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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 18 December 2008

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

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JUDGEMENT AND SENTENCE

Office of the Prosecutor:

Barbara Mulvaney
Christine Graham
Kartik Murukutla
Rashid Rashid
Gregory Townsend
Drew White

Counsel for the Defence:

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

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CHAPTER I: INTRODUCTION

1. OVERVIEW

(i) Introduction

1. This case concerns Colonel Théoneste Bagosora, the *directeur de cabinet* of the Ministry of Defence, General Gratien Kabiligi, the head of the operations bureau (G-3) of the army general staff, Major Aloys Ntabakuze, the commander of the elite Para Commando Battalion, and Colonel Anatole Nsengiyumva, the commander of the Gisenyi operational sector (I.2).[1]

2. The four Accused are charged with conspiracy to commit genocide, genocide, crimes against humanity (murder, extermination, rape, persecution and other inhumane acts) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (violence to life and outrages upon personal dignity). Nsengiyumva is also accused of direct and public incitement to commit genocide. The Prosecution relies on direct or superior responsibility.

3. The Defence has challenged the credibility of the Prosecution's evidence. In particular, Bagosora and Kabiligi have contested that they had actual authority over members of the Rwandan military, and Nsengiyumva and Ntabakuze have disputed that soldiers under their command committed criminal acts. For some of the events, the Accused have presented the defence of alibi, most notably Kabiligi and Bagosora. The Defence has also raised a number of procedural challenges, which are discussed in the judgement.

4. The evidence of this trial has reiterated that genocide, crimes against humanity and war crimes were perpetrated in Rwanda after 6 April 1994. The human suffering and slaughter were immense. These crimes were directed principally against Tutsi civilians as well as Hutus who were seen as sympathetic to the Tutsi-led Rwandan Patriotic Front (RPF) or as opponents of the ruling regime. The perpetrators included soldiers, gendarmes, civilian and party officials, *Interahamwe* and other militia, as well as ordinary citizens. Nevertheless, as the evidence in this case and the history of the Tribunal show, not every member of these groups committed crimes.

5. Also other persons than Tutsis and moderate Hutus suffered in 1994. The process of a criminal trial cannot depict the entire picture of what happened in Rwanda, even in a case of this magnitude. The Chamber's task is narrowed by exacting standards of proof and procedure as well as its focus on the four Accused and the specific evidence placed before it in this case.

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[1] During the 408 trial days of this case, 242 witnesses were heard, 82 for the Prosecution and 160 for the Defence. Nearly 1,600 exhibits were tendered. The transcripts of the case amount to more than 30,000 pages, whereas the final submissions of the parties totalled approximately 4,500 pages. The amount of evidence in this case is nearly eight times the size of an average single-accused case heard by the Tribunal. During the trial, the Chamber delivered about 300 written decisions. It pronounced its unanimous judgement on 18 December 2008. The written judgement was filed on 9 February 2009 after the conclusion of the editorial process.

(ii) Alleged Conspiracy to Commit Genocide 40714

6. The Prosecution alleges that the four Accused conspired amongst themselves and with others from late 1990 through 7 April 1994 to exterminate the Tutsi population. Reference is made to evidence – mostly circumstantial – which arguably forms links in a chain leading to a conspiracy to commit genocide in the months or years before April 1994.

7. Disputing that there was a conspiracy, the Defence argues that the Prosecution relies on evidence lacking credibility and draws inferences from facts that have not been proven. The Defence has also advanced a number of alternative explanations for the events which unfolded. One of them is based on the view that it was the RPF which shot down President Juvénal Habyarimana's plane on 6 April 1994, and that this event, together with other factors, triggered spontaneous killings.

8. These alternative explanations particularly relate to the count of conspiracy, but they have also been considered more generally. While some of them may provide a fuller picture of the events in Rwanda in 1994, they do not raise any doubt about the Chamber's overall characterisation of the events as genocide, or the key findings which form the basis of the judgement.

9. In relation to the Prosecution submissions about conspiracy, the Chamber points out, first, that the question is whether it is proven beyond reasonable doubt, based upon the evidence in this case, that the four Accused committed the crime of conspiracy to commit genocide. Second, when confronted with circumstantial evidence, the Chamber may, according to established case law, only convict where this conspiracy is the only reasonable inference. Third, the evidence implicates the Accused in varying degrees.

10. The first element referred to by the Prosecution is the participation of Bagosora, Ntabakuze and Nsengiyumva in a Commission which was set up in 1991 to define "the enemy". The Chamber agrees that the over-emphasis on Tutsi ethnicity in the definition of the enemy was troubling. However, it has not found that the document itself or its subsequent circulation to soldiers, in particular by Ntabakuze in 1992 and 1993, demonstrate a conspiracy to commit genocide.

11. The Chamber considers that Nsengiyumva was involved in the maintenance of lists of suspected accomplices of the RPF or others opposed to the ruling regime, and that Bagosora, Kabiligi and Nsengiyumva played a role in the creation, arming and training of civilian militia. However, it was not proven beyond reasonable doubt that these efforts were directed at killing Tutsi civilians with the intention to commit genocide.

12. Several elements underpinning the Prosecution case about conspiracy were not supported by sufficiently reliable evidence, for instance Bagosora's alleged utterance in 1992 that he was returning from the Arusha negotiations to prepare for the "apocalypse". Other examples are the four Accused's alleged role in certain clandestine criminal organisations, including the AMASASU, the Zero Network or death squads. The testimony about a meeting in Butare in February 1994, where Bagosora and Nsengiumva allegedly drew up a list of Tutsis to be killed, was not considered credible. The Chamber has reached the same conclusion with respect to Kabiligi's alleged speech about genocide in Ruhengeri in February 1994. There are also concerns with the reliability of the information provided by an informant, Jean-Pierre, and an anonymous letter outlining a "Machiavellian Plan".

13. The Chamber certainly accepts that there are indications which may be construed as evidence of a plan to commit genocide, in particular when viewed in light of the subsequent targeted and speedy killings immediately after the shooting down of the President's plane.

However, the evidence is also consistent with preparations for a political or military power struggle and measures adopted in the context of an on-going war with the RPF that were used for other purposes from 6 April 1994.

14. Consequently, the Prosecution has not proven beyond reasonable doubt that the only reasonable inference to be drawn from the evidence is that the four Accused conspired amongst themselves or with others to commit genocide before it unfolded from 7 April 1994. The Chamber has acquitted them of the count of conspiracy.

(iii) Kigali, 6 - 9 April 1994

15. It was around 8.30 p.m. on 6 April 1994 that a surface-to-air missile fired from near the Kigali airport brought down the plane carrying President Habyarimana and other dignitaries. They were returning from peace negotiations in Dar es Salaam aimed at implementing the Arusha Accords. The blast heard across Kigali killed all onboard. As the plane fell to the earth, Rwanda descended into violence, and within 24 hours, armed hostilities resumed between the Rwandan military and the RPF.

16. In the evening of 6 April 1994, shortly after the attack on the President's plane, Bagosora chaired a meeting of the military Crisis Committee, which was composed of senior army and gendarmerie officers at Camp Kigali. General Roméo Dallaire, the force commander of UNAMIR, also participated. During the meeting, Dallaire proposed that the military contact Prime Minister Agathe Uwilingiyimana. He also suggested that she should address the country following the shooting down of the President's plane. Bagosora refused. Later that night, Bagosora and Dallaire met with Jacques Roger Booh-Booh, the Special Representative of the United Nations Secretary-General, at his home. Bagosora again refused to consult with the Prime Minister.

17. After Bagosora's return to Camp Kigali, he approved and signed a communiqué to be read over radio announcing the death of the President. It was issued on behalf of the Minister of Defence, who was abroad.

18. During the night, General Dallaire ordered that an UNAMIR escort be provided to the Prime Minister so that she could address the nation on Radio Rwanda in the morning. Around 5.00 a.m. on 7 April 1994, 10 Belgian peacekeepers were dispatched to her residence. In the preceding hours, elements of the Reconnaissance Battalion and the Presidential Guard had surrounded the compound and at times fired on the gendarmes and Ghanaian peacekeepers guarding the Prime Minister. After the Belgian peacekeepers arrived, the compound came under attack. The Prime Minister fled her home and hid at a neighbouring compound. She was found, killed and then sexually assaulted.

19. At approximately the same time, soldiers from the Presidential Guard killed four important opposition leaders or prominent personalities in the Kimihurura neighbourhood of Kigali, namely Joseph Kavaruganda, the President of the Constitutional Court; Frédéric Nzamurambaho, the chairman of the *Parti Social Démocrate* and Minister of Agriculture; Landoald Ndasingwa, the vice-chairman of the *Parti Libéral* and Minister of Labour and Community Affairs; and Faustin Rucogoza, an official of the *Mouvement Démocratique Républicain* and Minister of Information. The next day, soldiers killed Augustin Maharangari, the Manager of the *Banque Rwandaise de Développement*.

20. The Chamber simply cannot accept that elite units of the Rwandan army would spontaneously engage in sustained gun and grenade fire with Rwandan gendarmes and United Nations peacekeepers, murder and assault the Prime Minister of their country, and kill five

prominent personalities, unless it formed part of an organised military operation pursuant to orders from superior military authorities.

21. The Belgian and Ghanaian peacekeepers were disarmed at the Prime Minister's residence and taken to Camp Kigali around 9.00 a.m. Shortly thereafter, a crowd of soldiers in the camp surrounded the Belgian peacekeepers and began assaulting them. Several Rwandan officers, including Colonel Nubaha, the camp commander, tried to verbally calm down the Rwandan soldiers.

22. While this was going on, around 10.00 a.m., Bagosora was chairing a meeting of high-ranking army and gendarmerie officers at an officer training school (ESM) close by. The participants were discussing the situation after the death of the President. Nubaha left the camp, entered the meeting, and informed Bagosora about the threat to the Belgian peacekeepers. After the meeting, Bagosora arrived at Camp Kigali. He saw the dead bodies of four Belgians and became aware that others were alive in the office. He claims that he was threatened and called a traitor by the mob of soldiers, and hence withdrew. No force was used to quell the volatile situation. Shortly after Bagosora's departure, camp soldiers killed the remaining Belgian peacekeepers with high powered weapons.

23. There were other organised killings involving the Rwandan military, at times working in conjunction with *Interahamwe* and other militiamen throughout Kigali, during the first 72 hours after the death of the President. Roadblocks were established throughout the city, and soon became sites of open and notorious slaughter and rape. At *Centre Christus*, soldiers killed 17 Rwandans with guns and grenades after locking them in a room. In Kabeza near Camp Kanombe, members of the Para Commando Battalion, went from house to house killing civilians. At the Kibagabago Mosque and Catholic Church in the Remera area as well as the Saint Josephite Centre in Nyamirambo, soldiers in conjunction with militiamen attacked and killed Tutsis. The Chamber also finds convincing the testimony about a member of the Presidential Guard raping a Tutsi refugee during the attack at the Saint Josephite Centre, and that soldiers killed Tutsi civilians at a roadblock and a school in Karama.

24. During an attack on Gikondo Parish on the morning of 9 April 1994, the Rwandan army sealed off the Gikondo area and gendarmes moved systematically through the neighbourhood with lists, sending Tutsis to Gikondo Parish. The gendarmes checked the identity cards of the Tutsis at the parish against their lists and then burned the identity cards. The *Interahamwe* proceeded to kill the more than 150 Tutsi refugees in an atrocious manner. The parish priests and UNAMIR military observers were forced to watch at gunpoint. Major Brent Beardsley of UNAMIR arrived shortly after the attack and described the terrible scene, which bore witness of killing, mutilation and rape. The *Interahamwe* returned later that night to finish off the survivors.

25. The Chamber has found that Bagosora was the highest authority in the Ministry of Defence and exercised effective control over the Rwandan army and gendarmerie from 6 until 9 April, when the Minister of Defence returned to Rwanda. For the reasons given in the judgement, he is responsible for the murder of the Prime Minister, the four opposition politicians, the 10 Belgian peacekeepers, as well as the extensive military involvement in the killing of civilians in Kigali during this period. Ntabakuze is responsible for crimes committed by members of the Para Commando Battalion in Kabeza.

(iv) Subsequent Events in Kigali

26. On 11 April 1994, thousands of Tutsi refugees fled from the *École Technique Officielle* (ETO) in Kigali after the Belgian peacekeepers withdrew from their position there. Tutsis were stopped at the Sonatube junction by members of the Para Commando Battalion. Members of the battalion as well as *Interahamwe* then marched the refugees several kilometers to Nyanza hill. A pick-up truck filled with members of the Para Commando Battalion passed the refugees. At Nyanza, they were waiting. When the refugees arrived, the soldiers opened fire. The *Interahamwe* then killed the survivors with traditional weapons.

27. In mid-April 1994, members of the Para Commando Battalion along with *Interahamwe* also participated in the killing of around 60 Tutsi refugees from *L'Institut Africain et Mauricien de Statistiques et d'Economie* (IAMSEA) in the Remera area of Kigali.

28. In view of Ntabakuze's command and control over members of the Para Commando Battalion, as well as the organisation of these crimes, the Chamber considers that he is responsible for the crimes committed by members of the Para Commando Battalion in Nyanza and at IAMSEA.

(v) Gisenyi Prefecture

29. On 7 April 1994, soldiers, *Interahamwe* and other militiamen engaged in targeted killings of Tutsi civilians in Gisenyi town and its surrounding area. One of the victims, Alphonse Kabiligi, had previously been identified as having ties with the RPF on a list maintained by the Rwandan army. On 8 April, at Mudende University, militiamen accompanied by a small group of soldiers separated Hutus from Tutsis and killed the Tutsi civilians. Nyundo Parish was the site of repeated attacks by militiamen from 7 to 9 April.

30. Nsengiyumva's responsibility for these attacks is clear. The presence of soldiers, the systematic nature of the attacks, and the fact they were carried out nearly in parallel and almost immediately after the President's death reflect centralised coordination that would have come only through the highest operational authority in the prefecture. Moreover, at the time of these attacks, Bagosora was the highest authority in the Ministry of Defence with control over the army and gendarmerie. He is therefore also responsible for these killings.

31. In June 1994, Nsengiyumva sent militiamen from Gisenyi prefecture, whose training he had overseen, to participate in an operation in Bisesero in Kibuye prefecture in mid-June 1994. Once there, and joined by militiamen from Cyangugu, the militia carried out attacks against Tutsi refugees on Bisesero hill.

(vi) Kabiligi

32. The Prosecution alleges that, on 28 January 1994, Kabiligi participated in a meeting in Cyangugu prefecture involving the distribution of weapons and another meeting to plan the genocide on 15 February 1994 in Ruhengeri prefecture. It also submits that he bears responsibility for crimes committed at various roadblocks in Kigali and its surrounding areas in April and June 1994.

33. Kabiligi has advanced an alibi for 28 January, 15 February and from 28 March until 23 April 1994. The Chamber notes that the allegations against him are based on the evidence of single witnesses whose credibility is questionable. Furthermore, the Prosecution has not eliminated the reasonable possibility that the alibi is true. This raises doubt about the specific crimes in which he was purportedly involved.

34. The Prosecution also contends that Kabiligi bears criminal responsibility as a superior based on his rank, position, reputation and charismatic influence. It did not, however, present sufficient evidence to show the scope of his actual authority as a member of the army general staff. In contrast, the Defence's military expert and other witnesses testified that this position did not entail command authority.

35. In the Chamber's view, some of the evidence reflected that Kabiligi played a more active role in the conduct of military operations than simply serving as a desk officer. However, the exact nature of his role is not clear, in particular whether it entailed command authority, or whether any of the operations, in which he may have participated, targeted civilians.

(vii) Verdict

36. The Chamber has found that Colonel Théoneste Bagosora is responsible as a superior under Article 6 (3) of the Statute for the killings of Prime Minister Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza, the 10 Belgian peacekeepers, and Alphonse Kabiligi. The conclusion is the same with respect to rapes perpetrated at roadblocks in the Kigali area from 7 to 9 April, the crimes committed at *Centre Christus*, Kabeza, Kibagabaga Mosque, Kibagabaga Catholic Church, Karama hill, the Saint Josephite centre, Gikondo Parish, the killings in Gisenyi town on 7 April, Nyundo Parish and Mudende University. Under Article 6 (1), he is liable for ordering under Article 6 (1) the murder of Augustin Maharangari as well as the killings committed at roadblocks in the Kigali area between 7 and 9 April. Bagosora is therefore guilty of genocide, crimes against humanity (murder, extermination, rape, persecution and other inhumane acts) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (violence to life and outrages upon personal dignity).

37. The Chamber acquits General Gratien Kabiligi of all counts.

38. Major Aloys Ntabakuze bears superior responsibility under Article 6 (3) for the crimes committed at Kabeza, Nyanza and IAMSEA in April 1994. He is therefore guilty of genocide, crimes against humanity (murder, extermination, persecution and other inhumane acts) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (violence to life). He is not guilty of rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II.

39. Colonel Anatole Nsengiyumva is responsible under Article 6 (1) for ordering the targeted killings in Gisenyi town on 7 April 1994, including Alphonse Kabiligi, as well as at Mudende University and Nyundo Parish. He also is liable under Article 6 (1) for aiding and abetting the attacks in the Bisesero area of Kibuye prefecture by sending militiamen to participate in them. Nsengiyumva is guilty of genocide, crimes against humanity (murder, extermination, persecution and other inhumane acts) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (violence to life). He is not guilty of direct and public incitement to commit genocide, rape as a crime against humanity and outrages upon personal dignity as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II.

40. Bagosora, Ntabakuze and Nsengiyumva are acquitted in relation to a considerable number of allegations with which they were charged. This follows from the specific sections of the judgement dealing with those events.

(viii) Sentence

41. The Chamber has considered the gravity of each of the crimes for which Bagosora, Ntabakuze and Nsengiyumva have been convicted as well as aggravating and mitigating circumstances. It sentences Bagosora, Ntabakuze and Nsengiyumva each to a single sentence of life imprisonment. They shall remain in the custody of the Tribunal pending transfer to the state where they will serve their sentence.

42. The Chamber orders the immediate release of Kabiligi and requests the Registry to make the necessary arrangements.

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2. THE ACCUSED

2.1 Théoneste Bagosora

43. Théoneste Bagosora was born on 16 August 1941 in Giciye commune, Gisenyi prefecture. He is married and the father of eight children, one of whom died in an accident.[2] Bagosora enrolled at the *École d'Officiers de Kigali*, which was later renamed *École Supérieure Militaire* (ESM), in 1962 and graduated with distinction as a second lieutenant in 1964.[3]

44. Over the next two decades, Bagosora received advanced military training in Europe. He obtained his Para Commando Certificate following studies at Skaffenberg and Namur-Marche-les-Dames in Belgium. In 1980, President Juvénal Habyarimana sent him to France where his training included how to command major units at the battalion or regiment level. There, Bagosora enrolled at the *École Supérieure de Guerre Interarmées* between 1 September 1980 and 11 December 1981 and *L'Institut des Hautés Études de Défense Nationale* from where he graduated, with a commendation, on 7 May 1982.[4]

45. Meanwhile, Bagosora rose through the military ranks in Rwanda. He was promoted to lieutenant in April 1967, became a captain in 1970 and major in 1977. In October 1981, he was promoted to lieutenant-colonel, a rank which he held for eight years. He became a full colonel on 1 October 1989, his highest rank, until retirement in September 1993.[5]

46. In early July 1973, Bagosora assisted General Habyarimana execute the *coup d'état* which unseated President Grégoire Kayibanda.[6]

47. Bagosora's duties as an officer increased with his rank. Upon graduation in 1964, he was assigned as a platoon commander in Kibuye from where he was later transferred to head a field platoon in Nyanza, and subsequently, in Butare. After returning from training in Belgium, he was made platoon leader in Ruhengeri. Though still a second lieutenant, he was then promoted to command the Bugesera or Gako Company, where he served between June and December 1966. Bagosora was subsequently transferred to head the Butare Company for approximately one year. This was followed by another year and a half as commander of the Cyangugu Company. At the end of 1969, as full lieutenant, he became commander of the Kanombe Training Centre Company. As a captain, Bagosora was appointed commander of the Kigali Company in 1972 and head of the Military Police Company, which was responsible for enforcing army discipline, in 1973. He led the military police until the early 1980s.[7]

48. From January to October 1982, Bagosora was appointed head of the *service de documentation* (SERDOC), a military intelligence service in the Ministry of Defence. Its mandate was to collate and analyse intelligence provided by army chiefs and others for the Minister of Defence. He was then appointed to serve as second in command of the ESM, the military academy, where he spent two and a half years. In 1985, after he declined the

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[2] Bagosora had one brother and four sisters. Three of his siblings have been killed. *See* T. 24 October 2005 pp. 4, 13, 44.
[3] *Id.* pp. 51-53; Bagosora Defence Exhibit 206 (*École Supérieure Militaire Diplôme*).
[4] T. 24 October 2005 pp. 34-35, 54-57; Bagosora Defence Exhibit 65 (*Brevet d'Études Militaires Supérieures*).
[5] T. 24 October 2005 pp. 51, 58; T. 25 October 2005 pp. 38, 45-46, 61.
[6] T. 25 October 2005 pp. 41, 44-45.
[7] *Id.* pp. 33-35, 39, 45.

President's invitation to take up a civilian post, he was transferred back to SERDOC and stayed there until 1988.[8]

49. In June 1988, two months after the April 1988 assassination of Colonel Stanislas Mayuya, who was commander of Camp Kanombe, Bagosora took over permanent command of the camp from Nsengiyumva.[9] Command of that camp normally included the elite Para Commando Battalion. President Habyarimana gave Bagosora responsibility for Kanombe Camp and the Light Anti-Aircraft Battalion. Bagosora remained in charge of Camp Kanombe as a full colonel until June 1992 when he was appointed *directeur de cabinet* for the Ministry of Defence. He served in that position until 14 July 1994.[10]

50. Bagosora retired as an army officer on 23 September 1993, but was recalled to active military service on 21 May 1994 by Augustin Bizimana, the Minister of Defence. He therefore continued in the post of *directeur de cabinet* as a soldier on active duty.[11]

51. On 4 December 1991, President Habyarimana set up the Enemy Commission to present an enemy threat assessment. Bagosora chaired the commission, which presented its report entitled "Definition of the Enemy" at the end of December 1991 (III.2.2).[12] He participated in several official missions, including the negotiation process in 1992 and 1993 between the Habyarimana Government and the Rwandan Patriotic Front which led to the Arusha Accords on 4 August 1993 (III.1.1; III.2.3).

52. Bagosora was active in a number of non-profit organisations. Between 1977 and 1994, he was a founding member and vice-president of AFOTEC, an association for technical training for soldiers and reservists, which established and ran the AFOTEC School in Kanombe. Bagosora was also a member of *Intwali*, a non-profit organisation for war disabled. In military circles, he was elected on several occasions as president of the association of the officer's mess in Kigali.[13]

53. On 14 July 1994, Bagosora fled Rwanda for Goma in Zaire. After the defeat of the Rwandan army in July 1994, he was appointed chair of the political and external relations committee of the newly reorganised Rwandan Armed Forces High Command. He was also part of the Cameroonian wing of the Movement for the Return of Refugees and Democracy

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[8] *Id.* pp. 51-58. According to Bagosora, he was kept in that position for a while because the President wanted to keep him close to monitor his activities.

[9] *Id.* pp. 58-59. *See also* Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 2, 5; Nsengiyumva, T. 11 October 2006 p. 79.

[10] T. 25 October 2005 pp. 51, 58-59; T. 26 October 2005 p. 8.

[11] T. 24 October 2005 p. 3; T. 25 October 2005 pp. 3, 17, 51; T. 26 October 2005 pp. 3, 5, 7; Bagosora Defence Exhibit 214 (Official Gazette of 15 October 1993 - Series of Presidential Orders). Bagosora was to be replaced as *directeur de cabinet* as part of the power sharing agreement of the Arusha Accords where a member of the MRND was supposed to take up his post. His replacement, however, did not assume this post. Between 23 September 1993 to 21 May 1994, Bagosora continued as the *directeur de cabinet*.

[12] T. 25 October 2005 p. 40; T. 26 October 2005 pp. 44-45.

[13] T. 25 October 2005 pp. 5-14, 58-59, 70-75, 78. AFOTEC stands for *Association pour la formation technique*. Bagosora was also a founding member and president of the Association for the development of the Giciye and Karago *communes* (ADECOGIKA) in 1984, an organisation whose objective was to promote socio-economic and cultural development in his native region of Bushiru – the same region as President Habyarimana. ADECOGIKA established and ran the Kibihekane College.

to Rwanda (RDR).[14] Bagosora subsequently left Zaire for Cameroon where he was arrested in Yaoundé on 9 March 1996, following which he was transferred to the United Nations Detention Facility.[15]

2.2 Gratien Kabiligi

54. Gratien Kabiligi was born on 18 December 1951 in Kamembe commune, Cyangugu prefecture. He is married and the father of six children. Kabiligi began his military education at the ESM in 1971. He graduated in 1974 with the rank of second lieutenant.[16]

55. Kabiligi was promoted lieutenant in 1977, captain in 1980 and major in 1984. Besides completing various technical military training courses within Rwanda, between 1986 and 1988, he undertook senior officer training at the military academy in Hamburg, West Germany. He was promoted to lieutenant-colonel in 1988, full colonel in 1992 and brigadier-general on 16 April 1994.[17]

56. From 1988 until 1991, he served as the Director of Studies at the ESM. Between 1991 and 1992, he commanded the 21st Battalion at the Mutara frontline. In June 1992, he was appointed commander of military operations in the Byumba operational sector where he served until August 1993. Kabiligi became the head of the G-3 bureau on the general staff of the Rwandan Army from September 1993. He retained that post until 17 July 1994.[18]

57. After the Rwandan army was defeated in July 1994, Kabiligi was named deputy commander, as well as commander of the Bukavu Squad, of the newly reorganised Rwandan Armed Forces High Command which was reconstituted in exile. He was later part of the Movement for the Return of Refugees and Democracy to Rwanda (RDR).[19] Kabiligi was arrested on 18 July 1997 in Nairobi, Kenya. On the same day, he was transferred to the United Nations Detention Facility.[20]

2.3 Aloys Ntabakuze

58. Aloys Ntabakuze was born on 20 August 1954 in Karago commune, Gisenyi prefecture. He is married and the father of four children. After attending the ESM, he graduated on 28 June 1978 with the rank of second lieutenant. He obtained a Level B Commando Certificate on 31 July 1976 and a Level A Commando Certificate on 28 June 1978, both from the Commando Training Centre of Bigogwe, Rwanda.[21]

59. In 1981, Ntabakuze was promoted to the rank of lieutenant. From 1983 to 1984, he received security training at the Military Security School of Algeria. He became a captain on 1 April 1984 and a commandant in April 1987. Between November 1986 and June 1988,

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[14] T. 24 October 2005 p. 24; Prosecution Exhibit 339 (Letter from Augustin Bizimana of 11 August 1994: Reorganisation of the Rwandan Armed Forces); Prosecution Exhibit 419 (RDR: United Nations Security Council Misled About the Presumed "Tutsi Genocide" in Rwanda).
[15] T. 24 October 2005 p. 2. *See also* Annex A.1 concerning his arrest and transfer to the Tribunal.
[16] Kabiligi Closing Brief, paras. 6-7.
[17] *Id.* paras. 8-9.
[18] *Id.* para. 10.
[19] Prosecution Exhibit 339 (Letter from Augustin Bizimana of 11 August 1994: Reorganisation of the Rwandan Armed Forces); Prosecution Exhibit 415 (RDR: Minutes of founding meeting).
[20] Kabiligi Closing Brief, para. 39. *See also* Annex A.2 concerning Kabiligi's arrest and transfer.
[21] T. 18 September 2006 pp. 3-4; Annex to Ntabakuze Closing Brief: Deposition September 2006 pp. 3-5. In 1979, Ntabakuze began training in Belgium, including elementary pilot training, which was never completed.

Ntabakuze trained in the United States of America, first at the Defence Language Institute of Lackland Air Force Base in San Antonio, Texas, and then, at the United States Army Command and General Staff College at Leavenworth, Kansas. He graduated in June 1988. In 1988, he obtained a parachuting certificate from Kanombe Camp. On 1 April 1991, he was promoted to major with retroactive effect from 1 April 1990.[22]

60. From July 1978 to February 1982, Ntabakuze was platoon leader in the Military Police Company in Kigali. Between July and December 1978 and from August 1979 to sometime in 1980, his direct superior was Bagosora who at the time was head of the Military Police Company (I.2.1). Ntabakuze served as platoon leader in the Presidential Guard in Kigali from February 1982 to November 1983. He held the post of commander of the Military Police Company in Kigali between June 1984 and November 1986.[23]

61. In June 1988, about two months after the assassination of the former commander Colonel Mayuya, Ntabakuze was appointed to lead the Para Commando Battalion in Camp Kanombe. He remained commander until 3 July 1994, when he was transferred to head the operational sector of Gitarama under the overall direction of General Augustin Bizimungu. During this period, the Para Commando Battalion remained one of his subordinate units.[24]

62. On 4 December 1991, Major Ntabakuze was one of 10 officers that served on the Enemy Commission chaired by Bagosora (III.2.2).[25] In February 1993, the Minister of Defence appointed him to a governmental commission mandated to establish new regulations for the integrated army anticipated to follow the Arusha Peace Accords.[26]

63. Following the defeat of the Rwandan Army, Ntabakuze left Rwanda on 17 July 1994. He was appointed deputy commander of the Goma Squad of the newly reorganised Rwandan Armed Forces High Command. Later, he joined the Movement for the Return of Refugees and Democracy to Rwanda (RDR).[27] Ntabakuze was arrested in Nairobi, Kenya on 18 July 1997 and subsequently transferred to the Tribunal.[28]

2.4 Anatole Nsengiyumva

64. Anatole Nsengiyumva was born on 4 September 1950 in Santinsyi commune, Gisenyi prefecture. He is married and the father of six children. Nsengiyumva studied at *École d'Officiers de Kigali* (later ESM) from August 1969 and completed his studies in April 1971. In November 1971, he was appointed to the National Police as part of an *ad hoc* establishment of police in Ruhengeri. He trained with the German Police where he completed his course in 1972. Nsengiyumva was appointed second lieutenant in the army and sub-commissioner in the police in 1973. He was promoted to first lieutenant in 1974, captain in 1977 and commander in 1980. He became major and lieutenant-colonel in October 1984 and October 1988, respectively.[29]

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[22] T. 18 September 2006 pp. 3-6; Annex to Ntabakuze Closing Brief: Deposition September 2006 pp. 3-5.
[23] Annex to Ntabakuze Closing Brief: Deposition September 2006 pp. 3-5.
[24] T. 18 September 2006 p. 19; Annex to Ntabakuze Closing Brief: Deposition September 2006 p. 5.
[25] Bagosora, T. 26 October 2005 p. 58.
[26] T. 21 September 2006 pp. 48-49.
[27] Prosecution Exhibit 339 (Letter from Augustin Bizimana of 11 August 1994: Reorganisation of the Rwandan Armed Forces); Prosecution Exhibit 415 (RDR: Minutes of founding meeting).
[28] T. 18 September 2006 p. 11. *See also* Annex A.2 concerning his arrest and detention.
[29] Nsengiyumva Defence Exhibit 212 (personal identification sheet); Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp.1-6.

65. Nsengiyumva began his career as a police officer in the Kigali Detachment but was soon transferred to Gisenyi. In June 1973, the police was integrated with the army under the name of National Guard. In September 1973, Nsengiyumva became instructor at the *École des Sous Officiers* (ESO) in Butare. From December 1973, he served in Kigali as an officer within the General Staff of the Rwandan Army in the G-1 department responsible for personnel administration. As first lieutenant, between March 1974 and December 1976, he was a private secretary as well as *aide-de-camp* to President Habyarimana.[30]

66. In December 1976, Nsengiyumva, still a first lieutenant, was appointed the head of G-2 in the General Staff of the Rwandan Army in charge of military intelligence where he remained until August 1981, while receiving promotions to captain and commander. From August 1981, as a commander, he replaced Colonel Félicien Muberuka as interim commander of Ruhengeri Commando Battalion. Nsengiyumva undertook military training at the Staff Command School in Compiègne, France between February and July 1982. Between September 1982 and December 1983, he attended France's War College.[31]

67. In October 1984, Nsengiyumva, now a major, was reappointed as G-2 at the army headquarters with responsibility for military intelligence. His primary role was to gather and analyse intelligence relating to the security of the army as well as the internal and external security of Rwanda.[32] He would then prepare reports for President Habyarimana who was also Minister of Defence and chief of staff of the armed forces.[33]

68. After Colonel Mayuya's assassination in April 1988, Nsengiyumva was appointed to replace him as the commander of Camp Kanombe and head of the Para Commando Battalion. He stayed in that post for two months. In June 1988, he handed over command of Camp Kanombe to Bagosora and of the Para Commando Battalion to Ntabakuze. Nsengiyumva then returned to his post as G-2, which he held until June 1993.[34]

69. As chief of military intelligence, Nsengiyumva was involved in several missions and commissions dealing with important matters of national security.[35] In February 1988, he was a member of a mission to Kampala, Uganda addressing the problem of Rwandan refugees in Uganda. In September 1990, he participated in negotiating a trilateral agreement between Uganda, Rwanda and Zaire under which none of the countries would host armed groups aimed at attacking another. He was a member of the Enemy Commission that Bagosora

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[30] T. 4 October 2006 pp. 2-3; T. 11 October 2006 p. 78; Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 1, 4.
[31] Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 2, 5.
[32] T. 4 October 2006 pp. 5-6.
[33] *Id.* pp. 5-6; T. 11 October 2006 p. 78; Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 2, 5.
[34] T. 4 October 2006 p. 6; T.11 October 2006 p. 79; Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 2, 5.
[35] Nsengiyumva participated in drafting several reports for the government including a report entitled "Causes of the wind from the east", dated 22 May 1990 (Nsengiyumva Defence Exhibit 6; T. 4 October 2006 p. 10); document dated 1 December 1991 regarding the new terrorism strategy of RPF; Nsengiyumva, T. 9 October 2006 p. 33; Nsengiyumva, T. 11 October 2006 p. 80; report dated 2 July 1992 entitled "Internal Security" (Prosecution Exhibit 20A); and a document dated 27 July 1992 "Mood of the military and civilians" (Prosecution Exhibit 21); Nsengiyumva, T. 11 October 2006 pp. 82-83. *See* Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 6-7.

chaired (III.2.2). Afterwards, he was appointed chair of a different commission in November 1992 to assess various scenarios relating to potential enemy threats against Rwanda.[36]

70. On 13 June 1993, Nsengiyumva became commander of the Gisenyi operational sector.[37] He also served as an *ex officio* member of the Prefectoral Security Council of Gisenyi. In June 1994, he was asked to serve as Liaison Officer for France's Operation Turquoise deployment to Rwanda.[38]

71. Nsengiyumva left for Goma, Zaire, on 17 July 1994. He later moved to the Mugunga Refugee Camp, approximately 10 kilometres from the city, before departing for Cameroon.[39] While there, he was part of the Cameroonian wing of the Movement for the Return of Refugees and Democracy to Rwanda (RDR).[40] Nsengiyumva was arrested on 27 March 1996 and transferred to the Tribunal on 23 January 1997.[41]

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[36] Prosecution Exhibit 13.1 (*Definition de L'Eni, Bureau Du G-2, AR, 21 Sept. 1992*); Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 6-7; T. 4 October 2006 pp. 17, 29; T. 9 October 2006 p. 61; T. 12 October 2006 p. 2.

[37] Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 2, 7; T. 4 October 2006 pp. 17, 20.

[38] Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), pp. 2-3. Nsengiyumva did not take up this position since Gisenyi prefecture did not become part of Operation Turquoise's zone of operation. *See* T. 4 October 2006 pp. 17-18.

[39] Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), p. 3.

[40] Prosecution Exhibit 419 (RDR: United Nations Security Council Misled About the Presumed "Tutsi Genocide" in Rwanda).

[41] Nsengiyumva Defence Exhibit 213 (Curriculum Vitae), p. 3. *See also* Annex A.3 concerning Nsengiyumva's arrest and detention.

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CHAPTER II: PRELIMINARY ISSUES

1. INTRODUCTION

72. In their Closing Briefs, the four Accused challenge various aspects of the fairness of the proceedings. The Prosecution did not mention these issues in its Closing Brief or during the oral submissions. Many of them have been addressed by the Chamber at various stages of the trial. Below the Chamber will consider the Defence submissions concerning the right to trial without undue delay (II.2), the right to an initial appearance without delay (II.3), provisional detention (II.4), the right to notice (II.5), the right to be present at trial (II.6), the admission of documents (II.7) and the Prosecution's disclosure obligations (II.8).

2. TRIAL WITHOUT UNDUE DELAY

73. The Defence teams claim that the right to trial without undue delay was violated.[42] The Bagosora Defence refers exclusively to events which occurred before the trial opened in 2002. In particular, seven months elapsed from the Tribunal in August 1996 confirmed his Indictment and ordered his continued detention in Cameroon until he pleaded guilty before the Tribunal in March 1997. Furthermore, his trial was initially scheduled to start in March 1998, but postponed because the Prosecution requested the joinder of his case with 28 others, which failed, and then ultimately with Kabiligi, Ntabakuze and Nsengiyumva, which succeeded. These efforts at joinder delayed the commencement of his trial for four years.[43]

74. The Kabiligi and Ntabakuze Defence teams challenge the length of the proceedings from their arrest in 1997 until the delivery of the judgement, arguing that the 11 year process cannot constitute a reasonable delay. While the Ntabakuze Defence does not make any detailed submissions in this regard, the Kabiligi Defence argues that there is no jurisprudence supporting 11 years of proceedings. Although the case is complex, it was made unnecessarily complicated by the Prosecution's request to join the four Accused and other issues such as translation, Prosecution staffing and availability of judges. The delay caused prejudice to Kabiligi because some witnesses died, such as Witness LG-1, who would have refuted allegations against him.[44]

75. The right to be tried without undue delay is guaranteed by Article 20(4)(c) of the Statute. The Appeals Chamber has pointed out that this right only protects the accused against *undue* delay, which has to be decided on a case by case basis.[45] The following factors are relevant: (a) the length of the delay; (b) the complexity of the proceedings (the number of counts, the number of accused, the number of witnesses, the quantity of evidence, the complexity of the facts and of the law); (c) the conduct of the parties; (d) the conduct of the authorities involved; and (e) the prejudice to the accused, if any.[46]

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[42] The Nsengiyumva Defence team did not expressly raise this challenge in its Closing Brief. However, in the context of its notice challenge, it does note the delay in Nsengiyumva's trial due to amendments of the Indictment. *See* Nsengiyumva Closing Brief, paras. 19-26.
[43] Bagosora Closing Brief, paras. 1915-1929.
[44] Kabiligi Closing Brief, paras. 53-75; Ntabakuze Closing Brief, para. 2627.
[45] *Nahimana et al.* Appeal Judgement, para. 1074.
[46] *Id.* para. 1075. *See also Mugiraneza*, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004, p. 3.

76. With respect to Bagosora's time in Cameroon, the Chamber recalls that he was arrested there on 9 March 1996 pursuant to a Belgian warrant (Annex A.1). He was only detained pursuant to the Tribunal's authority on 17 May 1996 when the Tribunal issued an order for Belgium to defer its jurisdiction and for Bagosora's provisional detention and transfer to Arusha. On 16 July 1996, the Tribunal issued a further order for his continued detention and reiterated its request for transfer. Bagosora's Indictment was confirmed on 10 August 1997. He arrived at the Tribunal detention facility on 23 January 1997, appeared before Trial Chamber II on 20 February 1997, and pleaded not guilty on 7 March 1997.

77. The Defence submissions do not show that the period from Bagosora's arrest to his transfer to the Tribunal constituted undue delay, or that the delay was the Tribunal's responsibility. Whether there was any undue delay in holding Bagosora's initial appearance after his transfer is discussed below (II.3).

78. Turning to the question of whether there has been undue delay in the trial generally, it is common ground that the proceedings have been lengthy. This can be explained by the particular complexity of the case. The three Indictments against the four Accused each charged direct and superior responsibility and between 10 and 12 counts, including conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide, crimes against humanity (murder, extermination, rape, persecution and other inhumane acts) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (violence to life and outrages upon personal dignity).[47] Over the course of 408 trial days, the Chamber heard 242 witnesses, received nearly 1,600 exhibits and issued around 300 written decisions.

79. The Accused were senior military officers, allegedly individually responsible for thousands of deaths which occurred throughout the country from April to July 1994. The testimonies involved numerous sites and events. While a few of these accounts concerned only one of the Accused, most of the evidence was relevant, either directly or circumstantially, to two or more of them. The prominence of the Accused as well as their alleged role in planning and executing the crimes committed in Rwanda required evidence covering nearly four years, from October 1990 to July 1994.

80. In the *Nahimana et al.* case, the Appeals Chamber held that a period of seven years and eight months between the arrest of Jean-Bosco Barayagwiza and his judgement did not constitute undue delay, apart from some initial delays which violated his fundamental rights. In particular, the Appeals Chamber reasoned that Barayagwiza's case was particularly complex due to the multiplicity of counts, the number of accused, witnesses and exhibits as well as the complexity of the facts and law. It further noted that comparisons with time frames in domestic criminal courts were not particularly persuasive given the inherent complexity of international proceedings.[48]

81. Like the present case, the *Nahimana et al.* case involved multiple Indictments and requests for amendments and joinder.[49] This case is also two to three times the size of the

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[47] Only Nsengiyumva was charged with direct and public incitement to commit genocide.
[48] *Nahimana et al.* Appeal Judgement, paras. 1076-1077.
[49] *Nahimana et al.* Trial Judgement, paras. 20-38.

Nahimana et al. case.[50] There was a need for intervals between the trial segments to allow the parties to prepare in view of the massive amounts of disclosure relevant to the case, the need to translate a number of documents, and the securing of witnesses and documents located around the world. Extensive cross-examination by four Defence teams took time.

82. As mentioned above, the length of the trial proceedings is largely due to the scope and gravity of the crimes charged against the Accused.[51] There is no undue delay in the proceedings as a whole that is specifically attributable to any party or the Tribunal. It is true that some of the individual cases could have started earlier if the Prosecution had not requested amendment of the Indictments and joinder. However, these procedures are provided for in the Rules and were warranted in order to reflect the full scope and joint nature of their alleged criminal conduct. At each stage, the Chamber considering the requests fully heard the parties and took into account issues of prejudice and delay before determining that they were warranted in the interests of justice.[52] The Defence teams have not identified any particular error in these determinations. After hearing the evidence it is clear that much of it was relevant to several Accused, as described above and reflected in the Chamber's factual findings.

83. Turning to any prejudice to the Accused caused by the length of the proceedings, the Kabiligi Defence has pointed to the death of Witness LIG-1, which it claimed would have contradicted the allegations made by Witness HN. However, the Chamber has not accepted Witness HN's evidence against Kabiligi and thus there can be no prejudice (III.2.6.2). Bagosora and Ntabakuze made no submissions concerning the prejudice they faced, and the Chamber cannot identify any, in particular since both have received life sentences in view of the gravity of their crimes. Furthermore, the Chamber notes that it took a number of steps to increase the efficiency of the proceedings, including, among other things, ordering a significant reduction in the Prosecution's witness list from 225 anticipated witnesses to the 80 witnesses which were ultimately called.[53] During the Defence case, 160 witnesses were heard in the course of 201 trial days.

84. In view of the size and complexity of this trial, in particular in comparison to the *Nahimana et al.* case, the Chamber does not consider that there has been any undue delay in the proceedings.

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[50] In particular, the Trial Chamber in *Nahimana et al.* heard 93 witnesses over the course of 241 trial days. *See Nahimana et al.* Trial Judgement, para. 50. This Chamber heard 149 more witnesses and sat an additional 167 days.

[51] In the *Rwamakuba* case, the Appeals Chamber dismissed in part Rwamakuba's assertion that there was undue delay in his trial proceedings, which lasted more than eight years, because he did not address the complexity of his case when it was joined with the *Karemera et al.* case, which involved a government wide joint criminal enterprise. *See Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 13.

[52] *See, e.g.*, Decision on the Prosecutor's Motion for Joinder, 29 June 2000; *Bagosora*, Decision on the Prosecution's Request for Leave to Amend the Indictment (TC), 12 August 1999; *Kabiligi and Ntabakuze*, Decision on the Prosecutor's Motion to Amend the Indictment (TC) 8 October 1999; *Nsengiyumva*, Decision of the Prosecution's Request for Leave to Amend the Indictment (TC), 2 September 1999.

[53] In fact, from this Chamber took over the trial in June 2003, it heard 80 Prosecution witnesses in the course of 170 trial days, ending on 14 October 2004. The commencement of the Defence case, which was originally scheduled for commencement from January 2005, was postponed to 11 April 2005, because a new Lead Counsel for Kabiligi had to be appointed (*see* Annex A.5.2).

3. INITIAL APPEARANCE WITHOUT DELAY

85. The Kabiligi Defence argues that Kabiligi was denied the right to an initial appearance without delay. It submits that, following his arrest on 18 July 1997, he was only brought before a judge of the Tribunal after a period of 183 days.[54] The Bagosora Defence also complains about the delay in Bagosora's initial appearance after his arrest in Cameroon, but only mentions this briefly in connection with its general submissions concerning undue delay in the trial proceedings. It notes that he was transferred to the Tribunal in January 1997 and only entered his plea in March of that year.[55]

86. The Nsengiyumva Defence notes the delay between his transfer on 23 January 1997 and his initial appearance on 19 February 1997 in the context of his submissions on notice, but does not specifically claim that his rights were violated.[56] The Ntabakuze Defence does not challenge the delay between his transfer and appearance before a judge.

87. In accordance with Rules 40 *bis* (J) and 62, a "suspect" or an "accused" has the right to be brought before a judge or a Trial Chamber without delay upon his transfer to the Tribunal. A violation of this right may entail a remedy, including an apology, reduction of sentence or financial compensation in the event of an acquittal. In each case where the Appeals Chamber has accorded a remedy for a violation of this right, the accused promptly challenged the violation.[57]

Kabiligi

88. A review of the procedural history of this case shows that the Kabiligi Defence submissions as to when Kabiligi was first brought before a judge of the Tribunal are incorrect (Annex A.2). When he was arrested and transferred to the Tribunal's detention facility on 18 July 1997, he was provisionally detained without an Indictment as a suspect pursuant to Rule 40 *bis*. Kabiligi was brought before a judge of the Tribunal on 14 August 1997, a period of 27 days after his transfer.[58] His identity was confirmed, and he had the opportunity to raise any concerns through his assigned counsel. Kabiligi appeared with counsel before a judge a second time a few days later, on 18 August, where the decision on his continued provisional detention was read into the record.[59] On 15 September 1997, Kabiligi and his counsel appeared a third time.[60] His Indictment was confirmed on 15 October 1997, and his initial appearance was held on 17 February 1998, or 125 days later.[61]

89. The Kabiligi Defence did not raise the issue of delay during any of his initial hearings or in motions which challenged various other aspects of the proceedings. It also does not appear that the matter was mentioned at any subsequent period until the Defence Closing Brief, some nine years after these delays occurred.

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[54] Kabiligi Closing Brief, paras. 47-50. The Kabiligi Defence erroneously states that the initial appearance occurred on 18 February 1997. It occurred one day earlier. *See* T. 17 February 1997.
[55] Bagosora Closing Brief, para. 1919.
[56] Nsengiyumva Closing Brief, para. 21.
[57] *Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, paras. 3, 28; *Kajelijeli* Appeal Judgement, para. 324.
[58] T. 14 August 1997 pp. 2-15.
[59] T. 18 August 1997 pp. 2-4.
[60] T. 15 September 1997 pp. 1-87.
[61] T. 17 February 1998 pp. 3-32.

90. The Chamber considers that the Defence's failure to promptly bring this challenge indicates that any prejudice suffered by Kabiligi is at most minimal. This failure has also prevented the development of a full record which would allow the Chamber to properly determine to what extent the delay is attributable to the Tribunal as opposed to any waiver of the right or other circumstances attributable to the Defence.

91. The 27 day period between Kabiligi's transfer to the Tribunal on 18 July 1997 and his first appearance before a judge on 14 August 1997 amounts to delay.[62] In the present case, there is no documentary evidence explaining the delay, but in view of its duration it is, on the face of it, a violation of his right to be brought before a judge without delay. Assuming that at least part of it was attributable to the Tribunal, the prejudice to Kabiligi appears to have been limited. One of the key purposes of bringing a suspect promptly before a judge after his transfer is to ensure that his rights are being respected.[63] In this initial period, there was a violation of Kabiligi's right to counsel during a custodial interrogation by the Prosecution. However, the Chamber has previously addressed that violation and accorded him a remedy by denying the Prosecution's request to admit the transcript of the interview into evidence and excluding portions of other testimony based on it.[64]

92. The 125 day period between the confirmation of Kabiligi's Indictment on 15 October 1997 and his initial appearance on 17 February 1998 appears unduly lengthy. The initial appearance of Ntabakuze, who was Kabiligi's co-accused in their original joint Indictment, occurred on 24 October 1997, nine days after its confirmation.[65] Again, the record does not clearly reflect why Kabiligi did not appear at this time. However, it is difficult to accept that he would also not have been given his initial appearance at the same time as Ntabakuze unless there had been some circumstances attributable to his counsel. This is confirmed by documentary evidence which is available.

93. After confirmation of the Indictment, the Registry attempted to make arrangements with Kabiligi's counsel on a convenient date for the initial appearance. This follows from a letter of 18 November 1997 between Kabiligi's counsel and the Registrar which alludes to these consultations.[66] In the letter, his counsel indicated that he had proposed early December, which conflicted with the Tribunal's recess. The letter also reflects that the Registry had fixed 27 November 1997 as the date for Kabiligi's initial appearance but that counsel vigorously protested against this on several grounds, including both his professional commitments and his objection to having a further hearing in the case until the disposition of his motion filed on 25 September to annul the proceedings. Consequently, the 125 day delay between the confirmation of Kabiligi's Indictment and his initial appearance is not

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[62] The Chamber notes in passing that the delay is significantly less than the violations in the *Rwamakuba* and *Kajelijeli* cases, where the accused were detained without being brought before a judge for 167 and 211 days, respectively, for the most part without counsel, unlike Kabiligi. *See Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 28; *Kajelijeli* Appeal Judgement, para. 237.
[63] *Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 28.
[64] Decision on Prosecutor's Motion for the Admission of Certain Materials Under Rule 89 (C), 14 October 2004, para. 21 (holding that Kabiligi's statement was taken in violation of his right to assistance of counsel). *See also* Decision on Kabiligi Motion for the Exclusion of Portions of Testimony of Prosecution Witness Alison Des Forges (TC), 4 September 2006, paras. 2, 5.
[65] T. 24 October 1997 pp. 3-32.
[66] *The Prosecution v. Gratien Kabiligi*, Case No. 97-30-I, Letter of 18 November 1997 from Jean Yaovi Degli to the Registrar, filed on 21 November 1997, RPP 90-89.

attributable to the Tribunal. The Kabiligi Defence letter of 18 November 1997 and its subsequent failure to bring this claim for nine years suggests that there was in fact a waiver of the right to a prompt initial appearance. At any rate, the Chamber observes that at the time he was represented by counsel who was actively challenging various aspects of the case. As mentioned above, he had also been brought before a judge on several occasions prior to the confirmation of his Indictment. Under these circumstances, the prejudice, if any, appears to be minimal.

Bagosora

94. Bagosora was transferred to the Tribunal on 23 January 1997 (Annex A.1). On 3 February, the Registry fixed the date of his initial appearance for 20 February.[67] Bagosora's assigned counsel was not able to be present during the hearing because of problems with his travel. Bagosora still made an initial appearance before Trial Chamber II on that day.[68] During the hearing, he confirmed his identity and asked the Chamber to replace his assigned counsel with Mr. Luc de Temmerman. He noted that Temmerman was present with him in court and had originally been his first choice as assigned counsel. The Chamber did not change the assignment, and, in the absence of Bagosora's Tribunal counsel, it decided to postpone the taking of his plea until 7 March 1997.

95. The Chamber considers that any delay between Bagosora's transfer and his initial appearance should be calculated to 20 February 1997, when he first appeared before a Trial Chamber. This period amounts to 28 days. The fact that he did not enter his plea at this time cannot be attributed to the Tribunal since it resulted from the travel difficulties of his assigned counsel which were beyond its control.

96. The Chamber considers that the 28 day delay in holding Bagosora's initial appearance is too long and constitutes a violation of his right to be brought before a judge without delay.[69] The Bagosora Defence's failure to raise this challenge until its Closing Brief indicates that there was minimal, if any, prejudice as a result of this violation.

Conclusion

97. According to the Appeals Chamber, any violation, even if it entails a relative degree of prejudice, requires a proportionate remedy.[70] The Appeals Chamber has also held that in practice, the effective remedy for violations of fair trial rights will take the form of equitable or declaratory relief.[71] The delays found above are not like in *Rwamakuba* or *Kajelijeli* where financial compensation or the reduction of a sentence are warranted. Those cases involved excessive delays before the initial appearance and were coupled with other serious fair trial rights violations including the right to counsel for extended periods. In the Chamber's view,

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[67] *The Prosecutor v. Théoneste Bagosora*, Case No. ICTR-96-7-I, Setting of the Date of the Initial Appearance, 3 February 1997, RP. 37.
[68] T. 20 February 1997 pp. 2-9.
[69] Again, the Chamber notes that the delay is less extensive than in the cases of *Rwamakuba* and *Kajelijeli*.
[70] *Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 24; *Semanza* Appeal Decision, para. 125.
[71] *Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 27.

the appropriate remedy for the violation of the rights of Kabiligi and Bagosora in view of the circumstances of this case is formal recognition that they occurred.

4. RULE 40 *BIS*

98. The Kabiligi and Ntabakuze Defence teams challenge various aspects of the provisional detention ordered pursuant to Rule 40 *bis*.

99. Rule 40 *bis* (C) provides that the provisional detention of a suspect may be ordered for a period not exceeding 30 days from the day after the transfer of the suspect to the Tribunal. The order must include the provisional charge and be served on the suspect and his counsel. Rule 40 *bis* (F) allows a judge to extend this period for an additional 30 days after hearing the parties and "before the end of the period of detention". This period may be extended twice for 30 days maximum but must not exceed 90 days in total after the date of the transfer (Rule 40 *bis* (G) and (H)).

4.1 Extension of Provisional Detention

100. The Kabiligi Defence argues that Kabiligi's provisional detention was illegally extended because it violated Rule 40 *bis*. It submits that he was transferred to the Tribunal on 18 July and that the initial 30 day extension of his detention occurred on 18 August, 32 days after his transfer.[72]

101. Judge Laïty Kama held a hearing on 14 August 1997 to determine whether Kabiligi's provisional detention should be extended. This was Kabiligi's 27th day of provisional detention, after his transfer. A decision by Judge Kama, dated 14 August, granted the extension and noted that it was to run from 18 August, which was the first day of the new 30 day period.[73] Judge Kama orally pronounced the decision on 18 August. It appears that the decision to extend the provisional detention was taken within the initial 30 day period, but only communicated to Kabiligi on the 31st day.[74] Therefore, there is no violation of Rule 40 *bis* (F), as Kabiligi suggests.

102. Even if the one day delay in communicating the decision would be considered a violation of the Rule, this was rectified during the second extension of his provisional detention which was ordered on 16 September 1997. This would have been within the 30 day period if the first extension had been announced on 17 August. Furthermore, the total period of Kabiligi's provisional detention did not exceed the maximum of 90 days allowed under the Rules, as his Indictment was confirmed on 15 October 1997, the 89th day after his transfer.

103. The Kabiligi Defence did not raise this challenge until its Closing Brief, more than nine years after the alleged violation of Rule 40 *bis* occurred. Given the circumstances described above, the Chamber cannot identify any prejudice to Kabiligi.

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[72] Kabiligi Closing Brief, paras. 39-41.
[73] *Kabiligi*, Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (in Accordance with Rule 40 *Bis* (F) of the Rules of Procedure and Evidence) (TC), dated 14 August 1997. The stamp on the original French version reflects that it was filed with the Registry on 20 August.
[74] The Kabiligi Defence's calculation of the length of his provisional detention – 32 days – does not take into account that it runs from the day after the transfer.

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4.2 Notification of Charges

104. The Kabiligi and Ntabakuze Defence teams submits that the delay in informing the Accused of the precise charges against them during their period of provisional detention constitutes a serious injustice. In this respect, they were transferred to the Tribunal's detention facility on 18 July 1997, and their joint Indictment was confirmed on 15 October 1997.[75]

105. A suspect arrested by the Tribunal has the right to be informed promptly of the reasons for his or her arrest.[76] The Appeals Chamber has acknowledged that confirmation and service of the indictment may follow some time after arrest, but the individual must be informed in substance of the nature of the charges against him at the time of his arrest or shortly thereafter.[77] In the *Semanza* case, the Appeals Chamber concluded that a reference to the accused being provisionally detained "for serious violations of international humanitarian law and crimes within the jurisdiction of the Tribunal" adequately described the substance of the charges to satisfy the requirement of notice at that stage.[78]

106. Rule 40 *bis* (D) requires the order of transfer to state the "provisional charge" against the suspect. The order for Kabiligi's transfer indicated that he was the G-3 officer in charge of operations and exercised *de facto* and *de jure* authority over officers and soldiers of the Rwandan army, including certain units of the Presidential Guard, Para Commando Battalion and Reconnaissance Battalion, who participated in massacres of the Tutsi civilian population with the assistance of militiamen.[79] Ntabakuze's transfer order stated that he was the commander of the Para Commando Battalion and exercised *de facto* and *de jure* authority over members of his unit. It further noted that these subordinates participated in massacres of the Tutsi civilian population along with other units, and specified that they killed Hutu and Tutsi politicians at the camp of the Presidential Guard.[80] Both orders also referred to possible charges of genocide, crimes against humanity and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II.

107. In the Chamber's view, the orders for the transfer of Kabiligi and Ntabakuze adequately informed them of the substance of the provisional charges against them.

5. NOTICE OF CHARGES

5.1 Introduction

108. Throughout the trial, the Chamber extensively considered the issue of notice in a series of decisions and oral rulings.[81] Numerous challenges have been renewed by the

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[75] Kabiligi Closing Brief, paras. 42-46; Ntabakuze Closing Brief, paras. 2599-2608.
[76] *Semanza*, Decision (AC), 31 May 2000, para. 78.
[77] *Id.* para. 78, fn. 104.
[78] *Id.* paras. 83-85.
[79] *Kabiligi*, Order for Transfer and Provisional Detention (In Accordance with Rule 40 *Bis* of the Rules) (TC), 16 July 1997, p. 3.
[80] *Ntabakuze*, Order for Transfer and Provisional Detention (In Accordance with Rule 40 *Bis* of the Rules) (TC), 16 July 1997, p. 3.
[81] The most significant decisions are: Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007; Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007; Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007; Decision on Nsengiyumva Motion For the Exclusion of Evidence Outside the

Defence in their Closing Briefs. The Defence teams challenge the notice provided to the Accused of the material facts underpinning the charges in their respective Indictments.

109. The specific challenge to a particular factual allegation is addressed in the relevant section of the factual findings. In many instances, the Chamber has not revisited those decisions in its factual findings, in particular where the Prosecution did not prove its case. It has nevertheless considered the challenges in view of the general principles, as recapitulated below.

5.2 Law

110. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.[82] The Prosecution is expected to know its case before proceeding to trial and cannot mould the case against the accused in the course of the trial depending on how the evidence unfolds.[83] Defects in an indictment may come to light during the proceedings because the evidence turns out differently than expected; this calls for the Trial Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of proceedings, or the exclusion of evidence outside the scope of the indictment.[84] In reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.[85]

111. The Appeals Chamber has held that criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically, including where feasible "the identity of the victim, the time and place of the events and the means by which the acts were committed".[86] Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[87]

112. If the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6 (3) of the Statute, the Indictment should plead the following: (1) that the accused is the superior of subordinates sufficiently identified, over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he is alleged to be responsible; (2) the criminal conduct of those others for whom he is alleged to be responsible; (3) the conduct of

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Scope of the Indictment (TC), 15 September 2006; Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006; Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006.

[82] *Muvunyi* Appeal Judgement, para. 18; *Seromba* Appeal Judgement, paras. 27, 100; *Simba* Appeal Judgement para. 63; *Muhimana* Appeal Judgement, paras. 76, 167, 195; *Gacumbitsi* Appeal Judgement, para. 49; *Ndindabahizi* Appeal Judgement, para. 16.

[83] *Muvunyi* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 27. *See also Kvočka et al.* Appeal Judgement, para. 30; *Niyitegeka* Appeal Judgement, para. 194; *Kupreškić et al.* Appeal Judgement, para. 92.

[84] *Muvunyi* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 27. *See also Kvočka et al.* Appeal Judgement, para. 31; *Niyitegeka* Appeal Judgement, para. 194; *Kupreškić et al.* Appeal Judgement, para. 92.

[85] *Muvunyi* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgement, para. 28; *Kvočka et al.* Appeal Judgement, para. 33.

[86] *Muhimana* Appeal Judgement, para. 76; *Gacumbitsi* Appeal Judgement, para. 49; *Ntakirutimana* Appeal Judgement, para. 32, quoting *Kupreškić et al.* Appeal Judgement, para. 89. *See also Ndindabahizi* Appeal Judgement, para. 16.

[87] *Ntagerura et al.* Appeal Judgement, para. 25.

the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and (4) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[88]

113. A superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6 (3) of the Statute.[89] The Appeals Chamber has held that an accused is sufficiently informed of his subordinates where they are identified as coming from a particular camp and under their authority.[90] It has also held that physical perpetrators of the crimes can be identified by category in relation to a particular crime site.[91]

114. The Appeals Chamber has previously stated that "the facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue".[92] Moreover, in certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes.[93]

115. Finally, the Appeals Chamber has held that a Trial Chamber may infer knowledge of the crimes from the widespread and systematic nature and a superior's failure to prevent or punish them from their continuing nature. These elements follow from reading the Indictment as a whole.[94]

116. An indictment lacking this precision is defective; however, the defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing the factual basis underpinning the charge.[95] The principle that a defect in an indictment may be cured is not without limits.[96] The Appeals Chamber has held that a Pre-Trial Brief in certain circumstances can provide such information.[97]

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[88] *Muvunyi* Appeal Judgement, para. 19; *Nahimana et al.* Appeal Judgement, para. 323; *Ntagerura et al.* Appeal Judgement, paras. 26, 152. *See also Naletilić and Martinović* Appeal Judgement, para. 67; *Blaškić* Appeal Judgement, para. 218.

[89] *Muvunyi* Appeal Judgement, para. 55; *Blagojević and Jokić* Appeal Judgement, para. 287.

[90] *Muvunyi* Appeal Judgement, para. 56; *Ntagerura et al.* Appeal Judgement, paras. 140, 141, 153.

[91] *See, e.g., Simba* Appeal Judgement, paras. 71-72 (concerning identification of other members of a joint criminal enterprise), quoting *Simba* Trial Judgement, paras. 393-393.

[92] *Ntagerura et al.* Appeal Judgement, para. 26 fn. 82, quoting *Blaškić* Appeal Judgement, para. 218. *See also Muvunyi* Appeal Judgement, para. 58.

[93] *Muvunyi* Appeal Judgement, para. 58; *Muhimana* Appeal Judgement, para. 79; *Gacumbitsi* Appeal Judgement, para. 50; *Kupreškić et al.* Appeal Judgement, para. 89.

[94] *Muvunyi* Appeal Judgement, para. 62.

[95] *Id.* para. 20; *Seromba* Appeal Judgement, para. 100; *Simba* Appeal Judgement, para. 64; *Muhimana* Appeal Judgement, paras. 76, 195, 217; *Gacumbitsi* Appeal Judgement, para. 49. *See also Ntagerura et al.* Appeal Judgement, paras. 28, 65.

[96] In this respect, the Appeals Chamber has previously emphasized: "[T]he "new material facts" should not lead to a "radical transformation" of the Prosecution's case against the accused. The Trial Chamber should always take into account the risk that the expansion of charges by the addition of new material facts may lead to unfairness and prejudice to the accused. Further, if the new material facts are such that they could, on their own, support separate charges, the Prosecution should seek leave from the Trial Chamber to amend the indictment and the Trial Chamber should only grant leave if it is satisfied that it would not lead to unfairness or prejudice to the Defence." *See Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law

117. In this respect, the Chamber notes that the Pre-Trial Brief in this case was filed on 21 January 2002. On 23 May 2002, the Chamber ordered the Prosecution to revise its Pre-Trial Brief to clearly indicate the paragraph in the Indictment to which the summaries in its annex were relevant.[98] The Prosecution filed its Revised Pre-Trial Brief on 7 June 2002, which consisted of a chart listing the relevant witness pseudonyms next to a given paragraph in the Indictment. Thus, both briefs must be read together. On 4 November 2002, the Chamber held that the Revised Pre-Trial Brief was controlling to the extent that there were any inconsistencies between it and the original.[99] Accordingly, the Chamber does not consider that such difference amount to inconsistent notice. The Chamber recalls that the Revised Pre-Trial Brief was filed almost a year before the Prosecution led the vast majority of its evidence.

5.3 General Challenges to the Indictments

118. The Bagosora and Nsengiyumva Defence teams have made lengthy general challenges to the notice provided to the Accused, mostly consisting of recitations of various legal principles.[100] The Appeals Chamber has held, however, that blanket objections that the entire indictment is defective are insufficiently specific.[101] Some more detailed arguments will be addressed here.

119. In particular, the two Defence teams argue that the Prosecution's delay in bringing amendments, expanding its Indictment several years after the arrest and transfer of the Accused, reflects the evolving nature of the cases against them as well as a lack of prompt and concise notice of the charges.[102] However, the amendment of an Indictment is allowed under the Rules and is permissible even during the course of a trial.[103] In the present case, the amendments were allowed after consideration of possible prejudice. They also occurred some three years before the commencement of trial. In the Chamber's view, this allowed sufficient time to prepare for any new allegations.

120. The Nsengiyumva Defence submits that many of the original witnesses that formed the basis of the confirmation of the Indictment were not ultimately called in the case against Nsengiyumva.[104] There is, however, no requirement for the Prosecution to rely on the same

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Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 30 (internal citations omitted).

[97] *Muhimana* Appeal Judgement, para. 82; *Gacumbitsi* Appeal Judgement, paras. 57, 58; *Ntakirutimana* Appeal Judgement, para. 48; *Naletilić and Martinović* Appeal Judgement, para. 45.

[98] Decision on Defence Motions of Nsengiyumva, Kabiligi, and Ntabakuze Challenging the Prosecutor's Pre-Trial Brief and on the Prosecutor's Counter-Motion (TC), 23 May 2002, para. 19.

[99] Decision (Motion by Aloys Ntabakuze's Defence for Execution of the Trial Chamber's Decision of 23 May 2002 on the Prosecutor's Pre-Trial Brief, Dated 21 January 2002, and Another Motion on a Related Matter (TC), 4 November 2002, para. 14.

[100] Bagosora Closing Brief, paras. 1930-2022; Nsengiyumva Closing Brief, paras. 18-68. The Kabiligi and Ntabakuze Defence teams have mostly raised specific challenges to the relevant paragraphs of the Indictment and the factual allegations advanced by the Prosecution. These challenges are considered in the Chamber's factual findings.

[101] *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 46.

[102] Bagosora Closing Brief, paras. 1934-1935; Nsengiyumva Closing Brief, paras. 19-24.

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

[104] Nsengiyumva Closing Brief, paras. 20, 32.

evidence at trial as that used in connection with the confirmation of the Indictment. The statements of the additional witnesses were disclosed in advance of trial in accordance with the Rules and the applicable witness protection decisions. Very few witnesses were added during the course of the trial.

121. The Nsengiyumva Defence refers to the Chamber's approach in deferring certain decisions on notice until the end of the case. The Bagosora Defence complains that the Chamber delayed consideration of its motion for exclusion until after it filed its Closing Brief.[105] The Chamber recalls that exclusion of evidence is only one of several possible remedies and not the exclusive one. The selection of an appropriate remedy is well within a Chamber's discretion which will take into consideration the particular circumstances of the case.[106] A Chamber also has the authority under Rule 89 (C) to admit evidence on unpleaded facts, even where it is not possible to convict, to the extent it has probative value with respect to another relevant issue in the case.[107] At the time of admission, a Chamber is not always in the position to fully appreciate the evidentiary value of all aspects of a disputed witness's testimony, in particular whether it might be relevant with respect to the overall credibility of the witness or other evidence, and thus may properly defer consideration to the final analysis of all the evidence.[108]

122. The Bagosora Defence challenges the organisation and argumentation of the Prosecution Closing Brief.[109] However, a closing brief is not a relevant document in determining whether an accused had notice of the charges against him.

5.4 Cumulative Effect of Defects in the Indictments

123. In its notice decisions and judgment, the Chamber has acknowledged that in a number of instances the Indictments against the Accused were defective with respect to several of the specific factual allegations advanced by the Prosecution. It determined that in many of these cases the defects were cured by timely, clear and consistent information, normally found in the Pre-Trial Brief or a motion to add a witness. The Appeals Chamber has held that, even if a Trial Chamber finds that the defects in the indictment have been cured by post-indictment submissions, it should consider whether the extent of these defects materially prejudiced the accused's right to a fair trial by hindering the preparation of a proper defence.[110]

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[105] *Id.* paras. 35-37; Bagosora Closing Brief, paras. 1952-1956.

[106] *Simba*, Decision on the Admissibility of Evidence of Witness KDD (TC), 1 November 2004, para. 15, citing *Krnojelac* Appeal Judgement, paras. 142-144; *Ntahobali and Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible" (AC), 2 July 2004, para. 16.

[107] *Ntahobali and Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible" (AC), 2 July 2004, paras. 14-16.

[108] *Simba*, Decision on the Admissibility of Evidence of Witness KDD (TC), 1 November 2004, para. 18. *See also Karemera et al.*, Decision on Interlocutory Appeal Regarding Witness Proofing (AC), 11 May 2007, para. 12 ("the Appeals Chamber observes that the Prosecution's act of disclosing new material to the Defence as a result of a proofing session does not mean that the Trial Chamber will allow the evidence to be led or that it will ultimately credit the testimony in its final assessment of the case.").

[109] Bagosora Closing Brief, paras. 2004-2022.

[110] *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 48.

124. The Chamber observes that, where defects have been cured, they relate to more generally worded paragraphs and do not add new elements to the case. The curing for the most part was based on the Pre-Trial Brief and its revision filed nearly a year before the Prosecution began presenting the majority of its witnesses in June 2003.[111] Furthermore, there have been a number of breaks throughout the proceedings which have allowed the parties to conduct investigations and prepare for evidence in upcoming trial sessions. The Chamber has also frequently exercised its discretion, where appropriate, to exclude evidence, to postpone all or part of a witness's testimony, and to grant recall for further cross-examination.

125. At its core, this case is, and has always been, about the alleged role of the Accused as senior military leaders who were involved in planning and preparations of the genocide and then used their authority to unleash the violence which occurred after the death of President Habyarimana. The Indictments clearly plead this role. When the individual Indictments are read as a whole they reasonably identify their subordinates by category with further geographic and temporal details related to individual events. The specific massacres and crimes, whether specifically pleaded in the Indictments or cured through timely, clear and consistent information, remain largely undisputed. The identity of many of the principal perpetrators are also not for the most part in dispute. Knowledge of the crimes has flowed mainly from their open and notorious or wide-spread and systematic nature. Furthermore, the Accused's exercise of authority to advance the crimes or fail to prevent them is a product of their clearly identified positions and the organised nature of the attacks. Notice of their knowledge as well as their participation in the crimes follow from reading the Indictments as a whole.

126. In the final analysis, the Defence teams' ability to prepare their case is amply demonstrated by their ultimate success in impeaching much of the Prosecution's evidence against them, through cross-examination, argumentation and evidence. A careful consideration of the Defence conduct during the course of trial and in their final submissions plainly reflects that they have mastered the case.

127. Accordingly, the trial has not been rendered unfair due to the number of defects in the Indictments which have been cured.

6. PRESENCE AT TRIAL

128. The Nsengiyumva Defence argues that the Accused was denied the right to be present at trial because the Chamber continued proceedings in his absence when he was medically unable to attend proceedings. It submits that, between 8 November and 13 December 2006, Nsengiyumva was unable to instruct his counsel with respect to the testimonies of Witnesses ALL-42, LAX-2, FB-25, Bernard Lugan, DELTA, André Ntagerura, Luc Marchal and Jacques Duvivier. To demonstrate prejudice, it incorporates by reference its motion to recall these witnesses, filed on 23 January 2007.[112]

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[111] Trial Chamber III heard two witnesses, Alison Des Forges and Witness ZF, from September to December 2002. The case was transferred to Trial Chamber I in June 2003. Between 16 June 2003 and 14 October 2004, the Prosecution presented its remaining 80 witnesses. *See* Annex A.5.2.

[112] Nsengiyumva Closing Brief, paras. 3308-3341. The Nsengiyumva Defence refers to its motion entitled Nsengiyumva Confidential Defence Motion for the Recall of Witnesses ALL-42, LAX-2, FB-25, Bernard Lugan, DELTA, [André] Ntagerura, Luc Marchal and Duvivier All Who Testified in the Session Beginning [10th] November to 13th December 2006 in View of the Material Prejudice Arising in the Absence of the Accused During Their Testimony, 23 January 2007 ("Nsengiyumva Recall Motion").

129. Article 20 (4)(d) of the Statute provides that an accused has a right "to be tried in his or her presence". The Appeals Chamber has interpreted this right to mean the Accused's physical presence in the courtroom. Any restriction on this fundamental right must be in service of a sufficiently important objective and must impair the right no more than is necessary to accomplish the objective.[113] The Appeals Chamber held that the right to an expeditious trial guaranteed to all accused in a joint trial is a relevant consideration for a Trial Chamber in balancing whether or not to proceed in the absence of one of the Accused due to illness. However, the question of whether a witness's testimony is likely to concern the alleged acts and conduct of a co-accused only is not a relevant concern.[114]

130. The Chamber considered Nsengiyumva's submissions on this issue extensively during the course of the trial. Based on a medical opinion, it found that his absence was justified due to his medical condition on 8, 9, 10 and 13 November 2006. During these four days, five witnesses were heard: Kabiligi Defence Witnesses ALL-42, YC-3, LAX-2 and FB-25, as well as Bagosora Expert Witness Bernard Lugan. Nsengiyumva attended the proceedings on 14 November, but was absent for the remainder of the trial session concluding on 12 December. The Chamber determined that after 13 November, Nsengiyumva's absence had not been substantiated by the Tribunal's medical section.[115]

131. In the Chamber's view, there was no violation of Nsengiyumva's right to be present between 8 and 13 November. His Defence case had closed; measures had been taken to address all reasonable concerns raised by the Defence; there was no showing of the relevance to the Accused of any testimony heard in his absence; and the risk of losing witnesses due to an adjournment posed a much greater threat of prejudice to Kabiligi than the speculative and remote prejudice to Nsengiyumva.[116] In imposing its narrow four day restriction on Nsengiyumva's right to be present at trial, the Chamber considered more than just the relevance of the evidence to him, for example the real threat of prejudice to his co-accused. In the Chamber's view, this was in conformity with the proportionality principle, pursuant to which any restriction on a fundamental right must be in service of a sufficiently important objective and must impair the right no more than is necessary to accomplish the objective.[117] Finally, it should be noted that this case was in a different procedural stage than in others cases where the Appeals Chamber has found a violation of the right to be present.[118]

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[113] *Zigiranyirazo*, Decision on Interlocutory Appeal (AC), 30 October 2006, paras. 10-14. *See also Stanišić and Simatović*, Decision on Defence Appeal of the Decision on Future Course of Proceedings (AC), 16 May 2008, para. 6; *Karemera et al.*, Decision on Nzirorera's Interlocutory Appeal Concerning His Right to Be Present at Trial (AC), 5 October 2007, para. 11.

[114] *Karemera et al.*, Decision on Nzirorera's Interlocutory Appeal Concerning His Right to Be Present at Trial (AC), 5 October 2007, para. 15.

[115] Decision on Nsengiyumva's Motions to Call Doctors and to Recall Eight Witnesses (TC), 19 April 2007, paras. 1-10, 19; Decision on Nsengiyumva Motion for Adjournment Due to Illness of the Accused (TC), 17 November 2007, paras. 1-12.

[116] Decision on Nsengiyumva's Motions to Call Doctors and to Recall Eight Witnesses (TC), 19 April 2007, para. 3; Decision on Nsengiyumva Motion for Adjournment Due to Illness of the Accused (TC), 17 November 2007, paras. 9-12.

[117] *Zigiranyirazo*, Decision on Interlocutory Appeal (AC), 30 October 2006, para. 14; *Karemera et al.*, Decision on Nzirorera's Interlocutory Appeal Concerning His Right to Be Present at Trial (AC), 5 October 2007, para. 11.

[118] The cases of *Zigiranyirazo, Karemera et al.* and *Stanišić and Simotović* were in the prosecution phase or had not yet started, whereas this trial was about to close.

132. In making its decision to proceed in his absence, the Chamber specifically envisioned the possible recall of the witnesses. The Appeals Chamber has recognised this as a possible remedy to cure any prejudice. The ultimate decision on the appropriateness of recall remains in the discretion of the Chamber which is best placed to assess the significance of the proposed evidence in relation to the charges against the Accused.[119]

133. The Chamber subsequently denied Nsengiyumva's request to recall eight witnesses heard during the total period of his absence between 8 November and 13 December. According to the Defence, the main purpose was to impeach Prosecution evidence and to bolster his Defence witnesses. In denying the motion, the Chamber reasoned that his case was closed, none of the witnesses were adverse to him, and they had limited significance to his case. It further noted that the evidence sought in some respects was general and would have been cumulative of other testimony.[120] In its Closing Brief, the Nsengiyumva Defence simply raises again issues which were already decided by the Chamber. It has advanced no additional reasons why the Chamber should reconsider its decision.

134. Nevertheless, the Chamber notes that four of the eight witnesses who Nsengiyumva sought to recall appeared after 13 November when he was absent without justification. Therefore, there can be no possible violation with respect to the Chamber's decision not to recall these witnesses.[121] The Chamber has considered the factual findings underpinning Nsengiyumva's convictions with respect to the other four who testified when his absence was not justified.[122] It cannot identify any possible prejudice from hearing them in his absence and not allowing their recall.[123]

7. ADMISSION OF EVIDENCE

135. During the testimony of Nsengiyumva, his Defence sought to introduce a number of documents. In its decision of 26 February 2007, the Chamber denied the motion to admit 19 documents as well as to allow the recall of certain Prosecution witnesses to be cross-examined on the basis of them.[124] The Defence argued that this violated Nsengiyumva's right

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[119] *Karemera et al.*, Decision on Nzirorera's Interlocutory Appeal Concerning His Right to Be Present at Trial (AC), 5 October 2007, para. 16.

[120] Decision on Nsengiyumva's Motions to Call Doctors and to Recall Eight Witnesses (TC), 19 April 2007, paras. 15-22.

[121] In its decision on the Nsengiyumva Recall Motion, the Chamber nevertheless considered the relevance of these four witnesses to his case.

[122] The Defence did not request to recall Witness YC-3, who was also one of the five witnesses who testified during this period.

[123] It follows from the Nsengiyumva Recall Motion, pp. 4-6 that the Defence wished to recall Witness ALL-42 on matters related to RPF infiltration. The Chamber notes that the alleged infiltration of Rwanda by the RPF has no bearing on Nsengiyumva's specific crimes. In relation to Witness LAX-2 and FB-25, they were supposed mainly to impeach Prosecution Witness XXQ. The Chamber observes that it has not relied on this witness in relation to Nsengiyumva. Witness FB-25 would also testify about the duties of operational sector commanders and its relationship with other authorities. The Chamber recalls that Witness FB-25 previously appeared during the trial as Ntabakuze Defence Witness DM-190, when Nsengiyumva was present. Finally, the Defence wanted to question Berhard Lugan about clandestine organisations and communication networks. However, the Chamber has not accepted the allegations against the Accused concerning the various clandestine organisations or his role in planning.

[124] Decision on Nsengiyumva's Motion to Admit Documents as Exhibits (TC), 26 February 2007. In denying the motion, the Chamber noted that the documents were relevant to Prosecution Witnesses DO, ABQ, OQ and XBH. The Nsengiyumva Defence did not seek certification of the decision.

to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf.[125]

136. In its ruling on the admissibility of these documents, the Chamber found that they were either cumulative of other evidence or that the Nsengiyumva Defence had failed to make a timely request to recall the relevant Prosecution witnesses for further cross-examination on them.[126] The Defence has not advanced any argument in its Closing Brief which would warrant reconsideration of that decision. Furthermore, with the exception of Witness DO, the Chamber has not relied on any of the witnesses implicated by the documents in its factual findings against Nsengiyumva.

137. With respect to Witness DO, the Chamber considered Nsengiyumva's testimony about the relevant documents in assessing the witness's credibility together with other evidence and arguments attempting to impeach him (III.3.6.1). As a result, the Chamber rejected a number of key aspects of Witness DO's testimony in the absence of corroboration. The Chamber was satisfied, however, that the witness participated in targeted killings in Gisenyi town on 7 April along with soldiers from Gisenyi military camp. This part of his testimony was corroborated and consistent with his conviction in Rwanda. In the Chamber's view, the additional material sought for admission would not have raised questions about this aspect of the Chamber's findings. Accordingly, there can be no prejudice from the decision not to admit the documents.

8. DISCLOSURE BEFORE CROSS-EXAMINATION

138. The Nsengiyumva Defence contends that the Prosecution did not properly disclose the immigration documents used to impeach Witnesses LT-1, LIG-2, LM-1, BRA-1, KBO-1 and Joseph Bukeye, as required by the Appeals Chamber's decision of 25 September 2006.[127] The Kabiligi Defence also argues that the Prosecution failed to disclose material it used during cross-examination in connection with Witnesses KVB-19, LX-65, YUL-39 and DELTA.[128] The Chamber notes that, in assessing these witnesses, it was not necessary to rely on this aspect of their examination and thus there is no prejudice.

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[125] Nsengiyumva Closing Brief, paras. 3342-3367. The Nsengiyumva Defence refers to Prosecution Witnesses DO, XBM, XBG and OAB in its Closing Brief.
[126] Decision on Nsengiyumva's Motion to Admit Documents as Exhibits (TC), 26 February 2007, paras. 3-20.
[127] Nsengiyumva Closing Brief, paras. 3368-3403, citing Decision on Interlocutory Appeal Relating to the Disclosure under Rule 66 (B) of the Tribunal's Rules and Procedure (AC), 25 September 2006.
[128] Kabiligi Closing Brief, paras. 117-128.

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CHAPTER III: FACTUAL FINDINGS

1. BACKGROUND

1.1 Arusha Accords

Introduction

139. The Arusha Accords were a set of documents negotiated and signed in Arusha, Tanzania, between 18 August 1992 and 4 August 1993 by the government of Rwanda and the Rwandan Patriotic Front (RPF) to end a civil war and to lay down a legal framework for a post-conflict settlement. The final version of the Arusha Accords incorporated a Peace Agreement between the government of Rwanda and the RPF, signed on 4 August 1993, and five protocols that focused on, among other things, the rule of law, the formation of a national army and power-sharing within the government. It also incorporated the N'Sele Ceasefire Agreement, signed in Tanzania on 12 July 1992, which had established a cessation of hostilities throughout the territory of Rwanda and had laid out the framework for the negotiations that followed.[129] The Peace Agreement legally established an end to the war between the two parties. Its provisions, combined with those of the Rwandan Constitution of 10 June 1990, were to form the governing law of the country during its transition to peace.[130]

140. The Arusha Accords were negotiated under the facilitation of Tanzania, and assisted by the Organisation of African Unity and the United Nations. Several states observed the negotiations.[131]

The Five Protocols of the Arusha Accords

141. The First Protocol of the Arusha Accords, an agreement on the rule of law, was signed by the Rwandan government and the RPF on 18 August 1992. Both parties expressed their commitment to pursue national unity, democracy, pluralism and respect for human rights. Specifically, the document recognised the importance of a multi-party political system and free and fair elections, and proposed the creation of a National Commission on Human Rights.[132]

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[129] The N'Sele Ceasefire Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front, as amended at Gbadolite on 16 September 1991 and at Arusha on 12 July 1992, Articles I, II.1, III, V, VI, VII. The cease-fire agreement was the product of several meetings between the two parties, beginning in 1990 in Zaire and assisted by the Presidents of Burundi, Tanzania, and Uganda, the Prime Minister of Zaire, the Secretary-General of the Organisation of African Unity (OAU) and a delegate from the UN High Commissioner for Refugees.

[130] Peace Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front, dated 4 August 1993 (Peace Agreement), Articles, 1-4. Under the terms of the Agreement, a number of identified articles of the Constitution were to be replaced by provisions of the Peace Agreement relating to the same matters. In the event of conflict between other unspecified provisions of the Constitution and the Peace Agreement, the provisions of the Peace Agreement were to be granted supremacy.

[131] Peace Agreement, Articles, 2, 10, 11.

[132] Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on the Rule of Law, signed at Arusha on 18 August 1992, Articles 1-17; Prosecution Exhibit 3 (Alison Des Forges: *Leave None to Tell the Story* (1999)), pp. 60, 96.

142. The Second Protocol was signed on 9 January 1993. It provided for a "Broad-Based Transitional Government", formed by the political parties that had participated in the establishment of the coalition government on 16 April 1992, with the addition of RPF representatives. The protocol also established the numerical distribution of ministerial "portfolios": five to the MRND, five to the RPF, four to the MDR (including the Prime Minister, which according to the final version of the Accords would be Faustin Twagiramungu), three each to the PSD and the PL, and one to the PDC. Habyarimana would remain President of the Republic. The Broad-Based Transitional Government was to be established within 37 days after the signing of the Peace Agreement, or by 10 September 1993. The first elections for a democratically selected government were to be held at the end of a 22 month transitional period.[133]

143. The Third Protocol of the Arusha Accords, signed on 9 June 1993, allowed for the repatriation and resettlement of Rwandan refugees. In this document, the Government of Rwanda and the RPF recognised that Rwandan refugees had an indisputable right to return to their country of origin and that allowing their repatriation was an important factor in steps toward peace, national unity and reconciliation. Article 2 stipulated that "[a]ny Rwandese refugee who wants go back to his country will do so without any precondition whatsoever" as long as their resettlement did not encroach on the rights of others. A special assistance fund was to be established to assist with this overall aim.[134]

144. The most comprehensive and contentious component of the Accords was the Protocol of Agreement on the Integration of the Armed Forces. According to this fourth Protocol, the new national army was reduced to 19,000 troops, including 6,000 *gendarmes*, requiring each side to demobilise at least half of its troops. The government forces and the RPF were to provide 60 and 40 per cent of the new integrated Rwandan army, respectively. The chief of staff of the army was to be appointed from the Rwandan army, and the chief of staff of the *gendarmerie* from the RPF. Posts in the chain of command from army headquarters to battalion level were to be distributed equally.[135]

145. Lastly, the Arusha Accords contained a Final Protocol of Agreement on Miscellaneous Issues and Final Provisions, signed on 3 August 1993, which set out guiding principles for the state security services and the oath of declaration for the President and other

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[133] Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on Power-Sharing within the Framework of a Broad-Based Transitional Government, signed at Arusha on 30 October 1992 and 9 January 1993, respectively, Articles 2, 5, 14, 55, 57, 61-62. The Second Protocol also established the legislative organ of the new government, the Transitional National Assembly. All political parties registered at the time of the signing of the Protocol were eligible to participate in the Assembly, and each party was allocated 11 seats, except the PDC which received four seats. *See also* Peace Agreement, Articles, 6, 7; Prosecution Exhibit 2A (Expert Report of Alison Des Forges), pp. 26-27; Prosecution Exhibit 3 (Alison Des Forges: *Leave None to Tell the Story* (1999)), p. 124; Prosecution Exhibit 436 (Expert Report of Bernard Lugan), p. 8.

[134] Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons, signed at Arusha on 9 June 1993, particularly Articles, 1, 2, 8, 12-21, 21-32.

[135] Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on the Integration of the Armed Forces of the Two Parties, signed at Arusha on 3 August 1993, Articles 2, 74, 144. At the time of the signing of the Accords, the Rwandan army was comprised of more than 30,000 soldiers and gendarmes and the RPF had approximately 20,000 troops. *See* Prosecution Exhibit 3 (Alison Des Forges: *Leave None to Tell the Story* (1999)), p. 125; Prosecution Exhibit 436 (Expert Report of Bernard Lugan), p. 8; Prosecution Exhibit 2A (Expert Report of Alison Des Forges), p. 27.

senior official posts. The implementation of the Arusha Accords was to be overseen by a UN peacekeeping force. Prior to the Accords, the Government of Rwanda and the RPF had jointly requested that the United Nations establish a neutral international force to monitor the peace as soon as an agreement had been signed. Three days after its signing, the Security Council adopted Resolution 846 (1993) authorising the United Nations Reconnaissance Mission to Rwanda, which was designed to "assess the situation on the ground and gather the relevant information" to determine how best to assist with the implementation of the Arusha Accords. The mission was led by General Roméo Dallaire. It arrived in Rwanda on 19 August 1993 and departed on 31 August 1993. On 5 October 1993, the United Nations Reconnaissance Mission to Rwanda was succeeded by the United Nations Assistance Mission in Rwanda (UNAMIR).[136]

1.2 Rwandan Armed Forces

The Ministry

146. The Rwandan Armed Forces, which was composed of the army and gendarmerie, fell under the President of the Republic who, consistent with the Constitution, was supreme commander in chief. In the performance of his duty, he was assisted by the Minister of Defence who handled daily defence matters, including the Rwandan Armed Forces, and reported directly to him.[137]

147. The Minister's immediate office was divided into the Central Secretariat and Public Relations Division and included the following key staff: *directeur de cabinet*, Adviser on Political and Administrative Affairs; and Adviser on Technical Affairs. The *directeur de cabinet*, who could be civilian or military, performed various functions including formulating department policy, distributing duties and replacing the minister whenever absent. In that capacity, he also managed and monitored the activities of advisers, press and other support services; monitored implementation of department decisions; centralised and verified issues and acts for the Minister's signature; supervised the timetable of the Ministry's short-and medium-term activities; prepared the Ministry's annual report; presided over the Ministry's council; coordinated relevant activities; liaised with the media and the socio-political establishment; and performed any other duties the minister assigned him. Bagosora served as *directeur de cabinet* from June 1992 to July 1994 (I.2.1).[138]

148. The functions of the Adviser on Political and Administrative Affairs included informing, advising and assisting the Minister of Defence on political and administrative issues, including analysing the socio-political situation of the country. The Adviser on

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[136] Protocol of Agreement Between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Miscellaneous Issues and Final Provisions, signed at Arusha on 3 August 1993, Articles 2-8; Bagosora Defence Exhibit 71 (Report of the UN Reconnaissance Mission to Rwanda), paras. 2, 3; Bagosora Defence Exhibit 47 (KIBAT *Chronique*), p. 6.

[137] *Constitution of the Republic of Rwanda* (1991), Art. 45; Bagosora Defence Exhibit 4 (*Journal Officiel de la République Rwandaise*), pp. 1766-1769. During his years in power, President Juvénal Habyarimana periodically was both commander in chief and Minister of Defence. *See* Bagosora, T. 26 October 2005 pp. 46-47, 61.

[138] Bagosora, T. 26 October 2005 pp. 3,5, 7; T. 25 October 2005 pp. 3, 17, 51; Bagosora Defence Exhibit 4 (*Journal Officiel de la République Rwandaise*), p. 1766; Bagosora Defence Exhibit 278 (Bagosora: *L'assassinat du Président Habyarimana* (30 October 1995)), pp. 4, 5, 9.

Technical Affairs assisted the Minister of Defence on technical issues and by participating in mediation missions.[139]

149. Various administrative divisions and units carried out specific functions for the Ministry of Defence. They had responsibility for issues ranging from personnel and administration to finance, social and legal affairs, technical cooperation, training and veterans affairs. The heads of those divisions and units were subordinate to the Minister of Defence.

Organisation and Structure of the Rwandan Armed Forces

150. In 1994, the Rwandan army was comprised of approximately 30,000 troops.[140] It apparently grew at least fivefold from around 6,000 troops in the pre-1990 period. Some estimate the army's strength eventually reached 40,000.[141] The army was said to have lowered its recruiting and training regimen to enable this growth.[142] Therefore, during the early 1990s, officers received only one year of training limited to combat tactics and weapons handling. Due to this and several other factors, including high levels of fatigue and low-quality equipment, support, finances and morale, some questioned the army's combat readiness.[143]

151. The chief of staff was the operational head of the Rwandan Army and the overall commander of troops.[144] His formal duties included coordinating subordinate activities; managing and deploying all military forces; and reporting to the Minister of Defence.[145] At the beginning of April 1994, this position was occupied by General Déogratias Nsabimana, who was killed in the Presidential plane crash on 6 April. The next day, Colonel Marcel Gatsinzi was promoted to general and appointed acting chief of staff. As part of his command authority, the chief of staff was supported in his functions by a general staff composed of four bureaus common to most armies worldwide: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).[146]

152. The G-1 was responsible for personnel, including both military and civilian Rwandan Army employees. The G-1's duties included managing civilian-military relations, training and discipline. Generally, the chief of the G-1 bureau liaised with civilian and military authorities to diffuse potential discord – a task that other armies frequently assign to a G-5 bureau.[147] The Rwandan army did not have a G-5 bureau.[148]

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[139] Bagosora Defence Exhibit 4 (*Journal Officiel de la République Rwandaise*), p. 1766.
[140] Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L0022656 para. 33b; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 27.
[141] Reyntjens, T. 15 September 2004 p. 8.
[142] Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L0022656, para. 35.
[143] *Id.* p. L002657, para. 43.
[144] *Id.* p. L002656, para. 31.
[145] Bagosora Defence Exhibit 4 (*Journal Officiel de la République Rwandaise*), p. 1768.
[146] *Id.* p. 1768; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), pp. 1-2. However, unlike most other countries' armies, the Rwandan army chief of staff was also responsible for the G bureaus and functional operations. Other armies employed a so-called Super Secretary to tend to these concerns. Duvivier, T. 6 December 2006 p. 63.
[147] Duvivier, T. 6 December 2006 p. 51; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), pp. 2-3, 32. However, the G-1 was not responsible for interrogation, which the G-4 managed.
[148] Duvivier, T. 6 December 2006 p. 51; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 32.

153. The G-2, among other functions, protected classified information and acquired intelligence regarding enemy vulnerability, took counter-intelligence measures to protect classified documents and signals, directed intelligence and counter-intelligence training for officers and soldiers and assessed and reported on troop morale to the chief of staff.[149]

154. The G-3 was generally responsible for military operations. In peace time, the G-3 was responsible for instruction and training. This included preparing directives, programs and orders governing troop training, and planning military exercises and manoeuvres. The G-3 also organised and managed the military training centres. During war, the mandate of the G-3 shifted to exclusive planning of military operations, conducting battle and coordinating tactical deployments in the field based on decisions of the Chief of Staff. The G-3 monitored and deployed soldiers during war-time for which reason he was relieved of all other administrative duties. Kabiligi, at the rank of Colonel, was appointed head of G-3 in September 1993. He was later promoted to Brigadier-General on 16 April 1994. He served as G-3 until 17 July 1994 (I.2.2).[150]

155. The G-4, the logistics unit, ensured that the troops were properly equipped. The G-4 also worked closely with the Kanombe Medical Command to provide medical support to the troops especially during war-time, including evacuating the wounded and delivering medical supplies.[151]

156. Rwanda's *Gendarmerie Nationale* was comprised of approximately 6,000 personnel in early 1994. The chief of staff of the gendarmerie in 1994 was General Augustin Ndindiliyimana whose functions were performed with the assistance of four bureaus: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).[152]

157. The main responsibility of the gendarmerie was to maintain public order and to enforce Rwanda's laws.[153] However, where necessary, gendarmes could participate in military operations with the Rwandan Army. This was particularly so during war-time. When so deployed, they generally received "secondary" assignments, such as guarding military positions. The gendarmerie was reported to be poorly equipped, irrespective of whether it was performing a police or military role. Gendarmes were deployed in the 10 prefectures of Rwanda. Each of the 10 detachments consisted of between 300 and 400 though Kigali, being the capital, had approximately 750 *gendarmes*.[154]

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[149] Bagosora, T. 25 October 2005 p. 50; Duvivier, T. 6 December 2006 p. 55; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 3.

[150] Duvivier, T. 6 December 2006 pp. 51-52, 57; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), pp. 3-4.

[151] Duvivier, T. 6 December 2006 p. 55; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 4.

[152] Bagosora, T. 25 October 2005 pp. 72-73, 76-77; Bagosora Defence Exhibit 226 (Decisions taken at the Cabinet meeting held on 9 June 1992); Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L0022658 para. 49 and L0022716 (annex 7).

[153] Kabiligi Defence Exhibit 83 (Law Concerning the Creation of the National Gendarmerie, 23 January 1974), Art. 3.

[154] Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L002658-59, paras. 48-53 and L0022716 (annex 7).

Rwandan Army Units of Particular Relevance to the Indictment

158. In all, the army had approximately 28 infantry battalions, and each was headed by a Major or a Lieutenant Colonel. Among them were several specialised units including the Para Commando Battalion, the Presidential Guard Battalion, the Reconnaissance Battalion, the Air Defence Battalion, the Military Police Battalion, the Huye Battalion, and the Light Air Defence Battalion.[155] In the present case, the Para Commando and the Presidential Guard Battalions are of particular interest (below).

The Para Commando Battalion

159. The Para Commando Battalion could receive orders directly from the Chief of Staff.[156] Ntabakuze was commander of the Para Commando Battalion from June 1988 to early July 1994 and had authority over its various units (I.2.3; IV.1.4). The mission of the Para Commando Battalion was to defend the national territory. The commander's duties included overseeing all military and administrative matters relating to the battalion. His immediate subordinates were the company commanders.[157]

160. The Para Commando Battalion was organised into five elite combat companies and a headquarter company which provided administrative and logistical support.[158] Four of the five combat companies were Manoeuvre Companies carrying light arms, while the other was a Fire Support Company that provided heavier artillery support to the Manoeuvre Companies.[159] Training was organised at the company level, although the battalions coordinated the companies' training schedule.[160]

161. The next rung along the chain of command within the Para Commando Battalion was the secretive *Commando de Recherche et d'Action en Profondeur* (CRAP) Platoon. Created in 1991 by the Army Headquarters, the 33 soldiers in the platoon performed subversive operations behind enemy lines.[161] For example, the CRAP Platoon would ambush the enemy or spot the enemy's deployments behind its lines.[162]

The Presidential Guard Battalion

162. The Presidential Guard Battalion, which was responsible for ensuring security of the Rwandan President, had a separate chain of command linked directly to him.[163] It had three

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[155] Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 27; Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L0022656, 33a; Reyntjens, T. 15 September 2004 p. 12.
[156] Bagosora, T. 24 October 2005 p. 69; Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), pp. 41-42. According to Ntabakuze, as of 6 April 1994, the Para Commando Battalion came under operational authority of the commander of Camp Kanombe. Later in April 1994, he came under the commander of the Kigali East operational sector.
[157] Ntabakuze, T. 18 September 2006 p. 10, 12, 19; Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 38, para. 7.
[158] Ntabakuze, T. 18 September 2006 p. 27.
[159] Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 40; Ntabakuze, T. 18 September 2006 pp. 20-21.
[160] Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 46.
[161] Witness BC, T. 1 December 2003 p. 26.
[162] Ntabakuze, T. 18 September 2006 pp. 30, 66; T. 21 September 2006 pp. 66-67; Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 42.
[163] Prosecution Exhibit 454 (*Reglement sur l'Organisation de l'Armée Rwandaise*), pp. L0022042-L0022043.

companies as follows: the 1st company, 2nd company, and a headquarters and logistics or services company.[164] Between April and July 1994, its commander was Major Protais Mpiranya.

Operational Sectors and Major Military Camps

163. Rwandan territory was sub-divided into seven operational sectors covering specific geographic areas: Gisenyi, Ruhengeri, Rulindo, Byumba, Mutara, Kibungo and Kigali-Ville.[165] Together, these sectors covered all of Rwanda. Each such sector contained four or five battalions. Nsengiyumva was head of the Gisenyi operational sector from 13 June 1993 to 17 July 1994 (I.2.4). His area covered Gisenyi prefecture, which had 12 communes.[166]

164. Within the operational sectors were various military camps. Camp Kigali was the army headquarters and message transmission centre located in the Kigali operational sector.[167] It housed, amongst others, the army general staff, ESM, the Prime Minister's residence, the Presidential Guard (which had approximately 600 troops), the Reconnaissance Battalion and the Military Police.[168] The Ministry of Defence was located approximately one kilometre from Camp Kigali.[169]

165. Camp Kanombe in Kigali was another important military camp. It had a munitions depot and an armoury, and housed seven units, including the Para Commando Battalion.[170] The other camps of interest in the present case were Camp Bigogwe, Camp Bugesera, Camp Butare, Camp Cyangugu, Camp Gitarama and Camp Kimihurura in Kigali as well as Camp Kami to the north of Kigali. The latter was the base for the Military Police Battalion.[171]

Military Attire

166. According to the regulations on uniforms, the different military units wore identical apparel, consisting of black boots and khaki or camouflage trousers and shirt. However, certain articles of clothing helped distinguish between units. For example, different groups wore different coloured berets. The Presidential Guard as well as most of the other army units wore black berets, the aviation squadrons wore blue ones, and the following four units wore camouflage-coloured berets: the Para-Commando Battalion, the Ruhengeri Commando Battalion, the Huye Commando Battalion and the Commando Training Centre of Bigogwe. Although not part of the army, the gendarmerie had similar uniforms and wore red berets.[172]

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[164] Witness DCB, T. 5 February 2004 pp. 105-106.
[165] Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L0022715; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 27.
[166] Nsengiyumva, T. 4 October 2006 pp. 36-37.
[167] Witness DA, T. 17 November 2003 pp. 6-8.
[168] Bagosora, T. 27 October 2005 p. 4; T. 8 November 2005 p. 85; Witness DA, T. 17 November 2003 p. 9; Beardsley, T. 30 January 2004 pp. 13-16.
[169] Witness DA, T. 17 November 2003 p. 10.
[170] Beardsley, T. 30 January 2004 pp. 15-16; Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 40.
[171] Beardsley, T. 30 January 2004 pp. 14-16; Ntabakuze, T. 18 September 2006 p. 21; Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L0022715.
[172] Ntabakuze, T. 18 September 2006 pp. 16-17. *See also* Ntabakuze Defence Exhibit 235, p. 47 (The Army and the Para Commando Background: "The uniforms of the FAR personnel were generally identical except the beret. There were red beret, black beret, blue beret and camouflage beret. The gendarmes were wearing a red

167. The Military Police of the Rwandan army wore white helmets during police missions and red *kepis* during ceremonial occasions. Further, a red *cordelette*, or belt, was supposed to be worn exclusively by commando instructors. Finally, the uniforms of officers had different epaulettes depending upon their rank.[173] The Chamber has also heard evidence that *Interahamwe* would alternate between wearing military fatigues, a civilian uniform, or a combination of the two.[174] At other times, soldiers wore no berets at all during combat.[175]

Hierarchy and Command

168. There were essentially three steps involved when the chief of staff wished to issue an operational order. First, the Chief of Staff made "Preparations to Decide", whereby he assigned a mission, and each of the four bureaus on the general staff gathered and analysed relevant information to produce multiple options for its execution.[176] The G-3 would then evaluate and rank the different options. Second, the Chief of Staff selected and adapted one of these options. Finally, the G-3 prepared the operations order, and a written order was transmitted to sector commanders to continue down the chain of command.[177] Even if the order was verbal, it was supposed to be confirmed in writing.[178] However, in practice, many orders may have been given orally thereby bypassing the chain of command.[179] According to Bagosora, this occurred at least once because events moved too quickly to ensure that a written order was created, as required by army rules.[180]

169. Operational orders were to follow the chain of command. The chief of staff gave orders to the sector commander. He conveyed the order to the battalion commander, who transmitted it to the company commander, who gave the order to the platoon commander and so on.[181]

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beret. Normal infantry units had a black beret. The aviation squadron had a blue beret. Then the following commando units had camouflage beret: Para Cdo Bn, Ruhengeri Commando Bn, Huye Commando Bn and Commando Training Centre of Bigogwe (CECDO)."). This exhibit was prepared by Ntabakuze. As to Presidential Guard wearing black berets, *see also* Witness RO-6, T. 27 April 2005 pp. 13-14; Witness XAI, T. 9 September 2003 p. 27; Witness BB-15, T. 11 September 2006 p. 8. Several other witnesses attested to the use of camouflage berets by the Para Commando Battalion. *See, e.g.*, Witness AFJ, T. 8 June 2004 p. 80; Witness XAI, T. 9 September 2003 pp. 26-27; Witness DBN, T. 31 March 2004 p. 80; T. 4 April 2004 p. 48; Witness DBQ, T. 29 September 2003 pp. 46-47; Witness DK-32, T. 28 June 2005 p. 6; Witness LE-1, T. 21 October 2005 p. 54; Witness RO-6, T. 27 April 2005 pp. 13-14.

[173] A senior captain wore three stars formed as an inverted pyramid beneath one bar, a major wore one star centred above one bar, a Lieutenant Colonel wore two parallel stars above one bar, a Colonel wore three stars from an inverted pyramid above one bar, a major general wore three stars from a pyramid above two parallel bars, and a lieutenant general wore two parallel stars above two parallel bars. *See* Prosecution Exhibit 162 (insignia of Rwandan army).

[174] Witness DA, T. 19 November 2003 p. 6.

[175] Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 49. Finally, according to Ntabakuze, some soldiers would fashion homemade camouflage berets and wear them at irregular times "in order to show off". *See* T. 18 September 2006 pp. 17-18; Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 47.

[176] Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), pp. 5-6.

[177] Duvivier, T. 6 December 2006 p. 56; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 6.

[178] Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 7.

[179] Bagosora Defence Exhibit 61 (statement of Leonidas Rusatira), p. 4.

[180] Bagosora, T. 7 November 2005 p. 61.

[181] Ntabakuze Defence Exhibit 235 (Army and Para Commando Battalion Background), p. 39.

170. Each battalion comprised approximately 700 men. There were 160 men in a company, 40 per platoon, and 10 men in a section.[182] Whenever a commander conveyed an order – be it a sector commander, platoon or other commander – he was always required to address five key aspects: (1) how the mission was to be carried out, (2) the sequence of the impending operation, (3) the "friendly" situation, (4) the enemy's situation, and (5) the means to ensure logistical support and transmissions.[183]

171. Regardless of its source, command of a unit conferred authority over all of that unit's personnel. Transfer of a unit generally conferred authority on the receiving unit's commander to use it as he saw fit.[184]

Discipline

172. The Rwandan Armed Forces established rules governing discipline as well as procedures that would apply if they were breached.[185] The law applied to all officers and soldiers without any distinction based on rank. Soldiers, including gendarme officers of the Rwandan Armed Forces drafted as regular soldiers or under contract, were required to comply with rules regarding use of arms, combat training and exercise of functions based on the overarching principle of obedience and respect for superior rank.[186]

173. Pursuant to Article 11 of the Act concerning discipline, authority was linked to duties so that soldiers were personally responsible for acts taken in the exercise of their authority. Authority followed the hierarchy principle, except in special circumstances where dispensation was given by a competent authority. Command of a unit was based on orders from an authority empowered to execute a mission. Unit command included the right and obligation to exercise authority over all the personnel in the unit.[187]

174. Article 3 defined "discipline" as "absolute obedience to the laws, military regulations and to superiors". Article 4 defined indiscipline as follows:

> "any voluntary or involuntary act or omission but attributable to a fault or negligence with the purpose or aim of undermining the methodical performance of military duties, the prompt execution without question of orders given for service, the privilege or good reputation of the Armed Forces respect of superiors. The seriousness of the acts of indiscipline is aggravated if they are repeated or carried out in group." [188]

175. A breach of discipline gave rise to disciplinary measures as well as separate, penal action.[189] Different acts of insubordination elicited various possible punishments, and certain

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[182] Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), p. 10. *See also* Bagosora Defence Exhibit 71 (UN Reconnaissance Mission Report), p. L0022656, para. 33b (estimating 600-800 men per battalion combat unit).
[183] Bagosora, T. 24 October 2005 p. 72.
[184] Prosecution Exhibit 155B (Presidential Act No. 413/02, 13 December 1978), p. 3, para. 12; Duvivier, T. 7 December 2006 pp. 4-5 (although the original unit retains administrative responsibility over the transferred unit).
[185] Prosecution Exhibit 155B (Presidential Act No. 413/02, 13 December 1978), p. 1, para. 1.
[186] *Id.* p. 1, para. 2 ([Discipline] is applicable to all without distinction of rank ...").
[187] *Id.* p. 3, para. 11.
[188] *Id.* p. 1, paras. 3, 4.
[189] *Id.* p. 6, para. 32 (1, 2).

superiors could mete out some punishments.[190] As a general rule, those officers without command authority could not impose disciplinary punishment upon his subordinates.[191]

176. Rwandan law provided four ways to avoid punishment for indiscipline or insubordination. First, for instance, a "subordinate shall not execute an order to perform an obvious unlawful act". However, if a subordinate failed to execute an order, and then unsuccessfully argued that the act would have been unlawful, he would still be disciplined for having failed to obey the order.[192] Second, before a soldier was to be disciplined, he was given an opportunity to explain his actions and to appeal the disciplinary decision to a higher authority. Third, the Minster of Defence could commute sentences in certain circumstances, such as national celebrations. Fourth, "[a]fter five years of service without other punishment", a punishment could be removed from a soldier's record by any of the following individuals: the President in respect of officers, the Minister of Defence in relation to regular service non-commissioned officers, and the chief of staff in favour of soldiers under contract.[193]

1.3 United Nations Assistance Mission for Rwanda

177. On 5 October 1993, the Security Council adopted Resolution 872 which established the United Nations Assistance Mission for Rwanda (UNAMIR).[194] The main purpose of UNAMIR was to establish and maintain a secure environment for the creation of the Broad-Based Transitional Government envisaged by the Arusha Peace Agreement (Arusha Accords), signed by the Rwandan government and the RPF on 4 August 1993 (III.1.1). This transitional government was to be in place until elections could be held and the government and RPF armies integrated.[195]

178. Consistent with the spirit of the Arusha Accords, UNAMIR was conceived as a short term mission with the first contingent initially deploying to Kigali for six months. However,

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[190] For a chart of possible punishments and actors authorised to mete out those punishments, *see* Prosecution Exhibit 155A (Presidential Act No. 413/02, 13 December 1978 (French version)), pp. K-223196-97; Kabiligi Defence Exhibit 129 (Expert Report of Colonel Duvivier), pp. 14-16.

[191] Prosecution Exhibit 155A (Presidential Act No. 413/02, 13 December 1978 (French version)), Art. 60.

[192] Prosecution Exhibit 155B (Presidential Act No. 413/02, 13 December 1978), p. 4, para. 15 (3).

[193] *Id.* pp. 2 and 5, para. 8, 9 and 20.

[194] Resolution 872 (1993) defined the UNAMIR mandate as follows: (a) to contribute to the security of the city of Kigali inter alia within a weapons-secure area established by the parties in and around the city; (b) to monitor observance of the cease-fire agreement, which calls for the establishment of cantonment and assembly zones and the demarcation of the new demilitarised zone and other demilitarisation procedures; (c) to monitor the security situation during the final period of the transitional government's mandate, leading up to the elections; (d) to assist with mine clearance, primarily through training programmes; (e) to investigate at the request of the parties or on its own initiative instances of alleged non-compliance with the provisions of the Arusha Peace Agreement relating to the integration of the armed forces, and pursue any such instances with the parties responsible and report thereon as appropriate to the Secretary-General; (f) to monitor the process of repatriation of Rwandan refugees and resettlement of displaced persons to verify that it is carried out in a safe and orderly manner; (g) to assist in the coordination of humanitarian assistance activities in conjunction with relief operations; (h) to investigate and report on incidents regarding the activities of the gendarmerie and police.

[195] Bagosora Defence Exhibit 215 (Peace Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front), Article 7; Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on the Integration of the Armed Forces of the Two Parties, Articles 53, 54, 72; Bagosora Defence Exhibit 71 (Report of the UN Reconnaissance Mission to Rwanda) paras. 1-3, 5, 8, 17, 110-112, 156, 217-218 and Annex 1, para. 12(a), p. L0022791; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 75-76, 82, 86-89.

according to Resolution 872, the Security Council could extend UNAMIR's mandate if the Secretary-General determined that there was substantial progress towards the implementation of the Arusha Accords. It was authorised with the maximum strength of 2,548 military personnel, including 2,217 formed troops and 331 military observers and 60 civilian police.[196]

179. UNAMIR was divided into (a) Office of the Special Representative of the Secretary-General; (b) Civil Police Division; (c) the Military Division and (d) the Administrative Division. The Special Representative of the Secretary-General, Jacques-Roger Booh-Booh (Cameroon), was head of mission. Booh-Booh served from November 1993 to May 1994.[197] UNAMIR's mandate and size changed several times during its time in Rwanda.[198] Its mandate was terminated on 8 March 1996. Withdrawal was completed in April 1996.

180. The UNAMIR headquarters was located at the Amahoro (Peace) Stadium in Kigali. The head of the Military Division, or the Force Commander, reported to the Special Representative. The Force Commander was based in and operated from the Force Headquarters.[199]

181. The UNAMIR Force Commander, Lieutenant-General Roméo Dallaire (Canada), was appointed on 5 October 1993.[200] The mission officially began with his arrival in Rwanda on 21 October 1993. He served also as head of mission until Booh-Booh was appointed and took up the post of Special Representative in November 1993.[201] Dallaire thereafter served only as the military head of UNAMIR, reporting to the Special Representative, until August 1994. His deputy, who arrived in Kigali in January 1994, was Brigadier General Henry Anyidoho (Ghana).[202] Major Brent Beardsley (Canada) served as General Dallaire's executive assistant

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[196] Resolution 872 (5 October 1993), paras. 7, 2, 6, 9; Bagosora Defence Exhibit 71 (Report of the UN Reconnaissance Mission to Rwanda) pp. L0022759-22765; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 53-55.
[197] Booh-Booh was replaced by Shaharyar M. Khan (Pakistan) in July 1994 until after UNAMIR concluded its withdrawal from Rwanda in April 1996. Booh-Booh testified for the Defence on 21 and 22 November 2005.
[198] Dallaire, T. 19 January 2004 p. 69. On 5 April 1994, a day before President Habyarimana's plane crashed, the Security Council, by Resolution 909, extended the mandate of UNAMIR until 29 July 1994. Following the outbreak of large-scale violence in Rwanda, by Resolution 912 of 21 April 1994, the Security Council reduced the mandate of UNAMIR to act as an intermediary in order to secure a ceasefire, authorising a reduced force level of 270, as outlined in paragraph 16 a Special Report of the UN Secretary-General on UNAMIR to the Security Council dated 20 April 1994. By Resolution 918 (1994) of 17 May 1994, the Security Council expanded the mandate of UNAMIR to include the additional responsibilities of contributing to the protection of refugees and civilians at risk, and to provide security and support for the distribution of relief supplies and humanitarian relief operations. The Security Council increased the force level to 5,500.
[199] In the early days of the mission, UNAMIR was temporarily housed at the *Hôtel des Milles Collines* in Kigali. The Amaraho Stadium became its permanent headquarters. *See* Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 109-110, 106, 59, 98.
[200] Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 96-97. General Dallaire testified for the Prosecution between 19 and 27 January 2004.
[201] Dallaire, T. 19 January 2004 p. 75; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 98, 114-115.
[202] Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 156, 442.

from October 1993 to May 1994.[203] In that role, he oversaw the Force Headquarters and coordinated UNAMIR's military operations and administration under Dallaire's direction.[204]

182. The Force Headquarters exercised overall authority over all units within the UNAMIR Military Division. These included both the armed soldiers in the various battalions of UNAMIR and the unarmed military officers that constituted the Military Observer Group.[205] The Force Headquarters had operational as well as administrative functions in respect of two main areas: the Kigali Weapon Secure Area (KWSA) and the Demilitarised Zone (DMZ). The KWSA was established by agreement between the RPF and the Rwandan Government around 23 December 1993. It was a confidence building measure designed by UNAMIR where the two sides agreed to store their weapons and ammunition in the Kigali area. Those secured weapons could only be moved with UNAMIR's permission and escort.[206]

183. The area called the DMZ was established in the 1991 N'sele Ceasefire Agreement (III.1.1) to the north of the country between the forward edge areas of each force. It was approximately 120 kilometres long and 20 kilometres wide at its widest point.[207]

184. As troops from the Rwandan Armed Forces and the Rwandan Patriotic Front were proximate to each other, UNAMIR's military observers played an important role. Though unarmed, they were organised into multinational teams and assigned to different parts of Rwanda, including important Rwandan Army military camps such as Camp Kigali and Camp Kanombe. Their principal task was to ensure that the parties adhered to the aspects of the Arusha Accords relating to security by monitoring certain areas, conducting patrols and reporting the information gathered to the Force Headquarters. Colonel Isoa Tikoka (Fiji) was the Chief Military Observer. He reported to General Dallaire.[208]

185. On 19 November 1993, General Dallaire, as Force Commander, issued a directive outlining the Rules of Engagement governing the use of weapons under UNAMIR's mandate.

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[203] Dallaire, T. 19 January 2004 pp. 75-76; Beardsley, T. 30 January 2004 p. 5. Major Beardsley testified for the Prosecution between 30 January and 5 February 2004.

[204] Dallaire's *chef de cabinet* was Captain Mbaye Diagne (Senegal) and *aide-de-camp* Captain Babacar Faye (Senegal). Dallaire, T. 19 January 2004 pp. 75-76; Beardsley, T. 30 January 2004 pp. 5-6. Faye testified for the Defence on 28 March 2006. *See*, in particular, T. 28 March 2006 pp. 28, 31-32, 45.

[205] General Dallaire also set up an intelligence unit headed by Lieutenant-Colonel Frank Claeys (Belgium), who testified as a Prosecution witness on 7 and 8 April 2004. Claeys worked with Captain Amadou Deme (Senegal). *See* Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 121-122; Claeys, T. 7 April 2004 pp. 27-28, 45-47.

[206] Dallaire, T. 19 January 2004 pp. 15-18; Marchal, T. 30 November 2006 pp. 5-7, 12-20, 34; T. 4 December 2006 pp. 16-19; T. 5 December 2006 pp. 14-25; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 533, 124-127.

[207] Dallaire, T. 19 January 2004 p. 16; T. 21 January 2004 p. 15; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 102, 528. Resolution 872 (1993) also welcomed, in paragraph 5, the efforts of the Organisation of African Unity (OAU) towards the integration of the Neutral Military Observer Group (NMOG II) into UNAMIR. On 29 March 1991, the Rwandan Government and the RPF had signed the N'sele Ceasefire Agreement. The agreement was amended on 16 September 1991 and on 12 July 1992. It established a Neutral Military Observer Group (NMOG I), under OAU auspices, to supervise the ceasefire. Its mandate ended on 31 July 1993 but the OAU deployed NMOG II, with an expanded force of 130, and the same mandate as NMOG I. The terms of the agreement was incorporated into the Arusha Peace Accord. *See* Bagosora Defence Exhibit 215 (Peace Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front), Article 2; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 43, 528.

[208] Tchemi-Tchambi, T. 6 March 2006 pp. 33-34, 38-41; Apedo, T. 7 September 2006 pp. 30-31; Beardsley, T. 30 January 2004 pp. 17-18; Faye, T. 28 March 2006 pp. 4, 6-10, 12-18.

The directive stressed the role of UNAMIR as an impartial peacekeeping force under Chapter VI of the UN Charter. The over-riding rule for UNAMIR was that the use of weapons was to be avoided. The use of weapons was not authorised, except for self-defence. Any use of weapons was to be authorised by the UNAMIR chain of command. Weapons could not be used to deter or retaliate.[209] Paragraph 17 of the directive authorised UNAMIR soldiers to use weapons, including deadly force, to prevent "crimes against humanity".[210]

186. The maintenance of law and order in Rwanda was the responsibility of the local police, monitored by the UN Civilian Police, but UNAMIR military personnel could assist in controlling criminal activity, if necessary. The Rwandan National Gendarmerie accompanied most UNAMIR field patrols because the gendarmerie alone had the authority to take measures regarding public order and to stop and question people.

187. The UNAMIR Military Division was comprised of several national battalions and a military company that were deployed in strategically important areas of Rwanda. The Belgian battalion was based in Kigali (KIBAT) and the Bangladeshi battalion in Rutongo (RUTBAT). Colonel Luc Marchal (Belgium) was the KIBAT and Kigali Sector Commander.[211] Lieutenant Colonel Joseph Dewez (Belgium) was a senior officer within KIBAT.[212] RUTBAT and KIBAT essentially performed similar duties.[213]

188. The Ghanaian battalion was based in Byumba in northern Rwanda (BYUBAT) and had approximately 200 soldiers under the command of Colonel Clayton Yaache (Ghana) who was responsible for the DMZ. In March 1994, BYUBAT was transferred from the DMZ to the KWSA to provide permanent protection to the airport and certain personalities. They relieved the burden on KIBAT and RUTBAT and enabled them to strengthen their patrol missions.[214]

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[209] Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 71-72, 99. The ROE were drafted by the Force Commander, but were approved by the UN and could only be changed with UN authority. General Dallaire forwarded the document to New York and to the capitals of all the troop-contributing nations, asking for confirmation of the ROE. He did not receive any formal written approval of the rules from the UN. The rules were amended to address some concerns of Belgium and Canada, and were thereafter considered as tacitly approved by all. According to Dallaire, this posed difficulties for the effective execution of UNAMIR operations. *See, e.g.*, T. 20 January 2004 p. 22.

[210] This is the so-called Chapter Six and a half mandate. Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), p. 72. *See also* Dewez, T. 23 June 2005 pp. 30-31, 33-34, 41.

[211] Colonel Marchal testified for the Defence between 30 November and 6 December 2006.

[212] Beardsley, T. 5 February 2004 p. 25; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 112-113, 119-121, 528. Lieutenant-Colonel Dewez testified for the Defence on 23 and 24 June 2005.

[213] Routine tasks included guarding the individual camps; providing escorts to accompany and protect specific people as they moved within and outside the KWSA; guarding the residences of certain important personalities; setting up roadblocks and checkpoints and engaging in a wide array of patrols. Day and night patrols were conducted, on foot and in vehicles, to make the UN presence felt, to build local confidence in UNAMIR and to gather intelligence. Daily patrols to the main roads bordering the south, west, and east of the KWSA were carried out, as was an intensive three-day foot patrol in the areas farthest from the south of the KWSA. There was a permanent patrol at the airport. Bagosora Defence Exhibit 47 (KIBAT report), para. 10; Dallaire, T. 19 January 2004 p. 88; Beardsley, T. 3 February 2004 p. 23; T. 5 February 2004 p. 28; Dewez, T. 23 June 2005 pp. 74-76; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 133, 533; Bagosora Defense Exhibit 47 (KIBAT *Chronique*), pp. 4, 6.

[214] Colonel Yaache became Kigali Sector Commander after the Belgians withdrew from Rwanda in April 1994. *See* Dallaire, T. 19 January 2004 pp. 6-7; T. 26 January 2004 p. 6; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 176-178, 203, 216-217, 308-309, 311-312, 317-318, 362.

189. Though initially based outside Kigali, the Tunisian Company was the Force Commander's fire brigade unit used to respond to emergencies. In December 1993, they were transferred to Kigali to guard the Rwandan National Assembly CND (*Conseil national pour le développement*) where an RPF battalion of about 1,000 men were stationed in accordance with the Arusha Accords.[215]

190. At its inception, most Rwandans did not know what UNAMIR was or its purpose; however, the UN was respected as it was known to provide education, health care and food aid to the country. The attitude of the population varied from place to place. While some Rwandans were sympathetic towards the mission, the majority was neutral. UNAMIR later conducted town hall meetings in Kigali to inform Rwandans about its mission and to listen to their concerns.[216]

191. UNAMIR faced critical challenges shortly after the mission began. Two massacres of civilians took place around mid and end of November 1993, respectively, for which the media and some government officials blamed the RPF. UNAMIR investigations failed to identify the perpetrators of the massacre. Consequently, it was labelled as "pro-RPF", thereby feeding the notion that it was sympathetic towards one of the parties to the conflict. In contrast, Special Representative Booh-Booh was later accused of being "pro-government, hard-line".[217]

192. Over time, distrust of UNAMIR and hostility towards certain of its elements mounted. Disciplinary infractions by some members of the Belgian contingent were reported and addressed. As part of its anti-Tutsi propaganda, RTLM (*Radio Télévision Libre des Mille Collines*) stoked public animosity towards the Belgians, condemning their role in Rwanda given their countries' status as a former colonial power.[218] The tension peaked in January and February 1994 with several confrontations between certain UNAMIR forces and Rwandans, including some involving important figures from the presidential camp.[219]

193. On 6 April 1994, after President Habyarimana's plane was shot down, various people immediately blamed the Belgians.[220] The RTLM, which was a propaganda tool, broadcasted that the Belgian troops had engineered the assassination, thereby inflaming public anger

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[215] Beardsley, T. 5 February 2004 p. 28; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 126-127, 128-131, 152; Booh-Booh, T. 21 November 2005 p. 61; Dewez, T. 23 June 2005 p. 76. At the checkpoint outside the CND, KIBAT provided staff every other week, and RUTBAT provided staff during the other weeks. This was more of a symbolic task to make UN presence felt because the actual checking was done by a Tunisian guard and the RPF.

[216] Dallaire, T. 20 January 2004 pp. 22-26, 42; T. 21 January 2004 pp. 25-26; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 47-48, 102, 106, 163, 172, 184.

[217] Dallaire, T. 19 January 2004 pp. 47-48; T. 20 January 2004 pp. 23, 45; T. 22 January 2004 p. 5; Booh-Booh, T. 21 November 2005 p. 65; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), pp. 110-112, 122, 159, 163.

[218] Dallaire, T. 19 January 2004 pp. 17, 48, 66; T. 20 January 2004 pp. 4, 23-25; T. 21 January 2004 pp. 29, 25; T. 23 January 2004 p. 48; T. 26 January 2004 pp. 73-74; Booh-Booh, T. 21 November 2005 pp. 60-61; Beardsley, T. 4 February 2004 p. 78; T. 30 January 2004 p. 30; Dewez, T. 23 June 2005 pp. 27-29, 45-47, 72, 76-78, 82-83; Claeys, T. 7 April 2004 pp. 41-45, 51; Hutsebaut, T. 2 December 2003 pp. 22, 38; Prosecution Exhibit 33 (Major Hock's report), p. 11; Prosecution Exhibit 252 (RTLM transcripts), pp. 10, 32; Prosecution Exhibit 449 (Report of Luc Marchal), para. 6.

[219] Dallaire, T. 21 January 2004 pp. 29-31, 44; Booh-Booh, T. 21 November 2005 pp. 62-63; van Putten, T. 20 March 2006 pp. 7, 15, 34-38; Marchal, T. 4 December 2006 pp. 19-21; T. 5 December 2006 pp. 26-28; Maggen, T. 13 March 2006 p. 17.

[220] Dallaire, T. 19 January 2004 p. 47.

towards the contingent.[221] The next day, 7 April 1994, 10 Belgian peacekeepers were killed at the Kigali Camp (III.3.4) Five Ghanaian peacekeepers who were with the Belgian soldiers were not killed. Belgium withdrew its soldiers from Rwanda on 18 and 19 April.[222]

[221] Dallaire, T. 19 January 2004 p. 66; Ntabakuze Defence Exhibit 33 (Roméo Dallaire: *Shake Hands with the Devil* (2003)), p. 254.
[222] T. 22 January 2004 p. 75-76; Marchal, T. 4 December 2006 pp. 5-6.

2. ALLEGATIONS OF PLANNING AND PREPARATION OF THE GENOCIDE

2.1 Introduction

194. The Indictments allege that all four Accused, from late 1990 until July 1994, "conspired among themselves and others to work out a plan with the intent to exterminate the civilian population and eliminate members of the opposition, so that they could remain in power". This plan consisted of recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, they organised, ordered and participated in the massacres perpetrated against the Tutsi population and of moderate Hutus.[223]

195. In support of this conspiracy, the Prosecution submits that the genocide was conceived of and planned significantly before 1994 and executed principally through the events occurring between April and July 1994. It is not argued that the Accused simultaneously agreed to a plan, or that such a plan consisted of a single course of equally-divided or unified conduct. Instead, the proper inference to be drawn from the evidence is that at various times, each of the Accused agreed to participate in a larger, lengthier effort to increasingly homogenise Rwandan society in favour of Hutu citizens, with the object of killing Tutsi civilians, as required. It is their participation in this process - and the willingness to create or exploit various opportunities to achieve it - which is the hallmark of their agreement.[224]

196. According to the Defence, there was no plan or conspiracy by the former Rwandan Government or the Rwandan military to harm civilians between April and July 1994 (III.7). The Prosecution's "theory of a planned genocide" is not supported by the evidence. Instead, the wave of civilian killings that swept Rwanda during this period was triggered by the RPF attack against Rwanda in October 1990. In launching this attack, the RPF consciously made a strategic and carefully planned first step that would eventually lead to a violent seizure of power, leading to a full-blown ethnic conflagration in Rwanda.[225]

197. Based on the submissions, the Chamber will first consider the earliest alleged evidence of conspiracy, the work of the Enemy Commission (III.2.2), followed by the so-called "apocalypse statement" (III.2.3); other pre-April 1994 meetings involving the Accused

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[223] The Bagosora and Ntabakuze Defence teams dispute the use of the term "moderate Hutu", arguing that it is vague. In particular, the Bagosora Defence submits that it does not take account of the evolving political situation in Rwanda, where even members of the opposition of President Habyarimana ultimately opposed complete RPF control of the government either before or after July 1994. *See* Bagosora Closing Brief, paras. 60-67; Ntabakuze Closing Brief, paras. 2411, 2396, 2437. The Chamber is aware of the elements pointed out by the Defence. It observes that the term "moderate Hutu" has been utilised in judgements and is a brief way of referring to Hutus who were either viewed as being in the opposition, allied with RPF positions or did not favour recourse to violence in order to solve Rwanda's various political impasses. The use of the term does not presuppose, as the Bagosora Defence suggests, that similar divisions did not exist amongst Tutsis. For the most part, the Chamber has not employed this term in the judgement unless it is describing the language used in the evidence, the Indictments or the parties' submissions.

[224] Prosecution Closing Brief, paras. 31-55, 438, 532, 680, 748-751; T. 2 April 2002 pp. 151-166; T. 28 May 2007 pp. 5, 10, 12-14; T. 1 June 2007 pp. 41-42.

[225] Bagosora Closing Brief, paras. 2109, 2133-2216; Kabiligi Closing Brief, paras. 19, 34, 78, 146, 185, 808; pp. 577, 589, 595-600; Ntabakuze Closing Brief, paras. 439-467, 557-608, 754, 2205-2207, 2332-2349, 2502-2516; Nsengiyumva Closing Brief, paras. 86, 196-223, 3224-3230.

(III.2.4); the preparation and use of lists (III.2.5); the creation, training and arming of civilian militias (III.2.6); clandestine organisations (III.2.7-9); and the RTLM (III.2.10).

2.2 Definition of the Enemy

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Introduction

198. Having convened and presided over a meeting of high-ranking military officers at ESM on 4 December 1991, President Habyarimana set up a military commission with the mandate "to further study and respond to the question: What must be done in order to defeat the enemy militarily, in the media, and politically". Bagosora chaired the commission (the Enemy Commission), which sat until about 20 December 1991. Aloys Ntabakuze and Anatole Nsengiyumva were members. The report was originally given limited distribution. However, on 21 September 1992, the Rwandan chief of staff, Déogratias Nsabimana, sent a letter to all OPS Sector Commanders units, enclosing excerpts of the report (the ENI document).[226] The commanders were asked to "circulate this document widely, highlighting in particular the chapters concerning the definition, identification and recruiting grounds of the enemy".[227]

199. According to each of the Indictments, the ENI Document and the use made of it by senior military officers aided, encouraged and promoted ethnic hatred and violence. The Prosecution submits that this document is evidence of conspiracy because the final document took a legitimate purpose (defining the enemy) and shifted it to an illegitimate, criminal purpose (targeting the Tutsis). The cooperation of Bagosora, Nsengiyumva and Ntabakuze in connection with the ENI Document is but one illustration of their close and frequent institutional contact in the context of the preparation of the genocide. As head of the Enemy Commission, Bagosora is personally responsible for the language used in the Commission's report which, in conjunction with his later testimony is sufficient to prove conspiracy. Nsengiyumva and Ntabakuze are co-conspirators. Kabiligi, although not a member of the ENI Commission, demonstrated his support for its conclusions.[228]

200. According to the Defence, the ENI document was not a manifestation of conspiracy to carry out genocide, but a legitimate military tool that sought to accurately characterise the enemy that was invading Rwanda. Defining the enemy is normal and necessary in times of war. The definition, when read in its entirety, did not improperly target Tutsi civilians or other non-combatants. It focused on acts, not ethnicity, and related to extremists who wanted to seize power. As officers defending the country from an invading army, it is unsurprising that the Accused may have participated in meetings and planning sessions related to the war. The document in evidence is only an excerpt which, when viewed in context, did not lend itself to the ethnic interpretation sustained by the Prosecution.[229]

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[226] Prosecution Exhibit 13.1 (Definition of the Enemy Document).
[227] Prosecution Exhibit 13 (Nsabimana's letter to operations commanders, dated 21 September 1992).
[228] Bagosora Indictment, paras. 5.5-5.7; Ntabakuze and Kabiligi Indictment, paras. 5.5-5.7; Nsengiyumva Indictment, paras. 5.5-5.7; Prosecution Closing Brief, paras. 36, 269, 508-531, 748-751; T. 28 May 2007 p. 13; T. 1 June 2007 pp. 37-38, 40.
[229] Bagosora Closing Brief, paras. 93-114, 534-539, 1450-1452; T. 26 October 2005 p. 70; Kabiligi Closing Brief, paras. 33, 1261, 1523-1525; Ntabakuze Closing Brief, paras. 508, 557-592, 2508-2514; T. 21 September 2006 pp. 39-42; Nsengiyumva Closing Brief, paras. 198-207; Nsengiyumva, T. 9 October 2006 pp. 61-62; T. 12 October 2006 pp. 2, 4-10; T. 13 October 2006 p. 10.

Deliberations

201. It is common ground that defining the enemy is done by military authorities in many countries. Based on such a definition, the armed forces may adapt its strategies and order its resources.[230] Consequently, the establishment of the Enemy Commission on 4 December 1991 was not in itself unusual or illegitimate, in particular in view of the fact that there had been hostilities on Rwandan territory since the RPF invasion on 1 October 1990. Little is known about the decision to set down the Commission and its internal working. Whether the Commission's activities gave an otherwise legitimate exercise a criminal purpose therefore depends primarily on the result of its work, bearing in mind subsequent developments. An assessment of the formulations used by the Commission must be based on the excerpt distributed on 29 September 1992, as the entire report is no longer available. There is no dispute about the authenticity of this excerpt.[231]

202. The excerpt is entitled "Definition and Identification of the Enemy". It is divided into three parts. Section A (Definition of the Enemy) describes the enemy, specifies the social groups from which the enemy and their supporters are mostly recruited, and mentions the milieu in which enemy activists are found. It also analyses RPF's and RPA's political and military organisation, identifying enemy officials who are responsible for the various fields. The two first provisions of Section A read as follows:

> A. DEFINITION OF THE ENEMY
> The enemy can be subdivided into two categories:
> - the primary enemy
> - enemy supporters
>
> 1. The primary enemy are the extremist Tutsi within the country and abroad who are nostalgic for power and who have NEVER acknowledged and STILL DO NOT acknowledge the realities of the Social Revolution of 1959, and who wish to regain power in RWANDA by all possible means, including the use of weapons.
>
> 2. Enemy supporters are all who lend support to the primary enemy. [...]
>
> Political opponents who desire power or peaceful and democratic change in the current political regime in RWANDA are NOT to be confused with the ENEMY or supporters of the ENEMY.[232]
>
> B. IDENTIFICATION OF THE ENEMY
> The ENEMY, or their accomplices, be they Rwandan or foreign nationals within the country or abroad, can be identified in particular by any of the following acts:
> - Taking up arms and attacking RWANDA;
> - Purchasing arms for enemy soldiers;
> - Contributing money to support the ENEMY;

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[230] Des Forges, T. 24 September 2004 p. 15; Dewez, T. 23 June 2005 p. 42; Ntabakuze Defence Exhibit 220B (Expert Report of Serge Desouter), p. 75; Kabiligi Defence Exhibit 129B (Expert Report of Colonel Duvivier), p. 30.

[231] According to Bagosora, the substantive content of Prosecution Exhibit 13.1 was the same as the corresponding part of the Commission's report. *See* T. 26 October 2005 p. 70.

[232] Prosecution Exhibit 13.1(b), which contains a correct translation of the French original. The translation of the definition in para 5.6 of the Indictments has been critisised by the Defence.

- Providing any form of material support to the ENEMY;
- Spreading propaganda favourable to the ENEMY;
- Recruiting for the ENEMY;
- Contaminating public opinion by spreading false rumours and information;
- Spying for the ENEMY;
- Divulging military secrets to the ENEMY;
- Acting as a liaison officer or runner for the ENEMY;
- Organising or performing acts of terrorism and sabotage in support of ENEMY activities;
- Organising or inciting revolts, strikes or any form of disorder to support ENEMY activities;
- Refusing to fight the ENEMY;
- Refusing to comply with war requisitions.

Political opponents who desire power or peaceful and democratic change in the current political regime in RWANDA are NOT to be confused with the ENEMY or supporters of the ENEMY.

203. The Definition of the Enemy clause qualifies the term "Tutsi" as the "extremist" Tutsis, who are not acknowledging the realities of the 1959 revolution and wish to "regain power ... by all possible means, including the use of weapons". The Identification of the Enemy provision describes the enemy, in particular, by certain enumerated acts, which in themselves have a connection to war (*e.g.* taking up arms, carrying out propaganda and recruitment for the enemy, spying, sabotage). Read in context, the Chamber does not agree with the Prosecution that the definition implies that all Tutsis are extremists, wanting to regain power. The Chamber has also noted the exception for political opponents who seek power within the political system through peaceful means, both in the Definition clause and the Identification clause. It is, however, aware that such disclaimers may sometimes be more cosmetic than substantial.[233]

204. It is clear that the definition of the "enemy" contains both an ethnic component and a reference to proscribed acts. In the other parts of the document, there is a similar ambiguity. Section B (Enemy Goals, Resources and Methods) states that the goal of the RPF is to "seize power in Rwanda and install the political system of its choice" and describes the enemies various activities, abroad and within the country. Section C (Enemy Strengths and Weaknesses) covers both the military and political fields. Also these parts of the ENI document generally use qualifications, such as "extremist" Tutsis, Tutsi "refugees" or the Tutsi "diaspora". However, the word "Tutsi" is used 14 times in the document and interchangeably in some places with "enemy", and there are generalisations which may indicate that the Tutsis were unified behind the single ideology of Tutsi hegemony.[234]

205. It may be asked whether the way the ENI document is formulated, combining both ethnicity and more direct language about the RPF, is an example of "double language", the real intention among its members being to target the Tutsis. However, the composition of the Commission does not support such a view. Of its 10 members, three of them, Bagosora,

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[233] The view of Des Forges was that the disclaimer was "ritual courtesy, a nod, in the direction of a commitment to democracy" in order to maintain a good public image. T. 16 September 2002 pp. 106-107; Prosecution Exhibit 2 (Expert Report of Alison Des Forges), p. 17.
[234] Des Forges, T. 10 September 2002, pp. 77, 80, 93.

Ntabakuze and Nsengiyumva, have been indicted by the Tribunal.[235] Among its members were persons generally considered as moderate. Two later attained high positions in the post-1994 Rwandan government.[236] The Prosecution suggests that unlike the Accused, the moderates distanced themselves from ethnic extremism after 1994.[237] The evidence does not support this view but indicates that they were perceived as moderates also in 1994.[238] It is therefore difficult to conclude that the ambiguous wording of the ENI Document, with its admittedly prominent ethnic component, is sufficient evidence of a conspiracy within the Commission around late 1991 to exterminate the Tutsi ethnic group.

206. Another question is whether individual members of the Commission intended the ENI Document to express anti-Tutsi sentiments.[239] Bagosora was appointed chairman by President Habyarimana. This may be explained by the fact that he was the highest ranking officer present at the 4 December 1991 meeting.[240] As already mentioned, there is virtually no evidence about the internal working of the Commission. Ntabakuze was one of the two rapporteurs but stated that he served only briefly on the Commission. This was supported by Bagosora.[241] Leaving aside whether this is correct, the Chamber notes that Cyiza was the other rapporteur. There is no evidence that a group of extremists within the Commission imposed their view on the other members or exercised a particular influence on the Commission's conclusions.[242]

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[235] The Commission was composed of 10 members, of whom three are accused at the Tribunal, four are deceased or reported missing, and three are at liberty: Colonel Théoneste Bagosora (accused), Colonel Déogratias Nsabimana (deceased), Colonel Marcel Gatsinzi (at liberty), Colonel Pontien Hakizimana (deceased), Colonel Félicien Muberuka (at liberty), Colonel Anatole Nsengiyumva (accused), Major Juvénal Bahufite (deceased), Major Augustin Cyiza (reported missing), Major Aloys Ntabakuze (accused) and Major Pierre Karangwa (at liberty).

[236] Colonel Gatsinzi is the current Rwandan Minister of Defence. Major Cyiza was a former Vice-president of the Rwandan Supreme Court and human rights advocate of considerable standing, *see* Bagosora Defence Exhibit 358 (Expert Report of Bernard Lugan), p. 92; Bagosora, T. 26 October 2005, pp. 52-54. *See also* Des Forges, T. 23 September 2002 pp. 103-106; T. 24 September 2002 pp. 2-3 (noting the complexity and dynamism of Rwandan politics, and the fact that many persons have followed somewhat extraordinary career paths).

[237] T. 1 June 2007 p. 40.

[238] *See* footnote 236 above and section III.4.2.3, where both Prosecution and Defence witnesses testified that Cyiza was considered an Inyenzi in 1994; Nsengiyumva Defence Exhibit 8 (James K. Gasana: *Rwanda: du Parti-Etat à l'Etat-Garnison* (2002), pp. 156-158, in particular 158 ("*L'intention génocidaire de la Commission militaire manque donc de preuves qui soient à la hauteur de la gravité d'une telle accusation. Notons par ailleurs qu'un des deux rapporteurs de cette commission, le major Cyiza, juriste dont l'integrité n'a jamais été mise en doute, était et reste un éminent défenseur des droits de l'homme*"). As for Gatsinzi, the Chamber notes that, after his appointment as acting chief of staff, he was ultimately removed on 16 April 1994. *See* Des Forges, T. 18 September 2002 p. 114; Bagosora, T. 26 October 2005 p. 53.

[239] Des Forges, T. 25 November 2002 p. 44.

[240] This decision has been explained by Habyarimana's desire to imbue Bagosora with special importance, or by virtue of Bagasora being the highest-ranking officer with the most seniority. Des Forges, T. 10 September 2002 p. 60; T. 23 September 2002 pp. 100-102; Bagosora, T. 25 October 2005 p. 40 and 26 October 2005 p. 56; Witness DM-190, T. 3 May 2005 p. 14.

[241] Ntabakuze Defence Exhibit 235 (deposition of Ntabakuze), p. 32, annexed to the Ntabakuze Closing Brief; Bagosora, T. 26 October 2005 p. 59. *See also* Des Forges, T. 25 November 2002 p. 44.

[242] Nsengiyumva Defence Exhibit 83 (*Augustin Cyiza – Un homme libre au Rwanda,* (2004)), contains an interview with Cyiza before he disappeared. It describes the work of the two rapporteurs, himself and Ntabakuze, and how the Commission finalised the report, sentence by sentence, in plenary. In his view, the Commission's definition of the enemy was a sociological reality (p. 11: "*Pour moi, la definition de l'ennemi*

207. Turning finally to the publication of the ENI document, the Chamber recalls that it was distributed by the chief of staff, Déogratias Nsabimana (III.2.2; III.2.4.1). There is no evidence that Bagosora, Ntabakuze or Nsengiyumva played any role in connection with the decision to publish it, several months after the Commission had submitted its report.

208. Consequently, the Chamber does not find it established beyond reasonable doubt that Bagosora, Ntabakuze and Nsengiyumva acted together in a conspiracy as members of the Enemy Commission in December 1991, the aim being to exterminate the Tutsi ethnic group. It reaches the same conclusion with respect to the publication of the ENI Document in September 1992. Kabiligi was not a member of the Commission and there is no evidence linking him to the ENI document or its publication.

209. This said, the ENI Document can be interpreted as equating Tutsi civilians with members of the RPF. The identification between Tutsi civilians and the enemy was an important precondition of the genocide. It also appeared to over-emphasise the ethnic component of the conflict in Rwanda. Although not in itself evidence of a conspiracy, the ENI Document is therefore significant as an early illustration of the tendency to polarise Rwandan society along ethnic lines. This occurred at a point of particular national vulnerability which, instead, called for responsible civic leadership.

210. In this light, the question remains whether subsequent use of the ENI Document is an indication of a conspiracy. The Prosecution points to its circulation by Nsabimana, its use by Ntabakuze during meetings with his soldiers at Camp Kanombe as well as similar sentiments expressed by Kabiligi in Byumba in 1992. Reference is also made to a press release by the CDR party listing enemies which mirrors the ENI Document.[243] The Chamber has considered elsewhere in the judgement the issue of the circulation of the document by Nsabimana and its use by Ntabakuze (III.2.4.1) as well as Kabiligi's alleged speech in Byumba (III.2.5.1) and concluded that these incidents either do not in themselves reflect a conspiracy or were not proven beyond reasonable doubt. The press release by the CDR party, which identifies as the "enemy" certain persons who were allegedly collaborating with the RPF, does not allude to the ENI Document.[244] While it makes reference to similar categories found in the ENI Document, such as persons recruiting for the RPF, this general category does not sufficiently reflect that there was any collaboration with the CDR party and members of the Commission.

2.3 Apocalypse Statement, Late October 1992

Introduction

211. The Bagosora Indictment alleges that Bagosora was opposed to the Government's concessions during the Arusha negotiations and left, "saying that he was returning to Rwanda to 'prepare the apocalypse'". The Prosecution relies primarily on the testimony of Witness XAM and a written statement of a potential witness, KT, who were both members of the RPF delegation in Arusha. Some Prosecution witnesses also learned about Bagosora's alleged

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c'est une réalité sociologique. L'interpretation du parti au pouvoir a été que l'ennemi était le Tutsi et l'opposant politique. Mais ce n'était pas l'esprit de la commission").

[243] Prosecution Closing Brief, paras. 512-524, 602; T. 28 May 2007 pp. 12-13; T. 1 June 2007 pp. 44-45.

[244] Prosecution Exhibit 29 (CDR party communiqué No. 5 (22 September 1993)).

remark from others or the media. According to the Prosecution, this incident shows his intention to enter into an agreement to commit genocide.[245]

212. The Bagosora Defence characterises this allegation as RPF propaganda. Bagosora was not present in Arusha when the purported statement was made. The Defence points to Witness B-9 as well as Claver Kanyarushoki, who participated in the October 1992 power sharing talks and testified that Bagosora was not amongst the Rwandan government's delegation at that time.[246]

Evidence

Prosecution Witness XAM

213. Witness XAM, a Tutsi, testified that Bagosora participated in the Arusha Accords negotiations on power sharing during a session in October 1992 as the most senior member of the FAR on the Rwandan government's negotiating team. After a morning of negotiations, the witness and two colleagues joined Bagosora, who was carrying his suitcases, in a hotel elevator as the members of the RPF delegation headed for lunch. The witness asked Bagosora why he was leaving so early for Christmas. Bagosora allegedly responded that he was not going home for Christmas, but that he was going to prepare the "apocalypse". Given the nature of Bagosora's comment, the witness immediately informed the Rwandan Foreign Minister, Boniface Ngulinzira, and Claver Kanyarushoki, the Rwandan Ambassador to Uganda.[247]

Bagosora

214. Bagosora testified that he never made the alleged statement nor participated in the power sharing talks, as asserted by Witness XAM. He arrived in Arusha only from 2 to 26 December 1992 to negotiate on a different topic, namely the integration of the armed forces.[248]

Bagosora Defence Witness B-9

215. Witness B-9, a Hutu, who participated in the October 1992 power sharing talks as a member of the Rwandan government delegation, confirmed that Bagosora only joined the negotiating team during the late November 1992 to early January 1993 session of talks to participate in discussions concerning military integration.[249] To illustrate this, the witness referred to a list of participants from both delegations attending the second round of negotiations in October 1992 on the power sharing protocol. The list does not mention Bagosora. Witness B-9 stated that in December 1992, the discussion on the integration of

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[245] Bagosora Indictment paras. 5.10; Prosecution Closing Brief, paras. 38, 1548-1551. The Prosecution also refers to the evidence of Witnesses DCH, AE, ON, AR, ZF and ATY who later heard of the apocalypse statement from Witness XAM or others (para. 1550), as well as to written statements of James Gasana (Nsengiyumva Defence Exhibit 219) and Joseph Murasampongo (Bagosora Defence Exhibit 128).

[246] Bagosora Closing Brief, paras. 743-767, and more generally paras. 768-792.

[247] T. 29 September 2004 pp. 2, 3 (quoting Bagosora as saying: "He was not going for Christmas, but he was going to prepare apocalypse two."), 5, 11, 15, 19, 20, 39; Prosecution Exhibit 311 (personal identification sheet).

[248] T. 14 November 2005 pp. 8, 20, 53. *See also* Bagosora Defence Exhibit 227 (Bagosora's passport), which places him in Tanzania between 2 and 26 December 1992. The passport was issued on 1 December 1992.

[249] T. 4 July 2005 pp. 20-21. He did not specify Bagosora's arrival date.

armed forces had not yet begun and thus the military members who arrived participated in the continued discussions on power sharing.[250]

Kabiligi Defence Witness Claver Kanyarushoki

216. Witness Kanyarushoki, a Hutu, testified that Bagosora was not amongst the Rwandan government's delegation during the October 1992 negotiations. Witness XAM never informed the witness about Bagosora's alleged apocalypse statement.[251]

Deliberations

217. Witness XAM is the only Prosecution witness who gave direct evidence concerning Bagosora's alleged remarks about the "apocalypse". He was a member of the RPF delegation during the October and December 1992 negotiations in Arusha. There is a significant discrepancy between Witness XAM's account of Bagosora's participation in the negotiations and the Defence evidence, which suggests that Bagosora was not in Arusha in October 1992 when he, according to the witness, made the statement.[252]

218. This contradiction could be explained if Witness XAM was simply mistaken about when the exchange occurred and it instead took place in December 1992. Both he and Bagosora were in Arusha that month. Such an explanation would also be consistent with the reference to Christmas during their alleged conversation. However, the witness was asked several times to confirm the date of the alleged event. He remained adamant that it took place in October 1992 during the power sharing talks, even when it was suggested to him that Bagosora participated in the negotiations only in December.[253]

219. Moreover, the testimony of Claver Kanyarushoki that Witness XAM never informed him about Bagosora's alleged apocalypse statement raises additional questions about the Prosecution's evidence.[254] The Chamber considers Kanyarushoki's evidence as credible.

220. During cross-examination, the Defence put to Witness XAM a statement of Prosecution Witness KT, who was not called.[255] The document was admitted in order to assess Witness XAM's credibility, not for the truth of its content.[256] However, even if it were considered for purposes of corroboration, as suggested by the Prosecution, there are discrepancies between that document and the testimony of Witness XAM. Witness KT's statement indicates that the incident occurred in the morning around Christmas 1992 as the RPF delegation headed for breakfast, and that the apocalypse remark was made in response to

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[250] T. 4 July 2005 pp. 11, 13, 14, 16, 20-22; Bagosora Defence Exhibit 174 (personal identification sheet); Bagosora Defence Exhibit 175 (List of participants at the second round of political negotiations concerning the sharing of power).

[251] T. 17 November 2006 p. 44; Kabiligi Defence Exhibit 113 (personal identification sheet). This witness was previously referred to as KVB-46.

[252] The negotiations were originally scheduled from 5 to 15 October but were extended to 30 October 1992. T. 4 July 2005 pp. 13-14, 16.

[253] T. 29 September 2004 pp. 15-17, 39.

[254] T. 17 November 2006 p. 44.

[255] Bagosora Defence Exhibit 142 (statement of 25 February 1998).

[256] T. 29 September 2004 p. 41. *See also Akayesu* Appeal Judgement, para. 134 ("In the opinion of the Appeals Chamber prior statement of witnesses who appear in court are as a rule relevant only insofar as they are necessary to a Trial Chamber in its assessment of the credibility of a witness. It is not the case, as appears to be suggested by Akayesu, that they should or could generally in and of themselves constitute evidence that the content thereof is truthful.").

a question from Witness KT. In contrast, Witness XAM categorically placed the event in October 1992 around lunch time after a morning of heated negotiations, and he claimed that his question to Bagosora prompted the apocalypse remark. Furthermore, he did not list Witness KT as one of the individuals accompanying him when the remark allegedly was made in the elevator.[257] In light of these contradictions, the Chamber considers that Witness KT's statement does not corroborate Witness XAM's account but rather raises further doubt about the reliability of his testimony.[258]

221. Finally, the Chamber is not persuaded that Witnesses DCH, AE, ON, AR, ZF and ATY, who subsequently learned of this alleged exchange second-hand or heard other persons use the term "apocalypse" in 1994, lend any greater strength to Witness XAM's testimony that Bagosora made the comment in 1992.[259]

222. The Chamber finds that the Prosecution has not proven beyond reasonable doubt that Bagosora made the so-called "apocalypse" statement during the Arusha negotiations, as alleged in paragraph 5.10 of the Bagosora Indictment.[260]

2.4 Meetings Before 6 April 1994

2.4.1 Meetings at Camp Kanombe, 1992 - 1993

Introduction

223. The Bagosora Indictment and the Kabiligi and Ntabakuze Indictment allege that, during the course of the negotiations of the Arusha Accords, senior army officers, including Bagosora and Ntabakuze, held meetings at Camp Kanombe. During this period, Bagosora and Ntabakuze purportedly urged the military to reject and show its disapproval of the Arusha Accords. They made statements identifying the enemy as the Tutsis and their sympathisers as the Hutus in the opposition, and stated that the extermination of the Tutsis would be the inevitable consequence of any resumption of hostilities by the RPF. In support

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[257] T. 29 September 2004 p. 3; Prosecution Exhibit 312 (The names of persons in the lift with Prosecution Witness XAM when he heard Accused Théoneste Bagosora make his statement). This document contains two names, whereas Witness KT's statement lists three persons, of whom only one is mentioned in both exhibits.

[258] The Defence has also referred to documents purportedly explaining why Bagosora left the negotiations in December 1992 (Bagosora Defence Exhibits 232-237). The Chamber does not consider it necessary to discuss these documents.

[259] None of these persons were present during the negotiations in Arusha. They heard about Bagosora's remark afterwards (without specifying dates). *See also* Reyntjens, T. 16 September 2004 p. 10; Nsengiyumva Defence Exhibit 219B (statement of 29 March 1997 by James Gasana, who heard from a representative of the RPF that Bagosora openly declared that he was going to "prepare the apocalypse"), pp. 6-7; Bagosora Defence Exhibit 128B (statement of 1 December 1997 of Joseph Murasampongo, who heard from his younger brother, an adviser to Minister Ngulinzira, that after returning from a negotiation mission in Arusha, Bagosora declared that he was going to unleash the Apocalypse."), p. 9.

[260] Paragraph 5.10 of the Bagosora Indictment also refers Bagosora's alleged anger at the positions taken by the Rwandan Foreign Minister Boniface Ngulinzira during the negotiations and Ngulinzira's subsequent killing on 10 April 1994 as result of his moderate stance. Some testimonies about Ngulinzira's killing were given by Prosecution Expert Witness Alison Des Forges (T. 11 September 2002 pp. 97-100; T. 16 September 2002 pp. 95-96; T. 17 September 2002 pp. 47-48; T. 18 September 2002 p. 16), Prosecution Witness DCH (T. 24 June 2004 pp. 57-59) and Prosecution Witness XBM (T. 14 July 2003 pp. 16-17). This evidence, however, is second hand. In its Closing Brief, the Prosecution does not refer to any direct evidence in support of this allegation, and the Chamber has not found any basis for it.

of these allegations, the Prosecution points to evidence that Bagosora met with Ntabakuze at Camp Kanombe and that Ntabakuze held ideology courses with members of the Para Commando Battalion at the camp. Reference is made to Witnesses DBQ, DBN, BC, LN, XAP and DP.[261]

224. The Bagosora and Ntabakuze Defence teams argue that the Prosecution evidence lacks credibility. They point to testimonies showing that Bagosora did not visit the camp and that Ntabakuze did not voice anti-Tutsi sentiments during this period. The Ntabakuze Defence argues that these alleged incidents fall outside of the temporal scope of the Tribunal's jurisdiction and are not specifically pleaded in the Indictment. Reference is made to Witnesses LMG, DK-11, DM-190, DM-191, DH-51, DM-25, DM-26 and Colonel Joseph Dewez.[262]

Evidence

Prosecution Witness DBQ

225. Witness DBQ, a Hutu, testified that he was a member of the First Company of the Para Commando Battalion. In 1993, there were regular meetings at the office of the commander of Camp Kanombe between senior officers, including the camp commander Colonel Muberuka, Colonel Baransaritse from the camp's medical company, Bagosora and Ntabakuze. The witness observed approximately 10 meetings, and Bagosora attended seven or eight of them. Ntabakuze's bodyguard told him that at one meeting the officers said that they would rather leave the country than live with the *Inkotanyi*.[263]

226. At some point in 1993, the witness also attended a meeting of the entire battalion at Camp Kanombe where Ntabakuze opposed the merger of the army and the RPF, stating that he would rather leave the country than have Paul Kagame in the army. He described the Tutsis as the enemy, but did not distribute the Definition of the Enemy document to the troops. Ntabakuze predicted that the Arusha Accords would fail and preferred continuation of the war. He urged solders not to mix with the *Inkotanyi* and added that, if the *Inkotanyi* resumed hostilities, he would start killing the Tutsis near the camp.[264]

Prosecution Witness DBN

227. Witness DBN, a Tutsi, was a member of the Para Commando Battalion. Between 1992 and 1993, Ntabakuze held bi-monthly meetings of the entire battalion in a wooded area at Camp Kanombe known as *Joli Bois*. The witness attended five of the meetings during this period. Ntabakuze would give updates on the negotiation process for the Arusha Accords and instructed his soldiers on what their attitude should be towards them. He urged rejection of the proposed merger between the Rwandan army with the RPF since they could not live with the Tutsi *Inyenzi*. Instead, he advocated continued war. Ntabakuze spoke about the "enemy" which he defined as the Tutsi *Inyenzi* who had attacked Rwanda from Uganda and wanted to

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[261] Bagosora Indictment, paras. 5.8, 5.11, 5.12; Kabiligi and Ntabakuze Indictment, paras. 5.8, 5.10, 5.11. Prosecution Closing Brief, paras. 39, 1109(a), 1119-1120(b), 1216(a), 1320(a), 1324(b), 1325, pp. 715, 793-795.
[262] Bagosora Closing Brief, paras. 473-478, 778-781; Ntabakuze Closing Brief, paras. 246-283, 293-335, 634-653, 737-748, 754, 797-816, 826-843.
[263] T. 23 September 2003 pp. 3, 46, 48-49; T. 29 September 2003 pp. 74-76; T. 30 September 2003 pp. 64-67; Prosecution Exhibit 99 (personal identification sheet).
[264] T. 23 September 2003 pp. 46-48, 50-51; T. 30 September 2003 pp. 57-59.

conquer the country. He also mentioned that there were Tutsis in the country collaborating with the RPF.[265]

Prosecution Witness BC

228. Witness BC was a member of the CRAP Platoon of the Para Commando Battalion. He attended two meetings of the entire battalion at *Joli Bois* in Camp Kanombe. During the first meeting in early 1993, Ntabakuze condemned the negotiation process for the Arusha Accords and stated that he did not want to sit at the same table as those "Tutsi sons of a bitch". He also rejected the power-sharing implications of the agreement. At the second meeting in late 1993, Ntabakuze expressed concern about the growing strength of the RPF army, the mounting casualties it was inflicting and the possibility that it was infiltrating the army's ranks. A soldier then asked if they should not start dealing with the infiltrators within their ranks. Ntabakuze told him to sit down and that he should not ask such questions in a public meeting.[266]

Prosecution Witness LN

229. Witness LN, a Tutsi, was a member of the Para Commando Battalion, but joined the medical company at Camp Kanombe after an injury. He testified that, between the end of 1992 and early 1994, weekly mandatory meetings were held at the *Joli Bois* area of Camp Kanombe for the battalion members that were not assigned to permanent duties. The witness attended three at the end of 1992. During the meetings, Ntabakuze defined the "enemy" as the "Tutsi *Inyenzi*" and also as those attacking Rwanda from outside, accomplices offering support within the country, including those in the army, and political opponents of the MRND. Reference was made at the meetings to the Definition of the Enemy document circulated by the army general staff. Ntabakuze also advised soldiers to avoid enemy traps, such as money used by the "enemy" and marrying Tutsi women.[267]

Prosecution Witness DP

230. Witness DP, a Tutsi, was a member of the General Services Company of the Para Commando Battalion. In 1992, Ntabakuze addressed a full meeting of the battalion where one of the soldiers expressed concern, by saying: "We cannot win this war when we go to the war front and we leave the enemies right here." Ntabakuze told him that that was possible, but they had to be careful and assess the situation first. Following the signing of the Arusha Accords, Ntabakuze held another meeting of the battalion and informed his troops about the prospective merger between the army and RPF on a 60 to 40 percent basis, respectively. Ntabakuze said that he would resist the integration. One soldier suggested that the integration would result in Paul Kagame becoming army chief of staff. Ntabakuze answered that he would rather leave the country than live with Tutsis.[268]

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[265] T. 31 March 2004 pp. 61, 64-68; T. 5 April 2004 pp. 30-31; Prosecution Exhibit 198 (personal identification sheet).

[266] T. 1 December 2003 pp. 25-31; T. 10 December 2003 pp. 93-96; Prosecution Exhibit 147 (personal identification sheet). Witness BC stated that he did not know his ethnic group. *See* T. 1 December 2003 pp. 39-40.

[267] T. 30 March 2004 pp. 48-56; T. 31 March 2004 pp. 14-16, 18-21, 41-45; T. 1 April 2004 pp. 24-28; Prosecution Exhibit 197 (personal identification sheet).

[268] T. 2 October 2003 pp. 7-8, 27-31, 38-39, 66-67; Prosecution Exhibit 112 (personal identification sheet).

Prosecution Witness XAP 40660

231. Witness XAP was a member of the Second Company of the Para Commando Battalion. For three months in 1993, Lieutenant Gahutu, the witness's company commander, as well as the platoon leaders conducted meetings at the company level three times a week at *Joli Bois* in Camp Kanombe in order to explain to their soldiers the definition of the "enemy". They explained that the "enemy" were Tutsis outside the country, Tutsis within the country who sent their children to join the RPF, and members of the opposition, particularly the PL and the MDR. The officers conducting the meetings also mentioned opposition politicians, such as Faustin Twagiramungu, an MDR official, and Landouald Ndasingwa, a PL official, by name. A brochure in Kinyarwanda containing the definition of the enemy bearing Ntabakuze's stamp and seal as battalion commander was distributed during the meetings. Ntabakuze attended one of the meetings, but did not give the lectures.[269]

Bagosora

232. Bagosora testified that he participated in the negotiations for the Arusha Accords as a military expert from 2 to 26 December 1992, 16 March to 25 June 1993 and 1 to 25 July 1993. He therefore could not have attended any meetings at Camp Kanombe as alleged by Witness DBQ.[270]

Ntabakuze

233. Ntabakuze denied that he met with Bagosora and other senior officers at Camp Kanombe to discuss opposition to the Arusha Accords. He also disputed that he sanctioned or participated in meetings with his battalion as described by the Prosecution witnesses. In particular, there would not have been material distributed in Kinyarwanda since all army documents were prepared in French. He welcomed the peace agreement after several years war and even played a role in its implementation by participating in the drafting of regulations for the integration of the two forces.[271]

Bagosora Defence Witness LMG

234. Witness LMG, a Hutu soldier, stated that Bagosora only travelled to Camp Kanombe twice from 1992 to April 1994. He also only heard Bagosora speak positively about the Arusha Accords.[272]

Ntabakuze Defence Witnesses DM-190, DM-191, DH-51

235. Witnesses DM-190 and DM-191, both senior Hutu military officers, as well as Witness DH-51, a Hutu army escort, testified that it would not have been possible for an officer's escort to attend a high level meeting, thus allowing him to report its contents to someone else. Witness DM-190 acknowledged that various units in the army held regular compulsory "morality sessions". Witness DM-191 added that all instruction material in the

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[269] T. 11 December 2003 pp. 11-16, 21-24; T. 15 December 2003 pp. 74-86, 96; Prosecution Exhibit 152 (personal identification sheet). Witness XAP refused to provide his ethnicity. *See* T. 11 December 2003 pp. 65-68.

[270] T. 27 October 2005 p. 60; T. 1 November 2005 pp. 8, 15; T. 10 November 2005 p. 75; T. 11 November 2005 p. 20; T. 14 November 2005 pp. 1-2.

[271] T. 21 September 2006 pp. 35-40, 44, 48-49; T. 25 September 2006 pp. 23, 31-32, 34-38.

[272] T. 15 July 2005 pp. 19-20; T. 18 July 2005 pp. 2-3; Bagosora Defence Exhibit 181 (personal identification sheet).

army was prepared in French and documents were interpreted orally into Kinyarwanda if necessary.[273]

Ntabakuze Defence Witness DK-11

236. Witness DK-11, a Hutu member of the CRAP Platoon, said that Ntabakuze regularly held meetings of the entire Para Commando Battalion at *Joli Bois* in Camp Kanombe. All soldiers would attend except those with special duties or permission. He attended about half of these meetings between 1991 and 1994. At some meetings, Ntabakuze described the RPF as the enemy. However, Ntabakuze never made derogatory comments about Tutsis or the Arusha Accords.[274]

Ntabakuze Defence Witness DM-25

237. Witness DM-25, a Hutu, was a member of the MDR party who worked in the office of Prime Minister Dismas Nsengiyaremye during his term of office from 5 April 1992 until 16 July 1993. After the conclusion of the Arusha Accords, the witness attended a meeting between military officers and politicians where the agreement was not well received. Ntabakuze addressed the gathering and praised the Accords as well as the peace process.[275]

Ntabakuze Defence Witness DM-26

238. Witness DM-26 is an officer who worked with Ntabakuze at Camp Kanombe between 1992 and 1994. The witness did not observe Ntabakuze discriminate against anyone in the Para Commando Battalion. Ntabakuze did not think it would be realistic for the army and the RPF to merge after four years of war, but did not seem otherwise opposed to the Arusha Accords.[276]

Ntabakuze Defence Witness Joseph Dewez

239. Colonel Dewez, a Belgian, served in Rwanda from 15 March until 19 April 1994 as commander of UNAMIR's Kigali Battalion. He attended military training between 1987 and 1988 along with Ntabakuze at Fort Leavenworth in the United States where they became acquainted. In speaking with Ntabakuze in Rwanda in late March 1994, the witness received the impression that Ntabakuze was not an extremist and that he was looking forward to seeing a return to peace in Rwanda.[277]

Deliberations

240. The Prosecution relies solely on Witness DBQ to establish that Bagosora, Ntabakuze and other officers met regularly at Camp Kanombe during the negotiation process for the Arusha Accords. The Chamber has questioned the credibility of aspects of Witness DBQ's credibility in other parts of the judgement. In particular, the Chamber recalls that, in connection with the events which transpired at Camp Kanombe on the night of 6 April, the

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[273] Witness DM-190, T. 3 May 2005 pp. 30, 40; Ntabakuze Defence Exhibit 94 (personal identification sheet). Witness DM-191, T. 5 May 2005 pp. 63-64; Ntabakuze Defence Exhibit 98 (personal identification sheet). Witness DH-51, T. 6 December 2005 p. 10; Ntabakuze Defence Exhibit 199 (personal identification sheet).

[274] T. 19 July 2005 pp. 8-12, 20-22; T. 20 July 2005 pp. 18-21; T. 21 July 2005 pp. 37-38; Ntabakuze Defence Exhibit 144 (personal identification sheet).

[275] T. 11 April 2005 p. 61; T. 12 April 2005 pp. 12-20; Ntabakuze Defence Exhibit 81 (personal identification sheet).

[276] T. 1 December 2006 pp. 23, 25, 27; Ntabakuze Defence Exhibit 266 (personal identification sheet).

[277] T. 23 June 2005 pp. 16-18, 26-28. Ntabakuze Defence Exhibit 122 (personal identification sheet).

witness asserted that Bagosora came to the camp and met at the same time as other credible Prosecution and Defence evidence placed Bagosora in meetings across Kigali with senior military and UNAMIR officials (III.3.5.1).

241. The Chamber views Witness DBQ's evidence with similar caution on these meetings and declines to rely on them in the absence of further evidence on this point. In any event, even if the Chamber accepted the witness's evidence as true, his account of what was said at the meeting is second-hand and uncorroborated. The Chamber therefore does not need to consider whether Bagosora's evidence concerning his limited travel to the camp and whether the general assertions of Witnesses DM-190, DM-191 and DM-51, suggesting that Witness DBQ could not have heard about the discussions from an escort, raise doubt about his allegations.

242. Turning to the alleged meetings of the Para Commando Battalion held at *Joli Bois*, the Prosecution points to six witnesses, who were members of the Para Commando Battalion, in support of the contention that Ntabakuze or other officers opposed the Arusha Accords, defined the enemy or made derogatory comments towards Tutsis during battalion meetings at the camp.

243. The Chamber notes that many of the witnesses provided a different description of when and how frequently the meetings were held. Witness DBQ attended one meeting at some point in 1993. Witness DBN referred to mandatory bi-monthly meetings between 1992 and 1993, of which he attended five. Witness BC attended two meetings, at the beginning and end of 1993, respectively. Witness LN referred to three meetings at the end of 1992, but noted that there were weekly meetings between 1992 and 1994. Witness DP participated in one meeting in 1992 and another after the signing of the Arusha Accords in the second half of 1993. Witness XAP described a series of meetings held three times a week for three months in 1993. It is also notable that a number of witnesses described the meetings as regular and mandatory for the entire battalion, yet each of the witnesses only participated in a few of them. In addition, Witness XAP mentioned that the meetings were held by his company commander and did not mention the larger meetings of the battalion, which Ntabakuze supposedly addressed. Witness DBQ is also alone is suggesting that Ntabakuze threatened to kill Tutsis in the area around the camp.

244. In the Chamber's view, this lack of consistency raises some concern about the credibility of the Prosecution's evidence on this point. The Chamber therefore declines to accept the specific details of each of the witnesses accounts. Nevertheless, this evidence taken together suggests that, at some point between 1992 and 1993, Ntabakuze addressed his battalion on one or more occasions about the Arusha Accords and discussed the definition of the enemy.

245. In reaching this conclusion, the Chamber is mindful that, on 21 September 1992, Déogratias Nsabimana, the army chief of staff, circulated the Definition of the Enemy Document to the commanders of all operational sectors and asked them to widely distribute the document highlighting the definition, identification and recruiting grounds of the enemy.[278] Ntabakuze was a member of the Enemy Commission that prepared the document (III.2.2). Therefore, it follows that Ntabakuze as a battalion commander would have implemented this instruction. Notably, several of the witnesses, including Witnesses DBN,

[278] Prosecution Exhibit 13B (letter from Nsabimana to operations commanders, dated 21 September 1992).

BC and LN, recounted Ntabakuze defining the enemy and its accomplices in a similar fashion as described in the document. Furthermore, Witness DM-190 noted that there were regular morality sessions within the army, and Witness DK-11 also recalls Ntabakuze speaking about the enemy. The fact that the official language of the army was French does not mean that some material related to this topic could not have been provided in Kinyarwanda. It is also logical that Ntabakuze would have given an update about the Arusha Accords since the ongoing process would have impacted the composition of the army.

246. Finally, the Chamber considers that Ntabakuze most likely made some inflammatory comments about the RPF or the success of the Arusha Accords, in particular given the RPF's unilateral resumption of hostilities in February 1993. Witness DM-25's testimony reflects that Ntabakuze was highly sceptical of the feasibility of integrating the two forces. The Chamber accords the evidence of Witnesses DM-25, DM-26 and Dewez about Ntabakuze's generally more positive attitude towards the process limited weight. These witnesses did not attend the meetings where he addressed his troops, and Ntabakuze may well have taken a different position with these witnesses given their background or positions. Be that as it may, opposition or statements against the Arusha Accords or elements therein, for example the integration of armed forces, does not as such constitute criminal conduct.

247. Accordingly, the Prosecution has not proven beyond reasonable doubt that Bagosora, Ntabakuze and other senior officers met at Camp Kanombe during the negotiation process of the Arusha Accords. The totality of the evidence suggests that Ntabakuze likely discussed the definition of the enemy with his battalion and expressed scepticism at the success of the integration of the army and RPF at some point between 1992 and 1993. The Chamber, however, is not convinced that this in itself demonstrates that Ntabakuze participated in a plan to commit genocide or harboured genocidal intent. The Chamber therefore does not need to address Ntabakuze's challenge with respect to the notice provided for these incidents.[279]

2.4.2 MRND Meeting, Umuganda Stadium, 27 October 1993

Introduction

248. Each of the Indictments alleges that Bagosora publicly urged the military to reject and show its disapproval of the Arusha Accords and that several officers, including Bagosora, stated that extermination of the Tutsis would be the inevitable consequence of any resumption of hostilities by the RPF or if the Arusha Accords were implemented. Referring to Witness XBM, the Prosecution points to a MRND meeting at Umuganda Stadium in Gisenyi prefecture on 27 October 1993 where Bagosora allegedly spoke.[280]

249. The Bagosora Defence argues that it did not receive adequate notice of this event. In addition, Witness XBM's testimony is uncorroborated and not credible.[281]

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[279] The Chamber previously held that Ntabakuze had notice of the alleged meetings between him and Bagosora at Camp Kanombe. *See* Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 57-59.

[280] Bagosora Indictment, paras. 5.11; Kabiligi and Ntabakuze Indictment, paras. 5.10-5.11; Nsengiyumva Indictment, para. 5.10; Prosecution Closing Brief, paras. 502, 1056, pp. 715, 794-795, 852.

[281] Bagosora Closing Brief, paras. 240-241, 673-691, 777-778, 1407, 1623-1625, 1627, 1885-1888, 2191, pp. 349-351; T. 30 May 2007 pp. 5-6. The Kabiligi and Ntabakuze Defence teams do not address this allegation.

Evidence

40656

Prosecution Witness XBM

250. Witness XBM, a Hutu and a CDR party member from 1992 through 1994, testified that he attended a MRND party meeting at Umuganda Stadium on 27 October 1993 that lasted from 10.00 or 11.00 a.m. until around 3.30 p.m. The MRND organised the meeting to recruit new members. A number of authorities addressed a crowd of at least 4,000. The *bourgmestre* of Rubavu commune in Gisenyi prefecture welcomed everyone. The prefect's representative introduced the visiting delegates: Augustin Ngirabatware, the Minister of Planning; Édouard Karemera, a MRND member of parliament; Joseph Nzirorera; Bagosora; and Mathieu Ngirumpatse, the MRND party chairman. Wellars Banzi, the Gisenyi MRND chairman, and Ngirabatware discussed the strength of the MRND party in the area. Karemera spoke about the worthlessness of the Arusha Accords, but nonetheless asked the attendees to coexist peacefully with supporters of national unity.[282]

251. Bagosora wore civilian clothes and sat "with other personalities". During the introductions, the prefect's representative informed the attendees that Bagosora was the *directeur du cabinet* in the Ministry of Defence and a member of the Arusha delegation. After Karemera finished speaking, Bagosora addressed the crowd for 15 to 20 minutes. He disagreed with the Arusha Accords and stated that power should not be shared with the enemy negotiating in Arusha. The *Inkotanyi* wanted to reduce the Hutu to slavery. Witness XBM also heard Bagosora claim that the war would end once the population contributed financially to its soldiers, and that such contributions were essential to prevent the sort of infiltration that led to the Tutsi slaughter of Hutus in Kirambo commune. The final speaker, Ngirumpatse, illustrated the MRND's strength by pointing to the 500 *Interahamwe* present in the stadium, all of whom, he said, had been trained outside of Rwanda.[283]

252. The witness testified that, in the evening of 27 October, he heard a Radio Rwanda newscaster put the rally's attendance at over 4,000. The reporter also summarised the various speeches and discussed Bagosora's presence at the rally.[284]

Bagosora

253. Bagosora denied attending an MRND meeting in October 1993, adding that, if he had participated in such a meeting, there would have been news accounts.[285]

Deliberations

254. Witness XBM was the only witness to testify about the alleged participation of Bagosora in an MRND meeting at Umuganda stadium in Gisenyi prefecture in October 1993. He mentioned this rally in his prior statement in February 2003 to Tribunal investigators.[286] Given the size of the alleged crowd, it is notable that no other witnesses testified about this

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The Nsengiyumva Defence notes that the Chamber excluded this evidence with respect to Nsengiyumva. Nsengiyumva Closing Brief, paras. 594, 1245, 1260, 2017; T. 31 May 2007 p. 43.

[282] T. 14 July 2003 pp. 12, 17-19, 21, 58, 80-83; T. 15 July 2003 pp. 2, 5; Prosecution Exhibit 80 (personal identification sheet).

[283] T. 14 July 2003 pp. 19-20, 80, 82, 84; T. 15 July 2003 pp. 2-5.

[284] T. 14 July 2003 pp. 81-83; T. 15 July 2003 p. 1.

[285] T. 1 November 2005 pp. 67-68; T. 14 November 2005 p. 11.

[286] Bagosora Defence Exhibit 26 (statement of 28 February 2003).

meeting. There are also no available transcripts from the radio or any other contemporaneous accounts of the meeting.

255. The Prosecution submits that Witness XBM's testimony is corroborated by Alison Des Forges, who testified about common themes in the writings of Bagosora and Nsengiyumva. The Prosecution notes that the themes expressed during the meeting are similar to their other writings.[287] In the Chamber's view, however, this does not sufficiently substantiate that the meeting in fact occurred or that Bagosora was amongst the participants.

256. The Chamber has expressed reservations about the credibility of other aspects of Witness XBM's testimony (III.2.4.5; III.3.6.7; III.4.2.4). It therefore views his testimony on this event with caution and declines to accept his account of this meeting without adequate corroboration. Accordingly, the Prosecution has not proven beyond reasonable doubt that Bagosora participated in a meeting at the Umuganda stadium in Gisenyi prefecture in October 1993.

257. The Chamber held, during the trial, that Bagosora had adequate notice of this allegation. In view of the Chamber's findings, it need not revisit the Bagosora Defence arguments concerning the pleading of this in the Indictment.[288]

2.4.3 Distribution of Weapons, Bugarama, 28 January 1994

Introduction

258. The Ntabakuze and Kabiligi Indictment alleges that soldiers gave assistance to civilian militias by providing weapons to them among other support. Specifically, the Prosecution alleges that on 28 January 1994, Kabiligi and André Ntagerura arrived by helicopter in Bugarama sector, Cyangugu prefecture and with Emmanuel Bagambiki distributed weapons to *Interahamwe* militia at a rally held on a football field. Reference is made to Witness LAI.[289]

259. The Kabiligi Defence reiterates that it had insufficient notice of Kabiligi's participation in this crime. Furthermore, Witness LAI's testimony lacks credibility and is contradicted by Emmanuel Bagambiki and André Ntagerura. Kabiligi was in Egypt on 28 January 1994, as explained by Witness LAX-23.[290]

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[287] Prosecution Closing Brief, para. 1059.

[288] The Chamber has concluded that Bagosora had notice of his participation in the meeting. *See* Decision on Bagosora Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 58-60. The Chamber, however, granted Nsengiyumva's request to exclude this evidence. *See* Decision on Nsengiyumva Motion For Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006 p. 22.

[289] Kabiligi and Ntabakuze Indictment, paras. 4.2, 6.45; Prosecution Closing Brief, paras. 683, 1415(b), 1416-1423, pp. 785-786, 839-840.

[290] Kabiligi Closing Brief, paras. 110, 480-481, 941-944, 946-956, 959-963, 1098-1099, 1147-1151, 1165-1167, 1231, 1278, 1310-1311, p. 578; T. 28 May 2007 pp. 35-36, 39, 55-56; T. 29 May 2007 pp. 19-21, 39.

Evidence

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Prosecution Witness LAI

260. Witness LAI, a Hutu, was a driver and member of the *Interahamwe* in 1994. On 5 January 1994, Emmanuel Bagambiki, Mathieu Ngirumpatse, Major Bavugamenshi of the gendarmerie met with Yussuf Munyakazi, the head of the *Interahamwe* for Bugarama commune in Cyangugu prefecture, at his residence. The witness was present with other *Interahamwe* and overheard the officials inform Munyakazi that Kabiligi and André Ntagerura would be coming in a helicopter to deliver weapons. Munyakazi held a meeting with *Interahamwe* the next day to inform them of the upcoming event.[291]

261. On the morning of 28 January 1994, Kabiligi, Ntagerura and Bagambiki arrived by helicopter at the Bugarama football field where around 20,000 *Interahamwe* youths from the Bugarama, Gishoma and Nyakabuye communes were gathered. The witness, who assisted with protocol for the rally, stood nearby and watched as Munyakazi and various others, including the *bourgmestre*, welcomed Kabiligi, who gave Munyakazi a pistol and congratulated him for being "courageous". Kabiligi also encouraged the youth to be vigilant and to fight the enemy, whom he identified as the Tutsis, wherever they were found.[292]

262. Together with four other individuals, Witness LAI went with Kabiligi and Munyakazi to offload weapons from the helicopter. The group removed a green wooden crate containing 11 Kalashnikov rifles, 10 boxes of ammunition, a box of grenades, military uniforms bales of fabric to make *Interahamwe* uniforms, berets, medals and cords. Kabiligi then met with three Burundian and two Rwandan militiamen there. He asked them to patrol the border to prevent Tutsi youth from crossing into Burundi to join the RPF. Kabiligi and Ntagerura remained for no more than an hour and then left in the helicopter.[293]

263. The weapons were loaded into Munyakazi's vehicle and moved to his residence. They were stored near Munyakazi's office. The following day, on 29 January, Munyakazi gave three of the rifles and grenades to the Burundians Kabiligi had met with the day before.[294]

264. The morning after President Habyarimana's plane had been shot down, *Interahamwe* gathered at Munyakazi's house, where the weapons were distributed. According to the witness, these weapons were used during the genocide to kill people in Mibilizi and Kibuye as well as Shangi, Nyakabuye, Gishoma and other localities.[295]

Kabiligi Defence Witness Emmanuel Bagambiki

265. Emmanuel Bagambiki, a Hutu and the prefect of Cyangugu prefecture in 1994, denied that he met with Kabiligi or Ntagerura in Cyangugu prefecture or anywhere else in Rwanda on 28 January 1994. He further denied that a helicopter came to Bugarama to distribute weapons on that date. Bagambiki spent that day at home because it was a national holiday.

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[291] T. 31 May 2004 pp. 3-4, 16-17, 19-20, 66-67, 76-80, 82-86; T. 2 June 2004 p. 10.
[292] T. 31 May 2004 pp. 4, 11-17, 48-49, 86-89; T. 1 June 2004 pp. 8-13; T. 2 June 2004 pp. 1, 4, 13-16.
[293] T. 31 May 2004 pp. 14-17, 48-50, 62-68; T. 1 June 2004 pp. 6-8, 10-11, 15-17; T. 2 June 2004 pp. 1-10; T. 3 June 2004 pp. 23-25.
[294] T. 31 May 2004 pp. 14-15, 17, 19-20, 62-66; T. 1 June 2004 pp. 6-13; T. 2 June 2004 pp. 1-8; T. 3 June 2004 p. 25.
[295] T. 31 May 2004 pp. 17-18; T. 3 June 2004 p. 25.

He said that, even if Ntagerura and Kabiligi had taken a helicopter into his prefecture without him, the local authorities would have informed him of such an event.[296]

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Kabiligi Defence Witness André Ntagerura

266. André Ntagerura, a Hutu and the Minister for Transport and Communications in 1994, testified that he was in Kigali on 28 January 1994. He did not travel to Bugarama or attend a ceremony in Cyangugu where weapons, uniforms or ammunition were distributed to *Interahamwe*.[297]

Kabiligi Defence Witness LAX-23

267. Witness LAX-23, a Rwandan diplomat in 1994, testified that Kabiligi arrived in Nairobi, Kenya on 24 January and then left for Egypt on 27 January 1994.[298]

Deliberations

268. The Prosecution relies exclusively on Witness LAI's purported first-hand account that Kabiligi attended a rally and distributed weapons in Bugarama commune on 28 January 1994. The witness had been incarcerated since 1996 and was, at the time of his testimony, awaiting trial in Rwanda.[299] The Chamber views his evidence with caution.

269. Witness LAI's first statement to Tribunal investigators in 1999 did not mention Kabiligi, whose alleged participation in the Bugarama event was later reflected in the witness's 2000, 2002 and 2003 statements to Tribunal investigators and his testimony in this trial. According to the 1999 statement, Ntagerura exited the helicopter, addressed the crowd, spoke with Munyakazi, and delivered weapons. The statement lists prominent government, political, and law enforcement officials, but makes no mention of Kabiligi's presence or involvement in the event.[300] The witness explained that his statement was tailored to the questions asked of him, which focused on specific persons.[301] It appears to have been taken in connection with the investigation of Ntagerura and Munyakazi. Although this may explain the omission, the lack of reference to Kabiligi remains noteworthy given his significant role in the event as described by the witness subsequently.[302]

270. In the *Ntagerura et al.* trial, Witness LAI testified that the Cyangugu gendarmerie commander, Bavugamenshi, arrived in the helicopter with Kabiligi and Ntagerura.[303] When testifying in the present case, the witness categorically denied that Bavugamenshi arrived in

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[296] T. 15 September 2006 pp. 13-14; T. 28 September 2006 pp. 30-31, 60-62; Kabiligi Defence Exhibit 95 (personal identification sheet). He was previously known as Kabiligi Defence Witness KC-55.
[297] T. 28 November 2006 pp. 23, 28-29, 31; Kabiligi Defence Exhibit 119 (personal identification sheet). He was previously identified in the proceedings as Kabiligi Defence Witness JRO-11.
[298] T. 21 November 2006 pp. 7-8, 10, 30-31, 39-41; Kabiligi Defence Exhibit 116 (personal identification sheet).
[299] T. 2 June 2004 p. 17; T. 3 June 2004 pp. 14-15. When asked about differences between the identification information in each of his statements to Tribunal investigators and his prior testimony in the *Ntagerura et al.* trial, Witness LAI testified that he returned from Zaire to Rwanda on 13 December 1996 and was arrested on 20 December 1996. *See* T. 31 May 2004 pp. 70-72; T. 1 June 2004 p. 4.
[300] Kabiligi Defence Exhibit 46 (statement of 10 July 1999).
[301] T. 31 May 2004 pp. 86-87; T. 1 June 2004 pp. 8-9.
[302] Kabiligi Defence Exhibit 48 (statement of 7 May 2002); Kabiligi Defence Exhibit 49 (statement of 28 August 2003). In a second statement provided to Tribunal investigators prior to testifying in the *Ntagerura et al.* trial, Witness LAI references Kabiligi's involvement in this event. *See* Kabiligi Defence Exhibit 47 (statement of 11 August 2000).
[303] Kabiligi Defence Exhibit 51 (*Ntagerura et al.* testimony of Witness LAI, T. 17 September 2001 p. 32).

the helicopter or that he had previously testified to this effect, asserting that there was a recording error in the prior proceeding.[304] The Chamber questions this explanation, in particular because he identified Bavugamenshi by name and position and because Bavugamenshi's name was spelled for clarity during his testimony.[305] In the present trial, Witness LAI also testified that he left the football field after the helicopter departed, noting that he even observed it in the air. He was confronted with his 2002 statement to Tribunal investigators, wherein he asserted that he did not know when the helicopter departed because he had left the football field. The witness explained the discrepancy by suggesting that he was either mistaken or "did not want to say the truth because it was going to incriminate [him]".[306] Although these inconsistencies are not significant, his explanations for them are not convincing.[307]

271. Of greater significance are differences between Witness LAI's account and the alibi evidence Kabiligi presented for 28 January 1994 (III.6.2). The witness insisted that the meeting occurred on 28 January 1994 and provided several reasons why he was certain of this date.[308] However, a letter from the Egyptian Ambassador to the Deputy Prosecutor of the Tribunal, tendered by the Prosecution, asserts that Kabiligi arrived in Cairo, Egypt on 27 January 1994 and that he departed on 8 February 1994.[309] Witness LAX-23 offered corroboration, testifying that Kabiligi left from Nairobi, Kenya for Egypt on 27 January 1994.[310] In light of this evidence, the Prosecution submits that Witness LAI might have been mistaken about the date of the meeting. However, when confronted with a letter from Kabiligi detailing his mission in Cairo, Egypt from 27 January to 8 February 1994, Witness LAI testified that it was fabricated and reiterated his certainty as to the event's timing.[311] Under these circumstances, the Chamber is not persuaded by the Prosecution's submission

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[304] T. 31 May 2004 pp. 87-88. The Chamber notes that none of the witness's statements to Tribunal investigators describe Bavugamenshi arriving in the helicopter that day. Kabiligi Defence Exhibit 46 (statement of 10 July 1999) mentions the "Chief of the Gendarmerie" awaiting the helicopter's arrival, whereas Kabiligi Defence Exhibits 47, 48, and 49 (statements of 11 August 2000, 7 May 2002, and 28 August 2003, respectively) contain no reference to Bavugamenshi's presence on that day.

[305] *See* Kabiligi Defence Exhibit 51 (*Ntagerura et al.* testimony of Witness LAI, T. 17 September 2001 p. 32).

[306] T. 31 May 2004 p. 66; T. 1 June 2004 pp. 7-8, 10-11; Kabiligi Defence Exhibit 48 (statement of 7 May 2002).

[307] The witness's estimate that 20,000 people attended the 28 January 1994 rally appears exaggerated, but the Chamber attaches limited importance to this. *See* T. 31 May 2004 p. 13; T. 28 May 2007 p. 35.

[308] T. 31 May 2004 pp. 15-17; T. 2 June 2004 pp. 14-15. To demonstrate his certainty as to the date, the witness explained that the event occurred one day after the death of a relative of Munyakazi and the day before the killing of two individuals based on their ethnicity. Moreover, the witness had testified that the event coincided with a national holiday, *la fête de la démocratie*. T. 31 May 2004 pp. 15-17.

[309] Prosecution Exhibit 232 C (Letter of 20 June 2002 from the Egyptian Ambassador, Rwanda, to the ICTR Deputy Prosecutor). This exhibit was tendered during the testimony of a Prosecution investigator, who noted that he could not testify as to the accuracy of its content. *See* T. 7 June 2004 pp. 36-38.

[310] *See also* Kabiligi Defence Exhibit 126 (Diary of Witness LAX-23, January 1994) which contains a notation for 27 January 1994 "Depart Col. Kabiligi". During the course of Witness LAX-23's cross-examination, he indicated that he recorded certain events in a diary in 1994. The witness agreed to provide a copy to the Prosecution when he returned home. *See* T. 21 November 2006 pp. 32-33. The exhibit was tendered after Witness LAX-23's testimony, and he was not subject to cross-examination with respect to it. *See* T. 4 December 2006 p. 44. Consequently, the Chamber accords it minimal probative value.

[311] T. 2 June 2004 pp. 13-16; Kabiligi Defence Exhibit 50 (Kabiligi's Mission Report to the Rwandan President, 12 and 13 February 1994) which confirms that Kabiligi went on mission on 27 January 1994 and notes that, on 28 January 1994, Kabiligi was to meet with Egyptian Chief of Weapons and Ammunition, Major-General Samir Abdel Wahab. The Chamber has no reason to doubt the reliability of the contents of the letter, which was disclosed to the Kabiligi Defence by the Prosecution. *See* T. 2 June 2004 p. 13.

and considers that the evidence of Kabiligi's alibi raises further doubt as to the reliability of Witness LAI's uncorroborated testimony with respect to this event.

272. Finally, Ntagerura and Bagambiki, alleged participants in the rally, testified that they were not in Bugarama and denied that they participated in the event.[312] The Chamber notes that both witnesses are alleged accomplices of Kabiligi and have a clear interest in denying that weapons were distributed.[313] Nonetheless, their testimonies raise additional doubt about Witness LAI's credibility on this event.

273. Accordingly, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that Kabiligi was in Bugarama commune on 28 January 1994 and distributed weapons there.

274. In its Closing Brief, the Kabiligi Defence renewed its objections to the notice provided for the Bugarama event, arguing that it is one of many not included in Kabiligi's Indictment.[314] The Chamber held, during the trial, that Kabiligi had adequate notice of this allegation. In view of the Chamber's findings, it need not revisit the Kabiligi Defence arguments concerning insufficient pleading of this incident.[315]

2.4.4 Meeting at Ruhengeri Military Camp, 15 February 1994

Introduction

275. All Indictments allege that the Accused conspired amongst themselves and with other military officers to plan the extermination of the civilian Tutsi population. In support of these allegations, the Prosecution refers to Witness XXQ who testified about a meeting on 15 February 1994 of local army and gendarmerie officers, chaired by Kabiligi, at the Ruhengeri Military Camp.[316]

276. The Kabiligi Defence requests that the testimony of Witness XXQ be excluded, because Kabiligi received insufficient notice and the Prosecution added this witness to its witness list without leave. It also submits that he lacks credibility. Witnesses LX-65, LCH-1, LAX-2, FB-25, YUL-39 and RX-6 dispute that the meeting occurred, and Luc Marchal testified that Kabiligi was in Kigali at the time. Moreover, Witness BRA-1 testified that Witness XXQ informed him that he was providing false testimony against Kabiligi.[317]

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[312] Bagambiki and Ntagerura were acquitted by this Tribunal for crimes committed in Cyangugu prefecture. *See Ntagerura et al.*, Trial Judgement, paras. 804-805, which was affirmed in *Ntagerura et al.*, Appeal Judgement, p. 129.

[313] Indeed, the Bugarama event formed part of their trial and it was supported by the testimony of Witness LAI and two other witnesses. *Ntagerura et al.*, Trial Judgement, paras. 119-132. However, the *Ntagerura* Chamber, which expressly accepted Kabiligi's alibi for 28 January 1994, rejected the Prosecution evidence. *Ntagerura et al.*, Trial Judgement, paras. 126, 129-132.

[314] Kabiligi Closing Brief, paras. 105-116 and more generally section II.5.

[315] Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, para. 19; Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007, paras. 12-14.

[316] Bagosora Indictment, paras. 5.1, 6.27; Kabiligi and Ntabakuze Indictment, paras. 5.1, 5.11, 5.12; Nsengiyumva Indictment, para. 5.1; Prosecution Closing Brief, paras. 40, 265, 1060, 1570-1577; pp. 709, 757, 789-790, 795-796, 812, 847.

[317] Kabiligi Closing Brief, paras. 110, 253, 256, 258, 265, 343-375, 482-485, 1013-1027, 1030-1035, 1074, 1080-1086, 1092, 1100, 1108-1109, 1114, 1124, 1126-1129, 1168, 1172, 1243, 1264, 1273-1274, 1529-1532;

Evidence

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Prosecution Witness XXQ

277. Witness XXQ, a Hutu gendarmerie officer, was based in Ruhengeri prefecture in the beginning of 1994. On the morning of 15 February, he received a telegram from the command of the Ruhengeri operational sector announcing a meeting of local army and gendarmerie officers to be chaired by Kabiligi, the army's G-3. Later that morning, around 10.00 a.m., the witness attended the meeting in place of the commander of the gendarmerie squadron. The meeting took place at the Ruhengeri operational sector command and lasted from 10.00 a.m. to 2.00 p.m. The witness was certain of the date because he had been summoned to a Kigali court to appear in a civil case following his father's death. Furthermore, the meeting with Kabiligi was held one week after another meeting General Ndindiliyimana had held in Ruhengeri. He also recalled leaving for Kigali to appear before a military commission on 17 February 1994, two days after the meeting with Kabiligi.[318]

278. Kabiligi arrived at the meeting by helicopter. Colonel Augustin Bizimungu, who at the time was the Ruhengeri sector operational commander, introduced him. Other participants included Lieutenant-Colonel Bivugabagabo, Major Ndekezi, Major Ruhumiliza, Major Nzabonimpa, who, according to the witness, was the commander of *École des gendarmerie nationale* (EGENA), Captain Hasangineza, and Second Lieutenant Niyitegeka, who was known as "Chuck Norris". Kabiligi chaired the meeting and introduced the agenda. He first said that in the Byumba and Mutara operational sectors, which he had just visited, the army and inhabitants were opposed to the Arusha Accords, in particular the power sharing provisions. The Arusha Accords could not be implemented because they allocated too many posts to the RPF within the government and military. In Kabiligi's view, the RPF should have had no more than 14 percent of the posts. He added that the military therefore should "understand the situation and assume their responsibilities". Kabiligi then stated that the war would resume on 23 February. To wage this war, it was necessary to train the local population and distribute weapons so that the civilians could fight the Tutsis when the soldiers were at the front. He used the term "enemy", which was meant to designate Tutsis and pro-Tutsi or pro-RPF Hutus. Kabiligi also said that each sector's commander should organise clandestine commando operations. When speaking about killings of the enemy, he used the French term "*déraciner*" (uproot). Colonel Bizimungu reiterated Kabiligi's words and noted that weapons had been distributed in Kinigi commune, where the RPF might first attack. Major Ruhumiliza agreed with Kabiligi's assessment of the Arusha Accords and said that they were not favourable to Hutus.[319]

279. It was decided during the meeting to sensitise soldiers to raise awareness about the resumption of hostilities. The participants also agreed to sensitise and distribute weapons to the population and to strengthen existing militias, in particular the *Turihose* militia, led by Hassan Ngeze, which would carry out commando operations for the government. Witness XXQ said that members of the *Turihose* militia had received military training at various camps, including in Libya and Israel. After the meeting, there was a reception, and then

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T. 28 May 2007 pp. 30, 37-38; T. 29 May 2007 pp. 1-8, 21; T. 1 June 2007 pp. 54-55. The other Accused do not address the allegations concerning the Ruhengeri meeting.

[318] T. 11 October 2004 pp. 2, 4-5, 28; T. 12 October 2004 pp. 20-22, 42-44, 51, 73-74; Prosecution Exhibit 316 (personal identification sheet).

[319] T. 11 October 2004 pp. 2-3, 5-10; T. 12 October 2004 pp. 25-27, 62, 72.

Kabiligi departed by helicopter.[320] Bizimungu chaired a subsequent meeting that day to discuss how to implement Kabiligi's directives. The witness did not know whether any commando operations were carried out in the days after the meeting since he left for Kigali on 17 February.[321]

280. According to Witness XXQ, President Habyarimana and his Burundian counterpart had chosen "a long time before" the date of 23 February to launch a genocide in both countries. The hostilities did not resume then because it was during the school year and therefore students, who would be away from home, would not be killed. It was decided to postpone the operation until a holiday. The witness saw a telegram sent to all units on 22 February calling off the attack pending an agreement by the Rwandan and Burundian presidents on a new date. The plane carrying the two Presidents was shot down before a decision was taken.[322]

Kabiligi Defence Witness Luc Marchal

281. Colonel Marchal attended a meeting as the representative of UNAMIR on 15 February 1994 at army headquarters in Kigali. It included Kabiligi, General Uytterhoeven of the Belgian army and General Deogratias Nsabimana, the Rwandan army's chief of staff. The meeting lasted from 10.00 a.m. to shortly after 12.00 p.m. The group then had lunch together until 3.30 p.m. The event was mentioned in Marchal's diary, recorded during the events. Marchal also testified that in February 1994, Rwandan army aircraft were based at Kanombe airport and subject to flight restrictions under the Kigali Weapons Secure Area (III.1.3). He did not remember Kabiligi using a helicopter on 15 February 1994 and said that it would have been impossible for him to do so without prior UNAMIR approval. Marchal did not recall complaints of a helicopter being flown by Kabiligi without such permission. He acknowledged that Ruhengeri was not part of the KWSA.[323]

Kabiligi Defence Witness LX-65

282. Witness LX-65, a gendarmerie officer in Ruhengeri prefecture until early February 1994, testified that he knew Witness XXQ well and that they had attended school together. In February 1994, Witness XXQ was stationed in Gisenyi. Witness LX-65 was unaware of any meeting held in Ruhengeri prefecture on 15 February 1994. It would be unusual for such a meeting to occur without all units being informed of it via telegram from army headquarters. Had all units been informed, he would have known.[324]

283. The witness commented on the participants who, according to Witness XXQ, were at the meeting. In February 1994, Major Augustin Budura had replaced Major Joseph Nzabonimpa as commander of EGENA, whereas Major Nzabonimpa was assigned to represent the army with UNAMIR. Second Lieutenant Niyonsenga was nicknamed "Chuck

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[320] T. 11 October 2004 pp. 5, 7-12; T. 12 October 2004 pp. 62-63, 68-69.
[321] T. 11 October 2004 pp. 12-13, 28; T. 12 October 2004 pp. 63-64. At the subsequent meeting, Colonel Bivugabagabo was asked to distribute weapons, giving priority to Kinigi and Gatonde communes. Captain Hasangineza was tasked with organising training, and Major Ndekezi was supposed to provide fuel, provisions and supplies. Second Lieutenant Niyitegeka was placed in charge of supervising commando operations, targeting Tutsis and Hutus opposed to the government.
[322] T. 11 October 2004 pp. 14, 22, 26; T. 12 October 2004 pp. 72-73, 78-79.
[323] T. 30 November 2006 pp. 3-5, 7-10, 12; T. 5 December 2006 pp. 23, 33-40; T. 6 December 2006 pp. 8-17; Kabiligi Defence Exhibit 124 (Extract from Colonel Marchal's diary for 15 February 1994); Kabiligi Defence Exhibit 122 (personal identification sheet).
[324] T. 26 September 2006 pp. 3-4, 6-8, 13; Kabiligi Defence Exhibit 97 (personal identification sheet).

Norris", and the witness was unaware of any other gendarmes with that nickname. Witness LX-65 found it highly unlikely for a gendarmerie commanding officer to be replaced at such a high level meeting of battalion and sector commanders by a junior officer like Witness XXQ.[325]

Kabiligi Defence Witness LCH-1

284. Witness LCH-1 was a Hutu staff officer at the gendarmerie headquarters in Kigali in early 1994. He had access to communications, including telegrams, but did not see anything regarding a meeting in Ruhengeri prefecture on 15 February 1994. The witness did not hear about Kabiligi presiding over such a meeting but admitted that he did not remember all meetings that took place in February 1994. The army and gendarmerie were separate institutions, and a local army commander could not convene such a joint meeting without going through national headquarters. He testified that Major Augustin Budura, and not Major Nzabonimpa, was the commander of EGENA. Major Nzabonimpa was a liaison officer with UNAMIR. In addition, Pascal Niyonsenga was nicknamed "Chuck Norris". According to the witness, there was no militia called *Turihose*. The majority of the Rwandan armed forces supported the Arusha Accords, as they were losing the war to the RPF. Steps were thus taken at the highest level to ensure implementation.[326]

Kabiligi Defence Witness LAX-2

285. Witness LAX-2, a Hutu army officer in Ruhengeri prefecture, testified that Kabiligi did not chair or attend a meeting there on 15 February 1994. As a high ranking officer, he would have been informed about it and attended it if it had occurred. Furthermore, army and gendarmerie officers would not attend joint meetings, except in case of war, and there was a lull in fighting at the time. The witness, who knew Witness XXQ, did not see him in Ruhengeri in February 1994.[327]

Kabiligi Defence Witness FB-25

286. Witness FB-25, a Hutu army officer in Ruhengeri in early 1994, was unaware of a Ruhengeri meeting chaired by Kabiligi on 15 February 1994. Given the rank of the witness, he would have attended such a meeting had it occurred. Joint meetings of the army and gendarmerie occurred only in wartime. Junior officers, such as Witness XXQ, would never have replaced the gendarmerie's commanding officer in this kind of meeting. The witness was not aware of Major Ndekezi serving in Ruhengeri and said that Second Lieutenant Niyonsenga was known as "Chuck Norris". Witness FB-25 was not aware of telegrams sent to convene the 15 February meeting or to start a genocide on 23 February 1994. Moreover, weapons would not be distributed to civilians in Ruhengeri prefecture because it was not on the frontline.[328]

Kabiligi Defence Witness YUL-39

287. Witness YUL-39, a Hutu, was an army officer based in Ruhengeri prefecture in February 1994. He denied that there was a meeting of the command on 15 February and that

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[325] T. 26 September 2006 pp. 8-10. Witness LX-65 did not know any gendarme called Niyitegeka.
[326] T. 3 October 2006 pp. 16-27; T. 5 October 2006 pp. 38-40; Kabiligi Defence Exhibit 102 (personal identification sheet).
[327] T. 9 November 2006 pp. 82-85; T. 10 November 2006 pp. 1-4, 23; Kabiligi Defence Exhibit 108 (personal identification sheet).
[328] T. 13 November 2006 pp. 3-7, 31-34; Kabiligi Defence Exhibit 109 (personal identification sheet).

Kabiligi came to Ruhengeri via helicopter. It would have been impossible, given the witness's rank, for such a meeting of the command to have taken place without his knowledge. He testified that no telegrams about a meeting or a genocide were received. No orders were issued for weapons to be distributed to civilians. Furthermore, there was no militia known as *Turihose*. The witness said it was impossible for an officer with Witness XXQ's functions to have replaced his commander at the alleged meeting.[329]

Kabiligi Defence Witness RX-6

288. Witness RX-6, a Hutu, was an employee at the Ministry of Defence in February 1994. He previously worked in the secretariat of the general staff of the army and was familiar with the practice of incoming and outgoing messages. According to the witness, there was no message on 22 February 1994 to all units to cancel the military operation on 23 February. If such a message had been sent, his department in the Ministry of Defence would have received it as well.[330]

Nsengiyumva Defence Witness BRA-1

289. Witness BRA-1, a Tutsi and former soldier in the RPF, testified that he knew Witness XXQ well since they attended the same school and were imprisoned together in Rwanda. Witness XXQ told Witness BRA-1 that he was going to testify against several accused in Arusha, including Kabiligi, Nsengiyumva and Augustin Bizimungu. According to Witness XXQ, his testimony was not truthful because he did not always know the people he testified against, including Bizimungu, but he knew Kabiligi. After agreeing to testify in Arusha, Witness XXQ received special treatment at the prison.[331]

Deliberations

290. Witness XXQ was the only witness to testify about the alleged meeting, chaired by Kabiligi, on 15 February 1994 in Ruhengeri prefecture.[332] His evidence seemed consistent. However, he was convicted and sentenced to death in Rwanda in March 2001 for his role in the genocide and his appeal was pending at the time of his testimony.[333] The Kabiligi Defence submits that this gave him an incentive to falsely testify against Kabiligi. It points to Witness BRA-1 who testified that Witness XXQ told him that he gave false testimony against Kabiligi, among others, and that Witness XXQ subsequently received special treatment in prison. The Chamber does not find Witness BRA-1's testimony entirely convincing because he did not remember important details of his conversations with Witness XXQ.[334] Moreover, he stated that Witness XXQ testified between January 2003 and February 2004, while the

[329] T. 15 November 2006 pp. 27-37, 64-65, 70; Nsengiyumva Defence Exhibit 110 (personal identification sheet).
[330] T. 6 November 2006 pp. 3-4, 6, 9-10, 36; Kabiligi Defence Exhibit 104 (personal identification sheet).
[331] T. 5 April 2006 pp. 58-63; T. 6 April 2006 pp. 13-18; T. 29 May 2006 pp. 7, 33-37, 39, 41-45; Kabiligi Defence Exhibit 171 (personal identification sheet).
[332] The Chamber notes that there is no trace of the genocide planning telegram he testified about.
[333] T. 12 October 2004 pp. 11-12, 48-49; Kabiligi Defence Exhibit 85 (Judgment of 16 August 2001 rendered by the Military Court in Rwanda), p. 201.
[334] T. 6 April 2006 p. 17.

witness in fact appeared before the Chamber in October 2004. This said, in view of his conviction and appeal, the Chamber considers the testimony of Witness XXQ with caution.[335]

291. Witness XXQ claimed that he attended the meeting chaired by Kabiligi as the representative of the Ruhengeri gendarmerie squadron commander who was absent. Witnesses LX-65, LCH-1, LAX-2, FB-25, YUL-39 and RX-6, who were either senior military officers in Ruhengeri prefecture or at headquarters in Kigali, stated that Witness XXQ's was too junior in rank to represent the commander. According to Witness FB-25, it would be unusual for all the more senior officers in the squadron, who could replace the commander, to be absent at the same time. Apart from the absence of the commander, the Chamber notes that no explanation was provided why Witness XXQ would replace the commander at such an important meeting including high level representatives of the Rwandan army and gendarmerie in Ruhengeri.

292. The six Defence witnesses mentioned above contradicted other aspects of Witness XXQ's testimony. These include the origins and transmission of the telegrams announcing the meeting and the identity and functions of the other alleged participants at the meeting. Indeed, some of the witnesses, for example Witness FB-25, doubted whether the gendarmerie unit, to which they belonged, would have been invited to such a high level planning meeting.[336] The Chamber has taken into account that the former officers had an interest in distancing themselves from a genocide planning meeting given their admission that they would have participated in a meeting of officers at such a senior level.[337] Nevertheless, their evidence raises some doubts about the credibility of Witness XXQ's testimony.

293. The Chamber has considered Witness XXQ's statements to Tribunal investigators and Rwandan authorities. It appears that the witness first mentioned this meeting in a letter to Rwandan military prosecutors, dated 7 July 2000, around the time of his trial, in which he inculpated senior Rwandan military officers in the planning of the genocide.[338] The witness claimed that he discussed the incident and the role of Kabiligi and others in a statement made to Rwandan authorities in August 1994.[339] There is no record of this statement before the Chamber to corroborate this. The witness, who in giving such a statement would have effectively admitted to participation in planning the genocide, was not charged of that crime during his trial in 2001, and there is no reference to the meeting in the judgment. The Chamber is therefore not convinced that he mentioned this event to Rwandan authorities in 1994.

294. In cross-examination, the Kabiligi Defence suggested that Witness XXQ had contacted the Rwandan military prosecutors in the hope of avoiding conviction for genocide for which he was being tried. The witness denied this. He stated that he wrote the July 2000 letter after he learnt of Kabiligi's arrest and because he wanted to assist the course of justice.

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[335] The Chamber had cause for further concerns about the credibility of Witness XXQ. He admitted that during his time in the army, he had several allegations of indiscipline which led to his appearance before several military investigation commissions. These included allegations that he was pro-RPF. *See* T. 11 October 2004 pp. 2, 4-5, 28; T. 12 October 2004 pp. 20-22.

[336] T. 13 November 2006 pp. 6-7, 32-33.

[337] In this connection, the Chamber has noted that according to Witness RX-6, no mass killing of Tutsis occurred in Rwanda in 1994. According to the witness, Tutsi members of the population were fleeing as RPF soldiers were killing civilians while the army was fighting to halt the RPF advance. *See* T. 6 November 2006 p. 22.

[338] T. 12 October 2004 pp. 49-50, 76.

[339] T. 12 October 2004 pp. 11-12, 48-49.

The aim of his letter was to ensure that this Tribunal would learn about this evidence since it seemed unlikely that the Rwandan officials that took his August 1994 statement would have transmitted it.[340]

295. Witness XXQ's *pro justitia* statement to Rwandan prosecutors in October 2000 extensively discussed Kabiligi's 15 February 1994 genocide planning meeting in Ruhengeri.[341] The transcripts of those interviews on 30 and 31 October reflect the contents of the *pro justitia* statement. Taken as a whole, the statement and interview transcripts were generally consistent with the witness's testimony before the Chamber.[342]

296. In his only statement to Tribunal investigators in August 2003, the witness did not mention Kabiligi participating at the 15 February 1994 meeting in Ruhengeri. This particular statement discusses Witness XXQ's activities between September 1990 and June 1994, including the postings he held as an officer in various parts of Rwanda. They include his initial assignment to, transfer from and subsequent return to Ruhengeri. The statement also makes various allegations against Lieutenant Bizumuremyi, Lieutenant Colonel Nsengiyumva, Captain Hasangeniza and Lieutenant Colonel Bivugabagabo but does not mention the meeting. In his October 2000 statements, Witness XXQ had implicated Captain Hasangeniza and Lieutenant Colonel Bivugabagabo as participants in the Ruhengeri meeting. On its own, the Chamber considers that this omission is not fatal to Witness XXQ's credibility because it is possible that the Tribunal investigators did not specifically ask him about the meeting.[343]

297. However, viewed in context of its overall significance, the omission is important given the highly incriminating description of Kabiligi's alleged role in planning the Rwandan genocide at the Ruhengeri meeting which the witness recounted, in great detail, in his earlier October 2000 *pro justitia* statement. This is particularly so in light of Witness XXQ's claim that he wrote a letter in July 2000 to Rwandan authorities precisely because he wanted to share his knowledge about that important meeting with the Tribunal. Furthermore, the Chamber recalls that the witness insisted that his initial statement regarding this meeting dated back to August 1994. The Chamber is therefore left with doubts about the reliability of the witness's testimony.

298. More importantly, Marchal testified that he was meeting with Kabiligi and others in Kigali on 15 February. His account of the meeting is credible and corroborated by an entry in his diary written contemporaneously with the events. The Chamber observes that the diary did not explicitly mention "Kabiligi", only that the G-3 officers of the army and gendarmerie were present.[344] The Chamber accepts Marchal's explanation that this was military shorthand

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[340] T. 12 October 2004 pp. 9-15.

[341] Kabiligi Defence Exhibit 83 (*Pro Justitia* Statement of 31 October 2000).

[342] Kabiligi Defence Exhibit 82 (*Procès Verbal* of 30 October 2000); Kabiligi Defence Exhibit 84 (Transcription of the *Procès Verbal* of the Rwandan Ministry of Justice – *Parquet General*, dated 30 and 31 October 2000).

[343] T. 11 October 2004 pp. 3-5; T. 13 October 2004 pp. 85-88. Nsengiyumva Defence Exhibit 61 (statement of 12 August 2003).

[344] *See* Kabiligi Defence Exhibit 124 (Extract from Colonel Marchal's diary for 15 February 1994); T. 30 November 2006 p. 12. Marchal made the following entry in his diary: "10 a.m.: Visit for interview or discussion with minister of national defence, with the two chiefs of staff of the Rwandan armed forces, of the gendarmerie, the G3 officers of the Rwandan armed forces and the gendarmerie, Colonel Bagosora, the Kigali sector commander, the liaison officers in the general staff or sector officers, as well as of the force. Very interesting discussions, open and constructive. Second meal at Pegasus. ... 3:30 p.m.: we went on to another activity".

instead of naming them.[345] It also accepts that he knew Kabiligi.[346] Finally, the Chamber has noted Marchal's evidence that he could not recall Kabiligi requesting authorisation to use a helicopter to fly to Ruhengeri, and that there was no such authorisation.[347]

299. The Prosecution suggests that Witness XXQ might have been mistaken about the date of the meeting. However, the witness insisted that it occurred on 15 February 1994 and offered several reasons for his certainty of the date for the meeting.[348] In the Chamber's view, Marchal's evidence raises serious doubt about the credibility of Witness XXQ's testimony concerning Kabiligi's participation in the meeting.

300. The Prosecution has also argued that Witness XXQ's testimony about 15 February 1994 is reliable because it "mirrors other pieces of evidence brought before the Chamber".[349] This submission is not persuasive. There may well have been other activities in February which may be seen as similar preparations as the 15 February Ruhengeri meeting. However, this does not alter the Chamber's finding that Kabiligi was not there. Consequently, the Prosecution has not proven this allegation beyond reasonable doubt.

301. During the course of the trial, the Chamber ruled that Kabiligi had received adequate notice of Witness XXQ's allegations in the Pre-Trial Brief.[350] Regarding the Prosecution's alleged procedural impropriety, the Chamber concluded that the exclusion of Witness XXQ's testimony was not appropriate and that the Kabiligi Defence should have requested such a remedy before the witness appeared to testify.[351] In view of the Chamber's findings, there is no need to revisit these decisions.

2.4.5 Meeting at Gisenyi MRND Headquarters, February 1994

Introduction

302. Each of the Indictments alleges that army officers from the north of Rwanda saw their power erode as a result of the Arusha Accords and therefore began to exacerbate the discourse of ethnic hatred and violence. The Prosecution points to a meeting at MRND headquarters in Gisenyi prefecture in February 1994 where Nsengiyumva and Bagosora spoke. Reference is made to Witness XBM.[352]

303. The Bagosora Defence argues that it did not receive adequate notice of this event. The Nsengiyumva Defence points to the Chamber's prior exclusion of Witness XBM's testimony

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[345] T. 5 December 2006 p. 52.
[346] T. 30 November 2006 pp. 14-15.
[347] *Id.* 5-14.
[348] *See* the summary of Witness XXQ's evidence above about him attending court, relating Kabiligi's meeting to a previous meeting, and the witness's departure for Kigali.
[349] Prosecution Closing Brief, para. 1575 (intelligence reports, military alert, other meetings, killing of Martin Bucyana).
[350] Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, paras. 13-14.
[351] Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006, paras. 19-21; Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007, para. 37.
[352] Bagosora Indictment, para. 5.9; Kabiligi and Ntabakuze Indictment, para. 5.9; Nsengiyumva Indictment, para. 5.8; Prosecution Closing Brief, paras. 41, 491, 496, 1057, 1059-1060, 1575, pp. 714, 794, 851.

about this meeting in relation to Nsengiyumva. Both Defence teams submit that his evidence is uncorroborated and not credible.[353]

Evidence

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Prosecution Witness XBM

304. Witness XBM, a Hutu CDR party member from 1992 to 1994, testified that he attended a meeting at MRND headquarters in Gisenyi prefecture in February 1994. At least 500 people were present, including Jean-Bosco Barayagwiza and Hassan Ngeze, both of whom represented the CDR; Nsengiyumva; Bagosora, who represented the MRND; about 400 or 500 CDR party members; MRND party members; members of the general population; and some soldiers. Barayagwiza was the first of three speakers. He announced the CDR's decision to change its position and accept the parliamentary seats offered to it because the CDR needed to monitor the plot between the RPF and its accomplices in Agathe Uwilingiyimana's government in Kigali. Barayagwiza asked the Gisenyi population to erect a roadblock to prevent foodstuff and beer from reaching Kigali. He also claimed to have evidence that the Tutsis possessed firearms and were prepared to kill the Hutus, prompting him to request that most Hutu youths be given firearms training for self-defense.[354]

305. After Barayagwiza's speech, Nsengiyumva said he was pleased that Gisenyi prefecture had fewer accomplices than Kigali because they had been chased from Gisenyi. He said that if the Gisenyi population noticed accomplices in the future, it should call on soldiers to intervene. A strategy had been adopted to solve the problem once and for all if the issue of accomplices and plots against the country came up again.[355]

306. Bagosora spoke last and complained about the ruling regime. Agathe Uwilingiyimana had convened a meeting with Faustin Twagiramungu and senior officers to ask them to oust President Habyarimana, but soldiers from the north rejected this idea. The RPF was prepared to assassinate Habyarimana and start a war. He ended his speech by promising to fulfil Barayagwiza's wish to train the youth.[356]

Bagosora

307. Bagosora denied attending a meeting of MRND and CDR officials in February 1994, adding that, if he had participated in such a meeting, there would have been news accounts.[357]

Deliberations

308. Witness XBM was the only witness to testify about the alleged participation of Bagosora in a meeting at MRND headquarters in Gisenyi prefecture in February 1994. He mentioned the incident in his statement to Tribunal investigators in February 2003.[358] The

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[353] Bagosora Closing Brief, paras. 673, 676-686, 689, 691, 1407, 1623-1625, 1627, 1885-1888, 2191, pp. 348, 350-351, 372; T. 30 May 2007 pp. 5-6; Nsengiyumva Closing Brief, paras. 594, 1245, 1260, 2017; T. 31 May 2007 p. 43. The Kabiligi and Ntabakuze Defence teams do not address this specific allegation.
[354] T. 14 July 2003 pp. 21-24; T. 15 July 2003 pp. 6-9; Prosecution Exhibit 80 (personal identification sheet).
[355] T. 14 July 2003 pp. 22-23; T. 15 July 2003 pp. 7, 9.
[356] T. 14 July 2003 pp. 23-24; T. 15 July 2003 pp. 8-10.
[357] T. 1 November 2005 pp. 67-68; T. 14 November 2005 p. 11.
[358] Bagosora Defence Exhibit 26 (statement of 28 September 2003).

Chamber has expressed reservations about other aspects of his testimony (III.2.4.2; III.3.6.7; III.4.2.4) and views his testimony on this event with caution.

309. The Prosecution submits that the evidence of Witness XBM is corroborated by Alison Des Forges, who testified about common themes in the writings of Bagosora. The Prosecution notes that the themes expressed during the meeting are similar to his other writings.[359] In the Chamber's view, this is not sufficient to substantiate that the meeting in fact occurred or that Bagosora participated in it. It is also notable, given the size of the crowd, that only Witness XBM testified about this event and that there are no other contemporaneous accounts of the meeting.

310. The Chamber has also noted the difference between the witness's statement in February 2003, in which he described himself as an official of the MDR party, and his testimony which reflects that he was an active member of the CDR party.[360] As discussed below (III.3.6.7), the Chamber does not consider the explanation for his failure to mention his CDR affiliation in his statement convincing since his party affiliation is the main reason he attended this and other meetings central to his testimony.[361] While it remains possible that the witness attended the alleged meeting as a member of the general population, the discrepancy about his party affiliation as well as his explanation for it raise further questions about his credibility. The Chamber declines to accept his account of this meeting without adequate corroboration. Accordingly, the Prosecution has not proven beyond reasonable doubt that Bagosora attended a meeting at MRND headquarters in Gisenyi prefecture in February 1994.

311. The Chamber held, during the trial, that Bagosora had adequate notice of this allegation. In view of the Chamber's findings, it need not revisit the Bagosora Defence arguments concerning the pleading of this incident in his Indictment.[362]

2.4.6 Butare Meeting, February 1994

Introduction

312. Each of the Indictments alleges that as part of their activities to orchestrate the genocide, the Accused established lists of people to be killed. In particular, the Prosecution contends that Bagosora and Nsengiyumva helped prepare such a list at a meeting in Butare prefecture in February 1994. Shortly thereafter, 33 Tutsis on the list were abducted and killed. Many other Tutsis were also allegedly killed in various communes in Gisenyi prefecture, based on the list drawn up in Butare. Reference is made to Witness XBH.[363]

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[359] Prosecution Closing Brief, para. 1059.

[360] Bagosora Defence Exhibit 26 (statement of 28 September 2003).

[361] Witness XBM explained that he remained a clandestine member of the MDR party and unwillingly joined the CDR party (III.3.6.7). He also suggested that the investigators failed to ask him about his party affiliation. However, it follows from his statement that he was questioned on this matter.

[362] The Chamber's conclusion that Bagosora had notice of his participation in the meeting is found in Decision on Bagosora Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 58-60. However, Nsengiyumva's request to exclude this evidence was granted. *See* Decision on Nsengiyumva Motion For Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006 p. 22.

[363] Bagosora Indictment, paras. 5.1, 5.36, 5.40; Kabiligi and Ntabakuze Indictment, paras. 5.1, 5.27, 5.31; Nsengiyumva Indictment, paras. 5.1, 5.25, 5.29; Prosecution Closing Brief, paras. 46-48, 471-472, 491, 505, 571-577, 585, 1038-1041, pp. 709-710, 731-732, 734-735, 789-790, 809, 811-812, 847-848, 865-866, 868-869.

313. The Bagosora and Nsengiyumva Defences reiterate that these allegations were not sufficiently pleaded in the Indictments. They further argue that Witness XBH lacks credibility and is contradicted by his own statements and Witnesses Alphonse Higaniro, BK-1, KYZ-1 and LIQ-1.[364]

Evidence 40641

Prosecution Witness XBH

314. In March 1993, Witness XBH, a Hutu, started working for Captain Idelphonse Nizeyimana who lived in Butare prefecture. Bagosora and Nsengiyumva came to Nizeyimana's home for a meeting in February 1994. Bagosora arrived around 7.00 p.m. in a blue Toyota, and Nsengiyumva about 10 minutes later in a white Hilux double cabin pickup. Both wore military fatigues and had escorts. The witness served them food and, after the meal, Nizeyimana introduced him to Bagosora and Nsengiyumva, asking him to join the three of them at the table. Nizeyimana stated that those responsible for the killing of Martin Bucyana in Butare prefecture should be arrested and killed. Bagosora said that important Hutus were being killed and proposed that they prepare a list of Tutsis to be targeted, starting with intellectuals and traders, before going on to others. Everyone suggested names as Nsengiyumva wrote down the list. They eventually completed a list containing names of about 100 Tutsis.[365]

315. After Nsengiyumva compiled the list, five or six photocopies were made. Bagosora, Nsengiyumva and Nizeyimana each took a copy. They instructed Witness XBH to deliver the three remaining lists to Lieutenant Bizumuremyi, who was the commander of the Butotori Military Camp in Gisenyi, another to *conseiller* Faziri of the Gisenyi sector, and the last to Faustin Bagango, the *bourgmestre* of Nyamyumba commune in Gisenyi. Bagosora promised the witness that he would secure him an important job at the Bralirwa factory once the Tutsis on the list were killed.[366]

316. A few days later, soldiers acting on the orders of Nizeyimana arrested 33 Tutsi men, women and children in Butare for their alleged role in Bucyana's killing and transported them in a blue Daihatsu truck first to Nizeyimana's house and then to SORWAL match factory, where they spent the night.[367] The witness did not participate in the arrests. The next day, Witness XBH and Alphonse Higaniro, the director of SORWAL, escorted a convoy of vehicles to Gisenyi Town. The Tutsis were in one of the vehicles. The convoy stopped and

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[364] Bagosora Closing Brief, paras. 126-127, 175, 605-618, 1539-1540, 1589-1590, 1623-1625, 1671, 1673, pp. 342-344, 357; Nsengiyumva Closing Brief, paras. 27, 34-35, 38, 47-50, 52, 151, 286, 539, 600-613, 658, 664, 686, 850-876, 1045-1048, 1066-1067, 1075-1076, 1085-1086, 1093, 1312, 1337-1369, 1382-1392, 1395-1422, 1953, 1992-1997, 2387-2389, 2541-2542, 2547-2552, 2573-2594, 2595-2597, 2603-2605, 2607-2609, 3148-3150.

[365] T. 3 July 2003 pp. 13-22; T. 4 July 2003 pp. 29-31, 33, 35-46, 48; T. 7 July 2003 pp. 34, 45-47; Prosecution Exhibit 63 (personal identification sheet). Bralirwa was a local beer manufacturing company. The 100 Tutsis on the list included Safari Nyambwega and his mother Therese, a Tutsi lady called Mukarugambwa, Butira, and Safari who worked at the Bralirwa factory, Nehemi Munyensanga, Jean-Bosco Rwagasore, Vincent Kayihura, Daniel Hamuli who was a judge in Rewerere commune, Mukabutare, Munyengabe, and Léonidas Baganahe.

[366] T. 3 July 2003 pp. 21-22, 27; T. 4 July 2004 pp. 40-47. The transcripts occasionally mention "Nyamnyumba" or "Nyumba", but the correct reference is Nyamyumba commune. *See* Prosecution Exhibit 67 (Map of Gisenyi).

[367] SORWAL was a matches manufacturing company. Witness XBH said the Tutsis spent the night in another truck there, wedged between cartons of matches. *See* T. 3 July 2003 pp. 14, 22-23; T. 4 July 2003 p. 53.

waited at the house of Jean-Bosco Ndarugorogoye – a local trader who was assisting them. Another vehicle transported soldiers who subsequently took the Tutsis to the Butotori Military Camp in a Daihatsu. The witness later overheard a telephone conversation between Ndarugorogoye and Lieutenant Bizumuremyi confirming that they had been executed. He also thought that the bodies had been thrown into a lake close to the military camp to hide the identities of those killed. Witness XBH stayed in Gisenyi for seven days and delivered the lists that had been drawn up in Butare to Lieutenant Bizumuremyi and *bourgmestre* Bagango.[368]

317. After a meeting at Umuganda Stadium on the morning of 8 April, Witness XBH drove with Bizumuremyi to Nyamyumba commune and attended a meeting of about 100 persons chaired by *Bourgmestre* Bagango at the Rushubi sector office. Some *Interahamwe* indicated a readiness to attack Tutsis but complained about lack of weapons. Bizumuremyi and Bagango offered guns (Kalashnikov rifles) and grenades. The witness, along with 17 others that included three soldiers, some civilians and members of the civil defence, then left to start the killings. His group's objective was to kill eight Tutsis from the list drawn up in Butare, starting with the officials and traders. The witness led the group that then located and killed seven of them.

318. They found Jean-Bosco Rwagasore, a Tutsi who was also on the list, at the Bralirwa factory on 9 April but a group of *Interahamwe* took him to be killed. That evening, Witness XBH went to Rubavu commune and informed *Conseiller* Faziri that they had accomplished their mission. Faziri explained that everyone on his own list had been killed except Daniel Hamuli, whom they could not locate.[369]

319. When Witness XBH returned to Butare, he informed Nizeyimana who then phoned Bagosora and Nsengiyumva to report that the list had been distributed and 33 Tutsis killed. That weekend, Bagosora, Nsengiyumva and Higaniro visited Nizeyimana, who asked the witness to give them an oral briefing. Afterwards, Bagosora and Nsengiyumva commended him on his bravery.[370]

320. Sometime in May 1994, the witness saw Nsengiyumva in Rubavu commune following an incident where a local resident fired at some *Interahamwe* after refusing to surrender Tutsi civilians hiding in his home. Nsengiyumva demanded that the Tutsis be handed over and taken to the *Commune Rouge*, a cemetery in Gisenyi prefecture where Tutsis were killed.[371]

Bagosora

321. Bagosora expressed his surprise that someone like Witness XBH would be centrally involved in a meeting with two colonels and a captain, and that Nsengiyumva would have acted as secretary in their presence. Bagosora denied having asked for or seen in 1994, lists that would be used to eliminate Tutsis. He also observed that the witness's allegation about the killing of the 33 Tutsis was uncorroborated and suggested that there would have been witnesses and grieving family members had such an event taken place.[372]

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[368] T. 3 July 2003 pp. 22-26; T. 4 July 2003 pp. 47-54; T. 7 July 2003 pp. 1-6, 9-11, 13-16, 18-19, 48.
[369] T. 3 July 2003 pp. 33-41, 51-53, 58-60, 63; T. 4 July 2003 pp. 8-9; T. 7 July 2003 pp. 54-56, 61-62.
[370] T. 3 July 2003 pp. 26-27; T. 7 July 2003 pp. 18-19.
[371] T. 3 July 2003 pp. 41-46, 65; T. 7 July 2003 pp. 65-66.
[372] T. 31 October 2005 pp. 74-75; T. 14 November 2005 p. 12.

Nsengiyumva

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322. Nsengiyumva denied ever visiting Butare in 1993 and 1994. He knew Captain Nizeyimana from their days at Camp Kanombe but did not have any special relationship with him. Nsengiyumva had never been to his home and denied ever seeing Witness XBH before this trial. According to Nsengiyumva, he had never met with Bagosora to draw up a list of Tutsis to be executed. The suggestion that he, as a colonel, took notes in the presence of a more junior captain was strange and contradicted the military's seniority rule.[373]

323. Bizumuremyi was not in Gisenyi in February 1994, nor was he ever commander of the Butotori site. Had Nsengiyumva drawn up a list, as Witness XBH alleged, he would have delivered it to Bizumuremyi himself instead of asking the witness to do so. There was no record of the 33 Tutsis that were allegedly abducted and killed. The witness's suggestion that Nsengiyumva returned to Butare prefecture to receive a briefing on killings conducted in Gisenyi, where he was based, was illogical.[374]

324. Nsengiyumva denied that there was a rally at Umuganda Stadium on the morning of 8 April 1994. Furthermore, Bizumuremyi did not distribute any weapons. No Kalashnikov rifles were used in Gisenyi as only G3 and R4 rifles were available to soldiers and the gendarmerie. Nsengiyumva had never heard of any of the three soldiers that Witness XBH allegedly worked with to carry out killings. He had also no knowledge of any of the persons he was alleged to have killed, nor did he order their deaths.[375]

Nsengiyumva Defence Witness Alphonse Higaniro

325. Alphonse Higaniro, a Hutu, resided in Butare prefecture between 1992 and 1994 and was director-general of SORWAL. He was a friend and neighbour of Captain Nizeyimana but did not know Witness XBH. Higaniro stated that he never met Bagosora or Nsengiyumva at Nizeyimana's home. On the day Bucyana was killed, Higaniro left Butare prefecture for two weeks, which meant that he could not have participated in the killing of the 33 Tutsis. SORWAL owned a blue Daihatsu truck that could take between 20 and 30 persons but Higaniro denied any involvement in drawing up a list or in transporting Tutsis to execution in Gisenyi.[376]

Nsengiyumva Defence Witness BK-1

326. Witness BK-1, a Hutu from Nyamyumba commune in Gisenyi prefecture, testified that he knew Witness XBH well as they attended primary school and played football together. Around Easter in 1993 and in April 1994, they saw each other but Witness XBH never mentioned having moved to Butare prefecture.[377]

327. Witness BK-1 confirmed that Faustin Bagango was *bourgmestre* of Nyamyumba commune but denied that he was involved in any killings. In fact, some days after Habyarimana's death, Bagango publicly reprimanded certain assailants, including Witness

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[373] T. 9 October 2006 pp. 2- 8, 54; T. 11 October 2006 p. 7.
[374] T. 9 October 2006 pp. 3-5.
[375] *Id.* pp. 5-8, 41.
[376] T. 2 October 2006 pp. 19-23, 33-36; Nsengiyumva Defence Exhibit 211 (personal identification sheet).
[377] T. 6 July 2005 pp. 3-14; T. 11 July 2005 p. 26; Nsengiyumva Defence Exhibit 86 (personal identification sheet).

XBH, who were suspected of killing Tutsis. Subsequently, the suspects rallied and suggested that Nsengiyumva and Bagango, among others, were enemy accomplices because they either were opposing the killings of Tutsis or were providing them safe haven.[378]

Nsengiyumva Defence Witness KYZ-1 40638

328. Witness KYZ-1 was a trader in Gisenyi Town in 1994 who knew Jean-Bosco Ndarugoragoye well. She did not know Witness XBH but was familiar with Alphonse Higaniro from his work at the factory where her family obtained supplies of matches. Higaniro never visited Ndarugoragoye's home or business between February and April 1994, nor did he or his partners ever bring 33 Tutsis there. Someone like Higaniro, who was well known, would not have been hosted in Ndarugoragoye's home without the witness's knowledge. She never met Nsengiyumva.[379]

Nsengiyumva Defence Witness LIQ-1

329. Witness LIQ-1, who lived in Nyamyumba commune in 1994, worked in Bralirwa in Gisenyi prefecture for over a decade. Witness XBH and his family were acquainted as they attended the same church. The witness also knew Jean-Bosco Rwagasore. On the evening of 7 to 8 April 1994, *Interahamwe* severely beat Rwagasore and left him to die in his home. The witness later learned that the *Interahamwe* burned him there. Witness LIQ-1 assisted in Rwagasore's burial and maintained that he was never abducted from the Bralirwa factory.[380]

330. He also learned from *gacaca* sessions that Jean Marie Vianney Bembereza, who was detained at the Gisenyi prison, had confessed to killing Rwagasore and sought forgiveness from his family. The witness knew all the people Witness XBH alleged had been killed. At least one of them was still alive and spoke occasionally with Witness LIQ-1.[381]

Deliberations

331. Witness XBH was the only Prosecution witness to testify about the alleged meeting at Captain Idelphonse Nizeyimana's house in Butare prefecture in February 1994 where lists were made, and about the subsequent killing of 33 Tutsis in Gisenyi prefecture. At the time of his testimony, he was serving a sentence of 20 years imprisonment in Rwanda, and the Chamber views his testimony with caution.[382]

332. There are differences between Witness XBH's statements to Rwandan authorities and his testimony before the Tribunal. His conviction related to one killing, which he had confessed to in a *pro justitia* statement to Rwandan authorities in October 1999. In that statement, he affirmed that he had not committed any other crimes.[383] The Rwandan court found that the witness's disclosure of the circumstances surrounding that killing was a mitigating factor when determining his sentence.[384] However, in his testimony to the Tribunal

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[378] T. 6 July 2005 pp. 20-22; T. 11 July 2005 pp. 19-21, 32-33, 37, 40-42.
[379] T. 5 June 2006 pp. 25, 28-29, 30-32, 34, 38, 43-44; Nsengiyumva Defence Exhibit 183 (personal identification sheet).
[380] T. 19 June 2006 pp. 3-11, 14-15, 28-29; Nsengiyumva Defence Exhibit 188 (personal identification sheet).
[381] T. 19 June 2006 pp. 10-14, 16, 19-24, 29-30, 33.
[382] Bagosora Defence Exhibit 24 (Rwandan judgment of Witness XBH, dated 27 October 2000).
[383] Bagosora Defence Exhibit 21 (statement of 8 October 1999), p. 20.
[384] Bagosora Defence Exhibit 24 (Rwandan judgment of Witness XBH, dated 27 October 2000), p. 68.

in July 2003, Witness XBH acknowledged participating in several crimes, including helping to draw up lists of Tutsis to be killed and escorting a convoy of 33 Tutsis that were apparently taken from Butare prefecture to Gisenyi prefecture for execution. He also admitted to having participated in the killing of seven other Tutsis over a two day period.

333. When asked about this contradiction, the witness admitted lying to the Rwandan authorities and stated that this was to avoid being sentenced to death.[385] While it might be understandable that the witness would try to avoid a more severe sanction, his willingness to mislead Rwandan judicial authorities for more favourable treatment raises some concerns about his credibility. The Chamber also observes that Witness XBH is an alleged accomplice of Bagosora and Nsengiyumva and may wish to shift guilt.

334. In his statement to Tribunal investigators in September 2002, Witness XBH stated that he participated in the alleged meeting to draw up the list of Tutsis with only three other individuals, namely Nizeyimana, Bagosora and Nsengiyumva. He explained that Bagosora proposed drawing up the list. Also, the witness offered names while Nsengiyumva alone wrote them down.[386] The witness maintained this position when he testified before the Chamber in July 2003.

335. In his subsequent interview with Tribunal investigators in June and October 2004, the witness stated that *Bourgmestre* Kanyabashi, Minister Augustin Ngirabatware, Alphonse Higaniro and Félicien Kabuga had all attended the meeting and participated in making the list.[387] As a result of this statement, the Chamber granted a Defence request to recall the witness for further cross-examination.[388]

336. When Witness XBH testified before the Chamber for the second time in June 2005, he gave a different account. He testified that it was Kabuga, not Bagosora, who had proposed that a list be made. Higaniro, Kanyabashi and Nsengiyumva had then written the names dictated by the others present.[389] Regarding the difference in the number of participants at the meeting, he explained that his prior testimony in 2003 focused only on the role of military officers and omitted all references to "civilian" personalities.[390] The witness added that he had told a Tribunal investigator that he could not offer testimony against Ngirabatware or Kabuga, because of a pact between Ngirabatware's family and his family. He also simply forgot to mention Kanyabashi and, in any event, the Tribunal investigator failed to ask exhaustive questions and did not properly record his statement.[391]

337. The Chamber does not find these explanations convincing. In particular, the witness gave detailed testimony in July 2003 concerning how the February meeting unfolded, including the arrival of the participants. He also confirmed the number of participants several

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[385] T. 4 July 2003 pp. 4-5, 8-12, 16; T. 7 July 2003 p. 61; T. 20 June 2005 p. 12; T. 21 June 2005 p. 26.
[386] Bagosora Defence Exhibit 20 (statement of 9 and 10 September 2002).
[387] Nsengiyumva Defence Exhibit 85 (statement of 3, 4 and 8 June and 5 and 6 October 2004).
[388] Anatole Nsengiyumva's Extremely Urgent Motion to Recall Prosecution Witness XBH for further Cross-Examination Pursuant to Rules 54, 90 (G), 73 (A), and 91 (B) of the Rules of Procedure and Evidence and Articles 19 and 20 of the Statute, filed on 6 April 2005. The Chamber granted the motion in an oral decision. *See* T. 18 May 2005 p. 7.
[389] T. 21 June 2005 pp. 8-17, 27-28, 30-37, 39; T. 22 June 2005 pp. 17-21, 24, 27.
[390] T. 21 June 2005 pp. 6, 20; T. 22 June 2005 p. 3.
[391] T. 21 June 2005 pp. 23-26, 43; T. 22 June 2005 p. 16.

times during his examination in 2003.[392] His assertion that he omitted Kabuga and Ngirabatware due to a family pact illustrates the witness's willingness to alter his account of events for personal reasons. Furthermore, this account does not explain why he did not testify in 2003 that Higaniro was present at the meeting. He did implicate Higaniro in relation to other events in that testimony. His suggestion that this aspect of his testimony was not properly recorded is therefore not convincing.

338. The discrepancies in Witness XBH's testimony and statements concerning the meeting as well as his explanations for them reduce his credibility.[393] In addition, the evidence of Witnesses BK-1, KYZ-1 and LIQ-1, while not definitive, raise additional questions about the identity of the Tutsi victims mentioned by Witness XBH as well as that of the perpetrators of the subsequent killings in Nyamyumba commune based on the Butare list. Accordingly, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that in February 1994 Bagosora and Nsengiyumva participated in a meeting in Butare where a list was drawn up of Tutsis to be killed, shortly after which 33 Tutsi were abducted and killed. Furthermore, given the Prosecution evidence, the Chamber has some doubts about Nsengiyumva's responsibility in relation to the alleged killings in April in Nyamyumba commune and other parts of Gisenyi prefecture.

339. The Chamber held, during the trial, that Bagosora and Nsengiyumva had adequate notice of these allegations. In view of the Chamber's findings, it need not revisit the Defence arguments concerning the pleading of these elements in their respective Indictments.[394]

2.4.7 Senegalese Dinner, 4 April 1994

Introduction

340. The Bagosora Indictment alleges that on 4 April 1994, Bagosora said that the only solution to the political impasse was to eliminate all the Tutsis. According to the Prosecution, he made these comments at a dinner organised by the Senegalese contingent of UNAMIR in Kigali while in the company of Luc Marchal and Roméo Dallaire. Reference is made to

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[392] *See, e.g.*, T. 3 July 2003 p. 17 ("Mr. President: There were three persons or four persons present during that conversation; is that so, Mr. Witness? The witness: There were three people. I was the fourth person, so there were four of us."); T. 4 July 2003 p. 38 ("Mr. President: ... In that house, on that evening, when you prepared the meal and the lists eventually were drawn up, who was in the house except for Mr. Bagosora, Mr. Anatole Nsengiyumva, your chief and yourself? Who else was in the house, please? The witness: No one else. Mr. President: On that evening there were only four persons in the house? ... The witness: Yes."); *Id.* p. 41 (Bagosora Defence: "Q. So, from 8:00 onwards there were four of you ... Am I right? A. Yes, that is correct.").

[393] In addition, the Chamber notes that during his testimony in June 2005, Witness XBH asserted that a relative of Bagosora and another individual had solicited him to change his statement for a bribe of three million Rwandan francs. He further alleged that a staff member of the Tribunal also asked him to modify his statements and to testify for the defence. Following these allegations, the Chamber ordered the Registry to investigate the matter. The investigating panel concluded that Witness XBH's allegations were not in any way credible. *See* T. 20 June 2005 pp, 14, 16-18; T. 22 June 2005 pp. 31-45, 48-55, 62-64; Bagosora Defence Exhibit 231 (*Rapport sur les allegations du témoin XBH relatives à des tentatives de lui faire changer son témoignage*).

[394] *See* Decision on Bagosora Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 54-57, 77; Decision on Nsengiyumva Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 10-12, 19, 22-24; Decision on Defence Objection to Elements of Testimony of Witness XBH (TC), 3 July 2003.

Dallaire and Expert Witness Filip Reyntjens.[395] The Bagosora Defence disputes the allegation and refers to the testimony Marchal, Isabelle Uzanyinzoga and Babacar Faye.[396]

Evidence

Prosecution Witness Roméo Dallaire

341. General Dallaire, the military commander of UNAMIR, testified that on 4 April 1994, he attended a dinner at the Méridien Hotel in Kigali, organised by the Senegalese contingent of UNAMIR in celebration of their national holiday. He sat at the same table as Colonel Marchal, Bagosora and his wife, and some other persons. Dallaire overheard Bagosora state that the region was faced with a Tutsi hegemony and that the Tutsis wanted to reclaim power.[397]

342. During the dinner, Dallaire also observed Marchal and Bagosora in a conversation, but did not hear the details since he was across from them and the music was loud. Sometime before Marchal's evacuation on 18-19 April, Marchal told Dallaire that Bagosora had stated that the war was at hand and that "a final solution was going to happen", involving elimination of the Tutsis. Dallaire was not surprised that he was not informed immediately of these comments, both because Marchal probably assumed that Dallaire was listening at the time and because the comments were not different in kind from Bagosora's general attitude towards the Tutsis.[398]

Prosecution Expert Witness Filip Reyntjens

343. Filip Reyntjens, an expert witness in Rwandan history, confirmed that he interviewed Marchal for research purposes in July 1994. Marchal told Reyntjens that during the Senegalese national dinner he heard Bagosora state that "the Arusha Accord was going to lead nowhere, except to disaster, and that the only course of action would be to exterminate all Tutsi". This was subsequently reflected in Reyntjens book. In his testimony, he pointed out that Marchal's statements, in which he indicated confusion as to whether Bagosora had predicted the final solution of the Tutsis, were given a long time after the interview.[399]

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[395] Bagosora Indictment, para. 5.13; Prosecution Closing Brief, paras. 726-728, 1528, p. 716.
[396] Bagosora Closing Brief, paras. 848–862, 1544, 1594, 1824, 1829, 1850, pp. 349-350.
[397] T. 19 January 2004 pp. 19-20; T. 22 January 2004 p. 46.
[398] T. 19 January 2004 pp. 20, 21-22 (examination-in-chief: "... [Marchal] related to me a statement by Colonel Bagosora that he heard and thought that I had heard also in regards to going to the ultimate solutions and clearly indicating an ethnic war was at hand, and words to that effect. I don't remember the exact words. ... The words were in nature indicating that war was at hand and a final solution was going to happen. Judge Egorov: And what was that final solution going to be? The witness: Well, it was directed towards that Tutsi ethnicity. And he at times said Tutsis and at other times used the RPF, which was over 90 per cent Tutsi. He was demonstratively hostile to the RPF on most occasions, anyway, although sometimes not overtly. But it was – they had been talking about the Tutsi hegemony, and from what I gather, was a continuum of that point."); T. 22 January 2004 pp. 45, 46-47 (cross-examination: "Q. Let us be clear here, General. Did you or didn't you hear Bagosora say that the Tutsis had to be eliminated? A. No I did not hear him say that. Q. ... Do you agree that ... Colonel Marchal did not hear Bagosora say that Tutsis had to be eliminated? A. No. Colonel Marchal said that he had heard Bagosora say so. Q. Are you sure that Colonel Marchal didn't hear Bagosora say the RPF had to be eliminated? A. It seems to me that it was the Tutsis. If it was a question of eliminating RPF we have to know that the RPF was 95 percent Tutsi.").
[399] T. 15 September 2004 pp. 33 (quote), 34; T. 17 September 2004 pp. 15, 18-21; Bagosora Defence Exhibit 9 (Filip Reyntjens: *Rwanda: Trois jours qui ont fait basculer l'histoire* (1995), p. 22.

Bagosora

344. Bagosora attended the Senegalese dinner on 4 April at the invitation of Boubacar Faye. He sat at the same table as Dallaire, Marchal, Mamadou Kane and his own wife, Isabelle Uzanyinzoga. The conversation focused on Rwandan regionalism and ethnic divisions. Bagosora also discussed the RPF's unwillingness to continue the peace process and predicted that the RPF intended to seize power through violent means. He denied discussing the elimination of the Tutsis or the RPF, although he later stated that Marchal's book provided an accurate summary of what had been discussed during dinner.[400]

Kabiligi Defence Witness Luc Marchal

345. Colonel Marchal, the Kigali sector commander of UNAMIR, confirmed that at the Senegalese dinner on 4 April, he sat with Dallaire, Mamadou Kane, and Bagosora and his wife. Bagosora, who sat next to Marchal, discussed the long-standing antagonism between the Tutsis and the Hutus. Marchal was unable to recall whether Bagosora also called for the elimination of the Tutsis or of the RPF. If Bagosora had made significant statements regarding the elimination of the Tutsis, Marchal would have entered this into his diary the same evening. No such entry had been made. He was uncertain whether he later informed Dallaire of Bagosora's utterances during the dinner.[401]

346. Marchal confirmed that he informed Reyntjens in July 1994 that Bagosora had referred to the extermination of the Tutsis at this dinner. He made similar comments in a *Pro Justitia* statement to the Belgian authorities in November 1995. Subsequently, he altered his views on this event in a statement given to Tribunal investigators in 1997, stating that he was uncertain whether Bagosora had used the term "Tutsi" or "RPF". In 2001, he wrote a book where he recounted his experiences at the Senegalese dinner. Marchal explained that his conflicting reports were a result of genuine confusion he felt regarding the content of Bagosora's utterances at this event.[402]

Bagosora Defence Witness Isabelle Uzanyinzoga

347. Isabelle Uzanyinzoga, Bagosora's wife, attended the Senegalese dinner on 4 April with her husband. During their four hours there, she never left her husband's side and heard his every word. Shortly after arriving, they sat next to each other at a rectangular table. Seated across from them were Dallaire and Marchal. A fifth individual that she could not identify also sat at the table. Dallaire, Marchal and Bagosora discussed Rwanda's ethnic issues, and Bagosora stated that the RPF was preventing the installation of the Broad-Based Transitional Government. Bagosora never said that the Tutsis or the RPF had to be eliminated.[403]

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[400] T. 2 November 2005 pp. 15-20, 22-23 ("Q. To summarise, Colonel, that is, in relation to the Senegalese ceremony, based on everything that has been said, can you tell the Court or summarise what you believe you said during that ceremony? A. I believe that Marchal's book summarised everything. That is the summary that I would have given. We did not talk about eliminating Tutsis; no such thing was said.").

[401] T. 4 December 2006 p. 37; Bagosora Defence Exhibit 361 (Extract from Colonel Marchal's diary, given in a *Pro Justitia* statement of 6 November 1995 to Belgian authorities), p. 2.

[402] T. 4 December 2006 pp. 38-43, 46-50; T. 6 December 2006 pp. 19-24; Bagosora Defence Exhibit 80 (statement of 11 February 1997), pp. 5-6; Bagosora Defence Exhibit 59 (Colonel Luc Marchal: *Rwanda: La Descente aux Enfers* (2001), p. 213.

[403] T. 1 December 2005 pp. 2, 14-16, 44, 48-50, 60.

Bagosora Defence Witness Babacar Faye

348. Lieutenant Colonel Faye, a Senegalese military officer assigned to UNAMIR, testified that he invited Bagosora and his wife to the 4 April celebration of Senegal's national day. There was "great noise" throughout this celebration, due in part to the Ghanaian battalion's orchestra playing in an enclosed space, which resulted in loud conversations. When Bagosora and his wife arrived, Faye seated them at the dignitaries' table. He did not hear Bagosora suggest that Tutsis be eliminated during the times he was with Bagosora on this evening.[404]

Bagosora Defence Witness Jacques Roger Booh-Booh

349. Jacques Roger Booh-Booh, the UN Special Representative to Rwanda, was a guest of honour at the Senegalese National Dinner. He was not aware that Bagosora had attended this event or made any derogatory statements during it.[405]

Deliberations

350. It is undisputed that Bagosora attended the Senegalese National Dinner at the Méridien Hotel in Kigali on 4 April and that he discussed the Rwandan political situation, the Arusha Accords, and the RPF with General Dallaire and Colonel Marchal who were seated at his table. The main question for the Chamber is whether Bagosora, as part of a conversation with Marchal, proposed eliminating the Tutsis as a solution to the political impasse between the Rwandan government and the RPF.

351. Only Marchal heard the alleged remark. This is not surprising, given the loud music that evening. Dallaire testified that Marchal told him about the conversation before 18 April. The Chamber accepts his evidence even though Marchal did not recall mentioning this to Dallaire. It follows from Dallaire's testimony that he was not quite certain about the exact words used by Marchal. He did not rule out that Bagosora had referred to the elimination of the RPF and not the Tutsis but noted that the RPF was predominantly composed of Tutsis.[406]

352. Marchal's interview with Reyntjens in July 1994 was reflected in the book, published the following year, where Reyntjens wrote that Bagosora had said that it was necessary to exterminate all Tutsis.[407] Similarly, in a 1995 *Pro Justitia* statement given to Belgian authorities on 29 November 1995, Marchal stated that Bagosora had referred to the "elimination of Tutsis" during the Senegalese dinner.[408] Marchal testified that this wording was influenced by the investigator's lack of knowledge about the Rwandan situation.[409]

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[404] T. 28 March 2006 pp. 39-41. Faye testified that the Senegalese contingent commander, Colonel Seck, may have been with Bagosora all evening, as he had invited Bagosora to the event. Seck would have informed Faye if such an event had occurred but never did.

[405] T. 21 November 2005 pp. 73-74, 78.

[406] T. 22 January 2004 p. 47 (quoted above). In connection with its assessment of Dallaire's testimony, the Chamber has taken into account Bagosora Defence Exhibit 245 (Dallaire's interview with *Le Soir* on 2 December 1995) as well as the reference to it in Bagosora's testimony at T. 2 November 2005 pp. 21-24. It notes that the interview was not put to Dallaire during his cross-examination.

[407] Bagosora Defence Exhibit 9 (Filip Reyntjens: *Rwanda: Trois jours qui ont fait basculer l'histoire* (1995)), p. 22: "*Lors d'une reception donnée par le contingent sénégalais de la MINUAR à l'occasion de la fête nationale de leur pays, le colonel Bagosora disait devant plusieurs témoins que les accords d'Arusha n'offraient aucune perspective et qu'il fallait exterminer tous les Tutsi*".

[408] This *Pro Justitia* Statement was not entered as an exhibit but the relevant portion was read into the record during Marchal's cross-examination. *See* T. 4 December 2006 p. 38 ("In answer to your question regarding

353. When Marchal gave his statement to Tribunal investigators in 1997, he was uncertain whether Bagosora had referred to the elimination of the RPF rather than the Tutsis but maintained that Bagosora had predicted the elimination of Tutsis.[410] And in his book, published in 2001, he wrote that Bagosora had referred to the elimination of the RPF and not the Tutsis.[411] Before the Chamber, Marchal explained that he was in doubt about the exact words used by Bagosora, in particular because his diary, which was filled in on the evening of 4 April 1994, did not refer to elimination of Tutsis as such.[412]

354. Marchal has explained his different accounts as confusion about what was said. However, as late as in February 1997, Marchal understood Bagosora's utterance as a prediction of the elimination of the Tutsis. He was even surprised that Bagosora had said this in the presence of UNAMIR representatives. This indicates that Bagosora's remark was more significant than reflected in Marchal's diary. Nevertheless, his present uncertainty about the exact content of the statement raises some doubt concerning what was said.

355. Having assessed the totality of the evidence, the Chamber finds it established that Bagosora mentioned the elimination of the RPF. However, it has not been demonstrated that he also referred to Tutsis in general, either explicitly or by implication. Consequently, the Chamber does not find it proven beyond reasonable doubt that Bagosora expressed himself in favour of elimination of "all the Tutsis", as alleged in the indictment, during the conversation with Marchal at the Senegalese National Dinner on 4 April 1994.

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statements by Colonel Bagosora on a plan intended to eliminate the Tutsis, 'My answer is that, indeed, at the reception of the 4th of April at the Méridien hotel, on the occasion of the Senegalese national day, Colonel Bagosora said that the only plausible solution for Rwanda would be the elimination of the Tutsis'").

[409] T. 4 December 2006 p. 40 ("But I can tell you that the person who was questioning me at that time, apart from what information they may have accessed in the press with regard to Rwanda, had no other idea or precise elements to define the RPF, the Tutsis, what's the difference between the Tutsis and the RPF and in the Tutsis living along the borders of Rwanda? None of these points were on the agenda or within the knowledge of that investigator").

[410] Bagosora Defence Exhibit 80 (statement of 11 February 1997), pp. 5-6 ("[Bagosora] summarised his view in the following terms: The RPF has only one objective, to take power by force, and the RPF has no intention of participating in power through democratic means and as there is no way of getting along with the RPF, the only solution is to eliminate the Tutsis. Today, I am not sure of the word used at the end of the above sentence: "RPF" or "Tutsi". What I am sure of is that his analysis of the situation predicted the elimination of the Tutsis because, in the course of the conversation, Bagosora commented on the traditional antagonism between the Hutus and the Tutsis ... I was surprised, however, that Bagosora said such a thing in public, given his position as *directeur de cabinet* in the Ministry of Defence").

[411] Bagosora Defence Exhibit 59 (Colonel Luc Marchal: *Rwanda: La Descente aux Enfers* (2001), p. 213: "*Insistant sur l'antagonisme ancestral entre Hutus et Tutsis, il conclut que le FPR n'a pas la moindre intention de participer au processus de paix par des moyens démocratiques mais que sa seule et unique motivation est la conquête du pouvoir par la force. Dans ces conditions, la seule possibilité pour le Rwanda de connaître un jour la paix est de l'éliminer*").

[412] T. 4 December 2006 pp. 37-38 ("And I am very much convinced that if Colonel Bagosora had made significant statements that made it possible for me to believe that the conclusion of his speech was really the elimination of Tutsis as such, I am convinced that this would have been reflected in the transcripts of that event. But that is not the case."); Bagosora Defence Exhibit 361 (Extract from Colonel Marchal's diary entry for 4 April 1994, given in a *Pro Justitia* Statement of 6 November 1995 to Belgian authorities): ("*1700 HR réception donnée par les Sénégalais à l'occasion de leur fête nationale. Très belle réussite, chaleureuse ambiance. Je prends le repas en compagnie du FC [Force Commander], de Mr Kane et du Col Bagosora et de son épouse. Intéressante discussion sur la situation politique au Rwanda et sur l'importance de l'ethnie dans les relations entre les communautés. En fait la thèse défendue est que la seule motivation du FPR en prenant les armes contre le gouvernement actuel n'est pas la victoire de la démocratie, mais la conquête du pouvoir par la violence. Je suis assez prêt de partager cette thèse qui me semble conforme à mes observations et deductions.*").

2.5 Preparation and Use of Lists

356. Each of the Indictments alleges that, as part of the Accused's conspiracy to eliminate Tutsis and members of the opposition, civilian and military authorities and militia prepared lists of persons to be eliminated. As early as October 1990, lists were used by Bagosora and Ntabakuze as part of the mass arrests following an RPF offensive into Rwanda. At a 1992 meeting, Bagosora instructed the two general staffs of the army and gendarmerie to create lists of the "enemy and its accomplices", which had been defined in the Definition of the Enemy document (III.2.2). The army intelligence bureau (G-2) prepared and updated these lists under the supervision of Nsengiyumva and later Aloys Ntiwirabogo. One of these lists was found in the vehicle of Déogratias Nsabimana, the army chief of staff, after a traffic accident in 1993. On 10 January 1994, an *Interahamwe* leader informed UNAMIR that he had received orders to prepare lists of Tutsis to be eliminated. From 7 April to late July 1994, the military and *Interahamwe* allegedly used these pre-established lists to massacre Tutsis and moderate Hutus.[413]

357. The Defence teams challenge the pleading in their respective Indictments of these allegations. They also dispute the evidentiary basis for the Prosecution's claims. Nevertheless, they do not seriously dispute that civilian or military authorities may have maintained lists. The Bagosora, Ntabakuze and Nsengiyumva Defence teams notably intimate that it is normal for governments or political parties to maintain lists. The Defence teams contest that the purpose of any such list, if it existed, would be to eliminate particular individuals. At any rate, targeted killings for political purposes would contradict claims that the murders constituted genocide.[414]

358. A number of the events, discussed below, precede the Tribunal's temporal jurisdiction of 1 January to 31 December 1994. The Appeals Chamber has held that this does not preclude the admission of such evidence if it is relevant and has probative value in terms of clarifying the context in which the crimes occurred, establishing by inference an Accused's criminal intent, or showing a deliberate pattern of conduct.[415] These pre-1994 events are not themselves material facts on which a conviction can be based. The Chamber therefore does not find it necessary to discuss the challenges by the Defence to the pleading of the pre-1994 incidents in the Indictments.

2.5.1 Arrests, October 1990

Introduction

359. In support of the allegation that Bagosora and Ntabakuze used lists in connection with their role in the mass arrests after the RPF attack on 1 October 1990, the Prosecution relies on Witnesses DBY, DBQ, XAB, XXC, XAI and Expert Witness Alison Des Forges, as well as Defence Witness DM-25, discussed below (III.2.5.2-3). Expert Witness Filip Reyntjens and

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[413] Bagosora Indictment, paras. 1.18, 5.1, 5.36-5.40, 6.34, 6.52; Kabiligi and Ntabakuze Indictment, paras. 1.18, 5.1, 5.27-5.31, 6.24; Nsengiyumva Indictment, paras. 1.18, 5.1, 5.25-5.29, 6.28. The relevant portions in the Prosecution Closing Brief are referenced below in each sub-section.

[414] Bagosora Closing Brief, paras. 126-140, 1985-1987, pp. 526-527; Kabiligi Closing Brief, paras. 185, 1522, 1537, pp. 605-607; Ntabakuze Closing Brief, paras. 2298-2301; T. 30 May 2008 pp. 85-86; Nsengiyumva Closing Brief, paras. 663-685.

[415] *Nahimana et al.* Appeal Judgement, paras. 315-316.

Ambassador Flatten also gave relevant testimony. The Prosecution submits that Kabiligi would have been "closely involved" in the events since he was a senior officer at ESM in 1990. To demonstrate this, it points to evidence of similar conduct from Witness XAI that Kabiligi gave orders to capture and kill "*Inyenzis*" in Byumba prefecture in 1992.[416]

360. The Bagosora and Ntabakuze Defence teams do not dispute that individuals arrested in October 1990 were previously identified. However, the evidence of the Accused's role in the arrests lacks credibility and relevance to the events which unfolded after 6 April 1994. Reference is also made to Witnesses LE-1 and DM-52 as well as Expert Witness Bernard Lugan. The Kabiligi Defence disputes that Kabiligi used lists and that he issued orders to capture and kill "*Inyenzis*" in 1992, pointing to Witnesses DVD-7 and FB-25.[417]

Evidence

Prosecution Witness DBY

361. Witness DBY, a Tutsi, was a member of the Para Commando Battalion in October 1990. The army chief of staff dispatched several army units, including a company of the Para Commando Battalion, to the war front in Byumba prefecture on the night of 1 October 1990 immediately following the RPF attack on Rwanda. The next day, the witness accompanied Ntabakuze and the rest of the Para Commando Battalion to Gabiro in Byumba prefecture. They returned to Camp Kanombe on 4 October 1990. That night, the witness heard sustained gunfire coming from the airport towards the camp, and the battalion was assembled and informed that the "Tutsis" had arrived in Kigali.[418]

362. On 5 and 6 October 1990, Witness DBY accompanied Ntabakuze, his guards and driver on an operation in Kigali where soldiers arrested Tutsis and individuals without identity cards. Ntabakuze read out names from a typed three page list of people who were then sought for arrest. Ntabakuze also unsuccessfully tried to locate a Hutu business man on the list named Ndagije, who was suspected of being an accomplice based on his connections to Uganda.[419]

Prosecution Witness DBQ

363. Witness DBQ, a Hutu, testified that he was a member of the Para Commando Battalion in 1990. Shortly after the RPF invaded Rwanda in October 1990, Tutsis and Hutus identified as RPF accomplices were selectively arrested in areas such as Kanombe, Gikorongo, Gikondo and Remera and brought back to Camp Kanombe. The witness participated in the arrest of four people in Kimironko. He heard from the bodyguards of Bagosora and Ntabakuze that these Accused used lists to identify and arrest individuals

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[416] Prosecution Closing Brief, paras. 277-281, 592, 1099-1100(a), 1103(c-d), 1108, 1109(g), pp. 731-735, 809-813, 865-868.
[417] Bagosora Closing Brief, paras. 479-505; Kabiligi Closing Brief, paras. 110, 115-116, 234-235, 339-342, 404-409, 729, 742-744, 751, 1126-1127, 1537, 1728; Ntabakuze Closing Brief, paras. 509-556; T. 30 May 2007 pp. 7, 25 (Bagosora). The Nsengiyumva Defence does not address this allegation in its Closing Brief.
[418] T. 12 September 2003 pp. 43, 46-48; T. 22 September 2003 p. 2; Prosecution Exhibit 95 (personal identification sheet).
[419] T. 22 September 2003 pp. 3-6, 19.

suspected of being RPF accomplices. However, he did not see any of these lists and only received verbal orders during the operation.[420]

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Prosecution Witness XAB

364. Witness XAB, a Tutsi member of the Para Commando Battalion, was deployed to Mutara in October 1990 and returned to Camp Kanombe on 5 October 1990. That evening, the Light Anti Aircraft Battalion fired heavy weapons steadily towards Masaka hill, and Witness XAB heard that the "enemy" had reached Kigali. The following morning, homes were searched and people were asked for identification. Tutsis were gathered at the Nyarugunga sector office.[421]

Prosecution Witness XXC

365. Witness XXC, a Hutu, lived in the Kicukiro sector of Kanombe commune in 1990 and worked as a watchman in the Kiyovu area. Sometime after 1 October 1990, he heard heavy gunfire, and the next day, at about 5.00 a.m., approximately 20 soldiers wearing camouflage uniform as well as black and camouflage berets surrounded his neighbourhood. They searched the houses and inspected the identity cards of the residents. The soldiers arrested Tutsis, individuals without identity cards and residents with issues of the newspaper *Kanguka* in their home. Those arrested were ferried on buses to Nyamirambo stadium. As the witness boarded one of the buses to be taken to the stadium, people from Gisenyi prefecture, who lived in the neighbourhood, pointed out Bagosora leaning on his jeep nearby and said: "If this attack is led by Bagosora, those who can pray better do so now." The witness next saw Bagosora at the stadium three days later. A soldier called for Landoald Ndasingwa over a megaphone after speaking with Bagosora. As Ndasingwa approached, Bagosora struck him on the shoulder with a pistol. There were around 50 persons between the witness and Bagosora.[422]

Prosecution Witness XAI

366. Witness XAI, a Hutu soldier with the 17th Battalion in Byumba prefecture, stated that, at some point in 1992, Kabiligi addressed officers and soldiers at the Byumba military camp, which was five kilometres from the war front. He told them that the RPF would infiltrate Rwanda disguised as civilians in order to provide information on the army's military positions in advance of an attack. Kabiligi further stated that the soldiers should be vigilant so that the infiltrators could be captured.[423]

Prosecution Expert Witnesses Alison Des Forges and Filip Reyntjens

367. Alison Des Forges, an expert in Rwandan history, testified that, following what she believed to be a staged RPF attack in Kigali on 4 October, authorities proceeded to arrest thousands of people in the city and around the country. A large number of detainees were

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[420] T. 23 September 2003 pp. 3, 25-26; T. 26 September 2003 p. 3; T. 30 September 2003 pp. 10-11; T. 25 February 2004 pp. 36-37; T. 29 March 2004 p. 4; T. 30 March 2004 pp. 34-36, 39-40. Prosecution Exhibit 99 (personal identification sheet).

[421] T. 6 April 2004 pp. 20, 43; Prosecution Exhibit 200 (personal identification sheet).

[422] T. 17 September 2003 pp. 11-12, 35; T. 18 September 2003 pp. 8-14, 31, 44, 49; T. 19 September 2003 pp. 10-27; Prosecution Exhibit 96 (personal identification sheet). Witness XXC was arrested in 1995 after being accused of involvement in the genocide. He was acquitted and released in October 2000. *See* T. 17 September 2003 pp. 8-11; T. 18 September 2003 pp. 36, 38, 44-49. The witness identified Bagosora in court. *See* T. 17 September 2003 pp. 41-42.

[423] T. 9 September 2003 pp. 8-9, 29-30. Prosecution Exhibit 94 (personal identification sheet).

Tutsis and alleged to have supported the RPF attack. Des Forges had examined a number of lists in the Butare prefecture comprising hundreds of names identified and arrested in 1990 as supporters of the enemy. Referring to these lists, she noted that some had been updated with an additional column to include the individuals' more recent activities. Filip Reyntjens, also an expert in Rwandan history, testified that lists were used to identify persons who were arrested in 1990.[424]

Bagosora

368. Bagosora denied that he, Ntabakuze or soldiers generally prepared lists or participated in arrests or killings in October 1990. Bagosora did not give information to assists those who carried out the arrests, and he denied that torture or killing occurred in Camp Kanombe or that anyone was detained there.[425]

369. A committee including representatives of the Ministry of Justice, the Ministry of Defence, the Central Intelligence Services and the Ministry of the Interior, chaired by Alphonse Nkubito, Rwanda's Prosecutor General, was established and responsible for creating lists of people to arrest. Bagosora denied going to Nyamirambo stadium when these arrests occurred. Reading from a document entitled "List of people arrested following the *Inkotanyi* attack of 1st October 1990", he explained that the Ministry of Justice seal was on the document because Nkubito belonged to this ministry. The document, which is incomplete, purports to list 6,334 individuals, and Bagosora was unaware of the Ministry of Defence preparing similar documents.[426]

Ntabakuze

370. Ntabakuze denied that he and members of the Para Commando Battalion carried out arrests in October 1990 using lists, as his battalion was deployed to fight against the aggression. One company of the Para Commando Battalion was deployed to Mutara on 1 October 1990 with other elements joining the following day.[427]

Nsengiyumva Defence Witness LE-1

371. Witness LE-1, a Hutu, was an army officer from 1973 to 1992 and worked at army headquarters in 1990. He never saw lists prepared by the military, containing names of persons to be killed.[428]

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[424] Des Forges, T. 5 September 2002 pp. 118-121; T. 16 September 2002 pp. 31-32; T. 17 September 2002 pp. 61-62; Reyntjens, T. 22 September 2004 p. 60.

[425] T. 26 October 2005 pp. 32-39, 50. Bagosora also testified that after the RPF attack on Kigali on the evening of 4 to 5 October 1990, he and other unit commanders at Kanombe camp arrested several of their own soldiers, who had fired into the camp and at command positions. These enemy infiltrators were sent to the Kigali prosecutor. More than 10 non-commissioned officers were imprisoned.

[426] T. 26 October 2005 pp. 36-38, 40-41; T. 1 November 2005 p. 59; T. 10 November 2005 p. 76. Bagosora Defence Exhibit 223 (*listes des personnes arretées suite à l'attaque des Inkotanyis du 1 Octobre 1990; du 1 Octobre 1990 au 31 Mars 1991*).

[427] T. 18 September 2006 pp. 14-16; T. 21 September 2006 p. 34; T. 22 September 2006 p. 42; Ntabakuze Defence Exhibit 226 (Report by United States Embassy, 8 November 1990).

[428] T. 19 October 2005 pp. 38-39, T. 20 October 2005 pp. 29-30; Nsengiyumva Defence Exhibit 112 (personal identification sheet). While in exile in 1995, a man named Barnabé Twagiramungu presented Witness LE-1 with a list that allegedly contained names of people to be killed. Starting with number 49, the list was incomplete, but included the names of the Ugandan President, the bishop of Goma, a Ugandan bishop, Rwandans abroad and others. *See* T. 20 October 2005 pp. 29-30.

372. After the RPF invasion on 1 October 1990, infiltrators attacked sensitive targets in Kigali on the night of 4 to 5 October. President Habyarimana established a committee, comprised of various government ministers, designed to avoid civilian reprisals and to provide for official action against those alleged to have conspired with the RPF. The committee set up a sub-committee, chaired by Alphonse Nkubito, the Prosecutor of Kigali. It included representatives from the Ministries of Defence and Interior as well as the Central Intelligence Service. National security agents and gendarmes arrested around 8,000 Hutus, Tutsis and Twas beginning from 7 October pursuant to warrants issued by the prosecutor. The detainees were sorted at Nyamirambo stadium before being placed in commune jails and military camps. The prosecutor decided whether there was sufficient evidence to keep them detained. Under pressure from the international community, President Habyarimana gave amnesty to all the detainees sometime in 1991 or 1992. Witness LE-1 was not aware of the participation of Bagosora or Ntabakuze in this operation. Ntabakuze was at the war front at the time.[429]

Ntabakuze Defence Witness Robert Flatten

373. Robert Flatten was the United States Ambassador to Rwanda from 1990 to November 1993. When he arrived in December 1990, approximately 8,000 people, nearly all Tutsis, were incarcerated because they had allegedly supported the RPF after the October invasion. The international community, human rights organisations and many Rwandans mounted pressure on the government to try the detainees. Given the relative inability to provide defence representation to so many detainees, they were released.[430]

374. Flatten was aware of plans to kill Tutsis, had seen lists of people to be eliminated and heard threats against persons known to support the Arusha Accords. However, he was not aware of a broad plan to commit genocide and believed that the lists were not prepared by individuals who were mainstream members of President Habyarimana's party or the government with whom he dealt.[431]

Kabiligi Defence Witnesses DVD-7 and FB-25

375. Witness DVD-7, a Hutu, was a company commander deployed in the field within the Byumba operational sector in 1992. He did not hear about Kabiligi's alleged speech at the Byumba camp in 1992. Kabiligi would not have given the speech in the absence of company commanders within the sector.[432] Witness FB-25, a Hutu, was an officer assigned to the Byumba operating sector in December 1992. He was not aware of any speech made by Kabiligi to soldiers on the tarmac of the camp. Given his position, the witness would have heard about it if it had occurred.[433]

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[429] T. 19 October 2005 pp. 76-78; T. 20 October 2005 pp. 25-29, 47-48, 64-70; T. 21 October 2005 pp. 56-59.
[430] T. 30 June 2005 pp. 31-32, 54-55; Ntabakuze Defence Exhibit 140 (personal identification sheet). Flatten testified that some Tutsi members of his own staff were among those arrested.
[431] T. 30 June 2005 pp. 64, 70-72; T. 1 July 2005 pp. 1-2.
[432] T. 6 November 2006 pp. 66-67, 70-71; Kabiligi Defence Exhibit 105 (personal identification sheet). Witness DVD-7 was not part of the 17th Battalion.
[433] T. 13 November 2006 pp. 3, 7-8, 15, 26; Kabiligi Defence Exhibit 109 (personal identification sheet). Witness FB-25 also appeared in the proceedings as Witness DM-190. He was not a member of the 17th Battalion.

Bagosora Defence Expert Witness Bernard Lugan

376. Bernard Lugan, an expert in Rwandan history, testified that of the nearly 6,000 to 7,000 individuals arrested in Kigali after the RPF attack in October 1990, nearly 61 percent were Hutus.[434]

Deliberations

377. Several thousand people were arrested and detained in Kigali in the wake of the RPF attack on Rwanda in October 1990 and, at least some of these arrests, were based on pre-established lists. There is some dispute as to when this operation commenced. Witness DBY, for example, indicated that soldiers were dispatched on the morning of 5 October, whereas Witness LE-1 noted that arrests occurred beginning on 7 October after a committee chaired by Prosecutor Nkubito met and drew up a list. In view of Witness DBY's first-hand account, the Chamber is satisfied that arrests began as early as 5 October following an attack in Kigali on the previous night. This evidence does not mean that arrests were not also conducted based on the lists drawn up by the committee described by Witness LE-1 and Bagosora. The question for the Chamber is to what extent Bagosora, Ntabakuze and Kabiligi were involved in this operation.

378. The main evidence of Ntabakuze's involvement in the operation comes from the first-hand evidence of Witnesses DBY and DBQ as well as to a lesser extent from Witness XXC. Witness DBY personally accompanied Ntabakuze during the operation and saw him carrying a list of names of people to arrest. His evidence was neither extensive nor detailed on the arrest operation, except for Ntabakuze's role in the unsuccessful attempt to locate Ndagije, the Hutu businessman. In particular, he did not clearly identify the units participating in the arrests, other than those accompanying Ntabakuze in his vehicle, beyond noting that some came from Camp Kanombe. Nevertheless, it is implicit in Ntabakuze's participation that at least some of the soldiers participating in the mass arrests would have been from the Para Commando Battalion. During the cross-examination of Witness DBY, the Ntabakuze Defence only focused on his ability to see the names on the list which Ntabakuze carried.[435] This point is not material given the witness's claim that he saw the list, not the names, while in close proximity to Ntabakuze, and that he heard names being read out from it. In the Chamber's view, Witness DBY gave a credible first-hand account. The participation of the Para Commando Battalion is corroborated by Witness XXC who observed soldiers wearing camouflage berets, exclusively worn by commando units, participating in the arrest.

379. Witness DBQ attested to directly participating in the arrest operation with other members of the Para Commando Battalion. The Ntabakuze Defence contests that he was in fact a member of the battalion during the relevant events by pointing to the testimony of several members of the battalion and company, who had never heard of him, as well as discrepancies between his current name and religion and that of the person listed on the roles of the battalion.[436] For witness protection reasons, the Chamber will not fully detail this evidence related to his credibility here. It suffices to note that the evidence concerning his membership in the battalion at the time is equivocal. In any event, the Chamber has raised concerns about the credibility of his testimony with respect to several other events. It

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[434] T. 14 November 2006 pp. 4, 11-14; Bagosora Defence Exhibit 358 (Expert Report of Bernard Lugan), p. 28.
[435] T. 22 September 2003 p. 19.
[436] Ntabakuze Closing Brief, paras. 257-281.

therefore views his evidence on this incident with equal caution and declines to rely on it in making factual findings.

380. Witness XAB, a member of the Para Commando Battalion testified about the arrests following the RPF invasion but the parties did not ask him to give details on the identity of the participants in the operation. Therefore, his testimony has limited probative value on this point.

381. The Ntabakuze Defence presented evidence through Ntabakuze and Witness LE-1 to show that neither Ntabakuze nor members of the Para Commando Battalion could have participated in the operation since they were stationed at Mutara, where Camp Gabiro is located, and because other security forces executed the arrest warrants.[437] The Chamber is mindful that, given their positions, both of these witnesses would have an interest in distancing themselves from the 1990 arrest operation. Ntabakuze does not dispute that he was sent to Mutara after the initial RPF attack, and Witness LE-1 testified that on the evening of 3 to 4 October, a decision was made to withdraw soldiers in Gabiro to defend the capital against a possible RPF attack on Kigali.[438] Bagosora confirmed Witness LE-1's account that Rwandan army officials suspected a possible RPF attack in the city and that the Para Commando Battalion was recalled based on this suspicion.[439] In view of this and Witness DBY's first-hand account of returning to Camp Kanombe from Camp Gabiro on 4 October, the Chamber is satisfied that Ntabakuze and the Para Commando Battalion were in a position to participate in the operation in Kigali around that time. Witness DBY's direct evidence demonstrates that Ntabakuze and members of the Para Commando Battalion participated in the arrest operation. The level of detail in Witness DBY's testimony, however, does not permit the Chamber to make findings on the full scope of Ntabakuze's involvement.

382. Turning to Bagosora, only Witness XXC provided a first-hand account placing him on the ground during the arrest operation and at the stadium where he allegedly assaulted Landoald Ndasingwa. The witness had no prior knowledge of Bagosora when he observed him during the arrest and instead heard other unidentified individuals living in his neighbourhood, who were purportedly from Gisenyi prefecture, make reference to Bagosora. In addition, at the stadium, there were approximately 50 people between the witness and Bagosora during the alleged altercation with Ndasingwa. In the Chamber's view, he did not have a reliable basis for identifying Bagosora, who was the commander of Camp Kanombe, at the time of the events in 1990, in particular given the difficult circumstances under which he observed him. Consequently, the Chamber declines to accept Witness XXC's testimony concerning Bagosora in the absence of corroboration.

383. With respect to Kabiligi, there is no testimony implicating him in the 1990 arrest operation. The Prosecution's submission that he would have participated in the operation, given his position as a senior officer at ESM in 1990, is not supported by any evidence. The Prosecution also suggests that his involvement in the 1990 arrests follows from his role in a

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[437] Paragraph 459 of the Kabiligi Closing Brief points out that Reyntjens made no mention of the Para Commando Battalion in relation to these arrests. This omission has limited significance since he did not testify extensively about the operation.
[438] T. 20 October 2005 p. 25 ("We proposed that the units which were engaged on the Gabiro highway be withdrawn to the capital in order to defend the capital because it was a dire situation. We just got confirmation that the attack would take place, and accordingly, defend the Kayonza crossroads, but also to check RPF advance, because there was another column which wanted to capture Ngarama *sous préfecture*.").
[439] T. 26 October 2005 p. 36.

similar event occurring in 1992 in the Byumba operational sector where he allegedly asked soldiers to be vigilant of RPF infiltrators disguised as civilians. Witness XAI was the only witness who testified about this event.[440] Witnesses FB-25 and DVD-7 suggested that Kabiligi never gave such an address, but their evidence is of limited probative value.[441] Even if this event occurred, the Chamber is not convinced that Kabiligi was involved in the arrest operation two years earlier.

384. The Prosecution has not made specific submissions in its Closing Brief to connect Nsengiyumva to the arrest operation.

385. Accordingly, the Chamber accepts that Ntabakuze and members of the Para Commando Battalion participated in the mass arrests in October 1990 following the RPF invasion of Rwanda. Lists were used to identify certain individuals while others were arrested based on their ethnicity, lack of identification documents or possession of certain material, such as the Kanguka newspaper, which might identify them as RPF sympathisers. The evidence allegedly connecting Bagosora to the operation is not clear. The Chamber is not convinced by the circumstantial evidence showing that Kabiligi was part of the event. There is no evidence reflecting that Nsengiyumva participated in the operation.

2.5.2 Orders to the General Staff, 1992

Introduction

386. The Indictments allege that Bagosora instructed the general staffs of the army and gendarmerie to create lists of the "enemy and its accomplices" during a 1992 meeting, which were then updated by the army intelligence bureau (G-2) under Nsengiyumva and then Aloys Ntiwirabogo. The Prosecution supports this allegation with evidence that Bagosora sent a telegram in 1992 to the army units defining the enemy as Tutsis. This was allegedly followed by the preparation of lists and demobilisation of Tutsi soldiers and Hutus suspected of being RPF accomplices. The Prosecution refers to Expert Witness Alison Des Forges and Witnesses DBY, XAP and DM-25.[442]

387. The Defence teams dispute the role of their clients in the preparation of lists in 1992 and argue that no reliable evidence connects them to this allegation. The Nsengiyumva Defence also submits that regular reports from the Minister of Defence to the Prime Minister during this period demonstrate that the keeping of lists by the military of suspected RPF recruits, for example, was not unusual. The Bagosora and Ntabakuze Defence dispute that Bagosora sent the 1992 telegram, resulting in the creation of lists and the demobilisation of soldiers. Reference is made to Witnesses DM-25, DM-52, DK-110, DK-120, DBN and BC.[443]

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[440] The Chamber has expressed concern about the reliability of certain aspects of Witness XAI's testimony in other parts of the judgement (III.2.5.1; III.4.4.1; III.4.5.2).

[441] Witness DVD-7 noted that he was assigned to the field during this period, not at the camp. Witness FB-25 only arrived in the sector in December 1992 and acknowledged that he would not be aware of what transpired before his assignment there.

[442] Prosecution Closing Brief, paras. 47, 592, 773, pp. 732, 810, 867.

[443] Bagosora Closing Brief, paras. 130-132, 586-603, p. 526; Kabiligi Closing Brief, para. 1537; Ntabakuze Closing Brief, paras. 609, 611, 614-653; Nsengiyumva Closing Brief, paras. 663-664, 669-670, 675.

Evidence

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Prosecution Expert Alison Des Forges

388. Alison Des Forges, an expert in Rwandan history, stated that, in early October 1992, some 10 days after the Definition of the Enemy document was circulated (III.2.2; III.2.4.1), the chief of staff of the Rwandan army, Déogratias Nsabimana, directed all military units to prepare lists of people suspected of any association with the enemy. As a basis for this assertion, she referred to a letter of 2 February 1993, in which then Prime Minister Dismas Nsengiyaremye criticised the efforts to compile lists and asked that any existing lists be given to the Minister of Justice. The letter makes reference to previous correspondence concerning the order to compile the lists. It also warns that the government needs to act delicately and should avoid that innocent people suffer the "ignominies" of 1990 when 8,000 people were arrested, maltreated and incarcerated on unfounded denunciations. Des Forges agreed that it is appropriate for military authorities to remain alert in the midst of war, but that this did not occur during a state of emergency. Military intelligence on "traitors" should have been distributed to the proper judicial authorities and not generally among soldiers.[444]

Prosecution Witness DBY

389. Witness DBY, a Tutsi member of the Para Commando Battalion, testified that, in late 1992, he saw a telegram from the Ministry of Defence, signed "MINADEF", addressed to the general staff and unit commanders throughout the country. In the witness's view, this meant it was from Bagosora. The telegram identified Tutsis as the enemy and warned the recipients to be vigilant since they were in their midst. Afterwards, Tutsi members of the army in general, including the Para Commando Battalion, were identified and demobilised based on lists. The witness did not see the lists. He cited the example of Corporal Zitoni, a Tutsi from Gitarama prefecture, who was dismissed from the Para Commando Battalion. Several other Tutsis and Hutus, who were suspected of being accomplices or affiliated with opposition parties, were also dismissed. Witness DBY could not recall the other names. The formal reason given for the dismissals was disciplinary grounds. By 1994, only about 15 Tutsis, including the witness, who had distinguished themselves in battle, remained at Camp Kanombe.[445]

Prosecution Witness XAP

390. Witness XAP, a member of the Second Company of the Para Commando Battalion, said that, in August 1993, one of Ntabakuze's bodyguards told him that the battalion's command was preparing lists of Tutsis and those who acted like Tutsis in order to demobilise

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[444] T. 16 September 2002 pp. 39-43, 81, 91; T. 17 September 2002 pp. 53-54; T. 24 September 2002 pp. 53-54; Prosecution Exhibit 22 (Letter of 2 February 1993 from Dismas Nsengiyaremye to the Rwandan Minister of Defence). Des Forges also said that, "in February", Stanislas Kinyoni, an officer in the gendarmerie, assembled gendarmes from the Kigali brigades and asked them to prepare lists of people with suspected ties to the RPF. The parties did not seek further details on this incident, for instance about her source of information. *See* T. 17 September 2002 p. 61. In this context, the Chamber also notes the evidence of Nsengiyumva Defence Witness RAS-1, a Hutu who worked in the intelligence bureau (G-2) of the gendarmerie from 1990 to 1994. He testified that the gendarmerie did not compile lists and that Major Kinyoni, who was appointed G-2 at the end of 1993, did not request gendarmes in Kigali to do so. *See* T. 13 October 2005 pp. 65-66, 69; T. 14 October 2005 p. 6; T. 18 October 2005 pp. 32-33.

[445] T. 22 September 2003 pp. 8-11, 19, 21-33, 35-36, 41-43, 46; Prosecution Exhibit 95 (personal identification sheet).

them. The witness heard that he was on the list, and also saw the list. He was not demobilised.[446]

Bagosora

391. Bagosora denied that he instructed two general staffs to establish lists of the enemy and its accomplices in a meeting in 1992. As *directeur de cabinet*, he could only convene a meeting of the general staffs in the Minister of Defence's absence to discuss urgent matters. However, the Minister, James Gasana, was in Rwanda in 1992. Bagosora denied ever calling a meeting under such circumstances from his appointment as *directeur de cabinet* in 1992 up until 5 April 1994.[447]

392. While *directeur de cabinet*, Bagosora was unaware of the February 1993 letter from Prime Minister Dismas Nsengiyaremye, discussing an order from the Rwandan army general staff to create lists of alleged *Inkotanyi* accomplices. Bagosora, noting that the letter was addressed to the Minister of Defence, had no recollection of it being discussed in a meeting. He was unaware of such an order coming from the Rwandan army headquarters. Bagosora acknowledged that identifying the enemy and its accomplices is a routine part of intelligence gathering, but denied that he could have given an order to collect such intelligence. Unlike the Minister of Defence, Bagosora did not have authority over Rwandan army or gendarmerie staff headquarters to give such orders.[448]

393. Bagosora testified that he did not send a telegram in 1992 or 1993 to unit commanders defining the Tutsis as the enemy. The Ministry of Defence would have violated the principles of military hierarchy if it had sent messages directly to Camp Kanombe.[449]

Nsengiyumva

394. Nsengiyumva testified that he did not participate in the preparation of lists of Tutsis to be killed and was not aware of such lists. He also did not hear about the February 1993 letter from the Prime Minister until it was disclosed to him in his trial by the Prosecution. Nsengiyumva disputed its authenticity and denied receiving an order from the chief of staff of the army to establish lists as reflected in it. He acknowledged, however, that as chief of the intelligence bureau (G-2) at the time, he would have been tasked with identifying enemy supporters, if it in fact had been ordered.[450]

Ntabakuze Defence Witness DM-25

395. Witness DM-25, a Hutu, was a member of the MDR party and worked in the office of Prime Minister Dismas Nsengiyaremye during his term of office from 5 April 1992 until 16 July 1993. The Prime Minister became aware that the Rwandan army was updating lists of suspected RPF accomplices. He did not suspect that massacres were being planned, but rather was concerned about the army's involvement in such matters, which were outside its jurisdiction, in view of the excesses of the mass arrests in 1990. The Prime Minister wrote a letter to the Minister of Defence on 2 February 1993 asking him to transmit the lists to the

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[446] T. 11 December 2003 pp. 11, 27-29; T. 15 December 2003 pp. 87-88, 93; Prosecution Exhibit 152 (personal identification sheet). Witness XAP refused to provide his ethnicity. *See* T. 11 December 2003 pp. 65-68.
[447] T. 1 November 2005 pp. 3-4.
[448] *Id.* pp. 4-6.
[449] T. 27 October 2005 p. 8; T. 14 November 2005 pp. 11-12.
[450] T. 5 October 2006 pp. 21-23; T. 12 October 2006 pp. 11-15, 18-19; T. 13 October 2006 p. 9.

Ministry of Justice so that it could open judicial files on the suspected individuals. The Prime Minister never saw a copy of the lists.[451]

396. Witness DM-25 was shown a copy of the February 1993 letter, purporting to be from the Prime Minister to the Minister of Defence concerning lists, which was the same letter that Des Forges had examined during her testimony. He recognised the signature of the Prime Minister and the office's official seal. After further examination, he raised concerns about whether the letter was in fact authentic, noting several anomalies in the text. However, he agreed that the substance of the letter was accurate since the Prime Minister was aware of the creation of lists and gave the order contained in the letter to the Minister of Defence.[452]

397. The witness explained that the Prime Minister's office and the Ministry of Interior had their own intelligence offices which gathered information concerning activities occurring in Rwanda. The Ministry of Defence had an office which focused on external security. The general staffs of both the army and gendarmerie also had intelligence bureaus (G-2), which were supposed to focus on military operations. The Prime Minister received a weekly security briefing from the Minister of Defence compiled from his own intelligence service as well as those in the army and gendarmerie. Some of those reports contained lists of suspected RPF recruits.[453]

Ntabakuze

398. Ntabakuze testified that he was unaware of the 1992 telegram defining the Tutsis as the enemy. Furthermore, he did not demobilise soldiers, such as Corporal Zitoni, based on their ethnicity. To illustrate this point, he also pointed to the fact that Witnesses DBN, DP, XAB, BC and XAO, who were Tutsi members of the Para Commando Battalion, remained in the battalion for the duration of the war in 1994. Ntabakuze also referred to a list of the Third Company of the Para Commando Battalion prepared in December 1993 for the purposes of the Social Security Fund, which contains Corporal Zitoni's name.[454]

Ntabakuze Defence Witness DM-52

399. Witness DM-52, a Hutu, was an officer in the Para Commando Battalion until 1993. He said that Corporal Zitoni was still in the battalion at the time of his departure.[455]

Ntabakuze Defence Witnesses DK-120 and DK-110

400. Witnesses DK-120 and DK-110, both Hutu members of the Para Commando Battalion, testified that they were not aware of any soldier being dismissed from the battalion based on ethnicity from 1992 and 1993.[456]

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[451] T. 11 April 2005 pp. 54, 75-77; T. 12 April 2005 pp. 4, 37-40, 71-72; T. 13 April 2005 pp. 7-8, 13, 15; Ntabakuze Defence Exhibit 81 (personal identification sheet).
[452] T. 11 April 2005 p. 74; T. 12 April 2005 pp. 48-61.
[453] T. 12 April 2005 p. 61; T. 13 April 2005 pp. 5, 8-9, 16-17. A number of individuals suspected of receiving training from the RPF are listed as part of one of the written security reports. *See* Nsengiyumva Defence Exhibit 63 (external security report of 15 October 1992), p. 4.
[454] T. 21 September 2006 pp. 37-39; Ntabakuze Defence Exhibit 135 (list of members of the Third Company).
[455] T. 27 June 2005 p. 23.
[456] Witness DK-120, T. 4 July 2005 p. 71; Ntabakuze Defence Exhibit 141 (personal identification sheet); Witness DK-110, T. 12 July 2005 p. 59; Ntabakuze Defence Exhibit 143A (personal identification sheet).

Prosecution Witnesses BC and DBN 40620

401. Witnesses BC and DBN, also members of the battalion, testified that there was no discrimination based on ethnic origin in the battalion.[457]

Deliberations

402. The main evidence that an order was issued to the two general staffs of the army and gendarmerie to prepare lists comes from a copy of a February 1993 letter written by Prime Minister Dismas Nsengiyaremye to the Minister of Defence. The Prosecution also refers to evidence from Witnesses DBY that Bagosora sent a telegram to the army staff and unit commanders describing Tutsis as the enemy. Witness DBY and XAP referred to the preparation of lists of Tutsi soldiers for demobilisation.

403. The Prime Minister's letter refers to an October 1992 order by the army chief of staff to all units and camps to identify suspected accomplices of the "*Inkotanyi*". The Defence disputes its provenance by pointing to Witness DM-25, who questioned its authenticity. However, in the Chamber's view, the letter appears to be authentic. It bears the seal of the office of the Prime Minister as well as his signature. More significantly, Witness DM-25 confirmed the accuracy of the substance of the letter, namely that the Prime Minister was aware that an order had been given to compile lists of suspected RPF accomplices, that this raised concerns, and that he had requested the Minister of Defence to forward the list to the Minister of Justice, as the proper authority to handle the matter.

404. The Prime Minister's letter alone does not demonstrate that an order was given by the army to prepare lists of suspected accomplices, in particular since it is second-hand. The Chamber, however, has viewed this evidence in the context of the evidence related to the 1990 mass arrests which, as discussed above, involved the participation of the army. Furthermore, one of the written security reports submitted by the Minister of Defence to the Prime Minister in October 1992 contains names of several individuals suspected of being trained by the RPF.[458] Of significance is also the evidence of the list found in the car of Déogratias Nsabimana, the army chief of staff, discussed below (III.2.5.3). In the Chamber's view, this evidence taken together indicates that the army was engaged in making lists of suspected RPF accomplices in 1992. The evidence does not show that the purpose of the lists was to identify Tutsis, as such, and to eliminate them.

405. The question remains whether the Accused were involved in the preparation of these lists. The Chamber is satisfied that Nsengiyumva was involved in the preparation and maintenance of the lists given his position as head of the intelligence bureau (G-2) on the army staff as well as his admission that he would have been tasked with this function if it had been ordered.

406. As *directeur de cabinet* of the Ministry of Defence, Bagosora would certainly have been aware of the creation and existence of lists, in particular since lists of suspected RPF accomplices featured in written reports from the Ministry of Defence to the Prime Minister. However, there is no direct evidence suggesting that he was responsible for ordering their

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[457] Witness DBN, T. 5 April 2004 p. 8; Prosecution Exhibit 198 (personal identification sheet); Witness BC, T. 1 December 2003 p. 51; Prosecution Exhibit 147 (personal identification sheet). Witness DBN is a Tutsi, while Witness BC stated that he did not know his ethnic group. *See* T. 1 December 2003 pp. 39-40.
[458] *See* Nsengiyumva Defence Exhibit 63 (external security report of 15 October 1992), p. 4.

creation and no evidence whatsoever about him instructing the general staffs at a meeting in 1992, as alleged in the Indictments.

407. There is evidence from Witness DBY that Bagosora issued a telegram at the end of 1992 informing the general staff and unit commanders that Tutsis were the enemy, which was followed by the preparation of lists of Tutsis and Hutus, suspected of being accomplices, and their demobilisation. The alleged telegram has not been entered as an exhibit, and Witness DBY's uncorroborated testimony provides the only evidence that it existed. The Chamber notes that the alleged telegram was signed "MINADEF", an acronym for the Ministry of Defence, and not by Bagosora personally. The witness believed it was from Bagosora because of his prominence. In the Chamber's view, this does not invariably show that it came from Bagosora, although it accepts that Bagosora would have known about such a sensitive issue. That said, it is also possible that the witness confused the telegram with the distribution of the Definition of the Enemy document which was distributed by the army chief of staff on 21 September 1992 (III.2.2; III.2.4.1).[459]

408. With respect to the subsequent preparation of lists of Tutsi soldiers, Witness XAP's testimony corroborates Witness DBY's evidence on this point in some respects. Several aspects of their testimony on this point raise some concern. In particular, their evidence about the existence of the lists is mostly second-hand, although Witness XAP claimed that he saw it. He did not explain when and under what circumstances this happened, nor was he asked to elaborate. In addition, Witness DBY placed these events at the end of 1992 or the beginning of 1993, whereas Witness XAP suggested it occurred after the signing of the Arusha Accords in August 1993. Witness DBY had first-hand knowledge of the demobilisation of soldiers, but he could only give one specific example, Corporal Zitoni. In this context, the Chamber notes the conflicting evidence from Witness DM-52 who stated that Zitoni was still in the battalion at the end of 1993. This is corroborated by a list of members of the Third Company as of December 1993.[460]

409. Finally, the Chamber notes that Witness DBY, a Tutsi, and Witness XAP, who was supposedly on the list, were not ultimately demobilised. Other members of the Para Commando Battalion, including Witnesses DK-110 and DK-120, did not recall the alleged demobilisations. Furthermore, Prosecution Witnesses BC and DBN testified that there was no discrimination in the battalion.[461] In view of the foregoing, the Chamber is not convinced beyond reasonable doubt that Ntabakuze ordered the demobilisation of Tutsis or Hutus suspected of being accomplices based on lists.

410. There is no evidence connecting Kabiligi to the creation of lists based on the order from army headquarters.

2.5.3 Déogratias Nsabimana's Vehicle, 1993

Introduction

411. In support of the allegation that a list was found in 1993 in the vehicle of Déogratias Nsabimana after an accident in February 1993, the Prosecution points to Experts Witnesses Alison Des Forges and Filip Reyntjens. Reference is made to Witnesses AAA, AS, ZF and

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[459] Prosecution Exhibit 13 (Nsabimana's letter to operational commanders, dated 21 September 1992).
[460] Ntabakuze Defence Exhibit 135 (list of members of the Third Company).
[461] Witness DBN, T. 5 April 2004 p. 8; Witness BC, T. 1 December 2003 p. 51.

OAB to prove the allegation that some of the individuals on the list were killed after 6 April 1994.[462]

412. The Defence teams do not dispute that a list was recovered from Nsabimana's vehicle, but contest its purpose and that the Accused were involved in its creation. Reference is made to Witness DM-25.[463]

Evidence

Prosecution Expert Witness Alison Des Forges

413. Alison Des Forges, an expert in Rwandan history, testified that General Ndindiliyimana, the gendarmerie chief of staff, recovered a list of 331 names from the vehicle of Déogratias Nsabimana, the army chief of staff, after an accident in 1993. Noting that the document was entitled "persons to contact", Des Forges acknowledged that it was impossible to ascertain whether there was an intention to kill each individual on the list. However, she emphasised that the list must have been significant if it was important enough for Ndindiliyimana to raise with members of his general staff and James Gasana, the Minister of Defence. The list was published in a book edited by André Guichaoua, an expert in Rwandan history.[464]

Prosecution Expert Witness Filip Reyntjens

414. Filip Reyntjens, an expert in Rwandan history, learned from the former governor of *Banque Nationale de Rwanda*, Jean Birira, about a list of 1,500 people discovered in February 1993 in Nsabimana's vehicle after an accident. Reyntjens stated that, in the Rwandan context, this meant that the individuals on the list were to be eliminated if "things turned sour". He believed that excerpts from it, names of not more than 200 individuals, were reproduced in an extract in the book edited by Guichaoua.[465]

Other Prosecution Witnesses

415. Witness AS, a person close to Alphonse Kabiligi in 1994, testified that, on 7 April 1994, *Interahamwe* and an individual, whom the witness believed to be a soldier, killed Alphonse Kabiligi. He was a member of the PSD party and a division head at the Economic Community of Great Lakes Countries in Gisenyi town (III.3.6.5).[466] Witness OAB, a Hutu who lived in Gisenyi town in April 1994, confirmed a passage from his statement given to Tribunal investigators in January 1999 that he observed Bernard Munyagashari kill Augustin

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[462] Prosecution Closing Brief, paras. 573, 587, 1071, 1469(c), pp. 732, 810, 866-867.

[463] Bagosora Closing Brief, paras. 135-140; Kabiligi Closing Brief, para. 1537; Nsengiyumva Closing Brief, paras. 663-670, 675, 682-684. The Ntabakuze Defence does not specifically address this allegation in its Closing Brief.

[464] T. 17 September 2002 p. 55; T. 25 September 2002 pp. 12-14. The list annexed to Guichaoua's book was tendered during the cross-examination of Bagosora. *See* T. 15 November 2005 p. 76; Prosecution Exhibit 370 (Extract of list from André Guichaoua: *Les Crises Politiques au Burundi et au Rwanda* (1995)). Des Forges also testified that Nsabimana reported to "a member of his family" in 1992 that a list of 60 enemies existed. According to Des Forges, this number grew to 500 sometime in 1993 and 1,500 a year later. This point was not developed by the parties. *See* T. 17 September 2002 p. 55.

[465] T. 21 September 2004 pp. 11-12; T. 22 September 2004 pp. 56-57, 59-60.

[466] T. 2 September 2003 pp. 44-45, 51; T. 3 September 2003 pp. 16-18; Prosecution Exhibit 88 (personal identification sheet). Alphonse Kabiligi was a Hutu originally from Butare prefecture.

Kalimuda, a Bralirwa employee, near the Edelweiss Hotel on 7 April.[467] Witness AAA, a Hutu and local official in Kigali, stated that, on the morning of 7 April, a Tutsi pastor named Amon Iyamuremye and his family were killed by *Interahamwe* and members of the population.[468] Witness ZF, a radio operator in Gisenyi in 1994, testified that Lieutenant Bizumuremyi informed him that a businessman named Rwemalika, who was on a list, was captured and killed in Kigali.[469] These victims were all mentioned in the extract of the list published in Guichaoua's book.[470]

Bagosora

416. Bagosora confirmed that the extract in Guichaoua's book is the list retrieved from Nsabimana's vehicle. He became familiar with the list in 1993 after reading a report mentioning it. The report was generated followed a meeting organised by the Ministry of Defence that included the chief of staff of the gendarmerie. The report did not make conclusive findings on its origins. Bagosora noted that the list included individuals close to the RPF. The individuals listed between numbers 326 to 331 were outside of Rwanda, and the list was subtitled "Persons to Contact". Both these elements suggest, in his view, that this could not have been a list identifying people to be killed. Bagosora stated that it was possible that someone within the RPF created it as a list of sympathisers to contact.[471]

Nsengiyumva

417. Nsengiyumva knew that Déogratias Nsabimana had been in an accident but was not aware that a list had been found in his car until he read his indictment. Nsengiyumva also saw the list in Guichaoua's book, entitled "*Aide Memoire* for the Protection of the Rights of the Person" and subtitled "Persons to Contact". He noted that the list makes no mention that those included were to be killed. A *Pro Justitia* statement of 27 October 1997, given by Augustin Ndindiliyimana, confirmed that he had recovered the list from Nsabimana's car. The statement indicated that Nsabimana had later told Ndindiliyimana that Caritas Ngomanzungu, the wife of an officer named Fulgence Ngomanzungu, gave Nsabimana the list. Nsengiyumva believed the woman still lived in Kigali.[472]

418. Nindiliyimana's *Pro Justitia* statement and a letter of 8 May 1997 from James Gasana, the former Minister of Defence, to Ndindiliyimana indicate that an investigation was opened into the matter but that no conclusions had been reached before Gasana's departure in July 1993. Nsengiyumva was not involved in or informed about the investigations. Gasana's letter further states: "Regarding the list in question, there's no basis whatsoever to

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[467] T. 25 June 2003 pp. 25-26; Prosecution Exhibit 58 (personal identification sheet); Nsengiyumva Defence Exhibit 22 (statement of 17 January 1999).
[468] T. 14 June 2004 pp. 30-33; T. 15 June 2004 p. 1; T. 18 June 2004 pp. 7-8; Prosecution Exhibit 263 (personal identification sheet).
[469] T. 28 November 2002 pp. 81-82. Rwemalika appears to have been a Tutsi. *See* T. 2 December 2002 p. 62.
[470] *See* Prosecution Exhibit 370 (Extract of the list from André Guichaoua: *Les Crises Politiques au Burundi et au Rwanda* (1995)). Amon Iyamuremye is listed as no. 211, Rwemalika as 227, Kalimuda as 241 and Alphonse Kabiligi as 247.
[471] T. 1 November 2005 pp. 3, 6-8; T. 15 November 2005 pp. 69-75. He added that Ndindiliyimana, who conducted the investigation, did not get along with Nsabimana, in whose car the list was found. This might explain the prominence given to the investigation by Ndindiliyimana.
[472] T. 5 October 2006 pp. 21-25, 57; T. 12 October 2006 pp. 16-19; T. 13 October 2006 p. 9; Prosecution Exhibit 370 (Extract of the list from André Guichaoua: *Les Crises Politiques au Burundi et au Rwanda* (1995)); Nsengiyumva Defence Exhibit 67A (*Pro Justitia* statement of Augustin Ndindiliyimana, October 1997).

categorically assert that it was not a tract, or a leaflet." In Nsengiyumva's view, this demonstrated that the list was not authentic.[473]

419. Nsengiyumva also read from a March 1997 statement of James Gasana and an April 2000 statement of Faustin Twagiramungu, a former chairman of the MDR party, which were both given to Tribunal investigators. Twagiramungu's statement indicates that "lists of persons to be eliminated existed", but that he was uncertain whether they were created prior to 1994 because he would have known about them. Gasana's statement indicates that "[m]any lists were circulating with varying contents" but that the "authors were never identified". Nsengiyumva highlighted the ambiguity about the content of the lists to which Gasana referred and the fact that the authors had not been identified.[474]

Ntabakuze Defence Witness DM-25

420. Witness DM-25, a Hutu, was a member of the MDR party. He worked in the office of Prime Minister Dismas Nsengiyaremye during his term of office from 5 April 1992 until 16 July 1993. The witness was aware of a list of Hutus and Tutsis allegedly found in the vehicle of Déogratias Nsabimana, the army chief of staff, after a traffic accident in 1993. He saw a portion of the list later published as an annex to Guichaoua's book at some point after July 1994. The lists were said to have been created through various military intelligence services. However, he was not certain if Nsengiyumva was responsible for them.[475]

Deliberations

421. There is no dispute that a list of individuals was found in the vehicle of Déogratias Nsabimana, the army chief of staff, after an accident in February 1993. An excerpt of that list has been reproduced in André Guichaoua's book. A comparison of this list with the evidence of Witnesses AS, AAA, OAB and ZF shows that it identifies several individuals who were ultimately killed after 6 April 1994.[476] The main questions for the Chamber are whether this list was prepared with the intention of killing Tutsis and suspected accomplices, and whether the Accused participated in its creation.

422. The Chamber observes that the list was entitled "*Aide Memoire* for the Protection of the Rights of the Person" and has a notation below the title indicating "Persons to Contact". Some of the names on the list refer to individuals living outside of Rwanda.[477] The list also contains annotations, such as:

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[473] T. 5 October 2006 pp. 28-29; T. 12 October 2006 p. 17; Nsengiyumva Defence Exhibit 67A (*Pro Justitia* statement of Augustin Ndindiliyimana, October 1997); Nsengiyumva Defence Exhibit 67B (Letter of 8 May 1997 from James Gasana to General Augustin Ndindiliyimana).

[474] T. 5 October 2006 pp. 60-66; Nsengiyumva Defence Exhibit 218 (statement of Faustin Twagiramungu, 13 April 2000); Nsengiyumva Defence Exhibit 219 (statement of Witness ED, 29 March 1997), p. 7.

[475] T. 11 April 2005 pp. 54, 70; T. 12 April 2005 pp. 4, 37-40, 71-73; T. 13 April 2005 pp. 13-15, 19-20; Ntabakuze Defence Exhibit 81 (personal identification sheet).

[476] The Chamber has expressed concerns about the credibility of certain aspects of the evidence of Witnesses AAA, OAB and ZF in other parts of the judgement. The death of the individuals to whom they referred is not disputed.

[477] The Chamber notes that Prosecution Exhibit 13.1B (Definition of the Enemy Document) includes Rwandans abroad within its description of the enemy: "The Enemy, or their supporters, be they Rwandan of foreign nationals within the country or abroad, can be identified in particular by any of the following acts"). *See* section III.2.2.

- Below the road by Bar Mont Jari, sells cement in a container, in front of his shop. Fraudulent business. Holds meetings of Tutsi in his shop late in the evening and then returns to Kicukiro in Remera. He has evacuated his family. Before October, he housed unknown persons and Ugandans.

- During the recent attack by the RPF, he said the following: "Just wait and see our boys. They are not good-for-nothing people, and they would invade Kigali within a time frame which is not short, and those ugly Hutus will be exterminated."

- Near Ruhara, Pascal's place, a former soldier who fools people that he's an idiot. Remera *pédagogique* office. Attends the above-mentioned meetings; always in company of young Tutsi. His father-in-law was killed in October 1990 because of his wickedness of always spitting in the mouth of peoples, ... the residues from his pipe. So he wanted to avenge the death of the latter.[478]

423. There is no direct evidence concerning the origin of this list. According to Bagosora, Nsengiyumva and Witness DM-25, the investigation by Ndindiliyimana into the list's origins was inconclusive. The Chamber accords this little weight, given the military's interest in distancing itself from such acts, and there is reason to believe that the list was generated by or for members of the Rwandan army. The list was discovered in the vehicle of the army chief of staff, and the annotations suggest that it is a list of individuals with suspected ties to the RPF. In forming its view, the Chamber has also taken into account the evidence, discussed above, concerning the preparation of lists by army units in 1992 as well as the evidence concerning the use of lists in connection with the events in 1990.

424. The list does not indicate the intent with which it was created. The Chamber is not convinced that the only reasonable conclusion to draw from the existence of the list is that it was prepared with the intention to kill the individuals on it. In this respect, the mass arrests in October 1990, which also involved lists, is illustrative. That operation, which included some killings and was condemned by many experts and observers, did not result in extensive killings.

425. As *directeur de cabinet* of the Ministry of Defence, Bagosora would certainly have been aware of lists of suspected RPF accomplices (III.2.5.2). The evidence in connection with the discovery of the list in Nsabimana's vehicle does not show that he played any role in the creation and maintenance of lists by the army. The situation with Nsengiyumva is different. At the material time, he held the position of head of the bureau of intelligence (G-2) on the army general staff. As he concedes, he would have been responsible for preparing or maintaining lists of suspected accomplices of the enemy. There is no evidence linking Ntabakuze or Kabiligi to compilation of this list.

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[478] *See* Prosecution Exhibit 370 (List extracts from André Guichaoua: *Les Crises Politiques au Burundi et au Rwanda* (1995)). The quotes are taken from entries 180, 186 and 187 of the list. They were interpreted during the cross-examination of Bagosora. *See* T. 15 November 2005 pp. 72-73.

2.5.4 *Interahamwe*

40614

Introduction

426. In support of the allegation that UNAMIR was informed that the *Interahamwe* were compiling lists of Tutsis to be eliminated, the Prosecution points to the testimony of Lieutenant Colonel Frank Claeys concerning an informant called Jean-Pierre. Further evidence follows from Witnesses BY, DCH, AAA and LAI.[479]

427. The Defence teams do not dispute that an informant named Jean-Pierre told UNAMIR officials that the *Interahamwe* were compiling lists of Tutsis to eliminate. They contest, however, the reliability of this source as well as the Prosecution witnesses in general.[480]

Evidence

Prosecution Witness Frank Claeys

428. Lieutenant Colonel Claeys, a Belgian, was the adviser to UNAMIR's reconnaissance team in 1994. On the evening of 10 January 1994, he met with an *Interahamwe* informant named "Jean-Pierre". The informant explained that MRND authorities, including its president, Mathieu Ngirumpatse, and possibly the secretary-general, Joseph Nzirorera, had ordered the drafting of lists recording the names, family composition, addresses, and streets or sectors of Tutsis. Claeys deduced that the process was informal, consisting of basic observation compiled by asking neighbours to provide information about neighbours. He understood that the informant updated the lists regularly and that they were kept at MRND headquarters. Claeys was unaware of how many Tutsis had been registered.[481]

429. Jean-Pierre explained to Claeys that the listing of Tutsis was initially done by the MRND to ensure that weapons would not be distributed to them if Kigali was attacked by the RPF. The informant sensed that the purpose of the lists shifted around UNAMIR's arrival in October and November 1993. After UNAMIR's arrival, MRND authorities again ordered the creation of lists, and the informant believed they were part of a plan to facilitate the extermination of Tutsis. Claeys never saw the informant's list. Jean-Pierre stated that he could produce the list but a precondition for doing so was his personal protection, which was

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[479] Prosecution Closing Brief, paras. 587-590, 1339-1342, 1415(e), 1468-1469(b), 1479, 1495, 1504(e), pp. 732-734, 809-811, 867-868. The Prosecution also points to the evidence of General Dallaire, the force commander of UNAMIR, and Major Beardsley, his personal assistant. General Dallaire confirmed that he was informed by Claeys about the conversation with Jean-Pierre which included the preparation of lists. *See* T. 22 January 2004 pp. 15-16, 20-21; T. 26 January 2004 p. 53. Major Beardsley gave some evidence about Claeys's meeting with Jean-Pierre, but he did not specifically discuss the issue of lists. T. 30 January 2004 p. 3; T. 4 February 2004 pp. 26-27, 32. Des Forges's testimony about the preparation of lists and Jean-Pierre was based on information from Claeys. *See* T. 17 September 2002 pp. 55-60.

[480] Bagosora Closing Brief, paras. 129, 133-134; Kabiligi Defence Brief, paras. 1168 (fn.1191), 1541, pp. 605-607; Ntabakuze Defence Brief, paras. 122-123. The Nsengiyumva Defence did not address the credibility of Jean-Pierre in its Closing Brief.

[481] T. 7 April 2004 pp. 27-31, 33, 35, 72-73; T. 8 April 2004 pp. 7, 9-10; Prosecution Exhibit 204 (personal identification sheet); Prosecution Exhibit 170 (Situation Reports, various); Prosecution Exhibit 32 (11 January 1994 Dallaire Fascimile to U.N. Headquarters), according to which the informant stated that "[s]ince UNAMIR's mandate [the informant] has been ordered to register all Tutsi in Kigali"). Jean-Pierre also provided other information concerning weapons caches and training. This evidence is discussed in section III.2.6.3.

not secured prior to the final meeting with him. The informant did not identify names appearing on the list. UNAMIR lost contact with him.[482]

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Prosecution Witness BY

430. Witness BY, a Hutu, was an important official within the *Interahamwe* between 1991 and 1994. He testified that MRND leaders supported the making of lists at various points between the end of 1990 and the beginning of 1993. In the first few months of 1994, several members of the MRND raised concerns about security, noting that some of their neighbours had disappeared for periods and were believed to have undergone training by the RPF in Mulindi. Party leaders and the national committee for the *Interahamwe* endorsed the idea of creating lists identifying individuals who were suspected "infiltrators", pro-RPF, MRND political opponents as well as new or unknown persons observed in neighbourhoods and families hosting them. The witness believed that the "entire Tutsi population was included" on the lists. Nevertheless, ethnicity was never a criterion. Rather, those placed on lists were those considered to be the "enemy". The lists were created on a neighbourhood by neighbourhood basis and generally sent to the MRND bureau in Kigali. They were also distributed to local MRND party leaders in various neighbourhoods. Witness BY did not make any lists or read any, but observed attendants at meetings exchanging lists. After the President's plane had been shot down on 6 April, the lists were used to eliminate Tutsis in various neighbourhoods throughout Kigali.[483]

Prosecution Witness DCH

431. Witness DCH, a Hutu member of the *Interahamwe*, testified that he attended an *Interahamwe* meeting in Kabuga in Rubungo commune in Kigali-Rurale prefecture sometime after March 1993. During that meeting, recommendations were made to identify *Inyenzi* supporters and to create lists of those opposed to the *Interahamwe*'s activities. These lists were created near the end of 1993. *Cellules* kept lists of inhabitants and their ethnic origins. The *responsable* in Kabuga, a local MRND official, allowed the *Interahamwe* access to this information. The witness agreed that some of the lists prepared by the *Interahamwe* were aimed at identifying targets for recruitment, funding and the manning of roadblocks. A commission coordinated by Laurent Semanza to monitor the creation of lists was established at an *Interahamwe* meeting in the beginning of April 1994 at Michel Bagaragaza's residence.[484]

Prosecution Witness LAI

432. Witness LAI, a Hutu, was a driver and member of the *Interahamwe* in Cyangugu prefecture in 1994. He testified that lists of Tutsis living in Bugarama commune were prepared before April 1994. At the end of 1993, the witness began observing lists being

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[482] T. 7 April 2004 pp. 31, 33, 72-74; T. 8 April 2004 pp. 7, 9-10, 13-14, 45.

[483] T. 2 July 2004 pp. 17-18, 36-40; T. 6 July 2004 pp. 51-52, 76; T. 8 July 2004 pp. 8-9, 18-25; T. 9 July 2004 pp. 17, 64-65, 79-81. Prosecution Exhibit 284 (personal identification sheet). At the time of his testimony, Witness BY was incarcerated and subject to prosecution in Belgium. *See* T. 2 July 2004 pp. 17-18; T. 6 July 2004 pp. 38-39, 58-59.

[484] T. 23 June 2004 pp. 4-9; T. 24 June 2004 pp. 65-66; Prosecution Exhibit 275 (personal identification sheet). Witness DCH pleaded guilty and was convicted of crimes committed primarily in the Kabuga area. He was sentenced to seven years' imprisonment. Ntabakuze Defence Exhibit 70C (Rwandan judgment of 8 December 2000), pp. 23-24. It is not clear if the meeting at Bagaragaza's home took place prior to or after 6 April. *See* T. 23 June 2004 p. 8.

created at the house of Yussuf Munyakazi, an *Interahamwe* leader in Cyangugu prefecture. "Senior officials" instructed Munyakazi to create lists. When Munyakazi passed on these instructions it was clear that lists were being made all over Rwanda. The lists of Tutsis and Hutus who did "not want to be members of the MRND" contained some names of individuals who were mentioned as assisting the RPF on Radio Muhabura, its station. There was a type-written list that contained over 50 sheets of paper, entitled "The Country's Enemies". The list was organised so that it first identified the name, then sector, and then *cellule*.[485]

433. By April 1994, people knew where Tutsis were, including those suspected of being RPF accomplices, and this facilitated arrests and massacres. Witness LAI pointed to the arrest of Karasira who was an "agronomist", and the killing of an engineer named Côme. The witness was unaware of who was responsible for these incidents. In April, "people" were asking if individuals listed had been killed and if not, such individuals were sought after. Even Tutsis who were members of the MRND were targeted in April.[486]

Prosecution Witness AAA

434. Witness AAA, a Hutu local official in Kigali prefecture in 1994, testified that the *Interahamwe* had prepared lists of persons to be killed at the sector level. The lists included alleged *Inkotanyi* accomplices as well as Hutus opposed to those in power and to the *Interahamwe*. These lists were drawn up prior to massacres, making it easier to locate and kill the targeted individuals.[487]

435. The witness first saw a list of Tutsis and moderate Hutus on 28 February 1993 at a meeting of around nine MRND party members and *Interahamwe* at a bar in Kigali. Two individuals who worked for the office of the President also attended. The list was four pages in length, but the witness only observed two hand-written pages, containing about 30 names each. It included information such as the individual's name, *cellule* neighbours, and work place and position. The witness was familiar with several names on the list of people from his locality and noted that they were Tutsis, or Hutus suspected of being accomplices of the *Inkotanyi*. The lists were prepared by local officials and *Interahamwe* leaders. At the time, the witness did not know that those on it would be targeted for killing.[488]

436. Witness AAA also said that MRND officials chose Innocent Sebuhuguro to prepare a list within the witness's *cellule* in 1993. The witness saw it but did not provide further details. He believed that Sebuhuguro was chosen to create the list because he had a stronger relationship with the MRND than the witness.[489]

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[485] T. 31 May 2004 pp. 3-4, 36; T. 2 June 2004 p. 10; T. 3 June 2004 pp. 2-3, 7-12, 17-18, 25-26; Prosecution Exhibit 221 (personal identification sheet). At the time of his testimony, Witness LAI was imprisoned in Cyangugu having pleaded guilty to crimes in Rwanda. *See* T. 31 May 2004 pp. 71-73; T. 2 June 2004 p. 17; T. 3 June 2004 pp. 14-15.

[486] T. 3 June 2004 pp. 7-8.

[487] T. 14 June 2004 pp. 11-13, 30-33, 47-48; T. 15 June 2004 p. 66; T. 17 June 2004 p. 53; T. 18 June 2004 pp. 4-5, 7; Prosecution Exhibit 263 (personal identification sheet).

[488] T. 14 June 2004 pp. 77-85; T. 15 June 2004 pp. 1, 66; T. 16 June 2004 pp. 46, 53-54; T. 17 June 2004 p. 53; T. 18 June 2004 pp. 3-7, 13; Prosecution Exhibit 270 (name of bar). During this meeting, the *responsable* introduced Captain Simbikangwa to those present. They informed the captain that they lacked weapons. He promised to provide arms, which were recieved on 5 March 1993. Witness AAA concluded that the purpose of the weapons was to target Tutsis who were accomplices of the *Inkotanyi* and to fight at the front. *See* T. 14 June 2004 pp. 83-84.

[489] T. 18 June 2004 pp. 7-8, 13.

Deliberations 40611

437. On 10 January 1994, UNAMIR received information from an informant known as Jean-Pierre concerning his preparation of lists by the *Interahamwe*. The Defence teams primarily contest his overall credibility, intimating that he was not reliable and was likely an RPF propaganda tool intended to discredit the Habyarimana regime. As discussed below (III.2.6.3), the Chamber considers that Jean-Pierre had access to information concerning the activities of the *Interahamwe*. However, given the second-hand nature of his evidence as well as other concerns, discussed in that section, the Chamber views the evidence based on Jean-Pierre's information with caution.

438. The evidence of Witnesses BY, LAI, DCH and AAA amply corroborates Jean-Pierre's information that members of the *Interahamwe* were preparing lists of individuals identified as enemies. In other sections of the judgement, the Chamber has raised questions about the credibility of other aspects of the testimony of these witnesses. The Chamber, therefore, declines to accept as reliable the specific details of their accounts. However, when taken together and viewed in context with the information received by Colonel Claeys as well as the totality of the evidence, the Chamber is convinced that the *Interahamwe* made an organised effort to create lists of suspected opponents of the regime. The information available, including the accounts of Witness BY and AAA, indicates that these lists were not focused exclusively on ethnicity. The evidence does not show that the Accused played any role in the preparation of lists by the *Interahamwe*.

2.5.5 Use of Lists, 1994

Introduction

439. In support of the allegation that members of the military and *Interahamwe* used pre-established lists as part of their effort to massacre Tutsis and moderate Hutus in 1994, the Prosecution points to a substantial body of evidence about lists and their use to facilitate killings, in particular events related to the killing of the Prime Minister and other political officials in Kimihurura; *Centre Christus*; Alphonse Kabiligi; Mudende University; Gikondo Parish; Kabgayi religious centre; a February 1994 meeting and subsequent killings in Butare and Gisenyi prefectures; a meeting held at Barnabé Samvura's house; *Centre Hospitalier de Kigali*; the Remera area and finally the killing of religious personnel at Nyundo Parish in Gisenyi prefecture. This evidence is discussed in detail in other parts of the judgement. Reference is also made to Witnesses KJ, ZF and A, which is summarised below.[490]

440. The Defence teams dispute the involvement of their clients in the use of pre-established lists in 1994. The Bagosora, Ntabakuze and Nsengiyumva Defence further emphasise that, if lists were used for targeted killings of political opponents, it would run counter to the claim of a genocide.[491]

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[490] Prosecution Closing Brief, paras. 45-48, 85, 104-105, 208, 263, 271, 282, 284, 409, 424, 439, 449, 462, 471-473, 491, 505-507, 552, 555, 571-604, 611, 732, 773, 972, 974-975, 1035(b, c), 1038-1039, 1040(c), 1066(a, c), 1069(e), 1071-1072, 1099-1100(a), 1108, 1109(g), 1183(b), 1185, 1223, 1224(e), 1261, 1274(c), 1340-1342, 1370, 1379-1380, 1388(b), 1415(e), 1425(f, h), 1457(b), 1468, 1469(b), 1473, 1474(d), 1479, 1495, 1504(e, k), 1514(b, c), 1533(b), 1538(b), 1539, 1542, 1550(h), 1581(b), pp. 733-735, 809, 812, 867-869.

[491] Bagosora Defence Brief, paras. 815, 1190-1195, 1623, 1625; Kabiligi Closing Brief, para. 1537, p. 605; Ntabakuze Closing Brief, paras. 2298-2301; Nsengiyumva Closing Brief, paras. 663-664, 668. Each of the

Evidence

40610

Prosecution Witness KJ

441. Witness KJ, a gendarme of mixed ethnicity stationed in Kibuye prefecture in 1994, testified that he attended a meeting in March 1994 with his commander Major Jean-Baptiste Jabo and his deputy Lieutenant Masengesho. According to the witness, Jabo and Masengesho had attended an earlier meeting with Clement Kayishema, the prefect of Kibuye prefecture, who had received a telegram from the Ministry of the Interior saying that RPF accomplices were scattered throughout the area. The intelligence staff of the gendarmerie was subsequently increased and a joint effort with the Ministry of the Interior was undertaken to search for accomplices and individuals opposed to the MRND. Between 10 and 15 April 1994, these efforts generated a list of 20 to 30 alleged *Inkotanyi* and individuals in Kibuye prefecture who opposed the government. The witness recognised some of the names and later learned that they were killed. He also saw a national list sent by the Ministry of the Interior in Major Jabo's office that had been sent to the prefectures and was a point of reference for lists created within the various prefectures.[492]

Prosecution Witness ZF

442. Witness ZF, a Hutu radio operator in Gisenyi in 1994, testified that Lieutenant Bizumuremyi had informed him of a "black list" of people that needed to be arrested. It included persons suspected of being RPF accomplices, intellectuals, businessmen and ordinary people. Bizumuremyi did not show him the list, but businessmen named Bwanafeza and Rwemalika and a woman in charge of the Edelweiss hotel, whose name the witness could not remember, were mentioned in connection with the list.[493]

Prosecution Witness A

443. Witness A, a Hutu high-ranking national official with the *Interahamwe*, testified that he spoke with Jean Kambanda in the first half of 1997 in Nairobi, Kenya. Kambanda told the witness that Bagosora showed him "a list of people to be killed", which contained the names of "Tutsis and Tutsi businessmen", during the first cabinet meeting held at the *Hôtel des Diplomates* sometime between 9 April and 12 April 1994. Kambanda had not known up until the meeting that there had been pre-established lists.[494]

Defence teams also make submissions concerning the specific events referred to by the Prosecution, which are discussed in the relevant sections of the judgement.

[492] T. 19 April 2004 pp. 4-6, 43-48, 52-55, 59-60; T. 22 April 2004 pp. 35-39; T. 27 April 2004 pp. 24-30; Prosecution Exhibit 212 (personal identification sheet). Witness KJ was arrested in Rwanda in December 1994 but released without being tried in 2002. *See* T. 19 April 2004 p. 6. *See also* Prosecution Exhibit 213 (Format of the document containing lists of names of accomplices in Kibuye). On the list was written, "Republic of Rwanda, MINADEF – Ministry of the Interior, intelligence service", and a PO Box number. The list was entitled "List of Accomplices Wanted" or "List of Accomplices to be Looked for" and appeared to have come from Kigali. It contained columns for the individual's name, commune, the father's and mother's names and comments such as the person's political party or charges levelled against him or her. The list also mentioned the individual's ethnic group. T. 19 April 2004 pp. 48, 54.

[493] T. 27 November 2002 p. 13; T. 28 November 2002 pp. 81-82. Witness ZF later learned from Bizumuremyi that Bwanafeza and Rwemalika were killed, and he heard that the Edelweiss employee had crossed the border to Goma. The witness believed that they were Tutsis. *See* T. 2 December 2002 p. 62. The witness's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.

[494] T. 1 June 2004 pp. 45-46, 79-80; T. 2 June 2004 p. 56; T. 3 June 2004 pp. 54-56, 99; Prosecution Exhibit 222 (personal identification sheet).

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Bagosora

444. Bagosora denied that he created lists of people to be killed or gave lists to soldiers on 7 April 1994. He also did not provide Jean Kambanda, or any member of the government, with a list of individuals to be killed. Bagosora did not attend cabinet meetings before, during, or after Jean Kambanda held the position of interim Prime Minister.[495]

Bagosora Defence Witness Jean Kambanda

445. Jean Kambanda, former Prime Minister of the Interim Government, testified that Bagosora never attended a cabinet meeting from April to July 1994, as only ministers attended such meetings. Delegates were not used in place of ministers even during a minister's absence. Bagosora never gave Kambanda a list of individuals to be killed. Kambanda denied informing Witness A in 1997 that Bagosora had referred to a list.[496]

Deliberations

446. Witness KJ provided first-hand and convincing evidence about the creation and use of lists after April 1994 in Kibuye prefecture, and the Chamber accepts it. His testimony demonstrated that military officials continued to compile lists of suspected RPF sympathisers and political opponents in 1994 and cooperated with other parts of the Rwandan government in this effort.

447. Witness ZF directly implicated Nsengiyumva in the use of lists in Gisenyi prefecture in 1994. The Chamber has expressed doubts about aspects of his evidence in other parts of the judgement and views his testimony with caution also here. Witness ZF's basis of knowledge was second-hand and uncorroborated, and the Chamber declines to accept his evidence on this point.

448. Witness A directly implicated Bagosora in the creation and use of lists in 1994, but his testimony was second-hand. His source, Prime Minister Jean Kambanda, disputed that he provided this information to Witness A. The Chamber is mindful of the credibility issues related to Kambanda's account. He is serving a life sentence for his role in the events during Rwanda in 1994 and is an alleged accomplice of Bagosora. Nevertheless, his evidence raises further concern about Witness A's uncorroborated and indirect testimony.

449. Much of the evidence referred to by the Prosecution is assessed in other parts of the judgement, along with the accompanying Defence evidence and submissions. The Chamber only recount the salient aspects of its findings here.[497]

450. The Chamber has heard evidence that elite units of the Rwandan military perpetrated targeted political killings in Kigali on the morning of 7 April 1994 (III.3.3; III.3.5.2).[498]

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[495] T. 8 November 2005 p. 57; T. 9 November 2005 pp. 12-13.

[496] T. 11 July 2006 pp. 30-31; T. 12 July 2006 pp. 5-8, 66-67; T. 20 November 2006 pp. 3-10; Bagosora Defence Exhibit 346 (personal identification sheet); Bagosora Defence Exhibit 348 (name of individual referred to as Mr. "X" or "A" during Kambanda's testimony).

[497] The Chamber has not accepted the Prosecution's allegations that lists were used after a February 1994 meeting in killings in Butare and Gisenyi prefectures (III.2.4.6) in killings following a meeting held at Barnabé Samvura's house in Gisenyi prefecture (III.3.6.3). The Prosecution also refers to a "list" at RTLM of prominent individuals who were executed on 7 April 1994. *See* Prosecution Closing Brief, para. 552. However, having examined the evidence, the Chamber considers that this was not a pre-established list, but rather an accounting of the killings.

Around the same time in Gisenyi prefecture, Alphonse Kabiligi, a Hutu member of the PSD party, was killed by militiamen and members of the military working in close cooperation (III.3.6.5). He was previously identified as a target for arrest or killing. On the night of 8 April, masked assailants came to Mudende university in Gisenyi prefecture and used lists in an attempt to check the identity cards of survivors of an earlier attack (III.3.6.7).[499]

451. The Chamber has also found that, on 9 April 1994, the Rwandan army sealed off the Gikondo area of Kigali, and gendarmes moved systematically through the neighbourhood with lists, sending Tutsis to Gikondo Parish. The gendarmes checked the identity cards of the Tutsis at the parish against their lists before the *Interahamwe* proceeded to kill them (III.3.5.8). Targeted killings of patients were also carried out by soldiers at the *Centre Hospitalier de Kigali* (III.4.1.3). Between April and June 1994, military personnel accompanied by *Interahamwe* regularly abducted refugees from the Kabgayi religious centre in Gitarama prefecture, sometimes using lists (III.4.4.1).

452. The evidence suggests that the lists prepared and maintained by the Rwandan military and the *Interahamwe* (III.2.5.3-4) were directed primarily at identifying suspected accomplices of the RPF and opponents of the Habyarimana regime or MRND party. The lists contained both Tutsis and Hutus and did not single out only Tutsis, as such. It is not clear that the lists were generated with the intent to kill the persons who were included, as opposed to arrest them or keep them under surveillance. However, given the identifying details accompanying them, it is obvious that they were meant to assist in locating the individuals, if necessary. Their use after 6 April 1994, in particular in the first several days, demonstrate that they facilitated the killings of specific individuals.

453. The Chamber is satisfied that Nsengiyumva, as the former head of the intelligence bureau (G-2) on the army general staff, participated in generating and maintaining these lists (III.2.5.3). It is not clear what role Bagosora played in their creation. However, the Chamber has no doubt that he was aware of their existence and use after 6 April 1994, given his authority at the time, his position as *directeur de cabinet* of the Ministry of Defence, and his prior post as head of the Ministry's military intelligence service (I.2.1). The evidence does not reflect what role Ntabakuze played in the creation of lists. Nevertheless, his use of them during the October 1990 arrest operation indicates his awareness of their existence (III.2.5.1). The Chamber heard no evidence directly connecting Kabiligi to the creation or use of lists.

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[498] UNAMIR observers also witnessed members of the Presidential Guard, gendarmerie and civilian militias going from house to house in the Kimihurura area with lists. *See* Beardsley, T. 3 February 2004 p. 40.
[499] There were also other targeted killings in Gisenyi prefecture on 7 April in Gisenyi town and at Nyundo Parish (III.3.6.1; III.3.6.6).

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2.6 Creation, Training and Arming of Civilian Militias

454. Each of the Indictments alleges that the various political parties in Rwanda created youth wings, such as the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR), which were converted into civilian militias and provided with training and weapons to serve as a complementary force to the Rwandan military to ensure the "extermination of the enemy and its 'accomplices'". More specifically, it is submitted that military authorities, such as Ntabakuze and Nsengiyumva, and civilian authorities supervised the training conducted simultaneously throughout the country in places such as Kigali, Cyangugu, Gisenyi and Butare prefectures and in and around military camps, including Gabiro, Gako, Mukamira and Bigogwe. Furthermore, the Accused and other military authorities purportedly provided weapons to militiamen during the course of the events referred to in the Indictments.[500]

455. Each of the Defence teams argue that there is no credible first-hand evidence demonstrating that that the army trained and armed civilian militiamen, or that the Accused or the army had any authority over them. The Bagosora Defence does not dispute that some weapons were distributed to certain areas at the war front, but distinguishes the legitimate civilian self-defence system from groups such as the *Interahamwe*. The Kabiligi Defence submits that the allegations concerning training and distribution of weapons are vague and do not give sufficient detail connecting Kabiligi to these activities. The Prosecution has not established a link between him and the *Interahamwe*. The Ntabakuze Defence argues that most of the evidence of training occurred in 1993, which is outside of the Tribunal's temporal jurisdiction, and that the allegations are not pleaded in the Indictment. It also refers to Defence evidence contradicting claims that Ntabakuze or members of the Para Commando Battalion provided training, arms and logistical support to the *Interahamwe*. The Nsengiyumva Defence also submits that these allegations are too vague. It points to Defence evidence refuting claims that militiamen were trained and armed in Gisenyi prefecture.[501]

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[500] Bagosora Indictment, paras. 1.17, 1.19, 3.11, 5.1, 5.16-5.35, 6.48, 6.58, 6.63; Kabiligi and Ntabakuze Indictment, 1.17, 1.19, 3.9, 5.1, 5.13-5.26, 6.32, 6.35; Nsengiyumva Indictment, paras. 1.17, 1.19, 3.9, 5.1, 5.12-5.24, 6.16, 6.21; Prosecution Closing Brief, paras. 44-45, 54, 491, 495, 497, 499-501, 503-504, 536-538, 560-566, 613-615, 625-626, 761-762, 856-866, 969-971, 984-987, 1000, 1001(c, f), 1005, 1016-1017, 1018(d), 1019(b, d), 1050, 1055, 1058(a), 1100(b), 1162, 1163(f), 1178, 1287(d), 1291(b), 1310-1317, 1358(c), 1361, 1363(m), 1365, 1370, 1383, 1387, 1388(a, c), 1413, 1415(c), 1422-1423, 1425(c), 1469(a), 1478-1479, 1481, 1497, 1504(b, c), 1571(c), 1649, 1765-1766, pp. 717-731, 772-773, 783, 786, 796-808, 811-812, 831-834, 853-865; T. 28 May 2007 p. 14. The Prosecution points to testimony of Witness XBM concerning various meetings. *See* Prosecution Closing Brief, paras. 1051(a), 1052-1053, 1056-1057, 1059-1060. The Chamber previously excluded this evidence. *See* Decision on Nsengiyumva Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, declaration 4.

[501] Bagosora Closing Brief, paras. 71, 116-119, 122-125, 142, 156, 550-561, 636-672, 800, 822, 1094, 1202-1208, 1432, 1620, 1622, 1623, 1703, 1860-1861, pp. 352-353; Kabiligi Closing Brief, paras. 19, 72, 184-185, 253, 265, 293-299, 398-399, 696-697, 793, 833-854, 910-911, 950, 963, 982, 985, 989, 1090, 1092, 1106, 1114, 1122, 1469-1482, 1493, 1533-1536, 1622, 1642-1649, pp. 351, 411-412, 570, 583, 592-596, 608, 616; Ntabakuze Closing Brief, paras. 285-287, 290-292, 485,756-796, 1540, 1666-1668, 2359-2360; Nsengiyumva Closing Brief, paras. 27, 35, 159-168, 176, 183, 246-258, 276-278, 281-282, 329-459, 472-531, 541-550, 567-569, 571, 573-577, 583, 817, 1045-1046, 1048, 1052-1053, 1055, 1124-1125, 1135-1139, 1271, 1227, 1307, 1440-1441, 1473, 1751-1754, 1756, 1759-1760, 1762-1765, 1886-1891, 1916, 1964, 1968-1973, 2022, 2140, 2372-2376, 2380-2381, 2402, 2707, 2710, 2726-2729, 2738-2739, 2910, 2915-2917, 2949-2951, 3180-3181, 3347; T. 29 May 2007 pp. 76-77; T. 30 May 2007 pp. 22-24; T. 31 May 2007 pp. 47-48.

2.6.1 *Interahamwe* and Other Political Party Militias

456. Constitutional amendments in June 1991 legalised multi-party politics in Rwanda, and several political parties were formed. At the end of 1991, the parties began establishing youth wings, such as the *Inkuba* (MDR), the *Interahamwe* (MRND), the *Impuzamugambi* (CDR), the *Abakombozi* (PSD) and the *jeunesse du PL* (PL). At times, these groups would engage in violent clashes following political rallies. The violence was mainly between the MRND's *Interahamwe* and the MDR's *Inkuba*.[502]

457. The *Interahamwe* was founded following two meetings at the end of 1991. The second meeting officially established the *Interahamwe*, and 11 leaders were elected, five forming the national committee with six others serving as advisers.[503] The *Interahamwe* had a hierarchical structure and was organised at each level of government. There were Hutu and Tutsi members at its inception, and its president, Robert Kajuga, was of Tutsi descent. It targeted the unemployed youths in the Kigali area, who were mainly war refugees, to fill its ranks. President Habyarimana made the first donation of 500,000 Rwandan francs to the organisation, which was used to purchase uniforms and to provide transport to meetings and rallies. *Interahamwe* members wore *kitenge* uniforms of mixed colours, which appeared similar to camouflage, and bore either an effigy of President Habyarimana or the MRND insignia.[504]

458. In 1992 and 1993, members of the *Interahamwe* and other civilians began receiving military training and weapons with the support of the Rwandan military.[505] As discussed below (III.2.6.2), it is not clear whether this training was directed at training the *Interahamwe* as such or whether some members were trained as part of the civil defence system.

459. After the RPF resumed hostilities in February 1993, the political divisions between the youth wings began to narrow into two camps: pro-RPF and anti-RPF. At a rally in Kigali in October 1993, calls of Hutu power and solidarity were made in an effort to get members of

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[502] Prosecution Exhibit 2A (Expert Report of Alison Des Forges), pp. 17-18; Prosecution Exhibit 436B (Expert Report of Bernard Lugan), pp. 6-7.

[503] The *Interahamwe* had a National Committee and a College of Advisers. The National Committee was composed of President (Robert Kajuga); 1st Vice-president (Phénéas Ruhumuliza); 2nd Vice-president (Georges Rutaganda); Secretary-General (Eugène Mbarushimana); and a Treasurer General (Dieudonné Niyitegeka). The College of Advisers was composed of Chairmen who headed different Commissions: Commission on Social and Legal Matters (Bernard Maniragaba); Research and Development Commission (Joseph Serugendo); Commission on Political Matters and Propaganda (Jean Pierre Sebanetsi); Economic and Financial Commission (Ephrem Nkezabera); Follow-up and Assessment Commission (J.M.V. Mudahinyuka); and External Relations and Documentation Commission (Alphonse Kanimbe). *See* Prosecution Exhibit 33B (2 February 1994 Report on the Study on the *Interahamwe* Militias by Major Hock), pp. 1, 14; Prosecution Exhibit 223 ("*Comité national provisoire des Interahamwe*").

[504] Witness A, T. 1 June 2004 pp. 35-39; T. 3 June 2004 p. 61; T. 3 June 2004 pp. 82-83. In view of the uniforms' similarity to military-style camouflage and evidence that some members wore portions of military fatigues, the Chamber has considered throughout the judgement whether assailants could have been in fact *Interahamwe* before identifying them as members of the Rwandan military.

[505] Witness DBY suggested that, in 1992, Bagosora authorised the distribution of weapons to *Interahamwe* who had been previously trained in Gabiro because he saw a telegram emanating from the Ministry of Defence referring to *Interahamwe* and "Foray at Remera". A week later he saw an *Interahamwe* in Remera named Foray carrying new weapons. The witness said that Foray had previously received training in Gabiro. *See* T. 12 September 2003 p. 42; T. 22 September 2003 pp. 6-8, 35, 41-43, 46-48. The telegram, however, was not tendered into evidence, and Witness DBY's testimony is the only evidence of its existence. The Chamber therefore declines to accept this testimony in the absence of further corroboration.

the various political parties to put aside their differences and focus on their common enemy, the RPF.[506] Eventually, civilians involved in the killings in Rwanda from 7 April were commonly referred to as *Interahamwe* even if they were not specifically members of the MRND youth wing.[507]

2.6.2 Rwanda's Civil Defence System and Civilian Assailants

Evidence

460. Authorities in Rwanda took various steps to establish a "civil defence system"[508] from the RPF's invasion in October 1990 when they mobilised the population to erect roadblocks, check identity cards at them and engage in neighbourhood patrols. Following the February 1993 resumption of hostilities by the RPF, these efforts continued to exist, but they were primarily focused in the northern border regions in areas closest to RPF occupied territory. During this period, some members of the local population were armed and trained and conducted patrols with soldiers to prevent RPF incursions.[509]

461. After the RPF resumed hostilities in February 1993, there was a sharp increase in interest in implementing a broader civil defence system. President Habyarimana, the CDR party and Ferdinand Nahimana, a prominent MRND party member called for civil self-defence on the radio, in press releases and letters.[510] In February and March 1993, Bagosora participated in meetings at the Ministry of Defence to promote civil defence in certain communes. He claims that he took notes during these discussions which are written as entries in his agenda.[511]

462. Following the RPF's February 1993 actions, the prefects of Ruhengeri and Byumba prefecture made requests to James Gasana, the Minister of Defence, for weapons to arm the

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[506] Des Forges, T. 24 September 2002 p. 102; T. 25 September 2002 pp. 30-31; T. 19 November 2002 p. 43; Prosecution Exhibit 436B (Expert Report of Bernard Lugan), p. 11. *See also* Kabiligi Defence Exhibit 10 (James Gasana: *La Violence Politique au Rwanda 1991-1993* (1998)), para. 100.

[507] *See, e.g.*, Witness XBG, T. 8 July 2003 p. 94; Witness OQ, T. 16 July 2003 p. 44; Witness ABQ, T. 6 September 2004 p. 8; Des Forges, T. 25 November 2002 pp. 10-12.

[508] The Chamber uses the term "civil defence" in this section as it was understood and applied in Rwanda at the time. The term "civil self-defence" is sometime also used in the evidence. As discussed in this section, Rwanda's efforts at civil defence more approximates the creation of armed resistance groups than the definition of the term in Article 61 of Additional Protocol I to the Geneva Conventions. Under Article 61, "Civil defence" refers to humanitarian tasks intended to protect the civilian population against or help it recover from the immediate effect of hostilties or disasters, such as warning, evacuation, medical services and fire-fighting. *See also* International Committee of the Red Cross, Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 12 August 1949 (1987), pp. 713-736.

[509] Des Forges, T. 17 September 2002 pp. 79-80; T. 18 November 2002 pp. 53-54. In a letter of 29 September 1991 to the Minister of Defence, Colonel Nsabimana proposed providing one gun for every 10 households and 1,760 guns for Muvmba, Ngarama, Muhara and Bwisige communes. To this end the government distributed 500 Kalashnikovs to civilian authorities, according to Dr. Augustin Iyamuremye, the secretary-general of central information services, in a Human Rights Watch interview. Along the northern war front in 1991, Nsabimana initiated civilian self-defence to assist the army against the RPF invaders. Des Forges, T. 17 September 2002 pp. 79-80.

[510] Des Forges, T. 17 September 2002 pp. 80-81; Prosecution Exhibit 35 (CDR press release). Nahimana re-circulated his letter calling for a Civil Defence force in March 1994. *See* Des Forges, T. 17 September 2002 pp. 127-128.

[511] T. 28 October 2005 p. 7; T. 31 October 2005 pp. 17-18. The significance of the agenda is discussed in this section below.

population. According to a book written by Gasana, he refused these requests since there was no organic law on the organisation of civil defence and because such an effort might frustrate on-going peace negotiations. He claimed that, in his absence, Bagosora illegally arranged for the distribution of weapons in four communes in Gisenyi prefecture. According to the book, Gasana successfully recuperated the weapons on his return. The prefect of Byumba, Augustin Bizimana, became Minister of Defence after Gasana fled Rwanda.[512]

463. Bagosora did not dispute that weapons were distributed to certain *bourgmestres* in Gisenyi, Ruhengeri and Byumba prefectures. However, he did not authorise the distribution. It was done in accordance with proper procedures, with an order directed from the Ministry of Defence to staff headquarters, which then transmitted instructions to the relevant military camps. Furthermore, Gasana had returned to Rwanda on 13 February 1993, making it impossible for Bagosora to have authorised the distribution of weapons without Gasana's consent in view of the limits on his authority (IV.1.2). Finally, the weapons were withdrawn after the cease fire with RPF was signed in Dar es Salaam on 7 March 1993. The only exception was Karago commune in Gisenyi prefecture.[513]

464. On 14 December 1993, Nsengiyumva drafted a letter to the chief of staff of the Rwandan army. The letter noted that civilians, mainly from Kigali, had been trained and armed with Kalashnikov rifles in connection with civil defence in four communes in Gisenyi prefecture – Mutura, Karago, Rwerere and Rubavu – but that most of these weapons were returned. The letter requested additional weapons, and Nsengiyumva noted in it that the training and distribution "will be handled at [his] level".[514] These communes were also referred to in Bagosora's agenda made several months earlier.[515]

465. Nsengiyumva confirmed that the four communes in Gisenyi received weapons in late 1993 in the aftermath of an RPF attack on Kabatwa, and that an early distribution had taken place in March 1993 as well. The Ministry of Defence provided approximately 300 weapons to Gisenyi military camp to be given to three *bourgmestres* in December 1993. Nsengiyumva said that he had no role in choosing which citizens would receive the weapons, did not know the political affiliations of the *bourgmestres* receiving the weapons, and was not involved in any training as people had already been trained. He denied that any incidents in April 1994 were connected to these weapons and did not believe that they were distributed to the *Interahamwe*. Nsengiyumva clarified that this instance of weapons distribution was separate from the civil defence program later established by the government.[516]

466. Around the same time, on 28 December 1993, Bishop Kalibushi of the Nyundo Diocese issued a press release condemning the distribution of weapons to civilians in the area, which was resulting in increased tensions, and called on authorities to explain the purpose of it.[517]

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[512] Kabiligi Defence Exhibit 10 (James Gasana: *La Violence Politique au Rwanda 1991-1993* (1998)), para. 67.
[513] Bagosora, T. 31 October 2005 pp. 63-68; T. 14 November 2005 p. 4.
[514] Des Forges, T. 17 September 2002 pp. 117-118; Prosecution Exhibit 36B (Nsengiyumva letter of 14 December 1993).
[515] Prosecution Exhibit 278 (Expert Report of Antipas Nyanjwa, Test Collection A: Bagosora Agenda). The communes are mentioned on the entries for 18 and 20 February, 4 March and the "Contact page ABC" (T. 31 October 2005 pp. 47-48).
[516] Nsengiyumva, T. 9 October 2006 pp. 58-60, 70-71; T. 12 October 2006 pp. 38-49; T. 13 October 2006 p. 8.
[517] Prosecution Exhibit 37 (Kalibushi letter). *See also* Des Forges, T. 17 September 2002 pp. 123-124, 126; Sagahutu, T. 27 April 2004 pp. 64, 77-80; T. 28 April 2004 pp. 46-49. The minutes of a meeting of 28 March

467. The Prosecution has also presented other first and second-hand evidence of military and civilian authorities providing training and weapons to civilians from 1992 through April 1994.[518] The Defence has presented witnesses to refute some of the specific allegations made by these witnesses.[519] Other evidence concerning the distribution of weapons is discussed in other parts of the judgement.

1994, discussed in detail below, between the army chief of staff, the Kigali operational sector commander and the prefect of Kigali mention ongoing military involvement in civil defence efforts in the northern border regions. *See* Prosecution Exhibit 38 (Nsabimana letter of 29 March 1994, p. 2, para. 10: "The efforts undertaken by the Ops Section Commanders neighbouring the DMZ in the framework of civilian self-defence will continue with the collaboration of local administrative authorities.").

[518] *See, e.g.,* Prosecution Exhibit 33B (2 February 1994 Report on the Study on the *Interahamwe* Militias by Major Hock), pp. 2-3, which lists various camps and suggests that 1,300 young *Interahamwe* have been trained in camps outside Kigali. For training at Gabiro, *see* Dallaire, T. 19 January 2004 pp. 94-97; T. 26 January 2004 p. 14; Beardsley, T. 3 February 2004 pp. 5-8, 86; T. 5 February 2004 pp. 2-3; Witness DA, T. 19 November 2003 pp. 6-8, 10; T. 10 December 2003 pp. 18-20; Witness CW, T. 8 October 2004 p. 22; Witness XAB, T. 6 April 2004 pp. 29-31; Witness XXY, T. 11 June 2004 pp. 7-8, 45; Witness DBY, T. 12 September 2003 p. 42; T. 22 September 2003 pp. 6-8, 35, 41-43, 46-48; Witness GS, T. 17 February 2004 pp. 68-69, 72-73; T. 18 February 2004 pp. 43-45; Witness DCH, T. 23 June 2004 pp. 12-14, 27; T. 24 June 2004 p. 56; Des Forges, T. 17 September 2002 pp. 59-60, 62, 76-77; T. 25 September 2002 pp. 18-19; T. 26 September 2002 p. 74; T. 19 November 2002 pp. 22-23, 28-29, 31-32. For training at Camp Kimihurura, *see* Witness DA, T. 19 November 2003 pp. 6-10; T. 10 December 2003 pp. 18-19. For training in Rulindo, *see* Witness XXJ, T. 14 April 2004 pp. 25-27, 32-33, 57-58. For training in Mukamira and Cyabalarika camps, *see* Witness DN, T. 19 February 2004 pp. 3-7, 10-15, 18-23; Witness DCH, T. 23 June 2004 pp. 12-17, 27-31, 38-39; T. 24 June 2004 pp. 56-57; T. 25 June 2004 pp. 8-9, 22; T. 28 June 2004 pp. 73-74. For training in Cyangugu, *see* Witness LAI, T. 31 May 2004 pp. 20-27, 29-31, T. 2 June 2004 pp. 11-13, 17; T. 3 June 2004 pp. 2-7, 14-17, 25. For training at Mount Kigali and in Gabiro, *see* Witness AAA, T. 14 June 2004 pp. 23-24, 75-76; T. 15 June 2004 pp. 58-60, 66. For training at Bigogwe camp, *see* Witness XBM, T. 14 July 2003 pp. 12-14, 33-38; T. 15 July 2003 pp. 27-28, 36-42; Beardsley, T. 3 February 2004 pp. 6-8; T. 4 February 2004 pp. 86-88; T. 5 February 2004 pp. 1-3; Prosecution Exhibit 401 (Letter of 20 April 1994, signed by Edouard Karamera). For training at the Mutura commune office, *see* Witness XBM, T. 14 July 2003 pp. 33-35, 37-39, T. 15 July 2003 pp. 33-36; Witness XBG, T. 8 July 2003 pp. 23-24, 28-29, 94; T. 9 July 2003 pp. 51, 58-59; Witness OAB, T. 24 June 2003 pp. 54, 68-69; T. 25 June 2003 pp. 88-89; Witness OAF, T. 23 June 2003 pp. 5-6, 65-66; Witness BY, T. 2 July 2004 pp. 27-32; T. 7 July 2004 pp. 19-25; T. 8 July 2004 pp. 32-33; T. 9 July 2004 pp. 31-36; Witness A, T. 1 June 2004 pp. 39-40; T. 2 June 2004 p. 78; T. 3 June 2004 pp. 70-73; Witness ZF, T. 28 November 2002 pp. 10-16, 35-36; Serushago, T. 18 June 2003 pp. 6-7, 9-10, 80-88. For training in Gishwati forest, *see* Sagahutu, T. 27 April 2004 pp. 65-68, 72-73, 77, 80-81; T. 28 April 2004 pp. 33, 36-42; T. 29 April 2004 pp. 7, 17-19. For training at *Saint Fidèle* institute, *see* Witness ABQ, T. 7 September 2004 p. 19; T. 8 September 2004 pp. 32-33. For distribution of weapons at the *Hôtel Meridien*, *see* Witness ZF, T. 28 November 2002 pp. 3-10, 26, 30-32; T. 3 December 2002 pp. 3-5, 72-76; T. 4 December 2002 pp. 63-64; T. 5 December 2002 pp. 67-76; Serushago, T. 18 June 2003 pp. 9, 13-15, 60-61, 63, 65-74, 83-85. For distribution of weapons in Kigali, *see* Witness BY, T. 5 July 2004 pp. 16-17, 21-25, 56-57, 79; T. 7 July 2004 pp. 79-83; T. 8 July 2004 39-43; 46-49; T. 9 July 2004 pp. 1-10; Witness A, T. 1 June 2004 pp. 69-70, 83; T. 2 June 2004 pp. 28-29; T. 3 June 2004 pp. 38-44.

[519] With respect to training at Bigogwe, *see* Nsengiyumva, T. 6 October 2006 pp. 8-11; Biot, T. 21 September 2006 pp. 77-78; Tchemi-Tchambi, T. 6 March 2006 pp. 33, 35, 37-44; Witness NATO-1, T. 27 June 2006 pp. 6-9, 20-21, 23-24; Witness LIG-1, T. 13 April 2005 pp. 42, 64-66; Witness BDR-1, T. 14 April 2005 p. 65; T. 15 April 2005 pp. 2, 3-6, 18-19; Witness YD-1, T. 12 December 2005 pp. 38-40, 48-49, 56-57; Witness CF-2, T. 29 November 2005 pp. 49-50, 72. Concerning training at the Mutura commune office, *see* Witness ICJ, T. 13 October 2006 pp. 58, 60, 63. For training at *Saint Fidèle* institute, *see* Witness LN-1, T. 7 July 2006 p. 6. With respect to training in Gisenyi in general, *see* Witness LK-2, T. 19 May 2005 pp. 2, 29; Witness R-1, T. 27 July 2005 pp. 17-18; T. 28 July 2005 p. 15. Concerning the distribution of weapons at *Hôtel Meridien*, *see* Nsengiyumva, T. 4 October 2006 pp. 30-31; T. 6 October 2006 pp. 12-13, 42-43; Nzirorera, T. 16 March 2006 pp. 64-65; T. 12 June 2006 p. 26; Witness TRA-2, T. 21 June 2006 pp. 24-27; Witness XEN-1, T. 30 May 2006 pp. 10-11. With respect to the role of the Para Commando Battalion in training at Camp Gabiro, *see* Ntabakazue, T. 21 September 2006 pp. 36-37; Witness DM-26, T. 1 December 2006 p. 22; Witness DM-190,

468. An undated document setting out a detailed framework for the implementation of a civil defence system was seized on Prime Minister Jean Kambanda when he was arrested in 1997 ("Civil Defence Document").[520] A review of the Civil Defence Document reflects that it was prepared during the cease fire between the arrival of UNAMIR in October 1993 and the resumption of hostilities between the RPF and the Rwandan army on 7 April 1994. This follows from certain passages in the document alluding to the participation of UNAMIR in joint patrols and the need for resistance "in the event of resumed hostilities".[521] Bagosora denied authoring and familiarity with it until his trial.[522]

469. According to the Civil Defence Document, the basic principles of the system were secrecy and the close collaboration between the army, gendarmerie and "political parties defending the principle of the Republic and Democracy" in recruiting and training members of resistance groups.[523] The objectives of civil defence were to ensure the security of the people and encourage them to defend the country against RPF attacks; protect public infrastructure and property; obtain information on the actions and presence of the enemy within localities; denounce infiltrators and collaborators of the enemy; disorganise any enemy action ahead of the intervention of the armed forces; and act as agents of the army and the national gendarmerie.[524]

470. The proposed structure for it was hierarchical and included coordinating committees at every level of government from the national to the sector level. Military and civilian personnel were to serve on each of these committees. The individual civil defence groups were to be formed at the level of the *cellule*.[525] Recruits for the civil defence groups were to be drawn from reservists, soldiers and gendarmes living in residential areas, "youths of political parties with republican leanings" and others convinced of the need for civil defence.[526]

471. The Ministry of Defence's tasks included appointing members of the national coordinating committee in conjunction with the Ministry of Interior, preparing lists of soldiers and reservists living in residential areas, and finding trainers. Military and civilian leaders were responsible for identifying the individuals to serve as part of the civil defence groups. In particular, general staff of the army and gendarmerie were to select the military personnel living outside of camps. The others were to be identified by the commune coordinating committees and political parties.[527]

472. The Civil Defence Document contained detailed instructions on the urgent organisation of civil defence in Kigali, Kigali-Rural, Byumba, Ruhengeri and Gisenyi

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T. 14 March 2006 p. 28. Concerning the alleged distribution of weapons to Witness BY, *see* Bagosora, T. 9 November 2005 pp. 10-12; T. 10 November 2005 p. 5; Witness XO-3, T. 26 July 2005 pp. 13-15, 27-32; Witness LMG, T. 18 July 2005 pp. 15. For general denial that civilians were trained in military camps in 1993, *see* Witness DM-191, T. 5 May 2005 p. 51.

[520] Nkole, T. 8 June 2004 p. 49; Prosecution Exhibit 254 (Organisation of Civil Defence). Kambanda stated that other ministers were referring to the Civil Defence Document at the time he issued his own directive on the implementation of civil defence to the prefects on 25 May 1994. *See* T. 12 July 2006 p. 52.

[521] Prosecution Exhibit 254B (Organisation of Civil Defence), pp. 3-4.

[522] Bagosora, T. 16 November 2005 p. 21.

[523] Prosecution Exhibit 254B (Organisation of Civil Defence), p. 4.

[524] *Id.* p. 5.

[525] *Id.* pp. 11-13.

[526] *Id.* p. 9.

[527] *Id.* pp. 5-8.

prefectures, notably identifying specific communes as well as the manpower and weapons (rifles and bladed traditional weapons) needed for each.[528] These areas were highlighted due to imminent threats from the RPF or strong indications of acts of violence by infiltrators in the event of a resumption of hostilities.

473. On 29 March 1994, Déogratias Nsabimana, the army chief of staff, convened a meeting at army headquarters with Tharcisse Renzaho, the prefect of Kigali, and Colonel Félicien Muberuka, the commander of the operational sector of Kigali, in order "to hone the civil self-defence plan". The following day, Nsabimana forwarded to the Minister of Defence the minutes outlining the decisions taken at the meeting.[529]

474. The minutes reflect military oversight and involvement in the civil defence system. For example, an experienced soldier living outside of the camp was to be placed in charge of each *cellule*. The commander of the Kigali operational sector would assign "operational *cellules*" to defend their neighbourhood and "to search for and neutralise infiltrators within the various neighbourhoods of the city". Military camps would be used to gather civil defence forces in order to give them operational directives. It was also agreed that the operational commander would contact the Ministry of Defence and the Ministry of Interior for weapons and ammunition and take the civilian forces into account in Kigali's defence plan.

475. With respect to civilian involvement, the prefect of Kigali was asked to provide lists of reservists and other "reliable civilians" who would work with soldiers in defending the neighbourhoods. It was suggested that *bourgmestres* instruct the population in traditional weapons since there were insufficient firearms. On 31 March 1994, Renzaho sent Nsabimana a list of 250 individuals identified for training and noted that additional lists would follow.[530] Witness STAR-1, an officer in the Huye Battalion, explained that there was no time to implement this civil defence system before the hostilities resumed with the RPF on 7 April.[531]

476. The civil defence system was formally implemented throughout the country on 25 May 1994 in a Directive by Prime Minister Jean Kambanda addressed to all prefects.[532] Nevertheless, there are a number of references in the evidence concerning its implementation prior to that date. For example, according to Des Forges, Colonel Tharcisse Muvunyi asked local officials on 21 April in Butare prefecture to provide training for the area's civil defence.[533]

477. On the same day Kambanda sent the 25 May Directive to all prefects on the organisation of civil defence, Edouard Karemera, the Minister of the Interior, issued an

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[528] *Id.* pp. 9-11, 13-16.
[529] Des Forges, T. 17 September 2002 pp. 129, 131-134; T. 18 September 2002 pp. 2-3; Prosecution Exhibit 38 (Nsabimana letter of 30 March 1994). Witness CE, a soldier attached to one of the bureaus on the army general staff, testified that he saw a document in late 1993 or early 1994 from Muberuka concerning the selection of members of the population to undergo weapons training to defend Kigali against an "*Inkotanyi*" attack because of the disarmament of soldiers under the Arusha Peace Accords. The witness was not familiar with other exchanges on the issue. *See* T. 13 April 2004 pp. 3-4, 19-23, 82-84; T. 14 April 2004 pp. 1-4.
[530] Des Forges, T. 18 September 2002 pp. 3-5; Prosecution Exhibit 39 (Letter of 31 March 1994 from Renzaho to Nsabimana).
[531] T. 23 February 2006 pp. 21, 29, 68-69.
[532] Prosecution Exhibit 47 (Prime Minister's Civil Defence Directive (25 May 1994)).
[533] Des Forges, T. 18 September 2002 p. 86; T. 25 September 2002 p. 127.

instruction on the implementation of the directive.[534] The Prime Minister's directive begin by noting that, in view of the RPF's attack after the death of President Habyariamana, every Rwandan is "duty-bound" to defend the country, which includes supporting the armed forces. It notes that Rwanda's "most effective weapon" is the "Rwandan people who have relentlessly given their unflinching support to the current government". In this regard, it calls on people to join the army. The directive further recognise the need to organise the people and train them within the next 15 days.[535]

478. The guidelines and objectives for the implementation of the civil defence strategy tracks the formulations in the Civil Defence Document, mentioned above.[536] The directive indicate that communal police and reservists were responsible for providing training in each locality.[537] The prefects were asked to set up civil defence committees to coordinate operations in each sector, commune and prefecture, which would be responsible for supervision of training, discipline and providing weapons and logistical support. The prefect, *bourgmestre* and *conseiller* were to chair the committee established at their administrative level. The local commanding officer in the area was responsible for ensuring regular supervision and evaluation of the civil defence efforts.[538] At the national level, a coordinating committee was responsible for general supervision and planning related to the entire system. It was composed of eight members including the Minister of the Interior (chairman), Minister of Defence (vice-chairman) and the chief of staff of the army.[539]

479. In the middle or second half of June 1994, Minister Edouard Karemera issued an instruction noting that there had not been full compliance with the 25 May Directive of the Prime Minister, in particular in connection with establishment of coordination committees at all levels. Nevertheless, the instruction informed the prefects that the Rwandan government has made available money for each prefecture to establish a civil defence fund. It provided further guidance on how the civil defence funds should be spent, including transport to zones of "intervention" and the purchase of traditional bladed weapons ("*armes blanches*").[540]

480. According to Des Forges, the civil defence system was administered by Bagosora's office in the Ministry of Defence.[541] She described its creation as a way to unite the political party militias towards a single purpose and bring them under control. It also augmented their strength with a larger popular participation and the organisation of each level of the country's

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[534] Prosecution Exhibit 48 (Ministerial instruction on the implementation of civil defence (25 May 1994)).
[535] Prosecution Exhibit 47B (Prime Minister's Civil Defence Directive (25 May 1994)), paras. 1-4.
[536] *Compare id.* paras. 5-6 *with* Prosecution Exhibit 254B (Organisation of Civil Defence), pp. 4-5.
[537] Prosecution Exhibit 47B (Prime Minister's Civil Defence Directive (25 May 1994)), para. 7.
[538] *Id.* paras. 8.1-8.8.
[539] *Id.* para. 8.9.
[540] Prosecution Exhibit 49 (Ministerial Instruction on the use of civil defence funds). The instruction is not dated. However, it refers to a telegram of 13 June, indicating that it was issued sometime after that period. *See also* Des Forges, T. 18 September 2002 pp. 89-91, 96-98.
[541] Des Forges, T. 18 September 2002 pp. 86-89. Des Forges based this opinion on an unidentified witness. She also relied in part on a statement written by Kabiligi. The Chamber has excluded this evidence as well as her testimony based on it, except like here where it also draws on other sources of information. Decision on Kabiligi Motion for the Exclusion of Portions of Testimony of Prosecution Witness Alison Des Forges (TC), 4 September 2006, paras. 2, 5. *See also* Decision on Prosecutor's Motion for the Admission of Certain Materials Under Rule 89 (C), 14 October 2004, para. 21 (holding that Kabiligi's statement was taken in violation of his right to assistance of counsel).

administrative structure from the national level to each *cellule*. The militias of the political parties, however, remained the "cutting edge" of the civil defence system.[542]

481. Witness BY, a high-ranking *Interahamwe* leader, stated that the interim government instituted a civil defence program to militarily train and arm the civilian population, and included the use of the *Interahamwe*, the *Impuzamugambi* and the *Inkuba*. Within the *Interahamwe*, instruction was based upon its existing training structure. The witness attended two civil defence meetings in May 1994 in Kigali, including one presided over by Colonel Gasake at the Ministry of Defence. Representatives of the MDR party and the CDR's *Impuzamugambi* were also present. At the meeting, Gasake asked the leaders of the youth wings to carry out an inventory of the needs and of the people who were in a position to be armed and provide civil defence.[543] Witness A, a high-ranking *Interahamwe* leader, acknowledged that members of the *Interahmwe* participated at times in military operations against the RPF with the army. When engaged in these operations, the *Interahamwe* fell under the control of the army, but otherwise it was not under the army's authority.[544] Kambanda also explained that the *Interahamwe* was a militia separate from civil defence.[545]

482. As discussed below (III.4.5.1), a set of written exchanges in June 1994 reflects that Edouard Karemera, the Minister of Interior, issued instructions to Nsengiyumva to deploy civil defence forces to Kibuye prefecture to reinforce military operations in the Bisesero area.[546] The evidence in that section also indicates that Nsengiyumva deployed these forces to reinforce the army in Kigali.

483. In this same vein, Witness HN, a Hutu soldier stationed at army headquarters, testified about three messages relating to the *Interahamwe*. They were sent to various operational commands. The first transmission, at the end of April 1994, was from the G-3 office to the commanding officer of military operations in Gitarama prefecture, stating that there was a need to recruit 150 *Interahamwe*, who would require training and weapons. The witness observed a second transmission from the G-3 office in Kabiligi's handwriting in May 1994 on a table in the transmission centre. It stated that there was a need to use *Interahamwe* at roadblocks in Kigali town. Witness HN was able to determine that the message was written by Kabiligi because he recognised his handwriting from a message Kabiligi had previously brought to the transmission centre. In June 1994, the witness heard Kabiligi communicating with troops in Kigali at a place called Mburabuturo. Ten minutes later, Kabiligi gave a message to the transmission centre instructing that *Interahamwe* manning roadblocks should be sent to Mburabuturo to assist in fighting the RPF.[547]

484. In the opinion of Des Forges and Filip Reyntjens, the references in the documents mentioned above to arming civil defence forces with traditional weapons indicated that their

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[542] Des Forges, T. 18 September 2002 pp. 11, 78, 82-83, 89-90.
[543] Witness BY, T. 5 July 2004 pp. 48-50; T. 9 July 2004 pp. 26-27.
[544] Witness A, T. 1 June 2004 pp. 64-67; T. 3 June 2004 pp. 58-59, 68-70.
[545] Kambanda, T. 12 July 2006 p. 39.
[546] *See also* Des Forges, T. 18 September 2002 p. 102; Nsengiyumva Defence Exhibit 187 (Kayishema Telegram to the Ministry of Defence, dated 12 June 1994); Prosecution Exhibit 396 (Édouard Karemera's hand-written notes of meeting on 17 June 1994); Prosecution Exhibit 50 (Edouard Karamera's telegram to Nsenigyumva, undated); Prosecution Exhibit 394 (Edouard Karamera telegram's to the Kibuye Prefect, dated 20 June 1994).
[547] T. 24 February 2004 pp. 28-32, 34-39, 43-46, 52-55, 57-68, 78-80; Prosecution Exhibit 196 (personal identification sheet).

target was civilian rather than military.[548] Peter Caddick-Adams, a Defence expert, expressed a contrary view on the use of traditional weapons, based on his review of the Civil Defence Document, seized from Kambanda, and the expert report of Reyntjens. He stated that there was nothing sinister in Rwanda's civil defence planning and that it was consistent with those of other western countries.[549]

485. According to the Caddick-Adams report, all states have historically maintained some kind of "civil defence" program, which in times of peace focus on what to do if there is a crisis or civil emergency, and in war focus on how to kill an invader. Rwanda's civil defence structure resembles those found in many European traditions. The fact that the instructions envision negotiating with governments to provide training suggests that the government intended to institute a permanent national institution drawing on the experiences of other nations. The instructions for Rwanda's civil defence program indicate that it is to act as an auxiliary force in addition to the army and gendarmerie. It was to have a logical military structure with a central hierarchy overseen jointly by the Ministries of Defence and Interior.[550]

486. The Caddick-Adams report disagrees with the conclusion that the use of traditional weapons evinced an intent to kill civilians. The use of traditional weapons and the limited distribution of firearms reflects the government's limited resources, the risks of having too many automatic weapons in circulation, and the need to discourage these forces from engaging the better trained troops where they would certainly lose. It is also consistent with the purposes of these forces, which are not to engage an enemy formation, but rather to focus on infiltrators, accomplices and looters.[551]

487. The report concluded with the caveat that there is always a risk that such organisations once formed can be subverted to tasks other than its original purpose. However, nothing in its proposed structure or armament hints at anything other than a valid attempt to set up an institution designed to counter an enemy threat in the event of hostilities.[552]

Deliberations

(i) General Findings

488. It is clear that Rwanda's civil defence system existed in some form from October 1990 until July 1994, even though it was only formalised through the 25 May 1994 Directive

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[548] Des Forges, T. 17 September 2002 pp. 133-134; T. 18 September 2002 pp. 97-98; Prosecution Exhibit 302 (Expert Report of Filip Reyntjens). In addition, Des Forges also highlighted certain expenditure on civil defence in areas which were not on the war front. T. 18 September 2002 p. 100; T. 19 November 2002 pp. 104-105.
[549] Caddick-Adams, a lecturer in global security at the Security Studies Institute of the United Kingdom Defence Academy, is an expert in the field of armed conflict. He did not appear as a witness in the trial, but his expert report assessing the civilian self defence program in Rwanda was admitted as a Bagosora Defence Exhibit. *See* Bagosora Defence Exhibit 362 (Expert Report of Peter Caddick-Adams). Helmut Strizek, a Nsengiyumva Defence expert witness, shared the views expressed by Caddick-Adams that there was nothing unusual about Rwanda's civil defence efforts. *See* Nsengiyumva Defence Exhibit 78 (Strizek report).
[550] Bagosora Defence Exhibit 362 (Expert Report of Peter Caddick-Adams), paras. 1-10, 17, 19, 21-24, 29-30.
[551] *Id.* paras. 4, 21-29, 31. According to the report, the use of rudimentary weapons is at the core of all civil defence movements worldwide since they are minimally resourced. The report points to the example of the British Home Guard during World War II whose initial weapons included pitchforks and bayonets affixed to wooden shafts.
[552] *Id.* paras. 18, 31.

issued by Prime Minister Kambanda. The Defence does not dispute that civilians were trained and armed within this system by military and civilian authorities.

489. There is a significant body of evidence concerning the training of civilians, in many cases identified as *Interahamwe*, which may have been part of Rwanda's civil defence system, given the similarities in training locations attributed to the civil defence system. It is not necessary to set forth an assessment of this evidence in detail. The Chamber has raised questions about the credibility of several of the factual witnesses in other sections of the judgement. Furthermore, some of the evidence is second-hand, vague or conflicts with other evidence. The Chamber declines to accept as reliable all details of their accounts, but is convinced by the totality of the evidence that Rwandan military and civilian authorities were arming and training civilians before April 1994.

490. The creation of Rwanda's civil defence system does not in itself demonstrate an intent on the part of the relevant authorities to kill civilians. The Caddick-Adams report reflects that the structure outlined in the document on the organisation of civil defence appears consistent with existing and previous systems in other countries. Alison Des Forges acknowledged that not all persons associated with this effort understood it to be directed at killing Tutsi civilians.[553] She further stated that the purpose of civil defence evolved over time from an understandable response to the February 1993 resumption of hostilities by the RPF to attacks on Tutsi civilians after 6 April 1994.[554]

491. The discussions held at army headquarters on 29 March 1994 reveal the extensive involvement of the Rwandan army at the highest levels in the planning, implementation and oversight of the civil defence system. This follows in particular from the participation of the army chief of staff, the operational sector commander for Kigali and the prefect as well as the immediate correspondence with the Minister of Defence on the issue. These efforts were formally established and extended throughout the country by the 25 May 1994 Directive. However, the Civil Defence Document relating to the organisation of civil defence in Kigali, Kigali-Rural, Gisenyi, Ruhengeri and Byumba prefectures, as well as the minutes of the meeting held on 29 March 1994, provide some guidance on the general structure and purpose of the system before 25 May.

492. The evidence is limited as to the extent the structure envisioned in the Civil Defence Document, the minutes of the 29 March 1994 meeting and the Prime Minister's directive was put into actual practice. This is evidenced by the Ministerial Instruction of June 1994, which indicated that the system had not been fully implemented. Nevertheless, common themes emerge, namely joint oversight by civilian and military authorities and the channelling of operational instructions through the military command in each operational sector. This follows most clearly from the meeting on 29 March 1994, as well as references to active or retired soldiers serving as the operations officers at each level of coordination, both in the Civil Defence Document and Kambanda's 25 May Directive. Furthermore, the evidence in this case reflects clear coordination by military and civilian assailants before 25 May 1994 in several organised operations, for example, at Kibagabaga Mosque (III.3.5.3), the Saint Josephite Centre (III.3.5.5), Gikondo Parish (III.3.5.8), Nyanza hill (III.4.1.1), the Islamic

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[553] Des Forges, T. 26 September 2002 pp. 84-85 ("I believe I indicate quite carefully in my report that not all persons associated with this effort and not all participants in this effort understood it to be directed against Tutsi civilians.").
[554] *Id.* pp. 17-18.

Cultural Centre (III.4.1.2), IAMSEA (III.4.1.4), in Gisenyi town (III.3.6.1; III.3.6.5) and at Mudende University (III.3.6.7). After 25 May, this coordination is also illustrated by the correspondence related to Nsengiyumva's deployment of Gisenyi-based militiamen to Kibuye prefecture in the second-half of June 1994 as well as his deployment of forces to Kigali (III.4.5.1).

493. Turning to the relationship between the civil defence system and party militias, such as the *Interahamwe*, the Chamber notes that the Civil Defence Document and Kambanda's 25 May Directive emphasise cooperation with member of political parties in connection with recruitment.[555] The Civil Defence Document specifically recommends recruiting "youths of political parties with republican leanings".[556] The incorporation of the *Interahamwe* within the civil defence structure also follows from the evidence of Des Forges and Witness BY. While Witness A disputed that the *Interahamwe* were part of the civil defence system, he nonetheless acknowledged that they at times participated in military operations against the RPF alongside the army. One telling example is Bagosora's statement during the meeting of 17 May 1994 with Colonel Clayton Yaache and Major Donald MacNeil of UNAMIR.[557] The meeting was video-taped and shown during the testimony of Expert Witness Alison Des Forges. In the course of their discussions, Bagosora refers to chairing an earlier meeting of the leaders from the youth movements of the political parties. Bagosora describes them as being in charge of the civil defence in Kigali.[558] According to Bagosora's testimony, this was a reference to the *Interahamwe, Impuzamugambi* and *Abakombozi*.[559]

494. In the Chamber's view, the evidence shows a considerable overlap between political party militias, such as the *Interahamwe*, and the civil defence system. This does not necessarily mean that all members of the *Interahamwe* were part of the civil defence structure

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[555] Prosecution Exhibit 47B (Prime Minister's Civil Defence Directive (25 May 1994)), para. 5 ("Close cooperation between territorial administration authorities and political parties that uphold republican and democratic ideal is a prerequisite for the recruitment of members of resistance groups and the organisation and training of such groups.").

[556] Prosecution Exhibit 254B (Organisation of Civil Defence), p. 4.

[557] Bagosora, T. 9 November 2005 pp. 47-54. The evidence of Major MacNeil, as corroborated by the report prepared after the meeting, indicates that the meeting occurred on 17 May 1994. *See* T. 23 November 2005 pp. 60-61; Bagosora Defence Exhibit 291 (Report of meeting on 17 May 1994). Major Donald MacNeil, a Canadian operations officer in UNAMIR's humanitarian cell, prepared the report and translated for Yaache at the meeting. *See* MacNeil, T. 23 November 2005 pp. 45-47, 51-52, 60-63.

[558] Prosecution Exhibit 44 (video footage); T. 18 September 2002 p. 61 ("We have summoned the different authorities of the youth movements in the parties, who are in charge of the civil defence in Kigali, to talk about them about this problem -- to talk with them, rather, about this problem. So, personally, I was in charge of this meeting of the different leaders of the youth movements. We agreed that to evacuate the orphans, there would be no problem.") Bagosora addressed the meeting in French. The French transcription of this portion of his statement reads: "*Et nous avons convoqué les différents responsables des jeunesses des partis qui font la défense civile dans Kigali pour leur parler de ce problème. Alors, moi, personnellement, j'ai dirigé cette réunion des différents responsables des jeunesses des partis, nous avons convenu que, pour l'évacuation des orphelins, qu'il n'y avait pas de problème.*" *See* T. 18 September 2002 pp. 95-96 (French). Major MacNeil testified that he would have used the word "called" rather than "summoned" in translating "*convoqué*". *See* T. 23 November 2005 p. 64.

[559] Bagosora, T. 9 November 2005 p. 44 ("Those young people, I cannot say that they were *Interahamwe* because that word '*Interahamwe*' was not written on their foreheads. But during the period in question, *Interahamwe*, the *Impuzamugambi, Abakombozi*, were all mixed together, and that is why I'm talking about the young people of various parties. Young people of various parties are not militiamen, because these were the youth wings of various political parties that had come together in every neighbourhood so as to ensure their safety and security in the neighbourhoods by setting up roadblocks.").

or that all civil defence participants were *Interahamwe*. Given the *ad hoc* and at times informal implementation of the system, in particular in the context of a war, its mere existence and connections to the military did not mean that the actions of its forces or of other militiamen were invariably the responsibility of military authorities. As Des Forges noted, the militias once armed threatened to go their own way.[560] In other words, the Chamber is mindful of the sometimes chaotic and disorganised nature of civilian forces operating in Rwanda at the time.

495. Therefore, in assessing whether civil defence forces or party militiamen were acting under the authority of the Rwandan military, the Chamber must carry out a concrete evaluation of each specific event, considering the actual facts on the ground. Factors suggesting that these groups were operating under the military's command include evidence of the issuance of direct orders from a military commander, joint participation or physical presence of military personnel, the provision of logistical support, and the nature and scope of the operation. With respect to the positions of roadblocks, manned exclusively by civilian personnel, the Chamber will consider the significance of their location, such as their presence in strategic areas and their proximity to public buildings or border crossings, where civilian or military forces would normally operate. The factual context of a given event will guide the Chamber's assessment of whether primary responsibility for these installations is attributable to either military or civilian authorities.

(ii) The Involvement of the Accused

496. The Chamber will now consider the evidence which suggests that the Accused played a key role in forming and implementing Rwanda's civil defence efforts. Alison Des Forges testified that Bagosora was in charge of the civil defence system as well as its architect. She relied in particular on the entries in his agenda and another source, which she did not identify.[561] Bagosora stated that his annotations were made in connection with meetings held at the Ministry of Defence following the RPF attack in February 1993. The discussions focused on the promotion of civil defence in certain communes.

497. Entries in the agenda for the months of February and March 1993 relate to training of militia by the communal police and reserve soldiers, training of "people" by the Rwandan military, arming of youths and displaced people, the criteria of those selected to be armed, coordination with the military, orders for ammunition from South Africa and Russia, and names of military officers. Other notes indicate numbers, places, names, types of weapons, supplies, requisitions, phone numbers, vehicles, calculations, invoices, meetings and "to do" lists. Notable entries include: "Who is the enemy of the country?"; "Songs praising the bravery of the army, Bikindi and others"; "General amnesty for all war crimes".[562]

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[560] T. 18 September 2002 p. 83 ("As one *bourgmestre* told me, himself apparently involved in the genocide, he said, 'You know, it was a good thing that the RPF arrived when it did, because the thugs were about to take over', meaning those young people who had been given guns, whom the older more 'respectable' genocidal leaders were having difficulty controlling."). *See also* Prosecution Exhibit 457B (Report of the High Command of the Rwandan Army (2-6 September 1994), p. 18: "Many problems are being encountered in the supervision of the *Interahamwe* and all civil defence recruits and serious incidents are reported every day. ... Simply directing the recruits and *Interahamwe* to civilian sites might create a climate of serious insecurity in the refugee camps").

[561] T. 18 September 2002 p. 86.

[562] *See* Prosecution Exhibit 278 (Expert Report of Antipas Nyanjwa, Test Collection A: Bagosora Agenda).

498. According to Bagosora, his notes were made for personal purposes during the meetings at the Ministry of Defence.[563] He explained the entry, "Who is the enemy of the country?", by referring to discussions about the need to raise awareness amongst the population about the identity of the "enemy", which according to his testimony were RPF combatants.[564] As for the mention of Bikindi, he noted that it concerned discussions about playing his songs as well as those of other musicians, which praised the bravery of the armed forces on its radio program.[565] Regarding the note on amnesty, he said that it was a reference to a peace agreement which was being negotiated with the RPF that was supposed to include an amnesty clause.[566]

499. Indeed, the entries sketch out many of the core elements of what would later become the Rwanda's formalised civil defence strategy. The agenda was provided to the Prosecution by Alison Des Forges, who received a copy of excerpts of it from the RPF, and was entered into evidence.[567] Antipas Nyanjwa, the Prosecution's handwriting expert, confirmed that Bagosora wrote the entries.[568] Bagosora also acknowledged this during the course of his testimony.[569] Nevertheless, the Bagosora Defence argues that it lacks probative value because neither the original nor copies of the entire agenda were disclosed. In view of this, it suggests that other portions contain exculpatory material and that the portions on the record were manipulated.[570]

500. During the course of the trial, the Chamber denied the Bagosora Defence requests to exclude the agenda as evidence and that the Prosecution should disclose the entire document.[571] The Chamber noted that the Prosecution was not in possession of the original agenda and decided to consider the agenda's probative value when making its factual findings. Bagosora has not sufficiently identified what exculpatory information might be in the remaining pages of the agenda which were not available at the time of trial or how they might alter the meaning of the exhibited entries. The Chamber observes that the areas of the agenda, which Bagosora suggested have been manipulated, do not appear material.[572]

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[563] T. 28 October 2005 p. 7; T. 31 October 2005 pp. 17-18.
[564] T. 28 October 2005 pp. 31-32.
[565] *Id.* 30, 33-34.
[566] T. 31 October 2005 p. 11.
[567] Des Forges, T. 17 September 2002 pp. 85-86.
[568] *See* Prosecution Exhibit 278 (Expert Report of Antipas Nyanjwa), p. 3. The Bagosora Defence also presented a handwriting expert, Michèle Langois, but her testimony did not focus on Bagosora's agenda. *See* T. 5 April 2006 p. 6 ("Madam Langlois, your report breaks down the documents that you received into three groups: L1, L2 and L3. Your testimony today will be limited to the questioned document contained in collection L2, as my understanding is there is no dispute with respect to the documents under L1 and L3.") "L1" is a reference to Bagosora's agenda whereas L2 is series of lists of individuals, some apparently related to civil defence. L2 corresponds to Test Collection B annexed to Nyanjwa's expert report. *See* Prosecution Exhibit 278 (Expert Report of Antipas Nyanjwa, Test Collection B). In Langois's assessment, the writing attributed to Bagosora by the Prosecution's handwriting expert Antipas Nyanjwa in this document (L2) was in fact written by three different authors, none of whom were Bagosora. *See* T. 5 April 2006 p. 7. In view of this contradiction, there is some doubt that this document (the series of lists of individuals) can be attributed to the Accused.
[569] T. 27 October 2005 p. 67 ("I do recognise the notes that I wrote down. But when those notes are taken out of the agenda which I cannot see, that is where I have a problem.").
[570] Bagosora Closing Brief, paras. 619-635.
[571] Decision on Bagosora Motion to Exclude Photocopies of Agenda (TC), 11 April 2007, paras. 5-6; Decision on Bagosora Motion for Disclosure of Agenda (TC), 11 April 2007; Decision on Request for Certification or Reconsideration Concerning the "Bagosora Agenda" (TC), 8 May 2007.
[572] *See, e.g.*, T. 27 October 2005 p. 72 (Bagosora pointed out that the word " Kanama" was added to his notes).

Consequently, these arguments do not call into question the authenticity of the agenda, given that Bagosora testified extensively on relevant entries, acknowledged writing them, and explained the circumstances surrounding their drafting.

501. The Chamber considers that the entries in Bagosora's agenda, as well as his explanations for them, demonstrate that he was actively involved in the military's development and implementation of a civil defence system. Several of the specific entries are troubling, and Bagosora's explanations for them are not entirely convincing. However, the Chamber cannot exclude the possibility that he was taking notes on suggestions made by others. Moreover, when viewed in the context of the immediate aftermath of the RPF's violation of the cease fire agreement, it does not necessarily show an intention to use the forces to commit genocide. Des Forges's testimony that Bagosora was responsible for running the civil defence program does not alone prove beyond reasonable doubt that this was his role because it was based on a single unidentified source.

502. The Chamber has found that, from the night of 6 April to the return of the Minister of Defence on 9 April, Bagosora exercised authority over the Rwandan military (IV.1.2). Therefore, the Chamber will consider in the context of the specific events and in its legal findings whether civil defence forces or party militiamen came under that authority.

503. With respect to Kabiligi, the evidence indicates that civilians were trained and participated in civil defence activities in Byumba prefecture where he was the operational commander from June 1992 until August 1993. This does not in itself demonstrate an intent to kill civilians. The Prosecution also emphasises that the minutes of the 29 March 1994 meeting were sent to the Minister of Defence on official stationary bearing a reference to the G-3 bureau, which in its view demonstrates the office's involvement with the civil defence program. The Chamber notes, however, that Kabiligi did not attend the meeting concerning civil defence because he was in Egypt from 28 March until around 8 April (III.6.2). Furthermore, the minutes forwarded to the Minister of Defence were personally signed by the chief of staff. The Chamber is therefore not convinced that the use of G-3 stationary by the army chief of staff for the minutes demonstrates any involvement of Kabiligi in the establishment of the civil defence forces.

504. The Prosecution also points to the evidence of Witness HN's testimony concerning three telegrams that Kabiligi purportedly sent between the end of April and early July 1994 concerning the deployment and use of *Interahamwe* in Kigali. The witness observed the three telegrams. His uncorroborated testimony is the only evidence of their existence.[573] He did not see Kabiligi write any of the three messages.[574] Additionally, they were written in French, a

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[573] The Prosecution asserts that Witness HN's testimony is corroborated by the testimony of Witness DA, who testified to a similar message emanating from the G-3 bureau. *See* Prosecution Closing Brief, para. 1316; T. 17 November 2003 pp. 22-23. Witness DA's testimony is the only evidence of the existence of this telegram. He also saw it on 7 April, when Kabiligi was not in the country (III.6.2). The Prosecution also points to Witnesses DCH, BY and DY, all of whom testified regarding the fact that *Interahamwe* were in fact sent to Mburabuturo to assist the Rwandan army. *See* Prosecution Closing Brief, para. 1316. In the Chamber's view, this circumstantial evidence does not adequately corroborate the actual existence of these transmissions.

[574] T. 24 February 2004 pp. 44-45, 79 ("Judge Reddy: So, again, the only reason why you say that this was a message from Kabiligi is because he brought this piece of paper to you; is that the situation? The witness: Yes, that's the only reason." While the witness indicated that the April telegram contained an abbreviated signature ("paraph"), he was only able to speculate that the initials were Kabiligi's. "Judge Reddy: Let's now focus on the very first message that you had seen. Now, did you see Kabiligi write that message? The witness: I did not see

language of which Witness HN only knew "a few words."[575] In the Chamber's view, this evidence is not sufficient to prove beyond reasonable doubt that Kabiligi issued orders concerning the deployment of *Interahamwe*.[576]

505. Turning to Ntabakuze, the Prosecution has not presented credible evidence that he participated in the arming or training of civil defence forces or party militiamen.[577] The Chamber will consider in the context of specific events whether civil defence forces or party militiamen came under his authority.

506. Finally, as discussed above, Nsengiyumva played a role in the arming and training of civil defence forces in Gisenyi prefecture in 1993. This does not in itself demonstrate an intent to kill civilians. However, the Chamber has also found that he participated in training of these forces between April and June 1994, and dispatched them to Kibuye prefecture and Kigali in the second half of June 1994 (III.4.5.1). In its factual and legal findings, the Chamber will consider in the context of specific events whether he bears responsibility for these and other events involving civil defence forces and party militia.

2.6.3 Jean-Pierre

Introduction

507. Each of the Indictments alleges that, on 10 January 1994, an *Interahamwe* leader named "Jean-Pierre" informed UNAMIR of a secret plan to train militia to exterminate the Tutsis and their "accomplices". The Prosecution refers to General Roméo Dallaire, Major Brent Beardsley, Lieutenant-Colonel Frank Claeys, Witnesses A and BY as well as Expert Witnesses Alison Des Forges and Filip Reytnjens.[578]

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him. Judge Reddy: Did you see Kabiligi put his paraph to that message? The witness: I did not see him do that.").

[575] *Id.* 39, 45-46.

[576] In addition, the Kabiligi Defence referred to several witnesses to refute Witness HN's allegations. Witness KVB-19, a Hutu officer with East Kigali operational sector, testified that he never saw any telegrams from Kabiligi discussing the deployment of *Interahamwe* at roadblocks or at Mburabuturo as reinforcements. *See* T. 27 September 2006, pp. 8-9; Kabiligi Defence Exhibit 184 (personal identification sheet). Witness FC-77, a Hutu officer at the Gitarama military camp and later at army headquarters, stated that no messages were sent by Kabiligi concerning the recruitment and training of *Interahamwe*, the deployment of *Interahamwe* at roadblocks, or the deployment of *Interahamwe* in Mburabuturo. *See* T. 7 September 2006, pp. 75-76; Kabiligi Defence Exhibit 92 (personal identification sheet). Witness FLA-4, a Hutu officer in stationed in Kigali, said that he never saw any telegrams from Kabiligi discussing the deployment of *Interahamwe* at roadblocks or in Mburabuturo. *See* T. 6 September 2006 pp. 77, 79; Kabiligi Defence Exhibit 91 (personal identification sheet). According to Witness RX-6, a Hutu staff member of the Ministry of Defence, no messages were sent by Kabiligi concerning the recruitment and training of *Interahamwe*, the deployment of *Interahamwe* at roadblocks, or the deployment of *Interahamwe* in Mburabuturo, and Kabiligi was never present at the *Centre de Transmission*. *See* T. 6 November 2006, pp. 7-10; Kabiligi Defence Exhibit 104 (personal identification sheet). Witness YC-3, a Hutu staff officer on the army general staff, said that Kabiligi never sent a message concerning the deployment of *Interahamwe* at roadblocks. *See* T. 9 November 2006 pp. 44-45; Kabiligi Defence Exhibit 107 (personal identification sheet).

[577] The Prosecution presented several witnesses concerning an alleged distribution of weapons from Camp Kanombe from 7 April 1994, including Witnesses GS and XAB. In section III.3.5.1 the Chamber has noted the conflicting nature of the evidence of what transpired at the camp during that period.

[578] Bagosora Indictment, paras. 5.3, 5.24, and 5.35; Kabiligi and Ntabakuze Indictment, paras. 5.3, 5.18, 5.26, 5.30; Nsengiyumva Indictment, paras. 5.3, 5.17, 5.28; Prosecution Closing Brief, paras. 1240, 1261, 1338-1355; pp. 712, 725, 730, 733-734, 781-792, 803-806, 810-811, 849, 861, 867-868.

508. The Defence teams accept that UNAMIR officials received information from an informant named Jean-Pierre. However, they dispute his reliability as a source suggesting that he exaggerated his credentials and was likely an RPF operative intent on providing misinformation to UNAMIR. Reference is made to Witnesses Jacques Roger Booh-Booh, Luc Marchal, BRA-1, Joseph Bukeye, ALL-42, as well as Expert Witnesses Strizek, Lugan and Desouter.[579]

Evidence

509. In early January 1994, General Roméo Dallaire, the UNAMIR Force Commander, was informed by Faustin Twagiramungu, the Prime Minister designate for the Broad-Based Transitional Government, that a member of the *Interahamwe*'s high command had information concerning its secret plan to exterminate Tutsis. Twagiramungu expressed confidence in the information, but told Dallaire that it would need to be verified. On 10 January 1994, Lieutenant-Colonel Frank Claeys and Colonel Luc Marchal, along with two other UNAMIR officers, met with Jean-Pierre.[580]

510. Jean-Pierre claimed to be a former Para Commando and previous member of the Presidential Guard and current top level trainer of *Interahamwe*. He told UNAMIR that approximately 1,700 to 1,900 *Interahamwe* had been trained in the use of military equipment at Camp Kanombe and other camps around Kigali. Both Lieutenant-Colonel Claeys and Major Beardsley testified that Jean-Pierre said that Kigali was divided into 20 cells and that each cell was responsible for exterminating Tutsis registered in their cell, so that 1,000 Tutsis could be killed in Kigali every 20 minutes. The *Interahamwe* were preparing lists to assist in this purpose. During the 10 January meeting, Jean-Pierre also informed UNAMIR of weapons caches that existed in Kigali and that both the Minister of Defence and Colonel Bagosora were involved in a plan to distribute weapons to the militiamen. Furthermore, Jean-Pierre spoke of a plan to get Belgians to overreact to the militia's provocations in order to trap them and force UNAMIR to withdrawal.[581]

511. Following the meeting, Dallaire was briefed on what had occurred, at which point he and others from the UNAMIR staff drafted and sent a code cable to UN headquarters in New York. On 11 January, Special Representative Booh-Booh received a cable from Kofi Annan, the head of the United Nations Department of Peacekeeping Operations, addressed to both Booh-Booh and Dallaire, asking them to see President Habyarimana about dismantling the weapons caches cited by Jean-Pierre. Booh-Booh was also asked to meet with Ambassadors of Western countries and, if need be, put pressure on President Habyarimana. Annan's telegram denied Dallaire permission to inspect the weapons caches cited by Jean-Pierre, stating that the UNAMIR mandate did not extend far enough for such an operation.[582]

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[579] Bagosora Closing Brief, paras. 294-311, p. 344; Kabiligi Closing Brief, paras. 1541-1547; Ntabakuze Closing Brief, paras. 122-124, 133-136; Nsengiyumva Closing Brief, paras. 287-288, 479-486.

[580] Dallaire, T. 20 January 2004 pp. 5-7; T. 22 January 2004 pp. 12; T. 26 January 2004 pp. 19-22.

[581] Dallaire, T. 20 January 2004 pp. 7-10, 12, 23, T. 22 January 2004 pp. 14-18, 23-28; T. 26 January 2004 pp. 45-54; Beardsley, T. 4 February 2004 pp. 20-32, 72-76, 86-87; T. 5 February 2004 pp. 70-78; Claeys, T. 7 April 2004 pp. 30-31, 33-35, 50-51, 57-59, 61-62, 72-75; T. 8 April 2004 pp. 6-13, 57-58.

[582] Dallaire, T. 20 January 2004 pp. 3-7; T. 22 January 2004 pp. 22-24; T. 26 January 2004 pp. 19-30, 45-46; Beardsley, T. 3 February 2004 pp. 12-17; T. 4 February 2004 pp. 28-29; T. 5 February 2004 pp. 74-76; Claeys, T. 8 April 2004 pp. 47-48; Booh-Booh, T. 21 November 2005 pp. 35-45; T. 22 November 2005 pp. 22-25; T. 22 November 2004 pp. 78-81; Ntabakuze Defence Exhibit 27 (Outgoing cable from UNAMIR to UN 11 January

512. On 12 January 1994, Booh-Booh and Dallaire held a meeting with the Ambassadors of Belgium, the United States, Germany and the *chargé d'affaires* of France to discuss the information provided by Jean-Pierre and Kofi Annan's instructions on how to proceed with the matter. After this meeting, Booh-Booh and Dallaire met President Habyarimana. They informed him that they were in possession of information on weapons caches and would give him time to dismantle the caches; otherwise, the matter would be referred to the Security Council. Habyarimana stated that he was unaware of these weapons caches but promised to pursue the issue. During the meeting with Habyarimana, no mention was made of the list of Tutsis, the killing of 1,000 Tutsi within 20 minutes or a plan to force the Belgian peacekeepers to withdraw. Subsequently, four or five MRND officials including the chairman and secretary-general of the party met with UNAMIR. These officials denied the existence of the arms caches and said they could not dismantle something of which they were not aware.[583]

513. Between January and March 1994, Lieutenant-Colonel Claeys was designated to be Jean-Pierre's sole UNAMIR contact and met with him on five occasions. Each meeting was documented in a series of reports prepared afterwards. During these meetings, Claeys learned that weapons coming from the army were being transported to caches in police vehicles. According to Jean-Pierre, most of the weapons that the *Interahamwe* had were new, but it was difficult to provide more weapons because of UNAMIR monitoring. Jean-Pierre said that *Interahamwe* were using the Motorola system utilised by the Presidential Guard. At nearly every meeting following the first, he informed Claeys that he was being pressured to speed up his weapons distribution. Jean-Pierre asked UNAMIR for assistance in relocating him and his family to a "friendly western country". Booh-Booh testified that he discussed this possibility with the Ambassadors of Belgium, the United States, Germany and the *chargé d'affaires* of France.[584]

514. Witness A, a high-ranking Hutu *Interahamwe* leader, knew Jean-Pierre. He learned from Robert Kajuga, the president of the *Interahamwe*, that Jean-Pierre was in charge of distributing 800 weapons that had been given from the Ministry of Defence to the MRND for the purpose of defending MRND authorities. Jean-Pierre gave 400 of these weapons to Kajuga, but then sold the 400 remaining weapons to an individual named Frodebu and disappeared.[585] Witness BY, also a high-ranking Hutu *Interahamwe* leader confirmed that Jean-Pierre was involved in distributing weapons and also that there was suspicion that Jean-Pierre had been diverting weapons.[586]

515. Dallaire and Beardsley were convinced of Jean-Pierre's status as a well-placed *Interahamwe* because he knew verbatim parts of conversations that Dallaire had with the president of the MRND. Beardsley and Claeys testified about a videotape viewed by UNAMIR of an MRND rally where Jean-Pierre was present in a business suit giving directions with a hand-held radio to uniformed *Interahamwe*. Dallaire and UNAMIR also

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1994, number 79); Ntabakuze Defence Exhibit 23 (Outgoing Cable from United Nations to UNAMIR of 11 January 1994, Number 100).

[583] Dallaire, T. 20 January 2004 pp. 4-5, 6-13, 19-20, 40; T. 26 January 2004 pp. 29-30; Claeys, T. 7 April 2004 p. 56; Booh-Booh, T. 21 November 2005 pp. 45-54; T. 22 November 2005 p. 25.

[584] Dallaire, T. 26 January 2004 p. 55; Claeys, T. 7 April 2004 pp. 32-37, 50-51, 53, 65-72, 76-86, 94-95; T. 8 April 2004 pp. 11-14, 32, 36, 45-47, 64; Prosecution Exhibit 172 (Reports of meetings with Jean-Pierre).

[585] Witness A, T. 1 June 2004 pp. 40-41, 44-45; T. 2 June 2004 pp. 73-76; T. 3 June 2004 pp. 60-61, 73-75, 78-81.

[586] Witness BY, T. 2 July 2004 pp. 32-35; T. 8 July 2004 pp. 2, 4-9, 17; T. 9 July 2004 pp. 37-38.

took steps to verify some of the information provided by Jean-Pierre. While Claeys waited in a car, Jean-Pierre took Captain Amadou Deme, a UNAMIR officer, into an MRND building and showed him an arms cache containing approximately 50 G3 and AK-47 rifles, along with ammunition, machetes and grenades. Jean-Pierre also drove with Claeys around Kigali and pointed out three other locations allegedly holding weapons caches. Claeys did not personally observe the arms in these locations.[587]

516. There is evidence which suggests that the information Jean-Pierre provided to UNAMIR concerning his background was not correct. For example, Witnesses A and BY identified Jean-Pierre as an MRND driver and said that he served as a liaison between the MRND party and the *Interahamwe*. Witness A could not remember that Jean-Pierre received commando training, and Witness BY did not recall that Jean-Pierre was ever a member of the Presidential Guard or even the Rwandan army. Joseph Buckeye, Jean-Pierre's former employer, identified Jean-Pierre as a man named "Turatsinze". He confirmed that Jean-Pierre had a connection with MNRD party headquarters and Twagiramungu, but refuted Jean-Pierre's contention that he had military training.[588]

517. Marchal stated that he could not exclude the possibility that the introduction of Jean-Pierre to UNAMIR was part of a manipulation strategy by Twagiramungu to embarrass President Habyarimana. Alternatively, Marchal speculated that Jean-Pierre could have been an RPF agent whose information was part of RPF machinations.[589] Witness ALL-42, a member of the RPF, testified that Jean-Pierre was an RPF agent who had infiltrated the *Interahamwe*. The witness asserted that Jean-Pierre's actions were part of a plan to manipulate UNAMIR. Dallaire also conceded that there was a risk that the information provided by Jean-Pierre had been manipulated, but felt that in context, there were reasonable grounds to rely on the information.[590]

Deliberations

518. It is not contested that, in early January 1994, Faustin Twagiramungu introduced UNAMIR to Jean-Pierre, an individual with close connections to the MNRD and the *Interahamwe*. He met with Claeys on five occasions from January to March 1994. He also showed UNAMIR officers the locations of several weapons caches, one of which was personally inspected by Captain Deme. The evidence of Witnesses A and BY as well as video footage of him at an *Interahamwe* rally demonstrate that he was a well-placed member of the organisation. Other evidence from Witnesses A, BY, Buckeye, ALL-42 and Marchal raises questions about the true nature of his identity, his involvement within the *Interahamwe* power structure and his motivations for providing information to UNAMIR.

519. When looking at how the events unfolded in Kigali after the death of President Habyarimana, the Chamber notes the similarity of how they corresponded to Jean-Pierre's

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[587] Dallaire, T. 20 January 2004 pp. 6-9, 40; T. 22 January 2004 pp. 18, 26; T. 26 January 2004 pp. 49-55; Beardsley, T. 3 February 2004 pp. 15-16; T. 4 February 2004 pp. 23-27, 71-76; T. 5 February 2004 pp. 71-74, 76-78; Claeys, T. 7 April 2004 pp. 31-37, 50-51, 53, 65-72 76-86; T. 8 April 2004 pp. 4-8, 14-15, 22-23, 37-39, 45-46.

[588] Witness A, T. 3 June 2004 pp. 74-75; T. 9 July 2004 pp. 37-38; Buckeye, T. 8 September 2006 pp. 23-28, 32, 34.

[589] Marchal, T. 30 November 2006 p. 32.

[590] Dallaire, T. 22 January 2004 pp. 10-11; Witness ALL-42, T. 9 November 2006 pp. 1-4; Marchal, T. 30 November 2006 pp. 31-32; T. 4 December 2006 pp. 9, 23; T. 6 December 2006 pp. 24-27.

information. His account could therefore be true. This is particularly so when viewed together with an unsigned letter of December 1993 supposedly from a Rwandan military officer to Dallaire outlining President Habyarimana's "Machiavellian plan" to commit massacres throughout the country and commit targeted assassinations of certain political officials in order to incite the RPF to violate the cease-fire agreement. The letter, however, is anonymous, disputed and lacks detail as to which officers formed part of the purported plan.[591] Furthermore, the evidence based on Jean-Pierre's information is entirely second or third-hand, and his whereabouts and the circumstances concerning his disappearance are unknown. Notably, Witnesses A and BY, who were both well placed *Interahamwe* officials, did not corroborate Jean-Pierre's information about the plan to kill Tutsis. These concerns warrant considerable caution in relying on this main aspect of Jean Pierre's information.

520. The substance of Jean-Pierre's information, described above, was documented by Claeys and others in reports or cables prepared after each meeting. Certain aspects of his information were verified by UNAMIR and other sources. For example, Claeys and Deme both confirmed the existence of at least one weapons cache in Kigali. The others could not be verified due to external constraints placed on UNAMIR discussed above. Furthermore, Witnesses A and BY also confirmed that Jean-Pierre played a role in the distribution of weapons to *Interahamwe*. In the Chamber's view, this evidence taken together demonstrates that the *Interahamwe* had at least one weapons cache with firearms and traditional weapons in early 1994. However, the existence of a weapons cache is not inconsistent with civil defence preparations, which would have had to be kept secret, in view of the ongoing peace process. Furthermore, Witness A and BY's suggestion that Jean-Pierre was involved in diverting weapons raises questions about his motivations and the reliability of some of the specific details of his information.

521. In addition, the Chamber has heard ample evidence considered above about the training of civilians prior to April 1994, which corroborates to some extent Jean-Pierre's information that members of the *Interahamwe* were trained. It cannot be excluded that the training of civilians and the distribution of weapons prior to 6 April 1994 were part of a larger civilian self-defence strategy in response to the fear of resumed hostilities (III.2.6.2). There is also corroboration for Jean-Pierre's information concerning the preparation of lists by members of the *Interahamwe* (III.2.5.4). However, the other information available indicates that these lists were not focused exclusively on ethnicity and instead were directed more generally at suspected opponents of the regime.

522. In sum, the information provided by Jean-Pierre lends some credence to the fact that the *Interahamwe* received training and had secret caches of weapons. However, in light of the concerns raised above, the Chamber is hesitant to rely on his assertion that the purpose of these activities was to kill Tutsis, as such.

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[591] Prosecution Exhibit 169 (anonymous letter to General Dallaire, UNAMIR Force Commander, 3 December 1993). In an interview of 22 December 1994 with Belgian officials, the Rwandan Minister of Justice acknowledged familiarity with the letter. He suggested that it was written by the political opposition as an attempt to manipulate UNAMIR in order to see its reaction. *See* Kabiligi Defence Exhibit 13 (*Auditorat Militaire près le Conseil de Guerre à Bruxelles*, 5 January 1995), pp. 2-3.

2.7 Zero Network

Introduction

523. The Prosecution alleges that the four Accused and other senior military and political figures in Rwanda were members of a secret group called the "Zero Network". It was closely linked to other clandestine groups and used a secret radio network. According to the Prosecution, the Accused's purported affiliation to the Zero Network is evidence of conspiracy and planning. Reference is made primarily to Witness ZF but also to the more general evidence of Expert Witnesses Alison Des Forges and Filip Reyntjens.[592]

524. The Kabiligi, Nsengiyumva and Ntabakuze Defence contend that the Accused lacked proper notice of Witness ZF's allegations. All four Defence teams argue that the evidence concerning the Zero Network lacks credibility. The Nsengiyumva Defence, in particular, points to Witnesses BDR-1, LM-1, NR-1, RO-1 and RAS-1. It also takes issue with the timing of the disclosure of Witness ZF's pre-trial statement and the special protection measures put in place for him.[593]

Evidence

Prosecution Witness ZF

525. Prosecution Witness ZF, a Hutu who worked at the Butotori military training camp in Gisenyi prefecture, testified that his work afforded him access to senior military officials, including Nsengiyumva and Bagosora. At the end of 1992, Lieutenant Bizumuremyi, who was involved in intelligence matters in the Gisenyi operational sector, informed him about the existence of a clandestine radio network, called "Zero Network".[594] The network was used by a group of prominent military and civilian individuals who had some form of trust between them and did not want their activities to be monitored. In particular, it was used to transmit the orders of the "Dragons", a group of persons who were in charge of death squads. The Dragons were also referred to as the "Abakozi". Other secret groups affiliated to this group were the AMASASU, and the "Friends of the Alliance". According to Bizumuremyi, the Zero Network had an extensive membership of at least 76 members, including Bagosora, Kabiligi, Ntabakuze and Nsengiyumva. The witness said that Bizumuremyi received the list of names from either Colonel Bahufite or Nsengiyumva.[595]

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[592] Bagosora, Nsengiyumva as well as Kabiligi and Ntabakuze Indictments paras. 1.13-1.16 (the Zero Network is not explicitly mentioned); Prosecution Closing Brief, paras. 37, 492, 766-767, 1000, 1001(h), pp. 761, 832. The Indictments also refer to the use of a "separate radio network" in 1994. This is not charged under count 1 (conspiracy), but count 2 (genocide). It is discussed with the events in Kigali after 6 April (III.3.5.9).
[593] Bagosora Closing Brief, paras. 550-556, fn. 1736; Kabiligi Closing Brief, paras. 110, 697-699, 701-713, 1526-1528, pp. 593, 597; T. 1 June 2007 p. 58 (Kabiligi); Ntabakuze Closing Brief, paras. 666-671, 712-715; Nsengiyumva Closing Brief, paras. 1098-1113, 2056-2059, 2065, 2087, 2142, 3112, 3116.
[594] Multiple spellings of "Bizumuremyi" have been used in the transcripts, such as "Bizimuremye", "Bizumuremye" and "Biziremye". The Chamber has elected to use the spelling in Nsengiyumva Defence Exhibit 16 (Situation Officers of the Rwanda Army on 5 March 1994). The witness stated that Lieutenant Bizumuremyi held the position of S2 officer in charge of intelligence during part of his time in Gisenyi. During Nsengiyumva's tenure at Gisenyi military camp, Bizumuremyi was responsible for coordination between Nsengiyumva and the Gisenyi militia. *See* T. 27 November 2002 pp. 14-15; T. 28 November 2002 p. 10.
[595] T. 26 November 2002 pp. 94-95; T. 27 November 2002 pp. 8-13, 33-37, 62-67; T. 28 November 2002 pp. 23-25; T. 3 December 2002 pp. 62-64; T. 4 December 2002 pp. 59-61, 94-99; T. 5 December 2002 pp. 3-9.

526. Witness ZF heard that the Zero Network had a main station in Kigali and regional transmission centres located throughout the country. He was told that the station for Gisenyi prefecture was located in Nsengiyumva's home. As Bizumuremyi was a close friend, he trusted the witness with this secret information.[596]

Prosecution Expert Witness Alison Des Forges

527. Alison Des Forges explained that the term "Zero Network" was introduced into Rwandan society through an open letter of 15 August 1992 from Christophe Mfizi to the MRND party, in which he resigned from the party. His letter denounced the corruption surrounding President Habyarimana and described the Zero Network as an organisation carrying out a number of immoral and illegal acts to keep President Habyarimana in power.[597]

Prosecution Expert Witness Filip Reyntjens

528. Filip Reyntjens testified that the "Zero Network" was a term coined by Christophe Mfizi to describe a group of influential persons, without permanent membership, membership cards or fixed leadership. When Reyntjens in October 1992 reported the findings of a Belgian fact-finding mission to Rwanda, five separate and unidentified sources indicated that Bagosora and Nsengiyumva were members of the Zero Network, or death squads. Two of the sources had been associated with the network. The aim of this group was to destabilise the country and the democratisation process.[598]

Prosecution Witness Roméo Dallaire

529. General Dallaire stated that he was told by informants, prior to 6 April 1994, that Bagosora was at the heart of various organisations, such as "*Opération Zero*", the Zero Network and death squads.[599]

Bagosora

530. Bagosora denied being a member of death squads, the Dragons or the Zero Network. He rejected the allegation in Reyntjens' 1992 report that he was a member of the death squads. The International Commission of Inquiry Report of 1993, which was set up to

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Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.

[596] T. 27 November 2002 pp. 34-35; T. 28 November 2002 p. 25.

[597] T. 11 September 2002 p. 61; Nsengiyumva Defence Exhibit 104 (*Le Reseau Zero*, letter of 15 August 1992 from Christophe Mfizi to the MRND party). Mfizi had been head of the national information service (ORINFOR) and had been replaced by Ferdinand Nahimana. Des Forges states in her book that the Zero Network was comprised of Habyarimana's closest allies, who Mfizi denounced as having taken control of the state. Reference is also made to a report from the International Commission of Inquiry in 1993, which concluded that the Zero Network was linked to the highest circles of power in Kigali and was responsible for many attacks. *See* Prosecution Exhibit 3 (Alison Des Forges, *Leave None to Tell the Story* (1999)), pp. 44, 58 and Prosecution Exhibit 27 (Report of the International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990 (1993)).

[598] T. 16 September 2004 pp. 39 (his mentioning of "relays", does not, according to the context, refer to radio transmissions), 57-58; Prosecution Exhibit 303 (Filip Reyntjens: Information on the "*Escadrons de la Mort*" [Death Squads], dated 9 October 1992, included in a *Pro Justitia* statement to Belgian authorities of 18 October 1996).

[599] T. 19 January 2004 pp. 56-57; T. 21 January 2004 pp. 71-72. Dallaire confirmed that he had numerous informants who told him about the Zero Network, including, but not limited to, the OAU Secretary-General and his representative, foreign ambassadors and military attachés.

investigate human rights violations in Rwanda since October 1990, did not mention his name in connection with death squads or the Zero Network.[600]

Nsengiyumva

531. Nsengiyumva denied having a separate radio transmission centre in his home and added that his only knowledge of the Zero Network came from Christophe Mfizi's open letter of 15 August 1992 to the MRND party. That letter used the phrase "Zero Network" to describe President Habyarimana's inner circle that were stifling progress within the MRND party but did not mention any particular individual affiliated with the network.[601]

Bagasora Defence Expert Witness Eugène Shimamungu

532. Eugène Shimamungu, an expert in Kinyarwanda and French linguistics, testified that the term "Zero Network" was invented by Christophe Mfizi, the former director of information in the Rwandan information authority, in a document published in August 1992. The document named the members of this group as the powers surrounding Habyarimana. The witness did not know if this was an organised group.[602]

Nsengiyumva Defence Witness RAS-1

533. Witness RAS-1, a Hutu, was an officer in the gendarmerie in 1994. He said that Bizumuremyi was stationed at the Kacyiru Gendarmerie Camp with him until at least January 1994 and was not stationed in Gisenyi. He had read Christopher Mfizi's letter about the Zero Network. The term was used to describe a group of people close to President Habyarimana who prevented him from being objective.[603]

Kabiligi Defence Witness Luc Marchal

534. Colonel Marchal stated that he was informed by the intelligence service of the Belgian army that the Zero Network conducted the "dirty tasks" of the government and that Bagosora was the "brains" of the group. At the time of the assassination of Gatabazi on 21 February 1994, he was of the opinion that his elimination had been carried out by the Zero Network. Persons working in UNAMIR and media reports also shared the opinion that this had been the work of a death squad.[604]

Defence Witnesses BDR-1, LM-1, NR-1, RO-1 and LIG-1

535. Witnesses BDR-1, LM-1, NR-1, RO-1 and LIG-1, all Hutus, were familiar with Witness ZF and his work in the Gisenyi operational sector. The first four witnesses described the Zero Network as a rumour. In particular, Witness NR-1, an alleged member of the network, testified that he was not affiliated or familiar with a secret radio network. The witnesses also indicated that Lieutenant Bizumuremyi, the source of Witness ZF's information in 1992, was not posted to Gisenyi operational sector until early 1994. Witnesses

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[600] T. 1 November 2005 p. 61; T. 10 November 2005 pp. 75-76.
[601] T. 6 October 2006 p. 36.
[602] T. 6 June 2006 pp. 58-59.
[603] T. 13 October 2005 pp. 65, 71-72; T. 14 October 2005 pp. 7-10; Nsengiyumva Defence Exhibit 100 (personal identification sheet).
[604] T. 4 December 2006 pp. 15, 21-22. Félicien Gatabazi was the Minister of Public Works and the head of the PSD party. *See* Prosecution Exhibit 3 (Alison Des Forges, *Leave None to Tell the Story* (1999)), p. 163.

BDR-1 and LM-1, who supervised Witness ZF at various periods, disputed his direct access to high-ranking military authorities, such as Nsengiyumva and Bagosora.[605]

Deliberations

536. The evidence raises questions about the existence of Zero Network, its activities, including whether it used a secret radio network, and its membership. It seems undisputed that the term "Zero Network" was introduced in Rwanda through Christophe Mfizi's open letter of 15 August 1992 to the MRND. In his letter, he tenders his resignation from the party, citing the dominance of the Zero Network within the MRND as the primary reason. He describes this network as a secret clique, which stood out as the "leading defender" of President Habyarimana, thereby representing a barrier to change. Its members are referred to as a "hardcore of people", who pervade the "entire national life at the political, military, financial, agricultural, scientific, scholarly, family and even religious levels".

537. Des Forges testified that the Zero Network described a group of people performing illegal or immoral acts to keep President Habyarimana in power. According to the report written by Reyntjens in 1992, the Zero Network was affiliated to death squads or groups of individuals actively trying to sabotage the political process and impeding the Arusha peace process. The international commission of investigation on human rights abuses also described its activities.[606] The Chamber notes that the term "Zero Nework" was coined by Mfizi and not used by persons within this group.[607] Irrespective of its name, the Chamber finds that there is considerable evidence of a group or network, close to President Habyarimana, which exercised influence within Rwanda.

538. There is limited information about the activities of the group but the indirect evidence indicates that it instigated violence.[608] The question arises whether it operated a secret radio network. Christophe Mfizi's letter did not mention this, nor did the expert witnesses or Dallaire. Only Witness ZF provided evidence to this effect. The witness referred to this group of prominent military and civilian persons, as the "Dragons", "Abakozi", AMASASU, and the "Friends of the Alliance".[609] According to Witness ZF, these persons used this radio

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[605] Witness BDR-1, T. 14 April 2005 pp. 64-65, 68, 76-80, 82-86, 89, 92; Nsengiyumva Defence Exhibit 72 (personal identification sheet); Witness LM-1, T. 1 March 2006 pp. 34-41, 64; Nsengiyumva Defence Exhibit 144 (personal identification sheet); Witness NR-1, T. 23 November 2005 pp. 3, 6, 12-14; Nsengiyumva Defence Exhibit 121 (personal identification sheet); Witness RO-1, T. 27 July 2005 p. 19-20; Nsengiyumva Defence Exhibit 98 (personal identification sheet). Witness LIG-1, T. 13 April 2005 pp. 61, 63; Nsengiyumva Defence Exhibit 69 (personal identification sheet). Witness LIG-1 did not testify about the Zero Network.

[606] Prosecution Exhibit 27 (Report of the International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990 (1993), p. 44 of the English version: "The attacks against communities or individuals, the creation of an atmosphere of fear and intimidation through the militias and the discourse of hatred and suspicion all recall a level of coordination and organization at the top. Those leading the operations, who are known collectively as the 'Zero network', were able to direct civilians, military and judicial authorities and the militias. They determined the ideological bent, the choice of means, and the selection of targets for the abuses").

[607] *See, e.g.*, Reyntjens, T. 16 September 2004 pp. 57-58 ("...[Mfizi] explains why he coins that group Zero Network. But it is certainly, not the members of the zero network and they would, anyway, say that such a thing never existed").

[608] Marchal heard that the Zero Network was responsible for the assassination of Gatabazi. There is other evidence to suggest that this was carried out by the RPF. *See* Ruzibiza, T. 9 March 2006 p. 35; Witness BRA-1, T. 6 April 2006 pp. 20-23; Bagosora, T. 1 November 2005 pp. 61-63.

[609] The allegations relating to "AMASASU" are dealt with in section III.2.8.

network to secretly conduct their activities. Although mostly vague about what they were doing, he did state that the Dragons, who used the radio network, were in charge of death squads.

539. The Chamber accepts that Witness ZF held a sensitive position within the Gisenyi operational sector from the end of 1990 through July 1994. This is corroborated by Witnesses BDR-1, LM-1, NR-1 and RO-1. In particular, Witnesses BDR-1 and LM-1, who held senior military and civilian positions, were tasked with intelligence matters and testified about their interactions with him. Witness ZF was therefore in a position to interact with individuals responsible for military intelligence in the area.

540. However, Witness ZF did not have any direct knowledge about the use of the Zero Network as a clandestine communications network. He did not have access to it and purportedly learned about the network and its members from Lieutenant Bizumuremyi, who in turn received this information from Nsengiyumva or Bahufite. The witness's evidence was frequently speculative.[610] This is problematic, not only because the witness's basis of knowledge is second or third hand, but also in view of the corroborated Defence evidence, suggesting that Bizumuremyi was not stationed in Gisenyi in 1992 when he according to Witness ZF revealed this information.[611] The Chamber cannot exclude that the "Zero Network" used a clandestine radio communications but finds the evidence to be inconclusive.[612]

541. As regards the membership of the "Zero Network", the Chamber notes that Alison Des Forges did not identify individuals associated with this group but asserted that its membership came from the highest echelons of the Habyarimana regime. Luc Marchal stated that Belgian military intelligence had identified Bagosora as the central figure in the Zero Network. Information given to Dallaire in 1993-94 also included his name. In Reyntjens' 1992 Report, five independent sources, two of whom had been associated with the group, identified Bagosora and Nsengiyumva as members of the Zero Network. However, none of the four accused were mentioned by the international commission of investigation in March 1993, which pointed to other prominent figures in Habyarimana's circle as members of this

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[610] *See, e.g.*, Witness ZF, T. 27 November 2002 p. 35 ("No, Counsel, I don't know where the station was, but I heard that the mother station existed and I believed it was true because you cannot have radios on a regional basis without having another -- a mother station on a national level. Q. Do you know within what organisation the mother station would have been with? A. Your Honour, I wouldn't be able to say what organisation, but I believe it was an organisation. There was someone at the head of the organisation who was in charge of the centre of the radios and there was, most likely, an operator who had been assigned there by the person in charge of the network."); T. 28 November 2002 pp. 23-25, 27 ("Q. And was the zero network an official military network? A. No, Counsel. I don't know how to describe this network, but this network was not official. ... Q. Do you have any idea what kind of information was transmitted on the network, the zero network? A. Counsel, I can speak generally. Information on this was confidential information which dealt with the activities and the program and projects of the dragon group. ... Q. And did you ever see that radio? A. No, Counsel."); T. 4 December 2002 p. 61 ("I did not have the frequency of the Zero Network.").

[611] *See also* Nsengiyumva Defence Exhibit 15 (Situation Officers of the Rwandan Army on 1 January 1993). This exhibit does not refer to Bizumuremyi. However, he is listed as a gendarme in Nsengiyumva Defence Exhibit 16 (Situation Officers of the Rwanda Army on 5 March 1994). Nsengiyumva Defence Exhibit 105 (Report of meeting on 18 January 1993) lists Bizumuremyi as a participant at a meeting of gendarmerie officers chaired by the Gendarmerie Chief of Staff.

[612] When reaching its conclusion, the Chamber has taken into account the alleged use of a "separate radio network" in 1994 (III.3.5.9).

group.[613] In a statement given to the Prosecution in 1998, Witness ZF did not mention the membership of the Zero Network but identified individuals who he had been told that he could communicate with and trust. On this trust list, he only identified Kabiligi and Nsengiyumva.[614] However, during his testimony, Witness ZF identified 76 members of the Zero Network, including all four Accused.

542. The Chamber finds it clear that there is insufficient evidence to link Ntabakuze and Kabiligi to this network. There are more indications about Bagosora and Nsengiyumva, but this evidence is general or hearsay. The Chamber has taken into account that it is difficult to provide direct evidence about a clandestine group, which allegedly performed illegal activities. On the other hand, a finding based on inferences about membership in such a loosely knit network, risks giving undue weight to rumours and speculation. Having assessed the totality of the evidence, the Chamber does not find it proven beyond reasonable doubt that Bagosora and Nsengiyumva were members of the Zero Network and operated a secret radio network.

543. In their Closing Briefs, the Kabiligi, Ntabakuze and Nsengiyumva Defence teams objected to the evidence of Witness ZF relating to the "Zero Network", arguing that it was not included in their respective indictments, that this prejudiced their ability to properly prepare for cross-examination, and that the evidence should be excluded for lack of notice.[615] The Chamber rejected similar submissions during trial and in light of the above reasoning does not consider it necessary to revisit this issue.[616]

2.8 AMASASU

Introduction

544. The Indictments allege that "prominent civilian and military figures" who shared an "extremist Hutu ideology" worked together from as early as 1990 to pursue a "strategy of ethnic division and incitement to violence". Specifically, the Prosecution argues that the Accused were members of a clandestine group called the AMASASU whose activities

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[613] According to the report, witnesses frequently identified Colonel Elie Segatwa, Protais Zigiranyirazo, Léon Mugesera, Mathieu Ngirumpatse, Alphonse Ntirivamunda, Joseph Habiyambere, Come Bizimungu and Pascal Simbikangwa as members of the Zero Network but this enumeration was not exhaustive. *See* Prosecution Exhibit 27 (Report of the International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990 (1993), p. 83 of the French version, which is more complete than the English summary.

[614] Witness ZF's statement to the Prosecution refers to the "*Secretaire Particulier*" or "Private Secretary" of the Minister of Defence which appears to be different from the *Directeur de Cabinet*, the post that Bagosora held. *See* Nsensiyumva Defence Exhibit 14A (French original), p. 6 and 14B (English translation), p. 4. But even assuming that this is meant to be a reference to Bagosora, the Chamber's finding (below) would remain the same.

[615] Kabiligi Closing Brief, paras. 701-713; Ntabakuze Closing Brief, para. 2393; Nsengiyumva Closing Brief, paras. 1098-1113.

[616] Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, para. 19; Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 11-14; Decision on Nsengiyumva Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 33-34.

allegedly included plotting the genocide and distributing weapons to execute it. Reference is made to Witnesses XXQ, ZF and DCH as well as Expert Witness Alison Des Forges.[617]

545. The Kabiligi, Ntabakuze and Nsengiyumva Defence teams submit that the Prosecution's evidence concerning the AMASASU falls outside the scope of the Indictment and cannot provide a basis for conviction. The Kabiligi and Ntabakuze Defence also contend that the Prosecution has led no evidence demonstrating criminal conduct by the AMASASU. All Defence teams argue that the Prosecution's evidence is unreliable and indirect. They rely primarily on the testimony of the Accused, Witness NATO-1 as well as Expert Witnesses Helmut Strizek and Eugène Shimamungu.[618]

Evidence

Prosecution Expert Witness Alison Des Forges

546. Alison Des Forges, an expert in Rwandan history, testified about the origins and purpose of the AMASASU, including two letters emanating from the organisation. In particular, she referred to a letter of 20 January 1993, signed by Commander Mike Tango of the supreme counsel of the AMASASU. The term is an acronym, defined in the letter as *Alliance des Militaires Agacés par les Séculaires Acts Sournois des Unaristes*.[619] She noted that it is also a word in Kinyarwanda that means "bullets, or the report of a weapon which has been fired".[620] The letter was initially provided to Des Forges by human rights colleagues in late 1993 or early 1994. She was unaware of its author but testified that former Minister of Defence, James Gasana, had linked Colonels Nsengiyumva, Bagosora, Nsabimana and others to the group. Gasana had fled based on threats from the AMASASU.[621]

547. Des Forges emphasised that the 20 January 1993 letter contains views in accord with those expressed by various important military officers and political leaders, including Leon Mugesera, Bagosora, Nsengiyumva and Jean-Bosco Barayagwiza. It links the RPF with the *Union Nationale Rwandaise* (UNAR), suggesting the shared intent to restore the Tutsi monarchy and its abuses. The letter supports the concept of "legitimate self-defence" – that the people have the right to take the law into their hands. According to Des Forges, this concept had been espoused by Mugesera two months before the letter. It also mentions as one of its objectives to detect and destroy hypocritical politicians who are attempting to maintain or accede into power fraudulently through the war and threatens to "strike without pity those who have sold our country". Des Forges testified that these expressions mirror sentiments and

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[617] Bagosora Indictment, paras. 1.12-1.16; Kabiligi and Ntabakuze Indictment, paras. 1.13-1.16; Nsengiyumva Indictment, paras. 1.13-1.16; Prosecution Closing Brief, paras. 37, 50-51, 783-786, 1001(i), 1493, 1571(b), 1574; T. 1 June 2007 pp. 21, 38-40.

[618] Bagosora Closing Brief, paras. 1456, 1515, 1729, 2174-2175, 2185-2187; Kabiligi Closing Brief, paras. 110-111, 697, 700-713, 1029-1034, 1079, 1543, pp. 593, 597-598; Ntabakuze Closing Brief, paras. 197-198, 483, 654-661, 666-701, Annex pp. 29, 30, 42; Nsengiyumva Closing Brief, paras. 52(e), 1105-1115, 1863, 1869-1872, 3002, 3010-3011, 3126-3127. *See also* T. 28 May 2007 pp. 29-30, 36-37 (Kabiligi); T. 29 May 2007 p. 62 (Bagosora); T. 31 May 2007 pp. 36-38 (Nsengiyumva).

[619] Prosecution Exhibit 30.1. The French expression means "alliance of soldiers irritated by the underhanded acts of those belonging to the UNAR party". UNAR was a royalist Tutsi party that gained prominence in the late 1950s. *See* Prosecution Exhibit 2A (Expert Report of Alison Des Forges), p. 7.

[620] T. 17 September 2002 p. 22.

[621] *Id.* pp. 22-26, 30-32; T. 24 September 2002 pp. 84-88; T. 18 November 2002 pp. 29-33, 91-93, 114.

language used in a letter written by Nsengiyumva on 27 July 1992.[622] She also suggested that the 20 January 1993 letter portrays the conflict as one based on the Hutu-Tutsi ethnic divide rather than political divisions, paralleling themes from a document written by Bagosora in 1995 while in Yaoundé, Cameroon.[623]

548. A second, undated document signed "For the AMASASU Supreme Council, Commander Tango Mike" and entitled "Note to the MRND and the CDR" was also introduced through Des Forges. She became aware of it shortly before appearing to testify. In her view, it appears to have been written after the 20 January 1993 document as it notes that the organisation is growing satisfactorily. The letter seeks support "especially in the operation to eliminate RPF accomplices who are working here on the inside", to counter "certain bitter opposition leaders", and to spread the AMASASU message.[624]

549. Des Forges has written that "Commandant Mike was a pseudonym, of course, but it seems likely that he is either Colonel Théoneste Bagosora or someone working closely with him".[625] She recognised that the AMASASU letters could be used to manipulate opinion, but was of the view that Gasana's conviction that the AMASASU existed made it "very likely, if not certain, that such an organisation existed".[626]

Prosecution Expert Witness Filip Reyntjens

550. Filip Reyntjens, an expert in Rwandan history, testified that Bagosora was one of a few officers alleged to have authored a letter dated 20 January 1993, signed under the title AMASASU, which expressed opposition to the Arusha Accords and the threat of "monarchist Tutsi". He noted that the 20 January 1993 date fell a couple of days after the second meeting in Arusha on the protocol of power sharing where Bagosora allegedly said he was preparing for the apocalypse or that the power sharing would cause an apocalypse in Rwanda.[627] Reyntjens noted that the letter was signed under a pseudonym.[628]

Prosecution Witness XXQ

551. Witness XXQ, a Hutu officer in the gendarmerie, first learned of the AMASASU in July 1992 from a letter challenging the Arusha Accords. He was also told about the group by a friend, Lieutenant Bizumuremyi, who was responsible for recruiting junior officers to the AMASASU. Bizumuremyi said that the AMASASU consisted of senior officers living in Kigali, including each of the accused, as well as members of the MRND who planned the genocide. Bagosora was the suspected leader.[629]

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[622] Prosecution Exhibit 21 (Letter of 27 July 1992 from Nsengiyumva to the Rwandan Army Chief of Staff entitled "Mood of the Military and Civilians"). *See also* Des Forges, T. 17 September 2002 pp. 29-33, 42, 50 (noting that the English text had been prepared from an incomplete version of the French document and reading from a complete French version); T. 24 September 2002 pp. 84-88.

[623] T. 17 September 2002 pp. 41-43, 49-51, 79-81; T. 18 November 2002 pp. 100-114.

[624] T. 17 September 2002 pp. 26-29; T. 24 September 2002 pp. 85-87; Prosecution Exhibit 30 ("*Note au M.R.N.D et à la C.D.R.*", undated).

[625] Prosecution Exhibit 3 (Alison Des Forges, *Leave None to Tell the Story* (1996)), p. 104.

[626] T. 24 September 2002 p. 88; T. 18 November 2002 p. 114.

[627] The Chamber has not found that Bagosora made the "apocalypse" statement as alleged by the Prosecution (III.2.3).

[628] T. 16 September 2004 pp. 6-7, 10, 21-22, 25, 27-28. The Prosecution Closing Brief does not refer to Reyntjens in connection with the AMASASU.

[629] T. 11 October 2004 pp. 28-29, 31-32; T. 13 October 2004 pp. 3-17; Prosecution Exhibit 316 (personal identification sheet). Witness XXQ confirmed a prior statement given to Rwandan judicial authorities that

552. The AMASASU distributed weapons even if such acts were not approved by the Ministry of Defence. Witness XXQ also suggested that the AMASASU was behind massacres in the Kayove-Ngororero, where the witness was deployed in 1993.[630] Based on conversations on 8 April 1994 with Major Kinyoni, a G-2 in the gendarmerie and a member of the AMASASU, who described a meeting that occurred at ESM that day, the witness discerned that the AMASASU was behind the installation of Sindikubwabo as President and Kambanda as Prime Minister.[631]

553. The basis of Witness XXQ's belief that Nsengiyumva participated in the AMASASU comes from a letter that the Accused had written on 27 July 1992 to army staff headquarters.[632] This letter explained that most of the civilian and army population were against the Arusha Accords. It did not contain the term AMASASU although the witness emphasised that it shared the group's ideology. Additionally, James Gasana, then Minister of Defence, wrote a letter to President Habyarimana on 26 July 1992 and informed him that senior officers were members of the AMASASU and that he was receiving insulting phone calls from them. The witness was given both letters. Colonel Sagatwa, the head of security for the President, assigned him to conduct an investigation into the accuracy of Nsengiyumva's letter, and he submitted his findings in a report on 3 August 1992. The investigation revealed that Nsengiyumva's characterisation of the civilians' and front line soldiers' reactions to the Arusha Accords were incorrect. Civilians were tired of the ongoing fighting and soldiers on the frontline were prepared for a merger. Military officers, however, were concerned about losing their posts. James Gasana gave a speech over Radio France International a month after he fled Rwanda in 1993, indicating that he left because the AMASASU "wanted to kill" him.[633]

554. Witness XXQ also identified a document attributed to the AMASASU that was directed to the MRND and CDR. The witness observed the document while in Kigali gendarmerie squadron office in October 1992. He was told to remain cautious and that there was a need to continue collecting information to prevent destablisation within the country. The witness saw the 20 January 1993 letter in early April 1993.[634]

Bizumuremyi had told him that Bagosora, Kabiligi, Colonel Rusatira, Colonel Serubuga, Colonel Gasake, Major General Nsabimana, Colonel Rwarakabije, Major Gakara, Major Stanislas Kinyoni, Colonel Tharcisse Renzaho, Major Nyamuhimba, and Colonel Laurent Munyakazi were members of the AMASASU. T. 13 October 2004 p. 14; Kabiligi Defence Exhibit 82 (statement of 30 October 2000), p. 5.

[630] It appears that Witness XXQ is referring to massacres that occurred in December 1992 based on a statement he gave to Rwandan judicial authorities. *See* Kabiligi Defence Exhibit 82 (statement of 30 October 2000), p. 1, where he states that "[f]rom January to March 1993, the Rwandan government selected me to go and ensure the safety of the victims of the massacres that took place in Ngororero and Kayove".

[631] T. 11 October 2004 p. 31; T. 12 October 2004 pp. 17-20; T. 13 October 2004, pp. 19-20, 29-33, 47-50, 54-56, 63-74.

[632] During Witness XXQ's examination-in-chief, the Chamber precluded the Prosecution from leading evidence on Nsengiyumva's involvement in the AMASASU based on lack of notice. This arose as the witness testified regarding the 27 July 1992 letter from Nsengiyumva. *See* T. 11 October 2004 pp. 32-38, 42; T. 13 October 2004 pp. 4-5; Prosecution Exhibit 21 (Letter of 27 July 1992 from Nsengiyumva to the Rwandan Army Chief of Staff entitled "Mood of the Military and Civilians"). Notwithstanding, Defence counsel, after consultation with each other, cross-examined Witness XXQ regarding the contents of Nsengiyumva's letter as it related to the AMASASU. *See* T. 13 October 2004 pp. 4-7. The Prosecution was not allowed to re-examine Witness XXQ on the basis of this letter. *See id.* pp. 97-101.

[633] *Id.* pp. 3-17.

[634] *Id.* pp. 96-97; Prosecution Exhibit 30 ("*Note au M.R.N.D et à la C.D.R.*", undated); Prosecution Exhibit 30.1 (Letter of 20 January 1993 from the AMASASU to the President of the Republic).

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Prosecution Witness ZF

555. Witness ZF, a Hutu who worked at the Butotori military training camp in Gisenyi prefecture, was made aware of several clandestine groups including the AMASASU, Abakozi, death squads, the "dragons", and the "friends of the alliance". The witness first said that he was unable to identify who gave him "information" regarding such organisations, noting that he lived in "a milieu where all that happened", but later said that Lieutenant Bizumuremyi had given him the list of members related to the organisations. According to the witness, the AMASASU was comprised of soldiers in Kigali as this was where it "carried out its activities". These soldiers worked with the commanders of the "dragons". The witness never attended a meeting of any of these organisations and was unable to confirm when the AMASASU was formed, but he noted that it was discussed in 1993.[635]

Prosecution Witness DCH

556. Witness DCH, a Hutu and member of the *Interahamwe*, testified that the AMASASU was composed of soldiers in the Para Commando Battalion in Camp Kanombe led by Ntabakuze. The group was responsible for intimidating those opposed to the MRND. The AMASASU existed in 1992 and 1993. The witness never attended any of its meetings. He did not see a list of its members or know any of its organisational details but became aware of the organisation through a soldier named Boniface Sengoza. Witness DCH was uncertain if it existed in 1994 but noted that it was related to, and, indeed, difficult to distinguish from, groups such as the Akazu and *commandos de chasse*, who were composed of soldiers, and the Zulus, who were *Interahamwe*.[636]

Bagosora

557. Bagosora denied that he was a member of the AMASASU, or that he was the author of the 20 January 1993 letter, signed by "Commander Tango Mike". He became aware of the document when James Gasana, the Minister of Defence, held a cabinet meeting to ascertain its origins. Gasana directed Colonel Laurent Rutayisire, the Head of External Security at the time, to investigate who the authors were. Bagosora believed that Gasana left before the results of the investigation but Bagosora was unaware if a report was turned in. Bagosora had left in March 1993 for Arusha and when he returned in July he did not ask Rutayisire about the results of the investigation. Rutayisire did not question Bagosora and no charges were brought against him suggesting he had authored the letter at that time. In connection with the investigation, Rutayisire indicated that Hassan Ngeze claimed to have authored the document. He commented that Mike Tango is an Anglophone name and any investigation into the group's existence should be geared towards the RPF rather than himself, a Francophone.[637]

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[635] T. 26 November 2002 pp. 93-95; T. 27 November 2002 pp. 13, 65, 67-68; T. 28 November 2002 pp. 4-5; T. 3 December 2002 pp. 62-66; T. 4 December 2002 p. 38; T. 5 December 2002 pp. 3-9. Witness ZF testified that the dragons also controlled the death squads, who worked secretly. *See* T. 3 December 2002 p. 63. The witness's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.
[636] T. 23 June 2004 pp. 1, 45-46, 51-53; T. 30 June 2006 pp. 48-50; Prosecution Exhibit 275 (personal identification sheet). The Chamber notes that Witness ZF had heard that Bagosora and Nsengiyumva were members of the Akazu. T. 25 June 2004 pp. 14-15.
[637] T. 31 October 2005 pp. 72-74; T. 11 November 2005 p. 2; T. 14 November 2005 pp. 2-3.

Ntabakuze

558. Ntabakuze denied that the AMASASU was a unit within the Para Commando Battalion. He first learned of the organisation in 2000 when he received Witness DCH's statement.[638]

Nsengiyumva

559. Nsengiyumva stated that Witness XXQ's assertions that he was part of the AMASASU lacked credibility. The witness did not mention Nsengiyumva's name to Rwandan authorities but said to Tribunal investigators and the Chamber that Nsengiyumva was alleged to be involved in the AMASASU.[639]

Ntabakuze Defence Witness DM-25

560. Witness DM-25, a Hutu senior Rwandan official who worked closely with the Prime Minister, testified that he was aware of the AMASASU through a sole communiqué. He did not provide particulars about the communiqué other than it threatened "accomplices or traitors to the fatherland" and encouraged people to stop having agreements with the *Inkotanyis*. The witness confirmed that rumours circulated, particularly among opposition democratic parties, that Bagosora was involved in this group. However, no report was received from the Prime Minister's intelligence services that would have enabled the witness to conclude that Bagosora was a founding member of the AMASASU. Additionally, he was unaware of how the group operated, and he testified that no follow-up was conducted as the group was not heard of after the letter.[640]

Ntabakuze Defence Witness NATO-1

561. Witness NATO-1, a Hutu soldier stationed in the Bigogwe training camp in Gisenyi prefecture, testified that he was unaware of the existence of AMASASU until he appeared to testify before the Tribunal. What he knew was that the word "AMASASU" meant "bullets" or "ammunition" in Kinyarwanda. Based on his knowledge, he was of the view that Boniface Sengoza could not have told Witness DCH about its existence.[641]

Nsengiyumva Defence Witness BDR-1

562. Witness BDR-1 was a Hutu who worked in the Gisenyi operational sector until around mid-1993. Rumours circulated among soldiers about the existence of a group of officers called the AMASASU that were not in agreement with the Arusha Accords as they were being prepared. Some officers gathered intelligence and found civilians discussing rumours of the AMASASU. However, he was not aware of evidence linking any individual to this group and said that without a leader the group merely amounted to a rumour.[642]

Ntabakuze Defence Witness DM-190

563. Witness DM-190, a Hutu member of the Rwandan Armed Forces stationed in Ruhengeri in 1994, observed in 1992 a "tabloid press" referring to tracts of an organisation

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[638] T. 21 September 2006 pp. 34-35.
[639] T. 9 October 2006 p. 72; Nsengiyumva Defence Exhibit 61 (statement of 12 August 2003); Kabiligi Defence Exhibit 84 (statement of 17 March 2003 in Rwandan judicial proceedings), pp. 16-18.
[640] T. 11 April 2005 pp. 53-54; T. 12 April 2005 pp. 29-30, 63-64; Ntabakuze Defence Exhibit 81 (personal identification sheet).
[641] T. 27 June 2006 pp. 3-4, 10, 28-29; Nsengiyumva Defence Exhibit 197 (personal identification sheet).
[642] T. 14 April 2005 pp. 64-66, 69, 92; Nsengiyumva Defence Exhibit 72 (personal identification sheet).

called the AMASASU. The witness was otherwise unaware of the organisation and its membership and noted that at that time there was a "proliferation" of rumours.[643]

Nsengiyumva Defence Expert Witness Helmut Strizek

564. Helmut Strizek, an expert in Rwandan history, challenged assertions that Bagosora was the leader of AMASASU. The theories regarding the planning of the genocide rely largely on anonymous documents, and there is no proof linking the 20 January 1993 letter to Bagosora. Strizek said that if Bagosora was the author, he would have been taking a great risk in writing such a letter. Instead, Strizek considered that the document was created by the RPF, who were interested in the removal of Minister of Defence James Gasana. Specifically, Strizek pointed to the tensions that existed between Gasana, a civilian, on the one hand, and the military, on the other hand, and suggested that the RPF could have played on this tension by authoring the document and threatening Gasana, who eventually fled the country. He also noted that Gasana was not liked by the MRND, which tends to give the appearance that this document would be authentic.[644]

Bagosora Expert Witness Eugène Shimamungu

565. Eugène Shimamungu, an expert in Kinyarwanda and French linguistics, testified that he was familiar with the term AMASASU from a document. Shimamungu did not describe the document, other than that its source had not been verified. He was unaware if the group existed.[645]

Deliberations

566. It follows from the submissions that the existence of the AMASASU is disputed, and that the Accused deny having been members of such an organisation. The Chamber will address both issues based on the available evidence.

(i) Existence of AMASASU

567. The 20 January 1993 letter, signed by someone calling himself Tango Mike, military call signs, appears to have been the first public indication of the AMASASU's existence. It is addressed to President Habyarimana and describes the group as members of the Rwandan army from the "commanding officer to smallest FAR soldier". It outlines the group's intention to thwart the "malicious plans of the members of the UNAR party". The letter talks of ongoing preparations by the *Inkotanyi* and *Inyenzi* to take Rwanda by force and that infiltrators have already been identified. Training of civilian youth in regions throughout Rwanda in order to support the army is suggested and Prime Minister Dismas Nsengiyaremye is praised, particularly for his support of people defending themselves and for speaking in favour of soldiers. The letter warns that the AMASASU is prepared to render justice itself.[646]

568. The undated note addressed to the MRND and CDR, also signed by Tango Mike, seems to have followed the 20 January 1993 letter, noting that the AMASASU's

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[643] T. 3 May 2005 p. 7; T. 4 May 2005 pp. 20-21; Ntabakazue Defence Exhibit 94 (personal identification sheet).
[644] T. 11 May 2005 pp. 34-35; T. 12 May 2005 pp. 30-31.
[645] T. 6 June 2006 pp. 3-6, 58-59.
[646] Prosecution Exhibit 30.1 ("*AMASASU: Alliance des Militaires Agacés par les Séculaires Acts Sournois des Unaristes*", dated 20 January 1993), in particular paragraphs 2 and 4, 5.1 to 5.3, 5.4 to 5.6.

"membership is increasing satisfactorily".[647] It acknowledges its support for the two political parties and seeks their support in the case of an RPF attack. The letter asks the organisations to assist, in particular, "in the operation to eliminate the RPF accomplices who are working here on the inside".[648]

569. The AMASASU letter and note, which the Chamber will refer to collectively as "the AMASASU documents", purport to be expressions of frustrated officers and their content creates an inference of having originated from military officers. According to Bagosora, the 20 January 1993 letter was sufficiently provocative to prompt the Minister of Defence, James Gasana, to order the Head of External Security, Colonel Rutayisire, to conduct an investigation into who authored it. Bagosora, however, was unaware of the results of this investigation and pointed to indications that Hassan Ngeze might have written the letter. Witness BDR-1 testified that intelligence gathered revealed only rumours about the group's existence. While evidence of contemporaneous investigations in Rwanda concerning the AMASASU's existence suggests inconclusive results,[649] the group appears to have been perceived both to be real and threatening. James Gasana's 20 July 1993 letter cites threats from the AMASASU as the basis for his resignation as Minister of Defence.[650] Gasana's conviction that the group existed, in part, led Des Forges to conclude that it was "very likely, if not certain, that such an organisation existed".[651]

570. Notwithstanding, and aside from the AMASASU documents, only unspecific and varied evidence concerning the purported group's existence and activities is in the record. Turning first to Witness XXQ, the Chamber notes that he had been detained since 1997 in Mulindi, Kigali, and sentenced to death in 2001 for crimes related to the genocide. The witness's appeal was pending when he provided his testimony.[652] Consequently, the Chamber

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[647] In Des Forges's opinion, the letter's content suggests that it was written "perhaps a month, two months, three months further along" from the group's formation and likely after the 20 January 1993 letter. T. 24 September 2002 p. 86. Witness XXQ suggested, however, that the document was obtained by the Kigali gendarmerie in October 1992. The Chamber agrees with Des Forges's analysis and, as discussed below, has reservations about the reliability of Witness XXQ's testimony relating to the AMASASU.

[648] Prosecution Exhibit 30 ("*Note au M.R.N.D et à la C.D.R.*", undated).

[649] The Chamber recalls that Witness XXQ purportedly conducted an investigation in 1992 into Nsengiyumva's 27 July 1992 letter leading him to conclude Nsengiyumva was involved in the AMASASU. At the outset, the witness's testimony reveals that the investigation was aimed at verifying the contents of Nsengiyumva's letter rather than verifying the AMASASU's existence. Moreover, his testimony appears incongruent with evidence in the record. He testified that the investigation was initiated in part by a 26 July 1992 letter received from the Minister of Defence, James Gasana, alleging that the AMASASU was threatening him, and noting in particular, that he had received insulting phone calls. It is surprising that Gasana would have sent such a letter nearly five months prior to the apparent release of the 20 January 1993 letter introducing the AMASASU's existence. While the contents of the Gasana letter as described by the witness are not precisely the same, they are strikingly similar to those in Gasana's 20 July 1993 resignation letter to the President. *See* T. 13 October 2004 pp. 4, 7-9; Prosecution Exhibit 243 (Letter of 20 July 1993 from James Gasana to the President). The Chamber cannot exclude the possibility that the AMASASU existed before the release of 20 January 1993 letter, and that Gasana had complained about threats from the group a year before he resigned. However, this aspect of Witness XXQ's testimony, in the Chamber's view, fails to establish the AMASASU's existence in 1992.

[650] Prosecution Exhibit 243 (Letter of 20 July 1993 from James Gasana to the President), which sets forth Gasana's intent to leave the Minister of Defence, citing, in particular, insecurity created by an anonymous political/military organisation known as the AMASASU. The exhibit was tendered through a Prosecution investigator. *See* T. 7 June 2004 pp. 101-103.

[651] T. 24 September 2002 p. 88.

[652] *See* T. 12 October 2004 pp. 5-9; Kabiligi Defence Exhibit 85A (Rwandan judgments of 5 March and 16 August 2001), pp. 16, 217.

views his evidence with caution and will not accept it without adequate corroboration. Witness XXQ testified that the AMASASU distributed weapons and perpetrated massacres in the Kayove-Ngororero near the beginning of 1993.[653] He provided no further detail with respect to the AMASASU distributing weapons.[654] With respect to the alleged Kayove-Ngororero massacres, the only apparent link the witness creates between the massacres and AMASASU are reported instructions he received from Lieutenant-Colonel Rwarakabije, who he identified as a member of the AMASASU, to follow orders on the ground. The witness also referred to Major André Bizimana's statements that the massacres were planned by the government and that the gendarmes were not to intervene.[655] The Chamber finds that this general evidence tends to presume, rather than establish beyond reasonable doubt, the group's existence.[656]

571. Witness DCH testified that the group existed in 1992 and 1993 and intimidated those opposed to the MRND.[657] The Chamber notes that the witness pleaded guilty and was sentenced to seven years' imprisonment for crimes committed in the Kabuga area.[658] It therefore considers his testimony with caution. In the Chamber's view, this testimony also does not provide sufficient independent basis to establish the group's existence or activities beyond reasonable doubt or detail to corroborate Witness XXQ's testimony. Witness ZF's testimony that the group executed "orders or the manoeuvres of the dragon" also fails to sufficiently delineate the group's existence or activities.[659] Moreover, the witness failed to reference the AMASASU once in a statement given to Tribunal investigators in June 1998, notwithstanding the fact that nearly 16 pages of it discuss groups and incidents predating 6 April 1994.[660]

572. In addition to the relative ambiguity in the Prosecution evidence, Defence witnesses raise further doubts about the group's existence. Witness DM-25, a figure centrally placed in the Rwandan government at the time, was unaware of any information other than the 20 January 1993 letter as it related to the group. Witnesses BDR-1 and DM-190 testimonies suggest the group's existence was merely rumoured but unsubstantiated.

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[653] Witness XXQ also concluded, based on a conversation with an alleged AMASASU member, that the group was responsible for the installation of Sindikubwabo as President and Kambanda as Prime Minister. The Chamber reviews evidence surrounding the installation of the Interim Government below (III.3.7).

[654] The Chamber did not find credible Witness XXQ's allegations relating to the February 1994 meeting wherein Kabiligi allegedly discussed the need to distribute weapons (III.2.4.4).

[655] *See* T. 12 October 2004 pp. 17-21; T. 13 October 2004 pp. 19-28.

[656] Additional issues raise concerns about the reliability of Witness XXQ's testimony as it relates to the AMASASU. For example, the witness is alone in asserting that the AMASASU was made public in a document in July 1992 (T. 11 October 2004 p. 32) and "started being known by the public in the month of July 1992" (T. 13 October 2004 p. 3).

[657] Witness DCH testified that he knew about AMASASU based on demonstrations in Camp Kanombe and soldiers leaving the front after Prime Minister Dismas Nsengiyaremye's call for soldiers to be demobilised. Some Kanombe camp soldiers tried to kill the Prime Minister. Furthermore, the witness noted that the Minister of Defence had to flee the country. *See* T. 18 June 2004 pp. 17-18; T. 23 June 2004 pp. 45-46; Kabiligi Defence Exhibit 65 p. 5 (statement of 5 November 2003). The witness did not offer further clarification as to how he linked these activities to the AMASASU.

[658] *See* T. 29 June 2004 pp. 20-21; Ntabakuze Defence Exhibit 70 C (Rwandan judgment of 8 December 2000), pp. 2-3, 23-24, 31. The Chamber has determined that other aspects of Witness DCH's testimony lacked credibility, in part, based on his apparent willingness to mislead judicial officials about the full scope of his culpability in the events (III.4.1.5).

[659] T. 3 December 2002 p. 63.

[660] Nsengiyumva Defence Exhibit 14 (statement signed 24 June 1998).

573. Before concluding, the Chamber will consider the evidence about the Accused's alleged membership in the AMASASU.

(ii) Membership of the AMASASU

574. Another disputed matter is whether the Accused were members of the AMASASU. Bagosora denied authoring the 20 January 1993 letter or being a member of the group, while Nsengiyumva disputed Witness XXQ's testimony linking him to it. Ntabakuze testified that he was unaware of the group before 2000. Prosecution Witnesses XXQ, ZF, and DCH only provided second-hand evidence concerning its membership. Witness XXQ, relying on information from Bizumuremyi, testified that each of the Accused were AMASASU members.[661] However, in his statement to Tribunal investigators in August 2003, Witness XXQ made no mention of the AMASASU or the Accused's membership in it. Although it is not clear that he was asked questions relating to the group, the Chamber finds it somewhat surprising that such information was not volunteered given that the statement discusses his evolving relationship with Bizumuremyi as well as Bizumuremyi's connections with Nsengiyumva prior to 1994.[662]

575. Witness XXQ did not mention Nsengiyumva, Ntabakuze or Bizumuremyi in connection with this organisation in prior statements given to Rwandan judicial authorities in October 2003.[663] He explained that the transcription of his statement may omit references to Nsengiyumva and Bizumuremyi where ellipses appear or at points where the transcript reads "inaudible". The Chamber does not find these explanations convincing. Having reviewed the transcript, it appears to employ ellipses to reflect natural pauses in speech rather than unrecorded testimony. The context surrounding relevant indications of "inaudible" does not make it likely that portions of the statement would be referring to either Nsengiyumva or Bizumuremyi.[664] As a second explanation, the witness suggested that these omissions may be due to the fact that he answered only general questions about the AMASASU. However, the transcript reflects that the witness was asked repeatedly about the group's membership and purpose. Witness XXQ testified at length about Nsengiyumva's involvement, noted that Ntabakuze had "distinguished" himself as member, and stated that Bizumuremyi was a purported source of information on the AMASASU. His failure to mention these individuals raises questions about the reliability of his testimony on this issue.[665] Consequently, the Chamber will not accept it absent adequate corroboration.

576. Turning to Witness ZF, the Chamber reiterates that his basis for knowledge is second-hand, relying on Bizumuremyi for information regarding the AMASASU's as well as the

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[661] *See* T. 11 October 2004 pp. 27-29; T. 13 October 2004 p. 14.
[662] Nsengiyumva Defence Exhibit 61 (statement of 12 August 2003). This conclusion is bolstered by the fact that the witness described the AMASASU in a statement to Rwandan judicial authorities without being prompted by a question specifically about the group. *See* Kabiligi Defence Exhibit 82 (statement of 30 October 2000), p. 5.
[663] *See* Kabiligi Defence Exhibit 84 (Transcripts of interviews of 30 and 31 October 2003). Witness XXQ also failed to mention these names in a statement given to Rwandan judicial officials in 2000. *See* Kabiligi Defence Exhibit 82 (statement of 30 October 2000).
[664] *See* Kabiligi Defence Exhibit 84C (Transcripts of interviews of 30 and 31 October 2003), pp. 16-18.
[665] *See* T. 11 October 2004 pp. 27-29; T. 13 October 2004 pp. 14, 83-89; Kabiligi Defence Exhibit 84 (Transcripts of interviews of 30 and 31 October 2003).

Zero Network's membership.[666] The witness identified each of the Accused specifically in relation to the Zero Network, but he did not expressly link any of them to the AMASASU.[667] Rather, the AMASASU's constituency is summarised as soldiers who worked with "commanders of the dragons and also had to execute the orders or manoeuvres of the dragons".[668] Accordingly, the Chamber is not convinced that Witness ZF's evidence adequately corroborates Witness XXQ's regarding any of the Accused's membership in the purported organisation.

577. With respect to Witness DCH, he testified that Ntabakuze was a member of the AMASASU, which was a "group of soldiers in Camp Kanombe and they were part of the Para Commando Battalion".[669] Like Witnesses XXQ and ZF, Witness DCH's knowledge of the AMASASU is second-hand, having purportedly learned of it through Boniface Sengoza. However, Witness NATO-1's testimony raises doubt as to whether Sengoza would have had any knowledge about the organisation or spoke with the witness about it. This raises concern about Witness DCH's second-hand evidence on this point.[670]

578. In addition to these witnesses' evidence, Des Forges drew extensive parallels in the sentiments expressed in the AMASASU documents and other writings by Nsengiyumva and Bagosora in particular to demonstrate membership. Consistent with and in addition to Des Forges's observations, the Chamber observes parallels among Nsengiyumva's 27 July 1992 letter, Bagosora's 1995 Cameroon document and the AMASASU documents. For instance, there are calls for democratic resolve[671] yet at the same time Tutsis are characterised as

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[666] *See* T. 5 December 2002 pp. 3-4 ("Q. ... Let us begin with the organisations that you named. The zero network, the Alliance, the Abakunzi, the Amasasu ... Q. ... You said the organisations were secret organisations; is that right? A. Yes, Counsel. Q. Who gave you the list of members of these organisations? A.: Counsel, the person who gave me these lists is indeed Lieutenant Bizumuremyi."). *See also* T. 4 December 2002 pp. 91-96. *See also* section III.2.6 about the Zero Network.

[667] *See, e.g.*, T. 27 November 2002 pp. 36-37, 61-62, 66.

[668] T. 3 December 2002 p. 63. The description's ambiguity is compounded by the fact that the witness initially testified that the terms "dragons" and "AMASASU" were used interchangeably to describe seemingly the same group. T. 27 November 2002 p. 65 ("But this is a very long list, but in addition to the names that I can remember and would like to disclose, there were all the ministers on the list, all the MRND ministers. I don't know if they were actually in the MRND or supporters of the MRND, but also the CDR, all of the *préfets* from the MRND, all of the *bourgmestres* from the MRND, CDR, all of those persons were members of the Abakozi, which others called the death squad, which others called dragons, which others called AMASASU.").

[669] T. 23 June 2004 p. 45.

[670] The Chamber also notes Bagosora Defence Exhibit 61 (statement of 20 February 1999 by Witness GHI to Tribunal investigators), pp. 4-5, which draws connections between the AMASASU letter and Bagosora, Nsengiyumva and Ntabakuze. It was introduced by the Defence during cross-examination of General Roméo Dallaire, T. 22 January 2004 pp. 9-10. According to the statement, Hassan Ngeze claimed to have written a tract for the AMASASU, but it also reads: "It is likely that someone familiar with the thinking of some officers expressed those thoughts on their behalf in the tract. At any rate, some officers were more highly-placed and more committed than others but what they had in common was that they were mainly from the north or had close ties with the President's family. These officers, whose center of gravity was Col. Bagosora, did not make life easy for the opposition parties. Among them, I can mention: Lt. Col. Anatole Nsengiyumva; Major Mpiranyia, Major Ntabakuze." The witness did not give in-court testimony and was not subject to cross-examination. The Chamber accords this document limited weight.

[671] *See* the 20 January 1993 letter, para. 4 ("We support political pluralism and democracy with all our might because we want to see real justice established in Rwanda.") *and* Nsengiyumva's July 1992 letter, p. 6 ("To this end, the democratic process must be kept on course and, whenever necessary, shown to the world to prove that, in spite of our current difficulties, we are still committed to democracy or, rather, to the democratic process....") *and* Bagosora's 1995 Cameroon document, p. 24 ("However, this should stop, because after so many human lives have been lost for such an unjust cause, Tutsis and Hutus should see reason and follow the example of the

untrustworthy[672] and their historical aggression towards Hutus is emphasised.[673] Written prior to April 1994, Nsengiyumva's 27 July 1992 letter and the 20 January 1993 AMASASU letter also express soldiers' vexation with leadership,[674] the need to prepare for war,[675] and the letters threaten unsanctioned attacks within Rwanda against those ostensibly aligned with the Tutsis.[676] In the Chamber's view, this evidence creates an inference that Bagosora and Nsengiyumva were behind the AMASASU documents and possibly part of a group of Rwandan army officers who shared these views.

579. Notwithstanding, additional considerations raise concerns particularly as it relates to the Accused's involvement in the group. According to Bagosora, an investigation into the origins of the 20 January 1993 letter was ordered by the Minister of Defence, but there is no evidence that he was ever charged with having authored it or that any of the other Accused were implicated. Moreover, the Prosecution experts affirm that the AMASASU documents are of unknown origin, and Des Forges stated that the AMASASU was "a group which is difficult to define".[677] Additionally, Des Forges's testimony that links Bagosora to the group relies in part on material the Chamber excluded. Subsequently, the Chamber determined that no weight would be given to Des Forges's opinions based on that material and excluded her testimony describing it.[678]

South African community. And they should start thinking that democracy, the only system based on the majority rule offering maximum guarantee for the minorities with genuine power sharing, can lead to a fair and lasting solution to the now secular conflict.").

[672] *See* the 20 January 1993 letter, paras. 2, 4, 5.2 (discussing the "underhanded acts" and "malicious plans of the members of the UNAR party" and referring to "blackmailing *Inyenzi*" and "unrepentant members of the UNAR party") *and* Bagosora's 1995 Cameroon document, pp. 21, 24 (referring to Tusti as acting with "arrogance" and as "self-important, arrogant, wily and sly ....") *and* Nsengiyumva's July 1992 letter, pp. 5-6 (suggesting that any display of good intention by the UNAR party to international observers is "subterfuge aimed solely at taking power ..."). *See also* the undated Note to the MRND and CDR ("you must work hard to counter sneaky manipulations of certain bitter opposition leaders.").

[673] *See* the 20 January 1993 letter, para. 4 (noting that the UNAR party has been "aggressing us from 1959 to present") *and* Bagosora's 1995 Cameroon document, pp. 21-24 (detailing Tutsi attacks against Hutu).

[674] *See* the 20 January 1993 letter, para. 5.6 (noting that the AMASASU, which purports to be an alliance of soldiers, "has noticed with indignation that often soldiers are victims of injustice served by capricious leaders") *and* Prosecution Exhibit 21 (generally). *See also* undated Note to the MRND and CDR ("You must find a strategy to support us; especially in the operation to eliminate RPF accomplices who are working here on the inside, otherwise the war will never end.").

[675] *See* the 20 January 1993 letter, para. 5.4 (suggesting the need to establish civilian defence units) *and* Nsengiyumva's July 1992 letter, pp. 5, 7 (noting that the military "must also get ready to continue with the war – if the enemy opts for it..." and setting forth specific tasks "[i]n order to prepare ourselves for the continuation of hostilities, which in the final analysis are inevitable ...").

[676] *See* the 20 January 1993 letter, paras. 5.2, 5.5 (noting that the AMASASU has identified "most virulent" of the "blackmailing *Inyenzi*" and "will render justice ourselves") *and* Nsengiyumva's July 1992 letter, p. 2, (discussing soldiers who are threatening to "settle old scores" with government leaders that have yielded to enemy demands).

[677] T. 18 November 2002 p. 92.

[678] *See* T. 17 September 2002 pp. 23-24; T. 24 September 2002 p. 88; Decision on the Prosecutor's Motion for the Admission of Certain Materials Under Rule 89 (C) (TC), 14 October 2004, paras. 3-4, 11-21; Decision on Kabiligi Motion for the Exclusion of Portions of Testimony of Prosecution Witness Alison Des Forges (TC), 4 September 2006, para. 6.

(iii) Conclusion

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580. The available evidence about the AMASASU is limited and to a large extent second-hand. It is clear that a group made its existence known through the AMASASU documents. While some persons centrally placed in the Rwandan government perceived the group to be a reality, others were not convinced. Information about the AMASASU's activities is sparse and imprecise when looking beyond the AMASASU documents purporting to represent it. Apart from its alleged involvement in massacres in late 1992, there is no evidencing concerning illegal acts from 1993 onwards that is directly linked to the AMASASU.

581. Evidence concerning membership is also questionable. The AMASASU documents are of unknown origin, with no evidence directly linking the Accused to their creation or circulation. The parallels between the AMASASU documents and the writings of the Accused are significant. Nonetheless, the Chamber is not convinced that the only reasonable inference to be drawn from them is that any one of the Accused authored the documents or were necessarily aligned with those who did. Moreover, the Chamber is unsatisfied that the second-hand accounts of Witnesses XXQ, ZF and DCH provides a sufficient independent basis to establish the Accused's membership in the group or that their evidence adequately corroborate other evidence implicating the Accused as members. In light of the foregoing, the available evidence fails to prove beyond reasonable doubt that the Accused were members of the AMASASU.

582. The Kabiligi, Ntabakuze and Nsengiyumva Defence have raised notice arguments in connection with allegations that they were part of the AMASASU and related organisations similar to those that the Chamber rejected at trial.[679] Based in part on the findings above, the Chamber does not find it necessary to revisit these submissions.

2.9 Death Squads

Introduction

583. The Indictments allege that "prominent civilian and military figures" who shared an "extremist Hutu ideology" worked together from as early as 1990 to pursue a "strategy of ethnic division and incitement to violence". Specifically, the Prosecution submits that death squads existed. Support is found primarily in the testimonies of Expert Witness Filip Reyntjens and Witnesses XXC, XAQ, ZF, DO and General Roméo Dallaire.[680]

584. The Defence teams argue that allegations about death squads fall outside the scope of the Indictments. Additionally, each of the Accused contends that the Prosecution evidence lacks credibility. Reference is made primarily to the testimony of the Accused, Witnesses

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[679] *See* Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007, paras. 17-20; Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007, paras. 6-10; Decision on Nsengiyumva Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 33-34; Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 11-14.

[680] Bagosora Indictment, paras. 1.13-1.16; Kabiligi and Ntabakuze Indictment, paras. 1.13-1.16; Nsengiyumva Indictment, paras. 1.13-1.16; Prosecution Closing Brief, paras. 492, 900, 1000, 1103(g), 1305(a), 1306; T. 1 June 2007 pp. 38-40.

DM-25, BRA-1, ACL-1, ALL-42, Joshua Abdul Ruzibiza, Colonel Luc Marchal, Pascal Ndengejeho and Expert Witnesses Helmut Strizek and Bernard Lugan.[681]

Evidence

Prosecution Expert Filip Reyntjens

585. Filip Reyntjens, an expert in Rwandan history, testified that following attacks in Murambe in late 1991, Bugesera in March 1992, and Kibuye in August 1992, he came to Rwanda to do research on organised destabilisations. Reyntjens drafted a report on his findings in October 1992 at President Habyarimana's request, who appeared to express genuine concern about the events and discovery of death squads. The report only mentions persons as members of the death squads where the individual had been identified by all five of Reyntjens's sources. These individuals, including Bagosora, were identified as being at the core of destabilisations aimed at discrediting the democratisation process and, later, the Arusha peace process. The group did not have fixed membership, hierarchy such as president or secretary, or identity cards. Reyntjens's investigation did not reveal specific meetings or activities of death squads, including acts of Bagosora.[682]

586. Reyntjens identified Janvier Afrika, a self-proclaimed member of a death squad, and Colonel Bonaventure Buregeya, a former director of ESM, as two sources for the report. Afrika had written an article about death squads in a journal called *Umurava*, which was released prior to Reyntjens's investigation.[683]

587. Reyntjens's research was not a judicial inquiry and he did not consider this a scientific report. Rather, it was akin to an activist memo, raising awareness about violent destabilisation and to appeal for an international inquiry to be conducted.[684]

Prosecution Witness XXC

588. Witness XXC, a Hutu who worked as a residential watchman in the Kiyovu quarter from 1990 to 1994, believed the death squad was a group of powerful natives from President Habyarimana's region in Gisenyi, who did not want regime change, and included Captain Pascal Simbikangwa, Bagosora, Colonel Elie Sagatwa and Protais Zigiranyirazo.[685]

589. The witness first heard about the death squad during a rally of opposition parties at the round-about in Kimihurura near the Prime Minister's office in 1992. Faustin Twagiramungu, the president of the MDR party, and Félicien Gatabazi, the president of the PSD party, said that the death squads were against those who opposed the Habyarimana regime. They would arrest people, take them to the President's office and torture them.

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[681] Bagosora Closing Brief, paras. 160-175, 238, 719, 1348; Nsengiyumva Closing Brief, paras. 49, 52(e), 111-112, 1101, 1106, 1108, 1549, 1581-1582, 1613, 1925, 1987, 3125; Ntabakuze Closing Brief, paras. 483, 654-671, 2207, 2254, 2298, p. 226; Kabiligi Closing Brief, paras. 698-713, pp. 593, 597-598. T. 28 May 2007 pp. 29-30 (Kabiligi); T. 31 May 2007 pp. 42-43 (Nsengiyumva). The Chamber has also taken into account the testimony of Ntabakuze Defence Expert Witness Desouter, T. 4 April 2006 pp. 33-34, 57; Ntabakuze Defence Exhibit 220 (Expert Report of Serge Desouter), p. 75; Witness, A-8, T. 9 May 2005 pp. 54-55; and Witness LM-1, T. 1 March 2006 p. 58.

[682] T. 16 September 2004 pp. 30-45; T. 22 September 2004 pp. 9-12.

[683] T. 16 September 2004 pp. 33-36; T. 21 September 2004 pp. 53-54; T. 22 September 2004 pp. 3-6, 10.

[684] T. 16 September 2004 pp. 33, 36-38.

[685] T. 17 September 2003 pp. 11-12, 24-25; T. 18 September 2003 pp. 31, 50-51; Prosecution Exhibit 96 (personal identification sheet).

Bagosora, Simbikangwa, Sagatwa, Zigiranyirazo, Colonel Célestin Rwagafita and others were identified as members.[686]

590. During the same rally, Boniface Ntawuyirushintege, a journalist and musician, addressed a gathering. He said that he was detained by Simbikangwa, struck on his knees with a hammer and whipped on the soles of his feet. He was using crutches, was bandaged, and the witness saw that there was no skin on his legs. A female writer for the newspaper "*Umurangi*" also spoke the same day, stating that she was arrested and tortured by a death squad.[687]

Prosecution Witness XAQ

591. Witness XAQ, a Hutu, testified that he was a member of the Para Commando Battalion until 1993. While in exile in the Central African Republic in July 1994, Corporal Eric Munyankindi, a member of the Para Commando Battalion, informed the witness that he was a member of the death squad. It existed from the advent of multi-party politics, and he had been sent to eliminate innocent people. The witness could not identify any individual murdered by the death squad prior to 1994. Newspapers also wrote about it, identifying senior officials as members.[688]

Prosecution Witness ZF

592. Witness ZF, a Hutu who worked at the Butotori military training camp in Gisenyi prefecture, was made aware of several clandestine groups, including the death squads, by Lieutenant Bizumuremyi. Although these groups worked in close association, the death squads were distinguished from the Zero Network, as "small groups apparently of well-trained people who were in charge of executing the decisions of the members of these networks". In particular, the death squads executed the orders of the dragons. The dragons, synonymous with Abakozi, were the "masterminds" behind activities directed at accomplices. The witness heard about a meeting in the *Méridien Hôtel* near the end of 1993 or beginning of 1994 attended by Joseph Nzirorera and unidentified Gisenyi militia chiefs who were chiefs of death squads.[689]

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[686] T. 17 September 2003 pp. 24-28; T. 19 September 2003 pp. 27-28.

[687] T. 17 September 2003 pp. 24-28; T. 19 September 2003 pp. 28-29, 47. The Prosecution Closing Brief, paragraph 1103(g), refers to Witness XXC's testimony that Bagosora was present when the female journalist was tortured and forced her to sit on an electric chair until she accepted not to write any further articles. The Bagosora Defence argues that the Prosecution indicated that it would not rely on this evidence. *See* Bagosora Closing Brief, para. 719. The Chamber agrees that the Prosecution undertook not to rely on this evidence, and will disregard it. *See* T. 19 September 2003 pp. 29-30 ("Ms. Mulvaney: I'm not – Mr. President, I'm not sure how you withdraw evidence. I have made a representation that we are not going to rely on that.").

[688] T. 23 February 2004 pp. 2-4, 17-19, 43, 46-47; Prosecution Exhibit 195 (personal identification sheet). Witness XAQ testified that the death squad was responsible for the deaths of Landoald Ndasingwa and Joseph Kavaruganda on 7 April. T. 23 February 2004 pp. 46-47. The Chamber assesses these allegations in section III.3.3.3.

[689] T. 26 November 2002 pp. 93-95; T. 27 November 2002 pp. 13, 65, 67-68; T. 28 November 2002 pp. 3-5; T. 3 December 2002 pp. 62-66; T. 4 December 2002 pp. 38, 92-96; T. 5 December 2002 pp. 3-9. Subsequent to the meeting at the *Méridien Hôtel*, Witness ZF observed Bizumuremyi distribute weapons, including ammunition, pistols and radios at Gisenyi military camp to militiamen. *See* T. 28 November 2002 pp. 3-10. The Chamber discusses the evidence related to weapons distribution above (III.2.6.2). The witness's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.

Prosecution Witness DO

593. Witness DO, a Hutu, testified that the death squad in Gisenyi existed when he arrived there in 1992. Michel Mabuye, a commander of it, informed him that Nsengiyumva established the death squad. It began in 1991, around the advent of the multi-party political system, and was supported by the MRND and CDR. Nsengiyumva gave instructions to this paramilitary force and Bizumuremyi supervised its activities. Amongst its members were an *Interahamwe* named Kiguru, Mubarak, a person named "Agronom", Munyagishari and Hassan Gitoki. The witness was unaware of any victims of the death squad in 1990 up until President Habyarimana's death but testified that they were responsible for a vast majority of the deaths afterwards. The witness used the term death squad to denote the group's activities in killings in 1994.[690]

Prosecution Witness Roméo Dallaire

594. General Dallaire, the UNAMIR force commander in 1994, first heard about death squads in November 1993 when receiving information that well trained Togolese men or officers were being brought in by the extremists to conduct assassinations inside Rwanda. Dallaire did not receive proof of this, but he observed that the RPF opposed Togolese UNAMIR observers.[691]

595. The intelligence about the death squad as well as the Group Zero was generally uncorroborated. Bagosora was mentioned as being at the heart of such organisations. While Dallaire did not see information contrary to this suggestion, he did not have informants with respect to death squads and believed that not all information he received was the truth.[692]

Bagosora

596. Bagosora denied that he was a member of death squads. He became aware of such groups from reading documents concerning the RPF and subsequently from hearing about an article written by Filip Reyntjens, Senator Kuijpers and Marie Cros in *Le Soir*. It was published in the end of 1992 and, because he was implicated as a member, Bagosora initiated a libel lawsuit against Reyntjens. He was not able to pursue the lawsuit because of the events beginning in April 1994.[693]

597. Séraphin Rwabakumba, who was Colonel Sagatwa's younger brother and Habyarimana's brother-in-law, was mentioned in Reyntjens's report as being a member of the death squads. Rwabakumba sent a letter requesting the Prosecutor General, Alphonse Nkubito, to conduct an investigation into the existence of death squads and the purported membership of several high ranking government, military and political officials.[694] No

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[690] T. 30 June 2003 pp. 19, 32-33; T. 1 July 2003 pp. 39-41, 71-74; T. 2 July 2003 pp. 22-24, 56-58; T. 17 October 2005 pp. 9-10; Prosecution Exhibit 61 (personal identification sheet). The witness also identified Omar Serushago, Hassan Ngeze, Barnabé Samvura and Sibomana as members of the death squad. T. 17 October 2005 pp. 9-10.

[691] T. 21 January 2004 pp. 73-74.

[692] T. 19 January 2004 pp. 89-94; T. 20 January 2004 p. 57; T. 21 January 2004 pp. 71-72. *See also* Beardsley, T. 30 January 2004 pp. 16; Bagosora Defence Exhibit 71 (Report of UN Reconnaissance Mission), p. 59, which notes the prevalence of arms throughout the country, a history of banditry and death squads, and the existence of paramilitary wings of certain political parties.

[693] T. 1 November 2005 pp. 55-61, 63-64; T. 10 November 2005 pp. 75-77; T. 17 November 2005 p. 41.

[694] Bagosora, who had also been identified by Reyntjens as a member of the death squads, testified that he was contacted before the letter was sent and agreed with this course of action. T. 1 November 2005 pp. 58-59;

investigation was conducted. According to Bagosora, death squads operating in Rwanda came from the RPF. They succeeded in convincing people that the MRND were killing people as well as linking killings to the "presidential camp". As examples, he pointed to evidence that the 17 or 18 May 1993 killing of Emmanuel Gapyisi, a senior official of the MDR party, and the 21 February 1994 killing of Félicien Gatabazi, President of the PSD, had been carried out by the RPF.[695] Bagosora did not deny that the "presidential camp" committed killings. However, he suggested that killings would generally be attributed to the MRND whenever they were done clandestinely.[696]

Ntabakuze

598. Ntabakuze rejected the allegations by Witnesses ZF and XAQ that he was in a death squad. He was not aware of such groups within the Para Commando Battalion.[697]

Nsengiyumva

599. Nsengiyumva denied that he established the death squad in Gisenyi in 1991. He heard rumours about death squads composed of people close to the President. In his view, RPF groups were killing individuals and blaming the MRND. As examples, he pointed to evidence that Gapyisi and Gatabazi were assassinated by the RPF.[698]

600. The persons identified as members of death squads in Janvier Afrika's article in the *Umurava* magazine, in Reyntjens's 1992 report, and in the report of the 1993 International Commission of Investigation all reflect people who Anastase Gasana, the Minister of Foreign Affairs in 1993, had identified in a letter he wrote to the MDR in May 1991.[699] In this letter, Gasana suggested that people close to the *Interahamwe* were at the root of problems befalling the nation. Nsengiyumva spoke to Froduald Karamira, vice-chairman of the MDR, in Gisenyi in May 1994. Karamira told him that the MDR identified people as members of death squads, and in particular Habyarimana's closest aides, to bring down Habyarimana's regime and allow the opposition to share power with the RPF. Karamira said he brought Reyntjens to Janvier Afrika and encouraged him to sensitise the European public to the death squads.

Bagosora Defence Exhibit 241 (Letter of 8 June 1993 from Séraphin Rwabakumba to the Prosecutor General), which reads: "We therefore wish to request you, Sir, to conduct an investigation into the "*escadrons de la mort*" affair, and to prosecute us, if there are grounds for it, or protect us if there is no case to answer. Obviously, this affair, which is a hoax used for political ends, nevertheless poses a real and permanent threat to our security."

[695] Bagosora pointed to an article authored by André Guichaoua and statements by Ruyenzi, a Tutsi who fled the RPF regime, attributing the killings to the RPF. Guichaoua's article was entitled "The assassination of President Habyarimana had been planned as early as 1993", and appeared in *Le Monde* on 6 May 2004. The article attributes the death of Gapyisi to Corporal Amani Mahoro, an imprisoned second lieutenant, and Sergeant Dan Ndaruhutse, a lieutenant in the Republican Guard. With respect to Gatabazi's death, the article notes that according to testimonies gathered by the ICTR and the French investigating judge Jean-Louis Bruguière, two specific RPF soldiers were said to have committed this crime. *See* T. 1 November 2005 pp. 61-63.

[696] T. 1 November 2005 pp. 58-64.

[697] T. 21 September 2006 pp. 34-35.

[698] T. 6 October 2006 pp. 37, 41; T. 11 October 2006 pp. 54, 63-64. Specifically, Nsengiyumva identified Lieutenant Joshua Abdul Ruzibiza and BRA-1 as witnesses who attributed killings to the RPF. T. 6 October 2006 p. 41.

[699] Nsengiyumva also testified that in March 1993, Prime Minister Nsengiyaremye and the Chairman of the RPF met, and Nsengiyaremye suggested that those identified by Gasana needed to be dismissed or tried for their involvement in massacres. If the RPF presented this recommendation in a letter to the Rwandan government it would be more sympathetic to that request than Nsengiyaremye's. Sometime after, the RPF's Patrick Mazimhaka sent a letter to the Rwandan Foreign Minister, which included the names of those identified by Gasana. *See* T. 6 October 2006 p. 39.

Nsengiyumva was not questioned by Reyntjens or the 1993 International Commission of Investigation about his alleged association with death squads.[700]

Ntabakuze Defence Witness DM-25

601. Witness DM-25, a Hutu senior Rwandan official who worked closely with the Prime Minister's office, testified that particularly when violence increased in the 1990s, people attributed killings to "death squadrons" or "death squads". The witness was never able to identify any group or members of a death squad, even to the extent the RPF may have been responsible. An international investigation was initiated after the killings in the Bigogwe area. It presented a report in March 1993, which suggested that members of the Rwandan army participated in human rights violations. Subsequently, the Cabinet met in 1993 and prepared an addendum explaining the Rwandan government's position on the findings. It expressed the government's commitment to correct human rights violations that were occurring in areas under its control but also stated that a report about violations in areas under RPF control should have been made.[701] Witness DM-25 believed that the Prosecutor carried out an investigation into death squads, but he was unaware of any conclusions about this.[702]

Ntabakuze Defence Witness Joshua Abdul Ruzibiza

602. Joshua Abdul Ruzibiza, a Tutsi member of the RPF until he went into exile in February 2001, joined the Rwanda Patriotic Army in October 1990. He stated that its soldiers killed Félicien Gatabazi and Emmanuel Gapyisi. Gatabazi was killed on 21 February 1994 by soldiers that belonged to the Ruzibiza's reconnaissance sub-group. Charles Ngabonziza from the Third Battalion of the Rwandan Patriotic Army told Ruzibiza that he killed Emmanuel Gapyisi in 1993. Retrospectively, Ruzibiza concluded that the killings, which were attributed to the Habyarimana's government, gave the appearance of its inability to provide security for the population and were used as a justification for the RPF to resume hostilities.[703]

Nsengiyumva Defence Witness BRA-1

603. Witness BRA-1, a Tutsi soldier who joined the RPF in 1991, testified that in late 1993 or early 1994, Félicien Gatabazi, the PSD president, was killed by Godfrey Kiyago, along with Samuel Kibanda and Gatashya. Witness BRA-1 did not see the killing but Kiyago, and others who had accompanied him, told him about it. The witness believed Paul Kagame ordered the killing. He also believed Kagame ordered the killing of Gapyisi, who was assassinated by an RPA soldier from the 101 unit named Ngomanziza, early in the war.[704]

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[700] *Id.* pp. 37-41. Nsengiyumva testified that Bizumuremyi had been singled out by opposition parties due to his role in anti-riot activities. Bizumuremyi was the sole lieutenant identified in opposition newspapers as being on a death squad. T. 4 October 2006 pp. 40-41.

[701] It appears that the government's comments, which addressed the findings of the January 1993 International Commission of Inquiry on Human Rights Violations in Rwanda Since 1 October 1990, were attached as an addendum to the report by the United Nations' Special Rapporteur on extrajudicial, summary or arbitrary executions issued in August 1993. *See* Prosecution Exhibit 28 (Report of 11 August 1993 by the United Nations Special Rapporteur Bacre Waly Ndiaye on Extrajudicial, Summary or Arbitrary Executions and Addendum of 7 April 1993 of the Rwandan offices of the President and Prime Minister), pp. 27-32.

[702] T. 12 April 2005 pp. 28-29, 64-66; T. 13 April 2005 pp. 4, 7, 18; Ntabakuze Defence Exhibit 81 (personal identification sheet); Nsengiyumva Defence Exhibit 65 (Letter of 15 April 1993 from Prefect Tharcisse Renzaho to the Kigali Prosecutor General).

[703] T. 9 March 2006 pp. 5-7, 35-36, 80-81; Ntabakuze Defence Exhibit 214 (personal identification sheet).

[704] The Chamber notes that the name "Ngomanziza" provided by Witness BRA-1 is similar to the name "Ngabonziza" provided by Witness Ruzibiza. The name given by Witness BRA-1 was on a list of proper names

The witness heard about his killing over an RPF radio and Ngomanziza discussed it with the witness in Mulindi prison in 1993. The killings were done as part of destabilisation activities.[705]

Nsengiyumva Defence Witness ACL-1

604. According to Witness ACL-1, a Hutu priest, assertions that Nsengiyumva was a leader of death squads in Gisenyi during the genocide were untrue.[706]

Nsengiyumva Defence Expert Helmut Strizek

605. Helmut Strizek, an expert in Rwandan history, testified that he had found no credible evidence regarding the existence of death squads. With respect to Reyntjens's inquiry, Strizek said that Janvier Afrika, who used a pseudonym and remained anonymous, was not a credible source. According to Strizek, the 1993 International Commission of Investigation was secured by the RPF. He pointed to Jean Carbonare, who was known to be aligned with the RPF at that time, as an example of an RPF supporter who headed this investigation. Its report discussed the existence of deaths squads.[707]

606. According to Strizek, the existence of death squads provided a justification in the eyes of the international community for the RPF's 8 February 1993 attack in violation of the cease-fire.[708] Strizek also noted that the killings of Emmanuel Gapyisi and Félicien Gatabazi had been attributed to the Habyarimana government and Hutu extremists. However, he pointed to information provided by André Guichaoua and Joshua Abdul Ruzibiza, which suggested that the RPF killed them.[709]

Bagosora Defence Expert Witness Bernard Lugan

607. Bernard Lugan, an expert in Rwandan history, testified that he spoke with Colonel Robardey, a French gendarme, who explained that in early 1993, the French gendarmerie carried out a judicial police inspection regarding death squads. Major Corrier, a French gendarme and instructor in the judicial police inspection centre, interrogated Janvier Afrika in prison. Corrier tried to ascertain whether Janvier Afrika knew the people he identified, whether he had gone to places he cited, and whether the information he provided was

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to be referred to during his testimony, whereas Ruzibiza spelled the name he provided. It is unclear whether the two witnesses referred to the same person.

[705] T. 5 April 2006 pp. 58-59; T. 6 April 2006 pp. 20-23; Nsengiyumva Defence Exhibit 171 (personal identification sheet).

[706] T. 23 March 2006 pp. 5, 26-27, 36; Nsengiyumva Defence Exhibit 168 (personal identification sheet).

[707] T. 11 May 2005 pp. 34-35, 42-43; T. 12 May 2005 pp. 28-30; T. 13 May 2005 p. 4.

[708] According to Strizek, death squads were a creation of the RPF, and he testified that James Gasana's book, *Du Parti-Etat à L'Etat-Garnison* (2002), mentions an RPF letter indicating that its attack should be postponed until after the Commission left Rwanda. T. 12 May 2005 p. 28.

[709] T. 11 May 2005 pp. 42-43; T. 12 May 2005 pp. 28-30. *See also* Bagosora Defence Exhibit 136 (statement of 14 March 2004 by Joshua Abdul Ruzibiza), p. 19, which reads: "After killing a number of political leaders and trying unsuccessfully to assassinate others, the RPF claimed always that the killings were the work of the MRND except that a few cases were really the work of the MRND and the CDR; many, including the international community, continued to blame the government. This gave the impression that the then Government was creating chaos in order to hinder the coming into effect of the Broad based transitional government. This was a trap set by the RPF; the government fell into it; nobody ever thought that it was the work of the RPF. *As a matter of fact, if we reconsider what we, the Inkotanyi, did in the zone we controlled and what happened to innocent civilians in the north of Rwanda, it was difficult to draw a line of difference between Inkotanyi's killings and those of the CDR*" (emphasis in original).

consistent with observations by those who claimed to be his sources. Major Corrier's report to Colonel Robardey categorically concluded that Janvier Afrika did not go to places he claimed to visit and that he failed to establish certain facts.[710]

Kabiligi Defence Witness Luc Marchal

608. Colonel Marchal, the Kigali Sector Commander of the Kigali Battalion for UNAMIR in 1994, testified that he initially believed that Félicien Gatabazi's assassination on 21 February 1994 was the work of the Zero Network or a death squad. However, Colonel Sagatwa, the head of Presidential security, asked Marchal if UNAMIR intended to investigate the murder, and the conviction with which the request was made gave Marchal the impression that the RPF might be responsible. UNAMIR was unable to obtain precise information regarding the assassination.[711]

Kabiligi Defence Witness ALL-42

609. Witness ALL-42, a Hutu member of the RPF, testified that "death squad" commando units were RPF agents that laid mines, employed grenades and other weapons and engaged in other acts. They would attribute such activities to the MRND.[712]

Ntabakuze Defence Witness Pascal Ndengejeho

610. Pascal Baylon Ndengejeho was a professor at the National University for Rwanda until 1994 and became a member of the MDR in 1991. The term "death squads" was commonly used but the witness was unable to identify any members. Terms like Akazu and *escadron de la mort* existed. The witness did not know the origin of the term death squad but it was said that every regime punishes its opponents through massacres.[713]

Deliberations

611. It follows from the evidence that as early as 1992, international observers began conducting inquiries in Rwanda based on purported extrajudicial killings and other acts that had the effect of destabilising the democratisation process.[714] The parties have different views as to who was responsible for various killings prior to April 1994, and, in particular, if death squads, with ties close to the President, were responsible for them. It is also disputed whether any of the Accused were members of such groups.

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[710] T. 14 November 2006 pp. 4-5, 28-30.
[711] T. 30 November 2006 pp. 3-4, 23, 33; T. 4 December 2006 pp. 21-23.
[712] T. 8 November 2006 pp. 12-13, 16, 51-52; Kabiligi Defence Exhibit 106 (personal identification sheet).
[713] T. 13 September 2006 pp. 3-4, 21-22; Kabiligi Defence Exhibit 94 (personal identification sheet).
[714] The Bagosora Defence expressly does not dispute that massacres occurred, for example, in Kibilira and Bugesera, prior to these investigations (Bagosora Closing Brief, para. 163) and Defence evidence, although somewhat indirectly, tends to corroborate that killings occurred. *See* Witness DM-25, T. 12 April 2005 pp. 28-29; Flatten, T. 30 June 2005 pp. 51-52; Ruzibiza, T. 10 March 2006 p. 19; Lugan, T. 14 November 2006 pp. 26-28. *See also* Prosecution Witnesses BY, T. 7 July 2004 p. 4; Reyntjens, T. 16 September 2004 pp. 37, 44-45; Des Forges, T. 16 September 2002 p. 108; T. 18 September 2002 p. 14; Prosecution Exhibit 28 (Report of 11 August 1993 by the United Nations Special Rapporteur Bacre Waly Ndiaye on Extrajudicial, Summary or Arbitrary Executions and Addendum of 7 April 1993 of the Rwandan offices of the President and Prime Minister), p. 29, which reads: "With regard to the massacres and attacks against persons and property, the Government acknowledges and regrets that such human rights violations took place in Kibilira, north-west Rwanda, against the Bagogwe, in Bugesera and all other places in the country where ethnic and/or political unrest has occurred."

612. Several pieces of documentary evidence highlight that Rwandans and the international community were concerned that killings and provocations were being coordinated within the country by people placed at the highest levels of the Rwandan government, military and political parties. In an article found in the journal *Umurava*, published in late 1992, an author calling himself Janvier Afrika stated that "unrest" experienced in Bugesera, Murambi, Kigali town, Gitarama and Ruhengeri had been organised by "determined *Interahamwe*". They included Bagosora, the President and other high ranking government, military, political officials and those closely associated with them.[715] Shortly thereafter, Reyntjens conducted an investigation and his report of 9 October 1992 expressly discussed "death squads" in Rwanda.[716] Relying on the testimonies of two people who proclaimed to be associated with the groups, including Janvier Afrika, and three others, including Colonel Bonaventure Buregeya, the report identified Bagosora and Nsengiyumva among other political, government and military leaders as members at the national level. Their activities sought to destabilise the democratisation process, intimidate Tutsis and opposition parties, and impede the Arusha peace process by giving a message that neither the RPF nor refugees would be safe in Rwanda.[717]

613. Reyntjens's report was followed by the international commission of investigation in January 1993 ("1993 Commission"), which reported in March 1993 that witnesses generally confirmed the existence of death squads.[718] The 1993 Commission found that massacres, assassinations and various disturbances of opposition parties were organised by the President's entourage. Individuals such as Elie Sagatwa, Protais Zigiranyiranzo, Léon Mugesera, Matthew Ngirumpatse, Alphonse Ntirivamunda, Joseph Habiyambere, Côme Bizimungu and Pascal Simbikangwa among others were cited repeatedly as being involved. None of the Accused was mentioned among this group.[719] In particular, the report pointed to death squad meetings, attested to by Janvier Afrika, which were aimed at organising the killing of Bagogwe Tutsis in 1991. These meetings involved high-ranking government,

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[715] The article also identifies Jean-Bosco Barayagwiza, Martin Bucyana, Matthieu Ngirumpatse, Protais Zigiranyiranzo, Séraphim Rwabukumba, Joseph Nzirorera, Laurent Serubuga, Elie Sagatwa, Alphonse Uwimana, Chantal Rushingabigwi, Alphonse Ntirivamunda, Tharcisse Renzaho, Gatete Rwambuka, Pascal Simbikangwa, Ribanje Rubugo, Pasteur Musabe, Casimir Biziumungu, Boniface Rucagu, Charles Nzabageregeza, Damien Seyoboka, Amandin Rugira, Noel Mbonabaryi, Major Nkundiye and James Gasana. Nsengiyumva Defence Exhibit 57 (*Umurava* No. 10, August 1992).

[716] According to Reyntjens, this article was published at least a month before he conducted his research. *See* T. 22 September 2004 p. 10; Prosecution Exhibit 303 (Report of 9 October 1992 by Filip Reyntjens on Information on the "*Escadrons de la mort*"). The report also discusses the Zero Network. The Chamber addresses evidence related to the Zero Network in section III.2.7.

[717] The report also identifies as part of the national level group Joseph Nzirorera, Protais Zigiranyirazo, Séraphim Rwabukumba, Colonel Laurent Serubuga, Colonel Elie Sagatwa, Chantal Rushingabigwi, Alphonse Ntirivamunda, Captain Pascal Simbikangwa, Boniface Rucagu and Major Leonard Nkundiye. Prosecution Exhibit 303 (Report of 9 October 1992 by Filip Reyntjens on Information on the "*Escadrons de la mort*"), pp. 3-4, 7.

[718] Des Forges, T. 16 September 2002 pp. 108-124; T. 17 September 2002 pp. 6-8. Prosecution Exhibit 27 is Des Forges's translation of the original French report of 17 March 1993 of the International Commission of Investigation on Human Rights Violations in Rwanda since 1 October 1990, the latter admitted as Prosecution Exhibit 26. *See* Des Forges, T. 16 September 2002 pp. 107-118. Having reviewed both exhibits, the Chamber has relied on the French original, which appears to be more complete than the translation. *Compare* Prosecution Exhibit 27 pp. 43-44 (English version of the "Death Squads and the Climate of Terror" section) *and* Prosecution Exhibit 26 pp. 78-84 (French version of the "*Escadrons de la mort et climat de terreur*").

[719] Prosecution Exhibit 26 (Report of 17 March 1993 of the International Commission of Investigation on Human Rights Violations in Rwanda since 1 October 1990), p. 83.

political and military figures.[720] It contained Janvier Afrika's assertions that the death squad decided to attack Bugesera, and that it was composed of *Interahamwe* from various sectors of Kigali, military from Camp Kanombe and members of the Presidential Guard.[721] In April 1993, after its report, the 1993 Commission issued a press release, where it clarified that it had used the conditional tense when identifying certain names in its analysis of the death squads. It was not in a position to confirm the existence of death squads or its members. However, it reiterated that the evidence supported the assertion that groups did exist to kill.[722]

614. Additional evidence of investigations into the existence of death squads in Rwanda was presented through the August 1993 report of United Nations' Special Rapporteur Bacre Waly Ndiaye. The report documented the groups' aims as creating terror and discrediting democratic reforms through, for example, assassinations and provoking riots in collaborations with militias and members of the armed forces in civilian attire.[723] Although little first-hand and reliable evidence existed to corroborate allegations surrounding death squads or a Zero Network involving the President and his close entourage, it found that there were "sufficient indications" to conclude that a "second power exists alongside that of the official authorities". This report attached a response prepared by the Rwandan President's and Prime Minister's offices, which disputed the 1993 Commission findings that the government was involved in death squads and criticised it for relying on a single witness to suggest the President's involvement.[724]

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[720] The report identifies the President, his wife, Joseph Nzirorera, Charles Nzabagerageza, Côme Bizimungu, Casimir Bizimungu, Elie Sagatwa, Protais Zigiranyiranzo, Rucagu as having attended meetings. Prosecution Exhibit 26 (Report of 17 March 1993 of the International Commission of Investigation on Human Rights Violations in Rwanda since 1 October 1990), pp. 38-39.

[721] Prosecution Exhibit 26 (Report of 17 March 1993 of the International Commission of Investigation on Human Rights Violations in Rwanda since 1 October 1990), p. 47.

[722] Nsengiyumva Defence Exhibit 58 (Press release of 15 April 1993 of the International Commission on Human Rights Violations in Rwanda since 1 October 1990), pp. 3-4. *See also* Reyntjens, T. 22 September 2004 pp. 11-12.

[723] Prosecution Exhibit 28 (Report of 11 August 1993 by the United Nations Special Rapporteur Bacre Waly Ndiaye on Extrajudicial, Summary or Arbitrary Executions and Addendum of 7 April 1993 of the Rwandan offices of the President and Prime Minister), p. 13, which reads: "The existence of 'death squads' is the subject of much argument in Rwanda, particularly since the close entourage of the Head of State, and even the President himself, have been explicitly accused of being involved in a clandestine organization known as 'Network Zero'. It has been reported that the objective of such groups is to get rid of troublesome individuals in order to create a climate of terror and insecurity, thus discrediting democratic reforms, the multi-party system and the peace process initiated at Arusha. Methods used are said to include assassinations of the regime's opponents (notably by poisoning, terrorist attacks or faked robberies), and provoking bloody riots and confrontations, sometimes in collaboration with the militias of parties close to those in power, plain-clothes members of the armed forces or representatives of the authorities. Several observers accuse such groups of being responsible for the planning of massacres of one part of the population by another. Unfortunately, there is little first-hand and reliable evidence to corroborate these allegations. There are nevertheless sufficient indications to enable the Special Rapporteur to conclude that a second power exists alongside that of the official authorities."

[724] Prosecution Exhibit 28 (Report of 11 August 1993 by the United Nations Special Rapporteur Bacre Waly Ndiaye on Extrajudicial, Summary or Arbitrary Executions and Addendum of 7 April 1993 of the Rwandan offices of the President and Prime Minister), p. 30, which addresses allegations related to death squads, and, in part, reads: "[T]he report of the International Commission of Inquiry makes an inadmissible mistake in giving the impression that the Government is responsible for the criminal acts perpetrated by 'death squads'. This question calls for clarification by the International Commission of Inquiry, which states, on the basis of testimony by a single individual, that the President of the Republic chaired a 'death squad' meeting during which it was decided to massacre the Bagogwe."

615. The Chamber's view is that the Prosecution evidence reflecting contemporaneous investigations into the existence of death squads is compelling. The reports appear to reflect evolving investigations related to various attacks in Rwanda from 1990 and make convincing arguments that the violence was not disorganised or spontaneous but committed with cooperation of various government and military authorities.[725] According to Reyntjens, he carefully considered the quality of the evidence he received with respect to death squads.[726] His methodology incorporated measures to safeguard against reporting misinformation.[727] Nonetheless, he conceded that his research was not a judicial inquiry and that a more serious international inquiry was required.[728] The 1993 Commission expanded on Reyntjens's research and, when testifying, he found its findings compelling. Moreover, he did not think that the participation of Jean Carbone, an RPF sympathiser, improperly influenced the report.[729] However, Reyntjens did not believe that the facts reported by the 1993 Commission were established beyond reasonable doubt. He noted that the 1993 Commission was not conducting a judicial inquiry but revealing the findings of concerned human rights and development advocates.[730]

616. Some of the testimonies about death squads from Prosecution Witnesses XXC, XAQ, ZF, DO, Dallaire and Beardsley corroborate the prior reports that clandestine groups began to engage in targeted violence beginning around the advent of multi-party politics. Like the prior investigations, Witness XXC testified that figures close to the President, such as Simbikangwa, Sagatwa and Zigiranyirazo, were purported members of the death squad. Indeed, Witness XXC's testimony offers striking parallels to activities of certain members that were also mentioned in the contemporaneous investigations.[731] However, the witnesses' evidence of the existence and activities of the death squads prior to 1994 is second-hand, and, Dallaire, for example, did not view the source of his information to be wholly reliable.

617. Turning to the Accused, the evidence implicating them as members of death squads is also second-hand. Janvier Afrika did not provide testimony. His article, which identified

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[725] Ruzibiza also testified that the killings of Bagogwe Tutsis in Ruhengeri and the attacks in Bugesera involved Rwandan "government forces as well as members of the local administration". *See* T. 10 March 2006 p. 19.
[726] *See, e.g.*, T. 22 September 2004 pp. 4-8.
[727] Prosecution Exhibit 303 (Report of 9 October 1992 by Filip Reyntjens on Information on the "*Escadrons de la mort*"), pp. 3-4, which notes that the testimony was collected separately and only persons identified by all five witnesses were mentioned explicitly in the report as responsible for upheavals. *See also* T. 16 September 2004 pp. 33, 35-36 (noting that if Janvier Afrika was his only witness he would not have written his report, which only mentions individuals identified by several sources); T. 22 September 2004 p. 9 (affirming that his report only identified by name individuals identified by all five sources).
[728] T. 16 September 2004 pp. 33, 36-38, 39-41; Prosecution Exhibit 303 (Report of 9 October 1992 by Filip Reyntjens on Information on the "*Escadrons de la mort*"), pp. 7-8, which reads: "In order, as far as possible, to get right to the bottom of these events and to avoid their repetition, it is imperative to have an exhaustive international investigation."; Bagosora Defence Exhibit 127 (Letter of 27 October 1992 from Filip Reyntjens to Colonel Sagatwa), which also suggests that it is in everyone's interests that a serious international investigation be conducted.
[729] T. 16 September 2004 pp. 43-44; T. 20 September 2004 pp. 17-18.
[730] T. 16 September 2004 pp. 43-44.
[731] *Compare, e.g.*, Witness XXC's testimony, summarised above, suggesting that Simbikangwa was involved in torturing an individual and that death squads employed the president's residence for this purpose *and* Prosecution Exhibit 26 (Report of 17 March 1993 of the International Commission of Investigation on Human Rights Violations in Rwanda since 1 October 1990), p. 83, which, in identifying purported members of the death squad or zero network, reads: "*le captain Pascal Simbikangwa (également repute pour avoir torture de nombreuses personnes de ses mains dans les locaux memes de la présidence, au service dit 'du fichier')*".

Bagosora assisting those who organised disturbances in Bugesera and elsewhere, does not expressly detail Bagosora's actions.[732] Reyntjens's report appears to be the only contemporaneous investigation implicating both Nsengiyumva and Bagosora as members of the death squads.[733] However, Reyntjens was clear to point out that his limited investigation did not reveal specific activities of either.[734] Additionally, Dallaire also testified that he had heard that Bagosora was a member of death squads but his basis for knowledge was second-hand, and unverified in his view. Witness DO's testimony that Nsengiyumva was involved with the death squad was also second-hand. Moreover, while Witness XAQ's testimony suggests that the death squad was part of the Para Commando Battalion, his evidence did not directly implicate Ntabakuze.[735]

618. The Defence led evidence to suggest that targeted killings in Rwanda were conducted by the RPF and attributed to those aligned with Habyarimana. This information is also second-hand and, in the Chamber's view, does not preclude the possibility that targeted killings and disturbances discussed in the *Umurava* article or investigated by Reyntjens, the 1993 Commission, and the United Nations Special Rapporteur, were carried out by individuals aligned with Habyarimana.

619. The Chamber finds that considerable evidence points to the existence of death squads in Rwanda years before the killings in April 1994. Several sources from this period point to Bagosora as a member of death squads. Nsengiyumva is less frequently identified, and Ntabakuze's participation can only be inferred based on the suggestion that members of the Para Commando Battalion were part of the death squads. As all the sources are second-hand and evidence describing the Accused's activities is limited, the Chamber cannot find beyond reasonable doubt that they were members of death squads. There is no evidence linking Kabiligi to death squads.

620. The Chamber has previously found that the Accused had sufficient notice of the death squad allegations. In light of the findings above, it does not find it necessary to revisit the Defence submissions about notice.[736]

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[732] Nsengiyumva Defence Exhibit 57 (*Umurava* No. 10, August 1992).
[733] Bishop Kalibushi's statement of July 1997 to Tribunal investigators describes Nsengiyumva as the head of the death squads in Gisenyi prefecture. *See* Prosecution Exhibit 422B (statement of 29 July 1997), p. 4 which reads: "As far as I can tell you about the activities of Colonel Anatole Nsengiyumva during the genocide period ... He was the supreme leader of the '*Esquadron de la mort*' (Death Squad) in Gisenyi Prefecture ... This man was a killer and supreme commander of death squads." The statement was tendered during the cross-examination of Nsengiyumva in connection with the assessment of the Accused's credibility. It does not indicate the bishop's basis of knowledge for the assertion.
[734] *See* T. 16 September 2004 pp. 38-39; T. 22 September 2004 p. 10.
[735] The Chamber notes that in response to a question of whom the death squads targeted, Witness XAQ testified that Munyankindi informed him that Ntabakuze led soldiers in a failed attempt to eliminate Prime Minister Dismas Nsengiyareme. T. 23 February 2004 pp. 19-20. However, the Defence objected to this evidence and the Chamber excluded it. *See* T. 23 February 2004 pp. 20-21, 30-32. *See also Bagosora et al.*, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence (AC), 19 December 2003, paras. 7, 22-23.
[736] Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007, paras. 6-10. *See also* Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 11-14; Decision on Nsengiyumva Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 33-34; Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 61-65.

2.10 *Radio Télévision Libre des Mille Collines*

Introduction

621. Each of the Indictments alleges that prominent figures close to President Habyarimana created RTLM as a mechanism for the dissemination of ethnic hatred and calls to ethnic violence. The Prosecution contends that the Accused were involved in RTLM in various ways, including ownership of shares. Reference is made primarily to Expert Witness Alison Des Forges as well as Witnesses XBM, Georges Ruggiu and DA. Several other witnesses testified about the nature of RTLM's content, such as Witnesses DBN, DBJ, CJ, FW, AAA and LN.[737]

622. The Bagosora Defence accepts that Bagosora was a shareholder in RTLM, but submits that his brother bought the shares for him for commercial reasons. There is no evidence to suggest that Bagosora had any involvement in the content or ideology of RTLM's broadcasts. The Nsengiyumva Defence disputes the credibility of Witness XBM's assertion that Nsengiyumva attended the inauguration meeting at Mount Muhe and refers to Witnesses CF-2 and YD-1 to refute his account. The Kabiligi Defence challenges the credibility of Ruggiu's assertion that Kabiligi provided any support to RTLM.[738]

Evidence

Prosecution Expert Witness Alison Des Forges

623. Alison Des Forges, an expert in Rwandan history, testified that a vast majority of RTLM's shareholders, approximately 800 out of 1,137 in total, held only one share because "there was an effort to enlist the maximum number of shareholders possible in order to create the sense that this was a voice of a large number of Hutu". She noted that the nature of the ownership of RTLM's shares was an "unusual structure" atypical of Rwanda at the time. Bagosora was one of only nine shareholders who owned 50 shares or more, including President Habyarimana who held the largest number. According to a receipt, Bagosora's shares were valued at 250,000 Rwandan Francs. Nsengiyumva had 10 shares, and Ntabakuze had one share. From October 1993, the content of RTLM was highly politicised, calling for the assassination of Tutsis and members of the Hutu opposition. In the months leading up to

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[737] Bagosora Indictment, para. 1.16; Kabiligi and Ntabakuze Indictment, para. 1.16; Nsengiyumva Indictment, para. 1.16; Prosecution Closing Brief, paras. 299, 386, 431, 540-554, 494, 634, 761, 1009, 1010(c-f), 1054, 1124, 1125(a), 1193(d), 1199(h), 1319, 1469(h); T. 28 May 2007 p. 13. The Prosecution also points to the diary of Witness DH-91, which was a contemporaneous account of the events, indicating that RTLM encouraged people to view the conflict in Rwanda as an ethnic one and stirred hatred in all parts of the country. *See* Prosecution Exhibit 334 (Diary of Witness DH-91). Witness DH-91 acknowledged that he refused to listen to RTLM in view of its content. *See* T. 26 April 2005 p. 6.

[738] Bagosora Closing Brief, paras. 793-799; Kabiligi Closing Brief, paras. 716, 718-720, 725; T. 28 May 2007 pp. 23-24 (Kabiligi); T. 30 May 2007 p. 22 (Bagosora). The Nsengiyumva Closing Brief does not address the installation ceremony or Nsengiyumva's ownership of RTLM shares, but the Defence made oral submissions on these issues, *see* T. 31 May 2007 pp. 34-35, 47-48 (Nsengiyumva). The Ntabakuze Defence did not comment upon these allegations.

the genocide, RTLM contributed to creating an atmosphere of fear and hatred, repeatedly conveying the message that the Tutsis were the enemy.[739]

Prosecution Witness Georges Ruggiu

624. Georges Ruggiu, a Belgian and Italian national, worked as a broadcast journalist for RTLM from 6 January to 14 July 1994. At its inception, RTLM's mandate was to promote a pro-MRND agenda and to counter the RPF in the media. After the death of President Habyarimana on 6 April 1994, the editorial policy changed, and RTLM became a radio station at war with the RPF. Its programming content expanded to promote a pro-Hutu agenda and to support the army, *Interahamwe* and interim government in their fight against "all *Inyenzis*", which could be interpreted as Tutsis. Broadcasters referred to the RPF and their supporters as "*Inyenzi-Inkotanyi*". According to Ruggiu, the coverage was not balanced.[740]

625. The daily management of the station fell under Gaspard Gahigi, the editor-in-chief, who worked with Phocas Habimana, the director-general, and Ferdinand Nahimana, a member of the station's *comité d'initiative*. This committee was composed of at least 12 members, including Nahimana who supervised editorial content, Jean-Bosco Barayagwiza who along with Nahimana dealt with financial matters, and Joseph Serugendo who handled technical issues. RTLM cooperated with the interim government and the army. Habimana served as the main contact between RTLM and the army and regularly communicated with General Augustin Bizimungu, the army Chief of Staff.[741]

626. RTLM received its information for broadcasts from the *Interahamwe*, the military as well as foreign media outlets. The *Interahamwe* and the army would sometimes call with names of people who were wanted and should be arrested, which were then broadcast in order to assist with the war effort. The Ministry of Defence provided information through its communications liaison officer or weekly briefings on the situation at the war front as well as anything else which might be advantageous to the war effort and demoralising to the RPF. The army also asked the station to suppress disadvantageous information, such as the ongoing killings, but had "no business in the editorial policy" of RTLM. According to Ruggiu, Habimana and Gahigi imposed this censorship, and no one complained about it.[742]

627. Around the end of January or beginning of February 1994, Ruggiu requested a permit from the Ministry of Defence for a pistol after an incident at a press conference. After 6 April, Ruggiu felt threatened by the Belgian contingent of UNAMIR and feared arrest. He

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[739] T. 18 September 2002 pp. 15, 32-33, 35-36, 39; Prosecution Exhibit 41 (Copy of a receipt for RTLM shares purchased by Bagosora). Des Forges did not identify the other prominent shareholders than Habyarimana and three of the Accused, but noted that they included "a number of important shareholders among military officers and among other notable personages in society". *Id.* p. 39. However, an incomplete list of the shareholders can be found at Prosecution Exhibit 336, which names several other individuals who have been charged before the Tribunal, such as Ferdinand Nahimana (10 shares), Michel Bagaragaza (10 shares), Augustin Ngirabatware (20 shares), Félicien Kabuga (100 shares), Simon Bikindi (one share), Joseph Serugendo (10 shares) Pauline Nyiramasuhuko (one share) and Jean Bosco Barayagwiza (15 shares).

[740] T. 16 June 2003 pp. 3, 5, 10-12, 25-27, 31-32; T. 17 June 2003 pp. 2, 86-87. Ruggiu pleaded guilty before the ICTR to persecution as a crime against humanity and incitement to genocide for the content of broadcasts he made during his employment with RTLM. He was sentenced to 12 years' imprisonment. *See also Ruggiu* Trial Judgement, pp. 19-20.

[741] T. 16 June 2003 pp. 12-13, 26-27; T. 17 June 2003 pp. 7, 40-43, 80, 85.

[742] T. 16 June 2003 pp. 29-31; T. 17 June 2003 pp. 6-8, 28, 76, 86-88.

therefore requested protection and was allowed to stay at Camp Kigali for a few days. Later, Ruggiu, Gahigi and three or four other journalists were allowed to stay at the *Hôtel des Diplomates*, which the military authorities had requisitioned. Ruggiu noted that Bizimungu facilitated his stay at the hotel. In connection with his fears, he was provided with a driver and an escort, which he claimed was approved by Kabiligi. While at Camp Kigali, he asked to wear military attire so that he would not be as conspicuous at the camp. For the most part, other RTLM staff did not receive this same treatment, but he was given privileges because he had been threatened.[743]

628. After 6 April, members of the Presidential Guard, who were at the nearby office of the President, as well as police made available by the office of Kigali-Ville prefecture, began providing security for RTLM. On 4 July 1994, as the RPF took Kigali, the Rwandan army moved RTLM's transmitter to Mount Muhe in Gisenyi prefecture on buses it had commandeered. The station's journalists moved there as well with vehicles and fuel provided by the army. RTLM's last broadcast from Gisenyi prefecture was transmitted on 13 July 1994.[744]

Prosecution Witness DA

629. Witness DA, a Hutu member of the Reconnaissance Battalion, testified that Captain Sagahutu encouraged him and other members of their battalion to purchase shares of RTLM. According to the witness, Sagahutu was a principal shareholder. Sagahutu told the soldiers that the RTLM was their radio station and that it would allow the military to air its views.[745]

Other Prosecution Witnesses[746]

630. Witness DBN, a Tutsi member of the Para Commando Battalion, listened to RTLM from April until June 1994 and regularly heard broadcasts encouraging Hutus to "exterminate" Tutsis.[747] Witness DBJ, a Tutsi, heard on the morning of 7 June 1994, Prefect Tharcisse Renzaho saying on RTLM that "*Inyenzi*" who had been forgotten were hiding in the ceiling of the Saint Josephite Centre in the Nyamirambo area of Kigali.[748] Witness CJ, a Hutu, heard RTLM denounce Frédéric Nzamurambaho, the Chairman of the PSD party and Minister of Agriculture, who was ultimately killed by the military on the morning of 7 April 1994.[749]

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[743] T. 16 June 2003 pp. 6-10; T. 17 June 2003 pp. 12-18, 21-22, 40, 64-65. Ruggiu did not specify the nature of the incident which prompted him to request the pistol.
[744] T. 16 June 2003 pp. 18-20, 23, 28.
[745] T. 19 November 2003 pp. 17-18; Prosecution Exhibit 129 (personal identification sheet).
[746] Several other witnesses, not referred to by the Prosecution in its Closing Brief, also attested to the extremist content of RTLM broadcasts and in particular to its incitement of killing after 6 April 1994. *See, e.g.*, Beardsley, T. 3 February 2004 p. 29 (RTLM was an extremist radio station which refused a request by General Dallaire made on 7 April 1994 that a communiqué be broadcast across the country appealing for calm); Dallaire, T. 20 January 2004 pp. 32-33 (heard numerous RTLM broadcasts after April 1994 inciting people to violence, specifically messages focusing on violence towards women); Sagahutu, T. 27 April 2004 pp. 59-60; T. 28 April 2004 p. 37 (RTLM regularly propagated ethnic hatred).
[747] T. 1 April 2004 pp. 60-61; Prosecution Exhibit 198 (personal identification sheet).
[748] T. 24 November 2003 pp. 14-17; Prosecution Exhibit 136 (personal identification sheet). The evidence concerning the attack in June 1994 at the Saint Josephite Centre is discussed in section III.4.1.14.
[749] T. 25 November 2003 pp. 38, 40-41, 46; Prosecution Exhibit 137 (personal identification sheet). The killing of Nzamurambaho is discussed below (III.3.3.3).

631. Witness FW, a Tutsi, listened to RTLM in early April and heard broadcasts urging Tutsis to return from their hiding places to their homes and also informing the army that Tutsis were hiding at the Islamic Cultural Centre in the Nyamirambo area of Kigali.[750] Witness AAA, a Hutu local official in Kigali, heard RTLM broadcasts summoning the army and *Interhamwe* to kill Tutsis at a house in his locality.[751] Witness LN, a Tutsi and former member of the Para Commando Battalion, heard RTLM broadcast on the night of 6-7 April that the *Inyenzi-Inkotanyi*, their accomplices as well as the Belgians had to pay for the killing of President Habyarimana.[752]

Prosecution Witness XBM

632. Witness XBM, a Hutu member of the CDR party in Gisenyi prefecture, testified that he and more than 1,500 other persons attended the inauguration ceremony of the RTLM radio antenna on Mount Muhe in Mutura commune in October 1993. Barayagwiza told those assembled that the purpose of RTLM was to "know who the real enemy is and be able to fight against the enemy". According to the witness, Nsengiyumva spoke next and said that civilians had to help the army in fighting the enemy.[753]

Bagosora

633. Bagosora owned 50 shares in RTLM, but testified that they were purchased by his brother as an investment without his prior knowledge. He had no other connection with respect to the station. RTLM was established in order to support the Presidential camp and to counter the RPF radio station, Radio Muhabura. The news content and music were not to his taste. In Bagosora's view, the station was mismanaged and the tone of the broadcasts endangered people. He had no authority in his position to shut the station down. Bagosora was not aware if the station operated with the support of the Ministry of Defence.[754]

634. Bagosora recognised the importance of the media in connection with the war effort as well as the radio as a medium of communication in Rwanda. In particular, in discussing the work of the Enemy Commission which he chaired, he noted that its mandate included finding ways to defeat the enemy militarily, politically and in the media, emphasising the importance of propaganda. Bagosora also noted that radio was the main means of mass communication because most of the Rwandan population did not read newspapers.[755]

635. The notations in Bagosora's agenda for the date of 10 February 1993 include notes concerning "censorship imposed on the radio" and "listening to all radio programs". Bagosora made these entries during meetings at the Ministry of Defence. After the government refused to accept a proposed state of emergency, the Ministry proposed reviewing and imposing some form of censorship on radio programs which went against the defence of the country. He noted that at the time the war was on and that information had to

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[750] T. 3 November 2003 pp. 2-4, 9-10; Prosecution Exhibit 116 (personal identification sheet). The killings at the Islamic Cultural Centre are discussed below (III.4.1.2).
[751] T. 14 June 2004 pp. 46-47; Prosecution Exhibit 263 (personal identification sheet).
[752] T. 30 March 2004 pp. 57-59; Prosecution Exhibit 197 (personal identification sheet).
[753] T. 14 July 2003 pp. 4, 31-32, 51, 54; T. 15 July 2003 p. 45; Prosecution Exhibit 80 (personal identification sheet).
[754] T. 25 October 2005 pp. 20-25, 27-29, 31-32; T. 15 November 2005 pp. 41-45, 49-50.
[755] T. 26 October 2005 pp. 47, 52, 81.

be geared to assisting the war effort and not demoralising the soldiers. At the time of the entries, only Radio Rwanda existed.[756]

Nsengiyumva

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636. Nsengiyumva said that he purchased 10 shares in RTLM as a commercial investment. He was unaware of the editorial content of the station, as he was not able to receive it in Gisenyi prefecture. Nsengiyumva denied attending a meeting for the inauguration of a RTLM antenna at Mount Muhe in 1993.[757]

Nsengiyumva Defence Witnesses CF-2 and YD-1

637. Witness CF-2, a Hutu CDR official in Gisenyi prefecture, testified that he was familiar with his party's activities from 1992 until 1994. According to the witness, the installation of the RTLM antenna at Mount Muhe was a private event, which he did not attend, and not a major gathering, which would have been inconsistent with the Arusha Peace Accords.[758] Witness YD-1, a Hutu who lived in close proximity to Mount Muhe during the relevant time period, said that he was unaware of a large ceremony or meeting being held at Mount Muhe for the purposes of installing an RTLM antenna.[759]

Deliberations

638. The Chamber notes that the Prosecution has not listed the relevant allegations in the Indictments related to RTLM under any of the charges against the Accused.

639. It is clear that RTLM played a significant role in sowing ethnic discord before 6 April 1994 and in inciting genocide against members of the Tutsi population after the death of President Habyarimana on 6 April. This follows from Witnesses Ruggiu, DBN, DBJ, CJ, FW, AAA, LN, Dallaire and Beardsley as well as Expert Witness Alison Des Forges.[760] These findings are also in accord with the conclusions of the Appeals Chamber and Trial Chamber in the *Nahimana et al.* case.[761]

640. The principal question for the Chamber is whether the Accused played a role in the establishment and operation of RTLM. The Prosecution points to evidence that the Enemy Commission (III.2.2), which included Bagosora, Nsengiyumva and Ntabakuze, recognised the need to control the media as part of its strategy to defeat the RPF. This premise was allegedly later underscored by Bagosora in his testimony and in entries in his diary,

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[756] T. 28 October 2005 pp. 25-27; Prosecution Exhibit 278 (Expert Report of Antipas Nyanjwa, Test Collection A: Bagosora Agenda).
[757] T. 9 October 2006 pp. 46-47; T. 12 October 2006 pp. 83-84.
[758] T. 29 November 2005 pp. 48-49, 57, 68-69, 71, 75; Nsengiyumva Defence Exhibit 127 (personal identification sheet).
[759] T. 12 December 2005 pp. 40, 47-48, 54-56; Nsengiyumva Defence Exhibit 131 (personal identification sheet). Witness YD-1 lived approximately 4.5 kilometres from Mount Muhe.
[760] The Chamber has expressed reservations about the credibility of Witness AAA in sections III.4.1.10-11 of the judgement, but accepts his evidence about the incident in the present context. His description mirrors a pattern which also follows from other evidence.
[761] *Nahimana et al.* Appeal Judgement, paras. 754, 758 ("The Appeals Chamber thus finds that, although it is clear that RTLM broadcasts between 1 January and 6 April 1994 incited ethnic hatred, it has not been established that they directly and publicly incited the commission of genocide ... The Appeals Chamber finds that it has not been demonstrated that the Trial Chamber erred in considering that some of the RTLM broadcasts after 6 April 1994 called for the extermination of Tutsis and amounted to direct and public incitement to commit genocide."), citing *Nahimana et al.* Trial Judgement, para. 486.

emphasising the importance of radio broadcasts in Rwanda and the need to communicate with the population during war. Against this backdrop, the Prosecution highlights the ownership of shares in RTLM by Bagosora, Nsengiyumva and Ntabakuze, in particular Bagosora's significant ownership interest in RTLM as compared with other shareholders. It also points to Nsengiyumva's participation in the inauguration of RTLM's radio antenna on Mount Muhe and the privileges and protection extended to RTLM personnel such as Ruggiu by Kabiligi.[762]

641. The Chamber is not persuaded that the recognition in the Enemy Commission's report that control of the media was essential to obtain victory against the RPF demonstrates that Bagosora, Nsengiyumva and Ntabakuze played any particular role in the creation or control of RTLM, even when seen in the light of subsequent developments. Likewise, RTLM's calls for the population to support the army does not itself illustrate army control of the station.[763] This said, it does suggest that RTLM and the army shared some common goals.

642. Bagosora, Nsengiyumva and Ntabakuze were among the 1,137 shareholders of RTLM. In particular, Bagosora's ownership interest appears significant since his 50 shares are amongst the largest held by a single individual. But there is no evidence that ownership of these shares gave the Accused any role in RTLM's operation or in the shaping of its broadcasts. The Prosecution points to no further evidence of any significant interaction on their part in support of the station, with the exception of Nsengiyumva (discussed below).

643. More generally, the Prosecution suggests that the army's alleged encouragement of soldiers to buy RTLM shares, based mainly on the testimony of Witness DA, illustrates the military's overall support for the creation and mission of the station. However, even if accepted, Witness DA's evidence does not refer to encouragement by any of the Accused. There is also no evidence as to what percentage of the shareholders belonged to the army. Furthermore, bearing in mind the relatively low price for an individual share and the efforts to maximise the number of single share owners, the Chamber is not convinced, by Witness DA's evidence alone, that purchasing shares was a genuine policy of senior army officials to encourage support of the station, in particular when taking account of the relative size of the army, numbering around 30,000 (III.1.2), when compared to the number of shareholders totalling only 1,137.

644. Turning to Nsengiyumva's alleged participation in the inauguration of RTLM's radio antenna, the Chamber notes that Witness XBM was the only witness to testify about Nsengiyumva's presence at this event. The Chamber has expressed reservations about his credibility elsewhere in the judgement (III.3.6.7). Consequently, the Chamber declines to accept this aspect of his testimony without additional corroboration. Witnesses CF-2 and YD-1 did not attend the ceremony, and their evidence is of limited value.

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[762] Prosecution Closing Brief, paras. 540-543, 546, 549, 551-553. The Prosecution also suggests that RTLM was created because Radio Rwanda was not sufficiently supportive of the Rwandan army. *Id.* paras. 544-545. The evidence referred to by the Prosecution is inconclusive and, even if true, does not concretely show a specific connection between the Accused and RTLM.

[763] The Prosecution refers to transcripts of a RTLM broadcast of 10 March 1994. *See* Prosecution Closing Brief, para. 548, quoting Prosecution Exhibit 250C ("But I have to remind you that since we started broadcasting these songs when RPF said it wanted to fight again, we found out that it was compulsory to support our army. The military were pleased as they called us many times and some of them even expressed their support to them because they said those songs raise their spirits. Whenever they hear them it pleases them and there are some who dance. In few, they say those songs help them very much.").

645. With respect to the Rwandan army's support to RTLM and its personnel, the Prosecution relies primarily on Ruggiu. In particular, he recounted how the army provided him with a firearm, military attire, housing at Camp Kigali and the *Hôtel des Diplomates*, fuel and an escort and vehicle. Furthermore, he said that the station was guarded by members of the Presidential Guard after 6 April and that the military transported RTLM's transmitter from Kigali to Gisenyi prefecture on 4 July in a commandeered bus. There are no disputes about these aspects of Ruggiu's testimony.

646. The Chamber observes that most if not all of Ruggiu's perquisites, such as his firearm, military attire and housing, appear to have been extended to him alone and not to RTLM staff in general. Moreover, they were provided in view of his individual circumstances after he personally requested them. Thus, the evidence of benefits extended to Ruggiu does not convincingly reflect an overall policy of army support for RTLM.

647. However, in the Chamber's view, the security provided by Presidential Guard at the station after 6 April, the housing provided to some RTLM staff at the *Hôtel des Diplomates,* and the role played by the army in moving RTLM's transmitter from Kigali to Gisenyi prefecture reflect a more substantial form of assistance by the army to the station. This evidence is indicative of the army's efforts to ensure that RTLM continued its broadcasts, thus reflecting its general approval of the editorial content. By itself, however, it does not demonstrate any overall editorial control by the army of the station's broadcasts. Indeed, Ruggiu was clear that RTLM was not under the military's authority. While he pointed to frequent contacts by the station manager and General Bizimungu, the witness did not participate in their discussions.

648. Furthermore, Ruggiu's testimony about military support to RTLM does not directly implicate the Accused. He makes only two brief references to Kabiligi authorising his military escort.[764] This aspect of Ruggiu's testimony is lacking in detail and, in particular, does not clarify his basis of knowledge for Kabiligi's role in assigning the escort. The Prosecution did not pursue this part of his testimony, and the Chamber does not consider that this brief and unsubstantiated reference convincingly demonstrates any involvement by Kabiligi in assisting Ruggiu or playing a role in RTLM. Ruggiu mainly implicated General Bizimungu, as well as lower level liaison officers, as the main contact points between the station and the army.

649. Accordingly, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that the Accused played a significant role in the creation or control of RTLM. Nevertheless, Bagosora's relatively significant ownership interest in the station is noteworthy. It amounted to three times his monthly income.[765] Even if one were to accept his argument that he was unaware of the initial purchase made by his brother, he never moved to disassociate himself from RTLM, for instance, by selling the shares, even as the content of its broadcasts became progressively more extremist and ultimately criminal after 6 April 1994. The much smaller ownership interest by Nsengiyumva and Ntabakuze to be less significant in

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[764] *See* T. 16 June 2003 p. 7 ("Q. Who assigned the escort to you? A. The first time it was the French soldiers I met at Gisneyi in Rwanda. Later, it was General Kabiligi who assigned an escort to me every week."); T. 17 June 2003 p. 13 ("It was General Kabiligi who issued the order that I be provided with military escort, and these were made available to me for one week.").

[765] Bagosora, T. 15 November 2005 p. 42.

this regard. The Chamber also finds that the army provided substantial assistance to RTLM in order to ensure that it continued its broadcasts, reflecting its general approval of the station.

3. EVENTS FROM 6 TO 9 APRIL 1994

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3.1 Death of President Habyarimana

650. Around 8.30 p.m. on 6 April 1994, a surface-to-air missile fired from near the Kigali airport brought down a plane carrying President Juvénal Habyarimana of Rwanda, President Cyprien Ntaryimara of Burundi, and General Déogratias Nsabimana, the chief of staff of the Rwandan army. They were returning from peace negotiations in Dar es Salaam aimed at implementing the Arusha Accords. The blast heard across Kigali killed all on board and, as the wreckage of Habyarimana's plane fell to the earth, Rwanda descended into violence.

651. Within 24 hours, armed hostilities resumed between the Rwandan military and the RPF, and several leading politicians and 10 Belgian peacekeepers were killed. Mass killings of Tutsi civilians in Kigali and Gisenyi also swiftly followed the blast and then spread throughout the country with intensified brutality throughout the conflict.

652. According to the Prosecution, the killing of President Habyarimana created a significant void in Rwanda's political and military leadership at a sensitive period within its transition to multi-party politics and in the implementation of the Arusha Accords. It reflected a point of crisis which the four Accused allegedly used as a pretext to maintain control over the government. Determining the author of the attack has limited bearing on their responsibility in relation to their alleged criminal conduct before and after the event.[766]

653. In the view of the Defence, General Kagame and the RPF launched the attack on President Habyarimana's plane in order to seize control of Rwanda through a decisive military victory. Through the attack, the RPF triggered well-predicted civilian massacres as part of its war plan, knowing that the Rwandan military would not be able to cope with the massacres and defend itself against a superior invading force at the same time. According to the Defence, this undermines the Prosecution's theory of a long planned conspiracy to commit genocide and supports the proposition that the mass killings were the result of spontaneous violence in response to the death of President Habyarimana. These alternative explanations for the events are addressed below (III.7).

654. In the present context, the Chamber observes that the attack on Habyarimana's plane is not charged as a crime in the Indictments and, accordingly, is simply background to the case. The Chamber will nonetheless bear in mind the evidence highlighted by the Defence in making its factual findings and address it where it raises reasonable doubt about the Prosecution's case.

3.2 Meetings, 6 - 7 April

655. According to the Indictments, Bagosora asserted himself "as the man of the moment capable of managing the crisis" following the death of President Habyarimana and the army's chief of staff and in the absence of the Minister of Defence. From 6 to 7 April 1994, Bagosora chaired several important meetings of senior military officers and allegedly presented himself as the representative of the Rwandan government to the public and international community. The Prosecution claims that, during this period, Bagosora refused to

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[766] Prosecution Closing Brief, paras. 249 ("No matter who was ultimately responsible for President Habyarimana's death, it is clear that his demise titled the Rwandan government military as lords of the Rwandan manor"), 250-254.

recognise the political authority of Prime Minister Agathe Uwilingiyimana and attempted to seize control of the country for the military. It argues that, during this critical period, the final authority of the Rwandan state rested with Bagosora.[767]

656. The Defence does not dispute much of the chronology of the official meetings held in the first 24 hours after the death of the President. However, it contests that the military was attempting to seize power in a *coup d'état* or that the meetings reflect a conspiracy to commit genocide. Instead, the Defence argues that the meetings were not criminal but were normal actions taken to ensure security in the midst of a crisis.[768]

3.2.1 Crisis Committee

Introduction

657. Each of the Indictments alleges that on the night of 6 April 1994, Bagosora chaired a meeting of the two General Staffs of the Rwandan military at the army headquarters in Camp Kigali. The Indictments further allege that, during this meeting of senior officers, Bagosora expressed a desire to take power of the government and refused to consult with the Prime Minister. Furthermore, the Nsengiyumva Indictment alleges that, during this meeting, Bagosora withdrew on several occasions to receive calls and spoke with Nsengiyumva, who then gave the order to begin the massacres in Gisenyi.[769]

Evidence

658. The Chamber heard largely consistent evidence from individuals who directly participated in this meeting of the Crisis Committee, namely Bagosora, General Dallaire, Major Beardsley and Colonel Marchal. From the evidence of these witnesses, the following series of events emerge.

659. In the hours that followed the plane crash on 6 April, Bagosora chaired a military crisis committee of senior military officials from both the army and gendarmerie at army headquarters in Camp Kigali which continued into the early hours of the next day.[770] Bagosora felt that he was the most appropriate person to chair the meeting because, although he was not the most senior officer present, as chief of staff of the Ministry of Defence, in his opinion, he had the authority to speak to both branches of the armed forces in the absence of the Minister. The Crisis Committee decided that Colonel Marcel Gatsinzi would serve as the interim chief of staff. General Dallaire and Major Beardsley joined the ongoing meeting of

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[767] Bagosora Indictment, paras. 6.2-6.8, 6.29-6.30; Kabiligi and Ntabakuze Indictment, paras. 6.2-6.7; Nsengiyumva Indictment, paras. 6.2-6.6; Prosecution Closing Brief, paras. 249-253 ("But on the night of 6 and 7 April 1994, when the Habyarimana regime was put to rest, the final authority that led Rwanda was Colonel Bagosora.").

[768] Bagosora Closing Brief, paras. 863-1102; Ntabakuze Closing Brief, para. 2368. The Nsengiyumva Defence does not address these meetings in its Closing Brief. As there is limited disagreement about the events, the evidence in the following sections will not be summarised piecemeal.

[769] Bagosora Indictment, para. 6.3; Nsengiyumva Indictment, paras. 6.3-6.4; Kabiligi and Ntabakuze Indictment, para. 6.4.

[770] Dallaire, T. 19 January 2004 pp. 22-23, 28; Bagosora, T. 2 November 2005, pp. 77-78. *See also* Beardsley, T. 3 February 2004 pp. 24-25 (referring to Bagosora's prominent role in the meeting).

senior officers between 10.30 and 11.00 p.m. at the request of Lt. Colonel Rwabalinda, the Rwandan army's liaison officer with UNAMIR.[771]

660. During the meeting, Bagosora explained that the military's main concern was to keep Kigali calm and secure and to maintain authority until a political structure could be put in place.[772] Dallaire then asked Bagosora why he did not recognise Prime Minister Agathe Uwilingiyimana as the political authority in the aftermath of Habyarimana's death.[773] Bagosora explained that the Prime Minister was not the right person for the situation and that the armed forces could not be placed under her authority. Dallaire suspected that the military was in fact staging a *coup d'état*, notwithstanding Bagosora's insistence during the meeting that this was not the case.[774]

661. Colonel Marchal arrived around 12.00 a.m., shortly before Bagosora, Lt. Colonel Rwabalinda and General Dallaire left the meeting in order to discuss the situation with UN Special Representative Jacques-Roger Booh-Booh at his residence. After Marchal's arrival, he and General Ndindiliyimana discussed the possibility of joint patrols with UNAMIR, a topic they also spoke about with Dallaire after he returned from meeting with Booh-Booh at about 2.00 a.m. (III.3.2.2). Marchal expressed concern about the safety of UN peacekeepers, and it was ultimately decided not to have joint patrols. General Dallaire and Major Beardsley left the army headquarters in Camp Kigali sometime after 2.30 a.m.[775]

Deliberations

662. The evidence about what transpired at this meeting remains largely uncontested. The Chamber considers that the Prosecution has proven beyond reasonable doubt that Bagosora chaired the Crisis Committee meeting of the two General Staffs and refused to recognise the authority of Prime Minister Agathe Uwilingiyimana. However, the Prosecution did not present any direct testimony on Bagosora's alleged attempt to seize control of the government for the military, an attempt that was rebuffed by other officers. Furthermore, there was no testimony that Bagosora withdrew several times during the Crisis Committee meeting to give orders to Nsengiyumva to begin the massacres in Gisenyi prefecture.[776]

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[771] Dallaire, T. 19 January 2004 pp. 22-23, 38; Bagosora, T. 2 November 2005, pp. 73-80; Booh-Booh, T. 21 November 2005 p. 80. *See also* Beardsley, T. 3 February 2004 pp. 24-25; Bagosora Defence Exhibit 66B (Minutes of meeting of 6-7 April 1994: "On the night of 6-7 April 1994, the *directeur de cabinet* of MINADEF chaired a meeting bringing together the Gendarmerie chief of staff, MINADEF Officers [and] the Army and Gendarmerie Senior Staff."), para. 1.

[772] Dallaire, T. 19 January 2004 p. 24.

[773] *Id.* pp. 24-25; Beardsley, T. 3 February 2004 p. 25.

[774] Dallaire, T. 19 January 2004 pp. 24-25; Beardsley, T. 3 February 2004 p. 25; Bagosora, T. 7 November 2005 pp. 5, 8-9.

[775] Dallaire, T. 19 January 2004 pp. 26-28, 34-35; Marchal, T. 4 December 2006 p. 57.

[776] However, the Chamber heard evidence on communications from Bagosora and Nsengiyumva on 6 April 1994 from Prosecution Witness ZF, who allegedly overheard Nsengiyumva receive a call from Bagosora. This evidence was excluded with respect to Bagosora based on lack of notice. *See* Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, para. 73. The evidence is discussed with respect to Nsengiyumva in section III.3.6.1.

3.2.2 Meeting with Booh-Booh

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Introduction

663. The Bagosora Indictment alleges that, in the early morning of 7 April 1994, Bagosora and General Roméo Dallaire met with UN Special Representative Jacques-Roger Booh-Booh at his residence. The Prosecution contends that Bagosora introduced himself as the "interlocutor of reference" and acted as the representative of the Rwandan government. It also alleges that he refused to consult with the Prime Minister.[777]

Evidence

664. General Dallaire, Bagosora and Special Representative Booh-Booh directly participated in this meeting and provided generally consistent evidence on the unfolding of the event.

665. Between 12.30 a.m. and 1.00 a.m., Bagosora, Lt. Colonel Rwabalinda and General Dallaire left Camp Kigali to meet with Booh-Booh.[778] Bagosora briefed Booh-Booh about the ongoing situation and expressed concern that the events would be viewed as a *coup d'état*.[779] Bagosora added that the military's role was to administer security and maintain calm pending the transfer of power to an interim government.[780] Booh-Booh told Bagosora that the military should consult with Prime Minister Agathe Uwilingiyimana as the Arusha Accords still governed the political situation in the country.[781] Bagosora rejected the proposal to consult with the Prime Minister.[782] He acknowledged that she was the Prime Minister, but refused to place the military under her command, citing her status in the minority of the MDR party and her possible participation in a *coup d'état* several days earlier.[783]

666. Booh-Booh proposed a meeting with the Ambassadors of the United States, France and Belgium the following morning at 9.00 a.m. to further discuss the situation.[784] The meeting with Booh-Booh ended around 1.30 a.m., and Dallaire, Bagosora and Rwabalinda returned to army headquarters at Camp Kigali around 1.30 or 2.00 a.m.[785]

667. Bagosora denied that he introduced himself as the "person or representative of reference" and explained that he was the representative of the armed forces.[786] Booh-Booh denied that Bagosora presented himself as the head of the government.[787]

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[777] Bagosora Indictment, para. 6.4; Prosecution Closing Brief, pp. 744-745.
[778] Dallaire, T. 19 January 2004 pp. 28-29.
[779] *Id.* pp. 32-33.
[780] *Id.* p. 32; Bagosora, T. 7 November 2005 p. 20.
[781] Booh-Booh, T. 7 November 2005 p. 22; T. 21 November 2005 pp. 80-81.
[782] Dallaire, T. 19 January 2004 p. 44; Bagosora, T. 7 November 2005 p. 21; Booh-Booh, T. 21 November 2005 p. 81.
[783] Bagosora, T. 7 November 2005 pp. 19, 21-22, 26.
[784] Dallaire, T. 19 January 2004 p. 44.
[785] *Id.* p. 34; Bagosora, T. 7 November 2005 p. 26.
[786] Bagosora, T. 7 November 2005 p. 17.
[787] Booh-Booh, T. 21 November 2005 p. 82.

Deliberations 40546

668. The evidence concerning the meeting with Booh-Booh is not disputed. The Chamber considers that the Prosecution has proven beyond reasonable doubt that Bagosora attended a meeting with Booh-Booh around 1.00 to 1.30 a.m. on 7 April in which he acted as the representative of the armed forces and refused to consult with the Prime Minister.

3.2.3 Meeting with the United States' Ambassador

Introduction

669. The Bagosora Indictment alleges that Bagosora met with the Ambassador of the United States at his residence at around 9.00 a.m. and presented himself as the representative of the civil and political authorities. According to the Prosecution, Bagosora was silent when asked by the Ambassador why the Prime Minister was being prevented from making a radio address. Bagosora allegedly also explained the shooting heard in the city as shots fired in the air by Presidential Guard soldiers who were upset by President Habyarimana's death.[788]

Evidence

Prosecution Witness Roméo Dallaire

670. General Dallaire did not attend the meeting, but he testified that the meeting did not take place as planned because the security situation prevented most of the ambassadors from attending. Booh-Booh could not join the meeting because an armoured personnel carrier did not arrive on time to transport him to the Ambassador's residence.[789]

Bagosora

671. Bagosora, General Ndindiliyimana and Lt. Colonel Rwabalinda met with the United States Ambassador at his residence at 9.00 a.m. for about 45 minutes. Bagosora denied that he presented himself as the representative of the civil and political authorities, noting that the Ambassador was already aware of his position as chief of staff of the Ministry of Defence. Bagosora conceded that he may have discussed the shooting heard throughout the city with the Ambassador, but testified that he was not informed of the initiative to have the Prime Minister deliver a radio address to the country, nor did he know about her security situation. When the other ambassadors did not arrive, the meeting ended because the officers had to attend the meeting at ESM, which was to begin at 10.00 a.m.[790]

Deliberations

672. The Chamber finds that Bagosora, General Ndindiliyimana and Lt. Colonel Rwabalinda met with the United States Ambassador for about 45 minutes around 9.00 a.m. on 7 April 1994. It also accepts the testimony of General Dallaire that the security situation in Kigali prevented Booh-Booh and the French and Belgian Ambassadors from attending. The Chamber considers that Bagosora was clearly acting as an authority of the military during the meeting and that the security situation in Kigali was discussed. However, in the absence of

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[788] Bagosora Indictment, para. 6.7; Prosecution Closing Brief, p. 746.
[789] Dallaire, T. 19 January 2004 pp. 33, 38.
[790] T. 7 November 2005 pp. 64-65, 68-69, 71, 73.

any direct evidence from the Prosecution, the Chamber cannot find that Bagosora presented himself as the representative of the civil and political authorities in the country or that the Prime Minister's radio address was discussed.

3.2.4 Meeting at ESM

Introduction

673. Each of the Indictments alleges that, on the morning of 7 April 1994, Bagosora chaired a meeting of Rwandan army and gendarmerie officers, including members of the two general staffs as well as sector and camp commanders. Bagosora allegedly reiterated that the military should take power and refused to consult with the Prime Minister, adding that he did not know if she was still alive. According to the Bagosora Indictment, Bagosora and General Ndindiliyimana were informed during this meeting by Colonel Nubaha that Belgian peacekeepers were under risk of death at Camp Kigali, but did nothing. The Kabiligi and Ntabakuze Indictment states that, after the meeting, Bagosora ordered Ntabakuze, Commander of the Para Commando Battalion, Major François-Xavier Nzuwonemeye, Commander of the Reconnaissance Battalion, and Lieutenant-Colonel Léonard Nkundiye, a former Commander of the Presidential Guard, to proceed with the massacres. Reference is made to General Dallaire and Expert Witness Filip Reyntjens[791]

674. The Defence teams do not dispute that a number of senior military officers met at ESM on 7 April or that Bagosora chaired the meeting. The Bagosora Defence dispute that he was not informed of the risk to the Belgian soldiers during the course of the meeting and only learned of this afterwards when he visited Camp Kigali. Furthermore, the Bagosora and Ntabakuze Defence teams contest that Bagosora ordered Ntabakuze to proceed with the massacres after the meeting. Reference is made to Witnesses A-8, DM-191, DK-32, STAR-1, DH-51, DK-19, Major Peter Maggen and Expert Witness Eugène Shimamungu.[792]

Evidence

675. The Chamber notes that the basic sequence of events during the meeting at ESM is not in dispute. The meeting was scheduled to start at 10.00 a.m., but began late because Bagosora arrived closer to 10.15 a.m.[793] He chaired the meeting, along with General Ndindiliyimana, and spoke first, updating the participants about the meetings he had conducted the previous evening.[794] Afterwards, Bagosora opened the floor for the officers to make comments. During the course of the meeting, the officers agreed with the idea of having a Crisis Committee, composed of the participants of the previous evening, and chaired

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[791] Bagosora Indictment, paras. 6.8, 6.24-6.25; Kabiligi and Ntabakuze Indictment, paras. 6.7, 6.24; Nsengiyumva Indictment, para. 6.6; Prosecution Closing Brief, paras. 307-309, 312, 314, 318, 1767, 1769 (c), 1786 (f), pp. 747-748, 756, 822, 830, 876.

[792] Bagosora Closing Brief, paras. 1056-1059, 1084-1086, 1109, 1116; Ntabakuze Closing Brief, paras. 1327-1354. The Kabiligi and Nsengiyumva Defence teams do not address this event in its Closing Brief.

[793] Bagosora, T. 7 November 2005 pp. 73-74; Ntabakuze, T. 18 September 2006 p. 48; Witness A-08, T. 9 May 2005 p. 77; Witness DM-191, T. 6 May 2005 p. 23; DK-32, T. 27 June 2005 p. 56.

[794] Bagosora, T. 7 November 2005 pp. 73-74; Ntabakuze, T. 18 September 2006 p. 50; Witness A-08, T. 9 May 2005 pp. 78-79; Witness DM-191, T. 6 May 2005 p. 26; Witness DK-32, T. 27 June 2005 p. 73; Witness STAR-1, T. 23 February 2006 p. 43.

by Ndindiliyimana.[795] It was also agreed that the Crisis Committee would have two tasks: first, to coordinate the actions of the army and gendarmerie in order to ensure security; and second, to provide material support to politicians so they could form the new government.[796] According to one of Expert Witness Des Forges's sources, the news of the Prime Minister's death reached Bagosora during the meeting, and, when someone raised the issue of contacting her, Bagosora allegedly responded: "I have, unfortunately, just learned that [the] prime minister has been killed".[797]

676. Around 10.45 a.m., Colonel Nubaha, the commander of Camp Kigali, entered the meeting and spoke into Bagosora's ear for a minute or less before leaving again.[798] According to Bagosora, Colonel Nubaha said that there was "great tension at Kigali Camp" and that the situation was dire. Bagosora testified that he understood by Nubaha's words that there was tension with the soldiers at Camp Kigali and cut Nubaha off, telling him to go back to the camp and calm the situation and that he would check on it after the meeting.[799] After Nubaha's departure, the meeting participants heard gunshots outside coming from the direction of Camp Kigali, which caused some of the participants to panic.[800]

677. General Dallaire arrived at the meeting around 11.00 a.m., just after Colonel Nubaha left and after the participants heard the gunshots.[801] Seating was arranged for Dallaire at the podium.[802] Bagosora informed Dallaire that he had gathered senior military officers to brief them on the prevailing situation and to give them general direction on security. After a few additional remarks in Kinyarwanda to the assembled officers, Bagosora continued in French for five or 10 more minutes, telling the officers to keep the situation under control, to maintain discipline and to curtail excesses.[803]

678. Bagosora then gave the floor to Dallaire to make a few comments.[804] Dallaire spoke for about five minutes, first offering his condolences on the loss of the President and the army chief of staff.[805] He then stated that UNAMIR would stay and support them to keep the implementation of the Arusha Accords on track.[806] General Dallaire emphasised that it was crucial for the commanders to maintain control of their troops so as not to degenerate into a civil war.[807] Finally, he informed them that, based on information he had received that

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[795] Bagosora, T. 8 November 2005 p. 33; Witness DK-32, T. 27 June 2005 p. 75; Witness STAR-1, T. 23 February 2006 p. 44.
[796] Bagosora, T. 7 November 2005 p. 77; Witness DK-32, T. 27 June 2005 p. 76; Witness STAR-1, T. 23 February 2006 pp. 44-45.
[797] *See* Des Forges, T. 25 September 2002 p. 106.
[798] Bagosora, T. 8 November 2005 pp. 6-7, 10-11; Witness DK-32, T. 27 June 2005 p. 77.
[799] Bagosora, T. 8 November 2005 pp. 7, 10-11.
[800] Bagosora, T. 8 November 2005 p. 6; Witness A-8, T. 10 May 2005 pp. 5-6; Witness DK-19, T. 11 July 2005 p. 64; Defence Witness DK-32, T. 27 June 2005 p. 73; Witness STAR-1, T. 23 February 2006 pp. 46, 49; Apedo, T. 7 September 2006 p. 46.
[801] Dallaire, T. 19 January 2004 pp. 36, 39; Bagosora, T. 7 November 2005 p. 77; Witness DK-32, T. 27 June 2005 p. 78.
[802] Dallaire, T. 19 January 2004 pp. 36-37; Witness DK-32, T. 27 June 2005 p. 78; Maggen, T. 13 March 2006 p. 10.
[803] Dallaire, T. 19 January 2004 pp. 37-38.
[804] *Id.* p. 38.
[805] *Id.* pp. 38, 39; Witness STAR-1, T. 23 February 2006 p. 45.
[806] Dallaire, T. 19 January 2004 p. 38.
[807] *Id.* p. 38; Witness STAR-1, T. 23 February 2006 p. 45; Maggen, T. 13 March 2006 pp. 10, 15.

morning, the RPF forces were staying where they were and were not planning to conduct any kind of altercation.[808]

679. Following Dallaire's intervention, Bagosora spoke for a few more minutes, repeating his concerns that the security of the nation was crucial and that the officers had to maintain control in order to resolve the reactions seen by a few units in Kigali.[809] He also reminded the members of the Crisis Committee that he wanted their statement explaining the current situation in the country by 2.00 p.m. to broadcast it over the radio.[810] Bagosora then thanked the participants and adjourned the meeting between noon and 12.30 p.m.[811] The officers stood at attention, and Bagosora left immediately before Dallaire had a chance to approach him about the situation with the 10 Belgian peacekeepers.[812]

680. After the meeting, Dallaire spoke with Ndindiliyimana about the 10 Belgian peacekeepers in Camp Kigali. According to Dallaire, Ndindiliyimana informed him that Camp Kigali was in riot, that it was being looked into and that Dallaire could not return to the camp because even some senior officers had been pulled back. Dallaire then met with the Crisis Committee for about 30 minutes, but left between noon and 12.30 p.m. because, in his view, the discussions were going nowhere.[813]

681. The Chamber also heard evidence from Prosecution Expert Witness Filip Reyntjens concerning an alleged order given by Bagosora at the end of the meeting to commence the genocide. According to Reyntjens, when he was conducting interviews for his book, one potential witness stated that he overheard Bagosora use the phrase "*muhere aruhande*" while talking to Ntabakuze, Colonel Nkundiye and Major Nzuwonemeye after the meeting. Reyntjens's source told him that, after Bagosora used this phrase, the four participants departed, and the source believed that they understood what Bagosora meant. Reyntjens, who is not a Kinyarwanda speaker, explained that the source said that the phrase meant, "Go about it systematically from one place to another", as when tilling a field or clearing a bush. He believed that this may have been the order to start the genocide.[814]

682. Bagosora and Ntabakuze denied that the incident referred to by Reyntjens occurred.[815] Defence Witnesses A-8, DK-32, DM-191 and DK-19, who were present at the meeting, testified that Bagosora did not meet privately with officers, such as Ntabakuze, Colonel Nkundiye and Major Nzuwonemeye after the meeting.[816]

683. According to Defence Expert Witness Eugène Shimamungu, a Kinyarwanda language expert, "*muhere aruhande*" was not a phrase that existed in Kinyarwanda the way that Reyntjens used it. The witness was of the view that Reyntjens mistakenly used the phrase either because he is not a native Kinyarwanda speaker or because it was a typographical

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[808] Dallaire, T. 19 January 2004 p. 38.
[809] *Id.* p. 39; Witness A-8, T. 10 May 2005 p. 6; Witness DK-32, T. 27 June 2005 p. 78; Witness STAR-1, T. 23 February 2006 pp. 46-47.
[810] Dallaire, T. 19 January 2004 p. 39.
[811] Ntabakuze, T. 18 September 2006 p. 50; Witness A-8, T. 10 May 2005 p. 6; Witness DK-32, T. 27 June 2005 p. 78.
[812] Dallaire, T. 19 January 2004 p. 39; Witness A-8, T. 10 May 2005 p. 6.
[813] Dallaire, T. 19 January 2004 pp. 39-40.
[814] T. 15 September 2004 p. 32; T. 17 September 2004 p. 80; T. 22 September 2004 pp. 28-29.
[815] Bagosora, T. 10 November 2005 p. 66; Ntabakuze, T. 18 September 2006 pp. 50-51.
[816] Witness A-8, T. 10 May 2005 p. 10; Witness DK-32, T. 27 June 2005 p. 58; Witness DM-191, T. 5 May 2005 p. 56; Witness DK-19, T. 11 July 2005 pp. 64-65.

error. The witness agreed, however, that there is a phrase in Kinyarwanda, "*muhere ruhande*", which is an agricultural metaphor and means to start from one side and move progressively on to the other.[817]

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684. The foregoing evidence is generally undisputed. Bagosora conducted the meeting of senior officers at ESM on 7 April 1994 and acted as a main authority even in relation to the Crisis Committee, which was set up to coordinate the General Staffs of the army and the gendarmerie. The Chamber finds that during the course of the meeting, Bagosora was made aware of a serious threat to the safety of the 10 Belgian peacekeepers at Camp Kigali. This follows from Colonel Nubaha's interruption of the meeting and the evidence of Dallaire who was informed immediately after it ended about the situation at Camp Kigali.

685. The Prosecution has not presented any direct evidence that Bagosora discussed the situation of the Prime Minister during the meeting, or that he proposed that the military seize control of the country. The Chamber heard some evidence concerning discussions about the Prime Minister from Des Forges. However, this evidence is second-hand.

686. The evidence concerning Bagosora's alleged order to Ntabakuze, Colonel Nkundiye and Major Nzuwonemeye to perpetrate the massacres after the meeting is second-hand and uncorroborated. The Chamber is unwilling to rely on this type of evidence in order to establish such a serious allegation, in particular where there is conflicting Defence evidence about whether these officers met privately after the meeting. Therefore, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that Bagosora issued such an order at the end of the meeting.[818]

3.3 Political Killings, 7 April

687. Each of the Indictments alleges that, while the senior officers were meeting at ESM on the morning of 7 April 1994, members of the Presidential Guard, the Para Commando Battalion and the Reconnaissance Battalion "tracked down, arrested, sexually assaulted, and killed" Prime Minister Agathe Uwilingiyimana. During this same period, members of these units also allegedly arrested and killed other important opposition leaders, namely Joseph Kavaruganda, Faustin Rucogoza, Landoald Ndasingwa and Frédéric Nzamurambaho. The Indictments assert that the elimination of these "political opponents" made it possible to set aside the establishment of the Broad-Based Transitional Government stipulated in the Arusha Accords, in favour of an Interim Government, thus removing a major obstacle to the pursuit of the massacres. The Prosecution relies on several witnesses as well as circumstantial evidence, regarding such issues as the timing, organisation and the similarity of the crimes, to illustrate prior planning and to connect them to the Accused.[819]

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[817] T. 6 June 2006 pp. 9-10; T. 7 June 2006 pp. 20-22.

[818] The Chamber, however, finds unpersuasive the Defence evidence that this event did not occur simply because Reyntjens may have misspelled the Kinyarwanda version of the alleged order. It follows from Shimamungu's testimony that a virtually identical phrase conveys the same meaning attributed by Reyntjens's source to Bagosora.

[819] Bagosora Indictment, paras. 6.9-6.10, 6.37-6.38; Nsengiyumva Indictment, paras. 6.7-6.8; Kabiligi and Ntabakuze Indictment, paras. 6.8-6.9; Prosecution Closing Brief, paras. 255-272, 274-284, pp. 746-748, 822-824, 876. The Bagosora Indictment and the Kabiligi and Ntabakuze Indictment refer to the four male victims by

688. To demonstrate motive and to place these murders in the larger context of the mass killings which occurred after 6 April 1994, the Prosecution relies principally on Expert Witnesses Des Forges and Reyntjens to argue that the deaths of these important opposition political figures destroyed the continuity of the Arusha Accords and created a power vacuum, which facilitated the military's, and in particular Bagosora's, takeover of the government. The Prosecution submits that, not only did the assassination of opposition leaders make it easier for Hutu extremists to unleash the genocide, but it also formed part of a broader vision to destroy alleged Tutsi supporters.[820]

689. The Bagosora Defence accepts that certain elements of the military killed these political figures. However, it disputes both the units and the level of organisation involved in the killings, noting that they did not conform to an organised military operation. There is limited and questionable direct evidence, emanating solely from Prosecution Witnesses ATY and DA, connecting Bagosora to the killings. With respect to the political significance of the killings, the Defence highlights the already lengthy delay in implementing the Arusha Accords and further rejects that these officials were instrumental in that process, thus eliminating any motive for Bagosora to have these individuals killed.[821]

690. The Ntabakuze Defence argues that the sections of the Kabiligi and Ntabakuze Indictment referring to these killings are vague. In particular, they fail to identify which unit or soldiers of the Para Commando Battalion participated in the crimes, do not give the time of the assassinations or the manner in which the victims were allegedly killed, and do not adequately describe Ntabakuze's role in the crimes. Furthermore, the evidence tendered in support of this allegation is limited, contradictory and unreliable hearsay. Ntabakuze would not have been in operational command of any of the members of the Para Commando Battalion that were transferred to the Presidential Guard before 6 April 1994.[822]

691. The Kabiligi Defence submits that the Prosecution presented no evidence linking Kabiligi to the political killings on 7 April 1994, emphasising that he was out of the country at the time and did not have operational command over the army.[823]

3.3.1 Political Context

692. Prosecution Expert Witness Filip Reyntjens testified about the political situation in the months preceding the death of President Habyarimana. In particular, he attested to a political stalemate in the institution of the Broad-Based Transitional Government envisioned by the Arusha Accords (III.1.1).[824] During this period, Prime Minister Uwilingiyimana was portrayed by her political opponents as being close to the RPF.[825] In light of the Prime Minister's perceived alignment with the RPF, it was alleged, in particular by Bagosora, that on 4 April 1994 she had held a meeting with opposition party leaders in an alleged attempt to

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their political offices, not by name. The Nsengiyumva Indictment only contains a general reference to members of the political opposition. The Prosecution witnesses relied on are mentioned in connection with the specific events.

[820] Prosecution Closing Brief, paras. 258-262, pp. 748-749, 823-824, 876.

[821] Bagosora Closing Brief, paras. 1003-1055, 1683, 1691, pp. 365, 375-376.

[822] Ntabakuze Closing Brief, paras. 1249-1290, 2369-2376.

[823] Kabiligi Closing Brief, paras. 400-418. The Nsengiyumva Closing Brief does not address political killings in Kigali.

[824] Reyntjens, T. 16 September 2004 pp. 92-95.

[825] *Id.* pp. 108-109.

garner support to overthrow President Habyarimana.[826] Bagosora pointed to this alleged *coup d'état* attempt as a significant reason for refusing to consult with her after the death of President Habyarimana.[827]

693. According to Des Forges and Reyntjens, the military killed Prime Minister Uwilingiyimana as well as Joseph Kavaruganda, Faustin Rucogoza, Landoald Ndasingwa and Frédéric Nzamurambaho because of the substantial influence they wielded over the situation following the death of Habyarimana.[828] In their view, their assassination destroyed the continuity of the Arusha Accords and created a power vacuum allowing extremist elements of the MRND to seize power.

694. Defence Expert Witness Bernard Lugan noted that the Prime Minister played no role in the implementation of the Broad-Based Transitional Government, which was to be headed by Faustin Twagiramungu. Lugan asserted that the succession rules established by the 1991 Constitution applied, according to which Theodore Sindikubwabo would lead the interim government.[829] Bagosora testified that the killing of these political officials had no relation to the implementation of the Broad-Based Transitional Government which had been stalled since September 1993.[830] Rather, he stated that they were simply a "settlement of scores" arising from neighbourhood or political disputes or were done for other reasons that he could not define.[831]

3.3.2 Prime Minister Agathe Uwilingiyimana

Introduction

695. The Chamber heard extensive evidence on the events surrounding the death of Prime Minister Agathe Uwilingiyimana from a number of witnesses. In particular, General Dallaire, Major Beardsley, Colonel Marchal, Colonel Dewez and Sergeant Hutsebaut gave testimony on the role of UNAMIR in attempting to arrange for the Prime Minister to address the nation on Radio Rwanda. Witnesses XXO, AE, ATY, DA, DAK, XXJ, HP and Ruggiu testified about the organisation and perpetrators of the attack on the Prime Minister's residential compound. The Defence did not present any evidence attempting to refute the killing of the Prime Minister. Instead, their arguments focus on whether the evidence connects them to the crime and whether the attack conformed to a military operation.[832]

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[826] Des Forges, T. 25 September 2002 pp. 96-100; Bagosora, T. 2 November 2005 p. 75, T. 15 November 2005 p. 65.
[827] Dallaire, T. 19 January 2004 p. 25; Beardsley, T. 3 February 2004 p. 25; Bagosora, T. 7 November 2005 pp. 5, 8-9.
[828] Des Forges, T. 18 September 2002 p. 39; Reyntjens, T. 15 September 2004 p. 17.
[829] T. 14 November 2006 pp. 42, 44-45.
[830] Bagosora, T. 8 November 2005 p. 50. *See also* Bagosora Closing Brief, paras. 1003-1011.
[831] T. 8 November 2005 p. 49.
[832] Bagosora Closing Brief, paras. 1003-1055, 1683, 1691, pp. 365, 375-376; Kabiligi Defence Brief, para. 203. The Ntabakuze and the Nsengiyumva Defence teams do not address the allegations concerning the death of the Prime Minister in their Closing Briefs.

Evidence

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696. Much of the evidence concerning the death of the Prime Minister is not in dispute.[833] On the night of 6 April 1994, Prime Minister Uwilingiyimana was at her residential compound in the Kiyovu neighbourhood of Kigali, located about 200 to 300 metres away from ESM. Her security detail included 10 Rwandan gendarmes and six Ghanaian peacekeepers from UNAMIR. Around 8.30 p.m., the head of her Rwandan security detail informed the Prime Minister about the death of President Habyarimana and advised her to leave before the surrounding area became blockaded. The Prime Minister, however, refused to leave.[834]

697. General Dallaire spoke by telephone with Prime Minister Uwilingiyimana several times before 10.30 p.m., and she informed him that she was having difficulty reaching members of her cabinet.[835] During the meeting of the Crisis Committee, as discussed above (III.3.2.1), Bagosora expressly refused Dallaire entreaties to consult with the Prime Minister. In addition, Dallaire also proposed that she should address the country about Habyarimana's death.[836] Bagosora again refused to consult with her during a meeting at the residence of Special Representative Booh-Booh later that night (III.3.2.2). At the end of that meeting, Dallaire and Booh-Booh spoke privately and agreed that UNAMIR would escort the Prime Minister to a radio station in the morning to address the country.[837]

698. Bagosora and Dallaire returned to military headquarters around 2.00 a.m.[838] Dallaire asked Colonel Marchal, who had been meeting with General Ndindiliyimana, to prepare an escort to take the Prime Minister to Radio Rwanda and to secure Radio Rwanda.[839] When Beardsley and Dallaire returned to UNAMIR headquarters a short time later, around 3.00 a.m., he reiterated this plan, and Dallaire contacted the Prime Minister to inform her that an escort was on its way.[840] Dallaire's efforts to arrange the address with Radio Rwanda were ultimately refused after the director of the station informed him that members of the Presidential Guard, who were at the station, would prevent it.[841] In addition, Dallaire's attempts to arrange access for the Prime Minister with RTLM were immediately rejected.[842]

699. Marchal relayed Dallaire's orders to Colonel Dewez sometime after 2.00 a.m. and further ordered him not to use force in executing the mission.[843] Dewez then tasked a contingent of Belgian peacekeepers, headed by Lieutenant Lotin, with escorting the Prime

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[833] As mentioned previously (III.3.2), the Chamber, thus, sees no need to summarise the evidence piecemeal.
[834] Witness XXO, T. 19 November 2003 pp. 44, 49-51; T. 20 November 2003 pp. 16-17.
[835] Dallaire, T. 19 January 2004 p. 24.
[836] Beardsley, T. 3 February 2004 pp. 25, 27-29. This is reflected in the Code Cable drafted shortly after the meeting from Dallaire to Maurice Baril, head of the military division of the United Nations Department of Peacekeeping Operations. *See* Prosecution Exhibit 170 (Code Cable of 7 April 1994 from General Dallaire to Baril), para. 11. Colonel Marchal also testified that the issue of a radio address was raised during the meeting, but that no decision was taken as to who would give the address. T. 4 December 2006 p. 60.
[837] Dallaire, T. 19 January 2004 p. 34.
[838] *Id.* p. 45; Bagosora, T. 7 November 2005, p. 26.
[839] Dallaire, T. 19 January 2004 pp. 28, 35, T. 22 January 2004 pp. 70-72; Beardsley, T. 3 February 2004 p. 29.
[840] Beardsley, T. 3 February 2004 p. 29; Dallaire, T. 22 January 2004 pp. 70-71. General Dallaire recalled raising the issue with the Prime Minister after meeting with Special Representative Booh-Booh and noted that he may have spoken to her from the Rwandan military headquarters.
[841] Dallaire, T. 21 January 2004 p. 27, T. 22 January 2004 p. 71; Beardsley, T. 3 February 2004 p. 29.
[842] Dallaire, T. 22 January 2004 p. 71; Beardsley, T. 3 February 2004 p. 29.
[843] Marchal, T. 4 December 2006 p. 61; Dewez, T. 24 June 2005 pp. 4-5.

Minister to Radio Rwanda.[844] In addition, Dewez dispatched a second group of Belgian peacekeepers in order to secure Radio Rwanda.[845] This second group, however, was prevented from reaching the station at a roadblock manned by soldiers.[846] Lotin's double escort of four jeeps arrived at the Prime Minister's residence around 5.00 a.m., after receiving information on a passable roadblock.[847]

700. Meanwhile, the situation at the Prime Minister's residential compound in the preceding hours had become increasingly tense. The Rwandan gendarmes in the Prime Minister's security detail had received reports from their platoon commander that members of the Presidential Guard were moving through the Kimihurura neighbourhood of Kigali targeting government ministers.[848] The Prime Minister had contacted UNAMIR twice around 12.00 and 2.15 a.m. seeking reinforcements to her security detail.[849] During the course of the evening, her security detail noticed that nearby roadblocks had been reinforced by soldiers and that an armoured vehicle from the Reconnaissance Battalion had arrived and pointed its cannon at the Prime Minister's residential compound. Soldiers manning the roadblock near ESM periodically fired guns and grenades at the compound as the security detail scouted the compound for escape routes.[850]

701. Witness XXO, who was present, explained that the Prime Minister's residential compound came under sustained gun and grenade fire around 5.00 a.m. after the Belgian peacekeeping contingent arrived.[851] Around that time, the security detail was trying to arrange for the Prime Minister to take refuge at the neighbouring compound of an American diplomat.[852] When this proved unsuccessful, the gendarmes moved the Prime Minister, her husband and children into hiding in separate rooms in another nearby home.[853] Before going into hiding, the Prime Minister spoke with General Dallaire sometime on the morning of 7 April to inform him that Rwandan troops had arrived outside her home and she was leaving.[854] After hiding the Prime Minister, the gendarmes then returned to her compound to monitor the situation with the Belgian and Ghanaian peacekeepers.[855]

702. Between 7.30 and 8.00 a.m., a large number of soldiers from the Presidential Guard and ESM advanced on the compound and ordered the peacekeepers and gendarmes to drop their weapons. The advancing Rwandan soldiers then opened fire on the Prime Minister's compound. The gendarmes retreated to the neighbouring home where the Prime Minister was

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[844] Marchal, T. 4 December 2006 p. 61; Dewez, T. 24 June 2005 p. 8.
[845] Dewez, T. 24 June 2005 pp. 3-4.
[846] *Id.* p. 5.
[847] Hutsebaut, T. 2 December 2003 p. 57; Dewez, T. 24 June 2005 p. 11.
[848] Witness XXO, T. 20 November 2003 pp. 17-18.
[849] Hutsebaut, T. 2 December 2003 pp. 25, 45.
[850] Witness XXO, T. 20 November 2003 pp. 18-22.
[851] T. 20 November 2003 pp. 24-25; Dewez, T. 24 June 2005 p. 14.
[852] T. 20 November 2003 p. 24.
[853] *Id.* pp. 24-25, T. 21 November 2003 p. 8.
[854] Beardsley, T. 3 February 2004 p. 37.
[855] Witness XXO, T. 20 November 2003 p. 25. *See also* Dewez, T. 24 June 2005 p. 15 (Colonel Dewez explaining that he ordered the Belgian peacekeepers not to accompany the Prime Minister into hiding in order to remain transparent and to remain in radio contact with him. He stated that the contingent thus remained at the residence). The Ghanaian peacekeepers were already stationed at the Prime Minister's residence as part of her security detail. *See* Beardsley, T. 3 February 2004 p. 30.

hiding. The peacekeepers were disarmed and taken to nearby Camp Kigali on a minibus (III.3.4).[856]

703. Around 8.30 or 9.00 a.m., Witness XXO spoke with his superior, Lt. Colonel Bavugamenshi, to apprise him of the attack. Bavugamensi said that he would ask for the attack to be stopped during a meeting of military officers being held at ESM that morning. The witness subsequently received a call from Bavugamenshi as the Rwandan soldiers attacked the residence where the Prime Minister was hiding. The soldiers arrested Witness XXO and gendarmes in the Prime Minister security detail. The witness then heard the soldiers shout that they had found the Prime Minister after searching the house.[857]

704. On the morning of 7 April 1994, Witness AE, who was stationed at a roadblock near ESM, heard soldiers from ESM shouting that the Prime Minister had been found and saw her emerge from a nearby home. According to the witness, soldiers from the Prime Minister's residence and Camp Kigali then ran toward her. Witness AE stated that the Prime Minister asked not to be killed and to instead be taken to army headquarters. He heard several soldiers arguing about what to do with the Prime Minister with some saying she should be killed and others saying she should be taken to military headquarters.[858]

705. Witness AE stated that he ordered his soldiers back to their positions at ESM and then heard gunshots a few minutes later. The Prime Minister's naked and bullet ridden body was seen lying openly in the compound with a bottle shoved into her vagina.[859] Soldiers from several units including the Presidential Guard, ESM, the Reconnaissance Battalion and the Huye Battalion, were seen walking around the property.[860] Around 1.00 to 1.30 p.m., Dallaire travelled from the Ministry of Defence to the UNDP compound passing by the Prime Minister residence. He saw blood and bullet holes on the walls of the compound, but explained that the Prime Minister's body had been taken away.[861]

706. The Prosecution also presented other evidence from Witnesses ATY, DA, DAK, XXJ, HP and Ruggiu relating to the organisation and perpetrators of the attack on the Prime Minister's residential compound. Parts of this specific evidence are disputed.[862]

Prosecution Witness ATY

707. Witness ATY, a Tutsi who lived in Kiyovu, recalled that, a few days before 6 April 1994, her husband showed her a list of names of people to be killed. It included among others Prime Minister Agathe Uwilingiyimana, Faustin Rucogoza, Landoald Ndasingwa and Frédéric Nzamurambaho.[863]

708. The witness stated that, on the morning of 7 April, soldiers from the Presidential Guard came to her house, pointed a gun at her, and one of them said it was necessary to kill all Tutsis. A Presidential Guard captain prevented this soldier from killing her, saying: "But why do you want to kill this lady? Bagosora has given us a list, and he has said that we should finish that list by 1 p.m. Do you think we are going to do everything, finish off all

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[856] Witness XXO, T. 20 November 2003 pp. 28-30. *See also* Witness AE, T. 16 December 2003 pp. 38-39.
[857] Witness XXO, T. 20 November 2003 pp. 30-32.
[858] Witness AE, T. 16 December 2003 p. 41.
[859] *Id.* pp. 42-43; Witness DA, T. 18 November 2003 p. 49.
[860] Witness DA, T. 18 November 2003 pp. 51-52.
[861] Dallaire, T. 20 January 2004 pp. 49-51.
[862] The Chamber will therefore follow its usual way of summarising the testimonies witness by witness.
[863] T. 27 September 2004 pp. 14-16; Prosecution Exhibit 309 (personal identification sheet).

those who are on that list? Do you think we'll have scoured the whole Kiyovu neighbourhood?".[864]

709. On the advice of the Presidential Guard captain, Witness ATY then fled, but as she left her house she saw soldiers take the Prime Minister out of her residential compound. She heard a soldier say to the Prime Minister, "I don't know you. I have nothing against you, but Bagosora and the government asked us to kill you." The witness returned to her home later that day and hid behind bottle crates in a dark storage room near the garage. In the afternoon, Bagosora called her house and spoke with one of her children to ask if their father had been killed. Her son responded that both parents were dead. Around 6.30 p.m., she observed Bagosora at her house, taking some of her husbands papers and speaking with her children. The witness thought that he was also confirming that she was dead. Bagosora explained to her children that their father, who was murdered on the same occasion as the Prime Minister, had been killed because he collaborated with the enemy and Tutsis. He regularly called the children in 1994 to try to assist them.[865]

Prosecution Witness DA

710. Witness DA, a Hutu soldier stationed at Camp Kigali, testified that, on 6 April 1994, Major Nzuwonemeye of the Reconnaissance Battalion tasked Captain Sagahutu with the mission of preventing the Prime Minister from leaving her residence. Sagahutu in turn dispatched Chief Warrant Officer Bizimungu and several armoured vehicles with the operation. The witness claimed that, on the morning of 7 April, he replenished the ammunition of the soldiers near the Prime Minister's residence. In addition, he overheard radio communications between Major Nzuwonemeye and Captain Sagahutu discussing Bagosora's instructions to complete the mission using any reinforcements as necessary, in particular, to ensure that no one had access to Radio Rwanda. Witness DA also stated that he accompanied Captain Sagahutu to identify the body of the Prime Minister and saw her bloodied naked corpse.[866]

Prosecution Witnesses DAK, XXJ and HP

711. Witness DAK, a Hutu member of the Reconnaissance Battalion, testified that Captain Sagahutu dispatched him to Radio Rwanda and the Prime Minister's residence with instructions to prevent the Prime Minister from gaining access to the radio station.[867] Witness XXJ, a Hutu army officer, overheard a similar order over the radio network.[868] Witness HP, a Hutu member of the Reconnaissance Battalion, attested to overhearing a radio transmission between Captain Sagahutu and Chief Warrant Officer Bizimungu concerning what to do with the Prime Minister. Bizimungu informed Sagahutu that they had found her and asked if he should bring her. Sagahutu responded by asking why he would bring her to the camp. Witness HP stated that, between 4.40 and 6.00 p.m. on 7 April 1994, he transported the body

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[864] T. 27 September 2004 p. 23; T. 28 September 2004 p. 20.
[865] T. 27 September 2004 pp. 24, 29; T. 28 September 2004 pp. 34-41.
[866] T. 17 November 2003 pp. 19-20, 24, 25-27, 30, 32, 33; T. 18 November 2003 pp. 46-49, 52; Prosecution Exhibit 129 (personal identification sheet).
[867] T. 7 November 2003 pp. 35-38; Prosecution Exhibit 121 (personal identification sheet).
[868] T. 14 April 2004 pp.18, 20, 21, 69-70; Prosecution Exhibit 208 (personal identification sheet).

of the Prime Minister, her husband and two other victims from the Prime Minister's residence to Camp Kanombe.[869]

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Prosecution Witness Georges Ruggiu

712. Georges Ruggiu, a Belgian and Italian journalist with RTLM, testified that, on 7 April, a group of Presidential Guard soldiers informed him that they had received orders to go to the Prime Minister's residence. The members of the Presidential Guard explained that, after disarming the Belgian peacekeeping contingent and removing them from the area, they asked the Prime Minister to remove her dress before killing her.[870]

Deliberations

713. In the Chamber's view, General Dallaire and Major Beardsley provided largely consistent and credible accounts of Dallaire's unsuccessful efforts to convince Bagosora to consult with the Prime Minister as well as Dallaire's failed attempts to arrange for her to make a radio address on the morning of 7 April. Both witnesses directly participated in these events, and, in particular, Beardsley's main function at the time was to take contemporaneous notes on what transpired at the meeting and to prepare a cable later that night conveying the information to Maurice Baril, head of the military division of the United Nations Department of Peace Keeping Operations in New York. The cable largely confirms the account as described by the two witnesses.[871]

714. Dallaire testified that he did not inform members of the Crisis Committee of his specific plan to dispatch Belgian peacekeepers to escort the Prime Minister to Radio Rwanda.[872] Beardsley recalled, however, that Dallaire proposed that the Prime Minister address the country during the first part of the meeting with the Crisis Committee. This is reflected in the cable drafted shortly after the meeting.[873] In the context of Rwanda, such an address would clearly be given over the radio. Therefore, in the Chamber's view, Bagosora would have been aware, at the very least, of Dallaire's desire to arrange for the Prime Minister to make a radio address.

715. It also follows from the evidence of Dallaire and Beardsley that Dallaire tasked Colonel Marchal with the mission to escort the Prime Minister to Radio Rwanda. Dallaire gave this order at the Rwandan military headquarters at Camp Kigali in the presence of other Rwandan military officers after returning to the camp with Bagosora from the meeting with Special Representative Booh-Booh. The Chamber notes that Marchal does not recall speaking with Dallaire or seeing him at Camp Kigali at this time.[874] However, the corroborated accounts of Dallaire and Beardsley, confirming that Dallaire spoke with Marchal about the mission at the camp, are more convincing. Therefore, the totality of the evidence indicates

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[869] T. 10 November 2003 p. 49; T. 11 November 2003 pp. 21, 23-24, 27-28; Prosecution Exhibit 122 (personal identification sheet).
[870] T. 16 June 2003 pp. 38-39.
[871] Beardsley, T. 3 February 2005 p. 26. *See also* Prosecution Exhibit 170 (Code Cable of 7 April 1994 from Dallaire to Baril).
[872] Dallaire, T. 22 January 2004 p. 72.
[873] Prosecution Exhibit 170 (Code Cable of 7 April 1994 from Dallaire to Baril: "The FC asked who would speak to the population and suggested the PM Agathe."), para 11.
[874] Marchal, T. 4 December 2006 p. 57.

that senior Rwandan military officials, including Bagosora, were likely aware of this more specific plan.

716. The Chamber considers that Dallaire, Beardsley, Marchal, Colonel Dewez and Sergeant Hutsebaut provided generally consistent and credible evidence concerning the issuance and the execution of the orders ultimately tasking the Belgian peacekeeping contingent with escorting the Prime Minister to Radio Rwanda and securing the station.

717. With respect to the killing of Prime Minister Uwilingiyimana, the Chamber considers that Witnesses XXO and AE provided credible and convincing first-hand accounts of what transpired at her residence from 6 to 7 April 1994. Both witnesses were in a position to closely follow the events, and the Defence generally does not dispute the accuracy of their evidence.[875] From their accounts, it clearly follows that elements of the Presidential Guard and Reconnaissance Battalion participated in the attack on the Prime Minister's residence as well as her murder and sexual assault.

718. Witnesses DA, DAK, HP, XXJ and Ruggiu offered varying degrees of corroboration. They confirmed the key aspects of the testimonies of Witnesses XXO and AE concerning the build-up of soldiers around the Prime Minister's residence, the presence of armoured vehicles and the condition of her body. The Chamber notes that the Defence does not specifically contest their evidence on these general points.

719. The Defence emphasises that the testimonies of Witnesses XXO, AE and other witnesses reflects the chaotic nature of the attack, which shows that it did not conform to an organised military operation. In support of this, the Bagosora Defence points to the evidence of Marchal, who reviewed Witness AE's evidence, and agreed that the killing of the Prime Minister did not appear to be organised, given the disagreement about what to do with her.[876]

720. In the Chamber's view, however, the attack on the Prime Minister's residence in Kiyovu was an organised military operation. The Chamber notes the proximity in time of the attack to the killing of other moderate politicians in the Kimihurura area nearby (III.3.3.3). Furthermore, the use of armoured vehicles and the build-up of soldiers during the course of the night, including elite units of the Rwandan army, also strongly suggest an organised military operation. Moreover, the Chamber simply cannot accept in this context that elite units of the Rwandan army would spontaneously engage in sustained gun and grenade fire with Rwandan gendarmes and United Nations peacekeepers, arrest these individuals, and then brutally murder and sexually assault the Prime Minister of their country unless it formed part of a military operation. The fact that Witness AE observed some soldiers who did not wish to pursue this ultimate course of action in the overall context does not detract from the Chamber's finding.

721. The question remains, however, to what extent this military operation can be attributed to the Accused. Witnesses ATY and DA connected Bagosora directly to the killings. However, the Chamber is not convinced that this evidence is credible and reliable. It is not disputed that Witness ATY's husband was killed along with the Prime Minister. However, some aspects of the witness's evidence appear speculative and lack clarity and coherence. For example, the witness provided a vague explanation of how her husband

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[875] Bagosora Closing Brief, paras. 1683, 1691.
[876] *Id.*; Marchal, T. 4 December 2006 p. 68.

obtained a purported list of assassination targets.[877] She also claimed that she knew all of the members of the Presidential Guard, but became evasive when pressed for the identity of the soldiers who came to her home.[878] The Chamber also has doubt that Bagosora was at her house on the afternoon of 7 April in light of prevailing circumstances in Kigali and evidence that he was at Camp Kanombe at that time.

722. Witness DA claimed that, on the morning of 7 April, Bagosora ordered the Reconnaissance Battalion to use reinforcements, if necessary, to prevent anyone from accessing Radio Rwanda. This follows from a conversation the witness allegedly overheard between Sagahutu and Major Nzuwonemeye. Bagosora was not discussed during the conversation, and the witness inferred that the order came from him since Nzuwonemeye mentioned that he was going to consult a meeting of officers which had been convened by Bagosora. In the Chamber's view, this evidence is not sufficiently reliable to show that Bagosora issued the instructions.

723. Nevertheless, the Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). The organised attack, involving elite units of the Rwandan army, targeted a senior government official. In the Chamber's view, the order for such an assault could only have come from the highest military authority, which at the time was Bagosora. In this respect, the Chamber also bears in mind his refusal to consult with the Prime Minister, his suspicions that she was involved in an attempted *coup d'état*, and his awareness that UNAMIR wanted her to address the nation.

724. The Chamber has not heard sufficient evidence directly implicating Kabiligi, Ntabakuze or Nsengiyumva in this crime.

3.3.3 Officials in Kimihurura

Introduction

725. Each of the Indictments alleges that, on the morning of 7 April 1994, members of the Presidential Guard and Para Commando Battalion killed four important opposition figures in the Kimihurura neighbourhood of Kigali, namely Joseph Kavaruganda, the President of the Constitutional Court; Frédéric Nzamurambaho, the Chairman of the PSD party and Minister of Agriculture; Landoald Ndasingwa, the vice-chairman of the PL and Minister of Labour and Community Affairs; and Faustin Rucogoza, an MDR official and Minister of Information. In support of these allegations, the Prosecution relies primarily on Witnesses Annonciata Mukarubibi, XAO, CJ and EQ, who provided first-hand evidence on the arrest or killing of these officials.[879]

726. The Defence does not dispute that elements of the Presidential Guard killed these political officials. The Ntabakuze Defence, in particular, asserts that the evidence connecting the Para Commando Battalion to these attacks is not reliable or credible. It further argues that, even if members of the Para Commando Battalion were involved in the attack, the

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[877] Witness ATY, T. 27 September 2004 pp. 61-63.
[878] Witness ATY, T. 28 September 2004 pp. 17-18.
[879] Bagosora Indictment, paras. 6.9, 6.38; Kabiligi and Ntabakuze Indictment, para. 6.8; Nsengiyumva Indictment, paras. 6.7, 6.38; Prosecution Closing Brief, paras. 282, 283, 296-305.

section transferred to the Presidential Guard camp in Kimihurura was no longer under Ntabakuze's command.[880]

Evidence

Prosecution Witness Annonciata Mukarubibi

727. Within hours of the downing of Habyarimana's plane on 6 April 1994, Joseph Kavaruganda and his wife Annonciata Mukarubibi observed their neighbour Casmir Bizimungu, a member of the MRND party and the Minister of Health, leaving his home after loading some of his personal property onto a truck. Around midnight, Frédéric Nzamburambaho called his neighbour Kavaruganda and reported that the President was dead. Nzamburambaho also informed Kavaruganda that their neighbour André Ntagerura, a member of the MRND and the Minister of Transport, was being evacuated from his home as well.[881]

728. Sometime after 4.00 a.m. on 7 April, Frédéric Nzamburambaho called his neighbour Joseph Kavaruganda to report that the Kimihurura neighborhood was surrounded and that no one could leave. About 45 minutes later, Annonciata Mukarubibi heard gunshots.[882]

729. Around 5.00 a.m., Joseph Kavaruganda spoke twice with several Rwandan soldiers, whom he believed were members of the Presidential Guard and the Para Commando Battalion. Kavaruganda informed his wife that he thought the group was headed by a Presidential Guard soldier named Captain Kabrera, one of his former students at the military academy. Kavaruganda also reported to his wife that these soldiers wanted to take him away so that he could not administer the oaths of office to the ministers and members of parliament.[883]

730. Kavaruganda believed that the Rwandan soldiers wanted to kill him and called UNAMIR around 6.00 a.m. for advice and to state that he was under attack. He was advised to remain at his residence and protect his family from gunfire. Kavaruganda and his family then hid on the floor in their bathrooms. A short time later, the soldiers broke into Kavaruganda's home and found his children. A Rwandan soldier held a gun to the head of Kavaruganda's daughter as she begged her father to open his bedroom door. Kavaruganda and his wife emerged from their hiding place, and the soldier lowered his weapon.[884]

731. The soldiers identified themselves as members of the Presidential Guard and the Para Commando Battalion. They placed Kavaruganda, his wife and two children onto a red pickup truck emblazoned with "MINADEF" on the side and headed toward the Presidential Guard Camp. After travelling about 200 metres, Captain Kabrera ordered Mukarubibi and her children off the truck. They returned to their residence around 6.30 or 7.00 a.m., where soldiers were looting their property. The soldiers asked Mukarubibi for money. She told them that the other soldiers had already taken her husband's money. A few minutes later, Captain

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[880] Bagosora Closing Brief, paras. 1003, 2286, pp. 543-544; Ntabakuze Closing Brief, paras. 1249-1290; Kabiligi Closing Brief, para. 202. The Nsengiyumva Defence does not address these allegations.
[881] T. 27 November 2003 pp. 18-19; Prosecution Exhibit 139 (personal identification sheet). The Prosecution Brief and the transcripts refer to Annonciata Mukarubibi as Annonciata Kavaruganda. Her personal identification sheet, which she affirmed as correct, uses the name Annonciata Mukarubibi.
[882] T. 27 November 2003 p. 20.
[883] *Id.* pp. 20-22.
[884] *Id.* pp. 22-24.

Kabrera returned with Joseph Kavaruganda who attempted to give his wife his identity card and 5,000 Rwandan Francs. The soldiers took the money and threw the identity card to the floor. Kabrera then left with Joseph Kavaruganda, and his wife never saw him again. Two days later, she heard over the radio that he was dead.[885]

732. The soldiers who remained at Kavuraganda's residence continued looting and beating Kavaruganda's family members. They then broke up into smaller groups, and one contingent went to the neighbouring Nzamburambaho residence.[886]

Prosecution Witness Didier Hutsebaut

733. In the early morning hours of 7 April, Sergeant Hutsebaut, a Belgian peacekeeper, observed extensive troop movements of the Rwandan army from his post in the Kimihurura neighbourhood of Kigali. He heard gunfire and grenade explosions in that neighbourhood from around 6.00 a.m. From his post, he saw ordinary soldiers, gendarmes and members of the Para Commando Battalion going from house to house.[887]

Prosecution Witness CJ

734. Witness CJ, a Hutu staying with Frédéric Nzamburambaho, was awakened around 4.00 a.m. by the sound of increased gunfire. The Rwandan gendarmes guarding Nzamburambaho advised the Minister to hide in nearby maize and sorghum fields. The witness and members of Nzamburambaho's family, however, remained in the residence. Witness CJ watched as the soldiers entered Kavaruganda's neighbouring house.[888]

735. Around 7.00 a.m., Witness CJ watched as the soldiers came from Kavaruganda's house to Nzamburambaho's home. The witness also identified some soldiers as members of the Presidential Guard and others as gendarmes. They unsuccessfully searched the residence for Nzamurambaho and then ordered everyone in the house to lie face down in the living room. The soldiers beat Nzamurambaho's family with farm implements which they found in the house before shooting them in the head. The witness managed to escape and hide in the ceiling of Nzamurambaho's room. From there, he heard the soldiers return to the house with Nzamurambaho and ask for money. The soldiers then shot Nzamurambaho in the head.[889]

Prosecution Witness XAO

736. Witness XAO, a Tutsi member of the Para Commando Battalion, testified that, on the morning of 7 April, he was stationed outside the Camp Kimihurura. In the preceding days, the Second Company of the Para Commando Battalion had been transferred to Camp Kimihurura and placed under the command of the Presidential Guard. Around 6.30 a.m., he saw six Presidential Guard soldiers escorting a man in civilian dress into Camp Kimihurura. The soldiers explained that they had arrested the person who was responsible for swearing in the new Rwandan President. The witness later learned that the arrested person was

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[885] *Id.* pp. 24-31.
[886] *Id.* p. 31.
[887] T. 2 December 2003 pp. 4, 26-32; Prosecution Exhibit 148 (personal identification sheet). For example, Hutsebaut and other UNAMIR peacekeepers were forcibly denied entry at the home of Félicien Ngango, a prominent member of the PSD, by around 25 members of the Rwandan armed forces, including gendarmes, Para Commandos, and regular soldiers, as the peacekeepers attempted to evacuate the family. The witness later heard screams and gunfire coming from the house.
[888] T. 25 November 2003 pp. 43, 44-45, 52-53.
[889] *Id.* pp. 45-48, 52, 53.

Kavaruganda, the President of the Constitutional Court. Around 30 minutes later, the witness's commanding officer, Lieutenant Gahutu, stated that Kavaruganda had been shot.[890]

737. Around 10.00 a.m., six Presidential Guard soldiers escorted Faustin Rucogoza, his wife, two daughters and a domestic servant into Camp Kimihurura. Witness XAO did not recognise Rucogoza but recalled soldiers taunting him with respect to his position as Minister of Information. One of the soldiers escorting him and his family shouted, "kill this dog". The witness watched as Murwanashyaka, a member of the Second Company of the Para Commando Battalion, shot and killed all of them. Murwanashyaka then laughed, and the soldiers threw the bodies in a trench. Witness XAO, who was also a member of Murwanashyaka's company, stated that no one attempted to prevent the killings or to punish anyone for them.[891]

Prosecution Witness EQ

738. Witness EQ, a Hutu night watchman, testified that, around 7.00 a.m., 20 members of the Presidential Guard stormed Landoald Ndasingwa's residential compound, firing guns and grenades at the doors and windows. After gaining access to the house, they demanded money from Ndasingwa and gathered his family in a bedroom. The witness was forced to watch as the soldiers first shot Ndasingwa and then his mother, his children, his wife and a domestic servant. Witness EQ and the gendarmes guarding the Ndasingwa residence then left the compound and walked past the Kavaruganda residence. The witness saw Captain Kabrera of the Presidential Guard in a red pickup truck in front of Kavaruganda's home. Around 8.00 a.m., as the witness walked toward an intersection leading to the Presidential Guard camp, he saw a white Renault which he claimed belonged to Bagosora.[892]

Prosecution Witness XXO

739. Witness XXO, a Hutu gendarme, heard reports at his post at the Prime Minister's residence of attacks on ministerial homes in Kimihurura neighborhood by members of the Presidential Guard.[893]

Prosecution Witness DCB

740. Witness DCB, a Hutu member of the Presidential Guard stationed at Camp Kimihurura, confirmed that the Second Company of the Para Commando Battalion under the command of Lieutenant Gahutu was transferred to the camp. Around 1.00 a.m. on 7 April, the witness was dispatched to Camp Kanombe, but he returned to Camp Kimihurura around 9.00 a.m. later that day. Around mid-day, he saw the dead bodies of five people lying in a trench near the camp's second entrance. A soldier informed him that Faustin Rucogoza was one of those who were killed. Sometime before noon, Witness DCB saw Bagosora and a number of other soldiers enter the camp in a Mercedes Benz jeep and drive toward the office of the camp commander. Around the same time, he also saw soldiers escorting several

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[890] T. 11 November 2003 pp. 56-59, T. 12 November 2003 pp. 1, 15; Prosecution Exhibit 124 (personal identification sheet).
[891] T. 11 November 2003 p. 60, T. 12 November 2003 pp. 1-5.
[892] T. 13 February 2004 pp. 7-20, 23-25; Prosecution Exhibit 182 (personal identification sheet).
[893] T. 20 November 2003 pp. 17-18; Prosecution Exhibit 133 (personal identification sheet).

prominent officials into the camp, including André Ntagerura, Casimir Bizimungu and Ferdinand Nahimana.[894]

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Kabiligi Defence Witness André Ntagerura

741. André Ntagerura, a Hutu Minister in the interim government, acknowledged that he sought refuge at the Presidential Guard camp on the night of 6 April on the advice of the gendarmes guarding his residence.[895]

Deliberations

742. The Chamber considers that Witnesses Annonciata Mukarubibi, CJ and EQ provided largely credible first-hand accounts of the attacks on the Kavaruganda, Nzamburambaho and Ndasingwa residences in Kimihurura. Sergeant Hutsebaut corroborated certain aspects of their evidence, in particular the timing of the general military activities in the area. These witnesses were directly involved in the events and could closely follow what transpired. Witnesses Mukarubibi and CJ gave a consistent time frame and chronology for the attacks at the Kavaruganda and Nzamburambaho residences. The Chamber therefore accepts the main features of the evidence of these witnesses.

743. There is a discrepancy between the time of 7.00 a.m., which Witness EQ offered for the attack on the Ndasingwa residence, and the credible evidence from Beardsley and Marchal of UNAMIR, who said that they spoke with Ndasingwa and his wife as late as 11.00 a.m.[896] In the Chamber's view, this does not undermine Witness EQ's overall testimony about the attack, but does suggest that the attack on the Ndasingwa residence probably occurred later in the morning than explained by him.

744. Witness XAO provided a credible first-hand account of members of the Presidential Guard bringing Joseph Kavaruganda and Faustin Rucogoza to the Camp Kimihurura. As a member of the Para Commando Battalion stationed at the camp, he would have been in a position to recognise members of the Presidential Guard. In addition, though the witness did not personally recognise Kavaruganda and Rucogoza, the soldiers accompanying them referred to their official positions. The witness's estimate of the timing of Kavaruganda's entry into the camp is similar to the time frame provided by Annouciata Mukarubibi for when he was taken away toward the camp.[897] Furthermore, the testimony of Witness DCB who saw the dead bodies of Rucogoza and his family adds some corroboration to Witness XAO's account of that killing.

745. It is not disputed that members of the Presidential Guard participated in the attacks on the Kavaruganda, Nzamburambaho and Ndasingwa residences. This also follows from

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[894] T. 5 February 2004 pp. 105-106, 108-109; T. 6 February 2004 pp. 2-6, 9-12, 23, 37, 39, 43-46, 53-55; Prosecution Exhibit 175 (personal identification sheet).

[895] T. 28 November 2006 pp. 34-35; Kabiligi Defence Exhibit 119 (personal identification sheet).

[896] Beardsley, T. 3 February 2004 pp. 37-38 (testifying that he spoke with Ndasingwa from around 9.00 a.m. to 10.00 a.m.); Marchal, T. 4 December 2006 p. 66 (stating that he conversed with Ndasingwa and his wife around 11.00 a.m.).

[897] The Chamber notes the discrepancy between Witness XAO's testimony that he heard about the killing of Joseph Kavaruganda around 7.00 a.m. and his prior written statement to Tribunal investigators in which he indicated that he learned this news around 2.00 p.m. The witness explained that the investigator was mistaken in taking down his statement. *See* T. 12 November 2003 p. 20. The Chamber accepts this explanation. The statement was not tendered into evidence.

Witness Mukarubibi, who explained that the soldiers identified themselves as members of the Presidential Guard and led her husband toward Camp Kimihurura. These same soldiers then went to the Nzamburambaho residence. Witness CJ, who attended school in Camp Kigali, and Witness EQ, who had a military background, were also able to identify many of the soldiers as part of the Presidential Guard.[898] The account of Witness XAO, discussed above, corroborates the role of the Presidential Guard in the attacks that morning and in ordering the killing of Faustin Rucogoza. Considering this evidence together, the Chamber finds beyond reasonable doubt that members of the Presidential Guard participated in these attacks.

746. The question remains whether members of the Para Commando Battalion also participated in these attacks. It is not disputed that the Second Company of the Para Commando Battalion was transferred to Camp Kimihurura to reinforce the Presidential Guard a few days before the death of Habyarimana. According to Annonciata Mukarubibi, several of the soldiers attacking her home identified themselves as Para Commandos. These soldiers also asked Mukarubibi's daughter if they knew her from Camp Kanombe, where the Para Commando Battalion was located. Sergeant Hutsebaut saw members of the Para Commando Battalion in the Kimihurura area on the morning of 7 April. Furthermore, the Chamber notes the first-hand account of Witness XAO that a member of the Para Commando Battalion killed Faustin Rucogoza at Camp Kimihurura on orders from a member of the Presidential Guard.

747. Considering the totality of the evidence, the Chamber is satisfied beyond reasonable doubt that elements of the Para Commando Battalion stationed at Camp Kimihurura participated in the attack on Kavaruganda residence and in the killing of Faustin Rucogoza. However, the Chamber notes the testimony of Witness XAO that the Para Commandos at Camp Kimihurura were under the command of the Presidential Guard.[899] The Prosecution has not pointed to any material refuting this aspect of Witness XAO's account.

748. The Chamber now turns to evidence connecting Bagosora to Camp Kimihurura and its vicinity during the killings. Witness EQ claimed that he saw a white Renault belonging to Bagosora being driven by his military escorts around 8.00 a.m. on 7 April.[900] However, the witness did not see Bagosora in the vehicle, and his knowledge of the Accused's official vehicle as well as his military escorts was several years old. Thus, this testimony has limited probative value.

749. Sometime before noon on 7 April, Witness DCB identified Bagosora in a moving vehicle filled with an unknown number of soldiers. He explained that this was the first time that he had seen Bagosora come to the Presidential Guard camp. He recognised Bagosora from having seen the Accused occasionally at Camp Kanombe several years earlier. The

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[898] Witness CJ, T. 25 November 2003 p. 48; Witness EQ, T. 13 February 2004 p. 20.
[899] T. 12 November 2003 p. 15 ("Q. Did your company not operate under the command of the officer commanding the presidential guard? A. The platoon had been transferred to the presidential guard; in other words, therefore we had to obey the command of the officer commanding the presidential guards. Q. So you do confirm, Witness, that Major Ntabakuze was not in charge of commanding the operations regarding the defence of the camp in which you were involved? A. No, he was not the one. Q. Do you also confirm that the commander of your company was Lieutenant Gahutu? A. That is correct. Q. Do you further confirm that it was Lieutenant Gahutu -- or that Lieutenant Gahutu got his orders from the commander of the Kimihurura camp? A. That is correct, because it was in that camp that we were.").
[900] T. 13 February 2004 pp. 20, 23, 31.

witness further acknowledged that a number of similar vehicles were in service in the Rwandan army.[901]

750. Witness DCB's testimony should be considered in the context of corroborated evidence that Bagosora participated in a meeting with the United States Ambassador at 9.00 a.m. and then chaired a meeting at ESM from around 10.00 a.m. until 12.30 p.m. (III.3.2.3; III.3.2.4). The Chamber cannot exclude the possibility that Bagosora could have stopped by Camp Kimihurura before attending the meeting at ESM. However, his participation in these meetings raises sufficient doubt about his presence at Camp Kimihurura on the morning of 7 April.[902]

751. The Chamber finds that the Prosecution has proven beyond reasonable doubt that, on the morning of 7 April 1994, elements of the Presidential Guard and Para Commando Battalion killed Joseph Kavaruganda, the President of the Constitutional Court; Frédéric Nzamurambaho, the Chairman of the PSD party and Minister of Agriculture; Landoald Ndasingwa, the vice-chairman of the PL and Minister of Labour and Community Affairs; and Faustin Rucogoza, an MDR official and Minister of Information. In particular, members of the Second Company of the Para Commando Battalion stationed at Camp Kimihurura played a role in the arrest of Joseph Kavaruganda and the killing of Faustin Rucogoza. At the same time these leading opposition figures were killed, the same elements of the Rwandan army provided sanctuary to prominent members of the MRND party at Camp Kimihurura, such as Ntagerura. It cannot be excluded that the purpose of the killings of these officials and the Prime Minister was to prevent the implementation of the Broad-Based Transitional Government, envisioned under the Arusha Accords. However, the evidence does not point unambiguously in this direction. It remains possible that the murders were primarily directed at eliminating political opponents or those viewed as sympathetic to the RPF.

752. The killing of the opposition political officials consisted of an organised military operation, in particular when viewed together with the evidence of the killing of Prime Minister Agathe Uwingiliyimana (III.3.3.2), and considering the involvement of elite military units. The Chamber has found that Bagosora had authority over the Rwandan military at the time of the attack (Section IV.1.2). Bagosora concedes that he was aware of the killings. The organised attack involving elite units of the Rwandan armed forces targeted senior government officials. In the Chamber's view, the order for such an assault could only have come from the highest military authority, which at the time was Bagosora.

753. The Prosecution has not presented sufficient evidence to prove beyond reasonable doubt that the members of the Second Company of the Para Commando Battalion who participated in the killings were acting under the authority of Ntabakuze. The Chamber has no basis for implicating Kabiligi or Nsengiyumva in these crimes.

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[901] T. 6 February 2004 pp. 37, 46, 53-55.

[902] Moreover, the Chamber notes that Witness DCB allegedly saw André Ntagerura arriving at Camp Kimihurura around the same time as Bagosora. *See* T. 6 February 2004 p. 3. Ntagerura, however, testified that he arrived the preceding night. *See* T. 28 November 2006 pp. 34-35.

3.4 Killing of 10 Belgian Peacekeepers, 7 April

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Introduction

754. Each of the Indictments alleges that elements of the Rwandan military killed 10 Belgian peacekeepers at Camp Kigali on the morning of 7 April 1994 after arresting them at the residence of Prime Minister Uwilingiyimana. The death of the peacekeepers prompted the withdrawal of most of UNAMIR's contingents, removing a major obstacle to the pursuit of the massacres. The Prosecution primarily relies on the evidence of Witnesses XAF, CE, AH, DA, KJ and XXQ and Roméo Dallaire.[903]

755. The Bagosora Defence emphasises the circumstantial nature of the Prosecution evidence. In particular, the attack on the peacekeepers was a spontaneous "mutiny" and not planned or ordered by Bagosora. Although he lacked authority over the assailants, he tried to stop the attack, having been informed of it after the meeting at ESM. Reference is made to Witnesses Apedo, R-3, R-6 and RN-1. The Ntabakuze and Kabiligi Defence teams submit there is no evidence connecting their clients to the attack.[904]

Evidence

Prosecution Witness XAF

756. Witness XAF, a Hutu member of the Reconnaissance Battalion stationed at Camp Kigali in April 1994, testified that, around 9.30 and 10.00 a.m. on 7 April, he saw two dead Belgian peacekeepers. Five disabled Rwandan soldiers were beating two other Belgians to death with crutches. A crowd of around 100 Rwandan soldiers and others at the camp stated in Kinyarwanda that the Belgians were responsible for the death of President Habyarimana. The Rwandan soldiers then tried to convince several other peacekeepers to come out of a nearby office, which was used by UNAMIR at the camp, with promises that they would not be harmed.[905]

757. The witness saw two Belgian peacekeepers emerge. A camp guard shot and killed one of them, and disabled soldiers beat the other to death with crutches. Two other Belgian peacekeepers also left the office with around six African peacekeepers. The disabled soldiers

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[903] Bagosora Indictment, paras. 6.9-6.10, 6.22, 6.23; Kabiligi and Ntabakuze Indictment, paras. 6.8-6.9, 6.15, 6.16; Nsengiyumva Indictment, paras. 6.7-6.8; Prosecution Closing Brief, paras. 306-329, pp. 753-757, 826-829, 876. The Bagosora and Ntabakuze and Kabiligi Indictments more specifically allege that, on arrival at Camp Kigali around 9.00 a.m., Rwandan soldiers, in the presence of officers, attacked the Belgian peacekeepers killing four instantly. Five Ghanaian peacekeepers were ultimately released, but the attacks against the surviving Belgians continued over the course of the next several hours until all were killed. The Bagosora Indictment alleges that, during the course of these attacks while several peacekeepers were still alive, Lt. Colonel Nubaha, the camp commander, allegedly told Bagosora about the risk of death to the Belgian soldiers, and Bagosora "did not take any decision and carried on with the meeting" at the nearby ESM. The Bagosora and Kabiligi and Ntabakuze Indictments further place the killing of the 10 Belgian peacekeepers in a larger context of an ultimately successful effort by "certain members of the extremist political circles" to provoke the withdrawal of the Belgian contingent, which also included negative propaganda, demonstrations, and a plan to turn the *Interahamwe* against Belgian troops. *See* Bagosora Indictment, paras. 6.17-6.21, 6.24-6.26; Kabiligi and Ntabakuze Indictment, paras. 6.11-6.14, 6.16-6.17.

[904] Bagosora Closing Brief, paras. 1072-1116; Kabiligi Closing Brief, paras. 202-204; Ntabakuze Closing Brief, paras. 2426-2427. The Nsengiyumva Defence does not address these allegations.

[905] T. 9 February 2004 pp. 2-8, 10, 25-27, 29, 42-43; Prosecution Exhibit 178 (personal identification sheet).

killed the two Belgian peacekeepers. The African peacekeepers were informed that the soldiers had no problem with them and were shown out of the camp. While these attacks were going on, Witness XAF saw Major Ntuyahaga, Captain Ndangurura and Lieutenant Munana pass by the crowd and do nothing to stop it.[906]

758. Around 10.00 a.m., the two surviving Belgian peacekeepers were able to kill and disarm a Rwandan soldier who tried to enter the office. These peacekeepers then fired into the crowd and dispersed it. Around 2.30 to 3.00 p.m., Witness XAF saw Major Ntuyahaga speak briefly with Major Nzuwonemeye, the commander of the Reconnaissance Battalion. After that, Major Ntuyahaga boarded an armoured vehicle with several members of the Reconnaissance Battalion, who were armed with a grenade launcher, and headed towards the camp entrance near the office with the two surviving peacekeepers. The witness then heard six shots fired and later saw the bodies of the remaining Belgian peacekeepers being carried out of the office.[907]

Prosecution Witness CE

759. Witness CE, a soldier stationed at Camp Kigali, testified that, around 8.00 a.m. on 7 April, a minibus carrying Belgian and African peacekeepers arrived at the camp and let them off near the entrance. About 30 minutes later, a Rwandan soldier at the camp started saying to other soldiers in the area that these peacekeepers had killed President Habyarimana. Another 15 minutes passed before around 40 soldiers, composed of the various units stationed at the camp, including disabled soldiers, surrounded the peacekeepers and began beating them to death. Some of the peacekeepers were able to seek refuge in the nearby office that UNAMIR used at the camp.[908]

760. The witness stated that he saw Colonel Nubaha, the camp commander, try to intervene and stop the attackers, but they did not listen to him. About 20 to 30 minutes after the attack began, one of the peacekeepers fired into the crowd of soldiers, dispersing it. Witness CE was then ordered to a defensive position in another part of the camp and later heard gunfire coming from the area where the peacekeepers were located.[909]

Prosecution Witness AH

761. Witness AH, a soldier stationed at Camp Kigali who had Tutsi family members, stated that, at around 9.00 a.m. on 7 April, he saw 10 unarmed Belgian peacekeepers being brought into the camp on foot by members of the Presidential Guard. The officer commanding the contingent of Presidential Guard soldiers spoke with a group of assembled soldiers at the camp. The witness heard later that the officer told the soldiers that the peacekeepers were responsible for the death of President Habyarimana. After that exchange, around 50 soldiers from the camp surrounded the peacekeepers and began beating them to death. Disabled soldiers joined the attack somewhat later. Around 9.30 a.m., Colonel Nubaha tried to intervene, but the assailants refused to listen to him.[910]

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[906] T. 9 February 2004 pp. 5-8, 10, 27, 29, 42-43.
[907] *Id.* pp. 7, 9-13, 27, 28, 30-32, 42.
[908] T. 13 April 2004 pp. 2-3, 35-37, 51, 53-56, 58; Prosecution Exhibit 205 (personal identification sheet).
[909] T. 13 April 2004 pp. 37-38, 55-59.
[910] T. 19 February 2004 pp. 27-29, 31, 32, 38, 42-46; T. 20 February 2004 pp. 1-7, 24, 39; Prosecution Exhibit 194 (personal identification sheet). Witness AH's ethnicity is unclear.

762. After an hour, six of the peacekeepers were dead, and the surviving four took refuge in the nearby office used by UNAMIR at the camp. The remaining peacekeepers began exchanging fire with the attacking soldiers for four hours. Around 2.00 p.m., Witness AH saw a soldier from the Reconnaissance Battalion fire approximately five grenades into the office, killing the remaining four peacekeepers.[911]

Prosecution Witness DA

763. Witness DA, a Hutu soldier stationed at Camp Kigali, explained that, at some time before 11.00 a.m., he saw Belgian peacekeepers sitting on the ground in the presence of a number of Rwandan soldiers as well as Colonel Nubaha. The witness heard that the peacekeepers were being questioned in connection with the death of President Habyarimana. He learned later that eight peacekeepers were beaten to death and that two other Belgian peacekeepers, who were stationed at the camp, were killed with grenades between 1.30 and 2.00 p.m. in the office that UNAMIR used.[912]

Prosecution Witness Roméo Dallaire

764. General Dallaire, the force commander of UNAMIR, testified that, around 11.00 a.m. on 7 April, he and Major Peter Maggen passed the main gate of Camp Kigali in a vehicle on their way to a meeting of senior officers of the Rwandan military. A major in the Rwandan gendarmerie, who had volunteered to drive Dallaire, spoke with the soldiers at the camp gate and learned that the meeting was being held at ESM. Dallaire noted that Camp Kigali was in a state of high alert. He also briefly glimpsed two injured or dead bodies in Belgian army uniforms about 30 metres inside the camp's gate. When Dallaire arrived at ESM, he found Captain Apedo, a Togolese military observer from UNAMIR, and five Ghanaian peacekeepers who had been guarding the Prime Minister. Captain Apedo informed Dallaire that Belgian peacekeepers had been taken to Camp Kigali where they were being beaten. Dallaire proceeded to the meeting at ESM where he raised the issue of the Belgian peacekeepers with General Ndindiliyimana after the meeting. Although he spoke briefly to Bagosora when he arrived and addressed the officers present, he did not mention the situation he observed at Camp Kigali.[913]

765. After the meeting at ESM, Dallaire went to the Ministry of Defence around 12.15 p.m. in order to meet with Bagosora and Ndindiliyimana. A Rwandan officer informed Dallaire that Bagosora was having lunch. While he waited, Dallaire communicated with his headquarters and began receiving reports that some of the Belgian soldiers at Camp Kigali might be dead. Bagosora and Ndindiliyimana arrived around 2.00 p.m. Dallaire immediately asked them what was happening in connection with the Belgian peacekeepers. Bagosora responded that he went to Camp Kigali to intervene and that he had begun to take action. He also told Dallaire that the camp was in chaos and that none of the officers had been able to bring the situation under control. Dallaire said that he would go to the camp, but Bagosora refused, stating that he would be killed as the situation was out of hand and that they would continue to work on it. Dallaire informed Bagosora that he was receiving reports that the

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[911] T. 19 February 2004 pp. 29-31, 42; T. 20 February 2004 pp. 4, 6-7.
[912] T. 18 November 2003 pp. 54-57; T. 19 November 2003 pp. 1-3; Prosecution Exhibit 129 (personal identification sheet).
[913] T. 20 January 2004 pp. 47-49; T. 22 January 2004 pp. 75-78.

Belgians were being blamed for killing President Habyarimana. According to Dallaire, Bagosora responded that "it is time to get the Belgians out of here fast".[914]

766. Around 6.00 p.m., Dallaire participated in a Crisis Committee meeting at the Ministry of Defence, chaired by Ndindiliyimana. Dallaire raised the issue of the Belgian peacekeepers again, and a number of individuals made unsuccessful efforts to get information. Dallaire finally stopped the meeting, saying nobody would leave until he got his men. Fifteen minutes after that, Ndindiliyimana made a phone call and confirmed that the peacekeepers had been killed and that their bodies were at the Kigali hospital. Dallaire then walked to the hospital where he saw the bodies of the Belgian peacekeepers piled in the hospital's morgue.[915]

Prosecution Witnesses XXQ and KJ

767. Witness XXQ, a Hutu army officer at Camp Kigali, saw a telegram on the morning of 7 April, prepared as a result of the Crisis Committee meeting the previous night, which blamed the Belgians for killing President Habyarimana.[916] Witness KJ, a gendarme of mixed Hutu-Tutsi ancestry, testified that, between 7 and 8 April at the gendarmerie camp in Kibuye prefecture, he saw a telegram emanating from the Ministry of Defence, stating that Belgian peacekeepers had killed President Habyarimana and that they should be brought to the nearest military camp.[917]

Bagosora

768. Bagosora testified that, after the meeting at ESM around 12.00 or 12.15 p.m., he returned to his office at the Ministry of Defence and tried to contact Colonel Nubaha for an update on the problem at Camp Kigali mentioned by Nubaha during the meeting (III.3.2.4). Bagosora did not proceed directly to the camp because he had heard gunshots coming from there during the meeting and was concerned for his safety. Nubaha's secretary informed Bagosora that several Belgian peacekeepers had been killed and that others were being fired on by soldiers at the camp. Bagosora then went to Camp Kigali accompanied by two escorts and found a mob of soldiers armed with guns, crutches and blocks of concrete. He saw no officers present. He addressed the crowd and asked them to return the bodies of the dead peacekeepers. The soldiers refused and said they would not return the bodies until the peacekeepers, who had killed one of the Rwandan soldiers, were dead. Bagosora was threatened and called a traitor. He withdrew and returned to the Ministry of Defence and contemplated what to do to bring the situation under control.[918]

769. After returning to his office, Bagosora told Dallaire that he had been unsuccessful at quelling the chaos at Camp Kigali, that four of the Belgian peacekeepers had been killed, but that others were still alive in the camp's UNAMIR office. According to Bagosora, Dallaire was silent and went to the Ministry's communication's centre. Dallaire returned only to pass on a message he had received from the RPF.[919]

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[914] T. 19 January 2004 pp. 42-44, 47-48, 66; T. 22 January 2004 pp. 75-76, 79-80.
[915] T. 20 January 2004 pp. 51-53.
[916] T. 13 October 2004 pp. 29, 43-44; Prosecution Exhibit 316 (personal identification sheet).
[917] T. 19 April 2004 pp. 55-56; Prosecution Exhibit 212 (personal identification sheet). Witness KJ did not see the signature on the telegram, but explained that it would normally be signed by Bagosora.
[918] T. 8 November 2005 pp. 6-8, 11, 20-22, 24-25.
[919] *Id.* pp. 21-22, 25-26.

Bagosora Defence Witness Kodjo Apedo

770. Captain Apedo, a Togolese peacekeeper with UNAMIR, was stationed at Camp Kigali in April 1994 as a military observer monitoring the weapons stores at the camp. He spent the night of 6 April at Camp Kigali in the small office assigned to UNAMIR located near the camp's gate. Apedo awoke to the sounds of gunfire around 5.00 to 5.30 a.m. He made a brief patrol around the camp and its perimeter and observed armed soldiers moving about and two roadblocks manned by soldiers outside the camp. Around 6.30 a.m., he returned, and the commander of the headquarters company informed him that the weapons stores had to be opened because there was now a state of war due to President Habyarimana's death. Apedo returned to UNAMIR's office at the camp to prepare a situation report. The camp commander, Colonel Nubaha, then held a general assembly.[920]

771. Around 9.00 a.m., a minibus carrying 10 Belgian and five Ghanaian peacekeepers entered the camp. The minibus dropped the peacekeepers off in front of the UNAMIR office at the camp. Captain Apedo and Lieutenant Lotin, who was in command of the arriving Belgian contingent, went into the UNAMIR office to discuss what had transpired. Lotin briefly informed Apedo that the peacekeepers had been posted at the Prime Minister's residence and that the Rwandan soldiers had disarmed them, promising to take them to a safe place. Apedo reported this to his superiors and then gave Lotin his Motorola radio in order to contact his commander.[921]

772. After this brief exchange, Apedo saw Rwandan soldiers at the camp, including disabled ones, beating the Belgian and Ghanaian peacekeepers with butts of their weapons, belts and sticks. The attackers refused Apedo's pleas to stop the attack, stating that the peacekeepers had killed President Habyarimana. Some Rwandan officers, including Lieutenant Munyana, also asked the crowd to stop the attack without success. Apedo urged the peacekeepers to crawl under a UNAMIR vehicle and take shelter in the office. All but four or five Belgian peacekeepers made it to the office, which Apedo then locked. A Rwandan soldier armed with a machine-gun demanded that Apedo move from the front of the office or he would be shot.[922]

773. A sergeant from the Reconnaissance Battalion, who had received some military training in Togo, pulled Apedo away from the door into a nearby office, urging him not to return for his safety. He then posted a soldier to guard Apedo. During a lull in the frenzy, Apedo returned to the UNAMIR office to get his radio to report to his superiors. The radio was taken away from him by a Rwandan soldier. A Rwandan lieutenant a short time later threatened to kill Apedo. However, another Rwandan soldier told the assailant that he could not kill Apedo because he was Togolese. The Rwandan lieutenant responded that "Whether he is a black or a white, UNAMIR is UNAMIR" and placed a gun to Apedo's head. Apedo was saved when another Rwandan soldier pulled the gun away.[923]

774. Several staff officers from the camp, including Colonel Nubaha, attempted to stop the attackers from lynching the Belgian peacekeepers. Nubaha and Apedo tried to place the four injured peacekeepers in a vehicle to take them to a hospital, but the crowd of attackers prevented this. Nubaha then left the camp and walked toward ESM around 10.00 or 10.30

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[920] T. 7 September 2006 pp. 29-31, 33-37; Bagosora Defence Exhibit 350 (personal identification sheet).
[921] T. 7 September 2006 pp. 37-39, 56-58.
[922] *Id.* pp. 39-41, 44, 55-56.
[923] *Id.* pp. 41-43.

a.m. Nubaha sent one of his escorts who brought Apedo out of the camp. As the escort said that the soldiers did not have any problem with the "blacks", Captain Apedo asked him to bring out the Ghanaian peacekeepers and do everything he could to assist the Belgians. The escort returned with the five Ghanaian peacekeepers, but said he could not do anything for the Belgians because they would have been lynched on the spot.[924]

775. Apedo remained with the Ghanaian peacekeepers at ESM. He then heard gunfire coming from the camp for the first time since the attack against the peacekeepers began. The escort said that the Belgians were probably being killed. Apedo then saw General Dallaire arrive at ESM. He informed Dallaire that four Belgian peacekeepers had been seriously injured, but that six remained alive in the UNAMIR office in the camp. Dallaire asked a major in the Rwandan gendarmerie to drive Apedo and the Ghanaian peacekeepers back to UNAMIR headquarters.[925]

Bagosora Defence Witness RO-3

776. Witness RO-3, a Hutu injured soldier at Camp Kigali in April 1994, testified that, between 7.30 and 9.00 a.m. on 7 April, he heard several soldiers at the camp saying that the UNAMIR peacekeepers who had killed President Habyarimana were at the parade ground. The witness saw between 15 and 17 peacekeepers, who people said were from Belgium and Ghana, in front of the office that UNAMIR used in the camp. A number of disabled soldiers approached the peacekeepers and began beating them with their crutches. Over the course of the next hour, the Rwandan soldiers continued to beat the peacekeepers as a succession of Rwandan officers, including Colonel Nubaha, Lt. Colonel Kanyandekwe and Chief Warrant Officer Sebutinyongera unsuccessfully tried to intervene. The witness heard the assailants refer to these officers as accomplices.[926]

777. The witness was frightened by the violence so he withdrew several times during the attack, but felt compelled to return eight to 10 times to see what was happening. At one point when Witness RO-3 returned, some of the peacekeepers had taken refuge inside the UNAMIR office. Nubaha was preventing the attackers from throwing grenades into it. According to the witness, most of the crowd of soldiers became "crazy". After Nubaha left, a soldier with a Kalashnikov gun tried to force the peacekeepers out of the office, but was taken hostage and killed. The peacekeepers then fired and dispersed the crowd. One of the peacekeepers tried to flee the camp and was shot.[927]

778. Bagosora arrived at the camp between 12.30 and 1.30 p.m. and addressed the attackers. At that time, several peacekeepers were still alive in the office. According to Witness RO-3, Bagosora told the 70 to 80 soldiers on the scene to stop the attack and to give him the bodies of the peacekeepers that had been killed. According to the witness, the crowd responded with anger and called Bagosora an accomplice. The assailants began shooting in the air, and Bagosora left immediately after. The witness returned around 10 minutes later. He subsequently heard grenades being fired, and the remaining peacekeepers were killed.[928]

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[924] *Id.* pp. 42-45.
[925] *Id.* pp. 45-48.
[926] T. 5 May 2005 pp. 3-6, 8-9, 12-23, 26, 30-31, 36-38; Bagosora Defence Exhibit 162 (personal identification sheet).
[927] T. 5 May 2005 pp. 8-9, 12-19.
[928] *Id.* pp. 15-30.

Bagosora Defence Witness RO-6 40520

779. Witness RO-6, a Hutu army officer in Camp Kigali, testified that around 9.00 a.m. on 7 April, he saw Major Ntuyahaga arrive at the camp in a minibus along with a number of Belgian and Ghanaian peacekeepers. According to the witness, around 50 disabled soldiers approached the peacekeepers and began searching them and taking their personal belongings. One Rwandan soldier held up a piece of paper, which he had found on one of the peacekeepers, saying that it was a list of people to be killed. After that, the Rwandan soldiers began beating the Belgian peacekeepers with crutches and stones while leaving the Ghanaian peacekeepers unharmed. There were shouts that the peacekeepers had killed the President. Several Rwandan officers tried unsuccessfully to turn back the attackers, but Colonel Nubaha succeeded in getting the peacekeepers into the office used by UNAMIR at the camp. After Colonel Nubaha departed, a soldier knocked on the door and told the Ghanaian peacekeepers that they could leave safely. The witness also stated that around 10.20 a.m., he saw General Dallaire enter the camp for several minutes before proceeding to ESM.[929]

780. At about 11.00 a.m., the Belgian peacekeepers in the UNAMIR office obtained a weapon and began firing at the crowd of soldiers periodically until around 1.00 p.m. At approximately 12.30 p.m., Bagosora arrived at the camp. He tried to stop the disabled soldiers from continuing their attack. The attackers threatened Bagosora and called him an accomplice, but no one fired during the 15 minutes that he was there.[930]

Nsengiyumva Defence Witness RN-1

781. Witness RN-1, a Hutu army officer posted at Camp Kigali, testified that, on 7 April 1994, he returned to the camp and saw a crowd of Rwandan soldiers, including wounded and convalescing soldiers, beating a group of Belgian peacekeepers. Two non-commissioned officers named Kagango and Sebutiyongera were trying to calm the attackers down. Witness RN-1 and Captain Apedo also tried to intervene. The witness contacted the camp's headquarters and Colonels Kanyandekwe and Ndahimana arrived. A Rwandan soldier fired above Colonel Kanyandekwe's head as he addressed the crowd.[931]

782. Two Belgian peacekeepers were shot as they ran toward the camp's gate. A Belgian peacekeeper managed to get into the UNAMIR office at the camp and found a machine gun there. He fired at the crowd, dispersing it, which allowed other peacekeepers to seek refuge in the office. Colonel Nubaha arrived after this and tried to prevent any further attacks by the soldiers at the camp. These efforts were unsuccessful, and the peacekeepers had to fire periodically to prevent Rwandan soldiers from advancing on the office. Witness RN-1 did not remain in the area since he had to ensure that the defences in other parts of the camp were reinforced. He was informed that grenades were ultimately thrown into the office where the peacekeepers had taken refuge. The witness was also told that Bagosora came to the camp to try to bring the situation under control.[932]

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[929] T. 27 April 2005 pp. 19-25; Bagosora Defence Exhibit 154 (personal identification sheet).
[930] T. 27 April 2005 pp. 25-27, 30-32.
[931] T. 13 February 2006 pp. 49, 63, 66-70, 72, 80-81; Nsengiyumva Defence Exhibit 133 (personal identification sheet).
[932] T. 13 February 2006 pp. 66-72, 80-83.

Deliberations

783. There is no dispute that, on 7 April, Rwandan soldiers killed 10 Belgian peacekeepers at Camp Kigali after their arrest at the Prime Minister's residence (III.3.3.2). The main questions for the Chamber are whether the Accused are responsible for these killings and whether these deaths were part of a plan to weaken UNAMIR in order to facilitate the massacre of Tutsi civilians. In answering these questions, the Chamber first sets forth the basic chronology of the events surrounding the death of the peacekeepers.

784. The Chamber heard a number of purported first-hand accounts of what transpired after peacekeepers were brought to Camp Kigali on the morning of 7 April. Most of the witnesses were Rwandan soldiers stationed at the camp. There are several discrepancies between these testimonies.[933] The Chamber accepts that each of the witnesses was present at Camp Kigali and observed at least some parts of the attacks which unfolded over the course of four to five hours. The differences may be explained by the chaotic nature of the events, the varying vantage points of the witnesses and some of the witnesses' desire to distance themselves from their own possible responsibility for the killings. These discrepancies leave the Chamber hesitant to accept the specific details or assertions offered by a given witness.

785. The most reliable and credible account of what transpired emerges from Captain Apedo, the UNAMIR observer stationed at the camp. He played a direct role interacting with both the peacekeepers, the assailants and Rwandan officers at the camp as the events unfolded in the first hour and a half after the peacekeepers were brought to the camp. His testimony is convincing and coherent and the Chamber therefore considers it as a point of departure in making its findings on this event.

786. The evidence shows that, around 9.00 a.m., Major Ntuyahaga brought the 10 Belgian and five Ghanaian peacekeepers to Camp Kigali in a minibus after disarming them at the Prime Minister's residence with assurances that they were being taken to a safe place. They were let off in front of the UNAMIR office at the camp, and Captain Apedo and Lieutenant Lotin spoke briefly inside the office. Shortly thereafter, a crowd of soldiers from the camp, including disabled soldiers, surrounded the Belgian and Ghanaian peacekeepers who remained outside and began assaulting them with rifle butts and crutches, shouting that they had killed President Habyarimana. Apedo attempted to intervene and tried to assist the peacekeepers into the UNAMIR office. The assailants blocked four of the Belgian peacekeepers from entering and continued to severely beat them outside as a crowd gathered. Several Rwandan officers, including Colonel Nubaha, the camp commander, intervened by verbally trying to calm the soldiers down before proceeding to a meeting of officers at the nearby ESM. However, no force was used to quell the volatile situation.

787. Around 10.30 a.m., Colonel Nubaha sent his escort into Camp Kigali to bring Captain Apedo and the Ghanaian peacekeepers to safety at ESM. At this point, it appears that four Belgian soldiers were either seriously wounded or dead and six remained barricaded in the UNAMIR office at the camp. Although the assailants primarily directed their attack against the Belgian soldiers, Apedo's testimony indicates that the African peacekeepers were targeted as well by some of the soldiers.

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[933] In particular, these discrepancies concern the role of the Presidential Guard, the role of officers at the camp, the use of firearms, the treatment of the Ghanaian peacekeepers, how many peacekeepers sought refuge in the UNAMIR office, and how the Belgian peacekeepers obtained a firearm.

788. Between 10.30 and 11.00 a.m., shots were heard coming from the camp. Based on Apedo's testimony, the Chamber considers that these were probably the first shots fired during the attack, and thus it does not accept the assertions from various witnesses that some of the Belgian soldiers or the Rwandan officers were fired on during the initial stages of the attack. Around 11.00 a.m., Apedo informed General Dallaire that four Belgian soldiers were seriously injured at the camp, but that six others remained alive in the UNAMIR office.

789. After Apedo's departure from the camp, the evidentiary situation remains less clear. It follows from the evidence that the Belgian peacekeepers in the office were able to obtain a firearm from one of the attacking Rwandan soldiers and use it to defend themselves. At some point between 12.15 and 2.00 p.m., Bagosora arrived at the camp and spoke with the assailants while several peacekeepers were still alive in the UNAMIR office. After he left, grenades were used to kill the remaining peacekeepers between 1.30 and 2.00 p.m. After 2.00 p.m., Bagosora and Dallaire spoke about the situation of the peacekeepers at the Ministry of Defence. Notwithstanding the chaos at Camp Kigali, Bagosora remained calm and took no action.

790. Turning to the question of Bagosora's responsibility, the Chamber is of the view that there is not sufficient evidence to prove beyond reasonable doubt that Bagosora planned the killing of the 10 Belgian peacekeepers taken to Camp Kigali. The main evidence of this comes from Witnesses KJ and XXJ who both purportedly saw telegrams blaming the Belgian soldiers for killing President Habyarimana and instructing that, if found, they be brought to the nearest military camp. However, their evidence on this point should be viewed with caution since the telegrams were not placed in evidence, and the only proof of their existence comes from these testimonies. Witness KJ was found credible in other parts of the judgement, but in these circumstances, in the Chamber's view, his evidence requires further corroboration.[934] Witness XXJ's vague reference to seeing a similar telegram at the conclusion of the Crisis Committee meeting on the night of 6 to 7 April is not sufficiently reliable to provide such corroboration. In particular, his evidence is lacking in detail and failed to mention the most significant aspect of the telegram, the purported order to arrest Belgian soldiers.

791. The Chamber accepts that the initial assault on the peacekeepers after they were brought to the camp may have resulted from insubordination. The evidence that a number of officers unsuccessfully tried to intervene equally supports this proposition and suggests that these killings were not part of a highly coordinated plan.

792. Nevertheless, the Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). It also concluded that he was aware of the threat posed to the Belgian peacekeepers around 10.45 a.m. when Colonel Nubaha informed him of the unrest at Camp Kigali. In any event, he was fully apprised of the dire situation facing them when he personally visited the camp between 12.15 and 2.00 p.m. after the conclusion of the meeting and saw the bodies of the dead peacekeepers. At the time, many of the peacekeepers were still alive in the UNAMIR office at the camp.

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[934] Even if the telegram described by Witness KJ existed, the Chamber is not satisfied that the only reasonable conclusion from its message is that Bagosora intended Belgian soldiers to be killed upon arrest. In particular, as described below, the manner in which the attack on the Belgian peacekeepers unfolded at its outset does not clearly demonstrate prior planning. Finally, there is no evidence showing that Bagosora was behind the rumours that the Belgians had shot down the plane, which provoked the soldiers at Camp Kigali.

793. Bagosora's testimony, as corroborated by Witnesses RO-6 and RO-3, suggests that the rioting soldiers refused to heed his calls for calm, and he withdrew from the camp. The Chamber does not find this evidence persuasive, bearing in mind their interest in distancing themselves from the crimes. In addition, the Chamber has also viewed the attack and the Defence evidence considering that the camp remained well guarded during the attack and that the guard posts were in fact reinforced as the events escalated. At no point did Bagosora or other military officers order the use of force to quell a highly volatile situation, notwithstanding the presence of the Reconnaissance Battalion, an elite unit at the camp. It is also noteworthy that a significant number of high-ranking military officials were meeting a few hundred metres away at ESM. Furthermore, the Chamber is satisfied that Bagosora had the means to quash the attack on the peacekeepers. In these circumstances, the Chamber finds that there was a clear failure by Bagosora to prevent the killing of the Belgian peacekeepers and that his inaction, in fact, had the effect of encouraging the assailants. Indeed, the attack escalated shortly after Bagosora's departure as the assailants used powerful weapons to finish off the surviving peacekeepers.

794. As to the other Accused, the Prosecution did not clearly demonstrate that they played any role in the attack. At the time, Kabiligi was in Cairo, Egypt (III.6.2), and Nsengiyumva was in Gisenyi prefecture (III.3.6). While Ntabakuze attended the meeting at ESM and likely heard gunshots coming from the camp, the evidence does not show that he was aware that Belgian peacekeepers were under attack or that his subordinates were involved in it.

795. The question remains whether the killing of the 10 peacekeepers was part of a larger effort to provoke the withdrawal of the Belgian peacekeeping contingent and weaken UNAMIR in order to facilitate the subsequent massacres. It is evident that the death of the Belgian peacekeepers prompted the withdrawal of that contingent from UNAMIR on 18 to 19 April. An informant told UNAMIR officials in January 1994 about a plan for the *Interahamwe* to bait the Belgian peacekeepers into using force (III.2.6.3). The Chamber has also recognised that there was a general hostility directed towards the Belgian contingent of UNAMIR in 1994, as propagated by RTLM and certain authorities, and that the Belgians were blamed after 6 April for complicity in the assassination of President Habyarimana (III.1.3). Nevertheless, the Chamber is not satisfied beyond reasonable doubt that the attack formed part of a concerted strategy to further the massacres by forcing the withdrawal of the Belgian peacekeeping contingent. As mentioned above, the evidence suggests that these killings were not necessarily part of a highly coordinated plan. It remains possible that the animosity towards the Belgian contingent followed from anti-colonial sentiments and their perceived support of the RPF.

796. Accordingly, the Chamber finds beyond reasonable doubt that Rwandan soldiers stationed at Camp Kigali killed the 10 Belgian peacekeepers who had been previously arrested at the Prime Minister's residence. Bagosora had knowledge of the threat they faced as an attack against them unfolded. He had the authority and means to prevent it, but failed to do so. It has not been proven beyond reasonable doubt that Kabiligi, Ntabakuze or Nsengiyumva played a role in these killings.

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3.5 Events in Kigali After 6 April

3.5.1 Camp Kanombe, 6 - 7 April

Introduction

797. The Prosecution contends that, between 6 and 7 April 1994, Bagosora met with Ntabakuze on one or more occasions at Camp Kanombe. Ntabakuze then allegedly held one or more assemblies at the camp with members of the Para Commando Battalion and ordered them to avenge the death of President Habyarimana by killing Tutsis. As a result, Ntabakuze's soldiers purportedly killed Tutsi civilians that night and the next morning in residential areas near Camp Kanombe, including Akajagali, Kabeza and Remera. Reference is made primarily to Witnesses DBQ, XAI, XAQ, XAP, LN, BC, DBN, XAB, DP, GS and XXJ.[935]

798. The Bagosora Defence argues that the evidence of the witnesses who claim that Bagosora met with Ntabakuze lacks credibility. Bagosora attended meetings with various officials when witnesses claimed he was at the camp. The Ntabakuze Defence reiterates that it lacked proper notice of the alleged meetings at Camp Kanombe and the subsequent killings. Furthermore, the Prosecution's evidence is unreliable. Ntabakuze secured the plane crash site, met with officers and assembled his soldiers only on the afternoon of 7 April. They were then deployed to military positions to fight the RPF and in order to defend the airport. Reference is made primarily to Witnesses DM-26, DK-19, DK-14, DH-51 and DH-87.[936]

Evidence

Prosecution Witness DBQ

799. Witness DBQ, a Hutu, testified that, in April 1994, he was a member of the First Company of the Para Commando Battalion. On the night of 6 April, he was stationed at Camp Kanombe. Between 8.20 and 8.30 p.m., the witness saw the downing of President Habyarimana's plane as it approached Kanombe airport. The camp's bugle sounded, and members of the Para Commando Battalion gathered their weapons from the armoury and assembled on the parade grounds in front of Ntabakuze's office. Ntabakuze briefly addressed the battalion and told them that the "*Inkotanyi*" had shot down the President's plane and that they should prepare for an attack. He then visited the crash site for about one to one and a half hours. Some members of the CRAP Platoon accompanied him to the site. The battalion remained on the parade ground, and other units at the camp were deployed in its defence.[937]

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[935] The Prosecution bases these contentions on several general allegations in the Indictments alleging that groups of soldiers killed civilians on the night of 6 to 7 April 1994, and that from 7 April elements of the Rwandan military and the *Interahamwe* perpetrated massacres of Tutsis in Kigali. *See* Bagosora Indictment, paras. 6.39, 6.50; Kabiligi and Ntabakuze Indictment, paras. 6.19, 6.27, 6.36; Prosecution Closing Brief, paras. 63, 154, 158, 168, 173, 177, 264, 419-420, 425, 1094-1097, 1109(b-c, f), 1120 (e, g), 1216 (b, c), 1223, 1224, (a-c), 1287 (a, b), 1305(b), 1307, 1320(c, d), 1324(a), 1326-1327, 1330-1331, 1335, 1363(p), pp. 767, 829, 831-832; T. 28 May 2007 pp. 11, 16.

[936] Bagosora Closing Brief, paras. 501-505, 961-967, 1706-1708; Ntabakuze Closing Brief, paras. 848-1248.

[937] T. 23 September 2003 pp. 3-4, 12-15, 21; T. 26 September 2003 pp. 41-43, 45-50; T. 29 September 2003 pp. 14, 57-58; T. 30 September 2003 pp. 39, 43, 47, 74; Prosecution Exhibit 99 (personal identification sheet).

800. Ntabakuze returned between 9.00 and 10.00 p.m. and immediately met with the camp commander Colonel Muberuka, Colonel Baransaritse from the camp's medical company, as well as several of the battalion's officers, including its company commanders. Bagosora also attended the meeting, arriving in his Mercedes-Benz jeep from the crash site, 20 to 30 minutes after the meeting began. The witness claimed that the individuals attending the meeting were members of the *Akazu*, a group of individuals close to President Habyarimana. The meeting lasted two to three hours, and Bagosora left the camp at its conclusion.[938]

801. After the meeting, around 1.00 a.m. on 7 April, Ntabakuze addressed the full assembly of his battalion. He told his men that the "*Inkotanyi/Inyenzi*" had shot down the President's plane and that they should start killing "people who were against the government, including Tutsis". Ntabakuze ordered the deployment of each of the companies. The First Company was to be sent to a neighbourhood near the camp known as "Akajagali", the Third Company to Kabeza and the Fourth Company to Remera. Witness DBQ explained that the Second Company was not present because it had previously been reassigned to Camp Kimihurura to reinforce the Presidential Guard. The companies departed the camp later that morning, although a few soldiers left at night. Ntabakuze left the camp with the Third Company which killed civilians in Kabeza.[939]

802. Witness DBQ and the First Company left the camp around 6.00 a.m. on the morning of 7 April. On their departure, they were joined by *Interahamwe* armed with traditional weapons as well as some volunteers from the CRAP Platoon. They began a house to house sweep of the Akajagali neighbourhood near the camp. Two to three soldiers would approach each house and demand the identification of the residents. The assailants then killed anyone who was a Tutsi. Some women were also raped. Witness DBQ did not kill anyone. Ntabakuze passed through the area twice between 10.00 and 11.00 a.m. and again between 1.30 and 2.00 p.m. On the second occasion, the witness heard Ntabakuze tell Lieutenant Muhawenimana, the commander of the First Company: "If the operation is over and there are no Tutsis, assemble the soldiers and take them to Remera ... so that we can try to repulse the RPF attack." At the time, 25 to 30 dead bodies were in full view of Ntabakuze. The soldiers departed around 3.30 to 4.00 p.m., and the witness estimated that between 1,000 and 1,500 persons were dead. The company proceeded to Remera, where other members of the Para Commando Battalion were engaged in the massacre of civilians until the RPF began engaging in combat later that day. The witness remained posted there until May.[940]

Witness DBQ identified several locations pertinent to his testimony and identified the camp and the President's residence on Prosecution Exhibits 100-103 (various sketches of Kanombe and surrounding areas).

[938] T. 23 September 2003 pp. 15-17; T. 29 September 2003 pp. 14-15, 22-31, 33-34, 38-40, 42-43; T. 30 September 2003 pp. 39-43, 45, 52-54, 59-61, 70. According to Witness DBQ, the officers included Captain Hakizimana, Lieutenant Rusingizandekwe, Lieutenant Muhawenimana, Lieutenant Maniriho, Second Lieutenant Udahemuka and Second Lieutenant Cyaka.

[939] T. 23 September 2003 pp. 21-23, 29; T. 26 September 2003 pp. 47-48, 57-58, 60; T. 29 September 2003 pp. 15-18, 20, 44-45, 49-51, 54, 57; T. 30 September 2003 pp. 23-24, 76-77. Witness DBQ initially testified that both the Third and Fourth companies were deployed to Remera, and then during cross-examination said that one company was sent to Remera and the other to Kabeza.

[940] T. 23 September 2003 pp. 23-35; T. 26 September 2003 pp. 57-60; T. 29 September 2003 pp. 1-4, 17, 46, 48-49, 51-54, 57-59; T. 30 September 2003 pp. 1-3, 11-14, 16, 19, 21, 23, 78. During cross-examination, Witness DBQ stated that, after the killings in Akajagali, the First Company returned to Camp Kanombe on the afternoon of 7 April for an assembly where they were dispatched to Remera. *See* T. 29 September 2003 pp. 49-50. The witness named a number of soldiers who he personally saw kill civilians in Akajagali (T. 23 September 2003 pp. 27-28). Ntabakuze was accompanied by Captain Rusingizandekwe, Captain Hakizimana (S-3) and his escorts

Prosecution Witness XAI

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803. Witness XAI, a Hutu, testified that he was a former member of the 17th Battalion who, as a result of injuries, was at the Camp Kanombe hospital on the night of 6 April. Around 8.40 p.m., he heard the sound of the camp's bugle. Soldiers at the hospital told the patients to assemble on the camp's tarmac, if they were well enough to do so. The witness gathered there with approximately 1,500 other soldiers, including around 800 members of the Para Commando Battalion. Ntabakuze was already there. He said that President Habyarimana's plane had been shot down and that those responsible "should die like dogs". Then he ordered his battalion to gather their weapons. When his soldiers returned to the tarmac, he told them to go after the "enemy" and then dispatched them to Akajagali, Mulindi, Kicukiro, Gikondo, Remera, Kigali town centre and even Rubungo. The assembly concluded around 9.00 p.m., and the soldiers left immediately. Witness XAI was around 20 metres away from Ntabakuze when he spoke.[941]

804. After the soldiers departed, Ntabakuze remained on the tarmac and spoke with Colonel Renzaho, Colonel Muberuka, Captain Hakizimana and Lieutenant Shumbusho. A short time later, the witness heard gunfire from the neighbourhood near the camp. The next morning drunken soldiers returned to the camp. They said that they had killed Tutsis in various locations, including a warrant officer named Ndamage who had been murdered near the camp. The witness heard about another assembly held on the morning of 7 April where Ntabakuze told his soldiers to only kill at night and to allow the *Interahamwe* to kill during the day.[942]

Prosecution Witness XAQ

805. Witness XAQ, a Hutu and a member of the Engineering Company, was stationed at Camp Kanombe on the night of 6 April 1994. He was on guard duty near the headquarters of his company, between 300 and 400 metres away from the office of the Para Commando Battalion. Around 8.30 p.m., he heard three explosions and saw a flash in the sky, and a state of confusion immediately prevailed in the camp. A short time later, Ntabakuze left for the crash site and returned to the camp. He assembled the members of the Para Commando Battalion on the tarmac. The witness moved within 20 metres of the assembly so that he could learn what had happened. Ntabakuze told his soldiers that the "*Inyenzis*" had killed the President and that they needed to "avenge his death" ("*Tugomba kumuhorera*"). The assembly ended around 9.00 p.m., and the soldiers went to the arms depot for weapons and left the camp. The witness heard gunfire as they started killing Tutsis in Akajagali, near the camp. The soldiers periodically returned to the camp for additional ammunition. A few hours later, the witness participated in an assembly with his own company.[943]

Corporals Mpakaniye and Uwimana. *See* T. 23 September 2003 pp. 31-32. The witness identified a sketch of Akajagali prepared by the Ntabakuze Defence, admitted as Ntabakuze Defence Exhibit 8. *See* T. 30 September 2003 pp. 6-8.

[941] T. 8 September 2003 pp. 5-6, 39-48; T. 10 September 2003 pp. 3, 28-31; T. 11 September 2003 pp. 1-5, 9, 29-34, 36-38, 45-49; T. 12 September 2003 pp. 3-4, 10-11, 35, 38-40; Prosecution Exhibit 94 (personal identification sheet).

[942] T. 8 September 2003 pp. 42, 47, 50-52; T. 11 September 2003 pp. 34, 37; T. 12 September 2003 pp. 5-9, 38-40.

[943] T. 23 February 2004 pp. 4, 23-26, 40-43, 48-57; Prosecution Exhibit 195 (personal identification sheet).

Prosecution Witness XAP

806. Witness XAP was a member of the Second Company of the Para Commando Battalion in April 1994. He was at the Camp Kanombe hospital on the night of 6 April when he heard the Presidential plane explode. A bugle sounded, signalling the soldiers, even the sick and wounded, to assemble on the camp's tarmac. The witness estimated that around 2,000 from the various units stationed at the camp gathered. Most of the soldiers were from the Para Commando Battalion. The CRAP Platoon was dispatched immediately to the crash site to gain information. After its departure, Ntabakuze addressed the assembly since the camp commander, Colonel Muberuka, was not there. He informed the soldiers that President Habyarimana was dead, that the Tutsis brought down the plane, and that the soldiers had to avenge the President's death. Ntabakuze met with his company commanders and then they left with their units for Remera and the Akajagali neighbourhood near the camp. Witness XAP heard gunfire throughout the night, and soldiers returning at dawn the next day confirmed that they were killing Tutsis.[944]

807. Around 11.00 a.m. on 7 April, the witness saw Lieutenant Sylvestre Nzabonariba, the commander of the battalion's support company, kill a soldier from Cyangugu prefecture, suspected of supporting the "*Inkotanyi*", near the barracks of the Second Company. According to the witness, Nzabonariba was not punished and retained his command.[945]

Prosecution Witness LN

808. Witness LN, a Tutsi and former member of the Para Commando Battalion, testified that he was injured and thus part of the Medical Company at Camp Kanombe in April 1994. He lived at the camp's hospital, but did administrative work at the camp. Around 8.30 p.m. on 6 April, the witness heard an explosion, and someone from the nearby Akajagali neighbourhood came to the hospital and said that a plane had been shot down. The witness listened to RTLM which immediately broadcast that a senior officer at Camp Kanombe had confirmed that the "*Inyenzi-Inkotanyi*, their accomplices, as well as the Belgians" had assassinated President Habyarimana. That night, the witness heard gunshots coming from the Akajagali neighbourhood.[946]

809. Around midnight or 1.00 a.m. on 7 April, Corporal Masitimu, the bodyguard of the camp's medical director Colonel Baransaritse, passed by Witness LN's room at the hospital for a drink. Masitimu, who was a friend, told the witness that Colonel Baransaritse was meeting at the hospital with Bagosora, Ntabakuze, Major Ntibihora and Major Mutabera. The purpose of the meeting was to discuss how to avenge the death of President Habyarimana. Masitimu stated that they were planning to kill Tutsis and prominent politicians, such as Agathe Uwilingiyimana, Landoald Ndasingwa, Faustin Twagiramungu and others, including Belgians. Around 5.00 a.m., Masitimu returned and informed the witness that the participants of the meeting had left for army headquarters and that the soldiers were looking for the

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[944] T. 11 December 2003 pp. 11, 29-35, 73, 74, 88, 91-92; T. 15 December 2003 pp. 13-14, 28-41, 49-56; Prosecution Exhibit 152 (personal identification sheet). Witness XAP refused to provide his ethnicity. *See* T. 11 December 2003 pp. 65-68. He estimated that the plane crash occurred at 7.30 p.m. and that the CRAP Platoon was dispatched between 7.40 and 8.00 p.m. Ntabakuze spoke in that same time-frame immediately after their departure. The members of the Para Commando Battalion left the camp around 10.00 p.m. The Chamber notes that the witness's estimate for the time of the plane crash is approximately an hour before it actually occurred.

[945] T. 11 December 2003 pp. 36, 38, 79-82.

[946] T. 30 March 2004 pp. 49-50, 57-63; T. 31 March 2004 pp. 9, 11-12, 29-32; T. 1 April 2004 pp. 6-13; Prosecution Exhibit 197 (personal identification sheet).

individuals which they had discussed. The witness was not certain as to the exact time the meeting ended.[947]

810. Later that morning, a soldier from the camp confirmed that Tutsis were being killed in the areas surrounding the camp. The witness heard gunfire and saw houses burning from nearby Ndera hill. Around 9.00 a.m. on 7 April, the witness saw Ntabakuze address the Para Commando Battalion, which was assembled near the camp's tarmac. He heard Ntabakuze say that the nature of the war had changed because the President had been killed by the Tutsis. Ntabakuze told the soldiers that the enemy was the Tutsis living nearby or Hutus opposed to the regime, and that they had to be eliminated. Ntabakuze specifically referred to the area of Kabeza, which was said to be an RPF stronghold. He also warned his troops not to loot or to rape women. The witness then saw Second Lieutenant Sylvestre Nzanbonariba kill Murekezi, a soldier from Cyangugu prefecture, on the tarmac. After the killing, Ntabakuze spoke with Nzanbonariba, as the witness was leaving. The witness did not hear about any investigation into the killing and learned three days later that the lieutenant returned to his post.[948]

Prosecution Witness BC

811. Witness BC testified that he was a member of the CRAP Platoon of the Para Commando Battalion in April 1994. Between 7.30 and 8.30 p.m., he heard an explosion near the residence of President Habyarimana and immediately headed to the armoury at Camp Kanombe. At the time, the witness did not know that the President's plane had crashed. Ntabakuze dispatched the witness and 18 other members of the CRAP Platoon to the President's residence to investigate. Once there, the witness saw the debris of the plane. Lieutenant Kanyamikenke ordered the platoon to secure the crash site and look for bodies. Ntabakuze also visited the crash site that night.[949]

812. At dawn, Lieutenant Kanyamikenke, the commander of the CRAP Platoon, told the soldiers not to worry if they heard shooting nearby since it would be from their soldiers. The witness later heard gunfire from the Nyarugunga neighbourhood between the camp and the President's residence. Between 8.00 and 9.00 a.m., Sergeant Ndayisaba, Corporal Camake and Corporal Dusi went back to the camp to attend a meeting at *Joli Bois*, a wooded area within the camp, with members of the Para Commando Battalion, called by Ntabakuze. When they returned between 8.30 and 9.00 a.m., they informed the members of the platoon at the crash site that Ntabakuze had ordered the soldiers to maintain discipline and systematically eliminate Tutsis. However, Ntabakuze and Kanyamikenke never directly gave him any orders to kill Tutsis. He never saw any member of his battalion kill civilians, but added that everywhere the battalion was deployed there were dead bodies.[950]

Prosecution Witness DBN

813. Witness DBN, a Tutsi and a member of the General Services Company in the Para Commando Battalion, testified that, around 8.00 p.m. on 6 April, he heard a loud explosion and saw a plane crash over President Habyarimana's residence. The bugle at Camp Kanombe sounded, and he rushed to the camp. He was ordered to gather his weapon and man his

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[947] T. 30 March 2004 pp. 60-63; T. 31 March 2004 pp. 29-41.
[948] T. 30 March 2004 pp. 63-68, 70-73; T. 1 April 2004 pp. 29, 31, 33-35.
[949] T. 1 December 2003 pp. 25, 32; T. 10 December 2003 pp. 79-80; Prosecution Exhibit 147 (personal identification sheet). Witness BC stated that he did not know his ethnic group. *See* T. 1 December 2003 pp. 39-40.
[950] T. 1 December 2003 pp. 32-35; T. 10 December 2003 pp. 81-87, 91-92.

vehicle, which was 20 metres from Ntabakuze's office. The battalion's company commanders met with Ntabakuze in his office for around 30 minutes as the rest of the soldiers gathered with their respective companies. After the meeting, the company commanders left the camp with their units towards the Akajagali neighbourhood behind the camp. Around 9.30 p.m., the witness fell asleep in his vehicle.[951]

814. Around 7.00 a.m. on 7 April, around 500 members of the Para Commando Battalion gathered again in front of Ntabakuze's office. Ntabakuze addressed his soldiers for about 20 minutes. He told them that the "Tutsis" had shot down President Habyarimana's plane and that they had to avenge his death. After the meeting, two companies left the camp for Akajagali, and the witness returned to his guard post near Ntabakuze's office. He heard gunfire and grenade explosions.[952]

815. After the meeting ended, Bagosora arrived at the camp alone around 7.30 a.m. in a white car, most likely a Peugeot, with military licence plates. He spoke with Ntabakuze in his office for about 20 minutes, and then left the camp. After his departure, the witness was ordered to take food to members of the Presidential Guard at the President's residence. As he passed through the Akajagali neighbourhood, he saw members of the Para Commando Battalion, wearing camouflage berets. There were bullet ridden dead bodies in the street and many of the houses looked as if they had been damaged by grenades.[953]

816. Around 10.00 a.m., Witness DBN drove a truck in a five vehicle convoy, carrying around 30 soldiers each, to Remera. The soldiers were deployed at various locations there, including near *Chez Lando* and the SGP Petrol station, in order to prevent the RPF from leaving their cantonment at the CND. He saw members of the Para Commando Battalion going from house to house in Kabeza. Around 1.00 p.m., he again took food to the Presidential Guard at President Habyarimana's residence. Soldiers and *Interahamwe* were breaking into houses. On this trip, he could see houses burning on Ndera, Masaka, Rusororo and Gasogi hills. In particular on Ndera hill, the witness also saw soldiers operating, but could not identify their unit given the distance.[954]

817. Witness DBN also testified about the death of a soldier from Cyangugu on the parade ground in front of Ntabakuze's office at Camp Kanombe. At some point before noon on 7 April, the witness heard a gunshot and went towards Ntabakuze's office to see what was happening. The soldiers there said that Lieutenant Nzanbonariba, a company commander, shot a soldier from Cyangugu prefecture, who some believed was Tutsi. After the incident, Ntabakuze called Nzabonariba into his office where the two spoke briefly.[955]

Prosecution Witness XAB

818. Witness XAB, a soldier in the Third Company of the Para Commando Battalion, said that he is a Tutsi but that his identification card indicated that he was a Hutu. After the crash of President Habyarimana's plane on the night of 6 April, an alarm was sounded at Camp

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[951] T. 31 March 2004 pp. 63, 68-70, 73, 75; T. 5 April 2004 pp. 31-39, 87; Prosecution Exhibit 198 (personal identification sheet). Witness DBN did not remember the names of the company commanders.
[952] T. 31 March 2004 pp. 75-77; T. 5 April 2004 pp. 39-41.
[953] T. 31 March 2004 pp. 77-81; T. 1 April 2004 p. 40; T. 5 April 2004 pp. 41-42, 75-81, 86-90, 101. Witness DBN identified several of the soldiers as Bizimungu, Mpiranya, Camake, Kiyogera and also Muyandinda from the battalion's CRAP Platoon and General Services Company.
[954] T. 1 April 2004 pp. 40-42, 45-49, 51; T. 5 April 2004 pp. 42-50.
[955] T. 1 April 2004 pp. 61-63; T. 5 April 2004 pp. 51-54.

Kanombe. The witness attempted to return to the camp from his nearby home, but was turned away by the guards at the gate. After returning home, he heard gunfire from the Akajagali area near the President's residence, which he referred to as Nyarugunga.[956]

819. Around 5.45 a.m. on 7 April, Witness XAB arrived at Camp Kanombe and saw 15 minutes later a fellow soldier named Nkurunziza who was carrying his child. Nkurunziza told the witness that a member of the CRAP Platoon named Dusi had killed Nkurunziza's wife and members of her Tutsi family. He also learned that other Tutsis were killed in the area by members of the Para Commando Battalion. Other colleagues informed him that members of the CRAP Platoon had killed Tutsi refugees at *Centre Christus* and that the Prime Minister had been killed. Around 7.00 to 7.30 a.m., Ntabakuze assembled the Para Commando Battalion and told his soldiers to avenge the death of the President and that the enemy was the "Tutsi and all of their accomplices". The Fourth Company was sent to Camp Kimihurura to replace the Second Company, which had been deployed there. The Second Company was redeployed to Kicukiro. The First and Third Companies were sent to Remera. The witness remained at Camp Kanombe to assist his family and did not join the company until 9 April.[957]

820. After the assembly, Witness XAB heard gunfire as the companies prepared to deploy. He rushed back to the tarmac and saw the dead body of a soldier named Murekezi from Cyangugu prefecture. The witness learned that Lieutenant Sylvestre Nzabonariba had killed him, after saying that there was no need to look for *Inyenzi* outside the camp because there were several within their own ranks. After the killing, the witness saw Ntabakuze pull Nzabonariba aside. At 8.00 a.m., he observed Bagosora arrive in a camouflage colour Land Rover jeep along with his bodyguards. He spoke with Ntabakuze for about 10 minutes outside Ntabakuze's office at Camp Kanombe. Nzabonariba was taken into the office while Bagosora was there, and after the meeting he was transferred to the Light Anti-Aircraft Battalion.[958]

Prosecution Witness DP

821. Witness DP, a Tutsi, was a member of the General Services Company of the Para Commando Battalion in April 1994. Around 8.30 p.m. on 6 April, he saw President Habyarimana's plane explode as it approached the airport. He then rushed to the homes of other soldiers living in his neighbourhood, known as Akajagali, which is in Nyarugunga sector near Camp Kanombe. He told them that the President was dead and that they needed to go to the camp. The camp's bugle then sounded, and the soldiers went to the assembly area. The battalion assembled around 9.00 p.m., and the witness heard Ntabakuze informing his soldiers that he was going to investigate the crash site to see if the President had been killed. Ntabakuze returned at 9.30 p.m. and confirmed the President's death. He told the battalion to stay together and then deployed members of the CRAP Platoon to secure the site. The battalion remained on standby for the night.[959]

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[956] T. 6 April 2004 pp. 20-22, 63, 85; Prosecution Exhibit 200 (personal identification sheet).
[957] T. 6 April 2004 pp. 22-24, 63-70, 78, 85-94.
[958] T. 6 April 2004 pp. 24-27, 33, 44-45, 90, 92-94; T. 7 April 2004 pp. 1-2, 4-12, 16-17, 19-20.
[959] T. 2 October 2003 pp. 11, 15, 56-58, 61, 73-74; Prosecution Exhibit 112 (personal identification sheet). Witness DP testified that he is a Tutsi, but in 1994 most people believed he was Hutu as indicated on his identity card at the time. His personal identification sheet indicates that he was a Hutu. He explained that the Prosecution wrote that he was a Hutu because a Tribunal investigator asked him what his identity card said in 1994. *See* T. 2 October 2003 pp. 56, 72; T. 3 October 2003 pp. 26-28.

822. Between 8.00 and 9.30 a.m. on 7 April, the witness gathered the bodies of the crash victims from the President's residence and guarded them in the mortuary of the hospital at Camp Kanombe. At 9.30 a.m., he left to attend an assembly of the Para Commando Battalion, which began around 10.30 or 11.00 a.m., at a wooded area in the camp known as *Jolis Bois*. Ntabakuze told his soldiers that war would resume and that the RPF had left the CND and attacked Remera. He cautioned that there were many Tutsis living in Remera and that the soldiers had to kill them. The meeting ended around 2.00 p.m. The witness returned to guard the bodies at the hospital but slipped away to briefly visit the family of his fiancée in Akajagali. On the way to Akajagali, at around 3.00 p.m., he heard gunshots and saw dead bodies and soldiers moving about, including two members of the battalion's First Company. On 8 April 1994, the witness returned and saw that his fiancée and her family, all Tutsis, were dead. A soldier who accompanied the witness told him to leave the house before the Presidential Guard found him there.[960]

Prosecution Witness GS

823. Witness GS, a Hutu, was a member of the Military Construction Company at Camp Kanombe in April 1994. Around 8.30 p.m. on 6 April, he saw President Habyarimana's plane explode in the sky over the Presidential residence. He then heard the sound of gunshots being fired in the air and gathered with other soldiers in front of the office of Major Ntibihora, his company commander, to find out what happened. Around 9.00 p.m., the witness saw Ntabakuze meet with Major Ntibihora and Lieutenant Colonel Baransaritse in front of the office of the Military Construction Company. The witness heard Ntabakuze say that the Tutsis had killed the President and that they had to avenge his death. The officers went into Ntibihora's office and, after a short while, came out and ordered members of the Military Construction Company to make coffins for the crash victims.[961]

824. Around midnight, Witness GS heard shooting coming from the direction of the President's residence and suspected that it was coming from members of the Presidential Guard. Around 4.00 a.m. on 7 April, members of the Para Commando Battalion left the camp, passing the witness's guard post, and began killing civilians in the nearby residential area. Around 7.00 a.m., he left the camp to see members of his father-in-law's family who lived close by in Kamashashi *cellule*, Nyarugunga sector, also referred to as Akajagali. He saw dead bodies in the neighbourhood surrounding the camp. Residents of the area said that members of the Para Commando Battalion, wearing camouflage berets, had already passed through the area, killing Tutsis, including the family of the witness's father-in-law. A member of the Presidential Guard near his father-in-law's house warned him to be careful so as not to be killed by the "*Inkotanyi*". The witness also saw a member of the Light Anti-Aircraft Battalion named Gasutamo, who appeared to be confirming that the killings had been carried out.[962]

Prosecution Witness XXJ

825. Witness XXJ, a Hutu, was an officer in a support unit stationed at Camp Kanombe in April 1994. Approximately three weeks before the death of President Habyarimana, his unit commander, Major Mutabera, chaired a meeting informing his soldiers that the RPF intended

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[960] T. 2 October 2003 pp. 12-17, 19-23, 75-76, 78-80; T. 3 October 2003 pp. 5-9.
[961] T. 17 February 2004 pp. 42-43, 45-46; T. 18 February 2004 pp. 21-22, 24-28, 30-32; Prosecution Exhibit 191 (personal identification sheet).
[962] T. 17 February 2004 pp. 42, 45-48, 55; T. 18 February 2004 pp. 33-43, 66.

to kill the President and to resume hostilities. According to the witness, the army general staff had transmitted this plan to each unit. After the plane crash on 6 April, the witness assembled with his unit in front of Mutebera's office, who instructed them to take up the previously agreed positions and await further instructions.[963]

826. On the morning of 7 April, an army captain contacted Witness XXJ by radio and asked him to verify the situation of his fiancée, who was in the Akajagali neighbourhood near the camp. The witness left the camp between 7.00 a.m. and 8.00 a.m. and saw members of the Presidential Guard and Para Commando Battalion canvassing the area. He found the woman alive, but several members of her family were dead, including her father, Corporal Ndamage. Other bodies were also visible outside the house. It was said that Ndamage was a Tutsi and that his son had joined the ranks of the *Inkotanyi*. While bringing the captain's fiancée back to the camp, the witness encountered a group of soldiers from the Para Commando Battalion, including a second lieutenant named Niyitegeka. The woman told the witness that they were responsible for the death of her family.[964]

Bagosora

827. Bagosora denied that he was at Camp Kanombe and met with Ntabakuze between the evening of 6 April through the morning of 7 April. He pointed to meetings he attended with General Dallaire and Special Representative Booh-Booh, which lasted from 10.30 p.m. until approximately 2.00 a.m., and his subsequent presence at staff headquarters until 4.30 a.m. to finalise the radio announcement regarding the President's death. Bagosora left staff headquarters for his home, arriving at approximately 5.00 a.m., and he remained there for approximately one hour before departing for staff headquarters again to meet with officers. Bagosora accounted for his time on the morning of 7 April, noting his presence at the Ministry of Defence for an MRND between around 6.45 and 8.30 a.m., and then his presence at the United States Ambassador's residence from 9.00 a.m. to approximately 9.45 a.m. Afterwards Bagosora stopped briefly at the Ministry before his meeting at ESM with commanders, where he arrived at approximately 10.15 to 10.30 a.m.[965]

828. According to Bagosora, he went to Camp Kanombe around 5.00 p.m. on 7 April, when he deposited his family at a friend's residence there. He left and returned at approximately 6.00 p.m. after he was unable to return to Camp Kigali. Bagosora departed for President Habyarimana's residence sometime around 7.00 to 7.30 p.m., returning to his friend's residence at Camp Kanombe between 9.00 and 9.30 p.m. where he slept, leaving at approximately 7.00 a.m. the following morning.[966]

829. Bagosora estimated that the distance between the Ministry of Defence and Camp Kanombe is approximately 20 kilometres and that a round trip would take about 40 minutes.[967]

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[963] T. 14 April 2004 pp. 16-18, 51-55, 57-58, 60, 63-65; T. 15 April 2004 pp. 80, 86-87; Prosecution Exhibit 208 (personal identification sheet).
[964] T. 14 April 2004 pp. 22-24; T. 15 April 2004 pp. 73-76, 79-84.
[965] T. 7 November 2005 pp. 29, 35-38, 48, 51, 53, 55-57, 61-65, 71-73; T. 15 November 2005 pp. 38-39.
[966] T. 8 November 2005 pp. 52-54, 57-58, 75.
[967] T. 7 November 2005 p. 66.

Ntabakuze

830. Ntabakuze testified that around 8.15 p.m. of 6 April 1994, he was in his quarters at Camp Kanombe when he heard three loud explosions. Rushing outside, he saw a fireball falling to the ground near the President's residence. He immediately left his home and headed for his office. There he saw the commanding officer of the Kigali operational sector, Colonel Muberuka, who told him that he had tried to reach the Presidential Guard for more information about what had occurred but had been unsuccessful. He ordered Ntabakuze to seek information from the Presidential Guard post at the residence and to take the CRAP Platoon to locate the crash site. Ntabakuze spoke to Lieutenant Kanyamikenke, the commander of the CRAP Platoon, took two of his men to reinforce his escort detail, and then left Camp Kanombe for the President's residence with the four soldiers. Ntabakuze left through the main entrance of Camp Kanombe and did not observe any soldiers killing any civilians in Akajagali. He noticed that there was no movement in the neighbourhood and surmised that residents had returned to their homes because of the explosion.[968]

831. Upon arrival at the guard post of the President's residence, Ntabakuze was informed by Lieutenant Sebashyitsi that the crash site's precise location had not been found yet. Ntabakuze located the wreckage in a banana plantation approximately 200 metres from the President's residence. Observing the national flag on the plane's tail, Ntabakuze recognised the plane as the President's. He returned to Camp Kanombe, passing through the entrance where Akajagali is located, to update Colonel Muberuka. He did not observe any soldiers killing anyone in Akajagali. In a meeting of the unit commanders chaired by Muberuka, they were ordered to "reinforce the perimeter of the Camp" and to be ready to intervene on short notice. Between 9.00 and 9.30 p.m., Ntabakuze drove along with Muberuka, who was in his own car, to the crash site. They stayed there for 20 minutes, extended condolences to the bereaved Habyarimana family and then returned to Camp Kanombe.[969]

832. At approximately 10.00 p.m., Ntabakuze took Major de Saint-Quentin, the head of the French parachute training team in Rwanda who was based at Camp Kanombe, to see the French nationals that had died in the crash. Again the convoy passed Akajagali and no soldiers were observed killing civilians. Ntabakuze left Major de Saint-Quentin there and returned to Camp Kanombe. He called a meeting of his Company Commanders to inform them about the death of the President, report Muberuka's orders and receive updates on the status of their various units. The meeting lasted about an hour. Ntabakuze asked all his commanders to inform their soldiers about the attack, to put them on high alert and to be ready to intervene at short notice. He did not give any orders for subordinates to leave the camp. Ntabakuze then spent the rest of the night in his office.[970]

833. On 7 April at approximately 6.00 a.m., Ntabakuze went to his house for approximately 45 minutes and then returned to his office at Camp Kanombe. Between 7.30 and 8.00 a.m., he met Major de Saint-Quentin and informed him about the meeting at ESM scheduled for 10.00 a.m. At 9.25 a.m., Ntabakuze left for ESM and arrived around 9.50 a.m. He drove past Akajagali and parts of Kigali but did not see any soldiers, dead bodies or any unusual activity. The ESM meeting, with approximately 50 to 60 military officers present, was chaired by Bagosora and General Ndindiliyimana and attended by Muberuka and

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[968] T. 18 September 2006 pp. 25-32, 36.
[969] *Id.* pp. 31-33, 36-43.
[970] *Id.* pp. 43-47.

General Dallaire among others. After the meeting, at 12.30 p.m., Ntabakuze returned to Camp Kanombe, but passed through Mburabuturo with Major Mutabera, commander of the field artillery battalion at Camp Kanombe. He arrived at the camp around 1.15 or 1.20 p.m. The soldiers were still on standby near the office of the Company Commanders. He then went to his residence on Camp Kanombe for lunch and returned to his office around 2.30 p.m.[971]

834. At 3.30 p.m., Muberuka ordered Ntabakuze to send reinforcements to Camp Kimihurura to reinforce the soldiers there because their position was under attack from the RPF. The rest of Ntabakuze's Para Commando companies were to be on standby should there be another mission. After the brief meeting, Ntabakuze gathered all his units on the tarmac for a parade. He informed them that the RPF had resumed hostilities and that they now had to fight the enemy. He then ordered the Fourth Company, under Second Lieutenant Hakizimana, to head for Camp Kimihurura. They left around 3.40 p.m. The Company did not report any killings in Akajagali.[972]

835. At around 4.00 p.m., Muberuka informed Ntabakuze that the RPF had attacked near the airport and captured the gendarmerie brigade in Remera. He ordered Ntabakuze to send reinforcements and to prevent the capture of the airport. Ntabakuze immediately dispatched the First Company. He subsequently met with Major de Saint-Quentin who had passed by to seek information. As they were discussing, Ntabakuze heard shots and rushed outside to discover that Lieutenant Nzabonariba had killed one of his soldiers. Ntabakuze disarmed Nzabonariba, replaced him and ordered an investigation.[973]

836. Ntabakuze testified that he later deployed the Third Company to Remera. He explained that each of the combat companies were dispatched with elements of the Fire Support Company. This meant that all his units were deployed by that point, leaving only about 60 or so administrative personnel in Camp Kanombe. At around 6.30 p.m., he spoke with Major de Saint-Quentin about the death of the Belgian peacekeepers. Ntabakuze subsequently left to establish his command post at the airport, which was on higher ground, so that he could communicate with his deployed units as well as Camp Kanombe. He held that post until May 20 when they had to withdraw because of the RPF advance.[974]

837. Ntabakuze stated that the only assembly of the entire Para Commando Battalion took place on 7 April around 3.30 p.m. During the assembly he did not speak about revenge; he only said that they had to counter-attack the enemy. Ntabakuze denied having met Bagosora in Camp Kanombe on 6 or 7 April. During this time period, Ntabakuze passed through Akajagali about four times: three times during the night and once in the morning to reach ESM. He did not see any soldiers engaged in killing civilians.[975]

Ntabakuze Defence Witness DM-26

838. Witness DM-26 is an officer who was stationed at Camp Kanombe at the beginning of April 1994. Around 8.30 p.m. on 6 April, he heard the explosion of President Habyarimana's plane followed by the sound of gunfire, which he interpreted as an attack on the camp. He tried to reassure his family and then proceeded to the office of Major Ntabakuze in order to obtain information about what had happened. Ntabakuze left for the crash site, and the

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[971] *Id.* pp. 47-52, 53.
[972] *Id.* pp. 53-54, 58-59, 60.
[973] *Id.* pp. 54-56.
[974] *Id.* pp. 54, 56-57, 66, 72.
[975] *Id.* pp. 30, 39, 47-49, 53, 59.

witness remained in an office near the assembly point for the Para Commando Battalion. Ntabakuze returned, informed the witness about the crash of the President's plane and asked him to accompany him to the crash site. The witness was not aware of any speech given by Ntabakuze to his soldiers that evening.[976]

839. Between 9.30 and 10.15 p.m., Witness DM-26 visited the crash site and remained there until around 2.00 to 4.00 a.m. Members of the CRAP Platoon were searching for the bodies of the crash victims. He returned to the crash site between 8.00 and 9.00 a.m. on the morning of 7 April and again remained for several hours. On both occasions, the witness passed through the area between the camp and the President's residence known as Akajagali. He described the neighbourhood as calm and did not see members of the Para Commando Battalion operating there or hear gunshots.[977]

840. Witness DM-26 met with Ntabakuze in his office on the morning of 7 April and for a second time in the course of the afternoon. While they were speaking in the afternoon, he heard a gunshot coming from the tarmac and saw two members of the Para Commando Battalion restraining the brother of a soldier who had just been shot. In his view, Ntabakuze then tried to calm the situation down. The witness added that he was not aware of any speech given by Ntabakuze to his soldiers that morning.[978]

Ntabakuze Defence Witness DH-51

841. Witness DH-51, a Hutu, was a member of the Para Commando Battalion in 1994 and part of Ntabakuze's escort after 6 April. In the evening of 6 April, he was seated outside the Para Commando commander's office when he heard two explosions and saw a plane crash and burst into flames. Afterwards, at approximately 8.30 p.m., Ntabakuze arrived at the office in a Toyota Hilux and spoke with Colonel Muberuka.[979]

842. The witness, along with four soldiers from the Para Commando Battalion and two others from the CRAP Platoon, escorted Ntabakuze to the crash site, where they remained there for about 20 minutes. They were not aware that President Habyarimana was dead, learning of this only during a subsequent visit when they were informed that his body had been found.[980]

843. In the meantime, the Camp Kanombe bugle had been sounded. The Para Commando Battalion soldiers assembled, unarmed, in front of the company offices around 9.00 p.m. After the first visit to the crash site, Ntabakuze returned to Camp Kanombe and had a short conversation with Colonel Muberuka. They all then returned to the crash site, in two separate vehicles. The second visit to the crash site lasted over 15 minutes. The soldiers from the Presidential Guard and the CRAP Platoon were also present and people were trying to extinguish the fire.[981]

844. Witness DH-51 escorted Ntabakuze on a third visit to the crash site that night. They drove Colonel Muberuka and Major de Saint-Quentin, the head of the French parachute training team stationed in Camp Kanombe, and returned to the camp at around 11.00 p.m.

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[976] T. 1 December 2006 pp. 21, 23, 26, 29; Ntabakuze Defence Exhibit 266 (personal identification sheet).
[977] *Id.* pp. 23-24, 26, 29-31, 34-35.
[978] *Id.* pp. 25, 27, 36.
[979] T. 6 December 2005 pp.10-12; Ntabakuze Defence Exhibit 199 (personal identification sheet).
[980] *Id.* pp. 12-13.
[981] *Id.* pp. 12-14.

The soldiers were still at the parade ground in front of the company offices. Ntabakuze went directly to his office. At around midnight, Ntabakuze met with the company commanders in another office. The meeting lasted for about one hour to an hour and a half. The witness did not see Bagosora come to Ntabakuze's office nor did Ntabakuze assemble members of the battalion that evening.[982]

845. On 7 April 1994, at around 9.00 a.m., Ntabakuze returned from picking up a change of his clothes at his residence near the camp. Witness DH-51 then escorted Ntakabuze to a meeting at ESM. They passed by Akajagali. According to the witness, no soldiers were present, the situation was normal, and people were moving without difficulty. The soldiers of the Para Commando Battalion were in front of the offices of their respective companies at the assembly ground, except for the Second Company which was at Kimihurura.[983]

846. The witness waited in the parking lot of the ESM. The meeting lasted about an hour and a half. Ntabakuze left the ESM at the same time as the other participants. This was about 11.00 a.m, and they arrived back in Camp Kanombe at about 11.30 a.m. The situation in the Akajagali neighbourhood, which they passed by, seemed normal. The soldiers of the Para Commando Battalion were still at the assembly ground.[984]

847. Between 2.30 and 3.00 p.m. that afternoon, Ntabakuze assembled all the soldiers. He told them that the RPF had resumed hostilities and that there had been an attack on the plane of the President, who had been killed. He said that staff headquarters had ordered the Fourth Company to Kimihurura for reinforcement of the soldiers there. The First and Third Companies later received orders to deploy between Remera and IAMSEA. Witness DH-51 testified that no orders were given to kill civilians in order to avenge the death of the President.[985]

Ntabakuze Defence Witness DK-14

848. Witness DK-14, a Hutu, was a member of the First Company of the Para Commando Battalion in April 1994. At approximately 8.30 p.m. on 6 April, the witness observed a "spark in the sky" and heard an explosion. After the crash of President Habyarimana's plane, the soldiers were summoned by a bugle, and they gathered with their weapons. At around 11.00 p.m., the battalion's company commanders informed the assembled soldiers that the President's plane had been brought down and that they should await further instructions. They remained there through the night until 7 April at 2.00 to 3.00 p.m., when Ntabakuze assembled them to inform them that the President was dead and that Camp Kimihurura had been attacked. At about 3.35 p.m., Ntabakuze dispatched the Fourth Company to Kimihurura, while the remaining companies were deployed to Remera. According to Witness DK-14, none of the members of the First Company were deployed to the Akajagali neighbourhood near the camp. The witness denied that Ntabakuze held other assemblies during the night of 6 April, on the morning of 7 April, or that the soldiers went outside the camp before Ntabakuze gave these orders.[986]

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[982] *Id.* pp. 14-17, 50-51.
[983] *Id.* pp. 19-20, 37-38, 42.
[984] *Id.* pp. 21, 26, 38-42, 46-48.
[985] *Id.* pp. 22, 51.
[986] T. 14 March 2006 pp. 24, 29-31; T. 16 March 2006 pp. 5-6, 9-11; Ntabakuze Defence Exhibit 218 (personal identification sheet).

Ntabakuze Defence Witness DK-19

849. Witness DK-19, a Hutu, was a member of the Engineering Company at Camp Kanombe in April 1994. At approximately 8.00 p.m. on 6 April, he was in Colonel Mayuya's camp and saw a plane on its final approach towards the Kanombe airport. The witness heard two missile shots, observed the plane change its path and heard an explosion which he attributed to the plane crashing. After the crash, a clarion called for the soldiers to assemble. At approximately 10.00 p.m., the witness's company commander told his unit that it was likely the Presidential plane had been brought down and to await further instructions. A non-commissioned officer later asked them to get their weapons.[987]

850. Around 2.00 a.m., Witness DK-19's company commander confirmed the death of the President and asked that they remain on camp grounds. The witness did not attend any assembly of the Para Commando Battalion and did not see anyone leave the camp. He could not see or hear from the tarmac what was occurring where the Para Commando Battalion assembled, nor could he see the main exit of Camp Kanombe. At approximately 9.00 a.m. on 7 April, the witness left Camp Kanombe for ESM, passing briefly by Akajagali. He did not observe any traces of violence in Akajagali or cross any roadblocks. The witness estimated that he arrived at ESM shortly before 10.00 a.m. Returning on to Camp Kanombe on the same route, he indicated that the situation in Akajagali at approximately 1.00 p.m. was the same as he had previously observed.[988]

Ntabakuze Defence Witness DH-87

851. Witness DH-87, a Hutu and a driver with the Presidential Guard, testified that, between 7.00 and 7.30 a.m. on 7 April, he passed by Akajagali on his way to the President's home. Akajagali was calm, and he did not observe soldiers there. He went to Camp Kanombe and between 8.00 and 8.30 a.m. observed around 400 members of the Para Commando Battalion gathered on the parade grounds at Camp Kanombe. In his view, the soldiers appeared to be awaiting instructions since they were not in specific formation. The witness remained at the camp for approximately 20 to 30 minutes, and then departed. Again, he did not observe any soldiers as he passed Akajagali.[989]

Deliberations

852. It follows from the evidence that, after the downing of President Habyarimana's plane, an alarm was sounded at Camp Kanombe, and members of the Para Commando Battalion assembled on the tarmac near Ntabakuze's office a short time later. It is also undisputed that members of the Para Commando Battalion were eventually deployed to various positions in Kigali, most notably Remera. The main issues are whether Ntabakuze met with Bagosora at Camp Kanombe at some point between 6 and 7 April 1994, and whether Ntabakuze ordered his soldiers to avenge the death of President Habyarimana by killing Tutsis in nearby localities, such as Akajagali.

853. The Prosecution has presented 11 purported first-hand accounts of what transpired at Camp Kanombe and in its vicinity between 6 and 7 April. This evidence comes from

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[987] T. 11 July 2005 pp. 51-53, 55, 57-59; T. 12 July 2005 pp. 18-19, 48–49; Ntabakuze Defence Exhibit 142 (personal identification sheet).
[988] T. 11 July 2005 pp. 59-60, 63, 65; T. 12 July 2005 pp. 20-21.
[989] T. 18 April 2005 pp. 59-65, 67-70, 72, 75-76; Ntabakuze Defence Exhibit 85 (personal identification sheet).

members of the Para Commando Battalion as well as other units stationed at the camp. The Ntabakuze Defence has presented six witnesses, including Ntabakuze, who were also in a position to follow at least a part of the events during that period. There are a number of significant differences between these testimonies as to what actually happened. In addition, several Prosecution and Defence witnesses, discussed in other sections, equally provided first-hand testimony placing Bagosora and Ntabakuze at other locations at times when certain Prosecution witnesses placed them at Camp Kanombe (III.3.2; III.3.7).

(i) Alleged Meeting Between Bagosora and Ntabakuze at Camp Kanombe

854. The Chamber will first consider whether Bagosora met with Ntabakuze at Camp Kanombe between 6 and 7 April 1994. Two witnesses said Bagosora was present at the camp on the night of 6 April, whereas two others placed him at the camp the next morning between 7.30 and 8.00 a.m. With respect to his presence at the camp on the night of 6 April, Witness DBQ gave direct testimony that Bagosora arrived around 9.00 or 10.00 p.m. and met with Ntabakuze and other officers for two to three hours in Ntabakuze office. Bagosora then left the camp, and Ntabakuze addressed the battalion around 1.00 a.m. Witness LN only heard that Bagosora met with Ntabakuze and other officers at the camp's hospital between midnight and 1.00 a.m. The accounts of Witnesses DBQ and LN appear to contradict each other as to the time and location of the meeting, although it is possible that Ntabakuze and Bagosora met twice, first at Ntabakuze's office in the camp and subsequently at the hospital, just outside the camp.

855. A more significant contradiction, however, exists between their accounts and the corroborated and credible testimonies of General Dallaire, Major Beardsley, Colonel Marchal, Special Representative Booh-Booh and Bagosora. According to these witnesses, which the Chamber accepts, Bagosora was at Camp Kigali attending a meeting of the Crisis Committee from around 9.30 p.m. until about 12.00 p.m., when he and Dallaire met with Booh-Booh at his residence (III.3.2.1-2). They returned to Camp Kigali around 2.00 p.m.[990] These meetings occurred at the times when Witnesses DBQ and LN placed him at Camp Kanombe.[991] The Prosecution does not reconcile the evidence of Witnesses DBQ and LN with the accounts of its other witnesses, including Dallaire and Beardsley, placing Bagosora at other locations in Kigali at the same time.[992] In the Chamber's view, this contradiction calls into question the reliability of the testimonies of Witnesses DBQ and LN about Bagosora's presence at Camp Kanombe. The Chamber is therefore not satisfied that the Prosecution has proven beyond reasonable doubt that Bagosora met with Ntabakuze on the night of 6 April.

856. Turning to the morning of 7 April, Witnesses DBN and XAB placed Bagosora at Ntabakuze's office at the camp at approximately the same time, around 7.30 to 8.00 a.m. Both witnesses gave similar approximations for the length of the meeting, ranging from 10 to

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[990] Prosecution Expert Witness Filip Reyntjens testified that Bagosora has a time span of about five hours that are unaccounted for on the morning of 7 April 1994 between 1.30 a.m. to about 6.30 a.m. Reyntjens surmised that it was during that period that Bagosora set the killings in motion. *See* T. 15 September 2004 pp. 25-28; T. 17 September 2004 pp. 35, 66. Bagosora claimed that he left army headquarters at Camp Kigali around 4.30 a.m. to go home and returned for a meeting around 6.00 a.m. *See* T. 7 November 2005 pp. 35-36, 48; T. 9 November 2005 pp. 56-57; T. 10 November 2005 p. 55.

[991] As mentioned above, Bagosora estimated that the distance was 20 kilometres. *See* T. 7 November 2005 p. 66.

[992] Prosecution Closing Brief, paras. 250-252, 264, 419-420, 1109(b), 1319, 1240, 1251(a), 1252-1255.

20 minutes. There are, however, some differences in their account. Witness DBN testified that Bagosora arrived alone in a white Peugeot vehicle. In contrast, Witness XAB stated that he arrived in a military Land Rover, accompanied by bodyguards. The Prosecution suggests that these witnesses corroborate each other, but has made no attempt to reconcile this difference in their accounts.[993]

857. Furthermore, the Prosecution alleges in paragraph 6.13 of the Bagosora Indictment that Bagosora was meeting with Mathieu Ngirumpatse and others at the Ministry of Defence about 7.00 a.m., as reflected in the evidence (III.3.7). It is also alleged in paragraph 6.7 that he met with the United States Ambassador at his residence at 9.00 a.m., which the Chamber has accepted (III.3.2.3). The Chamber further observes that the distance between the Ministry of Defence, Camp Kanombe and the residence of the United States Ambassador in Kaciyiru raises doubt that Bagosora could have met briefly with Ntabakuze at Camp Kanombe in addition to the other meetings he attended that morning.[994] For the foregoing reasons, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that Bagosora met Ntabakuze at Camp Kanombe on the morning of 7 April.

(ii) Ntabakuze's Alleged Order to Kill Tutsis in Areas Surrounding Camp Kanombe

858. Turning to the question of whether Ntabakuze ordered his soldiers to avenge the death of the President by killing Tutsis in nearby areas, the Prosecution and Defence witnesses are in general agreement that the members of the Para Commando Battalion assembled at the camp shortly after the downing of the plane. Their testimonies, however, differ significantly as to when and how Ntabakuze addressed his soldiers and dispatched them. A review of the accounts of the Prosecution witnesses reveals two main versions of what happened after the death of President Habyarimana. According to four witnesses, Ntabakuze addressed his battalion on the night of 6 April. It immediately left the camp to kill Tutsis in surrounding areas. Eight witnesses suggests that Ntabakuze addressed the battalion on the morning of 7 April and then dispatched it. One witness lends support to both versions. The Prosecution contends, for the most part, that each of its witnesses concerning this event corroborate each other and makes no effort to reconcile the varying details of their narratives. For its part, the Ntabakuze Defence presented evidence, suggesting that the battalion remained on standby until Ntabakuze dispatched them on the afternoon of 7 April to counter an RPF offensive.

859. The main evidence that Ntabakuze dispatched members of the Para Commando Battalion to kill Tutsis shortly after the crash comes from Witnesses XAI, XAQ, XAP and DBN. Each of them indicated that the full battalion was deployed to the neighbourhoods surrounding the camp around 9.00 p.m., approximately 30 minutes after the downing of the President's plane. There are, however, a number of differences between their individual accounts. For example, Witnesses XAI and XAP indicated that Ntabakuze addressed all the units in the camp. In contrast, Witness XAQ suggested that he only addressed assembled members of the Para Commando Battalion, which is consistent with evidence from other witnesses that each of the camp's units received its own address from its respective commander. This difference could possibly be explained by the passage of time and varying vantage points of the witness shortly after a chaotic event.

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[993] *Id.* paras. 1331, 1335, 1336.
[994] Prosecution Exhibit 53 (scaled street plan of Kigali).

860. However, there is a more significant difference between Witnesses XAI, XAQ and XAP who recounted Ntabakuze's calls for vengeance on the night of 6 April, and Witness DBN, who stated that Ntabakuze did not address the battalion that evening. According to Witness DBN, on the evening of 6 April, Ntabakuze simply met privately with the battalion's company commanders in his office. These company commanders then left the camp a short time later with their respective units. Witness DBN maintains that Ntabakuze's alleged calls for vengeance came at a separate assembly the following morning, when the battalion was dispatched for a second time. This discrepancy cannot be easily reconciled.

861. The Chamber notes that two other witnesses spoke about Ntabakuze addressing his battalion on the night of 6 April shortly after the downing of the President's plane. Witness DBQ stated that Ntabakuze blamed the *Inkotanyi* for shooting down the plane and asked his soldiers to prepare for an attack. Witness DP asserted that Ntabakuze simply confirmed the President's death and asked his soldiers to remain on standby. While both witnesses ultimately contend that Ntabakuze urged his soldiers to seek vengeance, they were adamant that the battalion was dispatched to neighbouring areas only on the morning of 7 April. In the Chamber's view, the above examples illustrate that the Prosecution has not presented clear and consistent evidence about what happened at Camp Kanombe on the night of 6 April.

862. The main evidence that Ntabakuze dispatched members of the Para Commando Battalion to kill Tutsis on the morning of 7 April comes from Witnesses DBQ, LN, DBN, XAB, BC, DP, GS and XXJ. Six of these witnesses referred to Ntabakuze allegedly addressing an assembly of the Para Commando Battalion before dispatching them to surrounding areas. Of these six witnesses, four (Witnesses DBQ, LN, DBN, and XAB) indicated that the assembly occurred on the camp's tarmac in front of Ntabakuze's office while the other two (Witnesses BC and DP) placed it in *Joli Bois* in another part of the camp.[995]

863. Leaving aside the varying location of the meeting, the witnesses also gave differing times for the assembly as well as the deployment of the battalion. With respect to those placing the assembly on the tarmac in front of Ntabakuze's office, Witness DBQ suggested that it occurred around 1.00 a.m. with the soldiers leaving at 6.00 a.m.; Witness LN said the meeting and deployment occurred around 9.00 a.m.; Witness DBN indicated the events occurred around 7.00 a.m.; and Witness XAB placed them between 7.00 and 7.30 a.m. As for those witnesses suggesting that the assembly took place at *Joli Bois*, Witness BC indicated the meeting occurred around 8.00 to 9.00 a.m., and Witness DP suggested it occurred between 11.00 a.m. and 2.00 p.m. Finally, Witness GS saw the battalion leave the camp around 4.00 a.m., and Witness XXJ saw its members operating in the Akajagali area around 7.00 a.m. The Prosecution has not sought to reconcile these divergent accounts, which further illustrates the lack of coherency in its evidence concerning the events at Camp Kanombe.

864. In contrast to the Prosecution's evidence on this point, the Ntabakuze Defence has presented a largely consistent account of what transpired at the camp after the death of President Habyarimana. In particular, the evidence of Ntabakuze, as corroborated mainly by Witnesses DM-26 and DH-51, indicates that, after the crash on the night of 6 April, Ntabakuze placed his battalion on alert, visited the crash site several times and met with his company commanders and other officers at the camp. Furthermore, on the morning of

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[995] Witness GS simply saw members of the Para Commando Battalion leave the camp, and Witness XXJ encountered them in the Akajagali area.

7 April, he met with other Rwandan officers at ESM and addressed and deployed his battalion in the afternoon after the RPF attacked Camp Kimihurura and the gendarmerie brigade in Remera.

865. The Chamber certainly views Ntabakuze's evidence with caution given his inherent self-interest in distancing himself from the criminal allegations against him. Similarily, Witness DH-51's evidence carries limited weight given the nature of his previous close working relationship with Ntabakuze during the relevant events. Witness DM-26 also previously had a professional relationship with Ntabakuze, but his testimony is both first-hand and appears credible. Witness DM-26 was near Ntabakuze's office shortly after the plane crashed and again on the morning of 7 April during the relevant periods when Prosecution witnesses claimed that Ntabakuze was addressing and deploying the battalion. He travelled from the camp to the President's residence through Akajagali on the night of 6 April and the morning of 7 April and reported that it appeared calm on both occasions. If Ntabakuze had in fact addressed and deployed his battalion at these times to kill Tutsis in Akajagali, as suggested by several Prosecution witnesses, it is likely that Witness DM-26 would have been aware of these events given his presence at the camp and in its vicinity.

866. The lack of coherence in the Prosecution evidence about the sequence of events at Camp Kanombe after the death of President Habyarimana coupled with the evidence presented by the Ntabakuze Defence leave the Chamber with doubt about what actually transpired. That said, the Chamber is also not fully convinced by the Defence evidence, in particular that the entire battalion remained on the tarmac for nearly 18 hours after the death of the President awaiting orders for deployment.

867. Accordingly, the Prosecution has not proven beyond reasonable doubt that Ntabakuze ordered members of the Para Commando Battalion to avenge the death of President Habyarimana in the areas surrounding the camp between 6 and 7 April. In view of these findings, the Chamber does not need to revisit the Ntabakuze Defence arguments concerning the notice it received in the Indictment for Ntabakuze's alleged role in this crime.[996]

3.5.2 *Centre Christus*, 7 April

Introduction

868. The Bagosora Indictment alleges that, on 7 April 1994 at the *Centre Christus* in the Remera area of Kigali, soldiers used the Centre record to select many persons, mostly Tutsis, forcibly confined them, and ordered militiamen to kill them. The Prosecution submits that Bagosora was seen at a nearby petrol station giving orders to a group of *Interahamwe* to kill Tutsis in the area. Kabiligi and Ntabakuze are purportedly responsible for the role played by the CRAP Platoon of the Para Commando Battalion in the killing of the 17 Tutsis at the Centre. The basis is a general allegation in their Indictment that, starting on 7 April, elements of the Rwandan army, gendarmerie and *Interahamwe* perpetrated massacres of the civilian

[996] The assembly of the Para Commando Battalion is alleged in the Indictments to have occurred on 8 April, but the Chamber has decided during the trial that this paragraph referred to assemblies on the night of 6-7 April. *See* Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 17-22. There is no specific allegation in the Indictment that Bagosora met with Ntabakuze at Camp Kanombe on the night of 6 April.

Tutsi population. Reference is made primarily to Witnesses CW, ET, DAN, XAB and DCB.[997]

869. The Bagosora Defence submits that the uncorroborated evidence of Witness CW that Bagosora was in Remera on the morning of 7 April lacks credibility and is contradicted by Witness X-4. The Ntabakuze Defence renews its arguments that the Indictment does not provide proper notice. The evidence of Witness XAB contradicts the direct evidence of Witnesses ET and DAN. Witnesses DP, BC, DBN and DM-26 demonstrated that the CRAP Platoon was deployed at the crash site of President Habyarimana's plane. Reference is also made to Colonel Marchal and Expert Witness Filip Reyntjens who testified that from 7 April, the RPF was operating in the Remera area near *Centre Christus* killing civilians with lists.[998]

Evidence

Prosecution Witness CW

870. Witness CW, a Tutsi, testified that, on the morning of 7 April 1994, he was hiding in bushes near the SGP petrol station in the Remera area of Kigali. Around 5.00 a.m., he saw a large number of *Interahamwe* armed with guns and traditional weapons gather at the station. After a vehicle arrived at a nearby home of a local *Interahamwe* leader, the witness saw Bagosora, accompanied by Colonel Nzabonita as well as military escorts, speaking with a small group of *Interahamwe* leaders. The witness was 4.5 metres away. He recognised Bagosora because he was a prominent military figure and since he had seen him in his neighbourhood several times between 1991 and 1994 at *Interahamwe* meetings. Bagosora was holding pieces of paper and told the leaders to go from house to house and kill "*Inyenzi*". After hearing this, the witness fled. On the morning of 8 April, he saw dead bodies along the street, while on his way to seek refuge at *Centre Christus*. Other refugees at the Centre from neighbouring areas said that their family members had been killed by *Interahamwe*. A foreign priest asked the witness to assist in digging graves for a number of priests who had been killed at *Centre Christus* the previous day.[999]

Prosecution Witness ET

871. Witness ET, a foreign priest who was at *Centre Christus*, explained that, on 7 April 1994, there were 13 permanent residents living at the centre, including six Jesuit priests and seven nuns, as well as 22 other guests. One of the Jesuit priests, Father Chrysologue Mahame, was a Tutsi and President of an organisation called *Volontaires de la Paix,* whose purpose was to work for peace and reconciliation. According to the witness, Father Mahame was not a member of a political party, but he was part of a predominately Tutsi organisation working for peace and reconciliation. He had a good relationship with President Habyarimana, but might also have had enemies. Father Christian De Fays, a Belgian priest at

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[997] Bagosora Indictment, paras. 6.33, 6.54; Kabiligi and Ntabakuze Indictment, para. 6.36; Prosecution Closing Brief, paras. 420-421, 1182-1186, 1265(f), 1335(g), 1552-1568, 1595-1598, 1719(e), pp. 767, 769, 836.

[998] Bagosora Closing Brief, paras. 734-742, 968-982, 1681-1682, pp. 541, 550; Ntabakuze Closing Brief, paras. 238-244, 1291-1326. The Kabiligi Defence does not address this incident in its Closing Brief.

[999] T. 8 October 2004 pp. 4-5, 7-13, 15, 17, 20, 24-30, 34-35, 39-44, 48-51, 54, 56-57, 60; Prosecution Exhibit 314 (personal identification sheet). Witness CW identified the various sites relevant to his testimony on a map of the Remera area, entered as Prosecution Exhibit 315. He identified Bagosora in court. T. 8 October 2004 p. 17. The witness did not attend the meetings which he claimed Bagosora attended between 1991 and 1994.

the Centre who had been in Rwanda for a long time, had told the witness in 1992 that Mahame's name was on a list of 80 names of individuals who had to be killed.[1000]

872. Around 6.10 a.m. on 7 April, Witness ET attended mass at a nearby convent and returned to the Centre's main hall around 7.30 a.m. He learned from Father De Fays that, in the meantime, six Rwandan soldiers had come to the Centre and asked for the register of the residents and guests there. The soldiers then assembled everyone in the main hall and checked their identification papers. Afterwards, they locked the Rwandan nationals in a room, except for Father Mahame and Father Patrick Gahizi, who refused to leave their quarters.[1001]

873. Around 9.00 a.m., a pickup truck filled with soldiers arrived and ordered the foreign nationals to lock themselves in the Centre's common room. From that room, the witness saw the soldiers forcibly leading Father Mahame and Father Gahize towards the room where the other Rwandan nationals were being held. Ten to 15 minutes later, the witness heard explosions and gunfire coming from the room. The witness was certain that the soldiers were from the Rwandan army because the RPF was not yet operational in the area. The foreign nationals remained locked up for several hours until a gendarme, who the witness saw frequently in the area, arrived around 1.00 p.m. The gendarme had brought two children, whose mother had just been killed, to the Centre.[1002]

874. Father De Fays told the gendarme what had happened at the Centre earlier that day. The gendarme replied: "Oh, the killers passed through this place!" He then accompanied the De Fays to the room where the Rwandan nationals were being held. They saw 17 dead bodies. Two other Rwandans were later found hiding in another room at the Centre. The next day, the priests buried the bodies. As the graves were being dug, the Rwandan army and the RPF exchanged gunfire nearby, which occurred on other days as well. The Belgian peacekeepers evacuated the foreign nationals on 10 April. The witness said that he did not see *Interahamwe* at the Centre and described the killings on 7 April as a "military operation".[1003]

Prosecution Witness DAN

875. Witness DAN did not testify. His statement was admitted pursuant to Rule 92 *bis*, and the Defence declined to call him for cross-examination. He was temporarily staying at the *Centre Christus* in April 1994. Around 7.00 a.m. on 7 April, the witness and other residents and guests at the Centre gathered in its chapel for a prayer service. About 15 minutes later, two or three soldiers entered the chapel and ordered the congregants to produce their identification. After a few minutes, three or four other soldiers assembled all of the guests and residents in a central location. The soldiers then locked up the Rwandan nationals in a room. Two Rwandan members of the Jesuit religious order, including Father Mahame, refused to enter the room.[1004]

876. Around 10.00 a.m., a group of six to 10 soldiers arrived. They went to the residence of the Jesuit order and forced Father Mahame and the other priest towards the room with the other Rwandans. The soldiers threatened the foreign nationals with death if they left the

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[1000] T. 18 November 2003 pp. 6, 10-12, 29-31; Prosecution Exhibit 131 (personal identification sheet).
[1001] *Id.* 13-15.
[1002] *Id.* 15-18, 33, 35.
[1003] *Id.* 18-22, 26-28, 32-33. Witness ET identified a photograph of the names of the 17 victims, which was entered as Prosecution Exhibit 132. T. 18 November 2003 pp. 22-25.
[1004] Prosecution Exhibit 459B (statement of 18 June 1999), pp. 3-4.

priests' living room. A short time later, the witness heard 20 minutes of sustained gunfire coming from where the Rwandans were being held. Around 1.00 p.m., two gendarmes arrived with two children whose mother had been killed. The gendarmes accompanied the witness and another priest to the room where they saw 17 dead bodies, including Father Mahame. Two Rwandans, Juvenal Rutumbu and Beatrice Nyiramafaranga, were later found hiding in another room.[1005]

Prosecution Witness XAB

877. Witness XAB, a Tutsi member of the Para Commando Battalion, stated that he arrived at Camp Kanombe around 5.45 a.m. on 7 April 1994. Around 6.00 a.m., Corporal Chrysologue Munyankindi, Ntabakuze's bodyguard, told him that members of the CRAP Platoon of the Para Commando Battalion had participated in massacres at *Centre Christus* in Remera.[1006]

Prosecution Witness DCB

878. Witness DCB, a Hutu member of the Presidential Guard, heard from soldiers at Camp Kimihurura and Camp Kanombe while he was running errands that members of the Para Commando Battalion were targeting Tutsis in the Remera area near *Centre Christus*.[1007]

Bagosora

879. Bagosora testified that he never attended meetings with *Interahamwe* leaders in Remera before 6 April 1994. If that had occurred, it would have been widely reported given his position in the Ministry of Defence. He also denied meeting with *Interahamwe* leaders in Remera on the morning of 7 April, as alleged by Witness CW. There were killings at *Centre Christus* targeting "the priest there and some of his colleagues", and "unfortunately" other people also had the "misfortune" to stay the night there. He acknowledged that he was aware that Father Mahame had been killed by the evening of 7 April. Bagosora attributed other killings in the area to the RPF.[1008]

Bagosora Defence Witness X-4

880. Witness X-4, a Hutu, was working in the vicinity of the SGP petrol station in Remera on the night of 6 April 1994. On the morning of 7 April, around 20 *Interahamwe*, who were known as the Zulus, gathered at an *Interahamwe* flag down the road from the petrol station. He also saw *Interahamwe* returning from looting and attacking Tutsis. The witness did not see any military personalities hold a meeting that morning near the petrol station. However, he observed military vehicles later that day, and several hundred soldier arrived on 9 April.[1009]

[1005] *Id.* pp. 4-6.
[1006] T. 6 April 2004 pp. 21-23, 30-32, 63-64; Prosecution Exhibit 200 (personal identification sheet).
[1007] T. 5 February 2004 p. 105; T. 6 February 2004 p. 16; Prosecution Exhibit 175 (personal identification sheet).
[1008] T. 1 November 2005 p. 69; T. 7 November 2005 pp. 66-68; T. 8 November 2005 pp. 47-48; T. 10 November 2005 pp. 20-21; T. 15 November 2005 pp. 38-39.
[1009] T. 24 March 2006 pp. 3-10, 12-15, 18-19, 22-24, 26, 34-36, 38-39; Bagosora Defence Exhibit 328 (personal identification sheet). Witness X-4 identified a number of photographs of the area around the petrol station (Bagosora Defence Exhibits 329, 330) as well as a sketch of the Remera area (Bagosora Defence Exhibit 331).

Ntabakuze

881. Ntabakuze stated that members of the Para Commando Battalion did not participate in the killing of civilians at *Centre Christus* or in the surrounding area. He said that the RPF took control of the area on 7 April.[1010]

Ntabakuze Defence Witness DM-26 and Prosecution Witnesses DP, BC and DBN

882. Witness DM-26, a military officer, was at Camp Kanombe on the night of 6 to 7 April 1994. He visited the site of the crash of the President's plane at 10.00 p.m. on 6 April and saw members of the CRAP Platoon there. Witnesses DP, BC and DBN, who were members of the Para Commando Battalion, also testified that the CRAP Platoon was deployed to the crash site on the night of 6 April. Witness BC added that members of the CRAP Platoon were not involved in the massacre at the *Centre Christus*.[1011]

Kabiligi Defence Witness Luc Marchal

883. Colonel Marchal, the Belgian commander of the Kigali sector of UNAMIR, stated that, on 7 April 1994, the RPF attacked the gendarmerie battalion in Remera and also killed several hundred people in the area on the basis of lists. He learned of the RPF attack on the brigade from the radio network as well as from Major Nzabonimpa, the gendarmerie's liason to UNAMIR. Nzabonimpa also informed Marchal about the RPF's killing of civilians with lists.[1012]

Prosecution Expert Witness Filip Reyntjens

884. Filip Reyntjens, an expert in Rwandan history, testified that, based on his research, the RPF sent groups of soldiers out of the CND and killed a number of people in the surrounding vicinity on the night of 6 April 1994. According to Reyntjens, the RPF left the CND at 4.20 p.m. on 7 April. During its operations in Remera, from 7 to 9 April, it killed 121 people in that area using lists.[1013]

Ntabakuze Defence Witness DK-37

885. Witness DK-37, a Hutu gendarme stationed at the Remera brigade, said that, around 9.00 or 10.00 a.m. on 7 April 1994, three civilians fleeing from IAMSEA informed him that the RPF was firing on members of the population there. A short time later, the RPF attacked the brigade headquarters. Between 12.00 and 1.00 p.m., the gendarmes retreated from Remera to Kicukiro. On the way, the witness passed by *Centre Christus*. The witness did not see any Rwandan soldiers in Remera on the morning of 7 April.[1014]

[1010] T. 20 September 2006 pp. 54-55; T. 21 September 2006 pp. 2-5; T. 25 September 2006 p. 16.
[1011] Witness DM-26, T. 1 December 2006 pp. 21, 23; Witness DP, T. 2 October 2003 pp. 74-76; Witness BC, T. 10 December 2003 pp. 79, 81; Witness DBN, T. 5 April 2004 pp. 32-35.
[1012] T. 30 November 2006 pp. 3-4, 26; T. 1 December 2006 p. 1; T. 5 December 2006 pp. 43-45; Kabiligi Defence Exhibit 122 (personal identification sheet).
[1013] T. 16 September 2004 pp. 51-52; T. 20 September 2004 p. 4; T. 22 September 2004 pp. 30, 56-57. A list of 121 victims of the RPF attack in Remera between 7 and 9 April is attached to Reyntjens's book. Bagosora Defence Exhibit 9 (*Rwanda: Trois jours qui on fait basculer l'histoire* (1995)).
[1014] T. 26 July 2005 pp. 57-63, 64-66, 71; Ntabakuze Defence Exhibit 152 (personal identification sheet).

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886. It is not disputed that 17 Rwandan nationals were killed by soldiers at *Centre Christus* in the Remera area of Kigali on the morning of 7 April 1994. This follows clearly from the undisputed accounts of Witnesses ET and DAN, who provided largely consistent and mostly first hand evidence of the events at the Centre. Neither witness saw the soldiers kill the Rwandans. However, Witness DAN was present when they were locked by soldiers in a room at the Centre, and Witness ET arrived a short time later and visited the group. They both watched as a second group of soldiers forced two other Rwandan priests towards the room and heard explosions 10 to 15 minutes later from that direction. It also follows from Witness ET's evidence that the soldiers who imprisoned the Rwandans used the Centre's register as well as the residents' identification cards to separate the Rwandan nationals from the others. Witness DAN experienced the separation first-hand, and Witness ET learned about it from Father Christian De Fays shortly after it occurred. The Chamber has not heard any evidence as to the ethnicity of the group other than Witness ET's evidence that Father Mahame was a Tutsi. The Chamber finds the evidence of Witnesses ET and DAN credible.

887. The main question for the Chamber is whether Bagosora, Ntabakuze or Kabiligi played a role in this crime. Neither Witnesses ET nor DAN were in a position to identify the military unit which conducted the operation to kill the Rwandan nationals at *Centre Christus*. Indeed, both witnesses expressly stated that they were not familiar with the uniforms and insignia of the soldiers.[1015] Witness ET, however, was certain that the soldiers were members of the Rwandan army as opposed to the RPF. The Chamber accepts Witness ET evidence that the perpetrators were members of the Rwandan army, notably because the attack occurred on the morning of 7 April. Both Reyntjens and Marchal noted that the RPF did not leave the CND to attack Remera until mid-afternoon on 7 April. In view of these two witnesses, the Chamber considers that Witness DK-37 was mistaken when he suggested that the RPF attacked the Remera gendarmerie brigade.

888. The Prosecution points to Witnesses XAB and DCB to show that the soldiers who perpetrated the killings at *Centre Christus* were members of the Para Commando Battalion, and in particular the battalion's CRAP Platoon. However, these two witnesses provided second-hand evidence, which lacked detail, and they did not indicate whether their sources had direct knowledge of the attacks. The Chamber therefore considers that their evidence has limited weight. Furthermore, Witness XAB heard about the attack around 6.00 a.m., which was several hours before the actual killings occurred, according to the reliable and corroborated evidence of Witnesses ET and DAN. This further calls into question the credibility of his evidence on this point. Accordingly, the Chamber is not satisfied that the Prosecution has shown that members of the Para Commando Battalion participated in the killings at *Centre Christus*.

[1015] Witness DAN, Prosecution Exhibit 459B, p. 4 (statement of 18 June 1999: "They were in military uniforms; I do not remember what colour the uniforms were."); Witness ET, T. 18 November 2003 p. 32 ("Q. ... But is it true that you cannot identify whether, for example, they were members of the presidential guard? It's true, isn't it? A. You're absolutely correct. I also said so in the course of my evidence here, that I was absolutely unaware of what their uniforms looked like. I know nothing. I knew that they were soldiers, that they were armed ... Q. But would you agree with me that the soldiers -- or the gendarmes, the members of the gendarmerie, wore uniforms that were very similar to those of the FAR or of the *Forces Armée Rwandaise*? A. I'm not aware of those differences in uniforms ...").

889. The Chamber finds beyond reasonable doubt that Rwandan soldiers killed 17 Rwandan nationals at *Centre Christus* in the Remera area of Kigali. However, the Prosecution has not established the specific unit that conducted the killings. The Chamber has found elsewhere that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). He was also aware of the killings at *Centre Christus*, in particular of Father Mahame.

890. Witness ET heard that Father Mahame was on a list as early as 1992. His evidence on this point is hearsay and, furthermore, does not clearly demonstrate the basis and reliability of his source's information. However, it is clear that Mahame was identified on a list of suspected accomplices by the CDR party in September 1992.[1016] Furthermore, the circumstances of the attack, described above, indicate that this was a targeted killing. Bearing in mind the evidence of other such killings on the morning of 7 April (III.2.5.5; III.3.3; III.3.6.1; III.3.6.5) the Chamber is satisfied that Mahame was previously identified as a target for arrest or killing by the military as well. This conclusion is further bolstered by the fact that Bagosora was personally informed about Mahame's killing on the night of 7 April along with the victims of other political assassinations.

891. The Chamber is not persuaded that the Prosecution has shown a connection between the attack at *Centre Christus* and Kabiligi and Ntabakuze. Consequently, there is no need to revisit the Ntabakuze Defence arguments concerning alleged insufficient notice.

892. Turning to other killings in the Remera area, Prosecution and Defence evidence suggests that both parties to the conflict perpetrated killings there. While the evidence about RPF crimes is largely second-hand, the Prosecution has presented direct evidence from Witness CW that Bagosora personally incited the killings of Tutsis at dawn on 7 April. The witness claimed that he observed Bagosora address local *Interahamwe* leaders from a distance of 4.5 metres while hiding in a bush. Witness CW's basis of knowledge for identifying Bagosora was the witness's familiarity with his role as a military officer as well as Bagosora's previous visits to Remera. His evidence about Bagosora's previous participation in meetings with the *Interahamwe* in the area was vague and inconsistent.[1017] The Chamber, therefore, has doubt about his ability to identify Bagosora, in particular bearing in mind that he was hiding and afraid for his life.

893. Furthermore, Witness CW asserted that the alleged meeting occurred at dawn as it was becoming light. On the morning of 7 April, Bagosora held a number of meetings with MRND political officials at the Ministry of Defence, the United States Ambassador at his residence, and military officials at ESM, beginning at 7.00 a.m. (III.3.2). While the witness suggested that the meeting occurred around 5.00 a.m. in the morning, the Chamber notes that he placed it after the communiqué was broadcast urging the public to remain at home.[1018] Other evidence suggests that this communiqué was broadcast around 6.30 a.m.,[1019] placing

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[1016] Prosecution Exhibit 29B (CDR party communiqué No. 5 (22 September 1993)), pp. 1-2 Father Mahame is listed as number 14 under the heading of persons suspected of recruiting for the "*Inyenzi-Inkotanyi*".

[1017] *See* T. 8 October 2004 pp. 39-44. In particular, Witness CW said that he saw Bagosora "more than twice" (p. 40) , "regularly" (p. 40), "two or three times" (p. 42), "frequently" (p. 43). He confirmed that he told Tribunal investigators that Bagosora came "several times a week" (p. 42). The witness also then claimed that he did not mention the number of times per week that Bagosora came and that he did not say "several times per week" (p. 43).

[1018] T. 8 October 2004 pp. 7, 44-45.

[1019] Reyntjens, T. 15 September 2004 p. 24.

the incident much closer in time to when Bagosora was attending other meetings. This raises some doubt as to whether he was also in Remera. The evidence of Witness X-4, although not definitive, raises additional concern about Witness CW's testimony concerning Bagosora's presence in Remera.

894. Accordingly, the Prosecution has not proven beyond reasonable doubt that Bagosora encouraged *Interahamwe* to kill Tutsis in the Remera area on the morning of 7 April.

3.5.3 Kibagabaga Mosque, 7 - 8 April

Introduction

895. The Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment allege that, on 7 April 1994, soldiers and militiamen attacked the Kibagabaga mosque in the Remera area of Kigali. They killed a number of the mostly Tutsi refugees there. Reference is made to Witness HU who testified about attacks on 7 and 8 April.[1020]

896. The Bagosora Defence challenges the credibility of Witness HU, in particular with respect to the question of whether soldiers acted in concert with militiamen during the attack, and disputes that Bagosora was involved. The Kabiligi and Ntabakuze Defence argue that the wording of this allegation does not mention their clients. Kabiligi was out of the country during this period (III.6.2). No evidence connects Ntabakuze or members of the Para Commando Battalion to the attack.[1021]

Evidence

Prosecution Witness HU

897. Witness HU, a Tutsi, lived near the Kibagabaga mosque in April 1994, which was in the Remera area of Kigali between Camp Kami and Camp Kanombe. On the night of 6 April, the witness heard an explosion in the sky over Kanombe which was followed by gunfire throughout the night from the various hills in Kigali. On the morning of 7 April, approximately 300 persons from the Remera area sought refuge at the mosque, including around 170 Hutus and 130 Tutsis. The refugees told the witness that they were fleeing from *Interahamwe* supported by soldiers. Around 11.00 a.m., the witness saw a group of 10 *Interahamwe*, led by a local CDR member named Bizimana, kill a Tutsi with a machete blow to his neck, as the victim was running towards the mosque. The refugees then began to arm themselves with traditional weapons.[1022]

898. After killing the Tutsi in front of the mosque, Bizimana and his *Interahamwe* threatened to attack the mosque if the Tutsi refugees were not handed over to them. Witness HU and the other refugees refused. Around 30 *Interahamwe* armed with traditional weapons and a few grenades returned with a pickup truck between 11.00 a.m. and 3.30 p.m. They

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[1020] Bagosora Indictment, para. 6.55; Kabiligi and Ntabakuze Indictment, para. 6.39; Prosecution Closing Brief, paras. 422, 1086-1089, pp. 769, 837-838.
[1021] Bagosora Closing Brief, paras. 1674-1675, p. 550; Kabiligi Closing Brief, para. 215; Ntabakuze Closing Brief, paras. 2464-2465.
[1022] T. 4 September 2003 pp. 2-8, 19-20, 26, 28, 33-35, 39, 42, 44-45, 51; Prosecution Exhibit 90 (personal identification sheet). Witness HU identified a photo of the mosque (Prosecution Exhibit 91). He said that most of the refugees were Tutsis while the Hutus came to pray, but remained in view of the security situation.

launched three attacks on the mosque. The assailants were repulsed by the refugees who threw stones. The *Interahamwe* did not use their grenades because the refugees said they also had grenades. There were no further attacks on 7 April. After 4.00 p.m., a soldier, whom the witness believed was a member of the Presidential Guard, came to the mosque and demanded his sister because further acts of violence might occur there. The young woman did not want to leave and asked her brother to save all of the refugees. Witness HU advised her to go, and she left with the soldier. The witness heard gunshots throughout the night.[1023]

899. Between 2.00 and 3.00 p.m. on 8 April, more than 10 soldiers, wearing camouflage jackets and black berets, and about 50 *Interahamwe,* surrounded the mosque. The commander of the soldiers demanded that all the refugees leave the mosque and line up on the road with their identity cards. Based on their uniforms, Witness HU thought the soldiers were from the Presidential Guard. The refugees refused, and the soldiers opened fire for a few minutes, killing three persons. The commander then demanded that the men line up in front of the mosque and began inspecting their identity cards, as the soldiers searched the mosque for weapons. No grenades were found. After checking 20 refugees, the commander said that most of the refugees were Tutsis and ordered his soldiers to withdraw a short distance. The *Interahamwe* then killed with machetes anyone with a Tutsi identification card. The witness saw 20 bodies on the road. The soldiers remained nearby watching the attack unfold.[1024]

900. Before the *Interahamwe* left, they warned Witness HU against helping the wounded, threatening with a renewed attack. He and others buried five victims later that day and another 14 victims on 9 April. The witness estimated that more than 20 persons died at the mosque or as they fled. The RPF gained control of the area between 11 and 13 April.[1025]

Deliberations

901. Witness HU is the only witness who testified about the events at Kibagabaga mosque on 7 and 8 April 1994. He provided direct and detailed testimony concerning the role of soldiers and *Interahamwe* in the attacks on the mosque. The Bagosora Defence points out that according to the testimony, *Interahamwe* killed a Tutsi in front of the mosque and then engaged in repeated attacks on 7 April, whereas in his statement to Tribunal investigators the events took place on 8 April. The witness acknowledged that he made a mistake concerning the date in his statement. He explained this by the passage of time since the events and the nature of the investigators' questions.[1026] The Chamber is satisfied by this explanation and considers Witness HU's testimony credible.

902. Based on the testimony, the Chamber finds that, on the morning of 7 April, around 300 Hutu and Tutsi refugees gathered at the Kibagabaga mosque due to increasing insecurity in the area. After killing a Tutsi in front of the mosque, 10 local *Interahamwe* threatened the refugees there with attack if they did not surrender the Tutsi refugees there. Later that day, 30 *Interahamwe* armed mainly with traditional weapons unsuccessfully attacked the mosque

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[1023] T. 4 September 2003 pp. 8-10, 40, 44-46, 52.

[1024] *Id.* pp. 10-16, 28-29, 36-40, 47-48, 52-53. Witness HU heard from other people that members of the Presidential Guard wore black berets. He did not know if there was any other distinguishing feature on their uniform to differentiate them from other soldiers, except for members of the Para Commando Battalion who wore camouflage berets. *See id.* pp. 66-67.

[1025] *Id.* 16-19, 49, 53-54. Witness HU noted that elements of the RPF were in the area even before 7 April. T. 4 September 2003 pp. 47-48.

[1026] *Id.* pp. 28-29, 40-41. The statement was not tendered as an exhibit.

three times. In addition to throwing stones, the refugees told the assailants that they had grenades to dissuade further attacks. That afternoon, a soldier came to the mosque for his sister, intimating that further attacks were coming. On 8 April, soldiers and *Interahamwe* surrounded the mosque and demanded that the refugees come out. The soldiers fired for a few minutes at the mosque, killing several persons, when the refugees refused. This prompted the refugees to line up on the street. The soldiers checked several identity cards and searched the mosque before withdrawing a short distance away. The *Interahamwe* continued checking identity cards and killed a number of Tutsi refugees. There were more than 20 mostly Tutsi victims of the attack.

903. Witness HU identified the soldiers who participated in the attack as members of the Presidential Guard because others had told him that his unit wore black berets. This is not a sufficient basis to establish that the soldiers were in fact from the Presidential Guard, as members of other Rwandan army units also wore black berets (III.1.2). The Chamber is not in a position to identify the particular unit of the soldiers. However, it is clear from the description of the colour of the berets that the soldiers were not members of the Para Commando Battalion, who wore camouflage colour berets (III.1.2).[1027]

904. The Chamber acknowledges, as the Bagosora Defence submits, that the claim by the refugees to possessing grenades may have legitimately prompted the army to search the premises of the mosque. However, the manner in which the operation was conducted can only be viewed as manifestly unlawful. In particular, the soldiers were accompanied by *Interahamwe*, who had previously threatened and repeatedly attacked the refugees at the mosque for harbouring Tutsi. Rather than firing warning shots, the soldiers killed three refugees in the mosque in order to intimidate them. Finally, the soldiers withdrew only a short distance away and watched as the *Interahamwe* killed the other, mostly Tutsi refugees. These facts clearly demonstrate that this attack was a coordinated effort between the soldiers and the militiamen.

905. The Chamber finds that the Prosecution has proven beyond reasonable doubt that, on 8 April, soldiers and *Interahamwe* killed more than 20 mostly Tutsi refuges at the Kibagabaga mosque. The Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). There is no evidence directly showing that Bagosora was aware of the specific attack at the mosque. However, given the widespread killing throughout Kigali perpetrated by or with the assistance of soldiers, the Chamber is satisfied that Bagosora was aware that soldiers under his authority participated in killings.

906. The Chamber has not heard sufficient evidence directly implicating Kabiligi or Ntabakuze in this crime. Kabiligi was not in Rwanda at the time of the attack (III.6.2). The description of the soldiers wearing black berets indicates that they were not members of the Para Commando Battalion, who wore camouflage berets (III.1.2). Therefore, there is no need to address the fact that the wording of their Indictment does not mention them.

[1027] In addition, even Witness HU distinguished the soldiers from members of the Para Commando Battalion based on the colour of the berets. *See id.* p. 66.

3.5.4 Kabeza, 7 - 8 April

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Introduction

907. The Bagosora Indictment and the Kabiligi and Ntabakuze Indictment allege that, from 7 April 1994, elements of the Rwandan army, gendarmerie and *Interahamwe* perpetrated massacres of the civilian population. The Prosecution points to evidence from Witnesses BL, DBN, AH and DCB that killings were committed by members of the Para Commando Battalion and the Presidential Guard in the Kabeza area. Ntabakuze allegedly personally supervised the killings in the area on 8 April around 10.00 a.m.[1028]

908. The Ntabakuze Defence reiterates that the Indictment does not provide proper notice that Ntabakuze or members of the Para Commando Battalion participated in attacks in Kabeza. In addition, the evidence of Witness AH and BL lacks credibility. Reference is made to Witnesses DH-51, DI-40 and Colonel Dewez.[1029]

Evidence

Prosecution Witness BL

909. Witness BL, a Tutsi, lived in Kabeza *cellule*, Kanombe sector in April 1994, which she described as a mixed, but majority Tutsi area. Around 6.00 a.m. on 7 April, Colonel Tharcisse Renzaho, the prefect of Kigali, informed the population over the radio that President Habyarimana had died and that everyone should remain at home. Between 8.30 a.m. and 9.00 a.m., the witness saw that members of the Para Commando Battalion congregated outside of her home. She identified their unit by their uniform, which included camouflage berets. A short time later, she heard gunfire. The wife of Alexi, one of her Tutsi neighbours, sought refuge in her home, saying that her husband had just been killed by soldiers from the Para Commando Battalion. The next day she saw approximately 10 to 15 *Interahamwe* carry the dead body of Musoni, another Tutsi, out of his home. There were many more deaths in the following days, which the witness believed were perpetrated by *Interahamwe*.[1030]

Prosecution Witness DBN

910. Witness DBN, a Tutsi member of the General Services Company in the Para Commando Battalion, testified that, around 1.00 p.m. on 7 April 1994, he delivered supplies to the Para Commando position in Remera. As he passed through Kabeza, he saw members of the Para Commando Battalion forcibly entering houses and setting fire to their roofs. He

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[1028] Bagosora Indictment, para. 6.50; Kabiligi and Ntabakuze Indictment, paras. 6.36; Prosecution Closing Brief, paras. 1265(f), 1295, 1296(d), 1298-1302, 1324(a), 1327, 1405 (a), pp. 767, 836; T. 28 May 2007 p. 16.

[1029] Ntabakuze Closing Brief, paras. 154-155, 398-414, 1570-1598, 1609-1633; T. 30 May 2007 p. 59; T. 31 May 2007 p. 7. The Ntabakuze Defence also refers to Witness DM-26, a military officer stationed at Camp Kanombe, who did not hear about crimes committed by members of the Para Commando Battalion. *See* T. 1 December 2006 p. 27. It makes similar submissions with respect to General Dallaire, Colonel Marchal and Colonel Dewez, noting that they travelled through Kabeza on the way to the airport but did not testify about the commission of any crimes. It also refers to Prosecution Witnesses XAB, DP and DBN, members of the Para Commando Battalion, who were posted at the Giporoso junction a few kilometrees away and did not testify about attacks in Kabeza. The Bagosora and Kabiligi Defence teams do not directly address this allegation in their Closing Briefs.

[1030] T. 5 May 2004 pp. 2-6, 10, 14-18; Prosecution Exhibit 219 (personal identification sheet).

could not see what was going on in the houses. On 8 April, the number of soldiers in the area had declined and nearly all of the houses had been burned. The neighbourhood was calm. He recognised several members of the Para Commando Battalion, its CRAP Platoon and a member of the Light Anti-Aircraft Battalion in the area. The witness did not see any killings or bodies in Kabeza. He located Kabeza on the map in an area between Nyarugunga and Nonko on the road from the camp passing by the airport.[1031]

Prosecution Witness AH

911. Witness AH, a soldier stationed at Camp Kigali who had Tutsi family members, was stationed at Camp Kigali in April 1994. On the night of 7 April, he returned to his home in Kabeza *cellule* in Kanombe sector to evacuate his family to Camp Kanombe, which was nearby. His wife told him that soldiers had stopped by their house earlier, but left her alone since she was married to a soldier. On the morning of 8 April, he saw members of the Presidential Guard and the CRAP Platoon of the Para Commando Battalion going from house to house, killing people. He recognised the members of the Para Commando Battalion by their camouflage beret and noted that the members of the Presidential Guard were wearing black berets.[1032]

912. Around 10.00 a.m., Witness AH saw Ntabakuze, accompanied by members of the Para Commando Battalion, driving slowly through the area in a blue Toyota Hilux. The witness thought that he was supervising the killings. Ntabakuze asked him to which unit he belonged and why he was not with the soldiers at his camp. The witness answered that he was a member of the headquarters company at Camp Kigali and that he was waiting for a vehicle to evacuate his family to Camp Kanombe. Ntabakuze did not respond and continued on his way. Around 11.00 a.m., the witness took his family to Camp Kanombe.[1033]

Prosecution Witness DCB

913. Witness DCB, a Hutu member of the Presidential Guard, heard from soldiers at Camp Kimihurura and Camp Kanombe while running errands that members of the Para Commando Battalion were targeting Tutsis in the Kabeza area.[1034]

Ntabakuze

914. Ntabakuze testified that the Para Commando Battalion was not deployed to Kabeza. He denied having been present in Kabeza on the morning of 8 April 1994 and stated that he was with a Belgian doctor, Colonel Pasuch, at 10.00 a.m. in Kanombe military hospital.[1035]

Ntabakuze Defence Witness Joseph Dewez

915. During his testimony, Colonel Dewez, the commander of UNAMIR's Kigali Battalion (KIBAT) referred to the KIBAT *Chronique*, a daily record of the activities of the Belgian

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[1031] T. 31 March 2004 pp. 61-62; T. 1 April 2004 pp. 49-53; T. 5 April 2004 pp. 48-50, 54-58; Prosecution Exhibit 198 (personal identification sheet); Ntabakuze Defence Exhibit 54 (map of area around Camp Kanombe).
[1032] T. 19 February 2004 pp. 27, 33-35, 37; T. 20 February 2004 pp. 24-25, 38, 40-41; Prosecution Exhibit 194 (personal identification sheet). Witness AH's own ethnicity is unclear.
[1033] T. 19 February 2004 pp. 35-37; T. 20 February 2004 pp. 36-38, 41.
[1034] T. 5 February 2004 p. 105; T. 6 February 2004 p. 16; Prosecution Exhibit 175 (personal identification sheet).
[1035] T. 20 September 2006 pp. 52-54.

UNAMIR contingent from 6 to 19 April 1994.[1036] He explained that, on 7 April, KIBAT's surgeon and an anaesthetist were with a Belgian colleague, Colonel Pasuch, at Camp Kanombe. Pasuch was working with the Belgian military in the area of medical cooperation. The KIBAT doctors had remained at Camp Kanombe for the previous day and a half due to fears of anti-Belgian sentiments.[1037]

916. According to the KIBAT *Chronique*, at 9.57 a.m. on 8 April, the headquarters of KIBAT contacted the Belgian doctors at Camp Kanombe requesting assistance for a seriously injured UN observer. Colonel Pasuch then contacted Major Saint Quentin, a French officer who was stationed at Camp Kanombe, for assistance. At 10.30 a.m., Saint Quentin left Pasuch's house with the doctors for Ntabakuze's house. Ntabakuze, accompanied by Saint Quentin, then drove the doctors in a pickup truck to the *École Technique Officielle* (ETO). They arrived at 12.24 p.m.[1038]

917. Ntabakuze accompanied them to facilitate the crossing of roadblocks and to ensure that they did not encounter any problems. Before Ntabakuze accompanied the doctors, he had met with a Belgian UNAMIR officer at the airport to facilitate their evacuation from the camp.[1039]

Ntabakuze Defence Witnesses DH-51

918. Witness DH-51, a Hutu member of Ntabakuze's escort team, testified that the Para Commando Battalion did not commit any massacres in Kabeza nor did Ntabakuze supervise any killings of civilians there.[1040]

Ntabakuze Defence Witness DI-40

919. Witness DI-40 was a Hutu resident of Kabeza *cellule* whose wife was a Tutsi. He stated that, before 6 April 1994, there were a number of RPF supporters and a majority of Tutsis in his area. Eight gendarmes were posted to the area when there was instability after the assassination of Emmanuel Gapyisi and Felicien Gatabazi. On the morning of 7 April, the witness heard gunshots in the area, and a short time later the gendarmes stopped by the witness's home to ask him to drive them to the hospital at Camp Kanombe. One of the gendarmes had been shot when they confronted an armed group of about 10 civilians led by someone named Paulin from the Remera area of Kigali. On 8 and 9 April, the witness also heard gunfire. Others in the area said that the armed gang was searching for RPF accomplices, who were primarily Tutsis in the area. The witness did not see any soldiers operating in the area from 7 to 9 April.[1041]

[1036] The KIBAT *Chronique* (Prosecution Exhibit 149) was prepared in September 1995 based on field journals (*journal de campagne*) as well as interviews of battalion members, and thus was limited to these sources. Dewez explained that he was ultimately responsible for the final editing and fact checking of the KIBAT *Chronique*. *See* T. 24 June 2005 pp. 18-24; Prosecution Exhibit 149, para. 3(b) (KIBAT *Chronique*). The introduction to the KIBAT *Chronique* explains how the information was collected.

[1037] T. 23 June 2005 pp. 51-52, 54; Ntabakuze Defence Exhibit 122 (personal identification sheet). KIBAT was composed of Belgium's Second Para Commando Battalion (III.4.1.1).

[1038] Prosecution Exhibit 149, para. 25 (KIBAT *Chronique*). *See also* T. 23 June 2005 pp. 51-52, 54. The KIBAT *Chronique* refers to the arrival destination as "Beverly Hills", which was the code for ETO.

[1039] T. 23 June 2005 pp. 52, 54.

[1040] T. 6 December 2005 pp. 24-25; Ntabakuze Defence Exhibit 199 (personal identification sheet).

[1041] T. 7 March 2006 pp. 3-7, 10-12, 14-17; T. 8 March 2006 p. 10; Ntabakuze Defence Exhibit 212 (personal identification sheet). Emmanuel Gapyisi and Felicien Gatabazi were leaders of the MDR and PSD political parties, respectively. *See* Prosecution Exhibit 3 (*Leave None to Tell the Story* (1999)), pp. 113, 437.

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920. There is no dispute that Tutsi civilians suspected of ties to the RPF were targeted in the Kabeza area of Kigali on 7 and 8 April 1994. The main questions for the Chamber are whether members of the Presidential Guard and Para Commando Battalion participated in this operation, and whether Ntabakuze was present on the morning of 8 April supervising it.

921. Witness BL saw members of the Para Commando Battalion, whom she identified by their camouflage beret, congregated outside of her house on the morning of 7 April and heard that they had killed her neighbour's husband. Witness AH heard from his wife that "soldiers" had stopped by their house on the night of 7 April. On the morning of 8 April, the witness saw members of the Para Commando Battalion and Presidential Guard going from house to house in the area shooting civilians.[1042] He was able to distinguish between the two units based on their uniforms, in particular noting that members of the Para Commando Battalion wore camouflage berets. Witness BL only saw and heard about *Interahamwe* in the area on 8 April. Witness DCB heard that members of the Para Commando Battalion were operating in Kabeza, but did not have any direct knowledge of this.

922. The Prosecution also asserts that Witness DBN, who saw members of the Para Commando Battalion in Kabeza on 7 and 8 April, corroborates this evidence.[1043] While the witness referred to "Kabeza", he placed it in a different location than the one referred to by Witnesses BL and AH.[1044] Therefore, Witness DBN's testimony concerns a different event, discussed below, and does not provide corroboration.

923. The evidence of Witnesses BL and AH demonstrates that members of the Para Commando Battalion and the Presidential Guard were operating in Kabeza on 7 and 8 April. Both witnesses provided direct and convincing testimony and accurately identified members of the Para Commando by their distinctive camouflage beret. The Chamber is mindful that members of the Ruhengeri Commando Battalion, Huye Commando Battalion and the Commando Training Center of Bigogwe also wore camouflage berets.[1045] However, the Chamber is satisfied that the unit operating in Kabeza were part of the Para Commando Battalion given the close proximity of Kabeza to Camp Kanombe. Furthermore, given Witness AH's profession as a soldier, the Chamber is convinced that he was in a position to accurately identify the military units of the assailants.[1046] The fact that Witness BL did not

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[1042] The Ntabakuze Defence asserts that Witness AH in one of his prior statements did not indicate that he had direct knowledge of the incident. *See* Ntabakuze Closing Brief, para. 1584. The Defence did not confront the witness with the statement or tender it as an exhibit.

[1043] Prosecution Closing Brief, paras. 1331, 1406.

[1044] *See* Witness DBN, T. 5 April 2004 pp. 49-50; Ntabakuze Defence Exhibit 54 (map of area around Camp Kanombe). Witness AH described the route he took from Camp Kigali to Kabeza on a map, entered as Ntabakuze Defence Exhibit 35. *See* T. 20 February 2004 pp. 27-35. A comparison of the two maps reflects that Witness DBN is referring to a different location on the other side of the airport. The map does not refer to it as Kabeza. The location referred to by Witness AH is named Kabeza on the map.

[1045] The Chamber has noted in other sections that these four Commando units wore camouflage berets (III.1.2).

[1046] Witness AH claimed to have first hand-knowledge of the arrival of the 10 Belgian peacekeepers at Camp Kigali on the morning of 7 April (III.3.4). He suggested that they came on foot with members of the Presidential Guard. *See* T. 19 February 2004 pp. 42-45. The Chamber found, however, based on the reliable evidence of several other eye-witnesses, that the peacekeepers arrived by mini-bus with members of the Reconnaissance Battalion. When confronted with this difference, Witness AH simply reaffirmed his testimony. *See* T. 19 February 2004 pp. 43-44. However, with respect to the incident in Kabeza, the witness accurately described the

also see soldiers on 8 April does not detract from Witness AH's evidence since she fled her home that day.[1047]

924. Witness AH also claimed that he had a brief conversation with Ntabakuze at 10.00 a.m. on 8 April while the soldiers were moving through the neighbourhood. He is the sole witness to testify about Ntabakuze's presence in the area. The witness did not indicate his basis of knowledge for identifying the officer as Ntabakuze. In addition, he was not asked to identify him in court. Consequently, the Chamber doubts the witness's identification of Ntabakuze in Kabeza. Furthermore, the evidence of Colonel Dewez and the KIBAT *Chronique* indicate that Ntabakuze departed Camp Kanombe for ETO around 10.30 a.m. in connection with the evacuation of the Belgian medical personnel at the camp. It reasonably follows from this evidence that he would have been at the camp for a period of time communicating with the Belgian and French officers there with respect to the evacuation. While it remains possible that the incident described by Witness AH could have occurred before Ntabakuze returned to Camp Kanombe, the Chamber considers that this evidence still raises additional doubt about whether Ntabakuze was supervising soldiers in Kabeza on 8 April.

925. In the Chamber's view, the general assertions of Witnesses DH-51 and DI-40 that there were no soldiers operating in Kabeza does not raise any doubt about the first-hand accounts of Witnesses BL and AH. In particular, Witness DI-40, although in Kabeza, did not have direct knowledge about the identity of the assailants there. Furthermore, his testimony that the area was suspected of harbouring RPF sympathisers presents a clear motive for soldiers to search the neighbourhood.[1048] The Chamber has also considered the credibility of the two Prosecution witnesses in view of Defence evidence, which suggests that members of the battalion did not leave Camp Kanombe until mid-afternoon on 7 April (III.3.5.1). The Chamber, however, is not fully convinced that the entire battalion remained on the tarmac for nearly 18 hours after the death of the President awaiting orders for deployment. When weighed against the credible accounts of Witness BL and AH, the Chamber is satisfied that at least a small contingent was present in Kabeza.

926. The Chamber finds beyond reasonable doubt that, on 7 and 8 April, members of the Para Commando Battalion were going from house to house in the Kabeza area and killing civilians. Members of the Presidential Guard also participated on 8 April. Kabeza was predominately Tutsi and viewed as sympathetic to the RPF.

927. In light of his command and control over members of the Para Commando Battalion (IV.1.4) as well as the organisation of the crime, the Chamber considers that it could only have been carried out with the knowledge and approval of Ntabakuze. The Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). There is no evidence directly showing that Bagosora was aware of the specific attack at the mosque. However, given the widespread killing throughout Kigali perpetrated by or with the

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uniform of the Para Commando Battalion. Furthermore, Witness BL identified the same unit operating in the area on the previous day.

[1047] T. 4 May 2004 p. 21.

[1048] The Ntabakuze Defence submits that Witnesses DM-26, DBN, XAB, DP, General Dallaire, Colonel Dewez and Colonel Marchal were either stationed near Kabeza or passed through the area on 7 and 8 April. In the Defence's view, the fact that none of these witnesses mentioned an attack in Kabeza calls into question the Prosecution's evidence. *See* Ntabakuze Closing Brief, paras. 1591-1593, 1597. The Chamber does not find this convincing since these witnesses were not specifically questioned on these points by the parties.

assistance of soldiers, the Chamber is satisfied that Bagosora was aware that soldiers under his authority were participating in killings. The Chamber has no evidence directly connecting Kabiligi to this specific attack.

928. Finally, the Chamber will address the Ntabakuze Defence assertion that it was not reasonably informed of the material facts concerning Ntabakuze's role in the killing of civilians in Kabeza.[1049] The issue of notice for this event has been the subject of previous litigation during the trial. In its decision of 26 June 2006, the Chamber determined that paragraph 6.36 of the Kabiligi and Ntabakuze Indictment was vague in relation to the specific allegation concerning the killing of civilians in Kabeza.[1050] The Chamber, however, found that this defect in the Indictment was cured by timely, clear and consistent information, notably by the summary of anticipated testimony of Witness AH in the Prosecution's Pre-Trial Brief, filed on 21 January 2002.[1051] This notice came almost two years before the appearance of Witness AH whose testimony underpins the Chamber's factual findings on this event. From the Chamber's findings above, Ntabakuze's role in the event is based on his command of the Para Commando Battalion, which is clearly pleaded in paragraph 4.8 of the Kabiligi and Ntabakuze Indictment.[1052]

929. The question remains whether members of the Para Commando Battalion were participating in attacks on the afternoon of 7 April in the area between Nyarugunga and Nonko described as "Kabeza" by Witness DBN. The Chamber has expressed concerns with the credibility of other aspects of his testimony and thus views his evidence on this point with caution. The witness did not mention this incident in his first two statements to Tribunal investigators in August 1999 and February 2000.[1053] The allegations surfaced in a will-say statement in December 2003, around four months before his testimony.[1054] The witness explained that he did not remember the incident at the time he gave his statements.[1055] This explanation is not entirely convincing since Witness DBN's statement of August 1999 refers to a similar incident of seeing attacks by members of the Presidential Guard as he was delivering food to their position on 7 April, which occurred just before he observed the incident in "Kabeza".[1056] The Chamber declines to accept Witness DBN's evidence on this point in the absence of corroboration.

[1049] The Bagosora Defence did not raise the issue of notice with respect to this incident.
[1050] Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 32-35.
[1051] *Id.* paras. 34-35. *See also* Prosecution Pre-Trial Brief (21 January 2002), Annex, p. 4 ("On the night of 7th to 8th April 1994 in the Kabeza area, military elements belonging to the Para-Commando Battalion and Presidential Guard Battalion went from family to family to kill civilians. The witness knew Ntabakuze well. At about 15h00 on 8th April 1994, the witness met Ntabakuze in a blue Hilux, on the main road to Kanombe. Ntabakuze questioned the witness on what he was doing there, the unit to which he belonged and why he wasn't with the others. The witness stated that he met Ntabakuze at the crossing between Kanombe and Kabeza where his troops were searching for and killing civilians and erecting roadblocks."). The revision to the Prosecution Pre-Trial Brief, filed in June 2002, specifically references Witness AH's summary in the January 2002 Pre-Trial Brief to paragraph 6.36 of the Kabiligi and Ntabakuze Indictment. *See* Prosecution Pre-Trial Brief (7 June 2002), p. 13.
[1052] Paragraph 4.8 of the Kabiligi and Ntabakuze Indictment reads: "In his capacity as Commander of the Para-Commando Battalion of the Rwandan Army, Aloys Ntabakuze exercised authority over the units of this Battalion." Paragraphs 3.3 and 6.34 refer to the "elite' nature of the battalion.
[1053] Ntabakuze Defence Exhibit 49 (statement of 20 August 1999); Ntabakuze Defence Exhibit 50 (statement of 25 February 2000).
[1054] Ntabakuze Defence Exhibit 52 (will-say statement of 14 December 2003).
[1055] T. 5 April 2004 p. 55.
[1056] Ntabakuze Defence Exhibit 49 (statement of 20 August 1999).

3.5.5 Saint Josephite Centre, 8 April

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Introduction

930. The Bagosora Indictment and the Kabiligi and Ntabakuze Indictment allege that, from 7 April 1994, elements of the Rwandan army, gendarmerie and *Interahamwe* perpetrated massacres of the civilian population. It is alleged that rape and sexual assault occurred during the course of these attacks. The Prosecution points to evidence of Witness DBJ who attested to an attack on 8 April 1994 at the Saint Josephite Centre in the Nyamirambo sector of Kigali.[1057]

931. The Bagosora Defence argues that Witness DBJ's testimony is contradicted by Witnesses DH-90 and DH-91.[1058]

Evidence

Prosecution Witness DBJ

932. Witness DBJ, a Tutsi, sought refuge along with other Tutsis at the Saint Josephite Centre in Nyamirambo from April to June 1994. Around 5.30 p.m. on 8 April, he saw a group of *Interahamwe* scale the walls of the Centre and began attacking the refugees. When the refugees resisted, about 20 soldiers shot at the main gate in order to reinforce the assailants. The witness believed the soldiers were from the Presidential Guard because they were wearing black berets and new camouflage uniforms. One of the soldiers also identified himself to the witness as a member of that unit.[1059]

933. Initially, the assailants asked to see the refugees' identity cards but eventually they just opened fire on the refugees because most were Tutsis. If the assailants recognised Hutus during the attack, they told them to leave. The *Interahamwe* used their traditional weapons to kill those who were fleeing. Over the course of the next two hours, the assailants killed around 85 Tutsi civilians. Many of the female victims were asked to undress before being killed. He also saw one of the soldiers take a Tutsi female student into an empty room at the Centre. The girl refused, but the soldier forcefully undressed her. He raped the girl and then killed her. Witness DBJ believes he survived the attack because his features were not common for a Tutsi.[1060]

Ntabakuze Defence Witness DH-90

934. Witness DH-90, who lived in Nyamirambo during the relevant events, testified that, in April 1994, Tutsi refugees were gathered at the religious institutions in the area, including the Saint Charles Lwanga Church, the Saint André College, the Saint Josephite Centre, the

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[1057] Bagosora Indictment, paras. 6.50, 6.65; Kabiligi and Ntabakuze Indictment, paras. 6.36, 6.47; Prosecution Closing Brief, paras. 151-152, 429, 1193, pp. 767, 776, 836, 841, 892. The Prosecution also refers to the rape described by Witness DBJ in support of paragraph 6.34 of the Nsengiyumva Indictment, which alleges that rape and sexual assault occurred during the massacres perpetrated in Rwanda.

[1058] Bagosora Closing Brief, para. 1684. The other Defence teams do not address this allegation.

[1059] T. 24 November 2003 pp. 4-6, 44-47, 50; T. 25 November 2003 pp. 17-19; Prosecution Exhibit 136 (personal identification sheet). The witness thought that an *Interahamwe* named Kigingi played a role in the attack because he later became well-known as the head of the militiamen in the area. *See* T. 25 November 2003 p. 32.

[1060] T. 24 November 2003 pp. 4-10, 41-42, 45-46, 50-51; T. 25 November 2003 pp. 20-22, 32.

Beneberika Convent and the Carmelite Convent. They first arrived around 31 March 1994, after the death of a prominent CDR party member in Biryogo commune. The witness testified about an attack on the church conducted by militiamen and soldiers wearing black berets on 8 April. He also referred to an attack on Saint André College by *Interahamwe* on 13 April, but did not mention any particular attack on the Saint Josephite Centre on 8 April.[1061]

Ntabakuze Defence Witness DH-91

935. Witness DH-91 testified that he was in a position to closely follow the events in the area surrounding the Saint Charles Lwanga Church, where he stayed from April to June 1994. A number of Hutu and Tutsi civilians first sought refuge at the church on 31 March 1994, fleeing violence in Biryogo commune, following the death of a prominent CDR party member. After the death of President Habyarimana, hundreds more arrived at the various religious institutions in Nyamirambo area, including Saint André College, the Saint Josephite Centre, the Beneberika Convent, and the Carmelite Convent.[1062]

936. The witness testified about an attack on 8 April on the Saint Charles Lwanga Church involving soldiers and militiamen. His diary which is a contemporaneous account of the events also refers to that attack. Neither he nor his diary explicitly referred to an attack on the Saint Josephite Centre on 8 April. However, an entry in his diary for 11 April 1994 alludes to centre being "seriously endangered" with 17 dead and 10 wounded.[1063]

Deliberations

937. Witness DBJ is the only witness to testify about the attack on the Saint Josephite Centre on 8 April 1994. His testimony on the attack was first-hand and largely consistent.[1064] In the Chamber's view, the fact that Witnesses DH-90 and DH-91 did not mention it does not undermine Witness DBJ's testimony. The witnesses were not specifically questioned about whether there was an attack on the Saint Josephite Centre on 8 April.[1065] Nevertheless, their evidence provides general corroboration as they attested that soldiers and *Interahamwe*

[1061] T. 25 April 2005 pp. 6-7, 28, 36-37, 41-45; T. 26 April 2005 pp. 14, 25-26, 31-32; Ntabakuze Defence Exhibit 88 (personal identification sheet). With respect to the identity of the soldiers, Witness DH-90 stated: "At the time I thought, without being sure, that they were members of the Presidential Guard." T. 25 April 2005 p. 44. The witness, who was at Saint Charles Lwanga Church, identified each of these geographically proximate locations on two maps. T. 25 April 2005 pp. 11-28, 32; T. 26 April 2006 pp. 19, 27-28, 46; Ntabakuze Defence Exhibit 90 (Map of Kigali identified by Witness DH-90); Ntabakuze Defence Exhibit 91 (Map of Nyamirambo identified by Witness DH-90).

[1062] T. 28 April 2005 pp. 50-51, 57, 79; T. 29 April 2005 pp. 40-41; Ntabakuze Defence Exhibit 92 (personal identification sheet). Witness DH-91 had reviewed and annotated the English translation of his diary (Prosecution Exhibit 334) and found that it was generally correct. T. 29 April 2005 pp. 37-38.

[1063] T. 28 April 2005 pp. 77-78; T. 29 April 2005 pp. 37-39; Prosecution Exhibit 334 (Diary of Witness DH-91), p. 1.

[1064] During cross-examination, Witness DBJ acknowledged a mistake in his statement to Tribunal investigators where he said he observed the rape of the student at the centre from the floor of the room where it occurred. During his testimony, he noted that he was under a nearby pear tree. The Chamber does not find this discrepancy significant. *See* T. 25 November 2003 pp. 21-22; Bagosora Defence Exhibit 48 (statement of 28 July 1999).

[1065] Witness DH-90 was specifically asked about whether he had heard about the rape and dismemberment of three Tutsi girls at the Saint Josephite center on 8 April. The witness responded that he had not heard about the incident. *See* T. 26 April 2005 pp. 31-32. This exchange is too limited to suggest that the witness had not heard about an attack on the centre.

engaged in attacks at the nearby Saint Charles Lwanga Church on that date.[1066] As discussed below (III.4.1.14), on 7 and 8 June 1994, military personnel and *Interahamwe* also attacked refugees at both the Saint Josephite Centre and the Saint Charles Lwanga Church within one day time-frame. Furthermore, the diary of Witness DH-91 alludes to an attack at the Saint Josephite Centre.[1067] The entry for 11 April referring to the dead and wounded at the Centre does not specify when the attack occurred. Accordingly, the Chamber considers that Witness DBJ's account of the attack on the Centre is credible.

938. Based on Witness DBJ's testimony, the Chamber finds beyond reasonable doubt that, on 8 April, soldiers wearing black berets and militiamen attacked and killed a number of Tutsi refuges at the Saint Josephite Centre. Many female victims were forced to undress before being killed. During the course of the attack, at least one Tutsi woman was raped by a soldier. The Chamber, however, is not satisfied that the witness's testimony convincingly demonstrates that the soldiers were members of the Presidential Guard as opposed to another unit of the army. The witness did not know if there was any difference between the uniform of the Presidential Guard and other units.[1068]

939. The Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). There is no evidence directly showing that Bagosora was aware of the specific attack at the mosque. However, given the widespread killing throughout Kigali perpetrated by or with the assistance of soldiers, the Chamber is convinced that Bagosora was aware that soldiers under his authority were participating in killings. The Chamber has not heard sufficient evidence directly implicating Kabiligi or Ntabakuze in this crime.

3.5.6 Augustin Maharangari, 8 April

Introduction

940. The Bagosora Indictment alleges that, on 8 April 1994, Bagosora communicated by radio with the prefect of Kigali-Ville, Tharcisse Renzaho, in order to ensure that the Manager of the *Banque Rwandaise de Développement* (BRD), Augustin Maharangari, had been "liquidated". Renzaho replied in the affirmative. Joseph Nzirorera, the MRND secretary-general, allegedly interrupted the conversation to seek confirmation of the news. The Prosecution relies primarily on Witnesses AL, BJ and ZF.[1069]

941. The Bagosora Defence questions whether Witness BJ would have been able to overhear such a radio transmission, as well as her ability to identify Bagosora. Reference is made to Witnesses A-4, A-8, LM-1 and ALL-42.[1070]

[1066] The Prosecution does not appear to be pursuing the attacks on 8 April 1994 at the Saint Charles Lwanga Church.
[1067] Prosecution Exhibit 334 (Diary of Witness DH-91: "Monday, 11 April 1994 ... The Brothers of Joseph, along with their refugees are seriously endangered. They had 17 dead – Munyambaraga's son Seminarest also died. More than 10 wounded were finally taken away by the Red Cross along with the dead."), p. 1.
[1068] T. 24 November 2003 p. 46.
[1069] Bagosora Indictment, para. 6.49; Prosecution Closing Brief, paras. 112, 1366-1369, 1392-1395, p. 767.
[1070] Bagosora Closing Brief, paras. 1230-1249, 1756, 1766, 1770-1772. The other Defence Closing Briefs do not address this event.

Evidence

40480

Prosecution Witness AL

942. Witness AL, a Hutu, was present at Maharangari's house between 6 and 12 April 1994. On 7 April, the witness escorted the wife and children to a neighbouring convent, due to growing security concerns. Maharangari and his son sought refuge there later that day. The next morning, four armed soldiers brought Maharangari back to his home. Three of them wore camouflage uniforms and black berets. The fourth wore instead a camouflage-coloured cloth on his head. The witness recognised him as a former member of the Presidential Guard and a driver at the BRD. Two of the soldiers pushed Maharangari into the house, while the witness and the cook were forced to remain with the other two soldiers outside the gate. The witness heard three gunshots. At around 8.00 a.m., the soldiers exited the compound, carrying the handbag of Maharangari's wife and a small metallic trunk.[1071]

943. Two other soldiers arrived soon after. One of them had a pistol and a handheld radio and was wearing an epaulette with stripe and stars and a red beret. The second soldier, who was carrying a rifle, went inside the house and asked Witness AL and the cook to look for Maharangari. He was found lying on the floor of the children's washroom, having been killed by three bullets. The soldier requested the witness and the cook to move the body. He also asked why they had not intervened to prevent the killing. The witness explained that they were unarmed and thus powerless to do so. The soldiers then went to the convent to inform Maharangari's wife of her husband's death and to offer their condolences. After the soldiers left, a Red Cross vehicle arrived to collect his body.[1072]

944. Later that day, two other soldiers, also wearing camouflage uniforms and black berets, arrived in a jeep. They parked at the house of a neighbour, who directed some young men to accompany the soldiers. The soldiers entered the convent, after which Witness AL heard gunshots. Immediately after the soldiers had left, the nuns called the witness to say that the entire Maharangari family had been exterminated. The witness went to the convent, where he helped load their bodies onto the Red Cross vehicle. All were dead, except for one of the children, who had been seriously wounded, and who is not believed to have survived.[1073]

Prosecution Witness BJ

945. Witness BJ, a Hutu, was employed by an international organisation. For security reasons, she was unable to leave her home in Kigali between 6 April and her evacuation on 10 April 1994. As the telephone system had ceased to work, she used a Motorola handheld radio issued by her employer to scan numerous radio frequencies in order to glean information about the unfolding situation. In the afternoon of either 8 or 9 April, she heard some conversations in Kinyarwanda on a couple of unidentifiable frequencies. One such conversation was an exchange in Kinyarwanda between Bagosora, Tharcisse Renzaho and Joseph Nzirorera, which she described as follows:

> I heard a conversation between three people and I was able to recognise some voices. It was somebody asking: "... "Have you finished to kill the director of the Rwandan Development Bank"; and the second voice replied, "Yes, my colonel". And the third

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[1071] T. 29 April 2004 pp. 52, 57-63, 74-75; Prosecution Exhibit 217 (personal identification sheet).
[1072] *Id.* 63-65, 77-78.
[1073] *Id.* 65-68, 74-81.

> voice said, "Are you sure?" And another voice -- the same voice replied, "Very much so". And I was able to identify three of the voices.[1074]

946. The witness identified the voice of the first speaker as Bagosora's, the second speaker was Renzaho, and the third voice belonged to Nzirorera. She described Bagosora's voice as "a strong voice with a northern accent and authoritarian". The witness had heard his voice in an interview on national radio prior to 1994, and when he gave a speech at a naming ceremony for the child of one of his relatives in 1993. Shocked at what she had heard, Witness BJ switched frequencies and did not return to that frequency.[1075]

947. Maharangari was a friend of Witness BJ. He was a Tutsi and member of the PSD party. She was later informed by one of his relatives that he had been killed on or around 8 April 1994. Maharangari had taken refuge in a convent near to his home, where he was found by soldiers, beaten and killed, along with his wife and children.[1076]

Prosecution Witness ZF

948. Witness ZF, a Hutu, gave evidence about the existence of the so-called "Zero Network", an unofficial and secret radio communication system used by a group of individuals wishing to shield their activities and communications from the government or army. According to the witness, the members included Bagosora, Renzaho and Nzirorera.[1077]

Nsengiyumva Defence Witness LM-1

949. Witness LM-1, a Hutu, stated that Maharangari was his Tutsi neighbour in the Kiyovu neighbourhood of Kigali, where he lived with his wife and children. The witness learned that Maharangari was murdered at home around 9 April 1994, and that his body was found there. The identity of the perpetrators was unknown to the witness. He also heard that Maharangari's wife and children had been killed at a nearby convent. The witness denied that the soldiers who had killed Maharangari's wife and children had parked their vehicle in his compound, as suggested by Witness AL.[1078]

Kabiligi Defence Witness ALL-42

950. Witness ALL-42, a Hutu member of the RPF from 1989 until the end of 1993, testified regarding the RPF's ideology, structure, methods and military strategy. He said that the RPF goals were to infiltrate the administration in Rwanda. An infiltration campaign aimed at destabilising Rwandan institutions was led by Augustin Maharangari. According to the witness, Maharangari was the RPF's agent in the PSD, which was in opposition to the government.[1079]

Bagosora Defence Witness A-8

951. Witness A-8, a Hutu, who worked at the Ministry of Defence, explained that during 1993, the public relations division of the Ministry of Defence prepared news bulletins that

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[1074] T. 15 April 2004 pp. 7-8; Prosecution Exhibit 209 (personal identification sheet).
[1075] T. 15 April 2004 pp. 3-7, 12, 26-29, 33-37, 50-55.
[1076] *Id.* 13-15, 18-19, 40.
[1077] T. 27 November 2002 pp. 13, 34, 37, 63, 66; T. 28 November 2002 p. 23; T. 3 December 2002 pp. 62-64; T. 4 December 2002 pp. 59-61, 94-99; T. 5 December 2002 p. 5. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.
[1078] T. 1 March 2006 pp. 54-57; Nsengiyumva Defence Exhibit 144 (personal identification sheet).
[1079] T. 8 November 2006 pp. 33-38; Kabiligi Defence Exhibit 106 (personal identification sheet).

were broadcast by Radio Rwanda. He was not aware of any interviews involving Bagosora being broadcast on national radio during 1993 until April 1994.[1080]

Bagosora Defence Witness A-4

952. Witness A-4, a Hutu, testified about the communications systems and various types of radios used by the Rwandan army. He was asked to comment on whether Witness BJ, whilst scanning a Motorola handheld radio issued by an international organisation, could have overheard a military radio transmission between Bagosora and two other persons. Witness A-4 stated that the army and international organisations were assigned different and separate radio frequencies by a government agency called MINITRANSCO. The frequencies assigned to a civilian would not have been able to tune into military transmissions. Witness BJ would therefore have lacked the capability to listen to a military radio transmission using a legally-issued, standard Motorola hand-set.[1081]

Deliberations

953. It is undisputed that Maharangari was killed at his residence on 8 April 1994. Witness AL, who was present during the attack at his home, gave reliable evidence about this, which was confirmed by the indirect evidence of Witnesses BJ and LM-1.[1082]

954. The Chamber also accepts that Maharangari was shot by soldiers of the Rwandan army. Witness AL testified that three of the four soldiers arriving at Maharangari's house were wearing camouflage uniform and black berets. The fourth, who had a special camouflage coloured cloth on the head, was a previous soldier. Other soldiers killed Maharangari's family later on the same day. Witness AL's description of the perpetrators was coherent and credible. The Chamber does not have a sufficient basis for identifying the units of the soldiers who were involved in this event.

955. The Prosecution submits that Bagosora was involved in the killing by seeking assurances through radio communication that Maharangari had in fact been killed. Only Witness BJ overheard the purported exchange between Bagosora, Renzaho and Nzirorera. In order to do so, she must have had a Motorola that could access frequencies utilised by Rwandan military and civilian officials, and a network of communication would have existed between the three identified officials themselves. It is undisputed that Bagosora possessed two Motorola handheld radios in April 1994. According to him, he used one of them to communicate with the Presidential Guard duty station at Camp Kimihurura, and the other to communicate with senior officials at the Ministry of Defence (III.3.5.9).

956. Witness BJ could not identify the frequency on which she heard this alleged conversation. Witness A-4, who had knowledge in this area, testified that an ordinary civilian operating a normal handheld Motorola radio would not have been able to access the radio frequencies of the Rwandan military. He also stated that it would have been very difficult for persons using military networks to have deviated from pre-determined frequencies. In the

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[1080] T. 9 May 2005 pp. 53, 61-62; T. 10 May 2005 p. 32; Bagosora Defence Exhibit 163 (personal identification sheet).
[1081] T. 25 July 2005 pp. 15-23; Bagosora Defence Exhibit 182 (personal identification sheet).
[1082] Because both testimonies were based on hearsay, it is not significant that Witness BJ testified that Maharangari was killed with his family by soldiers at the convent on 8 April 1994 (T. 15 April 2004 pp. 18-19, 40), whereas Witness LM-1 stated that the killing took place, by unknown persons, on or around 9 April 1994 (T. 1 March 2006 pp. 55-56).

Chamber's view, this does not exclude that Witness BJ could have overheard Bagosora using one of his Motorola hand-held radios.

957. Turning to the question whether Bagosora, Nzirorera and Renzaho could communicate over the same network, Witness A-4 questioned this possibility, given their different institutional affiliations. In the Chamber's view, this is not entirely convincing, as it cannot be excluded that these three persons may have had hand-held radios in addition to institutional communication networks. At the same time, the Chamber is reticent to accept Witness ZF's testimony as corroboration of Witness BJ's evidence. He said that all three were members of the "Zero Network", a secret organisation which allegedly operated a clandestine radio network. The Chamber has determined that his testimony about the secret radio network carries limited weight (III.2.7). It would also be surprising if a secret radio network could be so easily and inadvertently overheard by a civilian operating a Motorola hand-held radio.

958. Leaving aside the technical radio transmission aspects, where the evidentiary situation is unclear, the Chamber will now turn to Witness BJ's ability to recognise Bagosora's voice. The conversation she overheard was brief, without any greetings, introductions or call signs. She only heard the person requesting confirmation of the killing of Maharangari utter four words.[1083] This speaker was purportedly addressed as "My Colonel", had a northern accent and an authoritarian tone. The description indicates that the person could have been Bagosora, bearing in mind also his central position during the events of April 1994. However, the witness's basis for recognising Bagosora's voice was limited. She had previously heard him speak over the radio in an interview prior to 1994, but was not able to specify the name of the radio station or the programme that had aired this broadcast. Witness A-8, who had knowledge about the content of military programmes on radio stations in Rwanda, testified that to the best of his knowledge, Bagosora never took part in radio broadcasts during this period.

959. Witness BJ further claimed to have heard Bagosora give a speech at a naming ceremony for his brother's baby at the end of 1993 or the beginning of 1994.[1084] She explained that she had not been invited to the party, but had gone to see a friend who was there.[1085] The Defence put to her the passport of Bagosora's sister-in-law, which indicated that Bagosora's brother had only two children who were born in 1986 and 1989, and therefore would not have been hosting such a party at this time.[1086] In view of this evidence, there is also some doubt as to whether Witness BJ heard Bagosora speak on this second occasion.

960. Having considered the totality of the evidence, the Chamber has doubts about Witness BJ's ability to recognise Bagosora's voice, in particular because of the brevity of the conversation, the few words spoken by the person asking about the killing of Maharangari, and her limited basis for recognising Bagosora's voice. Under these circumstances, it is not

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[1083] T. 15 April 2004 pp. 38, 50. Witness BJ was asked to write down the words Bagosora uttered in Kinyarwanda, corresponding to the sentence "Have you finished to kill the director of the Rwandan Development Bank". *See* Prosecution Exhibit 210: "*Cya BRD mwakirangije sha?*"

[1084] T. 15 April 2004 pp. 50-56. The witness identified the name of Bagosora's brother in Bagosora Defence Exhibit 94 (Name of person hosting the party).

[1085] Bagosora Defence Exhibit 94, according to which she went to the party to fetch keys from a person who had been invited. The Chamber notes that this is an unusual way to attend a naming celebration.

[1086] T. 15 April 2004 pp. 52-56; Bagosora Defence Exhibit 199 (Passport of Bagsora's sister-in-law).

necessary to consider the significance of her previous written statements about the radio interception.[1087]

961. The Chamber finds that Maharangari, the Director of the Rwandan Bank of Development, was killed by soldiers of the Rwandan military, on or around 8 April 1994. His family members were also killed. The unit to which these soldiers belonged to is not clear. It has not been proven beyond reasonable doubt that Witness BJ heard Bagosora's voice on her Motorola radio around 8 or 9 April 1994, requesting confirmation that Maharangari had been killed.

962. The Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). There is no credible evidence directly showing that Bagosora was aware of the murder of Maharangari. However, given the widespread killing throughout Kigali perpetrated by or with the assistance of military personnel, including the targeted killings on the morning of 7 April (III.3.3; III.3.5.2), the Chamber is satisfied that Bagosora was aware that personnel under his authority were participating in killings.

3.5.7 Karama Hill and Kibagabaga Catholic Church, 8 - 9 April

Introduction

963. The Bagosora Indictment and the Kabiligi and Ntabakuze Indictment allege that, from 7 April 1994, elements of the Rwandan army, gendarmerie and *Interahamwe* perpetrated massacres of the civilian population. In support of these general allegations, the Prosecution points to Witness DW concerning the role of military personnel and *Interahamwe* in the killing of Tutsi civilians at the Karama hill in Rubungo commune on 8 April, and then at the Kibagabaga Catholic Church in Remera, on 9 April.[1088] The Bagosora Defence argues that Witness DW's testimony lacks credibility.[1089]

Evidence

Prosecution Witness DW

964. Witness DW, a Tutsi, testified that, around 8.00 a.m. on 8 April 1994, between 100 and 200 refugees fled shooting in the Remera area of Kigali and passed through the Kibagabaga neighbourhood on their way to a school on Karama hill in Rubungo commune. The witness and several members of her family joined the group, which eventually numbered around 500 persons. On the way, around 10.00 a.m., the group encountered a roadblock at the foot of Karama hill near the junction between Kimironko and Muzindiro, manned by military personnel wearing camouflage uniforms and a mix of black berets, red berets and helmets.

[1087] In particular, Witness BJ gave a statement to an international non-governmental organisation in June 1994 (Bagosora Defence Exhibit 96), shortly after the events. According to one of her handwritten responses, she also recognised the voice of Laurent Semanza, thereby indicating that four persons participated in the conversation. When this was put to her during cross-examination, she explained that she had been confused at the time she had given the statement. She listed Semanza as a participant, because his name had always been associated with the other three at the time of the genocide. T. 15 April 2004 pp. 20-21.

[1088] Bagosora Indictment, para. 6.50; Kabiligi and Ntabakuze Indictment, para. 6.36; Prosecution Closing Brief, paras. 218-219, 243-244, 1090-1093, pp. 764-765, 767, 772, 774, 835-836.

[1089] Bagosora Closing Brief, paras. 1676-1680. The other Defence teams do not address the allegations made by the Witness DW.

The witness recognised four soldiers from her area with black berets, who were from Kami Camp. On the basis of identity cards and physical features, the soldiers separated around 100 Tutsis, including the witness, from the group and took them to a nearby building. One of the soldiers threw a grenade at the refugees. The witness and 20 others managed to escape to Karama school, where they joined the other refugees. She continued to hear the sounds of grenades in the distance.[1090]

965. When Witness DW arrived at the school, she decided to hide in the nearby woods. The military personnel, mostly wearing black berets, followed the refugees, who escaped to the school. They began pushing some of the Tutsi refugees in latrine pits before throwing in grenades. The soldiers forced others to dig their own graves before killing them. The attacks began around 10.30 a.m. and continued throughout the night as more soldiers arrived at the school. At one point, soldiers found the witness in the woods, but she was able to escape. She avoided being selected from amongst the refugees by the soldiers because she hid her face and then spent the night in the woods. The witness returned to the Kibagabaga area on the morning on 9 April, where she sought safety with around 100 other Hutu, Tutsi and Twa refugees at the Catholic church around 8.00 a.m.[1091]

966. Around noon on 9 April, Witness DW saw about 50 military personnel, wearing black berets, red berets and helmets, dig trenches near Kibagabaga Church. Around 2.00 p.m., a high ranking soldier arrived and told another soldier, Rwamanywa, that the refugees had to die. The witness was standing about five metres away. After this, the soldiers gave firearms and grenades to a group of *Interahamwe* who were already armed with traditional weapons. The *Interahamwe* then began to attack the church, demanding the refugees to show their identity cards, and killing the Tutsis. The attack continued until the next morning. The military personnel watched and laughed as the attack was ongoing. The *Interahamwe* never asked the witness to produce her identity card, and she was not aware of how many Tutsi refugees were killed.[1092]

967. An *Interahamwe* named Muvoma, who lived nearby, told Witness DW and her sister that he would hide them if they paid him money. Early on 10 April, the witness and some of her family members went to his house. Other *Interahamwe* came and killed her mother and her sister there. The witness then fled from the back of the house when no one was guarding it and stayed in a sorghum field for around 15 days until the RPF rescued her.[1093]

Deliberations

968. Only Witness DW testified about the events at Karama hill. She was also the sole witness to give direct evidence on the attack at the Kibagabaga Catholic Church. Her account is therefore largely uncorroborated. The Bagosora Defence argues that her testimony is implausible in view of the number of times she evaded death after being selected by soldiers or harboured by *Interahamwe*.

[1090] T. 4 September 2003 pp. 60-67, 86-90; T. 5 September 2003 pp. 1-4; Prosecution Exhibit 92 (personal identification sheet). Witness DW suggested that the soldiers wearing black berets were regular army soldiers and that the ones wearing helmets were from the Presidential Guard.
[1091] T. 4 September 2003 pp. 67-74, 84-85; T. 5 September 2003 pp. 5-11, 27.
[1092] T. 4 September 2003 pp. 74-80, 85; T. 5 September 2003 pp. 12-19.
[1093] T. 4 September 2003 pp. 80-83, 85; T. 5 September 2003 pp. 18, 20-21, 23-25.

969. The Chamber has noted some differences between Witness DW's testimony and her statement to Tribunal investigators. For example, the witness testified that she hid in the sorghum field for 15 days until the end of April. However, according to her statement she remained there for two months until June. She explained that there was a mistake in her statement.[1094] In addition, her testimony reflects that she evaded capture by assailants on several occasions, whereas her statement reflects only one.[1095] When challenged on cross-examination, she maintained the version in her testimony. In the Chamber's view, these differences can be explained by the passage of time, the traumatic nature of the circumstances and communication problems during her interview.

970. In view of these variances and the nature of the events, the Chamber approaches the particular details of her evidence with caution. Nevertheless, it accepts the main features of her account, in particular that she witnessed the killing of Tutsi civilians at the roadblock near Karama hill, at Karama school and the Kibagabaga Church. In particular with respect to the last location, there is some corroboration from Witness HU about the attack, as he alluded to killings at the church (III.3.5.3). Furthermore, the events at the church mirror how the attack unfolded at the nearby mosque.[1096]

971. The Chamber therefore finds beyond reasonable doubt that military personnel killed Tutsi civilians at the roadblock and school near Karama hill around 8 April 1994. Around 9 April, they supervised the killing of Tutsi civilians at the Kibagabaga Catholic Church, after distributing weapons to *Interahamwe*.

972. The Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). There is no evidence directly showing that Bagosora was aware of these specific attacks. However, given the widespread killing throughout Kigali perpetrated by or with the assistance of soldiers, the Chamber is satisfied that Bagosora was aware that soldiers under his authority were participating in killings. The Chamber has not heard evidence implicating Kabiligi and Ntabakuze in this crime.

3.5.8 Gikondo Parish, 9 April

Introduction

973. Each of the Indictments alleges that military and political authorities herded Tutsi civilians to places of traditional refuge such as churches, where they were killed by *Interahamwe* acting in coordination with military personnel. Some of these killings were allegedly perpetrated pursuant to pre-established lists. Sexual assaults also allegedly formed part of these attacks. In support of these general allegations, the Prosecution points to evidence where the Rwandan army, gendarmerie and *Interahamwe* participated in an attack on 9 April at Gikondo Parish in Kigali. The Prosecution particularly emphasises the outrageous and inhumane nature of the killings and other crimes, such as sexual assault, perpetrated there. Reference is made to Witnesses Brent Beardsley, UT and XAI as well as Expert Witness Alison Des Forges. The Defence do not address the allegations concerning

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[1094] T. 4 September 2003 p. 85. Witness DW's statement to Tribunal investigators was not tendered as an exhibit.
[1095] T. 5 September 2003 p. 5.
[1096] T. 4 September 2003 p. 49.

the attack on Gikondo Parish. The Ntabakuze Defence objects, however, to the positioning of the Para Commando Battalion near the parish as alleged by Witness XAI.[1097]

Evidence 40473

Prosecution Witness Brent Beardsley

974. Major Beardsley, the personal staff officer to General Dallaire in UNAMIR, testified that, around 12.00 p.m. on 9 April 1994, two Polish officers received a faint radio message at UNAMIR headquarters from two Polish military observers living at Gikondo Parish in Kigali. The message said: "Come fast; they're killing here." With Dallaire's authorisation, Beardsley and the two Polish officers travelled to the parish in an armoured personal carrier, operated by Bangladeshi peacekeepers. The journey took around 30 minutes, requiring them to cross the frontline between the RPF and the Rwandan army and then several checkpoints manned respectively by members of the Para Commando Battalion, other Rwandan soldiers, the gendarmerie and militiamen.[1098]

975. When they arrived at Gikondo Parish, a large number of dead bodies were strewn in the streets. Two of the peacekeepers went to the priests' residence to look for the Polish military observers, while Beardsley and other peacekeepers walked towards the church. The corpses of children, hacked with machetes, filled the alleyway alongside the building. Inside the church, Beardsley found around 150 dead bodies in civilian attire. A priest was trying to assist the 15 survivors, who were badly injured. After surveying the scene, Beardsley spoke with the two Polish military observers who were at the priests' residence. They explained to Beardsley, through one of the Polish officers who acted as an interpreter, what had just happened there.[1099]

976. According to the military observers, the Rwandan army blocked off access to the area that morning, and then gendarmes, carrying lists, moved methodically through it escorting or sending Tutsis to the church. Other Tutsis also fled to the church. The priests and military observers, who were at the residence, heard screams from the church and walked over to investigate. The gendarmes seized them and held them against the wall with gun barrels pressed to their throats. The gendarmes compared identity cards of the Tutsi refugees to the lists that they were carrying. The identity cards were then burned as the *Interahamwe* entered the church and began killing the refugees over the course of the next several hours. Beardsley recounted the crimes in detail:

> Pregnant women had their stomachs slashed open, foetuses on the floor. Even a foetus was smashed. I remember -- just from the time I was there, I remember looking down, a woman obviously had tried to protect her baby. Somebody had rolled her off the baby. The baby was still alive and trying to feed on her breasts. She'd been -- her clothes had been ripped off. The killing that was done was not done, in their opinion, to kill the people immediately; it had been done to kill them slowly. Women's breasts, women vaginas had been cut with machetes; men's scrotum areas cut with machetes. Men had been hamstrung behind their Achilles' tendons so that they couldn't walk, but they would

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[1097] Bagosora Indictment, paras. 5.40, 5.44-5.45; Kabiligi and Ntabakuze Indictment, paras. 5.31, 5.35-5.36; Nsengiyumva Indictment, paras. 5.29, 5.31; Prosecution Closing Brief, paras. 204, 214, 246, 422, 594, 1251(c), 1260-1261, 1455, 1456(a-c), 1457, pp. 737, 815, 870; Ntabakuze Closing Brief, para. 1427.
[1098] T. 3 February 2004 pp. 41-43.
[1099] *Id.* pp. 43-45.

> have to watch what was happening to their families. There was rape that had taken place in addition to the killings, and the murder. The priests and military observers were forced to watch, and the gendarmes beat them with rifle butts if they averted their eyes from the killing. After a few hours, the gendarmes and militiamen became tired of the killing and left.[1100]

977. Around 3.30 p.m., Beardsley decided that the peacekeepers had to return to UNAMIR headquarters. There was no room in the armoured personnel carrier to evacuate all the wounded. The priests decided to stay with them until the next morning when additional vehicles could be organised to evacuate them. The peacekeepers gave the priests their first aid kits, water and food. The next morning the priests contacted UNAMIR by radio and informed Beardsley that the militiamen had returned to kill the survivors. According to Beardsley, the military observers were fairly traumatised by the experience and left the mission shortly after the events.[1101]

Prosecution Witness UT

978. The written statement of Witness UT, a Tutsi, who lived in Gikondo in 1994, was admitted pursuant to Rule 92 *bis*. She was cross-examined by the Bagosora and Kabiligi Defence. Early on the morning of 9 April 1994, she and her husband sought refuge at Gikondo Parish. Around 7.00 a.m., during mass, she heard gunshots from outside and screams to open the door. When the priest opened the church door, she saw 10 soldiers, wearing black berets. Three of them entered the church and ordered everyone to come outside and produce their identity cards. The soldiers allowed Hutus to leave and told the Tutsis to go back into the church. An officer passed by in a military jeep and told the soldiers not to waste their ammunition since the *Interahamwe* would be arriving shortly.[1102]

979. The *Interahamwe* arrived at 11.00 a.m. The assailants were armed with guns, grenades and traditional weapons and were blowing whistles and beating drums. The refugees were again ordered out of church and killed as they left the building. The *Interahamwe* then entered the church and began killing the refugees who resisted over the next several hours. Shortly after the attack began, the witness was struck behind the left shoulder as she exited the church and other refugees fell on top of her. The witness regained consciousness that evening and saw people in Red Cross who took her to a nearby medical centre.[1103]

Prosecution Witness XAI

980. Prosecution Witness XAI was a Hutu soldier of the 17th Battalion and at Camp Kanombe hospital in April 1994. He stated that, on the night of 6 April, Ntabakuze dispatched members of the Para Commando Battalion to positions in the Gikondo area of Kigali. The witness also said that, between 15 and 20 April, he passed through the area and saw members of the Para Commando Battalion at three roadblocks in the area.[1104]

[1100] *Id.* pp. 44-45.
[1101] *Id.* 45-46.
[1102] T. 9 June 2004 pp. 27-28; Prosecution Exhibit 258 (personal identification sheet); Prosecution Exhibit 259 (statement of 20 October 1998).
[1103] T. 9 June 2004 pp. 28-30; Prosecution Exhibit 259 (statement of 20 October 1998).
[1104] T. 8 September 2003 pp. 14-18, 42; Prosecution Exhibit 94 (personal identification sheet).

Prosecution Expert Alison Des Forges 40471

981. Alison Des Forges, an expert in Rwandan history, testified that Gikondo was one of the first dramatic massacres of the genocide. It occurred on the morning of 9 April 1994 when civilians who had taken refuge in that church were slaughtered by members of Rwandan armed forces and militia groups.[1105]

Deliberations

982. It is not disputed that more than 150 Tutsi refugees were killed at Gikondo Parish on the morning of 9 April 1994. The main question for the Chamber is to identify the assailants and to ascertain the nature of the operation. The Prosecution presented two witnesses who provided direct testimony on the attack or its aftermath: Major Beardsley and Witness UT. It then points to Witness XAI to demonstrate that members of the Para Commando Battalion were operating in the area. Finally, Des Forges presented general corroboration.

983. Beardsley provided a convincing and detailed first-hand account of the aftermath of the attack. He also recounted what the Polish military observers had directly seen during the course of the massacre, which they were forced to watch at gunpoint. Even though the account of the military observers is hearsay, the Chamber still considers this part of Beardsley's testimony credible and reliable. The men were trained observers who conveyed what they had seen to Beardsley a short time after the events occurred. In addition, Beardsley was at the parish and was in a position to verify the atrocious nature of the killings.

984. Witness UT offered the only eye-witness account of how the attack unfolded at the parish. Several features of her testimony corroborate Beardsley's version of the events. For example, she placed the attack in the same time-frame on the morning of 9 April. She referred to military personnel examining the refugees identity cards and indicated that the *Interahamwe* played the main role in killing the Tutsi refugees. Other aspects, however, are different. In particular, she characterised the military personnel involved in the separation as soldiers rather than gendarmes. She also said that they found the refugees at the church, rather than congregating them there. Finally, the witness mentioned the survivors being assisted by Red Cross personnel whereas Beardsley left the surviving victims in the company of priests at the parish, where it was reported that all the survivors were finished off.

985. Even though Beardsley's account of the attack was in part second-hand, the Chamber prefers it as the main basis of its findings on these events. Key aspects of his testimony were based on the first-hand report of military observers who would have been familiar with the different units in the Rwandan military and in a position, by virtue of their training as soldiers and function as military observers, to recount in detail such events. Moreover, the military observers were also forced to watch the entire attack. In contrast, Witness UT, a primary target of the attack, was physically injured by the *Interahamwe*, and lost consciousness shortly after it started. This may have impacted on her recollection. In addition, the Chamber notes the contradiction between her testimony where she stated that the soldiers wore black berets and her statement to Tribunal investigators in which she said "I do not recall if they had any headgear".[1106] Nevertheless, the Chamber is of the view that she endeavoured to tell the truth, and thus relies on her testimony insofar as it corroborates Beardsley's account.

[1105] T. 16 September 2002 pp. 90-91.
[1106] *See* T. 9 June 2004 p. 27; Prosecution Exhibit 259 (statement of 20 October 1998).

986. Based primarily on the testimony of Beardsley, the Chamber finds that, on the morning of 9 April, the Rwandan army sealed off the Gikondo area and that gendarmes moved systematically through the neighbourhood with lists, sending Tutsis to Gikondo Parish. The gendarmes checked the identity cards of the Tutsis at the parish against their lists and then burned the identity cards. The *Interahamwe* then proceeded to kill the more than 150 Tutsi refugees in the atrocious manner described by Beardsley above, as the parish priests and UNAMIR military observers were forced to watch at gunpoint. The *Interahamwe* returned later that night to kill most of the survivors.

987. There is no specific evidence of the unit of soldiers that were involved in the attack. Witness XAI testified that members of the Para Commando Battalion were stationed in the area. The Ntabakuze Defence contests Witness XAI's credibility in general as well as his specific evidence that members of the Para Commando were stationed near Gikondo Parish. Leaving aside issues of Witness XAI's general credibility, which are assessed elsewhere, his testimony, even if true, does not show that members of the battalion participated in the attack. The Chamber notes that Beardsley passed through a checkpoint manned by the Para Commando Battalion while travelling from UNAMIR headquarters to Gikondo Parish. This was at the frontline with the RPF, and Beardsley passed through several subsequent roadblocks manned respectively by regular soldiers, gendarmes and then militiamen. Beardsley's evidence shows that the battalion was not the only unit operating in the area and was the farthest from the parish. Consequently, the Chamber is not satisfied that the evidence demonstrates that members of the Para Commando Battalion were involved in the attack.

988. The Chamber finds beyond reasonable doubt that the Rwandan army, gendarmerie and *Interahamwe* conducted a joint operation to seal off the Gikondo area, to identify specific Tutsis there and to kill them along with all other Tutsi at the parish, a traditional place of refuge. Lists were used in ensuring that specific Tutsis were killed. The perpetrators also engaged in sexual assault and rape during the attack.

989. The Chamber has found that Bagosora had authority over the Rwandan army at the time of the attack (IV.1.2). There is no evidence directly showing that Bagosora was aware of the attack on the parish. However, given the widespread killing throughout Kigali perpetrated by or with the assistance of military personnel, the Chamber is satisfied that Bagosora was aware that personnel under his authority were participating in killings. The Chamber, however, has not heard sufficient evidence directly implicating Kabiligi, Ntabakuze or Nsengiyumva in this crime.

3.5.9 Separate Radio Network

Introduction

990. The Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment allege that Bagosora sometimes communicated with the commanders of the Presidential Guard, Para Commando Battalion and Reconnaissance Battalion via a "separate radio network". The Prosecution points to Witnesses BJ and DA, who illustrated his alleged use of a separate radio network, and to Expert Witnesses Alison Des Forges and Filip Reyntjens, who gave

general evidence about Bagosora's ability to communicate with military units via a handheld radio.[1107]

991. The Bagosora and Ntabakuze Defence submit that the Prosecution did not produce any evidence to support the allegation that Bagosora was in communication with commanders of military units via a separate radio network. Reference is also made to the evidence of Filip Reyntjens, who testified that this network was not a secret. The Kabiligi Defence argues that the testimony of Witness DA is contradictory.[1108]

Evidence

Prosecution Expert Witness Alison Des Forges

992. Alison Des Forges stated that Bagosora was in possession of two handheld Motorola radios, one connected to the Ministry of Defence and the other providing a direct link to the Presidential Guard. It was highly unusual for the second in command at the Ministry of Defence to have a radio link directly to the Presidential Guard. This unit had its own commanding officer, Colonel Sagatwa.[1109]

Prosecution Expert Witness Filip Reyntjens

993. Filip Reyntjens testified that Bagosora had informed him that he was in possession of two Motorola radios which he used to stay in touch with the guard post of the Presidential Guard at Camp Kimihurura and the Ministry of Defence. This information was confirmed by other army officers whom Reyntjens interviewed. Such equipment would have enabled Bagosora to contact military units independently. It was not unusual for senior members of the military to have mobile communications equipment.[1110]

Prosecution Witness DA

994. Witness DA, a Hutu, was a member of the Reconnaissance Battalion, whose duties included monitoring radio transmissions and delivering these messages to their intended recipients. He testified that operators receiving messages noted the time, date, origin, and the numbered code name for the person sending the transmission. Between 8.00 and 8.30 p.m. on 6 April 1994, he saw and filed a written radio transmission at the Reconnaissance Battalion offices in Camp Kigali. The originating code of the sender indicated that it was sent from the

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[1107] Paragraph 6.28 of the Kabiligi and Ntabakuze Indictment expressly refers to communication between Bagosora and the Presidential Guard, Para Commando Battalion and Reconnaissance Battalion. Paraagraph 6.40 of the Bagosora Indictment uses the more general term "commanders of these units", which, in the Chamber's view, includes the units mentioned in the preceding paragraphs of it (as paragraphs 6.28, 6.30, 6.31, 6.33, 6.34, 6.36-6.39 refer to the Presidential Guard, Para Commando Battalion, Reconnaissance Battalion and the commander of the Gisenyi Operational sector); Prosecution Closing Brief, paras. 1164, 1367, 1368, pp. 761, 832.

[1108] Bagosora Closing Brief, para. 952; Ntabakuze Closing Brief, para. 2393; Kabiligi Closing Brief, paras. 775-780.

[1109] T. 18 September 2002 p. 52.

[1110] T. 15 September 2004 p. 28; T. 21 September 2004 p. 29. In his book Reyntjens states that Bagosora had a radio network parallel to the Army and Gendarmerie and could thus communicate directly with the Para Commando and Reconnaissance Battalions. This was based on interviews with Bagosora from autumn 1994. Bagosora Defence Exhibit 9 (Filip Reyntjens: *Rwanda: Trois jours qui ont fait basculer l'histoire* (1995)), p. 57. He reiterated this in a statement to Belgian authorities in 1995, adding that Bagosora could also communicate directly with the Presidential Guard; Bagosora Defence Exhibit 135 (*Pro Justitia* statement of 31 July 1995), p. 2.

"secretary-general" of the Ministry of Defence, a post that Bagosora held at the time. The transmission was addressed to all military units and ordered them to go on stand-by and to reinforce roadblocks in collaboration with local officials to prevent infiltration. The witness later specified that the radio transmission was from the Ministry of Defence and not a specific individual.[1111]

Prosecution Witness BJ

995. Witness BJ, a Hutu, testified that on 8 April 1994, she overheard Bagosora, Tharcisse Renzaho and Joseph Nzirorera discussing the murder of the director of the Rwandan Development Bank, Augustin Maharangari, as she was scanning her own handheld Motorola radio. The witness recognised Bagosora's voice as she had previously heard him give interviews on the national radio stations. She did not tune into this radio channel again after overhearing this incident.[1112]

Prosecution Witness Roméo Dallaire

996. General Dallaire recalled attending a meeting with Bagosora, General Bizimungu and the High Commissioner for Human Rights, José Ayalo Lasso, at the *Hôtel des Diplomates* in May 1994. Dallaire confirmed that he saw a handheld Motorola radio on the table at the meeting room. He did not know who the radio belonged to but confirmed that it did not belong to Lasso or to him.[1113]

Prosecution Witness ZF

997. Witness ZF, a Hutu, testified that there was a clandestine radio network, called "Zero Network", associated to various secret groups (III.2.7). The Accused were allegedly part of this secret radio network, as well as other prominent military and civilian individuals. The witness heard that the Zero Network had a main station in Kigali and regional transmission centres located throughout the country. He was told that the station for Gisenyi prefecture was located in Nsengiyumva's residence.[1114]

Bagosora

998. Bagosora said that he had two Motorola radios. One was used to communicate internally with cabinet officials, and the duty officer at the Ministry of Defence. Bagosora was unable to use this radio for external communications. It was typical for senior ministry officials to have a personal radio. The other Motorola was issued to him when he moved to Kimihurura in January 1994 to enable him to communicate with his official escort who were relocated with him from Camp Kigali to the Presidential Guard at Camp Kimihurura. The reason was that the phone lines were frequently down in this area. He used this radio to talk directly with the duty office at the camp, and could not use it to communicate with the

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[1111] T. 17 November 2003 pp. 8-9, 12-14, 21-22; T. 5 December 2003 pp. 1-2; T. 8 December 2003 pp. 54-56, 75-89; Prosecution Exhibit 129 (personal identification sheet).

[1112] T. 15 April 2004 pp. 7, 9, 13, 50-54; Prosecution Exhibit 209 (personal identification sheet). The allegation relating to the killing of Augustin Maharangari is dealt with in section III.3.5.6.

[1113] T. 19 January 2004 pp. 56-57; Prosecution Exhibit 166 (Collection of seven still image extracts). The photos are taken from a video entered into evidence as Prosecution Exhibit 167. It shows General Dallaire sitting with Colonel Bizimungu and Bagosora at a meeting held at the *Hôtel des Diplomates* in Kigali.

[1114] T. 26 November 2002 pp. 94-95; T. 27 November 2002 pp. 7-13, 34-37, 62-66; T. 28 November 2002 pp. 23-24; T. 4 December 2002 pp. 59-61, 94-99; T. 5 December 2002 pp. 3-9. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.

Reconnaissance or Para Commando Battalions. Anybody who tuned onto the same frequency could listen to Bagosora's conversations.[1115]

999. According to Bagosora, his Motorola handset had 12 frequencies. The commander of the Presidential Guard gave him a frequency which allowed him to be heard by army headquarters, without being heard by the units below. It was a breach of army regulations to scan frequencies other than those assigned specifically. Such breaches were punishable.[1116]

Deliberations

1000. The Indictments allege that Bagosora communicated with military units using a "separate radio network". To the extent that this means a radio network separate from any other and using its own equipment, the only evidence of that character came from Witness ZF. He testified that Bagosora was a member of the Zero Network, which was a clandestine radio communications network used by various secret groups. The Chamber considered this allegation in III.2.7 and did not find it established beyond reasonable doubt that the Accused were involved in a secret radio network. Further, the evidence relating to the Zero Network was adduced to prove a conspiracy around 1992-1993, relating to paragraphs 1.13-1.16 of the Bagosora Indictment. The Chamber cannot exclude that such a network, if it existed, could have operated also in 1994, but Witness ZF did not testify about this, and there is no evidence to that effect.

1001. Turning to communication with military units in April 1994, Bagosora did not deny that at this time he had, at his disposal, two Motorola handheld radio handsets and could use them to communicate with the Ministry of Defence and the duty station at Camp Kimihurura. He disputed that there was anything unusual or illegal about this arrangement and denied that he communicated directly with military units via a separate radio network.

1002. Des Forges and Reyntjens both stated that Bagosora had two Motorola handsets. Reyntjens learned this directly from Bagosora. One handheld radio was used to communicate with the duty office of the Presidential Guard at Camp Kimihurura. Both witnesses agreed that this allowed Bagosora direct contact with this unit. In his book, Reyntjens added that Bagosora also had the ability to independently contact the Reconnaissance and Para Commando Battalion, but he did not point to any evidence for this assertion. The Chamber has found similar information in a *Pro Justitia* statement to Rwandan authorities in 1996 but the witness was not called.[1117]

1003. Witness BJ testified that she overheard Bagosora speaking to Nzirorera and Renzaho whilst scanning different frequencies on her Motorola handset. The Chamber, however, is not satisfied about the witness's ability to identify Bagosora's voice with accuracy during a fleeting transmission (III.3.5.6). At any rate, her testimony did not provide any information as to whether Bagosora was using a radio network separate to those normally used by the military at the time of the alleged transmission.

[1115] T. 2 November 2005 pp. 66-68.

[1116] *Id.* pp. 68-71.

[1117] *See* Bagosora Defence Exhibit 256 (*Pro Justitia* statement of 16 June 1996 to the Rwandan Ministry of Justice, where Marcel Gatsinzi states: "*Nous avons appris par après que Bagosora avait un réseau radio à lui, parallèle au réseau militaire normal. Dans ce réseau il avait le contact direct avec la GP [Garde Presidentielle], le batallion para-commando et le baillon de reconnaissance.* ... ". He also mentions the name of a colonel who could confirm this but that officer was not called as a witness.

1004. Witness DA was the only witness testifying that Bagosora sent a message from the Ministry of Defence. The witness first said that he heard, and then later that he had seen, a radio transmission addressed to all units on the 6 April from the "secretary-general" at that Ministry.[1118] During cross-examination, he clarified that the written radio transmission came from the transmission centre in the Ministry of Defence, and that he could not identify the specific sender.[1119] This evidence does not show that Bagosora communicated separately with military units. Witness DA's testified that there was a transmission centre in Bagosora's office but this evidence was unclear and uncorroborated.[1120]

1005. For the above reasons, the Chamber considers that the Prosecution has not proven beyond reasonable doubt the allegations relating to the use of a "separate" radio network.

1006. This said, Bagosora could, of course, communicate with military units through general networks. It is undisputed that he had two Motorola radios, and Witness DA testified that there was a transmission centre in the Ministry of Defence. The Chamber cannot rule out that such general means of communication could be used to convey sensitive messages from April to July 1994.

[1118] T. 17 November 2003 p. 22 ("The message came from the secretary-general of the ministry of defence ... I knew that because there were specific figures which were known, which were used. That is the codified message which enabled us to know where the message came from.").

[1119] T. 8 December 2003 pp. 55-59, 65, 75-77, in particular p. 77 ("Judge Reddy: So you really don't know who the message came from? Is that what you are saying? Witness: The message came from MINADEF, but as for the sender, I won't be able to mention the person who did send the message."); Bagosora Defence Exhibit 32 (Reglément de transmission); Bagosora Defence Exhibit 51 (Blank Message completed by Witness DA). The witness was also asked to comment on an extract of the testimony from Prosecution Witness DBY, a radio operator in the Rwandan Army, according to which standard procedure dictated that radio messages could not go directly from MINADEF to military units, without first going through the general staff. The witness's explanation for the deviation in this procedure on 6 April was vague and lacked detail. *See* T. 8 December 2003 pp. 71-72.

[1120] T. 8 December 2003 p. 75.

3.6 Gisenyi Prefecture

3.6.1 Military Camp and Gisenyi Town, 6 - 7 April

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Introduction

1007. According to the Nsengiyumva and Bagosora Indictments, on the night of 6 to 7 April 1994, Nsengiyumva summoned local leaders and militiamen to the Gisenyi military camp and ordered them to kill all RPF accomplices and Tutsis. He had received orders to start the massacres. Weapons were distributed, and the military and militiamen commenced the killings. Reference is made to Witnesses ZF, DO, Serushago and OAF.[1121]

1008. The Nsengiyumva Defence asserts that there is no notice for the specific killings. It also argues that the Prosecution's evidence is unreliable, as shown by Witnesses LUXX, LSK-1, ZDR-1, ZDR-2, ZR, HQ-1, CF-1, CF-2, CF-4, FN-1, TRA-2, BZ-3, XEN-1, Willy Biot and Aouili Tchemi-Tchambi. The Bagosora Defence disputes the credibility of the Prosecution evidence and asserts that the allegations related to Gisenyi prefecture do not implicate him.[1122]

Evidence

Prosecution Witness ZF

1009. Witness ZF, a Hutu working at Butotori military camp, and Major Habimana, the commander of the 42nd Battalion, went to Gisenyi military camp at 9.00 or 10.00 p.m. on 6 April 1994. On arrival, Lieutenant Rwasa told the witness, who was sitting with a group of officers, that Nsengiyumva was on the telephone with Bagosora. Lieutenant Bizumuremyi entered the room and told the group that President Habyarimana's plane had been shot down. Nsengiyumva joined the gathering, confirmed the President's death and told Bizumuremyi to begin the work of finishing off the *Inyenzi*.[1123]

1010. Nsengiyumva and Bizumuremyi went to the Accused's office. Bizumuremyi returned and spoke with a few officers, who went to the camp's tarmac. The commanders gathered their companies and deployed their soldiers to defensive positions. Barnabé Samvura, the head of the Gisenyi militia, arrived and stayed with Nsengiyumva for a period before going outside the camp. In the meantime, almost 200 militiamen had gathered in front of it.

[1121] Nsengiyumva Indictment, paras. 6.11, 6.13-6.16, 6.36; Bagosora Indictment, paras. 6.58, 6.59; Prosecution Closing Brief, paras. 48, 81-84, 87, 89, 435-436, 439-440, 442-447, 452-458, 464, 1001(d, e), 1004, 1017, 1019(c), 1033, 1034(a-d), 1040(b), 1042, 1043(a, b), 1044(a, b), 1045-1048, pp. 770, 877-881. *See* T. 28 May 2007 pp. 15-16.

[1122] Nsengiyumva Closing Brief, paras. 27, 151-155, 183, 624-634, 637, 686-710, 1055-1060, 1065, 1075, 1140-1163, 1242, 1302-1303, 1466, 1484-1546, 1550-1580, 1586-1605, 1613-1649, 2145-2146, 2150-2153, 2157-2160, 2167-2169, 2173-2175, 2178-2179, 2180-2185, 2188, 2190-2194, 2198-2200, 2277-2278, 2280, 2287-2288, 2301-2302, 2305, 2310-2313, 2331-2334, 2337-2341, 2343-2351, 2361-2362, 2370, 2380-2381, 2389, 2396-2398, 2661, 2718, 2953-2954, 2958, 2967-2969, 2971, 2977, 2982-2984; Bagosora Closing Brief, paras. 943-948, 1623-1625, 1667-1673, 1885-1888, 2355, pp. 382-383. *See* T. 31 May 2007 pp. 20-23, 68-69, 77; T. 1 June 2007 pp. 12, 15, 17. Reference is also made to Witness LK-2. *See* Nsengiyumva Closing Brief, paras. 2428, 2441. The Chamber has considered his evidence below (III.3.6.2).

[1123] T. 26 November 2002 pp. 94-95; T. 27 November 2002 p. 13; T. 28 November 2002 pp. 38-40, 64-65; T. 3 December 2003 pp. 56-57; T. 4 December 2004 pp. 81-84. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.

Bizumuremyi addressed this group, stating: "[t]he soldiers have gone to do their work, their normal work. As for you, you are going to also begin your work. Go everywhere, spare no one, even – not even babies. Do it quickly so that in the morning, we will have finished." After this speech those who had gathered left towards the city, and Bizumuremyi subsequently followed.[1124]

1011. After the militia left, Nsengiyumva spoke with Witness ZF about the evilness of Tutsis. Bagosora called Nsengiyumva three times that night. During the first call around 2.30 a.m., the witness heard Nsengiyumva say that the apocalypse was unfolding. At approximately 4.00 a.m., Bizumuremyi returned and said that the Rubavu operations were complete and that the work would continue in the rural areas. A short while later, Nsengiyumva passed this information onto Bagosora during their second call. After speaking for a third time around 6.00 a.m., Nsengiyumva told Bizumuremyi that Bagosora wanted to arrest Alphonse Kabiligi, who worked with the economic community for the Great Lakes. Bizumuremyi and the witness left.[1125]

1012. Witness ZF returned to Gisenyi military camp around 7.30 a.m. with a message for Nsengiyumva. He then drove with Nsengiyumva around town to the *Quartier Belge*, the airport, the stadium. During the trip, Nsengiyumva asked *Interahamwe* and *Impuzamugambi* at roadblocks how they were getting along with their "work". The witness accompanied Nsengiyumva on at least two additional occasions that day before noon to the airport, the military operational command camp and past the stadium and the *Commune Rouge*.[1126]

Prosecution Witness DO

1013. Witness DO, a Hutu who lived near the Gisenyi military camp, left for work around 5.00 a.m. on 7 April 1994. When approaching the bus station in town, three soldiers informed him about the death of the President and told him to return home. He did so and after about 30 minutes, Lieutenant Bizumuremyi and four uniformed soldiers arrived at the witness's compound with Thomas, Fiacre and Mabuye, who were important members of the Gisenyi *Interahamwe*. Between 7.00 and 8.30 a.m., Bizumuremyi ordered the witness to drive Thomas's Hiace minibus.[1127]

1014. According to Witness DO, he accompanied Bizumuremyi and the others to *Rue de l'Umuganda* where 50 to 60 *Interahamwe* were gathered. A Daihatsu was commandeered and given to the witness to drive. Bizumuremyi informed him that Nsengiyumva had given

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[1124] T. 28 November 2002 pp. 39-42; T. 3 December 2002 pp. 57-62.

[1125] T. 28 November 2002 pp. 42-46, 65-67; T. 2 December 2002 pp. 2-3, 52-53; T. 4 December 2002 pp. 84-91; T. 5 December 2002 p. 81. The Chamber has excluded evidence of this 6.00 a.m. phone call to the extent it relates to Bagosora. *See* Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, para. 73, and more generally section III.6.5.

[1126] T. 28 November 2002 pp. 46-48; T. 2 December 2002 pp. 6-14, 18-21, 48-52; T. 5 December 2002 pp. 23-24, 42-51, 56-59, 79; Nsengiyumva Defence Exhibit 13 (Testimony of Witness ZF in relation to the Brugière investigation). Witness ZF also testified that he and Nsengiyumva stopped at the Tegeli compound, where they found dead bodies. The Chamber has previously precluded evidence of the Tegeli murders. *See* Decision on Nsengiyumva Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 68-69.

[1127] T. 30 June 2003 pp. 3, 15-18, 67-69; T. 1 July 2003 pp. 7-11, 21-25; T. 2 July 2003 pp. 3, 26-27, 30-32; T. 14 October 2005 pp. 16, 18-21, 37-39; T. 17 October 2005 p. 33; Prosecution Exhibit 61 (personal identification sheet). Witness DO referred to Bizumuremyi as a "captain". On 8 April 1994, Bernard Munyagishari and other *Interahamwe* told him that a meeting had been held at Gisenyi military camp on the night of 6 to 7 April, where it was decided to kill Tutsis.

instructions to collect more *Interahamwe* and bring them to Gisenyi military camp. The witness first stopped at a roadblock mounted by *Conseiller* Fazile near Kagemana's place.[1128] He collected members of the *Interahamwe* and headed to Gisenyi military camp, arriving around 8.00 or 8.30 a.m. Over 30 individuals had gathered there to attend a meeting. Nsengiyumva stood outside his office with approximately five soldiers. He led the *Interahamwe*, Bizumuremyi and some soldiers into his office near the camp's entrance between 8.30 and 8.40 a.m. The witness remained outside with the three other drivers.[11291130]

1015. Thirty to 40 minutes later, the *Interahamwe*, Nsengiyumva and soldiers reappeared. Nsengiyumva ordered the soldiers to distribute weapons, which Witness DO believed came from the nearby armoury. At Bizumuremyi's direction, the soldiers gave approximately 15 guns as well as grenades to the *Interahamwe* leaders, including Thomas, Mabuye, Famal, Munyagishari and Fiacre. Nsengiyumva told Faziri Hakizimana that the roadblocks in the area needed to be reinforced and to warn his Muslim friends not to hide Tutsis. He told everyone that the Tutsis would be exterminated because they had just killed President Habyarimana. The meeting ended after the weapons had been distributed.[11311132]

1016. The *Interahamwe* were divided into 10 groups. Witness DO drove 15 to 20 assailants led by Fiacre and three soldiers from the camp. The soldiers were wearing civilian attire so that they would not be recognised. They picked up another 15 persons along the way to Bugoyi *cellule*. Between 9.00 a.m. and 9.00 pm. on 7 April, the group attacked several residential compounds in Gisenyi town, primarily near the military camp. Their victims included a Tutsi man, who taught in Nyundo, and his daughter; Daniel Rwabijongo, a Hutu, whose Tutsi wife had been killed earlier in the day by another group of *Interahamwe*; Assoumani Kajanja, a Hutu, who had tried to stop the attackers from killing his Tutsi wife; Gilbert, a Tutsi, and another Tutsi who was with him; a Tutsi woman named Mukabutare and her daughter; and a Hutu named Muvunyi, suspected of harbouring *Inkotanyi*. The witness's only role was to drive the assailants, and he did not personally kill anyone.[1133]

1017. After the attack on Gilbert's compound around 3.00 p.m., Bizumuremyi ordered the assailants to return to Gisenyi military camp. There, they attended a meeting in the courtyard, where 20 *Interahamwe* leaders, such as Bernard Munyagishari and Omar Serushago, were present. Nsengiyumva admonished *Conseiller* Faziri and *Conseiller* Sibomana of Byahi that measures had to be taken to prevent Tutsi refugees escaping to Zaire and that they would be held accountable. He also informed the group that steps needed to be taken to identify the

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[1128] It appears clear that Fazile was "Faziri", the *conseiller*. During cross-examination, Witness DO testified that he made stops at Hassan Ngeze's house, Hussein Ndimubanzie's house, and a man named Joseph's house in attempt to pick up *Interahamwe* before arriving at Kagemana's roadblock. The witness only retrieved Ndimubanzie during these prior stops. *See* T. 1 July 2003 pp. 25-27; T. 2 July 2003 pp. 28-29.

[1129] T. 30 June 2003 pp. 16, 18-20, 70; T. 1 July 2003 pp. 12-15, 26; T. 2 July 2003 pp. 3, 27-28; T. 14 October 2005 pp. 23-30. When recalled, Witness DO testified that he believed that they arrived at the military camp between 9.00 and 10.00 a.m. *See* T. 14 October 2005 pp. 18-19.

[1130] T. 30 June 2003 pp. 16, 19-21; T. 1 July 2003 pp. 13-19, 28-29; T. 2 July 2003 pp. 1-2, 29; T. 17 October 2005 p. 34.

[1131] T. 30 June 2003 pp. 16, 19-20, 22, 28, 81; T. 1 July 2003 pp. 29-34; T. 2 July 2003 pp. 10-11, 32-35.

[1132] T. 30 June 2003 pp. 20, 23-24, 70; T. 1 July 2003 pp. 34-35.

[1133] T. 30 June 2003 pp. 16, 24-36, 41-45, 48-50, 60-61, 84; T. 1 July 2003 pp. 35-38, 47-51, 63-65, 79; T. 2 July 2003 pp. 3, 9-10, 12-17, 36-37, 54-56; T. 17 October 2005 pp. 6, 9-10, 14-16, 18-19, 29-33. *See* Decision on Nsengiyumva Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 22-25 fn. 47 (admitting Witness DO's testimony at T. 30 June 2003 p. 42).

enemy, or Tutsis, at roadblocks. The group left after approximately 15 minutes and continued the killings mentioned above.[1134]

1018. At approximately 9.00 p.m., Witness DO drove his group to an area near the gendarmerie brigade where they met Nsengiyumva and the head of the gendarmerie. Nsengiyumva congratulated the *Interahamwe* on their good work and told them to go home. He informed the soldiers that they had to continue. The witness drove the *Interahamwe* home and took the three soldiers to the military camp.[1135]

Prosecution Witness Omar Serushago 40462

1019. Omar Serushago, a Hutu and *Interahamwe* leader in Gisenyi town, testified that Lieutenant Eustache Dusabeyezu, a soldier at Gisenyi military camp, and Thomas Mugiraneza, a member of the *Interahamwe*, stopped by Serushago's house around 5.00 a.m. on 7 April 1994 and informed him that President Habyarimana had died. They told the witness about a meeting held the previous night at Gisenyi military camp in which Nsengiyumva had ordered the massacring of Tutsis. Dusabeyezu stated that killings had begun that night after Nsengiyumva's orders. Dusabeyezu and Mugiraneza informed Serushago that they were in a hurry to begin massacres and asked Serushago to "deal with" his neighbours, the Musonera family. Instead, Serushago hid them in his house because they were close friends.[1136]

1020. Between 7.30 and 8.30 a.m., a group of *Interahamwe* from Bigogwe sector in Kinama commune stopped briefly at Serushago's home. Around 8.00 or 8.30 a.m., he left his home with Colonel Bonaventure Buregeya to bury Buregeya's nephew, who had been killed. Along the way, Serushago observed "a lot" of dead bodies, some riddled with bullets in the head and others that had been cut by machetes. He returned home after burying the child and did not go anywhere else on 7 April.[1137]

1021. Lieutenant Bizumuremyi and Nsengiyumva also passed by Serushago's house that day around 10.00 a.m. They told the witness that he could be killed if he did not participate in the massacres, which had already started. Around 2.00 p.m., Nsengiyumva came again and asked Serushago: "Why haven't you yet started killing? Because your friend, your colleagues have already started killing. What are you doing here?" Serushago told Nsengiyumva that he needed time because he had to take his pregnant wife to Zaire for the delivery.[1138]

Prosecution Witness OAF

1022. Witness OAF, a Hutu businessman living in Gisenyi near the military camp in 1994, testified that, on 7 April 1994 between 6.30 and 7.00 a.m., his wife told him that she had heard over the radio that the President's plane had been shot down. The witness walked outside of his house to see if anything was happening. He encountered two men, Gahutu and Nyaribogi, who were walking in the direction of the military camp. Approximately 15 to 20

[1134] T. 30 June 2003 pp. 36, 38-39. T. 2 July 2003 p. 18. Bizumuremyi drove himself around town as the massacres occurred, and Witness DO recalled passing him on Umuganda Street and close to the prosecutor's office in the city centre. T. 1 July 2003 pp. 52-54.
[1135] T. 30 June 2003 pp. 61-63; T. 1 July 2003 pp. 41-44, 76-78; T. 2 July 2003 pp. 12, 17.
[1136] T. 18 June 2003 pp. 3, 5-6, 16-18, 88-90, 92; T. 19 June 2003 pp. 33-35, 56-58, 62-63; Prosecution Exhibit 54 (personal identification sheet). Serushago was living in Colonel Bonaventure Buregeya's compound, which contained apartments and a house. *See* T. 18 June 2003 pp. 74-76.
[1137] T. 18 June 2003 pp. 17-18, 90-91; T. 19 June 2003 pp. 67-68.
[1138] T. 18 June 2003 pp. 18-19, 90-92; T. 19 June 2003 pp. 36, 62-63.

minutes later, the two returned carrying two guns and grenades and informed him that they were going to start "working".[1139]

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Nsengiyumva

1023. On 6 April 1994 at between 8.30 and 9.00 p.m., one of Nsengiyumva's children in Kigali called him and said that President Habyarimana had died. Nsengiyumva immediately went to the military camp and spoke on the telephone with Major Gérard Ntamagezo of the army general staff. Ntamagezo said that the chief of staff had also died and that the G-2, G-3 and G-4 were not available. Ntamagezo called back around 10.00 to 11.00 p.m. and told Nsengiyumva that he had been informed that there was a meeting and that they were awaiting instructions. Nsengiyumva also spoke with Major Biganiro, the gendarmerie commander in Gisenyi and Sub-prefect Andre Banyurwabuke, who was the acting prefect.[1140]

1024. Nsengiyumva asked Lance Corporal Moderne to fetch Witness ZF, who arrived around 9.30 p.m. Nsengiyumva instructed him to go to his position to monitor RPF radio communications and to immediately report any information related to the attack. Nsengiyumva did not discuss anything or receive any phone call in Witness ZF's presence. Witness ZF left within five minutes and returned sometime between 11.00 p.m. and midnight, informing Nsengiyumva that he had not heard any communications regarding the incident. He also reported that the RPF had closed their network and that it would not open until 6.00 a.m. Nsengiyumva instructed Witness ZF to go home and report back at his position at 6.00 a.m. in order to track RPF radio communications the following day. Nsengiyumva did not receive any phone calls during their brief conversation.[1141]

1025. At around 10.00 p.m., Nsengiyumva held a meeting in his office for about an hour with the non-commissioned officers of the sector command, headquarters company, and 42nd Battalion to brief them about the situation. Nsengiyumva instructed the officers to tell their soldiers to be vigilant. At 2.00 a.m., he left for home, which was approximately 100 to 150 metres away. At the time, he had not received any instructions from Kigali and the reports from his officers indicated that Gisenyi town remained calm. Nsengiyumva did not speak to Bagosora or conduct any meetings with civilians that evening.[1142]

1026. Corporal Moderne called Nsenigyumva between 5.00 and 6.00 a.m. on 7 April to inform him that, according to a telegram, Nsengiyumva was invited to a meeting at 10.00 a.m. in Kigali and that he would be collected by helicopter. The helicopter never arrived, and Nsengiyumva remained in Gisenyi. On his way to the camp, he drove around town, which was calm. Nsengiyumva held a meeting at 7.00 a.m. with his officers. Thirty minutes later, he told 50 to 70 soldiers from the Headquarters Company assembled on the tarmac to remain disciplined and vigilant. At 9.00 a.m., he met briefly with Witness ZF and then went home for a short period around 11.00 a.m. Sometime between 11.00 a.m. and 12.00 p.m., the

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[1139] T. 23 June 2003 pp. 2, 8-10, 31, 37, 45-49; Prosecution Exhibit 56 (personal identification sheet).
[1140] T. 4 October 2006 pp. 49-52; T. 12 October 2006 pp. 53-55.
[1141] T. 4 October 2006 pp. 52-54; T. 6 October 2006 pp. 15-16; T. 11 October 2006 pp. 7-8.
[1142] T. 4 October 2006 pp. 54-57; T. 6 October 2006 pp. 16-17, 43-44; T. 12 October 2006 p. 55. The non-commissioned officers present were Major François Xavier Uwimana, who was his S-2/3 and Nsenigyumva's second in command, Captain Faustin Habimana, commanding officer of the 42nd Battalion, Second Lieutenant Abel Rwasa, commanding officer of Headquarters Company, Lieutenant Anastase Bizumuremyi, an S-2/3, Lieutenant Iyamuremye, an S2-S3 of the 42nd Battalion, and Lieutenant Fidèle Udahemuka, Fighter Commando leader. Chief Warrant Officer Butera, a commissioned officer in charge of logistics, including weapons and ammunition, was also in attendance. T. 4 October 2006 pp. 54-55.

gendarmerie commander, Major Biganiro, contacted Nsengiyumva reporting "suspicious movements of youngsters", risks of attacks and looting. Nsengiyumva sent two platoons, consisting of 60 to 70 men, who were placed under Biganiro's command. Nsengiyumva did not meet with civilians or distribute weapons to *Interahamwe* and did not receive any messages to commence the massacres.[1143]

1027. Nsengiyumva stayed at the camp until about 1.00 p.m., when he returned to his house to eat lunch, returning to camp around 2.00 p.m. He attended a meeting at the prefect's office from 4.00 to 6.00 p.m. The prefect informed the attendants that houses had been burned in Mutura, that people had been killed in Karago commune, and that he was receiving information regarding tension in Giciye and Kayove communes. The gendarmerie commander informed them of the killing of Gaudiose Semucyo, whose body was found in Munakoro. Nsengiyumva was instructed to remain vigilant in anticipation of an RPF attack. He returned to the camp after the meeting, not seeing a single killing or dead body that day.[1144]

1028. Nsengiyumva did not know or learn about the deaths of Rwabijongo, Kajanja and Muvunyi and was never informed of soldiers being involved in killings in April 1994. He also testified that a witness statement turned over by the Prosecution suggested that Gilbert was killed between 11 and 14 April rather than 7 April. Nsengiyumva knew that Mukabutare was killed in April 1994.[1145]

Nsengiyumva Defence Witness LUXX

1029. Witness LUXX, a Hutu student, testified that on the evening of 6 April 1994, she was in Nsengiyumva's home. Early that evening, Nsengiyumva brought his wife and their three children to the *Hôtel Méridien*. At approximately 9.00 p.m., the witness received a call in Nsengiyumva's house from his daughter in Kiyovu, who said that she could hear gunshots and had been told that the President's plane had been shot down. Nsengiyumva's wife and children returned 30 minutes later without him. His wife said that Nsengiyumva had gone to the military camp.[1146]

1030. Nsengiyumva called around 11.00 p.m., stating that he would send protection. He returned home between 1.00 and 2.00 a.m. Around 6.00 or 6.30 a.m., he left without breakfast and returned around 11.00 a.m. He said that he was waiting for a helicopter to Kigali and that he was sending a vehicle for the children in Kigali. Nsengiyumva left for the office, returned between 1.00 and 2.00 p.m. for lunch and then went back to the military camp immediately thereafter.[1147]

[1143] T. 4 October 2006 pp. 46-47, 57-58; T. 5 October 2006 p. 5; T. 6 October 2006 pp. 12-13, 44, 48; T. 11 October 2006 p. 8; T. 12 October 2006 pp. 55-58, 61, 64-67.
[1144] T. 4 October 2006 pp. 58-64, 66-67; T. 6 October 2006 pp. 17-18, 48-52; T. 11 October 2006 pp. 25-26; T. 12 October 2006 pp. 66-72. Until 13 April, when the Belgians evacuated and left vehicles, Nsengiyumva drove around in a beige-coloured Pajero. *See* T. 4 October 2006 pp. 63-64; T. 9 October 2006 p. 14. *See also* Witness STAR-2, T. 28 February 2006 p. 28 (confirming that Nsengiyumva drove his Pajero before the Belgians soldiers left in mid-April and a pick-up that belonged to the Belgians afterwards).
[1145] T. 6 October 2006 pp. 48-52. Nsengiyumva accepted that Kajanja and Rwabijongo, Hutus considered to be accomplices, were among the first to be killed. T. 11 October 2006 pp. 24-25; T. 12 October 2006 p. 27.
[1146] T. 6 September 2006 pp. 58, 60-61; Nsengiyumva Defence Exhibit 206 (personal identification sheet).
[1147] T. 6 September 2006 pp. 61-62.

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Nsengiyumva Defence Witness LSK-1

1031. Witness LSK-1, a Hutu, was a trader and a neighbour of Witness DO in 1994. On the morning of 7 April 1994, Witness DO came to his house and informed him of the death of the President. Witness DO stated that he had tried to go to town but was turned back. Both men stood by the roadside to observe what was happening for approximately three hours. They were joined by several of their neighbours. At about 12.00 p.m., Kidumu, an *Interahamwe*, told Witness DO to follow them into town. No mention was made of going to Gisenyi military camp. According to Witness LSK-1, it was impossible for Witness DO to have attended a meeting at Gisenyi military camp on the morning of 7 April 1994, as he was in his company at this time.[1148]

1032. Furthermore, Witness DO never mentioned attending a meeting at the military camp on the morning of 7 April during his criminal proceedings in Rwanda or to him. Witness LSK-1 questioned the likelihood of Witness DO having close links to Bizumuremyi as his status and rank would have prevented this kind of association.[1149]

Nsengiyumva Defence Witness ZDR-1

1033. Witness ZDR-1, a Hutu, was a soldier based at Gisenyi military camp. At approximately 10.00 p.m. on 6 April 1994, a platoon leader, who had attended a meeting convened by Nsengiyumva, informed the witness that the President's plane had been shot down. From 6.00 a.m. to 6.00 p.m. on 7 April, the witness was on guard duty near the camp's entrance. Nsengiyumva entered the camp in a vehicle coming from the direction of his residence at 6.00 a.m., left at 11.00 a.m. in the direction of his residence, and returned approximately 30 minutes later. He left again around 2.00 p.m. and did not return prior to Witness ZDR-1 leaving his post. There was no movement of soldiers on that day. He did not observe soldiers from his platoon leaving the camp around 11.00 a.m. From his post, the witness also observed Nsengiyumva address soldiers at the camp on the morning of 7 April. The witness did not see civilians enter the camp that day.[1150]

Nsengiyumva Defence Witness ZDR-2

1034. On 6 April 1994, Witness ZDR-2, a Hutu soldier at Gisenyi military camp, was on guard duty behind the married soldiers' accommodation from 10.00 p.m. until 6.00 a.m. the following morning. Around 10.00 p.m. on 6 April, the witness's platoon commander said that the President's plane had been shot down and asked members of the platoon to be vigilant. The witness did not see a meeting of a large group of civilians during the time he was on duty. He later attended a meeting on the tarmac around 7.30 a.m. on 7 April. From approximately 8.00 to 8.15 a.m., Nsengiyumva and other officers who had been in another meeting, arrived. Nsengiyumva confirmed that the President's plane had been brought down. After the meeting, Witness ZDR-2 returned to his barracks. At 11.00 a.m., members of his

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[1148] T. 19 June 2006 pp. 35-36, 42-43, 50-51; Nsengiyumva Defence Exhibit 189 (personal identification sheet).
[1149] T. 19 June 2006 pp. 43-45, 51-53, 57.
[1150] T. 7 April 2006 pp. 3, 6-14; Nsengiyumva Defence Exhibit 175 (personal identification sheet). The officers who had been attending the meeting with Nsengiyumva included 42nd Battalion commander Habimana, Second Lieutenant Fidèle Udahemuka, Second Lieutenant Abel Rwasa, Chief Warrant Officer Butera and Major Uwimana. T. 28 March 2006 p. 66.

platoon were given orders to accompany the platoon commander to provide security in Gisenyi town.[1151]

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Nsengiyumva Defence Witness ZR

1035. After learning about the President's death, Witness ZR, a Hutu soldier, reported to Gisenyi military camp around 7.30 a.m. on 7 April 1994. As Nsengiyumva was in a meeting, he waited on the parade ground with at least 100 other rank-and-file officers. Nsengiyumva arrived around 8.30 a.m. He confirmed the death of the President and told them to be vigilant as the RPF were trying to take over. The witness, who had a clear view of the parade ground from where he was posted that day, did not see any civilians at the camp.[1152]

Nsengiyumva Defence Witness HQ-1

1036. Witness HQ-1 was a Hutu soldier based at Gisenyi military camp. Between 9.00 and 9.30 p.m. on 6 April 1994, he was instructed by Nsengiyumva to pick up the Accused's wife and three children from the *Hôtel Méridien* and drive them to their residence. When he returned from this assignment, he observed Nsengiyumva speaking with Witness ZF, who subsequently left. Nsengiyumva then convened a meeting with officers, which ended around 2.00 a.m. Afterwards, Nsengiyumva remained in his office with Major Uwimana. The witness accompanied Nsengiyumva to his residence and returned to the camp. He did not observe any civilians that night.[1153]

1037. On 7 April, the witness returned to the camp with Nsengiyumva between 6.30 and 7.00 a.m. Nsengiyumva convened a meeting with officers that morning, where he announced the death of the President and instructed them to remain disciplined. The witness accompanied Nsengiyumva to a meeting at the prefect's office at 8.00 a.m. Around 8.30 a.m., they went on a patrol, passing *La Corniche*, Lake Kivu, the market near Gacuba and near the railway station. Witness ZF did not accompany them on patrols that day. Nsengiyumva went home between midday and 1.00 p.m. and returned to the camp at 2.00 p.m. There was no meeting with civilians at any time on 7 April.[1154]

Nsengiyumva Defence Witness CF-1

1038. Witness CF-1, a Hutu, lived in Gisenyi. Members of the community told the him that *Interahamwe* had attacked Kajanja's home, and that he had been killed by machetes while trying to defend his wife on the evening of 7 April 1994 or the next morning. Omar Serushago informed him that Mukabutare had been killed by Hassan Gitoki after being forced to sign her property over to Gitoki. The witness learned about the deaths of Kajanja, Mukabutare and Kabiligi on Friday 8 April.[1155]

Nsengiyumva Defence Witness CF-2

1039. Witness CF-2, a Hutu, was a CDR official in Gisenyi prefecture. He did not hear gunshots or learn of killings occurring from 6 to 7 April 1994. He was also unaware of a

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[1151] T. 28 March 2006 pp. 62, 64-69; T. 30 March 2006 pp. 3-7, 21-22; Nsengiyumva Defence Exhibit 170 (personal identification sheet).
[1152] T. 14 February 2006 pp. 3-5, 7-13, 17, 21; Nsengiyumva Defence Exhibit 134 (personal identification sheet).
[1153] T. 13 October 2006 pp. 51-53, 55; Nsengiyumva Defence Exhibit 226 (personal identification sheet).
[1154] T. 13 October 2006 pp. 53-55.
[1155] T. 29 November 2005 pp. 3, 5-6, 32-33, 35-37; Nsengiyumva Defence Exhibit 125 (personal identification sheet).

meeting attended by civilians at Gisenyi military camp at that time. Nsengiyumva would not have had authority to convene such a meeting. As a member of the CDR, the witness would have been informed of any meeting, particularly if Mabuye had attended, as the two knew each other well.[1156]

Nsengiyumva Defence Witness CF-4 40457

1040. Witness CF-4, a Hutu, was a member of the CDR party in Gisenyi. The situation remained calm in Gisenyi on night of 6 to 7 April 1994. The witness was unaware of a meeting of civilians at the military camp during that period.[1157] Around noon on 7 April, he heard that a Tutsi named Solange and another unidentified young Tutsi man were killed. He also learned that a person named Semucyo, a teacher in Nyundo, was killed that morning. Persons allegedly involved in the killing were "Saidi" Harelimana, also known as "Fulgence", Hassan Gitoki, Michel Kiguru and others.[1158]

1041. Witness CF-4 learned that Kajanja, Mukabutare and Ignace Tegeri, all Tutsis, were killed by a group of *Interahamwe*, including "Bernard" and Saidi Harelimana. He did not believe they were all killed at the same time. The witness heard of Mukabutare's and Tegeri's killing four days after the President's death. Nsengiyumva's name was not mentioned in relation to the killings, which, according to the witness, were carried out by bandits. The witness was unaware of soldiers being involved in any of the killings in 1994 or Nsengiyumva having authority over civilian militias.[1159]

Nsengiyumva Defence Witness FN-1

1042. Witness FN-1, a Hutu, worked near Gisenyi military camp. He did not observe any movements of soldiers or large numbers of civilians while at work between 5.00 and 8.00 a.m. on 7 April 1994. He also did not see or hear about any meetings with civilians at the camp. The witness was close to Mabuye and saw him around 5.00 p.m. on 7 April. Mabuye did not mention receiving any orders from Nsengiyumva to kill. In fact, he considered Nsengiyumva to be an accomplice. Mabuye never spoke to the witness about being involved in killings.[1160]

Nsengiyumva Defence Witness TRA-2

1043. Witness TRA-2, a Hutu and member of the MRND and *Interahamwe*, was unaware of any *Interahamwe* meeting at Gisenyi military camp on 6 April 1994 or the next morning. Nsengiyumva did not distribute weapons to *Interahamwe* when he was a party member.[1161]

[1156] *Id.* pp. 48, 58, 63-65; T. 30 November 2005 pp. 2-3; Nsengiyumva Defence Exhibit 127 (personal identification sheet).
[1157] T. 14 February 2006 pp. 61-65; T. 15 February 2006 p. 5; Nsengiyumva Defence Exhibit 135 (personal identification sheet).
[1158] T. 14 February 2006 pp. 65-68; T. 15 February 2006 p. 6. "Bernard", the *Interahamwe* leader for the prefecture, and Hassan Gitoki were identified as having led the attack against Solange and the other unidentified Tutsi man.
[1159] T. 14 February 2006 pp. 71-74; T. 15 February 2006 p. 6.
[1160] T. 10 July 2006 pp. 38-40, 43-44, 47-49, 58-59; Nsengiyumva Defence Exhibit 204 (personal identification sheet). Witness FN-1 first saw Mabuye with a pistol four to five days after the President's death, which Mabuye said he acquired from the Congo. *See* T. 10 July 2006 pp. 41-42.
[1161] T. 21 June 2006 pp. 24-26; Nsengiyumva Defence Exhibit 192 (personal identification sheet).

Nsengiyumva Defence Witness Willy Biot

1044. Major Biot was a Belgian technical adviser to the Rwandan army who worked at Bigogwe commando training centre in Gisenyi prefecture. At approximately 12.30 a.m. on the evening of 6 to 7 April 1994, Captain Philippe Seconde, his deputy, called and informed him that President Habiyarimana was dead. Biot did not observe anything abnormal that evening.[1162]

1045. On 7 April, Biot sent Seconde and Warrant Officer Beyens to speak with Nsengiyumva in order to assess the situation. Seconde and Beyens left around 8.30 a.m. and went to Gisenyi military camp. They spoke with the S-3 officer who informed them that the operational commander was unavailable. Seconde and Beyens then went to Butotori camp and returned around 10.00 to 10.30 a.m. They later reported to Biot that the situation in Gisenyi town seemed relatively calm, but that Rwandan soldiers at roadblocks seemed edgy, briefly arresting them and searching their vehicle. They did not report observing soldiers and civilians meeting at the Gisenyi military camp, dead bodies or civilians manning roadblocks.[1163]

Nsengiyumva Defence Witness Aouili Tchemi-Tchambi

1046. Colonel Tchemi-Tchambi, a Togolese UNAMIR military observer, arrived in Gisenyi prefecture in early to mid-January 1994. He was a member of a six person unit sent to enforce the implementation of the Arusha Accords. As part of his patrol activities, he would conduct surprise inspections of Gisenyi military camp to ascertain that there were no stocks of weapons or grenades. These visits by Tchemi-Tchambi and others within his unit revealed that there were "neither weapons nor grenades" in the camp, and no other weapons caches were discovered in Gisenyi prefecture generally.[1164]

1047. On the night of 6 to 7 April 1994, Tchemi-Tchambi remained at his home near the Gisenyi airfield. The situation seemed calm that evening. The next morning, he noticed that the streets were unusually empty. Nsengiyumva provided soldiers to escort the UNAMIR officers to their office near the *Hôtel Méridien*. The soldiers arrived at approximately 7.00 a.m., and Tchemi-Tchambi's group took the route past the Edelweiss Hotel, rather than the market, to get to the office. His unit was told to remain in the office, which they did all day.

[1162] T. 21 September 2006 pp. 74, 78; T. 22 September 2006 pp. 1-2, 7-8; Nsengiyumva Defence Exhibit 209 (personal identification sheet); Prosecution Exhibit 411 ("*Journal de Campagne*"), p. L0008323. Biot lived approximately five to 10 minutes outside the centre of Gisenyi town towards Kigali. He evacuated on 13 April. Between 7 and 13 April 1994, he remained in the immediate vicinity of his compound in Gisenyi. T. 21 September 2006 pp. 75, 82; T. 22 September 2006 pp. 31-32.

[1163] T. 21 September 2006 pp. 76, 79-81; T. 22 September 2006 pp. 8-10; Prosecution Exhibit 411 ("*Journal de Campagne*"), p. L0008325. *But see* T. 22 September 2006 pp. 11-14 (discussing entries from his *Journal de Campagne*, pp. L0008325-L0008326). They reflect that around 10.30 a.m. on 7 April 1994, Seconde was contacted by the Van Colen family who complained of "shooting in the immediate vicinity of his house, direct threats to his home" and that "[a] gang of armed persons of more or less 15 persons in civilian attire, that which threatened Van Colen, is moving about in Gisenyi in a red taxi and is intent on, in quotes, massacring – settling of scores". Biot explained that there were rumours going around at this time and that because the report had not been verified he had reservations about it.

[1164] T. 6 March 2006 pp. 33-35, 40-41; Nsengiyumva Defence Exhibit 149 (personal identification information). Witness Tchemi-Tchambi noted that on one occasion, soldiers refused to allow the UNAMIR officers to inspect a building. When Nsengiyumva arrived, however, he ordered the officers to open the building. T. 6 March 2006 p. 42.

The witness did not receive any reports that members of the military distributed weapons to civilians at Gisenyi military camp or Gisenyi market that day. Tchemi-Tchambi slept in the office from 7 April to 10 April, before relocating to the *Hôtel Méridien*.[1165]

Nsengiyumva Defence Witness BZ-3 and XEN-1

1048. Witnesses BZ-3 and XEN-1, both Hutus, lived near Gisenyi town market and the Saint Fidèle Institute, respectively, in 1994. Neither witness heard gunfire in their neighbourhoods on the night of 6 April 1994.[1166]

Deliberations

1049. Both Prosecution and Defence evidence indicate that a number of Tutsi and Hutu civilians were murdered in Gisenyi town after the death of President Habyarimana. The main questions for the Chamber is whether Nsengiyumva and Bagosora participated in these killings. This requires a review of the evidence related to the meetings Nsengiyumva allegedly chaired at the Gisenyi military camp on the evening of 6 April 1994 and the following morning as well as the ensuing killings.

(i) Meetings and Distribution of Weapons

1050. The Chamber accepts that Witness ZF held a sensitive position within the Gisenyi operational structure, having direct access to Nsengiyumva and his deputies in 1994. Indeed, Nsengiyumva, in part, confirms that Witness ZF was at the Gisenyi military camp on the night of 6 to 7 April, although the two give different estimates of the length of time he spent there. Witness ZF's testimony that Nsengiyumva convened a meeting of company commanders that evening is corroborated by Nsengiyumva and Witnesses ZDR-1 and HQ-1. Thus, Witness ZF was, at least for certain periods during the night of 6 to 7 April, in a position to observe Nsengiyumva as well as generally to follow the activity in the Gisenyi military camp.

1051. Only Witness ZF testified that Nsengiyumva ordered Lieutenant Bizumuremyi to begin operations to kill Tutsis, and that Bizumuremyi then passed the instructions to civilians at the camp on the night of 6 to 7 April 1994. The Chamber has previously questioned Witness ZF's reliability as it relates to the Zero Network and the Amasasu, as he received his information from others (III.2.7-8). However, in this instance, Witness ZF's evidence is first-hand. In addition, the essence of his testimony regarding Nsengiyumva's instructions to Bizumuremyi and Bizumuremyi's commands to civilians outside the military camp is consistent with a prior account given to Tribunal investigators in June 1998. The witness described Nsengiyumva stating to Bizumuremyi "to work immediately to finish with these *Inyenzi* as soon as possible".[1167] He also said that Bizumuremyi exited "the camp to meet a

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[1165] T. 6 March 2006 pp. 35-37, 41-42, 44.

[1166] Witness BZ-3, T. 21 July 2005 pp. 52-57, 65-66; T. 22 July 2005 pp. 17-18; Nsengiyumva Defence Exhibit 95 (personal identification sheet). Witness XEN-1, T. 30 May 2006 pp. 3-4; Nsengiyumva Defence Exhibit 178 (personal identification sheet).

[1167] The words "to work" and "finish" are left out of the translation of Nsengiyumva Defence Exhibit 14B (statement signed 24 June 1998), p. 17. *See* Nsengiyumva Defence Exhibit 14A (statement signed 24 June 1998), p. 17, which reads "*tu dois immédiament commencer le travail pour en finir avec ces Inyenzi dans les plus brefs delai.*" In his statement, Witness ZF explains that "[f]or several years the word 'work' had already

large number of militia who had gathered in front of the guardroom". The account indicates that Bizumuremyi addressed a gathering of "about two hundred people".[1168]

1052. In the Chamber's view, however, it is not entirely clear why Nsengiyumva, the area's operational commander, would spend the entire night in his office with Witness ZF, a radio operator, in particular when the military was on high-alert. Moreover, according to Witness ZF, the killing operation in Gisenyi town occurred on the night of 6 April. The militiamen were dispatched sometime after 10.00 p.m. Bizumuremyi then reported around 4.00 a.m. that the operation was complete and they were moving onto the rural areas. This stands in contrast to the evidence of Witnesses BZ-3 and XEN-1, who testified that they did not hear gunfire or unrest in Gisenyi on the night of 6 to 7 April, while others, such as Witness LK-2, Tchemi-Tchambi and Biot described Gisenyi town as being calm that evening. Notably, Tchembi-Tchambi and the officers Biot dispatched to the camp on the morning of 7 April passed through Gisenyi town and saw no signs of the killings. Furthermore, the evidence of Witness DO, discussed below, indicates that the killings occurred during the day on 7 April. In view of these concerns, the Chamber has some doubt about Witness ZF's presence at the camp during the entire night of 6 to 7 April.

1053. There are also differences between the witness's evidence and that of the Defence. Witnesses ZDR-2, a soldier on guard at the camp, was not aware of the meeting, although he conceded that he did not have a clear view of the camp's entrance. Witnesses CF-2 and CF-4, who were CDR party members, as well as Witness TRA-2, an *Interahamwe*, were also unaware of the purported meeting. Nsengiyumva and Witnesses LUXX and ZDR-1 indicated that Nsengiyumva did not spend the night at the Gisenyi military camp, thereby contradicting Witness ZF's assertion that the two were together there during that period.

1054. The Defence evidence is not conclusive given the witnesses' relationship with Nsengiyumva as well as the interest of the soldiers and political party members in distancing themselves from the killings. Nevertheless, it raises further questions about the credibility of Witness ZF's uncorroborated account. Serushago and Witness DO heard about a meeting held at Gisenyi military camp that evening, but offered only limited details. The Chamber is not satisfied that their second-hand accounts are sufficient to corroborate Witness ZF's version. As a result, the Chamber accepts that Witness ZF was present at the military camp for various periods from 6 to 7 April. However, it will not rely on his testimony concerning the meeting with *Interahamwe* or Nsengiyumva's various conversations with Bagosora, which are closely linked to Witness ZF's version of when the militia was dispatched.

1055. With respect to the alleged meeting on the morning of 7 April, Witness DO provided the only first-hand account. He is currently incarcerated in Gisenyi, serving a life sentence based on a genocide conviction for killings in Gisenyi that are equally at issue in this proceeding.[1169] As an alleged accomplice of Nsengiyumva, the Chamber views the witness's testimony with caution. Furthermore, it recalls that his testimony prompted motions from the Defence to order perjury investigations. While the Chamber denied the requests, it concluded

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come to mean 'Kill the Tutsis'. There was no doubt about it in the minds of all Rwandans". *See* Nsengiyumva Defence Exhibit 14B (statement signed 24 June 1998), p. 17.

[1168] Nsengiyumva Defence Exhibit 14B (statement signed 24 June 1998), pp. 17-18.

[1169] T. 30 June 2003 pp. 4, 83-86; T. 1 July 2003 pp. 54-56, 59-61; Nsengiyumva Defence Exhibit 107 (Rwandan trial judgment). The witness testified that he was arrested in December 1996, pleaded guilty in 1998 and that his trial took place in 1999. T. 30 June 2003 p. 83; T. 1 July 2003 p. 54.

in one instance that the witness did not provide a correct account, and in another that he had provided contradictory testimony.[1170]

1056. There are certain differences between Witness DO's account given to the Tribunal and his Rwandan trial judgment. In testimony and statements to Tribunal investigators in July 1997, October 1997 and February 2003, Witness DO consistently indicated that Bizumuremyi came to his compound and told him to drive, after which the witness picked up and transported *Interahamwe* to Gisenyi military camp.[1171] The statements reflect that Nsengiyumva held a meeting with militia, which preceded attacks, and that weapons were distributed. However, his judgment does not mention that he attended a meeting at the military camp on the morning of 7 April 1994 and suggests that he started driving only around 1.30 p.m. after being forced to do so by Bizumuremyi.[1172] The witness reappeared for further cross-examination on this discrepancy.[1173]

1057. Witness DO explained that he had told the truth before the Tribunal and had withheld the information in his proceeding in Rwanda because he feared that, if he had talked about the events in the morning, he would have had problems.[1174] Later in his examination, he stated that he mentioned the morning meeting in passing during his trial, but simply did not provide all of the details for security reasons.[1175] While the witness's judgment may not summarise all of the evidence he provided, it is difficult to accept that it would omit a key event involving the area's operational commander. His confession reflects that he did place

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[1170] Decision on Defence Request for an Investigation into Alleged False Testimony of Witness DO (TC), 3 October 2003. Specifically, the Ntabakuze Defence argued that Witness DO deliberately and consciously provided false testimony when stating that he had not met with Prosecution counsel prior to testifying before the Tribunal (paras. 1-2, 5). The Chamber found that he did not give a correct account, noting its "difficulty accepting the witness's explanation for denying" that the prior meeting occurred. However, the request for an investigation was denied because it did not concern a matter material to the case against Nsengiyumva (paras. 10-11). The Nsengiyumva Defence, joined by the Bagosora and Kabiligi Defence, requested an investigation to determine if the witness committed perjury when alleging that members of Nsengiyumva's family had threatened him (paras. 3-4, 6). The Chamber decided that he contradicted his testimony regarding threats (para. 13). It also concluded that the witness contemporaneously recognised that his statement was incorrect when presented with irrefutable proof that it was wrong, indicating that the mental element for false testimony was not present (para. 13).

[1171] Nsengiyumva Defence Exhibit 26 (statement of 9 October 1997); Nsengiyumva Defence Exhibit 27 (statement of 30 July 1997); Nsengiyumva Defence Exhibit 29 (statement of 28 February 2003).

[1172] Nsengiyumva Defence Exhibit 107B (Rwandan trial judgment, 17 August 1999), p. 7. Witness DO's *Pro Justitia* statement to Rwandan authorities in March 1997 also makes no reference to weapons being distributed from the Gisenyi military camp that morning. Prosecution Exhibit 398 (statement of 25 March 1997).

[1173] T. 14 October 2004 p. 23.

[1174] T. 14 October 2005 p. 21 ("Mr. President: ... Being motivated by fear and trying to avoid execution, why was it important to say before the Rwandan court that you started driving from 1.30 and not from the morning? The witness: Thank you, Mr. President. During the time of my trial, we were very hesitant. We were very hesitant. And if I admitted that I started driving that vehicle in the morning and that I went to the military camp, I believed I would have problems. And to avoid those problems, I told them just part of the truth and I told them that I started driving that vehicle at 1.30 p.m. But the fact is that I had started driving the vehicle in the morning.").

[1175] T. 14 October 2005 pp. 27-30. The Prosecution introduced a *Pro Justitia* statement to Rwandan authorities given by Witness DO on 25 March 1997, wherein he indicates that Bizumuremyi came to his house around 7.30 a.m. with other *Interahamwe* and ordered him to drive them to Gisenyi military camp. Prosecution Exhibit 398 (*Pro Justitia* statement of 25 March 1997). This document was introduced to impeach Defence Witness LSK-1 (T. 19 June 2006 pp. 56-58) and was not put to Witness DO.

responsibility on soldiers from the military camp for the crimes.[1176] His apparent failure to mention the earlier events occurring at the camp during his trial is noteworthy since it was the triggering event for the attacks in his testimony before the Tribunal. This omission and his explanation for it raise questions about this aspect of his evidence.

1058. There are also differences between Witness DO's account of the meeting and other evidence. For example, the witness described Serushago attending the meeting, but Serushago claimed that he remained at home. In addition, Witnesses ZDR-1, ZR, HQ-1, CF-2, CF-4, who were soldiers and political officials in Gisenyi, and Witness FN-1, who worked in the immediate proximity of the camp, had no knowledge of this meeting. Similarly, Biot, who had dispatched soldiers to speak with Nsengiyumva, did not report such a gathering. Prosecution Witness ZF, who came to the camp at 7.30 a.m., also did not mention the meeting and indicated that he accompanied Nsengiyumva on several tours of Gisenyi town that morning. Furthermore, the testimony of Witness LSK-1 suggests that Witness DO remained with him until 12.00 p.m. on 7 April and did not go to the camp during this period. In the Chamber's view, some of these witnesses have an interest in minimising their involvement in this incident. However, their evidence, while not dispositive, raises some further questions concerning Witness DO's testimony about this event when considered in light of the concerns noted above. The Chamber therefore declines to accept the witness's account of Nsengiyumva's participation in meetings in the absence of corroboration.[1177]

1059. Witness OAF attested to seeing Gahutu and Nyaribogi returning from the direction of the camp with weapons shortly after 7.00 a.m.[1178] He observed only two people leaving by foot from the direction of the military camp whereas Witness DO's described numerous groups of assailants that apparently left together. The Chamber is not satisfied that Witness OAF provided adequate corroboration for Witness DO's testimony.

1060. Accordingly, the Prosecution has not proven that beyond reasonable doubt that Nsengiyumva addressed and distributed weapons to militiamen on 6 and 7 April.[1179]

[1176] Nsengiyumva Defence Exhibit 107B (Rwandan trial judgment, 17 August 1999), p. 7, which directly implicates Bizumuremyi in the crimes Witness DO was accused to have committed. In a statement to a Rwandan Prosecutor, the witness mentioned that he attended a meeting at the military camp on the morning of 7 April and Nsengiyumva ordered the *Interahamwe* "to fetch" Mukabutore. *See* Prosecution Exhibit 398B (*Pro Justitia* statement of 25 March 1997).

[1177] According to Tchemi-Tchambi, the Gisenyi military camp did not appear to have a stockpile of weapons. In the Chamber's view, this raises some questions as to Nsengiyumva's ability to distribute arms to militiamen gathered at the Gisenyi military camp on 7 April from the camp's armoury, as indicated by Witness DO. It does not, however, generally raise doubt about the provision of weapons to militiamen given the extensive evidence about the use of firearms and thus likelihood of secret caches (III.2.6).

[1178] Witness OAF stated that in a previous statement to investigators he could not remember the names of the two individuals he encountered when he exited his house, but testified that he provided them to a second team of investigators who questioned him. T. 23 June 2003 pp. 45-46.

[1179] The Chamber also questions the reliability of Serushago's evidence regarding Bizumuremyi and Nsengiyumva stopping by his house on 7 April. Serushago is an alleged accomplice of Nsengiyumva. The Chamber has on several occasions expressed reservations about his credibility. It therefore views his evidence with caution and declines to accept it without corroboration.

(ii) Killings in Gisenyi Town on 7 April 40451

1061. The Chamber will now consider evidence of killings on 7 April in Gisenyi town. Witness DO provided the only first-hand evidence of this. The Chamber notes that Witness DO's testimony regarding his participation in the killings was, if not contradictory, confusing.[1180] His evidence also varied as to the timing of events. He noted, however, that he could only provide estimates.[1181] In particular, relying on *Pro Justitia* statements and letters disclosed to him, Nsengiyumva argued that Witness DO's accounts of the killings were inconsistent with other evidence.[1182] The Chamber accepts that these inconsistencies likely resulted from a passage of time or an interest in distancing himself from the crimes. The Chamber also accepts his first-hand account that the killings occurred on 7 April notwithstanding the conflicting second-hand evidence from the Defence regarding the timing of certain deaths.

1062. While the Chamber expressed concern about Witness DO's credibility on matters related to Nsengiyumva's personal involvement in meetings on 7 April 1994, it has no doubt that the witness was a direct observer of the killings. This also follows from his conviction in Rwanda for the very incidents he mentioned during his testimony.

1063. Witness DO has consistently implicated soldiers in the attacks in his testimony, statements to Tribunal investigators and his trial in Rwanda.[1183] He is not alone in testifying that soldiers in civilian clothes worked closely with militia groups in Gisenyi.[1184] His evidence also fits into a broader pattern of soldiers accompanying and assisting civilian militiamen in attacks on Tutsi civilians and suspected accomplices in the days immediately following President Habyarimana's death. For example, in the killing of Alphonse Kabiligi on the evening of 7 April, civilian assailants led the attack, first wounding Kabiligi with more rudimentary weapons in a soldier's presence before being shot (III.3.6.5). With respect to the attack at Mudende University on 8 April, Witness HV credibly described soldiers assisting civilian militia separate Hutus from Tutsis and break into classrooms so the militiamen could

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[1180] For example, Witness DO initially testified that he observed Mabuye shoot Gilbert three times in the chest. During cross-examination he testified that he did not see the killing of Gilbert. *Compare* T. 30 June 2003 pp. 35-36 *and* T. 17 October 2005 p. 16. The witness later confirmed that he was present when Mabuye shot Gilbert. *See* T. 17 October 2005 pp. 31-32. The witness's testimony with respect to Kajanja's killing also was inconsistent. He testified that he observed the "attack" and noted that Fiacre, whom he said was the leader of his group of attackers, led *Interahamwe* in the attack. *See* T. 30 June 2003 p. 30. Later, he stated that he was not involved in nor did he transport killers to Kajanja's place and that he did not witness the killing. Subsequently, he testified that he did observe it, but explained that he did not take part in it. T. 17 October 2005 pp. 19, 29-31.

[1181] For example, at one point, he testified that the attack on Daniel Rwabijongo's residence occurred at 10.00 a.m., but later suggested it took place at 2.00 p.m. *See* T. 30 June 2003 p. 31; T. 1 July 2003 p. 50; T. 2 July 2003 p. 13. The timing he provided for the Kajanja attack ranged from around 12.00 p.m. to 2.30 p.m. *See* T. 30 June 2003 pp. 30-31; T. 1 July 2003 p. 50.

[1182] T. 15 January 2007 pp. 6-7; T. 18 January 2007 pp. 10-17. The Chamber allowed Nsengiyumva to testify with respect to several documents that purportedly impeach Witness DO's testimony but denied a request to admit them as exhibits. *See* Decision on Nsengiyumva Motion to Admit Documents as Exhibits (TC), 26 February 2007, paras. 1, 9-13.

[1183] Nsengiyumva Defence Exhibit 26 (statement of 9 October 1997); Nsengiyumva Defence Exhibit 27 (statement of 30 July 1997); Nsengiyumva Defence Exhibit 29 (statement of 28 February 2003); Nsengiyumva Defence Exhibit 107B (Rwandan trial judgment, 17 August 1999), pp. 7, 10.

[1184] *See* Witness ZF, T. 28 November 2002 pp. 10-16, 35-36 (testifying about soldiers in plain clothes training civilians in 1993); Serushago, T. 18 June 2003 p. 7; T. 19 June 2003 p. 30 (identifying soldiers in civilian clothes as being involved with *Impuzamugambi* and mentioning one who committed rapes in 1994).

kill Tutsi refugees inside (III.3.6.7). In the Chamber's view, this practice of soldiers providing firepower to assist civilians, who were the primary attackers, provides circumstantial corroboration of Witness DO's testimony.[1185]

1064. When viewing the evidence in its totality, the Chamber is convinced that soldiers accompanied Witness DO and other civilian attackers on 7 April 1994 as they conducted the targeted attacks against Tutsis and suspected accomplices described in his testimony. The soldiers provided material and substantial assistance to the attacks. This is evident particularly in the killing of the Tutsi teacher and his daughter on 7 April 1994, where soldiers participated directly.[1186] The Chamber is in no doubt that the soldiers in the attacks came from Gisenyi military camp given its proximity to the crimes. The witness has also consistently implicated Bizumuremyi as playing a role in the events that day.[1187]

1065. Turning to Nsengiyumva's responsibility, on the period covering 7 April, he was the Gisenyi operational commander and had authority over soldiers assigned to Gisenyi (I.2.4; IV.1.5). The Chamber has also determined that that under certain circumstances, Nsengiyumva could have *de facto* authority over civilian militiamen (III.2.6.2). Witness DO's evidence shows coordination between soldiers and civilians, and the Chamber is convinced beyond reasonable doubt that Nsengiyumva exercised authority over all the attackers. Moreover, the systematic nature of attacks by civilians and soldiers, which occurred in various areas in Gisenyi, almost immediately after President Habyarimana's death, leads to the only reasonable conclusion that they were ordered by the highest regional authority, Nsengiyumva. The evidence also reflects that Nsengiyumva's met with the military commanders in his operational sector and was in communication with the general staff in Kigali.

[1185] The Chamber also notes that Witness XBG, a Hutu and member of the *Impuzamugambi* in Mutura commune, described soldiers who accompanied groups of civilian attackers and played a supporting role as Tutsis civilians were sought out and killed. *See* T. 8 July 2003 pp. 4-6, 36-43, 45-48, 88-92, 94; T. 9 July 2003 pp. 1-20, 78-79; Prosecution Exhibit 66 (personal identification sheet). The Chamber has previously questioned certain aspects of Witness XBG's testimony (III.3.6.7). However, like Witness DO, Witness XBG also consistently implicated soldiers as participants in the killings that day in his own criminal proceedings. *See* Prosecution Exhibit 71 (Letter from Witness XBG to the Rwandan Public Prosecutor); Prosecution Exhibit 72 (*Pro Justitia* statement of 10 March 1999 by Witness XBG); Prosecution Exhibit 73 (*Pro Justitia* statement 26 May 2000 by Witness XBG). The Prosecution did not specifically indicate in its motion to add Witness XBG that he would give evidence concerning these attacks. The Chamber therefore has considered this evidence as background. *See Ntahobali and Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witness RV and QBZ Inadmissible" (AC), 2 July 2004, paras. 14-16.

[1186] There is also evidence that soldiers participated in the attack against Muvunyi. The testimony came as a surprise to the Prosecution and was not part of its case. T. 30 June 2003 pp. 45-59. The Muvunyi attack therefore is only considered for context.

[1187] *See* Nsengiyumva Defence Exhibit 26 (statement of 9 October 1997); Nsengiyumva Defence Exhibit 27 (statement of 30 July 1997); Nsengiyumva Defence Exhibit 29 (statement of 28 February 2003); Prosecution Exhibit 398 (*Pro Justitia* statement of 25 March 1997 to Rwandan judicial authorities); Nsengiyumva Defence Exhibit 107 (Rwandan trial judgment, 17 August 1999). The *Pro Justitia* statement, which was not put to Witness DO, reads in relevant part: "On 7 April 1994 at 7.30 in the morning ... Bizumuremyi, who was a captain at Gisenyi military camp, came to my house with other *Interahamwe* ... They ordered me to drive to the military camp ... they alighted from the vehicle and held meetings. After that, Colonel Anatole, who was then commander of Gisenyi, gave Bizumuremyi, Thomas and Fiacre an order for us to go fetch a woman by the name of Mukabutare." Prosecution Exhibit 398 (statement of 25 March 1997).

1066. The Chamber is also satisfied that the Indictment, when read in its totality and in conjunction with the Pre-Trial Brief, provided adequate notice of Nsengiyumva's role in the crime, the identity of the assailants and the victims. The Indictment and Pre-Trial Brief refer to Nsengiyumva ordering the crimes. The assailants are described as soldiers from Gisenyi military camp, including Bizumuremyi as well as those in plain clothes, and *Interahamwe*, some of whom are named in the summary of Witness DO's testimony in the Pre-Trial Brief. The victims are also referred to as Tutsis and moderate Hutus in different parts of Gisenyi town.[1188] While his evidence mentioned specific victims, the allegation concerns a mass killing operation throughout the area, which would make it impractical to identify specific individuals. In particular, Witness DO's testimony indicated that 10 groups of assailants participated in the operation.

1067. Bagosora has also been charged in relation to these killings. The Chamber does not accept his argument that these allegations do not relate to him. The Prosecution's Pre-Trial Brief lists Witness DO as supporting the relevant paragraphs of his Indictment related to Gisenyi.[1189] Bagosora exercised the highest authority in the military on 7 April (IV.1.2). Nsengiyumva as the operational commander of Gisenyi was therefore under his command. Furthermore, when this event is considered in view of the centralised and hierarchical nature of the army and together with other parallel killings in Gisenyi prefecture as well as in Kigali, the only reasonable inference is that these military operations were ordered or authorised by Bagosora.

[1188] In particular, the summary of Witness DO's anticipated testimony reads: "After the meeting [on 7 April, the witness] heard Nsengiyumva order the distribution of arms to the *Interahamwe* leaders. [The witness] saw this being done. Soldiers in civilian dress also got weapons. After weapons distribution, the *Interahamwe* and civilians divided into groups, went to different parts of city and started killing Tutsis and moderate Hutus on a mass scale." *See* Prosecution Pre-Trial Brief (21 January 2002), Annex, p. 59; Prosecution Pre-Trial Brief (7 June 2002), pp. 16-17.

[1189] Prosecution Pre-Trial Brief (7 June 2002), p. 8.

3.6.2 Market Place and Bus Station, 7 April

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Introduction

1068. The Nsengiyumva Indictment alleges that, on 7 April 1994, Nsengiyumva chaired meetings where he ordered militiamen to start killing the Tutsis. He subsequently distributed weapons to them. The Prosecution points to evidence of Nsengiyumva leading meetings on that date in the vicinity of the Gisenyi market and a neighbouring bus station, where he urged the local population to kill and also distributed weapons. Reference is made to Witnesses OAB, OAF and Isaïe Sagahutu.[1190]

1069. The Nsengiyumva Defence maintains that these allegations fall outside the Indictment. Alternatively, it argues that the Prosecution evidence is inconsistent and lacks credibility. Reference is made to Witnesses CF-1, CF-2, CF-4, BZ-3, HQ-1, STAR-2, MNC-1 and LK-2.[1191]

Evidence

Prosecution Witness OAF

1070. Witness OAF, a Hutu resident of Gisenyi town, testified that, around 8.00 or 8.30 a.m. on 7 April 1994, he saw Nsengiyumva and approximately four soldiers near the car wash at the Gisenyi town market. Between 15 and 30 civilians, including Hassan Gitoki, were also there. The witness could not hear what Nsengiyumva was saying, but he could see soldiers and civilians unloading three to four green wooden boxes from a vehicle. The boxes were approximately 80 centimetres long and 60 centimetres high, being moved by two people at a time. On 8 April, the witness met with Gitoki, who had a gun and grenades. Gitoki informed him that the boxes contained guns and grenades, which had been distributed to him.[1192]

Prosecution Witness Isaïe Sagahutu

1071. Isaïe Sagahutu, a Tutsi secondary school teacher, stated that, on the afternoon of 7 April 1994, he spoke on the telephone with Augustin Ntagara, a priest at Gisenyi Parish. Father Ntagara told him that Nsengiyumva had held a meeting sometime between 9.00 and 10.00 a.m. at a bus station in Gisenyi town. Nsengiyumva said to the crowd: "The father of the nation has died, and he must be given a pillow. You must go and kill all the Tutsis. Use all the means available to you. And if you need any reinforcement, I will provide you with reinforcement." Ntagara informed the witness that the killing of Tutsis commenced following the rally. Godios Semucyo was one of the victims.[1193]

[1190] Nsengiyumva Indictment, para. 6.16; Prosecution Closing Brief, paras. 81, 86, 88, 439, 447-448, 451, 1022-1023(a), 1028(c-f), 1029(a), 1388(d), pp. 879-881.
[1191] Nsengiyumva Closing Brief, paras. 264-268, 270-272, 302-303, 635-644, 1197, 1423-1429, 1447-1452, 1467-1469, 1483, 1525-1527, 1529-1530, 2008-2013, 2186-2187, 2193, 2239-2242, 2245, 2248-2254, 2256-2257, 2269, 2275-2276, 2282-2285, 2295, 2303-2304, 2316, 2438, 2614, 2617, 2619-2620, 2639, 2641, 2954; T. 31 May 2007 pp. 21-23, 49-51.
[1192] T. 23 June 2003 pp. 2, 10-13, 49-50, 54, 71-72; Prosecution Exhibit 56 (personal identification sheet).
[1193] T. 27 April 2004 pp. 58, 68, 86-87; T. 28 April 2004 pp. 17-18, 42-45; Prosecution Exhibit 215 (personal identification sheet).

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Prosecution Witness OAB

1072. Witness OAB, a Hutu living in Gisenyi town, left his house around 7.30 a.m. on 7 April 1994 and arrived at the border leading to Goma around 8.00 a.m. On his way to Goma, he passed the house of Bernard Munyagishari, the head of the Gisenyi *Interahamwe*. Without stopping the vehicle, he observed between 500 and 1000 *Interahamwe* there. After conducting some business in Goma, the witness returned home around 10.00 a.m., where he remained until 2.00 p.m. He next went to prayers and then to his neighbour's house. That afternoon, the witness heard that Nsengiyumva had held a meeting at 9.00 a.m. at the bus station and told everyone that the country had been attacked and that they had to establish night patrols. Nsengiyumva also identified the enemy as the Tutsis.[1194]

1073. On the same afternoon, the witness heard an announcement over a megaphone, calling local residents to a meeting at 4.00 p.m. at the bus station. Nsengiyumva and Bernard Munyagishari led a meeting there, telling those assembled that the enemy had launched an attack and needed to be identified.[1195] Nsengiyumva urged those assembled to maintain security and promised to provide weapons to Munyagishari for distribution to the local population. The meeting concluded between 6.00 and 6.30 p.m. No weapons were distributed at the meeting, but later that day he noticed that cartons of Chinese grenades were delivered to every *cellule* by Lieutenant "Nsegumurenye". Massacres started that evening.[1196]

1074. After the meeting, Witness OAB went home. He subsequently conducted night patrols in his *cellule* and assisted in setting up roadblocks until approximately midnight. He also took Hassan Gitoki to Gisenyi military camp after the meeting and observed that weapons were distributed at Munyagishari's house.[1197]

Nsengiyumva

1075. Nsengiyumva denied that he distributed weapons in the Gisenyi market on the morning of 7 April 1994. He testified that there was conflicting evidence regarding the meetings he allegedly was attending. Witness OAB's allegations were fabricated and uncorroborated, whereas his evidence regarding the meeting at the market on the morning of 7 April was second-hand. When the afternoon meeting purportedly took place, Nsengiyumva was at the prefect's office.[1198]

Nsengiyumva Defence Witness STAR-2

1076. Witness STAR-2, a Hutu who lived and worked near the *La Corniche* border crossing in Gisenyi town, testified that she had no recollection of anyone crossing the border into Zaire on 7 April 1994. There had been instructions for everyone to stay at home. Nsengiyumva passed by *La Corniche* around 3.00 p.m. on 7 April. She attended a security meeting at MULPOC with him around 4.00 p.m. It was attended by André Banyurwabuke, the sub-prefect who represented the prefect, Bizimana, who was the commander of the

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[1194] T. 24 June 2003 pp. 41-42, 44-45, 47-48, 51-52; T. 25 June 2003 pp. 8-9, 14-15, 23, 86-88; Prosecution Exhibit 58 (personal identification sheet).
[1195] When asked to identify how many people attended, Witness OAB responded: "There were a lot of people; virtually the entire population of Gisenyi. Gachupa 1, Gachupa 2 secteurs". T. 24 June 2003 p. 51.
[1196] T. 24 June 2003 pp. 46-48, 50-51; T. 25 June 2003 pp. 15, 23-24. Witness OAB identified Lieutenant "Nsegumurenye" as "virtually the deputy of Anatole Nsengiyumva". T. 24 June 2003 p. 49. The witness probably referred to Lieutenant Bizumuremyi. *See also* Prosecution Closing Brief, para. 451.
[1197] T. 24 June 2004 pp. 45, 50, 52-56; T. 25 June 2003 pp. 24-25, 28-29.
[1198] T. 9 October 2006 pp. 34-39.

gendarmerie, the prosecutor, the immigration service representative, and Nsengiyumva. They discussed security concerns and Banyurwabuke gave orders to each in attendance. The meeting lasted approximately two hours and Nsengiyumva remained until the end.[1199]

Nsengiyumva Defence Witness MNC-1

1077. Witness MNC-1, a Hutu who lived and worked near the *La Corniche* border crossing, did not see Witness OAB cross the border into Goma on the morning or afternoon of 7 April 1994. The customs post was nearly closed that day.[1200]

Nsengiyumva Defence Witness HQ-1

1078. Witness HQ-1, a Hutu soldier in the Gisenyi military camp, accompanied Nsengiyumva on 7 April 1994. He was unaware of any meeting where Nsengiyumva addressed civilians at the Gisenyi marketplace that day.[1201]

Nsengiyumva Defence Witness LK-2

1079. Witness LK-2, a gendarme, was at the Gisenyi gendarmerie camp on 6 April 1994. Around 9.00 p.m., Nsengiyumva informed the camp's commanding officer that President Habyarimana was dead. Gendarmes told the witness on the night of 6 to 7 April that the situation was calm.[1202]

1080. The witness did not receive any reports of abnormal activity in the Gisenyi market or other areas on the morning of 7 April but around midday there were reports of "young people" or "gangs of thugs" assaulting others. This required the gendarmerie commander to request reinforcements from Nsengiyumva. A military police and a fighter commando platoon were each deployed as reinforcements.[1203]

Nsengiyumva Defence Witness CF-1

1081. Witness CF-1, a Hutu living in Gisenyi, stated that, around 8.10 a.m. on 7 April 1994, he passed the Gisenyi market place and the bus station on his way to work. The streets were unusually empty. No shops were open at the market, and there were no vehicles at the bus station. People had been instructed to stay at home. He did not later learn of a meeting there between 8.00 and 9.00 a.m. where weapons were distributed. The witness left work around 2.00 p.m. and arrived home at approximately 2.30 p.m. He did not hear any megaphone announcement for a meeting, did not see a meeting taking place at the market between 4.00 and 6.00 p.m., and did not observe the distribution of grenades. Furthermore, he never learned of this having taken place.[1204]

1082. The witness was a neighbour of Witnesses OAB and OAF. Witness OAB was in his home when the witness left his own house around 8.00 a.m. Witness OAB could not have attended a meeting at the bus station in the afternoon of 7 April, because the two were

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[1199] T. 28 February 2006 pp. 4, 6-7, 12-16, 34-35, 47-48, 53-54; Nsengiyumva Defence Exhibit 143 (personal identification sheet). Witness STAR-2 admitted that it was possible that the meeting took place on 8 April rather than 7 April 1994, as the lapse of time made it difficult to remember precise dates. T. 28 February 2006 p. 54. MULPOC refers to Multinational Programming and Operational Centre of Economic Commission for Africa.
[1200] T. 4 July 2006 pp. 3-6; Nsengiyumva Defence Exhibit 198 (personal identification sheet).
[1201] T. 13 October 2006 pp. 51, 53-55; Nsengiyumva Defence Exhibit 226 (personal identification sheet).
[1202] T. 19 April 2005 pp. 2, 9-10; Nsengiyumva Defence Exhibit 73 (personal identification sheet).
[1203] T. 19 April 2005 pp. 10-11, 32-33.
[1204] T. 29 November 2005 pp. 3, 6, 12-14, 29-30, 32, 40-41; Nsengiyumva Defence Exhibit 125 (personal identification sheet).

together from 2.30 p.m. to 7.30 p.m., attending prayer services at 3.30 p.m., shortly after 6.00 p.m. and around 7.00 p.m.[1205]

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Nsengiyumva Defence Witness CF-2

1083. Witness CF-2, a Hutu member of the CDR party in Gisenyi, testified that shortly after 8.00 a.m. on 7 April 1994, he passed by the Gisenyi market and bus station on his way to work. There were possibly five people in front of the market, but no vehicles there or at the bus station. The witness did not observe Nsengiyumva, any soldiers, or a meeting at the market. Neither did he hear of a meeting there between 8.00 and 9.00 a.m. or Nsengiyumva distributing weapons.[1206]

1084. The witness left work to attend the mosque around 12.30 p.m., returning home at 1.00 p.m. He did not hear any public announcement urging people to attend a meeting around 4.00 p.m. Witness CF-2 had no knowledge of a meeting taking place around that time at Gisenyi market where Nsengiyumva addressed a large portion of the Gisenyi population. He did not hear about the distribution of weapons to *cellule*s after such a meeting.[1207]

Nsengiyumva Defence Witness CF-4

1085. Witness CF-4, a Hutu who lived in Gisenyi town, was at home on 7 April 1994 and did not see or hear of meetings being held at Gisenyi market place, either in the morning between 9.00 and 10.00 a.m. or from 4.00 to 6.00 p.m. He also did not hear a loudspeaker announcement calling for a meeting of Gisenyi residents in the afternoon on that day.[1208]

Nsengiyumva Defence Witness BZ-3

1086. Witness BZ-3, a Hutu, lived in Gisenyi town in the vicinity of the market and the bus station. At approximately 8.00 a.m. on 7 April 1994, she heard on the radio that President Habyarimana had died. Between 8.00 a.m. and noon, she was at neighbours' houses to discuss what happened.[1209]

1087. The witness did not observe a meeting at the Gisenyi market between 8.00 a.m. and noon on 7 April. She stayed in the immediate vicinity of her house, visiting three neighbours. The bus station was empty. She did not see Nsengiyumva there or any meeting involving him, soldiers and civilians where weapons were distributed. There was no meeting at the bus station between 4.00 and 6.00 p.m. She did not hear a megaphone announcement around 2.00 p.m. of a meeting being held at the bus station.[1210]

[1205] T. 29 November 2005 pp. 4, 30-32, 41-43.

[1206] *Id.* pp. 48, 59-61; T. 30 November 2005 pp. 3-4, 15; Nsengiyumva Defence Exhibit 127 (personal identification sheet). Witness CF-2 did not observe a meeting at the MRND office, which he passed on his way to work, nor did he later hear that one took place there between 6.00 and 8.00 a.m and attended by Nsengiyumva and many people. *See* T. 29 November 2005 p. 61.

[1207] T. 29 November 2005 pp. 62-63.

[1208] T. 14 February 2006 p. 61; T. 15 February 2006 p. 5; Nsengiyumva Defence Exhibit 135 (personal identification sheet).

[1209] T. 21 July 2005 pp. 53-57, 65-66; T. 22 July 2005 pp. 16-19, 24, 31-35; Nsengiyumva Defence Exhibit 95 (personal identification sheet); Nsengiyumva Defence Exhibit 97 (Sketch of Gisenyi town); Prosecution Exhibit 356 (Map of Gisenyi town).

[1210] T. 21 July 2005 pp. 61, 67-70; T. 22 July 2005 pp. 8-12, 27. Witness BZ-3 explained that it was not possible to see what was happening at the market or the bus station from outside the neighbours' houses she visited. *See* T. 22 July 2005 pp. 30-31.

Deliberations 40444

1088. The Prosecution presented evidence of two meetings held in the area of the Gisenyi market and bus station on the morning and afternoon of 7 April 1994. Witness OAF provided the only first-hand account placing Nsengiyumva at the marketplace in the morning. He allegedly observed him, in the company of four soldiers, off-loading boxes and later heard from Hassan Gitoki that he had obtained a gun and grenades from these boxes. While the witness observed Gitoki with a gun and grenades on 8 April, he did not see what was in or done with the boxes the previous day, and his information as to their contents and what occurred with them is second-hand.

1089. Witness OAB and Sagahutu did not attend the meeting or observe Nsengiyumva at the marketplace on the morning of 7 April. Sagahutu learned from a priest that Nsengiyumva held a rally where he urged *Interahamwe* to kill Tutsis and pledged to provide reinforcements. It does not seem that Sagahutu's source attended the rally.[1211] Likewise, Witness OAB only offered a second-hand account of a meeting during which Nsengiyumva allegedly identified Tutsis as the enemy and called for night patrols. Neither of these two witnesses appeared to have been informed that weapons were distributed during this event.

1090. Witness OAF's account of what happened at the Gisenyi market, on the one hand, and the testimonies of Witnesses OAB and Saguhutu, on the other, are different. In the Chamber's view, they are not mutually exclusive. However, the evidence in support of each version is scant, and none of them are corroborated. Furthermore, it is the Prosecution case that at roughly the same time in the morning as that rally, Nsengiyumva chaired two meetings at the military camp (III.3.6.1) and Samvura's residence (III.3.6.3), respectively. The question arises whether Nsengiyumva could have been at each of these various locations.[1212] Moreover, Witnesses CF-1, CF-2 and BZ-3 stated that the area was particularly empty at the approximate time Witness OAF placed Nsengiyumva at the market. Nsengiyumva denied that he chaired a meeting there. While the Defence evidence is inconclusive, the Prosecution evidence fails to establish beyond a reasonable any that he participated in a meeting near the Gisenyi market on the morning of 7 April 1994 where he distributed weapons and incited those in attendance to kill Tutsis.

1091. The second meeting, held near the Gisenyi bus station in the afternoon of 7 April, was only mentioned by Witness OAB. He was also the sole witness to testify that Lieutenant "Nsegumurenye" delivered grenades to every *cellule* after the meeting. While his testimony is first-hand, there are inconsistencies as to where he was, what he did, and what he observed that day. For example, he stated on several occasions that while he passed Bernard Munyagishari's residence on his way to the border in the morning of 7 April, he never

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[1211] *See* T. 28 April 2004 p. 43 ("Q. ... Now, did Mr. Ntagara tell you whether he, himself, attended this meeting? A. I have told you that I did not ask him for clarification. I did not speak physically with Ntagara, and we were on the phone together, so you can imagine what you can have in a telephone conversation at a time of panic. You don't ask for any of those details, and Ntagara was not an *Interahamwe*; he was a Tutsi priest who was also being hunted down. He had parishioners and he had the information. ...").

[1212] Also other aspects of the competing narratives – not necessarily proven beyond reasonable doubt – raise questions. For example, Witness DO described Hassan Gitoki at the military camp that morning when weapons were being distributed. Yet, Witness OAF suggests that Gitoki was with Nsengiyumva at the market around the same time, receiving weapons.

stopped there.[1213] Yet he also said that he was present when Nsengiyumva distributed weapons. The witness remarked that he would have been present because "he was one of the leaders", suggesting he was not simply passing by.[1214] This incident is not reflected in his prior statements to Tribunal investigators and is difficult to reconcile with other parts of his evidence. He testified that he went directly to Goma, returned directly home, remained there until 2.00 p.m., went to the mosque, and then continued to his neighbour's house, to the meeting near the Gisenyi town bus station between 4.00 and about 6.30 p.m., to his home to eat, on night patrols, and finally to bed around midnight.[1215]

1092. The witness further provided three different estimates of when he brought Hassan Gitoki to the Gisenyi military camp that day.[1216] He explained that he had problems remembering based on the lapse in time, and eventually suggested it occurred after the afternoon meeting. Even though it is understandable that the witness may have had problems recalling events from 1994, the Chamber notes that this explanation is inconsistent with his testimony that he did nothing significant other than night patrols until he went to bed.[1217] Moreover, in his statement to Tribunal investigators in January 2000, the first occasion the witness describes driving Gitoki to the Gisenyi military camp is on 14 April, involving a separate incident where Nsengiyumva allegedly distributed weapons to Gitoki.[1218]

1093. The Chambers certainly accepts that the passage of time may have impacted the quality of Witness OAB's testimony, but his inability to provide a coherent narrative of his activities raises concerns about the reliability of his evidence absent corroboration. Witness

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[1213] *See* T. 24 June 2003 pp. 51-52 ("A. At Munyagishari's house if I do recall, almost immediately after the president's death, there was a meeting. ... I was just going by, I didn't make a stop ..."); T. 25 June 2003 p. 8 ("Q. So your testimony is, at 7:30 you got into your vehicle and drove direct to the border without stopping anywhere? A. I did not stop."); T. 25 June 2003 p. 15 ("Q. Witness, did you stop at Munyagishari's house that morning? A. No, I did not stop there. I was in a hurry, I was going, so I got my goods from the other side of the border.").

[1214] T. 24 June 2003 pp. 52-55. The witness's responses generally to questions regarding this event were at times evasive and confusing. *See, e.g., id.* p. 52 ("Mr. President: The question was, who distributed the weapons? The witness: Munyagishari was not a soldier. He merely received the weapons from the military commander on the spot. Mr. President: The question relates to whether you saw anyone distribute weapons. The witness: Now, let's not dwell on this too long. Let me say that Hassan Gitoki told me to take him to the camp in the evening. I went with Hassan to Nsengiyumva, Anatole, and Hassan Gitoki brought back four guns. So the ones that were being distributed by Hassan Gitoki, where could he have gotten them from?").

[1215] T. 25 June 2003 pp. 8-9, 23-25. The witness also confirmed a prior statement to Tribunal investigators that he observed Munyagishari kill Augustin Kalimunda on 7 April 1994 near the Edelweiss Hotel. T. 25 June 2003 p. 26; Nsengiyumva Defence Exhibit 22 (statement of 15 January 1999). This further confuses the testimony about his activities on 7 April, as he was unable to place the event at a specific point in the day or reconcile it with his other descriptions. *See* T. 25 June 2003 p. 26.

[1216] T. 24 June 2003 p. 45 ("A. ... Subsequently, *Anatole Nsengiyumva organised another meeting at 5 p.m [on 7 April] and I attended the meeting and he repeated the same words. Shortly afterwards*, Saad's wife was arrested with her husband. An *Interahamwe* member named Hassan Gitoki went to seek Anatole Nsegiyumva's assistance at the military camp. *Since I had a vehicle, I drove Gitoki to the military camp* and Anatole instructed him to release the gentleman, but to do anything he wished to do to the woman.") (emphasis added); T. 24 June 2003 pp. 55-56 ("Q. Sir, you spoke of an incident in which you drove Thomas and Gitoki to see Nsengiyumva; is that correct? A. Yes, that is correct. Q. Do you recall when that was? A. That was on the day after the president's death. *It was around 2.00 or 3.00 p.m.*") (emphasis added); T. 25 June 2003 p. 28 ("Q. Yesterday in your testimony you told us that there's a time that Saad's wife was arrested, and you took Hassan Gitoki to the military camp to see Anatole Nsengiyumva; is that correct? ... A. Yes, I said so. Q. On 7th of April, is that correct? A. *Yes, in the morning.*") (emphasis added).

[1217] T. 25 June 2003 pp. 25, 28-29.

[1218] Nsengiyumva Defence Exhibit 23 (statement of 28 January 2000). *See also* T. 25 June 2003 pp. 30-31.

CF-1, who testified that he spent the afternoon with Witness OAB, stated that Witness OAB could not have attended a meeting at the bus station. Witnesses CF-2, CF-4 and BZ-3, who were all within hundreds of metres from the bus station, denied hearing an announcement that a meeting would be held that afternoon or that one occurred as alleged by Witness OAB. Witness STAR-2 and Nsengiyumva suggested that the Accused was attending a meeting with local officials in the relevant period. The Defence evidence is inconclusive. However, it reinforces the Chamber's doubt about Witness OAB's uncorroborated evidence.[1219]

1094. The Chamber finds that it has not been proven beyond reasonable doubt that Nsengiyumva held a meeting on the afternoon of 7 April 1994 where he incited those in attendance to kill Tutsis, or that he was involved in the subsequent delivery of grenades through a lieutenant.

1095. During the trial, the Chamber determined that Nsengiyumva had sufficient notice of the allegations.[1220] Based on the findings above, it will not revisit its prior finding.

3.6.3 Barnabé Samvura's House, 7 April

Introduction

1096. The Nsengiyumva Indictment alleges that, on 7 April 1994, Nsengiyumva chaired meetings where he ordered militiamen to kill the Tutsis. At one of them, he designated "a specific location where a Tutsi family had sought refuge". Referring to Witnesses ABQ, OQ and DO, the Prosecution submits that on that morning, Nsengiyumva led a meeting at the house of Barnabé Samvura, a senior official within the CDR party. There he allegedly distributed weapons and singled out Tutsis, including the Gasake family and Mbungo, who were subsequently killed by the *Interahamwe*.[1221]

1097. The Nsengiyumva Defence argues that the distribution of weapons and the killing of the Gasake family are not pleaded in the Indictment. Furthermore, the Prosecution evidence is inconsistent and unreliable. Reference is made to Witnesses ABC-1, WIN-1, CF-2 and CF-4.[1222]

[1219] Witness STAR-2 stated that the meeting occurred at MULPOC, while Nsengiyumva testified that he attended a meeting at the prefecture office.

[1220] Decision on Nsengiyumva Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 38-40, 60-62.

[1221] Nsengiyumva Indictment para. 6.16; Prosecution Closing Brief, paras. 48, 85, 104-105, 439, 449-450, 1035(c), 1040(c), 1064-1067, 1513, 1514(a-c), pp. 879-881; T. 28 May 2007 pp. 15-16.

[1222] Nsengiyumva Closing Brief, paras. 52(b), 234-245, 573, 660-661, 666, 676-678, 893-938, 1052, 1197, 1547, 1700-1750, 2007, 2077, 2086, 2089, 2281, 2289, 2297, 2306-2307, 2314, 2636, 2650, 2661, 2765-2786, 2790-2807; T. 31 May 2007 pp. 22-24. The Nsengiyumva Defence also points to evidence that he provided assistance to members of the families he allegedly singled out for attack. *See* Witness RN-1, T. 13 February 2006 pp. 57, 75-77, 83 (Nsengiyumva discussed assisting Mbungo's and Mukabutare's daughters cross the border); Witness STAR-2, T. 28 February 2006 pp. 31-34 (Nsengiyumva knew that the witness had provided refuge to Mukabutare's and Mbungo's daughters; Nsengiyumva provided his vehicle to assist in their evacuation to Zaire).

Evidence 40441

Prosecution Witness ABQ

1098. Witness ABQ, a Hutu visiting Gisenyi town in April 1994, testified that, on 7 April 1994 around 6.00 a.m., he heard on the radio that the President's plane had been shot down. One and a half to two hours later, he went to see Barnabé Samvura, the head of the CDR's *Impuzamugambi* in Rubavu commune, to gather more information. Sometime before noon, the witness saw about 20 *Interahamwe* and CDR members gathered outside Samvura's house in Majengo *cellule*, including Bufenge from Byahi sector. Many had spears, machetes, swords and clubs. Inside the compound was Nsengiyumva and approximately 10 others, including Barnabé Samvura, Bernard Munyagishari, Hassan Sibomana, who was the Byahi sector's *conseiller*, and Hassan Gitoki, the leader of the *Interahamwe* in that *cellule*. The witness stood approximately three metres from Nsengiyumva, who was wearing a military uniform and had two military escorts with him. Three soldiers were also among the crowd. Neither Faziri Hakizimana nor Hassan Ngeze attended the meeting.[1223]

1099. Addressing all who had gathered, Nsengiyumva said: "You know who has killed our president. It is the *Inyenzi,* and they have many accomplices amongst us. In other words, each Hutu must stand up and defend him or herself quickly, because if you lose time, they are going to exterminate us in the same way as they killed the President of the Republic." Holding a small piece of paper in his hand, he continued: "There are important *Inyenzi* who should not be spared" and he appeared to read names off the paper. Nsengiyumva listed Mbungo, a Tutsi who lived behind Samvura's residence, Segahinda, a Tutsi working at Bralirwa, Modeste Tabaro, the leader of the PL party, Bwanafeza, a prominent Tutsi trader in Gisenyi, Mukabutare, a prominent business woman in Gisenyi, and a man called Gasake, the son of an *Inkotanyi* who was Samvura's neighbour. The *Interahamwe* and *Impuzamugambi* asked for weapons and Nsengiyumva pledged to provide them. After the meeting, he left the compound in his car, a khaki-coloured Pajero, heading in the direction of Gisenyi town. The witness, who arrived at the meeting as it was coming to a close, did not see him distribute any weapons.[1224]

1100. Immediately after the meeting, the *Interahamwe* and *Impuzamugambi* organised themselves into groups of at least three persons and commenced attacks. Witness ABQ first observed an attack on the Mbungo compound. Some of the assailants were among those who had assembled outside Samvura's compound. The attackers forced open the gate and broke through a metal door into the house. They were armed with machetes, clubs and spears, and Bufenge was armed with a rifle. Remaining on the road, the witness heard gunshots and the assailants saying that Mbungo had been hiding in the ceiling in his house, and that his wife and children had fled. The attack lasted for about 20 minutes. Mbungo's body was loaded

[1223] T. 6 September 2004 pp. 3-6, 44-47; T. 7 September 2004 pp. 13-14, 20-21, 31-32; T. 8 September 2004 pp. 31-33, 52, 56-57; T. 9 September 2004 pp. 5, 7; Prosecution Exhibit 293 (personal identification sheet). Witness ABQ stated that two of the soldiers were called "Jeff", a commando instructor at Bigogwe, and "Regis", a soldier from Butotori. They were not in uniform. T. 6 September 2004 pp. 6, 47; T. 8 September 2004 pp. 31-32. These soldiers did not participate in the attacks in the neighbourhood, but the witness believed that they went into town and participated in other attacks. T. 6 September 2004 pp. 47-48.

[1224] T. 6 September 2004 pp. 6-8, 47-48; T. 7 September 2004 pp. 13-20; T. 8 September 2004 p. 32.

onto a vehicle headed to the *Commune Rouge*. No one who was inside Samvura's compound during the meeting participated in this attack.[1225]

1101. The attackers left for the Gasake house, while others remained to loot Mbungo's residence. Standing roadside, Witness ABQ observed Gasake's son, Cyuma, a money changer, be taken out of his house and beaten with sticks and the flat side of machetes. The assailants led him away, saying that the *bourgmestre* wanted to speak with him at the *Commune Rouge*. The witness did not see Cyuma again. Gasake's daughter, who was pregnant, and his son, Tutu, were also brought out of the house. Several assailants killed the daughter in Gasake's banana plantation behind the house, using machetes, spears and clubs. After a small hole was dug in the plantation, her body was deposited in it and covered with dirt. Tutu had been led out of the house shortly after his sister and killed. The witness could not recall whether Tutu was killed instantly or later at the *Commune Rouge*. Again, no one who had been inside Samvura's compound during the meeting participated in this attack.[1226]

1102. Witness ABQ also saw an attack against the house of a teacher named Biruru in the same *cellule* that day. He was stabbed with a spear and taken to the *Commune Rouge* in a Toyota Hilux.[1227]

Prosecution Witness OQ

1103. On the morning of 7 April 1994, Witness OQ, a student living in Gisenyi, heard the radio announcement that President Habyarimana was dead and that people should not move around. The witness went outside and saw a number of persons, wearing the uniforms of *Interahamwe* and *Impuzamugambi*, enter Barnabé Samvura's compound at approximately 9.00 a.m. He recognised individuals from both groups. There were prominent members of the *Interahamwe* present, but he did not know their names. Standing at the road across from Samvura's compound, the witness observed that those who had gathered inside the compound were armed with machetes, clubs and hoes. Nsengiyumva arrived in a military jeep, parking the vehicle inside the premises. The witness did not see any other soldiers than Nsengiyumva.[1228]

1104. Through a barbed wire fence, the witness observed that the group convened outside Samvura's house. People unloaded grenades from Nsengiyumva's vehicle and distributed them to those who had gathered inside the compound. They were in a green military cloth bag, and one grenade fell to the ground. Nsengiyumva, who was accompanied by Faziri, the *conseiller* of Gisenyi, took out a piece of paper and said the Gasake family name.[1229] Upon

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[1225] T. 6 September 2004 pp. 8-9; T. 7 September 2004 pp. 20-22, 25-27, 31.

[1226] T. 6 September 2004 pp. 9-11; T. 7 September 2004 pp. 26-31, 34-35.

[1227] T. 6 September 2004 p. 8; T. 7 September 2004 pp. 35-36. The Chamber has also considered Witness ABQ's evidence concerning attacks on the house of a teacher called Mudenge, an attack against Caritas's house, an attack against the house of a man named Rukanya, and the killing of Samuel Bimenyimana, or "Bembe", by Thomas, as well as the alleged protection Nsengiyumva provided to Thomas. T. 6 September 2004 pp. 8, 19-20; T. 7 September 2004 pp. 35-37; T. 8 September 2004 pp. 29-30, 54-55; Prosecution Closing Brief, para. 1514(j). The evidence is insufficient to make a finding.

[1228] T. 16 July 2003 pp. 4, 9-12, 14-15, 20-21, 36-37, 39, 41-44, 46-47; T. 18 July 2003 p. 5; Prosecution Exhibit 82 (personal identification sheet). When discussing the timing of his observations of the gathering, Witness OQ stated that "all these events occurred between 9 and 10 a.m." It appears that the word "events" referred to the gathering at Samvura's house and not necessarily the ensuing attack. *See* T. 16 July 2003 pp. 36-37, 39.

[1229] Witness OQ originally testified that Nsengiyumva announced the names of three households who were eventually massacred but later said he only heard Nsengiyumva say the Gasake family name. *See* T. 16 July 2003 p. 22; T. 18 July 2003 pp. 6-7, 12.

hearing this, the witness immediately ran to the Gasake family house to warn them about what he had seen.[1230]

1105. Once the weapons had been distributed, Nsengiyumva drove close to the Gasake house with Faziri and pointed in its direction. The *Interahamwe* and *Impuzamugambi* whistled and ran towards it. Members of the Gasake family remained in their house, but Witness OQ fled with a boy. The *Interahamwe* caught the boy and cut him with machetes. The witness did not see this as he continued to run, nor did he observe the killing of the Gasake family. He later learned that six of them had died.[1231]

Prosecution Witness DO

1106. Witness DO, a Hutu living in Gisenyi prefecture near the military camp, heard from Kiguru and Agronome that around 7.00 a.m. on 7 April 1994, a meeting occurred at Barnabé Samvura's house in Majengo. The participants devised a strategy to avenge the death of President Habyarimana, which they suspected had been killed by the *Inkotanyi*. The witness had no knowledge of who attended this meeting other than Kiguru and Agronome.[1232]

Nsengiyumva

1107. Nsengiyumva denied allegations that he attended a meeting at Barnabé Samvura's house on the morning of 7 April. He said that he had never been there and questioned the reliability of all the Prosecution evidence, suggesting that the testimonies of Witness ABQ and OQ were fabricated. Given his position within the military in 1994, Nsengiyumva would not have carried and distributed grenades. He said that grenades would not have been carried loosely in a bag, given the obvious risks, but would be transported in boxes. Furthermore, he would not have been alone at such a meeting but accompanied by bodyguards, and he would not have been carrying grenades.[1233]

Nsengiyumva Defence Witness WIN-1

1108. Witness WIN-1, a Tutsi living in Gisenyi, testified that, on the morning of 7 April 1994, the Gasake family home was attacked by *Interahamwe* from Byahi using clubs, machetes and sticks. The witness, who was standing outside during the attack, saw Espérance, a member of the Gasake family, being killed outside her home. At a distance of about 50 to 60 metres, she observed Espérance, who was pregnant, being clubbed over the head and struck in her stomach with a machete. Fearing for her safety, the witness immediately returned to her home. The attackers also pursued Espérance's brother, Cyuma. He sought refuge in a house close to the witness's but was caught and led away to be killed. The witness heard attacks going on inside the Gasake house and later learned that other members of the family were killed. She did not hear guns or grenades during the attack. The

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[1230] T. 16 July 2003 pp. 10, 12-14, 22-24, 42; T. 18 July 2003 pp. 3-8. Witness OQ provided a sketch to demonstrate his vantage point. Prosecution Exhibit 87 (Sketch of Samvura's compound and surrounding area).
[1231] T. 16 July 2003 pp. 14-15, 23-24, 27-28, 48; T. 18 July 2003 pp. 9, 12-13. Members of the Gasake family that were killed included Ancille Mukamuganga, Domine Uwamariya, Espérance Nyiramanzi, Jean-Baptiste Ruvuzacyuma, Tharcisse Semuhinzi, and Domine's son Yves Iradukunda. Gasake family members that survived were Tharcisse Gasake, Hussein Twagira, Jean-Claude Safari and two children of Domine, called Yvette Uwamariya and Pauline Nsengiyumva. T. 16 July 2003 pp. 3-4; Prosecution Exhibit 83 (list of Gasake family members).
[1232] T. 30 June 2003 pp. 3-4, 67, 69, 79, 85; Prosecution Exhibit 61 (personal identification sheet).
[1233] T. 9 October 2006 pp. 17-21; T. 18 January 2007 pp. 7-9.

witness did not see Nsengiyumva, military personnel or a vehicle present during the attack.[1234]

1109. The witness was not aware of a meeting at Barnabé Samvura's house on the morning of 7 April, nor did she learn of weapons, including grenades, being distributed to youth prior to the attack on the Gasake residence. She was unaware of Nsengiyumva being present at Samvura's house that day. The witness confirmed that the fence surrounding Barnabé Samvura's house was made of barbed wire and bamboo. However, it would have been very difficult for an observer to see into the compound from the roadside.[1235]

1110. Mbungo was killed by the same *Interahamwe* from Byahi one week after the genocide began. On the day he was killed, she encountered one of her own house staff, who indicated that Mbungo had been taken out of his house and killed in a ditch. Her servant was returning with items looted from Mbungo's residence after the killing.[1236]

Nsengiyumva Defence Witness ABC-1

1111. Witness ABC-1, a Hutu living in Gisenyi prefecture, was in Barnabé Samvura's house on the night of 6 to 7 April 1994. Samvura returned to his home around midnight, visibly intoxicated. The witness informed him of the President's death. Samvura appeared surprised, but given his state he went to bed and did not leave his home that evening. The next morning, Samvura left for work at 6.35 a.m. Because he was involved in production at the Bralirwa brewery, he explained that he needed to keep up production in this state of crisis. He returned around 3.30 p.m., without returning home in that period. No meeting involving Nsengiyumva, CDR members, *Interahamwe* and other political leaders was held at Samvura's house on the morning of 7 April. She did not see Nsengiyumva reading out a list of Tutsis to be killed and distribute grenades to CDR youth and *Interahamwe*.[1237]

1112. The witness was a neighbour of the Gasake family and learned that Mrs. Gasake and her two daughters, Domina and Espérance, were killed by civilians from Byahi on 7 or 8 April. She did not observe the killings. During a recent Gacaca proceeding, which she attended, a man called Jean Baptiste Ndimubanzi admitted to participating in the Gasake attack and looting a cupboard from the residence. This man did not implicate Nsengiyumva in the attack. Mbungo was killed after the Gasake family attack but not on the same day.[1238]

Nsengiyumva Defence Witness CF-2

1113. Witness CF-2, a member of the CDR in Gisenyi, attended all meetings held at the prefectoral level at that time. He knew Barnabé Samvura, the vice-chairman of the CDR at

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[1234] T. 13 March 2006 pp. 24, 28-31, 33-34; T. 14 March 2006 pp. 36-40, 43-45; Nsengiyumva Defence Exhibit 154 (personal identification sheet). Witness WIN-1 identified Ancille, Uwamariya, Twagira, Espérance, Cyuma, Kabiligi (or Mubiligi), and the children of Uwamariya as living in the Gasake house in April 1994. T. 13 March 2006 p. 28. She believed that "Tutu" was one of the grandchildren in the family. T. 14 March 2006 p. 45. The son of Witness WIN-1's husband pleaded guilty to having taken part in the Gasake household attack and participating in the killing of Espérance. T. 13 March 2006 pp. 26, 29-30; T. 14 March 2006 p. 36; Nsengiyumva Defence Exhibit 158 (Name of Mr. X, 14 March 2006).

[1235] T. 13 March 2006 pp. 31-34.

[1236] *Id.* pp. 32-33; T. 14 March 2006 pp. 42-43.

[1237] T. 13 June 2006 pp. 4, 9-12, 16, 18-19, 22, 26-27; Nsengiyumva Defence Exhibit 185 (personal identification sheet). Witness ABC-1 denied that Bernard Munyagishari, Sibomana, Raphael Bikumbi, *Conseiller* Faziri Hakizimana, Hassan Ngeze, Nyabuhinda or Rwagafilita came to Samvura's residence on 7 April. *See* T. 13 June 2006 pp. 13-14, 27.

[1238] *Id.* pp. 12-13, 16-19.

the prefectoral level and denied that any meeting took place at Samvura's house on 7 April 1994 between 9.00 and 10.00 a.m. Samvura did not have the authority to convene such a meeting without informing Witness CF-2. If such a meeting had occurred, the witness would have known.[1239]

1114. A neighbour of the Gasake family told the witness that members of that family, including the father, his daughter and son, were killed in an attack on the evening of 7 April. It was carried out by "jobless civilians", including individuals by the name of Selemani and Safari. Nsengiyumva was not mentioned in connection with these killings.[1240]

Nsengiyumva Defence Witness CF-4

1115. Witness CF-4, a Hutu member of the CDR party, did not attend a meeting at Barnabé Samvura's house on the morning of 7 April 1994, noting that meetings were organised at the CDR office. He denied that a meeting occurred where Nsengiyumva ordered CDR militia and *Interahamwe* to kill Tutsi. Had a meeting been held, the witness would have been invited, given his position in the party. Neither Nsengiyumva nor soldiers were affiliated with the CDR. Nsengiyumva did not have a working relationship with the CDR, did not attend CDR rallies and the witness never saw Samvura and Nsengiyumva together.[1241]

Deliberations

1116. There is no dispute that members of the Gasake family were attacked and killed on 7 April 1994, and that an additional attack was carried out against the Mbungo family. The question is whether Nsengiyumva chaired any meeting at Barnabé Samvura's residence before these attacks, at which he instructed attendants to kill *Inyenzi*. It is also disputed whether he distributed weapons.

1117. Witnesses ABQ and OQ described a meeting inside Samvura's compound on the morning of 7 April, involving Nsengiyumva, *Interahamwe* and *Impuzamugambi*. Nsengiyumva, holding a piece of paper, appeared to read names from it, including Gasake's, which prompted attacks by the *Interahamwe* and *Impuzamugambi* in attendance immediately after. The testimony of Witness DO regarding this meeting is hearsay and lacks significant detail. It therefore fails to provide corroboration.

1118. No previous statements provided by Witness OQ were introduced. Witness ABQ's prior interview is generally consistent with his trial testimony. However, he was confronted with his statement to Tribunal investigators in July 2003, according to which he could not remember whether Gasake's name was among those Nsengiyumva read from the list.[1242] The witness explained that he had forgotten but later remembered that the name had been mentioned.[1243] The Chamber accepts this explanation. According to the statement, the six names mentioned by the witness were not comprehensive, as Nsengiyumva purportedly read out more than 10. Furthermore, the document describes that the attack against Gasake's

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[1239] T. 29 November 2005 pp. 48-49, 65, 75, 79; Nsengiyumva Defence Exhibit 127 (personal identification sheet).
[1240] T. 29 November 2005 pp. 65-67; T. 30 November 2005 p. 1.
[1241] T. 14 February 2006 pp. 62, 74-75; Nsengiyumva Defence Exhibit 135 (personal identification sheet).
[1242] T. 7 September 2004 pp. 15-16; Nsengiyumva Defence Exhibit 54B (statement of 17 July 2003), p. 5: "Mbungo's name appeared among the names on the list Nsengiyumva had at Barnabé's house, but I do not remember if he called Gasake's name."
[1243] T. 7 September 2004 p. 16.

house took place immediately after the meeting, which is materially consistent with his testimony and bolsters his evidence in this trial that the Gasake family was identified prior to the attack.[1244]

1119. Another discrepancy is that Witness ABQ testified that he was unsure if he observed the killing of his friend, Tutu, or if he was taken to the *Commune Rouge*.[1245] According to his prior statement, he saw Tutu killed with machetes in the banana grove.[1246] He explained that the inconsistency arose because he provided the statement in French, which is not his first language. He reiterated that he was not sure if he witnessed the killing.[1247] Assuming that the witness observed these events, the Chamber finds his explanation regarding the mistranslation reasonable. The statement provides only a general description of what happened to Tutu and his sister, and the error may have resulted from lack of further clarification. Given the traumatic nature of the events, the witness's inability to recall whether he observed first-hand his friend's killing is reasonable.

1120. There are, however, differences between the testimonies of Witnesses ABQ and OQ. First, Witness ABQ testified that Nsengiyumva was accompanied by two military escorts and that three other soldiers were amongst the gathering, while Witness OQ saw no soldiers other than Nsengiyumva. Second, Witness OQ described grenades being off-loaded from Nsengiyumva's vehicle and distributed, while Witness ABQ denied observing Nsengiyumva distribute grenades. Indeed, Witness ABQ testified that those in attendance asked for weapons and that Nsengiyumva only pledged to provide them. Third, Witness ABQ's evidence shows a division among the congregants, with prominent political figures and local government officials inside the compound and militiamen positioned outside. Witness OQ, on the other hand, placed everyone, including the militiamen, inside Samvura's compound and questioned how anyone could receive instructions if they had been outside it. Fourth, Witness ABQ denied that *conseiller* Faziri Hazikimana was in attendance, while Witness OQ repeatedly mentioned him accompanying Nsengiyumva. Fifth, Witness ABQ testified that Nsengiyumva departed after the meeting, heading towards Gisenyi town, whereas Witness OQ described him driving towards the Gasake residence immediately prior to the attack on it. Finally, Witness ABQ's description suggests that attackers first went to the Mbungo compound, while Witness OQ only describes an attack on the Gasake residence.

1121. Some, but not all, of these discrepancies could result from each witness's distinct positioning, the timing of their observations and the passage of time. Witness ABQ noted his late arrival to the meeting, creating the possibility that he missed the weapons distribution.[1248] Witness OQ's observations could have been limited because he fled to the Gasake residence. Their evidence that an attack occurred on the Gasake family residence on the morning of 7 April is corroborated by the first-hand account of Witnesses WIN-1 and ABC-1.[1249]

1122. The Defence argues that Witnesses ABQ and OQ did not observe this event. Witnesses ABQ, WIN-1, ABC-1 and CF-2 testified that Witness OQ was not in Gisenyi in

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[1244] Nsengiyumva Defence Exhibit 54B (statement of 17 July 2003), pp. 4-5.
[1245] T. 6 September 2004 p. 10; T. 7 September 2004 pp. 29-30, 35.
[1246] Nsengiyumva Defence Exhibit 54B (statement of 17 July 2003), p. 5.
[1247] T. 7 September 2004 pp. 30-31.
[1248] *Id.* pp. 20-21.
[1249] Witness CF-2 also testified that he had heard that members of the Gasake family were killed on 7 April 1994, but he was told that the attack occurred in the evening.

April 1994.[1250] Moreover, Witness ABQ's alleged relationship with Samvura, which presumably offered him the opportunity to be within Samvura's compound that day, is disputed by Witness ABC-1.[1251] The Chamber notes that, notwithstanding his purported relationship with Samvura, Witness ABQ did not know where Samvura was when he testified.[1252]

1123. Nsengiyumva, members of the CDR party, such as Witnesses CF-2 and CF-4, and Witness ABC-1, who was in Samvura's residence that morning, denied that a meeting occurred there. Witness ABC-1 testified that Samvura left for work at 6.30 a.m. and denied, as did Nsengiyumva, that Nsengiyumva had ever been to that residence. Moreover, Witnesses WIN-1 and ABC-1 testified that the Gasake family were killed by individuals who had come from Byahi.[1253] In the Chamber's view, these testimonies carry limited weight as they had a clear interest in denying that the meeting took place, given their party affiliations or connections to the actors in the event.

1124. The Defence refers to two statements of a deceased witness, which were introduced by Nsengiyumva.[1254] They purportedly show that Colonel Rwagafilita was initially identified as leading this meeting, whereas Nsengiyumva only was implicated after Rwagafilita died and could not be prosecuted.[1255] The Chamber finds little merit in this argument. The first statement, a *Pro Justitia* declaration to Rwandan authorities in June 1995, focused on Rwagafilita, who was simply described as one of "those engaged in the conversation" in connection with a brief reference to the meeting at Samvura's house. The second statement, given to Tribunal investigators in June 1996, deals with Nsengiyumva and describes his role and utterances urging attendants to kill.[1256]

1125. The meeting at Samvura's house also formed part of the *Nahimana et al.* trial, where Witness EB in that case testified against Hassan Ngeze. The Defence argues that Nsengiyumva was not mentioned as being involved in the meeting during the proceedings in that case.[1257] In the Chamber's view, this evidence possesses minimal probative value and fails to raise reasonable doubt on its own.

1126. Nonetheless, the Chamber's maintains its concerns regarding the reliability of the Prosecution evidence. There is doubt as to the presence of Witnesses ABQ and OQ in the vicinity of the meeting, which is amplified by various inconsistencies in relation to evidence

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[1250] *See* Witness ABQ, T. 7 September 2004 pp. 7-9; Witness WIN-1, T. 13 March 2006 p. 28; T. 14 March 2006 pp. 43-44; Witness ABC-1, T. 13 June 2006 p. 18; Witness CF-2, T. 29 November 2005 p. 67.
[1251] Witness ABC-1, T. 13 June 2006 pp. 6-8.
[1252] T. 9 September 2004 p. 5. Evidence in the record suggests that Samvura died in 1996. *See* Witness ABC-1, T. 13 June 2006 p. 3.
[1253] The Chamber notes that Witness ABQ mentioned that an *Interahamwe* from Byahi, called Bufenge, participated at the meeting at Samvura's house and the subsequent attacks. T. 6 September 2004 pp. 9, 47.
[1254] The statements were taken by the Prosecution, who did not tender them because the witness had died. The Prosecution did not object to their admission. T. 16 January 2007 pp. 12-14.
[1255] T. 9 October 2006 p. 19; T. 18 January 2007 pp. 8-9.
[1256] Nsengiyumva Defence Exhibit 261 (statement of Witness OE, 18 June 1996); Nsengiyumva Defence Exhibit 262 (*Pro Justitia* statement of Witness OE, 12 June 1995).
[1257] T. 9 October 2006 p. 18; T. 18 January 2007 p. 7; *Nahimana et al.* Trial Judgement, paras. 789-790, 812, 836 (summarising Witness EB's evidence and findings related to a meeting at Samvura's residence and attacks on 7 April 1994). The Appeals Chamber subsequently rejected Witness EB's trial testimony to the extent it was not corroborated because evidence obtained after the trial suggested that he had recanted his trial testimony and that "genocide survivors consider [Witness EB] ready to do anything for money". *See Nahimana et al.* Appeal Judgement, para. 466.

that directly implicates Nsengiyumva in this event. Thus, the Chamber is not convinced beyond reasonable doubt that Nsengiyumva chaired a meeting at Barnabé Samvura's house, where he identified victims from a list to be attacked and distributed weapons to attackers.

1127. The Defence reiterates its objection that the Indictment does not provide sufficient notice about this incident. The Chamber has previously found that it was sufficiently pleaded.[1258] In view of its above finding, there is no need to revisit this issue.

3.6.4 Witness OC's Husband, 7 April

Introduction

1128. The Nsengiyumva Indictment alleges that, on the afternoon of 7 April 1994, Nsengiyumva ordered "a Tutsi man, his wife and their children" to get into the back of a truck. When the man and his sons refused, militiamen accompanying Nsengiyumva killed the man and seriously wounded his son with machetes while the Accused did nothing to prevent or stop the attack. The Prosecution submits that the "Tutsi man" was the husband of Witness OC, who explained that the event occurred in Gisenyi town and that the assailants included both soldiers and militiamen.[1259]

1129. The Nsengiyumva Defence submits that this allegation in the Indictment is vague and fails to give proper notice of the identity of the victims and the assailants and the time as well as the location of the crime. It argues that Witness OC is not credible, particularly her identification of Nsengiyumva. Her testimony is also contradicted by Witnesses Alphonsine Rugwizangoga Uwase, DEF-1, DEF-2 and STAR-2.[1260]

Evidence

Prosecution Witness OC

1130. Witness OC, a Tutsi resident of Gisenyi town, testified that on 7 April 1994, around 5.00 p.m., a soldier wearing a khaki-coloured beret came to her home and asked to know who had killed President Habyarimana. Her Tutsi husband fled the house with a Tutsi visitor, called Rose. About 10 minutes later, more than five soldiers returned with her husband. They took the witness, her husband, two sons and daughter to a location, which was 10 to 15 minutes walk away. Other soldiers, wearing khaki and black berets, were gathering Tutsi civilians. One of the soldiers demanded money from the husband and another injured her daughter with a bayonet. After receiving money, the soldiers said: "Go away; others will take care of killing you."[1261]

1131. The witness and her family began walking home. At around 6.00 p.m., they encountered a Toyota pickup truck, at a place called Gikarani. The truck was carrying

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[1258] Decision on Nsengiyumva Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 22, 24-25, 38-40.

[1259] Nsengiyumva Indictment, para. 6.17; Prosecution Closing Brief, paras. 106, 440, 459, 1459-1462, p. 881; T. 28 May 2007 pp. 15-16.

[1260] Nsengiyumva Closing Brief, paras. 749-802, 1055, 1198, 1939, 2001-2004, 2124, 2129, 2222, 2838-2857; T. 31 May 2007 pp. 54-55.

[1261] T. 9 June 2004 pp. 51-54, 62-68; T. 10 June 2004 pp. 9-10, 18, 20, 22-23; Prosecution Exhibit 260 (personal identification sheet). Witness OC stated that Rose was killed after the event on 7 April 1994, without elaborating on the circumstances of her death. *See* T. 10 June 2004 p. 15. The names of Witness OC's family members are listed in Prosecution Exhibit 261.

soldiers and *Interahamwe*. They were wearing dried banana leaves on their heads. Nsengiyumva got out of the passenger seat and said: "These little people, where are they coming from?" He then ordered the witness and her family into the truck. The witness and her daughter did so, but her two sons fled. One of them escaped but the *Interahamwe* and soldiers threw stones at her younger son and began hitting him with a machete. The husband hesitated to enter the vehicle and was attacked with machetes. The assailants then told the witness and her daughter to get out of the truck, and they ran home. Her younger son was cared for by a guard, and he returned the next morning. The witness never saw her husband again.[1262]

Nsengiyumva

1132. Nsengiyumva did not dispute that Witness OC's husband was killed. However, neither he nor his soldiers played any role in the attack. At the time when the witness claimed he was killed, Nsengiyumva was attending a prefecture security council meeting between approximately 4.00 and 6.00 p.m. He did not travel through the neighbourhood mentioned by the witness because it was not on the way between the prefect's office and the military camp. The description of the assailants wearing banana leaves and using traditional weapons to attack the husband clearly indicated that they were not soldiers. Nsengiyumva added that on 7 April 1994, he had a beige two-door Mitsubishi Pajero vehicle with official plates. He only began driving a Toyota pickup truck after Belgian soldiers left it at Gisenyi airport on 13 April.[1263]

Nsengiyumva Defence Witness DEF-1

1133. Witness DEF-1, a Tutsi, was staying in Gisenyi town in April 1994 with his uncle, who lived near Witness OC. Around 2.00 p.m. on 7 April, a group of more than 15 *Interahamwe,* armed mainly with traditional weapons, arrived in their neighbourhood and forced everyone to come out of their houses and stand by the roadside. The witness saw another group of 20 to 25 *Interahamwe* make Witness OC and her family leave their nearby home. One of them shot Witness DEF-1's aunt because she refused to have sex with him. The *Interahamwe* then forced Witness DEF-1, Witness OC's husband and six others onto their Daihatsu pickup truck. They arrived at the *Commune Rouge*, a cemetery, between 3.30 and 4.00 p.m. The assailants took Witness OC's husband off the truck first and killed him with their machetes. Witness DEF-1 was saved by an *Interahamwe* who used to work for his uncle.[1264]

Nsengiyumva Defence Witness DEF-2

1134. Witness DEF-2, a Hutu, lived in Gisenyi town near Witness OC and her family. On 7 April 1994, there were attacks in his area against persons "suspected of accommodating accomplices". On 8 April, he gave refuge to Witness OC and two of her children. The children told him that their house had been attacked the previous day around midday but that they could not identify the assailants. Witness OC said that her children were scattered around and that she had hidden inside the house, under a mattress. Her husband had been abducted by the attackers. During the eight days the family spent at Witness DEF-2's house,

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[1262] T. 9 June 2004 pp. 52, 54-57; T. 10 June 2004 pp. 16, 23-25, 27, 29, 33. Her older son, who was able to escape, returned in May 1994.
[1263] T. 4 October 2006 pp. 62-66; T. 9 October 2006 pp. 12-15.
[1264] T. 20 June 2006 pp. 34-45, 49-51; Nsengiyumva Defence Exhibit 191 (personal identification sheet).

Witness OC did not mention that soldiers had been amongst the attackers, or that Nsengiyumva had been present. Later he heard that the husband had been killed.[1265]

Nsengiyumva Defence Witness Uwase

1135. Alphonsine Rugawizangoga Uwase, a Hutu, was the secretary for the prefect of Gisenyi in April 1994. Around 2.00 p.m. on 7 April, the prefect sent his driver for her so that she could arrange a security council meeting that afternoon, at the prefectural offices. The meeting commenced at approximately 4.00 p.m. and lasted until around 6.00 p.m. As her office was outside the conference room, she saw Nsengiyumva enter it at the outset of the meeting. The witness confirmed that no one left before the end of the meeting.[1266]

Nsengiyumva Defence Witness STAR-2

1136. Witness STAR-2 testified that she attended a prefectural security meeting on 7 April 1994 at the MULPOC offices. The meeting commenced at around 4.00 p.m. and lasted for about two hours. Nsengiyumva attended the meeting and stayed until its end.[1267]

Deliberations

1137. It is not disputed that Witness OC's husband, a Tutsi, was killed on 7 April 1994. Witness OC, the only Prosecution witness, testified that her husband was attacked at a place called Gikarani in the presence of Nsengiyumva around 6.00 p.m. by soldiers and *Interahamwe*. In contrast, Witness DEF-1 stated that the *Interahamwe* killed him at the *Commune Rouge* between 3.30 and 4.00 p.m. The main question is whether Nsengiyumva or soldiers under his command were involved in this event.

1138. Witness OC's testimony was first-hand and consistent. The Defence argues that it is implausible that the witness and her daughter were allowed to escape the scene of the attack, especially if Nsengiyumva's intention had been the elimination of all Tutsis.[1268] The Chamber does not find it surprising that the assailants primarily targeted the husband. Tutsi men could, irrespective of their position in society, possibly join the RPF.

1139. Witness OC's previous statements to Tribunal investigators are generally in conformity with her testimony. The Defence argues that there are contradictions as to whether soldiers or *Interahamwe* attacked her husband and younger son. The Chamber notes that in her statement of June 1996, reference was made to soldiers only.[1269] Two weeks later, in July 1996, she explained that there were also *Interahamwe* in Nsengiyumva's vehicle, and that they, and "not soldiers", chased her son and threw stones at him.[1270] In her testimony, she said that both soldiers and *Interahamwe* were involved in this incident.[1271] In the Chamber's view, this purported discrepancy has limited significance.

[1265] T. 10 October 2006 pp. 3-8, 12, 15, 17-18; Nsengiyumva Defence Exhibit 211 (personal identification sheet).
[1266] T. 10 July 2006 pp. 11, 14-15, 25-26; Nsengiyumva Defence Exhibit 201 (personal identification sheet). Uwase was previously referred to as Nsengiyumva Defence Witness OAU-1.
[1267] T. 28 February 2006 pp. 13-15, 47-48, 53-54; Nsengiyumva Defence Exhibit 143 (personal identification sheet). MULPOC refers to Multinational Programming and Operational Centre of Economic Commission for Africa.
[1268] Nsengiyumva Closing Brief, paras. 758-759.
[1269] Nsengiyumva Defence Exhibit 45 (statement of 18 June 1996).
[1270] Nsengiyumva Defence Exhibit 46 (statement of 2 July 1996).
[1271] T. 9 June 2004 p. 56.

1140. In relation to her husband, only soldiers are mentioned in the witness's first statement, whereas in the second statement "other *Interahamwe*" than those pursuing her son attacked her husband. According to her testimony, both soldiers and *Interahamwe* hit him. The Chamber accepts her evidence that both groups participated in the attack but that the soldiers were in charge.[1272] Varying formulations concerning the exact role of those participating in this traumatic event does not affect her credibility.

1141. Witness OC consistently referred to soldiers during the various sequences of the events on 7 April which led to the killing of her husband. The Chamber accepts that she would be able to recognise their uniforms and appearance. She lived close to Gisenyi military camp and observed them frequently. A complicating factor, however, is her testimony that not only the *Interahamwe* but also the soldiers in the vehicle were wearing banana leaves, right down to their neck, so that she could not see their berets and most of their faces.[1273] Accepting that the situation in Rwanda was extraordinary, and that the soldiers may have wished to conceal their identity, the Chamber still finds that this would be a very unusual thing for soldiers to do. Such head gear would be more normal for the *Interahamwe* in that period.

1142. Witness OC said that she was certain that Nsengiyumva was present during the attack. She recognised him because she had seen him approximately once every three weeks inspecting soldiers near her home from the end of 1993, Nsengiyumva's arrival date in Gisenyi, until April 1994. The witness learned of his identity from her husband and stated that everyone knew him in Gisenyi. During cross-examination, the Defence put the statements to Tribunal investigators by two of Witness OC's children to her.[1274] None of them mentioned Nsengiyumva's presence at the site of the attack, and only one later heard that he had been in the Hilux pick-up truck and had "led the killing expedition". Given the relatively young ages of Witness OC's children at the time of the attack (15 and 11 years), the Chamber does not consider that the lack of reference to Nsengiyumva in their statements reduces the credibility of their mother's testimony.

1143. This said, it is recalled that according to the Appeals Chamber, the Chamber must always, in the interests of justice, proceed with extreme caution when assessing the identification of an accused made under difficult circumstances.[1275] In court, Witness OC experienced serious visual problems and could not identify the Accused unless in close

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[1272] T. 10 June 2004 p. 27 ("Q. ... Are you in a position to explain that apparent contradiction? A. But the soldiers were with *Interahamwes*. Q. But who exactly killed your husband? A. The soldiers, because they had the power.").

[1273] *Id.* p. 24. Not all assailants had their faces covered.

[1274] Nsengiyumva Defence Exhibit 47 (statement by Witness OK-1 of 2 May 1997); Nsengiyumva Defence Exhibit 48 (statement by Witness OH-1 of 24 April 1997). These statements generally support Witness OC's evidence about the soldiers in the Toyota Hilux truck, although one of them does not refer to the husband in that context.

[1275] *Bagilishema* Appeal Judgement, para. 75; *Kupreskic et al.*, Appeal Judgement, para. 39; *Bagilishema* Trial Judgement, para. 532.

proximity to him.[1276] However, she did make a poignant and positive identification of him.[1277] It is recalled that in-court identification has limited probative value.[1278]

1144. Witness DEF-1 indicated that the attack in Witness OC's area was perpetrated by *Interahamwe*. In particular, he was arrested by *Interahamwe* at the same time as Witness OC's husband. He saw her husband being taken from his home with his family. Witness DEF-1 and the husband were then taken directly to the *Commune Rouge* where the witness then saw him be killed. This occurred between 3.30 and 4.00 p.m., before the attack on the roadside to which Witness OC testified. The two divergent accounts of Witness OC and Witness DEF-1 cannot therefore be reconciled.

1145. In its Closing Brief, the Prosecution has not addressed the credibility of DEF-1. During cross-examination, it suggested to the witness that he confused Witness OC's husband with someone else. While this is possible, the Chamber notes that Witness DEF-1 was familiar with the area, saw the man he believed to be Witness OC's husband be forced out of his house, and also travelled with him in the back of a pickup truck, before seeing him be killed. The evidence does not therefore give any indication that he confused Witness OC's husband with another person. There is no other factor indicating that Witness DEF was untruthful.[1279]

1146. Witness DEF-2 did not see the attack against Witness OC's house but provided refuge to her and two of the children on the following day. He said that Witness OC did not mention to him that she had seen her husband being attacked at the roadside. She simply told him on 8 April that her home had been attacked the previous day by unidentified assailants, that she had escaped the attackers by hiding inside her house, but that her husband had been abducted. This version, and more generally Witness OC's alleged stay at Witness DEF-1's house, was not put to Witness OC during cross-examination.[1280] If this account is correct, there may have been reasons why she chose to keep silent about some aspects of the events, such as trauma and fear. This said, the Chamber notes that the children purportedly told Witness DEF-2 that they had been chased from the house on 7 April around "midday".[1281]

1147. Nsengiyumva and Alphonsine Rugawizangoga Uwase testified that Nsengiyumva was attending a prefecture security council meeting between 4.00 and 6.00 p.m., around the same time as the attack on the road. Both witnesses said that the meeting took place in the prefectural office, whereas Witness STAR-2 stated that it was held in the MULPOC building. Leaving this discrepancy aside, the Chamber is not persuaded that such a meeting would have

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[1276] T. 9 June 2004 pp. 33, 57-58; T. 10 June 2004 pp. 8-9. Witness OC had to walk past the Prosecution, the Bench and the Defence at close distance. There is no information available whether she had similar sight problems in 1994. The witness was born in 1944, and she was 50 years old in 1994 and 60 when she testified. This lack of clarity is not decisive to the Chamber's findings.

[1277] Witness OC identified Nsengiyumva in court after some initial difficulty, first identifying another person. T. 9 June 2004 pp. 57-61, 68-70, particularly pp. 59 ("If I am not mistaken, it is this person … Ah, now I have seen him. Oh, yeah, now I can see better. No, it's this one. I have just seen him. It's you. You don't know me, but I know you. I was nothing for you, I was nothing for you. It's you. You actually trampled me.").

[1278] *Kunarac et al.*, Appeal Judgement, para. 320.

[1279] Witness DEF-1 presented himself as a Tutsi victim. It was put to him that he was a Hutu, which he denied, and the Prosecution did not provide any basis for that proposition. *See* T. 20 June 2006 p. 45.

[1280] However, Witness OC volunteered that she was in hiding after 7 April 1994, without providing further details. T. 10 June 2004 p. 29.

[1281] As mentioned above, the children were 15 and 11 years old at the time of the attack.

prohibited Nsengiyumva's presence at the scene of the attack, which according to Witness OC occurred at approximately 6.00 p.m.

1148. Finally, Nsengiyumva testified that he was driving a two door Mitsubishi Pajero on 7 April. Prosecution Witness ZF saw Nsengiyumva use this vehicle in the morning of 7 April and confirmed that it was his official vehicle at this time.[1282] The Chamber has taken into account the possibility that Nsengiyumva may have used a different vehicle in the afternoon. This evidence, although not itself definitive, raises some additional doubt.

1149. Based on the totality of the evidence, the Chamber considers the evidentiary situation unclear. Witness OC and Witness DEF-1 provided seemingly convincing first-hand accounts of the attack, which cannot be reconciled. There are differences regarding the time of the attack at Witness OC's house as well as the whether the assailants there were soldiers or *Interahamwe*. Only Witness OC testified about the attack involving assailants coming from the Toyota Hilux. The Chamber considers it unusual for soldiers to wear banana leaves. Consequently, the Prosecution has not proven beyond reasonable doubt that Nsengiyumva ordered the killing of Witness OC's husband in the afternoon of 7 April 1994.

1150. According to the Defence, the allegation, as articulated in the Indictment, was vague and did not identify the victims or the assailants. In view of the Chamber's finding, there is no need to address this argument.

3.6.5 Alphonse Kabiligi, 7 April

Introduction

1151. The Nsengiyumva Indictment alleges that prior to events in April 1994, the authorities and militia established lists of people to be executed. From April 1994, these lists were used to identify people to be killed. Nsengiyumva had authority over soldiers and militiamen who killed moderate Hutus after 6 April 1994. The Prosecution specifically asserts that Alphonse Kabiligi, a Hutu civil servant and member of the PSD party, was placed on a list as early as 1991 and killed on 7 April in Gisenyi town by a soldier and other militiamen. Reference is made primarily to Witnesses AS and ZF. The Bagosora Indictment further alleges that military personnel and soldiers exterminated the civilian Tutsi population and its accomplices on orders of Nsengiyumva.[1283]

1152. The Nsengiyumva Defence submits that the killing of Alphonse Kabiligi is not pleaded in the Indictment and that Witness AS's testimony does not link his killing to Nsengiyumva. In fact, he assisted by evacuating the witness in connection with a prefectural committee meeting. The Bagosora Defence argues that Witness ZF's testimony lacks credibility.[1284]

[1282] Nsengiyumva Closing Brief, para. 1198. Witness ZF confirmed that in the morning of 7 April, Nsengiyumva was driving a Pajero, which was his official vehicle. *See* T. 2 December 2002 p. 2, 8 ("Q. Now, can you tell us more about this vehicle, Anatole's vehicle? What kind of vehicle was it, which make? A. At the time Colonel Anatole Nsengiyumva used a civilian vehicle, a Pajero, a small model, and I think at the time it was the vehicle that was allocated to the commanders of the operational sectors.").

[1283] Bagosora Indictment, paras. 6.58, 6.59; Nsengiyumva Indictment, paras. 5.1, 5.25, 5.29, 6.36, 6.37; Prosecution Closing Brief, paras. 208, 1001(e), 1007, 1068-1076.

[1284] Bagosora Closing Brief, paras. 941-952; Nsengiyumva Closing Brief, paras. 963-969.

Evidence

Prosecution Witness AS

1153. Witness AS testified that Alphonse Kabiligi was of mixed ethnicity and originally from Butare prefecture. In April 1994, he was a member of the PSD party and a division head at the Economic Community of Great Lakes Countries in Gisenyi town. The newspaper Kangura denounced him in 1991 for his frequent cross-border trips by raising suspicion that he was passing information to the RPF. Shortly after Kabiligi was named in Kangura, soldiers searched his house and he began receiving death threats. He later told the witness that a soldier informed him that a list of persons that were "not desired" was being prepared in Gisenyi prefecture.[1285]

1154. On the morning of 7 April 1994, Witness AS was with Kabiligi at his home in Gisenyi town when *Interahamwe* brought two close friends, called Chantal and Innocent, to his house. One of the *Interahamwe* told Kabiligi that he was on a list of people to be killed. Innocent informed him that people were being attacked in town. The witness tried to make a reservation at the *Hôtel Méridien* for Kabiligi and the others, assuming it would be safer, but the hotel manager refused. Kabiligi made several phone calls and learned of the death of several of his acquaintances as well as the Prime Minister.[1286]

1155. Witness AS saw armed individuals driving through town in minibuses. Kabiligi locked his gate, closed the windows and barricaded the doors. Around 8.00 p.m., *Interahamwe* broke down his gate and threatened to throw a grenade into the house if the occupants did not allow them in. The witness saw one of the assailants waving a grenade and opened the door. About 10 of them entered the house. The witness believed that one was a soldier because he wore a khaki uniform and carried a gun. They assaulted the witness while Kabiligi's four year old daughter hid under the couch. His 12-year-old son was taken to the kitchen and beaten. The *Interahamwe* stabbed Innocent in the eye with a spoke and poured pepper into the wound as he screamed in pain.[1287]

1156. After looking at Kabiligi's identity card, the soldier remarked that it was a bad thing that he was from Butare prefecture. While the assailants were beating Kabiligi they asked him to show them his RPF documents. He replied that he did not have any, and they cut off his arm with a machete. Kabiligi told the *Interahamwe* that, if they wanted to kill him, they should do it outside and not in front of his children. He was taken in front of his house and shot. Innocent then tried to flee the house but was shot in the back. After the assailants left, the witness hid in the garden with Kabiligi's children where she found Chantal moaning in pain as a result of a machete attack.[1288]

1157. The next morning, five or six soldiers in khaki uniform returned with a man named Mathias, an active member of the CDR party, who had previously worked with the Economic Community of Great Lakes Countries. He asked the soldiers to turn Kabiligi's body over so

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[1285] T. 2 September 2003 pp. 14-17, 27-29, 31-34, 36, 40-41; T. 3 September 2003 p. 19; Prosecution Exhibit 88 (personal identification sheet). Witness AS indicated that Kabiligi told her about the conversation with the soldier between 1991 and 1993.

[1286] T. 2 September 2003 pp. 43-44; T. 3 September 2003 pp. 16, 19.

[1287] T. 2 September 2003 pp. 44-45; T. 3 September 2003 pp. 6-7, 16-18, 22. Witness AS described the assailants as "bandits" and noted that she later learned the term "*Interahamwe*".

[1288] T. 2 September 2003 pp. 45-48, 51.

that he could identify him and said that they had done a good job. The soldiers loaded Chantal and the bodies of Kabiligi and Innocent onto a truck.[1289]

Prosecution Witness ZF

1158. Witness ZF, a Hutu radio-operator in Gisenyi, testified that he spent the night of 6 to 7 April with Nsengiyumva in his office at the Gisenyi military camp (III.3.6.1). At approximately 6.00 a.m., Nsengiyumva received a call from Bagosora. Nsengiyumva then asked Lieutenant Bizumuremyi if he knew a man that worked for the Economic Community for the Great Lakes. Bizumuremyi replied that he did, a man named Kabiligi. Nsengiyumva stated that Bagosora had asked that he be arrested, and Bizumuremyi left.[1290]

Deliberations

1159. It is not disputed that Alphonse Kabiligi was killed on the evening of 7 April 1994. Witness AS gave a credible first-hand account of the attack. The evidence also reflects that the brutal attack was conducted in the presence of Kabiligi's family, including his young children. The main questions for the Chamber are whether Kabiligi was killed based on a pre-established list and whether the assailants acted under the authority of Nsengiyumva or Bagosora.

1160. In early 1991, the newspaper Kangura accused Kabiligi of being an *Inkotanyi* accomplice.[1291] This newspaper was a private publication.[1292] The fact that he is mentioned there cannot be attributed to the two Accused or any other military and government officials, in the absence of evidence connecting them to the publication. It does suggest, however, along with searches of his home and harassment in 1991, that Kabiligi was popularly perceived as an RPF supporter or sympathiser. The Chamber has elsewhere (III.2.5.3) found that Kabiligi was on a list of suspected RPF accomplices found in 1993 in the vehicle of

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[1289] T. 2 September 2003 pp. 27, 48-51; T. 3 September 2003 pp. 16, 18-19. The soldiers then reluctantly drove Witness AS and Kabiligi's children to the home of the head of MOLPUC, an agency affiliated with the United Nations concerned with regional development. The witness and a number of foreigners were evacuated to Goma from MOLPUC on the night of 8 to 9 April, after receiving authorisation from Nsengiyumva, whom she saw there.

[1290] T. 28 November 2002 pp. 42-44, 46, 65-67; T. 2 December 2002 pp. 2-4, 52-53; T. 4 December 2002 pp. 84-86, 88-90; T. 5 December 2002 p. 81. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.

[1291] The article (in Kinyarwanda) about Alphonse Kabiligi is found in Prosecution Exhibit 89 (Kangura Issue No. 9, January 1991) and was read into the record. *See* T. 2 September 2003 pp. 31-32 ("At this time when we were being attacked by the *Inyenzi*, who called themselves the *Inkotanyi*, Kangura denounces some people to the intelligence services and informs the intelligence agency that the towns of Gisenyi and Goma have become key meeting points for the *Inkotanyi* and their accomplices ... Uganda has opened a consulate in Goma, Zaire, because of a plan conceived by the *Inkotanyi*, a plan which would allow weapons arriving from Kampala and elsewhere, [to] be taken across the border in diplomatic pouches with the assistance of Rwandan nationals working for BDGL, MULPOC, CEPGL and Bralirwa. We would like to mention, in particular, the following persons: ... Alphonse Kabiligi, CEPGL, Gisenyi, Rwanda ... Don't close your investigation on CEPGL, without considering the relations between Charles Kayihura and Alphonse Kabiligi, who both worked together. Consider what they do during their lunch break which lasts 30 minutes, when people work in the Gong Unique, whereas they ... spend more than 30 minutes during their lunch break. They associate with the accomplices of the *Inkotanyi* living in Goma.").

[1292] According to Tribunal case law, some articles in Kangura constituted incitement to commit genocide. *See Nahimana et al.* Appeal and Trial Judgements.

Déogratias Nsabimana, the army chief of staff, which was maintained by the Rwandan army.[1293] Witness AS also heard that Kabiligi was on a list on the morning of 7 April 1994.

1161. The above evidence strongly suggests that Kabiligi was previously identified as a target for arrest or killing based on his alleged ties to the RPF. This is confirmed by the manner in which the attack unfolded. The assailants broke down a locked gate, threatened to throw grenades into the house to ensure their entry, and asked Kabiligi about RPF documents, before mutilating and killing him.

1162. The next issue is who was responsible for the killing of Kabiligi. Witness AS's testimony appeared coherent and credible.[1294] She described the assailants who attacked his home on the night of 7 April as a group of *Interahamwe* or "bandits", carrying traditional weapons, accompanied by one "soldier". She identified the soldier based on his khaki uniform, military boots and gun. He was not, however, wearing a beret. Several "soldiers" returned the next day to verify the killing. Again, the witness identified them as such by their military-style uniform.[1295] She testified that she could distinguish between gendarmes and soldiers by the colour of their berets, red for gendarmes and black for soldiers, but that she was not familiar with any other differences in their uniforms.[1296]

1163. In the Chamber's view, the number of men in khaki military-style uniforms, present both during the attack and the next morning, shows clearly that the assailants were not simply civilians or "bandits", but either soldiers or gendarmes. However, the testimony of Witness AS does not show that they were soldiers under Nsengiyumva's control, as they wore no berets.[1297]

1164. The only direct evidence connecting Nsengiyumva to the crime comes from Witness ZF, who allegedly overheard around 6.00 a.m. on 7 April Bagosora, ask Nsengiyumva to arrest Kabiligi. This evidence was excluded with respect to Bagosora based on lack of notice.[1298] It was not challenged on these grounds by the Nsengiyumva Defence.[1299] The Chamber has previously expressed concern with the credibility of this aspect of Witness ZF's testimony and will not, in the present context, rely on it (III.3.6.1). In particular, it was not clear to the Chamber why Nsengiyumva and Witness ZF would have been together when this

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[1293] Alphonse Kabiligi is number 247 on this list (III.2.5.3). *See also* Prosecution Exhibit 370 (Annex to André Guichaoua: *Les Crises Politiques au Burundi et au Rwanda* (1995)).

[1294] The Chamber is not persuaded by the Defence submissions concerning Witness AS's previous statements to Tribunal investigators, or its reference to the fact that she did not know any other key persons in Gisenyi than Nsengiyumva. *See* Nsengiyumva Closing Brief, para. 969.

[1295] Witness AS stated that these "soldiers" were wearing military-style boots and green khaki uniforms. She did not specify whether they were wearing berets. *See* T. 3 September 2003 p. 16.

[1296] T. 3 September 2003 p. 18.

[1297] The Chamber has noted the following exchange during cross-examination: "Q. Witness, is it your opinion that Anatole Nsengiyumva played a big role in the massacres in 1994? A. I do not have the least doubt. Q. What is the basis of your opinion? A. On the situation prevailing in Gisenyi, the entire range of events there. ... Q. And you will agree with me then that the only time you had experience with Anatole, it was a positive experience when he was saving your life; isn't that true? A. I really need to think before answering that question. I think he had no choice; massacre foreigners or UN people, he had no choice. If he did not allow us to leave, that was going to trigger an international crisis. He had no choice." *See* T. 3 September 2003 p. 22.

[1298] *See* Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, para. 73 (excluding portions of Witness ZF's evidence).

[1299] The Nsengiyumva Defence did not object when the evidence was led. Its motion to exclude evidence did not raise the issue. *See* Decision on Nsengiyumva Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006.

purported conversation occurred. There is also conflicting other conflicting evidence concerning the events at the military camp that night which raise questions about Witness ZF's presence there at the time.

1165. While the evidence of Witnesses ZF and AS is insufficient to establish the identity of the uniformed assailant who accompanied Kabiligi's killers, the nature of the attack as described by Witness AS demonstrates military involvement when viewed in light of other systematic murders in Gisenyi. In the days following President Habyarimana's death, a pattern emerged in Gisenyi of soldiers playing a largely supporting role to civilian attackers who killed Tutsis and suspected accomplices. This is reflected in the evidence of Witnesses DO and XBG, who discuss attacks in Gisenyi town and elsewhere on 7 April (III.3.6.1). It also follows from the testimony of Witness HV, who described attacks on Central African Adventist University in Mudende on 8 April (III.3.6.7.). The Chamber is further convinced that a soldier participated in the operation against Kabiligi, and not a gendarme, even though he did not wear a beret. There is evidence that at least immediately after the President's death, gendarmes appeared to protect civilians who had been singled out for attack (III.3.6.7). While Kabiligi may have been viewed as an accomplice by local political and government officials, the list in deceased General Déogratias Nsabimana's vehicle also demonstrates that the military had singled him out as having ties to the RPF.[1300] Under the circumstances, the Chamber is convinced that the uniformed "soldier" identified by Witness AS as accompanying the civilian assailants as well as the five or six that returned the next day were members of the Rwandan army.

1166. Turning to Nsengiyumva's responsibility, the Chamber has found that on the period covering 7 April, Nsengiyumva was the Gisenyi operational commander and had authority over soldiers in that operational sector (IV.1.5). The Chamber also recalls its findings that under certain circumstances, the Nsengiyumva could have *de facto* authority over civilian militiamen (III.2.6.2). Witness AS's evidence shows clear coordination between the soldier and the civilian attackers. This is demonstrated by the arrival on the next day of another five or six soldiers returning to remove the bodies. The Chamber is also satisfied that Nsengiyumva had *de jure* and *de facto* authority over the soldier and civilian assailants given that the killings took place in Gisenyi town (IV.1.5).[1301] The speed with which this attack occurred – one day after President Habyarimana's death – and the fact it followed a pattern consistent with other attacks taking place in the prefecture leads to the only reasonable conclusion that the attacks were ordered by the highest operational authority in the prefecture, Nsengiyumva.

1167. Bagosora has also been charged in relation to these killings. The Chamber does not accept his argument that these allegations do not relate to him. The Prosecution's Pre-Trial

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[1300] The Chamber also recalls that Nsengiyumva held the position of head of the bureau of intelligence (G-2) on the army general staff when the list was discovered and would have been responsible for maintaining and updating lists (III.2.5.3).

[1301] The Chamber recalls that it was not satisfied beyond reasonable doubt that the Bigogwe and Butotori training facilities themselves fell under the command of Nsengiyumva. Witness XBG's evidence suggests that soldiers from Bigogwe participated in some of the attacks on 7 April (III.3.6.1). In this instance, there is no indication of the soldier coming from Bigogwe camp, which is nearly 25 kilometres away (*see* Nsengiyumva, T. 11 October 2006 p. 28; Serushago, T. 18 June 2003 p. 81) or from the Butotori camp in the neighbouring Nyamyumba commune (Nsengiyumva, T. 13 October 2006 p. 21). In any event, the Chamber also determined that such soldiers would be acting under Nsengiyumva's authority to the extent that they were participating in military operations in the Gisenyi operational sector.

Brief lists Witness AS as supporting the relevant paragraphs of his Indictment related to Gisenyi.[1302] Bagosora exercised the highest authority in the military on 7 April (IV.1.2). Nsengiyumva as the operational commander of Gisenyi was therefore under his command. Furthermore, when this event is considered together with other parallel killings in Gisenyi prefecture as well as in Kigali, the only reasonable inference is that these military operations were ordered or authorised by Bagosora. In reaching this finding, the Chamber does not rely on the evidence of Witness ZF.

3.6.6 Nyundo Parish, 7 - 9 April

Introduction

1168. The Nsengiyumva Indictment alleges that, between 8 April and June 1994, Nsengiyumva ordered soldiers and militiamen to attack the mostly Tutsi refugees at Nyundo Parish. It is further alleged that on 8 April these assailants, acting on Nsengiyumva's orders, arrested Bishop Wenceslas Kalibushi and brought him to a cemetery, known as the *Commune Rouge,* to be executed. Nsengiyumva then spared Kalibushi on orders from "military authorities" in Kigali. In particular, the Prosecution submits evidence related to a series of attacks at the parish from 7 to 9 April as well as in May. Reference is made primarily to the testimonies of Witnesses Isaïe Sagahutu, DO and ZF. The Bagosora Indictment alleges that military personnel and militiamen exterminated the Tutsi civilian population and its accomplices on Nsengiyumva's orders.[1303]

1169. The Nsengiyumva Defence argues that the allegations pertaining to Nyundo Parish are vague and that the Prosecution evidence exceeds the scope of the Indictment. In any event, the Prosecution witnesses lack credibility and are contradicted by Witnesses LK-2, RAS-4 and XX. The Bagosora Defence submits that these allegations do not implicate Bagosora.[1304]

Evidence

Prosecution Witness Isaïe Sagahutu

1170. Isaïe Sagahutu, a Tutsi secondary school teacher at Nyundo Parish, testified that, around 10.00 a.m. on 7 April 1994, he and his family sought refuge at the nearby Nyundo seminary along with 80 to 100 other Tutsis in the area. That afternoon, Sagahutu spoke on the telephone with Augustin Ntagara, a priest at Gisenyi Parish. Father Ntagara told the witness that the killing of Tutsis had commenced following a rally held by Nsengiyumva at a bus station in Gisenyi town. Around 5.00 p.m., about 200 *Interahamwe*, armed with traditional weapons, attacked the seminary. At the time, the witness was in a room there with the rector and other priests. One of the Tutsi priests, Adrien Nzanana, left the room and was killed in

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[1302] Prosecution Pre-Trial Brief (7 June 2002), p. 8.

[1303] Nsengiyumva Indictment, paras. 6.18-6.20; Bagosora Indictment, paras. 6.58-6.59; Prosecution Closing Brief, paras. 132, 437, 452, 466-469, 488, 489, 1034(g), 1035(d), 1051(h), 1388(e), pp. 881-882. The bishop's name is spelled as both "Kalibushi" and "Karibushi". For consistency, the Chamber has used "Kalibushi", as in the Nsengiyumva Indictment.

[1304] Nsengiyumva Closing Brief, paras. 941-962; Bagosora Closing Brief, pp. 382-383.

the corridor by the assailants, who were shouting "[k]ill this animal; kill this cockroach; kill them; finish them off and withdraw".[1305]

1171. When this first attack had ended, gendarmes, promising security, urged the women and children to gather in the seminary's chapel. Sagahutu distrusted the gendarmes and remained with the priests. Déo Twagirayezu, a Tutsi priest, said mass there. Then, *Interahamwe* launched a second swift attack, killing or wounding many of the refugees there as well as Father Twagirayezu. When the second attack started, the Hutu priests separated themselves from the Tutsis. Sagahutu hid in the ceiling, but could hear children screaming from the chapel. Sagahutu's wife was injured during the attack, and his four children were killed. After the second attack, the gendarmes, again promising security, evacuated the surviving refugees to Nyundo Parish, located above the seminary on a hill, where they joined 600 to 700 other mostly Tutsi refugees. Sagahutu and his wife joined the priests in the bishop's residence, where his wife received some medical attention.[1306]

1172. Early on 8 April, a priest warned Sagahutu that the *Interahamwe* were coming, and the witness, his wife and other refugees went to the cathedral. Bishop Kalibushi told the refugees: "You have to die like men. Do not die like cowards. Take all you can find in the form of weapons and defend yourselves, because there will be at least one survivor who is going to tell the truth one day." Around 10.30 to 11.00 a.m., Second Lieutenant Eustache Dusabeyezu and a group of *Interahamwe* entered the cathedral, told the refugees to leave and extorted money from them. Sagahutu recognised Dusabeyezu as a student at a local school named *Saint Fidèle*. Other local authorities came as well to evacuate the expatriates and some members of religious orders in order to take them to a local hotel. Dusabeyezu left the parish compound with Bishop Kalibushi, who was taken to the *Commune Rouge* to be killed.[1307]

1173. As Dusabeyezu was leaving, he fired his rifle in the air, and the *Interahamwe* began their attack. The refugees locked themselves in the cathedral and were able to fight off the assailants, even managing to kill one of the *Interahamwe*. The attackers withdrew around 5.00 p.m. According to Sagahutu, none of the refugees were killed.[1308]

1174. On the morning of 9 April, the assailants returned with reinforcements and guns. They again tried to gain entrance to the cathedral. The refugees, including Sagahutu, fought back and managed to prevent them from entering the cathedral. The attackers killed many of the refugees in the bishop's residence and the wounded who were in the parish's sacristy,

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[1305] T. 27 April 2004 pp. 58-59, 68, 83-87; T. 28 April 2004 pp. 10, 28, 42-45, 49, 65; Prosecution Exhibit 215 (personal identification sheet). The witness was previously referred to as Witness ON. He served as the ambassador of Rwanda to Uganda from 1995 to 2000 and then as the deputy speaker of the Rwandan national assembly from 2000 to 2003.

[1306] T. 27 April 2004 pp. 84, 87-89; T. 28 April 2004 pp. 10, 17, 49-50, 52, 65.

[1307] T. 27 April 2004 pp. 89-90; T. 28 April 2004 pp. 3, 10. Sagahutu said that many of the refugees at the cathedral had been there for more than a year. Gendarmes had been guarding them since they first sought refuge. During that period, the gendarmes told the refugees: "One day there will be trouble, and the day when trouble will come, we shall no longer be here to guard you. The *Interahamwe* will come in and they will exterminate you". T. 29 April 2004 pp. 18-19.

[1308] T. 27 April 2004 pp. 89-91; T. 28 April 2004 pp. 3, 10, 62, 65; T. 29 April 2004 p. 20. In addition, Sagahutu also testified that the gendarmes, who were guarding the refugees, joined the *Interahamwe* and fired at the cathedral, while the *Interahamwe* pelted it with stones. T. 27 April 2004 p. 91; T. 28 April 2004 p. 62. He later clarified that the role of these gendarmes was not to kill but to gather people together. T. 28 April 2004 pp. 62-65; Nsengiyumva Defence Exhibit 42 (undated statement of Sagahutu); Nsengiyumva Defence Exhibit 43 (statement of 23 May 1998); Nsengiyumva Defence Exhibit 44 (statement of 26 February 1996).

including Sagahutu's wife. Around 5.00 p.m., the *bourgmestre* of Kanama commune, as well as Major Biganiro, the gendarmerie commander, stopped the attack and promised to assure the security of the surviving refugees. The next day, 10 April, Major Biganiro and Lieutenant Bizumuremyi returned to Nyundo Parish with a list of religious personnel to evacuate. A priest persuaded a gendarme to allow Sagahutu to leave with them. At a roadblock on the way to Gisenyi town, *Interahamwe* tried to prevent Sagahutu from accompanying the priests because he was not on the list. However, a gendarme added his name to the list.[1309]

1175. Together with the other religious personnel, Sagahutu was taken to the *Hôtel Méridien* where he found Bishop Kalibushi. They stayed there until 12 April when they moved to a home owned by the Nyundo Diocese near the Palm Beach Hotel, where they were protected by gendarmes. Nsengiyumva and the prefect visited with the bishop on occasion. After receiving money, the gendarmes assisted Sagahutu and the other religious personnel in the house to flee to Goma around 20 April. During this period, Kalibushi told the witness that Nsengiyumva had come to the *Commune Rouge* just before Kalibushi was about to be killed on 8 April and spared his life. Nsengiyumva brought Kalibushi to the *Hôtel Méridien*. According to what Sagahutu heard, the bishop later asked Major Biganiro if the gendarmerie could bring the surviving priests and other religious personnel to the hotel. Biganiro agreed, and the bishop gave him the list of names, which was used to evacuate individuals on 10 April. The witness was told that the remaining refugees were killed in May.[1310]

Prosecution Witness DO

1176. Witness DO, a Hutu driver in Gisenyi, stated that, sometime in April 1994, he heard from a member of the *Interahamwe*, named Kiguru, that Nsengiyumva, in the company of the *Interahamwe*, had led an attack in Nyundo, massacring approximately 567 refugees. Kiguru told the witness that he had taken part in the attack.[1311]

Prosecution Witness ZF

1177. Witness ZF, a Hutu radio operator at the Butotori military camp, said that, sometime between 7-9 April, Nsengiyumva told Lieutenant Bizumuremyi that religious and other personnel at Nyundo had to be evacuated so that soldiers could occupy that position. He did not say how he obtained this information, but testified previously that he was quite close to Bizumuremyi. The witness later learned from unidentified sources that military elements killed refugees at Nyundo Parish and that Bishop Kalibushi had been arrested on 7 April and

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[1309] T. 27 April 2004 pp. 91-92; T. 28 April 2004 pp. 2-9, 11, 65; T. 29 April 2004 pp. 23-24.
[1310] T. 28 April 2004 pp. 2-6, 9, 11-12, 14-15, 23-26, 65-66; T. 29 April 2004 pp. 22-26. The witness noted that Nsengiyumva came twice to the residence.
[1311] T. 30 June 2003 pp. 19, 32, 75-76; Prosecution Exhibit 61 (personal identification sheet). Witness DO testified that Kiguru was a member of the "death squads" (III.2.9). He described a death squad as "a group of people which had been established by Colonel Anatole [Nsengiyumva]. Captain Bizimuremyi supervised the group's activities. The death squad was supported by the MRND and CDR..." The witness is currently serving a life sentence for genocide in a Rwandan prison for acting as a driver for the *Interahamwe* and soldiers, facilitating their crimes. He claimed never to have been a member of *Interahamwe* himself. T. 30 June 2003 pp. 4-5, 84-85.

subsequently released by Nsengiyumva at Bagosora's request to avoid a diplomatic incident.[1312]

Nsengiyumva

1178. Nsengiyumva denied having issued any order for Nyundo Parish to be attacked and noted that no evidence placed him at the scene. There were gendarmes at the parish protecting the refugees who had been there since the beginning of 1993, but they were not under his command. He did not send soldiers to abduct the bishop.[1313]

1179. Around 11.00 a.m. on 8 April 1994, as Nsengiyumva was leaving his camp, a group of gendarmes informed him that some people had just abducted Bishop Kalibushi and had taken him towards Gisenyi town. Nsengiyumva's soldiers manning the roadblock in front of the hospital told him that a minibus had passed, heading towards the prefecture office at high speed. Nsengiyumva pursued the minibus and found it at Gisenyi cemetery.[1314]

1180. When he arrived, the minibus had stopped, and the bishop was being pulled out near a grave. Nsengiyumva fired his gun and took one of the bishop's arms while the assailants pulled the other one. Nsengiyumva placed the bishop in his vehicle, left and immediately called the gendarmerie to explain the situation and to ask what was going on in Nyundo.[1315]

1181. Nsengiyumva took the bishop to the *Hôtel Méridien*, where he secured accommodation and arranged for someone to guard him. Later on the bishop was moved from the hotel to a neighbouring house belonging to the diocese. Out of concern, Nsengiyumva placed a guard there and requested the staff headquarters to authorise him to take the bishop to Goma. When pressure later mounted because the people of Gisenyi wanted to kill the bishop, he again sent a telegram requesting that the government authorise him to take the bishop out of the country and was finally given authorisation in mid-June. He accompanied him on his evacuation and was assisted by the Zairean military commander in Goma, General Tembele.[1316]

1182. Nsengiyumva testified that on 2 May 1994 there was a meeting convened by the prefect following the killings at Nyundo on 1 May to condemn those killings and to prevent such killings from being committed in Gisenyi town. Nsengiyumva even spoke during the rally (III.3.6.8).[1317]

Nsengiyumva Defence Witness LK-2

1183. According to Witness LK-2, a gendarme, there were approximately 300 Tutsi refugees at the Nyundo Parish cathedral on 7 April 1994, many of whom had been there since February 1993. He received reports of attacks against the cathedral from 7 to 9 April undertaken by unidentified armed members of the local population who appeared to be civilians. On the evening of 9 April, the witness was dispatched with other gendarmes to the cathedral, where he remained for three nights. There were no further attacks until around

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[1312] T. 26 November 2002 pp. 94-95; T. 27 November 2002 p. 13; T. 28 November 2002 pp. 9-11, 54-57. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.
[1313] T. 6 October 2006 pp. 4, 31-32.
[1314] T. 5 October 2006 pp. 6-7; T. 11 October 2006 p. 40.
[1315] T. 5 October 2006 pp. 6-7; T. 11 October 2006 pp. 40-42, 50.
[1316] T. 5 October 2006 pp. 6-8; T. 11 October 2006 pp. 43-44, 47-49, 64; T. 12 October 2006 p. 88.
[1317] T. 9 October 2006 pp. 10, 51-52.

1 May, when he saw reports of large scale attacks. From what he heard, the gendarmes resisted the attackers, but ultimately retreated to call for reinforcements. When the gendarmes returned, the remaining refugees at the parish had been killed or had fled. The witness did not see or receive any reports about Nsengiyumva or soldiers playing a role in these events.[1318]

Nsengiyumva Defence Witness RAS-4

1184. Witness RAS-4, a Hutu, was tried in Rwanda and convicted of genocide in relation to the killings at Nyundo Parish in Gisenyi prefecture and Nyange Parish in Kibuye prefecture. He was sentenced to death but acquitted on appeal. Local civilians, armed with traditional weapons, attacked the Nyundo seminary twice on 7 April 1994. During the first attack, around 4.00 p.m., the assailants killed two Tutsi priests, Adrien Nzanana and Déo Twagirayezu, and then withdrew. The assailants returned around 7.30 p.m. and killed at least 30 refugees in the seminary's chapel. During the second attack, the witness hid in a false ceiling along with Sagahutu, who he testified fell out of the ceiling and got a sprain. When the witness came down from the ceiling, he saw dead bodies. He recalled that two or three of Sagahutu's children had been killed, and his wife had been injured. Around 10.00 p.m., a priest and two gendarmes arrived and helped the witness evacuate Sagahutu's wife to the bishop's residence at Nyundo Parish.[1319]

1185. On 8 April, civilian militiamen attacked Nyundo Parish throughout the day. During the attack, the witness helped defend the entrance to the bishop's residence with stones. No one was killed on that day, but he heard that Bishop Kalibushi was abducted by a group of attackers. The same civilian assailants and *Interahamwes* returned on 9 April and conducted a large scale massacre. Gendarmes and a sub-prefect called André arrived in the afternoon, and fired into the air to disperse the killers. The witness was allowed to escape after begging for his life and bribing one attacker with money. At the end of 1994, the bishop told the witness that he had been taken by *Interahamwe* and, the witness believed, one soldier, to a cemetery known as *Commune Rouge*. Nsengiyumva had saved the bishop's life and brought him to the *Hôtel Méridien*. He then moved the bishop and other priests from Nyundo to a house belonging to the diocese about 10 metres away from the hotel.[1320]

Nsengiyumva Defence Witness XX

1186. Witness XX, a Tutsi survivor of the Nyundo Parish massacre, testified that sometime after 3.00 p.m. on 7 April 1994, Tutsis from the surrounding area, who had sought refuge at the Nyundo seminary, were attacked and killed by *Interahamwe* armed with traditional weapons. The witness was in a nearby convent at the time, but heard the assailants whistle and beat metal containers during the attack. Afterwards, Bishop Kalibushi sent a priest and two gendarmes to evacuate the witness, other religious personnel and the survivors to the cathedral at Nyundo Parish, where they could be better protected. There they joined about 300 other refugees who had been staying at the cathedral for over a year.[1321]

1187. On 8 April, *Interahamwe*, wearing banana leaves and armed with traditional weapons, attacked the cathedral, but the refugees were able to repel them without suffering any

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[1318] T. 19 April 2005 pp. 2, 11-19; Nsengiyumva Defence Exhibit 73 (personal identification sheet).
[1319] T. 5 December 2005 pp. 10-16, 21-26, 29, 31, 44-45, 48-49; Nsengiyumva Defence Exhibit 123 (personal identification sheet).
[1320] T. 5 December 2005 pp. 15-20, 34, 40-42, 45, 48.
[1321] T. 17 November 2005 pp. 55-59; Nsengiyumva Defence Exhibit 118 (personal identification sheet).

casualties. Witness XX saw a soldier named Eustache Dusabeyezu in the cathedral, threatening refugees. He was accompanied by *Interahamwe*, brandishing machetes. Dusabeyezu left with Bishop Kalibushi. That evening, Jean Kashyengo, a priest, reassured the witness that Kalibushi was not dead and that Nsengiyumva had saved him. In May or June 1994, the witness met Bishop Kalibushi in Goma. He told her that Dusabeyezu took him to the cemetery where assailants began stripping him and taking his rings. According to the witness, Kalibushi said: "But God sent one Anatole Nsengiyumva who came and, in a deep voice, talked to me. He said, 'Bishop, let's go.'" The bishop said to the witness that Nsengiyumva took him to a woman named Muyira, who had a residence near the *Hôtel Méridien* and the Palm Beach hotel.[1322]

1188. On the morning of 9 April, a group of *Interahamwe* with traditional weapons attacked the cathedral. They returned that afternoon with reinforcements and, according to Witness XX, killed almost all of the refugees. During the attack, she ran towards the bishop's residence and lay on the ground where she was quickly covered with dead bodies. She testified: "I was lying on my stomach, and they were cutting up babies and throwing the bodies over me to such an extent that I was covered with blood. I pretended to be dead, and they hacked my nephew into two pieces, who had his hand around me. And my sister-in-law was also hacked with a machete, and she was next to me. So when the attackers left, I took away the hand of my nephew and I remained quiet."[1323]

1189. The witness knew Sagahutu and observed him at Nyundo Parish during the attacks on 7 and 8 April. She did not see him on 9 April because he had fallen from upstairs and injured himself, so he was seated in a corner of the cathedral with a stick that he used to walk. Sagahutu's wife and children were killed in the attacks.[1324]

1190. The *Interahamwe* returned, searching through the victim's pockets, and one of them noticed Witness XX move. He demanded money from her. The assailant dragged the witness over to the gendarmes, who were guarding the refugees, and left her there, saying he would return for her. The gendarmes, however, refused to allow the attacker to take the witness away. Around 5.30 p.m., Major Biganiro, accompanied by a sub-prefect of Gisenyi prefecture, came to Nyundo Parish. Biganiro said that he could not protect the witness because she risked being killed even at his home. She asked him to take her to Nsengiyumva's residence because she knew him from Kigali and thought well of his family. She had also heard that he had saved the bishop. Biganiro agreed to take the witness and another girl to the Gisenyi military camp, where he dropped them off at the gates.[1325]

1191. Nsengiyumva received Witness XX in his office where she recounted the attack against Nyundo Parish. He took her to his residence and left her in the care of his wife and children, so she could wash the blood off of her body and change into fresh clothes. She remained at Nsengiyumva's residence for one month, from 9 April until 7 May. The witness noted that there were other people staying at the residence, and that about 15 to 20 other Hutu and Tutsi refugees were there at any given point during that period. On 7 May, Nsengiyumva

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[1322] T. 17 November 2005 pp. 59-62; T. 18 November 2005 pp. 26-27.
[1323] T. 17 November 2005 p. 64; T. 18 November 2005 pp. 25-26.
[1324] T. 18 November 2005 p. 7.
[1325] T. 17 November 2005 pp. 65-68; T. 18 November 2005 pp. 1-2. Witness XX did not know the name of the sub-prefect, who was also serving as the acting prefect. T. 18 November 2005 p. 18.

gave the witness a vehicle and some money to buy clothes. His wife gave her some clothes and took her to the home of Nsengiyumva Defence Witness STAR-2, who helped her cross the border into Goma.[1326]

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Deliberations

1192. Isaïe Sagahutu provided a direct and continuous narrative of what transpired at Nyundo Parish from 7 to 9 April 1994. He gave a detailed account of the repeated attacks first on the seminary and then on the bishop's residence and the cathedral at Nyundo Parish. The Defence submits that he attempted to solicit false testimony against Nsengiyumva from Witness XX, another survivor of the massacre.[1327] However, this allegation should have been put to him during cross-examination, or the Defence should have sought his recall.

1193. The Nsengiyumva Defence also points to incriminating statements in Rwandan proceedings made by Sagahutu against Witness RAS-4 and another individual, who was a Hutu priest. Both were convicted and sentenced to death at trial based on Sagahutu's evidence but were ultimately acquitted of any wrongdoing on appeal.[1328] This argument, however, carries limited weight since it relates to Sagahutu's evidence in a separate proceeding involving distinct evidence and a different accused than Nsengiyumva.[1329]

1194. There are other aspects of Sagahutu's evidence which show that he has a negative attitude to Nsengiyumva.[1330] This may be understandable in view of what he experienced and his view that Nsengiyumva is responsible for the death of his family members.

1195. The Chamber has considered the above issues in assessing Sagahutu's overall credibility. They merit some caution in approaching his testimony. Nevertheless, it is satisfied that he provided a compelling first-hand account of how the attack unfolded at Nyundo Parish. His testimony is corroborated in significant part by the largely convincing evidence of Witnesses RAS-4 and XX, who were in a similar position to closely follow the events there. Overall, these three witnesses provided a mostly consistent chronology of the main features of the attack. There are certain problematic features of each of their

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[1326] T. 18 November 2005 pp. 2-4, 17-18. *See also* Witness STAR-2, T. 28 February 2006 pp. 4, 19-21.

[1327] Witness XX testified that in 1997, she stayed with Sagahutu in Uganda. She alleged that he tried to persuade her to testify against Nsengiyumva to the effect that she knew that Nsengiyumva was an *Interahamwe*, that he was organising meetings and distributing weapons. Sagahutu told the witness that, because she had stayed in Nsengiyumva's house, she would be believed on these points. The witness did not believe that the allegations against Nsengiyumva were true. T. 18 November 2005 pp. 8-12, 16-17.

[1328] According to Witness RAS-4, Isaïe Sagahutu accused him and another individual, who was a priest, of genocide and of having killed members of Sagahutu's family in the attacks at Nyundo Parish. The allegations against these individuals were not considered founded by a Rwandan appeals court. *See* T. 5 December 2005 pp. 25-33. Reference is also made to certain exhibits tendered during Witness RAS-4's closed session examination confirming that the allegations against him and the other individual were overturned due to lack of evidence and because the trial court did not properly consider exonerating evidence.

[1329] *See Rutaganda* Review Decision, paras. 15, 20.

[1330] *See, e.g.*, T. 27 April 2004 p. 62 ("Physically, he's a villain ... from what I remember, he was big, strong, stout, with a wicked or ugly-looking face."). In referring to Bagosora, Sagahutu noted: "And he had a reputation of being really bad, wicked, even in football. And his nickname was Kigatura, which means a sudden disease which kills someone instantly."

accounts.[1331] However, in the Chamber's view, their evidence is generally credible on the repeated attacks at the parish, in particular where corroborated.

1196. Based on the evidence of Witnesses Sagahutu, RAS-4 and XX, the Chamber finds that a number of mostly Tutsi civilians sought refuge at the Nyundo seminary on 7 April 1994, fearing violence after the death of President Habyarimana. At the time, several hundred Tutsi refugees had already been staying for about a year, guarded by gendarmes, at the nearby cathedral of Nyundo Parish, following earlier violence in the area. That afternoon, a group of *Interahamwe* attacked the seminary killing two Tutsi priests.[1332] A second attack in the evening resulted in the death of a number of Tutsis in the chapel of the seminary. After this attack, a priest and gendarmes arrived to evacuate the survivors, including the three witnesses, to the bishop's residence and cathedral at Nyundo Parish which was above the seminary on a hill.

1197. Turning more specifically to Nsengiyumva's involvement during the attacks at Nyundo Parish, the Chamber observes first that the evidence is not clear as to whether or not they were initiated by the alleged meeting between Nsengiyumva and the *Interahamwe* on the morning of 7 April at the Gisenyi bus station. Sagahutu's testimony about the meeting was based on information received from Father Ntagara, who was probably not present at that gathering (III.3.6.2). This evidence is therefore possibly double hearsay, and the Chamber is reluctant to rely on it in the absence of corroboration. In any event, the evidence does not clearly demonstrate that the individuals attending the alleged meeting were the ones who attacked Nyundo Parish. The Chamber notes that Witness DO is the sole Prosecution witness who places Nsengiyumva at the scene of the attack leading *Interahamwe*. As this evidence is hearsay and uncorroborated, the Chamber will not make a finding that Nsengiyumva was there.

1198. It follows from the evidence of Witnesses Sagahutu and XX that, on the morning of 8 April, Second Lieutenant Eustache Dusabeyezu, who was a student, and a group of *Interahamwe* threatened refugees at the cathedral, extorted money from them and then abducted Bishop Kalibushi from his residence.[1333] Witness RAS-4 heard about the abduction

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[1331] The fact that Sagahutu testified against Witness RAS-4 in Rwanda may provide some motivation for the latter to give testimony that detracts from the evidence of the former. Nsengiyumva's assistance to Witness XX may influence her to recall events in a light more favourable to him.

[1332] Sagahutu initially testified that Fathers Adrien Nzanana and Déo Twagirayezu were killed during the first attack. Witness RAS-4 also mentioned this. Sagahutu later stated that Déo Twagirayezu gave mass in the seminary chapel, just before the second attack. *See* T. 27 April 2004 pp. 85-87. The Chamber does not find this discrepancy material. It is clear that both priests were killed during the attacks. Furthermore, Sagahutu was not present in the chapel.

[1333] According to Sagahutu's testimony, Dusabeyezu was a student at *Saint Fidèle* institute. Dusabeyezu's Rwandan judgment also refers to him as a student there. *See* Nsengiyumva Defence Exhibit 40 (Rwandan judgment of Dusabayezu of 22 December 1998), p. 26. However, a list of postings of Rwandan officers as of 1 March 1994 indicates that he was a student at Mudende University. *See* Nsengiyumva Defence Exhibit 16 (Situation of officers in the Rwandan Army as of 1 March 1994). This difference is not material. Sagahutu also referred to Lieutenant Dusabeyezu as "Eugene Hakizayezu" in his two prior statements to Tribunal investigators. *See* Nsengiyumva Defence Exhibit 42 (undated statement of Sagahutu); Nsengiyumva Defence Exhibit 43 (statement of 23 May 1998). However, Sagahutu correctly referred to Dusabeyezu in his statement to Rwandan judicial officials. *See* Nsengiyumva Defence Exhibit 44 (statement of 26 February 1996). The Chamber does not find this discrepancy significant, in particular as Dusabeyezu's judgment shows that he was indeed present at Nyundo Parish on 8 April 1994. *See* Nsengiyumva Defence Exhibit 40 (Rwandan judgment of Dusabayezu of 22 December 1998).

and mentioned the possible involvement of a soldier, which adds some limited corroboration. As Dusabeyezu left with the bishop, he fired in the air, and the *Interahamwe* attacked the parish. The refugees were able to fend off the assault without any casualty.

1199. While Sagahutu claims that Dusabeyezu's shot signalled the beginning of the attack, the Nsengiyumva Defence refers to his judgment in Rwanda, which concluded that he was not the leader of the assailants and that the shot was not necessarily a signal to start the attack. It also referred to his status as a student.[1334] The view expressed by the Rwandan court is not binding on the Chamber. However, its reasoning illustrates that Sagahutu's evidence does not compel the conclusion that Dusabeyezu's actions started the attack. It is also unclear what connection Dusabeyezu had to Nsengiyumva and where he fell into the military structure, particularly as he appears to have been a student at the time.[1335]

1200. Witness ZF testified that, between 7 and 9 April, Nsengiyumva ordered the evacuation of religious personnel and others from Nyundo Parish so that the military could occupy it. The Chamber has already raised concern with the reliability of Witness ZF's indirect evidence (III.2.7-8). In the present contect, he did not specifically identify his basis of knowledge for Nsengiyumva's alleged order. The fact that the military did not occupy this position, and that the refugees remained at the parish for several more weeks, also raises some doubt as to the veracity of the order. Furthermore, the witness's evidence concerning the role of soldiers in the attack as well as the arrest of Bishop Kalibushi on 7 April is second-hand and inconsistent with other reliable evidence. For example, Witnesses Sagahutu, RAS-4 and XX explained that the assailants were *Interahamwe* and that Kalibushi was arrested on 8 April. Consequently, the Chamber does not accept Witness ZF's testimony about the events at Nyundo Parish without corroboration.

1201. Based on the testimonies of Witnesses Sagahutu, RAS-4 and XX, the Chamber finds that the *Interahamwe*, returned with reinforcements on the morning of 9 April and conducted a large scale attack, killing many of the Tutsi refugees at the bishop's residence and in the sacristy of the cathedral. There is a discrepancy as to whether the assailants attacked with guns or only with traditional weapons. The Chamber accepts Sagahutu's first-hand credible evidence about the use of firearms. The fact that Witnesses RAS-4 and XX did not recall the assailants using guns likely results from the passage of time, their varying vantage points, as well as the chaotic nature of the situation. The use of firearms in addition to reinforcements further explains why the assailants were able to overpower the resistance of the refugees, which had been successful the previous day.

[1334] Nsengiyumva Defence Exhibit 40 (Rwandan judgment of Dusabayezu of 22 December 1998), pp. 29-30, which reads : "*Constate que l'infraction de participation criminelle dans les assassinats que l'Auditeur militaire porte à charge du 2Lt [Dusabeyezu] n'est pas prouvée car il allègue tout simplement que l'accusé était sur les lieux où les décisions étaient prises mais sans en rapporter de preuves tangibles, notamment sur l'endroit précis; que l'autorité dont jouissait l'accusé et dont parle l'Auditeur militaire n'est pas une preuve de participation criminelle surtout qu'il l'invoque en signalant l'acte louable qu'a posé l'accusé donnait l'autorisation aux Interahamwe de commencer à tuer les gens qui avait trouvé refuge à Nyundo car aucun témoin ne déclare connaître le signal qui a fait démarrer les massacres, surtout qu'ils ont débuté le lendemain le 9 avril 1994; que par conséquent la participation criminelle du sous-lieutenant Eustache dans les massacres de Nyundo reste douteuse; ...*". The Rwandan court further stated that Dusabayezu's crimes did not make him an offender of Category One crimes as stipulated in the Organic Law no. 08/96.

[1335] Notably, Dusabayezu's judgment also indicates that he had no command. Nsengiyumva Defence Exhibit 40, p. 30 (Rwandan judgment of Dusabayezu of 22 December 1998).

1202. The evidence reflects that the attack continued until mid-afternoon when Major Biganiro, the gendarmerie commander, and a local official arrived and stopped the massacre.[1336] Witness XX survived in large part because a gendarme prevented an *Interahamwe* from killing her. She was protected by Nsengiyumva until May 1994, when he arranged for her to leave Rwanda for Goma. Sagahutu escaped on 10 April, when gendarmes included him on a list of priests to be evacuated, which Bishop Kalibushi had provided the previous day. Sagahutu eventually stayed with the bishop and other priests at a house near the *Hôtel Méridien*, which was guarded by gendarmes. These gendarmes assisted Sagahutu and the priests cross the border to Goma at the end of April. The Chamber has also heard second-hand evidence from Witnesses Sagahutu and LK-2 that the refugees at Nyundo Parish were killed in May 1994. However, the Chamber does not have sufficient detail concerning this attack to make any findings.[1337]

1203. There is no direct evidence that Nsengiyumva gave an order to attack Nyundo Parish. Furthermore, it appears that the attacks between 7 and 9 April were perpetrated only by militiamen. However, the Chamber has considered this attack in the context of the other killings in Gisenyi at this time (III.3.6.1; III.3.6.5. III.3.6.7) as well as parallel attacks in Kigali (III.3.5). It has also noted the manner in which the series of attacks at the parish evolved from the initial targeted killings at the seminary on 7 April, an unsuccessful assault on 8 April and finally the massacre on 9 April involving reinforcements and the increased firepower of guns. The military clearly played a role in training and distributing weapons to militia groups (III.2.6.2). The manner in which the attack unfolded reflects coordination. Moreover, the repeated nature of the attack as well as its target, a major religious institution, indicates that it was not merely sporadic violence. In the Chamber's view, the only reasonable conclusion is that it was an organised operation which must have been sanctioned and ordered by the area's military commander, Nsengiyumva.

1204. Bagosora has also been charged in relation to these killings. The Chamber does not accept his argument that these allegations do not relate to him. The Prosecution's Pre-Trial Brief lists Sagahutu as supporting the relevant paragraphs of his Indictment related to Gisenyi.[1338] Bagosora exercised the highest authority in the military on 8 April (IV.1.2). Nsengiyumva as the operational commander of Gisenyi was therefore under his command. Furthermore, when this event is considered together with other parallel killings in Gisenyi prefecture as well as in Kigali, the only reasonable inference is that these military operations were ordered or authorised by Bagosora.

[1336] Witnesses Sagahutu, RAS-4 and XX each describe the public official variably as the *bourgmestre* of Kanama commune, the sub-prefect and the acting prefect. In the Chamber's view, this discrepancy is not significant. It follows from their evidence that it was a prominent local official.

[1337] Prosecution Closing Brief, paras. 132, 489, 1051(e)(h). The Prosecution refers to the evidence of Witness XBM who testified about a meeting on 24 May attended by Nsengiyumva where Bagosora thanked and rewarded attackers who killed 430 Tutsis at "Nyundo cave". T. 14 July 2003 pp. 24-29. According to the witness, the killings at Nyundo cave occurred around 27 and 28 April 1994. No other witness mentioned this incident, and no other evidence was offered in support of this assertion. The Prosecution does not indicate whether Witness XBM's account supports the allegations related to Nyundo Parish. The Chamber has already expressed significant reservation about the witness's credibility (III.3.6.7) and declines to accept it. Bagosora has also presented a reasonable alibi for the period when the meeting occurred (III.6.1). The Chamber further notes that Witness XEN-1, who lived and worked at the *Hôtel Méridien* in Gisenyi from early April until July 1994, testified that the meeting did not occur. T. 30 May 2006 pp. 4-5, 10, 15-16.

[1338] Prosecution Pre-Trial Brief (7 June 2002), p. 8.

1205. Having addressed the attacks, the Chamber will now consider the specific incident involving Bishop Kalibushi. It is possible that Nsengiyumva, as the area's operational commander, specifically ordered the abduction of the bishop or that the action was taken pursuant to a more general order from him to eliminate suspected accomplices. The Chamber recalls that Kalibushi was a vocal critic of the government's policy of arming and training militiamen in the area (III.2.6.2). Nevertheless, the evidence does not clearly indicate the connection between Dusabayezu and Nsengiyumva.

1206. Only Nsengiyumva provided direct evidence of what happened to the bishop at the *Commune Rouge*. According to his testimony, he prevented the assailants from killing the bishop and took him to safety at the *Hôtel Méridien*. This is corroborated by the second-hand evidence of Witnesses Sagahutu, RAS-4 and XX, who each heard this later from the bishop.[1339] Nsengiyumva also arranged for Bishop Kalibushi's evacuation in June, which was done on the orders of the interim government.[1340] Therefore, it is clear that Nsengiyumva saved the bishop. This raises some doubt as to whether Nsengiyumva would have issued the initial order to abduct Kalibushi.[1341] The question remains why Nsengiyumva saved the bishop. Kalibushi's statement of July 1997 indicates that Nsengiyumva only saved him as a result of pressure from his superiors.[1342] This may be the case, but this statement was tendered only in connection with assessing Nsengiyumva's credibility. As there is no direct evidence to this effect, the Chamber does not have a sufficient basis to conclude on this point.

[1339] Nsengiyumva Defence Witness R-1, a former member of the military police, heard that the military police saved Bishop Kalibushi. T. 26 July 2005 pp. 83-84; T. 28 July 205 pp. 16-18. In view of Nsengiyumva's testimony, Witness R-1's testimony on this point is not credible. In addition, two statements to Tribunal investigators given by Bishop Kalibushi were tendered into evidence during the cross-examination of Nsengiyumva, which also confirm this fact. *See* Prosecution Exhibit 421 (statement of 18 and 19 June 1996); Prosecution Exhibit 422 (statement of 29 July 1997).

[1340] Nsengiyumva, T. 11 October 2006 pp. 49-50. Nsengiyumva stated that he was responsible for the government taking the decision to evacuate the bishop. *See also* Prosecution Exhibit 420 (Excerpt of Karemera's agenda: "The issue of Bishop Kalibushi and his priests: The guard promised was not given. Supplies did not follow; medical care. Though we were 19 only 9 remained; the top authorities got the others out secretly. They, therefore, wished to leave for Goma. The Government decided that they should be allowed to leave with an escort. The Ministry of Labour and Social Affiars is tasked with contacting the *préfet* and the Commander of Operations in Gisenyi.").

[1341] The Prosecution also pointed to the testimony of Omar Serushago, an *Interahamwe*, concerning an alleged order given by Nsengiyumva to kill Bishop Kalibushi in Mid-May to June which was later retracted at the order of the government. *See* Prosecution Closing Brief, para. 1388(a); T. 18 June 2003 pp. 6, 51-57; T. 19 June 2003 pp. 23-30. This evidence is outside the scope of paragraph 6.19 of the Nsengiyumva Indictment. In any event, the Chamber has concerns with the credibility of this uncorroborated evidence in view of Serushago's status as an alleged accomplice (*See* T. 18 June 2003 p. 3; *Serushago* Trial Judgement, 5 February 1999, para. 4, p. 15) as well as the inconsistency between his testimony and his prior statements about who issued the orders. For example, in his statement, he said that the order to kill Kalibushi came from Bernard Munyagishari. *See* T. June 2003 pp. 26-28 (quoting Serushago's statement to Tribunal investigators of 13 February 1998). It was not tendered into evidence.

[1342] Prosecution Exhibit 422B (statement of 29 July 1997), p. 4 which reads: "As far as I can tell you about the activities of Colonel Anatole Nsengiyumva during the genocide period, I will sum them up this way: - He was the supreme leader of the '*Esquadron de la mort*' (Death Squad) in Gisenyi Prefecture. – He could have saved lives, but instead encouraged killings. – He supplied arms to the *Interahamwe* to kill members of the Tutsi ethnic group. – He made speeches at the stadium encouraging the *Interahamwe* to 'go ahead and finish the job' meaning 'go ahead and kill all Tutsis'. – Nsengiyumva did not save me. He was afraid of the higher authority, he could have killed me. He had the power and means to do whatever he wanted to do during the genocide period in Gisenyi. This man was a killer and supreme commander of death squads."

3.6.7 Mudende University and Busasamana Parish, 7 - 9 April

Introduction

1207. The Bagosora and Nsengiyumva Indictments allege that, from 7 April 1994, military personnel and militiamen massacred Tutsis and "political opponents" in Gisenyi prefecture on the orders of Nsengiyumva. The Prosecution contends that he ordered soldiers and militiamen to massacre the Tutsi refugees at the Central African Adventist University in Mudende. Reference is made primarily to Witnesses HV, XBM and XBG. The testimony of Witness XBG also shows that, immediately after the attack at the university, the assailants allegedly massacred Tutsis at Busasamana Parish in the presence of Nsengiyumva.[1343]

1208. The Nsengiyumva Defence argues that these attacks are not pleaded in the Indictment. Furthermore, the testimonies lack credibility and are contradicted by Witnesses Willy Biot, LK-2, LT-1, WY, MAR-1, BZ-1, HOP-1, YD-1, EAC-1 and KB-1. The Defence also refers to Alphonsine Rugwizangoga Uwase to establish an alibi. The Bagosora Defence contends that the evidence lacks credibility and does not implicate Bagosora in the attack.[1344]

Evidence

Prosecution Witness HV

1209. Witness HV, a Tutsi, was a student at Mudende University in April 1994. She testified that around 400 mostly Tutsi civilians, fleeing violence in the surrounding areas, sought refuge in the university's classrooms on the morning of 7 April. That evening, five soldiers addressed the students and told them: "You know what has happened. You know that the head of state is dead. You know the circumstances in which he died. You know who his killers are. We have come here to ensure your security and safety." The witness knew they were soldiers by their uniforms. She heard from others that a soldier killed the son of Frédéric Nzamurambaho, the Chairman of the PSD party and Minister of Agriculture, in the school's dormitory during the night.[1345]

1210. Around 6.00 a.m. on 8 April, Dr. Manga, an American who was in charge of student services, asked the students to go to the dormitories and locked them in. Witness HV and other female students complied with the instructions, but many of the male students did not. Two soldiers, and civilians armed with traditional weapons, attacked the campus around 9.00 a.m. and began killing the refugees there. The soldiers fired at the doors of the classrooms, opening them so that the civilian assailants could kill the refugees hiding inside. The soldiers stood passively by as the killing unfolded. Shortly after the attack began, the witness could not bear to watch any more and lost consciousness.[1346]

[1343] Bagosora Indictment, paras. 6.58, 6.59; Nsengiyumva Indictment, paras. 6.11, 6.22; Prosecution Closing Brief, paras. 134-135, 461-465, 506, 629, 1043, 1051, 1061, 1531-1535.
[1344] Nsengiyumva Brief, paras. 48, 52 (a), 711-723, 724-735, 1094, 1243-1247, 1248-1259, 1280-1336, 2016, 2019, 2213, 2223, 2235, 2236, 2436, 2439, 2452, 2861-2863, 2867-2901, 2902, 2905-2907, 2956; Bagosora Closing Brief, paras. 1623-1625, 1667-1673, pp. 382-383; T. 31 May 2007 pp. 58-61, 69.
[1345] T. 23 September 2004 pp. 21, 23-25; T. 24 September 2004 pp. 2-3, 7-10; Prosecution Exhibit 308 (personal identification sheet).
[1346] T. 23 September 2004 pp. 25-27; T. 24 September 2004 pp. 10-14. In the transcripts, the name "Dr. Manga" is spelled phonetically. T. 24 September 2004 p. 2. It is not clear whether this is the same individual as Vice-

1211. About two hours later, the two soldiers and the crowd of attackers forced open the doors of the dormitory and ordered the students to come out. The soldiers separated the Tutsi students from the non-Tutsis. Witness HV was told that the attackers killed two Tutsi students. She was able to escape to the dining hall when it began raining during a lull in the attack. Later that day, gendarmes arrived and promised to protect the refugees. Around 7.00 or 8.00 p.m., masked soldiers arrived and lined up the remaining refugees, checking their identities and reading out names from lists. Each time a deceased person's name was read, they marked it off the list. The gendarmes prevented the soldiers from taking anyone away and evacuated the surviving Tutsis to Gisenyi stadium the next evening. The students asked a gendarme to assist them to flee, promising him money, but the gendarme refused, saying that the military commander of the area knew the students were there.[1347]

Prosecution Witness XBM

1212. Witness XBM, a Hutu CDR party member, testified that, around 12.15 p.m. on 7 April 1994, he attended a meeting at the Mutura commune office. It included around 75 officials and members of the MRND and CDR parties, representing all sectors in the commune. Jean-Damascène Ntamaherezo, the president of the MRND party, read a message from Jean-Bosco Barayagwiza, the president of the CDR, that the Tutsis had to be exterminated because they had killed President Habyarimana. Around 3.30 p.m., Ntamaherezo received a message and informed the gathering that there was a problem at Mudende University.[1348]

1213. Around 4.00 p.m., the witness and the other participants went to the university, five to six kilometres away, to investigate. They learned from Sergeant Rukara, a gendarme guarding the campus, that Tutsi students were mocking Hutu students, who were in mourning. Since it was evening, the witness spent the night nearby at a relative's home. Between 4.30 and 6.30 a.m. the next morning, he heard gunshots coming from the university's campus. The gendarmes at the campus assured the local population not to worry about the gunfire, but the witness later learned that Tutsis had been killed. Before leaving Mudende around 1.00 p.m. on 8 April, he saw many Tutsi refugees streaming to the university from the surrounding area, seeking sanctuary from the violence.[1349]

1214. On the evening of 8 April, a *conseiller* told Witness XBM that the military wanted to address the population at a meeting the following morning. Around 8.00 a.m. on 9 April, the witness and approximately 200 others gathered at Kanyundo, a few hundred metres from the Mutura commune office. Some members of the crowd were armed with traditional weapons, and the witness had a stick. Second Lieutenant Nduwayezu, commander of the Kanyundo military position, told the crowd to go to Mudende. Nduwayezu, 11 other soldiers, and the crowd then went to the university. Sergeant Rukara informed Nduwayezu that the number of

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rector Munger or Dr. Lienart, referred to below by Witnesses LK-2 and Biot, respectively. This possible ambiguity, however, is not material to the Chamber's findings.

[1347] T. 23 September 2004 pp. 27-32; T. 24 September 2004 pp. 13-19, 31-32. Witness HV distinguished between the soldiers and gendarmes by virtue of their uniforms and the colour of their berets. In particular, she noted that gendarmes wore red berets and soldiers wore black berets. T. 23 September 2004 p. 35; T. 24 September 2004 p. 3.

[1348] T. 14 July 2003 pp. 3-4, 39-41, 60-61; Prosecution Exhibit 80 (personal identification sheet).

[1349] T. 14 July 2003 pp. 41-43, 62-63.

refugees had increased to 2,000 and that he had tried to get reinforcements from the commander of a military position near the Kabumba market, which had been refused.[1350]

1215. Lieutenant Nduwayezu then contacted the military position over the radio, seeking reinforcements. He was told that authorisation from superiors was required. Around 11.00 a.m., an ONATRACOM bus full of armed soldiers arrived and surrounded the university. Nsengiyumva arrived in a military jeep 20 minutes later and spoke with Nduwayezu and the gendarme guarding the university. The witness did not hear what was said. Nsengiyumva remained at the university for around an hour while Hutu students were evacuated. He then ordered the unarmed civilians to withdraw from the university and left. The soldiers and armed civilians began firing with guns and grenades at the Tutsi refugees. The killing lasted until around 5.00 p.m. The next day, on 10 April, the witness returned to the university from 9.00 a.m. until around 1.00 p.m. and watched as armed civilians looted and killed the Tutsi survivors.[1351]

Prosecution Witness XBG

1216. Witness XBG, a Hutu and CDR official, testified that, around 10.00 a.m. towards the end of May 1994, *Bourgmestre* Jean Berchmans Bakiye called a meeting near Mudende University of around 3,000 armed civilians. The witness attended as a representative of the CDR party along with 100 *Interahamwe* under his command. Bakiye, who was accompanied by Hassan Ngeze, told the crowd that Bagosora and Jean-Bosco Barayagwiza had visited him the day before and told him to "get rid of all dirt". Bakiye then pointed to the university where Tutsi refugees were guarded by gendarmes. He said that after the attack on the university they were to proceed to Busasamana Parish to reinforce the *Interahamwe* there.[1352]

1217. Around 11.00 a.m., approximately 20 soldiers arrived in a truck from the ISAR Tamira military position. For the next hour, the armed civilians and gendarmes attacked and killed some 600 Tutsi refugees at the university. The gendarmes fired at the doors of the various buildings, which were surrounded by civilian attackers who killed anyone who escaped. According to the witness, the soldiers did not actively participate in the attack since the gendarmes were involved in the killings; they arrived simply as reinforcements. For his part, the witness supervised the 100 attackers who accompanied him, but did not personally kill anyone.[1353]

1218. After the massacre at the university, Witness XBG and many of the other assailants in Mudende went to Busasamana Parish in Rewerere commune to assist other armed attackers to kill Tutsis there. On arrival, the witness saw an ONATRACOM bus filled with *Interahamwe* and Nsengiyumva's Land Rover. When they saw Nsengiyumva, the assailants

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[1350] *Id.* pp. 44-46, 66; T. 15 July 2003 p. 51.
[1351] T. 14 July 2003 pp. 46-48, 67.
[1352] T. 8 July 2003 pp. 49-50, 67, 71; T. 9 July 2003 pp. 20-24, 50, 66, 74; Prosecution Exhibit 66 (personal identification sheet). The witness used the term "*Interahamwe*" generally to describe the militiamen who accompanied him even though he was part of the CDR party, explaining: "There were *Interahamwe* who were members of the MRND. The *Impuzamugambi* were members of the CDR. After Habyarimana's death, all of us were described as *Interahamwe*, because the *Interahamwe* and the *Impuzamugambi* united in order to avenge Habyarimana's death. There was no difference between MRND and CDR. All of us became *Interahamwe*." T. 8 July 2003 p. 94; T. 9 July 2003 pp. 50-51 ("[After the death of Habyarimana,] [w]e were no longer *Interahamwe* or *Impuzamugambi* separately, we were Hutus whose purpose was to kill the Tutsis".).
[1353] T. 8 July 2003 pp. 50, 55, 67, 69-70; T. 9 July 2003 pp. 23, 29, 33. Witness XBG stated that "ISAR" referred to the "*Institut de science agronomique du Rwanda*" (Agricultural Science Institute of Rwanda).

danced and sang "exterminate these *Inyenzi-Inkotanyi*". Acrobats also preformed. After the singing and dancing, Hassan Ngeze introduced Nsengiyumva to the crowd. Nsengiyumva spoke for 20 minutes and told them: "you're going to attack a sacred place, so be careful. You should not damage the church building".[1354]

1219. Witness XBG also testified that, while in prison, he heard about an even larger massacre of 2,000 Tutsis from the local area at the university which occurred in April 1994. The massacre towards the end of May in Mudende involved Tutsis from other surrounding communities.[1355]

Nsengiyumva

1220. Nsengiyumva denied that he or his soldiers were involved in the massacre at Mudende University. On 8 April 1994, he rescued Bishop Kalibushi of Nyundo and held meetings at the MULPOC offices. On 9 April, he participated in a meting with André Banyurwabuke, the acting prefect of Gisenyi prefecture, at Umuganda Stadium from 11.00 a.m. to 2.00 p.m.[1356]

Nsengiyumva Defence Witness Willy Biot

1221. Major Biot, a Belgian military adviser to the Rwandan army, was stationed in the commando training centre in Bigogwe, Gisenyi prefecture in April 1994. In testifying, he relied in part on the campaign journal which he maintained during the relevant events that contemporaneously summarised the main events. From 7 to 13 April, Biot assisted in the evacuation of expatriates living in the prefecture. At 9.15 a.m. on 8 April, he received a telephone call from a Mr. Lienart of the Central African Adventist University in Mudende informing him that around 500 persons had been killed there. He also told Biot that a number of expatriates wanted to be evacuated. Biot responded that he was not in a position to organise the evacuation immediately, but that he would apprise the army of the situation at the university.[1357]

1222. Biot then called the commander of the Bigogwe training centre, Lieutenant Colonel Nzungize, to inform him about the situation at the university and requested an escort for the evacuation. From Biot's continued contacts with Mr. Lienart, the situation at the university appeared to remain calm. Two members of Biot's team participated in the evacuation which occurred between 9 and 10 April. Biot did not receive any further confirmation about the killings or who might have been responsible for them. He stated that Mr. Lienart's reports of the killings at the university might have been based on rumours.[1358]

Nsengiyumva Defence Witness LK-2

1223. Witness LK-2, a gendarme attached to the Gisenyi squadron, testified that, on 8 April 1994, vice-Rector Munger of the Central Adventist University in Mudende reported a large number of Tutsi refugees at the university and requested assistance. Lieutenant Harelimana was dispatched to Mudende and indicated that civilian assailants, who had since departed,

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[1354] T. 8 July 2003 pp. 70-71, 74, 79; T. 9 July 2003 pp. 31-33.
[1355] T. 9 July 2003 pp. 25-26, 28, 67-69.
[1356] T. 4 October 2006 pp. 31-32; T. 5 October 2006 pp. 5-7, 15-18. MULPOC refers to Multinational Programming and Operational Centre of Economic Commission for Africa.
[1357] T. 21 September 2006 pp. 73-75, 82; T. 22 September 2006 pp. 4-6, 22-26, 36-37; Prosecution Exhibit 411 (Campaign Journal).
[1358] T. 21 September 2006 pp. 75-76, 82; T. 22 September 2006 pp. 17, 24-26, 35-37.

had killed "a few tens or dozens" of refugees. The gendarmerie detachment remained at the university until the following day when it escorted the students to Gisenyi town. The witness was not aware of any other attacks on the university or reports of the involvement of soldiers in the attack.[1359]

Nsengiyumva Defence Witness LT-1

1224. Witness LT-1, a Hutu, was a student at Mudende University. On 8 April 1994, civilians armed with traditional weapons attacked the Tutsi refugees who had arrived at the university the previous day. After the initial attack, the assailants checked identity cards of the students, who were hiding in the dormitories, and told some of the refugees to go to the dining hall while the others were told to stay. She later heard that some Tutsi students in the dormitory were killed. That evening, civilian assailants returned and again began checking the students' identity papers. A group of three to five gendarmes dispersed these militiamen and told the students that they were there to protect them. No other attack occurred, and the university was evacuated the next day.[1360]

Nsengiyumva Defence Witness WY

1225. Witness WY, a Hutu, studied at Mudende University. Around midday on 7 April 1994, he learned that members of the local population had killed Edmond Nzamurambaho because of his public display of happiness at the death of President Habyarimana. That day, around 80 refugees arrived at the university. On the morning of 8 April, civilians armed with traditional weapons attacked the campus, but were repelled. The assailants returned later with reinforcements, but the fight ended around 10.00 a.m., when 10 gendarmes put an end to the attack. The witness estimated that around 30 persons were killed on both sides. He was evacuated the next day.[1361]

Nsengiyumva Defence Witness MAR-1

1226. Witness MAR-1, a Hutu, was a student at Mudende University. He learned from others that Edmond Nzamurambaho was killed on the university's campus by "vandals" offended by his behaviour. On 8 April 1994, around 30 members of the local population armed with traditional weapons attacked the refugees who had gathered at the university the previous day. Gendarmes, who arrived between 10.00 and 11.00 a.m., stopped the attack. The witness saw casualties on both sides. He did not hear any gunfire during the attack nor did he see Nsengiyumva or other soldiers. The gendarmes evacuated the students from the university between 9 and 10 April.[1362]

Nsengiyumva Defence Witness Alphonsine Rugwizangoga Uwase

1227. Alphonsine Uwase, a Hutu, worked at the prefecture office in Gisenyi in April 1994. On 9 April, she saw Nsengiyumva in a meeting from 11.00 a.m. until between 1.00 and 2.00 p.m. with the prefect at Umuganda stadium.[1363]

[1359] T. 19 April 2005 pp. 2, 22-26; Nsengiyumva Defence Exhibit 73 (personal identification sheet).
[1360] T. 26 April 2005 pp. 52, 54-55, 58-60; Nsengiyumva Defence Exhibit 74 (personal identification sheet).
[1361] T. 31 May 2006 pp. 2-6, 12, 31; Nsengiyumva Defence Exhibit 179 (personal identification sheet).
[1362] T. 29 May 2006 pp. 54, 57-64; Nsengiyumva Defence Exhibit 176 (personal identification sheet).
[1363] T. 10 July 2006 pp. 3-4, 17-18, 20; Nsengiyumva Defence Exhibit 201 (personal identification sheet). Uwase was formerly referred to as Nsengiyumva Defence Witness OAU-1.

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Nsengiyumva Defence Witness BZ-1

1228. Witness BZ-1, a Hutu gendarme, testified that he was on leave in Gisenyi in April 1994. On 9 April, he heard about the massacre at Mudende University from someone who participated in the attack. The individual told the witness that, on 8 April, civilian assailants went to the university to kill the "*Inyenzi*" who had sought refuge at the campus. The witness heard that Witnesses XBM and XBG were amongst the assailants. Witness BZ-1 was not aware that soldiers were involved in the killings at Mudende on 8 April.[1364]

Nsengiyumva Defence Witness YD-1

1229. Witness YD-1, a Hutu, testified that a student from Mudende University told him about the attack there, which occurred around 11.00 a.m. on 8 April 1994. The witness learned that Witnesses XBM and XBG were among the leaders of the attack. He did not hear about an attack on 9 April. The witness was also informed that the assailants killed Faustin Ndabarinze, a former *bourgmestre* of Mutura commune, after the attack and continued killing Tutsis in Kibavu and at Busasamana parish.[1365]

Nsengiyumva Defence Witness HOP-1

1230. Witness HOP-1, a Hutu, was arrested in December 1996, charged of with genocide and acquitted in 2000. While in prison, he heard that a number of persons, including Witnesses XBM and XBG, agreed to give false testimony against Nsengiyumva in exchange for better treatment.[1366]

Nsengiyumva Defence Witness EAC-1

1231. Witness EAC-1, a Hutu, lived in the area around Busasamana Parish in 1994. After attending mass there on the morning of 8 April 1994, he went to look for food for some of the Tutsi refugees at the parish. When he returned around 11.00 or 11.30 a.m., a large group of *Interahamwe*, who had arrived on foot, had surrounded the parish. They attacked at about 2.00 p.m. and killed many of the refugees. Four gendarmes arrived around 3.30 p.m. and fired into the air to disperse the assailants. The gendarmes rescued the two priests at the parish. The witness did not see Nsengiyumva or soldiers participating in the attack. He was also unaware of an attack or any other refugees gathering at the parish in May 1994.[1367]

Nsengiyumva Defence Witness KB-1

1232. Witness KB-1, a Hutu, testified that, between 2.00 and 3.00 p.m. on 8 April 1994, he was returning from Gisenyi town to his native area around Busasamana Parish. At Gasenyi, he observed a vehicle carrying gendarmes and priests from the parish. From a nearby hill he could see *Interahamwe* surrounding Busasamana Parish. When he walked by the parish, he observed corpses and a few *Interahamwe* trying to loot. The witness did not hear about Nsengiyumva participating in the killings or of any further attack on the parish in May or June.[1368]

[1364] 22 February 2006 pp. 3-4, 7-8, 10; Nsengiyumva Defence Exhibit 138 (personal identification sheet).
[1365] T. 12 December 2005 pp. 38-39, 42-47; Nsengiyumva Defence Exhibit 131 (personal identification sheet).
[1366] T. 20 June 2006 pp. 3-5, 17-27; Nsengiyumva Defence Exhibit 190 (personal identification sheet).
[1367] T. 10 October 2006 pp. 70-74, 76, 85-89; Nsengiyumva Defence Exhibit 223 (personal identification sheet).
[1368] T. 20 February 2006 pp. 8-14, 17-19; Nsengiyumva Defence Exhibit 136 (personal identification sheet).

Deliberations

1233. The Prosecution presented three witnesses concerning the attacks at Mudende University. One of them also testified about an attack at the Busasamana Parish by the same assailants. In view of the overlap in evidence, the Chamber considers these events together.

(i) Mudende University

1234. The Prosecution witnesses provided different accounts of the attack at Mudende University, in particular with respect to the date on which it occurred, the identity of the assailants, and the scope of the assault. Witness HV placed the attack on 8 April 1994 and described the assailants primarily as civilians armed with traditional weapons, supported by two soldiers. Witness XBM stated that the main assault occurred on 9 April and involved a bus full of soldiers and other civilian attackers, armed with firearms. Witness XBG described an attack at the university by soldiers and militiamen, armed with firearms, followed immediately by an attack at the Busasamana Parish at the end of May 1994. The Prosecution submits that the attack at the university described by Witness XBG occurred around 8 April 1994 and corroborates Witness HV's testimony.[1369] However, the detailed chronologies provided by each witness for the events as well as their descriptions of how the attack unfolded do not permit them to be easily reconciled.

1235. In assessing Nsengiyumva's responsibility for the attacks the Chamber must first consider which account is credible. In the Chamber's view, Witness HV, a survivor of the attack at Mudende University, provided the most reasonable version of what transpired. Although her testimony is not without problems, it is corroborated to varying degrees by several Defence witnesses who equally refer to an attack launched at the university primarily by civilian assailants on the morning of 8 April 1994. In addition, it also follows from this evidence that no significant violence occurred on 9 April, when the university was evacuated by gendarmes that evening.

1236. Bearing in mind the evidence supporting the sequence of events described by Witness HV, the Chamber finds it difficult to accept Witness XBM's version, placing the major attack one day later on the afternoon of 9 April. Witness XBM gave a comprehensive day by day account of his daily visits to the university from 7 until 10 April, which precludes the possibility that he was simply mistaken about the date of the attack. In addition, his description of the assailants as a busload of armed soldiers who attacked with guns and grenades radically differs from the account of Witness HV who only saw two soldiers playing a more supporting role. While her evidence reflects that she was not in a position to follow closely every aspect of the attack, the Chamber finds it difficult to believe that the presence of a busload of armed soldiers killing refugees with firearms would have escaped her notice. Witness XBM is also alone in describing the evacuation of Hutu students and placing Nsengiyumva at the campus before the attack.

1237. Witness XBM pleaded guilty to genocide before the Rwandan judicial authorities for failing to react when he witnessed the killing of a single individual on 8 April 1994.[1370] In his

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[1369] Prosecution Closing Brief, para. 134.

[1370] Witness XBM described his involvement in the genocide as follows: "I killed no one, I played no role, I just went to the scene where the massacres were carried out, to see, just to see." With respect to his guilty plea, he explained: "I witnessed the killing of someone, I did not react." *See* T. 14 July 2003 pp. 5-6; Prosecution Exhibit

statement to Rwandan officials in January 2003, he did not mention his purported presence during the repeated attacks at the university in Mudende. The witness explained that he was not asked about the attack.[1371] It may be the case that he was not questioned about whether he participated in the attack on Mudende university. The Chamber finds it difficult to accept, however, that the Rwandan officials did not ask him whether he was involved in any other criminal conduct during the relevant period. It is also troubling that several days later, he gave a much fuller account of his criminal activities, including the attack on the university, to Tribunal investigators in a statement of 28 February 2003, which was the day he was released from prison.[1372]

1238. The witness was asked to explain why he repeatedly walked the five kilometres to Mudende armed with a traditional weapon to watch a massacre as an innocent bystander. He replied that he was armed because "[it] was my right, an absolute right to carry a stick, and I did not do anything with it".[1373] In justifying why he innocently returned a second day to watch local civilians loot and kill survivors, he stated: "I told you that it was my absolute right. I don't see why you should be dwelling on that."[1374] Ultimately, the witness explained that he repeatedly went to Mudende because he had nothing better to do.[1375] The Chamber is not convinced that the witness was forthcoming about his own role in the attack, in particular given that his presence at the university followed a meeting where prominent leaders in the community, including the witness, were urged to kill Tutsis. In the Chamber's view, the witness's responses as well as others throughout his cross-examination appeared evasive and unpersuasive.[1376]

1239. Finally, the Chamber notes the discrepancy between Witness XBM's testimony that he was a member of the CDR party, and his statement to Tribunal investigators in February 2003, indicating that he was a local official of the MDR party.[1377] This discrepancy is significant because, throughout his testimony, the witness extensively discussed CDR party activities. It was also the main reason why he attended the meeting on 7 April at the Mutura commune office where CDR and other party officials allegedly told the select participants to exterminate Tutsis in the area.

1240. When this discrepancy was put to him, the witness explained that he unwillingly joined the CDR party in 1992 to ensure his personal security, but remained a clandestine member of the MDR party. He also said that the investigators did not ask him whether he was a member of the CDR party. It is evident, however, that the investigators asked him about his political affiliation. Given the significance of his party membership to his testimony, the

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81 (Guilty Plea of Witness XBM, dated 20 January 2003). The witness was released from prison on 28 January 2003, approximately six months before his testimony. *See* T. 14 July 2003 p. 5. He gave his first statement to Tribunal investigators in February 2003. Bagosora Defence Exhibit 26 (statement of 28 February 2003).

[1371] T. 14 July 2003 pp. 70-72.

[1372] Bagosora Defence Exhibit 26 (statement of 28 February 2003).

[1373] T. 14 July 2003 p. 66. Witness XBM later stated that the authorities required all members of the population to carry a weapon. *Id.* p. 69.

[1374] *Id.* p. 67.

[1375] *Id.* p. 69 ("Q. ... why go to the university day after day, massacres are being committed but you are just standing there, watching; why? A. Mr. President, I thank you. I went there but many people also went there on the 7th, 8th and 9th because trading had been banned and there was no activity in the school, so all people did was to go around and that's what I did too. That was the situation prevailing in the country.").

[1376] *See, e.g., id.* p. 75 (comment by the presiding judge to Witness XBM).

[1377] *Id.* pp. 54-59; Bagosora Defence Exhibit 26 (statement of 28 February 2003).

Chamber finds it surprising that the witness failed to mention this important fact, if true, in his statement. This discrepancy raises further concerns about his credibility. In light of the foregoing, the Chamber declines to accept Witness XBM's evidence without adequate corroboration.

1241. In the Chamber's view, Witness XBG does not provide such corroboration.[1378] The Prosecution argues that his account of the attack at Mudende University at the end of May 1994 in fact occurred around 8 April and supports Witness HV's version of events.[1379] The Chamber notes, however, that Witness XBG repeatedly insisted that the attack which he described occurred at the end of May.[1380]

1242. Assuming that Witness XBG was referring to the attack of 8 April, differences remain between his account and that of Witness HV. In particular, the military presence Witness XBG described is significantly larger than that discussed by Witness HV. Moreover, Witness XBG primarily implicates the gendarmes in actively supporting the killings by militiamen whereas Witness HV's evidence suggests that they protected the students and refugees.

1243. Other aspects of Witness XBG's testimony raise concern about his general credibility. The witness pleaded guilty in Rwanda to participating in the murder of four individuals on 7 April 1994.[1381] He was released from prison two months before his testimony in this case.[1382] In his confession, the witness acknowledged "the importance of pleading guilty without hiding anything".[1383] In spite of stating that his confession was exhaustive, he did not mention his prominent role in supervising 100 *Interahamwe* in the attacks at the university in Mudende and at the Busasamana Parish. The witness explained that he would have been sentenced to death if he had spoken about these events.[1384] The Chamber is fully aware that witnesses pleading guilty to Rwandan authorities may wish to minimise their own involvement during the events in 1994. However, this discrepancy and Witness XBG's willingness to be less than forthcoming with judicial officials raise concerns about his credibility.[1385]

[1378] The Chamber notes that Witness XBG testified about two massacres at Mudende Univeristy, one in April and one in May. The witness was not an eyewitness to the large scale attack in early April. This evidence came from an unidentified second-hand source. It also lacks any significant detail, in particular with respect to the identity of the perpetrators and as to how the attack unfolded. This hearsay testimony therefore would not corroborate Witness XBM's account.

[1379] Prosecution Closing Brief, para. 134. While the Prosecution submits that Witness XBG's evidence about the attack on Mudende University supports Witness HV's version of the events on 8 April, it nonetheless places the attack on Busasamana Parish in May 1994. *Id.* para. 135. According to Witness XBG's testimony, this followed immediately after the attack on the university. In another part of its brief, the Prosecution places the massacre at the university in Mudende described by Witness XBG in May 1994. *Id.* para. 1043.

[1380] T. 9 July 2003 pp. 20, 25-26, 29, 66, 68-69, 73-74.

[1381] The witness gave three statements acknowledging responsibility to Rwandan judicial officials. *See* Prosecution Exhibit 71 (Letter from Witness XBG to the Rwandan Public Prosecutor); Prosecution Exhibit 72 (*Pro Justitia* statement of 10 March 1999 by Witness XBG); Prosecution Exhibit 73 (*Pro Justitia* statement 26 May 2000 by Witness XBG). His Rwandan judgment was admitted as Prosecution Exhibit 74 (Rwandan trial judgment of Witness XBG, dated 26 October 2001).

[1382] Witness XBG, who testified on 8 and 9 July 2003, was released on 5 May 2003. T. 8 July 2003 p. 8.

[1383] T. 8 July 2003 pp. 86-87. *See also* Prosecution Exhibit 72 (*Pro Justitia* statement of 10 March 1999 by Witness XBG). Witness XBG emphasised that he believed in this proposition "with all [his] heart".

[1384] T. 8 July 2003 p. 87 ("If I had talked about those events I would have gotten a death sentence").

[1385] In addition, the Chamber observes that the Rwandan court noted that certain aspects of Witness XBG's confession were less than forthcoming. In particular, it concluded that he directly participated in a killing which

1244. The Chamber has also noted that Witness XBG only referred to gendarmes in his statement to Tribunal investigators in August 2002, not to the presence of soldiers during the attack at Mudende University.[1386] The witness stated that, when questioned by investigators, he referred to gendarmes because "gendarmes too are soldiers". He added: "The fact that I did not mention that there were soldiers there is not a problem. Whether the soldiers came or not, that would not have prevented the massacres of people."[1387] In the Chamber's view, the witness's response does not clarify his failure to mention the presence of Rwandan army soldiers, who were allegedly supervising the attack. This is a significant omission in relation to the criminal responsibility of Nsengiyumva. The witness's explanation raises further questions about the reliability of his account and his ability to accurately distinguish between various military units. For the foregoing reasons, the Chamber is unwilling to accept Witness XBG's evidence concerning the attacks at Mudende University and Busasamana Parish without corroboration.[1388]

1245. The Defence evidence is second-hand and far from definitive. The Chamber's concerns with Witnesses XBM and XBG's testimony rest first and foremost on the reasons explained above. Nevertheless, the evidence of Witnesses BZ-1, HOP-1 and YD-1 about the prominent roles played by Witnesses XBM and XBG in the attack supports the Chamber's concerns about the credibility of their accounts. In view of the Chamber's findings on the credibility of Witnesses XBM and XBG, the Chamber does not need to discuss here whether Nsengiyumva had an alibi on 8 and 9 April, as attested to by Nsengiyumva and Uwase.

1246. The Chamber finds it established that, on 7 April 1994, several hundred Tutsi refugees arrived at Mudende University. This follows from the testimony of Witness HV as corroborated in varying degrees by Witnesses LT-1, WY and MAR-1. The Chamber is not convinced on the basis of Witness HV's evidence alone that five soldiers came to the university that evening and blamed the Tutsis for killing President Habyarimana. The witness did not mention the presence of soldiers to Tribunal investigators and instead referred in her statement only to gendarmes coming to the campus.[1389] Otherwise in her statements and during her testimony she had no problems in distinguishing between these two groups.[1390]

1247. Based on the evidence of Witness HV, as corroborated by Witnesses WY and MAR-1, the Chamber finds that Edmond Nzamrambaho, the son of Frédéric Nzamrambaho, was

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he only claimed to have observed. *See* Prosecution Exhibit 74 (Rwandan trial judgment of XBG, dated 26 October 2001)("*Constate que* [Witness XBG] *a fait recours à la procédure d'aveu de plaidoyer de culpabilité, que néanmoins ses aveux ont été rejetés car il n'a pas bien explicité sa déclaration relative à la mort de [...], là où il affirme qu'il a seulement participé à son enterrement alors qu'on l'accuse de l'avoir sortie de la maison et participé à son assassinat.*").

[1386] Nsengiyumva Defence Exhibit **32** (statement of 29 August 2002).

[1387] T. 9 July 2003 p. 23.

[1388] There is also other hearsay evidence from Witness XBM who heard while in prison that there was another attack at the university at the end of May. This is not sufficient to credibly corroborate Witness XBG's account.

[1389] T. 24 September 2004 pp. 6-7, 23, 26; Nsengiyumva Defence Exhibit 60 (statement of 28 November 1995). Witness HV explained this discrepancy by noting that she was still traumatised when she gave her statement and acknowledged difficulty in remember the events. In view of this omission in her statement, coupled with her explanation, the Chamber has some doubt about her reliability on this point and is hesitant to accept the witness's account of the soldiers' visit without corroboration.

[1390] T. 23 September 2004 p. 35 ("**Q.** During your testimony, Madam Witness, you have spoken about soldiers and you have spoken about gendarmes. How did you distinguish between those two groups? A. We had known them before. Soldiers had their own uniform, the camouflage, while the gendarmes had khaki colour uniform. Their berets were also of different colours. The gendarmes wore red berets.").

killed at some point around 7 April. The exact time of the killing and the identity of the perpetrators is unclear since the three accounts of his death are second-hand and vary in these respects.

1248. Turning to the attack of 8 April, the Chamber relies primarily on Witness HV. It follows from her evidence that in the morning militiamen supported by at least two soldiers attacked and killed the Tutsi refugees at the university. Witnesses LK-2, LT-1, WY, MAR-1 as well as Biot corroborate to varying degrees an attack that morning primarily by militiamen. Witness HV is alone in placing soldiers at the scene. However, the Chamber finds this testimony credible and reliable, notwithstanding the traumatic nature of the events, since she was in a position to follow the attack for a brief period from her dormitory, heard gunfire, and was later personally questioned by a soldier during the separation of Hutu and Tutsi students.

1249. According to Witness HV's testimony, the soldiers played a supporting role by firing at the doors of classrooms, allowing the militiamen to kill refugees hiding inside. During the attack, the assailants separated Hutu and Tutsi students, and some of the Tutsis were killed. During a lull in the attack, after the separation, many of the students, including Witnesses HV and WY, were able to seek safety in the university's dining hall, where they were later protected by gendarmes. In the evening, the gendarmes turned back masked assailants, who were carrying lists and searching the survivors' identity documents. The Chamber is not entirely convinced that these assailants were soldiers, as opposed to militiamen, given the assailants' use of masks. Witness LT-1's testimony that the assailants were civilians raises some additional doubt. The gendarmes evacuated the remaining students and refugees on the evening of 9 April.

1250. The accounts of Witnesses LK-2, LT-1, WY and MAR-1 suggest that the attack was smaller in scale than reported by Witness HV. However, in the Chamber's view, Witness HV's version of the events suggesting a larger attack is supported by the contemporaneous report received by Major Biot on the morning of 8 April that 500 refugees had just been killed at the university.[1391]

1251. The Chamber finds beyond reasonable doubt that militiamen supported by at least two Rwandan army soldiers participated in an attack at the Central African Adventist University in Mudende on the morning of 8 April 1994. There is no clear evidence that Nsengiyumva was present at the scene of the attack.

1252. Turning to Nsengiyumva's responsibility, the Chamber has found that, as the Gisenyi operational commander, he had authority over soldiers in that operational sector (IV.1.5). The Chamber also recalls its findings that under certain circumstances, Nsengiyumva could have *de facto* authority over civilian militiamen (III.2.6.2). Witness HV's evidence shows clear coordination between the soldier and the civilian attackers. This is demonstrated in particular by soldiers firing at the doors of classrooms to gain access so that militiamen could kill refugees inside. The Chamber is also satisfied that Nsengiyumva had authority over the soldiers and civilian assailants. The attack occurred in the Gisenyi operational sector, and its tactical tempo, which targeted a major educational institution in the area, reflects that it was a planned military operation (IV.1.5). The speed with which this attack occurred – two days

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[1391] In view of the evidence that an attack in fact occurred, the Chamber places no weight on Major Biot's speculation that the university official was only recounting rumours of killings.

after President Habyarimana's death – and the fact that it followed a pattern consistent with other attacks taking place in the prefecture, leads to the only reasonable conclusion that the attacks were ordered by the highest operational authority in the prefecture, Nsengiyumva.

1253. Bagosora has also been charged in relation to these killings. The Chamber does not accept his argument that these allegations do not relate to him. The Prosecution's Pre-Trial Brief lists Witness HV as supporting the relevant paragraphs of his Indictment related to Gisenyi.[1392] Bagosora exercised the highest authority in the military on 8 April (IV.1.2). Nsengiyumva as the operational commander of Gisenyi was therefore under his command. Furthermore, when this event is considered together with other parallel killings in Gisenyi prefecture as well as in Kigali, the only reasonable inference is that these military operations were ordered or authorised by Bagosora.

(ii) Busasamana Parish

1254. There is no dispute that Tutsi refugees were killed at Busasamana Parish. The Prosecution relies only on Witness XBG. He is the sole witness to place the massacre at the end of May and to implicate Nsengiyumva in the killings. As discussed above, the Chamber has concerns with the reliability of his testimony concerning the related attack at Mudende University. The Chamber therefore declines to accept his testimony about Busasamana Parish in the absence of corroboration. Furthermore, there are differences between his testimony about the attack and the evidence of Witnesses YD-1, EAC-1 and KB-1, who indicate that the attack occurred on 8 April and involved only *Interahamwe*, not Nsengiyumva or his soldiers. These differences raise additional concerns about the reliability of Witness XBG's uncorroborated testimony.

(iii) Notice

1255. The Defence submits that it was not reasonably informed of the material facts concerning Nsengiyumva's role in the Mudende University attack.[1393] Given the contradictory nature of the evidence of Witnesses XBM, XBG and HV as to when the attack at the university occurred, it was impossible to prepare Nsengiyumva's defence.[1394]

1256. In considering these challenges during the course of the trial, the Chamber concluded that the Prosecution's motion to add Witnesses XBM and XBG as well as the summary of Witness HV's testimony annexed to the Pre-Trial Brief cured the Indictment's failure to specifically plead this attack.[1395] This material provided the Defence with the following approximate dates for when the attack occurred: 7-10 April (XBM), 8 April (HV) and May (XBG).[1396] In the Chamber's view, this adequately informed Nsengiyumva of when the

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[1392] Prosecution Pre-Trial Brief (7 June 2002), p. 8.

[1393] In view of its findings on Busasamana Parish, the Chamber does not need to consider the challenges to this incident.

[1394] Nsengiyumva Defence Brief, para. 52(a).

[1395] Decision on Nsengiyumva Motion for Exclusion of Evidence outside the Scope of the Indictment (TC), 15 September 2006, paras. 14, 50.

[1396] In this respect, the Prosecution's motion to add Witnesses XBM and XBG reflected that Witness XBM would implicate Nsengiyumva in a massacre at the university between 7 and 10 April 1994, and that Witness XBG would implicate Nsengiyumva in a massacre there in May. Confidential Prosecutor's Motion for Leave to Vary the Witness List, 13 June 2003, paras. 7, 9. Furthermore, the summary of Witness HV's testimony annexed to the Pre-Trial Brief places the attack on 8 April. *See* Prosecution Pre-Trial Brief (21 January 2002), Annex, p. 87.

incidents at the university occurred in order to prepare a defence. The difference between these three testimonies does not go to notice, but credibility.

1257. The Defence further argues that the summary of Witness HV's testimony in the Pre-Trial Brief does not indicate that her evidence supports any allegation against Nsengiyumva.[1397] The Prosecution Pre-Trial Brief, filed on 21 January 2002, reflected that Witness HV's anticipated testimony is listed as relevant to Bagosora, Ntabakuze and Kabiligi, but not Nsengiyumva.[1398] In May 2002, the Chamber ordered the Prosecution to file a revision to the Pre-Trial Brief clearly indicating the specific allegation in each Indictment that a given witness's testimony would support.[1399] The revision to the Pre-Trial Brief, filed on 7 June 2002, clearly listed Witness HV as supporting relevant paragraphs of the Nsengiyumva and Bagosora Indictments.[1400] In view of the revision, which the Nsengiyumva Defence did not challenge, the Chamber is satisfied that Nsengiyumva was aware that the allegations contained in the summary of Witness HV's anticipated testimony annexed to the Pre-Trial Brief were relevant to his Indictment. This notice was provided more than two years before Witness HV appeared to testify.

3.6.8 Umuganda Stadium Meetings, April - June

Introduction

1258. The Nsengiyumva Indictment alleges that, between April and June 1994, Nsengiyumva engaged in direct and public incitement to commit genocide while chairing meetings at Umuganda Stadium in Gisenyi prefecture with several hundred militiamen present. Reference is made to Witnesses ZF, DO, XBH and Isaïe Sagahutu.[1401]

1259. The Nsengiyumva Defence submits that the Prosecution did not adduce any evidence in support of the allegation, which is contradicted by Defence evidence. It refers to Witnesses Alphonsine Rugwizangoga Uwase CF-1, LIG-2, LS-1, RO-5, BX-3, LN-1 and TN-1.[1402]

[1397] Nsengiyumva Defence Brief, para. 52(a).

[1398] *See* Prosecution Pre-Trial Brief (21 January 2002), Annex, p. 87. In the annex, there is a list of each Accused next to the summaries of anticipated testimony. An "x" is placed in a box next to the Accused's name if he is implicated by the allegation. There is no "x" next to Nsengiyumva's name.

[1399] Decision on Defence Motions of Nsengiyumva, Kabiligi, and Ntabakuze Challenging the Prosecutor's Pre-Trial Brief and on the Prosecutor's Counter Motion (TC), 23 May 2002, para. 13.

[1400] Prosecution Pre-Trial Brief (7 June 2002), p. 17. The revision of the Pre-Trial Brief must be read in conjunction with the initial filing because the revision is simply a list of which witnesses support a given allegation in the Indictments. *See* Decision on Motion by Aloys Ntabakuze's Defence for Execution of the Trial Chamber's Decision of 23 May 2002 on the Prosecutor's Pre-Trial Brief, Dated 21 January 2002, and Another Motion on a Related Matter (TC), 20 November 2002, paras. 5, 11, 12.

[1401] Nsengiyumva Indictment, para. 6.30; Prosecution Closing Brief, paras. 76, 81, 90-94, 96, 470, 491, 1652, p. 891; T. 28 May 2007 p. 16. On p. 891 of the Prosecution Closing Brief, only Witnesses ZF and DO are mentioned in relation to para. 6.30 of the Indictment. However, Witnesses XBH and Sagahutu are included in paras. 94 and 470 and appear to be relavant.

[1402] Nsengiyumva Closing Brief, paras. 539-550, 600, 610-613, 645-647, 1337, 1359-1360, 1385-1387, 1920, 1949-1950, 2011, 2213, 2223, 2235-2236, 2264, 2328-2329, 2407, 2464, 2469-2471, 2560, 2568, 3034, 3046, 3148, 3205-3207, 3259; T. 31 May 2007 pp. 53-54; T. 1 June 2007 p. 13.

Evidence 40400

Prosecution Witness ZF

1260. Witness ZF, a Hutu who lived in Gisenyi, testified that, in at some point in 1994, following an attack on Mburabutura in Kigali, militiamen assembled at the Gisenyi stadium and cases of weapons and ammunition were distributed to them. The militiamen were then dispatched to Kigali on ONATRACOM buses to provide reinforcement to the city. The witness heard about this from military officers with whom he worked.[1403]

Prosecution Witness DO

1261. Witness DO, a Hutu driver who lived in Gisenyi prefecture in 1994, mentioned that *Conseiller* Faziri and Nsengiyumva presided over a meeting at Umuganda Stadium. He offered no additional testimony about the date, speakers, attendees, or content of this meeting.[1404]

Prosecution Witness Isaïe Sagahutu

1262. Isaïe Sagahutu, a Tutsi, lived in Nyundo near Gisenyi town where he was a teacher at a high school in 1994. He testified that he heard from his friend, Jean-Baptiste Tuyishime, that so-called "pacification" rallies were held regularly during the genocide. Nsengiyumva and Charles Zilimwabagabo, the new prefect of Gisenyi, regularly convened such meetings after 7 April 1994 as part of a policy of "false pacification" to convince Tutsis in hiding that the killings were over and that they could resume their work. Both officials parlayed the same message on local radio but the killings did not stop.[1405]

Prosecution Witness XBH

1263. Witness XBH, a Hutu, testified that he attended a meeting at Umuganda Stadium around 11.00 a.m. on 8 April 1994. About 300 local Hutus attended. *Conseiller* Faziri of the Gisenyi sector convened the meeting and addressed the crowd first, followed by Lieutenant Bizumuremye. Both called on the youth in attendance to unite against the the Tutsis in order to avenge the death of the President. The witness did not allege that Nsengiyumva was present or spoke at this meeting.[1406]

Nsengiyumva

1264. Nsengiyumva attended five public meetings at Umuganda Stadium between April and mid-June 1994, the first on 9 April. He said that this rally was agreed upon during a prefecture security committee meeting and intended to stop killings of area residents and to restore order. It began around 11.00 a.m. and ended about 2.00 p.m. Many inhabitants of Gisenyi attended the public meeting, and the stadium was almost full. André Banyurwabuke, acting as prefect, convened the meeting and explained to those who were present that if they

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[1403] T. 27 November 2002 p. 13; T. 28 November 2002 pp. 61-62. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.
[1404] T. 30 June 2003 pp. 3-4, 79; T. 1 July 2003 p. 34; Prosecution Exhibit 61 (personal identification sheet).
[1405] T. 27 April 2004 pp. 58-59; T. 28 April 2004 pp. 19-21; Prosecution Exhibit 215 (personal identification sheet). Sagahutu was originally referred to as Witness ON.
[1406] T. 3 July 2003 pp. 31-32, 56-57; T. 7 July 2003 pp. 50-53; Prosecution Exhibit 63 (personal identification sheet). Witness XBH was also referred to as PB-1 during these proceedings.

started killing each other, it would make the RPF's task easier. All speakers conveyed that the killings had to stop. Representatives of six political parties also spoke to the crowd: Banzi Wellars on behalf of the MRND, Barnabé Samvura for the CDR, Jean-Bosco Sibomana of the PSD, and representatives of the MDR, PDC and PL parties. All six addressed their respective party members and youth wings. The representative of the *Impuzamugambi* youth wing did not come. Bernard Munyagishari, representing the *Interahamwe* youth wing of the MRND, also directed them to stop the killings.[1407]

1265. Nsengiyumva attended in his capacity as a member of the prefecture security council. He spoke to the audience for 20-25 minutes, saying that the killings and the settling of old scores should cease. Those present should recognise that their enemies were not their neighbours or an ethnic group, and that calm should be restored. According to Nsengiyumva, killings became more sporadic, and the chaos subsided.[1408]

1266. Nsengiyumva also attended meetings at Umuganda Stadium around 23 April, on 2 May, around 23 May, and in mid-June 1994. They were meant to end killings and lootings. The prefect convened the meeting on 2 May in order to condemn the previous day's killings at Nyundo. During this meeting, which started around 11.00 a.m. and lasted for about two hours, Nsengiyumva publicly warned of killers who lured their victims to the *Commune Rouge*, a local cemetery where people were killed, by tricking them into believing they were going to a commune office. According to Nsengiyumva, no rally took place on 8 April 1994.[1409]

Nsengiyumva Defence Witness Alphonsine Rugwizangoga Uwase

1267. Alphonsine Uwase, a Hutu, worked as a secretary in the Gisenyi prefecture office in April 1994. She testified that the prefecture security council met on 7 April and decided to hold a pacification meeting at Umuganda Stadium two days later. This pacification meeting, for which shops were closed and attendance was said to be compulsory, started at 11.00 a.m. and lasted between two and three hours. Those invited to attend included heads of section, *bourgmestres* from the prefecture, and the general population. Uwase attended this meeting and recalled that the prefect and the *bourgmestre* of Rubavu commune urged the general population to stop looting and remain calm. No speaker incited the population to kill Tutsis. She added that the prefect convened another meeting at Umuganda Stadium in mid-May.[1410]

Nsengiyumva Defence Witness CF-1

1268. Witness CF-1, a Hutu who lived in Gisenyi town, attended a meeting at Umuganda Stadium on 9 April 1994 after learning about it from a megaphone announcement that same day. The prefect convened this meeting and appealed to the population to remain calm despite the killings taking place in Gisenyi town. He also instructed members of the

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[1407] T. 4 October 2006 pp. 31-32, 34-35; T. 5 October 2006 pp. 17-18; T. 6 October 2006 pp. 5-6; T. 9 October 2006 p. 20; T. 11 October 2006 pp. 25, 36, 70-74, 76-77; T. 12 October 2006 p. 11.

[1408] T. 4 October 2006 p. 35; T. 5 October 2006 p. 18; T. 6 October 2006 p. 5; T. 11 October 2006 pp. 25-26, 36, 70-72, 74-75, 77. Nsengiyumva agreed that a communiqué accurately reflected the topics discussed at Umuganda Stadium on 9 April. The communiqué, which he believed was read on Radio Rwanda, characterised the meeting as calling for "tolerance, peace and tranquillity", for the population to "flush out" bandits and "the enemy who can infiltrate", and for the Gisenyi market to open the next Monday. *See* T. 5 October 2006 pp. 58-60; T. 11 October 2006 pp. 73-74; Nsengiyumva Defence Exhibit 217 (Communiqué by the Gisenyi prefecture security committee, dated 10 April 1994).

[1409] T. 9 October 2006 p. 10; T. 11 October 2006 pp. 23, 36-37, 71, 75, 77; T. 13 October 2006 p. 3.

[1410] T. 10 July 2006 pp. 3, 14-20, 25; Nsengiyumva Defence Exhibit 201 (personal identification sheet).

population to schedule night patrols in their neighbourhoods, which the witness credited with helping to restore security. The testimony contained no information that Nsengiyumva was present at this meeting.[1411]

Nsengiyumva Defence Witness LIG-2 40398

1269. Witness LIG-2, a Hutu who lived in Gisenyi Prefecture from 1993 until July 1994, testified about a pacification meeting convened by Charles Zilimwabagabo, the new prefect, at the Umuganda Stadium in mid-April 1994. The witness attended the meeting which started at 10.00 a.m. after learning about it from his *cellule* leader. The stadium was nearly full with persons from all political parties and ethnic groups, a few gendarmes stationed around the stadium, Zilimwabagabo's and Nsengiyumva's bodyguard detail, and the communal police. Marc Mpozembizi, the *bourgmestre* of Rubavu commune, and Commander Biganiro, the head of the gendarmerie in Gisenyi, also attended the meeting.[1412]

1270. Mpozembizi was the first of four speakers. He stated that Gisenyi had become chaotic before promptly introducing the next speaker, Zilimwabagabo, who explained that the meeting had been organised to pacify the entire region because of looting, murders, extortion and banditry. He urged the crowd to go about their daily business in peace and assured them that the gendarmerie would take measures to re-establish peace. Biganiro spoke third, stressing the message of peace and announcing a 9.00 p.m. curfew that had been agreed upon by Nsengiyumva, Zilimwabagabo and all *bourgmestres* in Gisenyi. Nightly gendarmerie patrols would be instituted and the court and prison systems would deal with those involved in criminal activities. He asked everyone to return to their daily routines.[1413]

1271. Nsengiyumva, dressed in a camouflage uniform, then took the floor for about 15 minutes. He offered updates about the military situation in other prefectures, instructed the inhabitants to make peace with their neighbours and to avoid looting and murdering. Their enemy was not an ethnic group but those who had been waging war since 1990. Nsengiyumva concluded by wishing the inhabitants a successful resumption of their daily business.[1414]

1272. Witness LIG-2 testified that the civilian extremists at the meeting were not pleased with the speakers' message. During Nsengiyumva's speech, the witness heard them describe Nsengiyumva as an RPF agent whose house should be destroyed to oust the refugees hosted there. Zilimwabagabo was also the subject of attack since he belonged to an opposition party, the PL.[1415]

Nsengiyumva Defence Witness LS-1

1273. Witness LS-1, a Hutu, arrived in Gisenyi prefecture on 10 April 1994 to continue his work with the national government. He attended a mid-April meeting at Umuganda Stadium. Members of the population, invited by prefect Zilimwabagabo and their *conseillers*, filled the stadium. Many officials were present at the meeting, including Zilimwabagabo, Mpozembizi, the *bourgmestres* of neighbouring communes, Commander Biganiro of the gendarmerie,

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[1411] T. 29 November 2005 pp. 3, 29, 35-36; Nsengiyumva Defence Exhibit 125 (personal identification sheet).
[1412] T. 2 May 2005 pp. 14-17, 26-29, 51, 53; Nsengiyumva Defence Exhibit 75 (personal identification sheet).
[1413] T. 2 May 2005 pp. 28-30, 51, 59.
[1414] *Id.* pp. 30-31, 51-52, 59. Witness LIG-2 did not hear, throughout the month of May, an announcement for another pacification meeting. *Id.* p. 55.
[1415] *Id.* pp. 31-32, 52.

Nsengiyumva, and the president of the MRND party in Gisenyi, Banzi Wellars. The CDR party president, Barnabé Samvura, may have been present but did not speak.[1416]

1274. Mpozembizi addressed the crowd first and was followed, in an order that Witness LS-1 could not recall, by Zilimwabagabo, Biganiro, Wellars and Nsengiyumva. Nsengiyumva's speech was similar to the other interventions, asking the population not to be afraid and to remain calm since there was still a government in place. The speakers identified the enemy as the RPF and told the population not to kill Tutsis because of their ethnicity. After this meeting, killings continued but with less "intensity".[1417]

1275. Witness LS-1 also attended a meeting in May 1994 where Nsengiyumva spoke. The witness believed that Zilimwabagabo, as prefect, had convened this meeting. The focus was on welcoming the influx of refugees and on keeping Gisenyi town clean. The witness did not mention where the meeting took place or what Nsengiyumva said. He also heard about, but did not attend, other meetings in June and July.[1418]

Nsengiyumva Defence Witness RO-5

1276. Witness RO-5 was a Hutu student who fled Kigali and lived in Gisenyi prefecture between the end of April and July 1994. Near the end of April or early May, he attended a public rally at Umuganda Stadium that was meant to restore security in Gisenyi town. Speakers included Prefect Zilimwabagabo, Nsengiyumva, a number of *conseillers*, and the Minister of Planning, Ngirabatware. Nsengiyumva described the situation at the war front before discussing the deteriorating security situation in Gisenyi. He castigated those involved in banditry and killings, identifying two groups led by Serushago and Thomas, respectively, as well as people such as Kiguru and Sinyora.[1419]

Nsengiyumva Defence Witness BX-3

1277. Witness BX-3, a Hutu who lived in Gisenyi town, attended a public meeting at Umuganda Stadium in early or mid-May 1994. The prefect of Gisenyi convened the meeting in order to discuss security issues with the population. The *bourgmestre* gave an introductory address and then invited the prefect to speak. Afterwards, Nsengiyumva informed the crowd that the job of ensuring security within the prefecture fell upon the security forces. He warned those involved with killings that if they were caught, they would be dealt with severely. No speaker at the meeting incited members of the population to commit acts of violence.[1420]

Nsengiyumva Defence Witness LN-1

1278. Witness LN-1, a Hutu, was a student in Gisenyi town. He was told about a pacification meeting at Umuganda Stadium near the end of May 1994 where both the prefect and Nsengiyumva spoke. He learned about it when Omar Serushago, Michel Kidumu and their friends, who allegedly had committed some crimes in Gisenyi, expressed their anger that the military commander had spoken about them at the public meeting.[1421]

[1416] T. 13 July 2005 pp. 35, 39; T. 14 July 2005 pp. 12-14, 36-39; T. 15 July 2005 p. 4; Nsengiyumva Defence Exhibit 88 (personal identification sheet).
[1417] T. 14 July 2005 pp.12-14, 37, 46.
[1418] *Id.* pp. 15, 39, 45-46; T. 15 July 2005 p. 4.
[1419] T. 10 February 2006 pp. 4, 7, 9-10; Nsengiyumva Defence Exhibit 132 (personal identification sheet). The Prosecution did not cross-examine the witness.
[1420] T. 5 June 2006 pp. 4, 11-12; Nsengiyumva Defence Exhibit 181 (personal identification sheet).
[1421] T. 7 July 2006 pp. 5-7, 14; Nsengiyumva Defence Exhibit 200 (personal identification sheet).

Nsengiyumva Defence Witness TN-1

1279. Witness TN-1, a Hutu, moved to Gisenyi town in late May 1994 and attended a meeting at Umuganda Stadium around 15 June. Zilimwabagabo convened the meeting which was in the early afternoon and lasted for about two hours. About 10,000 people attended, and the stadium was full. Zilimwabagabo instructed everyone to respect the law. Nsengiyumva tried to calm the population by ensuring them that Gisenyi was protected by numerous battalions. He also asked the gendarmerie to provide additional security and directed the groups of youths engaged in looting and killing to stop these activities. When Nsengiyumva told the crowd that the Tutsis were not synonymous with the RPF, members of the population booed him and called him an accomplice. According to the witness, Nsengiyumva did not incite the population against the Tutsis at the meeting.[1422]

Deliberations

1280. There is no dispute that Nsengiyumva spoke at numerous meetings at Umuganda Stadium from April to June 1994. However, according to paragraph 6.30 of the Indictment, he "chaired" meetings there and "incited and encouraged" the population to continue massacring Tutsis. The Defence submits that there is no evidence to this effect.

1281. Nsengiyumva testified that he attended five meetings at Umuganda Stadium: on 9 April, 23 April, 2 May, around 23 May, and in mid-June. The first three meetings fall under the first time reference in the Indictment, the fifth meeting under the second. The Chamber observes that there is no evidence that Nsengiyumva chaired any of these meeting, and none of the four Prosecution witnesses heard him actually incite the population at Umuganda Stadium.

1282. Witness ZF did not testify about meetings there but gave hearsay evidence about the distribution of weapons at Gisenyi stadium. Those parts of his evidence contained no explicit reference to Nsengiyumva. According to Witness DO, Nsengiyumva was present during a meeting at Umuganda Stadium. However, he was not questioned about the date, speakers, or content of the speeches. Witness XBH testified about a meeting at the stadium on 8 April, but did not claim to have seen or heard Nsengiyumva there.

1283. The Defence offered eight witnesses who corroborated Nsengiyumva's testimony that he delivered peaceful messages at these meetings. Alphonsine Rugwizangoga Uwase and Witness CF-1 referred to a rally on 9 April at Umuganda Stadium. Witnesses LIG-2 and LS-1 agreed that Nsengiyumva's mid-April message was peaceful, whereas Witnesses RO-5, BX-3, LN-1 and TN-1 offered similar evidence about meetings between late April and mid-June. The Prosecution alleges that the purpose of the meetings was to create a sense of security which under the guise of false pacification was intended to lure out Tutsis that had gone into hiding. It refers, in particular, to Witness Sagahutu who described Nsengiyumva's false pacification activities conducted with Prefect Zilimwabagabo.[1423]

1284. The Chamber recalls that Sagahutu's evidence was indirect. He did not hear any of Nsengiyumva's speeches himself but was told by a friend that they formed part of false pacification messages. There is evidence in the case that the killings continued in spite of the

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[1422] T. 2 March 2006 pp. 58, 63, 66-68, 76-77; Nsengiyumva Defence Exhibit 147 (personal identification sheet).
[1423] Prosecution Closing Brief, in particular paras. 93, 94, 96.

meetings at Umuganda Stadium but no indication that people were killed after being lured out by speeches given there. Consequently, the Prosecution has not shown that Nsengiyumva "incited and encouraged" killings during these meetings.

1285. This said, the Chamber is not convinced that the Defence witnesses provided the full picture of what happened during the meetings at Umuganda Stadium. There are certain contradictions between their testimonies about the participants at the meetings and their speeches, and some witnesses gave indications of bias.[1424] The Chamber accepts the Prosecution submission that it was part of the tactics in 1994 to preach peace in order to lure persons out of hiding and then kill them. The aim was to conceal the violence from the international community or to keep the killings within the proper channels. There were also examples of double language, where formal or public orders to stop killings were not enforced whereas the real message was that they should continue.[1425] In this context, the Chamber has noted the text of the communiqué issued by the Gisenyi prefecture security committee, which, according to Nsengiyumva, correctly reflected what transpired at Umuganda Stadium on 9 April. It contains not only the conclusion that the entire population should live in "tolerance, peace and tranquillity" without disturbing other persons' lives, but also a statement to the effect that the population should "flush out the enemy who can infiltrate [the population], especially now that the *Inkontanyi* have resumed hostilities". One possible interpretation of these two formulations is that they convey a double message: both to stop and continue the killings. However, as the Chamber does not have sufficient reliable evidence about the various meetings, it is precluded from entering a finding.

[1424] For instance, Witness TN-1 denied ever hearing of killings that took place in Gisenyi town. T. 2 March 2006 pp. 77-78.
[1425] Des Forges, T. 18 September 2002 pp. 82-84, 118; Prosecution Exhibit 2A (Expert Report by Alison Des Forges), pp. 2, 55.

3.7 Formation of Interim Government

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Introduction

1286. The Bagosora Indictment alleges that Bagosora and the leaders of the MRND put in place an interim government which would "aid and abet the continuation of the massacres". According to the Prosecution, Bagosora met with the MRND executive committee around 7.00 a.m. on 7 April 1994 to appoint a new President and arranged a meeting of political officials on 8 April to form a new government. Bagosora allegedly introduced the members of the new government, almost all members of the "Power" wings of their parties, to the military Crisis Committee. Jean Kambanda was appointed Prime Minister of the interim government, which was officially sworn in on 9 April 1994. Reference is made primarily to Expert Witnesses Alison Des Forges and Filip Reyntjens as well as Witnesses Roméo Dallaire and XXQ.[1426]

1287. The Bagosora Indictment further alleges that "numerous Cabinet members" of the interim government then supported the existing plan of extermination and took the necessary steps to execute it, such as inciting the local population, distributing weapons, and dismissing local officials opposed to the killings. In support of these allegations, the Prosecution refers primarily to Des Forges as well as Witnesses Brent Beardsley, A and BY.[1427]

1288. The Bagosora Defence does not dispute that Bagosora met with political officials to discuss the selection of a new President and the formation of an interim government. However, the Prosecution did not present any evidence concerning the content of the discussions during those meetings. It submits that Bagosora's role was logistical and limited to conveying messages from Special Representative Booh-Booh and the military Crisis Committee related to the importance of filling the existing institutional void. The purpose of the interim government was limited to restoring security, negotiating with the RPF, and alleviating famine. The Defence points primarily to Mathieu Ngirumpatse, Joseph Nzirorera and Jean Kambanda.[1428]

[1426] Bagosora Indictment, paras. 6.11-6.16; Prosecution Closing Brief, pp. 749-752. The Kabiligi and Ntabakuze Indictment and the Nsengiyumva Indictment refer to the establishment of the Interim Government only as historical context. *See* Kabiligi and Ntabakuze Indictment, paras. 1.25 and 1.28; Nsengiyumva Indictment, paras. 1.25 and 1.28.

[1427] Bagosora Indictment, para. 6.16; Prosecution Closing Brief, paras. 252, 261, 268, pp. 752-753. The Prosecution also refers to the evidence of Witness AAA, a local official in Kigali, and Omar Serushago, an *Interahamwe* leader in Gisenyi (p. 752). However, Witness AAA's evidence focuses on activities at the local government level and does not address the allegation in paragraph 6.16 concerning the activities of cabinet ministers. *See* T. 14 June 2004 pp. 12-14, 17-21, 54-56, 66-70; T. 15 June 2004 pp. 37-45. Serushago heard from his chief, Bernard Munyagishari about a meeting at the MRND headquarters at the Gisenyi prefecture office in June 1994 where President Sindikubwabo, Nzirorera and Nsengiyumva promised weapons to kill Tutsi remaining in the area. *See* T. 19 June 2003 pp. 47-48. This evidence is hearsay.

[1428] Bagosora Closing Brief, paras. 991-997, 1127-1145, pp. 366-368. The Defence also points to the testimony of Édouard Karemera, the former first vice-president of the MRND (para. 992), but he did not testify about the formation of the interim government.

Evidence

Prosecution Expert Witness Alison Des Forges

1289. According to Alison Des Forges, an expert in Rwandan history, Bagosora and his supporters tried to take over power in the days immediately following the death of President Habyarimana. It was only after failing to take over the country that Bagosora reluctantly agreed to the creation of a new civilian government. Bagosora assumed control of the process in order to establish a Hutu Power government. In addition to directing military affairs, he facilitated the meetings of the politicians and afterwards presented a slate of candidates for ministerial posts, agreed upon by the politicians, to the senior military leadership. Though they may not have necessarily dissented publicly, some of the military leaders later disclosed that they were disappointed with the composition of the government and that it was not what they had envisaged when they sought to put one in place.[1429]

1290. Des Forges noted that in Gitarama and Butare prefectures as well as in some other areas there was limited violence until the beginning of the weekend of 16 April 1994. The interim government replaced the prefects of Gitarama and Butare prefecture, who were seen as resisting the killings, and changed the army chief of staff from Marcel Gatsinzi to Augustin Bizimungu, who was then promoted to general. On 19 April, President Sindikubwabo made an "extremely threatening speech" in Butare prefecture which was followed by similar speeches from Prime Minister Kambanda. In the following days, the massacres began in Butare.[1430]

Prosecution Expert Witness Filip Reyntjens

1291. Filip Reyntjens, an expert in Rwandan history, testified that at 7.00 a.m. on 7 April 1994, Bagosora met with members of the MRND leadership, including Mathieu Ngirumpatse, at the Ministry of Defence to discuss appointing a new president. Around 9.00 a.m. on 8 April, Bagosora summoned to the Ministry of Defence the leaders of the MRND and the power wings of other political parties, which were opposed to the Arusha Peace Accord. He asked them to select a new leader for Rwanda.[1431]

1292. Reyntjens stated that the first working session of the meeting started at 1.00 p.m. By the time the meeting ended around 4.00 p.m., agreement had been reached to establish an interim government composed of representatives of the extremist political parties present at the meeting. Reyntjens observed that the RPF had not been invited to the meeting. In his view, this constituted a violation of the letter and spirit of the Arusha Peace Accords, which called for power sharing between all political parties, including the RPF. He also stated that this was the first time since the period between 1990 and 1993 that all Tutsis were excluded from the government. Around 5.30 p.m. on the same day, Bagosora presented the new

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[1429] T. 10 September 2002 pp. 33-35; T. 18 September 2002 pp. 43-44, 46-53; T. 25 September 2002 pp. 114-118.

[1430] T. 18 September 2002 pp. 114-117.

[1431] T. 15 September 2004 pp. 11-15, 21; T. 16 September 2004 pp. 98-99; T. 17 September 2004 p. 33. Reyntjens has studied the immediate 72-hours that followed the death of President Habyarimana which resulted in his book: *Rwanda: Trois jours qui ont fait basculer l'histoire* (1995), which was entered into evidence as Bagosora Defence Exhibit 9. As part of this, he interviewed over 100 persons, many of whom were high-ranking Rwandan military officers who were privy to the events. His research included questionnaires responded to by Bagosora.

government to the Military Crisis Committee in a meeting held at the ESM. The government was sworn in around 10.00 a.m. on 9 April 1994.[1432]

1293. According to Reyntjens, Bagosora was a "central figure" that played a leading role in the various meetings and events in the days immediately following the downing of President Habyarimana's plane. For example, when he was asked to organise the selection of an interim government, Bagosora only invited extremist Hutu political leaders to the various meetings that culminated in the installation of a new government. It was the Hutu Power government whose selection Bagosora facilitated that subsequently "presided over the genocide".[1433]

Prosecution Witness Roméo Dallaire

1294. General Dallaire, UNAMIR's Force Commander, stated that, around 9.30 a.m. on 8 April 1994, he entered a conference room at the Ministry of Defence looking for Bagosora, briefly interrupting a political meeting attended by representatives of the various political parties. Bagosora was seated at the head of the table where the Minister of Defence would usually sit. Upon Dallaire's entrance, Bagosora immediately walked towards him and ushered him to the door, explaining that this was a meeting convened to build the political body to which he had previously said the military would transfer power. Dallaire did not recognise all the participants, but did not see anyone from the moderate elements of the PL or the MDR.[1434]

Prosecution Witness XXQ

1295. Witness XXQ, a Hutu army officer, heard from Major Kinyoni, the G-2 of the gendarmerie, that the AMASASU put in power President Sindikubwabo, Prime Minister Jean Kambanda and the rest of the interim government. On 8 April 1994, Bagosora organised a meeting at ESM to select the interim government. General Ndindiliyimana proposed Sindikubwabo as President. Bagosora then ordered Colonel Marcel Gatsinzi to arrange for Sindikubwabo's transport from Butare to Kigali on 9 April. The witness also heard that Kambanda was given a list of ministers to appoint who would implement the plan to kill Tutsis.[1435]

Prosecution Witness Brent Beardsley

1296. Major Beardsley, General Dallaire's assistant, said that massacres in Butare prefecture started only after Kambanda made a provocative speech there.[1436]

Prosecution Witness A

1297. Witness A, a Hutu and leading member of the *Interahamwe*, testified that, on 10 April 1994, he and other prominent *Interahamwe* met with Joseph Nzirorera, Edouard Karemera and Justin Mugenzi at the *Hôtel des Diplomates*. Nzirorera told them to travel to various sectors in the city and tell people to stop the killings and gather corpses to be removed because of the international community. Soldiers then escorted the witness and others around the city where the request to stop the killings was generally accepted. He returned to the hotel and informed the officials about their activities and the many corpses along the road.

[1432] T. 15 September 2004 pp. 21-23.
[1433] T. 16 September 2004 p. 16; T. 17 September 2004 pp. 66, 68.
[1434] T. 19 January 2006 pp. 48-49.
[1435] T. 13 October 2004 pp. 30, 33, 48-50; Prosecution Exhibit 316 (personal identification sheet).
[1436] T. 5 February 2004 p. 89.

Karemera and Mugenzi appeared pleased by the news while Nzirorera was indifferent. The witness added that, when the interim government moved from Kigali to Gitarama prefecture, the massacres also spread there. The killings began in Butare prefecture on 19 April after the President and Prime Minister visited the prefecture and replaced the Tutsi prefect.[1437]

Prosecution Witness BY

1298. Witness BY, a Hutu and leading member of the *Interahamwe*, testified that on 10 April 1994, senior officials of the MRND party, including Mathieu Ngirumpatse, Joseph Nzirorera and Edouard Karemera as well as other members of the interim government, such as Justin Mugenzi, summoned several *Interahamwe* leaders to the *Hôtel des Diplomates*. Ngirumpatse chastised the *Interahamwe* leaders for lacking control over the militiamen who were killing Tutsis at roadblocks and leaving their corpses exposed on the streets. He emphasised that the international community placed blame for the killings on the government and refused to recognise it. Ngirumpatse told the *Interahamwe* leaders to put an end to the killings and to remove the corpses. Mugenzi also criticised the *Interahamwe* leaders, saying that "instead of killing the major Tutsis, the important Tutsis, you go on killing the poor people, whereas the real enemy is hiding at the *Hôtel des Mille Collines*". Nzirorera added that he would secure an escort of soldiers from Bagosora to carry out the pacification assignment. On 11 and 12 April, three soldiers accompanied Witness BY and other *Interahamwe* leaders as they visited roadblocks in Kigali and instructed those manning them to immediately stop the killings and to remove the corpses.[1438]

Bagosora

1299. Bagosora testified that he arrived at the Ministry of Defence around 6.50 a.m. on 7 April 1994. There he met with General Ndindiliyimana and the members of the MRND executive committee, including Mathieu Ngirumpatse, MRND chairman, Edouard Karemera, MRND vice-chairman, and Joseph Nzirorera, national secretary of the MRND. Bagosora updated them on the recent events and emphasised Special Representative Booh-Booh's recommendation that the MRND select a new President. Bagosora departed between 8.30 and 8.45 a.m. for a meeting scheduled at 9.00 a.m. at the residence of the United States Ambassador in Kacyiru.[1439]

1300. Around 9.00 a.m. on 8 April, Bagosora again met with members of the MRND executive committee at the Ministry of Defence about the designation of a president. The MRND representatives discussed the legal basis for selecting a President and decided to apply the 1991 Rwandan Constitution. They asked Bagosora to arrange for representatives of other political parties to attend a meeting to form a new government. Bagosora provided military escorts for the politicians. The MRND officials departed the Ministry of Defence to consult with the president of the national assembly who lived nearby, returning to the Ministry around 11.00 a.m. Bagosora recalled seeing Dallaire at the Ministry on the morning

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[1437] T. 1 June 2004 pp. 56-60, 62-67, 69-70, 80-81; T. 4 June 2004 pp. 22-23; Prosecution Exhibit 222 (personal identification sheet).

[1438] T. 2 July 2004 pp. 43-48; T. 5 July 2004 pp. 16-18, 48-50; Prosecution Exhibit 284 (personal identification sheet).

[1439] Bagosora testified that he called Ngirumpatse at around 2.30 a.m. on 7 April 1994 to invite him and the other members of the MRND to a meeting at the Ministry of Defence. *See* T. 7 November 2005 p. 61.

of 8 April. According to Bagosora, he was only meeting with a few of the representatives in his office at the time and not a larger political meeting, as Dallaire suggested.[1440]

1301. Around noon that day, various party leaders from the MDR, PDC and PL met at the Ministry of Defence. Bagosora did not attend the meeting, but he updated political officials on recent events as they arrived there. Between 1.00 and 3.00 p.m., at the request of the political officials, Bagosora personally arranged for three members of the PSD party, namely a director of cabinet at the Ministry of Public Works named Rafiki, Emmanuel Ndindabahize, and François Ndungutse, to participate in the ongoing discussions. Around 5.00 p.m., Ngirumpatse informed Bagosora that the political parties had concluded their discussions on the new government. At 6.00 p.m., Bagosora introduced the interim government to the military Crisis Committee at ESM. He testified that the RPF had not been consulted on the interim government as a result of the resumed hostilities, adding that there was nothing unusual about a government composed only of Hutus.[1441]

Bagosora Defence Witness Mathieu Ngirumpatse

1302. After midnight on the morning of 7 April 1994, Mathieu Ngirumpatse, the Hutu president of the MRND, received a phone call from Bagosora to meet with MRND officials later that morning at the Ministry of Defence. Around 7.00 a.m., he met at the Ministry with Bagosora, General Ndindiliyimana, Edouard Karemera, who was the party's first vice-president, and Joseph Nzirorera, the party's national secretary. Bagosora told the MRND officials that Special Representative Booh-Booh had asked him to contact them about naming a new President. The meeting focused on the selection process. Bagosora left at 8.30 a.m. for his 9.00 a.m. meeting with the United States Ambassador.[1442]

1303. Around 9.00 a.m. on 8 April, the MRND officials met Bagosora at the Ministry of Defence. Bagosora explained that the politicians needed to find a political solution to the institutional vacuum that followed the death of the president. He agreed to facilitate a meeting with politicians from the other parties. After that, Ngirumpatse, Nzirorera and Karemera walked to the nearby home of the president of the national assembly, Théodore Sindikubwabo, who in accord with the 1991 Rwandan Constitution, was in line to assume the presidency. Around 11.00 a.m., the MRND officials returned to the Ministry and met with the leaders from the other political parties. Around 2.00 or 3.00 p.m., the participants requested Bagosora to facilitate the presence of the PSD party, which was not present. Each of the parties presented their candidates for the ministerial positions, who were then accepted without debate. After the meeting ended at 5.00 p.m., the representatives of the political parties went to ESM, and Ngirumpatse briefed the military Crisis Committee on the earlier meeting, which had just selected the new government [1443]

[1440] T. 8 November 2005 pp. 57-64, 70.

[1441] T. 8 November 2005 pp. 64-73.

[1442] T. 5 July 2005 pp. 52-59; T. 6 July 2005 p. 59; Bagosora Defence Exhibit 177 (personal identification sheet). Ngirumpatse is an accused before the Tribunal.

[1443] T. 5 July 2005 pp. 59-73. According to Ngirumpatse, the group decided that the interim government's three-pronged mission was: (1) to restore security to persons and property; (2) to negotiate with the RPF within six weeks; and (3) to alleviate famine among the approximately one million displaced people living around Kigali at the time.

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Nsengiyumva Defence Witness Joseph Nzirorera

1304. Joseph Nzirorera, a Hutu and national secretary of the MRND, stated that on 7 April 1994 around 1.00 a.m., Ngirumpatse called him and said that Bagosora had requested a meeting with the executive committee of the MRND. Around 7.00 a.m., Bagosora met with the committee at the Ministry of Defence and informed the members that Special Representative Booh-Booh had asked that they designate a new President. Bagosora left the meeting around 8.30 a.m. for a meeting with the United States Ambassador scheduled for 9.00 a.m.[1444]

1305. Around 9.00 a.m. on 8 April, Bagosora told the MRND executive committee at another meeting at the Ministry that UNAMIR and the military Crisis Committee wanted the political parties to establish an interim government to run Rwanda. Bagosora agreed to contact representatives of the other political parties. The members of the MRND executive committee then contacted the president of the national assembly, Thedore Sindikubwabo, who lived nearby, and persuaded him to accept the post of president in accord with the 1991 Rwandan constitution. At 11.00 a.m., the MRND executive committee returned to the Ministry of Defence and met with representatives of the MDR, PL and PDC parties to begin work on an agreement for a new government. Representatives of the PSD party arrived later in the afternoon. Bagosora did not participate in the meeting. Around 5.00 p.m., Nzirorera and the other political representatives went to the ESM to meet with the military Crisis Committee.[1445]

Bagosora Defence Witness Jean Kambanda

1306. Jean Kambanda, a Hutu Prime Minister of Rwanda and previously a founding member of the MDR, explained that before 6 April 1994, he considered himself as a political opponent of President Habyarimana. Around noon on 8 April, Froduald Karamira, vice-chairman of the MDR party, informed him that Prime Minister Agathe Uwilingiyimana had been killed and that their party had designated him as Prime Minister. Kambanda went to ESM around 5.00 p.m. when the interim government was presented to the military Crisis Committee. Kambanda saw Bagosora at the swearing in of the interim government on 9 April. Bagosora shook his hands, congratulated him and seemed pleased at the establishment of the interim government. Kambanda testified that the military set up the interim government, but that no soldier ever prevented it from running the country.[1446]

1307. Kambanda maintained that, while he did not personally perpetrate or order the commission of any crimes, he accepted responsibility for what occurred in Rwanda from April to July 1994. He acknowledged that his government had failed to protect all segments of the Rwandan population, whether Tutsis, Hutus or Twas. He did not deny that genocide was perpetrated against Tutsis in Rwanda but added that the RPF also launched a genocide

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[1444] T. 16 March 2006 pp. 69-71; Nsengiyumva Defence Exhibit 161 (personal identification sheet). Nzirorera is an accused before the Tribunal.

[1445] T. 16 March 2006 pp. 72-76.

[1446] T. 11 July 2006 pp. 7, 17, 22-31; T. 12 July 2006 pp. 10, 67, 73; Bagosora Defence Exhibit 346 (personal identification sheet). Kambanda added that he saw Bagosora only one other time after the installation of the interim government during a chance encounter at the Ministry of Defence in Kigali. He also spoke about Bagosora's trip to Gitarama prefecture to lobby for his return to active military service so that he could be considered for the chief of staff position. Kambanda did not personally see him on this occasion. T. 11 July 2006 pp. 31-36; T. 12 July 2006 pp. 7-8. Kambanda is serving a life sentence following a guilty plea before the Tribunal. *See Kambanda* Trial Judgement, chapter IV; *Kambanda* Appeal Judgment, paras. 2, 126.

against Hutus by attacking an otherwise peaceful country in the early 1990s and conducting a war on the population. According to Kambanda, whoever downed President Habyarimana's plane is responsible for the genocide of the Tutsis.[1447]

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Deliberations

1308. After the death of President Habyarimana, an all Hutu interim government headed by Prime Minister Jean Kambanda was formed by representatives of various political parties, including the MRND, MDR, PSD, PL and PCD. It is common ground that Bagosora had some involvement in the formation of this government. As alleged in paragraph 6.13 of the Bagosora Indictment, he acknowledged meeting with members of the MRND executive committee around 7.00 a.m. on 7 April 1994 at the Ministry of Defence to discuss the appointment of a new President. This is corroborated by Ngirumpatse and Nzirorera, both members of the executive committee, who provided consistent first-hand accounts of their meeting with Bagosora. The Chamber is mindful of their status as Bagosora's alleged co-conspirators as well as accused in related proceedings before the Tribunal. It is therefore reluctant to rely on the specific details of their discussions without further corroboration. However, the Chamber accepts the general features of their testimony that they met with Bagosora around 7.00 a.m. on 7 April to discuss the appointment of a new President, which is also consistent with the evidence of Reyntjens.[1448]

1309. Bagosora accepted that on 8 April he facilitated meetings of representatives from various political parties which culminated in the appointment of the interim government, which was officially sworn in the next day. In particular, he acknowledged meeting with the MRND executive committee around 9.00 a.m., arranging escorts for representatives of other political parties to meet at the Ministry of Defence around noon, updating these representatives on the current situation and need to form an interim government, personally escorting members of the PSD party to the meeting, and presenting the interim government to the Crisis Committee. The testimonies of Des Forges, Reyntjens, Dallaire, Ngirumpatse, Nzirorera and Kambanda also confirm Bagosora's actions in this respect.[1449] There is some minor variation in the specific times offered by the witnesses in setting forth the chronology of the day. The Chamber does not find this significant.

1310. The Bagosora Defence contends primarily that Bagosora's participation in this process was simply as a facilitator, providing logistical support and conveying information between interested parties, at the request of representatives of the international community and the Crisis Committee. It denies that Bagosora played the primary role in establishing the government or that he selected the individual cabinet members, which fell within the

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[1447] T. 11 July 2006 pp. 15-20. Kambanda also alluded to statements he made over the radio emphasising that: "Tutsis, Hutus, and Twas who are not RPF members are not our enemy. Therefore, we cannot look exclusively at ethnic groups and say our enemy is someone from a different ethnic group or region." He acknowledged however that "even within the government – and here let me say it in all honesty – I was not convinced that everybody was of this opinion that we had to stop the killings". *See* T. 12 July 2006 pp. 11-12.

[1448] Special Representative Booh-Booh requested Bagosora at an early morning meeting on 7 April to contact members of the MRND in order to designate a new president (III.3.3.2).

[1449] The Chamber notes the difference between the evidence of Dallaire and Bagosora concerning their brief encounter on the morning of 8 April. Dallaire indicated that Bagosora was presiding over a political meeting, whereas Bagosora stated that he was informally meeting in his office with a few people. The Chamber does not find this discrepancy material. It remains undisputed that Bagosora and Dallaire briefly met on the morning of 8 April while Bagosora was assisting the political leaders setting up the interim government.

province of the political parties. Bagosora's position was supported by evidence from Nzirorera, Ngirumpatse and Kambanda, which the Chamber views with caution. Witness XXQ, as well as Reyntjens and Des Forges, depict Bagosora as the main force behind the selection and installation of the interim government. Witness XXQ's testimony is hearsay and some of the details he heard about, including the location of Sindikubwabo at the time, are at odds with other evidence. The witness's lack of knowledge concerning the existence of the Crisis Committee raises further concerns about the reliability of his knowledge concerning what transpired in the immediate aftermath of the death of President Habyarimana.[1450] Reyntjens and Des Forges did not participate in the process and appeared as expert witnesses to provide context. Therefore, the Chamber declines to rely on their evidence alone to place primary responsibility on Bagosora for the establishment of the interim government and selection of its members. Nevertheless, it is clear that he played a significant role in forming the interim government.

1311. There is virtually no evidence about the internal deliberations at various meetings between Bagosora and the representatives of the political parties. The only first-hand testimonies about this comes from Bagosora, Nzirorera, Ngirumpatse and Kambanda, indicating that the government was established in order to transfer power to civilian authorities. The Chamber views their evidence with caution.

1312. It follows from Des Forges and Reyntjens that the government was composed of individuals associated with the Hutu power factions of their parties. However, the Chamber has not heard sufficient direct evidence in this case concerning the background of the various members of the government as well as their activities before and after 8 April 1994 in order to determine if the motivating factor for putting the government in place was to facilitate the massacres. The fact remains, however, that massacres were perpetrated in Rwanda throughout its tenure.[1451]

1313. It is clear that certain members of the government have been found guilty of genocide, including Prime Minister Jean Kambanda, Minister of Finance Emmanuel Ndindabahizi, Minister of Information Eliezer Niyitegeka and Minister of Higher Education and Scientific Research Jean de Dieu Kamuhanda. Two Ministers have thus far been acquitted by the Tribunal. The guilt or innocence of other members of the government will be decided in their individual trials.[1452]

[1450] *See* T. 13 October 2004 p. 50.

[1451] The evidence of Des Forges, Beardsley and Witness A indicate that the killings in Butare prefecture, for example, were triggered in part by a speech given by Kambanda and President Sindikubwabo on 19 April 1994 as well as the dismissal of the prefect who opposed the killings. *See* section III.4.3. These facts also underpinned Kambanda's guilty plea. *See Kambanda* Trial Judgement, para. 39 (iii, viii).

[1452] Notably, former Prime Minister Jean Kambanda, who appeared as a witness for Bagosora, pleaded guilty to committing genocide, conspiracy to commit genocide, direct and public incitement to commit genocide as well as murder and extermination as crimes against humanity. *See Kambanda* Trial Judgement, para. 40; *Kambanda* Appeal Judgement, para. 2, p. 41. Kambanda rejected his guilty plea and disputed the fairness of the proceedings leading to it. *See* T. 11 July 2006 pp. 6-15; T. 13 July 2006 pp. 3, 9. He unsuccessfully raised these issues on appeal in his case. In any event, the fact remains that he affirms the statements which he gave to the Prosecution, which ultimately formed the basis of his plea and convictions. *See also Ndindabahazi* Trial Judgement, paras. 505, 508, 511; *Niyitegeka* Trial Judgement, paras. 499, 502; *Kamuhanda*, Trial Judgement, paras. 6, 764, 770. André Rwamakuba, the Minister of Primary and Secondary Education, and André Ntagerura, Minister of Transport and Communications, were acquitted. *See Rwamakuba* Trial Judgement, paras. 3, p. 86;

1314. In sum, it is clear that Bagosora played an important role in putting in place the interim government. Some of its members did go on to participate in the genocide. There is no doubt that he facilitated important meetings of political and military officials on 7 and 8 April 1994. While he was a central figure in this effort, the limited evidence is inconclusive as to whether he played the decisive role in selecting its composition or in steering its policies after formation.

Ntagerura et al. Trial Judgement, paras. 82, 804. The Chamber notes that the testimonies of Witnesses A and BY about certain officials' influence over activities at roadblocks relate to accused whose trials are ongoing.

4. EVENTS FROM 11 APRIL 1994

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4.1 Kigali and Its Environs

4.1.1 Nyanza, 11 April

Introduction

1315. The Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment allege that, on 11 April 1994, after the withdrawal of UNAMIR peacekeepers from *École Technique Officielle* ("ETO"), Rwandan soldiers, including elements of the Presidential Guard, and *Interahamwe* moved a group of Tutsi refugees from ETO to Nyanza and massacred them there. Bagosora was allegedly present while the soldiers and *Interahamwe* forced the refugees to walk the several kilometres to Nyanza. The Prosecution argues that Para Commando soldiers under the command of Ntabakuze stopped these refugees at the Sonatube junction and marched them to Nyanza hill where they were openly slaughtered in order to block the road from Bugesera and to send a message to the advancing RPA army: "come any closer and we will keep killing your people". According to the Prosecution, the use of ammunition and the specific location of the killings reflects planning, military organisation and intention. Reference is made to Witnesses AR, AFJ, Jean-Bosco Kayiranga and XAB as well as Expert Witness Alison Des Forges.[1453]

1316. The Kabiligi and Ntabakuze Defence argue that the Indictment fails to specifically plead the roles of the respective Accused in the Nyanza massacre. The Kabiligi Defence also highlights that Kabiligi was not in Rwanda at the time of the events and that he lacked command over the operation. The Ntabakuze Defence disputes that Ntabakuze was involved in any killings of refugees and emphasises that the evidence only places him at the Sonatube intersection earlier that day. It refers to the testimony of Witnesses DK-11, DK-37, Joseph Dewez and Ntabakuze. The Bagosora Defence accepts that Bagosora passed a column of refugees on 11 April 1994, but it disputes that he played any role in the planning or organisation of the Nyanza massacre. The evidence of Witnesses LMG, Isabelle Uzanyinzoga, Gaudence Habimana Twibanire and Bagosora suggests that he was not driving a Mercedes Benz vehicle, as claimed by Witness AR, on that date and that he was on his way to Kiyovu to evacuate his family at the time of the attack.[1454]

Evidence

Prosecution Witness AR

1317. Witness AR, a Tutsi, sought refuge at ETO with his family on 8 April 1994, which was then protected by UNAMIR peacekeepers. Around 1.30 p.m. on 11 April, the

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[1453] Bagosora Indictment, para. 6.51; Kabiligi and Ntabakuze Indictment, paras. 6.37, 6.47; Prosecution Closing Brief, paras. 136, 147, 203, 217, 245, 330-360, 712-715, 828, 835-836, 1096 (f), 1112-1117, 1396-1403, 1433-1447, 1746-1747, 1750-1755, pp. 768, 837; T. 28 May 2007 pp. 19-20; T. 1 June 2007 p. 44.

[1454] Kabiligi Closing Brief, paras. 212-213, 302, 312-335; Ntabakuze Closing Brief, paras. 190, 192-194, 503, 1318-1320, 1439, 1487, 1490, 1669-1760, 1932, 2215, 2217, 2239, 2243, 2257-2263, 2309; Bagosora Closing Brief, paras. 1250-1267, 1989-1990, 1994, 1997, 2317, pp. 379-381, 471; T. 29 May 2007 pp. 8-11, 24 (Kabiligi); T. 30 May 2007 pp. 19-21 (Bagosora); T. 31 May 2007 pp. 3-7 (Ntabakuze); T. 1 June 2007 pp. 56-57 (Kabiligi).

peacekeepers withdrew and told the refugees that the Rwandan government forces had agreed to assure their protection. After the UNAMIR forces departed, the witness and other refugees fled ETO in an effort to reach safety at Amahoro stadium. Around 2.00 p.m., soldiers wearing camouflage uniforms stopped the witness and his family. The soldiers took them to an intersection near the Sonatube factory, where approximately 2,500 to 3,000 other refugees who had fled ETO were seated on the ground, surrounded by armed soldiers and *Interahamwe*. Some of the soldiers wore black berets, but those who appeared in charge wore camouflage berets.[1455]

1318. One of the soldiers wearing a camouflage uniform and camouflage beret, who seemed to be in command, moved about the area communicating on his radio and speaking with the other soldiers at the intersection. Two UNAMIR vehicles also passed by without stopping. After approximately 30 minutes, the commander ordered the refugees to stand and move along the road back toward ETO. Around 20 of the soldiers and more than 100 *Interahamwe* led the column of several thousand refugees past ETO toward Nyanza hill. Around 500 metres after ETO, Witness AR saw Bagosora sitting in the front seat of a Mercedes Benz military jeep at a junction in the road coming from RWANDEX, waiting for the refugees to pass. In the witness's opinion, Bagosora was supervising the operation. A few minutes later, a Toyota pickup truck with 15 to 20 soldiers mostly wearing camouflage uniforms and camouflage berets overtook the refugees and continued on the road towards Nyanza hill and Bugesera.[1456]

1319. Around 5.00 p.m., as the refugees reached the top of Nyanza hill, they found the soldiers who had passed them in the Toyota pickup. The soldiers told the refugees to sit down until all of them were assembled. Then, the soldiers and *Interahamwe* opened fire with guns and grenades, slaughtering the refugees. The witness was hit early and fell under a pile of bodies. The attackers fired for several hours. They ran out of ammunition during the attack, and the witness heard one of the soldiers say: "Take a vehicle, go back to the Sonatube position and bring some more ammunition so we can continue with our work." They also stopped firing at one point in order to allow any refugee with a Hutu identity card to leave. The next morning, 12 April, the attackers returned between 4.00 and 5.00 a.m., in an attempt to finish off the survivors. On 13 April, RPF soldiers arrived at Nyanza hill and moved the survivors to Rebero hill. As Witness AR left Nyanza, he passed dead bodies on the road to Bugesera. Nearly every member of his family was killed, including his infant son.[1457]

Prosecution Witness AFJ

1320. Witness AFJ, a member of the Para Commando Battalion, testified that he accompanied Ntabakuze to the Sonatube intersection at some point during the day between 7

[1455] T. 30 September 2003 pp. 89-90; T. 1 October 2003 pp. 5-12, 56, 75-77; Prosecution Exhibit 104 (personal identification sheet). Witness AR identified the soldiers as Presidential Guards by their camouflage uniforms. T. 1 October 2003 pp. 75-77. As discussed below, the Chamber considers that the witness was mistaken in his identification of the soldiers.

[1456] T. 30 September 2003 pp. 90-91; T. 1 October 2003 pp. 7-9, 15-17, 22-25, 55-59, 62-65, 70. Witness AR gave estimates of the number of refugees between 2,500 and 4,000. He recognised Bagosora because he had seen him on more than 20 previous occasions, including at the airport or at football matches and because he was familiar with Bagosora as a prominent official. T. 30 September 2003 pp. 85-87; T. 1 October 2003 pp. 7, 25, 58, 64-65.

[1457] T. 30 September 2003 p. 91; T. 1 October 2003 pp. 25-27, 31-32, 36-37, 51, 57. Witness AR identified the various locations of the incidents he described on a map of the relevant part of Kigali. *See* T. 1 October 2003 pp. 4-5; Prosecution Exhibit 106 (Map of Kigali marked by Witness AR).

and 15 April 1994. They found *Interahamwe* armed with Kalashnikovs chasing Tutsi refugees from ETO towards the Para Commando Battalion's position at the junction. Ntabakuze addressed the *Interahamwe,* asked them where they were taking the Tutsi civilians and ordered his soldiers to have the Tutsis sit down while he found a "refuge" for them. The witness noted that the members of the Para Commando Battalion were wearing camouflage uniforms and camouflage berets.[1458]

1321. According to Witness AFJ, Ntabakuze and the commander of the troops stationed at the Sonatube junction had radios. Ntabakuze contacted someone over the radio, speaking in French, which the witness could not understand. He then ordered the *Interahamwe* to take the Tutsi refugees sitting in the intersection to the school in Nyanza. A UNAMIR convoy carrying refugees to the airport then reached the intersection, and Ntabakuze spoke with a "white man" who alighted from one of the vehicles. After the conversation, Ntabakuze and the witness followed the UNAMIR vehicles to the airport. As they left, the *Interahamwe*, but not the soldiers, led the refugees towards Nyanza, along the main road to Bugesera. The witness was told later that month that the *Interahamwe* had killed the refugees at the school in Nyanza. He heard this from "those who passed by and even refugees who came from there". According to the witness, Ntabakuze did not order the *Interahamwe* to kill the refugees. The witness never saw members of the Para Commando Battalion kill civilians.[1459]

Prosecution Witness Jean-Bosco Kayiranga

1322. Jean-Bosco Kayiranga, a Hutu soldier, stated that, on 11 April 1994, he was at his home near Nyanza hill on medical leave. Around 4.00 or 5.00 p.m., soldiers and *Interahamwe* led between 1,000 and 1,500 mostly Tutsi refugees past the witness's home to the top of Nyanza hill on the road to Bugesera. Kayiranga saw his brother-in-law's children among the refugees and followed the refugees, trying to secure the children's release from Bosco, an army reservist and *Interahamwe*, who described himself as the "boss", and a second lieutenant, who was assigned to the Light Anti-Aircraft Battalion. Bosco asked for persons from Ruhengeri and Gisenyi to leave and then threw a grenade at the refugees as if to signal the beginning of the attack. The attackers had formed a semi-circle at the top of the hill and began firing on the refugees with guns and grenades for about one hour and a half. When the attackers ran out of ammunition, Kayiranga was able to save some of the children. In his view, Bosco led the attack.[1460]

Prosecution Witness XAB

1323. Witness XAB, a Tutsi member of the Para Commando Battalion, was told on 12 April 1994 by Corporal Camake, a member of the CRAP platoon, that members of his platoon had participated in the massacre of Tutsis from ETO.[1461]

[1458] T. 8 June 2004 pp. 77, 80-82, 84-85, 88, 91-94; Prosecution Exhibit 255 (personal identification sheet).
[1459] T. 8 June 2004 pp. 81-83, 87-90, 92-98, 101.
[1460] T. 30 April 2004 pp. 15-24; Prosecution Exhibit 218 (personal identification sheet). Kayiranga was formerly known as Witness DR.
[1461] T. 6 April 2004 pp. 20, 38-39, 77; Prosecution Exhibit 200 (personal identification sheet). CRAP is an abbreviation for "*Commando de Recherche et Action en Profondeur*". *See* Witness DK-11, T. 19 July 2005 (French version) p. 12; T. 19 July 2005 (English version) p. 12 ("deep-seated research and action commando"). Witness DK-11 was a former member of the CRAP platoon (*see* below).

Prosecution Expert Witness Alison Des Forges 40382

1324. Alison Des Forges, an expert in Rwandan history, testified that, after UNAMIR peacekeepers withdrew from ETO on 11 April 1994, militiamen attacked the 2,000 refugees there forcing them to flee. The refugees were stopped by members of the Para Commando Battalion at the Sonatube junction where they were held for approximately an hour before being marched towards Nyanza. A Belgian officer recognised and greeted Ntabakuze at the intersection. The officer was concerned for the refugees, but was unable to alert his superiors over the radio network. Des Forges made reference to written records from the Belgian peacekeeping contingent as part of the basis of her testimony.[1462]

1325. As the military and militiamen marched the refugees towards Nyanza, assailants pulled women from the column and raped them, sometimes killing them in the bushes. The refugees were stopped at the top of Nyanza hill, where they sat down for approximately 30 minutes. A truck carrying military personnel arrived, and the military fired at the refugees, giving the signal to the militiamen to begin the attack. Des Forges did not specify which unit of the military accompanied the refugees to Nyanza but said that the operation was carried out "jointly through cooperation between paracommando, gendarme and militia". The killing continued throughout the night, and assailants returned the following day to loot and finish off survivors. Nearly all the refugees were killed. According to Des Forges, they were killed at Nyanza because it was "a place remote from observation, unlike the Sonatube intersection, which would not be an appropriate place for a massacre".[1463]

Ntabakuze

1326. According to Ntabakuze, the Para Commando Battalion's Third Company and CRAP Platoon were in a combat position at the Sonatube junction on 11 April 1994. He had "reinforced [the Third Company] with the CRAP platoon". At some point before 12.30 p.m., Lieutenant Nzeyimana, the commander of the Third Company, informed Ntabakuze by radio that they had stopped around 250 refugees from ETO who were heading towards Amahoro stadium at the Sonatube junction. At the time, Ntabakuze was at his command post at Kanombe airport. Ntabakuze testified that he did not want the refugees to proceed towards Amahoro since it would involve crossing a battle line. He asked Nzeyimana to secure the refugees while he sought further instructions.[1464]

1327. Ntabakuze then attempted to contact Colonel Muberuka, the commander of the Kigali operations sector, but his call was intercepted by Lt. Colonel Kanyandekwe, a member of the G-3 staff, at army headquarters. Ntabakuze asked for instructions on what to do with the refugees at the Sonatube junction. Kanyandekwe consulted with Colonel Gatsinzi, the army chief of staff, and then instructed Ntabakuze to contact the gendarmerie brigade at Kicukiro in order to escort the refugees back to ETO. Ntabakuze contacted Nzeyimana and Captain Munyabarenzi of the Kicukiro brigade and relayed the instructions from headquarters. Ntabakuze received confirmation a short time later that the refugees had been returned to

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[1462] T. 18 September 2002 pp. 53-54; T. 25 November 2002 pp. 97-98.
[1463] T. 18 September 2002 pp. 53-55, 58.
[1464] T. 21 September 2006 pp. 8-9, 11, 13-14; T. 25 September 2006 pp. 52-54, 57. Ntabakuze could not recall the exact time of the communications involving the 250 refugees, but placed it before the incident involving the UNAMIR convoy discussed below. T. 21 September 2006 pp. 13-14; T. 25 September 2006 p. 53.

ETO. He explained that at the time he was not aware that the Belgian contingent would withdraw from ETO.[1465]

1328. Around 12.30 p.m., Nzeyimana contacted Ntabakuze after stopping five vehicles in a UNAMIR convoy carrying refugees towards the airport.[1466] At the time, Ntabakuze was between his command post at Kanombe airport and a Para Commando position at Giporoso. Ntabakuze went to the Sonatube junction to facilitate the convoy's passage. While at that junction, he spoke briefly on his radio with Colonel Dewez from the Belgian contingent of UNAMIR, explaining that the convoy was stopped because the army had not been previously informed about it. Since the convoy was overcrowded, Ntabakuze took several of the refugees in his own vehicle and followed the UNAMIR convoy to the Kanombe airport, where his command post was located.[1467]

1329. Ntabakuze stated that he did not hear until the end of 1994 about any further refugee movement that day or the massacre at Nyanza, noting that the RPF took control of the area on 12 April. He confirmed that Witness AFJ accompanied him to Sonatube on 11 April, but he disputed that he gave any orders to the *Interahamwe* concerning refugees assembled there. In Ntabakuze's view, Witness AFJ confused the radio communications about the 250 refugees with the incident involving the UNAMIR convoy.[1468]

Ntabakuze Defence Witness DK-11

1330. Witness DK-11, a Hutu member of the CRAP Platoon, explained that, on 9 April 1994, elements of his platoon as well as the third company of the Para Commando Battalion were stationed at the Sonatube intersection. The CRAP Platoon was commanded by Lieutenant Kanyamikenke. It was administratively assigned to the Para Commando Battalion, but operated independently, outside of Ntabakuze's command, and reported directly to the chief of staff and the G-3 of the army's staff.[1469]

1331. On 11 April, the soldiers stationed at the Sonatube junction stopped around 100 refugees from ETO at the intersection. The refugees were in danger of being caught in the cross-fire with the RPF. Witness DK-11 heard from Kanyamikenke, the platoon leader, that he had received an order to prevent the refugees' further movement until gendarmes arrived to escort them back to ETO. The witness thought the order came from the G-3 office of the general staff. A short time later, a squad of nine to 11 gendarmes escorted the refugees back towards ETO. The witness heard no further information about the refugees. He was not aware of an incident involving UNAMIR peacekeepers at the junction.[1470]

[1465] T. 21 September 2006 pp. 11-14; T. 25 September 2006 pp. 53-57, 59-60.

[1466] According to Colonel Dewez, the refugees in the convoy included expatriates and some Rwandan nationals (*see* below).

[1467] T. 21 September 2006 pp. 8-10, 13; T. 25 September 2006 pp. 52-53. Ntabakuze stated that he could not recall the exact time of the incident involving the UNAMIR convoy. He specified the time by reference to the KIBAT *chronique*, a report prepared by the Belgian contingent of UNAMIR (Prosecution Exhibit 149), which indicates that the incident occurred at 12.29 p.m. T. 21 September 2006 p. 13.

[1468] T. 21 September 2006 pp. 10, 14-15; T. 25 September 2006 pp. 56-58.

[1469] T. 19 July 2005 pp. 7, 17-18, 20, 53, 61; Ntabakuze Defence Exhibit 144 (personal identification sheet).

[1470] T. 19 July 2005 pp. 60-66. Witness DK-11 identified his position as well as the frontline on a sketch admitted as Ntabakuze Defence Exhibit 149 (sketch of the Sonatube junction).

Ntabakuze Defence Witness DK-37

1332. Witness DK-37, a Hutu gendarme, stated that, on 11 or 12 April 1994, he was stationed with the Kicukiro brigade at his post around 300 to 400 metres away from the Sonatube junction. Between 11.00 a.m. and midday, he saw a group of refugees walking along the road from Bugesera towards the Sonatube junction. The commander of the gendarmerie brigade then ordered a section of gendarmes from the witness's position to go to the Sonatube junction to provide security for the refugees. After 30 to 40 minutes, the witness watched as the gendarmes escorted a group of approximately 150 to 200 refugees past his position towards Bugesera. About an hour and a half later, the gendarmes returned and reported that they were unsuccessful in fending off an armed attack against the refugees by a large number of militiamen which forced the refugees to disperse.[1471]

Ntabakuze Defence Witness Joseph Dewez

1333. Colonel Dewez served in Rwanda from 15 March until 19 April 1994 as part of the Belgian contingent of UNAMIR. He was the commander of the Kigali Battalion ("KIBAT"), which was composed of Belgium's Second Para Commando Battalion. On 11 April, he dispatched a convoy of 50 vehicles in order to evacuate expatriates and some Rwandan nationals from the *Méridien* Hotel to the airport. During his testimony, Dewez referred to the KIBAT *Chronique*, a daily record of the activities of the Belgian UNAMIR contingent from 6 to 19 April 1994.[1472] He planned the convoy's route in order to avoid the frontline between the Rwandan army and RPF. The itinerary crossed several checkpoints including one at the Sonatube junction, which was close to the frontline. Dewez tasked Lieutenant Decuyper with leading the convoy and maintained periodic radio contact with him during the evacuation.[1473]

1334. At 12.05 p.m., Decuyper crossed the checkpoint at the Sonatube junction with the first part of the convoy. When he reached a subsequent roadblock, he learned that a portion of the convoy had been stopped at the Sonatube junction. He dispatched the first part of the convoy to the airport and returned to the Sonatube junction. Once there, he spoke with a Rwandan lieutenant in charge of the checkpoint who informed him that no vehicles could pass. Decuyper did not let anyone leave the vehicle, but asked the section to locate their automatic weapons. The Rwandan lieutenant then ordered his men to point their weapons at Decuyper. Additional tension resulted from mortar fire, falling some 50 metres from the intersection.[1474]

[1471] T. 26 July 2005 pp. 55, 62-71, 77; Ntabakuze Defence Exhibit 152 (personal identification sheet). Witness DK-37 identified his position on a sketch admitted as Ntabakuze Defence Exhibit 154.

[1472] The KIBAT *Chronique* (Prosecution Exhibit 149) was prepared in September 1995 based on field journals (*journal de campagne*) as well as interviews of battalion members, and thus was limited to these sources. Lieutenant Decuyper, who led the convoy, prepared the portion relating to this event, but that Dewez was ultimately responsible for the final editing and fact checking of the KIBAT *Chronique*. *See* T. 24 June 2005 pp. 18-24; Prosecution Exhibit 149 (KIBAT *Chronique*), paras. 3 (b), 48 (j). The introduction to the KIBAT *Chronique* also explains how it was assembled.

[1473] T. 23 June 2005 pp. 14-15, 27-28, 30, 54-60; T. 24 June 2005 p. 25; Prosecution Exhibit 149 (KIBAT *Chronique*), para. 48 (j). Dewez referred to the Sonatube junction in his testimony as "N12". While Dewez was not familiar with its exact name, his description of it, as well as his identification of it on a map, are consistent with the location of the Sonatube junction. *See* T. 23 June 2005 pp. 57-58; Ntabakuze Defence Exhibit 130 (map marked by Dewez). The KIBAT *Chronique* uses radio call signs for the peacekeepers. S6 refers to Dewez, and S2 refers to Lieutenant Decuyper. T. 23 June 2005 p. 60; T. 24 June 2005 pp. 19-20, 25, 27; Prosecution Exhibit 149 (KIBAT *Chronique*), para. 3 (b).

[1474] T. 23 June 2005 pp. 59-60; T. 24 June 2005 pp. 25-26; Prosecution Exhibit 149 (KIBAT *Chronique*), para. 48 (j)(4, 7).

1335. The Rwandan lieutenant asked Decuyper to accompany him to see his commander. Decuyper refused to leave the convoy and told the Rwandan lieutenant that the commander should come to the checkpoint. As a result, the Rwandan lieutenant called his commander, and then Ntabakuze arrived. As Ntabakuze stated that he knew Colonel Dewez, Decuyper put them in contact over the radio at 12.29 p.m. Ntabakuze assured Dewez that the stop was only a routine check and that everything would be fine. As the KIBAT *Chronique* indicates, a few minutes later, Decuyper proceeded to the airport with the convoy, which was accompanied by Ntabakuze. Dewez did not know whether Ntabakuze followed the convoy all the way to the airport. Dewez also confirmed that the Belgian peacekeepers stationed at ETO withdrew later that day around 1.45 p.m.[1475]

Bagosora

1336. Bagosora testified that, around 1.00 p.m. on 11 April 1994, he travelled to Camp Kanombe, where his family was staying. He brought them to the residence of Dr. Akigeneye in the Kiyovu neighbourhood of Kigali around 4.00 to 4.30 p.m. in order to prepare for their evacuation to Gisenyi prefecture. Bagosora acknowledged seeing many refugees in the Kicukiro area, which is near ETO. He stated that he travelled with his family in a Land Cruiser jeep and a double cabin pickup truck, which he had requisitioned from OCIR-Thé, since he had asked his driver that morning to take his Mercedes Benz vehicle to Gitarama prefecture with a family of eight Tutsis. At 10.00 a.m. on 12 April, Bagosora took his family and others in a military convoy as far as Gitarama prefecture, before they continued without him to Gisenyi.[1476]

Bagosora Defence Witness LMG

1337. According to Witness LMG, a Hutu soldier, Bagosora most frequently used a military green Mercedes Benz jeep. The witness stated that on 8 April 1994, he saw Bagosora's family at Dr. Akigeneye's residence in Kiyovu. On 10 April, Bagosora asked the witness to drive a group of about eight Tutsis to Gitarama in his Mercedes Benz jeep. Bagosora filled in a travel voucher, which mentioned that the individuals were members of his family, to facilitate their movement through roadblocks. On 11 April, the witness drove Bagosora's family from Kigali to Gisenyi in the Mercedes Benz jeep. Bagosora, who was driving a pickup truck, accompanied his family until the Kanzenze bridge, on Nyabarongo river.[1477]

Bagosora Defence Witness Isabelle Uzanyinzoga

1338. Isabelle Uzanyinzoga, Bagosora's wife, stated that, on 7 April 1994, Bagosora took his family to Camp Kanombe in an official Mercedes Benz military jeep and a Renault 21. They stayed there until 11 April. On that date, Bagosora arrived at Camp Kanombe between noon and 1.00 p.m. to take the family to Dr. Akigeneye's residence in Kiyovu. Bagosora did not have his usual Mercedes Benz vehicle and told her that he had allowed his driver to take some Tutsis, who were fleeing, to Gitarama. Around 4.00 p.m., they left in a Land Cruiser and in a double cabin pickup, driven by a soldier. They went towards Kicukiro and arrived at

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[1475] T. 23 June 2005 pp. 59-60; T. 24 June 2005 pp. 27-28, 30; Prosecution Exhibit 149 (KIBAT *Chronique*), paras. 48 (j)(7-9), 50 (c)(2).

[1476] T. 8 November 2005 pp. 78-81; T. 9 November 2005 pp. 1-7. Bagosora testified that Dr. Akingenye died in the plane crash along with President Habyarimana.

[1477] T. 18 July 2005 pp. 7-8, 15-16, 19-22; Bagosora Defence Exhibit 181 (personal identification sheet). Witness LMG explained that a travel voucher allowed a driver to be in a vehicle without the person who was supposed to be driven. *See* T. 18 July 2005 p. 21.

Dr. Akingeneye's residence in Kiyovu around 5.00 p.m. The next morning, on 12 April, between 9.00 and 9.30 a.m., Bagosora's family and many others travelled in a convoy to Gisenyi. This convoy included Bagosora's driver and his Mercedes Benz vehicle. Bagosora accompanied the convoy until Kamonyi in Runda commune.[1478]

Bagosora Defence Witness Gaudence Twibanire

1339. Gaudence Habimana Twibanire, Bagosora's daughter, testified that, on 7 April 1994, Bagosora evacuated his family to Camp Kanombe. On 11 April, he returned around 1.30 or 2.00 p.m. to move the family to Dr. Akingeneye's residence in the Kiyovu neighbourhood of Kigali. According to Twibanire, they left in a four-wheel drive vehicle, driven by Bagosora, and a double-cabin pickup truck, driven by a soldier who was not Bagosora's usual driver. They arrived at Dr. Akingeneye's residence early in the evening. The next day, on 12 April, Bagosora's family and many others left Kigali in a large convoy to Gisenyi prefecture. Bagosora accompanied the convoy until Kamonyi parish after they crossed Nyabarongo bridge into Gitarama prefecture.[1479]

Deliberations

1340. More than 1,000 mostly Tutsi refugees fleeing ETO were killed at Nyanza hill on 11 April.[1480] Several other facts concerning this massacre are also not disputed. In particular, elements of the Para Commando Battalion were stationed in a combat position at the Sonatube junction along the front line with the RPF. Ntabakuze was at the Sonatube junction around 12.30 p.m. assisting part of a UNAMIR convoy cross the military checkpoint there. At 1.45 p.m., a Belgian peacekeeping contingent, which had been guarding the large group of mostly Tutsi refugees at ETO, withdrew. Shortly thereafter, the refugees fled ETO, but were stopped at the Sonatube junction and marched towards Nyanza where they were killed. Bagosora observed the column of refugees move toward Nyanza.

1341. The principal issues for the Chamber to consider are whether Ntabakuze and elements of the Para Commando Battalion were involved in the attack at Nyanza hill; the significance of Bagosora's observation of the refugees moving towards the hill; and whether Kabiligi played any role in the massacre.

1342. Three Prosecution eye-witnesses testified about the events. Witness AR, a Tutsi survivor, was the only witness appearing before the Chamber to provide a continuous first-hand narrative of what transpired at ETO, the Sonatube junction and Nyanza hill. He did not see Ntabakuze but noticed Bagosora observing the moving refugees. Witness AFJ, a member of the Para Commando Battalion, testified about what happened at the Sonatube junction. He placed Ntabakuze at the scene ordering the *Interahamwe* to take refugees at the junction to Nyanza school. Kayiranga, a soldier, saw the column of refugees move towards Nyanza hill and watched as soldiers and *Interahamwe* massacred them. He also did not see Ntabakuze. None of these three witness provided evidence about Kabiligi.

[1478] T. 1 December 2005 pp. 22-23, 25-33, 55; Bagosora Defence Exhibit 293 (personal identification sheet). The witness was formerly known as Bagosora Defence Witness L-2.

[1479] T. 12 December 2005 pp. 2, 12-20; Bagosora Defence Exhibit 299 (personal identification sheet). The witness was formerly known as Bagosora Defence Witness L-4.

[1480] *See* Prosecution Exhibit 109 (video footage of Nyanza); Prosecution Exhibit 110 (still pictures from video footage of the corpses at Nyanza); Prosecution Exhibit 111 (photograph of the genocide memorial at Nyanza). Witness AR identified the footage and recognised some of the victims. T. 1 October 2003 pp. 31-37.

1343. The Chamber considers that Witness AR gave a mostly consistent and convincing account of the events. From 7 April 1994, a large number of mostly Tutsi civilians sought refuge at ETO where they were guarded by a contingent of Belgian peacekeepers. The Belgian contingent withdrew from ETO around 1.45 p.m. on 11 April, as confirmed by the evidence of Colonel Dewez, referring to the KIBAT *Chronique*. Many of the refugees, fearing attack, fled in an attempt to reach the Amahoro Stadium. This, however, would have required them to cross the frontline with the RPF, as highlighted by Ntabakuze and also Dewez, who by virtue of his role in UNAMIR at the time, was familiar with the various positions of the opposing forces.

1344. According to Witness AR, these refugees were stopped at the Sonatube junction by soldiers primarily wearing camouflage uniforms as well as camouflage berets. The witness surmised that these soldiers were members of the Presidential Guard based on information he had heard about their uniforms.[1481] The Chamber, however, is not satisfied that the witness had a sufficient basis of knowledge about military uniforms to adequately distinguish between various units. In this respect, other more reliable evidence on this point from Rwandan soldiers indicates that members of the Presidential Guard as well as other members of the Rwanda army wore black berets.[1482]

1345. With respect to the identity of the soldiers at the Sonatube junction, it is not disputed that members of the Para Commando Battalion's Third Company as well as its CRAP Platoon were stationed in a combat position there. This follows from the evidence of Witnesses AFJ, XAB, Ntabakuze, DK-11 and Dewez.[1483] In addition, Ntabakuze testified that members of the Para Commando Battalion wore camouflage berets.[1484] Ntabakuze further explained that three other units in the Rwandan army wore camouflage berets, namely the commando battalion of Huye, the commando battalion of Ruhengeri and the commando training centre of Bigogwe.[1485] There has been no suggestion that these units were operating in the immediate area around the Sonatube junction. In view of this as well as the position of the Para Commando Battalion at that junction, the Chamber has no doubt that the soldiers

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[1481] Witness AR's information came from a soldier who used to visit the witness's younger brother. His explanation equally suggests that he might have confused members of the Presidential Guard and Para Commando Battalion. *See* T. 1 October 2003 p. 77 ("In other words, members of the presidential guards were selected and they wore camouflage uniform. They were commandos ... because they were better trained than other soldiers. In other words, they would select people from those commandos and the presidential guards received a superior training. So that soldier told my younger brother that most presidential guard members were selected from among members of the paracommando battalion who were based in Kanombe.").

[1482] Witness RO-6, T. 26 April 2005 p. 86; T. 27 April 2005 pp. 13-14; Witness XAI, T. 10 September 2003 pp. 26-27. *See also* section III.1.2

[1483] Other witnesses also attested to the presence of Para Commandos at the Sonatube intersection at that time, for example, Witness XAI, T. 8 September 2003 pp. 16-18.

[1484] T. 18 September 2006 pp. 16-17. Several other witnesses stated that the Para Commando Battalion used camouflage berets (III.1.2). *See also* Witness AFJ, T. 8 June 2004 p. 80; Witness XAI, T. 10 September 2003 pp. 26-27; Witness DBN, T. 31 March 2004 p. 80; Witness DBQ, T. 29 September 2003 pp. 46-47; Witness DK-32, T. 28 June 2005 p. 6; Witness LE-1, T. 21 October 2005 pp. 53-54; Witness RO-6, T. 27 April 2005 pp. 13-14.

[1485] T. 18 September 2006 pp. 16-17. *See also* Ntabakuze Defence Exhibit 235, p. 47 (The Army and the Para Commando Background: "The uniforms of the FAR personnel were generally identical except the beret. There were red beret, black beret, blue beret and camouflage beret. The gendarmes were wearing a red beret. Normal infantry units had a black beret. The aviation squadron had a blue beret. Then the following commando units had camouflage beret: Para Cdo Bn, Ruhengeri Commando Bn, Huye Commando Bn and Commando Training Centre of Bigogwe (CECDO)."). This exhibit was prepared by Ntabakuze.

who stopped the large group of refugees were primarily members of the Para Commando Battalion.

1346. Based on this and the testimony of Witness AR, the Chamber finds that primarily members of the Para Commando Battalion as well as *Interahamwe* surrounded the large number of mostly Tutsi refugees at the Sonatube junction. After around 30 minutes, the commander of the troops, who had been communicating by radio, ordered about 20 soldiers and around 100 *Interahamwe* to escort the refugees toward Nyanza hill. At the time, Witness AR was unable to recognise the commander at the junction, and the witness could not identify Ntabakuze in court.[1486] The question is whether the testimony of Witness AFJ, who said that Ntabakuze requested the *Interahamwe* to take refugees to Nyanza school shows that it was in fact Ntabakuze who sent the group of refugees, including Witness AR, to Nyanza hill.

1347. A significant feature of Witness AFJ's account is Ntabakuze's interaction with a UNAMIR convoy at the Sonatube junction. The witness testified that a small group of refugees from ETO arrived at the junction before this convoy. Reliable evidence from Colonel Dewez and the KIBAT *Chronique* indicates that part of the UNAMIR convoy was stopped at the Sonatube junction at 12.05 p.m., and that Ntabakuze arrived around 12.30 p.m., facilitating the convoy's movement through the junction a few moments later.[1487] Therefore, the refugees observed by Witness AFJ would have arrived around this time. In contrast, Witness AR indicated that the refugees arrived at the Sonatube junction around 2.15 p.m., specifically 30 minutes after the withdrawal of the Belgian peacekeepers from ETO at 1.45 p.m.[1488] In addition, while Witness AR recalled seeing two UN vehicles pass, he did not see a UNAMIR convoy stopped at the junction. Therefore, in the Chamber's view, Witness AFJ's testimony does not corroborate Witness AR's evidence because they were referring to different incidents around two hours apart.[1489]

1348. Des Forges stated that a Belgian officer recognised Ntabakuze at the Sonatube junction. However, she was called as an expert, in order to provide background and context, and not as a factual witness. Her basis of knowledge concerning Ntabakuze's involvement in the attack appears to come from UNAMIR records, such as the KIBAT *Chronique* or material used in its preparation.[1490] As discussed above, the KIBAT *Chronique*, coupled with Dewez's testimony, indicates that Ntabakuze was at the Sonatube junction around 12.30 p.m.,

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[1486] T. 1 October 2003 p. 23 ("And after Bagosora, you have Nsengiyumva, Anatole; then there is also Kabiligi, but I don't recognise the person after Kabiligi, but I know the three people whom I have identified").
[1487] T. 23 June 2003 p. 59; Prosecution Exhibit 149 (KIBAT *Chronique*), para. 48 (j).
[1488] Witness AR testified that the Belgian peacekeepers left around 1.30 p.m. and that the refugees arrived around 2.00 p.m. The Chamber, however, relies more on the KIBAT *Chronique* which provides a more precise time of 1.45 p.m. for the withdrawal of the Belgian peacekeepers.
[1489] The Prosecution also appears to acknowledge this possibility. *See* Prosecution Closing Brief, para. 1442.
[1490] Des Forges initially referred to "written testimony" of Belgian peacekeepers as the basis of her testimony on Ntabakuze's involvement in the massacre, but later corrected it to written records. She explained that in connection with research on another case, she came across a reference to Ntabakuze in the "*carnet de veille*" and the "*carnet de campagne*", which were created by Belgian peacekeepers at the time. When reviewing the documents, which were in the possession of Belgian military authorities, she made notes since she did not have authority to copy the document. T. 18 September 2002 pp. 53-54; T. 25 November 2002 pp. 97-98.

but it does not itself demonstrate that he was present during the incident involving the large group of refugees who were later killed.[1491]

1349. Therefore, the Chamber is not convinced beyond reasonable doubt that Ntabakuze was present at the Sonatube junction around 2.00 p.m. and ordered more than 1,000 refugees, including Witness AR, to be taken to Nyanza hill.[1492]

1350. The next question is whether Ntabakuze around 12.00 p.m. dispatched the smaller group of refugees to their death at the hands of the *Interahamwe*. Witness AFJ was the only first-hand witness attesting to this. Ntabakuze stated that he was not actually at the Sonatube junction when this group of refugees arrived but that he arranged for their return to ETO through various radio exchanges from his headquarters at Kanombe airport. The Chamber observes that the KIBAT *Chronique* indicates that Ntabakuze arrived at the junction around 12.30 after the UNAMIR convoy arrived and suggests that he departed with it. This runs counter to Witness AFJ's suggestion that Ntabakuze was already at the intersection dealing with the refugees when the UNAMIR convoy arrived. The KIBAT *Chronique* also makes no reference to a group of refugees or *Interahamwe* at the intersection.[1493]

1351. In addition, Witnesses DK-11 and DK-37 as well as Ntabakuze refer to gendarmes, not *Interahamwe*, escorting the refugees back to ETO in order to prevent them from crossing the frontline. This Defence evidence is far from conclusive on this point.[1494] However, collectively, it raises some concern about Witness AFJ's claims, in the absence of corroboration, that Ntabakuze was present at Sonatube junction when the smaller group of refugees was there, issuing orders to the *Interahamwe* to take them to Nyanza. In any event, even if Witness AFJ's testimony on this point were accepted, there is no direct evidence that this smaller group of refugees was killed at this time.[1495]

1352. The Chamber will now consider the event at Nyanza hill. Witness AR gave credible evidence of the arrival and killing of the large group of Tutsi refugees there, which is

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[1491] Prosecution Expert Witness Reyntjens made a similar claim to that of Des Forges about Ntabakuze's presence, but it also appears to be based on the KIBAT *Chronique* or material used in its preparation. This point was not developed during his testimony. *See* T. 22 September 2004 p. 49.

[1492] The Chamber recalls that Georges Ruggiu attested to a conversation that he had with Ntabakuze at the United Nations Detention Facility in August or September 1997 related to the incident at the Sonatube junction. In particular, Ruggiu stated: "Aloys Ntabakuze told me that when the Belgian soldiers evacuated the Kacyiru ETO, he was there with his own soldiers at the Sonatube intersection. He told me that those who sought refuge at ETO came right up to his place, and he sent them all back. That's all he said to me. He also told to me he could not allow those people to go across the front line because it was not safe. That's all." *See* T. 16 June 2003 pp. 61-63. The Chamber is not persuaded that this brief account of a six-year-old conversation between Ntabakuze and Ruggiu demonstrates beyond reasonable doubt that Ntabakuze was present when the large group of refugees arrived at the Sonatube junction.

[1493] The absence of information in the KIBAT *Chronique* does not necessarily mean that an incident did not happen. However, the Chamber also notes the following testimony from Dewez: "[i]f the facts are not contained in that *chronique*, that means that those facts were not in the field diary or perhaps they were not reported by the troops of the battalion ... Logically, all that is found in the field diary and which represents something interesting or important was reflected". T. 24 June 2005 pp. 20-21.

[1494] In particular, Ntabakuze as well as Witnesses DK-11 and DK-37 diverge on the fate of this group of refugees. According to Witness DK-11, the gendarmes escorted the refugees back towards ETO. Witness DK-37, however, heard that *Interahamwe* attacked the column of refugees forcing them to disperse. Witnesses DK-11 and DK-37 do not mention the second larger group of refugees. However, they were not specifically asked about this.

[1495] Witness AFJ only heard about the killings later. He also insisted that Ntabakuze did not order the *Interahamwe* to kill the refugees.

corroborated by Kayiranga. In particular, Kayiranga accompanied the refugees up the hill and was present when the assailants fired on them. The Defence does not dispute Kayiranga's account, and the Chamber also finds his testimony generally credible and reliable.

1353. There is some variance in the details of the accounts of Witnesses AR and Kayiranga, such as the estimated number of refugees, the duration of the attack, the separation of Hutus from Tutsis versus the separation of persons from Gisenyi and Ruhengeri, as well as the presence of a Toyota pickup. The Chamber does not consider these differences significant; they can be explained by the passage of time, the varying vantage points of the witnesses, and the traumatic and chaotic nature of the event. Instead, the Chamber has focused on the common aspects of their accounts. Notably, both witnesses alluded to a large number of mostly Tutsi refugees who were killed by soldiers and *Interahamwe* with guns and grenades from late afternoon until nightfall. In addition, they noted a lull in the attack when the assailants ran out of ammunition and the removal of some refugees before the slaughter of Tutsis continued.

1354. Based primarily on the evidence of Witness AR, the Chamber finds that the column of refugees arrived at Nyanza hill around 5.00 p.m. where they were met by 15 to 20 soldiers, most of whom were wearing camouflage berets, which had passed them on their way in a Toyota pickup truck. The Chamber is satisfied that the soldiers escorting the refugees and in the pickup truck were primarily members of the Para Commando Battalion since, as discussed above, they left from the Para Commando position at the Sonatube junction and because of their camouflage uniforms and camouflage berets. Des Forges mentioned that some of the refugees were raped as they were marched to Nyanza. She was not specifically questioned by the parties on this point, her evidence does not indicate the identity of the perpetrators, and there was no corroboration by direct evidence in the present case.

1355. When all of the refugees had arrived, the soldiers and *Interahamwe* formed a semi-circle around them and opened fire. The soldiers sought additional ammunition from the Para Commando position at the Sonatube junction. During a lull in the attack, the attackers allowed Hutu refugees to leave. The killing continued until nightfall, and *Interahamwe* returned in the early morning on 12 April, intending to loot and kill any survivors. By 13 April, the armed forces of RPF moved into the area and rescued those remaining alive, including Witness AR. As considered above, the evidence of Kayiranga broadly corroborates significant portions of Witness AR's evidence. The fact that Kayiranga possibly identified one of the assailants at the scene as a member of the Light Anti-Aircraft Battalion does not undermine the clear evidence discussed above that the soldiers participating in the attack included members of the Para Commando Battalion.[1496] In addition, Witness XAB also provided some hearsay evidence that members of the CRAP Platoon participated in the killings. This evidence is not dispositive, but provides some additional corroboration.[1497]

[1496] *See* Witness AR, T. 1 October 2003 p. 24 ("The soldiers who overtook us in the pickup vehicle were wearing the same attire as those of the soldiers who were with us at Sonatubes, but it would appear there were some other soldiers who were wearing black berets. However, most of the soldiers were wearing camouflage uniforms and camouflage berets.").

[1497] The Chamber has concluded that this unit was part of the Para Commando Battalion. Consequently, the Chamber does not accept Witness DK-11's evidence that the CRAP Platoon was outside Ntabakuze's command (IV.1.4).

1356. In view of how the events unfolded, the Chamber can only find that the killing of these refugees resulted from prior planning. In this respect, the Chamber notes the role played by the Para Commando Battalion, an elite unit of the Rwandan army, in the movement of refugees and the attack. Furthermore, as the column moved from the Sonatube junction towards Nyanza, a Toyota pickup truck with 15 to 20 armed members of the Para Commando Battalion passed the refugees, and the soldiers then waited for the refugees at Nyanza. These facts clearly demonstrate organisation. The organised manner of the killing also follows from the corralling of the refugees at the Sonatube junction and again at Nyanza hill just before the assault. Moreover, additional ammunition during the attack was sought from the military position of the Para Commando Battalion at the Sonatube junction. Accordingly, the Chamber finds that the Prosecution has proven beyond reasonable doubt the allegations that members of the Para Commando Battalion were amongst the soldiers who were involved in the massacre of Tutsi refugees from ETO at Nyanza hill.

1357. The Chamber has doubt about the Prosecution argument that the precise location of the killings at Nyanza was selected primarily to send a message to the RPF not to advance further. Although this submission appears plausible,[1498] Des Forges testified that Nyanza was selected because it was more "remote" than the Sonatube junction. In any event, the Chamber lacks sufficient evidence concerning other possible motivations behind the operation than killing the refugees, as well as information on the RPF's troop positions and movements to reach the conclusion suggested by the Prosecution.

1358. The crucial question remains whether Ntabakuze played any role in the attack at Nyanza hill. In view of the extensive radio communications between the Para Commando position at the Sonatube junction, Ntabakuze and Rwandan army headquarters concerning the relatively small group of refugees earlier in the day, the Chamber cannot accept that Ntabakuze would not have been informed about the significantly larger group a few hours later. In light of his command and control over members of the Para Commando Battalion, discussed in section IV.1.4,[1499] as well as the manner in which the military operation was executed, the Chamber considers that it could only have been carried out with the knowledge and approval of Ntabakuze. It is unthinkable that members of the Para Commando Battalion, who were particularly disciplined, would have carried out such an extensive operation without the approval of their commander, Ntabakuze. Furthermore, the evidence also reflects a high degree of coordination between members of the Para Commando Battalion and civilian militiamen. The *Interahamwe* were clearly acting as a complementary force to the Para Commando Battalion during the attack. The Chamber has determined that under such circumstances, civilian militamen will be considered as acting under the authority of the army (III.2.6.3).

1359. Turning to Bagosora, the only direct evidence of his involvement in the attack at Nyanza hill comes from Witness AR. He testified that he saw Bagosora in a military style Mercedes Benz jeep along the route to Nyanza, supervising, in the witness's opinion, the implementation of his order to kill the Tutsis at ETO. Bagosora concedes that he observed the column of refugees that day, but in the context of evacuating his family from Camp Kanombe

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[1498] *See, e.g.*, Witness AR, T. 1 October 2003 p. 27 (noting that the RPF at the time was positioned on nearby Rebero hill advancing towards Nyanza).

[1499] Several former members of the Para Commando Battalion attested to the fierce discipline and respect for Ntabakuze's authority within the unit (IV.1.4). *See also* Witness DK-120, T. 5 July 2005 p. 18; Witness DK-110, T. 12 July 2005 pp. 57-58; T. 13 July 2005 pp. 4-6.

to the Kiyovu neighbourhood of Kigali in a Toyota Landcruiser and a Hilux pickup truck. The Chamber observes that, regardless of whether Bagosora was in a Mercedes Benz or a different vehicle, the import remains the same: he had full knowledge of the movement of a mass of refugees toward Nyanza hill.[1500]

1360. Bagosora claims that there was nothing unusual about the movement of refugees at the time. While this may be true, the Chamber has determined that this particular column of more than 1,000 mostly Tutsi refugees was flanked by at least 100 *Interahamwe* and elite Rwandan troops in a combat zone. Therefore, this was no ordinary occurrence. However, it is not clear what the full scope of his authority was on 11 April (IV.1.2). Bearing in mind the prevailing circumstances at the time, the Chamber is convinced that Bagosora was aware that these refugees were going to be killed. The Chamber adds that, in view of his position in the context of the events, it has some reservations about the incidental nature of Bagosora's presence while personally escorting his family.[1501] However, it does not have a sufficient basis to conclude that he ordered or supervised the operation.

1361. With respect to Kabiligi, the Chamber notes that the Prosecution presented no witnesses or other evidence directly connecting him to the Nyanza massacre. Ntabakuze, however, testified that he spoke over the radio with Lt. Colonel Kanyandekwe, who was sitting in for Kabiligi in the G-3 office at army headquarters, with respect to the first group of refugees. Other hearsay evidence from Witness DK-11 also suggests that the G-3 office was consulted. However, there is no indication that Kabiligi was aware of this communication, in particular considering the lack of evidence concerning his whereabouts at the time (III.6.2). Therefore, the Chamber does not find it established that Kabiligi played a role in this attack.

1362. Finally, the Chamber will address the Ntabakuze Defence assertion that it was not reasonably informed of the material facts concerning Ntabakuze's role in the Nyanza massacre. It submits that the description found in paragraph 6.37 of the Kabiligi and Ntabakuze Indictment does not include either Ntabakuze or anyone under his command, nor does it place any part of this event at the location of the Sonatube intersection.[1502]

1363. The issue of notice for this event has been the subject of litigation throughout the trial. In connection with the testimony of Ruggiu on 16 June 2003, the Chamber held that the Prosecution could present evidence related to the role of Ntabakuze and the Para Commando Battalion in moving Tutsi refugees from the Sonatube Junction back to ETO, even though it was not specifically mentioned in the Pre-Trial Brief or the Indictment. The Chamber ruled

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[1500] Witness AR's testimony about Bagosora is uncorroborated. The Chamber notes that the witness testified that the distance between himself and Bagosora was about six metres, whereas in a previous statement he thought it was no more than 30 metres. *See* Bagosora Defence Exhibit 38 (Prosecution Memorandum of 3 March 1997). There is also a question whether the witness would be able to accurately identify Bagosora inside a vehicle after briefly passing it during the traumatic circumstances. Finally, the Chamber cannot exclude the point made by the Bagosora Defence that Mercedes Benz jeeps were in common use by the Rwandan army. In view of Bagosora's testimony that he was present when the refugees passed by, there is no need for the Chamber to address the significance of these elements, as they do not affect the overall credibility of Witness AR.

[1501] Moreover, there are several discrepancies between Witness LMG's account and those of Bagosora and his family. In particular, Witness LMG saw Bagosora's family at Dr. Akingeneye's residence in Kiyovu on 8 April, undermining the evidence that they were at Camp Kanombe. Also, he refers to travelling to Gitarama with the Tutsi family on 10 April and evacuating Bagosora's family from Kigali on 11 April. Bagosora and his family, in contrast, place these events on 11 and 12 April, respectively.

[1502] Ntabakuze Closing Brief, paras. 1682-1689.

that it would assess any prejudice to the Accused in reaching final judgement.[1503] In its written decision of 29 June 2006, the Chamber rejected the Ntabakuze Defence request to exclude the evidence of Alison Des Forges, Ruggiu and Witnesses AR and AFJ concerning the incident at the Sonatube junction, in particular the testimony implicating Ntabakuze and the Para Commando Battalion.[1504] On 17 April 2007, the Chamber reconsidered this decision and reached the same conclusion.[1505]

1364. It follows from the factual findings above that the Prosecution has not proven beyond reasonable doubt that Ntabakuze was present at the Sonatube junction, issuing orders there to *Interahamwe* or soldiers to take refugees to Nyanza and kill them. Therefore, the Chamber does not find it necessary to consider whether there was adequate notice for this particular allegation by the Prosecution. From the Chamber's findings, above, his role in the event is based on his command of the Para Commando Battalion and the *Interahamwe* involved in the attack, which is clearly pleaded in paragraphs 4.8 and 6.31 of the Kabiligi and Ntabakuze Indictment.[1506]

1365. The Chamber is also satisfied that Ntabakuze received sufficient notice of the participation of the Para Commando Battalion and militiamen in the Nyanza massacre. Paragraph 6.37 of the Kabiligi and Ntabakuze Indictment states that that "soldiers, including elements of the Presidential Guard, and *Interahamwe* rounded up a group of refugees [from ETO] and moved them to Nyanza" where the "soldiers" massacred them. Although there is no explicit reference to the Para Commando Battalion, the general reference to "soldiers" includes members of that battalion when read in context. The Appeals Chamber has held that "in order to determine whether an accused was adequately put on notice of the nature and cause of the charges against him the indictment must be considered as a whole."[1507] In particular, paragraph 6.31 by way of introducing the specific massacres, including Nyanza, which are attributed to Ntabakuze, indicates that soldiers under his authority participated in them.[1508] Moreover, paragraph 6.44 of the Indictment provides that "most of the massacres were perpetrated with the participation, aid and instigation of military personnel ... Certain units of the Para-Commando, Reconnaissance and Presidential Guard battalions were the most implicated in these crimes in the capital ... often acting in concert with the militiamen".

[1503] T. 16 June 2003 pp. 58-59.

[1504] *See* Decision on Ntabakuze Motion on Exclusion of Evidence (TC), 29 June 2006, paras. 36-38.

[1505] Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007, paras. 14-18. In its decision of 29 June 2006, the Chamber had held that Ntabakuze had the burden to prove that he was prejudiced by any claims of lack of notice because he failed to make contemporaneous objections. The Chamber found in its April 2007 decision that the Ntabakuze Defence had made timely objections and thus shifted the burden to the Prosecution.

[1506] Paragraph 4.8 of the Kabiligi and Ntabakuze Indictment reads: "In his capacity as Commander of the Para-Commando Battalion of the Rwandan Army, Aloys Ntabakuze exercised authority over the units of this Battalion." Paragraphs 3.3 and 6.34 refer to the "elite' nature of the battalion. Paragraph 6.31 states: "From April to July 1994, ... Major Aloys Ntabakuze, exercised authority over ... militiamen." Paragraph 6.37 indicates that soldiers and *Interahamwe* worked together in rounding up the refugees from ETO.

[1507] *See Simba* Appeal Judgement, para. 72, fn. 158, citing *Gacumbitsi* Appeal Judgement, para. 123.

[1508] Paragraph 6.31 of the Kabiligi and Ntabakuze Indictment reads: "From April to July 1994, [by] their statements, the orders they gave and their acts, Brigadier General Gratien Kabiligi and Major Aloys Ntabakuze, exercised authority over members of the *Forces Armées Rwandaises*, their officers and militiamen. The military and militiamen, as from 6 April 1994, committed massacres of the Tutsi population and of moderate Hutu which extended throughout Rwandan territory with the knowledge of Brigadier General Gratien Kabiligi and Major Aloys Ntabakuze." As mentioned above, paragraph 4.8 of that Indictment further specifies that Ntabakuze's subordinates were units of the Para Commando Battalion.

The Chamber has previously held that other paragraphs in the Indictment also provided notice when read in context with paragraph 6.37.[1509] Accordingly, the Chamber considers that the Indictment is not vague and that it reasonably informed Ntabakuze that members of the Para Commando Battalion acting in conjunction with militiamen were involved in the crimes committed at Nyanza.

1366. In any event, if there were any ambiguity as to whether the Indictment sufficiently pleaded the involvement of Ntabakuze and the Para Commando Battalion in the massacre, the Chamber considers that it was cured by timely, clear and consistent notice. The summary of Witness XAB's anticipated testimony annexed to the Prosecution's Pre-Trial Brief, filed on 21 January 2002, specifically mentions the role of the CRAP Platoon, one of the battalion's units, in the massacre.[1510] Furthermore, in an oral ruling on 16 June 2003, the Chamber stated that it would consider evidence related to the role of Ntabakuze and the Para Commando Battalion in moving Tutsi refugees from the Sonatube junction towards Nyanza and assess any unfairness at the end of the case.[1511] Therefore, Ntabakuze was again informed that he had to face the allegation that both he and members of the Para Commando Battalion were implicated in the events at Nyanza.[1512] The notice provided by the Pre-Trial Brief and the Chamber's oral ruling was given sufficiently in advance to allow for adequate preparation of the testimony about Nyanza by Witnesses AR at the end of September 2003, Kayringa and XAB in April 2004, and AFJ in June 2004.[1513]

1367. The Ntabakuze Defence received additional notice implicating Ntabakuze and the Para Commando Battalion in the Nyanza massacre from the summary of Witness AFJ's anticipated testimony in a Prosecution motion in March 2004 to add witnesses as well as the witness's annexed statement to Tribunal investigators.[1514] This notice was consistent with earlier disclosure of Witness AFJ's statement on 20 August 2003 which further mentioned the Prosecution's intention to call him as a witness.[1515] The Chamber granted the

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[1509] Reference was made to paragraphs 6.19 and 6.34 of the Kabiligi and Ntabakuze Indictment. *See* Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007, paras. 17-18; Decision on Ntabakuze Motion on Exclusion of Evidence (TC), 29 June 2006, paras. 37-38.

[1510] *See* Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007, paras. 17-18; Decision on Ntabakuze Motion on Exclusion of Evidence (TC), 29 June 2006, para. 38; Prosecution Pre-Trial Brief (21 January 2002), Annex, p. 138 ("Witness will state that on the 12th April 1994 he was told by elements of C.R.A.P. that they had taken part in massacres at the *Ecole Technique Officielle* in Kicukiro."). The Pre-Trial Brief further indicates that Witness XAB's testimony is relevant to the charge of genocide in the Kabiligi and Ntabakuze Indictment.

[1511] T. 16 June 2003 pp. 58-59.

[1512] *See Simba* Appeal Judgement, para. 79 (viewing notice provided to the defence against a backdrop of chamber decisions).

[1513] Witness AR testified on 30 September and 1 October 2003, Kayiranga on 30 April 2004, Witness XAB on 6 April 2004 and Witness AFJ on 8 June 2004.

[1514] Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) of the Rules of Procedure and Evidence, 24 March 2004, paras. 22-27, in particular para. 25 ("This evidence establishes the involvement of the soldiers of the Para-Commando Battalion in gathering, movement and final execution of the Tutsi refugees, who had originally escaped from ETO, were then stopped at the SONATUBE intersection and finally exterminated at the NYANZA hill.").

[1515] *See* Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) of the Rules of Procedure and Evidence, 24 March 2004, para. 22. The Chamber does not consider that this disclosure in and of itself provided notice to Ntabakuze. *See Niyitegeka* Appeal Judgement, paras. 197, 221.

Prosecution's request to add Witness AFJ on 21 May 2004, noting that his prospective evidence was material to the Prosecution's case concerning the Nyanza massacre.[1516]

1368. The Chamber acknowledges that the evidence concerning the rounding up of the refugees at the Sonatube junction is important to its findings. However, the location of the crime charged in the Indictment is not the junction but Nyanza, which is specifically pleaded in paragraph 6.37. The fact that the refugees were originally stopped at the Sonatube junction and that the Para Commando Battalion was positioned there does not make the location a material fact that the Prosecution was required to plead to put Ntabakuze on notice of the charges against him. Rather, this evidence was simply relevant to proving the allegations pleaded in the Indictment. The Chamber recalls that, as noted above, the Ntabakuze Defence received reasonable notice that evidence would be led related to this location in order to prepare its defence.

1369. In sum, the Kabiligi and Ntabakuze Indictment, when read in its totality, put Ntabakuze on notice that the perpetrators of the Nyanza massacre included militiamen and members of the Para Commando Battalion, and that he could be held accountable based on his role as their commander. Any possible ambiguity in the Indictment was eliminated by subsequent notice given well before the appearance of witnesses relied on by the Trial Chamber in making its factual findings on this event. The Chamber therefore cannot identify any prejudice to the Ntabakuze Defence.

1370. In view of its findings on Kabiligi, the Chamber need not consider his challenges to the pleading of his role in the crime.

4.1.2 Islamic Cultural Centre (Kadhafi Mosque), 13 April

Introduction

1371. The Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment allege that soldiers and *Interahamwe* participated in a massacre that took place close to the Islamic Cultural Centre (also known as Kadhafi mosque) in Nyamirambo, in the Kigali-Ville prefecture, on 13 April 1994. The Prosecution also submits that Bagosora was subsequently observed in the area in uniform and issuing instructions to soldiers there. Reference is made to Witness FW.[1517]

1372. The Bagosora Defence argues that it did not recieve sufficient notice regarding certain aspects of Witness FW's testimony and challenges his credibility. Bagosora also did not have any connection to military operations after his recall to active service on 21 May 1994.

[1516] Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) (TC), 21 May 2004, paras. 20-22. Notably, the Ntabakuze Defence's objections to the addition of Witness AFJ did not focus on notice or relevance to the Indictment, but rather the cumulative nature of the evidence and the delay in seeking to add him as a witness. *See* Ntabakuze Defence Response to the "Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) of the Rules of Procedure and Evidence" of 24 March 2004, 5 April 2004, para. 20.

[1517] Bagosora Indictment, para. 6.27, 6.50; Kabiligi and Ntabakuze Indictments, para. 6.36; Prosecution Closing Brief, paras. 1123-1126, pp. 757, 767, 836. Witnesses DH-90 and DH-91 also provided evidence about the attack.

According to the Ntabakuze Defence, members of the Para Commando Battalion were not involved in the massacre.[1518]

Evidence 40368

Prosecution Witness FW

1373. Witness FW, a Tutsi, sought refuge at the Islamic Cultural Centre in the Nyamirambo area of Kigali on the afternoon of 12 April 1994, where he found around 400 to 500 other unarmed Tutsi refugees. Later that day, he heard an RTLM broadcast announcing that there were *Inyenzi* with firearms at the Centre and that the army should be aware of this. On 13 April at approximately 9.00 a.m., at least 15 soldiers, armed with firearms and grenades, and more than 15 *Interahamwe* with traditional weapons and grenades, arrived at the Centre. The soldiers wore camouflage uniforms with black or camouflage coloured berets containing an insignia of a blue bird. The *Interahamwe* were dressed in MRND uniforms, CDR uniforms or civilian clothes.[1519]

1374. The witness hid under an abandoned vehicle but could clearly observe the soldiers surround the dormitory facilities where the Tutsi refugees were located. The leader of the soldiers instructed the *Interahamwe* to bring the refugees out and kill them. The *Interahamwe* broke into the dormitory while the soldiers continued to stand outside with their weapons ready. The witness overheard the solders telling the *Interahamwe* to take the Tutsis away and ensure that none of them escaped. The refugees were brought out of the Centre, and the soldiers were the last to leave the compound. A few minutes later, the witness heard multiple powerful explosions. On 14 April, he discovered six injured Tutsis who had been taken away, but had managed to return to the dormitories. They told him that the soldiers and *Interahamwe* had taken them to a nearby neighbourhood called Kivugiza, locked them in several houses, and lobbed grenades inside.[1520]

1375. In May 1994, while still hiding at the Centre, Witness FW observed Bagosora exit a vehicle and speak with the soldiers he was with, telling them that it was important to be vigilant so as to prevent civilians and infiltrators from gaining access to the Centre and also because the *Inyenzis* could attack that place at any time. The witness was hiding in a building approximately 10 to 15 metres from Bagosora and the other soldiers. Bagosora was wearing the same uniform that the soldiers had been wearing on 13 April, including the black beret with an insignia of a blue bird, but he was not wearing the stripes on his uniform that denoted rank.[1521]

Ntabakuze Defence Witnesses DH-90 and DH-91

1376. Witness DH-90, who lived approximately 600 to 700 metres from the Islamic Cultural Centre during the relevant time period, heard that there were some serious "events" that took

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[1518] Bagosora Closing Brief, paras. 1179-1186; Ntabakuze Closing Brief, para. 2112. The Kabiligi Closing Brief does not address this incident, but Kabiligi has raised an alibi for this period (III.6.2).
[1519] T. 3 November 2003 pp. 4-12, 47-49; T. 4 November 2003 pp. 5-13; Prosecution Exhibit 116 (personal identification sheet).
[1520] T. 3 November 2003 pp. 13-21, 37, 43; T. 4 November 2003 pp. 5-6, 8-18.
[1521] T. 3 November 2003 pp. 29-31, 33-37, 39-43; T. 4 November 2003 pp. 21-23. Witness FW had previously been a friend of Bagosora's son-in-law and met Bagosora during a wedding "some time" before the incident at the Islamic Cultural Centre. On other occasions, he observed Bagosora in a moving vehicle and on television. *See* T. 3 November 2003 pp. 27-29, 33-36.

place on 13 April 1994 at Saint André and the Islamic Cultural Centre. In his opinion, soldiers were not responsible for the event, but he also said that he did not know if there were soldiers among the *Interahamwe* who perpetrated the massacre. Witness DH-91, who lived in Nyamirambo during the relevant events, was told that there were refugees at the Islamic Cultural Centre and that it was attacked. He later spoke with a woman who had survived the attack under a pile of dead bodies.[1522]

Bagosora

1377. Bagosora stated that he did not have any command authority over combat troops in general and specifically disputed that he was at the Centre in May 1994 directing troops.[1523]

Deliberations

1378. Witness FW is the only witness to provide direct testimony regarding the attack on the Islamic Cultural Centre on 13 April 1994.[1524] He provided very specific details regarding important components of the event, including the uniforms worn by the soldiers and *Interahamwe* involved, the weapons they carried, and the geography of the Centre. His evidence is largely convincing and mostly consistent with his prior statements to Tribunal investigators in November 1995 and July 2000, which were put to him during cross-examination.[1525]

1379. One difference between his testimony and his statements concerns the number of soldiers present. According to his November 1995 statement, only three soldiers participated in the attack whereas he testified that there were at least 15. The witness explained that his 1995 statement was a "summary of the situation".[1526] His testimony also reflects that soldiers arrived at the Centre in two groups, one of which arrived slightly ahead of the other and contained three soldiers.[1527] The Chamber accepts his explanation.

1380. Witnesses DH-90 and DH-91, who were both present in the general vicinity of the Centre and who had extensive dealings with other refugees during the relevant time period (III.4.1.14), also attested to the attack on the Centre.[1528] While Witness DH-90 suggested that soldiers were not responsible for the massacre, he acknowledged that he did not know if soldiers were present with *Interahamwe* during the attack. Based on Witness FW's testimony, the Chamber finds that soldiers accompanied by *Interahamwe* killed a large number of Tutsi refugees at the Islamic Cultural Centre in Nyamirambo on 13 April 1994.

1381. Turning to whether Ntabakuze bears any responsibility for the attack, the Chamber notes that Witness FW identified soldiers wearing camouflage berets, which are typically

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[1522] Witness DH-90, T. 25 April 2005 pp. 9, 38, 44-45; Witness DH-91, T. 29 April 2005 pp. 40, 50-51.
[1523] T. 9 November 2005 pp. 38-39.
[1524] According to Prosecution Closing Brief, para. 1126, Witnesses AAA and DBQ corroborate Witness FW's testimony. The Chamber notes, however, that both witnesses testified regarding an incident that occurred at the end of May 1994 involving the killing of Tutsi refugees from Saint André College and the Islamic Cultural Centre (III.4.1.14).
[1525] T. 3 November 2003 pp. 40-41; T. 4 November 2003 pp. 10-11, 13. The statements were not tendered into evidence.
[1526] T. 4 November 2003 p. 10.
[1527] T. 3 November 2003 pp. 11-13.
[1528] There is also a brief reference to the April attack on the Khadafi mosque in Prosecution Exhibit 3A (Alison Des Forges, *Leave None to Tell the Story* (1999)), p. 210.

worn by members of the Para Commando Battalion as well as three other commando units of the Rwandan army, the Ruhengeri Commando Battalion, the Huye Battalion and the Commando Training Center of Bigogwe (III.1.2). The witness did not specifically identify the soldiers as members of the Para Commando Battalion. At the time of the incident, the Para Commando Battalion was stationed in combat positions along a front line with the RPF between Remera and Sonatube (III.4.1.13-14). There is also some evidence from Witness XXJ suggesting that members of the Huye Battalion were operating in the Nyamirambo area.[1529] Therefore, the Chamber is not convinced that members of the Para Commando Battalion were the soldiers wearing camouflage berets at the mosque.

1382. As to Kabiligi, the Prosecution has not eliminated the reasonable possibility that he was not in Rwanda at the time the attack occurred (III.6.2). Furthermore, it has not proven that he had command over Rwandan soldiers (IV.1.3).

1383. With respect to Bagosora, the Prosecution has not proven as a general matter that he exercised command authority over the Rwandan army after 9 April 1994 (IV.1.2). The evidence related to this event also does not show that he exercised any specific command over the assailants involved in the attack. While Witness FW claimed that he saw Bagosora in May wearing a similar uniform to the assailants on 13 April, this fact, even if true, does not demonstrate that Bagosora was present or had command over the assailants at the time of the attack.

1384. The Chamber has some doubts about Witness FW's identification of Bagosora in May. His prior knowledge of Bagosora came from seeing him occasionally pass by in a moving vehicle. There is no information about when he saw him on television. He also met Bagosora at a wedding, but could not recall the approximate date other than noting it was before 1994 and "some time" prior to the relevant events. This is not a particularly strong basis of knowledge for identifying Bagosora under traumatic circumstances. At the time of the alleged sighting at the end of May, the witness was hiding in a building 10 to 15 metres away. Soldiers of the same unit, who had participated in the massacre the witness had survived in April, were receiving instructions to prevent civilian infiltrators from gaining access to the area where he was taking refuge.[1530]

1385. Furthermore, Witness FW did not mention Bagosora's presence in his previous statements to Tribunal investigators in November 1995 and July 2000. The witness explained that he only answered the questions that were put to him, which did not focus on Bagosora.[1531] The Chamber accepts that this may be true, but it is nonetheless surprising that he would not volunteer such information, given his apparent familiarity with Bagosora and his overall significance during the events. In view of these concerns, the Chamber declines to accept the witness's account of Bagosora's presence in the absence of corroboration.

[1529] T. 16 April 2004 pp. 10-11.
[1530] *See, e.g.*, T. 3 November 2003 p. 42 ("Q. ... You told us that you saw Bagosora in the month of May. Was it, could you be more specific, at the beginning or at the end of the month of May? A. Well, Counsel, I really am sorry. I am going to answer, but you yourself, as a reasonable human being, I mean, put yourself in my position. I was in a situation where at any point in time I could be killed. I could be killed by the soldiers who were in charge of guaranteeing security and peace. I've given you the dates that I could remember.").
[1531] T. 3 November 2003 pp. 40-41.

1386. The Chamber determined during the course of the trial that Bagosora had notice of his alleged presence in Nyamirambo in May 1994.[1532] In view of its findings, it is not necessary to revisit the Defence arguments concerning the notice provided for that allegation.

4.1.3 *Centre Hospitalier de Kigali*, April - May

Introduction

1387. The Bagosora Indictment alleges that, once the killings in Kigali had started, soldiers who were supposed to be guarding the *Centre Hospitalier de Kigali* (CHK) drew up lists of Tutsi patients and hospital staff to be targeted and then killed them. Each morning, the officer in charge reported to the Ministry of Defence. The Prosecution relies on the testimony of Witnesses ZA, XAI, DCB and UT.[1533]

1388. The Bagosora Defence argues that the Prosecution has failed to show that Bagosora had authority over the perpetrators. It further submits that the testimony of Witness ZA lacks credibility.[1534]

Evidence

Prosecution Witness ZA

1389. Witness ZA, a Tutsi, worked at the CHK in April 1994. On 10 April, she went to the hospital, accompanied by her two sisters, one of whom was pregnant and required medical treatment at the maternity ward. At the entrance to CHK there was a roadblock manned by a large number of soldiers, with additional soldiers nearby. The soldiers wore green coloured berets as well as dark green uniforms and had firearms. They were checking the identity cards of people before allowing them to pass. The witness noted that it was unusual to see military soldiers, as opposed to gendarmes, present in this area. There were also at least four civilians that had been brought from the hospital by soldiers and were placed on a pick-up truck. After explaining that she worked at the CHK, the witness and her sisters were allowed to enter. There were also several soldiers inside the hospital wearing the same uniforms as the soldiers at the roadblock outside.[1535]

1390. The soldiers entered the wards and, after asking patients to show their identity card, recorded some of their names and hospital bed numbers. In the evening, the patients whose names had been recorded were taken by the soldiers to an area in the hospital, where the trash was dumped, and killed. The witness could hear the victims screaming and was told by other patients that the persons being killed were Tutsis. She tried to assist some patients whose names had been placed on the lists by hiding them in a hospital lavatory. One of her colleagues reported her for this, and she was cautioned for her action. The witness and the

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[1532] Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 40-41.

[1533] Bagosora Indictment, para. 6.52; Prosecution Closing Brief, paras. 423-424, 595, 1272, 1274 (b) and (c), 1275-1276, 1454, 1456(d), 1458, p. 768. This event is not mentioned in the Indictments of the other Accused.

[1534] Bagosora Closing Brief, paras. 1694-1698, pp. 380-381.

[1535] T. 12 February 2004 pp. 11, 17-18, 20-22, 51-52, 59-60, 76-77; Prosecution Exhibit 180 (personal identification sheet). Witness ZA identified the CHK, the roadblocks she passed on her way there, as well as Camp Kigali on a map of Kigali entered as Prosecution Exhibit 181. *See* T. 12 February 2004 pp. 45-46.

threatened patients left the maternity ward by escaping through a window. She remained at the hospital but did not return to this ward.[1536]

1391. In mid-April, a radio communiqué issued by Prefect Renzaho requested that all dead bodies be removed from Kigali. After this message, trucks loaded with corpses arrived at the CHK, and the bodies were dumped in the same area of the hospital where the night killings occurred. According to the witness, the victims were Tutsis. Some of them were still alive, although seriously injured, and were treated at the hospital upon arrival. Soldiers abducted these injured patients at night and killed them with clubs at the same location where the other killings had occurred.[1537]

1392. In mid-May, a soldier showed Witness ZA a handwritten list of names that included her name and told her that she and the others on the list were going to die that night. She went to seek advice from a patient at the hospital, the chaplain of the Kacyiru gendarmerie, who hid her in his room because it was guarded by gendarmes. In the middle of the night, the officer in charge at the CHK, accompanied by two additional soldiers, searched the chaplain's room and removed the witness and one of her sisters. After pleading with a soldier to be shot rather than killed with a club, the witness was locked in an operating theatre, where she remained for the rest of the night. The next morning, a soldier sent to kill the witness told her that he would save her life by escorting her out of the hospital and then telling the officer in charge that he had in fact killed her. This plan worked, and Witness ZA was able to escape.[1538]

1393. The commanding officer present at the CHK, Lieutenant Pierre Nsanzimana, and the soldier that discovered her hiding in the chaplain's room were from the 33rd Battalion. The witness learned this from the two gendarmes guarding the chaplain. She was told by the soldier that subsequently escorted her to safety that Nsanzimana reported to the Ministry of Defence each morning about the killings that had occurred at the hospital the previous night. Nsanzimana wore a green uniform and a green beret like the other soldiers present at the hospital.[1539]

Prosecution Witness XAI

1394. Witness XAI, a Hutu, was a member of the 17th Battalion, who was injured in 1993 and hospitalised at Kanombe military hospital. Between 15 and 20 April 1994, he was transferred, along with 80 to 120 other soldiers, to the CHK. It was located 50 metres from Camp Kigali and the surrounding area was controlled by government forces, although citizens were allowed access to the hospital. The witness remained at the CHK until the end of April or early May. While there, he saw several Tutsis taken away to be beaten and killed. A number of soldiers at the hospital had deserted their positions at the front and sought refuge there but did not commit any acts of violence.[1540]

[1536] T. 12 February 2004 pp. 23-24.
[1537] *Id.* pp. 26-28, 32-33.
[1538] *Id.* pp. 26, 33-36, 75, 78-79. Witness ZA became acquainted with the soldier who saved her while working at the hospital.
[1539] *Id.* pp. 23-26, 53-58, 60-62, 75-76, 78.
[1540] T. 8 September 2003 pp. 7-9, 18; T. 9 September 2003 pp. 1-3, 24, 36-39; T. 10 September 2003 pp. 2-3, 22-24; T. 11 September 2003 pp. 13-15; T. 12 September 2003 pp. 11-12, 14; Prosecution Exhibit 94 (personal identification sheet). Witness XAI did not identify the assailants.

Prosecution Witness DCB

1395. Witness DCB, a Hutu, was a medical officer with the Presidential Guard at Camp Kimihurura. His duties included treating soldiers inside the camp and taking wounded soldiers for treatment at various hospitals. He went to the CHK often in April 1994 and recalled seeing several dead bodies there as well as soldiers from Camp Kigali.[1541]

Prosecution Witness UT

1396. The written statement of Witness UT, a Tutsi, who lived in Gikondo in 1994, was admitted pursuant to Rule 92 *bis*. She was cross-examined by the Bagosora and Kabiligi Defence. The witness was injured in an attack at Gikondo Parish (III.3.5.8). On 10 April 1994, she and other wounded persons were transferred to the CHK by the Red Cross. The patients were both soldiers and civilians. The witness observed soldiers beating patients, saying that the civilians were responsible for their injuries. As a result of these acts, she and others were evacuated to Kabgayi in Gitarama prefecture.[1542]

Deliberations

1397. There is no dispute that killings were perpetrated at the CHK.[1543] The Defence, however, does contest the credibility of the Prosecution's main witness for the event, Witness ZA, as well as the evidence connecting Bagosora to the crimes perpetrated there.

1398. Witness ZA provided first-hand evidence that soldiers killed Tutsi civilians at the hospital between mid-April and mid-May. Her testimony reflects that this happened at times after soldiers questioned the patients on their identity and drew up lists. It follows from her account that soldiers at a roadblock in front of the hospital also checked identity cards.

1399. She described the soldiers as wearing dark green uniforms and green berets. The Chamber notes, however, that members of the Rwandan army for the most part wore black berets or camouflage berets if they were part of elite commando units such as the Para Commando Battalion or Huye Battalion (III.1.2). This difference does not undermine her identification of the assailants at the CHK as soldiers in view of its close proximity to Camp Kigali as well as the evidence of Witnesses XAI, DCB and UT that soldiers were present at the hospital. In particular, Witnesses XAI and DCB were members of the Rwandan army and therefore able to distinguish between various military units. Witness ZA's description of the colour of the beret as green probably follows from her lack of familiarity with military dress, fading memory or the nature of the difficult circumstances surrounding the events. It is likely that the berets she saw were in fact either black or possibly camouflage since they appeared to match the soldiers' uniforms.

1400. Witnesses XAI, DCB and UT generally corroborated Witness ZA's assertion that Tutsis at the hospital were targeted. They were not questioned extensively on the events at the hospital, and their accounts are therefore less detailed.

[1541] T. 6 February 2004 pp. 25, 32; Prosecution Exhibit 175 (personal identification sheet).
[1542] Prosecution Exhibit 259 (statement of 20 October 1998); Prosecution Exhibit 258 (personal identification sheet); T. 9 June 2004 p. 24. Witness UT was not cross-examined on the portion of her statement relating to the events at the CHK.
[1543] Bagosora Closing Brief, pp. 380-381.

1401. The Defence disputed Witness ZA's credibility primarily with respect to her identification of Lieutenant Nsanizimana's unit and his reporting relationship to the Ministry of Defence. In particular, it notes that there was no 33rd Battalion in the Rwandan army.[1544] Also, there were only two officers in the Rwandan army named Nsanzimana, one assigned to the Rulindo operational sector 40 kilometres away in Kigali-Rural prefecture, and the other who was assigned to the G-1 bureau on the army general staff.[1545] In an effort to suggest that Nzanzimana was assigned possibly to the general staff, rather than the Ministry of Defence, the Defence referred to the statement of Witness BK, Witness ZA's sister, which indicated that Nsanzimana was attending a meeting at army headquarters.[1546]

1402. When confronted with these points, Witness ZA said that she was only recounting what she heard from the gendarmes at the hospital. She also emphasised that she was not familiar with the organisation of the military.[1547] In the Chamber's view, this explanation as well as the evidence suggesting that Nsanzimana was not assigned to the Ministry of Defence raise doubt about her hearsay evidence relating to the identity of the soldiers' unit and their reporting structure. It does not, however, undermine her overall credibility with respect to the events at the CHK. Her testimony remained consistent that soldiers were at the hospital under the command of Nsanzimana. The fact that one of the two officers with that name in the Rwandan army was assigned to the army general staff, which was located nearby at Camp Kigali, corroborates some aspects of her account.[1548]

1403. The Chamber considers that Witness ZA offered a mostly consistent and convincing account of targeted attacks by soldiers against Tutsi civilians, from mid-April to mid-May, at the CHK. She did not have an adequate basis of knowledge to identify their unit, although it appears likely that the commanding officer was part of the G-1 bureau at army headquarters at Camp Kigali. Her evidence also does not reliably implicate Bagosora in the crimes committed at the CHK.

[1544] T. 12 February 2004 pp. 56-57. *See also* Nsengiyumva Defence Exhibit 16 (Situation of officers in the Rwandan Army as of 1 March 1994).

[1545] T. 12 February 2004 pp. 57-58. *See also* Nsengiyumva Defence Exhibit 16 (Situation of officers in the Rwandan Army as of 1 March 1994).

[1546] Bagosora Closing Brief, para. 1695; T. 12 February 2004 p. 60; Bagosora Defence Exhibit 79A (Witness BX's statement of 9 November 1997), p. 6, which reads: "Around 10 p.m., on 20 April, another bomb landed near the Pediatric Unit. Dr. Cyridion, who was passing by the maternity ward, was surprised to see me still alive. He said something to the effect that he would settle my case with [Lieutenant Pierre Nsanzimana], who at that moment was in a meeting at the Army Headquarters." The Prosecution originally listed Witness BK as a potential witness but did not ultimately call her.

[1547] T. 12 February 2004 pp. 54-56.

[1548] The Defence suggests that Witness ZA lacks credibility because she spoke about a UNAMIR vehicle which was attacked by grenades during the evacuation of refugees from the *Hôtel des Milles Collines*. It notes that neither General Dallaire nor Major Beardsley corroborates this aspect of her testimony even though they testified extensively about the movement of refugees. *See* Bagosora Closing Brief, para. 1697. In the Chamber's view, this argument does not undermine her testimony since the witness was simply recounting what someone else told her. *See* T. 12 February 2004 p. 72.

4.1.4 IAMSEA, Mid-April

Introduction

1404. The Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment allege that, starting on 7 April, elements of the Rwandan army and *Interahamwe* perpetrated massacres of the civilian Tutsi population in places where they had sought refuge for their safety. As part of this general allegation, the Prosecution contends that, around 15 April 1994, members of the Para Commando Battalion and *Interahamwe*, under the authority of Ntabakuze, killed Tutsi civilians who had sought refuge at the *L'Institut Africain et Mauricien de Statistiques et d'Economie* ("IAMSEA") in the Remera area of Kigali. Reference is made to Witnesses WB, DBQ and DP.[1549]

1405. The Ntabakuze Defence maintains that it lacked sufficient notice of these allegations. It also disputes the credibility of the Prosecution's evidence, including the testimony that Ntabakuze was present at IAMSEA. The Defence points to Witnesses Dewez, L-22, DK-120, DH-51, DK-37 and DK-14.[1550]

Evidence

Prosecution Witness WB

1406. Witness WB, a Tutsi civil servant, testified that, at approximately 6.00 a.m. on 9 April 1994, two soldiers wearing camouflage berets forcibly entered his house. They forced the witness and his family to lie down and told them that "the time of the Tutsis was over and since Tutsis had killed Habyarimana, they, too, should be killed". Different soldiers passed by the witness's house during the day, some wearing helmets. A few of them drank his beer and spoke with him. A soldier from the same prefecture as the witness informed him that they were members of the Para Commando Battalion. Around 9.00 or 10.00 a.m., *Interahamwe* arrived and began looting. They also insulted and beat the witness and his family throughout the day. That evening, fearing for their safety, the witness asked some soldiers who were carrying out patrols in the area to escort the family and two house servants to IAMSEA, which is situated in the Remera area of Kigali. The soldiers accompanied them there on foot, where they joined around 150 staff, students and other refugees.[1551]

1407. Before noon on 11 or 12 April, Witness WB saw an army major speaking in English with about six UNAMIR peacekeepers as they evacuated 30 expatriates from IAMSEA. The witness knew the army officer's military rank because of the style of his epaulettes – a star and stripe of gold or silver metallic colouring. The major also wore a camouflage coloured uniform and camouflage beret. The peacekeepers wore insignia indicating that they were from Ghana or Nigeria. The expatriates showed their passports as they were evacuated. Around 70 persons remained at IAMSEA. On the evening of 13 April, about 10 members of the Para Commando Battalion, wearing "camouflage, khaki-coloured" uniforms and "khaki-coloured" berets, as well as 20 to 30 *Interahamwe*, armed with traditional weapons and

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[1549] Bagosora Indictment, para. 6.50; Kabiligi and Ntabakuze Indictment, para. 6.36; Prosecution Closing Brief, paras. 133, 151, 167, 426, 1109(f), 1120(f), 1156-1160, 1631, 1713.

[1550] Ntabakuze Closing Brief, paras. 1445-1446, 1450-1455, 1822-1907, 2214, 2216, 2218, 2227, 2273, 2298, 2301, 2450, 2535, 2553, 2562, 2570. The other Closing Briefs do not address this event.

[1551] T. 12 November 2003 pp. 18, 26, 29, 33-38; Prosecution Exhibit 125 (personal identification sheet).

grenades, arrived. They moved the witness and his family out of IAMSEA and took them to houses some 250 metres away where they spent the night. The soldiers locked the refugees in one place and the IAMSEA students and lecturers in another. One of the soldiers, Pierre Canisius Karasanyi, brought the refugees food later that evening.[1552]

1408. Around 10.00 a.m. on 14 April, Karasanyi allowed the refugees out of the houses and into a courtyard where Witness WB saw the major who had been present at IAMSEA during the evacuation of expatriates. Around 10 *Interahamwe* were asking the major to send the refugees back to their homes, and the refugees in turn begged to go back to IAMSEA because they felt it would be safer. There were about 10 other soldiers in the vicinity. The major asked the soldiers to escort the refugees back to IAMSEA. The witness heard the major say: "Leave them, let them go back at the IAMSEA. We will look at their own case, later on." In 1995, Karasanyi, who was present at IAMSEA in April 1994, informed the witness that the major was Ntabakuze, explaining that he was in charge of all military activities in the Remera area. The witness identified Ntabakuze in court.[1553]

1409. On 15 April at 4.00 p.m., approximately 30 or 40 *Interahamwe* and about eight soldiers came to IAMSEA. The soldiers were wearing "khaki" uniforms and "khaki" berets. They lined up the refugees inside IAMSEA. Paulin, the leader of the *Interahamwe* group, and a soldier checked their identity cards and separated Hutus from Tutsis. The assailants took more than 60 Tutsis to an area about 600 metres from IAMSEA, where a yellow pickup truck with soldiers was waiting. As the Tutsis were being taken away, the soldier from the same prefecture as Witness WB, with whom he had spoken on 9 April, pulled the witness out of the line. He permitted the witness to escape with three of his eight children. His wife and the other children were not allowed to leave with him. As the witness walked toward IAMSEA, he heard gunfire that lasted 30 to 45 minutes, which he believed to be the execution of all those who had been in the line. A soldier confirmed their execution after returning from the site. The witness never saw the other members of his family again. Three years later, the witness identified the bodies of his wife and two of his children by their clothes when their corpses were exhumed.[1554]

Prosecution Witness DBQ

1410. Witness DBQ, a purported Hutu member of the First Company of the Para Commando Battalion, stated that his company invaded the IAMSEA complex towards the end of April 1994. He participated in the attack, leading a section of soldiers, along with other members of the company. Before the attack, Ntabakuze spoke with Lt. Muhawenimana, the commander of the First Company. Ntabakuze remained in radio contact during the operation from his command post at the Giporoso junction. At one point, the witness overheard a radio transmission where Ntabakuze instructed Lieutenant Muhawenimana to identify and kill "*Inyenzi*". The soldiers forced approximately 600 refugees, who had been

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[1552] T. 12 November 2003 pp. 39-44; T. 13 November 2003 pp. 14, 17, 32. Witness WB made a sketch of the insignia of the major. It was admitted as Prosecution Exhibit 128. The witness stated that he knew that the soldiers who moved them to the houses were members of the Para Commando Battalion because one of the soldiers, named Pierre Canisius Karasanyi, subsequently gave him that information. Karasanyi was the soldier who locked them in the house. T. 12 November 2003 p. 43.

[1553] T. 12 November 2003 pp. 44-47, 53-54; T. 13 November 2003 pp. 4, 6, 12, 16-18, 27-28, 32-33.

[1554] T. 12 November 2003 pp. 43, 47-54; T. 13 November 2003 p. 28. Witness WB could not remember whether the berets were the same colour as the berets of the soldiers who came to his house on 9 April. T. 12 November 2003 p. 54.

hiding in various buildings, into a courtyard, and separated more than 100 Tutsis from the Hutus. The soldiers, including members of the witness's section, then killed the Tutsis at IAMSEA with the exception of about 30 Tutsi women. The witness claimed that he did not participate in the killings and that he instructed his men not to do so as well. The RPF, which was positioned nearby at the Amahoro stadium, then attacked the First Company, forcing them to retreat. The soldiers withdrew to their position with the Tutsi women and put them in a nearby house. They repeatedly raped these women over the course of the next three weeks until they withdrew from the area at the end of May. The witness said that the soldiers did not think it was a crime to rape women during war.[1555]

Prosecution Witness DP

1411. According to Witness DP, a Hutu member of the Para Commando Battalion, elements of the battalion were based in the Remera area near IAMSEA from 8 April until 21 May 1994. The witness saw Ntabakuze once when Ntabakuze was coming from the Para Commando position at IAMSEA after 13 April, but did not elaborate on the nature or context of the encounter.[1556]

Ntabakuze

1412. Ntabakuze said that he was never at IAMSEA during April and May 1994, and that soldiers under his command were not involved in the killing of refugees. He denied that rapes occurred there, stating that he received no information about incidents at IAMSEA. Ntabakuze also contested Witness WB's identification of him at IAMSEA based on the epaulettes of the "major" he saw there, stating that his epaulette was markedly different from the one the witness described.[1557]

Ntabakuze Defence Witness Joseph Dewez

1413. Colonel Dewez, a member of the Belgian contingent of UNAMIR, testified that Ntabakuze's epaulettes had an additional emblem representing the United States Staff College which they both attended in 1987.[1558]

Ntabakuze Defence Witness L-22

1414. Witness L-22, a Hutu, was a student and resident at IAMSEA from November 1990 until the end of April 1994. He did not witness any killings or rapes by army soldiers during the month of April nor did he see army soldiers or Ntabakuze at IAMSEA during that period. According to the witness, refugees were living at IAMSEA for a long time prior to April 1994. Their number increased after 6 April, when the gunfire made it very dangerous in the surrounding area. At midday on 7 April, the witness heard gunshots nearby. This intensified over the next days.[1559]

1415. At approximately 9.00 a.m. on 14 April, French-speaking Senegalese UNAMIR soldiers evacuated some non-Rwandan students and the director of the school from IAMSEA.

[1555] T. 25 February 2004 pp. 14-20, 22-24, 28-29, 54; T. 29 March 2004 pp. 6-8, 12, 19-22, 26-32, 41-44; Prosecution Exhibit 99 (personal identification sheet).
[1556] T. 2 October 2003 pp. 8, 17-19; Prosecution Exhibit 112 (personal identification sheet).
[1557] T. 21 September 2006 pp. 1-3; T. 25 September 2006 pp. 2, 13-14.
[1558] T. 23 June 2005 pp. 15-17, 23-27. *See* Ntabakuze Defence Exhibits 124 (Diploma of Aloys Ntabakuze), 125A (Diploma of Aloys Ntabakuze), 125B (Image of the insignia on Ntabakuze's epaulettes in 1994). The exhibits were tendered during Colonel Dewez's testimony on 23 June 2005.
[1559] T. 2 March 2006 pp. 19-20, 25, 30-33, 43; Ntabakuze Defence Exhibit 209 (personal identification sheet).

Those leaving were asked to show their identification documents. The UNAMIR soldiers took the witness and three others to meet with a Rwandan army captain, who told them to return to the school. The officer gave the students a telephone number to call if they encountered any problems. The witness did not see any army soldiers in the area between IAMSEA and where the UN took him to meet with the captain. Two days later, a refugee informed the others at IAMSEA that advancing RPF soldiers were dispersing young people, suspected of engaging in killings at the school, and that it had just set fire to a house with 10 people inside.[1560]

1416. On 18 or 19 April, at around 3.00 p.m., a man named Paulin and his gang of young men, armed with Kalashnikovs and traditional weapons, separated the persons at IAMSEA. Using IAMSEA identity cards, they divided the people into two groups: one group of students and another composed of teachers, cooks and refugees. The assailants took away the second group, which included Hutus and Tutsis as well as Witness L-22's Hutu brother. He never learned of the fate of either his brother or anyone else in the group. According to the witness, Rwandan army soldiers were never at IAMSEA.[1561]

Ntabakuze Defence Witness DK-120

1417. Witness DK-120, a Hutu soldier in the Para Commando Battalion, stated that the battalion attacked the RPF positions at IAMSEA on 8 April and again between 11 and 13 April 1994. The witness did not see or hear of any refugees or any refugee evacuations by UNAMIR. He also testified that he did not think soldiers who were being fired at constantly and who could not receive supplies because of the intense fighting could be capable of committing rape.[1562]

Ntabakuze Defence Witness DH-51

1418. Witness DH-51, a Hutu member of the Para Commando Battalion, said that he never observed the battalion engaged in killing or raping civilians, and that he was not aware of Ntabakuze giving orders to his soldiers to carry out such acts. The Para Commando Battalion never controlled the IAMSEA area but were deployed in its vicinity. The witness had not heard that rapes or killings had taken place in that area. He also stated that the Para Commando Battalion never collaborated with the *Interahamwe*.[1563]

Ntabakuze Defence Witnesses DK-37 and DK-14

1419. Witness DK-37, a Hutu gendarme with the Remera brigade, testified that, between 9.00 and 10.00 a.m. on 7 April 1994, civilians who had fled from IAMSEA arrived, seeking refuge at the gendarmerie post. The refugees told the gendarmes that they were fleeing from an RPF attack on civilians at IAMSEA. A section of gendarmes left for IAMSEA to carry out reconnaissance, but was ambushed by RPF soldiers. Three gendarmes died during the fighting. A mortar shell fell on the brigade from the direction of IAMSEA. Following that, the gendarmes exchanged fire with the RPF for one and a half to two hours. Between noon

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[1560] T. 2 March 2006 pp. 23, 32-39; T. 6 March 2006 pp. 24-25.
[1561] T. 2 March 2006 pp. 39-43; T. 6 March 2006 pp. 26-27. Witness L-22 stated that the incident with Paulin occurred four or five days after UNAMIR arrived.
[1562] T. 4 July 2005 pp. 64-65, 76-77; T. 5 July 2005 pp. 4-6, 28-31; Ntabakuze Defence Exhibit 141 (personal identification sheet).
[1563] T. 6 December 2005 pp. 22-25, 51-52, 54-55; Ntabakuze Defence Exhibit 199 (personal identification sheet).

and 1.00 p.m., the Remera brigade retreated to the Kicukiro brigade post.[1564] According to Witness DK-14, a Hutu member of the Para Commando Battalion, the IAMSEA area was controlled by the RPF from 9 April.[1565]

Deliberations

1420. After the death of President Habyarimana, many Hutus and Tutsis fleeing violence in the Remera area of Kigali sought refuge along with the students and staff at IAMSEA. This follows from the testimony of Witness WB, a Tutsi refugee, and Witness L-22, who was a student there. Members of the Para Commando Battalion were stationed nearby as part of a line of combat positions stretching from the Giporoso junction in Remera to the Sonatube junction in Kicukiro, and the RPF was operating in relatively close proximity at the Amahoro stadium east of IAMSEA.[1566] There is also consistent evidence from both the Prosecution and Defence that, in mid-April, armed civilian assailants under the direction of Paulin separated people at IAMSEA and led one of the groups away, never to be seen again. The principal question for the Chamber is whether members of the Para Commando Battalion were involved in the killing or rape of Tutsi refugees at IAMSEA in April 1994.

1421. The two main Prosecution eye-witnesses to this event are Witness WB, a survivor of the attack on IAMSEA, and Witness DBQ, who purportedly participated in it. The Prosecution submits that their accounts corroborate each other.[1567] The Chamber considers that Witness WB provided a first-hand, consistent and detailed narrative of the events, which the Chamber accepts, except as discussed below. In other contexts, the Chamber has had doubts about the credibility of Witness DBQ (III.2.5.1; III.3.5.1; III.4.1.14). There are differences between his and Witness WB's versions related to the date of the attack, the place of the killings, the abduction and rape of Tutsi women, and the role of the *Interahamwe*.

[1564] T. 26 July 2005 pp. 55-63; Ntabakuze Defence Exhibit 152 (personal identification sheet); Ntabakuze Defence Exhibit 153 (Sketch of the Remera area).

[1565] T. 14 March 2006 pp. 24, 31-32; T. 16 March 2006 pp. 3-5; Ntabakuze Defence Exhibit 218 (personal identification sheet).

[1566] *See, e.g.*, Ntabakuze, T. 21 September 2006 p. 7; Ntabakuze Defence Exhibit 228 (map of Kigali marked by Ntabakuze). In addition, multiple witnesses testified to the position of Para Commando, army and RPF soldiers in the Remera area during this period. Witnesses DP, DK-120, DH-51, DK-37 and DK-14 all testified that Para Commandos were in the area after 8 April 1994. The latter four stated that the IAMSEA location was controlled by the RPF and inaccessible to army soldiers. In his testimony, Witness DP placed IAMSEA just within the RPF frontline. *See* Prosecution Exhibit 115 (Map of Remera). A UNAMIR Situation Report from the 9 to 10 April reads as follows: "RPF controls the vicinity of CND, the Meridien roundabout and the Amahoro vicinity. Also three hundred meters from Amahoro complex towards airport. The junction with RPF units of the north is yet to be effective." *See* Ntabakuze Defence Exhibit 39 (Situation Report of 9 to 10 April). A UNAMIR situation report of 24 to 25 April states that Rwandan army "troops observed about 300m east of Amahoro Stadium." *See* Ntabakuze Defence Exhibit 40 (Situation Report of 24 to 25 April). Witness DK-37 testified that his brigade moved from their location just east of the Amahoro Stadium, westward away from IAMSEA, after fighting began on 7 April. *See* Ntabakuze Defence Exhibit 153 (Sketch of the Remera brigade movements). The evidence makes it clear that the RPF had control of the Amahoro Stadium as early as 9 April. IAMSEA, however, was at the frontline of the battle but not clearly under RPF control, with the Para Commando Battalion and gendarmerie stationed in the vicinity.

[1567] Prosecution Closing Brief, para. 1159. The Chamber notes that at one point during the cross-examination of Witness DBQ, the Prosecution seemed to suggest that they referred to different events. *See* T. 29 March 2004 p. 20.

1422. Witness WB, as corroborated by Witness L-22, placed the the round-up and killing of refugees in mid-April.[1568] In contrast, Witness DBQ suggested that it occurred at the end of April, rejecting the proposition that it happened in mid-April.[1569] He also insisted that the killings occurred at IAMSEA and disagreed with the proposition based on Witness WB's evidence, corroborated by Witness L-22, that the refugees were killed elsewhere.[1570] Witness WB, who survived, made no mention of the abduction of women. Witness DBQ's evidence on this point as well as their subsequent rape is not corroborated. Witness WB also did not testify about the attack by the RPF which, according to Witness DBQ, forced the First Company to withdraw. Moreover, Witness WB indicated that the majority of assailants separating the Tutsis from Hutus were *Interahamwe* led by Paulin. Witness L-22 also referred to the role played by Paulin and armed civilians in the attack. Witness DBQ only identified soldiers as the assailants, not the *Interahamwe*.[1571] These differences raise further questions about Witness DBQ's credibility.[1572] The Chamber therefore does not rely on his evidence with respect to the events at IAMSEA or the abduction and rape of Tutsi women from there.

1423. As mentioned above, the Chamber finds Witness WB's narrative of the events credible. His account is corroborated in a number of respects by Witness L-22. Both witnesses attested to the presence of refugees at IAMSEA, the evacuation of expatriates by UNAMIR and the separation of refugees by armed civilians led by Paulin. This said, there are differences between their accounts.[1573]

1424. One of them is whether soldiers participated in the events at IAMSEA. The Chamber considers the testimony of Witness WB more credible than that of Witness L-22, who denied

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[1568] Witness WB specified the date of the attack as 15 April. Witness L-22 suggested that it was four or five days after the UNAMIR evacuation, which places the incident around 18 to 19 April, but he provided only estimates.

[1569] T. 29 March 2004 p. 22. Witness DBQ's testimony that his unit retreated from its position three weeks later at the end of May suggests that the event could even have occurred at the beginning of May.

[1570] T. 29 March 2004 p. 21 ("Q. Witness, if I were to say to you that this Witness WB did not speak of any attacks against the IAMSEA, what would you say to that? A. I have told you that I don't know this witness. I have told you what I have seen because I was there. I don't know this witness ... Q. Witness, if I were to tell you that a witness, Witness DQ, in his statement, said that people were not killed at the IAMSEA, but along the way as they were on their way to Kabuga, what would you say to that, Witness? A. I will tell you that these people were killed at the IAMSEA. I cannot change my testimony. I was there; I was present.").

[1571] Witness WB's estimation of the number of refugees, around 150 before the evacuation of expatriates, is also significantly lower that the 600 mentioned by Witness DBQ. Witness DBQ also rejected the suggestion that Pierre Canisius Karasanyi was stationed in the IAMSEA area. According to Witness WB, this soldier assisted him during the event.

[1572] Other aspects of Witness DBQ's evidence on this event are equally troubling. For example, his explanation for leading a section of soldiers during the attack, but then not participating in the killing is not convincing, as his testimony does not suggest any other reasonable purpose for going to IAMSEA. At times, he appeared evasive and refused to answer questions. *See, e.g.*, T. 29 March 2004 p. 59 ("Q. What was the name of your platoon commander at IAMSEA and at the Christus centre? A. You can find that information in my statements, Counsel. Q. Witness, we cannot find this piece of information in any of your statements, and that is why I am putting the question to you. A. I cannot answer your question immediately, but I believe perhaps we could leave this matter aside. I remember that in my first statement I gave you the name of the platoon commander. Q. And today you do not recall the name of your platoon commander? A. I don't think that information is going to be of any use to you, Counsel. Mr. Tremblay: Mr. President, I checked the witness's statement over the weekend, and I just want to draw your attention to the fact, and you will make a final determination based on his testimony and his statements, you can see that he is unable to provide us with the name of his section commander during the war. The witness: I can give you his name, if you wish. That would not (*sic*) Warrant Officer Habiyambere. I just don't think that that information can assist you in any way.").

[1573] The Chamber does not consider material the varying descriptions of the identity of the peacekeepers.

such involvement. Witness WB personally interacted with some of the soldiers during the events, and one in particular saved his life on 15 April, as other refugees were being led away. He consistently described their uniforms and berets as khaki or camouflage. The witness's testimony reflects that he considered khaki and camouflage as essentially the same. The Chamber recalls that members of the Para Commando Battalion wore camouflage berets (III.1.2; III.4.1.1). Given the nearby position of the Para Commando Battalion, the Chamber is convinced that the soldiers who came to IAMSEA from 9 to 15 April were members of that unit. This is in conformity with the evidence of Witness WB who was informed a few days earlier by one of the soldiers present during the attack that he was a member of the Para Commando Battalion. There is no suggestion that the other commando units who wore this type of berets were operating in the area.

1425. The Chamber also observes that even Defence Witness DK-120 indicated that members of the Para Commando Battalion attacked RPF positions at IAMSEA. Furthermore, the evidence of Witnesses DK-120, DH-51, DK-37 and DK-14 concerning the RPF control of IAMSEA and lack of involvement of members of the Para Commando Battalion have limited weight given their interest to absolve their battalion of any responsibility for the event. Witness DK-120's account that he was at IAMSEA, but did not see any refugees, is somewhat implausible in view of the evidence of Witnesses WB and L-22 that there were a number of refugees there. Witness DH-51's general testimony that he did not hear about any crimes committed at IAMSEA has limited probative value. Finally, the evidence of Witnesses DK-37 and DK-14 about the activities of the RPF simply shows that it was active in the area, which is not disputed. It does not undermine Witness WB's account that members of the Para Commando Battalion were present at IAMSEA in mid-April.

1426. The reliability of Witness WB's evidence about Ntabakuze's presence at IAMSEA before 15 April is a different matter. He observed an officer with the epaulettes normally worn by a Rwandan army major and learned after the events that Ntabakuze was supervising soldiers in the area. He then identified Ntabakuze in court.[1574] The Chamber is not satisfied that the witness's brief sighting of the officer's epaulettes as well as information learned after the events is sufficient to demonstrate that the officer in question was Ntabakuze, in particular in view of the traumatic nature of the events.[1575] Witness WB's testimony is uncorroborated, and the Chamber is therefore not convinced that Ntabakuze was present at IAMSEA or in the surrounding area before the attack in mid-April.[1576]

1427. Based on Witness WB's testimony, the Chamber finds that, in mid-April 1994, *Interahamwe*, led by Paulin, and a member of the Para Commando Battalion separated Hutu and Tutsi refugees into two groups at IAMSEA. It is possible that some Hutus, such as Witness L-22's brother, were also part of the Tutsi group. However, this does not change that

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[1574] Witness WB also identified Ntabakuze during a photo lineup in Kigali on 1 August 2003. The Chamber decided that the Prosecution should use the normal process of identification in court. It added that if he was able to identify the Accused, the question of the admission of the previous photo line-up as evidence would not arise. *See* T. 13 November 2003 pp. 1-3.

[1575] The evidence of Ntabakuze, as corroborated by Dewez, that he wore a different style epaulette than a traditional Rwandan army major raises additional questions. *Compare* Prosecution Exhibit 128 (sketch of major's epaulettes by Witness WB) *with* Ntabakuze Defence Exhibit 227 (photo of Ntabakuze in camouflage uniform). However, in the Chamber's view, this evidence alone is not definitive since it is not clear whether Ntabakuze wore the special insignia he received from the United States Staff College on a daily basis.

[1576] The testimony of Witness DP, who saw Ntabakuze around 13 April 1994 coming from the Para Commando position near IAMSEA, is too general to confirm that the officer Witness WB saw was in fact Ntabakuze.

the separation was based mainly on ethnicity, as explained by Witness WB, who along with his family were part of the Tutsi group.

1428. The *Interahamwe* and around 10 members of the Para Commando Battalion led a group of approximately 60 Tutsis to an area 600 meters away. Other soldiers from the Para Commando Battalion were waiting for the refugees in a yellow pickup truck. A member of the Para Commando Battalion allowed Witness WB and three of his children to escape unharmed. A few minutes later, he heard sustained gunfire. He did not see the refugees again, and later saw the bodies of some members of his family which were exhumed from a mass grave. The Chamber is convinced that *Interahamwe* and members of the Para Commando Battalion killed the refugees. The joint participation of *Interahamwe* and soldiers, the separation of Hutus and Tutsis, and the presence of the pickup truck with additional soldiers at the killing site indicates organisation and prior planning.

1429. In light of his command and control over members of the Para Commando Battalion (IV.1.4), as well as the organisation of the crime, the Chamber considers that the operation could only have been carried out with the knowledge and approval of Ntabakuze. The Chamber has no evidence connecting Bagosora or Kabiligi to this specific attack.

1430. Finally, the Chamber will address the Ntabakuze Defence assertion that it was not reasonably informed of the material facts concerning Ntabakuze's role in the killing of Tutsi refugees at IAMSEA. The issue of notice for this event has been the subject of previous litigation during the trial. In June 2006, the Chamber decided that paragraph 6.36 of the Kabiligi and Ntabakuze Indictment was vague in relation to this specific allegation but found that this defect in the Indictment was cured by timely, clear and consistent information, notably by the summary of anticipated testimony of Witness WB in the Prosecution's Pre-Trial Brief, filed on 21 January 2002.[1577] This notice came more than 11 months before the appearance of the witness, whose testimony underpins the Chamber's factual findings on this event. It follows from the Chamber's findings above that Ntabakuze's role in the event is based on his command of the Para Commando Battalion, which is clearly pleaded in paragraph 4.8 of the Kabiligi and Ntabakuze Indictment.[1578] The Ntabakuze Defence does not raise any additional arguments in its Closing Brief which warrant the reconsideration of the Chamber's finding that he had adequate notice.

[1577] Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 32-35. *See also* Prosecution Pre-Trial Brief (21 January 2002), p. 134 ("[Witness WB] will testify on selective killings at IAMSEA in Kigali ... On the 15th April 1994 FAR soldiers and *Interahamwe* invaded the institute and took the Tutsis to an execution site about 600 meters away ... Witness found out after the genocide that the Major who ordered the selection of the Tutsi and who was in charge of the FAR would have been Ntabakuze"). In addition, the revision of the Prosecution Pre-Trial Brief, filed in June 2002, specifically references Witness WB's summary in the January 2002 Pre-Trial Brief to paragraph 6.36 of the Kabiligi and Ntabakuze Indictment. *See* Prosecution Pre-Trial Brief (7 June 2002), p. 13. In view of the Chamber's findings above, the Ntabakuze Defence objections to the notice provided concerning the allegation of rape, advanced by Witness DBQ, are no longer relevant.

[1578] Paragraph 4.8 of the Kabiligi and Ntabakuze Indictment reads: "In his capacity as Commander of the Para-Commando Battalion of the Rwandan Army, Aloys Ntabakuze exercised authority over the units of this Battalion." Paragraphs 3.3 and 6.34 refer to the "elite" nature of the battalion.

4.1.5 Ruhanga Church, 14 - 17 April

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Introduction

1431. The Kabiligi and Ntabakuze Indictment alleges that, starting on 7 April 1994, elements of the Rwandan army and *Interahamwe* perpetrated massacres of the civilian Tutsi population in places where they had sought refuge for their safety. Referring to Witness DCH, the Prosecution submits that Ntabakuze and the Para Commando Battalion participated in a massacre at Ruhanga church in Gikoro commune between 14 and 17 April 1994.[1579]

1432. The Ntabakuze Defence maintains earlier submissions that there was insufficient notice about this incident. It disputes the credibility of Witness DCH and emphasises that the Para Commando Battalion was never deployed to the Ruhanga area. Reference is made to Witness DI-43.[1580]

Evidence

Prosecution Witness DCH

1433. Witness DCH, a Hutu *Interahamwe*, testified that, on 14 April 1994, Laurent Semanza, the former *bourgmestre* of Bicumbi, came to Kabuga sector to seek reinforcements for an attack on Ruhanga church in Gikoro commune. The local *conseiller* gathered assailants, including *Interahamwe* and gendarmes from the Kabuga brigade. Ntabakuze arrived from Camp Kanombe with two companies of the Para Commando Battalion, each comprised of 80 to 100 soldiers.[1581]

1434. The assailants, including Witness DCH, left Kabuga sector for Ruhanga church. Ntabakuze and the *conseiller* travelled in a Mazda pickup that Ntabakuze had previously appropriated from a person killed at a roadblock. Between 14 and 17 April, the witness participated in three attacks at Ruhanga church. On the first day, the attackers, including the soldiers, killed Tutsi refugees until the evening. The next afternoon, Ntabakuze and members of the Para Commando Battalion again attacked the church, after picking up *Interahamwe* at Kabuga. On the third occasion, he and his soldiers as well as the *Interahamwe* returned to the church to kill the survivors and bury the corpses. The witness noted that a genocide memorial indicates that there were 500 victims there.[1582]

1435. Witness DCH had seen Ntabakuze on two or three previous occasions between 7 and 14 April, once at roadblock in the Kabuga area and again when he accompanied Laurent Semanza to Camp Kanombe for travel documents and weapons. These weapons were used during the attack on Ruhanga church.[1583]

[1579] Ntabakuze and Kabiligi Indictment para. 6.36; Prosecution Closing Brief, paras. 1477-1478, 1488, pp. 836-837.
[1580] Ntabakuze Closing Brief, paras. 150, 284-292, 1797-1821.
[1581] T. 22 June 2004 pp. 93-95; T. 29 June 2004 pp. 59-60; T. 30 June 2004 pp. 40-45, 48; Prosecution Exhibit 275 (personal identification sheet).
[1582] T. 22 June 2004 pp. 95-96; T. 24 June 2004 p. 65. The transcripts are not entirely clear as to which days, within the range of 14 to 17 April 1994, these three attacks took place.
[1583] *Id.* pp. 84-90; T. 30 June 2004 pp. 40-41.

Ntabakuze

1436. Ntabakuze testified that he established a command post at Kanombe airport on the evening of 7 April 1994 and therefore was not frequently at Camp Kanombe. He denied going to Kabuga and Ruhanga after the death of President Habyarimana, emphasising that the primary function of the Para Commando Battalion at the time was to defend the airport.[1584]

Ntabakuze Defence Witness DI-43

1437. Witness DI-43, a Hutu who lived in the Kabuga area, heard that people from Bicumbi commune killed mostly Tutsi refugees at Ruhanga church around 9 April 1994. He did not hear that soldiers participated in the attack and noted that the Kabuga gendarmerie had only a skeletal staff at the time. The witness was told that soldiers from unspecified units were in the Ruhanga area around 14 or 15 April in order to check the RPF advance. However, the Tutsi refugees there had already been killed.[1585]

Deliberations

1438. Tutsi refugees were killed at Ruhanga church in April 1994. The main points of contention are when this event unfolded and whether Ntabakuze and the Para Commando Battalion participated in it. Witness DCH was the only witness to implicate them in the killings at the church and to refer to multiple attacks between 14 and 17 April. He admitted that he had been amongst the attackers. In Rwanda, the witness pleaded guilty and was in 2000 convicted to seven years' imprisonment for crimes committed in the Kabuga area in April 1994.[1586] The Chamber considers his testimony with caution.

1439. Witness DCH's evidence contains few details concerning the attack at Ruhanga church except for the assertion that *Interahamwe* and soldiers killed Tutsis there. The Chamber also observes that unlike his testimony, his statement and subsequent conviction in Rwanda do not mention his involvement in that massacre. Questioned by Rwandan officials in 1999, the witness confessed to having committed several crimes but did not include the attacks against Ruhanga church. When the officials asked him about these attacks, he only referred to another person who sought reinforcements from the Kabuga area for the attack and added that he did not know anything else about the massacre. At the end of his statement, he said that he had told the entire truth.[1587]

1440. When this discrepancy between his testimony and his statement was put to him during cross-examination, Witness DCH explained that he was no longer under investigation for crimes in Rwanda at the time he appeared before the Tribunal.[1588] The Chamber is well aware

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[1584] T. 21 September 2006 pp. 16-17.
[1585] T. 27 February 2006 p. 78; T. 3 March 2006 pp. 5-9; Ntabakuze Defence Exhibit 203 (personal identification sheet).
[1586] Ntabakuze Defence Exhibit 70 (Rwandan judgment, dated 8 December 2000).
[1587] Ntabakuze Defence Exhibit 68 C (statement given to Rwandan authorities of 25 May 1999), in particular p. 20 ("Q. Is it true that Ruhanga was attacked by people from Kabuga? A. One of the children from Gasagara who lived in Kabuga, called Shafi, said that he had come from his home in search for reinforcement, in the person of Gasongo, for the situation was explosive. I don't know anything else.") and p. 27 (concluding his statement by saying "... what I have stated is true. I have hidden nothing from you").
[1588] T. 29 June 2004 p. 60 ("What I am telling you is that when I was answering the prosecutor's questions at the time, I was an accused, and today I am not an accused. At that time I was on trial before a court, and I explained the situation. And I've come here to explain the situation.").

that suspects may try to reduce their own role during the genocide by confessing to only some of the acts they committed. This said, the witness's explanation does indicate a willingness to mislead judicial officials and raises some concerns about his credibility.

1441. Witness DCH's conviction in December 2000 was based on his confessions.[1589] It is noteworthy that one of his co-accused was accused of killing persons at Ruhanga church.[1590] Therefore, even though this event formed part of the trial the witness continued to keep silent about his own involvement in it. Similarly, in his first statement to Tribunal investigators in February 2000, before the delivery of the Rwandan judgment, he omitted the attacks against the church and only mentioned Ntabakuze in connection with the delivery of weapons to a roadblock in the Kabuga area three to four days after the death of the President. This means that Ntabakuze would have been there around 10 April.[1591] In subsequent statements to Tribunal investigators in 2001 and 2004, however, the witness implicated Ntabakuze and members of the Para Commando Battalion in the attacks against the church between 15 (not 14, as in his testimony) and 17 April, but referred only to their participation during the first day.[1592]

1442. Witness DI-43, the only other witness who testified about attacks in Ruhanga, heard that many Tutsi refugees were killed there around 9 April. The Chamber has taken into account that he only provided hearsay evidence, and that he stated that there were soldiers in Ruhanga around the 14 or 15 April. It cannot be excluded that there were attacks in that area both around 10 April and between 14 and 17 April. However, it is worth noting that Witness DI-43's version is in conformity with the findings of the Trial Chamber in the *Semanza* case, which placed the attack against Ruhanga church on 10 April in accordance with the indictment in that case.[1593]

1443. Witness DCH's account is uncorroborated. Having considered the totality of the evidence, the Chamber finds that his testimony alone is insufficient to prove beyond reasonable doubt that Ntabakuze and the Para Commando Battalion participated in attacks at Ruhanga church between 14 and 17 April 1994. These concerns apply equally to allegations that Ntabakuze provided weapons to Witness DCH and other attackers in the Kabuga area.

1444. The Chamber has previously decided that Ntabakuze had adequate notice of these allegations. It does not see the need to revisit the Ntabakuze Defence submissions concerning the pleading of these incidents in the Indictment.[1594]

[1589] Ntabakuze Defence Exhibit 70 C (Rwandan judgment, dated 8 December 2000), pp. 2-3, 14, 23-24, 31.
[1590] Witness DCH's co-accused was specifically charged with involvement in the attack on the Ruhanga church with members of the Presidential Guard (not the Para Commandos) together with Bicumbi communal police. *See* Ntabakuze Defence Exhibit 70 C (Rwandan judgment, dated 8 December 2000), pp. 4, 40.
[1591] Kabiligi Defence Exhibit 63 (statement of 23 February 2000). The first part of the statement covers the general situation in Kabuga and specifically addresses Ntabakuze's alleged interaction with the witness before turning to Jerôme Bicamumpaka, which is the focus of the statement.
[1592] Witness DCH gave several statements, of which three are of significance here: Nsengiyumva Defence Exhibit 50 (statement of 20 September 2001); Kabiligi Defence Exhibit 64 (statement of 29 October 2001); Kabiligi Defence Exhibit 67 (statement of 6 March 2004).
[1593] Witness DCH appeared for the Prosecution in the *Semanza* case to rebut the alibi defence. The Trial Chamber noted that his evidence (multiple attacks in Ruhanga from 14 through 17 April) substantially departed from the Prosecution's evidence in its case-in-chief (a single attack at Ruhanga church on 10 April). *See Semanza* Trial Judgement, paras. 159-161. The Appeals Chamber did not find the Trial Chamber's conclusion unreasonable. *See Semanza* Appeal Judgment, para. 214.
[1594] Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006. paras. 39-41.

4.1.6 Masaka Hill, Mid-April

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Introduction

1445. The Kabiligi and Ntabakuze Indictment alleges that in Kigali, starting on 7 April 1994, elements of the Rwandan army and *Interahamwe* perpetrated massacres of the civilian Tutsi population in places where they had sought refuge for their safety. The Nsengiyumva Indictment alleges that, between 8 April and mid-July 1994, Nsengiyumva ordered militiamen and soldiers to exterminate the civilian Tutsi population and its accomplices. As part of these general allegations, the Prosecution seeks to hold Ntabakuze and Nsengiyumva responsible for an incident in mid-April 1994 where Nsengiyumva was authorised by Ntabakuze to take 30 members of the Para Commando Battalion from Camp Kanombe to Masaka hill in order to kill Tutsi civilians. Reference is made to Witness DBN.[1595]

1446. The Ntabakuze and Nsengiyumva Defence repeat earlier challenges that this incident is insufficiently pleaded in their respective Indictments. Witness DBN's testimony concerning the meeting at Camp Kanombe and Nsengiyumva's presence there is implausible and his evidence of the attack is uncorroborated hearsay. It is also contradicted by Witnesses OME-1, ICC-1, DH-51 and DM-23.[1596]

Evidence

Prosecution Witness DBN

1447. Witness DBN, a Tutsi member of the Para Commando Battalion, testified that, between 8.00 and 8.30 a.m. at some point between 10 and 15 April, Ntabakuze held a meeting at *Joli Bois* in Camp Kanombe. It was attended by more than 100 of the approximately 150 members of the Para Commando Battalion remaining there. The purpose of the meeting was to discuss the evacuation of the camp to the *École Technique Officielle*, due to the *Inyenzi* being near. None of the battalion's company or platoon commanders attended the meeting since they were deployed in combat positions. The meeting lasted less than one hour and ended perhaps around 9.20 a.m. About 10 minutes after the meeting began, Nsengiyumva arrived at the camp driving a military jeep, accompanied by four or five armed soldiers in the back, and parked about 15 metres from the witness. He spoke with Ntabakuze for about five minutes, requesting to take a platoon of soldiers to Masaka hill where "*Inkotanyi*" were hiding. The witness was four metres away from Ntabakuze and Nsengiyumva while they spoke. He had seen Nsengiyumva on several occasions at Camp Kanombe in 1993 and met him once in Gisenyi prefecture.[1597]

1448. Ntabakuze asked the assembled soldiers for volunteers to accompany Nsengiyumva. A few minutes later, around 8.50 or perhaps 9.00 a.m., a platoon of 30 soldiers, but no officers, left on board a truck bound for Masaka hill, which was eight kilometres away. They

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[1595] Kabiligi and Ntabakuze Indictment, para. 6.36; Nsengiyumva Indictment, paras. 6.22, 6.33, 6.36; Prosecution Closing Brief, paras. 427, 1324 (a), 1329, pp. 837, 884-886, 892, 896.

[1596] Ntabakuze Closing Brief, paras. 1919-1949; Nsengiyumva Closing Brief, paras. 2025-2026, 2595-2600, 3054-3058, 3059-3063; T. 31 May 2007 pp. 61-62. The Bagosora Defence and the Kabiligi Defence do not address these allegations.

[1597] T. 1 April 2004 pp. 54-57; T. 5 April 2004 pp. 110-120; T. 6 April 2004 pp. 1, 4, 10; Prosecution Exhibit 198 (personal identification sheet). The witness identified the location of *Joli Bois* where the meeting occurred on a sketch of Camp Kanombe. Ntabakuze Defence Exhibit 53 (Sketch of Camp Kanombe).

were armed with guns and grenades. Witness DBN could not name any of the soldiers, except for Rwanyamera, the driver. According to the witness, it would take 15 to 20 minutes to cover the distance if driving fast. Around 40 minutes later, the soldiers returned just as the meeting concluded. The witness heard from two members of the Para Commando Battalion, who were not members of his company and who had accompanied Nsengiyumva, that they had been misled when they were told that there were "*Inkotanyi*" at Masaka hill. In reality, Tutsi refugees were hiding in the coffee plantations and houses there. The soldiers threw grenades at them. There was no fighting. Rwanyamera confirmed this.[1598]

Ntabakuze

1449. Ntabakuze stated that the meeting described by Witness DBN at *Jolis Bois* in mid-April 1994 never occurred. Nsengiyumva was not in his chain of command, and thus not in a position to request his troops.[1599]

Nsengiyumva

1450. Nsengiyumva denied that he visited Camp Kanombe or Masaka hill during the relevant events in 1994. From 9 April 1994, the Kigali-Kanombe road was not passable due to fighting. It would therefore have been impossible for him to travel there from Gisenyi prefecture. Neither he or any of his family members had a residence at Masaka.[1600]

Nsengiyumva Defence Witness ICC-1

1451. Witness ICC-1, a Hutu who lived near Masaka hill in April 1994, heard that a group of assailants known as the "Zulus" killed Tutsis in the area between 7 and 21 April 1994. The witness did not hear about Nsengiyumva's participation in the killings.[1601]

Nsengiyumva Defence Witness OME-1

1452. Witness OME-1, a Hutu soldier stationed at Camp Kanombe, was related to Nsengiyumva. He testified that he did not see Nsengiyumva at Camp Kanombe in April 1994. By mid-April, Ntabakuze and the Para Commando Battalion had been deployed at the war front with the RPF and were no longer based at Camp Kanombe. In the witness's view, it would have been extraordinary for Nsengiyumva to conduct a military operation outside his operational sector. Nsengiyumva's private residence was in Ndera, Rubungo commune, and not in Masaka.[1602]

Nsengiyumva Defence Witness LE-1

1453. Witness LE-1, a Hutu senior army officer, stated that operational sector commanders, such as Nsengiyumva, were under the direct authority of the army chief of staff and could not conduct operations outside their sector without approval.[1603]

[1598] T. 1 April 2004 pp. 56-57; T. 5 April 2004 pp. 120-121; T. 6 April 2004 pp. 1-9.
[1599] T. 21 September 2006 pp. 18-19, 70.
[1600] T. 9 October 2006 pp. 55-56.
[1601] T. 10 October 2006 pp. 60, 62-64, 65, 67; Ntabakuze Defence Exhibit 222 (personal identification sheet).
[1602] T. 7 June 2006 pp. 41-44; Nsengiyumva Defence Exhibit 184 (personal identification sheet). The witness is also referred to as Ntabakuze Defence Witness DI-37.
[1603] T. 19 October 2005 pp. 56-57; Nsengiyumva Defence Exhibit 112 (personal identification sheet).

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Nsengiyumva Defence Witness DM-23

1454. Witness DM-23, a Hutu who was assigned to army headquarters, said that he was unaware of any visit by Nsengiyumva to Camp Kanombe in April 1994. According to the witness, Nsengiyumva did not have a home in Masaka, Kigali, but did have one in Ndera which was 10 kilometres away. He did not know whether Nsengiyumva had sought permission to go to Masaka in April, or had gone there without permission.[1604]

Ntabakuze Defence Witness DH-51

1455. Witness DH-51, a Hutu member of the Para Commando Battalion, who was stationed at Camp Kanombe, said that no meeting was held at the *Joli Bois* in mid-April 1994. He never heard that Nsengiyumva visited Camp Kanombe around that time.[1605]

Nsengiyumva Defence Witness LIQ-1

1456. Witness LIQ-1, a Hutu who lived in Gisenyi prefecture, testified that, on 14 April 1994, Nsengiyumva delivered the body of President Habyarimana to a cold room at Bralirwa, the brewery in Gisenyi prefecture. He saw Nsengiyumva visit there again on 15 April.[1606]

Deliberations

1457. Only Witness DBN testified about this meeting of members of the Para Commando Battalion at Camp Kanombe in mid-April, where Nsengiyumva asked Ntabakuze for soldiers to go to Masaka hill. It is not disputed that the witness was a member of the Para Commando Battalion. He would have some knowledge concerning the activities of his unit.

1458. The Chamber does not have sufficient evidence to substantiate Nsengiyumva's claim that the road from Gisenyi to Kigali was impassable. Similarly, Witness LIQ-1's estimate that Nsengiyumva was in Gisenyi on 14 and 15 April 1994 does not exclude that he may have been at Masaka hill between 10 and 15 April.

1459. A more troubling aspect is why Nsengiyumva, given his position as the Gisenyi operational commander, would be more than 200 kilometres away, at Masaka hill in Kigali-Rural prefecture, and conduct a military operation with volunteer members of an elite unit, which was not under his command. Witness DBN stated that the subdivisions of operational sectors were no longer respected during the massacres. Even though Masaka was far away, people could come for meetings or travelled there because they had houses in the Masaka area. It was considered positive to ask for reinforcements to kill Tutsis.[1607] On the other hand, Ntabakuze, Nsengiyumva, as well as Witnesses OME-1, LE-1, DM-23, LIQ-1 and DH-51 testified that such an operation would not have been possible given the prevailing command structure.

1460. The Chamber does not exclude that formal military structures and procedures were not always followed during the genocide. This said, Nsengiyumva's presence and request for soldiers appear unusual, even in the context of Rwanda in 1994. It is recalled that the hostilities between the RPF and the Rwandan army had resumed only days before, and the situation was unstable following the death of the President. It is not clear why Nsengiyumva

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[1604] T. 23 February 2006 p. 24; Ntabakuze Defence Exhibit 199 (personal identification sheet).
[1605] T. 6 December 2004 pp. 23, 28-29; Nsengiyumva Exhibit 188 (personal identification sheet).
[1606] T. 19 June 2006 pp. 17, 25, 26.
[1607] T. 6 April 2004 p. 12.

would leave his troops in this tense situation. Witness DBN's indication that some persons had houses in the area appeared speculative. There is no indication that Nsengiyumva had a house there, and this was rejected by Witnesses OME-1 and DM-23.[1608] Neither is there any information that Nsengiyumva had to attend a meeting in Kigali-Rural, which was the other possible explanation suggested by Witness DBN.[1609]

1461. According to Witness DBN, the entire operation at Masaka hill, from the soldiers' departure until their return, took only 40 minutes, and in any event less than one hour. The soldiers returned to the same meeting at the *Joli Bois* before it had ended. This would have given limited time for the operation, in view of his testimony that it would take 15-20 minutes to travel the distance to Masaka hill, driving at a fast speed. The Chamber has taken into account that it would not require much time to throw grenades at refugees in a coffee field but still considers it noteworthy that the operation was purportedly so brief.[1610]

1462. Witness DBN was unable to name a single soldier who allegedly participated in the operation, except for the driver. His evidence about the involvement of soldiers in the killings at Masaka hill is uncorroborated hearsay. No-one actually observed Nsengiyumva or the operation at Masaka hill. This said, Witness ICC-1 testimony that he did not hear of Nsengiyumva's involvement in the attack carries limited weight. The witness did not see the event itself but heard that *Interahamwe*, called the "Zulus", had carried out the killings.

1463. Having assessed the totality of the evidence, and in particular the lack of corroboration of Witness DBN's testimony, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Ntabakuze provided Nsengiyumva with 30 members of the Para Commando Battalion to kill Tutsi civilians at Masaka hill.

1464. The Chamber has previously held that Ntabakuze and Nsengiyumva had adequate notice of this allegation. In view of its finding it does not deem it necessary to reconsider the Defence submissions about lack of notice for this allegation.[1611]

4.1.7 Kiyovu Roadblock, April - June

Introduction

1465. The Bagosora Indictment alleges that, from the night of 6 to 7 April 1994, soldiers, including the Presidential Guard, set up roadblocks where militiamen joined them, or established their own where Tutsis were killed. The Nsengiyumva Indictment states that, between 8 April and mid-July 1994, Nsengiyumva ordered militiamen to eliminate Tutsis. It is also alleged that crimes of sexual violence were perpetrated at roadblocks. In support of

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[1608] The Chamber has taken into account that Witness OME-1 was related to Nsengiyumva.

[1609] It is also unusual that Ntabakuze would convene a meeting of significance, relating to the evacuation of the camp, without any of his company or platoon commanders present (who, according to the witness, was in combat positions). It is recalled that in the final event, Camp Kanombe did not fall until May 1994. *See* T. 6 April 2004 p. 1.

[1610] Witness DBN first said that the meeting ended around 9.20 a.m. He also indicated that the operation at Masaka hill lasted for 40 minutes from 8.50 or perhaps 9.00 a.m. and that the attackers came back just as the meeting concluded. The Chamber does not consider this discrepancy material, as the witness clearly gave estimates.

[1611] Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 39-41; Decision on Nsengiyumva Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 26-28.

these general allegations, the Prosecution argues that Bagosora and Nsengiyumva visited a roadblock in the Kiyovu area of Kigali several times between April and July 1994. Reference is made to Witnesses DAS and XXC.[1612]

1466. The Bagosora and Nsengiyumva Defence argue that the evidence presented is outside the scope of the Indictment. Furthermore, the testimonies are not credible, in part because the Accused were elsewhere when alleged to have been at roadblocks. Reference is made to Witnesses VO-5, CO-3, LE-1, LIQ-1 and LMG.[1613]

Evidence

Prosecution Witness DAS

1467. Witness DAS, a Tutsi, worked as a watchman in the Kiyovu area in Kigali in 1994. At 6.00 a.m. on 8 April 1994, Corporal Irandemba, who was a guard of the residence of Protais Zigiranyirazo, the brother-in-law of President Habyarimana, came to the witness's place of work and ordered him and other watchmen in the area to stand guard at Zigiranyirazo's home. The witness, who knew Irandemba well, remained stationed there for three months. In total, there were eight guards posted outside Zigiranyirazo's home, including three soldiers from the Presidential Guard. There were also *Interahamwe* present at the gate.[1614]

1468. Between 6.00 and 7.30 a.m. on the morning of 12 April, approximately 40 *Interahamwe*, some armed with guns, others with machetes, clubs or axes, arrived at Zigiranyirazo's house. They erected a roadblock with the witness and the other guards after Zigiranyirazo asked why they had not started to do what others were doing. Corporal Irandemba took command of the roadblock and headed it until it was dismantled on 4 July 1994. Throughout that period, seven to eight Tutsi watchmen, including the witness, participated in manning the roadblock with soldiers and *Interahamwe*. At no point were there two roadblocks in front of Zigiranyirazo's house. The witness's duties included stopping and searching vehicles and checking the identity of persons attempting to pass through the roadblock, and eventually collecting bodies. Starting on 12 April, those identified as Tutsis were killed, including children, elderly and women. Hutus without identity cards were accused of being accomplices and were killed as well.[1615]

1469. After Zigiranyirazo left around 15 or 16 April, and without his knowledge, the *Interahamwe* and soldiers, including Corporal Irandemba, would take away young Hutu and Tutsi women and rape them at a property located in front of Zigiranyirazo's residence, referred to as the "Chinese house". Rapes also occurred inside Zigiranyirazo's plot. Women were locked inside the Chinese house property, fed by *Interahamwe* and prevented from

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[1612] Bagosora Indictment, paras. 5.45, 6.28, 6.31, 6.62, 6.63, 6.65; Nsengiyumva Indictment, paras. 5.32, 6.22, 6.34; Prosecution Closing Brief, paras. 171, 180, 1103(e, f), 1104, 1128-1129, 1133-1139, pp. 738-742, 758-759, 772-775, 776-779, 871-874, 892-896. The Chamber discusses crimes committed at roadblocks throughout Kigali in a separate section (III.5.1).

[1613] Bagosora Closing Brief, paras. 1284-1308, 1334-1338, 1495, 1774, 2244, 2328; Nsengiyumva Closing Brief, paras. 306-328, 1095, 1198-2000, 2600, 3070, 3147.

[1614] T. 4 November 2003 pp. 45, 59-60; T. 6 November 2003 pp. 18-21, 25; T. 7 November 2003 pp. 17-19; Prosecution Exhibit 119 (personal identification sheet).

[1615] T. 5 November 2003 pp. 7, 11-19, 21, 48; T. 6 November 2003 pp. 6, 13, 18-22, 38, 51-52, 55-56; T. 7 November 2003 pp. 8, 17-19. Witness DAS identified a series of photographs of the Kiyovu area in the vicinity of the roadblock. *See* T. 6 November 2003 pp. 1-9; Prosecution Exhibit 120 A-D (photographs of Kiyovu area).

escaping. The witness mentioned five such women who were later rescued by the RPF: Goretti, Mutesi from the post office, Epiphany at Electrogaz, Immaculate, a businesswoman, and Davita.[1616]

1470. According to Witness DAS, there were other roadblocks in the Kiyovu area, generally manned by three or four persons, at which vehicles were not stopped. No roadblocks were erected before the foreigners fled the neighbourhood on 8 and 9 April. Witness XXC manned a roadblock in the vicinity of the European Union office and the Presbyterian Church. The witness did not go to this roadblock, but Witness XXC and other watchmen who were there sometimes came to Witness DAS's roadblock. He saw Witness XXC with a gun and had heard gunfire from the direction of his roadblock.[1617]

1471. Witness DAS saw Bagosora, Nsengiyumva and Lieutenant-Colonel Ephrem Setako four times at his roadblock. They were in the same military Mercedes-Benz jeep, accompanied by two soldiers, a driver and a bodyguard. The first occasion was around 14 April 1994 at about 11.00 a.m. When they arrived, approximately 50 dead bodies lay on the ground near the roadblock. Soldiers and *Interahamwe* were killing civilian men, women and children identified as Tutsis or without identification cards. The witness overheard Setako say: "Kill them, kill them. Why did they kill Habyarimana? Because they are Tutsis." He also heard Bagosora congratulate the soldiers and *Interahamwe* for working "in an active manner", which the witness understood to mean killing the Tutsis. Bagosora and Nsengiyumva did not tell the soldiers to stop the executions, nor did they take any disciplinary action against them.[1618]

1472. Bagosora, Nsengiyumva and Setako also visited the roadblock around 2 May 1994. While they were there, a group of more than 20 Zairian refugees were stopped because their Rwandan wives were Tutsis. When the women were arrested, the Zairian men begged Bagosora to let them pass with their wives. The witness heard Bagosora refuse and say "[t]he time of the Tutsi men and women is all over". The Zairians were allowed through the roadblock. The *Interahamwe* took four of the wives to the Chinese property and killed the others. The witness heard Nsengiyumva tell the *Interahamwe* to investigate whether Tutsis were hiding in the Presbyterian Church and to take their livestock because "all that is in the country belongs to the Hutus". In total, about 15 to 20 people were killed at the roadblock while Bagosora and Nsengiyumva were present.[1619]

1473. The third visit, in mid-June 1994, lasted for about 20 minutes and only Setako got out of the vehicle. A watchman named Vianney begged him to save his life. Setako replied that "I am not the one who told you to kill Habyarimana". The watchman was immediately shot to death by an *Interahamwe* named Kamango. Bagosora and Nsengiyumva stayed in the vehicle and did not intervene. While the three officers were present, Tutsi and Hutu civilians without identity cards were being killed at the roadblock.[1620]

[1616] T. 5 November 2003 pp. 21, 44-47.
[1617] T. 6 November 2003 pp. 25, 32-34; T. 7 November 2003 pp. 18-19; Prosecution Exhibit 98 (sketch of roadblocks in the Kiyovu area).
[1618] T. 5 November 2003 pp. 19-22; T. 6 November 2003 pp. 36, 56-58; T. 7 November 2003 pp. 4-6, 8-10, 20-22.
[1619] T. 5 November 2003 pp. 22, 41-44; T. 6 November 2003 pp. 36, 58-59; T. 7 November 2003 pp. 4-6, 10, 22-23.
[1620] T. 5 November 2003 p. 48; T. 6 November 2003 pp. 36-37, 60; T. 7 November 2003 pp. 4-5, 9-10.

1474. The fourth visit took place around 27 June 1994. Bagosora, Nsengiyumva and Setako arrived at around 11.00 a.m. with Gabriel Mbyaliyehe, the *conseiller* of Nyarugenge sector, and stayed for about half an hour. Bagosora was approximately five meters away from the location where killings were perpetrated. The witness heard Setako encourage the militiamen to continue the killing. Mbyaliyehe addressed the soldiers and *Interahamwe* manning the roadblock and asked them to inform other local watchmen that there was an "extraordinary" meeting at the Hotel Kiyovu courtyard at 2.00 p.m. At the meeting, Mbyaliyehe, who was accompanied by Bagosora, Nsengiyumva and Setako, told the area residents to stop the killings because the international community was watching them. After Mbyaliyehe left, Bagosora countermanded his instructions. He told the crowd to select the Tutsis amongst them, take some of them to the prefecture office, and to kill the rest nearby it. The soldiers and *Interahamwe* checked identification cards, and the soldiers brought approximately 40 Tutsis and Hutus without identification cards to the Kigali-Ville prefecture office. Another group of persons was taken near the Hotel Kiyovu, where they were killed with clubs. The witness managed to leave the meeting because he was not asked to present his identity card. Among the victims were Gahigi at the Rural Water Supply project, Rukundo, Jean Karega, who worked for someone at the German ministry, and Jean-Marie Vianny, who was employed at the Kigali central hospital. The witness was a distance away but could see what was happening and heard screams and gun shots.[1621]

Prosecution Witness XXC

1475. Witness XXC, a Hutu, worked as a residential watchman in the Kiyovu quarter from 1990 to 1994. From the morning of 7 April 1994, he observed soldiers mounting roadblocks and saw dead bodies on the road in Kiyovu. The first roadblock was erected in front of Captain Simbikangwa's house on 7 April around noon. It was manned by four Presidential Guard soldiers, wearing camouflage uniforms and black berets. They had grenades and were initially armed with Kalashnikovs and later with R-4 firearms. He recognised them because he lived close to the Presidential Guard camp and knew some soldiers who guarded officials in the area.[1622]

1476. Two additional roadblocks were set up in front of the house of Protais Zigiranyirazo. One was established by soldiers on 7 April. Six soldiers, wearing the same uniform as those in front of Simbikangwa's house, manned it with several *Interahamwe* amongst them. The soldiers initially had Kalashnikov rifles and later R-4 firearms, as well as mortars. The other roadblock was erected on 10 April and staffed by *Interahamwe* and civilians. The witness recalled an *Interahamwe* called Kamango who received a Kalashnikov from Bagosora around 20 April.[1623]

1477. There were two roadblocks near the *Péage*, which used to be a toll booth. The first was on a large avenue leading to the city centre. It was manned by 10 or 12, sometimes more, soldiers who the witness could not identify. The second roadblock was staffed by *Interahamwe* and positioned closer to the traffic lights. It was not less than 100 metres away from the other roadblock, but the two were in view of each other and individuals at one

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[1621] T. 5 November 2003 pp. 48-55; T. 6 November 2003 pp. 29-31, 38-40, 43, 45-46, 52-53; T. 7 November 2003 pp. 1-5, 9, 21-24.
[1622] T. 17 September 2003 pp. 11-12, 15-17, 40-41; T. 18 September 2003 pp. 31, 57; T. 19 September 2003 pp. 47, 55, 57, Prosecution Exhibit 96 (personal identification sheet); Prosecution Exhibit 98 (sketch of roadblocks).
[1623] T. 17 September 2003 pp. 15-17, 22, 40-41; T. 18 September 2003 p. 59; T. 19 September 2003 pp. 55-56.

would visit the other. The *Interahamwe* wore uniforms of *kitenge* material, civilian attire, military uniforms, or a mix between military and civilian attire. *Interahamwe* that had received weapons training had a variety of firearms, including Kalashnikovs and R-4 guns.[1624]

1478. Anyone who went by a roadblock had to display his or her identity card. Hutus were allowed to pass. Tutsis and Hutus who looked like Tutsis, would not. Many people were killed at these roadblocks. *Interahamwe* killed a Tutsi, Pierre Butoya, around 15 April at the roadblock in front of Simbikangwa's residence. A native of Gikongoro coming from *Sainte Famille* was taken to that roadblock, transferred to the roadblock at Zigiranyirazo's residence, and then taken to another place called *le village Swiss,* where he was killed. The witness knew that Tutsi watchmen worked in the area but was not aware if any of them had been asked to go to roadblocks and bury bodies.[1625]

1479. Witness XXC heard that the *Interahamwe* received their firearms from their national leaders, who had weapons that had previously been collected from soldiers. Some *Interahamwe* told him that Bagosora provided them with weapons from his house. As examples, the witness heard that around 20 April, Bagosora distributed an Uzi and a Kalashnikov to Furaha, who was positioned in Kiyovu, and a Kalashnikov to Kamango, the *Interahamwe* at the roadblock near Zigiranyirazo's house.[1626]

Bagosora

1480. Bagosora rejected Witness DAS's allegations. He left Kigali on the morning of 14 April 1994 with an official of the *Banque Nationale du Rwanda* to visit Gitarama and only returned to Kigali at 5.00 p.m. Setako was on official mission to Kinshasa, Zaire, on 14 April and could not have been at the roadblock, and Nsengiyumva was in Gisenyi. Furthermore, between 25 and 30 April 1994, Bagosora travelled between Gitarama and Kigali and even frequently left Rwanda on official business during the months of May and June 1994 (III.6.1). He questioned why the Prosecution would allege that he, a colonel, would be on the ground visiting *Interahamwe* instead of giving orders to subordinates.[1627]

Nsengiyumva

1481. Nsengiyumva denied meeting with Bagosora, Setako or Zigiranyirazo in Kiyovu on 14 April, 2 May and anytime in June 1994. As operational commander of Gisenyi, he could not travel outside his region, for official or private reasons, without receiving prior authorisation from the chief of staff of the army. On 14 April, he was in Gisenyi receiving the remains of President Habyarimana. He only saw Setako on 12 April before Setako's mission to Zaire. On 2 May, Nsengiyumva was speaking at a prefecture rally at Umuganda Stadium condemning the murders of Tutsis killed at Nyundo the previous day. He did not visit roadblocks in Kiyovu or any other neighbourhood of Kigali town.[1628]

[1624] T. 17 September pp. 15-19; T. 18 September 2003 p. 59.
[1625] T. 17 September 2003 pp. 16, 23-24; T. 19 September 2003 p. 47.
[1626] T. 17 September 2003 pp. 19-23; T. 19 September 2003 pp. 7, 48-51. The *Interahamwe* leadership kept the weapons received from soldiers at the Amgar Garage.
[1627] T. 9 November 2005 pp. 25-31; T. 14 November 2005 pp. 12-14. As Bagosora stated: "Neither Hitler, Himmler nor [Göring] ever went running around in Berlin to flush out Jews to be killed. They would call their subordinates and juniors, give them instructions, and those instructions would be acted upon." *See* T. 9 November 2005 p. 26.
[1628] T. 9 October 2006 pp. 9-12; T. 11 October 2006 pp. 10-11.

Bagosora and Nsengiymva Defence Witness VO-5 40342

1482. Witness VO-5, a Hutu, served in the Rwandan diplomatic service and was based in Kinsasha, Zaire, in April 1994. He testified that on 13 April, Setako and Casimir Bizimungu arrived in Kinshasa on an official mission to see President Mobutu Sese Seko. After three to five days, Setako and Bizimungu left Kinsasha for Gbadolite in northern Zaire. They returned to Kinsasha the next day and left for Rwanda three days later.[1629]

1483. The witness said he saw Bagosora in Kinshasa twice during the second half of April 1994, on 23-24 May and on 20 June on official trips to purchase weapons for Rwanda. Bagosora also visited sometime in July 1994.[1630]

Nsengiyumva Defence Witness LE-1

1484. Witness LE-1, a Hutu senior army officer, stated that operational sector commanders were under the direct authority of the army chief of staff. They could not conduct operations outside their sector without approval.[1631]

Nsengiyumva Defence Witness LIQ-1

1485. Witness LIQ-1, a Hutu who lived in Gisenyi prefecture, said that, on 14 April 1994, Nsengiyumva delivered the body of President Habyarimana to a cold room at Bralirwa, at the brewery in Gisenyi prefecture. He saw Nsengiyumva visit the body again on 15 April.[1632]

Bagosora Defence Witness CO-3

1486. Witness CO-3, a Hutu, worked for the *Banque Nationale du Rwanda*. He testified that, between 4.30 and 5.00 p.m. on 13 April 1994, Bagosora delivered to him at his house a copy of a presidential order and a letter from the Minister of Finance of the interim government ordering a transfer of government funds to Gitarama prefecture where the government had relocated due to insecurity in Kigali. Bagosora expressed concerns about security, and the two went to Witness CO-3's office where Bagosora called Colonel Marcel Gatsinzi, the Interim Chief of Staff, to request an emergency military escort which was made available the next morning.[1633]

1487. Around 9.00 a.m. on 14 April, Bagosora and the escorts of two jeeps and an armoured vehicle collected the witness and they proceeded to Gitarama prefecture. They returned to Kigali around 5.00 p.m. after having arranged the logistics for the transfer of funds, which took place from the next day until about 23 or 24 April. According to the witness, Bagosora monitored the teams working on this until about 19 or 20 April 1994.[1634]

[1629] T. 12 October 2005 pp. 10-15, 24, 36; T. 13 October 2005 pp. 49-50; Bagosora Defence Exhibit 194 (personal identification sheet).
[1630] T. 12 October 2005 pp. 15-19, 36, 46-47, 57-60; T. 13 October 2005 p. 47.
[1631] T. 19 October 2005 pp. 56-57; Nsengiyumva Defence Exhibit 112 (personal identification sheet).
[1632] T. 19 June 2006 pp. 17, 25, 26; Nsengiyumva Defence Exhibit 188 (personal identification sheet).
[1633] T. 13 February 2006 pp. 5, 9-13, 23, 25-26; Bagosora Defence Exhibit 304 (personal identification sheet); Bagosora Defence Exhibit 268 (Presidential Order No. 03/01 of 13 April 1994); Bagosora Defence Exhibit 269 (Letter from the Minister of Finance of 13 April 1994).
[1634] T. 13 February 2006 pp. 13-18, 26-30, 35-37, 40-43.

Bagosora Defence Witness LMG

1488. Witness LMG, a Hutu soldier, stated that he did not accompany Bagosora to the home of Protais Zigiranyirazo during the massacres. He was frequently with Bagosora from April to July 1994 and never observed him speak to those manning roadblocks.[1635]

Deliberations

1489. The main question for the Chamber is whether Bagosora or Nsengiyumva visited a roadblock in Kiyovu between mid-April and the end of June 1994 and encouraged the crimes committed there. Witness DAS provided the only first-hand account to this effect. The Chamber accepts that he lived and worked in Kiyovu in 1994 and therefore would have been familiar with the events in the area, including the killing and rape of persons apprehended at the roadblock. Witness XXC confirmed the existence of the roadblock as well as the crimes committed there between April and June 1994 but did not see Bagosora or Nsengiyumva.[1636]

1490. Witness DAS's basis for recognising Bagosora and Nsengiyumva was that at some point they both lived in the Kiyovu area. He indicated that it "was a long time ago, prior to the war, in the 1980s; 1980, 1982, even slightly before that, 1979". The witness heard Bagosora mentioned on the radio and knew that he was a military senior officer but did not know his exact position. With respect to Nsengiyumva, the witness would see him pass by in a vehicle or open President Habyarimana's car door while acting as the president's *aide-de-camp* in the mid-1970s.[1637] The witness did not provide any other compelling details in connection with the relevant events in 1994 that would suggest a greater basis of knowledge for accurately identifying the two Accused. In the Chamber's view, his basis for recognising them was neither particularly recent nor strong.

1491. There are differences between Witness DAS's testimony and his first statement to Tribunal investigators in October 1998 and July 1999.[1638] He testified that Bagosora and Nsengiyumva attended a meeting at Hotel Kiyovu after their fourth visit to the roadblock at the end of June 1994, whereas the statement indicates that it took place after a visit in April 1994.[1639] It makes no reference to Bagosora or Nsengiyumva attending the meeting. Instead, the statement indicates that the *conseiller* arrived alone and was the only one to speak to the gathering. This is a significant discrepancy, in particular in view of the witness's testimony that Bagosora told those assembled to continue killing Tutsis. According to his statement, only area watchmen attended the meeting whereas he testified that the entire population of Kiyovu was present. Finally, it follows from his testimony that the *conseiller* announced the meeting, whereas in the statement it is Bagosora.

[1635] T. 15 July 2005 pp. 19-20, 22-23; T. 18 July 2005 pp. 13-14; Bagosora Defence Exhibit 181 (personal identification sheet).

[1636] The Chamber notes that Witness XXC testified that he never saw Bagosora and Simbikangwa, who lived in the area, together. T. 19 September 2003 p. 50.

[1637] T. 4 November 2003 pp. 47-48. The Nsengiyumva Defence takes issue with Witness DAS's testimony that Nsengiyumva acted as President Habyarimana's *aide-de-camp* in 1973. Nsengiyumva Closing Brief, paras. 322. Nsengiyumva served in this position from 1974 to 1976 (I.2.4). The Chamber does not consider this discrepancy to be significant.

[1638] Bagosora Defence Exhibit 41 (statement of 13 July 1999). The statement was based on two interviews conducted on 26 October 1998 and 13 July 1999.

[1639] Witness DAS thought that Bagosora had been at the roadblock "at least twice" before, but it is clear from the context that this visit was around 15 April.

1492. When these discrepancies were put to him, the witness explained that he did not agree with the statement, that he told the investigators that there were mistakes that needed to be corrected, and that those corrections were made in subsequent statements to Tribunal investigators.[1640] The Chamber does not find this convincing. The witness first repeatedly disputed that the statement was read back to him, claiming that he was in a hurry when he met with the investigators to sign the statement.[1641] When asked how he would have been aware that there were mistakes if the statement was not read out to him, he altered his position and conceded that this was done.[1642] However, he indicated that it was read back in French, which he did not understand.[1643] The Chamber considers that the witness's evolving explanations raise some questions about his credibility, in particular since both he and the interpreter signed the statement indicating that it had been interpreted to the witness in Kinyarwanda. It is also surprising that, if the investigators were informed of errors in the statements, they would not simply correct them at that point rather than have the witness sign the statement.[1644]

1493. The purported mistakes in the first statement were not corrected for three years despite two additional intervening interviews with Tribunal investigators. In particular Witness DAS gave a second statement to Tribunal investigators in August 1999, one month after he signed the first statement. He did not take the opportunity to make any corrections in his first statement. The reason may be that the second statement focused on another accused, Eliézer Nyitegeka. Nevertheless, like the first statement, it still concerned events at the roadblock.[1645]

1494. Of greater significance is the fact that the witness's third statement to Tribunal investigators in August 2001 was expressly taken to "complete" the witness's first statement.[1646] In spite of this, none of the purported errors were corrected. It was not until the witness's fourth statement in July 2002 that he corrected the sequence of events placing Bagosora and Nsengiyumva's presence at the alleged meeting at Hotel Kiyovu in June instead of April.[1647] In that statement, Witness DAS acknowledged that he "erroneously implied" in his first statement that the meeting at Hotel Kiyovu occurred in April, which undermines to some extent his testimony that the investigators erred.[1648] These discrepancies and the witness's explanations for them raise some doubt about his credibility on matters related to the Accused's presence at the roadblock.

[1640] T. 6 November 2003 pp. 47-57.
[1641] *Id.* pp. 47-48 ("Q. ... Your statement was read out to you in Kinyarwanda, and you agreed with it and signed it; is that the way that matters proceeded? A. My statement was not reread to me. I was in a hurry, and my statement was not reread to me. In any case, I knew my statement by heart, all I did was to append my signature to it, I didn't wait for the statement to be reread to me. ... Q. ... I want to understand what you explained to us today. You are saying -- now, first of all, was this document translated into Kinyarwanda for you before you signed it? A. No. I signed without waiting for it to be read out to me.").
[1642] *Id.* p. 48 ("Q. So how were you then able to tell the investigators that there were mistakes in the statement if it wasn't read out to you in Kinyarwanda? A. They reread the statement, but I told them that there were mistakes.").
[1643] *Id.* pp. 49-50.
[1644] The statement was taken over the course of two interviews separated by nearly 10 months at the Tribunal's office in Kigali and could seemingly have been easily corrected.
[1645] Bagosora Defence Exhibit 42 (statement of 13 August 1999).
[1646] Bagosora Defence Exhibit 43 (statement of 24 August 2001).
[1647] Bagosora Defence Exhibit 44 (statement of 15 July 2002).
[1648] Bagosora Defence Exhibit 44A (statement of 15 July 2002), p. 5.

1495. The Prosecution also relies on Witness XXC concerning the events at the Kiyovu roadblock. However, on the most significant aspects of Witness DAS's testimony, namely the presence of Bagosora and Nsengiyumva at the roadblock, there are important differences in their accounts. Witness XXC did not mention that the two Accused visited the area and incited crimes there. Given their varying vantage points, it does not in itself contradict Witness DAS's testimony that Witness XCC did not see them. However, in light of the prominence of the Accused as well as the number and significance of their alleged visits it is surprising that Witness XXC did not even hear about this, given the regular contact between persons manning the two roadblocks.[1649]

1496. The Defence has presented evidence about Bagosora, Nsengiyumva and Setako's whereabouts on occasions when Witness DAS testified that they were at the roadblock. With respect to 14 April 1994, Bagosora said that he was moving funds from the national bank in Kigali to Gitarama prefecture. This was confirmed by Witness CO-3. Nsengiyumva said that he was receiving the body of President Habyarimana in Gisenyi prefecture, and Witness LIQ-1 provided corroboration.[1650] Furthermore, Witness VO-5 attested to seeing Setako on a diplomatic mission in Kinshasa, Zaire, from 13 April. In relation to Bagosora's presence at the roadblock in mid-June, the Chamber recalls his evidence that he was not in Rwanda from 23 May until 22 June 1994 (III.6.1). Witness LMG also testified that he frequently accompanied Bagosora during this period and never went with him to Zigiranyirazo's house or observed Bagosora speak or give orders to people at roadblocks.

1497. The Chamber is mindful that Witness DAS mentioned the presence of the Accused at the roadblock in four of his five previous statements to Tribunal investigators, and that he provided only approximate dates for their presence. It is also aware of the connections that the Defence witnesses have to Bagosora and Nsengiyumva, which may result in favourable testimony to the Accused. Nevertheless, the totality of the Defence evidence raises some doubt about Witness DAS's testimony concerning Bagosora and Nsengiyumva's presence, in particular when viewed in the context of the other credibility concerns noted above. The Chamber therefore declines to accept the specific aspects of his testimony concerning the Accused's alleged conduct there in the absence of corroboration.[1651]

1498. Turning to the allegations that Bagosora distributed weapons to *Interahamwe* manning roadblocks in the area, the Chamber notes that only Witness XXC testified about this. He saw *Interahamwe* with firearms and heard that they had received them from Bagosora. His knowledge about these distributions is second-hand and lacks precision. The Chamber declines to make a finding against Bagosora on this basis without corroboration.

1499. Accordingly, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that Bagosora and Nsengiyumva were present on four occasions at a roadblock erected in the Kiyuvo area of Kigali and that Bagosora distributed weapons to *Interahamwe* at those roadblocks around 20 April.

[1649] Witness XXC heard that Bagosora allegedly distributed weapons to some of the *Interahamwe* stationed at the roadblocks. In view of this, it is surprising that he would also not have heard about the repeated visits of the Accused and in particular the well-attended meeting at the Kiyovu hotel which was followed by killings.

[1650] Furthermore, Witness LIQ-1 suggested that it would be unusual for Nsengiyumva to leave his operational sector without authorisation from the army chief of staff. This alone does not show that Nsengiyumva remained in Gisenyi at the relevant times.

[1651] When considering the totality of the evidence, the Chamber has taken into account that Bagosora's purported visits at the roadblock around 2 May and 27 June 1994 fall outside of Bagosora's alibi.

1500. More generally, the Chamber is satisfied, on the basis of the testimonies of Witnesses DAS and XXC, that soldiers and *Interahamwe* manned roadblocks in the Kiyovu area shortly after President Habyarimana's death. There are certain differences between their testimonies with respect to when the roadblocks were established, their number and their location. Witness DAS stated that the Presidential Guard arrived on 8 April, and that only one roadblock was erected in front of Zigiranyirazo's residence on 12 April when a number of *Interahamwe* arrived.[1652] According to Witness XXC, soldiers wearing Presidential Guard uniforms mounted a roadblock in that location on 7 April, followed by a second roadblock nearby, set up by the *Interahamwe* on 10 April. Furthermore, Witness DAS denied that a roadblock was situated in front of Sindikangwa's residence, placing it closer to the European Union office, and appeared to deny that any roadblocks were erected prior to 8 or 9 April. The Chamber finds these inconsistencies insignificant, likely arising from the passage of time and different observations.

1501. The Chamber has no doubt that both witnesses were in the area at the time. It accepts Witness DAS's explanations why he and other Tutsis were stationed at the roadblock and survived. In particular, he explained that they removed the corpses and would have been killed as well if they had not manned it. The Tutsi watchmen were also under the protection of Corporal Irandemba because the witness's employer provided food and medicine to the soldiers and *Interahamwe* operating the roadblock.[1653] While Witness XXC was unaware if Tutsi watchmen had been asked to go to roadblocks and collect bodies, the Chamber does not consider that this undermines Witness DAS's testimony that he was present.[1654] Witness DAS testified that he saw Witness XXC in the area and that he believed Witness XXC did not know his name.[1655] This evidence appears credible given Witness DAS's knowledge of where Witness XXC worked and his corroborated observation that Witness XXC was carrying a gun at the time.[1656]

1502. Each of the witnesses provided coherent and largely consistent first-hand accounts of Presidential Guards positioning themselves in the vicinity of Protais Zigiranyirazo's house, joined by *Interahamwe*. They also testified that other roadblocks were erected in the neighbourhood. It appears logical that Presidential Guard soldiers would be placed in the area, which was close to the residence of the deceased President's brother-in-law as well as the residence of Sindikangwa, the brother-in-law of Colonel Sagatwa, who had been the President's head of security. In light of other evidence on the record suggesting that Presidential Guards began to mount roadblocks as early as the evening of 6 to 7 April, the Chamber also accepts that Presidential Guards took up positions as early as 7 April in Kiyovu. The witnesses' testimonies about coordination between soldiers and *Interahamwe*

[1652] Witness DAS gave statements to Tribunal investigators suggesting that the roadblock in front Zigiranyirazo's residence was set up as early as 7 or 8 April, not 12 April. *See* Bagosora Defence Exhibit 41B (statement of 13 July 1999), p. 5; Bagosora Defence Exhibit 42B (statement of 13 August 1999), p. 3. Again, the witness suggested these were errors based on an improper recording of his statement. *See* T. 6 November 2003 pp. 51-52. In the Chamber's view, this discrepancy is not material. While Witness DAS testified that no physical barrier was erected in front of Zigiranyirazo's house prior to 12 April, his testimony reflects that as early as 8 April, several people, including watchmen, soldiers and *Interahamwe* were gathered there, likely giving the impression that a roadblock existed. T. 4 November 2003 pp. 59-60; T. 5 November 2003 p. 7.

[1653] T. 6 November 2003 pp. 20-22, 27-29.

[1654] T. 19 September 2003 p. 47.

[1655] T. 6 November 2003 pp. 23-25.

[1656] Witness DAS, T. 6 November 2003 p. 25; Witness XXC, T. 17 September 2003 pp. 12, 21-22; T. 19 September 2003 p. 51.

around the roadblocks and the singling out and killing of Tutsis days after President Habyarimana's death is also consistent with evidence elsewhere in the record (III.5.1).

1503. Witness XXC reported seeing dead bodies in the road as early as 7 April and testified that many killings occurred at roadblocks. The first precise example of a killing he observed at a roadblock was the murder of Pierre Butoya around 15 April. Witness DAS testified that killings began at these roadblocks on 12 April. The Chamber considers that killings may have occurred at roadblocks manned by soldiers or *Interahamwe* in the Kiyovu area prior to 12 April, particularly in light of other evidence demonstrating killings at roadblocks elsewhere in Kigali prior to this date (III.5.1). However, the limited evidence in the record fails to demonstrate this beyond reasonable doubt.

1504. The Chamber also accepts Witness DAS's testimony that, after 15 or 16 April, *Interahamwe* and soldiers at the roadblock would take young Hutu and Tutsi women and house them nearby. The assailants would then rape them. The witness was present at the roadblock when this happened and it further is consistent with the pattern of sexual violence, which occurred in connection with roadblocks (III.5.1).

1505. In sum, the Chamber is satisfied that roadblocks were established by soldiers and civilians in the Kiyovu neighbourhood between 7 and 9 April 1994. At least from 12 April, the assailants at them killed Tutsi civilians. From 15 or 16 April, young women were stopped at them and raped nearby. The evidence reflects active coordination between the military and civilian assailants. The Prosecution, however, has not proven beyond reasonable doubt that Bagosora and Nsengiyumva were present at the roadblocks or that Bagosora distributed weapons at them.

1506. The Chamber has previously rejected the Defence submissions that they received insufficient notice about the allegations concerning the presence of Nsengiyumva and Bagosora at roadblocks in Kiyovu.[1657] In view of the finding above, the Chamber does not see any need to revisit the Defence arguments.

4.1.8 Lieutenant Desiré Mudenge, 21 April

Introduction

1507. The Kabiligi and Ntabakuze Indictment alleges that, in mid-April 1994, Kabiligi ordered the murders of an unnamed Tutsi soldier, who was a member of the Rwandan Army, as well as his family. The Prosecution refers to Witness DY who testified about Kabiligi's role in the killing of Lieutenant Desiré Mudenge around 21 April.[1658]

1508. The Kabiligi Defence disputes the reliability of Witness DY's testimony. The Defence evidence shows that Mudenge was killed at the beginning of April and that Kabiligi was in Nairobi, Kenya between 14 and 23 April 1994 (III.6.2). As Mudenge was a Hutu, his killing

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[1657] Decision on Nsengiyumva Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 20-21; Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 26-27.

[1658] Kabiligi and Ntabakuze Indictment, para. 6.30; Prosecution Closing Brief, paras. 110, 1281-1285, pp. 832-833; T. 28 May 2007 p. 19; T. 1 June 2007 p. 45.

was not pleaded in the Indictment and cannot support a conviction for genocide. Reference is made to Witnesses DK-11, ZDR-2, FC-77, LX-65 and Pierre Canisius Hitimana.[1659]

Evidence

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Prosecution Witness DY

1509. Witness DY, a Tutsi and a member of the Reconnaissance Battalion, testified that he was assigned as an escort to Kabiligi from around 20 April until the end of June 1994. Around 2.00 to 3.00 p.m. on the day after his initial assignment, he overheard from the radio in his light armoured vehicle an exchange between Captain Jean Morgan Hategekimana and Kabiligi. Hategekimana told Kabiligi: "We have just apprehended an *Inyenzi*, and he's Second Lieutenant Mudenge, and he is in with other *Inyenzis*." Kabiligi replied from his office using his Motorola radio: "What are you waiting for? Why are you waiting?" The witness then saw Kabiligi standing at the door of his office and heard him say, "I'm coming."[1660]

1510. The witness accompanied Kabiligi to the ONATRACOM office, a five-minute drive away, where Lieutenant Mudenge had been apprehended. Captain Hategekimana was with two armed soldiers and approximately 30 armed *Interahamwe*. Hategekimana saluted Kabiligi and said: "Here are the *Inyenzis*." Kabiligi responded by saying: "Congratulations, this is how we should go after the *Inyenzis*." The dead bodies of Mudenge and nine other persons were only a few metres away. Mudenge was in uniform and bleeding from wounds on his chest and waist. There was a pool of blood around the other bodies, which were in civilian clothes.[1661]

1511. Witness DY recognised Mudenge because he had heard that he had been jailed as a suspected accomplice of the "*Inkotanyi*" in 1990. The witness had also seen him after his reinstatement on some occasions around Camp Kigali in 1992. Given Mudenge's arrest, the witness and others assumed he was Tutsi.[1662]

Kabiligi Defence Witness FC-77

1512. Witness FC-77, a Hutu military officer, said that he attended ESM with Mudenge. The witness knew him and his family well and believed that Mudenge was Hutu. On 14 or 15 April 1994, the witness heard from his cousin, who was one of Mudenge's escorts, that *Interahamwe* had killed him at a roadblock near Gitega on 8 or 9 April. The cousin explained that Mudenge had returned to Kigali to search for his family. Mudenge and the cousin had managed to cross a roadblock near ONATRACOM, but then exchanged fire with *Interahamwe* at the next roadblock, where Mudenge was killed. Around that time, the witness

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[1659] Kabiligi Closing Brief, paras. 795-797, 801-803, 814-820, 832, 1228, 1578-1582, 1629-1633, pp. 391, 399, 402, 430, 600, 615; T. 28 May 2007 pp. 26, 46-49; T. 29 May 2007 pp. 21-23; T. 1 June 2007 pp. 54-55.

[1660] T. 16 February 2004 pp. 3-4, 19-20, 23-28, 41, 66, 77-80; T. 17 February 2004 pp. 5-6, 11. Witness DY explained that Captain Hategekimana and Kabiligi both gave their radio call signs, which were posted in his vehicle, during the radio exchange. T. 16 February 2004 pp. 24, 78-79; T. 17 February 2004 pp. 3-4.

[1661] T. 16 February 2004 pp. 28-32, 35, 76-77. Witness DY recognised Captain Hategekimana because they had met during the course of communal labour in 1990. T. 16 February 2004 pp. 28-32.

[1662] T. 16 February 2004 pp. 32-33, 41, 72. The Kabiligi Defence put to Witness DY that Mudenge was arrested and convicted for criminal acts. The witness could not confirm this, and the Defence did not substantiate its claim.

heard that a telegram was sent from the general staff informing Mudenge's unit about his death.[1663]

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Kabiligi Defence Witnesses LX-65 and Hitimana

1513. Witness LX-65, a gendarmerie officer, testified that he saw a telegram on 9 April 1994 while at ESM, which stated that Mudenge had been killed somewhere between Gitega and Biryogo.[1664] Similarly, Pierre Canisius Hitimana, a Hutu army officer, who recruited Mudenge into the army and therefore knew him well, stated that he heard about Mudenge's death between 7 and 15 April.[1665]

Kabiligi Defence Witnesses DK-11 and Nsengiyumva Defence Witness ZDR-2

1514. Witnesses DK-11 and ZDR-2, two Hutu soldiers who worked with Kabiligi, provided separate lists of his escorts and drivers from May to July 1994. None of the lists mention Witness DY. Both witnesses acknowledged that they might not be able to recall every member of Kabiligi's personal entourage.[1666]

Deliberations

1515. Witness DY was the only witness who testified about Kabiligi's alleged role in the killing of Mudenge around 21 April 1994. He provided a coherent first-hand account of Kabiligi's exchange with Hategekimana over the radio shortly after Mudenge's arrest and about Kabiligi's congratulations to the killers at the roadblock. Given the purported assignment to escort Kabiligi, the witness would have been able to follow the events as they transpired. However, a close review of the testimony raises some questions.

1516. Initially, it is noteworthy that Witness DY, a Tutsi, would be assigned to headquarters to escort Kabiligi from late April until June 1994 in the context of the events which were unfolding in Rwanda at the time. Furthermore, the witness continued to serve Kabiligi after his order to kill Mudenge based on his Tutsi ethnicity. The witness explained that he did not know whether Kabiligi knew his ethnicity, that he never faced discrimination or threats from him, but that he felt uncomfortable being a Tutsi in the Rwandan army, especially in 1994.[1667]

1517. The evidence of Witnesses DK-11 and ZDR-2, who were familiar with Kabiligi's escort detail during this period, does not corroborate Witness DY's purported assignment to Kabiligi. Although their evidence on this point is far from conclusive and possibly biased, the question arises whether Witness DY was in fact assigned to Kabiligi during this period.

1518. There is a discrepancy between Witness DY's testimony and his prior written statements concerning the date of Mudenge's killing. The witness testified that he was only

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[1663] T. 7 September 2006 pp. 69, 79-82; T. 8 September 2006 p. 16; Kabiligi Defence Exhibit 92 (personal identification sheet).
[1664] T. 26 September 2006 pp. 3, 6, 20-21; Kabiligi Defence Exhibit 97 (personal identification sheet). Witness LX-65's ethnicity was not indicated.
[1665] *Id.* pp. 79, 84; Kabiligi Defence Exhibit 100 (personal identification sheet). Hitimana was originally a protected witness with pseudonym KP-22.
[1666] Witness DK-11, T. 19 July 2005 p. 61; T. 20 July 2004 pp. 3-4, 38, 41-42, 44, 46, 49-51; Ntabakuze Defence Exhibit 11 (personal identification sheet); Witness ZDR-2, T. 30 March 2006 pp. 9, 11-12, 14, 16, 19-20; Nsengiyumva Defence Exhibit 170 (personal identification sheet). *See also* Prosecution Exhibits 354 (Witness DK-11's list of Kabiligi's escorts and drivers) and 386 (Witness ZDR-2's list of Kabiligi's escorts and drivers).
[1667] T. 16 February 2004 p. 71; T. 17 February 2004 pp. 33, 40.

assigned to escort Kabiligi "towards" 20 April after an assignment guarding officials at *Hôtel Diplomates,* and he was certain that the killing of Mudenge occurred after 20 April.[1668] However, in his statement in September 1997 to a Rwandan judicial official, the witness stated that the killing occurred between 15 and 20 April 1994.[1669] The witness explained that his statement was not properly recorded by the Rwandan official. Instead, he said that he told the official that he could not recall the exact date of the murder but that, if he had to give an approximate date, it would be beyond 15 April towards 20 April.[1670]

1519. The witness's more detailed statement in October 1997 to Tribunal investigators indicates that he was assigned to *Hôtel Diplomates* on 7 April for "approximately one week" to guard government ministers. He was assigned to Kabiligi two days later, and the killing of Mudenge occurred the following day.[1671] This would place the killing around 17 April 1994, which is within the range indicated in his statement given one month earlier.[1672] And in a statement given in January 2004 to Tribunal investigators, one month before his testimony, with a view to amending or supplementing his earlier statements, there are no corrections of the dates of his assignment to Kabiligi or the killing of Mudenge.[1673]

1520. The difference between Witness DY's testimony and two previous statements creates lack of clarity as to when Mudenge was killed. This is compounded by the evidence of Witnesses FC-77, LX-65 and Hitimana, who testified that the event occurred earlier in April. Without accepting the specific details of the hearsay accounts of these three Defence witnesses, their evidence adds to the uncertainty and suggests that Mudenge may have died earlier in April.[1674]

1521. The Chamber concludes that there are some doubts about Witness DY's uncorroborated testimony.[1675] In other parts of the judgement, the Chamber has also

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[1668] T. 16 February 2004 pp. 15, 19, 23, 66; T. 17 February 2004 p. 11 ("Q. So whatever the case, that killing took place after the 20th of April; is that correct? A. Correct.").

[1669] Kabiligi Defence Exhibit 29 (*Pro Justitia* statement of 18 September 1997): "Q. Do you remember when that happened? A. It was between 15 and 20 April 1994." The statement does not specify when the witness was assigned to escort Kabiligi.

[1670] Witness DY, T. 16 February 2004 p. 78. The Chamber notes that the English version of the transcript ("I told him I did recall the exact date") is apparently incorrect, whereas the French version appears more accurate: T. 16 February 2004 p. 80 ("*je lui ai dit que je ne me rappelais pas la date exacte*", emphasis added).

[1671] Kabiligi Defence Exhibit 28 (statement of 2 October 1997). Witness DY participated in fighting in the Kimihurura area the day before he was assigned to Kabiligi.

[1672] The witness did not refer to the evacuation of the government from Kigali to Gitarama on 12 April. If this is used as a point of departure, the killing of Mudenge would seem to have occurred on 15 April, which is still within the range in the statement.

[1673] Kabiligi Defence Exhibit 31 (statement of 14 January 2004). Another statement to Tribunal investigators deals with other events. *See* Kabiligi Defence Exhibit 30 (statement of 10 October 2001).

[1674] The Chamber also recalls that Prosecution Witness DN's statement of 7 October 1997 to Tribunal Investigators (Kabiligi Defence Exhibit 32) was put to Witness DY during cross-examination. *See* T. 17 February 2004 pp. 9-11. Witness DN, who did not testify, was a member of Witness DY's battalion. He arrived at the roadblock "just after" Mudenge was shot and did not see Hategekimana or Kabiligi there. The Chamber notes that the statement does not indicate the date of the incident or for how long Witness DN was at the roadblock.

[1675] There are other discrepancies between Witness DY's testimony and prior statements. First, according to the *Pro Justitia* statement of 18 September 1997 (Kabiligi Defence Exhibit 29), Kabiligi "came out of the armoured vehicle in which we were", whereas the witness testified that he came out of his office before they drove to the place where Mudenge had been killed. Second, the same statement refers to Morgan "Hakizimana", whereas the Kabiligi Defence Exhibit 28 (statement of 2 October 1997) and the testimony refer to "Hategekimana". The

expressed reservations about his credibility (III.4.1.9; III.4.4.2). Moreover, the Prosecution has not eliminated the reasonable possibility that Kabiligi was in Nairobi between 14 and 23 April (III.6.2). This further calls into question the witness's evidence about Kabiligi's role in Mudenge's death. Consequently, the Chamber is not convinced beyond reasonable doubt that Kabiligi ordered the killing of Lieutenant Desiré Mudenge. Under these circumstances, it is not necessary to address the Kabiligi Defence's other arguments relating to this event.

4.1.9 Kabiligi's Presence at Roadblocks, 21 - 30 April

Introduction

1522. The Indictment alleges that Kabiligi encouraged and supported militiamen who were murdering Tutsi civilians and that he ordered his men to use the *Interahamwe* at the roadblocks. The Prosecution argues that, from about 10 April to 31 May 1994, he passed roadblocks, manned by *Interahamwe* and soldiers, which were surrounded by the bodies of civilians. On one occasion, he allegedly saw a woman being killed at a roadblock in Gitega sector by *Interahamwe,* but did not assist her. Reference is made to Witness DY.[1676]

1523. The Defence argues that these allegations were not pleaded in the Indictment. Witness DY was not credible and not part of Kabiligi's escort, as indicated by Witnesses DK-11 and ZDR-2. At any rate, Kabiligi did not have any obligation to intervene and his conduct during the period was not criminal. Furthermore, he has an alibi from the end of March to 23 April 1994 (III.6.2).[1677]

Evidence

Prosecution Witness DY

1524. Witness DY, a Tutsi, testified that he was part of Kabiligi's escort from 20 April to end of June 1994. On 20 April, around 8.30 a.m., he escorted Kabiligi in a light armoured vehicle from the Presidential Guard camp at Kimihurura in the direction of Kimicanga. They passed the Sopecya station where they saw a roadblock manned by several *Interahamwe* armed with machetes, clubs and grenades as well as a soldier belonging to an unidentified unit. The witness observed several dead civilians, including men, women and children. The vehicle did not stop at the roadblock, and Kabiligi did not make any comment.[1678]

1525. On 21 April, Witness DY accompanied Kabiligi to Nyamirambo. They passed through several roadblocks at places such as *Chez Mutwe*, Nyamirambo brigade, Petrorwanda, at the ERP station and at two others known as Terminus and Cosmos. The witness saw soldiers and *Interahamwe* at the Terminus roadblock and *Interahamwe* at the others. The *Interahamwe* carried machetes, clubs, spears and guns. There were dead bodies at all the roadblocks, except at the Cosmos location. Most of them were men of varying ages, dressed in civilian attire. Kabiligi did not make any comment. The vehicle stopped at the

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Chamber accepts that these two discrepancies may be explained as mistakes made by the Rwandan judicial officer who took down the statement.

[1676] Kabiligi and Ntabakuze Indictment, para. 6.30; Prosecution Closing Brief, para. 1283 (b, d), pp. 832-833.

[1677] Kabiligi Closing Brief, paras. 419-450, 514, 520, 523, 795-797, 799-800, 804, 809-813, 821-823, 832, 1675-1679, pp. 615-616; T. 28 May 2007 pp. 46-49; T. 29 May 2007 pp. 21-23; T. 1 June 2007 pp. 54-56.

[1678] T. 16 February 2004 pp. 19-23, 71; T. 17 February 2004 p. 11; Prosecution Exhibit 188 (personal identification sheet).

dressed in civilian attire. Kabiligi did not make any comment. The vehicle stopped at the Terminus roadblock, and Kabiligi asked the *Interahamwe,* who the soldiers at the roadblock were. The *Interahamwe* responded that the soldiers were from Mount Kigali.[1679]

1526. Towards the end of April, the witness accompanied Kabiligi and his driver in the light armoured vehicle coming from Nyamirambo. When crossing a roadblock at the Gitega sector and nearing the postal school, the witness saw *Interahamwe* who were manning a roadblock metres away, shoving a lady wearing only her shorts, as well as striking her with clubs and hacking her with machetes. The witness's vehicle, which was approximately six metres away, did not stop and continued to Camp Kigali. He saw the woman's body at that location for three consecutive days after this event, and her arms and legs continued to move.[1680]

Ntabakuze Defence Witness DK-11 and Nsengiyumva Defence Witness ZDR-2

1527. Witnesses DK-11 and ZDR-2, two Hutu soldiers who worked with Kabiligi, each provided a list of persons escorting him between May and July 1994. Neither of them contained the name of Witness DY. Both witnesses acknowledged that they might not be able to recall every member of Kabiligi's personal entourage.[1681]

Deliberations

1528. The Prosecution relies only on Witness DY to establish that Kabiligi failed to intervene when he passed several roadblocks with dead civilians in and around Kigali around 20 and 21 April 1994 and on another occasion in late April. As mentioned elsewhere (III.4.1.8 and III.4.4.2), it may be asked whether the witness, a Tutsi, would be assigned to headquarters to escort Kabiligi from late April until June 1994 in the context of the events which were unfolding in Rwanda at the time. Witnesses DK-11 and ZDR-2, who were part of Kabiligi's security detail during the same period, did not mention Witness DY's name when listing their colleagues that served in Kabiligi's escort team. Even though they admitted that they might not be able to recall all their colleagues, their testimony, combined with Witness DY's ethnicity, create a certain doubt as to whether he actually was Kabiligi's escort.

1529. The Chamber observes that there are differences between Witness DY's testimony and his *Pro Justitia* statement to Rwandan judicial authorities in September 1997. In the statement, he referred to a woman lying on the ground for days, dying, whereas in his testimony he suggested that Kabiligi was present when *Interahamwe* assaulted her.[1682] In another statement to Tribunal investigators in October 1997, the witness did mention that Kabiligi observed the attack against the woman, as in the testimony.[1683] Witness DY's evolving descriptions of Kabiligi's actual presence during attacks raise concerns about his credibility. The Chamber notes that there was also an evolving description of Kabiligi's role in connection with the incident at the Musambira roadblock (III.4.4.2). The Chamber's doubt is strengthened by the fact that the two incidents on 20 and 21 April, where Kabiligi allegedly

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[1679] T. 16 February 2004 pp. 23, 36-38.
[1680] *Id.* pp. 38-41; T. 17 February 2004 pp. 11-14.
[1681] Witness DK-11, T. 19 July 2005 p. 61; T. 20 July 2004 pp. 3-4, 38, 41-42, 44, 46, 49-51; Defence Exhibit 144 (personal identification sheet). Witness ZDR-2, T. 30 March 2006 pp. 9, 11, 16, 19-20; Defence Exhibit 170 (personal identification sheet). *See also* Prosecution Exhibits 354 (Witness DK-11's list of Kabiligi's escorts and drivers) and 386 (Witness ZDR-2's list of Kabiligi's escorts and drivers).
[1682] T. 17 February 2004 pp. 13-14; Kabiligi Defence Exhibit 29 (statement of 18 September 1997).
[1683] Kabiligi Defence Exhibit 28B (statement of 2 October 1997), p. 6.

passed through roadblocks (above), fall within the period until 23 April, where he has an alibi (III.6.2).

1530. In view of the elements mentioned above, the Chamber declines to accept Witness DY's testimony in the absence of corroboration. Accordingly, the Prosecution has not proven beyond reasonable doubt that Kabiligi travelled through roadblocks with dead bodies on 20 and 21 April or observed the killing of a woman at a roadblock in Gitega sector around the end of April. In light of these findings, the Chamber does not need to address the Kabiligi Defence's other submissions.

4.1.10 Meeting at *Hôtel des Diplomates*, 24 April

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Introduction

1531. The Bagosora Indictment alleges that, from April to July 1994, Bagosora exercised authority over militiamen who committed massacres. The Prosecution contends that, around 24 April 1994, Bagosora arranged a meeting at the *Hôtel des Diplomates* between *Interahamwe* officials and General Roméo Dallaire to discuss the safe passage of refugees. However, before the meeting with Dallaire, Bagosora allegedly thanked the *Interahamwe* for their work and asked them to work closely with soldiers. Reference is made to Witnesses A and BY.[1684]

1532. The Bagosora Defence submits that these two witnesses lack credibility and are contradicted by each other as well as General Dallaire.[1685]

Evidence

Prosecution Witness A

1533. Witness A, a Hutu *Interahamwe* official, testified that, around 24 April 1994 at 10.30 a.m., he attended a meeting at the *Hôtel des Diplomates* in Kigali with Bagosora and senior *Interahamwe* officials. The witness identified as present six national *Interahamwe* leaders and three sector leaders from Gikondo, Kimicanga and Kicukiro. They then met with General Dallaire immediately afterwards. Bernard Maniragaba, one of the officials, informed the witness that the meeting with Dallaire was convened because the *Interahamwe* had prevented Dallaire from crossing a roadblock in Kigali while he tried to evacuate refugees from the *Hôtel des Milles Collines* to the Kanombe airport.[1686]

1534. Bagosora thanked the *Interahamwe* sector leaders for their work before Dallaire arrived. He also encouraged them to be vigilant and to cooperate with soldiers. The Gikondo sector leader asked him for assistance with the RPF, and Bagosora responded that he would ensure that the *Interahamwe* in Gikondo were reinforced with soldiers and gendarmerie. This meeting lasted no more than one hour and ended when a soldier entered the meeting room to

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[1684] Bagosora Indictment, paras. 6.43, 6.70; Prosecution Closing Brief, paras. 1425 (k), 1504 (h), pp. 761-762, 781.

[1685] Bagosora Closing Brief, paras. 800-807, 818-819, 824-830, 837-839, 1356-1378.

[1686] T. 1 June 2004 pp. 71, 73; T. 2 June 2004 pp. 84-85; T. 3 June 2004 pp. 92-93; Prosecution Exhibit 222 (personal identification sheet). Witness A said that this was the first time he met Bagosora, although he had previously heard about him. He identified Bagosora in court. *See* T. 1 June 2004 p. 24; T. 2 June 2004 pp. 24-25, 84.

inform Bagosora of Dallaire's arrival. When Bagosora left the meeting room, the *Interahamwe* leaders discussed what to say to Dallaire.[1687]

1535. Witness A said that Bagosora returned with Dallaire and two UNAMIR soldiers, Major Plante and a Senegalese captain. Bagosora introduced Dallaire and left the meeting. Dallaire inquired into evacuating refugees from the *Hôtel des Milles Collines*. The *Interahamwe* officials told him that he could evacuate them, but that the RPF had confined people at Remera stadium. Dallaire agreed to investigate this matter and the meeting concluded.[1688]

Prosecution Witness BY

1536. Witness BY, a Hutu *Interahamwe* official, attended a meeting convened by Bagosora on 23 or 24 April 1994 at the *Hôtel des Dipomates* along with several national *Interahamwe* officials. Around 40 to 50 neighbourhood *Interahamwe* leaders also participated. The meeting commenced around 11.30 a.m., and Bagosora informed them of the international community's request that roadblocks be dismantled. However, according to the witness, Bagosora did not order their removal. Instead, he told people to continue to be vigilant and then left after about 30 minutes.[1689]

1537. When Bagosora returned, he introduced General Dallaire and excused himself from the meeting. After exchanging introductions, Dallaire discussed UNAMIR's neutrality and requested safe passage for UNAMIR agents involved in humanitarian missions. The *Interahamwe* promised to comply with this request, and asked Dallaire to secure the release of Hutus being held by the RPF at the Amahoro stadium. He promised to investigate this issue.[1690]

Prosecution Witness Roméo Dallaire

1538. General Dallaire, the force commander of UNAMIR, testified that the first meeting he attended with *Interahamwe* leaders was at the *Hôtel des Diplomates* in early May 1994. General Augustin Bizimungu arranged the meeting so that UNAMIR could establish links with the militia to ensure its convoys' freedom of movement. Upon arriving at the *Hôtel des Diplomates*, Dallaire saw Bagosora in a room near the lobby. The meeting consisted of Dallaire, Bizimungu, and the national president, secretary-general and another leader of the *Interahamwe*. Dallaire did not recall any additional participants, though he stated that Bagosora was not at the meeting and that Bizimungu was the individual who left early.[1691]

[1687] T. 1 June 2004 pp. 71-73; T. 2 June 2004 pp. 85-86; T. 3 June 2004 pp. 63-64, 92. Witness A first stated that the term "work" meant the killing of Tutsis. He later said that Bagosora could have been referring to the *Interahamwe*'s participation in the war effort. *See* T. 1 June 2004 p. 73; T. 3 June 2004 pp. 63-64.

[1688] T. 1 June 2004 p. 72; T. 2 June 2004 pp. 46-47, 49, 86-87; T. 3 June 2004 pp. 92-93.

[1689] T. 5 July 2004 pp. 27-32, 35; T. 8 July 2004 p. 44; T. 9 July 2004 pp. 10-13; Prosecution Exhibit 284 (personal identification sheet).

[1690] T. 5 July 2004 pp. 34-35; T. 9 July 2004 pp. 12-13, 18, 21.

[1691] T. 19 January 2004 pp. 51-54; T. 23 January 2004 pp. 1-2. In Dallaire's book, he described Bagosora as being present along with General Bizimungu at the meeting in early May with *Interahamwe* leaders. *See* Ntabakuze Defence Exhibit 33A (Roméo Dallaire, *Shake Hands With the Devil* (2003)), pp. 345-346. However, he clarified during his testimony that Bagosora had not been present and only Bizimungu was there. *See* T. 23 January 2004 pp. 1-2.

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Bagosora

1539. Bagosora stated that he never arranged a meeting between Dallaire and the *Interahamwe*, and he denied attending such a meeting in late April 1994.[1692]

Deliberations

1540. It is clear that General Dallaire met with *Interahamwe* leaders at the *Hôtel des Diplomates*, but the evidence is conflicting as to exactly when it occurred, who convened the meeting and who was present.

1541. Dallaire placed the date of the meeting in early May 1994, more than week later than the estimates given by Witnesses A and BY. The Chamber considers that Dallaire provided a credible first-hand account of the incident. It also notes that there is a difference between Witness BY's testimony and his statement to Tribunal investigators in July 1998. He testified that the meeting occurred on 23 or 24 April, whereas, according to his statement, it took place on 13 or 14 April.[1693] The witness explained this discrepancy by noting that his prior interviews "contained contradictions, half truths" and other omissions and errors meant to shield himself from accusations.[1694] This explanation does not account for the error in the date and indicates the witness's willingness to mislead Tribunal officials when he perceives it to be in his best interest.

1542. Witnesses A and BY testified that Bagosora convened the meeting. He also introduced Dallaire upon his arrival, but left afterwards. Dallaire stated that it was Bizimungu, not Bagosora, who arranged and attended this meeting. There are also differences between Witness A's testimony and a prior statement to Tribunal investigators in June 1997. His testimony ascribes a prominent role to Bagosora in organising and speaking at the meeting. According to the statement, however, Bagosora did not come to the meeting.[1695] This is consistent with the evidence of both Dallaire and Bagosora. The witness explained that he never reviewed the transcripts of his interivew for corrections and that his 1997 statements did not differ from his testimony.[1696] The Chamber does not find this explanation convincing, in particular since it was transcribed from an audio-cassette.

1543. There are also differences with respect to the individuals who attended the meeting. According to Witness A, there were nine, whereas Witness BY estimated that over 40 were present. Dallaire identified only three members of the *Interahamwe* in attendance.

[1692] T. 9 November 2005 p. 59; T. 10 November 2005 p. 5; T. 15 November 2005 p. 40. Bagosora testified about meeting with Kigali area *Interahamwe* leaders in mid-May in connection with an evacuation of orphans (III.5.1). The meeting did not involve Dallaire.

[1693] Bagosora Defence Exhibit 116 (Interviews with Prosecution Witness BY, 3 July 1998), Cassette K7#12139 p. 31: "*MD: ... la distribution a été terminée le 11? ... Quand avez-vous rencontré Bagosora ... la fois suivante? T: La fois suivante ... j'ai rencontré Bagosora ... quand on avait convoqué les Interahamwe ... avec le représentant de la MINUAR ... à l'hôtel des Diplomates. MD: Quelle date? T: C'était deux ou trois jours plus tard.*"

[1694] T. 9 July 2004 pp. 3, 10, 13-14. At the time of his testimony, Witness BY had been arrested for crimes he allegedly committed in Rwanda and faced charges in a national jurisdiction. *See* T. 6 July 2006 pp. 38-39, 57-59.

[1695] *See* Prosecution Exhibit 227 (Interviews with Prosecution Witness A, 4 June 1997:), Cassette no. 23, p. 4: "Bagosora did not come on that day." The parties have not pointed to a subsequent statement where he placed Bagosora at the meeting.

[1696] T. 2 June 2004 pp. 47-51; T. 3 June 2004 p. 92.

1544. Dallaire's testimony as well as the above contradictions, raises questions about the credibility of the evidence of Witnesses A and BY concerning this meeting and in particular Bagosora's role in it. The Chamber further observes that Witnesses A and BY, as senior *Interahamwe* leaders, have an interest in minimising their own involvement and shifting blame to senior authorities, such as Bagosora.[1697]

1545. Accordingly, the Prosecution has not proven beyond reasonable doubt that Bagosora met with prominent *Interahamwe* leaders at the *Hôtel des Diplomates* around 24 April 1994.

4.1.11 Kigali Prefecture Security Meeting, End of April

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Introduction

1546. The Kabiligi and Ntabakuze Indictment alleges that, from April to July 1994, Kabiligi encouraged and helped militiamen to massacre the Tutsi population and its accomplices. In particular, the Prosecution alleges that, in April 1994, Kabiligi participated in a Kigali prefecture security council meeting where he promised to supply weapons to the local militia. Kabiligi kept this promise. Reference is made to Witness AAA.[1698]

1547. The Kabiligi Defence reiterates that this event was not pleaded properly in the Indictment. It also submits that Witness AAA lacks credibility and is contradicted by Witnesses Luc Marchal and YC-3.[1699]

Evidence

Prosecution Witness AAA

1548. Witness AAA, a Hutu local official in Kigali, testified that, between mid and late April 1994, he attended a meeting of the Kigali prefecture security council. Prefect Tharcisse Renzaho, a sub-prefect, the police commander of the prefecture, the *bourgmestres* of Kicukiro, Nyarugenge and Kacyiru, and the *conseillers* of various sectors in Kigali were present. Kabiligi participated as a military representative. Colonel Luc Marchal of UNAMIR and General Gatsinzi of the Rwandan army were also there. The witness did not know who Marchal was, but he heard Renzaho introduce Marchal by name and nationality at the beginning of the meeting. He also observed Kabiligi and Renzaho interpreting for Marchal what was being said in Kinyarwanda.[1700]

1549. Renzaho, who had convened the meeting, first spoke about the security situation during the war. The participants then raised matters pertaining to security in the sectors and

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[1697] Witness BY was in criminal proceedings at the time of his testimony. He also admitted to appropriating over $300,000 from his employer in Rwanda. *See* T. 6 July 2004 pp. 62-67. The Prosecution provided Witness A with a letter at his request stating it had insufficient evidence to open an investigation against him. *See* T. 2 June 2004 pp. 33-35, 45-46. *See also* Prosecution Exhibit 226 (Letter of 5 February 2002). In the Chamber's view, as a senior *Interahamwe* leader, the witness still has an interest in minimising his role in the events. *See also* Prosecution Closing Brief, para. 1428.

[1698] Kabiligi and Ntabakuze Indictment, paras. 5.1, 5.20, 6.30-6.32, 6.35-6.36, 6.45-6.46, 6.51; Prosecution Closing Brief paras. 673, 1468, 1469 (d), 1471. pp. 833, 836, 840-841; T. 28 May 2007 pp. 18-19.

[1699] Kabiligi Closing Brief, paras. 98, 102-104, 252-254, 380-382, 519, 966-967, 971, 976, 1122-1123, 1168, 1172; pp. 578-579, 589-590, 603, 617; T. 28 May 2007 pp. 31-32.

[1700] T. 14 June 2004 pp. 12-13, 17-20, 26-27; T. 15 June 2004 pp. 2, 84-85, 87-89; Prosecution Exhibit 263 (personal identification sheet).

asked for equipment and weapons to be given to the 10 households (*nyumba kumi*) and the *responsables*. Their questions were directed to the representative of the military authorities, Kabiligi, who promised that weapons would be distributed. He said that requests should be directed to Renzaho. He would in turn pass them on to the general staff of the army, which would then furnish the equipment. The meeting lasted for 15 minutes. The witness said that weapons were distributed, on a sectorial basis, at the end of April.[1701]

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Kabiligi Defence Witness Luc Marchal

1550. Colonel Luc Marchal was the Kigali Sector Commander of UNAMIR until he left Rwanda on 19 April 1994. He testified that he did not see Kabiligi between 6 April and his departure.[1702]

Kabiligi Defence Witness YC-3

1551. Witness YC-3 was a Hutu officer in the Rwandan army and had periodic contacts with UNAMIR in 1994. He was unaware of a meeting in Kigali involving Kabiligi, Gatsinzi, Marchal, Renzaho, the *bourgmestres* and *conseillers* between 27 and 30 April 1994. According to the witness, Gatsinzi could not have attended this meeting because he had already left Kigali. By these dates, Marchal had already left the country with the rest of the Belgian contingent.[1703]

Deliberations

1552. Witness AAA was the only Prosecution witness to testify about the prefecture security council meeting in April 1994 and Kabiligi's presence there. At the time of his testimony, he was awaiting trial in Rwanda.[1704] The Chamber considers his testimony with caution.

1553. The witness was not certain about the date of the meeting. He first said that it took place around mid-April 1994 but then indicated the end of the month, between 27 and 30 April.[1705] The Chamber accepts that the witness had problems remembering the date and notes that the last estimate is in conformity with a statement he gave to Tribunal investigators in October 2002, according to which the meeting occurred in "late April" 1994.[1706]

1554. Witness AAA's evidence was contradicted by other testimonies. In particular, Marchal testified that he was not in Rwanda at the end of April when the alleged meeting occurred. Furthermore, he did not see Kabiligi in the month of April. The Chamber finds Marchal's testimony to be credible and accepts that he was not present, irrespective of the

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[1701] T. 14 June 2004 pp. 18, 20-21; T. 15 June 2004 pp. 86, 89.
[1702] T. 30 November 2006 pp. 4, 20-21; Kabiligi Defence Exhibit 122 (personal identification sheet).
[1703] T. 9 November 2006 pp. 32-33, 40, 52, 54-58; Kabiligi Defence Exhibit 107 (personal identification sheet).
[1704] Ntabakuze Defence Exhibit 62 (Judicial Dossier of Witness AAA). The witness was detained in Kigali prison while awaiting trial. T. 14 June 2004 pp. 24-25; T. 17 June 2004 pp. 57-65.
[1705] T. 14 June 2004 p. 19 ("The witness: It was during the month of April but I do not remember the date. Judge Egorov: Was it the first or second part of April? The witness: It was in mid-April"); T. 15 June 2004 p. 85 ("I cannot recall the dates. It was the end of April, so it's between 27th and the 30th of April. But these are not specific dates. ... I am giving you an approximation").
[1706] Kabiligi Defence Exhibit 55 (statement of 16 October 2002). Neither this document nor his statement of June 2003 mentions that Kabiligi answered questions about security and promised to provide weapons. *See* Kabiligi Defence Exhibit 56 (statement of 18 June 2003). This evidence was first indicated about one week before his testimony. *See* Kabiligi Defence Exhibit 58 (Will-say statement of 9 June 2004).

exact date in April that it was actually held. His evidence is corroborated by Witness YC-3 who was unaware of the meeting but said that Marchal and Gatsinzi had left the country when it allegedly took place.

1555. One possible explanation could be that Witness AAA was mistaken as to the identity of the person he believed was Marchal. However, the witness gave a detailed description of how Marchal was introduced to the participants and the subsequent interpretation by Renzaho and Kabiligi in order to follow the discussion.[1707] When it was suggested to him that Marchal was out of the country at the time, he reaffirmed Marchal's presence.[1708] This reduces his credibility. Moreover, the Chamber has elsewhere expressed doubts about other aspects of Witness AAA's testimony (III.4.1.12-13). In the absence of corroboration, the Chamber declines to accept his evidence that Kabiligi was present.[1709]

1556. Accordingly, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that Kabiligi participated in a prefecture security council meeting in Kigali at the end of April 1994 and supplied weapons to the local militia.

1557. The Chamber has previously found that there was sufficient notice to admit the evidence of Witness AAA about this incident.[1710] In view of the finding above, there is no need to revisit this issue.

4.1.12 Meeting at Mount Kigali, Late April or Early May

Introduction

1558. The Kabiligi and Ntabakuze Indictment alleges that, from April to July 1994, Kabiligi ordered soldiers and civilians to massacre the Tutsi population and its accomplices. In particular, the Prosecution submits that, in late April or early May 1994, he travelled to the Huye Battalion military base on Mount Kigali and ordered a soldier and Kigali officials to murder all remaining *Inkotanyi* in Kigali town. Reference is made to Witnesses AAA and DK-11.[1711]

1559. The Kabiligi Defence reiterates that this incident is insufficiently pleaded in the Indictment. It also argues that Witness AAA lacks credibility and is contradicted in part by Witness STAR-1.[1712]

[1707] T. 15 June 2004 p. 85 ("When Colonel Renzaho spoke, Kabiligi would translate for Colonel Marchal; and when Kabiligi was speaking, then Renzaho worked as an interpreter").
[1708] T. 15 June 2004 p. 88 ("This is not a name I just pulled out of a hat. This is a name that was mentioned during the meeting. I saw a white man; the white man was introduced. ... They said his name was Colonel Marchal and that he was Belgian ...").
[1709] The Chamber does not find it necessary to consider Witness YC-3's comment that General Marcel Gatsinzi was no longer in Kigali, or that he was in Zaire in connection with a cease fire agreement, dated 23 April 1994. *See* Witness YC, T. 9 November 2006 p. 40; Ntagerura, T. 28 November 2006 pp. 8-9, 11-12; Kabiligi Defence Exhibit 120 (*Declaration de Cessez le Feu, 23 avril 1994*).
[1710] Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, paras. 17-18.
[1711] Kabiligi and Ntabakuze Indictment, paras. 5.1, 5.35, 6.31-6.32; Prosecution Closing Brief, paras. 169, 173, 1468, 1469 (e), 1766.
[1712] Kabiligi Closing Brief, paras. 110, 252-254, 966, 968, 972, 976, pp. 578-579, 589-590.

Evidence

40325

Prosecution Witness AAA

1560. Witness AAA, a Hutu local official in Kigali, testified that, towards the end of April or beginning of May 1994, he was invited by Witness STAR-1, an officer within the Huye Battalion, to its base located on Mount Kigali to attend a meeting with other Kigali officials. The purpose of the meeting was to discuss security matters. At the time, the RPF were only 15 kilometres away from the base.[1713]

1561. Witness AAA and other officials were gathered in Witness STAR-1's tent. Kabiligi arrived in a truck with six to eight soldiers. Witness STAR-1 stood up, saluted Kabiligi, and informed him that a meeting was being held to discuss security matters in the different sectors. Each of the participants also introduced themselves to Kabiligi. He seemed angry and replied that they were all idiots for allowing the Tutsis to move around Kigali freely and communicate with the RPF over radio devices. Kabiligi also said that the remaining Tutsis in each sector had to be eliminated. After Kabiligi had left with his escorts, Witness STAR-1 dismissed Witness AAA and the other officials and told them to go and search for accomplices with radios in the different sectors.[1714]

Nsengiyumva Defence Witness STAR-1

1562. Witness STAR-1 was a Hutu officer in the Huye Battalion in 1994 and was stationed at its military base on Mount Kigali from early May until the end of June. He denied that Kabiligi attended a meeting there, or that Kabiligi or Witness AAA visited the base. The only occasion that Witness STAR-1 met with Kabiligi during the conflict was later in June at the Nyamirambo stadium. The witness denied ever meeting or even knowing Witness AAA.[1715]

Ntabakuze Defence Witness DK-11

1563. Witness DK-11 was a Hutu soldier in the Rwandan army in 1994. He testified that on 12 May 1994, he was appointed to be a member of Kabiligi's personal escort. The witness held this position from mid-May until mid-July 1994, when he and Kabiligi fled Rwanda. During this period, the witness accompanied Kabiligi on four trips outside Kigali, to Camp Kanombe, the Presidential Guard camp, Mount Kigali and Runda. At Mount Kigali, Kabiligi met with the commanding officer of the battalion stationed there, Major Ntilikina.[1716]

Deliberations

1564. Witness AAA was the only Prosecution witness who described Kabiligi visiting Huye Battalion officers at Mount Kigali towards the end of April or early May. When the witness

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[1713] T. 14 June 2004 pp. 12-13, 17; T. 15 June 2004 pp. 2-3, 89-91, 93; Prosecution Exhibit 263 (personal identification sheet). Witness AAA had been detained since July 1997. *See* T. 14 July 2004 pp. 24-25; T. 17 June 2004 pp. 57-65.

[1714] T. 15 June 2004 pp. 2-4, 81-82, 90, 94-97.

[1715] T. 23 February 2006 pp. 4, 61-62, 65-67; T. 24 February 2006 pp. 28, 35-37; Nsengiyumva Defence Exhibit 140 (personal identification sheet).

[1716] T. 19 July 2005 p. 61; T. 20 July 2005 pp. 38, 43-45, 49; T. 21 July 2005 p. 24; Ntabakuze Defence Exhibit 144 (personal identification sheet). Witness DK-11 had doubts about the name of the commander and of the name of the battalion (T. 20 July 2005 p. 45).

testified in June 2004, he was awaiting trial in Rwanda for crimes committed in 1994.[1717] He had been detained since July 1997. The Chamber views his evidence with caution.

1565. The witness had previously given five statements to Tribunal investigators. One of them, recorded in June 2003, gives an account of the purported meeting and describes Kabiligi's utterances and mood in similar terms as the witness used in the courtroom.[1718] Witness STAR-1, who was allegedly present during the meeting, denied that it occurred and that Witness AAA and Kabiligi ever visited the base. The Chamber considers Witness STAR-1's evidence in light of his possible interest to distance himself from the order to kill Tutsis.

1566. Witness DK-11 said that he accompanied Kabiligi to a meeting with Witness STAR-1 at Mount Kigali at some point between mid-May and the mid-July. This is after the period – late April or beginning of May – indicated by Witness AAA. Furthermore, Witness DK-11's evidence was very limited and did not contain any information about the meeting or Kabiligi's words or mood.

1567. The Chamber has elsewhere expressed concerns about other aspects of Witness AAA's testimony (III.4.1.11; III.4.1.13). In the absence of any corroboration, the Chamber declines to accept his testimony about this incident.[1719] Accordingly, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that Kabiligi attended a meeting with local officials at the Huye Battalion base at Mount Kigali and ordered those present to kill remaining Tutsis in the area. The Chamber decided during the trial that Kabiligi had notice of this allegation.[1720] In view of its finding, it sees no need to revisit this issue.

4.1.13 Nykabanda Sector, 22 - 25 May

Introduction

1568. The Kabiligi and Ntabakuze Indictment alleges that, starting on 7 April 1994, elements of the Rwandan army and *Interahamwe* perpetrated massacres of the civilian Tutsi population in places where they had sought refuge for their safety. As part of these general allegations, the Prosecution seeks to hold Ntabakuze responsible for the murder and rape of Tutsi civilians in Nyakabanda sector of Kigali while the Para Commando Battalion was stationed there at the Iwacu centre in Kabusunzu. In support of these allegations, reference is made to Witnesses DBN and AAA.[1721]

1569. The Ntabakuze Defence repeats earlier challenges to the pleading of these crimes in the Indictment. It does not dispute that the Para Commando Battalion was stationed at the

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[1717] Ntabakuze Defence Exhibit 62 (Judicial dossier of Witness AAA). The witness was detained in Kigali prison while awaiting trial. *See* T. 14 June 2004 pp. 24-25; T. 17 June 2004 pp. 57-65.

[1718] Kabiligi Defence Exhibit 56 A (statement of 18 June 2003), p. 7, contains Kabiligi's words, written in upper case by the investigators. It also contains formulation such as "[Kabiligi] angrily said at the top of his voice" and "The meeting ended abruptly and General Kabiligi left the scene in an angry mood".

[1719] The Prosecution indicates that Witness AAA is not "worthy of being described as a wholly believable witness", but it invites the Chamber to accept certain aspects of his evidence. *See* Prosecution Closing Brief, para. 1471.

[1720] Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, paras. 17-18.

[1721] Kabiligi and Ntabakuze Indictment, para. 6.36; Prosecution Closing Brief, paras. 428, 432-433, 1324(a), 1328, 1469 (f-g), 1470, 1743, 1744 (a-d), 1745, 1822, pp. 836-837.

Iwacu centre in Kabusunzu at the end of May 1994, but it submits that the Prosecution evidence lacks credibility. It also points to contradictory evidence from Witnesses XAB, DH-13, DH-67, DH-68, DK-110 and DK-120.[1722]

Evidence

40323

Prosecution Witness AAA

1570. Witness AAA, a Hutu local official in Kigali, testified that, at the end of May 1994, the Para Commando Battalion established a camp at the Iwacu Centre in Nyakabanda sector. After the battalion's arrival, he received reports of an increase in killings, rape and looting in the area. Most of the Tutsis and Hutus who opposed the regime had been killed or had fled from the area by May, and crimes were being committed indiscriminately, even against the Hutu residents who remained. The witness described several instances of rape and murder against Hutus and Tutsis perpetrated by soldiers or *Interahamwe* accompanied by soldiers. This prompted the witness to go to the Iwacu Centre to speak with Ntabakuze about the violence. In particular, the witness mentioned a Tutsi, who was killed by *Interahamwe* and soldiers in May, named Jean Karwanyi. The soldiers involved in these crimes came from Camp Kigali, the Huye Camp and the Para Commando Battalion. When Witness AAA tried to speak with Ntabakuze at the Iwacu Centre about the increasing violence, Ntabakuze spoke unkindly to him and did not provide any assistance. The witness recognised some of the soldiers circulating in his sector as member of the Para Commando Battalion by their camouflage berets. That battalion continued committing crimes in the area with the *Interahamwe* until mid-June.[1723]

Prosecution Witness DBN

1571. Witness DBN, a Tutsi member of the Para Commando Battalion, stated that the battalion evacuated Camp Kanombe at night at the end of April 1994, staying two nights at the *École Technique Officielle* (ETO) before relocating to the Iwacu Centre in Kabusunzu. After leaving ETO, the witness spent one night at Camp Kigali before proceeding to Kabusunzu. About 300 members of the battalion had already set up temporary camp there the night before. On arrival at the Iwacu Centre, he saw about 20 members of the battalion loading about 15 bodies onto a truck. The bodies had bullet wounds and were in civilian attire. Ntabakuze was standing 10 metres away. The witness was not aware how these individuals had died, but a friend told him later that evening that there were gunshots in the vicinity the previous night.[1724]

[1722] Ntabakuze Closing Brief, paras. 329-335, 385-397, 2012-2092.

[1723] T. 14 June 2004 p. 12; T. 15 June 2004 pp. 7-23, 25-27, 29-30; T. 16 June 2004 pp. 76-77, 90-91, 95-100; T. 17 June 2004 pp. 5-10, 12-18; T. 18 June 2004 p. 10; Prosecution Exhibit 263 (personal identification sheet). Witness AAA stated that the driver referred to as "John" in his statement was the same person as Jean Karwanyi. *See* T. 17 June 2004 pp. 11-12, 17-18. He also mentioned the killing of a Hutu named Bideri before 20 April. *See* T. 16 June 2004 p. 91. The witness further noted that he only saw Ntabakuze once when he met him at the Centre. A soldier at the gate identified the officer with whom the witness spoke as Ntabakuze. The witness identified Ntabakuze in court. *See* T. 15 June 2004 pp. 7, 9.

[1724] T. 1 April 2004 pp. 64-68; T. 5 April 2004 pp. 58-59, 61-62, 65; Prosecution Exhibit 198 (personal identification sheet). Witness DBN did not know that the place was called the Iwacu centre since it was his first time there. The Chamber considers that he was referring to the Iwacu centre in view of the other evidence related to this deployment.

1572. The next morning, Witness DBN saw five members of the local population present three other individuals to Ntabakuze, explaining that they were *Inyenzi*, who were hiding in the area. Ntabakuze responded that "the dirt should be taken away and killed". Two soldiers named Uwimana and Bashimiraho took these three persons, who looked starved, behind the building, and the witness heard five gunshots. Later that day, he and other members of the Para Commando Battalion left for Gitarama prefecture, where they stayed for a week at the local military camp and in a nearby school. The rest of the battalion went to Butare prefecture. After a week in Gitarama prefecture, the battalion withdrew to Gisenyi prefecture and then to Goma, Zaire.[1725]

Prosecution Witness XAB

1573. According to Witness XAB, a Tutsi member of the Third Company of the Para Commando Battalion, his unit retreated from its position in Remera around 23 May 1994 and spent one night at the Iwacu Centre in Kabusunzu. The next day, it went to Muyira commune in Butare prefecture for less than two days before going to Gitarama prefecture. The witness never saw members of the Para Commando Battalion engage in the killing of civilians, including at Kabusunzu. There was only one soldier in the battalion named Bashimiraho. He lost his leg in 1992.[1726]

Ntabakuze

1574. Ntabakuze explained that, on the night of 21 May 1994, the Para Commando Battalion broke through the RPF lines which had encircled the battalion's position. The battalion then stayed briefly at the Iwacu Centre in Kabusunzu before deploying to Muyira commune in Butare prefecture on 25 May. He denied that his soldiers participated in the killing of Tutsi civilians in Kabusunzu at the end of May.[1727]

Ntabakuze Defence Witnesses DK-110 and DK-120

1575. Witnesses DK-110 and DK-120, Hutu members of the Para Commando Battalion, said that, around 21 May 1994, the battalion participated in a military operation to break through RPF lines surrounding their position near the ETO. After the operation, the Para Commando Battalion set up a camp at the Iwacu Centre in Kabusunzu for about two days so that the soldiers could rest. They saw Ntabakuze there. Only a few civilians were at the Centre when they arrived. The members of the Para Commando Battalion did not leave the Centre and did not commit any crimes there. The battalion then redeployed to Muyira commune, Butare prefecture.[1728]

Ntabakuze Defence Witness DH-13

1576. Witness DH-13, a Hutu trader who lived in Nykabanda sector in 1994, stated that members of the *Interahamwe* killed a Hutu named Bideri, John, who was a Tutsi driver, and a

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[1725] T. 1 April 2004 pp. 68-69; T. 5 April 2004 pp. 61-62, 64. Witness DBN stated that Uwimana was a member of the CRAP Platoon.
[1726] T. 6 April 2004 pp. 20, 50-51, 56-57, 75; T. 7 April 2004 pp. 17-18; Prosecution Exhibit 200 (personal identification sheet).
[1727] T. 20 September 2006 pp. 7-11, 13-18; T. 21 September 2006 pp. 18, 21-22; Ntabakuze Defence Exhibit 228 (Map of Kigali identifying Para Commando positions).
[1728] Witness DK-110, T. 12 July 2005 pp. 63-66; T. 13 July 2005 pp. 6-13, 26-28; Ntabakuze Defence Exhibit 143 (personal identification sheet); Witness DK-120, T. 5 July 2005 pp. 6-10, 31-33; Ntabakuze Defence Exhibit 141 (personal identification sheet).

Tutsi called Jean Karwanyi in early April 1994. On 7 April, he saw Witness AAA standing next to Karwanyi's dead body at a roadblock. Around 11 April, he heard about the death of Bideri and Karwanyi. The witness also stated that he never saw any soldiers in Nyakabanda sector in May 1994.[1729]

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Ntabakuze Defence Witness DH-67

1577. Witness DH-67, a Hutu, lived in close proximity to the Iwacu Centre in April and May. Around 20 May, she observed between 300 and 500 members of the Para Commando Battalion establish a temporary camp at the Centre for about three days. During that time, the witness did not see or hear about any killings by soldiers at the Centre or in the Kabusunzu area.[1730]

Ntabakuze Defence Witness DH-68

1578. Witness DH-68, a Hutu member of the medical company, testified that there was only one member of the Para Commando battalion named Bashimiraho. The witness noted that Bashimiraho joined the medical company in 1992 after his leg was amputated as a result of a war injury. Bashimiraho was evacuated to Butare prefecture along with the Camp Kanombe hospital at the end of April 1994 and was not in Kabusunzu at the end of May 1994.[1731]

Deliberations

1579. Ntabakuze and the Para Commando Battalion established a temporary camp at the Iwacu Centre in the Kabusunzu area of Nyakabanda sector from around 22 until 25 May 1994. Witnesses AAA and DBN implicated the battalion in various incidents of violence at the Centre and in the surrounding area. They did not, however, refer to the same events. Witness AAA spoke about a general increase in rape and murder in the area after the arrival of the battalion, mentioning several crimes perpetrated at the hands of the *Interahamwe* accompanied by soldiers, in particular a Tutsi named Jean Karwanyi. The witness then allegedly spoke with Ntabakuze. Witness DBN attested to two events, occurring at the Iwacu Centre, namely the loading of 15 bodies by soldiers onto a truck and Ntabakuze's alleged order to two soldiers to kill three Tutsi civilians, who were brought to the Centre by local assailants. The Chamber addresses each of the allegations in turn.

1580. Witness AAA did not provide direct testimony about crimes committed by members of the Para Commando Battalion. His evidence is based on seeing soldiers wearing camouflage berets in the area and reports of criminal conduct given to him by local officials and people within the community. He also explained that from 14 April, soldiers from other nearby camps, other than the Para Commando Battalion, operated in the area, including the Huye Battalion.[1732] The Huye Battalion, which was a commando unit, also wore camouflage

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[1729] T. 14 February 2006 pp. 25, 30-32, 34-39, 49, 54-55, 57. During Witness DH-13's testimony, he read an excerpt into the record from the Rwandan newspaper *Le Messager*, dated 24 November 1994, which stated that Bideri died on 9 April 1994. *See also* Ntabakuze Defence Exhibit 202 (excerpt of *Le Messager*, dated 24 November 1994).

[1730] T. 20 April 2005 pp. 4-5, 15-18, 29; Ntabakuze Defence Exhibit 87 (personal identification sheet).

[1731] T. 29 June 2005 pp. 100-101; T. 30 June 2005 pp. 2, 4, 6; Ntabakuze Defence Exhibit 83 (personal identification sheet).

[1732] T. 15 June 2004 p. 26 ("In the event that I have described, there were soldiers from Huye who would come down from their camps and work in the Nyakabanda *cellule* which – *cellules*, which are not far from their camp ... So they were operating in the *cellules* that were near Nyakabanda *cellule*. The soldiers of Huye camp

berets like the Para Commando Battalion.[1733] The witness also stated that the Para Commando Battalion was stationed at the Iwacu Centre and committed crimes in the area until mid-June. This testimony is contradicted by convincing and corroborated evidence from both Prosecution and Defence witnesses that the Para Commando Battalion stayed only temporarily at the Centre from around 22 to 25 May before redeploying. It also follows from the evidence of Witness DH-13 that the killing of Jean Karwanyi, which Witness AAA claimed occurred after the Para Commando Battalion arrived, likely happened in the initial days after the death of President Habyarimana – before the battalion set up temporary camp in the area.[1734]

1581. In addition to these doubts about Witness AAA's evidence, the Chamber notes that at the time of his testimony, he was imprisoned in Rwanda awaiting trial for crimes committed in Nykabanda sector.[1735] He therefore had an interest in minimising his own responsibility for crimes committed in the area and shifting blame to Ntabakuze. The Chamber has also raised question about other aspects of his testimony elsewhere in the judgement (III.4.1.11-12). For the foregoing reasons, the Chamber declines to accept his account concerning the activities of the Para Commando Battalion in Nykabanda sector without corroboration.

1582. Turning to Witness DBN, he indicated that the Para Commando Battalion established its temporary camp at the Iwacu Centre at the end of April, a full month ahead of when it was actually deployed there. This discrepancy alone is not sufficient to reject Witness DBN's account, but it does raise some concerns about the reliability of his testimony. It follows from other aspects of his testimony, such as the battalion's subsequent deployments to Butare and Gitarama prefectures, which is consistent with chronology of the deployments provided by other members of the battalion, that he was probably referring to events occurring at the end of May.

1583. There are differences between Witness DBN's testimony about crimes committed at the Iwacu Centre in Kabusunzu and his previous statements to Tribunal investigators. For example, he did not mention the killings at Iwacu Centre in his first statement in August 1999.[1736] In his second statement in February 2000, the witness said that he heard that the Para Commando Battalion was involved in killings in Kabusunzu.[1737] He did not mention seeing the loading of bodies onto a truck or personally observing Ntabakuze give orders to kill three Tutsi civilians. The allegation about Ntabakuze's order to kill three Tutsi civilians only surfaced in a will-say statement, disclosed in December 2003, less than four months before the witness's testimony.[1738] Witness DBN explained that the omissions in his

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therefore operated in Kabugura or Rwazamenyo. As to the gendarmes, they were involved in the event that took place in Rwazamenyo *cellule*, and the gendarmes were deployed throughout the *secteurs*. As to the other soldiers, they were in Nyakabanda *cellule*. And the soldiers from Kigali camp would come to Nyakabanda and Rwazamenyo. And it was as if the Nyakabanda camp was between several military camps, and so the military camps acted in collaboration with the *Interahamwe* to perpetrate the acts that I have referred to.").

[1733] Witness AAA stated that members of the Huye Battalion wore black berets. *See* T. 17 June 2004 p. 9. The Chamber has determined that the Huye Battalion, which was a commando unit, wore camouflage berets (III.1.2).

[1734] It follows from Witness DH-13's evidence that John, the driver, and Jean Karwanyi are two different persons. Witness AAA suggested that they were the same person.

[1735] *See* Ntabakuze Defence Exhibit 62 (Judicial dossier of Witness AAA).

[1736] Ntabakuze Defence Exhibit 49 (statement of 20 August 1999).

[1737] Ntabakuze Defence Exhibit 50 (statement of 25 February 2000).

[1738] Ntabakuze Defence Exhibit 51 (Will-say statement of 13 December 2003).

statements resulted from the questions put to him by the investigators.[1739] This explanation, however, is not entirely convincing. Witness DBN's statements of 1999 and 2000 focused specifically on Ntabakuze and the Para Commando Battalion and mentioned the temporary deployment at the Iwacu Centre at Kabusunzu. In the Chamber's view, it is noteworthy that such a serious allegation as Ntabakuze's order to kill three Tutsis was not included in those statements and only surfaced in the will-say statement.

1584. Witness DBN stated that one of the soldiers, whom Ntabakuze allegedly ordered to kill the three Tutsi civilians, was called Bashimiraho. The evidence of Witnesses DH-68 indicates that Bashimiraho was evacuated to Butare prefecture on 27 April 1994 together with the hospital at Camp Kanombe. Both Witnesses DH-68 and XAB testified that there was only one soldier in the battalion named Bashimiraho, who had lost his leg in 1992.

1585. It remains possible that Witness DBN was mistaken about the identity of the killers. However, other evidence from both the Prosecution and Defence suggests that no crimes occurred while the battalion was stationed at the Iwacu Centre. In particular, Prosecution Witness XAB, a Tutsi, testified that he did not see or hear about any killings by members of the battalion after 11 April at Nyanza hill (III.4.1.1). Defence Witnesses DK-110 and DK-120, who were also stationed at the Centre, and Witness DH-67, who lived nearby, corroborate Witness XAB's testimony with respect to the activities of the Para Commando Battalion in the area. The Chamber views the evidence of these battalion members with caution since they may have reason to distance themselves from crimes committed in the area. These concerns, however, do not necessarily apply to Witness XAB, a Tutsi, who implicated Ntabakuze and members of the battalion in connection with the massacre at Nyanza hill (III.4.1.1). The evidence of these Prosecution and Defence witnesses, when considered together, raises further doubt about the claims made by Witness DBN that members of the Para Commando Battalion killed civilians at the Iwacu Centre.[1740] This reasoning applies with equal force to Witness AAA's allegations, discussed above, concerning the battalion's alleged activities in the surrounding areas.

1586. In sum, the Prosecution has not proven beyond reasonable doubt that Ntabakuze and members of the Para Commando Battalion participated in crimes in Nykabanda sector while the battalion was deployed at the Iwacu Centre in Kabusunzu.

1587. The Chamber held during the trial that Ntabakuze had adequate notice of the allegations related to Nyakabanda sector.[1741] In view of the finding on this event, it is not necessary to revisit the notice provided for these allegations.

[1739] T. 5 April 2004 pp. 59-60 ("I met several investigators, and my answers were based on questions put to me; for example – if I was asked if I was at such-and-such a place, and if I answered yes, then the following question would concern the place [where] we went to and I would answer accordingly, but some investigators would ask me, 'You were at such-and-such a place.' If I said yes, then they would ask me, for example, what I did there, so the investigators had different questions, and that is why the contents of the statement could be different, depending on what the investigators asked. In some instances the second investigator did not ask what the first investigators had asked me.").

[1740] The Chamber has also raised questions about other aspects of Witness DBN's testimony (III.4.1.6).

[1741] *See* Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007, paras. 19-21; Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 42-43.

4.1.14 Saint André College, May - June

40318

Introduction

1588. The Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment allege that, from May to June 1994, soldiers under the orders of Kabiligi identified Tutsis who had sought refuge in a house near Saint André College in Kigali and killed them on 8 June 1994. The Prosecution refers primarily to the evidence of Witness DBQ that, at the end of May, General Bizimungu, Ntabakuze and Kabiligi directed *Interahamwe* and soldiers, including members of the Para Commando Battalion, to take Tutsi refugees away to be killed in the nearby Rwampara sector. Furthermore, it points to Witness DBJ, involving attacks from 7 to 10 June 1994 on the Saint Josephite Centre and Saint Charles Lwanga Church, which are near Saint André College. Reference is also made to Witness XXJ in connection with the killing of orphans near Saint André.[1742]

1589. The Bagosora Defence submits that the Prosecution's evidence does not connect him to the alleged killings or any possible role played by Kabiligi therein. The Kabiligi and Ntabakuze Defence teams submit that they did not recieve proper notice of the allegations. The Kabiligi Defence argues that Kabiligi lacked authority over soldiers in the area (IV.1.3). All three Defence teams contend that the Prosecution evidence lacks credibility. They refer to Witnesses DH-90 and DH-91.[1743]

Evidence

Prosecution Witness DBQ

1590. Witness DBQ, a Hutu and purported member of the Para Commando Battalion, testified that, towards the end of May 1994, portions of his battalion relocated to Camp Kigali, the Saint André College and the Iwacu Kabusunzu Centre. A few days later, the witness, who was posted at Camp Kigali, drove a pregnant Tutsi friend to a house near Nyamirambo stadium, passing Saint André College where he spent 20 to 30 minutes waiting to get through a roadblock. He recalled seeing about 100 members of the *Interahamwe* at the roadblock near Saint André College. There were also between 100 and 300 Tutsi civilians coming out of the buildings of Saint André College, as well as the nearby Islamic Centre.[1744]

1591. While at the roadblock, Witness DBQ saw Ntabakuze and General Bizimungu standing in front of the Saint André College. They were at a distance of five metres from his car. The witness overheard Ntabakuze tell Bizimungu that the Tutsis should be taken to "Kinihira", a term used in military circles at the beginning of the genocide to indicate when people had to be killed. According to the witness, Ntabakuze and Bizimungu used hand gestures to the soldiers and *Interahamwe* present to indicate that the Tutsi civilians should be taken away. They also said to the soldiers that the Tutsis should be killed at a location called

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[1742] Bagosora Indictment, para. 6.53; Kabiligi and Ntabakuze Indictment, para. 6.38; Prosecution Closing Brief, paras. 429-431, 1109 (e), 1193 (d-f), 1363, pp. 164-166, 506, 768-769, 837.
[1743] Bagosora Closing Brief, p. 381; Kabiligi Closing Brief, paras. 99, 110, 194, 214, 902-905, 1406, pp. 611-612, 620; Ntabakuze Closing Brief, paras. 139-144, 245-250, 2093-2125. The Kabiligi Defence notes the absence of evidence about this event from Defence Witnesses DK-11 and ZDR-2, who frequently accompanied Kabiligi during this period, as well as Prosecution Witness DY, who claimed that he was often with Kabiligi at this time.
[1744] T. 25 February 2004 pp. 9-11, 13, 54-57; Prosecution Exhibit 99 (personal identification sheet).

Rwampara. While the witness was waiting at the roadblock, he saw Kabiligi arrive in an armoured personnel carrier and speak to Bizimungu and Ntabakuze.[1745]

1592. Witness DBQ then continued on to Nyamirambo Stadium. On his return to Saint André College from the stadium, he passed Kabiligi going towards Mount Kigali in his armoured personnel carrier. The witness asked several soldiers from the Para Commando Battalion at the Saint André College roadblock about the fate of the Tutsi civilians who had been taken away. They responded that the Tutsis had already been killed in Rwampara sector, around 200 to 300 metres away. None of those soldiers was punished for the killings.[1746]

Prosecution Witness DBJ 40317

1593. Witness DBJ, a Tutsi, sought refuge along with other Tutsis at the Saint Josephite Centre near Saint André College in Nyamirambo from April to June 1994. On the morning of 7 June, he heard Tharcisse Renzaho on RTLM, saying that "*Inyenzi*" who had been forgotten were hiding in the ceiling of the Centre. That afternoon, a number of soldiers armed with guns arrived, stating that they had been sent by the administration because of the RPF presence at the Centre. The soldiers examined the identity cards of the refugees, led a group of around 100 Tutsis – who were mainly women, youth, and religious personnel – out of the compound, lined them up, and shot them to death. A soldier, wearing a "clean military uniform", searched the witness's room, but he was spared, probably because he did not look like a Tutsi. He acknowledged that it was difficult to tell the difference between *Interahamwe* and soldiers at this time, as some *Interahamwe* wore military uniforms.[1747]

1594. After the killings, nine survivors walked around 200 metres to the neighbouring Saint Charles Lwanga Church. An *Interahamwe* leader named Kigingi, who manned a roadblock near the church, stopped them and stabbed a pregnant women to death. The refugees continued to the church and passed by Saint André College, which was across the road, where soldiers were engaged in domestic tasks. Around 3.00 p.m. on 9 April, Kigingi led his *Interahamwe* in an attack on the 50 to 60 mostly Tutsi refugees at Charles Lwanga Church. They fired tear gas into the church and then herded the refugees onto two trucks. The witness believed that they were later killed at Mount Kigali. Gendarmes arrived at some point and watched the loading operation, but did nothing to prevent the Tutsi refugees from being taken away. In the witness's view, they were not strong enough to stop the *Interahamwe*.[1748]

1595. While they were boarding the refugees onto the vehicles, an army major named Ndamage convinced Kigingi to spare a Tutsi lecturer in the faculty of science education named Jean Damascene Ndayabaje, arguing that he made an important contribution to Rwanda. Kigingi relented and Ndayabaje was placed in a vehicle along with the witness and a few other religious personnel bound for Saint Paul Centre and ultimately the Saint Famille

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[1745] T. 25 February 2004 pp. 10-13, 56-57.
[1746] *Id.* pp. 10-14.
[1747] T. 24 November 2003 pp. 1-3, 13-18, 38, 41, 47; T. 25 November 2003 pp. 6-7, 10, 15-17, 32; Prosecution Exhibit 136 (personal identification sheet). The witness also referred to an earlier attack on the Saint Josephite Centre on 8 April 1994, where soldiers killed many of the Tutsi refugees. *See* T. 24 November 2003 pp. 4-10. He said that there were no killings between 8 April and 7 June 1994. *See* T. 25 November 2005 p. 6.
[1748] T. 24 November 2003 pp. 18-22, 37-38, 48; T. 25 November 2003 pp. 3-4, 11, 16-17. The witness identified the gendarmes by their red berets. T. 24 November 2003 pp. 48-49.

Church. Major Ndamage then assisted these survivors cross Kigingi's roadblock on the way.[1749]

40316

Prosecution Witness XXJ

1596. Witness XXJ, a Hutu lieutenant in the Rwandan army, stated that, from his position on Mount Kigali, he could see Saint André College at a distance of one or two kilometres. During his time on Mount Kigali from mid-May to mid-June 1994, he observed fierce fighting between the Rwandan government forces and units of the RPF in the vicinity of Saint André College. On one occasion, while he was conducting operations led by Kabiligi, the witness noticed gunshots near the Saint André College. Over the radio, he heard Kabiligi ask soldiers who were deployed in the area from which direction the shots were coming. The witness stated that he knew Kabiligi's voice and had just been talking over the radio with him before Kabiligi asked the soldiers his question. A soldier responded that the fire had been directed at a military vehicle and that shots were coming from the direction of where the orphans were located. Kabiligi then issued orders for his soldiers to conduct a search of that area. Witness XXJ stated that, much later, he was informed that orphans had been killed in Nyamirambo. He did not know whether the search had ever been conducted or whether the orphans he had heard were killed were the same ones referred to near Saint André College.[1750]

Ntabakuze

1597. Ntabakuze explained that, on the night of 21 May 1994, the Para Commando Battalion broke through the RPF lines, which had encircled its position. The battalion then stayed briefly at the Iwacu Centre in Kabusunzu before deploying to Muyira commune in Butare prefecture on 25 May. He denied that his soldiers were stationed at Saint André College or that they participated in the killing of Tutsi civilians in Rwampara sector at the end of May.[1751]

Ntabakuze Defence Witness DK-32

1598. Witness DK-32, a Hutu officer in the Rwandan army, testified that, in early May 1994, army headquarters divided the Kigali military operation sector into two and named Colonel Nkuriyekubona as head of the Kigali-East sector. The witness served in that sector. The Para Commando Battalion was placed under the command of Nkuriyekubona in the Kigali-East sector from the beginning of May until around 21 May after it completed an operation to break through RPF lines. The witness did not hear about any crimes committed by them during this period.[1752]

1599. Around 23 May, the Kigali-East sector established a command post at Saint André College. There were no refugees there, and the witness did not recall any incidents involving soldiers and refugees in the area. He did not see Ntabakuze in Nyamirambo. After the army established a position at the college, there was heaving shelling and fighting in the area. The

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[1749] T. 24 November 2003 pp. 22-26; T. 25 November 2005 pp. 12, 14.
[1750] T. 14 April 2004 pp. 48-50; T. 16 April 2004 pp. 9-15, 23-24; Prosecution Exhibit 208 (personal identification sheet).
[1751] T. 20 September 2006 pp. 7-11, 13-18; T. 21 September 2006 pp. 18, 22; Ntabakuze Defence Exhibit 228 (Map of Kigali identifying Para Commando positions).
[1752] T. 27 June 2005 pp. 43, 60-63; T. 28 June 2005 p. 54; Ntabakuze Defence Exhibit 136 (personal identification sheet).

witness agreed that there was a meeting between Nkuriyekubona and representatives from a nearby church concerning the evacuation of the refugees, but he could not recall it in detail. The witness evacuated after being wounded by a shell on 1 June.[1753]

Ntabakuze Defence Witnesses DK-110 and DK-120 40315

1600. Witnesses DK-110 and DK-120, Hutu members of the Para Commando Battalion, said that, around 21 May 1994, the battalion participated in a military operation to break through RPF lines surrounding its position near the *École technique officielle* (ETO). After the operation, the Para Commando Battalion set up a camp at the Iwacu Centre in Kabusunzu for about two days so that the soldiers could rest. They saw Ntabakuze there. Only a few civilians were at the Centre when they arrived. The members of the Para Commando Battalion did not leave it. The battalion then redeployed to Muyira commune, Butare prefecture.[1754]

Ntabakuze Defence Witness DH-90

1601. Witness DH-90, who lived in Nyamirambo during the relevant events, testified that, by May 1994, around 140 mostly Tutsi refugees were at the Saint Charles Lwanga Church, which was adjacent to the Saint André College. Other Tutsi refugees were at the nearby Saint Josephite Centre, the Beneberika Convent and the Carmelite Convent. The witness was certain that no refugees remained at Saint André College, which had been attacked on 13 April. In view of this, as well as the witness's familiarity with what happened in the area, he considered it unlikely that soldiers killed several hundred refugees from the college or the nearby Islamic Cultural Centre at the end of May.[1755] The witness, who was at Saint Charles Lwanga Church from March until June 1994, identified each of these geographically proximate locations as well as prominent area roadblocks, which were manned by civilians, on two maps and a series of photographs.[1756]

1602. Around 23 or 25 May, the Rwandan army established a military position at Saint André College. The witness speculated that it might have been the Gisaka Battalion, and he recalled two officers stationed there who might have been named Nkuriyekubona and Hakizimana. The witness never heard the name Ntabakuze or about the presence of members of the Para Commando Battalion in connection with the military position at the college. However, he emphasised that he could be mistaken with respect to the exact identity of the unit or the officers. After the Rwandan army arrived in Nyamirambo, the RPF began shelling the army's position. This caused a great deal of insecurity at the nearby church. In particular, throughout the day on 30 May, the church was effected by a bombardment from the RPF

[1753] T. 27 June 2005 pp. 64-65, 69; T. 28 June 2005 pp. 15-17. Witness DK-32 was not certain about the exact date when the command post was set up at Saint André College.

[1754] Witness DK-110, T. 12 July 2005 pp. 63-66; T. 13 July 2005 pp. 6-13, 26-28; Ntabakuze Defence Exhibit 143 (personal identification sheet); Witness DK-120, T. 5 July 2005 pp. 6-10, 31-33; Ntabakuze Defence Exhibit 141 (personal identification sheet).

[1755] T. 25 April 2005 pp. 6-7, 9, 32-33, 36-38, 54; T. 26 April 2005 pp. 15, 25-26. In recalling the chronology of events, the witness relied on handwritten notes, which he prepared after arriving in Arusha. T. 26 April 2005 pp. 7-8. He had reviewed Witness DH-91's diary in preparation of his testimony, describing it as a contemporaneous and good account of the events. He noted slight differences due to their different experiences. T. 26 April 2005 pp. 8, 10.

[1756] T. 25 April 2005 pp. 11-28, 32; T. 26 April 2006 pp. 19, 27-28, 46; Ntabakuze Defence Exhibit 90 (Map of Kigali identified by Witness DH-90); Ntabakuze Defence Exhibit 91 (Map of Nyamirambo identified by Witness DH-90); Ntabakuze Defence Exhibit 89 (Photographs identified by Witness DH-90).

position on Mount Rebero, which targeted the Rwandan army position, including one shell which killed around 50 refugees.[1757]

1603. The bombardment continued the next day, 31 May, and the refugees at the Saint Charles Lwanga Church fled to the nearby Ntwari school, where they joined others from the Beneberika convent. Two Rwandan priests tried to negotiate in vain with local prefecture officials for a military escort to take the refugees to *Hôtel des Mille Collines* or the Saint Paul Centre in Kigali, where protection was being provided by gendarmes. They succeeded only in obtaining a military escort for members of the Carmelite religious order, many of whom were Tutsis. The refugees returned that evening to the Saint Charles Lwanga Church, making their way across two roadblocks, after a gendarmerie captain prohibited them from staying the night at the school. On their return, they found that other refugees had arrived from the nearby Carmelite convent.[1758]

1604. On 3 or 4 June, Witness DH-90 met with the battalion commander at Saint André, whom he "trusted", and raised concerns about the safety of the refugees at the church during the bombardment. The battalion commander agreed that it was dangerous and asked the witness to accompany him to the prefecture office to discuss a possible evacuation with the local authorities. After meeting privately with local officials, the commander told the witness that the evacuation was not possible and that the refugees would have to wait for an exchange between the government and the RPF.[1759]

1605. On 7 June, the Rwandan army engaged the RPF in the Kivugiza area, not far from the church. Witness DH-90 heard shooting that evening and then met eight members of the Josephite religious order, including Jean Damascene Ndayambaje, who said that around 80 refugees had been shot at the Saint Josephite Centre. The witness speculated that *Interahamwe* perpetrated the attacks, but was not certain. On 8 June, Kigingi led an attack by *Interahamwe* on the Saint Charles Lwanga Church. At the time, the witness was meeting with a journalist, a representative of Pharmacists without Borders, and officers from UNAMIR and the Rwandan gendarmerie. The witness suffered minor injuries from a gunshot, and the journalist was injured. The gendarmerie officer chased away the assailants. On 9 June, soldiers evacuated the refugees at the nearby Beneberika convent to the Saint Charles Lwanga Church. The witness also met with a group of around 10 women who had been raped by unknown assailants.[1760]

1606. Between 2.30 and 3.00 p.m. on 10 June, Kigingi returned with a small truck saying he was going to evacuate the refugees to the Saint Paul Centre. Another person at the Saint Charles Lwanga Church, Witness DH-91, contacted Colonel Ngirabatware of the gendarmerie, who promised to send Captain Jean Chrysostome Ntirugirimbe. Kigingi's group attacked the church, trying without success to break open the doors with its guns and traditional weapons. The assailants fired teargas into the church. The *Interahamwe* entered and began killing the refugees with guns and grenades as soon as the doors were opened to allow the smoke to escape and people to flee. A contingent of 12 gendarmes arrived, but

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[1757] T. 25 April 2005 pp. 33-34, 39-40; T. 26 April 2005 pp. 21, 33-34, 44-45.
[1758] T. 25 April 2005 pp. 38-39, 48-49; T. 26 April 2005 pp. 18, 45.
[1759] T. 25 April 2005 pp. 38-40.
[1760] T. 25 April 2005 pp. 50-51; T. 26 April 2005 pp. 6, 14, 29-31.

Captain Ntirugirimbe was overwhelmed and asked the witness to call Colonel Ngirabatware for reinforcements.[1761]

1607. Witnesses DH-90 and DH-91 each went to see the commander at the Saint André College position for help, but they were stopped by a sentry. According to Witness DH-90, the commanders were engaged in battle with the RPF, so the witnesses could do nothing but wait. A shell then struck the church injuring both witnesses with shrapnel. Witness DH-90, who suffered only light injuries, tried to take Witness DH-91, who was hit in the chest and losing blood, to the hospital in Kigali for treatment. On the way, Witness DH-90 passed the truck brought by Kigingi and saw the assailants killing the refugees from the church, throwing the corpses off the vehicle. The witness turned and took another route to the hospital through a roadblock where the *Interahamwe* fired at them and immobilised their vehicle. A local official tried to calm down the assailants and assisted the witness to reach the hospital. Around 80 to 85 of the refugees at the church during this period survived.[1762]

Ntabakuze Defence Witness DH-91

1608. Witness DH-91 testified that he was in a position to closely follow the events in the area surrounding the Saint Charles Lwanga Church, where he stayed from April to June 1994, as well as the nearby Saint André College. The witness testified with the assistance of his diary, which he recorded daily during the relevant events. A number of Hutu and Tutsi civilians first sought refuge at Saint Charles Lwanga Church on 31 March 1994, fleeing violence in Biryogo commune, following the death of a prominent CDR party member. After the death of President Habyarimana, hundreds more arrived at the various religious institutions in Nyamirambo area, including Saint André College, the Saint Josephite Centre, the Beneberika Convent, and the Carmelite Convent. Numerous women, who sought refuge at the Saint Charles Lwanga Church during this period, had been victims of rape.[1763]

1609. According to Witness DH-91, only two refugees remained at Saint André College after 14 or 15 April 1994, following an RPF operation to remove the refugees, as well as an attack by soldiers and militiamen. The priests from Saint André College informed the witness about these events. As a result, he was certain that there was no incident at the end of May where hundreds of refugees were taken from Saint André College, as well as the nearby Islamic Cultural Centre, and killed by soldiers in Rwampara sector, even after the military established a position in the area. Given the close proximity of the college and Rwampara to the church as well as his active involvement with the situations facing refugees in the area, he would have seen or heard about such an operation. He acknowledged that he remained in his room with the curtains drawn on 30 May.[1764]

1610. On 22 May, Rwandan army soldiers took up a military position at Saint André College, and the RPF began shelling the area. The witness was not certain which unit was located at Saint André College, but he never heard references to either Ntabakuze or the Para

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[1761] T. 25 April 2005 pp. 51-52. Witness DH-90 referred to the gendarmerie captain as Jean Chrysostome Uwimana. Witness DH-91 identified this officer as Jean Chrysostome Ntirugirimbe, but also noted that there was a priest named Jean Chrysostome Uwimana. *See* T. 29 April 2005 pp. 3, 23. It appears that Witness DH-90 confused the two names. The Chamber uses Ntirugirimbe for the sake of consistency.

[1762] *Id.* pp. 52-53; T. 26 April 2005 pp. 27, 29, 50.

[1763] T. 28 April 2005 pp. 50-51, 57, 75-76, 79, 82-83; T. 29 April 2005 pp. 37-38, 40-41, 53. Witness DH-91 identified several photographs of the Saint Charles Lwanga Church and Saint André College, attesting to their close geographic proximity. T. 28 April 2005 pp. 52-55.

[1764] T. 28 April 2005 pp. 57-58, 78-79, 83-84; T. 29 April 2005 pp. 23-24, 67.

Commando Battalion. On 25 May, Witness DH-90, another person at the church, spoke with an officer at Saint André College named Nkuriyekubona, who agreed in view of the shelling to evacuate the refugees at the Saint Charles Lwanga Church to the Saint Paul Centre. The evacuation did not occur because authorisation was not forthcoming from officials at the prefecture.[1765]

1611. On 31 May, the refugees from Saint Charles Lwanga Church went to the nearby Ntawari school where they met other refugees from the Beneberika Convent. Prefect Renzaho gave his verbal permission to evacuate the refugees to Saint Paul Centre, but they never received written authorisation. That night a gendarme ordered the refugees to return home and threatened them if they did not leave the school. However, Witness DH-91 was able to negotiate the refugees' return to the church through roadblocks manned by machete-wielding assailants.[1766]

1612. Witness DH-91 testified that, between 3 and 5 June, Witness DH-90 sought the assistance of General Gatsinzi, Colonel Hakizimana and prefecture officials on behalf of the women and children as well as the Josphite Brothers who were being visited by militiamen. Witness DH-91 received reports from the Josephite Centre that *Interahamwe* and soldiers were checking their identification documents and mistreating the refugees there.[1767]

1613. On the afternoon of 7 June, assailants attacked the Saint Josephite Centre where around 80 refugees were gunned down. Several surviving members of the Josephite religious order, including Jean Damascene Ndayambaje, sought refuge at the Saint Charles Lwanga Church, informing the witness what happened. On 8 April, two UNAMIR peacekeepers, representatives from Pharmacists without Borders, a journalist as well as a local sub-prefect visited the church. During the visit, a local *Interahamwe* leader named Kigingi and other attackers surrounded the church around 2.00 or 3.00 p.m. and fired shots in the air. One of the shots wounded the journalist. Soldiers accompanying the group quickly evacuated him. On 9 June, two senior gendarmerie officers named Ngirabatware and Munyakazi visited the church and introduced Captain Jean Chrysostome Ntirugirimbe, the new gendarme responsible for the area's security. Witness DH-91 expressed the refugees concern over the increasing shelling in the area. In the witness's view, the gendarmes were very understanding and in favour of evacuation.[1768]

1614. On 10 June, Kigingi, accompanied by other armed militiamen, arrived with a Mazda pickup truck and offered to evacuate the women and children. The refugees then locked the church door, and Kigingi tried to break it open with an ax and gunfire. When Kigingi could not open the door, he threw teargas into the church, which killed a newborn baby. Witness DH-91 slipped out and ran to Saint André College to seek help from the soldiers there. A sentry told him that the officers were not available. The soldier added: "You have nothing to do here. This is a military camp." Several gendarmes arrived, including Ngirabatware, Munyakazi and Ntirugirimbe, and evacuated some of the wounded religious personnel.[1769]

[1765] T. 28 April 2005 pp. 77, 83-85; T. 29 April 2005 pp. 41, 55-57.
[1766] T. 28 April 2005 p. 85; T. 29 April 2005 pp. 3-4.
[1767] T. 29 April 2005 pp. 4-6, 62.
[1768] *Id.* pp. 8-11, 43. The witness indicated that he could distinguish gendarmes and soldiers by the colour of their berets. *Id.* p. 24.
[1769] *Id.* pp. 12-14, 44-46.

1615. At one point during the attack, a shell exploded severely wounding Witness DH-91. Witness DH-90 tried to take him to the Red Cross hospital for treatment. As the witnesses fled in a vehicle, they refused orders to stop near the market, and the assailants there shot at their vehicle. A local official and a communal policeman arrived and successfully negotiated with the assailants, who then pulled away the corpses on the road allowing them to pass. Witness DH-91 saw the Saint Charles Lwanga Church's pickup truck filled with corpses of refugees from the church. He later reported to UNAMIR officials that, of the around 260 mostly Tutsi refugees at the church, only about 40 survived.[1770]

Deliberations

1616. The Prosecution has presented evidence of three different attacks near Saint André College in the Nyamirambo area. The first involves the alleged killing of refugees from the college and the IWACU Centre at the end of May 1994. The second and third attacks relate to the Saint Josephite Centre and Saint Charles Lwanga Church from 7 to 10 June 1994.

(i) Killing of Refugees from Saint André College and the Iwacu Centre

1617. Witness DBQ was the only Prosecution witness to provide first-hand testimony about the alleged direct role played by Kabiligi, Ntabakuze and General Bizimungu in connection with the killing of several hundred Tutsi refugees from Saint André College and the nearby Islamic Centre at the end of May 1994.[1771] The Chamber has expressed concerns about other aspects of his credibility (III.2.5.1; III.3.5.1; III.4.1.4). In addition, the evidence of Witnesses DH-90 and DH-91, which the Chamber considers generally credible and reliable, as well as corroborating documentary evidence, in many respects contradicts Witness DBQ's account of presence of Tutsi refugees at Saint André College at the end of May.[1772]

1618. Witnesses DH-90 and DH-91 were in close proximity to Saint André College and actively followed the welfare of the refugees in the area, which Witness DH-91 recorded in his diary. In the Chamber's view, these witnesses would have been aware if an attack of this nature occurred at the end of May. They provided convincing and corroborated evidence and have no interest in offering testimony favourable to the Accused. Though it remains possible that the event described by Witness DBQ could have happened without their knowledge, this contradiction raises concern about Witness DBQ's credibility.

1619. The Chamber is not satisfied on the basis of Witness DBQ's evidence alone that members of the Para Commando Battalion were stationed at Saint André College. There is no question that around 22 May the Rwandan army established a position at Saint André

[1770] *Id.* pp. 14-15, 49.

[1771] It follows from the Prosecution's submissions that the events in early June 1994 recounted by Witness DBJ, refer to a separate incident than the one at the end of May described by Witness DBQ. *See* Prosecution Closing Brief, paras. 430-431. Witness AAA heard about the killing of refugees from Saint André College and the IWACU Centre at the end of May. *See* T. 12 July 2004 pp. 85-91, 98. The Prosecution does not refer to this aspect of the witness's testimony in its summary of his evidence nor connect him to Saint André in its list of witnesses supporting the event. *See* Prosecution Closing Brief, paras. 1469-1470, pp. 768-769, 837. It also does not list Witness AAA as corroborating Witness DBQ's testimony. *Id.* para. 1110. In view of this, as well as credibility concerns expressed in other sections of the judgement (III.4.1.11-13), the Chamber does not consider that Witness AAA provides corroboration for Witness DBQ.

[1772] *See also* Prosecution Exhibit 334 (Diary of Witness DH-91); Prosecution Witness DBJ, T. 25 November 2003 p. 6 (noting the absence of attacks between 8 April and 7 June at the nearby Saint Josephite Centre).

College. However, Witness DH-90, who interacted with the commander of the position at Saint André College, did not hear anyone mention the presence of the Para Commandos or Ntabakuze. This evidence must be viewed with a measure of caution, notably, because he acknowledged a lack of familiarity with various military units. However, given his frequent interaction with the soldiers there, it is sufficient to raise further doubts about Witness DBQ's uncorroborated account, in particular when coupled with the evidence of Witnesses DK-32, DK-110 and DK-120 on this point.

1620. It follows from the evidence of Ntabakuze as well as Witnesses DK-32, DK-110 and DK-120 that the Para Commando Battalion set up camp on 22 May at the Iwacu Centre in Kabusunzu before leaving the Kigali-East sector for Butare prefecture. According to Witness DH-90, the Centre was only a few minutes away from Saint André College.[1773] These witnesses indicated that the battalion stayed only for a few days at the Centre. The Prosecution has not presented any compelling evidence to counter this. In the Chamber's view, the fact that the battalion was briefly near the Saint André College is not sufficient to corroborate Witness DBQ's testimony of the alleged killings in Rwampara sector at the end of May. Accordingly, for the above reasons, the Chamber cannot accept Witness DBQ's account of what happened at Saint André College, in the absence of corroboration by reliable evidence.

1621. In the Chamber's view, Witness XXJ's evidence on the alleged killing of orphans near Saint André College does not provide such corroboration. Initially, there is no clear indication from his account that it refers to the same incident as described by Witness DBQ. Moreover, the Chamber has concerns about the reliability of Witness XXJ's testimony on this point. His account of the alleged attack is entirely second-hand from an unidentified source and acquired well after the event.[1774] His testimony does not provide key details, such as timing of the event or the identity of the assailants.[1775] It has also not been proven beyond reasonable doubt that Kabiligi had command authority (IV.1.3).

(ii) Saint Josephite Centre

1622. Based on the evidence of Witnesses DH-90 and DH-91, the Chamber finds that, from 22 May through 7 June 1994, there were several hundred mostly Tutsi refugees scattered at various religious institutions near Saint André College, including the Saint Charles Lwanga

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[1773] T. 25 April 2005 p. 13.

[1774] T. 14 April 2004 p. 50 ("Q. And, sir, do you know if you did conduct a search where the orphans were? A. I don't know whether there was a search at that place, but what I was able to hear is when he told them to go and conduct a check at the place from where the gunshots were coming, but I do not know whether they conducted a search there or not. Q. Sir, do you know what happened to the orphans? A. I don't know what happened immediately after that. But I subsequently heard people say that there were orphans who had been killed in Nyamirambo, but that information came to me much later."); T. 16 April 2004 p. 24 ("I listened to discussions over the radio. I do not know whether these orphans were really there. I did not know whether people went to this area to comb it, and later on, I received information about orphans had been killed at Nyamirambo. I do not know that there is a link between these two events. I can't give any specific issues.").

[1775] Furthermore, Witness XXJ's testimony concerning Kabiligi's discussions over the radio network is uncorroborated. His testimony that Kabiligi did not use a code sign when operating on the network (T. 16 April 2004 p. 13), appears to be inconsistent with both the Rwandan army's regulations on transmissions and the general evidence from other witnesses concerning radio communication. *See, e.g.*, Bagosora Defence Exhibit 32 (*Règlement sur les Transmissions*); Witness DA, T. 17 November 2003 pp. 12-13; Witness A-4, T. 22 July 2005 pp. 52-53, T. 25 July 2005 p. 22.

Church and the Saint Josephite Centre. After the Rwandan army established a military position in the area, shelling and other combat operations further complicated the already difficult living conditions of the refugees. On several occasions, Witness DH-90 made efforts to secure the evacuation of the refugees, speaking with the army commander at Saint André College, the gendarmerie and officials from the prefecture. The gendarmerie and the commander at Saint André College seemed supportive of these efforts. However, prefecture officials refused to give written authorisation for the movement. This is corroborated in part by Witness DK-32.

1623. The Chamber considers that Witness DBJ provided a generally credible first-hand account of the attack on 7 June at the Saint Josephite Centre, which is corroborated in certain respects by Witnesses DH-90 and DH-91.[1776] Based on his evidence, the Chamber finds that, on the afternoon of 7 June, soldiers armed with guns checked the identity of the refugees at the Saint Josephite Centre, leading around 100 Tutsis outside of the Centre's compound. The soldiers lined up the refugees and shot them to death. Witness DBJ and several religious personnel then fled to Saint Charles Lwanga Church, where they recounted what had transpired.

1624. The evidence of Witnesses DH-90 and DH-91, who heard about the attack from the survivors, corroborates Witness DBJ's account to some degree. In particular, Witness DH-91's diary, which was recorded contemporaneously with the events, contains the following entry for 7 June: "Around 14.10 hours, attacks by soldiers and *Interahamwe*, as well as thieves and thugs: we believe, that most of the eighty refugees are dead."[1777] Witness DBJ and the diary of Witness DH-91 refer to the assailants as soldiers. Witness DH-90, however, speculated that the assailants were *Interahamwe*. On this point, the Chamber prefers the first-hand evidence of Witness DBJ, who was searched and interrogated by a soldier in a "clean military uniform" shortly before the assailants executed the refugees.

(iii) Saint Charles Lwanga Church

1625. Witnesses DBJ, DH-90 and DH-91 each testified about a series of attacks at Saint Charles Lwanga Church by *Interahamwe* which followed the killings at the Saint Josephite Centre. Their evidence is first-hand and largely consistent. The Chamber finds it generally credible and reliable. It follows from their evidence that on 8 June 1994, Kigingi, a militiaman, led a brief attack on the church, while representatives of UNAMIR, Pharmacists Without Borders, the press, the gendarmerie and the prefecture were meeting with individuals there. The gendarmerie pushed back the assailants.

1626. Witnesses DBJ, DH-90 and DH-91 also testified about a significant attack on the church, which occurred on 10 June 1994. While Witness DBJ placed the attack on the afternoon of 9 June, it is clear from his description of how it unfolded that each of the witnesses were referring to the same attack. In view of the contemporaneous account of the events recorded in Witness DH-91's diary, the Chamber considers that his version of when the attack occurred is more reliable. Based primarily on Witnesses DBJ, DH-90 and DH-91,

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[1776] For the most part, the Defence does not contest Witness DBJ's evidence. The Bagosora Defence asserts that his testimony is contradicted by Witnesses DH-90 and DH-91. *See* Bagosora Closing Brief, paras. 1684-1686. As explained below, the Chamber considers that these Defence witnesses largely corroborate the main aspects of Witness DBJ's account. The other Defence teams do not address his testimony in their Closing Briefs.
[1777] Prosecution Exhibit 334 (Diary of Witness DH-91), p. 18.

the Chamber finds that, around 3.00 p.m. on 10 June, Kigingi led a massive attack, firing tear gas, guns and grenades at the refugees who had locked themselves in the church, after refusing his offer to evacuate them.

1627. Witnesses DH-90 and DH-91 sought the assistance of the gendarmerie as well as the soldiers positioned at Saint André College. An army sentry at the college rebuked their attempts to speak with the officers at the camp. The gendarmes who arrived appeared overwhelmed by the attack and only evacuated Witness DBJ and a selected group of religious personnel.[1778] Witnesses DH-90 and DH-91 were injured by an exploding shell and in their flight from the church saw the corpses of refugees from the church.

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(iv) Conclusions

1628. The Prosecution has not proven beyond reasonable doubt the allegation by Witness DBQ that Kabiligi and Ntabakuze were present at Saint André College at the end of May 1994 and ordered the murder of Tutsi refugees from the college and the Iwacu Centre. It has also not established that Kabiligi was involved in the killing of orphans in the Nyamirambo area.

1629. The Prosecution has proven beyond reasonable doubt that, on 7 June 1994, soldiers killed Tutsi refugees at the Saint Josephite Centre and that, on 10 June, *Interahamwe* attacked and killed Tutsis at Saint Charles Langwa Church. The Chamber, however, is not satisfied that there is sufficient reliable evidence to identify the unit of the soldiers who participated in the attack at the Centre or to implicate the Accused in the attack at the Church. The evidence reflects that Ntabakuze and the Para Commando Battalion were in Gitirama prefecture. Furthermore, the Chamber has not found that Bagosora or Kabiligi had general command authority over the Rwandan military at the time of the attacks (IV.1.2-3), and there is no evidence that they were observed on the scene or otherwise were involved in the attack. Bagosora also has an alibi for this period (III.6.1).

1630. Accordingly, the Chamber considers that the Prosecution has not proven beyond reasonable doubt that Bagosora, Kabiligi or Ntabakuze participated in the killing of Tutsi refugees in the area surrounding Saint André College.

1631. The Chamber has previously determined that the Defence had notice of these allegations.[1779] In view of its findings, there is no need to revisit these decisions.

[1778] *See also* Ntabakuze Defence Exhibit 41 (United Nations Investigation Report of Nyamirambo Killings, dated 17 June 1994), which referred to killings perpetrated by militiamen at Saint Charles Lwanga Church on 10 June and attempts by small gendarme force to intervene.

[1779] Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, para. 45; Decision on Admissibility of Evidence of Witness DBQ (TC), 18 November 2003, paras. 17, 21, 27.

4.2 Gisenyi Prefecture

40307

4.2.1 Saint Peter's Centre, 20 April

Introduction

1632. The Nsengiyumva Indictment alleges that, on 20 April 1994, Nsengiyumva ordered Omar Serushago and Bernard Munyagishari to abduct around 20 Tutsi refugees from "a house in Gisenyi" and to kill them at the *Commune Rouge*. The Prosecution submits that this house is the Saint Peter's Centre in Gisenyi town. It also contends that Nsengiyumva protected Serushago and Thomas Mugiraneza, another assailant who participated in the attack, from Colonel Nzungize, the commander of the Bigogwe training camp. His Hutu sister Felicité Niyitegeka was killed after trying to protect the refugees. Reference is made to Witnesses Omar Serushago and OAB.[1780]

1633. The Nsengiyumva Defence submits that the Prosecution's evidence lacks credibility and is contradictory. The evidence of Witnesses LK-2, ACL-1, CF-1, RO-1 and STAR-2 shows that Nsengiyumva did not play a role in these killings.[1781]

Evidence

Prosecution Witness Omar Serushago

1634. Omar Serushago, a Hutu and *Interahamwe*, was the head of the *La Corniche* roadblock at the customs checkpoint in Gisenyi town in April 1994. Between 1.00 and 2.00 p.m. on 20 April, Nsengiyumva came to that roadblock and ordered Serushago and another *Interahamwe*, Thomas Mugiraneza, to go to the Saint Peter's Centre and kill the Tutsi refugees there. Serushago then called Bernard Munyagishari, the head of the *Interahamwe* in Gisenyi prefecture, who met them at the Centre. Serushago and Mugiraneza drove to the Centre in a minibus belonging to the Jesuit order. They abducted 19 Tutsi refugees and a Hutu named Felicité Niyitegeka, who tried to prevent the assailants from taking the refugees. Niyitegeka was the sister of Colonel Nzungize, the commander of the Bigogwe training camp.[1782]

1635. The assailants took Niyitegeka and the Tutsi refugees to the *Commune Rouge*, a cemetery in Gisenyi town, and killed them there. Serushago personally shot three women and one man during the attack, which ended around 3.00 p.m. The same evening, Serushago saw Nsengiyumva at either the Palm Beach Hotel or *Hôtel Méridien*, at a meeting he was having with Joseph Nzizorera, Jean-Bosco Barayagwiza and Juvenal Uwilingiyimana. Serushago confirmed that the killings at the Saint Peter's Centre had been completed and Nsengiyumva

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[1780] Nsengiyumva Indictment, para. 6.23; Prosecution Closing Brief, paras. 108-109, 441, 1018(a), 1020, 1028(h), p. 886; The "St. Peter Centre" is also referred to as "Bishop Bigirumwami's place", the "St. Pierre Convent", "St. Pierre Centre" or the "St. Peters Convent". The Chamber uses "Saint Peter's Centre".

[1781] Nsengiyumva Closing Brief, paras. 1453-1458, 1780-1792, 1979-1980, 2128, 2259, 2272, 2435, 2455-2456, 2632, 2642-2643, 2670-2685; T. 1 June 2007 pp. 5-6.

[1782] T. 18 June 2003 pp. 3, 20, 26-29, 34-36; T. 19 June 2003 pp. 1-6; Prosecution Exhibit 54 (personal identification sheet). On 5 February 1999, pursuant to a plea agreement, Omar Serushago was found guilty by the Tribunal of genocide, murder, extermination and torture and was sentenced to 15 years imprisonment. *See* T. 18 June 2003 pp. 2-3, 41; *Serushago* Trial Judgement, p. 15. His appeal against this sentence was denied on 6 April 2000. *See Serushago* Appeal Judgement, p. 2.

congratulated the *Interahamwe* for carrying out a good job. He and the other officials were not concerned about the death of Felicité Niyitegeka and told the *Interahamwe* to continue with their work. Nsengiyumva later intervened when Colonel Nzungize sent soldiers from his camp to avenge the death of his sister and kill Serushago. At some point in June, Nsengiyumva allowed Serushago and Mugiraneza to seek refuge in the rooms of Nzizorera and Uwilingiyimana at the *Hôtel Méridien* for their own protection.[1783]

Prosecution Witness OAB

1636. Witness OAB, a Hutu living in Gisenyi town, testified that, a few days after the government moved to Gisenyi, he saw Serushago, Mugiraneza and Munyagishari taking around 100 Tutsi refugees from the Saint Peter's Centre and loading them onto two minibuses belonging to a religious order. According to the witness, some of the refugees were killed at the Centre while the others were taken to the *Commune Rouge* to be killed. The witness saw one body at the Centre. One of the victims, a Hutu woman, who was trying to protect the refugees, was the sister of Colonel Nzugize. The witness heard that, as a result of her death, Nsengiyumva had to intervene to protect Serushago from Nzugize, who wanted to avenge the death of his sister.[1784]

Nsengiyumva

1637. Nsengiyumva stated that he did not send Tutsi refugees to the Saint Peter's Centre. He did not have the authority to deploy soldiers to protect private residences, which was the responsibility of the gendarmerie. Neither did he offer Serushago protection after the killings, as the identity of the perpetrators remained unknown for some time afterwards. Colonel Nzungize was a colleague and he had no involvement in the killing of his sister.[1785]

Nsengiyumva Defence Witness ACL-1

1638. Witness ACL-1, a Hutu priest, arrived at the Saint Peter's Centre on 4 April 1994 to take part in a spiritual retreat. On 7 April 1994, 10 Tutsi refugees arrived at the Centre followed by a number of others in the following days. On 9 April, two gendarmes were posted there after a request for protection was made to the prefecture administration. The gendarmes stayed for approximately five or six days, and then they were deployed elsewhere. By 15 or 16 April, most of the approximately 100 Tutsis who had sought refuge at the Centre fled across the border into Zaire.[1786]

1639. Between 19 and 21 April, a group of young people armed with traditional weapons attacked the Centre. Witness ACL-1 did not see Serushago among the attackers; their leader was a man named Damas. The assailants forced the remaining refugees at the Centre to kneel and began assaulting them. Felicité Niyitegeka, the spiritual leader of the Centre, tried to intervene. She told the attackers that she was the sister of Colonel Nzungize. The assailants decried Nzungize as an "*Inyenzi*". They then loaded the witness and 20 to 30 persons at the

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[1783] T. 18 June 2003 pp. 27-29, 36; T. 19 June 2003 pp. 6-13.
[1784] T. 24 June 2003 pp. 41, 59-60; T. 25 June 2003 pp. 34-39, 42; Prosecution Exhibit 58 (personal identification sheet). Witness OAB stated that the Tutsi refugees arrived at the Saint Peter's Centre after Nsengiyumva forced them to leave the *Hôtel Méridien* and then the local MRND office.
[1785] T. 6 October 2006 pp. 19-21.
[1786] T. 23 March 2006 pp. 6-9, 17, 36; Nsengiyumva Defence Exhibit 168 (personal identification sheet).

Centre into a minibus and drove them to the cemetery to be killed. The witness survived because he was protected by one of the assailants.[1787]

40305

Nsengiyumva Defence Witness LK-2

1640. Witness LK-2, a Hutu gendarme, said that two gendarmes were sent to the Saint Peter's Centre on 5 April 1994, but were subsequently assigned to other duties because there were a number of other requests and the area seemed secure. At some later point, *Interahamwe* attacked the Centre and abducted and killed the mostly young women who were there.[1788]

Nsengiyumva Defence Witness CF-1

1641. Witness CF-1, a Hutu, lived in Gisenyi town. He was a friend of Serushago, who told the witness that in late June 1994, he and Thomas Mugiraneza abducted and killed approximately 30 mostly female refugees from the Saint Peter's Centre. Among those killed was Colonel Nzungize's sister, a Hutu, who had been shot because she had intervened and tried to prevent the killings. After this event, Colonel Nzungize arrived in Gisenyi town from the Bigogwe training camp to avenge the death of his sister, and Serushago went into hiding for a few days. Serushago did not mention to the witness that Nsengiyumva had been involved in connection with the event at Saint Peter's Centre.[1789]

Nsengiyumva Defence Witness STAR-2

1642. Witness STAR-2, a Hutu, lived and worked near the *La Corniche* roadblock in Gisenyi town. After 9 April 1994, between 20 and 25 refugees arrived at the nearby Saint Peter's Centre, which was guarded at the time by two gendarmes. Around 20 April, the refugees were murdered by Serushago and Thomas Mugiraneza at the *Commune Rouge*. She learned this information from one of the survivors of the attack as well as Colonel Nzungize, whose Hutu sister Felicité was killed in the attack. According to the witness, Nsengiyumva gave Nzungize soldiers to assist in locating Felicité's body. She did not see Serushago or Mugiraneza after the attack.[1790]

Nsengiyumva Defence Witness RO-1

1643. Witness RO-1, a Hutu soldier at the Gisenyi military camp, testified that he heard about an incident where a number of civilians were abducted and killed, including the sister of Colonel Nzungize, the commander of the Bigogwe training camp. The witness did not hear that any soldiers were involved in the attack.[1791]

Deliberations

1644. It is clear that Serushago played a prominent role in the abduction and killing of approximately 20 mostly Tutsi refugees from the Saint Peter's Centre in Gisenyi Town around 20 April 1994. He pleaded guilty before the Tribunal to participating in the attack and

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[1787] T. 23 March 2006 pp. 9-13, 15, 19, 37-39.
[1788] T. 19 April 2005 pp. 2, 26-28; Nsengiyumva Defence Exhibit 73 (personal identification sheet).
[1789] T. 29 November 2005 pp. 16-20, 26; Nsengiyumva Defence Exhibit 125 (personal identification sheet).
[1790] T. 28 February 2006 pp. 4-5, 21-24, 44-47; Nsengiyumva Defence Exhibit 143 (personal identification sheet).
[1791] T. 27 July 2005 pp. 15-16; Nsengiyumva Defence Exhibit 98 (personal identification sheet).

in personally killing four of the refugees at the *Commune Rouge*.[1792] Serushago also admitted having committed this crime in the present trial.[1793] His role in the killing is corroborated by several witnesses. Most of them heard about it but Witness OAB personally saw him taking the refugees away from the Centre in a mini-bus.[1794] It also follows from Serushago's evidence that Felicité Niyitegeka, the Hutu sister of Colonel Nzungize, was among those killed.

1645. The main issue for the Chamber is whether Nsengiyumva ordered Serushago to kill the refugees. Only Serushago testified that Nsengiyumva came to the *La Corniche* roadblock and ordered killings. He has also mentioned this in previous statements to the Tribunal.[1795] Apparently, he did not include Nsengiyumva when he gave an account of this event to Witness CF-2. As Serushago has been convicted of genocide and was a direct participant in the attack the Chamber views his evidence with caution. It will therefore not accept his testimony that Nsengiyumva ordered the killings without corroboration.[1796]

1646. Witness OAB provided some second-hand testimony, but only relating to Nsengiyumva's subsequent protection of Serushago. The witness suggested that the event happened at some point after the government relocated to Gisenyi prefecture, which the Chamber notes occurred in June and not in April as suggested by Serushago. Further, during his testimony, Witness OAB stated that hundreds of women, children and elderly were abducted from the Saint Peter's Centre. This description differs from Serushago's testimony. It also contradicts the witness's written statement given to Tribunal investigators signed in January 2000, in which he stated that those abducted from the Centre were wealthy Tutsis, who had been moved from the *Hôtel Méridien*.[1797] Consequently, the Chamber does not consider his evidence sufficiently reliable to adequately corroborate Serushago's account.

1647. Accordingly, the Prosecution has not proven beyond reasonable doubt that on 20 April 1994, Nsengiyumva ordered Serushago to abduct the refugees from the Saint Peter's Centre and to kill them at the *Commune Rouge*.

4.2.2 Stanislas Sinibagiwe, May

Introduction

1648. The Nsengiyumva Indictment alleges that, from April to July 1994, Nsengiyumva ordered soldiers and militiamen to exterminate the Tutsi population and its accomplices. In particular, the Prosecution contends that he ordered the abduction and killing of the director

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[1792] *Serushago* Trial Judgement, para. 25 (ix).
[1793] T. 19 June 2003 p. 5.
[1794] Witness CF-1 heard that the attack occurred in June. In the Chamber's view, this evidence still provides some corroboration.
[1795] *Serushago* Trial Judgement, para. 25 (ix) mentions that the event took place "on the orders of Anatole Nsengiyumva". This also follows from Nsengiyumva Defence Exhibit 17 (undated statement by Omar Serushago).
[1796] The Chamber notes that a similar conclusion was reached in the *Nahimana et al.* case. *See Nahimana et al.* Trial Judgement, para. 824.
[1797] Nsengiyumva Defence Exhibit 23 (statement of 28 January 2000). The statement was based on two interviews on 16 September 1999 and 28 January 2000.

of the school printing house, Stanislas Sinibagiwe. Reference is made to Witnesses OAB and OAF.[1798]

1649. The Nsengiyumva Defence reiterates that the allegation is not pleaded in the Indictment. It also argues that the Prosecution's evidence lacks credibility and is contradicted in part by Witnesses STAR-2 and TN-1.[1799]

Evidence

40303

Prosecution Witness OAB

1650. Witness OAB, a Hutu driver who lived in Gisenyi town, testified that he saw Omar Serushago stop the director of the school printing house at the *La Corniche* border crossing between Gisenyi and Goma. He could not recall the date of this incident. The director was accompanied by the prefect and the witness believed the prefect was trying to assist him crossing the border. Upon arriving at the roadblock in front of Serushago's house, a short distance from the border, the director was taken out of his vehicle. Nsengiyumva was present before his arrest, and Félicien Kabuga arrived afterwards. The director was placed in a minibus to be taken to the *Commune Rouge*. Serushago later told the witness that Nsengiyumva and Kabuga ordered the killing of the director.[1800]

Prosecution Witness OAF

1651. Witness OAF, a Hutu driver in 1994, frequently travelled with goods between Gisenyi town and Goma, Zaire, several times a day. On one of those occasions, he saw a man, who hailed from Byumba prefecture, be stopped at the roadblock near Omar Serushago's house and the border crossing. He could not recall the date of this incident. The roadblock was manned by *Interahamwe*, such as Omar Serushago, Bernard Munyagishari, Hassan Gitoki and Thomas. The individual who was stopped, had authorisation from Prefect Charles Zilimwabago to cross the border and was even being driven by the prefect's driver. Extensive discussions followed between the *Interahamwe* and the immigration officials at the border crossing and eventually Nsengiyumva and the prefect were summoned. After their arrival, the witness heard Nsengiyumva tell Thomas to take the man away. According to the witness, Thomas and his group were charged with taking people to the *Commune Rouge*. An immigration official later told the witness that the man had been killed.[1801]

Nsengiyumva Defence Witness STAR-2

1652. Witness STAR-2, a Hutu, lived and worked near the *La Corniche* border crossing in Gisenyi town in 1994. She knew Stanislas Sinibagiwe, a Hutu, who worked at the school printing press. At the end of April, the witness assisted Sinibagiwe's Tutsi wife, who felt

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[1798] Nsengiyumva Indictment, paras. 6.16, 6.22-6.23, 6.28; Prosecution Closing Brief, paras. 486, 1023 (b), 1028 (n); T. 28 May 2007 pp. 15-16. As explained below, the victim is sometimes called Stanis Simbizi.

[1799] Nsengiyumva Closing Brief, paras. 291, 803-810, 1462-1465, 1480-1483, 2630, 3032-3033; T. 31 May 2007 pp. 62-63.

[1800] T. 24 June 2003 pp. 41-42; T. 25 June 2003 pp. 40, 48-51; Prosecution Exhibit 58 (personal identification sheet). Witness OAB did not mention the proper name of the director of the school printing house. The evidence of this witness was solicited by the Defence during cross-examination, a couple of days after the testimony of Witness OAF (*see* below). The Chamber recalls that the *Commune Rouge* is a cemetery located in Gisenyi town where assailants brought people to be killed.

[1801] T. 23 June 2003 pp. 20-21, 23-24, 29-32, 61-62; Prosecution Exhibit 56 (personal identification sheet).

threatened, to cross the border into Zaire after seeking approval from Nsengiyumva. The witness learned from a friend, who, in turn, had heard from militiamen, that *Interahamwe* killed Sinibagiwe in Gisenyi in early May. She did not hear that Nsengiyumva was involved.[1802]

40302

Nsengiyumva Defence Witness TN-1

1653. Witness TN-1, a Hutu government and political official, testified that Stanislas Sinibagiwe, a Hutu from Byumba prefecture, was the director of the school printing press, which was part of the Ministry of Education. Sinibagiwe was a well-known member of the MDR party. At some point in early May 1994, the witness heard that Sinibagiwe was killed. Later, when the witness arrived in Gisenyi prefecture, one of the employees of the school printing press told him that Serushago and his militiamen killed Sinibagiwe after he went to change money. Witness TN-1 stated that Sinibagiwe was killed for money, but noted that he was also suspected of being an RPF accomplice. The witness did not hear that Nsengiyumva played a role in the crime.[1803]

Deliberations

1654. The evidence shows that militiamen killed Stanislas Sinibagiwe, a Hutu printing press director. Witnesses OAB and OAF both provided direct testimony about the events leading to his death. Witness OAF did not identify the victim by name or occupation but the Chamber is satisfied that he was referring to the printing press director given his description of the event and his reference to the victim's origins in Byumba prefecture. Both accounts describe an individual arriving at the roadblock in the prefect's vehicle and with his authorisation to cross the border. The witnesses were unable to provide even an approximate date for the incident, but the second-hand testimony of Witnesses STAR-1 and TN-1 suggest that it most likely occurred in May 1994.

1655. The main question for the Chamber is whether Nsengiyumva was involved in the crime. There are differences between the two testimonies. Witness OAB placed Nsengiyumva at the roadblock prior to Sinibagiwe's arrival, while Witness OAF stated that the Accused was summoned afterwards. Furthermore, Witness OAB referred to Serushago stopping Sinibagiwe, whereas Witness OAF did not describe Serushago's role but simply noted his frequent presence at the roadblock. In the Chamber's view, these discrepancies do not in themselves affect the witnesses' credibility. Considerable time has elapsed since this event and that they may have watched different sequences as the event unfolded.

1656. When considering each of these two testimonies, additional question arise. Witness OAB did not hear Nsengiyumva give any order to take the director away but was told by Serushago afterwards. Asked about Nsengiyumva's presence, he answered that Nsengiyumva was at the roadblock before and during the arrest but only after several questions.[1804] In contrast to this impression of evasiveness, he responded precisely and directly that Félicien Kabuga was present. This is noteworthy in view of his statement in January 2000 to Tribunal investigators, which focused on Kabuga and contained no reference to Nsengiyumva in

[1802] T. 28 February 2006 pp. 4, 16-19; Nsengiyumva Defence Exhibit 143 (personal identification sheet).
[1803] T. 2 March 2006 pp. 53, 64-66; Nsengiyumva Defence Exhibit 147 (personal identification sheet).
[1804] T. 25 June 2003 pp. 48-49.

connection with the director's killing.[1805] Other parts of the statement did implicate Nsengiyumva in alleged criminal conduct and it is therefore surprising that the witness did not mention him if he was present during the event.

1657. Serushago, who purportedly told Witness OAB that Nsengiyumva ordered the killing, testified generally about the Accused's authority over the roadblock. The Prosecution did not question him on the killing of the printing press director. The Chamber observes that in two previous statements, Serushago made no mention of Nsengiyumva's presence during the incident at the roadblock. In an interview given in February 1998, he explained that the director was recognised by Protais Zigiranyirazo. Serushago then arrested him and ordered an *Interahamwe* to take him to the *Commune Rouge*.[1806] His statement to Tribunal investigators in June 2001 provided a similar version.[1807] Also Serushago's judgement is based on the premise that the director was identified by Zigiranyirazo and that Serushago arrested him and ordered him killed. There is no mention of Nsengiyumva being present during this event.[1808]

1658. Based on a detailed consideration of Witness OAB's testimony and related evidence, the Chamber is not persuaded by his account that Nsengiyumva was present at the roadblock when the printing press director arrived.

1659. Turning to Witness OAF, the Chamber notes that his statement to Tribunal investigators in April 1999 does not mention the printing press director.[1809] Even though the statement focuses on Bernard Munyagishari it extensively describes Nsengiyumva's interaction with the *Interahamwe*. When questioned about this discrepancy, the witness insisted that he spoke about the incident on different occasions when he met a second time with Tribunal investigators.[1810] However, there is no evidence that such a statement exists.[1811]

[1805] Nsengiyumva Defence Exhibit 23 (statement of 28 January 2000), which refers to Félicien Kabuga, Omar Serushago, Munyagishari, Thomas and Prefect Zilimwagabo. When the statement was read out to him, Witness OAB affirmed it but the way the Defence asked its questions may not have made it clear to him that the underlying issue was the lack of reference to Nsengiyumva: "Q. … Is that your statement? A. Those statements were made by me. Q. And the contents are true? A. All that is said here reflect the reality. Mr. Bw'omanwa: My Lord, I rest my cross-examination. …". *See* T. 25 June 2000 pp. 50-51.

[1806] Nsengiyumva Defence Exhibit 17 (statement signed in Nairobi, Kenya on 3 February 1998): "About a week later, radio RTLM made a description of Stanis Simbizi. When he arrived at the roadblock, he was recognised by the President's brother-in-law, Protais Zigiranyirazo alias "Z". I arrested him and handed him over to Thomas Mugiraneza, who took him to the cemetery …").

[1807] Nsengiyumva Defence Exhibit 17 (statement of 19 June 2001): "At that time, the RTLM … put out a bulletin on Stanislas Simbisi, citing his name and information to facilitate his identification. … Mr. Simbizi, a moderate Hutu, was the Director of the school printing press (IMPRISCO) in Kigali. He was accused of being an RPF accomplice and he was wanted. … [T]he *Préfet* of Gisenyi, Dr. Charles Zilimwabagabo came to ask us to remove the roadblock at the same time Stanislas was going through. I stopped him and almost simultaneously, Protais Zigiranyirazo arrived and told us that the individual in question was Stanislas Simbizi. He ordered us to take him away and kill him." The statement also contains a remark to the effect that the prefect was against the killings whereas the *Interahamwe* had to obey Anatole Nsengiyumva. This formulation is general and not specifically related to the incident at the roadblock.

[1808] *Serushago* Trial Judgement, para. 25 (xiii). It follows from the context, read together with Serushago's previous statements, that this section relates to the director. The Chamber notes that according to para. 25 (xii), Nsengiyumva was one of several persons who at a meeting in May or June 1994 drew up a list of people to be eliminated, including the director. However, the Prosecution evidence was that Nsengiyumva gave an order at the roadblock, not that he singled out the director in advance.

[1809] T. 23 June 2003 p. 22; Nsengiyumva Defence Exhibit 21 (statement of 19 April 1999).

[1810] T. 23 June 2003 pp. 62-63, 73.

[1811] Witness OAF gave a second statement to Tribunal investigators on 17 December 2003 as an "Additional Note" (RP 10912) to his statement of April 1999, which was entered as Nsengiyumva Defence Exhibit 21. The

In the Chamber's view, it is doubtful that Tribunal investigators would fail to write down information from a potential witness about Nsengiyumva allegedly ordering the *Interahamwe* to ensure that a person is killed. This discrepancy between the testimony and the statement as well as Witness OAF's explanation for it raise questions about his credibility in relation to this incident.[1812]

1660. For the above reasons, the Chamber declines to rely on the accounts of Witnesses OAB and OAF concerning Nsengiyumva's involvement without further corroboration.[1813] Accordingly, the Prosecution has not proven beyond reasonable doubt that Nsengiyumva ordered the killing of Stanislas Sinibagiwe, the director of a printing press, in May 1994.

1661. The Chamber held during the trial that Nsengiyumva had adequate notice of his alleged role in this crime.[1814] Given its findings, it is not necessary to revisit the decision.

4.2.3 Four Tutsi Women, *La Corniche* Roadblock, Early June

Introduction

1662. The Nsengiyumva Indictment alleges that, between April and July 1994, Nsengiyumva supervised roadblocks in Gisenyi prefecture where Tutsis were identified and killed either on the spot or at the *Commune Rouge*. Furthermore, between 8 April and mid-July 1994, Nsengiyumva ordered militiamen and solders to exterminate Tutsi civilians. The Prosecution submits that at the *La Corniche* roadblock, Nsengiyumva searched buses attempting to cross the border between Gisenyi town and Zaire and then ordered Simon Bikindi and Enoch Kayondo to take several Tutsi women to the *Commune Rouge*. Reference is made to Witness DCH.[1815]

Prosecution disclosed the statement to the Defence and to the Chamber in anticipation of Witness OAF's testimony. The statement does not mention Nsengiyumva and was not tendered as an exhibit.

[1812] In addition, the Chamber notes an apparent internal inconsistency in his evidence. At several points during his testimony, he insisted that he heard Nsengiyumva give the order to Thomas to take Sinibagiwe away. *See* T. 23 June 2003 p. 23 ("I heard Anatole tell Thomas to take those people away – that person, rather. He told him to take away that person."). In other parts of it, he suggests that he heard about this order second-hand from customs officers. *See id.* pp. 31-32, 62 ("On my return, I asked the customs officers what had happened in regard to that person, and they told me that Anatole had issued orders to Thomas to take away that person and that he had been killed … I came back, and I asked them how things went, how did the situation evolve, and they told me that that person was handed over by Anatole, who ordered Thomas to take the person away.").

[1813] In para. 1023(b), fn. 1706, of the Prosecution Closing Brief, reference is made to Prosecution Exhibit 327 (statement of 6 December 1997), which was given to Tribunal investigators by a deceased person, Witness AA, and entered pursuant to Rule 92*bis*. *See* Decision on Admission of Statements of Deceased Witnesses (TC), 19 January 2005, paras. 5, 22. According to the statement, a man named "Stanislas", a Hutu member of the MDR party fleeing to Zaire, was arrested by "Omar" and taken to the "commune" by Thomas, who returned later, stating he had finished him. The statement makes no reference to Nsengiyumva's direct involvement in the incident and therefore does not corroborate the testimonies of Witnesses OAF and OAB in that regard.

[1814] Decision on Nsengiyumva Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 55-56. In its decision, the Chamber referred to a statement of Serushago who referred to Stanislas Sinibagiwe as "Stanis Simbizi, the manager of the school print shop in Kigali".

[1815] Nsengiyumva Indictment, paras. 6.21-6.22; Prosecution Closing Brief, paras. 233, 481, 1489, pp. 884-885.

1663. The Nsengiyumva Defence submits that this allegation was not sufficiently pleaded in the Indictment. Moreover, Witness DCH's uncorroborated evidence lacks credibility and is contradicted by Witnesses Simon Bikindi, MNC-1 and STAR-2.[1816]

Evidence

40299

Prosecution Witness DCH

1664. In late May or early June 1994, Witness DCH, a Hutu *Interahamwe* and bus driver, drove one of about six buses transporting Zairian nationals and their family members, including some Rwandans, from the Zairian Embassy and the *Hôtel des Milles Collines* in Kigali to Goma, Zaire. Major Cyiza, a gendarme, supervised the convoy and travelled in a separate vehicle. Between 3.00 and 4.00 p.m., the *Interahamwe* stopped the buses at the *La Corniche* roadblock near the customs and immigration border control in Gisenyi prefecture. The witness saw Simon Bikindi, Enoch Kayondo, Omar Serushago and other members of the population wearing military or *Interahamwe* uniforms or in civilian clothing. The *Interahamwe* at the roadblock insisted that the buses could not pass because they had "*Inyenzis*" on board. Cyiza refused to allow any of the passengers to be taken off the buses and said that he would seek assistance from the local military commander.[1817]

1665. A short time later, Nsengiyumva arrived in a Toyota Hilux double-cabin vehicle with three uniformed soldiers in the back. Cyiza explained the situation, showing him the convoy's travel warrant. Others at the roadblock insisted that there were *Inyenzis* on board. Nsengiyumva boarded Witness DCH's bus and began checking identity cards. Nsengiyumva escorted four Tutsi women, whose names the witness did not know, off the bus. He gave their identity cards to Kayondo and Bikindi and ordered them to take the women to the *Commune Rouge*. The civilians at the roadblocks agreed and said: "Yes, to the *Commune Rouge*, to the *Commune Rouge*"; they also began singing "*Tubatsembetsembe*".[1818]

1666. Kayondo, Bikindi, who had an Uzi pistol, and several others led the women behind the "*poste de commandement*", a small house where people drank beer, approximately 15 steps from the immigration office. Witness DCH heard sustained gunfire about three minutes later. Kayondo, Bikindi and the group returned to the roadblock with the women's personal belongings. Bikindi and Kayondo spoke with Nsengiyumva, and the witness heard Kayondo tell Nsengiyumva that Cyiza was an accomplice. The witness's bus, which was the first in the convoy, was permitted into Zaire. Nsengiyumva remained at the location. When the other buses crossed the border, the convoy continued. Witness DCH did not discuss with the other drivers whether persons had been led off their buses. Cyiza did not accompany the convoy as he had been assigned to a mission in Cyangugu.[1819]

Nsengiyumva

1667. Nsengiyumva testified that, in early June 1994, three buses, escorted by Major Cyiza and transporting Zairian nationals, were stopped at the border crossing between Gisenyi town

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[1816] Nsengiyumva Closing Brief, paras. 52 (d), 279, 290, 811-849, 1055-1056, 1058-1059, 1652-1688, 2020-2021, 2621-2622, 2633, 2644-2646, 2667-2669, 3302-3303; T. 31 May 2007 pp. 63-64.
[1817] T. 22 June 2004 pp. 50-51, 54-55, 78-79; T. 24 June 2004 pp. 70-71, 74-75; T. 28 June 2004 pp. 1-5, 17, 28; Prosecution Exhibit 275 (personal identification sheet).
[1818] T. 22 June 2004 pp. 51-53. T. 28 June 2004 pp. 13-16, 18-20, 25-26. "*Tubatsembetsembe*" means "let us exterminate them".
[1819] T. 22 June 2004 pp. 52, 54; T. 28 June 2004 pp. 4-5, 10-11, 17, 22, 26-30.

and Goma. They were not allowed to pass because Cyiza was suspected of being an *Inkotanyi*. An immigration official summoned Nsengiyumva to the border. Nsengiyumva convinced the persons at the border crossing that Cyiza was not an *Inkotanyi*, and the buses were allowed to cross. Cyiza then proceeded to Cyangugu prefecture. Nsengiyumva did not see Bikindi during the incident and claimed that he had never met Enoch Kayondo. He denied entering any of the buses to check the passenger's identities. Nsengiyumva was not aware of a place called the "*poste de commandement*", but knew of a small kiosk where drinks were sold about 20 metres from the customs post.[1820]

Nsengiyumva Defence Witness Simon Bikindi

1668. Simon Bikindi, a Hutu, was a singer, songwriter and dancer as well as a head of the division of social-cultural affairs at the Ministry of Youth and Sports. He is also an accused before the Tribunal. Bikindi denied having been an *Interahamwe*. He was never at a roadblock and was not present or participated in the killing of Tutsi refugees taken from a convoy of buses, travelling to Zaire, in May or June 1994. Enoch Kayondo was a football referee, but Bikindi did not know him personally. The witness was aware that Major Cyiza was a gendarme.[1821]

Nsengiyumva Defence Witness MNC-1

1669. Witness MNC-1, a Hutu, worked near the *La Corniche* customs post in 1994. In early June, he saw that a convoy of three buses stopped at the border crossing around 2.00 or 3.00 p.m. People responsible for immigration and *Interahamwe* were preventing the buses from passing because Major Cyiza, who accompanied the convoy, was suspected of being an RPF accomplice and attempting to bring arms back into the country for the RPF. Around 20 minutes later, Nsengiyumva arrived and spoke privately with Cyiza. The witness believed Cyiza had contacted Nsengiyumva through a military network. The buses, which had been there for no longer than 30 minutes, were allowed to pass, and Cyiza left for Cyangugu prefecture. Nsengiyumva did not search the buses, and no one was taken from them and killed. The witness did not see Simon Bikindi or Enoch Kayonda near the border crossing.[1822]

Nsengiyumva Defence Witness STAR-2

1670. Witness STAR-2, a Hutu, lived and worked near the *La Corniche* border crossing in Gisenyi town. She testified that, around 3.00 p.m. in early June, three buses carrying Tutsi women married to Zairian nationals were stopped near the Bralirwa kiosk about 40 to 45 metres from the immigration office, where lemonade was sold. Around 25 to 30 *Interahamwe* gathered and tried to prevent Major Cyiza from leaving the country because he was suspected of being an RPF accomplice. A colleague of the witness called Nsengiyumva to resolve the problem. Nsengiyumva arrived an hour later and took Cyiza away from the checkpoint. The

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[1820] T. 9 October 2006 pp. 49-51.

[1821] T. 22 June 2006 pp. 2-6, 9-11, 22-23; Nsengiyumva Defence Exhibit 193 (personal identification sheet). During cross-examination, it was put to Bikindi that Enoch Kayondo was a fellow shareholder in RTLM. Bikindi denied having any knowledge of this. When he testified, he was awaiting the commencement of his trial at the Tribunal. On 2 December 2008, Bikindi was convicted to 15 year of imprisonment for direct and public incitement to commit genocide. *See Bikindi* Trial Judgement, p. 112.

[1822] T. 4 July 2006 pp. 3, 8-9, 11-13, 20-21; Nsengiyumva Defence Exhibit 198 (personal identification sheet). The witness testified that Simon Bikindi was a well-known musician who worked with the Ministry of Youth and Education. Enoch Kayondo was an employee of the Ministry of Finance but was also known as a football referee in Gisenyi.

buses, which had been there for two hours, were then allowed to cross the border. Nsengiyumva did not board the buses, check identity cards, order passengers to leave or remove four Tutsi women. The witness did not see anyone being removed from buses or killed, nor did she see Simon Bikindi in the area during this incident.[1823]

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Deliberations

1671. The Chamber accepts that in early June 1994, several buses carrying Zairian refugees were stopped at the *La Corniche* border crossing at some point. They were escorted by Major Augustin Cyiza. Nsengiyumva was asked to intervene.[1824] This follows from the four witnesses who purportedly have first-hand knowledge of the event. The main question for the Chamber is Nsengiyumva's role during this incident and, in particular, whether he searched for Tutsis onboard the buses and ordered Simon Bikindi and Enoch Kayonda to take four women to the *Commune Rouge* who were then killed a short distance away while Nsengiyumva was still there.

1672. Witness DCH is the only witness to attest to these aspects. In contrast, the three Defence witnesses described a situation where Cyiza had problems because he was considered an *Inkontanyi*, but that the convoy crossed the border without any problem once Nsengiyumva had intervened. According to them, neither Bikindi nor Kayonda were present. Also Bikindi denied having been present.

1673. Witness DCH pleaded guilty in Rwanda and was sentenced to seven years' imprisonment for crimes committed primarily in the Kabuga area, which is in the vicinity of Kigali.[1825] The Chamber has elsewhere expressed some reservations about his credibility and approaches his testimony about this incident with caution.[1826] This said, it notes that the event involving the four Tutsi women were mentioned by the witness in three statements to Tribunal investigators, of which the first was taken while he was still imprisoned. The three versions are generally consistent.[1827]

1674. The Chamber accords limited weight to the testimonies of Nsengiyumva and Bikindi, who both have a clear interest to paint a different picture of what happened when the buses arrived at the border post. It simply notes that Bikindi has not been convicted for acts relating to this event.[1828] Witnesses MNC-1 and STAR-2 testified that they were near the *La Corniche*

[1823] T. 28 February 2006 pp. 4, 24-27, 54-56; Nsengiyumva Defence Exhibit 143 (personal identification sheet). The witness was aware that Bikindi worked for the Ministry of Youth Affairs.
[1824] Witness DCH was not certain whether this event occurred in late May or early June, whereas the three Defence witnesses who testified that they were present stated that it was in early June.
[1825] Ntabakuze Defence Exhibit 70 (Rwandan judgment of Witness DCH, dated 8 December 2000), pp. 23-24, 31.
[1826] The Chamber found that other aspects of Witness DCH's testimony lacked credibility, in part, based on his apparent willingness to mislead judicial officials about the full scope of his culpability in the events (III.4.1.5).
[1827] For instance, the Chamber considers it to be of limited significance whether Nsengiyumva allegedly ordered Bikindi and Kayonda to kill the four Tutsi women by taking them behind the command post, as in Bagosora Defence Exhibit 114 (statement of 9 July 2001), or by leading them to the *Commune Rouge*, which is the version both in Kabiligi Defence Exhibit 65 (statement of 5 November 2003) and Kabiligi Defence Exhibit 67 (statement of 6 March 2004), as well as in the witness's testimony. The Chamber notes that the last two exhibits were tendered in court by the Nsengiyumva Defence but wrongly entered as Kabiligi exhibits.
[1828] Paragraph 24 of the Bikindi Amended Indictment alleged that in June 1994, following orders from Nsengiyumva, Bikindi ordered Interahamwe in his company to take a group of Tutsi women behind a kiosk

roadblock when the convoy of buses arrived. Both saw Nsengiyumva arrive but stated that he was called to settle the question of whether Major Cyiza, a suspected RPF accomplice, should be allowed to cross into Zaire, rather than to search for Tutsis on board the buses. They also testified that Nsengiyumva did not enter these buses or remove civilians from them, and that they did not see Bikindi or Kayonda there.

1675. The accounts of Witnesses MNC-1 and STAR-2 should be assessed in light of their work in close proximity to the border post between April and June 1994. They may therefore wish to distance themselves from the event and killings that purportedly occurred at this location generally. Their evidence differed as to how long the buses were held back and who contacted Nsengiyumva, although these discrepancies could be explained by different observations as well as the passage of time. While the Defence evidence is inconclusive, the Chamber has reservations about accepting Witness DCH's testimony without corroboration and finds the evidentiary situation unclear. Finally, it notes that the witness testified that Omar Serushago was present in the area during the event.[1829] Other evidence suggests that Serushago controlled the *La Corniche* roadblock border crossing after the President's death (III.5.2). Although the Chamber has elsewhere expressed doubts about his credibility it still notes that the Prosecution led no evidence through Serushago about this event.[1830]

1676. The Chamber finds that the Prosecution has not proven beyond reasonable doubt that Nsengiyumva searched buses which were stopped at the *La Corniche* border crossing and ordered Bikindi and Kayonda to kill four Tutsi women that were taken out of them.

1677. During the course of the trial, the Chamber concluded that Nsengiyumva had received adequate notice of this allegation.[1831] In view of the conclusion above, it sees no need to revisit its previous finding.

4.2.4 Meeting at MRND Headquarters, Early June

Introduction

1678. Each of the Indictments alleges that the Accused prepared the genocide of the Tutsis and their accomplices by stoking ethnic tension. In this context, the Prosecution points to a meeting at MRND headquarters in Gisenyi prefecture in early June 1994 where Bagosora and Nsengiyumva spoke. Reference is made to Witness XBM.[1832]

1679. The Bagosora Defence argues that Witness XBM's testimony is unreliable and uncorroborated. Furthermore, it presented an alibi that Bagosora was out of the country at the

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called the "Command Post" and kill them. In the Bikindi judgement, the Prosecution conceded that it had not presented any evidence on this event. *See* Bikindi Trial Judgement, para. 11.

[1829] T. 22 June 2004 p. 51; T. 28 June 2004 p. 28.

[1830] According to the Nsengiyumva Closing Brief, para. 811, it is surprising that the Prosecution "apparently neither interviewed Major Cyiza nor called him to testify", as he "was still living at all material times". However, it follows from Nsengiyumva Defence Exhibit 83 (*Augustin Cyiza – Un homme libre au Rwanda* (2004)), p. 5 that he was abducted on 23 April 2003. At that point in time, the Prosecution had only called two witnesses, Alison Des Forges and Witness ZF.

[1831] Decision on Nsengiyumva Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 29-30.

[1832] Bagosora Indictment, paras. 5.9, 5.15, 6.27; Kabiligi and Ntabakuze Indictment, para. 5.9; Nsengiyumva Indictment, para. 5.8; Prosecution Closing Brief, paras. 490-491, 1052, 1059.

time of the alleged meeting. The Nsengiyumva Defence points to the Chamber's prior exclusion of Witness XBM's testimony about this meeting in relation to Nsengiyumva.[1833]

Evidence

40295

Prosecution Witness XBM

1680. Witness XBM, a Hutu CDR party member from 1992 to 1994, testified that he was in Gisenyi town in early June 1994, when he saw and followed a large crowd walking towards MRND headquarters. He learned that Bagosora had summoned the general population, and especially MRND and CDR party members, to a meeting that lasted from 1.30 until 4.00 p.m. The witness entered the headquarters and saw Bagosora waiting outside of the meeting hall. When about 600 people had arrived, some of whom were military officers, Bagosora opened the meeting and said that President Habyarimana died because he had disregarded Bagosora's advice not to trust the Tutsis. Bagosora was enraged and noted that the Hutus had not united in assisting the army as they had in 1990. He asserted that those helping the Tutsis to hide or escape, and those who pitied them, were to be considered enemies of Rwanda. At his request, the attendees contributed a total of seven million Rwandan francs to help the front line soldiers repel the enemy. The witness gave 3,000.[1834]

1681. Witness XBM also said that Nsengiyumva spoke briefly at this meeting, reporting that Rwanda's people and soldiers faced a dire situation. The witness got the impression that Nsengiyumva was in a hurry.[1835]

Nsengiyumva

1682. Nsengiyumva testified that Witness XBM's testimony of attending CDR and MRND meetings lacked credibility because he was an MDR official in his sector. Additionally, the Chamber had excluded his evidence regarding certain meetings.[1836]

Bagosora

1683. Bagosora denied that was at the MRND headquarters in June 1994 with Nsengiyumva. He never attended a meeting where he said that Habyarimana died because he trusted Tutsis, and he never claimed that people pitying or assisting Tutsis were the enemy. Between 23 May and 19 June 1994, he travelled to Kinshasa, South Africa and the Seychelles in order to acquire weapons (III.6.1).[1837]

Bagosora Defence Witness VO-5

1684. Witness VO-5, a Hutu and Rwandan diplomat in Kinshasa in 1994, stated that Bagosora and Joseph Nzirorera arrived in Kinshasa on 23 May. He believed that Bagosora

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[1833] Bagosora Closing Brief, paras. 673, 676-686, 691, 1148-1168, 1429-1431, 1495, 1587, 1623-1625, 1627, 1774, 1843, 1885-1888; Nsengiyumva Closing Brief, paras. 594, 1245, 1260, 2017. The Kabiligi and Ntabakuze Defence do not address this allegation.
[1834] T. 14 July 2003 pp. 29-30; T. 15 July 2003 pp. 22-25; Prosecution Exhibit 80 (personal identification sheet).
[1835] T. 14 July 2003 p. 30.
[1836] T. 9 October 2006 pp. 46, 49.
[1837] T. 9 November 2005 pp. 66-74; T. 10 November 2005 pp. 2-5, 75; T. 14 November 2005 p. 11; T. 16 November 2005 p. 70; T. 17 November 2005 pp. 21-22, 37-39.

remained in Kinshasa for more than a week and left for South Africa in early June (III.6.1).[1838]

40294

Nsengiyumva Defence Joseph Nzirorera

1685. Joseph Nzirorera, the President of the National Assembly, travelled with Bagosora from Goma to Kinshasa, Zaire, on 23 May 1994. From there he went to South Africa from 27 May to 9 June. Bagosora joined him there on 3 June to bring money in relations to a weapons purchase. Bagosora left for the Seychelles the following day to inspect the materials to be purchased (III.6.1).[1839]

Deliberations

1686. Witness XBM is the only witness to testify about Bagosora and Nsengiyumva's alleged participation in a meeting at the MRND headquarters in Gisenyi prefecture in early June. This evidence has been excluded as it relates to Nsengiyumva, and it will be assessed only to the extent it implicates other Accused.[1840]

1687. The Prosecution submits that Witness XBM's testimony is corroborated by Alison Des Forges, who testified about common themes in the writings of Bagosora and Nsengiyumva. The Prosecution notes that the themes expressed during the meeting are similar to their other writings.[1841] In the Chamber's view, however, any similarity does not sufficiently substantiate that the meeting in fact occurred or that Bagosora was amongst the participants.

1688. The Chamber has expressed reservations about Witness XBM's credibility elsewhere (III.2.4.2; III.2.4.5; III.2.10; III.3.6.7). As discussed in the section setting forth the alibi evidence in detail (III.6.1), Bagosora has provided a reasonable explanation for his time during the early part of June. There is corroborated testimonial and documentary evidence showing that he was in Kinshasa, South Africa and Seychelles at this time. In view of the credibility concerns with Witness XBM's uncorroborated testimony, the Chamber is not satisfied that the Prosecution has eliminated the reasonable possibility that Bagosora's alibi is true. Consequently, the Chamber declines to accept this aspect of Witness XBM's testimony.

1689. The Chamber previously considered the admissibility of this evidence. In view of its findings, it is unnecessary to revisit the decisions.[1842]

[1838] T. 12 October 2005 pp. 10, 15-18, 36, 52-55, 57-61; T. 13 October 2005 pp. 44-48; Bagosora Defence Exhibit 194 (personal identification sheet).

[1839] T. 16 March 2006 pp. 66, 77-80; T. 17 March 2006 pp. 1-5; T. 12 June 2006 pp. 33-34, 44, 46; Nsengiyumva Defence Exhibit 162 (personal identification sheet). Nzirorera referred to a stamp in his passport that indicated he entered Goma on 23 May and a stamp indicating he arrived in South Africa on 27 May 1994. *See* T. 17 March 2006 pp. 4-5; Bagosora Defence Exhibit 321 (Nzirorera's passport).

[1840] Decision on Nsengiyumva Motion For Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006 p. 22, which declares as inadmissible "Witness XBM's testimony about meetings in Gisenyi préfecture, with the exception of a meeting at *Méridien Hôtel* in May 1994 which is admissible".

[1841] Prosecution Closing Brief, para. 1059.

[1842] Decision on Nsengiyumva Motion For Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006 p. 22; Decision on Bagosora Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 58-60.

4.2.5 Espérance Uwayirege (Longin's Wife), June

40293

Introduction

1690. The Nsengiyumva Indictment alleges that, between May and June 1994, Nsengiyumva ordered Omar Serushago and his militiamen to abduct "a Tutsi woman" and kill her at the *Commune Rouge*. The Prosecution submits that this woman was Espérance Uwayirege, a Tutsi cashier at the *Banque de Kigali* in Gisenyi, who was married to Longin Rudasingwa. It is also alleged that Bagosora was implicated in her killing because he, during a meeting at the *Hôtel Méridien* in June 1994, asked Nsengiyumva to locate her. In support of these allegations, reference is made to Witnesses Omar Serushago, OAB, ABQ and DO.[1843]

1691. The Bagosora and Nsengiyumva Defence contend that the allegation that their clients attended a meeting at the *Hôtel Méridien* in June 1994 is not pleaded in their respective Indictments. Furthermore, the Prosecution evidence lacks credibility. The Bagosora Defence argues that Bagosora was out of Rwanda at the time. Reference is made primarily to Witnesses USA-1, WHO-1, ANG-1, XEN-1, HCR-1, CF-1, CF-2, TN-1, CF-4, LIG-2, Nzirorera as well as Nsengiyumva and Bagosora.[1844]

Evidence

Prosecution Witness Omar Serushago

1692. Omar Serushago, a Hutu and *Interahamwe* leader, testified that, at some point in June 1994, Juvénal Uwilingiyimana, the director of the Rwandan National Parks and MRND committee member, called him from the home of Fabien Nsengiyumva. He asked Serushago to come to that house and kill Longin Rudasingwa's wife, who was hiding there. Fabien headed a football team in Gisenyi prefecture, coached by Longin Rudasingwa. Apparently, Longin's wife, a Tutsi, felt safe in Fabien's house because he had close ties to President Habyarimana's family. Serushago knew Longin's wife as the cashier at the *Banque de Kigali* in Gisenyi prefecture. There were rumours that she was cooperating with the RPF. According to Serushago, Uwilingiyimana wanted her dead because she was an "*Inyenzi*".[1845]

1693. Serushago and another *Interahamwe*, Thomas Mugiraneza, apprehended the woman and they brought her to Nzirorera and Nsengiyumva as Serushago knew that they had wanted to find her. They first went to the *Hôtel Méridien* where Joseph Nzirorera was staying and then to the Palm Beach Hotel where Nsengiyumva was. Nsengiyumva commended them for locating Longin's wife and ordered them to kill her. Serushago and Mugiraneza immediately took her to the *Commune Rouge*, a Gisenyi cemetery where people were executed. They

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[1843] Nsengiyumva Indictment, para. 6.29; Prosecution Closing Brief, paras. 107, 181, 361-379, 1018(b), 1028(i), 1514(d, e), pp. 890-891.

[1844] Nsengiyumva Closing Brief, paras. 614-623, 877-892, 987-994, 1430-1436, 1459-1461, 1793-1798, 1981-1985, 2273, 2308, 2316, 2702-2703, 2715, 2725, 2755, 2761, 2808-2837; T. 31 May 2007 pp. 73-74; T. 1 June 2007 pp. 1-4; Bagosora Closing Brief, paras. 1148-1168, 1415-1428. The Bagosora Defence also points to other alibi evidence (III.6.1).

[1845] T. 18 June 2003 pp. 37-39, 51; T. 19 June 2003 pp. 36-38, 40, 69; Prosecution Exhibit 54 (personal identification sheet). There does not appear to be any relationship between Fabien Nsengiyumva and the Accused, Anatole Nsengiyumva. On 5 February 1999, pursuant to a plea agreement, Omar Serushago was found guilty by the Tribunal of genocide, murder, extermination and torture for crimes he committed as an *Interahamwe* in Gisenyi. He was sentenced to 15 years imprisonment. *See* T. 18 June 2003 pp. 2-3; *Serushago* Trial Judgement, p. 15.

handed her over to a lieutenant, who shot her in the head, killing her instantly. Serushago and Mugiraneza returned to the Palm Beach Hotel, and Nsengiyumva praised them again for finding the "*Inyenzi*".[1846]

1694. When testifying about women who were raped and killed at the *Commune Rouge*, Serushago said that he knew that Longin Rudasingwa's mistress Thérèse, who worked at Rwandex, was raped there. He did not provide any further details about the crime.[1847]

Prosecution Witness OAB

1695. Witness OAB, a Hutu driver in Gisenyi town, stated that, around 9 or 10 April 1994, he was driving from Gisenyi to Goma and saw one of Longin's two wives named Thérèse in a minibus with Omar Serushago near a customs office at the *La Corniche* border post. Her dress was torn, and the witness thought she had been raped. She had been abducted earlier from Bralirwa, the brewery, and taken to Serushago's house because the assailants wanted to rape her. Several people, including *Interahamwe* leaders, were begging Serushago to let the woman go because she was the wife of the local football coach. Serushago refused, explaining that he had orders to kill her at the *Commune Rouge*. Anatole Nsengiyumva was standing nearby and had previously spoken to Serushago, who was telling people on the scene that Nsengiyumva had given him the authority to kill Thérèse. Serushago also spoke individually to the witness about it.[1848]

1696. The witness also had heard that Nsengiyumva ordered Serushago to kill Longin's other wife at Rwandex, but he could not remember her name and did not give further details about this killing.[1849]

Prosecution Witness ABQ

1697. Witness ABQ, a Hutu student, said that, at the beginning of June 1994, he accompanied Barnabé Samvura, the head of the CDR militia, to a closed meeting at the *Hôtel Méridien* of more than 30 persons, including prominent military, political and government officials. The witness recognised Anatole Nsengiyumva, Bernard Munyagishari, the prefect of Gisenyi and the manager of the *Banque de Kigali*. A speaker, whom the witness learned afterwards was Bagosora, addressed the group and criticised the people of Gisenyi prefecture for hiding "*Inyenzi*" and assisting them to cross the border to Zaire. Bagosora illustrated the problem with the story of Fred Rwigema, who fled Rwanda as a child in 1959 and returned as an adult to lead an invasion.[1850]

[1846] T. 18 June 2003 pp. 29-31, 39; T. 19 June 2003 pp. 37, 39-41, 69.

[1847] T. 18 June 2003 p. 51. Serushago explained that Rwandex was a coffee factory. T. 18 June 2003 p. 32.

[1848] T. 24 June 2003 pp. 41-43, 61; T. 25 June 2003 pp. 32, 43-47, 82-83; Prosecution Exhibit 58 (personal identification sheet). Witness OAB could not recall the exact date of the event but it was three or four days after the death of President Habyarimana. The Chamber notes that, according the witness, the *Interahamwe* received the minibus in which he saw Longin's wife a week after the death of the President. *See* T. 25 June 2003 p. 32 (French), which correctly reflects "Longin's" as opposed to "Roger's" wife.

[1849] T. 24 June 2003 p. 61; T. 25 June 2003 pp. 46, 82.

[1850] T. 6 September 2004 pp. 23-27; T. 9 September 2004 pp. 13-23; Prosecution Exhibit 293 (personal identification sheet). Witness ABQ described Bagosora physically, said that he spoke Kinyarwanda with a Bushiru accent, but stated that he would not be able to recognise him in court. T. 6 September 2004 p. 44. Fred Rwigema led the RPF invasion in October 1990 and was killed during it. *See* Bagosora, T. 26 October 2005 pp. 32-33; T. 5 November 2005 p. 40; Nsengiyumva, T. 6 October 2006 p. 24.

1698. Bagosora also spoke about ways to raise money to buy weapons for the army and noted that the manager of the *Banque de Kigali* had agreed to loan the government money. He tasked Anatole Nsengiyumva with locating the bank's cashier in order to open the cash box. It was said that the cashier, a Tutsi, had gone into hiding. She was the wife of "Longe Sherif", the local football coach. Nsengiyumva agreed at the meeting to take on the assignment. The witness later heard that she was killed.[1851]

Prosecution Witness DO

1699. Witness DO, a Hutu driver in Gisenyi town, heard from *Interahamwe*, and later from Serushago, that, in April, Serushago killed Longin's wife. She had worked at the *Banque de Kigali*.[1852]

Nsengiyumva

1700. According to Anatole Nsengiyumva, Longin Rudasingwa's wife Espérance and her children were looking for safe accommodation around 10 April 1994. He asked one of his assistants, Major Uwimana, to take them to the home of Fabien Nsengiyumva. On 12 April, Casimir Bizimungu, the Minister of Health, called and asked him to locate Espérance, the cashier of the *Banque de Kigali*, because she had the access codes to the bank's cash box. That day, Anatole Nsengiyumva took Espérance to the bank to open the cash box and then returned her to Fabien Nsengiyumva's home. No meeting occurred in June at the *Hôtel Méridien,* as described by Witness ABQ. Bagosora and Nzirorera were travelling abroad in June.[1853]

Nsengiyumva Defence Witness USA-1

1701. Witness USA-1, a Hutu, was staying at Fabien Nsengiyumva's home in April 1994. Fabien was an executive at the Bralirwa brewery and president of the local football team. He and his wife were close friends with Longin Rudasingwa and Longin's wife Espérance. Longin was the team's coach as well as a nurse at the Bralirwa dispensary. Around 9 April, Espérance sought refuge at Fabien's house because she was Tutsi and suspected by some to be an "accomplice".[1854]

1702. On 12 April, Anatole Nsengiyumva called Fabien's house and said that he needed Espérance to open the cash box at the *Banque de Kigali* so that government officials could be paid their mission allowance. Later that day he came alone and took Espérance to the bank in order to open the cash box, returning her to the house that evening. Around 21 April, Serushago and Thomas abducted Espérance in a dark blue mini-bus while Juvénal Uwilingiyimana, a family friend, and Jean Habyarimana, another friend, were at the house. The witness did not know whether Uwilingiyimana had called Serushago and informed him of Espérance's hiding place or if anyone other than Nsengiyumva, Major Uwimana and her family knew she was hiding there. The witness did not believe that Anatole Nsengiyumva, a senior military official, would have any type of relationship with Serushago. After that incident, Witness USA-1 took Espérance's children to the Nyundo orphanage.[1855]

[1851] T. 6 September 2004 pp. 27-28; T. 7 September 2004 p. 5; T. 9 September 2004 pp. 19-20.
[1852] T. 30 June 2003 pp. 3, 75-77; T. 2 July 2003 p. 11; Prosecution Exhibit 61 (personal identification sheet).
[1853] T. 6 October 2006 pp. 22-23, 27-29.
[1854] T. 2 October 2006 pp. 6-9, 50-51, 53; Nsengiyumva Defence Exhibit 210 (personal identification sheet).
[1855] T. 2 October 2006 pp. 7, 9-13, 40-44, 49-55.

Nsengiyumva Defence Witness WHO-1

1703. Witness WHO-1, a Hutu, lived near Longin Rudasingwa and his wife Espérance in an area of homes reserved for Bralirwa employees. Longin was a medical assistant at Bralirwa. After the death of President Habyarimana, Espérance went into hiding near her home. During this period, the witness spoke with a friend who told the witness that Anatole Nsengiyumva would be contacted to assist Espérance. Soldiers then retrieved Espérance and her children from her house. Espérance was taken to Fabien Nsengiyumva's house, while her children were taken to the home of a Zairean named Patti. Witness WHO-1 stayed in contact with Espérance for the first few days after she moved to Fabien's home until the phone system stopped working. The witness later heard from that friend that Omar and a group of assailants surrounded the house and abducted Espérance in order to kill her.[1856]

Nsengiyumva Defence Witness ANG-1

1704. Witness ANG-1, a Hutu employee at the *Hôtel Méridien* in Gisenyi, knew Longin Rudasingwa, a football coach and a medical assistant at the brewery, as well as his wife Espérance, who worked at the *Banque de Kigali*. He heard that, at the end of June 1994, Serushago and Thomas Mugiraneza abducted her because she was the cashier at the bank and very beautiful. They killed her at the Byahi cemetery. The witness never saw them bring her to the *Hôtel Méridien* and testified that had she been brought there he would have been informed. The only meeting he could recall at the hotel between April and June was convened by Félicien Kabuga and neither Bagosora nor Nsengiyumva had attended.[1857]

Nsengiyumva Defence Witness XEN-1

1705. Witness XEN-1, a Hutu employee at the *Hôtel Méridien* in Gisenyi, had known Serushago since childhood. Serushago, a black market money changer, had a reputation for being dishonest and cheating people. Towards the end of April or in May 1994, he heard that Serushago and Thomas Mugiraneza killed Espérance, who worked at a Gisenyi bank. The witness knew Espérance and did not see her or the assailants at the hotel during this period. He recalled only one meeting being held at the *Hôtel Méridien* between April and June 1994. It had been convened by Félicien Kabuga and Nsengiyumva was not present.[1858]

Nsengiyumva Defence Witness HCR-1

1706. Witness HCR-1, a Hutu employee at the Palm Beach Hotel in Gisenyi, heard that Longin Rudasingwa's wife was killed at some point between April and July 1994. He testified that Longin was a doctor and that his wife worked at the local bank. The witness did not see anyone bring her to the hotel. He only recalled Nsengiyumva coming to the hotel twice. Both times were prior to April 1994. The witness worked at the hotel six days of every week, and admitted that Nsengiyumva could have visited the hotel on his day off. However, the witness would probably have heard about such a visit.[1859]

[1856] T. 26 June 2006 pp. 25-26, 28-29; Nsengiyumva Defence Exhibit 196 (personal identification sheet).
[1857] T. 14 March 2006 pp. 3, 7, 12-17; T. 16 March 2006 pp. 26-28; Nsengiyumva Defence Exhibit 157 (personal identification sheet).
[1858] T. 30 May 2006 pp. 4-7, 13, 16-17; Nsengiyumva Defence Exhibit 178 (personal identification sheet).
[1859] T. 26 June 2006 pp. 3, 5-6, 10-15, 18, 20, 22; Nsengiyumva Defence Exhibit 195 (personal identification sheet).

Nsengiyumva Defence Witness CF-1

1707. Witness CF-1, a Hutu, lived in Gisenyi town in April 1994. He was a friend of Serushago. At the end of June 1994, Serushago informed him that he had killed Longin Rudasingwa's wife, Espérance, because she was "arrogant and had turned down his advances". She had been staying at the home of Fabien Nsengiyumva at the time of her death. Serushago told the witness on the day of the killing and did not give any indication that he had acted pursuant to orders. The witness was certain that this event had occurred in June because he fled Gisenyi two to three weeks after hearing about it. Longin's wife was among the last victims in Gisenyi prefecture. The witness also stated that one of Rudasingwa's two mistresses had been killed sometime in April. The witness added that Serushago could not have received a call ordering him to kill the woman because there were no functioning telephone networks in Rwanda two weeks after the death of President Habyarimana.[1860]

Nsengiyumva Defence Witnesses CF-2 and TN-1

1708. Witness CF-2, a Hutu who lived in Gisenyi town, testified that, on 8 April 1994, he heard about the killing of Longin's wife.[1861] Witness TN-1, a Hutu and government and political official, was told that Longin's wife was killed in Gisenyi town at some point in June 1994.[1862]

Nsengiyumva Defence Witness CF-4

1709. Witness CF-4, a Hutu who lived in Gisenyi town, heard that Longin's first wife Thérèse was killed immediately after the death of the President on the premises of Rwandex. His second wife was killed in June 1994 in the Nyundo area. The witness believed that an *Interahamwe* named Omar Faizi killed both women. He did not hear about any involvement by Nsengiyumva in the crime.[1863]

Nsengiyumva Defence Witness LIG-2

1710. Witness LIG-2, a Hutu businessman in Gisenyi, had known Omar Serushago since childhood and noted that he was also known as "Faizi". He knew Longin Rudasingwa since primary school and testified that his wife, a Tutsi, was very beautiful and worked at a bank. After the death of the President, she sought refuge at the home of a friend who was the former president of the Gisenyi football team. The witness heard that Serushago and five other *Interahamwe* went to the house and abducted the woman at gun point. Serushago then raped and killed her.[1864]

Bagosora

1711. Bagosora denied that he attended a meeting at the *Hôtel Méridien* in June 1994 with Nsengiyumva. He testified that he was travelling to Zaire, South Africa and Seychelles from 23 May until 22 June in an attempt to purchase weapons (III.6.1).[1865]

[1860] T. 29 November 2005 pp. 3, 22-26, 39; Nsengiyumva Defence Exhibit 125 (personal identification sheet). The telephone network was still operating on 10 April 1994. T. 29 November 2005 p. 23.
[1861] T. 29 November 2005 pp. 49, 65; Nsengiyumva Defence Exhibit 127 (personal identification sheet).
[1862] T. 2 March 2006 pp. 53, 59; Nsengiyumva Defence Exhibit 147 (personal identification sheet).
[1863] T. 14 February 2006 p. 61; T. 15 February 2006 pp. 4-5; Nsengiyumva Defence Exhibit 135 (personal identification sheet).
[1864] T. 2 May 2005 pp. 15, 17, 58; Nsengiyumva Defence Exhibit 75 (personal identification sheet).
[1865] T. 9 November 2005 pp. 67-68, 74; T. 10 November 2005 pp. 2, 75; T. 17 November 2005 p. 37.

Nsengiyumva Defence Witness Joseph Nzirorera 40288

1712. Joseph Nzirorera, the President of the National Assembly, denied meeting Serushago at the *Hôtel Méridien* in June 1994, explaining that he met him for the first time in 1998 at the United Nations Detention Facility in Arusha. Nzirorera travelled on 23 May with Bagosora from Goma to Kinshasa, Zaire. From there he went to South Africa from 27 May to 9 June. Bagosora joined him in South Africa on 3 June before proceeding to the Seychelles the next day (III.6.1). Nzirorera knew Longin, the coach of Gisenyi's football team, by name only and had no information with respect to his wife's death.[1866]

Deliberations

1713. There is no dispute that Serushago played a prominent role in the abduction and killing of Espérance Uwayirege, a Tutsi employee of the Gisenyi branch of the *Banque de Kigali*, who was married to Longin Rudasingwa, a Hutu. Serushago pleaded guilty before the Tribunal to abducting her and handing her over to an ex-soldier to be killed on the orders of Nsengiyumva in June 1994.[1867] In the present trial, he confirmed having committed this crime.

1714. Serushago's evidence as well as the testimonies of Witnesses USA-1, WHO-1, CF-1 and LIG-2 show that he abducted her from Fabien Nsengiyumva's home. There is some discrepancy in the accounts as to when she was abducted and killed. Some witnesses, including Witness USA-1, who observed Serushago take Espérance, said April. Others, largely referring to the rape and killing of Thérèse, who also seems to have been Longin's wife or possibly mistress, described a similar event occurring in April. The Chamber notes that the relevant Indictment paragraph about the killing of "a Tutsi woman" indicates that this event occurred "[b]etween May and June 1994". The Prosecution primarily relies on Serushago's evidence that Nsengiyumva was involved in the killing of Espérance in June.[1868] Thérèse's rape and killing is not pleaded in the Indictment and cannot provide a basis for conviction. The Chamber therefore considers evidence related to Thérèse because it offers context to the Prosecution's case concerning Espérance's murder.[1869]

1715. The main question for the Chamber is whether Nsengiyumva ordered Serushago to kill Espérance Uwayirege. Serushago is the only witness who gave direct testimony to this effect. He suggested that before the killing, he brought Espérance to Nzirorera at the *Méridien Hôtel* and then to Nsengiyumva at the Palm Beach Hotel. This is the primary evidence that Nsengiyumva ordered the killing. However, Nzirorera denied Serushago's account and pointed to evidence that he was not in Rwanda from the 23 May to 15 June

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[1866] T. 16 March 2006 pp. 61-62, 64-66; T. 17 March 2006 pp. 1-5; T. 12 June 2006 pp. 33-38, 44, 46.

[1867] *Serushago* Trial Judgement, para. 25(xii), which reads: "Omar Serushago acknowledges that in June 1994, in Gisenyi, on the orders of Anatole Nsengiyumva, Thomas Mugiraneza and himself, abducted a Tutsi woman and brought her near the *Commune Rouge* to execute her. This person was in fact killed by Lt. Rabuhihi, an ex-soldier of the 42nd Battalion, Force Armée Rwandaise (FAR)." Serushago also previously described Nsengiyumva's alleged order to kill Espérance. Nsengiyumva Defence Exhibit 17 (statement of 3 February 1998, signed in Nairobi).

[1868] Nsengiyumva Indictment, para. 6.29.

[1869] Evidence concerning the killing of Thérèse in April was elicited through Serushago as well as Witnesses OAB and CF-4. Witness DO's testimony that he learned that Longin's wife had been killed on 7 April and Witness and CF-2's testimony that it occurred on 8 April 1994 suggest that they may also have been referring to Thérèse's killing rather than Espérance's.

(III.6.1). Witnesses XEN-1 and ANG-1, employees at the *Hôtel Méridien*, did not observe Serushago or Espérance at the hotel. Nsengiyumva also denied Serushago's allegations, and Witness HCR-1, a Palm Beach Hotel employee, also did not see her.[1870] While the Defence evidence is inconclusive, Serushago is an alleged accomplice of Nsengiyumva. The Chamber has expressed its scepticism about his credibility elsewhere, views his evidence with caution and will not accept it without corroboration (III.3.6.1; III.4.2.1).

1716. The testimony of Witness OAB does not provide such corroboration. His evidence primarily concerned Serushago's rape and murder in April 1994 of Thérèse. He only briefly mentioned that he had heard that Nsengiyumva ordered the killing of Espérance. This second-hand evidence lacks detail and his previous statements to Tribunal investigators do not mention Espérance's death in June 1994.[1871]

1717. Witness DO's testimony that Serushago killed Longin's wife, also fails to sufficiently corroborate the Prosecution case regarding the killing of Espérance in June. His evidence is second-hand, lacks precision and does not directly link Nsengiyumva to the crime.[1872] His account that Longin's wife worked at the *Banque of Kigali*, suggests that he was referring to Espérance. However, he described the killing as occurring in April, which would be more consistent with evidence concerning Thérèse's death. This ambiguity illustrates the limited value of his evidence in support of the Prosecution case.

1718. The testimonies of Witness USA-1, apparently a friend of Fabien Nsengiyumva and Espérance, and Witness WHO-1, indicate that Anatole Nsengiyumva had offered some protection by assisting in delivering Espérance to Fabien Nsengiyumva's house in April. Witness USA-1's first-hand account of Serushago and Thomas abducting Espérance does not show any involvement by the Accused.[1873] Likewise, Witness WHO-1's second-hand evidence only suggests that Serushago and other members of the *Interahamwe* were involved in her kidnapping and eventual murder. Even assuming that the testimonies of Witnesses USA-1 and WHO-1 were flawed, the evidentiary situation remains unclear.[1874]

1719. The Chamber next considers whether the alleged meeting at the *Hôtel Méridien* in the "beginning of the month of June" corroborates the Prosecution case that Nsengiyumva was involved in Espérance's murder in June. Witness ABQ is the only witness to testify about this

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[1870] The Chamber accords some weight to the evidence of Witnesses ANG-1, XEN-1 and HCR-1 but is not totally convinced, based on their respective functions in the hotels, that they would have known everything that was going on there.

[1871] Nsengiyumva Defence Exhibit 22 (statement of 15 January 1999); Nsengiyumva Defence Exhibit 23 (statement of 28 January 2000). Witness OAB is alone in linking Nsengiyumva to the killing of Thérèse in April. However, his testimony differs from a statement given to Tribunal investigators in January 1999. The statement refers to this April incident, describes the woman as "the wife of Longin" but makes no mention of Nsengiyumva's role in this killing. Nsengiyumva Defence Exhibit 22 (statement of 15 January 1999), p. 4. The witness described Nsengiyumva's general role during the genocide later in the statement (p. 5).

[1872] *See also* Nsengiyumva Defence Exhibit 26A (statement of 7 October 1997 to Tribunal investigators), p. 4, which reads: "Omari Faizi also killed the wife of one Longin who was a trainer of a soccer team in Gisenyi called '*Étincelle*'. I got the story about these killings from one *Interahamwe* called Kiguru." The statement suggests that Witness DO overheard this being reported to Bizumuremyi as he was driving him around.

[1873] The Chamber has taken into account the Prosecution suggestion to Witness USA-1 during cross-examination that Anatole Nsengiyumva, who had accompanied Espérance to the bank on 12 April, was one of very few who knew where she was hiding. T. 2 October 2006 pp. 51-55. If the implication is that he informed Serushago about her whereabouts there is no support for that conclusion in Serushago's testimony.

[1874] The two witnesses gave different evidence about what happened to Espérance's children after her abduction. The Prosecution did not cross-examine Witness WHO-1.

event. He attended the closed meeting of prominent personalities as Barnabé Samvura's escort but denied being a part of his militia. Evidence addressed elsewhere in the judgement raises some question as to whether the witness had the relationship he claimed to have had with Samvura (III.3.6.2). The witness was also not able to identify Bagosora at the meeting or in court.[1875] Bagosora presented alibi evidence that raises reasonable doubt about the reliability of the witness's evidence that Bagosora was in Gisenyi for a meeting at the beginning of June (III.6.1). For the foregoing reasons, the Chamber is unwilling to accept Witness ABQ's account of this meeting without corroboration.

1720. Accordingly, the Prosecution has not proven beyond reasonable doubt that Bagosora and Nsengiyumva attended a meeting at the *Méridien Hôtel* in the beginning of June or that Nsengiyumva ordered Serushago to abduct Espérance Uwayirege and to kill her at the *Commune Rouge*.

1721. The Chamber previously admitted Witness ABQ's testimony in relation to the meeting at the *Méridien Hôtel*.[1876] In light of its findings, the Chamber does not find it necessary to address the Bagosora and Nsengiyumva Defence notice challenges.

4.2.6 Sexual Violence

Introduction

1722. The Nsengiyumva Indictment alleges that, between April and July 1994, Bernard Munyagishari, his group of militiamen and Omar Serushago's group of militiamen abducted, confined and sexually assaulted Tutsi women. The Prosecution alleges that, during this period, soldiers and militiamen under Nsengiyumva's control acted with his knowledge and consent in committing numerous rapes and murders against the Tutsi population. Reference is made primarily to Witnesses ZF and Omar Serushago.[1877]

1723. The Nsengiyumva Defence maintains that these allegations are not pleaded in the Indictment. Furthermore, the Prosecution evidence, which lacks credibility, fails to establish that Nsengiyumva committed rape or that he knew or should have known about sexual assaults committed by his subordinates.[1878]

[1875] T. 6 September 2004 p. 44 ("In fact, I am not sure that I would recognise him if I saw him today. I will not be able to recognise him if I saw him.").

[1876] Decision on Bagosora Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, para. 17.

[1877] Nsengiyumva Indictment, paras. 6.24, 6.34; Prosecution Closing Brief, paras. 165-166, 168, 178, 180-182, 480, pp. 887-888, 892-896. The Prosecution also refers to Witness OAB's testimony related to the rape of Longin's wife Thérèse by Serushago (III.4.2.5). Additionally, it points to the testimony of Witness OAB, according to which, on the night of 7 April 1994 at the Gisenyi military camp, Nsengiyumva said to an *Interahamwe* concerning a certain Marie-Louise: "do what you want to do with that Tutsi woman". *See* T. 24 June 2003 pp. 45, 50. The Chamber has not accepted Witness OAB's uncorroborated testimony about the events at the camp that night (III.3.6.2) and declines to do so also in this context. Finally, the Prosecution refers to Witness OAB's evidence to support allegations that rapes occurred in the houses of the *Interahamwe* in Gisenyi. Prosecution Closing Brief, paras. 180, 1028(i). The Chamber excluded this evidence for lack of notice during the witness's testimony. T. 24 June 2003 pp. 61-64.

[1878] Nsengiyumva Closing Brief, paras. 162, 168, 970-986, 995-1030, 1131, 1172-1181, 1986, 2012, 3185-3188, 3196-3197, 3212-3215, 3281-3286.

Evidence

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Prosecution Witness ZF

1724. Witness ZF, a Hutu based at Butotori military camp, knew Omar Serushago, Thomas and Damas, and that they led small groups of *Interahamwe* militiamen in Gisenyi. Sometime after 6 April 1994, Damas told the witness that he, Omar Serushago, Thomas, other *Interahamwe* and *Impuzamugambi* had a house where they raped young Tutsi women before executing them. Witness ZF and Lieutenant Bizumuremyi also visited this house. During the visit, the witness noticed one young Tutsi girl there. Damas informed Bizumuremyi that the house was used for raping women and girls before executing them. Bizumuremyi told Damas that failure to execute these girls might lead them to flee abroad and join the RPF's ranks. [1879]

1725. At some point in April, Witness ZF accompanied Nsengiyumva to the *Commune Rouge*, a cemetery in Gisenyi where people were executed. As their vehicle stopped briefly, the witness saw a group of militiamen, led by Omar Serushago and armed with traditional weapons and guns, who were standing near another group of naked civilians. Serushago saluted Nsengiyumva. They continued on their way after Nsengiyumva spoke with the militia leaders there, including Serushago.[1880]

Prosecution Witness Omar Serushago

1726. Omar Serushago, a Hutu *Interahamwe* leader in Gisenyi, testified that he was only aware of rapes committed by Bernard Munyagishari, the head of the *Interahamwe*, and by soldiers and militiamen at the *Commune Rouge*. Munyagishari told Serushago that he raped women on the nights of 6 and 7 April 1994. Serushago also stated that soldiers participated in raping women at the *Commune Rouge*. He gave the example of a reservist and intelligence officer named Migendo who raped members of a religious order affiliated with the Gisenyi parish. According to Serushago, Nsengiyumva never issued any orders to commit rape; however, he was aware of these crimes because he was the operations commander, travelled around the area and likely received reports.[1881]

Nsengiyumva

1727. Nsengiyumva stated that no soldier under his command committed rape. He never received reports of rape from Witness ZF or Bizumuremyi, and denied knowledge of the rape house described by Witness ZF. He had no knowledge of rapes committed anywhere in Gisenyi by militiamen, including Bernard Munyagishari, Omar Serushago, Thomas and Damas. Nsengiyumva further denied that Migendo was one of his soldiers or that he had ever gone anywhere with Witness ZF.[1882]

[1879] T. 26 November 2002 pp. 94-95; T. 27 November 2002 pp. 13, 31-32; T. 28 November 2002 pp. 30-32, 59-61, 79-80; T. 5 December 2002 pp. 79-90. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.

[1880] T. 28 November 2002 pp. 58-59.

[1881] T. 18 June 2003 pp. 2, 29, 51-52, 58-59; T. 19 June 2003 pp. 30-33; Prosecution Exhibit 54 (personal identification sheet). On 5 February 1999, pursuant to a plea agreement, Omar Serushago was found guilty by the Tribunal of genocide, murder, extermination and torture for crimes he committed as an *Interahamwe* in Gisenyi. He was sentenced to 15 years imprisonment. *See* T. 18 June 2003 pp. 2-3, 41; *Serushago* Trial Judgement, p. 15.

[1882] T. 6 October 2006 pp. 34-35, 45-47; T. 9 October 2006 pp. 38, 60-61; T. 11 October 2006 p. 23; T. 12 October 2006 pp. 91-93, 95; T. 13 October 2006 p. 8.

1728. It is well known that rape and other forms of sexual violence were widespread in Rwanda during the events in 1994. This follows in part from Prosecution Expert Witness Binaifer Nowrojee.[1883] The Chamber has determined that these acts were committed open and notoriously at Kigali area roadblocks (III.5.1; III.4.1.7), the Kabgayi religious centre (III.4.4.1), and during the attacks at the Saint Josephite Centre (III.3.5.5) and Gikondo Parish (III.3.5.8). Furthermore, the case law of this Tribunal has shown that sexual violence was widespread.[1884] The question here is whether Nsengiyumva is responsible for specific acts of rape committed in Gisenyi prefecture as alleged by Witnesses ZF and Serushago.

1729. The Prosecution presented two main witnesses in order to prove allegations of rape or other forms of sexual violence in Gisenyi prefecture during the relevant events. Witness ZF provided the only testimony on the existence of the rape house allegedly used by militiamen in Gisenyi. His testimony is largely second-hand, although he claims that he visited the house with Lieutenant Bizumuremyi. It is also uncorroborated. Furthermore, he also did not witness any specific crimes of sexual violence there. His testimony concerning Nsengiyumva's alleged visit to the *Commune Rouge* is similarly uncorroborated. The Prosecution did not examine Serushago, who Witness ZF saw there, on this alleged incident. The Chamber has elsewhere expressed concern about the credibility of other aspects of Witness ZF's testimony (III.2.7-9; III.3.6.1). The Chamber views his testimony concerning the rape house with caution. The Chamber therefore declines to accept Witness ZF's testimony on these points without corroboration.

1730. Serushago testified generally about rape committed by militiamen and soldiers at the *Commune Rouge*. He provided only one example of rape committed there, referring to a rape involving an alleged military reservist named Migendo who was also an intelligence officer. No detail was provided about this incident, and it is not clear whether Serushago has direct knowledge of the incident. The Chamber notes the difference between his testimony and his statement in February 1998 to Tribunal investigators where he said Migendo had left the military.[1885] Serushago claimed that his statement was not properly interpreted.[1886] However, this explanation is not entirely convincing, in particular since the investigator confirmed Migendo's status with Serushago during the interview.

1731. Serushago is the sole witness to testify about rapes committed by Munyagishari. His evidence on this point is second-hand and lacking in any detail. Serushago is an alleged

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[1883] *See, e.g.*, Prosecution Exhibit 291 (Expert Report of Binaifer Nowrojee), paras. 13-27, 48; Nowrejee, T. 12 July 2004 pp. 85-91, 98. The Chamber admitted Nowrejee as an expert in relation to her investigations of sexual crimes in Rwanda based on her interviews and field investigations. It concluded that her evidence was relevant to the pattern of sexual violence in 1994, including whether it was widespread, public, and the level of brutality compared to other armed conflicts, and whether it appeared organised. T. 12 July 2004 pp. 72-73. She testified about sexual violence in general during the conflict and did not provide specific evidence on Gisenyi prefecture.

[1884] *See, e.g.*, *Muhimana* Appeal Judgement, para. 53 ("The Appellant's conviction for rape as a crime against humanity, for which he was sentenced to life imprisonment, rests on his commission of or complicity in the rapes of ten ... individuals"); *Gacumbitsi* Appeal Judgement, para. 102 ("[T]he Trial Chamber reasonably concluded that there was a widespread and systematic attack against Tutsis in Rusumo Commune. Its further conclusion that the rapes formed part of this attack was also reasonable in light of the finding that 'the victims of rape were chosen because of their Tutsi ethnic origin, or because of their relationship with a person of the Tutsi ethnic group'".); *Semanza* Trial Judgement, para. 479; *Akeyesu* Trial Judgement, paras. 692-695.

[1885] Nsengiyumva Defence Exhibit 18 (Excerpt of interviews from 11 to 13 February 1998).

[1886] T. 19 June 2003 p. 32.

accomplice of Nsengiyumva, who has been convicted of genocide. The Chamber views his evidence with caution. In view of these concerns, the Chamber declines to accept these parts of his testimony without corroboration. The Nsengiyumva Defence also points to the evidence of Witnesses CF-1 and NR-1, attesting to Serushago boasting about rapes he committed, to attack his credibility.[1887] In view of the Chamber's findings, it is not necessary to assess these second-hand allegations in detail.

1732. Accordingly, the Prosecution has not established beyond reasonable doubt the allegations connecting Nsengiyumva to sexual violence in Gisenyi prefecture.[1888]

1733. The Chamber held during the trial that Nsengiyumva had adequate notice of his alleged role in these crimes.[1889] It is therefore not necessary to revisit the Defence's challenges to the notice provided for these incidents in the Indictment.

[1887] Nsengiyumva Closing Brief, para. 998.
[1888] The Prosecution also refers to the testimony of Nsengiyumva Defence Witness RO-1 that women lived in Nsengiyumva's house as evidence supporting its claims against Nsengiyumva. *See* Prosecution Closing Brief, para. 182. However, Witness RO-1 testified that he was informed by members of Nsengiyumva's escort that these women had sought "refuge" in Nsengiyumva's home – not that they were being held against their will and subjected to rape. Nothing in his testimony suggests otherwise. T. 27 July 2005 pp. 12-14; T. 28 July 2005 pp. 7-8. In the Chamber's view, this evidence does not support the Prosecution's contention that Nsengiyumva was responsible for rapes.
[1889] Decision on Nsengiyumva Motion For Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 64-67.

4.3 Butare Prefecture

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Introduction

1734. According to the Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment, Rwanda's civil and military leaders "took the necessary steps for Tutsis to be eliminated" in Butare prefecture. In particular, on 20 April 1994, two military planes landed in Butare with numerous Presidential Guard and Para Commando Battalion soldiers. It is alleged that these soldiers in tandem with the *Interahamwe* of Butare and elsewhere, such as Kigali, took part in murdering and massacring civilians. Reference is made primarily to Witnesses A, LN, Brent Beardsley as well as Expert Witnesses Alison Des Forges and Filip Reyntjens.[1890]

1735. The Bagosora Defence submits that Bagosora was not in Butare during the massacres, and that he had no command or control over the army or the *Interahamwe* there. The Kabiligi Defence argues that there is no link between Kabiligi and the alleged perpetrators of the killings in Butare, and that he was outside of Rwanda between 6 and 23 April 1994 (III.6.2). According to the Ntabakuze Defence, none of the allegations relate to Ntabakuze. Furthermore, there is no evidence that military aircraft transported Presidential Guard and Para Commando Battalion soldiers to Butare.[1891]

Evidence

Prosecution Witness A

1736. Witness A, a Hutu senior official in the *Interahamwe,* testified that he and his family evacuated Kigali on 12 April 1994 after learning that the interim government also had fled the capital. He travelled without difficulty to Butare prefecture, as roadblocks had not yet been established outside Kigali. There were no signs of killings in Butare. However, after 12 April, Callixte Kalimanzira, a Butare native and the secretary-general of the Ministry of the Interior, was encouraging civilians to man roadblocks. The witness crossed more than 50 roadblocks in Kigali, many of which were manned by armed *Interahamwe*, when he returned there briefly around 24 April.[1892]

1737. The killings in Butare prefecture began on 19 April, shortly after the interim government replaced Prefect Jean-Baptiste Habyilimana, a Tutsi member of the PL party, with Sylvain Nsabimana, a Hutu member of the PSD party. On that date, President Sindikubwabo, accompanied by Prime Minister Kambanda, delivered an inflammatory speech in the area, provoking the local population to kill Tutsis by making statements such as: "Don't think that this is none of your business; it is your business and you have to do it."

[1890] Bagosora Indictment, paras. 6.56-6.57; Kabiligi and Ntabakuze Indictment, paras. 6.40-6.41; Prosecution Closing Brief, paras. 380-397, pp. 769-770, 838-839. The killings in Butare prefecture are not mentioned in the Nsengiyumva Indictment. The Indictments include the specific killing of Rosalie Gicanda, but the Prosecution presented no evidence on this allegation. The Prosecution also refers to Witness DBN, a member of the Para Commando Battalion, who heard RTLM broadcasts advocating the killing of Tutsis in Butare prefecture. *See* T. 31 March 2004 pp. 61, 63; T. 1 April 2004 p. 60.

[1891] Bagosora Closing Brief, p. 382; Kabiligi Closing Brief, paras. 216, 301; Ntabakuze Closing Brief, paras. 2264, 2466.

[1892] T. 1 June 2004 pp. 22, 62-64, 67-70, 79; T. 3 June 2004 pp. 97-98; T. 4 June 2004 p. 28; Prosecution Exhibit 222 (personal identification sheet).

Until that point, the local Hutus had resisted killing Tutsis because of a long history of inter-marriage and peaceful co-existence with them.[1893]

1738. After the President's speech on 19 April, soldiers and the local population started the killings in Butare town. In particular, a group of *Interahamwe* from Kigali tried to kill Witness A's cousin that night but spared him after receiving 30,000 Rwandan francs. The witness believed that soldiers under Captain Nizeyimana from the *École des Sous-Officiers* ("ESO"), a local military school, were responsible for some of the area killings. He also heard from some youths that, after the President's speech, they drowned several Tutsis following a request by the head of their *cellule*. The witness claimed that he did not see any of the massacres. On two occasions, he was asked respectively by *Bourgmestre* Kanyabashi and Colonel Muvunyi of ESO to prevent *Interahamwe,* who accompanied Robert Kajuga to Butare, from looting in the area.[1894]

Prosecution Witness LN

1739. Witness LN, a Tutsi member of the Para Commando Battalion who joined the medical company in 1994, stated that injured soldiers from the hospital at Camp Kanombe were evacuated to Butare prefecture around 27 April 1994. He stayed at the ESO in Butare until 12 June 1994, when he was moved to Cyangugu prefecture. Around 11.00 a.m. at one point in May, he saw an *Interahamwe* pull a girl who was no more than 13 years' old from a crowd of refugees gathered near a roadblock near the prefecture office. The *Interahamwe* openly raped the girl while calling her an *Inyenzi*. Several soldiers passed but did nothing to stop the crime. The *Interahamwe* then began to harass other women as the witness walked back to the ESO. The witness did not observe any officers present. Other soldiers told him later that rape was not an unusual occurrence. The witness had also seen bodies at roadblocks in town manned by *Interahamwe*.[1895]

Prosecution Witness Brent Beardsley

1740. Major Beardsley, General Dallaire's assistant in UNAMIR, said that the Butare region was peaceful for two weeks after the death of President Habyarimana. In his opinion, this peaceful period ended when units from the Presidential Guard went to Butare and began to kill Tutsis. A speech made by Jean Kambanda around that time also provoked massacres. Beardsley noted that an incident at a hospital was the catalyst for the departure of *Médecins Sans Frontière*.[1896]

Prosecution Expert Witness Alison Des Forges

1741. Alison Des Forges, an expert in Rwandan history, testified that, until 16 to 17 April 1994, the massacres in Rwanda had not extended to Butare prefecture. This changed after the interim government replaced the Tutsi prefect there. Moreover, on 19 April 1994, President Sindikubwabo and Prime Minister Kambanda, both of whom were from Butare prefecture, visited Butare town. As the new prefect was installed, President Sindikubwabo gave an

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[1893] T. 1 June 2004 pp. 62-63, 65; T. 3 June 2004 pp. 97-98; T. 4 June 2004 pp. 22-23.
[1894] T. 1 June 2004 pp. 63-64; T. 3 June 2004 pp. 49-51, 97-98; T. 4 June 2004 p. 25. Witness A also testified that *Interahamwe* tried to kill his cousin but refrained upon learning of the witness's position in the *Interahamwe*.
[1895] T. 30 March 2004 pp. 48-50, 78-88; T. 31 March 2004 pp. 1-2, 51-53; Prosecution Exhibit 197 (personal identification sheet).
[1896] T. 5 February 2004 p. 89.

inflammatory speech flanked by several ministers, including Kambanda, and local officials. Sindikubwabo's message was that "we must all participate". Afterwards, Kambanda gave a similar speech.[1897]

1742. That afternoon, groups of soldiers and militia arrived in Butare prefecture by bus from Kigali to reinforce the local military. In the following days, these assailants joined local forces from the ESO, the Ngoma military camp and the police headquarters. They killed Tutsis throughout the prefecture, in particular near a school called the *Groupe Scolaire*, the university, the water reservoir, the health centre at Matyazo and the Ngoma church. Des Forges highlighted the role of Lieutenant Hategekimana, from Ngoma military camp, who in her view, played a prominent role in the killings.[1898]

Prosecution Witness Filip Reyntjens

1743. According to Filip Reyntjens, an expert in Rwandan history, soldiers from the Ngoma military camp and the ESO were involved in killings in Butare prefecture. In his view, the participation of soldiers was not simply the result of indiscipline, but rather orders from local officers. However, the impetus for the killings came from lower-ranking officers, such as lieutenants. Officers of a higher rank, including Colonel Muvunyi of the ESO, were powerless to stop them. In Reyntjens's opinion, the Presidential Guard and outside *Interahamwe* groups played an important role in starting the massacres in Butare prefecture on 19 and 20 April 1994 and in overcoming local resistance to participating in the killings.[1899]

Bagosora

1744. Bagosora conceded that massacres took place in Butare from 19 April 1994 but denied responsibility for them. In his view, the massacres were a result of the desperation arising from the war and the pressure from the RPF which had alarmed the people and driven them to the interior of the country. The interim government, which was in flight, had no credibility. In those chaotic circumstances, the population turned on each other. The fact that the massacres in Butare and elsewhere in Rwanda occurred at different times in areas proved that there was no coordinated plan to eliminate the Tutsis.[1900]

Deliberations

1745. There is no dispute that massacres and other crimes occurred in Butare prefecture after President Sindikubwabo and Prime Minister Kambanda visited the region on 19 April 1994. In the present case, most of the evidence of crimes committed there, which the Prosecution relies on, is general and largely second-hand.

[1897] T. 10 September 2002 pp. 29-30; T. 18 September 2002 pp. 114-117. In particular, President Sindikubwabo said: "We have come from far away; now we'll wait to see your reaction ... If you do not participate, you, too, are an enemy." She also quoted him as saying: "You, too, are involved. Even here in Butare, the furthest possible point from the battlefront, you, too, must join in this campaign against the enemy, because you cannot stand aside and pretend it does not touch you. You all are concerned."

[1898] T. 18 September 2002 pp. 115-117. Des Forges did not identify the unit of the soldiers who arrived in Butare prefecture from Kigali.

[1899] T. 16 September 2004 pp. 2-4; T. 21 September 2004 pp. 27-29. Reyntjens also noted the similiarities between the attacks in Butare prefecture in mid-April 1994 and earlier massacres in the Bugesera region in 1992, notably the introduction of Presidential Guard and outside *Interahamwe* groups to start the killings.

[1900] T. 7 November 2005 p. 52; T. 10 November 2005 pp. 16-17.

1746. Witness A spoke about soldiers perpetrating crimes in Butare prefecture, but gave few details about specific events other than an incident where local youths drowned Tutsis after the President's speech. He also claimed that he never saw any of the killings. Beardsley briefly referred to an incident at the hospital in Butare prefecture but did not indicate his basis of knowledge. Des Forges and Reyntjens were called as experts, mainly to provide background and context, and not as factual witnesses. Their evidence therefore gave no details on the specific attacks. Only Witness LN, who personally witnessed an *Interahamwe* rape a young girl at a roadblock in May 1994, offered direct and specific evidence. The Chamber considers this credible, but it does not directly implicate any of the Accused.

1747. The Prosecution did not present any evidence that members of the Para Commando Battalion were dispatched to Butare prefecture on 20 April. Witness LN mentioned the transfer of wounded soldiers there from the hospital at Camp Kanombe on 27 April, which was precipitated by the impending fall of the camp to the RPF. This evidence refers to a different set of circumstances than the reference in the Indictment to the infusion of soldiers from Kigali on 20 April to participate in killings. Furthermore, Witness LN did not refer to any particular crimes committed by these wounded soldiers.

1748. The evidence that members of the Presidential Guard arrived in Butare prefecture on 20 April to participate in attacks comes primarily from Beardsley and Reyntjens. Des Forges mentioned the arrival of soldiers, but did not specify their unit. None of these witnesses had first-hand knowledge of the alleged transfer of soldiers, and the basis of their knowledge is unclear and general.[1901] Even if the Chamber accepts this evidence, the Prosecution has still not clearly shown that the killings resulted primarily from the the infusion of outside forces from Kigali, the role played by Bagosora, Kabiligi or Ntabakuze in their transfer, or the exact nature of the participation of the Presidential Guard in the killings.

1749. The Chamber has not found that Bagosora had general authority over the Rwandan military after 9 April (IV.1.2). There is no specific evidence linking him to the events in Butare. The Chamber has accepted Kabiligi's alibi that he was in Nairobi around 20 April (III.6.2). It has also not found that he had command over the army (IV.1.3). Other evidence indicates that the Para Commando Battalion was stationed along the frontline with the RPF in Kigali until 22 May when it retreated to Kabusunzu. The battalion then briefly was stationed in Muyira commune, Butare prefecture from 25 to 27 May 1994 before relocating to Gitarama prefecture (III.4.1.13-14; III.4.4.1). The Prosecution did not present any evidence concerning crimes committed by members of the battalion while briefly in Butare prefecture.

1750. Accordingly, the Prosecution has not proven beyond reasonable doubt that the Accused participated in the crimes committed in Butare prefecture.

[1901] Beardsley's brief testimony on this point occurred at the end of his cross-examination by the Defence, and no further clarification was sought from the parties. Des Forges provided no explanation for the source of her testimony. Reyntjens was not questioned on the basis of his knowledge concerning the deployment of the Presidential Guard.

4.4 Gitarama Prefecture

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4.4.1 Kabgayi Religious Centre, April - June

Introduction

1751. The Bagosora Indictment as well as the Kabiligi and Ntabakuze Indictment allege that, on several occasions between April and June 1994, soldiers and *Interahamwe* militiamen abducted and raped female Tutsi students and refugees at the nursing school in the Kabgayi religious centre in Gitarama prefecture. The Minister of Defence and the General Staff of the Rwandan Army were allegedly informed about these crimes and did nothing to stop them. The Prosecution also contends that Ntabakuze allegedly ordered the killing of around 80 Tutsi refugees at the centre in April or May 1994. Reference is made to Witnesses XAI, XXY, DAZ and UT as well as Expert Witness Alison Des Forges.[1902]

1752. The Ntabakuze and Kabiligi Defence teams reiterate that the specific allegations concerning their role in the crimes committed at Kabgayi are not pleaded in their Indictment. The Ntabakuze Defence submits that the Prosecution evidence placing Ntabakuze at Kabgayi lacks credibility. The evidence from Witnesses DI-35, DH-133, DH-51 and DM-25 contradicts the Prosecution's case. The Bagosora Defence argues that the perpetrators of the attacks are not sufficiently identified and disputes the allegations against Bagosora.[1903]

Evidence

Prosecution Witness XAI

1753. Witness XAI, a Hutu soldier with the 17th Battalion in Byumba prefecture, testified that he was being treated at the military hospital at Camp Kanombe at the beginning of April 1994. Between 15 and 20 April, he and 80 to 120 other wounded soldiers were transferred to the *Centre Hospitalier de Kigali* (CHK). After staying there for two to three weeks, he was moved again with 800 wounded soldiers to the hospital at the Kabgayi religious centre in Gitarama prefecture around the end of April or beginning of May. He remained there for two to three weeks until he was transferred to another hospital in Gisenyi prefecture. Witness XAI explained that the wounded soldiers were relocated at each stage when their location was on the verge of capture.[1904]

1754. About one and a half weeks after he arrived at Kabgayi, Witness XAI saw Ntabakuze come to the hospital with a gendarmerie major called Anne-Marie Nyirahakizimana, in order to boost the morale of the injured soldiers. At the time, a number of soldiers were forced to sleep outside because there were not enough beds in the hospital. Ntabakuze walked around the hospital as well as the surrounding area where there were around 80 to 120 Tutsi

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[1902] Bagosora Indictment, para. 6.60; Kabiligi and Ntabakuze Indictment para. 6.42; Prosecution Closing Brief, paras. 398-416, 1096(c), 1456(e, f), 1457(c), 1464(c, g), 1473-1476, pp. 771, 839; T. 28 May 2007 p. 19.

[1903] Ntabakuze Closing Brief, paras. 336-355, 370-384, 1950-2007, 2180-2181, 2232, 2265-2266, 2492-2495; Kabiligi Closing Brief, paras. 217, 228; Bagosora Closing Brief, paras. 692-710, 1439-1445, 1726-1727. *See also* T. 28 May 2007 p. 32 (Kabiligi); T. 30 May 2007 pp. 69, 77, 83 (Ntabakuze); T. 31 May 2007 pp. 9-10 (Ntabakuze).

[1904] T. 8 September 2003 pp. 5-11, 13, 17-18, 52-54, 58-59; T. 9 September 2003 pp. 37-38; T. 11 September 2003 pp. 13-15; T. 12 September 2003 p. 12; Prosecution Exhibit 94 (personal identification sheet). Witness XAI explained that the dates he provided were only estimates.

refugees. After decrying that "nothing has been done" in Gitarama, Ntabakuze approached a group of soldiers near the witness and said: "Soldiers are there in broad daylight outside and Tutsis are inside houses ... If you cannot do anything, I am going to bring *Interahamwe*, known as Zulus, from Mushubati." Ntabakuze and Anne-Marie left, and 10 to 15 minutes later a group of about 30 armed *Interahamwe* arrived. The assailants took about 80 Tutsi refugees towards a nearby wooded area, and 20 minutes later Witness XAI heard explosions and screams coming from there.[1905]

Prosecution Witness XXY

1755. Witness XXY, a Hutu, worked at the junior seminary in the Kabgayi religious centre assisting one of the priests in distributing food to Tutsi refugees there. According to the witness, the massacres in Gitarama prefecture began in the middle of May 1994. He heard from Jean-Claude Uwiragiye, a member of the Para Commando Battalion, that the battalion had been transferred to Mushubati in Gitarama in order to reinforce the local *Interahamwe*, who were too weak. Uwiragiye told the witness that Ntabakuze dispatched his soldiers to assist the *Interahamwe* kill Tutsis throughout Gitarama and Kibuye prefectures. Uwiragiye also spoke about an incident, occurring sometime before 2 June, where Ntabakuze and two wounded soldiers went to Kabgayi hospital and handed injured Tutsi refugees there to *Interahamwe* at a nearby roadblock to be killed. Beginning at some point in May, the "Zulus", a local *Interahamwe* group killed around 500 to 1,000 Tutsi refugees at Kabgayi.[1906]

1756. With respect to other events in Gitarama prefecture, the witness also testified that, after the interim government arrived, the witness saw Bagosora in his military Mercedes Benz jeep in Gitarama town. Soldiers told him that Bagosora was travelling around the country giving military instructions. After the fall of Gitarama to the RPF, the witness again saw Bagosora at Bulinga, saying to *Interhamwe*: "You can see that Tutsis are causing you to flee. Wherever you go, kill the Tutsis, right up to the babies." Bagosora then drove towards Kigali.[1907]

Prosecution Witness DAZ

1757. Witness DAZ, a Tutsi, was a refugee at the nursing school at the Kabgayi religious centre in Gitarama prefecture from April until June 1994. Her written statement was admitted pursuant to Rule 92 *bis*, and she was cross-examined by the Defence in relation to Kabgayi. The witness estimated that approximately 3,000 refugees were at the centre during this period. A group of two or three soldiers and 10 to 15 *Interahamwe* came to the school around three times a week, usually between 10.00 and 11.00 a.m., to abduct young men and intellectuals. Sometimes these assailants carried lists and searched for specific individuals.

[1905] T. 8 September 2003 pp. 53-59; T. 12 September 2003 pp. 15-25, 34-38. Witness XAI referred to the other officer allegedly with Ntabakuze as a major named Anne-Marie without indicating her last name. The Chamber considers that this is a reference to Major Anne-Marie Nyirahakizimana, who was convicted in Rwanda of crimes committed at the Kabgayi religious centre. *See* Ntabakuze Defence Exhibit 2 (Rwandan judgment of 3 June 1999).

[1906] T. 11 June 2004 pp. 4, 15, 19, 24, 31-32; T. 30 June 2004 pp. 79-83, 98; Prosecution Exhibit 262 (personal identification sheet). Witness XXY also testified about other killings as well as sexual violence committed by *Interahamwe* in Gitarama prefecture at places including the Mu Biti roadblock and Nyabisindu.

[1907] T. 11 June 2004 pp. 17-18; T. 1 July 2004 pp. 77-80, 83-89, 93-94. Witness XXY identified Bagosora in court. T. 11 June 2004 p. 16. The witness did not specify when or how frequently he saw Bagosora in Gitarama town.

The persons taken from the school were never seen again by the witness. The assailants also abducted women in order to rape them. In addition, there were wounded soldiers at the school who would rape the female refugees at night. The witness saw around four dead bodies every morning.[1908]

1758. Two soldiers raped Witness DAZ on 26 May around 7.00 p.m. in one of the rooms at the nursing school. The soldiers beat her with their guns as they took her to the room. When they arrived, the soldiers asked her if she was Tutsi. After she said "yes", a soldier raped her while calling her an *Inyenzi*. The soldiers also said that they were raping her because she was a Tutsi. Another soldier raped her in the same room on 28 May, calling her an *Inyenzi* and telling her that she must suffer because of her kinsmen. The witness was able to identify the perpetrators as soldiers because they wore uniforms. However, she acknowledged that she could not distinguish between soldiers by their unit or rank and that she had never seen a gendarme.[1909]

Prosecution Witness UT

1759. Witness UT, a Tutsi, was a refugee at the Kabgayi religious centre. Her statement was admitted pursuant to Rule 92 *bis*. She was cross-examined by the Defence in connection with the events at Gikondo Parish, but was not questioned on Kabgayi. The witness stated that soldiers and *Interahamwe* abducted injured refugees, including her husband, and killed them. Soldiers also came at night to take young women. The women would return the next morning and speak about suffering repeated rapes by multiple soldiers. They wore camouflage uniforms and various types of head gear. The witness stated that she could distinguish between soldiers and gendarmes by the color of their berets, but was not able to identify a particular unit.[1910]

Prosecution Expert Witness Alison Des Forges

1760. According to Des Forges, an expert in Rwandan history, the killings in Gitarama prefecture began after 17 April 1994 when the government removed a prefect known for resisting the killings. She also stated that thousands of Tutsis sought refuge at the Kabgayi religious centre. Groups of *Interahamwe* and local officials would come there with lists of individuals whom they were seeking.[1911]

Ntabakuze

1761. Ntabakuze testified that he did not visit the Kabgayi religious centre because he was at the war front in Kigali until the end of May 1994. The Para Commando Battalion was

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[1908] Prosecution Exhibit 274 (statement of 28 April 1999); T. 16 June 2004 pp. 3, 6-8, 10.
[1909] Prosecution Exhibit 274 (statement of 28 April 1999); T. 16 June 2004 pp. 5-6, 9-11.
[1910] T. 9 June 2004 p. 27; Prosecution Exhibit 259 (statement of 20 October 1998).
[1911] T. 17 September 2002 pp. 61-62; T. 18 September 2002 p. 114. Des Forges's book *Leave None to Tell the Story* reflects that around 30,000 mostly Tutsi refugees gathered under the protection of the religious officials at the Kabgayi religious centre. In many cases, local officials brought Tutsi refugees from the surrounding areas to safeguard them, but some officials, in her opinion, did so as part of a genocidal plan. Military officials never launched a major attack on the centre, but were planning to before the RPF seized the area on 2 June 1994. The book notes that around 1,500 persons were taken in small groups during the course of the events and killed. It also refers to harassment of refugees by wounded soldiers at the centre. *See* Prosecution Exhibit 3 (Alison Des Forges, *Leave None to Tell the Story* (1999)), pp. 226, 241, 247, 278. With respect to other crimes in Gitarama, her expert report refers without elaboration to attacks at Mugina, Musambira and Byimana. Prosecution Exhibit 2A (Expert Report of Alison Des Forges), p. 48.

deployed in various positions from the Giporoso junction to the Sonatube junction in Kigali from 7 April until 22 May, when the battalion retreated to Kabusunzu for two to three days. On 25 May, the battalion was transferred to Muyira commune in Butare prefecture to reinforce the Bugesera operational sector. When the RPF captured Nyanza in Butare prefecture on 29 May, the Para Commando Battalion was involved in delaying operations along the Nyanza-Gitarama road until the capture of Kabgayi by the RPF on 2 June. After that, the battalion was engaged in fighting in Gitarama town until its fall on 12 June. From 12 June until 17 July, the battalion was engaged in delaying operations along the Gitarama-Gisenyi road.[1912]

Ntabakuze Defence Witness DI-35

1762. Witness DI-35, a Hutu army officer, was stationed at the Gitarama military camp from August 1993 until his transfer to Kigali on 4 May 1994. The camp consisted of around 150 convalescing soldiers who were not combat ready. The camp nonetheless maintained several defensive positions in the area, including one at the Kabgayi religious centre and two others nearby, in order to collect intelligence and defend against an RPF attack. The gendarmerie ensured the area's overall security and had a post at Mbare, two kilometres from the Kabagayi religious centre.[1913]

1763. After the death of President Habyarimana, several thousand mostly Tutsi refugees came to the centre, fleeing the resumption of hostilities and ethnic violence in the surrounding areas, eventually numbering more than 20,000. Injured soldiers from the war front arrived at the Kabgayi hospital shortly after the resumption of hostilities for emergency treatment, but they were not forced to stay outside on the centre's grounds. During his time in Gitarama, Witness DI-35 did not hear about any crimes committed at the centre. He explained that, given the military positions there and nearby, the officers at the camp would have been notified if crimes had been committed. He also had not heard of an *Interahamwe* group known as the "Zulus". He added that Ntabakuze never visited the centre, noting that the Para Commando Battalion was on the frontline in Kigali at the time.[1914]

Ntabakuze Defence Witness DH-133

1764. Witness DH-133, a Hutu student at the seminary in the Kabgayi religious centre, testified that he was at the centre's hospital caring for an injured relative from 15 April until 1 June 1994. He described Kabgayi religious centre as a large religious complex with several buildings, including the largest hospital in Gitarama, surrounded by woods on top of a hill covering around six hectares. While at Kabgayi during this period, he spent around 15 hours a day at the hospital caring for the wounded, but at times also moved freely about the other parts of the centre. Around 25,000 Hutu and Tutsi persons, cared for by CARITAS and the

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[1912] T. 18 September 2006 pp. 65-66; T. 20 September 2006 pp. 15-29; T. 21 September 2006 pp. 22-24; Ntabakuze Defence Exhibit 235 (Para Commando Battalion background), p. 38. This exhibit was prepared by Ntabakuze.

[1913] T. 24 November 2005 pp. 22-24, 27, 29-35, 37-38, 42, 45-48; Ntabakuze Defence Exhibit 196 (personal identification sheet). Witness DI-35 prepared two sketches of Gitarama town and the Kabgayi religious centre and identified the various locations, which he described. *See* Ntabakuze Defence Exhibit 197 (Sketch of Gitarama Town); Ntabakuze Defence Exhibit 198 (Sketch of Kabgayi Religious Centre). The witness noted that the Kabgayi religious centre, which is situated just outside of Gitarama town, covered seven to 10 hectares and was surrounded by a fence and eucalyptus trees. In addition to the buildings for religious services, there were several schools, a seminary, a hospital and buildings for various religious communities.

[1914] T. 24 November 2005 pp. 39-43, 47-52.

dioceses, eventually sought refuge at Kabgayi, fleeing local ethnic violence as well as the war. The witness noted that the distance from Kabgayi to Mushubati was around 10 kilometres. He also heard that Augustin Bizimana, the Minister of Defence came periodically to the centre.[1915]

1765. The witness stated that there were soldiers guarding the centre from his arrival in April and that wounded soldiers arrived around 15 May 1994, but possibly earlier. He recounted an incident where unknown assailants abducted around 20 persons, including religious personnel, with a minibus and killed them a few kilometres away in Mpanda, Butare prefecture. He also noted that militiamen or possibly the RPF infiltrated the centre and abducted and killed some of the refugees. However, the witness did not hear about 80 Tutsis being removed from the hospital.[1916]

Ntabakuze Defence Witnesses DH-51 and DM-25

1766. Witness DH-51, a Hutu member of the Para Commando Battalion who frequently accompanied Ntabakuze, testified that Ntabakuze never went to Kabgayi. He accepted the Prosecution's proposition that there were some wounded members of the Para Commando Battalion at the Kabgayi religious centre.[1917] Witness DM-25, a Hutu government official who lived near Kabgayi, stated that he did not hear about Ntabakuze's involvement in the events at Kabgayi.[1918]

Deliberations

1767. There are a number of facts related to the events at the Kabgayi religious centre that are not disputed. From 7 April to 2 June 1994, thousands of mostly Tutsi refugees gathered at the centre, fleeing ethnic violence in surrounding areas as well as the resumed hostilities. Several soldiers from the Gitarama military camp were stationed there or nearby. There was also a gendarmerie post two kilometres away. During this period, wounded soldiers received treatment at the Kabgayi hospital, including some members of the Para Commando Battalion. In addition, some women, including Witness DAZ, were raped by individuals in military uniform.[1919]

[1915] T. 1 March 2006 pp. 75, 82-92; T. 10 March 2006 pp. 57, 59-60, 62-63, 69; Ntabakuze Defence Exhibit 206 (personal identification sheet). Witness DI-133 was shown a sketch made by Witness DI-35 of the Kabgayi religious centre and agreed that it was accurate. *See* T. 1 March 2006 p. 84; Ntabakuze Defence Exhibit 198 (Sketch of Kabgayi religious centre). The witness also viewed a BBC video of what purported to be Kabgayi centre (Prosecution Exhibit 382). He recognised that there were similarities with forests, buildings and basketball equipment, but did not entirely recognise that it was Kabgayi. T. 10 March 2006 pp. 67-71, 75. Kambanda, who frequented Kabgayi when the interim government was in Gitarama, was also shown the video. He was not able to recognise the location in the video as Kabgayi. T. 12 July 2006 pp. 82-84.

[1916] T. 1 March 2006 pp. 84, 86-87, 90-92; T. 2 March 2006 pp. 1, 12-14; T. 10 March 2006 pp. 61-65, 70, 73-75. Witness DI-133 also attested to hearing about an attack by the RPF on the centre after the fall of Gitarama on 2 June, resulting in the death of Bishop Thaddeé Nsengiyumva, Bishop Vincent Nsengiyumva, Bishop Joseph Ruzidana as well as about 10 other religious personnel on 5 June 1994. T. 1 March 2006 p. 93; T. 2 March 2006 pp. 2, 8-12.

[1917] T. 6 December 2005 pp. 7-8, 10, 25, 30-34, 36-37, 52; Ntabakuze Defence Exhibit 199 (personal identification sheet).

[1918] T. 11 April 2005 pp. 64-65; Ntabakuze Defence Exhibit 81 (personal identification sheet).

[1919] After the close of the trial, the Ntabakuze Defence claimed that the Prosecution was in possession of exculpatory material implicating the RPF in crimes committed at the Kabgayi religious centre. The Chamber determined that the alleged incident referred to by the Defence was different from the crimes at issue in this case

1768. There are two allegations directly implicating Ntabakuze in the killing of Tutsi civilians at Kabgayi by *Interahamwe*.[1920] The first comes from Witness XAI who testified that, at the end of April or early May, Ntabakuze arrived at the centre with Major Anne-Marie Nyirahakizimana, complained about the presence of Tutsis there and sent *Interahamwe* to kill them in a nearby wooded area. The second comes from Witness XXY who heard that Ntabakuze came to the centre around 2 June and handed Tutsis over to *Interahamwe* at nearby roadblocks to be killed. The witness also testified generally that the Para Commando Battalion was sent to Gitarama prefecture to reinforce the *Interahamwe*.

1769. Turning first to Witness XAI's account, the Chamber notes that there are differences between his testimony about Ntabakuze's presence at the Kabagayi religious centre and his statement to Tribunal investigators in April 2001. First, according to his examination-in-chief, Ntabakuze came to the centre and complained about the presence of Tutsi refugees, promising to send the Zulu *Interahamwe* group. He then left before the *Interahamwe* arrived and killed about 80 Tutsi refugees near the centre. However, the witness's statement indicates that Ntabakuze, while at the centre, dispatched his military escorts to bring the *Interahamwe* there. Ntabakuze then conferred with the *Interahamwe* at Kabgayi before the assailants took 80 Tutsis away to be killed.[1921]

1770. Witness XAI was confronted with the description of the attack that he gave in his statement on multiple occasions during cross-examination and initially affirmed his statement.[1922] However, after continued questioning on this point, he changed his position and again noted that Ntabakuze left before the *Interahamwe* arrived, which was consistent with his prior position in his examination-in-chief. He also intimated that there might have been interpretation problems when his statement was given.[1923] Nevertheless, when asked whether the investigators "altered" or "distorted" his statement, the witness replied: "The investigators did their job. They recorded my statement the way it was done. I agree with all they have said or written down in the statement."[1924]

1771. The Chamber raised the discrepancy about Ntabakuze's presence during the attack at the conclusion of the witness's examination. This time, the witness explained that the

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and occurred after the Rwandan military had withdrawn from the area. *See* Decision on Ntabakuze Defence Motions Concerning Disclosure of Exculpatory Evidence, 22 October 2008, para. 6.

[1920] At one point in its Closing Brief, the Prosecution suggests that Witness XXY's testimony corroborates Witness XAI's account. However, in another part of its brief, the Prosecution suggests that the two witnesses described separate incidents. *Compare* Prosecution Closing Brief, para. 411 ("In one incident, a corporal in the Paracommando Battalion told Witness XXY that the accused Ntabakuze went to the Kabgayi hospital, took wounded Tutsis out of the hospital, and gave them to the *Interahamwe* at the nearby roadblock to be killed. The accused Ntabakuze also came to the hospital in May 1994 and told witness XAI …")(internal citations omitted), *with id.* para. 1097 ("XAI's testimony was corroborated in material respects by witnesses DBQ, XAQ, LN, XAB and XXY"). The Chamber considers both scenarios.

[1921] Kabiligi Defence Exhibit 25 (statement of 11 April 2001).

[1922] T. 12 September 2003 pp. 15-16 ("Q. … And at the end the escort leaves in the Accused's vehicle and returned some ten minutes later with about 30 *Interahamwe* armed with rifles and grenades. And, finally, after the *Interahamwe* conferred with the Accused, they abduct some 30 refugees whom they killed at the Kabgayi forest. Q. So you stand by that statement; is that correct, Witness? A. Yes, I stand by that statement."), pp. 24-25 ("Mr. President: So the sentence read out by Defence counsel, you maintain the substance of that sentence; it is correct. The Witness: Yes, the sentence or that section that has just been read out by counsel is in conformity with the statement I made, and it is the truth.").

[1923] T. 12 September 2003 p. 25.

[1924] *Id.* p. 25.

description of the incident that was in his statement was not what he told the investigators.[1925] In the Chamber's view, the difference between his testimony and his statement concerning whether Ntabakuze was present and conferred with the *Interahamwe* at the centre before the attack is a significant discrepancy. Furthermore, the witness provided conflicting explanations for it, initially affirming the version of events in his statement and then repudiating it several times during the course of his cross-examination. The Chamber considers that the witness did not adequately explain the discrepancy between his testimony and his statement. In addition, his inconsistent explanations for the differences raise further questions about his credibility.

1772. There are also differences between Witness XAI's testimony and other evidence concerning this incident. For example, the Prosecution appears to rely on the Rwandan judgment of Major Nyirahakizimana to corroborate Witness XAI's testimony.[1926] However, Nyirahakizimana's crime, as described in the Rwandan judgment, involved *Interahamwe* taking a group of Tutsi refugees by minibus to Gisenyi prefecture to be killed, not killing them in a wooded area near the centre, as Witness XAI suggested. Moreover, neither the description of the evidence nor the factual findings recounted in Nyirahakizimana's judgment mentions Ntabakuze.[1927] Furthermore, the distance of 10 kilometres between Kabgayi centre and Mushubati undermines Witness XAI's claim that *Interahamwe* came within 10 to 15 minutes of Ntabakuze's alleged departure. These issues raise additional concern with respect to the reliability of the witness's evidence.[1928] Therefore, the Chamber declines to rely on Witness XAI's account in the absence of corroboration.

1773. The question remains whether Witness XXY's testimony implicating Ntabakuze in killings at the Kabgayi religious centre is reliable. The witness's account is based on hearsay. Moreover, even though he received this information from a purported member of the Para Commando Battalion, he was not certain whether his source had first-hand knowledge of the incident.[1929] Therefore, the reliability of the witness's evidence on this point is questionable. For the same reasons, the Chamber is also not satisfied that his hearsay evidence shows that Ntabakuze or the Para Commando Battalion were transferred to Gitarama prefecture to reinforce the *Interahamwe*'s efforts to kill Tutsis. In addition, the Chamber has other concerns with Witness XXY's credibility. For example, his testimony, which suggests that the "Zulus" killed between 500 and 1,000 Tutsis in an attack at Kabgayi, conflicts with the evidence of Alison Des Forges, who noted that the "Military and militia never launched an open assault on the extensive camps" there.[1930] For these reasons, the Chamber also declines to accept his other testimony, such as that related to Bagosora, without corroboration.

[1925] *Id.* pp. 36-38.
[1926] Prosecution Closing Brief, para. 411.
[1927] Ntabakuze Defence Exhibit 2 (Rwandan judgment of 3 June 1999).
[1928] The fact that the Para Commando Battalion was engaged in combat operations in Kigali until the end of May 1994 leaves the Chamber with further doubt that Ntabakuze would personally travel to the Kabgayi religious centre for such a brief visit. This issue is not dispositive since it would be reasonable for Ntabakuze to visit the wounded members of the Para Commando Battalion who were at Kabgayi religious centre. However, the lack of detail about when wounded members of the Para Commando Battalion were at the centre as well as their number prevents the Chamber from concluding that Ntabakuze visited the hospital at the centre as opposed to commanding his troops who were engaged in active combat at the war front.
[1929] T. 30 June 2004 p. 81 ("I'm simply narrating the information that he gave me, but I cannot say whether he was an eyewitness or not. He could have gotten the information from someone else. I do not know.").
[1930] Prosecution Exhibit 3 (Alison Des Forges, *Leave None to Tell the Story* (1999)), p. 278.

1774. Accordingly, for the foregoing reasons, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that Ntabakuze was present at the Kabgayi religious centre and played a role in the killing of Tutsi civilians there.

1775. Turning to the evidence of other crimes at the Kabgayi religious centre, it follows from the unchallenged evidence from Witnesses DAZ and UT that individuals in military uniforms and *Interahamwe* repeatedly raped some Tutsi women at the complex. Some of these assailants were wounded military personnel being treated at the Kabgayi hospital. In the case of Witness DAZ, the assailants said that they were raping her because she was a Tutsi. Their evidence also reflects that groups of assailants periodically abducted refugees, sometimes using lists. While the evidence of Witness DI-35 suggests that there were no crimes committed in the centre, this testimony is not convincing in light of the evidence of Witnesses DAZ and UT. In addition, Witness DI-35's evidence covers a limited period, given his transfer to Kigali on 4 May. Therefore, he was not in a position to know what transpired at the centre after that date. The Chamber notes, however, that there is little evidence indicating whether the military personnel were part of the army or the gendarmerie and no evidence as to their unit. The evidence of Witnesses DAZ, UT and Des Forges about the individual crimes committed at the centre is too general for the Chamber to make any specific findings on their scope.[1931]

1776. There is insufficient evidence demonstrating that Bagosora, Kabiligi and Ntabakuze were aware of or otherwise connected to the specific crimes committed at Kabgayi or in Gitarama prefecture in general. The Chamber has not found that Bagosora had authority over the Rwandan military after 9 April when the Minister of Defence returned (IV.1.2). Similarly, the Prosecution did not establish that Kabiligi exercised command over the army (IV.1.3). The evidence also does not show that either of them were at Kabgayi during the relevant events or had any specific involvement in the crimes committed there or elsewhere in the prefecture. As discussed above, it was not proven that Ntabakuze came to the centre. While there were some wounded members of the Para Commando Battalion at Kabgayi, there is not a sufficient basis to determine that they were involved in the rape or killing of refugees there.

1777. During the course of the trial, the Chamber concluded that there was adequate notice for these allegations.[1932] In view of the findings on this event, it is not necessary to revisit its previous decisions on notice.

[1931] Witness DAZ stated that she could not identify rank or unit. She was not familiar with gendarmes. Witness UT, who referred to "soldiers", said that she could distinguish between soldiers and gendarmes by the colour of their berets in the context of her cross-examination on Gikondo Parish. She was not cross-examined on the part of her statement related to Kabgayi. Moreover, while there was a military camp in Gitarama and a few soldiers stationed at the centre, there was also a nearby gendarmerie post, and Major Nyirahakizimana, who was convicted in Rwanda of crimes at Kabgayi, was a gendarme. *See* Ntabakuze Defence Exhibit 2 (Rwandan judgment of 3 June 1999).

[1932] *See* Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 66, 68-69; Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007, paras. 22-24; Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 46-49.

4.4.2 Musambira Roadblock, 10 June

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Introduction

1778. The Kabiligi and Ntabakuze Indictment alleges that, from April to July 1994, Kabiligi authorised soldiers and militiamen to massacre the Tutsi population. In particular, the Prosecution claims that, around 10 June, he encouraged *Interahamwe* to murder more than 10 people at a roadblock at Musambira in Gitarama prefecture. Reference is made to Witnesses DY and KJ.[1933]

1779. The Kabiligi Defence maintains that the evidence concerning the attack is not pleaded in the Indictment. It argues that Witness DY lacks credibility and is contradicted in part by Witnesses DK-11 and ZDR-2. The allegation, even if found true, is not criminal.[1934]

Evidence

Prosecution Witness DY

1780. Witness DY, a Tutsi and a member of the Reconnaissance Battalion, stated that he served as Kabiligi's escort from around 20 April until the end of June 1994. Around 10 June, he travelled with Kabiligi as a gunner in a light armoured vehicle from Camp Kigali towards Gitarama town. On the way, they noticed that a crowd had gathered near Musambira. Taking the road headed towards the Musambira commune office, they stopped at a roadblock where there were about 30 *Interahamwe* carrying firearms and traditional weapons. A group of more than 10 people in civilian clothes were sitting about three metres from the road.[1935]

1781. Kabiligi exited the vehicle and, when a man armed with a rifle approached, Kabiligi greeted him by saying, "Good day, Abdala." Abdala, whom Witness DY identified as a notorious *Interahamwe* also known as "Abdulhamani", replied, "Good day, General," then told Kabiligi, "Here are the *Inyenzis* whom we have arrested." Without any further comment from Kabiligi, Abdala turned around and shot at the group, and the other *Interahamwe* immediately shot and killed the group members in an attack that lasted about 60 seconds. Kabiligi did nothing to stop this massacre. Afterwards Kabiligi told Abdala: "Be vigilant. Make sure that no one infiltrates your ranks."[1936]

1782. Kabiligi's vehicle continued on the road towards the Musambira commune office. He exited the vehicle at the Musambira market, and looked at the surrounding hills. Upon re-entering the vehicle, Kabiligi informed headquarters that they would not go to Gitarama but back to Kigali. On the way back, they passed the same roadblock. Witness DY saw that the *Interahamwe* were still there with the dead bodies. The group returned to headquarters. Kabiligi never commented on the killing.[1937]

[1933] Kabiligi and Ntabakuze Indictment, paras. 5.1, 6.31; Prosecution Closing Brief, paras. 131, 194-195, 605-606, 609, 620, 1281-1285, 1370, 1372, pp. 712-713, 716, 762-764, 766, 772-773, 776, 779, 782, 792-795, 815, 829, 832-834, 836, 839-841, 845-846.
[1934] Kabiligi Closing Brief, paras. 110, 184, 192, 419-450, 795-797, 806, 809-813, 825-832, 1501, 1503-1504, 1507, 1509, 1615-1617, 1664-1669, pp. 600-601, 614-616; T. 28 May 2007 pp. 48-49; T. 1 June 2007 p. 55.
[1935] T. 16 February 2004 pp. 6, 8, 19, 41, 53-55; T. 17 February 2004 pp. 11, 15, 19-21, 26-27; Prosecution Exhibit 188 (personal identification sheet).
[1936] T. 16 February 2004 pp. 53-56; T. 17 February 2004 pp. 21-23, 25-26.
[1937] T. 16 February 2004 pp. 56-57; T. 17 February 2004 pp. 15, 23, 25-26, 39-40.

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Prosecution Witness KJ

1783. Witness KJ, a member of the gendarmerie in Kibuye in 1994, testified that he was stopped by *Interahamwe* at a roadblock at Musambira, Gitarama prefecture around 14 or 15 April 1994, which was commanded by a man named Abdoulrahmani.[1938]

Ntabakuze Defence Witness DK-11 and Nsengiyumva Defence Witness ZDR-2

1784. Witnesses DK-11 and ZDR-2, two Hutu soldiers who worked with Kabiligi, each provided a list of persons escorting him between May and July 1994. Witness DY's name is not included. Both witnesses acknowledged that they might not be able to recall every member of Kabiligi's personal entourage.[1939]

Deliberations

1785. The Prosecution relies on Witness DY to establish Kabiligi's presence and encouragement of the killing of about 10 Tutsi civilians by *Interahamwe* led by Abdala at a roadblock in Musambira in Gitarama prefecture. It also points to Witness KJ, who testified that *Interahamwe* led by this same person in coordination with the military, manned a roadblock in Musambira in mid-April.

1786. As mentioned elsewhere (III.4.1.8-9), it may be asked whether the witness, a Tutsi, would be assigned to headquarters to escort Kabiligi from late-April until June 1994 in the context of the events which were unfolding in Rwanda at the time. Witnesses DK-11 and ZDR-2, who were part of Kabiligi's security detail during the same period, did not mention Witness DY's name when listing their colleagues that served in Kabiligi's escort team. Even though they admitted that they might not be able to recall all their colleagues, their testimony, combined with Witness DY's ethnicity, create a certain doubt as to whether Witness DY actually was Kabiligi's escort.

1787. Moreover, there are differences between Witness DY's testimony and his previous statements. In a *Pro Justitia* statement to Rwandan authorities in September 1997, the witness placed the event in May, not June, and explained that Kabiligi only passed a group of *Interahamwe* who had arrested 10 people. Later, when they passed again, the *Interahamwe* had killed the individuals.[1940] In a statement to Tribunal investigators in October 1997, the witness gave a similar version but added that Kabiligi told the *Interahamwe* to remain vigilant before the killing took place in his absence.[1941] However, in a statement to investigators in January 2004, one month before his testimony, the witness corrected his

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[1938] T. 19 April 2004 pp. 4, 8-11; T. 20 April 2004 pp. 27-28, 50-54, 60-61, 68-73, 75; T. 27 April 2004 p. 2, 9-12, 14; Prosecution Exhibit 212 (personal identification sheet).

[1939] Witness DK-11, T. 19 July 2005 p. 61; T. 20 July 2004 pp. 3-4, 38, 41-42, 44, 46, 49-51; Defence Exhibit 144 (personal identification sheet). Witness ZDR-2, T. 30 March 2006 pp. 9, 11, 16, 19-20; Defence Exhibit 170 (personal identification sheet). *See also* Prosecution Exhibits 354 (Witness DK-11's list of Kabiligi's escorts and drivers) and 386 (Witness ZDR-2's list of Kabiligi's escorts and drivers).

[1940] Kabiligi Defence Exhibit 29 (*Pro Justitia* statement of 18 September 1997), stating that "... we noticed that the *Interahamwe* had arrested about ten people that [they] were going to kill. We continued our journey to the commune office. On our way back, we noticed that the *Interahamwe* had already killed those people"). Kabiligi then stated that they should be vigilant.

[1941] Kabiligi Defence Exhibit 28 (statement signed on 6 October 1997), according to which Kabiligi asked the *Interahamwe to* be vigilant before he continued to the commune office and returned later to find that the killings had taken place ("When we returned, the people had been killed by the *Interahamwe* and their bodies were still at the roadblock.").

previous statement to the effect that the persons at the roadblock "had been killed in the presence of Kabiligi" before they continued.[1942] This was also his testimony.

1788. When confronted with this discrepancy, Witness DY testified that the two first statements had been recorded improperly. The Chamber finds this explanation surprising. It appears unlikely that both a Rwandan judicial official and Tribunal investigators would have overlooked such a highly incriminating element as Kabiligi's presence during the killings. In addition, both statements reflect that they were read back to the witness. He confirmed that the Tribunal investigators did so. The wording of the first two statement is clear that Kabiligi was not present during the killing. The witness could not provide any other explanation.[1943] In view of the evolving nature of the three statements, the Chamber cannot exclude that the witness gradually has sought to implicate Kabiligi.

1789. Witness KJ's evidence does not corroborate Witness DY's version. It simply confirmed that *Interahamwe*, led by Abdoulrahmani, manned a roadblock in Musambira in mid-April. No reference was made to any massacre on or about 10 June in Kabiligi's presence. Having considered the totality of the evidence, and noting that Witness DY's testimony is uncorroborated, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Kabiligi encouraged *Interahamwe* to kill more than 10 people at a roadblock at Musambira in Gitarama prefecture around around 10 June 1994.

1790. In view of its finding, the Chamber need not revisit its previous determination that Kabiligi had sufficient notice of these allegations.[1944]

[1942] Kabiligi Defence Exhibit 31 (statement of 14 January 2004).
[1943] T. 17 February 2004 pp. 25-26, 37-39. Witness DY said that he corrected the time period to June (p. 26). However, this is not reflected in any statement.
[1944] Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007, paras. 32-34.

4.5 Kibuye Prefecture

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4.5.1 Bisesero, June

Introduction

1791. The Nsengiyumva Indictment alleges that, in June 1994, Edouard Karemera ordered Nsengiyumva to send troops to the Bisesero area in Kibuye prefecture where Tutsi refugees had gathered to flee massacres. From April to June 1994, Nsengiyumva purportedly chaired meetings at the Umuganda Stadium in Gisenyi prefecture where he encouraged militiamen to continue the massacres. According to the Bagosora Indictment, military authorities called on militiamen to eliminate Tutsis throughout the country and provided them with logistical support. Based on these allegations, the Prosecution contends that, in June 1994, Nsengiyumva recruited and trained local youth at the stadium and then, along with Bagosora, dispatched them to kill Tutsi civilians in Kibuye prefecture. Reference is made to Witnesses Omar Serushago, ABQ, ZF and KJ as well as Expert Witness Alison Des Forges.[1945]

1792. The Nsengiyumva Defence argues that the Prosecution's evidence is either hearsay or circumstantial. Furthermore, the Nsengiyumva and Bagosora Defence contend that it lacks credibility and is inconsistent with the testimonies of Edouard Karemera, Joseph Nzirorera, Nsengiyumva and Bagosora.[1946]

Evidence

Prosecution Expert Witness Alison Des Forges

1793. Alison Des Forges, an expert in Rwandan history, testified that, from early April to the end of June 1994, Tutsis sought sanctuary at the top of a hill in Bisesero. The authorities launched joint militia and military operations, attacking these refugees repeatedly during this period. The refugees used their superior positioning on the hill and rudimentary weapons, such as sticks and stones, to fend off attacks. By June, they were starving and in tatters. Nonetheless, their continued existence posed a serious threat to the government if the international community, including the French soldiers participating in *Opération Turquoise*, learned that the Rwandan government's operations in the area were directed at eliminating Tutsis rather than the RPF. By late June, the government was determined to eliminate the surviving refugees on Bisesero hill. Des Forges referred to a letter sent from the Minister of Interior, Edouard Karemera, asking Nsengiyumva to send soldiers from his command to support gendarmes and the local population in a "clearing up" operation in Bisesero.[1947]

[1945] Nsengiyumva Indictment, paras. 6.27, 6.30; Bagosora Indictment, paras. 6.44-6.45, 6.62-6.63. Prosecution Closing Brief, paras. 563-564, 632, 931-942, 1016-1020, 1370, 1377, 1385-1386, 1512-1513, 1514 (f-i), 1515-1516, pp. 763, 765, 773, 775, 888-891. The Prosecution also points to evidence of a meeting at the *Hôtel Méridien* where government officials attempted to raise money to buy weapons.

[1946] Nsengiyumva Closing Brief, paras. 460-471, 572, 578-587, 1031-1044, 1190-1193, 1800-1809, 1822, 1922, 1956, 2357, 2371, 2519, 2693-2694, 2702, 2704, 3048-3053, 3200-3202, 3205-3207; Bagosora Closing Brief, paras. 1415-1428.

[1947] T. 10 September 2002 pp. 36-37; T. 18 September 2002 pp. 102-105; Prosecution Exhibit 50 (Edouard Karemera's letter to Nsengiyumva, undated). Karemera explained that he sent it on 18 June 1994 (*see* below). The telegram uses the term "*opération de ratissage*", which Des Forges translated as "clearing up".

Prosecution Witness Omar Serushago

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1794. Serushago, a Hutu *Interahamwe* leader, stated that Bernard Munyagishari, the head of the *Interahamwe* in Gisenyi prefecture, attended a meeting at the *Hôtel Méridien* in June 1994. According to Munyagishari, the purpose of the meeting was to raise money for weapons and ammunition to fight Tutsis on Bisesero hill and Nyange in Kibuye prefecture. Several prominent figures attended the meeting, including Emmanuel Ndindabahizi, Augustin Ngirabatware, Joseph Nzirorera, Juvénal Uwilingiyimana and Nsengiyumva. Both Ndindabahizi and Nzirorera spoke of the need for reinforcements and weapons to kill the Tutsis who were resisting in Bisesero. Nsengiyumva said that ammunition and weapons were available, and several persons in attendance contributed money. Serushago later gave 10,000 Rwandan francs.[1948]

1795. At some point in June, Serushago saw Nsengiyumva travelling at night from the Goma airport to Gisenyi town with two trucks requisitioned from the local brewery. He told Serushago that he was carrying weapons and asked him to inform the MRND and CDR youth that the ammunition was now available. Nsengiyumva later summoned Serushago and other *Interahamwe* to the military camp, requesting them to take a vehicle and call on the youth of Gisenyi to provide reinforcements for an attack on Kibuye prefecture. Serushago and Rashid Gahutu, another *Interahamwe*, drove Gahutu's Toyota car around town asking youth to participate in the attack. Local party militias then gathered at the Umuganda Stadium, where they were given weapons and sent by bus to Bisesero and Nyange. Serushago sent *Interahamwe* under his command to assist with the Bisesero attack but did not participate in it.[1949]

Prosecution Witness ABQ

1796. Witness ABQ, a Hutu student, testified that around the middle or the end of June 1994, he heard megaphone announcements that Nsengiyumva was encouraging youth from Gisenyi prefecture to join the army. The witness went to the Umuganda Stadium where he participated in selection competitions. Between 100 and 400 individuals were selected and received military training for seven days at the stadium. The witness, who was one of the recruits, learned how to march and to handle firearms, such as Kalashinkovs and R-4 rifles. The soldiers providing the training were from the Gisenyi military camp and the Bigogwe training camp.[1950]

1797. On the last day of training, the recruits were informed that they would be departing on their mission. Nsengiyumva came to the stadium around midnight. This was the first occasion Witness ABQ saw him there. Nsengiyumva announced that he had purchased new Kalashnikovs with rocket launcher mounts from South Africa, and that the recruits would be

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[1948] T. 18 June 2003 pp. 3, 5-7, 41-45; T. 19 June 2003 pp. 13-14, 69, 71-72; Prosecution Exhibit 54 (personal identification sheet). After clarifying that he did not attend the meeting, Serushago specified that his contribution was collected from him while he was at a customs check point. *See* T. 18 June 2003 pp. 48-50, 69-70. On 5 February 1999, pursuant to a plea agreement, Omar Serushago was found guilty by the Tribunal of genocide, murder, extermination and torture for crimes he committed as an *Interahamwe* in Gisenyi. He was sentenced to 15 years imprisonment. *See* T. 18 June 2003 pp. 2-3; *Serushago* Trial Judgement, p. 15.

[1949] T. 18 June 2003 pp. 44-46; T. 19 June 2003 pp. 13-15, 20-23, 69-70.

[1950] T. 6 September 2004 pp. 3, 28-30, 34; T. 7 September 2004 pp. 37-43; T. 9 September 2004 pp. 23-24, 28-29, 31; Prosecution Exhibit 293 (personal identification sheet).

sent to Kigali to fight at Mburabuturo and Gisozi. He then introduced Bagosora, who said that the *Inyenzi* were occupying these two locations and shelling Kigali town.[1951]

1798. A short time later, weapons were distributed to the recruits and they boarded four ONATRACOM buses. At a junction in Nyundo, the buses passed the road to Kigali and continued towards Kibuye prefecture instead. The witness knew that no *Inkotanyi* troops were fighting there. He had also previously heard an announcement made over a megaphone attached to a vehicle owned by Gahutu that *Interahamwe* were requesting reinforcements to fight *Inyenzi* on a "major hill" in Bisesero. At a roadblock in Nyamyumba commune in Gisenyi prefecture, Witness ABQ and six others got off the bus.[1952]

1799. In July 1994 in the Congo, a person who had been on the bus, informed Witness ABQ that it went to the Bisesero hill. Military leaders led the recruits, instructing them to bring *Inyenzi* down from the hill.[1953]

Prosecution Witness ZF

1800. Witness ZF, a Hutu radio operator at Butotori military camp, testified that, sometime in 1994, groups of militia were assembled and trained in "Gisenyi stadium". They were eventually equipped with arms brought in from the Seychelles and transported through Goma and sent as reinforcements to Mburabuturo on ONATRACOM buses. At the height of the genocide, Hutu militiamen pursued Tutsis, forcing the latter to seek refuge on Bisesero hill in Kibuye. As the civilian attackers could not overcome these Tutsis, military reinforcement was sought from the Gisenyi high command. Lieutenant Bizumuremyi informed the witness that Nsengiyumva ordered Bizumuremyi to organise the operation, with Bizurumemyi deploying reinforcements to Bisesero on ONATRACOM buses.[1954]

Prosecution Witness KJ

1801. In June 1994, Witness KJ, a gendarme stationed in Kibuye prefecture, saw several ONATRACOM buses at the prefecture office. They carried between 300 and 400 *Interahamwe,* armed with traditional weapons, who were singing: "Yea, let us exterminate them. Yea, let us exterminate them in the forests. We are going to defeat them, and we are going to win this war." Several of the *Interahamwe* told the witness that they were from Ramba, Giciye and Kayovo communes in Gisenyi prefecture and Bugarama commune in Cyangugu prefecture. They had been sent to assist in eliminating the Tutsis resisting in Bisesero. Those from Bugarama indicated that Yussuf Munyakazi, commander of the *Interahamwe*, had sent them.[1955]

1802. After the buses had arrived, Eliézer Niyitegeka, Gérard Ntakirutimana, Alfred Musema and others arrived. Niyitegeka addressed the crowd and thanked them for coming

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[1951] T. 6 September 2004 pp. 30-32, 34-35; T. 7 September 2004 p. 44; T. 9 September 2004 pp. 28-31.
[1952] T. 6 September 2004 pp. 32-34; T. 7 September 2004 pp. 43-46; T. 9 September 2004 pp. 25-26. ONATRACOM stands for *Office national des transports en commune*. Witness ABQ did not see Omar Serushago, whom he knew, at the Umuganda Stadium the night the buses left for Bisesero. *See* T. 7 September 2004 pp. 45-46.
[1953] T. 6 September 2004 p. 34; T. 9 September 2004 p. 27.
[1954] T. 26 November 2002 pp. 93-95; T. 27 November 2002 p. 13; T. 28 November 2002 pp. 61-62, 82-84. Witness ZF's father was a Hutu, but the witness was raised as a Tutsi by his mother's family. *See* T. 27 November 2002 p. 13.
[1955] T. 19 April 2004 pp. 4-7, 37-40; T. 20 April 2004 pp. 65-67; Prosecution Exhibit 212 (personal identification sheet).

from "various corners of the prefecture". He also thanked Musema for his efforts in fighting Tutsis on Bisesero hill and Obed Ruzindana for his efforts to overcome the Tutsi enemy. Niyitegeka stated that the Ministry of Defence and the Ministry of the Interior had invited all those who had gathered so that they could continue exterminating Tutsis who were still resisting around Bisesero. He said that Robert Kajuga was also sending about 100 *Interahamwe* reinforcements. Additional ONATRACOM buses from Kigali carrying the singing *Interahamwe* sent by Kajuga arrived as Niyitegeka spoke.[1956]

1803. Witness KJ testified that the buses had left the following morning. He later learned from those returning from Bisesero, including gendarmes, that the Tutsis there had been attacked and those in hiding exterminated. This occurred near the end of the war, but the witness was unaware whether it was the final attack. Generally, it was the *Interahamwe* who carried out the attacks in Kibuye prefecture, but the gendarmes and army also provided assistance. According to the witness, the Ministry of Defence and the general staff of the gendarmerie provided necessary material, whereas the Minister of the Interior led groups composed of civilians, gendarmes and soldiers in exterminating the Tutsis. He explained that there were no military camps in the area, but soldiers escorted the assailants.[1957]

Nsengiyumva

1804. Nsengiyumva denied that he attended a meeting in June 1994 at the *Hôtel Méridien* to raise money for an attack in Bisesero. He acknowledged, however, that on 19 June, he received a telegram from Minister Edouard Karemera requesting him to send troops to Bisesero to assist the gendarmerie and the population to "carry out a mopping-up operation in Bisesero where there were RPF troops". Nsengiyumva never sent any soldiers because he took orders from the chief of staff, not from a governmental minister. Bisesero was not in his area of operation, and he had no troops to spare. A day or two after Nsengiyumva received the telegram, the chief of staff arrived in Gisenyi and spoke with Nsengiyumva, indicating that he would sort out the issue.[1958]

1805. Nsengiyumva disputed Witness ABQ's testimony about the training and recruitment at the Umuganda Stadium, explaining that he had received instructions from the general staff to recruit youth to replace soldiers injured in battle. The recruitment was done by local authorities, such as the prefect and the *bourgmestre*. Starting approximately two weeks after President Habyarimana's death, approximately 400 recruits were taught tactics and how to handle weapons at the Umuganda Stadium. Nsengiyumva oversaw the training and went there on a few occasions. The training ended in June when the general staff requested that the recruits should intervene in Kigali. Nsengiyumva informed them that they were headed to the front in Kigali. The recruits left on ONATRACOM buses without weapons or uniforms as Nsengiyumva had none of either for them. He did not receive confirmation that they arrived in Kigali, but he overheard a radio communiqué that they fought at Mburabuturo.[1959]

[1956] T. 19 April 2004 pp. 40-42; T. 22 April 2004 pp. 31-34.
[1957] T. 19 April 2004 pp. 42-43, 63-66. Witness KJ could not recall the names of the gendarmes that participated in the attack. There were prior attacks in Bisesero, in particular led by Mika Muhimana. *See* T. 19 April 2004 pp. 35-36, 42-43.
[1958] T. 5 October 2006 pp. 67-69; T. 6 October 2006 pp. 1-3, 29-31; T. 11 October 2006 p. 51; T. 12 October 2006 pp. 88-89; T. 13 October 2006 pp. 7-8.
[1959] T. 5 October 2006 pp. 67-68; T. 9 October 2006 pp. 16-17; T. 11 October 2006 pp. 27, 32-36. Nsengiyumva noted that the recruits were not trained in using Kalashnikovs or G3s. *See* T. 11 October 2006 pp. 35-36.

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Bagosora

1806. Bagosora denied that he addressed a gathering of recruits at Umuganda Stadium in June 1994 along with Nsengiyumva. He was in Kinshasa, South Africa and the Seychelles between 23 May and 22 June arranging for the purchase of weapons (III.6.1).[1960]

Nsengiyumva Defence Witness Edouard Karemera

1807. Edouard Karemera was the Hutu vice-president of the MRND party in 1994 and installed as Minister of the Interior on 25 May 1994. He testified that, around 12 June, the prefect of Kibuye prefecture, Clément Kayishema, sent a telegram to the Ministry of Defence regarding insecurity, particularly in the Bisesero area of Kibuye.[1961]

1808. On 17 June 1994, the Council of Ministers met in Muramba, Gisenyi prefecture, and discussed Kayishema's telegram. According to Karemera, Nsengiyumva co-chaired the meeting with President Sindikubwabo. Karemera took notes during the meeting, which stated that "[t]he government decided to intervene vigorously in Bisesero, if need be, with the support of Gisenyi, by 20th June 1994 at the latest".[1962] Karemera testified that the Council of Ministers decided that a letter would be sent to the Gisenyi operational commander, Nsengiyumva, asking him to send support to Kibuye prefecture. On the instruction of Prime Minister Jean Kambanda, Karemera sent a letter on 18 June 1994, directing Nsengiyumva to send reinforcements to Bisesero in order to assist gendarmes and the population. The Minister of Defence, who would normally have been the one to send the instruction, did not attend the meeting.[1963]

1809. The 18 June 1994 letter had the heading "*Opération de ratissage à Kibuye*" and directed Nsengiyumva to send reinforcements for an operation in the Bisesero area of the Gishyita commune, "which has become a sanctuary for the RPF". The term "*ratissage*" was taken from the telegram sent by Kayishema, which Karemera understood to be a technical military term used to describe activities such as searches to flush out and arrest criminals and the seizing of stolen property. In this particular case, Kayishema wanted infiltrators unmasked and the identification and seizure of weapons and ammunitions caches. The letter gave a deadline of two days for the operation to be completed. Karemera explained that, because this was the only support to be provided to the already mobilised Kibuye gendarmerie and population, it was necessary to indicate the shortest possible time necessary.[1964]

1810. According to Karemera, Nsengiyumva did not follow the order as he questioned the legality of the procedure used to communicate it. The reason was that Karemera was not a part of the military command structure. Karemera subsequently consulted with the Minister of Defence, who informed him that what he had done was a "mistake". The Minister took

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[1960] T. 9 November 2005 p. 74.

[1961] T. 16 June 2006 pp. 3-5, 7-8, 10-11; Nsengiyumva Defence Exhibit 186 (personal identification sheet); Nsengiyumva Defence Exhibit 187 (Clément Kayishema's telegram to the Ministry of Defence, dated 12 June 1994). Karemera noted that on 9 June 1994, Kayishema sent him a telegram on the topic of insecurity in Bisesero, but he had not received it. Karemera is an accused before the Tribunal.

[1962] Prosecution Exhibit 396 (Edouard Karemera's hand-written notes from meeting on 17 June 1994).

[1963] T. 16 June 2006 pp. 3-5, 7-9; T. 16-18, 22, 24-25, 29-30.

[1964] T. 16 June 2006 pp. 3-4, 6-7. *See also* Prosecution Exhibit 50 (Edouard Karemera's letter to Nsengiyumva, undated).

"the necessary measures" and ultimately no reinforcements were sent to Bisesero. Karemera acknowledged that he wrote a letter to Kayishema on 20 June 1994, confirming that instructions had been sent to Gisenyi to send support to Kibuye. Specifically, the letter informed Kayishema that the government requested the "commander of Gisenyi *secteur* [to] support the Kibuye Gendarmerie" to "carry out the operation" and that "the Minister of Defence [had] confirmed those instructions".[1965]

Nsengiyumva Defence Witness Joseph Nzirorera

1811. Joseph Nzirorera, a Hutu and national secretary of the MRND, denied having attended a meeting with Nsengiyumva, Ndindabahazi, Ngirabatware and *Interahamwe* around 22 June 1994 at the *Hôtel Méridien* to raise funds to assist in killing Tutsis in Bisesero. Nzirorera knew Nsengiyumva who, as area commander in Gisenyi, had no association with the *Interahamwe*. He acknowledged that the interim government had been set up in Gisenyi around that time, that he was there and that it was possible that he encountered Ndindabahizi or Ngirabatware in the *Hôtel Méridien* on that day.[1966]

Nsengiyumva Defence Witness LS-1

1812. Witness LS-1, a Hutu, moved to Gisenyi town a few days after the President's plane had been shot down. Approximately two weeks after the President's death, the witness heard over Radio Rwanda that the Ministry of Defence was recruiting youth to join the military. He observed training at Umuganda Stadium. It lasted for two to three weeks, and the recruits were sent to the war front at Mburabuturo in Kigali. The witness knew this because he was later informed that a friend, who had participated in the training, was killed in Mburabuturo.[1967]

Deliberations

1813. The main question for the Chamber is whether Nsengiyumva and Bagosora dispatched civilian militiamen to Kibuye prefecture in June 1994 to participate in attacks against Tutsi civilians in Bisesero on orders of the government. The Prosecution submits that Nsengiyumva participated in a meeting to raise funds for the operation and imported weapons in connection with it. He then allegedly supervised the recruitment, training and arming of area youth, who were dispatched from Umuganda Stadium by Nsengiyumva and Bagosora.

1814. Only Serushago testified about the meeting at the *Hôtel Méridien* to raise funds, which was contradicted by Joseph Nzirorera and Nsengiyumva. Serushago's evidence is hearsay and lacks corroboration. He is also the only witness to provide direct testimony about

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[1965] T. 16 June 2006 pp. 6-7, 35, 43-44; Prosecution Exhibit 394 (Edouard Karemera letter to the prefect of Kibuye, dated 20 June 1994). During his cross-examination, Karemera also read a 24 June 1994 letter that appeared to have been written by Ignace Bagilishema, the *bourgmestre* of Mabanza *commune*. *See* Prosecution Exhibit 397 (Bagilishema's letter to the prefect of Kibuye, dated 24 June 1994). This exhibit was admitted over Nsengiyumva's counsel objection that a proper foundation had not been established. T. 16 June 2006 p. 46. The letter, which Karemera stated he did not receive in 1994, is addressed to the Kibuye prefect and discusses attacks launched by "*Interahamwe* who had come from Gisenyi to reinforce attacks at Bisesero between 19 and 22 June". T. 16 June 2006 pp. 9-11, 41-43, 46.

[1966] T. 16 March 2006 pp. 67-68; T. 12 June 2006 pp. 41-44; Nsengiyumva Defence Exhibit 161 (personal identification sheet). Nzirorera is an accused before the Tribunal.

[1967] T. 13 July 2005 pp. 35-36, 39-40; T. 14 July 2005 pp. 19-21, 27; Nsengiyumva Defence Exhibit 88 (personal identification sheet).

Nsengiyumva's alleged discussions with him at the *La Corniche* roadblock about importing weapons and the subsequent order at the military camp to recruit area youth. The Chamber has raised questions about Serushago's credibility elsewhere in the judgement (III.3.6.1; III.4.2.1; III.4.2.5) and declines to accept these parts of his account without corroboration. Witness ZF's account about Nsengiyumva importing weapons is second-hand and lacks detail as to the source of his information. Therefore, it does not provide sufficient corroboration.

1815. There is considerable evidence regarding Bagosora's attempts to obtain weapons in the Seychelles in June 1994 (III.6.1). Indeed, a United Nations International Commission of Inquiry suggests that Bagosora orchestrated two shipments of weapons from the Seychelles to Goma between 16 and 19 June.[1968] This evidence offers circumstantial corroboration that weapons were brought into Rwanda around this time in June. However, it does not implicate Nsengiyumva in the physical transfer of weapons over the border and is not itself sufficient to corroborate Serushago or Witness ZF's allegations. It is also unkown whether they were used in the attack on Bisesero, as Witness KJ referred to the assailants carrying traditional weapons.

1816. Bagosora denies that he ever spoke to the recruits at the Umuganda Stadium and points to evidence that he was out of Rwanda at the relevant time (III.6.1). Witness ABQ was the only witness to place Bagosora at the stadium in June. The Chamber rejected his testimony with respect to Bagosora's participation in a meeting around the same time, due to concerns about his ability to identify the Accused as well as the evidence that Bagosora was not in the country at the time (III.4.2.5). The Chamber declines to rely on Witness ABQ's testimony with respect to Bagosora's presence at the stadium without further corroboration.

1817. The Chamber, however, accepts Serushago's testimony that, at some point in June, he and Gahutu drove a Toyota around in Gisenyi, calling on local residents to be trained at Umuganda Stadium. This is corroborated by Witness ABQ, who saw the vehicle and responded to the call for training. Nsengiyumva conceded that he oversaw the recruitment and training at the stadium and periodically went there. Witness LS-1 also refers to training.

1818. The question remains whether Nsengiyumva dispatched the recruits, including Witness ABQ, from Umuganda Stadium to Kibuye prefecture. Nsengiyumva disputes that and asserts that he dispatched individuals to Kigali to fight the RPF, not to Kibuye prefecture. There is support for Nsengiyumva's proposition from a number of witnesses, including Witnesses ZF and LS-1, who all refer to civilian recruits being sent to reinforce the army in Mburabuturo in the Kigali area.[1969] The Chamber therefore cannot exclude that at some point Nsengiyumva sent locally recruited and trained youth to fight alongside the army in Kigali. This alone is not a crime, but it does reflect close cooperation between Nsengiyumva, the army and the recruitment and training of civilians.

1819. Leaving aside whether Nsengiyumva, on this particular occasion, sent the recruits to Kigali, the totality of the evidence clearly indicates that he did dispatch militiamen to

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[1968] Prosecution Exhibit 364 (Final Report of 20 March 1996 of the United Nations International Commission of Inquiry), paras. 29-33.

[1969] Witnesses DY, DCH, DM-191, A-8, RX-6 and Ntabakuze also refer to involvement of *Interahamwe* in Mburabuturo. Even Prosecution Witness ABQ recounted Nsengiyumva informing the recruits that they were going to be sent there. It is of course possible that this was a deliberate strategy to conceal the true nature of the operation.

Bisesero in the second half of June to participate in attacks against Tutsi civilians there. Witness ABQ testified that buses of recruits travelled toward Kibuye prefecture. He later heard that they participated in attacks there. There is also other hearsay evidence from Serushago and Witness ZF about Nsengiyumva sending militiamen to Bisesero. The Chamber views these testimonies with caution since they are in part second-hand and it has raised concerns about other aspects of the credibility of these witnesses elsewhere in the judgement. However, when considered together with the first-hand account of Witness KJ concerning the arrival of militiamen from Gisenyi prefecture, the Chamber is satisfied that the core element of their testimonies, concerning Nsengiyumva's role in dispatching militiamen, is true, in particular in view of the available documentary evidence.

1820. Between 9 June and 20 June 1994, there was correspondence between government and military officials concerning the provision of weapons and reinforcements from the Gisenyi operational sector in order to assist with an "*opération de ratissage*"[1970] in Kibuye prefecture. On 9 June, Clément Kayishema, the prefect of Kibuye prefecture, sent a telegram to Edouard Karemera, the Minister of the Interior, about the security situation in Kibuye prefecture.[1971] On 12 June, Kayishema wrote to the Minister of Defence, indicating that "the people of the area are ready to undertake a clean-up operation in the interests of civil defense" in Bisesero sector.[1972] The telegram requested the Minister of Defense to give the Kibuye commander a formal order to oversee an operation between 15 and 18 June and to provide ammunition.

1821. On 17 June 1994, Government ministers discussed providing such assistance and authorised a "vigorous intervention" in Bisesero with the assistance of the Gisenyi operational sector.[1973] This follows from Karemera's testimony and his contemporaneous notes taken at the meeting. After the meeting, Karemera asked Nsengiyumva to assist the Kibuye Gendarmerie detachment, with the support of the population, to undertake a military operation in Bisesero no later than 20 June.[1974] Karemera's letter notes that he had been authorised to make the request on behalf of the government since the Minister of Defence was travelling abroad.

[1970] The various translations of this French phrase in the English versions of the correspondence related to the operation in Bisesero use the phrase "sweep operation", "cordon and search operation" and "clean-up operation". *See* Prosecution Exhibit 50B (Edouard Karemera letter to Nsengiyumva); Nsengiyumva Defence Exhibit 187B (Clément Kayishema telegram to the Ministry of Defence, dated 12 June 1994). Des Forges also used the term "clearing up". *See* T. 18 September 2002 p. 102. The Chamber notes that the verb "*rattiser*" has a specific military meaning: "*Ratisser le terrain: fouiller méthodiquement une zone de terrain à l'aide d'éléments très rapprochés les uns des autres*". *See Le Petit Robert* (2003), p. 2177.

[1971] This telegram was not admitted into evidence. Karemera does not dispute that it was sent, but denies that he ultimately received it. However, its existence and content is referenced in Kayishema's subsequent telegram of 12 June 1994 to the Minister of Defence. *See* Nsengiyumva Defence Exhibit 187 (Clément Kayishema's telegram to the Ministry of Defence, dated 12 June 1994).

[1972] *See* Nsengiyumva Defence Exhibit 187 (Clément Kayishema's telegram to the Ministry of Defence, dated 12 June 1994).

[1973] Prosecution Exhibit 396 (Edouard Karemera's hand-written notes of meeting on 17 June 1994).

[1974] Prosecution Exhibit 50A (Edouard Karemera letter to Nsengiyumva: "*J'ai l'honneur de vous informer que lors du Conseil des Ministres de ce vendredi 17 Juin 1994, le Gouvernement a décidé de demander au Commandement du Secteur Opérationnel de Gisenyi d'appuyer le Groupement de la Gendarmerie à Kibuye pour mener, avec l'appui de la population, l'operation de ratissage dans le secteur Bisesero de la Commune Gishyita, qui est devenu un sanctuaire du FPR*"). The letter is not dated, but Karemera explained that he sent it on 18 June 1994.

1822. Nsengiyumva acknowledged receipt of this letter, but denied that he ever sent "soldiers" to assist in the operation, explaining that he only took his orders from the army's chief of staff. Karemera stated that Nsengiyumva refused to comply with the order and that no reinforcements were sent. The Chamber is not convinced by their explanations. They have a clear interest in distancing themselves from the Kibuye operation. Furthermore, their evidence is plainly contradicted by a letter Karemera sent to Prefect Kayishema on 20 June, informing him of the decision to send reinforcements to Kibuye and referring to a correspondence from the Minister of Defence, also dated 20 June, confirming Karemera's previous instructions.[1975] The letter asks Kayishema to closely monitor the operation, noting that it included the assistance of the populations of Gishyita, Gisovu and Gitesi communes. In the Chamber's view, this correspondence demonstrate a coordinated effort between the Rwandan government, the military and civilian militiamen in connection with a military operation in Kibuye prefecture in the second half of June 1994.[1976]

1823. Witness KJ provided direct and convincing testimony about the arrival in Kibuye prefecture of buses of *Interahamwe* militiamen from Gisenyi and Cyangugu prefectures around the same time as the exchange of letters between the civilian and military authorities.[1977] He was informed by those arriving from Gisenyi that they came from Ramba, Giciye and Kayove communes. The Chamber notes that these communes do not border Rubavu commune, where the training took place. Nonetheless, Witness KJ's testimony does not purport to reflect the commune of origin of each militiaman coming from Gisenyi. Witness ABQ testified that the recruitment efforts at Umuganda Stadium brought people from each of the communes in Gisenyi and that the request for volunteers was announced as having come from Nsengiyumva.[1978] It follows from Witness KJ's testimony that Eliézer Niyitegeka, the Minister of Information, welcomed the assailants and emphasised that they had been sent by the Ministries of the Interior and Defence. The witness later learned that the assailants along with gendarmes had participated in attacks against Tutsis in Bisesero. In the Chamber's view, Witness KJ corroborates that militiamen were sent by Nsengiyumva pursuant to the government's instructions to Kibuye prefecture to participate in attacks in Bisesero. There is no direct evidence of the exact nature of the crimes committed by the

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[1975] Prosecution Exhibit 394 (letter of 20 June 1994), which states: "I refer to your telegrams of 9 and 12 June 1994 and would like to inform you that with respect to the search operation in Bisesero *secteur*, the Cabinet Meeting of 17 June 1994 has requested that the commander of Gisenyi *secteur* should support the Kibuye Gendarmerie *groupement* to carry out the operation by 20 June 1994 latest. In his response to my letter of 18 June 1994 which was copied to you, the Minister of Defence confirmed those instructions in the telegram he sent to the Army and Gendarmerie Headquarters on 20 June 1994. Therefore, it is your duty to closely monitor this operation which requires the support of the inhabitants of Gishyita, Gisovu and Gitesi *communes* and to give me a feedback before the end of this month, that is, June 1994."

[1976] The statement by Jean Kambanda, who explained in his interview with Tribunal prosecutors, that he instructed Minister Karemera to contact Nsengiyumva to request intervention in Bisesero but that "[t]he colonel never intervened in that region" would appear to corroborate Nsengiyumva's claim. However, based on the evidence discussed above, this statement does not raise any doubt about Nsengiyumva's involvement. *See* Nsengiyumva Defence Exhibit 220B (transcript of an interview of Jean Kambanda, dated 15 January 1998) at p. K0155412.

[1977] The testimony of Prosecution Witness LAI provides some corroboration that *Interahamwe* were dispatched from Cyangugu to Kibuye prefecture. *See* T. 31 May 2004 pp. 33-36. The witness stated that the killings in Bisesero occurred around 15 April 1994. The Chamber considers that the witness is mistaken about the date as he also places this incident after most of the Tutsis had been killed in Cyangugu, which suggests a much later time.

[1978] T. 7 September 2004 pp. 38-42.

militiamen from Gisenyi. However, the Chamber is satisfied that the presence of additional reinforcements provided substantial assistance to the killings of Tutsi civilians on Bisesero hill.

1824. Accordingly, the Chamber finds it established beyond reasonable doubt that, in the second half of June, Nsengiyumva sent militiamen from Gisenyi prefecture to participate in an operation in Bisesero to kill Tutsis in Kibuye prefecture on orders of the government. As an operational commander of a neighbouring sector, he was aware that the RPF was not in the area and that the attack was directed at civilians.

1825. The Chamber has not found that Bagosora had general authority over the Rwandan military after 9 April (IV.1.2). The evidence also does not show that he directly participated in the operation. Therefore the Prosecution has not proven beyond reasonable doubt that he bears responsibility for the attack.

4.5.2 Prevention of Humanitarian Aid to Tutsis, July

Introduction

1826. The Kabiligi and Ntabakuze Indictment alleges that, from April to July 1994, Kabiligi brought about the massacre of Tutsi refugees through his acts, orders or complicity. In particular, the Prosecution claims that, during July 1994, Kabiligi intentionally prevented Tutsis in Kibuye prefecture from receiving humanitarian supplies. Reference is made to Witnesses XAI and XXY.[1979]

1827. The Kabiligi Defence maintains that it received insufficient notice of this allegation. Furthermore, Witnesses XAI and XXY lack credibility and are contradicted by Witnesses BB-15, SX-1, VIP-1, TT-2, DK-11 and ZDR-2.[1980]

Evidence

Prosecution Witness XAI

1828. Witness XAI, a Hutu soldier with the 17th Battalion in Byumba prefecture, testified that from June to July 1994, he was admitted to Gisenyi hospital for a few days to receive treatment for an injury. In early July, Kabiligi came to the hospital in a red Pajero and met with Nsengiyumva, after which Kabiligi encouraged the wounded soldiers. The witness overheard him say that he was going to Kibuye prefecture to ensure that the Tutsis still located in Bisesero and Karongi were unable to receive supplies like food and weapons. Kabiligi's stated aim was to rid these areas of Tutsis before *Opération Turquoise* could arrive from Kibuye town. The witness recognised Kabiligi's driver, Masengesho, who confirmed that they were going to Bisesero and Karongi in Kibuye prefecture because of recent reports of Tutsi presence there.[1981]

[1979] Kabiligi and Ntabakuze Indictment, para. 6.33; Prosecution Closing Brief, paras. 1096(d), 1464(a), 1626, p. 834.
[1980] Kabiligi Closing Brief, paras. 110-116, 409, 745-751, 994-1005, 1012, 1174, 1176-1178, 1234-1235, 1583-1584, 1707, pp. 579-580, 590-591, 598.
[1981] T. 9 September 2003 pp. 13-16, 40, 42-47; T. 10 September 2003 pp. 5-7, 32-34; Prosecution Exhibit 94 (personal identification sheet).

1829. After Witness XAI fled to Goma in July 1994, he learned from a refugee named Dusabimana, who had heard this from soldiers, that someone called Kabiligi was commanding troops in Kibuye prefecture. Dusabimana also told the witness that "a certain Kabiligi came and the hunt for Tutsis then started again". At the time of this conversation, the attacks in Karongi, Kibuye town and Bisesero had ended.[1982]

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Prosecution Witness XXY

1830. Witness XXY, a Hutu secondary school student in 1994, took refuge in Kibuye prefecture for three weeks in July after the fall of Gitarama to the RPF. He stated that French soldiers gave him additional food in exchange for helping *Opération Turquoise* distribute food throughout Kibuye prefecture. On one such occasion, he joined a Senegalese soldier on an operation in Bisesero. Before their vehicle could reach Biserero, they came across a roadblock at Mubuga manned by a member of the Para Commando Battalion and *Interahamwe*. When the witness told him about their destination and purpose, the soldier replied: "No, don't go to Bisesero. The Tutsis in Bisesero are wicked." He informed the witness that Kabiligi had ordered them to prevent all vehicles from crossing the roadblock. Eventually the Senegalese soldier alighted from the truck, and the Rwandan soldier told him, with the witness acting as translator, that the truck could not pass, by order of the authorities. The Senegalese soldier tried to drive through the roadblock, but stopped and turned around when the Rwandan soldier loaded his rifle and pointed it at the truck.[1983]

Nsengiyumva

1831. Nsengiyumva received Kabiligi in Gisenyi on 23 April 1994, when he was returning from a mission in Kenya. A helicopter then transported Kabiligi to Kigali. Nsengiyumva did not see him after that date until they both arrived in Goma after 17 July. He never met with Kabiligi at Gisenyi hospital on 4 July and did not visit injured soldiers in Gisenyi around that date. Nsengiyumva said that Kabiligi would have left Kigali on 4 July when everyone else was leaving the town.[1984]

Kabiligi Defence Witness BB-15

1832. Witness BB-15, a Hutu member of the Presidential Guard, said that Kabiligi was in Kigali on 3 and 4 July 1994. He saw Kabiligi in Kigali on the evening of 3 July, and near the Muhondo centre around 7.00 a.m. and 1.00 or 2.00 p.m. on the following day. The witness also saw Kabiligi in Gisenyi from 16 to 18 July as the army was leaving for Goma.[1985]

Ntabakuze Defence Witness DK-11 and Nsengiyumva Defence Witness ZDR-2.

1833. Witnesses DK-11 and ZDR-2 were Hutu soldiers working with Kabiligi. They testified that his headquarters remained in Camp Kigali until the night of 3 to 4 July 1994.[1986] Prior to this departure, Kabiligi left Camp Kigali only to visit Camp Kanombe, the Presidential Guard camp, and Mount Kigali, and there was also a failed attempt to visit Runda in Gitarama prefecture on 3 July. Both witnesses stated that when Kabiligi travelled, he would usually be in a caravan of three vehicles, and Witness DK-11 specified that Kabiligi

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[1982] T. 9 September 2003 p. 47; T. 10 September 2003 pp. 3-5.
[1983] T. 11 June 2004 pp. 2-4, 36-40; T. 30 June 2004 p. 100; T. 1 July 2004 pp. 12-29, 37, 39, 95; Prosecution Exhibit 262 (personal identification sheet).
[1984] T. 11 October 2006 pp. 5-6.
[1985] T. 11 September 2006 pp. 5-8, 11-12, 18, 35-36; Kabiligi Defence Exhibit 93 (personal identification sheet).
[1986] Ntabakuze Defence Exhibit 144 (personal identification sheet).

would ride in a red Pajero. They mentioned that Masengesho was one of Kabiligi's drivers.[1987]

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Kabiligi Defence Witness SX-1

1834. Witness SX-1, a French member of *Opération Turquoise*, testified that the mission established its headquarters in Goma, Zaire, and operated in Rwanda from 22 June 1994. It created three humanitarian security zones in the southwest of Rwanda in Kibuye, Cyangugu and Gikongoro prefectures. Those were the locations of the largest refugee populations. Each zone contained three military groups, which disarmed soldiers and militia, dismantled all roadblocks and conducted patrols in their area of operation. After the first week, the mission had total control of a good part of these areas. The Rwandan army avoided these zones since they were disarmed upon entry. Therefore, the soldiers evacuating Kigali went via Ruhengeri prefecture to Gisenyi prefecture, which were not part of the *Opération Turquoise* zone of operation.[1988]

1835. Witness SX-1 heard no reports of Kabiligi entering a humanitarian safe zone in July 1994. He also considered it highly unlikely that Kabiligi would have given orders in Kibuye to block access to refugees since the Rwandan military was not in a position to issue orders in areas under the control of *Opération Turquoise*.

1836. *Opération Turquoise* troops distributed food from Kibuye town to refugees in Bisesero. The witness was not aware that Rwandans were used in connection with such distribution. Furthermore, Senegalese troops only became operational in Kibuye prefecture in mid-July. The witness did not receive any reports that elements of the Rwandan military or militiamen impeded the humanitarian activities of *Opération Turquoise*.[1989]

Kabiligi Defence Witness VIP-1

1837. Witness VIP-1, a French member of *Opération Turquoise*, stated that he worked in Kibuye and Cyangugu prefectures from 23 to 30 June 1994. At the time, his unit was based in Bukavu, Zaire. It entered Cyangugu prefecture on 23 June and took control of Kibuye town on 24 June when a detachment was dispatched there by helicopter. Vehicles arrived from Cyangugu prefecture on 26 June to allow the mission to move around. The detachment was redeployed to Gikongoro prefecture following the arrival of another squad on 30 June. Also on that day, he went to Bisesero after members of the mission discovered a massacre site there. The men in his unit observed bodies and rescued the survivors. There were no elements of the Rwandan military in the area when he arrived. The witness did not receive any reports that members of the Rwandan military were obstructing the mission of *Opération Turquoise*.[1990]

1838. To the witness's knowledge, there was no roadblock erected at Mubuga, and the mission would not have tolerated one. He did not exclude that a temporary one could have been erected. His squad distributed food in Kibeho in Gikongoro prefecture. The witness was

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[1987] Witness DK-11, T. 19 July 2005 p. 61; T. 20 July 2005 pp. 3-4, 42-44, 49-51, Ntabakuze Defence Exhibit 144 (personal identification sheet); Witness ZDR-2, T. 30 March 2006 pp. 11-16; Nsengiyumva Defence Exhibit 170 (personal identification sheet). *See also* Prosecution Exhibit 354 (Witness DK-11's list of Kabiligi's escorts and drivers); Prosecution Exhibit 386 (Witness ZDR-2's list of Kabiligi's escorts and drivers).
[1988] T. 16 January 2007 pp. 32, 34-35, 38-50; Kabiligi Defence Exhibit 131 (personal identification sheet).
[1989] T. 16 January 2007 pp. 39-40.
[1990] T. 16 January 2007 pp. 54-60, 83-84, 89-90; Kabiligi Defence Exhibit 132 (personal identification sheet).

not aware that food was distributed in Kibuye prefecture. However, he did not dispute that this was done by another contingent of troops. The witness was not aware that Rwandans were used in such efforts. Senegalese troops joined the squad in Kibuye in mid-July.[1991]

1839. Witness VIP-1 knew Kabiligi from a prior mission in Rwanda in 1992. He spoke with Kabiligi in Cyangugu prefecture on 24 June 1994, for 15 to 30 minutes. Kabiligi had come from Kigali to request French assistance. The witness informed him that the mission was exclusively humanitarian. Around 15 July, Witness VIP-1 was in Gisenyi to meet General Bizimungu, the Rwandan army's chief of staff. Bizimungu informed him that Kabiligi was retreating to Gisenyi with the last of the troops from Kigali through Ruhengeri prefecture.[1992]

Kabiligi Defence Witness TT-2

1840. Witness TT-2 was a French member of *Opération Turquoise* in July and August 1994, based in Kibuye town. He visited Bisesero within days of his arrival and found a makeshift camp with a number of refugees who recounted surviving a massacre. A Senegalese contingent joined the mission at some point after the end of June. The mission used trucks to provide food and other supplies to the survivors of the Bisesero massacre and to other displaced persons in the area. The witness did not recall that Rwandans participated in this effort, but did not exclude that it was possible.[1993]

1841. The witness did not receive any reports of Rwandan soldiers interfering with the humanitarian mission in the area. Most of them left the area soon after the French soldiers arrived. The *Opération Turquoise* troops assigned to Kibuye prefecture before the witness arrived in July had already dismantled a number of roadblocks in the area. The witness's contingent dismantled the remaining ones. In particular, most disappeared after an announcement was made during church services. There were regular patrols by members of the mission near the Mubuga area. Witness TT-02 also received frequent reports concerning the movement of convoys and other activities in the zone. He did not hear about Kabiligi being in the area or about an incident involving a roadblock in Mubuga.[1994]

Deliberations

1842. Witness XAI provided a first-hand account of Kabiligi in early July telling wounded soldiers in a Gisenyi hospital that he was going to Kibuye prefecture to prevent Tutsi refugees there from receiving food before *Opération Turquoise* could assist them. The witness later heard after the events that Kabiligi had in fact gone to Kibuye. As corroboration, the Prosecution points to Witness XXY, who while assisting *Opération Turquoise* deliver food to refugees at some point in the first part of July, was turned back at a roadblock in Mubuga. The member of the Para Commando Battalion manning the roadblock told the witness that Kabiligi had issued the order to prevent passage of relief supplies. Other second-hand evidence from Witness XXY suggests that Kabiligi expressed similar sentiments in connection with refugees in Cyangugu prefecture (III.4.6.3).

1843. Witness XAI's testimony about Kabiligi's presence in Gisenyi prefecture in early July is uncorroborated, and his testimony that Kabiligi went to Kibuye prefecture is hearsay.

[1991] T. 16 January 2007 pp. 55-57, 66-68.
[1992] *Id.* pp. 69-72, 90.
[1993] T. 18 January 2007 pp. 23-24, 31-33, 36, 49; Kabiligi Defence Exhibit 133 (personal identification sheet).
[1994] T. 18 January 2007 pp. 24-25, 32, 38-39, 41, 43-46, 57-58.

There is also conflicting evidence from Nsengiyumva, Witnesses DK-11, ZDR-2, BB-15 and VIP-1, indicating that Kabiligi was in Kigali at the beginning of July with the last remnants of the army. This evidence is not definitive. Notably, some of these witnesses may have an interest in providing testimony favourable to Kabiligi in view of their status as Rwandan soldiers. Furthermore, Witness VIP-1's testimony is hearsay. It also cannot be excluded that Kabiligi made a specific trip to Gisenyi or Kibuye prefecture during this period similar to his brief trip to Cyangugu prefecture on 24 June 1994 to meet with Witness VIP-1. Nonetheless, when the Defence evidence is taken together and weighed against Witness XAI's uncorroborated or second-hand accounts, the Chamber has some doubt about Kabiligi's presence in Gisenyi and Kibuye prefectures at this time.

1844. Furthermore, the Chamber is mindful that *Opération Turquoise* was operating in Kibuye prefecture from 24 June 1994 and had already begun providing relief supplies to refugees in Bisesero as early as 30 June. According to Witness SX-1, the French troops had control of most of southwest Rwanda by this time. Consequently, it is difficult to understand why, in early July, Kabiligi would be saying that he needed to prevent a humanitarian relief effort before the French troops could provide such assistance, when in fact the operation was already well underway. The Chamber has also expressed concern elsewhere in the judgement with other aspects of Witness XAI's testimony (III.3.5.1; III.4.4.1). Accordingly, the Chamber declines to accept his testimony about this incident in the absence of corroboration.

1845. In the Chamber's view, Witness XXY does not provide such corroboration. He is the only witness to testify about an *Opération Turquoise* truck being prevented from delivering food at a roadblock in Mubuga. It follows from Witnesses SX-1, VIP-1 and TT-2 that by July nearly all roadblocks had been dismantled within the humanitarian safety zones and that the French troops were in near total control of the area, with regular patrols around Mubuga. Given the reporting structure of this force, it appears unlikely that such an incident would have occurred without their notice. This evidence is not conclusive, but it does raise questions about the credibility of Witness XXY's account.

1846. Furthermore, the evidence of the three French witnesses suggests that the Senegalese contingent did not arrive in Kibuye until mid-July, and that Rwandans did not assist in distributing relief supplies. It remains possible that the purported mission occurred in the second half of July. However, this would further undermine the proposition that Rwandan forces were still mounting roadblocks since the French forces progressively dismantled them over the course of their mandate. Furthermore, in view of the informal nature of Witness XXY's purported work for the mission, it is possible that the Defence witnesses were not aware that he assisted in food deliveries. Nevertheless, these differences in the Prosecution and Defence evidence cause additional concern. The Chamber has also raised questions about other aspects of his testimony elsewhere in the judgement (III.4.4.1). It therefore declines to accept his account of the event at the roadblock without adequate corroboration.

1847. Accordingly, the Prosecution has not proven beyond reasonable doubt that Kabiligi attempted to prevent relief supplies from reaching refugees in Kibuye prefecture.

1848. During the course of the trial, the Chamber determined that there was adequate notice of these allegations.[1995] As a result of the findings on this event, it is not necessary to revisit the Kabiligi Defence arguments concerning the notice for these incidents.

[1995] Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007, paras. 9-11, 15-16; Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, para. 19.

4.6 Cyangugu Prefecture

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4.6.1 Meetings at MRND Headquarters and *Cercle Sportif*, 23 - 24 April

Introduction

1849. The Kabiligi and Ntabakuze Indictment alleges that, between 10 April and about 31 May 1994, Kabiligi encouraged and supported militiamen who were murdering Tutsis. Specifically, the Prosecution submits that he attended a meeting at the MRND headquarters in Cyangugu prefecture on 23 April 1994 as part of the delegation of President Sindikubwabo. Kabiligi urged the civilian population to give money to support efforts to fight the Tutsi enemy. On the following day, he allegedly collected funds during a meeting at the *Cercle Sportif* nearby, the purpose being to purchase weapons, and donated one million Rwandan francs himself. The Prosecution primarily relies on Witness XXH.[1996]

1850. The Defence submits that Kabiligi received insufficient notice of these allegations. It also argues that Witness XXH lacks credibility and provided uncorroborated evidence. His testimony was contradicted by Witnesses Emmanuel Bagambiki, André Ntagerura, RX-3, TD-77 and the written statement of Witness SX-9. Furthermore, Kabiligi has an alibi for 23 April as he was returning to Kigali from Nairobi.[1997]

Evidence

Prosecution Witness XXH

1851. Witness XXH, a Hutu businessman in Cyangugu, testified that word was spread around Kamembe town that a meeting would be held on 23 April 1994. Between 10.00 a.m. and 1.00 p.m., he attended a meeting at the MRND headquarters at which the newly appointed President Sindikubwabo addressed local businessmen.[1998] Kabiligi as well as Ministers Casimir Bizimungu and André Ntagerura formed part of the presidential delegation. Among the 200 to 300 persons present were Prefect Emmanuel Bagambiki, Lieutenant Samuel Imanishimwe, officials, businessmen as well as *Interahamwe* leaders Yussuf Munyakazi, Christophe Niandui, Manase Mubumbyi and Édouard Bandiste. Bagambiki spoke first. He introduced the new President and said that military assistance would be given to assist in repelling the attack of the Tutsis, who he also referred to as the enemy. President Sindikubwabo stated that he had acceded to the presidency in light of the assassination of the President by the "Tutsi enemy", that the new government should be supported, and that all assistance should be provided to overcome the enemy.[1999]

[1996] Kabiligi and Ntabakuze Indictment, paras. 6.30, 6.45; Prosecution Closing Brief, paras. 676-677, 1408-1412, in particular 1410 (b), 1422, p. 839.

[1997] Kabiligi Closing Brief, paras. 110, 253, 383-395, 514, 521, 523, 913-915, 919-929, 939-940, 1088-1089, 1098-1099, 1102-1103, 1165-1167, 1270-1272, 1292, 1536, pp. 572-573; T. 28 May 2007 pp. 29-30, 38-39, 53-55.

[1998] Prosecution and Defence witnesses refer to this location as the MRND "headquarters", "palace", "house", "hall" or "*Palais du MRND*". For consistency, the Chamber will refer to it as the "MRND headquarters".

[1999] T. 4 May 2004 pp. 35-36, 44-47, 75; T. 6 May 2004 pp. 4-6, 9, 15-16, 18-20, 62-63, 69; Prosecution Exhibit 220 (personal identification sheet). At the time of the testimony, the witness was detained in Cyangugu prefecture, awaiting trial in Rwanda. He was arrested on 26 September 1994 and in 1998 charged with genocide. T. 4 May 2004 pp. 64, 66.

1852. Bagambiki then introduced Kabiligi as being in charge of the army. Kabiligi stated that the people of Cyangugu prefecture could overcome the enemy through continued funding for the acquisition and distribution of weapons. The witness explained that by the term "enemy" Kabiligi was referring to the Tutsis and the RPF. Munyakazi said that he would do anything to avenge the death of President Habyarimana, who had been killed by the *Inyenzi-Inkotanyi,* and that he would send *Interahamwe* to Bisesero. Manase Mubumbyi and Édouard Bandeste indicated that they were saddened by the President's death and in favour of raising money to assist the army.[2000]

1853. The following day, on 24 April between 9.00 and 11.00 a.m, Witness XXH attended a meeting at the *Cercle Sportif*, a recreational centre, across from the Cyangugu prefecture office. Kabiligi and government officials, such as Bagambiki, the prosecutor "Paul", and first deputy prosecutor Siméon Nchamihigo were present, as were *Interahamwe* such as Munyakazi and Mubumbyi. The purpose of the meeting was to collect money from the civilian population to assist the army. Approximately 100 to 200 persons attended. Kabiligi urged them to contribute on the basis of their resources. He donated one million Rwandan francs. The witness gave 20,000 francs. Around five million francs were collected in total and provided to a committee for the purchase of weapons.[2001]

Kabiligi Defence Witness Emmanuel Bagambiki

1854. Emmanuel Bagambiki, a Hutu, was the prefect of Cyangugu prefecture in 1994, and has been tried and acquitted by the Tribunal. He stated that, on 17 May 1994, he and President Sindikubwabo attended a meeting at the MRND headquarters in Cyangugu prefecture. The meeting lasted between 11.00 a.m. and 2.00 or 3.00 p.m. About 400 persons were present. Bagambiki, as the prefect, spoke first, followed by the President, who urged those gathered to give support to the interim government. André Ntagerura, Justin Mugenzi and a member of the MDR steering committee, Donat Murego, were also present and spoke afterwards.[2002]

1855. Neither Casimir Bizimungu nor Kabiligi were present at the 17 May meeting, and Bagambiki had no recollection of Yussuf Munyakazi speaking at it. André Nambaje, a representative of the information agency ORINFOR, was present and later gave a report about the meeting on Radio Rwanda. This was Sindikubwabo's first visit to Cyangugu prefecture in his capacity as President. According to Bagambiki, Sindikubwabo was not in Cyangugu prefecture on 23 or 24 April. No meetings were held at the MRND headquarters on 23 April and at the *Cercle Sportif* on 24 April, or on 18 May, the day after Sindikubwabo's visit. Bagambiki did not see Kabiligi in Cyangugu prefecture between April and July 1994.[2003]

1856. Bagambiki recalled chairing meetings with Cyangugu businessmen on 29 May and 5 June 1994 in response to their concerns regarding insecurity in the area and their express desire to raise funds to contribute to the war effort. A bank account had previously been

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[2000] T. 4 May 2004 pp. 46-48; T. 6 May 2004 pp. 6-12, 18, 47, 62-63, 69-70.
[2001] T. 4 May 2004 pp. 47-49; T. 6 May 2004 pp. 13-16, 66.
[2002] T. 15 September 2006 pp. 2-3; T. 28 September 2006 pp. 30-31, 35-36, 39, 41-43; Kabiligi Defence Exhibit 95 (personal identification sheet). *See Ntagerura et al.* Trial Judgement, para. 805; *Ntagerura et al.* Appeal Judgement, para. 7. Bagambiki was previously identified in the proceedings as Kabiligi Defence Witness KC-55.
[2003] T. 15 September 2006 pp. 3-5; T. 28 September 2006 pp. 36-37, 67-68.

opened in October 1990 in order to solicit money for security services in the business districts. Bagambiki eventually was a co-signer of the account, but did not manage the funds. He was unaware of how much money was collected or if anyone offered to deposit one million Rwandan francs.[2004]

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Kabiligi Defence Witness André Ntagerura

1857. André Ntagerura, a Hutu, was the Minister for Transport and Communications in Rwanda in 1994. He has been acquitted by the Tribunal of crimes committed in Cyangugu prefecture. On 23 April 1994, he crossed the border between Gisenyi town, Rwanda and Goma, Zaire, to fly to Kinshasa. Around 3.00 p.m., he flew from Kinshasa to Gbadolite, Zaire, where he headed a government and military delegation negotiating a cease fire agreement with the RPF. Ntagerura authorised General Marcel Gatsinzi and Colonel Aloys Ntiwiragabo to sign the agreement of 23 April 1994. He flew to Kinshasa on 24 April where he met Casimir Bizimungu, the Minister of Health. On 12 May 1994, Ntagerura returned to Rwanda, after travelling to Kenya and Tanzania. He produced a copy of the cease fire agreement and his passport, the latter reflecting his exit from Rwanda on 23 April and his return on 12 May.[2005]

1858. Ntagerura attended an assembly at the MRND party headquarters in Cyangugu prefecture on 17 May 1994 where President Sindikubwabo introduced himself and sought to bring a message of peace and pacification. Ntagerura addressed the participants along with Prefect Bagambiki, Justin Mugenzi and Donat Murego. The meeting was covered by ORINFOR in Cyangugu prefecture, and a report was broadcast on Radio Rwanda the next day. Neither Kabiligi nor Casimir Bizimungu was present. Ntagerura was not aware of a meeting held at the *Cercle Sportif* the day after Sindikubwabo's visit, nor was he aware of any meeting at that location wherein Kabiligi contributed one million Rwandan francs for the purpose of purchasing weapons.[2006]

Kabiligi Defence Witness SX-9

1859. Witness SX-9, a prominent Rwandan government official, did not testify but the Chamber admitted his written statement pursuant to Rule 92 *bis*. According to his evidence, Casimir Bizimungu did not attend a meeting at the MRND headquarters in Cyangugu prefecture on either 23 April or 17 May 1994. Bizimungu was in Kinshasha, Zaire, on 23 and 24 April, and his hotel bills were attached to the statement. Witness SX-9 also stated that on 17 May, Bizimungu was not in Rwanda.[2007]

Kabiligi Defence Witness RX-3

1860. Witness RX-3, a Hutu, was a government official who worked in Cyangugu prefecture in 1994. He attended a meeting of approximately 300 or 400 people at MRND

[2004] T. 28 September 2006 pp. 36-39, 41-42.

[2005] T. 28 November 2006 pp. 8-15, 18-21, 28-29; T. 29 November 2006 pp. 4-5, 24-25; Kabiligi Defence Exhibit 119 (personal identification sheet). *See Ntagerura et al.* Trial Judgement, para. 804; *Ntagerura et al.* Appeal Judgement, para. 7; Kabiligi Defence Exhibit 120 (*Declaration de Cessez le Feu, 23 avril 1994*); Kabiligi Defence Exhibit 121 (Passport of André Ntagerura). Ntagerura was previously identified in the proceedings as Kabiligi Defence Witness JRO-11.

[2006] T. 28 November 2006 pp. 15-18; T. 29 November 2006 p. 10.

[2007] T. 19 January 2007 p. 13; Kabiligi Defence Exhibit 135 (statement of 11 December 2006). The hotel bills have a header that reads "Grand Hotel Kinshasa". It is attributed to "Bizimungu, Casimir Dr., *Ambassade du Rwanda*", and the charges appear to cover dates from 13 April to 24 April 1994.

headquarters in mid-May at which Prefect Bagambiki, President Sindikubwabo, André Ntagerura and Justin Mugenzi addressed those assembled. Sindikubwabo introduced himself and gave "messages of peace". Samuel Imanishimwe, the local military commander, was also present. The witness did not see Casimir Bizimungu or Kabiligi at this event, nor did he see Kabiligi in the Cyangugu prefecture between April and July 1994. He was not aware of any meeting on 23 April but did remember Sindikubwabo coming to Cyangugu a month after the interim government was formed. Had Kabiligi been in Cyangugu prefecture, there would only have been a five percent chance that the witness would not have been aware of his presence.[2008]

Kabiligi Defence Witness TD-77

1861. Witness TD-77 was a Hutu trader living in Kamembe commune, Cyangugu prefecture in 1994. He was present at a meeting on 17 May 1994 and recalled that it was attended by President Sindikubwabo, the prefect and the *bourgmestre* of Kamembe. Kabiligi was not there. Sindikubwabo only came to Kamembe commune on this occasion. There was no meeting held on 23 April at the MRND headquarters attended by Sindikubwabo and Kabiligi. The witness recalled that he was in the commune on 23, 24 and 25 April because of mechanical problems with his vehicle and testified that had such a meeting occurred on 23 April he would have heard about it. The witness did not see or learn of Kabiligi visiting Kamembe commune between the 6 April and 17 July 1994.[2009]

Deliberations

1862. Witness XXH testified that Kabiligi attended two meetings in Cyangugu prefecture at the MRND headquarters and the *Cercle Sportif*, respectively, on 23 and 24 April 1994, where he encouraged attendants to raise funds to acquire weapons. He was the only Prosecution witness who provided evidence about these events. As he was incarcerated and awaiting trial for genocide charges, the Chamber views his testimony with caution.

1863. The witness placed Ntagerura, Bagambiki, Bizimungu and Kabiligi with President Sindikubwabo at the MRND headquarters on 23 April calling on the population to assist in the fight against Tutsis. Four Defence witnesses testified that the meeting with Sindikubwabo did not take place on 23 April 1994 but on 17 May 1994, and that Kabiligi and Bizimungu were not present.[2010] The Chamber is mindful that Ntagerura and Bagambiki would have a clear interest in distancing themselves from the alleged meeting, as described by Witness XXH, given its content and their alleged participation in it. Witness SX-9 could have a similar interest. On the other hand, there is some documentary evidence aimed at corroborating their testimonies.

1864. Ntagerura presented an international agreement and a passport indicating that he was in Zaire on 23 April. Although these two document do not show that it would have been impossible for him to be in Cyangugu, they provide some support to his testimony.[2011]

[2008] T. 26 September 2006 pp. 42, 44-47, 51-55; Kabiligi Defence Exhibit 98 (personal identification sheet).
[2009] T. 6 September 2006 pp. 30-34, 42-44, 51; Kabiligi Defence Exhibit 90 (personal identification sheet).
[2010] Witness XXH was in Cyangugu prefecture on 17 May but was unaware of any meeting on that day, including one involving President Sindikubwabo, André Ntagerura, Justin Mugenzi and Donat Murengo. *See* T. 6 May 2004 pp. 20, 22-24.
[2011] Kabiligi Defence Exhibit 120 (*Declaration de Cessez le Feu, 23 avril 1994*) does not in itself show that Ntagerurua was in Zaire, as the cease fire agreement, signed on 23 April by two Rwandan military officials, is

Bizimungu's presence in Zaire on 23 and 24 April was corroborated in part by Ntagerura's testimony and by Bizumungu's hotel bills submitted with Witness SX-9's statement.[2012]

1865. Also Witnesses RX-3 and TD-77 stated that President Sindikubwabo did not address a meeting in Cyangugu in April 1994 and that Kabiligi was not in the area at this time. The Chamber views their testimonies with caution. Witness RX-3's personal knowledge about Kabiligi was limited. Some other issues relating to his credibility have also been considered.[2013] Witness TD-77 has been alleged to have committed genocide in Cyangugu and he has withheld information about his names in previous proceedings before the Tribunal.[2014] This said, their testimonies point in the same direction as the other Defence evidence.

1866. Furthermore, Kabiligi's alibi (III.6.2) that he returned to Kigali from Nairobi on 23 April raises additional questions about the likelihood of his participation in a meeting on that date in Cyangugu prefecture, even though the alibi is not necessarily inconsistent with the Prosecution's evidence.

1867. Witness XXH's version is uncorroborated. For the reasons mentioned above, the Chamber is not convinced that Kabiligi attended a meeting with President Sindikubwabo on 23 April in Cyangugu prefecture. There is no evidence that he attended the meeting on 17 May, described by the Defence witnesses.[2015]

1868. In view of the Chamber's concerns with the reliability of Witness XXH relating to the alleged meeting of 23 April it gives limited weight to his account that Kabiligi participated in a meeting the next day, on 24 April, at the *Cercle Sportif*. Also this part of the witness's evidence is uncorroborated. The Chamber notes that, according to Bagambiki, a meeting was held at the end of May to raise money from local businessmen to implement supplemental security measures. There is no indication that Kabiligi attended that meeting.[2016]

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not signed and authorised by Ntagerura on that day. Kabiligi Defence Exhibit 121 (Passport of André Ntagerura) contains a stamp from the *La Corniche* border indicating that he entered Goma, Zaire on 23 April but does not rule out that he did so in the evening, after the purported meeting with Sindukwabo in the morning of the same day. The witness testified that he crossed the border in the morning of 23 April. T. 29 November 2006 p. 5.

[2012] *See* Kabiligi Defence Exhibit 135 (statement 11 December 2006). The Chamber has taken into account that there was no cross-examination of this witness concerning the hotel bills attesting to Bizimungu's stay in Kinshasa, Zaire.

[2013] Witness RX-3 assisted individuals by providing them falsified documents in June and July 1994, including some persons later indicted by the Tribunal. *See* T. 26 September 2006 pp. 62-66, 68-72; Kabiligi Defence Exhibit 90 (Kabiligi's passport). It is also noted that at some point the witness was a member of the prefectoral security council. *Id.* pp. 59-60, 70.

[2014] T. 6 September 2006 pp. 35-39, 50-51; Prosecution Exhibit 408 (Extract from Rwanda's Official Gazette, November 1996, showing the witness's name on a list of Category One genocide suspects.); Prosecution Exhibit 406 (Excerpts from the *Ntagerura et al.* trial), in which he denied that he had been known by a name on the list of suspects which now appears in Kabiligi Defence Exhibit 90 (personal identification sheet).

[2015] The Chamber has also noted that the Defence put to Witness XXH that, on 3 June 1994, a journalist on Radio Rwanda, André Nambaje, reported that President Sindikubwabo visited Cyangugu prefecture on 17 May 1994. *See* T. 6 May 2004 pp. 18-24. The transcripts of the radio transmission was not tendered as an exhibit in the present trial, *see* T. 6 May 2004 pp. 70-71, but it was read into the record during Bagambiki's re-examination. T. 28 September 2006 p. 68 ("Within the framework of the nation-wide tour of the president of the republic, Dr. Sindikubwabo, to convey to Rwandans a pacification message, he visited Cyangugu prefecture on the 17th of May.").

[2016] It is noteworthy that in the radio transmission mentioned in the preceding footnote, the journalist reported on 3 June 1994 that the previous Sunday, 29 May, a "businessman" pledged to donate one million Rwandan francs

1869. Consequently, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Kabiligi participated in meetings on 23 and 24 April, respectively, at the MRND headquarters and the *Cercle Sportif* in Cyangugu prefecture.

1870. The Chamber determined at trial that Kabiligi had adequate notice of these allegations. In view of its findings above, it does not deem it necessary to reconsider the Defence submissions on this matter.[2017]

4.6.2 Roadblock Near *Hôtel du Lac*, Mid-May

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Introduction

1871. According to the Ntabakuze and Kabiligi Indictment, senior military officials, including Kabiligi, offered assistance and encouragement to the perpetrators of the massacres of Tutsi civilians from 7 April until July 1994. He is alleged to have encouraged and supported militiamen in murdering Tutsi civilians and having ordered his subordinates to work in coordination with *Interahamwe* at roadblocks. In support of these general allegations, the Prosecution submits that Kabiligi established a roadblock, manned by soldiers and *Interahamwe*, near the *Hôtel du Lac* in May 1994 where over 100 civilians were killed. Reference is made to Witness XXH.[2018]

1872. The Kabiligi Defence argues that this allegation was not specifically pleaded in the Indictment. It further contends that Witness XXH's uncorroborated testimony lacks credibility and is contradicted by Witnesses Emmanuel Bagambiki, André Ntagerura, RX-3 and TD-77.[2019]

Evidence

Prosecution Witness XXH

1873. Witness XXH, a Hutu, worked in Cyangugu town in the vicinity of the Rusizi 1 border crossing in April and May 1994. He testified that, in the beginning of May, Kabiligi arrived in Cyangugu and installed his family at the *Hotel du Lac*. The witness saw Kabiligi there. Around mid-May, a roadblock was erected between that hotel and the border-post at the Rusizi 1 bridge in Kibungo commune.[2020] It was located about 25 to 30 metres from both

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into an account to be managed by a prefectural committee so that arms could be purchased and distributed to the population in support of civil defence. *See* T. 28 September 2006 pp. 36-39.

[2017] *See* Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, pp. 11-12; Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007, para. 37, fn. 53.

[2018] Kabiligi and Ntabakuze Indictment, paras. 6.30, 6.43-6.48; Prosecution Closing Brief, paras. 1408-1412, in particular 1410 (a), pp. 839-845. *See also* Pre-Trial Brief (21 January 2002), p. 149.

[2019] Kabiligi Closing Brief, paras. 110, 916, 930-933, 939-940, 1088, 1098-1099, 1102-1103, pp. 572-573; T. 28 May 2007 pp. 29-30, 54-55.

[2020] The transcripts contain two spellings, "Rusizi" and "Ruzizi". For consistency, the Chamber has chosen to use "Rusizi". According to Witness XXH, the roadblock was established to provide increased security to the families of senior Rwandan personnel staying at the hotel, such as the wives of André Ntagerura, Déogratias Nsabimana as well as the families of Casimir Bizimungu and Kabiligi. *See* T. 4 May 2004 p. 41.

sites. The witness heard that Kabiligi had ordered the establishment of the roadblock, but could not recall the source of his information.[2021]

1874. From April to July 1994, the Rusizi 1 roadblock was manned by *Interahamwe* and soldiers from the Presidential Guard and Camp Karambo in Cyangugu prefecture. Witness XXH could identify the soldiers by their distinctive insignia and black berets. They would decide who could pass through the roadblock, and the *Interahamwe* would kill Tutsis and those without identification papers. On one occasion, soldiers flushed out a man from the Home *Saint-François,* a hotel. He was killed by *Interahamwe* at the Rusizi 1 roadblock because he lacked identification. The witness estimated that between 100 and 150 persons were killed there and near the river bank. Those executed at the roadblock were buried in mass graves while those killed close to the river were thrown into the river and retrieved later to be buried. The witness also observed bodies being transported in Red Cross vehicles.[2022]

Kabiligi Defence Witness Emmanuel Bagambiki

1875. Emmanuel Bagambiki, a Hutu, was the prefect of Cyangugu prefecture in 1994 and has been acquitted by the Tribunal. Without specifying the date, he explained that gendarmes established a roadblock near the Rusizi 1 border-post, about 200 to 300 metres from the Rusizi river bridge. The roadblock was manned exclusively by gendarmes and not by soldiers or civilians. Kabiligi never erected a roadblock anywhere in Cyangugu prefecture. Bagambiki denied that around 100 people were killed at the Rusizi 1 border-post. He would have known if corpses were thrown into the river because they would have interfered with the turbines of a hydroelectric dam on it.[2023]

Kabiligi Defence Witness André Ntagerura

1876. André Ntagerura, a Hutu, was the Minister for Transport and Communications in 1994. He was acquitted by the Tribunal for crimes committed in Cyangugu prefecture. Ntagerura stayed at the Home *Saint-François* in Cyangugu prefecture on the nights of 15 to 17 May 1994. At the time, he was part of a delegation negotiating in neighbouring Bukavu, Zaire, about the importation of food. The *Hôtel du Lac* was a very short distance from the Home *Saint-François* and could be seen from there. Ntagerura did not see a roadblock

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[2021] T. 4 May 2004 pp. 35, 41-44, 49, 76; T. 6 May 2004 pp. 3-4, 29-32, 46; Prosecution Exhibit 220 (personal identification sheet). Witness XXH was detained in Cyangugu prefecture at the time of his testimony, awaiting trial in Rwanda. He was arrested on 26 September 1994 and charged with committing the crime of genocide in 1998. *See* T. 4 May 2004 pp. 64, 66.

[2022] T. 4 May 2004 pp. 36-37, 41-43; T. 6 May 2004 pp. 29-33, 35-40, 44-45. The soldiers from Camp Karambo wore insignias on their berets, whereas the Presidential Guards had white spats mentioning they were part of the Presidential Guard. *See* T. 6 May 2004 pp. 30-31. He also added that the *Interahamwe* were initially armed with clubs, machetes and spears. However, in May, Lieutenant Jean-Claude Singirankabo, who was the commander of the Karambo camp, and Lieutenant Samuel Imanishimwe led the distribution of weapons at roadblocks, including guns. *See* T. 4 May 2004 pp. 41-43; T. 6 May 2004 p. 17. Imanishimwe was convicted by the Tribunal. *See Ntagerura et al.* Trial Judgement, para. 806; *Ntagerura et al.* Appeal Judgement, paras. 7, 442-444.

[2023] T. 15 September 2006 pp. 6-7; T. 28 September 2006 pp. 30-31, 47-49; Kabiligi Defence Exhibit 95 (personal identification sheet). *See Ntagerura et al.* Trial Judgement, para. 805; *Ntagerura et al.* Appeal Judgement, para. 7. Emmanuel Bagambiki was previously identified in the proceedings as Kabiligi Defence Witness KC-55.

outside the *Hôtel du Lac*, but he saw one close to the bridge linking Bukavu in Zaire and Cyangugu on the Rusizi river. It was manned by gendarmes,[2024]

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Kabiligi Defence Witness RX-3

1877. Witness RX-3, a Hutu local official, worked in the area of the Rusizi 1 border-post in 1994. It was situated near a bridge linking Cyangugu to Bukavu. According to the witness, who frequently visited the border-post, there was a permanent roadblock staffed by customs personnel, who regulated traffic in and out of Zaire, and soldiers who provided security. Another roadblock had been set up downhill from *Hôtel des Chutes*, about 400 metres from the border-post, which was manned by Cyangugu gendarmes.[2025]

1878. The witness did not see Kabiligi at the Rusizi 1 border-post between April and July 1994. He visited the *Hôtel du Lac* on a daily basis between April and July 1994 and never saw Kabiligi or learned of his presence there during that period. No roadblock was established around 25 to 30 metres from, or anywhere near, the *Hôtel du Lac* between April and July 1994. There were no killings near the Rusizi 1 border-post and no bodies were thrown in the Rusizi river.[2026]

Kabiligi Defence Witness TD-77

1879. Witness TD-77, a Hutu trader who worked in Kamembe commune, Cyangugu prefecture in 1994, testified that a permanent roadblock staffed by immigration officials existed at the Rusizi 1 post on the Rwanda and Zaire border. After 6 April 1994, soldiers started manning that roadblock. The witness estimated that he went to the roadblock about twice per day. He never observed any murders or dead bodies there.[2027]

Deliberations

1880. Witness XXH is the only Prosecution witness to testify that Kabiligi ordered the establishment of a roadblock between the *Hôtel du Lac* and the Rusizi 1 bridge border crossing where over 100 people were allegedly murdered. At the time of his testimony, he was a detainee awaiting trial in Rwanda. The Chamber views his evidence with caution.

1881. The witness did not observe Kabiligi order the establishment of the roadblock and he could not recall who informed him that Kabiligi was responsible for it.[2028] In a prior statement to Tribunal investigators in August 2001, as well as during his examination-in-chief, the witness stated that he personally observed over 100 people being killed by the coordinated efforts of soldiers and *Interahamwe* at this roadblock.[2029] On cross-examination,

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[2024] T. 28 November 2006 pp. 8, 15-16, 22-23, 28-29, 39; Kabiligi Defence Exhibit 119 (personal identification sheet). *See Ntagerura et al.* Trial Judgement, para. 804; *Ntagerura et al.* Appeal Judgement, para. 7. André Ntagerura was previously identified in the proceedings as Kabiligi Defence Witness JRO-11.

[2025] T. 26 September 2006 pp. 42, 47-48, 56-57, 59-61; Kabiligi Defence Exhibit 98 (personal identification sheet).

[2026] T. 26 September 2006 pp. 46, 48-49.

[2027] T. 6 September 2006 pp. 31, 34-35; Kabiligi Defence Exhibit 90 (personal identification sheet). The witness did, however, observe dead bodies at a roadblock near Gatandara. According to other evidence, this roadblock was close to the *Hôtel des Chutes*.

[2028] *See* T. 4 May 2004 pp. 41-44; T. 6 May 2004 pp. 29-32.

[2029] *See* Kabiligi Defence Exhibit 43 (statement of 15 August 2001: "The soldiers would detain the Tutsis and others who they did not want to allow to proceed into Zaire. Such persons would be taken behind the ERP petrol station and killed by soldiers and *Interahamwe* during the night. I personally saw over 100 people being killed in that manner, but I think the total number of victims exceeded 150 … On several occasions I saw Kabiligi and

however, he testified that he only observed two killings at the roadblock. The witness did not provide any explanation for this discrepancy, and instead asserted that there was none.[2030] In the Chamber's view, this discrepancy and the witness's explanation for it raises significant concern about his credibility.[2031]

1882. None of the Defence witnesses observed Kabiligi, killings, or *Interahamwe* working with soldiers in May at a roadblock near the *Hôtel du Lac* and in the vicinity of Rusizi 1 border-post.[2032] The Chamber is aware that Bagambiki and Ntagerura might wish to distance themselves from the events. Witness RX-3 answered the questions in a straight-forward way but his personal knowledge about Kabiligi was limited. Some other issues relating to his credibility has also been considered.[2033] As regards Witness TD-77, it is noted that he has been alleged to have committed genocide in Cyangugu and that he in previous proceedings before the Tribunal withheld information about his names.[2034]

1883. Even though there are elements reducing the weight of the Defence evidence, Witness XXH's testimony about the establishment of the roadblock was indirect and uncorroborated, and there were inconsistencies concerning Kabiligi's alleged involvement in killings. Having considered the totality of the evidence, the Chamber finds that the Prosecution has not proven beyond reasonable doubt that Kabiligi established a roadblock between the *Hôtel du Lac* and the Rusizi 1 bridge where over 100 people were killed by soldiers working in coordination with *Interahamwe*.

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the soldiers killings those people."); T. 4 May 2004 p. 42 (testifying that he personally observed "more than 100 people killed at this roadblock" and that he observed people being killed "[w]henever [he] was passing by River Rusizi").

[2030] T. 6 May 2004 pp. 36, 37 ("Personally, I saw two people being killed there"), 45, 46 ("Q. ... In your statement, you said that 150 persons were killed and you saw over 100 being killed. Between two and 100, there is a large chasm. A. Thank you, Counsel. I am not – there's no inconsistency there ... Q. ... So I would like you to speak about the inconsistency when in one document you say that you saw 100 people being killed, with your own eyes, and in the courtroom you said that two people – you saw two people killed, with your own eyes. A. I have not contradicted [*sic*] up until now. I am testifying about the facts I witnessed. You have your version; I have mine. The Trial Chamber will determine.").

[2031] Witness XXH's description of having observed, on an unspecified date, a man killed by *Interahamwe* after being flushed out of the Home *Saint-François* is also uncorroborated. In his previous statement, he asserted that the man was killed in Kabiligi's presence; Kabiligi Defence Exhibit 43 (statement of 15 August 2001). Witness XXH made no such assertion when he testified. *See* T. 6 May 2004 pp. 40-41.

[2032] Other discrepancies also emerge when comparing Witness XXH's testimony as it relates to these allegations with that of the Defence witnesses. *See* Bagambiki, T. 15 September 2006 p. 6; T. 28 September 2006 pp. 56-60 (denying that Kabiligi's family stayed at the *Hôtel du Lac* when arriving in Cyangugu) *and* Witness XXH, T. 4 May 2004 p. 41; T. 6 May 2004 p. 31 (asserting that Kabiligi's family stayed in the *Hôtel du Lac*).

[2033] Witness RX-3 assisted individuals by providing them falsified documents in June and July 1994, including some persons later indicted by the Tribunal. *See* T. 26 September 2006 pp. 62-66, 68-72; Kabiligi Defence Exhibit 90 (Kabiligi's passport). It is also noted that at some point the witness was a member of the prefectoral security council. *Id.* pp. 59-60, 70.

[2034] T. 6 September 2006 pp. 35-39, 50-51; Prosecution Exhibit 408 (Extract from the Rwanda Post, November 1996, showing the witness's name on a list of Category One genocide suspects.); Prosecution Exhibit 406 (Excerpts from the *Ntagerura et al.* trial), in which he denied that he had been known by a name on the list of suspects which now appears in Kabiligi Defence Exhibit 90 (personal identification sheet).

1884. The Chamber determined at trial that Kabiligi had adequate notice of this allegation.[2035] In light of the above findings, the Chamber will not revisit its previous decision.[2036]

4.6.3 Sighting of Kabiligi, August

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Introduction

1885. The Kabiligi Indictment alleges that, between 7 April and July 1994, Tutsis and moderate Hutus sought refuge in locations they thought to be safe, often on the recommendation of the local government and military authorities, who were frequently complicit in their abduction and massacres. In support of these general allegations, the Prosecution points to evidence that in August 1994, Kabiligi reprimanded and attempted to kill Corporal Jean-Claude Uwiragiye for failing to recruit local youths to launch an attack on Tutsis in Mururu and Nyarushishi. Reference is made to Witness XXY.[2037]

1886. The Kabiligi Defence submits that this allegation was not properly pleaded in the Indictment. The Prosecution evidence lacks credibility and is contradicted by Witnesses SX-1, VIP-1, TT-2, BB-15, DK-11, ZDR-2 and Emmanuel Bagambiki. Kabiligi left Rwanda in early July 1994 and could not have been in Cyangugu in August 1994.[2038]

Evidence

Prosecution Witness XXY

1887. Witness XXY, a Hutu, testified that he travelled to Cyangugu prefecture in early August 1994. Shortly after his arrival, he met a member of the Para Commando battalion named Corporal Jean-Claude Uwiragiye. The witness told Uwiragiye that he was working with *Opération Turquoise* and distributing food to refugees. Uwiragiye replied that the witness could lose his life if people found out what he was because "an order had been given by General Kabiligi".[2039]

[2035] Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005, paras. 8, 11-12; Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007, para. 37, fn. 53. The Chamber found that notice for these allegations had been given in paras. 6.43-6.48 of the Kabiligi and Ntabakuze Indictment.

[2036] Witness XXH also provided a first-hand account of Kabiligi killing a suspected deserter at the Rusizi 1 roadblock. *See* T. 4 May 2004 pp. 57-59; T. 6 May 2006 pp. 37, 40-42, 48, 54-55. The Chamber excluded this evidence for lack of notice. *See* Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006, paras. 17-18. Furthermore, the witness testified with respect to other roadblocks in Cyangugu and killings at them. *See* T. 4 May 2004 pp. 38-40, 44, 82-83; T. 6 May 2004 pp. 44, 47. None of these roadblocks are identified in the Kabiligi and Ntabakuze Indictment. The Kabiligi Defence objected to Witness XXH's evidence, noting that the roadblocks were only identified in a will-say statement, but lacked other detail. *See* T. 4 May 2004 pp. 39-40. The Chamber notes that the summary of Witness XXH's anticipated testimony annexed to the Prosecution's Pre-Trial Brief (21 January 2002), p. 149 refers only to the roadblock in the vicinity of Rusizi 1 and has limited its considerations to the roadblock between the *Hôtel du Lac* and the Rusizi bridge.

[2037] Kabiligi and Ntabakuze Indictment paras. 6.32, 6.33; Prosecution Closing Brief, paras. 1464 (b), 1098(d). Witness XAI also provided relevant evidence.

[2038] Kabiligi Closing Brief, paras. 110, 745-750, 991, 993-995, 1006-1012, 1094-1095, 1098-1099, 1165-1167, 1176-1177, p. 601.

[2039] T. 10 June 2004 p. 37; T. 11 June 2004 pp. 2-4; T. 1 July 2004 pp. 10, 29-31; Prosecution Exhibit 262 (personal identification sheet).

1888. Sometime around 20 August 1994 at about 10.00 a.m., the witness saw Kabiligi and Uwirayige talking to each other close to the Rusizi River in Cyangugu prefecture, near the Zairian border. The witness stood at a distance from the two men. When Kabiligi left, Uwiragiye said that Kabiligi was angry with him because he had not implemented Kabiligi's order to recruit area youths to kill Tutsis at the Mururu and Nyarushishi refugee camps in Cyangugu prefecture. These areas were controlled by *Opération Turquoise*. Later that day, the witness crossed the border to go to Bukavu, Zaire. There he met Uwiragiye who informed him that Kabiligi "had almost killed him" because the refugees at Nyarushishi had been transferred to a RPF controlled area and could no longer be killed.[2040]

Prosecution Witness XAI

1889. Witness XAI, a Hutu soldier with the 17th Battalion in Byumba prefecture, testified that he saw Kabiligi at a hospital in Gisenyi prefecture in July 1994 (III.4.5.2). At the time, Kabiligi had a bodyguard named Uwiragiye.[2041]

Kabiligi Defence Witness Emmanuel Bagambiki

1890. Emmanuel Bagambiki, a Hutu, was prefect of Cyangugu in 1994. He testified that most of the Rwandan army had fled the country by August 1994 and were situated in refugee camps in Zaire. It was therefore unlikely that Kabiligi was in Cyangugu in August. Well before the first arrival of refugees on 11 May, the Nyarushishi camp in Cyangugu prefecture had been well guarded by approximately 50 to 60 gendarmes. The witness was unaware of an attack against the camp. Furthermore, the French troops of *Opération Turquoise* had arrived at Nyarushishi on 23 June and taken over the security of the camp.[2042]

1891. Bagambiki was also present at Nyarushishi camp on 30 June 1994 during the visit of the French Minister of Defence, François Léotard. He confirmed that Daniel Kamatali, the person in charge of Nyarushishi camp, had been interviewed by Léotard during the visit and had confirmed that the camp was well protected. Kamatali had stated that the camp had come under attack only once previously, but the assailants had been repelled by the gendarmes and no one had been harmed.[2043]

Kabiligi Defence Witnesses SX-1, VIP-1, TT-2

1892. Witnesses SX-1, VIP-1 and TT-2 were French members of *Opération Turquoise* in 1994. They were not aware that the mission had Rwandan staff assisting in the distribution of food to refugees. In addition, Witness VIP-1 met General Bizimungu on 15 July in Gisenyi prefecture. Bizimungu informed him that Kabiligi was retreating to Gisenyi with the last of the troops from Kigali through Ruhengeri prefecture.[2044]

[2040] T. 11 June 2004 pp. 4-6; T. 30 June 2004 pp. 91, 95-96; T. 1 July 2004 pp. 7, 9, 31, 34-37.
[2041] T. 9 September 2003 pp. 13-14; Prosecution Exhibit 94 (personal identification sheet).
[2042] T. 15 September 2006 pp. 2, 10-12; Defence Exhibit 95 (personal identification sheet).
[2043] T. 15 September 2006 pp. 14-21. *See also* Kabiligi Defence Exhibit 96 (Video of French Defence Minister visiting Nyarushishi refugee camp).
[2044] Witness SX-1, T. 16 January 2007 pp. 32, 34, 39-40; Kabiligi Defence Exhibit 131 (personal identification sheet); Witness VIP-1, T. 16 January 2007 pp. 54-55, 72; Kabiligi Defence Exhibit 132 (personal identification sheet); Witness TT-2, T. 18 January 2007 pp. 23-24; Kabiligi Defence Exhibit 133 (personal identification sheet).

Kabiligi Defence Witness BB-15

1893. Witness BB-15, a Hutu member of the Presidential Guard, said that Kabiligi was in Kigali on 3 and 4 July 1994. He saw him at the Kigali crossroads on the evening of 3 July, and near the Muhondo centre around 7.00 a.m. and 1.00 or 2.00 p.m. on the following day. He also saw the Accused in Gisenyi from 16 to 18 July as the army was leaving for Goma. During that operation, the witness observed Kabiligi once every day between 16 and 18 July 1994, including at a camp called *Lac Vert* on the banks of Lake Kivu as the Rwandan army crossed the border from Gisenyi into Goma. Witness BB-15 entered Zaire on 18 July 1994. After that date, he saw Kabiligi at the camp until October 1994, but did not specify how frequently.[2045]

Kabiligi Defence Witnesses DK-11 and Nsengiyumva Defence Witness ZDR-2

1894. Witnesses DK-11 and ZDR-2, two Rwandan soldiers who worked with Kabiligi, provided separate lists of his escorts and drivers from May to July 1994. None of the lists mention Corporal Uwiragiye. Both witnesses acknowledged that they might not be able to recall every member of Kabiligi's personal entourage.[2046]

Deliberations

1895. Witness XXY was the only witness testifying about the incidents involving Kabiligi in Cyangugu and Bukavu in August 1994. The Chamber will first consider Uwiragiye's warning that Witness XXY might be killed if it was found out he was delivering food to Tutsis. The witness's testimony about Kabiligi's order is hearsay and lacks detail as to the specific circumstances surrounding it or the nature of the instruction. Nevertheless, the witness claimed that he heard a similar warning from a Rwandan soldier at a roadblock in Mubuga when he was also delivering food with *Opération Turquoise* in Kibuye prefecture in July (III.4.5.2). The Chamber raised questions concerning the credibility of Witness XXY in connection with this event. In particular, it relied on the evidence of Witnesses SX-1, VIP-1 and TT-2 which cast a measure of doubt on whether the incident occurred, whether humanitarian aid was blocked and whether the witness could have been employed by the French mission. These concerns, while not conclusive, apply with equal force to this incident.

1896. With respect to the sighting of Kabiligi near the Rusizi river around 20 August 1994, the Chamber notes that Witness XXY was the sole witness to this event. He was also not a participant in the conversation between Kabiligi and Uwiragiye. His recounting of Kabiligi's anger over Uwiragiye's failure to recruit area youths for an attack on two refugee camps is therefore hearsay. Kabiligi's threat to kill Uwiragiye over the failed attack, which the witness learned about later that day is also second-hand.

1897. Furthermore, there is evidence from Witnesses BB-15, VIP-1 and Bagambiki which suggest that there were no military officers in Cyangugu and that Kabiligi had evacuated along with the army to Goma between 16 and 18 July 1994. This Defence evidence is inconclusive. It remains possible that Kabiligi could have travelled to Bukavu, which was right across the border from where the witness allegedly saw him, in particular bearing in

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[2045] T. 11 September 2006 pp. 3, 5-8, 11-12, 18, 35-36; Defence Exhibit 93 (personal identification sheet).
[2046] Witness DK-11, T. 19 July 2005 p. 61; T. 20 July 2004 pp. 3-4, 38, 41-42, 44, 46, 49-51; Witness ZDR-2, T. 30 March 2006 pp. 9, 11-12, 14, 16, 19-20; Prosecution Exhibit 354 (Witness DK-11's list of Kabiligi's escorts and drivers); Prosecution Exhibit 386 (Witness ZDR-2's list of Kabiligi's escorts and drivers).

mind that Kabiligi was named commander of the Bukavu squad in the reorganised Rwandan army (I.2.2). However, the testimony of Bagambiki reflected that the Nyarushishi refugee camp was well guarded by Rwandan gendarmes and *Opération Turquoise*. The Chamber has reviewed the video footage of the French Defence Minister's visit to Nyarushishi camp on 29 June 1994. It corroborates Bagambiki's evidence and shows images of the troops of *Opération Turquoise* guarding the camp with heavy calibre machine guns.[2047] Under such circumstances, the Chamber questions whether Kabiligi would entrust a low-ranking soldier to gather local youths to launch attacks on areas that would include sites heavily guarded by French soldiers.[2048]

1898. In view of the mostly second-hand and uncorroborated nature of Witness XXY's testimony, the Defence evidence raises sufficient concerns about the credibility with respect to Kabiligi's alleged activities and statements in Cyangugu prefecture in August 1994. In reaching this conclusion, the Chamber has also considered the account of Witness XAI, who stated that Kabiligi was accompanied by Uwiragiye as a bodyguard in Gisenyi. The Chamber has doubt as to whether Kabiligi was present in Gisenyi in early July (III.4.5.2). Furthermore, the evidence of Witnesses DK-11 and ZDR-2 raise questions about whether Uwiragiye was in fact assigned to Kabiligi.

1899. Accordingly, the Prosecution has not proven beyond reasonable doubt that Kabiligi gave an order to kill those providing assistance to *Opération Turquoise*. It is also not convinced that sometime in August 1994, Kabiligi reprimanded Corporal Uwiragiye for failing to follow orders that he lead youth in Cyangugu to kill Tutsis in Mururu and Nyarushishi in Cyangugu prefecture.

1900. During the course of the trial, the Chamber determined that Kabiligi had notice of these allegations. In light of the findings, there is no need to revisit the Kabiligi Defence arguments concerning notice.[2049]

[2047] *See* Kabiligi Defence Exhibit 96 (Video of French Defence Minister visiting Nyarushishi refugee camp).
[2048] The Kabiligi Defence also points to the testimony of André Ntagerura concerning his presence at Nyarushishi on 30 June 1994. *See* Kabiligi Closing Brief, para. 1010. However, Ntagerura was not questioned about this.
[2049] *See* Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi, 23 April 2007, paras. 15-16.

5. ROADBLOCKS

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5.1 Kigali

Introduction

1901. The Bagosora Indictment and the Kabiligi and Ntabakuze Indictment allege that, from the night of 6 to 7 April 1994, elements of the Rwandan army set up roadblocks to control movements in Kigali. Militiamen set up their own roadblocks or joined those manned by members of the Presidential Guard, the Para Commando Battalion and the Reconnaissance Battalion. At these places, people's identity were checked and those identified as Tutsis were summarily executed.[2050]

1902. The Bagosora Defence contends that those at roadblocks tended to be disenfranchised poor. They had been displaced through years of RPF attacks pre-dating April 1994, and there is evidence suggesting that the Rwandan army lacked control over the thousands that engaged in killings. Furthermore, it would have been unable to stop this unless it confronted these civilians directly, a strategy that was inconsistent with the Rwandan army's need to engage the RPF. The Ntabakuze Defence argues that the Indictment provides insufficient notice and suggests that Prosecution evidence of criminality at roadblocks manned by members of the Para Commando Battalion lacks credibility.[2051]

Evidence

(i) Military Checkpoints and Positions

1903. From the night of 6 April 1994, members of the Rwandan army, including the Presidential Guard, were stationed at areas surrounding military camps and on key routes to critical locations such as the Kigali airport.[2052] On the afternoon of 7 April, members of the Para Commando Battalion were deployed in a series of military positions forming the front line with the RPF from the Remera area on the west to Sonatube in the east. The battalion held these positions until it retreated to Kabasunzu on the night of 21 to 22 May 1994 after the fall of the airport and Camp Kanombe.[2053]

1904. On several occasions UNAMIR encountered periodic difficulty in passing these positions, at times requiring the intervention of senior military personnel. Around 1.00 a.m.

[2050] Bagosora Indictment, para. 6.31; Kabiligi and Ntabakuze Indictment, 6.22; Prosecution Closing Brief, paras. 168, 605-622, 901-902, 1135(h, i, j), 1338, 1405(c, d), pp. 758-759, 830. Reference is made to the following testimonies, which the Chamber has already assessed: Witnesses XXC and DAS (III.4.1.7); Witness DY (III.4.1.8-9; III.4.4.2); Witness DCH (III.4.1.6); Witness DBQ (III.4.1.14).

[2051] Bagosora Closing Brief, paras. 219, 404, 422-423, 653-659, 1227, 1314-1317, 1401, 1499 1501, 1694-1698, 1764-1765, pp. 373-374; Ntabakuze Closing Brief, paras. 1406-1407, 1409-1425. The Kabiligi Defence does not address the Prosecution's case concerning roadblocks in general. Its arguments on the specific allegations made by Witness DY against Kabiligi at roadblocks are considered in sections III.4.1.8-9; III.4.4.2.

[2052] *See, e.g.*, Daillaire, T. 20 January 2004 pp. 26-30; Marchal, T. 30 November 2006 pp. 22-23; Apedo, T. 7 September 2006 pp. 29, 34-36, 49; Witness AH, T. 20 February 2004 pp. 29-30, 33, 37-38; Witness AE, T. 16 December 2003 pp. 34-37, 66-75; Hutsebaut, T. 2 December 2004 p. 49.

[2053] The evidence concerning the deployment and movements of the Para Commando Battalion are discussed in sections III.3.5.1; III.4.1.1; III.4.1.4; III.4.1.13-14. *See also* Ntabakuze Defence Exhibit 228 (Map of Kigali identifying Para Commando positions).

on 7 April, members of the Presidential Guard stopped General Dallaire's vehicle in Kimihurura as he and Bagosora were travelling to meet with Jacques-Roger Booh-Booh, the Special Representative of the Secretary-general. Bagosora had to intervene in order to ensure that they could pass through.[2054] That same night, the Presidential Guard also prevented the passage of UNAMIR patrols dispatched to the crash site and to UNDP.[2055] Major Peter Maggen, a Belgian officer working for UNAMIR in 1994, testified that around 10.15 to 10.30 a.m. on 7 April, Dallaire and Maggen were stopped by soldiers approximately 30 to 50 metres from a roadblock in the vicinity of the *Hôtel des Mille Collines*. Weapons were pointed at them and Dallaire negotiated with those at the roadblock, who allowed them to pass on foot.[2056] Colonel Joseph Dewez, Commander of the UNAMIR's Kigali Battalion in 1994, stated that Ntabakuze provided considerable assistance in facilitating the movement of Dewez's troops and had control over roadblocks manned by his battalion. For example, on 9 April, Ntabakuze escorted a platoon of Belgian peacekeepers to Rwandex. Moreover, on 11 April 1994, members of the Para Commando Battalion delayed a UNAMIR convoy carrying refugees to the Kanombe airport. Ntabakuze was summoned and facilitated the convoys passage (III.4.1.1).[2057]

1905. As a general matter, the evidence does not show that crimes were perpetrated in connection with these exclusively military positions.[2058] However, there are notable exceptions. For example, there were killings in connection with the military roadblock near Karama hill (III.3.5.7). On 11 April, members of the Para Commando Battalion detained a large refugee movement at the Sonatube junction and participated in their murder several kilometres away at Nyanza hill (III.4.1.1).

1906. The Chamber also received other evidence about crimes at such roadblocks. Witness XAB, a Tutsi member of the Third Company of the Para Commando Battalion, heard from a member of the First Company that its soldiers were raping Tutsi women along with *Interahamwe* at Sobolirwa position.[2059] Witness DBQ, a Hutu, who was purportedly a member of the Para Commando Battalion, described *Interahamwe* and soldiers manning roadblocks in the vicinity of Ntabakuze's command post at the Giporoso junction in Remera.

[2054] Dallaire, T. 19 January 2004 pp. 29-31, 34; T. 20 January 2004 p. 26; T. 22 January 2004 pp. 64-65; Prosecution Exhibit 170 (Outgoing cable of 7 April 1994 from Dallaire to Baril), which reads: "At 2118 hours a platoon of Presidential Guard established a roadblock at the *Méridien* traffic circle and blocked traffic. Several shots were fired. No reported casualties. The guards appeared by UNAMIR observation to be nervous and dangerous". *See also* Prosecution Exhibit 5 (Final Report of 9 December 1994 of the Commission of Experts established pursuant to Security Council Resolution 935), pp. 10-11, para. 66.

[2055] Beardsley, T. 3 February 2004 p. 37; T. 4 February 2004 pp. 38-39; Dewez, T. 23 June 2005 p. 85; T. 24 June 2005 p. 31; Prosecution Exhibit 149B (*KIBAT Chronique*), pp. 16-17.

[2056] Maggen, T. 13 March 2006 pp. 8, 18-19.

[2057] T. 23 June 2005 pp. 28-29, 31, 54.

[2058] Prosecution Witness BY, a high-ranking *Interahamwe* leader, distinguished between roadblocks established by the population, including *Interahamwe*, and those manned by soldiers, testifying that on 8 and 9 April, he did not see any dead bodies at roadblocks manned by soldiers. *See* T. 4 July 2003 p. 29 ("Q. In your statements you seem to distinguish – you seem to make a clear distinction between roadblocks mounted by members of the population, including *Interahamwe* and other youth wings, and roadblocks manned by soldiers. And more specifically, you explain that during your various tours on the 8th and the 9th that there were no dead bodies at the roadblocks manned by the soldiers. Can you confirm that or not? A. I'm confirming that, Counsel.")

[2059] Witness XAB, T. 6 April 2004 pp. 38-41, 52, 76; Prosecution Exhibit 200 (personal identification sheet); Prosecution Exhibit 202 (name of soldier who told Witness XAB about rapes).

He claimed that people were stopped at these roadblocks and taken away and killed.[2060] Ntabakuze denied that members of his battalion manned roadblocks with *Interahamwe* or committed rapes at their positions.[2061]

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(ii) Civilian Roadblocks

1907. According to Major Brent Beardsley, the personal staff officer to General Dallaire in UNAMIR, there was an extensive network of roadblocks throughout Kigali. Those established by the Rwandan army were situated near the front line, each commanded by a non-commissioned officer. Gendarmes staffed roadblocks normally less than 200 metres behind the army positions. Then followed a series of additional roadblocks manned by *Interahamwe* and other civilians, armed with machetes and clubs. Members of each of these groups frequented the others' roadblocks.[2062]

1908. Civilian roadblocks were usually run by a soldier, policeman, gendarme or a civilian armed with a gun. The leader might also have grenades and, occasionally, a hand-held Motorola radio.[2063] The roadblocks manned by militia appeared to be the most dangerous, in particular after 8 or 9 April 1994.[2064] These locations were sites of open and notorious slaughter and sexual assault. Several witnesses, including Dallaire and Beardsley, observed dead men and women around roadblocks throughout Kigali, including children. The bodies of the dead were frequently piled near the roadblocks and at times were collected by local officials. Female victims were left lying on their back with their legs spread and stained with semen. Dallaire saw objects crushed or implanted in vaginas, breasts cut off, stomachs opened and the mutilated genitals of men. The only uniformed soldier among the dead whom Dallaire observed at a roadblock was one of his military observers.[2065]

[2060] Witness DBQ, T. 23 September 2003 pp. 3, 41-42; T. 30 September 2003 pp. 19-20, 24; T. 25 February 2004 p. 9; Prosecution Exhibit 99 (personal identification sheet).

[2061] T. 21 September 2006 p. 6. *See also* T. 18 September 2006 pp. 71-72; T. 20 September 2006 p. 50 (discussing the merits of Witness XAB's testimony regarding misconduct of Para Commandos around 12 April).

[2062] Beardsley, T. 3 February 2004 pp. 49-50; Prosecution Exhibit 173 (personal identification sheet). Beardsley testified that between January and April 1994, *Interahamwe*, militia and civilians would also establish roadblocks to block movement throughout Kigali during periods of demonstrations, riots and killings. Major Donald MacNeil, an officer in UNAMIR's humanitarian cell, said that, around 20 April 1994, when he arrived in Rwanda, there were a considerable number of roadblocks in Kigali, some manned by the military or other uniformed personnel, others by civilians, militia or defence forces. *See* T. 23 November 2005 p. 47.

[2063] Beardsley provided illustration of this organisation when discussing his evacuation of a convent on 10 or 11 April 1994. Specifically, his vehicle drove through a roadblock being set up by 15 or 20 males primarily in their teens and twenties and a Rwandan soldier. When returning, the soldier, who seemed to be in charge because he was armed while the others only had machetes or clubs, stated: "It's good you're not Belgian because if you were, we would drink your blood and eat your flesh". Beardsley, who had his pistol on his waist, told the man that he would have a hard time doing that with a hole in his head. The soldier waved Beardsley's vehicle through. *See* T. 3 February 2004 p. 47.

[2064] *Id.* pp. 49-50.

[2065] Dallaire, T. 20 January 2004 pp. 29-32; T. 23 January 2004 p. 28; Beardsley, T. 3 February 2004 pp. 49-52; Witness ZA, T. 12 February 2004 pp. 16-22, 45-46, 50-51, 76-77; Witness BY, T. 2 July 2004 pp. 17-18, 39, 42-43; T. 5 July 2004 pp. 9-10, 13; T. 6 July 2004 pp. 51-52, 76; T. 8 July 2004 p. 31; T. 9 July 2004 pp. 17-19, 72, 76; Witness A, T. 1 June 2004 pp. 48-49, 52-53; T. 2 June 2004 pp. 81-82; T. 3 June 2004 pp. 79-80; Ruggiu, T. 16 June 2003 pp. 3, 5-6, 39-44; T. 17 June 2003 pp. 6-7, 14, 16, 44-47, 51-53; Witness AA, Prosecution Exhibit 397 (Rule 92 *bis* statement of 6 December 1997); Witness AU, Prosecution Exhibit 398 (Rule 92 *bis* statement of 24 November 1997).

1909. After a meeting of the Interim Government at the *Hôtel des Diplomates* on 10 April, Witnesses A and BY, two high-ranking Hutu officials in the *Interahamwe,* were instructed by government officials to go on a pacification tour to various roadblocks throughout the city with Rwandan army escorts, allegedly provided by Bagosora, in order to instruct civilians to gather bodies for removal and stop the killings or face sanctions. After the tour, Witness A informed Joseph Nzirorera, Edouard Karemera and Justin Mugenzi about the killings and Karemera and Mugenzi appeared pleased. Despite the pacification tour, there is evidence that killings intensified after the departure of the government for Gitarama prefecture on 12 April and as a result of RTLM broadcasts.[2066]

1910. Bagosora believed that each neighbourhood on the initiative of local authorities set up roadblocks to prevent infiltration and that the population had been doing this since *Inyenzi* attacks commenced in 1959. The Crisis Committee that met on 8 April did not appeal to the public to set up roadblocks and those erected were not part of the civil defence program. Those at roadblocks "made their own law" and Bagosora denied that the government was aware of what was going on or that he gave money to *Interahamwe*, militiamen or young people at roadblocks.[2067]

1911. According to Bagosora, the Rwandan army's responsibility was to counter attacks by the RPF, which it was failing to do. He noted that even some of the army's soldiers were being killed at roadblocks by the population because they were fleeing instead of fighting the RPF.[2068] Colonel Luc Marchal, the Belgian Commander of the Kigali Sector, was of the view that the Rwandan army could not simultaneously cope with killings perpetrated by the *Interahamwe* and attacks by the RPF since the army's resources were fully devoted to the war effort.[2069]

(iii) Facilitating Movement through Roadblocks

1912. UNAMIR held a series of meetings with military officials and *Interahamwe* leaders in May 1994 in order to obtain safe passage through the Kigali roadblocks for its humanitarian operations, such as the evacuation of refugees. Major Donald MacNeil, the Canadian operations officer in UNAMIR's humanitarian cell, testified that, on 3 May 1994, UNAMIR attempted to evacuate 60 Rwandan refugees, holding foreign visas, from the *Hôtel des Milles Collines* to the airport. It had previously secured agreement for the movement from General Augustin Bizimungu, the army chief of staff. Militiamen at a roadblock stopped the UNAMIR vehicle, and their leader refused to allow it to pass even after being informed of the army's agreement. They demanded to see a written paper giving permission to pass. Several of the refugees were beaten and looted. They were permitted to return to the *Hôtel des Milles Collines* after the intervention of Prefect Tharcisse Renzaho.[2070]

[2066] Witness BY, T. 5 July 2004 pp. 7-14, 21-22, 31-33; T. 8 July 2004 pp. 45-49; T. 9 July 2004 pp. 48-49; Witness A, T. 1 June 2004 pp. 54, 56-61; T. 2 June 2004 pp. 80-81.

[2067] Bagosora, T. 10 November 2005 pp. 9, 21, 25.

[2068] *Id.* p. 38.

[2069] Marchal, T. 30 November 2006 p. 4; T. 1 December 2006 pp. 1-2. *See also* Ruzibiza, T. 9 March 2006 pp. 5-7, 46.

[2070] MacNeil, T. 23 November 2005 pp. 45-51; Bagosora Defence Exhibit 287 (Daily Humanitarian Report No. 8 (3 May 1994)). Major MacNeil prepared the report and was present at the roadblock during the incident. The failed evacuation was raised at a subsequent meeting on 15 May 1994, where it was noted that the *Interahamwe*

1913. UNAMIR obtained written authorisations for safe passage in the movement of refugees from the RPF and the Rwandan army on 5 and 7 May, respectively.[2071] Afterwards, up to 3,000 refugees were relocated across the frontline from mid-May to 20 June. UNAMIR was generally successful in these efforts except when a ceasefire failed, and it was too dangerous to move the evacuees. MacNeil was not aware of whether Bagosora was involved in facilitating this.[2072]

1914. Bagosora did, however, play a role in the failed attempt to evacuate around 200 Tutsi orphans. Around 13 May, he met with Bernard Kouchner, who was representing the French government, and Dallaire concerning the evacuation.[2073] On 14 May, Bagosora had a meeting with the heads of the *Interahamwe* and "self-defence forces" as well as Colonel Clayton Yaache, the Ghanaian head of the UNAMIR humanitarian cell, to discuss the feasibility of granting the French government's request to move the orphans. At the meeting, the *Interahamwe* and self-defence forces agreed to support the plan.[2074] On 15 May, Yaache and MacNeil met with Lieutenant Colonel Paul Rwarakabiji, the head of the operations bureau (G-3) on the general staff of the gendarmerie, to discuss security details for the convoy. Yaache raised the failed evacuation attempt on 3 May from the *Hôtel des Milles Collines* and asked if Bagosora could provide written authorisation for the convoy to pass. MacNeil was not aware if Bagosora was ultimately involved in this.[2075]

1915. On 16 May, Yaache, MacNeil, Rwarakabiji and Colonel Aloys Ntiwiragabo, the head of the intelligence bureau on the army general staff, met with a number of *Interahamwe* leaders to discuss the plans for the operation. Yaache and Rwarakabiji opened the meeting by noting the previous discussions and agreement of UNAMIR, the Rwandan government and military as well as *Interahamwe* leaders to the proposed evacuation. After that, according to MacNeil, the meeting "went downhill". Several *Interahamwe* leaders, who had not participated in earlier discussions, opposed the plan unless it was agreed that their members could escort the convoy. They also expressed concern that the RPF was trying to empty Kigali of Tutsis in advance of a major offensive, further noting that the orphans had not previously been in danger. Yaache thought the condition of an *Interahamwe* escort would be unacceptable to the RPF and that it would derail the operation. In MacNeil's view at the time, the dissent expressed by the *Interahamwe* reflected that the Rwandan military "lack[ed] control of the militia groups and the will to marshal these groups in any positive way".[2076]

1916. On 17 May, Bagosora met with Yaache and MacNeil to discuss the reasons why the planned evacuation of orphans scheduled for that day had not occurred.[2077] Yaache explained

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demanded to see a document giving authorisation to pass. *See* Bagosora Defence Exhibit 289 (Report of meeting on 15 May 1994), para. 12.

[2071] MacNeil, T. 23 November 2005 pp. 50-51. Bagosora Defence Exhibits 288A-B (UNAMIR Agreements with RGF and RPF for Safe Passage of Displaced Persons from UNAMIR Protected Camps).

[2072] MacNeil, T. 23 November 2005 pp. 50-51.

[2073] Dallaire, T. 19 January 2004 pp. 67-69, 73; Bagosora, T. 9 November 2005 pp. 40, 42-44.

[2074] Bagosora, T. 9 November 2005 pp. 46-47. The meeting between Yaache, Bagosora and the *Interahamwe* leaders was discussed at a meeting the following day and reflected in its report. *See* MacNeil, T. 23 November 2005 p. 54; Bagosora Defence Exhibit 289 (Report of meeting on 15 May 1994), para. 4.

[2075] MacNeil, T. 23 November 2005 pp. 53-54; Bagosora Defence Exhibit 289 (Report of meeting on 15 May 1994).

[2076] MacNeil, T. 23 November 2005 pp. 56-60; Bagosora Defence Exhibit 290 (Report of meeting on 16 May 1994).

[2077] Bagosora, T. 9 November 2005 pp. 47-54; MacNeil, T. 23 November 2005 pp. 60-63; Prosecution Exhibit 44 (Copy of Video of an Interview Given by Colonel Bagosora to Colonel Yaache of UNAMIR); Bagosora

that UNAMIR had cancelled the evacuation due to the concerns raised by the *Interahamwe* leaders and his belief that the RPF would not agree to their condition of personally escorting the orphans through RPF held territory to the airport. Bagosora agreed that this condition was essential to the security of the mission and noted that only three or four members of the *Interahamwe* would participate. He suggested that the RPF equally provide a joint escort. Bagosora emphasised that the Rwandan government wanted the evacuation to occur and that if it did not then it would be the fault of the RPF. Yaache agreed to pursue the matter with Dallaire and the RPF. In the course of their discussions, Bagosora described the militia leaders he spoke with at the meeting of 14 May as being in charge of the civil defence in Kigali.[2078]

1917. In the opinion of MacNeil and Dallaire, Bagosora could influence the *Interahamwe* at the roadblocks in particular with respect to the transfer of refugees. MacNeil testified that Bagosora told him that he had control over them.[2079]

Deliberations

1918. There is no dispute that, after the death of President Habyarimana, soldiers and gendarmes were stationed at checkpoints or at military positions at various locations in Kigali. Many of these, in particular with respect to the Para Commando Battalion, formed the front line against the RPF in the battle for Kigali. For the most part, the evidence does not show that violent crime occurred at these exclusively military sites.[2080] The Chamber does not find anything criminal in itself in the military deploying forces after the death of the Head of State to secure vital locations or to prevent an advance of opposing forces. Nevertheless, the

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Defence Exhibit 291 (Report of meeting on 17 May 1994). A transcript of the video footage was played and transcribed by the court reporters during the testimony of Alison Des Forges. *See* T. 18 September 2002 pp. 61-62, 70-75. The evidence of Major MacNeil, as corroborated by the report prepared after the meeting, indicates that the meeting occurred on 17 May 1994. *See* T. 23 November 2005 pp. 60-61; Bagosora Defence Exhibit 291 (Report of meeting on 17 May 1994).

[2078] T. 18 September 2002 p. 61 ("We have summoned the different authorities of the youth movements in the parties, who are in charge of the civil defence in Kigali, to talk about them about this problem – to talk with them, rather, about this problem. So, personally, I was in charge of this meeting of the different leaders of the youth movements. We agreed that to evacuate the orphans, there would be no problem.") Bagosora addressed the meeting in French. The French transcription of this portion of his statement reads: "*Et nous avons convoqué les différents responsables des jeunesses des partis qui font la défense civile dans Kigali pour leur parler de ce problème. Alors, moi, personnellement, j'ai dirigé cette réunion des différents responsables des jeunesses des partis, nous avons convenu que, pour l'évacuation des orphelins, qu'il n'y avait pas de problème.*" *See* T. 18 September 2002 pp. 95-96 (French). Major MacNeil testified that he would have used the word "called" rather than "summoned" in translating "*convoqué*". T. 23 November 2005 p. 64. *See also* section IV.1.2.1.

[2079] Dallaire, T. 19 January 2004 p. 71 ("... General Bizimungu and Colonel Bagosora [were] very much involved in the interplay in regards to bringing the *Interahamwe* on line. I had raised the point about the *Interahamwe* with the new mandate I had, that they absolutely had to be brought under control for all of the different checkpoints in order to prevent my forces to do their work and we don't end up with a confrontation with the *Interahamwe* as we are deploying and conducting our operations. And at that time and previously, Colonel Bagosora indicated that he could contact the *Interahamwe* and pass on instructions – information for them to act upon."); T. 23 January 2004 pp. 41-42; MacNeil, T. 23 November 2005 p. 67 ("Q. And based on the meeting of 17 May, would you say that Bagosora had any control over the militia? A. The only thing I could say on that is that he told us that he did and he had, as we understood it, met with them ... to pass on his direction to them as to what he wanted them to do for him as being the representative of the Rwandan government. That is – that is all I could say. He felt that he did.").

[2080] There are notable exceptions, outlined above, with respect to Karama hill (III.3.5.7) and the Sonatube junction (III.4.1.1).

difficulties that UNAMIR encountered in travelling throughout the city, in particular in the evacuation of refugees, is telling of the army's attitude towards UNAMIR's humanitarian mission.

1919. Turning to other types of roadblocks, most of them were manned by a mix of civilians and military personnel or only by civilians. The evidence shows that these installations proliferated throughout Kigali beginning on 7 April 1994. The civilians were primarily members of political party militias, for instance *Interahamwe*, or local inhabitants who volunteered or were pressed into service at them as part of the "civil defence" efforts. The roadblocks were used to check the identities of passers-by, and Tutsis, persons without identification documents and Hutu members of opposition parties were singled out. Military and government personnel had little difficulty passing through them. UNAMIR, however, had frequent difficulties.

1920. The evidence clearly demonstrates that civilian roadblocks manned by militia were sites of slaughter and sexual assault from 7 April. In view of the accounts, in particular of UNAMIR personnel, the Chamber does not accept that anyone travelling in Kigali in the early period of conflict would not have seen the crimes being committed at roadblocks. The Chamber is mindful though of the testimony of Major MacNeil, an operations officer for UNAMIR's humanitarian cell, who stated that most of the bodies had been removed when he arrived on 20 April.[2081] There is evidence, in particular from MacNeil, that the RPF was daily infiltrating behind the Rwandan government's front line.[2082] A roadblock is in principle designed to combat such infiltration. However, the scope of the violence inflicted at these installations, which included sexual assault and the killing of the elderly and children, cannot be justified by the threat of infiltration.

1921. The main question for the Chamber is whether the Accused bear responsibility for the crimes which occurred at these sites. The Chamber does not have direct evidence of an explicit order emanating from the military or government to establish or man roadblocks.[2083] There is Prosecution and Defence evidence that suggests that the roadblocks were erected spontaneously and were under no one's control. The Chamber does not exclude that some of the roadblocks in Kigali at various places and points in time fell into this category.

1922. Nevertheless, the Chamber observes that there was an extensive network of roadblocks throughout Kigali. They were mounted from 7 April at the same time that the Rwandan military was publicly asking civilians to stay home (IV.1.2). Some of these were manned by both civilian and military personnel.[2084] Rwandan military and government vehicles had little difficulty passing through them while UNAMIR and other civilians frequently had difficulty, absent written authorisation from the Rwandan authorities.[2085] High ranking army officers, including Bagosora, served as points of contact to facilitate movement

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[2081] MacNeil, T. 23 November 2005 p. 47 ("Myself and another Canadian arrived on [20 April] ... there were still some dead bodies laying about on the road. The majority of them, though, that were in the city had already been removed.").
[2082] *Id.* p. 47 ("So I would say that [the RPF was] infiltrating into the government lines on a daily basis.").
[2083] There is evidence of high-level discussions between civilian and military authorities at the end of March 1994 indicating that civil defence forces were to receive orders from area military commanders (III.2.6.2).
[2084] In making this finding, the Chamber has been mindful of the evidence that some members of the *Interahamwe* at roadblocks wore parts of military uniforms.
[2085] *See, e.g.*, Witness LMG, T. 15 July 2005 pp. 19-20, 22-23, 29-30 32-34; T. 18 July 2005 pp. 10-13, 15, 49-52 (discussing his ability to pass through roadblocks with Bagosora and while in military uniform).

through them. The Chamber also recalls that, during a meeting with UNAMIR on 17 May 1994, Bagosora referred to the civilians manning roadblocks as being responsible for the civil defence of Kigali (III.2.6.2).

1923. Therefore, as a general matter, in view of this evidence as well as the strategic importance of Kigali in the war against the RPF, the Chamber is satisfied that a majority of the roadblocks in Kigali were established and operated at the behest of or with the blessing of government or military authorities as part of its defensive effort (III.2.6.2). In view of this, the Chamber does not accept the Defence submission that the army was unable to put an end to the violence occurring at roadblocks. The evidence of Alison Des Forges that militia groups acted increasingly on their own as the conflict progressed, [2086] as well as that of Major MacNeil concerning the evacuation of orphans in mid-May, however, demonstrates that this control was not always effective, even when high-ranking army and gendarmerie personnel were involved. Nevertheless, there is no doubt that civilian and military authorities exercised some degree of control or influence over them.

1924. As for Bagosora's responsibility, the Chamber recalls that he was the main authority in the Ministry of Defence from 6 to 9 April, with control over the Rwandan army and gendarmerie (IV.1.2). It is inconceivable in view of the open and notorious slaughter at roadblocks that he would be unaware of the crimes being committed at them or the presence of military personnel at some of the primarily civilian ones, notwithstanding his denial to the contrary.[2087] In the Chamber's view, Bagosora is responsible for the crimes committed at roadblocks in the Kigali area during this period.[2088] This does not mean that other authorities are not also culpable for their role in establishing and operating them.

1925. With respect to Ntabakuze, there is no evidence that Ntabakuze participated in the wider system of primarily civilian roadblocks throughout Kigali. In addition, it has not been shown that members of the Para Commando Battalion were present at civilian roadblocks.[2089] Witness XAB testified that he heard that members of the Para Commando Battalion were raping women at a military check point at the Sobolirwa position and killing those who resisted. His testimony is uncorroborated and second-hand, and the Chamber declines to accept Witness XAB's evidence on this point.[2090]

[2086] T. 18 September 2002 p. 83 ("As one *bourgmestre* told me, himself, apparently involved in the genocide, he said, 'You know, it was a good thing that the RPF arrived when it did, because the thugs were about to take over', meaning those young people who had been given guns, whom the older more 'respectable' genocidal leaders were having difficulty controlling."). *See also* Prosecution Exhibit 457B (Report of the Rwandan Armed Forces High Command (2-6 September 1994): "Many problems are being encountered in the supervision of the *Interahamwe* and all civil defence recruits and serious incidents are reported every day. ... Simply directing the recruits and *Interahamwe* to civilian sites might create a climate of serious insecurity in the refugee camps"), p. 18.

[2087] Bagosora, T. 8 November 2005 pp. 80-81.

[2088] The Chamber accepts that Bagosora also had some influence at roadblocks after 9 April 1994. His statement to Major MacNeil that he had "control" over the *Interahamwe* came in mid-May 1994. However, there is not sufficient reliable evidence to show the scope of his influence over the *Interahamwe*. Furthermore, in spite of what he said to MacNeil, the operation to evacuate the orphans, which was important for Bagosora, was not ultimately successful in part due to difficulties with the *Interahamwe*.

[2089] There was some evidence that a soldier wearing what appeared to be a uniform of the Para Commando Battalion was at civilian roadblocks. *See* Beardsley T. 3 February 2004 p. 47. This is not sufficient to connect Ntabakuze or the battalion to the wider system of roadblocks.

[2090] The Chamber notes that Witness XAB's source regarding these crimes, Prosecution Witness DP, appeared in this trial, but the Prosecution led no evidence through that witness regarding these crimes.

1926. Witness DBQ testified that he observed three roadblocks in the Remera-Giporoso area, where the Para Commando Battalion was stationed. They were manned by *Interahamwe* and soldiers. People were stopped and led elsewhere to be killed.[2091] His testimony about these incidents is not corroborated. The Chamber recalls that it has raised questions about Witness DBQ's credibility in general and in connection with a number of incidents elsewhere in the judgement where he implicated members of the Para Commando Battalion in crimes (III.2.5.1; III.3.5.1; III.4.1.4; III.4.1.14). It therefore declines to accept his testimony on this point.

1927. Based on the foregoing, the Chamber is not convinced beyond reasonable doubt that members of the Para Commando Battalion committed rapes at the Sobolirwa military position or that members of that battalion and *Interahamwe* together committed killings at the roadblocks in the Remera-Giporoso area.

1928. The Kabiligi Defence has presented an alibi that Kabiligi was outside of Rwanda until 23 April (III.6.2). Furthermore, the Chamber has not found that he had operative authority over Rwandan army personnel (IV.1.3). The Prosecution has not proven beyond reasonable doubt that Kabiligi bears responsibility for crimes committed at roadblocks.[2092]

5.2 Gisenyi

Introduction

1929. The Nsengiyumva Indictment alleges that militiamen set up roadblocks in Gisenyi prefecture between April and July 1994 in order to identify accomplices and kill them on the spot or at the *Commune Rouge*. Nsengiyumva is alleged to have supervised the roadblocks and, from about 8 April to 31 July, to have ordered militiamen and soldiers to exterminate the Tutsi population and its accomplices, and, specifically, to have ordered militiamen in a continuous fashion to eliminate Tutsis at roadblocks. The Prosecution relies primarily on the testimony of Omar Serushago, Isaïe Sagahutu and Witnesses OAF, DO and HV.[2093]

1930. The Nsengiyumva Defence submits that the Indictment lacks sufficient specificity and that the Prosecution failed to give clear and consistent notice of evidence to be brought in support of the allegations. It also argues that the evidence lacks credibility. Reference is made to Willy Biot and Witnesses CF-1, CF-2, BZ-3, BX-3, R-5, RN-1, MNC-1 and STAR-2.[2094]

[2091] Witness DBQ also testified that he observed seven individuals who were taken in Ntabakuze's office and interrogated. One of Ntabakuze's bodyguards, Pakaniye, informed the witness that these were *Inyenzis* who were going to be killed. Two, who clearly were not *Inyenzi*, were released while five men were taken to Rushingwamwiza and killed. T. 23 September 2003 pp. 41-42. The witness's knowledge of the killings is second-hand. More generally, the Chamber has consistently expressed reservations about his credibility. In allowing this particular evidence in over notice objections, the Chamber noted that the event "arguably changed the nature of the criminal responsibility of the Accused." *See* Decision on Admissibility of Evidence of Witness DBQ (TC), 18 November 2003, para. 22. The Chamber does not accept Witness DBQ's evidence on this point.

[2092] There is some evidence in the period falling outside of his alibi that Kabiligi observed mistreatment at roadblocks (III.4.1.8-9; III.4.4.2). The Chamber has not found these testimonies credible.

[2093] Nsengiyumva Indictment, paras. 6.21, 6.22; Prosecution Closing Brief, paras. 483-488, 611, 619, 1018(e), 1023(b)-(c), 1034(f), 1388(f), pp. 883-886. The Prosecution points to excerpts of other evidence discussed elsewhere in the judgement, including Witness OAF (III.4.5.2), Witness DO (III.3.6.1), Witness OAB (III.3.6.2; III.4.2.3), Witness DBN (III.4.1.6), Witness DCH (III.4.2.3), Witnesses OQ and ABQ (III.3.6.3).

[2094] Nsengiyumva Closing Brief, paras. 289-305, 328, 1520-1521, 1940, 2243-1244, 2247, 2249, 2255, 2269, 2286, 2290, 2293, 2298, 2613, 2625-2626, 2637, 2651, 2657-2659, 2955, 3041-3042, 3044.

Evidence

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1931. The evidence reflects that roadblocks were erected in Gisenyi prefecture after President Habyarimana's death, with two prominent roadblocks situated at *La Corniche*, near the Goma-Gisenyi border crossing, and in front of Jean Kagemana's residence in Gisenyi town. Two Prosecution witnesses, Omar Serushago, a Hutu and an *Interahamwe*, and Isaïe Sagahutu, a Tutsi high school teacher, testified about cooperation between civilians and either the military or gendarmes in operating Gisenyi roadblocks, while all Defence witnesses were uniform in stating that military and civilian personnel did not jointly man roadblocks.[2095] Witness DO stated that he passed a roadblock set up by *conseiller* Faziri on the orders of Nsengiyumva.[2096] Nsengiyumva, although acknowledging the existence of both civilian and military roadblocks in Gisenyi, denied that there were any jointly manned roadblocks or that he ever ordered civilians to establish roadblocks.[2097] In addition to the *La Corniche* and Kagemana roadblocks discussed below, roadblocks were observed in Nyundo, Rugerero, Gisa, the entrance of Gisenyi town,[2098] on the way to Gisenyi stadium,[2099] and at the Koko bridge on the border of Kibuye and Gisenyi.[2100]

(i) La Corniche Roadblock

1932. Omar Serushago testified that he was the commander of a roadblock set up at *La Corniche*. The purpose of the roadblock was the identification of Tutsis and Hutus opposed to the Habyarimana regime, who were then taken to the *Commune Rouge* and killed.[2101] Serushago had five *Interahamwe* or *Impuzamugambi* under his command, namely Abuba Mukabu, Sibomana Rashid Gahutu, Dahati, Hamis Poku (alias *Etranger*) and Thomas Mugiraneza. Around June 1994, he claimed that Vicky Bagosora, a son of Bagosora, and Bernard Mbonabaryi, a son of Habyarimana's uncle, arrived to reinforce them at the roadblock as they screened an increased number of people in the Gisenyi area following the interim government's transfer there. The persons at the roadblock were armed with rifles and grenades, which were allegedly provided by Bizimungu and Bagosora and the military camp under Nsengiyumva's command. Serushago testified to seeing Nsengiyumva at the *La*

[2095] Serushago, T. 18 June 2003 p. 26; Sagahutu, T. 28 April 2004 pp. 3-9; T. 29 April 2004, pp. 23-24, 26.
[2096] Witness DO, T. 30 June 2003 p. 18; T. 2 July 2003 pp. 17-18.
[2097] Nsengiyumva, T. 4 October 2006 pp. 66-67; T. 5 October 2006 pp. 3-4; T. 12 October 2006 pp. 22-23, 72; Nsengiyumva Defence Exhibit 215 (Sketch of Gisenyi area drawn by Nsengiyumva). According to Nsengiyumva, there were four military roadblocks established in Gisenyi, which sought to protect military facilities and block intruders. Nsengiyumva acknowledged that he saw civilians at roadblocks, but asserted that he could not make a distinction between militiamen and the rest of the population. *See also* Witness FN-1, T. 10 July 2006 pp. 47-48 (discussing a military roadblock approximately 200 yards from the Gisenyi military camp that was established in 1990); Witness RN-1, T. 13 February 2006 pp. 50, 53-54 (confirming that there were separate civilian and military roadblocks, with the latter situated near strategic areas in Gisenyi, such as the military camp, the hospital, and the bishop's residence, and manned by four to five uniformed soldiers with Kalashnikovs); Witness DO, T. 30 June 2003 pp. 18, 70-72, 74 (testifying about a roadblock staffed by three soldiers at Gisenyi military camp, which had existed since 1990). *See also* Prosecution Exhibit 62 (Map of Gisenyi marked by Witness DO).
[2098] T. 28 April 2004 pp. 2-9; T. 29 April 2004 pp. 23-23, 26. *See also* section III.3.6.6 (evidence related to Nyundo Parish).
[2099] Witness HV, T. 23 September 2004 p. 32.
[2100] Witness RN-1, T. 13 February 2006 pp. 50, 73-75.
[2101] Serushago, T. 18 June 2003 pp. 19-20. The roadblock was approximately 100 metres from Serushago's residence. T. 19 June 2003 p. 76.

Corniche roadblock several times throughout the genocide, including an occasion between 13 and 20 April when Nsengiyumva congratulated Serushago for being in charge of the roadblock and told him that he needed to be conscientious in identifying Tutsis and sending them to their death at the *Commune Rouge*.[2102] No other witnesses mentioned to a military presence at the *La Corniche* roadblock. While Serushago stated that he did not establish the that roadblock until 13 April, a few witnesses said that it was functioning as early as 9 April.[2103]

1933. According to Prosecution Witness OAF, the *La Corniche* roadblock was manned by Serushago and other *Interahamwe,* including Bernard Munyagishari, Hassan Gitoki, Thomas and other young militiamen. They were armed with rifles, primarily Kalashnikovs, and grenades. The witness did not see any dead bodies at this roadblock, which is consistent with Serushago's testimony that the victims were brought to the *Commune Rouge* to be killed.[2104] Witness RN-1, a Hutu soldier present in Gisenyi for five days in early May 1994, and Witness STAR-2, a Hutu working in Gisenyi, both confirmed the presence of between six and eight civilians at the *La Corniche* roadblock, but testified that the individuals were armed with traditional weapons and had no firearms or grenades.[2105] Neither witness observed any killings or dead bodies there, although Witness RN-1 testified that he had heard that killing and looting occurred at *La Corniche* in April. The witness was told by the *Interahamwe* at the roadblock that they were there to prevent Tutsis and RPF sympathisers from passing. He was also informed by Serushago that he thought Nsengiyumva was working with the Tutsis.[2106]

(ii) Kagemana Roadblock

1934. A second notable roadblock was erected in front of Jean Kagemana's residence in Gisenyi town after the death of President Habyarimana. Witness OAF testified that Gakwara and Kamwe, two members of the *Interahamwe* armed with Kalashnikovs, headed the roadblock, with *Interahamwe* leaders Bernard Munyagishari and Hassan Gitoki supervising it. Witness RN-1 thought there were five to six individuals at the location during the day, with slightly more at night. According to Witness OAF, Tutsis identified at the roadblock were killed on the spot or taken to the *Commune Rouge*. He saw approximately 100 dead bodies there in total throughout the events. They were removed with vehicles.[2107] Witness

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[2102] Serushago, T. 18 June 2003 p. 26.

[2103] Serushago, T. 18 June 2003 pp. 19-20, 22-25; Witness OAF, T. 23 June 2003 p. 20 (stating that the *La Corniche* roadblock was established "three, four, or five days following President Habyarimana's death"); Witness MNC-1, T. 4 July 2006 pp. 13-14 (testifying that persons attempted to position the roadblock closer to a government services center on 9 April 1994, but Prefect Charles Zilimwabagabo intervened and convinced them to place it further away).

[2104] Witness OAF, T. 23 June 2003 pp. 5, 9-10, 20, 58, 60.

[2105] Witness RN-1, T. 13 February 2006 pp. 54-56; T. 28 February 2006 pp. 4-5, 8-11, 56-57.

[2106] Witness RN-1, T. 13 February 2006 pp. 54-56; Witness STAR-2, T. 28 February 2006 pp. 8-11, 56-57. Witness RN-1 had no knowledge of Nsengiyumva giving orders to civilian militia at roadblocks, and testified that they, including Serushago and Damas, viewed him as a collaborator for his efforts to evacuate certain people. T. 13 February 2006 pp. 58, 83-84. The witness also testified generally that some soldiers were not following orders. T. 13 February 2006 p. 84.

[2107] Witness OAF, T. 23 June 2003 pp. 16-20, 31, 57-60, 76, 79-80; Witness RN-1, T. 13 February 2006 pp. 54-56.

DO, a Hutu resident of Gisenyi, also observed *Interahamwe* at the Kagemana roadblock and thought that it was possibly erected on 7 April 1994.[2108]

1935. Nsenigyumva and Defence Witnesses CF-1, CF-2, BZ-3, RN-1 and BX-3 confirmed the existence of the Kagemana roadblock, but denied observing any dead bodies at the location and uniformly asserted that the roadblock was not erected until at least one to two week's after the President's airplane crash.[2109] Major Biot, a Belgian military adviser to the Rwandan army, mentioned the existence of military roadblocks pre-dated 7 April, but did not observe or receive any reports of civilian roadblocks in Gisenyi prefecture between 7 and 13 April when he left Rwanda.[2110] Witnesses CF-2 and BZ-3 saw *Interahamwe* at the Kagemana roadblock, with Witness BZ-3 stating that they were armed with machetes and sticks, but not guns. BZ-3 did not observe identification being checked and testified that the purpose of the roadblock was to protect a wealthy local businessman, an opinion shared by Witness RN-1 and echoed by BX-3.[2111] No witnesses testified to the existence of the military at Kagemana roadblock.

Deliberations

1936. It is common ground that civilian and military roadblocks were mounted in Gisenyi prefecture in the days after the death of President Habyarimana. There is no evidence showing that killings or other crimes occurred in connection with roadblocks manned exclusively by soldiers or gendarmes. The two most prominent civilian roadblocks, referred to in this case, were located at *La Corniche* at the border crossing between Gisenyi town and Goma as well as in front of Jean Kagemana's house. Both were manned by *Interahamwe*, and Serushago was in charge of the *La Corniche* roadblock.

1937. With respect to *La Corniche*, the evidence demonstrates beyond reasonable doubt that this roadblock was used to single out and kill Tutsis and suspected RPF sympathisers.[2112] Indeed, Defence evidence generally confirms this.[2113] The Chamber is also satisfied on the basis of Witness OAF's testimony that Tutsis were identified and killed at the Kagemana roadblock. The Chamber is not persuaded by the Defence witness that no killings occurred at

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[2108] Witness DO, T. 30 June 2003 pp. 70-74.

[2109] Witness BZ-1, T. 21 July 2005 pp. 59, 62, 70-72; T. 22 July 2005 pp. 2-3; Witness CF-1, T. 29 November 2005 pp. 3, 13-14, 40-41; Witness CF-2, T. 29 November 2005 pp. 48, 51-53, 72-74; Witness RN-1, T. 13 February 2006 pp. 54-56; Witness BX-1, T. 5 June 2006 pp. 4, 6, 10-11, 16; Nsengiyumva, T. 4 October 2006 pp. 66-67; T. 12 October 2006 p. 72. Witness RN-1 did not know when the Kagemana roadblock was erected, because he was not yet present in Gisenyi in April 1994.

[2110] Biot, T. 21 September 2006 pp. 79-83; T. 22 September 2006 pp. 9, 13, 19-20.

[2111] Witness BZ-1, T. 21 July 2005 pp. 70-72; T. 22 July 2005 pp. 6-7, 9-10, 24-25; Witness CF-2, T. 29 November 2005 pp. 72-73; Witness RN-1, T. 13 February 2006 pp. 54-56. Witness CF-2 recognized "Gakwara" and "Kamwe" at the roadblock, two individuals identified as *Interhamawe* by Witness OAF (*See* T. 23 June 2003 p. 17). Witness BZ-3 admitted that she might not have passed through the checkpoint more than once. BX-3 testified that the purpose of the Kagemana roadblock was to protect the businesses of a group of Gisenyi traders.

[2112] The Chamber has also found that Stanislas Sinibagiwe was killed in connection with the *La Corniche* roadblock in May 1994. It did not conclude that Nsengiyumva was directly responsible for this death (III.4.2.2).

[2113] STAR-2, T. 28 February 2006 pp. 9-11. The Chamber observes that Witness STAR-2 denied seeing dead bodies or hearing about killings at *La Corniche* roadblock. However, this is not dispositive since a reasonable inference can be drawn from her earlier evidence that this roadblock was used to locate "accomplices". In addition, the Chamber is convinced by the totality of the evidence regarding this incident that the Tutsis identified at this roadblock were routinely sent to execution at the *Commune Rouge*.

these roadblocks simply because they did not observe it. While the Chamber has previously raised questions with respect to the credibility of Witness OAF in connection with other events (III.3.6.1-2; III.4.2.2), his testimony is first-hand. It is also corroborated generally by the common agreement that the *Interahamwe* manning the roadblock were armed.

1938. The question remains whether Nsengiyumva bears responsibility for these sites. With respect to the *La Corniche* roadblock, the evidence of Serushago suggests that Nsengiyumva congratulated him on his appointment as head of this roadblock. This alone or other evidence about their relationship does not suggest that the roadblock was under Nsengiyumva's control. The Chamber further recalls that it has expressed reservations about the credibility of other aspects of Serushago's evidence as it relates to the Accused (III.3.6.1; III.4.2.1; III.4.2.5).

1939. The *La Corniche* roadblock was placed at a strategic location at the Rwandan border with Zaire, a short distance away from the customs and immigration posts. Given the sensitivity of this site, the Chamber is satisfied that it could only have been erected and operated with the authorisation of the government. It is not entirely clear, however, whether this would have fallen under the military's authority or that of the prefecture administration, similar to immigration and customs functions. There is also not sufficient credible evidence concerning Nsengiyumva's relationship with those manning the roadblock. Accordingly, it is not the only reasonable conclusion that it fell under his authority. Nevertheless, there is certainly evidence that Nsengiyumva was present at the crossing since he facilitated the evacuation of several Tutsis[2114] and was summoned to facilitate the passage of a convoy of Zairean refugees (III.4.2.2). This does suggest that his role as the operational sector's military commander gave him some influence over it, but not necessarily effective control over those operating it.

1940. Turning to the roadblock in front of Kagemana's house, the Defence evidence suggests that it was established to protect the home of a wealthy businessman. There does not appear to be any strategic importance to the site, nor is there evidence suggesting that it formed part of a widespread network of roadblocks within Gisenyi town. As a result, the Chamber has some doubt that it would have fallen under Nsengiyumva's command.

1941. Accordingly, the Prosecution has not proven beyond reasonable doubt that Nsengiyumva was responsible for the killings at the roadblocks at *La Corniche* and in front of Kagemana's house.

[2114] *See, e.g.*, Witness STAR-2, T. 28 February 19-21, 30-34; Witness RN-1, T. 13 February 2006 pp. 56-58, 75-77, 83.

6. ALIBI

1942. Each of the Accused have advanced alibis in connection with some of the allegations against them. In many cases, the Chamber has set forth and assessed such submissions in the sections concerning the relevant events. This is generally the case where the alibi covers a narrow time frame.[2115] The Bagosora and Kabiligi Defence have also presented alibis, respectively, that span a period of several weeks and multiple criminal incidents. In order to preserve a coherent narrative of this evidence and to avoid repetition of details in specific sections, it is recounted and assessed below.

1943. It is well settled that, in assessing an alibi, an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case. The alibi does not carry a separate burden. The burden of proving beyond reasonable doubt the facts charged remains squarely on the shoulders of the Prosecution, which must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.[2116]

6.1 Bagosora, 23 May to 22 June 1994

Introduction

1944. As set forth elsewhere in the judgement, the Prosecution alleges that, from late May to early June 1994, Bagosora participated in meetings in Gisenyi at the *Hôtel Méridien* on 24 May in connection with an attack on Nyundo Parish (III.3.6.6), in early June at MRND headquarters (III.4.2.4), at the beginning of June at the *Hôtel Méridien* related to the killing of Espérance Uwayirege (III.4.2.5), and mid to late June at Umuganda Stadium concerning subsequent attacks in Bisesero (III.4.5.1). The Prosecution has also presented evidence that Bagosora instigated killings at a roadblock in the Kiyovu area of Kigali in mid and late June (III.4.1.7). It argues that an absence of documentation reflecting Bagosora's departures from and entries into Rwanda and Zaire in May and June 1994 undermines his alibi evidence.[2117]

1945. According to the Defence, Bagosora left Rwanda on 23 May 1994 to obtain weapons and ammunition in Zaire, South Africa and the Seychelles, and he did not return to Rwanda until 22 June. Reference is made to Joseph Nzirorera, Nsengiyumva, Witness VO-5 and Isabelle Uzanyinzoga as well as Bagosora's passport and an investigative report by the Belgian judiciary on Rwanda's attempts to purchase weapons. The Bagosora Defence filed its notice of alibi for this period on 12 July 2004.[2118]

[2115] For example, Bagosora has advanced an alibi in connection with his alleged participation in meetings on the night of 6 April and the morning of 7 April at Camp Kanombe (III.3.5.1) as well as his presence in the Remera area on 7 April 1994 (III.5.2). Kabiligi has presented alibi evidence related to his participation in meetings in Cyangugu prefecture on 28 January (III.2.4.3) and in Ruhengeri prefecture on 15 February 1994 (III.2.4.4). Ntabakuze argues that he has an alibi for his alleged presence in Kabeza on the morning of 8 April 1994 (III.3.5.4). Nsengiyumva has raised an alibi for his alleged role in killings at Masaka hill (III.4.1.6) and at the Kiyovu roadblock (III.4.1.7). These submissions are discussed in connection with the specific events.

[2116] *Simba* Appeal Judgement, para. 184, citing *Simba* Trial Judgement para. 303.

[2117] Prosecution Closing Brief, paras. 653, 655-664.

[2118] Bagosora Closing Brief, paras. 1148-1172; *Bagosora et al., Notice d'Alibi # 1*, 12 July 2004.

Evidence

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Bagosora

1946. Bagosora testified that he was not in Rwanda from 23 May to 22 June 1994. He travelled with Joseph Nzirorera to Kinshasa, Zaire, on 23 May, where he remained continuously until 3 June, to execute contracts for weapons. On 24 May, Bagosora signed a contract that had been previously negotiated. On 24 May, Lieutenant Colonel Ruhorahoza brought Bagosora travellers checks and unsigned purchase slips, which Bagosora signed in Kinshasa on 25 May in order to finalise the transaction.[2119] Bagosora also signed an additional contract there on 30 May.[2120]

1947. On 3 June, Bagosora left Kinshasa for Johannesburg, South Africa to meet Joseph Nzirorera, who had left Kinshasa on 27 May and successfully negotiated an additional contract to acquire weapons. Bagosora delivered Nzirorera travellers checks that he had acquired from Ruhorahoza in Kinshasa. On the following day, Bagosora accompanied a South African broker to the Seychelles to oversee the loading of weapons and ammunition. Once in the Seychelles, Bagosora was informed that the travellers checks that he had brought to Nzirorera had been cancelled by the issuer. Nzirorera contacted the governor of the national bank and orchestrated a funds transfer, which allowed Bagosora to load the weapons and ammunition. Bagosora left the Seychelles on 19 June, travelling through Goma to Kinshasa, Zaire. He went back to Kinshasa to settle outstanding accounts and remained there until 22 June.[2121]

1948. According to Bagosora, the stamps in his passport and the stamps reflecting his entries into and departures from South Africa and the Seychelles were genuine. He explained that there was no marks in his passport regarding his entry to Zaire on 23 May and his exit from it on 22 June because he travelled on a separate travel document for members of the Economic Community of the Great Lakes (CEPGL). When he returned to Kinshasa via Goma from the Seychelles on 19 June, he travelled on a plane under Zairean authority and bypassed immigration procedures altogether.[2122]

Bagosora Defence Witness VO-5

1949. Witness VO-5, a Hutu who worked at the Rwandan Embassy in Zaire, testified that he received Bagosora and Joseph Nzirorera in Kinshasa on 23 May 1994. The two visitors stayed at the Intercontinental Hotel and Bagosora came to the Rwandan Embassy the following day to sign contracts for weapons purchases. The witness was uncertain what other days he saw Bagosora but did not believe that he left Kinshasa until early June when he went to South Africa.[2123]

[2119] Bagosora testified that it would have been impossible to have travelled to Kigali to acquire the travellers checks as the RPF had already taken control of Kanombe airport prior to 25 May 1994. T. 9 November 2005 p. 71.
[2120] T. 9 November 2005 pp. 67-72, 75; T. 10 November 2005 pp. 2, 75; T. 17 November 2005 pp. 37-39.
[2121] T. 9 November 2005 pp. 68, 72-75; T. 10 November 2005 p. 2.
[2122] T. 10 November 2005 p. 2; T. 16 November 2005 p. 70; T. 17 November 2005 pp. 21-22, 37-39; Bagosora Defence Exhibit 227 (Bagosora's Passport).
[2123] T. 12 October 2005 pp. 10, 15-18, 36, 52-55, 57-61; T. 13 October 2005 pp. 44-48; Bagosora Defence Exhibit 194 (personal identification sheet).

1950. The next time the witness saw Bagosora was at the Intercontinental Hotel in Kinshasa on 20 June. Bagosora said that he had just arrived from the Seychelles. The witness did not know how long Bagosora remained in Kinshasa.[2124]

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Nsengiyumva Defence Witness Joseph Nzirorera

1951. Joseph Nzirorera, the President of the National Assembly, travelled by air on 23 May 1994 with Lieutenant Colonel Jean-Bosco Ruhorahoza from Goma to Kinshasa, Zaire. Nzirorera was on a mission for the Rwandan government to obtain weapons and ammunition. Bagosora, on a separate mission to buy weapons, accompanied the two on the trip from Goma. Between 23 and 26 May, they stayed at the Intercontinental Hotel and usually had breakfast together. Nzirorera proceeded to South Africa on 27 May. In South Africa, he found a weapons supplier and Bagosora joined him there on 3 June, bringing one million dollars in travellers checks to finalise the transaction. The equipment they were purchasing, however, was in the Seychelles and because Nzirorera had no expertise, Bagosora left the following day to inspect the weapons and ammunition. On 4 June, Nzirorera signed a $120,000 contract to requisition a plane to transport the materials. Bagosora confirmed from the Seychelles that they had found the correct materials. However, the suppliers would not extend them credit and on 9 June, Nzirorera executed a contract with the suppliers for around $837,000. He contacted Bagosora and returned to Kinshasa that day. Bagosora subsequently informed Nzirorera that the sellers had problems cashing the travellers checks and asked him to assist. Nzirorera, working with the Rwandan ambassador in Kinshasa and a official from the National Bank, Denis Ntirugirimbabazi, arranged a transfer of funds to pay for the order. Nzirorera returned to Rwanda around 15 June.[2125]

Bagosora Defence Witness Isabelle Uzanyinzoga

1952. Isabelle Uzanyinzoga, Bagosora's wife, moved from Kigali to Gisenyi town on 12 April 1994. She saw Bagosora briefly on 23 May as he was leaving Rwanda to go on a mission to Kinshasa to buy weapons and ammunition. She recalled the specific date because it was two days after the fall of Camp Kanombe to the RPF. While he was away, she learned from Joseph Nzirorera that Bagosora had also gone to South Africa. When Bagosora returned to Gisenyi on 22 June, he mentioned his trip to the Seychelles. She remembered the precise date of Bagosora's return because it was one day before *Opération Turquoise* arrived in Rwanda.[2126]

Nsengiyumva

1953. Nsengiyumva stated that Bagosora left Gisenyi in May to go on mission to Zaire and returned to Rwanda on 23 June 1994, which was one day after *Opération Turquoise* arrived in Rwanda.[2127]

[2124] T. 12 October 2005 pp. 18-20, 36-37, 45-47.
[2125] T. 16 March 2006 pp. 66, 77-80; T. 17 March 2006 pp. 1-5; T. 12 June 2006 pp. 33-34, 44, 46-49, 51; Nsengiyumva Defence Exhibit 162 (personal identification sheet). Nzirorera referred to his passport, which included stamps indicating that he entered Goma on 23 May and South Africa on 27 May 1994. *See* T. 17 March 2006 pp. 4-5; Bagosora Defence Exhibit 321 (Nzirorera's passport). He explained that members of the CEPGL could travel between the member countries on a travel document separate from a passport. *See* T. 17 March 2006 p. 4; T. 12 June 2006 pp. 35-38.
[2126] T. 1 December 2005 pp. 2, 32, 36-39, 55; Bagosora Defence Witness 293 (personal identification sheet). Uzanyinzoga was previously known as Witness LO-2.
[2127] T. 11 October 2006 p. 9.

Deliberations

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(i) Kinshasa, 23 May to 3 June 1994

1954. According to Bagosora, he remained continuously in Kinshasa, Zaire, from 23 May to 3 June 1994. Nzirorera and Witness VO-5 confirmed Bagosora's evidence that he arrived in Kinshasa on 23 May, and that he went to the Rwandan Embassy the following day to negotiate arms purchases. Nzirorera asserted that he saw Bagosora in Kinshasa daily until 26 May and Witness VO-5 testified that he believed that Bagosora remained in Kinshasa until early June.

1955. The Prosecution suggests that Bagosora's evidence relating to his time in Zaire should be rejected, because his passport does not reflect his entry into the country and his evidence regarding alternative travel documents is unreliable.[2128] Bagosora, Nzirorera and Witness VO-5 consistently testified that Rwandan nationals, as members of the Economic Community of the Great Lakes (CEPGL), could enter Zaire using a separate CEPGL travel document.[2129] Moreover, a Belgian *Pro Justitia* statement of July 1995, containing an investigator's report about attempted arms purchases by the Rwandan government, supports Bagosora's evidence that he was in Kinshasa at least from 24 through 26 May and on 30 May.[2130] This is also reflected in the annexes to the report, which include contracts and purchase receipts signed by Bagosora.[2131]

1956. The investigator's report indicates that Bagosora signed a contract on 24 May 1994 in Kinshasa. It also states that, on 25 May, he "purchased" travellers checks in Kigali and provided them to a person in Kinshasa that same day.[2132] The report concludes, however, that it would have been materially impossible for Bagosora to have travelled to Kigali, bought travellers checks and then return to Kinshasa the same day, in particular because the Rwandan government likely took its resources to Gisenyi when they fled Kigali.[2133] Bagosora testified that the travellers checks had been brought to Kinshasa unsigned and undated and were given to him there by Lieutenant Colonel Ruhorahoza on 24 May.[2134]

[2128] Prosecution Closing Brief, paras. 657-664.
[2129] Bagosora, T. 16 November 2005 p. 70; Nzirorera, T. 17 March 2006 p. 4; T. 12 June 2004 pp. 34-38; Witness VO-5, T. 12 October 2005 pp. 20, 36-37.
[2130] Prosecution Exhibit 365 (*Pro Justitia* statement of 24 July 1995 by Olivier Bogaert and annex). The French original and English translation of the report and annex are contained sequentially in the same exhibit. Each version has a different page numbering convention. In addition, for some documents in the annex, such as photocopies of receipts, the English translation refers to the French original. When it is necessary to make references to specific pages of the report, the Chamber has identified the relevant version.
[2131] T. 9 November 2005 pp. 70-71.
[2132] Prosecution Exhibit 365 (*Pro Justitia* statement of 24 July 1995 by Olivier Bogaert and annex (English)), p. 4. Copies of the contract and purchase slip are annexed. *Id.* (French), pp. K0077168-K0077171. Bagosora testified that the document contained his signature and that it was one of the contracts he had signed in Kinshasa. T. 9 November 2005 pp. 68, 71.
[2133] Prosecution Exhibit 365 (*Pro Justitia* statement of 24 July 1995 by Olivier Bogaert and annex (English)), p. 5. *See also* Witness VO-5, T. 12 October 2005 p. 60; T. 13 October 2005 pp. 47-48 (testifying that he did not believe Bagosora could have gone to Kigali on 25 May and returned to Kinshasa the same day).
[2134] T. 9 November 2005 pp. 68-69, 71.

1957. The Belgian investigator's report also references an attestation that is signed by Bagosora and dated 26 May 1994.[2135] The Chamber notes that it bears the insignia of the Rwandan Embassy in Zaire and that Witness VO-5 believed that it was generated in the Embassy.[2136] The statement also includes a contract signed by an American businessman and Bagosora, bearing the date 30 May. An attestation on Rwandan Embassy letterhead, signed by Bagosora with the same date, is also annexed.[2137] A purchase slip for travellers checks from the *Banque Commerciale du Rwanda*, indicating that the transaction had occurred on 30 May, is enclosed. The slip is signed by Bagosora and the statement indicates that he gave the travellers checks to the American in Kinshasa that day.[2138]

1958. The testimonial evidence supporting Bagosora's alibi comes largely from himself, his wife, other Accused before the Tribunal and another witness closely associated with the former Rwandan government. The Chamber is mindful of the possible interest of these individuals in distancing Bagosora or themselves from the crimes committed during this period. However, this alone is not sufficient to invalidate their accounts. As discussed above, much of their testimony is corroborated by documentary evidence.

1959. Furthermore, the Chamber is not satisfied that the Prosecution has eliminated the reasonable possibility that Bagosora was in Zaire, rather than Gisenyi between 23 May and 3 June 1994. The evidence for this part of the alibi has been considered bearing in mind several witnesses who claimed to have seen Bagosora in Gisenyi during this period, including Witness XBM at the *Hôtel Méridien* on 24 May (III.3.6.6) and at the MRND headquarters in "early June" (III.4.2.4) as well as Witness ABQ at the *Hôtel Méridien* in the "beginning of June" (III.4.2.5). Each of these sightings is uncorroborated. The Chamber has already raised doubts about the credibility of the two witnesses or their ability to identify Bagosora in connection with the incidents. These concerns are largely independent of the alibi, but are reinforced after consideration of the alibi evidence. An accumulation of uncorroborated sightings of Bagosora in Gisenyi, which are of questionable reliability, may leave the Chamber with a lingering suspicion that he may have been there at the time, but this is not a substitute for proof beyond reasonable doubt.[2139]

1960. In particular, Witness XBM's testimony about the alleged meeting on 24 May at the *Hôtel Méridien*, is squarely rebutted by Bagosora, Nzirorera, Witness VO-5 as well as

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[2135] Prosecution Exhibit 365 (*Pro Justitia* statement of 24 July 1995 by Olivier Bogaert and annex (English)), p. 4. A copy of the attestation is annexed. *Id.* (French), p. K0077172.
[2136] T. 12 October 2005 pp. 54-55.
[2137] Prosecution Exhibit 365 (*Pro Justitia* statement of 24 July 1995 by Olivier Bogaert and annex (French)), pp. K0077173-K0077175, K0077182.
[2138] *Id.* (English), p. 5. As noted above, the Belgian investigator's report suggests that it would have been impossible for Bagosora to have gone to Kigali to purchase the checks and returned to Kinshasa the same day. According to Frédériq Keller, an American businessman, "a smallish, stocky black man from Rwanda" had said during prior negotiations that he needed five days to go to Rwanda and obtain the checks from the bank, which had relocated to Gisenyi. This may be a reference to Bagosora, but if so, it does not show that Bagosora in fact returned to Gisenyi.
[2139] The Chamber has also taken into consideration that Bagosora, as a senior official in the Ministry of Defence, might have had access to Rwandan military aircraft, in particular in view of the importance of his mission. Bagosora testified that the Gazelle helicopters owned by the Rwandan army would not have been able to transport him from Kinshasa to Goma given the need to refuel. T. 10 November 2005 pp. 3-5. The range of a Gazelle helicopter is not dispositive since it could have been refueled or he might have used another longer range aircraft. However, these possibilities still do not eliminate the reasonable possibility that his alibi is true when considered with the totality of the Prosecution and Defence evidence of his activities during this period.

documentary evidence, introduced by the Prosecution, which suggest that Bagosora was in Kinshasa on that day.

1961. With respect to Witnesses XBM and ABQ's evidence that they saw Bagosora in Gisenyi in "early" or the "beginning" of June, the Belgian investigator's report reflects that Bagosora signed a contract in Kinshasa on 30 May. Witness VO-5 testified that Bagosora remained in Kinshasa until early June, and Bagosora said he left for South Africa on 3 June. Documentary evidence supporting this appears in Bagosora's passport, which includes a visa stamp, dated 2 June, from the South African Embassy. Bagosora testified that this was the embassy in Kinshasa.[2140] The visa number begins with the letters "KIN", lending further credence to Bagosora's claim.[2141]

(ii) South Africa, 3 to 4 June 1994

1962. Bagosora and Nzirorera testified that Bagosora arrived in Johannesburg, South Africa on 3 June 1994, and left for the Seychelles the following day. Bagosora's passport reflects entry on 3 June into the South African international airport near Johannesburg and his departure from there on 4 June.[2142] The Prosecution presented no direct evidence suggesting that Bagosora was in Rwanda on these dates, other than possibly the testimonies of Witnesses ABQ and XBM, mentioned above, regarding meetings in Gisenyi in "early" or the "beginning" of June. The Prosecution appears to accept that Bagosora's was in South Africa on these days.[2143] Accordingly, in view of the evidence, the Prosecution has not eliminated the reasonable possibility that Bagosora's alibi for the second period is true.

(iii) The Seychelles, 4 to 19 June 1994

1963. Bagosora and Nzirorera each testified that Bagosora left South Africa on 4 June 1994 for the Seychelles. As just noted, Bagosora's passport reflects his departure from South Africa on that day. A stamp also records his entry to the Seychelles on 4 June.[2144] The Prosecution produced a report of the United Nations International Commission of Inquiry, dated 20 March 1996, containing investigations into the sale of weapons to the Rwandan government in violation of Security Council Resolutions. The report reflects that the Commission uncovered Seychelles immigration documents indicating Bagosora's entrance

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[2140] T. 10 November 2005 p. 2.
[2141] Bagosora Defence Exhibit 227 (Bagosora passport).
[2142] *Id.*
[2143] Prosecution Closing Brief para. 657, which notes that Bagosora's exit stamp from Zaire on 3 June and his entry and exit stamps from South Africa on 3 and 4 June 1994, respectively, on their face "have some reliability". *See also* T. 16 November 2005 p. 67 ("Mr. White: We accept that there are certain parts of the passport that represent certain travels that are corroborated by other documents that have been produced, travel vouchers, and that sort of thing. So it's not the case that the Prosecution is saying that Colonel Bagosora was never in any of the places that he says he was, but it is the case that the Prosecution is saying that where that evidence differs from the Prosecution's own evidence, that the Prosecution's evidence is to be relied on and not Colonel Bagosora's ... It's not the case that the Prosecution will say that the passport in its entirety ought to be ignored. The Prosecution will be in a position to accept much of the movements of Colonel Bagosora, but at the same time the Prosecution will argue that, in fact, the movements do not amount to an alibi with respect to the responsibility that is alleged to fall on his shoulders.").
[2144] Bagosora Defence Exhibit 227 (Bagosora passport).

into the country on 4 June.[2145] The Seychelles's Minister of Defence, who was involved in arms negotiations with Bagosora in June 1994, informed the Commission that Bagosora, purporting to be a representative of the Zairean Ministry of Defence, arrived in the Seychelles on 4 June accompanied by a South African national.[2146]

1964. The purpose of the Commission's investigations was not to establish Bagosora's whereabouts. Nevertheless, its report provides further evidence of Bagosora's continued presence in the Seychelles. A certificate of 16 June 1994 from the Seychelles Peoples' Defence Forces (SPDF) documents the provision of arms to Bagosora.[2147] Moreover, an attestation, bearing Bagosora's signature and also dated 16 June, certifies that the civilian aircraft chartered to transport the munitions was under the full responsibility of the Zairean Ministry of Defence.[2148] Finally, the report attaches another certificate of arms provisions signed by Bagosora on 18 June 1994.[2149]

1965. Bagosora testified that he left Seychelles on 19 June 1994, travelled through Goma and continued to Kinshasa, Zaire. His departure from the Seychelles is supported by a stamp in his passport, and the Commission was informed that Bagosora accompanied a second shipment of arms that left the Seychelles on 19 June for Goma.[2150] Nothing in Bagosora's passport or documents recovered by the Commission suggests that Bagosora left the Seychelles prior to 19 June.[2151]

1966. Therefore, the Chamber is not satisfied that the Prosecution has eliminated the reasonable possibility that Bagosora was in Seychelles, rather than Gisenyi and Kigali engaging in criminal conduct, between 4 and 19 June. The evidence for this part of the alibi has been assessed bearing in mind the testimonies of Witnesses XBM and ABQ, mentioned above, with respect to Bagosora's presence at meetings in Gisenyi in "early" or the "beginning" of June; Witness DAS, who claimed that Bagosora was at the Kiyovu roadblock in mid-June (III.4.1.7); and Witness ABQ concerning Bagosora's presence at Umuganda stadium in the middle or end of June (III.4.5.1).

[2145] Prosecution Exhibit 364 (Report of 20 March 1996 of the United Nations International Commission of Inquiry), para. 37, p. L0003739. The relevant resolutions concerning the sale of weapons to the Rwandan government in the Great Lakes region are Security Council Resolution 918 (1994), 997 (1995) and 1011 (1995).
[2146] *Id.* para. 29. The Commission noted that the physical description it received of Bagosora corresponded with the description provided by the Seychelles authorities. *See Id.* para. 38.
[2147] The certificate was provided by Seychelles authorities and annexed to the Commission's report. It is signed by a Lieutenant Colonel of the SPDF, countersigned by Bagosora and dated 16 June 1994. *Id.* para. 33, p. L0003734.
[2148] *Id.* para. 13, p. L0003738.
[2149] *Id.* p. L0003735.
[2150] Bagosora referred to the exit stamp during his testimony. *See* T. 10 November 2005 p. 2; Bagosora Defence Exhibit 227 (Bagosora passport); Prosecution Exhibit 364 (Report of 20 March 1996 of the United Nations International Commission of Inquiry), para. 31 ("Following the departure of the second consignment of arms – accompanied by Colonel Bagosora – on 19 June …").
[2151] Indeed, the Prosecution's position appears to be that Bagosora is responsible for the crimes with which he was charged, but not necessarily that he was not in South Africa and the Seychelles in June 1994. *See* Prosecution Closing Brief, para. 657, which submits that the entry and exit stamps from the Seychelles in Bagosora's passport, on their face "have some reliability". *See also* T. 16 November 2005 p. 69 ("Ms. Mulvaney: I think, the passport, in and of itself, we haven't taken a position on. We can substantiate his movement through the arms documents. That's why we know where he is, as he was violating the UN embargo down in South Africa, buying weapons from the Seychelles; we have that documented.").

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(iv) Kinshasa, 19 to 22 June 1994

1967. According to Bagosora, he was in Kinshasa from 19 to 22 June 1994 in order to "settle accounts".[2152] This part of his alibi is not supported by any documentary evidence. In the Chamber's view, his explanation for travelling to Kinshasa lacks clarity, but it cannot be excluded that he may have had some remaining issues to deal with following his various arms purchases. Bagosora's version is corroborated by three witnesses. Witness VO-5 stated that he saw Bagosora there on 20 June, and Bagosora's wife and Nsengiyumva attested to his return to Gisenyi around 22 June. As noted above, these witnesses may have an interest in providing favourable testimony for Bagosora.

1968. However, the main evidence of Bagosora's presence in Rwanda comes from Witnesses DAS and ABQ who suggest that he was either at Umuganda Statdium in Gisenyi or the Kiyouvu roadblock in Kigali in the middle or end of June. As noted above, there are credibility problems with these aspects of their testimonies independent of the alibi. The Prosecution therefore has not eliminated the reasonable possibility that Bagosora was in Kinshasa between 19 and 22 June 1994. The Chamber emphasises that this part of Bagosora's alibi remains somewhat equivocal and would likely be overcome by reliable and credible evidence placing him in Rwanda during this period.

6.2 Kabiligi, 28 March to 23 April 1994

Introduction

1969. As set forth elsewhere in this judgment, the Prosecution accuses Kabiligi of ordering the murder of Lieutenant Desiré Mudenge around 21 April 1994 (III.4.1.8) and being present at roadblocks in Kigali around on 20 and 21 April (III.4.1.9). More generally, the Prosecution submits that Kabiligi's position and authority coupled with his presence in Rwanda shortly after the death of President Habyarimana implicate him in the planning and implementation of the killings against Tutsi civilians and Hutu political opponents after 7 April.[2153]

1970. The Kabiligi Defence presented evidence of an alibi that Kabiligi was not in Rwanda during the period immediately before and following the death of the President and that he could not have played any role in the planning or execution of crimes committed during that time. In particular, it claims that, from 28 March until 8 April "or thereabouts", Kabiligi was in Cairo, Egypt for military training. On 14 April, he arrived in Nairobi to negotiate a sales contract for ammunition. The contract was signed on 15 April, but Kabiligi stayed in Nairobi to settle the delivery date before returning to Rwanda on 23 April. In support of the alibi, reference is made to Pierre Claver Kanyarushoki, STAR-1, DELTA, LAX-23, RO-6 and

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[2152] T. 9 November 2005 p. 73 (French) ("*Q. Pourquoi vous ne retournez pas au Rwanda, alors que vous êtes près du Rwanda, lorsque vous êtes à Goma? R. Mais l'avion... l'avion dans lequel j'étais, était l'avion d'un Zaïrois. Nous avions à régler d'abord des comptes à Kinshasa, avant que je ne rentre. Q. Quels comptes que vous aviez à régler ? Je ne comprends pas très bien. R. Ses remboursements à lui, parce qu'en cette période-là, pour toutes les affaires, nous avions la plupart des autorités à Kinshasa à l'hôtel Intercontinental, et c'est l'Ambassade du Rwanda qui s'occupait de tous ces problèmes-là.*").

[2153] Prosecution Closing Brief, paras 665-694.

Nsengiyumva as well as documentary evidence. The Defence did not give any notice of alibi or lead any evidence on Kabiligi's whereabouts between 9 and 13 April 1994.[2154]

Evidence

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Kabiligi Defence Witness Kanyarushoki

1971. Pierre Claver Kanyarushoki, a Hutu who was Rwanda's Ambassador to Uganda in April 1994, spoke to Kabiligi on the telephone around 8 April. Kabiligi said that he was still in Egypt. The witness spoke on the telephone again with Kabiligi a few days later when Kabiligi was in Nairobi, Kenya. One of Kanyarushoki's assistants, who had recently been reassigned to the Rwandan embassy in Nairobi, Kenya due to safety concerns for his family in Uganda, also informed him about Kabiligi's presence in Kenya.[2155]

Kabiligi Defence Witness LAX-23

1972. Witness LAX-23, a Rwandan diplomat in Kenya, testified that Kabiligi arrived in Nairobi on the morning of 14 April 1994 from Egypt. He came to Kenya to negotiate a contract for weapons with Oriental Machineries, Inc., which was signed on 15 April. The witness saw Kabiligi at the Rwandan embassy at least once a day until he managed to charter a flight to Rwanda on 23 April. Antoine Nkezabera, the first secretary of the embassy, and the witness accompanied Kabiligi to the airport on that date. The witness did not know where Kabiligi was from 8 to 14 April 1994.[2156]

Kabiligi Defence Witnesses DELTA

1973. Witness DELTA, a Hutu Rwandan diplomat in Kenya, met Kabiligi at the Rwandan embassy in Nairobi on 14 April 1994. The Rwandan ambassador to Kenya introduced Kabiligi to Witness DELTA and informed him that the Accused had come from Cairo, Egypt on his way to Rwanda. The witness saw Kabiligi several times at the embassy over the next several days until 22 April. He was told by Antoine Nkezabera, who had accompanied Kabiligi to the airport, that Kabiligi left on 23 April by chartered aircraft for Rwanda.[2157]

Nsengiyumva and Defence Witnesses RO-6 and STAR-1

1974. Nsengiyumva testified that Kabiligi arrived at Gisenyi Airport on 23 April 1994 in a small plane and immediately departed for Kigali by helicopter. Kabiligi told Nsengiyumva that he was coming from Nairobi.[2158] Witness RO-6, a Hutu military police officer, saw a helicopter carrying Kabiligi land at Camp Kigali sometime after 20 April.[2159] Witness STAR-

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[2154] Kabiligi Closing Brief, paras. 473-523; Kabiligi Defence Exhibit 134 (alibi documents). This exhibit contains Kabiligi's notice of alibi of 6 October 2004 as well as several other key exhibits, such as Prosecution Exhibit 232 (Egyptian Government letters), Kabiligi Defence Exhibit 23 (letters related to Nairobi weapons contract) and KABRIGA-05 (Egyptian military academy documents).

[2155] T. 17 November 2006 pp. 20, 36, 40, 61; Kabiligi Defence Exhibit 113 (personal identification sheet). Kanyarushoki stated in his examination-in-chief that he spoke with Kabiligi around 10 April 1994, but accepted during cross-examination that it was likely on 8 April when shown Prosecution Exhibit 232 (Egyptian government letters), which states that Kabiligi departed Egypt at that time. The witness said that he was not certain about dates.

[2156] T. 21 November 2006 pp. 7-8, 10-15, 39-40; Kabiligi Defence Exhibit 116A (personal identification sheet).

[2157] T. 22 November 2006 pp. 10, 12-15, 29; Kabiligi Defence Exhibit 117 (personal identification sheet).

[2158] T. 11 October 2006 pp. 5-6.

[2159] T. 27 April 2005 pp. 48-49; T. 28 April 2005 pp. 27-28, 32; Bagosora Defence Exhibit 154 (personal identification sheet).

1, a Hutu Rwandan army officer, testified that he saw Kabiligi arrive in Kigali between 20 and 25 April.[2160]

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Deliberations

1975. Kabiligi's alibi for the period of 28 March to 23 April 1994 can be divided into three distinct parts. The first part includes the period that he was in Cairo, Egypt from 28 March until his departure for Saudi Arabia on 8 April. The second part concerns the period from 9 to 13 April where the Kabiligi Defence has provided no indication as to Kabiligi's whereabouts, except to intimate that he remained outside of Rwanda. The third part relates to the period from 14 to 23 April when Kabiligi was allegedly in Nairobi, Kenya.

(i) 28 March to 8 April 1994

1976. With respect to the first part of the alibi, the Prosecution accepts that Kabiligi was in Cairo from 28 March until 8 April 1994 when he departed Egypt on a flight to Saudi Arabia.[2161] This is also confirmed by documentary evidence from the Egyptian government as well as the military training academy Kabiligi attended there.[2162] The Chamber notes that the testimony of Kanyarushoki suggests that Kabiligi might have been in Cairo as late as 10 April. However, Kanyarushoki acknowledged that he was not certain about the dates in particular when confronted with documentary evidence from the Egyptian government confirming Kabiligi's date of departure. In view of the evidence, the Chamber considers that Kabiligi has established the first part of his alibi.

(ii) 9 to 13 April 1994

1977. The Kabiligi Defence provided no indication of Kabiligi's whereabouts between 9 and 13 April 1994 in either its notice of alibi or its Closing Brief. Witnesses LAX-23 and DELTA, who attested to Kabiligi's arrival in Nairobi on 14 April, simply asserted that he was coming from Cairo, only implying that he had not yet returned to Rwanda. However, Witness LAX-23 clearly stated that he did not know where Kabiligi was in the days before arriving in Nairobi. Taking into account the time needed for return travel, the Prosecution also considers it "reasonable to conclude that Kabiligi first returned to Rwanda on or about [9 or 10 April]".[2163] The Chamber accepts that Kabiligi has a reasonable explanation of his activities until this time. However, the Defence did not provide one for his time between 10 and 13 April.

1978. This said, the Prosecution evidence of Kabiligi's activities in Rwanda during this period is limited. It refers primarily to the evidence of Prosecution Witnesses CE and Ruggiu who attested to Kabiligi's arrival at Camp Kigali after the death of President

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[2160] T. 23 February 2006 pp. 3, 70-71 ("Mount Rebero fell on the 19th and Kabiligi arrived later. I believe it was one or two days after the fall of Mount Rebero, but not after five days."); Nsengiyumva Defence Exhibit 140 (personal identification sheet).
[2161] Prosecution Closing Brief, paras. 665-666.
[2162] *See* Kabiligi Defence Exhibit 134 (alibi documents), containing Prosecution Exhibit 232 (Egyptian government letters) and KABRIGA-05 (Egyptian military academy documents).
[2163] Prosecution Closing Brief, para. 687.

Habyarimana.[2164] Witness CE, a soldier, recalled seeing Kabiligi and hearing soldiers cheer his arrival at Camp Kigali in a military jeep "a few days" after the death of the President.[2165] Ruggiu, a journalist with the RTLM, recalled seeing Kabiligi arrive between 14 and 17 April by helicopter near the officers mess at Camp Kigali.[2166] Although the witnesses provided different dates for Kabiligi's arrival, the Prosecution contends in its Closing Brief that these two witnesses "materially" corroborate one other.[2167] There is, however, no convincing way to explain the significant discrepancy between their testimonies about Kabiligi's arrival, and it appears that they are referring to separate incidents at different times.

1979. The Prosecution also submits that, given Kabiligi's senior position in the G-3 office of the army staff, it is unreasonable to assume that he would delay his return to Rwanda by several weeks.[2168] In light of Kabiligi's authority over the aviation squadron as well as the existence of helicopter flights as early 7 April, the Prosecution argues that Kabiligi could have easily facilitated his return to Rwanda.[2169] It suggests that Kabiligi may have returned multiple times, implicitly arguing that Witness CE saw him during the second part of the alibi and that Ruggiu was referring to a later arrival during the third part of the alibi.[2170] These submission are more consistent with the witnesses' varying accounts of Kabiligi's arrival.

1980. The Prosecution did not present any other evidence of Kabiligi's presence in Rwanda between 9 and 13 April, which is surprising given the resumed hostilities and his role as G-3 on the army's general staff. Furthermore, the Chamber heard extensive evidence from a number of soldiers stationed at Camp Kigali in connection with the killing of the Belgian peacekeepers (III.3.4).[2171] Indeed, the sheer contrast between the limited evidence related to Kabiligi's whereabouts during this period – only Witness CE's testimony – and the overwhelming evidence of the activities of Bagosora, Ntabakuze and Nsengiyumva, discussed elsewhere in this judgement, is significant.[2172] In the Chamber's view, the exceedingly limited nature of the evidence of Kabiligi's presence in Rwanda between 9 and 13 April is important, in particular bearing in mind his rank and role in the army. It suggests

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[2164] Prosecution Closing Brief, paras. 668-672. As further corroboration, the Prosecution also suggests that Witness AAA saw Kabiligi and Prefect Tharcisse Renzaho at a prefecture security council meeting in mid-April 1994 (III.4.1.11). *See* Prosecution Closing Brief, para. 673, citing T. 14 June 2004 pp. 17-21; T. 15 June 2004 p. 85. However, as the Kabiligi Defence notes, leaving aside other credibility concerns, Witness AAA conceded in cross-examination that this meeting occurred after 25 April. *See* Kabiligi Closing Brief, paras. 519; T. 15 June 2004 p. 85 ("I cannot recall the dates. It was the end of April, so it's between the 27th and the 30th of April. But these are not specific dates. I would say that – I am giving you an approximation. I would say that it took place towards the end of April. Q. In any case, you are saying at the end of April. Can we agree that the meeting took place after the 25th of April? Would that be correct? A. Yes, we could agree on that. It was starting on the 25th and perhaps in the days that followed.").

[2165] T. 13 April 2004 pp. 28-29; T. 14 April 2004 pp. 5, 7-8; Prosecution Exhibit 205 (personal identification sheet).

[2166] T. 16 June 2003 pp. 49-50; T 17 June 2003 pp. 30, 38-39.

[2167] Prosecution Closing Brief, paras. 1012(a), 1359(c).

[2168] *Id.* paras. 687 (m-n), 688.

[2169] *Id.* paras. 687 (o-q, t), 690-691.

[2170] *Id.* paras. 672, 686.

[2171] For example, the Chamber heard from Prosecution Witnesses XAF, CE, AH, DA, KJ and XXJ as well as Bagosora Defence Witnesses RO-3, RO-6 and RN-1, who were at Camp Kigali after the death of President Habyarimana.

[2172] Furthermore, there is evidence that Ntabakuze communicated with the G-3 office in connection with the arrival of refugees at Sonatube junction on 11 April 1994. However, it is notable that the office's deputy Lieutenant Colonel Kanyandekwe was involved in the radio exchange, not Kabiligi (III.4.1.1).

he may not have been in Rwanda. The Chamber therefore has some doubt about Witness CE's evidence placing Kabiligi in Rwanda. And even assuming that Witness CE's evidence were true, the Chamber still has no evidence of any of Kabiligi's activities between 9 and 13 April.

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(iii) 14 to 23 April 1994

1981. Turning to the third part of Kabiligi's alibi from 14 until 23 April 1994, the Prosecution accepts that Kabiligi may have briefly travelled to Nairobi, Kenya.[2173] In this respect, the Chamber finds that the evidence reliably shows that Kabiligi arrived in Nairobi on 14 April and signed a weapons contract on 15 April with Oriental Machineries, Inc. This follows from the testimonies of Witnesses LAX-23 and DELTA, which are corroborated by documentary evidence, referring to Kabiligi signing the contract of 15 April 1994.[2174] It is less clear how long Kabiligi remained in Kenya.

1982. The Kabiligi Defence has explained that he remained there until 23 April, arranging the delivery date for the contracted munitions as well as his chartered transport back to Rwanda. This is supported mainly by Witnesses LAX-23 and DELTA, who regularly saw him at the embassy and who took him to the airport. Witness LAX-23's agenda,[2175] reflecting Kabiligi's date of departure, provides corroboration, as do Nsengiyumva and Witnesses STAR-1 and RO-6, who place Kabiligi's arrival in Rwanda on or around 23 April. Witnesses STAR-1 and RO-6 gave only approximate dates for his arrival around this time.

1983. To counter this evidence, the Prosecution appears to rely on Witnesses Ruggiu, DY and XXH. As noted above, Ruggiu allegedly saw Kabiligi arrive at Camp Kigali at some point between 14 and 17 April. Witness DY testified that he was assigned to escort Kabiligi on 20 April (III.4.1.8-9). Witness XXH allegedly saw Kabiligi at a meeting with President Sindikubwabo in Cyangugu prefecture on 23 April (III.4.1.6). The Chamber considers the overall lack of evidence concerning Kabiligi's activities in Rwanda between 14 and 23 April to militate in favour of the reasonableness of the third part of his alibi.

1984. The Chamber has previously expressed concern with the credibility of Ruggiu and thus views his evidence with caution. In this case, there are some discrepancies with respect to when he stayed at Camp Kigali. According to his testimony, he was there from 14 to 16 April. However, in his plea agreement, he affirmed that he was at Camp Kigali significantly earlier, between 12 and 14 April.[2176] Furthermore, Witness CE, whom the Prosecution relies on to corroborate Ruggiu's presence at Camp Kigali, testified that he did not see Ruggiu there

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[2173] Prosecution Closing Brief, para. 687.

[2174] *See* Kabiligi Defence Exhibit 23. This exhibit contains one letter dated 30 August 1994 from Prime Minister Kambanda, referring to the contract signed on 15 April by Kabiligi. It also contains two letters dated 13 and 15 September 1994 from Defence Minister Bizimana concerning the problems with the contract with Oriental Machineries Inc., which was signed in April.

[2175] Kabiligi Defence Exhibit 126B (Agenda of Witness LAX-23).

[2176] *See* Bagosora Defence Exhibit 14, para. 159 (Ruggiu's plea agreement: "Ruggiu admits that, between 12 and 14 April, the military authority provided lodging for him in the Kigali military camp"). Ruggiu's prior statement to Tribunal investigators also indicates that he arrived on 12 or 13 April 1994. *See* Kabiligi Defence Exhibit 20B p. 24 (Undated Statement of Ruggiu: "That is why I would also say that around 12 or 13 April, when I was put under the Kigali Barracks"). His prior testimony in the *Nahimana et al.* case, however, placed his time at Camp Kigali in a range from 13 to 17 April. *See* Kabiligi Defence Exhibit 21B (Excerpts from *Nahimana et al.* T. 5 March 2002 pp. 27-29).

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until after the bombing of RTLM, around 17 to 19 April.[2177] If true, this would then place Ruggiu's sighting of Kabiligi more in line with the Kabiligi Defence's version of when the Accused returned.[2178] Witness CE's account does not exclude that Ruggiu was at the camp earlier, but given that Ruggiu was Belgian it is likely that his presence would have been noticed. These differences reflect that there is a lack of clarity as to when Ruggiu was at the camp. His evidence is uncorroborated, and the Chamber declines to rely on his account of Kabiligi's return.

1985. The Chamber has previously expressed concern with the credibility of uncorroborated testimony of Witness DY (III.4.1.8-9; III.4.4.2). Concerning the evidence of Witness XXH, which places Kabiligi in Cyangugu on 23 April (III.4.1.6), the Chamber notes that this evidence does not strictly refute Kabiligi's alibi since his Defence claims that he returned to Rwanda on 23 April. Furthermore, André Ntagerura, Witness RX-3 and Emmanuel Bagambiki disputed that there was a meeting in Cyangugu involving Kabiligi and the President at this time. According to their testimony, they attended a meeting involving the President around 17 May, and Kabiligi was not present. Considering this evidence, the Chamber declines to accept Witness XXH's evidence without further corroboration.

1986. The Chamber finds that the Defence has provided a reasonable explanation of Kabiligi's whereabouts during the third part of his alibi from 14 to 23 April 1994, supported by first-hand corroborated evidence. The Chamber has taken into account the Prosecution's arguments concerning the credibility of these alibi witnesses, based primarily on their status as alleged co-conspirators, their connections with the interim-government or possible efforts after 1994 to overthrow the current government in Rwanda.[2179] However, the Prosecution still has not proven beyond reasonable doubt that Kabiligi returned from Nairobi before 23 April 1994 when its evidence is weighed individually and together with the alibi evidence.

[2177] T. 13 April 2004 p. 28; T. 14 April 2004 pp. 5-6.
[2178] Furthermore, the itinerary offered by Ruggiu for Kabiligi's return, which he learned second-hand, is consistent with the Defence evidence placing Kabiligi's arrival around 23 April 1994.
[2179] Prosecution Closing Brief, paras. 678-685.

7. DEFENCE VIEWS ON THE CAUSES OF THE EVENTS IN 1994

7.1 Introduction

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The Defence

1987. The Defence has offered alternative explanations during the course of trial and in their Closing Briefs concerning the events which unfolded in Rwanda after the death of President Habyarimana. In particular, it has stressed that there was no plan or conspiracy by the former Rwandan government or military to harm civilians between April and July 1994. Instead, according to the Defence, the wave of civilian killings that swept the country during this period was triggered by a number of other factors.[2180]

1988. According to the Defence, the RPF's invasion in October 1990, its repeated violations of ceasefire agreements and strategy of guerrilla-war and infiltration were important causes of the events. The RPF's military strategy was not aimed at democratisation or the return of the Tutsi refugees to Rwanda, but to restore Tutsi domination by seizing power by force. It was this strategy, fully realised with the RPF's victory in July 1994, that initially destabilised the Habyarimana regime and then sparked the widespread and predicted reprisal killings of civilians after 6 April 1994.[2181]

1989. In the Defence's view, the failure of the Arusha Accords was also a significant factor. The major barrier to the implementation of this agreement was RPF's intransigence. Although pretending to accept and abide by them, the RPF in reality sought absolute, rather than shared, power. Throughout the peace negotiations, the RPF was already threatening war and preparing a military build-up. In contrast, President Habyarimana and his entourage did not oppose the Arusha Accord. The Rwandan military also took effective steps toward their implementation and the integration of its forces with the RPF.[2182]

1990. Furthermore, the history of politically-motivated violence in Burundi in the two decades prior to 1994 provided examples of massive killings of Hutu civilians by a Tutsi-dominated military, and thus established a precedent for mass-killings associated with challenges to political power that were known to all people living in Rwanda. The assassination in October 1993 of the first elected Hutu President, the massacres of tens of thousands of civilians by the Burundian Tutsi-dominated army, and the resulting 350,000 refugees that entered Rwanda, created an atmosphere of fear and mistrust in the region that, according to the Defence, made negotiated power-sharing impossible. The assassination of the Hutu Presidents of Burundi and Rwanda on 6 April 1994 showed that the majority Hutu population could not depend on the Tutsi minority to share power in a democratic process.[2183]

[2180] *See generally* Bagosora Closing Brief, paras. 28-42, 68-88, 181-433; Kabiligi Closing Brief, paras. 524-660; Ntabakuze Closing Brief, paras. 439-467, pp. 138-167; Nsengiyumva Closing Brief, paras. 86-128. The Defence teams refer to a number of witnesses and exhibits. The Chamber has fully considered this material. In view of its limited relevance to the case, as described in this section, it has not set this evidence out in detail.

[2181] Bagosora Closing Brief, paras. 197-220, 346-354; Ntabakuze Closing Brief, paras. 441-443, 447-453; Nsengiyumva Closing Brief, paras. 87-128.

[2182] Bagosora Closing Brief, paras. 73-85, 240-257; Kabiligi Closing Brief, paras. 524-575; Ntabakuze Closing Brief, para. 450; Nsengiyumva Closing Brief, para. 100.

[2183] Bagosora Closing Brief, para. 227-239; Ntabakuze Closing Brief, paras. 444-446, 464.

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1991. The Defence argues that the RPF shot down President Habyarimana's plane on 6 April 1994 with the aim of plunging the country into civil war. It thus created a pretext to decisively seize power. The RPF knew that the resumption of war would lead to massive civilian casualties, in view of the Burundian experience, warnings from the international community, as well as the prevailing tension in the country resulting from its initial invasion and military activities. The RPF and its superior military forces also prevented the Rwandan government and military from quelling the massacres by diverting their resources to the war effort. It also rejected ceasefires, ordered its forces not to intervene to save civilians and blocked the intervention of an international force. All of this was part of the RPF's war-plan and ensured that civilian killings would continue unabated. Therefore, the Defence submits that the RPF bears responsibility for planning and triggering the massacres which unfolded in Rwanda, not so-called Hutu extremists.[2184]

1992. Finally, the Defence submits that crimes were committed by the RPF in areas occupied by its forces or where combat was occurring.[2185]

The Prosecution

1993. The Prosecution rejects these arguments as mostly irrelevant and submits that they serve primarily as a diversionary tactic. It further contends that the evidence underlying the Defence's alternative explanations, in particular the opinions of its experts, is based on incomplete information, discredited sources and a questionable methodology. With respect to the shooting down of the President's plane, the Prosecution emphasises that this is not charged as a crime in the present case. While it may have been a catalyst for the crimes committed afterwards, it certainly was not the root cause. Furthermore, given the numerous competing theories for who was responsible, as well as the conflicting information, the Prosecution is not satisfied that such a case could be brought to trial. Finally, the Prosecution's charges relate to the Accused's individual criminal responsibility for specific offences. The question of whether the RPF also committed crimes or should have been charged, therefore, has no bearing on the case against them.[2186]

7.2 Deliberations

1994. One of the main purposes of the Defence's alternative explanations for the events is to undermine the Prosecution's theory that the Accused planned and conspired before April 1994 to commit the genocide which unfolded after the death of the President. The Chamber has taken into account these arguments, as well as the evidence underlying them, in assessing the allegations underpinning the Prosecution's case for conspiracy. In particular, the Prosecution has pointed to evidence of the Accused's role in defining the enemy, their participation and statements in various meetings, the preparation of lists, the creation of civilian militias and the Accused's purported role in clandestine organisations (III.2). As discussed in that section and the legal findings on conspiracy (IV.2.1), the Prosecution has not proven this charge beyond reasonable doubt.

[2184] Ntabakuze Closing Brief, paras. 454-467; Bagosora Closing Brief, paras. 182, 211-213, 355-433; Kabiligi Closing Brief, paras. 576-660; Nsengiyumva Closing Brief, paras. 94-96, 117-118.
[2185] Ntabakuze Closing Brief, paras. 461-463; Bagosora Closing Brief, paras. 181, 371; Nsengiyumva Closing Brief, paras. 88-91, 100-101, 111, 113.
[2186] Prosecution Closing Brief, paras. 249-254, 1689-1696; T. 1 June 2007 pp. 41-42.

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1995. The existence of the armed conflict and the periodic resumption of hostilities between October 1990 and April 1994 did provide a context for the Chamber's assessment of the preparation of lists and the creation of civilian militias, which raised some doubt as to whether they were at their inception intended for genocidal purposes (III.2.5-6). However, in all other respects, the alternative explanations had little relevance to the Prosecution's specific allegations that there was a conspiracy.

1996. Another aim of the Defence arguments is to show that the killings which occurred after the death of the President were somehow spontaneous with primary responsibility lying with the RPF which allegedly triggered the events. The Chamber does not exclude that there were a certain amount of spontaneous reprisal killings by members of the population in Rwanda. The evidence reflects that there was a prevailing climate of ethnic and political tension and mistrust at the time. It is also perfectly possible that some killings reflected the settling of old scores between certain individuals. However, the Accused are not being tried for such crimes. Rather, the core of the charges against them is anything but spontaneous. They are accused of a series of specific crimes perpetrated mostly by soldiers, including elite units, often acting in conjunction with militiamen. The evidence shows that these were organised military operations ordered at the highest levels. Therefore, a full consideration of the evidence of the specific crimes charged against the Accused reflects that the Defence's alternative explanations have no or limited relevance to the Prosecution's case.

1997. The attack on President Habyarimana's plane is not charged as a crime in any of the Indictments. There are multiple theories concerning who is responsible.[2187] The Chamber has permitted the Defence to adduce some evidence related to this event as background.[2188] It remains, however, a collateral issue in the case. The Defence has presented a body of evidence suggesting that the RPF was responsible for the attack.[2189] In view of the

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[2187] *See, e.g.*, Prosecution Exhibit 3A (Alison Des Forges: *Leave None to Tell the Story* (1999)), pp. 181-185; Bagosora Defence Exhibit 9 (Filip Reyntjens: *Trois jours qui on fait basculer l'histoire* (1995)); Bagosora Defence Exhibit 135B (*Pro Justitia* Statement of 31 July 1995 of Filip Reynjtens to Belgian judicial authorities), p. 4.

[2188] Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006, paras. 12-18 ("The Indictment does not attribute responsibility for the attack on the Presidential airplane to any of the Accused or their alleged co-conspirators. Paragraph 6.2 of the Indictment states neutrally that: 'On 6 April 1994 at about 8:30 p.m., the plane carrying, among other passengers, the President of the Republic, Juvénal Habyarimana, was shot down on its approach to Kigali Airport, Rwanda.' This event is characterized as the trigger for the massacres which ensued; but, unlike other paragraphs of the Indictment, no involvement of the Accused is alleged. Nor did the Prosecution present evidence during its case-in-chief to prove any responsibility by the Accused in the assassination. The only such suggestion was made during the cross-examination of the Accused Bagosora, when the Prosecution put to Colonel Bagosora that he had been involved in the attack on the Presidential airplane. The Prosecution has made clear, in responding to separate motion by the Bagosora Defence, that this question was posed only for the purpose of challenging the witness's credibility, as he had himself discussed responsibility to the attack during his examination-in-chief. The Prosecution did not suggest, and indeed specifically renounced, that it was seeking to hold the Accused criminally responsible for the President's assassination. ... The conspiracy in which the Accused is alleged to have participated does not include the attack on the Presidential airplane on 6 April 1994. ... Evidence that persons other than the Accused or his alleged co-conspirators were involved in shooting down the Presidential plane does not make any of these allegations any less likely."). *See also* Decision on Ntabakuze Motion for Disclosure of Prosecution Files (TC), 6 October 2006, para. 5; Decision on Request for Cooperation of the Government of France (TC), 6 October 2006, paras. 3-6; Decision on Disclosure of Defence Witness Statements in Possession of the Prosecution Pursuant to Rule 68 (A) (TC), 8 March 2006, paras. 6-7.

[2189] *See, e.g.*, Bagosora Defence Exhibit 247 (Report of 1 August 1997 by Michael Hourigan), para. IV; Bagosora Defence Exhibit 5 (testimony of 21 April 2000 given by Jean-Pierre Mugabe in Washington D.C.,

Prosecution's position with respect to the attack and its limited significance, this evidence has not been adequately tested through cross-examination by an interested party or through rebuttal evidence, and the Chamber therefore has no view on who the perpetrators may have been. Even assuming that the RPF were responsible, it would not have any bearing on the Accused's criminal responsibility. The attacks for which they have been held responsible were organised military operations directed at civilians. There can be no justification for this even if the opposing military force commenced the hostilities.

1998. To the extent that the Defence's alternative explanations aim to raise doubt about whether a genocide occurred in Rwanda, the submissions are without merit. A review of the evidence related to the crimes underpinning the charges amply demonstrates that the perpetrators acted with genocidal intent (IV.2.2). Leaving aside the particular facts in this case, it is clear that a genocide occurred. The Tribunal has convicted a high number of individuals in completed cases for genocide committed in various parts of the country. The Appeals Chamber has even concluded that the genocide in Rwanda in 1994 is a fact of common knowledge which there is no reasonable basis to dispute.[2190]

1999. Finally, with respect to crimes committed by the RPF, a main concern for the Defence is the apparent imbalance in the Prosecution strategy to date in failing to indict RPF members allegedly responsible for humanitarian law violations in Rwanda during 1994. The Chamber fails to see how this would exculpate the Accused for their own alleged crimes. Furthermore, Article 15 (2) of the Statute reads: "The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any government or from any other source." It is beyond the scope of Chamber's task to evaluate the Prosecutor's overall strategy.

2000. Furthermore, the Defence has not pointed to any evidence with respect to the crimes for which the Accused have been held accountable showing that the RPF may have committed them.[2191] Regarding the allegation that the RPF may have committed crimes in Rwanda other than those charged in the Indictments during the same period,[2192] the Appeals Chamber has held that "it is well established in the jurisprudence of the Tribunal that

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U.S.A.); Kabiligi Defence Exhibit 125 (International Arrest Warrant issued by Jean-Louis Bruguière on 17 November 2006); Ntabakuze Defence Exhibit 216 (Joshua Abdul Ruzibiza: *Rwanda, l'histoire secrete* (2005)); Nsengiyumva Defence Exhibit 81 (statement of 5 July 2004 by Lt. Aloys Ruyenzi), para. 23; Ruzibiza, T. 9 March 2006 pp. 20-22, 67; T. 10 March 2006 pp. 39-41), Witness BRA-1, T. 6 April 2005 pp. 67-68, 74; T. 29 May 2005 pp. 18-19, 23-25, 27, 30-32; Witness LX-1, T. 3 October 2006 pp. 59-60; T. 5 October 2006 p. 75; Marchal, T. 30 November 2006 pp. 27-28; T. 4 December 2006 pp. 6-7, 51-53; T. 5 December 2006 p. 13; Strizek, T. 11 May 2005 pp. 53-60; T. 12 May 2005 pp. 33, 64-65; Reyntjens, T. 15 September 2004 pp. 13-14, 25; T. 22 September 2004 p. 39; Kanyarushoki, T. 17 November 2006 p. 35.

[2190] *Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 35. More specifically, the Appeals Chamber has characterised the events of 1994 as "a campaign of mass killing intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population".

[2191] The Defence refers to evidence that the RPF was allegedly involved in killings in Remera (III.3.5.2) and Kabgayi in June 1994 (III.4.4.1). The Accused were not found responsible for these events.

[2192] For example, the Defence points to evidence of the RPF allegedly committing crimes, such as the assassinations of Félicien Gatabazi, the President of the PSD, in February 1994 and Emmanuel Gapyisi, an MDR official, in May 1993 (III.2.9), Byumba and in eastern Rwanda in 1994 (*see, e.g.*, Witness BRA-1, T. 6 April 2006 pp. 64-68; Witness ALL-42, T. 8 November 2006 pp. 41-43, T. 9 November 2006 pp. 13, 25, T. 17 November 2006 pp. 9-10; Ndagijimana, T. 16 November 2006 pp. 54-55, 63; Kabiligi Defence Exhibit 112 (Cable of 14 October 1994 from Shaharyar Khan to Kofi Annan), paras. 4-7).

arguments based on reciprocity, including the *tu quoque* argument, are no defence to serious violations of international humanitarian law".[2193]

2001. In sum, the alternative explanations for the events have added relevant context to a few allegations against the Accused. For the most part, however, they are irrelevant to the core issues in this case, namely whether the Accused are responsible for the specific criminal allegations charged against them.

[2193] *Martić* Appeal Judgement, para. 111. *See also Kupreškić et al.* Appeal Judgement, para. 25. *See also Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006, paras. 12-18 ("Descriptions of crimes committed by RPF forces against civilians in geographic areas physically distant from combat between the opposing armed forces in 1994 would not suggest the innocence or mitigate the guilt of the accused. The impact of such events on the criminal conduct with which the accused are charged is too remote and indirect. The Defence submissions have not demonstrated that such information would assist in disproving any element of the offences with which the Accused are charged, or how it could sustain a valid excuse or justification for their alleged conduct.").

CHAPTER IV: LEGAL FINDINGS

2002. The Prosecution has charged Bagosora, Kabiligi, Ntabakuze and Nsengiyumva with conspiracy to commit genocide, genocide, complicity in genocide, crimes against humanity (murder, extermination, rape, persecution and other inhumane acts) and serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (violence to life and outrages upon personal dignity). In addition, it charges Nsengiyumva with direct and public incitement to commit genocide.

2003. In its factual findings, the Chamber found that Bagosora, Ntabakuze and Nsengiyumva participated in the creation of the Definition of the Enemy in 1991 (III.2.2) and that Ntabakuze used this definition in speaking with his soldiers in 1992 and 1993 (III.2.4.1). Bagosora, Kabiligi and Nsengiyumva were involved in the creation, arming and training of civilian militias between 1990 and 1994 (III.2.6.2). Nsengiyumva played a role in the maintaining of lists (III.2.5.3). These findings are relevant to conspiracy (IV.2.1).

2004. With respect to the events after 6 April 1994, the Chamber found that Bagosora was involved in the crimes committed against Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza (III.3.3), Augustin Maharangari (III.3.5.6), the 10 Belgian peacekeepers (III.3.4), Alphonse Kabiligi (III.3.6.5) as well as those crimes committed from 6 to 9 April at roadblocks in the Kigali area (III.5.1), *Centre Christus* (III.3.5.2), Kibagabaga Mosque (III.3.5.3), Kabeza (III.3.5.4), the Saint Josephite Centre (III.3.5.5), Karama hill and Kibagabaga Catholic Church (III.3.5.7), Gikondo Parish (III.3.5.8), Gisenyi town (III.3.6.1), Nyundo Parish (III.3.6.6) and Mudende University (III.3.6.7). The Indictment charges Bagosora with the killing of Maharangari under Article 6 (1) of the Statute. The killings at roadblocks are charged under Articles 6 (1) and 6 (3). The remaining crimes are charged only under Article 6 (3).

2005. The Chamber has found that Aloys Ntabakuze was involved in the crimes at Kabeza (III.3.5.4), Nyanza (III.4.1.1) and IAMSEA (III.4.1.4). These crimes are charged only under Article 6 (3). Anatole Nsengiyumva was involved in the crimes committed in Gisenyi town on 7 April (III.3.6.1), including Alphonse Kabiligi (III.3.6.5), as well as at Nyundo Parish (III.3.6.6) and Mudende University (III.3.6.7), and in the Bisesero area of Kibuye prefecture (III.4.5.1). These crimes are charged in Nsengiyumva's Indictment under Articles 6 (1) and 6 (3). The Chamber did not find that Kabiligi was directly involved in any of the specific criminal events alleged against him.

2006. In this chapter, the Chamber will address the legal consequences of the involvement of the Accused in these events.

1. CRIMINAL RESPONSIBILITY

2007. The Indictments charge both direct responsibility under Article 6 (1) and superior responsibility under Article 6 (3). The Prosecution in its Closing Brief has focused its legal arguments exclusively on superior responsibility, even though it referred more generally to each form of responsibility under Article 6 (1) in its closing arguments.[2194] As mentioned above, the Accused are mainly charged with superior responsibility. Below, the Chamber will discuss whether they can be convicted on this basis for one of the substantive crimes, enumerated in Articles 2 to 4, and whether they can be held responsible under Article 6 (1), when this form of liability is alleged.

1.1 Legal Principles

1.1.1 Direct Responsibility under Article 6 (1)

2008. "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.[2195]

2009. The Appeals Chamber has explained that an aider and abetter carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on its commission.[2196] 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.[2197] The Appeals Chamber has also determined that the *actus reus* of aiding and abetting may be satisfied by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of a crime.[2198] The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.[2199] In cases of specific intent crimes such as persecution or genocide, the aider and abetter must know of the principal perpetrator's specific intent.[2200]

2010. The Chamber will assess these forms where relevant in its legal findings.

[2194] *Id.* paras. 2002-2038; T. 28 May 2007 p. 5 ("Our case is that they committed these offences, they prepared, they planned, they ordered, they directed, they incited, they encouraged and they approved the killing of innocent civilian Tutsi men, women and children, as well as other civilians who were considered their accomplices.").

[2195] *Semanza* Appeal Judgement, paras. 361, 363.

[2196] *Blagojević and Jokić* Appeal Judgement, para. 127. *See also Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, paras. 45-46; *Vasiljević* Appeal Judgement, para. 102; *Ntagerura et al.* Appeal Judgement, para. 370.

[2197] *Blagojević and Jokić* Appeal Judgement, para. 127. *See also Blaškić* Appeal Judgement, para. 48; *Simić* Appeal Judgement, para. 85; *Ntagerura et al.* Appeal Judgement, para. 372.

[2198] *Blagojević and Jokić* Appeal Judgement, para. 127. *See also Krstić* Appeal Judgment, paras. 137, 138, 144.

[2199] *Blagojević and Jokić* Appeal Judgement, para. 127. *See also Simić* Appeal Judgement, para. 86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 46; *Ntagerura et al.* Appeal Judgement, para. 370.

[2200] *Blagojević and Jokić* Appeal Judgement, para. 127. *See also Simić* Appeal Judgement, para. 86; *Krstić* Appeal Judgment, paras. 140, 141.

1.1.2 Superior Responsibility under Article 6 (3)

2011. The following three elements must be proven to hold a civilian or a military superior criminally responsible pursuant to Article 6 (3) of the Statute for crimes committed by subordinates: (a) the existence of a superior-subordinate relationship; (b) the superior's knowledge or reason to know that the criminal acts were about to be or had been committed by his subordinates; and (c) the superior's failure to take necessary and reasonable measures to prevent such criminal acts or to punish the perpetrator.[2201]

2012. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship. The superior must have possessed the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates. The superior must have had effective control over the subordinates at the time the offence was committed. Effective control means the material ability to prevent the commission of the offence or to punish the principal offenders. This requirement is not satisfied by a showing of general influence on the part of the accused.[2202]

2013. A superior will be found to have possessed or will be imputed with the requisite *mens rea* sufficient to incur criminal responsibility provided that: (i) the superior had actual knowledge, established through direct or circumstantial evidence, that his subordinates were about to commit, were committing, or had committed, a crime under the statute; or (ii) the superior possessed information providing notice of the risk of such offences by indicating the need for additional investigations in order to ascertain whether such offences were about to be committed, were being committed, or had been committed by subordinates.[2203]

2014. With respect to actual knowledge, relevant factors include: the number, type and scope of illegal acts committed by the subordinates, the time during which the illegal acts occurred, the number and types of troops and logistics involved, the geographical location, whether the occurrence of the acts is widespread, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved, and the location of the superior at the time.[2204]

1.2 Bagosora's Superior Responsibility

1.2.1 Authority – General Considerations

Introduction

2015. The Bagosora Indictment alleges that Bagosora exercised authority over the Rwandan military, their officers and militiamen given his position as *directeur de cabinet* in the Ministry of Defence, his military rank and the personal relations with the commanders of

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[2201] *Orić* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 484; *Gacumbitsi* Appeal Judgement, para. 143; *Ntagerura et al.* Trial Judgement, para. 627; *Semanza* Trial Judgement, para. 400.

[2202] *Halilović* Appeal Judgement, para. 59; *Gacumbitsi* Appeal Judgement, para. 143; *Kajelijeli* Appeal Judgement, para. 85; *Ntagerura et al.* Appeal Judgement, paras. 341-342; *Ntagerura et al.* Trial Judgement, para. 628; *Semanza* Trial Judgement, paras. 402, 415.

[2203] *Delalić et al.* Appeal Judgement, para. 232. *See also Hadžihasanović and Kubura* Appeal Judgement, para. 28; *Galić* Appeal Judgement, para. 184; *Bagilishema Appeal Judgement*, paras. 37, 42; *Ntagerura et al. Trial* Judgement, para. 629; *Semanza* Trial Judgement, para. 405.

[2204] *See, e.g., Delić* Trial Judgement, para. 64; *Strugar* Trial Judgement, para. 68; *Limaj et al.* Trial Judgement, para. 524.

units most implicated in the killings. The Prosecution points to evidence of Bagosora's active role after the death of President Habyarimana, such as chairing meetings of the military officers, meeting with UNAMIR and foreign officials, establishing the interim government and meeting with *Interahamwe* leaders, to show his actual authority during this period. Expert Witnesses Alison Des Forges and Filip Reyntjens depicted Bagosora as the main authority in Rwanda in the three days following the death of President Habyarimana.[2205]

2016. Bagosora denied the significance of his position as well as his role. Prior to the President's death, he was somewhat marginalised, as evidenced by the delayed promotions throughout his career as compared to other officers, and his retirement from active military service between 21 September 1993 and 21 May 1994. There were also significant limitations on his authority as *directeur de cabinet*. He lacked operational control and could not give orders to chiefs of staff of the army and gendarmerie. Any seemingly prominent action he took in that position was because of the requests of others, and as such he was mainly a functionary. He gave illustrations to show that he was not the principal figure in the initial period after the death of the President.[2206]

De Jure Authority

2017. Bagosora assumed the position of *directeur de cabinet* in the Ministry of Defence in June 1992 (I.2.1). He retired from the army, as a full colonel, on 23 September 1993, but continued in this post. Originally, he was to relinquish it when the Broad-Based Transitional Government under the Arusha Accords was to take over and a civilian official named by the MRND party was to take his place. However, as a consequence of the events, he remained *directeur de cabinet* until he went into exile in July 1994.[2207]

2018. The Official Journal of the Rwandan government, issued in November 1992, listed the various offices within the Ministry of Defence and their respective functions, and also contains an organisational chart depicting the hierarchy and chain of command.[2208] It follows from the chart that the Minister of Defence was the direct superior in the chain of command over the *directeur de cabinet* and the chiefs of staff of the army and gendarmerie. The *directeur de cabinet* was part of a separate chain of command within the Ministry and was not directly above the chiefs of staff in the hierarchy. A detailed analysis of the list of offices within the Ministry as well as the organisational chart reflects that the post of *directeur de cabinet* was the most senior one after that of the Minister in the Rwandan Ministry of Defence. The *directeur de cabinet* was in charge of coordinating and supervising the day to

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[2205] Bagosora Indictment, paras. 4.2-4.4, 6.2, 6.43; Prosecution Closing Brief, paras. 253, 277, 1517-1530, 2018, pp. 761-762; Des Forges, T. 10 September 2002 pp. 33-35; T. 18 September 2002 pp. 51-53; T. 25 September 48-49, 61-62, 67-68, 73-75, 80-82; Reyntjens, T. 15 September 2004 pp. 24-25, T. 16 September 2004 p. 116; T. 17 September 2004 pp. 12-13, 66-67.

[2206] Bagosora Closing Brief, paras. 506-532, 1169-1189, 1196-1229, 1783-1794, pp. 376-378; Bagosora, T. 25 October 2005 pp. 60-65, 75; T. 26 October 2005 pp. 2-3, 7; T. 27 October 2005 pp. 20, 22, 32-33; T. 7 November 2005 pp. 5, 61; T. 8 November 2005 pp. 58-59; T. 9 November 2005 p. 38. As illustrations that he merely responded to requests, Bagosora mentioned that he was asked by Dallaire to meet with Booh-Booh, Booh-Booh asked him to contact the political parties about selecting a new president, and Booh-Booh proposed the meeting with the United States Ambassador.

[2207] Bagosora, T. 26 October 2005 pp. 2-3, 7.

[2208] Bagosora Defence Exhibit 4, pp. 1766-1769 (*Journal Officiel la République Rwandaise* (15 November 1992)).

day work of the Ministry. He would replace the Minister in his absence.[2209] This occurred in April 1994 when Augustin Bizimana, the Minister of Defence, was on official mission in Cameroon. 40204

2019. A letter of 27 January 1993 from the then Minister of Defence, James Gasana, sought to restrict the legal authority of the *directeur de cabinet* when the Minister was absent or unavailable. It appears that this instruction was an attempt by Gasana to limit Bagosora's influence in the Ministry.[2210] In particular, it obliged the *directeur de cabinet* to ensure the proper functioning of the daily business (*les affaires courantes*) of the Ministry.[2211] It authorised him, among other things, to convoke and preside over meetings of the chiefs of staff of the army and gendarmerie as well as the other directors of the Ministry.[2212] After such a meeting, the *directeur de cabinet* could issue operational orders to the chiefs of staff of the army and gendarmerie if they were in writing and had also been previously approved by those in attendance, in particular the concerned chief of staff. In all other respects, the competence of the chiefs of staffs of the army and gendarmerie remained unaffected. Several notable powers were not conferred by Gasana's directive, such as the transfer or promotion of officers and the taking of disciplinary measures.[2213]

2020. It is not clear whether the restrictions imposed by this letter remained in legal force after Gasana, who was considered a moderate, fled Rwanda for security reasons in July 1993 and was replaced by Augustin Bizimana. Before Gasana left, he had also prepared an official request to make Bagosora retire.[2214] After Gasana left, Bagosora did retire from the army on 21 September 1993, but retained his post as *directeur de cabinet* (I.2.1).

2021. Even assuming that the limitations imposed by Gasana's letter remained in force, the *directeur de cabinet* still played an important role in presiding over joint meetings of the

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[2209] *Id.*. The relevant portion (p. 1766) of the journal reads: "*Attributions propres au directeur de cabinet. - Direction, coordination, animation, orientation et contrôle des activités des Conseillers, de l'Attaché de Presse et des services d'appui relevant du Cabinet; - Distribution et suivi des affaires; - Elaboration de la politique générale du département et suivi de la mise en œuvre des options et décisions gouvernementales dans les domaines d'intervention du département; - Centralisation et vérification des dossiers et des actes à soumettre au visa ou à la signature du ministère; - Supervision, en étroite collaboration avec le Directeur général, de la programmation des activités du ministère à court et moyen termes et de l'élaboration du rapport annuel du ministère; - Animation du Conseil du ministère; - Coordination des activités de coopération intéressant le ministère; - Relations avec l'environnement socio-politique et les médias; - Remplacement du Ministre en cas d'absence ou d'empêchement de ce dernier pour ce qui concerne les affaires courantes; - Toute autre tâche confiée par le Ministre.*"

[2210] *See* Kabiligi Defence Exhibit 10 (James Gasana, *La Violence Politique au Rwanda 1991-1993* (1998)), p. 14, fn. 13.

[2211] Prosecution Exhibit 246 (letter of 27 January 1993 from the Minister of Defence to the *directeur de cabinet*), para. 1. Copies for information were sent to the President and the Prime Minister and several other institutions. Para. 2 defined the daily business ("*Par affaires courantes, il faut entendre tous les actes d'administration et de gestion du Ministère pour les affaires de la compétence du Ministre de la Défence non déléguées aux Chefs d'Etats-Majors des Forces sous réserve des points suivants ...* ") and listed limitations of authority.

[2212] Prosecution Exhibit 246 (letter of 27 January 1993 from the Minister of Defence), para. 5. Minutes of such meetings must be taken and approved by all participants.

[2213] *Id.* para. 2 (a).

[2214] *See* Kabiligi Defence Exhibit 10 (James Gasana, *La Violence Politique au Rwanda 1991-1993* (1998)), p. 14, fn. 13 ("*En plus, avant ma démission en juillet 93, j'ai déposé au Gouvernement un dossier de sa mise en retraite. Cette mise en retraite fut décidée en août 1993. Cependant, pour des raisons qui ne sont pas claires, mon successeur l'a maintenu comme Directeur de cabinet, et a réhabilité son influence au sein des FAR.*").

chiefs of staff of the army and gendarmerie as well as other Ministry officials, which could ultimately result in the issuance of operational orders to commands of these two military forces.

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De Facto Authority

2022. A careful review of Bagosora's official activities in the first three days after the death of President Habyarimana shows that on a number of occasions he in fact exceeded the limits of Gasana's letter of 27 January 1993. Ndindiliyimana convoked the first Crisis Committee meeting on the evening of 6 April, but Bagosora was the one who ultimately chaired it and played the dominant role.[2215] It was of course consistent with his authority as *directeur de cabinet* to preside over joint meetings of the army and gendarmerie chiefs of staff. However, several of the actions taken during the meeting and afterwards were not. In particular, the committee named Marcel Gatsinzi, the commanding officer of ESO in Butare prefecture, as the acting army chief of staff. It was Bagosora who proposed naming an acting chief of staff and personally signed the telegram making the appointment.[2216] As noted above, the directive from Gasana governing the role of the *directeur de cabinet* in the absence of the Minister specifically excluded the authority to promote and transfer personnel without the express authorisation of the Minister of Defence. Bagosora was clearly operating with greater authority.

2023. On 7 April, Bagosora, on behalf of the Rwandan military, met with Jacques Roger Booh-Booh, the Special Representative of the Secretary-General, around 1.00 a.m. (III.3.2.2) and with the United States Ambassador at 9.00 a.m. (III.3.2.3). He claimed that he did not initiate these meetings and, in the case of the meeting with the United States, noted that he was accompanied by Ndindiliyimana. In the Chamber's view, the question of whether he initiated the meetings is besides the point: he was in fact representing the Rwandan military – the main authority still operating in the country – to the international community and was viewed by senior military officials as the most appropriate person to do so.

2024. In this same vein, Bagosora also became the face of the Rwandan authorities to his own population since he signed the communiqués read over the radio at 6.30 a.m. on 7 April and another one later that afternoon at 5.20 p.m.[2217] The first communiqué was an

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[2215] *See also* Bagosora Defence Exhibit 66B (Minutes of meeting of 6-7 April 1994: "On the night of 6-7 April 1994, the *directeur de cabinet* of MINADEF chaired a meeting bringing together the Gendarmerie chief of staff, MINADEF Officers [and] the Army and Gendarmerie Senior Staff."), para. 1; Bagosora, T. 2 November 2005 p. 77 ("And in the course of the meeting, I found myself chairing the meeting at the invitation of General Ndindiliyimana; but I should even point out that even if he had not requested me to do so, I would have chaired the meeting. I was empowered to chair the meeting ... But I was the most appropriate person, because General Ndindiliyimana, being a gendarme, had no authority over the army, whereas in my capacity as director of cabinet, sitting in for the minister, I could speak to the two armed forces or two forces by delegation ... the minister was absent. This was a serious crisis. If the minister would have been there, he would have done the same thing. Since he was not present, I replaced him.").

[2216] Reyntjens, T. 17 September 2004 p. 30; Bagosora, T. 2 November 2005 pp. 79-80; T. 7 November 2005 p. 57. According to Bagosora, Colonel Mursampango, head of the administration bureau (G-1), was already serving as the acting chief of staff on 6 April in the absence of Déogratias Nsabimana since he was the next most senior member of the army staff. In the Chamber's view, there was therefore no gap necessitating an emergency appointment in the absence of the Minister of Defence.

[2217] Reyntjens, T. 15 September 2004 p. 24; Bagosora, T. 7 November 2005 pp. 35, 44; T. 8 November 2005 pp. 32-34; Bagosora Defence Exhibit 103 (first communiqué of 7 April 1994); Bagosora Defence Exhibit 67 (second communiqué of 7 April 1994). Bagosora's explanation for simply approving and issuing the second

announcement from the Minister of Defence informing the country of the death of the President. It also asked the armed forces to "remain vigilant, to ensure the security of the people" and the population "to stay at home and await new orders". The second communiqué was issued on behalf of the armed forces. It informed the country of the army and gendarmerie's joint meeting at ESM earlier that day, the creation of the Crisis Committee, as well as the their intention to ensure security, especially in Kigali, and support the country's political authorities.

2025. Bagosora chaired the meeting of senior military officers at ESM, which commenced on 7 April at 10.15 a.m. (III.3.2.4). The purpose of the meeting was to gather operational commanders of the army and gendarmerie, update them on the prevailing situation, and issue instructions for the maintenance of order. In the Chamber's view, this is again a much more expansive role than simply chairing a joint meeting of chiefs of staff and Ministry officials, as described in Gasana's letter of 27 January 1993. Furthermore, Bagosora played the main role at the meeting. When the participants ratified the idea of the Crisis Committee, which had met the previous evening, Bagosora was the one who decided that Ndindiliyimana should chair its subsequent meetings.

2026. The prominence and authority of Bagosora was also apparent in the fact that he was the person Colonel Nubaha approached during the ESM meeting concerning the ongoing attack against the 10 Belgian peacekeepers at Camp Kigali (III.3.2.4). He instructed Nubaha to take care of the problem and then went to the camp to follow up on it (III.3.4). In the Chamber's view, Bagosora's actions during the meeting and with respect to the attack on the Belgian soldiers are more similar to that of a commander issuing orders and ensuring their implementation than those of a civilian functionary.[2218] After the death of the 10 Belgian peacekeepers at Camp Kigali, Nubaha, the camp commander, was transferred at Bagosora's request to another post, which was ultimately more significant.[2219]

2027. Bagosora played a key role in facilitating the installation of the interim government by meeting with political leaders on 7 and 8 April (III.3.7). Rusatira was resistant to Bagosora, as a retired officer, participating in the Crisis Committee meeting on 8 April.[2220] However, Bagosora ultimately performed the task of ensuring the formation of the new government and presented it to the committee for its approval. Rusatira was ultimately marginalised and the military Crisis Committee effectively ceased to exist after its meeting on 8 April.[2221] The interim government continued to wield authority for the duration of the relevant events.

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communiqué, rather than participate in its drafting is telling: "Well, in principle, the boss will ask the juniors and subordinates to work. I was the chair of that meeting. I could not be attending to the drafting of the communiqué. I had to review the draft with them afterwards to make sure it was okay." *See* T. 8 November 2005 p. 8.

[2218] Bagosora's explanation for his apparent calm when confronted by General Dallaire with the death of the 10 Belgian peacekeepers is revealing: "[Dallaire] said that I was strangely calm. But even in Canadian schools it must be the case that if you are an officer in command, you have to be calm." T. 8 November 2005 p. 26.

[2219] *Id.* p. 17. After learning of the death of the 10 Belgian peacekeepers on the afternoon of 7 April, Bagosora telephoned Colonel Musampango, the G-1 for administration, and asked him to replace Colonel Nubaha as commander of Camp Kigali. Nubaha became the commander of a base, which under normal circumstances, according to Bagosora, would be considered a promotion since it was a more important post.

[2220] Des Forges, T. 25 September 2002 pp. 110-111; Bagosora, T. 8 November 2005 pp. 58-59.

[2221] Des Forges, T. 25 September 2002 p. 119; Reyntjens, T. 20 September 2004 p. 6; Bagosora, T. 9 November 2005 p. 36.

2028. After the return of the Minister of Defence on the afternoon of 9 April and the installation of the interim government that day, there is less evidence as to the scope of Bagosora's actual authority over the military. Nevertheless, it is clear that he continued to play a prominent role and was tasked with important functions. For example, he was responsible for ensuring the movement of the government's money from Kigali to Gitarama on 14 April.[2222] In addition, he represented the Rwandan government on missions abroad to purchase weapons in May and June 1994.[2223] The Chamber agrees with Reyntjens that this was a sensitive matter, involving a considerable sum of money, and thus required a person of trust.[2224]

2029. Bagosora also remained an important liaison in Kigali between the Rwandan government and the international community after 9 April.[2225] He testified that Dallaire would contact him when important personalities wanted to meet Rwandan officials. In the first half of May, Bagosora met with Dallaire and the United Nations High Commissioner for Human Rights at the *Hôtel des Diplomates*.[2226] Around 13 May, Bagosora also met with Bernard Kouchner to discuss the evacuation of orphans from certain sites in Kigali. Video footage also depicts Bagosora giving Kouchner a tour of the *Hôtel des Milles Collines* to inspect the refugees there. Around 14 May, he accompanied Kouchner to Murambi in Gitarama prefecture, where the government was meeting, to put him in contact with Prime Minister Kambanda.[2227] Later that day, he met with Colonel Yaache, of the Ghanaian contingent of UNAMIR, to discuss facilitating the evacuation of the orphans through roadblocks in Kigali (III.5.1).[2228] Officials abroad also continued to view Bagosora as a prominent figure in Rwanda. Notably, Prudence Bushnell, the Deputy Assistant Secretary of State for African Affairs of the United States Department of State, personally called Bagosora on 28 April 1994 to ask him to put an end to the massacres.[2229]

2030. Finally, Bagosora was an experienced and well trained officer, fully capable of command. He had participated in combat, worked in the field of intelligence and held important positions, such as commander of Camp Kanombe, the most important camp, and the Light Anti-Aircraft Battalion (I.2.1). He was viewed by others as ambitious and desirous of more power than the post of *directeur de cabinet* allowed.[2230] As his own testimony reflects, he was sufficiently prominent to hold private audiences with President Habyariamana to encourage him in 1991 to relinquish his position as chief of staff of the army and then in 1993 to not seek re-election.[2231] From the morning of 7 April, he was

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[2222] Bagosora, T. 9 November 2005 pp. 18-19.
[2223] *Id.* pp. 66-75; T. 10 November 2005 pp. 2-5. *See also* section III.6.1.
[2224] T. 20 September 2004 pp. 8-9.
[2225] The Bagosora Defence submits that these contacts were consistent with his position as *directeur de cabinet* and occurred because the government was in Gitarama prefecture. He did not undertake these activities in his personal capacity. *See* Bagosora Closing Brief, paras. 1224-1229. Even accepting this explanation, the Chamber considers that these high-level contacts still indicate that he was a person of significance.
[2226] Bagosora, T. 9 November 2005 pp. 40-41; Prosecution Exhibit 168 (video footage).
[2227] Bagosora, T. 9 November 2005 pp. 40, 42-43; Prosecution Exhibit 168 (video footage).
[2228] Bagosora, T. 9 November 2005 pp. 47-54; Prosecution Exhibit 44 (video footage). A transcript of the video footage was played and transcribed by the court reporters during the testimony of Alison Des Forges. *See* T. 18 September 2002 pp. 61-62, 70-75. *See also* section III.2.6.2.
[2229] Prosecution Exhibit 368 (telegram from 29 April 1994 from Prudence Bushnell, United States Department of State, to United States Embassy confirming telephone conversation with Bagosora).
[2230] Witness DM-25, T. 12 April 2005 pp. 32, 82; Bagosora, T. 27 October 2005 p. 20.
[2231] Bagosora, T. 25 October 2005 pp. 70-76.

armed, in uniform and accompanied by a military escort, certainly not the public persona of a simple civilian functionary. From that date, in spite of any possible formal limitations stemming from his retirement from the army and his position as *directeur de cabinet*, he projected military power and authority, consistent with his conduct, well before he was officially recalled to active military service on 21 May 1994 (I.2.1).

Conclusion

2031. Based on the foregoing, the Chamber finds beyond reasonable doubt that, after the death of President Habyarimana, Bagosora's assumed the power of the highest authority in the Ministry of Defence. He was in fact acting as the Minister of Defence. His conduct reflects that he exercised control over the Rwandan Armed Forces, the most powerful entity at the time in the Rwandan government, at least until the afternoon of 9 April when the Minister of Defence returned and after the interim government was installed. His specific role and authority over members of the military and militiamen after that time is less clear, but the Chamber considers that he maintained influence and significance within the Rwandan government and military for the duration of the relevant events.

1.2.2 Superior – Subordinate Relationship

2032. Many of the assailants in the attacks in the Kigali and Gisenyi area between 7 and 9 April were members of elite units, such as the Presidential Guard and the Para Commando Battalion, as well as other soldiers and gendarmes, identified more particularly with geographic and temporal details related to the events.

2033. In addition to the military perpetrators, civilian militiamen participated in a number of the attacks and manned many of the roadblocks in the Kigali area. The Chamber has determined that, in certain circumstances, civilian assailants could be considered as acting under the authority of the Rwandan military (III.2.6.2). For the most part, these militiamen were working in close coordination with military personnel during the attacks or at Kigali roadblocks, where a soldier or gendarme was frequently at the head. The attack at Gikondo Parish is illustrative. Soldiers sealed the area, gendarmes sheparded area residents to the parish and then held the UNAMIR military observers and parish priests at gunpoint as the militiamen brutally murdered the local inhabitants (III.3.5.8). It is clear that these civilian militiamen were acting as an auxiliary or complementary force to the Rwandan military at least at the time of the commission of the crimes.

2034. The pattern and frequency of the attacks against civilians, including prominent personalities and opposition figures, the involvement of military personnel, including elite units, in some of these attacks, as well as their close proximity to the death of President Habyarimana and the resumption of hostilities between government forces and the RPF leave as the only reasonable conclusion that they were organised military operations. In view of this, as well as Bagosora's role at the head of the Rwandan military, it follows that these assailants were his subordinates and under his effective control.

2035. Many of the Kigali area roadblocks were exclusively manned by civilians, but they were part of an extensive network in an area of strategic importance to the Rwandan army in its battle for Kigali with the RPF (III.2.6.2). They were at times alongside military roadblocks and positions or other barriers which had a soldier or gendarme at its head. These militiamen were referred to as providing for the civil defence of Kigali. Their purpose was ostensibly to identify enemy infiltrators. The Chamber recalls that as of 28 March 1994, a few days before the roadblocks were erected, the ongoing discussions by high-ranking military and civilian officials intended the civil defence efforts in Kigali to be directed by the area operational

commander. The Chamber is mindful of its conclusion that militia groups became increasingly uncontrollable as the conflict progressed. However, at least in their initial days, these roadblocks could only have existed with the authorisation of the Rwandan military. The Chamber therefore finds that those manning them from 7 to 9 April 1994 were Bagosora's subordinates. This does not mean that other civilian or military leaders did not also exercise control over them.

2036. The attack at Nyundo Parish in Gisenyi prefecture appears to have been perpetrated solely by civilian assailants (III.3.6.6). However, it mirrors other massacres of civilians, which involved soldiers, and reflects a degree coordination and control given its progressively increasing intensity from targeted assassinations on 7 April to wholesale slaughter on 9 April, which featured the increased firepower of guns. The military clearly played a role in training and distributing weapons to militia groups (III.2.6.2). This operation must have been sanctioned by the area's military commander, Nsengiyumva. The Chamber therefore finds that these civilian assailants were acting under military control and were equally subordinates of Bagosora.

2037. Finally, even if the civilian assailants could not be considered as subordinates of Bagosora, the cooperation, presence and active involvement of military personnel alongside their civilian counterparts rendered substantial assistance to the crimes perpetrated by the militiamen. The soldiers and gendarmes present at the scenes of attacks or in their vicinity would have clearly encouraged these operations with full knowledge of the crimes being committed. Bagosora therefore would still remain liable for the crimes of these militiamen since subordinates under his effective control would have aided and abetted them in addition to their own direct participation in the criminal acts.[2232]

1.2.3 Knowledge

2038. The Chamber is satisfied that Bagosora had actual knowledge that his subordinates were about to commit crimes or had in fact committed them. As discussed above, it is clear that these attacks were organised military operations requiring authorisation, planning and orders from the highest levels. It is inconceivable that Bagosora would not be aware that his subordinates would be deployed for these purposes, in particular in the immediate aftermath of the death of President Habyarimana and the resumption of hostilities with the RPF, when the vigilance of military authorities would have been at its height. Furthermore, many of these crimes took place in Kigali where Bagosora was based, including the open and notorious slaughter at roadblocks, or in the vicinity of Gisenyi town where Nsenigyumva, the operational commander of Gisenyi, was located.

2039. Furthermore, in the alternative, the Chamber notes that Bagosora also had reason to know that subordinates under his command would commit crimes. On the night of 6 April, Bagosora expressed to Dallaire during the Crisis Committee meeting that his main concern was keeping Kigali secure and calm (III.3.2.1). The next morning, Bagosora spoke with the United States Ambassador about the shootings that could be heard throughout Kigali the previous night (III.3.2.3). He witnessed first-hand the ongoing attack by Rwandan soldiers at

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[2232] *See Orić* Appeal Judgement, para. 20; *Nahimana et al.* Appeal Judgement, paras. 485-486; *Blagojević and Jokić* Appeal Judgement, paras. 280, 282. Paragraphs 6.62 and 6.66 of the Bagosora Indictment allege that military personnel aided and abetted militiamen in the commission of crimes. The Prosecution also contends that a superior can be responsible for the role of his subordinates in aiding and abetting crimes. *See* Prosecution Closing Brief, paras. 2008-2009.

Camp Kigali against the 10 Belgian peacekeepers (III.3.4). Moreover, he was informed on the evening of 7 April about the murder of the Prime Minister as well as other prominent or opposition figures, including Father Mahame (III.3.5.2). UNAMIR was receiving reports from military observers about targeted killings by military personnel (III.2.5.5). It is difficult to accept that similar reports were not being provided to Bagosora.

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1.2.4 Failure to Prevent or Punish

2040. As noted above, these attacks were clearly organised and authorised or ordered at the highest level of the Rwandan military. Therefore, Bagosora failed in his duty to prevent the crimes because he in fact participated in them. There is also absolutely no evidence that the perpetrators were punished afterwards.

2041. Finally, in view of their widespread and systematic nature, the Chamber categorically rejects that the crimes committed by Bagosora's subordinates were somehow spontaneous and that the military lacked resources to put them down while fighting the RPF. To the extent that it lacked resources, it is because these very resources had been committed by military authorities to executing the crimes.

1.3 Kabiligi's Superior Responsibility

2042. The Kabiligi and Ntabakuze Indictment alleges that Kabiligi exercised authority over the Rwandan military, their officers and militiamen by virtue of his position as head of the military operations bureau (G-3) on the army general staff. In this function, he was responsible for planning, coordinating and ensuring the execution of military operations throughout Rwanda and in particular had command over the operational sectors of Byumba, Ruhengeri, Mutara and Kigali as well as the elite units, such as the Presidential Guard, Reconnaissance Battalion and Para Commando Battalion. The Prosecution points primarily to evidence of Kabiligi's rank as a brigadier general, evidence of him or the G-3 bureau issuing orders and directing combat, as well as documents relating to his military role in exile to demonstrate his actual command authority.[2233]

2043. The Kabiligi Defence argues that the Prosecution has not presented any credible evidence to prove that Kabiligi exercised any actual command authority as head of the military operations bureau (G-3). Any role Kabiligi played after July 1994 has no relevance to his actual authority during the relevant events. Evidence from the Defence's military expert as well as from Rwandan and foreign military officers familiar with the scope of a G-3's authority in the Rwandan army and foreign militaries, shows that the head of the G-3 bureau lacked operational command and the power to take disciplinary measures.[2234]

1.3.1 *De Jure* Authority

2044. Kabiligi held the position of head of the military operations bureau (G-3) on the army staff from September 1993 until leaving Rwanda in July 1994 (I.2.2). He was promoted to brigadier general on 16 April 1994 and was one of the highest ranking officers in the

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[2233] Kabiligi and Ntabakuze Indictment, paras. 4.2-4.4, 6.31; Prosecution Closing Brief, paras. 695-725, 2018, pp. 783-789.
[2234] Kabiligi Closing Brief, paras. 1318-1493.

Rwandan army. Prior to his appointment as G-3, he served as the commander of the Byumba operational sector.[2235]

2045. The Prosecution did not bring a military expert to define the scope of Kabiligi's authority as head of the operations bureau (G-3). Alison Des Forges, a Prosecution expert in Rwandan history, provided some testimony on his authority as G-3, but it was mainly based on her review of an interview with Kabiligi during his custodial interview in 1997. As that interview had previously been excluded as evidence because it was taken in violation of Kabiligi's fair trial rights, the Chamber declared that it would accord no weight to expert opinions based exclusively on that interview.[2236] Filip Reyntjens, another Prosecution expert on Rwandan history, testified that Kabiligi had a reputation as an excellent operational soldier. However, he described Kabiligi's function as G-3 as a "bureaucrat" or "an office job" and stated that he "would not, for instance, fight a war on the front, would not command an operational unit on the front".[2237] According to Reyntjens, Kabiligi had no ability to give orders to the Presidential Guard.[2238] He also confirmed a 1998 interview in which he said that he did not have any information about Kabiligi's involvement in the genocide, but acknowledged that he has not studied his role in particular.[2239]

2046. According to Lieutenant Colonel Jacques Duvivier, Kabiligi's Belgian military expert, each of the bureaus on the army staff (G-1 to G-4) was a tool available to the chief of staff to provide him with necessary information and proposals so that the chief of staff could respond to a given situation and issue orders. The role of the G-3 in this process was to provide information concerning training and military operations. Once the chief of staff has taken a decision and issued orders for a military operation, the G-3 transmitted them to operational commanders and oversaw their implementation. However, the G-3 did not have any direct authority over the operational commanders in the chain of command. The chief of staff maintained the responsibility for the execution of his orders.[2240]

2047. In its Closing Brief, the Prosecution concedes that Kabiligi may have possessed limited *de jure* authority.[2241] The G-3's lack of operational command was also testified to by several other Defence witnesses than Duvivier: Witnesses FC-77, KP-22, FLA-4, KVB-19,

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[2235] Some of Kabiligi's direct subordinates, namely the staff officers within the G-3 Bureau, are depicted in an organisational chart of the army staff as well as on a list of officers in the Rwandan army. *See* Prosecution Exhibit 454 (Rules of the Rwandan Army), p. 7; Nsengiyumva Defence Exhibit 15 (Situation of officers in the Rwandan Army as of 1 March 1994).

[2236] Decision on Kabiligi Motion for the Exclusion of Portions of Testimony of Prosecution Witness Alison Des Forges (TC), 4 September 2006, paras. 2, 5. *See also* Decision on Prosecutor's Motion for the Admission of Certain Materials Under Rule 89 (C), 14 October 2004, para. 21 (holding that Kabiligi's statement was taken in violation of his right to assistance of counsel).

[2237] T. 21 September 2004 p. 23.

[2238] *Id.* p. 24.

[2239] *Id.* p. 22; T. 22 September 2004 p. 51; Bagosora Defence Exhibit 134 (Reyntjens's interview).

[2240] Kabiligi Defence Exhibit 129B (Expert Report of Colonel Duvivier), pp. 3-7, 10. Colonel Duvivier worked at the beginning of his military career as an assistant staff officer on the Belgian general staff. He was also a former instructor at ESM in Rwanda from 1983 to 1988 and from 1993 to 14 April 1994. He stated that organisational systems for the general staff is nearly universal. T. 6 December 2006 pp. 37-41, 44, 48-52.

[2241] Prosecution Closing Brief, para. 2018 ("General Kabiligi was *de jure* among the top 5 highest ranking officers in the Rwanda army, and although he arguably possessed limited direct hierarchal command over an administrative assignment of specific troops within his official post, within his *de jure* command he enjoyed a *de facto* status of superior responsibility under 6 (3), partly as a consequence of charismatic influence, partly in obeisance to his official post of G3, and partly by his reputation and standing as a General, one of the top 5 officers in the entire army.").

LAX-2, LCH-1, LX-65, YC-3, YUL-39, SX-1, A-8 and Colonel Luc Marchal.[2242] These witnesses included a high ranking French officer (Witness SX-1), who was familiar with the functioning of the G-3 office of the French army. Duvivier and Marchal were familiar with the structure of both the Belgian army and the Rwandan army, which were similarly organised. Also Rwandan officers who had worked at one point on the G-3 staff (Witnesses YC-3 and FC-77) gave similar evidence. The remaining witnesses were also Rwandan army officers. Even Witness XXJ, which the Prosecution is relying heavily on in relation to Kabiligi's command authority, appeared to make a distinction between the general regulations and the factual situation under the extraordinary situation in 1994, focusing on the latter.[2243] In the Chamber's view, the Prosecution has not proven beyond reasonable doubt that Kabiligi had *de jure* authority over various units of the Rwandan Armed Forces in their conduct of military operations.

1.3.2 *De Facto* Authority

2048. According to the Prosecution, Kabiligi had *de facto* authority over various units. This flowed from his rank, position, reputation and charismatic influence.[2244] The main evidence of Kabiligi's exercise of command comes from Prosecution Witness XXJ, a Hutu lieutenant.[2245] The witness, who was an artillery officer, testified that, from mid-May to mid-June, he received orders directly from Kabiligi over the radio and once in person at army headquarters in relation to firing on specific targets during ongoing military operations against the RPF. In his view, as the G-3 officer of the general staff, Kabiligi had overall command of military operations in the city of Kigali, as well as responsibility for operations at a national level.[2246] The Kabiligi Defence disputes this evidence and points to Defence

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[2242] Witness FC-77, T. 8 September 2006 p. 11; Witness KP-22, T. 26 September 2006 pp. 82-83; Witness FLA-4, T. 6 September 2006 pp. 74-75, 77 and T. 7 September 2006 pp. 11, 15, 25; Witness KVB-19, T. 27 September 2006 pp. 15-16, 24 and T. 28 September 2006 p. 22; Witness LAX-2, T. 10 November 2006 pp. 4, 10-11; Witness LCH-1, T. 3 October 2006 pp. 28-31, 34-35; Witness LX-65, T. 26 September 2006 pp. 7, 9-10, 17-18; Witness SX-1, T. 17 January 2007 pp. 33-34; Witness YC-3, T. 7 November 2006 pp. 40-41; Witness YUL-39, T. 15 November 2006 p. 32; Marchal, T. 6 December 2006 pp. 5-6; Witness A-8, T. 10 May 2005 pp. 30-31.

[2243] Witness XXJ, T. 15 April 2004 p. 100 ("... You see, with all, there was a change in structure. When fighting intensified, we did not continue following the ordinary structure, and a case in point is what happened in Kigali town. Kabiligi led operations there, and it's obvious that he was the person who was capable of directing combat. ... But that was not maybe because it was his operational sector, but maybe it was because he was the only one who had demonstrated capacity to defend Kigali town".).

[2244] Prosecution Closing Brief, para. 2018, *see also* para. 702 ("Gratien Kabiligi was a hands-on officer. His command was notable for the fact that his domain included not only the planning and map rooms of the headquarters, but also the tents and artillery posts of the battlefield. His military and strategic abilities were said to be second to no-one in the Rwandan army and he had the respect of his subordinates.").

[2245] The Prosecution also pointed to Witnesses LAI, XXQ, CE, AAA, DK-11 and HN. Witness LAI testified about Kabiligi's alleged distribution of weapons on 28 January 1994 (III.2.4.3). Witness XXQ referred to Kabiligi's participation in a February 1994 meeting in Ruhengeri prefecture (III.2.4.4). Witness CE testified about soldiers cheering Kabiligi's arrival at Camp Kigali (III.6.2). Witness AAA allegedly participated in two meetings with Kabiligi at the Kigali-Ville prefecture office (III.4.1.11) and on Mount Huye (III.4.1.12). Witness DK-11 gave testimony about the G-3 bureau issuing instructions to the Para Commando Battalion concerning the movement of Tutsi refugees from ETO to Nyanza hill (III.4.1.1). Witness HN referred to Kabiligi issuing instructions to operational commanders to use *Interahamwe* in operations (III.2.6.2). In other sections of the judgement, the Chamber either did not accept the evidence of these witnesses on these incidents or did not find that it resulted in command authority for Kabiligi.

[2246] T. 14 April 2004 pp. 45-48; T. 15 April 2004 pp. 99-100; T. 16 April 2004 pp. 9-10, 13-14, 16, 18-19; Prosecution Exhibit 208 (personal identification sheet). Witness XXJ stated that the Field Artillery Battalion, the

Witness FLA-4, a Hutu artillery officer, who stated that Witness XXJ was never stationed on Mount Kigali and moreover would have received his orders from his unit commander, not Kabiligi.[2247]

2049. Witness XXJ's evidence of receiving orders directly from Kabiligi is uncorroborated and contradicted by Witness FLA-4. His evidence concerning radio contact by Kabiligi is general, and the single incident where the witness met with him at army headquarters is not sufficient to demonstrate that Kabiligi was the operational commander of Kigali. The Chamber thus accords limited weight to his testimony concerning the scope of Kabiligi's authority. Nevertheless, Witness FLA-4 acknowledged seeing Kabiligi meeting for about five minutes with the commanding officer of the artillery unit, Major Mutabera, at Mount Kigali in May 1994.[2248] Other witnesses, including Witnesses STAR-1, VIP-1, DCH and Jean Kambanda, attested to Kabiligi's presence on the ground in relation to military operations.[2249] Witness STAR-1, a Hutu officer in the Huye Battalion, saw Kabiligi meet briefly in the field on one occasion with the Kigali-west sector commander concerning a counter offensive against the RPF.[2250] Witness VIP-1, an officer assigned to *Opération Turquoise*, testified that, in mid-July 1994 General Augustin Bizimungu, the chief of staff of the Rwandan army, told him that Kabiligi was retreating with the last group of combatants that had been expelled from Kigali.[2251]

2050. Considered together, these witnesses reflect that Kabiligi might have played a more active role in the conduct of military operations than simply serving as a desk officer. However, the evidence is not clear as to the exact nature of his role in these incidents, for example, whether it entailed command authority. In addition, even if the testimonies relied on by the Prosecution established that he had operational command, they do not show that he participated in operations that resulted in civilian casualties.[2252] Furthermore, the evidence is consistent with the G-3 function of monitoring all activities relating to military operations.[2253]

2051. Jean Kambanda, the Prime Minister of Rwanda, stated that he was told that, as a G-3, Kabiligi was in command of all troops in Kigali.[2254] The Chamber accords his opinion on

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Reconnaissance Battalion, the military police, the Presidential Guard, the Para Commando Battalion and the Logistical Battalion were all based in Kigali and therefore came under Kabligi's command. The witness suggested, however, that Kabiligi lacked authority over the Rulindo operational sector which neighboured Kigali. This undercuts the Prosecution's theory that he had an overall command role over the entire Rwandan army.

[2247] Kabiligi Closing Brief, paras. 871-882; Witness FLA-4, T. 6 September 2006 pp. 73-76; Kabiligi Defence Exhibit 91 (personal identification sheet). Witness FLA-4 also appeared as Nsengiyumva Defence Witness OME-1.

[2248] T. 7 September 2006 pp. 14-15.

[2249] In addition, by way of analogy, the Prosecution refers to Witness YUL-39, a Hutu officer, who was familiar with the functions of an S-3 on the staff of a commander of an operational sector. The witness stated that an S-3 was in contact with troops on the ground. *See* Prosecution Closing Brief, para. 719, citing T. 15 November 2006 pp. 56-57. In the Chamber's view, the fact that Witness YUL-39, as an S-3, may have been actively involved on the ground does not mean that the same parallel exists at the G-3 level or with Kabiligi.

[2250] T. 24 February 2006 pp. 35-36.

[2251] T. 17 January 2007 pp. 54, 71-73.

[2252] Witness XXJ testified about an alleged order given by Kabiligi to search an area in the vicinity of Saint André College where orphans were located and where intense fighting was ongoing nearby between the Rwandan army and the RPF. The witness heard much later that the orphans were killed. The Chamber did not find this evidence reliable (III.4.1.14).

[2253] Kabiligi Defence Exhibit 129B (Expert Report of Colonel Duvivier), pp. 3-4.

[2254] T. 13 July 2006 pp. 10, 16; T. 14 July 2006 p. 45.

Kabiligi's authority limited weight since he did not identify his sources of information and acknowledged a lack of familiarity with military matters.[2255] The Prosecution also points to Witness DCH, an *Interahamwe*, who claimed that he worked with soldiers under Kabiligi's authority at Camp Kigali.[2256] The witness's evidence on this point is limited and uncorroborated. The Chamber has raised questions about various aspects of Witness DCH's testimony in other parts the judgement (III.2.8; III.4.1.5; III.4.2.3).

2052. The Prosecution also refers to Witness A-8, a Hutu gendarmerie officer with the Ministry of Defence, who stated generally that Kabiligi as G-3 would convey orders from the chief of staff to operational commanders. The witness, however, viewed Kabiligi as an adviser.[2257] In addition, reference is made to Witness RAS-1, a Hutu gendarmerie officer, who testified that the G-2 and G-3 on the general staff would work in close collaboration so that operations could be carried out effectively with the necessary intelligence.[2258] However, the witness spoke only in general terms and was not questioned about this specifically in relation to Kabiligi or the army general staff. In any event, in the Chamber's view, this evidence is not inconsistent with the description of the position of G-3, as set forth above.

2053. To further establish Kabiligi's command authority, the Prosecution highlights two letters emanating from the G-3 bureau. One is a letter drafted by Kabiligi after giving a UNAMIR military observer a tour of the army's weapons depots.[2259] This does not give any indication of his command authority. The other letter, which is addressed to the Minister of Defence, concerns the minutes of a meeting on the implementation of a civil defence program.[2260] The meeting was held on 29 March 1994 between Déogratias Nsabimana, the army chief of staff, Tharcisse Renzaho, the prefect of Kigali, and Félicien Muberuka, who was the operational commander of Kigali. Kabiligi was in Egypt at the time (III.6.2). The letter was signed by Nsabimana, and the sole connection to Kabiligi is that it was printed on the letterhead of the G-3 bureau. In the Chamber's view, this letter may show that Kabiligi's office played some role in preparation of the civil defence program, but it does not demonstrate his authority over members of the armed forces or militiamen.

2054. Finally, the Prosecution submits that evidence of Kabiligi's appointment in August 1994 as deputy commander, as well as commander of the Bukavu Squad, of the reorganised Rwandan army and his other subsequent political activities are a reflection of the *de facto* authority he enjoyed in Rwanda.[2261] A letter of 11 August 1994 from Augustin Bizimana, the Minister of Defence, to all field and general officers listed Kabiligi as the Rwandan army's deputy commander and as the commander of the Bukavu squad. The document, however, concerned the "reorganization of the Rwandan Armed Forces". In the Chamber's view, this appointment may be a recognition of Kabiligi's skills as a military commander, but it does not prove beyond reasonable doubt that this had in fact been his actual role as G-3.

[2255] T. 13 July 2006 p. 16.
[2256] Prosecution Closing Brief, para. 717; T. 18 June 2004 p. 32.
[2257] T. 9 May 2005 p. 53; T. 10 May 2005 p. 31.
[2258] T. 13 October 2005 pp. 65-66; T. 18 October 2005 p. 24.
[2259] Prosecution Exhibit 379 (Letter of 13 January 1994).
[2260] Prosecution Exhibit 38 (Letter from Déogratias Nsabimana to the Minister of Defence, dated 30 March 1994).
[2261] Prosecution Closing Brief, paras. 700, 724, 867-873, 877-879; Prosecution Exhibit 339 (Letter from Augustin Bizimana of 11 August 1994: Reorganisation of the Rwandan Armed Forces); Prosecution Exhibit 415 (RDR: Minutes of founding meeting); Prosecution Exhibit 457 (Report of the High Command (2-6 September 1994)).

2055. In the same vein, the minutes of a meeting from 2 to 6 September 1994 of the Rwandan army high command in Goma and another meeting from 29 March to 3 April 1995 to create a political organisation for refugees simply reflect that Kabiligi was present. Participation in these meetings shows that he remained committed to returning the former government to power in Rwanda. They do not provide any clarity on Kabiligi's actual authority as G-3 during the relevant events in Rwanda. It also does not necessarily follow from the minutes alone that Kabiligi was in agreement with every sentiment expressed during the meetings.

1.3.3 Conclusion

2056. The Prosecution has not proven beyond reasonable doubt that Kabiligi exercised authority over the Rwandan Armed Forces, in particular the operational sectors of Byumba, Ruhengeri, Mutara and Kigali as well as the Presidential Guard, Reconnaissance Battalion and Para Commando Battalion, beyond his subordinates in the operations bureau (G-3) of the army staff. The evidence does not show that these subordinates committed crimes at points when Kabiligi exercised effective control over them. There is some evidence that Kabiligi was involved in connection with operations conducted against the RPF in Kigali. The Prosecution has not proven that these related to the targeting of civilians.[2262]

1.4 Ntabakuze's Superior Responsibility

1.4.1 Authority – General Considerations

Introduction

2057. The Kabiligi and Ntabakuze Indictment alleges that Ntabakuze exercised authority over the Rwandan military, their officers and militiamen by virtue of his position as commander of the Para Commando Battalion, an elite unit within the Rwandan army.[2263] The Ntabakuze Defence concedes that Ntabakuze commanded the Para Commando Battalion. It disputes, however, that he had operational command over the CRAP platoon (*Commando de Recherche et d'Action en Profondeur*).[2264]

[2262] It is notable that the Prosecution was asked during its final submissions what remained of the case against Kabiligi if the alibi were accepted. The Prosecution responded that he would still be liable for the charge of conspiracy (IV.2.1) and events on which Witness DY testified (III.4.1.8-9; III.4.4.2). It mentioned his superior responsibility for the actions of Colonel Kanyandekwe, who was acting as G-3 in his absence, in relation to the Nyanza massacre. The Prosecution did not refer to his superior responsibility in general. *See* T. 1 June 2007 pp. 35, 43-45. The Chamber has not found that Kabiligi had effective control over Kanyandekwe during his absence (III.4.1.1).

[2263] Kabiligi and Ntabakuze Indictment, paras. 4.6, 4.8, 6.31. Prosecution Closing Brief, paras. 741-747, 2018, pp. 789, 883.

[2264] Ntabakuze Closing Brief, paras. 471, 473-474, 2481, 2482-2483. *See also* Ntabakuze Defence Exhibit 235 (deposition of Ntabakuze), pp. 5-6, 41-46. This is annexed to the Closing Brief. The Ntabakuze Defence also disputes that he had any control over the battalion's Second Company when it was temporarily under the command of the Presidential Guard during the events of 6-7 April (III.3.3.3). *See* Ntabakuze Closing Brief, para. 471.

De Jure Authority

2058. There is no dispute that Ntabakuze was the *de jure* commander of the Para Commando Battalion.[2265] The main question for the Chamber is whether he also had authority over the CRAP platoon. The listing of officers in the Rwandan army clearly places the CRAP platoon within the section of the document concerning the Para Commando Battalion.[2266] A Ntabakuze Defence Exhibit detailing the organisation of the Para Commando Battalion lists it as under Ntabakuze's command as well.[2267] Nevertheless, according to Ntabakuze and Witnesses DK-11, the CRAP platoon was assigned to the Para Commando Battalion only for administrative purposes and received its orders through Ntabakuze directly from the army general staff.[2268] Witness BC, a member of the CRAP platoon, also stated that most of the orders to the unit came from army headquarters through Ntabakuze.[2269]

2059. The Chamber does not exclude that many of the orders tasking the CRAP platoon with assignments originated from army headquarters. This is logical, bearing in mind its specialised function, such as undertaking covert operations, often behind enemy lines.[2270] According to Witness BC, the platoon's orders came through Ntabakuze, who oversaw the operations and received mission reports after their completion.[2271] Under Rwandan law, Ntabakuze remained legally accountable for the orders he issued.[2272] In the Chamber's view, this evidence sufficiently demonstrates that the CRAP platoon was an integral part of the Para Commando Battalion under Ntabakuze's *de jure* authority.

De Facto Authority

2060. It is not disputed that the Para Commando Battalion was well trained, disciplined and loyal to Ntabakuze.[2273] With respect to the CRAP platoon, Ntabakuze's actual authority over

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[2265] *See also* Nsengiyumva Defence Exhibit 15 (Situation of officers in the Rwandan Army as of 1 March 1994).
[2266] *Id.*
[2267] Ntabakuze Defence Exhibit 157 (organisation of the Para Commando Battalion).
[2268] Ntabakuze, T. 21 September 2006 p. 67; Witness DK-11, T. 19 July 2005 pp. 18, 40; T. 20 July 2005 pp. 15-16.
[2269] Witness BC, T. 1 December 2003 pp. 25, 47.
[2270] Witness BC and Ntabakuze detailed the specialised missions of the CRAP platoon. *See* Witness BC, T. 1 December 2003 p. 28; Ntabakuze, T. 21 September 2006 pp. 66-67.
[2271] Witness BC, T. 1 December 2003 p. 47 ("Q. In your statement you say that the CRAP platoon received most of its instructions from the army headquarters, is that correct? A.Yes. Yes, for the most part, but that was done with the blessing of the commander of the paracommando battalion, Aloys Ntabakuze. Q. When you say, "with the blessing", are you implying that the commander supervised it, that it was under the supervision, I mean the supervision of the execution of the mission of that CRAP? A. Yes. After the mission, the reports were sent to the battalion commander. Q. But, in principle, if I understand you correctly, you were under the supervision of the headquarters as far as your operations were concerned? A. The headquarters gave us missions through Major Ntabakuze's office and he explained the missions to us and then placed us on mission, and Lieutenant Kanyamikenke gave Ntabakuze a report after the mission, and the report was further forwarded to the army headquarters."). Kanyamikenke was the commander of the CRAP Platoon.
[2272] Prosecution Exhibit 155 (Presidential Act No. 413/02, 13 December 1978), p. III, Art. 14, which reads: "In the exercise of authority, a soldier shall: ... Take full responsibility for the orders given and for their execution, such responsibility cannot be separated from the responsibility of subordinates").
[2273] Ntabakuze Closing Brief, paras. 473-474 ("During the war, the Para Commando Battalion was well known to be one of the most effective and disciplined units among the Rwandan Armed Forces (FAR). Para Commando soldiers were very proud of being members of the unit ..."). *See also* Witness DM-26, T. 1 December 2006 p. 23; Witness DK-120, T. 4 July 2005 p. 70; Witness DH-85, T. 18 April 2005 pp. 31-34; Witness DH-68, T. 30 June 2005 pp. 19-20.

its members is reflected in his orders to the platoon on the night of 6 April to secure the crash site of the President's plane (III.3.5.1) and its joint deployment with other units of the Para Commando Battalion at places such as the Sonatube junction (III..4.1.1). Notably, Colonel Muberuka, the Kigali operational commander, ordered Ntabakuze to deploy the CRAP platoon to the crash site within minutes of the event, not the army staff. Moreover, Ntabakuze stated that he reinforced the Third Company at the Sonatube junction with the CRAP platoon.[2274] Furthermore, members of the CRAP platoon were trained by the same staff that trained the Para Commando Battalion's other units and were hand-picked from its various companies.[2275]

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2061. The Chamber finds beyond reasonable doubt that Ntabakuze had authority over members of the Para Commando Battalion, including its CRAP platoon. The Prosecution has not established, as alleged in the Indictment, that he had authority over other parts of the Rwandan military or its officers while serving as head of the battalion.[2276]

1.4.2 Superior – Subordinate Relationship

2062. The perpetrators of the attacks at Kabeza (III.3.5.4), Nyanza hill (III.4.1.1) and IAMSEA (III.4.1.4) included members of the Para Commando Battalion, as well as its CRAP platoon. The attacks reflect military organisation and, in view of the elite nature of these units as well as their discipline, would only have occurred with the authorisation or orders of higher military authorities, in particular the commander of their battalion, Ntabakuze. As discussed above, the military troops committing crimes were clearly Ntabakuze's subordinates acting under his effective control.

2063. The three attacks also included members of civilian militia groups acting as an auxiliary or complementary force to the soldiers. The Chamber determined that in certain circumstances civilian assailants could be considered as acting under the authority of the Rwandan military (III.2.6.2). These militiamen were working in close coordination with military perpetrators during these attacks. The Chamber is satisfied that at the time of the crimes the militiamen were also Ntabakuze's subordinates acting under his effective control.

2064. Finally, even if the civilian assailants could not be considered as subordinates of Ntabakuze, the cooperation, presence and active involvement of military personnel alongside their civilian counterparts rendered substantial assistance to the crimes perpetrated by the militiamen. The soldiers and gendarmes present at the scenes of attacks or in their vicinity would have clearly encouraged these operations with full knowledge of the crimes being committed. Ntabakuze therefore would still remain liable for the crimes of these militiamen

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[2274] *See* Ntabakuze, T. 18 September 2006 p. 29; T. 21 September 2006 p. 9.
[2275] Witness BC, T. 1 December 2003 p. 25; Witness DM-26, T. 1 December 2006 pp. 21-22; Witness DH-85, T. 14 April 2005 p. 46; Witness DH-68, T. 29 June 2005 p. 96; Witness DK-11, T. 19 July 2005 p. 7.
[2276] The Chamber is aware that Ntabakuze also briefly commanded the Gitarama operational sector between 3 and 17 July 1994. Ntabakuze, T. 18 September 2006 pp. 10-11. However, the Prosecution has not presented evidence liking him to crimes committed during that period.

since subordinates under his effective control would have aided and abetted them in addition to their own direct participation in the criminal acts.[2277]

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1.4.3 Knowledge

2065. The Chamber is satisfied that Ntabakuze had actual knowledge that his subordinates were about to commit crimes or had in fact committed them. As discussed above, it is clear that these attacks were organised military operations requiring authorisation, planning and orders from the highest levels. It is inconceivable that Ntabakuze would not be aware that his subordinates would be deployed for these purposes, in particular in the immediate aftermath of the death of President Habyarimana and the resumption of hostilities with the RPF, when the vigilance of military authorities would have been at its height.

2066. Furthermore, the location of the massacres at Nyanza and IAMSEA were near military positions of the Para Commando Battalion, and Kabeza is located near Camp Kanombe where the battalion was based. Moreover, in the case of Nyanza hill, there was extensive radio communication between the Para Commando position at Sonatube junction, Ntabakuze and Rwandan army headquarters concerning a smaller group of refugees stopped there earlier in the day. The Chamber cannot accept that Ntabakuze would not have been informed about the significantly larger group a few hours later.

1.4.4 Failure to Prevent and Punish

2067. As noted above, these operations were clearly organised and authorised or ordered at the highest level of the Para Commando Battalion. Therefore, Ntabakuze failed in his duty to prevent the crimes because he in fact participated in them. There is absolutely no evidence that the perpetrators were punished afterwards.

1.5 Nsengiyumva's Responsibility

1.5.1 Authority – General Considerations

Introduction

2068. The Nsengiyumva Indictment alleges that Nsengiyumva exercised authority over the Rwandan military, their officers and militiamen, in particular in the Gisenyi operational sector, by virtue of his position, his rank and personal relations and shared beliefs with individuals implicated in the killings.[2278]

2069. The Nsengiyumva Defence accepts that from June 1993 to June 1994, Nsengiyumva was the Gisenyi operational sector commander and had authority over the soldiers under him.

[2277] *See Orić* Appeal Judgement, para. 20; *Nahimana et al.* Appeal Judgement, paras. 485-486; *Blagojević and Jokić* Appeal Judgement, paras. 280, 282. Paragraphs 6.44 and 6.48 of the Kabiligi and Ntabakuze Indictment allege that military personnel aided and abetted militiamen in the commission of crimes. The Prosecution also contends that a superior can be responsible for the role of his subordinates in aiding and abetting crimes. *See* Prosecution Closing Brief, paras. 2008-2009.

[2278] Nsengiyumva Indictment, paras. 4.2, 4.4-4.5, 6.36; Prosecution Closing Brief, paras. 435, 655, 741-747, 2018, pp. 847, 896.

It disputes his authority over the Bigogwe Commando Training Centre and Bututori training facility. It further argues that the Indictment fails to adequately identify his subordinates.[2279]

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2070. It follows from case law that, if the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible under Article 6 (3) of the Statute, the Indictment should plead, among other things, that he is the superior of sufficiently identified subordinates over whom he had effective control.[2280] A superior need not necessarily know the exact identity of his subordinates who perpetrate crimes in order to incur liability under Article 6 (3).[2281]

2071. The Indictment adequately identifies Nsengiyumva's subordinates alleged to have committed the crimes. Some are named in various paragraphs throughout the Indictment in connection with the attacks.[2282] In most cases, the participants who physically perpetrated the crimes are identified in the Indictment and the Pre-Trial Brief dealing with the specific crimes by broad category, such as *Interahamwe* or soldiers, and then further identified with geographic and temporal details. In the context of this case, it is clear that the references to soldiers are those within the Gisenyi operational sector. Given the nature of the attacks, the Chamber is satisfied that the Prosecution provided an adequate identification.[2283]

De Jure and De Facto Authority

2072. It is not disputed that Nsengiyumva was the army commander of the operational sector of Gisenyi from June 1993 until June 1994, when he became the liaison officer with *Opération Turquoise*.[2284] Therefore, the Chamber is satisfied that soldiers assigned to Gisenyi operational sector were under Nsengiyumva's command.

2073. The remaining questions for the Chamber are whether his authority also extended to the Bigogwe Commando Training Centre and Bututori training facility in Gisenyi prefecture. According to Nsengiyumva, both of these facilities answered directly to the army general staff.[2285] Major Willy Biot, a Belgian military adviser assigned to Bigogwe camp, testified that Butotori fell under Bigogwe's command.[2286] He did not indicate whether Bigogwe camp fell under Nsengiyumva's authority.

[2279] Nsengiyumva Closing Brief, paras. 149-194.
[2280] *Muvunyi* Appeal Judgement, para. 19; *Nahimana et al.* Appeal Judgement, para. 323; *Ntagerura et al.* Appeal Judgement, paras. 26, 152.
[2281] *Muvunyi* Appeal Judgement, para. 55; *Blagojević and Jokić* Appeal Judgement, para. 287.
[2282] For example, with respect to civilian militiamen, paragraphs 6.13 and 6.22-6.24 of the Indictment specifically mention Bernard Munyagishari, Omar Serushago, Barnabé Samvura, Mabuye and Thomas Mugiraneza.
[2283] *See, e.g.*, *Muvunyi* Appeal Judgement, paras. 55-56.
[2284] Nsengiyumva, T. 4 October 2006 p. 17, T. 11 October 2006 p. 21.
[2285] T. 5 October 2006 p. 70; T. 9 October 2006 p. 73; X-6, T. 13 October 2006 p. 19.
[2286] T. 21 September 2006 p. 75. *See also* Biot, T. 21 September 2006 p. 82 ("Q. And during this evacuation, did you seek the assistance of the local ops commander? A. No, I always worked with commanding officer, Nzungize, firstly, because I had very good contacts with the colonel as part of my work. We saw each other on almost a daily basis. Furthermore, in order for me to benefit from Rwandan army forces escorts from Butotori, which was under the Bigogwe camp, it was very normal for me to make a request to the camp commander."). *See also* Nsengiyumva, T. 9 October 2006 p. 3.

2074. The Prosecution did not specifically address the issue of whether the Bigogwe and Bututori facilities came under Nsengiyumva's command in its Closing Brief. Omar Serushago, an *Interahamwe* leader, stated that Colonel Bahufite, the Gisenyi operational commander oversaw training at Bigogwe beginning in June 1993 which continued when Nsengiyumva took over as operational commander.[2287] The fact that Serushago attributes training at these camps to the operational sector commander does not definitively indicate that the camps, themselves, were under Nsengiyumva's authority as opposed to the army general staff.

2075. The Chamber notes that military schools such as ESM and ESO came directly under army headquarters.[2288] Furthermore, the officers at Butotori and Bigogwe are not located under the Gisenyi operational sector heading in the document listing the place of service of the officers in the Rwandan army.[2289] While it is conceivable that these locations came under Nsengiyumva's command by virtue of their location in the Gisenyi operational sector, the record does not conclusively show this. The Chamber however is satisfied that, given Nsengiyumva's role as the area's operational commander, these soldiers would in fact be operating under his authority when engaged in military operations in the area.

Conclusion

2076. The Chamber finds beyond reasonable doubt that Nsengiyumva had command over soldiers within the Gisenyi operational sector. The Prosecution has not proven that members of other units of the Rwandan army, including at Bigogwe or Butotori training facilities, were under his general authority, except when they were involved in military operations.

1.5.2 Superior – Subordinate Relationship

2077. The assailants participating in the targeted killings in Gisenyi town on 7 April (III.3.6.1), including the murder of Alphonse Kabiligi (III.3.6.5), and the massacre at Mudende University (III.3.6.7) included soldiers from the Gisenyi operational sector. Given the nature and pattern of these assaults as well as their similarity to parallel events in Kigali, the Chamber has no doubt that they were part of an organised military operation conducted on orders or with the authorisation of the highest military authorities, including Nsengiyumva, the area's operational commander. The soldiers were clearly Nsengiyumva's subordinates acting under his effective control.

2078. These attacks also included the participation of militiamen. The Chamber has determined that in certain circumstances civilian assailants could be considered as acting under the authority of the Rwandan military (III.2.6.2). These militiamen were working in close coordination with military assailants during the attacks. The Chamber is satisfied that at the time of the crimes the militiamen were also Nsengiyumva's subordinates acting under his effective control, in particular bearing in mind his involvement in the arming and training of civilians both before and after 6 April 1994 (III.2.6.2; III.4.5.1)

[2287] T. 18 June 2003 pp. 80-81.

[2288] This is reflected in the organisational chart which forms part of Prosecution Exhibit 454 (Rules of the Rwandan Army), p. 5.

[2289] Nsengiyumva Defence Exhibit 16 (Situation of officers in the Rwandan Army as of 1 March 1994). The commando training centre under Colonel Nzungize is listed separately after ESM and ESO.

2079. Turning to the repeated attacks at Nyundo Parish (III.3.6.6), they were perpetrated only by militiamen. The attack mirrors other massacres of civilians in Gisenyi and Kigali, which involved soldiers. It reflects a degree of coordination and control given its progressively increasing intensity from targeted assassinations on 7 April to wholesale slaughter on 9 April, which featured the increased firepower of guns. The military clearly played a role in training and distributing weapons to militia groups (III.2.6.2). This operation must have been sanctioned by the area's military commander, Nsengiyumva. The assailants were therefore acting under military control and were equally subordinates of Nsengiyumva.

2080. The attacks in Bisesero also involved militiamen.[2290] Nsengiyumva oversaw the arming and training between April and June of the militia sent to Kibuye prefecture (III.4.5.1). He dispatched them on the orders of the interim government to reinforce operations there against Tutsi civilians. While the Chamber is satisfied that these assailants were Nsengiyumva's subordinates, it cannot conclude that they were acting under his effective control at the time of the attack since they were placed under the authority of local leaders in Kibuye prefecture. The Chamber will, however, consider in its legal findings whether Nsengiyumva bears any other form of responsibility for their crimes.

2081. Finally, even if the civilian assailants could not be considered as subordinates of Nsengiyumva, the cooperation, presence and active involvement of military personnel alongside their civilian counterparts rendered substantial assistance to the crimes perpetrated by the militiamen. The soldiers and gendarmes present at the scenes of attacks or in their vicinity would have clearly encouraged these operations with full knowledge of the crimes being committed. Nsengiyumva therefore would still remain liable for the crimes of these militiamen since subordinates under his effective control would have aided and abetted them in addition to their own direct participation in the criminal acts.[2291]

1.5.3 Knowledge

2082. The Chamber is satisfied that Nsengiyumva had actual knowledge that his subordinates were about to commit crimes or had in fact committed them. As discussed above, it is clear that these attacks were organised military operations requiring authorisation, planning and orders from the highest levels. It is inconceivable that Nsengiyumva would not be aware that his subordinates would be deployed for these purposes, in particular in the immediate aftermath of the death of President Habyarimana and the resumption of hostilities with the RPF when the vigilance of military authorities would have been at its height. Furthermore, the location of many of these crimes were around Gisenyi town where Nsengiyumva was based. With respect to Nyundo Parish, Nsengiyumva was put on clear notice of imminent attack at the parish when he rescued Bishop Kalibushi, who had been abducted from his residence there on 8 April by a soldier and *Interahamwe* and taken to be killed at the *Commune Rouge*. He also was made plainly aware of the results of the attack

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[2290] There is evidence that local government and military authorities from Kibuye prefecture outside of Nsengiyumva's operational sector also participated in the attacks in Bisesero. However, the contingent of assailants sent from Gisenyi prefecture appears to have only included civilian militiamen.

[2291] *See Orić* Appeal Judgement, para. 20; *Nahimana et al.* Appeal Judgement, paras. 485-486; *Blagojević and Jokić* Appeal Judgement, paras. 280, 282. Paragraphs 6.32 and 6.35 of the Nsengiyumva Indictment allege that military personnel aided and abetted militiamen in the commission of crimes. The Prosecution also contends that a superior can be responsible for the role of his subordinates in aiding and abetting crimes. *See* Prosecution Closing Brief, paras. 2008-2009.

when Witness XX, a survivor of the attack, came to the military camp covered in blood seeking his assistance (III.3.6.6).

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1.5.4 Failure to Prevent and Punish

2083. As noted above, these operations were clearly organised and authorised or ordered at the highest level of the Gisenyi operational sector. Therefore, Nsengiyumva failed in his duty to prevent the crimes because he in fact participated in them. There is absolutely no evidence that the perpetrators were punished afterwards.

2. GENOCIDE

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2.1 Conspiracy to Commit Genocide

Introduction

2084. Count 1 of each of the Indictments charges the Accused with conspiracy to commit genocide pursuant to Article 2(3) (b) of the Statute. It is alleged that each of them "conspired with [their co-accused] and others to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group".[2292] Section 5 of the three Indictments (entitled "Preparation") states that the Accused and other persons conspired "to work out a plan" with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they could remain in power. The components of this plan include speeches and incitement, militia groups (including training and distribution of weapons), and the establishment of lists of persons to be executed.[2293]

2085. In support of the charge of conspiracy, the Prosecution points to certain key pieces of evidence or alleged events showing the Accused's alleged involvement in extended planning and preparations for genocide prior to 1994. In particular, it refers to work of the ENI Commission and subsequent meetings of soldiers invoking its definition of the enemy, Bagosora's 1992 reference to planning the "apocalypse", clandestine organisations, the warnings from Jean-Pierre and the anonymous "Machiavellian Plan" letter, the preparation of lists and the creation, arming and training of civilians.[2294]

2086. The Defence teams argue that the Prosecution either relies on evidence lacking credibility or misinterprets evidence. It also improperly draws inferences from facts which have not been proven. Therefore, the constituent elements of conspiracy have not been established. The Kabiligi Defence also argues that the Prosecution seeks to rely on evidence outside the temporal scope of the Tribunal.[2295]

The Law

2087. Conspiracy to commit genocide is "an agreement between two or more persons to commit the crime of genocide".[2296] The *actus reus* of the crime is the existence of an agreement between individuals to commit genocide.[2297] The persons involved in the agreement must possess the *mens rea* for genocide, that is the intent to destroy in whole or in

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[2292] Bagosora Indictment, para. 6.64, Count 1; Kabiligi and Ntabakuze Indictment, para. 6.51, Count 1; Nsengiyumva Indictment, para. 6.37, Count 1.
[2293] Bagosora Indictment, paras 5.1-5.40; Kabiligi and Ntabakuze Indictment, paras. 5.1-5.36; Nsengiyumva Indictment, paras. 5.1-5.32.
[2294] Prosecution Closing Brief, paras. 31-55; T. 27 May 2007 pp. 12-14; T. 1 June 2007 pp. 37-42.
[2295] Bagosora Closing Brief, paras. 2133-2216; Kabiligi Closing Brief, paras. 1512-1566; Ntabakuze Closing Brief, paras. 2478-2480, 2502-2516; Nsengiyumva Closing Brief, paras. 86-128, 195-233, 3219-3221.
[2296] *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, para. 894; *Ntagerura et al.* Appeal Judgement, para. 92; *Kajelijeli* Trial Judgement, para. 787; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana* Trial Judgement, para. 798; *Musema* Trial Judgement, para. 191.
[2297] *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.

part a national, ethnical, racial or religious group as such.[2298] The *mens rea* for genocide is discussed more fully below in connection with the crime of genocide (IV.2.2).

2088. With respect to the *actus reus*, the agreement can be proven by establishing the existence of planning meetings for the genocide, but it can also be inferred, based on circumstantial evidence.[2299] The concerted or coordinated action of a group of individuals can constitute evidence of an agreement. The qualifiers "concerted or coordinated" are important: it is not sufficient to simply show similarity of conduct.[2300] In certain cases the existence of a conspiracy to commit genocide between individuals controlling institutions could be inferred from the interaction between these institutions.[2301] When based on circumstantial evidence, the finding of a conspiracy must be the only reasonable inference based on the totality of the evidence.[2302]

2089. The Tribunal's case law has addressed the issue of conspiracy in eight cases: *Kajelijeli, Kambanda, Musema, Nahimana et al., Niyitegeka, Ntagerura et al., Ntakirutimana* and *Seromba*.[2303] Of the eight cases, a conspiracy was found by the Trial Chamber to exist in three of them: *Kambanda, Nahimana et al.* and *Niyitegeka*. Prime Minister Jean Kambanda pleaded guilty to conspiring with other ministers and officials in his government to commit genocide after 8 April 1994.[2304] The conspiracy conviction in *Niyitegeka* concerned a specific attack in the Bisesero region of Kibuye prefecture in June 1994 and was based on his participation and statements in several meetings in that region around the same time.[2305] In *Nahimana et al.*, the Trial Chamber convicted the three Accused "for consciously interact[ing] with each other, using the institutions they controlled [*Kangura*, RTLM and the CDR party] to promote a joint agenda, which was the targeting of the Tutsi population for destruction."[2306] The Appeals Chamber, however, reversed the finding in *Nahimana et al.* because, while the factual basis for the conviction was consistent with a joint agenda to commit genocide, it was not the only reasonable conclusion from the evidence.[2307]

[2298] *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.
[2299] *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.
[2300] *Nahimana et al.* Appeal Judgement, paras. 896-897.
[2301] *Id.* para. 907.
[2302] *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896.
[2303] *See Kajelijeli* Trial Judgement, paras. 785-798; *Kambanda* Trial Judgement, para. 40; *Musema* Trial Judgement, para. 937-941; *Nahimana et al.* Trial Judgement, paras. 1040-1055; *Niyitegeka* Trial Judgement, paras. 422-479; *Ntagerura et al.* Trial Judgement, para. 70; *Ntagerura et al.* T. 6 March 2002 pp. 54, 68 (oral decision acquitting Samuel Imanishimwe pursuant to Rule 98*bis*); *Ntakirutimana* Trial Judgement, paras. 797-801, 838-841; *Seromba* Trial Judgement, paras. 344-351. An overarching conspiracy for the whole genocide was charged in three of these cases: *Kajelijeli, Nahimana et al.* and *Kambanda*. The first two cases concerned the period 1990 to 1994, whereas *Kambanda* involved a conspiracy after 8 April 1994. The remaineder of the cases focused on regional conspiracies after 6 April 1994.
[2304] *Kambanda* Trial Judgement, para. 40(2) ("(2) By his acts or omissions described in paragraphs 3.8, 3.9, 3.13 to 3.15 and 3.19 of the indictment, Jean Kambanda did conspire with others, including Ministers of his Government, such as Pauline Nyiramasuhuko, André Ntagerura, Eliezer Niyitegeka and Edouard Karemera, to kill and to cause serious bodily or mental harm to members of the Tutsi population, with intent to destroy in whole or in part, an ethnic or racial group as such, and has thereby committed Conspiracy to Commit Genocide, stipulated in Articles 2(3) (b) of the Statute as a crime, and attributed to him by virtue of Article 6(1) and punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.").
[2305] *Niyitegeka* Trial Judgement, paras. 424-479.
[2306] *Nahimana et al.* Trial Judgement, paras. 1054-1055.
[2307] *Id.* paras. 906, 910.

2090. It is also noteworthy that in the *Kajelijeli* case, the Prosecution charged the Accused with an overarching conspiracy including military personnel, members of the government and political leaders to commit genocide which spanned from 1990 to 1994. The Trial Chamber found that the Accused participated in creating lists of Tutsis as well as discussions on the arming and training militiamen to fight the RPF and its accomplices. The Trial Chamber, however, was not satisfied on this evidence alone that these actions were taken for the purpose of eliminating Tutsis.[2308]

2091. Finally, the Chamber notes that a number of the allegations discussed in this section precede the Tribunal's temporal jurisdiction of 1 January to 31 December 1994. The Chamber is mindful that it can only convict the Accused of criminal conduct occuring in 1994. Nevertheless, the Appeals Chamber has held that the provisions of the Statute on the temporal jurisdiction of the Tribunal do not preclude the admission of evidence on events prior to 1994, if the Chamber deems such evidence relevant and of probative value and there is no compelling reason to exclude it. Such evidence can be relevant to: clarify a given context; establishing by inference the elements (in particular, criminal intent) of criminal conduct occurring in 1994; and demonstrating a deliberate pattern of conduct.[2309] The Chamber therefore does not find it necessary to address the challenge by the Defence to the pleading of the pre-1994 incidents in the Indictments since they are not themselves material facts on which a conviction can be based.

Deliberations

2092. At the outset, the Chamber emphasises that the question under consideration is not whether there was a plan or conspiracy to commit genocide in Rwanda. Rather, it is whether the Prosecution has proven beyond reasonable doubt based on the evidence in this case that the four Accused committed the crime of conspiracy.

2093. Paragraph 5.1 of each of the Indictments alleges that the Accused conspired amongst themselves and with others "from late 1990 until July 1994" to exterminate the Tutsi population. The criminal responsibility section of the Indictments reflects that the conspiracy existed before 7 April 1994 and was simply put in place after that date.[2310] The Prosecution's submissions in its Closing Brief and during oral argument have focused exclusively on the formation of the conspiracy, allegedly involving the Accused, before 7 April. Reference is made only to the events after that date to further illustrate that a conspiracy was in fact already in place. Consequently, the Accused are charged with a conspiracy pre-dating 7 April and not a conspiracy which was formed after that date.[2311]

[2308] *Kajelijeli* Trial Judgement, paras. 427-449. The Prosecution did not appeal Kajelijeli's Trial Judgement.

[2309] *Nahimana et al.* Appeal Judgement, paras. 313, 315-316. In that case, the Appeals Chamber did consider pre-1994 evidence in assessing whether a conspiracy existed. *Id.* paras. 905, 908.

[2310] Bagosora Indictment, para. 6.64; Kabiligi and Ntabakuze Indictment, para. 6.46; Nsengiyumva Indictment, para. 6.33, which all state that the massacres "were the result of a strategy adopted and elaborated by political, civil, and military authorities in the country ... As from ... 7 April, other authorities at the national and local levels espoused this plan and joined the first group in encouraging, organizing and participating in the massacres of the Tutsi population and its 'accomplices'".

[2311] To the extent that Paragraph 5.1 of the Indictments could be interpreted as charging a conspiracy which was formed after 6 April 1994, the Prosecution's final submissions described above reflect that it has failed to pursue such a charge. *See Ntagerura et al.* Appeal Judgement, paras. 149-150. The Chamber will therefore not consider it as a basis of conviction.

2094. Another general issue relates to the commencement of the alleged planning. As mentioned above, the Indictment indicates that the conspiracy took place from "late 1990". According to the Prosecution Closing Brief, "the planning aspect of conspiracy extended a significant time prior to the events in 1994".[2312] The Prosecution has referred to evidence from as early as December 1990 in order to demonstrate a conspiracy. However, it clarified in its oral submissions that the alleged plan was only in place for several months, possibly for more than a year, before 7 April 1994.[2313] Instead, during most of the period from the end of 1990 to April 1994, the Prosecution speaks mainly of the evidence showing a "growing and developing preparedness", a "trend" and a "tendency" towards a conspiracy, which it claims then crystallised into one.[2314] It contends that each of the acts which in themselves might not evince a conspiracy form a link in a chain of conspiracy.[2315]

2095. The Chamber notes that views on the commencement of the planning from the expert witnesses vary. During her testimony, Alison Des Forges explained that the "organisational" phase of the planned genocide began in 1993 and early 1994, although a small group of individuals had been conceptualising and planning the genocide for a "much longer time."[2316] According to Filip Reyntjens, there was "no particular moment in time when a number of conspirators sat together and decided, 'We are going to organise a genocide'." However, Reyntjens testified that the element of intent to commit genocide was present and developed incrementally beginning 1 October 1990.[2317] Bernard Lugan, on the other hand, testified that there was no proof of plan or conspiracy to kill Tutsis.[2318] Helmut Strizek stated that there was no conspiracy to commit genocide because the downing of the plane was the spark that began the genocide.[2319]

[2312] Prosecution Closing Brief, para. 35.

[2313] T. 1 June 2007 p. 42. In particular, it stated: "there was no plan in 1992 to conduct a genocide in April 1994. There's no evidence of that." *See id.* p. 41.

[2314] *Id.* p. 41.

[2315] *Id.* p. 39.

[2316] T. 26 September 2002 p. 36. During her testimony, Des Forges pointed to a statement by the then Minister of Justice following the RPF attack of 1 October 1990 in which he asserted that Tutsis within Rwanda likely facilitated the attack as the moment when key persons in the government commenced thinking about genocide. T. 5 September 2002 pp. 113, 118-119. Des Forges also pointed to the February 1991 publication of a pamphlet by Leon Mugesera which used the term genocide for the first time. T. 5. September 2002 pp. 121-124. In her expert report, Des Forges suggested that steps toward the eventual genocide began as early as 1991 with the issuance of a secret report by a 10 officer commission chaired by Bagosora that contained definitions of the Tutsi "enemy" and its alleged collaborators. This report was circulated to army officers in 1992 and utilised in the effort to generate lists of RPF "accomplices" that accelerated in late 1992 and 1993. According to Des Forges, the march toward genocide continued with actions such as the 1992 establishment of the CDR, the 1993 Hutu Power coalition, and the stockpiling of arms and training of militias that continued throughout 1993. These preparations culminated in late March 1994, when, according to Des Forges, military and political leaders had soldiers and militiamen ready to attack targeted victims throughout the country. Prosecution Exhibit 2A (Expert Report of Alison Des Forges), pp. 19-23, 30-35.

[2317] T. 20 September 2004 pp. 9-10.

[2318] T. 15 November 2006 p. 7 ("I have not found any proof of planning [plan to kill Tutsis]...I criticised at length in my reports what is considered as information trying to establish the existence of such a plan.").

[2319] T. 11 May 2005 p. 8 ("Q. So when you were looking at the planning of the genocide, is it fair to say that your focus was on who shot down the airplane? A. Yes, and the reason is that for me they were always linked. The theory of planning was supported by people who said that the plane was brought down by extremists. But by finding that the plane was brought down by the RPF, the theory of planning became obsolete because I told myself that it's not possible for Hutu extremists to plan something which they did not know where such a thing could lead. Do you see my reasoning?"); T. 12 May 2005 p. 68 ("In toto, because I have always said that this is

2096. A third matter relates to the participants in the alleged conspiracy. The Prosecution is arguing that all four Accused conspired amongst themselves and with other named civilian and military authorities and in Nsengiyumva's case also local militia leaders in Gisenyi prefecture.[2320] There is no requirement that the Chamber conclude that all of the Accused conspired together. It suffices if the Prosecution can establish that they conspired with at least one other with whom they are alleged in their respective Indictment to have planned to commit genocide. The Chamber observes that there is limited evidence with respect to the many of the other alleged co-conspirators on the record, in particular with respect to their role in the planning of the alleged conspiracy.

2097. Turning now to the elements underpinning the allegation of planning and conspiracy, the Prosecution acknowledges that its case is principally circumstantial.[2321] There are only a few alleged meetings which could be characterised as planning genocide. The allegations instead refer, among other things, to statements made by the Accused, their affiliation with certain clandestine organisations, general warnings, of which some were circulated publicly, that the *Interahamwe* or groups with the military were plotting assassinations and mass killings, and their role in the preparation of lists as well as the arming and training of civilians. Most of the components of the planning have been extensively considered in other parts of the judgment (III.2). However, the Chamber finds it useful to briefly recapitulate the findings on the events, which the Prosecution has highlighted in its Closing Brief and oral submissions, and view them together in the legal context of an alleged conspiracy.[2322] The Chamber has nonetheless also taken into account the evidence related to the other events not specifically referred to by the Prosecution.

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a unique type of genocide in history, and this confirms that those people were beyond anybody's control. It confirms that there was no command, no planning. It was a spontaneous act of unruly, uncontrollable people who went on a killing spree. And it is actually this argument which [General Dallaire] confirms here that there were uncontrollable and mass actions.").

[2320] The Indictments against Bagosora, Kabiligi and Ntabakuze name the following individuals: Bagosora, Kabiligi, Ntabakuze, Nsengiyumva, Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Protais Mpiranya, François-Zavier Nzuwonemeye, Augustin Bizimana and Tharcisse Renzaho. *See* Bagosora Indictment, para. 6.64; Kabiligi and Ntabakuze Indictment, para. 6.46. The Nsengiyumva Indictment names: Nsengiyumva, Bagosora, Ntabakuze, Joseph Nzirorera, Félicien Kabuga, Omar Serushago, Bernard Munyagishari, Mabuye, Barnabé Samvura and Thomas Mugiraneza. The Nsengiyumva Indictment does not refer to Kabiligi. Nsengiyumva Indictment, para. 6.33.

[2321] Prosecution Closing Brief, para. 35 ("The inference to be drawn from the evidence is *not* that each of the accused sat in the same room at the same time and agreed to a plan, nor that such a plan consisted of a single course of equally-divided or unified conduct").

[2322] The Prosecution refers to alleged meetings held in Butotori. *See* Prosecution Closing Brief, para. 42. The Chamber admitted allegations about meetings there against Bagosora and Ntabakuze, but excluded these allegations with respect to Nsengiyumva based on lack of notice. *See* Decision on Bagosora Motion for the Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007, paras. 70-72; Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006, paras. 57-59; Decision on Nsengiyumva Motion For the Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, paras. 43-45. As the Indictment's are similarly worded, fairness requires that these allegations be excluded as to all Accused. In any event, the Chamber has raised concerns with the credibility of the underlying evidence in other parts of the judgement, and it would not have altered the conclusion on the conspiracy charge.

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(i) The Enemy Commission

2098. The Prosecution submits that the ENI document, which defined the enemy in ethnic terms, was "a step towards a criminal conspiracy".[2323] The Chamber has found that, from December 1991, Bagosora, Nsengiyumva, Ntabakuze and other high-ranking officers participated in a commission which produced the Definition of the Enemy document (III.2.2). The document was then circulated within the army in September 1992 and used by Ntabakuze during meetings with members of the Para Commando Battalion (III.2.4.1). The Chamber agrees that the over-emphasis on the Tutsi ethnicity in the document is troubling, but cannot conclude that the document or its circulation to soldiers in the Rwandan army in themselves evidenced a conspiracy to commit genocide. It can be viewed, however, as background to give context to the subsequent actions of Bagosora, Nsengiyumva and Ntabakuze.

(ii) The "Apocalypse"

2099. The Prosecution submits that Bagosora was intent by the end of 1992 on preparing the "apocalypse" based on an alleged statement to a member of the RPF delegation during a session of the Arusha Accords in 1992.[2324] The Chamber, however, did not find the evidence supporting this allegation credible (III.2.3), and it therefore has no probative value in establishing Bagosora's role in a conspiracy.

(iii) Meetings Before 6 April 1994

2100. The Prosecution submits that Kabiligi participated in a meeting in February 1994 in Ruhengeri with local military commanders to inform them of a plan to commit genocide (III.2.4.4).[2325] Furthermore, it also points to evidence around the same time that Nsengiyumva and Bagosora met in Butare prefecture with other officials to draw up lists of Tutsis to kill (III.2.4.6) and also participated in a rally in Gisenyi prefecture, where they described the enemy as Tutsis (III.2.4.2). The Chamber however did not find the uncorroborated evidence supporting these allegations credible. Similarly, the Chamber was not convinced that Bagosora referred to the eliminaton of the Tutsis at the Senegalese dinner held on 4 April (III.2.4.5).

(iv) The Preparation and Use of Lists

2101. The Prosecution argues that the involvement of the Accused in the preparation of lists which were subsequently used during the killings evidences prior planning (III.2.5).[2326] The Chamber found that Nsengiyumva given his role as head of the military intelligence bureau (G-2) on the army staff would have been involved in the preparation of lists and that Bagosora in light of his position was likely aware of them. It also concluded that Ntabakuze made use of lists to arrest people in October 1990. It was not proven that Kabiligi was

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[2323] Prosecution Closing Brief, paras. 35-36, 39; T. 1 June 2007 p. 38.
[2324] Prosecution Closing Brief, para. 38.
[2325] Prosecution Closing Brief, paras. 40-41. The Prosecution does not refer to the February 1994 Butare meeting in its final submissions on conspiracy.
[2326] Prosecution Closing Brief, paras. 46-49.

involved in this effort. The Chamber was not satisfied, however, that these lists were prepared or maintained with the intent to kill Tutsi civilians.

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(v) The Creation, Arming and Training of Civilian Militias

2102. The Prosecution also contends that the Accused role in arming and training civilians, who later participated in the killings, and in particular the notes contained in Bagosora's agenda related to these efforts, shows planning (III.2.6).[2327] The Chamber has found that Bagosora, Nsengiyumva and Kabiligi participated in varying degrees in the arming and training of civilians. It was not proven that Ntabakuze was involved in this effort. The entries in Bagosora's agenda, as well as his explanations for them, demonstrate that he was actively involved in the military's development and implementation of a civil defence system. Nsengiyumva and Kabiligi would have played a role as operational commanders in sectors were training was ongoing. However, when viewed in the context of the immediate aftermath of the RPF's violation of the cease fire agreement, it does not necessarily show an intention to use the forces to commit genocide.

(vi) Jean-Pierre and the "Machiavellian Plan"

2103. The Prosecution contends that the information provided to UNAMIR by its informant Jean-Pierre concerning the activities of the *Interahamwe* as well as the anonymous letter detailing a "Machiavellian Plan" by certain members of the army to engage in mass killings further illustrates the existence of a conspiracy to commit genocide.[2328] As discussed in section III.2.6.3, the Prosecution's reliance on this evidence is problematic since there are lingering questions concerning the reliability of this evidence and because it does not directly implicate the Accused. This evidence therefore has limited probative value in establishing the Accused's role in a conspiracy.

(vii) Clandestine Organisations (Zero Network, AMASASU and Death Squads) and RTLM

2104. The Prosecution argues that the Accused's participation in clandestine organisations, such as the Zero Network (III.2.7), AMASASU (III.2.8) and death squads (III.2.9), reflects their concerted action in furtherance of a plan to commit genocide as well as the existence of a group of some officers operating outside of normal chains of command to commit illegal acts.[2329] In particular, it points to the AMASASU letters which threaten targeted assassinations and mass killings. In its Closing Brief, the Prosecution points to parallels in these letters and other writings of Bagosora and Nsengiyumva, in particular Nsengiyumva's letter of 27 July 1992 to President Habyarimana, who was then also army chief of staff.[2330]

2105. With respect to the parallels between Bagosora and Nsengiyumva's writings and the sentiments expressed in the AMASASU letters, the Chamber concluded that this evidence

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[2327] Prosecution Closing Brief, paras. 44-45, 54.
[2328] Prosecution Closing Brief, paras. 52-53.
[2329] Prosecution Closing Brief, paras. 37, 50-51; T. 1 June 2007 pp. 38-39. The Prosecution does not refer to death squads in its final submissions on conspiracy.
[2330] Prosecution Exhibit 21 (Letter of 27 July 1992 from Nsengiyumva to the Rwandan Army Chief of Staff entitled "Mood of the Military and Civilians"). The Prosecution also referred to other letters written by Nsengiyumva which make reference to Ntabakuze, Kabiligi and Ferdinand Nahimana. *See* Prosecution Exhibit 18 (Letter of 15 December 1990); Prosecution Exhibit 25 (Letter of 24 February 1993).

created an inference that Bagosora and Nsengiyumva were behind the AMASASU documents and possibly part of a group of Rwandan army officers who shared these views.[2331] However, the available information concerning the existence of Zero Network and the AMASASU as well as the Accused's participation in them was limited and to a large extent second-hand. The Chamber was therefore unable to conclude beyond reasonable doubt that the Accused were members of them.

2106. Turning to the death squads, the Chamber noted the considerable evidence pointing to their existence and role in killings before April 1994. Several sources also indicated to varying degrees that Bagosora, Nsengiyumva and Ntabakuze were members. However, this information was all second-hand and its description of the Accused's activities was limited. Therefore, the Chamber could not find beyond reasonable doubt that they were members of death squads. In addition, the mere fact that such groups existed and were engaged in criminal acts does not mean that it was preparing a genocide. The Prosecution has not clearly identified their membership or shown a proven connection between their activities and the Accused. Similarly, the Chamber was not satisfied that the Accused played a significant role in the creation or control of RTLM. Consequently, these elements carry limited weight in relation to the conspiracy.

(viii) Concluding Observations

2107. Having considered the elements mentioned by the Prosecution, discussed above, and elsewhere in the judgement, the Chamber cannot exclude that there were in fact plans prior to 6 April to commit genocide in Rwanda. As the Prosecution argues, there are certain indications in the evidence of a prior plan or conspiracy to perpetrate a genocide as well as other politically motivated killings in Rwanda, which could have been triggered upon the resumption of hostilities between the government and the RPF or following some other significant event.

2108. For example, a cycle of ethnic violence against Tutsi civilians has often followed attacks by the RPF or earlier groups associated with Tutsis, such as *Union Nationale Rwandaise* party. After an attack by Tutsi combatants in December 1963, there were reprisal killings. Following the October 1990 RPF invasion, there were mass arrests as well as localised killings at the time and in subsequent years in several northern communes and the Bugesera region. Allegations were made that elements of the government and security forces failed to timely intervene or participated in these events.[2332]

[2331] The Prosecution noted that it could not directly attribute the document to any of the Accused, but it nonetheless showed that elements of the Rwandan army were involved in planning. *See* T. 1 June 2008 p. 39 ("Now, all of those elements, even though we don't know the identity of the author, taken at face value, it indicates that within the Rwandan armed forces there's a subset of individuals who have, for the -- an unlawful purpose, organised or planned and intend to render their own form of justice by acting with the speed of lightning. The document itself can't be directly attributed to the four Accused; they didn't sign it, as far as we know. But it is a link in the chain of conspiracy that somebody is out there planning, somebody is moving in this direction. So all that's necessary later on is to create a link between that conspiracy and the contribution of the four Accused.").

[2332] For example, Alison Des Forges and Filip Reyntjens point to incidents such as the mass arrests in October 1990, the 1992 Bugesera massacre, the killing of Bigogwe Tutsis as well as other attacks. *See* Prosecution Exhibit 2A (Expert Report of Alison Des Forges), pp. 15-16, 24-25; Prosecution Exhibit 302 (Expert Report of Filip Reyntjens).

2109. At the same time, there was also a campaign to secretly arm and train civilian militiamen and efforts to put in place a "civil defence" system made up of "resistance" groups (III.2.6.2). The Chamber found that Bagosora, Nsengiyumva and Kabiligi were involved in some of these efforts in varying degrees. In particular, the outlines of the core of the proposed civil defence system were recorded as notes in Bagosora's agenda, during meetings at the Ministry of Defence in early 1993, after the RPF resumed hostilities and advanced towards Kigali. Furthermore, lists primarily aimed at identifying suspected accomplices of the RPF and opponents of the Habyarimana regime or MRND party were prepared and maintained by the army (III.2.5). However, in the context of the ongoing war with the RPF, this evidence does not invariably show that the purpose of arming and training these civilians or the preparation of lists was to kill Tutsi civilians.

2110. After the death of President Habyarimana, these tools were clearly put to use to facilitate killings. When viewed against the backdrop of the targeted killings and massive slaughter perpetrated by civilian and military assailants between April and July 1994 as well as earlier cycles of violence, it is understandable why for many this evidence takes on new meaning and shows a prior conspiracy to commit genocide. Indeed, these preparations are completely consistent with a plan to commit genocide. However, they are also consistent with preparations for a political or military power struggle. The Chamber recalls that, when confronted with circumstantial evidence, it may only convict where it is the only reasonable inference. It cannot be excluded that the extended campaign of violence directed against Tutsis, as such, became an added or an altered component of these preparations.[2333]

2111. Furthermore, the Chamber observes that the evidence in this case only implicates the Accused in varying degrees in these efforts. It is possible that some military or civilian authorities did intend these preparations as part of a plan to commit genocide. However, the Prosecution has not shown that the only reasonable inference based on the credible evidence in this trial was that this intention was shared by the Accused.

2112. Other or newly discovered information, subsequent trials or history may demonstrate a conspiracy involving the Accused prior to 6 April to commit genocide. This Chamber's task, however, is narrowed by exacting standards of proof and procedure, the specific evidence on the record before it and its primary focus on the actions of the four Accused in this trial. In reaching its finding on conspiracy, the Chamber has considered the totality of the evidence, but a firm foundation cannot be constructed from fractured bricks.

[2333] *See Nahimana et al.* Appeal Judgement, paras. 906, 910 ("The Appeals Chamber finds that, even if this evidence is capable of demonstrating the existence of a conspiracy to commit genocide among the Appellants, on its own it is not sufficient to establish the existence of such a conspiracy beyond reasonable doubt. It would also have been reasonable to find, on the basis of this evidence, that the Appellants had collaborated and entered into an agreement with a view to promoting the ideology of "Hutu power" in the context of the political struggle between Hutu and Tutsi, or even to disseminate ethnic hatred against the Tutsi, without, however, going as far as their destruction in whole or in part. Consequently, a reasonable trier of facts could not conclude that the only reasonable inference was that the Appellants had conspired together to commit genocide ... There is no doubt, in the Appeals Chamber's view, that the aforementioned factual findings are compatible with the existence of "a joint agenda" aiming at committing genocide. However, it is not the only reasonable inference. A reasonable trier of fact could also find that these institutions had interacted to promote the ideology of "Hutu power" in the context of a political struggle between Hutu and Tutsi, or to disseminate ethnic hatred against the Tutsi without going as far as the destruction, in whole or in part, of that group.").

2113. Accordingly, the Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that the four Accused conspired amongst themselves or with others to commit genocide before it unfolded on 7 April 1994.

2.2 Genocide

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2.2.1 Introduction

2114. Count 2 of the Indictments charge the Accused with genocide under Article 2 (3)(a) and 2 (3)(e) of the Statute.

2.2.2 Law

2115. To find an accused guilty of the crime of genocide, it must be established that he committed any of the enumerated acts in Article 2 (2) with the specific intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity, or religion.[2334] Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.[2335] 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.[2336]

2116. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that can lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.[2337]

2117. The Indictment charges the Accused with killing and causing serious bodily or mental harm to members of the Tutsi group. It is firmly established that the Tutsi ethnicity is a protected group.[2338] Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group.[2339] The term "causing serious bodily harm" refers to acts of sexual violence, serious acts of physical violence falling short of killing that seriously injure the health, cause disfigurement, or cause any serious

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[2334] *Nahimana et al.* Appeal Judgement, para. 492, 496, 522-523; *Niyitegeka* Appeal Judgement, para. 48; *Gacumbitsi* Appeal Judgement, para. 39; *Brđanin* Trial Judgement, paras. 681, 695.
[2335] *Seromba* Appeal Judgement, para. 175; *Gacumbitsi* Appeal Judgement, para. 44; *Simba* Trial Judgement, para. 412; *Semanza* Trial Judgement, para. 316.
[2336] *Simba* Appeal Judgement, para. 269; *Ntakirutimana* Appeal Judgement, paras. 302-304; *Niyitegeka* Appeal Judgement, paras. 48-54; *Krnojelac* Appeal Judgement, para. 102, citing *Jelisić* Appeal Judgement, para. 49.
[2337] *Seromba* Appeal Judgement, para. 176, citing *Seromba* Trial Judgement, para. 320; *Nahimana et al.* Appeal Judgement, paras. 524-525; *Simba* Appeal Judgement, para. 264; *Gacumbitsi* Appeal Judgement, paras. 40-41; *Rutaganda* Appeal Judgement, para. 525; *Semanza* Appeal Judgement, para. 262, citing *Jelisić* Appeal Judgement, para. 47; *Kayishema and Ruzindana* Appeal Judgement, paras. 147-148.
[2338] Prosecution Exhibit 3 (Expert Report of Alison Des Forges), pp. 1, 3-4, 6-8. Furthermore, every judgement rendered by this Tribunal concerning genocide has recognised that the Tutsi ethnicity is a protected group. *See also Karemera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 25; *Semanza* Appeal Judgement, para. 192.
[2339] *Simba* Trial Judgement, para. 414, citing *Kayishema and Ruzindana* Appeal Judgement, para. 151.

injury to the external or internal organs or senses.[2340] Serious mental harm refers to more than minor or temporary impairment of mental faculties.[2341] The serious bodily or mental harm, however, need not be an injury that is permanent or irremediable.[2342] This harm can include crimes of sexual violence, including rape.[2343]

2.2.3 Deliberations

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(i) Kigali and Its Environs

Belgian Peacekeepers, 7 April (III.3.4)

2118. The Prosecution has charged the killing of the 10 Belgian peacekeepers under the count of genocide. It does not argue that these murders constituted the crime of genocide themselves. Rather, they were intended to prompt Belgium to withdraw its contingent to UNAMIR and thus facilitate the ensuing massacres. The Chamber is not satisfied that this is the only reasonable inference to draw from the killing of the Belgian peacekeepers (III.3.4). Accordingly, the Chamber does not find that these killings constituted genocide. It also has not been proven that they were committed with the requisite genocidal intent in order to substantially assist other acts of genocide.

Centre Christus, 7 April (III.3.5.2)

2119. On the morning of 7 April 1994, soldiers killed 17 Rwandans at *Centre Christus* in the Remera area of Kigali. The Chamber lacks sufficient reliable evidence to show that the killers had the requisite genocidal intent. Other than Father Mahame, a Tutsi, the ethnicity of the other victims is unknown. The circumstances surrounding the attack reflect that it was a targeted killing similar to others perpetrated against prominent personalities or opposition figures on the morning of 7 April. The testimony of Bagosora, who was informed of Mahame's death that evening, also suggests that the attack was directed primarily at the priest and that the others were simply unfortunate to have been staying there. Accordingly, it has not been proven beyond reasonable doubt that these killings constituted the crime of genocide.

Prominent Personalities and Opposition Political Officials, 7-8 April (III.3.3; III.3.5.6)

2120. The Prosecution has charged the killing of Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza and Augustin Maharangari under the count of genocide. With the exception of Ndasingwa and Maharangari, who were Tutsis, these prominent personalities or members of the opposition were Hutus. The Prosecution does not argue that the killing of the Hutu individuals constituted the crime of genocide themselves. Rather, they were intended to prevent the

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[2340] *Seromba* Appeal Judgement, paras. 46-49; *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, para. 320, citing *Kayishema and Ruzindana* Trial Judgement, para. 110.
[2341] *Seromba* Appeal Judgement, para. 46; *Kajelijeli* Trial Judgement para. 815; *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, paras. 321-322; *Kayishema and Ruzindana* Trial Judgement, para. 110.
[2342] *Ntagerura et al.* Trial Judgement, para. 664; *Semanza* Trial Judgement, paras. 320, 322.
[2343] *Seromba* Appeal Judgement, para. 46; *Gacumbitsi* Trial Judgement, para. 292; *Akayesu* Trial Judgement, paras. 706-707.

installation of the Broad-Based Transitional Government and thereby allow the creation of an interim government favouring a policy of genocide. The Chamber is not satisfied that this is the only reasonable inference to draw from the killing of these individuals (III.3.3.3).

2121. The Chamber also lacks sufficient reliable evidence to show that the killers of Landoald Ndasingwa and Augustin Maharangari, both Tutsis, had the requisite genocidal intent. Ndasingwa was killed by elite soldiers in connection with the murder of other Hutu government and political figures in the Kimihurura neighbourhood on the morning of 7 April. Maharangari was killed by soldiers in a similarly organised manner the next day. The evidence does not show that they were killed because they were Tutsis. Given these circumstances, it remains possible that these killings were part of systematic attacks aimed at eliminating political opponents or those viewed as sympathetic to the RPF.

2122. Accordingly, the Chamber does not find that these killings constitute the crime of genocide. It also has not been proven beyond reasonable doubt that they were committed with the requisite genocidal intent in order to substantially assist other acts of genocide.

Kigali Area Roadblocks, 7-9 April (III.5.1)

2123. Roadblocks manned primarily by civilians, at times with a soldier or gendarme at its head, proliferated throughout Kigali, beginning on 7 April 1994. The civilians were mostly members of political party militias or local inhabitants who volunteered or were pressed into service at them as part of the "civil defence" efforts (III.2.6.2). The roadblocks were used to check the identities of passers-by. Tutsis, persons without identification documents, and Hutu members of opposition parties were singled out. These roadblocks were sites of open and notorious slaughter and sexual assault from 7 April.

2124. The Chamber finds that, considering the purpose of roadblocks, the assailants at them intentionally killed Tutsis. The Chamber also finds that the acts of rape, sexual violence and mistreatment of Tutsis there constituted serious bodily or mental harm.

2125. The Chamber heard extensive evidence about the killing of Tutsi civilians throughout the Kigali area at roadblocks immediately after the death of President Habyarimana. The assailants checked the identity cards of the victims and targeted mainly Tutsis along with Hutus suspected of being sympathetic to the RPF. In these circumstances, the only reasonable conclusion is that the assailants who physically perpetrated the killings possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

2126. The Chamber has considered, as the only reasonable inference, that Bagosora in the exercise of his authority between 6 and 9 April 1994 ordered the crimes at Kigali area roadblocks (III.2.6.2). In the context of the open and notorious targeting and slaughter of Tutsis at them, he was aware of the genocidal intent of the perpetrators and shared it.

Other Crimes in the Kigali Area, 7-9 April: Kibagabaga Mosque (III.3.5.3), (Kabeza (III.3.5.4), Saint Josephite Centre (III.3.5.5), Karama Hill and Kibagabaga Catholic Church (III.3.5.7) and Gikondo Parish (III.3.5.8))

2127. On the morning of 7 April 1994, around 300 Hutu and Tutsi refugees gathered at the Kibagabaga mosque in Remera due to increasing insecurity in the area. A group of *Interahamwe* attacked a Tutsi refugee in front of the mosque and threatened the refugees there with attack if they did not surrender the Tutsis. That afternoon, the refugees fended off three attacks. A soldier came to the mosque for his sister, intimating that further attacks were coming. On 8 April, soldiers and *Interahamwe* surrounded the mosque, and the soldiers fired

for a few minutes, killing several persons, to prompt the refugees to line up on the street. The soldiers checked identity cards and then withdrew. The *Interhamwe* then continued checking cards and killed more than 20 mostly Tutsi refugees.

2128. In the Kabeza area of Kigali, members of the Para Commando Battalion, Presidential Guard and *Interahamwe* went from house to house on 7 and 8 April and killed people. The area was predominately Tutsi and considered sympathetic to the RPF.

2129. On 8 April, soldiers wearing black berets and militiamen attacked and killed a number of Tutsi refugees at the Saint Josephite Centre. The assailants initially asked to see the refugees' identity cards, and Hutus were asked to leave. During the course of the attack, some of the women were asked to undress before being killed and at least one woman was raped by a soldier.

2130. At Karama hill near Kigali in Rubungo commune, soldiers and gendarmes killed a number of Tutsi refugees on 8 April. Many of the refugees at the school had just fled an attack at a nearby roadblock where military personnel were separating Hutus and Tutsis based on their identity cards before killing the Tutsis.

2131. On 9 April 1994, a number of soldiers and gendarmes digging trenches near Kibagabaga Catholic Church were told by a high-ranking soldier to kill the refugees there. The military personnel then gave firearms and grenades to a group of *Interahamwe* who began attacking the church. During the attack, the *Interahamwe* asked to see the identity cards of the refugees and killed the Tutsis. The military personnel watched as the attack proceeded.

2132. During an attack on Gikondo Parish on the morning of 9 April, the army sealed off the Gikondo area, and gendarmes moved systematically through the neighbourhood with lists, sending Tutsis to the parish. The gendarmes checked the identity cards of the Tutsis there against their lists and burned the identity cards. The *Interahamwe* then proceeded to kill the more than 150 Tutsi refugees in an atrocious manner. The parish priests and UNAMIR military observers were forced to watch at gunpoint. Major Brent Beardsley of UNAMIR arrived shortly after the attack and described the terrible scene, which bore witness of killing, mutilation and rape. The *Interahamwe* returned later that night to finish off the survivors.

2133. Considering the nature of how the attacks unfolded, the Chamber finds that soldiers, gendarmes or *Interahamwe* participating in the events intentionally killed Tutsis during these events. Furthermore, the acts of rape, sexual violence and mistreatment constituted serious bodily or mental harm.

2134. The Chamber heard extensive evidence about the killing of Tutsi civilians throughout Kigali area and in other parts of Rwanda in the days immediately after the death of President Habyarimana. In the course of many of the attacks, the assailants checked the identity cards of the victims or asked Hutus to leave. In these circumstances, the only reasonable conclusion is that the assailants who physically perpetrated the killings possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

2135. The Chamber concluded that Bagosora bears superior responsibility for the crimes committed in Kabeza, Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church and Gikondo Parish (IV.1.2). Ntabakuze bears superior responsibility for the crimes committed in Kabeza (IV.1.4). In the circumstances of the attacks, described above, Bagosora and Ntabakuze also would have been fully aware of the participants' genocidal intent.

Nyanza Hill, 11 April (III.4.1.1) and IAMSEA, Mid-April (III.4.1.4) 40172

2136. On 11 April 1994, thousands of Tutsi refugees fled from the ETO in Kigali after the Belgian peacekeepers withdrew from the position. They were stopped at the Sonatube junction by soldiers of the Para Commando Battalion. Members of the battalion as well as *Interahamwe* then marched the refugees several kilometres to Nyanza hill. A pick-up truck filled with members of the Para Commando Battalion passed the refugees. At Nyanza, they were waiting. When the refugees arrived, the soldiers opened fire. When they ran out of ammunition, they sent for more. The *Interahamwe* then killed the survivors with traditional weapons.

2137. Around 15 April, members of the Para Commando Battalion along with *Interahamwe* separated Tutsi from Hutu refugees at IAMSEA. These assailants then led around 60 Tutsis away to a location where other members of the Para Commando Battalion were waiting. The Tutsi refugees were killed.

2138. Given the manner in which these attacks unfolded, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group. In view of the large number of Tutsi victims at Nyanza hill, the separation of Tutsis from Hutus at IAMSEA, and the extensive evidence of the targeting of members of this group in Rwanda, the only reasonable conclusion is that the assailants who physically perpetrated these attacks possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

2139. Ntabakuze bears superior responsibility for these crimes (IV.1.4). In the circumstances of the attacks at Nyanza hill and IAMSEA he was aware of the participants' genocidal intent.

(ii) Gisenyi Prefecture

Gisenyi Town, 7 April (III.3.6.1)

2140. On 7 April 1994, militiamen supported by plainclothes soldiers from the Gisenyi military camp conducted targeted killings in the vicinity of the camp, and primarily in Bugoyi *cellule*. Soldiers accompanied militiamen to the house of a Tutsi teacher, where both groups participated in killing him and his daughter. Hutus suspected of being accomplices, such as Rwabijongo and Kajanja, were also killed by militiamen, as was Rwabijongo's Tutsi wife. These attacks were followed by the killings of Gilbert, a Tutsi, and another Tutsi man hiding in a compound with him. Mukabutare, a Tutsi, and her daughter were also singled out and killed.

2141. The Chamber finds that these assailants intentionally killed members of the Tutsi ethnic group. The attack focused primarily on Tutsi victims as well as some Hutus viewed as sympathetic to the RPF. The extensive evidence about the targeting of members of this group at this time shows, as the only reasonable conclusion, that the assailants who physically perpetrated these attacks possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

2142. In assessing Nsengiyumva's responsibility, the Chamber has viewed these crimes in connection with the participation of soldiers and militiamen in the killing of Alphonse Kabiligi (III.3.6.5) and the massacre at Mudende University (III.3.6.7). Given the nature of these assaults and the involvement of soldiers under Nsengiyumva's command (IV.1.5), the Chamber has no doubt that the genocidal killings in Gisenyi town on 7 April were ordered by Nsengiyumva, the highest military authority in the area. In reaching this conclusion, the

Chamber has taken into account that he met with military officers on the night of 6 to 7 April in order to discuss the situation after the death of President Habyarimana (III.3.6.1). Furthermore, it has viewed these events in the context of the other parallel crimes being committed in Kigali by elite units and other soldiers in the wake of the death of President Habyarimana, which were also ordered or authorised by the highest military authority (III.3.3). In the Chamber's view, Nsengiyumva's orders to these assailants to participate substantially assisted in the execution of these crimes.

2143. As discussed in section IV.1.2, Bagosora bears superior responsibility for the crimes committed in Gisenyi town on 7 April.

2144. Given the circumstances surrounding the attacks in Gisenyi town the Chamber is satisfied that Nsengiyumva and Bagosora were aware of the participants' genocidal intent.

Alphonse Kabiligi, 7 April (III.3.6.5) 40171

2145. The killing of Alphonse Kabiligi on 7 April 1994 is charged under the crime of genocide. The evidence reflects that he was a Hutu of mixed parentage. Kabiligi was suspected of being an RPF accomplice and was killed by soldiers as part of targeted attacks on the morning of 7 April which mirror similar killings in the Kigali area of prominent personalities committed on political grounds. Therefore, it has not been proven beyond reasonable doubt that his death constituted genocide.

Mudende University, 8 April (III.3.6.7)

2146. On the morning of 8 April 1994, militiamen supported by at least two soldiers attacked and killed the Tutsi refugees at Mudende University. The soldiers played a supporting role by firing at the doors of classrooms, allowing the militiamen to kill refugees hiding inside. During the attack, the assailants separated Hutu and Tutsi students, and some of the Tutsis were killed.

2147. The Chamber finds that, given the nature of the attacks, the assailants intentionally killed members of the Tutsi ethnic group. The number of Tutsi victims at the university, the separation of Tutsis from Hutus, as well as the extensive evidence concerning the targeting of members of this group in Rwanda shows, as the only reasonable conclusion, that the assailants who physically perpetrated these attacks possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

2148. In assessing Nsengiyumva's responsibility, the Chamber has viewed these crimes in connection with the participation of soldiers and militiamen in the killing of Alphonse Kabiligi (III.3.6.5) and the other targeted killings on 7 April in Gisenyi town (III.3.6.1). Given the nature of these assaults and the involvement of soldiers under Nsengiyumva's command (IV.1.5), the Chamber has no doubt that the genocidal killings at Mudende University were ordered by Nsengiyumva, the highest military authority in the area. In reaching this conclusion, the Chamber has considered that Nsengiyumva met with military officers on the night of 6 to 7 April in order to discuss the situation after the death of the President (III.3.6.1). Furthermore, it has viewed these events in the context of the other parallel crimes being committed in Kigali by elite units and other soldiers in the wake of the death of the President, which were also ordered or authorised by the highest military authority (III.3.3). In the Chamber's view, Nsengiyumva's orders to these assailants to participate in the crimes substantially assisted in the execution of the attack.

2149. Bagosora bears superior responsibility for the crimes committed at Mudende University (IV.1.2). Given the circumstances surrounding the attack there, the Chamber is satisfied that Bagosora and Nsengiyumva were aware of the participants' genocidal intent.

Nyundo Parish, 7-9 April (III.3.6.6) 40170

2150. On the afternoon of 7 April 1994, *Interahamwe* engaged in a targeted attack at the Nyundo seminary and killed two priests before withdrawing. Later that evening, they killed a number of Tutsi refugees in the seminary's chapel. The survivors were evacuated to the cathedral and the bishop's residence nearby. On 8 April, the *Interahamwe* unsuccessfully attacked Nyundo Parish several times. They returned with reinforcements on the morning of 9 April and killed a number of Tutsi refugees at the parish before gendarmes put an end to the attack and evacuated several members of religious orders.

2151. Given the nature of the attacks, the Chamber finds that the assailants intentionally killed members of the Tutsi ethnic group. The large number of Tutsi victims at Nyundo Parish as well as the extensive evidence of the targeting of members of this group in Rwanda clearly shows that the assailants who physically perpetrated these attacks possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

2152. Nsengiyumva clearly had a close connection with militiamen in Gisenyi given his involvement in their arming and training both before and after April 1994 (III.2.6.2; III.4.5.1). The Chamber has also concluded that he acted as their superior (IV.1.5). Given the repeated nature of these assaults, increasing in intensity from targeted killings on 7 April to a massacre on 9 April, their proximity to the death of the President, the resumption of hostilities with the RPF, as well as their similarity with parallel killings in Gisenyi and Kigali involving military authorities, the only reasonable conclusion is that this was a military operation also ordered by Nsengiyumva. This order from the highest military authority in the area substantially assisted in the completion of the crime.

2153. As discussed in section IV.1.2, Bagosora bears superior responsibility for the crimes committed at Nyundo Parish.

2154. Given the circumstances surrounding the attacks at Nyundo Parish the Chamber is satisfied that Nsengiyumva and Bagosora were aware of the participants' genocidal intent.

(iii) Bisesero, Kibuye Prefecture, June (III.4.5.1)

2155. In the second half of June 1994, Nsengiyumva dispatched militiamen, whose training he had overseen, from Gisenyi prefecture to reinforce local forces in an operation in the Bisesero area of Kibuye prefecture. This followed a request by the interim government to provide this support. On arrival, the militiamen were chanting "Let's exterminate them". Government and local authorities sent them to kill surviving Tutsi refugees in Bisesero.

2156. The Chamber finds that these assailants participated in the intentional killing of members of the Tutsi ethnic group. In view of the widespread killing of Tutsis throughout Rwanda as well as the chanting of "Let's exterminate them" by the assailants, the Chamber has no doubt that they participated in the attacks with the intent to destroy, in whole or in substantial part, the Tutsi group.

2157. Nsengiyumva's provision of additional resources to conduct the killings in Bisesero substantially assisted in the completion of the crime. He was requested to send reinforcements by the interim government and did so with full knowledge of the intended purpose and genocidal nature of the operation. In the Chamber's view, Nsengiyumva

therefore aided and abetted the killing of Tutsi refugees in Bisesero by making resources available to the local authorities in Kibuye prefecture for this purpose.

2.2.4 Conclusion

40169

Bagosora

2158. The Chamber finds Bagosora guilty of genocide (Count 2) for ordering the crime of genocide committed between 6 and 9 April 1994 at Kigali area roadblocks under Article 6 (1) and for the crimes committed at the Kabeza, Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gikondo Parish, Gisenyi town, Mudende University and Nyundo Parish as a superior under Article 6 (3) of the Statute. Bagosora is also liable as a superior for crimes committed at the Kigali area roadblocks (IV.1.2), which the Chamber will take into account in sentencing.

Kabiligi

2159. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of genocide (Count 2).

Ntabakuze

2160. The Chamber finds Ntabakuze guilty of genocide (Count 2) for the crime of genocide committed at Kabeza, Nyanza hill and IAMSEA as a superior under Article 6 (3) of the Statute.

Nsengiyumva

2161. Nsengiyumva is guilty of genocide (Count 2) for ordering the killings in Gisenyi town, Mudende University, Nyundo Parish and aiding and abetting the killings in Bisesero under Article 6 (1) of the Statute. For the reasons set forth above, the Chamber is also satisfied that he could be held responsible as a superior under Article 6 (3) for the crimes committed in Gisenyi town as well as at Mudende University and Nyundo Parish (IV.1.5). This will be taken into account in sentencing.

2.3 Complicity in Genocide

2162. Count 3 of the Indictments charge the Accused with complicity in genocide. The Prosecution has indicated that the count of complicity should be dismissed in the event of a finding on the count of genocide.[2344] Accordingly, the Chamber dismisses this count in respect of Bagosora, Ntabakuze and Nsengiyumva. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of complicity in genocide (Count 3).

[2344] Prosecution Closing Brief, para. 2150.

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2.4 Direct and Public Incitement to Commit Genocide

2163. The Prosecution charges Nsengiyumva with direct and public incitement to commit genocide (Count 4) based on his encouragement of militiamen to kill Tutsi civilians during meetings held on the morning of 7 April 1994 (III.3.6.2-3) as well as at Umuganda stadium between April and June 1994 (III.3.6.8).[2345] The Prosecution did not prove these allegations beyond reasonable doubt. Accordingly, the Chamber acquits Nsengiyumva of direct and public incitement to commit genocide charged under Count 4 of his Indictment.

[2345] Nsengiyumva Indictment, paras. 6.14, 6.16, 6.30, Count 4.

3. CRIMES AGAINST HUMANITY

40167

3.1 Introduction

2164. Counts 4 to 9 of the Bagosora Indictment, Counts 4 to 8 of the Kabiligi and Ntabakuze Indictment, and Counts 5 to 9 of the Nsengiyumva Indictment charge the Accused with murder, rape, persecution and inhumane treatment as crimes against humanity under Article 3 (a), (b), (g-i) of the Statute.

3.2 Widespread and Systematic Attack

2165. For an enumerated crime under Article 3 to qualify as a crime against humanity, the Prosecution must prove that there was a widespread or systematic attack against the civilian population on national, political, ethnic, racial or religious grounds.[2346] 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).[2347] Intended to be read as disjunctive elements, "widespread" refers to the large scale nature of the attack and the number of targeted persons, while "systematic" describes the organised nature of the acts of violence and the improbability of their random occurrence.[2348]

2166. As concerns 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.[2349] The additional requirement that crimes against humanity have to be committed "on national, political, ethnic, racial or religious grounds" does not mean that a discriminatory *mens rea* must be established.[2350]

2167. The Chamber has considered the totality of the evidence, in particular concerning the ethnic composition of the individuals who sought refuge at various sites as well as the actual or perceived political leanings of many of those killed or singled out at roadblocks in the days after President Habyarimana's death. It finds that there were widespread and systematic attacks against the civilian population on ethnic and political grounds between April and July 1994. It is inconceivable that the principal perpetrators of these attacks as well as the Accused did not know that their actions formed part of this attack. As high-ranking military officers, the Accused would have been familiar with the situation unfolding both nationally and in

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[2346] *Semanza* Appeal Judgement, paras. 326-332, citing *Akayesu* Trial Judgement, para. 578; *Rutaganda* Trial Judgement, para. 73; *Akayesu* Appeal Judgement, paras. 467, 469; *Ntakirutimana* Appeal Judgement, para. 516; *Ntagerura et al.* Trial Judgement, paras. 697-698; *Mpambara* Trial Judgement, para. 11; *Simba* Trial Judgement, para. 421; *Gacumbitsi* Trial Judgement, para. 299; *Tadić* Appeal Judgement, paras. 248, 255.

[2347] *Nahimana et al.* Appeal Judgement, paras. 915-918; *Kordić and Čerkez* Appeal Judgement, para. 666; *Kunarac et al.* Appeal Judgement, para. 89; *Kunarac et al.* Trial Judgement, para. 415.

[2348] *Nahimana et al.* Appeal Judgement, para. 920, quoting *Kordić and Čerkez* Appeal Judgement, para. 94; *Ntakirutimana* Appeal Judgement, para. 516; *Mpambara* Trial Judgement, para. 11; *Semanza* Trial Judgement, paras. 328-329; *Kunarac et al.* Trial Judgement, para. 429; *Kunarac et al.* Appeal Judgement, para. 94; *Gacumbitsi* Appeal Judgement, para. 101, citing *Gacumbitsi* Trial Judgement, para. 299; *Stakić* Appeal Judgement, para. 246; *Blaškić* Appeal Judgement, para. 101; *Limaj et al.* Trial Judgement, para. 180; *Brđanin* Trial Judgement, para. 133.

[2349] *Gacumbitsi* Appeal Judgement, paras. 86, 103, citing *Tadić* Appeal Judgement, paras. 251-252; *Galić* Appeal Judgement, para. 142; *Semanza* Appeal Judgement, paras. 268-269; *Simba* Trial Judgement, para. 421; *Kordić and Čerkez* Appeal Judgement, para. 99; *Kunarac et al.* Trial Judgement, para. 434; *Kunarac et al.* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras. 124-127.

[2350] *Akayesu* Trial Judgement, paras. 464-469, 595; *Bagilishema* Trial Judgement, para. 81.

areas under their control. Many of the attacks or massacres where open and notorious. The Chamber has also concluded that Bagosora, Ntabakuze and Nsengiyumva ordered or authorised many of these attacks.

3.3 Murder

40166

3.3.1 Introduction

2168. Counts 4 and 5 of the Bagosora Indictment, Count 5 of the Nsengiyumva Indictment, and Count 4 of the Kabiligi and Ntabakuze Indictment charge the Accused with murder as a crime against humanity under Article 3 (a) of the Statute.

3.3.2 Law

2169. Murder is the intentional killing of a person without any lawful justification or excuse or the intentional infliction of grievous bodily harm leading to death with knowledge that such harm will likely cause the victim's death.[2351]

3.3.3 Deliberations

2170. The Chamber has already determined that the killing of Tutsis at roadblocks in Kigali between 7 and 9 April 1994, as well as during the attacks in Kabeza, Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Nyanza hill, IAMSEA, Gisenyi town on 7 April, Mudende University, Nyundo Parish and Bisesero constituted genocide. On the same basis, the Chamber is satisfied that these intentional murders were conducted on ethnic grounds.

2171. Some Hutus were likely killed during these attacks, even though they were principally directed at Tutsis. As they formed part of the attack on ethnic grounds they constitute murder as a crime against humanity.[2352] At roadblocks, in Kabeza, and during the targeted killings in Gisenyi town on 7 April, there is evidence that the killings were also conducted on political grounds. In particular, roadblocks were equally established to identify members of the political opposition and those suspected of being RPF accomplices. Kabeza was viewed as a neighbourhood populated by Tutsis and individuals sympathetic to the RPF. The killings in Gisenyi town also mirror targeted assassinations on political grounds conducted at the same time in Gisenyi and in Kigali. These crimes therefore formed part of the attack on political grounds.

2172. The Chamber has already determined that Bagosora bears responsibility for the crimes committed at Kigali area roadblocks, Kabeza, Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gisenyi town on 7 April, Mudende University and Nyundo Parish as a superior under Article 6 (3) (IV.2.4). It also concluded that Ntabakuze is responsible as a superior for crimes committed in Kabeza, Nyanza hill and IAMSEA (IV.2.4), and that Nsengiyumva is responsible for ordering or aiding and abetting the killings in Gisenyi town on 7 April, Mudende Universiy, Nyundo

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[2351] Decision on Motions for Judgement of Acquittal, para. 25; *Karera* Trial Judgement, para. 558. The Chamber notes that some Trial Chambers have held that murder requires an element of pre-meditation, not only intent. *Bagilishema* Trial Judgement, para. 86, *Ntagerura et al.* Trial Judgement, para. 700; *Semanza* Trial Judgement, para. 339. In the present case, the Chamber is satisfied that the killings at issue would constitute murder as a crime against humanity under both standards.

[2352] *Muhimana* Appeal Judgement, para. 174; *Semanza* Trial Judgement, para. 330.

Parish and Bisesero (IV.2.4). As discussed above, the assailants and the Accused were aware that these events formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds (IV.3.2).

2173. The Chamber will discuss below whether the three Accused also bear criminal responsibility for the other crimes which did not constitute genocide.

(i) Kigali and Its Environs

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Belgian Peacekeepers, 7 April (III.3.4)

2174. On the morning of 7 April 1994, 10 Belgian peacekeepers dispatched to escort Prime Minister Agathe Uwilingiyimana to Radio Rwanda were arrested and disarmed during an attack by Rwandan soldiers on her residence. The peacekeepers were taken to Camp Kigali where four were beaten to death by a mob of soldiers. The beatings did not stop even though some officers at the camp tried to verbally intervene. Six peacekeepers were able to seek refuge in the UNAMIR office there and fend off the assailants for several hours after disarming a Rwandan soldier. They were later killed by high powered weapons. In view of the circumstances surrounding these attacks, the Chamber finds that these murders were premeditated.

2175. Considering their status as United Nations peacekeepers and that they were disarmed, the Chamber is satisfied that the victims could not be considered as combatants.[2353] The fact that the peacekeepers were able to obtain a weapon during the course of the attack in order to defend themselves against a mob of soldiers intending to kill them can in no way alter this conclusion.

2176. The peacekeepers were arrested and disarmed during the course of an attack on the Prime Minister, which the Chamber concluded above was part of the attack against the civilian population on political grounds. UNAMIR and the Belgian contingent in particular were also seen as sympathetic to the RPF and Tutsis in general (III.1.3). Immediately after the death of the President, the Belgian contingent was blamed for downing his plane by RTLM as well as by some of the assailants at the camp. Therefore, it is clear that the killing of the peacekeepers formed part of the widespread and systematic attack on political and ethnic grounds.

2177. The Chamber has concluded that Bagosora bears superior responsibility for the crimes committed against these individuals (IV.1.2). The assailants and Bagosora were aware that these attacks formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds (IV.3.2).

[2353] In the *Martić* case, the Appeals Chamber determined that the definition of civilians contained in Article 50 of Additional Protocol I reflects the definition of civilian for the purpose of applying crimes against humanity. The term civilian in that context does not include persons *hors de combat*. The Appeals Chamber held that, according to the Statute, a person *hors de combat* may be the victim of an act amounting to a crime against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population. *See Martić* Appeal Judgement, paras. 302, 313 (referring to Article 5 of the ICTY Statute concerning crimes against humanity).

Prominent Personalities and Opposition Political Officials, 7 April (III.3.3)

2178. On the morning of 7 April 1994, members of elite army units, including the Presidential Guard, Para Commando Battalion and Reconnaissance Battalion, systematically targeted and killed Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa and Faustin Rucogoza, who were all prominent personalities or opposition political officials. The Chamber has described this as an organised military operation ordered or authorised at the highest level of the Rwandan military. In view of the nature of these operations, the Chamber finds that they were intentionally murdered. In addition, bearing in mind the actual or perceived political leanings of these individuals, it is clear that they formed part of a systematic attack against civilians on political grounds.

2179. The Chamber concluded that Bagosora bears superior responsibility under Article 6 (3) of the Statute for the crimes against these individuals (IV.1.2).[2354] The assailants and Bagosora were aware that they formed part of a systematic attack against the civilian population on political grounds (IV.3.2).

Centre Christus, 7 April (III.3.5.2)

2180. On 7 April 1994, soldiers killed 17 Rwandans at *Centre Christus* in the Remera area of Kigali. The civilians were first identified by the Centre's register and locked in a room. The soldiers later returned to kill them with guns and grenades. One of the victims, Father Mahame, was a prominent personality in Rwanda and was on a list of suspected accomplices of the RPF. The circumstances surrounding the attack reflect that it was a targeted killing on political grounds similar to others perpetrated against prominent personalities or opposition figures on the morning of 7 April. The testimony of Bagosora, who was informed of Mahame's death that evening, also suggests that the attack was directed primarily at the priest.

2181. The Chamber concluded that Bagosora bears superior responsibility under Article 6 (3) for the crimes at *Centre Christus* (IV.1.2). The assailants and Bagosora were aware that these attacks formed part of a systematic attack against the civilian population on political grounds (IV.3.2).

Augustin Maharangari, 8 April (III.3.5.6)

2182. Soldiers killed Augustin Maharangari, the Director of the Rwandan Bank of Development, at his residence on 8 April 1994. The evidence reflects that Maharangari was suspected of being an RPF accomplice. His killing also mirrors other targeted assassinations in the wake of the death of President Habyarimana (III.3.3; III.3.5.2; III.3.6.1; III.3.6.5). It is clear that his killing was premeditated and conducted on political grounds. The Chamber has considered, as the only reasonable inference, that Bagosora in the exercise of his authority between 6 and 9 April ordered the political assassinations conducted throughout Kigali and Gisenyi prefecture (III.3.5.6). He therefore is responsible for ordering, under Article 6 (1), the

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[2354] The Chamber concluded that the Second Company of the Para Commando Battalion, which participated in these attacks, had been previously and temporarily subordinated to the Presidential Guard at Camp Kimihurura and thus were not under Ntabakuze's effective control at the time of the attack (III.3.3.3).

murder of Maharangari.[2355] The assailants and Bagosora were aware that these killings formed part a systematic attack against the civilian population on political grounds (IV.3.2).

(ii) Gisenyi Prefecture

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Alphonse Kabiligi, 7 April (III.3.6.5)

2183. Alphonse Kabiligi was brutally murdered on the evening of 7 April. During the course of the attack, soldiers asked to see his identity card and noted that it was bad that he was from Butare prefecture. They also demanded to see his RPF documents before cutting off his arm and taking him outside and shooting him. The Chamber has found that Kabiligi was on a list of suspected accomplices of the RPF maintained by the Rwandan army. It is clear that his murder was premeditated and on political grounds.

2184. In assessing Nsengiyumva's responsibility, the Chamber has viewed the killing of Alphonse Kabiligi in connection with the participation of soldiers and militiamen in the killings at Mudende University (III.3.6.7) and the other targeted killings on 7 April in Gisenyi town (III.3.6.1). Given the nature of these assaults and the involvement of soldiers under Nsengiyumva's command (IV.1.5), the Chamber finds as the only reasonable conclusion that the killing of Alphonse Kabiligi was ordered by Nsengiyumva, the highest military authority in the area. In making this finding, the Chamber has taken into consideration that Nsengiyumva met with military officers on the night of 6 to 7 April in order to discuss the situation in the aftermath of the death of President Habyarimana (III.3.6.1). Furthermore, it has viewed these events in the context of the other parallel crimes being committed in Kigali by elite units and other soldiers in the wake of the death of President Habyarimana, which were also ordered or authorised by the highest military authority (III.3.3; III.3.5.6). In the Chamber's view, Nsengiyumva's orders to these assailants to participate in the crimes substantially assisted in their execution.

2185. Bagosora bears superior responsibility for the murder of Alphonse Kabiligi (IV.1.2). The assailants and the Accused were aware that this killing formed part of a systematic attack against the civilian population on political grounds (IV.3.2).

3.3.4 Conclusion

Bagosora

2186. The Chamber finds Bagosora guilty of murder as a crime against humanity (Count 4) for ordering the murder of Augustin Maharangari and the killings committed between 7 and 9 April 1994 at Kigali area roadblocks under Article 6 (1) of the Statute. He is also responsible as a superior under Article 6 (3) for the murders of Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza and civilians at *Centre Christus*, Kabeza, the Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gikondo Parish, Gisenyi town on 7 April, including Alphonse Kabiligi, Mudende University and Nyundo Parish. Furthermore, he is responsible for murder as a crime against humanity (Count 5) for the deaths of the 10 Belgian peacekeepers as a superior under Article 6 (3). Bagosora is liable as a superior for crimes

[2355] The murder of Augustin Maharangari is charged against Bagosora under Article 6 (1), while the killing of the other prominent personalities is charged only under Article 6 (3).

committed at the Kigali area roadblocks (IV.1.2), which the Chamber will take into account in sentencing.

Kabiligi

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2187. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of murder as a crime against humanity (Count 4).

Ntabakuze

2188. The Chamber finds Ntabakuze guilty of murder as a crime against humanity (Count 4) for the crimes committed at Kabeza, Nyanza hill and IAMSEA as a superior under Article 6 (3) of the Statute.

Nsengiyumva

2189. Nsengiyumva is guilty of murder as a crime against humanity (Count 5) for ordering the killings in Gisenyi town, including Alphonse Kabiligi, Mudende University, Nyundo Parish and for aiding and abetting the killings in Bisesero under Article 6 (1) of the Statute. The Chamber is also satisfied that he could be held responsible as a superior under Article 6 (3) for the crimes committed in Gisenyi town as well as at Mudende University and Nyundo Parish (IV.1.5). This will be taken into account in sentencing.

3.4 Extermination

3.4.1 Introduction

2190. Count 6 of the Bagosora and Nsengiyumva Indictments, and Count 5 of the Kabiligi and Ntabakuze Indictment charge the Accused with extermination as a crime against humanity under Article 3 (b) of the Statute.

3.4.2 Law

2191. The crime of extermination is the act of killing on a large scale.[2356] The *actus reus* consists of any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals.[2357] 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.[2358] 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 deaths in a widespread or systematic manner.[2359]

[2356] *Seromba* Appeal Judgement, para. 189; *Ntakirutimana* Appeal Judgement, para. 516.
[2357] *Seromba* Appeal Judgement, para. 189; *Ndindabahizi* Appeal Judgement, para. 123.
[2358] *Brđanin* Appeal Judgement, para. 470; *Gacumbitsi* Appeal Judgement, para. 86; *Ntakirutimana* Appeal Judgement, para. 522; *Semanza* Appeal Judgement, paras. 268-269; *Simba* Trial Judgement, para. 422.
[2359] *Brđanin* Appeal Judgement, para. 476; *Stakić* Appeal Judgement, paras. 259-260; *Gacumbitsi* Appeal Judgement, para. 86; *Ntakirutimana* Appeal Judgement, para. 522.

3.4.3 Deliberations

2192. Several of the events charged as extermination when viewed separately do not satisfy the threshold of killing on a large-scale, in particular the targeted political assassinations. However, the Chamber has considered the events for which the Accused have been held responsible together since they are essentially part of the same widespread and systematic attacks against the civilian population on political and ethnic grounds. In this respect, the Chamber emphasises the relatively brief time period in which these crimes were committed and that each of them were based on the same set of orders or authorisation from the Accused.

2193. It is clear therefore that the following killings satisfy either in themselves or collectively the requirement of killings on a large-scale: Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza (III.3.3), Alphonse Kabiligi (III.3.6.5) and Augustin Maharangari (III.3.5.6) as well as civilians at roadblocks in the Kigali area between 7 and 9 April (III.5.1), at *Centre Christus* (III.3.5.2), the Kibagabaga Mosque (III.3.5.3), Kabeza (III.3.5.4), the Saint Josephite Centre (III.3.5.5), Karama hill and Kibagabaga Catholic Church (III.3.5.7), Gikondo Parish (III.3.5.8), Nyanza hill (III.4.1.1), IAMSEA (III.4.1.4), Gisenyi town (III.3.6.1), Nyundo Parish (III.3.6.6), Mudende University (III.3.6.7) and Bisesero (III.4.5.1). Each of these killings were conducted on the basis of ethnic and political grounds (IV.3.3.3). As also noted above, the assailants and the Accused were aware that these attacks formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds (IV.3.2).

3.4.4 Conclusion

Bagosora

2194. The Chamber finds Bagosora guilty of extermination as a crime against humanity (Count 6) for the killing of Augustin Maharangari as well as those committed between 7 and 9 April 1994 at Kigali area roadblocks under Article 6 (1) of the Statute. He is responsible as a superior under Article 6 (3) for the killings of Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza and Alphonse Kabiligi as well as for the crimes committed at *Centre Christus*, Kabeza, the Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gikondo Parish, Gisenyi town, Mudende University and Nyundo Parish. Bagosora is also liable as a superior for crimes committed at the Kigali area roadblocks (IV.1.2), which the Chamber will take into account in sentencing.

Kabiligi

2195. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of extermination as a crime against humanity (Count 5).

Ntabakuze

2196. The Chamber finds Ntabakuze guilty of extermination as a crime against humanity (Count 5) for the crime of genocide committed at Kabeza, Nyanza hill and IAMSEA as a superior under Article 6 (3) of the Statute.

Nsengiyumva

2197. Nsengiyumva is guilty of extermination as a crime against humanity (Count 6) for ordering the killings in Gisenyi town on 7 April, including Alphonse Kabiligi, Mudende University, Nyundo Parish and for aiding and abetting the killings in Bisesero under Article 6 (1) of the Statute. For the reasons set forth above, the Chamber is also satisfied that he could be held responsible as a superior under Article 6 (3) for the crimes committed in Gisenyi town as well as at Mudende University and Nyundo Parish. This will be taken into account in sentencing.

3.5 Rape

3.5.1 Introduction

2198. Count 7 of the Bagosora and Nsengiyumva Indictments and Count 6 of the Kabiligi and Ntabakuze Indictment charge the Accused with rape as a crime against humanity under Article 3(g) of the Statute.

3.5.2 Law

2199. Rape as a crime against humanity requires proof of the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator.[2360] Consent for this purpose must be consent given voluntarily and freely and is assessed within the context of the surrounding circumstances.[2361] Force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape.[2362]

2200. The *mens rea* for rape as a crime against humanity is the intention to effect the prohibited sexual penetration with the knowledge that it occurs without the consent of the victim.[2363]

3.5.3 Deliberations

2201. The Chamber has found that acts of rape occurred during attacks on civilians at Kigali area roadblocks (III.5.1), the Saint Josephite Centre (III.3.5.5) and Gikondo Parish (III.3.5.8). It is clear that, given the circumstances surrounding these attacks, there could have been no consent for these acts of sexual violence and that the perpetrators would have known this fact. The Chamber has determined that the crimes at these locations were committed as part of a wide-spread and systematic attack on ethnic and political grounds (IV.3.2).

2202. Bagosora bears superior responsibility for the crimes committed at Kigali area roadblocks between 7 and 9 April, the Saint Josephite Centre and Gikondo Parish (IV.1.2).[2364] As noted above, the assailants and the Accused were aware that these attacks formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds (IV.3.2).

[2360] *Kunarac et al.* Appeal Judgement, paras. 127-128; *Semanza* Trial Judgement, para. 344.
[2361] *Kunarac et al.* Appeal Judgement, paras. 127-133; *Semanza* Trial Judgement, para. 344.
[2362] *Kunarac et al.* Appeal Judgement, para. 129.
[2363] *Id.* para. 127; *Semanza* Trial Judgement, para. 346.
[2364] Bagosora is charged with rape as a crime against humanity only under Article 6 (3) of the Statute.

3.5.4 Conclusion

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Bagosora

2203. The Chamber finds Bagosora guilty of rape as a crime against humanity (Count 7) for the rapes committed between 7 and 9 April 1994 at Kigali area roadblocks, at the Saint Josephite Centre and Gikondo Parish under Article 6 (3).

Kabiligi

2204. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of rape as a crime against humanity (Count 6).

Ntabakuze

2205. The Prosecution did not prove beyond reasonable doubt that Ntabakuze was responsible either directly or as a superior for any of the rapes alleged against him in his Indictment (III.4.1.1; III.4.4.1). Accordingly, the Chamber acquits Ntabakuze of rape as a crime against humanity (Count 6).

Nsengiyumva

2206. The Prosecution did not prove beyond reasonable doubt that Nsengiyumva was responsible either directly or as a superior for any of the rapes alleged against him in his Indictment (III.4.2.6). Accordingly, the Chamber acquits Nsengiyumva of rape as a crime against humanity (Count 7).

3.6 Persecution

3.6.1 Introduction

2207. Count 8 of the Bagosora and Nsengiyumva Indictments, and Count 7 of the Kabiligi and Ntabakuze Indictment charge the Accused with persecution as a crime against humanity under Article 3 (h) of the Statute.

3.6.2 Law

2208. The Appeal Chamber has established that "the crime of persecution consists of an act or omission which discriminates in fact and which: denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*)."[2365] The required discriminatory intent can be inferred

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[2365] *Nahimana et al.* Appeal Judgement, para. 985, quoting *Krnojelac* Appeal Judgement, para. 185. *See also Simić* Appeal Judgement, para. 177; *Stakić* Appeal Judgement, paras. 327-328; *Kvočka et al.* Appeal Judgement, para. 320; *Kordić and Čerkez* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113.

from circumstantial evidence, such as the nature of the attack and the circumstances surrounding it.[2366]

2209. The enumerated grounds of discrimination for persecution in Article 3 (h) of the Statute do not expressly include ethnic grounds, which is included in the list of discriminatory grounds for the attack contained in the *chapeau* of Article 3. Notwithstanding, the Appeals Chamber in the *Nahimana et al.* case held that discrimination on ethnic grounds could constitute persecution if the accompanying violation of rights was sufficiently serious, such as killings, torture and rape. It affirmed a conviction for persecution based on the supervision of roadblocks where Tutsis were killed.[2367]

3.6.3 Deliberations

2210. The Chamber has found Bagosora, Ntabakuze and Nsengiyumva responsible variously for the killings of Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza, Alphonse Kabiligi and Augustin Maharangari as well as of civilians at Kigali area roadblocks between 7 and 9 April, *Centre Christus*, Kabeza, the Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gikondo Parish, Nyanza hill, IAMSEA, Gisenyi town on 7 April, Mudende University, Nyundo Parish and Bisesero (IV.3.3.4). It has also held Bagosora responsible for the rapes committed at Kigali area roadblocks, the Saint Josephite Centre and Gikondo Parish.

2211. The Chamber has already determined that these crimes formed part of the widespread and systematic attack against civilians on ethnic and political grounds (IV.3.4.3; IV.3.5.3). These crimes are also charged in their respective Indictments as persecution.

2212. In the Chamber's view, these acts of killing and rape equally establish the *actus reus* of persecution. Furthermore, the circumstances surrounding the attacks clearly evince that the perpetrators had the requisite discriminatory intent on ethnic or political grounds. In particular, for many of these crimes, the Chamber has already found that the assailants possessed genocidal intent (IV.2.2.3). The assailants and the Accused were aware that these attacks formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds (IV.3.2).

3.6.4 Conclusion

Bagosora

2213. The Chamber finds Bagosora guilty of persecution as a crime against humanity (Count 8) for the killing of Augustin Maharangari and the crimes committed between 7 and 9 April 1994 at Kigali area roadblocks under Article 6 (1). He is liable as a superior under Article 6(3) of the Statute for the killings of Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza as well as the crimes committed at *Centre Christus*, Kabeza, the Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gikondo Parish, Gisenyi town, Mudende University and Nyundo Parish. Bagosora is also liable as a superior for the crimes committed

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[2366] *Nahimana et al.* Appeal Judgement, para. 986; *Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.
[2367] *Nahimana et al.* Appeal Judgement, paras. 986-988, 1002.

at the Kigali area roadblocks (IV.1.2), which the Chamber will take into account in sentencing.

Kabiligi

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2214. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of persecution as a crime against humanity (Count 7).

Ntabakuze

2215. The Chamber finds Ntabakuze guilty of persecution as a crime against humanity (Count 7) for the killings committed at Kabeza, Nyanza hill and IAMSEA as a superior under Article 6 (3) of the Statute.

Nsengiyumva

2216. Nsengiyumva is guilty of persecution as a crime against humanity (Count 8) for ordering the killings in Gisenyi town, Mudende University, Nyundo Parish and aiding and abetting the killings in Bisesero under Article 6 (1) of the Statute. The Chamber is also satisfied that he could be held responsible as a superior under Article 6 (3) for the killings committed in Gisenyi town as well as at Mudende University and Nyundo Parish (IV.1.5). This will be taken into account in sentencing.

3.7 Other Inhumane Acts

3.7.1 Introduction

2217. Count 9 of the Bagosora and Nsengiyumva Indictments and Count 8 of the Kabiligi and Ntabakuze Indictment charge the Accused with inhumane acts as a crime against humanity under Article 3 (i) of the Statute.

3.7.2 Law

2218. The crime of inhumane acts is a residual clause for serious acts which are not otherwise enumerated in Article 3.[2368] They must be similar in gravity to the acts envisaged in Article 3 and must cause mental or physical suffering or injury or constitute a serious attack on human dignity.[2369] The *mens rea* required is the intent to inflict serious bodily or mental harm upon the victim and the knowledge that the act or omission is part of a widespread and systematic attack.[2370]

[2368] *Kordić and Čerkez* Appeal Judgement, para. 117.
[2369] *Galić* Appeal Judgement, para. 155; *Kordić and Čerkez* Appeal Judgement, para. 117; *Musema* Trial Judgement, para. 232.
[2370] *Kayishema and Ruzindana* Trial Judgement, paras. 148-151, 583; *Musema* Trial Judgement, para. 232; *Delalić et al.* Trial Judgement, para. 536; *Kunarac* Trial Judgement, para. 504; *Kordić and Čerkez* Appeal Judgement, para. 117.

3.7.3 Deliberations

2219. The sole reference in the Indictments to inhumane treatment is the sexual assault of Prime Minister Uwilingiyimana.[2371] The Chamber found that a bottle was inserted into her vagina after her death (III.3.3.2).[2372]

2220. In its Closing Brief, the Prosecution refers to several incidents of inhumane treatment occurring during the course of attacks in which the Chamber has implicated the Accused. In particular, it points to prevention of refugees from seeking sanctuary and the suffering of small children left to die next to their murdered parents in connection with the attack at Nyanza hill, the sheparding of refugees to Gikondo Parish where they were killed as well as the slow and atrocious manner in which people were murdered there, the forcing of victims to dig their own graves and the throwing of them alive into latrines before killing them at Karama hill, the stripping of women before killing them at the Saint Josephite Centre and the brutal murder of Alphonse Kabiligi in front of his family.[2373]

2221. The Indictments do not refer to these specific acts of inhumane treatment. However, the Chamber accepts that notice was provided in the Prosecution's Pre-Trial Brief for the prevention of refugees killed at Nyanza hill from seeking sanctuary, the sheparding of Tutsis to Gikondo Parish to be killed in a house of worship, the stripping of women at the Saint Josephite centre and the torture and murder of Alphonse Kabiligi in front of his family.[2374]

2222. The Chamber is satisfied that each of these acts conducted in the course of the attacks against the Prime Minister, Alphonse Kabiligi as well as the civilians at Gikondo Parish, Nyanza hill and the Saint Josephite Centre constitutes a serious attack on human dignity. In the circumstances of the attacks, it is clear that they were perpetrated with the intent to cause serious bodily or mental harm to the victims. The Chamber has already determined that the

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[2371] Bagosora Indictment, para. 6.9; Kabiligi and Ntabakuze Indictment, para. 6.8; Nsengiyumva Indictment, para. 6.7. In its Closing Brief, the Prosecution does not point to the sexual assault against the Prime Minister as an act of inhumane treatment, but instead mentions it as evidence which would put the Accused on notice of the propensity of soldiers to commit acts of sexual violence. *See* Prosecution Closing Brief, paras. 155-156. Since it is clearly pleaded in the Indictments and mentioned in the Closing Brief, the Chamber does not consider that the Prosecution has abandoned this as a basis of conviction.

[2372] In the *Niyitegeka* case, the accused was held responsible for other inhumane acts for his role in the desecration of a man's genitals and the insertion of a sharpened piece of wood in a woman's vagina after they were killed. *See Niyitegeka* Trial Judgement, paras. 459-467. The appeal against these convictions was dismissed. *Niyitegeka* Appeal Judgement, paras. 132, 183.

[2373] Prosecution Closing Brief, paras. 203-205, 207-208, 214, 217-218.

[2374] With respect to Nyanza hill, the summary of Witness AR's anticipated testimony annexed to the Pre-Trial Brief states: "On 11th April 1994, the UNAMIR soldiers evacuated from ETO. The witness left the site. The witness and other refugees, were stopped by soldiers ... The refugees were turned back and led towards the ETO." *See* Prosecution Pre-Trial Brief (21 January 2002), p. 10. The Chamber has extensively discussed the notice for the attack in general in section III.4.1.1. Concerning Gikondo Parish, the summary of Witness UT's anticipated testimony annexed to the Pre-Trial Brief states: "Some refugees were killed inside the church and some outside". *See* Prosecution Pre-Trial Brief (21 January 2002), p. 133. As for the Saint Josephite Centre, the summary of Witness DBJ's anticipated testimony annexed to the Pre-Trial Brief states: "Some of the victims were naked, men and women." *See id.* p. 43. With respect to Alphonse Kabiligi, the summary of the anticipated testimony of Witness AS states: "At about 8.00 p.m. [Alphonse Kabiligi's] family were attacked ... They started torturing the witness and other persons in the house. The soldier stated that his was wanted [Kabiligi] for interrogation. [Kabiligi] was cut by a machete and led outside where he was killed." *See id.* pp. 10-11. In the revision to the Pre-Trial Brief, filed on 7 June 2002, each of these witnesses is listed under a relevant paragraph in the Indictments which is charged as other inhumane acts.

assailants would have been aware that they formed part of the wide-spread and systematic attack against the civilian population on ethnic and political grounds (IV.3.2).

2223. Bagosora bears superior responsibility under Article 6 (3) of the Statute for the crimes committed against the Prime Minister and Alphonse Kabiligi as well as the civilians at the Saint Josephite Centre and Gikondo Parish (IV.1.2). Ntabakuze bears superior responsibility under Article 6 (3) for the crimes committed in connection with the Nyanza hill massacre (IV.1.4). Nsengiyumva is directly responsible under Article 6 (1) for ordering the death of Alphonse Kabiligi (IV.3.3.4). He is also responsible as a superior which will be taken into account during sentencing (IV.1.5).

3.7.4 Conclusion

Bagosora

2224. The Chamber finds Bagosora guilty of other inhumane acts as a crime against humanity (Count 9) as a superior under Article 6 (3) in connection with the sexual assault of the Prime Minister, the torture and murder of Alphonse Kabiligi in front of his family, the stripping of female refugees at the Saint Josephite Centre and the sheparding of refugees to Gikondo Parish, where they were killed.

Kabiligi

2225. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of other inhumane acts as a crime against humanity (Count 8).

Ntabakuze

2226. The Chamber finds Ntabakuze guilty of other inhumane acts as a crime against humanity (Count 8) as a superior under Article 6 (3) for preventing the refugees killed at Nyanza hill from seeking sanctuary.

Nsengiyumva

2227. Nsengiyumva is guilty of other inhumane acts as a crime against humanity (Count 8) for ordering under Article 6 (1) the killing of Alphonse Kabiligi which was done in a brutal manner in front of his family.

4. SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II

4.1 Introduction

2228. Counts 10, 11 and 12 of the Bagosora Indictment, Counts 9 and 10 of the Kabiligi and Ntabakuze Indictment and Counts 10 and 11 of the Nsengiyumva Indictment charge the Accused with serious violations of Article 3 Common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 1977 under Articles 4 (a) and 4 (e) of the Statue for violence to life and outrages upon personal dignity.

4.2 Threshold Elements

4.2.1 Law

2229. In connection with crimes within the scope of Article 4 of the Statute, the Prosecution must prove, as a threshold matter, the following elements: (1) the existence of a non-international armed conflict; (2) the existence of a nexus between the alleged violation and the armed conflict; and (3) that the victims were not directly taking part in the hostilities at the time of the alleged violation.[2375]

4.2.2 Non-International Armed Conflict

2230. The evidence reflects that, on 1 October 1990, the RPF, made up mostly members of Rwanda's community of exiled Tutsis living in surrounding countries, invaded the territory of Rwanda from Uganda. The initial invasion was repulsed by Rwandan government forces, but the RPF remained in a portion of the northern border region of Rwanda. Between October 1990 and April 1994, the RPF and the Rwandan government negotiated several cease fire agreements, which were frequently violated.[2376] In August 1993, the parties to the conflict had finally agreed to a peace agreement, the Arusha Accords, which called for the integration of forces and the political participation of the RPF in a Broad-Based Transitional Government (III.1.1). At the time active hostilities resumed between the RPF and the Rwandan government in April 1994, they were awaiting the integration of forces and the creation of the Broad-Based Transitional Government provided for by the Arusha Accords. In view of these circumstances, it is established that during the relevant period an armed conflict of a non-international character existed on the territory of Rwanda.

4.2.3 Nexus

2231. A nexus exists between the alleged offence and the non-international armed conflict when the offence is closely related to the hostilities. In determining whether the requisite close relation exists, the jurisprudence of the Tribunal reflects:

> [T]he existence of armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit [the offence], his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be

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[2375] *Akayesu* Appeal Judgement, para. 438; *Ntagerura et al.* Trial Judgement, para. 766; *Semanza* Trial Judgement, para. 512.
[2376] Section III.1.1 (Arusha Accords); Prosecution Exhibit 3 (Expert Report of Alison Des Forges), pp. 12-14.

> established ... that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.[2377]

2232. As reflected in the evidence and previous case law, the ongoing armed conflict between the Rwandan government forces and the RPF, which was identified with the Tutsi ethnic minority in Rwanda and many members of the political opposition, both created the situation and provided a pretext for the extensive killings and other abuses of members of the civilian population in Rwanda. The killings began within hours of the death of President Habyarimana and on the same day the active hostilities resumed between the RPF and government forces.[2378]

2233. The Chamber has described the following targeted assassinations of prominent personalities and political opposition figures as military operations: Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza, Alphonse Kabiligi and Augustin Maharangari as well as the killings at various sites in the Kigali area and Gisenyi as military operations. The killing of the Belgian peacekeepers occurred at a military camp after they had been disarmed earlier during the course of an attack on the Prime Minister's residence. Some of the assailants were blaming the peacekeepers for shooting down the President's plane, which triggered the resumption of hostilities.

2234. For the most part, soldiers, often from elite units, were the main perpetrators of the crimes or acted in conjunction with gendarmes and militiamen. The participation of military personnel in the attacks substantially influenced the manner in which the killings and other crimes were executed.

2235. With respect to crimes committed at roadblocks, the Chamber has highlighted their relationship to the military's civil defence efforts and noted the frequent mixing of military and civilian personnel at them. The evidence shows that the pretext of the killings at them was to identify RPF infiltrators. The dispatch of militiamen, trained by military authorities in Gisenyi, to Bisesero was done to ostensibly assist with an operation against RPF operatives in the area.

2236. In the Chamber's view, the military and civilian assailants were acting in furtherance of the armed conflict or under its guise. Accordingly, the Chamber finds it established that the alleged violations of Articles 4 (a) and 4(e) of the Statute had the requisite nexus to the armed conflict between Rwandan government forces and the RPF.

4.2.4 Victims

2237. At the time of the alleged violations, most of the victims were primarily unarmed Tutsi civilians who were either murdered in their homes, at places of refuge such as religious sites and schools, or at roadblocks on their way to these sanctuaries while fleeing the resumption of hostilities or other attacks.

[2377] *Semanza* Trial Judgement, para. 517, quoting *Kunarac et al.* Appeal Judgement, para. 58. The *Semanza* Trial Judgement's findings on nexus were affirmed by the Appeals Chamber. *See Semanza* Appeal Judgement, para. 369. *See also Rutaganda* Appeal Judgement, paras. 569-580, 577-579; *Ntagerura et al.* Trial Judgement, para. 793, affirmed by *Ntagerura et al.* Appeal Judgement, paras. 427, 428.
[2378] *Semanza* Trial Judgement, para. 518, affirmed by *Semanza* Appeal Judgement, para. 369.

2238. There is evidence that the refugees at Nyundo Parish used traditional weapons to defend themselves against the repeated attacks by militiamen. The Chamber is not satisfied that the use of rudimentary defensive weapons changes the status of the victims. Even if those with weapons for self-defence could be characterised as combatants, their possible presence within groups of refugees does not deprive those who are non-combatants of their protected status.[2379]

2239. The Belgian peacekeepers were highly trained members of the Belgian army's Para Commando Battalion. As part of UNAMIR, they were neutral in the conflict between the Rwandan government forces and the RPF (III.1.3). Furthermore, they had been disarmed well before the attack against them at Camp Kigali. The fact that one of the Belgians was able to obtain a weapon and use it for self-defence during the course of the attack does not alter their status. This happened only after the mob of soldiers at the camp began brutally beating the peacekeepers to death (III.3.4).

2240. Therefore, the Chamber finds beyond reasonable doubt that the victims of the alleged violations of Articles 4(a) and 4(e) of the Statute were not taking active part in the hostilities.

4.3 Violence to Life

4.3.1 Introduction

2241. Counts 10 and 11 of the Bagosora Indictment, Count 9 of the Kabiligi and Ntabakuze Indictment and Count 10 of the Nsengiyumva Indictment charge the Accused with violence to life under Article 4 (a) of the Statute as a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

4.3.2 Law

2242. Article 4 (a) of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II amounting to: "Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment." The specific violation of murder requires the unlawful, intentional killing of another person.[2380]

4.3.3 Deliberations

2243. In its previous legal findings, the Chamber has found Bagosora responsible for ordering under Article 6 (1) of the Statute the killing of Augustin Maharangari and the crimes committed at Kigali area roadblocks from 7 to 9 April. He is also liable as a superior under Article 6 (3) for the killings of Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza and the 10 Belgian peacekeepers as well as the civilians at *Centre Christus*, Kabeza, the Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gikondo Parish, Gisenyi town, including Alphonse Kabiligi, Mudende University and Nyundo Parish. It held Ntabakuze responsible as a superior under Article 6 (3) for the killings at Kabeza, Nyanza hill and IAMSEA.

[2379] *Semanza* Trial Judgement, para. 515.
[2380] *Id.* paras. 338, 373; *Ntagerura et al.* Trial Judgement, para. 765.

Nsengiyumva was found responsible under Article 6 (1) for ordering the killings in Gisenyi town, Mudende University, Nyundo Parish and aiding and abetting the killings in Bisesero.

2244. It follows from those findings, that these killings also amount to murder under Article 4 (a) of the Statute. As discussed above, in the circumstances of these attacks, it is clear that the perpetrators were aware that the victims were not taking an active part in the hostilities. Furthermore, each of these crimes against these individuals not taking an active part in the hostilities had a nexus to the non-international armed conflict between the Rwandan government and the RPF.

4.3.4 Conclusion

Bagosora

2245. The Chamber finds Bagosora guilty of violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 10) for ordering the murder of Augustin Maharangari and the killings committed between 6 and 9 April 1994 at Kigali area roadblocks under Article 6 (1) of the Statute. He is also liable as a superior under Article 6 (3) for the murders and other crimes committed against Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, Faustin Rucogoza and civilians at *Centre Christus*, Kabeza, the Kibagabaga Mosque, the Saint Josephite Centre, Karama hill, Kibagabaga Catholic Church, Gikondo Parish, Gisenyi town, including Alphonse Kabiligi, Mudende University and Nyundo Parish. Furthermore, Bagosora is responsible as a superior under Article 6 (3) for violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 11) for the deaths of the 10 Belgian peacekeepers. He is also liable as a superior for crimes committed at the Kigali area roadblocks (IV.1.2), which the Chamber will take into account in sentencing.

Kabiligi

2246. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment. Accordingly, the Chamber acquits Kabiligi of violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 9).

Ntabakuze

2247. The Chamber finds Ntabakuze guilty of violence to life as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 9) for the killings at Kabeza, Nyanza hill and IAMSEA as a superior under Article 6 (3) of the Statute.

Nsengiyumva

2248. Nsengiyumva is guilty of violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 10) for ordering under Article 6 (1) the killings in Gisenyi town on 7 April, including Alphonse Kabiligi, Mudende University, Nyundo Parish and aiding and abetting the killings in Bisesero. He could be held responsible as a superior under Article 6 (3) for the crimes committed in Gisenyi town as well as at Mudende University and Nyundo Parish (IV.1.5). This will be taken into account in sentencing.

4.4 Outrages upon Personal Dignity

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4.4.1 Introduction

2249. Count 12 of the Bagosora Indictment, Count 10 of the Kabiligi and Ntabakuze Indictment and Count 11 of the Nsengiyumva Indictment charge the Accused with outrages upon personal dignity under Article 4 (e) of the Statute as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

4.4.2 Law

2250. Article 4 (e) of the Statute prescribes that the Tribunal has the power to prosecute persons who committed or ordered serious violations of Common Article 3 or Additional Protocol II amounting to: "Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault." Outrages upon personal dignity have been defined as any act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity.[2381] The *mens rea* of the crime requires that the accused knew that his act or omission would have such effect.[2382]

2251. It follows from the counts in the Indictments and the allegations charged in support of them that the Prosecution is only charging acts of rape under Article 4 (e).

4.4.3 Deliberations

2252. In its findings on genocide and rape as a crime against humanity, the Chamber found Bagosora responsible as a superior for the rape of women at Kigali area roadblocks between 7 and 9 April, the Saint Josephite Centre and Gikondo Parish (IV.3.5.4).

2253. It follows from those findings, that the rapes of these individuals also amount to rape under Article 4 (e) of the Statute. As discussed above, in the circumstances of these attacks, it is clear that the perpetrators were aware that the victims were not taking an active part in the hostilities. Furthermore, each of these crimes against individuals not taking an active part in the hostilities has a nexus to the non-international armed conflict between the Rwandan government and the RPF.

4.4.4 Conclusion

Bagosora

2254. The Chamber finds Bagosora guilty of outrages against personal dignity as violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count 12) for the rapes committed between 6 and 9 April 1994 at Kigali area roadblocks, at the Saint Josephite Centre and Gikondo Parish under Article 6 (3).

Kabiligi

2255. The Prosecution did not prove beyond reasonable doubt that Kabiligi was responsible either directly or as a superior for any of the crimes alleged against him in his Indictment.

[2381] *Kunarac et al.* Appeal Judgement, para. 163.
[2382] *Id.* para. 164.

Accordingly, the Chamber acquits Kabiligi of outrages against personal dignity as violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count 10).

Ntabakuze 40149

2256. The Prosecution did not prove beyond reasonable doubt that Ntabakuze was responsible either directly or as a superior for any of the rapes alleged against him in his Indictment (III.4.1.1; III.4.4.1). The Chamber acquits Ntabakuze of outrages against personal dignity as violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count 10).

Nsengiyumva

2257. The Prosecution did not prove beyond reasonable doubt that Nsengiyumva was responsible either directly or as a superior for any of the rapes alleged against him in his Indictment (III.4.2.6). Accordingly, the Chamber acquits Nsengiyumva of outrages against personal dignity as violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Count 11).

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CHAPTER V: VERDICT

2258. For the reasons set out in this Judgement, having considered all evidence and arguments, the Trial Chamber finds unanimously in respect of

THÉONESTE BAGOSORA as follows:

Count 1:	NOT GUILTY of Conspiracy to Commit Genocide
Count 2:	GUILTY of Genocide
Count 3:	DISMISSED (Complicity in Genocide)
Count 4:	GUILTY of Crimes Against Humanity (Murder)
Count 5:	GUILTY of Crimes Against Humanity (Murder of the Belgian Peacekeepers)
Count 6:	GUILTY of Crimes Against Humanity (Extermination)
Count 7:	GUILTY of Crimes Against Humanity (Rape)
Count 8:	GUILTY of Crimes Against Humanity (Persecution)
Count 9:	GUILTY of Crimes Against Humanity (Other Inhumane Acts)
Count 10:	GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Violence to Life)
Count 11:	GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Violence to Life of the Belgian Peacekeepers)
Count 12:	GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Outrages upon Personal Dignity)

GRATIEN KABILIGI as follows:

Count 1:	NOT GUILTY of Conspiracy to Commit Genocide
Count 2:	NOT GUILTY of Genocide
Count 3:	NOT GUILTY of Complicity in Genocide
Count 4:	NOT GUILTY of Crimes Against Humanity (Murder)
Count 5:	NOT GUILTY of Crimes Against Humanity (Extermination)
Count 6:	NOT GUILTY of Crimes Against Humanity (Rape)
Count 7:	NOT GUILTY of Crimes Against Humanity (Persecution)
Count 8:	NOT GUILTY of Crimes Against Humanity (Other Inhumane Acts)
Count 9:	NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Violence to Life)
Count 10:	NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Outrages upon Personal Dignity)

ALOYS NTABAKUZE as follows: 40147

Count 1:	NOT GUILTY of Conspiracy to Commit Genocide
Count 2:	GUILTY of Genocide
Count 3:	DISMISSED (Complicity in Genocide)
Count 4:	GUILTY of Crimes Against Humanity (Murder)
Count 5:	GUILTY of Crimes Against Humanity (Extermination)
Count 6:	NOT GUILTY of Crimes Against Humanity (Rape)
Count 7:	GUILTY of Crimes Against Humanity (Persecution)
Count 8:	GUILTY of Crimes Against Humanity (Other Inhumane Acts)
Count 9:	GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Violence to Life)
Count 10:	NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Outrages upon Personal Dignity)

ANATOLE NSENGIYUMVA as follows:

Count 1:	NOT GUILTY of Conspiracy to Commit Genocide
Count 2:	GUILTY of Genocide
Count 3:	DISMISSED (Complicity in Genocide)
Count 4:	NOT GUILTY of Direct and Public Incitement to Commit Genocide
Count 5:	GUILTY of Crimes Against Humanity (Murder)
Count 6:	GUILTY of Crimes Against Humanity (Extermination)
Count 7:	NOT GUILTY of Crimes Against Humanity (Rape)
Count 8:	GUILTY of Crimes Against Humanity (Persecution)
Count 9:	GUILTY of Crimes Against Humanity (Other Inhumane Acts)
Count 10:	GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Violence to Life)
Count 11:	NOT GUILTY of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Outrages upon Personal Dignity)

CHAPTER VI: SENTENCING

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1. INTRODUCTION

2259. Having found Bagosora, Ntabakuze and Nsengiyumva guilty of genocide, crimes against humanity and serious violations of common Article 3 to the Geneva Conventions and Additional Protocol II, the Chamber must determine appropriate sentences.

2260. The penalty imposed should reflect the goals of retribution, deterrence, rehabilitation, and the protection of society. Pursuant to Article 23 of the Statute and Rule 101 of the Rules of Procedure and Evidence, the Chamber shall consider the general practice regarding prison sentences in Rwanda, the gravity of the offences or totality of the conduct, the individual circumstances of the accused, including aggravating and mitigating circumstances, and the extent to which any penalty imposed by a court of any State on the accused for the same act has already been served.[2383] As pointed out by the Appeals Chamber, these considerations are not exhaustive when determining the appropriate sentence. In addition, the Trial Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.[2384]

2. SUBMISSIONS

2261. The Prosecution submits that the crimes charged against the Accused are so heinous that they place each of them in the category of the most serious offenders, in particular given their senior status in the Rwandan army. They did not surrender, admit their guilt, show remorse, or cooperate in any fashion in bringing others to justice. Bagosora refused to acknowledge the existence of a genocide, and Ntabakuze and Nsengiyumva exhibited zeal in the conduct of the killings. There are no mitigating factors. Accordingly, the Prosecution argues that they should be sentenced to life imprisonment on each count in their Indictment.[2385]

2262. The Ntabakuze Defence submits that, if convicted of any crimes, Ntabakuze's good character as attested to by Colonel Joseph Dewez, Colonel Luc Marchal and Witnesses DM-25, DK-32 and DM-26, should be considered in mitigation. In particular, it asserts that the evidence shows that, during the course of the events, Ntabakuze provided assistance on several occasions to UNAMIR and others and maintained discipline, cohesion and combat effectiveness within his unit without resort to discrimination amongst his soldiers. In addition, it points to several alleged procedural violations, discussed in chapter II, which, if founded, should also reduce his sentence.[2386] The Bagosora and Nsengiyumva Defence teams did not make any sentencing submissions.[2387]

[2383] Article 23 (1)-(3) and Rule 101 (B)(i)-(iv).
[2384] *Kajelijeli* Appeal Judgement, para. 290. *See* Rule 101 (C).
[2385] Prosecution Closing Brief, paras. 2096-2134, 2137-2148.
[2386] Ntabakuze Closing Brief, paras. 2597-2628.
[2387] The Bagosora Defence submits that it is impossible to make sentencing submissions until it knows the basis of any possible conviction. *See* Bagosora Closing Brief, paras. 2083-2085. However, Rule 86 (C) of the Rules clearly states that sentencing submissions shall be addressed in closing arguments. *See Muhimana* Appeal Judgement, para. 231.

3. DELIBERATIONS

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3.1 Gravity of the Offences

2263. All crimes under the Tribunal's Statute are serious violations of international humanitarian law.[2388] 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.[2389]

2264. 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".[2390]

2265. The Chamber has determined that, between 6 and 9 April 1994, Bagosora was the highest authority in the Ministry of Defence and exercised control over the Rwandan Armed Forces, the most powerful entity at the time in the Rwandan government. There may have been others behind him or at a similar level, for instance in the government or the various political parties. Nevertheless, there is no doubt that he was one of the main, if not the most important, person in Rwanda at this time. In this period, members of the military and militiamen working with them as an auxiliary or complementary force participated in a widespread and systematic campaign of slaughter and targeted political assassinations as war resumed with the RPF.

2266. The toll of human suffering was immense as a result of crimes which could have only occurred with his orders or authorisation. Simple murder was compounded with extreme brutality and cruelty: after the killing of Prime Minister Agathe Uwilingiyimana her genitals were mutilated with a bottle; Alphonse Kabiligi's arm was cut off with a machete in front of his family before he was shot to death; refugees were herded to places of worship, such as Gikondo Parish, before being brutally killed as peacekeepers and priests were forced at gunpoint to watch the carnage, including the mutilation of sexual organs; women stopped at roadblocks were raped before being killed, their naked corpses left by the road.

2267. Bagosora's failure to prevent and punish the crimes with which he has been convicted set Rwanda on a course of further slaughter in the days which followed. This would have been avoided or at least substantially mitigated had he reigned in the troops under his control and used them as a stabilising force rather than unleash them as one of death. His acts and omissions during this period are worthy of the highest sanction and censure comparable to other senior leaders who have received life sentences.

2268. Ntabakuze was the commander of the elite Para Commando Battalion, a highly disciplined, well-trained, frontline force. He was an able, professional and respected officer. It appears from the evidence that his battalion spent most of the war engaged with RPF forces. However, at key moments in the days after the death of President Habyarimana its members went from house to house in Kabeza, a predominately Tutsi and RPF-leaning area,

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[2388] *Kayishema and Ruzindana* Appeal Judgement, para. 367 (quoting Article 1 of the Statute).
[2389] *Kajelijeli* Appeal Judgement, para. 291.
[2390] *Kvočka et al.* Appeal Judgment, para. 681.

killing civilians. At IAMSEA, they separated a number of Tutsis from Hutus at a school and killed them along with *Interahamwe*. These were organised military operations which, in such a disciplined and elite unit, only would have occurred following Ntabakuze's orders or with his authorisation. When deployed along the frontline at Sonatube junction, members of the battalion and *Interahamwe* stopped a large group of predominately Tutsi refugees fleeing to safety and marched them to their death at Nyanza hill in one of the most notorious early massacres of the genocide, a crime of which the Appeals Chamber has already emphasised the gravity.[2391] The Chamber agrees with this view.

2269. Nsengiyumva served as commander of the Gisenyi operational sector. He was the highest military authority in an area, which was one of the furthest from the army's frontline with the RPF. Within hours after the death of President Habyarimana, soldiers accompanying militiamen conducted targeted genocidal and political killings, including of Alphonse Kabiligi, which as noted above, was brutally murdered in front of his family. Other larger scale killings followed against refugees at Mudende University and Nyundo Parish. These can only be described as organised military operations conducted on orders from Nsengiyumva. In June, he dispatched militiamen, whose training he oversaw, to participate in an operation to kill starving and barely surviving Tutsi refugees in Bisesero. The gravity and brutality of these crimes are worthy of the highest condemnation. His conduct is equivalent to other senior regional authorities who have also received life imprisonment.

2270. Under Rwandan law, similar crimes carry the possible penalties of life imprisonment, depending on the nature of the accused's participation.[2392] In this Tribunal, a sentence of life imprisonment is generally reserved those who planned or ordered atrocities as well as the most senior authorities.[2393] In the Chamber's view, the gravity of the crimes committed by Bagosora, Ntabakuze and Nsengiyumva warrants similar treatment.

[2391] *Rutaganda* Review Decision, para. 21 ("[T]he Appeals Chamber recalls that it declined to revisit Mr. Rutaganda's life sentence, after quashing a conviction of murder in his appeal, noting in particular the gravity of the events in Nyanza alone."), citing *Rutaganda* Appeal Judgement, para. 592.

[2392] *Kanyarukiga*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (assessing Rwanda's penalty structure); *Gatete*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25. *See also Semanza* Appeal Judgement, para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), quoting *Serushago* Appeal Judgement, para. 30; *Dragan Nikolić* Appeal Judgment, para. 69.

[2393] *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 and affirmed against senior government authorities in: *Ndindabahazi* 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, e.g.*, *Karera* Trial Judgement, para. 585 (prefect of Kigali-Rural); *Kayishema and Ruzindana* Trial Judgement (Sentence), p. 8 (Kayishema was prefect of Kibuye); *Gacumbitsi* Appeal Judgement, para. 206 (*bourgmestre*); *Musema* Trial Judgement, paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Rutaganda* Trial Judgement, paras. 466-473 (second vice-president of *Interahamwe* at national level).

3.2 Individual, Aggravating and Mitigating Circumstances

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2271. The Chamber will consider the individual circumstances of the Accused, 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.[2394] 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.[2395]

2272. In aggravation, the Chamber has considered Bagosora's role as a superior in connection with Kigali area roadblocks and Nsengiyumva's role as a superior with respect to the targeted killings in Gisenyi town, including Alphonse Kabiligi, and the massacres at Mudende University and Nyundo Parish. The large number of Tutsi victims during the course of the attacks and massacres is also aggravating with respect to each of the Accused's conviction for genocide, which is a crime with no numeric minimum of victims.[2396]

2273. The Chamber has already discussed the background and individual circumstances of each Accused (I.2). The Chamber is mindful of their lengthy public service to their country as military officers. It has considered Bagosora's efforts to facilitate the evacuation of orphans at the behest of the French government (III.5.1). It has also assessed the selective assistance that Nsengiyumva rendered to some Tutsis in Gisenyi prefecture in 1994, in particular Witness XX, a Tutsi nun and family friend, after the Nyundo Parish massacre (III.3.6.6). Furthermore, the Chamber has taken into account Ntabakuze's role in facilitating UNAMIR convoys and the general positive view of him held by certain UNAMIR and foreign officers and high ranking opposition officials (III.3.5.4; III.4.1.1). In the Chamber's view, this selective assistance carries only limited weight as a mitigating factor.[2397]

2274. The Chamber is aware that Nsengiyumva and Ntabakuze were at times following superior orders in executing their crimes, which is a mitigating factor under Article 6 (4) of the Statute. However, given their own senior status and stature in the Rwandan army, the Chamber is convinced that their repeated execution of these crimes as well as the manifestly unlawful nature of any orders they received to perpetrate them reflects their acquiescence in committing them. No mitigation is therefore warranted on this ground.

2275. In the Chamber's view, the gravity of the crimes and the aggravating factors greatly outweigh any mitigating factors.

[2394] *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 294.
[2395] *Ndindabahizi* Appeal Judgement, para. 137.
[2396] *Semanza* Appeal Judgement, paras. 337-338.
[2397] *Kajelijeli* Appeal Judgement, para. 311.

4. CONCLUSION

2276. 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.[2398] The convictions for genocide, crimes against humanity and serious violations of common Article 3 to the Geneva Conventions and Additional Protocol II are based largely on the same underlying criminal acts.

2277. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Théoneste Bagosora to

LIFE IMPRISONMENT

2278. The Chamber **SENTENCES** Aloys Ntabakuze to

LIFE IMPRISONMENT

2279. The Chamber **SENTENCES** Anatole Nsengiyumva to

LIFE IMPRISONMENT

5. CONSEQUENTIAL ORDERS

2280. The above sentences 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.

2281. Until their transfer to their designated places of imprisonment, Théoneste Bagosora, Aloys Ntabakuze and Anatole Nsengiyumva shall be kept in detention under the present conditions.

2282. Pursuant to Rule 102 (B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

2283. The Chamber has acquitted Kabiligi of all counts against him and orders his immediate release.

2284. It requests the Registry to make the necessary arrangements.

[2398] *Nahimana et al.* Appeal Judgement, paras. 1042-1043; *Simba* Trial Judgement, para. 445; *Ndindabahizi* Trial Judgement, para. 497.

Arusha, 18 December 2008

Erik Møse	Jai Ram Reddy	Sergei Alekseevich Egorov
Presiding Judge	Judge	Judge

(Seal of the Tribunal)

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ANNEX A: PROCEDURAL HISTORY

1. THÉONESTE BAGOSORA

2285. Théoneste Bagosora was arrested in Cameroon on 9 March 1996 pursuant to a Belgian international arrest warrant.[2399]

2286. On 17 May 1996, Judge Lennart Aspegren granted the Prosecution's request that Belgium defer its case against Bagosora to the ICTR.[2400] Judge Aspegren ordered Bagosora's transfer and provisional detention for 30 days to the Tribunal's detention facilities on the same day.[2401]

2287. Following delays in the implementation of the transfer order, Judge Aspegren ordered Bagosora's continued detention in Cameroon for another 30 days, through 16 July 1996, and reiterated the prior request to Cameroon to transfer Bagosora to the Tribunal's detention facilities "as soon as possible."[2402] On 15 July 1996, with Bagosora still in Cameroon, Judge Laïty Kama, President of Trial Chamber I, ordered his continued detention there for another 30 days for a third "and final" time.[2403]

2288. On 5 August 1996, the Prosecution submitted its Indictment against Théoneste Bagosora. Five days later, Judge Aspegren confirmed the Indictment, holding that there was sufficient evidence to provide reasonable grounds to believe that Bagosora had committed genocide, conspiracy to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II.[2404] Judge Aspegren also issued a warrant of arrest on behalf of the ICTR, requesting that Cameroon continue to hold Bagosora in custody and convey the charges of the Indictment to him.[2405]

2289. By a letter dated 30 August 1996, Bagosora requested that the Registrar of the Tribunal assign him Defence counsel. When his first and third options were refused, Bagosora opted to be represented by Mr. Benjamin Ondingui.[2406]

2290. On 23 January 1997, Bagosora was transferred from Cameroon to the Tribunal's detention facilities in Arusha, Tanzania. He made an initial appearance before Trial Chamber II, composed of Judge William Sekule, presiding, Judge Yakov Ostrovsky and Judge Navanathem Pillay, on 20 February 1997. He did not have legal counsel, however, and did not make his plea.[2407]

[2399] The warrant for Bagosora's arrest was issued on 29 May 1995.
[2400] *Bagosora*, Decision on the Application by the Prosecution for a Formal Request for Deferral (TC), 17 May 1996; T. 17 May 1996 pp. 1-3.
[2401] *Bagosora*, Decision: Order of Provisional Detention and of Transfer (TC), 17 May 1996.
[2402] *Bagosora*, Decision: Continued Detention on Remand of Théoneste Bagosora (TC), 18 June 1996. The hearing took place in Cameroon.
[2403] *Bagosora*, *Décision: Prolongation de la détention provisoire de Théoneste Bagosora* (TC), 15 July 1996.
[2404] *Bagosora*, Decision: Confirmation of the Indictment (TC), 10 August 1996. On 5 October 1998, Trial Chamber II denied the Bagosora Defence motion to compel the Prosecution to provide greater detail regarding counts of the Indictment. *See Bagosora*, Decision on the Defence Motion for Further Particulars on Counts 2, 3 and 4 of the Indictment (TC), 5 October 1998.
[2405] *Bagosora*, Warrant of Arrest, 10 August 1996.
[2406] *Bagosora*, Decision on the Request by the Accused for Change of Assigned Counsel (TC), 26 June 1997. Bagosora's first and third choices were already representing other accused persons. On 28 February 1997, the Registry confirmed that Mr. Ondingui had been assigned to the Accused as his Defence Counsel.
[2407] T. 20 February 1997 pp. 1-9.

2291. On 7 March 1997, Bagosora, represented by Mr. Ondingui, made his second appearance before Trial Chamber II, pleading not guilty to all charges in the Indictment. During a status conference that day, a trial date was provisionally set for 12 March 1998.[2408] The Tribunal granted Bagosora's request for a new lead counsel on 26 June 1997, and Mr. Benjamin Ondingui was replaced by Mr. Raphaël Constant.[2409]

2292. The Prosecution submitted a new indictment, stipulating charges against Bagosora and 28 others on 6 March 1998. Eleven days later, Trial Chamber II postponed Bagosora's trial pending the decision on the Prosecution's motion to join his Indictment.[2410] The Prosecution's request for joinder was denied by Judge Tafazzal Khan on 31 March 1998.[2411]

2293. On 12 August 1999, Trial Chamber II granted the Prosecution's motion to amend the Indictment against Bagosora to include a complicity in genocide charge, allegations of crimes against humanity, including rape, murder, extermination, persecution, and other inhumane acts, and further allegations of serious violations of common Article 3, including outrages upon personal dignity.[2412] Bagosora pleaded not guilty to these new charges.[2413]

2. GRATIEN KABILIGI AND ALOYS NTABAKUZE

2294. On 16 July 1997, Judge Kama ordered the transfer from Kenya and provisional detention for 30 days of Gratien Kabiligi and Aloys Ntabakuze.[2414] Ntabakuze was arrested in Nairobi, Kenya two days later and signed an *Avis de Droits de Suspect*. Ntabakuze and Kabiligi were transferred to the Tribunal's detention facilities in Arusha, Tanzania on 18 July 1997. On 14 August 1997, in two separate decisions, Judge Kama extended the provisional detention of both Accused for 30 days. These orders were extended by Judge Pillay on 16 September 1997.[2415]

2295. Judge Aspegren confirmed a joint Indictment against Kabiligi and Ntabakuze on 15 October 1997, finding sufficient evidence to support charges of genocide, crimes against humanity, complicity in genocide, and violations of common Article 3 to the 1949 Geneva Conventions and Additional Protocol II. On the same day the Chamber ordered that Ntabakuze and Kabiligi be arrested under the confirmed indictment and informed of the

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[2408] T. 7 March 1997 pp. 24-25.
[2409] *Bagosora*, Decision on the Request by the Accused for Change of Assigned Counsel (TC), 26 June 1997; T. 27 June 1997 p. 58. *See also* correspondence between ICTR and Raphaël Constant, dated 23 July 1997.
[2410] *Bagosora*, Decision on the Prosecution Motion for Adjournment (TC), 17 March 1998.
[2411] *Bagosora and 28 Others*, Dismissal of Indictment (TC), 31 March 1998.
[2412] *Bagosora*, Decision on the Prosecution's Request for Leave to Amend the Indictment (TC), 12 August 1999.
[2413] T. 13 August 1999 p. 36.
[2414] *Kabiligi*, Order of Transfer and Provisional Detention (in Accordance with Rule 40 *bis* of the Rules) (TC), 16 July 1997; *Ntabakuze*, Order of Transfer and Provisional Detention (in Accordance with Rule 40 *bis* of the Rules) (TC), 16 July 1997.
[2415] *Kabiligi*, Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (in Acccordance with Rule 40 *Bis* (F) of the Rules of Procedure and Evidence) (TC), 14 August 1997; *Ntabakuze*, Decision on the Extension of the Provisional Detention for a Maximum Period of Thirty Days (in Acccordance with Rule 40 *Bis* (F) of the Rules of Procedure and Evidence) (TC), 14 August 1997; *Kabiligi*, Extension of the Provisional Detention for a Maximum Period of Thirty Days (in Accordance with Rule 40 *Bis* (G) of the Rules of Procedure and Evidence) (TC), 16 September 1997; *Ntabakuze*, Extension of the Provisional Detention for a Maximum Period of Thirty Days (in Accordance with Rule 40 *Bis* (G) of the Rules of Procedure and Evidence) (TC), 16 September 1997.

charges against them.[2416] On 24 October 1997 and 17 February 1998, Ntabakuze and Kabiligi, respectively, pleaded not guilty to all counts contained in their Indictment.[2417] Trial Chamber II dismissed a Prosecution indictment attempting to join the case of Ntabakuze and Kabiligi with 27 others on 31 March 1998.[2418]

2296. On 25 September 1998, Trial Chamber II determined that Ntabakuze's arrest and continued detention were validly authorised. It also ordered the Prosecution to return personal items and documents unnecessary to its case to the Ntabakuze Defence and held that the measures used by Kenya to restrain and arrest Ntabakuze were deemed reasonable and within Kenya's jurisdiction as the arresting State. It dismissed the Defence motion for annulment of proceedings.[2419]

2297. Trial Chamber II denied Defence requests on 30 September 1998 to prosecute the Accused separately.[2420] It also ordered the Prosecution to clarify two paragraphs in its Indictment by providing approximate times and locations of anti-Tutsi speeches on 5 October 1998. In the same order, the Chamber dismissed Defence motions to nullify the Kabiligi and Ntabakuze Indictment based on procedural violations, including undue delay resulting from a failure to agree on a trial date and multiple defects in the Indictment.[2421]

2298. In a separate 5 October 1998 decision, Trial Chamber II ordered the Prosecution to return to the Kabiligi Defence original versions of all documents unnecessary for trial, in addition to certified copies of documents intended for use at trial.[2422] It also dismissed the Kabiligi Defence motion to initiate an investigation and nullify proceedings against the Accused based on accusations that Kabiligi was tortured and endured cruel or inhuman treatment during the course of his arrest and subsequent detention.[2423]

[2416] *Kabiligi and Ntabakuze*, Decision to Confirm the Indictment (TC), 15 October 1997; *Kabiligi and Ntabakuze*, Warrant of Arrest and Order for Continued Detention (TC), 15 October 1997.

[2417] T. 24 October 1997 p. 29; T. 17 February 1998 p. 20.

[2418] *Bagosora and 28 Others*, Dismissal of Indictment (TC), 31 March 1998.

[2419] *Kabiligi and Ntabakuze*, Decision on the Defence Motion for Annulment of Proceedings, Release and Return of Personal Items and Documents (TC), 25 September 1998. Later in the proceedings, the Chamber ordered the Prosecution to comply with this order and return personal items and documents to the Accused. *See Ntabakuze*, Decision on the Defence Motion to Implement Trial Chamber II Decision Rendered on 25 September 1998 Ordering the Return of Seized Items and on the Prosecution's Motion for a Temporary Stay for the Execution of the Same Decision (TC), 19 May 2000. On 28 June 2000, Trial Chamber III granted the Prosecution a 21-day extension to comply with its 25 September 1998 ruling. *See Ntabakuze*, Decision on the Prosecution's urgent Motion for Extension of Time Within Which to Comply Fully With the Orders Contained in the Decision of 19 May 2000 (TC), 28 June 2000.

[2420] *Kabiligi and Ntabakuze*, Decision on the Defence Motion Requesting an Order for Separate Trials (TC), 30 September 1998. On 4 May 2000, Trial Chamber III dismissed the Ntabakuze Defence motion to declare the Prosecution's motion for joinder of the Accused inadmissible. *See Kabiligi and Ntabakuze*, Decision on Ntabakuze's Motion to Declare Inadmissible the Prosecutor's Motion for Joinder (TC), 4 May 2000.

[2421] *Kabiligi and Ntabakuze*, Decision on the Defence Preliminary Motions Relating to Defects in the Form and Substance of the Indictment (TC), 5 October 1998. On 17 May 2000, Trial Chamber III denied the Prosecution's motion to temporarily stay the part of this decision that required the Prosecution to clarify certain passages. *See Kabiligi and Ntabakuze*, Decision on the Prosecution Motion for a Temporary Stay of Execution of the Decision of 5 October 1998 Relating to Defects in the Form of the Indictment (TC), 17 May 2000.

[2422] *Kabiligi and Ntabakuze*, Decision on the Defence Motion for the Restitution of Items and Documents Seized (TC), 5 October 1998.

[2423] *Kabiligi and Ntabakuze*, Decision on the Defence Motion to Lodge Complaint and Open Investigations into Alleged Acts of Torture Under Rules (40) (C) and 73 (A) of the Rules of Procedure and Evidence (TC), 5 October 1998. The Appeals Chamber later rejected the Kabiligi Defence's motion to appeal this decision. *See*

2299. On 16 March 1999, the Registrar approved Ntabakuze's request to withdraw Ms. Simonette Rakotondramanitra, as his counsel.[2424] On 17 March 1999, the Registrar granted Kabiligi's request to withdraw Ms. Macha Sinegre-David as his counsel. Less than one month later, Mr. Clemente Monterosso was appointed as Ntabazuke's lead counsel.[2425]

2300. The Prosecution amended its joint Indictment on 13 August 1999 to include new charges of conspiracy to commit genocide and crimes against humanity, extermination, rape, and persecution. The Chamber confirmed the Amended Indictment on 8 October 1999.[2426]

2301. On 4 November 1999, Trial Chamber II dismissed the Kabiligi Defence motion alleging defects in his initial detention and requesting his release.[2427] On the same day, Trial Chamber III rejected Kabiligi Defence motion to disqualify Judge Sekule of Trial Chamber II.[2428]

2302. The Appeals Chamber rejected motions on 21 January 2000 from both Defence teams who claimed that Trial Chamber II had failed to order disclosure of certain material contained in the Prosecution's request to amend its Indictment.[2429] On 13 April 2000, Trial Chamber III denied motions from the Ntabakuze and Kabiligi Defence seeking to declare the Indictment void.[2430]

2303. On 5 May 2000, Trial Chamber III dismissed the Kabiligi Defence motion requesting transcripts of former interviews with the Accused and Prosecution investigators.[2431] It denied Kabiligi and Ntabakuze Defence motions requesting that the Prosecution provide further details of the new charges in the Amended Indictment on 18 May 2000.[2432] The next day,

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Kabiligi and Ntabakuze, Decision Rejecting Notice of Appeal (AC), 18 December 1998. The Appeals Chamber rejected Kabiligi's appeal against this decision. *See Kabiligi and Ntabakuze*, Decision Rejecting Notice of Appeal (AC), 28 July 1999.

[2424] *Kabiligi and Ntabakuze*, Decision to Withdraw the Assignment of Counsel Simonette Rakotondramanitra (TC), 16 March 1999.

[2425] *Kabiligi and Ntabakuze, Décision de retrait de la Commission d'Office à Maitre Macha Sinegre-David* (TC), 17 March 1999; *Kabiligi and Ntabakuze, Décision portant nomination de Me Clemente Monterosso en qualité de conseil principal de M. Aloys Ntabakuze* (TC), 13 April 1999.

[2426] *Kabiligi and Ntabakuze*, Decision on the Prosecutor's Motion to Amend the Indictment (TC), 8 October 1999.

[2427] *Kabiligi and Ntabakuze*, Decision on the Defence Motion for Nullity of Proceedings and Release (TC), 4 November 1999. The Appeals Chamber later rejected the motion from the Defence to appeal this decision. *See Kabiligi and Ntabakuze*, Interlocutory Appeal Against the Decision on Nullity of Proceedings and Release (AC), 2 June 2000.

[2428] *Kabiligi and Ntabakuze*, Decision on the Defence's Extremely Urgent Motion for Disqualification and Objection Based on Lack of Jurisdiction (TC), 4 November 1999. On 18 May 2000, the Appeals Chamber held that it did not have jurisdiction to review this decision. *See Kabiligi and Ntabakuze*, Interlocutory Appeal Against the Decision of 4 November 1999 (AC), 18 May 2000.

[2429] *Kabiligi and Ntabakuze*, Decision Rejecting Notice of Appeal (AC), 21 January 2000.

[2430] *Kabiligi and Ntabakuze*, Decision on Defence Motion Objecting to Lack of Jurisdiction and Seeking to Declare the Indictment Void *Ab Initio* (TC), 13 April 2000.

[2431] *Kabiligi and Ntabakuze*, Decision on Kabiligi's Motion for the Disclosure of Statements to the Accused (TC), 5 May 2000.

[2432] *Kabiligi and Ntabakuze*, Decision on Preliminary Motion Seeking to Obtain From the New Indictment Clarification Crucial in the Exercise of the Right of the Accused to Raise Preliminary Motions (Under 50 (C) of the Rules of Procedure and Evidence) (TC), 18 May 2000; *Kabiligi and Ntabakuze*, Decision on Defence Motion Seeking Clarification of the New Charges (Rule 72 of the Rules of Procedure and Evidence) (TC), 18 May 2000. The Chamber later denied the Ntabakuze Defence motion challenging and seeking clarification of the Indictment. *See Kabiligi and Ntabakuze*, Decision on Ntabakuze's Preliminary Motion and Motion for the Execution of the Decisions Rendered on 5 October 1998 and 8 October 1999 (TC), 20 October 2000.

Trial Chamber III decided that the Prosecution was not allowed to keep original versions of certain documents seized from Ntabakuze that were not necessary for trial. It ordered the Prosecution to provide the Accused with copies of documents which it wished to retain.[2433]

2304. On 1 June 2000, Trial Chamber III denied the Kabiligi Defence motion to compel supplementary investigations by the Prosecution into the plane crash of President Habyarimana.[2434] The following day, it denied the new Kabiligi Defence motion seeking to nullify the proceedings and declare illegal and inadmissible certain evidence obtained from the Accused.[2435]

2305. A Kabiligi Defence motion was granted by Trial Chamber III on 6 June 2000, compelling the Prosecution to clarify certain paragraphs of the Indictment.[2436] In two separate decisions two days later, it decided that the Ntabakuze and Kabiligi Defence were entitled to disclosure of a United Nations report, dated 1 August 1997.[2437]

2306. Trial Chamber III denied the Kabiligi Defence motion asserting that the Prosecution had not complied with a former decision of Trial Chamber II to disclose original documents seized from the Accused that were not necessary for the preparation of trial on 28 June 2000. On the same day, Trial Chamber III denied the Prosecution's motion to postpone the return of original documents to Kabiligi until the end of trial.[2438]

3. ANATOLE NSENGIYUMVA

2307. Anatole Nsengiyumva was apprehended in Cameroon pursuant to a Rwandan arrest warrant on 27 March 1996. Judge Lennart Aspegren ordered Nsengiyumva's transfer to the Tribunal's detention facilities and provisional detention for 30 days on 17 May 1996.[2439] He reissued this order on 18 June.[2440] On 12 July 1996, Judge Yakov Ostrovsky confirmed the Prosecutor's Indictment against Nsengiyumva, finding sufficient evidence to support charges of direct and public incitement to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and the Additional Protocol II.[2441]

2308. Nsengiyumva was transferred to the Tribunal's detention facilities on 23 January 1997. The Accused, represented by Mr. Kennedy Ogetto and Mr. Gershom Otachi Bw'Omanwa, made his initial appearance on 19 February 1997 before Trial Chamber I, composed of Judge Kama, presiding, Judge Sekule and Judge Pillay. Nsengiyumva pleaded

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[2433] *Kabiligi and Ntabakuze*, Decision on the Defence Motion to Implement Trial Chamber II Decision Rendered on 25 September 1998 Ordering the Return of Seized Items and on the Prosecution's Motion for a Temporary Stay for the Execution of the Same Decision (TC), 19 May 2000.
[2434] *Kabiligi and Ntabakuze*, Decision on the Defence Motion Seeking Supplementary Investigations (TC), 1 June 2000.
[2435] *Kabiligi and Ntabakuze*, Decision on Kabiligi's Motion to Nullify and Declare Evidence Inadmissible (TC), 2 June 2000.
[2436] *Kabiligi and Ntabakuze*, Decision on Kabiligi Motion to Quash or Amend the Indictment (TC), 6 June 2000.
[2437] *Kabiligi and Ntabakuze*, Decision on Kabiligi's Supplementary Motion for Investigation and Disclosure of Evidence (TC), 8 June 2000; *Kabiligi and Ntabakuze*, Decision on Ntabakuze's Motion for Disclosure of Material (TC), 8 June 2000.
[2438] *Kabiligi and Ntabakuze*, Decision on Kabiligi's Motion for Disclosure and Restitution of Documents Pursuant to Decision Rendered on 5 October 1998 and the Prosecution's Motion for a Temporary and Partial Stay of Execution of the Same Decision (TC), 28 June 2000.
[2439] *Nsengiyumva*, Decision: Order of Provisional Detention and Transfer (TC), 17 May 1996.
[2440] *Nsengiyumva*, Decision: Continued Detention on Remand of Anatole Nsengiyumva (TC), 18 June 1996.
[2441] *Nsengiyumva*, Decision on the Review of the Indictment (TC), 12 July 1996.

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not guilty to all charges.[2442] On 28 September 1998, Trial Chamber II denied the Defence motion contesting its jurisdiction to consider the Prosecution's request for leave to amend and join the Nsengiyumva Indictment with three other Accused.[2443]

2309. On 24 May 1999, Trial Chamber I ordered the Prosecution to clarify its Indictment by identifying the names and categories of Nsengiyumva's subordinates and to identify persons allegedly killed by the Accused.[2444] The Prosecution was granted leave to amend the Nsengiyumva Indictment and to add the charges of conspiracy to commit genocide, genocide, complicity in genocide, crimes against humanity (extermination, rape and persecution), and serious violations of common Article 3 of the Geneva Convention and Additional Protocol II on 2 September 1999.[2445]

2310. Trial Chamber III denied a Defence motion, on 13 April 2000, challenging the Chamber's jurisdiction to rule on the Prosecution's Amended Indictment.[2446] On 3 May 2000, it rejected the Defence motion arguing that a certain portion of the Concise Statement of Facts section should be stricken from the Amended Indictment.[2447] The Chamber dismissed the Defence motion, on 12 May 2000, alleging that the Chamber did not have the requisite jurisdiction to try the Accused on certain counts of the Amended Indictment.[2448] On 15 May 2000, the Chamber ordered the Prosecution to provide further details on a number of the paragraphs of the Amended Indictment.[2449]

4. BAGOSORA AND 28 OTHERS

2311. On 6 March 1998, the Prosecution submitted a joint Indictment, naming 29 Accused, including Bagosora, Kabiligi, Ntabakuze and Nsengiyumva. Judge Khan dismissed the Indictment against Bagosora and 28 others on 31 March 1998. The Appeals Chamber rejected the Prosecution's appeal of the decision on 8 June 1998.[2450]

[2442] T. 19 February 1997 p. 14.
[2443] T. 28 September 1998 pp. 28-32. The Prosecution sought to join the Nsengiyumva Indictment with those of Ntabakuze, Kabiligi and Bagosora. The Defence motion to appeal this decision was dismissed. *See Nsengiyumva*, Decision on Appeal Against Oral Decision of Trial Chamber II of 28 September 1998 (AC), 3 June 1999.
[2444] *Nsengiyumva*, Decision on the Defence Motion to Strike Out the Indictment (TC), 24 May 1999. The Chamber invited the Prosecution to make these amendments within 30 days.
[2445] *Nsengiyumva*, Decision of the Prosecution's Request for Leave to Amend the Indictment (TC), 2 September 1999.
[2446] *Nsengiyumva*, Decision on the Defence Motions Objecting to the Jurisdiction of the Trial Chamber on the Amended Indictment, 13 April 2000.
[2447] *Nsengiyumva*, Decision on the Defence Motion Seeking the Striking Out of Paragraph 6.17 of the Concise Statement of Facts for Non-Compliance of Orders Requiring Amendment (TC), 3 May 2000.
[2448] *Nsengiyumva*, Decision on the Defence Motion Raising Objections on Defects in the Form of the Indictment and to Personal Jurisdiction on the Amended Indictment (TC), 12 May 2000.
[2449] *Nsengiyumva*, Decision on the Defence Motion on Defects in the Form of the Indictment (TC), 15 May 2000.
[2450] *Bagosora and 28 Others*, Dismissal of Indictment (TC), 31 March 1998; *Bagosora and 28 Others*, Decision on the Admissibility of the Prosecution's Appeal from the Decision of a Confirming Judge Dismissing an Indictment Against Théoneste Bagosora and 28 Others (AC), 8 June 1998.

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5.1 Pre-Trial Proceedings

2312. On 29 June 2000, Trial Chamber III granted the Prosecution motion to join the cases of Bagosora, Kabiligi and Ntabakuze, and Nsengiyumva.[2451]

2313. On 21 November 2001, Trial Chamber III ruled that each party be given notice of all filings in the case against Bagosora and 28 others.[2452] It also harmonised the Prosecution witness protection orders on 29 November 2001.[2453] The Chamber ordered the Prosecution on 5 December 2001 to disclose the identity of its protected witnesses, as well as their non-redacted statements, either 35 days before each witness's expected testimony or when an individual comes under the Tribunal's protection, whichever was earlier.[2454]

5.2 Prosecution Case

2314. The Prosecution delivered its opening statement on 2 April 2002 before Trial Chamber III, composed of Judge Lloyd G. Williams, presiding, Judge Pavel Dolenc and Judge Andrésia Vaz.[2455] It heard two witnesses over the course of 32 days, including the examination of Prosecution Expert Witness Alison Des Forges.

2315. On 2 May 2002, the Chamber ordered the Prosecution to amend its Pre-Trial Brief to identify the portions of its Indictment that its witnesses intended to corroborate with testimony.[2456] The Prosecution filed its revised brief on 7 June 2002.[2457]

2316. The Chamber granted, on 13 May 2002, the request from the Bagosora, Kabiligi and Ntabakuze Defence to compel the Prosecution to deliver French translations of several key documents, including the Prosecution's Pre-Trial Brief, its list of intended trial witnesses, summaries for each prospective witness's testimony and a copy of Jean Kambanda's statement.[2458] On the same day, the Chamber dismissed the Bagosora, Kabiligi and Ntabakuze motion alleging untimely delivery of these documents to the Accused.[2459]

[2451] *Bagosora et al.*, Decision on the Prosecution's Motion for Joinder (TC), 29 June 2000.
[2452] *Bagosora et al.*, Decision on Defence's Extremely Urgent Motion for All Inferences to be Drawn From the Joinder Decision Rendered on 29 June 2000 (TC), 21 November 2001.
[2453] *Bagosora et al.*, Decision on the Prosecution Motion for Harmonisation and Modification of Protective Measures for Witnesses (TC), 29 November 2001.
[2454] *Bagosora et al.*, Decision and Scheduling Order on the Prosecution Motion for Harmonisation and Modification of Protective Measures for Witnesses (TC), 5 December 2001. On 28 March 2002, Trial Chamber III dismissed the joint Defence motion to reconsider both decisions. *See Bagosora et al.*, Decision on Defence Motion for reconsideration of the Decisions rendered on 29 November 2001 and 5 December 2001 and for a Declaration of lack of Jurisdiction (TC), 28 March 2002.
[2455] T. 2 April 2002 pp. 137-196.
[2456] *Bagosora et al.*, Decision on Defence Motions of Nsengiyumva, Kabiligi and Ntabakuze Challenging the Prosecutor's Pre-Trial Brief and on the Prosecutor's Counter Motion (TC), 23 May 2002.
[2457] *Bagosora et al.*, The Prosecutor's Pre-Trial Brief Revision in Compliance with the Decision on Prosecutor's Request for an Extension of the Time Limit in the Order of 23 May 2002, and with the Decision on the Defence Motion Challenging the Pre-Trial Brief, dated 23 May 2002 (TC), 7 June 2002.
[2458] *Bagosora et al.*, Decision on Defence Extremely Urgent Motion for Translation of Document (TC), 13 May 2002.
[2459] *Bagosora et al.*, Decision on the Motion of Bagosora, Kabiligi and Ntabakuze for the Preservation of their Rights (TC), 13 May 2002.

2317. The Chamber ordered the Prosecution to identify within 15 days all portions of its concise statement of facts to which its witnesses intended to testify on 23 May 2002. In the same decision, the Chamber rejected Defence requests to compel the Prosecution to file three separate sets of pre-trial documents, one for each Indictment.[2460] It dismissed the Bagosora Defence motion requesting Bagosora's provisional release on 12 July 2002.[2461]

2318. On 12 September 2002, the Chamber denied Prosecution efforts to enter into evidence testimony delivered by Expert Witness Alison Des Forges in support of other cases adjudicated before the Tribunal.[2462] It rejected the Bagosora Defence request on 30 September 2002 to prohibit certain witnesses' testimonies due to untimely disclosure of statements by the Prosecution. The Chamber limited its remedy to a censure of the Prosecution. In the same decision, it ordered the Prosecution to disclose to the Bagosora Defence the "former identifying data" of Witness ZF at least 35 days before his scheduled testimony.[2463]

2319. The Chamber ordered the Prosecution to file its revised list of witnesses and to disclose statements for each prospective witness within ten days of the date of the decision on 4 November 2002.[2464] The case was adjourned on 5 December 2002.[2465]

2320. On 8 April 2003, the Chamber requested the Prosecution to file a revised and final list of its intended witnesses, with a 100-name limit.[2466] The Prosecution submitted a revised witness list on 30 April 2003, containing 121 names and excluding two witnesses that had already testified.

2321. The parties were informed by the Registry that Judge Williams had withdrawn from the trial on 7 May 2003. The President of the Tribunal reassigned the case on 4 June 2003 to Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy and Judge Sergei Alekseevich Egorov.[2467] On 11 June 2003, Trial Chamber I decided to continue the trial from the point of suspension instead of beginning anew.[2468] The case recommenced in

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[2460] *Bagosora et al.*, Decision on Defence Motions of Nsengiyumva, Kabiligi and Ntabakuze Challenging the Prosecution's Pre-Trial Brief and on the Prosecution's Counter-Motion (TC), 23 May 2002. On 31 May 2002, the Chamber refused to grant the Prosecution an extension to comply with this order. *Bagosora et al.*, Decision on Prosecution's Request for an Extension of the Time Limit in the Order of 23 May 2002 (TC), 31 May 2002.

[2461] *Bagosora et al.*, Decision on the Defence Motion for Release (TC), 12 July 2002. On 19 April 2002, the Chamber granted the Prosecution's motion for an extension of time to reply to the Bagosora Defence motion. *Bagosora et al.*, Decision on the Prosecution's Urgent Motion for Suspension of Time Limit for Response in the Matter of Defence Motion "*Requête en Demande de Mise en Liberté*" Filed by Counsel for Bagosora on 8 April 2002 (TC), 19 April 2002. On 21 May 2002, the Chamber decided to allow the Prosecution another extension, until 28 May 2002. *Bagosora et al.*, Decision on the Prosecution's Request for Variation of the Order of 19 April 2002 (TC), 21 May 2002.

[2462] T. 12 September 2002 p. 6.

[2463] *Bagosora et al.*, Decision on the Defence for Bagosora's Motion for Postponement or Quashing of the Testimonies of Witnesses Ruggiu, XAM and ZF (TC), 30 September 2002.

[2464] *Bagosora et al.*, Decision (Motion by Aloys Ntabakuze's Defence for Execution of the Trial Chamber's Decision of 23 May 2002 on the Prosecution's Pre-Trial Brief, Dated 21 January 2002, and Another Motion on a Related Matter (TC), 4 November 2002.

[2465] T. 5 December 2003 p. 141.

[2466] *Bagosora et al.*, Order for a Reduction of Prosecutor's Witness List (TC), 8 April 2003.

[2467] T. 16 June 2003 p. 2.

[2468] *Bagosora et al.*, Decision on Continuation or Commencement *De Novo* of Trial (TC), 11 June 2003.

Trial Chamber I five days later.[2469] The Prosecution conducted the remainder of its case over 170 days, hearing 80 witnesses.

2322. On 26 June 2003, the Chamber granted the Prosecution request for leave to add six witnesses to its list of proposed witness.[2470] It ordered the Prosecution on 18 July 2003 to disclose its witness list, in addition to each witness's unredacted statement, no later than 28 July 2003. In the same decision, the Chamber provided for derogations from this deadline when warranted by special circumstances.[2471] On 15 August 2003, the Prosecution successfully moved to suspend the time limit to disclose information on nine of its witnesses.[2472]

2323. The Chamber granted the Prosecution, on 1 September 2003, another extension of the time-limit for filing a motion for special protective measures concerning two witnesses, giving the Prosecution until 5 September to file its motions.[2473] The Prosecution filed the relevant motion, and the Chamber issued special protective measures for the two witnesses on 3 October 2003.[2474]

2324. On 9 September 2003, the Chamber denied Ntabakuze Defence motions to sever the case or, in the alternative, to compel the Prosecution to postpone calling witnesses against the Accused in order to allow his new lead counsel, Mr. Peter Erlinder, to familiarise himself with the case.[2475]

2325. The Chamber partially granted the joint Defence motion on 16 December 2003 ordering the Prosecution to request and then disclose Rwandan judicial records created in connection with domestic proceedings initiated against prospective Prosecution witnesses. It declined to postpone the testimony of witnesses whose documents had not yet been obtained.[2476]

2326. On 1 March 2004, the Chamber granted the Nsengiyumva Defence motion seeking disclosure of the unredacted statements of three Prosecution witnesses pursuant to Rule 68.[2477] Also on this date, it ordered the Prosecution to comply with its 8 April 2003 decision

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[2469] T. 16 June 2003 pp. 1-2. On this date the judges of Trial Chamber I signed a declaration stating that they had familiarised themselves with the records of the proceedings in the case. *See* Chamber Exhibit 1.
[2470] *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 *bis* (E) (TC), 26 June 2003.
[2471] *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003.
[2472] *Bagosora et al.*, Decision on Prosecution Notice of Intention to File Motions for Special Witness Protection Measures (TC), 15 August 2003. The time-limit was postponed with respect to Witnesses A, BT, BW, BY, CT, DBO, DF, ZA and ZZ.
[2473] *Bagosora et al.*, Decision on Prosecution Request for Extension of Suspension of Time-Limit for Filing Motion for Special Witness Protection Measures (TC), 1 September 2003.
[2474] *Bagosora et al.*, Decision on Prosecution Motion for Special Protective Measures for Witnesses A and BY (TC), 3 October 2003.
[2475] *Bagosora et al.*, Decision on Motions by Ntabakuze for Severance and to Establish a Reasonable Schedule for the Presentation of Prosecution Witnesses (TC), 9 September 2003.
[2476] *Bagosora et al.*, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses (TC), 16 December 2003.
[2477] *Bagosora et al.*, Decision on Motion for Disclosure Under Rule 68 (TC), 1 March 2004. The unredacted statements of Witnesses OH, OK and OL were the subject of this order.

to reduce its witness list to 100 names by 12 March 2004.[2478] The Prosecution filed a list on that date.

2327. The Chamber granted, in part, the motion from the Bagosora Defence on 10 March 2004 and issued a request to the government of Rwanda asking it to determine whether it possessed a list of specific documents, and if so, to transmit them to the Tribunal.[2479] On 23 March 2004, it denied an application from African Concern, a non-governmental organisation, seeking to appear as *amicus curiae*.[2480] The Chamber denied the motion to compel the Vatican's cooperation in facilitating a meeting between one of its former employees and the Bagosora Defence on 13 May 2004, as the Vatican was not a United Nations member state.[2481]

2328. On 21 May 2004, the Chamber partially granted the Prosecution motion to vary its witness list by allowing the addition of four witnesses that had been included on their 12 March 2004 list as "substitutes" or "added" individuals.[2482] On this date, it also issued a decision finding the Prosecution to be in violation of its former order to limit its witness list to 100 names, issued on 1 March 2004. It requested compliance by 28 May 2004.[2483]

2329. The Chamber granted the Bagosora Defence request for the Republic of Ghana to help facilitate a meeting with former UNAMIR Officer, Major General Yaache on 25 May 2004.[2484] On 28 May 2004, the Prosecution filed its list of 100 witnesses. It indicated its intent to replace four of the witnesses and stated that it would no longer call several of the witnesses listed on its original list. The Chamber later ordered the Prosecution's full

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[2478] *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004. As mentioned above, Trial Chamber III ordered, on 8 April 2003, the Prosecution to file a witness list of no more than 100 names. The list submitted on 30 April 2003 contained 121 names.

[2479] *Bagosora et al.*, Request to the Government of Rwanda for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 10 March 2004.

[2480] *Bagosora et al.*, Decision on *Amicus Curiae* Request by African Concern (TC), 23 March 2004.

[2481] *Bagosora et al.*, Decision on Defence Motion to Obtain Cooperation from the Vatican Pursuant to Article 28 (TC), 13 May 2004.

[2482] *Bagosora et al.*, Decision on Prosecutor's Motions for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) (TC), 21 May 2004. The Chamber granted the addition of Witnesses AAA, ABE, AFJ and Commander Maxwell Nkole to the list. Reconsideration of this decision was denied in *Bagosora et al.*, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 Bis (E), 15 June 2004. The Chamber refused to extend the seven-day time limit to seek certification of its previous ruling in *Bagosora et al.*, Decision on Prosecution's Request for a Suspension of the Time-Limit Under Rule 73 (C) in Respect of the Trial Chamber's "Decision on Prosecution's Motion for Leave to vary the Witness List Pursuant to Rule 73 *bis* (E) (TC), 16 June 2004. It also denied the Prosecution certification to appeal its 16 June 2004 decision. *See Bagosora et al.*, Decision on Prosecution's Request for Certification Under Rule 73 with Regard to Trial Chamber's "Decision on Prosecution's Request for a Suspension of the Time-Limit" (TC), 14 July 2004. Reconsideration of this decision was also denied. *See Bagosora et al.*, Decision on Prosecution's Second Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution's Motion for Leave to vary the Witness List Pursuant to Rule 73 *bis* (E)" (TC), 14 July 2004.

[2483] The Chamber found the Prosecution to be in "obvious" non-compliance with its former order, for including seven "92 *bis* witnesses" among its list of 100 other "witnesses" submitted on 12 March 2004. *Bagosora et al.*, Decision on Motion to Compel the Prosecution to Comply with the Chamber's Decision of 1 March 2004 (TC), 21 May 2004.

[2484] *Bagosora et al.*, Decision on the Defence for Bagosora's Request to Obtain the Cooperation of the Republic of Ghana (TC), 25 May 2004.

compliance with its previous orders, "by filing a list of all its witnesses, not to exceed one hundred in number" by 17 June 2004.[2485]

2330. On 10 June 2004, the Chamber granted several Prosecution motions and issued subpoenas compelling seven witnesses to testify. It requested assistance from the government of Rwanda to facilitate their attendance.[2486]

2331. The Chamber, on 23 June 2004, granted the Bagosora Defence request to issue a subpoena compelling Major General Yaache to meet with the Bagosora Defence.[2487] It granted the similar Prosecution motion the next day that requested a subpoena to compel the presence of Witness BW.[2488] On 29 June 2004, the Chamber ruled orally that it would not take judicial notice of the date of the Ruhanga Church massacre as found in the *Semanza* judgement.[2489]

2332. On 25 August 2004, the Chamber allowed the Prosecution motion to issue a subpoena for the appearance of Prosecution Witness BT. The Chamber requested assistance from the Kingdom of Belgium to facilitate the witness's attendance.[2490]

2333. The Chamber denied, on 9 September 2004, the Ntabakuze Defence motion objecting to the Prosecution's untimely disclosure of the report of Prosecution Expert Witness Filip Reyntjens.[2491] It orally overruled other Defence objections on the same issue, providing its rationale in a written decision issued on 28 September 2004.[2492] On 16 September 2004, the Chamber denied joint Defence objections to questions posed by the Prosecution to Reyntjens regarding events that occurred in Rwanda prior to 1991 and 1992.[2493]

2334. On 29 September 2004, the Chamber rejected the Prosecution request to recall handwriting expert Antipas Nyanjwa to testify on the authorship and authenticity of certain

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[2485] *Bagosora et al.*, Decision on Defence Motion to Compel the Prosecution to File a Revised Witness List (TC), 15 June 2004.

[2486] *Bagosora et al.*, Decision on Requests for Subpoenas (TC), 10 June 2004. The Chamber issued subpoenas for Witnesses AI, BA, CW, DBO, DH, HV and OP. One of them, Witness DBO, was unable to travel to Arusha. The Chamber denied the Prosecution's motion to allow Witness DBO's testimony by deposition. *See Bagosora et al.*, Decision on Prosecution's Motion to Allow Witness DBO to Give Testimony by Means of Deposition (TC), 25 August 2004.

[2487] *Bagosora et al.*, Decision on Request for Subpoena of Major General Yaache and Cooperation of the Republic of Ghana (TC), 23 June 2004.

[2488] *Bagosora et al.*, Decision on Request for Subpoena for Witness BW (TC), 24 June 2004.

[2489] T. 29 June 2004 pp. 6-7.

[2490] The Chamber held that the Prosecution's alternative requests that the testimony be given by deposition or video-link were premature; *Bagosora et al.*, Decision on the Prosecutor's Request for a Subpoena Regarding Witness BT (TC), 25 August 2004. A subpoena was served on Witness BT on 7 September 2004. On 4 October 2004, the Chamber denied a Prosecution motion to order the deposition of Witness BT in Belgium. *See Bagosora et al.*, Decision on Prosecution Request for Deposition of Witness BT (TC), 4 October 2004. Four days later, the Chamber granted a Prosecution request to hear Witness BT's testimony via video-link in *Bagosora et al.*, Decision on Prosecution for Testimony of Witness BT via Video-Link (TC), 8 October 2004.

[2491] *Bagosora et al.*, Decision on Motion for Postponement of Testimony of Witness Reyntjens (TC), 9 September 2004.

[2492] T. 15 September 2004 p. 1; *Bagosora et al.*, Decision on Motion for Exclusion of Expert Witness Statement of Filip Reyntjens (TC), 28 September 2004.

[2493] T. 16 September 2004 p. 2.

documents. Nyanjwa had previously testified that photocopies of entries in Bagosora's diary from 1994 had been written by the Accused.[2494]

2335. On 13 October 2004, the Chamber dismissed the request from the Government of Rwanda to be granted *amicus curiae* status to make an appearance before the Chamber to claim restitution of property and assets from Bagosora.[2495] The following day, it partially allowed the Prosecution motion to admit certain documentary evidence pursuant to Rule 89 (C), including the records of interviews with Ntabakuze. In the same decision, it found that the Prosecution had failed to show that Kabiligi had waived his right to counsel during interviews with Tribunal investigators after his arrest, and declined to admit transcripts of his interviews into evidence.[2496]

2336. The Prosecution concluded its case-in-chief on 14 October 2004.[2497] Each Defence team was asked to file a Pre-Defence Brief by 12 December 2004, as well as provide preliminary provisional witness lists and a summary for each witness by 12 November 2004.[2498] The case for all four Accused was scheduled to begin on 12 January 2005.

2337. On 22 October 2004, the Chamber granted the Bagosora Defence motion to issue a subpoena compelling Mr. Mamadou Kane, a political adviser to the Special Representative of the Secretary-General in Rwanda, to meet with the Defence team.[2499] On the same date, the Chamber issued a request to the Republic of France to facilitate a meeting between two of its nationals and the Bagosora Defence.[2500]

2338. The Registrar ordered the withdrawal of Kabiligi's lead counsel, Mr. Jean Yaovi Degli, on 26 October 2004.[2501] The Chamber denied the joint Defence motion to reinstate him, appointing instead, Mr. Paul Skolnik, co-counsel for Bagosora at that time, as Kabiligi's new lead counsel.[2502]

[2494] *Bagosora et al.*, Decision on the Prosecution Motion to Recall Witness Nyanjwa (TC), 29 September 2004. In two separate decisions in 2007, the Chamber rejected Bagosora Defence motions seeking, respectively, to exclude the photocopies of the agenda and to compel the Prosecution to proffer the original agenda. Reconsideration and certification to appeal this decision were denied. *See Bagosora et al.*, Decision on Bagosora Motion to Exclude Photocopies of Agenda (TC), 11 April 2007; *Bagosora et al.*, Decision on Bagosora Motion for Disclosure of Agenda (TC), 11 April 2007; *Bagosora, et al.*, Decision on Request for Certification or Reconsideration Concerning the "Bagosora Agenda" (TC), 8 May 2007.

[2495] *Bagosora et al.*, Decision on *Amicus Curiae* Request by the Rwandan Government (TC), 13 October 2004.

[2496] *Bagosora et al.*, Decision on the Prosecutor's Motion for the Admission of Certain Materials Under Rule 89 (C) (TC), 14 October 2004.

[2497] T. 14 October 2004 p. 41.

[2498] T. 14 October 2004 pp. 12-13, 15.

[2499] *Bagosora et al.*, Decision on Bagosora Defence's Request for a Subpoena Regarding Mamadou Kane (TC), 22 October 2004.

[2500] *Bagosora et al.*, Request to the Republic of France for Cooperation and Assistance Pursuant to Article 28 of the Statute (TC), 22 October 2004.

[2501] *Bagosora et al.*, Decision to Withdraw the Assignment of Mr. Jean Yaovi Degli as Defence Counsel for Gratien Kabiligi (TC), 26 October 2004.

[2502] *Bagosora et al.*, Decision on the Defence Motions for the Reinstatement of Jean Yaovi Degli as lead counsel for Gratien Kabiligi (TC), 19 January 2005. Certification of this decision was denied in *Bagosora et al.*, Decision on the Defence Requests for Certification of the "Decision on the Defence Motions for the Reinstatement of Jean Yaovi Degli as lead counsel for Gratien Kabiligi" (TC), 2 February 2005. On the same day it ordered that Kabiligi should be allowed to communicate with Mr. Degli. *See Bagosora et al.*, Decision on Mr. Degli's Request for Authorization to Communicate with Mr. Kabiligi (TC), 2 February 2005.

2339. In a status conference held on 21 December 2004, the start of the Defence case was postponed until 30 March 2005.[2503] The Chamber denied the Ntabakuze Defence motion on 28 December 2004, which sought the dismissal of the case against Ntabakuze due to intimidation of its prospective witnesses.[2504]

2340. On 11 January 2005, the Chamber rejected the Prosecution motion to compel each Accused to present his testimony before any other Defence witnesses.[2505] The Chamber denied all four Defence motions for acquittal pursuant to Rule 98 *bis* on 2 February 2005, ruling that all charges against the Accused remained intact.[2506] It requested that the Netherlands assist the Bagosora Defence in accessing Major Robert Alexander van Putten on 7 February 2005.[2507]

2341. The Chamber refused to allow Mr. Degli to continue as Kabiligi's counsel on a *pro bono* basis on 4 March 2005. It later denied certification of this decision.[2508] On 24 March 2005, the Chamber denied an application from Mr. Skolnik to withdraw as Kabiligi's lead counsel and another Defence motion requesting severance as a result of the prejudice caused to Kabiligi.[2509]

5.3 Defence Case

2342. The Defence commenced its case on 11 April 2005 and finished on 18 January 2007, after offering 180 witnesses over the course of 201 trial days, including Bagosora, Ntabakuze and Nsengiyumva. The Defence elected to combine their witnesses as part of a single, larger presentation. The Kabiligi Defence's obligation to file its Pre-Defence Brief and present witnesses was suspended due to the re-assignment of counsel.[2510]

2343. On 21 April 2005, the Chamber decided that the Kabiligi Pre-Defence Brief, as well as an initial sequence of witnesses, should be filed no later than 30 days before the presentation of its first witness. The opening statement of the Kabiligi Defence was scheduled for the day of the presentation of its first witness, which was 6 September 2006.[2511]

2344. On 26 April 2005, the Chamber outlined the procedure for cross-examination of witnesses during the Defence phase, deciding that questions by Defence teams other than the

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[2503] T. 21 December 2004 p. 27.
[2504] *Bagosora et al.*, Decision on Motion Concerning Alleged Witness Intimidation (TC), 28 December 2004.
[2505] *Bagosora et al.*, Decision on Motion to Compel Accused to Testify Prior to Other Defence Witnesses (TC), 11 January 2005.
[2506] *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005.
[2507] *Bagosora et al.*, Decision on Request to the Kingdom of the Netherlands for Cooperation and Assistance (TC), 7 February 2005.
[2508] *Bagosora et al.*, Decision on Request for Private Representation of Gratien Kabiligi (TC), 4 March 2005; *Bagosora et al.*, Decision on Request for Certification of Appeal Concerning Private Representation (TC), 24 March 2005.
[2509] *Bagosora et al.*, Decision on Maitre Paul Skolnik's Application for Reconsideration of the Chamber's Decision to Instruct the Registrar to Assign Him as Lead Counsel for Gratien Kabiligi (TC), 24 March 2005; *Bagosora et al.*, Decision on Request for Severance by Accused Kabiligi (TC), 24 March 2005.
[2510] T. 1 March 2005 p. 5.
[2511] *Bagosora et al.*, Decision on Postponement of Defence of Accused Kabiligi (TC), 21 April 2005. The Kabiligi Defence request for certification of this decision was declined in *Bagosora et al.*, Decision on Kabiligi Defence Request for Certification (TC), 4 May 2005. The Chamber later ordered the Kabiligi Defence to file its Pre-Defence Brief by 7 July 2006. *See Bagosora et al.*, Decision on Commencement of Kabiligi Defence and Filing of Pre-Defence Brief (TC), 21 June 2006.

one(s) calling the witness should be conducted before the commencement of cross-examination by the Prosecution.[2512]

2345. On 1 June 2005, the Chamber harmonised the four Defence teams' witness protection orders and held that its 15 March 2004 decision, in which it outlined protections measures for Ntabakuze Defence witnesses, should also apply to the Nsengiyumva Defence. It held that the wording of its witness protection orders was correct and that automatic access to protected Defence witness information should be limited to members of the "Prosecution team in this case".[2513]

2346. The Chamber denied the Ntabakuze Defence request for the Prosecution to disclose its database of witness statements on 8 June 2005.[2514] On 5 July 2005, it granted the Prosecution request for further witness identifying information from the Ntabakuze and Nsengiyumva Defence teams, insofar as the information provided by them had been deficient.[2515]

2347. On 27 September 2005, the Chamber partially granted the Kabiligi Defence motion for exclusion, ruling that portions of the testimony of Witnesses XAU and DCH were inadmissible as irrelevant to the Indictment against the Accused.[2516] On the same day, it denied the Kabiligi Defence request that the Prosecution provide greater specificity in the Indictment.[2517] It also rejected the Nsengiyumva Defence request for an order requiring the Prosecution to disclose any documents or other materials in its possession concerning the immigration status of Defence witnesses that day.[2518] The Appeals Chamber subsequently reversed the Trial Chamber's decision and ordered the Prosecution to permit inspection by the Defence of all requested immigration documents not intended for use as exhibits.[2519]

2348. The Chamber granted on 31 October 2005 the Nsengiyumva Defence request for the Government of Togo to facilitate contact with Mr. Aouili Tchemi-Tchambi, a former United Nations observer in Rwanda. It also allowed the Bagosora Defence request for the

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[2512] *Bagosora et al.*, Decision on Modalities for Examination of Defence Witnesses (TC), 26 April 2005.
[2513] *Bagosora et al.*, Decision on Motion to Harmonize and Amend Witness Protection Orders (TC), 1 June 2005. The Appeals Chamber later determined that this decision inappropriately restricted the Prosecution's ability to perform its functions and asked the Chamber to adjust its ruling accordingly. *See Bagosora et al.*, Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005.
[2514] *Bagosora et al.*, Decision on Disclosure of Prosecution Data Base and Map (TC), 8 June 2005.
[2515] *Bagosora et al.*, Decision on Sufficiency of Defence Witness Summaries (TC), 5 July 2005. Certification of this decision was denied. *See Bagosora et al.*, Decision on Request for Certification Concerning Sufficiency of Defence Witness Summaries (TC), 21 July 2005.
[2516] *Bagosora et al.*, Decision on Exclusion of Testimony Outside the Scope of the Indictment (TC), 27 September 2005. Subsequent Defence motions for reconsideration and certification of this decision were denied. *See Bagosora et al.*, Decision on Kabiligi Motion for Exclusion of Testimony of Witness XAI (TC), 14 September 2006; *Bagosora et al.*, Decision on Application for Certification to Appeal Decision on Exclusion of Testimony (TC), 10 February 2006.
[2517] *Bagosora et al.*, Decision on Kabiligi Request for Particulars of the Amended Indictment (TC), 27 September 2005. The Chamber denied the Kabiligi Defence motion seeking certification to appeal this decision. *See Bagosora et al.*, Decision on Certification of Appeal from Decision Denying Request for Further Particulars of the Indictment (TC), 10 February 2006.
[2518] *Bagosora et al.*, Decision on Disclosure of Materials Relating to Immigration Statements of Defence Witnesses (TC), 27 September 2005. The Chamber later granted the Defence application for certification of this decision; *Bagosora et al.*, Decision on Certification of Interlocutory Appeal Concerning Prosecution Disclosure of Defence Witness Statements (TC), 22 May 2006.
[2519] *Bagosora et al.*, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66 (B) of the Tribunal's Rules of Procedure and Evidence (AC), 25 September 2006.

Bangladeshi government to facilitate a meeting with Colonel Bahir and Captain Wadud, two of the former members of the Bangladeshi contingent of UNAMIR.[2520]

2349. On 2 December 2005, the Chamber made two amendments to protection orders applicable to the Defence, deleting portions of the orders that infringed on the Prosecution's access to confidential information of Defence witnesses.[2521] The Chamber granted Bagosora, Ntabakuze and Nsengiyumva Defence requests on 17 February 2006 to remove 51 prospective witnesses from their witness lists and to add 31 others, contingent upon disclosure of the newly added witnesses' identifying information and unredacted statements at least 35 days prior to their scheduled testimony.[2522]

2350. The Chamber partially granted the Ntabakuze Defence motion seeking disclosure of prior statements given to the Prosecution by four Defence witnesses, on the basis that they were exculpatory under Rule 68 (A) on 8 March 2006.[2523] On 22 March 2006, it issued an oral ruling denying the joint Kabiligi, Nsengiyumva and Ntabakuze Defence motion to sever their trials from Bagosora due to the possibility of prejudice arising from the testimony of two potential Bagosora witnesses.[2524]

2351. On 21 April 2006, the Chamber requested that Belgium facilitate meetings between the Nsengiyumva Defence team and four UNAMIR officers stationed in Gisenyi prefecture during 1994.[2525] It granted, on 24 May 2006, the Bagosora Defence motion for disclosure of portions of the statement of Witness AIU, but denied its simultaneous request for the subpoena of this witness.[2526]

2352. The Chamber allowed further alterations to the Nsengiyumva Defence witness list on 6 June 2006. It granted the Nsengiyumva Defence's request to add 12 new witnesses to its list and remove 12 others.[2527]

2353. On 29 June 2006, the Chamber partially granted the Ntabakuze Defence motion that sought exclusion of seventeen categories of evidence, excluding three of the challenged categories of evidence.[2528] Certification of this decision was granted.[2529] The Appeals Chamber ruled that the Chamber should reconsider its former decision in order to determine

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[2520] *Bagosora et al.*, Decision on Request to the Republic of Togo for Assistance Pursuant to Article 28 of the Statute (TC), 31 October 2005; *Bagosora et al.*, Decision on Request to the Republic of Bangladesh (TC), 31 October 2005.
[2521] *Bagosora et al.*, Decision Amending Defence Witness Protection Orders (TC), 2 December 2005.
[2522] *Bagosora et al.*, Decision on Defence Motions to Amend the Defence Witness List (TC), 17 February 2006.
[2523] *Bagosora et al.*, Decision on Disclosure of Defence Witness Statements in Possession of the Prosecution Pursuant to 68 (A) (TC), 8 March 2006. The Chamber granted the Defence motion in respect of the statements of Defence Witnesses DM-46 and DM-80, which it found were exculpatory in part.
[2524] T. 22 March 2006 p. 8. Its written opinion on the issue was rendered on 27 March 2006. *Bagosora et al.*, Decision on Request for Severance of Three Accused (TC), 27 March 2006. Requests for certification from all three accused were denied. *See Bagosora et al.*, Decision on Certification of Request for Severance of Three Accused (TC), 22 May 2006.
[2525] *Bagosora et al.*, Decision on Request to the Kingdom of Belgium for Assistance Pursuant to Article 28 of the Statute (TC), 21 April 2006.
[2526] *Bagosora et al.*, Decision on Disclosure of Identity of Prosecution Informant (TC), 24 May 2006.
[2527] *Bagosora et al.*, Decision on Nsengiyumva Motion for Leave to Amend its Witness List (TC), 6 June 2006.
[2528] *Bagosora et al.*, Decision on Ntabakuze Motion for Exclusion of Evidence (TC), 29 June 2006.
[2529] *Bagosora et al.*, Decision on Request for Certification of Decision on Exclusion of Evidence (TC), 14 July 2006.

whether the defects contained in the Indictment materially prejudiced the rights of the Accused to a fair trial by hindering the Defence preparations.[2530]

2354. On 6 July 2006, the Chamber denied the Ntabakuze Defence request for Jean Kambanda's anticipated testimony not to be considered in relation to Ntabakuze's case.[2531] The Chamber later rendered an oral decision suspending Kambanda's testimony until written submissions on this issue could be heard.[2532] The Chamber issued a subpoena on 14 July 2006 for the appearance and testimony of Major Jacques Biot.[2533]

2355. The Chamber requested on 29 August 2006 the Tanzanian government to facilitate a meeting between the Bagosora Defence and Ambassador Ami R. Mpungwe, a former Tanzanian official.[2534] It later granted the Bagosora Defence request to issue a subpoena compelling Mr. Mpungwe's appearance.[2535]

2356. The Chamber partially granted the Kabiligi Defence motion to exclude the testimony of seven Prosecution witnesses on 4 September 2006. Certification of this decision was denied.[2536] On the same day, the Chamber excluded portions of Alison Des Forges's expert testimony that referenced previously excluded statements made by Kabiligi during an interview with the Prosecution in July 1997.[2537]

2357. On 11 September 2006, the Chamber issued a subpoena to compel the appearance of General Marcel Gatsinzi.[2538] Gatsinzi agreed to testify, provided that he was called as a Chamber witness and permitted to testify via video-link.[2539] The Chamber later decided not to

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[2530] *Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006. The Chamber affirmed its 29 June 2006 decision in *Bagosora et al.*, Decision Reconsidering Exclusion of Evidence Following Appeals Chamber Decision (TC), 17 April 2007. It dismissed the Ntabakuze Defence request for certification of this decision. *See Bagosora et al.*, Decision on Ntabakuze Motion for Certification Concerning Exclusion of Evidence (TC), 23 May 2007.

[2531] *Bagosora et al.*, Decision on Ntabakuze Request for Exclusion of Testimony of Witness Jean Kambanda (TC), 6 July 2006.

[2532] T. 13 July 2006 p. 39. On 16 June 2006, the Chamber orally ordered the Registry to determine whether Kambanda's future arrival could be moved forward several days so that he would have more time to testify. *See* T. 16 June 2006 p. 49. On 6 September 2006, the Chamber orally rejected the Kabiligi Defence motion to suspend the trial pending a decision on the scheduling of Kambanda's testimony. *See* T. 6 September 2006 p. 15. A few days later, the Chamber decided to exclude certain topics from Kambanda's testimony, pursuant to Kabiligi Defence, Nsengiyumva Defence and Ntabakuze Defence objections. *See Bagosora et al.*, Decision on Severance or Exclusion of Evidence Based on Prejudice Arising from Testimony of Jean Kambanda (TC), 11 September 2006.

[2533] *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006. The witness testified under the name Willy Biot. *See* Nsengiyumva Defence Exhibit 209 (personal information sheet).

[2534] *Bagosora et al.*, Decision on the Bagosora Defence Request for Subpoena of Ambassador Mpungwe and Cooperation of the United Republic of Tanzania (TC), 29 August 2006.

[2535] *Bagosora et al.*, Decision on Request for Subpoena of Ami R. Mpungwe (TC), 19 October 2006.

[2536] *Bagosora et al.*, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006.; *Bagosora et al.*, Decision on Kabiligi Request for Certification to Appeal Decision on Exclusion of Evidence (TC), 18 October 2006. The Chamber's 4 September 2006 decision was affirmed on 23 April 2007. *Bagosora et al.*, Decision Reconsidering Exclusion of Evidence Related to Accused Kabiligi (TC), 23 April 2007.

[2537] *Bagosora et al.*, Decision on Kabiligi Motion for the Exclusion of Portions of Testimony of Prosecution Witness Alison Des Forges (TC), 4 September 2006.

[2538] *Bagosora et al.*, Decision on Request for a Subpoena (TC), 11 September 2006.

[2539] The Registrar's Submissions Regarding the Trial Chamber's Decision on Request for a Subpoena of 11 September 2006, 5 October 2006, paras. 6-7.

call Gatsinzi as a Chamber witness.[2540] Also on 11 September 2006, the Chamber granted the Nsengiyumva Defence team leave to add six more witnesses to its list and granted the Bagosora Defence team's request to add two witnesses and remove 15 others.[2541]

2358. On 15 September 2006, the Chamber partially allowed the Nsengiyumva Defence motion for exclusion, deciding that five specific pieces of Prosecution evidence should be struck from the record because they were beyond the scope of the Indictment.[2542] On 6 October 2006, it denied the Ntabakuze Defence motion to compel disclosure of any and all evidence gathered by the Prosecution concerning actions of members of the RPF.[2543] On the same day, the Chamber refused the Ntabakuze Defence motion requesting assistance from France to obtain the "Brugière Report".[2544] It also dismissed the Ntabakuze Defence request to issue subpoenas compelling senior United Nations officials Kofi Annan, Iqbal Riza, Shaharyar Khan and Michael Hourigan to appear before the Tribunal.[2545]

2359. The deadline for the presentation of the Defence cases (except for Kabiligi) expired on 13 October 2006, although several Bagosora Defence and Ntabakuze Defence witnesses remained outstanding.[2546] On 17 October 2006, the Chamber rejected the Bagosora and Ntabakuze Defence request for disclosure from the Prosecution of evidence pertaining to the assassination of President Habyarimana.[2547]

2360. On 30 October 2006, the Chamber granted the Prosecution's motion requesting that the Kabiligi Defence provide identifying information for each of its witnesses as well as any

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[2540] T. 8 December 2006 pp. 4-5. In *Bagosora et al.*, Decision on Bagosora Motion for Additional Time for Closing Brief and on Related Matters (TC), 2 May 2007, the Chamber noted that the Defence never requested a video-link with this witness and that, as all parties completed the presentation of evidence on 12 December 2006, it was unable to do anything further. In *Bagosora et al.*, Decision on Bagosora Request for Ruling or Certification Concerning Subpoena Issued to General Marcel Gatsinzi (TC), 23 May 2007, the Chamber held that it had formally issued its ruling with regard to Gatsinzi's appearance before the Tribunal and refused to revisit this issue.

[2541] *Bagosora et al.*, Decision on the Nsengiyumva Motion to Add Six Witnesses to its Witness List (TC), 11 September 2006; *Bagosora et al.*, Decision on Bagosora Motion to Modify its Witness List (TC), 11 September 2006.

[2542] *Bagosora et al.*, Decision on Nsengiyumva Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006.

[2543] *Bagosora et al.*, Decision on Ntabakuze Motion for Disclosure of Prosecution Files (TC), 6 October 2006. In a similar decision rendered on 20 November 2006, the Chamber denied another Ntabakuze Defence motion to compel the Prosecution to disclose evidence related to the RPF's alleged involvement in massacres. *See Bagosora et al.*, Decision on Ntabakuze Motion for Disclosure of Specific Exculpatory Evidence (TC), 20 November 2006.

[2544] *Bagosora et al.*, Decision on Request for Cooperation of the Government of France (TC), 6 October 2006. The Chamber later denied a Bagosora Defence motion to compel the Prosecution and the United Nations to disclose all evidence regarding the President's assassination. *See Bagosora et al.*, Decision on Requests for Disclosure and Investigations Concerning the Assassination of President Habyarimana (TC), 17 October 2006. The Chamber denied certification to appeal the decision in *Bagosora et al.*, Decision on Request for Certification of Appeal on disclosure and Investigations Concerning the Assassination of President Habyarimana (TC), 12 December 2006.

[2545] *Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006. Reconsideration of this decision was denied. *See Bagosora et al.*, Decision on Ntabakuze Motion for Reconsideration of Denial of Issuance of Subpoena to a United Nations Official (TC), 12 December 2006.

[2546] T. 13 October 2006 p. 1.

[2547] *Bagosora et al.*, Decision on the Requests for Disclosure and Investigations Concerning the Assassination of President Habyarimana (TC), 17 October 2006.

statements in its possession.[2548] On 10 November 2006, it partially granted the Bagosora Defence motion to amend its witness list and allow testimony from Expert Witness Bernard Lugan.[2549] It partially granted a Bagosora Defence motion to add Witness Ami R. Mpungwe to its witness list a week later.[2550]

2361. On 17 November 2006, the Chamber denied the Nsengiyumva Defence motion to suspend the trial in light of Nsengiyumva's absence in court due to illness, during which the Chamber heard testimony from eight remaining Defence witnesses.[2551] It later refused to recall these witnesses.[2552] The Chamber rejected the Ntabakuze Defence motion on 20 November 2006 seeking disclosure from the Prosecution of evidence concerning the alleged involvement of RPF soldiers in massacres in April and June 1994.[2553]

2362. The Chamber partially granted the Kabiligi Defence motion on 6 December 2006 and ordered the Prosecution to disclose any statements or documents that Kabiligi gave to immigration authorities, as well as any documents seized from the Accused by ICTR investigators.[2554] It denied the Kabiligi Defence motion for certification to appeal the decision on 12 December 2006.[2555]

2363. In a status conference on 19 January 2007, the Prosecution was ordered to file its Closing Brief by 2 March 2007. All Defence teams were ordered to file their Closing Briefs by 2 April 2007.[2556] Extensions were later granted to the Bagosora Defence for translation of the Prosecution Closing Brief into French, first until 10 May and then until 17 May.[2557] On 26 March 2007, the Chamber ordered the other three Defence teams to file their respective Closing Briefs no later than 23 April 2007.[2558]

2364. On 29 March 2007, the Chamber dismissed requests from the Kabiligi and Ntabakuze Defence to require that the Prosecution remove evidence from its Closing Brief that had already been excluded at trial. The Chamber explained that it would ignore all formally excluded evidence.[2559]

[2548] *Bagosora et al.*, Decision on Alleged Deficiencies in the Kabiligi Pre-Defence Brief (TC), 30 October 2006.
[2549] T. 10 November 2006 p. 29.
[2550] *Bagosora et al.*, Decision on Bagosora Motion to Present Additional Witnesses and Vary its Witness List (TC), 17 November 2006.
[2551] *Bagosora et al.*, Decision on Nsengiyumva Motion for Adjournment Due to Illness of the Accused (TC), 17 November 2006. On 12 December 2006, the Chamber dismissed the Nsengiyumva Defence motion requesting medical doctors to establish the state of Nsengiyumva's physical health. *See* T. 12 December 2006 p. 7.
[2552] *Bagosora et al.*, Decision on Nsengiyumva Motions to Call Doctors and to Recall Eight Witnesses (TC), 19 April 1997.
[2553] *Bagosora et al.*, Decision on Ntabakuze Motion for Disclosure of Specific Exculpatory Evidence (TC), 20 November 2006.
[2554] *Bagosora et al.*, Decision on Kabiligi Motion for Inspection of Documents under Rule 66 (B) (TC), 6 December 2006.
[2555] *Bagosora et al.*, Decision on Kabiligi Request for Certification Concerning Inspection of Documents Pursuant to Rule 66 (B) (TC), 12 December 2006.
[2556] T. 19 January 2007, p. 16.
[2557] *Bagosora et al.*, Decision on Bagosora Defence Motion Concerning Scheduling of its Closing Brief (TC), 13 March 2007; *Bagosora et al.*, Decision on Bagosora Motion for Additional Time for Closing Brief and on Related Matters (TC), 2 May 2007.
[2558] *Bagosora et al.*, Decision on Defence Motions for Extension of Time to File Their Closing Briefs (TC), 26 March 2007.
[2559] *Bagosora et al.*, Decision on Defence Motions to Strike Excluded Evidence From the Prosecution Closing Brief (TC), 29 March 2007.

2365. In a decision of 18 April 2007, the Chamber denied the Ntabakuze Defence motion requesting that it order the Prosecution to investigate Rwandan President Paul Kagame and other RPF leaders and initiate criminal proceedings against them. In the same decision, it also denied the Bagosora Defence motion seeking disclosure of all evidence suggestive of RPF crimes committed in Rwanda in 1994.[2560]

2366. On 30 April 2007, the Chamber denied the Bagosora Defence motion seeking to exclude portions of testimony provided by witnesses whose immigration documents were previously undisclosed.[2561] It granted in part the Bagosora Defence motion seeking the exclusion of evidence based on lack of notice on 11 May 2007.[2562] On 28 May 2007, the Bureau denied a Bagosora Defence motion seeking disqualification of all three judges presiding over Trial Chamber I based on an apprehension of bias.[2563]

5.4 Further Proceedings

2367. Oral closing arguments were heard by the Chamber between 28 May and 1 June 2007. On 22 October 2008, it denied, in one decision, three Ntabakuze motions seeking the disclosure of alleged exculpatory material related to the activities of the RPF in resuming hostilities in Rwanda after 6 April and other crimes, and a stay in proceedings until the Prosecution had met its disclosure obligations.[2564] On the same day, it rejected a Ntabakuze motion seeking the admission of an indictment issued by Judge Andreu of Spain on 8 February 2008 against former members of the RPF.[2565] Also on that date, the Chamber dismissed Ntabakuze and Nsengiyumva Defence requests to expedite the translation of the *Nahimana et al.* Appeal Judgement, to allow additional arguments based on it prior to the rendering of the judgement in the case, and to stay proceedings until such time.[2566]

2368. The Chamber pronounced its unanimous judgement on 18 December 2008. It sentenced Bagosora, Ntabakuze and Nsengiyumva to life imprisonment based on convictions for genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II. Kabiligi was acquitted of all counts and immediately released. On 31 December 2008, the Chamber denied the Prosecution's motion to impose conditions on Kabiligi's liberty, but requested him to inform the Tribunal and his counsel of his whereabouts in the event that there was a change in his residence before the expiration of the period for filing a notice of appeal.[2567] The Chamber filed the written judgement on 9 February 2009 after the completion of the editorial process.

[2560] *Bagosora et al.*, Decision on Ntabakuze Petition for a Writ of Mandamus and Related Defence Requests (TC), 18 April 2007.
[2561] *Bagosora et al.*, Decision on Bagosora Motion to Exclude Testimony Relating to Immigration Document (TC), 30 April 2007.
[2562] *Bagosora et al.*, Decision on Bagosora Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 11 May 2007.
[2563] *Bagosora et al.*, Decision on Motion for Disqualification of Judges (TC), 28 May 2007.
[2564] *Bagosora et al.*, Decision on Ntabakuze Defence Motions Concerning Disclosure of Exculpatory Evidence (TC), 22 October 2008.
[2565] *Bagosora et al.*, Decision on Ntabakuze Defence Motions for the Admission of Additional Evidence (TC), 22 October 2008.
[2566] *Bagosora et al.*, Decision on Defence Motions Concerning Appeal Chamber Jurisprudence After Closure of the Case (TC), 22 October 2008.
[2567] *Bagosora et al.*, Decision on Prosecution Motion to Impose Conditions on Kabiligi's Liberty (TC), 31 December 2008.

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ANNEX B: CITED MATERIALS AND DEFINED TERMS

1. JURISPRUDENCE

1.1 ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 ("*Akayesu* Trial Judgement")

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 ("*Akayesu* Appeal Judgement")

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001 ("*Bagilishema* Trial Judgement")

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (AC), 3 July 2002 ("*Bagilishema* Appeal Judgement")

Bagosora et al.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006

Bikindi

The Prosecutor v. Simon Bikindi, Case No. ICTR-01-72-T, Judgement (TC), 2 December 2008 ("*Bikindi* Trial Judgement")

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-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008 ("*Gatete* Decision on Prosecutor's Request for Referral to the Republic of Rwanda")

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")

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Kambanda

The Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Judgement and Sentence (TC), 4 September 1998 ("*Kambanda* Trial Judgement")

Jean Kambanda v. The Prosecutor, Case No. ICTR-97-23-A, Judgement (AC), 19 October 2000 ("*Kambanda* Appeal 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-R11*bis*, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008 ("*Kanyarukiga* Decision")

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The Prosecutor v. Edouard Karemera et al., Case No. ICRT-98-44-AR73.10, Decision on Nzirorera's Interlocutory Appeal Concerning His Right to Be Present at Trial (AC), 5 October 2007

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Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

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Ntakirutimana

The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003 ("*Ntakirutimana* Trial Judgement")

The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 ("*Ntakirutimana* Appeal Judgement")

Rutaganda

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Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Decision (AC), 31 May 2000

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1.2 ICTY

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Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 ("*Blaškić* Appeal Judgement")

Brđanin

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Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement (AC), 3 April 2007 ("*Brđanin* Appeal Judgement")

Delalić et al.

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Delić

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Galić

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement (AC), 30 November 2006 ("*Galić* Appeal Judgement")

Hadžihasanović and Kubura

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Jelisić

Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 ("*Jelisić* Appeal Judgement")

Kordić and Čerkez

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Krstić

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Kupreškić et al.

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Kvočka et al.

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("*Kvočka et al.* Appeal Judgement")

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Orić

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Simić

Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 ("*Simić* Appeal Judgement")

Stakić

Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 ("*Stakić* Trial Judgement")

Stanišić and Simatović

Prosecutor v. Jovica Stanišić and Franko Simatović, Case No. IT-03-69-AR73.2, Decision on Defence Appeal of the Decision on Future Course of Proceedings (AC), 16 May 2008

Strugar

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Tadić

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 ("*Tadić* Appeal Judgement")

Vasiljević

Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement (AC), 25 February 2004 ("*Vasiljević* Appeal Judgement")

2. DEFINED TERMS AND ABBREVIATIONS

AMASASU

Alliance des Militaires Agacés par les Séculaires Acts Sournois des Unaristes

Bagosora Closing Brief

The Prosecutor v. Théoneste Bagosora, Case No. ICTR-98-41-T, Théoneste Bagosora's Final Trial Brief, 21 May 2007[2568]

Bagosora Indictment

The Prosecutor v. Théoneste Bagosora, Case No. ICTR-96-7-I, Amended Indictment, 12 August 1999.

CDR

Coalition pour la Défense de la République

CND

Conseil National pour le Développement

Commune Rouge

A place in Gisenyi town were people were taken to be killed

[2568] The Chamber also consulted the original, which was filed in French: *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, *Mémoire Final de la Défense de Théoneste Bagosora*, 25 May 2007.

DMZ

Demilitarised Zone

EGENA

École des Gendarmerie Nationale

ESM

École Superieure Militaire

ESO

École des Sous-Officiers

ETO

École Technique Officielle

fn.

Footnote

IAMSEA

L'Institut Africain et Mauricien de Statistiques et d'Economie

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

Kabiligi and Ntabakuze Indictment

The Prosecutor v. Gratien Kabiligi and Aloys Ntabakuze, Case Nos. ICTR-97-34-I and ICTR-97-30-I, Amended Indictment, 13 August 1999.

Kabiligi Closing Brief

The Prosecutor v. Gratien Kabiligi, Case No. ICTR-98-41-T, Gratien Kabiligi's Final Trial Brief, 23 April 2007[2569]

KIBAT

Kigali Battalion

KWSA

Kigali Weapon Secure Area

MDR

Mouvement Démocratique Républicain

MINADEF

Ministry of Defence

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement

Nsengiyumva Closing Brief

The Prosecutor v. Anatole Nsengiyumva, Case No. ICTR-98-41-T, Anatole Nsengiyumva's Unredacted Final Trial Brief, 23 April 2007[2570]

Nsengiyumva Indictment

The Prosecutor v. Anatole Nsengiyumva, Case No. ICTR-96-12-I, Amended Indictment, 12 August 1999.

Ntabakuze Closing Brief

The Prosecutor v. Aloys Ntabakuze, Case No. ICTR-98-41-T, Aloys Ntabakuze's Final Trial Brief, 23 April 2007[2571]

[2569] The Kabiligi Defence filed a corrigendum and an addendum to its Closing Brief. *The Prosecutor v. Gratien Kabiligi*, Case No. ICTR-98-41-T, Corrigendum to the Closing Brief of Gratien Kabiligi, 16 May 2007; *The Prosecutor v. Gratien Kabiligi*, Case No. ICTR-98-41-T, Addendum no. 2 to the Closing Brief of Gratien Kabiligi, 14 June 2007.

[2570] The Nsengiyumva Defence filed a corrigendum to its Closing Brief. *The Prosecutor v. Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Corrigendum to the Unredacted Closing Brief of Anatole Nsengiyumva, 25 May 2007

[2571] The Ntabakuze Defence filed an Amended Final Trial Brief, which is a public and redacted version, as well as a Corrigendum and Addendum. *The Prosecutor v. Aloys Ntabakuze*, Case No. ICTR-98-41-T, Aloys Ntabakuze's Amended Final Trial Brief, 23 May 2007; *The Prosecutor v. Aloys Ntabakuze*, Case No. ICTR-98-41-T, Corrigendum and Addendum to the Closing Brief of Aloys Ntabakuze, 24 May 2007.

OAU

Organisation of African Unity

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

PDC

Parti Démocrate Chrétien

PL

Parti Libéral

Prosecution Pre-Trial Brief (21 January 2002)

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-I, Prosecutor's Pre-Trial Brief in accordance with Rule 73 *bis* of the Rules of Procedure and Evidence, 21 January 2002

Prosecution Pre-Trial Brief (7 June 2002)

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-I, The Prosecutor's Pre-Trial Brief Revision in compliance with the Decision on Prosecutor's Request for an Extension of the Time Limit in the Order of 23 May 2002, and with the Decision on the Defence Motion Challenging the Pre-Trial Brief, 23 May 2002

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

RTLM

Radio Télévision Libre des Mille Collines

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

40110

Statute

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

T.

Transcript

UNAMIR

United Nations Assistance Mission for Rwanda

UNAR

Union Nationale Rwandaise

1678

40109

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-96-7-I

THE PROSECUTOR

AGAINST

THEONESTE BAGOSORA

AMENDED INDICTMENT

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

THEONESTE BAGOSORA

with **CONSPIRACY TO COMMIT GENOCIDE, GENOCIDE, COMPLICITY IN GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY,** and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II,** offences stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal.

TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

N de dossier:ICTR-96-7-I

ICTR
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LE PROCUREUR DU TRIBUNAL

CONTRE

THEONESTE BAGOSORA

ACTE D'ACCUSATION AMENDÉ

Le Procureur du Tribunal Pénal International pour le Rwanda, en vertu des pouvoirs que lui confère l'article 17 du Statut du Tribunal Pénal International pour le Rwanda ("le Statut du Tribunal") accuse:

THEONESTE BAGOSORA

d'**ENTENTE EN VUE DE COMMETTRE LE GÉNOCIDE,** de **GÉNOCIDE** de **COMPLICITÉ DE GÉNOCIDE,** d'**INCITATION PUBLIQUE ET DIRECTE À COMMETTRE LE GÉNOCIDE,** de **CRIMES CONTRE L'HUMANITÉ,** et de **VIOLATIONS DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II,** crimes prévus aux articles 2, 3 et 4 du Statut du Tribunal.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: Marianne Ben Salima
SIGNATURE: Salima DATE: 11/12/2008

1. HISTORICAL CONTEXT

1.1 The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsi to die and thousands more to flee the country in the years immediately following. The revolution resulted in the abolition of the Tutsi monarchy and the proclamation of the First Republic in early 1961, confirmed in a referendum held in the same year. Legislative elections held in September 1961 confirmed the dominant position of the MDR-PARMEHUTU (*Mouvement Démocratique Républicain-Parti du Mouvement d'Emancipation Hutu*), led by Grégoire Kayibanda, who was subsequently elected President of the Republic by the Legislative Assembly on 26 October 1961.

1.2 The early years of the First Republic, which was under the domination of the Hutu of central and southern Rwanda, were again marked by ethnic violence. The victims were predominantly Tutsi, the former ruling elite, and those related to them, who were killed, driven to other regions of Rwanda or forced to flee the country. The gradual elimination of the opposition parties in those early years confirmed the MDR-PARMEHUTU as the single party, the only party to present candidates in the elections of 1965.

1.3 The early part of 1973 in Rwanda was again marked by ethnic confrontations between the Hutu and Tutsi, prompting another exodus of the Tutsi minority from the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and South resulted in a military coup by General Juvénal Habyarimana on 5 July 1973, shifting power from civilian to military

1. CONTEXTE HISTORIQUE

1.1 La révolution de 1959 marque le début d'une période d'affrontements ethniques entre les Hutu et les Tutsi au Rwanda, provoquant au cours des années qui ont immédiatement suivi, des centaines de morts chez les Tutsi et l'exode de milliers d'entre eux. Cette révolution entraîne l'abolition de la monarchie Tutsi et la proclamation de la Première République au début de l'année 1961, confirmée par référendum au cours de la même année. Les élections législatives de septembre 1961 confirme la domination du MDR-PARMEHUTU (Mouvement Démocratique Républicain-Parti du Mouvement d'Émancipation Hutu) de Grégoire Kayibanda, qui est élu Président de la République par l'assemblée législative le 26 octobre 1961.

1.2 Les premières années d'existence de cette république, dominée par les Hutu du centre et du sud du Rwanda, sont de nouveau marquées par la violence ethnique. Les victimes furent principalement des Tutsi, l'ancienne élite dirigeante, et leurs alliés; ceux-ci furent tués, chassés vers d'autres régions du Rwanda ou forcés de s'enfuir du pays. L'élimination progressive des partis d'opposition durant ces premières années confirme le MDR-PARMEHUTU comme parti unique, qui est le seul à présenter des candidats aux élections de 1965.

1.3 Le début de l'année 1973 au Rwanda est de nouveau marqué par des affrontements ethniques entre Hutu et Tutsi qui provoquent, après ceux de 1959 à 1963, un nouvel exode de la minorité Tutsi. Cette recrudescence des tensions ethniques et politiques (entre le Nord et le Sud) aboutit, le 5 juillet 1973, à un coup d'État militaire mené par le Général Juvénal Habyarimana. Le coup d'État entraîne un renversement du pouvoir, qui passe des mains des civils à

hands and from the Hutu of central Rwanda to the Hutu of the northern *préfectures* of Gisenyi and Ruhengeri (Habyarimana's native region).

1.4 In 1975, President Habyarimana founded the *Mouvement Révolutionnaire National pour le Développement* (MRND), a single party, and assumed the position of party Chairman. The administrative and party hierarchies were indistinguishable in this single party state from the level of the *Préfet* to the *bourgmestres*, and down to that of the *conseillers de secteurs* and *responsables de cellule.*

1.5 From 1973 to 1994, the government of President Habyarimana used a system of ethnic and regional quotas which was supposed to provide educational and employment opportunities for all, but which was used increasingly to discriminate against both Tutsi and Hutu from regions outside the northwest.

In fact, by the late 1980s, persons from Gisenyi and Ruhengeri occupied many of the most important positions in the military, political, economic and administrative sectors of Rwandan society. Among the privileged elite, an inner circle of relatives and close associates of President Habyarimana and his wife, Agathe Kanziga, known as the Akazu, enjoyed great power. This select group, almost exclusively Hutu, was supplemented by individuals who shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.

1.6 In 1990, the President of the Republic, Juvénal Habyarimana, and his

celles des militaires et de celles des Hutu du centre du Rwanda à celles des Hutu des préfectures de Gisenyi et Ruhengeri au nord du pays (région natale du Président Habyarimana).

1.4 En 1975, le président Habyarimana fonde le Mouvement Révolutionnaire National pour le Développement (MRND), parti unique, dont il assume la présidence. La structure administrative et la hierarchie du MRND se confondent en un véritable parti-État à tous les niveaux de l'administration territoriale, du Préfet aux Bourgmestres, jusqu'aux conseillers de secteurs et responsables de cellule.

1.5 De 1973 à 1994, le gouvernement du Président Habyarimana applique un système de quotas basé sur l'origine ethnique et régionale qui était censé offrir des chances égales à tous en matière d'éducation et d'emploi, mais qui fut utilisé progressivement de manière discriminatoire à l'encontre des Tutsi et des Hutu originaires d'autres régions que le nord-ouest.

De fait, à la fin des années 1980, plusieurs des postes les plus importants dans les secteurs militaires, politiques, économiques et administratifs de la société rwandaise étaient occupés par des personnes originaires de Gisenyi et Ruhengeri. Parmi l'élite privilégiée, un noyau, connu sous l'appellation Akazu, composé de membres de la famille et d'intimes du Président Habyarimana et de son épouse, Agathe Kanziga, jouit d'un grand pouvoir. Aux membres de ce groupe, presque exclusivement Hutu, se joignent des personnes qui en partagent l'idéologie Hutu extrémiste et qui sont principalement originaires de la région natale du Président et de son épouse.

1.6 Au cours de l'année 1990, le Président de la République, Juvénal Habyarimana, et son parti unique, le

single party, the MRND, were facing mounting opposition, including from other Hutu.

1.7 On 1 October 1990, the Rwandan Patriotic Front (RPF), made up mainly of Tutsi refugees, attacked Rwanda. Within days the government began arresting thousands of people, presumed to be opponents of Habyarimana and suspected of being RPF accomplices. Although the Tutsi were the main target, Hutu political opponents were also arrested.

1.8 Following pressure from the internal opposition and the international community, and the RPF attack of October 1990, President Habyarimana permitted the introduction of multiple political parties and the adoption of a new constitution on 10 June 1991. The *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). The first transitional government was made up almost exclusively of MRND members, following the refusal of the main opposition parties to take part. With the second transitional government in April 1992, the MRND became a minority party for the first time in its history, with nine ministerial portfolios out of 19. On the other hand, the MRND retained its domination over the local administration.

1.9 The new Government then entered negotiations with the RPF, which resulted in the signing of the Arusha Accords on 4 August 1993. The Accords provided for a new system of sharing military and civilian power between the RPF, the opposition parties and the MRND.

1.10 By the terms of the Arusha Accords,

MRND, font face à une opposition grandissante, notamment de la part d'autres Hutu.

1.7 Le 1er octobre 1990, le Front Patriotique Rwandais (FPR), composé majoritairement de réfugiés Tutsi, attaque le Rwanda. Dans les jours qui suivent, le gouvernement procède à l'arrestation de milliers de personnes présumées être des adversaires d'Habyarimana et soupçonnées de complicité avec le FPR. Parmi les personnes arrêtées, majoritairement d'origine Tutsi, il y a également des opposants politiques Hutu.

1.8 Suite aux différentes pressions de l'opposition interne et de la communauté internationale, et à l'attaque du FPR d'octobre 1990, le Président Habyarimana autorise l'introduction du multipartisme et l'adoption d'une nouvelle constitution le 10 juin 1991. Le *Mouvement Révolutionnaire National pour le Développement* (MRND) est alors rebaptisé *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). Le premier Gouvernement de transition est composé presque exclusivement de membres du MRND, suite au refus des principaux partis d'opposition d'en faire partie. Avec la mise en place du second Gouvernement de transition en avril 1992, le MRND se retrouve minoritaire pour la première fois de son histoire, avec neuf portefeuilles ministériels sur 19. Par contre, le MRND demeure fortement dominant au niveau de l'administration territoriale.

1.9 Le nouveau Gouvernement entame alors des négociations avec le FPR qui aboutissent le 4 août 1993 à la signature des Accords d'Arusha. Ces Accords prévoient un nouveau partage des pouvoirs militaires et civils entre le FPR, les partis d'opposition et le MRND.

1.10 Aux termes des Accords d'Arusha

which provided for the integration of both sides' armed forces, the new national army was to be limited to 13,000 men, 60% FAR *(Forces Armées Rwandaises)* and 40% RPF. The posts of command were to be shared equally (50%-50%) between the two sides, with the post of Chief of Staff of the Army assigned to the FAR.

The Gendarmerie was to be limited to 6,000 men, 60% FAR and 40% RPF, with the posts of command shared equally (50%-50%) between the two sides and the post of Chief of Staff of the Gendarmerie assigned to the RPF.

1.11 As regards representation within the government, the Arusha Accords limited the number of ministerial portfolios to be held by the MRND to five, plus the Presidency. The other portfolios were to be shared as follows: RPF, five; MDR (*Mouvement démocratique républicain*), four (including the post of Prime Minister); PSD (*Parti social-démocrate*), three; PL (*Parti libéral*), three; and the PDC (*Parti démocrate-chrétien*), one.

1.12 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions of prominence in the various sectors of Rwandan society, this new power sharing plan, as demanded by the political opposition and as stipulated in the Arusha Accords, meant a relinquishment of power and the loss of numerous privileges and benefits. With political changes following the establishment of the multi-party government of April 1992, several important military officers from the north had been forced to retire. At the same time, many of the military were facing massive demobilisation with the implementation of the Arusha Accords.

1.13 From 1990, Habyarimana and

qui prévoient l'intégration des forces armées des deux parties, l'effectif de la nouvelle armée nationale est limité à 13 000 hommes dont 60% proviennent des FAR (Forces Armées Rwandaises) et 40% du FPR. Quant aux postes de commandement, ils sont attribués à parts égales (50%-50%) aux deux parties, le poste de Chef d'État Major de l'armée revenant aux FAR.

L'effectif de la Gendarmerie est limité à 6 000 hommes, composé de 60% des FAR et 40% du FPR, avec les postes de commandement répartis équitablement (50%-50%) entre les deux parties, le poste de Chef d'État Major de la Gendarmerie revenant au FPR.

1.11 Au niveau de la représentation au sein du gouvernement, les Accords d'Arusha limitent à cinq le nombre de portefeuilles ministériels du MRND en plus de la Présidence de la République. Les autres portefeuilles se répartissent ainsi: cinq pour le FPR, quatre pour le MDR (*Mouvement démocratique républicain*) dont le poste de premier Ministre, trois pour le PSD (*Parti social-démocrate*), trois pour le PL (*Parti libéral*) et un pour le PDC (*Parti démocrate-chrétien*).

1.12 Pour les hommes et les femmes proches du Président Habyarimana, parmi lesquels les membres de *l'Akazu*, qui occupaient des fonctions importantes au sein des divers secteurs de la société rwandaise, ce nouveau partage du pouvoir, tel qu'exigé par les opposants politiques et stipulé par les Accords d'Arusha, signifie l'abandon du pouvoir et la perte de nombreux privilèges et d'importants bénéfices. Les changements politiques consécutifs à l'établissement d'un régime multipartite en avril 1992 obligent plusieurs officiers militaires importants, originaires du Nord, à prendre leur retraite. En même temps, l'application des Accords d'Arusha confronte plusieurs militaires à une démobilisation massive.

1.13 À partir de 1990, Habyarimana et

several of his close associates devised the strategy of inciting hatred and fear of the Tutsi minority as a way of rebuilding solidarity among the Hutu and keeping themselves in power. They strongly opposed any form of power sharing, including the one envisaged by the Arusha Accords.

1.14 Determined to avoid the power sharing prescribed by the Arusha Accords, several prominent civilian and military figures pursued their strategy of ethnic division and incitement to violence. They targeted and labelled as RPF accomplices the entire Tutsi population, and also Hutu opposed to their domination, particularly those from regions other than northwestern Rwanda. At the same time, they sought to divide Hutu opposition parties, attracting some of their members back to the support of Habyarimana. These efforts to divide the Hutu opposition were furthered by the assassination of Melchior Ndandaye, the democratically elected Hutu President, in neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the three major parties opposed to the MRND had each split into two factions. The faction of each known as the "Power" faction aligned itself with the MRND.

1.15 The strategy adopted in the early 1990s, which culminated in the widespread massacres of April 1994, comprised several components, which were carefully worked out by the various prominent figures who shared the extremist Hutu ideology, including the members of the *Akazu*.

In addition to the incitement to ethnic violence and the extermination of the Tutsi and their "accomplices", was the organization and military training of the youth wings of the political parties, notably the *Interahamwe* (youth wing of the MRND), the preparation of lists of people to be eliminated, the distribution of weapons to

plusieurs de ses plus proches collaborateurs conçoivent une stratégie d'incitation à la haine et à la peur face à la minorité Tutsi, afin de rétablir la solidarité parmi les Hutu et de se maintenir au pouvoir. Ils s'opposent fortement à toute forme de partage du pouvoir et particulièrement au partage prévu par les Accords d'Arusha.

1.14 Déterminées à éviter le partage des pouvoirs prévu par les Accords d'Arusha, plusieurs personnalités civiles et militaires en vue poursuivent leur stratégie de conflit ethnique et d'incitation à la violence. Elles visent la population Tutsi tout entière, qui est qualifiée de complice du FPR, de même que les Hutu opposés à leur domination, particulièrement ceux qui sont originaires d'autres régions que le nord-ouest du Rwanda. Parallèlement, elles tentent de diviser les partis d'opposition Hutu, en ramenant certains de leurs membres dans le camp d'Habyarimana. Les efforts destinés à diviser l'opposition Hutu sont favorisés par l'assassinat, par des soldats Tutsi de l'armée burundaise, de Melchior Ndandaye, président Hutu démocratiquement élu dans le Burundi voisin. À la fin de 1993, deux des trois principaux partis opposés au MRND s'étaient divisés en deux factions chacun. Les factions connues sous le nom de "Power" s'allient au MRND.

1.15 La stratégie adoptée au début des années 90, qui va connaître son apogée avec les massacres généralisés d'avril 1994, comporte plusieurs éléments qui sont soigneusement élaborés par les différentes personnalités qui partagent cette idéologie extrémiste, dont les membres de l'*Akazu*.

À l'incitation à la violence ethnique et à l'extermination des Tutsi et de leurs "complices", s'ajoutent l'organisation et l'entraînement militaire des jeunesses politiques, notamment les *Interahamwe* (jeunesses du MRND), la préparation de listes de personnes à éliminer, la distribution d'armes à des civils, l'assassinat de certains

civilians, the assassination of certain political opponents and the massacre of many Tutsi in various parts of Rwanda between October 1990 and April 1994.

1.16 The incitement to ethnic hatred took the form of public speeches by people sharing the extremist ideology. These political and military figures publicly appealed to hatred and fear of the Tutsi and urged the Hutu majority to "finish off the enemy and its accomplices". A perfect illustration is the speech made in November 1992 by Léon Mugesera, vice-chairman of the MRND for Gisenyi *préfecture*, who at the time was already inciting the public to exterminate the Tutsi and their "accomplices".

With the intention of ensuring widespread dissemination of the calls to ethnic violence, prominent figures from the President's circle set up true hate media. Thus the creation of *Radio Télévision Libre des Mille Collines (RTLM)* and of the newspaper *Kangura* was a part of the strategy and pursued the same logic.

1.17 The creation of the youth wings of the political parties, originally established to encourage or even force adherence to one or another party in the newly-established multi-party system, provided Habyarimana's circle with a large, devoted and effective workforce to implement the adopted strategy. These youth organizations, which were affiliated to the political parties, were soon manipulated as part of the anti-Tutsi campaign. Some of the members of these organizations, notably the *Interahamwe* (MRND), were organized into militia groups, which were financed, trained and led by prominent civilians and military figures from the President of the Republic's entourage. They were issued weapons, with the complicity of certain military and civilian authorities. The militia groups were transported to training sites, including certain military camps, in public

opposants politiques et le massacre de nombreux Tutsi dans diverses régions du Rwanda entre octobre 1990 et avril 1994.

1.16 L'incitation à la haine ethnique prend la forme de discours publics prononcés par des personnalités partageant cette idéologie extrémiste. Ces personnalités politiques et militaires appellent publiquement à la haine et à la peur des Tutsi et exhortent la majorité Hutu "à en finir avec l'ennemi et ses complices". Le discours prononcé en novembre 1992 par Léon Mugesera, vice-président du MRND pour la préfecture de Gisenyi, qui dès cette époque incitait publiquement à l'extermination des Tutsi et leurs "complices", en est la parfaite illustration.

Dans le but d'assurer une large diffusion de ces appels à la violence ethnique, des personnalités de l'entourage du Président mettent sur pied de véritables média de la haine. La création de la Radio Télévision Libre des Mille Collines (RTLM) et du journal *Kangura* participe de cette stratégie et s'inscrit dans cette logique.

1.17 La création des ailes jeunesses des partis politiques, qui avait à l'origine pour objectif d'encourager ou même de forcer l'adhésion à l'un ou l'autre des partis du nouveau régime multipartite, va fournir à l'entourage d'Habyarimana une main d'oeuvre dévouée, nombreuse et efficace pour mettre en oeuvre la stratégie adoptée. Ces organisations de jeunesse affiliées aux partis politiques sont très vite manipulées dans le cadre de la campagne anti-Tutsi. Des membres de ces organisations, particulièrement les *Interahamwe*-MRND, sont organisés en milices, financées, entraînées et dirigées par des personnalités civiles et militaires de l'entourage du Président de la République. Des armes leur sont distribuées avec la complicité de certaines autorités militaires et civiles. Leur transport vers les sites d'entraînement, dont certains camps militaires, est assuré par des

administration vehicles or vehicles belonging to companies controlled by the President's circle.

1.18 During the mass arrests of October 1990, the civilian and military authorities followed lists that had been drawn up in order to identify and locate the presumed accomplices of the RPF, the majority of whom were Tutsi. Later, Army, Gendarmerie, local authorities and *Interahamwe* were given orders to prepare new lists or update the existing ones, which were subsequently used during the massacres of 1994. In March 1993, such a list was found in the vehicle of the Army Chief of Staff.

1.19 Towards the end of 1991, certain Rwandan authorities distributed weapons to certain civilians in the north-eastern region of the country as part of a civil self-defence campaign, in reaction to the RPF attack of October 1990. Later, some authorities distributed weapons nationwide, notably to the *Interahamwe* and carefully selected individuals, even in regions distant from the war zone. Towards the end of 1993, the Bishop of Nyundo criticized the distribution of weapons in a public letter, questioning its purpose.

1.20 The pursuit of the strategy thus described played a catalytic role in the political and ethnic violence of the time, which climaxed in the April 1994 massacres. The early part of the 90s was marked by numerous political assassinations and large massacres of the Tutsi minority, including the one in Kibilira (1990), that of the Bagogwe (1991) and the one in Bugesera (1992). The massacres were instigated and organized by local authorities with the complicity of certain prominent persons from the President's circle. Therein can be found the components of the strategy which culminated in the genocide of 1994.

véhicules de l'administration publique ou appartenant à des sociétés contrôlées par l'entourage du Président.

1.18 Lors des arrestations massives d'octobre 1990, les autorités civiles et militaires se réfèrent à des listes établies pour identifier et localiser les présumés complices du FPR, en majorité Tutsi. Par la suite, l'Armée, la Gendarmerie, les autorités locales et les *Interahamwe* reçoivent des directives pour préparer de nouvelles listes ou tenir à jour les listes existantes, qui vont servir lors des massacres de 1994. En mars 1993, une telle liste est retrouvée dans le véhicule du Chef d'État Major de l'Armée.

1.19 Vers la fin de 1991, certaines autorités rwandaises distribuent des armes à certains membres de la population civile du nord-est du pays dans le cadre de la campagne d'auto-défense civile en réaction à l'attaque du FPR d'octobre 1990. Plus tard, en dehors du cadre de l'auto-défense civile, des armes sont distribuées dans tout le pays par des autorités, notamment aux *Interahamwe* et à des personnes soigneusement choisies, même dans des régions éloignées de la zone de guerre. Vers la fin de 1993, l'Évêque de Nyundo critique dans une lettre publique cette distribution d'armes, s'interrogeant sur sa finalité.

1.20 La mise en place de la stratégie ainsi décrite joue un rôle de catalyseur dans la violence politique et ethnique de cette époque qui atteint son paroxysme avec les massacres d'avril 1994. Le début des années 90 est marqué par de nombreux assassinats politiques et d'importants massacres de la minorité Tutsi, dont celui de Kibilira (1990), ceux des Bagogwe (1991) et celui du Bugesera (1992). Ces massacres sont suscités et organisés par des autorités locales avec la complicité de certaines personnalités de l'entourage du Président Habyarimana. On y retrouve tous les éléments de la stratégie qui va aboutir au génocide de

1994.

1.21 In early 1994, certain prominent people from Habyarimana's circle instigated violent demonstrations in Kigali aimed at preventing the implementation of the Arusha Accords. Soldiers in civilian clothes and militiamen took part, seeking to provoke confrontations with the Belgian UNAMIR soldiers. These incidents were partially the cause of the postponement of the establishment of the institutions foreseen by the Arusha Accords.

1.21 Au début de 1994, des manifestations violentes visant à empêcher la mise en place des Accords d'Arusha se déroulent à Kigali à l'instigation de certaines personnalités de l'entourage d'Habyarimana. On y retrouve des militaires en civil aux côtés des miliciens qui cherchent à provoquer des affrontements avec les soldats belges de la MINUAR. Ces incidents sont en partie à l'origine du report de la mise en place des institutions prévues dans les Accords d'Arusha.

1.22 On 6 April 1994, the plane carrying, among other passengers, the President of the Republic of Rwanda, Juvénal Habyarimana, was shot down on its approach to Kigali airport.

1.22 Le 6 avril 1994, l'avion transportant, entre autres passagers, le Président de la République du Rwanda, Juvénal Habyarimana, est abattu peu avant son atterrissage à l'aéroport de Kigali.

1.23 In the hours which followed the crash of the President's plane, the senior officers of the FAR convened to assess the situation. Those who shared the extremist Hutu ideology, generally from the North, proposed an Army take-over. During a second meeting which took place on the morning of 7 April, that option was rejected in favour of setting up an interim Government.

1.23 Dans les heures qui suivent la chute de l'avion présidentiel, les principaux officiers des FAR se réunissent pour évaluer la situation. Ceux qui partagent l'idéologie extrémiste Hutu, généralement les militaires du nord du pays, proposent la prise du pouvoir par l'Armée. Le 7 avril au matin, lors d'une deuxième réunion, cette option est rejetée au profit de la mise sur pied d'un gouvernement intérimaire.

1.24 Already on the morning of 7 April and while these discussions were taking place, groups of military, lists in hand, proceeded to arrest, confine and carry out systematic assassinations of a large number of political opponents, both Hutu and Tutsi, including the Prime Minister, some of the Ministers in her Government and the President of the Constitutional Court. At the same time, however, the military were evacuating prominent members of the dead President's circle, including the MRND Ministers, to safe locations.

The Belgian UNAMIR soldiers sent to protect the Prime Minister were disarmed, arrested and taken to Kigali military camp, where they were massacred, prompting the

1.24 Dès le 7 avril au matin, parallèlement à ces discussions, des groupes de militaires, listes en main, procèdent à l'arrestation, à la séquestration et à l'assassinat de nombreux opposants politiques, Hutu et Tutsi, parmi lesquels le Premier Ministre, certains des ministres de son gouvernement et le Président de la Cour Constitutionnelle. Par contre, au même moment, des militaires évacuent dans des endroits sûrs des personnalités de l'entourage du défunt Président, y compris les ministres du MRND.

Les militaires belges de la MINUAR envoyés pour protéger le Premier Ministre sont désarmés, arrêtés et conduits au camp militaire de Kigali où ils sont massacrés. Cet

withdrawal of the Belgian contingent in the days that followed. After the withdrawal of the Belgian troops, the UN Security Council drastically reduced the number of UNAMIR personnel in Rwanda.

incident précipite le retrait du contingent belge dans les jours qui suivent. Après le retrait des troupes belges, le Conseil de sécurité des Nations-Unies réduit de façon draconienne le nombre de personnel de la MINUAR au Rwanda.

1.25 The leaders of various political parties not targeted in the assassinations assembled at the request of military officers. Other than members of the MRND, most participants were members of the "Power" wings of their respective parties. Given the political and constitutional void created by the deaths of most national political authorities, they set up a government based on the 1991 constitution. Composed solely of Hutu, the government was sworn in on 9 April 1994. The MRND held nine ministerial posts, plus the Presidency of the Republic, while the remaining 11 positions, including that of Prime Minister, went to the "Power" factions of the other parties.

1.25 Les dirigeants des divers partis politiques non visés par les assassinats se réunissent à la demande d'officiers militaires. En dehors des membres du MRND, la plupart des participants sont membres des ailes "Power" de leurs partis respectifs. Étant donné le vide politique et constitutionnel créé par la mort de la plupart des personnalités politiques nationales, ils mettent sur pied un gouvernement fondé sur la constitution de 1991. Le gouvernement, exclusivement composé de personnalités Hutu, prête serment le 9 avril 1994. Neuf postes ministériels sont attribués au MRND, en plus de la présidence de la République, et les onze postes restants, incluant celui de premier ministre, reviennent aux factions "Power" des autres partis.

1.26 In the hours following the crash of President Habyarimana's plane, military and militiamen set up roadblocks and began slaughtering Tutsi and members of the Hutu opposition in Kigali and in other parts of Rwanda. At the roadblocks, they checked the identity cards of passers-by and killed those or most of those who were identified as Tutsi. Military patrols, often involving militiamen, scoured the city, lists in hand, to execute the Tutsi and certain political opponents.

1.26 Dans les heures qui suivent la chute de l'avion du Président Habyarimana, les militaires et les miliciens érigent des barrages et commencent à massacrer les Tutsi et les membres de l'opposition Hutu à Kigali et dans d'autres régions du Rwanda. Aux barrages, ils procèdent à la vérification des cartes d'identité de tous les passants et exécutent toutes les personnes, ou la plupart des personnes, identifiées comme étant Tutsi. Des patrouilles de militaires, souvent accompagnés de miliciens sillonnent la ville, listes en main, pour exécuter les Tutsi et certains opposants politiques.

1.27 During the entire period of the genocide, FAR military, particularly units of the Presidential Guard, the Para-Commando Batallion, Reconnaissance Battalion and the Gendarmerie, in complicity with militiamen, actively participated in the massacres of the Tutsi throughout Rwanda.

1.27 Durant toute la période du génocide, des militaires des FAR, particulièrement des unités de la Garde Présidentielle, du Bataillon Para-Commando, du Bataillon reconnaissance et de la Gendarmerie, avec la complicité de miliciens, participent activement aux massacres de Tutsi sur toute l'étendue du Rwanda.

1.28 As soon as it was formed, the Interim Government espoused the plan for extermination put in place. Throughout the period of the massacres, the Government made decisions and issued directives to aid and abet in the extermination of the Tutsi population and the elimination of the Hutu political opponents. Members of the Government incited the population to eliminate the enemy and its "accomplices", some of them participating directly in the massacres.

1.29 Local authorities, including *préfets*, *bourgmestres*, *conseillers de secteur* and *responsables de cellule* applied the Government-issued directives in execution of the plan for the extermination of the Tutsi population. They incited and ordered their subordinates to perpetrate the massacres and took a direct part in them.

1.30 Having been psychologically and militarily prepared for several months, the groups of militiamen spearheaded the execution of the extermination plan and were directly involved in the massacres of the civilian Tutsi population and of moderate Hutus, thus causing the deaths of hundreds of thousands of people in less than 100 days.

1.28 Dès sa formation, le Gouvernement Intérimaire fait sien le plan d'extermination mis en place. Durant toute la période des massacres, le Gouvernement prend des décisions et donne des directives dans le but d'aider et encourager l'extermination de la population Tutsi et l'élimination des opposants politiques Hutu. Des membres de ce gouvernement incitent la population à éliminer l'ennemi et ses "complices", certains d'entre eux prennent part directement aux massacres.

1.29 Des autorités locales, telles que les Préfets, les Bourgmestres, les conseillers de secteur et les responsables de cellule, appliquent les directives du Gouvernement visant à exécuter le plan d'extermination de la population Tutsi. Ils incitent et ordonnent à leurs subordonnés de se livrer aux massacres et y prennent eux-mêmes part directement.

1.30 Les groupes de miliciens, psychologiquement et militairement préparés depuis plusieurs mois, constituent le fer de lance dans l'exécution du plan d'extermination et sont directement impliqués dans les massacres de la population civile Tutsi et des Hutu modérés, causant ainsi la mort de centaines de milliers de personnes en moins de 100 jours.

2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

2.1 The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

2.2 During the events referred to in this indictment, Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.

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

2.4 During the events referred to in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

2.5 During the events referred to in this indictment, a state of non-international armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons, according to the provisions of Article 3 common to the Geneva Conventions and of Additional Protocol II.

2. COMPÉTENCES TERRITORIALE, TEMPORELLE ET MATÉRIELLE

2.1 Les crimes visés par le présent acte d'accusation ont été commis au Rwanda entre le 1er janvier 1994 et le 31 décembre 1994.

2.2 Lors des événements auxquels se réfère le présent acte d'accusation, le Rwanda était divisé en 11 préfectures: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-ville, Kigali-rural et Ruhengeri. Chaque préfecture est subdivisée en communes et en secteurs.

2.3 Lors des événements auxquels se réfère le présent acte d'accusation, les Tutsi, les Hutu et les Twa étaient identifiés comme des groupes ethniques ou raciaux.

2.4 Lors des événements auxquels se réfère le présent acte d'accusation, il y a eu sur tout le territoire du Rwanda des attaques systématiques ou généralisées contre une population civile, en raison de son appartenance politique, ethnique ou raciale.

2.5 Lors des événements auxquels se réfère le présent acte d'accusation, il y avait un conflit armé non international sur le territoire du Rwanda. Les victimes auxquelles se réfère le présent acte d'accusation étaient des personnes protégées, au sens de l'article 3 commun aux Conventions de Genève et du Protocole additionnel II.

3. THE POWER STRUCTURE

The Government

3.1 According to the Constitution of 10 June 1991, executive power is exercised by the President of the Republic, assisted by the Government, composed of the Prime Minister and the ministers. The members of the Government are appointed by the President of the Republic upon the proposal of the Prime Minister. The Prime Minister directs the Government's program. The Government determines and applies national policy. To that effect, it controls the civil service and the armed forces. The Prime Minister decides the functions of the ministers and officials under the Prime Minister's authority. The resignation or termination of tenure of the Prime Minister, for whatever reason, causes the Government to resign.

3.2 The Ministers implement the Government's policy, as defined by the Prime Minister. They are answerable to the Head of the Government for doing so. In carrying out their duties, they have at their disposal the civil service and local administration corresponding to their functions.

The *Forces Armées Rwandaises*

3.3 The *Forces Armées Rwandaises (FAR)* were composed of the *Armée Rwandaise* (AR) and the *Gendarmerie Nationale* (GN). The *Forces Armées Rwandaises* did not have a unified command and came directly under the Minister of Defence. The Commander-in-Chief of the *Forces Armées Rwandaises* was the President of the Republic.

3. STRUCTURE DU POUVOIR

Le Gouvernement

3.1 Selon la Constitution du 10 juin 1991, le pouvoir exécutif est exercé par le Président de la République, assisté du gouvernement composé du Premier Ministre et des ministres. Les membres du gouvernement sont nommés par le Président de la République sur proposition du Premier Ministre. Le Premier Ministre est chargé de diriger l'action du gouvernement. Le gouvernement détermine et conduit la politique de la nation et dispose, à cet effet, de l'administration publique et de la force armée. Le Premier Ministre détermine les attributions des ministres et des agents placés sous son autorité. La démission ou la cessation des fonctions du Premier Ministre, pour quelque cause que ce soit, entraîne la démission du gouvernement.

3.2 Les ministres exécutent la politique du Gouvernement définie par le Premier Ministre. Ils répondent devant le Chef du Gouvernement de cette exécution. Dans l'exercice de leurs fonctions ils disposent de l'administration publique et territoriale correspondante à leurs attributions.

Les Forces Armées Rwandaises

3.3 Les Forces Armées Rwandaises (FAR) étaient composées de l'Armée Rwandaise (AR) et de la Gendarmerie Nationale (GN). Les Forces Armées Rwandaises ne disposaient pas d'un Etat-Major unifié et relevaient directement du ministre de la Défense. Le chef suprême des Forces Armées Rwandaises était le Président de la République.

3.4 The General Staff of the Rwandan Army was headed by the Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.5 The territory of Rwanda was divided into various military operations sectors, each headed by a military sector commander. Also, there were elite units within the Rwandan Army, namely the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion. The troops were divided into companies within the sectors and the units.

3.6 By virtue of their rank and their functions, the officers of the Rwandan Army had the duty to enforce the general rules of discipline for all soldiers under their authority, even those not belonging to their units.

3.7 The General Staff of the *Gendarmerie Nationale* was headed by the Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.8 The *Gendarmerie Nationale* was responsible for maintaining public order and peace and the observance of the laws in effect in the country.

3.9 The *Gendarmerie Nationale* was under the Minister of Defence but could carry out its duties of ensuring public order and peace at the request of the local government authority having jurisdiction,

3.4 L'Etat-Major de l'Armée Rwandaise était dirigé par un Chef d'Etat-Major assisté de quatres officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.5 Le territoire du Rwanda était divisé en différents secteurs d'opérations militaires. Chaque secteur était dirigé par un commandant militaire. En outre, il y avait des unités d'élites au sein de l'Armée Rwandaise: le bataillon de la Garde Présidentielle, le bataillon Para-Commando, et le bataillon de Reconnaissance. Les troupes étaient divisées en compagnies au sein des secteurs et des unités.

3.6 De par leur grade et leurs fonctions, les officiers de l'Armée Rwandaise avaient le devoir de faire respecter les règles générales de discipline pour tous les militaires sous leur autorité, même s'ils n'appartenaient pas à leurs unités.

3.7 L'Etat-Major de la Gendarmerie était dirigé par un Chef d'Etat-Major assisté de quatres officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.8 La Gendarmerie Nationale était chargée du maintien de l'ordre et de la paix publique et de l'exécution des lois en vigueur dans le pays.

3.9 La Gendarmerie Nationale relevait du ministre de la Défense, mais pouvait exercer ses attributions de maintien de l'ordre et de la paix publique à la requête de l'autorité administrative territoriale

namely the *Préfet*. In cases of emergency, this request could be made verbally, notably by telephone. Such requests had to be carried out immediately. In addition, the *Gendarmerie Nationale* was obliged to transmit to the *Préfet* all information relating to public order. It had the duty to assist anyone in danger.

compétente, en la personne du préfet. En cas d'urgence, cette réquisition pouvait être faite verbalement, notamment par téléphone. Cette réquisition devait être exécutée sans délai. En outre, la Gendarmerie Nationale devait porter à la connaissance du préfet tout renseignement concernant l'ordre public. Elle devait assistance à toute personne en danger.

The Political Parties and The Militia

3.10 During the events referred to in this indictment, the main political parties in Rwanda were the MRND *(Mouvement Républicain National pour la Démocratie et le Développement)*, the CDR (*Coalition pour la Défense de la République*), the MDR (*Mouvement Démocratique Républicain*), the PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (Rwandan Patriotic Front) was a politico-military opposition organization.

Les Partis Politiques et les Milices

3.10 Lors des événements visés dans le présent acte d'accusation, les principaux partis politiques au Rwanda étaient: le MRND (Mouvement Républicain National pour la Démocratie et le Développement), la CDR (Coalition pour la Défense de la République), le MDR (Mouvement Démocratique Républicain), le PSD (Parti Social-Démocrate) et le PL (Parti Libéral). Le FPR (Front Patriotique Rwandais) était une organisation politico-militaire d'opposition.

3.11 Most of the political parties had created a youth wing. The members of the MRND's youth wing members were known as the "*Interahamwe*" and those of the CDR were known as the "*Impuzamugambi*". Numerous MRND youth wings' members subsequently received military training and were thus tranformed from youth movements into militias.

3.11 La plupart des partis politiques avaient créé une aile jeunesse en leur sein. Celle du MRND était connue sous l'appellation "*Interahamwe*" et celle de la CDR sous le nom de "*Impuzamugambi*". Par la suite, plusieurs membres de l'aile jeunesse du MRND ont reçu un entraînement militaire; ce qui a transformé ces mouvements de jeunesse en milices.

4. THE ACCUSED

Théoneste Bagosora

4.1 **Théoneste Bagosora** was born on 16 August 1941, in Giciye *commune*, Gisenyi *préfecture*, Rwanda.

4.2 During the events referred to in this indictment, **Théoneste Bagosora** held the office of *directeur de cabinet* in the Ministry of Defence. In his capacity as *directeur de cabinet* in the Ministry of Defence, **Théoneste Bagosora** managed day-to-day affairs in the absence of the Minister of Defence.

4.3 In 1964, **Théoneste Bagosora** graduated from the *Ecole des officiers* in Kigali with the rank of 2nd lieutenant; he received a certificate in advanced military studies from France's staff college. He exercised successively the functions of second-in-command of the *Ecole Supérieure Militaire* in Kigali and of Commander of Kanombe military camp, before being appointed *directeur de cabinet* in the Ministry of Defence in June 1992. Retired from the Rwandan Army on 23 September 1993, he nonetheless continued to hold the office of *directeur de cabinet* in the Ministry of Defence. He was still *directeur de cabinet* on 6 April 1994 and remained in that position until he left the country in July 1994.

4.4 His rank, his office and the personal relations he had with the commanders of the units that were the most implicated in the events referred to in this indictment, and the fact that they were from the same region and shared the same political beliefs, gave him authority over those persons and over members of the militias, given the

4. L'ACCUSÉ

Théoneste Bagosora

4.1 **Théoneste Bagosora** est né le 16 août 1941, dans la commune de Giciye, préfecture de Gisenyi, Rwanda.

4.2 Lors des événements visés dans le présent acte d'accusation, **Théoneste Bagosora** exerçait les fonctions de directeur de cabinet au ministère de la Défense Nationale. En sa qualité de directeur de cabinet au Ministère de la Défense nationale, **Théoneste Bagosora,** en l'absence du Ministre de la Défense, assumait la gestion des affaires courantes du ministère.

4.3 En 1964, **Théoneste Bagosora** est diplômé de l'École des officiers de Kigali avec le grade de Sous-Lieutenant. Il est titulaire du brevet d'études militaires supérieures de l'école de guerre française. Il a successivement occupé les fonctions de Commandant en second de l'École Supérieure Militaire de Kigali et de Commandant du camp militaire de Kanombe avant d'être nommé en juin 1992, directeur de cabinet au Ministère de la Défense. Mis à la retraite de l'Armée Rwandaise le 23 septembre 1993, il a néanmoins continué d'exercer les fonctions de directeur de cabinet au Ministère de la Défense. Il occupait encore ces fonctions le 6 avril 1994, et y est resté jusqu'à son départ du pays en juillet 1994.

4.4 Outre son grade et ses fonctions, les relations personnelles qu'il avait avec les commandants des unités les plus impliquées dans les événements visés dans le présent acte d'accusation ainsi que le fait qu'il était natif de la même région qu'eux et partageait les mêmes convictions politiques, lui conféraient, dans le contexte régionaliste de l'exercice du pouvoir au Rwanda, une

regionalist context in which power was exercised in Rwanda.

autorité sur ceux-ci et sur les miliciens.

5. CONCISE STATEMENT OF THE FACTS: PREPARATION

5.1 From late 1990 until July 1994, **Théoneste Bagosora,** Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Gratien Kabiligi, Protais Mpiranya, Aloys Ntabakuze, François-Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana and Tharcisse Renzaho conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they could remain in power. The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, they organized, ordered and participated in the massacres perpetrated against the Tutsi population and of moderate Hutu.

5.2 In a letter dated 3 December 1993, certain FAR officers revealed to the UNAMIR Commander the existence of what they called a "Machiavellian plan" conceived by military who were mainly from the North and who shared the extremist Hutu ideology. The objective of the Northern military was to oppose the Arusha Accords and keep themselves in power. The means to achieve this consisted in exterminating the Tutsi and their "accomplices". The letter indicated moreover the names of political opponents to be eliminated. Some of them were in fact killed on the morning of 7 April 1994.

5.3 On 10 January 1994, UNAMIR was

5. EXPOSÉ SUCCINT DES FAITS : PRÉPARATION

5.1 Dès la fin de 1990 jusqu'à juillet 1994, **Théoneste Bagosora,** Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Gratien Kabiligi, Protais Mpiranya, Aloys Ntabakuze, François Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana et Tharcisse Renzaho se sont entendus entre eux et avec d'autres pour élaborer un plan dans l'intention d'exterminer la population civile Tutsi et d'éliminer des membres de l'opposition et se maintenir ainsi au pouvoir. Les éléments de ce plan comportaient, entre autres, le recours à la haine et à la violence ethnique, l'entraînement et la distribution d'armes aux miliciens ainsi que la confection de listes de personnes à éliminer. Dans l'exécution de ce plan ils ont organisé, ordonné et participé aux massacres perpétrés à l'encontre de la population Tutsi et des Hutu modérés.

5.2 Dans une lettre datée du 3 décembre 1993, des officiers des FAR ont révélé au Commandant de la MINUAR l'existence d'un "plan machiavélique" conçu par des militaires essentiellement originaires du Nord et partageant l'idéologie Hutu extrémiste. L'objectif de ces militaires nordistes était de s'opposer aux Accords d'Arusha et de se maintenir au pouvoir. Les moyens pour ce faire consistaient à exterminer les Tutsi et leurs "complices". La lettre mentionnait, par ailleurs, les noms d'opposants politiques à éliminer. Certains d'entre eux ont effectivement été assassinés dans la matinée du 7 avril 1994.

5.3 Le 10 janvier 1994, la MINUAR est

informed by an *Interahamwe* leader of the details of a plan to exterminate the Tutsi population and its "accomplices".

Speeches and Incitement

5.4 The incitement to ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated, before and during the genocide, by elements of the FAR on the one hand, and by members of the Government and local authorities on the other.

5.5 On 4 December 1991, President Juvénal Habyarimana set up a military commission. The commission was given the task of finding an answer to the following question: "*What do we need to do in order to defeat the enemy militarily, in the media and politically?*" Lt. Col. Anatole Nsengiyumva and Major Aloys Ntabakuze were members of this commission, presided by **Colonel Théoneste Bagosora,**

5.6 In a letter dated 21 September 1992, the General Staff of the Rwandan Army ordered that an extract from the commission report be circulated among the troops. The letter came from the office of the Chief of Intelligence (G-2), namely Lieutenant Colonel Anatole Nsengiyumva. The extract defined the main enemy as follows: "*The Tutsis from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms.*" The secondary enemy was defined as: "*Anyone providing any kind of assistance to the main enemy*". The document specified that the enemy was being recruited from within certain social

informée, par un dirigeant des *Interahamwe*, des détails d'un plan d'extermination de la population Tutsi et de ses "complices".

Discours et Incitation

5.4 L'incitation à la haine et à la violence ethniques a constitué un élément essentiel du plan mis en place. Elle a été articulée, avant et durant le génocide, d'une part par des éléments des FAR, et d'autre part par des membres du gouvernement et des autorités locales.

5.5 Le 4 décembre 1991, le Président Juvénal Habyarimana met en place une commission militaire. Cette commission était chargée de répondre à la question suivante: "*Que faut-il faire pour vaincre l'ennemi sur le plan militaire, médiatique et politique?*". Le Major Aloys Ntabakuze et le Lt Col. Anatole Nsengiyumva étaient membres de cette commission, présidée par le **Colonel Théoneste Bagosora.**

5.6 Dans une lettre datée du 21 septembre 1992, l'Etat-Major de l'Armée Rwandaise a ordonné la diffusion, parmi les troupes, d'un extrait du rapport produit par cette commission. Cette lettre émanait du bureau du Chef des renseignements (G-2), à savoir le Lieutenant Colonel Anatole Nsengiyumva. Ce document définissait l'ennemi principal comme étant "*le Tutsi de l'intérieur ou de l'extérieur, extrémiste et nostalgique du pouvoir, qui n'a jamais reconnu et ne reconnaît pas encore les réalités de la Révolution Sociale de 1959 et qui veut reconquérir le pouvoir au Rwanda par tous les moyens, y compris les armes*"et l'ennemi secondaire comme étant "*toute personne qui apporte tout concours à l'ennemi principal*". Le document précisait que le recrutement de l'ennemi se faisait

groups, notably: "*the Tutsis inside the country, Hutus who are dissatisfied with the present regime, foreigners married to Tutsi women...*". Among the activities the enemy was accused of, the document mentioned "*the diversion of national opinion from the ethnic problem to the socio-economic problem between the rich and the poor*".

5.7 The document and the use made of it by the senior officers aided, encouraged and promoted ethnic hatred and violence.

5.8 As from 1993, **Colonel Théoneste Bagosora** and Aloys Ntabakuze made statements wherein they identified the enemy as the Tutsi, and their sympathizers as the Hutu in the opposition.

5.9 As part of the negotiations for the Protocol on integration of the Armed Forces under the Arusha Accords, the officers from the North saw their powers eroded. This reality they could not accept made it opportune for to them to exacerbate the discourse of ethnic hatred and violence.

5.10 **Colonel Théoneste Bagosora** participated in the Arusha talks, and openly manifested his opposition to the concessions made by the Government representative, Boniface Ngulinzira, Minister of Foreign Affairs, to the point of leaving the negotiation table. **Colonel Théoneste Bagosora** left Arusha saying that he was returning to Rwanda to "*prepare the apocalypse*". On 11 April 1994, Boniface Ngulinzira was assassinated by the military. His death was announced on RTLM in these terms: "*We have exterminated all the accomplices of the RPF, Boniface Ngulinzira will no longer go and sell the country to the RPF's advantage in Arusha. The Peace Accords are only scraps of paper,*

parmi certains groupes sociaux, notamment : "*...Les Tutsi de l'intérieur, les Hutu mécontents du régime en place, les étrangers mariés aux femmes Tutsi...*" Parmi les activités reprochées à l'ennemi, le document mentionnait le "*...Détournement de l'opinion nationale du problème ethnique vers le problème socio-économique entre les riches et les pauvres*".

5.7 Ce document et l'utilisation qu'en ont faite les officiers supérieurs ont aidé, encouragé et favorisé la haine et la violence ethniques.

5.8 Dès 1993, le **Colonel Théoneste Bagosora** et Aloys Ntabakuze ont tenu des propos identifiant l'ennemi aux Tutsi et ses sympathisants aux Hutu de l'opposition.

5.9 Dans le cadre des négociations du Protocole d'intégration des Forces Armées, prévues par les Accords d'Arusha, les officiers du Nord voyaient leurs pouvoirs s'éroder. Cette réalité inacceptable pour eux, allait leur fournir l'occasion d'exacerber le discours de haine et de violence ethniques.

5.10 Le **Colonel Théoneste Bagosora** a participé aux négociations d'Arusha et a manifesté ostensiblement son opposition aux concessions faites par le représentant du Gouvernement, Boniface Ngulinzira, Ministre des Affaires Étrangères, au point de quitter la table des négociations. Le **Colonel Théoneste Bagosora** a quitté Arusha en déclarant qu'il rentrait au Rwanda " *pour préparer l'apocalypse*". Le 11 avril 1994, Boniface Ngulinzira était assassiné par les militaires. La RTLM a annoncé sa mort en ces termes: "*nous avons exterminé tous les complices du FPR, M Boniface Ngulinzira n'ira plus vendre le pays au profit du FPR à Arusha. Les Accords de paix ne sont plus que des chiffons de papier comme l'avait*

as our father, Habyarimana, had predicted".

5.11 At the time of the negotiation of the Arusha Accords, several meetings of Army officers including **Colonel Théoneste Bagosora,** Lt. Col. Anatole Nsengiyumva and Major Aloys Ntabakuze were held notably at Kanombe military camp . During the same period, Aloys Ntabakuze and **Théoneste Bagosora** urged the military to reject and show their disapproval of the Arusha Accords. In August 1993, Aloys Ntabakuze even ordered his men to abduct the Prime Minister and bring her to Kanombe Camp. The operation was cancelled while it was under way on the orders of the Chief of Staff, General Déogratias Nsabimana.

5.12 Several senior officers in the Rwandan Army, including **Théoneste Bagosora**, Gratien Kabiligi and Aloys Ntabakuze, publicly stated that the extermination of the Tutsi would be the inevitable consequence of any resumption of hostilities by the RPF or if the Arusha Accords were implemented. Furthermore, on various occasions, **Colonel Théoneste Bagosora** declared that the solution to the war was to plunge the country into an apocalypse in order to eliminate all the Tutsi and thus ensure lasting peace. These statements were often made in the presence of senior officers, including Anatole Nsengiyumva. The latter stated moreover that the implementation of the Arusha Accords would unleash war.

5.13 On 4 April 1994, three days before the beginning of the genocide, **Colonel Théoneste Bagosora** reasserted that the only solution to the political impasse was to eliminate all the Tutsi.

prédit notre papa Habyarimana".

5.11 Durant la période des négociations des Accords d'Arusha, plusieurs réunions, regroupant des officiers, parmi lesquels, le **Colonel Théoneste Bagosora,** le Lt Col. Anatole Nsengiyumva et le Major Aloys Ntabakuze ont eu lieu, notamment au camp militaire de Kanombe. Durant cette même période, Aloys Ntabakuze et **Théoneste Bagosora** ont encouragé les militaires à rejeter et à manifester leur désaccord vis-à-vis des Accords d'Arusha. En août 1993, Aloys Ntabakuze a même ordonné à ses hommes d'enlever le Premier Ministre et de l'amener au camp de Kanombe. L'opération a été annulée en cours d'exécution sur ordre du Chef de l'Etat-Major, le Général Déogratias Nsabimana.

5.12 Plusieurs officiers supérieurs de l'Armée Rwandaise, parmi lesquels, **Théoneste Bagosora,** Gratien Kabiligi, et Aloys Ntabakuze, ont publiquement déclaré que l'extermination des Tutsi serait la conséquence inévitable de toute reprise des hostilités par le FPR ou de la mise en application des Accords d'Arusha. Le **Colonel Théoneste Bagosora,** en outre, a déclaré, à différentes occasions, que la solution à la guerre était de faire sombrer le pays dans l'apocalypse pour éliminer tous les Tutsi et ainsi assurer une paix durable. Ces propos étaient souvent tenus en présence d'officiers supérieurs, parmi lesquels, Anatole Nsengiyumva. Ce dernier a, par ailleurs, déclaré que la mise en place des Accords d'Arusha déclencherait la guerre.

5.13 Trois jours avant le déclenchement du génocide, le 4 avril 1994, le **Colonel Théoneste Bagosora** a réaffirmé que la seule solution à l'impasse politique, était

5.14 Towards the end of March 1994, in the presence of a group of Belgian Army officers, the Chief of Staff of Rwandan Army, General Deogratias Nsabimana, and Colonel Gratien Kabiligi spoke of the possibility of eliminating the RPF (Rwandan Patriotic Front) and the Tutsi within a short time. Moreover, during the genocide, **Gratien Kabiligi** expressed his satisfaction with the crimes perpetrated by the *Interahamwe* militia against the civilian Tutsi population.

5.15 The characterization of the Tutsis as the enemy and of members of the opposition as their accomplices was echoed by politicians, notably by Léon Mugesera, MRND Vice-Chairman for Gisenyi *préfecture*, in a speech he made on 22 November 1992. Broadcast on the state radio and therefore reaching a much larger audience, Léon Mugesera's speech already at that time was an incitement to exterminate the Tutsi population and their "accomplices".

The Militia Groups

5.16 The creation of the youth wings satisfied two of the political parties' concerns: to mobilize young people and to sensitize them to politics. The MRND and CDR followed the example of the MDR and RPF, which had already institutionalized their youth movements. Political rivalries during the multi-party period exacerbated tensions. The *"Interahamwe"* and *"Impuzamugambi"* began to be drawn astray from the time they were used to oppose with violence the political demonstrations organized by parties of the opposition.

d'éliminer tous les Tutsi.

5.14 Vers la fin du mois de mars 1994, le Chef d'État Major de l'Armée Rwandaise, le Général Déogratias Nsabimana, et le Colonel Gratien Kabiligi ont évoqué devant des officiers de l'armée belge, la possibilité d'éliminer le FPR (Front Patriotique Rwandais) et les Tutsi dans un court laps de temps. D'ailleurs, durant le genocide, **Gratien Kabiligi** a exprimé sa satisfaction quant aux crimes perpétrés par les miliciens *Interahamwe* contre la population civile Tutsi.

5.15 La qualification des Tutsi comme étant l'ennemi et des membres de l'opposition comme étant leurs complices, a été reprise par des politiciens, notamment Léon Mugesera, Vice Président du MRND pour la préfecture de Gisenyi, dans un discours prononcé le 22 novembre 1992. Diffusé sur la Radio d'Etat et s'adressant ainsi à un public beaucoup plus large, le discours de Léon Mugesera, a incité, dès cette époque, à exterminer la population Tutsi et ses "complices".

Les milices

5.16 La création des ailes jeunesses répondait à deux préoccupations au niveau des partis politiques: mobiliser et sensibiliser les jeunes à la politique. Le MRND et la CDR ont suivi l'exemple du MDR et du FPR qui avaient déjà institutionnalisé leurs mouvements de jeunesse. Les rivalités politiques de la période du multi-partisme ont exacerbé les tensions. Les *"Interahamwe"* et les *"Impuzamugambi"* ont été entraînés dans la dérive dès lors qu'ils ont été utilisés pour s'opposer violemment aux manifestations politiques organisées par les partis de l'opposition.

5.17 In order to ensure that, when the time came, the extermination of the enemy and its "accomplices" would be carried out swiftly and effectively, it was necessary to create a militia that was structured, armed and complementary to the Armed Forces. For the militia to be represented nationally, *Interahamwe* committees were created at *prefecture* level.

5.18 As from 1993, and even before that date, anxious to radicalize the *Interahamwe* movement, the leaders of the MRND, in collaboration with officers of the FAR, decided to provide military training to those members most devoted to their extremist cause and to other idle youths. Furthermore, weapons were distributed to them.

Training of the Militia Groups

5.19 The training was supervised by military, including Protais Mpiranya, Aloys Ntabakuze, Anatole Nsengiyumva, Léonard Nkundiye, and civilian authorities. Training was conducted simultaneously in several *préfectures* around the country: Kigali, Cyangugu, Gisenyi and Butare, as well as in the Mutara sector. Training also took place in military camps, notably Gabiro, Gako, Mukamira and Bigogwe, as well as around these camps or in neighbouring forests.

5.20 In the Mutara sector, Colonel Léonard Nkundiye supervised the training of the MRND militia, the *Interahamwe*.

5.21 Moreover, in 1993, the implication of Colonel Léonard Nkundiye's men in the training given was confirmed by internal

5.17 Afin de s'assurer qu'à terme, l'extermination de l'ennemi et de ses "complices" se ferait rapidement et efficacement, il était nécessaire de constituer une milice, structurée, armée et complémentaire aux Forces Armées. Pour donner une représentation nationale à cette milice, des comités d'*Interahamwe* ont été créés au niveau préfectoral.

5.18 Dès 1993 et même avant, dans un souci de radicalisation du mouvement *Interahamwe*, les dirigeants du MRND en collaboration avec des officiers des FAR, ont décidé de faire suivre aux éléments les plus dévoués à leur cause extrémiste et à d'autres jeunes désoeuvrés, un entraînement militaire. En outre, des armes leur ont été distribuées.

L'entraînement des milices

5.19 L'entraînement était supervisé par des militaires, parmi lesquels Protais Mpiranya, Aloys Ntabakuze, Anatole Nsengiyumva, Léonard Nkundiye, et par des autorités civiles. Ces entraînements ont eu lieu simultanément dans plusieurs préfectures du pays : Kigali, Cyangugu, Gisenyi, Butare et dans le secteur du Mutara. Ces entraînements se tenaient dans des camps militaires, notamment les camps de Gabiro, Gako, Mukamira et de Bigogwe et également aux alentours de ces camps ou dans les forêts avoisinantes.

5.20 Dans le secteur du Mutara, le Colonel Léonard Nkundiye a supervisé l'entraînement des miliciens du MRND, les *Interahamwe*.

5.21 D'ailleurs, en 1993, l'implication des hommes du Colonel Léonard Nkundiye dans ces entraînements a été confirmée par des

inquiries which were ordered following a telegram sent to various units, as well as to the General Staff, by the Commander of the Rwamagana military camp. The telegram revealed the implication of soldiers from the Mutara sector in the training in question.

5.22 In Kigali *préfecture*, Protais Mpiranya and Aloys Ntabakuze supervised the training of the MRND militia, the *Interahamwe*.

5.23 In Gisenyi *préfecture*, between June 1993 and July 1994, Anatole Nsengiyumva supervised the training of the MRND militia, the *Interahamwe*, and that of the CDR militia, the *Impuzamugambi*.

5.24 On 10 January 1994, a leader of the *Interahamwe* militia informed UNAMIR that 1,700 militiamen had undergone training and that they could eliminate 1,000 Tutsis every twenty minutes.

5.25 The secret training of the militiamen became more and more notorious. They could on some occasions be seen training in public places or on their way to the training sites, while chanting slogans inciting the extermination of the enemy.

Distribution of Weapons

5.26 In order to implement the plan for the extermination of the enemy and its "accomplices", the militiamen were to receive weapons, in addition to military training. Hence, the military and civilian authorities distributed weapons to the militiamen and certain carefully selected members of the civilian population in various *préfectures* of the country.

enquêtes internes ordonnées à la suite d'un télégramme adressé à différentes unités, ainsi qu'à l'Etat-Major par le Commandant du camp de Rwamagana. Ce télégramme révélait l'implication des militaires du secteur de Mutara dans lesdits entraînements.

5.22 Dans la préfecture de Kigali, Protais Mpiranya et Aloys Ntabakuze ont supervisé l'entraînement des miliciens du MRND, les *Interahamwe*.

5.23 Dans la préfecture de Gisenyi, entre juin 1993 et juillet 1994, Anatole Nsengiyumva a supervisé l'entraînement des miliciens du MRND, les *Interahamwe* et les miliciens de la CDR, les *Impuzamugambi*.

5.24 Le 10 janvier 1994, un dirigeant des milices *Interahamwe* a informé la MINUAR que 1,700 miliciens avaient suivi un entraînement et qu'ils pouvaient éliminer 1,000 Tutsi toutes les vingt minutes.

5.25 Les entraînements secrets des miliciens sont devenus de plus en plus de notoriété publique. On a pu les voir s'entraîner, à certaines occasions, dans des endroits publics ou se diriger vers les sites d'entraînement, en chantant des slogans incitant à l'extermination de l'ennemi.

La distribution d'armes

5.26 Pour mettre en oeuvre le plan d'extermination de l'ennemi et ses "complices", les miliciens devaient recevoir, en plus d'un entraînement militaire, des armes. Dès lors, les autorités militaires et civiles ont distribué des armes aux miliciens et à certains membres soigneusement choisis de la population civile, dans différentes préfectures du pays.

5.27 In 1993, President Habyarimana declared in Ruhengeri that the *Interahamwe* had to be *equipped* so that, come the right time, "*ils descendent*".

5.28 Before and during the events referred to in this indictment, Augustin Bizimana, **Théoneste Bagosora**, Protais Mpiranya, Anatole Nsengiyumva, Aloys Ntabakuze and others distributed weapons to the militiamen and certain carefully selected members of the civilian population with the intent to exterminate the Tutsi population and eliminate its "accomplices".

5.29 In February 1993, without the knowledge of the Minister of Defence, James Gasana, **Colonel Théoneste Bagosora** arranged for weapons to be distributed to the *bourgmestres* of Gisenyi. The weapons were taken from the Army's logistics base in Kigali and were then distributed by the *bourgmestres* to certain carefully selected civilians in Gisenyi.

5.30 From July 1993 to July 1994, the Minister of Defence, Augustin Bizimana, who replaced James Gasana, encouraged and facilitated the acquiring of weapons for MRND militants by openly asserting that the Ministry of Defence was a Ministry of the MRND. He personally received several influential members of the MRND, the CDR and *Interahamwe* in his office.

5.31 From June 1993 to July 1994, in Gisenyi, Military Commander of the *préfecture*, Anatole Nsengiyumva and his subordinates participated in the distribution of weapons to the militiamen.

5.32 Towards the end of 1993, in an open letter broadcast on national radio, the Bishop

5.27 En 1993, le Président Habyarimana déclarait à Ruhengeri qu'on devait *équiper* les *Interahamwe* pour qu'au moment opportun, "*ils descendent*".

5.28 Avant et durant les événements visés dans le présent acte d'accusation, Augustin Bizimana, **Théoneste Bagosora,** Protais Mpiranya, Anatole Nsengiyumva, Aloys Ntabakuze et d'autres ont distribué des armes aux miliciens et à certains membres soigneusement choisis de la population civile dans l'intention d'exterminer la population Tutsi et d'éliminer ses "complices".

5.29 En février 1993, à l'insu du ministre de la Défense, James Gasana, le **Colonel Théoneste Bagosora** a fait distribuer des armes aux bourgmestres de Gisenyi. Ces armes avaient été retirées de la base logistique de l'armée à Kigali. Par la suite les bourgmestres les ont distribuées à certains membres soigneusement choisis de la population civile de Gisenyi.

5.30 De juillet 1993 à juillet 1994, le ministre de la Défense, Augustin Bizimana, qui a remplaçé James Gasana, a encouragé et favorisé l'obtention d'armes pour les militants du MRND, en affirmant ouvertement que le ministère de la Défense Nationale était un ministère du MRND. Il recevait personnellement plusieurs membres influents du MRND, de la CDR et des *Interahamwe* dans son bureau.

5.31 De juin 1993 à juillet 1994, à Gisenyi, le Commandant militaire de la préfecture, Anatole Nsengiyumva et certains de ses subordonnés ont participé à la distribution d'armes aux miliciens.

5.32 Vers la fin 1993, dans une lettre ouverte diffusée sur les ondes de la Radio

of the diocese of Nyundo, in Gisenyi *préfecture*, denounced the distribution of weapons in that prefecture.

5.33 Due to the proliferation of weapons in Kigali-*ville préfecture*, UNAMIR put in place a disarmament program, titled Kigali Weapon Security Area (KWSA). The program came into effect in early 1994. Concurrently, in cooperation with the Chief of Staff of the Gendarmerie, Augustin Ndindiliyimana, UNAMIR organized search operations in Kigali. The effectiveness of the operations was compromised by General Augustin Ndindiliyimana, who gave advance information on the locations targeted in the searches to Mathieu Ngirumpatse, MRND Chairman. The latter passed the information on to the *Interahamwe*, who immediately moved the weapons.

5.34 On 7 January 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga and other influential MRND members participated in a meeting at the MRND headquarters in opposition to the disarmament program. It was decided at this meeting to use all possible means to resist the implementation of the disarmament, and also to hide weapons at various locations.

5.35 On 10 January 1994, UNAMIR was informed by an *Interahamwe* leader of the existence of weapons caches in Kigali and a plan to eliminate the Tutsi population. It instructed one of its officers to uncover the exact locations of the weapons. That officer identified several caches throughout Kigali, in places controlled by members of the MRND, notably at the party headquarters in Kimihurura, in a house belonging to General Augustin Ndindiliyimana. During the search of that house, the UNAMIR officer

Nationale, l'évêque du diocèse de Nyundo, préfecture de Gisenyi, a denoncé la distribution d'armes dans cette préfecture.

5.33 En raison de la prolifération des armes dans la préfecture de Kigali-ville, la MINUAR a mis en place un programme de désarmement, dénommé Kigali Weapon Security Area (KWSA). Ce programme est entré en vigueur au début de l'année 1994. Parallèlement, et en collaboration avec le Chef d'Etat-Major de la gendarmerie, Augustin Ndindiliyimana, la MINUAR a organisé des opérations de fouille à Kigali. L'efficacité de ces opérations a été compromise par le Général Augustin Ndindiliyimana, qui a informé à l'avance Mathieu Ngirumpatse, Président du MRND, du lieu des perquisitions. Ce dernier en avisait les *Interahamwe* qui ont déplaçé aussitôt les armes.

5.34 Le 7 janvier 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga et d'autres membres influents du MRND ont participé à une réunion au quartier général du MRND, pour s'opposer au programme de désarmement. Il y a été décidé, d'une part, de résister par tous les moyens à l'exécution du programme de désarmement, et d'autre part de dissimuler des armes à différents endroits.

5.35 Le 10 janvier 1994, la MINUAR a été informée, par un dirigeant des *Interahamwe*, de l'existence de caches d'armes à Kigali, et d'un plan pour éliminer la population Tutsi. Elle a mandaté un de ses officiers pour s'assurer de l'emplacement exact des armes. Cet officier a localisé plusieurs caches d'armes à travers la ville de Kigali, dans des lieux contrôlés par des membres du MRND, notamment au quartier général du parti, situé à Kimihurura, dans une maison appartenant au Général

discovered several firearms and cases of ammunition. The informer asserted that, as regards the military aspects of his duties, he was under the orders of MRND Chairman, Mathieu Ngirumpatse, and the Army Chief of Staff, Déogratias Nsabimana. Moreover, he informed UNAMIR that the weapons that had been distributed came from the Army.

Augustin Ndindiliyimana. Lors de la fouille, l'officier de la MINUAR a découvert, à cet endroit, plusieurs armes à feu et des caisses de munitions. L'informateur a affirmé travailler sous les ordres du Président du MRND, Mathieu Ngirumpatse, et du Chef d'Etat Major de l'Armée, Déogratias Nsabimana pour les aspects militaires de ses tâches. Il a, en outre, informé la MINUAR que les armes distribuées provenaient de l'Armée.

Establishment of Lists

5.36 Having identified the Tutsi as the enemy and the members of the opposition as their accomplices, members of the Army General Staff, civilian authorities and militiamen established lists of people to be executed.

5.37 In 1992, at a meeting, **Colonel Théoneste Bagosora** instructed the two General Staffs to establish lists of people identified as the enemy and its accomplices. The Intelligence Bureau (G-2) of the Rwandan Army established the lists under the supervision of Anatole Nsengiyumva. The lists were regularly updated under the authority of Anatole Nsengiyumva and afterward of Aloys Ntiwiragabo.

5.38 In 1993, following a traffic accident, a list of the type described above was found in the vehicle of the Chief of Staff, Déogratias Nsabimana. During the events, some of the people on that list were killed.

5.39 On 10 January 1994, an *Interahamwe* leader informed UNAMIR that he had received orders to establish lists of Tutsi to be eliminated.

Confection de listes

5.36 Après avoir identifié le Tutsi comme étant l'ennemi principal et les membres de l'opposition comme ses complices, des membres de l'Etat-Major de l'Armée, des autorités civiles et des miliciens ont dressé des listes de personnes à exécuter.

5.37 En 1992, lors d'une réunion, le **Colonel Théoneste Bagosora** a demandé aux deux Etats-Majors d'établir des listes de personnes identifiées comme étant l'ennemi et ses complices. Les agents du service de renseignements du G-2 de l'Armée Rwandaise ont procédé à la confection de ces listes, sous la supervision d'Anatole Nsengiyumva. Ces listes ont été régulièrement mises à jour sous l'autorité d'Anatole Nsengiyumva et par la suite d'Aloys Ntiwiragabo.

5.38 En 1993, à la suite d'un accident de circulation, une telle liste a été découverte dans le véhicule du Chef d'Etat-Major, Déogratias Nsabimana. Durant les événements, des personnes figurant sur cette liste ont été assassinées.

5.39 Le 10 janvier 1994, un dirigeant des *Interahamwe* a informé la MINUAR qu'il avait reçu l'ordre de préparer des listes de Tutsi à éliminer.

5.40 From 7 April to late July, military and *Interahamwe* massacred members of the Tutsi population and moderate Hutu by means of pre-established lists, among other things.

5.40 Du 7 avril à la fin juillet, des militaires et des *Interahamwe* ont perpétré des massacres de membres de la population Tutsi et des Hutu modérés, entre autres à l'aide de listes pré-établies.

Precursors Revealing A Deliberate Course of Action

5.41 The political and ethnic violence of the early 1990s was characterized by the use of the elements of the strategy which achieved its finality in the genocide of April 1994. The massacres of the Tutsi minority at that time, including those in Kibilira (1990), in Bugesera (1992), and those of Bagogwe (1991), were instigated, facilitated and organized by civilian and military authorities. On each occasion, a campaign of incitement to ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.

Antécédents révélant une conduite délibérée

5.41 La violence ethnique et politique du début des années 90 a été caractérisée par l'utilisation des éléments de la stratégie qui allait connaître son aboutissement avec le génocide de 1994. Les massacres de la minorité Tutsi perpétrés à cette époque, tels que ceux à Kibilira (1990), à Bugesera (1992), et ceux à l'encontre des Bagogwe (1991) ont été suscités, facilités et organisés par des autorités civiles et militaires. À chaque occasion une campagne d'incitation à la violence ethnique menée par des autorités locales a été suivie de massacres de la minorité Tutsi, perpétrés par des groupes de miliciens et de civils, armés et aidés par ces mêmes autorités et certains militaires. À chaque occasion, ces crimes sont demeurés impunis et les autorités impliquées n'ont généralement pas été inquiétées.

5.42 Cooperation between the *Interahamwe* and certain military personnel, particularly those in the Presidential Guard and the Para-Commando Battalion, was manifested in early 1994 in opposition to the implementation of the institutions provided for under the Arusha Accords. On 5 January 1994, at the time of the swearing-in ceremony of the Broad-Based Transitional Government, the *Interahamwe* organized a demonstration in cooperation with members of the Presidential Guard. They prevented political opponents from entering the *Conseil national de développement (CND)*.

5.42 La collaboration entre des *Interahamwe* et certains militaires, particulièrement de la Garde Présidentielle et du Bataillon Para-Commando, s'est de nouveau manifestée au début de 1994 pour s'opposer à la mise en place des institutions prévues par les Accords d'Arusha. Le 5 janvier 1994, lors de la cérémonie prévue pour la prestation de serment du Gouvernement de Transition à Base Elargie, les *Interahamwe* ont organisé une manifestation en collaboration avec des éléments de la Garde Présidentielle. Ils ont interdit l'accès au CND (Conseil national de

The swearing-in of the members of the Government did not take place. In the end, only the President, Juvénal Habyarimana, was sworn in.

5.43 On 8 January 1994, *Interahamwe*, in complicity with elements of the Presidential Guard and the Para-Commando Battalion dressed in civilian clothes, again organized a demonstration near the CND. On that occasion, the *Interahamwe* had hidden weapons very nearby and were equipped with radios provided by the Presidential Guard. That demonstration was intended to provoke and cause injury to the Belgian UNAMIR soldiers.

Modus Operandi

5.44 Finally, as of 7 April 1994, throughout Rwanda, Tutsis and certain moderate Hutus, began to flee their homes to escape the violence to which they were victims on their hills and to seek refuge in places where they had traditionally felt safe, notably churches, hospitals and other public buildings such as *commune* and *préfecture* offices. On several occasions, gathering places were indicated to them by the local authorities, who had promised to protect them. For the initial days, the refugees were protected by a few gendarmes and communal police in these various locations, but subsequently, the refugees were systematically attacked and massacred by militiamen, often assisted by the same authorities who had promised to protect them. During the numerous attacks on the refugees throughout the country, personnel of the FAR, military or gendarmes, who were supposed to protect them, prevented the Tutsi from escaping and facilitated their massacre by the *Interahamwe*. On several

développement) aux opposants politiques. La prestation de serment des membres du Gouvernement n'a pas eu lieu. Finalement seul le Président, Juvénal Habyarimana, a prêté serment.

5.43 De nouveau, le 8 janvier 1994, les *Interahamwe* en complicité avec des éléments de la Garde Présidentielle et du Bataillon Para-Commando habillés en civils, ont organisé une manifestation près du CND. À cette occasion, les *Interahamwe* avaient dissimulé des armes à proximité et étaient équipés de radios fournies par la Garde Présidentielle. Cette manifestation visait à provoquer et blesser les soldats belges de la MINUAR.

Modus Operandi

5.44 Finalement, dès le 7 avril 1994, sur tout le territoire du Rwanda, des Tutsi et certains Hutu modérés, pour échapper à la violence dont ils étaient victimes sur leurs collines, ont commencé à fuir leurs maisons pour chercher refuge dans des endroits où traditionnellement ils s'étaient sentis en sécurité, notamment des églises, des hôpitaux et d'autres édifices publics comme les bureaux communaux et préfectoraux. À plusieurs occasions, des endroits de rassemblement leur avaient été indiqués par des autorités locales qui avaient promis de les protéger. Durant les premiers jours, les réfugiés ont été protégés par quelques gendarmes et policiers communaux dans ces différents endroits, mais par la suite, systématiquement, les réfugiés ont été attaqués et massacrés par des miliciens, souvent aidés par ces mêmes autorités qui avaient promis de les protéger. Au cours des nombreuses attaques menées contre les réfugiés partout à travers le pays, des membres des FAR, militaires ou gendarmes,

occasions, these FAR personnel participated directly in the massacres.

qui devaient les protéger, ont empêché les Tutsi de fuir et facilité leur massacre par les *Interahamwe*. A plusieurs occasions, ces membres des FAR ont participé directement aux massacres.

5.45 Furthermore,soldiers, militiamen and gendarmes raped, sexually assaulted and committed other crimes of a sexual nature against Tutsi women and girls, sometimes after having first kidnapped them.

5.45 De plus, des militaires, des miliciens et des gendarmes ont commis des viols, des agressions sexuelles et d'autres crimes de nature sexuelle à l'encontre de certaines femmes et jeunes filles Tutsi et ce parfois après les avoir enlevées.

316. CONCISE STATEMENT OF THE FACTS: OTHER VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

Power Crisis

6.1 On 6 April 1994 at about 8:30 p.m., the plane carrying, among other passengers, the President of the Republic, Juvénal Habyarimana, was shot down on its approach to Kigali Airport, Rwanda.

6.2 Following the crash of the President's plane, the *Forces Armées Rwandaises* were left without leadership. The President was dead, along with the Chief of Staff of the Rwandan Army, Colonel Déogratias Nsabimana. The Minister of Defence, Augustin Bizimana, and the Chief of Intelligence Services (G2) in the Rwandan Army, Colonel Aloys Ntiwiragabo, were on mission in the Republic of Cameroon. They returned to the country in the days that followed. Gratien Kabiligi, the officer in charge of operations (G3) in the Rwandan Army General Staff, was also on mission in Egypt and immediately returned to the Headquarters when he was briefed about the situation. In the absence of the Minister of Defence, **Colonel Théoneste Bagosora**, *directeur de cabinet*, asserted himself as the man of the moment capable of managing the crisis.

Military Takeover Attempt

6.3 During the night of 6 to 7 April, a first meeting mainly of officers of the two General Staffs was held at the Rwandan Army Headquarters in Kigali military camp. The meeting was chaired by **Colonel**

6.EXPOSÉ SUCCINCT DES FAITS: AUTRES VIOLATIONS DU DROIT INTERNATIONAL HUMANITAIRE

Crise du pouvoir

6.1 Au soir du 6 avril 1994 vers 20:30 heures, l'avion transportant entre autres passagers le Président de la République du Rwanda, Juvénal Habyarimana, a été abattu peu avant son atterrissage à l'aéroport de Kigali, Rwanda.

6.2 Après la chute de l'avion présidentiel, les Forces Armées Rwandaises se sont retrouvées sans direction. Le Président était mort ainsi que le chef d'Etat-Major (AR), le Colonel Déogratias Nsabimana. Le Ministre de la Défense, Augustin Bizimana et le responsable des renseignements (G2) de l'Etat-Major (AR), le Colonel Aloys Ntiwiragabo, étaient en mission en République du Cameroun. Ces derniers sont revenus au pays dans les jours qui ont suivi. Gratien Kabiligi, responsable des opérations (G3) de l'Etat-Major (AR), était également en mission en Egypte et a rejoint l'Etat-Major aussitôt informé de la situation. En l'absence du Ministre de la Défense, le **Colonel Théoneste Bagosora**, directeur de cabinet, s'est imposé comme l'homme de la situation à même de gérer la crise.

Tentative de prise de pouvoir par les militaires

6.3 Dans la nuit du 6 au 7 avril, une première réunion rassemblant principalement des officiers des deux État-Majors s'est tenue à l'État-Major de

Théoneste Bagosora. During this meeting **Colonel Théoneste Bagosora** and other officers, including Major Kayumba, expressed their desire to take power. Despite the advice of certain people to involve Prime Minister Agathe Uwilingiyimana in managing the crisis, **Colonel Théoneste Bagosora** refused to consuilt her in any way, ceasing to acknowledge her authority.

6.4 The same night, **Colonel Théoneste Bagosora**, accompanied by General Dallaire and Lieutenant-Colonel Rwabalinda, went to see Dr. J. R. Booh Booh, the United Nations Secretary General's Special Representative. **Colonel Théoneste Bagosora** introduced himself to Dr. Booh Booh as the interlocutor of reference. Their discussions bore mainly on how to fill the constitutional void caused by the President's death. **Colonel Théoneste Bagosora** was asked to honour the Arusha Accords and enter into contact with the Prime Minister. For the second time, **Colonel Théoneste Bagosora** once again strenuously refused that she be consulted.

6.5 In the early hours of the morning of 7 April 1994, the duty officer at the Rwandan Army headquarters, Major Kayumba, was informed that gunfire had been heard near the Prime Minister's residence. He told his interlocutor that he was aware of the situation, and said that: "*It's us trying to prevent the Prime Minister from going to the radio station.*"

6.6 In his capacity as *directeur de cabinet* of the Ministry of Defence, **Colonel Théoneste Bagosora** signed the first official

l'Armée Rwandaise au camp de Kigali. Cette réunion était présidée par le **Colonel Théoneste Bagosora**. Au cours de cette rencontre, le **Colonel Théoneste Bagosora** et d'autres officiers, parmi lesquels le Major Kayumba, ont manifesté leur volonté de prendre le pouvoir. Malgré les recommandations de certaines personnes d'associer le Premier Ministre, Agathe Uwilingiyimana, à la gestion de cette crise, le **Colonel Théoneste Bagosora** s'est opposé à toute consultation de cette dernière, ne lui reconnaissant plus aucun pouvoir.

6.4 Dans la même nuit, le **Colonel Théoneste Bagosora,** accompagné du Général Dallaire et du Lieutenant-Colonel Rwabalinda, s'est rendu chez le Dr J.R. Booh Booh, Représentant Spécial du Secrétaire Général des Nations Unies. Le **Colonel Théoneste Bagosora** s'est présenté au Représentant Spécial comme étant l'interlocuteur de référence. Leurs discussions ont porté surtout sur la manière de combler le vide constitutionnel laissé par la mort du Président. Le **Colonel Théoneste Bagosora** a été invité à respecter les Accords d'Arusha et à communiquer avec le Premier Ministre. Pour la seconde fois,le **Colonel Théoneste Bagosora** s'est à nouveau opposé vigoureusement à ce qu'elle soit consultée.

6.5 Le 7 avril 1994, aux premières heures de la matinée, l'officier de permanence à l'Etat-Major de l'Armée Rwandaise, le Major Kayumba, a été informé que des coups de feu ont été entendus près de la résidence du Premier Ministre. Il a déclaré à son interlocuteur qu'il était au courant de la situation et que "*c'est nous qui voulons empêcher le PM d'aller à la radio.*"

communiqué announcing the death of the President and the other passengers in the plane. The information was broadcast on the morning of 7 April.

6.7 **Colonel Théoneste Bagosora,** presenting himself as the representative of the civil and political authorities, met the Ambassador of the United States of America at his residence on 7 April, at around 9:00 a.m. Present at the meeting were General Augustin Ndindiliyimana and Lieutenant-Colonel Rwabalinda. When the Ambassador asked him the reason why the Prime Minister was being prevented from making a radio address, **Colonel Théoneste Bagosora** was silent. However, to explain the shooting heard in the city,**Colonel Théoneste Bagosora** told the Ambassador that the Presidential Guard soldiers were upset about the President's death and were shooting in the air.

6.8 In the morning of 7 April, another meeting of the FAR officers was held at the *Ecole Supérieure Militaire* (ESM); those participating included Major Aloys Ntabakuze, Major François-Xavier Nzuwonemeye and Lt. Col. Léonard Nkundiye. Also present were the commanding officers of the sectors of operation in Rwanda, the commanders of the military camps and officers of the General Staffs (AR and GN). The Commander of the Presidential Guard, Major Mpiranya, did not attend that meeting. Meanwhile, his men were already perpetrating massacres. The meeting was chaired by **Colonel Théoneste Bagosora**. He reiterated his position, maintaining that the military should take power. For the third time, **Colonel Théoneste Bagosora** refused that the Prime Minister be consulted, adding that he did not know if she was still alive. The meeting

6.6 Le **Colonel Théoneste Bagosora** a signé, en sa qualité de directeur de cabinet du Ministère de la Défense, le premier communiqué officiel annonçant la mort du Président et des autres passagers de l'avion. Le message a été radiodiffusé le 7 avril au matin.

6.7 Le **Colonel Théoneste Bagosora,** qui s'est présenté comme le représentant des autorités civiles et politiques, a rencontré le 7 avril vers 09.00 heures l'Ambassadeur des Etats-Unis d'Amérique à la résidence de ce dernier. Étaient présents lors de cette rencontre, le Général Augustin Ndindiliyimana et le Lieutenant-Colonel Rwabalinda. Interrogé par l'Ambassadeur sur les raisons pour lesquelles on interdisait au Premier Ministre de prononcer un discours à la radio, le **Colonel Théoneste Bagosora** a gardé le silence. Par contre, le **Colonel Théoneste Bagosora** a expliqué à l'Ambassadeur que les coups de feu entendus dans la ville étaient le fait de membres de la Garde Présidentielle qui, affectés par la mort du Président de la République, tiraient en l'air.

6.8 Dans la matinée du 7 avril, une nouvelle réunion des officiers des FAR s'est tenue à l'École Supérieure Militaire (ESM). Ont participé à la rencontre: le Major Aloys Ntabakuze, le Major François-Xavier Nzuwonemeye et Lt-Col Léonard Nkundiye. Ont été également présents: des officiers commandants des secteurs opérationnels du Rwanda, des commandants des camps militaires et des officiers d'État-Major (AR et GN). Le Commandant de la Garde Présidentielle, le Major Mpiranya, n'a pas assisté à cette réunion. Pendant ce temps ses hommes se livraient déjà à des massacres. Le **Colonel Théoneste Bagosora** a dirigé cette réunion. Il a réitéré sa position et maintenu que les militaires devaient prendre le pouvoir. Le **Colonel Théoneste**

ratified the decision taken in the night to establish a "crisis committee" composed of senior military officers, including **Théoneste Bagosora,** General Augustin Ndindiliyimana and Tharcisse Renzaho.

6.9 While this meeting was going on, Prime Minister Agathe Uwilingiyimana was tracked down, arrested, sexually assaulted and killed by Rwandan Army personnel, more specifically, members of the Presidential Guard, the Para-Commando Battalion and the Reconnaissance Battalion. Concurrently, members of the same units arrested, confined and killed important opposition leaders. Hence, the following were killed: the President of the Constitutional Court, the Chairman of the PSD party and Minister of Agriculture, the Vice-Chairman of the PL party and Minister of Labor and Community Affairs, as well as a member of the Political Bureau of the MDR, the Minister of Information. That same morning, the ten Belgian para-commandos from UNAMIR who were dispached to the Prime Minister residence to escort her to the radio were murdered at Kigali military camp.

6.10 The elimination of political opponents made it possible to set aside the establishment of the Broad-Based Transition Government (BBTG), stipulated in the Arusha Accords, in favour of an Interim Government. The murder of the Belgian soldiers prompted the withdrawal of most of UNAMIR's contingents. Those two events removed the two major obstacles to the pursuit of the massacres.

Bagosora s'est opposé, pour une troisième fois, à toute consultation du Premier Ministre, ajoutant qu'il ne savait pas si celle ci était toujours en vie. La réunion a entériné la décision prise dans la nuit de créer un "comité de crise" regroupant des officiers supérieurs militaires, parmi lesquels **Théoneste Bagosora,** le Général Augustin Ndindiliyimana et Tharcisse Renzaho.

6.9 Pendant que se déroulait la réunion, le Premier Ministre, Madame Agathe Uwilingiyimana était traquée, arrêtée, agressée sexuellement et tuée par des membres de l'Armée Rwandaise, plus particulièrement ceux de la Garde Présidentielle, du bataillon Para-Commando et du bataillon de Reconnaissance. Parallèlement à cet assassinat, des membres de ces mêmes unités ont arrêté, séquestré et tué des leaders importants de l'opposition. C'est ainsi qu'ont été tués: le Président de la Cour Constitutionnelle, le Président du PSD et Ministre de l'Agriculture, le Vice-Président du PL et Ministre du Travail et des Affaires Sociales ainsi qu'un membre du Bureau Politique du MDR, Ministre de l'Information. Dans la même matinée, les 10 Para-Commandos belges de la MINUAR qui avaient été envoyés à la résidence du Premier Ministre pour l'escorter à la radio étaient assassinés au camp militaire de Kigali.

6.10 L'élimination des opposants politiques a permis d'écarter la mise en place du Gouvernement de Transition à Base Elargie (G.T.B.E.), prévue aux Accords d'Arusha, au profit d'un Gouvernement Intérimaire. L'assassinat des militaires belges a provoqué le retrait de la majeure partie des contingents de la MINUAR. Ces deux événements ont écarté les deux obstacles majeurs à la poursuite des

Formation of the Interim Government

6.11 Making up for the failure of the attempt at a military takeover by certain military personnel, **Colonel Théoneste Bagosora** and the leaders of the MRND put in place an Interim Government which would aid and abet the continuation of the massacres.

6.12 Already, in the night of 6 to 7 April, in Kigali, the Presidential Guard (PG) moved the MRND ministers and prominent members of the deceased President Habyarimana's circle. Some were taken to military camps. They were subsequently moved to the *Hôtel Diplomate,* where they were guarded by members of the Reconnaissance Battalion.

6.13 On 7 April, at about 7:00 a.m., **Colonel Théoneste Bagosora** called a meeting at the Ministry of Defence of the members of the MRND executive committee, including Mathieu Ngirumpatse. The purpose of the meeting was to appoint a new President of the Republic.

6.14 On 8 April, **Colonel Théoneste Bagosora** summoned political party representatives to a meeting to form a new Government. To that effect, he arranged their transport to the Ministry of Defence. The members of the Government were appointed at the meeting. **Colonel Théoneste Bagosora** introduced the individuals chosen to constitute the Interim Government to the military crisis committee. They were almost all members of the *MRND* and of the "Power" wings of the other political parties. No one of Tutsi descent was included either in the talks or in the new Government.

massacres.

Formation du Gouvernement Intérimaire

6.11 Faisant face à l'échec de la tentative de prise du pouvoir par certains militaires, le **Colonel Théoneste Bagosora** et les dirigeants du MRND ont mis en place un Gouvernement Intérimaire qui allait aider et encourager la continuation des massacres.

6.12 Dès la nuit du 6 au 7 avril, à Kigali, la Garde Présidentielle (GP) a déplacé les Ministres du MRND et des personnalités de l'entourage du défunt Président Habyarimana. Certains d'entre eux ont été conduits dans des camps militaires. Ils ont été transférés, par la suite, à l'hôtel Diplomate où leur sécurité a été assurée par des membres du bataillon de Reconnaissance.

6.13 Le 7 avril aux environs de 07.00 heures, le **Colonel Théoneste Bagosora** a convoqué au Ministère de la Défense, une réunion des membres du comité exécutif du parti MRND, parmi lesquels, Mathieu Ngirumpatse. L'objet de la réunion était de désigner le nouveau Président de la République.

6.14 Dans la journée du 8 avril, le **Colonel Théoneste Bagosora** a convoqué des représentants des partis politiques à une réunion afin de former un nouveau gouvernement. Il a, à cet effet, organisé leur déplacement au Ministère de la Défense. Les membres du Gouvernement ont été désignés lors de la réunion. Le **Colonel Théoneste Bagosora** a présenté au comité militaire de crise, le même jour, les personnes choisies pour composer le Gouvernement Intérimaire. Ces personnes étaient presque toutes issues du *MRND* et

6.15 Jean Kambanda was appointed Prime Minister of the Interim Government of Rwanda formed on 8 April 1994. The Government was officially sworn in on 9 April 1994.

6.16 As soon as the Interim Government was formed, numerous Cabinet members supported the plan of extermination in place and took the necessary steps to execute it. They incited the people to eliminate "the enemy and its accomplices", distributed weapons to them. They dismissed local government authorities who were opposed to the massacres, replacing them with others who were devoted to the cause, and adopted directives intended to facilitate the massacre of the civilian Tutsi population.

Scaling-Down of UNAMIR's Personnel

6.17 UNAMIR was established in order to facilitate the peaceful establishment of the institutions foreseen under the Arusha Accords. This United Nations military force was perceived as an obstacle by certain members of the extremist political circles. Certain eminent figures in this circle thus adopted a strategy intended to provoke the Belgian military contingent, UNAMIR's most effective and best-equipped contingent. Their ultimate goal was to force them to withdraw.

6.18 Hence, a propaganda campaign against the Belgians was run, notably with the aid of the media, such as *Radio Télévision Libre des Mille Collines (RTLM)* and the newspaper *Kangura*.

des ailes dites "power" des autres partis politiques. Aucune personnalité d'origine Tutsi n'a été associée aux discussions ou n'a fait partie du nouveau gouvernement.

6.15 Jean Kambanda a été désigné Premier Ministre du Gouvernement Intérimaire de la République Rwandaise constitué le 8 avril 1994. Le Gouvernement a officiellement prêté serment le 9 avril 1994.

6.16 Dès la formation du Gouvernement Intérimaire, plusieurs membres du Cabinet ont adhéré au plan d'extermination mis en place et pris les moyens nécessaires pour l'exécuter. Ils ont incité la population à éliminer "l'ennemi et ses complices", lui ont distribué des armes. Ils ont révoqué des autorités administratives locales opposées aux massacres pour les remplacer par d'autres acquises à la cause et ont adopté des directives visant à faciliter les massacres de la population civile Tutsi.

Réduction des effectifs de la MINUAR

6.17 La MINUAR avait été instituée dans le but de faciliter la mise en place pacifique des institutions prévues aux Accords d'Arusha. Cette force militaire des Nations Unies était perçue comme un obstacle par certains membres de la classe politique extrémiste. Aussi des personnalités de ce groupe ont adopté une stratégie visant à provoquer les militaires belges qui constituait le contingent le plus efficace et le mieux équipé de la MINUAR. L'objectif à terme était de forcer leur retrait.

6.18 Dans cet esprit, une campagne de propagande anti-belge a été menée, notamment par le truchement des moyens

6.19 On 7 January 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga and other influential MRND members participated in a meeting at the MRND headquarters. On that occasion, they decided to provoke the Belgians by various means, notably during the demonstration which was to take place on 8 January 1994.

6.20 Indeed, on 8 January 1994, elements of the Para-Commando Battalion and of the Presidential Guard in civilian clothes participated in the said demonstration with a number of *Interahamwe*. They had hidden weapons in the vicinity of the demonstration with the intent to kill some Belgian UNAMIR soldiers. Finally, no Belgian UNAMIR partol was sent to the scene.

6.21 On 26 January 1994, Joseph Nzirorera, Edouard Karemera, Jean Habyarimana and the Chairman of the *Interahamwe*, Robert Kajuga, participated in a meeting at the MRND headquarters. They worked out a strategy to set the *Interahamwe* against the Belgian troops.

6.22 In the night of 6 to 7 April 1994, a number of Belgian military personnel were ordered to go to the Prime Minister's residence and to escort her to the national radio station, where she was to make an address. When they arrived at the Prime Minister's residence at around 5:00 a.m., they were attacked by FAR personnel, including elements from the Presidential Guard, the Para-Commando Battalion and the Reconnaissance Battalion. Later, the ten Belgian paracommandos, along with the five Ghanaian soldiers who were guarding the Prime Minister, were disarmed and arrested. Despite the terms under which their surrender was negotiated and the promise to take them to a UNAMIR base, the Belgian

médiatiques tels que la Radio Télévision Libre des Mille Collines (RTLM) et le journal *Kangura*.

6.19 Le 7 janvier 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga et d'autres membres influents du MRND ont participé à une réunion au quartier général du MRND. À cette occasion, ils ont décidé de provoquer les Belges, par différents moyens, notamment lors de la manifestation du 8 janvier 1994.

6.20 En effet, le 8 janvier 1994, des éléments du Bataillon Para-Commando et de la Garde Présidentielle en tenue civile ont participé à ladite manifestation avec des *Interahamwe*. Ils avaient caché des armes aux alentours des lieux de la manifestation dans le but de tuer des militaires belges de la MINUAR. Finalement, aucune patrouille belge de la MINUAR ne s'est présenté sur les lieux.

6.21 Le 26 janvier 1994, Joseph Nzirorera, Edouard Karemera, Jean Habyarimana et le Président des *Interahamwe*, Robert Kajuga, ont participé à une réunion au quartier général du MRND. Ils ont élaboré une stratégie pour monter les *Interahamwe* contre les troupes belges.

6.22 Dans la nuit du 6 au 7 avril 1994, des soldats belges ont reçu l'ordre d'aller au domicile du Premier Ministre pour l'escorter jusqu'à la Radio Nationale où elle devait prononcer un discours. Arrivés à la résidence du Premier Ministre, vers 5. 00 heures, ils ont été attaqués par des militaires des FAR, parmi lesquels des éléments de la Garde Présidentielle, du Bataillon Para-Commando et du Bataillon de Reconnaissance. Par la suite les dix para commandos belges ont été désarmés et arrêtés, en compagnie des cinq soldats

and Ghanaian soldiers were taken to Kigali military camp by Major Bernard Ntuyahaga.

6.23 As soon as they arrived at Camp Kigali at around 9:00 a.m., the UNAMIR soldiers were attacked and beaten by Rwandan soldiers in front of Rwandan Army officers. Four of the Belgian soldiers were killed instantly. Meanwhile, the Ghanaian soldiers were set free. The six remaining Belgian soldiers withstood several attacks over some hours before finally being killed.

6.24 **Colonel Théoneste Bagosora** and Augustin Ndindiliyimana were about 100 metres away, participating in a meeting at the staff college *(École Supérieure Militaire)*. They were informed by the Camp Commander, Lt. Nubaha, that the Belgian UNAMIR soldiers were under risk of death at Kigali military camp. Other officers, including François-Xaxier Nzuwonemeye, joined the meeting after leaving Kigali military camp while the assaults against the Belgian soldiers were still being perpetrated and four of them were already dead.

6.25 Informed of the danger faced by the Belgian soldiers at Kigali military camp, **Théoneste Bagosora** and Augustin Ndindiliyimana did not take any decision and carried on with the meeting until around 12:00 noon.

6.26 Due to the anti-Belgian propaganda and the murder of the ten Belgian para-commandos, Belgium informed the Security Council on 13 April 1994 that it was withdrawing its contingent from Rwanda. A week later, the Security Council ordered a drastic reduction of UNAMIR's civilian and military personnel.

ghanéens qui assuraient la protection du Premier Ministre. Malgré leur reddition négociée et la promesse d'être conduits à une base de la MINUAR, les militaires belges et ghanéens ont été amenés au camp de Kigali par le Major Bernard Ntuyahaga.

6.23 Dès leur arrivée au camp de Kigali, aux environs de 9.00 heures, les soldats de la MINUAR ont été attaqués et battus par des militaires rwandais, et ce devant des officiers de l'Armée Rwandaise. Quatre militaires belges ont été tués sur le champ. Pendant ce temps, les soldats ghanéens ont été libérés. Les six autres militaires belges ont résisté à plusieurs attaques pendant quelques heures avant d'être achevés.

6.24 À une centaine de mètres de ces lieux, **Colonel Théoneste Bagosora** et Augustin Ndindiliyimana participaient à une réunion à l'Ecole Supérieure Militaire. Ils ont été informés, par le Commandant du camp, le Lt Nubaha, que des militaires belges de la MINUAR étaient en danger de mort au camp militaire de Kigali. Certains officiers, parmi lesquels, François-Xavier Nzuwonemeye, ont rejoint la réunion après avoir quitté le camp de Kigali, alors que les attaques contre les soldats belges se poursuivaient et que quatre d'entre eux avaient déjà été tués.

6.25 Informés du danger que les soldats belges encouraient, **Théoneste Bagosora** et Augustin Ndindiliyimana n'ont pris aucune décision et ont poursuivi la réunion jusqu'aux alentours de 12.00 heures.

6.26 En raison de la propagande anti-Belge et de l'assassinat des 10 para-commando belges, la Belgique a informé le Conseil de Sécurité, le 13 avril 1994, qu'elle retirait son contingent du Rwanda. Une

semaine après, le Conseil de Sécurité a ordonné une réduction drastique du personnel civil et militaire de la MINUAR.

Perpetration of the Massacres

6.27 As from 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for a long time by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders and directives of some of these authorities, including **Colonel Théoneste Bagosora**.

6.28 As of the night of 6 to 7 April, in the capital, elements of the Para-Commando Battalion and Presidential Guard set up roadblocks, reinforced with armored vehicles on the major roads, controlling people's movements. Concurrently, groups of soldiers scoured the city and murdered civilians.

6.29 In the night of 6 to 7 April, at the meeting of the officers of the General Staff, UNAMIR's Commander in Chief recommended that the militias remain calm and that the Presidential Guard battalion return to camp. **Colonel Théoneste Bagosora**, who chaired the meeting, assured him of his cooperation. Moreover, General Augustin Ndindiliyimana agreed to strengthen the joint Gendarmerie-UNAMIR patrols in view of the situation. He did not subsequently give any orders to that effect.

6.30 During the said meeting, **Colonel Théoneste Bagosora** withdrew several times to an adjacent room to receive calls. During this period, **Colonel Théoneste**

Commission des massacres

6.27 À partir du 7 avril 1994, des massacres de la population Tutsi et l'assassinat de nombreux opposants politiques ont été commis sur tout le territoire du Rwanda. Ces crimes planifiés et préparés de longue date par des personnalités civiles et militaires partageant l'idéologie hutu extrémiste ont été perpétrés par des miliciens, des militaires et des gendarmes suivant les ordres et les directives de certaines de ces autorités, dont le **Colonel Théoneste Bagosora**.

6.28 Dès la nuit du 6 au 7 avril, dans la capitale, des éléments du Bataillon Para-Commando et de la Garde Présidentielle ont érigé des barrages, renforcés par des véhicules blindés, sur les principaux axes routiers, contrôlant le déplacement de la population. Parallèlement, des groupes de militaires ont sillonné la ville et se sont livrés à des assassinats de civils.

6.29 Dans la nuit du 6 au 7 avril, lors de la réunion des officiers de l'Etat-Major, le Commandant en Chef de la MINUAR a recommandé que les milices restent calmes et que le Bataillon de la Garde Présidentielle regagne son camp. Le **Colonel Théoneste Bagosora**, qui dirigeait cette réunion, l'a assuré de sa collaboration. En outre, le Général Augustin Ndindiliyimana s'est engagé à renforcer les patrouilles conjointes de la gendarmerie et de la MINUAR compte tenu des circonstances. Il n'a donné, subséquemment, aucun ordre à cet effet.

6.30 Au cours de cette réunion, le **Colonel Théoneste Bagosora** s'est retiré à plusieurs reprises dans une salle adjacente pour recevoir ses appels. Durant cette

Bagosora talked on the phone with Lieutenant-Colonel Anatole Nsengiyumva. Immediately following the said conversation, Lieutenant-Colonel Anatole Nsengiyumva gave the order to begin the massacres in Gisenyi.

6.31 Despite **Colonel Théoneste Bagosora**'s reassurances, militiamen set up roadblocks of their own or joined those manned by personnel of the Presidential Guard, the Para-Commando Battalion and the Reconnaissance Battalion. At these places, people's identities were checked, notably by means of verification of identity cards, and the Tutsi or those identified as such were summarily executed.

6.32 Further, at about 5:00 a.m. on 7 April, **Colonel Théoneste Bagosora** personally ordered a group of *Interahamwe* from Remera, the *INYANGE,* to commence exterminating the civilian Tutsi population. He knew the group well since he had previously participated in several of their meetings.

6.33 On the 7 April, an official representative of the RPF and certain FAR officers asked **Col. Théoneste Bagosora** and Augustin Ndindiliyimana, as well as the General Staff of the Rwandan Army, to control the military personnel, notably the Presidential Guard, who were murdering civilians.

6.34 Following the meeting of the morning of 7 April 1994, **Colonel Théoneste Bagosora** flouted these requests and ordered Major Aloys Ntabakuze, Commander of the Para-Commando Battalion, Major François-Xavier Nzuwonemeye, Commander of the

période, le **Colonel Théoneste Bagosora** s'est entretenu par téléphone avec le Lieutenant-Colonel Anatole Nsengiyumva. Immédiatement après cet entretien, le Colonel Anatole Nsengiyumva a donné l'ordre de commencer les massacres à Gisenyi.

6.31 Malgré les assurances données par le **Colonel Théoneste Bagosora,** des miliciens ont érigé leurs propres barrages ou se sont joints à ceux des militaires de la Garde Présidentielle, des Bataillons Para-Commando et Reconnaissance. À ces endroits, on vérifiait l'identité des passants notamment en contrôlant les cartes d'identité et on y exécutait sommairement les Tutsi ou ceux reconnus Tutsi.

6.32 Par ailleurs, le 7 avril aux environs de 5.00 heures, le **Colonel Théoneste Bagosora,** a, en personne, donné l'ordre à un groupe d'*Interahamwe* de Remera, les *INYANGE*, de commencer l'extermination de la population civile Tutsi. Ce groupe lui était familier puisqu'il avait participé auparavant à plusieurs de leurs réunions.

6.33 Dans la journée du 7 avril, un représentant officiel du FPR et certains officiers des FAR ont demandé au **Colonel Théoneste Bagosora** et à Augustin Ndindiliyimana ainsi qu'à l'Etat-Major de l'Armée Rwandaise de contrôler les militaires, qui commettaient des assassinats contre la population civile, notamment la Garde Présidentielle.

6.34 Après la réunion du 7 avril au matin, le **Colonel Théoneste Bagosora** a fait fi de ces demandes et a donné ordre au Major Aloys Ntabakuze, Commandant du Bataillon Para-Commando, au Major François-Xavier Nzuwonemeye, Commandant du Bataillon de Recconnaissance et au Lieutenant

Reconnaissance Battalion, and Lieutenant-Colonel Léonard Nkundiye, former Commander of the Presidential Guard, to proceed with the massacres. On the same day, on the orders of **Colonel Théoneste Bagosora,** groups of soldiers, including elements of the Presidential Guard and of the Para-Commando Battalion, proceeded to carry out selective assassinations of people whose names were on a list.

Colonel Léonard Nkundiye, ancien Commandant de la Garde Présidentielle, de procéder aux massacres. Dans la même journée, sur ordre du **Colonel Théoneste Bagosora,** des groupes de militaires, dont des éléments de la Garde Présidentielle et du Bataillon Para-Commando, ont procédé à des assassinats sélectifs de personnes figurant sur une liste.

6.35 On 7 of April 1994, the General Staff of the Rwandan Army sent a telegram ordering the troops to seek the assistance of the *Interahamwe* and of the people in identifying the Tutsi and to proceed to exterminate them.

6.35 Le 7 avril 1994, l'Etat-Major de l'Armée Rwandaise a envoyé un télégramme ordonnant aux troupes de requérir l'aide des *Interahamwe* et de la population pour identifier les Tutsi et procéder à leur extermination.

6.36 With **Colonel Théoneste Bagosora**'s communiqué, broadcast by radio the same day, asking people to remain at home and await further instructions, the process of elimination of the civilian Tutsi and the moderate Hutu population by military personnel and militiamen was facilitated.

6.36 Avec la radiodiffusion, le même jour, d'un communiqué du **Colonel Théoneste Bagosora** demandant à la population de rester à la maison en attendant de nouvelles directives, le processus d'élimination par des militaires et des miliciens de la population Tutsi et Hutu modérée a été facilitée.

6.37 During the night of 6 to 7 April, Major François-Xavier Nzuwonemeye ordered some of his soldiers to help the Presidential Guard to assassinate the Prime Minister. In the morning of 7 April, at an assembly, Major François-Xavier Nzuwonemeye ordered his soldiers to get rid of the "enemy and its accomplices".

6.37 Dans la nuit du 6 au 7 avril, le Major François-Xavier Nzuwonemeye a ordonné à certains de ses soldats d'aller prêter main forte à la Garde Présidentielle pour assassiner le Premier Ministre. Dans la matinée du 7 avril, lors d'un rassemblement, le Major François-Xavier Nzuwonemeye a donné l'ordre à ses militaires de se débarasser de "l'ennemi et ses complices".

6.38 In the morning of 7 April, Major Protais Mpiranya ordered his soldiers to get rid of the Minister of Information, Mr. Faustin Rucogoza, who was detained at the Presidential Guard camp. The Minister of Information was immediately assassinated.

6.38 Le 7 avril au matin, le Major Protais Mpiranya a donné l'ordre à ses soldats de se débarasser du Ministre de l'Information, M. Faustin Rucogoza, qui était detenu au camp de la Garde Présidentielle. Le Ministre de l'Information a été immédiatement assassiné.

6.39 On 8 April 1994, at a general

6.39 Le 8 avril 1994, lors d'un

assembly, the Commander of the Para-Commando Battalion, Aloys Ntabakuze, ordered his soldiers to "*avenge the death of President Habyarimana by killing the Tutsi*". Further, he encouraged his troops by confirming that certain Tutsi and their "*politician accomplices*" had been killed. Indeed, several opposition leaders had been assassinated the previous day.

6.40 Thereafter, **Colonel Théoneste Bagosora** was in communication with the commanders of these units sometimes using a separate radio network.

6.41 From April to July 1994, Brigadier-General Gratien Kabiligi, Chief of military operations in the Rwandan Army, regularly met with the Commander of the Presidential Guard, Protais Mpiranya, and the Commander of the Para-Commando Battalion, Aloys Ntabakuze and also with **Colonel Théoneste Bagosora**.

6.42 During the massacres, Brigadier-General Gratien Kabiligi encouraged and supported the militiamen who were murdering Tutsi civilians and ordered his men to use the *Interahamwe* at the roadblocks. Moreover, in mid-April 1994, Gratien Kabiligi ordered the murder of a soldier in the *Forces Armées Rwandaises* of Tutsi descent, as well as certain members of his family.

rassemblement général, le Commandant du Bataillon Para-Commando, Aloys Ntabakuze, a donné l'ordre à ses militaires de "*venger la mort du Président Habyarimana en tuant les Tutsi*". Il les a, par ailleurs, encouragés en leur confirmant la mort de certains Tutsi et de leurs "*complices politiciens*". De fait, plusieurs leaders de l'opposition avaient été assassinés la veille.

6.40 Par la suite le **Colonel Théoneste Bagosora** est resté en communication avec les commandants de ces unités grâce entre autres à un réseau radio parallèle.

6.41 D'avril à juillet 1994, le Brigadier Général, Gratien Kabiligi, Chef des opérations militaires de l'Armée Rwandaise, a rencontré régulièrement le Commandant de la Garde Présidentielle, Protais Mpiranya, et le Commandant du bataillon Para-Commando, Aloys Ntabakuze ainsi que le **Colonel Théoneste Bagosora.**

6.42 Pendant les massacres, le Brigadier Général Gratien Kabiligi a encouragé et soutenu les miliciens qui assassinaient les civils Tutsi et a ordonné à ses hommes d'utiliser les *Interahamwe* aux barrages. En outre, à la mi-avril 1994, Gratien Kabiligi a ordonné le meurtre d'un soldat des Forces Armées Rwandaises d'origine Tutsi et de certains membres de la famille de ce dernier.

EXTENSION OF THE MASSACRES

6.43 From April to July 1994, by virtue of his position, his statements, the orders he gave and his acts, **Colonel Théoneste Bagosora** exercised authority over members of the *Forces Armées Rwandaises*, their officers and militiamen. The military and militiamen, as from 6 April 1994, committed massacres of the Tutsi population and of moderate Hutu which extended throughout rwandan territory with the knowledge of **Colonel Théoneste Bagosora.**

6.44 The massacres of members of the Tutsi population and the murder of the moderate Hutu extended throughout the territory of Rwanda. In every *préfecture*, local civil and military authorities and militiamen espoused the plan of extermination and followed the directives and orders in order to execute it. They called on the civilian population to eliminate the enemy and its "accomplices". They distributed weapons to civilians and militiamen. They gave orders to commit, aided, abetted and participated in the massacres.

6.45 From April to July 1994, in all the regions of the country, members of the Tutsi population who were fleeing from the massacres on their hills sought refuge in locations they thought would be safe, often on the recommendation of the local civil and military authorities. In many of these places, despite the promise that they would be protected by the local civil and military authorities, the refugees were attacked, abducted and massacred, often on the orders or with the complicity of those same authorities.

ÉTENDUE DES MASSACRES

6.43 D'avril à juillet 1994, de par ses fonctions, ses propos, les ordres qu'il a donnés et ses actes, le **Colonel Théoneste Bagosora** a exercé une autorité sur les membres des Forces Armées Rwandaises, leurs officiers et des miliciens. Ces militaires et miliciens ont commis dès le 6 avril des massacres contre la population tutsi et des hutu modérés qui se sont étendus sur l'ensemble du territoire rwandais à la connaissance du **Colonel Théoneste Bagosora**.

6.44 Les massacres de membres de la population Tutsi et les assassinats des Hutu modérés se sont étendus sur l'ensemble du territoire du Rwanda. Dans chaque préfecture, des autorités locales, civiles et militaires et des miliciens ont adhéré au plan d'extermination et ont suivi les directives et les ordres afin de l'exécuter. Ils ont appelé la population civile à éliminer l'ennemi et ses "complices". Ils ont distribué des armes à des civils et des miliciens. Ils ont ordonné, encouragé, aidé et participé aux massacres.

6.45 D'avril à juillet 1994, dans toutes les régions du pays, des membres de la population Tutsi qui fuyaient les massacres sur leurs collines ont cherché refuge dans endroits qu'ils croyaient sûrs, souvent sur recommandation des autorités locales, civiles et militaires. Dans plusieurs de ces endroits, malgré la promesse qu'ils seraient protégés par les autorités locales, civiles et militaires, les réfugiés ont été attaqués, enlevés et massacrés, souvent sur les ordres ou avec la complicité de ces mêmes autorités.

KIGALI

6.46 By virtue of the fact that Kigali was the capital of Rwanda, seat of the Government, the place where the elite units of the Rwandan Army were based and where the headquarters for both the Army and the Gendarmerie were situated, several of the military and civilian figures who had planned and organized the massacres played a leading role in carrying out the massacres in Kigali.

6.47 At the time of the events referred to in this indictment, Lieutenant-Colonel Tharcisse Renzaho, *Préfet* of Kigali, was also an officer on active service in the Rwandan Army and seconded to the Ministry of the Interior. He was a member of the crisis committee set up on 7 April 1994, wich included **Colonel Théoneste Bagosora**. By virtue of his rank, his office and his links with prominent figures who shared the extremist Hutu ideology, he acted as a *de facto* Minister of the Interior in Kigali *préfecture*. Anyone who wanted to leave the city had to have an authorization signed by him. Also, his authorization carried weight in other *préfectures*.

6.48 On at least two occasions, Tharcisse Renzaho sent the *conseillers de secteur* and political leaders to collect weapons and ammunition from the Army headquarters in order to distribute them at the roadblocks. Those roadblocks were used to exterminate the Tutsi population and eliminate its "accomplices". Subsequently, Tharcisse Renzaho continued to distribute weapons to the *Interahamwe*.

6.49 On 8 April 1994,**Colonel Théoneste Bagosora** communicated by radio with the *Préfet* of Kigali, Tharcisse Renzaho, to

KIGALI

6.46 Du fait que Kigali était la capitale du Rwanda, siège du Gouvernement, où étaient stationnés, en plus, les unités d'élites de l'Armée rwandaise et les États-Major de l'Armée et de la Gendarmerie, plusieurs des personnalités militaires et civiles qui avaient planifié et organisé les massacres ont joué un rôle de premier plan dans leur exécution à Kigali.

6.47 Lors des événements visés dans le présent acte d'accusation, le Lt. Colonel Tharcisse Renzaho, préfet de Kigali, était également un officier actif de l'armée rwandaise détaché au Ministère de l'Intérieur. Il était membre du comité de crise mis en place le 7 avril 1994, dont faisait parti le **Colonel Théoneste Bagosora**. De par son grade, ses fonctions et ses liens avec des personnalités partageant l'idéologie Hutu extrémiste, il agissait de fait comme un véritable Ministre de l'Intérieur pour la préfecture de Kigali. Toute personne qui voulait quitter la ville devait être munie d'une autorisation signée de sa main. De plus, ces autorisations faisaient autorité dans d'autres préfectures.

6.48 À au moins deux reprises, Tharcisse Renzaho a envoyé les conseillers de secteur et des dirigeants politiques chercher des armes et des munitions à l'Etat-Major de l'armée afin de les distribuer au niveau des barrages. Ces barrages étaient utilisés pour exterminer la population Tutsi et éliminer ses "complices". Par la suite, Tharcisse Renzaho a continué à distribuer des armes aux *Interahamwe*.

6.49 Le 8 avril 1994, le **Colonel Théoneste Bagosora** a communiqué par radio avec le préfet de Kigali, Tharcisse

make sure that the Manager of the *Banque Rwandaise de Développement* had been "liquidated". Tharcisse Renzaho replied in the affirmative. Joseph Nzirorera, MRND Secretary-General, interrupted the conversation to ask confirmation of the news.

6.50 Starting on 7 April, in Kigali, elements of the Rwandan Army, Gendarmerie and *Interahamwe* perpetrated massacres of the civilian Tutsi population. Concurrently, elements of the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion murdered political opponents. Numerous massacres of the civilian Tutsi population took place in places where they had seek refuge for their safety.

ETO-Nyanza

6.51 As of 7 April 1994, many Tutsis sought refuge at the *École Technique Officielle (ETO)*, under the protection of UNAMIR, to escape the attacks against them. On 11 April 1994, immediately following the retreat of the UNAMIR Belgian contingent based at ETO, soldiers, including elements of the Presidential Guard, and *Interahamwe* rounded up a group of refugees and moved them to Nyanza. **Théoneste Bagosora** was present at the time. After forcing them to walk for two kilometres, the soldiers massacred the refugees. The survivors were dispatched by militiamen on the soldiers' orders.

Centre Hospitalier de Kigali

6.52 When the massacres started, the *Centre Hospitalier de Kigali* (CHK) took in numerous wounded Tutsi from various areas of the city. On several occasions, soldiers

Renzaho, pour s'assurer que le directeur de la Banque Rwandaise de Développement avait été "liquidé". Tharcisse Renzaho a répondu par l'affirmative. Joseph Nzirorera, secrétaire-général du MRND, est intervenu dans la conversation pour demander confimation de la nouvelle.

6.50 Dès le 7 avril, à Kigali, des éléments de l'Armée Rwandaise, de la Gendarmerie et des *Interahamwe* se sont livrés à des massacres contre la population civile Tutsi. Parallèlement, des éléments de la Garde Présidentielle, du Bataillon Para Commando et du Bataillon de Reconnaissance ont assassiné des opposants politiques. De nombreux massacres de la population civile Tutsi se sont déroulés dans des endroits où ils s'étaient réfugiés pour leur sécurité.

ETO-Nyanza

6.51 Dès le 7 avril 1994, de nombreux Tutsi ont trouvé refuge à l'École Technique Officielle (ETO) sous la protection de la MINUAR pour échapper aux attaques dont ils étaient victimes. Le 11 avril 1994, immédiatement après le repli du contingent belge de la MINUAR basé à l'ETO, des militaires, dont des éléments de la Garde Présidentielle, et des *Interahamwe* ont encerclé les réfugiés et les ont déplacés vers Nyanza. **Théoneste Bagosora** était sur les lieux au même moment. Après une marche forcée de deux kilomètres, les militaires ont massacré les réfugiés. Les survivants ont été achevés, sur ordre des militaires, par des miliciens.

Centre Hospitalier de Kigali

6.52 Dès le début des massacres, le Centre Hospitalier de Kigali (CHK) a accueilli de nombreux Tutsi blessés venant de différents quartiers de la ville. À

who were supposed to be guarding the hospital selected Tutsi patients and killed them on the spot. Furthermore, a list of the staff of Tutsi descent was drawn up and several of the people on the list were killed. Each morning, the officer in charge reported to MINADEF (Ministry of Defence) on the number of Tutsi who had been killed.

Near Saint-André School

6.53 From May to June 1994, soldiers under the orders of Brigadier-General Gratien Kabiligi checked the identities and took down the names of people recognized as being Tutsi who had taken refuge in a house across from Saint-André school, in Kigali. On 8 June 1994, these soldiers surrounded the house, forced the occupants out and shot them to death.

Centre Christus

6.54 On 7 April 1994, at the *Centre Christus*, soldiers used the *Centre* record to select many people, the majority of whom were Tutsi, and forcibly confined them for several hours. On the arrival of the militiamen and on the orders of soldiers, these people were murdered.

Kibagabaga Mosque

6.55 On 7 April 1994, soldiers and militiamen came to the Mosque. The soldiers demanded that the refugees identify themselves with their identification cards. When the refugees refused, the soldiers attacked the mosque, shooting and killing many people. Afterwards, the refugees , the majority of whom were Tutsi, were forced

plusieurs reprises, des militaires qui devaient assurer la protection de l'hôpital ont sélectionné des patients Tutsi et les ont tués sur place. En outre, une liste des membres du personnel d'origine Tutsi a été dressée et plusieurs d'entre eux ont été tués. Chaque matin, l'officier responsable faisait rapport au MINADEF (Ministère de la Défense) du nombre de Tutsi qui avaient été tués.

Près du collège Saint-André

6.53 De mai à juin 1994, des militaires relevant du Brigadier Général Gratien Kabiligi ont contrôlé l'identité et relevé les noms de personnes reconnues Tutsi qui s'étaient réfugiées dans une maison située en face du collège Saint-André, à Kigali. Le 8 juin 1994, ces militaires ont entouré ladite maison, fait sortir les personnes qui s'y trouvaient et les ont fusillées.

Centre Christus

6.54 Le 7 avril 1994, au Centre Christus, des militaires ont selectionné à l'aide du registre du Centre plusieurs personnes en majorité Tutsi qu'ils ont séquestrés pendant plusieurs heures. À l'arrivée des miliciens et sur l'ordre de militaires, ces personnes ont été assassinées.

Mosquée de Kibagabaga

6.55 Le 7 avril 1994, des militaires et des miliciens se sont présentés à la mosquée. Les militaires ont exigé que les réfugiés s'identifient en exhibant leur carte d'identité; suivant leur refus les militaires ont attaqué la mosquée et ont tiré sur les réfugiés, faisant plusieurs morts. Par la suite, les réfugiés, en majorité Tutsi, ont été forcés de remettre leur armes traditionnelles et les

to surrender their tradionnal weapons and the militiamen then attacked them in the presence of the soldiers. Several people died in the attack.

BUTARE

6.56 The country's civil and military leaders became aware of the exceptional situation in Butare. They took the necessary steps for the Tutsis to be eliminated. Moreover, elements of the Army and *Interahamwe* militiamen were sent in from Kigali as reinforcements to start the massacres.

6.57 On 20 April 1994, two military planes landed in Butare with numerous Presidential Guard and Para-Commando Battalion soldiers on board. These soldiers, in tandem with the *Interahamwe* of Butare and elsewhere, took part in murdering and massacring civilians, notably the former Queen of Rwanda, Rosalie Gicanda, a historical symbol for all Tutsi.

GISENYI

6.58 In the night of 6 to 7 April 1994, in Gisenyi *préfecture*, Military Commander Anatole Nsengiyumva ordered certain political leaders, local authorities and militiamen to at Gisenyi military camp. At this assemble, Anatole Nsengiyumva ordered the participants to kill all the RPF accomplices and all the Tutsi. At the end of the meeting, Anatole Nsengiyumva ordered his subordinayes to distribute weapons and grenades to the militiamen who were present.

6.59 Furthermore, on the 7 April 1994,

miliciens les ont alors attaqués, en présence des militaires. L'attaque a fait plusieurs morts.

BUTARE

6.56 Les dirigeants civils et militaires du pays ont pris conscience de la situation particulière qui régnait à Butare. Ils ont pris les mesures nécessaires pour que les Tutsi soient éliminés. En outre, des éléments de l'armée et des miliciens *Interahamwe* ont été envoyés en renfort de Kigali pour commencer les massacres.

6.57 Le 20 avril 1994, deux avions militaires ont atterri à Butare, avec à leur bord des dizaines de militaires de la Garde Présidentielle et du Bataillon Para-Commando. Ces militaires ont participé aux côtés des *Interahamwe* de Butare et d'ailleurs, aux meurtres et aux massacres de civils, parmi lesquels, l'ancienne Reine du Rwanda, Rosalie Gicanda, symbole historique pour tous les Tutsi.

GISENYI

6.58 Dans la nuit du 6 au 7 avril 1994, dans la préfecture de Gisenyi, le Commandant militaire Anatole Nsengiyumva a ordonné le rassemblement au camp militaire de Gisenyi de certains dirigeants politiques, des autorités locales et des miliciens. Lors de ce rassemblement Anatole Nsengiyumva a donné l'ordre aux participants de tuer tous les complices du FPR et tous les Tutsi. À la fin de la réunion, Anatole Nsengiyumva a ordonné à ses subordonnés de distribuer des armes et des grenades aux miliciens présents.

6.59 De plus, le 7 avril 1994, Anatole Nsengiyumva a reçu un télégramme de

Anatole Nsengiyumva received a telegram from Kigali ordering him to start the massacres. Between 7 April and mid-July 1994, in Gisenyi, Anatole Nsengiyumva ordered militiamen and soldiers to exterminate the civilian Tutsi population and its "accomplices". Between April and July 1994, the militiamen, on the orders of Anatole Nsengiyumva, hunted down, abducted and killed several members of the Tutsi and moderate Hutu population in Gisenyi. Furthermore, several of those militiamen commited rapes, sexual assaults and other crimes of sexual nature against Tutsi woman and girls.

GITARAMA: *Nursing School*

6.60 Between April and June 1994, several people found refuge at the secondary nursing school in Kabgayi, Gitarama *préfecture*, where students and staff were already located. On several occasions during this period, soldiers and *Interahamwe* militiamen abducted and raped female Tutsi students and refugees. Minister of Defense Augustin Bizimana and the General Staff of the Rwandan Army were informed of this situation but did not take any effective steps to end the crimes once and for all.

Responsability

6.61 From April to July 1994, several hundred thousand people were massacred throughout Rwanda. The majority of the victims were killed solely because they were Tutsi or appeared to be Tutsi. The other victims, nearly all Hutu, were killed because they were considered Tutsi accomplices, were linked to them through marriage or were opposed to the extremist Hutu

Kigali lui ordonnant de commencer les massacres. Entre le 7 avril et la mi-juillet 1994, à Gisenyi, Anatole Nsengiyumva a donné l'ordre à des miliciens et à des militaires d'exterminer la population civile Tutsi et ses "complices". Entre avril et juillet 1994, les miliciens sur les ordres d'Anatole Nsengiyumva ont traqué, enlevé et tué plusieurs membres de la population Tutsi et Hutu modérée de Gisenyi. De plus, plusieurs de ces miliciens ont commis des viols, des agressions sexuelles et d'autre crimes de nature sexuelles contre des femmes et des jeunes filles Tutsi.

GITARAMA: *École d'infirmières*

6.60 Entre avril et juin 1994, plusieurs personnes ont trouvé refuge à l'école secondaire des infirmières de Kabgayi, préfecture de Gitarama, où se trouvaient déjà des étudiants et du personnel. À plusieurs reprises durant cette periode, des militaires et des miliciens *Interahamwe* ont enlevé et violé des étudiantes et des réfugiées Tutsi. Informés de cette situation le Ministre de la Défense Augustin Bizimana et l'Etat-Major de l'Armée Rwandaise n'ont pris aucune mesure efficace pour mettre un terme définitif à ces crimes.

Responsabilité

6.61 D'avril à juillet 1994, plusieurs centaines de milliers de personnes ont été massacrées sur tout le territoire du Rwanda. La plupart des victimes ont été tuées pour la seule raison qu'elles étaient des Tutsi ou ressemblaient à des Tutsi. Les autres victimes, surtout des Hutu, ont été tuées parce qu'elles étaient qualifiées de complice des Tutsi, liées à ces derniers par mariage ou opposées à l'idéologie Hutu extrémiste.

ideology.

6.62 From 7 April 1994 around the country, most of the massacres were perpetrated with the participation, aid and instigation of military personnel, gendarmes and Hutu militiamen. Certain units of the Para-Commando, Reconnaissance and Presidential Guard battalions were the most implicated in these crimes in the capital and in other *préfectures*, often acting in concert with the militiamen.

6.63 Further, from April to July 1994, in the course of the massacres, some soldiers gave assistance to militiamen, notably by providing them logistical support, i.e. weapons, transport and fuel.

6.64 The massacres thus perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, such as **Théoneste Bagosora,** Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Gratien Kabiligi, Protais Mpiranya, Aloys Ntabakuze, François-Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana and Tharcisse Renzaho, who conspired to exterminate the Tutsi population. As from on 7 April, other authorities at the national and local levels espoused this plan and joined the first group in encouraging, organizing and participating in the massacres of the Tutsi population and its "accomplices".

6.65 During the events referred to in this indictment, rapes, sexual assaults and other crimes of a sexual nature were widely and notoriously committed throughout Rwanda. These crimes were perpetrated by, among others, soldiers, militiamen and gendarmes

6.62 Dès le 7 avril 1994, partout au Rwanda, la plupart des massacres ont été commis avec la participation, l'aide et l'encouragement des militaires, des gendarmes et des miliciens. Certaines unités des Bataillons Para-Commando, de Reconnaissance et de la Garde Présidentielle ont été les plus impliquées dans la commission de ces crimes dans la capitale et dans d'autres préfectures du pays, agissant souvent de concert avec les miliciens.

6.63 En outre, d'avril à juillet 1994, durant la commission des massacres, des militaires ont aidé des miliciens, notamment en leur fournissant la logistique, à savoir des armes, du transport et du carburant.

6.64 Les massacres perpétrés furent le résultat d'une stratégie adoptée et élaborée par des autorités politiques, civiles et militaires du pays dont **Théoneste Bagosora,** Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Gratien Kabiligi, Protais Mpiranya, Aloys Ntabakuze, François Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana et Tharcisse Renzaho qui se sont entendues pour exterminer la population Tutsi. À partir du 7 avril, d'autres autorités nationales et locales ont adhéré à ce plan et se sont jointes au premier groupe pour encourager, organiser et participer aux massacres de la population Tutsi et ses "complices".

6.65 Lors des événements auxquels se réfère le présent acte d'accusation, des viols, des agressions sexuelles et d'autres crimes de nature sexuelle ont été commis, d'une façon généralisée et notoire sur tout le territoire du Rwanda. Ces crimes ont été perpétrés, entre autres, par des militaires, des

against the Tutsi population, in particular Tutsi women and girls.

6.66 Military officers, members of the Interim Government and local authorities aided and abetted their subordinates and others in carrying out the massacres of the Tutsi population and its accomplices. Without the complicity of the local and national civil and military authorities, the principal massacres would not have occurred.

6.67 From April to July 1994, although certain Gendarmerie units assigned to combat duty came under the General Staff of the Rwandan Army, the other units were responsible for maintaining public law and order throughout Rwanda and were directly under General Augustin Ndindiliyimana, the Chief of Staff of the Gendarmerie.

6.68 From April to July 1994, General Augustin Ndindiliyimana received daily reports from his troops, notably during meetings held at the Gendarmerie Headquarters. These troops reported on the scale and scope of the massacres being perpetrated against the civilian population. He personally went to various *préfectures* to assess the situation.

6.69 From April to July 1994, the officers of the General Staff of the Army participated in daily meetings at which they were informed of the massacres of the civilian Tutsi population. These meetings assembled the members of the General Staff and unit commanders, including, among others, Major-General Augustin Bizimungu, Brigadier-General Gratien Kabiligi, Major Aloys Ntabakuze, Major Protais Mpiranya,

miliciens et des gendarmes contre la population Tutsi, en particulier des femmes et des jeunes filles Tutsi.

6.66 Des officiers militaires, des membres du Gouvernement Intérimaire et des autorités locales ont aidé et encouragé leurs subordonnés et des tiers à commettre les massacres de la population Tutsi et de ses "complices". Sans la complicité des autorités locales et nationales, civiles et militaires, les principaux massacres n'auraient pas eu lieu.

6.67 D'avril à juillet 1994, bien que certaines unités de la gendarmerie affectées au combat relevaient de l'Etat-Major de l'Armée, les autres unités étaient responsables d'assurer l'ordre et la paix publique sur l'ensemble du territoire rwandais et relevaient directement du Chef de l'Etat-Major de la Gendarmerie, le Général Augustin Ndindiliyimana.

6.68 D'avril à juillet 1994, le Général Augustin Ndindiliyimana a reçu des rapports quotidiens de ses troupes, notamment au cours de réunions tenues à l'Etat-Major de la gendarmerie. Ces troupes ont fait des rapports sur l'ampleur et l'étendue des massacres contre la population civile. Il s'est, lui-même, rendu dans différentes préfectures afin d'évaluer la situation.

6.69 D'avril à juillet 1994, les officiers de l'État-Major de l'Armée, ont participé à des réunions quotidiennes où ils ont été informés des massacres perpétrés contre la population civile Tutsi. Ces réunions regroupaient les membres de l'Etat-Major et les chefs d'unités dont, entre autres, le Major-Général Augustin Bizimungu, le Brigadier-Général Gratien Kabiligi, le Major Aloys Ntabakuze, le Major Protais Mpiranya, le Major François-Xavier

Major François-Xavier Nzuwonemeye, Colonel Aloys Ntiwiragabo, as well as Colonel **Théoneste Bagosora** and the Chief of Staff of the Gendarmerie, General Augustin Ndindiliyimana.

6.70 Between April and July 1994, **Colonel Théoneste Bagosora** issued safe passages to certain people to pass roadblocks manned either by soldiers or by militiamen. Furthermore, on 16 May 1994, in negotiations on the evacuation of orphans who had been grouped together at two camps in Kigali, **Colonel Théoneste Bagosora** set the conditions for their evacuation. He had previously discussed terms with the *Interahamwe* at a meeting that he had chaired.

6.71 In April 1994, **Colonel Théoneste Bagosora** ordered the transfer of the central bank's funds to Gitarama by the Reconnaissance Battalion. Further, **Colonel Théoneste Bagosora** negotiated the purchase of weapons in the name and on behalf of the Government.

6.72 Knowing that massacres of the civilian population were being committed, the political and military authorities, including **Colonel Théoneste Bagosora,** took no measures to stop them. On the contrary, they refused to intervene to control and appeal to the population as long as a cease-fire had not been declared. This categorical refusal was communicated to the Special Rapporteur via the Chief of Staff of Rwandan Army, Major-General Augustin Bizimungu.

6.73 **Colonel Théoneste Bagosora,** in his position of authority, acting in concert with, notably Augustin Ndindiliyimana, Augustin

Nzuwonemeye, le Colonel Aloys Ntiwiragabo, ainsi que le Colonel **Théoneste Bagosora** et le chef de l'Etat-Major de le gendarmerie, le Général Augustin Ndindiliyimana.

6.70 Entre avril et juillet 1994, le **Colonel Théoneste Bagosora** a délivré à certaines personnes des sauf-conduits pour franchir les barrages tenus soit par des militaires, soit par des miliciens. En outre, le 16 mai 1994, lors de négociations pour l'évacuation d'orphelins regroupés dans deux camps à Kigali, le **Colonel Théoneste Bagosora,** a posé les conditions de leur évacuation. Il en avait auparavant discuté les termes avec les *Interahamwe* lors d'une réunion qu'il avait présidée.

6.71 En avril 1994, le **Colonel Théoneste Bagosora** a ordonné le transfert des fonds de la Banque Nationale de Kigali à Gitarama par le Bataillon de Reconnaissance. Le **Colonel Théoneste Bagosora** a, par ailleurs, négocié l'achat d'armes au nom et pour le compte du Gouvernement

6.72 Sachant que des massacres étaient commis contre la population civile, les autorités politiques et militaires dont le **Colonel Théoneste Bagosora,** n'ont pris aucune disposition pour les arrêter. Au contraire ils ont refusé d'intervenir pour contrôler et faire appel à la population tant qu'un accord de cessez-le-feu ne serait pas ordonné. Ce refus catégorique a été transmis au Rapporteur spécial par l'intermédiaire du Chef de l'Etat-Major de l'Armée Rwandaise, le Major-Général Augustin Bizimungu.

6.73 Le **Colonel Théoneste Bagosora** dans sa position d'autorité, en agissant de concert avec notamment Augustin Ndindiliyimana, Augustin Bizimungu,

Bizimungu, Aloys Ntiwiragabo, Gratien Kabiligi, Protais Mpiranya, Aloys Ntabakuze, François-Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana and Tharcisse Renzaho, participated in the planning, preparation or execution of a common scheme, strategy or plan, to commit the atrocities set forth above. The crimes were committed by him personally, by persons he assisted or by his subordinates, and with his knowledge or consent.

Aloys Ntiwiragabo, Gratien Kabiligi, Protais Mpiranya, Aloys Ntabakuze, François-Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana et Tharcisse Renzaho, a participé à la planification, la préparation ou l'exécution d'un plan, d'une stratégie ou d'un dessein commun, afin de perpétrer les atrocités énoncées ci-dessus. Ces crimes ont été perpétrés par lui-même ou par des personnes qu'il a aidées ou par ses subordonnés, alors qu'il en avait connaissance ou y consentait.

7. CHARGES

COUNT 1:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 to 6.39, 6.42 to 6.55, 6.57 to 6.66

conspired with Anatole Nsengiyumva, Gratien Kabaligi, Aloys Ntabakuze and others to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

7. LES CHEFS D'ACCUSATION

PREMIER CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 à 6.39, 6.42 to 6.55, 6.57 to 6.66

s'est entendu avec Anatole Nsengiyumva, Gratien Kabaligi, Aloys Ntabakuze et d'autres pour tuer et porter des atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial, et ont, de ce fait commis le crime **D'ENTENTE EN VUE DE COMMETTRE LES GÉNOCIDE** tel que prévu à l'article 2(3)(b) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6(1) et punissable en vertu des articles 22 et 23 du Statut.

COUNT 2:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 to 6.39, 6.42 to 6.55, 6.57 to 6.66

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

DEUXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 à 6.39, 6.42 to 6.55, 6.57 to 6.66

est responsable de meurtres et d'atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **GÉNOCIDE** tel que prévu à l'article 2(3)(a) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 3:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

TROISIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 to 6.39, 6.42 to 6.55, 6.57 to 6.66

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 4:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 à 6.39, 6.42 to 6.55, 6.57 to 6.66

est responsable de meurtres et d'atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **COMPLICITÉ DANS LE GÉNOCIDE** tel que prévu à l'article 2(3)(e) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

QUATRIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37

to 6.39, 6.42 to 6.55, 6.57 to 6.66

is responsible for the murder of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 5:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 6.18, 6.20, 6.22, 6.23

is responsible for the murder of the ten belgian soldiers from UNAMIR as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

à 6.39, 6.42 to 6.55, 6.57 to 6.66

est responsable d'assassinats de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(a) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

CINQUIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 6.18, 6.20, 6.22, 6.23

est responsable du meurtre des dix militaires belges de la MINUAR dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(a) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable

COUNT 6:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 to 6.39, 6.42 to 6.55, 6.57 to 6.66

is responsible for the extermination of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 7:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

en vertu des articles 22 et 23 du Statut.

SIXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 à 6.39, 6.42 to 6.55, 6.57 to 6.66

est responsable d'extermination de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(b) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

SEPTIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-pursuant to Article 6(3), according to paragraphs: 4.2, 4.3, 4.4, 5.1, 5.45, 6.59, 6.60, 6.65

is responsible for rape as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

Théoneste Bagosora:

-conformément à l'article 6(3), selon les paragraphes: 4.2, 4.3, 4.4, 5.45, 6.59, 6.60, 6.65

est responsables de viols dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(g) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du même Statut.

COUNT 8:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 to 6.39, 6.42 to 6.55, 6.57 to 6.66

is responsible for persecution on political, racial or religious grounds, as part of a widespread and systematic attack against a

HUITIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 à 6.39, 6.42 à 6.55, 6.57 to 6.66

est responsable de persécution pour des raisons politiques, raciales ou religieuses de personnes dans le cadre d'une attaque

civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(h) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

systématique et généralisée contre une population civile, en raison de son appartenance politique, etyhnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(h) du Statut du Tribunal pour lequel il est individuellement responsable conformément à l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 9:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 to 6.39, 6.42 to 6.55, 6.57 to 6.66

is responsible for inhumane acts against persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(i) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the

NEUVIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 à 6.39, 6.42 to 6.55, 6.57 to 6.66

est responsable d'actes inhumains contre des personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un crime contre l'humanité, **CRIME CONTRE L'HUMANITÉ** tel que prévu à l'article 3(i) du Statut du Tribunal pour lequel il est

Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du même Statut.

COUNT 10

DIXIÈME CHEF D'ACCUSATION

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73
-pursuant to Article 6(3), according to paragraphs: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22, 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 to 6.39, 6.42 to 6.55, 6.57 to 6.66

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73
-conformément à l'article 6(3), selon les paragraphes: 5.44, 5.45, 6.9, 6.18, 6.20, 6.22 6.23, 6.27, 6.28, 6.30, 6.31, 6.34, 6.35, 6.37 à 6.39, 6.42 à 6.55, 6.57 to 6.66

is responsible for killing and causing violence to health and to the physical or mental well-being of civilians as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (a) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

est responsable de meurtres, d'atteintes à la santé et au bien être physique et mental de personnes civiles dans le cadre d'un conflit armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4 (a) du Statut du Tribunal et pour lequel il est individuellement responsable en vertut de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 11:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

Théoneste Bagosora:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.8, 5.10 to 5.13, 5.28, 5.29, 5.37, 6.2 to 6.4, 6.6 to 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 to 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 to 6.73

-pursuant to Article 6(3), according to paragraphs: 6.18, 6.20, 6.22, 6.23

is responsible for violence to life, health and physical well-being of persons, as part of an armed internal conflict and particularly the killing of the ten belgan soldiers from UNAMIR, and thereby committed **SERIOUS VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (a) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

ONZIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.8, 5.10 à 5.13, 5.28, 5.29, 5.37, 6.2 à 6.4, 6.6 à 6.8, 6.11,6.13, 6.14, 6.24, 6.25, 6.27, 6.29 à 6.34, 6.36, 6.40, 6.41, 6.43, 6.47, 6.49, 6.51, 6.64, 6.69 à 6.73

-conformément à l'article 6(3), selon les paragraphes: 6.18, 6.20, 6.22, 6.23

est responsable des atteintes portée à la vie dans le cadre d'un conflit armé interne et particulièrement du meurtre des dix militaires belge de la MINUAR et a de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4 (a) du Statut du Tribunal et pour lequel il est individuellement responsable en vertut de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 12:

By the acts or omissions described in paragraphs 5.1 to 6.73 and more specifically in the paragraphs referred to below:

DOUZIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.73 et plus particulièrement aux paragraphes référenciés ci-dessous;

Théoneste Bagosora:

-pursuant to Article 6(3), according to paragraphs: 4.2, 4.3, 4.4, 5.1, 5.45, 6.59, 6.60, 6.65

is responsible for outrages upon personal dignity, in particular humiliating and degrading treatment, rape and indecent assault, as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (e) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

At Kigali, 12-8-99

Bernard A. Muna
Deputy Prosecutor

Théoneste Bagosora:

-conformément à l'article 6(3), selon les paragraphes: 4.2, 4.3, 4.4, 5.45, 6.59, 6.60, 6.65

est responsable d'atteintes à la dignité de la personne, notamment de traitements humiliants et dégradants, de viols et d'attentats à la pudeur dans le cadre d'un conflit armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE DE L'ARTICLE 3 COMMUNE AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4(e) du Statut du Tribunal et pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du même Statut.

À Kigali, le 12-8-99

Bernard A. Muna
Procureur Adjoint

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

Case No. ICTR-97-34-I
Case No ICTR-97-30-I

N de dossier:ICTR-97-34-I
N de dossier:ICTR-97-30-I

THE PROSECUTOR

AGAINST

GRATIEN KABILIGI
ALOYS NTABAKUZE

AMENDED INDICTMENT

LE PROCUREUR DU TRIBUNAL

CONTRE

GRATIEN KABILIGI
ALOYS NTABAKUZE

ACTE D'ACCUSATION AMENDÉ

1999 AUG 13 1:40
ICTR CRIMINAL REGISTRY RECEIVED

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

GRATIEN KABILIGI
ALOYS NTABAKUZE

with **CONSPIRACY TO COMMIT GENOCIDE, GENOCIDE, COMPLICITY IN GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY,** and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II,** offences stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal.

Le Procureur du Tribunal Pénal International pour le Rwanda, en vertu des pouvoirs que lui confère l'article 17 du Statut du Tribunal Pénal International pour le Rwanda ("le Statut du Tribunal") accuse:

GRATIEN KABILIGI
ALOYS NTABAKUZE

d'ENTENTE EN VUE DE COMMETTRE LE GÉNOCIDE, de **GÉNOCIDE** de **COMPLICITÉ DE GÉNOCIDE, d'INCITATION PUBLIQUE ET DIRECTE À COMMETTRE LE GÉNOCIDE,** de **CRIMES CONTRE L'HUMANITÉ,** et de **VIOLATIONS DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II,** crimes prévus aux articles 2, 3 et 4 du Statut du Tribunal.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: Marianne Ben Salima
SIGNATURE: [signature] DATE: 01/12/2008

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1. HISTORICAL CONTEXT

1.1 The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsi to die and thousands more to flee the country in the years immediately following. The revolution resulted in the abolition of the Tutsi monarchy and the proclamation of the First Republic in early 1961, confirmed in a referendum held in the same year. Legislative elections held in September 1961 confirmed the dominant position of the MDR-PARMEHUTU (*Mouvement Démocratique Républicain-Parti du Mouvement d'Emancipation Hutu*), led by Grégoire Kayibanda, who was subsequently elected President of the Republic by the Legislative Assembly on 26 October 1961.

1.2 The early years of the First Republic, which was under the domination of the Hutu of central and southern Rwanda, were again marked by ethnic violence. The victims were predominantly Tutsi, the former ruling elite, and those related to them, who were killed, driven to other regions of Rwanda or forced to flee the country. The gradual elimination of the opposition parties in those early years confirmed the MDR-PARMEHUTU as the single party, the only party to present candidates in the elections of 1965.

1.3 The early part of 1973 in Rwanda was again marked by ethnic confrontations between the Hutu and Tutsi, prompting another exodus of the Tutsi minority from the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and South resulted in a military coup by General Juvénal Habyarimana on 5 July 1973,

1. CONTEXTE HISTORIQUE

1.1 La révolution de 1959 marque le début d'une période d'affrontements ethniques entre les Hutu et les Tutsi au Rwanda, provoquant au cours des années qui ont immédiatement suivi, des centaines de morts chez les Tutsi et l'exode de milliers d'entre eux. Cette révolution entraîne l'abolition de la monarchie Tutsi et la proclamation de la Première République au début de l'année 1961, confirmée par référendum au cours de la même année. Les élections législatives de septembre 1961 confirme la domination du MDR-PARMEHUTU (Mouvement Démocratique Républicain-Parti du Mouvement d'Émancipation Hutu) de Grégoire Kayibanda, qui est élu Président de la République par l'assemblée législative le 26 octobre 1961.

1.2 Les premières années d'existence de cette république, dominée par les Hutu du centre et du sud du Rwanda, sont de nouveau marquées par la violence ethnique. Les victimes furent principalement des Tutsi, l'ancienne élite dirigeante, et leurs alliés; ceux-ci furent tués, chassés vers d'autres régions du Rwanda ou forcés de s'enfuir du pays. L'élimination progressive des partis d'opposition durant ces premières années confirme le MDR-PARMEHUTU comme parti unique, qui est le seul à présenter des candidats aux élections de 1965.

1.3 Le début de l'année 1973 au Rwanda est de nouveau marqué par des affrontements ethniques entre Hutu et Tutsi qui provoquent, après ceux de 1959 à 1963, un nouvel exode de la minorité Tutsi. Cette recrudescence des tensions ethniques et politiques (entre le Nord et le Sud) aboutit, le 5 juillet 1973, à un coup d'État militaire mené par le Général Juvénal Habyarimana.

shifting power from civilian to military hands and from the Hutu of central Rwanda to the Hutu of the northern *préfectures* of Gisenyi and Ruhengeri (Habyarimana's native region).

1.4 In 1975, President Habyarimana founded the *Mouvement Révolutionnaire National pour le Développement* (MRND), a single party, and assumed the position of party Chairman. The administrative and party hierarchies were indistinguishable in this single party state from the level of the *Préfet* to the *bourgmestres*, and down to that of the *conseillers de secteurs* and *responsables de cellule*.

1.5 From 1973 to 1994, the government of President Habyarimana used a system of ethnic and regional quotas which was supposed to provide educational and employment opportunities for all, but which was used increasingly to discriminate against both Tutsi and Hutu from regions outside the northwest.

In fact, by the late 1980s, persons from Gisenyi and Ruhengeri occupied many of the most important positions in the military, political, economic and administrative sectors of Rwandan society. Among the privileged elite, an inner circle of relatives and close associates of President Habyarimana and his wife, Agathe Kanziga, known as the Akazu, enjoyed great power. This select group, almost exclusively Hutu, was supplemented by individuals who shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.

1.6 In 1990, the President of the

Le coup d'État entraîne un renversement du pouvoir, qui passe des mains des civils à celles des militaires et de celles des Hutu du centre du Rwanda à celles des Hutu des préfectures de Gisenyi et Ruhengeri au nord du pays (région natale du Président Habyarimana).

1.4 En 1975, le président Habyarimana fonde le Mouvement Révolutionnaire National pour le Développement (MRND), parti unique, dont il assume la présidence. La structure administrative et la hierarchie du MRND se confondent en un véritable parti-État à tous les niveaux de l'administration territoriale, du Préfet aux Bourgmestres, jusqu'aux conseillers de secteurs et responsables de cellule.

1.5 De 1973 à 1994, le gouvernement du Président Habyarimana applique un système de quotas basé sur l'origine ethnique et régionale qui était censé offrir des chances égales à tous en matière d'éducation et d'emploi, mais qui fut utilisé progressivement de manière discriminatoire à l'encontre des Tutsi et des Hutu originaires d'autres régions que le nord-ouest.

De fait, à la fin des années 1980, plusieurs des postes les plus importants dans les secteurs militaires, politiques, économiques et administratifs de la société rwandaise étaient occupés par des personnes originaires de Gisenyi et Ruhengeri. Parmi l'élite privilégiée, un noyau, connu sous l'appellation Akazu, composé de membres de la famille et d'intimes du Président Habyarimana et de son épouse, Agathe Kanziga, jouit d'un grand pouvoir. Aux membres de ce groupe, presque exclusivement Hutu, se joignent des personnes qui en partagent l'idéologie Hutu extrémiste et qui sont principalement originaires de la région natale du Président et de son épouse.

1.6 Au cours de l'année 1990, le

Republic, Juvénal Habyarimana, and his single party, the MRND, were facing mounting opposition, including from other Hutu.

1.7 On 1 October 1990, the Rwandan Patriotic Front (RPF), made up mainly of Tutsi refugees, attacked Rwanda. Within days the government began arresting thousands of people, presumed to be opponents of Habyarimana and suspected of being RPF accomplices. Although the Tutsi were the main target, Hutu political opponents were also arrested.

1.8 Following pressure from the internal opposition and the international community, and the RPF attack of October 1990, President Habyarimana permitted the introduction of multiple political parties and the adoption of a new constitution on 10 June 1991. The *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). The first transitional government was made up almost exclusively of MRND members, following the refusal of the main opposition parties to take part. With the second transitional government in April 1992, the MRND became a minority party for the first time in its history, with nine ministerial portfolios out of 19. On the other hand, the MRND retained its domination over the local administration.

1.9 The new Government then entered negotiations with the RPF, which resulted in the signing of the Arusha Accords on 4 August 1993. The Accords provided for a new system of sharing military and civilian power between the RPF, the opposition parties and the MRND.

Président de la République, Juvénal Habyarimana, et son parti unique, le MRND, font face à une opposition grandissante, notamment de la part d'autres Hutu.

1.7 Le 1er octobre 1990, le Front Patriotique Rwandais (FPR), composé majoritairement de réfugiés Tutsi, attaque le Rwanda. Dans les jours qui suivent, le gouvernement procède à l'arrestation de milliers de personnes présumées être des adversaires d'Habyarimana et soupçonnées de complicité avec le FPR. Parmi les personnes arrêtées, majoritairement d'origine Tutsi, il y a également des opposants politiques Hutu.

1.8 Suite aux différentes pressions de l'opposition interne et de la communauté internationale, et à l'attaque du FPR d'octobre 1990, le Président Habyarimana autorise l'introduction du multipartisme et l'adoption d'une nouvelle constitution le 10 juin 1991. Le *Mouvement Révolutionnaire National pour le Développement* (MRND) est alors rebaptisé *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). Le premier Gouvernement de transition est composé presque exclusivement de membres du MRND, suite au refus des principaux partis d'opposition d'en faire partie. Avec la mise en place du second Gouvernement de transition en avril 1992, le MRND se retrouve minoritaire pour la première fois de son histoire, avec neuf portefeuilles ministériels sur 19. Par contre, le MRND demeure fortement dominant au niveau de l'administration territoriale.

1.9 Le nouveau Gouvernement entame alors des négociations avec le FPR qui aboutissent le 4 août 1993 à la signature des Accords d'Arusha. Ces Accords prévoient un nouveau partage des pouvoirs militaires et civils entre le FPR, les partis d'opposition et le MRND.

1.10 By the terms of the Arusha Accords, which provided for the integration of both sides' armed forces, the new national army was to be limited to 13,000 men, 60% FAR *(Forces Armées Rwandaises)* and 40% RPF. The posts of command were to be shared equally (50%-50%) between the two sides, with the post of Chief of Staff of the Army assigned to the FAR.

The Gendarmerie was to be limited to 6,000 men, 60% FAR and 40% RPF, with the posts of command shared equally (50%-50%) between the two sides and the post of Chief of Staff of the Gendarmerie assigned to the RPF.

1.11 As regards representation within the government, the Arusha Accords limited the number of ministerial portfolios to be held by the MRND to five, plus the Presidency. The other portfolios were to be shared as follows: RPF, five; MDR (*Mouvement démocratique républicain*), four (including the post of Prime Minister); PSD (*Parti social-démocrate*), three; PL (*Parti libéral*), three; and the PDC (*Parti démocrate-chrétien*), one.

1.12 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions of prominence in the various sectors of Rwandan society, this new power sharing plan, as demanded by the political opposition and as stipulated in the Arusha Accords, meant a relinquishment of power and the loss of numerous privileges and benefits. With political changes following the establishment of the multi-party government of April 1992, several important military officers from the north had been forced to retire. At the same time, many of the military were facing massive demobilisation with the implementation of

1.10 Aux termes des Accords d'Arusha qui prévoient l'intégration des forces armées des deux parties, l'effectif de la nouvelle armée nationale est limité à 13 000 hommes dont 60% proviennent des FAR (Forces Armées Rwandaises) et 40% du FPR. Quant aux postes de commandement, ils sont attribués à parts égales (50%-50%) aux deux parties, le poste de Chef d'État Major de l'armée revenant aux FAR.

L'effectif de la Gendarmerie est limité à 6 000 hommes, composé de 60% des FAR et 40% du FPR, avec les postes de commandement répartis équitablement (50%-50%) entre les deux parties, le poste de Chef d'État Major de la Gendarmerie revenant au FPR.

1.11 Au niveau de la représentation au sein du gouvernement, les Accords d'Arusha limitent à cinq le nombre de portefeuilles ministériels du MRND en plus de la Présidence de la République. Les autres portefeuilles se répartissent ainsi: cinq pour le FPR, quatre pour le MDR (*Mouvement démocratique républicain*) dont le poste de premier Ministre, trois pour le PSD (*Parti social-démocrate*), trois pour le PL (*Parti libéral*) et un pour le PDC (*Parti démocrate-chrétien*).

1.12 Pour les hommes et les femmes proches du Président Habyarimana, parmi lesquels les membres de *l'Akazu*, qui occupaient des fonctions importantes au sein des divers secteurs de la société rwandaise, ce nouveau partage du pouvoir, tel qu'exigé par les opposants politiques et stipulé par les Accords d'Arusha, signifie l'abandon du pouvoir et la perte de nombreux privilèges et d'importants bénéfices. Les changements politiques consécutifs à l'établissement d'un régime multipartite en avril 1992 obligent plusieurs officiers militaires importants, originaires du Nord, à prendre leur retraite. En même temps, l'application des Accords d'Arusha confronte plusieurs militaires à

the Arusha Accords.

1.13 From 1990, Habyarimana and several of his close associates devised the strategy of inciting hatred and fear of the Tutsi minority as a way of rebuilding solidarity among the Hutu and keeping themselves in power. They strongly opposed any form of power sharing, including the one envisaged by the Arusha Accords.

1.14 Determined to avoid the power sharing prescribed by the Arusha Accords, several prominent civilian and military figures pursued their strategy of ethnic division and incitement to violence. They targeted and labelled as RPF accomplices the entire Tutsi population, and also Hutu opposed to their domination, particularly those from regions other than northwestern Rwanda. At the same time, they sought to divide Hutu opposition parties, attracting some of their members back to the support of Habyarimana. These efforts to divide the Hutu opposition were furthered by the assassination of Melchior Ndandaye, the democratically elected Hutu President, in neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the three major parties opposed to the MRND had each split into two factions. The faction of each known as the "Power" faction aligned itself with the MRND.

1.15 The strategy adopted in the early 1990s, which culminated in the widespread massacres of April 1994, comprised several components, which were carefully worked out by the various prominent figures who shared the extremist Hutu ideology, including the members of the *Akazu*.

In addition to the incitement to ethnic violence and the extermination of the Tutsi and their "accomplices", was the

une démobilisation massive.

1.13 À partir de 1990, Habyarimana et plusieurs de ses plus proches collaborateurs conçoivent une stratégie d'incitation à la haine et à la peur face à la minorité Tutsi, afin de rétablir la solidarité parmi les Hutu et de se maintenir au pouvoir. Ils s'opposent fortement à toute forme de partage du pouvoir et particulièrement au partage prévu par les Accords d'Arusha.

1.14 Déterminées à éviter le partage des pouvoirs prévu par les Accords d'Arusha, plusieurs personnalités civiles et militaires en vue poursuivent leur stratégie de conflit ethnique et d'incitation à la violence. Elles visent la population Tutsi tout entière, qui est qualifiée de complice du FPR, de même que les Hutu opposés à leur domination, particulièrement ceux qui sont originaires d'autres régions que le nord-ouest du Rwanda. Parallèlement, elles tentent de diviser les partis d'opposition Hutu, en ramenant certains de leurs membres dans le camp d'Habyarimana. Les efforts destinés à diviser l'opposition Hutu sont favorisés par l'assassinat, par des soldats Tutsi de l'armée burundaise, de Melchior Ndandaye, président Hutu démocratiquement élu dans le Burundi voisin. À la fin de 1993, deux des trois principaux partis opposés au MRND s'étaient divisés en deux factions chacun. Les factions connues sous le nom de "Power" s'allient au MRND.

1.15 La stratégie adoptée au début des années 90, qui va connaître son apogée avec les massacres généralisés d'avril 1994, comporte plusieurs éléments qui sont soigneusement élaborés par les différentes personnalités qui partagent cette idéologie extrémiste, dont les membres de l'*Akazu*.

À l'incitation à la violence ethnique et à l'extermination des Tutsi et de leurs "complices", s'ajoutent l'organisation et

organization and military training of the youth wings of the political parties, notably the *Interahamwe* (youth wing of the MRND), the preparation of lists of people to be eliminated, the distribution of weapons to civilians, the assassination of certain political opponents and the massacre of many Tutsi in various parts of Rwanda between October 1990 and April 1994.

1.16 The incitement to ethnic hatred took the form of public speeches by people sharing the extremist ideology. These political and military figures publicly appealed to hatred and fear of the Tutsi and urged the Hutu majority to "finish off the enemy and its accomplices". A perfect illustration is the speech made in November 1992 by Léon Mugesera, vice-chairman of the MRND for Gisenyi *préfecture*, who at the time was already inciting the public to exterminate the Tutsi and their "accomplices".

With the intention of ensuring widespread dissemination of the calls to ethnic violence, prominent figures from the President's circle set up true hate media. Thus the creation of *Radio Télévision Libre des Mille Collines (RTLM)* and of the newspaper *Kangura* was a part of the strategy and pursued the same logic.

1.17 The creation of the youth wings of the political parties, originally established to encourage or even force adherence to one or another party in the newly-established multi-party system, provided Habyarimana's circle with a large, devoted and effective workforce to implement the adopted strategy. These youth organizations, which were affiliated to the political parties, were soon manipulated as part of the anti-Tutsi campaign. Some of the members of these organizations, notably the *Interahamwe* (MRND), were organized into militia groups, which were financed, trained and led

l'entraînement militaire des jeunesses politiques, notamment les *Interahamwe* (jeunesses du MRND), la préparation de listes de personnes à éliminer, la distribution d'armes à des civils, l'assassinat de certains opposants politiques et le massacre de nombreux Tutsi dans diverses régions du Rwanda entre octobre 1990 et avril 1994.

1.16 L'incitation à la haine ethnique prend la forme de discours publics prononcés par des personnalités partageant cette idéologie extrémiste. Ces personnalités politiques et militaires appellent publiquement à la haine et à la peur des Tutsi et exhortent la majorité Hutu "à en finir avec l'ennemi et ses complices". Le discours prononcé en novembre 1992 par Léon Mugesera, vice-président du MRND pour la préfecture de Gisenyi, qui dès cette époque incitait publiquement à l'extermination des Tutsi et leurs "complices", en est la parfaite illustration.

Dans le but d'assurer une large diffusion de ces appels à la violence ethnique, des personnalités de l'entourage du Président mettent sur pied de véritables média de la haine. La création de la Radio Télévision Libre des Mille Collines (RTLM) et du journal *Kangura* participe de cette stratégie et s'inscrit dans cette logique.

1.17 La création des ailes jeunesses des partis politiques, qui avait à l'origine pour objectif d'encourager ou même de forcer l'adhésion à l'un ou l'autre des partis du nouveau régime multipartite, va fournir à l'entourage d'Habyarimana une main d'oeuvre dévouée, nombreuse et efficace pour mettre en oeuvre la stratégie adoptée. Ces organisations de jeunesse affiliées aux partis politiques sont très vite manipulées dans le cadre de la campagne anti-Tutsi. Des membres de ces organisations, particulièrement les *Interahamwe*-MRND, sont organisés en milices, financées,

by prominent civilians and military figures from the President of the Republic's entourage. They were issued weapons, with the complicity of certain military and civilian authorities. The militia groups were transported to training sites, including certain military camps, in public administration vehicles or vehicles belonging to companies controlled by the President's circle.

1.18 During the mass arrests of October 1990, the civilian and military authorities followed lists that had been drawn up in order to identify and locate the presumed accomplices of the RPF, the majority of whom were Tutsi. Later, Army, Gendarmerie, local authorities and *Interahamwe* were given orders to prepare new lists or update the existing ones, which were subsequently used during the massacres of 1994. In March 1993, such a list was found in the vehicle of the Army Chief of Staff.

1.19 Towards the end of 1991, certain Rwandan authorities distributed weapons to certain civilians in the north-eastern region of the country as part of a civil self-defence campaign, in reaction to the RPF attack of October 1990. Later, some authorities distributed weapons nationwide, notably to the *Interahamwe* and carefully selected individuals, even in regions distant from the war zone. Towards the end of 1993, the Bishop of Nyundo criticized the distribution of weapons in a public letter, questioning its purpose.

1.20 The pursuit of the strategy thus described played a catalytic role in the political and ethnic violence of the time, which climaxed in the April 1994 massacres. The early part of the 90s was marked by numerous political assassinations

entraînées et dirigées par des personnalités civiles et militaires de l'entourage du Président de la République. Des armes leur sont distribuées avec la complicité de certaines autorités militaires et civiles. Leur transport vers les sites d'entraînement, dont certains camps militaires, est assuré par des véhicules de l'administration publique ou appartenant à des sociétés contrôlées par l'entourage du Président.

1.18 Lors des arrestations massives d'octobre 1990, les autorités civiles et militaires se réfèrent à des listes établies pour identifier et localiser les présumés complices du FPR, en majorité Tutsi. Par la suite, l'Armée, la Gendarmerie, les autorités locales et les *Interahamwe* reçoivent des directives pour préparer de nouvelles listes ou tenir à jour les listes existantes, qui vont servir lors des massacres de 1994. En mars 1993, une telle liste est retrouvée dans le véhicule du Chef d'État Major de l'Armée.

1.19 Vers la fin de 1991, certaines autorités rwandaises distribuent des armes à certains membres de la population civile du nord-est du pays dans le cadre de la campagne d'auto-défense civile en réaction à l'attaque du FPR d'octobre 1990. Plus tard, en dehors du cadre de l'auto-défense civile, des armes sont distribuées dans tout le pays par des autorités, notamment aux *Interahamwe* et à des personnes soigneusement choisies, même dans des régions éloignées de la zone de guerre. Vers la fin de 1993, l'Évêque de Nyundo critique dans une lettre publique cette distribution d'armes, s'interrogeant sur sa finalité.

1.20 La mise en place de la stratégie ainsi décrite joue un rôle de catalyseur dans la violence politique et ethnique de cette époque qui atteint son paroxysme avec les massacres d'avril 1994. Le début des années 90 est marqué par de nombreux assassinats

and large massacres of the Tutsi minority, including the one in Kibilira (1990), that of the Bagogwe (1991) and the one in Bugesera (1992). The massacres were instigated and organized by local authorities with the complicity of certain prominent persons from the President's circle. Therein can be found the components of the strategy which culminated in the genocide of 1994.

1.21 In early 1994, certain prominent people from Habyarimana's circle instigated violent demonstrations in Kigali aimed at preventing the implementation of the Arusha Accords. Soldiers in civilian clothes and militiamen took part, seeking to provoke confrontations with the Belgian UNAMIR soldiers. These incidents were partially the cause of the postponement of the establishment of the institutions foreseen by the Arusha Accords.

1.22 On 6 April 1994, the plane carrying, among other passengers, the President of the Republic of Rwanda, Juvénal Habyarimana, was shot down on its approach to Kigali airport.

1.23 In the hours which followed the crash of the President's plane, the senior officers of the FAR convened to assess the situation. Those who shared the extremist Hutu ideology, generally from the North, proposed an Army take-over. During a second meeting which took place on the morning of 7 April, that option was rejected in favour of setting up an interim Government.

1.24 Already on the morning of 7 April and while these discussions were taking place, groups of military, lists in hand, proceeded to arrest, confine and carry out systematic assassinations of a large number of political opponents, both Hutu and

politiques et d'importants massacres de la minorité Tutsi, dont celui de Kibilira (1990), ceux des Bagogwe (1991) et celui du Bugesera (1992). Ces massacres sont suscités et organisés par des autorités locales avec la complicité de certaines personnalités de l'entourage du Président Habyarimana. On y retrouve tous les éléments de la stratégie qui va aboutir au génocide de 1994.

1.21 Au début de 1994, des manifestations violentes visant à empêcher la mise en place des Accords d'Arusha se déroulent à Kigali à l'instigation de certaines personnalités de l'entourage d'Habyarimana. On y retrouve des militaires en civil aux côtés des miliciens qui cherchent à provoquer des affrontements avec les soldats belges de la MINUAR. Ces incidents sont en partie à l'origine du report de la mise en place des institutions prévues dans les Accords d'Arusha.

1.22 Le 6 avril 1994, l'avion transportant, entre autres passagers, le Président de la République du Rwanda, Juvénal Habyarimana, est abattu peu avant son atterrissage à l'aéroport de Kigali.

1.23 Dans les heures qui suivent la chute de l'avion présidentiel, les principaux officiers des FAR se réunissent pour évaluer la situation. Ceux qui partagent l'idéologie extrémiste Hutu, généralement les militaires du nord du pays, proposent la prise du pouvoir par l'Armée. Le 7 avril au matin, lors d'une deuxième réunion, cette option est rejetée au profit de la mise sur pied d'un gouvernement intérimaire.

1.24 Dès le 7 avril au matin, parallèlement à ces discussions, des groupes de militaires, listes en main, procèdent à l'arrestation, à la séquestration et à l'assassinat de nombreux opposants politiques, Hutu et Tutsi, parmi lesquels le

Tutsi, including the Prime Minister, some of the Ministers in her Government and the President of the Constitutional Court. At the same time, however, the military were evacuating prominent members of the dead President's circle, including the MRND Ministers, to safe locations.

The Belgian UNAMIR soldiers sent to protect the Prime Minister were disarmed, arrested and taken to Kigali military camp, where they were massacred, prompting the withdrawal of the Belgian contingent in the days that followed. After the withdrawal of the Belgian troops, the UN Security Council drastically reduced the number of UNAMIR personnel in Rwanda.

1.25 The leaders of various political parties not targeted in the assassinations assembled at the request of military officers. Other than members of the MRND, most participants were members of the "Power" wings of their respective parties. Given the political and constitutional void created by the deaths of most national political authorities, they set up a government based on the 1991 constitution. Composed solely of Hutu, the government was sworn in on 9 April 1994. The MRND held nine ministerial posts, plus the Presidency of the Republic, while the remaining 11 positions, including that of Prime Minister, went to the "Power" factions of the other parties.

1.26 In the hours following the crash of President Habyarimana's plane, military and militiamen set up roadblocks and began slaughtering Tutsi and members of the Hutu opposition in Kigali and in other parts of Rwanda. At the roadblocks, they checked the identity cards of passers-by and killed those or most of those who were identified as Tutsi. Military patrols, often involving militiamen, scoured the city, lists in hand, to

Premier Ministre, certains des ministres de son gouvernement et le Président de la Cour Constitutionnelle. Par contre, au même moment, des militaires évacuent dans des endroits sûrs des personnalités de l'entourage du défunt Président, y compris les ministres du MRND.

Les militaires belges de la MINUAR envoyés pour protéger le Premier Ministre sont désarmés, arrêtés et conduits au camp militaire de Kigali où ils sont massacrés. Cet incident précipite le retrait du contingent belge dans les jours qui suivent. Après le retrait des troupes belges, le Conseil de sécurité des Nations-Unies réduit de façon draconienne le nombre de personnel de la MINUAR au Rwanda.

1.25 Les dirigeants des divers partis politiques non visés par les assassinats se réunissent à la demande d'officiers militaires. En dehors des membres du MRND, la plupart des participants sont membres des ailes "Power" de leurs partis respectifs. Étant donné le vide politique et constitutionnel créé par la mort de la plupart des personnalités politiques nationales, ils mettent sur pied un gouvernement fondé sur la constitution de 1991. Le gouvernement, exclusivement composé de personnalités Hutu, prête serment le 9 avril 1994. Neuf postes ministériels sont attribués au MRND, en plus de la présidence de la République, et les onze postes restants, incluant celui de premier ministre, reviennent aux factions "Power" des autres partis.

1.26 Dans les heures qui suivent la chute de l'avion du Président Habyarimana, les militaires et les miliciens érigent des barrages et commencent à massacrer les Tutsi et les membres de l'opposition Hutu à Kigali et dans d'autres régions du Rwanda. Aux barrages, ils procèdent à la vérification des cartes d'identité de tous les passants et exécutent toutes les personnes, ou la plupart des personnes, identifiées comme étant

execute the Tutsi and certain political opponents.

1.27 During the entire period of the genocide, FAR military, particularly units of the Presidential Guard, the Para-Commando Batallion, Reconnaissance Battalion and the Gendarmerie, in complicity with militiamen, actively participated in the massacres of the Tutsi throughout Rwanda.

1.28 As soon as it was formed, the Interim Government espoused the plan for extermination put in place. Throughout the period of the massacres, the Government made decisions and issued directives to aid and abet in the extermination of the Tutsi population and the elimination of the Hutu political opponents. Members of the Government incited the population to eliminate the enemy and its "accomplices", some of them participating directly in the massacres.

1.29 Local authorities, including *préfets*, *bourgmestres*, *conseillers de secteur* and *responsables de cellule* applied the Government-issued directives in execution of the plan for the extermination of the Tutsi population. They incited and ordered their subordinates to perpetrate the massacres and took a direct part in them.

1.30 Having been psychologically and militarily prepared for several months, the groups of militiamen spearheaded the execution of the extermination plan and were directly involved in the massacres of the civilian Tutsi population and of moderate Hutus, thus causing the deaths of hundreds of thousands of people in less than 100 days.

Tutsi. Des patrouilles de militaires, souvent accompagnés de miliciens sillonnent la ville, listes en main, pour exécuter les Tutsi et certains opposants politiques.

1.27 Durant toute la période du génocide, des militaires des FAR, particulièrement des unités de la Garde Présidentielle, du Bataillon Para-Commando, du Bataillon reconnaissance et de la Gendarmerie, avec la complicité de miliciens, participent activement aux massacres de Tutsi sur toute l'étendue du Rwanda.

1.28 Dès sa formation, le Gouvernement Intérimaire fait sien le plan d'extermination mis en place. Durant toute la période des massacres, le Gouvernement prend des décisions et donne des directives dans le but d'aider et encourager l'extermination de la population Tutsi et l'élimination des opposants politiques Hutu. Des membres de ce gouvernement incitent la population à éliminer l'ennemi et ses "complices", certains d'entre eux prennent part directement aux massacres.

1.29 Des autorités locales, telles que les Préfets, les Bourgmestres, les conseillers de secteur et les responsables de cellule, appliquent les directives du Gouvernement visant à exécuter le plan d'extermination de la population Tutsi. Ils incitent et ordonnent à leurs subordonnés de se livrer aux massacres et y prennent eux-mêmes part directement.

1.30 Les groupes de miliciens, psychologiquement et militairement préparés depuis plusieurs mois, constituent le fer de lance dans l'exécution du plan d'extermination et sont directement impliqués dans les massacres de la population civile Tutsi et des Hutu modérés, causant ainsi la mort de centaines de milliers de personnes en moins de 100 jours.

2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

2.1 The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

2.2 During the events referred to in this indictment, Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.

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

2.4 During the events referred to in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

2.5 During the events referred to in this indictment, a state of non-international armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons, according to the provisions of Article 3 common to the Geneva Conventions and of Additional Protocol II.

2. COMPÉTENCES TERRITORIALE, TEMPORELLE ET MATÉRIELLE

2.1 Les crimes visés par le présent acte d'accusation ont été commis au Rwanda entre le 1er janvier 1994 et le 31 décembre 1994.

2.2 Lors des événements auxquels se réfère le présent acte d'accusation, le Rwanda était divisé en 11 préfectures: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-ville, Kigali-rural et Ruhengeri. Chaque préfecture est subdivisée en communes et en secteurs.

2.3 Lors des événements auxquels se réfère le présent acte d'accusation, les Tutsi, les Hutu et les Twa étaient identifiés comme des groupes ethniques ou raciaux.

2.4 Lors des événements auxquels se réfère le présent acte d'accusation, il y a eu sur tout le territoire du Rwanda des attaques systématiques ou généralisées contre une population civile, en raison de son appartenance politique, ethnique ou raciale.

2.5 Lors des événements auxquels se réfère le présent acte d'accusation, il y avait un conflit armé non international sur le territoire du Rwanda. Les victimes auxquelles se réfère le présent acte d'accusation étaient des personnes protégées, au sens de l'article 3 commun aux Conventions de Genève et du Protocole additionnel II.

3. THE POWER STRUCTURE

The *Forces Armées Rwandaises*

3.1 The *Forces Armées Rwandaises (FAR)* were composed of the *Armée Rwandaise* (AR) and the *Gendarmerie Nationale* (GN). The *Forces Armées Rwandaises* did not have a unified command and came directly under the Minister of Defence. The Commander-in-Chief of the *Forces Armées Rwandaises* was the President of the Republic.

3.2 The General Staff of the Rwandan Army was headed by the Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.3 The territory of Rwanda was divided into various military operations sectors, each headed by a military sector commander. Also, there were elite units within the Rwandan Army, namely the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion. The troops were divided into companies within the sectors and the units.

3.4 By virtue of their rank and their functions, the officers of the Rwandan Army had the duty to enforce the general rules of discipline for all soldiers under their authority, even those not belonging to their units.

3.5 The General Staff of the *Gendarmerie Nationale* was headed by the

3. STRUCTURE DU POUVOIR

Les Forces Armées Rwandaises

3.1 Les Forces Armées Rwandaises (FAR) étaient composées de l'Armée Rwandaise (AR) et de la Gendarmerie Nationale (GN). Les Forces Armées Rwandaises ne disposaient pas d'un Etat-Major unifié et relevaient directement du ministre de la Défense. Le chef suprême des Forces Armées Rwandaises était le Président de la République.

3.2 L'Etat-Major de l'Armée Rwandaise était dirigé par un Chef d'Etat-Major assisté de quatres officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.3 Le territoire du Rwanda était divisé en différents secteurs d'opérations militaires. Chaque secteur était dirigé par un commandant militaire. En outre, il y avait des unités d'élites au sein de l'Armée Rwandaise: le bataillon de la Garde Présidentielle, le bataillon Para-Commando, et le bataillon de Reconnaissance. Les troupes étaient divisées en compagnies au sein des secteurs et des unités.

3.4 De par leur grade et leurs fonctions, les officiers de l'Armée Rwandaise avaient le devoir de faire respecter les règles générales de discipline pour tous les militaires sous leur autorité, même s'ils n'appartenaient pas à leurs unités.

3.5 L'Etat-Major de la Gendarmerie était dirigé par un Chef d'Etat-Major assisté de

Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.6 The *Gendarmerie Nationale* was responsible for maintaining public order and peace and the observance of the laws in effect in the country.

3.7 The *Gendarmerie Nationale* was under the Minister of Defence but could carry out its duties of ensuring public order and peace at the request of the local government authority having jurisdiction, namely the *Préfet*. In cases of emergency, this request could be made verbally, notably by telephone. Such requests had to be carried out immediately. In addition, the *Gendarmerie Nationale* was obliged to transmit to the *Préfet* all information relating to public order. It had the duty to assist anyone in danger.

The Political Parties and The Militia

3.8 During the events referred to in this indictment, the main political parties in Rwanda were the MRND *(Mouvement Républicain National pour la Démocratie et le Développement)*, the CDR (*Coalition pour la Défense de la République*), the MDR (*Mouvement Démocratique Républicain*), the PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (Rwandan Patriotic Front) was a politico-military opposition organization.

3.9 Most of the political parties had created a youth wing. The members of the MRND's youth wing members were known as the "*Interahamwe*" and those of the CDR

quatres officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.6 La Gendarmerie Nationale était chargée du maintien de l'ordre et de la paix publique et de l'exécution des lois en vigueur dans le pays.

3.7 La Gendarmerie Nationale relevait du ministre de la Défense, mais pouvait exercer ses attributions de maintien de l'ordre et de la paix publique à la requête de l'autorité administrative territoriale compétente, en la personne du préfet. En cas d'urgence, cette réquisition pouvait être faite verbalement, notamment par téléphone. Cette réquisition devait être exécutée sans délai. En outre, la Gendarmerie Nationale devait porter à la connaissance du préfet tout renseignement concernant l'ordre public. Elle devait assistance à toute personne en danger.

Les Partis Politiques et les Milices

3.8 Lors des événements visés dans le présent acte d'accusation, les principaux partis politiques au Rwanda étaient: le MRND (Mouvement Républicain National pour la Démocratie et le Développement), la CDR (Coalition pour la Défense de la République), le MDR (Mouvement Démocratique Républicain), le PSD (Parti Social-Démocrate) et le PL (Parti Libéral). Le FPR (Front Patriotique Rwandais) était une organisation politico-militaire d'opposition.

3.9 La plupart des partis politiques avaient créé une aile jeunesse en leur sein. Celle du MRND était connue sous l'appellation "*Interahamwe*" et celle de la

were known as the "*Impuzamugambi*". Most of the MRND and CDR youth wings' members subsequently received military training and were thus tranformed from youth movements into militias.

CDR sous le nom de "*Impuzamugambi*". Par la suite, la plupart des membres des ailes jeunesses du MRND et de la CDR ont reçu un entraînement militaire; ce qui a transformé ces mouvements de jeunesse en milices.

4. THE ACCUSED

Gratien Kabiligi

4.1 **Gratien Kabiligi** was born on 18 December 1951, Rusunyu *secteur*, Kamembe *commune*, Cyangugu *préfecture*, Rwanda.

4.2 During the events referred to in this indictment, **Gratien Kabiligi** exercised the functions of Chief of Military Operations (G-3) within the High Command of the Rwandan Army. **Gratien Kabiligi** had the responsibility of planning, coordinating and ensuring the execution of military operations throughout the territory of Rwanda.

4.3 In 1993, Lieutenant-Colonel **Gratien Kabiligi** held the position of Commander of Military Operations for Byumba sector. He was promoted to the rank of colonel before being appointed Brigadier-General on 16 April 1994.

4.4 In his capacity as Commander of Military Operations (G-3) in the High Command of the Rwandan Army, **Gratien Kabiligi** had under his command the units of the sectors of Byumba, Ruhengeri, Mutara and Kigali, as well as the elite units such as the Presidential Guard and the Para-Commando Battalion and the Reconnaissance Battalion, and exercised authority over them.

Aloys Ntabakuze

4.5 **Aloys Ntabakuze** was born in 1954 in Karago *commune*, Gisenyi *préfecture*, Rwanda.

4.6 During the events referred to in this indictment, **Aloys Ntabakuze** exercised the functions of Commander of the Para-Commando Battalion in the Rwandan Army.

4. LES ACCUSÉS

Gratien Kabiligi

4.1 **Gratien Kabiligi** est né le 18 décembre 1951, secteur de Rusunyu dans la commune de Kamembe, préfecture de Cyangugu, Rwanda.

4.2 Lors des événements visés dans le présent acte d'accusation , **Gratien Kabiligi** exerçait les fonctions de Chef des Opérations Militaires (G-3) de l'Etat-Major de l'Armée Rwandaise. **Gratien Kabiligi** était chargé de planifier, coordonner et faire exécuter les opérations militaires sur tout le territoire du Rwanda.

4.3 En 1993, le Lieutenant Colonel **Gratien Kabiligi** exerçait les fonctions de Commandant des Opérations Militaires pour le secteur de Byumba. Il a été promu au grade de Colonel avant d'être nommé, le 16 avril 1994, Brigadier Général.

4.4 En sa qualité de Commandant des Opérations Militaires (G-3) de l'Etat-Major de l'Armée Rwandaise, **Gratien Kabiligi** avait sous son commandement les unités des secteurs de Byumba, Ruhengeri, Mutara, Kigali ainsi que les unités d'élite telles que la Garde Présidentielle, le Bataillon Para-Commando et le Bataillon de Reconnaissance sur lesquelles il exerçait une autorité.

Aloys Ntabakuze

4.5 **Aloys Ntabakuze** est né en 1954, dans la commune de Karago, préfecture de Gisenyi, Rwanda.

4.6 Lors des événements visés dans le présent acte d'accusation, **Aloys Ntabakuze** exerçait les fonctions de Commandant du Bataillon Para-Commando de l'Armée

Rwandaise.

4.7 **Aloys Ntabakuze** obtained a "B" commando certificate on 31 July 1976 and a paratrooper's certificate on 12 August 1978. He obtained an "A" commando certificate on 28 June 1978. On the same date, he graduated from Rwanda's *Ecole Supérieure Militaire* (ESM) with the rank of 2nd lieutenant. He was subsequently promoted to the rank of lieutenant on 5 February 1982. On 30 June 1984, he graduated from the *Direction centrale de la sécurité militaire*, of the Peoples' Democratic Republic of Algeria, after a training course in security, specializing in "Presidential Protection". He obtained an "A" paratrooper certificate on 2 August 1991. He served in the Presidential Guard before being promoted to the position of Commander of the Para-Commando Battalion in the Rwandan Army in 1992.

4.7 Le 31 juillet 76, **Aloys Ntabakuze** obtient son brevet "B" Commando, le 12 août 1978 son brevet de Parachutiste et le 28 juin 78, il obtient son brevet "A" Commando. Il est diplômé de l'École Supérieure Militaire (ESM) du Rwanda avec le grade de Sous-Lieutenant. Le 5 février 1982, il est promu au grade de lieutenant. Le 30 juin 1984, il reçoit un diplôme de la Direction centrale de la sécurité militaire, de la République Algérienne Démocratique et Populaire, suite à un stage de formation de sécurité dans la spécialité: "Protection Présidentielle". Le 2 août 1991, il obtient son Brevet "A" Parachutiste. Il a servi dans la Garde Présidentielle avant d'être promu au poste de Commandant du Bataillon Para-Commando dans l'armée rwandaise en 1992.

4.8 In his capacity as Commander of the Para-Commando Battalion of the Rwandan Army, **Aloys Ntabakuze** exercised authority over the units of this Battalion.

4.8 En sa qualité de Commandant du Bataillon Para-Commando l'armée rwandaise, **Aloys Ntabakuze** exerçait une autorité sur les unités de ce bataillon.

5. CONCISE STATEMENT OF THE FACTS: PREPARATION

5.1 From late 1990 until July 1994, **Gratien Kabiligi, Aloys Ntabakuze,** Théoneste Bagosora, Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Protais Mpiranya, François-Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana and Tharcisse Renzaho conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they could remain in power. The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, they organized, ordered and participated in the massacres perpetrated against the Tutsi population and of moderate Hutu.

5.2 In a letter dated 3 December 1993, certain FAR officers revealed to the UNAMIR Commander the existence of what they called a "Machiavellian plan" conceived by military who were mainly from the North and who shared the extremist Hutu ideology. The objective of the Northern military was to oppose the Arusha Accords and keep themselves in power. The means to achieve this consisted in exterminating the Tutsi and their "accomplices". The letter indicated moreover the names of political opponents to be eliminated. Some of them were in fact killed on the morning of 7 April 1994.

5.3 On 10 January 1994, UNAMIR was

5. EXPOSÉ SUCCINT DES FAITS : PRÉPARATION

5.1 Dès la fin de 1990 jusqu'à juillet 1994, **Gratien Kabiligi, Aloys Ntabakuze** Théoneste Bagosora, Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Protais Mpiranya, François Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana et Tharcisse Renzaho se sont entendus entre eux et avec d'autres pour élaborer un plan dans l'intention d'exterminer la population civile Tutsi et d'éliminer des membres de l'opposition et se maintenir ainsi au pouvoir. Les éléments de ce plan comportaient, entre autres, le recours à la haine et à la violence ethnique, l'entraînement et la distribution d'armes aux miliciens ainsi que la confection de listes de personnes à éliminer. Dans l'exécution de ce plan ils ont organisé, ordonné et participé aux massacres perpétrés à l'encontre de la population Tutsi et des Hutu modérés.

5.2 Dans une lettre datée du 3 décembre 1993, des officiers des FAR ont révélé au Commandant de la MINUAR l'existence d'un "plan machiavélique" conçu par des militaires essentiellement originaires du Nord et partageant l'idéologie Hutu extrémiste. L'objectif de ces militaires nordistes était de s'opposer aux Accords d'Arusha et de se maintenir au pouvoir. Les moyens pour ce faire consistaient à exterminer les Tutsi et leurs "complices". La lettre mentionnait, par ailleurs, les noms d'opposants politiques à éliminer. Certains d'entre eux ont effectivement été assassinés dans la matinée du 7 avril 1994.

5.3 Le 10 janvier 1994, la MINUAR est

informed by an *Interahamwe* leader of the details of a plan to exterminate the Tutsi population and its "accomplices".

Speeches and Incitement

5.4 The incitement to ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated, before and during the genocide, by elements of the FAR on the one hand, and by members of the Government and local authorities on the other.

5.5 On 4 December 1991, President Juvénal Habyarimana set up a military commission. The commission was given the task of finding an answer to the following question: "*What do we need to do in order to defeat the enemy militarily, in the media and politically?*" **Major Aloys Ntabakuze,** Lt. Col. Anatole Nsengiyumva and Colonel Théoneste Bagosora were members of this commission.

5.6 In a letter dated 21 September 1992, the General Staff of the Rwandan Army ordered that an extract from the commission report be circulated among the troops. The letter came from the office of the Chief of Intelligence (G-2), namely Lieutenant Colonel Anatole Nsengiyumva. The extract defined the main enemy as follows: "*The Tutsis from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms.*" The secondary enemy was defined as: "*Anyone providing any kind of assistance to the main enemy*". The document specified that the enemy was being recruited from within certain social

informée, par un dirigeant des *Interahamwe*, des détails d'un plan d'extermination de la population Tutsi et de ses "complices".

Discours et Incitation

5.4 L'incitation à la haine et à la violence ethniques a constitué un élément essentiel du plan mis en place. Elle a été articulée, avant et durant le génocide, d'une part par des éléments des FAR, et d'autre part par des membres du gouvernement et des autorités locales.

5.5 Le 4 décembre 1991, le Président Juvénal Habyarimana met en place une commission militaire. Cette commission était chargée de répondre à la question suivante: "*Que faut-il faire pour vaincre l'ennemi sur le plan militaire, médiatique et politique?*". Le **Major Aloys Ntabakuze,** le Lt Col. Anatole Nsengiyumva et le Colonel Théoneste Bagosora étaient membres de cette commission.

5.6 Dans une lettre datée du 21 septembre 1992, l'Etat-Major de l'Armée Rwandaise a ordonné la diffusion, parmi les troupes, d'un extrait du rapport produit par cette commission. Cette lettre émanait du bureau du Chef des renseignements (G-2), à savoir le Lieutenant Colonel Anatole Nsengiyumva. Ce document définissait l'ennemi principal comme étant "*le Tutsi de l'intérieur ou de l'extérieur, extrémiste et nostalgique du pouvoir, qui n'a jamais reconnu et ne reconnaît pas encore les réalités de la Révolution Sociale de 1959 et qui veut reconquérir le pouvoir au Rwanda par tous les moyens, y compris les armes*"et l'ennemi secondaire comme étant "*toute personne qui apporte tout concours à l'ennemi principal*". Le document précisait que le recrutement de l'ennemi se faisait

groups, notably: *"the Tutsis inside the country, Hutus who are dissatisfied with the present regime, foreigners married to Tutsi women..."*. Among the activities the enemy was accused of, the document mentioned *"the diversion of national opinion from the ethnic problem to the socio-economic problem between the rich and the poor"*.

5.7 The document and the use made of it by the senior officers aided, encouraged and promoted ethnic hatred and violence.

5.8 As from 1993, **Aloys Ntabakuze** and Colonel Théoneste Bagosora made statements wherein they identified the enemy as the Tutsi, and their sympathizers as the Hutu in the opposition.

5.9 As part of the negotiations for the Protocol on integration of the Armed Forces under the Arusha Accords, the officers from the North saw their powers eroded. This reality they could not accept made it opportune for to them to exacerbate the discourse of ethnic hatred and violence.

5.10 At the time of the negotiation of the Arusha Accords, several meetings of Army officers including **Major Aloys Ntabakuze** Colonel Théoneste Bagosora and Lt. Col. Anatole Nsengiyumva were held notably at Kanombe military camp . During the same period, **Aloys Ntabakuze** and Théoneste Bagosora urged the military to reject and show their disapproval of the Arusha Accords. In August 1993, **Aloys Ntabakuze** even ordered his men to abduct the Prime Minister and bring her to Kanombe Camp. The operation was cancelled while it was under way on the orders of the Chief of Staff, General Déogratias Nsabimana.

parmi certains groupes sociaux, notamment : *"...Les Tutsi de l'intérieur, les Hutu mécontents du régime en place, les étrangers mariés aux femmes Tutsi..."* Parmi les activités reprochées à l'ennemi, le document mentionnait le *"...Détournement de l'opinion nationale du problème ethnique vers le problème socio-économique entre les riches et les pauvres"*.

5.7 Ce document et l'utilisation qu'en ont faite les officiers supérieurs ont aidé, encouragé et favorisé la haine et la violence ethniques.

5.8 Dès 1993, **Aloys Ntabakuze** et le Colonel Théoneste Bagosora ont tenu des propos identifiant l'ennemi aux Tutsi et ses sympathisants aux Hutu de l'opposition.

5.9 Dans le cadre des négociations du Protocole d'intégration des Forces Armées, prévues par les Accords d'Arusha, les officiers du Nord voyaient leurs pouvoirs s'éroder. Cette réalité inacceptable pour eux, allait leur fournir l'occasion d'exacerber le discours de haine et de violence ethniques.

5.10 Durant la période des négociations des Accords d'Arusha, plusieurs réunions, regroupant des officiers, parmi lesquels, le **Major Aloys Ntabakuze**, le Colonel Théoneste Bagosora et le Lt Col. Anatole Nsengiyumva ont eu lieu, notamment au camp militaire de Kanombe. Durant cette même période, **Aloys Ntabakuze** et Théoneste Bagosora ont encouragé les militaires à rejeter et à manifester leur désaccord vis-à-vis des Accords d'Arusha. En août 1993, **Aloys Ntabakuze** a même ordonné à ses hommes d'enlever le Premier Ministre et de l'amener au camp de Kanombe. L'opération a été annulée en cours d'exécution sur ordre du Chef de l'Etat-Major, le Général Déogratias

Nsabimana.

5.11 Several senior officers in the Rwandan Army, including **Gratien Kabiligi, Aloys Ntabakuze** and Théoneste Bagosora, publicly stated that the extermination of the Tutsi would be the inevitable consequence of any resumption of hostilities by the RPF or if the Arusha Accords were implemented.

5.11 Plusieurs officiers supérieurs de l'Armée Rwandaise, parmi lesquels, **Gratien Kabiligi, Aloys Ntabakuze** et Théoneste Bagosora ont publiquement déclaré que l'extermination des Tutsi serait la conséquence inévitable de toute reprise des hostilités par le FPR ou de la mise en application des Accords d'Arusha.

5.12 Towards the end of March 1994, in the presence of a group of Belgian Army officers, Colonel Gratien Kabiligi and the Chief of Staff of Rwandan Army, General Deogratias Nsabimana, spoke of the possibility of eliminating the RPF (Rwandan Patriotic Front) and the Tutsi within a short time. Moreover, during the genocide, **Gratien Kabiligi** expressed his satisfaction with the crimes perpetrated by the *Interahamwe* militia against the civilian Tutsi population.

5.12 Vers la fin du mois de mars 1994, le Colonel **Gratien Kabiligi** et le Chef d'État Major de l'Armée Rwandaise, le Général Déogratias Nsabimana, ont évoqué devant des officiers de l'armée belge, la possibilité d'éliminer le FPR (Front Patriotique Rwandais) et les Tutsi dans un court laps de temps. D'ailleurs, durant le genocide, **Gratien Kabiligi** a exprimé sa satisfaction quant aux crimes perpétrés par les miliciens *Interahamwe* contre la population civile Tutsi.

The Militia Groups

Les milices

5.13 The creation of the youth wings satisfied two of the political parties' concerns: to mobilize young people and to sensitize them to politics. The MRND and CDR followed the example of the MDR and RPF, which had already institutionalized their youth movements. Political rivalries during the multi-party period exacerbated tensions. The *"Interahamwe"* and *"Impuzamugambi"* began to be drawn astray from the time they were used to oppose with violence the political demonstrations organized by parties of the opposition.

5.13 La création des ailes jeunesses répondait à deux préoccupations au niveau des partis politiques: mobiliser et sensibiliser les jeunes à la politique. Le MRND et la CDR ont suivi l'exemple du MDR et du FPR qui avaient déjà institutionnalisé leurs mouvements de jeunesse. Les rivalités politiques de la période du multi-partisme ont exacerbé les tensions. Les *"Interahamwe"* et les *"Impuzamugambi"* ont été entraînés dans la dérive dès lors qu'ils ont été utilisés pour s'opposer violemment aux manifestations politiques organisées par les partis de l'opposition.

5.14 In order to ensure that, when the time came, the extermination of the enemy and its

5.14 Afin de s'assurer qu'à terme, l'extermination de l'ennemi et de ses

"accomplices" would be carried out swiftly and effectively, it was necessary to create a militia that was structured, armed and complementary to the Armed Forces. For the militia to be represented nationally, *Interahamwe* committees were created at *prefecture* level.

5.15 As from 1993, and even before that date, anxious to radicalize the *Interahamwe* movement, the leaders of the MRND, in collaboration with officers of the FAR, decided to provide military training to those members most devoted to their extremist cause and to other idle youths. Furthermore, weapons were distributed to them.

Training of the Militia Groups

5.16 The training was supervised by military, including **Aloys Ntabakuze,** Protais Mpiranya, Anatole Nsengiyumva, Léonard Nkundiye, and civilian authorities. Training was conducted simultaneously in several *préfectures* around the country: Kigali, Cyangugu, Gisenyi and Butare, as well as in the Mutara sector. Training also took place in military camps, notably Gabiro, Gako, Mukamira and Bigogwe, as well as around these camps or in neighbouring forests.

5.17 In Kigali *préfecture*, **Aloys Ntabakuze** and Protais Mpiranya supervised the training of the MRND militia, the *Interahamwe*.

5.18 On 10 January 1994, a leader of the *Interahamwe* militia informed UNAMIR that 1,700 militiamen had undergone training and that they could eliminate 1,000 Tutsis every twenty minutes.

5.19 The secret training of the militiamen

"complices" se ferait rapidement et efficacement, il était nécessaire de constituer une milice, structurée, armée et complémentaire aux Forces Armées. Pour donner une représentation nationale à cette milice, des comités d'*Interahamwe* ont été créés au niveau préfectoral.

5.15 Dès 1993 et même avant, dans un souci de radicalisation du mouvement *Interahamwe*, les dirigeants du MRND en collaboration avec des officiers des FAR, ont décidé de faire suivre aux éléments les plus dévoués à leur cause extrémiste et à d'autres jeunes désoeuvrés, un entraînement militaire. En outre, des armes leur ont été distribuées.

L'entraînement des milices

5.16 L'entraînement était supervisé par des militaires, parmi lesquels **Aloys Ntabakuze**, Protais Mpiranya, Anatole Nsengiyumva, Léonard Nkundiye, et par des autorités civiles. Ces entraînements ont eu lieu simultanément dans plusieurs préfectures du pays : Kigali, Cyangugu, Gisenyi, Butare et dans le secteur du Mutara. Ces entraînements se tenaient dans des camps militaires, notamment les camps de Gabiro, Gako, Mukamira et de Bigogwe et également aux alentours de ces camps ou dans les forêts avoisinantes.

5.17 Dans la préfecture de Kigali, **Aloys Ntabakuze** et Protais Mpiranya ont supervisé l'entraînement des miliciens du MRND, les *Interahamwe*.

5.18 Le 10 janvier 1994, un dirigeant des milices *Interahamwe* a informé la MINUAR que 1,700 miliciens avaient suivi un entraînement et qu'ils pouvaient éliminer 1,000 Tutsi toutes les vingt minutes.

5.19 Les entraînements secrets des

became more and more notorious. They could on some occasions be seen training in public places or on their way to the training sites, while chanting slogans inciting the extermination of the enemy.

Distribution of Weapons

5.20 In order to implement the plan for the extermination of the enemy and its "accomplices", the militiamen were to receive weapons, in addition to military training. Hence, the military and civilian authorities distributed weapons to the militiamen and certain carefully selected members of the civilian population in various *préfectures* of the country.

5.21 In 1993, President Habyarimana declared in Ruhengeri that the *Interahamwe* had to be *equipped* so that, come the right time, *"ils descendent"*.

5.22 Before and during the events referred to in this indictment, **Aloys Ntabakuze**, Augustin Bizimana, Théoneste Bagosora, Protais Mpiranya, Anatole Nsengiyumva, and others distributed weapons to the militiamen and certain carefully selected members of the civilian population with the intent to exterminate the Tutsi population and eliminate its "accomplices".

5.23 From July 1993 to July 1994, the Minister of Defence, Augustin Bizimana, who replaced James Gasana, encouraged and facilitated the acquiring of weapons for MRND militants by openly asserting that the Ministry of Defence was a Ministry of the MRND. He personally received several influential members of the MRND, the CDR and *Interahamwe* in his office.

miliciens sont devenus de plus en plus de notoriété publique. On a pu les voir s'entraîner, à certaines occasions, dans des endroits publics ou se diriger vers les sites d'entraînement, en chantant des slogans incitant à l'extermination de l'ennemi.

La distribution d'armes

5.20 Pour mettre en oeuvre le plan d'extermination de l'ennemi et ses "complices", les miliciens devaient recevoir, en plus d'un entraînement militaire, des armes. Dès lors, les autorités militaires et civiles ont distribué des armes aux miliciens et à certains membres soigneusement choisis de la population civile, dans différentes préfectures du pays.

5.21 En 1993, le Président Habyarimana déclarait à Ruhengeri qu'on devait *équiper* les *Interahamwe* pour qu'au moment opportun, *"ils descendent"*.

5.22 Avant et durant les événements visés dans le présent acte d'accusation, **Aloys Ntabakuze**, Augustin Bizimana, Théoneste Bagosora, Protais Mpiranya, Anatole Nsengiyumva, et d'autres ont distribué des armes aux miliciens et à certains membres soigneusement choisis de la population civile dans l'intention d'exterminer la population Tutsi et d'éliminer ses "complices".

5.23 De juillet 1993 à juillet 1994, le ministre de la Défense, Augustin Bizimana, qui a remplacé James Gasana, a encouragé et favorisé l'obtention d'armes pour les militants du MRND, en affirmant ouvertement que le ministère de la Défense Nationale était un ministère du MRND. Il recevait personnellement plusieurs membres influents du MRND, de la CDR et des

5.24 Due to the proliferation of weapons in Kigali-*ville préfecture*, UNAMIR put in place a disarmament program, titled Kigali Weapon Security Area (KWSA). The program came into effect in early 1994. Concurrently, in cooperation with the Chief of Staff of the Gendarmerie, Augustin Ndindiliyimana, UNAMIR organized search operations in Kigali. The effectiveness of the operations was compromised by General Augustin Ndindiliyimana, who gave advance information on the locations targeted in the searches to Mathieu Ngirumpatse, MRND Chairman. The latter passed the information on to the *Interahamwe*, who immediately moved the weapons.

5.25 On 7 January 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga and other influential MRND members participated in a meeting at the MRND headquarters in opposition to the disarmament program. It was decided at this meeting to use all possible means to resist the implementation of the disarmament, and also to hide weapons at various locations.

5.26 On 10 January 1994, UNAMIR was informed by an *Interahamwe* leader of the existence of weapons caches in Kigali and a plan to eliminate the Tutsi population. It instructed one of its officers to uncover the exact locations of the weapons. That officer identified several caches throughout Kigali, in places controlled by members of the MRND, notably at the party headquarters in Kimihurura, in a house belonging to General Augustin Ndindiliyimana. During the search of that house, the UNAMIR officer discovered several firearms and cases of ammunition. The informer asserted that, as

Interahamwe à son bureau.

5.24 En raison de la prolifération des armes dans la préfecture de Kigali-ville, la MINUAR a mis en place un programme de désarmement, dénommé Kigali Weapon Security Area (KWSA). Ce programme est entré en vigueur au début de l'année 1994. Parallèlement, et en collaboration avec le Chef d'Etat-Major de la gendarmerie, Augustin Ndindiliyimana, la MINUAR a organisé des opérations de fouille à Kigali. L'efficacité de ces opérations a été compromise par le Général Augustin Ndindiliyimana, qui a informé à l'avance Mathieu Ngirumpatse, Président du MRND, du lieu des perquisitions. Ce dernier en avisait les *Interahamwe* qui ont déplacé aussitôt les armes.

5.25 Le 7 janvier 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga et d'autres membres influents du MRND ont participé à une réunion au quartier général du MRND, pour s'opposer au programme de désarmement. Il y a été décidé, d'une part, de résister par tous les moyens à l'exécution du programme de désarmement, et d'autre part de dissimuler des armes à différents endroits.

5.26 Le 10 janvier 1994, la MINUAR a été informée, par un dirigeant des *Interahamwe*, de l'existence de caches d'armes à Kigali, et d'un plan pour éliminer la population Tutsi. Elle a mandaté un de ses officiers pour s'assurer de l'emplacement exact des armes. Cet officier a localisé plusieurs caches d'armes à travers la ville de Kigali, dans des lieux contrôlés par des membres du MRND, notamment au quartier général du parti, situé à Kimihurura, dans une maison appartenant au Général Augustin Ndindiliyimana. Lors de la fouille, l'officier de la MINUAR a découvert, à cet

regards the military aspects of his duties, he was under the orders of MRND Chairman, Mathieu Ngirumpatse, and the Army Chief of Staff, Déogratias Nsabimana. Moreover, he informed UNAMIR that the weapons that had been distributed came from the Army.

endroit, plusieurs armes à feu et des caisses de munitions. L'informateur a affirmé travailler sous les ordres du Président du MRND, Mathieu Ngirumpatse, et du Chef d'Etat Major de l'Armée, Déogratias Nsabimana pour les aspects militaire de ses tâches. Il a, en outre, informé la MINUAR que les armes distribuées provenaient de l'Armée.

Establishment of Lists

5.27 Having identified the Tutsi as the enemy and the members of the opposition as their accomplices, members of the Army General Staff, civilian authorities and militiamen established lists of people to be executed.

5.28 In 1992, at a meeting, Colonel Théoneste Bagosora instructed the two General Staffs to establish lists of people identified as the enemy and its accomplices. The Intelligence Bureau (G-2) of the Rwandan Army established the lists under the supervision of Anatole Nsengiyumva. The lists were regularly updated under the authority of Anatole Nsengiyumva, and afterwards of Aloys Ntiwiragabo.

5.29 In 1993, following a traffic accident, a list of the type described above was found in the vehicle of the Chief of Staff, Déogratias Nsabimana. During the events, some of the people on that list were killed.

5.30 On 10 January 1994, an *Interahamwe* leader informed UNAMIR that he had received orders to establish lists of Tutsi to be eliminated.

Confection de listes

5.27 Après avoir identifié le Tutsi comme étant l'ennemi principal et les membres de l'opposition comme ses complices, des membres de l'Etat-Major de l'Armée, des autorités civiles et des miliciens ont dressé des listes de personnes à exécuter.

5.28 En 1992, lors d'une réunion, le Colonel Théoneste Bagosora a demandé aux deux Etats-Majors d'établir des listes de personnes identifiées comme étant l'ennemi et ses complices. Les agents du service de renseignements du G-2 de l'Armée Rwandaise ont procédé à la confection de ces listes, sous la supervision d'Anatole Nsengiyumva. Ces listes ont été régulièrement mises à jour sous l'autorité d'Anatole Nsengiyumva, et par la suite d'Aloys Ntiwiragabo.

5.29 En 1993, à la suite d'un accident de circulation, une telle liste a été découverte dans le véhicule du Chef d'Etat-Major, Déogratias Nsabimana. Durant les événements, des personnes figurant sur cette liste ont été assassinées.

5.30 Le 10 janvier 1994, un dirigeant des *Interahamwe* a informé la MINUAR qu'il avait reçu l'ordre de préparer des listes de Tutsi à éliminer.

5.31 From 7 April to late July, military, including subordinates of **Aloys Ntabakuze** and **Gratien Kabiligi,** often with the complicity of *Interahamwe,* massacred members of the Tutsi population and moderate Hutu by means of pre-established lists, among other things.

5.31 Du 7 avril à la fin juillet, des militaires, notamment les subordonnés de **Aloys Ntabakuze et Gratien Kabiligi,** souvent avec la complicité des *Interahamwe,* ont perpétré des massacres de membres de la population Tutsi et des Hutu modérés, entre autres à l'aide de listes pré-établies.

Precursors Revealing A Deliberate Course of Action

5.32 The political and ethnic violence of the early 1990s was characterized by the use of the elements of the strategy which achieved its finality in the genocide of April 1994. The massacres of the Tutsi minority at that time, including those in Kibilira (1990), in Bugesera (1992), and those of Bagogwe (1991), were instigated, facilitated and organized by civilian and military authorities. On each occasion, a campaign of incitement to ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.

5.33 Cooperation between the *Interahamwe* and certain military personnel, particularly those in the Para-Commando Battalion and the Presidential Guard, was manifested in early 1994 in opposition to the implementation of the institutions provided for under the Arusha Accords. On 5 January 1994, at the time of the swearing-in ceremony of the Broad-Based Transitional Government, the *Interahamwe* organized a demonstration in cooperation with members of the Presidential Guard. They prevented political opponents from entering the *Conseil national de développement (CND).*

Antécédents révélant une conduite délibérée

5.32 La violence ethnique et politique du début des années 90 a été caractérisée par l'utilisation des éléments de la stratégie qui allait connaître son aboutissement avec le génocide de 1994. Les massacres de la minorité Tutsi perpétrés à cette époque, tels que ceux à Kibilira (1990), à Bugesera (1992), et ceux à l'encontre des Bagogwe (1991) ont été suscités, facilités et organisés par des autorités civiles et militaires. À chaque occasion une campagne d'incitation à la violence ethnique menée par des autorités locales a été suivie de massacres de la minorité Tutsi, perpétrés par des groupes de miliciens et de civils, armés et aidés par ces mêmes autorités et certains militaires. À chaque occasion, ces crimes sont demeurés impunis et les autorités impliquées n'ont généralement pas été inquiétées.

5.33 La collaboration entre des *Interahamwe* et certains militaires, particulièrement du Bataillon Para-Commando et de la Garde Présidentielle, s'est de nouveau manifestée au début de 1994 pour s'opposer à la mise en place des institutions prévues par les Accords d'Arusha. Le 5 janvier 1994, lors de la cérémonie prévue pour la prestation de serment du Gouvernement de Transition à Base Elargie, les *Interahamwe* ont organisé une manifestation en collaboration avec des éléments de la Garde Présidentielle. Ils ont interdit l'accès au CND (Conseil national de

The swearing-in of the members of the Government did not take place. In the end, only the President, Juvénal Habyarimana, was sworn in.

5.34 On 8 January 1994, *Interahamwe*, in complicity with elements of the the Para-Commando Battalion and the Presidential Guard dressed in civilian clothes, again organized a demonstration near the CND. On that occasion, the *Interahamwe* had hidden weapons very nearby and were equipped with radios provided by the Presidential Guard. That demonstration was intended to provoke and cause injury to the Belgian UNAMIR soldiers.

Modus Operandi

5.35 Finally, as of 7 April 1994, throughout Rwanda, Tutsis and certain moderate Hutus, began to flee their homes to escape the violence to which they were victims on their hills and to seek refuge in places where they had traditionally felt safe, notably churches, hospitals and other public buildings such as *commune* and *préfecture* offices. On several occasions, gathering places were indicated to them by the local authorities, who had promised to protect them. For the initial days, the refugees were protected by a few gendarmes and communal police in these various locations, but subsequently, the refugees were systematically attacked and massacred by militiamen, often assisted by the same authorities who had promised to protect them. During the numerous attacks on the refugees throughout the country, personnel of the FAR, military or gendarmes, who were supposed to protect them, prevented the Tutsi from escaping and facilitated their massacre by the *Interahamwe*. On several

développement) aux opposants politiques. La prestation de serment des membres du Gouvernement n'a pas eu lieu. Finalement seul le Président, Juvénal Habyarimana, a prêté serment.

5.34 De nouveau, le 8 janvier 1994, les *Interahamwe* en complicité avec des éléments du Bataillon Para-Commando et de la Garde Présidentielle habillés en civils, ont organisé une manifestation près du CND. À cette occasion, les *Interahamwe* avaient dissimulé des armes à proximité et étaient équipés de radios fournies par la Garde Présidentielle. Cette manifestation visait à provoquer et blesser les soldats belges de la MINUAR.

Modus Operandi

5.35 Finalement, dès le 7 avril 1994, sur tout le territoire du Rwanda, des Tutsi et certains Hutu modérés, pour échapper à la violence dont ils étaient victimes sur leurs collines, ont commencé à fuir leurs maisons pour chercher refuge dans des endroits où traditionnellement ils s'étaient sentis en sécurité, notamment des églises, des hôpitaux et d'autres édifices publics comme les bureaux communaux et préfectoraux. À plusieurs occasions, des endroits de rassemblement leur avaient été indiqués par des autorités locales qui avaient promis de les protéger. Durant les premiers jours, les réfugiés ont été protégés par quelques gendarmes et policiers communaux dans ces différents endroits, mais par la suite, systématiquement, les réfugiés ont été attaqués et massacrés par des miliciens, souvent aidés par ces mêmes autorités qui avaient promis de les protéger. Au cours des nombreuses attaques menées contre les réfugiés partout à travers le pays, des membres des FAR, militaires ou gendarmes,

occasions, these FAR personnel participated directly in the massacres.

qui devaient les protéger, ont empêché les Tutsi de fuir et facilité leur massacre par les *Interahamwe*. A plusieurs occasions, ces membres des FAR ont participé directement aux massacres.

5.36 Furthermore,soldiers, militiamen and gendarmes raped, sexually assaulted and committed other crimes of a sexual nature against Tutsi women and girls, sometimes after having first kidnapped them.

5.36 De plus, des militaires, des miliciens et des gendarmes ont commis des viols, des agressions sexuelles et d'autres crimes de nature sexuelle à l'encontre de certaines femmes et jeunes filles Tutsi et ce parfois après les avoir enlevées.

6. CONCISE STATEMENT OF THE FACTS: OTHER VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

Power Crisis

6.1 On 6 April 1994 at about 8:30 p.m., the plane carrying, among other passengers, the President of the Republic, Juvénal Habyarimana, was shot down on its approach to Kigali Airport, Rwanda.

6.2 Following the crash of the President's plane, the *Forces Armées Rwandaises* were left without leadership. The President was dead, along with the Chief of Staff of the Rwandan Army, Colonel Déogratias Nsabimana. The Minister of Defence, Augustin Bizimana, and the Chief of Intelligence Services (G2) in the Rwandan Army, Colonel Aloys Ntiwiragabo, were on mission in the Republic of Cameroon. They returned to the country in the days that followed. **Gratien Kabiligi**, the officer in charge of operations (G3) in the Rwandan Army General Staff, was also on mission in Egypt. In the absence of the Minister of Defence, Colonel Théoneste Bagosora, *directeur de cabinet*, asserted himself as the man of the moment capable of managing the crisis.

6.3 On 7 April 1994, the Minister of Defence informed **Gratien Kabiligi** of the massacres perpetrated in the city of Kigali and ordered him to report back to the Headquarters as soon as possible. On his return, **Gratien Kabiligi** was briefed on the civilian and military situation.

6. EXPOSÉ SUCCINCT DES FAITS: AUTRES VIOLATIONS DU DROIT INTERNATIONAL HUMANITAIRE

Crise du pouvoir

6.1 Au soir du 6 avril 1994 vers 20:30 heures, l'avion transportant entre autres passagers le Président de la République du Rwanda, Juvénal Habyarimana, a été abattu peu avant son atterrissage à l'aéroport de Kigali, Rwanda.

6.2 Après la chute de l'avion présidentiel, les Forces Armées Rwandaises se sont retrouvées sans direction. Le Président était mort ainsi que le chef d'Etat-Major (AR), le Colonel Déogratias Nsabimana. Le Ministre de la Défense, Augustin Bizimana et le responsable des renseignements (G2) de l'Etat-Major (AR), le Colonel Aloys Ntiwiragabo, étaient en mission en République du Cameroun. Ces derniers sont revenus au pays dans les jours qui ont suivi. **Gratien Kabiligi**, responsable des opérations (G3) de l'Etat-Major (AR), était également en mission en Egypte. En l'absence du Ministre de la Défense, le Colonel Théoneste Bagosora, directeur de cabinet, s'est imposé comme l'homme de la situation à même de gérer la crise.

6.3 Le 7 avril 1994, le Ministre de la Défense a informé **Gratien Kabiligi** des massacres commis dans la ville de Kigali et lui a ordonné de rejoindre l'État-Major le plus tôt possible. Dès son retour, **Gratien Kabiligi** a reçu de l'État-Major un compte rendu sur la situation, tant civile que militaire.

Military Takeover Attempt

6.4 During the night of 6 to 7 April, a first meeting mainly of officers of the two General Staffs was held at the Rwandan Army Headquarters in Kigali military camp. The meeting was chaired by Colonel Théoneste Bagosora. During this meeting Colonel Théoneste Bagosora and other officers, including Major Kayumba, expressed their desire to take power. Despite the advice of certain people to involve Prime Minister Agathe Uwilingiyimana in managing the crisis, Colonel Théoneste Bagosora refused to consuilt her in any way, ceasing to acknowledge her authority.

6.5 In the early hours of the morning of 7 April 1994, the duty officer at the Rwandan Army headquarters, Major Kayumba, was informed that gunfire had been heard near the Prime Minister's residence. He told his interlocutor that he was aware of the situation, and said that: "*It's us trying to prevent the Prime Minister from going to the radio station.*"

6.6 In his capacity as *directeur de cabinet* of the Ministry of Defence, Colonel Théoneste Bagosora signed the first official communiqué announcing the death of the President and the other passengers in the plane. The information was broadcast on the morning of 7 April.

6.7 In the morning of 7 April, another meeting of the FAR officers was held at the *Ecole Supérieure Militaire* (ESM); those participating included **Major Aloys Ntabakuze**, Major François-Xavier Nzuwonemeye and Lt. Col. Léonard

Tentative de prise de pouvoir par les militaires

6.4 Dans la nuit du 6 au 7 avril, une première réunion rassemblant principalement des officiers des deux État-Majors s'est tenue à l'État-Major de l'Armée Rwandaise au camp de Kigali. Cette réunion était présidée par le Colonel Théoneste Bagosora. Au cours de cette rencontre, le Colonel Théoneste Bagosora et d'autres officiers, parmi lesquels le Major Kayumba, ont manifesté leur volonté de prendre le pouvoir. Malgré les recommandations de certaines personnes d'associer le Premier Ministre, Agathe Uwilingiyimana, à la gestion de cette crise, le Colonel Théoneste Bagosora s'est opposé à toute consultation de cette dernière, ne lui reconnaissant plus aucun pouvoir.

6.5 Le 7 avril 1994, aux premières heures de la matinée, l'officier de permanence à l'Etat-Major de l'Armée Rwandaise, le Major Kayumba, a été informé que des coups de feu ont été entendus près de la résidence du Premier Ministre. Il a déclaré à son interlocuteur qu'il était au courant de la situation et que "*c'est nous qui voulons empêcher le PM d'aller à la radio.*"

6.6 Le Colonel Théoneste Bagosora a signé, en sa qualité de directeur de cabinet du Ministère de la Défense, le premier communiqué officiel annonçant la mort du Président et des autres passagers de l'avion. Le message a été radiodiffusé le 7 avril au matin.

6.7 Dans la matinée du 7 avril, une nouvelle réunion des officiers des FAR s'est tenue à l'École Supérieure Militaire (ESM). Ont participé à la rencontre: **le Major Aloys Ntabakuze,** le Major François-Xavier Nzuwonemeye et Lt-Col Léonard Nkundiye.

Nkundiye. Also present were the commanding officers of the sectors of operation in Rwanda, the commanders of the military camps and officers of the General Staffs (AR and GN). The Commander of the Presidential Guard, Major Mpiranya, did not attend that meeting. Meanwhile, his men were already perpetrating massacres. The meeting was chaired by Colonel Théoneste Bagosora. He reiterated his position, maintaining that the military should take power. For the third time, Colonel Théoneste Bagosora refused that the Prime Minister be consulted, adding that he did not know if she was still alive.

Ont été également présents: des officiers commandants des secteurs opérationnels du Rwanda, des commandants des camps militaires et des officiers d'État-Major (AR et GN). Le Commandant de la Garde Présidentielle, le Major Mpiranya, n'a pas assisté à cette réunion. Pendant ce temps ses hommes se livraient déjà à des massacres. Le Colonel Théoneste Bagosora a dirigé cette réunion. Il a réitéré sa position et maintenu que les militaires devaient prendre le pouvoir. Le Colonel Théoneste Bagosora s'est opposé, pour une troisième fois, à toute consultation du Premier Ministre, ajoutant qu'il ne savait pas si celle-ci était toujours en vie.

6.8 While this meeting was going on, Prime Minister Agathe Uwilingiyimana was tracked down, arrested, sexually assaulted and killed by Rwandan Army personnel, more specifically members of the the Para-Commando Battalion of Major **Ntabakuze**, Presidential Guard, and the Reconnaissance Battalion. Concurrently, members of the same units arrested, confined and killed important opposition leaders and prominent figures in the Tutsi community. Hence, the following were killed: the President of the Constitutional Court, the Chairman of the PSD party and Minister of Agriculture, the Vice-Chairman of the PL party and Minister of Labor and Community Affairs, as well as a member of the Political Bureau of the MDR, the Minister of Information. That same morning, the ten Belgian para-commandos from UNAMIR who were dispatched to the Prime Minister residence to escort her to the radio were murdered at Kigali military camp.

6.8 Pendant que se déroulait la réunion, le Premier Ministre, Madame Agathe Uwilingiyimana était traquée, arrêtée, agressée sexuellement et tuée par des membres de l'Armée Rwandaise, plus particulièrement ceux du bataillon Para-Commando du Major **Ntabakuze**, de la Garde Présidentielle et du bataillon de Reconnaissance. Parallèlement à cet assassinat, des membres de ces mêmes unités ont arrêté, séquestré et tué des leaders importants de l'opposition et des personnalités éminentes de la communauté Tutsi. C'est ainsi qu'ont été tués: le Président de la Cour Constitutionnelle, le Président du PSD et Ministre de l'Agriculture, le Vice-Président du PL et Ministre du Travail et des Affaires Sociales ainsi qu'un membre du Bureau Politique du MDR, Ministre de l'Information. Dans la même matinée, les 10 Para-Commandos belges de la MINUAR qui avaient été envoyés à la résidence du Premier Ministre pour l'escorter à la radio étaient assassinés au camp militaire de Kigali.

6.9 The elimination of political opponents made it possible to set aside the establishment of the Broad-Base Transition

6.9 L'élimination des opposants politiques a permis d'écarter la mise en

Government (BBTG), stipulated in the Arusha Accords, in favour of an Interim Government. The murder of the Belgian soldiers prompted the withdrawal of most of UNAMIR's contingents. Those two events removed the two major obstacles to the pursuit of the massacres.

Formation of the Interim Government

6.10 Making up for the failure of the attempt at a military takeover by certain military personnel, Colonel Théoneste Bagosora and the leaders of the MRND put in place an Interim Government which would aid and abet the continuation of the massacres.

Scaling-Down of UNAMIR's Personnel

6.11 UNAMIR was established in order to facilitate the peaceful establishment of the institutions foreseen under the Arusha Accords. This United Nations military force was perceived as an obstacle by certain members of the extremist political circles. Certain eminent figures in this circle thus adopted a strategy intended to provoke the Belgian military contingent, UNAMIR's most effective and best-equipped contingent. Their ultimate goal was to force them to withdraw.

6.12 Hence, a propaganda campaign against the Belgians was run, notably with the aid of the media, such as *Radio Télévision Libre des Mille Collines (RTLM)* and the newspaper *Kangura*.

6.13 On 7 January 1994, Mathieu

place du Gouvernement de Transition a Base Elargie (G.T.B.E.), prévue aux Accords d'Arusha, au profit d'un Gouvernement Intérimaire. L'assassinat des militaires belges a provoqué le retrait de la majeure partie des contingents de la MINUAR. Ces deux événements ont écarté les deux obstacles majeurs à la poursuite des massacres.

Formation du Gouvernement Intérimaire

6.10 Faisant face à l'échec de la tentative de prise du pouvoir par certains militaires, le Colonel Théoneste Bagosora et les dirigeants du MRND ont mis en place un Gouvernement Intérimaire qui allait aider et encourager la continuation des massacres.

Réduction des effectifs de la MINUAR

6.11 La MINUAR avait été instituée dans le but de faciliter la mise en place pacifique des institutions prévues aux Accords d'Arusha. Cette force militaire des Nations Unies était perçue comme un obstacle par certains membres de la classe politique extrémiste. Aussi des personnalités de ce groupe ont adopté une stratégie visant à provoquer les militaires belges qui constituait le contingent le plus efficace et le mieux équipé de la MINUAR. L'objectif à terme était de forcer leur retrait.

6.12 Dans cet esprit, une campagne de propagande anti-belge a été menée, notamment par le truchement des moyens médiatiques tels que la Radio Télévision Libre des Mille Collines (RTLM) et le journal *Kangura*.

Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga and other influential MRND members participated in a meeting at the MRND headquarters. On that occasion, they decided to provoke the Belgians by various means, notably during the demonstration which was to take place on 8 January 1994.

6.14 Indeed, on 8 January 1994, a number of *Interahamwe* and elements of the Para-Commando Battalion and the Presidential Guard in civilian clothes participated in the said demonstration. They had hidden weapons in the vicinity of the demonstration with the intent to kill some Belgian UNAMIR soldiers. Finally, no Belgian UNAMIR partol was sent to the scene.

6.15 In the night of 6 to 7 April 1994, a number of Belgian military personnel were ordered to go to the Prime Minister's residence and to escort her to the national radio station, where she was to make an address. When they arrived at the Prime Minister's residence at around 5:00 a.m., they were attacked by FAR personnel, including elements from the Para-Commando Battalion, the Presidential Guard and the Reconnaissance Battalion. Later, the ten Belgian paracommandos, along with the five Ghanaian soldiers who were guarding the Prime Minister, were disarmed and arrested. Despite the terms under which their surrender was negotiated and the promise to take them to a UNAMIR base, the Belgian and Ghanaian soldiers were taken to Kigali military camp by Major Bernard Ntuyahaga.

6.16 As soon as they arrived at Camp Kigali at around 9:00 a.m., the UNAMIR soldiers were attacked and beaten by Rwandan soldiers in front of Rwandan Army officers. Four of the Belgian soldiers

6.13 Le 7 janvier 1994, Mathieu Ngirumpatse, Augustin Bizimana, Augustin Ndindiliyimana, Déogratias Nsabimana, Robert Kajuga et d'autres membres influents du MRND ont participé à une réunion au quartier général du MRND. À cette occasion, ils ont décidé de provoquer les Belges, par différents moyens, notamment lors de la manifestation du 8 janvier 1994.

6.14 En effet, le 8 janvier 1994, des *Interahamwe* et des éléments du Bataillon Para-Commando et de la Garde Présidentielle en civil ont participé à ladite manifestation. Ils avaient caché des armes aux alentours des lieux de la manifestation dans le but de tuer des militaires belges de la MINUAR. Finalement, aucune patrouille belge de la MINUAR ne s'est pas présenté sur les lieux.

6.15 Dans la nuit du 6 au 7 avril 1994, des soldats belges ont reçu l'ordre d'aller au domicile du Premier Ministre pour l'escorter jusqu'à la Radio Nationale où elle devait prononcer un discours. Arrivés à la résidence du Premier Ministre, vers 5. 00 heures, ils ont été attaqués par des militaires des FAR, parmi lesquels des éléments du Bataillon Para-Commando, de la Garde Présidentielle et du Bataillon de Reconnaissance. Par la suite les dix para commandos belges ont été désarmés et arrêtés, en compagnie des cinq soldats ghanéens qui assuraient la protection du Premier Ministre. Malgré leur reddition négociée et la promesse d'être conduits à une base de la MINUAR, les militaires belges et ghanéens ont été amenés au camp de Kigali par le Major Bernard Ntuyahaga.

6.16 Dès leur arrivée au camp de Kigali, aux environs de 9.00 heures, les soldats de la MINUAR ont été attaqués et battus par des militaires rwandais, et ce devant des

were killed instantly. Meanwhile, the Ghanaian soldiers were set free. The six remaining Belgian soldiers withstood several attacks over some hours before finally being killed.

6.17 Due to the anti-Belgian propaganda and the murder of the ten Belgian para-commandos, Belgium informed the Security Council on 13 April 1994 that it was withdrawing its contingent from Rwanda. A week later, the Security Council ordered a drastic reduction of UNAMIR's civilian and military personnel.

officiers de l'Armée Rwandaise. Quatre militaires belges ont été tués sur le champ. Pendant ce temps, les soldats ghanéens ont été libérés. Les six autres militaires belges ont résisté à plusieurs attaques pendant quelques heures avant d'être achevés.

6.17 En raison de la propagande anti-Belge et de l'assassinat des 10 para-commando belges, la Belgique a informé le Conseil de Sécurité, le 13 avril 1994, qu'elle retirait son contigent du Rwanda. Une semaine après, le Conseil de Sécurité a ordonné une réduction drastique du personnel civil et militaire de la MINUAR.

Perpetration of the Massacres

6.18 As from 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for a long time by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders and directives of some of these authorities, including **Major Aloys Ntabakuze** and **Brigadier Général Gratien Kabiligi**.

6.19 As of the night of 6 to 7 April, in the capital, elements of the Para-Commando Battalion and Presidential Guard set up roadblocks, reinforced with armored vehicles, on the major roads, controlling people's movements. Concurrently, groups of soldiers scoured the city and murdered civilians.

6.20 In the night of 6 to 7 April, at the meeting of the officers of the General Staff, UNAMIR's Commander in Chief recommended that the militias remain calm and that the Presidential Guard battalion return to camp. Colonel Théoneste Bagosora, who chaired the meeting, assured him of his cooperation. Moreover, General Augustin Ndindiliyimana agreed to strengthen the joint Gendarmerie-UNAMIR patrols in view of the situation. He did not subsequently give any orders to that effect.

6.21 During the said meeting, Colonel Théoneste Bagosora withdrew several times to an adjacent room to receive calls. During this period, Colonel Théoneste Bagosora

Commission des massacres

6.18 À partir du 7 avril 1994, des massacres de la population Tutsi et l'assassinat de nombreux opposants politiques ont été commis sur tout le territoire du Rwanda. Ces crimes planifiés et préparés de longue date par des personnalités civiles et militaires partageant l'idéologie hutu extrémiste ont été perpétrés par des miliciens, des militaires et des gendarmes suivant les ordres et les directives de certaines de ces autorités, dont le **Major Aloys Ntabakuze** et le **Brigadier Général Gratien Kabiligi**.

6.19 Dès la nuit du 6 au 7 avril, dans la capitale, des éléments du Bataillon Para-Commando et de la Garde Présidentielle ont érigé des barrages, renforcés par des véhicules blindés, sur les principaux axes routiers, contrôlant le déplacement de la population. Parallèlement, des groupes de militaires ont sillonné la ville et se sont livrés à des assassinats de civils.

6.20 Dans la nuit du 6 au 7 avril, lors de la réunion des officiers de l'Etat-Major, le Commandant en Chef de la MINUAR a recommandé que les milices restent calmes et que le Bataillon de la Garde Présidentielle regagne son camp. Le Colonel Théoneste Bagosora, qui dirigeait cette réunion, l'a assuré de sa collaboration. En outre, le Général Augustin Ndindiliyimana s'est engagé à renforcer les patrouilles conjointes de la gendarmerie et de la MINUAR compte tenu des circonstances. Il n'a donné, subséquemment, aucun ordre à cet effet.

6.21 Au cours de cette réunion, le Colonel Théoneste Bagosora s'est retiré à plusieurs reprises dans une salle adjacente pour recevoir ses appels. Durant cette période, le

talked on the phone with Lieutenant-Colonel Anatole Nsengiyumva. Immediately following the said conversation, Lieutenant-Colonel Anatole Nsengiyumva gave the order to begin the massacres in Gisenyi.

6.22 Despite Colonel Théoneste Bagosora's reassurances, militiamen set up roadblocks of their own or joined those manned by personnel of the Presidential Guard, the Para-Commando Battalion and the Reconnaissance Battalion. At these places, people's identities were checked, notably by means of verification of identity cards, and the Tutsi or those identified as such were summarily executed.

6.23 On the 7 April, an official representative of the RPF and certain FAR officers asked Col. Théoneste Bagosora and Augustin Ndindiliyimana, as well as the General Staff of the Rwandan Army, to control the military personnel, notably the Presidential Guard, who were murdering civilians.

6.24 Following the meeting of the morning of 7 April 1994, Colonel Théoneste Bagosora flouted these requests and ordered **Major Aloys Ntabakuze**, Commander of the Para-Commando Battalion, Major François-Xavier Nzuwonemeye, Commander of the Reconnaissance Battalion, and Lieutenant-Colonel Léonard Nkundiye,former Commander of the Presidential Guard, to proceed with the massacres. On the same day, on the orders of Colonel Théoneste Bagosora, groups of soldiers, including elements of the Presidential Guard and of the Para-Commando Battalion, proceeded to carry out selective assassinations of people whose names were on a list.

Colonel Théoneste Bagosora s'est entretenu par téléphone avec le Lieutenant-Colonel Anatole Nsengiyumva. Immédiatement après cet entretien, le Colonel Anatole Nsengiyumva a donné l'ordre de commencer les massacres à Gisenyi.

6.22 Malgré les assurances données par le Colonel Théoneste Bagosora, des miliciens ont érigé leurs propres barrages ou se sont joints à ceux des militaires de la Garde Présidentielle, des Bataillons Para-Commando et Reconnaissance. À ces endroits, on vérifiait l'identité des passants notamment en contrôlant les cartes d'identité et on y exécutait sommairement les Tutsi ou ceux reconnus Tutsi.

6.23 Dans la journée du 7 avril, un représentant officiel du FPR et certains officiers des FAR ont demandé au Colonel Théoneste Bagosora et à Augustin Ndindiliyimana ainsi qu'à l'Etat-Major de l'Armée Rwandaise de contrôler les militaires, qui commettaient des assassinats contre la population civile, notamment la Garde Présidentielle.

6.24 Après la réunion du 7 avril au matin, le Colonel Théoneste Bagosora a fait fi de ces demandes et a donné ordre au **Major Aloys Ntabakuze**, Commandant du Bataillon Para-Commando, au Major François-Xavier Nzuwonemeye, Commandant du Bataillon de Recconnaissance et au Lieutenant Colonel Léonard Nkundiye, ancien Commandant de la Garde Présidentielle, de procéder aux massacres.Dans la même journée, sur ordre du Colonel Théoneste Bagosora, des groupes de militaires, dont des éléments de la Garde Présidentielle et du Bataillon Para-Commando, ont procédé à des assassinats sélectifs de personnes figurant sur une liste.

6.25 On 7 of April 1994, the General Staff of the Rwandan Army sent a telegram ordering the troops to seek the assistance of the *Interahamwe* and of the people in identifying the Tutsi and to proceed to exterminate them.

6.26 With Colonel Théoneste Bagosora's communiqué, broadcast by radio the same day, asking people to remain at home and await further instructions, the process of elimination of the civilian Tutsi and the moderate Hutu population by military personnel and militiamen was facilitated.

6.27 On 8 April 1994, at a general assembly, the Commander of the Para-Commando Battalion, **Aloys Ntabakuze**, ordered his soldiers to "*avenge the death of President Habyarimana by killing the Tutsi*". Further, he encouraged his troops by confirming that certain Tutsi and their "*politician accomplices*" had been killed. Indeed, several opposition leaders had been assassinated the previous day.

6.28 Thereafter, commanders of the Presidential Guard, of the Para-Commando Battalion, **Major Aloys Ntabakuze,** and of the Reconnaissance Battalion were in communication with Colonel Théoneste Bagosora sometimes using a separate radio network.

6.29 From April to July 1994, Brigadier-General **Gratien Kabiligi**, Chief of military operations in the Rwandan Army regularly met with the Commander of the Presidential Guard, Protais Mpiranya, and the Commander of the Para-Commando Battalion, **Aloys Ntabakuze** and also with Colonel Théoneste Bagosora.

6.30 During the massacres, Brigadier-

6.25 Le 7 avril 1994, l'Etat-Major de l'Armée Rwandaise a envoyé un télégramme ordonnant aux troupes de requérir l'aide des *Interahamwe* et de la population pour identifier les Tutsi et procéder à leur extermination.

6.26 Avec la radiodiffusion, le même jour, d'un communiqué du Colonel Théoneste Bagosora demandant à la population de rester à la maison en attendant de nouvelles directives, le processus d'élimination par des militaires et des miliciens de la population Tutsi et Hutu modérée a été facilitée.

6.27 Le 8 avril 1994, lors d'un rassemblement général, le Commandant du Bataillon Para-Commando, **Aloys Ntabakuze**, a donné l'ordre à ses militaires de "*venger la mort du Président Habyarimana en tuant les Tutsi*". Il les a, par ailleurs, encouragés en leur confirmant la mort de certains Tutsi et de leurs "*complices politiciens*". De fait, plusieurs leaders de l'opposition avaient été assassinés la veille.

6.28 Par la suite les commandants de la Garde Présidentielle, du Bataillon Para-Commando, le **Major Aloys Ntabakuze** et du Bataillon Reconnaissance sont restés en communication avec le Colonel Théoneste Bagosora grâce, entre autres, à un réseau radio parallèle.

6.29 D'avril à juillet 1994, le Brigadier Général, **Gratien Kabiligi**, Chef des opérations militaires de l'Armée Rwandaise a rencontré régulièrement le Commandant de la Garde Présidentielle, Protais Mpiranya, et le Commandant du bataillon Para-Commando, **Aloys Ntabakuze** ainsi que le Colonel Théoneste Bagosora.

General **Gratien Kabiligi** encouraged and supported the militiamen who were murdering Tutsi civilians and ordered his men to use the *Interahamwe* at the roadblocks. Moreover, in mid-April 1994, **Gratien Kabiligi** ordered the murder of a soldier in the *Forces Armées Rwandaises* of Tutsi descent, as well as certain members of his family.

EXTENSION OF THE MASSACRES

6.31 From April to July 1994, their statements, the orders they gave and their acts, **Brigadier Général Gratien Kabiligi** and **Major Aloys Ntabakuze**, exercised authority over members of the *Forces Armées Rwandaises*, their officers and militiamen. The military and militiamen, as from 6 April 1994, committed massacres of the Tutsi population and of moderate Hutu which extended throughout rwandan territory with the knowledge of **Brigadier Général Gratien Kabiligi** and **Major Aloys Ntabakuze.**

6.32 The massacres of members of the Tutsi population and the murder of the moderate Hutu extended throughout the territory of Rwanda. In every *préfecture*, local civil and military authorities and militiamen espoused the plan of extermination and followed the directives and orders in order to execute it. They called on the civilian population to eliminate the enemy and its "accomplices". They distributed weapons to civilians and militiamen. They gave orders to commit, aided, abetted and participated in the massacres.

6.33 From April to July 1994, in all the regions of the country, members of the Tutsi population who were fleeing from the massacres on their hills sought refuge in locations they thought would be safe, often

6.30 Pendant les massacres, le Brigadier Général **Gratien Kabiligi** a encouragé et soutenu les miliciens qui assassinaient les civils Tutsi et a ordonné à ses hommes d'utiliser les *Interahamwe* aux barrages. En outre, à la mi-avril 1994, **Gratien Kabiligi** a ordonné le meurtre d'un soldat des Forces Armées Rwandaises d'origine Tutsi et de certains membres de la famille de ce dernier.

ÉTENDUE DES MASSACRES

6.31 D'avril à juillet 1994, leurs propos, les ordres qu'il ont donnés et leurs actes, le **Brigadier Général Gratien Kabiligi** et le **Major Aloys Ntabakuze**, ont exercé une autorité sur les membres des Forces Armées Rwandaises, leurs officiers et des miliciens. Ces militaires et miliciens ont commis dès le 6 avril des massacres contre la population tutsi et des hutu modérés qui se sont étendus sur l'ensemble du territoire rwandais à la connaissance du **Brigadier Général Gratien Kabiligi** et le **Major Aloys Ntabakuze.**

6.32 Les massacres de membres de la population Tutsi et les assassinats des Hutu modérés se sont étendus sur l'ensemble du territoire du Rwanda. Dans chaque préfecture, des autorités locales, civiles et militaires et des miliciens ont adhéré au plan d'extermination et ont suivi les directives et les ordres afin de l'exécuter. Ils ont appelé la population civile à éliminer l'ennemi et ses "complices". Ils ont distribué des armes à des civils et des miliciens. Ils ont ordonné, encouragé, aidé et participé aux massacres.

6.33 D'avril à juillet 1994, dans toutes les régions du pays, des membres de la population Tutsi qui fuyaient les massacres sur leurs collines ont cherché refuge dans

on the recommendation of the local civil and military authorities. In many of these places, despite the promise that they would be protected by the local civil and military authorities, the refugees were attacked, abducted and massacred, often on the orders or with the complicity of those same authorities.

KIGALI

6.34 By virtue of the fact that Kigali was the capital of Rwanda, seat of the Government, the place where the elite units of the Rwandan Army were based and where the headquarters for both the Army and the Gendarmerie were situated, several of the military and civilian figures who had planned and organized the massacres played a leading role in carrying out the massacres in Kigali.

6.35 On at least two occasions, Tharcisse Renzaho, *Prefect of Kigali,* who was also an officer on active service in the Rwanda Army, sent the *conseillers de secteur* and political leaders to collect weapons and ammunition from the Army headquarters in order to distribute them at the roadblocks. Those roadblocks were used to exterminate the Tutsi population and eliminate its "accomplices". Subsequently, Tharcisse Renzaho continued to distribute weapons to the *Interahamwe.*

6.36 Starting on 7 April, in Kigali, elements of the Rwandan Army, Gendarmerie and *Interahamwe* perpetrated massacres of the civilian Tutsi population. Concurrently, elements of the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion murdered political opponents. Numerous massacres of the civilian Tutsi population took place in

endroits qu'ils croyaient sûrs, souvent sur recommandation des autorités locales, civiles et militaires. Dans plusieurs de ces endroits, malgré la promesse qu'ils seraient protégés par les autorités locales, civiles et militaires, les réfugiés ont été attaqués, enlevés et massacrés, souvent sur les ordres ou avec la complicité de ces mêmes autorités.

KIGALI

6.34 Du fait que Kigali était la capitale du Rwanda, siège du Gouvernement, où étaient stationnés, en plus, les unités d'élites de l'Armée rwandaise et les États-Major de l'Armée et de la Gendarmerie, plusieurs des personnalités militaires et civiles qui avaient planifié et organisé les massacres ont joué un rôle de premier plan dans leur exécution à Kigali.

6.35 À au moins deux reprises, Tharcisse Renzaho, préfet de Kigali, qui était également un officier actif de l'armée rwandaise, a envoyé les conseillers de secteur et des dirigeants politiques chercher des armes et des munitions à l'Etat-Major de l'armée afin de les distribuer au niveau des barrages. Ces barrages étaient utilisés pour exterminer la population Tutsi et éliminer ses "complices". Par la suite, Tharcisse Renzaho a continué à distribuer des armes aux *Interahamwe.*

6.36 Dès le 7 avril, à Kigali, des éléments de l'Armée Rwandaise, de la Gendarmerie et des *Interahamwe* se sont livrés à des massacres contre la population civile Tutsi. Parallèlement, des éléments de la Garde Présidentielle, du Bataillon Para Commando et du Bataillon de Reconnaissance ont assassiné des opposants politiques. De

places where they had seek refuge for their safety.

ETO-Nyanza

6.37 As of 7 April 1994, many Tutsis sought refuge at the *École Technique Officielle (ETO),* under the protection of UNAMIR, to escape the attacks against them. On 11 April 1994, immediately following the retreat of the UNAMIR Belgian contingent based at ETO, soldiers, including elements of the Presidential Guard, and *Interahamwe* rounded up a group of refugees and moved them to Nyanza. **Théoneste Bagosora** was present at the time. After forcing them to walk for two kilometres, the soldiers massacred the refugees. The survivors were dispatched by militiamen on the soldiers' orders.

Near Saint-André School

6.38 From May to June 1994, soldiers under the orders of **Brigadier-General Gratien Kabiligi** checked the identities and took down the names of people recognized as being Tutsi who had taken refuge in a house across from Saint-André school, in Kigali. On 8 June 1994, these soldiers surrounded the house, forced the occupants out and shot them to death.

Kibagabaga Mosque

6.39 On 7 April 1994, soldiers and militiamen came to the Mosque. The soldiers demanded that the refugees identify themselves with their identification cards. When the refugees refused, the soldiers attacked the mosque, shooting and killing many people. Afterwards, the refugees , the

nombreux massacres de la population civile Tutsi se sont déroulés dans des endroits où ils s'étaient réfugiés pour leur sécurité.

ETO-Nyanza

6.37 Dès le 7 avril 1994, de nombreux Tutsi ont trouvé refuge à l'École Technique Officielle (ETO) sous la protection de la MINUAR pour échapper aux attaques dont ils étaient victimes. Le 11 avril 1994, immédiatement après le repli du contingent belge de la MINUAR basé à l'ETO, des militaires, dont des éléments de la Garde Présidentielle, et des *Interahamwe* ont encerclé les réfugiés et les ont déplacés vers Nyanza. Théoneste Bagosora était sur les lieux au même moment. Après une marche forcée de deux kilomètres, les militaires ont massacré les réfugiés. Les survivants ont été achevés, sur ordre des militaires, par des miliciens.

Près du collège Saint-André

6.38 De mai à juin 1994, des militaires relevant du Brigadier Général **Gratien Kabiligi** ont contrôlé l'identité et relevé les noms de personnes reconnues Tutsi qui s'étaient réfugiées dans une maison située en face du collège Saint-André, à Kigali. Le 8 juin 1994, ces militaires ont entouré ladite maison, fait sortir les personnes qui s'y trouvaient et les ont fusillées.

Mosquée de Kibagabaga

6.39 Le 7 avril 1994, des militaires et des miliciens se sont présentés à la mosquée. Les militaires ont exigé que les réfugiés s'identifient en exhibant leur carte d'identité; suivant leur refus les militaires ont attaqué la mosquée et ont tiré sur les

majority of whom were Tutsi, were forced to surrender their tradionnal weapons and the militiamen then attacked them in the presence of the soldiers. Several people died in the attack.

BUTARE

6.40 The country's civil and military leaders became aware of the exceptional situation in Butare. They took the necessary steps for the Tutsis to be eliminated. Moreover, elements of the Army and *Interahamwe* militiamen were sent in from Kigali as reinforcements to start the massacres.

6.41 On 20 April 1994, two military planes landed in Butare with numerous Presidential Guard and Para-Commando Battalion soldiers on board. These soldiers, in tandem with the *Interahamwe* of Butare and elsewhere, took part in murdering and massacring civilians, notably the former Queen of Rwanda, Rosalie Gicanda, a historical symbol for all Tutsi.

GITARAMA: *Nursing School*

6.42 Between April and June 1994, several people found refuge at the secondary nursing school in Kabgayi, Gitarama *préfecture*, where students and staff were already located. On several occasions during this period, soldiers and *Interahamwe* militiamen abducted and raped female Tutsi students and refugees. Minister of Defense Augustin Bizimana and the General Staff of the Rwandan Army were informed of this situation but did not take any effective steps to end the crimes once and for all.

réfugiés, faisant plusieurs morts. Par la suite, les réfugiés, en majorité Tutsi, ont été forcés de remettre leur armes traditionnelles et les miliciens les ont alors attaqués, en présence des militaires. L'attaque a fait plusieurs morts.

BUTARE

6.40 Les dirigeants civils et militaires du pays ont pris conscience de la situation particulière qui régnait à Butare. Ils ont pris les mesures nécessaires pour que les Tutsi soient éliminés. En outre, des éléments de l'armée et des miliciens *Interahamwe* ont été envoyés en renfort de Kigali pour commencer les massacres.

6.41 Le 20 avril 1994, deux avions militaires ont atterri à Butare, avec à leur bord des dizaines de militaires de la Garde Présidentielle et du Bataillon Para-Commando. Ces militaires ont participé aux côtés des *Interahamwe* de Butare et d'ailleurs, aux meurtres et aux massacres de civils, parmi lesquels, l'ancienne Reine du Rwanda, Rosalie Gicanda, symbole historique pour tous les Tutsi.

GITARAMA: *École d'infirmières*

6.42 Entre avril et juin 1994, plusieurs personnes ont trouvé refuge à l'école secondaire des infirmières de Kabgayi, préfecture de Gitarama, où se trouvaient déjà des étudiants et du personnel. À plusieurs reprises durant cette periode, des militaires et des miliciens *Interahamwe* ont enlevé et violé des étudiantes et des réfugiées Tutsi. Informés de cette situation le Ministre de la Défense Augustin Bizimana et l'Etat-Major de l'Armée Rwandaise n'ont pris aucune mesure efficace pour mettre un terme définitif à ces crimes.

Responsability

6.43 From April to July 1994, several hundred thousand people were massacred throughout Rwanda. The majority of the victims were killed solely because they were Tutsi or appeared to be Tutsi. The other victims, nearly all Hutu, were killed because they were considered Tutsi accomplices, were linked to them through marriage or were opposed to the extremist Hutu ideology.

6.44 From 7 April 1994 around the country, most of the massacres were perpetrated with the participation, aid and instigation of military personnel, gendarmes and Hutu militiamen. Certain units of the Para-Commando, Reconnaissance and Presidential Guard battalions were the most implicated in these crimes in the capital and in other *préfectures*, often acting in concert with the militiamen.

6.45 Further, from April to July 1994, in the course of the massacres, some soldiers gave assistance to militiamen, notably by providing them logistical support, i.e. weapons, transport and fuel.

6.46 The massacres thus perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, such as **Gratien Kabiligi, Aloys Ntabakuze,** Théoneste Bagosora, Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Protais Mpiranya, François-Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana and Tharcisse Renzaho, who conspired to exterminate the Tutsi population. As from on 7 April, other authorities at the national and local levels espoused this plan and joined the first group in encouraging, organizing and participating

Responsabilité

6.43 D'avril à juillet 1994, plusieurs centaines de milliers de personnes ont été massacrées sur tout le territoire du Rwanda. La plupart des victimes ont été tuées pour la seule raison qu'elles étaient des Tutsi ou ressemblaient à des Tutsi. Les autres victimes, surtout des Hutu, ont été tuées parce qu'elles étaient qualifiées de complice des Tutsi, liées à ces derniers par mariage ou opposées à l'idéologie Hutu extrémiste.

6.44 Dès le 7 avril 1994, partout au Rwanda, la plupart des massacres ont été commis avec la participation, l'aide et l'encouragement des militaires, des gendarmes et des miliciens. Certaines unités des Bataillons Para-Commando, de Reconnaissance et de la Garde Présidentielle ont été les plus impliquées dans la commission de ces crimes dans la capitale et dans d'autres préfectures du pays, agissant souvent de concert avec les miliciens.

6.45 En outre, d'avril à juillet 1994, durant la commission des massacres, des militaires ont aidé des miliciens, notamment en leur fournissant la logistique, à savoir des armes, du transport et du carburant.

6.46 Les massacres perpétrés furent le résultat d'une stratégie adoptée et élaborée par des autorités politiques, civiles et militaires du pays dont **Gratien Kabiligi, Aloys Ntabakuze,** Théoneste Bagosora, Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Protais Mpiranya, , François Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana et Tharcisse Renzaho, qui se sont entendues pour exterminer la population Tutsi. À partir du 7 avril, d'autres autorités nationales et locales ont adhéré à ce plan et se sont jointes au premier groupe pour encourager,

in the massacres of the Tutsi population and its "accomplices".

6.47 During the events referred to in this indictment, rapes, sexual assaults and other crimes of a sexual nature were widely and notoriously committed throughout Rwanda. These crimes were perpetrated by, among others, soldiers, militiamen and gendarmes against the Tutsi population, in particular Tutsi women and girls.

6.48 Military officers, members of the Interim Government and local authorities aided and abetted their subordinates and others in carrying out the massacres of the Tutsi population and its accomplices. Without the complicity of the local and national civil and military authorities, the principal massacres would not have occurred.

6.49 From April to July 1994, the officers of the General Staff of the Army participated in daily meetings at which they were informed of the massacres of the civilian Tutsi population. These meetings assembled the members of the General Staff and unit commanders, including, among others, Major-General Augustin Bizimungu, Brigadier-General **Gratien Kabiligi**, Major **Aloys Ntabakuze**, Major Protais Mpiranya, Major François-Xavier Nzuwonemeye, Colonel Aloys Ntiwiragabo, as well as Colonel Théoneste Bagosora, and the Chief of Staff of the Gendarmerie, General Augustin Ndindiliyimana.

6.50 Knowing that massacres of the civilian population were being committed, the political and military authorities, including Brigadier-General **Gratien Kabiligi** and Major **Aloys Ntabakuze,** took no measures to stop them. On the contrary, they refused to intervene to control and

organiser et participer aux massacres de la population Tutsi et ses "complices".

6.47 Lors des événements auxquels se réfère le présent acte d'accusation, des viols, des agressions sexuelles et d'autres crimes de nature sexuelle ont été commis, d'une façon généralisée et notoire sur tout le territoire du Rwanda. Ces crimes ont été perpétrés, entre autres, par des militaires, des miliciens et des gendarmes contre la population Tutsi, en particulier des femmes et des jeunes filles Tutsi.

6.48 Des officiers militaires, des membres du Gouvernement Intérimaire et des autorités locales ont aidé et encouragé leurs subordonnés et des tiers à commettre les massacres de la population Tutsi et de ses "complices". Sans la complicité des autorités locales et nationales, civiles et militaires, les principaux massacres n'auraient pas eu lieu.

6.49 D'avril à juillet 1994, les officiers de l'État-Major de l'Armée, ont participé à des réunions quotidiennes où ils ont été informés des massacres perpétrés contre la population civile Tutsi. Ces réunions regroupaient les membres de l'Etat-Major et les chefs d'unités dont, entre autres, le Major-Général Augustin Bizimungu, le Brigadier-Général **Gratien Kabiligi**, le Major **Aloys Ntabakuze**, le Major Protais Mpiranya, le Major François-Xavier Nzuwonemeye, le Colonel Aloys Ntiwiragabo ainsi que le Colonel Théoneste Bagosora, et le chef de l'Etat-Major de le gendarmerie, le Général Augustin Ndindiliyimana.

6.50 Sachant que des massacres étaient commis contre la population civile, les autorités politiques et militaires dont le Brigadier Général **Gratien Kabiligi** et le Major **Aloys Ntabakuze**, n'ont pris aucune disposition pour les arrêter. Au contraire ils

appeal to the population as long as a cease-fire had not been declared. This categorical refusal was communicated to the Special Rapporteur via the Chief of Staff of Rwandan Army, Major-General Augustin Bizimungu.

6.51 Brigadier-General **Gratien Kabiligi** and Major **Aloys Ntabakuze,** in his position of authority, acting in concert with, notably Théoneste Bagosora, Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Protais Mpiranya, François- Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana and Tharcisse Renzaho, participated in the planning, preparation or execution of a common scheme, strategy or plan, to commit the atrocities set forth above. The crimes were committed by them personally, by persons they assisted or by their subordinates, and with their knowledge or consent.

ont refusé d'intervenir pour contrôler et faire appel à la population tant qu'un accord de cessez-le-feu ne serait pas ordonné. Ce refus catégorique a été transmis au Rapporteur spécial par l'intermédiaire du Chef de l'Etat-Major de l'Armée Rwandaise, le Major-Général Augustin Bizimungu.

6.51 Le Brigadier Général **Gratien Kabiligi** et le Major **Aloys Ntabakuze**, dans sa position d'autorité, en agissant de concert avec notamment Théoneste Bagosora, Augustin Ndindiliyimana, Augustin Bizimungu, Aloys Ntiwiragabo, Protais Mpiranya, François- Xavier Nzuwonemeye, Anatole Nsengiyumva, Augustin Bizimana et Tharcisse Renzaho, ont participé à la planification, la préparation ou l'exécution d'un plan, d'une stratégie ou d'un dessein commun, afin de perpétrer les atrocités énoncées ci-dessus. Ces crimes ont été perpétrés par eux-mêmes ou par des personnes qu'ils ont aidées ou par leurs subordonnés, alors qu'ils en avaient connaissance ou y consentaient.

7: CHARGES

COUNT 1:

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

conspired with Theoneste Bagosora, Anatole Nsengiyumva and other persons to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute of the Tribunal, for which they are individually responsible

7: LES CHEFS D'ACCUSATION

PREMIER CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

se sont entendus avec Theoneste Bagosora, Anatole Nsengiyumva et d'autres personnes pour tuer et porter des atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial, et ont, de ce fait commis le crime **D'ENTENTE EN VUE DE COMMETTRE LES GÉNOCIDE** tel que prévu à l'article 2(3)(b) du Statut du

pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute

Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6(1) et punissables en vertu des articles 22 et 23 du Statut.

COUNT 2:

DEUXIÈME CHEF D'ACCUSATION

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically in the paragraphs referred to below:

Par les actes et omissions décrits aux paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

are responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which they are individually responsible

sont responsables de meurtres et d'atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **GÉNOCIDE** tel que prévu à l'article 2(3)(a) du Statut du Tribunal pour lequel ils sont

pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 3:

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

are responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and

individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

TROISIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

sont responsables de meurtres et d'atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **COMPLICITÉ DANS LE GÉNOCIDE** tel que prévu à l'article 2(3)(e) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

23 of the Statute.

COUNT 4:

By the acts or omissions described in paragraphs 5.1 to 6.50 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

are responsible for the murder of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which they are individually responsible pursuant to

QUATRIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.50 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

sont responsables d'assassinats de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(a) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et

Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT5:

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

are responsible for the extermination of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute of Tribunal, for which they are individually

punissables en vertu des articles 22 et 23 du Statut.

CINQUIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

sont responsables d'extermination de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(b) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et

responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 6:

By the acts or omissions described in paragraphs 5.1 to 6.50 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(3), according to paragraphs: 4.2 to 4.4,5.36, 6.8, 6.42, 6.47

Aloys Ntabakuze:

-pursuant to Article 6(3), according to paragraphs: 4.6 to 4.8, 5.36, 6.8, 6.42, 6.47

are responsible for rape as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 7:

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically

punissables en vertu des articles 22 et 23 du Statut.

SIXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(3), selon les paragraphes: 4.2 à 4.4, 5.36, 6.8, 6.42, 6.47

Aloys Ntabakuze:

-conformément à l'article 6(3), selon les paragraphes: 4.6 à 4.8,5.36, 6.8, 6.42, 6.47

sont responsables de viols dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(g) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du même Statut.

SEPTIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés

in the paragraphs referred to below

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

are responsible for persecution on political, racial or religious grounds, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(h) of Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 8:

ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

sont responsables de persécution pour des raisons politiques, raciales ou religieuses de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, etyhnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(h) du Statut du Tribunal pour lequel ils sont individuellement responsables conformément à l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

HUITIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

are responsible for inhumane acts against persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(i) of Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 9:

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paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

sont responsables d'actes inhumains contre des personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un crime contre l'humanité, **CRIME CONTRE L'HUMANITÉ** tel que prévu à l'article 3(i) du Statut du Tribunal pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du même Statut.

NEUVIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-pursuant to Article 6(3), according to paragraphs: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 to 6.45, 6.51

Aloys Ntabakuze:

-pursuant to Article 6(1), according to paragraphs: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-pursuant to Article 6(3), according to paragraphs: 5.33 to 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 to 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

are responsible for killing and causing violence to health and to the physical or mental well-being of civilians as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (a) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 10:

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paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.11, 5.12, 6.2, 6.3, 6.18, 6.29, 6.30, 6.31, 6.38, 6.46, 6.49, 6.50, 6.51
-conformément à l'article 6(3), selon les paragraphes: 5.35, 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.25, 6.32 to 6.39, 6.41 à 6.45, 6.51

Aloys Ntabakuze:

-conformément à l'article 6(1), selon les paragraphes: 4.6 to 4.8, 5.1, 5.5, 5.8, 5.10, 5.16, 5.17, 5.22, 6.7, 6.8, 6.18, 6.24, 6.27 to 6.31, 6.46, 6.49 to 6.51
-conformément à l'article 6(3), selon les paragraphes:5.33 à 5.36, 6.8, 6.15, 6.16, 6.18, 6.19, 6.32 à 6.39, 6.41, 6.44, 6.45, 6.47, 6.51

sont responsables de meurtres, d'atteintes à la santé et au bien être physique et mental de personnes civiles dans le cadre d'un conflit armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4 (a) du Statut du Tribunal et pour lequel ils sont individuellement responsables en vertut de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du Statut.

DIXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux

By the acts or omissions described in paragraphs 5.1 to 6.51 and more specifically in the paragraphs referred to below:

Gratien Kabiligi:

-pursuant to Article 6(3), according to paragraphs: 4.2 to 4.4,5.36, 6.8, 6.42, 6.47

Aloys Ntabakuze:

-pursuant to Article 6(3), according to paragraphs: 4.6 to 4.8, 5.36, 6.8, 6.42, 6.47

are responsible for outrages upon personal dignity, in particular humiliating and degrading treatment, rape and indecent assault, as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (e) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

At Kigali,

Bernard A. Muna
Deputy Prosecutor

paragraphes 5.1 à 6.51 et plus particulièrement aux paragraphes référenciés ci-dessous;

Gratien Kabiligi:

-conformément à l'article 6(3), selon les paragraphes: 4.2 à 4.4, 5.36, 6.8, 6.42, 6.47

Aloys Ntabakuze:

-conformément à l'article 6(3), selon les paragraphes: 4.6 à 4.8,5.36, 6.8, 6.42, 6.47

sont responsables d'atteintes à la dignité de la personne, notamment de traitements humiliants et dégradants, de viols et d'attentats à la pudeur dans le cadre d'un conflit armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE DE L'ARTICLE 3 COMMUNE AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4(e) du Statut du Tribunal et pour lequel ils sont individuellement responsables en vertu de l'article 6 du Statut et punissables en vertu des articles 22 et 23 du même Statut.

À Kigali, le

Bernard A. Muna
Procureur Adjoint

ICTR-96-12-I 39992
12 AUGUST 1999
(2045 bis - 2002 bis)

2045 bis

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-96-12-1

THE PROSECUTOR

AGAINST

ANATOLE NSENGIYUMVA

AMENDED INDICTMENT

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

ANATOLE NSENGIYUMVA

with **CONSPIRACY TO COMMIT GENOCIDE, GENOCIDE, COMPLICITY IN GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY,** and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II,** offences stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal.

TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

N de dossier: TPIR-96-12-1

LE PROCUREUR DU TRIBUNAL

CONTRE

ANATOLE NSENGIYUMVA

ACTE D'ACCUSATION AMENDÉ

ICTR CRIMINAL REGISTRY RECEIVED 1999 AUG 12 P 6:48

Le Procureur du Tribunal Pénal International pour le Rwanda, en vertu des pouvoirs que lui confère l'article 17 du Statut du Tribunal Pénal International pour le Rwanda ("le Statut du Tribunal") accuse:

ANATOLE NSENGIYUMVA

d'ENTENTE EN VUE DE COMMETTRE LE GÉNOCIDE, de **GÉNOCIDE** de **COMPLICITÉ DE GÉNOCIDE,** d'**INCITATION PUBLIQUE ET DIRECTE À COMMETTRE LE GÉNOCIDE,** de **CRIMES CONTRE L'HUMANITÉ,** et de **VIOLATIONS DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II,** crimes prévus aux articles 2, 3 et 4 du Statut du Tribunal.

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS

NAME / NOM: Marianne Bell Salimo

SIGNATURE: ... *DATE:* 1/12/2008

2044 bis

39991

1. HISTORICAL CONTEXT

1.1 The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsi to die and thousands more to flee the country in the years immediately following. The revolution resulted in the abolition of the Tutsi monarchy and the proclamation of the First Republic in early 1961, confirmed in a referendum held in the same year. Legislative elections held in September 1961 confirmed the dominant position of the MDR-PARMEHUTU (*Mouvement Démocratique Républicain-Parti du Mouvement d'Emancipation Hutu*), led by Grégoire Kayibanda, who was subsequently elected President of the Republic by the Legislative Assembly on 26 October 1961.

1.2 The early years of the First Republic, which was under the domination of the Hutu of central and southern Rwanda, were again marked by ethnic violence. The victims were predominantly Tutsi, the former ruling elite, and those related to them, who were killed, driven to other regions of Rwanda or forced to flee the country. The gradual elimination of the opposition parties in those early years confirmed the MDR-PARMEHUTU as the single party, the only party to present candidates in the elections of 1965.

1.3 The early part of 1973 in Rwanda was again marked by ethnic confrontations between the Hutu and Tutsi, prompting another exodus of the Tutsi minority from the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and South resulted in a military coup by General Juvénal Habyarimana on 5 July 1973,

1. CONTEXTE HISTORIQUE

1.1 La révolution de 1959 marque le début d'une période d'affrontements ethniques entre les Hutu et les Tutsi au Rwanda, provoquant au cours des années qui ont immédiatement suivi, des centaines de morts chez les Tutsi et l'exode de milliers d'entre eux. Cette révolution entraîne l'abolition de la monarchie Tutsi et la proclamation de la Première République au début de l'année 1961, confirmée par référendum au cours de la même année. Les élections législatives de septembre 1961 confirme la domination du MDR-PARMEHUTU (Mouvement Démocratique Républicain-Parti du Mouvement d'Émancipation Hutu) de Grégoire Kayibanda, qui est élu Président de la République par l'assemblée législative le 26 octobre 1961.

1.2 Les premières années d'existence de cette république, dominée par les Hutu du centre et du sud du Rwanda, sont de nouveau marquées par la violence ethnique. Les victimes furent principalement des Tutsi, l'ancienne élite dirigeante, et leurs alliés; ceux-ci furent tués, chassés vers d'autres régions du Rwanda ou forcés de s'enfuir du pays. L'élimination progressive des partis d'opposition durant ces premières années confirme le MDR-PARMEHUTU comme parti unique, qui est le seul à présenter des candidats aux élections de 1965.

1.3 Le début de l'année 1973 au Rwanda est de nouveau marqué par des affrontements ethniques entre Hutu et Tutsi qui provoquent, après ceux de 1959 à 1963, un nouvel exode de la minorité Tutsi. Cette recrudescence des tensions ethniques et politiques (entre le Nord et le Sud) aboutit, le 5 juillet 1973, à un coup d'État militaire mené par le Général Juvénal Habyarimana.

shifting power from civilian to military hands and from the Hutu of central Rwanda to the Hutu of the northern *préfectures* of Gisenyi and Ruhengeri (Habyarimana's native region).

Le coup d'État entraîne un renversement du pouvoir, qui passe des mains des civils à celles des militaires et de celles des Hutu du centre du Rwanda à celles des Hutu des préfectures de Gisenyi et Ruhengeri au nord du pays (région natale du Président Habyarimana).

1.4 In 1975, President Habyarimana founded the *Mouvement Révolutionnaire National pour le Développement* (MRND), a single party, and assumed the position of party Chairman. The administrative and party hierarchies were indistinguishable in this single party state from the level of the *Préfet* to the *bourgmestres*, and down to that of the *conseillers de secteurs* and *responsables de cellule*.

1.4 En 1975, le président Habyarimana fonde le Mouvement Révolutionnaire National pour le Développement (MRND), parti unique, dont il assume la présidence. La structure administrative et la hierarchie du MRND se confondent en un véritable parti-État à tous les niveaux de l'administration territoriale, du Préfet aux Bourgmestres, jusqu'aux conseillers de secteurs et responsables de cellule.

1.5 From 1973 to 1994, the government of President Habyarimana used a system of ethnic and regional quotas which was supposed to provide educational and employment opportunities for all, but which was used increasingly to discriminate against both Tutsi and Hutu from regions outside the northwest.

In fact, by the late 1980s, persons from Gisenyi and Ruhengeri occupied many of the most important positions in the military, political, economic and administrative sectors of Rwandan society. Among the privileged elite, an inner circle of relatives and close associates of President Habyarimana and his wife, Agathe Kanziga, known as the Akazu, enjoyed great power. This select group, almost exclusively Hutu, was supplemented by individuals who shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.

1.5 De 1973 à 1994, le gouvernement du Président Habyarimana applique un système de quotas basé sur l'origine ethnique et régionale qui était censé offrir des chances égales à tous en matière d'éducation et d'emploi, mais qui fut utilisé progressivement de manière discriminatoire à l'encontre des Tutsi et des Hutu originaires d'autres régions que le nord-ouest.

De fait, à la fin des années 1980, plusieurs des postes les plus importants dans les secteurs militaires, politiques, économiques et administratifs de la société rwandaise étaient occupés par des personnes originaires de Gisenyi et Ruhengeri. Parmi l'élite privilégiée, un noyau, connu sous l'appellation Akazu, composé de membres de la famille et d'intimes du Président Habyarimana et de son épouse, Agathe Kanziga, jouit d'un grand pouvoir. Aux membres de ce groupe, presque exclusivement Hutu, se joignent des personnes qui en partagent l'idéologie Hutu extrémiste et qui sont principalement originaires de la région natale du Président et de son épouse.

1.6 In 1990, the President of the

1.6 Au cours de l'année 1990, le

Republic, Juvénal Habyarimana, and his single party, the MRND, were facing mounting opposition, including from other Hutu.

1.7 On 1 October 1990, the Rwandan Patriotic Front (RPF), made up mainly of Tutsi refugees, attacked Rwanda. Within days the government began arresting thousands of people, presumed to be opponents of Habyarimana and suspected of being RPF accomplices. Although the Tutsi were the main target, Hutu political opponents were also arrested.

1.8 Following pressure from the internal opposition and the international community, and the RPF attack of October 1990, President Habyarimana permitted the introduction of multiple political parties and the adoption of a new constitution on 10 June 1991. The *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). The first transitional government was made up almost exclusively of MRND members, following the refusal of the main opposition parties to take part. With the second transitional government in April 1992, the MRND became a minority party for the first time in its history, with nine ministerial portfolios out of 19. On the other hand, the MRND retained its domination over the local administration.

1.9 The new Government then entered negotiations with the RPF, which resulted in the signing of the Arusha Accords on 4 August 1993. The Accords provided for a new system of sharing military and civilian power between the RPF, the opposition parties and the MRND.

Président de la République, Juvénal Habyarimana, et son parti unique, le MRND, font face à une opposition grandissante, notamment de la part d'autres Hutu.

1.7 Le 1er octobre 1990, le Front Patriotique Rwandais (FPR), composé majoritairement de réfugiés Tutsi, attaque le Rwanda. Dans les jours qui suivent, le gouvernement procède à l'arrestation de milliers de personnes présumées être des adversaires d'Habyarimana et soupçonnées de complicité avec le FPR. Parmi les personnes arrêtées, majoritairement d'origine Tutsi, il y a également des opposants politiques Hutu.

1.8 Suite aux différentes pressions de l'opposition interne et de la communauté internationale, et à l'attaque du FPR d'octobre 1990, le Président Habyarimana autorise l'introduction du multipartisme et l'adoption d'une nouvelle constitution le 10 juin 1991. Le *Mouvement Révolutionnaire National pour le Développement* (MRND) est alors rebaptisé *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). Le premier Gouvernement de transition est composé presque exclusivement de membres du MRND, suite au refus des principaux partis d'opposition d'en faire partie. Avec la mise en place du second Gouvernement de transition en avril 1992, le MRND se retrouve minoritaire pour la première fois de son histoire, avec neuf portefeuilles ministériels sur 19. Par contre, le MRND demeure fortement dominant au niveau de l'administration territoriale.

1.9 Le nouveau Gouvernement entame alors des négociations avec le FPR qui aboutissent le 4 août 1993 à la signature des Accords d'Arusha. Ces Accords prévoient un nouveau partage des pouvoirs militaires et civils entre le FPR, les partis d'opposition et le MRND.

1.10 By the terms of the Arusha Accords, which provided for the integration of both sides' armed forces, the new national army was to be limited to 13,000 men, 60% FAR *(Forces Armées Rwandaises)* and 40% RPF. The posts of command were to be shared equally (50%-50%) between the two sides, with the post of Chief of Staff of the Army assigned to the FAR.

The Gendarmerie was to be limited to 6,000 men, 60% FAR and 40% RPF, with the posts of command shared equally (50%-50%) between the two sides and the post of Chief of Staff of the Gendarmerie assigned to the RPF.

1.11 As regards representation within the government, the Arusha Accords limited the number of ministerial portfolios to be held by the MRND to five, plus the Presidency. The other portfolios were to be shared as follows: RPF, five; MDR (*Mouvement démocratique républicain*), four (including the post of Prime Minister); PSD (*Parti social-démocrate*), three; PL (*Parti libéral*), three; and the PDC (*Parti démocrate-chrétien*), one.

1.12 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions of prominence in the various sectors of Rwandan society, this new power sharing plan, as demanded by the political opposition and as stipulated in the Arusha Accords, meant a relinquishment of power and the loss of numerous privileges and benefits. With political changes following the establishment of the multi-party government of April 1992, several important military officers from the north had been forced to retire. At the same time, many of the military were facing massive demobilisation with the implementation of

1.10 Aux termes des Accords d'Arusha qui prévoient l'intégration des forces armées des deux parties, l'effectif de la nouvelle armée nationale est limité à 13 000 hommes dont 60% proviennent des FAR (Forces Armées Rwandaises) et 40% du FPR. Quant aux postes de commandement, ils sont attribués à parts égales (50%-50%) aux deux parties, le poste de Chef d'État Major de l'armée revenant aux FAR.

L'effectif de la Gendarmerie est limité à 6 000 hommes, composé de 60% des FAR et 40% du FPR, avec les postes de commandement répartis équitablement (50%-50%) entre les deux parties, le poste de Chef d'État Major de la Gendarmerie revenant au FPR.

1.11 Au niveau de la représentation au sein du gouvernement, les Accords d'Arusha limitent à cinq le nombre de portefeuilles ministériels du MRND en plus de la Présidence de la République. Les autres portefeuilles se répartissent ainsi: cinq pour le FPR, quatre pour le MDR (*Mouvement démocratique républicain*) dont le poste de premier Ministre, trois pour le PSD (*Parti social-démocrate*), trois pour le PL (*Parti libéral*) et un pour le PDC (*Parti démocrate-chrétien*).

1.12 Pour les hommes et les femmes proches du Président Habyarimana, parmi lesquels les membres de *l'Akazu*, qui occupaient des fonctions importantes au sein des divers secteurs de la société rwandaise, ce nouveau partage du pouvoir, tel qu'exigé par les opposants politiques et stipulé par les Accords d'Arusha, signifie l'abandon du pouvoir et la perte de nombreux privilèges et d'importants bénéfices. Les changements politiques consécutifs à l'établissement d'un régime multipartite en avril 1992 obligent plusieurs officiers militaires importants, originaires du Nord, à prendre leur retraite. En même temps, l'application des Accords d'Arusha confronte plusieurs militaires à

the Arusha Accords.

1.13 From 1990, Habyarimana and several of his close associates devised the strategy of inciting hatred and fear of the Tutsi minority as a way of rebuilding solidarity among the Hutu and keeping themselves in power. They strongly opposed any form of power sharing, including the one envisaged by the Arusha Accords.

1.14 Determined to avoid the power sharing prescribed by the Arusha Accords, several prominent civilian and military figures pursued their strategy of ethnic division and incitement to violence. They targeted and labelled as RPF accomplices the entire Tutsi population, and also Hutu opposed to their domination, particularly those from regions other than northwestern Rwanda. At the same time, they sought to divide Hutu opposition parties, attracting some of their members back to the support of Habyarimana. These efforts to divide the Hutu opposition were furthered by the assassination of Melchior Ndandaye, the democratically elected Hutu President, in neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the three major parties opposed to the MRND had each split into two factions. The faction of each known as the "Power" faction aligned itself with the MRND.

1.15 The strategy adopted in the early 1990s, which culminated in the widespread massacres of April 1994, comprised several components, which were carefully worked out by the various prominent figures who shared the extremist Hutu ideology, including the members of the *Akazu*.

In addition to the incitement to ethnic violence and the extermination of the Tutsi and their "accomplices", was the

une démobilisation massive.

1.13 À partir de 1990, Habyarimana et plusieurs de ses plus proches collaborateurs conçoivent une stratégie d'incitation à la haine et à la peur face à la minorité Tutsi, afin de rétablir la solidarité parmi les Hutu et de se maintenir au pouvoir. Ils s'opposent fortement à toute forme de partage du pouvoir et particulièrement au partage prévu par les Accords d'Arusha.

1.14 Déterminées à éviter le partage des pouvoirs prévu par les Accords d'Arusha, plusieurs personnalités civiles et militaires en vue poursuivent leur stratégie de conflit ethnique et d'incitation à la violence. Elles visent la population Tutsi tout entière, qui est qualifiée de complice du FPR, de même que les Hutu opposés à leur domination, particulièrement ceux qui sont originaires d'autres régions que le nord-ouest du Rwanda. Parallèlement, elles tentent de diviser les partis d'opposition Hutu, en ramenant certains de leurs membres dans le camp d'Habyarimana. Les efforts destinés à diviser l'opposition Hutu sont favorisés par l'assassinat, par des soldats Tutsi de l'armée burundaise, de Melchior Ndandaye, président Hutu démocratiquement élu dans le Burundi voisin. À la fin de 1993, deux des trois principaux partis opposés au MRND s'étaient divisés en deux factions chacun. Les factions connues sous le nom de "Power" s'allient au MRND.

1.15 La stratégie adoptée au début des années 90, qui va connaître son apogée avec les massacres généralisés d'avril 1994, comporte plusieurs éléments qui sont soigneusement élaborés par les différentes personnalités qui partagent cette idéologie extrémiste, dont les membres de l'*Akazu*.

À l'incitation à la violence ethnique et à l'extermination des Tutsi et de leurs "complices", s'ajoutent l'organisation et

organization and military training of the youth wings of the political parties, notably the *Interahamwe* (youth wing of the MRND), the preparation of lists of people to be eliminated, the distribution of weapons to civilians, the assassination of certain political opponents and the massacre of many Tutsi in various parts of Rwanda between October 1990 and April 1994.

1.16 The incitement to ethnic hatred took the form of public speeches by people sharing the extremist ideology. These political and military figures publicly appealed to hatred and fear of the Tutsi and urged the Hutu majority to "finish off the enemy and its accomplices". A perfect illustration is the speech made in November 1992 by Léon Mugesera, vice-chairman of the MRND for Gisenyi *préfecture*, who at the time was already inciting the public to exterminate the Tutsi and their "accomplices".

With the intention of ensuring widespread dissemination of the calls to ethnic violence, prominent figures from the President's circle set up true hate media. Thus the creation of *Radio Télévision Libre des Mille Collines (RTLM)* and of the newspaper *Kangura* was a part of the strategy and pursued the same logic.

1.17 The creation of the youth wings of the political parties, originally established to encourage or even force adherence to one or another party in the newly-established multi-party system, provided Habyarimana's circle with a large, devoted and effective workforce to implement the adopted strategy. These youth organizations, which were affiliated to the political parties, were soon manipulated as part of the anti-Tutsi campaign. Some of the members of these organizations, notably the *Interahamwe* (MRND), were organized into militia groups, which were financed, trained and led

l'entraînement militaire des jeunesses politiques, notamment les *Interahamwe* (jeunesses du MRND), la préparation de listes de personnes à éliminer, la distribution d'armes à des civils, l'assassinat de certains opposants politiques et le massacre de nombreux Tutsi dans diverses régions du Rwanda entre octobre 1990 et avril 1994.

1.16 L'incitation à la haine ethnique prend la forme de discours publics prononcés par des personnalités partageant cette idéologie extrémiste. Ces personnalités politiques et militaires appellent publiquement à la haine et à la peur des Tutsi et exhortent la majorité Hutu "à en finir avec l'ennemi et ses complices". Le discours prononcé en novembre 1992 par Léon Mugesera, vice-président du MRND pour la préfecture de Gisenyi, qui dès cette époque incitait publiquement à l'extermination des Tutsi et leurs "complices", en est la parfaite illustration.

Dans le but d'assurer une large diffusion de ces appels à la violence ethnique, des personnalités de l'entourage du Président mettent sur pied de véritables média de la haine. La création de la Radio Télévision Libre des Mille Collines (RTLM) et du journal *Kangura* participe de cette stratégie et s'inscrit dans cette logique.

1.17 La création des ailes jeunesses des partis politiques, qui avait à l'origine pour objectif d'encourager ou même de forcer l'adhésion à l'un ou l'autre des partis du nouveau régime multipartite, va fournir à l'entourage d'Habyarimana une main d'oeuvre dévouée, nombreuse et efficace pour mettre en oeuvre la stratégie adoptée. Ces organisations de jeunesse affiliées aux partis politiques sont très vite manipulées dans le cadre de la campagne anti-Tutsi. Des membres de ces organisations, particulièrement les *Interahamwe*-MRND, sont organisés en milices, financées,

by prominent civilians and military figures from the President of the Republic's entourage. They were issued weapons, with the complicity of certain military and civilian authorities. The militia groups were transported to training sites, including certain military camps, in public administration vehicles or vehicles belonging to companies controlled by the President's circle.

1.18 During the mass arrests of October 1990, the civilian and military authorities followed lists that had been drawn up in order to identify and locate the presumed accomplices of the RPF, the majority of whom were Tutsi. Later, Army, Gendarmerie, local authorities and *Interahamwe* were given orders to prepare new lists or update the existing ones, which were subsequently used during the massacres of 1994. In March 1993, such a list was found in the vehicle of the Army Chief of Staff.

1.19 Towards the end of 1991, certain Rwandan authorities distributed weapons to certain civilians in the north-eastern region of the country as part of a civil self-defence campaign, in reaction to the RPF attack of October 1990. Later, some authorities distributed weapons nationwide, notably to the *Interahamwe* and carefully selected individuals, even in regions distant from the war zone. Towards the end of 1993, the Bishop of Nyundo criticized the distribution of weapons in a public letter, questioning its purpose.

1.20 The pursuit of the strategy thus described played a catalytic role in the political and ethnic violence of the time, which climaxed in the April 1994 massacres. The early part of the 90s was marked by numerous political assassinations

entraînées et dirigées par des personnalités civiles et militaires de l'entourage du Président de la République. Des armes leur sont distribuées avec la complicité de certaines autorités militaires et civiles. Leur transport vers les sites d'entraînement, dont certains camps militaires, est assuré par des véhicules de l'administration publique ou appartenant à des sociétés contrôlées par l'entourage du Président.

1.18 Lors des arrestations massives d'octobre 1990, les autorités civiles et militaires se réfèrent à des listes établies pour identifier et localiser les présumés complices du FPR, en majorité Tutsi. Par la suite, l'Armée, la Gendarmerie, les autorités locales et les *Interahamwe* reçoivent des directives pour préparer de nouvelles listes ou tenir à jour les listes existantes, qui vont servir lors des massacres de 1994. En mars 1993, une telle liste est retrouvée dans le véhicule du Chef d'État Major de l'Armée.

1.19 Vers la fin de 1991, certaines autorités rwandaises distribuent des armes à certains membres de la population civile du nord-est du pays dans le cadre de la campagne d'auto-défense civile en réaction à l'attaque du FPR d'octobre 1990. Plus tard, en dehors du cadre de l'auto-défense civile, des armes sont distribuées dans tout le pays par des autorités, notamment aux *Interahamwe* et à des personnes soigneusement choisies, même dans des régions éloignées de la zone de guerre. Vers la fin de 1993, l'Évêque de Nyundo critique dans une lettre publique cette distribution d'armes, s'interrogeant sur sa finalité.

1.20 La mise en place de la stratégie ainsi décrite joue un rôle de catalyseur dans la violence politique et ethnique de cette époque qui atteint son paroxysme avec les massacres d'avril 1994. Le début des années 90 est marqué par de nombreux assassinats

and large massacres of the Tutsi minority, including the one in Kibilira (1990), that of the Bagogwe (1991) and the one in Bugesera (1992). The massacres were instigated and organized by local authorities with the complicity of certain prominent persons from the President's circle. Therein can be found the components of the strategy which culminated in the genocide of 1994.

1.21 In early 1994, certain prominent people from Habyarimana's circle instigated violent demonstrations in Kigali aimed at preventing the implementation of the Arusha Accords. Soldiers in civilian clothes and militiamen took part, seeking to provoke confrontations with the Belgian UNAMIR soldiers. These incidents were partially the cause of the postponement of the establishment of the institutions foreseen by the Arusha Accords.

1.22 On 6 April 1994, the plane carrying, among other passengers, the President of the Republic of Rwanda, Juvénal Habyarimana, was shot down on its approach to Kigali airport.

1.23 In the hours which followed the crash of the President's plane, the senior officers of the FAR convened to assess the situation. Those who shared the extremist Hutu ideology, generally from the North, proposed an Army take-over. During a second meeting which took place on the morning of 7 April, that option was rejected in favour of setting up an interim Government.

1.24 Already on the morning of 7 April and while these discussions were taking place, groups of military, lists in hand, proceeded to arrest, confine and carry out systematic assassinations of a large number of political opponents, both Hutu and

politiques et d'importants massacres de la minorité Tutsi, dont celui de Kibilira (1990), ceux des Bagogwe (1991) et celui du Bugesera (1992). Ces massacres sont suscités et organisés par des autorités locales avec la complicité de certaines personnalités de l'entourage du Président Habyarimana. On y retrouve tous les éléments de la stratégie qui va aboutir au génocide de 1994.

1.21 Au début de 1994, des manifestations violentes visant à empêcher la mise en place des Accords d'Arusha se déroulent à Kigali à l'instigation de certaines personnalités de l'entourage d'Habyarimana. On y retrouve des militaires en civil aux côtés des miliciens qui cherchent à provoquer des affrontements avec les soldats belges de la MINUAR. Ces incidents sont en partie à l'origine du report de la mise en place des institutions prévues dans les Accords d'Arusha.

1.22 Le 6 avril 1994, l'avion transportant, entre autres passagers, le Président de la République du Rwanda, Juvénal Habyarimana, est abattu peu avant son atterrissage à l'aéroport de Kigali.

1.23 Dans les heures qui suivent la chute de l'avion présidentiel, les principaux officiers des FAR se réunissent pour évaluer la situation. Ceux qui partagent l'idéologie extrémiste Hutu, généralement les militaires du nord du pays, proposent la prise du pouvoir par l'Armée. Le 7 avril au matin, lors d'une deuxième réunion, cette option est rejetée au profit de la mise sur pied d'un gouvernement intérimaire.

1.24 Dès le 7 avril au matin, parallèlement à ces discussions, des groupes de militaires, listes en main, procèdent à l'arrestation, à la séquestration et à l'assassinat de nombreux opposants politiques, Hutu et Tutsi, parmi lesquels le

Tutsi, including the Prime Minister, some of the Ministers in her Government and the President of the Constitutional Court. At the same time, however, the military were evacuating prominent members of the dead President's circle, including the MRND Ministers, to safe locations.

The Belgian UNAMIR soldiers sent to protect the Prime Minister were disarmed, arrested and taken to Kigali military camp, where they were massacred, prompting the withdrawal of the Belgian contingent in the days that followed. After the withdrawal of the Belgian troops, the UN Security Council drastically reduced the number of UNAMIR personnel in Rwanda.

1.25 The leaders of various political parties not targeted in the assassinations assembled at the request of military officers. Other than members of the MRND, most participants were members of the "Power" wings of their respective parties. Given the political and constitutional void created by the deaths of most national political authorities, they set up a government based on the 1991 constitution. Composed solely of Hutu, the government was sworn in on 9 April 1994. The MRND held nine ministerial posts, plus the Presidency of the Republic, while the remaining 11 positions, including that of Prime Minister, went to the "Power" factions of the other parties.

1.26 In the hours following the crash of President Habyarimana's plane, military and militiamen set up roadblocks and began slaughtering Tutsi and members of the Hutu opposition in Kigali and in other parts of Rwanda. At the roadblocks, they checked the identity cards of passers-by and killed those or most of those who were identified as Tutsi. Military patrols, often involving militiamen, scoured the city, lists in hand, to

Premier Ministre, certains des ministres de son gouvernement et le Président de la Cour Constitutionnelle. Par contre, au même moment, des militaires évacuent dans des endroits sûrs des personnalités de l'entourage du défunt Président, y compris les ministres du MRND.

Les militaires belges de la MINUAR envoyés pour protéger le Premier Ministre sont désarmés, arrêtés et conduits au camp militaire de Kigali où ils sont massacrés. Cet incident précipite le retrait du contingent belge dans les jours qui suivent. Après le retrait des troupes belges, le Conseil de sécurité des Nations-Unies réduit de façon draconienne le nombre de personnel de la MINUAR au Rwanda.

1.25 Les dirigeants des divers partis politiques non visés par les assassinats se réunissent à la demande d'officiers militaires. En dehors des membres du MRND, la plupart des participants sont membres des ailes "Power" de leurs partis respectifs. Étant donné le vide politique et constitutionnel créé par la mort de la plupart des personnalités politiques nationales, ils mettent sur pied un gouvernement fondé sur la constitution de 1991. Le gouvernement, exclusivement composé de personnalités Hutu, prête serment le 9 avril 1994. Neuf postes ministériels sont attribués au MRND, en plus de la présidence de la République, et les onze postes restants, incluant celui de premier ministre, reviennent aux factions "Power" des autres partis.

1.26 Dans les heures qui suivent la chute de l'avion du Président Habyarimana, les militaires et les miliciens érigent des barrages et commencent à massacrer les Tutsi et les membres de l'opposition Hutu à Kigali et dans d'autres régions du Rwanda. Aux barrages, ils procèdent à la vérification des cartes d'identité de tous les passants et exécutent toutes les personnes, ou la plupart des personnes, identifiées comme étant

execute the Tutsi and certain political opponents.

1.27 During the entire period of the genocide, FAR military, particularly units of the Presidential Guard, the Para-Commando Batallion, Reconnaissance Battalion and the Gendarmerie, in complicity with militiamen, actively participated in the massacres of the Tutsi throughout Rwanda.

1.28 As soon as it was formed, the Interim Government espoused the plan for extermination put in place. Throughout the period of the massacres, the Government made decisions and issued directives to aid and abet in the extermination of the Tutsi population and the elimination of the Hutu political opponents. Members of the Government incited the population to eliminate the enemy and its "accomplices", some of them participating directly in the massacres.

1.29 Local authorities, including *préfets*, *bourgmestres*, *conseillers de secteur* and *responsables de cellule* applied the Government-issued directives in execution of the plan for the extermination of the Tutsi population. They incited and ordered their subordinates to perpetrate the massacres and took a direct part in them.

1.30 Having been psychologically and militarily prepared for several months, the groups of militiamen spearheaded the execution of the extermination plan and were directly involved in the massacres of the civilian Tutsi population and of moderate Hutus, thus causing the deaths of hundreds of thousands of people in less than 100 days.

Tutsi. Des patrouilles de militaires, souvent accompagnés de miliciens sillonnent la ville, listes en main, pour exécuter les Tutsi et certains opposants politiques.

1.27 Durant toute la période du génocide, des militaires des FAR, particulièrement des unités de la Garde Présidentielle, du Bataillon Para-Commando, du Bataillon reconnaissance et de la Gendarmerie, avec la complicité de miliciens, participent activement aux massacres de Tutsi sur toute l'étendue du Rwanda.

1.28 Dès sa formation, le Gouvernement Intérimaire fait sien le plan d'extermination mis en place. Durant toute la période des massacres, le Gouvernement prend des décisions et donne des directives dans le but d'aider et encourager l'extermination de la population Tutsi et l'élimination des opposants politiques Hutu. Des membres de ce gouvernement incitent la population à éliminer l'ennemi et ses "complices", certains d'entre eux prennent part directement aux massacres.

1.29 Des autorités locales, telles que les Préfets, les Bourgmestres, les conseillers de secteur et les responsables de cellule, appliquent les directives du Gouvernement visant à exécuter le plan d'extermination de la population Tutsi. Ils incitent et ordonnent à leurs subordonnés de se livrer aux massacres et y prennent eux-mêmes part directement.

1.30 Les groupes de miliciens, psychologiquement et militairement préparés depuis plusieurs mois, constituent le fer de lance dans l'exécution du plan d'extermination et sont directement impliqués dans les massacres de la population civile Tutsi et des Hutu modérés, causant ainsi la mort de centaines de milliers de personnes en moins de 100 jours.

2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

2.1 The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

2.2 During the events referred to in this indictment, Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.

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

2.4 During the events referred to in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

2.5 During the events referred to in this indictment, a state of non-international armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons, according to the provisions of Article 3 common to the Geneva Conventions and of Additional Protocol II.

2. COMPÉTENCES TERRITORIALE, TEMPORELLE ET MATÉRIELLE

2.1 Les crimes visés par le présent acte d'accusation ont été commis au Rwanda entre le 1er janvier 1994 et le 31 décembre 1994.

2.2 Lors des événements auxquels se réfère le présent acte d'accusation, le Rwanda était divisé en 11 préfectures: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-ville, Kigali-rural et Ruhengeri. Chaque préfecture est subdivisée en communes et en secteurs.

2.3 Lors des événements auxquels se réfère le présent acte d'accusation, les Tutsi, les Hutu et les Twa étaient identifiés comme des groupes ethniques ou raciaux.

2.4 Lors des événements auxquels se réfère le présent acte d'accusation, il y a eu sur tout le territoire du Rwanda des attaques systématiques ou généralisées contre une population civile, en raison de son appartenance politique, ethnique ou raciale.

2.5 Lors des événements auxquels se réfère le présent acte d'accusation, il y avait un conflit armé non international sur le territoire du Rwanda. Les victimes auxquelles se réfère le présent acte d'accusation étaient des personnes protégées, au sens de l'article 3 commun aux Conventions de Genève et du Protocole additionnel II.

3. THE POWER STRUCTURE

The *Forces Armées Rwandaises*

3.1 The *Forces Armées Rwandaises (FAR)* were composed of the *Armée Rwandaise* (AR) and the *Gendarmerie Nationale* (GN). The *Forces Armées Rwandaises* did not have a unified command and came directly under the Minister of Defence. The Commander-in-Chief of the *Forces Armées Rwandaises* was the President of the Republic.

3.2 The General Staff of the Rwandan Army was headed by the Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.3 The territory of Rwanda was divided into various military operations sectors, each headed by a military sector commander. Also, there were elite units within the Rwandan Army, namely the Presidential Guard, Para-Commando Battalion and Reconnaissance Battalion. The troops were divided into companies within the sectors and the units.

3.4 By virtue of their rank and their functions, the officers of the Rwandan Army had the duty to enforce the general rules of discipline for all soldiers under their authority, even those not belonging to their units.

3.5 The General Staff of the *Gendarmerie Nationale* was headed by the

3. STRUCTURE DU POUVOIR

Les Forces Armées Rwandaises

3.1 Les Forces Armées Rwandaises (FAR) étaient composées de l'Armée Rwandaise (AR) et de la Gendarmerie Nationale (GN). Les Forces Armées Rwandaises ne disposaient pas d'un Etat-Major unifié et relevaient directement du ministre de la Défense. Le chef suprême des Forces Armées Rwandaises était le Président de la République.

3.2 L'Etat-Major de l'Armée Rwandaise était dirigé par un Chef d'Etat-Major assisté de quatres officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.3 Le territoire du Rwanda était divisé en différents secteurs d'opérations militaires. Chaque secteur était dirigé par un commandant militaire. En outre, il y avait des unités d'élites au sein de l'Armée Rwandaise: le bataillon de la Garde Présidentielle, le bataillon Para-Commando, et le bataillon de Reconnaissance. Les troupes étaient divisées en compagnies au sein des secteurs et des unités.

3.4 De par leur grade et leurs fonctions, les officiers de l'Armée Rwandaise avaient le devoir de faire respecter les règles générales de discipline pour tous les militaires sous leur autorité, même s'ils n'appartenaient pas à leurs unités.

3.5 L'Etat-Major de la Gendarmerie était dirigé par un Chef d'Etat-Major assisté de

Chief of Staff, assisted by four senior officers in charge of four bureaux: G-1 (Personnel and Administration), G-2 (Intelligence), G-3 (Military Operations) and G-4 (Logistics).

3.6 The *Gendarmerie Nationale* was responsible for maintaining public order and peace and the observance of the laws in effect in the country.

3.7 The *Gendarmerie Nationale* was under the Minister of Defence but could carry out its duties of ensuring public order and peace at the request of the local government authority having jurisdiction, namely the *Préfet*. In cases of emergency, this request could be made verbally, notably by telephone. Such requests had to be carried out immediately. In addition, the *Gendarmerie Nationale* was obliged to transmit to the *Préfet* all information relating to public order. It had the duty to assist anyone in danger.

The Political Parties and The Militia

3.8 During the events referred to in this indictment, the main political parties in Rwanda were the MRND *(Mouvement Républicain National pour la Démocratie et le Développement)*, the CDR (*Coalition pour la Défense de la République*), the MDR (*Mouvement Démocratique Républicain*), the PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (Rwandan Patriotic Front) was a politico-military opposition organization.

3.9 Most of the political parties had created a youth wing. The members of the MRND's youth wing members were known as the "*Interahamwe*" and those of the CDR

quatres officiers supérieurs responsables de quatre bureaux: le bureau du G-1, (Personnel et Administration), le bureau du G-2 (Renseignements et Intelligence), le bureau du G-3 (Opérations militaires) et le bureau du G-4 (Logistique).

3.6 La Gendarmerie Nationale était chargée du maintien de l'ordre et de la paix publique et de l'exécution des lois en vigueur dans le pays.

3.7 La Gendarmerie Nationale relevait du ministre de la Défense, mais pouvait exercer ses attributions de maintien de l'ordre et de la paix publique à la requête de l'autorité administrative territoriale compétente, en la personne du préfet. En cas d'urgence, cette réquisition pouvait être faite verbalement, notamment par téléphone. Cette réquisition devait être exécutée sans délai. En outre, la Gendarmerie Nationale devait porter à la connaissance du préfet tout renseignement concernant l'ordre public. Elle devait assistance à toute personne en danger.

Les Partis Politiques et les Milices

3.8 Lors des événements visés dans le présent acte d'accusation, les principaux partis politiques au Rwanda étaient: le MRND (Mouvement Républicain National pour la Démocratie et le Développement), la CDR (Coalition pour la Défense de la République), le MDR (Mouvement Démocratique Républicain), le PSD (Parti Social-Démocrate) et le PL (Parti Libéral). Le FPR (Front Patriotique Rwandais) était une organisation politico-militaire d'opposition.

3.9 La plupart des partis politiques avaient créé une aile jeunesse en leur sein. Celle du MRND était connue sous l'appellation "*Interahamwe*" et celle de la

were known as the "*Impuzamugambi*". Most of the MRND and CDR youth wings' members subsequently received military training and were thus tranformed from youth movements into militias.

CDR sous le nom de "*Impuzamugambi*". Par la suite, la plupart des membres des ailes jeunesses du MRND et de la CDR ont reçu un entraînement militaire; ce qui a transformé ces mouvements de jeunesse en milices.

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4. THE ACCUSED

Anatole Nsengiyumva

4.1 **Anatole Nsengiyumva** was born on 4 September 1950 in Satinsyi *commune*, Gisenyi *préfecture*.

4.2 During the events referred to in this indictment, Lieutenant-Colonel **Anatole Nsengiyumva** had been Commander of Military Operations for Gisenyi sector since 13 June 1993.

4.3 Before that, **Anatole Nsengiyumva** exercised the functions of Chief of Military Intelligence within the High Command of the Rwandan Army for several years.

4.4 In his capacity as Commander of Military Operations for Gisenyi sector, **Anatole Nsengiyumva** exercised authority over the military in Gisenyi sector.

4.5 His rank, his previous functions and the personal relations he had with the civilian and military authorities, and the fact that they were from the same region and shared the same political convictions, gave him authority over the MRND militia, the *Interahamwe*, and the CDR militia, the *Impuzamugambi*, given the regionalist context in which power was exercised in Rwanda.

4. L'ACCUSÉ

Anatole Nsengiyumva

4.1 **Anatole Nsengiyumva** est né le 4 septembre 1950 dans la commune de Satinsyi, préfecture de Gisenyi.

4.2 Lors des événements visés dans le présent acte d'accusation, le Lieutenant-Colonel **Anatole Nsengiyumva** exerçait les fonctions de Commandant des Opérations Militaires de Gisenyi depuis le 13 juin 1993.

4.3 Auparavant, **Anatole Nsengiyumva** a exercé les fonctions de Chef des Renseignements Militaires de l'Etat-Major de l'armée rwandaise pendant plusieurs années.

4.4 En sa qualité de Commandant des Opérations Militaires pour le secteur de Gisenyi **Anatole Nsengiyumva** exerçait une autorité sur les militaires du secteur de Gisenyi.

4.5 Son grade, ses fonctions antérieures ainsi que les relations personnelles qu'il avait avec les autorités militaires et civiles, le fait d'être natif de la même région qu'eux et de partager les mêmes convictions politiques, lui conféraient, dans le contexte régionaliste de l'exercice du pouvoir au Rwanda, une autorité sur les miliciens du MRND, les *Interahamwe* et les miliciens de la CDR, les *Impuzamugambi*.

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5. CONCISE STATEMENT OF THE FACTS: PREPARATION

5.1 From late 1990 until July 1994, **Anatole Nsengiyumva**, Théoneste Bagosora, Aloys Ntabakuze and Joseph Nzirorera, conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition, so that they could remain in power. The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated. In executing the plan, **Anatole Nsengiyumva**, Théoneste Bagosora, Aloys Ntabakuze, Joseph Nzirorera, Omar Serushago, Bernard Munyagishari, Mabuye, Barnabe Samvura and Thomas Mugirameza organized, ordered and participated in the massacres perpetrated against the Tutsi population and of moderate Hutu.

5.2 In a letter dated 3 December 1993, certain FAR officers revealed to the UNAMIR Commander the existence of what they called a "Machiavellian plan" conceived by military who were mainly from the North and who shared the extremist Hutu ideology. The objective of the Northern military was to oppose the Arusha Accords and keep themselves in power. The means to achieve this consisted in exterminating the Tutsi and their "accomplices". The letter indicated moreover the names of political opponents to be eliminated. Some of them were in fact killed on the morning of 7 April 1994.

5.3 On 10 January 1994, UNAMIR was informed by an *Interahamwe* leader of the details of a plan to exterminate the Tutsi

5. EXPOSÉ SUCCINT DES FAITS : PRÉPARATION

5.1 Dès la fin de 1990 jusqu'à juillet 1994, **Anatole Nsengiyumva**, Théoneste Bagosora, Aloys Ntabakuze et Joseph Nzirorera se sont entendus entre eux et avec d'autres pour élaborer un plan dans l'intention d'exterminer la population civile Tutsi et d'éliminer des membres de l'opposition et se maintenir ainsi au pouvoir. Les éléments de ce plan comportaient, entre autres, le recours à la haine et à la violence ethnique, l'entraînement et la distribution d'armes aux miliciens ainsi que la confection de listes de personnes à éliminer. Dans l'exécution de ce plan **Anatole Nsengiyumva**, Théoneste Bagosora, Aloys Ntabakuze, Joseph Nzirorera, Omar Serushago, Bernard Munyagishari, Mabuye, Barnabe Samvura et Thomas Mugirameza ont organisé, ordonné et participé aux massacres perpétrés à l'encontre de la population Tutsi et des Hutu modérés.

5.2 Dans une lettre datée du 3 décembre 1993, des officiers des FAR ont révélé au Commandant de la MINUAR l'existence d'un "plan machiavélique" conçu par des militaires essentiellement originaires du Nord et partageant l'idéologie Hutu extrémiste. L'objectif de ces militaires nordistes était de s'opposer aux Accords d'Arusha et de se maintenir au pouvoir. Les moyens pour ce faire consistaient à exterminer les Tutsi et leurs "complices". La lettre mentionnait, par ailleurs, les noms d'opposants politiques à éliminer. Certains d'entre eux ont effectivement été assassinés dans la matinée du 7 avril 1994.

5.3 Le 10 janvier 1994, la MINUAR est informée, par un dirigeant des *Interahamwe*, des détails d'un plan d'extermination de la population Tutsi et de ses "complices".

population and its "accomplices".

Speeches and Incitement

5.4 The incitement to ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated, before and during the genocide, by elements of the FAR on the one hand, and by members of the Government and local authorities on the other.

5.5 On 4 December 1991, President Juvénal Habyarimana set up a military commission. The commission was given the task of finding an answer to the following question: "*What do we need to do in order to defeat the enemy militarily, in the media and politically?*" **Lt. Col. Anatole Nsengiyumva** , Colonel Théoneste Bagosora and Major Aloys Ntabakuze were members of this commission.

5.6 In a letter dated 21 September 1992, the General Staff of the Rwandan Army ordered that an extract from the commission report be circulated among the troops. The letter came from the office of the Chief of Intelligence (G-2), namely Lieutenant Colonel Anatole Nsengiyumva. The extract defined the main enemy as follows: "*The Tutsis from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms.*" The secondary enemy was defined as: "*Anyone providing any kind of assistance to the main enemy*". The document specified that the enemy was being recruited from within certain social groups, notably: "*the Tutsis inside the country, Hutus who are dissatisfied with the present regime, foreigners married to Tutsi*

Discours et Incitation

5.4 L'incitation à la haine et à la violence ethniques a constitué un élément essentiel du plan mis en place. Elle a été articulée, avant et durant le génocide, d'une part par des éléments des FAR, et d'autre part par des membres du gouvernement et des autorités locales.

5.5 Le 4 décembre 1991, le Président Juvénal Habyarimana met en place une commission militaire. Cette commission était chargée de répondre à la question suivante: "*Que faut-il faire pour vaincre l'ennemi sur le plan militaire, médiatique et politique?*". Le **Lt Col. Anatole Nsengiyumva,** le Colonel Théoneste Bagosora et Le Major Aloys Ntabakuze étaient membres de cette commission.

5.6 Dans une lettre datée du 21 septembre 1992, l'Etat-Major de l'Armée Rwandaise a ordonné la diffusion, parmi les troupes, d'un extrait du rapport produit par cette commission. Cette lettre émanait du bureau du Chef des renseignements (G-2), à savoir le Lieutenant Colonel Anatole Nsengiyumva. Ce document définissait l'ennemi principal comme étant "*le Tutsi de l'intérieur ou de l'extérieur, extrémiste et nostalgique du pouvoir, qui n'a jamais reconnu et ne reconnaît pas encore les réalités de la Révolution Sociale de 1959 et qui veut reconquérir le pouvoir au Rwanda par tous les moyens, y compris les armes*"et l'ennemi secondaire comme étant "*toute personne qui apporte tout concours à l'ennemi principal*". Le document précisait que le recrutement de l'ennemi se faisait parmi certains groupes sociaux, notamment : "*...Les Tutsi de l'intérieur, les Hutu mécontents du régime en place, les étrangers mariés aux femmes Tutsi...*" Parmi

women...". Among the activities the enemy was accused of, the document mentioned "*the diversion of national opinion from the ethnic problem to the socio-economic problem between the rich and the poor*".

5.7 The document and the use made of it by the senior officers aided, encouraged and promoted ethnic hatred and violence.

5.8 As part of the negotiations for the Protocol on integration of the Armed Forces under the Arusha Accords, the officers from the North saw their powers eroded. This was reality they could not accept made it opportune for to them to exacerbate the discourse of ethnic hatred and violence.

5.9 At the time of the negotiation of the Arusha Accords, several meetings of Army officers including Colonel Théoneste Bagosora, **Lt. Col. Anatole Nsengiyumva** and Major Aloys Ntabakuze were held notably at Kanombe military camp .

5.10 Several senior officers in the Rwandan Army, including Théoneste Bagosora, Gratien Kabiligi and Aloys Ntabakuze, publicly stated that the extermination of the Tutsi would be the inevitable consequence of any resumption of hostilities by the RPF or if the Arusha Accords were implemented. Furthermore, on various occasions, Colonel Théoneste Bagosora declared that the solution to the war was to plunge the country into an apocalypse in order to eliminate all the Tutsi and thus ensure lasting peace. These statements were often made in the presence of senior officers, including **Anatole Nsengiyumva.** The latter stated moreover that the implementation of the Arusha

les activités reprochées à l'ennemi, le document mentionnait le "*...Détournement de l'opinion nationale du problème ethnique vers le problème socio-économique entre les riches et les pauvres*".

5.7 Ce document et l'utilisation qu'en ont faite les officiers supérieurs ont aidé, encouragé et favorisé la haine et la violence ethnique.

5.8 Dans le cadre des négociations du Protocole d'intégration des Forces Armées, prévues par les Accords d'Arusha, les officiers du Nord voyaient leurs pouvoirs s'éroder. Cette réalité inacceptable pour eux, allait leur fournir l'occasion d'exacerber le discours de haine et de violence ethniques.

5.9 Durant la période des négociations des Accords d'Arusha, plusieurs réunions, regroupant des officiers, parmi lesquels, le Colonel Théoneste Bagosora, **le Lt Col. Anatole Nsengiyumva** et le Major Aloys Ntabakuze ont eu lieu, notamment au camp militaire de Kanombe.

5.10 Plusieurs officiers supérieurs de l'Armée Rwandaise, parmi lesquels, Théoneste Bagosora, Gratien Kabiligi, et Aloys Ntabakuze, ont publiquement déclaré que l'extermination des Tutsi serait la conséquence inévitable de toute reprise des hostilités par le FPR ou de la mise en application des Accords d'Arusha. Le Colonel Théoneste Bagosora, en outre, a déclaré, à différentes occasions, que la solution à la guerre était de faire sombrer le pays dans l'apocalypse pour éliminer tous les Tutsi et ainsi assurer une paix durable. Ces propos étaient souvent tenus en présence d'officiers supérieurs, parmi lesquels, **Anatole Nsengiyumva.** Ce dernier a, par ailleurs, déclaré que la mise en place des Accords d'Arusha déclencherait la

Accords would unleash war.

5.11 The characterization of the Tutsis as the enemy and of members of the opposition as their accomplices was echoed by politicians, notably by Léon Mugesera, MRND Vice-Chairman for Gisenyi *préfecture*, in a speech he made on 22 November 1992. Broadcast on the state radio and therefore reaching a much larger audience, Léon Mugesera's speech already at that time was an incitement to exterminate the Tutsi population and their "accomplices".

The Militia Groups

5.12 The creation of the youth wings satisfied two of the political parties' concerns: to mobilize young people and to sensitize them to politics. The MRND and CDR followed the example of the MDR and RPF, which had already institutionalized their youth movements. Political rivalries during the multi-party period exacerbated tensions. The *"Interahamwe"* and *"Impuzamugambi"* began to be drawn astray from the time they were used to oppose with violence the political demonstrations organized by parties of the opposition.

5.13 In order to ensure that, when the time came, the extermination of the enemy and its "accomplices" would be carried out swiftly and effectively, it was necessary to create a militia that was structured, armed and complementary to the Armed Forces. For the militia to be represented nationally, *Interahamwe* committees were created at *prefecture* level. This decision of the central committee of the MRND taken in June 1993 was carried out in their localities by political

guerre.

5.11 La qualification des Tutsi comme étant l'ennemi et des membres de l'opposition comme étant leurs complices, a été reprise par des politiciens, notamment Léon Mugesera, Vice Président du MRND pour la préfecture de Gisenyi, dans un discours prononcé le 22 novembre 1992. Diffusé sur la Radio d'Etat et s'adressant ainsi à un public beaucoup plus large, le discours de Léon Mugesera, a incité, dès cette époque, à exterminer la population Tutsi et ses "complices".

Les milices

5.12 La création des ailes jeunesses répondait à deux préoccupations au niveau des partis politiques: mobiliser et sensibiliser les jeunes à la politique. Le MRND et la CDR ont suivi l'exemple du MDR et du FPR qui avaient déjà institutionnalisé leurs mouvements de jeunesse. Les rivalités politiques de la période du multi-partisme ont exacerbé les tensions. Les *"Interahamwe"* et les *"Impuzamugambi"* ont été entraînés dans la dérive dès lors qu'ils ont été utilisés pour s'opposer violemment aux manifestations politiques organisées par les partis de l'opposition.

5.13 Afin de s'assurer qu'à terme, l'extermination de l'ennemi et de ses "complices" se ferait rapidement et efficacement, il était nécessaire de constituer une milice, structurée, armée et complémentaire aux Forces Armées. Pour donner une représentation nationale à cette milice, des comités d'*Interahamwe* ont été créés au niveau préfectoral. Cette décision prise par le Comité Centrale du MRND en juin 1993 a été mise en oeuvre par des personnalités politiques au niveau de leur

figures in their constituencies, including,among others, Bernard Munyagishari in Gisenyi.

5.14 As from 1993, and even before that date, anxious to radicalize the *Interahamwe* movement, the leaders of the MRND, in collaboration with officers of the FAR, decided to provide military training to those members most devoted to their extremist cause and to other idle youths. Furthermore, weapons were distributed to them.

Training of the Militia Groups

5.15 The training was supervised by military, including Protais Mpiranya, Aloys Ntabakuze, **Anatole Nsengiyumva**, Léonard Nkundiye, and civilian authorities. Training was conducted simultaneously in several *préfectures* around the country: Kigali, Cyangugu, Gisenyi and Butare, as well as in the Mutara sector. Training also took place in military camps, notably Gabiro, Gako, Mukamira and Bigogwe, as well as around these camps or in neighbouring forests.

5.16 In Gisenyi prefecture, between June 1993 and July 1994, **Anatole Nsengiyumva** supervised the training of the MRND militia, the *Interahamwe*, and that of the CDR militia, the *Impuzamugambi*.

5.17 On 10 January 1994, a leader of the *Interahamwe* militia informed UNAMIR that 1,700 militiamen had undergone training and that they could eliminate 1,000 Tutsis every twenty minutes.

circonscription, parmi lesquelles Bernard Munyagishari à Gisenyi.

5.14 Dès 1993 et même avant, dans un souci de radicalisation du mouvement *Interahamwe*, les dirigeants du MRND en collaboration avec des officiers des FAR, ont décidé de faire suivre aux éléments les plus dévoués à leur cause extrémiste et à d'autres jeunes désoeuvrés, un entraînement militaire. En outre, des armes leur ont été distribuées.

L'entraînement des milices

5.15 L'entraînement était supervisé par des militaires, parmi lesquels Protais Mpiranya, Aloys Ntabakuze, **Anatole Nsengiyumva**, Léonard Nkundiye, et des autorités civiles. Ces entraînements ont eu lieu simultanément dans plusieurs préfectures du pays : Kigali, Cyangugu, Gisenyi, Butare et dans le secteur du Mutara. Ces entraînements se tenaient dans des camps militaires, notamment les camps de Gabiro, Gako, Mukamira et de Bigogwe et également aux alentours de ces camps ou dans les forêts avoisinantes.

5.16 Dans la préfecture de Gisenyi, entre juin 1993 et juillet 1994, **Anatole Nsengiyumva** a supervisé l'entraînement des miliciens du MRND, les *Interahamwe* et les miliciens de la CDR, les *Impuzamugambi*.

5.17 Le 10 janvier 1994, un dirigeant des milices *Interahamwe* a informé la MINUAR que 1,700 miliciens avaient suivi un entraînement et qu'ils pouvaient éliminer 1,000 Tutsi toutes les vingt minutes.

5.18 Les entraînements secrets des

5.18 The secret training of the militiamen became more and more notorious. They could on some occasions be seen training in public places or on their way to the training sites, while chanting slogans inciting the extermination of the enemy.

Distribution of Weapons

5.19 In order to implement the plan for the extermination of the enemy and its "accomplices", the militiamen were to receive weapons, in addition to military training. Hence, the military and civilian authorities distributed weapons to the militiamen and certain carefully selected members of the civilian population in various *préfectures* of the country.

5.20 In 1993, President Habyarimana declared in Ruhengeri that the *Interahamwe* had to be *equipped* so that, come the right time, "*ils descendent*".

5.21 Before and during the events referred to in this indictment, **Anatole Nsengiyumva** Théoneste Bagosora, Joseph Nzirorera and others distributed weapons to the militiamen and certain carefully selected members of the civilian population with the intent to exterminate the Tutsi population and eliminate its "accomplices".

5.22 In February 1993, without the knowledge of the Minister of Defence, James Gasana, Colonel Théoneste Bagosora arranged for weapons to be distributed to the *bourgmestres* of Gisenyi. The weapons were taken from the Army's logistics base in Kigali and were then distributed to certain carefully selected civilians in Gisenyi.

miliciens sont devenus de plus en plus de notoriété publique. On a pu les voir s'entraîner, à certaines occasions, dans des endroits publics ou se diriger vers les sites d'entraînement, en chantant des slogans incitant à l'extermination de l'ennemi.

La distribution d'armes

5.19 Pour mettre en oeuvre le plan d'extermination de l'ennemi et ses "complices", les miliciens devaient recevoir, en plus d'un entraînement militaire, des armes. Dès lors, les autorités militaires et civiles ont distribué des armes aux miliciens et à certains membres soigneusement choisis de la population civile, dans différentes préfectures du pays.

5.20 En 1993, le Président Habyarimana déclarait à Ruhengeri qu'on devait *équiper* les *Interahamwe* pour qu'au moment opportun, "*ils descendent*".

5.21 Avant et durant les événements visés dans le présent acte d'accusation, **Anatole Nsengiyumva,** Théoneste Bagosora, Joseph Nzirorera et d'autres ont distribué des armes aux miliciens et à certains membres soigneusement choisis de la population civile dans l'intention d'exterminer la population Tutsi et d'éliminer ses "complices".

5.22 En février 1993, à l'insu du ministre de la Défense, James Gasana, le Colonel Théoneste Bagosora a fait distribuer des armes aux bourgmestres de Gisenyi. Ces armes avaient été retirées de la base logistique de l'armée à Kigali et par la suite redistribuées à certains membres soigneusement choisis de la population civile de Gisenyi.

5.23 De juin 1993 à juillet 1994, à

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5.23 From June 1993 to July 1994, in Gisenyi, Military Commander, **Anatole Nsengiyumva** and some of his subordinates participated in the distribution of weapons to the militiamen.

5.24 Towards the end of 1993, in an open letter broadcast on national radio, the Bishop of the diocese of Nyundo, in Gisenyi *préfecture*, denounced the distribution of weapons in that prefecture.

Establishment of Lists

5.25 Having identified the Tutsi as the enemy and the members of the opposition as their accomplices, members of the Army General Staff, civilian authorities and militiamen established lists of people to be executed.

5.26 In 1992, at a meeting, Colonel Théoneste Bagosora instructed the two General Staffs to establish lists of people identified as the enemy and its accomplices. The Intelligence Bureau (G-2) of the Rwandan Army established the lists under the supervision of **Anatole Nsengiyumva.** The lists were regularly updated under the authority of **Anatole Nsengiyumva** and afterwards of Aloys Ntiwiragabo.

5.27 In 1993, following a traffic accident, a list of the type described above was found in the vehicle of the Chief of Staff, Déogratias Nsabimana. During the events, some of the people on that list were killed.

5.28 On 10 January 1994, an *Interahamwe* leader informed UNAMIR that he had received orders to establish lists of

Gisenyi, le Commandant militaire **Anatole Nsengiyumva** et certains de ses subordonnés ont participé à la distribution d'armes aux miliciens.

5.24 Vers la fin 1993, dans une lettre ouverte diffusée sur les ondes de la Radio Nationale, l'évêque du diocèse de Nyundo, préfecture de Gisenyi, a denoncé la distribution d'armes dans cette préfecture.

Confection de listes

5.25 Après avoir identifié le Tutsi comme étant l'ennemi principal et les membres de l'opposition comme ses complices, des membres de l'Etat-Major de l'Armée, des autorités civiles et des miliciens ont dressé des listes de personnes à exécuter.

5.26 En 1992, lors d'une réunion, le Colonel Théoneste Bagosora a demandé aux deux Etats-Majors d'établir des listes de personnes identifiées comme étant l'ennemi et ses complices. Les agents du service de renseignements du G-2 de l'Armée Rwandaise ont procédé à la confection de ces listes, sous la supervision **d'Anatole Nsengiyumva.** Ces listes ont été régulièrement mises à jour sous l'autorité **d'Anatole Nsengiyumva** et par la suite d'Aloys Ntiwiragabo.

5.27 En 1993, à la suite d'un accident de circulation, une telle liste a été découverte dans le véhicule du Chef d'Etat-Major, Déogratias Nsabimana. Durant les événements, des personnes sur cette liste ont été assassinées.

5.28 Le 10 janvier 1994, un dirigeant des *Interahamwe* a informé la MINUAR qu'il avait reçu l'ordre de préparer des listes de Tutsi à éliminer.

Tutsi to be eliminated.

5.29 From 7 April to late July, military and *Interahamwe* massacred members of the Tutsi population and moderate Hutu by means of pre-established lists, among other things.

Precursors Revealing A Deliberate Course of Action

5.30 The political and ethnic violence of the early 1990s was characterized by the use of the elements of the strategy which achieved its finality in the genocide of April 1994. The massacres of the Tutsi minority at that time, including those in Kibilira (1990), in Bugesera (1992), and those of Bagogwe (1991), were instigated, facilitated and organized by civilian and military authorities. On each occasion, a campaign of incitement to ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.

Modus Operandi

5.31 Finally, as of 7 April 1994, throughout Rwanda, Tutsis and certain moderate Hutus, began to flee their homes to escape the violence to which they were victims on their hills and to seek refuge in places where they had traditionally felt safe, notably churches, hospitals and other public buildings such as *commune* and *préfecture* offices. On several occasions, gathering places were indicated to them by the local authorities, who had promised to protect

5.29 Du 7 avril à la fin juillet, des militaires et des *Interahamwe* ont perpétré des massacres de membres de la population Tutsi et des Hutu modérés, entre autres à l'aide de listes pré-établies.

Antécédents révélant une conduite délibérée

5.30 La violence ethnique et politique du début des années 90 a été caractérisée par l'utilisation des éléments de la stratégie qui allait connaître son aboutissement avec le génocide de 1994. Les massacres de la minorité Tutsi perpétrés à cette époque, tels que ceux à Kibilira (1990), à Bugesera (1992), et ceux à l'encontre des Bagogwe (1991) ont été suscités, facilités et organisés par des autorités civiles et militaires. À chaque occasion une campagne d'incitation à la violence ethnique menée par des autorités locales a été suivie de massacres de la minorité Tutsi, perpétrés par des groupes de miliciens et de civils, armés et aidés par ces mêmes autorités et certains militaires. À chaque occasion, ces crimes sont demeurés impunis et les autorités impliquées n'ont généralement pas été inquiétées.

Modus Operandi

5.31 Finalement, dès le 7 avril 1994, sur tout le territoire du Rwanda, des Tutsi et certains Hutu modérés, pour échapper à la violence dont ils étaient victimes sur leurs collines, ont commencé à fuir leurs maisons pour chercher refuge dans des endroits où traditionnellement ils s'étaient sentis en sécurité, notamment des églises, des hôpitaux et d'autres édifices publics comme les bureaux communaux et préfectoraux. À plusieurs occasions, des endroits de rassemblement leur avaient été indiqués par

them. For the initial days, the refugees were protected by a few gendarmes and communal police in these various locations, but subsequently, the refugees were systematically attacked and massacred by militiamen, often assisted by the same authorities who had promised to protect the refugees. During the numerous attacks on the refugees throughout the country, personnel of the FAR, military or gendarmes, who were supposed to protect them, prevented the Tutsi from escaping and facilitated their massacre by the *Interahamwe*. On several occasions, these FAR personnel participated directly in the massacres.

5.32 Furthermore,soldiers, militiamen and gendarmes raped, sexually assaulted and committed other crimes of a sexual nature against Tutsi women and girls, sometimes after having first kidnapped them.

des autorités locales qui avaient promis de les protéger. Durant les premiers jours, les réfugiés ont été protégés par quelques gendarmes et policiers communaux dans ces différents endroits, mais par la suite, systématiquement, les réfugiés ont été attaqués et massacrés par des miliciens, souvent aidés par ces mêmes autorités qui avaient promis de protéger les réfugiés. Au cours des nombreuses attaques menées contre les réfugiés partout à travers le pays, des membres des FAR, militaires ou gendarmes, qui devaient les protéger, ont empêché les Tutsi de fuir et facilité leur massacre par les *Interahamwe*. A plusieurs occasions, ces membres des FAR ont participé directement aux massacres.

5.32 De plus, des militaires, des miliciens et des gendarmes ont ont commis des viols, des agressions sexuelles et d'autres crimes de nature sexuelle a l'encontre de certaines femmes et jeunes filles Tutsi et ce parfois après les avoir enlevées.

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6. CONCISE STATEMENT OF THE FACTS: OTHER VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

6.1 On 6 April 1994 at about 8:30 p.m., the plane carrying, among other passengers, the President of the Republic, Juvénal Habyarimana, was shot down on its approach to Kigali Airport, Rwanda.

6.2 Following the crash of the President's plane, the *Forces Armées Rwandaises* were left without leadership. The President was dead, along with the Chief of Staff of the Rwandan Army, Colonel Déogratias Nsabimana. The Minister of Defence, Augustin Bizimana, and the Chief of Intelligence Services (G2) in the Rwandan Army, Colonel Aloys Ntiwiragabo, were on mission in the Republic of Cameroon. They returned to the country in the days that followed. Gratien Kabiligi, the officer in charge of operations (G3) in the Rwandan Army General Staff, was also on mission in Egypt and immediately returned to the Headquarters when he was briefed about the situation. In the absence of the Minister of Defence, Colonel Théoneste Bagosora, *directeur de cabinet*, asserted himself as the man of the moment capable of managing the crisis.

6.3 During the night of 6 to 7 April, a first meeting mainly of officers of the two General Staffs was held at the Rwandan Army Headquarters in Kigali military camp. The meeting was chaired by Théoneste Bagosora. During this meeting,Théoneste Bagosora and other officers, including Major Kayumba, expressed their desire to take power. Despite the advice of certain people to involve Prime Minister Agathe

6. EXPOSÉ SUCCINCT DES FAITS: AUTRES VIOLATIONS DU DROIT INTERNATIONAL HUMANITAIRE

6.1 Au soir du 6 avril 1994 vers 20:30 heures, l'avion transportant entre autres passagers le Président de la République du Rwanda, Juvénal Habyarimana, a été abattu peu avant son atterrissage à l'aéroport de Kigali, Rwanda.

6.2 Après la chute de l'avion présidentiel, les Forces Armées Rwandaises se sont retrouvées sans direction. Le Président était mort ainsi que le chef d'Etat-Major (AR), le Colonel Déogratias Nsabimana. Le Ministre de la Défense, Augustin Bizimana et le responsable des renseignements (G2) de l'Etat-Major (AR), le Colonel Aloys Ntiwiragabo, étaient en mission en République du Cameroun. Ces derniers sont revenus au pays dans les jours qui ont suivi. Gratien Kabiligi, responsable des opérations (G3) de l'Etat-Major (AR), était également en mission en Egypte et a rejoint l'Etat-Major aussitôt informé de la situation. En l'absence du Ministre de la Défense, le Colonel Théoneste Bagosora, directeur de cabinet, s'est imposé comme l'homme de la situation à même de gérer la crise.

6.3 Dans la nuit du 6 au 7 avril, une première réunion rassemblant principalement des officiers des deux État-Majors s'est tenue à l'État-Major de l'Armée Rwandaise au camp de Kigali. Cette réunion était présidée par Théoneste Bagosora. Au cours de cette rencontre, Théoneste Bagosora et d'autres officiers, parmi lesquels le Major Kayumba, ont manifesté leur volonté de prendre le

Uwilingiyimana in managing the crisis, Théoneste Bagosora refused to consuilt her in any way, ceasing to acknowledge her authority.

6.4 During the said meeting, Colonel Théoneste Bagosora withdrew several times to an adjacent room to receive calls. During this period, Colonel Théoneste Bagosora talked on the phone with Lieutenant-Colonel Anatole Nsengiyumva. Immediately following the said conversation, **Lieutenant-Colonel Anatole Nsengiyumva** gave the order to begin the massacres in Gisenyi.

6.5 Thereafter, Colonel Théoneste Bagosora remained in contact with **Lt. Colonel Anatole Nsengiyumva.**.

6.6 In the morning of 7 April, another meeting of the FAR officers was held at the *Ecole Supérieure Militaire* (ESM); those participating included Major Aloys Ntabakuze, Major François-Xavier Nzuwonemeye and Lt. Col. Léonard Nkundiye. Also present were the commanding officers of the sectors of operation in Rwanda, the commanders of the military camps and officers of the General Staffs (AR and GN). The Commander of the Presidential Guard, Major Mpiranya, did not attend that meeting. Meanwhile, his men were already perpetrating massacres.

6.7 While this meeting was going on, Prime Minister Agathe Uwilingiyimana was tracked down, arrested, sexually assaulted and killed by Rwandan Army personnel, more specifically, members of the Presidential Guard, the Para-Commando Battalion and the Reconnaissance Battalion. Concurrently, members of the same units

pouvoir. Malgré les recommandations de certaines personnes d'associer le Premier Ministre, Agathe Uwilingiyimana, à la gestion de cette crise, Théoneste Bagosora s'est opposé à toute consultation de cette dernière ne lui reconnaissant plus aucun pouvoir.

6.4 Au cours de cette réunion, le Colonel Théoneste Bagosora s'est retiré à plusieurs reprises dans une salle adjacente pour recevoir ses appels. Durant cette période, le Colonel Théoneste Bagosora s'est entretenu par téléphone avec le **Lieutenant-Colonel Anatole Nsengiyumva**. Immédiatement après cet entretien, **Anatole Nsengiyumva** a donné l'ordre de commencer les massacres à Gisenyi.

6.5 Par la suite le Colonel Théoneste Bagosora est resté en contact avec **Lt. Colonel Anatole Nsengiyumva.**

6.6 Dans la matinée du 7 avril, une nouvelle réunion des officiers des FAR s'est tenue à l'École Supérieure Militaire (ESM). Ont participé à la rencontre: le Major Aloys Ntabakuze, le Major François-Xavier Nzuwonemeye et Lt-Col Léonard Nkundiye. Ont été également présents: des officiers commandants des secteurs opérationnels du Rwanda, des commandants des camps militaires et des officiers d'État-Major (AR et GN). Le Commandant de la Garde Présidentielle, le Major Mpiranya, n'a pas assisté à cette réunion. Pendant ce temps ses hommes se livraient déjà à des massacres.

6.7 Pendant que se déroulait la réunion, le Premier Ministre, Madame Agathe Uwilingiyimana était traquée, arrêtée, agressée sexuellement et tuée par des membres de l'Armée Rwandaise, plus particulièrement ceux de la Garde Présidentielle, du bataillon Para-Commando

arrested, confined and killed important opposition leaders. That same morning, the ten Belgian para-commandos from UNAMIR who were dispached to the Prime Minister residence to escort her to the radio were murdered at Kigali military camp.

6.8 The elimination of political opponents made it possible to set aside the establishment of the Broad-Based Transition Government (BBTG), stipulated in the Arusha Accords, in favour of an Interim Government which would aid and abet the continuation of the massacres. The murder of the Belgian soldiers prompted the withdrawal of most of UNAMIR's contingents. Those two events removed the two major obstacles to the pursuit of the massacres.

6.9 On 7 of April 1994, the General Staff of the Rwandan Army sent a telegram ordering the troops to seek the assistance of the *Interahamwe* and of the people in identifying the Tutsi and to proceed to exterminate them.

6.10 With Colonel Théoneste Bagosora's communiqué, broadcast by radio the same day, asking people to remain at home and await further instructions, the process of elimination of the civilian Tutsi and the moderate Hutu population by military personnel and militiamen was facilitated.

6.11 As from 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for a long time by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel

et du bataillon de Reconnaissance. Parallèlement à cet assassinat, des membres de ces mêmes unités ont arrêté, séquestré et tué des leaders importants de l'opposition. Dans la même matinée, les 10 Para-Commandos belges de la MINUAR qui avaient été envoyés à la résidence du Premier Ministre pour l'escorter à la radio étaient assassinés au camp militaire de Kigali.

6.8 L'élimination des opposants politiques a permis d'écarter la mise en place du Gouvernement de Transition à Base Elargie (G.T.B.E.), prévue aux Accords d'Arusha, au profit d'un Gouvernement Intérimaire qui allait aider et encourager la continuation des massacres. L'assassinat des militaires belges a provoqué le retrait de la majeure partie des contingents de la MINUAR. Ces deux événements ont écarté les deux obstacles majeurs à la poursuite des massacres.

6.9 Le 7 avril 1994, l'Etat-Major de l'Armée Rwandaise a envoyé un télégramme ordonnant aux troupes de requérir l'aide des *Interahamwe* et de la population pour identifier les Tutsi et procéder à leur extermination.

6.10 Avec la radiodiffusion, le même jour, d'un communiqué du Colonel Théoneste Bagosora demandant à la population de rester à la maison en attendant de nouvelles directives, le processus d'élimination par des militaires et des miliciens de la population Tutsi et Hutu modérée a été facilitée.

6.11 À partir du 7 avril 1994, des massacres de la population Tutsi et l'assassinat de nombreux opposants politiques ont été commis sur tout le territoire du Rwanda. Ces crimes planifiés et préparés de longue date par des

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and gendarmes on the orders and directives of some of these authorities, including **Lt. Colonel Anatole Nsengiyumva**.

Gisenyi

6.12 Gisenyi, the *préfecture* of origin of the deceased President, Juvénal Habyarimana, is located in northwestern Rwanda. From the time of the coup d'état in 1973, Gisenyi was the bastion of the *Mouvement républicain national pour la démocratie et le développement* (MRND) and the *Coalition pour la défense de la république* (CDR). Several prominent civil and military figures who had espoused the extremist Hutu ideology were from this *préfecture*. After 1990, the *préfecture* was the theatre for much inter-ethnic tension and violence, causing the death of many Tutsi. This was the case with the *Bagogwe* in 1991. In early June 1994, the Interim Government moved to Gisenyi.

6.13 In the night of 6 to 7 April 1994, in Gisenyi *préfecture*, the Military Commander **Anatole Nsengiyumva** ordered certain political leaders, local authorities and militiamen to assemble at Gisenyi military camp. Were at this meeting, Bernard Munyagishari, Chairman of the *Interahamwe* for Gisenyi, Barnabé Samvura, Chairman of the CDR for Rubavu *commune*, and Thomas Mugiraneza, Vice-Chairman of the *Interahamwe* for Gisenyi.

6.14 During this assemble, **Anatole Nsengiyumva** ordered the participants to kill all the RPF "accomplices" and all the Tutsi. At the end of the meeting, **Anatole Nsengiyumva** he ordered his subordinates to distribute weapons and grenades to the militiamen*Interahamwe* who were present.

6.15 On 7 April 1994, **Anatole**

personnalités civiles et militaires partageant l'idéologie hutu extrémiste ont été perpétrés par des miliciens, des militaires et des gendarmes suivant les ordres et les directives de certaines de ces autorités, dont le **Lt.Colonel Anatole Nsengiyumva**.

Gisenyi

6.12 Préfecture d'origine du défunt Président, Juvénal Habyarimana, Gisenyi est située au nord-ouest du Rwanda. Depuis le coup d'Etat de 1973, elle est le bastion du *Mouvement Républicain National pour la Démocratie et le Développement* (MRND) et de la *Coalition pour la Défense de la République (CDR)*. Plusieurs personnalités civiles et militaires partageant l'idéologie Hutu extrémiste sont originaires de cette préfecture. Depuis 1990, elle a été le théatre de nombreuses tensions et violences inter-ethniques entraînant la mort de nombreux Tutsi. Ce fut le cas en 1991 avec les Bagogwe. Au début de juin 1994, le Gouvernement Intérimaire s'est installé à Gisenyi.

6.13 Dans la nuit du 6 au 7 avril 1994, dans la préfecture de Gisenyi, le Commandant militaire **Anatole Nsengiyumva** a ordonné le rassemblement au camp militaire de Gisenyi, de certains dirigeants politiques, des autorités locales et des miliciens. Étaient présents à cette réunion, Bernard Munyagishari, Président des *Interahamwe* pour Gisenyi, Barnabé Samvura, Président de la CDR pour la commune de Rubavu, et Thomas Mugirameza, Vice-Président des *Interahamwe*, pour Gisenyi.

6.14 Lors de ce rassemblement, **Anatole Nsengiyumva** a donné l'ordre aux participants de tuer tous les complices du FPR et tous les Tutsi. À la fin de la réunion

Nsengiyumva received a telegram from Kigali ordering him to start the massacres.

6.16 On 7 April 1994, **Lt.Colonel Anatole Nsengiyumva** chaired meetings at which he ordered the militiamen to kill the Tutsi. He subsequently distributed weapons to the militiamen. At one of these meetings, **Anatole Nsengiyumva** gave the order to start the massacres, designating a specific location where a Tutsi family had sought refuge. In the minutes that followed that order, the militiamen executed the members of the family in **Anatole Nsengiyumva**'s presence.

6.17 In the afternoon of 7 April 1994, **Anatole Nsengiyumva** ordered a Tutsi man, his wife and their children to get into the back of the truck he was using. The man and his sons refused to obey the order. In the presence of **Anatole Nsengiyumva**, the militiamen accompanying him assaulted the man and one of his sons with machetes, killing the man and seriously wounding his son. **Anatole Nsengiyumva** did nothing to prevent or to stop this attack.

Nyundo Parish

6.18 Since the massacres of the Bagogwe in 1991, Nyundo parish had been a place of refuge for Tutsi victims of ethnic violence. As early as 7 April 1994, men, women and children, the majority of whom were Tutsi, sought refuge at that location.

6.19 On 8 April, soldiers and militiamen went to Bishop Wenceslas Kalibushi's residence in Nyundo to arrest him. They then took him to the *Commune Rouge* to be executed. **Anatole Nsengiyumva**, who was

Anatole Nsengiyumva a ordonné à ses subordonnés de distribuer des armes et des grenades aux miliciens présents.

6.15 Le 7 avril 1994, **Anatole Nsengiyumva** a reçu un télégramme de Kigali lui ordonnant de commencer les massacres.

6.16 Le 7 avril 1994, le **Lt.Colonel Anatole Nsengiyumva** a présidé des réunions au cours desquelles il a ordonné aux miliciens de tuer les Tutsi. Conséquemment il leur a distribué des armes. Au cours de l'une de ces réunions, **Anatole Nsengiyumva** a donné l'ordre de commencer les massacres en désignant un endroit précis où s'était réfugiée une famille Tutsi. Dans les minutes qui ont suivi cette instruction, les miliciens ont exécuté les membres de cette famille, et ce en présence d'**Anatole Nsengiyumva**.

6.17 Le 7 avril 1994, dans l'après-midi, **Anatole Nsengiyumva** a ordonné à un Tutsi, à sa femme et à leurs enfants de monter à l'arrière du camion dans lequel il circulait. L'homme et ses fils ont refusé d'obtempérer. En présence d'**Anatole Nsengiyumva,** les miliciens l'accompagnant ont battu l'homme et l'un de ses fils à coups de machette, tuant l'homme et blessant griévement son fils. **Anatole Nsengiyumva** n'a rien fait pour prévenir ou arrêter l'attaque.

Paroisse de Nyundo

6.18 Depuis les massacres de Bagogwe en 1991, la paroisse de Nyundo a toujours servi de lieu de refuge pour les Tutsi victimes de violences à caractère ethnique. Dès le 7 avril 1994, des hommes, des femmes et des

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at the location, ordered the soldiers and militiamen to release the Bishop temporarily. Some days later, **Anatole Nsengiyumva** ordered the militiamen to go and execute the Bishop. Before the execution, the order was annuled by the military authorities of Kigali.

6.20 From 8 April to June 1994, the refugees at Nyundo parish were repeatedly attacked by soldiers and militiamen on the orders of **Anatole Nsengiyumva.** On at least one occasion, **Anatole Nsengiyumva** was present.

6.21 Between April and July 1994, roadblocks were set up by the militiamen in Gisenyi *préfecture*, in order to identify the Tutsi and their "accomplices" and kill them on the spot or take them to *Commune Rouge* to execute them there. **Anatole Nsengiyumva** supervised several of those roadblocks and distributed weapons to the militiamen who manned them.

6.22 Between 8 April and mid July 1994, **Anatole Nsengiyumva** ordered militiamen and soldiers to exterminate the civilian Tutsi population and its "accomplices". Among the groups of militiamen which executed **Anatole Nsengiyumva**'s orders, the most active were led by Bernard Munyagishari, Omar Serushago, Mabuye and Thomas Mugiraneza.

6.23 Between April and July 1994, Omar Serushago, Bernard Munyagishari, Mabuye et Thomas Mugiraneza and their groups of militiamen hunted down, abducted and killed several members of the Tutsi population and of moderate Hutu in Gisenyi. Notably on 20 April 1994, Omar Serushago and Bernard Munyagishari, on the orders of **Anatole Nsengiyumva**, abducted about

enfants, en majorité Tutsi, ont trouvé refuge à cet endroit.

6.19 Le 8 avril, des militaires et des miliciens se sont rendus au domicile de l'évêque Wenceslas Kalibushi, à Nyundo, pour arrêter celui-ci. Ils l'ont conduit à la "Commune Rouge" pour l'exécuter. **Anatole Nsengiyumva,** présent sur les lieux, a ordonné aux militaires et aux miliciens de le relâcher temporairement. Quelques jours après, **Anatole Nsengiyumva** a donné l'ordre aux miliciens d'aller exécuter l'évêque. Avant son exécution, l'ordre a été annulé par des autorités militaires de Kigali.

6.20 Du 8 avril à juin 1994, les réfugiés de la Paroisse de Nyundo ont subi plusieurs attaques des militaires et des miliciens sur l'ordre d'**Anatole Nsengiyumva.** Au moins à une occasion, **Anatole Nsengiyumva** était présent.

6.21 Entre avril et juillet 1994, des barrages ont été érigés par des miliciens, dans la préfecture de Gisenyi, afin de sélectionner les Tutsi et leurs *"complices"* et les tuer sur place ou les conduire à la "Commune Rouge" pour les exécuter. **Anatole Nsengiyumva** a supervisé plusieurs de ces barrages et a distribué des armes aux miliciens qui les tenaient.

6.22 Entre le 8 avril et la mi-juillet 1994, **Anatole Nsengiyumva** a donné des ordres à des miliciens et à des militaires d'exterminer la population civile Tutsi et ses "complices". Parmi les groupes de miliciens qui ont exécuté les ordres d'**Anatole Nsengiyumva,** les plus actifs étaient dirigés par Bernard Munyagishari, Omar Serushago, Mabuye et Thomas Mugiraneza.

6.23 Entre avril et juillet 1994, Omar Serushago, Bernard Munyagishari, Mabuye,

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twenty Tutsi who had found refuge in a house in Gisenyi, took them to the *Commune Rouge* and executed them.

6.24 Between April and July 1994, Bernard Munyagishari, his group of militiamen and Omar Serushago's group of militiamen abducted, confined, raped, sexually assaulted and committed other crimes of sexual nature against Tutsi woman and girls.

6.25 On 25 April 1994, in Gisenyi *préfecture*, Félicien Kabuga, founder of RTLM, Mathieu Ngirumpatse, President of MRND, Edouard Karemera, Interior Minister and **Anatole Nsengiyumva** agreed together and with others to establish the *Fonds de Défense Nationale* (FDN), for the purpose of providing assistance to the Interim Government to fight the enemy and its "accomplices". This Fund would serve to buy weapons, vehicles and uniforms for the *Interahamwe* militia and the Army in all *préfectures* in the country. Félicien Kabuga was appointed chairman of the *comité provisoire* of the FDN and was a signatory to the fund's accounts with the the *Banque de Kigali* and *Banque Commerciale du Rwanda*, the latter opened by **Anatole Nsengiyumva** in Gisenyi.

6.26 In April 1994, **Anatole Nsengiyumva**, Bernard Munyagishari and others held a meeting in Gisenyi concerning reinforcements for the militiamen in Nyange, Kibuye *préfecture*, where numerous Tutsis were still putting up resistance to the massacres. **Anatole Nsengiyumva** arranged to send two pick-up truckloads of militiamen, and provided them with weapons. In fact, the operation lasted two days and was conducted by Bernard Munygishari.

6.27 In June 1994, Interior Minister

Thomas Mugiraneza et leurs groupes de miliciens ont traqué, enlevé et tué plusieurs membres de la population Tutsi et des Hutu modérés de Gisenyi. Notamment le 20 avril 1994, Omar Serushago et Bernard Munyagishari, sur ordre de **Anatole Nsengiyumva,** ont enlevé une vingtaine de Tutsi qui avaient trouvé refuge dans une maison de Gisenyi, les ont conduits à la "Commune Rouge" et les ont exécutés.

6.24 Entre avril et juillet 1994, Bernard Munyagishari, son groupe de miliciens et le groupe de miliciens d'Omar Serushago ont enlevé, séquestré, violé, agressé sexuellement et commis d'autres crimes de nature sexuelle contre des femmes et des jeunes filles Tutsi.

6.25 Le 25 avril 1994, dans la préfecture de Gisenyi, Félicien Kabuga, fondateur de la RTLM, Mathieu Ngirumpatse, Président du MRND, Edouard Karemera, Ministre de l'Intérieur et **Anatole Nsengiyumva** se sont mis d'accord entre eux et avec des tiers pour créer le Fonds de Défense Nationale (F.D.N.), dans le but de fournir assistance au Gouvernement Intérimaire pour combattre l'ennemi et ses "complices". Ce Fonds devait servir à l'achat d'armes, de véhicules et d'uniformes pour les milices *Interahamwe* et l'armée dans toutes les préfectures du pays. Félicien Kabuga a été nommé président du Comité provisoire du F.D.N et était un signataire des comptes bancaires du Fonds, ouverts à la Banque de Kigali et à la Banque commercial du Rwanda, ce dernier par **Anatole Nsengiyumva** à Gisenyi .

6.26 En avril 1994, **Anatole Nsengiyumva,** Bernard Munyaghisari et d'autres ont tenu un réunion à Gisenyi dans le but de fournir des renforts aux miliciens de Nyange, préfecture de Kibuye, où de nombreux Tutsi résistaient encore aux massacres. **Anatole Nsengiyumva** a

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Edouard Karemera ordered the Commander in Gisenyi, **Anatole Nsengiyumva**, to send troops into the Bisesero area, in Kibuye *préfecture*, supposedly to combat the enemy, although the RPF was in fact never in Bisesero. There was only of a group of Tutsis refugees who had gathered in that region, fleeing the massacres.

6.28 Between May and June 1994, **Anatole Nsengiyumva**, Félicien Kabuga, Joseph Nzirorera, General Secretary of MRND and Juvénal Uwiligimana, Director of *l'Office rwandais du tourisme et des parc nationaux* held a meeting in Gisenyi. During the meeting, Joseph Nzirorera and Juvénal Uwiligimana took note of the names of the Tutsi and moderate Hutu who had come from other *préfectures*. They drew up a list of people to eliminate, which they handed over to the *Interahamwe*.

6.29 Between May and June 1994, Omar Serushago and his group of militiamen abducted a Tutsi woman and brought her, on the order of **Anatole Nsengiyumva** to the "Commune Rouge"to execute her.

6.30 From April to June 1994, **Colonel Anatole Nsengiyumva** chaired meetings at Umuganda stadium in Gisenyi, with several hundred militiamen in attendance. On those occasions, he incited and encouraged the participants to continue the massacres of the civilian Tutsi population.

Responsability

6.31 From April to July 1994, several hundred thousand people were massacred throughout Rwanda. The majority of the victims were killed solely because they were Tutsi or appeared to be Tutsi. The other victims, nearly all Hutu, were killed because

organisé l'envoi de deux camionnettes chargées de miliciens et leur a fourni des armes. De fait, l'opération a duré 2 jours et a été dirigée par Bernard Munyagishari.

6.27 En juin 1994, le Ministre de l'Intérieur Édouard Karemera a ordonné au Commandant de Gisenyi, **Anatole Nsengiyumva**, l'envoi de troupes dans la région de Bisesero, préfecture de Kibuye, dans le but supposé pour combattre l'ennemi alors que le FPR ne s'était, en fait, jamais rendu à Bisesero. Il n'y avait dans cette zone qu'une concentration de réfugiés Tutsi qui fuyaient les massacres.

6.28 Entre mai et juin 1994, **Anatole Nsengiyumva,** Félicien Kabuga, Joseph Nzirorera, Secrétaire général du MRND et Juvénal Uwiligimana, Directeur de l'Office rwandais du tourisme et des parc nationaux ont tenu une réunion à Gisenyi. Au cours de cette réunion, Joseph Nzirorera et Juvénal Uwiligimana ont relevé les noms des Tutsi et des Hutu modérés venus d'autres préfectures. Ils ont dressé une liste de personnes à éliminer qu'ils ont remis aux *Interahamwe*.

6.29 Entre mai et juin 1994, Omar Serushago et son groupe de miliciens ont enlevé une femme Tutsi et l'ont conduite, sur ordre d'**Anatole Nsengiyumva,** à la Commune Rouge pour l'exécuter.

6.30 Du mois d'avril au mois de juin 1994, le **Colonel Anatole Nsengiyumva** a présidé des réunions auxquelles ont assisté plusieurs centaines de miliciens au stade Umuganda dans la préfecture de Gisenyi. Il a, à ces occasions, incité et encouragé les participants à continuer les massacres de la population civile Tutsi.

they were considered Tutsi accomplices, were linked to them through marriage or were opposed to the extremist Hutu ideology.

6.32 From 7 April 1994 around the country, most of the massacres were perpetrated with the participation, aid and instigation of military personnel, gendarmes and Hutu militiamen.

6.33 The massacres perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, at the national as well as the local level, such as, **Anatole Nsengiyumva**, Théoneste Bagosora, Aloys Ntabakuze, Joseph Nzirorera, Felicien Kabuga, Omar Serushago, Bernard Munyagishari, Mabuye, Barnabe Samvura and Thomas Mugirameza, who conspired to exterminate the Tutsi population.

6.34 During the events referred to in this indictment, rapes, sexual assaults and other crimes of a sexual nature were widely and notoriously committed throughout Rwanda. These crimes were perpetrated by, among others, soldiers, militiamen and gendarmes against the Tutsi population, in particular Tutsi women and girls.

6.35 Military officers, members of the Interim Government and local authorities aided and abetted their subordinates and others in carrying out the massacres of the Tutsi population and its accomplices. Without the complicity of the local and national civil and military authorities, the principal massacres would not have occurred.

6.36 From April to July 1994, by virtue of his position, his statements, the orders he

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6.31 D'avril à juillet 1994, plusieurs centaines de milliers de personnes ont été massacrées sur tout le territoire du Rwanda. La plupart des victimes ont été tuées pour la seule raison qu'elles étaient des Tutsi ou ressemblaient à des Tutsi. Les autres victimes, surtout des Hutu, ont été tuées parce qu'elles étaient qualifiées de complice des Tutsi, liées à ces derniers par mariage ou opposées à l'idéologie Hutu extrémiste.

6.32 Dès le 7 avril 1994, partout au Rwanda, la plupart des massacres ont été commis avec la participation, l'aide et l'encouragement des militaires, des gendarmes et des miliciens.

6.33 Les massacres perpétrés furent le résultat d'une stratégie adoptée, élaborée et mise en exécution par des autorités politiques, civiles et militaires du pays, tant au niveau national que local, dont **Anatole Nsengiyumva,** Théoneste Bagosora, Aloys Ntabakuze, Joseph Nzirorera, Felicien Kabuga, Omar Serushago, Bernard Munyagishari, Mabuye, Barnabe Samvura et Thomas Mugirameza, qui se sont entendues pour exterminer la population Tutsi.

6.34 Lors des événements auxquels se réfère le présent acte d'accusation, des viols, des agressions sexuelles et d'autres crimes de nature sexuelle ont été commis, d'une façon généralisée et notoire sur tout le territoire du Rwanda. Ces crimes ont été perpétrés, entre autres, par des militaires, des miliciens et des gendarmes contre la population Tutsi, en particulier des femmes et des jeunes filles Tutsi.

6.35 Des officiers militaires, des membres du Gouvernement Intérimaire et des autorités locales ont aidé et encouragé leurs subordonnés et des tiers à commettre les

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gave and his acts, **Anatole Nsengiyumva** exercised authority over members of the *Forces Armées Rwandaises*, their officers and militiamen. The military and militiamen, as from 6 April 1994, committed massacres of the Tutsi population and of moderate Hutu which extended on large part of rwandan territory with the knowledge of **Anatole Nsengiyumva.**

6.37 Lt Colonel Anatole Nsengiyumva, in his position of authority, acting in concert with, notably Théoneste Bagosora, Aloys Ntabakuze, Joseph Nzirorera, Felicien Kabuga, Omar Serushago, Bernard Munyagishari, Mabuye, Barnabe Samvura and Thomas Mugirameza participated in the planning, preparation or execution of a common scheme, strategy or plan, to commit the atrocities set forth above. The crimes were committed by him personally, by persons he assisted or by his subordinates, including the militiamen who acted under his order and with his knowledge or consent.

massacres de la population Tutsi et de ses "complices". Sans la complicité des autorités locales et nationales, civiles et militaires, les principaux massacres n'auraient pas eu lieu.

6.36 D'avril à juillet 1994, de par ses fonctions, ses propos, les ordres qu'il a donnés et ses actes, **Anatole Nsengiyumva** a exercé une autorité sur des membres des Forces Armées Rwandaises, leurs officiers et des miliciens. Ces militaires et miliciens ont commis dès le 6 avril des massacres contre la population tutsi et des hutu modérés qui se sont étendus sur une grande partie du territoire rwandais à la connaissance d'**Anatole Nsengiyumva.**

6.37 Le **Lt Colonel Anatole Nsengiyumva** dans sa position d'autorité, en agissant de concert avec notamment Théoneste Bagosora, Aloys Ntabakuze, Joseph Nzirorera, Felicien Kabuga, Omar Serushago, Bernard Munyagishari, Mabuye, Barnabe Samvura et Thomas Mugirameza a participé à la planification, la préparation ou l'exécution d'un plan, d'une stratégie ou d'un dessein commun, afin de perpétrer les atrocités énoncées ci-dessus. Ces crimes ont été perpétrés par lui-même ou par des personnes qu'il a aidées ou par ses subordonnés, dont les miliciens qui ont agi sous ses ordres alors qu'il en avait connaissance ou y consentait.

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7: THE CHARGES

COUNT 1:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-pursuant to Article 6(3), according to paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

conspired with Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and others to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **CONSPIRACY TO COMMIT GENCODE**, a crime stipulated in Article 2(3)(b) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 2:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically

7: LES CHEFS D'ACCUSATION

PREMIER CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-conformément à l'article 6(3), selon les paragraphes: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

s'est entendu avec Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze et d'autres pour tuer et porter des atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial, et ont, de ce fait commis le crime **D'ENTENTE EN VUE DE COMMETTRE LES GÉNOCIDE** tel que prévu à l'article 2(3)(b) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6(1) et punissable en vertu des articles 22 et 23 du Statut.

DEUXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus

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in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-pursuant to Article 6(3), according to paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-conformément à l'article 6(3), selon les paragraphes: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

est responsable de meurtres et d'atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **GÉNOCIDE** tel que prévu à l'article 2(3)(a) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 3:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-pursuant to Article 6(3), according to

TROISIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-conformément à l'article 6(3), selon les

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paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 4:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 6.14, 6.16, 6.30

is responsible for direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

paragraphes:5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

est responsable de meurtres et d'atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime de **COMPLICITÉ DANS LE GÉNOCIDE** tel que prévu à l'article 2(3)(e) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

QUATRIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 6.14, 6.16, 6.30

est responsable d'incitation directe et publique à commettre le meurtre et des atteintes graves à l'intégrité physique et mentale de membres de la population tutsi dans l'intention de détruire en tout ou en partie ce groupe ethnique ou racial et ont, de ce fait, commis le crime **D'INCITATION DIRECTE ET PUBLIQUE À COMMETTRE LE GÉNOCIDE** tel que prévu à l'article 2(3)(c) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

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COUNT 5:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-pursuant to Article 6(3), according to paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

is responsible for the murder of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

CINQUIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-conformément à l'article 6(3), selon les paragraphes:5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

est responsable d'assassinats de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(a) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 6:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

SIXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

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Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-pursuant to Article 6(3), according to paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

is responsible for the extermination of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-conformément à l'article 6(3), selon les paragraphes: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

est responsable d'extermination de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(b) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 7:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(3), according to paragraphs : 4.2 to 4.4, 5.32, 6.29, 6.34

is responsible for rape as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(g) of Statute of the Tribunal, for which he is individually

SEPTIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(3), selon les paragraphes: 4.2 à 4.4, 5.32, 6.29, 6.34

est responsable de viols dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(g) du Statut du Tribunal pour

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2005 bis

responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du même Statut.

COUNT 8:

HUITIÈME CHEF D'ACCUSATION

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below

Par les actes et omissions décrits aux paragraphes 5.1 à. 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-pursuant to Article 6(3), according to paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-conformément à l'article 6(3), selon les paragraphes: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

is responsible for persecution on political, racial or religious grounds, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(h) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

est responsable de persécution pour des raisons politiques, raciales ou religieuses de personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, etyhnique ou raciale, et ont, de ce fait commis un **CRIME CONTRE L'HUMANITÉ**, tel que prévu à l'article 3(h) du Statut du Tribunal pour lequel il est individuellement responsable conformément à l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 9:

NEUVIÈME CHEF D'ACCUSATION

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus

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in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs:4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-pursuant to Article 6(3), according to paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

is responsible for inhumane acts against persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(i) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes: 4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37
-conformément à l'article 6(3), selon les paragraphes: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

est responsable d'actes inhumains contre des personnes dans le cadre d'une attaque systématique et généralisée contre une population civile, en raison de son appartenance politique, ethnique ou raciale, et ont, de ce fait commis un crime contre l'humanité, **CRIME CONTRE L'HUMANITÉ** tel que prévu à l'article 3(i) du Statut du Tribunal pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du même Statut.

COUNT 10:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(1), according to paragraphs: 4.2 to 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 to 6.17, 6.19 to 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37

DIXIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(1), selon les paragraphes:4.2 à 4.4, 5.1, 5.5, 5.9, 5.10, 5.15, 5.16, 5.21, 5.23, 5.26, 6.4, 6.5, 6.11, 6.13 à 6.17, 6.19 à 6.23, 6.25 to 6.30, 6.33, 6.36, 6.37

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2003 bis

-pursuant to Article 6(3), according to paragraphs: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

is responsible for killing and causing violence to health and to the physical or mental well-being of civilians as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (a) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

-conformément à l'article 6(3), selon les paragraphes: 5.31, 5.32, 6.16, 6.17, 6.20 to 6.24, 6.26, 6.28, 6.29, 6.32, 6.34, 6.36

est responsable de meurtre, d'atteintes à la santé et au bien être physique et mental de personnes civiles dans le cadre d'un conflit armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE 3 COMMUN AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que prévu à l'article 4 (a) du Statut du Tribunal et pour lequel il est individuellement responsable en vertut de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du Statut.

COUNT 11:

By the acts or omissions described in paragraphs 5.1 to 6.37 and more specifically in the paragraphs referred to below:

Anatole Nsengiyumva:

-pursuant to Article 6(3), according to paragraphs: 4.2 to 4.4, 5.32, 6.29, 6.34

is responsible for outrages upon personal dignity, in particular humiliating and degrading treatment, rape and indecent assault, as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (e) of the Statute of

ONZIÈME CHEF D'ACCUSATION

Par les actes et omissions décrits aux paragraphes 5.1 à 6.37 et plus particulièrement aux paragraphes référenciés ci-dessous;

Anatole Nsengiyumva:

-conformément à l'article 6(3), selon les paragraphes: 4.2 à 4.4, 5.32, 6.29,6.34

est responsable d'atteintes à la dignité de la personne, notamment de traitements humiliants et dégradants, de viols et d'attentats à la pudeur dans le cadre d'un conflit armé interne, et ont, de ce fait, commis le crime de **VIOLATIONS GRAVES DE L'ARTICLE DE L'ARTICLE 3 COMMUNE AUX CONVENTIONS DE GENÈVE ET DU PROTOCOLE ADDITIONNEL II** tel que

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the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

prévu à l'article 4(e) du Statut du Tribunal et pour lequel il est individuellement responsable en vertu de l'article 6 du Statut et punissable en vertu des articles 22 et 23 du même Statut.

At Kigali, 12-8-99

Bernard A. Muna
Deputy Prosecutor

À Kigali, le 12-8-99

Bernard A. Muna
Procureur Adjoint

United Nations
Nations Unies

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	☐ Trial Chamber III A. N'Gum
	☐ Chief, CMS J.-P. Fomété	☐ Appeals Chamber / Arusha Chamber II F. A. Talon		☐ Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	☒ Chamber I **Judges Møse, Reddy, Egorov** (names)	☐ Defence (names)	☐ Prosecutor's Office (names)	☐ Other: (names)
Case Name:	The Prosecutor vs. **Bagosora, Kabiligi, Ntabakuze, Nsengiyumva**		**Case Number:** ICTR-98-41-T	
Dates:	Transmitted: **9 February 2009**		Document's date: **18 December 2008**	
No. of Pages:	**776 (including cover sheet)**	**Original Language:**	☒ English ☐ French ☐ Kinyarwanda	
Title of Document:	**Judgement and Sentence**			

Classification Level:
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☐ Strictly Confidential / Under Seal
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☒ Public

TRIM Document Type:

☐ Indictment	☐ Warrant	☐ Correspondence	☐ Submission from non-parties
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☐ Disclosure	☐ Order	☐ Appeal Book	☐ Accused particulars
☒ Judgement	☐ Motion	☐ Book of Authorities	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

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☐ English ☒ French ☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	☒ English	☐ French	☐ Kinyarwanda
Translation	in	☐ English	☐ French	☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):
☐ English ☐ French ☐ Kinyarwanda

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

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☐ Urgent		☐ Hearing date:
☐ Normal		☐ Other deadlines:

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