munyakazi as Leader of the Bugarama Interahamwe

4. The Indictment alleges that Munyakazi was a leader with *de facto* authority over the Bugarama MRND *Interahamwe* militia.¹

5. Prosecution witnesses testified that Munyakazi was the leader of the Bugarama *Interahamwe*. He went to political rallies accompanied by *Interahamwe*, used members of the *Interahamwe* as bodyguards, housed and fed members of the *Interahamwe*, and provided one of his homes to the group for use as a headquarters. In addition, they testified that Munyakazi led the Bugarama *Interahamwe* during specific attacks on Nyamasheke, Shangi and Mibilizi Parishes. Defence witnesses described Munyakazi as an old man, with no interest in politics, who was devoted to farming and to his religion. Although the Chamber has not found that Munyakazi was the *de jure* leader of the Bugarama *Interahamwe*, it has found that he was a leader with *de facto* authority over the *Interahamwe* during the attacks at Shangi and Mibilizi Parishes.

(iv) Recruitment and Training

6. The Indictment alleges that Munyakazi, along with several other men, helped recruit and train the Bugarama *Interahamwe*.²

7. Prosecution Witness BWB was the only witness to testify that Munyakazi was involved in recruiting *Interahamwe*. According to this witness, Munyakazi toured the region in 1990 in his capacity as a member of the MRND, urging local youths to join the youth wing

¹ Second Amended Indictment ("Indictment"), para. 1.

² Indictment para. 8.

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of the party. The Chamber notes that the Indictment does not cover the year 1990 and that the Prosecution adduced no evidence that the *Interahamwe* was already in existence at that time. Witness BWW, an accomplice witness, was inconsistent regarding the date that he, himself, joined the *Interahamwe* and provided no details about recruitment during the Indictment period. The Chamber has found that the witness' evidence is, therefore, of limited evidentiary value, as it was uncorroborated in all respects.

8. Three Prosecution witnesses testified that the *Interahamwe* in Bugarama received some form of military training. According to these witnesses, a certain Athanase Ndutiye, also known as Tarek Aziz, who lived in one of Munyakazi's houses, was either one among several trainers, or the chief instructor, of this group of *Interahamwe*. One of these witnesses testified that Munyakazi and Tarek Aziz were present together during a training session. Apart from this testimony, the Prosecution adduced no evidence linking Munyakazi to the training. In addition, the Prosecution failed to show that the relationship between Munyakazi and Tarek Aziz was more than one of landlord and tenant. The Trial Chamber has concluded that the Prosecution did not prove beyond reasonable doubt that Munyakazi either recruited or trained the Bugarama *Interahamwe*.

(v) *Weapons: Storage and Distribution*

9. The Indictment alleges that Munyakazi armed the Bugarama *Interahamwe* with weapons that were regularly stored at his house.³

10. One Prosecution witness testified that arms were stored in Munyakazi's house. This was an accomplice witness, and his evidence was, at times, inconsistent and exaggerated. Another Prosecution witness testified that Munyakazi distributed arms during the attack on Shangi Parish. This witness was also an accomplice witness and did not know Munyakazi very well. The Chamber views the testimony of these two witnesses with caution and has only accepted their evidence where corroborated. Given the issues regarding the credibility of these witnesses, the Trial Chamber has concluded that the Prosecution did not prove beyond reasonable doubt that Munyakazi armed the *Interahamwe* or that he stored weapons for the *Interahamwe* in any of his houses.

(vi) *Food and Transport*

11. The Indictment alleges that Munyakazi was among those who provided food to, and regularly transported, the Bugarama *Interahamwe* to and from various massacre sites.⁴

12. Two Prosecution witnesses alleged that the *Interahamwe* ate meals at Munyakazi's house. The Chamber found that the evidence of these two witnesses was contradictory. Thus, the Trial Chamber has concluded that the Prosecution did not prove beyond reasonable doubt that Munyakazi provided food to the Bugarama *Interahamwe*, or that he participated in a common plan to provide food to the *Interahamwe*.

13. Several Prosecution witnesses alleged that Munyakazi led the attacks on Shangi Parish on 29 April 1994 and on Mibilizi Parish on 30 April 1994. They further testified that Munyakazi arrived at the crime sites with two vehicles carrying *Interahamwe*. Defence witnesses denied that Munyakazi was involved in these attacks. The Trial Chamber has found that Munyakazi was a leader of these attacks, and that he arrived with two vehicles carrying groups of *Interahamwe* from outside the Shangi and Mibilizi areas. The Trial Chamber

³ Indictment para. 9.

⁴ Indictment para. 10.

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therefore has found that Munyakazi facilitated the transportation of the Bugarama *Interahamwe* to the two crime sites.

(vii) *Nyamasheke Parish*

14. The Indictment alleges that Munyakazi transported the Bugarama *Interahamwe* to Nyamasheke Parish, located in Kagano *commune*, Cyangugu *préfecture*; where the Accused personally assisted the *Interahamwe* in killing hundreds of Tutsi civilian refugees.⁵

15. The Prosecution presented two witnesses with regard to the killings at Nyamasheke Parish on 16 April 1994. These witnesses testified that Munyakazi led a group of *Interahamwe*, who attacked the parish on the morning of 16 April 1994. The Defence submitted that a major attack took place on 15 April 1994, in which Munyakazi did not participate. There was no subsequent attack the following day, and, indeed, there was no need for such an attack because all the refugees at the parish were killed during the 15 April attack.

16. The Chamber has also considered evidence of an attack on the CIMERWA cement factory by Bugarama *Interahamwe* on the same day as the attack on Nyamasheke Parish. It is implausible that the Bugarama *Interahamwe* participated in both attacks given the distance between the two sites, 85 kilometres. There was also no evidence that the Bugarama *Interahamwe* worked in two or more factions.

17. Therefore, considering the evidence of the CIMERWA attack in addition to Defence evidence that no attack took place at Nyamasheke Parish on 16 April 1994, the Trial Chamber has found that the Prosecution did not prove beyond reasonable doubt that Munyakazi was involved in an attack on 16 April 1994 at Nyamasheke Parish.

(viii) *Shangi Parish*

18. The Indictment further alleges that Munyakazi transported the Bugarama *Interahamwe* to Shanghi Parish, located in Gafunzo *commune*, Cyangugu *préfecture*; where the Accused personally assisted the *Interahamwe* in killing hundreds of Tutsi civilian refugees.⁶

19. Six Prosecution witnesses testified about the attack on 29 April 1994 at Shanghi Parish. These witnesses alleged that Munyakazi led a group of *Interahamwe*, who attacked Shanghi Parish during the afternoon of 29 April 1994. They testified that approximately 5,000 Tutsi civilians were killed during the attack. The Trial Chamber found this evidence to be credible. The Chamber accorded little weight to the evidence of three Defence witnesses who were not eyewitnesses. These witnesses testified that they had not heard that Munyakazi was involved in the attack.

20. Accordingly, the Chamber has found that the Prosecution proved beyond reasonable doubt that Munyakazi was the leader of the attack on Shanghi Parish on 29 April 1994.

(ix) *Mibilizi Parish*

21. The Indictment alleges that Munyakazi transported the Bugarama *Interahamwe* to Mibilizi Parish, located in Cyimbogo *commune*, Cyangugu *préfecture*; where the Accused ordered the *Interahamwe* to kill only Tutsi males.⁷

⁵ Indictment para. 12.

⁶ Indictment para. 13.

⁷ Indictment para. 14.

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22. Four Prosecution witnesses testified that Munyakazi led a group of *Interahamwe* that attacked Mibilizi Parish on 30 April 1994, and that 60 to 100 Tutsi civilians were killed during the attack. The Chamber has found this evidence credible. The Chamber accorded little weight to the testimony of the one Defence witness who stated that no attack took place on 30 April 1994 and other Defence witnesses who were not eyewitness but said that they had not heard that Munyakazi was involved in the attack.

23. Accordingly, the Chamber has found that the Prosecution has proven beyond reasonable doubt that Munyakazi was a leader of the attack on Mibilizi Parish on 30 April 1994.

(x) Legal Findings and Verdict

24. The Trial Chamber has found that the Prosecution did not prove beyond reasonable doubt that the Accused participated in a Joint Criminal Enterprise, as alleged in paragraph 4 of the Indictment. The Trial Chamber, however, has found Yussuf Munyakazi responsible, pursuant to Article 6 (1) of the Statute, for "committing" the mass killings at Shangi Parish on 29 April 1994 and at Mibilizi Parish on 30 April 1994.

25. While there was no direct evidence that Munyakazi harboured any animosity towards Tutsi civilians, the Trial Chamber was able to infer, on the basis of circumstantial evidence, that Munyakazi intended to destroy, in whole or in part, the Tutsi civilian group. The Prosecution has further established the *chapeau* elements of crimes against humanity.

26. Munyakazi is, therefore, guilty of genocide (Count 1) and extermination as a crime against humanity (Count 3). He is not guilty of complicity in genocide (Count 2).

(xi) Sentencing

27. The Chamber has considered the gravity of each of the crimes for which Munyakazi has been convicted, as well as aggravating and mitigating circumstances. The Chamber sentences Munyakazi to a single sentence of 25 years of imprisonment. He shall remain in the custody of the Tribunal pending transfer to the State where he will serve his sentence.

2. ALLEGATIONS NOT PURSUED BY THE PROSECUTION

28. At the end of its case, the Prosecution stated that it would not pursue the charges set out against Munyakazi in paragraphs 11 and 15 of the Indictment.⁸ Therefore, the Chamber has not considered these allegations.

⁸ T. 4 June 2009 p. 35; Indictment paras. 11 and 15.

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3. YUSSUF MUNYAKAZI

29. At the outset, the Trial Chamber observes that most of the information available about the Accused came from the Accused himself. Yussuf Munyakazi was born in 1936 in Rwamatamu *commune*, Kibuye *préfecture*, Rwanda.⁹ He is a Muslim.¹⁰ He never went to school, but attended an adult literacy programme, which was set up in 1968. There, he learned to read and write in Kinyarwanda.¹¹ In April 1994, Munyakazi had two wives and 13 children.¹²

30. Munyakazi moved to Bugarama in January 1960 and began to acquire property there for agricultural use.¹³ In April 1994, he was a successful farmer, and a relatively large land-owner.¹⁴ He also owned four houses and three vehicles.¹⁵ The Trial Chamber is of the view that, by the start of the conflict, Munyakazi was relatively wealthy by Bugarama standards.

31. Munyakazi was a founding member of the local agricultural cooperative named CAVECUVI, which was established in 1968.¹⁶ In 1991, he was elected as president of CAVECUVI and remained in that position until May 1993.¹⁷ He was chairman of *Banque Populaire* in Bugarama when it was founded.¹⁸ However, the time frame for this position is unknown.

32. Munyakazi remained a member of the MRND party following the advent of multi-party politics in Rwanda in 1991 but never held an official position within the party.¹⁹

33. Munyakazi fled to the Democratic Republic of the Congo ("DRC") on 7 July 1994.²⁰ He was arrested there on 5 May 2004 and transferred to the Tribunal on 7 May 2004.²¹

⁹ T. 15 October 2009 p. 13. The Second Amended Indictment, para. 1 states that he was born in 1935.

¹⁰ T. 14 October 2009 pp. 31, 50; T. 15 October 2009 p. 32.

¹¹ T. 14 October 2009 p. 20; T. 15 October 2009 p. 12.

¹² T. 14 October 2009 p. 25; T. 14 October 2009 p. 33.

¹³ T. 14 October 2009 pp. 1-2.

¹⁴ T. 14 October 2009 pp. 2-4, 10-12; T. 15 October 2009 pp. 12-13.

¹⁵ T. 15 October 2009 p. 13.

¹⁶ T. 14 October 2009 p. 19.

¹⁷ T. 14 October 2009 pp. 20-21.

¹⁸ T. 15 October 2009 p. 12.

¹⁹ T. 14 October 2009 p. 21; T. 15 October 2009 pp. 20-21.

²⁰ T. 15 October 2009 p. 18. In 1994, the Democratic Republic of Congo was known as Zaire.

²¹ T. 14 October 2009 pp. 33-34.

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CHAPTER II: FACTUAL FINDINGS

1. INTRODUCTION

34. In its factual findings, the Chamber considers whether the Prosecution has proven beyond reasonable doubt the material facts, both pleaded in the Indictment and pursued at the close of its case, which underpin its charges of genocide and crimes against humanity.

2. ALIBI

Introduction

35. The Trial Chamber recalls that it is settled jurisprudence that an accused does not bear the burden of proving his alibi beyond reasonable doubt.²² The Appeals Chamber has reaffirmed the basic principles concerning the assessment of alibi evidence:

An alibi does not constitute a defence in its proper sense. By raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged. An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather "[h]e must simply produce the evidence tending to show that he was not present at the time of the alleged crime" or, otherwise stated, present evidence "likely to raise a reasonable doubt in the Prosecution case." If the alibi is reasonably possibly true, it must be accepted.

Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true. The Prosecution may do so, for instance, by demonstrating that the alibi does not in fact reasonably account for the period when the accused is alleged to have committed the crime. Where the alibi evidence does *prima facie* account for the accused's activities at the relevant time of the commission of the crime, the Prosecution must "eliminate the reasonable possibility that the alibi is true," for example, by demonstrating that the alibi evidence is not credible.²³

36. Pursuant to Rule 67(A)(ii)(a), the Defence has a duty to notify the Prosecution of its intent to enter the defence of alibi. This notification should occur before the commencement of the trial and be specific enough to enable the Prosecution to prepare its case.²⁴ Failure to show good cause for the lack of notice may have an impact on the Trial Chamber's assessment of the credibility of the alibi.²⁵

37. Munyakazi relies on two separate alibis. On 16 April 1994, the date of the attack on Nyamasheke Parish, he claims that he participated in two separate efforts to assist specified neighbours and never had an opportunity to leave Bugarama *commune*. On 29 and 30 April 1994, the dates of the attacks on Shangi and Mibilizi Parishes, Munyakazi claims that he attended funeral proceedings for a friend that took place over three days. Thus, Munyakazi

²² *Zigiranyirazo*, Judgment (AC) 16 November 2009 para. 17. See also *Niyitegeka*, Judgment (AC), 9 July 2004, para. 60; *Kajelijeli*, Judgment (AC), 23 May 2005, paras. 42-43; *Delalic et al.*, Judgment (AC), 20 February 2001, para. 581; *Musema*, Judgment (AC), 16 November 2001, para. 202; *Kayishema and Ruzindana*, Judgment (AC), 1 June 2001, para. 113.

²³ *Zigiranyirazo* Appeal Judgment paras. 17-18 (internal citations omitted).

²⁴ *Kayishema and Ruzindana*, Judgment (AC) 1 June 2001 para. 111.

²⁵ *Semanza*, Judgment (AC) 20 May 2005 para. 93. See also *Kayishema and Ruzindana*, Judgment (TC) 21 May 1999 para. 237.

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denies that he was present during the commission of the crimes outlined in paragraphs 12 through 14 of the Indictment.

Alibi for 16 April 1994

Yussuf Munyakazi

38. Munyakazi denied that he was present at Nyamasheke Parish on 16 April 1994. Rather, he remained in Bugarama that day to assist friends and neighbours.²⁶

39. He testified that Prosecution Witness Esidras²⁷ Musengayire left Mibilizi hospital on 15 April 1994, due to the deteriorating security situation in the Mibilizi area, although he had not yet fully recovered from the 7 April grenade attack on him.²⁸ The following day, Munyakazi made arrangements to transport Musengayire to the DRC to receive medical attention. Early in the morning of 16 April 1994, Munyakazi and his neighbours agreed that a certain André Nyirimibibi would help Musengayire cross the river to the DRC. Nyirimibibi then travelled with Musengayire as planned. Munyakazi remained in Bugarama waiting for a report from Nyirimibibi on the success of the mission.²⁹ Nyirimibibi returned to Bugarama at approximately 11 a.m., and informed Munyakazi that he had been able to assist Musengayire cross the border into the DRC.³⁰ Soon after his return, at approximately noon that same day, Nyirimibibi was arrested, beaten, and forced to pay a fine for assisting Musengayire's flight.³¹

40. At approximately 5:00 p.m. on 16 April 1994, Munyakazi was informed that a certain Isaac Burege had been killed during an attack that day at the CIMERWA factory. Munyakazi and his driver went to CIMERWA and discovered that Burege had indeed been murdered. Munyakazi found Burege's wife and five children and brought them back to the safety of his house at approximately 5:30 p.m.³²

Prosecution Witness Esidras Musengayire

41. Witness Musengayire was at the Mibilizi hospital from 7 April 1994 until approximately 1 May 1994. André Nyirimibibi came to see him at the hospital and eventually took him to the DRC. After spending a night at Nyirimibibi's house, the witness arrived in the DRC between 3 and 4 May 1994.³³

Alibi for 29-30 April 1994

Yussuf Munyakazi

42. Munyakazi denied that he was present at Shangi and Mibilizi Parishes on 29 and 30 April 1994 respectively,³⁴ and offered two different accounts of his activities. During his examination-in-chief on 14 October 2009, Munyakazi testified that he did not leave his house

²⁶ T. 14 October 2009 pp. 47-49; T. 15 October 2009 p. 33.

²⁷ Witnesses referred to the Witness Esidras Musengayire variously as Esidras, Esdras, and Ezra.

²⁸ T. 15 October 2009 p. 33.

²⁹ T. 14 October 2009 pp. 44-46.

³⁰ T. 14 October 2009 p. 45.

³¹ T. 14 October 2009 p. 46; T. 15 October 2009 p. 59.

³² T. 14 October 2009 p. 48.

³³ T. 24 April 2009 pp. 5-6. T. 27 April 2009 pp. 9-10.

³⁴ T. 15 October 2009 p. 29.

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on 29 April 1994. The 29th was a Friday, the Muslim day of rest, and Munyakazi attended prayers at 3:30 p.m. and then again at 6:00 p.m. He read the Koran between the prayer sessions.³⁵

43. During his testimony the following day, on 15 October 2009, Munyakazi testified that on 27 April 1994, a certain Emedeyo Kabungo was killed after helping a Tutsi named Gratien Gahizi cross into the DRC. Munyakazi attended funeral proceedings at Kabungo's home which began at 2:00 p.m. on 29 April 1994 and lasted for three days, in accordance with Muslim tradition.³⁶

Deliberations

Notice of an alibi defence

44. The Trial Chamber observes that the Defence provided no notice of alibi as required by Rule 67 (A) (ii). Nevertheless, failure to provide notice pursuant to Rule 67 (A) (ii) does not mean a defence of alibi cannot be invoked. Rule 67 (B) ensures the right of the accused to rely on the defence of alibi, regardless of prior notice.³⁷ This provision is consistent with the principle of the presumption of innocence and the duty of the Prosecution to prove guilt beyond reasonable doubt.³⁸

45. However, the Chamber also notes that in addition to providing no notice of the alibi before the commencement of trial, the Defence provided no notice that Munyakazi would rely on an alibi during the cross-examination of Prosecution witnesses, in the Pre-Defence Brief, or during the testimony of Defence witnesses. The alibi was only introduced during the testimony of the Accused who appeared as the last Defence witness.

46. In its closing arguments, the Defence conceded that it did not provide formal notice of an alibi, but argued that it had alluded to one in the Pre-Defence Brief.³⁹ The Chamber notes that in that brief the Defence simply stated that Munyakazi went to the mosque several times a day and that he only left Bugarama *commune* to rescue Tutsis.⁴⁰ The Defence further argued in its closing arguments that it had not provided notice of an alibi defence because of translation difficulties and because it was not certain whether Munyakazi would testify:

... nous n'avons pas eu un entretien avec Monsieur Munyakazi qui doit nécessairement se faire par traducteur, nous permettant de savoir que se dégageaient de sa défense des moyens d'alibi. Et ce n'est que lorsque cela s'est présenté ainsi, lorsqu'il a décidé de se présenter comme témoin pour sa propre cause, que ceci s'est révélé à nous.⁴¹

³⁵ T. 14 October 2009 pp. 50-51; T. 15 October 2009 pp. 32, 50.

³⁶ T. 15 October 2009 pp. 1-3, 32, 54-55.

³⁷ Rule 67 (B) states: "Failure of the Defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences".

³⁸ *Nchamihigo*, (Trial Chamber), November 12, 2008, para. 20. See also *Nchamihigo* Appeals Judgement, paras 94-99 affirming the Trial Chamber's Decision on this point.

³⁹ T. 28 January 2010 pp. 34-35.

⁴⁰ Pre-Defence Brief, paras. 11, 23.

⁴¹ T. 28 January 2010 p. 51 (p. 59 in French).

MR. NEKUUE:

Secondly, it is important that I should bring to the attention of the Trial Chamber that the Defence of Mr. Yussuf Munyakazi has encountered problems that the Trial Chamber is aware of and that when, in its present composition, it had to take on board Mr. Munyakazi's case, it wasn't certain that Mr. Munyakazi was going to appear as a witness for his own Defence. And so we, therefore, did not have any discussion with Mr. Munyakazi, which has to be done through an interpreter, which is why we were not aware that he would present an alibi. And that is why, when he decided to testify in his own

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47. Thus, according to the Defence, it was not until counsel began preparing Munyakazi to testify that they discovered that he could provide alibis for the days on which the Prosecution alleged that he participated in criminal activities.⁴² The Trial Chamber observes that Munyakazi testified that he could speak Swahili,⁴³ the native language of Lead Counsel who is Tanzanian. Moreover, it simply beggars belief that the Defence team, having had regular access to their client throughout the course of the entire proceedings, would only happen to discover at the eleventh hour of the trial that the Accused possessed full alibis for the three attacks that lay at the heart of the Prosecution case. In sum, the Trial Chamber finds the Defence's excuse for providing no notice of its alibi to be wholly unpersuasive.

The Alibi: 16 April 1994

48. The only evidence supporting Munyakazi's alibi for 16 April 1994 is Munyakazi's own testimony.

49. Munyakazi claims that on 16 April 1994 he arranged for Musengayire's transfer to the DRC, helped the Burege family, and participated in religious practices. Not only is this evidence uncorroborated, but Musengayire, himself, testified that he did not leave Mibilizi hospital until early May 1994. The Defence did not challenge Musengayire's testimony about

Defence, we got to know that he was going to raise the alibi. So at no point in time did the Defence intend to conceal anything from the Prosecution.

In any case, this was only a clarification so that the Trial Chamber should not focus on the possibility of the Defence not being ethical, because the laws or rules governing this Tribunal authorise us to make use of such a means of Defence even at the last minute. Even the Prosecution is aware of this. So I was seeking to make this clarification just so that the Defence is understood insofar as the measures he took is concerned.

(French, p. 59) M^e NEKUIE :

Deuxièmement : il est important que je fasse savoir à la Chambre que la Défense de Monsieur Yussuf Munyakazi a connu des convulsions, que la Chambre... dont la Chambre est parfaitement consciente, et que, lorsque dans sa composition actuelle, elle s'est retrouvée en train de prendre en main le cas de Monsieur Munyakazi, il n'était pas certain que Monsieur Munyakazi comparaitrait comme témoin pour sa défense.

Ainsi donc, nous n'avons pas eu un entretien avec Monsieur Munyakazi qui doit nécessairement se faire par traducteur, nous permettant de savoir que se dégageaient de sa défense des moyens d'alibi. Et ce n'est que lorsque cela s'est présenté ainsi, lorsqu'il a décidé de se présenter comme témoin pour sa propre cause, que ceci s'est révélé à nous.

⁴² T. 14 October 2009 p. 49.

M. JEGEDE :

Madame le Président, j'ai un commentaire. La Chambre se souviendra qu'Esdras a déposé devant tel, et cette question ne lui a pas été posée. La question n'a pas été posée à l'époque. Et la Défense maintenant évoque cette question à titre d'alibi. Mais si la Défense allègue que Munyakazi était ailleurs, le 16, alors, elle aurait dû nous communiquer un avis de défense d'alibi et elle aurait pu même le faire plus tard, mais le faire maintenant, c'est totalement inadmissible, Madame le Président.

M. NEKUI :

...Lors de la préparation de Monsieur Munyakazi, nous avons constaté qu'il avait la possibilité d'expliquer sa journée du 16 avril, et c'est ce que nous sommes en train de faire. Je ne sais pas pourquoi on nous oppose le fait que nous aurions dû le faire à l'occasion du témoignage d'Esdras. Qu'est-ce que cela veut dire? Ça n'a absolument pas de sens ni de fondement juridique. Et donc, je ne voudrais pas que nous perdions du temps là-dessus, Madame le Président. Cela d'autant qu'il n'y a rien qui nous empêche d'évoluer sur cette ligne de questionnement d'après les dispositions du Règlement de procédure.

⁴³ T. 14 October 2009 p. 20.

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this date on cross-examination,⁴⁴ despite the fact that Musengayire's cross-examination took place three days after the examination-in-chief.⁴⁵

50. The Chamber further notes that there are discrepancies in Munyakazi's several explanations of his activities on 16 April 1994. As described above, during examination-in-chief, Munyakazi testified that on 15 April 1994, Nyirimbibi collected Musengayire from Mibilizi hospital and took him to his own home. On 16 April 1994, Munyakazi waited in Bugarama for news from Nyirimbibi about his journey to the DRC with Musengayire. At 11:00 a.m., Nyirimbibi reported to Munyakazi that the trip had been successful. At 5:00 p.m. that same day, Munyakazi learned about the attack on Tutsi refugees at the CIMERWA factory, and the killing of Isaac Burege. Munyakazi went to CIMERWA and brought Burege's surviving family members back to his house. They arrived at the house at approximately 5:30 p.m. that day.⁴⁶

51. During cross-examination, Munyakazi summarised his activities of 16 April 1994 somewhat differently, suggesting for the first time that he personally escorted Musengayire to the DRC before going to CIMERWA: "...We had to take Esidras to Congo. ...So I took Ezra to Congo and then went to CIMERWA to take the family...."⁴⁷ Moreover, there were discrepancies in the time frames cited by Munyakazi. Munyakazi testified that he learned about the attack in CIMERWA and Burege's killing at 2:00 p.m. on 16 April 1994,⁴⁸ and not at 5 p.m. as he had stated during the previous day's testimony. Munyakazi said that Nyirimbibi informed him that the mission to the DRC had been successful at approximately 8:00 a.m., and not at 11:00 a.m. as he had testified the previous day. In a third account, Munyakazi added that he learned from his son at approximately noon that Nyirimbibi had been assaulted for helping Musengayire leave Rwanda.⁴⁹

52. While the discrepancy about Munyakazi's personal participation in Musengayire's trip to the DRC may be attributable to a mistake in wording or interpretation, the Trial Chamber is more concerned about the other discrepancies related to the times at which Munyakazi learned of Burege's killing, the dates on which Musengayire left Mibilizi hospital, and the time at which Munyakazi learned that Musengayire's trip to the DRC was a success. Inconsistencies in the recollection of times and dates may in some circumstances be attributable to the passage of time; however, in this instance, the differences arose in Munyakazi's account of the same events over two consecutive days. Thus, the Trial Chamber is unable to attribute the discrepancies to the lapse of time since the events described. At no time has the Defence argued that the faculties of the Accused were in any way diminished because of his advanced age or some other factor. Thus, the Trial Chamber concludes that the discrepancies in Munyakazi's testimony regarding his activities on 16 April 1994 are significant.

53. Therefore, the Trial Chamber finds that Munyakazi's alibi for 16 April 1994 is not credible. Nevertheless, as will be discussed in more detail below, the Prosecution did not establish beyond reasonable doubt that Munyakazi participated in the events at Nyamasheke Parish on 16 April 1994 (see Chapter II.7).

⁴⁴ T. 14 October 2009 pp. 45-47.

⁴⁵ T. 24 April 2009 pp. 5-6. T. 27 April 2009 pp. 9-10.

⁴⁶ T. 14 October 2009 pp. 44-48.

⁴⁷ T. 15 October 2009 p. 33 (en), pp. 40-41 (fr).

⁴⁸ T. 15 October 2009 p. 33.

⁴⁹ T. 15 October 2009 pp. 58-59.

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The Alibi: 29-30 April 1994

54. The Prosecution alleges that Munyakazi participated in an attack on Shangi Parish on 29 April 1994, and that he participated in a separate attack on Mibilizi Parish on 30 April 1994.⁵⁰ The Accused testified that he attended funeral proceedings for a certain Emedeyo Kabungo on both those days.

55. The Trial Chamber notes at the outset that Munyakazi gave one account of his activities on 29 April 1994 during his first day of testimony and a significantly different account during his testimony the following day, claiming that he forgot to mention certain details regarding his activities on 29 April 1994 during his first day of testimony.⁵¹

56. On 14 October 2009, Munyakazi's first day of testimony, Munyakazi testified that on 29 April 1994 he attended prayer sessions at 3:30 p.m. and 6:00 p.m., and read the Koran between the prayer sessions. It was only on the second day of his examination-in-chief that Munyakazi recalled, in response to a leading question from his counsel, that he had attended funeral proceedings for Kabungo on the afternoon of the 29th and that the proceedings had lasted three days. Munyakazi did not clarify the inconsistencies, for example, by explaining that he attended Kabungo's funeral proceedings on the 29th, but left for short periods at 3:30 p.m. and 6:00 p.m. to attend prayer sessions at the mosque. The Trial Chamber, therefore, finds no reasonable explanation for the discrepancies.

57. The Trial Chamber further notes that the Defence proffered no corroboration of any aspect of Munyakazi's alibi. It adduced no evidence of Kabungo's death, called no witnesses involved in the alleged funeral proceedings to give evidence, nor did it produce statements from any such potential witnesses, although Munyakazi testified that some were still alive, and at least one was still living in Bugarama.⁵² In addition, the Defence offered no corroborating evidence that it is Muslim tradition in Rwanda to observe a three-day mourning period following a death. Therefore, the Trial Chamber concludes that Munyakazi's alibi for 29-30 April 1994 has little evidentiary value. As will be discussed in further detail below, the Trial Chamber finds that its reasonableness has been overcome by the compelling Prosecution evidence placing Munyakazi at Shangi and Mibilizi Parishes on 29 and 30 April 1994, respectively (see Chapters II.7 and II. 8).

Conclusion

58. The Trial Chamber recalls that the Defence provided no notice of an alibi Defence and has failed to show good cause for this omission. This is not dispositive, but it is relevant in assessing whether the alibi is credible. Moreover, while under ordinary circumstances it might be extremely difficult to recall what took place on a particular day 15 years ago, the Trial Chamber notes that the crimes for which Munyakazi is charged took place on three specific dates. The Accused was arrested on 5 May 2004, the Second Amended Indictment was issued on 3 November 2008, the Trial commenced on 22 April 2009, and Munyakazi testified on 14 and 15 October 2009. As already stated, the Defence has advanced no reasonable explanation for Munyakazi's failure to recall that he had an alibi until the last days of his trial, and the suspicious circumstances under which the alibi was finally raised causes the Chamber to seriously question its credibility.

59. In summary, although the Trial Chamber is mindful that the Accused does not have to prove his alibi beyond a reasonable doubt, the Chamber finds the alibis, both for 16 April 1994 and 29-30 April 1994, advanced by Munyakazi to be inconsistent and contradictory. It

⁵⁰ Indictment, paras. 13, 14.

⁵¹ T. 14 October 2009 pp. 50-51, T. 15 October 2009 pp. 1-3.

⁵² T. 15 October 2009 p. 32.

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further concludes that the grounds provided by the Defence for the failure to provide notice of the alibis are unreasonable.

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3. MUNYAKAZI AS LEADER OF THE BUGARAMA INTERAHAMWE

60. Paragraph 1 of the Indictment alleges the following:

Yussuf Munyakazi was born in 1935 in Rwamatamu *commune*, Kibuye *préfecture*, Rwanda. During the period covered by this indictment [*sic*], Yussuf Munyakazi was a wealthy businessman and commercial farmer in Bugarama *commune*, Cyangugu *préfecture* and a leader with *de facto* authority over the Bugarama MRND *Interahamwe* militia.⁵³

61. The Defence denies that Munyakazi had any involvement with the *Interahamwe* of Bugarama. While it does not dispute that Munyakazi was a member of the MRND during the relevant period of the Indictment, it asserts that he held no leadership position within that party and was too old and preoccupied with other pursuits to have any involvement with the *Interahamwe*.⁵⁴

*Evidence*Prosecution Witness BWX

62. Witness BWX, a Hutu, worked in close proximity to Munyakazi's house in Misufi *cellule*, Bugarama *secteur*.⁵⁵ Until 1993, the top MRND party official in Bugarama was a man named Mabwire, who left office because he opposed the reprehensible acts committed by members of the MRND. Later, the witness saw Munyakazi leading MRND meetings and rallies originally led by Mabwire, and deduced that Munyakazi had replaced Mabwire.⁵⁶ The witness began seeing Munyakazi in the company of *Interahamwe* in or around 1992 or 1993.⁵⁷

63. Munyakazi was involved in *Interahamwe* activities in the days and weeks following the death of President Habyarimana.⁵⁸ During that period, the *Interahamwe* met at Munyakazi's house and travelled in vehicles to Mibilizi, Shangi, and other places to perpetrate crimes, often in the company of Munyakazi.⁵⁹ The witness knew about this because the *Interahamwe* would brag about their crimes upon their return.⁶⁰ Members of the *Interahamwe* acted as Munyakazi's bodyguards, carrying firearms and accompanying Munyakazi wherever he went.⁶¹ Tarek Aziz, an *Interahamwe*, lived in one of Munyakazi's houses.⁶²

64. The *Interahamwe* lived at Munyakazi's house, which was located near the customs building at the DRC border. According to the witness, this house was referred to as

⁵³ Indictment para. 1. See also, Prosecution Closing Brief paras. 51, 138-142.

⁵⁴ Defence Closing Brief paras. 1-16.

⁵⁵ Prosecution Exhibit 6 (personal identification sheet); T. 24 April 2009 p. 12 (closed session); T. 24 April 2009 pp. 15-16; T. 27 April 2009 pp. 35, 38 (closed session).

⁵⁶ T. 27 April 2009 pp. 27-28.

⁵⁷ T. 24 April 2009 p. 18.

⁵⁸ T. 24 April 2009 pp. 23-24.

⁵⁹ T. 24 April 2009 pp. 23-24.

⁶⁰ T. 24 April 2009 p. 23.

⁶¹ T. 24 April 2009 pp. 17, 22; T. 27 April 2009 p. 21.

⁶² T. 27 April 2009 pp. 20-21.

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“headquarters”, but the witness did not know what this meant. The *Interahamwe* were positioned there to monitor those who were travelling to and from the DRC.⁶³

65. The *Interahamwe* began military training exercises between 1992 and 1993, at a football field located in an area called Tenth Street.⁶⁴ Munyakazi would go to these training sessions, but since the witness was not among those who were trained, he could not say what Munyakazi was doing there.⁶⁵ Tarek Aziz trained the *Interahamwe* on the use of firearms.⁶⁶

Prosecution Witness Esidras Musengayire

66. Witness Esidras Musengayire, alias Ezra, a Tutsi, lived in *Cité Bugarama* in *Bugarama commune* in *Cyangugu préfecture* in April 1994.⁶⁷ He lived in Munyakazi's house from 1982 to 1984, and during that time, Munyakazi treated him like a son.⁶⁸ When the witness later moved to his own house, Munyakazi continued to consider him as a member of his family until the outbreak of the genocide.⁶⁹

67. Munyakazi was a member of the MRND party but held no elected office in the *commune*.⁷⁰ The president of the *Interahamwe* in Bugarama was Job Mabwire.⁷¹ However, the witness would see Munyakazi in the company of the *Interahamwe*.⁷² The witness never heard Munyakazi refer to himself as the leader of the *Interahamwe*. On the contrary, Munyakazi referred to the people living in his house as *Interahamwe*.⁷³ Tarek Aziz lived in Munyakazi's house and told the witness that he, Tarek Aziz, was responsible for training the *Interahamwe*.⁷⁴ Other *Interahamwe*, such as Liere and Mundere, lived with Mama Safi, one of Munyakazi's wives.⁷⁵ The witness later stated that Mundere lived with Mama Safi, and that Liere was one of Munyakazi's neighbours.⁷⁶ In April 1994, before the witness left Bugarama, the *Interahamwe* would meet at Munyakazi's house.⁷⁷

68. The witness believed that Munyakazi was influential within the *Interahamwe*. He recalled that, prior to 7 April 1994, the *Interahamwe* and the JDR, the youth wing of the MDR party, clashed at a location known as Kizura. A person was killed by the *Interahamwe*, and Munyakazi was detained for two days. The *Interahamwe* demonstrated against Munyakazi's arrest by blocking the road to CIMERWA for a day. Munyakazi was subsequently released.⁷⁸

69. On 7 April 1994, at about 6:00 a.m., the *Interahamwe* came to the witness' house, dragged him out of his house, and took him to Munyakazi's house.⁷⁹ Munyakazi then asked the *Interahamwe* to leave. Musengayire believed that the *Interahamwe* were expecting

⁶³ T. 27 April 2009 p. 34-35, 38 (closed session).

⁶⁴ T. 24 April 2009 p. 18-19.

⁶⁵ T. 27 April 2009 p. 32.

⁶⁶ T. 24 April 2009 p. 20.

⁶⁷ Prosecution Exhibit 5 (personal identification sheet); T. 23 April 2009 p. 49.

⁶⁸ T. 23 April 2009 p. 51; T. 27 April 2009 p. 2.

⁶⁹ T. 27 April 2009 p. 2.

⁷⁰ T. 23 April 2009 p. 52; T. 27 April 2009 p. 6.

⁷¹ T. 27 April 2009 p. 15.

⁷² T. 23 April 2009 p. 52.

⁷³ T. 27 April 2009 p. 14.

⁷⁴ T. 24 April 2009 p. 4.

⁷⁵ T. 27 April 2009 pp. 15, 16.

⁷⁶ T. 27 April 2009 p. 16.

⁷⁷ T. 24 April 2009 p. 1.

⁷⁸ T. 24 April 2009 pp. 2-3.

⁷⁹ T. 23 April 2009 p. 49.

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Munyakazi to order his killing. Instead, Munyakazi led the witness into a room in his house and locked the door to protect him. Soon thereafter, a member of the *Interahamwe* broke the window and threw a grenade into the room, and the witness was gravely wounded. Munyakazi then arranged to have the witness taken to the hospital.⁸⁰ The witness did not see who threw the grenade but later learned through *Gacaca* proceedings that the grenade was thrown by an *Interahamwe* named Zacharie Mario, one of Munyakazi's sons.⁸¹

Prosecution Witness BWV

70. Witness BWV, a Hutu, testified that Munyakazi was a member of the MRND and, in that capacity, recruited young people to join the *Interahamwe* in 1990.⁸² Munyakazi would travel in a vehicle with a megaphone urging young people to join the *Interahamwe*.⁸³ The witness first stated that he joined the *Interahamwe* in March 1993,⁸⁴ but later said he had been mistaken and actually joined the *Interahamwe* in March 1992.⁸⁵ At that time, the official objective of the *Interahamwe* was to "fight for" the country.⁸⁶

71. The *Interahamwe* underwent daily training in 1993, and Tarek Aziz, who lived in Munyakazi's house, was one of their instructors.⁸⁷ Munyakazi had at least two *Interahamwe* guards during the training sessions.⁸⁸ The Bugarama *Interahamwe* used weapons that were stored in Munyakazi's house.⁸⁹ *Interahamwe* bodyguards kept watch over Munyakazi's house at night.⁹⁰ Following expeditions to attack and kill Tutsi civilians, the *Interahamwe* ate at the house belonging to Munyakazi's wife Rukiya.⁹¹ Munyakazi also provided *Interahamwe* uniforms to the witness and a number of other members of the *Interahamwe* in March 1994.⁹² When Munyakazi wanted to give instructions to the members of the *Interahamwe*, he did so within his compound because its walls were six or seven metres high, and others could not overhear what was being said.⁹³

72. Munyakazi led the attack on Shangi Parish.⁹⁴ He called the *Interahamwe* to an open field near "the cooperative" and instructed them to "go there and do what we were supposed to do there," which the witness understood as an instruction to kill Tutsi civilians. Most of the *Interahamwe* were armed. The witness only had a machete and a club because the firearms available had already been distributed.⁹⁵ After the killings at Shangi Parish, the *Interahamwe* who participated in the killings went back to Rukiya's house to have a meal before going home.⁹⁶

⁸⁰ T. 23 April 2009 pp. 49-50; T. 27 April 2009 p. 9.

⁸¹ T. 24 April 2009 p. 4.

⁸² Prosecution Exhibit 12 (personal identification sheet); T. 29 May 2009 p. 9 (closed session).

⁸³ T. 29 May 2009 p. 23 (closed session).

⁸⁴ T. 29 May 2009 p. 9 (closed session).

⁸⁵ T. 29 May 2009 pp. 23-24 (closed session).

⁸⁶ T. 29 May 2009 p. 11 (closed session).

⁸⁷ T. 29 May 2009 p. 12 (closed session).

⁸⁸ T. 29 May 2009 p. 13 (closed session).

⁸⁹ T. 29 May 2009 pp. 13, 31 (closed session).

⁹⁰ T. 29 May 2009 p. 13 (closed session).

⁹¹ T. 29 May 2009 p. 28 (closed session).

⁹² T. 29 May 2009 p. 36 (closed session).

⁹³ T. 29 May 2009 p. 29 (closed session).

⁹⁴ T. 29 May 2009 p. 16 (closed session).

⁹⁵ T. 29 May 2009 pp. 16-17 (closed session).

⁹⁶ T. 29 May 2009 pp. 19, 29 (closed session).

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73. Munyakazi also gave instructions to attack Mibilizi Parish. When the attackers arrived at the parish, Munyakazi said: "Don't you know why you are here?" A local trader named Bandetsi added: "[b]ut you are looking at us as if you do not know what you have come to do here." Following these words, the *Interahamwe* immediately surrounded the parish grounds and began killing Tutsi civilians. They did so quickly because Munyakazi told them that it was getting late.⁹⁷

Prosecution Witness BWR

74. Witness BWR, a Tutsi,⁹⁸ worked at the CIMERWA Cement Factory in Bugarama for nine years until the day President Habyarimana died.⁹⁹ While the witness was working at CIMERWA, Munyakazi would come to CIMERWA, but the witness did not know what he was doing there.¹⁰⁰ On the day of President Habyarimana's death, the witness stopped working and fled to his native locality in Shangi in Gafunzo *commune* because he no longer felt safe.¹⁰¹ The witness was unable to estimate the number of times he saw Munyakazi prior to April 1994, but each time the witness went to *Cité* Bugarama, he would see Munyakazi.¹⁰²

75. On an unspecified date, at Ijambwe, the *Interahamwe* attacked members of the JDR, the youth wing of the MDR. Munyakazi ordered the *Interahamwe* to return to their vehicles, which they did immediately upon receiving the instruction.¹⁰³ The witness concluded that Munyakazi was the leader of the Bugarama *Interahamwe* because each time the *Interahamwe* went out, Munyakazi led them, and because the population of Bugarama referred to the *Interahamwe* as "Yussuf's *Interahamwe*."¹⁰⁴

76. Following the death of President Habyarimana, the witness sought refuge at Shangi Parish together with other Tutsis.¹⁰⁵ On 29 April 1994, Munyakazi led a large-scale attack on the parish.¹⁰⁶ The witness believed that Munyakazi signaled for the *Interahamwe* to attack by firing the first shots, after which the *Interahamwe* began throwing grenades and shooting at the refugees.¹⁰⁷ The attack lasted until the evening, and when it was over, the witness was too disoriented to know whether there were any other survivors of the attack.¹⁰⁸

Prosecution Witness BWU

77. Witness BWU, a Hutu, was a farmer in 1994.¹⁰⁹ He saw Munyakazi on two occasions.¹¹⁰ First, at a meeting held at Kamarampaka Stadium in Cyangugu *préfecture* in late 1993.¹¹¹ There, the Cyangugu *préfet* Bagambiki introduced Munyakazi as the president

⁹⁷ T. 29 May 2009 p. 35 (closed session).

⁹⁸ Prosecution Exhibit 2 (personal identification sheet).

⁹⁹ T. 22 April 2009 p. 41 (closed session); T. 22 April 2009 p. 55.

¹⁰⁰ T. 22 April 2009 p. 56.

¹⁰¹ T. 22 April 2009 pp. 55-56.

¹⁰² T. 22 April 2009 p. 42.

¹⁰³ T. 22 April 2009 pp. 48-49.

¹⁰⁴ T. 22 April 2009 pp. 48-49.

¹⁰⁵ T. 22 April 2009 p. 43.

¹⁰⁶ T. 22 April 2009 p. 44.

¹⁰⁷ T. 22 April 2009 p. 45.

¹⁰⁸ T. 22 April 2009 pp. 45-46.

¹⁰⁹ Prosecution Exhibit 13 (personal identification sheet).

¹¹⁰ T. 4 June 2009 p. 9.

¹¹¹ T. 4 June 2009 pp. 5, 9, 11, 19.

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of the Bugarama *Interahamwe*.¹¹² The witness saw Munyakazi again on 29 April 1994, during the attack at Shangi Parish.¹¹³ Together with another high ranking member of the Bugarama *Interahamwe*, Munyakazi led a group of about 50 or 60 *Interahamwe* in an attack on Tutsi civilians who had sought refuge at the parish.¹¹⁴ Munyakazi arrived at the parish in a vehicle loaded with weapons.¹¹⁵

Prosecution Witness LAY

78. Witness LAY, a Tutsi, was a trader in 1994,¹¹⁶ and a leader of the Liberal Party.¹¹⁷ He saw Munyakazi going to political rallies on numerous occasions in 1993. Along the way, Munyakazi often stopped at the *commune* office at Kabeza for discussions with local officials or members of the population.¹¹⁸ Munyakazi was always accompanied by *Interahamwe* carrying political banners and Munyakazi was received by the local population as an important personality.¹¹⁹ However, the witness did not know specifically which position Munyakazi held in the MRND or the *Interahamwe*.¹²⁰ The last time the witness saw Munyakazi was when Munyakazi led the attack at Nyamasheke Parish on 16 April 1994.¹²¹

Prosecution Witness LCQ

79. Witness LCQ, a Tutsi, was a farmer in 1994.¹²² He first met Munyakazi in 1988.¹²³ Munyakazi was a trader and a very popular farmer in Bugarama who owned many houses. From 1988 until 1990, the witness would see the Accused in *Cité* Bugarama, standing on the veranda of his house when the witness went there to sell milk.¹²⁴ The witness, together with his wife and about 20 neighbours, sought refuge at the Mibilizi Parish on 8 April 1994.¹²⁵ Munyakazi led in the attack on Mibilizi Parish on 30 April 1994.¹²⁶

Prosecution Witness BWP

80. Witness BWP, a Tutsi, lived in Kagano *commune* in Cyangugu *préfecture* in April 1994. He was 15 or 16 years old at the time of events.¹²⁷ He saw Munyakazi at Kabeza Centre twice in 1993, when Munyakazi went past Kabeza Centre on his way to MRND rallies. Munyakazi would stop along the way to talk to local residents.¹²⁸ On those two occasions, Munyakazi was in the company of people who were singing for him, and the

¹¹² T. 4 June 2009 pp. 19-21, 25.

¹¹³ T. 4 June 2009 pp. 5, 9.

¹¹⁴ T. 4 June 2009 p. 7.

¹¹⁵ T. 4 June 2009 p. 28.

¹¹⁶ Prosecution Exhibit 4 (personal identification sheet); T. 23 April 2009 pp. 22-23.

¹¹⁷ T. 23 April 2009 p. 34.

¹¹⁸ T. 23 April 2009 pp. 39-40.

¹¹⁹ T. 23 April 2009 pp. 33-34, 39.

¹²⁰ T. 23 April 2009 p. 34.

¹²¹ T. 23 April 2009 p. 23.

¹²² Prosecution Exhibit 11 (personal identification sheet).

¹²³ T. 28 April 2009 p. 28.

¹²⁴ T. 28 April 2009 pp. 30-31.

¹²⁵ T. 28 April 2009 pp. 15-16.

¹²⁶ T. 28 April 2009 p. 34.

¹²⁷ Prosecution Exhibit 3 (personal identification sheet); T. 23 April 2009 pp. 2, 8.

¹²⁸ T. 23 April 2009 pp. 2, 7-8.

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witness had the impression that Munyakazi was the leader of those surrounding him.¹²⁹ On 11 April 1994, the witness and his family sought refuge at Nyamasheke Parish.¹³⁰ Munyakazi led the *Interahamwe* during the attack at Nyamasheke Parish on 16 April 1994.¹³¹

Prosecution Witness MP

81. Witness MP, a Hutu, worked at Mibilizi Parish in April 1994.¹³² He testified that the Accused led the 30 April 1994, attack on Mibilizi Parish. The witness first learned about Munyakazi from one of his colleagues at Mibilizi who phoned Shangi Parish and was told that Munyakazi and his *Interahamwe* had attacked Shangi Parish on 29 April 1994.¹³³ In addition, the gendarmes who were stationed at Mibilizi Parish had a discussion with the leader of the attack on 30 April 1994, when the *Interahamwe* arrived at the parish. They then informed the witness that the person they had spoken to was Munyakazi. Finally, the witness could hear everything during the attack and noted that Munyakazi was the only one issuing orders.¹³⁴

Yussuf Munyakazi

82. Munyakazi testified that he was a member of the MRND party but was too old to be a member of its youth wing, the *Interahamwe*.¹³⁵ He was not the leader of the *Interahamwe*, and¹³⁶ he never held a position of responsibility or ran for an elected position within the MRND.¹³⁷ He was not in charge of recruiting new members within the party.¹³⁸ He never attended or organised meetings of the *Interahamwe*.¹³⁹ The *Interahamwe* met at the communal office, but Munyakazi did not know what took place during these meetings, as he did not follow their activities.¹⁴⁰

83. The leader of the MRND in Bugarama *secteur* was Kassim Jumapili,¹⁴¹ and the president of MRND at the communal level was Ayubu Mabwire.¹⁴² The leader of the Bugarama *Interahamwe* at the *commune* level was Athanase Ndutiye, alias Tarek Aziz, and his vice president was Thomas Mugunda.¹⁴³ Tarek Aziz rented a room in one of Munyakazi's houses and paid monthly rent like other tenants.¹⁴⁴ Munyakazi was not Tarek Aziz's mentor nor was he his supervisor,¹⁴⁵ and Munyakazi did not consider Tarek Aziz to be a member of

¹²⁹ T. 23 April 2009 pp. 9-10.

¹³⁰ T. 23 April 2009 p. 3.

¹³¹ T. 23 April 2009 pp. 3-5.

¹³² Prosecution Exhibit 7 (personal identification sheet); T. 27 April 2009 pp. 43-44.

¹³³ T. 27 April 2009 pp. 48-50.

¹³⁴ T. 27 April 2009 pp. 51-53.

¹³⁵ T. 14 October 2009 p. 21.

¹³⁶ T. 14 October 2009 p. 43.

¹³⁷ T. 14 October 2009 p. 21; T. 15 October 2009 p. 21.

¹³⁸ T. 15 October 2009 p. 21.

¹³⁹ T. 14 October 2009 pp. 23-24, 43.

¹⁴⁰ T. 14 October 2009 p. 23.

¹⁴¹ T. 14 October 2009 p. 22.

¹⁴² T. 14 October 2009 pp. 21-22.

¹⁴³ T. 14 October 2009 p. 22.

¹⁴⁴ T. 14 October 2009 pp. 16, 41.

¹⁴⁵ T. 15 October 2009 p. 41.

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his family.¹⁴⁶ Tarek Aziz was never Munyakazi's bodyguard, and Munyakazi never had bodyguards.¹⁴⁷

84. At some unspecified time prior to 1994, Munyakazi was detained by the Cyangugu Public Prosecutor following clashes between the MRND and another political party. During those clashes, several persons were wounded, and a person was killed. Some people wanted to seize Munyakazi's property, and he was therefore blamed for the clashes and taken before the Cyangugu Prosecutor. An investigation was conducted, and Munyakazi was cleared and released the same day he was arrested.¹⁴⁸

85. In April 1994, Munyakazi was constructing a building close to the customs office near the border with DRC.¹⁴⁹ However, this building was still under construction and could not have been used by the *Interahamwe*. The building was completed in May or June 1994.¹⁵⁰ The *Interahamwe* did not meet at or operate in any of Munyakazi's houses.¹⁵¹ Munyakazi did not stock weapons for the *Interahamwe* at any of his houses, and his wives never prepared food for the *Interahamwe*.¹⁵²

Defence Witness NKM

86. Witness NKM, a Hutu, lived in Bugarama *commune* in April 1994. He worked at the bank in Bugarama *commune*.¹⁵³ Munyakazi's residence was some 150 metres away from the witness' residence in Bugarama *secteur*.¹⁵⁴ Munyakazi was an ordinary customer at the bank, and was not the biggest rice farmer in Bugarama *commune*.¹⁵⁵

87. The witness was a member of the PDI party, and, as part of his functions, he monitored the activities of the MRND party at the communal level.¹⁵⁶ Thus, he was in a position to know Munyakazi's role within the MRND. Although Munyakazi was a member of the MRND, he was neither the chairman nor the vice chairman of the MRND.¹⁵⁷ Nor was Munyakazi the president of MRND at the *secteur* level.¹⁵⁸ He held no position within the party.¹⁵⁹ The chairman of the MRND at the communal level was Job Mabwire.¹⁶⁰ The vice president was Theobali Munyakayanza.¹⁶¹ During the period between 1993 and 6 April 1994, Munyakazi never chaired MRND meetings.¹⁶² Munyakazi was not in a position to convene meetings of any political party.¹⁶³

¹⁴⁶ T. 14 October 2009 p. 41.

¹⁴⁷ T. 14 October 2009 p. 42.

¹⁴⁸ T. 15 October 2009 pp. 25-26; Prosecution Exhibit 23 (Rapport sur les Droits de l'homme au Rwanda; Octobre 1992 jusqu'à Octobre 1993 produit par l'Association Rwandaise pour la Défense des Droits de la Personne et des Libertés Publiques — « ADL - Kigali - décembre 1993 »).

¹⁴⁹ T. 14 October 2009 pp. 6, 8-9.

¹⁵⁰ T. 14 October 2009 pp. 17-18; T. 15 October 2009 pp. 60-61.

¹⁵¹ T. 14 October 2009 p. 44.

¹⁵² T. 14 October 2009 p. 43.

¹⁵³ Defence Exhibit 6 (personal identification sheet); T. 31 August 2009 pp. 7-8 (closed session).

¹⁵⁴ T. 31 August 2009 p. 31.

¹⁵⁵ T. 31 August 2009 pp. 8-9.

¹⁵⁶ T. 31 August 2009 pp. 14-15.

¹⁵⁷ T. 31 August 2009 p. 13.

¹⁵⁸ T. 31 August 2009 p. 46.

¹⁵⁹ T. 31 August 2009 p. 13.

¹⁶⁰ T. 31 August 2009 pp. 14, 45, 48.

¹⁶¹ T. 31 August 2009 p. 46.

¹⁶² T. 31 August 2009 p. 15.

¹⁶³ T. 31 August 2009 p. 17.

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88. The witness was not aware of a relationship between Munyakazi and the youth wing of the MRND party.¹⁶⁴ He did not know whether Tarek Aziz was the coordinator of the *Interahamwe*. He never saw Tarek Aziz and Munyakazi together.¹⁶⁵ The witness did not know Thomas Mugunda.¹⁶⁶ He never saw or heard that members of the Bugarama *Interahamwe* were involved in crimes, either prior to or after 6 April 1994.¹⁶⁷

89. On 7 April 1994, the witness heard a grenade explode at Munyakazi's house. He was told that the grenade was thrown by a young man who was angry at Munyakazi for protecting Musenyagire and others. When the assailants who brought Musengayire to Munyakazi's house realised that Musengayire had not been killed, they set off to kill Shema, a Tutsi, who was Munyakazi's adopted son. The witness believed that Shema was killed to send a warning to Munyakazi not to impede the killings.¹⁶⁸ Shema was killed by two *Interahamwe* known as Eliere and Noah. Munyakazi had no authority over these two young men nor did he have any authority over any other young people involved in such activities after 6 April 1994.¹⁶⁹ Crimes were committed by the youth groups of the various political parties, such as the MRND, the PDI, the MDR, the PL, and the CDR. Each group obeyed its own party leadership, and there was no overall coordination between the groups.¹⁷⁰

Defence Witness NDB

90. Witness NDB, a Hutu, lived in Bugarama and was a farmer in April 1994.¹⁷¹ The distance between his home and Munyakazi's residence was approximately 500 metres.¹⁷² The witness saw and heard about crimes committed by young persons in Bugarama affiliated with such political parties as the MRND, MDR, PDI, CDR and PSD. These young persons came from surrounding neighbourhoods like Muhehwe, Nyabitare, Kibangira, and other areas. These youth groups began committing crimes shortly after the death of President Habyarimana. However, there was no relationship between the youth groups and Munyakazi.¹⁷³ He never saw Munyakazi in the company of those young people and does not believe that Munyakazi fed the men voluntarily.¹⁷⁴

Defence Witness NRB

91. Witness NRB, a Hutu, lived in Nzahaha *secteur* in Bugarama *commune* in April 1994. He worked for the CAVECUVI cooperative society.¹⁷⁵ Nzahaha *secteur* was approximately eight kilometres from Cité Bugarama.¹⁷⁶ He first met Munyakazi in 1960 and knew that he was a farmer.¹⁷⁷ Munyakazi was also a member of CAVECUVI, and held a position there.¹⁷⁸ Munyakazi's house was located approximately 40 metres from CAVECUVI.¹⁷⁹

¹⁶⁴ T. 31 August 2009 p. 19.

¹⁶⁵ T. 31 August 2009 pp. 46-47.

¹⁶⁶ T. 31 August 2009 p. 46.

¹⁶⁷ T. 31 August 2009 p. 43.

¹⁶⁸ T. 31 August 2009 pp. 25-26.

¹⁶⁹ T. 31 August 2009 p. 26; See also French transcript, pp. 29-30.

¹⁷⁰ T. 31 August 2009 pp. 26-27.

¹⁷¹ T. 1 September 2009 p. 12 (closed session); Defence Exhibit 10 (personal identification sheet).

¹⁷² T. 1 September 2009 p. 12 (closed session); T. 1 September 2009 p. 19.

¹⁷³ T. 1 September 2009 p. 13.

¹⁷⁴ T. 1 September 2009 p. 15.

¹⁷⁵ Defence Exhibit 12 (personal identification sheet); T. 1 September 2009 p. 37.

¹⁷⁶ T. 1 September 2009 p. 45 (closed session).

¹⁷⁷ T. 1 September 2009 p. 37 (closed session).

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92. Munyakazi was a member of the MRND but held no position within the party.¹⁸⁰ He, therefore, did not have the authority to organise meetings. Only party chairmen were entitled to do so.¹⁸¹ The witness was a member of the MRND and recalled that the president of the MRND party in Bugarama *commune* in April 1994, was Job Mabwire. The witness did not know whether Munyakazi was the vice president of the party at the *commune* level nor did he know whether he was president of the MRND at the *secteur* level.¹⁸² He did not know who the leader of the *Interahamwe* in his own *secteur* was because he was not a member of the *Interahamwe*.¹⁸³

Defence Witness MPCC

93. Witness MPCC, a Tutsi, lived in Ruhoko *secteur*, Gishoma *commune*, Cyangugu *préfecture* in 1994. He was the chairman of the MRND party in Gishoma *commune* and an agricultural extension worker.¹⁸⁴ He first met Munyakazi in the early 1980s. Munyakazi lived in Bugarama and was a member of the MRND.¹⁸⁵ Members of the *Interahamwe* were generally between 18 and 35 years of age. Their role was to mobilise the population. If a 40-year-old was strong and able-bodied he could be a member of the youth wing of the MRND, but this was uncommon.¹⁸⁶ Munyakazi was not the leader of the Bugarama *Interahamwe*. The *Interahamwe* leaders came from within the *Interahamwe* structure.¹⁸⁷ The leader of the *Interahamwe* in Bugarama was Tarek Aziz. Tarek Aziz was a tenant in one of Munyakazi's houses, but he did not live with Munyakazi.¹⁸⁸

Defence Witness AMB

94. Witness AMB, a Hutu, was a university student outside of Bugarama in 1994. He was a native of Bugarama *commune* and would spend his holidays there.¹⁸⁹ He spent a significant amount of time in Bugarama in 1993 and 1994,¹⁹⁰ and was in Bugarama throughout April 1994.¹⁹¹ Munyakazi was his neighbour.¹⁹² One of Munyakazi's wives, Mama Safi, lived about 200 metres from the witness' family home. Another wife, Mama Zainabu, lived about 40 metres from his home.¹⁹³

95. He first met Tarek Aziz in 1987, when Tarek Aziz was a trader.¹⁹⁴ The witness had a Tutsi friend who lived in the same house as Tarek Aziz. Thus, he knew that Tarek Aziz was a tenant in Munyakazi's house and that there was no special relationship between Tarek Aziz

¹⁷⁸ T. 1 September 2009 pp. 37, 45 (closed session).

¹⁷⁹ T. 1 September 2009 p. 38 (closed session).

¹⁸⁰ T. 1 September 2009 p. 39.

¹⁸¹ T. 1 September 2009 p. 40.

¹⁸² T. 1 September 2009 pp. 49-50.

¹⁸³ T. 1 September 2009 p. 48.

¹⁸⁴ Defence Exhibit 18 (personal identification sheet); T. 7 September 2009 pp. 46, 57-58 (closed session).

¹⁸⁵ T. 7 September 2009 pp. 47-48 (closed session).

¹⁸⁶ T. 7 September 2009 pp. 52-53 (closed session).

¹⁸⁷ T. 7 September 2009 p. 60 (closed session).

¹⁸⁸ T. 7 September 2009 p. 61.

¹⁸⁹ Defence Exhibit 21 (personal identification sheet); T. 10 September 2009 pp. 1, 3, 21-22 (closed session).

¹⁹⁰ T. 10 September 2009 pp. 4, 22-23 (closed session).

¹⁹¹ T. 10 September 2009 p. 10.

¹⁹² T. 10 September 2009 p. 4 (closed session).

¹⁹³ T. 10 September 2009 p. 9.

¹⁹⁴ T. 10 September 2009, p. 4 (closed session).

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and Munyakazi.¹⁹⁵ He never saw Tarek Aziz gathering young people at his residence. He never saw or heard that there was a weapons depot in Munyakazi's house.¹⁹⁶ He never saw Munyakazi in the company of bodyguards.¹⁹⁷

96. Munyakazi was a member of the MRND,¹⁹⁸ but had no authority over the *Interahamwe*. The witness was aware of the existence of the *Interahamwe* in Kigali but did not know that there were *Interahamwe* in Bugarama.¹⁹⁹ During cross-examination, he confirmed that in a prior statement he told the Defence that Tarek Aziz was the leader of the *Interahamwe*. He explained that he was not sure whether Tarek Aziz was a leader of the *Interahamwe* or simply a member with considerable clout.²⁰⁰

Defence Witness YMC

97. Witness YMC, a Hutu, was a trader in Misufi *cellule* in Bugarama in April 1994.²⁰¹ He first met Munyakazi in 1985 when he began his trade in Bugarama. His business premises were close to Munyakazi's own.²⁰² Munyakazi was a member of the MRND but held no leadership position. Job Mabwire was the president of the MRND in Bugarama but was not the president of the *Interahamwe*.²⁰³

98. The witness knew Tarek Aziz, an *Interahamwe*, who was a tenant in one of Munyakazi's houses. He never saw Tarek Aziz in the company of Munyakazi and never saw youths assembled in front of Munyakazi's house.²⁰⁴ He never saw Munyakazi in the company of bodyguards. Munyakazi was too old to be involved in military training. The witness never heard that Munyakazi had an arms depot in his house, nor did he ever see Munyakazi carrying a weapon.²⁰⁵ The witness denied that he had financed the local *Interahamwe* together with Munyakazi and a man named Elias Bakundize.²⁰⁶

Defence Witness YMS

99. Witness YMS, a Hutu, was a trader who lived in Bugarama *secteur*, Bugarama *commune*, in April 1994.²⁰⁷ The witness had business dealings with Munyakazi.²⁰⁸ Between 1993 and 6 April 1994, the MRND had a youth wing in Bugarama *commune* made up of young people between the ages of 18 and 30, who elected their own officers. Munyakazi was not in charge of the youth wing, and the witness never saw Munyakazi leading members of this youth group.²⁰⁹ He never saw Munyakazi distributing *kitenge* cloth for *Interahamwe*

¹⁹⁵ T. 10 September 2009 pp. 6-7 (closed session); T. 10 September 2009 p. 8.

¹⁹⁶ T. 10 September 2009 p. 9.

¹⁹⁷ T. 10 September 2009 p. 8.

¹⁹⁸ T. 10 September 2009 p. 24 (closed session).

¹⁹⁹ T. 10 September 2009 p. 10.

²⁰⁰ T. 10 September 2009 p. 27 (closed session).

²⁰¹ Defence Exhibit 22 (personal identification sheet); T. 14 September 2009 pp. 1-2.

²⁰² T. 14 September 2009 p. 3 (closed session).

²⁰³ T. 14 September 2009 pp. 5-6.

²⁰⁴ T. 14 September 2009 pp. 6-7, 23.

²⁰⁵ T. 14 September 2009 pp. 10-11.

²⁰⁶ T. 14 September 2009 pp. 20-22; Prosecution Exhibit 16

²⁰⁷ Defence Exhibit 24 (personal identification sheet); T. 14 September 2009 pp. 30-31, 33 (closed session).

²⁰⁸ T. 14 September 2009 p. 31 (closed session).

²⁰⁹ T. 14 September 2009 p. 34.

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uniforms and never heard anyone say that Munyakazi had done so.²¹⁰ He never saw *Interahamwe* eating at any of Munyakazi's houses.²¹¹

Defence Witness Théobald Gakwaya Rwaka

100. Witness Théobald Gakwaya Rwaka, a Hutu,²¹² worked at the Ministry of Justice for nine years, where he was responsible for national security, the police and prisons.²¹³ He, then, worked at CIMERWA in Bugarama from 1992 to 1996.²¹⁴ He knew Munyakazi because Munyakazi was well known in the area, but did not consider Munyakazi to be a friend. Munyakazi was a member of the MRND but did not hold any position in the MRND at the communal level.²¹⁵ The leader of the *Interahamwe* in Bugarama was Tarek Aziz.²¹⁶ He never saw Munyakazi in the company of the *Interahamwe* and believed that, given his age, Munyakazi could not have been a member of the youth group.²¹⁷ In response to a question about whether he had seen Munyakazi in April 1994, the witness said that he did not see Munyakazi that month, adding that "I could not go to [Munyakazi's] house in Bugarama because I heard there were a lot of *Interahamwes* [*sic*] there."²¹⁸

Defence Witness ELB

101. Witness ELB, a Hutu, joined the Bugarama *Interahamwe* in February 1993 and remained a member through April 1994. The witness was the vice president of the *Interahamwe* at the *commune* level and Tarek Aziz was the president.²¹⁹ The witness informed the Chamber that he had participated in the 16 April 1994 attack on CIMERWA.²²⁰ Munyakazi was an old man and played no role within the *Interahamwe* movement.²²¹ However, the witness conceded that he, himself, was 42 years old at the time he was vice president of the *Interahamwe*.²²² Few members of the *Interahamwe* were above the age of 40; the witness could only recall four people, including himself.²²³

102. Munyakazi provided no assistance to the *Interahamwe*. The *Interahamwe* never held meetings in Munyakazi's house or his wives' houses. The executive committee usually held meetings on Sundays at the communal office.²²⁴ The *Interahamwe* wore *kitenge*, and each member obtained his own fabric.²²⁵ The witness never saw Munyakazi distributing *kitenge*.²²⁶

²¹⁰ T. 14 September 2009 p. 49.

²¹¹ T. 14 September 2009 p. 41.

²¹² Defence Exhibit 26 (personal identification sheet); T. 16 September 2009 pp. 1-2.

²¹³ T. 16 September 2009 p. 3.

²¹⁴ T. 16 September 2009 pp. 2-3.

²¹⁵ T. 16 September 2009 p. 6.

²¹⁶ T. 16 September 2009 pp. 8, 29.

²¹⁷ T. 16 September 2009 p. 8.

²¹⁸ T. 16 September 2009 p. 33.

²¹⁹ Defence Exhibit 27 (personal identification sheet); T. 17 September 2009 pp. 1-2.

²²⁰ T. 17 September 2009 p. 11.

²²¹ T. 17 September 2009 p. 3.

²²² T. 17 September 2009 p. 15.

²²³ T. 17 September 2009 p. 16.

²²⁴ T. 17 September 2009 pp. 4-5, 13.

²²⁵ T. 17 September 2009 pp. 4-5.

²²⁶ T. 17 September 2009 p. 5.

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The *Interahamwe* in Bugarama did not provide Munyakazi with an escort or security,²²⁷ and the witness never saw Munyakazi with bodyguards.²²⁸

103. Prior to 6 April 1994, Tarek Aziz rented a room in Munyakazi's house.²²⁹ In March 1994, the only persons undergoing military training in Bugarama were Burundian civilians. There was no link between the Burundians and the *Interahamwe*. Prior to April 1994, the *Interahamwe* focused on mobilisation activities and community assistance, not on military training.²³⁰ The Bugarama *Interahamwe* did not use Munyakazi's vehicles,²³¹ and at no point in time did the witness see the *Interahamwe* eating in any of Munyakazi's houses.²³²

Deliberations

104. The Defence does not contest that Munyakazi owned four houses,²³³ that his family owned a total of 80 rice blocks,²³⁴ and that he was Chairman of the CAVECUVI cooperative from 1991 to May 1993.²³⁵ He was also Chairman of *Banque Populaire* in Bugarama when it was founded. Munyakazi himself agreed that he was an accomplished man in Rwanda before he fled the country in July 1994.²³⁶ On this basis, the Trial Chamber concludes that there is consensus among the parties that the Accused was a relatively wealthy and gifted man by the standards of Bugarama at the time.

105. The Trial Chamber observes that the Prosecution adduced no evidence about the political structures in Bugarama *commune* and/or Cyangugu *préfecture*, and no evidence about relations between the various political parties. Moreover, the evidence at trial regarding Munyakazi's political background was sparse, and the evidence about his personal views on Rwanda's Tutsi minority, non-existent. The parties do not dispute that the Accused was a member of the MRND. What the parties dispute is whether the Accused was a leader with *de facto* authority over the Bugarama *Interahamwe*.

106. Prosecution Witnesses LAY, BWP and BWR all said they believed that Munyakazi was the leader of the Bugarama *Interahamwe* because he went to political rallies in the company of the *Interahamwe* and was received as an important personality. To illustrate that Munyakazi had substantial influence over the *Interahamwe*, Witness BWR described an incident that took place at a location known as Ijambwe, during which Munyakazi gave orders to the *Interahamwe* and they obeyed. No date was provided for this incident, nor was the incident mentioned by any other Prosecution witness. Not one of the three witnesses provided identifying information about the *Interahamwe* allegedly accompanying Munyakazi or identifying information about those who allegedly received him as an important personality. Without such detail, the Trial Chamber is unable to determine whether the witnesses' testimonies on this issue corroborate each other sufficiently to allow it to make inferences with respect to Munyakazi's status at the time. Witness BWR additionally testified that "when these *Interahamwe* went out... Munyakazi led them," and that the population of

²²⁷ T. 17 September 2009 p. 8.

²²⁸ T. 17 September 2009 p. 11.

²²⁹ T. 17 September 2009 p. 3.

²³⁰ T. 17 September 2009 pp. 5-7.

²³¹ T. 17 September 2009 p. 12.

²³² T. 17 September 2009 p. 15.

²³³ T. 14 October 2009 pp. 5-6, 8-9, 17-18; T. 15 October 2009 p. 13.

²³⁴ T. 14 October 2009 p. 4.

²³⁵ T. 14 October 2009 pp. 19-21.

²³⁶ T. 15 October 2009 p. 12.

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Bugarama referred to the *Interahamwe* as "Yussuf's *Interahamwe*."²³⁷ However, this witness also testified that he fled Bugarama on 7 April 1994, and it is unclear from his testimony whether he was describing Munyakazi's alleged links with the *Interahamwe* before or after this date. The mere fact that Munyakazi might, at one time or another, have been seen in the company of members of the *Interahamwe* does not, in and of itself, allow the Trial Chamber to infer that he was a leader of the *Interahamwe* with *de facto* authority over them.

107. According to Prosecution Witness Esidras Musengayire, Munyakazi treated him like a son. He had free access to Munyakazi's house, and was, therefore, in a position to observe the relationship that existed between Munyakazi and the *Interahamwe*. The Trial Chamber finds that his testimony on these points was consistent and was not shaken on cross-examination. While Munyakazi claimed that Musengayire testified against him because Musengayire was the president of IBUKA in Bugarama,²³⁸ the question of membership in IBUKA was not put to the witness on cross-examination, and there is no other evidence on the record to support this claim. Furthermore, the witness acknowledged that Munyakazi saved his life on 7 April 1994. Therefore, the Trial Chamber sees no evidence that the witness had a motive to fabricate or embellish evidence against Munyakazi. The Trial Chamber, however, notes the *proprio motu* pronouncement the witness made at the end of his testimony in which he asked Munyakazi to apologise for his crimes.²³⁹ The witness did not explain the basis of his certitude that Munyakazi had committed crimes. The Trial Chamber recalls that he was in the hospital from 7 April to 3 or 4 May 1994, when the specific crimes alleged against Munyakazi are alleged to have taken place. Nevertheless, the Trial Chamber finds his testimony to be credible and reliable in many, but not all, respects.

108. According to Musengayire, Munyakazi was a member of the MRND, but held no elected office in the *commune*. While he saw Munyakazi in the company of the *Interahamwe*, he never heard Munyakazi indicate that he was their leader. On the contrary, Munyakazi would refer to others as *Interahamwe*, and Musengayire believed that the president of the *Interahamwe* in the area was Job Mabwire, contrary to the testimony of Prosecution Witnesses BWX, BWW and Munyakazi himself.²⁴⁰ Musengayire, nevertheless, believed that Munyakazi was influential among the members of the *Interahamwe*. In support of this position, he described an incident, which he could only say took place prior to 7 April 1994, involving clashes between the *Interahamwe* and JDR, the youth wing of the MDR party, which resulted in a death. Following the incident, Munyakazi was arrested, and the *Interahamwe* demonstrated by blocking the main road to CIMERWA for a day. Munyakazi was released following these demonstrations.²⁴¹ No other witness referred to this incident.

109. During Munyakazi's cross-examination, the Prosecution introduced an excerpt from a report entitled "*Rapport sur les Droits de L'Homme au Rwanda*" which stated that Munyakazi chaired an MRND meeting in Gikundamvura on 11 October 1992. According to the report, after the meeting violence broke out, and twelve persons were wounded. Munyakazi was subsequently arrested. After a series of protests by the MDR and counter-

²³⁷ T. 22 April 2009 pp. 48-49.

²³⁸ T. 15 October 2009 p. 11; Munyakazi learned that no Tutsi in Bugarama would testify against him. Thus, a decision was made that the president of the Bugarama chapter of *Ibuka* would testify against him, Munyakazi. Musengayire is the president of the *Ibuka* association in Bugarama.

²³⁹ T. 27 April 2009 p. 19; Witness Esidras Musengayire declared "Your Honour, I would like to say to Munyakazi publicly, as his son, I would like to ask him to confess to his crime, and then the sentence would be able to be diminished or reduced. Because the persons who committed crimes as -- at the same time as him have confessed their crimes and they have given been reduced sentences and they are living comfortably at home"

²⁴⁰ T. 27 April 2009 p. 15.

²⁴¹ T. 24 April 2009 pp. 2-3.

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protests by the MRND, Munyakazi was released on 17 October 1992.²⁴² The Chamber notes that the Prosecution did not lay a proper foundation for the introduction of this report. The author and the source of this information are unidentified, and nothing is known about the organization that published the report. The Chamber, therefore, can attach no weight to the document.

110. In addition, the Chamber notes that while the incident mentioned in the report is similar to that described by Witness Musengayire, it is unable to definitively conclude that both are referring to the same event. Munyakazi acknowledged that he was arrested after an incident between the MRND and another political party but said he was arrested because he had fallen out with members of the MRND. He added that the office of the Public Prosecutor had investigated the matter at the time and found that he was not guilty. Again, it is unclear whether Munyakazi was referring to the evident described by Musengayire or the human rights report.²⁴³ Given the vagueness of the evidence regarding the incident, or incidents, the Chamber accords to it little weight.

111. The Trial Chamber accepts Witness Musengayire's account regarding his capture at the hands of the *Interahamwe* on 7 April 1994. Musengayire testified that when the *Interahamwe* captured him, he was taken to Munyakazi's house with the expectation that Munyakazi would order his murder. This suggests that Munyakazi might have had authority over the *Interahamwe*. However, Musengayire also testified that when Munyakazi tried to protect him by placing him in a room in his house, a member of the *Interahamwe* threw a grenade at Musengayire through a window. Furthermore, that same day another of Munyakazi's adopted sons, Shema Saidi, a Tutsi, was killed by the local *Interahamwe*.²⁴⁴ The Trial Chamber finds that these events cast doubt on the allegation that Munyakazi had authority over the acts of the *Interahamwe* throughout the Indictment period.

112. The Chamber acknowledges that Prosecution Witness BWX worked in close proximity to Munyakazi's house in Misufi before the events of April 1994, and was therefore in a position to observe what transpired in the vicinity. Nevertheless, the Trial Chamber has doubts regarding his overall credibility. There are contradictions in Witness BWX's testimony about whether he continued to work regularly near Munyakazi's house after 6 April 1994. For example, the witness testified that he went to work on 7 April 1994 because, as a Hutu, he did not feel threatened.²⁴⁵ However, he made no mention of the attack that took place that day on Esidras Musengayire-- a man with whom Witness BWX was acquainted. This, together with the witness' concession on cross-examination that he evacuated his Tutsi wife to the DRC on or around 7 or 8 April 1994, suggests that Witness BWX was not at his place of work on 7 April 1994.²⁴⁶ The Trial Chamber has heard significant evidence that Hutus in Bugarama who were either associated with Tutsis, or assisted Tutsis, were killed by local assailants. The Chamber, therefore, considers it unlikely that a man with a Tutsi wife

²⁴² Prosecution Exhibit 23, Association Rwandaise pour la Défense des Droits de la Personne et des Libertés Publiques, "Rapport sur les Droits de L'Homme au Rwanda, octobre 1992-octobre 1993", décembre 1993.

²⁴³ T.15 October 2009 p. 26.

²⁴⁴ T.14 October 2009 pp. 26, 40-41; T. 31 August 2009 pp. 25-26, 56.

²⁴⁵ T. 24 April 2009 pp.18, 22-23: Witness BWX testified that on 7 April 1994 he continued working as usual because as a Hutu he was under no threat. When the security situation worsened he was forced to move his "work implements." After 6 April 1994, the Bugarama *Interahamwe* began persecuting area Tutsis and abducted a certain Nzaramba. Nzaramba never returned and Witness BWX believed he was killed for helping a Tutsi neighbor escape the area. Another man named Ndayaye, also a Hutu, hid a Tutsi neighbour and helped him escape across the Rwandan border. Ndayaye was also arrested by the *Interahamwe* and never seen again. Witness BWX assumed that he too had been killed. Both victims lived within 10 metres of the witness' house.

²⁴⁶ T. 24 April 2009 pp. 24, 25; T. 27 April 2009 pp. 23-24.

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would have continued to work near the premises of an *Interahamwe* gathering point following the events of 6 April 1994. The witness did not address this issue.

113. The Trial Chamber also notes that while Witness BWX expressed certitude about the broad outlines of certain issues, he was often vague with respect to details. For example, the witness testified that Tarek Aziz, an *Interahamwe* trainer, lived in Muniyaki's house, but he did not know in what capacity he lived there. He is the only witness who testified about Tarek Aziz's living arrangements who did not confirm that Tarek Aziz was, at a minimum, a tenant in this house. The witness also testified that he would see Muniyaki at *Interahamwe* training sessions, but he did not know what Muniyaki was doing there. He saw the *Interahamwe* training with guns and noted that Muniyaki's bodyguards carried firearms, but did not know whether the weapons were stored in Muniyaki's home in Misufi. In conclusion, although Witness BWX said he was in close proximity to Muniyaki's house on a daily basis and was, therefore, very familiar with what was taking place there, he, in fact, knew very little about the *Interahamwe* who are alleged to have used Muniyaki's house as a gathering place.

114. Witness BWX believed that the *Interahamwe* received their firearms during a meeting that took place in 1993 in Bugarama chaired by André Ntagerura. He suspected this because Muniyaki, the only well-known person from Bugarama to have attended the meeting, assisted Ntagerura at the meeting, and the witness first saw the *Interahamwe* with firearms soon after this meeting.²⁴⁷ No other witness corroborated any part of his testimony about this meeting and, indeed, other witnesses testified that the *Interahamwe* had received their weapons from local sources, including soldiers and gendarmes.

115. Given the discrepancies and ambiguities in his evidence, the Trial Chamber will rely on Witness BWX's account of events, particularly those that took place after 7 April 1994, only insofar as it is corroborated by other evidence.

116. Witness BWX assumed that Muniyaki was both the leader of the Bugarama MRND and the president of the local *Interahamwe* for a number of reasons. He believed that the *Interahamwe* used Muniyaki's house located near the customs building as their headquarters. However, the Trial Chamber notes that it is not clear how the witness knew this as this was not the building belonging to Muniyaki that he was in a position to observe.²⁴⁸ The witness also testified that the *Interahamwe* held meetings at Muniyaki's house, an allegation supported by Witnesses Musengayire and BWB.²⁴⁹ He also stated that the *Interahamwe* would assemble at Muniyaki's house before leaving on killing and looting expeditions, and that Muniyaki often went with them. Witness BWB corroborated Witness BWX's testimony that some *Interahamwe* lived at Muniyaki's house, and that Muniyaki employed bodyguards who were members of the *Interahamwe*.²⁵⁰

117. Prosecution Witness BWU was tried and convicted for crimes committed at Shangi Parish in April 1994, and is therefore an accomplice witness. He testified that during *Gacaca* hearings held in July 2005, he pled guilty, but that this plea was rejected by the court.²⁵¹ In that first confession, the witness did not mention Muniyaki nor did he refer to the 29 April

²⁴⁷ T. 24 April 2009 p.21; T. 27 April 2009 pp. 26-27, 32.

²⁴⁸ T. 27 April 2009 pp. 34-35, 38 (closed session).

²⁴⁹ Witness Musengayire, T. 24 April 2009 pp. 1, 3: In April 1994, before the witness left Bugarama, the *Interahamwe* would meet at Muniyaki's house; Witness BWB, T. 29 May 2009, p. 29., (closed session) when Muniyaki wanted to give instructions to the *Interahamwe*, he did so within his compound because outsiders would not be able to overhear what was said there.

²⁵⁰ Prosecution Witness BWB, T. 29 May 2009 p. 13, 15-17, 19, 22, 28, 34-35 (closed session).

²⁵¹ T. 4 June 2009 pp. 4, 12-15.

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1994 attack on Shangi Parish.²⁵² He only referred to those attacks on Shangi Parish that took place on 13 and 20 April 1994, and did not refer to killings that took place during those attacks. The witness testified in the instant proceedings that while in prison he provided the authorities with a more complete second confession, in which he discussed Munyakazi's role in the events at Shangi on 29 April 1994. The second guilty plea was accepted,²⁵³ but was not entered into evidence in the instant proceedings.

118. The witness gave a statement to ICTR investigators on 27 September 2007.²⁵⁴ In that statement, he told the investigators that he had named Munyakazi as a perpetrator in *Gacaca* proceedings.²⁵⁵ However, because the witness' second guilty plea was not entered into evidence in the instant proceedings, the Trial Chamber is unable to assess the veracity of the witness' testimony with respect to this plea.

119. In assessing Witness BWU's overall credibility, the Chamber notes that he did not mention Munyakazi or the Shangi attack of 29 April 1994 in his first confession. While, at earlier stages of the proceedings in Rwanda, the witness may have attempted to minimise his involvement in the genocide, the Chamber nevertheless considers this point to be of some significance. In addition, while the witness was not asked by the Defence whether he agreed to testify against co-perpetrators in return for a reduced sentence, the Trial Chamber notes that he was sentenced to a ten-year prison term in Rwanda,²⁵⁶ despite the gravity of the crimes he confessed to having committed. In addition, the witness himself appears to have admitted naming more co-perpetrators, including Munyakazi, in his second plea. Therefore, the Trial Chamber views his evidence with caution and will rely on his evidence only where it is corroborated.

120. Witness BWU testified that during an MRND meeting held at Kamarampaka stadium in Cyangugu *préfecture* in late 1993, the Cyangugu *Préfet* Bagambiki introduced Munyakazi as the leader of the *Interahamwe* in Bugarama *commune*. The witness added that because he was a member of the CDR party, he did not know whether the chairman of the Cyangugu MRND attended the rally.²⁵⁷ The witness added that he was 19 years old at the time of the rally and was not interested in other political parties.²⁵⁸ As no other witness mentioned this meeting, the Trial Chamber cannot accord significant weight to this evidence.

121. Witness BWU participated in the attack that took place on Shangi Parish on 29 April 1994. He testified that Munyakazi led the attack on the parish. This evidence is corroborated, and, as will be discussed in further detail below, the Trial Chamber is satisfied that the Prosecution has proven beyond reasonable doubt that Munyakazi was the leader of that attack (see Chapter II.8).

122. Witness BWU was also an accomplice who was tried and convicted for having participated in the 1994 genocide.²⁵⁹ He was arrested in November or December of 1994. According to the witness, he provided details of his crimes in a confession provided to the Cyangugu prosecutor's office in 2005.²⁶⁰ The witness was then tried before two *Gacaca*

²⁵² Defence Exhibit 4 (the guilty plea of 2005); T. 4 June 2009 p. 34.

²⁵³ T. 4 June 2009 pp. 11-12, 14.

²⁵⁴ Defence Exhibit 5 (statement to the ICTR investigators dated 27th of October 2007); T. 4 June 2009 pp. 11, 16, 22, 34.

²⁵⁵ T. 4 June 2009 p. 11.

²⁵⁶ T. 4 June 2009 p. 5.

²⁵⁷ T. 4 June 2009 pp. 5-6, 21-22.

²⁵⁸ T. 4 June 2009 p. 19.

²⁵⁹ T. 29 May 2009, pp. 6-7. (closed session).

²⁶⁰ T. 29 May 2009 pp. 25-26, 27. According to the Prosecution, it disclosed to the Defence a letter from the Prosecutor's office in Bugarama claiming that it has no documents relating to Witness BWU in its possession.

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courts in Rwanda. He was sentenced to thirteen years in prison by the first *Gacaca* bench, and fourteen years by the second. He was released after having been detained for twelve and a half years. According to the witness, he was released pursuant to a presidential decree because he had confessed to his crimes and repented.²⁶¹ The witness testified that in April 1994, he collaborated primarily with Munyakazi and Tarek Aziz, who lived in Munyakazi's house and was Munyakazi's deputy in his criminal activities.²⁶²

123. While the Defence did not ask the witness whether he received a reduced sentence in return for testifying against his co-perpetrators, the Trial Chamber observes that he confessed to a large number of killings but was released after having spent twelve and a half years in prison. Moreover, he implied that there had been a plea agreement although his testimony on this point was not clear.²⁶³ Given these concerns, the Trial Chamber accords little weight to Witness BWB's testimony except where it is corroborated.

124. Witness BWB, a self-confessed member of the Bugarama *Interahamwe*, was not asked by either party whether Munyakazi was the leader of the Bugarama *Interahamwe* in April 1994. Instead, he testified that Munyakazi was a member of the MRND and that, in that capacity, he recruited young persons to join the *Interahamwe*.²⁶⁴ He was the only witness to have testified about Munyakazi's role in recruiting youth to the *Interahamwe*. He was also the only witness to have stated that the Bugarama *Interahamwe* stored their weapons at Munyakazi's house, although he was perhaps the best positioned of all the witnesses, save Defence Witness ELB, to have had access to the latter information. The Trial Chamber recalls that both Witnesses BWX and Musengayire were proximate to Munyakazi's premises, but that neither referred to the storage of weapons at Munyakazi's house.

125. However, Witness BWB corroborated Witness BWX's testimony that Munyakazi had bodyguards who were members of the *Interahamwe*. Witnesses BWU, BWR and BWP corroborated Witness BWB's testimony that Munyakazi led the attack on Shangi Parish on 29 April 1994. Prosecution Witnesses LCQ, MM and MP corroborated Witness BWB's testimony that Munyakazi was one of the leaders of the attack on Mibilizi Parish.²⁶⁵ The fact that Munyakazi led the attacks at Shangi and Mibilizi Parishes indicates that he did have a substantial degree of *de facto* influence over the Bugarama *Interahamwe* on those days.

126. During Munyakazi's cross-examination, the Prosecution submitted that Munyakazi was accused in *Gacaca* courts in Misufi *cellule* and Muko *cellule* of being in charge of the *Interahamwe* stationed in the Bugarama district; the leader of the *Interahamwe* operations in the Cyangugu and Kibuye provinces; that his house was the headquarters and assembly point for the *Interahamwe*; and that he had sent members of the *Interahamwe* to kill a certain Rwitembagaza.²⁶⁶ Munyakazi countered that his accusers in Misufi and Muko *cellules* wanted to seize his property.²⁶⁷ The Trial Chamber notes that Prosecution Exhibits 26 and 27

²⁶¹ T. 29 May 2009 p. 8. (closed session).

²⁶² T. 29 May 2009 pp. 6-7 (closed session).

²⁶³ T. 29 May 2009 pp. 8, 26-27: "After confessing and pleading guilty and begging for forgiveness of the state, the government of national unity, I provided all the requested information, and that information was circulated wherever it was necessary, in the various *secteurs* and even in *cellules*. I had to provide information concerning those charges."

²⁶⁴ T. 29 May 2009 p. 9. (closed session).

²⁶⁵ T. 29 May 2009 pp. 20-21.

²⁶⁶ T. 15 October 2009 pp. 35-38; Prosecution Exhibits 26 and 27 (Munyakazi's *Gacaca* files) Prosecution Exhibit 26 provides the personal details of the accused, summarises in three short sentences the allegations against the accused, and lists the alleged victims of his crimes and proposed witnesses. Prosecution Exhibit 27, another *Fiche Individuelle* alleging a separate crime, provides a two sentence summary of the allegations against the accused.

²⁶⁷ T. 15 October 2009 p. 38.

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1994 attack on Shangi Parish.²⁵² He only referred to those attacks on Shangi Parish that took place on 13 and 20 April 1994, and did not refer to killings that took place during those attacks. The witness testified in the instant proceedings that while in prison he provided the authorities with a more complete second confession, in which he discussed Munyakazi's role in the events at Shangi on 29 April 1994. The second guilty plea was accepted,²⁵³ but was not entered into evidence in the instant proceedings.

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²⁵² Defence Exhibit 4 (the guilty plea of 2005); T. 4 June 2009 p. 34.

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²⁵⁴ Defence Exhibit 5 (statement to the ICTR investigators dated 27th of October 2007); T. 4 June 2009 pp. 11, 16, 22, 34.

²⁵⁵ T. 4 June 2009 p. 11.

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²⁵⁷ T. 4 June 2009 pp. 5-6, 21-22.

²⁵⁸ T. 4 June 2009 p. 19.

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123. While the Defence did not ask the witness whether he received a reduced sentence in return for testifying against his co-perpetrators, the Trial Chamber observes that he confessed to a large number of killings but was released after having spent twelve and a half years in prison. Moreover, he implied that there had been a plea agreement although his testimony on this point was not clear.²⁶³ Given these concerns, the Trial Chamber accords little weight to Witness BWB's testimony except where it is corroborated.

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125. However, Witness BWB corroborated Witness BWX's testimony that Munyakazi had bodyguards who were members of the *Interahamwe*. Witnesses BWU, BWR and BWP corroborated Witness BWB's testimony that Munyakazi led the attack on Shangi Parish on 29 April 1994. Prosecution Witnesses LCQ, MM and MP corroborated Witness BWB's testimony that Munyakazi was one of the leaders of the attack on Mibilizi Parish.²⁶⁵ The fact that Munyakazi led the attacks at Shangi and Mibilizi Parishes indicates that he did have a substantial degree of *de facto* influence over the Bugarama *Interahamwe* on those days.

126. During Munyakazi's cross-examination, the Prosecution submitted that Munyakazi was accused in *Gacaca* courts in Misufi *cellule* and Muko *cellule* of being in charge of the *Interahamwe* stationed in the Bugarama district; the leader of the *Interahamwe* operations in the Cyangugu and Kibuye provinces; that his house was the headquarters and assembly point for the *Interahamwe*; and that he had sent members of the *Interahamwe* to kill a certain Rwitembagaza.²⁶⁶ Munyakazi countered that his accusers in Misufi and Muko *cellules* wanted to seize his property.²⁶⁷ The Trial Chamber notes that Prosecution Exhibits 26 and 27

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²⁶² T. 29 May 2009 pp. 6-7 (closed session).

²⁶³ T. 29 May 2009 pp. 8, 26-27: "After confessing and pleading guilty and begging for forgiveness of the state, the government of national unity, I provided all the requested information, and that information was circulated wherever it was necessary, in the various *secteurs* and even in *cellules*. I had to provide information concerning those charges."

²⁶⁴ T. 29 May 2009 p. 9. (closed session).

²⁶⁵ T. 29 May 2009 pp. 20-21.

²⁶⁶ T. 15 October 2009 pp. 35-38; Prosecution Exhibits 26 and 27 (Munyakazi's *Gacaca* files) Prosecution Exhibit 26 provides the personal details of the accused, summarises in three short sentences the allegations against the accused, and lists the alleged victims of his crimes and proposed witnesses. Prosecution Exhibit 27, another *Fiche Individuelle* alleging a separate crime, provides a two sentence summary of the allegations against the accused.

²⁶⁷ T. 15 October 2009 p. 38.

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are documents issued by the Rwandan Supreme Court's Department of *Gacaca* Affairs entitled "*Fiche Individuelle de L'Accusé*." Neither of these documents suggests that the Accused was either tried or convicted of any crime in Rwanda. Therefore, the Trial Chamber accords no weight to this material.

127. The Defence case is that Munyakazi was no more than an ordinary member of the MRND, as were many other Rwandans at the time. He was never a member of the *Interahamwe*, and indeed because the *Interahamwe* was the youth wing of a political party, Munyakazi would have been precluded from participating in such a group by virtue of his advanced age at the time of the events.²⁶⁸

128. The Trial Chamber notes that three Defence witnesses cast doubt on the Defence proposition that Munyakazi was too old to be a member of the *Interahamwe*, when they testified that members of the *Interahamwe* were occasionally over the age of 40.²⁶⁹ However, the Defence witnesses all testified that Munyakazi was not a member of the Bugarama *Interahamwe* and in no way participated in its activities. Some of the Defence witnesses stated that Tarek Aziz was the leader of the Bugarama *Interahamwe*,²⁷⁰ while others, who claimed to have been knowledgeable about the activities of the Bugarama *Interahamwe*, said that they did not know who its leaders were.²⁷¹ Other Defence witnesses testified that those committing crimes in the Bugarama region were disorganised youth groups.²⁷²

129. Defence Witness NKM claimed that, as a member of an opposition party, he closely monitored the activities of the communal MRND,²⁷³ and yet he could not name the leaders of the Bugarama *Interahamwe*, and never saw or heard that the Bugarama *Interahamwe* were involved in the crimes that took place after 6 April 1994.²⁷⁴ The witness testified that he had been subject to post-conflict government pressure to testify falsely against individual Hutus. Immediately following his testimony before *Gacaca* courts that Munyakazi had killed individuals in Bugarama and that he had organised rallies, he was employed as a principal in a secondary school following a long period of unemployment. Thus, he believed that he had been rewarded for testifying for the Prosecution.²⁷⁵

130. Defence Witness NRB, who was a member of the MRND, explained that he could not say who the leader of the Bugarama *Interahamwe* was because he himself was not a member of the *Interahamwe*.²⁷⁶ Witnesses YMC and YMS also said they could not name the leader of the Bugarama *Interahamwe* in April 1994. Witness ABM testified that he was aware of the existence of the *Interahamwe* in Kigali but did not know that there were *Interahamwe* in Bugarama.²⁷⁷ However, on cross-examination, he confirmed that, in a prior statement, he said that Tarek Aziz was the leader of the Bugarama *Interahamwe*. At trial, he explained that he was not certain whether Tarek Aziz was a leader of the *Interahamwe* or simply a member with considerable clout, but the Trial Chamber considers that this does not adequately explain why he failed to acknowledge the existence of a chapter of *Interahamwe* in Bugarama during

²⁶⁸ Defence Closing Brief para 15; Munyakazi, T.14 October 2009 p.21; T. 14 September 2009 p. 34; T. 17 September 2009 p. 3.

²⁶⁹ T. 7 September 2009 pp.52-53; T. 17 September 2009 pp. 15, 16; T. 16 September 2009 p. 8.

²⁷⁰ T. 14 October 2009 p. 22; T. 7 September 2009 p. 61; T. 17 September 2009 p. 2.

²⁷¹ T.31 August 2009 pp. 46-47; T.1 September 2009 pp. 48-50.; T. 10 September 2009 p. 27 (closed session);

Witness Théobald Gakwaya Rwaka, T. 16 September 2009 pp. 8, 28-29.

²⁷² T. 10 September 2009 p. 27 (closed session).

²⁷³ T. 31 August 2009 pp. 14-15.

²⁷⁴ T. 31 August 2009 p. 43.

²⁷⁵ T.31 August 2009 pp. 34-37.

²⁷⁶ T. 1 September 2009 p. 48.

²⁷⁷ T. 10 September 2009 p. 10.

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his examination-in-chief.²⁷⁸ The Defence witnesses were uniformly unable to describe the command structure of *Interahamwe* in Bugarama, but all claimed to be certain that Munyakazi was not involved in its activities. The Chamber, therefore, finds Defence Witnesses NKM, NRB, YMC, YMS and ABM evidence regarding Munyakazi's role with the *Interahamwe* to be unreliable.

131. Defence Witness ELB, a Hutu, was arrested on 28 January 1997.²⁷⁹ He was tried and convicted by a *Gacaca* court in Rwanda for genocide. The witness, along with Tarek Aziz and 28 others, was charged with killing Tutsis, *inter alia*, at CIMERWA, in Mibilizi, in Shangi, and in Bisesero. He denied having participated in the events at Mibilizi, Bisesero and Shangi but confessed to having participated in the attack at CIMERWA.²⁸⁰ In the instant case, he confirmed that he was the vice president of the Bugarama *Interahamwe* in April 1994.²⁸¹ Thus, of all the witnesses in this case, he was in the best position to observe the *Interahamwe*'s activities and understand its structure during this period. However, the Trial Chamber notes that Witness ELB is an accomplice, who is currently serving a sentence in Rwanda for crimes he admitted committing during the genocide. The Trial Chamber takes into account the possibility that the witness may have testified with a view to minimising his role in the events of April 1994, and will, therefore, accord little weight to his testimony except where corroborated by other witnesses.

132. The Trial Chamber concludes that much of the Defence testimony regarding the structure of the *Interahamwe*, or other criminal groups operating in Bugarama in April 1994, was contradictory and unreliable, and, therefore, sheds no light on the structure or leadership of such groups.

Conclusion

133. The Trial Chamber accepts that members of the Bugarama *Interahamwe* may have met regularly at Munyakazi's house in Misufi. However, it is unable to determine whether they met there at the behest of Munyakazi, or Munyakazi's tenant, Tarek Aziz. Further, it considers the evidence that Munyakazi had *Interahamwe* bodyguards to be vague and inconclusive. The Trial Chamber is further unable to determine whether the Bugarama *Interahamwe* was a well-structured organisation with a well-defined chain of command.

134. The Trial Chamber recalls, however, that the Indictment does not allege that Munyakazi was "the leader" of the Bugarama *Interahamwe* but rather "a leader" of the Bugarama *Interahamwe*. As will be discussed in more detail below, the Trial Chamber is satisfied that Munyakazi was the leader of the attack on Shangi Parish on 29 April 1994 (see Chapter II.8), and that he was a leader of the 30 April 1994 attack on Mibilizi Parish (see Chapter II.9). On this basis, the Trial Chamber concludes that the Prosecution has proven beyond reasonable doubt that the Accused was a leader with *de facto* authority over the Bugarama *Interahamwe* who attacked Shangi and Mibilizi Parishes on 29 and 30 April 1994, respectively.

²⁷⁸ T. 10 September 2009, p. 27 (closed session).

²⁷⁹ T. 17 September 2009 p. 18.

²⁸⁰ T. 17 September 2009 p. 24.

²⁸¹ T. 17 September 2009 p. 2.

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4. RECRUITMENT AND TRAINING OF THE BUGARAMA *INTERAHAMWE*

135. In paragraph 8 of the Indictment, the Prosecution alleges that

[b]etween October 1993 and April 1994 Yussuf MUNYAKAZI acting in concert with NDUTIYE alias TAREK AZIZ, NDEREYA MUNDERE, REKERAHO Samuel and HABINEZA Theobald recruited and trained the Bugarama Interahamwe in military drills and the use of firearms and other weapons on diverse dates at diverse locations in and around Bugarama commune. More specifically, the training of interahamwe was conducted at two football fields located in Cite Bugarama and at the CIMERWA football field all [*sic*] of Bugarama Commune.

136. In support of these allegations, the Prosecution proffered testimony from Witnesses BWX, BWY and Esidras Musengayire.²⁸²

137. The Defence denies the charges and claims that the Prosecution evidence is discredited by the testimony of the Accused and Witnesses NKM, MEBU, MPCC, YCH, ABM, YMC, YMS, MYA and ELB.²⁸³

*Evidence*Prosecution Witness BWX

138. Witness BWX, a Hutu, worked in close proximity to Munyakazi's house in Misufi *cellule*, Bugarama *secteur* in 1994.²⁸⁴ The witness first saw Munyakazi with members of the *Interahamwe* in or around 1992 or 1993.²⁸⁵ Munyakazi was the president of the *Interahamwe* and was involved in the activities of the *Interahamwe* after President Habyarimana's death.²⁸⁶

139. The *Interahamwe* underwent training on the football field located at Tenth Street, in 1992 or 1993.²⁸⁷ The witness lived in the neighbourhood and was able to see the *Interahamwe* training there regularly. He estimated that approximately ten men participated in these sessions.²⁸⁸ Tarek Aziz, who lived in Munyakazi's house, was their training instructor. It was public knowledge that the *Interahamwe* were training and everyone could see the training sessions.²⁸⁹ The witness could not say how frequently the training sessions took place or provide more precise dates.²⁹⁰ Munyakazi would go to the training grounds but the witness could not say what Munyakazi was doing there.²⁹¹ The *Interahamwe* started carrying firearms and training with them in 1993, but the witness did not know where they kept the weapons.²⁹²

²⁸² Indictment para. 8; Prosecution Closing Brief paras. 50-55; T. January 2010 pp. 5, 7.

²⁸³ Defence Closing Brief paras. 17-23.

²⁸⁴ Prosecution Exhibit 6 (personal identification sheet); T. 24 April 2009 p.11; T. 27 April 2009 p.35 (closed session).

²⁸⁵ T. 24 April 2009 p. 18.

²⁸⁶ T. 24 April 2009 pp. 18, 22, 23-24.

²⁸⁷ T. 24 April 2009 pp. 18-19.

²⁸⁸ T. 24 April 2009 p. 20.

²⁸⁹ T. 24 April 2009 pp. 19, 20; T. 27 April 2009 pp. 20-21.

²⁹⁰ T. 24 April 2009 pp. 19.

²⁹¹ T. 27 April 2009 p. 32.

²⁹² T. 24 April 2009 p. 21.

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Prosecution Witness BWW

140. Witness BWW, a Hutu, was a member of the Bugarama *Interahamwe* in 1994. He was tried and convicted for having participated in the 1994 genocide.²⁹³ He testified that he collaborated primarily with Munyakazi and Tarek Aziz, who lived in Munyakazi's house and was Munyakazi's deputy, to commit crimes in 1994.²⁹⁴

141. Munyakazi was a member of the MRND and began recruiting young people to join the *Interahamwe* in 1990.²⁹⁵ He travelled in a vehicle with a megaphone urging young people to join the *Interahamwe* militia.²⁹⁶ The witness joined the *Interahamwe* in March 1993.²⁹⁷ On cross-examination, he clarified that he actually joined the *Interahamwe* in March 1992.²⁹⁸ At that time, the official objective of the *Interahamwe* was to fight for the defence of the country.²⁹⁹

142. The *Interahamwe* underwent daily training in 1993. He and the other *Interahamwe* were trained by soldiers and gendarmes belonging to a detachment located close to Munyakazi's house. Among the instructors were Lieutenant Nduwamungu and Tarek Aziz, who lived in Munyakazi's house. The training took place at locations called Kibangira and Ninth Avenue.³⁰⁰ Initially, recruits would use pieces of wood that had been shaped like rifles for practice rather than real firearms. It was not until March 1994 that they began training with real firearms³⁰¹ in the Nyirandakunze forest.³⁰²

Prosecution Witness Esidras Musengayire

143. Witness Esidras Musengayire, a Tutsi, lived in *Cité Bugarama* in Bugarama *commune* in Cyangugu *préfecture* in April 1994.³⁰³ He lived in Munyakazi's house from 1982 to 1984 and Munyakazi treated him like a son, even after he moved to his own house.³⁰⁴

144. In April 1994, the *Interahamwe* were already in existence and the witness would see them in Munyakazi's company.³⁰⁵ Tarek Aziz, an *Interahamwe*, lived in one of the rooms in Munyakazi's compound.³⁰⁶ Tarek Aziz had a military background and trained the local *Interahamwe*. The witness did not know where the training took place.³⁰⁷

Yussuf Munyakazi

²⁹³ Prosecution Exhibit 12 (personal identification sheet); T. 29 May 2009, pp. 5, 6-7, 9.

²⁹⁴ T. 29 May 2009 pp. 7-8 (closed session).

²⁹⁵ T. 29 May 2009 p. 9 (closed session).

²⁹⁶ T. 29 May 2009 p. 23 (closed session).

²⁹⁷ T. 29 May 2009 p. 9 (closed session).

²⁹⁸ T. 29 May 2009 pp. 23-24 (closed session).

²⁹⁹ T. 29 May 2009 p. 11 (closed session).

³⁰⁰ T. 29 May 2009 pp. 12, (English Transcript pp 24 spells the location "Kibaringa" hill, while the French Transcript at p. 31 spells it as "Kibangira").

³⁰¹ T. 29 May 2009 pp. 23-24 (closed session).

³⁰² T. 29 May 2009 pp. 24-25 (closed session).

³⁰³ Prosecution Exhibit 5 (personal identification sheet); T. 23 April 2009 p. 48.

³⁰⁴ T. 23 April 2009 p. 51; T. 27 April 2009 p. 2.

³⁰⁵ T. 23 April 2009 p. 52.

³⁰⁶ T. 27 April 2009 pp. 15-16.

³⁰⁷ T. 24 April 2009 pp. 4-5.

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145. Munyakazi joined the MRND in 1992 but never held an official position within the party and never recruited new members to the party.³⁰⁸ Tarek Aziz was the president of the *Interahamwe* at the *commune* level, and Thomas Mugunda was his deputy.³⁰⁹

146. Munyakazi never underwent military training and never handled a gun.³¹⁰ He was unaware of military training at Kibangira forest or at the Bugarama football field. The Bugarama football field was located approximately 500 metres from Munyakazi's residence and he would have known if military drills or exercises had taken place there. He never went to Nyirandakunze forest, which was located in Nyakabuye *commune* approximately 35 kilometres from Bugarama.³¹¹

147. Tarek Aziz rented a room in Munyakazi's house and paid rent monthly like all the other tenants.³¹² He moved in as a tenant before the advent of multiparty politics in the country.³¹³ Munyakazi was neither Tarek Aziz's mentor nor his supervisor.³¹⁴ Tarek Aziz was an agronomist, who worked from Monday through Saturday, and sometimes at night. Therefore, Munyakazi believed he did not have the time to train the *Interahamwe*. The *Interahamwe* would meet at the communal office, but Munyakazi did not follow their activities.³¹⁵

148. Munyakazi carried out an investigation and learned that it was Tarek Aziz who threw the grenade at Esidras Munsegayire in his house on 7 April 1994.³¹⁶ The same day, Munyakazi told Tarek Aziz to leave his house, which Tarek Aziz did towards the end of that day.³¹⁷

Defence Witness NKM

149. Witness NKM, a Hutu, was a member of the PDI party and worked at a bank in Bugarama *commune*.³¹⁸ Munyakazi was a regular customer at the bank.³¹⁹ There was a football pitch at Tenth Avenue in Bugarama *commune*, but the witness did not see or hear that MRND youths were carrying out unusual activities or military training there between 1993 and 6 April 1994.³²⁰ Tarek Aziz was a tenant in one of Munyakazi's houses.³²¹ The witness did not see or hear that during the period of April to July 1994, Tarek Aziz assembled young persons at his residence.³²² There was no special relationship between Tarek Aziz and Munyakazi.³²³

³⁰⁸ T. 14 October 2009 p. 21; T. 15 October 2009 pp. 20-21.

³⁰⁹ T. 14 October 2009 p. 22; T. 15 October 2009 pp. 39-41.

³¹⁰ T. 14 October 2009 p. 23.

³¹¹ T. 14 October 2009 p. 30.

³¹² T. 14 October 2009 p. 16.

³¹³ T. 14 October 2009 p. 23.

³¹⁴ T. 15 October 2009 p. 41.

³¹⁵ T. 14 October 2009 pp. 17, 23.

³¹⁶ T. 14 October 2009 p. 40.

³¹⁷ T. 14 October 2009 p. 41.

³¹⁸ Defence Exhibit 6 (personal identification sheet); T.31 August 2009 pp. 5, 7-8, 38. (closed session).

³¹⁹ T. 31 August 2009 pp. 8, 9 (closed session).

³²⁰ T. 31 August 2009 p. 22.

³²¹ T. 31 August 2009 pp. 27, 47.

³²² T. 31 August 2009 p. 48.

³²³ T. 31 August 2009 pp. 27-28.

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Defence Witness MEBU

150. Witness MEBU, a Hutu, lived in Bugarama *secteur* in 1994.³²⁴ The witness first met Munyakazi when he was 10 years old.³²⁵ Military training sessions never took place in Bugarama.³²⁶

Defence Witness MPCC

151. Witness MPCC, a Tutsi, lived in Ruhoko *secteur*, Gishoma *commune* in 1994.³²⁷ He was a member of the MRND party in Gishoma *commune*.³²⁸ He first met Munyakazi in the early 1980s, and Munyakazi was a member of the MRND party.³²⁹ The leader of the Bugarama *Interahamwe* was Tarek Aziz, not Munyakazi.³³⁰

152. The youth in his area received no military training until the end of May 1994 when civil defence forces were set up throughout Cyangugu *préfecture* and the rest of the country. The purpose of these forces was to support soldiers at the battlefield. Claudien Singirankabo, a retired soldier, organised the civil defence forces in the witness' *cellule*.³³¹

Defence Witness AMB

153. Witness AMB, a Hutu, was a university student outside Bugarama in 1994. Between October 1993 and 6 April 1994, he returned to Bugarama on numerous occasions.³³² Munyakazi's two wives, Mama Safi and Mama Zainabu, both lived in close proximity to the witness' home. While visiting Bugarama, Witness AMB never saw Tarek Aziz provide training to young people. On Sundays, he would sometimes go the Tenth Avenue football pitch to watch football matches, but never saw or heard that military training was taking place there.³³³ Tarek Aziz was a tenant in Munyakazi's house but the witness never saw Tarek Aziz in Munyakazi's company. The only relationship between them was that of landlord-tenant.³³⁴

Defence Witness YMC

154. Witness YMC, a Hutu, was a trader in 1994, and lived in Misufi *cellule* in Bugarama. He first met Munyakazi in 1985 when he arrived in Bugarama to start his trade. The witness' business premises were in close proximity to Munyakazi's businesses.³³⁵

155. There was a football field on Tenth Avenue. The witness did not see military or paramilitary training taking place there prior to 6 April 1994. He also did not see or hear that military or paramilitary training took place in Nyirandakuze forest prior to 6 April 1994. Munyakazi was not in charge of military training for the youth wing of the MRND.³³⁶

³²⁴ Defence Exhibit 8 (personal identification sheet); T. 31 August 2009 pp. 50, 52, 54 (closed session).

³²⁵ T. 31 August 2009 p. 54.

³²⁶ T. 31 August 2009 p. 57-58.

³²⁷ Defence Exhibit 18 (personal identification sheet); T. 7 September 2009 pp. 44, 46, 57-58 (closed session).

³²⁸ T. 7 September 2009 pp. 46, 58 (closed session).

³²⁹ T. 7 September 2009 pp. 47-48 (closed session).

³³⁰ T. 7 September 2009 pp. 60-61 (closed session).

³³¹ T. 7 September 2009 p. 51 (closed session).

³³² Defence Exhibit 21 (personal identification sheet); T. 10 September 2009 pp. 1, 3 (closed session).

³³³ T. 10 September 2009 p. 9.

³³⁴ T. 10 September 2009 p. 8.

³³⁵ Defence Exhibit 22 (personal identification sheet); T. 14 September 2009 pp. 1-2, 3 (closed session).

³³⁶ T. 14 September 2009 p. 10.

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Tarek Aziz, an *Interahamwe*, lived in Munyakazi's house. The witness never saw Munyakazi and Takek Aziz together.³³⁷

Defence Witness YMS

156. Witness YMS, a Hutu, was a trader and lived in Bugarama *secteur* in Bugarama *commune* in 1994.³³⁸ As a trader, he knew Munyakazi in 1994 and would see Munyakazi going to the mosque.³³⁹ The witness never saw Munyakazi supervise military training there.³⁴⁰ Bugarama football field was located on Tenth Avenue.³⁴¹

157. Between May and June 1994, youths aged 15 years and older, from all political parties, underwent "training" on the roads. They practiced with pieces of wood sharpened into the shape of guns. The purpose of the training was to prepare young people to reinforce the armed forces. The training was organised by the interim government and led by Colonel Singirankabo.³⁴² The witness did not see Munyakazi participate in these activities.³⁴³

158. Tarek Aziz was a tenant in Munyakazi's house.³⁴⁴ Between 1993 and 6 April 1994, Tarek Aziz and Munyakazi did not spend time together because they had different occupations.³⁴⁵ Tarek Aziz was not involved in the recruitment of members for the party and he was not involved in the leadership of the youth wing. There were others who were in charge of the youth wing.³⁴⁶

Defence Witness MYA

159. Witness MYA, a Hutu, was assigned to the gendarmerie in Bugarama from the middle of March 1994 until 9 April 1994, when he went to the central Cyangugu gendarmerie headquarters. He was assigned to Bugarama twice before that: the first time, towards the end of 1992; and a second time in 1993. Each time, he would stay in Bugarama for approximately a month.³⁴⁷ The distance between Munyakazi's residence and the gendarmerie post in Bugarama was about 300 metres.³⁴⁸

160. There were two football fields in Bugarama. One of them was in the town itself while the other was at the CIMERWA factory. The gendarmes would go to the field in town to play football on Fridays. On other days, they would go there to exercise. The witness never went to the CIMERWA field, and was not aware of any military training sessions taking place at the Bugarama football field.³⁴⁹ There was a forest in the Kibangira area but the gendarmes could not have conducted firearms training in this area because local residents lived in close

³³⁷ T. 14 September 2009 pp. 7, 23

³³⁸ Defence Exhibit 24 (personal identification sheet); T. 14 September 2009 pp. 30-31(closed session).

³³⁹ T. 14 September 2009 p. 31 (closed session); T. 14 September 2009 p. 33.

³⁴⁰ T. 14 September 2009 p. 38.

³⁴¹ T. 14 September 2009 p. 37.

³⁴² T. 14 September 2009 p. 40.

³⁴³ T. 14 September 2009 pp. 40, 53, 59.

³⁴⁴ T. 14 September 2009 p. 32 (closed session).

³⁴⁵ T. 14 September 2009 p. 33.

³⁴⁶ T. 14 September 2009 p. 47.

³⁴⁷ Defence Exhibit 25 (personal identification sheet); T. 15 September 2009 pp. 4-5, 12.

³⁴⁸ T. 15 September 2009 p. 10.

³⁴⁹ T. 15 September 2009 p. 8.

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proximity to the forest. Had firearms training taken place there, the gendarmes would have heard the gunshots in Bugarama.³⁵⁰

161. During the time he was in Bugarama, he never saw gendarmes using sticks during their training exercises.³⁵¹ The witness was not aware that civilian youths received weapons training in Bugarama between 1993 and April 1994.³⁵²

Defence Witness ELB

162. Witness ELB, a Hutu, was the vice president of the *Interahamwe* at the *commune* level. Tarek Aziz was the president.³⁵³ The *Interahamwe* did not undertake military exercises in March 1994. Burundians, who left their country following the death of President Ndadaye and settled in the communal office in an area on Second Avenue called Kibanguro, were the ones involved in military training. They would run from Kibanguro, meet another group coming from the CIMERWA factory and together they would go to Second Avenue to carry out military exercises. The trainees were civilians, but the trainers were military officers.³⁵⁴ Burundians were linked to the Bugarama gendarmerie detachment but there was no link between the Burundians and Munyakazi or between the Burundians and the *Interahamwe*. The *Interahamwe*'s objective was not to provide military training to people but to assist in communal activities.³⁵⁵

Deliberations

Recruitment

163. The only evidence that Munyakazi was involved in the recruitment of *Interahamwe* was proffered by Prosecution Witness BWX, an accomplice witness. He testified that Munyakazi was a member of the MRND party, and in that capacity toured the area urging the youth to join the *Interahamwe*. However, he asserted that Munyakazi did this in 1990, a year that is not covered by the Indictment, and the Prosecution adduced no evidence that this recruitment continued through the Indictment period. Furthermore, Witness BWX was not certain of the year he himself joined the *Interahamwe*.³⁵⁶ Moreover, the Trial Chamber considers that the recruitment process, as described by Witness BWX, would have been public and high profile. Therefore, other witnesses should have been able to corroborate evidence regarding Munyakazi's role in this process.

164. Thus, the Prosecution has not established beyond reasonable doubt that Yussuf Munyakazi recruited *Interahamwe* between October 1993 and April 1994.

Training

165. Prosecution Witnesses BWX, BWW, and Esidras Musengayire all testified that the *Interahamwe* were trained in Bugarama, that Tarek Aziz was one of their trainers, and that

³⁵⁰ T. 15 September 2009 p. 9.

³⁵¹ T. 15 September 2009 p. 11.

³⁵² T. 15 September 2009 p. 9.

³⁵³ Defence Exhibit 27 (personal identification sheet); T. 17 September 2009 pp. 1-2.

³⁵⁴ T. 17 September 2009 pp. 5-6.

³⁵⁵ T. 17 September 2009 p. 6.

³⁵⁶ T. 29 May 2009 pp. 9, 23-24. Prosecution Witness BWX stated that he joined the *Interahamwe* in March 1993. On cross-examination he clarified that he actually joined the *Interahamwe* in March 1992.

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Tarek Aziz lived in one of Munyakazi's houses. Witness BWX was the only witness to testify that Munyakazi was present during training sessions, and thus was the only one to provide a direct link between Munyakazi and the training of the *Interahamwe*.

166. Witness BWX worked in close proximity to Munyakazi's house at Misufi in 1994, and said that he was treated like a member of the Munyakazi family. Thus, among Prosecution witnesses, Witness BWX and Witness Esidras Musengayire, who was considered as Munyakazi's adopted son, were the closest to Munyakazi. Yet, while Witness BWX was aware that Tarek Aziz lived in Munyakazi's house, he testified that he did not know in which capacity Tarek Aziz lived there.³⁵⁷ All other witnesses familiar with Tarek Aziz agreed that, at a minimum, he was a tenant in Munyakazi's house.

167. Witness BWX was the only Prosecution witness to testify that Munyakazi was present at the training sessions which he said took place at the football field on Tenth Street.³⁵⁸ The Trial Chamber accepts that because he lived close to this football field, he was in a position to know what took place there. However, the witness could not provide dates, or estimate the frequency, of the training sessions. The witness stated that the *Interahamwe* began training with firearms in 1993,³⁵⁹ contrary to Witness BWW, a member of the Bugarama *Interahamwe*, who stated that the *Interahamwe* did not begin training with real firearms until March 1994. Witness BWW's evidence is partially corroborated by Prosecution Witness Esidras Musengayire who testified that he did not see the *Interahamwe* with firearms until 7 April 1994. That Witness BWX could not recall the specific dates on which training took place is not surprising, but that he would not be in a position to say whether these firearms appeared immediately before the events of April 1994 or whether they had always been used during *Interahamwe* training sessions is of greater concern to the Trial Chamber.

168. Furthermore, Witness BWX stated that he did not know where the firearms were kept. Witness BWW testified that firearms were kept in Munyakazi's house, which was in close proximity to where Witness BWX worked. The Trial Chamber also observes that Witness BWX testified that the *Interahamwe* trained with firearms at the Tenth Street football field, while Witness BWW testified that this training took place in Nyirandakunze forest.

169. Finally, the Trial Chamber notes that while Witness BWX testified that Tarek Aziz was the training instructor, Witness BWW testified that he was only one of several training instructors, some of whom were gendarmes and soldiers. The Chamber notes that Witness BWX's evidence regarding the training is vague and largely inconsistent with that of other Prosecution witnesses. The Trial Chamber further recalls its earlier conclusion that the evidence of Witness BWX was not always reliable.

170. Witness Musengayire, who was also close to Munyakazi, corroborates Witness BWX's testimony that Tarek Aziz, who lived in Munyakazi's house, was involved in the training of the *Interahamwe*. However, Musengayire said nothing about Munyakazi's own role in the training. He only testified that there were often *Interahamwe* at Munyakazi's home. The Trial Chamber cannot infer that Munyakazi was involved in the training on this basis.

171. As a member of the Bugarama *Interahamwe*, Witness BWW was in a better position than other Prosecution witnesses to describe the training regime in Bugarama. He testified that the *Interahamwe* underwent daily training in 1993, that they did not receive firearms until March 1994, and that Tarek Aziz was among the training instructors. He also provided

³⁵⁷ T. 27 April 2009 pp. 21-23.

³⁵⁸ T. 24 April 2009 p. 18; T. 27 April 2009 p. 32.

³⁵⁹ T. 24 April 2009 p. 21; T. 27 April 2009 pp. 27, 32.

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precise locations for the training sessions. Although an accomplice witness, the Trial Chamber considers Witness BWB to be credible on these points. Witness BWB did not associate Munyakazi with the training sessions nor did he mention that Munyakazi was ever present at the training sessions. He only testified that Tarek Aziz was Munyakazi's deputy, and on this point his testimony was vague as he never associated Tarek Aziz with the attacks led by Munyakazi on Mibilizi and Shangi Parishes in which he admitted having participated.

172. The Trial Chamber considers that, even if it accepts Witness BWX's testimony that Munyakazi was on occasion present at training sessions of the *Interahamwe*, this evidence alone is insufficient to find that the Accused played a role in the training of the Bugarama *Interahamwe*. Witness BWX testified that the training took place in full public view on the local football field. Thus, it should have been possible to corroborate this testimony. The fact that Tarek Aziz, an *Interahamwe* training instructor, was a tenant in Munyakazi's house is of equally little assistance in making a determination that Munyakazi was involved in the training.

Conclusion

173. The Trial Chamber concludes that the Prosecution evidence is insufficient to establish the allegation that Yussuf Munyakazi, acting in concert with those named in the Indictment, recruited and trained the Bugarama *Interahamwe* in military drills and the use of firearms and other weapons on diverse dates at various locations in an around the Bugarama *commune*.³⁶⁰

³⁶⁰ Indictment para. 8.

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5. STORED WEAPONS AND ARMED THE BUGARAMA *INTERAHAMWE*

174. Paragraph 9 of the Indictment reads as follows:

Between January and July 1994 **Yussuf MUNYAKAZI** armed the Bugarama Interahamwe with guns, grenades and other weapons that were regularly stored at his house located in Cite Bugarama of Bugarama Commune.³⁶¹

175. The Prosecution relies on the evidence of Witnesses BWW, BWU, BWX, BWR and Esidras Munsegayire.

176. The Defence denies that Munyakazi either stored weapons for the Bugarama *Interahamwe* or distributed weapons to them.³⁶² It relies on the evidence of Witnesses NKM, NRB, YMS, AMB, YMC, MYA, ELB and Munyakazi.

Evidence

Prosecution Witness BWW

177. Witness BWW, a Hutu,³⁶³ was tried and convicted for having participated in the 1994 genocide. He testified that he collaborated primarily with Munyakazi and Athanase Ndutiye, also known as Tarek Aziz, who lived in Munyakazi's house and was Munyakazi's deputy.³⁶⁴

178. There were over 2000 members of the *Interahamwe* in Bugarama, and they used weapons that were stored at Munyakazi's house. These arms included Kalashnikovs, light automatic rifles, guns and grenades, and were provided by gendarmes and soldiers in various *communes*. The *Interahamwe* would ask Munyakazi for weapons when they needed them.³⁶⁵ The weapons were stored in the third room from the entrance of Munyakazi's house, a room that measured approximately three by three and a half metres.³⁶⁶ The *Interahamwe* underwent daily training in 1993, using pieces of wood shaped as rifles. It was not until March 1994 that they acquired real firearms.³⁶⁷

Prosecution Witness BWU

179. Prosecution Witness BWU, a Hutu, was a farmer in 1994,³⁶⁸ and a member of the CDR party.³⁶⁹ He was accused of having participated in the killings at Shangi Parish and appeared before a *Gacaca* court in Shangi *secteur* in January 2007. He pleaded guilty to having committed crimes at the parish and was sentenced to 10 years in prison. He was then released for time served.³⁷⁰

³⁶¹ Indictment para. 9.

³⁶² Defence Closing Brief paras. 24-33.

³⁶³ Prosecution Exhibit 12 (personal identification sheet); T. 29 May 2009 p. 6 (closed session).

³⁶⁴ T. 29 May 2009 pp. 6-7 (closed session).

³⁶⁵ T. 29 May 2009 p. 13 (closed session).

³⁶⁶ T. 29 May 2009 p. 31 (closed session).

³⁶⁷ T. 29 May 2009 pp. 12, 23-25 (closed session).

³⁶⁸ Prosecution Exhibit 13 (personal identification sheet); T. 4 June 2009 p. 2.

³⁶⁹ T. 4 June 2009 p. 6.

³⁷⁰ T. 4 June 2009 pp. 3-5.

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180. On 29 April 1994, the witness was manning a roadblock, with weapons distributed by local CDR leader Gatamobwa, at Bushenge Centre in Shangi.³⁷¹ Munyakazi arrived at the roadblock at approximately 3:00 p.m., along with two Daihatsu vehicles loaded with weapons.³⁷² The weapons included knives, machetes, guns, sharp metal bars, and grenades. There were more than 150 bladed weapons in Munyakazi's vehicle. If the attackers did not have weapons during the attack on Shangi Parish, they would go to the vehicles to get weapons. The witness used a machete during the attack,³⁷³ while other assailants used guns.³⁷⁴

Prosecution Witness BWX

181. Witness BWX, a Hutu, worked in close proximity to Munyakazi's house in Misufi *cellule*. According to the witness, he was considered to be a member of Munyakazi's family.³⁷⁵ The witness believed that the *Interahamwe* started training between 1992 and 1993.³⁷⁶ He did not know who gave the *Interahamwe* arms, but testified that in 1993, André Ntagerura and Callixte Nzabonimana, high ranking members of the MRND, came to Bugarama by plane and landed at a fenced-in rice plantation. Once they arrived, Munyakazi summoned the population to a meeting, which the witness attended. Ntagerura chaired the meeting, and Munyakazi assisted him. Both Ntagerura and Nzabonimana addressed the *Interahamwe*. It was after this meeting that the *Interahamwe* in Bugarama began training with firearms. Witness BWX, therefore, concluded that the firearms had been delivered by Ntagerura and Nzabonimana during this visit. He did not know where the weapons were kept.³⁷⁷

Prosecution Witness Esidras Musengayire

182. Witness Esidras Musengayire, a Tutsi, lived in *Cité Bugarama*, Bugarama *commune*, Cyangugu *préfecture* in 1994.³⁷⁸ The witness testified that he lived in Munyakazi's house from 1982 to 1984 and that Munyakazi treated him like a son.³⁷⁹

183. Musengayire never saw the *Interahamwe* carrying firearms before 7 April 1994. He saw them with ropes attending political party rallies and blocking roads during demonstrations.³⁸⁰ Musengayire and Tarek Aziz would have friendly discussions about the *Interahamwe* since Musengayire had free access to Munyakazi's house in which Tarek Aziz was a tenant. One day, prior to 7 April 1994, the witness saw Tarek Aziz with a pistol that he carried around his waist, but nothing extraordinary happened that day.³⁸¹

184. On 7 April 1994, Musengayire was attacked by a group of *Interahamwe* carrying ropes and knives. The witness did not see other weapons on that occasion.³⁸² When he was

³⁷¹ T. 4 June 2009 pp. 6-7.

³⁷² T. 4 June 2009 p. 7.

³⁷³ T. 4 June 2009 p. 29.

³⁷⁴ T. 4 June 2009 p. 26.

³⁷⁵ Prosecution Exhibit 6 (personal identification sheet); T. 24 April 2009 p. 12 (closed session); T. 27 April 2009 p. 35 (closed session).

³⁷⁶ T. 24 April 2009 pp. 19-20.

³⁷⁷ T. 24 April 2009 p. 21; T. 27 April 2009 pp. 27, 32.

³⁷⁸ Prosecution Exhibit 5 (personal identification sheet); T. 23 April 2009 p. 48.

³⁷⁹ T. 23 April 2009 p. 51; T. 27 April 2009 p. 2.

³⁸⁰ T. 24 April 2009 p. 5.

³⁸¹ T. 24 April 2009 pp. 4-5, 7.

³⁸² T. 24 April 2009 pp. 4-5, 7.

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taken to Munyakazi's residence, he noticed that there were three *Interahamwe* present, but did not see them carrying weapons. Although Munyakazi tried to protect Musengayire, a grenade was lobbed at Musengayire soon after his arrival at Munyakazi's house. Musenyagire did not know who threw it. During Gacaca hearings, an *Interahamwe* testified that the grenade was lobbed by a member of the *Interahamwe* named Zacharie Mario, who was Munyakazi's son.³⁸³

Prosecution Witness BWR

185. Witness BWR, a Tutsi, lived in Gitambi *secteur*, in Nyakabuye *commune*, in April 1994. He worked at the CIMERWA cement factory canteen.³⁸⁴ The witness testified that he would see the *Interahamwe* militia on a regular basis, and that they had firearms and swords. The *Interahamwe* were very well organized. They had uniforms, and carried grenades and knives, which the witness believed showed that the *Interahamwe* was a structured organisation.³⁸⁵ The witness believed that Munyakazi was the leader of the *Interahamwe*.³⁸⁶

Yussuf Munyakazi

186. Munyakazi never stocked weapons in any of his homes during the Indictment period.³⁸⁷ He did not own a firearm during this period. Indeed, he did not know how to use a firearm, and thus would not have carried such a weapon.³⁸⁸

187. The labourers who worked on Munyakazi's farms each owned their hoes and machetes. Munyakazi never bought or distributed such tools to them.³⁸⁹ Munyakazi personally owned a hoe and a machete, as did each of his wives. It was customary for people to have a knife at home in order to slaughter poultry or to peel bananas or potatoes. He did not own an axe and would borrow one from his neighbours when needed.³⁹⁰

Defence Witnesses NKM

188. Defence Witness NKM lived in Bugarama *commune*. He was a member of the PDI political party and worked at a bank in Bugarama *commune* in 1994.³⁹¹ There were no weapons or arms circulating in Bugarama before 6 April 1994. During that period, no stocks of weapons were held in any home in Bugarama. The witness never heard anyone say that Munyakazi was in possession of a stock of weapons in one of his houses in Bugarama.³⁹² He never saw Munyakazi carry a weapon. There was a small group of gendarmes in the city, and if Munyakazi had been seen with a weapon, he would have been reported to the gendarmerie.³⁹³

³⁸³ T. 24 April 2009 p. 4.

³⁸⁴ Prosecution Exhibit 2 (personal identification sheet); T. 22 April 2009 pp. 41 (closed session), 47.

³⁸⁵ T. 22 April 2009 p. 50.

³⁸⁶ T. 22 April 2009 pp. 41, 49-50.

³⁸⁷ T. 14 October 2009 p. 43.

³⁸⁸ T. 14 October 2009 p. 48.

³⁸⁹ T. 14 October 2009 p. 32.

³⁹⁰ T. 14 October 2009 p. 33.

³⁹¹ Defence Exhibit 6 (personal identification sheet); T.31 August 2009 pp. 7-8 (closed session).

³⁹² T. 31 August 2009 p. 23.

³⁹³ T. 31 August 2009 pp. 30-31.

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Defence Witness NRB

189. Defence Witness NRB, a Hutu, lived in Bugarama *commune*, and worked for the CAVECUVI cooperative society in 1994.³⁹⁴ He knew André Ntagerura.³⁹⁵ The rice fields were in swamps and no plane or helicopter could have landed there. There was a location known as *Riziculture*. The distance between CAVECUVI and *Riziculture* was approximately 10 metres. If a plane had landed at *Riziculture*, the witness would have known about it.³⁹⁶

Defence Witness YMS

190. Witness YMS, a Hutu, lived in Bugarama *secteur* in Bugarama *commune* in 1994, and was a trader.³⁹⁷ He stored his goods in a space that he rented from Muniyakazi.³⁹⁸ The witness never saw Muniyakazi with a firearm.³⁹⁹ His residence was about 12 metres from the rice fields where Ntagerura's helicopter allegedly landed. Had a helicopter landed in the area, the witness would have known about it.⁴⁰⁰

Defence Witness AMB

191. Witness AMB, a Hutu, was a native of Bugarama, but a university student elsewhere in 1994. He would return to Bugarama to spend his holidays.⁴⁰¹ Between October 1993 and 6 April 1994, he went to Bugarama on many occasions, and remained in Bugarama throughout the month of April 1994.⁴⁰² Muniyakazi was one of his family's close neighbours. The witness never heard that Muniyakazi had a weapons depot in any of his houses.⁴⁰³

Defence Witness YMC

192. Witness YMC, a Hutu, was a trader in Misufi *cellule* in Bugarama in 1994.⁴⁰⁴ He first met Muniyakazi in 1985, and his business premises were close to Muniyakazi's own.⁴⁰⁵ Muniyakazi prayed and received guests at one of his houses which was close to the witness' home.⁴⁰⁶ While Witness YMC was generally engaged in his own activities, he would see Muniyakazi around his house.⁴⁰⁷ He did not see weapons or hear that weapons were being stored in any of Muniyakazi's houses prior to 6 April 1994. He never saw Muniyakazi carrying a weapon. The witness remained in Bugarama after 6 April 1994.⁴⁰⁸

³⁹⁴ Defence Exhibit 12 (personal identification sheet); T.1 September 2009 pp. 35, 37 (closed session).

³⁹⁵ T. 1 September 2009 p. 40.

³⁹⁶ T. 1 September 2009 p. 40.

³⁹⁷ Defence Exhibit 24 (personal identification sheet); T. 14 September 2009 pp. 30-31, 33 (closed session).

³⁹⁸ T. 14 September 2009 p. 31 (closed session).

³⁹⁹ T. 14 September 2009 pp. 39-40.

⁴⁰⁰ T. 14 September 2009 p. 39.

⁴⁰¹ Defence Exhibit 21 (personal identification sheet); T. 10 September 2009 pp. 1, 3, 21-22 (closed session).

⁴⁰² T. 10 September 2009 pp. 3 (closed session), 10.

⁴⁰³ T. 10 September 2009 p. 9.

⁴⁰⁴ Defence Exhibit 22 (personal identification sheet); T. 14 September 2009 pp. 1-2, 3 (closed session).

⁴⁰⁵ T. 14 September 2009 p. 3 (closed session).

⁴⁰⁶ T. 14 September 2009 p. 6.

⁴⁰⁷ T. 14 September 2009 p. 11.

⁴⁰⁸ T. 14 September 2009 pp. 10, 15.

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Defence Witness MYA

193. Witness MYA, a Hutu, was a gendarme posted in Bugarama from the middle of March 1994 until 9 April 1994, when he returned to the central Cyangugu gendarmerie.⁴⁰⁹ His duty in Bugarama was to ensure the safety and security of the local inhabitants and to protect the infrastructure there. The gendarmes were deployed at the CIMERWA factory, but the witness often patrolled *Cité* Bugarama and its environs.⁴¹⁰

194. The gendarmes in Bugarama had firearms, FAL assault rifles and a machine gun, which was positioned on a hill for the protection of Bugarama town. The lieutenants had pistols. In 1993, the gendarmes were never told that firearms were circulating among the civilian population of Bugarama. They were never assigned to search for firearms among civilians.⁴¹¹ The witness never heard that Munyakazi had a firearm or that firearms were stored at Munyakazi's residence. The only firearms Witness MYA was aware of were stored at the gendarmerie.⁴¹² He did not know what took place in Bugarama following his departure.⁴¹³

Defence Witness ELB

195. Witness ELB, a Hutu, joined the Bugarama *Interahamwe* in Bugarama in February 1993. He was the vice president of the *Interahamwe* at the *commune* level during the Indictment period. Athanase Ndutiye, also known as Tarek Aziz, was the president.⁴¹⁴

196. Prior to 6 April 1994, the *Interahamwe* did not have firearms. Munyakazi was not a soldier and did not have a stock of weapons at his house. His house was close to the gendarmerie, and thus, he would not have been able to stock weapons there.⁴¹⁵

197. Prior to 6 April 1994, the witness never saw Tarek Aziz carrying a gun. However, on 7 April 1994 at approximately 8:00 a.m., he saw him carrying one for the first time.⁴¹⁶ Tarek Aziz was in front of the gendarme's post wearing a military shirt on that day. Tarek Aziz told Witness ELB that his gendarme friend, Enoch, had given him the shirt, a Kalashnikov and two grenades.⁴¹⁷

Deliberations

198. The Defence contests the Prosecution's allegation, in paragraph 9 of the Indictment, that Munyakazi stored weapons at his house, and/or that he armed the Bugarama *Interahamwe*.

Storage of Weapons

199. Witness BWB, an accomplice witness, is the only Prosecution witness who testified that Munyakazi stored arms at his house. As discussed earlier, the Chamber treats this witness'

⁴⁰⁹ Defence Exhibit 25 (personal identification sheet); T. 15 September 2009 pp. 4, 5, 12.

⁴¹⁰ T. 15 September 2009 p. 6.

⁴¹¹ T. 15 September 2009 p. 7.

⁴¹² T. 15 September 2009 p. 7.

⁴¹³ T. 15 September 2009 p. 13.

⁴¹⁴ T. 17 September 2009 p. 2.

⁴¹⁵ T. 17 September 2009 p. 7.

⁴¹⁶ T. 17 September 2009 p. 8.

⁴¹⁷ T. 17 September 2009 p. 9.

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evidence with caution (see Chapter II.3). He stated that there were over 2,000 members of the *Interahamwe* in Bugarama, and that they used weapons that were stored at Munyakazi's house. The Trial Chamber notes that this witness exhibited a general tendency to exaggerate numbers, and therefore may have exaggerated the number of *Interahamwe* in Bugarama. In addition, the witness did not provide a time-frame for the storage of these weapons or say where Munyakazi got the weapons, although he did state that the Bugarama *Interahamwe* only began training with firearms in March 1994.

200. The Trial Chamber observes that no other witness corroborated this testimony about the storage of weapons at Munyakazi's house. On the contrary, Prosecution Witness BWX, who worked in close proximity to Munyakazi's house in Misufi, and could therefore observe what was taking place there, testified that he did not know where the *Interahamwe* kept their weapons. Given the position of his workplace, the Trial Chamber considers it likely that he would have seen *Interahamwe* entering the compound unarmed and exiting with weapons. Witness BWX's testimony, therefore, creates doubt regarding the veracity of Witness BWX's testimony.

201. Without additional evidence to corroborate Witness BWX's testimony, the Chamber finds that there is insufficient Prosecution evidence on this issue and will therefore not review the Defence evidence.

Arming the Bugarama *Interahamwe*

202. Witness BWX said he believed that the Bugarama *Interahamwe* obtained their weapons when Andre Ntagerura and Callixte Nzabonimana visited Bugarama in 1993. He claimed that, during the visit, he attended a meeting that Ntagerura chaired with Munyakazi's assistance. Following this meeting, the witness began to see the *Interahamwe* training with firearms.⁴¹⁸

203. The Chamber notes that Witness BWX's evidence that the weapons came to Bugarama during that visit was based on speculation. He testified that the meeting took place in 1993, while Witness BWX, a member of the Bugarama *Interahamwe*, testified that the *Interahamwe* did not have weapons until March 1994. No other witness mentioned this high-level visit to Bugarama. Indeed, Defence Witnesses NRB and YMS denied that such a visit took place, arguing that no helicopter could have landed in the area without their knowledge.

204. Witness BWX stated that the weapons provided to the *Interahamwe* came from gendarmes and soldiers; however, the witness did not specify when these arms were acquired. Witness BWX's testimony regarding the source of the weapons was partially corroborated by Defence Witness ELB, who was also a member of the Bugarama *Interahamwe* at the time. Witness ELB testified that Tarek Aziz told him that he had received a gun and grenades from a Bugarama gendarme on 7 April 1994.⁴¹⁹ The evidence of Prosecution Witness BWX, particularly with respect to the time-frame in which he saw armed *Interahamwe*, was too vague to assist the Chamber in its analysis.

205. Although Witnesses BWX and ELB are both accomplice witnesses, the Trial Chamber considers that they were best placed to know the source of the arms they used, and notes that neither said the weapons came from Munyakazi. The Trial Chamber concludes that it cannot determine the source of the weapons that were used by the Bugarama *Interahamwe* on the basis of the evidence adduced.

⁴¹⁸ T. 24 April 2009 p. 21; T. 27 April 2009 pp. 27, 32.

⁴¹⁹ T. 17 September 2009 pp. 8-9.

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206. Witness BWU testified that Munyakazi arrived at Shangi Parish on 29 April 1994, with two Daihatsu vehicles loaded with weapons. He added that Munyakazi led the Bugarama *Interahamwe* during this attack. As noted above (see Chapter II.3), BWU was an accomplice witness, and thus, the Trial Chamber views his testimony with caution. The Trial Chamber finds that it cannot infer that the weapons were supplied by Munyakazi merely on the basis that he transported them to Shangi Parish.

207. Given that Witness BWX's testimony regarding the source of the weapons used by the Bugarama *Interahamwe* was speculative, and that the evidence of Witness BWU, an accomplice witness, is uncorroborated, the Trial Chamber finds that the Prosecution has not proven beyond reasonable doubt that Munyakazi armed the Bugarama *Interahamwe*.

Conclusion

208. The Trial Chamber finds that the Prosecution has not proven beyond reasonable doubt that between January and July 1994 Munyakazi armed the Bugarama *Interahamwe* or that he stored weapons at any of his houses.



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6. FOOD AND TRANSPORTATION

209. Paragraph 10 of the Indictment reads:

Between January and July 1994 Yussuf MUNYAKAZI acting in concert with ZACHARIE alias MARIYO, SEBATWARE Marcel, NDOLIMANA Casimir, MUGUNDA Thomas, NGARUKIYE Emmanuel, BAKUNDUKIZE Elias provided food and regularly transported or facilitated the transportation of the Bugarama *Interahamwe* to and from the various massacre sites alleged in this indictment.

210. The Defence disputes these allegations and relies on Witnesses ELB, NKM and Albert Lavie. It also refers to evidence that Munyakazi was never in the company of gendarmes, reservists, *Interahamwe*, or soldiers; that no food was ever prepared for such persons in any of these houses; and that such persons never gathered at any of his homes.⁴²⁰

Prosecution Witness BWX

211. Witness BWX, a Hutu, worked in close proximity to Munyakazi's house in Misufi *cellule*, Bugarama *secteur*, in 1994, and was in a position to observe what was taking place there on a regular basis.⁴²¹ According to the witness, Munyakazi lived in this house.⁴²²

212. The witness often saw the *Interahamwe* prepare and eat their meals at Munyakazi's house, but did not know who purchased the food.⁴²³ From his workplace, the witness observed *Interahamwe* cooking in the inner courtyard of the building.⁴²⁴ Approximately five *Interahamwe* would prepare the meals at Munyakazi's house. When the food was ready, the *Interahamwe* would deliver the food to various positions manned by other *Interahamwe*. Those who prepared the food lived in Munyakazi's house, but *Interahamwe* who were not from Bugarama occasionally joined them to take their meals in the inner courtyard.⁴²⁵

213. Munyakazi was the president of the *Interahamwe*. The *Interahamwe* met at Munyakazi's house before leaving to commit offences.⁴²⁶ The witness knew about this because the *Interahamwe* would brag about their crimes upon their return.⁴²⁷ In the days and weeks following the death of President Habyarimana, the *Interahamwe* boarded vehicles and travelled to Mibilizi, Shangi, and other places, to commit crimes.⁴²⁸

Prosecution Witness BWW

214. Witness BWW, a Hutu, was a member of the Bugarama *Interahamwe* in 1994. He was tried and convicted for having participated in the 1994 genocide.⁴²⁹ According to the witness, Munyakazi lived in Misufi *cellule* in Bugarama *secteur*.⁴³⁰

⁴²⁰ Defence Closing Brief paras. 5-13.

⁴²¹ Prosecution Exhibit 6 (personal identification sheet); T. 24 April 2009 pp. 12 (closed session); T. 27 April 2009 p. 35 (closed session).

⁴²² T. 27 April 2009 pp. 34-35, 38 (closed session).

⁴²³ T. 24 April 2009 p. 20.

⁴²⁴ T. 27 April 2009 pp. 35-36 (closed session).

⁴²⁵ T. 27 April 2009 pp. 37, 39 (closed session).

⁴²⁶ T. 24 April 2009 p. 16; T. 27 April 2009 p. 38 (closed session).

⁴²⁷ T. 24 April 2009 pp. 18, 22-24.

⁴²⁸ T. 24 April 2009 p. 23.

⁴²⁹ Prosecution Exhibit 12 (personal identification sheet); T. 29 May 2009, pp. 6-7 (closed session).

⁴³⁰ T. 29 May 2009 p. 8 (closed session).

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215. The witness met Munyakazi's wife, Rukiya, because it was at her house that the *Interahamwe* ate their meals. They did not eat at Munyakazi's other houses. They ate meals at Rukiya's house because it had a courtyard, and they could assemble there after killing. This house was located by the customs building.⁴³¹ In particular, the Bugarama *Interahamwe* ate at Rukiya's house after the attacks on Shangi and Mibilizi Parishes.⁴³²

216. The witness stated that Munyakazi owned two Daihatsu vehicles, one blue and one white.⁴³³ He estimated that about 120 *Interahamwe* boarded the two Daihatsu vehicles that went to Shangi Parish in April 1994.⁴³⁴ Following that attack, the *Interahamwe* boarded the vehicles upon which they had arrived and travelled to Munyakazi's house where they had a meal.⁴³⁵ More than 120 armed *Interahamwe* also travelled to attack Mibilizi Parish in April using Munyakazi's two vehicles.⁴³⁶

Prosecution Witness BWQ

217. Witness BWQ, a Tutsi, lived in Shangi *secteur* in April 1994. He was a farmer and a member of the MRND.⁴³⁷ The witness and his family fled to Shangi Parish on or about 7 April 1994.⁴³⁸ On 29 April 1994, Munyakazi arrived at Shangi Parish aboard a white Daihatsu truck accompanied by other persons between 3 and 4 in the afternoon.⁴³⁹ The Daihatsu pickup carried approximately 40 attackers.⁴⁴⁰

Prosecution Witness BWU

218. Witness BWU, a Hutu, was a farmer in 1994.⁴⁴¹ On 29 April 1994, Munyakazi arrived at a roadblock on the way to Shangi Parish at about 3:00 p.m. He and his vice president came with two Daihatsu vehicles loaded with weapons and *Interahamwe*. There were about 50 or 60 *Interahamwe* in the group. Munyakazi and a group of armed *Interahamwe* travelled in the first Daihatsu, which was green. Munyakazi's vice president and a second group of *Interahamwe* travelled in a second Daihatsu, which was brown. The witness did not identify Munyakazi as being the driver of either vehicle and did not know who owned the vehicles.⁴⁴²

219. Witness BWU was at the roadblock when Munyakazi asked for directions to Shangi Parish. The witness provided directions and accompanied the attackers. The vehicles drove off at a very slow pace while other assailants walked behind them in the direction of the parish.⁴⁴³

⁴³¹ T. 29 May 2009 pp. 10, 19, 28 (closed session).

⁴³² T. 29 May 2009 pp. 28-29 (closed session).

⁴³³ T. 29 May 2009 p. 11 (closed session).

⁴³⁴ T. 29 May 2009 p. 18 (closed session).

⁴³⁵ T. 29 May 2009 pp. 18-19 (closed session).

⁴³⁶ T. 29 May 2009 pp. 20-21 (closed session).

⁴³⁷ Prosecution Exhibit 1 (personal identification sheet); T. 22 April 2009 pp. 10, 18-19 (closed session).

⁴³⁸ T. 22 April 2009 pp. 12, 21.

⁴³⁹ T. 22 April 2009 p. 13.

⁴⁴⁰ T. 22 April 2009 pp. 14, 28-29.

⁴⁴¹ Prosecution Exhibit 13 (personal identification sheet); T. 4 June 2009 p. 2.

⁴⁴² T. 4 June 2009 pp. 9, 27-28.

⁴⁴³ T. 4 June 2009 pp. 6-7, 32.

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220. After completing the attack on Shangi Parish, a man named Gatamobwa, who was the Chairman of the CDR party, gave Munyakazi's vice president money to organise a reception for the assailants when they returned to their homes.⁴⁴⁴

Prosecution Witness MP

221. Witness MP, a Hutu, was present at Mibilizi Parish during the 30 April 1994 attack.⁴⁴⁵ Munyakazi arrived at the parish between 4:00 and 5:00 p.m., with a group of *Interahamwe* aboard two Daihatsu vehicles. Frightened, the witness went to seek shelter with the gendarmes. Through a small window in the office of the gendarmes, the witness could see the vehicles arrive. They stopped approximately 200 metres from the witness.⁴⁴⁶

Prosecution Witness MM

222. Witness MM, a Tutsi, was present at Mibilizi Parish during the attack on 30 April 1994.⁴⁴⁷ The attack was led by Munyakazi, who together with a significant number of *Interahamwe*, arrived from Bugarama on board two Daihatsu pickup trucks.⁴⁴⁸

223. On cross-examination, the witness explained that he did not actually see the vehicles that day but was told by someone over the phone that the attackers had arrived in two vehicles. Since the witness was told that the two vehicles were full, he estimated that there had been between 80 and 100 attackers. In addition, the witness stated that he did not see Munyakazi that day, but rather heard that the leader was Munyakazi from the person who had called over the phone to warn of the attack, and from the gendarmes at Mibilizi who spoke to Munyakazi when he arrived at the parish.⁴⁴⁹

Prosecution Witness LCQ

224. Witness LCQ, a Tutsi, sought refuge at Mibilizi Parish on or about 8 April 1994 with his wife and about 20 neighbours.⁴⁵⁰ On 30 April, he saw two vehicles arrive at the parish carrying assailants.⁴⁵¹ The witness recognized Munyakazi and his vice president among the *Interahamwe*.⁴⁵² Munyakazi led the attackers who assaulted the witness.⁴⁵³

Prosecution Witness Esidras Musengayire

225. Witness Esidras Musengayire, a Tutsi,⁴⁵⁴ was adopted by Munyakazi at a young age. The witness left Munyakazi's house when he got married, a decade before the genocide.⁴⁵⁵ At some time in the 1990s, before the genocide, the Rwandan government compensated

⁴⁴⁴ T. 4 June 2009 pp. 8-9.

⁴⁴⁵ Prosecution Exhibit 7 (personal identification sheet); T. 27 April 2009 pp. 43-44.

⁴⁴⁶ T. 27 April 2009 p. 46.

⁴⁴⁷ Prosecution Exhibit 9 (personal identification sheet); T. 27 April 2009 pp. 58-59 (closed session).

⁴⁴⁸ T. 27 April 2009 p. 61.

⁴⁴⁹ T. 28 April 2009 p. 7.

⁴⁵⁰ Prosecution Exhibit 11 (personal identification sheet); T. 28 April 2009 pp. 15-16.

⁴⁵¹ T. 28 April 2009 pp. 20-21.

⁴⁵² T. 28 April 2009 p. 27.

⁴⁵³ T. 28 April 2009 p. 34.

⁴⁵⁴ Prosecution Exhibit 5 (personal identification sheet); T. 23 April 2009 p. 48.

⁴⁵⁵ T. 23 April 2009 p. 51; T. 27 April 2009 p. 2.

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Munyakazi for expropriating part of his land, and with that money Munyakazi bought a blue Daihatsu pickup truck. Munyakazi also owned a double-cabin Hilux, but the witness did not state the colour.⁴⁵⁶

226. The witness began noticing the *Interahamwe* around the middle of 1993. On some occasions the *Interahamwe* moved around in a vehicle that belonged to the *commune*, on others they used vehicles belonging to the state-owned rice farm. During this period, 1993, Munyakazi did not own a vehicle.⁴⁵⁷

Yussuf Munyakazi

227. In 1994, Munyakazi owned four houses and three vehicles.⁴⁵⁸ He had a second-hand double cabin Hilux vehicle that he bought in 1990 and kept until 1994.⁴⁵⁹ However, this vehicle was no longer working in 1994. He, therefore, bought a Daihatsu truck and a Suzuki vehicle both of which were working in April 1994.⁴⁶⁰ He purchased these two additional vehicles in 1993 with compensation he received from the government for the expropriation of part of his land.⁴⁶¹ The vehicles did not leave Bugarama in April 1994.⁴⁶² Munyakazi's eldest son, Zacharie Mario, used Munyakazi's Daihatsu Marque to learn how to drive.⁴⁶³

228. Between 7 April 1994 and July 1994, Munyakazi was not the leader of the Bugarama *Interahamwe* and never organised any of their meetings.⁴⁶⁴ None of his houses served as meeting grounds for the *Interahamwe*, and at no point in time did the *Interahamwe* come to work in any of his houses.⁴⁶⁵ None of his wives ever prepared food for the *Interahamwe*.⁴⁶⁶

229. There was a courtyard within the house belonging to Mama Safi, one of Munyakazi's wives. The women prepared food in that courtyard.⁴⁶⁷ When Defence Witness Albert Lavie brought refugees to Munyakazi's house for protection, it was at Mama Safi's house that the group stayed.⁴⁶⁸ The refugees, the children, and the women lived at Mama Safi's house. None lived in Munyakazi's house at the market square.⁴⁶⁹

230. Munyakazi divorced Mama Rukiya in 1987 and had no links with her in 1994.⁴⁷⁰

Defence Witness NKM

231. In April 1994, Witness NKM, a Hutu, held a position in the PDI political party at the *préfectoral* level in Bugarama *commune* and worked for a bank.⁴⁷¹ He would meet Munyakazi, who was an ordinary customer at the bank.⁴⁷² Munyakazi owned a Hilux vehicle

⁴⁵⁶ T. 27 April 2009 pp. 18-19.

⁴⁵⁷ T. 24 April 2009 pp. 2-3, 7.

⁴⁵⁸ T. 15 October 2009 p. 13.

⁴⁵⁹ T. 14 October 2009 p. 10.

⁴⁶⁰ T. 14 October 2009 p. 51.

⁴⁶¹ T. 14 October 2009 p. 10; T. 15 October 2009 p. 13.

⁴⁶² T. 14 October 2009 p. 51.

⁴⁶³ T. 15 October 2009 p. 13.

⁴⁶⁴ T. 14 October 2009 p. 43.

⁴⁶⁵ T. 14 October 2009 p. 44.

⁴⁶⁶ T. 14 October 2009 p. 43.

⁴⁶⁷ T. 15 October 2009 p. 48.

⁴⁶⁸ T. 15 October 2009 pp. 48-49.

⁴⁶⁹ T. 15 October 2009 p. 49.

⁴⁷⁰ T. 14 October 2009 p. 43.

⁴⁷¹ Defence Exhibit 6 (personal identification sheet); T. 31 August 2009 pp. 7-8 (closed session).

⁴⁷² T. 31 August 2009 pp. 8-9.

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which was driven by a man named Zacharie and used for farming. He never saw Munyakazi in that vehicle after 6 April 1994, and never saw youths travelling in the vehicle from Munyakazi's house.⁴⁷³ Munyakazi had two wives, one named Mama Safi and a second named Rukiya. Rukiya's nickname was Mama Zainabu.⁴⁷⁴

Defence Witness Albert Lavie

232. Witness Albert Lavie, a Hutu, lived in the Nyarugenge *commune* in 1994.⁴⁷⁵ He was a communal policeman in Kigali town, and his duty was to ensure the security of the *conseiller* of Biryogo, Amri Karekezi, and his family.⁴⁷⁶ Towards the end of May or early June 1994, he took Karekezi's family to Munyakazi's house, where Munyakazi gave them refuge.⁴⁷⁷

233. The witness and the driver stayed in Munyakazi's house for approximately four hours during which time they had a meal.⁴⁷⁸ The witness did not see food leaving the compound. He did not notice any young persons coming into, or leaving, Munyakazi's compound.⁴⁷⁹

Defence Witness NDB

234. Witness NDB, a Hutu, lived in Bugarama, and was a farmer in April 1994.⁴⁸⁰ The distance between his home and Munyakazi's residence was about 500 metres.⁴⁸¹ He never saw Munyakazi in the company of the *Interahamwe* and does not believe that Munyakazi would have fed them voluntarily.⁴⁸²

Defence Witness AMB

235. Witness AMB, a Hutu, was a university student outside Bugarama in 1994.⁴⁸³ Between October 1993 and 6 April 1994, he returned home to Bugarama on many occasions.⁴⁸⁴ Munyakazi's two wives, Mama Safi and Mama Zainabu, both lived in close proximity to Witness AMB's house.⁴⁸⁵ Munyakazi had two vehicles, an old Suzuki and an old Daihatsu. The witness never saw or heard that the youths of the MRND used these vehicles.⁴⁸⁶

236. In April 1994, the witness was in Bugarama. He did not see groups of youths assembling at Munyakazi's house.⁴⁸⁷ He did not see Tarek Aziz or other bodyguards with Munyakazi. He did not know whether Munyakazi's vehicles were assigned to transport youths from Bugarama.⁴⁸⁸

⁴⁷³ T. 31 August 2009 p. 32.

⁴⁷⁴ T. 31 August 2009 p. 20.

⁴⁷⁵ Defence Exhibit 9 (personal identification sheet); T. 1 September 2009 pp. 1-2.

⁴⁷⁶ T. 1 September 2009 p. 3.

⁴⁷⁷ T. 1 September 2009 pp. 4-5.

⁴⁷⁸ T. 1 September 2009 p. 6.

⁴⁷⁹ T. 1 September 2009 pp. 6-7.

⁴⁸⁰ Defence Exhibit 10 (personal identification sheet); T. 1 September 2009 p. 12 (closed session).

⁴⁸¹ T. 1 September 2009 pp. 12, 19.

⁴⁸² T. 1 September 2009 p. 15.

⁴⁸³ Defence Exhibit 21 (personal identification sheet); T. 10 September 2009 p. 3 (closed session).

⁴⁸⁴ T. 10 September 2009 p. 3 (closed session).

⁴⁸⁵ T. 10 September 2009 p. 9.

⁴⁸⁶ T. 10 September 2009 p. 10.

⁴⁸⁷ T. 10 September 2009 p. 10.

⁴⁸⁸ T. 10 September 2009 p. 11.

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Defence Witness YMC

237. Witness YMC, a Hutu, was a trader in Misufi *cellule* in Bugarama in April 1994.⁴⁸⁹

238. Munyakazi had a residence in which he received guests and prayed, but also owned three other houses. The distance from the witness' house to the residence where Munyakazi prayed was about 50 metres.⁴⁹⁰

239. Munyakazi owned three vehicles in April 1994: a Suzuki jeep, a double-cabin Hilux and a Daihatsu pickup. The witness sold the blue Daihatsu pickup to Munyakazi,⁴⁹¹ but never saw Munyakazi driving the vehicle.⁴⁹² On or about 15 April 1994, Munyakazi borrowed the witness' vehicle to help some families.⁴⁹³

240. In April 1994, Witness YMC did not see Munyakazi's vehicles being used to ferry the youths of the MRND. The pickup was very old and could not have been used to carry anything heavier than rice.⁴⁹⁴ The witness did not see young people gathering in front of Munyakazi's house to organise their departure to other destinations. Even though the witness was generally engaged in his own activities, he would see Munyakazi in the neighbourhood.⁴⁹⁵ During this period, the witness did not see young people gathering or eating at the houses of either of Munyakazi's wives.⁴⁹⁶

Defence Witness YMS

241. Witness YMS, a Hutu, lived in Bugarama *secteur* in Bugarama *commune* in April 1994. He was a trader and lived approximately 150 metres from his place of business.⁴⁹⁷ There was no room in Munyakazi's house for preparing food for a group of people. He never saw members of the *Interahamwe* preparing food at Munyakazi's house.⁴⁹⁸

242. He did not see Munyakazi's vehicles carry young people to or from rallies.⁴⁹⁹

243. Munyakazi did not have a wife named Rukiya in 1994.⁵⁰⁰ He heard people say that a woman named Mama Rukiya was once Munyakazi's wife, but that she left Munyakazi and married another man, before the witness met Munyakazi in 1975. Munyakazi's second wife, who lived in one of his houses between 1993 and 6 April 1994, was named Mama Zainabu.⁵⁰¹

⁴⁸⁹ Defence Exhibit 22 (personal identification sheet); T. 14 September 2009 p. 3 (closed session).

⁴⁹⁰ T. 14 September 2009 pp. 4, 6 (closed session).

⁴⁹¹ T. 14 September 2009 pp. 8-9, 11.

⁴⁹² T. 14 September 2009 p. 15.

⁴⁹³ T. 14 September 2009 p. 12.

⁴⁹⁴ T. 14 September 2009 p. 9.

⁴⁹⁵ T. 14 September 2009 pp. 11-12.

⁴⁹⁶ T. 14 September 2009 p. 11.

⁴⁹⁷ Defence Exhibit 24 (personal identification sheet); T. 14 September 2009 pp. 30-31, 33 (closed session).

⁴⁹⁸ T. 14 September 2009 p. 41.

⁴⁹⁹ T. 14 September 2009 p. 37.

⁵⁰⁰ T. 14 September 2009 p. 35.

⁵⁰¹ T. 14 September 2009 p. 35-36.

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Defence Witness ELB

244. Witness ELB, a Hutu, joined the Bugarama *Interahamwe* in February 1993. In April 1994, he was the vice president at the *commune* level and Tarek Aziz was the president.⁵⁰²

245. Prior to April 1994, Muniyazi had an old Hilux vehicle which was not functioning. He had another vehicle bought by his wives Mama Safi and Rukiya, but the car was registered to a certain Zacharie. According to the witness, Muniyazi's vehicles were never used by the Bugarama *Interahamwe* to attend rallies, because the *Interahamwe* would walk to rallies chanting slogans.⁵⁰³

246. The witness never ate at Muniyazi's house or at the houses belonging to either of Muniyazi's wives.⁵⁰⁴ At no point in time between 7 April and 30 April 1994 did he see members of the Bugarama *Interahamwe* eating at any of Muniyazi's houses.⁵⁰⁵ Muniyazi had two wives, who bought a vehicle together, one named Mama Safi and the other named Mama Rukiya.⁵⁰⁶

Deliberations

247. The Prosecution alleges that Muniyazi contributed to the crimes committed at Nyamashekye, Shangi, and Mibilizi Parishes by transporting the *Interahamwe* to the crime sites, and by feeding them following the massacres.

248. The parties do not dispute that Muniyazi owned four houses. However, the witnesses who testified with respect to paragraph 10 of the Indictment referred, often without clear distinction, to various houses and wives. Therefore, the Trial Chamber will attempt to clarify Muniyazi's domestic arrangements. On the basis of the evidence adduced, the Trial Chamber concludes that the house most often cited by the witnesses was located in Misufi *cellule*.⁵⁰⁷ He rented out rooms in this house to a number of tenants. A second house was located close to the customs office near the border with the DRC. Muniyazi claimed that house was still under construction in April 1994 and this was not disputed.⁵⁰⁸ However, the Trial Chamber is unable to conclude on this basis alone that the second house could not have been used. In addition, Muniyazi had two other houses, one for his wife Mama Safi, and one for his second wife.

249. With respect to the identity of the second wife, Muniyazi testified that his two wives in 1994 were named Mama Safi and Mama Zainabu. He divorced Mama Rukiya in 1987 and had no links with her thereafter.⁵⁰⁹ However, Prosecution Witnesses BWX and Musengayire, both of whom were close to Muniyazi, testified that his two wives in 1994 were named Mama Safi and Mama Rukiya. Witness BWW testified that he ate at a house belonging one of Muniyazi's wives named Mama Rukiya. Defence Witness ELB, who was vice president of the *Interahamwe*, also named Mama Rukiya as Muniyazi's second wife in 1994. Witness NKM testified that Mama Rukiya's nickname was Zainabu. Only Defence Witnesses AMB and YMS corroborated Muniyazi's evidence that the second wife was named Zainabu and

⁵⁰² Defence Exhibit 27 (personal identification sheet); T. 17 September 2009 pp. 1-2.

⁵⁰³ T. 17 September 2009 pp. 8-9, 12, 16-17.

⁵⁰⁴ T. 17 September 2009 pp. 14-15 ("Rokia" in the transcript).

⁵⁰⁵ T. 17 September 2009 pp. 14-15.

⁵⁰⁶ T. 17 September 2009 p. 8 ("Rokia" in the transcript).

⁵⁰⁷ Particularly Prosecution Witnesses BWX, Esidras Musengayire and BWW (except when he specified that the house belonged to Mama Rukiya); and Defence Witnesses ELB, ABM, YMC, YMS, and Muniyazi.

⁵⁰⁸ T. 14 October 2009 pp. 6, 8-9, 17-18; T. 15 October 2009 p. 60.

⁵⁰⁹ T. 14 October 2009 pp. 3-4.

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not Rukiya. The Trial Chamber does not believe that any of the charges against the accused hinge on this detail, and thus will not make a finding on this issue.

250. Munyakazi testified that he lived in the two houses belonging to his wives,⁵¹⁰ while Witness BWX stated that Munyakazi lived at Misufi in the same compound where he had rooms for rent.⁵¹¹ Again, the Trial Chamber considers it need not make a determination on this issue in order to assess the specific charges against the Accused.

251. The Prosecution's position is that there are Gacaca documents from Misufi and Muko *cellules* charging Munyakazi with crimes similar to those in the Indictment.⁵¹² However, these records are mere *fiches individuelles* and do not allege that Munyakazi provided food or transportation to the Bugarama *Interahamwe*.⁵¹³ Prosecution Exhibit 26 alleges instead that the *Interahamwe* would convene at his house after participating in killing sprees.⁵¹⁴

252. The Trial Chamber finds that the evidence adduced by the Prosecution does not support the allegation that Munyakazi acted in concert with those persons named in paragraph 10 of the Indictment to provide food and transport to the Bugarama *Interahamwe*.⁵¹⁵ However, the Chamber will determine whether Munyakazi is more directly liable for providing food and transportation to the Bugarama *Interahamwe*.

Food

253. Two Prosecution witnesses, BWX and BWW, alleged that Munyakazi was involved in the distribution of food to the *Interahamwe*. Only Witness BWX testified that the meals were provided at Munyakazi's house in Misufi *cellule*. Defence Witnesses ELB, ABM, YMC and YMS⁵¹⁶ all testified that the persons living in this particular house were all paying tenants. Prosecution Witnesses BWX, BWW and Esidras Musengayire corroborated this evidence.

254. Witness BWX, who was in close proximity to Munyakazi's house in Misufi on a daily basis and who said he was treated like a member of Munyakazi's family, testified that approximately five *Interahamwe* who lived in Munyakazi's compound would cook food in the inner courtyard. They would then distribute the food to *Interahamwe* positioned outside the compound. In addition, *Interahamwe* who were not from Bugarama would occasionally eat in the inner courtyard of the compound where the food was prepared. The witness did not specify when this took place.⁵¹⁷

255. Witness BWW, on the other hand, testified that "it was at Rukiya's place that we received meals after work. We referred to it as 'work' because killing Tutsis was considered as a job, and we were very proud of carrying out that job."⁵¹⁸ In particular, he claimed that the *Interahamwe* had meals at Mama Rukiya's house following the attacks on Shangi and

⁵¹⁰ T. 14 October 2009 pp. 2-4.

⁵¹¹ T. 24 April 2009 p.15, 16; T. 27 April 2009 p.35 (closed session).

⁵¹² T. 15 October 2009 pp. 36-37; Prosecution Closing Brief paras. 60-61.

⁵¹³ Prosecution Exhibit 26 and 27 (*Gacaca Fiches Individuelles* with respect to Munyakazi); T. 15 October 2009 pp. 33, 35-36, 38-39.

⁵¹⁴ Prosecution Exhibit 26, *Fiche Individuelle*, ERN 10469036.

⁵¹⁵ Indictment para 10 ZACHARIE alias MARIYO, SEBATWARE Marcel, NDOLIMANA Casimir, MUGUNDA Thomas, NGARUKIYE Emmanuel, BAKUNDUKIZE Elias.

⁵¹⁶ T. 27 April 2009 pp. 35-36 (closed session); T. 17 September 2009 p. 3; T. 10 September 2009 pp. 8, 34; T. 14 September 2009 pp. 7, 31-32.

⁵¹⁷ T. 27 April 2009 pp. 36-37.

⁵¹⁸ T. 29 May 2009 p. 28 (closed session).

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Mibilizi Parishes.⁵¹⁹ He added that Mama Rukiya lived near the house by the customs building.⁵²⁰ He did not say whether Muniyaki was present when the food was supplied, and did not say where Mama Rukiya obtained the food.⁵²¹ As discussed above, the Trial Chamber is unable to determine whether Muniyaki's claim that no food could have been provided by him, through Mama Rukiya, because he was no longer married to Rukiya in 1994, is credible. Nevertheless, the Trial Chamber recalls that it treats Witness BWX's testimony with caution because he is an accomplice witness, and further notes that he did not implicate Muniyaki directly in the provision of the food. Thus, it finds that the witness' testimony that Muniyaki provided food to the *Interahamwe* at Rukiya's house must be corroborated.

256. According to Witness BWX, food cooked in the inner courtyard of Muniyaki's house at Misufi was distributed to other *Interahamwe* positioned nearby. He did not see where the food was taken, nor did he ask. The witness provided no foundation for his assertion that the food was distributed to *Interahamwe* positioned elsewhere, and thus the witness' knowledge about the eventual distribution of the food appears to be mere speculation. The Trial Chamber also notes that the witness did not specify when these incidents involving food took place.⁵²² Finally, the evidence does not prove that it was Muniyaki who was responsible for the preparation and distribution of the food at the house in Misufi. Another reasonable inference is that the food was obtained and prepared by tenants of the house who happened to be members of the *Interahamwe*.

257. Witness Esidras Musengayire, who the Trial Chamber has found to be generally credible, did not suggest that Muniyaki fed or provided food to members of the *Interahamwe*. The witness had free access to Muniyaki's house, and was well placed to know of Muniyaki's relationship with the *Interahamwe*. However, the Trial Chamber recalls that the witness was injured and left Bugarama on 7 April 1994, and thus was not aware of what took place after that date.⁵²³

258. Witness BWX testified that he and fellow members of the *Interahamwe* were fed only at the house belonging to Mama Rukiya, which was by the customs building, while Witness BWX said that the food was prepared at Muniyaki's house in Misufi where the tenants lived. This constitutes a significant discrepancy. For the reasons described above, the Trial Chamber is unwilling to rely on the evidence of either witness alone to find that the Muniyaki was responsible for feeding the Bugarama *Interahamwe*.

259. The Trial Chamber concludes that the evidence is not sufficient to lead to the conclusion that Muniyaki provided food for the *Interahamwe*, or was involved in a common plan to do so.

Transportation

260. The Chamber will now turn to the evidence that Muniyaki provided or facilitated the transportation of *Interahamwe* to the Shangi and/or Mibilizi massacre sites. The Trial Chamber notes that the Prosecution has not proven beyond reasonable doubt that Muniyaki participated in the attack on Nyamasheke Parish (see Chapter II.7).

⁵¹⁹ T. 29 May 2009 pp. 28-29 (closed session).

⁵²⁰ T. 29 May 2009 p. 10 (closed session).

⁵²¹ At one point, Witness BWX stated in evidence: 'At Yussuf Muniyaki's residence there was food. But in spite of all that, he could ask for more food that had to be brought to his house for our feeding.' This statement was not clarified. T. 29 May 2009 p. 13.

⁵²² T. 27 April 2009 pp. 36-37 (closed session).

⁵²³ T. 23 April 2009 p. 50.

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261. Prosecution Witnesses BWW, BWU, LCQ, MM and MP all testified that Munyakazi and the Bugarama *Interahamwe* arrived at the Shangi and Mibilizi crime sites aboard two vehicles. Prosecution Witness BWW testified that Munyakazi owned the vehicles in which *Interahamwe* were transported to the parishes.⁵²⁴ Prosecution Witness Esidras Musengayire testified that prior to the 7 April 1994 attack on him the *Interahamwe* travelled in vehicles belonging to the *commune* and state-owned rice farm.⁵²⁵ The Trial Chamber stresses that the Indictment does not allege that Munyakazi used his own vehicles to transport the *Interahamwe* to the crime sites but rather that he “transported or facilitated the transportation” of the *Interahamwe* to these sites.

262. Witness BWW testified that approximately 120 members of the *Interahamwe*, including himself, were transported in Munyakazi’s two Daihatsu vehicles, one white and one blue, to the Shangi and Mibilizi crime sites.⁵²⁶ The Trial Chamber is of the view that the witness has exaggerated the number of *Interahamwe* allegedly transported to the crime sites in the two vehicles. However, this alone does not discredit the testimony as witnesses are often inaccurate regarding numbers, particularly 15 years after events.

263. There were discrepancies, albeit minor ones, in the evidence given by the witnesses describing the vehicles. Witness BWQ saw Munyakazi arrive at the Shangi site in a white Daihatsu, whereas according to Witness BWU, it was a green Daihatsu, with a brown one behind. Witness BWW testified that *Interahamwe* were transported in two Daihatsu vehicles, one blue and one white. According to Witnesses MP and MM, Munyakazi arrived at Mibilizi Parish on 30 April 1994 in two Daihatsu vehicles, although Witness MM’s evidence was hearsay. Witness LCQ saw two vehicles at the Mibilizi attack, one of which was a Daihatsu.⁵²⁷ The Chamber holds that these minor discrepancies may be attributable to the passage of time and the chaos that prevailed at the scene of the crimes.

264. The Defence submits that the Prosecution has adduced no evidence that Munyakazi transported assailants to Shangi Parish, and states that Prosecution Witnesses BWQ, BWR, and BWU only testified that Munyakazi travelled on board a vehicle with *Interahamwe* to Shangi Parish.⁵²⁸ The Defence further argues that there is no evidence that Munyakazi transported attackers to Mibilizi Parish. Prosecution Witness MM did not actually see the vehicles that arrived. Prosecution Witnesses MP and LCQ did not specify who owned the vehicles or whether Munyakazi had any role in providing this transport.⁵²⁹

265. Witness BWX testified that the *Interahamwe* met and boarded the vehicles from Munyakazi’s compound before travelling to commit crimes.⁵³⁰ Witnesses BWQ and BWR both stated that Munyakazi led the attack on Shangi Parish and that they saw him come to the parish accompanied by *Interahamwe* aboard a vehicle. Witnesses MP and LCQ both testified that Munyakazi was the leader of the attack at Mibilizi Parish and that he came to the parish with *Interahamwe* aboard two vehicles. Witness BWW also stated that at Shangi and Mibilizi, Munyakazi came in the company of the *Interahamwe* aboard two vehicles and that he led the attack at these parishes.

266. The Trial Chamber is satisfied that the Bugarama *Interahamwe* arrived at the Shangi and Mibilizi crime sites aboard two vehicles, and in Munyakazi’s company. Whether the

⁵²⁴ Witness Esidras also stated that Munyakazi bought a Daihatsu vehicle just before the genocide.

⁵²⁵ T. 24 April 2009 pp. 2-3, 7.

⁵²⁶ T. 29 May 2009 pp. 11, 17, 20-21.

⁵²⁷ T. 28 April 2009 p. 37.

⁵²⁸ Defence Closing Brief para. 74.

⁵²⁹ Defence Closing Brief para. 105.

⁵³⁰ T. 24 April 2009 pp. 22-24; T. 27 April 2009 p. 38 (closed session).

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vehicles belonged to Munyakazi is immaterial. As will be discussed in further detail below, The Trial Chamber finds that the Prosecution has proven beyond reasonable doubt that Munyakazi was the leader of the attack on Shangi Parish on 29 April 1994, and a leader of the attack on Mibilizi Parish on 30 April 1994. On this basis, the Trial Chamber infers that Munyakazi played a role in facilitating transportation for the Bugarama *Interahamwe* from Bugarama to the two crime sites.

Conclusion

267. The Trial Chamber concludes that the Prosecution has not proven beyond reasonable doubt that Munyakazi provided food to the *Interahamwe* between January and July 1994. However, it is satisfied that the overall evidence establishes that Munyakazi had a role in facilitating the transportation of the Bugarama *Interahamwe* to and from Shangi and Mibilizi Parishes on 29 and 30 April 1994, respectively.

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7. ATTACK ON NYAMASHEKE PARISH, 16 APRIL 1994

268. Paragraph 12 of the Indictment reads as follows:

On or about 16 April 1994, Yussuf MUNYAKAZI, with the Bugarama *interahamwe*, attacked and killed hundreds of Tutsi civilians who had sought refuge at Nyamasheke [sic] Parish, Kagano *commune*, Cyangugu *prefecture*, using firearms and traditional weapons. Yussuf MUNYAKAZI transported the *interahamwe* to Nyamasheke [sic] Parish and personally shot at the Tutsi civilians during the attack.

269. The Prosecution relies on the testimony of Witnesses LAY and BWP.⁵³¹

270. The Defence argues that no attack took place on 16 April 1994 at Nyamasheke Parish, and relies on Witnesses Thomas Nahimana, MBRE, YCH, YCC, ELB and Théobald Gakwaya Rwaka. It further relies on Munyakazi's alibi for this date.⁵³²

Evidence-Nyamasheke Parish

Prosecution Witness LAY

271. Witness LAY, a Tutsi, worked in Nyamasheke and was a member of the Liberal Party in 1994.⁵³³ He knew Munyakazi because Munyakazi would often stop in Nyamasheke on his way to and from political rallies in 1993. Each time Munyakazi passed through the town, tensions rose between the political parties.⁵³⁴

272. On Saturday, 9 April 1994, the witness' house was attacked. He sought refuge at Nyamasheke Parish, and his family joined him later. There were other refugees at the parish and more continued to arrive after him.⁵³⁵ On 13 and 15 April 1994, the local residents of Kagano attacked the refugees at the parish. These attacks were led by a *sous-préfet* and other local political leaders. The witness' entire family was killed during the attack on 15 April 1994.⁵³⁶

273. On 16 April 1994, the witness was inside the church standing on a platform. From that vantage point, he could see through the window what was taking place outside the church. The attack began at around 6:30 a.m. Residents of Kagano and members of the *Interahamwe* participated in the attack.⁵³⁷ Although the witness was not wearing a watch at the time, he believed that Munyakazi arrived between 9:00 a.m. and 10:00 a.m. with a group of *Interahamwe*.⁵³⁸ The witness could not hear what Munyakazi was saying but saw him talking to the "authorities" already at the scene, some of whom the witness named.⁵³⁹

274. Following Munyakazi's arrival, the attackers broke down the church doors. The witness heard a voice among the attackers telling the women and children to leave the church and not to be afraid; however, he could not identify the speaker. As soon as the women and

⁵³¹ Indictment para. 12; Prosecution Closing Brief paras. 64-68, 124-129, 143-146.

⁵³² Defence Closing Brief paras. 49-72, 163-167.

⁵³³ Prosecution Exhibit 4 (personal identification sheet); T. 23 April 2009 p. 22.

⁵³⁴ T. 23 April 2009 pp. 22-23, 39-40.

⁵³⁵ T. 23 April 2009 pp. 23-24.

⁵³⁶ T. 23 April 2009 pp. 25-26.

⁵³⁷ T. 23 April 2009 p. 26.

⁵³⁸ T. 23 April 2009 pp. 26-27.

⁵³⁹ T. 23 April 2009 pp. 27-28.

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children emerged from the church, they were killed by the attackers. Muniyaki was standing at the entrance to the church.⁵⁴⁰

275. The attackers then entered the church. The witness was standing 15 to 20 metres from Muniyaki and could still see him.⁵⁴¹ Inside the church, Muniyaki led the *Interahamwe*. He was carrying a pistol.⁵⁴² Although the witness first testified that Muniyaki was issuing orders to the attackers,⁵⁴³ he later clarified that he heard orders being given at a time when he could see Muniyaki surrounded by *Interahamwe*.⁵⁴⁴ The attack lasted until approximately 2:00 p.m.⁵⁴⁵ The attackers first used grenades and firearms, before setting refugees on fire using petrol.⁵⁴⁶ They then attacked the refugees with traditional weapons.⁵⁴⁷ At some point, the witness fell among the bodies of the refugees and passed out.⁵⁴⁸

276. The witness could not give an estimate of the number of refugees killed during each of the three attacks but stated that 45,000 bodies from the parish were buried in 1995.⁵⁴⁹

Prosecution Witness BWP

277. Witness BWP, a Tutsi, lived in Kagano *commune*, Cyangugu *préfecture*, in April 1994. The witness was 15 or 16 years old at the time.⁵⁵⁰ The witness saw Muniyaki twice in 1993 as Muniyaki passed through Nyamasheke on the way to and from MRND rallies in Kirambo.⁵⁵¹ Each time, Muniyaki stopped to talk with the local population, and each time he was surrounded by members of the MRND.⁵⁵²

278. The witness and his family sought refuge at Nyamasheke Parish on Monday, 11 April 1994, and remained there until 16 April 1994.⁵⁵³

279. Using traditional weapons, the local population of Kagano attacked the refugees at the parish on 13 April 1994.⁵⁵⁴ On 15 April 1994, communal police officers and demobilised soldiers joined the Kagano local population in attacking the parish again.⁵⁵⁵ Approximately 20 refugees were killed during the attack that took place on 13 April.⁵⁵⁶ Many more died during the 15 April attack but the witness could not provide an estimate.⁵⁵⁷ The refugees who managed to survive hid inside the church and spent the night there.⁵⁵⁸ The witness estimated that there were approximately 2,250 refugees in the church during the 16 April attack.⁵⁵⁹

⁵⁴⁰ T. 23 April 2009 pp. 29, 36-37.

⁵⁴¹ T. 23 April 2009 p. 30.

⁵⁴² T. 23 April 2009 p. 31.

⁵⁴³ T. 23 April 2009 pp. 30-31.

⁵⁴⁴ T. 23 April 2009 pp. 45-46.

⁵⁴⁵ T. 23 April 2009 p. 31.

⁵⁴⁶ T. 23 April 2009 pp. 32, 37-38.

⁵⁴⁷ T. 23 April 2009 p. 38.

⁵⁴⁸ T. 23 April 2009 pp. 31-32.

⁵⁴⁹ T. 23 April 2009 pp. 31, 34-36.

⁵⁵⁰ Prosecution Exhibit 3 (personal identification sheet); T. 23 April 2009 p. 2.

⁵⁵¹ T. 23 April 2009 pp. 2, 7.

⁵⁵² T. 23 April 2009 pp. 2, 8, 10.

⁵⁵³ T. 23 April 2009 p. 3.

⁵⁵⁴ T. 23 April 2009 p. 5.

⁵⁵⁵ T. 23 April 2009 p. 5.

⁵⁵⁶ T. 23 April 2009 pp. 5, 11-12.

⁵⁵⁷ T. 23 April 2009 p. 6.

⁵⁵⁸ T. 23 April 2009 p. 3.

⁵⁵⁹ T. 23 April 2009 p. 7.

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280. On 16 April 1994, the attack started at 6:00 a.m. During the initial stages of the attack, the refugees were able to hold back the assailants, who were Hutus from Kagano commune.⁵⁶⁰ Several hours later, the refugees who were posted by the doors, and could see what was taking place at Kabeza Centre, informed the other refugees that Munyakazi was on his way to the parish.⁵⁶¹

281. About half an hour later, at approximately 10:00 a.m., they heard the sound of whistles and drums. At that time, a group of *Interahamwe* led by Munyakazi arrived at the parish.⁵⁶² When the refugees heard the attackers arrive, they blocked the doors of the church with benches. However, twenty minutes later, the attackers were able to break down the doors. The *Interahamwe* ordered the women and children out of the church and killed them.⁵⁶³ The attackers used firearms, traditional weapons, and grenades.⁵⁶⁴ The witness was approximately five to ten metres from Munyakazi at the time and could see him for about 30 minutes.⁵⁶⁵ Among the attackers that day was a man named Pima, who led a group of assailants from Gafunzo.⁵⁶⁶

282. Munyakazi had a pistol and was the first person to fire into the church after the women and children were killed.⁵⁶⁷ Other members of the *Interahamwe* then followed suit.⁵⁶⁸ While he was lying under the corpses, the witness continued to hear the sound of gunshots and grenades.⁵⁶⁹ He also smelled petrol and heard the sound of bodies exploding.⁵⁷⁰ The *Interahamwe* began firing on the refugees approximately 40 minutes after arriving at the parish.⁵⁷¹ That evening, the witness emerged from among the corpses and went to seek refuge with a friend.⁵⁷²

Yussuf Munyakazi

283. Munyakazi denied participating in any attack on Nyamasheke Parish.⁵⁷³ On the morning of 16 April 1994, Munyakazi and his neighbours were busy organising Esidras Musengayire's evacuation to the DRC.⁵⁷⁴ They decided that a man named André Nyirimibibi would travel with Esidras, and Munyakazi would wait in Bugarama to hear whether their trip had been successful.⁵⁷⁵ At approximately 11:00 a.m., André returned and reported that the trip had been a success.⁵⁷⁶ Later, at approximately 5:00 p.m., Munyakazi left for the CIMERWA cement factory after hearing that his former neighbour, Isaac Burege, had been

⁵⁶⁰ T. 23 April 2009 pp. 3, 12.

⁵⁶¹ T. 23 April 2009 p. 12-13.

⁵⁶² T. 23 April 2009 pp. 3-4, 13.

⁵⁶³ T. 23 April 2009 pp. 4, 6-7.

⁵⁶⁴ T. 23 April 2009 p. 7.

⁵⁶⁵ T. 23 April 2009 pp. 4-5.

⁵⁶⁶ T. 23 April 2009 p. 14.

⁵⁶⁷ T. 23 April 2009 pp. 4, 13.

⁵⁶⁸ T. 23 April 2009 p. 13.

⁵⁶⁹ T. 23 April 2009 p. 14.

⁵⁷⁰ T. 23 April 2009 p. 16.

⁵⁷¹ T. 23 April 2009 p. 4.

⁵⁷² T. 23 April 2009 p. 5; T. 23 April 2009 p. 18 (closed session).

⁵⁷³ T. 14 October 2009 pp. 47-49.

⁵⁷⁴ T. 14 October 2009 pp. 44.

⁵⁷⁵ T. 14 October 2009 pp. 44-45, 47-48.

⁵⁷⁶ T. 14 October 2009 p. 45.

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killed near there. When he arrived, he found that Isaac was in fact dead, but his wife and children were alive. Munyakazi brought them back to his home to save them.⁵⁷⁷

Defence Witness Thomas Nahimana

284. Witness Thomas Nahimana, a Hutu, was a vicar at Nyamasheke Parish in 1999.⁵⁷⁸ During this period, he was able to speak with Father Ubald and Father Apollinaire, who were at Nyamasheke Parish in April 1994. The witness also obtained information about the events of April 1994 during the period he worked for the Ecclesiastical Peace, Unity and Justice Commission.⁵⁷⁹ Fathers Ubald and Apollinaire told the witness that Pima and his associates were responsible for the attacks on Nyamasheke Parish.⁵⁸⁰ Munyakazi's name was never mentioned in connection with attacks on the parish.⁵⁸¹

Defence Witness MBRE

285. Witness MBRE, a Hutu, lived in Mukinja *secteur* in 1994 and was an agricultural instructor.⁵⁸² His office was in the Nyamasheke communal office, which was located within the Kabeza Trading Centre, 500 metres, or a five minute walk, from Nyamasheke Parish.⁵⁸³

286. On 13 April 1994, a meeting was held between the *bourgmestre*, Bishop Thaddée Ntihinyurwa, the *préfet*, and the local population who were interested in attacking the parish. After that meeting, the witness saw everyone leave the communal office except the bishop and the *bourgmestre*. The next day, the bishop left, taking with him the priests who were at the parish.⁵⁸⁴

287. On 14 April 1994, once the bishop departed, the witness went home. At approximately 5:00 p.m. that day, he heard gunshots and explosions.⁵⁸⁵ This continued throughout the night until around 8:00 or 9:00 p.m. the following evening, 15 April 1994. He subsequently learned that there had been an attack on the parish.⁵⁸⁶

288. On 16 April 1994, the witness was in the communal office, and later at the Kabeza Centre, from 7:30 a.m. until 2:00 p.m. He did not hear or see any attack on the parish that day. He did not see Munyakazi in the parish or at the communal office and did not hear anyone mention Munyakazi's name in relation to an attack that day.⁵⁸⁷

Defence Witness YCH

289. Witness YCH, a Hutu, lived in Gakomeye *cellule*, Mukinja *secteur* in Kagano *commune*. He is a Catholic and was a member of Nyamasheke Parish.⁵⁸⁸ He went to the parish twice a week, in April 1994. He recalled visiting the parish on 13 April 1994, to care

⁵⁷⁷ T. 14 October 2009 p. 48.

⁵⁷⁸ Defence Exhibit 13 (personal identification sheet); T. 2 September 2009 pp. 4, 15.

⁵⁷⁹ T. 2 September 2009 pp. 15-16.

⁵⁸⁰ T. 2 September 2009 p. 16.

⁵⁸¹ T. 2 September 2009 p. 16.

⁵⁸² Defence Exhibit 17 (personal identification sheet); T. 7 September 2009 p. 32 (closed session).

⁵⁸³ T. 7 September 2009 p. 32 (closed session); T. 7 September 2009 p. 34.

⁵⁸⁴ T. 7 September 2009 p. 35.

⁵⁸⁵ T. 7 September 2009 p. 35.

⁵⁸⁶ T. 7 September 2009 p. 35-36.

⁵⁸⁷ T. 7 September 2009 pp. 36-37.

⁵⁸⁸ Defence Exhibit 19 (personal identification sheet); T. 8 September 2009 p. 3 (closed session).

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for a friend, Francors Nyiramongi, who was a refugee.⁵⁸⁹ On that day, there was an attempted attack on the parish, which was unsuccessful because the *préfet* intervened.⁵⁹⁰ Following the *préfet*'s intervention, the situation was calm, and the witness was able to contact his friend.⁵⁹¹

290. On 15 April 1994, the witness was at his house, which was quite far from the parish. At around 3:00 p.m. to 4:00 p.m., he heard gunshots. The witness later learned that there had been a large attack on the parish that day.⁵⁹² That evening, the witness met acquaintances of his, former soldiers, in a local pub. The former soldiers bragged about what they had done at the parish and told the witness that a man named Pima led the attack.⁵⁹³

291. The following day, 16 April 1994, the witness went to the communal office. There, policemen told him that they had visited the parish and that there were no survivors.⁵⁹⁴ The policemen also told him that the attackers were led by men named Pima, Kodo, Elias, and Rutagengwa. Pima was from Gafunzo *commune*. Kodo and Elias were natives of Kagano *commune*.⁵⁹⁵

292. On 16 April 1994, the witness was at the communal office from 10:00 a.m. to 2:00 p.m. The communal office was approximately 500 metres from the parish. He saw neither Munyakazi nor his vehicle. He did not hear gunshots or explosions.⁵⁹⁶ He did not hear anyone mention that Munyakazi and Pima went to the parish that day. He was able to see the church on his way home, and saw no attack.⁵⁹⁷ The witness insisted that there was no reason for an attack on 16 April 1994 given that all the refugees were killed the previous day.⁵⁹⁸

Defence Witness YCC

293. Witness YCC, a Hutu, lived five minutes by foot from Nyamasheke Parish and the Kabeza Trading Centre, in April 1994.⁵⁹⁹ The Kabeza Trading Centre was the largest commercial centre in the area, and local residents would gather there to trade information about security in the area.⁶⁰⁰

294. On 15 April 1994, the witness went to the Kabeza Trading Centre in the morning and remained there until 5:00 p.m. From the centre, he was able to watch the attack on Nyamasheke Parish that day, which he said was led by Pima. The attack ended at approximately 4:00 p.m. or 5:00 p.m.; however, the witness only watched the beginning of the attack. He believed there were approximately 2,000 assailants that day. The attackers that came with Pima gathered at the trading centre before proceeding to the parish.⁶⁰¹

295. On 16 April 1994, in the morning, the witness was again at the Kabeza Trading Centre. He testified that he did not witness an attack on Nyamasheke Parish that day.⁶⁰² He believed that there was no purpose for such an attack, as all the refugees had been killed

⁵⁸⁹ T. 8 September 2009 p. 4 (closed session).

⁵⁹⁰ T. 8 September 2009 pp. 6-7.

⁵⁹¹ T. 8 September 2009 p. 7.

⁵⁹² T. 8 September 2009 p. 7.

⁵⁹³ T. 8 September 2009 p. 16.

⁵⁹⁴ T. 8 September 2009 p. 7.

⁵⁹⁵ T. 8 September 2009 p. 8.

⁵⁹⁶ T. 8 September 2009 pp. 8-9.

⁵⁹⁷ T. 8 September 2009 pp. 9-10.

⁵⁹⁸ T. 8 September 2009 pp. 8, 10.

⁵⁹⁹ Defence Exhibit 20 (personal identification sheet); T. 8 September 2009 p. 20 (closed session).

⁶⁰⁰ T. 8 September 2009 p. 26.

⁶⁰¹ T. 8 September 2009 p. 21.

⁶⁰² T. 8 September 2009 pp. 23-24.

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during the attack the previous day by Pima's men.⁶⁰³ Although the witness knew Munyakazi,⁶⁰⁴ he never heard that Munyakazi was in Nyamasheke on 16 April 1994.⁶⁰⁵ He denied that Munyakazi met with others at the parish that day to discuss launching an attack.⁶⁰⁶ Furthermore, he was not aware of any links between Munyakazi and Pima.⁶⁰⁷

Evidence-Attack on the CIMERWA Cement Factory

Prosecution Witness BWB

296. Witness BWB, a Hutu, was a member of the Bugarama *Interahamwe* in 1994. He was convicted by a Gacaca court in Rwanda for participating in the 1994 genocide. He testified that, in committing his crimes, he collaborated primarily with Munyakazi and Tarek Aziz, the latter of whom lived in Munyakazi's house and was Munyakazi's deputy.⁶⁰⁸

297. The witness, together with other members of the Bugarama *Interahamwe*, attacked the CIMERWA cement factory on 16 April 1994. The *Interahamwe* killed Tutsis, "their accomplices," and others who had sought refuge there.⁶⁰⁹ He specifically identified one of his victims as the son of Rwamihigo.⁶¹⁰ The witness participated in three attacks together with the *Interahamwe*, including the attack on CIMERWA. Although he could not recall the dates of the other two attacks, he was certain the attack on CIMERWA occurred on 16 April 1994, because a colleague of his, Samuel Hungurimana, told him the date, and he remembered that the attack took place on a Saturday.⁶¹¹

Defence Witness Théobald Gakwaya Rwaka

298. Witness Théobald Gakwaya Rwaka, a Hutu, worked at the CIMERWA cement factory in Bugarama from 1992 to 1996.⁶¹² In 1994, CIMERWA had approximately 400 employees, not including temporary employees.⁶¹³ During his time at CIMERWA, he was also the national vice president of the Christian Party and was aware of the political structures and personalities in the region.⁶¹⁴

299. The witness was not working when the attack on CIMERWA began on Saturday, 16 April 1994.⁶¹⁵ However, he received a letter from his supervisor requesting that he complete a task and left for his office.⁶¹⁶ When he arrived there at approximately 2:30 p.m., the attack on CIMERWA had begun and was ongoing.⁶¹⁷ The witness testified that he did not see who the attackers were but was later told that they were *Interahamwe*.⁶¹⁸ The witness then fled the area but returned to the factory in July 1994. Upon his return, he wrote a report concluding

⁶⁰³ T. 8 September 2009 p. 23.

⁶⁰⁴ T. 8 September 2009 pp. 21-22.

⁶⁰⁵ T. 8 September 2009 pp. 23-24.

⁶⁰⁶ T. 8 September 2009 p. 24.

⁶⁰⁷ T. 8 September 2009 p. 26.

⁶⁰⁸ Defence Exhibit 27 (personal identification sheet); T. 29 May 2009 pp. 6-8.

⁶⁰⁹ T. 29 May 2009 p. 14 (closed session).

⁶¹⁰ T. 29 May 2009 pp. 6-7 (closed session).

⁶¹¹ T. 29 May 2009 pp. 14-15 (closed session).

⁶¹² Defence Exhibit 26 (personal identification sheet); T. 16 September 2009 pp. 3, 26-28.

⁶¹³ T. 16 September 2009 p. 25.

⁶¹⁴ T. 16 September 2009 p. 5.

⁶¹⁵ T. 16 September 2009 p. 18.

⁶¹⁶ T. 16 September 2009 pp. 18-19.

⁶¹⁷ T. 16 September 2009 p. 19.

⁶¹⁸ T. 16 September 2009 p. 20.

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that 50 persons had been killed in the 16 April 1994 attack on CIMERWA, and that the attack had been led and perpetrated by Tarek Aziz and the *Interahamwe*.⁶¹⁹ The witness testified that after the genocide he worked with a human rights NGO, and that he never heard allegations against Munyakazi.⁶²⁰

Defence Witness ELB

300. Witness ELB, a Hutu, was the vice president of the Bugarama *Interahamwe* in April 1994.⁶²¹ He testified that the Bugarama *Interahamwe* never participated in an attack on Nyamasheke Parish. On 16 April 1994, the witness, together with the Bugarama *Interahamwe*, attacked the CIMERWA Cement Factory in Bugarama. That attack began at 8:00 a.m. and ended that evening; thus, the Bugarama *Interahamwe* could not have been in Nyamasheke that day. The *Interahamwe* travelled the eight kilometres between Cité Bugarama and CIMERWA on foot.⁶²²

Deliberations

301. The Prosecution presented two witnesses, Witnesses LAY and BWP, to establish Munyakazi's involvement in the attack at Nyamasheke Parish on 16 April 1994. Both of these witnesses were survivors of the attack and placed Munyakazi at the scene. The Defence offered five witnesses who all claimed that Munyakazi did not participate in the attack. Defence Witness Thomas Nahimana acknowledged that attacks took place at Nyamasheke Parish but did not cite specific dates. Defence Witnesses MBRE, YCC, and YCH claimed that there was no attack on 16 April, but that an attack took place on 15 April 1994. Munyakazi testified that he did not participate in the attack and was helping neighbours on that day. The Trial Chamber will also consider the evidence concerning the attack on the CIMERWA Cement factory because it took place on 16 April 1994 and is relevant to Munyakazi's possible whereabouts on that day.

302. Prosecution Witnesses LAY and BWP offered corroborating accounts of the attack at Nyamasheke Parish on 16 April. Both testified that an initial attack took place around 6:00 a.m., which the refugees were able to repel; that around 9:00 to 11:00 a.m., Munyakazi arrived with other members of the *Interahamwe* and broke through the church doors; that the women and children were ordered outside the church and killed; and that the attackers then entered the church and killed the remaining refugees.⁶²³ The witnesses' accounts are consistent with one another and there are no material discrepancies between their testimonies.⁶²⁴ It is the view of the Trial Chamber that both witnesses were generally credible and reliable.

303. However, the Trial Chamber notes that Witness LAY was evasive concerning his knowledge of Witness BWP. When asked, the witness did not directly answer whether he knew Witness BWP. Only once the Presiding Judge intervened, did the witness say that

⁶¹⁹ T. 16 September 2009 pp. 21-23, 29.

⁶²⁰ T. 16 September 2009 p. 17.

⁶²¹ Defence Exhibit 27 (personal identification sheet); T. 17 September 2009 pp. 1-2.

⁶²² T. 17 September 2009 pp. 11-12.

⁶²³ T. 23 April 2009 pp. 3-6, 11-12, 23-27, 29-30.

⁶²⁴ T. 23 April 2009 pp. 3-6, 31. Witness BWP testified that Munyakazi carried a pistol, was the first to shoot into the church and fired on refugees inside the church. Witness LAY testified that Munyakazi carried a pistol but did not know whether he used it.

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Witness BWP was a member of the Nyamasheke population.⁶²⁵ The Trial Chamber notes this issue with some concern.

304. Defence Witnesses MBRE, YCC, and YCH all testified that there was no attack on Nyamasheke Parish on 16 April 1994. None of these witnesses were present at Nyamasheke Parish that day. However, all three lived and worked around the parish, and all three said that they were in and around the Kabeza Centre on 16 April 1994. The Trial Chamber notes that Prosecution Witness BWP testified that the Kabeza Centre was visible from the entrance of Nyamasheke Parish.⁶²⁶ Thus, the testimonies of these Defence witnesses that no attack took place on 16 April cannot be discredited on the basis that they were not in a position to see what was taking place at the parish that day.

305. Defence Witness Thomas Nahimana corroborated the evidence of Defence Witnesses YCC, YCH and MBRE that Pima was responsible for the attacks on Nyamasheke Parish.⁶²⁷ However, his testimony is based on hearsay, as he was not present in the area during the attacks.⁶²⁸ Additionally, he did not know the precise dates of the attacks on Nyamasheke Parish.⁶²⁹

306. The Trial Chamber recalls that it has already found Munyakazi's alibi to be unreliable. Therefore, it will not figure into the present analysis (see Chapter II.2).

307. In considering whether Munyakazi participated in the Nyamasheke Parish attack, the Trial Chamber is not limited by the arguments submitted by the Prosecution and Defence. In particular, the Trial Chamber will consider the evidence about the attack on CIMERWA on 16 April 1994, which neither party referred to in their Closing Briefs, insofar as it relates to the attack on Nyamasheke Parish. The Trial Chamber recognises that the evidence regarding this attack is not consistent with either party's theory of the case, but the theories advanced by the parties do not bind the Trial Chamber in its analysis of the evidence.

308. Both Prosecution and Defence Witnesses testified that a group of *Interahamwe* attacked CIMERWA on 16 April 1994. As these witnesses do not appear to have had a motive to manufacture such evidence, the Trial Chamber is satisfied that this attack did indeed take place on 16 April 1994. The Trial Chamber will consider the implications of this finding on its analysis of the events alleged by the Prosecution in paragraph 12 of the Indictment.

309. Defence Witness ELB testified that he was one of the *Interahamwe*⁶³⁰ who attacked CIMERWA on 16 April. He testified that the attack began at 8:00 a.m. and continued until nightfall. Therefore, he believed that the Bugarama *Interahamwe* could not have been involved in an attack anywhere else that day.⁶³¹ The Trial Chamber views his testimony with caution. Although the witness confessed that he was the vice president of the Bugarama *Interahamwe*,⁶³² he only conceded to having participated in the 16 April 1994 attack on

⁶²⁵ T. 23 April 2009 p. 44 (closed session); T. 23 April 2009 p. 45.

⁶²⁶ T. 23 April 2009 p. 12. The witness testified: "Refugees who were at the parish had been posted in front of the church near the doors, and they could see what was happening at the Kabeza Centre, and those were the people who told us that Munyakazi was coming... They talked and we heard what they were saying. You know, when you are in front of the church, you can see what is happening in the Kabeza Centre."

⁶²⁷ T. 2 September 2009 p. 16.

⁶²⁸ T. 2 September 2009 p. 32.

⁶²⁹ T. 2 September 2009 p. 32.

⁶³⁰ T. 17 September 2009 p. 2.

⁶³¹ T. 17 September 2009 pp.11-12.

⁶³² T. 17 September 2009 p. 2.

CIMERWA.⁶³³ The Trial Chamber is mindful that the witness may have tried to minimise the role of the Bugarama *Interahamwe* overall in order to diminish his own role in the April 1994 events in Cyangugu *préfecture*.

310. Defence Witness Théobald Gakwaya Rwaka worked at CIMERWA in April of 1994.⁶³⁴ He witnessed the attack on 16 April and later filed a report stating that 50 people were killed.⁶³⁵ The witness testified that the attack happened on a Saturday and was in progress when he arrived at CIMERWA at 2:30 p.m.⁶³⁶ He had heard that the *Interahamwe* members, under the command of Tarek Aziz, were responsible for the attack.⁶³⁷ The Trial Chamber notes that the witness' knowledge of the assailants is based on hearsay.

311. Prosecution Witness BWB was convicted of genocide for his participation in the events of April 1994.⁶³⁸ The witness testified that he and the Bugarama *Interahamwe* participated in three attacks in April 1994: The 16 April 1994 attack on the CIMERWA factory and two later attacks on Shangi and Mibilizi Parishes.⁶³⁹ According to the witness, Munyakazi was the leader of the Bugarama *Interahamwe*,⁶⁴⁰ and Tarek Aziz was his deputy.⁶⁴¹

312. CIMERWA was eight kilometres from Bugarama centre,⁶⁴² and Nyamasheke Parish was approximately 85 kilometres from Bugarama.⁶⁴³ The Trial Chamber observes that the Prosecution evidence does not suggest that Munyakazi participated in the attack on Nyamasheke Parish, and then went on to attack CIMERWA. Nor has it adduced any evidence that there were two or more factions within the Bugarama *Interahamwe*, enabling one faction to attack CIMERWA while another group was attacking Nyamasheke Parish.

313. The Trial Chamber further observes that the two accomplice witnesses who confessed to having been members of the Bugarama *Interahamwe*, Prosecution Witness BWB and Defence Witness ELB, both confessed to having participated in the attack on CIMERWA. Neither testified that the Bugarama *Interahamwe* was involved in a separate attack on Nyamasheke Parish that same day. The Prosecution has alleged that Munyakazi worked together with the Bugarama *Interahamwe*, and indeed has shown, as will be discussed later, that he did so at Shangi and Mibilizi Parishes. The Prosecution has not adequately shown why Munyakazi would abandon this *modus operandi* at Nyamasheke.

314. Thus the following questions arise: 1) Why would Munyakazi have been involved in an attack on Nyamasheke Parish, which was relatively far from Bugarama, when the Bugarama *Interahamwe* were attacking CIMERWA so close to Bugarama? 2) With whom

⁶³³ T. 17 September 2009 pp.11-12.

⁶³⁴ T. 16 September 2009 p. 3: The witness testified that he worked at the CIMERWA from 1992 to 1996.

⁶³⁵ T. 16 September 2009 pp. 19, 28-29.

⁶³⁶ T. 16 September 2009 p. 19.

⁶³⁷ T. 16 September 2009 p. 29.

⁶³⁸ T. 29 May 2009 p. 6 (closed session).

⁶³⁹ T. 29 May 2009 pp. 14-15 (closed session): There is some confusion in the testimony about the sequence of events. The witness stated that Shangi Parish was the first attack in which the Bugarama *Interahamwe* participated and that it took place towards the end of April. Later he asserted that the attack at CIMERWA took place on 16 April, and testified that the attacks on Shangi and Mibilizi Parishes took place at the end of month.

⁶⁴⁰ T. 29 May 2009 p. 16 (closed session).

⁶⁴¹ T. 29 May 2009 p. 7 (closed session).

⁶⁴² T. 17 September 2009 p. 11.

⁶⁴³ Prosecution Witness MM, T. 28 April 2009, p. 3; Munyakazi, T. 15 October 2009 p.33 Stated that the distance between his locality and Nyamasheke is about 80 to 90 kilometres.

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would Munyakazi have attacked Nyamasheke Parish, when it is clear that some or all of the Bugarama *Interahamwe* were involved in the attack on CIMERWA that same day?

315. While the Trial Chamber found both Prosecution witnesses to be credible and reliable, in considering the evidence, the Trial Chamber cannot ignore that circumstances at Nyamasheke Parish in April 1994 were chaotic, and that the witnesses may therefore have been mistaken regarding dates and details.

Conclusion

316. In assessing the totality of the evidence, including the unanswered questions regarding the attack on CIMERWA and the Defence evidence that no attack took place at Nyamasheke Parish on 16 April 1994, the Trial Chamber finds that the Trial Chamber has a reasonable doubt regarding Munyakazi's participation in the Nyamasheke attack. Thus, the Prosecution has not proven that Yussuf Munyakazi participated in an attack at Nyamasheke Parish on 16 April 1994, as alleged in the Indictment.

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8. ATTACK ON SHANGI PARISH, 29 APRIL 1994

317. Paragraph 13 of the Indictment reads:

On or about 29 April 1994, Yussuf MUNYAKAZI, with the Bugarama *Interahamwe*, attacked and killed hundreds of Tutsi civilians who had sought refuge at Shangi Parish, Gafunzo *commune*, Cyangugu *prefecture*, using firearms and traditional weapons. Yussuf MUNYAKAZI transported the *Interahamwe* to Shangi Parish and personally shot and killed several Tutsi civilians during the attack.

318. The Prosecution relies on the evidence of Witnesses BWQ, BWR, BWU, BWW, MP and MM.⁶⁴⁴

319. The Defence does not dispute that an attack took place on Shangi Parish on 29 April 1994 but denies Munyakazi's participation in the attack. It relies on Munyakazi's alibi for that date and the evidence of Witnesses ELB, YCI and Faustin Ntakirutimana.⁶⁴⁵

Evidence

Prosecution Witness BWQ

320. Witness BWQ, a Tutsi farmer, lived in Shangi *secteur* in April 1994,⁶⁴⁶ and was a member of the MRND.⁶⁴⁷ In 1993, the witness saw Munyakazi twice at political functions in Gafunzo *commune* and then in 1994 during the attack on Shangi Parish. He identified Yussuf Munyakazi in court.⁶⁴⁸

321. Following the crash of President Habyarimana's plane, the Hutus claimed the plane had been shot down by the Tutsis. In order to avoid reprisal attacks by Hutus, the Tutsis fled their homes and businesses. The witness sought refuge at Shangi Parish with his wife, three children, and other family members.⁶⁴⁹ The first refugees arrived on Friday 7 April 1994, and when the witness arrived at Shangi Parish approximately 20 refugees were already there.⁶⁵⁰ By the following morning about 300 refugees had arrived at the Shangi Parish and this number increased continuously.⁶⁵¹

322. Between 13 and 29 April 1994, there were multiple attacks on Shangi Parish. On 13 April 1994, there was a large-scale attack led by a certain Pima. Approximately 2,000 refugees were killed during that attack.⁶⁵² The witness cannot recall the number of attacks that occurred between 13 April and 29 April on Shangi Parish, but stated that rarely two days went by without an attack.⁶⁵³

323. On 29 April 1994, the witness saw Munyakazi at Shangi Parish between 3:00 p.m. and 4:00 p.m. Munyakazi arrived at Shangi Parish in a white Daihatsu truck accompanied by about 40 *Interahamwe* from Bugarama who were armed with guns. Munyakazi was wearing a

⁶⁴⁴ Indictment para. 13; Prosecution Closing Brief paras. 69-77, 130-133, 147-149

⁶⁴⁵ Defence Closing Brief paras. 73-103, 168-173.

⁶⁴⁶ Prosecution Exhibit 1 (personal identification sheet); T. 22 April 2009 p. 10 (closed session).

⁶⁴⁷ T. 22 April 2009 pp. 18-19.

⁶⁴⁸ T. 22 April 2009 pp. 11, 17.

⁶⁴⁹ T. 22 April 2009 p. 12.

⁶⁵⁰ T. 22 April 2009 p. 21.

⁶⁵¹ T. 22 April 2009 pp. 12, 21.

⁶⁵² T. 22 April 2009 pp. 13, 21.

⁶⁵³ T. 22 April 2009 p. 22.

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pair of trousers and a long jacket that came right down to his knees. Some of the assailants wore ordinary clothes while others were bare-chested and still others had branches on their heads.⁶⁵⁴

324. Munyakazi arrived with two bodyguards and was armed with a shotgun.⁶⁵⁵ The witness identified the men accompanying Munyakazi as bodyguards because Munyakazi was walking ahead of them, and they accompanied him to the residence of the mother superior.⁶⁵⁶

325. Munyakazi asked the witness what he and others were doing at the parish. The witness responded that they came to seek refuge at Shangi. Munyakazi told the witness to tell the other refugees to get into the church so that he and his men could provide security for the refugees. Munyakazi then asked the witness where the mother superior was. The witness led him to the mother superior's house where he left Munyakazi before returning to the church.⁶⁵⁷

326. The main doors to the church were locked so the witness used the back door to enter the church. There he saw approximately 5,000 refugees. The witness then heard gunshots and saw that the refugees in the backyard were being fired upon by the men wearing branches and plants. Munyakazi was standing by a side door while other guards were trying to break down the door.⁶⁵⁸ The witness was able to see the killings through ventilation holes in the walls of the church.⁶⁵⁹

327. The witness got close to the main door of the church and saw Munyakazi and his escort firing at the doors of the church. The witness was able to see Munyakazi's face.⁶⁶⁰ Then he moved towards the middle of the church.⁶⁶¹ The attackers smashed in all the doors, and Munyakazi was standing by the side door, while the attackers were lobbing grenades.⁶⁶² The witness testified that he was near the altar, and so was not injured by the grenades.⁶⁶³ Munyakazi led the attack and members of the local population took part.⁶⁶⁴ Witness BWQ stated that he did not see Munyakazi killing anyone himself.⁶⁶⁵

328. The assailants later hit the witness with a spiked club and he lost consciousness. Both of the witness' hands were broken during this attack. The witness regained consciousness at around 3:00 a.m. on 30 April 1994.⁶⁶⁶ Subsequently, he hid in cypress trees and went to the convent of nuns where his wounds were treated. He was then evacuated to Nyarushishi.⁶⁶⁷

329. The witness did not know how many persons had been killed during the attack. He never saw Munyakazi again.⁶⁶⁸ There were minor attacks on Shangi Parish after the attack of 29 April, but Munyakazi was not present during those attacks.⁶⁶⁹

⁶⁵⁴ T. 22 April 2009 pp. 13-14.

⁶⁵⁵ T. 22 April 2009 p. 27.

⁶⁵⁶ T. 22 April 2009 pp. 27-28.

⁶⁵⁷ T. 22 April 2009 pp. 14-15.

⁶⁵⁸ T. 22 April 2009 pp. 14-15.

⁶⁵⁹ T. 22 April 2009 pp. 15, 30-31.

⁶⁶⁰ T. 22 April 2009 pp. 30-31.

⁶⁶¹ T. 22 April 2009 p. 31.

⁶⁶² T. 22 April 2009 p. 33.

⁶⁶³ T. 22 April 2009 p. 15.

⁶⁶⁴ T. 22 April 2009 pp. 15-16, 22, 32-33.

⁶⁶⁵ T. 22 April 2009 p. 16.

⁶⁶⁶ T. 22 April 2009 p. 16.

⁶⁶⁷ T. 22 April 2009 pp. 16, 26, 29, 32-34.

⁶⁶⁸ T. 22 April 2009 pp. 16, 32.

⁶⁶⁹ T. 22 April 2009 p. 27.

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Prosecution Witness BWR

330. Witness BWR, a Tutsi, lived in Nyakabuye *commune* and worked at CIMERWA in 1994.⁶⁷⁰ Prior to April 1994, the witness saw Munyakazi whenever he went to *Cité Bugarama*.⁶⁷¹ While the witness was working at CIMERWA, Munyakazi would come to the factory, but the witness did not know why he came or what he did there.⁶⁷²

331. The witness regularly went to Shangi Parish, a seven minute walk from his house, to attend mass.⁶⁷³ Following the death of President Habyarimana, there was a general sense of insecurity and the witness fled the area because he no longer felt safe.⁶⁷⁴ On 7 April 1994, the witness' elder brother was killed.⁶⁷⁵ On 9 April, the witness decided to seek refuge at Shangi Parish with his family.⁶⁷⁶ Attacks on the parish began almost as soon as the witness and his family arrived there.⁶⁷⁷ Specifically, the witness recalled an attack on 14 April, led by a certain Pima. The witness was told that Pima was from Gafunzo *commune*.⁶⁷⁸

332. On 29 April 1994, there was a large-scale attack on Shangi Parish led by Munyakazi.⁶⁷⁹ At the time of the attack there were approximately 6,000 refugees in the church; some were outside the church building, some in the presbytery, and others were inside the church building.⁶⁸⁰ As soon as the witness saw Munyakazi at Shangi, he knew that a massacre would ensue.⁶⁸¹ The witness was on the road leading to the Gafunzo communal office when he saw a white vehicle carrying a group of people who were wearing leaves on their heads. He saw Munyakazi get out of the vehicle wearing an overcoat, but could not remember the colour. As the vehicle approached, the witness ran back to the Shangi Parish building to alert the refugees of the imminent attack.⁶⁸²

333. The attack on 29 April 1994 began at approximately 4:00 p.m.⁶⁸³ The witness was able to see what was taking place outside the church through air vents located approximately 50 to 75 centimetres from the church floor.⁶⁸⁴

334. Munyakazi was carrying a small pistol, and the *Interahamwe* were carrying grenades, spiked clubs, swords and spears. They surrounded the church and forced open the doors. Munyakazi began shooting, which the witness believed was a signal to start the attack. The *Interahamwe* then began throwing grenades, and firing shots, at the refugees inside the church. The attackers entered the church and finished off their victims using traditional weapons.⁶⁸⁵ The attack lasted until the evening, and when it was over the witness was too

⁶⁷⁰ Prosecution Exhibit P.2 (personal identification sheet); T. 22 April 2009 p. 41 (closed session), 47.

⁶⁷¹ T. 22 April 2009 p. 42.

⁶⁷² T. 22 April 2009 p. 56.

⁶⁷³ T. 22 April 2009 p. 43.

⁶⁷⁴ T. 22 April 2009 pp.43, 55-56.

⁶⁷⁵ T. 22 April 2009 p. 46.

⁶⁷⁶ T. 22 April 2009 pp. 43, 46, 56-57.

⁶⁷⁷ T. 22 April 2009 pp. 43-44.

⁶⁷⁸ T. 22 April 2009 p. 44.

⁶⁷⁹ T. 22 April 2009 p. 44.

⁶⁸⁰ T. 22 April 2009 pp. 53-54.

⁶⁸¹ T. 22 April 2009 p. 51.

⁶⁸² T. 22 April 2009 pp. 44, 50-51.

⁶⁸³ T. 22 April 2009 p. 45.

⁶⁸⁴ T. 22 April 2009 p. 55.

⁶⁸⁵ T. 22 April 2009 p. 45.

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disoriented to know whether there were any other survivors of the attack.⁶⁸⁶ The witness estimated that approximately 6,000 refugees were killed during the Shangi attack.⁶⁸⁷

Prosecution Witness BWU

335. Witness BWU, a Hutu, was a farmer in 1994. He lived in Shangi *secteur*, Gafunzo *commune* at the time.⁶⁸⁸ The witness saw Muniyazi on two occasions: first, at a meeting at the Kamarampaka stadium in Cyangugu *préfecture* in late 1993; and then at Shangi Parish on 29 April 1994.⁶⁸⁹ The witness acknowledged that he had participated in the attack on Shangi Parish on 29 April 1994, and testified that he had done so together with Muniyazi, the leader of the Bugarama *Interahamwe*.⁶⁹⁰

336. The witness stated that between 12 and 29 April 1994, local residents waged several attacks on Shangi Parish. Tutsis who had sought refuge at the parish were able to resist these first attacks. At some point the local residents realised that they were unable to fight the Tutsis at the parish alone and called for reinforcement.⁶⁹¹ Prior to the attack on 29 April 1994, Étienne Gatamobwa, the local CDR leader, asked for reinforcements at a security meeting in Cyangugu *préfecture*. The authorities promised Gatamobwa that reinforcements would be sent.⁶⁹²

337. On 29 April 1994, at about 3:00 p.m., Muniyazi and the *Interahamwe* arrived at the roadblock at Bushenge Centre manned by the witness and requested to be shown the way to Shangi Parish.⁶⁹³ Muniyazi and his vice president led a group of about 50 or 60 *Interahamwe*. The group at the roadblock informed Muniyazi that the parish was located about a kilometre away from the roadblock. The vehicles drove off at a very slow pace and local residents, including the witness, followed behind.⁶⁹⁴ Approximately 150 to 200 local residents at Bushenge centre joined the group from Bugarama.⁶⁹⁵ Gatamobwa arrived at Shangi Parish after the start of the attack.⁶⁹⁶

338. Along the road to the parish, the assailants stopped at a place called the Rwagataraka Cemetery. Muniyazi ordered them to distinguish themselves from the Tutsis, and the men then disguised themselves with leaves and branches.⁶⁹⁷ Muniyazi and a group of armed *Interahamwe* were in the lead vehicle, a green Daihatsu.⁶⁹⁸ Muniyazi's vice president, and a second group of *Interahamwe*, followed in a second vehicle, a brown Daihatsu.⁶⁹⁹ The attackers subsequently split into two groups; one group attacked the parish from the main facade while the other group attacked from the backyard.⁷⁰⁰

339. Upon arrival at the parish, the two groups of assailants began shooting at the refugees. Some refugees were killed by gunfire; others were finished off with machetes and other

⁶⁸⁶ T. 22 April 2009 pp. 44-45.

⁶⁸⁷ T. 22 April 2009 p. 54.

⁶⁸⁸ Prosecution Exhibit.13 (personal identification sheet); T. 4 June 2009 p. 2.

⁶⁸⁹ T. 4 June 2009 pp.9, 21, 22.

⁶⁹⁰ T. 4 June 2009 pp. 4-6.

⁶⁹¹ T. 4 June 2009 pp. 9, 23, 26.

⁶⁹² T. 4 June 2009 pp. 7, 24.

⁶⁹³ T. 4 June 2009 p. 7.

⁶⁹⁴ T. 4 June 2009 pp. 6-7, 32.

⁶⁹⁵ T. 4 June 2009 pp. 25-26.

⁶⁹⁶ T. 4 June 2009 p. 27.

⁶⁹⁷ T. 4 June 2009 pp. 7-8.

⁶⁹⁸ T. 4 June 2009 p. 27.

⁶⁹⁹ T. 4 June 2009 pp. 9, 27, 28.

⁷⁰⁰ T. 4 June 2009 pp. 7-8, 32.

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weapons. Some refugees were able to lock themselves inside the church. Munyakazi instructed the assailants to "go and get axes so as to break down the doors and finish off the refugees." The attackers borrowed two axes from houses near the church and used them to break down two of the church's four doors.⁷⁰¹ It took the assailants about 30 minutes to force open the doors and enter the church.⁷⁰²

340. After the assailants forced open the doors of the parish, they approached "a fat lady" named Petronilla Nyiramuteteri. She begged them for pity. They told her to "apologise or seek grace from our leader, Yussuf." When she moved towards Munyakazi, he shot and killed her with a pistol. During this incident, other assailants were killing refugees inside the church. The witness stated that he was part of the group who told Petronilla to go and beg for mercy from the leader. Apart from Petronilla, the witness did not see Munyakazi kill anyone else himself.⁷⁰³

341. Prior to the arrival of these reinforcements local residents lacked ammunition. The Bugarama *Interahamwe* was well equipped and came with guns, grenades and over 150 bladed weapons. There were weapons in Munyakazi's vehicles and if any attackers needed weapons, they could get them from the vehicles. The witness himself ran out of ammunition and grenades and thus used a machete.⁷⁰⁴ The witness killed five people during the attack on 29 April 1994. On 30 April, while they were burying the bodies, the attackers discovered people who were hiding at the scene and killed them too.⁷⁰⁵ There were between 8,000 and 12,000 refugees in the parish before the 29 April massacre started,⁷⁰⁶ and between 5,000 and 6,000 refugees were killed on 29 April 1994.⁷⁰⁷

342. The attack started at 3:00 p.m. and ended in the evening when it was getting dark.⁷⁰⁸ Munyakazi was wearing a long coat and a black pair of trousers. His vice president was wearing a long-sleeved shirt and a sleeveless sweater. The *Interahamwe* wore *kitenge* uniforms.⁷⁰⁹ After completing the attack, the CDR leader Gatamobwa spoke with Munyakazi, and gave his vice president money to organise a reception for the attackers.⁷¹⁰

Prosecution Witness BWW

343. Witness BWW, a Hutu, was a member of the Bugarama *Interahamwe* in 1994. He testified that he collaborated primarily with Munyakazi and Tarek Aziz, who lived in Munyakazi's house and was Munyakazi's deputy in committing crimes in 1994.⁷¹¹

344. Towards the end of April 1994, Munyakazi called the *Interahamwe* to an open field near "the cooperative" and instructed them to attack Shangi Parish. Munyakazi's specific instructions to the *Interahamwe* were "that we should go there and do what we were supposed to do and by that, he meant kill Tutsi." They arrived at the parish at approximately 3:00 p.m. and Munyakazi led the attack.⁷¹²

⁷⁰¹ T. 4 June 2009 pp. 8, 24.

⁷⁰² T. 4 June 2009 p. 32.

⁷⁰³ T. 4 June 2009 pp. 8, 31, 32.

⁷⁰⁴ T. 4 June 2009 pp. 28, 29.

⁷⁰⁵ T. 4 June 2009 p. 29.

⁷⁰⁶ T. 4 June 2009 p. 8.

⁷⁰⁷ T. 4 June 2009 p. 30.

⁷⁰⁸ T. 4 June 2009 p. 8.

⁷⁰⁹ T. 4 June 2009 pp. 9, 27-28.

⁷¹⁰ T. 4 June 2009 pp. 8-9.

⁷¹¹ Prosecution Exhibit 12 (personal identification sheet); T. 29 May 2009, pp. 6-7, 9, 23-24.

⁷¹² T. 29 May 2009 pp. 16-17 (closed session).

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345. The witness could not give an estimate of the number of *Interahamwe* who participated in the attack, but believed that up to 120 *Interahamwe* boarded the two Daihatsu vehicles, which ferried them to Shangi. Most of the *Interahamwe* were armed. Witness BWW only had a machete and a club because the rifles and grenades available had already been distributed among the other men.⁷¹³ When they arrived at Shangi, the *Interahamwe* surrounded the parish and climbed over the fence surrounding it. Munyakazi was wearing a black suit and safari type shoes that day. He was carrying a pistol.⁷¹⁴

346. At Shangi Parish, Munyakazi took nine Tutsis out of the group, lined them against the wall and shot them. This incident took place towards the end of the attack, when the witness was resting.⁷¹⁵ The witness killed 20 Tutsis that day.⁷¹⁶ The witness estimated that it took two to three hours to kill all the Tutsis⁷¹⁷ and that the attack ended at approximately 6:30 p.m.⁷¹⁸ He stated that more than 50,000 Tutsis were killed that day.⁷¹⁹ Following the attack, the *Interahamwe* boarded the vehicles they arrived in and travelled to Munyakazi's house where they had a meal.⁷²⁰

Prosecution Witness MP

347. Witness MP, a Hutu, went to the Mibilizi Parish on 7 April 1994, where he estimated there were more than 5,000 refugees.⁷²¹ On 30 April 1994, one of the witness' colleagues telephoned Shangi Parish to get news and heard that Munyakazi and his *Interahamwe* had attacked Shangi Parish the previous day. The witness inferred from this news, and other details, that Munyakazi was also the leader of the assailants who later attacked Mibilizi Parish on 30 April 1994.⁷²²

Prosecution Witness MM

348. Witness MM, a Tutsi, was present at Mibilizi Parish on 30 April 1994. He received a phone call warning those at Mibilizi Parish that Munyakazi was on his way to Mibilizi to kill all the Tutsis, and that he had killed the Tutsis at Shangi Parish.⁷²³

Yussuf Munyakazi

349. A friend of Munyakazi's named Emedeyo Kabungo was killed on 27 April 1994. On 29 April 1994, Munyakazi and his neighbours gathered at his late friend's house for the funeral. The mourning rites lasted three days.⁷²⁴ Munyakazi denied that he had participated in the events at Shangi Parish on 29 April 1994.⁷²⁵

⁷¹³ T. 29 May 2009 pp. 15-17 (closed session).

⁷¹⁴ T. 29 May 2009 pp. 17-18 (closed session).

⁷¹⁵ T. 29 May 2009 pp. 18, 34 (closed session).

⁷¹⁶ T. 29 May 2009 p. 18 (closed session).

⁷¹⁷ T. 29 May 2009 p. 32 (closed session).

⁷¹⁸ T. 29 May 2009 p. 18 (closed session).

⁷¹⁹ T. 29 May 2009 pp. 17, 32 (closed session).

⁷²⁰ T. 29 May 2009 p. 19 (closed session).

⁷²¹ Prosecution Exhibit 7 (personal identification sheet); T. 27 April 2009 pp. 43-44, 45, 46 (closed session).

⁷²² T. 27 April 2009 pp. 48-49.

⁷²³ Prosecution Exhibit 9 (personal identification sheet); T. 27 April 2009 pp. 58-59, 62.

⁷²⁴ T. 15 October 2009 pp. 1-3.

⁷²⁵ T. 15 October 2009 pp. 4-5.

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Defence Witness Faustin Ntakirutimana

350. Witness Faustin Ntakirutimana, a Hutu, was a teacher living in Gafunzo *commune* in 1994.⁷²⁶ He was the president of the youth wing of the MDR party in Gafunzo *commune*, as well as the secretary of the party.⁷²⁷ The witness knew Munyakazi in 1994. Munyakazi was a member of the MRND party.⁷²⁸

351. In April 1994, the witness did not go to Shangi Parish but learned that Tutsis were seen fleeing towards the parish.⁷²⁹ He knew Pima well because he was a close neighbour. The witness was not part of Pima's group, and believed there was no relationship between Pima and Munyakazi.⁷³⁰ The witness learned that Pima, an ex-soldier, forced local residents to join him in attacking Shangi Parish.⁷³¹ The attackers were mainly local youth and demobilised soldiers. After attacking the parish, they would come back and boast about having shot at refugees. The witness heard about two attacks, one between 15 and 20 April 1994 and the other around 29 or 30 April 1994.⁷³²

352. The witness heard from these returning assailants about the second attack, that they opened fire on refugees at Shangi Parish. While some refugees managed to flee, the witness understood that the attack was a significant one.⁷³³

353. Following the genocide in 1994, the witness closely monitored the *Gacaca* proceedings in his area and spoke to a number of his fellow teachers who had survived the attacks on Shangi. Everybody told him that Pima had led the attacks. Munyakazi was not mentioned in any of the proceedings or reports.⁷³⁴ The witness never heard that the Bugarama *Interahamwe* had come to reinforce Pima's group.⁷³⁵

Defence Witness YCI

354. Witness YCI, a Hutu, was a farmer in 1994. He lived in Shangi *secteur* in Gafunzo *commune*, and was married to a Tutsi.⁷³⁶ The witness saw Munyakazi each time he went to Bugarama to buy food.⁷³⁷ He knew the Accused as "Munyakazi the Muslim".⁷³⁸

355. The witness heard the term *Interahamwe* used, but never saw the persons referred to as *Interahamwe*, even though he was a member of the MRND. It was only after the genocide that he learned that it was the *Interahamwe* who attacked Shangi Parish, and that these assailants were his neighbours.⁷³⁹

356. The witness stated that in April 1994, his wife's family sought refuge at his house. He was afraid that his house would be attacked, and, therefore, on 11 and 12 April he sent his

⁷²⁶ Defence Exhibit 14 (personal identification sheet); T.2 September 2009 p. 37.

⁷²⁷ T.2 September 2009 p. 37.

⁷²⁸ T.2 September 2009 p. 37.

⁷²⁹ T.2 September 2009 p. 40.

⁷³⁰ T.2 September 2009 p. 43.

⁷³¹ T.2 September 2009 p. 41.

⁷³² T.2 September 2009 pp. 41-42.

⁷³³ T.2 September 2009 pp. 41-42.

⁷³⁴ T. 2 September 2009 pp. 43-44.

⁷³⁵ T. 2 September 2009 pp. 42, 45.

⁷³⁶ Defence Exhibit 16 (personal identification sheet); T. 7 September 2009 p. 3 (closed session).

⁷³⁷ T. 7 September 2009 p. 5.

⁷³⁸ T. 7 September 2009 pp. 10, 12.

⁷³⁹ T.7 September 2009 p. 18.

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male in-laws to Shangi Parish to seek refuge there. Only the women stayed at his house because the attackers were not attacking women at the time.⁷⁴⁰ The witness brought food to his in-laws at the parish twice a week.⁷⁴¹

357. There were approximately 3,500 to 4,000 refugees at Shangi Parish in April 1994.⁷⁴² In April the *sous-préfet* of the *préfecture*, Théodore Munyengabe, and Father Mategeko went to the parish and took 40 refugees from the parish. The witness was at the parish at the time. No life-threatening attack took place on 13 April 1994, but there was some looting.⁷⁴³ No meetings ever took place at Rwagataraka Cemetery, and the witness never saw the Accused there. Ordinarily, meetings were held at the football field.⁷⁴⁴

358. The large-scale attack on the parish took place on 28 or 29 April 1994. The attackers came through the witness' neighbourhood, near the communal office. The witness, and others who had Tutsi wives, followed the attackers to monitor what was taking place.⁷⁴⁵ The attack started at around 4:00 p.m., and the attackers had guns, grenades and traditional musical instruments. The attackers came on foot, and they were so many that there was no room for vehicles on the road.⁷⁴⁶

359. The witness was able to identify three groups among the attackers: a large group of approximately 500 people from Gafunzo *commune* led by Pima, who was carrying a grenade and a gun; a second group from Mwito *secteur* of approximately 300 people with traditional weapons and drums; and a third group from Bushenge of approximately 200 carrying machetes and clubs.⁷⁴⁷

360. The witness went into hiding when he first heard whistles and drums. However, when he heard gunshots and explosions, he approached the attackers to see what was taking place but then retreated again.⁷⁴⁸ He was able to see the leader, Pima, holding a sword, a man named Mahembe holding a gun and rounding people up, and a man named Miranzi launching grenades into the crowd. At around 7:00 p.m. the witness saw the attackers leaving with bags and sewing machines, and concluded that the attack was over.⁷⁴⁹

361. The following morning, the witness and others who had Tutsi relatives accompanied the *conseiller*, the *bourgmestre* and the communal police to the parish. The *bourgmestre* sent them to get help evacuating those refugees who were still alive.⁷⁵⁰ The witness never heard Munyakazi's name in connection with the attack. The parish was far from Bugarama.⁷⁵¹

Defense Witness ELB

362. Witness ELB, a Hutu, was a member of the Bugarama *Interahamwe* in 1994. He was the vice president of the *Interahamwe* at the *commune* level and Tarek Aziz was the

⁷⁴⁰ T. 7 September 2009 p. 7.

⁷⁴¹ T. 7 September 2009 p. 8.

⁷⁴² T. 7 September 2009 p. 15.

⁷⁴³ T. 7 September 2009 p. 8.

⁷⁴⁴ T. 7 September 2009 p. 10.

⁷⁴⁵ T. 7 September 2009 pp. 8-9, 20.

⁷⁴⁶ T. 7 September 2009 p. 9.

⁷⁴⁷ T. 7 September 2009 pp. 9, 20.

⁷⁴⁸ T. 7 September 2009 pp. 10-11.

⁷⁴⁹ T. 7 September 2009 p. 11.

⁷⁵⁰ T. 7 September 2009 p. 12.

⁷⁵¹ T. 7 September 2009 p. 9.

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president.⁷⁵² The witness was unaware of the attack on Shangi Parish and did not participate in the attack.⁷⁵³ He committed no crimes together with Munyakazi.⁷⁵⁴

Deliberations

Munyakazi's Role at Shangi Parish

363. The Trial Chamber heard four Prosecution witnesses who were present at Shangi Parish on 29 April 1994; two as victims and two as perpetrators. The witnesses all placed Munyakazi at the scene. Two other Prosecution witnesses adduced hearsay evidence about Munyakazi's role in the attack. The Defence does not dispute that an attack took place on Shangi Parish on 29 April 1994, during which large numbers of Tutsi refugees were killed. Three Defence witnesses, one of whom was a partial eyewitness, denied that Munyakazi was involved in the attack. Munyakazi's alibi for this day has been discussed above (see Chapter II.2).

364. The four Prosecution eyewitnesses, BWU, BWU, BWQ and BWR, all provided largely consistent first-hand accounts of the day's events, and agreed on a number of material facts. The witnesses all testified that the massacre that took place at Shangi Parish on 29 April 1994, began between 3:00 p.m. and 4:00 p.m. in the afternoon and ended at nightfall. All stated that Munyakazi was present and that he was accompanied by *Interahamwe*; that Munyakazi was wearing an overcoat and carrying a gun; that the assailants first used firearms before completing the massacre using traditional weapons; and that thousands of Tutsi were killed during the attack.⁷⁵⁵

365. Prosecution Witnesses BWR and BWQ were both refugees at Shangi Parish and survivors of the attack. Although the Trial Chamber has doubts about Witness BWQ's ability to move around the church in the precise manner he described in his testimony,⁷⁵⁶ the Trial Chamber considers his account to be credible and reliable overall. It further considers the evidence of Witness BWR to have been credible and reliable. Witness BWQ testified that Munyakazi played a prominent role in the attack. In particular, he led a delegation that went to speak to the mother superior when the assailants arrived. He deceived the refugees into believing that he and his men had arrived to protect the refugees and not to kill them. Finally, he oversaw the smashing of the parish doors, the last line of defence between the assailants and the refugees.⁷⁵⁷ This latter point was partially corroborated by Witness BWR who testified that the attackers forced open the doors and that Munyakazi was standing with them when this took place. Witness BWR also testified that Munyakazi fired into the church. He believed this was a signal to start the attack.⁷⁵⁸ According to these witnesses, Munyakazi was not a mere bystander at Shangi Parish but the leader of the attack.

366. The Trial Chamber recalls that Witness BWU was an accomplice witness, and that his previous statements and confessions were inconsistent.⁷⁵⁹ It therefore views his testimony

⁷⁵² Defence Exhibit 27 (personal identification sheet); T. 17 September 2009 pp. 1-2.

⁷⁵³ T. 17 September 2009 p. 12.

⁷⁵⁴ T. 17 September 2009 pp. 20, 25. Prosecution Exhibits 19A, 20A, and 21A (Witness ELB's *Pro Justitia* statements to Rwanda authorities)

⁷⁵⁵ See summary of Prosecution Witnesses BWU, BWR, BWQ and BWU.

⁷⁵⁶ T. 22 April 2009 p. 32.

⁷⁵⁷ T. 22 April 2009 pp. 14-15.

⁷⁵⁸ T. 22 April 2009 p. 45.

⁷⁵⁹ T. 4 June 2009 pp. 14-18. The witness did not mention Munyakazi in his guilty plea in 2005 but in his statement to ICTR investigators on 27 September 2007 claims that he did. Defence Exhibit 4A, Report on

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with caution. Accordingly, the Trial Chamber will generally rely on his testimony only when corroborated by other witnesses. The witness was among those who attacked Shangi Parish on 29 April 1994. He testified that Muniyazi ordered the attackers to distinguish themselves from the Tutsi and then form two groups, one attacking the parish from the front the other from the rear.⁷⁶⁰ Witness BWR confirmed that many of the attackers wore branches and leaves, and that they encircled the church building upon arrival.⁷⁶¹ Witness BWQ also stated that the attackers wore branches, and testified that attackers were firing on the refugees from both the front and back of the church.⁷⁶² Witness BWU further testified that Muniyazi ordered the attackers to break down the church doors,⁷⁶³ while Witness BWQ said that Muniyazi was present as the *Interahamwe* broke down the doors.⁷⁶⁴

367. As noted earlier, Prosecution Witness BWU, an accomplice witness, has demonstrated a marked tendency to exaggerate figures, and his testimony was, on occasion, inconsistent. Accordingly, the Trial Chamber will only rely on Witness BWU's testimony when corroborated by other witnesses. The Defence argued in its closing arguments that Witness BWU disputed other Prosecution evidence that Muniyazi ordered the *Interahamwe* to break down the church doors.⁷⁶⁵ However, upon reviewing the record, the Trial Chamber considers that Witness BWU's testimony was about Muniyazi's instructions with regards to fences surrounding the parish, not the doors to the church, and, therefore, concludes that the testimonies of Witnesses BWU, BWU and BWQ are not inconsistent.⁷⁶⁶

368. The Trial Chamber notes that both Witnesses BWQ and BWR stated that Muniyazi was the leader of the attack on Shangi.⁷⁶⁷ However, as crime site victims during chaotic circumstances, they were less well-placed to make such an assessment than individuals who participated in the attack. In this regard, the Trial Chamber observes that both perpetrator witnesses BWU and BWU corroborated their conclusion that Muniyazi led the attack. Prosecution Witnesses MP and MM provided only hearsay evidence. Moreover, both heard about Muniyazi's involvement in the events at Shangi from the same source. Nevertheless, their testimony supports the evidence of both the perpetrators and victims who were present at Shangi on 29 April 1994 and testified that Muniyazi led that attack.

369. The Trial Chamber considers that the discrepancies between the witnesses regarding the number of refugees and the colour of the assailants' vehicles are minor and can be attributed to the passage of time and the chaos at the scene.

370. The Prosecution confronted Muniyazi with testimony from the *Ntagerura* case, during which former Cyangugu *sous-préfet* Théodore Muniyanga testified that on 28 or 29 April 1994, Muniyazi launched a massive attack on Shangi Parish killing most of the refugees there. Muniyazi contested the *sous-préfet's* account of events, arguing that the only

Confession of Prosecution Witness BWU; Defence Exhibit 5A, Prosecution Witness BWU's statement of 27 September 2007.

⁷⁶⁰ T. 4 June 2009 p. 7-8, 32.

⁷⁶¹ T. 22 April 2009 pp. 44-45.

⁷⁶² T. 22 April 2009 pp. 14-15.

⁷⁶³ T. 4 June 2009 pp. 8, 24.

⁷⁶⁴ T. 22 April 1994 pp. 14-15, 30-31.

⁷⁶⁵ T. 28 January 2010 pp. 23-24.

⁷⁶⁶ T. 29 May 2009 p. 17(closed session).

⁷⁶⁷ T. 22 April 2009 p. 51; T. 22 April 2009 pp. 14, 28-29

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thing he did on 29 April 1994, was save Tutsis.⁷⁶⁸ Munyakazi added that he did not know Munyangabe.⁷⁶⁹ Munyakazi's alibi has been discussed earlier (see Chapter II.2).

371. With respect to the other Defence witnesses, the Trial Chamber begins by observing that Witness ELB was an accomplice witness, and, therefore, his testimony will be considered with caution. Witness ELB stated that he was not aware that an attack at Shangi took place on 29 April and that he did not participate, but he did not explicitly say that it did not happen.⁷⁷⁰ This is disputed by Witness BWU who testified that Witness ELB actually participated in the attack.⁷⁷¹ While the Trial Chamber is not required to determine whether Witness ELB participated or not in the attack, it nevertheless considers that the witness may have tailored his testimony in order to minimise his own role in the events of April 1994. Thus, the Trial Chamber accords little weight to his testimony with respect to Shangi Parish.

372. The Trial Chamber found the evidence of Defence Witness Faustin Ntakirutimana to be consistent and credible but notes that his testimony was entirely hearsay. His evidence that he heard that Pima and local Shangi residents attacked Shangi Parish is not inconsistent with Prosecution evidence that Munyakazi and the Bugarama *Interahamwe* went to Shangi to reinforce local attackers. The witness was never asked whether Munyakazi had been involved, but he did not believe he would have been involved given the significant distance between Bugarama and Shangi Parish.⁷⁷² The fact that he did not hear Munyakazi's name mentioned after the conflict by colleagues who were present at Shangi or during Gacaca proceedings does not confirm Munyakazi's absence. All the witnesses testified that there were large numbers of attackers on 29 April 1994, and thus it is possible that Ntakirutimana's sources were unaware of Munyakazi's involvement.

373. Defence Witness YCI was unclear about which parts of the attack on Shangi Parish he actually witnesses. He first stated that he went out of his way to observe the attackers as he had Tutsi family members who were endangered, but then later said he retreated because he was afraid of the attackers. The Trial Chamber considers this account to be plausible, but, nevertheless, concludes that the witness was not in a position to observe everything that took place.

374. The Trial Chamber also notes Witness YCI's insistence that no meetings took place at the Rwagataraka Cemetery. As he was not a member of the groups attacking Shangi Parish, it is not clear how he could have been so certain about this point. He was equally insistent that there were so many attackers on the road to Shangi on 29 April 1994 that there was no room for vehicles. Again his certitude on this matter is disquieting given that he himself described a procession towards the parish involving hundreds of attackers. While the witness testified that he first saw the attackers as they passed through his neighbourhood, he was vague in describing his position as he followed the attackers. His description of Pima as the leader of the attack is based on his observation of Pima with a sword and local hearsay about Pima's activities at Shangi. As noted earlier, Pima's presence and possible leadership role during the 29 April 1994 attack is not inconsistent with the Prosecution's allegations.

375. Additionally, Witness YCI's claim that he was unaware of the existence of the *Interahamwe* in April 1994, when he was a member of the MRND party, puts his credibility

⁷⁶⁸ T.15 October 2009 pp. 30-32, 51; Prosecution Exhibit 24: *Prosecutor v. Ntagerura*, Transcript of 24 March 2003; and Prosecution Exhibit 25: *Ntagerura* Judgement, para. 482.

⁷⁶⁹ T.15 October 2009 pp. 30, 52.

⁷⁷⁰ T. 17 September 2009 p. 12.

⁷⁷¹ T. 4 June 2009 pp. 9, 27-28.

⁷⁷² T. 2 September 2009 p. 47.

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in question. The Trial Chamber is not persuaded that the witness was in a position to know whether Munyakazi was at Shangi Parish on 29 April 1994.

376. In conclusion, the Trial Chamber is satisfied beyond reasonable doubt that Munyakazi led the attack on Shangi Parish on 29 April 1994. Having considered all the evidence, the Chamber recalls that the Prosecution introduced testimony from six witnesses, from a wide array of perspectives, all confirming Munyakazi's leadership role, and that four of these witnesses provided detailed first-hand evidence of how Munyakazi led the attack on Shangi Parish. The Trial Chamber finds these witnesses to be credible and reliable, and where the Trial Chamber has treated a certain Prosecution witness' testimony with caution, the material aspects of Munyakazi's leadership role have been supported by corroborative evidence. The Trial Chamber further finds that the Defence evidence has not raised reasonable doubt that Munyakazi led the attack on Shangi Parish. For reasons stipulated above (see Chapter II.2), the Trial Chamber rejects Munyakazi's alibi. Moreover, the evidence provided by Defence Witness Ntakirutimana was entirely hearsay. While Defence Witness YCI gave a partial eyewitness account of the attack, by his own admission he spent at least part of the attack in hiding, and his description of the attack was on some points uncorroborated. Finally, Defence Witness ELB testified that he had never heard of the attack on Shangi Parish, an account that the Trial Chamber finds discredited by the rest of the evidence on the record.

Did Munyakazi Personally Shoot and Kill Tutsi Civilians during the Attack

377. Prosecution Witness BWU stated that after the church doors at Shangi were forced open by the *Interahamwe*, a woman named Petronilla Nyiramuteteri asked Munyakazi for mercy and that Munyakazi responded by shooting and killing her.⁷⁷³ The Trial Chamber begins by observing that the victim's name was mentioned neither in the Indictment nor in the Prosecution's Pre-Trial Brief. Witness BWU, an accomplice witness, was the only witness who made this allegation. Witnesses BWR and BWQ both claimed to have been at the door when it was broken and said they saw Munyakazi there at that time. Neither referred to this incident.⁷⁷⁴ Witness BWU's account is uncorroborated, and therefore the Trial Chamber concludes that the Prosecution has not established beyond reasonable doubt that Munyakazi shot and killed a woman named Petronilla Nyiramuteteri on 29 April 1994, at Shangi Parish.

378. Prosecution Witness BWU testified that towards the end of the massacre Munyakazi personally selected nine refugees out of the crowd and shot them.⁷⁷⁵ Witness BWU, another assailant, did not mention this incident nor did any of the other Prosecution witnesses. The Trial Chamber has previously found that it could not make a finding on the basis of Witness BWU's uncorroborated testimony.

379. Thus the Trial Chamber finds that the Prosecution has not proven beyond reasonable doubt that Munyakazi personally shot and killed Tutsi civilians at Shangi Parish on 29 April 1994.

Conclusion

380. The Prosecution has proven beyond reasonable doubt that Munyakazi was the *de facto* leader of the attack at Shangi Parish on 29 April 1994 and that he transported the *Interahamwe* and instructed them to kill the Tutsi civilians at the parish. The Trial Chamber

⁷⁷³ T. 4 June 2009 pp. 8, 31-32.

⁷⁷⁴ T. 22 April 2009 pp. 15-16, 29, 30-31; T. 22 April 2009 pp. 45, 53.

⁷⁷⁵ T. 29 May 2009 pp. 18, 34.

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infers from Munyakazi's position as leader of the attack, the purpose of which was to exterminate the Tutsis at the parish, that his intent was to destroy the Tutsi civilian population at that location. The Prosecution has not proven beyond reasonable doubt that Munyakazi personally shot Tutsi civilians during the attack.



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9. ATTACK ON MIBILIZI PARISH, 30 APRIL 1994

381. Paragraph 14 of the Indictment reads:

On or about 30 April 1994, Yussuf MUNYAKAZI, with the Bugarama *Interahamwe*, attacked and killed about a hundred civilian Tutsis men who had sought refuge at Mibilizi Parish, Cyimbogo commune, Cyangugu prefecture, using firearms and traditional weapons. Yussuf MUNYAKAZI transported the *Interahamwe* to Mibilizi parish and ordered them to kill only Tutsi males, which they did.

382. The Defence submits that Munyakazi was not involved in any attack on Mibilizi Parish.⁷⁷⁶

Evidence

Prosecution Witness LCQ

383. Witness LCQ, a Tutsi, was a farmer in April 1994.⁷⁷⁷ The witness first met Munyakazi in or around 1988 to 1989, during his frequent travels to Bugarama on business.⁷⁷⁸ He never returned to Bugarama after 1990 because it was dangerous to travel there as a Tutsi.⁷⁷⁹

384. The witness sought refuge at the Mibilizi Parish together with his wife and about 20 neighbours on 8 April 1994.⁷⁸⁰ When they arrived at the parish, there were already approximately 300 refugees there.⁷⁸¹

385. The first attack on the parish took place on 13 April 1994. It was led by a certain Kayibanda. A second attack took place on 18 April 1994 and was led by a man named Bandetse together with the Cyangugu *sous-préfet*. A third attack, also led by Bandetse, took place on 20 April 1994.⁷⁸² The assailants in each of the first three attacks were residents of the neighbouring localities.⁷⁸³

386. On 30 April 1994, at approximately 4:00 p.m., Witness LCQ saw Munyakazi enter the premises of the parish together with a group of *Interahamwe* who were armed primarily with traditional weapons, although one was carrying a firearm. Munyakazi was carrying a sword.⁷⁸⁴ Munyakazi told the refugees: "You have killed the head of state, and you have come to hide here... You are going to pay for what you have done."⁷⁸⁵

387. Munyakazi then directed the *Interahamwe* to take a group of refugees, including the witness, outside the church gates. The refugees were stripped naked. The attackers then took the refugees further down the road into the forest where they were forced onto a vehicle. The vehicle was surrounded by *Interahamwe* to prevent the refugees from escaping.⁷⁸⁶ At that

⁷⁷⁶ See, Defence Closing Brief paras. 128-135.

⁷⁷⁷ Prosecution Exhibit 11 (personal identification sheet); T. 28 April 2009 pp. 15-16.

⁷⁷⁸ T. 28 April 2009 p. 18.

⁷⁷⁹ T. 28 April 2009 p. 19.

⁷⁸⁰ T. 28 April 2009 pp. 15-16, 27.

⁷⁸¹ T. 28 April 2009 p. 16.

⁷⁸² T. 28 April 2009 p. 17.

⁷⁸³ T. 28 April 2009 pp. 27-28.

⁷⁸⁴ T. 28 April 2009 pp. 20, 34.

⁷⁸⁵ T. 28 April 2009 p. 20.

⁷⁸⁶ T. 28 April 2009 p. 21.

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point, the refugees were separated into smaller groups of five or six and taken deeper into the forest, where they were killed by *Interahamwe* using clubs and machetes.⁷⁸⁷ The witness watched the killing of a first group of six refugees before being taken himself deeper into the forest. He was then hit with a spiked club and lost consciousness. When he regained consciousness, he was at the presbytery.⁷⁸⁸

388. The witness recognised only two men among the attackers on 30 April 1994: Munyakazi and another perpetrator.⁷⁸⁹ The witness sustained many injuries in the attack, resulting in multiple scars on his body and the loss of a finger. The witness indicated his scars to the Trial Chamber.⁷⁹⁰

Prosecution Witness MP

389. Witness MP, a Hutu, was at Mibilizi Parish in April 1994.⁷⁹¹ The first Tutsi refugees began arriving at the parish on 7 April 1994, and their numbers rose to about 5,000 in the days that followed.⁷⁹²

390. The witness was a member of a coordination group responsible for the security of the refugees.⁷⁹³ Numerous attacks were waged on the parish, and they varied in magnitude. Between 2,500 and 3,500 refugees were killed in an attack that took place on 18 April 1994. On 20 April, another 100 refugees were individually selected by the attackers and killed. On 30 April, there was yet another attack in which between 60 and 100 refugees were killed.⁷⁹⁴ The attack on 30 April took place between 4:00 p.m and 5:00 p.m and lasted about half an hour.⁷⁹⁵

391. During the attack, the witness was located in a room in a small house reserved for gendarmes at the parish. The room had a window from which he was able to observe the events taking place outside. Munyakazi and a group of approximately 50-70 *Interahamwe* arrived aboard two Daihatsu vehicles. Some carried firearms and grenades, while others carried traditional weapons. The gendarmes at the parish pleaded with the attackers to leave the remaining refugees alone, arguing that the only survivors of prior attacks were old men, women and children, but the attackers were not deterred. The leader of the group then gave a signal to begin the attack. Firearms were used to signal both the beginning and the end of the attack. From the witness' vantage point, he was able to see the *Interahamwe* entering the classroom, where the refugees were hiding, and later exiting from the classrooms. He was also able to hear the various signals given to the assailants by their leader. The refugees were killed with bladed weapons.⁷⁹⁶ The assailants killed the refugees where they were hiding. During the attack on 30 April, the attackers did not ask the refugees to sit down before selecting those to be killed. The witness did not see Munyakazi carrying a weapon on that day.⁷⁹⁷

⁷⁸⁷ T. 28 April 2009 pp. 21-22.

⁷⁸⁸ T. 28 April 2009 p. 22.

⁷⁸⁹ T. 28 April 2009 pp. 27, 33-34.

⁷⁹⁰ T. 28 April 2009 p. 22.

⁷⁹¹ Prosecution Exhibit 7 (personal identification sheet); T. 27 April 2009 pp. 43-44 (closed session).

⁷⁹² T. 27 April 2009 p. 45.

⁷⁹³ T. 27 April 2009 p. 49.

⁷⁹⁴ T. 27 April 2009 pp. 45, 50-51.

⁷⁹⁵ T. 27 April 2009 pp. 45-48, 51.

⁷⁹⁶ T. 27 April 2009 pp. 46-48, 52.

⁷⁹⁷ T. 27 April 2009 p. 56.

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392. The witness knew that the leader of the attack was Munyakazi because that day one of his colleagues phoned a friend at Shangi Parish and learned that Shangi had been attacked the previous day by the Accused and his group of *Interahamwe*. The witness suspected that Mibilizi Parish would be the next target. He therefore contacted persons living along the road to the parish and asked them to warn him if they saw Munyakazi. Soon thereafter, one of these persons called the witness to inform him that he had seen Munyakazi and his group pass in the direction of the parish. Fifteen minutes later, Munyakazi arrived at the parish. During the attack, the witness was not in a position to see whether Munyakazi himself gave the signal to start the attack, or only ordered that the signal be given. The witness also believed that the leader of the assailants was Munyakazi because the gendarmes who spoke to the leader of the *Interahamwe* when they arrived, in order to dissuade the attack, informed the witness that the person they had spoken with was Munyakazi.⁷⁹⁸

Prosecution Witness MM

393. Witness MM, a Tutsi, was present at Mibilizi Parish in 1994.⁷⁹⁹ During April 1994, approximately 6,000 Tutsis arrived to seek refuge at the parish. At least half of them died there.⁸⁰⁰ This witness was also a member of the coordination committee responsible for the security of the refugees. During the attack, the members of the committee were together with the gendarmes. Witness MM confirmed that he was together with Witness MP during the attack.⁸⁰¹

394. Small scale attacks against the refugees began on 11 April 1994. A large-scale attack, in which assailants used firearms and grenades, took place on 18 April 1994. Another large-scale attack took place on 20 April 1994. During that attack, the assailants forced the refugees to assemble and sit down. They then selected individuals from the group and killed them outside the church premises.⁸⁰²

395. On 30 April 1994, another attack began at approximately 5:00 p.m. The witness did not personally see Munyakazi that day.⁸⁰³ However, approximately an hour before the attack began, the parish office received a phone call from a person stating that Munyakazi and his *Interahamwe* had just passed along the road to Mibilizi Parish singing songs and saying that they were on their way to kill the refugees at Mibilizi as they had already killed those at Shangi and Hanika. In addition, one of the gendarmes at the parish had a discussion with Munyakazi when he arrived, and then reported the content of the conversation to the witness. The gendarme also told the witness that the person he had spoken with was Munyakazi. Survivors of the attack also later confirmed to the witness that Munyakazi was the leader of the attack.⁸⁰⁴

396. During the attack that day, the witness was in a room from which he could see both the inside and outside of the parish.⁸⁰⁵ Upon arrival, the *Interahamwe* assembled the refugees into the courtyard. They then selected those individuals they intended to kill and took them outside the parish.⁸⁰⁶ The remaining refugees were primarily old men and women. The

⁷⁹⁸ T. 27 April 2009 pp. 48-49, 51-53.

⁷⁹⁹ Prosecution Exhibit 9 (personal identification sheet); T. 27 April 2009 pp. 58-59 (closed session).

⁸⁰⁰ T. 27 April 2009 pp. 60-61; T. 28 April 2009 pp. 1, 7.

⁸⁰¹ T. 27 April 2009 p. 62; T. 28 April 2009 pp. 1, 9.

⁸⁰² T. 27 April 2009 p. 61; T. 28 April 2009 p. 6.

⁸⁰³ T. 28 April 2009 p. 7.

⁸⁰⁴ T. 27 April 2009 pp. 61-62; T. 28 April 2009 p. 7.

⁸⁰⁵ T. 27 April 2009 p. 62.

⁸⁰⁶ T. 27 April 2009 p. 63.

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witness heard the leader of the attack telling them: "I was called and yet there is not very much to be done." The witness understood this to mean that the young men had already been removed for extermination, and, therefore, he did not have to kill the remainder as they were old and had no significance. The refugees applauded in response.⁸⁰⁷ The witness did not recall hearing any signals preceding the attack.⁸⁰⁸

397. Within 40 minutes, the *Interahamwe* had selected individuals and taken them away to be killed.⁸⁰⁹ Those who had been selected were killed in a courtyard outside the parish, and others were killed further down the road using bladed weapons. After the attack, the witness saw the dead bodies. He estimated that 70 persons were killed that day. Two of those selected for execution survived the attack.⁸¹⁰

Prosecution Witness BWW

398. Witness BWW, a Hutu,⁸¹¹ testified that he participated in an attack on Shangi Parish at the end of April 1994, and that the attack on Mibilizi Parish took place in late April 1994, approximately three days after the attack on Shangi Parish.⁸¹²

399. Before going to Mibilizi, the witness, other attackers and Munyakazi received instructions from a man named Edouard Bandetsi, a trader from Nyakabuye, at a location named Ingoro.⁸¹³ The witness estimated that approximately 120 *Interahamwe* travelled to the parish aboard the two Daihatsu vehicles belonging to Munyakazi, and brought with them weapons that were stored at Munyakazi's home.⁸¹⁴

400. The attack began at three or four in the afternoon. Although the witness could not say how long it lasted, he testified that it was dark when they returned home.⁸¹⁵ When the attackers arrived at Mibilizi, they were welcomed by the gendarmes who were sympathetic to the cause of the *Interahamwe*.⁸¹⁶ Bandetsi and Munyakazi were the leaders of the attack on Mibilizi that day.⁸¹⁷ To launch the attack, the Accused asked: "Don't you know why you're here?" Bandetsi added: "You are looking at us as if you don't know what to do."⁸¹⁸ According to the witness, the *Interahamwe* found only men at Mibilizi Parish when they arrived. The *Interahamwe* caught the men, stripped them naked, and loaded them on to a vehicle. From the vehicle they were then taken into the forest where they were killed. As night time approached, the *Interahamwe* killed some refugees inside the parish itself. The witness killed 15 Tutsis himself using a machete and a club.⁸¹⁹

⁸⁰⁷ T. 27 April 2009 p. 63; T. 28 April 2009 p. 10.

⁸⁰⁸ T. 28 April 2009 p. 10.

⁸⁰⁹ T. 27 April 2009 p. 61; T. 28 April 2009 p. 7.

⁸¹⁰ T. 27 April 2009 pp. 63-64; T. 28 April 2009 p. 10.

⁸¹¹ Prosecution Exhibit 12 (personal identification sheet); T. 29 May 2009 pp. 6.

⁸¹² T. 29 May 2009 pp. 15, 34 (closed session).

⁸¹³ T. 29 May 2009 pp. 20, 34-35 (closed session).

⁸¹⁴ T. 29 May 2009 pp. 20-21 (closed session).

⁸¹⁵ T. 29 May 2009 p. 35 (closed session).

⁸¹⁶ T. 29 May 2009 p. 35 (closed session).

⁸¹⁷ T. 29 May 2009 p. 20 (closed session).

⁸¹⁸ T. 29 May 2009 p. 35 (closed session).

⁸¹⁹ T. 29 May 2009 pp. 21-22 (closed session).

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Yussuf Munyakazi

401. Munyakazi stated that on 29 April 1994, a Bugarama Muslim named Emedeyo Kabungo died. He and his neighbours gathered to pray for Kabungo, and the mourning rites continued for three days.⁸²⁰ He denied that he had participated in any way in events at Mibilizi Parish on 30 April 1994,⁸²¹ but acknowledged that he heard that Mibilizi Parish was attacked.⁸²²

Defence Witness Thomas Nahimana

402. Witness Thomas Nahimana, a Hutu, was pursuing theological studies in 1994. During the Easter holidays in April 1994, the witness returned to his home in Nzahaha *secteur*, an area neighbouring Bugarama *secteur*, where Munyakazi lived. He remained in the area throughout the Indictment period.⁸²³

403. In the early weeks of April 1994, the witness attended mass each day at Mushaka Parish and assisted the parish priest, Father Antoine Hategekimana, a Tutsi, officiate at mass.⁸²⁴ On 16 April 1994, Witness Nahimana moved to Mushaka Parish following an order from the bishop that seminarians move to their respective parishes.⁸²⁵

404. Father Antoine advised all Tutsi refugees to seek refuge at Mibilizi Parish or in the DRC rather than at Mushaka Parish, and Father Antoine's own family followed this advice.⁸²⁶ Nahimana travelled to Mibilizi three times in April 1994 to check on Father Antoine's family: on 20, 24 and 30 April.⁸²⁷ In May 1994, the witness travelled to Mibilizi Parish every Saturday to bring diabetes medication to Father Antoine's mother. He did so until the refugees at the parish were evacuated to Nyarushishi on 27 May 1994.⁸²⁸

405. During his visit to Mibilizi Parish on 20 April 1994, the witness confirmed that an attack took place at the parish on 18 April 1994, and that Father Antoine's brother died immediately after the attack. The witness returned to Mibilizi Parish on 24 April 1994 to bring money so that the brother's family could be evacuated.⁸²⁹ At some point, the witness was told that a certain Edouard Bandetsi, leader of the Mibilizi *Interahamwe*, was responsible for the attack that took place on 18 April.⁸³⁰

406. On 30 April 1994, the witness again travelled to Mibilizi Parish. He arrived at approximately 11:00 a.m. to 11:30 a.m., and remained there until 5:00 p.m. to 6:00 p.m. before returning to Mushaka.⁸³¹ While at the parish, he had a meal with Witnesses MM and MP and an elderly priest named Father Antoine Muco.⁸³² On 30 April 1994, the witness "did not see any attack."⁸³³ He did not see Munyakazi nor did he see young men from Bugarama.

⁸²⁰ T. 15 October 2009 pp. 1-3.

⁸²¹ T. 15 October 2009 pp. 4-5.

⁸²² T. 15 October 2009 p. 5.

⁸²³ Defence Exhibit 13 (personal identification sheet); T. 2 September 2009 pp. 4-5.

⁸²⁴ T. 2 September 2009 p. 7.

⁸²⁵ T. 2 September 2009 pp. 8-9.

⁸²⁶ T. 2 September 2009 pp. 9, 29.

⁸²⁷ T. 2 September 2009 pp. 10-11, 35.

⁸²⁸ T. 2 September 2009 p. 24.

⁸²⁹ T. 2 September 2009 pp. 10-11.

⁸³⁰ T. 2 September 2009 p. 15.

⁸³¹ T. 2 September 2009 pp. 11.

⁸³² T. 2 September 2009 pp. 11-12, 19, 35.

⁸³³ T. 2 September 2009 p. 13.

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He never heard later about such an attack nor did he hear Munyakazi's name in connection with an attack on Mibilizi Parish.⁸³⁴

407. The witness had good relations with Prosecution Witnesses MP and MM and they never told him about an attack on Mibilizi Parish led by the Accused on 30 April 1994. He could not say why they testified that there had been an attack on that day but speculated that they had perhaps confused the date of the attack.⁸³⁵

408. In 1999, the witness took over leadership of an Ecclesiastical Peace, Justice and Unity Commission. The Commission worked towards reconciliation among Rwandans. During his work with the Commission, the witness spoke to 16 families living in Cyangugu *préfecture* about the events that took place during the genocide and who was responsible. The Ecclesiastical Commission had good relations in Cyangugu *préfecture* with a government commission doing similar work, and the two groups often exchanged information about the events that took place in 1994.⁸³⁶ Nahimana never heard it said that Munyakazi was involved in an attack on Mibilizi Parish.⁸³⁷

Defence Witness MPCC

409. Witness MPCC, a Tutsi, was chairman of the MRND in Gishoma *commune* in Cyangugu *préfecture* in 1994.⁸³⁸ He first met Munyakazi in the early 1980s. Munyakazi lived in Bugarama *secteur* in Bugarama *commune* in Cyangugu *préfecture*.⁸³⁹

410. The witness heard about the killings at Mibilizi Parish from other persons, particularly during the period he was in prison, and from Gacaca hearings he attended after his release from prison.⁸⁴⁰ In prison, he was told that the leader of the killings at Mibilizi was a certain Edouard Bandetse who hailed from Mibilizi.⁸⁴¹ During his time in prison, and later during Gacaca hearings, he never heard Munyakazi named as a perpetrator of the killings at Mibilizi Parish.⁸⁴²

Defence Witness ELB

411. Witness ELB, a Hutu, was the vice president of the Bugarama *Interahamwe* in 1994.⁸⁴³ The Bugarama *Interahamwe* never attacked Mibilizi Parish. The main attack on Mibilizi Parish took place on 18 April 1994, and was led by the *Interahamwe* of Gitarama and Mibilizi. The leaders of that attack on Mibilizi were named Kayibanda, Sudure and Mudeyi. Subsequently, there were smaller scale attacks led by the Kayibanda, the head of the Gitarama *Interahamwe*. Munyakazi never asked the Bugarama *Interahamwe* to attack Mibilizi Parish on 30 April 1994.⁸⁴⁴

⁸³⁴ T. 2 September 2009 p. 13.

⁸³⁵ T. 2 September 2009 pp. 14, 30.

⁸³⁶ T. 2 September 2009 pp. 15-16.

⁸³⁷ T. 2 September 2009 pp. 17, 28.

⁸³⁸ Defence Exhibit 18 (personal identification sheet); T. 7 September 2009 pp. 46, 57-58. (closed session)

⁸³⁹ T. 7 September 2009 pp. 47-48 (closed session).

⁸⁴⁰ T. 7 September 2009 p. 54. (closed session).

⁸⁴¹ T. 7 September 2009 pp. 54-55 (closed session).

⁸⁴² T. 7 September 2009 pp. 55-56, 61 (closed session).

⁸⁴³ Defence Exhibit 27 (personal identification sheet); T. 17 September 2009 pp. 1-2.

⁸⁴⁴ T. 17 September 2009 p. 12.

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Deliberations

412. Four Prosecution witnesses testified about an attack they said took place at Mibilizi Parish on 30 April 1994. The four represent a broad cross-section of witnesses; one was a survivor, one a perpetrator and two were individuals who were otherwise present at the parish at the time. Defence Witness Thomas Nahimana testified that no attack took place at Mibilizi Parish that day, while Defence Witness MPCC acknowledged that attacks had taken place at Mibilizi but not specifically on 30 April 1994. In any case, Edouard Bandetse was responsible for these attacks. Witness ELB denied that the Bugarama *Interahamwe* were involved in any attack on Mibilizi Parish. Munyakazi appeared to acknowledge that an attack had taken place at the parish, but did not specify the date, and testified that he was elsewhere on 30 April 1994.

413. While the Trial Chamber finds Prosecution Witnesses MP and MM to be both credible and reliable, discrepancies exist between their accounts of the attack. Witness MP testified that all the refugees were killed in classrooms within parish walls and that there was no selection process to determine who would be killed.⁸⁴⁵ He also stated that there was a gunshot to signal the start and end of the killings.⁸⁴⁶ Witness MM did not mention a gunshot or other signal launching the attack, and said that the refugees were assembled for a selection process and were then taken outside the parish to be killed.⁸⁴⁷ This latter description is corroborated by Witnesses LCQ and BWW who both testified that the refugees were grouped together and taken out to the forest to be executed. The Trial Chamber is of the view that the discrepancies between the evidence of Prosecution Witness MM and that of Prosecution Witness MP do not discredit their testimonies and can be attributed to the passage of time and confusion due to the frequency of attacks on Mibilizi Parish during this period.

414. Despite the discrepancies, the testimonies of Witnesses MM and MP largely corroborate each other on a number of other points. Both stated that prior large scale attacks had taken place on the Parish on 18 and 20 April 1994. This was corroborated by Witness LCQ.⁸⁴⁸ Both testified about the warnings they had received of an impending attack,⁸⁴⁹ that the leader of the attack had a discussion with the gendarmes upon arrival at the parish, that the attack took place late in the afternoon, and that it was of short duration.⁸⁵⁰

415. All of the Prosecution witnesses testified that Munyakazi led the attack, and that it started in the afternoon between 3:00 p.m. and 5:00 p.m. Apart from Witness BWW, who did not know the exact date of the attack, all the Prosecution witnesses affirmed that this particular attack took place on 30 April 1994. The Trial Chamber observes that the identification of Munyakazi by Witnesses MM and MP is based on hearsay from the same sources.⁸⁵¹ Both testified that there was a telephone call warning of Munyakazi's arrival, and that gendarmes spoke to Munyakazi once he arrived and identified him as the leader of the group of assailants.⁸⁵² Witness MM further testified that survivors of Mibilizi confirmed that the attack was led by Munyakazi.⁸⁵³ Although this evidence is based on hearsay, the Trial Chamber considers it to be reliable because Munyakazi's role is corroborated by Witnesses LCQ and BWW.

⁸⁴⁵ T. 27 April 2009 p. 56.

⁸⁴⁶ T. 27 April 2009 pp. 53-54.

⁸⁴⁷ T. 27 April 2009 pp. 61; 63.

⁸⁴⁸ T. 27 April 2009 pp. 45, 50-51, 61; T. 28 April 2009 p. 6, 17.

⁸⁴⁹ T. 27 April 2009, pp. 48-49, 51-53; T. 27 April 2009 pp. 61-62, T. 28 April 2009 p. 7.

⁸⁵⁰ T. 27 April 2009 pp. 48-49, 51; T. 27 April 2009 pp. 61-62.

⁸⁵¹ T. 27 April 2009 pp. 48-49, 51-53; T. 27 April 2009 p. 62.

⁸⁵² T. 27 April 2009 pp. 48-49, 51-53; T. 27 April 2009 p. 62; T. 28 April 2009 p. 7.

⁸⁵³ T. 27 April 2009 p. 62; T. 28 April 2009 p. 7.

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416. The Trial Chamber relies, in particular, on Witness LCQ to establish Munyakazi's role in the attack at Mibilizi. The witness was a survivor and an eyewitness to the event. He knew Munyakazi prior to the attack and recognised him among the attackers at Mibilizi Parish on 30 April 1994.⁸⁵⁴ The witness's testimony was consistent and credible. It was also generally corroborated by other Prosecution witnesses.

417. Prosecution Witness BWB, an accomplice and former member of the Bugarama *Interahamwe*, conceded that he had participated in the attack. While the Trial Chamber views his testimony with caution, it notes that his testimony that the victims were assembled, stripped naked, and taken to the forest to be killed is corroborated by Witnesses LCQ and MM.⁸⁵⁵

418. Defence Witness MPCC testified that killings took place at Mibilizi and that Edouard Bandetse was responsible. The Trial Chamber notes, however, that the witness was not at Mibilizi Parish on 30 April 1994, and that his testimony is based entirely on hearsay.⁸⁵⁶ Therefore, the Trial Chamber accords little weight to this evidence.

419. Defence Witness Thomas Nahimana testified that he was present at Mibilizi Parish on 30 April 1994 and that no attack took place that day. His testimony is therefore of greater significance than that of Witness MPCC. The Trial Chamber observes, however, that Nahimana described only one attack on Mibilizi Parish, stating that during a visit to the parish on 20 April 1994, he learned that an attack had taken place there two days earlier on 18 April 1994.⁸⁵⁷ He did not mention an attack taking place on 20 April 1994 although he said that he went to the parish that day, and returned there again on 24 April 1994.⁸⁵⁸ The Trial Chamber notes that three Prosecution witnesses—LCQ, MM and MP—all testified that a significant attack took place on 20 April. The Trial Chamber considers Nahimana's failure to mention the 20 April attack to be sufficiently significant to cast doubt on his overall reliability. The Chamber further notes that Nahimana testified that there was considerable confusion at Mibilizi Parish during this period, and that this may have affected his memory of events.⁸⁵⁹

420. Defence Witness ELB testified that he was a member of the Bugarama *Interahamwe* in 1994. Because he is an accomplice witness, the Trial Chamber treats his evidence with caution. Although Witness ELB testified that the Bugarama *Interahamwe* were not involved in the attack at Mibilizi, he was tried and convicted by a Gacaca court on charges that included participation in an attack on Mibilizi Parish.⁸⁶⁰ The Trial Chamber further notes that Prosecution Witness LCQ testified that Witness ELB took part in the attack at Mibilizi Parish with Munyakazi.⁸⁶¹ The Trial Chamber considers that the witness may have wanted to minimise his role in the events of April 1994, and, therefore, had a motive to dissemble. It, therefore, accords little weight to his evidence on this matter.

421. The Trial Chamber recalls that it has already found that Munyakazi's alibi for 30 April 1994 is not credible (see Chapter II.2). With respect to the Defence witnesses, the Trial

⁸⁵⁴ T. 28 April 2009 pp. 17-18; 20: The witness knew Munyakazi because he brought his cattle to Bugarama and sold milk to Munyakazi.

⁸⁵⁵ T. 29 May 2009 pp. 20-21, 34-35: The witness does not give an exact date for the attack but stated that it took place three days after the attack at Shangi Parish.

⁸⁵⁶ T. 7 September 2009 pp. 54-56 (closed session)

⁸⁵⁷ T. 2 September 2009 pp. 10-13; T. 2 September 2009 p. 14.

⁸⁵⁸ T. 2 September 2009 pp. 10-11; T. 2 September 2009 pp. 12-13: The witness testified that the only attack on Mibilizi Parish took place on 18 April 1994.

⁸⁵⁹ T. 2 September 2009 pp. 10-13, 19.

⁸⁶⁰ T. 17 September 2009 pp. 24-25.

⁸⁶¹ T. 28 April 2009 pp. 27, 33.

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Chamber reiterates its concern that Witness ELB's testimony may have been guided by a desire to minimise his role in the events of April 1994, and that Witness MPCC was not an eyewitness to the events. The Trial Chamber has further doubts about the credibility of Defence Witness Thomas Nahimana, as discussed above. Taken together, the Trial Chamber does not consider that the Defence evidence to be reliable or credible.

422. All four of the Prosecution witnesses, representing various perspectives, confirmed that Munyakazi led the attack. The Trial Chamber finds these witnesses to be credible and reliable and that where the Trial Chamber has had to approach certain aspects of their testimony with caution, the evidence with respect to Munyakazi's leadership role is well corroborated. The Trial Chamber is satisfied that the Defence evidence does not raise a reasonable doubt as to Munyakazi's involvement as a leader of the attack on Mibilizi Parish. Based on a complete evaluation of the evidence, the Trial Chamber is satisfied beyond reasonable doubt by the Prosecution evidence that Munyakazi led the attack on Mibilizi Parish.

Conclusion

423. In conclusion, the Trial Chamber is satisfied that the Prosecution has proven beyond reasonable doubt that a group of *Interahamwe* and other unknown assailants attacked Mibilizi Parish on 30 April 1994, and that Munyakazi both led and participated in the attack. The purpose of the attack was to kill the Tutsi refugees remaining at the parish. The Trial Chamber infers from Munyakazi's position as a leader of the attack, the purpose of which was to exterminate the Tutsis at the parish, that his intent was to destroy the Tutsi civilian population at that location.

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CHAPTER III: LEGAL FINDINGS

424. The Prosecution has charged Munyakazi with genocide (count 1), or in the alternative, complicity in genocide (count 2), and extermination (count 3) as a crime against humanity. His alleged responsibility is based on Article 6 (1) of the Statute.

425. In its factual findings, the Chamber determined that Munyakazi led the attack on Shangi Parish on 29 April 1994, in which 5,000 to 6,000 Tutsi civilians were killed, and that he was one of the leaders of the 30 April 1994 attack on Mibilizi Parish in which 60 to 100 Tutsi civilians were killed. He also facilitated transportation of the Bugarama *Interahamwe* to the two crime sites. No other allegations in the Indictment have been proven. Therefore, the Chamber will only address Munyakazi's criminal responsibility for these events, which are charged as genocide and, in the alternative, complicity in genocide. The killings are also charged as extermination, a crime against humanity.

1. CRIMINAL RESPONSIBILITY

1.1 Article 6 (1) of the Statute

426. Article 6 (1) of the Statute sets out several forms of individual criminal responsibility applicable to the crimes falling within the Tribunal's jurisdiction, namely: planning, instigating, committing, ordering, as well as aiding and abetting.

1.1.1 Planning, Instigating, Committing, Ordering, Aiding and Abetting

427. "Planning" requires that one or more persons design the criminal conduct constituting a statutory crime that is later perpetrated. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct. The *mens rea* entails the intent to plan the commission of a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.⁸⁶²

428. "Instigating" implies prompting another person to commit an offence. It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused. It is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime. The *mens rea* is the intent to instigate another person to commit a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the act or omission instigated.⁸⁶³

429. With respect to "committing", the Appeals Chamber in *Seromba* held that

[i]n the context of genocide, however, "direct and physical perpetration" need not mean physical killing; other acts can constitute direct participation in the *actus reus* of the crime.⁸⁶⁴

⁸⁶² *Nsengimana* Trial Judgement para. 796, citing *Dragomir Milosević* Appeal Judgement para.268; *Nahimana et al.* Appeal Judgement para. 479.

⁸⁶³ *Nsengimana* Trial Judgement para. 797, citing *Nahimana et al.* Appeal Judgement para. 480.

⁸⁶⁴ *Seromba* Appeal Judgement, para. 161, citing *Gacumbitsi* Appeal Judgement, para. 60.

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430. "Committing" is not limited to direct and physical perpetration. Other acts can constitute direct participation in the *actus reus* of the crime.⁸⁶⁵ The question of whether an accused acts with his own hands, for example, when killing people, is not the only relevant criterion.⁸⁶⁶ The correct legal standard is whether actions of the Accused were "as much an integral part of the genocide as were the killings which [they] enabled."⁸⁶⁷ Thus, the question is whether the evidence supports the conclusion that the Accused became a principal perpetrator of the crime itself by "approving and embracing as his own the decision to commit the crime and thus should be convicted for committing genocide."⁸⁶⁸

431. "Committing" has also been interpreted to contain three forms of joint criminal enterprise: basic, systemic, and extended.⁸⁶⁹ The Chamber will discuss Munyakazi's alleged participation in the basic form of joint criminal enterprise below (see Chapter III.1.1.2).

432. "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.⁸⁷⁰ Culpability for ordering requires an awareness of the substantial likelihood that a crime will be committed in the execution of an order.⁸⁷¹ The order does not have to be direct; it can be implied and based upon circumstantial evidence.⁸⁷² However, the order must have a "direct and substantial effect" on the crime.⁸⁷³

433. "Aiding and abetting," according to the consistent jurisprudence of the Appeals Chamber, occurs when someone 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.⁸⁷⁴ 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.⁸⁷⁵ The requisite mental element of aiding and abetting is knowledge that the acts performed assist

⁸⁶⁵ See *Gacumbitsi* Appeal Judgement, para. 60 in which the Appeals Chamber held that supervising and directing the separation of Tutsi refugees so that they could be killed constituted "committing."; *Ndindabahizi* Appeal Judgement, para. 123.

⁸⁶⁶ From *Seromba* Appeal Judgement, para. 161, footnote 369: "Committing" is not limited to physical perpetration of a crime. See, e.g., ARCHBOLD: CRIMINAL PLEADING, EVIDENCE AND PRACTICE (2007), §18-7; *Bundesgerichtshof* [BGH] [(German) Federal Supreme Court of Justice] 26 July 1994, *Entscheidungen des Bundesgerichtshofs in Strafsachen* [BGHSt] 40, 218 (236).

⁸⁶⁷ *Gacumbitsi* Appeal Judgement, para. 60.

⁸⁶⁸ *Seromba* Appeal Judgement, para. 161.

⁸⁶⁹ *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.

⁸⁷⁰ *Bagosora et al.* Trial Judgement para. 2008, citing *Semanza* Appeal Judgement paras. 361, 363.

⁸⁷¹ *Nahimana, Barayagwiza and Ngeze*, Appeal Judgement 28 November 2007 para. 481.

⁸⁷² *Kordić & Čerkez*, Trial Judgment 26 February 2001 para. 388

⁸⁷³ *Kamuhanda*, Appeal Judgment 19 September 2005 para. 76.

⁸⁷⁴ *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.

⁸⁷⁵ *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.

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the commission of the specific crime of the principal perpetrator.⁸⁷⁶ In cases of specific intent crimes, such as persecution or genocide, the aider and abetter must know of the principal perpetrator's specific intent.⁸⁷⁷

434. The Chamber will discuss these modes of liability where applicable in making its legal findings regarding the culpability of Munyakazi for the crimes alleged in the Indictment.

1.1.2 Joint Criminal Enterprise

Introduction

435. Paragraphs four and five of the Indictment read as follows:

4. During the period covered by this indictment, **YUSSUF MUNYAKAZI**, acted individually or in concert, as part of a joint criminal enterprise, with Ndutiye *alias* TAREK AZIZ, NDEREYA MUNDERE, REKERAHO Samuel, HABINEZA Theobald, ZACHARIE ALIAS [SIC] MARIYO, SEBATWARE Marcel, NDOLIMANA Casimir[,] MUGUNDA Thomas, NGARUKIYE Emmanuel, BAKUNDUKIZE Elias, the Bugarama *Interahamwe* militia and others. The object and purpose of the joint criminal enterprise was to commit genocide and crimes against humanity targeting the Tutsi racial or ethnical group. In execution of the joint criminal enterprise Yussuf Munyakazi acted with members of the joint criminal enterprise with the intent to destroy the Tutsi population in whole or in part.

CHARGES

INDIVIDUAL CRIMINAL LIABILITY

Article 6 (1) of the Statute

5. The accused, **YUSSUF MUNYAKAZI**, is individually responsible for the crimes alleged in this indictment pursuant to *Article 6(i) of the Statute*. The accused planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. In addition, the accused participated in a joint criminal enterprise the purpose of which was the destruction, in whole or in part, of the Tutsi racial or ethnic group in Cyangugu and Kibuye *prefectures*. To fulfil this criminal purpose, the accused, acting individually or in concert with others known and unknown, significantly contributed to the joint criminal enterprise. The crimes enumerated within this indictment were within the object of the joint criminal enterprise.

436. In its Pre-Trial and Closing briefs, the Prosecution states that it is relying "primarily" on the basic form of joint criminal enterprise.⁸⁷⁸

437. The Defence denies that Munyakazi participated in a joint criminal enterprise, and contests the Prosecution evidence linking Munyakazi with Tarek Aziz and/or Thomas Mugunda. It specifically rejects the Prosecution allegation that Munyakazi and Tarek Aziz

⁸⁷⁶ *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.

⁸⁷⁷ *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127, *Simić* Appeal Judgement para. 86, *Krstić* Appeal Judgement paras. 140-141.

⁸⁷⁸ Pre-Trial Brief, para 10; Prosecution Closing Brief, para. 18.

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recruited, trained and/or armed the Bugarama *Interahamwe*, and that Munyakazi provided food and or transport to the Bugarama *Interahamwe*.⁸⁷⁹

Law

438. According to settled jurisprudence, the required *actus reus* for each form of joint criminal enterprise comprises of three elements.⁸⁸⁰ 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 in the Statute. There is no need 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.⁸⁸¹

439. The required *mens rea* for the basic form of joint criminal enterprise requires the intent to perpetrate a certain crime, this intent being shared by all co-perpetrators.⁸⁸² 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.⁸⁸³

Application

Evidence-Yussuf Munyakazi and Athanase Ndutiye, also known as Tarek Aziz

Prosecution Witness Esidras Musengayire

440. Witness Esidras Musengayire, a Tutsi, knew Munyakazi well because he had lived in Munyakazi's house from 1982 to 1984. During that time Munyakazi treated him like a son. Although Musengayire later moved to his own house, Munyakazi continued to consider him as a member of his family until the outbreak of the genocide.⁸⁸⁴

441. Tarek Aziz had a military background and was a member of the Bugarama *Interahamwe*.⁸⁸⁵ A number of *Interahamwe*, including Tarek Aziz, lived in Munyakazi's house.⁸⁸⁶ Musengayire had free access to Munyakazi's house. When the witness saw young people gathered at Munyakazi's home, Tarek Aziz informed the witness that he was

⁸⁷⁹ Defence Closing Brief, paras. 50-63; Defence Closing Argument, 28 January 2010, pp. 51-54 (fr).

⁸⁸⁰ *Nsengimana* Trial Judgement para. 802, citing *Brđanin* Appeal Judgement para. 364, *Simba* Trial Judgement para. 387.

⁸⁸¹ *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.

⁸⁸² *Nsengimana* Trial Judgement para. 803, citing *Brđanin* Appeal Judgement para. 365; *Simba* Trial Judgement para. 388, citing *Ntakirutimana* Appeal Judgement para. 467, *Vasiljević* Appeal Judgement para. 101, *Krnjelac* Appeal Judgement para. 32.

⁸⁸³ *Simba* Trial Judgement para. 388, citing *Kvočka et al.* Appeal Judgement paras. 109-110.

⁸⁸⁴ T. 23 April 2009 p. 51; T. 27 April 2009 p. 2.

⁸⁸⁵ T. 24 April 2009 p. 4; p. 6 (Fr).

⁸⁸⁶ T. 27 April 2009 pp. 4, 15-16.

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providing them with military training.⁸⁸⁷ One day prior to 7 April 1994, Musengayire saw Tarek Aziz carrying a pistol around his waist. The witness did not recall any specific event taking place that day.⁸⁸⁸

Prosecution Witness BWX

442. Witness BWX, a Hutu, worked in close proximity to Munyakazi's house in Misufi *cellule*, in Bugarama *commune*, in 1994.⁸⁸⁹ Tarek Aziz's real name was Ndutiye and he was born in Nyakabuye *commune*. Tarek Aziz lived at Munyakazi's house, but the witness did not know whether he was a tenant or whether he was living there for free.⁸⁹⁰ Munyakazi found employment for Tarek Aziz at CAVECUVI.⁸⁹¹ Tarek Aziz trained the *Interahamwe*, and was one of the bodyguards who always accompanied Munyakazi.⁸⁹²

Prosecution Witness BWW

443. Witness BWW, a Hutu, was a member of the Bugarama *Interahamwe* in April 1994. He was tried and convicted by a *Gacaca* court in Rwanda for having participated in the 1994 genocide. The witness confessed that he was involved in the killings of Tutsis in April 1994 and testified that he collaborated primarily with Munyakazi and Athanase Ndutiye, alias Tarek Aziz. Tarek Aziz lived in Munyakazi's house and was his deputy.⁸⁹³ In 1993, the *Interahamwe* underwent daily training, and Tarek Aziz was one of their instructors.⁸⁹⁴

Yussuf Munyakazi

444. Munyakazi testified that Tarek Aziz came from the Nyakabuye *commune*, which was far from Bugarama *commune*. Tarek Aziz began working as an agronomist at CAVECUVI in 1991 or 1992 and from that time on was a tenant at Munyakazi's house.⁸⁹⁵ He occupied one of the rooms in the house and paid monthly rent like all the other tenants. Tarek Aziz became Munyakazi's tenant before the advent of multiparty politics.⁸⁹⁶ Munyakazi was not Tarek Aziz' protector, godfather, mentor or supervisor, and Tarek Aziz was not considered part of Munyakazi's family.⁸⁹⁷ Despite his nickname, Tarek Aziz was not a Muslim.⁸⁹⁸ Munyakazi never had any bodyguards.⁸⁹⁹ Munyakazi did not help Tarek Aziz obtain the job at CAVECUVI. Tarek Aziz was hired through an open application and testing process. Although Munyakazi was the president of CAVECUVI at the time, he was not involved in this testing process.⁹⁰⁰

⁸⁸⁷ T. 24 April 2009 pp. 4-5, 7.

⁸⁸⁸ T. 24 April 2009 pp. 5, 7.

⁸⁸⁹ Prosecution Exhibit 6 (personal identification sheet); T. 24 April 2009 p.12 (closed session); T. 27 April 2009 p. 35 (closed session).

⁸⁹⁰ T. 27 April 2009 pp. 20-21.

⁸⁹¹ T. 27 April 2009 pp. 21, 22-23.

⁸⁹² T. 24 April 2009 pp. 21- 23.

⁸⁹³ T. 29 May 2009, pp. 6-8 (closed session).

⁸⁹⁴ T. 29 May 2009 pp. 12, 24-25.

⁸⁹⁵ T. 15 October 2009 pp. 39-40.

⁸⁹⁶ T. 14 October 2009 pp. 15-17, 23.

⁸⁹⁷ T. 14 October 2009 p. 41.

⁸⁹⁸ T. 14 October 2009 pp. 16-17; T.15 October 2009 p. 40.

⁸⁹⁹ T. 14 October 2009 pp. 23, 42.

⁹⁰⁰ T. 14 October 2009 pp. 16-17; T. 15 October 2009 pp. 39-40.

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445. Tarek Aziz was the president of the *Interahamwe* at the communal level, and another person was his deputy.⁹⁰¹ Tarek Aziz worked from Monday through Saturday including some nights.⁹⁰² Due to these long working hours, Munyakazi rarely encountered him⁹⁰³ and Munyakazi believed that Tarek Aziz did not have time to provide military training to the local youth. Munyakazi knew that the *Interahamwe* would meet at the *commune* office but he did not know what they did there.⁹⁰⁴ Munyakazi was not aware that Tarek Aziz had been dismissed from a military detachment in Butare, nor that he was later dismissed from another position he held in a Prosecutor's office.⁹⁰⁵

446. Tarek Aziz was at Munyakazi's house on 7 April 1994, when a grenade was thrown at Esidras Musengayire.⁹⁰⁶ Following the incident Munyakazi carried out an investigation and discovered that it was Tarek Aziz who threw the grenade.⁹⁰⁷ At about 5:00 p.m., on 7 April 1994, Munyakazi told Tarek Aziz to leave his house and Tarek Aziz did so towards the end of the day. After leaving the house, Tarek Aziz and the other assailants continued to kill people that same day.⁹⁰⁸ Munyakazi did not know where Tarek Aziz went after leaving his house on 7 April 1994, but assumed that he stayed with friends who were gendarmes. According to Munyakazi, "[Tarek Aziz] took part in the attacks led... by gangs of killers."⁹⁰⁹

Defence Witness NKM

447. Witness NKM lived in Bugarama *commune* in April 1994. He was a member of the PDI political party and worked at the bank in Bugarama *commune*. The witness had known Munyakazi all his life.⁹¹⁰ The witness first met Tarek Aziz when they were in primary school. Later, they both took a series of tests for admission to the School for Non-commissioned Officers (ESO) in Butare. Tarek Aziz was eventually admitted to the school. In 1994, Tarek Aziz was a rice farmer and a seasonal worker at CAVECUVI.⁹¹¹

448. Tarek Aziz was a tenant in one of Munyakazi's houses.⁹¹² The distance between that residence and Witness NKM's house was approximately 150 metres. Witness NKM was not aware that during the period between April and July 1994 Tarek Aziz assembled young people at his residence. If such meetings had taken place, the witness would have seen them.⁹¹³ He did not know whether Tarek Aziz was the coordinator of the *Interahamwe*. The witness never saw Tarek Aziz and Munyakazi together.⁹¹⁴

449. There was no special relationship between Tarek Aziz and Munyakazi between 6 April and 17 July 1994. Although Tarek Aziz was a Muslim, Witness NKM never saw him at the mosque.⁹¹⁵ Members of the youth wings of the MRND, PDI, MDR, and CDR political parties were responsible for the killings of Tutsi civilians and the looting of their properties.

⁹⁰¹ T. 14 October 2009 p. 22; T. 15 October 2009 pp. 39-41.

⁹⁰² T. 14 October 2009 p. 23.

⁹⁰³ T. 14 October 2009 p. 17; T. 15 October 2009 p. 40.

⁹⁰⁴ T. 14 October 2009 p. 23.

⁹⁰⁵ T. 15 October 2009 p. 40.

⁹⁰⁶ T. 14 October 2009 pp. 36-38.

⁹⁰⁷ T. 14 October 2009 p. 40.

⁹⁰⁸ T. 14 October 2009 p. 41.

⁹⁰⁹ T. 15 October 2009 p. 62.

⁹¹⁰ Defence Exhibit 6 (personal identification sheet); T. 31 August 2009 p. 8 (closed session).

⁹¹¹ T. 31 August 2009 pp. 20-21, 46.

⁹¹² T. 31 August 2009 pp. 27, 47.

⁹¹³ T. 31 August 2009 p. 48.

⁹¹⁴ T. 31 August 2009 pp. 46-47.

⁹¹⁵ T. 31 August 2009 pp. 27-28.

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When they came together they respected no particular authority.⁹¹⁶ In the witness' view, Munyakazi, Tarek Aziz and Mugunda were not responsible for the terror inflicted on Tutsis and Hutus who opposed the MRND.⁹¹⁷

Defence Witness NRB

450. Witness NRB lived in Bugarama *commune* and worked at CAVECUVI in April 1994.⁹¹⁸ Tarek Aziz's real name was Ndutiye.⁹¹⁹ Tarek Aziz was employed at Technoserve without Munyakazi's assistance; he applied for the position and then took a test. The witness saw Tarek Aziz every day because they both worked at CAVECUVI.⁹²⁰ The witness was unaware of MRND party structures in Bugarama prior to April 1994,⁹²¹ but was certain that there was no link between Munyakazi and the youth wing of the MRND, and that such youth did not live in Munyakazi's house.⁹²²

Defence Witness MPCC

451. Witness MPCC, a Tutsi,⁹²³ lived in Ruhoko *secteur*, Gishoma *commune* in Cyangugu *préfecture* in 1994. He was the chairman of the MRND party in Gishoma *commune* and was also an agricultural extension worker in that *commune*.⁹²⁴ Witness MPCC first met Munyakazi in the early 1980s.⁹²⁵

452. The leader of the *Interahamwe* in Bugarama *commune* was Athanase Ndutiye, also known as Tarek Aziz. Tarek Aziz was a native of Nyakabuye *commune*, and died in prison after the genocide. In 1994, Tarek Aziz was an outreach worker in Bugarama and a tenant in one of Munyakazi's houses.⁹²⁶

Defence Witness AMB

453. Witness AMB was a student outside of Bugarama *commune* in 1994.⁹²⁷ He was a native of Bugarama and would return there during the holidays.⁹²⁸ The witness first met Tarek Aziz in 1987.⁹²⁹ The witness was told that Tarek Aziz was originally named Athanase Ndutiye, but changed his name when he converted to Islam upon arrival in Bugarama *commune*.⁹³⁰ There were rumours that Tarek Aziz had been dismissed from the military.⁹³¹ From 1991 through April 1994, Tarek Aziz worked at Technoserve.⁹³² Munyakazi was not

⁹¹⁶ T. 31 August 2009 pp. 26-27, 41.

⁹¹⁷ T. 31 August 2009 p. 47.

⁹¹⁸ Defence Exhibit 12 (personal identification sheet); T. 1 September 2009 pp. 35, 37 (closed session).

⁹¹⁹ T. 1 September 2009 p. 41.

⁹²⁰ T. 1 September 2009 p. 42.

⁹²¹ T. 1 September 2009 p. 50.

⁹²² T. 1 September 2009 p. 41.

⁹²³ T. 7 September 2009 p. 58 (closed session).

⁹²⁴ Defence Exhibit 18 (personal identification sheet); T. 7 September 2009 pp. 46 (closed session).

⁹²⁵ T. 7 September 2009 p. 47 (closed session).

⁹²⁶ T. 7 September 2009 p. 61 (closed session).

⁹²⁷ Defence Exhibit 21 (personal identification sheet); T. 10 September 2009 p. 3 (closed session).

⁹²⁸ T. 10 September 2009 pp. 3, 21-22 (closed session).

⁹²⁹ T. 10 September 2009 p. 4 (closed session).

⁹³⁰ T. 10 September 2009 p. 25 (closed session).

⁹³¹ T. 10 September 2009 p. 4 (closed session).

⁹³² T. 10 September 2009 pp. 5-6 (closed session).

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involved in the recruitment process at Technoserve.⁹³³ The witness knew that Tarek Aziz was a tenant in one of Munyakazi's houses because he had a friend, named Selemeni, who was also a tenant in the same house.⁹³⁴

454. The house in which Tarek Aziz was a tenant was located at the former marketplace at Misufi *cellule*. The tenants' rooms were at the back of the house.⁹³⁵ The witness never saw Tarek Aziz with Munyakazi and believed that the only relationship that existed between them was one of landlord-tenant. Munyakazi did not have bodyguards.⁹³⁶

455. The witness was in Bugarama on 6 April 1994, and did not see youths assembling at Munyakazi's house during the period between 6 and 30 April 1994.⁹³⁷ However, the witness did begin seeing an unruly youth group around Bugarama after 7 April 1994. Its members would cover themselves in banana leaves so that they could not be identified.⁹³⁸ At that time, Tarek Aziz was still living in Munyakazi's house as a tenant. The witness assumed but was not certain that Tarek Aziz was one of the leaders of the group. However, the witness never saw Tarek Aziz training young people.⁹³⁹

Defence Witness YMC

456. Witness YMC, a Hutu, was a trader in Misufi *cellule* in Bugarama *secteur* in 1994.⁹⁴⁰ He knew Athanase Ndutiye before he adopted his nickname. Athanase Ndutiye assumed the name "Tarek Aziz" after watching television during the Kuwait-Iraq war. The witness did not believe he had converted to Islam.⁹⁴¹ Tarek Aziz was working for an NGO known as Technoserve. He was a tenant in Munyakazi's house when he was working at Technoserve and at the time the *Interahamwe* was established.⁹⁴² The witness never saw Tarek Aziz in Munyakazi's company either before or after 6 April 1994. He never saw youths of the MRND assembling in front of Munyakazi's house. He never saw Munyakazi with bodyguards and never saw him carrying a gun.⁹⁴³

Defence Witness YMS

457. Witness YMS, a Hutu, was a trader living in Bugarama *commune* in April 1994. He rented out space from Munyakazi to store his goods.⁹⁴⁴ Tarek Aziz was a tenant in Munyakazi's house and hailed from Nyakabuye *commune*, whereas Munyakazi was from Bugarama.⁹⁴⁵ Tarek Aziz was a Christian. The witness did not know whether he ever converted to Islam. The witness never saw Munyakazi and Tarek Aziz going to the mosque together. The witness was not aware of any relationship between Tarek Aziz and Munyakazi apart from that of landlord-tenant. The witness assumed that Tarek Aziz and Munyakazi could not have spent time together between 1993 and 6 April 1994 because they had different

⁹³³ T. 10 September 2009 p. 8.

⁹³⁴ T. 10 September 2009 pp. 6-7, 34 (closed session), 8.

⁹³⁵ T. 10 September 2009 p. 35 (closed session)

⁹³⁶ T. 10 September 2009 p. 8.

⁹³⁷ T. 10 September 2009 p. 10.

⁹³⁸ T. 10 September 2009 p. 26 (closed session).

⁹³⁹ T. 10 September 2009 pp. 26-29 (closed session).

⁹⁴⁰ Defence Exhibit 22 (personal identification sheet); T. 14 September 2009 p. 3 (closed session).

⁹⁴¹ T. 14 September 2009 pp. 6-7.

⁹⁴² T. 14 September 2009 p. 23.

⁹⁴³ T. 14 September 2009 pp. 7, 11.

⁹⁴⁴ Defence Exhibit 24 (personal identification sheet); T. 14 September 2009 pp. 30-32 (closed session), 33.

⁹⁴⁵ T. 14 September 2009 p. 32 (closed session).

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occupations. Tarek Aziz worked for Technoserve, and the witness did not believe that Munyakazi helped him get the position there.⁹⁴⁶

458. Tarek Aziz was a member of the MRND. However, he was not involved in the recruitment for the MRND, and he was not a leader of its youth wing.⁹⁴⁷ There was a difference between the youth wings of the political parties, who were peaceful cheerleaders for their parties, and the brutal thugs, who were known as *Interahamwe*, who were operating in the area at the time. Tarek was a self-nominated leader of the thugs in Bugarama.⁹⁴⁸ According to the witness, anyone who was a member of the MRND was referred to as *Interahamwe*, young and old. Both the witness himself and Munyakazi would have been referred to as members of the *Interahamwe* because they were members of the MRND. All members of the MRND occasionally wore *kitenge* fabric to party rallies.⁹⁴⁹

Defence Witness Théobald Gakwaya Rwaka

459. The witness, a Hutu, worked at the Rwandan Ministry of Justice for nine years where he was responsible for national security, the police and the prisons. He then worked at CIMERWA in Bugarama from 1992 to 1996.⁹⁵⁰ With the advent of multi-party politics in Rwanda, the witness together with colleagues founded the Christian Democratic Party.⁹⁵¹ Following the death of President Habyarimana, the witness began to believe that his colleagues blamed him for the President's death because he was a member of an opposition party. He felt threatened and began working unusual hours.⁹⁵²

460. The witness testified that the leader of the Bugarama *Interahamwe* was a certain Athanase, also known as Tarek Aziz.⁹⁵³ Following the introduction of multiparty politics, Tarek Aziz often appeared at MRND party meetings as leader of the local militia, although individuals from other political parties were also members of his group. The witness could not say whether Tarek Aziz was responsible for all the attacks that took place in the region, but said he participated in many attacks and spared or killed whoever he wanted.⁹⁵⁴ Following the death of President Habyarimana, Tarek Aziz came to the witness' house three times, each time asking for money. The witness believed that Tarek Aziz would have killed him if he had refused to pay. During the conflict, the witness never saw Tarek Aziz together with Munyakazi.⁹⁵⁵

Defence Witness ELB

461. Witness ELB, a Hutu, joined the *Interahamwe* in February 1993. In April 1994, he was the vice president of the Bugarama *Interahamwe* at the *commune* level, and Athanase Ndutiye, also known as Tarek Aziz, was the president.⁹⁵⁶ Prior to 6 April 1994, Tarek Aziz rented a room in Munyakazi's house. Munyakazi knew that Tarek Aziz was the president of

⁹⁴⁶ T. 14 September 2009 p. 33.

⁹⁴⁷ T. 14 September 2009 p. 48.

⁹⁴⁸ T. 14 September 2009 p. 48.

⁹⁴⁹ T. 14 September 2009 p. 49.

⁹⁵⁰ Defence Exhibit 26 (personal identification sheet); T. 16 September 2009 p. 3.

⁹⁵¹ T. 16 September 2009 p. 4.

⁹⁵² T. 16 September 2009, pp. 11-12.

⁹⁵³ T. 16 September 2009 p. 8.

⁹⁵⁴ T. 16 September 2009 p. 13.

⁹⁵⁵ T. 16 September 2009 pp. 13-14.

⁹⁵⁶ Defence Exhibit 27 (personal identification sheet); T. 17 September 2009 p. 2.

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the *Interahamwe* but the witness never saw Munyakazi assisting Tarek Aziz, and the *Interahamwe* would hold their meetings at the communal office not at Munyakazi's house.⁹⁵⁷ From 7 April 1994, Tarek Aziz and other persons began to threaten Munyakazi, accusing him of sheltering the enemy. Tarek Aziz left Munyakazi's house on 7 April and went to live with a group of gendarmes.⁹⁵⁸

462. Prior to 6 April 1994, Witness ELB never saw Tarek Aziz carrying a gun. On 7 April 1994, at about 8 a.m., the witness saw Tarek Aziz for the first time armed with a gun.⁹⁵⁹ Tarek Aziz was in front of the gendarmes' post, wearing the shirt of a military uniform. He told the witness that a gendarme named Enoch, a friend of his, had given him the shirt, a Kalashnikov and two grenades.⁹⁶⁰ The witness further noted that after the 7 April attack on Esidras Musengayire, he saw Tarek Aziz carrying only one grenade. The witness concluded that Tarek Aziz had thrown the second grenade at Munyakazi's house.⁹⁶¹

463. The witness informed the Chamber that he had participated in the 16 April 1994 attack at CIMERWA in Bugarama.⁹⁶²

Evidence-Munyakazi and Thomas Mugunda

Prosecution Witness BWU

464. Prosecution Witness BWU, a Hutu, was a farmer in 1994.⁹⁶³ The witness participated in the crimes that were committed in April 1994 at Shangi Parish.⁹⁶⁴ The witness named a number of co-perpetrators, including Munyakazi, who he said led the Bugarama *Interahamwe* during the attack.⁹⁶⁵

465. Thomas Mugunda was a high-ranking member of the Bugarama *Interahamwe*. The witness learned this after the conflict when he was incarcerated together with Mugunda. The witness first met Mugunda on 29 April 1994, during the attack at Shangi Parish.⁹⁶⁶

466. On 29 April 1994, Munyakazi and his *Interahamwe* came as reinforcements to kill Tutsi civilians who had sought refuge at Shangi Parish. Munyakazi arrived at the roadblock at about 3 p.m together with Mugunda and about 50 or 60 *Interahamwe*.⁹⁶⁷ The two men arrived in separate vehicles.⁹⁶⁸ After completing the attack, the CDR leader, Gatamobwa, gave Mugunda money to organise a reception for the attackers.⁹⁶⁹

⁹⁵⁷ T. 17 September 2009 pp. 3-4.

⁹⁵⁸ T. 17 September 2009 p. 11.

⁹⁵⁹ T. 17 September 2009 p. 8.

⁹⁶⁰ T. 17 September 2009 p. 9.

⁹⁶¹ T. 17 September 2009 p. 10.

⁹⁶² T. 17 September 2009 p. 11.

⁹⁶³ Prosecution Exhibit 13 (personal identification sheet).

⁹⁶⁴ T. 4 June 2009 pp. 3-4.

⁹⁶⁵ T. 4 June 2009 p. 4; the witness listed: Pascal Ndayisabe, Grégoire Ntezimana; Jacques Mirambi; Nicodème Nyagasaza; Étienne Gatamobwa; Aimé Matos, Mategeko.

⁹⁶⁶ T. 4 June 2009 p. 24.

⁹⁶⁷ T. 4 June 2009 pp. 6-9, 24.

⁹⁶⁸ T. 4 June 2009 pp. 8, 24, 27.

⁹⁶⁹ T. 4 June 2009 pp. 8-9.

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Prosecution Witness LCQ

467. Witness LCQ, a Tutsi, was a farmer in April 1994. On 8 April 1994, the witness sought refuge at Mibilizi Parish together with his wife and about 20 neighbours.⁹⁷⁰ On 30 April 1994, at approximately 4 p.m., the witness saw Munyakazi enter the premises of the parish together with a group of *Interahamwe* who proceeded to attack the parish.⁹⁷¹ The witness recognised only two men among the attackers, Munyakazi and Thomas Mugunda.⁹⁷²

Prosecution Witness Esidras Musengayire

468. Witness Esidras Musengayire, a Tutsi, lived in *Cité Bugarama* in April 1994.⁹⁷³ Among the members of the Bugarama *Interahamwe* the witness was familiar with, "the first" was Athanase Ndutiye. Others included a certain "Mugunda" who also worked at CAVECUVI.⁹⁷⁴

Yussuf Munyakazi

469. Munyakazi testified that the leader of the Bugarama *Interahamwe* at the *commune* level was Athanase Ndutiye, alias Tarek Aziz. Another high ranking members was Thomas Mugunda.⁹⁷⁵

Defence Witness ELB

470. Witness ELB became a member of the *Interahamwe* in Bugarama *commune* in February 1993, and remained a member throughout April 1994. The witness was the vice president of the *Interahamwe* at the *commune* level and Athanase Ndutiye, also known as Tarek Aziz, was the president.⁹⁷⁶ Munyakazi played no role in the *Interahamwe*.⁹⁷⁷

471. The witness participated in the 16 April 1994 attack on CIMERWA in Bugarama *commune* during which many people were killed. Some of the attackers were the *Interahamwe*, others were Burundians.⁹⁷⁸ Munyakazi did not contribute to the attack.⁹⁷⁹ Apart from the attack on CIMERWA, the witness participated in no other attacks.⁹⁸⁰

⁹⁷⁰ Prosecution Exhibit 11 (personal identification sheet); T. 28 April 2009 pp. 15-16.

⁹⁷¹ T. 28 April 2009 pp. 20-22.

⁹⁷² T. 28 April 2009, pp. 27, 33.

⁹⁷³ Prosecution Exhibit 5 (personal identification sheet); T. 23 April 2009 p. 49.

⁹⁷⁴ T. 24 April 2009 p. 1; T. 27 April 2009 p. 12.

⁹⁷⁵ T. 14 October 2009 p. 22.

⁹⁷⁶ T. 17 September 2009 p. 2.

⁹⁷⁷ T. 17 September 2009 p. 3.

⁹⁷⁸ T. 17 September 2009 pp. 11-12, 14.

⁹⁷⁹ T. 17 September 2009 p. 11.

⁹⁸⁰ T. 17 September 2009 pp. 12, 16.

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*Deliberations*Introduction

472. The Prosecution alleges that Munyakazi was a member of a joint criminal enterprise, the purpose of which was to commit genocide against the Tutsi population. It relies on the basic form of this mode of liability.⁹⁸¹

473. The Indictment names the following alleged co-perpetrators: Ndutiye, alias Tarek Aziz, Ndereya, Mundere, Rekeraho Samuel, Habineza Theobald, Zacharie alias Mariyo, Sebatware Marcel, Ndolimana Casimir, Muguna Thomas, Ngarukiye Emmanuel, and Bakundize Elias.

474. With respect to the specific contribution of the Accused to the joint criminal enterprise, the Prosecution in its Pre-Trial brief alleges that: "...between 6 and 16 April 1994, the Accused used his *de facto* authority and influence as the leader of Bugarama *Interahamwe* to further the aims of the joint criminal enterprise by planning, ordering, instigating, or otherwise aiding and abetting the commission of genocide and extermination."⁹⁸² This description of the contribution of the Accused is reiterated in para. 49 of the Prosecution's Closing Brief. In its Closing Brief, the Prosecution further recalls that it "...relies on the theory of Joint Criminal Enterprise to establish the individual criminal responsibility of MUNYAKAZI."⁹⁸³ With respect to the particular contributions of the alleged co-perpetrators, the Indictment and Pre-Trial Brief allege that Ndutiye, also known as Tarek Aziz, participated in the recruitment and training of the Bugarama *Interahamwe*.⁹⁸⁴ The Indictment accuses Thomas Mugunda of having worked in concert with Munyakazi to facilitate the transport of the *Interahamwe* to the crime sites.⁹⁸⁵ The Trial Chamber observes that, with these exceptions, the Prosecution, in its Indictment and Pre-Trial Brief, simply lists the alleged co-perpetrators of the crimes without describing their alleged positions and contributions to the joint criminal enterprise.⁹⁸⁶

475. The Trial Chamber, however, is equally mindful that the Defence did not object to the vague notice provided by the Prosecution with respect to this mode of liability. Thus, the Trial Chamber is left to infer many of the material facts of the alleged joint criminal enterprise.

476. The Trial Chamber observes that no evidence was adduced with respect to many of the persons named in paragraph 4 of the Indictment. Others were mentioned in passing, but either without specific reference to their role in the Bugarama *Interahamwe* or without linking the individual to the Accused. After a thorough review of the evidence, the Trial Chamber finds that of those persons named in paragraph 4 of the Indictment, the Prosecution has only adduced evidence of probative value linking Munyakazi to two persons, Tarek Aziz and Thomas Mugunda. Thus, the Trial Chamber will only review information with respect to the Accused and his connection to those two individuals.

477. The principal basis for the assertion that Munyakazi and Tarek Aziz co-perpetrated a joint criminal enterprise follows from the evidence of Prosecution Witnesses BWX, BWB, and Esidras Musengayire. Prosecution witnesses BWU, LCQ and Esidras Musengayire gave evidence linking Munyakazi and Thomas Mugunda.

⁹⁸¹ Indictment, para. 4; Prosecution Pre-Trial Brief, paras.14-16; Prosecution Closing Brief, para. 18.

⁹⁸² Prosecution Pre-Trial Brief, para. 18.

⁹⁸³ Prosecution Closing Brief, para. 18.

⁹⁸⁴ Indictment para. 8; Prosecution Pre-Trial Brief, para.8

⁹⁸⁵ Indictment para. 10.

⁹⁸⁶ Prosecution Pre-Trial Brief, para.17.

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Munyakazi and Tarek Aziz

478. The Trial Chamber understands the Prosecution theory of the case to be that Munyakazi was a leader of the Bugarama *Interahamwe* and that Tarek Aziz was either his deputy or a close associate. This association suggests that the two men shared a common plan to commit the crimes alleged in the Indictment.

479. The parties do not dispute that Tarek Aziz was a tenant in Munyakazi's house in Misufi *cellule*, and that he was one among a number of paying tenants living there. Prosecution witnesses did not say when Tarek Aziz became a tenant while Munyakazi testified that Tarek Aziz moved into the house well before the events alleged in the Indictment, and this evidence was corroborated by Defence Witness YMC. Whether Munyakazi lived in this same compound or elsewhere is unclear. However, even if the two men had lived next door to each other as landlord and tenant, this is not sufficient evidence to conclude that they shared a common purpose to destroy the Tutsi population and collaborated to achieve this goal.

480. Prosecution Witness BWX testified that Munyakazi helped Tarek Aziz obtain employment at CAVECUVI when he arrived in Bugarama in the early 1990s. The Trial Chamber has accepted that the witness could provide relevant information because his workplace was located sufficiently close to Munyakazi's compound in Misufi *cellule* in 1994 that he could observe what was taking place there. However, the witness did not provide a foundation for his knowledge about recruitment processes at CAVECUVI. The Chamber further notes that while Witness BWX testified that he was present at Munyakazi's compound almost daily prior to April 1994, and that he was treated like a member of Munyakazi's family, he did not know whether Tarek Aziz was a tenant in the house. Because all other witnesses who testified to Tarek Aziz's living arrangements were aware that he was living in the house as a tenant, Witness BWX's failure to acknowledge this point casts some doubt on his credibility. Munyakazi testified that he first met Tarek Aziz when the latter came to Bugarama to take a test for recruitment to CAVECUVI. He denied having helped Tarek Aziz obtain his job there. Although the Chamber finds Witness BWX credible in some instances, the assertion that Munyakazi found Tarek Aziz a job was not corroborated by any other witness and is lacking in detail. The Chamber is therefore not convinced that Munyakazi obtained employment for Tarek Aziz in 1991. Even if he had, this alone would not constitute evidence of a strong relationship between the two men in 1994.

481. Witness BWX further claimed Tarek Aziz was one of the bodyguards who often accompanied Munyakazi. Prosecution Witness BWB, on the other hand, who admitted having been a member of the Bugarama *Interahamwe*, testified that Munyakazi had *Interahamwe* bodyguards, but did not mention that Tarek Aziz was one of them. Moreover, Prosecution Witness Esidras Musengayire, who was very close to Munyakazi, and also knew Tarek Aziz, only said that Munyakazi was seen in the company of *Interahamwe*. Given these contradicting statements and the gaps in Witness BWX's knowledge concerning the relationship between Tarek Aziz and Munyakazi, the Chamber is not persuaded on the basis of his testimony alone that Tarek Aziz acted as one of Munyakazi's bodyguards.

482. Prosecution Witness BWB stated that Tarek Aziz was Munyakazi's deputy but provided no further detail.⁹⁸⁷ Prosecution Witness BWU, on the other hand, testified that Thomas Mugunda was Munyakazi's vice president.⁹⁸⁸ The Trial Chamber recalls that Witnesses BWB and BWU were both accomplice witnesses and will therefore accord greater

⁹⁸⁷ T. 29 May 2009 p. 7.

⁹⁸⁸ T. 4 June 2009 p. 9, 27-28.

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weight to their evidence where it is corroborated. Prosecution Witness Esidras Musengayire did not suggest that Munyakazi was Tarek Aziz's superior. Defence Witnesses MPCC, AMB, YMC, ELB, NRB, NKM and Théobald Gakwaya Rwaka all testified that Aziz had no special relationship with Munyakazi. Indeed, Defence Witness ELB testified that their relationship after 7 April 1994 was a hostile one. When the totality of the evidence is considered, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Tarek Aziz was Munyakazi's deputy or a close associate.

483. In addition, the Trial Chamber observes that the Prosecution has adduced no evidence indicating that Tarek Aziz was present during the attacks on Shangi and Mibilizi Parishes, on 29 and 30 April 1994 respectively, or that he otherwise contributed to those attacks in any manner. The Trial Chamber further recalls that it is not satisfied that Munyakazi was involved in the training of the Bugarama *Interahamwe* (see Chapter. III.4).

484. It is therefore the Chamber's view that the evidence of Munyakazi's relationship with Tarek Aziz is insufficient to demonstrate, as the only reasonable conclusion, that the two men participated in a joint criminal enterprise to destroy the Tutsi population.

Munyakazi and Thomas Mugunda

485. The Prosecution alleges that Munyakazi acted in concert with Thomas Mugunda, among others, in a joint criminal enterprise, the purpose of which was to destroy the Tutsi population. One specific charge stemming from this allegation was that Munyakazi acted in concert with Thomas Mugunda and others to provide food and transportation to the Bugarama *Interahamwe*.

486. Prosecution Witness BWU, an accomplice witness, testified that Munyakazi was the president of the Bugarama *Interahamwe* and that Thomas Mugunda was his vice president. Defence Witness ELB, another accomplice witness but one who was better placed than Witness BWU to know the structure of the Bugarama *Interahamwe*, testified that Mugunda was the vice president of the Bugarama *Interahamwe* and that Tarek Aziz was the president. Witness BWU was the only Prosecution witness to have linked Munyakazi and Mugunda in this manner. In addition, Witness BWU was from the Shangi area and not from Bugarama, and his knowledge is based almost exclusively on the attack that took place on 29 April 1994 in which he admitted having participated. A third accomplice witness, Prosecution Witness BWW, who admitted having been a member of the Bugarama *Interahamwe*, was also in a better position than Witness BWU to assess the relationship between Munyakazi and Mugunda. This witness did not mention Mugunda in his testimony. Prosecution Witness Musengayire, who also linked Munyakazi to the *Interahamwe*, only said that a certain "Mugunda" was a tenant in Munyakazi's house and worked at CAVECUVI.

487. Although Witness BWU referred to Mugunda's presence and his role as Munyakazi's deputy during the attack on Shangi Parish on 29 April 1994, Witness ELB testified that Mugunda was not present. While the Trial Chamber accepts that Witness ELB may have lied about Mugunda's presence for a number of reasons, the evidence nevertheless pits the evidence of two accomplice witnesses against each other. The Chamber notes that Prosecution Witness BWW, who also admitted to having participated in the attack on Shangi Parish, did not mention the presence or role of Mugunda. The Trial Chamber cannot conclude that Munyakazi and Mugunda participated in a joint criminal enterprise to exterminate Tutsis at Shangi Parish on the strength of Witness BWU's uncorroborated testimony. The Chamber further observes that the Prosecution did not refer to Mugunda's presence at Shangi Parish in

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its Closing Brief or closing arguments. Overall, the Trial Chamber has heard insufficient evidence about Mugunda to properly assess his possible role in the Shangi attack.

488. Prosecution Witness LCQ was a victim of the 30 April attack on Mibilizi Parish. He testified that he was able to identify only two of the attackers that day, Munyakazi and Thomas Mugunda. Although the Chamber considers Witness LCQ's testimony to have been credible and reliable overall, it notes that he is the only witness to have placed Thomas Mugunda at Mibilizi parish, and that he did not say how he knew Mugunda. Moreover, he did not describe Mugunda's role. Witness ELB testified that Mugunda did not participate in the attack. The Trial Chamber recalls, however, that he had a motive to dissemble. Prosecution Witness BWB, who admitted taking part in the attack, did not mention the participation of Mugunda. Rather, he testified that the two leaders of that attack were Munyakazi and a certain Edouard Bandetsi, who is named in neither the Indictment nor the Prosecution Pre-Trial Brief. The Trial Chamber further notes that the Prosecution did not refer to Mugunda's presence at Mibilizi Parish in its Closing Brief or closing arguments. The Chamber finds that the evidence is insufficient to conclude that Thomas Mugunda participated in a joint criminal enterprise with Munyakazi to exterminate Tutsi civilians at Mibilizi Parish on 30 April 1994.

Conclusion on JCE

489. The Trial Chamber considers the Prosecution's less specific allegation, in paragraph 4 of the Indictment, that the Accused participated in a joint criminal enterprise with the "Bugarama Interahamwe" to be too vague to support a conviction.

490. As set out above, the more specific allegation that the Accused and Tarik Aziz and/or Thomas Mugunda and/or other persons named in the Indictment participated together in a joint criminal enterprise has not been supported by sufficient evidence. Consequently, the Trial Chamber rejects joint criminal enterprise as a mode of liability in this case.

Overall conclusion on other modes of liability

491. The Trial Chamber recalls that Munyakazi was a prominent man in Bugarama community on the basis of his wealth and prior positions at *Banque Populaire* and the CAVECUVI cooperative. He was therefore in a position of authority at the crime sites. The Trial Chamber recalls that although it found that the Prosecution had not established beyond reasonable doubt that Munyakazi personally killed Tutsi civilians at the crime sites, it also found that the Prosecution has established that Munyakazi was the leader of the attack at Shangi Parish on 29 April 1994, and a leader of the attack on Mibilizi Parish on 30 April 1994 (see Chapter II.8 and Chapter II.9), and that the purpose of the attacks was to eliminate the Tutsi civilians who had sought refuge at those locations. On the basis of his leadership position at the crime sites, the Trial Chamber concludes that Munyakazi was as much an integral part of the the killings as those he enabled, and that he approved and embraced the decision to commit the crimes as his own. The Trial Chamber therefore finds he is liable for "committing" the killings at Shangi and Mibilizi Parishes on 29 and 30 April 1994 respectively.

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2. GENOCIDE (COUNTS 1 AND 2)

492. Count 1 of the Indictment charges Munyakazi with genocide under Article 2(3)(a) of the Statute. In support of this count, the Prosecution points to massacres at Nyamasheke, Shangi and Mibilizi Parishes on 16, 29 and 30 of April 1994. These crimes are also charged in the alternative under Count 2 as complicity in genocide. The other allegations in support of these counts have not been established. To the extent that the Trial Chamber finds Munyakazi responsible under Count 1, it will not discuss his liability under Count 2.

2.1 Law

493. A person commits the crime of genocide (Article 2(3)(a) of the Statute) if he or she commits one of the acts enumerated in Article 2(2) of the Statute (*actus reus*) with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such ("genocidal intent").⁹⁸⁹ Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.⁹⁹⁰ 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.⁹⁹¹

494. The jurisprudence accepts that in most cases genocidal intent will be proved by circumstantial evidence.⁹⁹² In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include but are not limited to: (a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) the repetition of destructive and discriminatory acts and (i) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators.⁹⁹³

495. The Indictment charges Munyakazi with killing members of the Tutsi group. It is firmly established that civilian members of the Tutsi ethnicity constitute a protected group,⁹⁹⁴ and this fact is not disputed by the Defence. The killings alleged must be linked to the intent to destroy in whole, or in part, members of the protected group.⁹⁹⁵ In the instant case, the Defence does not dispute the legal elements of the crime of genocide.

⁹⁸⁹ Nahimana Appeals J, para. 492.

⁹⁹⁰ *Bagosora et al.* Trial Judgement para. 2115, citing *Gacumbitsi* Appeal Judgement para. 44.

⁹⁹¹ *Ntakirutimana* Appeal Judgement paras. 302-304, *Niyitegeka* Appeal Judgement paras. 48-54.

⁹⁹² *Nahimana* Appeal Judgement, para. 524. *Gacumbitsi* Appeal Judgement, paras. 40-41 and 44.

⁹⁹³ *Seromba* AC J, para. 176, citing in part *Seromba* TC J, para. 320.

⁹⁹⁴ See also *Bagosora et al.* Trial Judgement para. 2116 and note 2338 ("Furthermore, every judgement rendered by this Tribunal concerning genocide has recognised that the Tutsi ethnicity is a protected group.").

⁹⁹⁵ *Kayishema and Ruzindana* Appeal Judgement para. 151.

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2.2 Application

496. The Trial Chamber has already found that Munyakazi was the leader of the attack on Shangi Parish on 29 April 1994, and one of the leaders of the attack on Mibilizi Parish on 30 April 1994 (see Chapters II.8 and II.9). All the evidence indicates that apart from a very small number of individual parish staff and gendarmes, who were not killed during these attacks, those present at the two parishes were predominantly Tutsi civilians. The assailants killed approximately 5,000-6,000 refugees in the course of the 29 April 1994 attack on Shangi Parish.⁹⁹⁶ Approximately 60-100 Tutsis were killed by the same groups during the 30 April attack on Mibilizi Parish.⁹⁹⁷ Very few refugees survived either attack, and thus the Trial Chamber is able to infer that the overall intent of the attackers was to eliminate members of a protected group on the basis of its ethnic composition. The Defence has not suggested that there was any other motive or purpose or intent underlying these attacks.

497. The Trial Chamber recalls that it has rejected the Prosecution's allegation that Munyakazi participated in a joint criminal enterprise to commit crimes at these two locations but that it has concluded that Munyakazi "committed" the killings pursuant to Article 6 (1) of the Statute (See Chapter III.1.1.2).

498. The Trial Chamber finds very little direct evidence of the intent of the Accused. Prosecution Witness LCQ, a survivor of the attack whom the Trial Chamber found to be credible and reliable, stated that the Accused told the refugees at Mibilizi parish, "You have killed the head of state... You are going to pay for what you have done."⁹⁹⁸ Beyond that the Prosecution has adduced no direct evidence that the Accused shared the animosity towards Tutsis that was widespread at the time.

499. The parties do not dispute that those who sought refuge at the parishes were predominantly Tutsi civilians. Both parishes sustained prior attacks in April 1994, and the evidence indicates that assailants attacked Shangi and Mibilizi Parishes at the end of April to complete the killings of refugees that had been initiated by other groups of assailants but left significant numbers of survivors. The only reasonable finding on the basis of the evidence adduced is that the assailants who perpetrated the killings on 29 and 30 April 1994 at the two parishes possessed the intent to destroy, in whole or in substantial part, the local population of Tutsi civilians.

500. The Trial Chamber also finds that the only reasonable inference that can be drawn from the evidence adduced at trial is that in leading the attacks on these places of refuge, the Accused was aware that the attacks were part of a context of widespread attacks on Tutsi civilians. The two attacks together resulted in thousands of civilian deaths, and there is no evidence that the Hutu staff and gendarmes present at the parishes on the days in question were targeted together with the Tutsis who had sought refuge at the parishes. Whether Munyakazi led the attacks because he shared an animosity towards Tutsis or because he sought to curry favour with political associates or authorities, the Trial Chamber finds that in leading the attacks, Munyakazi shared the specific intent to eliminate the protected group that had sought refuge at these two parishes.

⁹⁹⁶ Witness BWR, T. 22 April 2009, p. 54.; Witness BWU, T. 4 June 2009 p.30

⁹⁹⁷ Witness MM, T. 27 April 2009 pp. 63-64; T. 28 April 2009 p. 10; Witness MP, T. 27 April 2009, pp. 45, 50-51.

⁹⁹⁸ T. 28 April 2009 p. 20.

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2.3 Conclusion

501. Accordingly, the Trial Chamber finds Munyakazi guilty of committing genocide (Count 1) pursuant to Article 6 (1) for the killings of Tutsi civilians at Shangi Parish on 29 April 1994 and Mibilizi Parish on 30 April 1994. He is therefore not guilty of the alternative charge of complicity to commit genocide (Count 2).

3. CRIMES AGAINST HUMANITY (COUNT 3)

502. Count 3 of the Indictment charges Munyakazi with extermination as a crime against humanity under Article 3 (b) of the Statute. In support of Count 3, the Prosecution points to the killings of people at Nyamasheke, Shangi and Mibilizi Parishes on 16, 29 and 30 April 1994 respectively.

3.1 Widespread and Systematic Attack

503. For an enumerated crime under Article 3, such as extermination, to qualify as a crime against humanity at the ICTR, the Prosecution must prove that the crime was committed as part of a widespread or systematic attack against the civilian population on national, political, ethnic, racial or religious grounds.⁹⁹⁹ 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) of Article 3.¹⁰⁰⁰ The *chapeau* elements are disjunctive: “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.¹⁰⁰¹

504. 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.¹⁰⁰² The additional requirement at the ICTR that crimes against humanity must be committed “on national, political, ethnic, racial or religious grounds” does not mean that a discriminatory *mens rea* need be established.¹⁰⁰³

505. The Trial Chamber has considered the totality of the evidence, in particular concerning the ethnic composition of the individuals who were killed during the events in this case. The Trial Chamber is satisfied that there was a widespread and systematic attack against the civilian population on ethnic grounds. As noted above, bearing in mind the specific nature and circumstances of the killings, the Trial Chamber is further satisfied that Munyakazi was aware that the killings he participated in formed part of this broader attack.

3.2 Extermination

Law

506. The crime of extermination is the act of killing on a large scale. The *actus reus* consists of any act, omission, or combination thereof which contributes directly or indirectly

⁹⁹⁹ ICTR Statute, Article 3.

¹⁰⁰⁰ *Nahimana et al.* Appeal Judgement paras. 915-918, *Kordić and Čerkez* Appeal Judgement para. 666, *Kunarac et al.* Appeal Judgement para. 89.

¹⁰⁰¹ *Nahimana et al.* Appeal Judgement para. 920.

¹⁰⁰² *Gacumbitsi* Appeal Judgement paras. 86, 103.

¹⁰⁰³ *Setako* Trial Judgment para. 477, citing *Bagosora et al.* Trial Judgement para. 2166, *Akayesu* Trial Judgement paras. 464-469, 595, *Bagilishema* Trial Judgement para. 81.

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to the killing of a large number of individuals. Although extermination is the act of killing a large number of people, such a designation does not suggest that a numerical minimum must be reached. The *mens rea* of extermination requires that the accused intend to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their death in a widespread or systematic manner.¹⁰⁰⁴

3.3 Application

507. The Trial Chamber has already determined that Munyakazi committed genocide at Shangi and Mibilizi Parishes on 29 and 30 April 1994 respectively (see Chapters II.8 and II.9). The Trial Chamber is also satisfied that the number of killings was sufficiently large to amount to extermination. Given the high concentration of Tutsi civilians at the two parishes, it is clear that Munyakazi intended to kill on a massive scale.

3.4 Conclusion

508. Accordingly, The Trial Chamber finds Munyakazi guilty of committing extermination (Count 3) as a crime against humanity pursuant to Article 6 (1) for the killings of Tutsi civilians at Shangi Parish on 29 April 1994 and Mibilizi Parish on 30 April 1994.

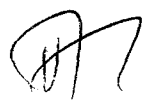
¹⁰⁰⁴ *Seromba* Appeal Judgement para. 189, *Ntakirutimana* Appeal Judgement paras. 516, 522, *Ndindabahizi* Appeal Judgement para. 123, *Brđanin* Appeal Judgement para. 470, 476, *Gacumbitsi* Appeal Judgement para 86, *Semanza* Appeal Judgement paras. 268-269, *Stakić* Appeal Judgement paras. 259-260.

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CHAPTER IV: VERDICT

- Count 1: **Guilty** of Genocide
- Count 2: **Not Guilty** of Complicity in Genocide
- Count 3: **Guilty** of Extermination as a Crime against Humanity



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CHAPTER V: SENTENCING

1. INTRODUCTION

509. Having found Yussuf Munyakazi guilty of genocide and extermination as a crime against humanity, the Chamber is required to determine an appropriate sentence.

510. The penalty imposed ought to 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 conduct of the accused, the individual circumstances of the accused, including aggravating and mitigating circumstances. The Chamber will also consider the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served.¹⁰⁰⁵ 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, in the pre-trial period, and during trial.¹⁰⁰⁶

1.1 Submissions

511. The Prosecution argues that for each count in the Indictment under which Munyakazi is found guilty, the Chamber should impose concurrent life sentences. In addition, it is submitted that his offences are grave and there are no mitigating factors. The Prosecution further argues that the Chamber should take into account the status of the Accused in society at the time of the crimes, the role he played in the execution of the crimes, his motives and the manner in which the crimes were executed.¹⁰⁰⁷

512. The Prosecution submits that aggravating circumstances in this case should include the motivation of the accused and his goals, as well as planning and premeditation, the disposition and the will of the accused in regard to the criminal act, the extent to which he behaved in a manner contrary to his duty and the status of the Accused in society at the time of the commission of the crimes including his duty *vis-a-vis* the population.¹⁰⁰⁸

513. The Defence submits that, in the event of a conviction, "Munyakazi be allowed the fullest benefits of the mitigating factors as reflected in the totality of the evidence adduced throughout the trial." The Defence underscored that Munyakazi saved the lives of Tutsis during the war and that he cooperated throughout the trial.¹⁰⁰⁹ Furthermore the Defence submits that Munyakazi's age, health and piety should be considered as mitigating factors by the Trial Chamber in sentencing.¹⁰¹⁰

¹⁰⁰⁵ *Setako* Trial Judgement para. 494, *Renzaho* Trial Judgement para. 814. See also Article 23 (1)-(3) and Rule 101 (B)(i)-(iv).

¹⁰⁰⁶ *Renzaho* Trial Judgement para. 814, citing *Kajelijeli* Appeal Judgement para. 290. See also Rule 101 (C).

¹⁰⁰⁷ Prosecution Closing Brief pp. 163-193; T. 28 January 2010 p. 17.

¹⁰⁰⁸ Prosecution Closing Brief pp. 49-50.

¹⁰⁰⁹ T. 28 January 2010 pp. 47-48.

¹⁰¹⁰ T. 28 January 2010 pp. 49

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1.2 Deliberations

1.2.1 Gravity of the Offence

514. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.¹⁰¹¹ 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.¹⁰¹²

515. 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".¹⁰¹³

516. The Chamber has determined that Munyakazi committed genocide at Shangi Parish on 29 April 1994 and Mibilizi Parish on 30 April 1994.¹⁰¹⁴ These crimes are grave and resulted in a substantial number of deaths and human suffering. "Commission" is a direct form of participation.

517. Under Rwandan law, similar crimes carry the possible penalties of life imprisonment, depending on the nature of the participation of the accused.¹⁰¹⁵ In this Tribunal, a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities as well as the most senior authorities.¹⁰¹⁶ The Chamber finds some guidance from cases that include

¹⁰¹¹ *Bagosora et al.* Trial Judgement para. 2263, citing *Kayishema and Ruzindana* Appeal Judgement para. 367 (quoting Article 1 of the Statute).

¹⁰¹² *Setako* Trial Judgement para. 497, *Bagosora et al.* Trial Judgement para. 2263, citing *Kajelijeli* Appeal Judgement para. 291.

¹⁰¹³ *Setako* Trial Judgement para. 498, *Bagosora et al.* Trial Judgement para. 2263, citing *Kvočka et al.* Appeal Judgement para. 681.

¹⁰¹⁴ Indictment paras 13-14.

¹⁰¹⁵ *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36AT-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 May 2008, paras. 24-32; *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, paras. 22-25 (assessing Rwanda's penalty structure); *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, 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.

¹⁰¹⁶ *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, 2268-2269, 2277-2279 (*Directeur de cabinet* of Ministry of Defence, Commander of Para Commando Battalion, and Commander of Gisenyi Operational Sector); *Renzaho* Trial Judgement paras. 819, 826 (prefect of Kigali-Ville and colonel in the Rwandan army); *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, *Karera* Trial Judgement para. 585 (prefet of Kigali-Rural); *Kayishema and Ruzindana* Trial Judgement (Sentence) p. 8 (Kayishema was prefect of Kibuye); *Gacumbitsi* Appeal Judgement para. 206 (*bourgmestre*); *Musema* Trial Judgement paras. 999-1008 (influential director of a tea factory); *Rutaganda* Trial Judgement paras. 466-473 (second Vice-president of *Interahamwe* at national level).

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convictions for direct participation in genocide and extermination that did not result in life sentences.¹⁰¹⁷

1.2.2 Individual, Aggravating and Mitigating Circumstances

518. The Chamber will consider Munyakazi'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. 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.¹⁰¹⁸

519. The Appeals Chamber has held that an accused's abuse of his superior position or influence may be considered as an aggravating factor.¹⁰¹⁹ In the Chamber's view, although Munyakazi was not a figure of national renown or authority, he was nevertheless influential within his community. He leveraged this influence to reinforce and enhance the criminal activities of the Bugarama *Interahamwe* at Shangi and Mibilizi Parishes. Munyakazi's abuse of this influential position within Bugarama society amounts to an aggravating factor.

520. The Chamber has considered Munyakazi's background and individual circumstances. The Chamber is mindful of Munyakazi's age and acknowledges the assistance he provided to a number of Tutsi friends during the genocide. However, as the Appeals Chamber of this Tribunal has explicitly affirmed, it is well within the province of a Trial Chamber to disregard such "selective assistance" to Tutsis as a mitigation factor.¹⁰²⁰ The Trial Chamber further considers the relative "piety" of the Accused to be irrelevant as his piety did not prevent him from committing crimes or seeking absolution at Trial. Therefore, the Chamber does not regard these as mitigating factors.

1.2.3 Conclusion

521. The Chamber has found Munyakazi guilty for genocide and extermination as a crime against humanity, offences stipulated in Articles 2 and Articles 3 of the Statute of the Tribunal. 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.¹⁰²¹ The convictions for genocide and extermination as a crime against humanity in this case are based largely on the same underlying criminal acts.

522. Considering all the relevant circumstances discussed above, the Chamber, pursuant to Rule 101, **SENTENCES** Yussuf Munyakazi to:

TWENTY-FIVE (25) Years of Imprisonment

¹⁰¹⁷ See for example, *Simba* Appeal Judgement paras. 279-288, p. 103; *Semanza* Appeal Judgement paras. 388-389. *Kayishema and Ruzindana* Appeal Judgement paras. 191, 194, 352: In *Simba*, the Appeals Chamber affirmed a sentence of 25 years of imprisonment for the retired colonel who participated in two massacres. In *Semanza*, the Appeals Chamber determined 25 years of imprisonment to be the appropriate sentence for the direct perpetration of genocide and extermination at a massacre site by a former *bourgmestre*. The Accused in *Ruzindana* was a successful businessman. The Appeals Chamber affirmed the sentence of 25 years of imprisonment for genocide, based on the direct participation of the accused in attacks.

¹⁰¹⁸ *Renzaho* Trial Judgement para. 822, citing *Ndindabahizi* Appeal Judgement, para. 137.

¹⁰¹⁹ *Renzaho* Trial Judgement para. 822, citing *Simba* Appeal Judgement paras. 284-285.

¹⁰²⁰ *Bikindi* Appeal Judgement, paras. 161-63.

¹⁰²¹ *Renzaho* Trial Judgement para. 825, citing *Nahimana et al.* Appeal Judgement paras. 1042-1043, *Simba* Trial Judgement para. 445, *Ndindabahizi* Trial Judgement para. 497.

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1.3 Consequential Orders

523. Munyakazi shall receive credit for time served since his arrest on 5 May 2004, pursuant to Rule 101 (C) of the Rules. 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.

524. Until his transfer to his designated place of imprisonment, Yussuf Munakazi shall be kept in detention under the present conditions.

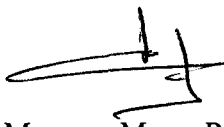
525. Pursuant to Rule 102 (A) and 103 of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 5 July 2010, done in English.



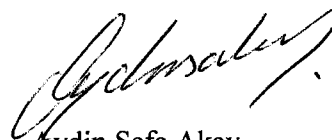
Florence Rita Arrey

Presiding Judge



Mparany Mamy Richard
Rajohnson

Judge



Aydin Sefa Akay

Judge

[Seal of the Tribunal]



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ANNEX A: PROCEDURAL HISTORY

1. PRE-TRIAL PROCEEDINGS

1. On 10 October 1997, the Prosecution issued an Indictment against Emmanuel Bagambiki, Samuel Imanishimwe and Yussuf Munyakazi.¹⁰²²

2. On 26 May 2000, as Yussuf Munyakazi was still at large, the Trial Chamber issued an order severing Yussuf Munyakazi from the Indictment, to enable the trial against Co-Accused Emmanuel Bagambiki and Lt. Samuel Imanishimwe to proceed.¹⁰²³

3. On 29 November 2002, a Pre-Trial Chamber granted leave to the Prosecution to amend the Indictment.¹⁰²⁴ The Prosecution issued the Amended Indictment on 29 November 2002. It charged Yussuf Munyakazi with two counts: Count 1- Genocide, or alternatively Complicity in Genocide, Count 2- Extermination as a Crime against Humanity.¹⁰²⁵

4. The Accused was arrested in the Democratic Republic of Congo on 5 May 2004, and transferred to the United Nations Detention Facility on 7 May 2004.¹⁰²⁶ Munyakazi's initial appearance took place on 12 May 2004. He pleaded not guilty to all charges.¹⁰²⁷

5. At a status conference held on 31 August 2007, the Prosecution announced its intention to file a motion, pursuant to Rule 11 *bis*, to transfer the case against Yussuf Munyakazi to another jurisdiction.¹⁰²⁸ On 7 September 2007, the Prosecution filed a motion seeking to refer Munyakazi's case to the authorities in Rwanda, pursuant to Rule 11 *bis*. On 2 October 2007, the Defence filed a response opposing the proposed transfer. On 2 October 2007, the President designated a Bench within Trial Chamber III to address the referral issues.¹⁰²⁹

6. The Trial Chamber granted leave to the Government of Rwanda, the Kigali Bar Association, the International Criminal Defence Attorneys Association ("ICDAA") and Human Rights Watch ("HRW"), to appear as *amici curiae*¹⁰³⁰ on the referral issue. It held a hearing on 24 April 2008. On 28 May 2008, the Trial Chamber denied the Prosecution's request for referral to Rwanda.¹⁰³¹

¹⁰²² *Prosecutor v. Munyakazi*, Decision to Confirm the Indictment, 10 October 1997.

¹⁰²³ T. 26 May 2000 p. 12.

¹⁰²⁴ *Prosecutor v. Munyakazi*, Decision on the Prosecutor's Ex Parte Request for Leave to Amend the Indictment, 29 November 2002.

¹⁰²⁵ Amended Indictment of 29 November 2002, Case No. ICTR-97-36A.

¹⁰²⁶ Decision on "Request for Reversal of Decision Prohibiting Contact with Other Detainees" 15 February 2005, paras 1,-2, 10-11; ICTR Press Release, ICTR/INFO-9-2-592-EN, 22 April 2009.

¹⁰²⁷ Initial Appearance; T. 12 May 2004, p. 9.

¹⁰²⁸ T. 30 August 2007 p.1-2

¹⁰²⁹ *Prosecutor v. Munyakazi*, Designation of a Trial Chamber for the Referral of the case of Yussuf Munyakazi to Rwanda, 2 October 2007.

¹⁰³⁰ *Prosecutor v. Munyakazi*, Order for Submissions of the Republic of Rwanda as the State Concerned by the Prosecutor's Request for Referral of the Indictment against Yussuf Munyakazi to Rwanda, 9 November 2007; Decision on the Application by the Kigali Bar Association for Leave to Appear as *Amicus Curiae*, 6 December 2007; Decision on the Application by the International Criminal Defence Attorneys Association (ICDAA) for Leave to File a Brief as *Amicus Curiae*, 6 December 2007; Decision on the Request by Human Rights Watch to Appear as *Amicus Curiae*, 10 March 2008.

¹⁰³¹ *Prosecutor v. Munyakazi*, Decision on the Prosecutor's Request for Referral of Case to The Republic of Rwanda Rules 11 *bis* and 74 of the Rules of Procedure and Evidence, 28 May 2008

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7. The Prosecution appealed the Trial Chamber's Decision. The Appeal Chamber granted permission to the ICDA and the Republic of Rwanda on 18 July 2008 to file *amici curiae* Briefs.¹⁰³² On 8 October 2008, the Appeal Chamber dismissed the Prosecution's appeal and upheld the Trial Chamber's decision denying referral of the case to Rwanda.¹⁰³³

8. On 30 October 2008, the Trial Chamber again granted a Prosecution motion to amend the Indictment.¹⁰³⁴ On 3 November 2008, the Prosecutor filed the Second Amended Indictment, adding detail to the previous Indictment.¹⁰³⁵ The President of the Tribunal, Judge Dennis C. M. Byron, assigned the Trial bench composed of Judge Florence Rita Arrey (Presiding), Judge Mparany Mamy Richard Rajohnson and Judge Aydin Sefa Akay, on 15 April 2009.

9. The Prosecution filed a Pre-Trial Brief on 30 March 2009.¹⁰³⁶ On 17 April 2009, the Chamber scheduled the commencement of trial for 22 April 2009.¹⁰³⁷ The Trial commenced on 22 April 2009.

2. PROSECUTION CASE

10. The Prosecution case began on 22 April 2009 and ended on 04 June 2009. Over the course of seven trial days, the Prosecution called 11 witnesses, including one who was heard by deposition in Kigali.¹⁰³⁸ 28 Prosecution Exhibits were tendered into evidence.

3. DEFENCE CASE

11. Following a Pre-Defence Conference held on 9 June 2009, the Trial Chamber scheduled the start of the Defence case for 31 August 2009.¹⁰³⁹ The Defence filed its Pre-Defence Brief on 31 July 2009.¹⁰⁴⁰

12. On 25 August 2009, the Trial Chamber ordered the Defence to reduce its witness list.¹⁰⁴¹

¹⁰³² *Prosecutor v. Munyakazi*, Decision on Request from the International Criminal Defence Attorneys Association (ICDAA) for Permission to File an Amicus Curiae Brief, 15 July 2008; Decision on Request from the Republic of Rwanda for Permission to File Amicus Curiae Brief, 18 July 2008

¹⁰³³ *Prosecutor v. Munyakazi*, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11bis, 8 October 2008

¹⁰³⁴ *Prosecutor v. Munyakazi*, Decision on Prosecution Request for Leave to Amend the Indictment, 30 October 2008.

¹⁰³⁵ Second Amended Indictment, 03 November 2008.

¹⁰³⁶ The Prosecutor's Pre-Trial Brief Pursuant to Rule 73 bis (B)(ii) of the Rules of Procedure and Evidence, 30 March 2009.

¹⁰³⁷ Scheduling Order Regarding the Commencement of the Trial, under Rule 54 of the Rules of Procedure and Evidence, 17 April 2009.

¹⁰³⁸ *Prosecutor v. Munyakazi*, Decision on Prosecutor's Extremely Urgent Motion For the Deposition of Witness BWB, 20 May 2009.

¹⁰³⁹ Scheduling Order following the pre-Defence Conference, 9 June 2009

¹⁰⁴⁰ Yussuf Munyakazi's Pre-Defence Brief, 31 July 2009

¹⁰⁴¹ Order for the Defence to Reduce Its List Of Witnesses (Rules 54 and 73ter (D) of the Rules of Procedure and Evidence), 25 August 2009

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13. The Defence case opened on 31 August 2009. Over twelve trial days, the Defence called 20 witnesses, including the Accused, who was the last witness to appear. The Defence also tendered 29 exhibits into evidence.

4. FURTHER PROCEEDINGS

14. On 20 October 2009, the Defence filed a motion requesting a site visit.¹⁰⁴² The Prosecution filed its Closing Brief on 16 December 2009, and the Defence filed its brief on 17 December 2009.

15. Closing arguments were heard on 28 January 2010. On 17 March 2010, the Chamber issued a decision granting the Defence motion requesting a site visit.¹⁰⁴³ On 7 May 2010, the Chamber reconsidered the Defence motion for judicial view of the *locus in quo*, concluding that, after careful consideration of all the evidence, the site visit was no longer necessary.¹⁰⁴⁴

16. The Chamber delivered the oral summary of its Judgement on 30 June 2010, and files this written judgement on 5 July 2010.

¹⁰⁴² Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo*, (Rule 4 of the RPE), 20 October 2009

¹⁰⁴³ Decision on Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo*, 17 March 2010

¹⁰⁴⁴ Reconsideration of "Decision on Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo*", 07 May 2010

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ANNEX B: CITED MATERIALS AND DEFINED TERMS

1. JURISPRUDENCE

a. 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”)

Bagosora et al.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses (TC), 16 December 2003

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, 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, Judgement (TC), 18 December 2008 (“Bagosora et al. Trial Judgement”).

Bikindi

The Prosecutor v. Simon Bikindi., Case No. ICTR-01-72-A, Judgement (AC), 18 March 2010.

Gacumbitsi

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

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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*”)

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

Karera

The Prosecutor v. François Karera, Case No. ICTR-01-74-T, Judgement and Sentence (TC), 7 December 2007 (“*Karera Trial Judgement*”)

Kayishema and Ruzindana

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-I-T, Judgement (TC), 21 May 1999 (“*Kayishema and Ruzindana Trial Judgement*”)

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-I-A, Judgement (AC), 1 June 2001 (“*Kayishema and Ruzindana Appeal Judgement*”)

Mpambara

The Prosecutor v. Jean Mpambara, Case No. ICTR-01-65-T, Judgement (TC), 11 September 2006 (“*Mpambara Trial Judgement*”)

Muhimana

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 (“*Muhimana Appeal Judgement*”)

Musema

The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000 (“*Musema Trial Judgement*”)

Alfred Musema v. The Prosecutor, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001 (“*Musema Appeal Judgement*”)

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Muvunyi

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 (“*Muvunyi Appeal Judgement*”)

Nahimana et al.

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 (“*Nahimana et al. Appeal Judgement*”)

Ndindabahizi

The Prosecutor v. Emmanuel Ndindabahizi, Case No. ICTR-2001-71-T, Judgement and Sentence (TC), 15 July 2004 (“*Ndindabahizi Trial Judgement*”)

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 (“*Ndindabahizi Appeal Judgement*”)

Niyitegeka

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003 (“*Niyitegeka Trial Judgement*”)

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 (“*Niyitegeka Appeal Judgement*”)

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-R, Decision on Request for Review (AC), 30 June 2006

Nsengimana

The Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-01-69-T, Judgement (TC), 17 November 2009 (“*Nsengimana Trial Judgement*”)

Ntagerura et al.

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004 (“*Ntagerura et al. Trial Judgement*”)

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“*Ntagerura et al. Appeal Judgement*”)

Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 (“*Ntakirutimana Appeal Judgement*”)

Renzaho

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-T, Judgement (TC), 14 July 2009 (“*Renzaho Trial Judgement*”)

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Rutaganda

The Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999 (“*Rutaganda Trial Judgement*”)

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 (“*Rutaganda Appeal Judgement*”)

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification (AC), 8 December 2006

Semanza

The Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003 (“*Semanza Trial Judgement*”)

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 (“*Semanza Appeal Judgement*”)

Seromba

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-T, Judgement (TC), 13 December 2006 (“*Seromba Trial Judgement*”)

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 (“*Seromba Appeal Judgement*”)

Serushago

Omar Serushago v. The Prosecutor, Case No. ICTR-98-39-A, Reasons for Judgment (AC), 6 April 2000 (“*Serushago Appeal Judgement*”)

Simba

The Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, Decision on Defence Motion to Obtain Judicial Records Pursuant to Rule 68 (TC), 4 October 2004

The Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, Judgement and Sentence (TC), 13 December 2005 (“*Simba Trial Judgement*”)

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 (“*Simba Appeal Judgement*”)

Zigiranyirazo

The Prosecutor v. Protais Zigiranyirazo, Case No. ICTR-01-73-T, Judgement (TC), 18 December 2008 (“*Zigiranyirazo Trial Judgement*”)

Protais Zigiranyirazo v. The Prosecutor, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009 (“*Zigiranyirazo Appeal Judgement*”)

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b. ICTY

Blagojević and Jokić

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 (“*Blagojević and Jokić Appeal Judgement*”)

Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 (“*Blaškić Appeal Judgement*”)

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004 (“*Brđanin Trial Judgement*”)

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement (AC), 3 April 2007 (“*Brđanin Appeal Judgement*”)

Galić

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement (AC), 30 November 2006 (“*Galić Appeal Judgement*”)

Halilović

The Prosecutor v. Sefer Halilović, Case No. IT-01-48-A, Judgement (AC), 16 October 2007 (*Halilović Appeal Judgement*)

Jelisić

The Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 (“*Jelisić Appeal Judgement*”)

Kordić and Čerkez

The Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004 (“*Kordić and Čerkez Appeal Judgement*”)

Krnojelac

The Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 (“*Krnojelac Appeal Judgement*”)

Krstić

The Prosecutor v. Radoslav Krstić, Case No. IT-98-33-A, Judgement (AC), 19 April 2004 (“*Krstić Appeal Judgement*”)

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Kunarac et al.

The Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23-T and IT-96-23/1-T, Judgement (TC), 22 February 2001 ("*Kunarac et al.* Trial Judgement")

The Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23-A and IT-96-23/1-A, Judgement (AC), 12 June 2002 ("*Kunarac et al.* Appeal Judgement")

Kupreškić et al.

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement (AC), 23 October 2001 ("*Kupreškić et al.* Appeal Judgement")

Kvočka et al.

The Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("*Kvočka et al.* Appeal Judgement")

Limaj et al.

The Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-T, Judgement (TC), 30 November 2005 ("*Limaj et al.* Trial Judgement")

Dragomir Milošević

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement (AC), 12 November 2009 ("*Dragomir Milošević* Appeal Judgement")

Naletilić and Martinović

Prosecutor v. Mladen Naletilić, a.k.a. "TUTA" and Vinko Martinović, a.k.a. "ŠTELA", Case No. IT-98-34-A, Judgement (AC), 3 May 2006 ("*Naletilić and Martinović* Appeal Judgement")

Dragan Nikolić

Prosecutor v. Dragan Nikolić, Case No. IT-94-2-A, Judgement on Sentencing Appeal (AC), 4 February 2005 ("*Dragan Nikolić* Appeal Judgement")

Orić

The Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement (AC), 3 July 2008 ("*Orić* Appeal Judgement")

Simić

The Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 ("*Simić* Appeal Judgement")

Stakić

The Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 ("*Stakić* Appeal Judgement")

Tadić

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The Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 (“*Tadić* Appeal Judgement”)

Vasiljević

The Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement (AC), 25 February 2004 (“*Vasiljević* Appeal Judgement”)

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2. DEFINED TERMS AND ABBREVIATIONS

Abakombozi

The youth wing of PSD (*Parti Social Démocrate*) party

CAVECUVI

A cooperative that assist rice farmers in the Bugarama region in processing and selling rice

CDR

Coalition pour la Défense de la République

CIMERWA

Cement du Rwanda- Cement factory

CND

Conseil National pour le Développement

Defence Closing Brief

Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A, Defence Closing Brief, filed on 17 December 2009.

DRC

Democratic Republic of Congo. In 1994, the country was named Zaire.

ESO

École des Sous-Officiers

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

Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A, Second Amended Indictment, 03 November 2008.

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JDR

The youth wing of the MDR party (*Mouvement Démocratique Républicain*)

MDR

Mouvement Démocratique Républicain

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

PDC

Parti Démocrate Chrétien

PDI

Parti Démocrate Islamique

PL

Parti Libéral

Prosecution Pre-Trial Brief

Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A, The Prosecutor's Pre-Trial Brief Pursuant to Rule 73 *bis* (B)(ii) of the Rules of Procedure and Evidence, 30 March 2009.

Prosecution Closing Brief

Prosecutor v. Yussuf Munyakazi, Case No. ICTR-97-36A, *The Prosecutor's Closing Brief* Filed on 16 December 2009

PSD

Parti Social Démocrate

RP (RPP)

Registry Page(s) (reference to page number in the case file maintained by the Registry)

RPF

Rwandan (also Rwandese) Patriotic Front

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RTL

Radio Télévision Libre des Mille Collines

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

Statute

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

T.

Transcript

ANNEX C: INDICTMENT

CONFIDENTIAL

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-97-36A-I

The PROSECUTOR

v

Yussuf MUNYAKAZI

SECOND AMENDED INDICTMENT

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

Yussuf MUNYAKAZI

with **GENOCIDE** or, alternatively, **COMPLICITY IN GENOCIDE**; and **EXTERMINATION** as a **CRIME AGAINST HUMANITY**, offences stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below

THE ACCUSED

1. Yussuf MUNYAKAZI was born in 1935 in Rwamatamiu *commune*, Kibuye *préfecture*, Rwanda. During the period covered by this indictment, Yussuf MUNYAKAZI was a wealthy businessman and commercial farmer in Bugarama *commune*, Cyangugu *préfecture* and a leader with *de facto* authority over the Bugarama MRND *Interahamwe* militia (hereinafter "the Bugarama *interahamwe*").

CONCISE STATEMENT OF FACTS, including CHARGES

2. Between 1 January and 31 December 1994, citizens native to Rwanda were classified according to the following ethnic or racial classifications: Tutsi, Hutu, and Twa.
3. Between 6 April and 17 July 1994, throughout Rwanda, there were widespread or systematic attacks against a civilian population based on Tutsi ethnic or racial identification, political opposition, real or perceived, to the MRND, or perceived sympathies to the Tutsi. As a result of these attacks, large numbers of ethnically or racially identified Tutsis and of persons perceived to be politically opposed to the MRND, including moderate Hutus, were killed.

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4. During the period covered by this indictment, Yussuf MUNYAKAZI, acted individually or in concert, as part of a joint criminal enterprise, with NDUTIYE alias TAREK AZIZ, NDEREYA MUNDERE, REKERAHO Samuel, HABINEZA Theobald, ZACHARIE alias MARIYO, SEBATWARE Marcel, NDOLIMANA Casimir MUGUNDA Thomas, NGARUKIYE Emmanuel, BAKUNDUKIZE Elias, the Bugarama *Interahamwe* militia and others. The object and purpose of the joint criminal enterprise was to commit genocide and crimes against humanity targeting the Tutsi racial or ethnical group. In execution of the joint criminal enterprise Yussuf MUNYAKAZI acted with members of the joint criminal enterprise with the intent to destroy the Tutsi population in whole or in part.

CHARGES

INDIVIDUAL CRIMINAL LIABILITY

Article 6 (1) of the Statute

5. The accused, Yussuf MUNYAKAZI, is individually responsible for the crimes alleged in this indictment pursuant to *Article 6(1) of the Statute*. The accused planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes. In addition, the accused participated in a joint criminal enterprise the purpose of which was the destruction, in whole or in part, of the Tutsi racial or ethnic group in Cyangugu and Kibuye *prefectures*. To fulfil this criminal purpose, the accused, acting individually or in concert with others known and unknown, significantly contributed to the joint criminal enterprise. The crimes enumerated within this Indictment were within the object of the joint criminal enterprise.

Counts 1: GENOCIDE

6. The Prosecutor charges Yussuf MUNYAKAZI with GENOCIDE, *a crime stipulated in Article 2 (3)(a) of the Statute*, in that between the dates of 6 April and 17 July 1994 in Cyangugu and Kibuye *prefectures*, Yussuf MUNYAKAZI, with intent to destroy, in whole or in part, the Tutsi racial or ethnic group, planned, ordered, instigated, committed or otherwise aided and abetted others in the planning, preparation or execution of killing or causing serious bodily or mental harm to members of the Tutsi group, as alleged in the factual paragraphs below:

Alternatively,

Counts 2: COMPLICITY IN GENOCIDE

7. The Prosecutor charges Yussuf MUNYAKAZI with COMPLICITY IN GENOCIDE, *a crime stipulated in Article 2 (3)(e) of the Statute*, in that on or between the dates of 6 April and 17 July 1994, in Cyangugu and Kibuye *prefectures*, Yussuf MUNYAKAZI, with intent to destroy or knowing that other people intended to destroy, in whole or in part, the Tutsi racial or ethnic group, and knowing that his assistance would contribute to the crime of genocide instigated, or otherwise aided and abetted those other people in the planning, preparation or execution of the killing or causing serious bodily or mental harm to members of the Tutsi group, as outlined in the factual paragraphs below;

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FACTUAL ALLEGATIONS

8. Between October 1993 and April 1994 Yussuf MUNYAKAZI acting in concert with NDUTIYE *alias* TAREK AZIZ, NDEREYA MUNDERE, REKERAHO Samuel and HABINEZA Theobald recruited and trained the Bugarama *Interahamwe* in military drills and the use of firearms and other weapons on diverse dates at diverse locations in and around Bugarama commune. More specifically, the training of *interahamwe* was conducted at two football fields located in *Cite* Bugarama and at the CIMERWA football field all of Bugarama Commune.
9. Between January and July 1994 Yussuf MUNYAKAZI armed the Bugarama *Interahamwe* with guns, grenades and other weapons that were regularly stored at his house located in *Cite* Bugarama of Bugarama Commune.
10. Between January and July 1994 Yussuf MUNYAKAZI acting in concert with ZACHARIE *alias* MARIYO, SEBATWARE Marcel, NDOLIMANA Casimir, MUGUNDA Thomas, NGARUKIYE Emmanuel, BAKUNDUKIZE Elias provided food and regularly transported or facilitated the transportation of the Bugarama *Interahamwe* to and from the various massacre sites alleged in this indictment.
11. On or about 11 or 13 April 1994, Yussuf MUNYAKAZI, with the Bugarama *interahamwe*, attacked and caused mental harm to the Tutsi civilians who had sought refuge at Cyangugu Cathedral. During the attack the *Interahamwe* militiamen shot at the Tutsi civilian refugees who dispersed in fright. In the process six of the Tutsi civilians were taken by soldiers to the military camp where five of them were killed.
12. On or about 16 April 1994, Yussuf MUNYAKAZI, with the Bugarama *interahamwe*, attacked and killed hundreds of Tutsi civilians who had sought refuge at Nyamashekye Parish, Kagano *commune*, Cyangugu *préfecture*, using firearms and traditional weapons. Yussuf MUNYAKAZI transported the *interahamwe* to Nyamashekye parish and personally shot at the Tutsi civilians during the attack.
13. On or about 29 April 1994, Yussuf MUNYAKAZI, with the Bugarama *interahamwe*, attacked and killed hundreds of Tutsi civilians who had sought refuge at Shangi Parish, Gafunzo *commune*, Cyangugu *préfecture*, using firearms and traditional weapons. Yussuf MUNYAKAZI transported the *interahamwe* to Shangi parish and personally shot and killed several Tutsi civilians during the attack.
14. On or about 30 April 1994, Yussuf MUNYAKAZI, with the Bugarama *interahamwe*, attacked and killed about a hundred civilian Tutsis men who had sought refuge at Mibilizi Parish, Cyimbogo *commune*, Cyangugu *préfecture*, using firearms and traditional weapons. Yussuf MUNYAKAZI transported the *interahamwe* to Mibilizi parish and ordered them to kill only Tutsi males which they did.

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15. On or around 13 and 14 May 1994, Yussuf MUNYAKAZI, with the Bugarama *interahamwe* and acting in concert with others, attacked and killed thousands of Tutsi civilians who had sought refuge in Bisesero, Kibuye *prefecture* using firearms and traditional weapons. Yussuf MUNYAKAZI transported the *interahamwe* to Bisesero and was present during the attack.

Count 3: EXTERMINATION as a CRIME AGAINST HUMANITY

16. The Prosecutor charges Yussuf MUNYAKAZI with EXTERMINATION as a CRIME AGAINST HUMANITY, as stipulated in Article 3 (b) of the Statute, in that on or between the dates of 6 April and 17 July 1994, in Cyangugu and Kibuye *préfectures*, Yussuf MUNYAKAZI did kill or cause a large number of persons to be killed with the knowledge that the killings were part of a widespread or systematic attack against a civilian population on political, ethnic, or racial grounds.

17. Paragraphs 2 through 15 above are incorporated by reference herein.

The acts and omissions of Yussuf MUNYAKAZI detailed herein are punishable in reference to Articles 22 and 23 of the Statute.

Dated at Arusha this 3rd day of November 2008



Hassan Bubacar JALLOW
The 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 TC1 (names)	☐ Defence (names)	☐ Prosecutor's Office (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. YUSSUF MUNYAKAZI			Case Number: ICTR-97-36A-T
Dates:	Transmitted: 05 July 2010		Document's date: 05 July 2010	
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☐ Reference material is provided in annex to facilitate translation.			
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☐ Urgent		☐ Hearing date:
☐ Normal		☐ Other deadlines: