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Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER III

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Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

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THE PROSECUTOR

v.

Édouard KAREMERA and
Matthieu NGIRUMPATSE

Case No. ICTR-98-44-T

JUDGEMENT AND SENTENCE

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INTRODUCTION

1. THE ACCUSED

1.1 Édouard Karemera

1. Karemera was born 1 September 1951 in Rucura *secteur*, Mwendo *commune*, Kibuye *préfecture*, Rwanda. After completing his primary education and secondary studies, he attended Louvain Catholic University in Belgium from 1971-1976 and received a certificate in general humanities and a bachelor of laws.¹

2. He returned to Rwanda and began a career in government in 1977 when recruited as a civil servant in the Ministry of the Interior. He was later employed as Secretary General in the Ministry of Public Service and Employment and was a legal advisor to the Office of the Presidency. In April 1981, he was appointed to the cabinet of President Juvénal Habyarimana as the Minister of Public Service and Employment. This appointment was followed by two ministerial positions between 1982 and 1989: Minister of Political Administrative and Institutional Affairs and Minister for Institutional Relations.²

3. From September 1990 to April 1991, Karemera chaired the National Synthesis Commission that President Habyarimana appointed to draft the new Rwandan Constitution and the new law on the organization of political parties.³

4. Karemera's career in the MRND party (*le Mouvement Révolutionnaire National pour le Développement*, later *le Mouvement Républicain National pour la Démocratie et le Développement*) began with membership in the MRND Central Committee from September 1979 through June 1991. In June 1991, he was elected National Secretary of the MRND and in April 1993, he became the First Vice President of the MRND and member of the MRND Executive Bureau. On 25 May 1994, Karemera became the Minister of the Interior and Communal Development for the Interim Government.

5. Karemera left Rwanda on 16 July 1994 for Goma, in what is now the Democratic Republic of Congo. He was arrested in Lomé, Togo, on 5 June 1998 and was transferred to the United Nations Detention Facility ("UNDF") where he has remained throughout the course of this trial.⁴

1.2 Matthieu Ngirumpatse

6. Ngirumpatse was born on 12 December 1939 in Rulindo, Kigali *préfecture*, Rwanda. After completing his primary and secondary education in Rwanda, he studied humanities at Saint Paul College in Bukavu, in what is now the Democratic Republic of Congo. Though he originally planned to study law at Bujumbura University in Burundi, the security situation in the Great Lakes region was such that Ngirumpatse was compelled to return home to Rwanda after only eight months. He began working in the prosecutor's

¹ Karemera, T. 18 May 2009, pp. 3, 4; Exhibit DK-120, "*Curriculum vitae* de Mr. Édouard Karemera".

² Karemera, T. 17 May 2009, pp. 4, 5.

³ *Id.*, p. 5.

⁴ *Id.*, p. 6.

office in Butare, eventually becoming the head prosecutor in Kigali. His work as a prosecutor continued until 1973.⁵

7. Beginning in 1967, Ngirumpatse was a member of the Rwandan delegation to the Organization of African Unity. In 1974, President Habyarimana appointed Ngirumpatse Ambassador to Ethiopia. He served in that capacity until 1979, when he was appointed Ambassador to Germany. While in Europe, Ngirumpatse completed his education with a PhD in law at Strasbourg University.⁶

8. Ngirumpatse returned to Rwanda in 1985 and was appointed diplomatic adviser to President Habyarimana in 1986. Four years later, Habyarimana appointed Ngirumpatse general manager of the *Société Nationale des Assurances au Rwanda* (SONARWA), Rwanda's national insurance corporation.⁷

9. In addition to his involvement in diplomacy and business, Ngirumpatse was an active participant in civil society organizations. In particular, he was interested in music and founded the Kigali Choir. Ngirumpatse was also a composer of Rwandan music and poetry, and his lyrics were included in a poetry anthology used in secondary schools in Rwanda.⁸

10. Ngirumpatse entered domestic politics in 1991, when he was appointed chairman of the MRND in Kigali-ville *préfecture*. He was elected National Secretary of the MRND in May 1992, and National Party Chairman and Chairman of the MRND Executive Bureau in July 1993,⁹ positions he held during the events of 1994. Ngirumpatse was Minister of Justice from December 1991 to 7 April 1992.¹⁰

11. He was arrested in Bamako, Mali, on 5 June 1998 and transferred to the UNDF where he has remained throughout the course of this trial, apart from periods in a hospital or safe house for health reasons.¹¹

PRELIMINARY ISSUES

1. INTRODUCTION

12. In their Closing Briefs, the Accused challenge various aspects of the fairness of the proceedings. The Prosecution did not address these issues in its Closing Brief or during its oral arguments. Many of them have been addressed by the Chamber at various stages of the trial. The Chamber will consider the following Defence submissions.

⁵ Ngirumpatse, T. 17 January 2011, pp. 3, 5, 7, 8.

⁶ *Id.*, pp. 5, 6, 11, 12.

⁷ *Id.*, pp. 22, 23.

⁸ *Id.*, pp. 14-16.

⁹ Ngirumpatse, T. 19 January 2011, pp. 9, 10.

¹⁰ Ngirumpatse, T. 17 January 2011, p. 10; *Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, ("Karemera et al."), (Ngirumpatse) Defence Closing Brief, filed 2 June 2011, para. 89 ("Ngirumpatse Closing Brief").

¹¹ Ngirumpatse, T. 18 February 2011, p. 5. According to the Commanding Officer of the UNDF, Ngirumpatse spent the following dates in a hospital: 4/4/03 – 16/4/03 (AICC); 17/8/08 – 18/8/08 (AAR); 18/8/08 – 5/9/08 (KCMC); 8/10/08 – 4/6/09; 12/5/10 – 15/5/10; 14/6/10 – 22/6/10; 6/7/11 – 9/7/11 (Nairobi Hospital). He spent the following period in a safe house: 4/6/09 – 25/6/10. See email sent by Saidou Guindo, Commanding Officer of the UNDF, to Amanda Grafstrom, Associate Legal Officer, on 23/9/11.

1.1 Temporal Jurisdiction

13. Karemera claims that paragraph 25.2 of the Indictment cannot support a conviction because it falls outside the temporal jurisdiction of the Tribunal.¹² Article 7 of the Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955 (“the Statute”), states that the temporal jurisdiction of the Tribunal extends from 1 January 1994 to 31 December 1994. It is well-established, however, that the Chamber may consider pre-1994 evidence for several purposes, including context, demonstrating intent, or a deliberate pattern and practice.¹³

14. The Prosecution has pleaded paragraph 25.2 of the Indictment under the charge of conspiracy to commit genocide, alleging that the Accused participated in a rally on or about 27 October 1993 and exhorted the crowd to “combat the enemy”. The Chamber notes that the conspiracy charge is not based exclusively on this rally, but rather a long list of acts. Therefore, it is free to consider the rally as contextual evidence for the conspiracy charge but will not regard the Accused’s participation in the rally, if proven, as a punishable act under its jurisdiction.

1.2 Personal Jurisdiction

15. Karemera asserts that the allegations in the Indictment brought against the MRND party or its organs must fail because a decision filed by the Chamber in *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera, and André Rwamakuba* states that the Prosecution may not equate the individual criminal responsibility of the Accused with the criminal responsibility of the MRND.¹⁴

16. Article 5 of the Statute establishes that the Tribunal only has jurisdiction over natural persons. The decision cited by Karemera did not state that all allegations brought against the MRND must fail because the Tribunal only has personal jurisdiction over natural persons. Instead, the decision found that the Prosecution mentioned the involvement of the MRND in Rwanda in the Indictment to shed light on the historical, political, and social context of the alleged crimes. The current Indictment alleges that the Accused controlled the MRND party as members of its Executive Bureau. The Chamber will, therefore, consider all allegations brought against the MRND, if proven, as context for the crimes that the Accused are alleged to have committed as individuals.

2. NOTIFICATION OF CHARGES

17. The Accused contend that they were not properly notified of the charges against them.¹⁵ Karemera complains that he was not served with an arrest warrant on 5 June 1998, the day he was arrested, and that he was not served with a copy of the Indictment until 2

¹² *Karemera et al.*, Karemera’s Final Trial Brief Pursuant to Rule 86(B) of the Rules, filed on 2 June 2011, paras. 134, 577, (“Karemera Closing Brief”).

¹³ *Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze* Case No. ICTR-99-52-A, Judgement (AC), para. 315, (“*Nahimana et al.* Appeal Judgement”); *Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Judgement (TC), para. 26, (“*Setako* Trial Judgement”).

¹⁴ Karemera Closing Brief, para. 196, citing *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera, and André Rwamakuba*, Case No. ICTR-98-44-T, Decision on the Prosecutor’s Motion for Leave to Amend the Indictment (TC), 13 February 2004, para. 48.

¹⁵ Karemera Closing Brief, paras. 1, 2; Ndirumpatse Closing Brief, para. 960.

September 1998.¹⁶ Ngirumpatse argues that his arrest without “prior charges” prejudiced the fairness of his trial.¹⁷

18. A suspect arrested by the Tribunal has the right to be informed promptly of the reasons for his or her arrest.¹⁸ In *Semanza*, 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.¹⁹

19. Karemera stated that he was served with several documents on the date of his arrest, including a letter from the Prosecution to the Togolese Ministry of Justice, signed on 27 May 1998, which requested assistance with his arrest. Karemera acknowledged that he read the letter²⁰ and Judge Laity Kama confirmed that the letter stated that the Prosecution had evidence tending to show that the suspect may have committed crimes falling within the jurisdiction of the Tribunal.²¹ Therefore, the Chamber considers that the notice requirements at that stage were satisfied.

20. Regarding service of the Indictment upon Karemera, the Chamber recalls that the Prosecution chose to have him placed in provisional detention according to Rule 40 *bis*.²² This distinction is important because it means that the procedure governing service of the Indictment upon Karemera was governed by Rule 40 *bis* (Transfer and Provisional Detention of Suspects) instead of Rule 55 (Execution of Arrest Warrants). 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. 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)).

21. Most importantly, Rule 40 *bis* (I) states that the provisions in Rules 55 (B) to 59 shall apply *mutatis mutandis* to the execution of the order for the transfer and provisional detention of the suspect. Because Rule 55 (C) (ii) establishes that a confirmed indictment must be served upon the accused, Rule 40 *bis* (I) indirectly states that the accused must be served with a confirmed indictment during his period of provisional detention (not to exceed 90 days after the date of the transfer). Indeed, the Appeals Chamber has confirmed that the time-limit provided for under Rule 40 *bis* for confirming an indictment runs from the day the suspect is transferred to the Tribunal’s detention facility.²³

22. Karemera was transferred to the UNDF on 11 July 1998.²⁴ On 10 August 1998, Judge Laity Kama granted the Prosecution’s request for an extension to Karemera’s

¹⁶ Karemera Closing Brief, para. 1.

¹⁷ Ngirumpatse Closing Brief, para. 960.

¹⁸ *Prosecutor v. Laurent Semanza* ICTR-97-20-A (“*Semanza*”), Decision (AC), 31 May 2000, para. 78, (“*Semanza* Decision”).

¹⁹ *Id.*, paras. 83-85.

²⁰ T. 10 August 1998, pp. 23, 24.

²¹ T. 16 July 1998, p. 17.

²² *Id.*, pp. 3, 4.

²³ *Semanza* Decision, para. 97.

²⁴ T. 16 July 1998, p. 3.

provisional detention and ordered him provisionally detained for an additional 20 days.²⁵ The indictment against Karemera was confirmed on 29 August 1998²⁶ and, by his own admission, served upon him on 2 September 1998.²⁷ Accordingly, noting that the Indictment was served upon him 52 days after his transfer to the detention facility, the Chamber finds that Karemera was timely served with the formal list of charges against him.

23. Concerning Ngirumpatse, the Chamber understands his claim regarding “prior charges” to refer to “prior notification” of the charges against him. The jurisprudence of the Tribunal does not provide for advance notification to a suspect that he or she will be arrested and the reasons for his or her impending arrest. Thus, the Chamber does not consider that Ngirumpatse was prejudiced in this regard.

3. INITIAL APPEARANCE WITHOUT DELAY

24. Karemera argues that he was denied the right to an initial appearance without delay because his initial appearance hearing occurred more than ten months after his arrest.²⁸

25. 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.

26. Karemera was transferred to the UNDF on 11 July 1998, where he was provisionally detained without an indictment as a suspect pursuant to Rule 40 *bis*. He was brought before a judge of the Tribunal on 16 July 1998, a period of five days after his transfer. His identity was confirmed, and he and his assigned counsel were given the opportunity to raise any concerns regarding his rights.²⁹ Karemera appeared with counsel before a judge a second time on 10 August 1998, a period of 25 days later, where the decision on his continued provisional detention was read into the record.³⁰ His indictment was confirmed on 29 August 1998, and his initial appearance pursuant to Rule 62 was scheduled for 24 November 1998. Due to several adjournments, however, his initial appearance was not held until 7 April 1999, or 221 days later.³¹

27. The five-day period between Karemera’s transfer to the Tribunal on 11 July 1998 and his first appearance before a judge on 16 July 1998 does not amount to delay. The Chamber, however, will address the 221-day period between the confirmation of his indictment on 29 August 1998 and his initial appearance pursuant to Rule 62 on 7 April 1999.

28. It is apparent that Karemera substantially contributed to the length of time between the confirmation of his indictment and his initial appearance. On 16 October 1998, five weeks before his scheduled initial appearance, he filed a motion for his release, contending that the Prosecutor neglected to indict him within the time limits provided by the Rules.³²

²⁵ T. 10 August 1998, p. 18.

²⁶ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-I, Warrant of Arrest and Order for Continued Detention (TC), 29 August 1998.

²⁷ Karemera Closing Brief, para. 1.

²⁸ *Id.*, para. 2.

²⁹ T. 16 July 1998, pp. 2-4.

³⁰ T. 10 August 1998, p. 18.

³¹ *Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Decision on the Defence Motion for the Release of the Accused (TC), 10 December 1999.

³² *Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Motion, 16 October 1998.

Karemera’s counsel, Jesse Kiritta, withdrew his representation on 27 October 1998 because he feared the Registry would take action against him based on an alleged request by the Prosecutor.³³ While it was entirely acceptable for Karemera to file the 16 October motion, and for Kiritta to exercise his prerogative to withdraw his representation, Karemera’s next step appears dilatory in nature.

29. On 4 December 1998, approximately one month after the Tribunal established a moratorium on the assignment of French and Canadian defence counsel, Karemera requested the assignment of a Canadian defence counsel. According to the Registry, this occasioned several difficulties in assigning him legal representation.³⁴ Karemera did not claim that he was unaware of the moratorium.³⁵

30. The Registry was finally able to assign Karemera a Belgian defence counsel, Pierre Legros, on 24 February 1999. By this point, the Chamber had found it necessary to reschedule Karemera’s initial appearance for 10 March 1999.³⁶ Legros, however, withdrew his representation on 3 March 1999 and was replaced by Emmanuel Leclerq on 7 March 1999. The Chamber was forced to grant another adjournment of the initial appearance because Leclerq had not had sufficient time to discuss the case with Karemera.³⁷ On 6 April 1999, Leclerq withdrew his representation on account of irreconcilable differences with Karemera.³⁸ The following day, the Chamber concluded that Karemera was able to participate *pro se* in his initial appearance, after giving due consideration to his rights and the interests of justice.³⁹

31. Thus, it is apparent that the vast majority of delays, which resulted in the 221-day gap between the confirmation of the Indictment and Karemera’s initial appearance, were occasioned by Karemera himself or circumstances not attributable to the Tribunal. Accordingly, the Chamber does not consider that Karemera’s right to initial appearance without delay was violated.

32. Furthermore, in each case where the Appeals Chamber has accorded a remedy for a violation of the right of initial appearance without delay, such as an apology, reduction of sentence or financial compensation in the event of an acquittal, the accused had promptly challenged the violation.⁴⁰ Karemera, however, did not raise the issue of delay during any of his initial hearings or in motions that challenged various other aspects of the proceedings. It also does not appear that the matter was mentioned at any later period until his closing brief, some 13 years after these delays occurred. The Chamber considers that Karemera’s failure to promptly bring this challenge indicates that any prejudice he suffered is minimal at most.

³³ T. 16 November 1999, pp. 9, 10.

³⁴ *Id.*, p. 25.

³⁵ See T. 16 November 1999, generally.

³⁶ See T. 3 March 1999, generally.

³⁷ T. 10 March 1999, pp. 19, 20.

³⁸ T. 7 April 1999, pp. 5, 6.

³⁹ *Id.*, pp. 102-105.

⁴⁰ *Prosecutor v. André Rwamakuba v.* Case No. ICTR-98-44C-A, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, paras. 3, 28; *Prosecutor v. Juvénal Kajelijeli* Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005, para. 324, (“*Kajelijeli* Appeal Judgement”).

4. TRIAL WITHOUT UNDUE DELAY

33. Ngirumpatse argues that the 12-year process between the date of his arrest and the presentation of his case affected his right to a fair trial. He also argues that he was prejudiced because he was imprisoned during the proceedings against him. He argues that this imprisonment hindered his ability to contact his defence team, thereby affecting its ability to conduct investigations on his behalf.⁴¹

34. 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.⁴² 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.⁴³

35. It is common ground that the proceedings have been lengthy. This can be explained by the particular complexity of the case. Throughout the initial process of joinder and severance, the number of accused fluctuated frequently, once reaching a record high of eight accused. The eight indictments charged direct and superior responsibility and multiple counts, including conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide, crimes against humanity (rape and extermination), and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (killing and causing violence to health and physical or mental well-being). Moreover, the operative Indictment charges the accused with participation in a joint criminal enterprise comprising over 65 persons, spanning across the entire country of Rwanda, and concerning evidence ranging from 1992 to July 1994.

36. Furthermore, the Prosecution asserts that the Accused are individually criminally responsible for all rapes and sexual assaults that occurred in Rwanda from early to mid-April 1994 to June 1994 as genocide or, alternatively, complicity in genocide. It also charges the rapes and sexual assaults as genocide and crimes against humanity under the theory of extended joint criminal enterprise – the first charge of its kind in the history of international criminal law.

37. This case was also delayed considerably by a necessary rehearing before a new Chamber,⁴⁴ which resulted in a two-year setback.⁴⁵

38. During the second trial, over the course of 374 trial days, the Chamber heard 153 witnesses, admitted 114 witness statements under Rule 92 *bis*, received over 1,400 exhibits,

⁴¹ Ngirumpatse Closing Brief, para. 972.

⁴² *Nahimana et. al* Appeal Judgement, para. 1074.

⁴³ *Id.*, para. 1074. See also *Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka, and Prosper Mugiraneza*, Case No. ICTR-99-50-T, (“*Bizimungu et al.*”), 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, pp. 2-3.

⁴⁴ See *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, and André Rwamakuba*, Case No. ICTR-98-44-AR15bis.2, Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera’s Motion for Leave to Consider New Material (AC), 28 September 2004.

⁴⁵ The first trial against the Accused began on 27 November 2003. See T. 27 November 2003. The rehearing began on 19 September 2005. See T. 19 September 2005.

and issued nearly 900 written decisions. Moreover, this case was faced with Ngirumpatse's continued ill-health, which forced the Chamber to stay the proceedings for thirteen months before leaving it with no alternative but to sit for the equivalent of two to three days a week for two-thirds of the Defence case. Furthermore, the untimely death of former co-Accused Joseph Nzirorera on 1 July 2010 created a two-month delay until the trial resumed on 23 August 2010.

39. In *Nahimana et al.*, the Appeals Chamber considered 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 especially 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 because of the inherent complexity of international proceedings.⁴⁶ Using this precedent as a benchmark, the Trial Chamber in *Bagosora et al.* considered that a period of eleven years for its proceedings did not constitute undue delay given that its case comprised 408 trial days, 242 witnesses, nearly 1,600 exhibits, and around 300 written decisions.⁴⁷

40. Like the the *Nahimana et al.* case, the present case involved multiple indictments and requests for amendments and joinder.⁴⁸ This case is also nearly two times the size of the *Nahimana et al.* case,⁴⁹ nearly equals the *Bagosora et al.* case in terms of trial days and exhibits, and *triples* the latter in the number of written decisions issued. When considered alongside the setback occasioned by the rehearing and the dilatory effects of Ngirumpatse's illness and Nzirorera's death, these factors provide a reasonable explanation for the length of the proceedings.

41. While 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, these procedures are provided for in the Rules and were warranted in order to reflect the full scope and joint nature of the alleged criminal conduct of the Accused. 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.⁵⁰ The

⁴⁶ *Nahimana et al.* Appeal Judgement, para. 1076.

⁴⁷ *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva*, Case No. ICTR-98-41-T, ("*Bagosora et al.*"), Judgement (TC), 18 December 2008, paras. 78-84, ("*Bagosora* Trial Judgement").

⁴⁸ *Nahimana et al.* Trial Judgement, paras. 20-38.

⁴⁹ 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 60 more witnesses and sat an additional 133 trial days.

⁵⁰ See, e.g., *Prosecutor v. Mathieu Ngirumpatse, Édouard Karemera, André Rwamakuba, Joseph Nzirorera, and Juvénal Kajelijeli*, Case No. ICTR-98-44-I ("*Ngirumpatse et al.*"), Decision on the Prosecutor's Request for Amendment of the Order of Confirmation and Non-Disclosure of the Indictment (TC), 6 April 1999; *Prosecutor v. Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Félicien Kabuga, and Juvénal Kajelijeli*, Case No. ICTR-98-44-T, Decision on the Prosecutor's Motion to Withdraw the Motion for Joinder of the Accused (TC), 27 April 2000; *Prosecutor v. Mathieu Ngirumpatse, Joseph Nzirorera, and Juvénal Kajelijeli*, Case No. ICTR-98-44-I, Decision on the Prosecutor's Motion for Joinder of Accused and on the Prosecutor's Motion for Severance of the Accused (TC), 29 June 2000; *Prosecutor v. Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Félicien Kabuga, Mathieu Ngirumpatse, Joseph Nzirorera, and Juvénal Kajelijeli*, Case No.

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.

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

43. Concerning Ngirumpatse's contention that his detention during the proceedings prejudiced him by restricting contact with his Defence team and inhibiting its investigations on his behalf, the Chamber notes that he has not presented any specific allegations, which would support a review of the Chamber's determination that his detention was adequate. In any event, Rule 64 states that an accused shall be detained on remand upon his transfer to the Tribunal. Accordingly, the Chamber does not consider that Ngirumpatse was prejudiced by his detention during the proceedings.

5. VIOLATION OF RIGHT TO COUNSEL

44. Karemera argues that he was deprived of legal assistance of his choosing from the date of his arrest to 8 February 2000.

45. Article 20 (4) (d) of the Statute guarantees an accused before the Tribunal the right to counsel of his or her own choosing. An accused who lacks the means to remunerate

ICTR-98-44-T, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvénal Kajelijeli (TC), 6 July 2000; *Prosecutor v. Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Félicien Kabuga, Mathieu Ngirumpatse, Joseph Nzirorera, and Juvénal Kajelijeli*, Case No. ICTR-98-44-T, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Joseph Nzirorera (TC), 12 July 2000; *Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Decision on Prosecutor's Motion to Correct the Indictment Dated 22 December 2000 and Motion for Leave to File an Amended Indictment – Warning to the Prosecutor's Counsels Pursuant to Rule 46 (A) (TC), 25 January 2001; *Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-T, Decision on the Defence Motion, Pursuant to Rule 72 of Rules of Procedure and Evidence, Pertaining to, *Inter Alia*, Lack of Jurisdiction and Defects in the Form of the Indictment (TC), 25 April 2001; *Prosecutor v. Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, and Félicien Kabuga*, Case No. ICTR-98-44-I, Decision on the Prosecutor's Motion for Severance of Félicien Kabuga's Trial and for Leave to Amend the Accused's Indictment (TC), 1 September 2003; *Prosecutor v. Augustin Bizimana, Édouard Karemera, Mathieu Ngirumpatse, Callixte Nzabonimana, Joseph Nzirorera, and André Rwamakuba*, Case No. ICTR-98-44-T, Decision on the Prosecutor's Motion for Separate Trials and for Leave to File an Amended Indictment (TC), 8 October 2003; *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-I, Decision to Extend the Time Limit for Filing Observations Concerning the Prosecution Motion of 29 August 2003, and on the Prosecutor's Request for Leave to File Amended Indictment, Filed on 23 January 2004 (TC), 26 January 2004; *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, and André Rwamakuba*, Case No. ICTR-98-44-T, Decision on the Prosecutor's Motion for Leave to Amend the Indictment (TC), 13 February 2004; *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, and André Rwamakuba*, Case No. ICTR-98-44-PT, Decision on Severance of André Rwamakuba and Amendments of the Indictment (TC), 7 December 2004; *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, and André Rwamakuba*, Case No. ICTR-98-44-PT, Decision on Severance of André Rwamakuba and for Leave to File Amended Indictment (TC), 14 February 2005; *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-PT, Decision on Prosecution Motion for Leave to File Amended Indictment and Filing of Further Supporting Material (TC), 18 February 2005.

counsel has the right to have counsel assigned to him by the Registrar from the list drawn up in accordance with Rule 45 of the Rules.⁵¹

46. The crux of Karemera's complaint is not that legal aid was not made available to him, but rather that the Registrar did not promptly assign him the counsel of his choice under the Tribunal's legal aid program. While in practice, the Registrar will take account of an accused's preferences in assigning counsel, where an accused's defence is being paid for pursuant to the Tribunal's legal aid program his right to legal counsel of his own choosing from the list kept by the Registrar is not absolute.⁵² It is within the Registrar's discretion to override that preference if it is in the interests of justice.⁵³

47. A review of the procedural history of this case from the date of Karemera's arrest until 8 February 2000 shows that he was provided with four counsel under the Tribunal's legal aid program during this period.⁵⁴

48. Karemera did not oppose the assignment of counsels Kiritta, Legros, or Leclerq when he appeared before the Tribunal in 1998 or state on the record that they were not counsel of his choice. Moreover, he did not file any motions during the period in question complaining of lack of counsel of his choice. The Chamber considers that his failure to promptly bring this challenge indicates that any prejudice he suffered is at most minimal. Furthermore, it is apparent that friction between Karemera and at least two of the counsel assigned to him led them to end their representation.⁵⁵ Taking this into account, and noting Karemera's apparent decision to appear *pro se* at the end of 1999, the Chamber is not

⁵¹ Article 20(4)(d) of the Statute; Rules 45 and 77(F) of the Rules; Directive on the Assignment of Defence Counsel, as amended on 15 June 2007, Article 2.

⁵² See *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement, 9 May 2007, para. 17 ("*Blagojević and Jokić Appeal Judgement*"); *Prosecutor Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement, 1 June 2001, paras. 61, 62; *Prosecutor v. Jean Kambanda v.*, Case No. ICTR-97-23-A, Judgement, 19 October 2000, paras. 11, 12, 33.

⁵³ *Blagojević and Jokić Appeal Judgement*, para. 17.

⁵⁴ It is clear from the record that Karemera was provided with legal assistance during the period in question. During his first two appearances before a judge of the Tribunal, he was assisted by Jesse Kiritta, a Tanzanian lawyer. T. 16 July 1998, p. 2; T. 10 August 1998, p. 3. In the period between 10 August 1998 and 10 March 1999, he was represented by Kiritta, Pierre Legros (Brussels Bar), and Emmanuel Leclerq (Brussels Bar). T. 10 March 1999, p. 3; T. 8 April 1999, p. 152. Kiritta withdrew his representation on 27 October 1998. T. 16 November 1999, p. 9. Legros represented Karemera for just over a week before withdrawing his representation and immediately being replaced by Leclerq. T. 8 April 1999, pp. 152, 153. Leclerq represented Karemera during his third appearance before a judge of the Tribunal on 10 March 1999. T. 10 March 1999, p. 3. On 6 April 1999, Leclerq withdrew his representation on account of irreconcilable differences with Karemera. T. 7 April 1999, pp. 5, 6. At some point between 10 March and 7 April 1999, Kiritta also withdrew his representation. See T. 7 April 1999. From the record, it appears that Karemera chose to proceed *pro se* until 9 February 2000, when Didier Skornicki, a French lawyer, was assigned to him. See the title pages for: *Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Decision on the Defence Motion for the Release of the Accused (TC), 10 December 1999; and *Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Decision on the Defence Motion for the Restitution of Documents and Other Personal or Family Belongings Seized (Rule 40 (C) of the Rules of Procedure and Evidence), and the Exclusion of such Evidence which may be Used by the Prosecutor in Preparing an Indictment Against the Applicant (TC), 10 December 1999. See also T. 25 February 2000, p. 4.

⁵⁵ On 6 April 1999, Leclerq withdrew his representation on account of irreconcilable differences with Karemera. T. 7 April 1999, pp. 5, 6. At some point between 10 March and 7 April 1999, Kiritta also ended his representation. See T. 7 April 1999. On 8 April 1999, Karemera made it clear that his relationship with Kiritta was contentious when he asserted that he attempted to submit a motion *pro se* while Kiritta was still his counsel. T. 8 April 1999, p. 151. Moreover, it became clear that Karemera viewed Kiritta with contempt when he stated: "Mr. Kiritta [sic] was assigned to me, never assisted me, never represented me..." T. 8 April 1999, p. 151.

satisfied that any period where he was without counsel of his choice is attributable to the Tribunal.

6. NOTICE OF CHARGES

6.1 Introduction

49. Throughout the trial, the Chamber extensively considered the issue of notice in a series of decisions and oral rulings.⁵⁶ Numerous challenges have been renewed by the Accused in their closing briefs, which the Chamber has considered in view of the general principles, as restated below.

6.2 Law

50. 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.⁵⁷ 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.⁵⁸ 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.⁵⁹ In reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.⁶⁰

51. 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”.⁶¹ 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.⁶²

⁵⁶ The most significant decisions are: *Karemera et al.*, Decision on Defects in the Form of the Indictment (TC), 5 August 2005; *Karemera et al.*, Oral Decision on Defence Motion on Inadmissibility of Evidence Concerning Meetings not Pleaded in the Indictment (TC), 27 February 2006; *Karemera et al.*, Decision on Defence Oral Motions for Exclusion of Witness XBM’s Testimony, for Sanctions against the Prosecution and for Exclusion of Evidence outside the Scope of the Indictment (TC), 19 October 2006; *Karemera et al.*, Decision on Joseph Nzirorera’s Motion to Exclude Evidence of Material Facts not Charged in the Indictment (TC), 18 March 2008; *Karemera et al.*, Order (TC), 18 February 2011.

⁵⁷ *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008, para. 18, (“*Muvunyi Appeal Judgement*”); *Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008, paras. 27, 100, (“*Seromba Appeal Judgement*”).

⁵⁸ *Muvunyi Appeal Judgement*, para. 18; *Prosecutor v. André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 27, (“*Ntagerura et al. Appeal Judgement*”).

⁵⁹ *Muvunyi Appeal Judgement*, para. 18; *Ntagerura et al. Appeal Judgement*, para. 27.

⁶⁰ *Muvunyi Appeal Judgement*, para. 18; *Nahimana et al. Appeal Judgement*, para. 326.

⁶¹ *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007, para. 76, (“*Muhimana Appeal Judgement*”); *Prosecutor v. Sylvestre Gacumbitsi* Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006, para. 49, (“*Gacumbitsi Appeal Judgement*”).

⁶² *Ntagerura et al. Appeal Judgement*, para. 25.

52. 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 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.⁶³

53. 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.⁶⁴ 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 command.⁶⁵ It has also held that physical perpetrators of the crimes can be identified by category in relation to a particular crime site.⁶⁶

54. 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”.⁶⁷ 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.⁶⁸

55. Additionally, the Appeals Chamber has held that a Trial Chamber may infer knowledge of the crimes from their widespread character. It may also infer knowledge from a superior’s proximity to the crimes and his or her failure to prevent or punish their continuing nature. These elements follow from reading the Indictment as a whole.⁶⁹

56. “Curing” is the process by which vague or general allegations in an indictment are given specificity and clarity through communications other than the indictment itself. Only material facts which can be reasonably related to existing charges may be communicated in such a manner. The mere service of witness statements or potential exhibits by the Prosecution as part of its disclosure obligations is generally insufficient to inform the Defence of the material facts that the Prosecution intends to prove at trial. The presence of a material fact somewhere in the Prosecution’s disclosures does not suffice to give reasonable notice to the accused; what is required is notice that the material fact will be relied upon as part of the Prosecution case, and how. An accused person can only be expected to prepare his or her defence on the basis of material facts contained in the indictment, not on the basis

⁶³ *Muvunyi* Appeal Judgement, para. 19; *Nahimana et al.* Appeal Judgement, para. 323.
⁶⁴ *Muvunyi* Appeal Judgement, para. 55; *Blagojević and Jokić* Appeal Judgement, para. 287.
⁶⁵ *Muvunyi* Appeal Judgement, para. 56; *Ntagerura et al.* Appeal Judgement, paras. 140, 141, 153.
⁶⁶ See e.g., *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007, paras. 71, 72, (“*Simba* Appeal Judgement”) (concerning identification of other members of a joint criminal enterprise).
⁶⁷ *Ntagerura et al.* Appeal Judgement, para. 26 fn. 82. See also *Muvunyi* Appeal Judgement, para. 58.
⁶⁸ *Muvunyi* Appeal Judgement, para. 58; *Muhimana* Appeal Judgement, para. 79.
⁶⁹ *Muvunyi* Appeal Judgement, para. 62.

of all the material disclosed to him or her that may support any number of additional charges, or expand the scope of existing charges. In light of the volume of disclosure by the Prosecution in certain cases, a witness statement will not, without some other indication, adequately signal to the accused that the allegation is part of the Prosecution case. The essential question is whether the Defence has had reasonable notice of, and a reasonable opportunity to investigate and confront, the Prosecution case.⁷⁰

57. A clear distinction must be drawn between vagueness in an indictment and an indictment omitting certain charges altogether. While it is possible, as stated above, to remedy the vagueness in an indictment, new or omitted charges can be incorporated into the indictment only by formal amendment pursuant to Rule 50 of the Rules. A count or charge is the legal characterization of the material facts which support that count or charge. In pleading an indictment, the Prosecution is required to specify the alleged legal prohibition infringed (*i.e.* the count or charge) and the acts or omissions of the accused that give rise to that allegation of infringement of a legal prohibition (*i.e.* the material facts). A “new charge” arises not only where there is a new count, but where new allegations could lead to liability on a factual basis that was not reflected in the indictment.⁷¹

58. Objections based on lack of notice should be specific and timely. The objection should be raised at the pre-trial stage, for instance in a motion challenging the indictment, or at the time the evidence of a new material fact is introduced. Although failing to object at the time the evidence is introduced does not prohibit the Defence from objecting at a later date, a Trial Chamber should determine whether the objection was so untimely that the burden of proof has shifted from the Prosecution to the Defence to demonstrate that the accused’s ability to defend himself has been materially impaired. Relevant factors to consider include whether the Defence has provided a reasonable explanation for its failure to raise its objection at the time the evidence was introduced and whether the Defence has shown that the objection was raised as soon as possible thereafter.⁷²

59. In its notice decisions and judgement, the Chamber has acknowledged that in a number of instances, the Indictment against the Accused was 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 with attached witness summaries 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.⁷³ The Chamber will conduct this analysis below, after addressing the arguments of the Accused regarding notice.

⁷⁰ *Muvunyi* Appeal Judgement, para. 166.

⁷¹ *Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 293, (“*Karera* Appeal Judgement”); *Ntagerura et al.* Appeal Judgement, para. 32.

⁷² *Bagosora et al.* Interlocutory Appeal Decision, paras. 45, 46.

⁷³ *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.

6.3 General Challenges to the Indictment

60. The Accused have made several general challenges to the Indictment mostly consisting of blanket statements and recitations of various legal principles. These general challenges will be addressed here instead of in the factual findings.

6.3.1 Reference to Names of the Accused Throughout Indictment

61. Karemera argues that 32 paragraphs in the Indictment cannot be relied on to ground a conviction because they do not concern him or mention him by name.⁷⁴ Ngirumpatse claims that he does not need to defend himself against the paragraphs in the Indictment, which only mention Karemera or Joseph Nzirorera by name. He contends that the Prosecution did not establish his knowledge of or participation in the offences, which are specific to Karemera and Nzirorera.⁷⁵

62. The indictment paragraphs in this case do not have to contain the name of the Accused to ground a conviction against them and they are not defective merely because they do not mention the Accused by name. The Prosecution has pleaded the individual criminal responsibility of the Accused through a joint criminal enterprise comprising over 65 persons, including the Accused. The Prosecution has also charged the Accused with conspiring to commit genocide with each other and a multitude of persons. Therefore, the criminal responsibility of the Accused may be affected by the acts or omissions of each other and other persons.

63. Moreover, the Indictment alleges that former accused Joseph Nzirorera was a member of the joint criminal enterprise and co-conspirator to commit genocide. Therefore, the acts or omissions of Joseph Nzirorera are relevant to the criminal responsibility of the Accused.

6.3.2 Pleading of Material Facts and Form of Criminal Responsibility

64. The Accused contend that many paragraphs in the Indictment fail to properly plead material facts or a form of criminal responsibility, thereby prejudicing their attempts to prepare an adequate defence.

65. Karemera argues that 62 paragraphs in the Indictment should be excluded because they failed to provide sufficient notice of the legal and factual reasons for the charges against him.⁷⁶ He also claims that many of the paragraphs in the Indictment remained silent or were too vague on material facts.⁷⁷ Ngirumpatse asserts, without more, that approximately 45 paragraphs in the Indictment are defective because they employ wording that is too vague.⁷⁸ He also submits blanket conclusions that 11 paragraphs in the Indictment are incomprehensible⁷⁹ and that the Prosecution failed to plead certain facts in the Indictment with enough specificity.⁸⁰

⁷⁴ Karemera Closing Brief, paras. 130, 133, 135, 137, 142, 151, 154, 155, 164, 167, 171, 184, 187, 192, 587, 608, 620.

⁷⁵ Ngirumpatse Closing Brief, paras. 851, 852.

⁷⁶ Karemera Closing Brief, para. 193.

⁷⁷ *Id.*, para. 586.

⁷⁸ Ngirumpatse Closing Brief, para. 105.

⁷⁹ *Id.*, para. 107.

⁸⁰ *Id.*, para. 708.

66. According to the Appeals Chamber, blanket objections that the entire Indictment is defective are insufficiently specific.⁸¹ The arguments above are cursory, conclusory statements that approximately 60 out of 80 paragraphs in the Indictment are defective. Although Karemera discusses each paragraph individually in his closing brief, he merely restates its content and appends statements such as: “[t]he details of this allegation...are not sufficient to support a conviction”⁸² or “[t]his charge is inconsistent and imprecise”⁸³ and “[t]he paragraph is vague”.⁸⁴

67. In some instances, he complains that the Prosecution did not “specify the nature of the Accused’s criminal participation”⁸⁵ or provide specific details in support of the allegation.⁸⁶ The Chamber notes, however, that the Prosecution pleaded the paragraphs in the Indictment under headings that correspond to the various crimes charged. Moreover, it is understandable that an Indictment cannot contain the detailed evidence that will arise during trial because it is supposed to summarize the case against the Accused.⁸⁷

68. The Chamber does not consider that the Accused have demonstrated that the Indictment fails to properly plead material facts or forms of criminal responsibility; accordingly, their arguments in this regard are dismissed.⁸⁸

Joint Criminal Enterprise

69. The Accused claim that Indictment paragraphs 4-16, which plead individual criminal responsibility, are defective. They argue that they were unable to properly defend themselves against the claim that they participated in a joint criminal enterprise because the relevant Indictment paragraphs are imprecise concerning material facts, the form of joint criminal enterprise pleaded, and their intent to participate in the joint criminal enterprise.⁸⁹

70. Concerning paragraphs 4, 15, and 16 of the Indictment, Karemera argues that he cannot tell whether he is being charged with planning, instigating, ordering, committing, aiding and abetting, or joint criminal enterprise.⁹⁰ The plain language of paragraphs 4 and 15 indicate that he is being charged with all of the above. Paragraph 16 does not concern a form of individual criminal responsibility; rather, it refers to the material fact of the intent or state of mind of the Accused.⁹¹

71. Regarding paragraphs 1-8 and 14 of the Indictment, Karemera claims that material facts such as dates, places, circumstances, identities of individuals, and the nature of the

⁸¹ *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.

⁸² See e.g., Karemera Closing Brief, paras. 129, 132, 136.

⁸³ *Id.*, para. 146.

⁸⁴ *Id.*, Karemera Closing Brief, para. 148.

⁸⁵ *Id.*, para. 138.

⁸⁶ *Id.*, para. 139.

⁸⁷ See *Muvunyi* Appeal Judgement, para. 19. “The...charges against the 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.” (Emphasis added).

⁸⁸ The Chamber, however, has considered Karemera’s notice submission regarding paragraphs 64.1 and 64.2. (see IV.6.1).

⁸⁹ Karemera Closing Brief, paras. 99-120; Ngirumpatse Closing Brief, para. 855.

⁹⁰ Karemera Closing Brief, paras. 99, 118.

⁹¹ The “basic” form of joint criminal enterprise requires that all the co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention. *Simba* Trial Judgement, para. 386.

participation of the Accused are missing, therefore rendering the paragraphs defective.⁹² The Chamber recalls that an indictment must be considered as a whole. Where an indictment contains some allegations of a general nature, this alone does not render it defective. Other allegations in the indictment may sufficiently plead the material facts underpinning the charges in the indictment.⁹³

72. Paragraphs 4-16 exist under the heading “Individual Criminal Responsibility” in the Indictment, meaning, of course, that they are restricted to explaining the parameters of the alleged joint criminal enterprise. Paragraph 7, in turn, explains that the Accused are charged with individual criminal responsibility through participation in a joint criminal enterprise for the crimes set forth in Counts 2-7. Thus, considering the Indictment as a whole, the Chamber notes that the section of the Indictment titled “Charges”, contains 58 paragraphs replete with the material facts Karemera contends are missing.

73. Karemera asserts that paragraphs 9-14 of the Indictment are defective because they fail to specify his alleged intention to participate in the joint criminal enterprise.⁹⁴ The intent of the Accused, however, is pleaded in paragraph 5, which states that they participated in the joint criminal enterprise with the intent to destroy the Tutsi population of Rwanda through the commission of crimes in violation of Articles 2, 3, and 4 of the Statute.

74. The Accused claim that the Indictment does not specify the type of joint criminal enterprise they are charged with.⁹⁵ Paragraph 16, however, states that the Accused and other participants in the joint criminal enterprise shared the intent and state of mind required for the commission of each of the crimes charged in Counts 2, 3, 4, 6, and 7. Thus, paragraph 16 invokes the widely-recognized language from the *Tadić* Appeal Judgement, which describes the first, or “basic”, category of joint criminal enterprise as one where the co-perpetrators share the same criminal intent.⁹⁶

75. Moreover, paragraph 7 states that the crimes enumerated in Counts 3, 4,⁹⁷ and 5 were the natural and foreseeable consequences of the execution of the object of the joint criminal enterprise, recalling the widely-recognized language from the *Tadić* Appeal Judgement, which describes the third, or “extended” category of joint criminal enterprise as one that requires the foreseeability of the possible commission by other members of the group of offences that do not constitute the object of the common criminal purpose.⁹⁸

76. In the midst of heavy litigation concerning the inclusion and application of joint criminal enterprise in the Indictment at the outset of the case,⁹⁹ the Appeals Chamber issued

⁹² Karemera Closing Brief, paras. 100-107, 116, 117.

⁹³ *Seromba* Appeal Judgement, para. 27.

⁹⁴ Karemera Closing Brief, paras. 108-117.

⁹⁵ Karemera Closing Brief, paras. 101, 102; Ngirumpatse Closing Brief, para. 855.

⁹⁶ *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement (AC), 15 July 1999, para. 220 (“*Tadić* Appeal Judgement”).

⁹⁷ The Trial Chamber concluded that the Prosecution could not charge the Accused with participation in a joint criminal enterprise to be complicit in genocide (Count 4). Nonetheless, it informed the Prosecution that it did not need to amend the Indictment in this regard. This explains why paragraph 7 of the Indictment still mentions Count 4. See *Karemera et al.*, Decision on Defence Motions Challenging the Pleading of a Joint Criminal Enterprise in a Count of Complicity in Genocide in the Amended Indictment (TC), 18 May 2006.

⁹⁸ *Tadić* Appeal Judgement, para. 220.

⁹⁹ See, e.g., *Prosecutor v. Karemera, Ngirumpatse, Nzirorera, and Rwamakuba*, Case No. ICTR-98-44-T, Decision on the Preliminary Motions by the Defence of Joseph Nzirorera, Édouard Karemera, André Rwamakuba, and Mathieu Ngirumpatse Challenging Jurisdiction in Relation to Joint Criminal Enterprise (TC),

a decision that explained the three categories of joint criminal enterprise, and their attendant language derived from the *Tadić* Appeal Judgement, for the parties.¹⁰⁰ Furthermore, that decision stated that it was acceptable for the Prosecution to charge the Accused with the extended version of joint criminal enterprise for Count 5. Accordingly, the Chamber considers that the Accused were duly informed of the form of joint criminal enterprise pleaded for each count.

Superior Responsibility

77. Karemera argues that Indictment paragraphs 17-20, which plead superior responsibility, are defective. He contends that he was unable to properly defend himself against the claim that he is criminally responsible as a superior because the relevant Indictment paragraphs are imprecise regarding material facts such as time, place, circumstances, the identity of his subordinates, the conduct of the MRND, and his ability to prevent or punish the criminal conduct of his subordinates.¹⁰¹

78. Paragraphs 17-20 appear under the heading “Command Responsibility” in the Indictment, meaning, of course, that they are restricted to explaining the parameters of the alleged command responsibility of the Accused. Paragraph 19, in turn, claims that the subordinates of the Accused committed the crimes charged in the Indictment. Thus, considering the Indictment as a whole, the Chamber notes that the section of the Indictment titled “Charges” contains 58 paragraphs replete with the material facts Karemera contends are missing.

6.3.3 Cumulative Effect of Defects in the Indictment

79. The Indictment gave the Defence adequate notice of the essence of the Prosecution’s case, namely that Accused played a key role in planning and carrying out the Rwandan genocide. The Chamber considers that, wherever defects are cured, the new material facts do not amount to a radical transformation of the Prosecution’s case. In each

11 May 2004; *Prosecutor v. Nzirorera*, Case No. ICTR-98-44-AR72.3, Decision on Validity of Appeal of Joseph Nzirorera Regarding Joint Criminal Enterprise Pursuant to Rule 72(E) of the Rules of Procedure and Evidence (AC), 11 June 2004; *Prosecutor v. Karemera, Ngirumpatse, Nzirorera, and Rwamakuba*, Case No. ICTR-98-44-AR72.4, Decision on Validity of Appeal of André Rwamakuba Against Decision Regarding Application of Joint Criminal Enterprise to the Crime of Genocide Pursuant to Rule 72(E) of the Rules of Procedure and Evidence (AC), 23 July 2004; *Prosecutor v. Rwamakuba*, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004; *Karemera et al.*, Decision on Defence Motion Challenging the Jurisdiction of the Tribunal – Joint Criminal Enterprise (TC), 5 August 2005; *Karemera et al.*, Decision on Defence Motions Challenging the Indictment as Regards the Joint Criminal Enterprise Liability (TC), 14 September 2005; *Karemera, Ngirumpatse, and Nzirorera v. Prosecutor*, Case No. ICTR-98-44-AR72.5, Decision on Validity of Joseph Nzirorera’s Appeal of Decision on Defence Motion Challenging the Jurisdiction of the Tribunal – Joint Criminal Enterprise (AC), 14 October 2005; *Prosecutor v. Karemera, Ngirumpatse, and Nzirorera* Case No. ICTR-98-44-AR72.6, Decision on Validity of Joseph Nzirorera’s Appeal of Decision “Reserving” Motion to Dismiss for Lack of Jurisdiction: Joint Criminal Enterprise and Complicity (AC), 14 November 2005; *Prosecutor v. Karemera, Ngirumpatse, and Nzirorera* Case No. ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise (AC), 12 April 2006; *Karemera et al.*, Decision on Defence Motions Challenging the Pleading of a Joint Criminal Enterprise in a Count of Complicity in Genocide in the Amended Indictment (TC), 18 May 2006.

¹⁰⁰ *Prosecutor v. Karemera, Ngirumpatse, and Nzirorera* Case No. ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise (AC), 12 April 2006, para. 13.

¹⁰¹ Karemera Closing Brief, paras. 122-124.

instance, the material facts provided in the post-Indictment submissions relate to a general paragraph and serve to particularise the allegations contained therein, but do not change the substance of the allegations or add new elements to the case. The Defence's ability to confront these new material facts is evidenced by its thorough cross-examination of the Prosecution's witnesses.

80. In addition, the Defence was afforded four months after the close of the Prosecution's case before the commencement of its own case, giving it sufficient time to investigate and further rebut these new material facts. Notwithstanding the Prosecution's failure to plead a number of material facts in the Indictment, the Chamber finds that the Defence was not materially prejudiced, and that the trial was not rendered unfair, by the cumulative effect of the defects in the Indictment having been cured.

7. UNEQUAL TREATMENT

81. Ngirumpatse contends that he was prejudiced throughout the proceedings by unequal treatment, which he describes as follows.

82. The Prosecution was afforded more time and resources than him to present its case.¹⁰² He was limited, penalised, and hurried to establish his witness list.¹⁰³ The completion strategy of the Tribunal subjected his case to undue pressure.¹⁰⁴ The procedure for conducting Prosecution investigations is less restrictive than the procedure for conducting Defence investigations.¹⁰⁵ The Prosecution deliberately filed its submissions in English to confuse his Defence team.¹⁰⁶

83. He was prejudiced because the majority of judges on the bench were native English-speakers.¹⁰⁷ The Language Services Section ("LSS") either did not translate or filed untimely translations of submissions in English.¹⁰⁸ The court interpreters misinterpreted much of the English material during the proceedings.¹⁰⁹ Ngirumpatse did not present any examples. He was prejudiced by a large number of last-minute disclosures.¹¹⁰ The Prosecution abused his witnesses by deceiving them with fabricated documents masquerading as inconsistent testimony from other witnesses.¹¹¹

84. The Chamber will address Ngirumpatse's claims of unequal treatment, which were sufficiently supported to permit a ruling, below.

7.1 Disproportionate Time and Number of Witnesses Compared to the Prosecution

85. The Appeals Chamber has already addressed Ngirumpatse's claim that the amount of time and number of witnesses he was allocated are disproportionate to the time allocated

¹⁰² Ngirumpatse Closing Brief, paras. 7, 963, 965, 968.

¹⁰³ *Id.*, paras. 963, 973.

¹⁰⁴ *Id.*, para. 964.

¹⁰⁵ *Id.*, paras. 965-967.

¹⁰⁶ *Id.*, para. 969.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*, para. 970.

¹¹¹ *Id.*, para. 971.

to the Prosecution.¹¹² Paragraphs 28-31 of the Rule 73 *ter* Appeal Decision conclude that the Chamber did not abuse its discretion in determining that the number of witnesses and the amount of time allocated for the presentation of Ngirumpatse's Defence were reasonably proportionate to those allocated to the Prosecution.

7.2 Unfair Limitations and Pressure During Preparation of Witness List

86. Pursuant to Rule 73 *ter* (B), a Chamber may order the Defence, prior to the commencement of its case but after the close of the case for the Prosecution, to file a list of witnesses the Defence intends to call. Moreover, a Trial Chamber has the discretion, under Rule 73 *ter* (D), to limit the number of witnesses if it considers that an excessive number of witnesses are being called to prove the same facts.

87. The Prosecution closed its case on 25 January 2008. On 7 April 2008, Ngirumpatse submitted a list of 514 witnesses.¹¹³ Despite being urged twice by the Chamber to reduce the number of witnesses he anticipated calling¹¹⁴ and notwithstanding a warning issued to his Defence counsel that was upheld by the Appeals Chamber,¹¹⁵ Ngirumpatse refused to reduce his witness list. After several extensions of time, and despite the Chamber's order to amend his witness list to conform to approximately 40 days of hearing for six hours a day, which would be consistent with and proportionate to what was needed for the presentation of his case,¹¹⁶ Ngirumpatse filed an amended list of 354 witnesses on 15 July 2008, which would have clearly exceeded the time allotted.¹¹⁷

88. On 17 September 2008, the Chamber ordered Ngirumpatse to reduce the number of witnesses he intended to call to 35.¹¹⁸ The Appeals Chamber upheld this ruling, stating that it was satisfied that the Chamber had considered whether the amount of time and number of witnesses it allocated were adequate to permit Ngirumpatse to present his case in a manner consistent with his rights.¹¹⁹ Ngirumpatse finally filed his list of 35 witnesses on 14 October 2008, nearly ten months after the close of the Prosecution case.¹²⁰

89. Accordingly, the Chamber finds no merit in Ngirumpatse's claim that he was limited, penalized, and hurried to establish his witness list.

¹¹² *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-AR73, Decision on Mathieu Ngirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008 (AC), 30 January 2009, ("Rule 73 *ter* Appeal Decision").

¹¹³ *Karemera et al.*, Mémoire préliminaire de M. Ngirumpatse sur le fondement de l'article 73 *ter* du règlement de procédure et de preuve, filed on 7 April 2008.

¹¹⁴ Rule 73 *ter* Appeal Decision, para. 14.

¹¹⁵ *Id.*, para. 15.

¹¹⁶ *Karemera et al.*, Ordonnance relative au mémoire de Mathieu Ngirumpatse suite a la décision du 17 avril 2008 relative a l'administration de la preuve de la défense (TC), 25 June 2008.

¹¹⁷ *Karemera et al.*, Mémoire pour M. Ngirumpatse sur l'ordonnance du 25 juin lui prescrivant de préciser la liste de ses témoins, filed on 15 July 2008.

¹¹⁸ *Karemera et al.*, Decision on Mathieu Ngirumpatse's Motions for Reconsideration and Extension of Time-Limits for the Presentation of his Case (TC), 17 September 2008.

¹¹⁹ Rule 73 *ter* Appeal Decision, para. 27.

¹²⁰ *Karemera et al.*, Ngirumpatse's Brief Following the Decision on the Motions for Reconsideration and for Extension of the Time Limit for Presentation of Mathieu Ngirumpatse's Case, filed on 14 October 2008.

7.3 Primary Working Language of the Judges

90. While English is the primary working language of Judges Dennis Byron and Vagn Joensen, they are fully capable of reading and ruling on submissions filed in French. Moreover, the remaining member of the bench, Judge Kam, is a native French-speaker. Finally, the team of Chambers legal officers has always contained one or more native French-speakers in addition to native English-speakers who are fully capable of reading and working with submissions filed in French. Finally, the Chamber has continually been assisted by the Language Services Section ("LSS") of the Tribunal, which provides simultaneous translation of the proceedings (Kinyarwanda, English, French), transcripts of the proceedings (English, French), and translations of filings and submissions (English, French). Thus, the Chamber does not consider that Ngirumpatse was prejudiced by having his case heard by a bench that consisted primarily of native English-speakers.

8. PROSECUTION EMPLOYMENT OF FORMER DEFENCE LEGAL ASSISTANT

91. Ngirumpatse contends that the Prosecution's employment of a former Defence legal assistant prevented him from challenging the Prosecution's case to the best of his ability.¹²¹ The Chamber understands Ngirumpatse's position to be that he has been prejudiced somehow by a conflict of interest arising from the Prosecution's employment of his former legal assistant. The Chamber has already addressed this claim in its decision of 11 April 2011 and found that a conflict of interest did not exist.¹²²

92. Although Ngirumpatse claims that the Chamber issued its decision without considering the *curriculum vitae* of his former legal assistant,¹²³ he does not address the substance of the document or the manner in which it might have affected the outcome of the decision.¹²⁴

9. DIFFICULTIES WITH TRANSLATIONS

93. Karemera claims that he was prejudiced because he was not served with French translations of three decisions. He further contends that neither he nor his Defence counsel were adequately served with French translations of documents throughout the proceedings, causing a serious handicap in the preparation of his Defence.¹²⁵

94. According to Karemera, the Chamber's decision of 10 December 1999, which dismissed a motion by which he had requested to be released, was not served upon him in French; therefore, he argues that he was unable to finalise and file an appeal against the decision.¹²⁶ The Chamber notes that Karemera did not file a motion complaining of the lack of service in French at the time, nor when he was assigned counsel of his choosing two

¹²¹ Ngirumpatse Closing Brief, paras. 126-134.

¹²² *Karemera et al.*, Décision sur la requête urgente pour Matthieu Ngirumpatse aux fins d'annulation de la poursuite et aux fins de mise en liberté immédiate (TC), 11 April 2011.

¹²³ Ngirumpatse Closing Brief, para. 128.

¹²⁴ *Id.*, paras. 126-134.

¹²⁵ Karemera Closing Brief, para. 4.

¹²⁶ *Id.*



months later.¹²⁷ The Chamber considers that his failure to promptly bring a challenge indicates that any prejudice he suffered, if any, appears to be minimal.

95. Furthermore, Karemera does not explain how service of some procedural documents and the decisions rendered by the Appeals Chamber on 28 May 2000 and 25 April 2001 in English prejudiced him throughout the proceedings. Accordingly, and noting that all Defence counsel in the case have a working knowledge of the English language,¹²⁸ the Chamber dismisses his complaints in this regard.

10. COLLECTION AND PRESENTATION OF EVIDENCE

10.1 Intimidation of Defence Witnesses

96. Ngirumpatse claims that many of his witnesses were threatened, arrested, and scared before, during, or after their testimony before the Tribunal. He adds that the Tribunal cannot guarantee reliable protection for witnesses and that investigations by his Defence team were hindered by fears surrounding the arrest of Professor Peter Erlinder in Rwanda.¹²⁹

97. Ngirumpatse has not demonstrated how the threats, arrests, and fear allegedly experienced by his witnesses and Defence team are attributable to the Tribunal. In fact, many of Ngirumpatse's witnesses opted to waive their protective measures and testify under their own names.¹³⁰ Ultimately, only six of Ngirumpatse's 38 witnesses testified under a pseudonym. Ngirumpatse has also failed to demonstrate how Professor Erlinder's arrest hindered investigations by his Defence team.¹³¹ Accordingly, the Chamber dismisses his claims in these regards.

10.2 Reversal of Burden of Proof

98. Ngirumpatse claims that the Indictment shifts the burden of proof from the Prosecution to the Defence through the use of phrases such as: "could not have been unaware" and "that he did not know".¹³² Ngirumpatse does not refer the Chamber to places in the Indictment where this language is found, nor does he explain how these phrases shift the burden of proof. In any event, the Chamber reassures the Defence that it will always place the burden of proof on the Prosecution to prove the charges in the Indictment, regardless of the language used.¹³³

11. EVIDENTIARY ISSUES

11.1 Burden and Standard of Proof

99. Article 20(3) of the Statute guarantees the presumption of innocence of each accused person. The burden of proving the guilt of the accused person beyond a reasonable

¹²⁷ On 9 February 2000, Didier Skornicki, a French lawyer, began to represent Karemera. See also fn. 55, *supra*.

¹²⁸ *Karemera et al.*, Decision Regarding Translation of Exhibits (TC), 20 January 2010, para. 15.

¹²⁹ Ngirumpatse Closing Brief, paras. 982-986.

¹³⁰ On 25 August 2010, Ngirumpatse sent a list of his witnesses who would be waiving their protective measures to the Chamber. See T. 26 August 2010, p. 36.

¹³¹ For a similar analysis, see *Prosecutor v. Callixte Kalimanzira* Case No. ICTR-05-88-A, Decision on Kalimanzira's Request to Postpone the Appeal Hearing (AC), 2 June 2010.

¹³² Ngirumpatse Closing Brief, para. 117.

¹³³ See (II.11.1) for jurisprudence stating that the burden of proof never shifts to the Defence.

doubt rests solely on the Prosecution and never shifts to the Defence. The Chamber must be satisfied beyond a reasonable doubt that the accused is guilty before a verdict can be entered against him or her.¹³⁴

100. While the Defence does not have to adduce evidence to rebut the Prosecution's case, the Prosecution will fail to discharge its burden of proof if the Defence presents evidence that raises a reasonable doubt regarding the Prosecution's case.¹³⁵ An accused person must be acquitted if there is any reasonable explanation for the evidence other than his or her guilt.¹³⁶ Refusal to believe or rely upon Defence evidence does not automatically amount to a guilty verdict. The Chamber must still satisfy itself that the Prosecution proved every element of the crime charged and the mode of liability, and any fact indispensable to a conviction, beyond a reasonable doubt.¹³⁷

11.2 Viva Voce Evidence

101. When evaluating *viva voce* evidence, the Chamber may consider a variety of factors, including the witness's demeanour in court, the plausibility and clarity of the witness's testimony, and whether there were contradictions or inconsistencies within the witness's testimony, between the witness's testimony and the witness's prior statements relied upon in court or admitted as exhibits, or between the witness's testimony and that of other witnesses.¹³⁸ The Trial Chamber may also consider the individual circumstances of the witnesses, including their role in the events in question, their relationship with the accused and other witnesses, their criminal record, the impact of trauma on their memory, social and cultural factors, and whether they would have an underlying motive to give a certain version of the events.¹³⁹

102. As a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court, discrepancies attributable to the passage of time or the absence of record-keeping do not necessarily affect the credibility or reliability of witnesses.¹⁴⁰

103. While direct evidence is preferred, hearsay evidence is not *per se* inadmissible before the Trial Chamber.¹⁴¹ The Trial Chamber has the discretion to treat such hearsay evidence with caution, depending on the circumstances of the case.¹⁴² In certain

¹³⁴ *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Judgement (TC), 27 February 2009, para. 36 (“*Rukundo Trial Judgement*”); Rule 87(A) of the Rules of Procedure and Evidence.

¹³⁵ *Prosecutor v. Eliézer Niyitigeka*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004, paras. 60, 61, (“*Niyitigeka Appeal Judgement*”); *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001, para. 117, (“*Kayishema and Ruzindana Appeal Judgement*”).

¹³⁶ *Prosecutor v. Mucić, Delić, and Landžo*, Case No. IT-96-21-Abis, Judgement (AC), 8 April 2003, para. 58 (“*Čelebići Appeal Judgement*”).

¹³⁷ *Rukundo Trial Judgement*, para. 37.

¹³⁸ *Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement (TC), 2 December 2008, para. 31 (“*Bikindi Trial Judgement*”).

¹³⁹ *Id.*

¹⁴⁰ *Id.*, para. 32.

¹⁴¹ *Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003, para. 34, (“*Rutaganda Appeal Judgement*”).

circumstances, hearsay evidence may require other credible or reliable evidence adduced by the Prosecution in order to support a finding of fact beyond a reasonable doubt.¹⁴³

104. Finally, it is not unreasonable for a trier of fact to accept some, but reject other parts of a witness's testimony.¹⁴⁴

11.3 Documentary Evidence

105. In order to properly assess the allegations before it, the Trial Chamber relies upon documentary evidence proffered by the parties. Documentary evidence can provide valuable corroboration of witness testimony or supplement valuable information where oral evidence is insufficient. However, documentary evidence is not, as a matter of law, preferable to *viva voce* testimony.¹⁴⁵ In evaluating and weighing the evidence, the Trial Chamber looks particularly at factors such as authenticity and proof of authorship.¹⁴⁶

11.4 Accomplice Witnesses

106. Accomplice witnesses, who are associates in guilt or partners in crime with the accused, may have motives or incentives to implicate the accused in order to gain some benefit in regard to their own case or sentence.¹⁴⁷ When an accomplice witness testifies in accordance with a prior statement implicating the accused, a Trial Chamber must be mindful that the witness may have had a motive or incentive to implicate the accused when he gave the prior statement, even if he has already been sentenced or has served his sentence.

107. The jurisprudence of this Tribunal has established that accomplice witness evidence is neither inadmissible, nor unreliable *per se*, especially when an accomplice is thoroughly cross-examined.¹⁴⁸ However, when weighing the probative value of such evidence, a Chamber is bound to carefully consider the totality of the circumstances in which it was tendered and, when necessary, must approach such evidence with caution in order to ensure a fair trial and guard against the exercise of a possible underlying motive on the part of the witness.¹⁴⁹ As a corollary, a Trial Chamber should at least briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused; in this way, a Trial Chamber demonstrates its cautious assessment of this evidence.¹⁵⁰

108. In addition and depending on the circumstances of the case, it may also be necessary to employ a cautious approach towards witnesses who are merely charged with crimes of a similar nature. However, in most cases, these witnesses will not have the same tangible motives for giving false evidence as witnesses who were allegedly involved in the same

¹⁴² *Id.*
¹⁴³ *Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Judgement (TC), 22 June 2009, para. 75.
¹⁴⁴ *Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, para. 88, (“*Karera Appeal Judgement*”).
¹⁴⁵ *Simba Appeal Judgement*, para. 132.
¹⁴⁶ *Zigiranyirazo Trial Judgement*, para. 94; *Bikindi Trial Judgement*, para. 37.
¹⁴⁷ *Niyitegeka Appeal Judgement*, para. 98.
¹⁴⁸ *Id.*
¹⁴⁹ *Id.*; *Muvunyi Appeal Judgement*, para. 128.
¹⁵⁰ *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Judgement (AC), 17 March 2009, para. 146.

criminal acts as the accused. Therefore, as long as no special circumstances have been identified, it is reasonable for a Trial Chamber to employ a lesser degree of caution towards the testimony of witnesses charged with similar crimes as opposed to accomplices.¹⁵¹

109. The Appeals Chamber has explained that two testimonies corroborate each other when one *prima facie* credible testimony is compatible with another *prima facie* credible testimony regarding the same fact or a sequence of linked facts.¹⁵² Further, corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony.¹⁵³

110. It is well-established that a Trial Chamber has the discretion to consider a material fact proven by the uncorroborated testimony of a single witness if that testimony is otherwise credible.¹⁵⁴ However, such evidence must be assessed with appropriate caution.¹⁵⁵ Nevertheless, if the Trial Chamber finds that a witness's testimony is inconsistent or otherwise problematic, it may still accept the evidence if it is corroborated by other evidence.¹⁵⁶ Whether it is necessary to rely on several witnesses' evidence to establish proof of a material fact depends on various factors that must be assessed in light of the circumstances of each case.¹⁵⁷ Where there is conflicting testimony, it is the duty of the Trial Chamber to decide which evidence it deems more probative.¹⁵⁸

12. PROTECTIVE MEASURES

111. Most Prosecution and Defence witnesses were granted protective measures in order to prevent public disclosure of their identities.¹⁵⁹ Accordingly, when a witness or exhibit refers to a protected witness by his or her real name, the Chamber will not assist the reader by cross-referencing the real name of the protected witness with his or her pseudonym. Notwithstanding, the Chamber seeks to set forth the basis of its reasoning as clearly as possible, while avoiding disclosure of any information that may reveal the identity of protected witnesses. It has been mindful in its deliberations of the information it cannot fully explain.

¹⁵¹ *Prosecutor v. Ntagurera, Bagambiki, and Imanishimwe*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 234, (“*Cyangugu Appeal Judgement*”).

¹⁵² *Karera Appeal Judgement*, para. 173.

¹⁵³ *Id.*

¹⁵⁴ *Id.*, para. 45.

¹⁵⁵ *Id.*

¹⁵⁶ *Prosecutor v. Ntakirutimana and Ntakirutimana*, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, para. 132.

¹⁵⁷ *Rutaganda Appeal Judgement*, para. 29.

¹⁵⁸ *Id.*

¹⁵⁹ *Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse, Joseph Nzirorera, and André Rwamakuba*, Case No. ICTR-98-44-R75, Order on Protective Measures for Prosecution Witnesses (TC), 10 December 2004; *Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T (“*Karemera et al.*”), Decision on Édouard Karemera’s Motion for Orders for the Protection of Defence Witnesses (TC), 19 February 2008; *Karemera et al.*, Décision relative aux requêtes d’Édouard Karemera en modification de la liste de ses témoins ainsi qu’en extension des mesures de protection (TC), 2 June 2008; *Karemera et al.*, Décision relative à la protection des témoins d’Édouard Karemera (TC), 24 October 2008; *Karemera et al.*, Décision consolidée sur les diverses écritures de Matthieu Ndirumpatse en vertu de l’article 73 ter du règlement ainsi que sur celles du procureur (TC), 5 July 2010.

13. DEATH OF JOSEPH NZIRORERA

112. Joseph Nzirorera, former co-Accused of Karemera and Ngirumpatse, died on 1 July 2010 in Arusha, Tanzania. On 12 August 2010, the Chamber issued a decision on the Registrar's submission notifying of Nzirorera's demise.¹⁶⁰ In that decision, the Chamber decided, according to the jurisprudence of international criminal tribunals, to terminate the proceedings against Nzirorera effective 1 July 2010.¹⁶¹

113. On 23 August 2010, the Chamber issued an oral decision concerning the implications of Nzirorera's death, stating that the evidence already heard regarding Nzirorera would remain on the record and ordering the Prosecution to remove his name from the title and counts of the Indictment along with any reference to him as an Accused in the case. The Chamber also ordered the Prosecution to refer to Nzirorera in normal font in the Indictment instead of bold.¹⁶² The Prosecution filed an amended indictment on the same day, in compliance with the order.¹⁶³

114. After carefully examining the evidence, arguments of the parties, and the Indictment, the Chamber has concluded that paragraphs: 32, 32.1 - 32.5, 53, 62, 62.1 - 62.12, 63, 63.1, and 63.2 of the Indictment concern factual allegations, which relate exclusively to Nzirorera's conduct. Accordingly, the Chamber has not considered these paragraphs in its factual findings.

115. Nevertheless, several paragraphs remain in the Indictment, which refer to Joseph Nzirorera while alleging facts that would affect the criminal liability of Karemera and Ngirumpatse, if proven. When assessing these paragraphs, the Chamber will not consider Nzirorera's liability for these acts. It will, however, consider evidence of Nzirorera's participation to the extent that it has probative value regarding the potential criminal liability of Karemera and Ngirumpatse. While conducting this assessment, the Chamber will refer to the evidence concerning Nzirorera, which it heard prior to his death.

14. CREDIBILITY OF WITNESS BTH

116. Witness BTH, a prisoner at Ruhengeri prison, testified under oath as a Prosecution witness in June 2006.¹⁶⁴ He was recalled in April 2008 at which point he testified under oath that he knowingly lied during his testimony in June 2006 and in other cases before the Tribunal. The witness also asserted that the Rwandan government was forcing detainees at Ruhengeri prison to give false testimony before the Tribunal.¹⁶⁵ He claimed that Prosecution Witness GBU in this case and Witness GDD in the *Kajelijeli* case provided false testimony as part of this conspiracy.¹⁶⁶ According to counsel for Nzirorera, adjudicated facts 41-46¹⁶⁷ in this case are based on the testimony of Witness GDD.¹⁶⁸

¹⁶⁰ *Karemera et al.*, Decision Relating to Registrar's Submission Notifying the Demise of Accused Joseph Nzirorera (TC), 12 August 2010, ("Nzirorera Decision").

¹⁶¹ Nzirorera Decision, para. 2.

¹⁶² T. 23 August 2010, p. 18.

¹⁶³ See Indictment.

¹⁶⁴ See T. 8, 12-14, 16, 19, 20 June 2006.

¹⁶⁵ See T. 10, 14-17 April 2008.

¹⁶⁶ T. 10 April 2008, pp. 57, 58.

¹⁶⁷ Adjudicated facts no. 41-46 were admitted from the *Kajelijeli* trial judgement. See *Karemera et al.*, Decision on Appeals Chamber Remand of Judicial Notice (TC), 11 December 2006.

¹⁶⁸ T. 10 April 2008, p. 57.

Witness BTH also claimed that persons who later testified as Nzirorera Defence Witnesses GAP and 6 were members of the conspiracy.¹⁶⁹

117. The Chamber does not rely on adjudicated facts 41-46 or the testimony of Witnesses BTH, GAP, or 6 in the judgement as this evidence only relates to Nzirorera; thus, whether the evidence contained therein is tainted is of no consequence here. The Chamber, however, will evaluate the testimony of Witness GBU with caution throughout the judgement, taking his alleged relationship with Witness BTH into account.

15. ARUSHA ACCORDS

Introduction

118. 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.¹⁷⁰ 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.¹⁷¹

119. 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.¹⁷²

The Five Protocols of the Arusha Accords

120. 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

¹⁶⁹ T. 10 April 2008, p. 58 (Witness GAP); T. 14 April 2008, pp. 5, 6 (Witnesses GAP and 6).

¹⁷⁰ 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 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.

¹⁷¹ 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.

¹⁷² Peace Agreement, Articles 2, 10, 11.

political system and free and fair elections, and proposed the creation of a National Commission on Human Rights.¹⁷³

121. 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.¹⁷⁴

122. 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.¹⁷⁵

123. 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.¹⁷⁶

124. 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

¹⁷³ 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.

¹⁷⁴ 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.

¹⁷⁵ 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.

¹⁷⁶ 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.

other 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),¹⁷⁷ which included a U.N. peacekeeping force under the leadership of Force Commander General Dallaire. Special Representative for the Secretary General, Jacques-Roger Booh-Booh, began his assignment in Rwanda on 23 November 1993¹⁷⁸ and resigned on 6 June 1994.

16. THE MRND PARTY

125. The first Constitution of Rwanda was adopted on 28 January 1961, marking the end of a royalist regime. It was replaced by a second Constitution on 24 November 1962.¹⁷⁹ This second Constitution was suspended by a military *coup d'état* on 5 July 1973, which was led by Minister of the National Guard and Army Chief of Staff Major General Juvénal Habyarimana who then became head of state. Article 1 of the Declaration of the High Command of the National Guard stipulated that all political activities were to be forbidden throughout the territory of Rwanda.¹⁸⁰ The transitional period following the *coup d'état* of 1973 ended with the adoption of the 20 December 1978 Constitution by referendum. In the meantime, President Habyarimana founded the MRND (*Mouvement Révolutionnaire National pour le Développement*) in 1975, which had a monopoly on all political activities.¹⁸¹

126. On 5 July 1990, President Habyarimana announced the creation of a National Synthesis Commission to prepare the draft of the new Constitution.¹⁸² He appointed thirty individuals to the commission, including Karemera as the chairman.¹⁸³ Karemera chaired the commission from 24 September 1990 to April 1991.¹⁸⁴ He submitted the report of the commission at the end of March 1990.¹⁸⁵

127. On 5 July 1990, President Habyarimana announced that he had accepted the principle of multiparty politics and institutional reform.¹⁸⁶ Thereafter, a constituent

¹⁷⁷ Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandan Patriotic Front on Miscellaneous Issues and Final Provisions, signed at Arusha on 3 August 1993, Articles 2-8.

¹⁷⁸ T. 16 February 2010, p. 5; T. 17 February 2010, p. 3.

¹⁷⁹ Exhibit K 0377380, “Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka”, p. 5.

¹⁸⁰ *Id.*, p. 6.

¹⁸¹ *Id.*, p. 7.

¹⁸² Karemera, T. 18 May 2009, pp. 5, 13.

¹⁸³ *Id.*, pp. 13, 14; Exhibit DK122, “Members of the National Synthesis Commission”.

¹⁸⁴ Karemera, T. 18 May 2009, p. 5; Exhibit DK122, “Members of the National Synthesis Commission”.

¹⁸⁵ Karemera, T. 18 May 2009, p. 13.

¹⁸⁶ Exhibit K 0377380, “Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka”, p. 10; Karemera Defence Witness XQL, T. 5 May 2008, p. 15.

assembly adopted the new constitution which was signed into law on 10 June 1991, thus replacing the 20 December 1978 Constitution.¹⁸⁷ A law on political parties was enacted on 18 June 1991, laying out the framework for their operation and formation.¹⁸⁸ After the publication of this law, five parties were formed immediately, namely the MRND, the PSD, the PL, the MDR and the PDC. Other political parties also declared their existence.¹⁸⁹ The MRND became the *Mouvement Républicain National pour la Démocratie et le Développement*, retaining the initials “MRND”.¹⁹⁰

128. The transitional period required the formation of a transitional government in which all officially registered political parties were called to participate.¹⁹¹ In April 1992, a coalition government was formed including the MRND, MDR, PSD, PL and PDC parties.¹⁹² The MDR obtained the position as Prime Minister whereas the MRND obtained 9 out of 19 ministries: namely, the Ministry of Defence, Ministry of the Interior, Ministry of Planning, Ministry of Youth and Associate Movements, Ministry of Public Administration, Ministry of Health, Ministry of Transport and Communications, Ministry of Higher Education, Scientific Research, and Culture, and the Ministry of Family and Women’s Affairs. The MRND retained its position as head of state and Juvenal Habyarimana remained President of the country and head of the army.¹⁹³

16.1.1 MRND Structure – Single-Party System

A Centralised State Party

129. The MRND was a state party¹⁹⁴ with a chief through whom everything had to pass.¹⁹⁵ The President of the MRND was the President of the Republic.¹⁹⁶ The State was at the disposal of the party and the party worked for the State by providing it with orientation and directions.¹⁹⁷ The President appointed individuals to positions in the party.¹⁹⁸

¹⁸⁷ Exhibit DNZ1, “Constitution of Rwanda, adopted: 30 May 1991”, Article 102; Ngirumpatse Defence Witness PR, T. 19 November 2011, p. 29 (closed session); Karemera Defence Witness XQL, T. 5 May 2008, p. 15.

¹⁸⁸ Exhibit K 0377380, “Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka”, p. 10; Ngirumpatse Defence Witness PR, T. 19 November 2011, p. 30 (closed session).

¹⁸⁹ Exhibit K 0377380, “Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka”, p. 12.

¹⁹⁰ Karemera, T. 18 May 2009, p. 6; Ngirumpatse, T. 19 January 2011, pp. 14, 15.

¹⁹¹ Ngirumpatse Defence Witness PR, T. 19 November 2011, pp. 30, 31 (closed session).

¹⁹² *Id.*, p. 31 (closed session).

¹⁹³ Exhibit P64, “Protocol of Understanding Between the Political Parties Called Upon to Participate in the Transitional Government”, pp. 2, 3, 5.

¹⁹⁴ Ngirumpatse Defence Witness PR, T. 19 November 2011, p. 30 (closed session); Karemera, T. 18 May 2009, p. 10.

¹⁹⁵ Exhibit K 0377380, “Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka”, p. 7.

¹⁹⁶ Prosecution Witness UB, T. 22 February 2006, p. 23; Ngirumpatse Defence Witness PR, T. 19 November 2011, p. 34 (closed session); Exhibit DK121, “Organisation et Fonctionnement du MRND, Parti Unique”.

¹⁹⁷ Karemera, T. 18 May 2009, p. 11.

¹⁹⁸ Ngirumpatse Defence Witness PR, T. 19 November 2011, p. 34 (closed session); Ngirumpatse, T. 19 January 2011, p. 10; Karemera, T. 18 May 2009, pp. 9-10.

130. After the adoption of the 28 December 1978 Constitution, all citizens were members of the MRND.¹⁹⁹ There were no conditions of membership apart from being Rwandese. Even people who did not wish to belong to the party were compelled to be members of the MRND.²⁰⁰

131. Criticism and opposition were punished and the free press disappeared. Top administrative officials began to hold the positions of party leaders at their various administrative levels.²⁰¹ The *bourgmestres*, *conseillers de secteur* and the *responsables de cellule* accumulated both political and administrative duties.²⁰²

132. Power was centralised and the President of the Republic contemporaneously held the positions of Minister of Defence, Army and National *Gendarmerie* Chief of Staff, Supreme Commander of the Army, and President of the Higher Judicial Council.²⁰³ Notably, centralisation was seen in the attempt to establish the primacy of the party over the government and all administrative structures. As examples, members of the Central Committee of the party became ministers and the Secretary General of the party replaced the President of the Republic in case of the President's absence or impediment.

133. The judiciary was subservient to the executive. The President of the Republic was President of the Higher Judicial Council and judges were appointed and dismissed at will by the executive. The deputies, although elected by the population, simply approved the decisions of the Government. As a result, the Government was not subjected to any form of control mechanism. Lastly, the army and *gendarmerie* were entirely subservient to their Chief. Soldiers participated in the activities of the party and, for example, wore medals of the party with the effigy of the Head of State, Chief of Staff and Minister of Defence.²⁰⁴

134. The administrative system was restructured to permit greater monitoring of the population and grassroots decisions. The party *cellule* became the basic authority, followed by the *secteur*, the *commune* and the *préfecture*.²⁰⁵ The *de jure* power of local officials was overshadowed by those holding the real power in Kigali.²⁰⁶

Organs and Functioning of the Single-Party System

135. At the national level, the President was the main coordinator of the State and the party's organs.²⁰⁷ Alongside the President, three further organs were situated at the national level, namely the national congress as the deliberative organ, the Central Committee as the

¹⁹⁹ Ngirumpatse Defence Witness PR, T. 19 November 2011, pp. 30, 34 (closed session).

²⁰⁰ Karemera, T. 18 May 2009, p. 8.

²⁰¹ Exhibit K 0377380, "Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka", p. 7.

²⁰² Karemera, T. 18 May 2009, pp. 9, 11, 12; Exhibit DK121, "Organisation et Fonctionnement du MRND, Parti Unique".

²⁰³ Exhibit K 0377380, "Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka", p. 7.

²⁰⁴ *Id.*, p. 8.

²⁰⁵ *Id.*, p. 7.

²⁰⁶ *Id.*, p. 8.

²⁰⁷ Karemera, T. 18 May 2009, p. 10; Exhibit DK121, "Organisation et Fonctionnement du MRND, Parti Unique".

party's organ of orientation and follow-up,²⁰⁸ and the government which was executing the directives taken at the national level.²⁰⁹

136. The President of the MRND as well as the Central Committee prepared the national congress meetings and the resolutions of the congress. They were responsible for following up on the decisions that were taken.²¹⁰ The Central Committee was the organ that actually exercised governmental functions and was composed of those faithful to the Head of State.²¹¹

137. As a single party, the executive functions of the MRND were exercised by the President who was assisted by the General Secretary.²¹² At the prefectural level, the prefectural committee was both the deliberative organ and the organ of orientation and follow-up. The *préfet*, assisted by three elective representatives, was in charge of the execution of the decisions taken at the prefectural level.²¹³

138. At the level of the *commune*, the communal congress acted as the deliberative organ and the organ of orientation and follow-up. The implementation of the decisions taken at this level was assigned to a *bourgmestre*, who was assisted by three elective representatives.²¹⁴

139. At the level of the *secteur*, the deliberative organ was the sectorial congress and the organ of orientation/follow-up was the *secteur* committee. The decisions taken at the *secteur* level were executed by the *conseiller* who was assisted by three elective representatives.²¹⁵

140. At the level of the *cellule*, the deliberative organ was the *assemblée de cellule*, while the *cellule* committee was the organ of follow-up and orientation. The decisions taken at the *cellule* level were implemented by the *responsable de cellule*.²¹⁶

141. At each level, the execution of the resolutions was carried out by administrative authorities concurrently acting as leaders of the MRND at this level.²¹⁷

16.1.2 MRND Structure – Multi-Party System

142. After the new party statute was adopted on 5 July 1991, the nominal functions under the single-party regime become elective functions²¹⁸ while retreating the party system with

²⁰⁸ The Chamber notes that Exhibits DK121 and DK123 use the terms “Organes de conception et de suivi” which the Chamber understands to designate organs of orientation of the party politics and of follow-up.

²⁰⁹ Exhibit DK121, “Organisation et Fonctionnement du MRND, Parti Unique”.

²¹⁰ Karemera, T. 18 May 2009, p. 17; DK121, “Organisation et Fonctionnement du MRND, Parti Unique”.

²¹¹ Exhibit K 0377380, “Constitutional Evolution and Political Power in Rwanda From 1 October 1990 to 1 July 1994, Expert Report by Charles Ntampaka”, p. 7.

²¹² Karemera, T. 18 May 2009, p. 11: “As a single party the MRND did not have an executive bureau at national level. There was a president of the MRND and the president of the MRND was assisted in his tasks by the general secretary of the MRND, but the latter and the president did not constitute the bureau, the bureau was the president, if you so will.”

²¹³ Exhibit DK121, “Organisation et Fonctionnement du MRND, Parti Unique”.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Karemera, T. 18 May 2009, pp. 10, 11; DK121, “Organisation et Fonctionnement du MRND, Parti Unique”.

five levels from the national to the *cellule* level,²¹⁹ and its tripartite division between deliberative, orientation and follow-up and execution organs.²²⁰

Organs and Functioning of the MRND in the Multi-Party System

143. Pursuant to the new MRND statutes, the party had the following organs at the national level: National Congress, National Committee, National President, and National Secretary. At the party congress in April 1992, the statutes were amended to provide for a Political Bureau and a National Executive Bureau.

National Congress

144. The National Congress, composed of around 500 members, was the movement's supreme organ and sole deliberative organ. It elected the National Committee, the National President and the National Secretary.

National Committee

145. The National Committee, composed of sixty members, adopted the criteria guiding the Political Bureau with respect to the selection of MRND Ministers in the transitional government.²²¹ The Committee also had the task of implementing the decisions of the national congress, preparing decisions to be adopted by the national congress, and installing the various organs of the MRND party.²²²

National President

146. The National President had the following duties and responsibilities: advise and direct the movement in line with the programme and directives adopted by the national congress; convene the national congress and chair its meetings; convene and chair National Committee meetings; establish and organise the administrative services of the movement and define their duties and responsibilities in consultation with the National Committee; appoint and dismiss the administrative officers of the movement in consultation with the National Committee; establish and maintain relations with national and foreign organisations and institutions; and represent the movement within the country and abroad.²²³ The National President also supervised the National Secretary. President Habyarimana remained National President of the Party until the National Congress in July 1993 where Ngirumpatse was elected National President.

147. As provided for in the internal regulations, the two Vice-Presidents replaced the President when he was absent.²²⁴ Karemera was elected first Vice-President and Kabagena second Vice-President at the National Congress in July 1993.

²¹⁹ Exhibit DNG2, "Statutes of the MRND", Articles 18, 19; Exhibit DK123, "Organisation et Fonctionnement du MRND Rénové"; Karemera, T. 18 May 2009, p. 10; Prosecution Witness UB, T. 16 February 2006, pp. 37-39.

²²⁰ Karemera, T. 18 May 2009, p. 10; Exhibit DK123, "Organisation et Fonctionnement du MRND Rénové".

²²¹ Exhibit DK124, "Communiqué du MRND".

²²² Exhibit DK123, "Organisation et Fonctionnement du MRND Rénové".

²²³ Exhibit DNG2, "Statutes of the MRND", Article 51.

²²⁴ Prosecution Witness UB, T. 22 February 2006, p. 23.

National Secretary

148. The National Secretary organised the National Congress and implemented the resolutions, motions and statements of the National Congress and National Committee. He was in charge of daily management of the party and supervised the activities at the prefectural and communal party levels.^{225 226} Karemera was National Secretary from June 91 to April 1992 when he was succeeded by Ngirumpatse who in turn was succeeded by Nzirorera in July 1993.

National Executive Bureau

149. The National President, the two Vice-Presidents, and the National Secretary formed the Executive Bureau. The tasks of the Bureau were defined by the tasks of its members.

Political Bureau

150. The Political Bureau was composed of the Executive Bureau and the chairs of the prefectural committees. Karemera explained that the chairs of three other MRND committees were also members.

Prefectural Level

151. At the prefectural level, the prefectural congress remained the party's decision-making organ and elected the chair of the prefectural committee and its 20 members. The prefectural committee executed the decisions taken at the prefectural level.²²⁷ It included representatives from the various *communes*.²²⁸ Ngirumpatse was chair of the prefectural committee in Kigali-Ville from 1991 to April 1992.²²⁹

152. At the level of the *cellule*, the organs remained the same.²³⁰

CHAPTER III: ACTUAL CONTROL OVER THE MRND PARTY**Introduction**

153. The extent of the control Karemera and Ngirumpatse had over the MRND is a disputed fact in the case, which impacts on a number of the Chamber's findings.

Evidence*Prosecution Witness UB*

154. The witness was a government official in Kigali and MRND party member.²³¹ At the time of his testimony, he had been convicted in Rwanda for his role in the genocide.²³²

²²⁵ Exhibit DNG2, "Statutes of the MRND", Article 58.

²²⁶ Prosecution Witness UB, T. 22 February 2006, p. 23.

²²⁷ Exhibit DNG2, "Statutes of the MRND", Article 39.

²²⁸ Prosecution Witness UB, T. 16 February 2006, p. 39.

²²⁹ Ngirumpatse, T. 17 January 2011, pp. 36, 37.

²³⁰ Exhibit DK123, "Organisation et Fonctionnement du MRND Rénové"; Exhibit DK121, "Organisation et Fonctionnement du MRND, Parti Unique".

155. While President Habyarimana was still also President of the MRND, the actual leader of the party was the National Secretary. Ngirumpatse was elected to that post in April 1992. When Habyarimana was replaced as president of the party in July 1993, Ngirumpatse remained the actual leader of the party as the new president of the party. He was assisted by his two Vice-Presidents, Karemera and Kabagena, and the National Secretary, Nzirorera, who together formed the National Executive Bureau.

156. The Executive Bureau convened with the chairs of the prefectural committees in the Political Bureau. Although the Political Bureau could give instructions to the Executive Bureau according to the party's structure, it was the latter which took decisions and gave orders to the prefectural leaders. The members of the Executive Bureau presided over all meetings at the national level in addition to all party rallies.

Prosecution Witness ALG

157. The witness was an official in Kigali-ville *préfecture* in 1994 and attended meetings of the MRND committee at the prefectural level in Kigali-ville.²³³ He pleaded guilty to his participation in the genocide on 19 May 1998.²³⁴

158. Although according to the party structure the Party Congress was the party's highest organ, it was in fact the Executive Bureau that took the decisions and directed the party. The Bureau prepared the decisions to be adopted by the Congress, and Ngirumpatse, as the party President, convened the Congress and presided over it Congress as well as all other party organs and party rallies at the national level. The Political Bureau was used for the prefectural chairs to present complaints from party members to the Executive Bureau and to channel decisions taken by higher bodies to lower bodies.

Matthieu Ngirumpatse

159. Ngirumpatse testified that the National Committee and the Political Bureau, as well as the Congress, controlled the activities of the National Executive Bureau.²³⁵ The National Executive Bureau did not decide anything without the approval of the Political Bureau. If the matter was very serious, the approval of the National Committee was needed, while the approval of the National Congress was obligatory for national matters.²³⁶

Deliberations

Cautionary Issues

160. Prosecution Witness UB has been convicted and Prosecution ALG is being prosecuted for participation in the Rwandan genocide.²³⁷ The Chamber, therefore, treats their testimony with the requisite degree of caution.

²³¹ T. 16 February 2006, p. 35; T. 13 March 2006, pp. 4, 5.

²³² T. 28 February 2006, pp. 33, 34.

²³³ T. 26 October 2006, pp. 16, 17 (closed session).

²³⁴ *Id.*, p. 18.

²³⁵ Ngirumpatse, T. 19 January 2011, p. 10.

²³⁶ Ngirumpatse, T. 24 January 2011, p. 12.

²³⁷ See paras. 154 (UB) and 157 (ALG).

Control Over the MRND

161. The Chamber finds that the testimony of Prosecution Witnesses UB and ALG is consistent and reliable. Their testimony is not incompatible with Ngirumpatse's testimony that the Executive Bureau respected the statute of the party. Thus, Witnesses UB and ALG have not claimed that the Executive Bureau neglected to convene the National Congress or disregarded its decisions; neglected to consult the National Committee or the Political Bureau; or disregarded decisions made by these organs. The issue is the degree of influence the Executive Bureau exercised over these organs. In this regard, the Chamber notes that the members of the Executive Bureau were also members of the other three organs, and that the National President and the National Secretary under his supervision convened and organised the meetings of all three organs and presided over the meetings.

162. Furthermore, since its inception in 1975, the party had been ruled by the top organs of the party, which lends credibility to the testimony of Witnesses UB and ALG that the National President, his Vice-Presidents, and the National Secretary, even after the adoption of the new MRND statute following the introduction of the multi-party system, exercised decisive power over the party. The Chamber, therefore, believes the testimony of Witnesses UB and ALG that the President of the party (Ngirumpatse), his two Vice-presidents, (Karemera and Kabagema), and the National Secretary (Nzirorera) had actual control over the MRND.

CHAPTER IV: FACTUAL FINDINGS – EVENTS PRIOR TO 8 APRIL 1994

1. THE *INTERAHAMWE*

1.1 Clarification of the Allegations

163. Paragraph 24 of the Indictment introduces allegations concerning the *Interahamwe* movement for the period prior to 8 April 1994, as specified in sub-paragraphs 24.1 through 24.8. Some differences exist between the introductory paragraph, the sub-paragraphs and the Prosecution's Pretrial Brief and Closing Brief.

164. The introductory paragraph refers to a "corps of militamen" whereas the sub-paragraphs and briefs refer specifically to the *Interahamwe* of the MRND. The Chamber considers that the allegations relate specifically to the *Interahamwe* of the MRND.

165. The introductory paragraph refers to activities "over the course of 1993 and 1994" whereas sub-paragraph 28.1 refers to activities "sometime during 1992". The Chamber understands the allegation to be that the *Interahamwe* movement was initially formed "sometime during 1992" but expanded and brought under the control of the Accused "over the course of 1993 and 1994".

166. Several paragraphs in this section of the Indictment refer to the "MRND Steering Committee." In its briefs, however, the Prosecution refers to the "Executive Bureau" as the highest executive organ of the MRND. Therefore, the Chamber will employ that term throughout the judgement.

167. There are also several references in this section of the Indictment to the "MRND Central Committee," which was a contemplative body in the old MRND structure. In the new MRND structure, there was no "Central Committee," but rather a contemplative body called the "MRND National Committee" and an expanded executive committee referred to as the "MRND Political Bureau."

1.2 Formation of the *Interahamwe* in Kigali-ville Préfecture.

Allegation in the Indictment

168. Sometime during 1992, Ngirumpatse initiated or supported the proposal that the MRND establish a youth wing that would be called the *Interahamwe*. The *Interahamwe* would compete with the youth wings of opposition political parties and recruit members for the MRND. The *Interahamwe* eventually attracted and incorporated unemployed, delinquent youth who often engaged in illegal activity.²³⁸

Evidence

Transcript of Radio Broadcast of MRND Rally of 7 November 1993

169. The transcript shows that, in his address during the rally, Robert Kajuga referred to the second birthday of the *Interahamwe* as 1st November.²³⁹

Prosecution Witness HH

170. The witness was an *Interahamwe* leader in Kigali in 1994.²⁴⁰ He pleaded guilty to participating in the genocide and was imprisoned at the time of his testimony.²⁴¹

171. After Jean-Pierre Turatsinze asked him to join the *Interahamwe*, he went to a meeting held at Vedaste Rubangura's place, known as Technoserve, in either May or June of 1992. Many other new members were at the meeting. Ngirumpatse presented the *Interahamwe* leaders to those at the meeting. Those leaders included Robert Kajuga, Georges Rutaganda, and Phénéas Ruhumuliza.²⁴² Kajuga took the floor to welcome the new members and explain the organization's aims to them.

172. It was clear that the MRND played a part in recruiting the witness as an *Interahamwe* so he could oppose the efforts of another party's MP. Ngirumpatse told the new members at the meeting to obey the instructions of the *Interahamwe* leaders and that their task was to recruit and entice other youths to join their party line because it was the best.²⁴³

173. In order to be chosen as a member of the *Interahamwe*, one had to be well-known within the *secteur*.²⁴⁴ Army reservists and ex-soldiers were not discouraged from becoming members.²⁴⁵

Prosecution Witness ALG

²³⁸ Indictment, para. 24.1.

²³⁹ Exhibit P12 "Transcript of Radio Broadcast of 7 November 1993 MRND Rally". Cross reference with video of rally, also admitted into evidence as Exhibit P12, to ascertain date of rally.

²⁴⁰ T. 15 November 2006, p. 44 (closed session).

²⁴¹ Exhibit P35 (under seal).

²⁴² T. 8 November 2006, p. 21-26.

²⁴³ *Id.*, p. 25.

²⁴⁴ *Id.*, p. 27.

²⁴⁵ *Id.*, p. 28.

174. The witness²⁴⁶ testified that at a meeting in January 1992, the Provisional National Committee was introduced to party members and Jean-Pierre Turatsinze. Turatsinze was the *Interahamwe* coordinator in the sense that he was the liaison between the *Interahamwe* and the MRND. At a meeting of the Kigali-Ville *préfecture* committee in the same month, Ngirumpatse told everyone that the *Interahamwe* were to be set up throughout the country. At a meeting a week or two later, he stated that the *Interahamwe* had been formed and that leaders had been appointed.²⁴⁷

Prosecution Witness G

175. The witness was a high-ranking member of the *Interahamwe*.²⁴⁸ He received extensive benefits, financial and otherwise, from the Prosecution in exchange for his testimony.²⁴⁹

176. Ngirumpatse played a role in the establishment of the *Interahamwe* in Kigali-ville and on one occasion even attended a meeting regarding the establishment of the *Interahamwe*, which he encouraged.²⁵⁰ At one point, the MRND leadership requested that *Interahamwe* be recruited from the ranks of the unemployed.²⁵¹

177. The witness agreed with the content of the transcript of Ngirumpatse's speech in Ruhengeri on 15 November 1992, which states that Ngirumpatse referred to the *Interahamwe* and asked them to recruit sharp members who were committed to the party throughout the country.²⁵²

Prosecution Witness T

178. The witness was a high-ranking member of the *Interahamwe*.²⁵³ At the time of his testimony, he had pleaded guilty to genocide charges in Belgium and was cooperating with the Belgian authorities.²⁵⁴ He received extensive benefits, financial and otherwise, from the Prosecution in exchange for his testimony.²⁵⁵

179. In January 1992, Ngirumpatse asked members of the Provisional National Committee of the *Interahamwe* to reflect on the implementation of the *Interahamwe*

²⁴⁶ See para. 157, *supra*.

²⁴⁷ T. 1 November 2006, p. 28.

²⁴⁸ T. 13 October 2005, p. 9 (closed session).

²⁴⁹ *Karemera et al.*, Disclosure of Prosecutor's Compliance with Decision on Prosper Mugiraneza's Motion for Records of All Payments Made Directly or Indirectly to Witness D, filed confidentially on 17 April 2008; *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Oral Decision on Motion to Compel Full Disclosure of ICTR Payments for the Benefit of Witnesses G and T and Motion for Admission of Exhibit: Payments Made for the Benefit of Witness G (TC), 29 May 2008.

²⁵⁰ T. 10 October 2005, p. 70.

²⁵¹ *Id.*, p. 65.

²⁵² T. 17 October 2005, p. 19.

²⁵³ T. 22 May 2006, p. 21.

²⁵⁴ *Id.*, p. 22.

²⁵⁵ *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Oral Decision on Motion to Compel Full Disclosure of ICTR Payments for the Benefit of Witnesses G and T and Motion for Admission of Exhibit: Payments Made for the Benefit of Witness G (TC), 29 May 2008; Prosecutor's *Ex Parte* Disclosure Regarding Expenses on Behalf of Witness T, filed confidentially and *ex parte* on 15 July 2008; Notice of Further Material Relating to Witness T, under Rule 67D, filed confidentially on 8 September 2008; Interoffice Memorandum – Disclosure of Previously Withheld Witness T Materials, filed confidentially on 3 June 2010.

movement in other *préfectures*.²⁵⁶ An *Interahamwe* delegation went to Butare towards the end of March or early April 1992 and launched the *Interahamwe* within the student community of the National University of Rwanda to compete with the PSD youth wing, which had a majority in that *préfecture*.²⁵⁷

180. The *Interahamwe* did not recruit members with the intention to form an army that would exterminate Tutsis.²⁵⁸

Prosecution Witness GOB

181. The witness was a member of the MRND prefectural committee for Kigali-ville and the MRND Political Bureau.²⁵⁹ He attended a prefectural meeting in July 1991 chaired by Ngirumpatse, who was the head of the committee. The meeting considered various issues affecting the party, including the concern that the party was having trouble with the conduct of the youth from opposition parties. The meeting concluded that it was necessary and important to have a youth wing that could cope with the youth wings of other parties.²⁶⁰

182. Ngirumpatse coordinated the discussion concerning recruitment of *Interahamwe* members. They decided to start with the children of the senior MRND personalities who could go to bars and points where drinks were sold, in addition to the public square in Kigali, to silence the youth of the other opposition parties.²⁶¹ Ngirumpatse chaired another prefectural meeting in September 1991 where those in attendance agreed to see how these young persons could extend their activities beyond Kigali and swell their numbers.²⁶² They brainstormed on the name for their youth group and decided to call them the *Interahamwe*.²⁶³

183. The *Interahamwe* were represented nationwide as of 1992. They started attacking passersby and even looting persons who said nothing against the party. The population started to complain about the activities of the *Interahamwe* and Desiré Murenzi, a member of the Provisional National Committee, resigned because the *Interahamwe* no longer followed the instructions given to them. The witness claims that the misbehavior of the *Interahamwe* was reported to the MRND National Secretary, and President Habyarimana was aware of the situation when he was chairman of the party. Ngirumpatse responded to the allegations of *Interahamwe* misbehavior by stating that one should not complain about the *Interahamwe* but instead move closer to them and help them.²⁶⁴

Prosecution Witness Ahmed Napoleon Mbonkunkiza

184. The witness was a member of the MRND party and its youth wing, the "Jeunesse" of the MRND ("JMRND").²⁶⁵

²⁵⁶ T. 22 May 2006, p. 41.

²⁵⁷ *Id.*, p. 42.

²⁵⁸ T. 26 May 2006, pp. 29, 30.

²⁵⁹ T. 22 October 2007, pp. 18, 19 (closed session).

²⁶⁰ *Id.*, p. 25.

²⁶¹ *Id.*, pp. 25, 26.

²⁶² *Id.*, p. 26.

²⁶³ *Id.*, p. 27.

²⁶⁴ *Id.*, pp. 27, 28.

²⁶⁵ T. 20 September 2005, pp. 23, 25.

185. He attended an MRND meeting in February 1992 where Ngirumpatse arrived with Robert Kajuga, Phénéas Ruhumuliza, Georges Rutaganda, Eugene Mbarushimana, and Bernard Maniragaba and his consorts. Ngirumpatse announced that he was arriving with the *Interahamwe* leadership and mentioned that he had created the *Interahamwe* so they could work on behalf of the MRND to raise awareness.²⁶⁶ These meetings occurred every week in Kigali-ville.²⁶⁷

186. Ngirumpatse also chaired the next MRND meeting, which took place two weeks later. During this meeting, Ngirumpatse gave the floor to the *Interahamwe*. He spoke during the meeting and said that the *Inkotanyi* and members of opposition groups were continuing to provoke him. Ngirumpatse said that they needed to pursue the *Inkotanyi*. He also stated that they knew members of the *Inkotanyi* and that Tutsis were members of the *Inkotanyi* as well as the opposition. Ngirumpatse stated that it was necessary to pursue these people and kill them and that people needed to do all in their power to complete the work.²⁶⁸

Nzirorera Defence Witness Georges Rutaganda

187. The witness was the second vice-president of the Provisional National Committee of *Interahamwe*.²⁶⁹ He was sentenced to life imprisonment for his role in the genocide.²⁷⁰

188. Phénéas Ruhumuliza invited him to attend a meeting concerning the *Interahamwe* at the Technoserve building in late November or early December 1991. Désiré Murenzi, Thomas Kigufi, Cyrille Bizimungu, Robert Kajuga, and Dieudonné attended this meeting. The Provisional National Committee of the *Interahamwe* was established during the third meeting he attended, and Robert Kajuga was selected as president of that committee. They defined the goal of the *Interahamwe* as devising strategies that would support the MRND.²⁷¹

189. In early 1992, the *Interahamwe* only participated in party meetings but their numbers began to expand. One had to be a member of the MRND and disseminate party propaganda to become an *Interahamwe* member. Membership cards were initially distributed to the *Interahamwe* but the practice was eventually stopped.²⁷²

190. Ngirumpatse did not play a role in the establishment of the *Interahamwe*, and the members of the committee did not have any contact with him during 1991 and early 1992. Clashes between the *Interahamwe* and members of other parties began around May 1992.²⁷³

191. Karemera had nothing to do with the founding of the *Interahamwe*.²⁷⁴ He did not notice that bandits and deserters joined the *Interahamwe*.²⁷⁵

Matthieu Ngirumpatse

²⁶⁶ *Id.*, pp. 45, 46.

²⁶⁷ *Id.*, p. 48.

²⁶⁸ *Id.*, p. 52.

²⁶⁹ T. 12 April 2010, p. 3.

²⁷⁰ *Rutaganda Appeal Judgement*, p. 168.

²⁷¹ T. 12 April 2010, pp. 4-7.

²⁷² *Id.*, pp. 11-13.

²⁷³ *Id.*, p. 14.

²⁷⁴ *Id.*, p. 16.

²⁷⁵ *Id.*, p. 20.

192. Ngirumpatse had nothing to do with the formation of the *Interahamwe*. Towards the end of 1991, the Provisional National Committee simply informed him that the *Interahamwe* had been created.²⁷⁶ He refuted the testimony of multiple Prosecution witnesses who claimed that: he was involved with the creation of the *Interahamwe*; the *Interahamwe* was created to counter insults from other opposition political parties and was initially composed of the children of MRND members; he introduced members of the *Interahamwe* at meetings and chose them for the purpose of killing Tutsis and opposition leaders; he distributed weapons at *Interahamwe* meetings and prepared appointments to the Provisional National Committee; the *Interahamwe* recruited unemployed youth; the Steering Committee of the MRND controlled the *Interahamwe*; the *Interahamwe* protected the interests of the MRND; he urged the extension of the *Interahamwe* to other *préfectures*; and that the MRND provided venues for *Interahamwe* meetings.²⁷⁷

193. Ngirumpatse acknowledges that he played a role in recruiting youth into the MRND but claims he did so to strengthen the party and give it a future. He did not recruit youth so they could defend the country.²⁷⁸ Rutaganda and Witnesses G and T were among those who independently created the *Interahamwe* without the intervention of any member of the MRND.²⁷⁹

Deliberations

Cautionary Issues

194. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH, ALG, and Defence Witness Rutaganda were convicted and imprisoned for participating in the genocide.²⁸⁰ Furthermore, at the time of his testimony, Prosecution Witness T was detained and awaiting trial on genocide charges.²⁸¹ The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program²⁸² and that Rutaganda called Ngirumpatse as a Defence witness in his own trial.

195. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Undisputed Issues

196. It is undisputed that the *Interahamwe* was initially founded to counter the existing youth groups of other political parties, which harassed the MRND party, and to recruit new members for the MRND.

Initiation of the Interahamwe and its Establishment in Kigali-Ville Préfecture

²⁷⁶ T. 21 January 2011, p. 18.

²⁷⁷ See T. 24 January 2011, pp. 6-22.

²⁷⁸ T. 2 February 2011, p. 8.

²⁷⁹ *Id.*, p. 20.

²⁸⁰ See paras. 170 (HH); 157 (ALG); and 187 (Rutaganda).

²⁸¹ See para. 178.

²⁸² See paras. 175 (G) and 178 (T).

197. Prosecution Witness GOB testified that the Kigali-ville prefectural Committee discussed the establishment of a youth wing of the MRND as early as July 1991 and its expansion to the rest of the Rwanda as early as September 1991, which is consistent with Prosecution Witness Mbonnyunkiza's testimony that an MRND youth wing, called the JMRND, existed prior to the establishment of the *Interahamwe*. Witness GOB also testified that it was the prefectural committee who decided to name the youth wing "*Interahamwe*".

198. The Chamber notes, on the other hand, that pursuant to the address of the chair of the Provisional National Committee at the rally on 7 November 1993 at Nyamirambo Stadium,²⁸³ the *Interahamwe* was founded on 1st November 1991, which is fairly consistent with Defence Witness Rutaganda's evidence that the meetings leading to the creation of the Provisional National Committee started in late November or early December 1991.

199. The Chamber considers it reasonable that the prefectural Committee of the Rwandan capital, which was chaired by Ngirumpatse, would have deliberated on how to counter the youth wings of other political parties that were bothering the MRND. The Chamber, therefore, believes the testimony of Witness GOB.

200. The Chamber has not been presented with evidence that Ngirumpatse was involved in the creation of the Provisional National Committee as the Steering Committee of the *Interahamwe*. The Prosecution, however, has presented strong evidence that Ngirumpatse supported the Provisional National Committee and the implementation of the *Interahamwe* in Kigali-ville. The Chamber refers to the testimony of Prosecution Witnesses GOB, G, HH, T, and Mbonnyunkiza, which states that Ngirumpatse attended MRND meetings where Provisional National Committee members were introduced.

201. Ngirumpatse and Rutaganda, on the other hand, dispute that Ngirumpatse played an active role in the implementation of the *Interahamwe*. The Chamber notes that the *Interahamwe* served a legitimate purpose at the time of its establishment; therefore, participating in its implementation is not in itself incriminating. Nevertheless, participation in its creation is an element in the assessment regarding whether Ngirumpatse later exercised control over the *Interahamwe*. Thus, Ngirumpatse has a general interest in minimising his involvement with the *Interahamwe* and the Chamber notes that Rutaganda's conviction for genocide is directly related to his leadership role in the *Interahamwe*. Moreover, the Chamber considers it unlikely that the Provisional National Committee could have addressed the MRND members at meetings on the party premises without the involvement of the prefectural chair. Thus, the Chamber finds the Prosecution evidence more probative than the testimony of Ngirumpatse and Rutaganda.

202. Concerning participation in general party meetings regarding the *Interahamwe*, Ngirumpatse and Witnesses HH and G testified that Ngirumpatse attended one meeting in 1992 where the Provisional National Committee was presented to party members. Witness Mbonnyunkiza, however, testified about two meetings. Although the dates Witnesses HH and Mbonnyunkiza gave for the meetings differ, the Chamber does not find that their testimony is incompatible, especially considering the time that has elapsed between the events and their testimony. The Chamber, therefore, finds that Witnesses HH, G, Ngirumpatse, and Mbonnyunkiza, with respect to the first meeting Ngirumpatse mentioned, testified about the same meeting sometime in 1992.

²⁸³ Exhibit P12, "Transcript of Radio Broadcast of 7 November 1993 MRND Rally".

203. The Chamber is not convinced, however, that Ngirumpatse attended a second general party meeting regarding the *Interahamwe*. During cross-examination, Witness Mbonkunkiza seemed uncertain about the second meeting. Moreover his claim that Ngirumpatse would have called for the killing of Tutsis in 1992 seems implausible considering that there were still Tutsi members in the MRND at the time, and that ethnic tensions did not escalate until late 1993. Accordingly, the Chamber does not rely on this uncorroborated aspect of his testimony.

Recruitment of Unemployed, Delinquent Youth who often Engaged in Illegal Activity

204. The Chamber believes the testimony of Witness G that unemployed youth were recruited into the *Interahamwe*, noting that the Defence did not rebut this point. Nonetheless, it considers that unemployment is not synonymous with a propensity for crime. Witness GOB, however, testified about criminal acts committed by the *Interahamwe*. Taking this into account, the Chamber considers that some *Interahamwe* members could have been considered delinquent youth.

Conclusion

205. The Prosecution has proved beyond a reasonable doubt that sometime during 1992, Ngirumpatse supported the proposal that the MRND establish a youth wing that would be called the *Interahamwe*. The *Interahamwe* would compete with the youth wings of opposition political parties and recruit members for the MRND. The *Interahamwe* eventually attracted and incorporated unemployed, delinquent youth who often engaged in illegal activity.

1.3 Expansion, Structure and Control of the *Interahamwe* Nationwide

Allegation in the Indictment

206. Over the course of 1993 and 1994, Karemera and Ngirumpatse together with Nzirorera and others undertook initiatives that were intended to create and extend their own personal control and that of the MRND Executive Bureau over the *Interahamwe* as an organised, centrally commanded corps of militiamen that would respond to their call to attack, kill and destroy the Tutsi population. Thus, during an MRND national congress held around June or July of 1993, the MRND National Committee or Political Bureau, including Ngirumpatse (who as of July 1993 was the National President of the MRND) authorized and founded *Interahamwe* committees at the *préfecture* level throughout Rwanda. As a result, the *Interahamwe* fell squarely under the control of the MRND *préfecture* chairmen who themselves were subject to the authority of the MRND Executive Bureau.²⁸⁴

Evidence

Transcript from MRND National Congress of April 1992

²⁸⁴ Indictment, para. 24.2.

207. The transcript shows that Ngirumpatse, who was elected National Secretary of the MRND at the congress, read out its resolutions at the end of the meeting. The fourth resolution stated:

“The members of the National Congress commended the founders of the *Interahamwe* organization and requested that this organisation should be established in all *préfectures* and even *communes*, and if possible, affiliated to the MRND party.”

Transcript of Radio Broadcast of MRND Rally of 7 November 1993

208. The transcript shows that Robert Kajuga in his address welcomed the *Interahamwe* of Kibuye and invited a representative to take the floor.²⁸⁵

Prosecution Witness HH

209. The witness²⁸⁶ testified that at the first MRND meeting at the Technoserve building, he and others were told to obey the instructions of the *Interahamwe* leaders.²⁸⁷ It was clear that the *Interahamwe* was practically identical to the MRND. The National Secretary of the MRND party was the head of the *Interahamwe* and Jean-Pierre Turatsinze’s office was inside the MRND headquarters. Turatsinze was known as the *Interahamwe* Coordinator and all *Interahamwe* leaders from Kigali reported to him.²⁸⁸ Turatsinze reported to the National Secretary of the MRND.²⁸⁹

210. *Interahamwe* officials existed in the *communes*, *secteurs*, *préfectures*, and at the national level. The MRND played a role in administering and organising the *Interahamwe* nationwide.²⁹⁰

Prosecution Witness ALG

211. The witness²⁹¹ testified that at the meeting in January 1992 where the Provisional National Committee was introduced to party members, they were also introduced to Jean-Pierre Turatsinze and were told that he was the *Interahamwe* coordinator, in the sense that he was the liaison between the *Interahamwe* and the MRND. Turatsinze had an office in the MRND headquarters.²⁹²

212. The *Interahamwe* was run by the Executive Bureau and the Provisional National Committee. The committee intended to place a number of organs at a national level. At a meeting of the Kigali-Ville prefectural committee in January 1992, Ngirumpatse told everyone that the *Interahamwe* were to be set up throughout the country. At a meeting a week or two later, he stated that the *Interahamwe* had been formed and that leaders had

²⁸⁵ Exhibit P12, “Transcript of Radio Broadcast of 7 November 1993 MRND Rally”. Date of rally may be ascertained by cross referencing the broadcast with the video of rally, also admitted into evidence as Exhibit P12.

²⁸⁶ See para. 170, *supra*.

²⁸⁷ T. 8 November 2006, pp. 24, 25.

²⁸⁸ *Id.*, p. 26.

²⁸⁹ *Id.*, p. 29.

²⁹⁰ *Id.*, p. 30.

²⁹¹ See para. 157.

²⁹² T. 26 October 2006, pp. 36, 37.

been appointed.²⁹³ Eventually, the *Interahamwe* had party organs in the *préfectures*, *communes*, and *secteurs*.²⁹⁴

Prosecution Witness T

213. The witness²⁹⁵ testified that Ngirumpatse was always the leader of the committee of the *Interahamwe* as the main representative of the party and was present at the meetings in the Provisional National Committee during the period of April to November 1992. He gave directives on what was to be done, the information that had to be disseminated, the schedule of the meetings, and when the activities would be organised.²⁹⁶

214. In January 1992, Ngirumpatse asked members of the Provisional National Committee to reflect on the implementation of the *Interahamwe* in other *préfectures*. Thereafter, Robert Kajuga, Dieudonné Niyitegeka, and Ephrem Nkezabera went to Gisenyi *préfecture* to establish the *Interahamwe*. During late March or early April 1992, a delegation composed of Kajuga, Bernard Maniragaba, Jean-Pierre Sebanetsi, and Ephrem Nkezabera went to Butare to hold a meeting with the students of the National University of Rwanda, which was facilitated by an MRND representative from that *préfecture* who was a lecturer at the university.²⁹⁷

215. After 6 April 1994 the *Interahamwe* were controlled by Ngirumpatse, Karemera, and Nzirorera. Ngirumpatse's radio broadcast on 18 May 1994 asking that those at the *Hôtel des Milles Collines* be allowed to pass through the roadblocks was honoured.²⁹⁸

Prosecution Witness AXA

216. The witness is a former *Interahamwe* member²⁹⁹ from Kibuye *préfecture* who was convicted and imprisoned for crimes related to the genocide at the time of his testimony.³⁰⁰

217. At the end of 1993, Tharcisse Kabasha, the *bourgmestre*, convened 150 *Interahamwe* from Bwakira at the communal office and told them that an official had come from Kigali with a message for them. The purpose of the meeting was to set up *Interahamwe* in the commune. The witness saw Karemera arrive in a Land Rover belonging to the presidency.

218. It was a period of trouble; members of the various parties were against one another and they wanted the MRND party to have more influence in Kibuye *préfecture*. Karemera said that Tutsis were the enemy.³⁰¹

Prosecution Witness AWD

²⁹³ T. 1 November 2006, p. 28.

²⁹⁴ T. 26 October 2006, p. 41.

²⁹⁵ See para. 178, *supra*.

²⁹⁶ T. 22 May 2006, p. 65.

²⁹⁷ *Id.*, pp. 41, 42. During his testimony, the witness was asked to refer to these individuals according to the numbers assigned to them on Exhibit P9, which was admitted under seal.

²⁹⁸ T. 6 June 2006, p. 20.

²⁹⁹ T. 20 November 2007, p. 4.

³⁰⁰ T. 11 October 2007, pp. 14, 22.

³⁰¹ *Id.*, pp. 14-16.

219. The witness was an MRND official for a *commune*.³⁰² At the time of his testimony, he was detained and was awaiting trial in Rwanda for his alleged participation in the genocide.³⁰³

220. Jean-Pierre Turatsinze became the national leader of the *Interahamwe* when they moved from the Rubangura building. Turatsinze reported daily to the Executive Bureau of the MRND on the daily activities of the *Interahamwe* and their financial and other resource needs.³⁰⁴

Prosecution Witness G

221. The witness³⁰⁵ stated that the *Interahamwe* was created within the *préfectures* after 1992 and were led by the MRND coordinator for each *préfecture*.³⁰⁶ The Executive Committee of the MRND oversaw the *Interahamwe* prefectural leadership.³⁰⁷

222. The witness believed that that the *Interahamwe* who manned the roadblocks were under the control of the MRND. The leaders of the *Interahamwe* in Kigali were under the control of Joseph Nzirorera. The *Interahamwe* at the roadblocks saw Matthieu Ndirumpatse as their president, and he therefore had complete influence over them.³⁰⁸

Prosecution Witness GOB

223. The witness³⁰⁹ testified that the *Interahamwe* had its own leadership separate from the MRND but that these leaders were under the authority of the MRND who had absolute control over them. The leaders of the *Interahamwe* could not do anything without the green light of the leadership of the MRND.³¹⁰

Prosecution Witness Ahmed Napoleon Mbonnyunkiza

224. The witness³¹¹ testified that Ndirumpatse controlled the *Interahamwe* as National Secretary of the MRND.³¹²

Prosecution Witness UB

225. The witness³¹³ testified that on 11 April 1994, the person in overall control of the *Interahamwe* was the person in charge of the MRND: Matthieu Ndirumpatse.³¹⁴

Ndirumpatse Defence Witness PTR

³⁰² T. 7 November 2007 (Extract), p. I.

³⁰³ T. 7 November 2007, pp. 5, 6, 14.

³⁰⁴ *Id.*, p. 25.

³⁰⁵ See para. 175, *supra*.

³⁰⁶ T. 10 October 2005, p. 35.

³⁰⁷ *Id.*, p. 65.

³⁰⁸ T. 27 October 2005, pp. 18, 19; T. 28 October 2005, pp. 21, 22.

³⁰⁹ See para. 181, *supra*.

³¹⁰ T. 23 October 2007, p. 7.

³¹¹ See para. 184, *supra*.

³¹² T. 28 October 2005, p. 44.

³¹³ See para. 154, *supra*.

³¹⁴ T. 27 February 2006, pp. 62, 63.

226. The witness worked for the Rwandan Red Cross and was in charge of humanitarian operations in Kigali.³¹⁵

227. Red Cross ambulances were stopped at roadblocks and if the patient looked like a Tutsi he would be removed from the ambulance and killed. As a result, the witness contacted Kajuga and Rutaganda and received a *laissez-passer* for safe passage signed by Kajuga. The *laissez-passer* was respected at roadblocks where *Interahamwe* were in charge, but did not solve all problems at other roadblocks.³¹⁶

Ngirumpatse Defence Witness GCF

228. The witness was a Belgian nurse who frequently visited Rwanda from 1982 to 1994. She was married in Rwanda on 11 September 1993 and Ngirumpatse attended the wedding.³¹⁷ The following day there was an incident where the *Interahamwe* clashed with Ngirumpatse and disrespected him.³¹⁸

Ngirumpatse Defence Witness HDE

229. The witness was a prominent member of the Christian Democratic Party in 1994.³¹⁹ Ngirumpatse did not have effective control over the *Interahamwe* because they arrested and persecuted his son and daughter-in-law.³²⁰

Ngirumpatse Defence Witness Delphine Ngirumpatse

230. The witness is Ngirumpatse's daughter. She accompanied him and his family in their flight to Gitarama.³²¹ Ngirumpatse had to negotiate with the *Interahamwe* at roadblocks so that they would be let through.³²²

Ngirumpatse Defence Witness Jean Mpambara

231. The witness was a mayor in Kibungo *préfecture* and a member of the MRND prefectural committee.³²³ The *Interahamwe* never existed as an organised, structured group in his *commune* or in Kibungo *préfecture*. Ngirumpatse never introduced any local leaders of the *Interahamwe* anywhere in his *préfecture*.³²⁴

Ngirumpatse Defence Witness PR

³¹⁵ T. 18 November 2010, pp. 9, 12-13.

³¹⁶ T. 19 November 2010, pp. 7-9; T. 18 Nov. 2010, p. 41.

³¹⁷ T. 22 September 2010, pp. 3, 7, 15, 44, 45.

³¹⁸ *Id.*, pp. 15, 17.

³¹⁹ T. 24 November 2010, pp. 44, 45.

³²⁰ T. 25 November 2010, pp. 9-11.

³²¹ T. 10 January 2011, pp. 6, 12, 13.

³²² *Id.*, p. 13.

³²³ T. 20 September 2010, pp. 24, 25.

³²⁴ *Id.*, pp. 24-26.

232. The witness was a member of the transitional government.³²⁵ Some comments from Kajuga at a rally held at Nyamirambo Stadium on 7 November 1993 suggest that there were organised *Interahamwe* in Kibuye *préfecture* by November 1993, because the MRND had given the green light to organise and set up structures on the national level. He cautioned, however, that the *Interahamwe* did not constitute an organ of the MRND.³²⁶

Nzirorera Defence Witness Georges Rutaganda

233. The witness³²⁷ testified that during a congress in 1992, the MRND recommended that the *Interahamwe* be extended nationally and some political leaders returned to their regions and established cells there. Those cells, however, had no hierarchical relationship with the Provisional National Committee. There was no hierarchical relationship among the *Interahamwe* groups in the *préfectures* because they were completely independent. The *Interahamwe* groups in the *secteurs* were also independent. Everyone acted independently at their own convenience and as they deemed fit.³²⁸

234. Bernard Munyagishari was appointed President of the *Interahamwe* in Gisenyi in 1992. This was the only *préfecture* with an *Interahamwe* leader appointed at the prefectural level.³²⁹ The project of extending the *Interahamwe* structure to all *préfectures* was never implemented. The *Interahamwe* never had a statute and was never formally affiliated with the MRND.³³⁰

235. After April 1992, each *secteur* had its own *Interahamwe* committee, which cooperated with the prefectural and national committees, albeit without a hierarchical relationship. The National Committee had no role to play in choosing sectoral presidents. Ngirumpatse never played a role in drafting letters from the National Committee; he was merely informed of them after the fact.³³¹

236. The *Interahamwe* never had the intention to exterminate Tutsis; this would have been nonsensical given that the president of the *Interahamwe*, Robert Kajuga, was a Tutsi.³³²

Nzirorera Defence Witness Ferdinand Nahimana

237. The witness was a member of the MRND prefectural committee for Ruhengeri.³³³ He was convicted by the Tribunal for his role in the genocide and sentenced to 30 years imprisonment.³³⁴

238. Ngirumpatse did not authorise the *Interahamwe* to be affiliated with the MRND on behalf of the MRND during the April 1992 party congress. Instead, the MRND decided to

³²⁵ T. 19 November 2010, p. 31 (closed session).

³²⁶ T. 23 November 2010, pp. 15, 16 (closed session).

³²⁷ See para. 187, *supra*.

³²⁸ T. 12 April 2010, pp. 14, 15.

³²⁹ *Id.*, p. 16.

³³⁰ *Id.*, pp. 17, 18.

³³¹ *Id.*, pp. 21, 22.

³³² *Id.*, p. 9.

³³³ T. 21 April 2010, p. 8.

³³⁴ *Id.*, p. 5.

tackle this issue at the next congress.³³⁵ As shown in the transcription of the decisions and recommendations of the April congress that were read aloud by Ngirumpatse, it was merely suggested that the *Interahamwe* be integrated with the MRND.³³⁶ The *Interahamwe* was never integrated into the MRND party in any way.³³⁷

Joseph Nzirorera

239. Nzirorera testified that when he was elected National Secretary of the MRND, he found Turatsinze there as a driver who was arrogant, knew nothing, and pretended to be a spy. Turatsinze pretended that he was going to get information from the opposition. Nzirorera terminated Turatsinze's contract at the secretariat of the MRND because he considered him a "trickster." He dismissed Turatsinze towards the end of 1993, in October or November, around the time the MRND moved into its new offices in Kimihurura. Nzirorera informed Ngirumpatse of his decision to dismiss Turatsinze.

240. Some people felt that Turatsinze was an important man because he had been recommended by the former Minister of the Interior, Faustin Munyaseza.

241. Turatsinze had a small antechamber in the MRND offices where he had put some material. Nzirorera asked that the place be locked up and the keys kept. Nzirorera strictly forbade Turatsinze from setting foot on the MRND premises. He did not have the power, however, to send him away from the party.³³⁸

242. Turatsinze was under the authority of the MRND accountant.³³⁹

Matthieu Ngirumpatse

243. Ngirumpatse stated that the *Interahamwe* was autonomous and those who initiated the movement were not answerable to him. The *Interahamwe* did not obey instructions from any organ of the MRND. He was not the coordinator of the *Interahamwe*. Although the *Interahamwe* stated that their postal address was that of the MRND, they did this without consulting the MRND. He did not draft the correspondence of the *Interahamwe* Provisional National Committee, and they were not shown to him for approval. He never received members of the provisional committee or young *Interahamwe* members in his office or residence, only a few times in his law office. He never signed membership cards for *Interahamwe* members. The *Interahamwe* was never appropriated by the MRND.³⁴⁰

244. The *Interahamwe* did not have any statutes or a constitution and existed in Kigali, but not across the country. While one or two members of the committee went to Gisenyi to choose a propaganda official, there was no development or organisation of the *Interahamwe* nationwide. The *Interahamwe* was not created to exterminate Tutsis and it never had a structure similar to that of the MRND. This would have been impossible because there were many Tutsi members of the *Interahamwe*, including the president of the *Interahamwe*, Robert Kajuga. Moreover, many *Interahamwe* lost family members during the events that

³³⁵ *Id.*, p. 46.

³³⁶ *Id.*, p. 46.

³³⁷ *Id.*, p. 9.

³³⁸ T. 20 May 2010, pp. 48, 49.

³³⁹ T. 27 May 2010, p. 47.

³⁴⁰ T. 24 January 2011, pp. 2-6.

followed the assassination of the president. The *Interahamwe* was not created for the purpose of forming a militia.³⁴¹

245. There was no integration between the *Interahamwe* and the MRND.³⁴² Regarding Rutaganda's testimony that the *Interahamwe* was an integral part of the MRND, Ngirumpatse asserted that Rutaganda had misinterpreted the constitution of the MRND.

246. Although the MRND encouraged the creators of the *Interahamwe* to continue with their project, this does not mean that Ngirumpatse was the one in charge of the *Interahamwe*. He could assist the founders of the *Interahamwe* as the National Secretary and, later, as the chairman of the MRND but he did not organise their activities. The MRND leadership would advise the *Interahamwe* regarding any demonstrations they wished to organise, which might have been prejudicial to the interests of the party, but the party did not have the power to authorise the *Interahamwe* to organise these demonstrations.³⁴³

247. Jean-Pierre Turatsinze may have sat in an office at the MRND headquarters, but he did not have his own small office and he was not in charge of the *Interahamwe*.³⁴⁴ Turatsinze was merely a driver and staff member of the National Secretariat of the MRND. He was a member of the MRND and was recruited in 1992. Turatsinze was used to deliver messages and worked at the reception during a congress on 3 July 1993. He was not in charge of coordinating the activities of the *Interahamwe*, he was not Ngirumpatse's right-hand man, and he was not the liaison between Ngirumpatse and the *Interahamwe*. Turatsinze had a primary school education, did not speak French, was fired for embezzlement and barred from the premises of the MRND National Secretariat in November 1993.³⁴⁵

248. It is wrong to assume that Ngirumpatse controlled the *Interahamwe* simply because others contacted him first when they wanted to change the behavior of the *Interahamwe*. He was simply the liaison between the *Interahamwe* and the MRND.³⁴⁶

Deliberations

Cautionary Issues

249. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH, ALG, AXA, UB, and Defence Witnesses Rutaganda and Nahimana were convicted and imprisoned for participating in the genocide.³⁴⁷ Furthermore, at the time of their testimony, Prosecution witnesses AWD and T were detained and awaiting trial on genocide charges.³⁴⁸ The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program³⁴⁹ and that

³⁴¹ *Id.*, pp. 18-22.

³⁴² T. 2 February 2011, p. 19.

³⁴³ *Id.*, p. 19.

³⁴⁴ T. 2 February 2011, pp. 20, 21.

³⁴⁵ *Id.*, pp. 16-18.

³⁴⁶ T. 1 February 2011, p. 40.

³⁴⁷ See paras. 170 (HH); 157 (ALG); 216 (AXA); 154 (UB); 187 (Rutaganda); and 237 (Nahimana).

³⁴⁸ See paras. 219 (AWD) and 178 (T).

³⁴⁹ See paras. 175 (G) and 178 (T).

Rutaganda called Ngirumpatse as a Defence witness in his own trial. The Chamber also takes into account that Witness Delphine Ngirumpatse is Ngirumpatse's daughter.³⁵⁰

250. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Expansion of the Interahamwe Throughout Rwanda

251. The *Interahamwe* was initially established in Kigali *préfecture*. Prosecution Witnesses HH, ALG and G, who lived in Kigali at the time, stated that the *Interahamwe* was established at all levels in that *préfecture*.

252. In April 1992, the MRND National Congress resolved that the *Interahamwe* should be set up throughout Rwanda. Witnesses ALG, HH, and G and Defence Witness Rutaganda testified that this actually happened. The evidence of Prosecution Witness AXA, and the transcript of the 7 November 1993 rally corroborate that the *Interahamwe* was established in Kibuye *préfecture* and Ngirumpatse confirmed that the *Interahamwe* was established in Gisenyi *préfecture*. It is also apparent that the *Interahamwe* existed in Kibungo *préfecture*.

253. Defence Witness Mpambara testified that the *Interahamwe* were attacked by youth groups of the PL party after an MRND rally in Kibungo in 1993. Although he stated that the *Interahamwe* was not an organised, structured group in Kibungo, he did not dispute that it existed in that *préfecture*. Furthermore, a report from General Augustin Ndindiliyimana³⁵¹ confirms that the *Interahamwe* existed in Kibungo in 1993 and were being trained in Mutara sector where Witness Mpambara commanded his troops.³⁵² Ngirumpatse, on the other hand, testified that apart from Kigali and Gisenyi *préfectures* there was no "development or organisation" of the *Interahamwe* nationwide. If by this, Ngirumpatse meant that there were *préfectures* where the *Interahamwe* did not exist, the Chamber finds the evidence that the *Interahamwe* existed in all *préfectures* in one form or another more probative.

254. The evidence of Prosecution Witness T that the Provisional National Committee sent members to Gisenyi *préfecture* in January 1994 and Butare *préfecture* from March to April 1994 to set up *Interahamwe* organisations is, with respect to Gisenyi, corroborated by Ngirumpatse's evidence. It is also generally supported by the evidence of Witness ALG that Ngirumpatse announced that *Interahamwe* were to be set up throughout the country at the Kigali-ville prefectural committee in January 1994.

Structure of the Interahamwe

255. It was decided during the April 1992 MRND congress that the *Interahamwe* should be established throughout the country at the prefectural and communal levels. It follows from the evidence of Witnesses HH and G that the *Interahamwe* was, in fact, organised at the prefectural level in all *préfectures*. This is consistent with the Chamber's findings with respect to Kigali *préfecture* (see para. 251), and with respect to Gisenyi *préfecture* it is

³⁵⁰ See para. 230.

³⁵¹ See Exhibit P512, "Les événements du Rwanda d'Octobre 1990 à Juin 1994".

³⁵² See T. 16 September 2010, p. 6; T. 20 September 2010, p. 32.

consistent with the evidence of Ngirumpatse and Rutaganda. Witness AXA, however, only testified that *Interahamwe* were established in his *commune* in Kibuye *préfecture*. Witness T stated that *Interahamwe* were established at the University of Butare, and Rutaganda claimed that independent cells of *Interahamwe* were established in the *préfectures*.

256. The Chamber notes that Witness HH was a local *Interahamwe* leader in Kigali and that the functions of Witness G within the *Interahamwe* movement were basically related to Kigali, wherefore these witnesses may not have been aware of the situation in all *préfectures*.

257. The Chamber also notes that the MRND was only the dominant party in some *préfectures*. With respect to *préfectures* where the MRND was not dominant, the Chamber believes that the evidence bears out as follows. In Kibuye *préfecture*, *Interahamwe* from Gisenyi were sent to assist with the assault on Tutsis in Bisesero (see IV.6.3); and in Butare *préfecture*, the *Interahamwe* was set up at the university.

258. Consequently, the Chamber is convinced that the *Interahamwe* was well organised in Kigali and Gisenyi *préfectures*. It is not convinced, however, that the *Interahamwe* was organised to the same degree in other *préfectures*.

Formal Status of the Interahamwe

259. The transcripts from the April 1992 MRND congress, which Ngirumpatse and Nahimana referred to, show that the decision to formally affiliate the *Interahamwe* movement with the MRND party was deferred. There is no evidence that this formal affiliation ever took place or that a statute was ever drafted to define the status and organisation of the *Interahamwe*.

Role of Jean-Pierre Turatsinze

260. The Chamber has also considered the role of Jean-Pierre Turatsinze. It is undisputed that Turatsinze was an employee of the MRND who was based at the party headquarters. The testimony of Prosecution Witnesses HH and ALG that he was the liaison between the *Interahamwe*, Ngirumpatse, and the Executive Bureau (not the Provisional National Committee) is corroborated by the testimony of Prosecution Witness AWD, who believed Turatsinze was the leader of the *Interahamwe*, and supported by the Chamber's findings in (IV.1.5.2) regarding Turatsinze's role in the distribution of weapons to the *Interahamwe*.

261. Although Ngirumpatse and Nzirorera asserted that Turatsinze was nothing more than an uneducated driver and errand-runner who did not serve as a liaison with the *Interahamwe*, the Chamber finds the Prosecution's evidence more probative and believes beyond a reasonable doubt that Turatsinze was a liaison between the *Interahamwe* nationwide and Ngirumpatse and the Executive Bureau.

Control Over the Interahamwe

262. The Prosecution has presented no evidence that the MRND National Committee or Political Bureau took a decision to expand and seize control over the *Interahamwe* at the 1993 congress.

263. It follows from the Chamber's findings and the testimony of Defence Witness PTR that the Provisional National Committee exercised control over the *Interahamwe* in Kigali-

ville *préfecture* (see IV.1.3; V.7.1) This is corroborated by Ngirumpatse to the extent that he testified that the committee had exclusive control over the *Interahamwe*.

264. With respect to who or which organ, if any, had ultimate control over the *Interahamwe* in Kigali-ville and other *préfectures*, there is some variation between Witnesses HH, ALG, T, AWD, UB, and G as to whether it was Ngirumpatse, the National Secretary, or the Executive Bureau. The variations, however, can be explained by the witnesses' reference to different periods of time and the specificity of the terms they chose to use. The Chamber understands their testimony to mean that Ngirumpatse was involved in controlling the *Interahamwe* either as National Secretary (from April 1992 to July 1993) or thereafter as MRND President and chair of the Executive Bureau.

265. The Prosecution's evidence is supported by the evidence underpinning the Chamber's findings in (IV.1.2) regarding Ngirumpatse's pivotal role in the formation of the *Interahamwe* in Kigali-ville *préfecture* and its expansion to the rest of the country, in paragraph 258 concerning Turatsinze's role as a liaison between the *Interahamwe* and Ngirumpatse and the Executive Bureau, and in (V.1.4.1) with respect to the pacification tour of Kigali roadblocks conducted by members of the Provisional National Committee of the *Interahamwe*.

266. Furthermore, the testimony of Ngirumpatse and Rutaganda that the Kigali-ville *Interahamwe* was ultimately run by the Provisional National Committee, which only informed Ngirumpatse of its activities without seeking his instructions, does not prevail over the Prosecution's evidence or the Chamber's prior findings regarding Turatsinze's role.

267. The same is true for the testimony of Ngirumpatse and Rutaganda that the *Interahamwe* movements in other *préfectures* had their own leaders. The Chamber does not consider this testimony believable when it takes into account the centralised structure of the MRND. Such a structure would not permit the essential party functions to be left in the hands of a self-appointed committee or self-appointed local leaders.

268. Finally, the Chamber attaches little weight to the testimony of Defence Witnesses GCF, HDE and YBZ. Proof of isolated incidents where Ngirumpatse would have come into conflict with the *Interahamwe* is not inconsistent with his authority over the *Interahamwe* on a national level. A national figure can easily come into conflict with individual, bottom-rung subordinates, particularly during a period of civil war. Furthermore, the Chamber's findings do not exclude the possibility that local *Interahamwe* cells may have existed, which were not under the complete control of the MRND leadership.

269. The Chamber, therefore, with respect to the *Interahamwe* movement in Kigali-ville and Gisenyi *préfectures* and those other *préfectures* where the *Interahamwe* was well organised along party structures, is convinced beyond a reasonable doubt that Ngirumpatse was either the ultimate authority as National Secretary or as President of the MRND and head of the Executive Bureau.

Conclusion

270. The Prosecution has proved beyond a reasonable doubt that *Interahamwe* committees were established in Kigali-ville and Gisenyi *préfectures* according to MRND party structures. The *Interahamwe* was also established in other *préfectures* such as Butare and Kibungo but these organs did not follow MRND party structures in the same way as Kigali-ville and Gisenyi.

271. Ngirumpatse and the Executive Bureau of the MRND, including Karemera as the Vice-Chairman, represented the ultimate authority over the *Interahamwe* in Kigali-ville and Gisenyi. In this regard, Ngirumpatse exerted his authority as National President of the MRND and head of its Executive Bureau.

272. The Prosecution has not proved the other allegations in paragraph 24.2 beyond a reasonable doubt.

1.4 Military Training of the *Interahamwe* Prior to April 1994

Introduction

Allegation in the Indictment

273. Beginning in 1993, Ngirumpatse agreed with MRND national leaders, civilian authorities in the territorial administration, and military authorities in the Ministry of Defence and Rwandan Armed Forces to provide the *Interahamwe* with military training so they could later be deployed to kill and harm the Rwandan Tutsi population.³⁵³

274. Minister of Defence Augustin Bizimana and his *Directeur de cabinet* Théoneste Bagosora took decisions, which the Accused were aware of and complicit in, to provide training that occurred in military camps in Kigali, Byumba, Gisenyi and Ruhengeri. The Prosecution specifically alleges that training occurred at Gabiro, Mukamira, and Bigogwe camps as well as in the neighbouring forests including Gishwati and Akagera.³⁵⁴

Evidence

15 February 1993 Letter from Ngirumpatse to President Habyarimana

275. In the letter, Ngirumpatse stated that he believed it was necessary to urgently begin secret training of civilian youth. He also stated that Zaire and Kenya must be alerted so they may join efforts to combat the plan of the RPF to conquer Rwanda, Burundi, and eastern Zaire. This plan could only be stopped with the participation of all people.³⁵⁵

Prosecution Witness ALG

276. The witness³⁵⁶ testified that Renzaho, the Kigali-ville *préfet*, told him and other MRND leaders around March 1993 that the *Interahamwe* would undergo military training and that the decision had been taken by senior MRND officials. The training was to be kept a secret. Renzaho said they could not let the opposition parties know about it, because the purpose of the training was to prepare the *Interahamwe* to support the FAR, particularly in defending Kigali from the enemy. By January 1994, two groups had been trained, but he was not in a position to know the duration of the individual military training sessions.³⁵⁷ The *Interahamwe* were carrying grenades and rifles in 1993 and even more so in 1994 after

³⁵³ Indictment, para. 24.3. The Chamber will address the stockpiling and distribution of weapons referred to in this paragraph in (IV.1.5), *infra*.

³⁵⁴ Indictment, para. 24.4.

³⁵⁵ Exhibit P027, "15/02/93 Letter from Ngirumpatse about Military Training", pp. 1, 2.

³⁵⁶ See para. 157.

³⁵⁷ T. 26 October 2006, pp. 47, 48, 56.

they had undergone military training.³⁵⁸ Senior officials were trained at the Kabuga building and then taken to Gabiro and Bigogwe.

277. As of 1990, Tutsis were defined as the enemy because they made up most of the RPF.³⁵⁹ The witness heard Ngirumpatse mention “enemies of democracy,” “enemies of the republic,” and “enemies who did not accept the achievements of the 1959 revolution” in 1993 and 1994 and understood this to refer to Tutsis.³⁶⁰

Prosecution Witness AWD

278. The witness³⁶¹ stated that the *Interahamwe* received military training in 1993 in Gabiro, Bigogwe and several locations in Kigali. Approximately 700 *Interahamwe* were selected in Kigali and trained for one month, returning to Kigali towards the end of December.³⁶² The witness knew about the training because the *Interahamwe* were his neighbours, and although it was a secret where they went, when they returned they had R4 weapons. Also, the *Interahamwe* showed people pictures taken of them during the training.³⁶³

279. The principal group responsible for coordinating the military training for the *Interahamwe* was the Executive Bureau of the MRND. The *Interahamwe* were supposed to support the Presidential Guard as they protected the President. Turatsinze was the liaison between the Executive Bureau and the *Interahamwe* who were receiving military training.³⁶⁴ The *Interahamwe* were “peasants who could not keep a secret.” When they were drunk, they would speak freely about the training they had received, the purpose of which was to kill Tutsis.³⁶⁵

280. The witness was invited to Ngirumpatse’s home, where Ngirumpatse and Karemera informed him that they were organising security zones, and placing MRND officials in charge of these zones.³⁶⁶ The individuals placed in charge were Aminadab Buhake (the chairman of the MRND in the Kicukiro *commune*) and Nyarugenge Karera (the *sous-préfet* of the Kigali-rural *sous-préfecture*). The MRND wanted to organise the *Interahamwe* who had just undergone training at Mutara or elsewhere to be responsible for the security in town, to counter the RPF element that was at the CND building.³⁶⁷

Prosecution Witness HH

281. The witness³⁶⁸ became aware that the *Interahamwe* were being trained militarily in 1993. He recalled that he was invited to the Kabuga building in 1993 by Jean-Pierre Turatsinze, along with other *secteur* leaders of Kigali and neighbouring *communes*.

³⁵⁸ *Id.*, p. 42.

³⁵⁹ *Id.*, p. 48.

³⁶⁰ *Id.*, p. 49.

³⁶¹ See para. 219.

³⁶² T. 10 October 2007, p. 22.

³⁶³ *Id.*, p. 23.

³⁶⁴ *Id.*, p. 25.

³⁶⁵ *Id.*, p. 26.

³⁶⁶ *Id.*, pp. 30, 32.

³⁶⁷ *Id.*, p. 32.

³⁶⁸ See para. 170, *supra*.

282. There they were told that they needed to short-list youths to be sent for military training. Ngirumpatse was present during this meeting and spoke in agreement with Turatsinze about selection of young people for military training. The witness received secret military training, along with other *secteur* leaders, at the Kabuga building prior to beginning the selection of youths to undergo training. The training at the Kabuga building was conducted by a former Presidential Guard soldier named Gaparata.³⁶⁹

283. The witness sent *Interahamwe* on two occasions to be trained at Bigogwe and Mutara camps. Selection for training was based upon their ability to be trusted and to keep secrets.³⁷⁰ The witness participated in the distribution of firearms to those who were to be trained towards the end of 1993.³⁷¹ The witness received firearms along with Turatsinze, and was sure that Ngirumpatse had authorised their distribution from a conversation with Silas Kubwimana, from whose home the witness and Turatsinze retrieved the weapons.³⁷²

Prosecution Witness T

284. The witness³⁷³ testified that the *Interahamwe* began to receive military training in July 1993. The training was organised by the MRND leadership through the Minister of Defence. Ngirumpatse specifically promised, in light of increased security concerns, that certain members of the *Interahamwe* would receive training in order to support the army, and participated in continued meetings developing this plan. Discussions began on this idea in November 1992, and then more particularly after the RPF attack of February 1993.³⁷⁴

285. The military training took place in Rwandan army camps outside Kigali. Those returning from such training would most commonly say they had been trained at Bigogwe, Mutara, or Bugesera. The training would last two to three weeks, and the *Interahamwe* were being trained to fight the RPF, RPF infiltrators, and its accomplices.³⁷⁵

286. The witness roughly defined “accomplices” as persons considered to be infiltrators because they were unknown and spoke Kinyarwanda poorly, or persons who openly declared their affiliation with the RPF.³⁷⁶

Prosecution Witness G

287. The witness³⁷⁷ testified that the *Interahamwe* received military training on how to handle weapons, and that as secretary-general and then chairman of the MRND, Ngirumpatse knew of the military training of the *Interahamwe*.³⁷⁸ The military training of the *Interahamwe* began in the latter half of 1993 so they could protect officials. It was the

³⁶⁹ T. 8 November 2006, pp. 48, 49.

³⁷⁰ *Id.*, p. 51.

³⁷¹ *Id.*, p. 52.

³⁷² T. 8 November 2006, p. 52.

³⁷³ See para. 178, *supra*.

³⁷⁴ T. 24 May 2006, pp. 16, 17.

³⁷⁵ *Id.*, pp. 25, 26.

³⁷⁶ T. 24 May 2006, p. 26.

³⁷⁷ See para. 175, *supra*.

³⁷⁸ T. 10 October 2005, pp. 62, 64.

Executive Bureau of the MRND that made the decision to begin the military training of the *Interahamwe*.³⁷⁹

Prosecution Witness ZF

288. The witness was a radio operator at Butotori military training facility.³⁸⁰ In late 1992, he overheard a meeting at Butotori Camp chaired by Théoneste Bagosora and attended by Joseph Nzirorera, among others. The topic of the meeting was the need to preempt the Tutsis' plan to exterminate Hutus.³⁸¹

289. The witness also learned of two occasions between 1992 and 1994 when Ngirumpatse attended meetings in Gisenyi that discussed *Interahamwe* support of the military. The witness heard from Bizumuremyi on the day of the meetings that the meetings addressed discipline among the *Interahamwe* and the need for a clear structure in that organization. Ngirumpatse chaired these meetings at the *Palais* MRND.³⁸²

Prosecution Witness Frank Claeys

290. The witness was a lieutenant colonel in the Belgian army who served in the UNAMIR peacekeeping force under General Roméo Dallaire,³⁸³ and had extensive contact with the informant Jean Pierre Turatsinze.³⁸⁴

291. He was told prior to 10 January 1994 that groups of young people were being gathered near Kanombe and then brought by bus out of Kigali to military training camps. At that time, he did not have specific information about the type of training the individuals were receiving at those camps,³⁸⁵ but Captain Deme's sources revealed to UNAMIR in December 1993 that the *Interahamwe* were receiving military training.³⁸⁶ The information obtained in December identified Kanombe, Bigogwe, Mutara, Bugesera, Gako, and the Nyungwe forest as training sites.³⁸⁷

292. On 10 January 1994, the witness was present at a meeting with Major Kesteloot, Captain Deme, Colonel Marchal, and Turatsinze.³⁸⁸ At this meeting, which lasted about an hour and a half, Turatsinze identified himself as responsible for training the *Interahamwe*.³⁸⁹ Turatsinze told them that he was paid 150,000 Rwandan francs per month by the MRND party to train the *Interahamwe* in close combat and military discipline.³⁹⁰

293. Turatsinze never identified himself as a member of the military or to have personally provided military training. Claeys assumed he was in charge of organising transportation from Kigali to the military camps outside the city and arranging for barracks

³⁷⁹ T. 27 October 2005, pp. 26, 27.

³⁸⁰ T. 15 May 2006, pp. 17, 18 (closed session).

³⁸¹ T. 16 May 2006, pp. 61-63.

³⁸² T. 16 May 2006, pp. 26-30.

³⁸³ T. 21 November 2006, pp.40-42.

³⁸⁴ T. 21 November 2006, p. 44.

³⁸⁵ T. 21 November 2006, p. 46.

³⁸⁶ T. 28 November 2006, p. 29.

³⁸⁷ *Id.*, p. 27.

³⁸⁸ T. 21 November 2006, pp. 47, 50.

³⁸⁹ *Id.*, p. 55; T. 23 November 2006, p. 4.

³⁹⁰ T. 21 November 2006, p. 60.

and things of that nature. From a military standpoint, Turatsinze was an operations officer, not a military instructor, because he was based in Kigali rather than at one of the camps outside the city.³⁹¹

Prosecution Witness UB

294. In June 1993, the witness³⁹² had a meeting with Turatsinze, and at that time asked about the *Interahamwe* in his *secteur* who had weapons. Turatsinze admitted distributing weapons to *Interahamwe* and that the *Interahamwe* had undergone training. By the time of this meeting, training had already taken place, but had been done in secret. The witness only became aware of it when he saw *Interahamwe* with firearms. In the June 1993 meeting, he learned that the party was aware of the training.³⁹³ *Interahamwe* were selected by the MRND Executive Bureau in the Kabuga building and then sent to a military camp in Gabiro, and there was also training occurring at Gako and in Ruhengeri.³⁹⁴ His estimate was that more than 1700 people underwent training in the military camps.³⁹⁵

295. *Interahamwe* leaders selected youths to undergo training. The list of selected youth was sent to the Executive Bureau of the MRND before being transmitted to the President and Secretary of the *Interahamwe*.³⁹⁶ The person who coordinated between the MRND Executive Bureau and the *Interahamwe* Provisional National Committee on military training was Turatsinze, who held a position in the Executive Bureau.³⁹⁷

Prosecution Witness GOB

296. The witness³⁹⁸ testified that the *Interahamwe* were receiving military training as early as 1992. Soldiers who received training told him about this because they respected the positions he held.³⁹⁹

297. The MRND, including the witness, mobilised reservists and active soldiers including Presidential Guard members, and recruited them into the ranks of the *Interahamwe* so they could train the *Interahamwe*.⁴⁰⁰ Two examples of such people are Sergeant Sebitabi, who was *Interahamwe* president in Kimisagara and Corporal Mayuya.⁴⁰¹

298. Although he did not know whether the MRND had the capacity to kill 10,000 Tutsis in 1993, he was aware that training was occurring at the time. The MRND wanted to do a test "preparing acts of genocide" to see whether it had the capacity to carry out this plan, should the war with the RPF resume.⁴⁰²

Prosecution Witness AWE

³⁹¹ T. 23 November 2006, p. 6.

³⁹² See para. 154, *supra*.

³⁹³ T. 2 March 2006, pp. 34, 35.

³⁹⁴ T. 23 February 2006, p. 36.

³⁹⁵ T. 24 February 2006, p. 10.

³⁹⁶ T. 23 February 2006, pp. 38-40.

³⁹⁷ *Id.*, pp. 39, 40.

³⁹⁸ See para. 181, *supra*.

³⁹⁹ T. 22 October 2007, pp. 29-31.

⁴⁰⁰ *Id.*, p. 31.

⁴⁰¹ *Id.*, p. 31.

⁴⁰² *Id.*, p. 39.

299. The witness was a *conseiller* in Kigali.⁴⁰³ During his testimony, he was serving a prison sentence in Rwanda for his role during the genocide.⁴⁰⁴

300. He received a letter signed by Ngirumpatse around the end of 1992 or early 1993 requesting that he provide character references for twelve Hutu men in his *secteur* who were being considered by the *Interahamwe*. He knew the men on the list and confirmed that they were of good character. He later saw the men leave on a bus and when they returned after three months, the men told him that they had undergone military training.⁴⁰⁵

301. Prior to hearing from the men that they had returned from training, the witness recalls four MRND meetings where he heard mention of military training activities. The first three meetings were at the Vedaste building,⁴⁰⁶ and the fourth was at the residence of Félicien Kabuga (Kabuga Building).⁴⁰⁷ Ngirumpatse spoke at the first three meetings, and was present, along with Karemera and Joseph Nzirorera, at the fourth. During the first meeting, Ngirumpatse spoke of how the MRND was recruiting young people for military training.⁴⁰⁸ At some point during the first three meetings, Ngirumpatse also said that the *Interahamwe* had undergone training and would fight should the MRND come under attack in the future. At the fourth meeting, which the witness originally recalled as having occurred around August 1993, but which the witness related to an event that happened in December 1993, Nzirorera said that the *Interahamwe* had completed their training at Gabiro and received firearms.⁴⁰⁹

Prosecution Witness XBM

302. The witness was a leader of the MDR party in Gisenyi in 1991 and 1992. He changed parties as a result of *kubohoza* and became a member of the CDR party from 1992 until 1994, though he claims to have continued to owe allegiance to the MDR.⁴¹⁰ He attended a rally around October or November 1993 at Umuganda Stadium in Gisenyi.⁴¹¹

303. The more than 500 *Interahamwe* in attendance at the Umuganda Stadium rally were wearing uniforms and were brought to the stadium from Ruhengeri and Gisenyi on buses. Ngirumpatse asked that the youth undergo training so that, if necessary, they could help the Rwandan Armed Forces defend on the front lines. This training occurred at the Mutura communal offices and at Bigogwe.⁴¹²

Prosecution Witness Ahmed Napoléon Mbonnyunkiza

⁴⁰³ T. 3 July 2007, p. 17.

⁴⁰⁴ *Id.*, pp. 17, 18.

⁴⁰⁵ *Id.*, p. 24.

⁴⁰⁶ T. 4 July 2007, pp. 15, 16.

⁴⁰⁷ T. 3 July 2007, pp. 23, 24;

⁴⁰⁸ T. 4 July 2007, pp. 15, 16.

⁴⁰⁹ T. 3 July 2007, p. 24; T. 4 July 2007, pp. 17, 18; T. 9 July 2008, pp. 27, 28.

⁴¹⁰ T. 20 June 2006, pp. 50, 51.

⁴¹¹ T. 21 June 2006, p. 20.

⁴¹² *Id.*, pp. 24, 25.

304. The witness⁴¹³ testified that military training of the *Interahamwe* was carried out in 1993, and that such training could not have happened without approval by the Executive Bureau.⁴¹⁴

Written Statement of Prosecution Witness GAY

305. The witness is a rape victim who testified that *Interahamwe* underwent military training in Mukingo before 1994.⁴¹⁵ They were trained at the Mukingo *commune* office by soldiers from Mukamira in Nkuli *commune*. Kajelijeli was heavily involved in supervising the training.⁴¹⁶ The witness knows this because she recalls that one of the men who raped her, Michel Nyigaba, who she knew prior to the rape in April 1994, was undergoing training before 1994.⁴¹⁷

Prosecution Witness GBU

306. The witness lived in Busogo and was a member of the MRND.⁴¹⁸ In mid-1992, he, along with approximately 300 others, received secret training at Mukingo *commune* office from soldiers in weapons handling, grenades, other military exercises such as raids, and manning roadblocks. Nzirorera visited during training on at least one occasion and promised uniforms and membership cards.⁴¹⁹

Prosecution Witness BDW

307. The witness was a soldier in the Rwandan Armed Forces. He helped train the *Interahamwe* in October 1993 in Bwakira.⁴²⁰ He and others were asked to help communal authorities in Gacyira *commune* by providing military training to youths selected from *secteurs* within the *commune*.⁴²¹ He also witnessed military training at Birambo, which began before the training in Bwakira. He believes the training in Birambo began between July and September 1993. He estimates that by October 1993, military training was underway in 11 *secteurs*, and about 600 individuals were receiving training from various instructors.⁴²² These individuals were divided into smaller groups of approximately 50 individuals during the training.⁴²³ His superiors at Bwakira were former Captains in the Rwandan Armed Forces (at the time reservists) Mudaheranwa and Ndakaza, and Warrant Officer Murindangabo,⁴²⁴ though he later clarified that their roles were supervisory and that they were not instructors.⁴²⁵

⁴¹³ See para. 178.

⁴¹⁴ T. 27 October 2005, pp. 26, 56.

⁴¹⁵ T. 19 January 2010, pp. 28, 29.

⁴¹⁶ Exhibit P111, (under seal).

⁴¹⁷ T. 19 January 2010, pp. 28, 29.

⁴¹⁸ T. 1 December 2006, p. 18.

⁴¹⁹ T. 4 December 2006, pp. 18, 19.

⁴²⁰ T. 14 November 2007, p. 48.

⁴²¹ T. 28 November 2007, p. 22.

⁴²² T. 14 November 2007, p. 48.

⁴²³ T. 28 November 2007, p. 21.

⁴²⁴ *Id.*, p. 18.

⁴²⁵ T. 21 April 2008, p. 14.

308. On 13 October 1993, Karemera held a meeting at the multi-purpose hall of Bwakira *commune*.⁴²⁶ Present at the meeting were Karemera, André Kagimbangabo, Colonel Ndahimana, a businessman whose name the witness did not know, a representative of the *Impuzamugambi* named Amani Mugabo, and *Bourgmestre* Kabasha.⁴²⁷ During that meeting, Karemera called upon the attendees to help train the *Interahamwe*, which to the witness meant to help the army.⁴²⁸ Karemera identified the enemy of the country as the Tutsis, and explained where to find them and how to identify them.⁴²⁹ Training of the *Interahamwe*, who had already been selected at the time of the meeting, commenced after this meeting.⁴³⁰

Prosecution Witness AXA

309. The witness⁴³¹ states that in April 1993 or 1994, Karemera, Munyampundu, and Ruhigira met at the Bwakira *commune* office. There were around 200 *Interahamwe* gathered and Karemera told them that he had come to identify youngsters who would undergo military training. Karemera then provided firearms to be used for the training; approximately 20 guns were distributed.⁴³² Military training of the *Interahamwe* took place in the Mashiga Valley or in the forest that was below the commune office. They also received training in Ndoha⁴³³ Forest, which was a very small and crowded area for militia training.⁴³⁴

Nzirorera Defence Witness Georges Rutaganda

310. The witness⁴³⁵ was not aware of any military training provided to the *Interahamwe* prior to the death of President Habyarimana. He was not involved in it and does not know how or why the *Interahamwe* committee would have considered training those people. Furthermore, the only evidence of such training is from people who say that they were trained or provided training and there is no evidence of the logistics needed for such training, therefore it could not have taken place. Any statements to the contrary are part of an attempt to frame the MRND.⁴³⁶

311. The 1998 report by Augustin Ndindiliyimana was merely saying that the *Interahamwe* had gone to support the army in fighting the RPF, which was true in the sense that many civilians went and participated and supported the army. It cannot be said, however, that the *Interahamwe* Provisional National Committee played a role in sending them. The letter of the MDR Party, which complained about military training of

⁴²⁶ T. 14 November 2007, pp. 54, 55.

⁴²⁷ *Id.*, p. 55; T. 29 November 2007, p. 2.

⁴²⁸ T. 28 November 2007, p. 23.

⁴²⁹ T. 14 November 2007, p. 55; T. 28 November 2007, p. 23.

⁴³⁰ T. 28 November 2007, p. 23, 26, 27.

⁴³¹ See para. 216, *supra*.

⁴³² T. 20 November 2007, pp. 8-11.

⁴³³ The English transcript misspells the name of the forest as "Ndora". The French transcript correctly spells it as "Ndoha".

⁴³⁴ T. 20 November 2007, pp. 13-16.

⁴³⁵ See para. 187, *supra*.

⁴³⁶ T. 12 April 2010, p. 33; T. 13 April 2010, pp. 54, 59.

Interahamwe in Kanombe is part of the malicious manipulation meant to frame the *Interahamwe*.⁴³⁷

Nzirorera Defence Witness Tharcisse Renzaho

312. The witness is a former colonel of the Rwandan Armed Forces and has been sentenced to life imprisonment by the Tribunal for his role in the genocide.⁴³⁸

313. Prior to the death of Habyarimana, he never received information that the *Interahamwe* was receiving military training,⁴³⁹ or that Rwandan soldiers were prohibited from joining a political party. He denies having informed Augustin Bizimana, Karekezi and Mbayarehe that the *Interahamwe* were undergoing military training in March 1993.⁴⁴⁰ He only became aware of complaints of *Interahamwe* being trained in Kanombe in 1993 after reading a report from the Kanombe representative of MDR.⁴⁴¹

Nzirorera Defence Witness Assiel Ndisetse

314. The witness was *conseiller* in Busogo in Ruhengeri *prefecture*.⁴⁴² There was neither military training in Mukingo before Habyarimana's death nor training at Isimbi. Those on night patrols learned how to handle firearms, and therefore had some training at the Mukamira military camp and borrowed weapons from soldiers for the night.⁴⁴³ There were no *Interahamwe* in Mukingo or Ruhengeri. Niyigaba's group was engaged in agriculture and had no link to the MRND, Joseph Nzirorera, or Isimbi. They were not known as *Interahamwe*.⁴⁴⁴

Nzirorera Defence Witness Anatole Nsengiyumva

315. The witness worked as commander of the operational sector in Gisenyi in early June 1993, before becoming liaison operator with *Opération Turquoise* in late June 1994 and head of military intelligence.⁴⁴⁵ He was convicted of genocide by the Tribunal at the time of his testimony.⁴⁴⁶

316. The witness believed that no *Interahamwe* training took place prior to 6 April 1994, but he heard that some kind of training was being held in some military camps in Gabiro, Gako, Bigogwe, Nyungwe Forest, and Gishwati Forest. He heard that the Israelis and French were involved in the training, but that if the training were really going on, the Belgian technical teams in the area would have reported something to that effect. Training for the self-defence programmes did take place at various locations in Mutara *secteur*.⁴⁴⁷ According to the witness, UNAMIR Force Commander Roméo Dallaire said that the

⁴³⁷ T. 14 April 2010, pp. 2-5.

⁴³⁸ See *Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A, Judgement (AC), 1 April 2011.

⁴³⁹ T. 14 April 2010, p. 56.

⁴⁴⁰ *Id.*, p. 46.

⁴⁴¹ T. 27 April 2010, pp. 18, 19.

⁴⁴² T. 23 November 2009, p. 17.

⁴⁴³ *Id.*, pp. 19, 20, 25.

⁴⁴⁴ T. 23 November 2009, p. 21; T. 24 November 2009, pp. 19-23; T. 25 November 2009, pp. 11, 15.

⁴⁴⁵ T. 28 April 2010, p. 4.

⁴⁴⁶ *Id.*, p. 6.

⁴⁴⁷ T. 28 April 2010, pp. 14, 16, 30.

Israelis and French were involved in training *Interahamwe*, but this would have been difficult for the Belgians to miss or keep quiet about.⁴⁴⁸

Karemera Defence Witness TXL

317. The witness comes from Bwakira *commune* in Kibuye.⁴⁴⁹ Neither of the people who would have been responsible for training in Bwakira *commune*, namely Captain Mudaheranwa or Captain Ndakaza, were in charge of *Interahamwe* militia training there. Mudaheranwa was physically handicapped and could not conduct such training, and Ndakaza was not pleased with the Habyarimana regime and thus would not have trained the youth wing of the regime. Both Mudaheranwa and Ndakaza worked in places that were a distance away from Bwakira and they would not have left their offices to train people who were not members of the services in which they worked.⁴⁵⁰

318. He knows the Ndoha Forest area as a wooded, marshy area with bushes and shrubs some distance away from Bwakira Commune with no road leading to the wood, and this type of terrain was not ideal for *Interahamwe* military training.⁴⁵¹ He also knows Birambo *secteur* Primary School and the Mashiga Valley, and neither was an appropriate place for the *Interahamwe* to conduct military training.⁴⁵²

Karemera Defence Witness RTM

319. The witness was an eighteen year old student who was at home in Bwakira *commune* during the events of 1994.⁴⁵³ He stated that there was no training of *Interahamwe* in Bwakira *commune*, because the MRND had a weak presence there since 1991.⁴⁵⁴ The Mashiga valley and the lower forest of Ndoha would have been too marshy for military training.⁴⁵⁵

Karemera Defence Witness WSL

320. The witness was a diplomat.⁴⁵⁶ He testified that military training could not have occurred in the Ndoha wooded area, the hills located at the end of the Nzaratsi plateau, without local inhabitants knowing about it. It is not possible that Captain Ndakaza would have trained *Interahamwe* in the Ndoha wooded area because he had been dismissed from the army by the MRND and, therefore, would never have trained the *Interahamwe* for the MRND.⁴⁵⁷

Karemera Defence Witness ETK

⁴⁴⁸ *Id.*, p. 16.

⁴⁴⁹ T. 14 July 2008, p. 10.

⁴⁵⁰ *Id.*, p. 15.

⁴⁵¹ *Id.*, pp. 17, 18.

⁴⁵² T. 14 July 2008, pp. 18, 19.

⁴⁵³ T. 12 November 2008, pp. 24, 25 (closed session); T. 12 November 2008, p. 44.

⁴⁵⁴ *Id.*, p. 31.

⁴⁵⁵ *Id.*, pp. 31, 32.

⁴⁵⁶ T. 7 May 2008, p. 43.

⁴⁵⁷ *Id.*, p. 50, 51.

321. In April 1994, the witness was a member of the government in Birambo *sous-préfecture*, and was therefore aware of the happenings in Mwendo *commune*, Kivumu *commune*, and Bwakira *commune*.⁴⁵⁸ He had no information about military training before, after, or between 1993 and 1994 in Bwakira *commune*. He knows Mashiga Valley and it is not suitable for military training because it is a small field in a marsh cultivated by local inhabitants to grow potatoes and beans.⁴⁵⁹ He also knows Birambo Primary School and he never saw any soldiers undergoing military training in such open areas, and did not know how people could claim that military training took place on the football pitch. He knows Ndoha Forest as a place that is not very large, with a marsh, and situated near Bwakira. He did not see how military training could take place in such an area with so many hills.⁴⁶⁰

Karemera Defence Witness BWW

322. The witness is a teacher who has known Karemera since childhood.⁴⁶¹ He was not aware of any *Interahamwe* military training in the areas of Birambo or Bwakira, and the allegations that Karemera distributed weapons and ammunition in these areas are lies.⁴⁶² There were no *Interahamwe* at Kirinda or at the *bureau communal*.⁴⁶³

Ngirumpatse Defence Witness Jonas Maniliho

323. The witness is a Swiss national of Rwandan origin.⁴⁶⁴ The witness worked in the Kabuga Building in Kigali until 7 April 1994, after which time nobody was allowed access to the building. He first heard about the idea of military training taking place within the Kabuga building in court the day he testified. It was impossible for any secret activity to have been carried out in the Kabuga Building.⁴⁶⁵

Nzirorera Defence Witness Juvénal Kajelijeli

324. Juvénal Kajelijeli was *bourgmestre* of Mukingo.⁴⁶⁶ He was convicted by the Tribunal for crimes related to the genocide.⁴⁶⁷

325. There was no military training in Mukingo Commune prior to Habyarimana's plane being shot down, only recruitment drives to enlist people to protect against the RPF. Neither Rukundo, nor Niyigaba, nor Gato were selected for recruitment.⁴⁶⁸

Ngirumpatse Defence Witness Emmanuel Neretse

326. The witness was an officer in the Rwandan Armed Forces.⁴⁶⁹ He testified that there was no recruitment into the Rwandan army after April 1993 and he was not aware of any

⁴⁵⁸ T. 11 November 2008, p. 9.

⁴⁵⁹ *Id.*, pp. 22, 24, 25.

⁴⁶⁰ *Id.*, pp. 24-26.

⁴⁶¹ T. 24 March 2009, p. 21.

⁴⁶² *Id.*, p. 24.

⁴⁶³ *Id.*, p. 49.

⁴⁶⁴ T. 26 October 2010, p. 4.

⁴⁶⁵ *Id.*, p. 7.

⁴⁶⁶ T. 2 February 2010, p. 2.

⁴⁶⁷ See *Kajelijeli Appeal Judgement*.

⁴⁶⁸ T. 2 February 2010, pp. 11, 12.

clandestine training of youth by the Rwandan army; he would have known if such training was conducted because he was in an operational sector and moved around and monitored military activity.⁴⁷⁰

Defence Witness LIG-1

327. The witness was a soldier in the Rwandan Armed Forces until September 1993.⁴⁷¹ He never heard of military training being provided to the *Interahamwe* in Gisenyi, and he never saw *Interahamwe* at the military camp. Gisenyi is a small camp, and because Bigogwe was close by, any training of the *Interahamwe* would probably have occurred there instead.⁴⁷² He never heard of military training of *Interahamwe* taking place at Bigogwe camp either and was unaware of officers from Gisenyi camp who were involved in training militia elsewhere. Gisenyi had too few officers in its operational command to conduct training.⁴⁷³

Ngirumpatse Defence Witness Aloys Twambaze

328. From November 1990 the witness was at Bigogwe training facility where he trained a battalion, and then returned to the field with them. He personally trained civilians in December 1990, but those civilians are ones who intended to join the army and were going to become soldiers in the FAR. In this respect, each *préfecture* of Rwanda had a quota of candidates to be sent to the Bugesera training centre, which had been a training centre even before 1990.⁴⁷⁴

329. Bugesera was a training centre even prior to 1990, and with the outbreak of the war, two other training centres were set up because the recruitment process had to be accelerated. Those who were selected by their *préfectures* went to Bugesera training centre for medical, physical, and intellectual tests. Of those who passed the tests, some were taken to Gabiro or Bigogwe, and some of the recruits would remain at Bugesera. It was in that context that in December 1990 the witness received one thousand civilian recruits whom he was to train along with his team and who subsequently became soldiers in the Rwandan Armed Forces.⁴⁷⁵ Their ethnicity was not one of the criterion in the recruitment.

330. He was not aware of any other training of civilians apart from that at the beginning of 1992, when some civilians were then trained in areas near the border with Uganda in the handling of weapons so that they could defend themselves, because at that time the enemy had civilian infiltrators wearing civilian clothes who would use parts in the border to come into the country. At that time, the army had resorted to using citizens who could “flush out” the infiltrators, since the citizens knew who lived in their areas and were the only ones who could effectively identify who the outsiders were. If the citizens caught any such persons, they would hand that outsider to the authorities.⁴⁷⁶

⁴⁶⁹ T. 8 September 2010, pp. 38, 39.

⁴⁷⁰ T. 13 September 2010, pp. 25, 26.

⁴⁷¹ Exhibit DNZ524, *Bagosora et. al.*, T. 13 April 2005, p. 42 (extract; closed session).

⁴⁷² Exhibit DNZ524, *Bagosora et. al.*, T. 13 April 2005, p. 64.

⁴⁷³ *Id.*, p. 65.

⁴⁷⁴ T. 31 August 2010, pp. 1, 2.

⁴⁷⁵ *Id.*, p. 2.

⁴⁷⁶ *Id.*

Ngirumpatse Defence Witness Faustin Ntilikina

331. The witness was a soldier in the Rwandan Armed Forces.⁴⁷⁷ Military training only occurred as part of civil defence, the concept of which emerged in February or March 1992 in response to the Ministry of the Interior and Ministry of Defence noticing that military defences at the front line in Mutara were allowing the RPF to infiltrate and strike in areas where refugees were and to assassinate administrative personalities. Some people in those areas were therefore selected for basic military training, especially in weapons handling, so they could perform night patrols and intervene if any criminals or RPF infiltrators came to their area.

332. The witness asserts that it was more of a dissuasive measure and alerting method than a war strategy. The same was attempted in December 1993 in order to combat the RPF coming from Uganda and killing people in Mutara and Karago. A third attempt occurred in Kigali in March 1994, and the witness does not know whether any feedback was received or considered after the 31 March 1994 meeting about civil defence, but it would be false to say that any of these civil defence programmes had been designed to eliminate Tutsis.⁴⁷⁸

333. The witness never saw *Interahamwe* receive military training when he was in Kigali in January 1994. There was no training during the period when he was at headquarters, nor was he ever informed of any weapons distributed to the *Interahamwe*.

Transcript of Nzirorera Defence Witness Agnes Ntamabyaliro from Bizimungu et al. Trial

334. The witness was the Rwandan Minister of Commerce, and then Minister of Justice in the Uwilingiyimana Government and the Interim Government.⁴⁷⁹ At the time of her testimony, she was detained while her trial for crimes related to the genocide was ongoing.⁴⁸⁰

335. The government learned about military training of *Interahamwe*, and after it asked questions, it was told the training would stop. She cannot remember when this occurred, but recalls that a report that the training had stopped was produced prior to the signing of the Arusha Accords in 1993. News about distribution of weapons came in tandem with news of military training; one came before the other but she cannot recall which came first.⁴⁸¹ She heard that training was being conducted in Gabiro, and MRND Ministers were present at the cabinet meeting where these discussions occurred. Everybody at the meeting agreed that this training should stop. None of the ministers opposed the decision or abstained from voting.⁴⁸²

Matthieu Ngirumpatse

⁴⁷⁷ Exhibit DNG106 (under seal).

⁴⁷⁸ T. 2 September 2010, pp. 43-46.

⁴⁷⁹ *Bizimungu et al.*, T. 21 August 2006, pp. 7, 42.

⁴⁸⁰ *Bizimungu et al.*, T. 23 August 2006, pp. 19-21.

⁴⁸¹ *Bizimungu et al.*, T. 24 August 2006, pp. 36, 37.

⁴⁸² *Bizimungu et al.*, T. 24 August 2006, pp. 57, 58.

336. Ngirumpatse testified that the army and MRND never collaborated to exterminate the Tutsis.⁴⁸³ The allegation that he turned the *Interahamwe* into a militia, and that he provided military training to the youth of the MRND and *Interahamwe* is propaganda and fabricated.

337. On 9 January 1994, the Minister of Foreign Affairs, Mr. Gasana of the Twagiramungu wing of the MDR, issued a press *communiqué* that accused the MRND of training *Interahamwe* to kill members of opposition parties. The *communiqué*, however, did not use the term “Tutsi”. The Uwilingiyimana government held a cabinet meeting and concluded that the training alleged by Gasana did not take place.

338. With respect to his letter of 15 February 1993, Ngirumpatse states that the Executive Bureau of the MRND requested the youth be trained to keep the RPF in check militarily but this was not meant to be within the context of the civil defence movement.⁴⁸⁴ The Executive Bureau requested the discrete implementation of this initiative because, in its experience from 1991 and 1992, great caution was necessary to prevent the RPF from learning of its plans. He was simply referring to youths in general in the letter, not the *Interahamwe*. He wrote the letter and sent it directly to President Habyarimana, so there could not have been an opportunity to change the writing. If he had intended to refer to the *Interahamwe*, he would have written “*Interahamwe*” instead of “youth”.⁴⁸⁵

339. He disputes the allegation of Witness ZF that he attended two meetings at the *Palais MRND* in Gisenyi.⁴⁸⁶ It was outside the scope of his duties as MRND chairman to discuss military affairs.⁴⁸⁷

Édouard Karemera

340. Karemera asserted that Prosecution Witnesses BDW and AXA lied when they said military training took place at the primary school in Birambo, Ndoha Forest, and Mashiga Valley. The soccer pitch at Birambo primary school where military training allegedly took place is right next to the main road when one leaves Kilinda. The boundary between Bwakira and Mwendu passes through the middle of the soccer pitch, which is also across from Birambo market. Because of its location and the fact that it was used for many different activities, there is no way that military training could have been carried out there. Ndoha forest was not facing the Bwakira office, and he is not sure whether it could be used for training purposes, but Defence witnesses testified that it was unlikely and some of them are professional soldiers. Mashiga valley is not actually a valley and could not be used for training purposes since there is a busy road running right through it, and this would never work as a shooting range.⁴⁸⁸

Deliberations

Cautionary Issues

⁴⁸³ T. 27 January 2011, p. 31.

⁴⁸⁴ See also Exhibit P27, “15/02/93 Letter from Ngirumpatse about Military Training”.

⁴⁸⁵ T. 20 January 2011, pp. 8, 9; T. 2 February 2011, p. 30.

⁴⁸⁶ T. 24 January 2011, p. 24.

⁴⁸⁷ *Id.*, pp. 37.

⁴⁸⁸ T. 20 May 2009, pp. 42, 43.

341. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses ALG, HH, UB, AWE, AXA, and Defence Witnesses Rutaganda, Renzaho, Nsengiyumva, and Kajelijeli were convicted and imprisoned for participating in the genocide.⁴⁸⁹ Furthermore, at the time of their testimony, Prosecution Witnesses AWD and T, and Defence Witness Ntamabyaliro were detained and awaiting trial on genocide charges.⁴⁹⁰ The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program⁴⁹¹ and that Rutaganda called Ngirumpatse as a Defence witness in his own trial.

342. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Military Training of the Interahamwe

343. The Prosecution witnesses gave consistent evidence that *Interahamwe* were selected for military training and received military training.

344. Prosecution Witnesses HH and AWE testified that they selected *Interahamwe* for training. Witness HH stated that he and other *Interahamwe secteur* leaders from Kigali received training in weapons handling by an ex-soldier in the Kabuga building. Prosecution Witnesses GBU and AXA stated that they received training in Mukingo *commune* in Ruhengeri *prefecture* and in Bwakira *commune* in Kibuye *prefecture*, respectively. Prosecution Witness GOB claimed that he participated in selecting trainers and Prosecution Witness BDW asserted that he trained *Interahamwe* in Bwakira *commune* and witnessed training in Birambo. The evidence that military training of the *Interahamwe* took place was confirmed by Prosecution Witnesses T and G who held high positions in the *Interahamwe* movement and therefore were in a position to know of this activity.

345. The evidence was further corroborated by Prosecution witnesses who received the information from authorities and MRND leaders: Witness ALG from Renzaho; Witness AWD from Ngirumpatse and Karemera; Witness HH from Ngirumpatse; Witness AWE from Ngirumpatse and Nzirorera; and Witness BDW from Karemera.

346. The evidence was also corroborated by Prosecution Witnesses AWD, HH, and GAY who received the information from *Interahamwe* who had undergone training, and Prosecution Witness Claeys who had heard the information from Turatsinze.

347. Nonetheless, the Prosecution evidence was rebutted by a number of Defence witnesses who had not heard of any training and asserted that it could not have taken place without their knowledge. The Chamber notes that testimony from a witness who positively experienced or learned a matter is generally more probative than testimony from a witness who was unaware of that same matter.

348. With respect to the evidence of Defence Witnesses Rutaganda and Renzaho who held positions that would have enabled them to know about military training of the *Interahamwe*, the Chamber notes they are both convicted for genocide related to the

⁴⁸⁹ See paras. 157 (ALG); 170 (HH); 154 (UB); 299 (AWE); 216 (AXA); 187 (Rutaganda); 312 (Renzaho); 315 (Nsengiyumva); and 324 (Kajelijeli).

⁴⁹⁰ See paras. 219 (AWD), 178 (T); and 334 (Ntamabyaliro).

⁴⁹¹ See paras. 175 (G) and 178 (T).

activities of the *Interahamwe*. With respect to the testimony of Defence Witness Maniliho, who worked in the Kabuga building, the Chamber recalls that during its site visit to Kigali, it inspected the building from the outside and observed that it is a very large, multi-storied building. Furthermore, Witness HH did not claim that the weapons handling involved shooting exercises. Therefore, training could have taken place in one part of this building without being observed by occupants in another part of the building.

349. Concerning the evidence of Defence Witnesses TXL, RTM, WSL, ETK, BWB, and Karemera that military training could not have taken place in Mashiga valley, Ndoha forest, or Birambo, the Chamber notes that during its site visit to Kibuye, it inspected the area. The Mashiga valley appeared to be a rather narrow valley with a road alongside it and that the Birambo training ground was visible from the road and nearby houses. The Chamber further noted that there was a small forest below the Bwakira communal office, as testified by Witness AXA, but the parties agreed that the location was not known as Ndoha forest, which was another location far away from any communal office.

350. Pursuant to the Chamber's observations, the landscape and small forest next to the communal office would have allowed for military exercises to take place, but it would have been very difficult to conduct the exercises in secret. However, Witnesses AXA and BDW did not testify that the exercises were conducted in secret. It was apparent that Witness AXA was mistaken about the name of the forest next to the communal office. Witness AXA, however, was from the area and the Chamber does not believe that his mistake demonstrates an intent to mislead the Chamber. Therefore, the Chamber believes the evidence of Witnesses AXA and BDW that *Interahamwe* underwent military training in Bwakira *commune*.

351. Having compared and contrasted the Prosecution and Defence evidence, the Chamber is convinced beyond reasonable doubt that *Interahamwe* received military training.

352. Regarding the locations where the military training took place, the witnesses mentioned: Gabiro military camp in Mutara *secteur* in Byumba *préfecture* (ALG, AWD, AWE, HH, T, Claeys); Bigogwe (military camp), which is located between Ruhengeri *préfecture* and Gisenyi *préfecture* (ALG, AWD, HH, T, Claeys, UB); the Kabuga building; Kanombe military camp; Gako military camp in Bugesera; other locations in Kigali *préfecture* (HH, AWD, T, Claeys, UB); and Bwakira *commune* and Nyungwe Forest in Kibuye *préfecture* (AXA, UB, BDW). The Chamber notes that, apart from the evidence of Witnesses HH, GBU, AXA, and BDW, the evidence is based on hearsay. The hearsay evidence, however, is consistent and based on information from different sources. The Chamber, therefore, believes the evidence.

Agreement between Ngirumpatse, National MRND leaders, and Authorities in the Ministry of Defence and the Rwandan Armed Forces to Train Interahamwe

353. It follows from the testimony of several Prosecution witnesses that Ngirumpatse (AWD, HH, and AWE), Karemera (AWD, BDW and AXA) and Nzirorera (AWE), and thus the MRND Executive Bureau, were involved in the decision to train *Interahamwe*. This testimony is corroborated by that of Claeys and the Chamber's finding that Turatsinze was the liaison between the Executive Bureau and the *Interahamwe*. It is also consistent with the Chamber's finding that the Executive Bureau was in control of the *Interahamwe* see (III; IV.1.3)

354. Moreover, the Chamber considers that large-scale military training of *Interahamwe* in cooperation with the Ministry of Defence, which was also controlled by the MRND party,

could not take place without the involvement of the MRND leadership. The Chamber, therefore, believes the evidence that Ngirumpatse and other national MRND leaders, including Karemera, were involved in the decision to provide military training to the *Interahamwe*. The Chamber also believes the testimony of Witness HH that *Préfet* Renzaho and other authorities in the territorial administration were involved, considering that some of the training took place in communal offices. Furthermore, noting that some of the training took place in military camps, the Chamber is also convinced that Minister Bizimana and his *chef de cabinet* were involved as well as elements in the Rwandan Armed Forces.

Purpose of the Military Training

355. According to Ngirumpatse’s letter to the President as well as the testimony of Prosecution Witnesses ALG, AWD, T, ZF, AWE, XBM, and BDW, the purpose of the training was either to reinforce the army so it could withstand advances of the RPF, or to protect officials.

356. Witnesses ALG and AWD asserted that the *Interahamwe* were being trained to kill Tutsis generally. Witness ALG based this conclusion on Renzaho’s use of the term “enemy”, which at some point would have become synonymous with Tutsis, and Witness AWD based his claim on the words of drunken *Interahamwe* who had undergone military training. Witness GOB claimed that the purpose was to test acts of genocide in the event of resumed hostilities, but did not explain the basis for his assumption. The Chamber finds this evidence speculative.

357. Although Witness T stated that the *Interahamwe* were also being trained to fight the accomplices of the RPF, he did not assert that the population considered Tutsi civilians to be accomplices at that time. Accordingly, the Chamber does not find this evidence sufficient to conclude that the military training of the *Interahamwe* was aimed at assaulting Tutsi civilians.

Conclusion

358. The Prosecution has proved beyond a reasonable doubt that, starting in 1993, military training was provided to *Interahamwe* in military camps and elsewhere pursuant to an agreement or understanding between Ngirumpatse, other national MRND leaders, authorities in the terrestrial administration, the Minister of Defence, Bizimana, his *chef de cabinet*, and elements in the Rwandan Armed Forces.

359. It has not been proven beyond reasonable doubt that the military training was aimed at assaulting Tutsi civilians.

1.5 Ordering, Facilitating, or Assisting the Distribution of Weapons and Concealment of Stockpiled Firearms

Allegation in the Indictment

360. Ngirumpatse ordered, facilitated, or assisted the distribution of weapons to *Interahamwe* during 1993 and early 1994. He ordered or assisted the concealment of

stockpiled firearms so they would not be removed pursuant to the KWSA (Kigali Weapons Secure Area), a disarmament initiative launched by UNAMIR, intending that such weapons would later be distributed to the *Interahamwe*.⁴⁹²

1.5.1 Importation of Weapons Through Kanombe Airport

Evidence

Prosecution Witness Jean-Bosco Twahirwa

361. In 1994, the witness worked for Abdul Mohamed Bandali at the *Établissement rwandais*⁴⁹³ where he often saw Ngirumpatse. Dudule Rahamatali, Bandali's special assistant, told Twahirwa that the *Établissement rwandais* played a role in the importation of arms.⁴⁹⁴

362. Around the end of 1993,⁴⁹⁵ Rahamatali told Twahirwa that a Romanian Airlines plane was transporting arms into Kigali airport. Rahamatali said that the arms were carried in crates labelled "spare parts" and unloaded at night. One day, one of the crates fell to the ground and Rahamatali saw that weapons were contained inside. Rahamatali showed Twahirwa a document listing the weapons. Although the list was supposed to be for spare parts, it was a list of weapons imported through the offices of *Établissement rwandais*.⁴⁹⁶

363. On one occasion, Twahirwa drove Rahamatali to the airport because a plane was landing with arms. From twenty metres away, the witness saw ten four cubic metre crates labelled "Spare Parts for *Établissement rwandais*". Rahamatali told the witness that the arms were imported on the orders of Matthieu and Bosco Sezirahiga who ran a transport company called TAC. Rahamatali was tasked with unloading the supplies and distributing the weapons.⁴⁹⁷

364. Rahamatali told Twahirwa that he would take the crates to Ndindiliyimana's house in Kimihurura and that the arms would be distributed to the *Interahamwe*. Rahamatali knew Ngirumpatse was involved because he visited the *Établissement rwandais* very often.⁴⁹⁸ After being taken to Ndindiliyimana's house, the weapons would be distributed to leaders of the *Interahamwe* in Gitikinyoni, Muhima, and other places, including the house of Habyarimana's sister.⁴⁹⁹

365. At the end of May 1994, the witness visited Sèraphin Rwabukumba's house in Rwakibu⁵⁰⁰ and saw soldiers collecting boxes of weapons labelled "Spare parts, *Établissement rwandais*" that looked like those he had seen at the airport. The boxes were open and contained Kalashnikovs. The witness heard rumours that the MRND had

⁴⁹² See Indictment para. 24.5.

⁴⁹³ T. 25 June 2007, p. 8.

⁴⁹⁴ *Id.*, p. 20.

⁴⁹⁵ *Id.*, p. 21.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*, pp 20-23.

⁴⁹⁸ *Id.*, pp. 23.

⁴⁹⁹ *Id.*, p. 24.

⁵⁰⁰ *Id.*, p. 26.

distributed weapons to the population and that UNAMIR tried to recover some of the weapons.⁵⁰¹

Ngirumpatse Defence Witness Malien Habyarimana

366. Until April 1994, the witness was responsible for providing administrative oversight of the airports on behalf of the Minister for Transport and Communications, including monitoring the issuance of landing and overflying permissions, or authorisations.⁵⁰²

367. Before landing in Rwanda, all flights had to have been registered with, and received authorisation from, the Ministry of Transport and Communication.⁵⁰³ He disputed the information contained in a Human Rights in Africa and US Policy Report dated 26/27 June 1994 relating to an unauthorised secret landing and unloading of a planeload of arms at Kigali Airport. Neither he nor the department were given the opportunity to respond to it at the time, or at least it was not brought to his attention.⁵⁰⁴

368. Apart from the civilian area, there was a military area at the international airport in Kigali where weapons ordered by soldiers were offloaded. The Ministry of Transport and Communication was not allowed in the military area and was only responsible for civilian planes. He was not aware of the delivery of weapons for military use, and did not receive any information on deliveries of illicit weapons. Sometimes he saw military planes surrounded by soldiers offloading weapons but stated that it was not his business.⁵⁰⁵

369. He was not aware of an incident on 21 January 1994 where a flight from Belgium carrying arms was met by the Rwandan military, who then escorted the weapons to Kanombe as mentioned in a report by a Lieutenant Nees.⁵⁰⁶

Ngirumpatse Defence Witness GW

370. In 1994, the witness was familiar with Kigali airport by virtue of his profession.⁵⁰⁷ He testified that between 1 September and 31 December 1993, only a limited number of airlines were operating out of Kigali. During those dates, he never saw an aircraft labeled "Romanian Airlines". Only LAR aircraft had such an inscription and he did not see any of their planes either.⁵⁰⁸ LAR operated with small aircraft which could not carry large caches of weapons. Furthermore, Dudule Rahamatali was a beggar who did not receive wooden boxes full of firearms on behalf of the *Établissement rwandais*.⁵⁰⁹

371. The witness was at Kigali Airport every other day, if not every day. He would have known if an LAR plane landed when he was not there because there was a board that

⁵⁰¹ *Id.*, pp. 25, 26.

⁵⁰² T. 10 January 2011, pp. 39, 40; T. 11 January 2011 p. 8.

⁵⁰³ T. 10 January 2011, pp. 40, 41, 47, 48.

⁵⁰⁴ T. 11 January 2011, pp. 6-8, 15.

⁵⁰⁵ *Id.*, p. 9.

⁵⁰⁶ *Id.*, pp. 8-10, 13, 14.

⁵⁰⁷ T. 31 August 2010, p. 33 (closed session).

⁵⁰⁸ *Id.*, pp. 40-42; Ngirumpatse Defence Exhibit 103.

⁵⁰⁹ T. 31 August 2010, p. 47.

indicated all arrivals and departures for the staff. He always checked this board every time he arrived at the airport.⁵¹⁰

372. Air traffic was controlled by the civil aviation authority and required prior authorisation or clearance for both take-off and landing. The flight plan would be in the archives of the civil aviation authority, if not the archives of neighbouring countries. There was an embargo against The Republic of Rwanda at the time and the airport was under increased surveillance. The planes were also checked by customs and security services.⁵¹¹

Karemera Defence Witness ETK

373. By virtue of his employment, the witness⁵¹² was knowledgeable about Kigali airport between 1985 and 6 April 1994.⁵¹³ During his time at Kanombe Airport, he had never seen the Romanian carrier TAROM Airlines use the airport.⁵¹⁴

Ngirumpatse Defence Witness FAT

374. Due to his employment, the witness was familiar with the procedures and functioning of Kigali airport in 1993 and early 1994.⁵¹⁵ He testified that there were no agreements for any Romanian airline to serve Kanombe airport.⁵¹⁶

375. An arms agreement between Rwanda and South Africa had already been negotiated.⁵¹⁷ He personally saw some, but not all, of the weapons arrive from South Africa.⁵¹⁸ There were occasions when weapons arrived several times a day.⁵¹⁹

376. It would not have been possible for Ngirumpatse to import large containers of weapons into Kanombe airport on Romanian Airlines without someone noticing.⁵²⁰ Although a Romanian Airlines plane could unofficially service Kanombe airport by changing information on the flight manifest,⁵²¹ someone in the Ministry of Transport and Communication would have to be aware of these changes.⁵²²

Written Statement of Ngirumpatse Defence Witness ZBA

377. The witness worked with freight in Kigali airport from 1990 until the end of 1993. She never saw a Romanian airline or one named TAROM. If she was not at work when either was there, her colleagues would have told her about it. She never saw wooden crates, much less crates of arms. Tradesmen or customers could not reach the freight zone because it was a controlled area. When planes were unloaded, the parcels were stored and

⁵¹⁰ *Id.*, p. 44.

⁵¹¹ *Id.*, pp. 44-46.

⁵¹² See para. 321, *supra*.

⁵¹³ T 11 November 2008, pp. 5, 9 (closed session).

⁵¹⁴ *Id.*, p. 35.

⁵¹⁵ T. 8 November 2010, p. 29.

⁵¹⁶ *Id.*, p. 12-13.

⁵¹⁷ *Id.*, p. 29.

⁵¹⁸ *Id.*, p. 29-31.

⁵¹⁹ *Id.*, p. 31.

⁵²⁰ *Id.*, p. 19.

⁵²¹ *Id.*, p. 30.

⁵²² *Id.*

dispatched from the MAGERWA hangar. Customers went to the hangar, not to the tarmac. She does not recall wooden crates being left on the tarmac.⁵²³

Written Statement of Ngirumpatse Defence Witness Godelieve Barushwanubusa

378. The witness is the only sister of President Habyarimana. She lived at a convent near the ESM military school in Kigali from 1983 until 7 April 1994 and worked at the Ministry of Health. She disputed Jean-Bosco Twahirwa's evidence that arms were stored at her house and that she lived near Kanombe military camp.⁵²⁴

Written Statement of Ngirumpatse Defence Witness RRE

379. In 1993, the witness worked for Air Rwanda at Kigali airport. She did not see any TAROM or Romanian airline planes there. Due to the size of the airport, it would not have been possible for an unknown plane to have gone unnoticed.⁵²⁵

Written Statement of Ngirumpatse Defence Witness XYZ

380. The witness has knowledge of the airline companies that operated in Kigali between 1993 and 1994 by virtue of his employment. He never saw or heard anyone discuss a Romanian plane, TAROM or Romanian airlines. Cargo was handled in a guarded hangar, and any large cargo kept outside the hangar could not be seen by the public. There was a wall of containers covering the view. The control tower archives are preserved but are confidential and held by the military.⁵²⁶

Matthieu Ngirumpatse

381. Ngirumpatse refuted any involvement in the importation of arms.⁵²⁷

Site Visit

382. The Judges conducted a site visit in February 2011. They visited Kigali airport and the cargo area and inspected the cargo area.⁵²⁸

Deliberations

383. The Chamber heard an abundance of evidence concerning possible importation of weapons through Kanombe airport.

384. According to Defence Witness Habyarimana, the military could import weapons through the airport without any interference from the civil aviation authorities. This was supported by the testimony of Defence Witness FAT that weapons originating from South Africa were imported in large quantities through the airport.

⁵²³ Exhibit DNG223.

⁵²⁴ Exhibit DNG170, "Déclaration de soeur Godelieve Barushwanubusa".

⁵²⁵ Exhibit DNG180, "Personal Information Sheet for RRE".

⁵²⁶ Exhibit DNG222.

⁵²⁷ T. 25 January 2011, p. 6.

⁵²⁸ Report on Site Visit (Confidential).

385. The Chamber further notes that according to Prosecution Witness Twahirwa, the weapons were brought to the house of Ndindiliyimana, the Chief of Staff of the *Gendarmerie*. Therefore, the importation Twahirwa referred to could have been a military consignment.

386. Nonetheless, the Prosecution did not present compelling evidence that Ngirumpatse was involved with the importation of weapons. Twahirwa's uncorroborated assumption that Ngirumpatse was behind an importation of weapons was based exclusively on the fact that Ngirumpatse visited the facilities of the alleged consignee for the importation, *Établissement rwandais*, on a regular basis. Thus, it has not been proven beyond reasonable doubt that Ngirumpatse was involved in importing weapons.

Conclusion

387. The Prosecution has not proved beyond a reasonable doubt that Ngirumpatse facilitated the distribution of weapons to the *Interahamwe* by importing them through Kanombe Airport.

1.5.2 Distribution of Weapons and Concealment of Stockpiled Firearms

Evidence

Prosecution Witness Frank Claeys

388. The witness⁵²⁹ testified that he attended a meeting with Turatsinze on 10 January 1994 where Turatsinze stated that weapons provided by government forces had been hidden in drains around a roundabout in case the demonstration of 8 January 1994 had escalated.⁵³⁰ The meeting resulted in a fax that was sent to U.N. Headquarters.⁵³¹

389. Turatsinze was prepared to provide the location of a cache of 135 weapons that night and stated that he had already distributed 110 weapons, including 35 with ammunition.⁵³² Claeys considered Turatsinze's information from the meeting too precise to be untrue but noted that it still needed verification.⁵³³ Turatsinze's information was reported to the Special Representative of the Secretary General, Booh-Booh, and to the force commander, General Dallaire.⁵³⁴

390. At around 4.00 p.m. on 12 January 1994, Booh-Booh and the force commander informed the President and General Secretary of the MRND of the information they had on the storage and distribution of weapons to the party militia. The President and Secretary General denied that the MRND was involved. They were urged to investigate the matter as

⁵²⁹ See para. 290, *supra*.

⁵³⁰ T. 21 November 2006, p. 60.

⁵³¹ *Id.*, p. 51; Exhibit DNZ15, "Outgoing Cable Code – 11 January 1994".

⁵³² T. 22 November 2006, p. 2.

⁵³³ *Id.*, p. 5.

⁵³⁴ *Id.*, p. 51; Exhibit DNZ15, "Outgoing Cable Code – 11 January 1994".

a first priority and report back to UNAMIR as soon as possible.⁵³⁵ The witness was not present at that meeting.⁵³⁶

391. Claeys met with Turatsinze again on 12 January. Turatsinze explained he was late because he had a meeting beforehand with the party authorities where they had questioned him about the distribution of weapons. Claeys deduced that the MRND President had gone straight from the meeting with Booh-Booh to speak with Turatsinze. The President wanted to know why the weapons had not been distributed and appeared scared. Turatsinze told him that he had not found enough responsible people to distribute the weapons to.⁵³⁷ They wanted him to accelerate the distribution of arms. Claeys got the impression that the arms were going to be distributed to individuals so that they would be harder to trace.⁵³⁸

392. Claeys confirmed the following contents of Dallaire's report to Annan: Turatsinze informed that there were between 60 and 70 weapons hidden in the vegetation beside the road prior to the demonstration of 8 January 1994.⁵³⁹ Turatsinze stated that he had already distributed weapons to about 25 *secteur* commanders and that they had not yet been distributed to the lower levels. Turatsinze said he had the authority to take the weapons back or instruct them to be distributed to the lower levels.⁵⁴⁰ Turatsinze told them that he used his own car and minibuses of the party or army vehicles to transfer weapons, which were moved every five or six days. Grenades were distributed a long time ago and each *Interahamwe* should have at least two to three, with up to sixty per *secteur*.⁵⁴¹

393. After the meeting on 12 January 1994, Turatsinze showed Captain Deme fifty rifles and sealed boxes of ammunition packed in canvas bags at the MRND headquarters. Claeys waited outside in the car and did not see the weapons himself.⁵⁴² They could not seize the weapons because it was not within their mandate. They met Turatsinze the next evening to receive more intelligence.

394. The witness recalled that following Deme's findings, he and Dallaire had a meeting with the MRND President, Ngirumpatse, and the National Secretary in the Amahoro Hotel on the afternoon of 13 January 1994.⁵⁴³

395. Dallaire expressed his concern about weapons being stored outside military barracks and Ngirumpatse and Joseph Nzirorera denied any knowledge of the weapons or involvement in their distribution. They did not ask for further details or offer to make any enquiries.⁵⁴⁴ Claeys did not believe their denials.⁵⁴⁵ They saw Turatsinze again on the evening of 13 January 1994. The witness prepared a report on the meeting. Turatsinze said that two hundred of his people would be present and armed with small weapons at a proposed meeting in Nyamirambo on 16 January 1994. He also said that military vehicles

⁵³⁵ Exhibit P43, "Outgoing Cable Code, 13 January 1994, Initiatives Undertaken Relating to Latest Security Information".

⁵³⁶ T. 22 November 2006, pp. 6, 7.

⁵³⁷ *Id.*, pp. 6, 8.

⁵³⁸ *Id.*, p. 8.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*, p. 9.

⁵⁴¹ *Id.*, p. 10.

⁵⁴² *Id.*, pp. 11, 12; Exhibit P42 "Outgoing Cable Code – Draft".

⁵⁴³ T. 22 November 2006, pp. 12, 13.

⁵⁴⁴ pp. 17, 18.

⁵⁴⁵ T. 22 November 2006, p. 18.

were used to transport weapons coming from military camps and were sometimes replaced by civilian cars for security reasons.⁵⁴⁶ The witness interprets this as a typical security act to make things untraceable. The cars were also used to transport weapons when they had to change the cache, which was done every seven or eight days. Turatsinze assured that he could keep the weapons at the MRND party building until the following Monday night; however, after that they would have to be moved. Turatsinze said he would move some of the weapons hidden at his home to the MRND building if UNAMIR was going to do a raid.⁵⁴⁷

396. Turatsinze explained that the weapons normally came from the barracks, but since the military observers had made up an inventory of weapons in the barracks and stocking places, each movement had to be announced and monitored. Weapons going out also had to be brought back. Approximately twenty of the distributed weapons were provided with magazines and ammunition.⁵⁴⁸ The weapons had no magazines when distributed to the lower cells because he had not found enough responsible people and did not have enough ammunition. He was provided with four more boxes of ammunition.⁵⁴⁹ The weapons distribution had started in December.⁵⁵⁰

397. The witness confirmed the contents of a report he prepared,⁵⁵¹ according to which Turatsinze told them that a number of heavy weapons had been transferred out of Kigali in mid-November 1993, in particular to Karago and Nyungwe forest. Claeys recalled that he had heard of this from others and believed that Turatsinze must have had contacts with the army in order to have known this.⁵⁵²

398. After the 13 January 1994 meeting, Turatsinze showed them three places in the KWSA where weapons were stored. He showed three locations with fifteen, twenty and one hundred weapons respectively.⁵⁵³ They were shown four weapons caches in total, in addition to the previous MRND cache of fifty weapons seen by Deme on 12 January. The witness recalled that they went in a vehicle and were taken to the back of a bar and a septic area, but did not see any of the weapons.⁵⁵⁴

399. Claeys confirmed a report that he wrote stating that Turatsinze told him that Tharcisse Renzaho distributed nine weapons with ammunition on 20 January 1994.⁵⁵⁵

400. Turatsinze requested direction on whether to prevent distribution or take the weapons back. UNAMIR asked him to distribute them as slowly as possible.⁵⁵⁶

Prosecution Witness G

⁵⁴⁶ *Id.*, pp. 20,21.

⁵⁴⁷ *Id.*, p. 21.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.*, pp. 21, 22.

⁵⁵⁰ *Id.*, p. 23.

⁵⁵¹ Exhibit P44, "Meeting on 13 Jan. 93".

⁵⁵² T. 22 November 2006, pp. 22, 23.

⁵⁵³ *Id.*, p. 23.

⁵⁵⁴ *Id.*, pp. 23,24.

⁵⁵⁵ *Id.*, pp. 25, 26.

⁵⁵⁶ *Id.*, p. 29.

401. The witness⁵⁵⁷ testified that the *Interahamwe* received 800 guns in 1993 from Ngirumpatse who had received them from the Ministry of Defence.⁵⁵⁸ The witness heard about the distribution from Robert Kajuga, who received 400 firearms and distributed them at the *secteur* level in Kigali alongside Bernard Maniragaba in the latter half of 1993. The distribution occurred prior to the arrival of UNAMIR. He personally saw weapons at Kajuga's house. Turatsinze also received 400 weapons. The weapons were distributed to the *Interahamwe* after they completed military training; however, not all of the weapons reached them.⁵⁵⁹

402. The *Interahamwe* were warned when UNAMIR planned to carry out searches for weapons in Kigali. On one occasion, General Dallaire informed the Minister of Defence of an impending weapons search, who told Ngirumpatse at a meeting that they needed to do everything possible to ensure that the weapons were not taken by UNAMIR. Following the meeting, Ngirumpatse convened the Provisional National Committee of the *Interahamwe*, warned them of the impending searches, and instructed them to inform people that they should hide the weapons. Ngirumpatse later told Kajuga that they would be forewarned by Ndindiliyimana of all searches because UNAMIR were always accompanied by *gendarmes* on the searches.⁵⁶⁰

Prosecution Witness UB

403. The witness⁵⁶¹ was a government official in Kigali and MRND party member.⁵⁶² He testified that prior to 1994, Turatsinze told him that he had received 600 guns from the Chief of Staff of the national army. Turatsinze was the treasurer and co-ordinator of *Interahamwe* activities at the national level, and his boss was Ngirumpatse.⁵⁶³ Turatsinze did not request the guns from the Chief of Staff; the President of the party asked him to keep them and the witness believed that Turatsinze could not have had them without his approval. The guns were kept in the public works department in Kigali, for which Habyarimana's brother-in-law was responsible, before being taken to the Kimihurura residence of Silas Kubwimana, the MRND leader in Taba *commune*.⁵⁶⁴

404. The guns were intended to kill people and were to be distributed to the *Interahamwe* following the completion of their training.⁵⁶⁵ He believed that the MRND did not disarm the *Interahamwe* according to the Arusha Accords because it would have revealed that the *Interahamwe* had become a militia armed with weapons from the military.⁵⁶⁶

405. The MRND moved weapons from one hidden location to another so that UNAMIR would not find them and did not give the weapons to UNAMIR. He assumed Ngirumpatse

⁵⁵⁷ See para. 175, *supra*.

⁵⁵⁸ T. 10 October 2005, p. 59; T. 11 October 2005 p. 19.

⁵⁵⁹ T. 10 October 2005, pp. 59-60.

⁵⁶⁰ T. 11 October 2005, p. 20; Exhibit P13, "Letter re: Quid de la neutralité de la mission des Nations Unies pour l'assistance au Rwanda (MINUAR)".

⁵⁶¹ See para. 154, *supra*.

⁵⁶² T. 13 March 2006, pp. 4, 5; T. 16 February 2006, p. 35.

⁵⁶³ See (IV.1.3).

⁵⁶⁴ T. 24 February 2006, pp.13,14.

⁵⁶⁵ *Id.*, p. 14.

⁵⁶⁶ *Id.*, p. 15.

and Nzirorera would have ordered these movements and that they would have been implemented by Turatsinze.⁵⁶⁷

406. Turatsinze would not have ordered the movement of the weapons without the approval of his superiors.⁵⁶⁸

Prosecution Witness T

407. The witness⁵⁶⁹ testified that arms were distributed around the end of 1993 by Turatsinze and Kajuga, though not all were given to the intended recipients. He received a firearm from Turatsinze around the end of December 1993 or early January 1994. Two or three weeks later, Turatsinze asked him if he could return the weapon so he could prove to the military authorities that he had really distributed the arms.⁵⁷⁰

408. The witness surmised that it was the collective leadership of the party and the command of the army that arranged the distribution of guns to the *Interahamwe*. Ngirumpatse and Joseph Nzirorera may have been involved. He did not know the number of guns that were supposed to be distributed, but on one occasion Turatsinze mentioned 596 or 696.⁵⁷¹

409. The guns could only have come from the army because they had the exclusive right to possess weapons at that time in Rwanda. There was no legal trade in weapons.⁵⁷² Turatsinze took the witness to a house near the airport where the weapons were kept before distribution. The witness suspected that weapons were held in secure weapons caches, either in army premises or MRND buildings. He was shown how to handle a pistol in a side room of the MRND offices in the Kabuga building. He explained that weapons could have been stored there although he did not see any.⁵⁷³

410. The weapons were distributed so people could defend themselves through urban guerrilla warfare against the RPF. It was thought that UNAMIR was only targeting the *Interahamwe* for disarmament and not the RPF.⁵⁷⁴ In a meeting in January, Ngirumpatse warned them that UNAMIR was authorised to carry out searches and that anybody arrested could no longer count on the support of the MRND.⁵⁷⁵ Ngirumpatse suggested hiding the weapons.⁵⁷⁶

Prosecution Witness HH

411. The witness⁵⁷⁷ testified that guns were distributed to the *Interahamwe* at the end of 1993 by MRND presidents following authorisation by Turatsinze, who had himself been authorised by Joseph Nzirorera. He knew that Turatsinze received the instructions from

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*, p. 19.

⁵⁶⁹ See para. 178, *supra*.

⁵⁷⁰ T. 24 May 2006, p. 21.

⁵⁷¹ *Id.*, p. 22.

⁵⁷² *Id.*

⁵⁷³ *Id.*, p. 23.

⁵⁷⁴ *Id.*, p. 29.

⁵⁷⁵ *Id.*, p. 30.

⁵⁷⁶ *Id.*

⁵⁷⁷ See para. 170, *supra*.

Nzirorera because the witness discussed it with Turatsinze and Silas Kubwimana at Kubwimana's house where the witness first saw the firearms.⁵⁷⁸

412. Silas Kubwimana said that they should distribute the firearms immediately because it would create a big problem for them if they were discovered. Turatsinze told him not to worry because he had received authorisation to distribute the firearms.⁵⁷⁹ It appeared from the discussion that Joseph Nzirorera had discussed the distribution with Déogratias Nsabimana and the arms had been taken from UNAMIR warehouses.⁵⁸⁰

413. They distributed the weapons to twenty *Interahamwe secteur* presidents in Kigali-ville over three days from the day the discussion occurred. André Nzabenterura was the only *secteur* leader absent. The recipients of weapons signed a list to acknowledge receipt.⁵⁸¹

414. Nzirorera was aware of the distribution because the witness and Turatsinze went to the party headquarters in Kimihurura and asked Nzirorera for an allowance to the witness because of his work with the distribution of the firearms.⁵⁸²

415. The witness recalled that there were 600 guns in sacks and that each president received a different number of weapons. He heard that 480 guns were taken from the stock. The distribution would start at 8.00 and they would work all day and all night carrying weapons in a Mitsubishi vehicle, accompanied by Turatsinze in a Suzuki Samurai. He did not see Turatsinze after February 1994 and thinks he disappeared in March 1994.⁵⁸³ The guns were intended to protect MRND militants from possible assault by RPF soldiers and infiltrators.⁵⁸⁴

416. In 1994, after Habyarimana was sworn in, he heard rumours that Turatsinze had given arms to the president of the *Interahamwe* and then took them back to sell to FRODEBU, an armed group in Burundi. From then nobody could trust Turatsinze because he allegedly divulged party secrets. Turatsinze mentioned all of this to the witness in conversation. The witness also heard that UNAMIR had searched the MRND headquarters looking for arms and that Turatsinze had been accused of revealing a secret to UNAMIR.⁵⁸⁵

417. Georges Rutaganda gave weapons to some *Interahamwe*, which the witness understood had been stored at the MRND headquarters.⁵⁸⁶ The witness learned that UNAMIR searched the MRND headquarters and that the search had been unsuccessful. He was not informed of the MRND's efforts to hide weapons.⁵⁸⁷

Prosecution Witness AWE

⁵⁷⁸ T. 8 November 2006, p. 52.

⁵⁷⁹ *Id.*, pp. 52, 53.

⁵⁸⁰ *Id.*, p. 54.

⁵⁸¹ *Id.*

⁵⁸² *Id.*, pp.54- 55.

⁵⁸³ *Id.*, p. 55.

⁵⁸⁴ *Id.*, p. 56.

⁵⁸⁵ T. 9 November 2006, p. 7.

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

418. The witness⁵⁸⁸ testified that in 2004, Jean Habyarimana told him that the MRND had ordered weapons from Europe in 1993, some of which had been delivered and distributed to the *Interahamwe*.⁵⁸⁹ In the witness's opinion, these orders could not have been placed without the knowledge of the Executive Bureau of the MRND.⁵⁹⁰ The witness was not told who in the party hierarchy had ordered the weapons.⁵⁹¹ Ngirumpatse could have approved the order from abroad.⁵⁹²

419. Before August 1993, he was present at three MRND meetings.⁵⁹³ At the third meeting, Nzirorera said that the *Interahamwe* had completed their training and had received firearms and grenades, which they could use whenever the MRND was attacked.⁵⁹⁴ Ngirumpatse and Karemera were also present at this meeting.⁵⁹⁵ On cross-examination, the witness was confronted with evidence that he had attributed Nzirorera's statement to Ngirumpatse.⁵⁹⁶

Nzirorera Defence Witness Jacques-Roger Booh-Booh

420. The witness was the Special Representative of the Secretary General of the United Nations in Rwanda from 23 November 1993 until 30 June 1994.⁵⁹⁷

421. He testified that arms caches were a recurrent problem in Rwanda that was discussed in the documents of cabinet meetings even prior to the Arusha Accords. The problem was such that the signatories of the Arusha Accords sent a letter to the UN headquarters to request that one of the duties of the mission should be to seize all illegally distributed arms.⁵⁹⁸ Booh-Booh received a request from the Secretary-General requesting that he investigate the issue of alleged arms caches.⁵⁹⁹ The witness met President Habyarimana in the company of Dallaire and a colleague of his.⁶⁰⁰ The President said he was unaware of the allegations and explained that he had withdrawn from the MRND leadership, and that everything to do with the functioning of the party was led by Ngirumpatse. The President asked the witness to speak with the leaders of the party.

422. After the meeting with the President, he met with an MRND delegation led by Ngirumpatse at the UNAMIR office. He believes Nzirorera was also present. They denied knowing about hidden weapons.⁶⁰¹ In a cable to General Dallaire dated 13 January 1994, the witness stated that he had received a report that the President of the MRND had ordered

⁵⁸⁸ See para. 299, *supra*.

⁵⁸⁹ T. 3 July 2007, p. 18,19.

⁵⁹⁰ *Id.*, p. 20.

⁵⁹¹ *Id.*, p. 21.

⁵⁹² *Id.*

⁵⁹³ T. 4 July 2007, p. 15.

⁵⁹⁴ *Id.*, p. 18.

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*, p. 65.

⁵⁹⁷ T. 16 Feb. 2010, p. 6.

⁵⁹⁸ T. 16 February 2010, p. 14.

⁵⁹⁹ *Id.*, p. 15; Exhibit P40, "Outgoing Code Cable, 11 January 1994, Contacts with Informant".

⁶⁰⁰ T. 16 February 2010, p. 16.

⁶⁰¹ *Id.*, p. 17; Exhibit P43, "Outgoing Code Cable, 13 January 1994, Initiatives Undertaken Relating to Latest Security Information".

an accelerated distribution of weapons after becoming unnerved by the meeting.⁶⁰² After more than one thousand patrols by UNAMIR, they succeeded in finding nine pistols.⁶⁰³

423. There was an informant named Jean-Pierre who was a close relative of Twagiramungu who the latter described as a Tutsi, an *Interahamwe* deserter, and an idiot.⁶⁰⁴ He never heard that Jean-Pierre had claimed there was a plan to exterminate a thousand Tutsis in 20 minutes.⁶⁰⁵

Nzirorera Defence Witness Georges Rutaganda

424. The witness⁶⁰⁶ testified that the accusations in 1993 and 1994 that the MRND were arming and training the *Interahamwe* were false and designed to eliminate MRND opponents by framing them and weakening their political influence.⁶⁰⁷

425. While in a meeting in Ngirumpatse's office in February 1994, he heard that some weapons were being distributed to the *Interahamwe*.⁶⁰⁸ Ngirumpatse convened the meeting, which was attended by Rutaganda, Augustin Bizimana, Faustin Munyazesa, Robert Kajuga, Phénéas, and Dieudonné.⁶⁰⁹ The weapons were to be used to protect themselves against those people killing MRND members.⁶¹⁰ The people in the meeting believed that members of the MRND were being singled out for assassination.⁶¹¹ The Minister of Defence, Faustin Munyazesa, told Rutaganda that "materials" would be given to those at the meeting to counter the attackers and that Robert Kajuga was supposed to distribute the "necessary materials."⁶¹² Kajuga was evasive about the weapons and never actually produced the "materials".⁶¹³ Instead, Rutaganda later learned through rumours that Kajuga had sold the weapons to a rebel movement in Burundi in collaboration with Turatsinze.⁶¹⁴

426. It was out of the question that the weapons would be used for killing Tutsis.⁶¹⁵ Possessing or distributing these weapons was not a violation of the UNAMIR Kigali Weapons Secure Area Regime because it was not a violation to protect the MRND leadership from assassins.⁶¹⁶ He himself had a weapon at the time and thought it was legal because it was for personal protection and not for any other use.⁶¹⁷ The Ministry of Finance gave a number of guns to party leaders for protection but these weapons were not being hidden and UNAMIR did not confiscate them.⁶¹⁸ At the same time, the only stockpile of

⁶⁰² Exhibit P43, "Outgoing Code Cable, 13 January 1994, Initiatives Undertaken Relating to Latest Security Information".

⁶⁰³ T. 17 February 2010, pp. 8-9.

⁶⁰⁴ T. 16 February 2010, p. 16.

⁶⁰⁵ *Id.*, p. 17.

⁶⁰⁶ See para. 187, *supra*.

⁶⁰⁷ T. 13 April 2010, p. 59.

⁶⁰⁸ T. 12 April 2010, pp. 33-34; T. 13 April 2010, p. 55.

⁶⁰⁹ T. 12 April 2010, p. 34.

⁶¹⁰ *Id.*, p. 33.

⁶¹¹ *Id.*, p. 34.

⁶¹² T. 12 April 2010, p. 34.

⁶¹³ *Id.*, p. 35.

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*, p. 36.

⁶¹⁶ T. 13 April 2010, pp. 55,56.

⁶¹⁷ *Id.*, p. 56.

⁶¹⁸ *Id.*

weapons he knew about before 6 April were the weapons that Kajuga sold to Burundian rebels.⁶¹⁹ After 6 April, however, anyone could get a weapon.⁶²⁰ The proliferation was so widespread after that point that even grenades were distributed.⁶²¹ However, he did not personally receive any weapons for distribution.⁶²²

Nzirorera Defence Witness Tharcisse Renzaho

427. The witness⁶²³ refuted Frank Claeys' testimony that on 20 January 1994, he distributed nine weapons to the *Interahamwe* in a blue Pajero.⁶²⁴ He never met Turatsinze, and did not own a blue Pajero.⁶²⁵ He did not own a blue Peugeot either, refuting a UNAMIR intelligence report dated 22 February 1994, which recorded that Renzaho had personally distributed the weapons with a blue Peugeot.⁶²⁶ Also with respect to the UNAMIR intelligence report of 22 February 1994, Renzaho denied that he and other *préfets* were increasing the numbers of communal policemen and distributing weapons to them.⁶²⁷

428. The information in a UNAMIR report of 13 February 1994, which stated that the MRND was distributing weapons to its members and that the headquarters of the MRND had weapons in it was propaganda spread by RPF agents.⁶²⁸

Ngirumpatse Defence Witness André Nzabanterura

429. The witness was an MRND *cellule* chairman in 1994.⁶²⁹ At the time of his testimony, he was imprisoned for his role in the genocide.⁶³⁰ The *Interahamwe* received weapons after they completed training at Camp GP.⁶³¹ Though he was chairman of the *Interahamwe* in the area, he played no role in training or arming the *Interahamwe*.⁶³² There were no *Interahamwe* living in his house.⁶³³ He himself had a weapon which he obtained illegally.⁶³⁴ He bought it for his own personal security.⁶³⁵

Joseph Nzirorera

⁶¹⁹ *Id.*, p. 57.

⁶²⁰ *Id.*

⁶²¹ *Id.*, p. 58.

⁶²² *Id.*

⁶²³ See para. 312, *supra*.

⁶²⁴ T. 14 April 2010, p. 57.

⁶²⁵ *Id.*

⁶²⁶ T. 27 April 2010, p. 25.

⁶²⁷ *Id.*

⁶²⁸ *Id.*, p. 23.

⁶²⁹ T. 29 September 2010, p. 4-5.

⁶³⁰ *Id.*, pp. 3, 34.

⁶³¹ *Id.*, p. 27.

⁶³² *Id.*, p. 28.

⁶³³ *Id.* (The witness never really addressed whether or not he had distributed weapons in his home—he just denied that any *Interahamwe* were living there).

⁶³⁴ T. 29 September 2010, p. 28.

⁶³⁵ *Id.*, p. 29.

430. Joseph Nzirorera denied being aware of any distribution of weapons to the youth of Mukingo commune.⁶³⁶ Nzirorera further denied being aware of the distribution of weapons to Robert Kajuga and Turatsinze by the Ministry of Defence.⁶³⁷

Matthieu Ngirumpatse

431. Ngirumpatse denied that he ordered, authorised, facilitated, or issued instructions for weapons to be distributed to the *Interahamwe* in 1993 or 1994. The only activity involving arms was related to the Provisional National Committee of the *Interahamwe* and the Minister of Defence. The purpose of the distribution was not to kill, but to provide personal protection to members of the Provisional National Committee.⁶³⁸

432. He denied participating in the clandestine importation of arms.⁶³⁹ He further denied hiding any arms or issuing instructions for arms to be hidden at the MRND headquarters or at any other location under MRND supervision.⁶⁴⁰ He was never informed of the distribution of arms by anyone to the youth of the MRND.⁶⁴¹

433. He denied ever being aware that weapons were clandestinely imported using a Romanian plane in 1993 or 1994.⁶⁴²

434. With regard to Frank Claeys' testimony, Ngirumpatse explained that Turatsinze no longer had access to the MRND headquarters at that time and Claeys could not get inside because of the colour of his skin so neither of them could have seen anything.⁶⁴³

435. He agreed that he and Nzirorera met with General Dallaire and Claeys at the Amahoro hotel on 13 January 1994 and were questioned about hidden weapons. They spontaneously invited them to carry out a search but they refused.⁶⁴⁴

436. He met Booh-Booh in his capacity as chairman of the MRND to talk about the storage and distribution of weapons. The President of the republic had been told that there was an arms cache in the MRND building and that weapons were being distributed to the MRND youth; and that was the purpose of the discussion.⁶⁴⁵

Deliberations

Cautionary Issues

437. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses UB, HH, AWE, and Defence Witnesses Nzabanterura, Rutaganda and Renzaho were convicted and imprisoned for participating in the genocide.⁶⁴⁶ Furthermore, at the time of his

⁶³⁶ T. 20 May 2010, p. 13.

⁶³⁷ T. 24 May 2010, p. 3.

⁶³⁸ T. 25 January 2011, p. 6.

⁶³⁹ *Id.*, p. 7.

⁶⁴⁰ *Id.*

⁶⁴¹ *Id.*

⁶⁴² *Id.*, p. 16.

⁶⁴³ *Id.*, p. 26.

⁶⁴⁴ *Id.*, p. 27.

⁶⁴⁵ T. 1 February 2011, p. 19.

⁶⁴⁶ See paras. 154 (UB), 170 (HH); 299 (AWE); 429 (Nzabanterura); 187 (Rutaganda); and 312 (Renzaho).

testimony, Prosecution Witness T was detained and awaiting trial on genocide charges.⁶⁴⁷ The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program⁶⁴⁸ and that Rutaganda called Ngirumpatse as a Defence witness in his own trial.

438. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Stockpiling and Distribution of Weapons

439. Prosecution Witness Claeys recalled abundant information he received from Turatsinze regarding the stockpiling of weapons and their distribution to the *Interahamwe*. The information he related was corroborated in many ways, as follows.

440. Claeys stated that Turatsinze showed Captain Deme an arms cache in the MRND headquarters while he waited outside. He also mentioned that Turatsinze showed him and Deme three other arms caches. Prosecution Witness T mentioned that he saw weapons at Kajuga's house, and Prosecution Witness G claimed that he received a firearm from Turatsinze. Prosecution Witness HH asserted that he participated in the distribution of the firearms. Witnesses T, G, and HH testified that distributions began in 1993.

441. Furthermore, the information Claeys received from Turatsinze is corroborated by the testimony of Witnesses G and UB regarding what Kajuga and Turatsinze, respectively, told them about the distributions. It is also corroborated by Defence Witness Nzabanterura's evidence that *Interahamwe* members received weapons after undergoing training at a military camp.

442. Thus, the Chamber attaches no weight to Defence Witness Booh-Booh's doubt that weapons had been distributed, which appears to have been based on the meager results of UNAMIR weapons searches. Because of his position, he would have known about the arms caches Turatsinze showed Claeys and Deme because they were mentioned in the UNAMIR reports he was served with on a regular basis. Furthermore, his testimony as a whole seemed to reflect bitterness towards the publicity the UNAMIR Force Commander had received.

443. The Chamber is convinced that firearms were provided by military authorities and widely distributed to members of the *Interahamwe*. Unlike the testimony of Ngirumpatse and Rutaganda, they were not distributed solely for the protection of members of the Provisional National Committee. The Prosecution has also presented strong evidence that additional weapons were stockpiled for later distribution.

Conclusion

444. The Prosecution has proved beyond a reasonable doubt that, starting in 1993, weapons were provided to the *Interahamwe* and also stockpiled for later distribution to the *Interahamwe*.

⁶⁴⁷ See para. 178.

⁶⁴⁸ See paras. 175 (G) and 178 (T).

Involvement of Ngirumpatse and the MRND Executive Bureau

445. The Chamber refers to its finding that the *Interahamwe* was under the control of the MRND Executive Bureau in areas where it had an organised structure (see IV.1.3). It also recalls its findings that Turatsinze was an employe of the Executive Bureau and its liaison with the *Interahamwe* (see IV.1.3). These findings confirm that Turatsinze did not hold a position within the MRND, which would have allowed him to independently engage military authorities in a large-scale operation to distribute weapons to the *Interahamwe*.

446. These circumstances, therefore, strongly suggest that the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution. The testimony of several Prosecution witnesses supports this conclusion. Prosecution Witness AWE stated that he was informed at an MRND meeting attended by Ngirumpatse, Karemera and Nzirorera that *Interahamwe* who had undergone military training had received arms and grenades. Prosecution Witness HH testified that Nzirorera authorised payment of an allowance to him for participation in the distribution of firearms. Prosecution Witness Claeys stated that an arms cache existed in the MRND headquarters.

447. Moreover, Prosecution Witness G testified that Kajuga told him about Ngirumpatse's involvement with the distributions, and Prosecution Witnesses HH, Claeys, and UB stated that Turatsinze told them about Ngirumpatse's involvement. The Chamber's finding that Ngirumpatse was involved in concealing arms caches further substantiates its conclusion that the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution.

Conclusion

448. The Prosecution has proved beyond a reasonable doubt that Ngirumpatse and the MRND Executive Bureau agreed with the military authorities to distribute arms to the *Interahamwe* and stockpile arms for later distribution to the *Interahamwe*.

Concealment of Weapons

449. Prosecution Witnesses G and T stated that Ngirumpatse warned the Provisional National Committee of the *Interahamwe* to hide weapons because UNAMIR was going to conduct searches. This is further corroborated by Claeys' evidence that Turatsinze told him about measures that had been taken to conceal weapons. Having found that Ngirumpatse was involved in the distribution and stockpiling of weapons, the Chamber finds that Claeys's testimony that Ngirumpatse denied that weapons had been distributed, or were being stockpiled for later distribution, during a meeting with General Dallaire and Claeys further corroborates Ngirumpatse's involvement in the concealment of weapons.

Conclusion

450. The Prosecution has proved beyond reasonable doubt that weapons were concealed at the instigation of Ngirumpatse and the MRND Executive Bureau.

Purpose of the Weapons Distribution

451. According to the testimony of Prosecution Witnesses UB and AWD and Defence Witness Nzanbanterura, *Interahamwe* received weapons after undergoing military training.

This is not sufficient, however, to infer that the weapons were distributed for the purpose of killing Tutsi civilians because the Chamber has already found in that the Prosecution did not prove beyond a reasonable doubt that the training of the *Interahamwe* was aimed at assaulting Tutsi civilians (see IV.1.4).

452. Moreover, the remaining evidence does not clearly demonstrate that the weapons were distributed for the purpose of killing Tutsi civilians. Prosecution Witness HH and Defence Witness Rutaganda testified that weapons were distributed to protect MRND members from assaults by the RPF and infiltrators. Furthermore, Prosecution Witness Claeys stated that Turatsinze told him about weapons being hidden near the venue for a demonstration on 8 January 1994 so they could be used in case tensions at the event escalated. Without more, this concealment of weapons does not evince a plan to kill Tutsi civilians.

453. Although Prosecution Witness UB speculated that the weapons were meant for killing "people," he did not specifically refer to Tutsis.

Conclusion

454. The Prosecution has not proved beyond a reasonable doubt that the distribution of weapons to the *Interahamwe* and stockpiling of weapons for later distribution to the *Interahamwe* was aimed at killing Tutsi civilians.

1.6 Fund-Raising Events Organized by the MRND (1993-1994)

Allegation in the Indictment

455. Ngirumpatse together with Joseph Nzirorera participated in fundraising activities for the *Interahamwe*. Particularly noteworthy are several meetings organised under the auspices of the MRND party to arrange collections of money from businessmen and wealthy party members. Several such fundraising and celebratory banquets for the *Interahamwe* took place at the *Hôtel L'Horizon Rebero* in Kigali in 1993 and 1994. Nzirorera organised at least one such gathering. Persons in attendance included Juvénal Habyarimana, Séraphin Rwabukumba, Augustin Ndirabatware, and Robert Kajuga, among many other notable MRND party-members, several of whom made congratulatory speeches.⁶⁴⁹

Evidence

Prosecution Witness G

456. The witness⁶⁵⁰ testified that President Habyarimana arranged for 500,000 Rwanda francs to be given to the *Interahamwe* through the national treasury in November 1991. The *Interahamwe* used that money to rent buses and buy uniforms and refreshments for rallies. Subsequently, individual members contributed to the *Interahamwe* based on their income.⁶⁵¹

⁶⁴⁹ Indictment, para. 24.8.

⁶⁵⁰ See para. 175, *supra*.

⁶⁵¹ T. 11 October 2005, pp. 2, 3.

457. Sometime in the second half of 1993, the President organised a fundraising event for the *Interahamwe* at the *Hôtel L'Horizon Rebero*.⁶⁵² A number of senior officials were present at the meeting, including Joseph Nzirorera, Séraphin Rwabakumba, Casimir Bizimungu, Robert Kajuga, Augustin Ndirabatware, Augustin Bizimungu, the director of the Rwandan Commercial Bank, and the manager of BSCR.⁶⁵³ Ndirumpatse and Karemera did not attend.⁶⁵⁴

458. Those present at the meeting pledged a total of 1.5 million francs to support the *Interahamwe*.⁶⁵⁵ The President pledged 300,000 francs to set an example,⁶⁵⁶ while Joseph Nzirorera pledged between 300,000 and 500,000 francs.⁶⁵⁷ The money donated by the President was handed over to the national treasurer,⁶⁵⁸ but the witness did not know whether the remaining 1.2 million francs were given to the treasurer or deposited into the *Interahamwe* account. The money could have been given directly to the Executive Committee of the MRND, which then used the money without giving it to the treasurer.⁶⁵⁹ The money raised was intended to be used to purchase uniforms and to rent buses to transport people to rallies. There was no expectation that it would be used to purchase weapons or to exterminate Tutsis.⁶⁶⁰

Prosecution Witness AWD

459. The witness⁶⁶¹ stated that in February 1994, his neighbours who were members of the *Interahamwe* informed him that President Habyarimana had organised an event at *Hôtel L'Horizon Rebero* to raise money for the *Interahamwe*. The witness was not invited to the event. His neighbours told him that invitations had been distributed in secret.⁶⁶²

Prosecution Witness T

460. The witness⁶⁶³ testified that around July 1993, he attended a fundraising event for the *Interahamwe* at the *Hôtel L'Horizon Rebero*. President Habyarimana and the *Interahamwe* committee organised the event, at which a number of individuals pledged to contribute funds.⁶⁶⁴

461. Joseph Nzirorera attended the event and pledged 150,000 francs. Thereafter, Nzirorera continued to make further contributions to the *Interahamwe*.⁶⁶⁵

Prosecution Witness AWE

⁶⁵² *Id.*, p. 3; T. 17 October 2005, p. 29.

⁶⁵³ T. 11 October 2005, p. 4; T. 17 October 2005, pp. 34, 35.

⁶⁵⁴ T. 17 October 2005, p. 34.

⁶⁵⁵ T. 11 October 2005, p. 3.

⁶⁵⁶ *Id.*, p. 4; T. 13 October 2005, p. 14 (closed session); T. 17 October 2005, p. 34.

⁶⁵⁷ T. 27 October 2005, p. 19.

⁶⁵⁸ T. 11 October 2005, p. 4; T. 13 October 2005, p. 14 (closed session).

⁶⁵⁹ T. 11 October 2005, p. 4.

⁶⁶⁰ T. 17 October 2005, p. 33.

⁶⁶¹ See para. 219, *supra*.

⁶⁶² T. 10 October 2007, p. 32.

⁶⁶³ See para. 178, *supra*.

⁶⁶⁴ T. 24 May 2006, p. 24.

⁶⁶⁵ *Id.*

462. The witness⁶⁶⁶ testified that the president of the *Interahamwe* in Cyahafi secteur, Félicien Munyezamu, as well as two *Interahamwe* named Augustin Bararambirwa and Kajabo, told him about a meeting that was held at the *Hôtel L'Horizon Rebero* on 28 March 1994 and chaired by Ngirumpatse. The witness did not attend that meeting.⁶⁶⁷

Prosecution Witness ALG

463. The witness⁶⁶⁸ testified that businessmen and senior MRND officials, in particular the Executive Bureau and National Secretariat, gave money and material assistance to the *Interahamwe*.⁶⁶⁹

Ngirumpatse Defence Witness PR

464. The witness⁶⁷⁰ testified that he never attended a fundraising meeting for the *Interahamwe* at the *Hôtel L'Horizon Rebero*, nor did he recall hearing of such a meeting when he was working in Rwanda.⁶⁷¹

Nzirorera Defence Witness Augustin Bizimungu

465. The witness was chief of staff of the Rwandan Army during the genocide and was convicted by the Tribunal for his role during the genocide.⁶⁷² He testified that he never attended a fundraising event for the *Interahamwe* at the *Hôtel L'Horizon Rebero*, as alleged by Prosecution Witness G.⁶⁷³

Nzirorera Defence Witness Georges Rutaganda

466. The witness⁶⁷⁴ testified that he attended an event at the *Hôtel L'Horizon Rebero* in early 1993 to raise money for the *Interahamwe*. Kajuga organised the event under the auspices of the National Committee of the *Interahamwe*. The money was to be used in organising the constituent congress of the *Interahamwe*. The witness did not see Joseph Nzirorera at that meeting.⁶⁷⁵

Joseph Nzirorera

467. Nzirorera testified that he went to the *Hôtel L'Horizon Rebero* regularly but never attended any fundraising events for the *Interahamwe* there.⁶⁷⁶

⁶⁶⁶ See para. 299, *supra*.

⁶⁶⁷ T. 4 July 2007, pp. 22, 23.

⁶⁶⁸ See para. 157, *supra*.

⁶⁶⁹ T. 26 October 2010, p. 57.

⁶⁷⁰ See para. 232, *supra*.

⁶⁷¹ T. 19 November 2010, p. 38 (closed session).

⁶⁷² T. 8 February 2010, p. 8. See also *Prosecutor v. Augustin Ndingiliyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye, and Innocent Sagahutu*, Case No. ICTR-00-56-T, Judgement (TC), 17 May 2011, (“*Ndingiliyimana et al. Trial Judgement*”).

⁶⁷³ T. 8 February 2010, p. 42.

⁶⁷⁴ See para. 187, *supra*.

⁶⁷⁵ T. 12 April 2010, p. 25.

⁶⁷⁶ T. 20 May 2010, p. 8.

Matthieu Ngirumpatse

468. Ngirumpatse testified that he never attended a meeting to raise funds for the *Interahamwe*. He was not aware of money being handed to the Executive Bureau and then used in a clandestine manner. The buses hired to transport *Interahamwe* to rallies in other *préfectures* were not exclusively for *Interahamwe* but were for all party members who wanted to attend.⁶⁷⁷

469. Ngirumpatse also disputed Witness AWE's testimony that he chaired a meeting at the *Hôtel L'Horizon Rebero* on 28 March 1994. At that time, he was busy attending meetings for the establishment of institutions. He was not aware of any meeting that may have taken place at the *Hôtel L'Horizon Rebero*.⁶⁷⁸

Deliberations*Cautionary Issues*

470. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses AWE and ALG, and Defence Witnesses Bizimungu and Rutaganda were convicted and imprisoned for participating in the genocide.⁶⁷⁹ Furthermore, at the time of their testimony, Prosecution witnesses AWD and T were detained and awaiting trial on genocide charges.⁶⁸⁰ The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program⁶⁸¹ and that Rutaganda called Ngirumpatse as a Defence witness in his own trial.

471. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Fundraising Activities

472. Based on the evidence of Prosecution Witnesses G, T, and AWD, and Defence Witnesses PR and Rutaganda, the Chamber is satisfied that fundraising activities for the *Interahamwe* took place in 1993 and 1994 at the *Hôtel L'Horizon Rebero* in Kigali. The evidence of these witnesses was broadly consistent on this point and the Chamber considers it to be credible.

473. The Chamber is also satisfied that Nzirorera and other senior officials, including Juvénal Habyarimana and Robert Kajuga, participated in these fundraising activities. Witnesses G, T, and Rutaganda provided consistent testimony on this point and the Chamber considers it to be credible.

474. The Chamber is not satisfied, however, that Ngirumpatse participated in these fundraising events at the *Hôtel L'Horizon Rebero*. Prosecution Witness AWE's evidence is

⁶⁷⁷ T. 25 January 2011, pp. 28, 29.

⁶⁷⁸ T. 20 January 2011, p. 45.

⁶⁷⁹ See paras. 299 (AWE); 157 (ALG); 465 (Bizimungu); and 187 (Rutaganda).

⁶⁸⁰ See paras. 219 (AWD) and 178 (T).

⁶⁸¹ See paras. 175 (G) and 178 (T).

based on hearsay and does not indicate the purpose of the alleged meeting; accordingly, it is insufficient to sustain the allegation.

Conclusion

475. The Prosecution has not proved beyond a reasonable doubt that Ngirumpatse participated in fundraising activities for the *Interahamwe* during 1993 and 1994.

2. MEETINGS AND PUBLIC RALLIES

476. Paragraph 25 of the Indictment, as specified in sub-paragraphs 25.1 to 25.3, alleges that over the course of 1993 and early 1994, Karemera and Ngirumpatse, together with Nzirorera, often participated in MRND meetings and addressed public gatherings and rallies where they characterized Tutsis as the enemy. These gatherings were intended to indoctrinate MRND party members, particularly the MRND-*Interahamwe* youth wing, with anti-Tutsi sentiment and to generate fear and loathing of the Tutsi as a group among Rwanda's Hutu population.

2.1 Ngirumpatse's Presentation and Endorsement of Local *Interahamwe* Leaders

Introduction

Allegation in the Indictment

477. During 1993 and continuing through early 1994, Ngirumpatse participated in MRND party meetings at the prefectural level in Kigali-rural, Kibungo, and several other *préfectures*. During these meetings he presented and endorsed local leaders of the *Interahamwe* to the various regional constituencies of the MRND as a means to expand membership in the *Interahamwe* and exercise control over the militias through structures of authority in the MRND party.⁶⁸²

Evidence

Prosecution Witness HH

478. The witness⁶⁸³ testified that the first meeting where he was introduced to the *Interahamwe* movement took place in the building belonging to Vedaste Rubangura in Kigali-ville. The witness did not mention any meetings with Ngirumpatse in Kigali-rural.⁶⁸⁴

Matthieu Ngirumpatse

479. Ngirumpatse denied attending MRND prefectural meetings between January 1993 and early 1994 where he introduced local *Interahamwe* chiefs. Ngirumpatse testified that all

⁶⁸² Indictment, para. 24.6.

⁶⁸³ See para. 170, *supra*.

⁶⁸⁴ T. 8 November 2006, pp. 21, 25-27; T. 10 November 2006, p.12.

préfectures had MRND party chairs so there was no need for him to go and carry out the same functions.⁶⁸⁵

Deliberations

480. The Prosecution has not led evidence that the alleged meetings took place.

Conclusion

481. The Prosecution has not proved beyond a reasonable doubt that Ngirumpatse participated in prefectural meetings during 1993 and continuing through early 1994 where he presented and endorsed local leaders of the *Interahamwe* to as a means of expanding *Interahamwe* membership and exercising control over the militias through structures of authority in the MRND party.

2.2 Lists of Persons to be Killed and Preparation of Killing Campaign against Tutsis and Hutus who Supported the RPF

Allegation in the Indictment

482. Ngirumpatse chaired meetings of the Provisional National Committee of the *Interahamwe* in Kigali during late 1993 and early 1994. At these meetings, Ngirumpatse and other *Interahamwe* leaders prepared lists of persons to be killed and planned a larger killing campaign against Tutsis and moderate Hutus.⁶⁸⁶

Evidence

Prosecution Witness HH

483. The witness⁶⁸⁷ was first instructed by Ngirumpatse to make lists of supporters of the RPF towards the end of 1992 after the agreement between Rwandan opposition parties and the RPF was signed in Brussels. The instructions to create lists were given during meetings of the presidents of *secteurs* that were held at the MRND party headquarters and at MRND meetings held in Ruhengeri. Ngirumpatse took the floor and said that people who send their children to the RPF and others who paid fees for Rwandans to be killed must be identified.⁶⁸⁸

484. The instructions to draw up lists were reiterated by Turatsinze at later meetings. The instructions stated that the lists should be populated with Tutsis who held meetings at night and persons who sent their children to join the RPF and gave the RPF sums of money. The reports drafted by the *secteur* presidents were turned over to Turatsinze. If Turatsinze was away and the matter was urgent, the *secteur* presidents were supposed to turn their reports over to Ngirumpatse.⁶⁸⁹ Ngirumpatse and Joseph Nzirorera were aware that the lists were

⁶⁸⁵ T. 24 January 2011, p. 23.

⁶⁸⁶ Indictment, para. 24.7.

⁶⁸⁷ See para. 170, *supra*.

⁶⁸⁸ T. 17 November 2006, p. 18.

⁶⁸⁹ T. 8 November 2006, p. 60; T. 17 November 2006, pp. 18-20.

being created. The witness believes that the instructions to create the lists came from Ngirumpatse and Nzirorera, because Turatsinze was the only one who reported to them.⁶⁹⁰

485. Turatsinze drafted a master list, which he then handed to the National Secretary of the MRND. The witness observed the handover on several occasions. The lists did not aim to list all Tutsis in a *secteur*, but only those people suspected of collaborating with the RPF. The lists were collected and sent to MRND headquarters until April 1994, and the witness is sure that the people on those lists were among the first to be killed after 6 April 1994.

486. The lists were never turned over to the *Interahamwe* after 6 April 1994, because it was the *Interahamwe* who drafted them.⁶⁹¹

Prosecution Witness Frank Claeys

487. Turatsinze told the witness⁶⁹² that he had been ordered to register the houses inhabited by Tutsis but that the inventory was still being compiled. Turatsinze suspected that the lists were for the extermination of the Tutsis.⁶⁹³

Prosecution Witness UB

488. The witness⁶⁹⁴ was aware of a requirement to register Tutsis in 1994. At the *cellule* level, the *Interahamwe* made a census, which was then transmitted to the *secteur* level and up the levels of MRND party administration until it reached the Executive Bureau.

489. In the first days of the genocide, as people were being killed, the killers used lists. Soldiers went around with lists looking for people, which demonstrated to him that the lists had been drawn up in advance.⁶⁹⁵

Prosecution Witness T

490. The witness⁶⁹⁶ did not know of any lists drawn up by the *Interahamwe*. People knew each other in the neighborhoods and considered unknown persons to be infiltrators so there was no need for lists to be created. He admitted it was possible that the names of people who entered the RPF quarters in Kigali were monitored and their names may have been written down. An individual went to the RTLM station on 8 April 1994 and saw lists of people to be eliminated; the names of persons whose elimination was uncertain had question marks next to them.⁶⁹⁷

Nzirorera Defence Witness Joshua Ruzibiza

491. Joshua Ruzibiza was an RPF Sergeant in 1994 who worked in combat intelligence.⁶⁹⁸ Lists of specific groups of people were created prior to the genocide; for

⁶⁹⁰ T. 8 November 2006, pp. 60, 61.
⁶⁹¹ T. 17 November 2006, p. 20; T. 8 November 2006, p. 61.
⁶⁹² See para. 290, *supra*.
⁶⁹³ T. 21 November 2006, p. 65.
⁶⁹⁴ See para. 154, *supra*.
⁶⁹⁵ T. 24 February 2006, pp. 10-11.
⁶⁹⁶ See para. 178, *supra*.
⁶⁹⁷ T. 7 June 2006, pp. 19-21.
⁶⁹⁸ Exhibit DNZ554, *Bagosora et. al.*, T. 9 March 2006, p. 6.

example those whose children joined the RPF, people who were suspected to be propagandists of the RPF, people who collected financial support for the RPF, and Hutus who supported the RPF war. Those listed were to be killed at some point in the future, and most were killed within the first three days after 6 April 1994.⁶⁹⁹

492. Based on his observations in Kigali and Byumba between April and July 1994, he stated that the *Interahamwe* almost always assisted or aided the Rwandan Armed Forces in the killings. He testified that everybody knows one another in Rwanda so Hutus do not need to draw up lists if the purpose was to kill all Tutsis.⁷⁰⁰

Ngirumpatse Defence Witness André Nzabanterura

493. The witness⁷⁰¹ stated that there was no list of Tutsis to eliminate. The issue of lists was created to discredit the MRND and the *Interahamwe*. In Rugando *cellule*, the MRND vice-chair was a Tutsi named Kalisa Rutabingwa and he would not have remained a member of the MRND if they had drawn up such a list.⁷⁰²

Matthieu Ngirumpatse

494. Ngirumpatse testified that any allegations that he chaired meetings where lists of Tutsis and moderate Hutus to be killed were created are fabricated. The RPF collected all the records and archives after they took control of Rwanda so if the lists existed they would have been turned over to the Prosecutor and would be in evidence in this trial. Lists were not necessary in Rwanda because everyone's ethnicity was known.⁷⁰³

Deliberations

Cautionary Issues

495. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH and UB, and Defence Witness Nzabanterura were convicted and imprisoned for participating in the genocide.⁷⁰⁴ Furthermore, at the time of his testimony, Prosecution Witness T was detained and awaiting trial on genocide charges.⁷⁰⁵ The Chamber also takes into account that Witness T has received extensive benefits under the Prosecution's witness protection program.⁷⁰⁶

496. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

The Lists

⁶⁹⁹ Exhibit DNZ554, *Bagosora et. al.*, T. 10 March 2006, pp. 18-20.

⁷⁰⁰ *Id.*

⁷⁰¹ See para. 429, *supra*.

⁷⁰² T. 29 September 2010, p.16.

⁷⁰³ T. 24 January 2011, pp. 23-24.

⁷⁰⁴ See paras. 170 (HH); 154 (UB); and 429 (Nzabanterura).

⁷⁰⁵ See para. 178 (T).

⁷⁰⁶ *Id.*

497. The Prosecution has presented no evidence of any discussions in the Provisional National Committee of the *Interahamwe* concerning the preparation of lists of people to be killed.

498. Prosecution Witness HH gave direct evidence that lists were being prepared of specific groups of people to be killed. Defence Witness Ruzibiza corroborated his evidence; however, he was working for the RPF and did not explain the basis for his evidence. Furthermore, the evidence of Prosecution Witnesses Claeys and UB was based on hearsay and concerned another type of lists, namely of all Tutsis. Recalling that the Chamber treats the evidence of Witness HH with caution, the Chamber does not find the evidence sufficient to conclude that lists were being prepared of specific groups of people to be killed.

499. The hearsay evidence of Claeys and UB that lists of all Tutsis were being prepared is also problematic because it is inconsistent with the evidence of Witness HH, who stated that only lists of supporters of the RPF were being prepared. As an *Interahamwe* leader, Witness HH would have been involved in the preparation of such lists and therefore is in a better position to know who was included in them.

500. Furthermore, as testified by Witness T and Ngirumpatse, there seemed to be little need to register all Tutsis because the ethnicity of Rwandans was already known. Therefore, the Prosecution did not present sufficient evidence that lists were being prepared of all Tutsis or that the killing of all Tutsis was otherwise being planned.

Conclusion

501. The Prosecution has not proved beyond a reasonable doubt that Ngirumpatse chaired meetings of the National Committee of the *Interahamwe* in Kigali during late 1993 and early 1994 where he and other *Interahamwe* leaders prepared lists of persons to be killed and planned a larger killing campaign against Tutsis and moderate Hutus.

2.3 Clarification of the Allegations Concerning Rallies

Karemera's Participation in Public Rallies

502. While introductory paragraph 25 alleges that Karemera often participated in various MRND political party meetings, he is not included in the specific allegations in subparagraphs 25.1 or 25.3. The Prosecution, however, presented evidence that Karemera attended the meeting under subparagraph 25.1 and two meetings under subparagraphs 25.3.

503. The Chamber notes that although the subparagraphs must be interpreted in light of the introductory paragraph, the fact that subparagraphs 25.1. and 25.3 do not mention Karemera while specifically mentioning other political leaders creates a defect in the allegations in these subparagraphs with respect to Karemera. The Chamber recalls the standards for curing defects in the Indictment (see II.6).

23 October 1993 Rally at Nyamirambo Stadium

504. On 26 October 2006, Prosecution Witness ALG testified that Karemera attended the rally.⁷⁰⁷ The Defence objected to the evidence⁷⁰⁸ but the Chamber admitted it in an oral ruling.⁷⁰⁹

505. The Chamber notes that the Pre-Trial Brief notified the Defence that Prosecution Witnesses GFJ and UB, among others, would testify that Karemera and other MRND leaders were present at a rally in Nyamirambo on 23 October 1993,⁷¹⁰ and that Karemera addressed large audiences at various MRND rallies during 1994, many held in Nyamirambo Stadium.⁷¹¹

506. Furthermore, the summary for Witness ALG, which was annexed to the Pre-Trial Brief, states that “[t]he witness will also provide accounts of several key meetings and events...meetings held in relation to the demonstration and rally in Nyamirambo on 23 October 1993...” The summary also mentions that the testimony of Witness ALG will support sub-paragraph 25.1 of the Indictment (23 October 1993 Nyamirambo rally).⁷¹²

507. Accordingly, the Chamber will consider the testimony of Witness ALG and others that Karemera was present at the 23 October 1993 rally at Nyamirambo stadium because the Accused received timely, clear, and consistent information that Karemera’s presence at the rally would form part of the factual basis underpinning the charge. Furthermore, Karemera gave evidence concerning this rally.

7 November 1993 Rally at Nyamirambo Stadium

508. The Prosecution offered into evidence a video-recording of the rally on 11 October 2005, which clearly demonstrates that Karemera attended the rally and gave a speech. On 14 April 2009, the Prosecution offered into evidence the transcript of the radio broadcast of the speech he gave during the rally.

509. The Pre-Trial Brief informed Karemera that Witnesses GFJ and UB, among others, would testify that he and other MRND leaders were present at a rally in Nyamirambo on 23 October 1993, *or at similar rallies during that same period*, where calls for Hutu Power were made.⁷¹³

510. The Chamber notes that Karemera neither objected to the admission of the videotape in 2005 nor to the admission of the transcript in 2009, and has provided no explanation for his failure to raise objections before he filed his closing brief. Therefore, considering the general allegation in the introduction in paragraph 25 and noting that the rally falls within the timeframe indicated in the Pre-Trial brief, the Chamber will also consider the evidence in relation to Karemera.

16 January 1994 Rally at Nyamirambo Stadium

⁷⁰⁷ T. 26 October 2006, pp. 43-45.

⁷⁰⁸ *Id.*, p. 46.

⁷⁰⁹ T. 27 October 2006, p. 21.

⁷¹⁰ Pre-Trial Brief, para. 79.

⁷¹¹ *Id.*, para. 80.

⁷¹² *Id.*, Annex “ALG”.

⁷¹³ *Id.*, para. 79.

511. On 11 October 2005, the Prosecution offered into evidence a transcript of an RTLM radio broadcast⁷¹⁴ and on 5 December 2007, it offered into evidence a transcript of a Radio Rwanda broadcast,⁷¹⁵ which demonstrate that Karemera attended the rally and addressed the crowd.

512. The Chamber notes that Karemera did not object to the admission of the transcripts of the radio broadcasts, or provide an explanation for his failure to raise objections before he filed his closing brief. Furthermore, he led evidence concerning this rally. Therefore, considering the general allegation in the introduction in paragraph 25 and noting that the rally falls within the timeframe indicated in the Pre-Trial brief, the Chamber will also consider the evidence related to Karemera.

"Hutu Power"

513. The Prosecution employs this term throughout the Indictment, Pre-Trial Brief, and Closing Brief, particularly with respect to its allegations concerning public rallies. Despite its extensive use of this term, however, the Prosecution has failed to explain what it means.

514. Considering the context in which the term is used, the Chamber understands it to mean opposition to power-sharing with the RPF and, thus, a general opposition to the Arusha Accords. The Chamber does not consider "Hutu Power" synonymous with genocidal ideology to massacre Tutsis. If the Prosecution intended the term to be interpreted in this manner, it should have expressly stated this in the Indictment.

2.4 23 October 1993 Rally at Nyamirambo Stadium

Allegation in the Indictment

515. On or about 23 October 1993, Ngirumpatse, Jean-Bosco Barayagwiza, and others participated in a rally at Nyamirambo stadium in Kigali where they made speeches that characterized Tutsis as accomplices of "the enemy." The rally included animation and pageantry by *Interahamwe*.⁷¹⁶

Undisputed Evidence

516. It is undisputed that a rally occurred at Nyamirambo Stadium in Kigali on 23 October 1993.⁷¹⁷ It is also undisputed that Froudouald Karamira, chairman of the MRND Kigali-ville prefectural committee, spoke at the rally⁷¹⁸ and that the *Interahamwe* performed.⁷¹⁹

Evidence

Transcript of Froudouald Karamira's Speech at Nyamirambo Stadium on 23 October 1993

⁷¹⁴ Exhibit P14, "16/1/1994 Broadcast RTLM".

⁷¹⁵ Exhibit P230, "16/1/1994 Broadcast RTLM".

⁷¹⁶ Indictment, para. 25.1.

⁷¹⁷ Exhibit P272, "Pre-1994 Background 23/10/1993, Discours Karamira meeting politique du 23 octobre 1993".

⁷¹⁸ *Id.*

⁷¹⁹ Witness ALG, T. 26 October 2006, p. 43, 46; Witness UB, T. 24 February 2006, pp. 5-7.

517. The transcript shows that Karamira addressed the crowd and claimed that a tragedy similar to what had just been committed in Burundi would occur in Rwanda if people did not take care. It was verified that the RPF-*Inkotanyi* had been involved in overthrowing the government in Burundi. Furthermore, Paul Kagame was involved in the Burundi attack, which meant that he intended to deceive Rwandans with the Arusha Accords.

518. Therefore, every Hutu living in Rwanda must rise up against Kagame and those who supported him so the necessary can be done. All Hutu must unite and start training. Lack of vigilance by the people allowed the *Inyenzi* to become members of the Broad-Based Transitional Government. Prime Minister Agathe Uwilingiyimana had shown *Inyenzi* behaviour. The enemy was in their midst and the primary means of entry was through Radio Rwanda, but Radio RTL M came to the rescue.

519. Karamira ended his speech by saying that Hutus, wherever they were, should not argue with or attack each other while they are being attacked by Tutsis. He encouraged the audience to prevent the traitor from infiltrating their ranks and stealing their power.⁷²⁰

Prosecution Witness ALG

520. The witness⁷²¹ testified that he attended the march of support, which ended in Nyamirambo stadium and was followed by a rally that he also attended.⁷²² The march was a peaceful event, but during the rally the situation deteriorated and 'virulent speeches' were made.⁷²³

521. Senior MRND official Jean Habyarimana and MDR members Froudouald Karamira and François Karera planned the rally.⁷²⁴ Habyarimana and the president of the CDR spoke after Karamira, stating that Tutsis should be fought and the pre-1959 regime should not be allowed to return.⁷²⁵ The witness does not recall seeing Ngirumpatse or Karemera at the rally or hearing them address the crowd, but believes Karemera may have been present.⁷²⁶

Prosecution Witness AWD

522. The witness⁷²⁷ testified that he attended the rally. All Hutu majority parties were invited. Justin Mugenzi, Froudouald Karamira, and Karemera also attended, but not Ngirumpatse or Joseph Nzirorera. The MRND Executive Bureau told him to invite MRND militants to the rally.⁷²⁸ Karemera arrived late and the witness does not think he made a speech. He did notice Karemera speaking with Jean Habyarimana about the main theme of the rally, which was to unite Hutus to fight against Tutsis. The witness believes that the

⁷²⁰ Exhibit P272, "Pre-1994 Background 23/10/1993, Discours Karamira meeting politique du 23 octobre 1993". Excerpts of Karamira's speech were broadcast over RTL M radio and those excerpts are in the record in Exhibit P5.

⁷²¹ See para. 157, *supra*.

⁷²² T. 26 October 2006, pp. 42-44; T. 1 November 2006, p. 49.

⁷²³ *Id.*, p. 45.

⁷²⁴ *Id.*

⁷²⁵ *Id.*, pp. 45, 46.

⁷²⁶ T. 1 November 2006, p. 48.

⁷²⁷ See para. 219, *supra*.

⁷²⁸ T. 7 November 2007, p. 40.

MRND leaders for Kigali-ville *préfecture* were present during the conversation between Karemera and Habyarimana.⁷²⁹

Prosecution Witness T

523. The witness⁷³⁰ testified that the rally was a public manifestation of an agreement, which arose after the leadership of the MDR split in July 1993. From that time, the MRND held the same opinion as the CDR and supported the *Interahamwe*. This rally was not when the Hutu Power movement was born, but rather when it was officially recognised and acknowledged.⁷³¹

Prosecution Witness UB

524. The witness⁷³² testified that Ngirumpatse called Jean Habyarimana and after their conversation, Habyarimana assembled the members of the MRND prefectural committee and MRND leaders at the *communal* level to ask them to order everyone to attend the rally. Neither Ngirumpatse nor Joseph Nzirorera were at the rally, but Karemera came in at the end of the rally and spoke to Habyarimana. An expression of Hutu Power took place at the rally.⁷³³ The speeches made at the rally referred to Tutsis as the enemy, and the witness saw Tutsi homes being destroyed in his neighbourhood immediately after the rally.

525. After the rally, *Interahamwe* and *Inkuba* beat up Tutsis that lived around the stadium.⁷³⁴

Karemera Defence Witness Jean-Marie Vianney Nkezabera

526. The witness was Vice-President of the MDR from its inception and Vice-Chairman of the MDR in Kigali-ville *préfecture* in 1994.⁷³⁵ He organised and attended the rally, but distanced himself and the MDR from Froudouald Karamira's speech at the rally. Karemera did not attend the rally because he was at an MRND Steering Bureau meeting but Jean Habyarimana was present in his capacity as MRND president for Kigali-ville *préfecture*.⁷³⁶ The witness believes that the march and rally were a point of departure and a coming together for all those who supported Hutu power.⁷³⁷

Édouard Karemera

527. Karemera stated that a march was organised in Kigali after President Ndadaye of Burundi was assassinated. The march led to an assembly at Nyamirambo stadium but that assembly was not a rally. He did not attend the march or the assembly.⁷³⁸

⁷²⁹ T. 9 November 2007, pp. 22, 23.

⁷³⁰ See para. 178, *supra*.

⁷³¹ T. 24 May 2006, pp. 28, 29.

⁷³² See para. 154, *supra*.

⁷³³ T. 24 February 2006, pp. 4, 5.

⁷³⁴ *Id.*, p. 5.

⁷³⁵ T. 8 May 2008, pp. 46, 52.

⁷³⁶ T. 13 May 2008, p. 35.

⁷³⁷ *Id.*, p. 55.

⁷³⁸ T. 18 May 2009, p. 63.

Matthieu Ngirumpatse

528. Ngirumpatse is unsure if Hutu Power was an ideology or slogan but learned that it was introduced on 23 October 1993 by Froudouald Karamira at the Nyamirambo stadium rally. He was not present at this rally, because it was an MDR party rally and he was never in any way associated with that slogan or idea.⁷³⁹ He never made private or public statements to indoctrinate youth to hate Tutsis and never promoted hatred or division. Such statements would have subjected him to reprimands or sanctions.

529. He did not order Witness UB to attend the rally. If such an order would have been given, it would not have come from the national chairman of the MRND but from the prefectural chair. Ngirumpatse listened to some excerpts of the rally on the radio, which did not conform to the allegations of Witness UB. The MRND was not present at the rally because it was organized by the MDR.⁷⁴⁰

Deliberations

Cautionary Issues

530. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses ALG and UB were convicted and imprisoned for participating in the genocide.⁷⁴¹ Furthermore, at the time of their testimony, Prosecution Witnesses AWD and T were detained and awaiting trial on genocide charges.⁷⁴² The Chamber also takes into account that Prosecution Witness T has received extensive benefits under the Prosecution's witness protection program.⁷⁴³

531. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

The Speeches

532. In his speech, Karamira equated Tutsis with: "those who supported" Paul Kagame; "the enemy in their midst"; and "a traitor infiltrating their ranks and stealing their power". This corroborates the testimony of Prosecution Witnesses ALG and UB that speakers at the rally referred to Tutsis as accomplices of the enemy. The testimony of Witness UB that Tutsis were attacked immediately after the rally further corroborates the evidence that Tutsis were referred to in this way during the rally.

533. Therefore, the Chamber finds it proven beyond a reasonable doubt that speeches were made during the 23 October 1993 rally at Nyamirambo stadium, which characterized Tutsis as accomplices of the enemy.

Involvement of Ngirumpatse and Karemera

⁷³⁹ T. 20 January 2011, pp. 37, 38; T. 21 January 2011, p. 2.

⁷⁴⁰ T. 20 January 2011, pp. 37, 38; T. 21 January 2011, p. 4.

⁷⁴¹ See paras. 157 (ALG) and 154 (UB).

⁷⁴² See paras. 219 (AWD) and 178 (T).

⁷⁴³ See para. 178.

534. Prosecution Witnesses AWD and UB were consistent in their assertions that Karemera attended the rally, arrived late, and spoke with Jean Habyarimana. Nkezabera's testimony that Karemera attended an MRND Executive Bureau meeting during the rally is not enough to rebut the evidence of the Prosecution witnesses. Nkezabera was a member of the MDR party and would not have been in a position to know the particulars of such meetings held by another party. In any event, Karemera's attendance at another meeting is not inconsistent with his presence at the rally because Witnesses AWD and UB testified that he arrived late. Therefore, the Chamber finds the Prosecution evidence more probative than Karemera's denial that he attended the rally, and is convinced that Karemera was present but arrived late and did not address the participants.

535. There is no evidence that Ngirumpatse attended the rally.

536. Nevertheless, there is strong evidence that the MRND Executive Bureau was involved in the organization of the rally. Witnesses AWD and UB testified that the MRND Executive Bureau or Ngirumpatse ordered MRND militants to attend the rally. Moreover, it is clear that the MRND prefectural chairman attended the rally and spoke, Karemera was present, and the *Interahamwe* performed. Taking this into account, and noting the centralised structure of the MRND, the Chamber finds it proven beyond a reasonable doubt that the MRND Executive Bureau condoned the rally and its general purpose of showing unity for the Hutu Power cause. There is, however, insufficient evidence that the Executive Bureau condoned the association made between Tutsis and accomplices of the enemy (RPF).

Conclusion

537. The Prosecution has proved beyond a reasonable doubt that on or about 23 October 1993, a rally was held at Nyamirambo stadium in Kigali where speeches were made that characterized Tutsis as accomplices of "the enemy." The rally included animation and pageantry by *Interahamwe*. Karemera arrived late and did not address the audience. The MRND Executive Bureau condoned the rally and its general purpose of showing unity for the Hutu Power cause.

2.5 27 October 1993 Rally at Umuganda Stadium

Allegation in the Indictment

538. On or about 27 October 1993, Karemera and Ngirumpatse together with Joseph Nzirorera and other high-level officials of the MRND participated in a rally at Umuganda Stadium in Gisenyi. Colonel Théoneste Bagosora and Augustin Ngirabatware also participated in the rally with thousands of persons in attendance. Those who addressed the crowd, including Ngirumpatse and Karemera, spoke of their opposition to the Arusha Accords and exhorted the crowd to combat the enemy. *Interahamwe* in *kitenge* uniforms provided security and animation for the event.⁷⁴⁴

Evidence

Prosecution Witness XBM

⁷⁴⁴ Indictment, para. 25.2

539. The witness⁷⁴⁵ attended an MRND political rally in Gisenyi *préfecture* in the autumn of 1993 at Umuganda Stadium, in October or November. He estimated between 3,000 and 5,000 people attended the rally, which lasted about three hours. Party leaders from the MRND were present at the rally, including Ngirumpatse, Karemera, Kabagema, and Joseph Nzirorera. Ngirabatware, Wellars Banzi, and military authorities like Bagosora and Nsengiyumva were also at the rally.⁷⁴⁶

540. Théoneste Bagosora addressed the audience in civilian attire, and told them that he never had confidence in the Arusha Accords. He stated that he could not fathom how power would be shared with the people who had killed his relatives and that the RPF had nothing good to bring to Rwanda. Bagosora called on the youth to undergo military training to support the army, and the rest of the population was invited to make contributions.⁷⁴⁷

541. Karemera spoke after Bagosora and urged the population to be vigilant but also tolerant so they could cohabit with the *Inkotanyi*. Nonetheless, if the *Inkotanyi* started behaving badly, the population should not comply with the Arusha Accords.⁷⁴⁸

542. Ngirumpatse spoke last and asserted that the strength of the MRND was reflected in the *Interahamwe*. He stated that more than 500 *Interahamwe* were present at the rally in special *kitenge* clothing. Like Bagosora, Ngirumpatse asked the youth to undergo military training so they could intervene on the front if necessary and called upon the population to contribute financially to the armed forces.⁷⁴⁹

Prosecution Witness HH

543. The witness⁷⁵⁰ was responsible for security at a rally held at the Umuganda stadium in 1993 with a team of his *Interahamwe*.⁷⁵¹ He did not recall the month the rally occurred. Many *Interahamwe* came from various *préfectures* to participate in the rally. Banzi Wellars, Ngirumpatse, Joseph Nzirorera, Anatole Nsengiyumva, and Théoneste Bagosora were present and dressed in civilian clothes, and Karemera may have been present. André Nzabanterura and other *Interahamwe* accompanied the witness in a vehicle on the way to the rally.⁷⁵²

Prosecution Witness André Nzabanterura

544. The witness⁷⁵³ confirmed that a rally was held at Umuganda stadium in Gisenyi in 1993, but testified that the rally occurred before July of that year, perhaps in March. Witness HH did not accompany him to the rally in a vehicle.⁷⁵⁴

Nzirorera Defence Witness Théoneste Bagosora

⁷⁴⁵ See para. 302, *supra*.

⁷⁴⁶ T. 21 June 2006, pp. 20, 21, 24.

⁷⁴⁷ *Id.*, pp. 22, 23.

⁷⁴⁸ *Id.*, pp. 23, 24.

⁷⁴⁹ *Id.*, pp. 24, 25.

⁷⁵⁰ See para. 170, *supra*.

⁷⁵¹ T. 9 November 2006, p. 2.

⁷⁵² *Id.*, pp. 1-3, 5; T. 16 November 2006, pp. 4-6, 12-14.

⁷⁵³ See para. 429, *supra*.

⁷⁵⁴ T. 29 September 2010, p. 21-22; T. 30 September 2010, pp. 1-5.

545. The witness was the *directeur de cabinet* of the Ministry of Defence during the genocide and was convicted by the tribunal for his role in the genocide.⁷⁵⁵ He denied attending a rally at Umuganda Stadium in 1993, and explained that he was an active soldier until 23 September 1993 and was not authorised to participate in any public political activities before that date.⁷⁵⁶

Matthieu Ngirumpatse

546. Ngirumpatse testified that there was no rally on 27 October 1993 because rallies could not be held on working days.⁷⁵⁷ Furthermore, in the north of the country, no MRND rallies were held after 8 February 1993. Théoneste Bagosora did not attend MRND party rallies; it would have been out of place for Bagosora to attend a political rally and make statements.⁷⁵⁸

Deliberations

Cautionary Issues

547. The Chamber recalls that, at the time of their testimony, Prosecution Witness HH and Defence Witnesses Bagosora and Nzabanterura were convicted and imprisoned for participating in the genocide.⁷⁵⁹

548. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

The Rally

549. Prosecution Witness Nzabanterura testified about a rally that took place sometime between March and June 1993, which could have been a different rally from the one described by Prosecution Witnesses XBM and HH. Nonetheless, the Chamber notes that Nzabanterura's evidence contradicts Ngirumpatse's claim that a rally could not have taken place after March 1993.

550. Witnesses XBM and HH provided consistent testimony about a rally at Umuganda Stadium in Gisenyi in 1993, which Ngirumpatse, Joseph Nzirorera, Théoneste Bagosora, Anatole Nsengiyumva, and Banzi Wellars attended. They also stated that Bagosora appeared in civilian clothes, and that the *Interahamwe* attended in large numbers. Witness XBM added that the *Interahamwe* wore *kitenge* uniforms. Having compared and contrasted the testimony of Witnesses XBM and HH, the Chamber is convinced that they referred to the same rally, which took place in October or November 1993, and that it was the same rally that was pleaded in sub-paragraph 25.2 of the Indictment. Moreover, according to Witness Bagosora, he would not have been barred from attending a rally on this date

⁷⁵⁵ See *Bagosora et al.* Trial Judgement.

⁷⁵⁶ T. 28 June 2010, p. 47.

⁷⁵⁷ Exhibit DNZ167, "Calendar Showing October 1993" was admitted into evidence.

⁷⁵⁸ T. 20 January 2011, pp. 38-41.

⁷⁵⁹ See paras. 170 (HH); 545 (Bagosora); and 429 (Nzabanterura).

because he was no longer an active soldier at that time. Nonetheless, the Chamber finds that rallies are generally ordinary and legitimate activities for a political party.

551. The Prosecution did not present sufficient evidence that the speakers mentioned their opposition to the Arusha Accords and exhorted the crowd to combat the enemy. The only Prosecution witness who testified on this issue (XBM) did not provide satisfactory answers to discrepancies between his testimony and prior statements. Noting that there are no video or audio recordings of the speeches, the Chamber does not find it safe to rely on the testimony of Witness XBM regarding the content of the speeches.

Conclusion

552. The Prosecution has proved beyond a reasonable doubt that sometime between October and November 1993, Karemera and Ngirumpatse participated in a rally at Umuganda Stadium in Gisenyi. Colonel Théoneste Bagosora also participated in the rally with thousands of persons in attendance. *Interahamwe* in *kitenge* uniforms were also present.

553. The Prosecution has not proved beyond a reasonable doubt that those who addressed the crowd spoke of their opposition to the Arusha Accords and exhorted the crowd to combat the enemy.

2.6 Rallies and Public Gatherings at Nyamirambo Stadium in Early November 1993, mid-January 1994, mid-February 1994, and March 1994

Allegation in the Indictment

554. The Prosecution alleges that on several occasions in early November 1993, mid-January 1994, mid-February 1994, and March 1994, Ngirumpatse addressed public gatherings or rallies at Nyamirambo Stadium in Kigali. The rallies assembled leading politicians that espoused the cause of "Hutu Power" and sometimes ended with chants of "*Tubatsembembe*" ["Let us exterminate them"], referring to Tutsis. Members of the *Interahamwe* participated in the rallies.⁷⁶⁰

555. The Prosecution has only led evidence about two rallies which took place on 7 November 1993 and 16 January 1994.

2.6.1 7 November 1993 Rally

Undisputed Evidence

556. It is undisputed that an MRND party rally took place at Nyamirambo Stadium in Kigali on 7 November 1993 and that the *Interahamwe* participated. A videotape of the rally shows that Karemera and Ngirumpatse addressed the public and that the *Interahamwe* provided entertainment.⁷⁶¹

Evidence

⁷⁶⁰ Indictment, para. 25.3.

⁷⁶¹ Exhibit P012, "Videotape of 7 November 1993 Rally at Nyamirambo Stadium".

*Videotape of Rally and Official Translation of Radio Re-broadcast of Speeches*⁷⁶²; *Unofficial Translations of Radio Re-broadcast of Speeches*⁷⁶³

557. Nzirorera spoke at the rally and stated that other political parties were seeking to eliminate the MRND. He invoked Rwandan proverbs to assert that the MRND would resist their attacks. Nzirorera also stated that the MRND was opposed to the Arusha Accords and had warned people about them because they had been prepared by the *Inkotanyi* for the purpose of overthrowing the MRND and President Habyarimana.⁷⁶⁴ Nzirorera's speech was followed by one by Bonaventure Habimana, and then Karemera spoke followed by Robert Kajuga.⁷⁶⁵

558. Karemera gave a speech about financial bonuses for the members of the *cellule* committees. According to him, the *cellule* committees prevented the *Inkotanyi* from taking over Rwanda because they were the closest entity to the people and were therefore in charge of managing patrols and roadblocks.⁷⁶⁶

559. Kajuga encouraged the audience to attend the commemoration of the second anniversary of the birth of the *Interahamwe*, and to see how the *Interahamwe* had been trained. He stated that the *Interahamwe* were in charge of Kigali, and that no demonstration could be held unless it was approved by them.

560. Robert Kajuga also mentioned that the *Interahamwe* asked the Rwandan Armed Forces to play a football match because of the close relationship between the two organisations. He then called upon the *Interahamwe* from Kibuye to show themselves and one member addressed the audience. The *Interahamwe* speaker told the public that the *Interahamwe* movement had been instituted in Kibuye with committees throughout the various administrative levels and that it was planning a congress in the near future. The speaker then appealed to the audience for funds, advice, and assistance for the Kigali *Interahamwe*. He boasted of 1,000 new recruits in the Kigali *Interahamwe*, some coming from the youth wings of other political parties.⁷⁶⁷

561. Ngirumpatse told the rally that people throughout the world had learned to respect the *Interahamwe* and the MRND. He told the crowd that the MRND did not wish the young people to fight amongst themselves but noted that if other political parties sparked confrontation, the MRND would defeat them. He thanked the *Interahamwe* and stated that it had supported the party since its inception.⁷⁶⁸ He mentioned that traps had been laid in the Arusha Accords.⁷⁶⁹

⁷⁶² *Id.*; Exhibits P012B, P012B2, "Side A/B". (The same exhibit number was assigned to the videotape and the translations of the radio re-broadcasts of the speeches).

⁷⁶³ Exhibit DNZ13, "Speech Delivered by the First Vice-Chairman of MRND, Édouard Karemera, at the MRND Rally Held at Nyamirambo Stadium on 7 November 1993", Exhibit DNZ50, "Speech of Joseph Nzirorera, Secretary National of the MRND, Pronounced at the Time of the Rally of the MRND Held in Nyamirambo Stadium on November 7, 1993", Exhibit DNZ51, "Speech Pronounced by Matthieu Ngirumpatse, President of the MRND, at the Time of the MRND Rally Held in Nyamirambo Stadium on November 7, 1993".

⁷⁶⁴ Exhibit P012, pp. 2-5; Exhibit DNZ050, pp. 3, 4.

⁷⁶⁵ Exhibit P012, pp. 5-14.

⁷⁶⁶ T. 18 May 2009, pp. 38, 40.

⁷⁶⁷ Exhibit P012, pp. 5-14.

⁷⁶⁸ Exhibit DNZ051, p. 1.

⁷⁶⁹ Exhibit P012B2, p. 5.

562. Ngirumpatse also told the crowd that when other parties spoke of destroying the MRND they meant that MRND party members would be killed. The *Interahamwe* reassured him that such a situation was impossible.⁷⁷⁰ Jean Habyarimana and Simon Bikindi also spoke.

Matthieu Ngirumpatse

563. Ngirumpatse is not aware of the song “*Tubatsembasembe*” and asserts that it was never sung before or after MRND rallies. He did not advocate the extermination of *Inkotanyi*, *Inyenzi*, Tutsis, or members of opposition parties at the 7 November 1993 rally. Instead, he mocked people who espoused such ideas. He did not defend Hutu interests at the rally because that was neither the objective of the MRND nor its motto. He could not have promoted such ideas because it would have compromised votes in his favor.⁷⁷¹

Deliberations

564. The video-recording shows a rally where leaders and prominent members of the MRND, including Ngirumpatse, Karemera and Nzirorera, work with the *Interahamwe* to express party unity and strength. It appears that the rally intended to motivate and galvanise party members, including the *Interahamwe*, and recruit new members for the party and the *Interahamwe*. The Chamber considers this a regular and legitimate activity for a political party.

565. There is no evidence that “*Tubatsembasembe*” was sung on this occasion.

566. With respect to the allegation that Hutu Power was promoted, the Chamber finds that Nzirorera espoused these sentiments in his speech. Ngirumpatse mentioned the Arusha Accords briefly but unfavourably, mentioning that traps had been laid in them for the MRND. He criticised opposition politicians who supported power-sharing with the RPF. Considering that Ngirumpatse, Karemera, and Nzirorera appeared at the rally representing the Executive Bureau of the MRND, and that Ngirumpatse and Karemera did not distance themselves from Nzirorera’s Hutu Power statements in their speeches, the Chamber finds that this had the effect of supporting Nzirorera’s comments.

Conclusion

567. The Prosecution has proved beyond a reasonable doubt that an MRND party rally took place at Nyamirambo Stadium in Kigali on 7 November 1993. Karemera, Ngirumpatse, and leading MRND politicians addressed the public and the *Interahamwe* provided entertainment. The rally espoused the cause of Hutu Power.

2.6.2 16 January 1994 Rally

Undisputed Evidence

568. It is undisputed that a rally took place on 16 January 1994 at Nyamirambo Stadium as evidenced by broadcasts on Radio RTL and Radio Rwanda. Karemera and

⁷⁷⁰ *Id.*, pp. 3-5; DNZ051.

⁷⁷¹ T. 21 January 2011, pp. 3, 4.

Ngirumpatse attended the rally and addressed the audience. Members of the *Interahamwe* participated in the rallies.⁷⁷²

Evidence

*Radio RTLM Broadcasts of 16 January 1994 Rally*⁷⁷³

569. Ngirumpatse in his address to the rally recalled the events of 1958-1961 and cautioned those who were creating lists of people to be killed to recall what had happened to those who created lists in 1959. He told the audience that they were experiencing difficult times, which were similar to those of the past. The people causing the difficulties were doing so deliberately.

570. Ngirumpatse spoke of lies being circulated about MRND weapons distributions and preparation for combat, noting that these were similar to lies that were circulated in 1960 and stating that the UN forces should not believe them. He urged the crowd to remember Karemera's warning that Rwanda was at a crossroads and claimed that the second UN mission would leave for the same reasons as the first.⁷⁷⁴

571. André Ntagerura spoke of Agathe Uwilingiyimana's failure to restore security within Rwanda and her failure to improve the economy. He also spoke derisively about Uwilingiyimana's attempt to divide the MRND ministers, stating that it would fail because the MRND ministers were *Interahamwe*. He mentioned a conversation with the MRND chairman in Cyangugu *préfecture*, who told him that the population of Cyangugu would support the MRND if the need arose.⁷⁷⁵

572. Justin Mugenzi told the crowd that the neverending intrigues of the political parties would push Rwanda into an abyss, and that he supported President Habyarimana's proposal for handling conflicts over parliamentary appointments.⁷⁷⁶ He blamed Agathe Uwilingiyimana and Faustin Twagiramungu for the delay in establishing the BBTG.⁷⁷⁷

573. Jean Habyarimana mentioned a document that the MRND planned to distribute, which explained the nature of the problem between Hutus and Tutsis as well as the regionalism in the country. He asked the people to leave the stadium in peace and specifically requested the *Interahamwe* to be disciplined so the rally could end in splendour and glory.⁷⁷⁸

574. Karemera recalled Ngirumpatse's speech from February where he urged MRND members to never forget that they should punish those who betrayed the MRND at the polling booth. He then blamed the MDR, PSD, and PDC political parties for stopping the implementation of the Broad-Based Transitional Government. He told the audience that the

⁷⁷² Exhibit P014, "Radio RTLM Broadcast of 16 January 1994 Rally – RTLM 0295"; Exhibit P230, "Radio Rwanda Broadcast"; Exhibit P231, "Radio RTLM Broadcast of 16 January 1994 Rally – RTLM 0294".

⁷⁷³ Exhibit P014, "Radio RTLM Broadcast of 16 January 1994 Rally – RTLM 0295"; Exhibit P231, "Radio RTLM Broadcast of 16 January 1994 Rally – RTLM 0294".

⁷⁷⁴ Exhibit P14, p 9.

⁷⁷⁵ *Id.*, pp. 16-20.

⁷⁷⁶ *Id.*, pp. 27.

⁷⁷⁷ *Id.*, pp. 21, 22.

⁷⁷⁸ Exhibit P231, pp. 2-3.

Arusha Accords and their supporters caused problems with the implementation of the transitional institutions.⁷⁷⁹

Radio Rwanda Broadcast of 16 January 1994

575. According to Jean Bosco Habimana, the Radio Rwanda journalist, the rally focused on the stance of the MRND in the political landscape of the time, and the delay in establishing the Broad-Based Transitional Government pursuant to the Arusha Accords.⁷⁸⁰

Prosecution Witness ALG

576. The witness⁷⁸¹ attended the rally. The purpose of the rally was to denounce the Arusha Accords.⁷⁸² The “power wings” of other political parties had been invited to the rally along with CDR party officials. The rally was organised by senior officials of the MRND, namely members of the MRND Executive Bureau. The rally was summoned and chaired by Ngirumpatse. Karemera also attended the rally and spoke along the same lines as Ngirumpatse.⁷⁸³ Karemera stated that the MRND could not recognise the political power of the RPF because the RPF did not recognise the power of the majority, which was acquired during the 1959 revolution. Mugenzi also attended and addressed the rally, saying those that did not recognise the 1959 revolution would come to great misfortune.⁷⁸⁴

577. *Interahamwe* attended the rally and danced and sang songs, which conveyed genocidal ideology. People were sometimes assaulted during these animations. The CDR party used the phrase “let us exterminate them” referring to Tutsis, and members of the MRND often repeated the expression. This expression was used during the rally and among people departing the rally in buses.

578. The audience easily understood that the speakers intended for the term “enemy” to mean Tutsis, although the witness did not remember if Ngirumpatse used the term “enemy” in his speech. Ngirumpatse’s speech was a call to war because of phrases like “we will not accept this” and the tone and context of the speech.⁷⁸⁵ The witness remarked that it would be quite a feat to translate Ngirumpatse’s speech because there are many parables in Kinyarwanda, which are complicated. If one analyzes Ngirumpatse’s speech, it becomes obvious that he was calling for war, even if he did not use the word “enemy.”⁷⁸⁶

Prosecution Witness AWD

579. The witness⁷⁸⁷ recalled attending a rally in mid-January 1994, which was led by Ngirumpatse. Ngirumpatse invited the leaders of the “power wings” of parties and spoke of the events of 1959, which demonstrated the evil of Tutsis. Ngirumpatse told the crowd that

⁷⁷⁹ *Id.*, pp. 8-12.

⁷⁸⁰ Exhibit P230, “Radio Rwanda Broadcast of 16 January 1994”, pp. 13, 14.

⁷⁸¹ See para. 157, *supra*.

⁷⁸² T. 26 October 2006, p. 50; T. 31 October 2006, p. 5.

⁷⁸³ T. 26 October 2006, p. 50.

⁷⁸⁴ *Id.*, p. 51.

⁷⁸⁵ T. 31 October 2006, p. 3.

⁷⁸⁶ *Id.*, p. 14.

⁷⁸⁷ See para. 219, *supra*.

it needed to come together to fight against Tutsis because they were the single enemy of the country.

580. Ngirumpatse pointed out the *Interahamwe* and said that the population would not remain quiet if President Habyarimana suffered the same fate as President Ndadaye of Burundi. The witness understood this to mean that Tutsis would be exterminated if they killed President Habyarimana.⁷⁸⁸

Prosecution Witness UB

581. The witness⁷⁸⁹ attended the rally and heard Ngirumpatse's speech.⁷⁹⁰ Ngirumpatse's reference to 1959 was meant to suggest that Tutsis were going to regain power as they did in that year. It was also meant to suggest that Hutus should not allow Tutsi women and children to escape into exile again.⁷⁹¹ The witness understood this reference to mean that all Tutsis should be killed, including the women and children.⁷⁹²

Prosecution Witness T

582. The witness⁷⁹³ attended the rally. Ngirumpatse's speech focused on three main topics: the great heroes of the first hours of the first republics, the need for leaders chosen by the people, and criticism of the Arusha Accords.

Karemera Defence Witness XQL

583. The witness was an MRND party member who attended the rally.⁷⁹⁴ Neither Karemera, nor Ngirumpatse, nor Joseph Nzirorera incited people to ethnic hatred. Everyone knew that the enemy was the RPF and the MRND party never confused Tutsis generally with the RPF. Ngirumpatse's message at the rally was not meant to confuse Tutsis with RPF members. The MRND never confused the RPF with all Tutsis.⁷⁹⁵

584. The participants did not sing "*Tumbatsembatsembe*" and she never heard the phrase uttered at a rally that she attended.⁷⁹⁶

585. Ngirumpatse reminded the crowd of the events of the 1960s and warned the audience not to fall into the same trap.⁷⁹⁷ Rwandans had to do everything possible to avoid the reoccurrence of the painful events of the 1950s and 1960s. The witness, however, did not believe that Ngirumpatse's speech urged the population to rid the country of Tutsis as was done in 1959-1961.⁷⁹⁸

⁷⁸⁸ T. 10 October 2007, p. 25.

⁷⁸⁹ See para. 154, *supra*.

⁷⁹⁰ T. 24 February 2006, p. 23.

⁷⁹¹ *Id.*, pp. 20-22.

⁷⁹² *Id.*, p. 22.

⁷⁹³ See para. 178, *supra*.

⁷⁹⁴ T. 5 May 2008, pp. 9 (closed session), 10, 13.

⁷⁹⁵ T. 6 May 2008, p. 5.

⁷⁹⁶ *Id.*, p. 6.

⁷⁹⁷ *Id.*, p. 26.

⁷⁹⁸ *Id.*, p. 28.

Ngirumpatse Defence Witness PR

586. The witness⁷⁹⁹ spoke at an MRND rally at Nyamirambo Stadium on 16 January 1994, but denied making a speech about the *Interahamwe*. The witness was shown Exhibit P229A, and commented that only an ill-intentioned observer could conclude that he was endorsing the *Interahamwe*.⁸⁰⁰

Édouard Karemera

587. Karemera's speech during the rally updated MRND militants on the reasons for the stalemate with the Arusha Accords. He touched on the responsibility of Agathe Uwilingiyimana and Faustin Twagiramungu in particular. He spoke of the dissent among opposition parties but never attacked Tutsis in his speech. Instead, he was denouncing the irresponsible conduct of the Prime Minister designate who insisted on making arrangements with the RPF without consulting with the President and MRND.⁸⁰¹

Matthieu Ngirumpatse

588. Ngirumpatse testified that the purpose of the rally was to remind party members of the MRND's commitment to the Arusha Accords and the importance of participating in transitional institutions. It was also meant to update members on the security situation.⁸⁰² He did not threaten a repeat of the massacres that had happened before but was speaking against a perceived determination by some of the partners to the Arusha Accords to destabilise the transition process.

589. He did not mention plans to compile lists of persons to exterminate; instead, the lists he referred to in his speech were of RPF infiltrators.⁸⁰³ His call for the UN to leave was simply a reference to the time when a referendum would put an end to the UN mission.⁸⁰⁴

590. He never made public or private statements in order to indoctrinate youth to hate Tutsis and never promoted hatred or division. He never called for the extermination of an entire part of a population or for violence. From 1990 to 1994 there is not a speech, call, radio programme, public statement, article, or mail in which he called for hatred. He did not engage in doublespeak because doublespeak would not be understood by a crowd with different levels of training and education.⁸⁰⁵

Deliberations*Cautionary Issues*

591. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses ALG and UB were convicted and imprisoned for participating in the genocide.⁸⁰⁶

⁷⁹⁹ See para. 232, *supra*.

⁸⁰⁰ T. 23 November 2010, p.21 (closed session).

⁸⁰¹ T. 18 May 2009, pp. 41-45.

⁸⁰² T. 21 January 2011, p. 6.

⁸⁰³ *Id.*, pp. 9, 10.

⁸⁰⁴ *Id.*, pp. 10, 11.

⁸⁰⁵ T. 21 January 2011, p. 17.

⁸⁰⁶ See paras. 157 (ALG) and 154 (UB).

Furthermore, at the time of their testimony, Prosecution witnesses AWD and T were detained and awaiting trial on genocide charges.⁸⁰⁷ The Chamber also takes into account that Prosecution Witness T has received extensive benefits under the Prosecution's witness protection program.⁸⁰⁸

592. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

The Rally

593. The broadcasts give a varied picture of the message conveyed by MRND leaders during the rally. On one hand, they attacked: the party's main opponents (RPF and Prime Minister Agathe Uwilingiyimana); the UN generally for suspecting the MRND of distributing weapons and preparing an armed conflict; and the Arusha Accords for giving the RPF a disproportionate role in power-sharing. The MRND leaders also warned that this could lead to a repeat of the events of 1959. On the other hand, the leaders blamed the other political parties for delaying the implementation of the Broad-Based Transitional Government.

594. Ngirumpatse's claim that the rally supported the Arusha Accords is not credible. It does not conform to the general themes addressed by the speakers or the aggressive criticism of delays in the implementation of the Broad-Based Transitional Government. The latter appears to have been more of a means for attacking the political opponents of the MRND than an expression of support for the Arusha Accords and its principles of power-sharing.

595. Thus, the Chamber finds Prosecution Witnesses T and ALG reliable to the extent that they asserted that, during the rally, the MRND criticized the Arusha Accords and opposed the envisaged power-sharing with the RPF. Consequently, the Chamber is convinced that Hutu Power was espoused at the rally. Moreover, considering the centralised structure of the MRND and the fact that the speakers did not object to each other's speeches, the Chamber finds that the MRND maintained a unified front during the rally.

596. Karemera's contention that his speech was restricted to updating the audience on the state of the Arusha Accords and criticizing Agathe Uwilingiyimana and Faustin Twagiramungu's behavior does not rebut the Prosecution evidence concerning the general tenor and purpose of the rally.

597. Nonetheless, the Chamber is not convinced by the testimony of Prosecution Witnesses AWD and ALG that the rally called for the killing of Tutsi civilians. The language Witness AWD claimed that Ngirumpatse used when referring to the events in 1959 does not appear in the broadcast. Nor does the broadcast show any chanting of "*Tubatsembatsembe*." The possibility that some militants may have chanted it as testified by Witness ALG does not show that it was part of the program for the rally.

Conclusion

⁸⁰⁷ See paras. 219 (AWD) and 178 (T).

⁸⁰⁸ See para. 178 (T).

598. The Prosecution has proved beyond a reasonable doubt that a rally took place on 16 January 1994 at Nyamirambo Stadium. Karemera, Ngirumpatse, and other leading MRND politicians attended the rally and addressed the audience. Members of the *Interahamwe* participated in the rally and the rally espoused the cause of Hutu Power.

599. The Prosecution has not proved beyond a reasonable doubt that the rally called for the killing of all Tutsis or that "*Tumbatsembatsembe*" was chanted during the rally.

2.7 Creation and Financing of RTLM

Allegation in the Indictment

600. Ngirumpatse, among others, participated in the creation and financing of the RTLM radio station, which served as a vehicle for disseminating their extremist ideology.⁸⁰⁹

Evidence

RTLM Statute

601. The RTLM Statute, which was registered on 7 April 1993, was signed by the fifty founders of RTLM. Ngirumpatse's name is not among them.⁸¹⁰ The statute contains no indications that the station was created to spread a pro-genocide ideology.⁸¹¹

Adjudicated Facts

602. Radio was the medium of mass communication with the broadest reach in Rwanda. Many people owned radios and listened to RTLM at home, in bars, on the streets and at roadblocks.⁸¹²

603. The *Interahamwe* and other militia listened to RTLM and acted on the information that was broadcast by RTLM.⁸¹³

Prosecution Witness HH

604. The witness⁸¹⁴ testified that the *Interahamwe* listened to Radio Rwanda and RTLM, and those radio stations "were very much used when inciting people to kill".⁸¹⁵

Prosecution Witness ALG

605. The witness⁸¹⁶ testified that RTLM encouraged people to kill and that "everyone knew" that RTLM indulged in genocidal ideology.⁸¹⁷

⁸⁰⁹ Indictment, para. 30.

⁸¹⁰ Exhibit DNZ11, "Constitution of RTLM".

⁸¹¹ *Id.*

⁸¹² Adjudicated fact no. 142 - *Nahimana* Trial Judgement.

⁸¹³ Adjudicated fact no. 143- *Nahimana* Trial Judgement.

⁸¹⁴ See para. 170, *supra*.

⁸¹⁵ T. 14 November 2006, p. 8 (closed session).

⁸¹⁶ See para. 157, *supra*.

⁸¹⁷ T. 27 October 2006, p. 12.

Prosecution Witness XBM

606. The witness⁸¹⁸ attended a ceremony on Muhe Hill in September 1993 for the laying of the first stone for the installation of the RTLM antenna.⁸¹⁹ Between 600 and 800 persons were present at the ceremony.⁸²⁰

607. Barayagwiza spoke at the RTLM ceremony. He said that the purpose of the antenna was to enable inhabitants to listen to RTLM so that they would know what was going on in their country and who the enemy was. Barayagwiza said that members of the population should take all necessary measures to check the enemy. He told the audience that RTLM was an instrument that would enable members of the population to understand the habits and behaviour of Tutsis, and also “to understand that times had changed”.⁸²¹

608. Anatole Nsengiyumva then took the floor and said that the time had come to track down the enemy within the civilian population. Nsengiyumva stated that the enemy was anyone who defended the interests of Tutsis and could be said to be someone who had no rights.⁸²²

Prosecution Witness FH

609. The witness was imprisoned by Rwandan authorities at the time of his testimony.⁸²³ He testified that RTLM played a prominent role in the perpetration of crimes of genocide.⁸²⁴ At a meeting of local and government officials in Gitarama *préfecture* on 18 April 1994, the *préfet* of Gitarama, Uwizeye, told those present that there was a problem with the RTLM radio station, whose broadcasts were causing tension among the various ethnic groups in Rwanda.⁸²⁵

610. From his experience in Gitarama, the witness believes that “if the military had not joined in the genocide and had prevented it, if the *Interahamwe* had not joined in, if the RTLM had not encouraged it, the genocide would not have taken place.”⁸²⁶

611. It was “common knowledge” that most of RTLM’s shareholders were from the MRND and he believed that those individuals could have intervened to admonish the radio station.⁸²⁷ The founders who had shares in that radio station could have done something. It may be that they could not have done everything 100 per cent, but they at least could have used what was available to get all that to stop.⁸²⁸

⁸¹⁸ See para. 302, *supra*.

⁸¹⁹ T. 21 June 2006, p. 41.

⁸²⁰ *Id.*, p. 43.

⁸²¹ *Id.*, p. 42.

⁸²² *Id.*, p. 43.

⁸²³ T. 11 July 2007, p. 28, lines 27-37.

⁸²⁴ T. 18 July 2007, p. 19.

⁸²⁵ T. 12 July 2007, pp. 3-5; T. 18 July 2007, p. 18.

⁸²⁶ T. 16 July 2007, p. 29.

⁸²⁷ T. 18 July 2007, p. 19.

⁸²⁸ T. 12 July 2007, p. 10.

612. It would have been impossible to control RTLM at the communal level. Only the shareholders of RTLM could give advice to the RTLM journalists. The government also could have controlled it.⁸²⁹

Prosecution Witness G

613. The witness⁸³⁰ testified that several members of the National Committee of the *Interahamwe* purchased shares in RTLM as an investment when the company was founded. At that time, there was no expectation that the radio station would encourage the population to exterminate Tutsis. Rather, RTLM was presented as a company that was going to generate profit and allow the MRND to have access to a radio station through which it could express itself.⁸³¹ On 9 April 1994, he went into the RTLM offices and saw a blackboard with a list of people to be killed.⁸³²

Nzirorera Defence Witness Jacques Roger Booh-Booh

614. The witness⁸³³ testified that RTLM “stood for violence.”⁸³⁴ The radio station took very extreme positions against UNAMIR and consistently called for its departure from Rwanda.⁸³⁵

Nzirorera Defence Witness Lt. Col. Anatole Nsengiyumva

615. The witness⁸³⁶ testified that there was no ceremony at Mount Muhe to install an antenna for RTLM, as claimed by Witness XBM.⁸³⁷ The RTLM antenna had to be installed at Mount Karisimbi, near the antenna of Radio Rwanda.⁸³⁸

Karemera Defence Witness Jean Marie Vianney Ndagijimana

616. The witness was the Rwandan Ambassador to France until 27 April 1994.⁸³⁹ He recalled the “negative” RTLM broadcasts between April and July 1994, in which the radio station stigmatised part of the Rwandan population and “incited the massacres of Rwandans by Rwandans.”⁸⁴⁰

Ngirumpatse Defence Witness PTR

617. The witness⁸⁴¹ testified that RTLM told *Interahamwe* at roadblocks that they should not allow anyone to pass without checking them. RTLM did not use the word “kill”, but

⁸²⁹ T. 18 July 2007, p. 54.

⁸³⁰ See para. 175, *supra*.

⁸³¹ T. 17 October 2005, pp. 36, 37.

⁸³² T. 11 October 2005, p. 55.

⁸³³ See para. 420, *supra*.

⁸³⁴ T. 17 February 2010, p. 3.

⁸³⁵ *Id.*

⁸³⁶ See para. 303, *supra*.

⁸³⁷ T. 29 April 2010, pp. 5, 6.

⁸³⁸ *Id.*, p. 6.

⁸³⁹ T. 11 July 2008, p. 4.

⁸⁴⁰ *Id.*, p. 22.

⁸⁴¹ See para. 226, *supra*.

instead used terms like “control,” “be vigilant,” and “do not allow anyone to pass by”. One could understand those terms in a certain way. The young people could do whatever they thought necessary as a result of such incitement, including killing.⁸⁴²

618. *Interahamwe* attacked a Red Cross ambulance on 14 April 1994 because RTLM gave the impression that the Red Cross could transport “enemies” in their ambulances.⁸⁴³

Nzirorera Defence Witness Innocent Twagiramungu

619. The witness lived in Kabeza in 1994.⁸⁴⁴ He testified that after the President’s plane crash, RTLM broadcast statements saying that Tutsis were accomplices and enemies. Some MRND leaders, particularly *Interahamwe* leaders like Kajuga, characterised Tutsis as the enemy of the country on RTLM.⁸⁴⁵

Ngirumpatse Defence Witness PR

620. The witness⁸⁴⁶ testified that he was not aware of any member of the Interim Government or the MRND who used the mass media, including the RTLM, to incite the population to commit genocide. The Interim Government did not have the means to put an end to RTLM broadcasts that were inciting people to carry out massacres.⁸⁴⁷

Nzirorera Defence Witness Ferdinand Nahimana

621. The witness⁸⁴⁸ testified that Ngirumpatse did not have any control over, or access to, the journalists of RTLM either before or after 6 April 1994. Ngirumpatse was never part of the management of RTLM, nor was he a member of the organs of the RTLM enterprise. After 6 April there was “some kind of dysfunctioning” as a result of the war, but Ngirumpatse did not have any authority to close down RTLM.⁸⁴⁹

Matthieu Ngirumpatse

622. Ngirumpatse testified that he read the RTLM statute before buying his two shares and noted that there was nothing to suggest that the station was created to spread an extremist, pro-genocide ideology. It was not his intention to contribute to the creation and financing of a radio station that would subsequently be used to spread a pro-genocide ideology. At the time that he purchased his shares, no one knew how events in Rwanda were going to unfold. He never sought to know who else had bought shares in RTLM, nor did he participate in any manner whatsoever in the running of RTLM and its activities.⁸⁵⁰

Deliberations

⁸⁴² T. 19 November 2010, pp. 3, 4.

⁸⁴³ *Id.*, p. 2.

⁸⁴⁴ T. 12 May 2010, p. 26.

⁸⁴⁵ *Id.*, p. 25.

⁸⁴⁶ See para. 232, *supra*.

⁸⁴⁷ T. 22 November 2010, pp. 31, 32 (closed session).

⁸⁴⁸ See para. 237, *supra*.

⁸⁴⁹ T. 21 April 2010, pp. 40, 41.

⁸⁵⁰ T. 25 January 2011, p. 30.

Cautionary Issues

623. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH and ALG, and Defence Witnesses Nsengiyumva and Nahimana were convicted and imprisoned for participating in the genocide.⁸⁵¹ Furthermore, at the time of his testimony, Prosecution Witness FH was detained and awaiting trial on genocide charges.⁸⁵² The Chamber also takes into account that Prosecution Witness G has received extensive benefits under the Prosecution's witness protection program.⁸⁵³

624. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

RTLM's Editorial Policy

625. The evidence shows beyond a reasonable doubt that the RTLM radio station served as a vehicle for the dissemination of extremist ideology, both before and after the commencement of the genocide. The evidence does not, however, show whether this was the case from the outset of RTLM's broadcasting activities or, if not, from which point in time its broadcasting policy may have changed.

Ngirumpatse's Involvement

626. There is no evidence before the Chamber to suggest that Ngirumpatse played any role in the creation or financing of RTLM beyond purchasing two shares in the station. Nor is there evidence that RTLM served as a vehicle for disseminating extremist ideology at the time he purchased the shares. Finally, no evidence was led that Ngirumpatse knew that RTLM had been created for this purpose.

Conclusion

627. The Prosecution has proved beyond a reasonable doubt that the RTLM served as a vehicle for disseminating extremist ideology. It has not proved beyond a reasonable doubt that Ngirumpatse participated in the creation and financing of RTLM as part of a campaign of propaganda to instigate and incite violence against Tutsis.

3. CIVIL DEFENCE**3.1 Meeting Called by Nsabimana on or about 29 March 1994***Allegation in the Indictment*

628. On or about 29 March 1994, a meeting was held by Army Chief of Staff Déogratias Nsabimana with the *préfet* of Kigali and the *commandant de secteur* for the city of Kigali, to fine-tune the structure and organisation of a civil defence plan.⁸⁵⁴

⁸⁵¹ See paras. 170 (HH); 157 (ALG); 315 (Nsengiyumva); and 237 (Nahimana).

⁸⁵² See para. 609.

⁸⁵³ See para. 175.

⁸⁵⁴ Indictment, para. 26.

629. The plan included: establishing the *cellule* as an administrative unit in the territorial administration, which was the organisational equivalent of the platoon; drawing up lists of reservists resident in Kigali at the *cellule* level that would be available to work with soldiers; training civilians to work with reservists and soldiers; stockpiling weapons and ammunition at the level of the *cellule*; and instructing civilians on the use of swords, spears, machetes, bows, and arrows.⁸⁵⁵

630. Other documentation of the civil defence plan from the same period emphasised the need for secrecy and collaboration between military commanders, the national *gendarmérie*, and political parties defending principles of "Republic and Democracy," which was a reference to the MRND.⁸⁵⁶

Undisputed Evidence

631. It is undisputed that Army Chief of Staff Déogratias Nsabimana held a meeting with the *préfet* and *commandant de secteur* of Kigali on 29 April 1994 to fine-tune a civilian self-defence plan, as detailed in minutes of the meeting.

Evidence

Minutes of the 29 March 1994 Meeting

632. The minutes show that Army Chief of Staff Déogratias Nsabimana chaired a meeting on 29 March 1994 at the Army General Staff headquarters, where the *préfet* of Kigali and the *commandant de secteur* for the city of Kigali were invited. The purpose of the meeting was to hone the civilian self-defence plan.⁸⁵⁷

633. As a result of the meeting, the *cellule* was chosen as an organisational unit equivalent to a platoon and the *commandant de secteur* was to draw up a list of soldiers who lived outside the camps. It was decided that reservists would be the first to be called upon, followed by reliable civilians who had been trained. Once the training was completed, the operational *cellules* would initially be assigned by the *commandant de secteur* to defend their neighbourhoods and subsequently to search for and neutralise infiltrators.

634. An experienced soldier would be appointed at the head of each *cellule* and work closely with administrative authorities. Meetings between military personnel and civilians would be held by the *commandant de secteur*, who would also provide operational directives.

635. The Ministry of Defence and the Ministry of Interior were to be contacted to make weapons available for distribution to selected civilian personnel.

636. It was further suggested that *bourgmestres* teach the population how to use traditional weapons (swords, spears, machetes, bows and arrows) because there were insufficient firearms available.

⁸⁵⁵ *Id.*

⁸⁵⁶ *Id.*

⁸⁵⁷ Exhibit DNZ178, "Minutes of 29 March 1994 Meeting".

637. Finally, it was recommended that the *commandant de secteur* take into account the civilian self-defence concept in the preparation of the defence plan for the city of Kigali, accelerate the drafting of the lists of military and civilian personnel, and forward them without delay.

List of Persons Chosen in the Cellule for Civil Defense

638. On 31 March 1994,⁸⁵⁸ Tharcisse Renzaho, *préfet* for Kigali-ville, sent a list to the Army Chief of Staff of “reservists and others,” chosen for civil defence. These persons were chosen from the *cellules* composing the *préfecture* of Kigali-ville.

Prosecution Witness AWE

639. The witness⁸⁵⁹ testified that Félicien Munyezamu, the *Interahamwe* President in Cyahafi *secteur*, and two other *Interahamwe*, told him that a meeting was held at the Rebero Hotel on or around 28 March 1994, during which Ngirumpatse stated that the RPF were moving closer to town.⁸⁶⁰ Ngirumpatse told the *Interahamwe* that if they noticed that the RPF were killing people, they should join the Rwandan Armed Forces in order to kill Tutsis and their accomplices.⁸⁶¹ During the meeting, it was also decided to give weapons to selected civilians, if there were no former soldiers or reservists.

640. The grass-roots officials were entrusted with choosing the civilians among their neighbours and bringing a list to the *conseillers de secteur*, who would then distribute weapons to the persons named on the list.⁸⁶² The witness was in charge of distributing weapons in his *secteur*.⁸⁶³

Nzirorera Defence Witness Tharcisse Renzaho

641. The witness⁸⁶⁴ attended a meeting on 29 March 1994 convened by the Army Chief of Staff.⁸⁶⁵ The witness commented on the minutes of the meeting⁸⁶⁶ and testified that the meeting was a legitimate response to the situation facing the country; it was not an order for operations to be carried out from the high command. The meeting was not a manifestation of a directive of the Kigali-ville *préfecture*.⁸⁶⁷

642. The list of civilian reservists⁸⁶⁸ was a list of persons qualified to receive the necessary training for civil defence in case it became necessary. The MRND was not involved in preparing that list.⁸⁶⁹

⁸⁵⁸ Exhibit DNZ179, “List of Persons Chosen for Civil Defence in Kigali-ville *préfecture*.”

⁸⁵⁹ See para. 299, *supra*.

⁸⁶⁰ T. 4 July 2007, p. 22.

⁸⁶¹ *Id.*, p. 22.

⁸⁶² T. 5 July 2007, pp. 21, 22.

⁸⁶³ *Id.*, pp. 22, 23.

⁸⁶⁴ See para. 312, *supra*.

⁸⁶⁵ T. 15 April 2010, p. 8.

⁸⁶⁶ Exhibit DNZ178, “Minutes of 29 March 1994 Meeting”.

⁸⁶⁷ T. 15 April 2010, pp. 8-11.

⁸⁶⁸ Exhibit DNZ179, “List of persons chosen for civil defence in Kigali-ville *préfecture*”.

⁸⁶⁹ T. 15 April 2010, p. 11.

Deliberations

Cautionary Issues

643. The Chamber recalls that, at the time of their testimony, Prosecution Witness AWE and Defence Witness Renzaho were convicted and imprisoned for participating in the genocide.⁸⁷⁰

644. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

The Meeting

645. The minutes of the meeting firmly establish that on or about 29 March 1994, a meeting was held by Army Chief of Staff Déogratias Nsabimana with the *préfet* of Kigali and the *commandant de secteur* for the city of Kigali, to fine-tune the structure and organisation of a civil defence plan, which included: establishing the *cellule* as an administrative unit in the territorial administration; drawing up lists of reservists; training civilians to work with reservists and soldiers; and instructing civilians on the use of swords, spears, machetes, bows, and arrows.

646. The Prosecution has not presented other documentation from the “same period” which the Chamber understands as the period prior to 8 April 1994, which call for collaboration among the military and political organs in the country or invoke the defence of “the principle of the Republic and Democracy.”

Conclusion

647. The Prosecution has proved beyond a reasonable doubt that on 29 March 1994, a meeting was held by Army Chief of Staff Déogratias Nsabimana with the *préfet* of Kigali and the *commandant de secteur* for the city of Kigali, to fine tune the structure and organization of a civil defence plan, which included: establishing the *cellule* as an administrative unit in the territorial administration; drawing up lists of reservists; training civilians to work with reservists and soldiers; and instructing civilians on the use of swords, spears, machetes, bows and arrows.

CHAPTER V: FACTUAL FINDINGS – EVENTS FROM 8 APRIL TO MID-JULY 1994

1. CREATION OF THE INTERIM GOVERNMENT

1.1 The Presidency and Army Leadership

Narrative Statement in the Indictment

648. The assassinations of President Juvénal Habyarimana and Army Chief of Staff Déogratias Nsabimana on 6 April 1994 created a crisis of leadership for the civilian and

⁸⁷⁰ See paras. 299 (AWE) and 312 (Renzaho).

military authorities in Rwanda. Théoneste Bagosora was unable to take control through the Ministry of Defense and the Rwandan Armed Forces.⁸⁷¹

Evidence

Nzirorera Defence Witness Théoneste Bagosora

649. The witness⁸⁷² denies that he attempted a military coup.⁸⁷³ Gatsinzi was installed as Army Chief of Staff to replace Nsabimana,⁸⁷⁴

Édouard Karemera, Matthieu Ngirumpatse, Joseph Nzirorera

650. On the night of 6 April 1994, Théoneste Bagosora contacted Karemera and Ngirumpatse to request that they meet him at the Ministry of Defense the following morning.⁸⁷⁵ At the meeting on the morning of 7 April 1994, Bagosora relayed Jacques Roger Booh-Booh's suggestion that the MRND nominate a replacement for the presidency to Karemera and Ngirumpatse.⁸⁷⁶ Karemera and Ngirumpatse agreed that they could not have the MRND nominate a replacement because this would require the MRND congress to meet, and the security situation in Kigali made this impossible.⁸⁷⁷ Therefore, Karemera, Ngirumpatse, and Joseph Nzirorera took it upon themselves to select a successor for President Habyarimana.⁸⁷⁸

651. By the afternoon of 8 April 1994, Karemera and Ngirumpatse had concluded that they could not rely on the Arusha Accords to establish the modality for selecting a replacement for President Habyarimana. They considered that the accords did not provide for a scenario where the President died before the installment of the transitional institutions, as was the case at that time.⁸⁷⁹ Instead, they chose to rely on the 1991 Constitution, which they did not consider repealed by the Arusha Accords.⁸⁸⁰ Interpreting Article 42 of the Constitution as providing that the President would be replaced by the Speaker of Parliament in the event that he was unable to perform his duties, Karemera and Ngirumpatse, joined by Joseph Nzirorera, decided to walk to Dr. Théodore Sindikubwabo's house and ask him, as Speaker of Parliament, whether he would be willing to assume the presidency. Sindikubwabo accepted and they returned to the Ministry of Defense to continue to take part in the meeting.⁸⁸¹

Deliberations

⁸⁷¹ Indictment, para. 28.

⁸⁷² See para. 545, *supra*.

⁸⁷³ T. 25 June 2010, pp. 19, 20.

⁸⁷⁴ T. 29 June 2010, p. 61.

⁸⁷⁵ Karemera, T. 19 May 2009, p. 11; Ngirumpatse, T. 25 January 2011, pp. 40, 41.

⁸⁷⁶ Karemera, T. 19 May 2009, pp. 15, 16; Ngirumpatse, T. 25 January 2011, p. 43.

⁸⁷⁷ Karemera, T. 19 May 2009, p. 17; Ngirumpatse, T. 25 January 2011, p. 43.

⁸⁷⁸ Karemera, T. 19 May 2009, p. 17.

⁸⁷⁹ Ngirumpatse, T. 26 January 2011, pp. 18, 20; Nzirorera, T. 17 May 2010, p. 39.

⁸⁸⁰ Ngirumpatse, T. 26 January 2011, p. 18; Nzirorera, T. 17 May 2010, p. 40.

⁸⁸¹ See Karemera, T. 19 May 2009, p. 17; Ngirumpatse, T. 26 January 2011, pp. 18, 19, 21, 22; Nzirorera, T. 17 May 2010, pp. 40, 43, 44.

652. The Chamber notes that the Prosecution does not allege that the Accused were involved in a failed attempt by Théoneste Bagosora to take control of Rwanda through the Ministry of Defense and the Rwandan Armed Forces after the assassination of President Habyarimana. Therefore, the Chamber need not address this implied allegation against Bagosora.

653. Moreover, the Prosecution does not allege that the decision to designate Theodore Sindikubwabo as successor to President Habyarimana, and head of the army, contravened the Arusha Accords or the 1991 Constitution.

654. Furthermore, the Prosecution does not allege that the appointment of Gatsinzi to succeed Nsabimana was illegitimate.

Conclusion

655. The Prosecution has not alleged any wrongdoing by Karemera or Ngirumpatse in this section of paragraph 28 of the Indictment.

1.2 Assassination of Key Opposition Politicians and the President of the Constitutional Court

Allegation in the Indictment

656. Karemera, Ngirumpatse, and Joseph Nzirorera convened with Colonel Théoneste Bagosora at the Ministry of Defence on the morning of 7 April 1994 and the morning and afternoon of 8 April 1994. In the meantime Presidential Guard soldiers loyal to Bagosora, and subject to his effective control, killed Prime Minister Agathe Uwilingiyimana, *Parti Social-Démocrate* chairman Frederick Nzamurambaho, *Parti Libéral* party chairman Landouald Ndasingwa, and Constitutional Court President Joseph Kavaruganda. These persons would otherwise have assumed control of the government, or their participation would have been required to constitute a new civilian authority under the terms of the Arusha Accords or the 1991 Constitution.⁸⁸²

Evidence

Nzirorera Defence Witness Jacques Roger Booh-Booh

657. The witness⁸⁸³ testified that, on the morning of 7 April 1994, he met with Bagosora and urged him to contact Prime Minister Agathe Uwilingiyimana, but the soldiers refused.⁸⁸⁴ Bagosora had unequivocally refused to contact Uwilingiyimana the night before when the witness requested him to do so.⁸⁸⁵

Nzirorera Defence Witness Théoneste Bagosora

⁸⁸² Indictment, para. 28.1.

⁸⁸³ See para. 420, *supra*.

⁸⁸⁴ T. 16 February 2010, p. 45.

⁸⁸⁵ T. 18 February 2010, p. 7.

658. The witness⁸⁸⁶ testified that he did not contact Prime Minister Agathe Uwilingiyimana after the assassination of President Habyarimana because he was suspicious of her. He did not want to place the armed forces under her command and did not believe that the constitution stipulated that the prime minister would replace the president in the event of death or incapacity.⁸⁸⁷

“Three Days that Changed the Course of History”

659. During the 8 April 1994 meeting at the Ministry of Defense, the political parties were represented as follows: MRND (Karemera, Ngirumpatse, Joseph Nzirorera); MDR (Donat Murego, Froduald Karamira); PL (Justin Mugenzi, Agnes Ntamabyariro); PSD (Hyacinthe Rafiki Nsengiyumva, François Ndungutse); and PDC (Kabanda, Sibomana, Ruhumuriza). These persons, however, represented the “Power” wings of their respective parties.⁸⁸⁸

660. The persons who represented the opposing wings of the parties had either been assassinated the day before, or were in hiding because they feared for their lives.⁸⁸⁹

Deliberations

661. The Chamber notes that the assassinations of President Habyarimana and army Chief of Staff Nsabimana did not in itself affect the composition or functions of the government. Thus, it was the assassination of Prime Minister Agathe Uwilingiyimana that created the need for the formation of a new government.

662. The Chamber, furthermore, notes that the formation of a new government, either pursuant to the 1991 Constitution or the Arusha Accords, would have required the participation of the President of the Constitutional Court to swear in new ministers.

663. Thus, the assassination of Prime Minister Agathe Uwilingiyimana made it possible to form a new government, while the elimination of the various opposition party leaders ensured that their support for the Arusha Accords would not be included. The elimination of the President of the Constitutional Court facilitated the installation of ministers appointed by the Hutu Power wings of the political parties.

664. The Prosecution implies that Bagosora ordered the assassination of these key figures. The Chamber does not need to address this allegation, however, because the Prosecution does not allege that Bagosora ordered the killings pursuant to an agreement with the Accused.

1.3 Formation of the Interim Government

Allegation in the Indictment

665. Karemera and Ngirumpatse agreed with Joseph Nzirorera, Théoneste Bagosora, Donat Murego, Frodouald Karamira, Hyacinthe Rafiki Nsengiyumva, other leading

⁸⁸⁶ See para. 545, *supra*.

⁸⁸⁷ T. 25 June 2010, p. 33.

⁸⁸⁸ Exhibit DNZ835, “Three Days that Changed the Course of History”, p. 53.

⁸⁸⁹ *Id.*

members of the MRND and “Hutu Power” opposition parties, and extremist elements in the military to assemble the Interim Government of 8 April 1994 to implement a policy of genocide by using the legitimacy of state authority and the apparatus and resources of the state.⁸⁹⁰

Deliberations

Legitimacy of the Interim Government

666. The Chamber notes that the parties to the Arusha Accords had not managed to agree on the implementation of the Broad-Based Transitional Government pursuant to the Arusha Accords by the time President Habyarimana was assassinated. Moreover, the atmosphere between the parties deteriorated further after his death because of speculations concerning responsibility for the assassination. Hostilities between the Rwandan Armed Forces and the RPF resumed on 7 April 1994.⁸⁹¹

667. Under these circumstances, the parties could not have been expected to agree on the implementation of the Broad-Based Transitional Government before the situation stabilised. The Chamber also notes that the Prosecution does not allege that a new government based on the 1991 Constitution would have been illegitimate.

668. Moreover, the Interim Government was identical to the government of Prime Minister Agathe Uwilingiyimana concerning the distribution of portfolios between the political parties.

669. The essence of the Prosecution’s challenge to the legitimacy of the Interim Government was that it was “predicated on a series of assassinations by Rwandan government forces.”⁸⁹² The Chamber, however, recalls that the Prosecution did not allege that the assassinations were carried out as a result of an agreement with or among the Accused (see V.1.2).

670. Conversely, the Defence claims that the legitimacy of the Interim Government was recognized by the UN, as evidenced by a memorandum from the Secretary General.⁸⁹³ The memorandum, however, only concluded that the UN could enter into negotiations with the Interim Government because it was the *de facto* authority over parts of Rwanda. It did not assess the *de jure* constitutional basis of the Interim Government.

671. Consequently, the Chamber will limit itself to assessing whether the policy of the Interim Government was a policy of genocide and thus illegitimate.

Policy of the Interim Government

672. The Prosecution has led no evidence of a positive agreement between the parties behind the Interim Government, at the time it was created, to pursue a policy of genocide. The Chamber defers its deliberation on whether the Interim Government intended to implement a policy of genocide from its inception, or whether it developed a policy of

⁸⁹⁰ Indictment, para. 28.

⁸⁹¹ Karemera, T. 19 May 2009, p. 12.

⁸⁹² Prosecution Closing Brief, para. 106.

⁸⁹³ Exhibit DNZ425, “Outgoing Cable Code from Kofi Annan dated 25 May 1994”.

genocide during the course of its rule, to its legal findings concerning a possible joint criminal enterprise (see VI.1.2; 1.3). These legal findings will take place after the Chamber addresses the allegations of criminal acts or omissions which allegedly took place during the tenure of the Interim Government.

1.4 Kigali Roadblocks

1.4.1 Pacification Tours to Roadblocks

Allegation in the Indictment

673. On or about 10 April 1994, Karemera and Ngirumpatse together with Joseph Nzirorera convened a meeting with the national leadership of the *Interahamwe* at the *Hôtel des Diplomates* that included participation from the recently appointed Interim Government ministers. During the meeting, Ngirumpatse ordered and instigated the *Interahamwe* leaders to control their men and to invoke the authority of the Interim Government to organise the removal of corpses from the streets. Although the campaign was deemed one of pacification, it was essentially a means of exerting control and direction over *Interahamwe* militias so that the killings would be focused on the most important targets first, the Tutsi intellectuals, and so that they would proceed with greater discretion. In fact, it was a means to aid and abet the killing.⁸⁹⁴

Undisputed Evidence

674. It is undisputed that a meeting took place on 10 April 1994 at the *Hôtel des Diplomates*, and that the meeting was attended by senior officials from all political parties behind the Interim Government, including Ngirumpatse, Joseph Nzirorera and members of the Provisional National Committee of the *Interahamwe*.⁸⁹⁵ At the meeting, the *Interahamwe* leaders were requested to conduct a tour of the roadblocks to persuade the *Interahamwe* and others manning the roadblocks to stop the killings. Karemera drafted a *communiqué* that was broadcast on the radio the same day.⁸⁹⁶ The *Interahamwe* leaders complied with the request, conducted the tour, and reported upon their return.⁸⁹⁷

Evidence

Radio Communiqué of 10 April 1994

675. The *communiqué* demonstrates that a meeting was held on 10 April 1994, which was attended by senior officials of the MRND, MDR, PSD, PDC and PL political parties. The *communiqué* was broadcast on Radio Rwanda on the same day and stated that pursuant to the discussions held at the meeting, the political parties wished to inform the nation that they had called on administrative bodies to make every possible effort to immediately end disturbances, massacres and looting throughout the country and, in particular, in towns. The

⁸⁹⁴ Indictment para. 38; Prosecution Closing Brief, para. 329.

⁸⁹⁵ T. 19 May 2009, p. 22

⁸⁹⁶ *Id.*; Exhibit DNZ21, "Communiqué issued 10 April 1994."

⁸⁹⁷ Witness G: T. 11 October 2005, p. 58; Witness T: 24 May 2006, p. 62.

document was signed by Ngirumpatse as the Chairman of the MRND and Karemera as the Vice-Chairman.⁸⁹⁸

Prosecution Witness G

676. The witness⁸⁹⁹ testified that on the morning of 10 April 1994, he was told by another *Interahamwe* leader that Joseph Nzirorera wanted to see them. The witness went with other *Interahamwe* leaders to the *Hôtel des Diplomates*. Many people were present at the hotel, including ministers. He saw Ngirumpatse and Interim President Sindikubwabo.⁹⁰⁰

677. The meeting was chaired by Nzirorera, who wanted the *Interahamwe* leaders present at the meeting to visit the *Interahamwe* manning the roadblocks, try and stop the killings, and collect dead bodies along the roads. Nzirorera stated that the following morning, he would ask the general head office of the public works and another ministry for bulldozers or lorries for collecting the bodies so they could be buried in mass graves. It was necessary to do this because the international community was becoming concerned and the dead bodies had to be disposed of.⁹⁰¹

678. The *Interahamwe* leaders present at the meeting agreed to carry out the mission, but requested security. Nzirorera told them that they would be escorted by soldiers who would be responsible for their security.⁹⁰² The *Interahamwe* leaders went into various *secteurs* where they delivered the message to stop the killings, and to ensure that the dead bodies in the neighbourhood would be brought to the roads so they could be collected the following morning. There were thousands of bodies on the main roads of Kigali, most of which belonged to Tutsis. The *Interahamwe* leaders were welcomed in many places, although the people manning the roadblocks requested firearms.⁹⁰³

679. They ended their mission at around 6.00 or 6.30 p.m. the same day and went back to the hotel.⁹⁰⁴ They met again with Nzirorera, Karemera, and Mugenzi. They gave a report on the mission, stating that there had been many dead bodies on the streets, that the inhabitants had welcomed the request to stop the killings for the time being so the bodies could be disposed of, and that they had requested firearms. Nzirorera, Ka remera, and Mugenzi clearly expressed joy when they heard that there had been a large number of dead bodies.⁹⁰⁵

680. In the witness's opinion, the real purpose of the mission was not to stop the killings but rather to give an impression to the international community that there had not been many killings, if any at all. If the government really wanted the killings to be stopped, it could have given orders directly to the soldiers, but it did not do so. The killings actually resumed the same night of the meeting, and in other subsequent speeches, MRND leaders were inciting people to continue with the killings.⁹⁰⁶

⁸⁹⁸ Exhibit DNZ21B, "Communiqué issued 10 April 1994".
⁸⁹⁹ See para. 175, *supra*.
⁹⁰⁰ T. 11 October 2005, pp. 56, 57.
⁹⁰¹ *Id.*, p. 57.
⁹⁰² *Id.*
⁹⁰³ *Id.*, pp. 58, 59.
⁹⁰⁴ *Id.*, p. 58.
⁹⁰⁵ *Id.*, p. 60.
⁹⁰⁶ *Id.*, p. 61.

Prosecution Witness T

681. The witness⁹⁰⁷ attended a meeting on 10 April 1994 at the *Hôtel des Diplomates*, called by the MRND authorities. Ngirumpatse, Karemera and Joseph Nzirorera were present at the meeting. The summons to attend the meeting was addressed to all 11 members of the Provisional National Committee of the *Interahamwe*. However, due to the circumstances at the time, only six of the committee members were able to participate.

682. Ngirumpatse, Karemera and Nzirorera informed the *Interahamwe* of the pacification mission, which was to deliver the message on behalf of the Interim Government that killings at the roadblocks had to stop. They were told that the government was having problems with the international community because of the corpses that were being exposed on the roadside. The corpses had to be gathered so that trucks could pick them up, in order to avoid epidemics. In order to undertake this assignment, the *Interahamwe* were provided with an armed escort.⁹⁰⁸ Only five of the six committee members were able to execute the mission.

683. The mission began the following day, when they toured various *secteurs*.⁹⁰⁹ The reaction at the roadblocks upon hearing the message was generally of surprise and discontent. The people at the roadblocks were complaining that, instead of being provided with arms to protect themselves, they were being asked by the government to put down their arms and surrender to the RPF and its accomplices. There were, however, also people that understood and accepted the message.⁹¹⁰

684. In the afternoon of 11 April 1994, around 5 p.m., the *Interahamwe* leaders reported back to Ngirumpatse, Karemera, and Nzirorera regarding the mission. Their general reaction was one of indifference and detachment from the events. Ngirumpatse urged the *Interahamwe* leaders again to carry on spreading the message, telling those who were requesting weapons that the government would take that into consideration.⁹¹¹

685. The climate at the *Hôtel des Diplomates* contrasted with the reality outside and it was difficult to get the message across, because of the contrary messages being given by radio stations, in particular RTLM. The witness had the impression that the government was trying to shed the problem onto the shoulders of the *Interahamwe* leaders, either to gain a clear conscience or because of prodding by the international community.

686. The mission was ambiguous because the means to carry it out were not provided.⁹¹² The killings did not stop as a result of the mission. On 12 April, some of the *Interahamwe* leaders that had participated in the meeting continued touring the roadblocks, while spreading the pacification message.⁹¹³

Joseph Nzirorera

⁹⁰⁷ See para. 178, *supra*.

⁹⁰⁸ T. 24 May 2006, pp. 59, 60.

⁹⁰⁹ *Id.*, pp. 60, 61.

⁹¹⁰ *Id.*, p. 61.

⁹¹¹ *Id.*, p. 62.

⁹¹² *Id.*, p. 63.

⁹¹³ *Id.*, p. 64.

687. On 10 April 1994, Ngirumpatse told Nzirorera that they had requested the political parties to talk to their militants and to members of youth wings that were involved in the killings. Karemera was not present when Ngirumpatse informed him of this. Ngirumpatse asked Nzirorera to contact members of the *Interahamwe* to disseminate the message. That is when some members of the *Interahamwe* committee arrived at the hotel on 10 April 1994 between noon and 2 p.m.⁹¹⁴ Ephrem Nkezabera, Bernard Maniragaba, Joseph Serugendo, Jean-Pierre Sebanetsi, and Dieudonné Niyitegeka arrived, possibly also Eugène Mbarushimana. Mugenzi also attended.⁹¹⁵

688. Ngirumpatse addressed the meeting and repeated the pacification message that had been sent by the government. They entrusted the *Interahamwe* leaders with the mission of going to the various neighborhoods to see if crimes were being committed by youth wings, in particular the youth wing of the MRND, and stated that they should put an end to the killings. They were told to report to Nzirorera, Ngirumpatse, and Mugenzi with their findings. They told them that the situation was damaging the reputation of the government and country and that this would not be well conceded by the international community.

689. The *Interahamwe* leaders agreed and hailed the proposal. Nzirorera and Ngirumpatse did not think they controlled the *Interahamwe*, rather, they thought they might be able to influence them with their message. The five political parties had drafted a *communiqué* appealing to the population to maintain peace; Karemera was involved in drafting the document.⁹¹⁶

690. At 5 p.m. on 10 April 1994, the *Interahamwe* leaders returned and informed Nzirorera, Ngirumpatse, and Mugenzi of the difficulties they had faced. They requested a military escort. The Minister of Defence provided an escort, which the *Interahamwe* leaders used on 11 April to go to the neighborhoods and deliver the message.⁹¹⁷

Édouard Karemera

691. Édouard Karemera testified that a meeting occurred on 10 April 1994 at the *Hôtel des Diplomates* that brought together political party leaders. During the meeting, the participants discussed what could be done to support the government and lend credibility to its militants. Karemera was tasked with drafting a *communiqué* on behalf of the political parties, which had to be discussed and signed. He did not attend the meeting between the *Interahamwe* leaders and the political leaders as he was busy drafting the *communiqué*. During the meeting, Ngirumpatse and Nzirorera met with some of the members of the Provisional National Committee of the *Interahamwe*. The purpose of the *communiqué* was to invite militants of their various parties to assist the Rwandan Armed Forces to become involved in each other's security and to avoid regional or partisan separation.⁹¹⁸

692. The purpose of the pacification mission that was assigned to the members of the Provisional National Committee was to go into neighborhoods and disseminate the message in the *communiqué*. The goal of the pacification mission was not to go and hide corpses. Rather, the purpose of the pacification mission was to instruct the youth, especially those

⁹¹⁴ T. 18 May 2010, p. 3.

⁹¹⁵ *Id.*, pp. 4, 5.

⁹¹⁶ *Id.*, pp. 6, 7.

⁹¹⁷ *Id.*, p. 8.

⁹¹⁸ T. 19 May 2009, p. 22; Exhibit DNZ21, "Communiqué issued 10 April 1994".

who were at roadblocks, to understand that the government was completely against the chaos that was spreading in the city.⁹¹⁹

693. The Red Cross was in charge of gathering and burying corpses and the Provisional National Committee neither had the knowledge or means to carry out the task.⁹²⁰

Matthieu Ngirumpatse

694. Ngirumpatse stated that several members of the *Interahamwe* committee were summoned by Nzirorera and attended a meeting at the *Hôtel des Diplomates* on 10 April 1994 at around 11 a.m. Those persons were Ephrem Nkezabera, Maniragaba, Sebanetsi, and Niyitegeka. A message from Minister Mugenzi was passed on to them.⁹²¹

695. They were told that the government was worried about the scale of the killings and that they had received a mission from the government to contact their party members to ask them to calm down because the government wanted to stop the killings and provide security for persons and property. They told them to do the rounds and calm down the militants, or supporters, and the youth who were at the roadblocks or any other location where they might be doing something evil. They went on to explain to them that the issue was not one of ethnicity and ethnic groups had not brought down the presidential plane. They told them that it was neither timely nor appropriate for ethnic wars to take place. Ngirumpatse testified that he, not Joseph Nzirorera, chaired the meeting on 10 April. President Sindikuabwo was not present.⁹²²

696. He, not Nzirorera, conveyed the government's message about the pacification tour to the participants at the meeting. The *Interahamwe* leaders agreed with the government's decision and promised to return with feedback on the next day.⁹²³

697. The issue of removal of dead bodies was not part of the discussion at the meeting.⁹²⁴ The dead bodies were taken away at the behest of the Red Cross and the Prime Minister. The international community's concerns were not addressed at the meeting. The *Interahamwe* leaders did not request an escort for them during their mission.⁹²⁵

698. Nobody could have expressed joy upon hearing of the killings at the roadblocks.⁹²⁶

699. The *Interahamwe* leaders did not report back to Ngirumpatse later on 10 April because he was occupied with other business. They may have reported to Nzirorera. Ngirumpatse was told that the *Interahamwe* leaders had reported that they could not get through to the roadblocks without a military escort. Thereafter a military escort was provided to them. Ngirumpatse was present together with Nzirorera and Mugenzi when the *Interahamwe* leaders reported back the next day. Karemera was not present.

⁹¹⁹ T. 19 May 2009, p. 22.

⁹²⁰ *Id.*, p. 23.

⁹²¹ T. 26 January 2011, p. 43.

⁹²² *Id.*, pp. 43, 44.

⁹²³ *Id.*, p. 46.

⁹²⁴ *Id.*, p. 45.

⁹²⁵ *Id.*, p. 46.

⁹²⁶ *Id.*, p. 47.

700. Ephrem Nkezabera provided the report and stated that the message had been well received. Persons manning the roadblocks had asked for weapons because the RPF was firing on them.⁹²⁷

Deliberations

Cautionary Issues

701. The Chamber recalls that, at the time of his testimony, Prosecution Witnesses T was detained and awaiting trial on genocide charges.⁹²⁸ The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program.⁹²⁹

702. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Course of the Meeting

703. As a preliminary matter, the Chamber notes that Prosecution Witness G testified that he saw Interim President Sindikubwabo at the hotel, not that Sindikubwabo attended the first meeting with the *Interahamwe* leaders on 10 April 1994.

704. There are some discrepancies between the testimonies concerning the meeting, mainly with respect to the timing of the events and persons who attended.

705. Witness G testified that Nzirorera chaired the first meeting. The Chamber, however, is convinced by the testimony of Nzirorera and Ngirumpatse that the latter, as the senior leader, chaired the meeting.

706. Witness G also claimed that the first tour to the roadblocks took place on 10 April with the first feedback meeting with the political leaders taking place later that same day with Karemera, Nzirorera and Mugenzi in attendance. Prosecution Witness T, on the other hand, testified that the first tour to the roadblocks took place on 11 April with the feedback meeting occurring later that day attended by Ngirumpatse, Karemera, and Nzirorera.

707. The evidence of Witness G is corroborated by Nzirorera's testimony that the *Interahamwe* leaders reported to him, Ngirumpatse, and Mugenzi on 10 April that they had aborted the first tour and requested a military escort. It is also corroborated by Ngirumpatse's testimony that the *Interahamwe* leaders may have reported to Nzirorera on 10 April with the same information. Thus, Witness G could have been referring to the aborted tour and the subsequent feedback meeting on 10 April whereas Witness T could have referred to the tour that was executed the next day with a military escort and the subsequent feedback meeting with Ngirumpatse, Karemera and Nzirorera. With respect to the feedback meeting, the testimony of Witness T is corroborated by Ngirumpatse and Nzirorera, although Ngirumpatse testified that Mugenzi, not Karemera, was the third person who attended the feedback meeting.

⁹²⁷ T. 27 January 2011, p. 4.

⁹²⁸ See para. 178.

⁹²⁹ See paras. 175 (G) and 178 (T).

708. Considering the above and noting that it is undisputed that Witnesses G and T attended the meetings and tours to the roadblocks on 10 and 11 April, the Chamber finds the discrepancies in their testimony immaterial and their evidence generally reliable.

709. Moreover, Witnesses G and T gave consistent evidence that the *Interahamwe* leaders at the initial meeting on 10 April were told to instruct *Interahamwe* and others manning the roadblocks to gather dead bodies in order to facilitate their collection by the authorities. Their evidence is not inconsistent with the evidence of Karemera and Ngirumpatse that the bodies were taken away at the behest of the authorities and Red Cross or with Karemera's testimony that concealment of bodies was not the purpose of the pacification tour. The Chamber finds it plausible that the issue of gathering dead bodies, as well as the international community's reaction to the killings, would have been raised at the meeting and believes the testimony of Witnesses G and T in these respects.

Actual Purpose of the Pacification Tour

710. According to the evidence, the 10 April meeting did not address whether the killings were only supposed to stop temporarily. Nor does it appear from the evidence that the killings were supposed to focus on Tutsi intellectuals.

711. The Chamber is convinced that Ngirumpatse, Karemera, and the other political leaders behind the Interim Government were motivated by reasons other than their genuine concern for the Tutsi population when they ordered the *Interahamwe* leaders to stop the killings at the roadblocks. In arriving at this conclusion, the Chamber has considered its finding that the reaction of the international community to the killings was presented to the *Interahamwe* leaders as a reason for the mission. Moreover, it has found that firearms subsequently were provided by or with the consent of members of the Executive Bureau to the persons manning the roadblocks with full knowledge that they would be used to kill Tutsis (see V.1.4.2).

712. The Chamber has also evaluated the testimony of Witnesses G and T concerning the reaction of the MRND leaders when the *Interahamwe* leaders reported the massive scale of the killings to them. Regardless of whether their reaction was one of joy, as testified by Witness G, or of indifference, as testified by Witness T, the Chamber concludes that neither reaction would be appropriate for a person who intended to put an end to the massacres and truly "pacify" the region.

713. The Chamber cannot conclude, however, that the only reasonable inference from the evidence is that the mission was launched to aid and abet future killings by exerting control and direction over the *Interahamwe* so that the killings could be focused on Tutsi intellectuals.

Conclusion

714. The Prosecution has proved beyond a reasonable doubt that a meeting took place on 10 April 1994 at the *Hôtel des Diplomates*, and that the meeting was attended by senior officials from all political parties behind the Interim Government, including Ngirumpatse, Karemera, Joseph Nzirorera and members of the Provisional National Committee of the *Interahamwe*. At the meeting, the *Interahamwe* leaders were requested to conduct a tour of the roadblocks to persuade the *Interahamwe* and others manning the roadblocks to stop the killings.

715. The Chamber has not proved beyond a reasonable doubt that the mission was launched to aid and abet future killings by exerting control and direction over the *Interahamwe* so that the killings could be focused on Tutsi intellectuals.

1.4.2 Arrangement with Bagosora to Obtain Firearms

Allegation in the Indictment

716. After the meeting held at the *Hôtel des Diplomates* on 10 April 1994,⁹³⁰ even as they attempted to control the killings at the roadblocks, Ngirumpatse and Joseph Nzirorera made arrangements with Théoneste Bagosora to obtain firearms from the Ministry of Defence and distribute them to militiamen in Kigali with the intention that they would be used to attack and kill the Tutsi population.⁹³¹

Evidence

Prosecution Witness HH

717. The witness⁹³² attended a meeting chaired by Dallaire's deputy at the *Hôtel des Diplomates* around 11 April 1994 regarding Gisimba orphanage. Théoneste Bagosora, Callixte Nzabonimana, Gahigi, a journalist from RTLM, Maniragaba and *Interahamwe secteur* presidents were at the meeting.

718. After Dallaire's representatives left, weapons were distributed to *Interahamwe secteur* presidents outside the meeting room.⁹³³ Soldiers gave the guns to Kajuga who distributed them to people on a list that had been compiled when Kajuga, Maniragaba and Ngirabatware had toured the roadblocks to assess the situation on 8 April 1994.⁹³⁴

719. Joseph Nzirorera and Ngirumpatse did not participate in the meeting but could not have been unaware of the distribution because they were at the hotel. When the witness was outside the building, he saw Nzirorera on an upper floor and Maniragaba told him that Ngirumpatse was in the building.⁹³⁵ Nzabonimana and Gahigi were monitoring the distribution. From time to time, Maniragaba would go upstairs and the witness believed he was making reports.⁹³⁶

720. The witness does not know how many guns were distributed. There were approximately ten crates containing firearms and ammunition. The firearms were distributed because the *Interahamwe* had earlier been requested to carry out night patrols and had requested weapons to defend themselves whilst doing so. The *secteur* presidents had been instructed to consult with the *conseillers* to see how the guns could be distributed at various roadblocks. At the time, the killing of accomplices had already begun and corpses were visible at Kimisagara, Nyakabanda and on the side of the road.⁹³⁷

⁹³⁰ See Indictment, para. 38.

⁹³¹ Indictment, para. 39.

⁹³² See para. 170, *supra*.

⁹³³ T. 9 November 2006, p. 13.

⁹³⁴ *Id.*, p. 16.

⁹³⁵ *Id.*, p. 15.

⁹³⁶ *Id.*, pp. 16, 17.

⁹³⁷ *Id.*, pp. 17, 18.

Prosecution Witness T

721. The witness⁹³⁸ participated in a tour on 11 April 1994 by *Interahamwe* leaders to roadblocks at the request of the political leaders behind the Interim Government.⁹³⁹

722. He testified that the *Interahamwe* manning the roadblocks requested weapons in order to defend themselves.⁹⁴⁰ When they reported this to Ngirumpatse later the same day he said that the government would try to settle the people's demands concerning firearms.⁹⁴¹

723. On the following day, 12 April 1994, he continued visiting roadblocks with his colleagues. That afternoon, they discovered that the government was fleeing. He went to the *Hôtel des Diplomates* at 2.00 p.m. with Bernard Maniragaba and Pierre Sebanetsi and explained the problems they were facing to Nzirorera, who told them to telephone him later that afternoon. Nzirorera informed Maniragaba that he had consulted with Théoneste Bagosora and they should meet Bagosora at 6.00 p.m. at the *Hôtel des Diplomates*. Bagosora asked them to follow him to the Ministry of Defence where he telephoned and gave orders to his driver who took them to a storeroom where they obtained 100 or more firearms and ammunition. They distributed these weapons the following day, 13 April 1994, at the same roadblocks they had previously toured.⁹⁴²

Prosecution Witness G

724. The witness⁹⁴³ took part in the tour of roadblocks. When the *Interahamwe* leaders ended their mission on 10 April 1994, they went back to the *Hôtel des Diplomates* and reported to Joseph Nzirorera, Ka remera, and Justin Mugenzi that many of the people manning the roadblocks had requested firearms. There was no reaction to the request for firearms and weapons were not distributed that evening at the hotel.⁹⁴⁴

725. When he left Kigali on 12 April 1994, there were roadblocks but no weapons; however, when he returned around 22 April 1994 there were weapons being carried at every single roadblock, particularly in Gitega. He saw Witness T in Gitarama with a weapon. Witness T told him that that the day after 12 April 1994, they were given weapons by Nzirorera who had made an arrangement with Théoneste Bagosora. When the witness went back to Kigali he stopped at Bernard Maniragaba's house and asked for a weapon. Maniragaba told the witness that he had to get it from Georges Rutaganda. Rutaganda said the weapon he had set aside for the witness was at his home so he could not get the weapon.⁹⁴⁵

Prosecution Witness UB

⁹³⁸ See para. 178, *supra*.

⁹³⁹ T. 24 May 2006, p. 60.

⁹⁴⁰ *Id.*, p. 61.

⁹⁴¹ *Id.*, p. 62.

⁹⁴² *Id.*, pp. 64, 65.

⁹⁴³ See para. 175, *supra*.

⁹⁴⁴ T. 11 October 2005, pp. 59, 60.

⁹⁴⁵ T. 12 October 2005, p. 11.

726. The witness's⁹⁴⁶ brother, an *Interahamwe*, told him that he had received a firearm from soldiers at the *Hôtel des Diplomates* on 10 April 1994 in order to ensure public security and felt that "a Tutsi's fate was sealed." Georges Rutaganda and Bernard Maniragaba were present at that meeting and the *Interahamwe* top leaders were also at the hotel. During the meeting, Callixte Nzabonimana gave a speech stating that Ngirumpatse, Joseph Nzirorera and Karemera had agreed with the general staff, the High Commander of the Army and the Chief of General Staff, to distribute those arms. The soldiers came in a vehicle from Kigali camp.⁹⁴⁷

727. The witness's brother did not tell him who exactly in the army had authorised the distribution of weapons.⁹⁴⁸ The witness knew that the Ministry of Defence had arms and considered that Bagosora was involved with the distribution because the witness had previously received weapons from the Ministry of the Defence. The firearms distributed at the *Hôtel des Diplomates* were issued to the *Interahamwe* so they could kill Tutsis.⁹⁴⁹

Prosecution Witness ALG

728. The witness⁹⁵⁰ heard from Jean Néopomuscène Biziyaremye about a meeting chaired by Théoneste Bagosora that occurred on 10 or 11 April 1994 at the *Hôtel des Diplomates*. Weapons were distributed once the meeting had adjourned and Dallaire departed. The meeting concerned the evacuation of children.⁹⁵¹

729. The witness saw *Interahamwe* receiving weapons at Kigali *préfecture* office from Gratien Kabiligi in May 1994.⁹⁵²

Prosecution Witness AWD

730. The witness⁹⁵³ had contacts in the *Interahamwe* who informed him that a meeting led by Théoneste Bagosora and attended by MRND leaders, including Ngirumpatse, occurred at the *Hôtel des Diplomates* on 10 or 11 April 1994. Matters of security were considered, and those in attendance realised that it was necessary to strengthen the force of the *Interahamwe* and the soldiers on the war front. They decided to distribute weapons to the *conseillers* in all *secteurs*, who would give them to trusted young Hutu men so that they could be used to kill Tutsis. The witness did not specify whether the weapons were actually distributed.⁹⁵⁴

Joseph Nzirorera

731. Nzirorera testified that in the afternoon of 11 April 1994, he and Ngirumpatse met with the same *Interahamwe* leaders with whom they had met the day before, who gave them a report on their mission. They raised a problem, namely that the population was

⁹⁴⁶ See para. 154, *supra*.

⁹⁴⁷ T. 27 February 2006, pp. 43, 44, 53, 55.

⁹⁴⁸ *Id.*, p. 56.

⁹⁴⁹ *Id.*, pp. 58, 59, 61.

⁹⁵⁰ See para. 157, *supra*.

⁹⁵¹ T. 2 November 2006, p. 68.

⁹⁵² T. 31 October 2006, pp. 2, 3.

⁹⁵³ See para. 219, *supra*.

⁹⁵⁴ T. 10 October 2007, pp. 34, 35.

requesting weapons. Nzirorera believed that people were worried for their security and wanted to be able to defend themselves. Nzirorera and Ngirumpatse could not promise anything to the population because the government had problems with weapons and ammunitions.⁹⁵⁵

732. The meeting ended at about 8.00 p.m. Nzirorera went back to where he was residing whereas Ngirumpatse stayed at the *Hôtel des Diplomates*. Nzirorera and Ngirumpatse had instructed the group of *Interahamwe* leaders to go around the remaining neighbourhoods the following day, 12 April 1994, very early in the morning, and provide another report by 11.00 a.m. at the *Hôtel des Diplomates*.⁹⁵⁶

Matthieu Ngirumpatse

733. Ngirumpatse testified that he did not cooperate with Théoneste Bagosora or others to obtain firearms from the Ministry of Defence to be distributed to youth of political parties in Kigali.⁹⁵⁷ He did not give any instructions for the distribution of weapons to the *Interahamwe* following 6 April 1994.⁹⁵⁸ He was not aware of any meeting held by Bagosora and MRND officials around 10 or 11 April 1994 at the *Hôtel des Diplomates* during which it was allegedly decided that *conseillers* should distribute weapons to trusted youths to be used to kill Tutsis.⁹⁵⁹

Deliberations

Cautionary Issues

734. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH, UB, and ALG were convicted and imprisoned for participating in the genocide.⁹⁶⁰ Furthermore, at the time of their testimony, Prosecution Witnesses AWD and T were detained and awaiting trial on genocide charges.⁹⁶¹

735. The Chamber also notes that Witnesses G and T received extensive benefits, financial and otherwise, from the Prosecution in exchange for their testimony and takes this into account when assessing their credibility.⁹⁶²

736. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Weapons Distribution on 10 April 1994

737. Prosecution Witness UB gave hearsay evidence about a meeting on 10 April 1994 attended by Ngirumpatse, Karemera and Nzirorera. Prosecution Witness AWD provided

⁹⁵⁵ T. 18 May 2010, pp. 13, 14.

⁹⁵⁶ *Id.*, p. 15.

⁹⁵⁷ T. 27 January 2011, p. 10.

⁹⁵⁸ *Id.*, p. 21.

⁹⁵⁹ *Id.*, pp. 23, 24.

⁹⁶⁰ See paras. 170 (HH); 154 (UB); and 157 (ALG).

⁹⁶¹ See paras. 219 (AWD) and 178 (T).

⁹⁶² See para. 175 (G) and 178 (T).

hearsay evidence about a meeting on 10 or 11 April 1994 attended by Ngirumpatse, other political leaders, and Bagosora.

738. The Chamber considers that the witnesses could be referring to the same meeting although their accounts seem to differ in several respects such as the timing of the meeting and the participants. Taking into account, however, that the hearsay evidence of Witnesses UB and AWD is not corroborated by direct evidence, and that Witness T testified that no weapons distribution took place on 10 April 1994, the Chamber finds it unsafe to conclude that weapons were distributed on 10 April 1994.

Weapons Distribution on 11 April 1994

739. Prosecution Witness HH testified that weapons were distributed around 11 April 1994 at the *Hôtel des Diplomates* after a meeting with General Dallaire's deputy concerning an orphanage. This testimony is corroborated by the hearsay evidence of Witness ALG concerning the same facts. Therefore, the Chamber believes the testimony of Witness HH that, after the meeting, weapons were distributed to *Interahamwe* secteur leaders in the presence of Bagosora, Nzabonimana, an MRND minister of the Interim Government, and others. The Chamber also believes the assertion of Witness HH that Nzirorera was present at the hotel when the distribution took place. The Chamber also relies on Nzirorera's evidence, as corroborated by the hearsay evidence of Witness HH, that Ngirumpatse stayed at the hotel.

740. The Chamber is convinced that weapons could not have been distributed to the *Interahamwe* without the consent of the MRND Executive Bureau. In arriving at this conclusion, the Chamber has considered its finding that the MRND Executive Bureau controlled the *Interahamwe* in Kigali (see IV.1.3). It has also noted the consistent testimony of Witnesses G and T that MRND leaders were informed by *Interahamwe* leaders that persons manning roadblocks had requested weapons (see V.1.4.1).

Weapons Distribution on or about 12 April 1994

741. Nzirorera and Witness T gave consistent testimony that the *Interahamwe* leaders reported to Nzirorera after their second roadblock tour on 12 April 1994 and stated that the persons manning the roadblocks had requested weapons. Witness T also testified that Nzirorera organised weapons for distribution to the roadblocks through Bagosora later the same day. Witness G corroborates this testimony through his hearsay evidence on these facts, which he received from Witness T, and his observation upon his return 10 days later that all roadblocks had been provisioned with weapons.

742. Accordingly, the Chamber believes the testimony of Witness T that Nzirorera organised the distribution of weapons to people manning the roadblocks after the second tour.

Intent Behind the Distribution of Weapons to Roadblocks and Interahamwe

743. Witnesses HH, T, and Nzirorera testified that *Interahamwe* and other persons manning roadblocks wanted weapons to protect themselves, whereas Prosecution Witness UB speculated that the weapons were intended for killing Tutsis.

744. The Chamber finds that the distribution of weapons could serve both purposes. Considering the massive scale of the killings of civilian Tutsis that were taking place, as reported to the MRND leaders by the *Interahamwe* leaders after the tours to the roadblocks,

and considering that the killings continued after these tours, as testified by Prosecution Witnesses G and T, the Chamber concludes that it was foreseeable by the MRND leaders that the weapons would also be used to kill Tutsis.

Conclusion

745. The Prosecution has proved beyond a reasonable doubt that weapons were distributed on 11 April 1994 at the *Hôtel des Diplomates*. The weapons were distributed to the *Interahamwe* in the presence of Col. Bagosora and with the consent of Ngirumpatse and Nzirorera. On 12 April 1994, Nzirorera arranged with Bagosora to issue weapons to people manning roadblocks. It was foreseeable by the MRND leaders that the weapons would also be used to kill civilian Tutsis.

1.5 Meeting at the *Hôtel des Diplomates* on or about 11 April 1994

Allegation in the Indictment

746. On or about 11 April 1994, Ngirumpatse, Karemera, and Joseph Nzirorera participated in a meeting at the *Hôtel des Diplomates*, which was attended by members of the Interim Government and most *préfets*. The purpose of the meeting was to mobilise the territorial administration. The *préfets* reported on the security situation in their respective regions. Butare and Gitarama *préfectures* were labeled inactive because the killings of Tutsis had not begun on a massive scale.⁹⁶³

Undisputed Evidence

747. It is undisputed that a meeting took place on 11 April 1994 at the *Hôtel des Diplomates* between most *préfets*, the Interim President, the Interim Prime Minister, the members of the Interim Government, and other politicians.⁹⁶⁴

Evidence

Radio Rwanda Broadcast of 11 April 1994

748. The broadcast concerns Interim Prime Minister Jean Kambanda's speech at the meeting. In the speech, Kambanda issued specific directives for restoring order and security, including urging *préfets* to organise pacification meetings in *préfecture* headquarters, *communes*, and *secteurs*.⁹⁶⁵

Prosecution Witness Fidèle Uwizeye

749. The witness was the *préfet* of Gitarama until June 1994.⁹⁶⁶ He testified that the meeting started at around 11.00 a.m. and ended between 1.00 and 2.00 p.m. There were

⁹⁶³ Indictment, para 40.

⁹⁶⁴ Exhibit DK132, "Radio Broadcast of 11 April 1994".

⁹⁶⁵ *Id.*

⁹⁶⁶ T. 19 July 2007, p. 8.

about 30 to 40 people present. The *préfet* of Butare did not attend, and Kambanda stated that he would pay dearly for his absence.⁹⁶⁷

750. The stated purpose of the agenda was that the participants would get to know each other and each *préfet* would speak about the situation prevailing in his respective *préfecture*.⁹⁶⁸ Nobody mentioned the killings. The meeting was a pantomime; what was being said were lies in the face of all that he knew. They could hear gunfire from outside and, therefore, the meeting did not last long.

751. The speeches at the meeting were meaningless with regard to concrete measures that were required to put an end to the massacres. No steps were taken and there were no provisions for punishing those who would not comply with Kambanda's instructions.⁹⁶⁹

752. The Radio Rwanda broadcast contained some passages that were taken directly from the meeting; however, some were left out. This broadcast was not a faithful reproduction of Kambanda's speech at the meeting, but was rather an interview that was given after the meeting, which hid many things. The broadcast conveyed a message which was not negative. If such a speech had really been delivered, and if the government had complied with the instructions therein, the genocide would not have been committed on a large scale nationwide.⁹⁷⁰

Defence Witness Tharcisse Renzaho

753. The witness⁹⁷¹ attended the meeting on 11 April 1994 and testified that the main concern was how the violence could be stopped. He did not see Karemera, Ngirumpatse or Joseph Nzirorera at the meeting.⁹⁷²

Joseph Nzirorera

754. Nzirorera stated that neither he, nor Karemera, nor Ngirumpatse attended the meeting on 11 April between the government and the *préfets*.⁹⁷³

Édouard Karemera

755. Karemera testified that the *préfets* came to Kigali on 11 April.⁹⁷⁴

Matthieu Ngirumpatse

756. Ngirumpatse testified that he did not attend the meeting of *préfets* that took place on 11 April 1994. The purpose of that meeting was not to assemble the territorial administration to kill. Rather, the purpose of the meeting was to restore peace. He never

⁹⁶⁷ *Id.*, pp. 27-29.

⁹⁶⁸ *Id.*, p. 27.

⁹⁶⁹ T. 26 July 2007, p. 30.

⁹⁷⁰ *Id.*, pp. 28-30.

⁹⁷¹ See para. 312, *supra*.

⁹⁷² T. 15 April 2010, pp. 30, 31.

⁹⁷³ T. 18 May 2010, p. 12.

⁹⁷⁴ T. 19 May 2009, p. 38.

heard that the *préfectures* of Butare and Gitarama were considered inactive because the massacres of Tutsis were not taking place there on a large scale.⁹⁷⁵

Conclusion

757. The Prosecution has proved beyond a reasonable doubt that a meeting of Interim Government officials and most *préfets* took place at the at the *Hôtel des Diplomates* on 11 April 1994, during which the *préfets* reported on the security situation in their respective regions. This meeting mobilised the territorial administration to the extent that *préfets* were urged to organise pacification meetings in *préfecture* headquarters, *communes*, and *secteurs*.

758. It did not present any evidence, however, that the Accused attended the meeting, or that Butare and Gitarama *préfectures* were labeled inactive at the meeting because killings had not started on a massive scale.

2. INTERVENTION OF THE INTERIM GOVERNMENT IN THE ACTIVITIES OF THE TERRITORIAL ADMINISTRATION AND MILITARY

2.1 Meeting at Murambi Training School on 18 April 1994

Allegation in the Indictment

759. Ngirumpatse, Karemera, Interim Prime Minister Jean Kambanda, Mugenzi, Niyitegeka, Barayagwiza, and others participated in a meeting at the Murambi training school on or about 18 April 1994. During the meeting, several *bourgmestres* from Gitarama *préfecture* requested Jean Kambanda to provide reinforcements to protect the Tutsi population and restore order in the region. Instead, the Interim Government ministers and political party leaders in attendance, notably Ngirumpatse, Karemera and Justin Mugenzi, instigated the Gitarama delegation to stop protecting Tutsis and to allow the *Interahamwe* to continue killing Tutsi civilians.⁹⁷⁶

Undisputed Evidence

760. It is undisputed that a meeting regarding the security situation in Gitarama *préfecture* was scheduled to be held at the *préfecture* office on 18 April 1994 and that, at the behest of the Prime Minister, the meeting was moved to the Murambi Training School. The meeting in Murambi was attended by several Interim Government ministers, the *préfet*, and the *bourgmestres* from most of the *communes* in Gitarama.⁹⁷⁷

Evidence

Rapport de Mission effectuée à Gisenyi et Ruhengeri du 18 au 19 avril 1994

⁹⁷⁵ T. 27 January 2011, pp. 11, 12.

⁹⁷⁶ Indictment, para. 47.

⁹⁷⁷ Exhibit P105, "Transcript of Radio Rwanda Broadcast of 19 April 1994"; Karemera Closing Brief, paras. 533, 534; Ngirumpatse Closing Brief, para. 105.

761. The report, which is dated 20 April 1994, indicates that Karemera accompanied Minister of Defence Bizimana on a visit to Gisenyi and Ruhengeri to assess the prevailing military and political situation. There is no indication in the report as to when the participants left Murambi or arrived in Gisenyi or Ruhengeri, or what mode of transport was used.⁹⁷⁸

Evidence Concerning the Meeting

Prosecution Witness FH

762. The witness⁹⁷⁹ attended the meeting sessions at the Interim Government headquarters in Murambi.⁹⁸⁰

763. Initially, Gitarama *Préfet* Fidèle Uwizeye had summoned an extended security meeting to start at 9.00 a.m. at the Gitarama Prefectural Office. Approximately 100 people had arrived for the meeting when the *préfet* told the group that he had just been informed that the Interim Prime Minister wanted to participate in the meeting. The *préfet* ordered the group to go to Murambi to meet the Prime Minister. The group left immediately for Murambi.⁹⁸¹

764. In Murambi, he recognised approximately 10 ministers at the morning meeting, including Nzabonimana, Mugenzi, and Ntagerura, national leaders of political parties, including Karemera from the MRND and Donat Murego and Shingiro Mbonamutwa from the MDR, senior army officers, high ranking civil servants, religious leaders, and journalists.⁹⁸² Tutsis were present at the morning meeting, including a Tutsi Muslim religious leader.⁹⁸³

765. Prime Minister Kambanda entered and read a speech that he had prepared for the occasion.⁹⁸⁴ His speech provided the audience with news or reports from the frontline, briefed them with the steps he intended to take to restore law and order, and informed them of matters connected with the training sessions that had to be organised for members of the population as part of the civil defence operations. The audience did not react positively to the speech because they thought they had assembled to discuss their security concerns instead of listen to a speech from the Prime Minister who they did not know in advance that they would be meeting with.⁹⁸⁵

766. The *préfet* of Gitarama then spoke about security issues in Gitarama and raised the various problems that had arisen due to the arrival of the government, including the large presence of soldiers who were forcing people to show identification cards, raping women, and killing Tutsis. He also requested the government to ask the MRND to order the *Interahamwe* to stop killing innocent Tutsi civilians. The *bourgmestres* were then asked to

⁹⁷⁸ Exhibit P199: "Édouard Karemera's Rapport de Mission Effectuée à Gisenyi et Ruhengeri du 18 au 19 Avril 1994".

⁹⁷⁹ See para. 609, *supra*.

⁹⁸⁰ T. 11 July 2007, p. 38.

⁹⁸¹ T. 12 July 2007, p. 2.

⁹⁸² T. 12 July 2007, pp. 7, 8.

⁹⁸³ *Id.*, p. 16.

⁹⁸⁴ *Id.*, p. 3.

⁹⁸⁵ *Id.*, pp. 3, 4.

speaking about their difficulties. *Bourgmestre* Mporanzi said that Nzabonimana assaulted him after he arrested people who had eaten cows belonging to Tutsis.⁹⁸⁶ The *bourgmestre* of Mugina, Callixte Ndagijimana, wondered how he could guarantee the security of the refugees at the *bureau communal* following the demobilisation of the *gendarmes*. Other *bourgmestres* raised similar issues.⁹⁸⁷ Members of the clergy also expressed worries about the situation and asked for provisions to assist internally displaced persons.⁹⁸⁸

767. The audience was shocked when no satisfactory answers were given by any of the authorities at the meeting regarding the concerns raised by the *préfet*. The *préfet* requested to speak again and asked the Prime Minister to provide answers and concrete solutions. The government's civil servants said they would study the matters raised, but the witness could tell that they would not come up with serious solutions since the national politicians had remained silent.⁹⁸⁹ Around lunchtime, they were told that the meeting was over and the protocol officer excused everyone except the *bourgmestres* who had to stay to receive a special message.⁹⁹⁰

768. When the *bourgmestres* and the *préfet* returned to the meeting hall, the situation had changed, and the people delivering the message were trying to intimidate the local officials.⁹⁹¹

769. Kalimanzira warned the assembled people, in his capacity as a senior government official, that it was known that the *bourgmestres* of Gitarama *préfecture* were not performing their duties properly and that some of them were accomplices of the *Inkotanyi* and not on good terms with the *Interahamwe*. Karemera spoke, saying that the people of Gitarama had adopted an attitude similar to opposition members which should be condemned and stopped; Hutus should unite to fight the RPF and their accomplices, and staunch support should be extended to the *Interahamwe*.⁹⁹² Nobody contradicted Karemera; the speeches of the national politicians supported each other and used words that caused fear.⁹⁹³

770. When Mugenzi spoke he blamed and accused those assembled for not involving Gitarama in the fight against the *Inkotanyi*, saying that despite different political affiliations they needed to work together and that anyone who did not comply would be considered an enemy of the country. The witness understood the phrase "accomplices of the enemy" to mean any Hutu who assisted the enemy in any way and "enemy" to mean anybody who did not comply with what the government wanted.⁹⁹⁴ The national politicians and civil servants did not directly advocate killings, but wanted the local authorities to stop assisting Tutsis who were being chased and hunted down by the *Interahamwe* because they were suspected of supporting the RPF.⁹⁹⁵

⁹⁸⁶ *Id.*, pp. 4, 5.

⁹⁸⁷ *Id.*, pp. 5, 6.

⁹⁸⁸ *Id.*, p. 9.

⁹⁸⁹ *Id.*

⁹⁹⁰ *Id.*, pp. 5, 6.

⁹⁹¹ *Id.*, p. 10.

⁹⁹² *Id.*, pp. 15, 16.

⁹⁹³ *Id.*, p. 17.

⁹⁹⁴ *Id.*, pp. 17, 18.

⁹⁹⁵ *Id.*, p. 20.

771. The local authorities were shocked and felt terrorised. Instead of dealing with the problems raised in the earlier meeting, the national leaders now told them that they were not happy with how they were doing their jobs and that they were assisting the enemy. The remaining speakers supplemented each other and the tension continued to rise as more speeches were made.⁹⁹⁶

772. After this meeting where local officials realised that they were not going to receive any support from the government, efforts to assist Tutsis diminished, and genocidal acts intensified. The witness admitted that his own behaviour changed after the meeting as did that of *bourgmestre* Akayesu.⁹⁹⁷

Prosecution Witness Fidèle Uwizeye

773. The witness⁹⁹⁸ called a meeting of *bourgmestres* and other local officials on 18 April 1994, which was taken over by the Prime Minister and consequently, did not turn out as he had envisaged. The Prime Minister had first notified the witness through his private secretary that he wished to address the meeting, and then for security reasons the meeting was moved to Murambi.⁹⁹⁹ The national leaders who spoke at the meeting included Prime Minister Kambanda, Minister Mugenzi, Karemera, who was not yet a minister, and Ngirumpatse. Nzabonimana was present but did not speak.¹⁰⁰⁰

774. The witness spoke and explained the security situation in Murambi to the Prime Minister. He explained that the local officials wanted to use this opportunity to address the government about the reprehensible acts that had occurred in the *préfecture*. He asked the government to take measures to end this kind of conduct; the local officials did not want these acts to continue as they had in Kigali.¹⁰⁰¹ He asked the government to assume its responsibility, to guarantee the security in the *préfecture*, and to control the *Interahamwe* or send them back to Kigali, but he understood that he was wasting his time. He explained to the Prime Minister that without the *gendarmes* who had been removed from his control he would not be able to counter illegal activities occurring in the *préfecture*, including ministers and army officials distributing firearms to youth who later set up roadblocks.¹⁰⁰²

775. In response, the Prime Minister pointed to a programme he had presented in his speech at the meeting with nearly all of the *préfets* on 11 April 1994 and noted that he did not suggest that people should go to Gitarama to start killing or acting as the witness claimed they had been. The witness was not satisfied with the response and requested concrete measures but Kambanda did not say any more.¹⁰⁰³ The witness then asked all *bourgmestres* to take the floor to further buttress the statements he had made.¹⁰⁰⁴ *Bourgmestres* from Nyandwi and Rukiramacumu took the floor; the witness wanted

⁹⁹⁶ *Id.*, pp. 15, 16.

⁹⁹⁷ *Id.*, pp. 32, 33.

⁹⁹⁸ See para. 749, *supra*.

⁹⁹⁹ T. 19 July 2007, pp. 34, 35.

¹⁰⁰⁰ *Id.*, p. 49.

¹⁰⁰¹ *Id.*, pp. 39, 40.

¹⁰⁰² *Id.*, pp. 42, 43.

¹⁰⁰³ *Id.*, p. 50.

¹⁰⁰⁴ *Id.*, p. 40.

bourgmestres Karuganda and Mporanzi to also take the floor to discuss security events that they had told him about, but both refused.¹⁰⁰⁵

776. The *bourgmestres* of Mugina and Runda took the floor and spoke. The *bourgmestre* of Mugina, Ndagijimana, repeated what the witness had said regarding attacks perpetrated in the previous days by Setiba's *Interahamwe* gang. He also said that he feared for his life because the *gendarmes* had been withdrawn and five soldiers whom his policemen had captured and sent to the military camp to be detained had been released. He was later killed at a roadblock.¹⁰⁰⁶

777. The *bourgmestre* of Runda, named Sixbert, whom the witness expected to corroborate the story of the attacks by Setiba's gang, changed his account when addressing the meeting and said that the three people were killed because they were accomplices and carrying weapons.¹⁰⁰⁷

778. The witness remembered the speeches made by the national authorities because they were harsh; he was quite frightened by their utterances.¹⁰⁰⁸

779. Karemera took the floor and defended the *Interahamwe* and MRND, stating that the witness had always been against the MRND and had worked with the former Prime Minister to fight against the party. He said that the witness was engaging in politics for the benefit of his party, that he had not allowed the *Interahamwe* to work, and that he was lying and biased because there were no problems in the *préfecture*. He suggested that the JDR or *Abakombozi* had committed the killings dressed as *Interahamwe*.¹⁰⁰⁹

780. Ngirumpatse gave a similar speech and claimed that the *Interahamwe* were at the front with the soldiers combating the enemy.¹⁰¹⁰ Mugenzi told the witness that the government was wasting its time and that the *préfet* and his *bourgmestres* did not want to understand the current policy. He claimed that persons such as the local authorities in Gitarama should be dismissed. His speech was so harsh that the witness chose to leave the room after it was made.¹⁰¹¹

781. The national authorities were applauded when they took the floor and were happy and laughing. Nobody supported the witness's position or attempts to reach a consensus. In the witness's mind, the authorities confirmed that the killings in Gitarama were not offences. The meeting demoralised the *bourgmestres* resulting in large-scale killings after the meeting from 18 to 28 April 1994.¹⁰¹²

Karemera Defence Witness Jean-Paul Akayesu

¹⁰⁰⁵ *Id.*, pp. 46-49.

¹⁰⁰⁶ *Id.*, p. 45.

¹⁰⁰⁷ *Id.*, p. 44.

¹⁰⁰⁸ *Id.*, pp. 49, 50.

¹⁰⁰⁹ *Id.*

¹⁰¹⁰ *Id.*

¹⁰¹¹ *Id.*, pp. 50, 51.

¹⁰¹² *Id.*, p. 52.

782. The witness was *bourgmestre* of Taba commune¹⁰¹³ and has been convicted by the Tribunal of genocide, crimes against humanity, and direct and public incitement to commit genocide, acts that were directly related to the events of 18 April 1994.¹⁰¹⁴

783. He testified that he arrived at the Gitarama Prefectural Office at approximately 9.00 a.m., and was told that the meeting would instead be held at Murambi on the invitation of the Prime Minister. He was one of the last to arrive in Murambi. Among those present he noticed clergy, political party representatives, including Malaki of the PL party, the *bourgmestres* of the *préfecture* and people from local government technical services.

784. The ministers present at the meeting included Eliézer Niyitegeka, Justin Mugenzi, Jean de Dieu Habineza, Straton Sabakunzi, Callixte Nzabonimana and Pauline Nyiramasuhuko.¹⁰¹⁵ Malaki was a Tutsi, and he was not the only Tutsi present at the morning meeting.¹⁰¹⁶

785. The Prime Minister opened the meeting by reading a speech which outlined the security situation at the war front, his government's programme, and the actions he was taking to restore peace. He asked everyone to maintain security and noted that the government was in contact with the RPF.¹⁰¹⁷

786. *Monsignor* Thadée Nsengiyumva and *Monsignor* Samuel Musabyimana spoke next, followed by one or two ministers and the *préfet*.¹⁰¹⁸

787. Nsengiyumva stated that he was dealing with internally-displaced persons at his parish and was coping but had concerns about the future if peace was not restored. Musabyimana also told the Prime Minister that he had internally-displaced persons but was able to house and feed them. Minister Habineza encouraged the bishops to continue to do what they could, noting that the Government was overwhelmed and had limited means.

788. The *préfet* spoke of internally-displaced persons at the stadium, telling the Prime Minister of all they had done to protect them. He spoke of a group of internally-displaced persons that he had moved from the stadium to Simana and mentioned that he was concerned about them. The *préfet* also said that disturbances were beginning in Taba and Mugina *communes* because of internally-displaced persons.¹⁰¹⁹

789. Karemera was not present at this meeting. The witness is a tall man and was one of the last to enter the conference room so he noticed who was coming in and is sure that Karemera whom he knew was not there. Joseph Nzirorera and Ngirumpatse were not present at the meeting either.¹⁰²⁰ Nobody was encouraged to kill Tutsis during the meeting.¹⁰²¹

790. The witness did not hear anybody at the meeting speak about what Uwizeye claims to have heard from Karemera.

¹⁰¹³ T. 14 May 2008, pp. 6, 7.

¹⁰¹⁴ *Id.*, p. 79 (closed session).

¹⁰¹⁵ *Id.*, pp. 8, 10.

¹⁰¹⁶ *Id.*, p. 16.

¹⁰¹⁷ *Id.*, pp. 6, 7.

¹⁰¹⁸ *Id.*, p. 9.

¹⁰¹⁹ *Id.*, pp. 9, 10.

¹⁰²⁰ *Id.*, p. 11.

¹⁰²¹ *Id.*, p. 16.

791. Uwizeye did not storm out and slam the door behind him while the Prime Minister was there. In any event, there would have been no need for anybody to act in such a way because the tenor of the meeting was calm.¹⁰²² After the morning meeting, Uwizeye contacted every *bourgmestre* and told them the Prime Minister wanted to see them at 2.00 p.m. Karemera did not attend the afternoon meeting either. The afternoon session included a smaller group of people. Karemera was not at the afternoon meeting either.¹⁰²³

Karemera Defence Witness CWL

792. The witness was an MDR party member and did not attend the meeting, but heard about it on Radio Rwanda the following day. He recalled from the broadcast that *préfet* Fidèle Uwizeye attended the meeting, but did not recall whether it was mentioned that Karemera or Ngirumpatse were present at the meeting.¹⁰²⁴

793. The witness believes that Karemera could not have said what Uwizeye claimed in his testimony because Uwizeye and the witness spoke to each other regularly and Uwizeye would likely have told him if Karemera had said such things at the meeting.¹⁰²⁵

Karemera Defence Witness Eliézer Niyitegeka

794. The witness was Minister of Information in the Interim Government and was convicted by the Tribunal for his role during the genocide.¹⁰²⁶ He attended the meeting briefly before he was called out to grant interviews to journalists. He recalled that Mugenzi and Kambanda were present at the meeting.¹⁰²⁷ Ngirumpatse, Joseph Nzirorera, and Karemera were not present in Murambi on 18 April 1994.

Karemera Defence Witness Jeanne Marie Vianney Mporanzi (Transcript from Nzabonimana Admitted after Closing Arguments)

795. The witness was the *bourgmestre* of Rutobwe *commune* in Gitarama in 1994 and testified for the Defence in the *Nzabonimana* trial.¹⁰²⁸ He stated that he attended the 18 April 1994 meeting in Gitarama. He arrived at 9.00 a.m. for the meeting, which was scheduled for 10.00 a.m. and spoke with other *bourgmestres* before the beginning of the meeting. The main topic for discussion at that time was the "situation which was beginning to overwhelm" them and the silence and absence of a reaction from the senior authorities.

796. The *préfet* arrived and stated that the meeting had been postponed and replaced by one with the Prime Minister at the Murambi Centre. That meeting began around 1.00 p.m. and an estimated 180 to 200 persons attended including clergy, political party officials, representatives of associations, and traders. Kambanda mentioned the disorder and insecurity in the country and explained the priorities of the Interim Government as

¹⁰²² *Id.*, p. 13.

¹⁰²³ *Id.*, pp. 14-16.

¹⁰²⁴ T. 6 May 2008, p. 61; T. 7 May 2008, p. 10.

¹⁰²⁵ T. 6 May 2008, p. 63.

¹⁰²⁶ *Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004.

¹⁰²⁷ T. 3 March 2010, p. 15.

¹⁰²⁸ Exhibit P586, "25 August 1998 Witness Statement".

defeating the RPF and restoring security in the *préfectures*. He stated that he was powerless to deal with the country's security problems because he had to send the *gendarmerie* to the front to support the army.

797. *Préfet* Uwizeye took the floor and described the situation in the *préfecture*, including the violence in the *communes*, displacement of Tutsis, and beginning of massacres in certain *communes*. He asked the Prime Minister to take urgent measures to make the population safe. A minister responded for the Prime Minister, reiterating that the main concern for the Interim Government was the resumption of hostilities with the RPF.

798. A Protestant clergyman asked the Prime Minister whether he could clarify who the enemy was and he responded by stating that the RPF was the enemy and that criterion for determining who was the enemy was not an ethnic one but the individual's choice to support the RPF or the government forces. No utterances that could be characterized as incitement to hatred or genocide were made. People left dissatisfied and unconvinced by the Interim Government.

799. The witness was then advised that a special meeting of the *bourgmestres* was going to be held in a classroom. Uwizeye sat for a few minutes before leaving and never returning to the meeting.

800. Kambanda arrived and asked the *bourgmestres* to explain the situation in their *communes*. Four or five spoke in succession complaining of the risk of a "spillover" and their inability to control the situation. The Prime Minister interrupted them, advised them to do the best they could with their little means to stamp out the violence, protect the internally-displaced persons and evacuate those who were in danger to Kabgayi, and left.

801. The Interim Government ministers remained behind at the meeting and some of them, notably Mugenzi, gave concrete advice such as avoiding confrontations with persons destroying houses and eating cows. Rather than infuriate the crowds, the *bourgmestres* were to tolerate some extortions against goods, houses, and cattle in order to keep the situation calm. The witness does not believe that these recommendations should be understood as encouraging genocide.

802. The audience scattered after the meeting and returned to their *communes* worried, dissatisfied because they did not receive the support and logistical reinforcements they expected.¹⁰²⁹

Ngirumpatse Defence Witness PR

803. The witness¹⁰³⁰ did not attend the meeting although he spent a few minutes outside the meeting room. He saw about 30 people. He did not recall seeing Karemera or Ngirumpatse.¹⁰³¹

Witness T-24 (transcript from the *Nzabonimana* trial, disclosed and admitted after closing arguments)

¹⁰²⁹ Exhibit P588, "Statement of 11 January 2010", pp. 4-9.

¹⁰³⁰ See para. 232, *supra*.

¹⁰³¹ T. 22 November 2010, pp. 38, 39 (closed session).

804. The witness was a *bourgmestre* in Rwanda during the genocide¹⁰³² who attended the 18 April meeting at Murambi. The *Interahamwe* were not mentioned during the 18 April meeting at Murambi. No threats were made regarding lack of collaboration with the *Interahamwe*. What frightened the *bourgmestres* was the fact that their hierarchy did not come to their rescue and they did not receive assistance. They were told that they could not count on the soldiers to restore security because they were needed on the war front. The *bourgmestres* were never threatened during the 18 April meeting at Murambi.¹⁰³³

805. After the meeting, he felt discouraged because he did not receive the assistance he requested for his *commune*. This might have been the reason that he did not remember a lot of things that happened at the meeting. He did not hear much at the meeting because he felt that you could not expect anything from someone who does not provide you with assistance when you are in difficulty. He and his colleagues left the meeting discouraged because they were not assisted in their daily duties and the killings had become widespread in their *préfecture*. He felt that the population was abandoned to its fate.¹⁰³⁴

806. The witness was replaced a month and a half after the meeting by a young appointee from the MRND. He was replaced because he did not share the same policies and ideas as the authorities.¹⁰³⁵

Édouard Karemera

807. Karemera testified that he did not attend the meeting because he had left Murambi that day on a mission to Ruhengeri and Gisenyi with Minister of Defence Augustin Bizimana. On 18 April, they travelled by road to Ruhengeri and arrived towards the end of the day. The trip would take about three hours. Bizimana had access to a military helicopter but they traveled by road.¹⁰³⁶ He heard of the meeting on Radio Rwanda on 20 April.¹⁰³⁷

808. Even if he had been in Gitarama on 18 April he would have had no occasion to attend this meeting because it was a meeting of the prefectural security council, which was extended to include political party leaders operating in the *préfecture* and leaders of religious congregations. He was neither the leader of a religious congregation or a member of an organ of the MRND party in that *préfecture*.¹⁰³⁸

Matthieu Ngirumpatse

809. Ngirumpatse testified that he became aware of the meeting because he heard about it on the radio. He did not attend because he had gone to the Gitarama *préfecture* office to deal with his passport that day.¹⁰³⁹ An immigration officer was present at the *préfecture* office to help him with his passport issues.¹⁰⁴⁰

¹⁰³² Exhibit DNG229B10, "Statement (A-K)".

¹⁰³³ T. 27 April 2010, p. 5 (closed session).

¹⁰³⁴ *Id.*

¹⁰³⁵ T. 27 April 2010, p. 6 (closed session).

¹⁰³⁶ T. 19 May 2009, pp. 50, 51; T. 27 May 2009, pp. 39, 41, 43; Exhibit P199, "Mission Report of 20 April 1994".

¹⁰³⁷ T. 19 May 2009, pp. 51, 52.

¹⁰³⁸ *Id.*, p. 52.

¹⁰³⁹ T. 27 January 2011, p. 38.

¹⁰⁴⁰ T. 15 February 2011, p. 32.

Evidence Concerning the Credibility of Prosecution Witness FH (Disclosed and Admitted after Closing Arguments)

Prosecution Witness FH (Transcript from Nzabonimana)

810. The witness¹⁰⁴¹ acknowledged that he referred to his status as a witness at the Tribunal during his proceeding before a *gacaca* court in Rwanda. During the *gacaca* proceeding, he said: "I noted that it was not enough to testify and that the witnesses were not enough, so I opted for the guilty plea procedure and I confessed in 2005. That is another sign of my goodwill to cooperate."

811. He further stated that he worked with the administration of Gitarama prison to sensitise his co-detainees to the policies of the government and to convince them to plead guilty. He was the Captain General in Gitarama prison for less than a year and from time to time had disciplinary powers over the other prisoners.¹⁰⁴²

Gacaca Judgement of Witness FH (4 November 2008)

812. In his statement contained in the judgement, the witness¹⁰⁴³ claimed that a delegation from the Prosecution of the Tribunal asked him to testify on the role that senior political leaders played in the genocide. He stated that he had been testifying for the Tribunal since 1996, which proves that he told the truth and maintained what he said. He later became convinced that it was not enough to testify so he entered his confession and guilty plea on a form.¹⁰⁴⁴

Written Declaration of Witness T-24 (8 February 2010)

813. In paragraphs 34 and 35 of his declaration, the witness¹⁰⁴⁵ states that Witness FH is the Secretary General of the prisoners at Gitarama prison, where he is detained. Although he is second in command as Secretary General, he actually wields the most power within the prison hierarchy. Under the old prison system in Gitarama, he used to hold the position of Captain General.¹⁰⁴⁶

Testimony of Witness CNAC (Transcript from Nzabonimana)

814. The witness testified that Witness FH was the Captain General of Gitarama prison for three years.¹⁰⁴⁷

Deliberations

Preliminary Issue: Remedy for Disclosure Violation

¹⁰⁴¹ See para. 609, *supra*.

¹⁰⁴² Exhibit DNG229A5, *Nzabonimana*, T. 15 December 2009, pp. 34, 35 (closed session).

¹⁰⁴³ See para. 609, *supra*.

¹⁰⁴⁴ Exhibit DNG229A12 (under seal).

¹⁰⁴⁵ See para. 804, *supra*.

¹⁰⁴⁶ Exhibit DNG229B11, "Written Statement of 8 February 2010", paras. 34, 35.

¹⁰⁴⁷ Exhibit DNG229C2, *Nzabonimana*, T. 12 April 2010, p. 15 (closed session).

815. After closing arguments, the Prosecution disclosed to the Defence “possible” exculpatory material from the *Nzabonimana* trial.¹⁰⁴⁸ The Chamber ordered the Prosecution to identify the material it assessed as exculpatory, and the Defence to make submissions.¹⁰⁴⁹ Ngirumpatse made submissions moving the Chamber to find that the Prosecution had violated its obligation to disclose exculpatory information as soon as practicable under Rule 68 of the Rules of Procedure and Evidence. Ngirumpatse also moved the Chamber to remedy the prejudice he suffered by admitting certain parts of the disclosed material as evidence in the trial and by excluding the testimony of Prosecution Witnesses FH and Fidel Uwizeye. Ngirumpatse opposed reopening the trial. Karemera requested a translation of the Prosecutor’s submissions and refrained from making submissions when the Chamber denied the request.

816. The Chamber decided that the Prosecution had violated its obligation to disclose exculpatory material in a timely manner and decided to grant Ngirumpatse’s request for the admission of parts of the disclosed material and to rule in the judgement on Ngirumpatse’s request that the testimony of Witnesses FH and Uwizeye be excluded.¹⁰⁵⁰

Material Prejudice

817. The Chamber recalls that the fact that material has not been disclosed in a timely manner does not *per se* create a prejudice to the accused.¹⁰⁵¹ The accused must demonstrate that he has been prejudiced by the late disclosure in order for remedial or punitive measures to be warranted.¹⁰⁵²

818. In determining whether the Defence was prejudiced by the late disclosure or non-disclosure of exculpatory material, relevant considerations include: the potentially low probative value of the evidence;¹⁰⁵³ whether the Defence had sufficient time to analyse the material and the opportunity to challenge it during cross-examination;¹⁰⁵⁴ whether the Defence could seek admission of the material as additional evidence;¹⁰⁵⁵ and whether the Defence could call the relevant witnesses to testify.¹⁰⁵⁶ Also relevant is the extent to which the Defence knew about the exculpatory evidence and was able to access it.¹⁰⁵⁷

¹⁰⁴⁸ Disclosure of Potential R68 Material from *Nzabonimana* Trial, filed confidentially on 11 October 2011, (“Disclosure”).

¹⁰⁴⁹ *Karemera et al.*, Order Concerning Confidential Prosecution Disclosure of Rule 68(A) Material (TC), 13 October 2011.

¹⁰⁵⁰ *Karemera et al.*, Decision faisant suite à l’ordonnance de la Chambre concernant la communication confidentielle du Procureur d’éléments de preuve en vertu de l’article 68(A) (TC), 15 November 2011.

¹⁰⁵¹ *Kajelijeli* Appeal Judgement, para. 262.

¹⁰⁵² *Id.*

¹⁰⁵³ *Kalimanzira* Appeal Judgement, para. 20; *Prosecutor v. Niyitegeka v.* Case No. ICTR-96-14-R, Decision on Third Request for Review (AC), 23 January 2008, para. 28 (no material prejudice because the exculpatory evidence did not warrant review).

¹⁰⁵⁴ See *Krstić* Appeal Judgement, paras. 192, 197.

¹⁰⁵⁵ *Id.*, para. 187.

¹⁰⁵⁶ See *Blaškić* Appeal Judgement, para. 282.

¹⁰⁵⁷ *Id.*, paras. 295, 298; *Krstić* Appeal Judgement, para. 154; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2, Decision on Motions to Extend Time for Filing Appellant’s Briefs (AC), 11 May 2001, para. 9; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant’s Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, para. 38. See also *Kordić and Čerkez* Appeal Judgement, paras. 200-201 (where the Registry

819. The Chamber takes particular note of the Appeals Chamber's statement that:

[E]vidence disclosed after the close of hearings but before judgement may lead to the re-opening of a case at first instance. The situation could arise where, following the close of the presentation of evidence, but prior to the delivery of the judgement of the Trial Chamber, exculpatory evidence relating to the accused has come to the possession of the Prosecution. *A Trial Chamber is entitled to have the benefit of all relevant evidence put before it in order to reach an informed and well-balanced judgement*, and its ability to accept evidence late prior to judgement is in conformity with the requirement of a fair trial under the Statute and the Rules.¹⁰⁵⁸ (Emphasis added).

820. The evidence from *Nzabonimana*, which the Prosecution did not disclose on time, was presented after Witnesses FH and Uwizeye were examined in this case in 2007. Thus, the Defence could not have used that evidence to confront Witnesses FH and Uwizeye. Moreover, it is unlikely that the Chamber would have granted a request to recall Witnesses FH and Uwizeye.

821. Nonetheless, the late disclosure prevented the Defence from requesting the admission of Witness FH's transcript from *Nzabonimana*. It also precluded the Defence from calling Witness T-24 to testify. Therefore, the Defence has suffered material prejudice.

822. To put the prejudice suffered into perspective, however, the Chamber notes that it is a common theme in cross-examination of detained witnesses to inquire whether they have received favourable treatment in prison in exchange for their testimony before the Tribunal. Nonetheless, the Defence teams in this case put no such questions to Witness FH. Likewise, it appears from the Prosecution evidence presented in 2007 that Witness T-24 attended the 18 April meeting. Thus, the Defence could have interviewed him on this matter and could have called him to testify if it considered that the totality of his testimony could have benefited the Accused.¹⁰⁵⁹ Also, the Defence must have known that the 18 April meeting was an issue in *Nzabonimana*.

823. Where the Prosecution has violated its obligation to disclose exculpatory material, and where this has caused material prejudice to the Accused, various remedies are available to the Chamber. These include: recalling relevant Prosecution witnesses for further cross-examination; allowing the Defence to call additional witnesses; drawing a reasonable inference in favour of the Accused from the exculpatory material; excluding relevant parts

gave the Accused access to open-session material, and where the Accused monitored its content, his decision not to seek access to closed-session material precludes a claim that he was prejudiced by the non-disclosure of the closed-session material).

¹⁰⁵⁸ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings (AC), 26 September 2000, para. 31 (emphasis added). See also *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.6, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, paras. 2, 7 (stating, in a trial in the initial stages of the Prosecution case, that "[i]f a Rule 68 disclosure is extensive, parties are entitled to request an adjournment in order to properly prepare themselves. The authority best placed to determine what time is sufficient for an accused to prepare his defence is the Trial Chamber conducting the case").

¹⁰⁵⁹ The Chamber recalls that on 7 April 2008, Ngirumpatse submitted a list of 514 witnesses under Rule 73 *ter* (see I.7.2).

of the Prosecution evidence; ordering a stay of proceedings; and dismissing charges against the Accused.¹⁰⁶⁰

824. The exclusion of evidence, however, is an extreme remedy that should only be considered in exceptional circumstances, where other reasonable remedies are not applicable.¹⁰⁶¹

825. Witness T-24 presented a slightly different version of the meeting from that of Witnesses FH and Uwizeye to the extent that he claimed that the *bourgmestres* were never threatened during the meeting. In every other respect, however, his testimony regarding the meeting corroborated that of Witnesses FH and Uwizeye, as will be discussed in the deliberations below regarding the allegation in the Indictment. Furthermore, the Chamber attaches great weight to his statement that he was so disillusioned by the national government's unwillingness to stop the killings that he did not hear much at the meeting or remember a lot of what transpired during it. Accordingly, it considers that the testimony of Witness T-24 has low probative value in contrast to the consistent testimony of Witnesses FH and Uwizeye.

826. The fact that Witness FH mentioned that he had testified numerous times before the Tribunal during his *gacaca* proceeding does not indicate that this testimony was fueled by ulterior motives. Rather, it merely appears that he considers his role as a witness before the Tribunal part of his personal quest for redemption and that he also intended to underscore the consistency between his testimony before the *gacaca* court and the Tribunal. Neither his testimony in *Nzabonimana* nor his *gacaca* judgement give rise to the inference that this quest for redemption involves the presentation of false testimony before the Tribunal. Furthermore, the Chamber does not consider that it specifically renders his testimony in this case less reliable. Accordingly, the Chamber finds that this evidence has relatively low probative value.

827. Concerning his status within the Gitarama prison hierarchy, the Chamber does not find that his leadership roles or proximity to the prison administration and policies of the Rwandan government cast a shadow over the reliability of his testimony. His role within the prison system regards the discipline of his fellow inmates and efforts to convince detainees to plead guilty. Neither his testimony nor that of Witnesses T-24 and CNAC give rise to the inference that he is not a credible witness. The evidence does not show that he used his powers to force his fellow inmates to plead guilty so he could carry favor with the

¹⁰⁶⁰ *Prosecutor v. Nindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence Motions Alleging Violation of the Prosecutor's Disclosure Obligations Pursuant to Rule 68 (TC), 22 September 2008, paras. 61, 62. See also *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Decision on Ongoing Complaints about Prosecutorial Non-Compliance with Rule 68 of the Rules (TC), 13 December 2005, para. 35 (concerning the drawing of a reasonable inference in favour of the Accused).

¹⁰⁶¹ *Karemera et al.*, Decision on Joseph Nzirorera's Seventeenth Notice of Disclosure Violations and Motion for Remedial and Punitive Measures (TC), 20 February 2008, para. 20.; *Karemera et al.*, Decision on Defence Motion for Exclusion of Witness GK's Testimony or for Request for Cooperation from Government of Rwanda - Articles 20 and 28 of the Statute; Rules 66 and 98 of the Rules of Procedure and Evidence (TC), 27 November 2006, para. 3; *Karemera et al.*, Decision on Defence Oral Motions for Exclusion of XBM's Testimony, for Sanctions Against the Prosecution and Exclusion of Evidence Outside the Scope of the Indictment (TC), 19 October 2006, para. 6; *Karemera et al.*, Decision on Prosecutor's Notice of Delay in Filing Expert Report of Professor André Guichaoua; Defence Motion to Exclude the Witness' Testimony; and Trial Chamber's Order to Show Cause (TC), 1 February 2006, para. 11; *Karemera et al.*, Decision on Defence Motions to Exclude Testimony of Professor André Guichaoua (TC), 20 April 2006, para. 8.

prison administration. His cooperation with the administration is certainly favorable for him but it does not lead the Chamber to conclude that the only reasonable inference is that his testimony before the Tribunal in this case lacks credibility. Thus, the Chamber finds that this evidence has relatively low probative value.

828. Recalling that a Chamber may accept certain parts of a witness's testimony and reject others, the Chamber considers that even if Witness FH purposefully minimized his tenure as Captain General of Gitarama prison before the *Nzabonimana* Trial Chamber, this does not necessarily mean that his testimony in this case regarding the 18 April 1994 meeting is unreliable. Therefore, the Chamber also finds that this evidence has relatively low probative value.

829. Moreover, the Chamber recalls that Witness FH testified in *Akayesu* before he was arrested and notes that the parties have not argued that any contradiction exists in his testimony from that case, which concerns the same issues he testified to in this case.

830. Accordingly, considering the relatively low probative value of the evidence that was untimely disclosed by the Prosecution, the Chamber concludes that the admission of the evidence is sufficient to remedy the prejudice suffered.

Cautionary Issues

831. The Chamber recalls that, at the time of their testimony, Defence Witnesses Akayesu and Niyitegeka were convicted and imprisoned for participating in the genocide.¹⁰⁶² Furthermore, at the time of his testimony, Prosecution Witness FH was detained and awaiting trial on genocide charges.¹⁰⁶³

832. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Attendance at the Meetings

833. The Prosecution has presented no evidence that Barayagwiza attended the meetings.

Karemera's Attendance

834. Witnesses FH and Fidèle Uwizeye stated that Karemera attended the meetings and addressed the audience. Although the Defence challenged their credibility on the grounds of prior inconsistent statements, the Chamber notes that the inconsistencies during direct examination were corrected as mistakes, and that the testimony of Witnesses FH and Uwizeye in this regard has been consistent for nearly fifteen years.

835. Their first statements to the Prosecution, which place Karemera at the meeting, were provided for investigations concerning Jean Paul Akayesu over a year before Karemera was arrested and charged by the Tribunal in 1998.¹⁰⁶⁴

836. Defence Witnesses Akayesu and Niyitegeka denied that Karemera attended the meetings; however, the Chamber recalls that Niyitegeka claims to have attended the

¹⁰⁶² See paras. 782 (Akayesu) and 794 (Niyitegeka).

¹⁰⁶³ See para. 609.

¹⁰⁶⁴ Prosecution Closing Brief, fn. 588; (L1), *supra*; Exhibit DNZ323 (under seal); DNG077, "English Translation Uwizeye 1997 Statement to OTP in *Kambanda* trial".

meeting only briefly. Therefore, Akayesu is the only person who is capable of contradicting the evidence that the Accused were present. The Chamber notes that Akayesu's testimony in this trial is not in line with his defence in his own trial before the Tribunal on related events, notably with respect to the contents of the meeting and Akayesu's disposition therein.¹⁰⁶⁵ The Chamber also recalls that he was evasive during questioning.¹⁰⁶⁶

837. The Chamber attaches little weight to the testimony of Defence Witness PR that he did not see Karemera because Witness PR did not enter the meeting room. Similarly, the inability of Defence Witness CWL to recall whether Karemera attended the meeting based on his recollection of a radio broadcast of the meeting is insufficient to outweigh the Prosecution's evidence.

838. Karemera submits that he could not have attended the meeting because it was a meeting between the Gitarama Security Committee and members of the Interim Government and he was a member of neither. The Chamber considers this submission frivolous. The meeting took place in Murambi at the behest of the Prime Minister who could invite whoever he wanted and the Chamber notes that Karemera appeared together with Interim government ministers the next day at the installation of the new *prefet* of Butare, (see V.2.2) and on 3 May at a meeting in Kibuye, (see V.3.2).

839. Karemera further submits that he could not have attended the meetings because he accompanied Minister of Defence Augustin Bizimana on a working visit to Gisenyi and Ruhengeri on 18 April 1994 as evidenced by the mission report dated 20 April 1994.

840. Karemera did not notify the Prosecutor in accordance with Rule 67 (A)(ii)(a) that he would enter an alibi defence. However, this does not limit his right to rely on such a defence.¹⁰⁶⁷

841. The Chamber accepts that the mission report provides Karemera with an alibi for the evening of 18 April 1994 and the preceding time it would have taken him and Minister of Defence Augustin Bizimana to travel from Murambi to Ruhengeri. However, the mission report does not confirm Karemera's claim that he and Bizimana travelled for approximately three hours by road to reach Ruhengeri, despite the fact that Bizimana, as Minister of Defence, had access to a military helicopter. Thus, Karemera's alibi (mission report) does not tend to show that he was not present at the meetings in Murambi training school. Rather, his attendance at the meetings would explain why he and Bizimana did not arrive at the mission area in Ruhengeri until the end of the day.

842. The Chamber finds that the probative value of the Prosecution evidence outweighs the doubt that Karemera's alibi and other evidence creates. The Chamber is thus convinced beyond reasonable doubt that Karemera attended the 18 April 1994 meeting at the Murambi training school.

Ngirumpatse's Attendance

843. Fidèle Uwizeye stated that Ngirumpatse attended the meeting and addressed the audience. Uwizeye also asserted several times prior to his testimony in this case that

¹⁰⁶⁵ Exhibit P316, "Akayesu Trial Judgement", paras. 178-194.

¹⁰⁶⁶ T. 14 May 2008, pp. 32, 36.

¹⁰⁶⁷ See Rule 67 (B) of the Rules of Procedure and Evidence.

Ngirumpatse attended the meeting, including a statement to the Prosecution in 1997, well before Ngirumpatse was arrested.¹⁰⁶⁸ The Chamber notes that Uwizeye provided this statement for investigations concerning Jean Kambanda, not Ngirumpatse.¹⁰⁶⁹

844. Although Witness FH did not claim that Ngirumpatse attended the meeting, he specifically testified that he did not know Ngirumpatse and therefore would not have even been able to identify him if he was sitting in the courtroom during this case.¹⁰⁷⁰ The Chamber considers that this explains why he would not have been able to identify Ngirumpatse as one of those present at the meeting.

845. Further, although Uwizeye claimed to have only attended one meeting, he did not dispute that more than one session may have occurred on 18 April 1994 at Murambi, and Witnesses FH and Akayesu claimed that Uwizeye was present throughout the relevant events. Furthermore, Akayesu as well as Witnesses Mporanzi and T-24 corroborated large portions of the evidence presented by Witnesses FH and Uwizeye regarding the 18 April 1994 meetings. The only points on which the evidence provided by Akayesu differed concerned the presence of the Accused and the tenor of the meeting.

846. Witnesses Akayesu and Niyitegeka denied that Ngirumpatse attended the meetings, Witness PR stated that he did not see Ngirumpatse outside the meeting room, and Witness CWL claimed that the radio broadcast did not mention Ngirumpatse as being present. For the reasons given above in its analysis of Karemera's attendance at the meeting, the Chamber attaches little weight to this evidence with regard to Ngirumpatse.

847. Ngirumpatse claimed that he could not have attended the meetings because he went to the Gitarama Prefectural Office twice on 18 April 1994 to resolve issues with his passport. However, Ngirumpatse's claim is not supported by any evidence that he actually went to the prefectural office, or the times that he would have gone. Furthermore, it is not unlikely that he could have attended the meetings and gone to the Gitarama Prefectural Office on the same day because the meetings were also held in Gitarama. Accordingly, the only evidence before the Chamber regarding Ngirumpatse's claim that he was at the prefectural office at the time of the meeting is his own bald assertion to that effect.

848. For these reasons, the Chamber considers the Prosecution evidence more probative than the Defence evidence and is convinced beyond a reasonable doubt that Ngirumpatse attended the meetings and addressed the audience.

Content of the Meeting

849. Defence Witness Akayesu disputed that the national political leaders intimidated the *préfet* and *bourgmestres* and claimed that the discussion was mainly about internally-displaced persons. That would not, however, explain why only the *préfet* and *bourgmestres* were told to attend the second part of the meeting considering that religious leaders had also raised concerns regarding internally-displaced person during the first meeting. The Chamber further recalls its assessment of Akayesu's testimony above.

850. The Chamber attaches no weight to the testimony of Defence Witness CWL.

¹⁰⁶⁸ See (I.2.1); Exhibit DNG76, "Uwizeye 1996 Statement to OTP in Akayesu trial".

¹⁰⁶⁹ Prosecution Closing Brief, fn. 589.

¹⁰⁷⁰ Witness FH, T. 11 July 2007, p. 38.

851. Witnesses FH, Uwizeye, and Mporanzi, on the other hand, gave consistent evidence that the national political leaders during the first part of the meeting (where the extended Gitarama security committee was present) remained demonstratively passive to the requests from the *préfet*, *bourgmestres*, and clergy for assistance to stop the killings of Tutsis that were being committed by the *Interahamwe*. Witnesses FH, Uwizeye, and Mporanzi also gave consistent testimony that a second meeting was held at Murambi that only included the Interim Government delegation, *bourgmestres*, and *préfet*.

852. Witnesses FH and Uwizeye gave consistent evidence that during the second meeting, Karemera, Ngirumpatse, and Mugenzi intimidated the local officials by referring to them as possible accomplices of the RPF and warned them to support the Interim Government's policy and not interfere with the *Interahamwe*. Witness Mporanzi corroborates the claim of Witnesses FH and Uwizeye that Mugenzi was one of the main individuals who addressed the *bourgmestres* during the second meeting. Witnesses FH and Uwizeye gave further consistent evidence that *bourgmestres*, including Akayesu, stopped trying to protect Tutsis after the meeting and allowed the *Interahamwe* to continue massacring them.

853. Although Witness Mporanzi claimed that the second meeting should not be interpreted as encouraging the genocide, he only referred to how the advice of the Interim Government during that meeting should be interpreted today. He did not mention how he interpreted that advice at the time. Taking this into consideration and noting that he claimed in his written statement to the Defence in *Nzabonimana* that he had lied in two prior witness statements to the Prosecution,¹⁰⁷¹ the Chamber views his specific comments that the meeting did not encourage the genocide with caution.

854. Witness T-24 also presented a slightly different version of the meeting from that of Witnesses FH and Uwizeye to the extent that he claimed that the *bourgmestres* were never threatened during the meeting. In every other respect, however, his testimony regarding the meeting corroborated that of Witnesses FH and Uwizeye. Furthermore, the Chamber attaches great weight to his statement that he was so disillusioned by the national government's unwillingness to stop the killings that he did not hear much at the meeting or remember a lot of what transpired during it. Accordingly, it does not consider that the testimony of Witness T-24 renders the consistent testimony of Witnesses FH and Uwizeye unreliable.

855. Witnesses Mporanzi and T-24 did mention repeatedly, however, that the Gitarama delegation was disillusioned and upset by the Interim Government's failure to support their efforts to stem the violence in their *communes*. Witness T-24 stated that the government officials did not agree to assist the local officials with stopping the widespread killings in their areas. He stated that he and the other local officials felt discouraged because it was clear that the government officials had abandoned their population to its fate. Witness Mporanzi stated several times that the Gitarama delegation was unconvinced by the responses of the Interim Government officials to their concerns and requests. The Chamber considers that this general sense of disillusionment reveals a very important aspect of the Interim Government's response to the killings in Gitarama during the meeting – what it did not say.

¹⁰⁷¹ Exhibit P588, "Statement of 11 January 2010", p. 10.

856. The Chamber acknowledges that resources are often strained in times of armed conflict. As a result, they are frequently reserved for priority recipients such as the armed forces and staff supporting the front lines. In this regard, if the *gendarmerie* was unavailable to police the *communes* of Gitarama and put an end to the violence because they were sent to fight the RPF, this would have been a reasonable, albeit unfortunate, consequence of the civil war.

857. What the Chamber finds unreasonable, however, is the refusal of the Interim Government delegation and the party leaders to take *any* measures during the meeting to stop the killings, in particular because the killings and rapes were ascribed to soldiers and *Interahamwe* who had followed the Interim Government on its flight from Kigali. The Interim Government was in control of the soldiers, and the MRND Executive Committee, including Karemera and Ngirumpatse, was in control of the Kigali *Interahamwe*. Moreover, the Ministry of Defence was an MRND portfolio. There is absolutely no indication that the government delegation or party leaders, at a minimum, stated that the killings of innocent civilians, including Tutsis, must stop at all costs. Nor is there any indication of them stating that they would intervene to order the soldiers, *Interahamwe*, and other party youth militias to stop killing and raping Tutsis. They did not address the 180-200 people mentioned by Witness Mporanzi with this message. Nor did they draft a *communiqué* on behalf of the Interim Government, for example, to all residents of Gitarama, explaining that they should not kill innocent civilians. Considering, moreover, that the Interim Government was stationed in Gitarama by this stage, the Chamber finds that its refusal to take a concrete step during the meeting to stop the killings amounts to tacit approval of the attacks against innocent civilians.

858. Furthermore, the *gendarmerie* was not the only resource at the disposal of the Interim Government to stop the killings. The voices and authority of the Prime Minister and his cabinet, the MRND leadership, and the leaders of the other political parties behind the government were powerful resources. Nonetheless, the Interim Government chose not to use these resources.

859. For these reasons, the Chamber considers the evidence of Witnesses FH and Uwizeye more convincing than the Defence evidence and finds that the political leaders, including Karemera and Ngirumpatse, instigated the Gitarama delegation at the meetings to stop protecting Tutsis and to allow the *Interahamwe* to continue killing them.

Conclusion

860. The Prosecution has proved the following beyond a reasonable doubt. A meeting regarding the security situation in Gitarama *préfecture* was scheduled to be held at the *préfecture* office on 18 April 1994 and that at the behest of the Prime Minister, the meeting was moved to the Murambi Training School. The meeting in Murambi was attended by several Interim Government ministers, national political party leaders, the *préfet* and the *bourgmestres* from most of the *communes* in Gitarama. Karemera and Ngirumpatse attended the meetings and addressed the audience. During the meetings, the political leaders, including Karemera and Ngirumpatse, instigated the Gitarama delegation to stop protecting Tutsis and to allow the *Interahamwe* to continue killing Tutsis.

2.2 Replacement of *Préfets* of Butare and Kibungo and Killings in Butare

Allegation in the Indictment

861. On or about 17 April 1994, the *conseil des ministres* of the Interim Government removed the *préfet* of Butare, Jean-Baptiste Habyalimana, and the *préfet* of Kibungo Godfroide Ruzindana, both of whom were known to have opposed the attacks upon the Tutsi population. They were both killed shortly thereafter. Several new *préfets* that embraced the Interim Government's policy of targeting Tutsi civilians as the enemy were appointed. The decisions to appoint the new *préfets* were broadcast to the nation in a Radio Rwanda *communiqué* read by Minister of Information Eliézer Niyitegeka on or about 17 April 1994. The new *préfets* were installed on 19 April.¹⁰⁷²

862. Interim President Theodore Sindikubwabo addressed a public rally in Butare on or about 19 April 1994 and encouraged those that did not adopt the government's program to "step aside". Thereafter, killings of Tutsi civilians started or accelerated in Butare.¹⁰⁷³ During the rally, the Interim Government publicly deposed Jean-Baptiste Habyalimana, a member of the PL party and only Tutsi *préfet* in Rwanda, and replaced him with Sylvain Nsabimana.¹⁰⁷⁴ Nsabimana was eventually deemed insufficiently aggressive in the campaign of violence against Tutsis and was replaced by Colonel Alphonse Nteziryayo, who took an active part in the massacres.¹⁰⁷⁵

Undisputed Evidence

863. The factual assertions in the allegations as to who were replaced and installed as *préfets*, when it happened, and how it was announced, are undisputed. It is also undisputed that Interim President Sindikubwabo gave a speech that was broadcast over the radio during Sylvain Nsabimana's installation as *préfet* of Butare on or about 19 April 1994 and that Ngirumpatse did not attend the installation ceremony.

Evidence

17 April 1994 RTLM/Radio Rwanda Broadcast

864. The broadcast was read by Minister of Information Eliézer Niyitegeka. It contains a *communiqué* of the Interim Government, which relays to the public the agenda items for a meeting of the Council of Ministers that occurred on that day.

865. It informs that the council decided to appoint *préfets* in the *préfectures* without *préfets*, namely Kigali, Byumba, Ruhengeri, and Gisenyi. The new *préfets* were François Karera (Kigali), Elie Nyirimibibi (Byumba), Basile Nsabumugisha (Ruhengeri), and Dr. Charles Zirimwabagabo (Gisenyi). Niyitegeka announced that the council had also replaced the *préfets* of Butare and Kibungo with Sylvain Nsabimana and Anaclet Rudakubana, respectively. Niyitegeka announced that the new *préfets* would assume their duty posts by 19 April 1994.¹⁰⁷⁶

19 April 1994 Radio Rwanda Broadcast

¹⁰⁷² Indictment, para. 45.

¹⁰⁷³ *Id.*, para. 48; Prosecution Closing Brief, paras. 64, 65.

¹⁰⁷⁴ Indictment, para. 48.

¹⁰⁷⁵ *Id.*, para. 57.

¹⁰⁷⁶ Exhibit DNZ314, "RTLM/Radio Rwanda 17/04/94 Broadcast", pp. 2, 3.

866. The transcript of the Radio Rwanda broadcast of Interim President Theodore Sindikubwabo's speech at the rally in Butare *préfecture* on 19 April 1994 shows that Sindikubwabo warned the audience that the war was a calamity and that they should not take matters lightly. Instead, the audience was urged to protect its *préfecture* by "working." Sindikubwabo emphasized that "those who only expect others to work and who stand by as uncommitted onlookers should be unmasked" and that these persons "may stand by as observers but they shall not be part of our team."¹⁰⁷⁷

Prosecution Witness G

867. The witness¹⁰⁷⁸ testified that sometime after the Interim Government fled to Gitarama, it sent François Ndungutse, a PSD chairman, to Butare to find a native *préfet* who could replace the existing one. The existing *préfet* was Jean Habyalimana, a Tutsi from the PL party. Habyalimana was removed on 19 April 1994 and assassinated shortly thereafter, along with his family.¹⁰⁷⁹

868. The witness overheard Sylvain Nsabimana's installation on 19 April 1994 as new *préfet* of Butare from a service station adjacent to the ceremony. The ceremony was being broadcast over loudspeakers. Given the context, he understood Sindikubwabo's reference to "work" to mean killing Tutsis. Sindikubwabo also stated that he was going to help Nsabimana with his work as the new *préfet*. The killings in Butare began on the evening of Nsabimana's swearing-in ceremony, just after Sindikubwabo's speech was made.¹⁰⁸⁰ Youths in Butare participated in the massacre of Tutsis.¹⁰⁸¹

869. Soon after Sindikubwabo's speech, Karemera and his consorts decided to replace Nsabimana as *préfet* because he tried to help some Tutsis flee to Burundi so they could escape the killings in Butare. On 17 June 1994, Karemera came to Butare to swear in Colonel Alphonse Nteziryayo as Nsabimana's replacement. Karemera thought Nteziryayo was "the man for the task". When Karemera said this, he may have been referring to the fact that Nteziryayo was a soldier who had been in charge of civil defence in Butare and trained the youth of the Butare *communes* with military exercises, including how to handle weapons to defend themselves against Tutsis who were in Butare.¹⁰⁸²

Prosecution Witness Ahmed Napoleon Mbonnyunkiza

870. The witness¹⁰⁸³ heard Sindikubwabo's speech over the radio.¹⁰⁸⁴ The speech incited the entire *préfecture* and used terms that clearly incited the extermination of Tutsis.¹⁰⁸⁵

Prosecution Witness ALG

¹⁰⁷⁷ Exhibit P15, "English Translation of Transcript of Radio Rwanda Broadcast of Interim President Théodore Sindikubwabo's Speech at Rally in Butare *préfecture* on 19 April 1994", pp. 4, 5.

¹⁰⁷⁸ See para. 175, *supra*.

¹⁰⁷⁹ T. 12 October 2005, p. 4.

¹⁰⁸⁰ *Id.*, pp. 5, 6, 8.

¹⁰⁸¹ T. 27 October 2005, p. 22.

¹⁰⁸² *Id.*; T. 25 October 2005, pp. 48, 49.

¹⁰⁸³ See para. 184, *supra*.

¹⁰⁸⁴ T. 23 September 2005, p. 7.

¹⁰⁸⁵ *Id.*, pp. 5, 6.

871. The witness¹⁰⁸⁶ heard Sindikubwabo's speech over the radio.¹⁰⁸⁷ Sindikubwabo's speech incited the population to kill and they began to do so for the first time once the speech was over.¹⁰⁸⁸

Prosecution Witness Fidèle Uwizeye

872. The witness¹⁰⁸⁹ testified that he and the *préfet* of Butare, Habyalimana, and the *préfet* of Kibungo, Ruzindana, belonged to opposition parties and stood by their positions. They had carried out several joint actions prior to the month of April with a view to reinforcing good governance and pursuing good political decisions. For instance, they supported the Arusha Accords.¹⁰⁹⁰

873. On 11 April 1994,¹⁰⁹¹ the witness learned that the Interim Government had convened a meeting in Kigali for *préfets*, but that he and Habyalimana had not been invited. The witness called Interim Prime Minister Jean Kambanda and asked why he had not been invited. Kambanda told him to come to the meeting and he did. Habyalimana was concerned for his security and did not attend. At the meeting, Kambanda said that the *préfet* of Butare was the only *préfet* who was absent without a good reason and that he would pay dearly for it.¹⁰⁹²

Prosecution Witness FH

874. The witness¹⁰⁹³ testified that after the 18 April 1994 meeting when Prime Minister Jean Kambanda talked about civil defence, there were two categories among the authorities: those who supported the killings and those who were against. The consequences for the latter were prejudicial. Some authorities who opposed the killings were killed, molested, or humiliated and called *Inkotanyi* accomplices so that they would no longer be respected by the citizens.¹⁰⁹⁴

Ngirumpatse Defence Witness Jean Mpambara

875. The witness¹⁰⁹⁵ stated that on 8 April 1994, the *préfet* of Kibungo, Godefroid Ruzindana, told him to deploy all means possible to stop the violence against Tutsis in his *commune*.¹⁰⁹⁶ The witness followed Ruzindana's order, which was revealed to the *sous-préfet* of Kibungo, the commander of the *gendarmérie* and his supervisors, the *conseiller de*

¹⁰⁸⁶ See para. 157, *supra*.

¹⁰⁸⁷ T. 27 October 2006, p. 9.

¹⁰⁸⁸ *Id.*, p. 11.

¹⁰⁸⁹ See para. 749, *supra*.

¹⁰⁹⁰ T. 19 July 2007, pp. 22, 23.

¹⁰⁹¹ At T. 19 July 2007, p. 21, the witness states that he was informed on 7 April 1994 but it is clear from the rest of the transcript, particularly pages 18 and 26, that the witness meant 11 April 1994.

¹⁰⁹² T. 19 July 2007, pp. 21, 22, 28.

¹⁰⁹³ See para. 609, *supra*.

¹⁰⁹⁴ T. 12 July 2007, pp. 28, 36.

¹⁰⁹⁵ See para. 231, *supra*.

¹⁰⁹⁶ T. 20 September 2010, pp. 2, 3.

secteur, and the chief of communal police. Ruzindana was removed from his position around 17 or 18 April 1994.¹⁰⁹⁷

Nzirorera Defence Witness Eliézer Niyitegeka

876. The witness¹⁰⁹⁸ stated that Godefroid Ruzindana was not removed on 17 April because he was opposed to the killings in Kibungo. He was already dead on 17 April 1994.¹⁰⁹⁹

Édouard Karemera

877. Karemera stated that he proposed and appointed Alphonse Nteziryayo as the replacement *préfet* for Sylvain Nsabimana in Butare *préfecture*.¹¹⁰⁰

Deliberations

Cautionary Issues

878. The Chamber recalls that, at the time of their testimony, Prosecution Witness ALG and Defence Witness Niyitegeka were convicted and imprisoned for participating in the genocide.¹¹⁰¹ Furthermore, at the time of his testimony, Prosecution Witness FH was detained and awaiting trial on genocide charges.¹¹⁰² The Chamber also takes into account that Prosecution Witness G has received extensive benefits under the Prosecution's witness protection program.¹¹⁰³

879. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Fate of Préfets Habyalimana and Ruzindana

880. The Chamber is convinced by the testimony of Defence Witness ZNJ that Ruzindana was known to have opposed the attacks against the Tutsi population and by Prosecution Witness Uwizeye's testimony, which is corroborated by Prosecution Witness G, that the killings of Tutsis in Butare started only after Habyalimana was removed as *préfet*. This indicates that Habyalimana had resisted attacks against the Tutsi population. The Chamber, furthermore, relies on the undisputed testimony of Witness G that Habyalimana was a Tutsi. The Prosecution, however, did not present evidence that he was the only Tutsi *préfet* in Rwanda.

881. Concerning the reasons why the two *préfets* were replaced, Defence Witness Niyitegeka claimed that Ruzindana was replaced because he had died. This is inconsistent, however, with Niyitegeka's radio announcement and the evidence of Witness ZNJ that

¹⁰⁹⁷ *Id.*, pp. 3, 4, 31.

¹⁰⁹⁸ See para. 794, *supra*.

¹⁰⁹⁹ T. 3 March 2010, pp. 14, 15.

¹¹⁰⁰ T. 19 May 2009, pp. 45-47.

¹¹⁰¹ See paras. 157 (ALG) and 794 (Niyitegeka).

¹¹⁰² See para. 609.

¹¹⁰³ See para. 175.

Ruzindana was *replaced*. The Chamber does not accept Niyitegeka's testimony and notes that Ruzindana did attend the Interim Government's meeting with the *préfets* in Kigali on 11 April 1994.

882. With respect to Habyalimana, it appeared from Uwizeye's evidence that the Prime Minister blamed Habyalimana for not attending the Interim Government's meeting with the *préfets* in Kigali on 11 April 1994. This could not, however, have been the actual reason for his dismissal considering that Habyalimana had not been invited to attend and, as a Tutsi, could not have travelled to Kigali without putting himself at risk.

883. Accordingly, the Chamber is convinced that the only reasonable inference that can be made from the circumstances is that Habyalimana and Ruzindana were replaced because they opposed attacks on Tutsis.

884. The Chamber's finding is corroborated by the testimony of Witness G that the attacks on Tutsis began immediately after Habyalimana's removal, and consistent with the testimony of Prosecution Witness FH concerning the consequences for officials that opposed the killings of Tutsis in Gitarama.

885. The fact that *préfet* Uwizeye was not removed at the same time as Habyalimana and Ruzindana does not undermine the conclusion that the latter were removed because they opposed attacks on Tutsis. Although Uwizeye also opposed attacks on Tutsis, there did not seem to be the same need to remove him at the same time as the others because the Interim Government was temporarily seated in his *préfecture* (Gitarama) and was therefore already capable of directly influencing the *sous-préfets* and *bourgmestres* under his command. This is evidenced by Uwizeye's evidence that he could not control the *Interahamwe* that had followed the Interim Government from Kigali to Gitarama because he did not have enough *gendarmes* at his disposal (see V.2.1). Moreover, it may have been politically inopportune to remove Uwizeye because he was the *préfet* of the region that served as the temporary seat of the Interim Government. In this regard, the Chamber recalls that he was removed after the Interim Government had moved to Gisenyi (see V.2.4).

886. The Chamber relies on the testimony of Witness G that Habyalimana was killed shortly after his removal and with respect to Ruzindana, the Chamber relies on Niyitegeka's testimony that he died but, for the reasons mentioned above, disbelieves his claim that he died before his removal. The Chamber, however, does not consider the Prosecution's statement that Habyalimana and Ruzindana were killed shortly after their removal to mean that their assassination was ordered by the Interim Government. Rather, it regards this statement as a factual assertion that they were killed just like many others who either opposed the Interim Government or were Tutsi.

Genocidal Leanings of the Replacement Préfets

887. With respect to the replacement *préfet* for Butare, Sylvain Nsabimana, the Chamber is convinced by the testimony of Witness G that the massacres against Tutsis began immediately after he was installed. This is corroborated by the Chamber's findings with respect to the genocidal intent of Sindikubwabo's speech. While Witness G stated that Nsabimana was later removed because he allowed some Tutsis to flee to Burundi, this selective assistance is not inconsistent with a finding that he possessed genocidal intent generally. Nor does it undermine the conclusion that the Interim Government installed Nsabimana because it believed he would embrace the government's genocidal policy. The Chamber, therefore, finds it proven beyond a reasonable doubt that Nsabimana was

installed as *préfet* because the Interim Government believed he embraced the Interim Government's genocidal policy.

888. With respect to the *préfet* who replaced Ruzindana in Kibungo, the Chamber's finding that Ruzindana was removed because he opposed the attacks on Tutsis would lead to the assumption that the Interim Government believed that his replacement would embrace the government's genocidal policy. The Chamber, however, has not been presented with any evidence regarding the identity of the new *préfet* or the situation in Kibungo after Ruzindana was removed.

Sindikubwabo's Speech

889. The Chamber is convinced beyond a reasonable doubt by the testimony of Witnesses G and Mbonnyunkiza that Interim President Sindikubwabo's speech urged the population of Butare to kill Tutsis. Given the context in Rwanda¹¹⁰⁴ on 19 April 1994, the references to "work" and requests not to leave the "work" to others were a call for the Hutu population to begin killing Tutsis in the same manner as in other *préfectures*. This is corroborated by the Chamber's findings that *préfet* Habyalimana was removed because he opposed attacks on Tutsis and the testimony of Witness G that the attacks on Tutsis started immediately after the speech and installation of the new *préfet* in Butare.

Installation of Nteziryayo

890. The Chamber relies on the testimony of Witness G that Nsabimana was removed as *préfet* because he assisted Tutsis to flee to Burundi. The Chamber notes that Karemera was the Minister of the Interior for the Interim Government when Nsabimana was removed.

891. The Chamber also relies on the testimony of Witness G that Nteziryayo was in charge of civil defence for Butare and trained the youth in military exercises and weapons handling. Further, considering that Nsabimana was installed as *préfet* because the Interim Government believed he would implement its genocidal policy, and that he was removed because he deviated from that policy, the Chamber is convinced beyond a reasonable doubt that Karemera and the Interim Government selected Nteziryayo as Nsabimana's replacement because they believed that he would implement the government's genocidal policy more effectively.

Conclusion

892. The Prosecution has proved the following beyond a reasonable doubt. Habyalimana and Ruzindana were replaced as *préfets* of Butare and Kibungo because they opposed attacks on Tutsis. Nsabimana was installed as Habyalimana's replacement because the Interim Government believed he embraced its genocidal policy. Interim President Sindikubwabo's speech in Butare on 19 April 1994 urged the population of Butare to kill Tutsis. When Karemera and the Interim Government decided to replace Nsabimana, they selected Nteziryayo because they believed that he would implement the government's genocidal policy more effectively.

¹¹⁰⁴ See (III.4.1).

2.3 Removal of Military Officers who did not Support Killing Tutsis and Recall into Active Service of Retired, Extremist Military Officers

Allegation in the Indictment

893. The Interim Government transferred officers in the *gendarmerie* that were perceived not to support attacks on the Tutsi population from the interior of the country to the battlefield with the RPF in or near Kigali. This was done so that the attacks against Tutsis in Butare, Kibuye, and elsewhere would not be impeded. The Interim Government also recalled retired military officers and installed them as regional managers of the civil defense. The retired officers were closely associated with the extremist currents of the Habyarimana government.¹¹⁰⁵

Evidence

Nzirorera Defence Witness Anatole Nsengiyumva

894. The witness¹¹⁰⁶ stated that the former Chief of Staff of the army, Colonel Laurent Serubuga was recalled to administer the civil defence programme in Gisenyi. Serubuga refused and the Minister of Defence appointed another retired officer named Mathias Havugwintore. Havugwintore was a retired major. After some time, Lieutenant Colonel Denis Nkizinkiko and retired colonel of the *gendarmerie* Jean Ngayinteranya were also appointed to assist with the civil defense programme in Gisenyi. According to the witness, however, the civil defense programme was never implemented and he did not see those officers recruit or train anyone for the program. These events occurred around May 1994.¹¹⁰⁷

Deliberations

895. The Prosecution has presented no evidence that *gendarmes* were transferred to the front after the installation of the Interim Government.

896. Furthermore, it does not follow from Defence Witness Anatole Nsengiyumva's evidence that the retired military officers who were recalled to administer the civil defence program in Gisenyi around May 1994 were aligned with any extremist currents, which is the thrust of the allegation. The Chamber, therefore, need not address which government "the Habyarimana government" is referring to.

Conclusion

897. The Prosecution has not proved the allegation beyond a reasonable doubt.

2.4 Removal of *Préfet* of Gitarama

Allegation in the Indictment

¹¹⁰⁵ Indictment, para. 46.

¹¹⁰⁶ See para. 315, *supra*.

¹¹⁰⁷ T. 28 April 2010, pp. 27, 28.

898. The Interim Government deposed the *préfet* of Gitarama in early June 1994 and appointed Major Damascene Ukulikiyeyezu as a regional leader for civil defence in Gitarama *préfecture*. Ukulikiyeyezu began to operate as *de facto préfet* in Gitarama and directed the resources of the *préfecture* towards exterminating Tutsis. In this regard, he was assisted by several new *sous-préfets* for Gitarama and Minister for Youth and Sports, Callixte Nzabonimana.¹¹⁰⁸

Undisputed Evidence

899. It is undisputed that Major Damascène Ukuyikiyeyezu was appointed *préfet* of Gitarama on 10 June 1994, while Karemera was Minister of the Interior for the Interim Government.¹¹⁰⁹

Evidence

Transcript of Radio Rwanda Broadcast of 11 June 1994

900. A radio journalist announced that the *conseil de ministres* had met the previous day and made a number of decisions, including the appointment of Damascene Ukulikiyeyezu as *préfet* of Gitarama.¹¹¹⁰

Prosecution Witness Fidèle Uwizeye

901. The witness¹¹¹¹ stated that until 11 April 1994, there were no problems and no killings in Gitarama *préfecture* because the *bourgmestres* had followed his instructions not to mount roadblocks.¹¹¹² On 12 April 1994, however, members of the Interim Government went to Gitarama, including the President of the Republic, ministers, politicians, and *Interahamwe*, and established themselves in Murambi. The witness had not been alerted about this visit.¹¹¹³

902. Uwizeye went to the location where attacks had been carried out, thinking that he could exercise some authority; instead, the *Interahamwe* leaders who were there made a mockery of him and he had to leave as fast as he could. The *Interahamwe* set up a roadblock in Cyakabiri and Cyamatongo towards Gitarama. He tried to dismantle these roadblocks, but they were erected again.¹¹¹⁴

903. Towards the end of April, he met with the Minister of Finance, Emmanuel Ndindabahizi, who was accompanied by soldiers, and wanted an office as the head of civil defence. The witness told Ndindabahizi that he did not have any offices available for armed men. Ndindabahizi threatened the *préfet* by saying that he was ignorant and that he was

¹¹⁰⁸ Indictment, para. 58.

¹¹⁰⁹ Karemera, T. 19 May 2009, p. 45; Exhibit DK37, "Radio broadcast of 11 June 1994", p. 4.

¹¹¹⁰ Exhibit DK37, "Radio broadcast of 11 June 1994", p. 4.

¹¹¹¹ See para. 749, *supra*.

¹¹¹² T. 19 July 2007, pp. 25, 26.

¹¹¹³ *Id.*, pp. 30-32.

¹¹¹⁴ *Id.*, p. 33.

going to sack him. The witness testified that if Ukilikiyeyezu had taken office in Gitarama *préfecture* the witness would have been considered as taking part in the genocide.¹¹¹⁵

904. During a cabinet meeting on 10 May 1994, the Council of Ministers discussed the witness's performance and he was informed that they wanted to dismiss him.¹¹¹⁶ On or about 2 June 1994, Major Damascène Ukuyikiyeyezu informed Uwizeye that he had taken over his position, and requested that all prefectural vehicles be made available to him.¹¹¹⁷ He was afraid they would shoot him to death. There was no official handover ceremony between Uwizeye and Ukuyikiyeyezu.¹¹¹⁸ The witness fled after his removal and never returned to Gitarama.¹¹¹⁹

Prosecution Witness FH

905. The witness¹¹²⁰ testified that Major Damascène Ukuyikiyeyezu was in charge of the civil defence operation.¹¹²¹ The *préfet* of Gitarama was sacked in June 1994 after being called an "*Inkotanyi* accomplice" because he had clearly stated that he did not support the killings. He was replaced by Ukuyikiyeyezu. However, according to the witness, Ukuyikiyeyezu did not support the killings either.¹¹²²

Édouard Karemera

906. Karemera testified that the Council of Ministers on 10 June 1994 decided to replace Fidele Uwizeye with Jean Damascène Ukuyikiyeyezu as *préfet* of Gitarama. Karemera went to Gitarama to supervise the handing over between the outgoing and incoming *préfets*.¹¹²³

Deliberations

907. Karemera's evidence is corroborated by the announcement in the Radio Rwanda broadcast that the Interim Government deposed Fidèle Uwizeye as *préfet* of Gitarama on 10 April 1994 and replaced him with Jean Damascène Ukulikiyeyezu.

908. The Prosecution has presented no evidence that Ukulikiyeyezu would have directed the resources of the *préfecture* towards the extermination of Tutsis before or after his official appointment as *préfet* or that Interim Government Minister for Youth and Sports Callixte Nzabonimana and the newly appointed *sous-préfets* would have supported him in such an endeavour.

Conclusion

¹¹¹⁵ T. 20 July 2007, p. 27.

¹¹¹⁶ T. 24 July 2007, p. 36.

¹¹¹⁷ T. 20 July 2007, p. 27.

¹¹¹⁸ T. 24 July 2007, pp. 40, 41.

¹¹¹⁹ *Id.*, pp. 39, 40.

¹¹²⁰ See para. 609, *supra*.

¹¹²¹ T. 12 July 2007, p. 28.

¹¹²² *Id.*, pp. 36, 37; T. 17 July 2007, p. 8.

¹¹²³ T. 19 May 2009, pp. 45, 47.

909. The Prosecution has proved beyond a reasonable doubt that the Interim Government deposed the *préfet* of Gitarama in early June 1994 and replaced him with Major Damascène Ukuyikiyeyezu. It has not proved, however, that Ukuyikiyeyezu directed the resources of the *préfecture* towards exterminating Tutsis with the assistance of several new *sous-préfets* for Gitarama and Minister for Youth and Sports, Callixte Nzabonimana.

3. MEETINGS WITH THE POPULATION

3.1 Pacification Tours to *Préfectures*

Allegation in the Indictment

910. On or about 12 April 1994, Karemera and Ngirumpatse fled to Gitarama with the Interim Government, which took its temporary headquarters at the Murambi Training School.¹¹²⁴ There, over the next two months until early June 1994, high-level officials of each political party represented in the Interim Government, including Karemera and Ngirumpatse, held regular meetings to consider policy matters. Thereafter, the various Interim Government ministers that came from these parties convened in *conseils des ministres* to set the policy for the Interim Government.¹¹²⁵

911. During these numerous cabinet meetings, the Interim Government adopted directives and issued instructions to *préfets* and *bourgmestres*. The intent behind these decisions was to instigate and aid and abet further attacks against Tutsis. A minister from each *préfecture* was appointed to be responsible for what was termed “pacification.” The ministers were then dispatched to their *préfectures* of origin to incite further killings and exercise control over the militias. During the cabinet meetings, the various ministers made requests for weapons to distribute in their respective home *préfectures* knowing and intending that the weapons would be used to attack and kill the Tutsi population.¹¹²⁶

Undisputed Evidence

912. It is undisputed that Karemera and Ngirumpatse accompanied the Interim Government in its flight to Gitarama on 12 April 1994¹¹²⁷ and remained with the Interim Government, Ngirumpatse being abroad on mission part of time.

Evidence

Prosecution Witness FH

913. The witness¹¹²⁸ testified that no written instructions were passed down through the formal chain of command from the Interim Government to the *communes* to direct people to kill Tutsis. The witness did not know whether those taking part in the killings received any formal instruction from the Interim Government.¹¹²⁹ The Interim Government did not

¹¹²⁴ Indictment, paras. 42, 43.

¹¹²⁵ *Id.*, para. 43.

¹¹²⁶ *Id.*, para. 44.

¹¹²⁷ Karemera, T. 19 May 2009, p. 21; Ngirumpatse, T. 26 January 2011, p. 41; T. 27 January, pp. 33-35.

¹¹²⁸ See para. 609, *supra*.

¹¹²⁹ T. 18 July 2007, p. 6.

openly tell people to kill Tutsis, but during the 18 April 1994 meeting at Murambi in Gitarama, its representatives asked the local authorities to assist the *Interahamwe*, who continued to kill Tutsis. Therefore, the witness understood the instruction "to go and assist" the *Interahamwe* to mean to go and kill Tutsis.¹¹³⁰

Nzirorera Defence Witness Lieutenant Colonel Anatole Nsengiyumva

914. The witness¹¹³¹ stated that while "civil defence" concerned mobilising the population to face the Rwandan Patriotic Front (RPF), the purpose of the "pacification program" was to stop the killings among the population.¹¹³²

Nzirorera Defence Witness Pauline Nyiramasuhuko

915. The witness was the Minister of Family and Women's Affairs and a member of the MRND in 1994.¹¹³³ The Trial Chamber convicted her of conspiracy to commit genocide, genocide, rape as a crime against humanity and extermination as a crime against humanity.¹¹³⁴

916. Within the Interim Government, the political parties would confer with their ministers on a regular basis to discuss government policies before the ministers presented the viewpoints of their respective parties in the cabinet.¹¹³⁵ The MRND supported only what the government approved; therefore, because the government was against the killings, the MRND was also against the killings.¹¹³⁶

917. After the Prime Minister issued security instructions on 27 April 1994, at a cabinet meeting held on 28 or 29 April 1994, the ministers decided that they should spend five days on a tour with the representatives of political parties to explain the security instructions to the different *préfectures*. They decided upon different areas to visit and that the ministers would go in groups of two assisted by the political party representatives.¹¹³⁷ After the ministers' five-day tour, all Rwandans understood the message that peace had to be restored in the country.¹¹³⁸ The tour began on 30 April 1994 in Gikongoro and Butare *préfectures*.¹¹³⁹

918. The Interim Government's use of the pacification and civil defence programs failed due to a lack of military strength.¹¹⁴⁰ In her diary entries of 12, 14, and 15 April 1994, which referred to sessions of the Council of Ministers and political parties, she noted under the sub-heading "Pacification:" "first sensitise the *cellules* to ensure civil defence."¹¹⁴¹

¹¹³⁰ *Id.*

¹¹³¹ See para. 303, *supra*.

¹¹³² T. 29 April 2010, p. 47.

¹¹³³ T. 3 May 2010, p. 6 (closed session).

¹¹³⁴ *Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Élie Ndayambaje*, Case No ICTR-98-42, Oral Summary (TC), 24 June 2011.

¹¹³⁵ T. 4 May 2010, p. 5.

¹¹³⁶ T. 3 May 2010, p. 21.

¹¹³⁷ *Id.*, p. 17.

¹¹³⁸ *Id.*

¹¹³⁹ *Id.*

¹¹⁴⁰ T. 3 May 2010, p. 21.

¹¹⁴¹ Exhibit P497, "Working Session of the Council of Ministers + Political Parties of 12 April 1994".

Nzirorera Defence Witness Eliézer Niyitegeka

919. The witness¹¹⁴² stated that the notion of “pacification” differed from that of “civil defence.” The letter of 27 April 1994 was the basis of the pacification tours. It contained instructions to restore calm in the country whereas the civil defence program was based on a document dated 25 May 1994, which established its own separate purposes and goals.¹¹⁴³

920. The Interim Government assigned teams to go to different *préfectures* to speak to and pacify the population.¹¹⁴⁴ The witness was a member of these “teams”. The ministers did not necessarily visit their *préfectures* of origin. For instance, Karemera was not from Gikongoro but went there nevertheless as a political leader.¹¹⁴⁵ The witness also went to a *préfecture* to deliver a pacification message but it was not his *préfecture* of origin.¹¹⁴⁶

Karemera Defence Witness LOL

921. The witness was a *préfet* in 1994.¹¹⁴⁷ After President Habiyarimana’s plane was shot down, his *préfecture* was highly insecure. The administration organised pacification meetings around the *préfecture* to reassure people and discourage violence.¹¹⁴⁸ Despite this fact, there were many killings but the administration was unable to capture the killers who fled into the hills.¹¹⁴⁹

922. He organised several pacification meetings with authorities of different levels including the Minister of Interior, the Minister of Justice, and their representatives. He also organized pacification meetings for Ngirumpatse in one of the districts.¹¹⁵⁰

Ngirumpatse Defence Witness PR

923. The witness¹¹⁵¹ testified that ministers and government officials went on pacification tours to create peace among the population. The Minister of Justice held meetings with members of the judiciary to motivate them to prosecute and punish those who didn’t comply. However, with the continuation of hostilities, they could not stop the killings.¹¹⁵²

Transcript of Nzirorera Defence Witness Emmanuel Ndindabahizi from Bizimungu et al.

924. The witness was Minister of Finance in the Interim Government.¹¹⁵³ He was convicted by the The Trial Chamber of genocide and crimes against humanity.¹¹⁵⁴

¹¹⁴² See para. 794, *supra*.

¹¹⁴³ T. 3 March 2010, p. 24.

¹¹⁴⁴ *Id.*, p. 38.

¹¹⁴⁵ *Id.*, pp. 38, 39.

¹¹⁴⁶ *Id.*, p. 25.

¹¹⁴⁷ T. 8 July 2008, p. 16 (closed session).

¹¹⁴⁸ *Id.*, p. 36.

¹¹⁴⁹ *Id.*, p. 36, 37.

¹¹⁵⁰ *Id.*, p. 45 (closed session).

¹¹⁵¹ See para. 232, *supra*.

¹¹⁵² T. 22 November 2010, p. 31.

¹¹⁵³ Exhibit DNZ513, *Bizimungu et al.*, T. 30 April 2007, p. 5.

¹¹⁵⁴ *Ndindabahizi Appeal Judgement*, p. 49; Exhibit DNZ513, *Bizimungu et al.*, T. 30 April 2007, p. 5, 47.

925. After Jean Kambanda received information about security issues, he organised visits to *préfecture* headquarters where pacification meetings were held. The basis for these meetings were the instructions that had been orally issued at the 11 April 1994 meeting at *Hôtel des Diplomates* and the 27 April 1994 letter to the *préfets*. There were various pacification meetings throughout Rwanda. In all the meetings, the 27 April 1994 letter was used for guidance and was distributed before the visits to the *préfectures*, so that the *préfets* would be aware of the instructions before the meetings took place.¹¹⁵⁵

Karemera Defence Witness XFP

926. The witness was a diplomat in 1994.¹¹⁵⁶ He testified that he received reports that eminent members of the MRND, including some ministers, went on tours in the country. They went to Butare *préfecture*, for instance, to call on the population not to stigmatise Tutsis or confuse them with the RPF.¹¹⁵⁷

Édouard Karemera

927. Karemera testified that the term "pacification" meant disseminating the message contained in the 10 April 1994 *communiqué* in order to avoid ethnic divisions and the spread of chaos.¹¹⁵⁸

928. On 27 April 1994, the government had decided on a program of tours throughout the country, in the zones still not under the control of the Rwandan Armed Forces. Members of the government and members of political parties composed the delegations. He attended some of these meetings in his capacity as first vice-president of the MRND and also as a member of the parliament when he went to Kibuye *préfecture*, for instance.¹¹⁵⁹

929. The MRND Political Bureau met in Murambi on 12 and 13 May 1994. Ministers of the Interim Government who were members of the MRND were invited to attend.¹¹⁶⁰

Matthieu Ngirumpatse

930. Ngirumpatse testified that he had no control over ministers from the MRND because they were responsible to the Prime Minister and President. He did not have control over the *bourgmestres*, *préfets* or ministers' advisors either.¹¹⁶¹

931. On 21 or 22 April 1994, he went on an official mission mandated and approved by the president of the republic.¹¹⁶² On this mission Ngirumpatse, travelling as part of a convoy, left Murambi to go to Gisenyi and Goma, arriving at Kinshasa a few days later.¹¹⁶³ The convoy then visited Nairobi where they stayed until departing on 28 April to Cairo. While in Nairobi and Cairo, Ngirumpatse met with the respective Presidents and Rwandan

¹¹⁵⁵ Exhibit DNZ513, *Bizimungu et al.*, T. 2 May 2007, pp. 30-38.

¹¹⁵⁶ T. 11 July 2008, p. 4.

¹¹⁵⁷ *Id.*, p. 27.

¹¹⁵⁸ T. 19 May 2009, pp. 22, 23.

¹¹⁵⁹ T. 20 May 2009, pp. 4, 5.

¹¹⁶⁰ *Id.*, p. 15.

¹¹⁶¹ T. 2 February 2011, p. 31.

¹¹⁶² Ngirumpatse T. 27 January 2011, p. 41 and T. 15 February 2011, pp. 4 and 5.

¹¹⁶³ Ngirumpatse T. 15 February 2011, p. 4.

ambassadors to Kenya and Egypt.¹¹⁶⁴ Mugenzi, who had also been travelling as part of the convoy, left the mission at this stage to undertake another mission.¹¹⁶⁵

932. After Cairo, Ngirumpatse visited Geneva, Paris, and Kinshasa to meet with the Rwandan ambassadors of those countries.¹¹⁶⁶ Ngirumpatse elaborated that his visit to Paris was in his personal capacity – not as part of the official convoy – to meet with French authorities.¹¹⁶⁷

933. Concluding his duties in Kinshasa, Ngirumpatse travelled through Goma and Gitarama, returning to Rwanda on 15 May.¹¹⁶⁸ A few days after his return, on 18 May, he joined Minister Mugenzi at a cabinet meeting to submit his mission report.¹¹⁶⁹

934. On 1 June, Ngirumpatse went on a second mission abroad to Tunis for the plenary and heads of state meetings as part of the OAU Council of Ministers summit.¹¹⁷⁰ With the summit concluding on 15 June 1994, Ngirumpatse went to Europe for several days, staying in Paris to meet with French authorities.¹¹⁷¹ He returned to Rwanda on 25 or 27 June.¹¹⁷²

935. On 9 July 1994, Ngirumpatse led a delegation to meet Marshal Mobutu on behalf of President Sindikubwabo, to speak with him about the political military situation in Rwanda. Mobutu, however, did not receive them until 15 days later because he was ill. With the population crossing the border on 17 July, and Ngirumpatse still on mission, he did not return to Rwanda after this final mission.¹¹⁷³

Deliberations

Cautionary Issues

936. The Chamber recalls that, at the time of their testimony, Defence Witnesses Nsengiyumva, Niyitegeka, and Ndindabahizi were convicted and imprisoned for participating in the genocide.¹¹⁷⁴ Furthermore, at the time of their testimony, Prosecution Witness FH and Defence Witness Nyiramasuhuko were detained and awaiting trial on genocide charges.¹¹⁷⁵

937. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Party Meetings Prior to Cabinet Meetings

¹¹⁶⁴ *Id.*, p. 5.

¹¹⁶⁵ Ngirumpatse T. 1 February 2011, p. 35 and 36 and T. 15 February 2011, p. 11.

¹¹⁶⁶ Ngirumpatse T. 15 February 2011, pp. 11 and 12.

¹¹⁶⁷ *Id.*, p. 8.

¹¹⁶⁸ Ngirumpatse T. 26 January 2011, p. 41; T. 15 February 2011, p. 11 and T. 17 February 2011, p. 6.

¹¹⁶⁹ Ngirumpatse T. 27 January 2011, p. 38.

¹¹⁷⁰ Ngirumpatse T. 15 February 2011, p. 16 and T. 17 February 2011, p. 32 and T. 18 February 2011, p. 13.

¹¹⁷¹ Ngirumpatse T. 28 January 2011, pp. 20 and 21 and T. 15 February 2011, p. 23 and T. 17 February 2011, p.

33.

¹¹⁷² Ngirumpatse T. 28 January 2011, p. 21 and T. 15 February 2011, p. 24.

¹¹⁷³ Ngirumpatse T. 28 January 2011, p. 21.

¹¹⁷⁴ See paras. 315 (Nsengiyumva); 794 (Niyitegeka); and 924 (Ndindabahizi).

¹¹⁷⁵ See paras. 915 (Nyiramasuhuko) and 609 (FH).

938. According to the testimony of Defence Witness Pauline Nyiramasuhuko and Karemera, MRND party officials, including Ngirumpatse and Karemera, held meetings with Interim Government ministers from their party prior to cabinet meetings of the Interim Government. During these prior meetings, they would discuss the party's viewpoints on the issues to be discussed at the cabinet meetings. Therefore, and referring to the Chamber's findings that the Executive Bureau actually controlled the MRND party (see V.1.3), the Chamber is convinced that the MRND leadership influenced the decisions that were taken by the Interim Government. The Chamber notes that the fact that the MRND supported what the Interim Government approved cannot mean that the MRND did not influence the government's decisions. Otherwise, there would have been little reason to have consultations *before* cabinet meetings.

Directives and Instructions to Préfets and Bourgmestres

939. It is undisputed that the Interim Government issued directives and instructions to *préfets* who then instructed the *bourgmestres* where appropriate. There is no evidence, however, of Interim Government directives or instructions addressed to the *bourgmestres*. With respect to the intent behind the directives and instructions to the *préfets*, the Chamber refers to its findings that the intent was to encourage continued killings of Tutsis (see V.3.4.2).

Purpose of "Pacification" Tours

940. It is undisputed that the Interim Government dispatched ministers and party leaders, including Karemera, to address the population throughout the part of the country controlled by the Interim Government.

941. According to the testimony of Defence Witnesses Nyiramasuhuko, Niyitegeka, and Ndindabahizi, Prime Minister Jean Kambanda's 27 April 1994 letter on the security situation in Rwanda was the basis for the pacification tours. The Chamber has found that the intent behind the letter was genocidal (see V.3.4.2).

942. Although several Defence witnesses claimed that the civil defence program was different from the pacification tours, the Chamber recalls that Nyiramasuhuko equated pacification with civil defence in her diary entries from the Interim Government cabinet meetings. The Chamber also notes the evidence of Nyiramasuhuko and Defence Witness LOL that the pacification tours did not stop the killings of Tutsis.

943. Whereas these circumstances suggest that the purpose of the pacification tours would have mirrored the purpose of Kambanda's letter of 27 April 1994 and the Civil Defence Programme, the Chamber has heard no direct evidence of what transpired during the pacification meetings apart from the meetings in Kibuye on 3 and 16 May (see V.3.2; 3.3). The Chamber, therefore, finds it unsafe to conclude beyond reasonable doubt that the general purpose of the pacification tours was to encourage the continued killing of Tutsis throughout Rwanda.

944. Furthermore, the Chamber has heard no evidence that the tours were specifically aimed at exercising control over militias.

Requests for Weapons

945. The Chamber has heard no evidence that requests for weapons were made to the participants of the pacification tours.

Conclusion

946. The Prosecution has proved beyond a reasonable doubt that the MRND leadership influenced the decisions that were taken by the Interim Government. The intent behind the Interim Government's directives and instructions to the *préfets* was to incite the further killings of Tutsis. The Interim Government dispatched ministers and party leaders, including Karemera, on "pacification tours" to address the population throughout the part of the country controlled by the Interim Government. The Prosecution, however, has not proved beyond reasonable doubt that the intent of the tours was to incite the further killings of Tutsis.

3.2 Kibuye Meeting on or about 3 May 1994

Allegation in the Indictment

947. On or about 3 May 1994, Karemera participated in a large meeting called by Interim Government officials at the Kibuye prefectural office. Prime Minister Jean Kambanda addressed the gathering and promoted civil defence as a means to combat the RPF, reporting that the war was in all *communes* in Rwanda. Eliézer Niyitegeka made comments that characterised Tutsi children as the enemy. Karemera also addressed the gathering and paid tribute to the *Interahamwe* and called upon them to "flush out, stop and combat the enemy" in collaboration with the youth wings of the other parties.

948. Through this address, Karemera associated himself with the policies of the Interim Government, which intended to characterize all Tutsis as "the enemy", "accomplices of the enemy" or "accomplices of the RPF". Thereby, Karemera instigated and incited the audience to "fight the enemy" and physically attack and destroy Tutsis as a group. The speeches and some of the commentary from the meeting were re-broadcast to the nation by Radio Rwanda several days later, on or about 9 May 1994.¹¹⁷⁶

Undisputed Evidence

949. It is undisputed that Karemera, Prime Minister Jean Kambanda and Minister of Information Eliézer Niyitegeka attended the 3 May 1994 meeting in Kibuye and addressed the audience.¹¹⁷⁷ It is also undisputed that the meeting was public.¹¹⁷⁸

Site Visit

950. On 23 February 2011, the Chamber visited Kibuye *préfecture* and observed that the *préfecture* office was only minutes away from the location of the Gatwaro Stadium and Home Saint-Jean massacres, which occurred approximately two weeks before the 3 May 1994 meeting. Kibuye town is a small, compact area and Gatwaro Stadium is particularly close to the Kibuye prefectural office.

Minutes of the Meeting

¹¹⁷⁶ Indictment, paras. 33.1, 52.

¹¹⁷⁷ Witness GK: T. 8 December 2006, pp. 30, 31, 34; Karemera: T. 20 May 2009, pp. 4, 5; Karemera Closing Brief, para. 269; Exhibit P82, "Minutes of the Security Meeting Held on 3 May 1994", pp. 2, 4-10.

¹¹⁷⁸ Karemera Defence Witness LSP, T. 10 July 2008, p. 36.

951. The minutes show that *Préfet* Clément Kayishema spoke first about the culture of hatred and revenge that had been adopted by the population. Then, Prime Minister Jean Kambanda spoke about the war and the RPF. He stated that politicians should be open about whether they were defending the population or whether they were following the *Inkotanyi*'s ideology because anyone who did not say which side they were on should not seek a position when peace was re-established. He also stated that the government had initiated a program to train the population in civil defense to be able to confront the RPF.

952. Karemera thanked the Prime Minister and the government for visiting Kibuye *préfecture* with a message of peace. He talked about the announcement that the Coalition Government parties issued on 10 April 1994, which was addressed to all Rwandans. In that announcement, it was stated that the population had to live in harmony and avoid violence. He continued by informing participants of what the MRND had done in order to restore security in the country.

953. Karemera read several MRND announcements. In an 11 April 1994 announcement, the MRND party sent a message of assurance to its members. In a 23 April 1994 announcement, the MRND said it supported the Rwandan Army, and requested all Rwandans, especially MRND members, to double their efforts in supporting the army and government policies intended to restore tranquility and security in the country. The 25 April 1994 announcement expressed support and gratitude to the *Interahamwe* for their contribution to restoring peace in collaboration with the Rwandan Army. Lastly, the 27 April announcement contained a message intended for party leaders at all levels concerning the restoration of peace in the country.

954. Karemera continued his speech with a special message intended for the MRND *Interahamwe*. That message called upon *Interahamwe* to continue being vigilant in flushing out, stopping, and fighting the enemy in collaboration with other youth members of other parties. He asked them to be among the first to positively respond to the policy of defending Rwanda, the civil defence programme, and to capture alive those who may abuse their uniform by harassing the population.

955. Donat Murego, the National Secretary General of the MDR and Emmanuel Ndindabahizi, the PSD President in Kibuye *préfecture*, both made speeches after Karemera. Murego called on Rwandan patriots to "work." The Prime Minister discussed the situation in all war zones but did not mention Kibuye. Niyitegeka was present at the meeting as Minister of Information.¹¹⁷⁹

Radio Rwanda Broadcast of the Meeting

956. The first transcript of the broadcast shows that Jean Rwabukwisi, member of the Secretariat of the MDR, questioned the role of the UN in the conflict, the legalisation of carrying weapons and the fate that should be reserved for *Inkotanyi* accomplices who are still in public administration. The second person to intervene was the *bourgmestre* of Gisovu who asked for help to hunt "large *Inkotanyi*" who were present in his *commune*. Charles Sikubwabo, *bourgmestre* of Gishyita, also worried about the *Inkotanyi* and mentioned the killing of 300 people.¹¹⁸⁰ Dr. Hitimana of Kibuye hospital asked two

¹¹⁷⁹ Exhibit P82, "Minutes of the Security Meeting Held on 3 May 1994".

¹¹⁸⁰ Exhibit DNZ289, "Radio Rwanda Transcript".

questions. The first regarded people, including children, who had taken refuge at the Kibuye hospital. He requested that measures be taken to ensure the security of these refugees and to get food and medical supplies. His second question related to MDR officials. He requested them to send a clear message to the youth of the party to stop the killings.¹¹⁸¹

957. The second transcript offers a continuation of the Prime Minister's answers to questions regarding radio and communications issues, bandits in Birambo, the role of UNAMIR, distribution of weapons to adults, people collaborating with the enemy, people gathered in the high mountains, and the *Banques Populaires*. He briefly responded to Dr. Hitimana by saying that the hospital must not be considered a place to commit atrocities. He then answered other questions regarding Nyungwe forest, the UN forces, Uganda and the complaint lodged by Belgium. Donat Murego, Eliézer Niyitegeka, the Bwakira *bourgmestre*, and Hyacinthe Bicamumpaka also spoke.¹¹⁸²

958. Niyitegeka stated that one must choose between representing the people and representing the RPF and its supporters. He mentioned that certain MDR members had deviated gravely and that Twagiramungu had gone astray so the MDR was no longer with him. According to Niyitegeka, Twagiramungu had become a real *Inkotanyi*, like many others, and measures had been taken. Some deviants had been excluded from the party while others had been disciplined.

Prosecution Witness GK

959. The witness was a local authority in Kibuye *préfecture*.¹¹⁸³ At the time of his testimony, he was imprisoned on suspicion of involvement in the genocide.¹¹⁸⁴

960. The meeting started in the morning between 10 and 11 a.m. and ended around 3 p.m.¹¹⁸⁵ A pestilential stench was present in Kibuye as a result of the killings of the civilian population that had occurred approximately two weeks earlier.¹¹⁸⁶ The mass graves for the victims had only been completed two days before the meeting.¹¹⁸⁷ The massacres had killed approximately 2,000 people.¹¹⁸⁸

961. *Préfet* Clément Kayishema spoke first, welcomed the guests, and mentioned that there was no security problem in Kibuye. However, he alluded to security problems in Bisesero. Attacks were being launched at the time to kill refugees and inhabitants of Bisesero who had been wrongly labelled *Inkotanyi* rather than Tutsi. The witness understood the description of this security problem to be a pretext to attack the refugees in Bisesero.¹¹⁸⁹

962. Prime Minister Jean Kambanda addressed the meeting. During his speech, he said it was necessary to review the Arusha Peace Accords. He enjoined members of the population

¹¹⁸¹ *Id.*

¹¹⁸² Exhibit DNZ290, "Radio Rwanda Broadcast 968 of 9 May 1994".

¹¹⁸³ T. 8 December 2006, p. 6 (closed session).

¹¹⁸⁴ *Id.*, pp. 7, 8 (closed session).

¹¹⁸⁵ *Id.*, p. 31.

¹¹⁸⁶ *Id.*

¹¹⁸⁷ *Id.*, p. 29.

¹¹⁸⁸ *Id.*, p. 27.

¹¹⁸⁹ *Id.*, p. 32.

to continue cooperating with the army to take on the enemy, which had attacked the country.¹¹⁹⁰ The witness interpreted Kambanda's words as encouraging the members of the population to support the army in their search for *Inkotanyi*. The witness deplored the fact that, during the meeting, Kambanda did not address the killings being perpetrated everywhere in the country including Kibuye *préfecture*. Instead, Kambanda said that there were groups of enemy combatants throughout the country. The witness understood Kambanda's speech as encouraging the killings because it did not mention them but focused on the need to fight the enemy instead.¹¹⁹¹

963. Karemera spoke on behalf of the MRND, emphasising the support that the MRND felt towards the government of Jean Kambanda and President Sindikubwabo. He invited the members of the party to support the government. Although he does not remember Karemera's words concerning the *Interahamwe* very well, the witness recalls that he mentioned them at one point in his speech. Karemera did not mention the smell in the area.¹¹⁹² None of the speakers mentioned the killings that occurred previously in the area.¹¹⁹³

964. When shown the minutes of the meeting, the witness recalled that Karemera's speech requested the *Interahamwe* to remain vigilant and continue fighting the enemy. He understood the term "enemy" to mean civilians.¹¹⁹⁴

965. Donat Murego urged Rwandan patriots to "work" in his speech at the meeting, stating that they should know that they will reap what they sow. The witness interpreted "work" to mean collaborating with killers. Eliézer Niyitegeka also attended the meeting and gave a speech on behalf of the MDR party, which did not condemn the killings.¹¹⁹⁵

966. Questions regarding Bisesero were raised during the meeting. Charles Sikubwabo, the *bourgmestre* of Gishyita, expressed worries about the internally-displaced persons in Bisesero because there were *Inkotanyi* there. He said he was able to kill 500 people there and needed reinforcements.¹¹⁹⁶ Aloys Ndimbati, *bourgmestre* of Gisovu, spoke along similar lines. He said there were real *Inkotanyi* there and it was not an issue of Tutsis.¹¹⁹⁷ Sikubwabo mentioned over 300 killings in Bisesero in Karemera's presence.¹¹⁹⁸ The audience understood that civilians had been killed, without any shadow of a doubt.¹¹⁹⁹

967. Dr. Hitimana, a member of the MDR working at Kibuye hospital, asked two questions. The first one referred to people, including approximately 100 children, who had been evacuated to Kibuye hospital. He requested that measures be taken to ensure the security of these internally-displaced persons and protect them from assailants. He also asked that they be supplied with food and medicines. His second question was related to the MDR. He requested its youth wing to stop killing and leave the refugees alone.¹²⁰⁰

¹¹⁹⁰ *Id.*, p. 31.

¹¹⁹¹ *Id.*,

¹¹⁹² *Id.*, p. 34.

¹¹⁹³ *Id.*, pp. 31, 32, 34, 35.

¹¹⁹⁴ *Id.*, p. 45.

¹¹⁹⁵ *Id.*, pp. 36, 46, 47.

¹¹⁹⁶ *Id.*, p. 41.

¹¹⁹⁷ *Id.*, pp. 41, 42.

¹¹⁹⁸ T. 13 December 2006, p. 3.

¹¹⁹⁹ *Id.*, p. 5.

¹²⁰⁰ T. 8 December 2006, pp. 38-40.

968. Eliézer Niyitegeka and Donat Murego supported what Dr. Hitimana said but thought the questions were futile and that he had no idea concerning the state of the country. Nahimana also addressed the meeting saying Dr. Hitimana did not know where he was or what he was talking about. The witness interpreted the message to be that evacuating the children was a mistake and that they should have been killed instead. The atmosphere of the meeting was such that members of the public did not dare ask questions, and if they did, the responses were discouraging. The children referred to by Dr. Hitimana, who were alive during the meeting, were subsequently killed. The witness was told that they were abducted and killed outside the hospital grounds but he does not know who led the attack.¹²⁰¹ Dr. Hitimana was also criticised for asking that the MDR youth group stop the killings.¹²⁰²

Karemera Defence Witness ETK

969. The witness¹²⁰³ attended the meeting on 3 May 1994 in Kibuye.¹²⁰⁴

970. Karemera took the floor in his capacity as a member of the MRND committee in Kibuye and spoke about the need for peace to be restored in the *préfecture*. He called upon members of the MRND party and the general population to work for the establishment of peace in the country. He asked members of the population in Kibuye to stop killing and looting, and to help the Rwandan army fight the RPF.¹²⁰⁵ Karemera mentioned killings.¹²⁰⁶ Many writings published in Rwanda mentioned the killings. These publications stated that both Tutsis and moderate Hutus had been killed. Bandits were doing the killing and looting, but the killings of Tutsis had stopped by 3 May.¹²⁰⁷

Karemera Defence Witness Mathias Hitiyaremye

971. The witness lived in Kibuye town in 1994¹²⁰⁸ and served thirteen years in jail in Rwanda for his participation in the genocide.¹²⁰⁹ He was present at the 3 May 1994 meeting and testified that Karemera spoke as an MRND representative and National Vice-President of the party. Karemera's message was national and not aimed at Kibuye only. Referring to the *Interahamwe* in Kigali and, in the frame of a national message, Karemera asked the *Interahamwe* to be present when the civil defence programme was launched. He said that youths who agreed with the MRND ideals should work with the *Interahamwe* instead of being "sidelined".¹²¹⁰ Karemera asked the *Interahamwe* and the youth of the entire country to respond to civil defence and assist the army.¹²¹¹

Karemera Defence Witness LSP

¹²⁰¹ *Id.*, pp. 36-38.

¹²⁰² *Id.*, p. 40.

¹²⁰³ See para. 321, *supra*.

¹²⁰⁴ T. 11 November 2008, p. 31.

¹²⁰⁵ *Id.*, p. 32.

¹²⁰⁶ T. 12 November 2008, p. 8.

¹²⁰⁷ *Id.*

¹²⁰⁸ T. 15 July 2008, pp. 29.

¹²⁰⁹ *Id.*, p. 57.

¹²¹⁰ *Id.*, p. 63.

¹²¹¹ *Id.*, p. 65.

972. The witness was a *bourgmestre* in 1994.¹²¹² He attended the 3 May Kibuye meeting.¹²¹³ There were two meetings held in Kibuye *préfecture*. The first one was in early May and the Prime Minister attended. The second was about two weeks later and President Sindikubwabo attended.¹²¹⁴ Karemera delivered a speech promoting peace and pacification.¹²¹⁵

973. The witness believed that discussions of the massacres were omitted from the Kibuye meeting minutes out of forgetfulness. The speakers were concerned about the protection of persons and property and it would have been impossible for them to overlook the killings during the meeting. The witness and others attending the meeting in Kibuye, toured the region to counter the barbaric acts, and asked everyone to link hands to put an end to the massacres. Everyone participating in the Kibuye meeting in early May was aware of written reports regarding the events occurring in the Kibuye region. It was not a closed-door meeting, it was an open-door meeting.¹²¹⁶

Édouard Karemera

974. Karemera testified that on 27 April 1994, the government established a programme of pacification tours throughout the country, and the 3 May Kibuye meeting was part of that programme.¹²¹⁷ He attended this meeting in his dual capacity as First Vice-President of the MRND and as a member of the Parliament in Kibuye *préfecture*.¹²¹⁸

975. The Kibuye *préfet* opened the meeting, then the Prime Minister spoke. Karemera spoke next followed by Donat Murego, the secretary general of the MDR, and Emmanuel Ndindabahizi, the Minister of Finance and chairman of the PSD in Kibuye *préfecture*.¹²¹⁹ The meeting lasted approximately 5 hours.¹²²⁰

976. He read the MRND announcements of 10, 23 and 27 April 1994. His message was about overcoming party and ethnic division to restore order and security. He also invited the *Interahamwe* to support the Rwandan Armed Forces and to conduct themselves appropriately.¹²²¹

977. The so-called minutes presented by the Prosecution are a *procès-verbal* and do not constitute minutes from that meeting. They were drafted on 8 June 1994 more than one month after the meeting, and Joseph Bugingo, the drafter of the *procès-verbal*, was in jail at that time.

978. Bugingo was at the meeting and was *Préfet* Kayishema's secretary at that time. The *préfet* forwarded the document on 8 June 1994 to Jean Kambanda, copying the *bourgmestre*

¹²¹² T. 10 July 2008, p. 8 (closed session).

¹²¹³ *Id.*, p. 19.

¹²¹⁴ *Id.*, pp. 18, 19.

¹²¹⁵ *Id.*, p. 19.

¹²¹⁶ *Id.*, p. 36.

¹²¹⁷ T. 20 May 2009, p. 4.

¹²¹⁸ *Id.*, p. 5.

¹²¹⁹ *Id.*, p. 7.

¹²²⁰ *Id.*, p. 8.

¹²²¹ *Id.*, p. 5.

of Kibuye. The participants of the meeting were not copied, which was normal since it was a time of war.¹²²²

979. The agenda of the meeting was not complete or reliable. For example, it did not include Kabasha's comment on behalf of the Kibuye people thanking the Prime Minister. It also misstated the occupations and locations of individuals such as Bugingo, Hitimana, and Karara.¹²²³

Deliberations

Cautionary Issues

980. The Chamber recalls that, at the time of his testimony, Prosecution Witness GK was detained and awaiting trial on genocide charges.¹²²⁴ The Chamber also takes into account that Defence Witness Hitiyaremye, who testified in 2008, was imprisoned from 1994 to 2007 for crimes relating to genocide.¹²²⁵

981. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Credibility of Witness GK

982. The Chamber notes that Witness GK's testimony is generally corroborated by the minutes and radio broadcasts of the meeting with respect to the identity of the speakers, the order in which they spoke, and the fact that the killings that had recently occurred in Kibuye were not mentioned during the meeting. Accordingly, the Chamber finds Witness GK generally credible.

Reliability of Minutes of the Meeting

983. The Chamber notes that the letter that accompanied the minutes when they were forwarded is dated 8 June 1994, signed by the *préfet*, addressed to the Prime Minister, and copied to the *bourgmestre*. The attachment reads "Minutes." While the letter indicates that Joseph Bugingo was the *rapporteur*, it does not mention when the minutes were drafted or approved. Moreover, the attached list of participants indicates that Bugingo is from "Kibuye *préfecture*, Kibuye prison." In the Chamber's view, however, this does not give rise to the inference that Bugingo was a detainee in the prison.

984. The Chamber further finds that the fact that the minutes were taken by a *préfecture* staff member indicates that they would have been approved by at least the *préfet* before they were forwarded to the Prime Minister. The *préfet* had no reason to antagonise Karemera. Accordingly, the Chamber finds the minutes of the meeting generally reliable.

Kambanda's Speech

¹²²² *Id.*, pp. 6, 7.

¹²²³ *Id.*, pp. 7-9.

¹²²⁴ See para. 959.

¹²²⁵ See para. 971.

985. Although the radio broadcasts do not show that Kambanda specifically referred to civil defence, the Chamber is convinced by the testimony of Witness GK that Kambanda urged the population to cooperate with the military in the fight against the RPF. The Chamber considers that this amounts to promoting civil defence as a means to combat the RPF. In making this finding, the Chamber notes that the minutes of the 3 May 1994 meeting record Prime Minister Kambanda stating that the government initiated civil defence to confront the RPF.

Niyitegeka's Speech

986. It does not appear from the minutes or radio broadcasts that Niyitegeka characterised Tutsi children as the enemy. Furthermore, the testimony of Witness GK that Niyitegeka blamed Dr. Hitimana for being concerned with the children in light of the prevailing situation of the country does not amount to characterising Tutsi children as the enemy.

Karemera's Speech

987. Karemera's testimony corroborates the claim in the minutes that he read the 25 April 1994 announcement during the meeting, which expressed support and gratitude to the *Interahamwe* for their contribution in restoring peace in collaboration with the Rwandan Army. Furthermore, the claim in the minutes that he called on the *Interahamwe* to continue being vigilant in flushing out, stopping, and fighting the enemy in collaboration with youth members of other parties is corroborated by the testimony of Defence Witness Hitiyaremye to the extent that he testified that Karemera called for the *Interahamwe* and youth to respond to civil defence and assist the army. Recalling the Chamber's finding that the minutes are generally reliable, the Chamber is convinced that Karemera paid tribute to the *Interahamwe* in his speech and called on them to flush out, stop and combat the enemy.

Equating Tutsis with the Enemy and Calling for their Extermination

988. Although the Interim Government officials addressed several issues in various ways during the meeting, the Chamber finds that they presented a united front to the audience whereby they adopted and supported each other's express and implicit commentary. They arrived in Kibuye as a group and were present during each other's speeches. The minutes and radio broadcasts show that none of the Interim Government officials rejected the comments of their peers and that the dynamic among the speakers was one of cooperation.

989. The most striking message delivered by the Interim Government officials during the meeting, however, relates to what they did not say. The Chamber notes the testimony of Witness GK that 2,000 people had recently been massacred by the *Interahamwe* and military in close vicinity to the meeting place. The mass graves for the victims had only been completed two days prior to the meeting and the stench of the bodies was still in the air when the officials spoke. It would have been utterly impossible for the Interim Government officials to be unaware of the killings that had occurred.

990. Nonetheless, they did not comment on the killings and especially did not urge the population to cease massacring civilians. No reasonable individual who sought peace and wished to end the killings would have squandered such an opportunity to immediately and resoundingly condemn the massacre of innocent civilians.

991. Instead, Karemera and the Interim Government officials only provided abstract rhetoric about restoring peace in the country without referring to the reports that had been

circulated regarding the events occurring in Kibuye, the mass graves surrounding the meeting venue, or the stench of dead bodies. Karemera went so far as to pay tribute to the *Interahamwe* and call upon them to *continue* to be vigilant and flush out, stop and combat the enemy. With such a backdrop, these words can only be understood as an unequivocal endorsement of the killings. Accordingly, the Chamber is convinced that Karemera encouraged the audience to “fight the enemy” and physically attack and destroy Tutsis as a group.

Conclusion

992. The Prosecution has proved beyond a reasonable doubt that during the public 3 May 1994 meeting of Interim Government officials in Kibuye, Prime Minister Jean Kambanda promoted civil defence as a means to combat the RPF. Karemera addressed the meeting and paid tribute to the *Interahamwe* in his speech, calling on them to continue flushing out, stopping, and combating the enemy, thereby inciting the audience to physically attack and destroy Tutsis as a group.

3.3 Kibuye Meeting on 16 May 1994

Allegation in the Indictment

993. The Prosecution alleges that on or about 16 May 1994, President Sindikubwabo, accompanied by Karemera, held a “security” meeting in Kibuye during which he thanked Kibuye *préfet*, Clément Kayishema, for accomplishing his mission, referring to the killing of Tutsi in Kibuye, thereby equating Tutsis with the “enemy or its accomplices” and inciting and instigating or aiding and abetting those in attendance to physically attack and to destroy Tutsis as a group.¹²²⁶

Undisputed Evidence

994. It is undisputed that President Sindikubwabo held a meeting with *préfet* Clément Kayishema and others in Kibuye on or about 16 May 1994.

Evidence

17 May 1994 Radio Rwanda Broadcast

995. A transcript of a rebroadcast of speeches given during the 16 May 1994 meeting shows that *Préfet* Clément Kayishema, after introducing President Sindikubwabo as the next speaker, stated that the security situation was good in Kibuye, that activities had resumed in the offices, and that people were moving around normally. President Sindikubwabo then thanked Kayishema and the participants for coming to the meeting and showing their support. He also thanked the Rwandan Armed Forces and congratulated the people of Kibuye for establishing a stable government for the country, restoring security of persons and property, and restoring law and order throughout the country.¹²²⁷

¹²²⁶ Indictment, paras 33.2, 55.

¹²²⁷ Exhibit DNZ291, “Transcript of 17 May 1994 Radio Rwanda Broadcast”.

996. A transcript of the radio broadcast of the end of the meeting shows that *bourgmestre* Kabasha made three recommendations to the Government regarding the role of foreign countries in restoring peace, the question of civil defence, and the collaboration between higher authorities and local authorities. President Sindikubwabo then replied briefly to these three recommendations and Préfet Clément Kayishema closed the meeting.¹²²⁸

Prosecution Witness GK

997. The witness¹²²⁹ attended the 16 May 1994 meeting¹²³⁰ and testified that president Sindikubwabo gave an indirect overview of the situation in Kibuye. Sindikubwabo congratulated the residents of Kibuye for being active, but the witness does not know whether he praised them because schools and services were functioning or because they had committed killings. Sindikubwabo did not condemn the extraordinary killings in Kibuye. Préfet Clément Kayishema was present but the witness does not recall whether he gave a speech. Karemera did not attend the meeting.

998. The residents of Kibuye were discouraged because nothing happened after the Kibuye Meeting on 3 May 1994.¹²³¹ When shown Sindikubwabo's response to a question made by *bourgmestre* Kabasha during the meeting, the witness interpreted the response to mean that the *Inkotanyi* had infiltrated the country and needed to be observed and controlled. They could not be trusted and needed to be observed closely.¹²³² The witness felt that Sindikubwabo was urging the audience to kill *Inyenzi* and accomplices that they found.¹²³³

Prosecution Witness AMO

999. The witness was a farmer in Kibuye *préfecture* in 1994¹²³⁴ and heard about the meeting on the radio. The broadcast specified that Sindikubwabo had congratulated the people of Kibuye for working swiftly and mentioned that they should go on with their daily activities. The radio journalist added that Sindikubwabo had asked members of the public to man roadblocks and conduct patrols.¹²³⁵ He understood that Sindikubwabo thanking people for working swiftly meant he was thanking them for killing Tutsis efficiently.¹²³⁶

Karemera Defence Witness Mathias Hitiyaremye

1000. The witness¹²³⁷ attended the Kibuye meeting on 16 May 1994, chaired by President Sindikubwabo, who told the civil servants that people had to carry out their ordinary tasks, as Prime Minister Kambanda had asked them to do. Counsel for Karemera informed the witness, without referring to the source, that an explanation had been given concerning the

¹²²⁸ Exhibit P83, "Side B"; Exhibit P248, "Side A".

¹²²⁹ See para. 959, *supra*.

¹²³⁰ T. 11 December 2006, p. 4.

¹²³¹ *Id.*, p. 3.

¹²³² *Id.*, pp. 4, 5.

¹²³³ *Id.*, p. 5.

¹²³⁴ T. 29 November 2007, p. 51.

¹²³⁵ T. 30 November 2007, p. 14.

¹²³⁶ *Id.*

¹²³⁷ See para. 971, *supra*.

meeting, which posited that President Sindikubwabo had insinuated to the audience that they should continue to “work” and that “work” in this context meant killing Tutsis. The witness disagreed with the alleged explanation and stated that Sindikubwabo meant instead that normal activities like farming and schooling should resume. Karemera did not attend the meeting.¹²³⁸

Karemera Defence Witness ETK

1001. The witness¹²³⁹ attended the 16 May 1994 meeting held in Kibuye but Karemera did not.¹²⁴⁰

Karemera Defence Witness LSP

1002. The witness¹²⁴¹ attended the 16 May meeting in Kibuye.¹²⁴² Karemera did not attend the meeting.¹²⁴³

Édouard Karemera

1003. Karemera testified that he did not attend the 16 May 1994 meeting.¹²⁴⁴

Deliberations

Cautionary Issues

1004. The Chamber recalls that, at the time of his testimony, Prosecution Witness GK was detained and awaiting trial on genocide charges.¹²⁴⁵ The Chamber also takes into account that Defence Witness Hitiyaremye, who testified in 2008, was imprisoned from 1994 to 2007 for crimes relating to genocide.¹²⁴⁶

1005. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Karemera's Attendance

1006. The Prosecution has presented no evidence that Karemera attended the meeting.

President Sindikubwabo's Address

1007. It appears from the radio broadcast, as corroborated by the testimony of Prosecution Witnesses GK and AMO, that President Sindikubwabo congratulated the army and the

¹²³⁸ T. 15 July 2008, p. 48.

¹²³⁹ See para. 321, *supra*.

¹²⁴⁰ T. 11 November 2008, pp. 32, 33.

¹²⁴¹ See para. 972, *supra*.

¹²⁴² T. 10 July 2008, p. 19.

¹²⁴³ *Id.*

¹²⁴⁴ T. 20 May 2009, p. 11.

¹²⁴⁵ See para. 959.

¹²⁴⁶ See para. 971.

people of Kibuye for restoring the security of persons and property¹²⁴⁷ rather than specifically thanking the *préfet* for completing his mission.

1008. The Chamber, however, finds that President Sindikubwabo demonstrated the same deliberate silence regarding the massacres in Kibuye, which the Interim Government representatives displayed during their 3 May meeting. Rather than use his role as President of the Interim Government to condemn the massacre of 2,000 innocent civilians that had taken place a month before, Sindikubwabo chose to thank the audience for creating peace. This was done despite the public knowledge of the killings and mass graves in the area. The Chamber therefore considers that Sindikubwabo condoned the massacres and thus encouraged people to attack and destroy the Tutsis as a group.

Conclusion

1009. The Prosecution has proved beyond a reasonable doubt that on 16 May 1994, President Sindikubwabo held a meeting in Kibuye with *préfet* Clément Kayishema and others during which he congratulated the army and the people of Kibuye for restoring the security of persons and property despite the public knowledge of the killings and mass graves in the area. Sindikubwabo therefore condoned the massacres.

1010. The Prosecution has not proved beyond a reasonable doubt that Karemera attended a security meeting with President Sindikubwabo where the latter thanked Kibuye *préfet* Kayishema for accomplishing his mission to kill Tutsis in Kibuye.

3.4 Agreement to Support Interim Government; Orders, Directives & Instructions Issued from April-June 1994

Allegation in the Indictment

1011. Karemera and Ngirumpatse agreed with Joseph Nzirorera, Justin Mugenzi, Frodouald Karamira, Jean Kambanda, and others to place the existing structures of authority within the MRND and "Hutu Power" political parties at the service of the Interim Government. This was to be accomplished through the territorial administration of Rwanda under the control of the Ministry of Interior and military command structure under the control of the Ministry of Defence and Rwandan Armed Forces. The agreement intended to mobilise extremist militiamen in the *Interahamwe* and *Impuzamugambi* militias and armed civilians to attack, kill, and destroy Rwanda's Tutsi population.¹²⁴⁸ It also intended to galvanise anti-Tutsi fear and loathing among the Hutu population and mold it into a lethal apparatus, in the form of militias trained and armed with resources from the state, for deployment in a campaign of destruction against Tutsis as a group.¹²⁴⁹

1012. This agreement was manifested in various directives and instructions issued to *préfets* and *bourgmestres* and to the general population during the course of April, May, and June 1994, among them: (i) the letter to all *préfets* from Jean Kambanda regarding *Instructions to Restore Security in the Country* of 27 April 1994; (ii) the *Directives of the Prime Minister to all Préfets on the Organization of Civil Defence* of 25 May 1994; (iii) the

¹²⁴⁷ Exhibit DNZ291, "Transcript of 17 May 1994 Radio Rwanda Broadcast".
¹²⁴⁸ Indictment, para. 28.2.
¹²⁴⁹ *Id.*, para. 29.

letter to all *préfets* from Karemera regarding *Implementation of the Prime Minister's Directives on the Self-Organization of Civilian Defence* of 25 May 1994; (iv) the *Ministerial Instructions to the Préfets of the Préfectures on the Use of Funds Earmarked for the Ministry of the Interior and Communal Development for Civil Self-Defence* of mid-June 1994; and (v) the letter to *Commandant du Secteur Anatole Nsengiyumva* from Karemera regarding the *Opération de ratissage à Kibuye* of 18 June 1994. These documents ("Civil Defence Documents") were issued by consensus during various cabinet meetings of the Interim Government and derived from recommendations from the MRND Steering Committee, which included Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera.¹²⁵⁰

1013. Upon assessing paragraphs 28.2, 28.3, and 29 of the Indictment as a whole, the Chamber considers that the Prosecution has alleged that the "agreement" manifested itself through the Civil Defence Plan, which was created by the Interim Government and definitively set in motion by the Civil Defence Documents. Thus, the Chamber will determine whether the agreement intended to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population after it analyzes each of the Civil Defence Documents.

3.4.1 Context in which the Directives and Instructions were Issued

1014. The Civil Defence Documents range in date from 27 April to 19 June 1994 and generally state that the directives and instructions therein were a response by the Interim Government to the assassination of President Habyarimana and renewal of hostilities by the RPF. Therefore, the Chamber will focus on the general situation in Rwanda from 6 April to 19 June 1994 as the backdrop for its analysis of the documents. It will pay special attention to the activities of the Interim Government during this period.

1015. It will also, however, consider the evidence regarding the indoctrination of Rwandan youth prior to 6 April 1994 by persons who eventually became members of the Interim Government, or played a pivotal role in its creation.

Indoctrination During "Hutu Power" Rallies

1016. The Chamber has found that the concept of Hutu Power was espoused at numerous speeches and rallies given throughout Rwanda and that after the assassination of the Burundian president, the tone and intent behind the speeches given by MRND and other Hutu Power leaders took on a more sinister tone. Future members of the Interim Government and the Accused attended these rallies and gave these speeches (see IV.2.4; 2.5; 2.6).

Interim Government Awareness of Killings

1017. The Interim Government was sworn in on 9 April 1994. By 8 April 1994, the killings in Rwanda were already so overt that Special U.N. Representative Jacques Roger Booh-Booh sent a cable to the U.N. Secretary General reporting a "ruthless campaign of

¹²⁵⁰ *Id.*, para. 28.3. See also the first two sentences of Indictment, para. 57, which contains a duplicate allegation concerning the 25 May 1994 letter from Édouard Karemera to all *préfets*, pleaded under Counts 3 and 4 (Genocide or, alternatively, Complicity in Genocide).

ethnic cleansing and terror” that had already claimed “quite heavy” civilian casualties that were “primarily ethnic in nature.”¹²⁵¹ In another cable, he reported that the *Interahamwe* were committing atrocities.¹²⁵² Booh-Booh was able to discern these facts amid the loss of UNAMIR’s entire telephone system as well as pervasive disinformation and faulty reporting by local news sources.¹²⁵³

1018. Furthermore, Ngirumpatse stated that by 9 April 1994, he and his consorts had “obtained a lot of information” regarding the killings in Rwanda. He asserted that the Interim Government and its associates exchanged information, which they had obtained from the army and *gendarmérie*, during its first cabinet meeting on 9 April 1994. According to Ngirumpatse, “everyone was made aware of the scope of the killings that were being perpetrated, killings which had started on the 7th during the day...[f]rom the 9th we had a great deal of information.”¹²⁵⁴

1019. Karemera and Ngirumpatse testified that the Interim Government fled to Gitarama on 12 April 1994.¹²⁵⁵ Because the Interim Government fled as a unit, the Chamber considers the only reasonable inference to be that the same mechanisms, which informed them of the killings on 9 April 1994, continued to exist and inform them after their flight to Gitarama.

1020. Furthermore, by the time the first of the Civil Defence Documents was issued (27 April 1994), the genocide had been ongoing throughout Rwanda for nearly three weeks.

Encouragement of Killings by the Interim Government

1021. The Chamber has already found that by the time the first Civil Defence Document was issued (27 April 1994), Karemera, Ngirumpatse, and the Interim Government had encouraged the killing of Tutsis in Gitarama (see V.2.1) and Butare (see V.2.2). It has also found that the Interim Government established a national defence fund by this date, which the Accused knew or had reason to know was intended to re-provision armed militias who were committing systematic attacks against Tutsis in Gisenyi and throughout Rwanda (see V.5.1). Additionally, the Interim Government deposed the *préfets* of Butare and Kibungo by this date because they opposed the killings of Tutsis (see V.2.2).

1022. Finally, the Chamber has found that on or about 3 May 1994, a meeting of Interim Government officials was held in Kibuye where Karemera paid tribute to the *Interahamwe* and called upon them to flush out the enemy in collaboration with the youth wings of other parties (see V.3.2).

1023. Mindful of the above, as well as other available evidence in the record about the situation in Rwanda in 1994, the Chamber now turns to its analysis of the Civil Defence Documents.

3.4.2 Content of the Various Directives and Instructions

Undisputed Evidence

¹²⁵¹ Exhibit DNZ225, “Outgoing Code Cable, 8 April 1994”.

¹²⁵² Exhibit P141, “Outgoing Code Cable, 9 April 1994”.

¹²⁵³ Exhibit DNZ225, “Outgoing Code Cable, 8 April 1994”.

¹²⁵⁴ T. 26 January 2011, p. 41.

¹²⁵⁵ Karemera, T. 19 May 2009, p. 21; Ngirumpatse, T. 26 January 2011, p. 41; T. 27 January, p. 30.

1024. The existence of the Civil Defence Documents is undisputed.¹²⁵⁶ It is also undisputed that the documents were agreed upon by the Interim Government and derived at least in part from recommendations by Karemera, Ngirumpatse, and the MRND.¹²⁵⁷

1025. Therefore, the issue before the Chamber is whether the documents manifest an agreement to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population.

Letter from Jean Kambanda Concerning Instructions to Restore Security in the Country – 27 April 1994

Evidence

The Letter

1026. Interim Government Prime Minister Jean Kambanda issued instructions to be followed by all levels in charge of security and the Rwandan population to ensure that security and calm would return quickly.

1027. The *préfets* were requested to organise security meetings without delay at the prefectural level, which would be held frequently. Jean Kambanda also requested the *préfets* to tackle the security problem with the assistance of all levels of civil society and the national army. After stating that it was well known that the RPF-*Inkotanyi* was the enemy, Kambanda requested that the *préfets* explain to the people that violence among them constituted a breach for the enemy, and that they must avoid anything that would bring about violence on the pretext of ethnic groups, regions, denominations, political parties, or other hatreds.

1028. Nevertheless, Kambanda stated that the population “must remain watchful in order to unmask the enemy and his accomplices and hand them over to the authorities,” receiving assistance from the Rwandan Armed Forces where needed.¹²⁵⁸

1029. He directed the authorities of the *communes*, *secteurs*, and *cellules*, with the assistance of the Rwandan Armed Forces wherever possible, to identify places where officially recognised roadblocks should be set up, and to establish a system of security patrols in order to prevent the enemy from infiltrating. Kambanda then stated that all acts of violence, looting, and criminal acts must stop immediately and called on the National Army, the public prosecution, and the judicial authorities to severely punish any person found guilty of those acts. The *préfets* would be assisted by the Rwandan Armed Forces and judicial authorities whenever necessary. They were requested to sensitise the population to

¹²⁵⁶ Exhibit DNZ183, “Instructions to Restore Security in the Country of 27 April 1994”; Exhibit DNZ347, “Directive of Prime Minister Jean Kambanda to all *Préfets* on the Organisation of the Civil Defence of 25 May 1994”; Exhibit P59, “Letter from Édouard Karemera to *Préfets* re: Implementation of Prime Minister Jean Kambanda’s Directives of 25 May 1994”; Exhibit P60, “Ministerial Instructions to the *Préfets* of the Préfectures on the Use of Funds Earmarked for the Ministry of Interior and Communal Development for Civil Self-Defence of mid-June 1994”; Exhibit P58, “Letter from Édouard Karemera to Anatole Nsengiyumva of 17 June 1994.”

¹²⁵⁷ Emmanuel Ndindabahizi, Exhibit DNZ513, *Bizimungu et al.*, T. 1 May 2007, p. 11; Pauline Nyiramasuhuko, T. 3 May 2010; Karemera, T. 19 May 2009, pp. 60, 61, 66; See also P247, “MRND Communiqué of 13 May 1994.”

¹²⁵⁸ Exhibit DNZ183, “Instructions to Restore Security in the Country of 27 April 1994”, pp. 2, 3.

give their full support to their government and to collaborate with the Rwandan Armed Forces.¹²⁵⁹

Prosecution Witness FH

1030. The witness¹²⁶⁰ testified that speeches were made and documents prepared but that none of the instructions were implemented. Instead of halting the genocide, the speeches and documents actually intensified the genocide. When he received the 27 April 1994 letter from the Prime Minister saying that they should advise members of the population not to fight or engage in any disputes with each other, he called a meeting of the *conseillers*. He told them that the government did not support ethnic division and showed them a copy of the letter with the Prime Minister's stamp.

1031. He later met with members of the population at the *secteur* level, showed them the letter and told them that these were the instructions from the government. While he held this meeting, a member of the population with a radio shouted and told him to stop talking in this manner because he had just heard the RTL radio station claim that there were some "bad" officials preventing members of the population from seeking out the enemy.

1032. To the witness, this meant that far superior forces were operating that inhibited or prevented the implementation of instructions when speeches and documents were prepared and sent out by the Interim Government.¹²⁶¹ He believed that the Interim Government could have stopped the increasing insecurity but instead they chose to do nothing. Because the MRND was the predominant power, it could have taken steps to stop the killings. In his opinion, the Ministers of Defence, Interior, and Home Affairs, who were all MRND members, had the power to control the situation and discipline the *Interahamwe*.¹²⁶²

Prosecution Witness ALG

1033. The witness¹²⁶³ stated that the 27 April 1994 letter by Prime Minister Jean Kambanda was written 20 days after the resumption of hostilities and during that period people who were killing civilians were claiming that they were killing *Inkotanyi* and their accomplices, so this letter was mere rhetoric and did nothing to stop the massacres. People used the guise of hunting down the enemy and the accomplices as a pretext for killing innocent persons.¹²⁶⁴ The Interim Government did not successfully implement the instructions.¹²⁶⁵

1034. In the Interim Government, the MRND held nine or ten ministerial posts including the Ministries of Defence and Interior.¹²⁶⁶ Karemera, in his capacity as Minister of the Interior (as of 25 May 1994), and because he was so high-ranking for so long, would have

¹²⁵⁹ *Id.*, pp. 3, 4.

¹²⁶⁰ See para. 609, *supra*.

¹²⁶¹ T. 18 July 2007, p. 15.

¹²⁶² T. 12 July 2007, pp. 9, 10.

¹²⁶³ See para. 157, *supra*.

¹²⁶⁴ T. 7 November 2006, pp. 10, 11.

¹²⁶⁵ *Id.*, p. 53.

¹²⁶⁶ T. 26 October 2006, p. 27.

known everything the *Interahamwe* did and it would have been impossible for him not to know what was happening.¹²⁶⁷

Deliberations

Cautionary Issues

1035. The Chamber recalls that, at the time of his testimony, Prosecution Witness ALG was convicted and imprisoned for participating in the genocide.¹²⁶⁸ Furthermore, at the time of his testimony, Prosecution Witness FH was detained and awaiting trial on genocide charges.¹²⁶⁹

1036. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

The Letter

1037. On its face, the letter is not a manifestation of an agreement by the Interim Government to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population. Save for the definition of the enemy as the "RPF-*Inkotanyi*" and the directive to "remain watchful in order to unmask the enemy and his accomplices and hand them over to the authorities", the letter does not contain any language, which could possibly be interpreted as a call to kill Tutsis.

1038. The testimony of Prosecution Witnesses FH and ALG that the instructions in the letter were not implemented, and that the letter was mere rhetoric, does not persuade the Chamber that the letter contained an affirmative instruction to kill Tutsis. Although Witness FH insinuated that his efforts to implement the express instructions in the letter were foiled by an undercurrent that advocated violence against Tutsis, this does not mean that the letter itself advocated such violence. While Witness ALG stated that the instructions in the letter were hard to implement because individuals would often decide not to employ them, he did not explain how these individual decisions could have been influenced by the language of the letter.

1039. What the Chamber considers far more telling, however, is what the letter does not say. Taking into account that the genocide of Tutsis was nearly three weeks underway by 27 April 1994, and extended to all corners of Rwanda, the Chamber considers that any individual or organisation, which opposed the killings and wished to restore peace to the country, would have stated in much more obvious and emphatic terms that the mass slaughter of innocent civilians of mostly Tutsi ethnicity must end immediately. Instead, the letter employs incomprehensibly distant language in all passages that purport to urge the population to restore peace in the country.

1040. For example, Kambanda persistently used the ambiguous term "security" in the letter when referring to the situation in Rwanda. The Chamber considers that, the title of the letter aside, terms such as "mass killings", "massacres" or "killings" would have been far

¹²⁶⁷ T. 1 November 2006, pp. 43, 44.

¹²⁶⁸ See para. 157.

¹²⁶⁹ See para. 609.

more appropriate, and accurate, when addressing the widespread and public nature of the genocide. Furthermore, Kambanda does not use the term “violence”, his closest approximation to acknowledging the killings, until halfway through the letter. When he does touch on the subject, he merely requests the population to avoid anything that might bring about violence among them on various rote pretexts before swiftly reminding them that they must “nevertheless” remain watchful in order to unmask the enemy¹²⁷⁰

1041. Later in the letter, in a marginally more pointed reference, he states that all violence, looting, and criminal acts must end immediately.¹²⁷¹ An urgent, specific call to end the nation-wide killings that had been occurring for nearly three weeks is conspicuously absent from a letter regarding the subject of *restoring security to the country*. This leads the Chamber to believe that the Interim Government was not worried about ending the killings.

1042. In fact, on 24 April 1994, General Roméo Dallaire informed the Secretary-General of the UN that the Interim Government did not seem concerned about civilian massacres.¹²⁷²

1043. Not surprisingly then, immediately following the distribution of Kambanda’s letter, UNAMIR reported complaints from the International Committee of the Red Cross that patients were being pulled out of ambulances by *Interahamwe* and killed.¹²⁷³ After Colonel Yaache met with Tharcisse Renzaho on the matter, he reported that Renzaho’s response was that the militias were defending their neighbourhoods “in concert with the overall aims of the government.” On 29 April 1994, UNAMIR Force Commander Roméo Dallaire reported to UN Secretary-General Kofi Annan that the Interim Government lacked the will or capacity to curb the civil defence structure and that this tended to show that the Interim Government was using civil defence as a part of its operational strategy.¹²⁷⁴

1044. In light of all of the above and recalling the Interim Government’s initiatives to: intimidate and force the local authorities in Gitarama not to resist the *Interahamwe*’s assaults on Tutsis on 18 April 1994 (see V.2.1); replace the *préfets* of Butare and Kibungo who resisted assaults on Tutsis; and further promote assaults on Tutsis in Butare on 19 April 1994 (see V.2.2), the Chamber considers Jean Kambanda’s 27 April 1994 letter to be a thinly-veiled attempt to deliver a false message of pacification for the purpose of hiding, at the very least, the Interim Government’s implicit approval of the genocide from the world and from posterity.

Conclusion

1045. The Prosecution has proved beyond a reasonable doubt that the 27 April 1994 letter manifests an agreement to approve the ongoing killings of Tutsis by deliberately failing to curb their killing, thus encouraging extremist militiamen and armed civilians to attack and kill Tutsis and destroy Rwanda’s Tutsi population.

¹²⁷⁰ Exhibit DNZ183, “Instructions to Restore Security in the Country of 27 April 1994”, para. 3.

¹²⁷¹ *Id.*, para. 4.

¹²⁷² Exhibit DNZ413, “Outgoing Code Cable, 24 April 1994”.

¹²⁷³ See also Witness PTR, T. 18 November 2010, p. 41 where the witness recounts the instance where *Interahamwe* took wounded persons who looked like Tutsis out of a Red Cross ambulance and killed them on 14 April 1994.

¹²⁷⁴ P478, “UNAMIR-CHO dated 28 April 1994”; DNZ417, “Outgoing Code Cable, 29 April 1994”.

Directive of Jean Kambanda to all *Préfets* on the Organisation of the Civil Defence – 25 May 1994

Evidence

The Directive

1046. Through the directive, Interim Government Prime Minister Jean Kambanda informed that the country had been attacked by the RPF and that every Rwandan was duty-bound to defend it to the best of his ability, using all means at his disposal. Kambanda called upon people to join the army in fighting against the enemy because the Rwandan people were Rwanda's most effective weapon. He directed communal and prefectural authorities to ensure that the initial actions of mobilisation, organisation, and training were completed within the next 15 days.¹²⁷⁵

1047. For the civil defence strategy to be effective and efficient, Kambanda advocated adherence to the following guidelines: tactical and strategic organisation of popular resistance; training of groups to be centres of civil defence in each *cellule* or in each *secteur*; targeted recruitment of able-bodied and physically fit persons of good conduct who lived in the same neighbourhood, *cellule*, or *secteur*; and close cooperation between territorial administration authorities and political parties.¹²⁷⁶

1048. Kambanda enumerated the objectives of civil defence in paragraph 6 of the directive: to ensure the security of the people and encourage them to defend themselves against RPF attacks instead of abandoning their property; to protect public infrastructure and property; to obtain information on the actions and presence of the enemy in the *commune*, the *cellule*, or the neighbourhood; to denounce infiltrators and collaborators of the enemy; to disorganise any enemy action ahead of the intervention of the armed forces; and to act as agents of the army and national *gendarmerie*.¹²⁷⁷ He gave detailed instructions regarding the way the civil defence committees should be laid out in the *secteurs*, *communes*, and *préfectures* and at the national level, along with who should be the civil defence instructors.¹²⁷⁸

Nzirorera Defence Witness Tharcisse Renzaho

1049. The witness¹²⁷⁹ stated that it was impossible to set up a civil defence programme as laid out in the 25 May 1994 directive because the security situation had already drastically deteriorated. A civil defence system is an integral part of the internal defence system of each country. One cannot incriminate Rwanda's system up-front as a programme to kill remaining Tutsis in Rwanda simply because they tried to put a civil defence system into place.¹²⁸⁰

¹²⁷⁵ Exhibit DNZ347, "Directive of Jean Kambanda to all *Préfets* on the Organisation of the Civil Defence of 25 May 1994", pp. 1, 2.

¹²⁷⁶ Exhibit DNZ347, " Directive of the Prime Minister to all *Préfets* on the organisation of the civil defence", p. 2.

¹²⁷⁷ *Id.*, pp. 2, 3.

¹²⁷⁸ *Id.*, pp. 3-7.

¹²⁷⁹ See para. 312, *supra*.

¹²⁸⁰ T. 15 April 2010, pp. 44-46.

Deliberations

Cautionary Issues

1050. The Chamber recalls that, at the time of his testimony, Defence Witness Renzaho was convicted and imprisoned for participating in the genocide.¹²⁸¹ He was not a direct accomplice of the Accused. Nevertheless, the Chamber will apply the requisite degree of caution to him when assessing his credibility and the weight of his evidence.

The Letter

1051. On its face, the letter is not a manifestation of an agreement by the Interim Government to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population. Instead, it showcases a list of actions to be taken by all *préfets* to create a functioning civil defense system. At first blush, it appears to reflect the legitimate, integral program Renzaho mentions.

1052. Once again, however, the Chamber is struck by what the letter does not include. Considering that the genocide had been underway for nearly seven weeks when the directives were sent on 25 May 1994, and that the killings targeted all Tutsis, including women, children, and the elderly, the Chamber finds it telling that the directives did not, at a bare minimum, clarify that innocent Tutsi civilians did not equate with the RPF and therefore should not have been killed.

1053. The Chamber cannot conceive of a legitimate reason why the Prime Minister of the Interim Government would fail for a second time, nearly seven weeks into the genocide, to request the population to stop exterminating innocent Tutsi civilians.

1054. By the time the directives were issued, 250,000 – 500,000 fatalities had occurred and tens of thousands of persons had been maimed or wounded, primarily at the hands of the *Interahamwe* and Presidential Guard, as acknowledged by high-ranking members of the Interim Government.¹²⁸² Moreover, the killings were especially concentrated in the areas under the control of members or supporters of the armed forces of the Interim Government.¹²⁸³

1055. Renzaho's general, conclusory testimony that civil defence programs are an integral part of the internal defence system of each country is resoundingly outweighed by the incongruity between the language of the directives and the circumstances in which they were issued. The only reasonable inference is that the directives deliberately omitted, at a minimum, the necessary clarification that innocent Tutsi civilians did not comprise the military enemy, which the civil defence program sought to eliminate. The Chamber is convinced that this had the effect of encouraging the continued killing of Tutsis.

Conclusion

¹²⁸¹ See para. 312.

¹²⁸² Exhibit P546, "Report of the Secretary General on the Situation in Rwanda – 31 May 1994", pp. 2, 3.

¹²⁸³ *Id.*, p. 3.

1056. The Prosecution has proved beyond a reasonable doubt that the 25 May 1994 directive manifests an agreement to encourage extremist militiamen and armed civilians to attack and kill Tutsis and destroy Rwanda's Tutsi population.

Letter from Édouard Karemera to Préfets Regarding Implementation of Jean Kambanda's Directives – 25 May 1994

Evidence

The Letter

1057. Karemera, as Minister of the Interior of the Interim Government, asked the *préfets* to establish all the necessary mechanisms to immediately set-up or carry out a long list of actions with respect to civilian self-defence. These actions included the establishment of committees, lists, and inventories for identifying resources in the *préfectures* such as people, equipment, and weapons.

1058. Additionally, criteria were to be developed to select young people for training, and awareness campaigns were to be held to invite the population to look for additional weapons, such as bows, arrows, and spears. The importance of roadblocks and patrols were to be explained to the population. Persons to train the members of the civilian self-defence core group both politically and ideologically were also to be identified.

1059. Regarding the importance of properly identifying the enemy, Karemera asked the *préfets* to establish all necessary mechanisms to carry out the following action: "Identification and choices/or instruments to describe the enemy, recognition amongst members of the civilian self-defence groups and to gather these members".¹²⁸⁴

Édouard Karemera

1060. Karemera testified that he, Ngirumpatse, and Joseph Nzirorera agreed to the civil defence programme in principle, but did not say how the civil defence should be organised by the Interim Government.

1061. After his appointment as Minister of the Interior, he took the time to read and understand the scope of directives and implementation measures and was in agreement with the measures contained in those directives. Because the text was ready, he saw no reason to delay the signing of his letter after his ministerial appointment on 25 May 1994. However, he was not able to implement the directives as planned due to insufficient resources and time.¹²⁸⁵

1062. The Minister of the Interior and Minister for Defence were both members of civil defence programming at the national level and both came from the MRND party. This was a government activity, however, and not a party function. It had nothing to do with massacres.¹²⁸⁶

¹²⁸⁴ Exhibit P59, "Re: Implementation of the Prime Minister's Directives on the Self-Organisation of Civilian Defence", pp. 2, 3.

¹²⁸⁵ T. 19 May 2009, pp. 60-62.

¹²⁸⁶ *Id.*, pp. 62-66; T. 27 May 2009, p. 8.

Deliberations

1063. On its face, the letter is not a manifestation of an agreement by the Interim Government to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population. Instead, it lists a series of actions to be taken by all *préfets* to create a functioning civil defense system according to the Prime Minister's directives.

1064. Once again, however, the Chamber is struck by what the letter does not include. Considering that the genocide had been underway for nearly seven weeks when the directives were sent on 25 May 1994, and that the killings targeted all Tutsis, including women, children, and the elderly, the Chamber finds it telling that Karemera's letter did not, at a bare minimum, implore the *préfets* to ensure that their civil defense teams did not consider these particularly vulnerable and virtually always non-combatant sectors of the population "the enemy." In fact, the letter did not include the slightest indication on how to identify the "enemy" the nation-wide civil defence program was supposed to eliminate. Instead, the letter merely noted, in passing, that it would be important to develop a modality for conducting this identification, and that once identified, members of the enemy should be removed from the civil defence structure.¹²⁸⁷

1065. Recalling its deliberations above on Kambanda's 25 May 1994 directive, the Chamber cannot conceive of a legitimate reason why Karemera, as Minister of the Interior for the Interim Government, would fail, nearly seven weeks into the genocide, to request the population to stop exterminating innocent Tutsi civilians.

1066. Thus, the only reasonable inference is that the letter deliberately omitted, at a minimum, express instructions to Rwanda's *préfets* to instruct their civil defence elements not to target innocent Tutsi civilians, particularly women, children, and the elderly, as the enemy. The Chamber is convinced that this had the effect of encouraging the continued killing of Tutsis.

1067. Additionally, the Chamber finds it curious that while Jean Kambanda's directives mention "arms and ammunition" only,¹²⁸⁸ Karemera chose to mention an "[a]wareness campaign inviting the population to look for other weapons (bows and arrows, spears...)"¹²⁸⁹ The record is replete with evidence that innocent Tutsis were routinely massacred with traditional weapons such as knives, spears, machetes, hoes, and clubs.¹²⁹⁰

Conclusion

¹²⁸⁷ Exhibit P59, "Re: Implementation of the Prime Minister's Directives on the Self-Organisation of Civilian Defence", p. 2.

¹²⁸⁸ Exhibit DNZ347, "Directive of Jean Kambanda to all *Préfets* on the Organisation of the Civil Defence of 25 May 1994", p. 4.

¹²⁸⁹ Exhibit P59, "Re: Implementation of the Prime Minister's Directives on the Self-Organisation of Civilian Defence", p. 2.

¹²⁹⁰ See Adjudicated Facts 57 – *Kajelijeli* Trial Judgement; 73- *Ntakirutimana* Trial Judgement; 91- *Musema* Trial Judgement; 92- *Niyitegeka* Trial Judgement; 98- *Kayishema* Trial Judgement, 104- *Musema* Trial Judgement; 106, 107-*Niyitegeka* Trial Judgement.

1068. In light of all of the above, the Prosecution has proved beyond a reasonable doubt that Karemera's 25 May 1994 letter manifests an agreement to encourage Hutus to continue killing Tutsis.

Ministerial Instructions to the Préfets of the Préfectures on the Use of Funds Earmarked for the Ministry of Interior and Communal Development for Civil Self-Defence – mid-June 1994

Evidence

The Instructions

1069. Karemera, as minister of the Interior of the Interim Government, details the funds available for civilian self-defence of the *préfectures*. It referenced a telegram sent on 13 June 1994, which notified the *préfets* that each would receive a lump sum to be used to establish a prefectural civil defence fund.

1070. For *préfectures* already at war, the Ministry of the Interior suggested that the civil defence fund be used for: catering expenses for militiamen; transport at the time of interventions; fuel and maintenance for vehicles; health expenses for those wounded in action; intelligence and information expenses; purchasing instruments to signal the enemy and to identify the members of the civil self-defence committees; purchasing cutting and thrusting weapons; and purchasing office equipment for the use of the civil self-defence coordination committees.

1071. For *préfectures* not yet affected by war, the Ministry of the Interior suggested that the civil defence fund be used for: purchasing technical and training equipment; contingent transport costs to the *préfecture*; purchasing cutting and thrusting weapons; and purchasing office equipment.¹²⁹¹

Transcript of Prosecution Expert Witness Filip Reyntjens from the Bagosora et al. Trial

1072. The witness is an expert in Rwandan history. According to the witness, it is obvious that bladed weapons or traditional weapons could not have been used against the RPF or any army using firearms. Traditional weapons, however, are very useful for killing unarmed civilians. The witness is unaware of a single example where civilian participants in the Civil Defence Programme engaged the RPF with traditional weapons. Manning roadblocks while armed with traditional weapons could not have, in any sensible way, been used to combat the RPF. Nevertheless, traditional weapons were used in a frightfully efficient fashion to slaughter unarmed civilians.¹²⁹²

1073. The witness believes that if someone insisted on using traditional weapons during the events in question, this person would have known that the only persons you can kill with these weapons are unarmed civilians. The idea of confronting the RPF with traditional weapons is so unreasonable that the persons who organized the Civil Defence Programme

¹²⁹¹ Exhibit P60, "Ministerial Instructions to the *Préfets* of the *Préfectures* on the Use of Funds Earmarked for the Ministry of Interior and Communal Development for Civil Self-Defence of mid-June 1994", pp. 1, 2.

¹²⁹² Exhibit P515-A1, *Bagosora et al.*, T. 15 September 2004, pp. 62, 63.

could not have believed that it would work because they are intelligent people who were involved with the military.¹²⁹³

Deliberations

1074. On its face, the letter is not a manifestation of an agreement by the Interim Government to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population. Instead, it details the funds available for civilian self-defence of the *préfectures* and makes suggestions concerning the use of the funds.

1075. The Chamber considers that the emphasis on arming the *préfectures* with cutting and thrusting weapons facilitated the continuous massacre of Tutsi civilians with traditional weapons such as knives, spears, machetes, hoes, and clubs.¹²⁹⁴ At this stage in the genocide, for the reasons set forth in the analysis of prior documents above, the only reasonable inference is that Karemera knew that the civil defence forces were killing innocent Tutsis with cutting and thrusting weapons.

1076. This inference is reinforced by the fact that it would have been obvious at this stage in the war that cutting and thrusting weapons would have been useless against RPF. By mid-June 1994, the RPF had defeated the Rwandan Armed Forces, *gendarmerie*, and other conventional armed forces of the Interim Government, which had fought with the benefit of artillery, other heavy weapons, and firearms, and routed them from Ruhengeri, Kigali, and most of the north and east of Rwanda. It would have been suicidal for the civilian civil defense militias to engage the RPF with cutting and thrusting weapons, particularly at this juncture in the war. In this regard, the Chamber attaches great weight to the expert testimony of Witness Reyntjens.

1077. Furthermore, unlike the Tutsis in Bisesero, internally-displaced civilian supporters of the Interim Government were not trapped on hilltops and forced to defend themselves against firearms with sticks and stones. Instead, they had an open escape route into the Democratic Republic of Congo, which was protected by the French armed forces of *Opération Turquoise*. Accordingly, the Chamber does not consider that internally-displaced civilian supporters of the Interim Government had an overwhelming need to defend themselves with cutting and thrusting weapons as they fled Rwanda.

1078. Accordingly, the Chamber is convinced that the only reasonable inference is that Karemera knew that the cutting and thrusting weapons requested would be used within Rwanda and away from the battle front, which, at this point in 1994 meant that they would be used to continue committing genocide against Tutsis instead of to assist with civil defence.

Conclusion

1079. In light of all of the above, the Prosecution has proved beyond a reasonable doubt that Karemera's directives on the use of civil defence funds manifest an agreement to

¹²⁹³ Exhibit P515-E1, *Bagosora et al.*, T. 21 September 2004, p. 13.

¹²⁹⁴ See Adjudicated Fact nos. 57 – *Kajelijeli* Trial Judgement; 73- *Ntakirutimana* Trial Judgement; 91- *Musema* Trial Judgement; 92- *Niyitegeka* Trial Judgement; 98- *Kayishema* Trial Judgement, 104- *Musema* Trial Judgement; 106, 107- *Niyitegeka* Trial Judgement.

encourage extremist militiamen and armed civilians to continue to attack, kill, and destroy Rwanda's Tutsi population.

Letter from Édouard Karemera to Anatole Nsengiyumva - 18 June 1994

1080. For the reasons set forth in (V.6.3), the Chamber finds that the Prosecution has proved beyond a reasonable doubt that Karemera's 18 June 1994 letter to Anatole Nsengiyumva regarding *Opération de ratissage à Kibuye* is a manifestation of an agreement to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population.

4. CIVIL DEFENCE PROGRAM

4.1 Meetings of the *Conseils des Ministres* on 27, 29, and 30 April 1994

Allegation in the Indictment

1081. The *conseils des ministres* met on 27, 29, and 30 April 1994 to discuss "civil defence". Prime Minister Jean Kambanda issued a letter on 27 April 1994 that held all citizens responsible for "unmasking the enemy and its accomplices" and ordered or authorised the erection of roadblocks knowing that they would be used to identify and kill Tutsis and their "accomplices".¹²⁹⁵

Undisputed Evidence

1082. It is undisputed that on 27 April 1994, Prime Minister Jean Kambanda issued a letter addressed to all *préfets* entitled "Instructions to Restore Security in the Country", which urged the population, among other issues, to establish roadblocks throughout Rwanda.¹²⁹⁶ It is also undisputed that the *conseils des ministres* convened on the same day.¹²⁹⁷

Deliberations

1083. Recalling the extensive evidence of the widespread and public nature of the genocide, and noting that it was obvious to anyone in Rwanda by 27 April 1994 that Tutsis were being screened and killed at roadblocks,¹²⁹⁸ the Chamber considers that the only reasonable inference is that Jean Kambanda knew that roadblocks were being used to identify and kill Tutsis and their accomplices when he issued the letter.

Conclusion

1084. The Prosecution has proved beyond a reasonable doubt that Prime Minister Jean Kambanda issued instructions to restore security on 27 April 1994, and authorised the establishment of roadblocks, knowing that roadblocks were being used to identify Tutsis and their accomplices for the purpose of killing them.

¹²⁹⁵ Indictment, para. 51.

¹²⁹⁶ Exhibit DNZ183, "Instructions to Restore Security in the Country", p. 3.

¹²⁹⁷ Exhibit DNZ545, "Defence Witness Information Sheet"; Niyitegeka, T. 1 March 2010, p. 32.

¹²⁹⁸ See, e.g., Adjudicated Fact no. 21- *Kajelijeli* Trial Judgement; (V.7).

1085. The Prosecution has not presented any evidence, however, that the *conseils des ministres* convened on 29 and 30 April 1994.

4.2 Meeting on Implementation of Measures for Managing the Civil Defence Force on or about 17 May 1994

Allegation in the Indictment

1086. On or about 17 May 1994, at a cabinet meeting, the Interim Government implemented measures to manage “the civil defence force”, formally entrusting the Ministers of Defence, Interior, Primary and Secondary Education, Youth and Sports, Family Affairs, and Tourism with responsibility for the civil defence programme.¹²⁹⁹

Evidence

Nzirorera Defence Witness Pauline Nyiramasuhuko

1087. The witness¹³⁰⁰ attended the meeting that began on 17 May 1994.¹³⁰¹ Political parties discussed government policies with their ministers on a regular basis before the ministers presented their viewpoints in cabinet meetings.¹³⁰²

Nzirorera Defence Witness Eliézer Niyitegeka

1088. The witness¹³⁰³ participated in the cabinet meeting that began on 17 May 1994. Civil defence was discussed during the meeting. It was a cabinet meeting for cabinet members only.¹³⁰⁴ Political party leaders did not attend.

Édouard Karemera

1089. Édouard Karemera stated that meetings that brought representatives of different political parties together to discuss civil defence never occurred. However, each party was encouraged to discuss civil defence and submit its advice to the government.¹³⁰⁵ He was unaware of any meetings between Interim Government ministers and high-level political party leaders.¹³⁰⁶

Deliberations

¹²⁹⁹ Indictment, para. 56.

¹³⁰⁰ See para. 915, *supra*.

¹³⁰¹ T. 4 May 2010, pp. 33.

¹³⁰² *Id.*, p. 5.

¹³⁰³ See para. 794, *supra*.

¹³⁰⁴ T. 3 March 2010, p. 42.

¹³⁰⁵ T. 21 May 2009, p. 64.

¹³⁰⁶ *Id.*,

1090. It is undisputed that a meeting of Interim Government Ministers began on 17 May 1994 and that civil defence was discussed as testified by Nzirorera Defence Witnesses Pauline Nyiramasuhuko and Eliézer Niyitegeka.¹³⁰⁷

1091. The Prosecution did not offer evidence that the meeting discussed the implementation of the civil defence force. Nor did it demonstrate that the Ministers of Defence, Interior, Primary and Secondary Education, Youth and Sports, Family Affairs, and Tourism were entrusted with responsibility for the civil defence programme during the meeting.

Conclusion

1092. The Prosecution has proved beyond a reasonable doubt that a meeting took place on 17 May 1994 between Interim Government Ministers to discuss the civil defence issue.

1093. The Prosecution has not proved beyond a reasonable doubt, however, that on or about 17 May 1994, the Interim Government implemented measures to manage the civil defence force, formally entrusting the Ministers of Defence, Interior, Primary and Secondary Education, Youth and Sports, Family Affairs, and Tourism with responsibility for the civil defence programme.

5. FUNDRAISING

5.1 Creation of a National Defense Fund

Allegation in the Indictment

1094. On or about 25 April 1994, Félicien Kabuga organized a meeting in Gisenyi to create the *Fonds de Défense Nationale*. By 25 April 1994, Karemera and Ngirumpatse knew or had reason to know that the *Fonds de Défense Nationale* was intended to re-provision armed militias who were committing systematic attacks against Tutsis in Gisenyi and throughout Rwanda. The funds were deposited in an account in the *Banque Commercial de Rwanda* so that weapons could be purchased for the army and the *Interahamwe*. Shortly thereafter, Lt. Col. Anatole Nsengiyumva distributed weapons to militiamen in Gisenyi that were used to kill Tutsis.¹³⁰⁸

Evidence

Letter Dated 25 April 1994 from Félicien Kabuga to the Interim Government

1095. In the letter, Félicien Kabuga informs the Interim Government of the decision to create a *Fonds de Défense Nationale* in Gisenyi. The letter states that the inhabitants of Gisenyi who support the Interim Government met on 24 and 25 April 1994 to create a national defense fund to assist the armed forces and its supporters in the fight against “the enemy and their accomplices.” One of the purposes of the fund was to make “traditional

¹³⁰⁷ Nyiramasuhuko, T. 4 May 2010, p. 33; Niyitegeka, T. 3 March 2010, p. 42; Exhibit P224, “Pauline Nyiramasuhuko’s Diary”, pp. 30-32; Exhibit P555, “Radio Broadcast 18 May 1994”, p. 5. Pauline Nyiramasuhuko explained during her testimony that the meeting began on 17 May 1994 and continued until 26 May 1994. The Chamber notes that the French version of the transcripts mentions 26 May and not 25 May 1994.

¹³⁰⁸ Indictment, para. 50.

weapons (bows and arrows, spears, swords...)” available in large quantities for Rwandan youths to use in guerrilla warfare.¹³⁰⁹

Letter dated 20 May 1994 from the Creators of the Fonds de Défense Nationale to the Prime Minister

1096. In the letter, the creators of the *Fonds de Défense Nationale* request the Interim Government to extend the idea to a permanent, nationwide fund. It states that the fund was created to assist the armed forces and civilian population in its fight against “the enemy, the RPF INKOTANYI”.¹³¹⁰

UNAMIR Outgoing Code Cable, 8 April 1994

1097. In the cable, Special UN Representative Jacques Roger Booh-Booh informs the U.N. Secretary General of a “ruthless campaign of ethnic cleansing and terror” that had already claimed “quite heavy” civilian casualties that were “primarily ethnic in nature. Booh-Booh was able to discern these facts amid the loss of UNAMIR’s entire telephone system and pervasive disinformation and faulty reporting by local news sources.”¹³¹¹

UNAMIR Outgoing Code Cable, 9 April 1994

1098. In the cable, Special UN Representative Jacques Roger Booh-Booh informs the U.N. Secretary General that the *Interahamwe* were committing atrocities in Rwanda.¹³¹²

Transcript of Prosecution Expert Witness Filip Reyntjens from the Bagosora et al. Trial

1099. The witness is an expert in Rwandan history. According to the witness, it is obvious that bladed weapons or traditional weapons could not have been used against the RPF or any army using firearms. Traditional weapons, however, are very useful for killing unarmed civilians. The witness is unaware of a single example where civilian participants in the Civil Defence Programme engaged the RPF with traditional weapons. Manning roadblocks while armed with traditional weapons could not have, in any sensible way, been used to combat the RPF. Nevertheless, traditional weapons were used in a frightfully efficient fashion to slaughter unarmed civilians.¹³¹³

1100. The witness believes that if someone insisted on using traditional weapons during the events in question, this person would have known that the only persons you can kill with these weapons are unarmed civilians. The idea of confronting the RPF with traditional weapons is so unreasonable that the persons who organized the Civil Defence Programme could not have believed that it would work because they are intelligent people who were involved with the military.¹³¹⁴

Édouard Karemera

¹³⁰⁹ Exhibit P200, “Message to the Government”.

¹³¹⁰ Exhibit P203, “Letter from Creators of National Defense Fund to the Prime Minister”.

¹³¹¹ Exhibit DNZ225, “Outgoing Code Cable, 8 April 1994”.

¹³¹² Exhibit P141, “Outgoing Code Cable, 9 April 1994”.

¹³¹³ Exhibit P515-A1, *Bagosora et al.*, T. 15 September 2004, pp. 62, 63.

¹³¹⁴ Exhibit P515-E1, *Bagosora et al.*, T. 21 September 2004, p. 13.

1101. Karemera testified that a meeting occurred on 25 April 1994 in Gisenyi for the purpose of collecting funds to support the Rwandan Armed Forces. Félicien Kabuga organized the meeting and it was attended by major traders who were displaced but wished to stay in the country. Kabuga wrote to the Prime Minister to inform him that three million Rwandan francs had been collected. The funds were deposited at the *Banque Commerciale du Rwanda* and *Banque de Kigali*, and Kabuga communicated the account numbers to the Prime Minister. Kabuga urged the government to follow this example and request other Rwandans to deposit funds in those accounts. Karemera was in Gitarama at the time of the meeting, and was informed of it after it had taken place. He contributed to the account.¹³¹⁵

Matthieu Ngirumpatse

1102. By 9 April 1994, Ngirumpatse and his consorts had “obtained a lot of information” regarding the killings in Rwanda. He asserted that the Interim Government and its associates exchanged information, which they had obtained from the army and *gendarmérie*, during its first cabinet meeting on 9 April 1994. According to Ngirumpatse, “everyone was made aware of the scope of the killings that were being perpetrated, killings which had started on the 7th during the day...[f]rom the 9th we had a great deal of information.”¹³¹⁶

Deliberations

1103. It is undisputed that the *Fonds de Défense Nationale* was created on 25 April 1994, nearly three weeks after the genocide began. The Chamber acknowledges that the creation of a national defense fund would not have been a criminal act if it had been limited to financing the war against the RPF. However, the fund was also set up to provide militias with traditional weapons at a point in time when the killings of Tutsi civilians were extremely widespread and public. Moreover, the Chamber has taken judicial notice that the vast majority of the killers were *Interahamwe* and other groups of armed civilians.¹³¹⁷ It is also clear that the killers routinely used traditional weapons such as knives, spears, machetes, hoes, and clubs to commit the massacres.¹³¹⁸ These are precisely the types of weapons Félicien Kabuga intended to re-provision the youths with, once the fund was established.

1104. Taking into account the scale and public nature of the atrocities in Rwanda by 9 April 1994, as evidenced by the cable codes sent to the Secretary General of the UN, and noting Ngirumpatse’s own testimony that he and his colleagues were well aware of the killings by that date, it would be impossible for Karemera and him to claim, two weeks later when the fund was created, that they did not know or have reason to know that the militiamen and civilians to be supplied by the fund were killing Tutsis throughout the country. This conclusion is supported by the complete lack of evidence throughout the

¹³¹⁵ T. 21 May 2009, p. 20.

¹³¹⁶ T. 26 January 2011, p. 41.

¹³¹⁷ See Adjudicated Fact nos. 20, 22, 49, 57-59, 61- *Kajelijeli* Trial Judgement; 29- *Rutaganda* Trial Judgement; 65, 144, 145- *Semanza* Trial Judgement; 70, 72, 73, 120, 121 – *Ntakirutimana* Trial Judgement; 86, 91, 94, 111-113 – *Musema* Trial Judgement; 88, 92, 102, 106, 107, 137 – *Niyitegeka* Trial Judgement; 95, 96, 98, 114, 115- *Kayishema* Trial Judgement.

¹³¹⁸ See Adjudicated Fact nos. 57- *Kajelijeli* Trial Judgement, 73- *Ntakirutimana* Trial Judgement, 91, 104- *Musema* Trial Judgement, 92, 106, 107- *Niyitegeka* Trial Judgement, 98- *Kayishema* Trial Judgement.

record of even one instance where militiamen or civilians engaged the RPF forces with traditional weapons and farm tools. In this regard, the Chamber attaches great weight to the expert testimony of Witness Reyntjens.

1105. The Prosecution does not allege that Karemera attended the 25 April 1994 meeting or that he learned of it immediately after it occurred. Therefore, Karemera's arguments in this regard are irrelevant.¹³¹⁹ Karemera's claim that he did not contribute to the fund to arm the military, *Interahamwe*, or militias¹³²⁰ is not believable. The fund was established for the express purpose of further arming the military, militias, and civilians.

Conclusion

1106. The Prosecution has proved beyond a reasonable doubt that on or about 25 April 1994, Félicien Kabuga organized a meeting in Gisenyi to create the *Fonds de Défense Nationale*. By 25 April 1994, Karemera and Ngirumpatse knew or had reason to know that the fund was intended to re-provision armed militias who were committing systematic attacks against Tutsis throughout Rwanda. The funds were deposited in an account in the *Banque Commercial de Rwanda* so that weapons could be purchased for the army and the *Interahamwe*.

5.2 Meetings with Influential Businessmen in June 1994

Introduction

Allegation in the Indictment

1107. On several occasions in June 1994, Karemera and Ngirumpatse together with Joseph Nzirorera participated in meetings with influential businessmen linked to the MRND political party and "Hutu Power". The purpose of these meetings was to raise funds to buy weapons to be distributed to soldiers, *Interahamwe*, and other militias. The meetings took place at the *Hôtel Meridien* and in a location alternatively identified as the "*Palais MRND*" and the "*préfecture* office" adjacent to the Hotel Palm Beach in Gisenyi. The meetings took place around the time that the Interim Government had relocated to Gisenyi, when many influential Rwandans and senior civil servants had either accompanied the Interim Government or fled to Gisenyi themselves. At that time, Karemera and Ngirumpatse knew or had reason to know that *Interahamwe* and other militias were systematically attacking the civilian Tutsi population in Gisenyi and throughout Rwanda, and that equipping militiamen would lead to further killings of civilians.¹³²¹

Evidence

Prosecution Witness XBM

1108. The witness¹³²² testified that he attended a meeting sometime around 20 June 1994 at the *Palais MRND* in Gisenyi *préfecture* to raise money to assist the soldiers. The meeting

¹³¹⁹ Karemera Closing Brief, para. 583.

¹³²⁰ *Id.*, para. 584.

¹³²¹ Indictment, para. 59.

¹³²² See para. 302, *supra*.

was organised by MRND supporters and members of the other parties allied with the MRND. A large number of people were present, including Théoneste Bagosora, Anatole Nsengiyumva, and Banzi Wellars, but the witness did not see any of the Accused or Nzirorera there.¹³²³ Members of the population had come to support the army because they had run out of ammunition.¹³²⁴ Those present at the meeting contributed a total of 7 million francs to the fundraising effort.¹³²⁵

Nzirorera Defence Witness Anatole Nsengiyumva

1109. The witness¹³²⁶ testified that there was no meeting in May or June 1994 in Gisenyi to mobilise funds for war.¹³²⁷ Bagosora was in South Africa and the Seychelles at that time.¹³²⁸

1110. The witness used to see Ngirumpatse at the Meridien Hotel after 6 April 1994.¹³²⁹

Nzirorera Defence Witness Hassan Ngeze

1111. The witness was a founding member of the CDR¹³³⁰ and editor-in-chief of *Kangura* newspaper.¹³³¹ He was convicted by the Tribunal for his role in the genocide.¹³³²

1112. The witness never attended an MRND meeting around 20 June 1994 at the *Palais MRND* in Gisenyi at which Bagosora spoke.¹³³³ No political or public meetings took place in Gisenyi unless they were organised by the people in charge of security.¹³³⁴

Nzirorera Defence Witness Théoneste Bagosora

1113. The witness¹³³⁵ testified that from 23 May to 22 June 1994, he was “on an official mission outside Rwanda”.¹³³⁶ He never heard of any meeting at the MRND Palace in Gisenyi to raise funds for the war.¹³³⁷ He never attended a meeting at the Hotel Meridien in June 1994.¹³³⁸

Deliberations

¹³²³ T. 4 July 2006, pp. 5, 6; T. 3 July 2006, p. 36.

¹³²⁴ T. 4 July 2006, p. 7.

¹³²⁵ T. 4 July 2006, p. 5; T. 5 July 2006, p. 48.

¹³²⁶ See para. 315, *supra*.

¹³²⁷ T. 28 April 2010, p. 31.

¹³²⁸ *Id.*

¹³²⁹ T. 29 April 2010, p. 19.

¹³³⁰ *Id.*, p. 13.

¹³³¹ T. 23 April 2010, p. 16. At the time of his testimony, he had been convicted by the Tribunal for his role in the genocide. See T. 23 April 2010, p. 33.

¹³³² *Nahimana et al.* Appeal Judgement, Disposition.

¹³³³ Exhibit DNZ790, “Statement by Hassan Ngeze dated 24 May 2008”, p. 1.

¹³³⁴ *Id.*

¹³³⁵ See para. 545, *supra*.

¹³³⁶ T. 28 June 2010, p. 43.

¹³³⁷ *Id.*, p. 47.

¹³³⁸ *Id.*, p. 48.

1114. There is no evidence that Karemera, Ngirumpatse, or Nzirorera participated in meetings with influential businessmen to raise funds to buy weapons in June 1994.

Conclusion

1115. The Prosecution has not proved beyond a reasonable doubt that in June 1994 Karemera, Ngirumpatse, or Nzirorera participated in meetings with influential businessmen linked to the MRND and Hutu Power to raise funds to buy weapons to distribute to soldiers, *Interahamwe*, and other militias.

6. ATTACKS AGAINST THE TUTSI POPULATION IN BISESERO HILLS

6.1 Karemera's Address in Mwendo Commune Urging the Slaughter of Tutsis in Bisesero Hills

Allegation in the Indictment

1116. Towards the end of April 1994, Karemera arrived in Mwendo *commune*, Kibuye *préfecture*. Local authorities and a small crowd gathered to greet him. He addressed the audience and explained that Tutsis in Bisesero were attacking Hutus and that they should go to Bisesero to help Hutus there to kill Tutsis "now that [they] had finished Tutsis of this area and that the problem is there in Bisesero..."¹³³⁹

Karemera's Submission on Notice

1117. Karemera submits that this allegation has not been sufficiently pleaded because the indicated time of the alleged gathering is too imprecise and because the exact location of the gathering was not in the Indictment.¹³⁴⁰

Chamber's Decision on Notice

1118. Paragraph 64.1 alleges that Karemera addressed a crowd of people in Mwendo *commune* in late April 1994. In the view of the Chamber, while the time of the gathering indicated in paragraph 64.1 is sufficiently precise, the location of the gathering was not pleaded with enough specificity to enable Karemera to prepare an adequate defence. The Chamber therefore finds this paragraph of the Indictment to be defective with regard to the location of the gathering.

1119. The Chamber recalls that any prejudice that may have been caused to an accused by a defective indictment may be cured by timely, clear, and consistent information provided to the accused by the Prosecution.¹³⁴¹ Attached to the Prosecution Pre-Trial Brief was a summary of Witness AMO's anticipated testimony. The English and French versions of the

¹³³⁹ Indictment, para. 64.1.

¹³⁴⁰ Karemera Closing Brief, paras. 166, 353.

¹³⁴¹ *Kupreškić et al.* Appeal Judgement, para. 114 ("The Appeals Chamber, however, does not exclude the possibility that, in some instances, a defective indictment can be cured if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her. Nevertheless, in light of the factual and legal complexities normally associated with the crimes within the jurisdiction of this Tribunal, there can only be a limited number of cases that fall within that category."). See also *Ntakirutimana* Appeal Judgement, para. 27.

summary indicated that the witness was from Kibuye and would testify that Karemera, arriving from Mwendo accompanied by the *bourgmestre* of Mwendo *commune* and by AMO's neighbour, met with a number of people at "Gasenyi centre".¹³⁴²

1120. During trial, Witness AMO testified that the gathering took place at "Gasenyi centre" in Mwendo *commune*.¹³⁴³ Despite the misspelling in the summary of the anticipated testimony of Witness AMO, the Chamber finds that it was apparent from the context in the summary that Witness AMO would testify about Gasenyi centre in Mwendo *commune*, and not about a location in Gisenyi *préfecture*. The Chamber also notes that Karemera was not misled by the misspelling since he called several witnesses to testify about Gasenyi centre. The Chamber, therefore, finds that the lack of specificity in the Indictment was cured by the notice given in the summary of the anticipated testimony of Witness AMO.

Evidence

Prosecution Witness AMO

1121. The witness¹³⁴⁴ testified that Karemera came to the Gasenyi commercial centre in Mwendo *commune*, dressed in military uniform, in late April 1994.¹³⁴⁵ The witness estimated that there were between 50 and 100 people at the centre when Karemera arrived.¹³⁴⁶ Karemera met with a number of acquaintances, including Téléphore Ndamage who represented the MRND at the level of the *préfecture* and who was also in charge of two primary schools in the area.¹³⁴⁷ Also in attendance was the *bourgmestre* of Mwendo *commune* Muragizi, a businessman named Thomas, and numerous ordinary members of the population.¹³⁴⁸ According to the authorities present, Karemera was just passing through and only stayed in Gasenyi for an hour.¹³⁴⁹

1122. Ndamage told Karemera that there were no problems in the region and that the Tutsis had already been exterminated. Ndamage stated that problems only persisted in Bisesero *secteur*, where Tutsis were killing Hutus. Karemera replied, "[i]f there are no problems here, why, then, aren't you going to support the others in Bisesero? What are you doing?"¹³⁵⁰ The witness was standing approximately five to ten metres away from Karemera and he could hear the conversation clearly.¹³⁵¹ The witness understood Karemera to mean that they should go and kill Tutsis.¹³⁵²

1123. Those who had assembled in the Gasenyi centre, particularly youngsters and able-bodied persons, heeded Karemera's invitation and went to Bisesero *secteur* to assist the Hutus.¹³⁵³ In particular, the witness recalled that Mathias Barigira went to Bisesero after

¹³⁴² Prosecution Pre-Trial Brief, Annex, p. 20682.

¹³⁴³ T. 30 November 2007, pp. 9, 10; T. 3 December 2007, p. 25.

¹³⁴⁴ See para. 977, *supra*.

¹³⁴⁵ T. 30 November 2007, p. 9; T. 3 December 2007, p. 25.

¹³⁴⁶ T. 30 November 2007, p. 10; T. 3 December 2007, p. 25.

¹³⁴⁷ T. 30 November 2007, p. 11; T. 3 December 2007, p. 26.

¹³⁴⁸ T. 30 November 2007, pp. 10, 11.

¹³⁴⁹ *Id.*, p. 11.

¹³⁵⁰ T. 30 November 2007, p. 10; T. 3 December 2007, pp. 25, 26.

¹³⁵¹ T. 30 November 2007, p. 12.

¹³⁵² *Id.*, p. 10.

¹³⁵³ *Id.*, pp. 10, 12.

Karemera spoke to people in Gasenyi.¹³⁵⁴ The witness also identified Nkurunziza, his brother Nzibabaza, Buyenzi, and Budaraza as among those who participated in the killings in Bisesero.¹³⁵⁵

Karemera Defence Witness CTB

1124. The witness was a *conseiller* in his *secteur* and a member of the MRND in 1994.¹³⁵⁶ He testified that he did not see Karemera in the Gasenyi commercial centre and there was no meeting in the centre between April and July 1994.¹³⁵⁷

Karemera Defence Witness RQU

1125. The witness was a trader in the Gasenyi commercial centre in April 1994.¹³⁵⁸ He refuted the suggestion that Karemera came to the Gasenyi centre during April 1994 and incited the population to kill Tutsis. The witness was working in the Gasenyi centre during the relevant period but never saw Karemera there.¹³⁵⁹

Karemera Defence Witness XOY

1126. The witness lived in the Gasenyi commercial centre, where her husband operated a business, from 13 April to June 1994. From her house, she could see all the activities that were taking place in the Gasenyi centre.¹³⁶⁰ She never saw or heard about Karemera holding a meeting in the Gasenyi centre. She stated that had Karemera visited the Gasenyi centre and assembled the local inhabitants, she and her husband would have heard about it.¹³⁶¹

Karemera Defence Witness XXW

1127. The witness was a resident of Mwendo *commune* in 1994.¹³⁶² He testified that he knew Karemera but did not see him in the *commune* during April 1994.¹³⁶³

Édouard Karemera

1128. Karemera testified that he passed through Gasenyi commercial centre at around 8.00 a.m. in the morning of 3 May 1994 on his way from his home in Nyarusange, Mwendo *commune*, to the *préfecture* hall in Kibuye town.¹³⁶⁴ When asked if he recalled seeing anybody in Gasenyi centre when he passed through, Karemera stated:

¹³⁵⁴ *Id.*, p. 13.

¹³⁵⁵ T. 30 November 2007, p. 12; T. 3 December 2007, p. 26.

¹³⁵⁶ T. 14 April 2008, pp. 54, 55; T. 15 April 2008, p. 17.

¹³⁵⁷ T. 14 July 2008, p. 58.

¹³⁵⁸ T. 16 July 2008, p. 28 (closed session).

¹³⁵⁹ T. 16 July 2008, pp. 31, 32; T. 6 April 2009, p. 20.

¹³⁶⁰ T. 31 March 2009, p. 7.

¹³⁶¹ *Id.*, p. 4.

¹³⁶² *Id.*, p. 19.

¹³⁶³ *Id.*, p. 20.

¹³⁶⁴ T. 25 May 2009, pp. 10, 11.

"Somebody by what name? There are people. I mean, it's a centre. If you go through there, there are always people there who are moving about. At 8 o'clock people were rising. They are early risers there. So who would you have loved me to have seen?"¹³⁶⁵

1129. Karemera recalled that there were three roadblocks or barriers in Gasenyi centre, but there was no one manning them. At each roadblock, Karemera's escort got out of their vehicle and lifted the barrier to enable them to pass.¹³⁶⁶

Deliberations

1130. The Prosecution does not allege that Karemera held a pre-arranged meeting at Gasenyi Center and Prosecution Witness AMO does not make this claim. Moreover, Karemera admits that he was in the vicinity and passed the centre around the time of the alleged gathering. The Chamber, therefore, attaches little weight to the testimony of Defence Witnesses CTB, RQU, XOY and XXW.

1131. According to Witness AMO, Karemera would have stepped out of his car and exchanged information and views with people, including local authorities, who flocked to greet him. Witness AMO was part of the crowd. The Chamber does not find it safe to base a finding regarding what Karemera might have said under such circumstances on the testimony of Witness AMO without any corroboration.

Conclusion

1132. The Prosecution has not proved beyond a reasonable doubt that Karemera told a group of local authorities and members of the population to go to Bisesero to help Hutus to kill Tutsis when he visited Mwendo *commune* in late April 1994.

6.2 Massacre of Tutsis in Bisesero Hills

Allegation in the Indictment

1133. Throughout April, May, and June 1994, in several large scale attacks, thousands of Tutsi civilians who had taken refuge in Bisesero Hills were killed, including Tutsi women and children. The attackers were local people reinforced by groups of *Interahamwe* and *gendarmes* brought in from Gisenyi, Cyangugu, and Kigali. The attacks were organised by local officials in political parties and the territorial administration. One attack, in particular, which took place on 13 and 14 May, was organised by national and regional political authorities from Kibuye, including Minister of Information Eliezer Niyitegeka, Kibuye *préfet* Clement Kayishema, businessman Obed Ruzindana, and several *bourgmestres* and *conseillers*. They arrived in Bisesero on 13 May accompanied by *Interahamwe* militiamen, soldiers, and *gendarmes* and ordered them to surround, search out, and comb the hills to kill Tutsis with firearms, machetes, and clubs. These authorities were known to collaborate with Karemera, and were present for Karemera's address during the meeting at the Kibuye *préfecture* office on 3 May 1994.¹³⁶⁷

¹³⁶⁵ *Id.*, p. 11.

¹³⁶⁶ *Id.*, pp. 11, 12.

¹³⁶⁷ Indictment, paras. 52, 54, 55.

Karemera's Submissions on Notice

1134. Karemera submits that he cannot be convicted of his alleged personal participation in the attacks because it is not pleaded in the Indictment. Paragraph 64.2 identifies a number of national and regional authorities allegedly present in Bisesero, without mentioning the presence of Karemera among them.¹³⁶⁸

Chamber's Decision on Notice

1135. The Prosecution's assertion that Karemera was among the regional authorities who were present in Bisesero and appeared to be coordinating the attacks¹³⁶⁹ clearly goes further than the specific allegation in paragraph 64.2 of the Indictment. The Chamber, however, recalls that paragraph 64 of the Indictment, which introduces the Bisesero allegations, claims that Karemera "planned, prepared, ordered, instigated and aided and abetted attacks against the Tutsi population in Kibuye prefecture".

1136. The Chamber, further, notes that paragraph 101 of the Pre-Trial Brief and the attached summaries of the anticipated testimony of Witnesses AMM and AMN indicate that the witnesses would testify that Karemera was personally involved at the scene of the attacks.¹³⁷⁰

1137. During trial, Witnesses AMN and AMM testified that Karemera was present in Bisesero around 13 May and appeared to be among the authorities who were directing the attacks against Tutsis at that time.¹³⁷¹ Both witnesses also testified to Karemera's presence in Bisesero on at least one subsequent occasion during the attacks.¹³⁷² Defence Counsel objected to the introduction of this testimony on the basis that Karemera's direct involvement at the scene of the Bisesero attacks was not alleged in the Indictment.¹³⁷³

1138. In its oral decision regarding Witness AMM's testimony, the Chamber held:

The Chamber finds that the alleged fact that Karemera was present at the crime scene does not amount to a radical transformation of the Prosecution's case. Thus, the indictment was cured by paragraph 101 of the Pre-Trial Brief [of] 2005, the summary of Witness AMM's testimony and the will-say notice of 19 December 2006. Therefore, the Defence has been put on adequate notice in a timely manner to allow the Accused to know and prepare the case against him. Consequently, the Chamber denies the Defence's oral motion to exclude Witness AMM's testimony with respect to Karemera's presence at the crime scene in the Bisesero area on the 13th of May 1994.¹³⁷⁴

1139. The Chamber adopted a similar approach to the testimony of Witness AMN, treating it as falling within the notice that the Prosecution had provided to the Defence in its Pre-Trial Brief.¹³⁷⁵

¹³⁶⁸ Karemera Closing Brief, paras. 167, 168.

¹³⁶⁹ Prosecution Closing Brief, para. 134.

¹³⁷⁰ Prosecution Pre-Trial Brief, para. 101, Annex pp. 20683, 20684.

¹³⁷¹ T. 1 October 2007, pp. 24-26; T. 19 June 2007, p.8; T. 20 June 2007, pp. 23, 33, 37.

¹³⁷² T. 19 June 2007, pp. 21, 22; T. 1 October 2007, pp. 25, 26, 36, 37.

¹³⁷³ T. 19 June 2007, pp. 9-17, 21; T. 1 October 2007, pp. 26, 27, 33, 34.

¹³⁷⁴ T. 19 June 2007, p. 16. *see also* p. 21.

¹³⁷⁵ T. 1 October 2007, pp. 28, 35, 36.

1140. The Chamber sees no reason to reconsider its previous decisions on this issue. Accordingly, the Chamber finds that Karemera had sufficient notice that the Prosecution would present evidence of his presence and direct participation in the attacks in Bisesero.

Evidence

Adjudicated Facts

1141. Regular attacks occurred in the Bisesero region from 9 April 1994 until about 30 June 1994, and thousands of Tutsis were killed, injured, and maimed there.¹³⁷⁶ The attackers consisted of *Interahamwe*, *gendarmes*, soldiers, and civilians.¹³⁷⁷ The *Interahamwe*, *gendarmes*, and soldiers were usually armed with guns and wore uniforms. The civilians were usually armed with clubs, machetes, bows, arrows, spears, hoes, knives, sharpened bamboo sticks, and other traditional weapons.¹³⁷⁸

1142. The most severe attacks occurred in the Bisesero area around 13 and 14 May 1994, after an apparent two-week lull in the attacks.¹³⁷⁹

Muyira Hill, May 1994

1143. On 13 May 1994, a large scale attack occurred on Muyira Hill against up to 40,000 Tutsi refugees.¹³⁸⁰ The attack started in the morning, sometime between 7.00 and 10.00 a.m.¹³⁸¹ The attackers were armed with firearms, grenades, rocket launchers, and traditional weapons, and sang anti-Tutsi slogans.¹³⁸² Thousands of unarmed Tutsi men, women, and children were killed during the attack at the hands of the assailants, and many were forced to flee for their survival.¹³⁸³

1144. Another large scale attack against Tutsi civilians occurred on Muyira Hill on 14 May 1994. The attackers, numbering as many as 15,000, were armed with traditional weapons, firearms, and grenades, and they sang slogans.¹³⁸⁴ The attackers comprised thousands of *Interahamwe*, soldiers, policemen, and Hutu civilians.¹³⁸⁵ They were carrying guns, spears, sharpened bamboo sticks, clubs, and machetes.¹³⁸⁶ They were transported in ONATRACOM buses, lorries belonging to COLAS, MINITRAP vehicles, buses, pick-ups, vehicles from the Gisovu Tea Factory, and vehicles commandeered from Tutsis.¹³⁸⁷ These vehicles parked at Kucyapa. The attackers were chanting "*Tubatsembatsembe*", which means "Let's exterminate them", a reference to the Tutsis.¹³⁸⁸

¹³⁷⁶ Adjudicated fact no. 70 – *Ntakirutimana* Trial Judgement.

¹³⁷⁷ Adjudicated fact no. 72 – *Ntakirutimana* Trial Judgement.

¹³⁷⁸ Adjudicated fact no. 73 – *Ntakirutimana* Trial Judgement.

¹³⁷⁹ Adjudicated fact no. 85 – *Kayishema* Trial Judgement.

¹³⁸⁰ Adjudicated fact no. 86 – *Musema* Trial Judgement.

¹³⁸¹ Adjudicated fact no. 87 – *Musema* Trial Judgement; 99 – *Niyitegeka* Trial Judgement.

¹³⁸² Adjudicated fact no. 91 – *Musema* Trial Judgement.

¹³⁸³ Adjudicated fact no. 94 – *Musema* Trial Judgement.

¹³⁸⁴ Adjudicated fact no. 104 – *Musema* Trial Judgement.

¹³⁸⁵ Adjudicated fact no. 88 – *Niyitegeka* Trial Judgement.

¹³⁸⁶ Adjudicated fact no. 92 – *Niyitegeka* Trial Judgement.

¹³⁸⁷ Adjudicated fact no. 89 – *Niyitegeka* Trial Judgement.

¹³⁸⁸ Adjudicated fact no. 90 – *Niyitegeka* Trial Judgement.

1145. *Préfet* Kayishema was present at the massacres at Muyira Hill and its vicinity beginning around 13 May 1994.¹³⁸⁹ Kayishema and Ruzindana arrived at the head of the convoy of vehicles that transported soldiers, members of the *Interahamwe*, communal police, and armed civilians.¹³⁹⁰ Kayishema signalled the start of the attacks by firing a shot into the air, directed the assaults by dividing the assailants into groups, headed one group of them as it advanced up the hill, and verbally encouraged the attackers through a megaphone.¹³⁹¹ Ruzindana also played a leadership role, distributing traditional weapons, leading a group of attackers up the hill, and shooting at the refugees.¹³⁹² Ruzindana orchestrated the massacre at the hole near Muyira Hill, and the assault commenced upon his instruction.¹³⁹³

1146. Musema was one of the leaders of the attackers coming from Gisovu on 13 May. He drove his red Pajero to the attack. He was armed with a rifle, which he used during the attack.¹³⁹⁴

1147. Eliézer Niyitegeka was also one of the leaders in the attack commencing 13 May.¹³⁹⁵ He was armed with a gun and was shooting at the Tutsi refugees at the hill. In addition, Niyitegeka instructed the assailants during the attack, showing them where to go and how to attack the refugees.¹³⁹⁶ Niyitegeka was in the front row leading the attackers, together with other leaders.¹³⁹⁷

1148. In the evening of 13 May, after the attack against Tutsi refugees at Muyira Hill, Niyitegeka held a meeting at Kucyapa for the purpose of deciding on the programme of killings for the next day and to organise those killings against the Tutsis in Bisesero, who numbered approximately 60,000. The meeting was attended by about 5,000 people.¹³⁹⁸ Using a loudspeaker, Niyitegeka thanked attackers for their participation and commended them for their “good work”, which referred to the killing of Tutsi civilians. Niyitegeka told them to share the people’s property and cattle, and to eat meat so that they would be strong to return the next day to continue the work, that is, the killing.¹³⁹⁹

1149. On the morning of 14 May, Niyitegeka and others, together with attackers, arrived at Muyira Hill and parked their vehicles at Kucyapa.¹⁴⁰⁰

Mumataba Hill, May 1994

1150. Musema participated in an attack on Mumataba hill in mid-May 1994. The assailants, numbering between 120 and 150, included tea factory employees, armed with traditional weapons, and communal policemen.¹⁴⁰¹ In the presence and with the knowledge

¹³⁸⁹ Adjudicated fact no. 95 – *Kayishema* Trial Judgement.
¹³⁹⁰ Adjudicated fact no. 96 – *Kayishema* Trial Judgement.
¹³⁹¹ Adjudicated fact no. 97 – *Kayishema* Trial Judgement.
¹³⁹² Adjudicated fact no. 98 – *Kayishema* Trial Judgement.
¹³⁹³ Adjudicated fact no. 109 – *Kayishema* Trial Judgement.
¹³⁹⁴ Adjudicated fact no. 93 – *Musema* Trial Judgement.
¹³⁹⁵ Adjudicated fact no. 99 – *Niyitegeka* Trial Judgement.
¹³⁹⁶ Adjudicated fact no. 100 – *Niyitegeka* Trial Judgement.
¹³⁹⁷ Adjudicated fact no. 101 – *Niyitegeka* Trial Judgement.
¹³⁹⁸ Adjudicated fact no. 102 – *Niyitegeka* Trial Judgement.
¹³⁹⁹ Adjudicated fact no. 103 – *Niyitegeka* Trial Judgement.
¹⁴⁰⁰ Adjudicated fact no. 105 – *Niyitegeka* Trial Judgement.
¹⁴⁰¹ Adjudicated fact no. 111 – *Musema* Trial Judgement.

of Musema, tea factory vehicles transported attackers to the location. The attack was launched on the blowing of whistles, and the targets of the attack were 2,000 to 3,000 Tutsis who had sought refuge in and around a certain Sakufe's house.¹⁴⁰²

Nyarutovu Hill, May 1994

1151. Elizaphan Ntakirutimana brought armed attackers in the rear hold of his vehicle to Nyarutovu Hill one day in the middle of May 1994. The group was searching for Tutsi refugees and chasing them. Elizaphan Ntakirutimana pointed out the fleeing refugees to the attackers who then chased the refugees singing "Exterminate them; look for them everywhere; kill them; and get it over with, in all the forests."¹⁴⁰³

Nyakavumu Cave, May 1994

1152. Musema participated in the attack on Nyakavumu Cave at the end of May 1994. The assailants closed off the entrance to the cave with wood and leaves, which they then set on fire. Over 300 Tutsi civilians who had sought refuge in the cave died as a result of the fire.¹⁴⁰⁴

1153. At the cave, Kayishema was directing the siege generally and Ruzindana was commanding the attackers from Ruhengeri; both were giving instructions to the attackers and orchestrating the attack.¹⁴⁰⁵ *Gendarmes*, members of the *Interahamwe*, and various local officials were present and participated in the attack.¹⁴⁰⁶

Events in June 1994

1154. Three meetings were convened in Kibuye town in June 1994.¹⁴⁰⁷ The first took place around 10 June in the conference room of the prefectural office. The meeting started between 10.00 and 11.00 a.m.¹⁴⁰⁸ It was attended by *Interahamwe* and various officials, including *préfet* Kayishema, Ruzindana, Musema, Eliézer Niyitegeka, Gérard Ntakirutimana, and the *bourgmestres* of the *communes* surrounding Bisesero, seated in the front row.¹⁴⁰⁹

1155. Ruzindana took the floor and explained to the participants that the meeting was aimed at evaluating their progress in killing Tutsis in the Bisesero area and to decide what still needed to be done to finish that task.¹⁴¹⁰

1156. Gérard Ntakirutimana also took the floor, saying that the problem they faced in completing the work was that they had insufficient guns and ammunition. Like other speakers at the meeting, Ntakirutimana spoke through a microphone connected to

¹⁴⁰² Adjudicated fact no. 112 – *Musema* Trial Judgement.

¹⁴⁰³ Adjudicated fact no. 116 – *Ntakirutimana* Trial Judgement.

¹⁴⁰⁴ Adjudicated fact no. 113 – *Musema* Trial Judgement.

¹⁴⁰⁵ Adjudicated fact no. 114 – *Kayishema* Trial Judgement.

¹⁴⁰⁶ Adjudicated fact no. 115 – *Kayishema* Trial Judgement.

¹⁴⁰⁷ Adjudicated fact no. 118 – *Ntakirutimana* Trial Judgement.

¹⁴⁰⁸ Adjudicated fact no. 119 – *Ntakirutimana* Trial Judgement.

¹⁴⁰⁹ Adjudicated fact no. 120 – *Ntakirutimana* Trial Judgement.

¹⁴¹⁰ Adjudicated fact no. 121 – *Ntakirutimana* Trial Judgement.

loudspeakers.¹⁴¹¹ At those meetings, Ntakirutimana also participated in the distribution of weapons, discussed the planning of attacks in Bisesero, was assigned a role in such an attack, and reported back on its success.¹⁴¹²

1157. There was a second meeting that took place about a week later at the same venue. It also started between 10.00 and 11.00 a.m., and lasted about four hours.¹⁴¹³ The same officials who attended the first meeting also attended the second. Many other persons, including *Interahamwe*, were present, both inside and outside the room.¹⁴¹⁴

1158. Gérard Ntakirutimana was named as a member of the “Ngoma group”, which included Enos Kagaba and Mathias Nginshuti and was to attack Murambi.¹⁴¹⁵ Niyitegeka promised to provide weapons for the killing of Tutsis in Bisesero.¹⁴¹⁶ The meeting was held to permit Niyitegeka to answer questions posed at the previous meeting, including questions relating to the promise of weapons made at the previous meeting.¹⁴¹⁷

1159. During the second meeting, Niyitegeka distributed the weapons to group representatives for use in killings in Bisesero.¹⁴¹⁸ Niyitegeka stated that the attack would take place the next day in Bisesero.¹⁴¹⁹ Niyitegeka presented the attack plan on a blackboard by drawing a circle with “Bisesero” written in the circle. Around this circle were written the names of the designated leaders of each group of attackers and the points of departure for the five groups, which were Karongi, Rushishi, Kiziba, Gisiza, and Murambi.¹⁴²⁰ Niyitegeka encouraged people to participate in the attack, and was himself a leader for the Kiziba group.¹⁴²¹ Niyitegeka’s plan was carried out in the attack at Kiziba the next day against Tutsis in Bisesero. This attack was led by Niyitegeka and resulted in many victims amongst the Tutsi refugees.¹⁴²²

1160. On or about 18 June, Niyitegeka attended a meeting in the canteen of Kibuye prefectural office where he promised to supply *gendarmes* for the next day’s attack and urged *bourgmestres* and others to do all they could to ensure participation in the attacks so that all the Tutsis in Bisesero could be killed. Another attack took place the next day as planned.¹⁴²³

1161. Sometime in June, at approximately 5.00 p.m., Niyitegeka spoke at a meeting at Kibuye prefectural office, which was attended by Kayishema, Ruzindana, many *Interahamwe*, and others.¹⁴²⁴ The *Interahamwe* were chanting, “Exterminate them, flush them out of the forest”, meaning the Tutsis.¹⁴²⁵ Niyitegeka told the audience that he had come so that they could pool their efforts in overcoming the enemy, that is, the Tutsis, and

¹⁴¹¹ Adjudicated fact no. 122– *Ntakirutimana* Trial Judgement.
¹⁴¹² Adjudicated fact no. 123– *Ntakirutimana* Trial Judgement.
¹⁴¹³ Adjudicated fact no. 125– *Ntakirutimana* Trial Judgement.
¹⁴¹⁴ Adjudicated fact no. 126– *Ntakirutimana* Trial Judgement.
¹⁴¹⁵ Adjudicated fact no. 132– *Ntakirutimana* Trial Judgement.
¹⁴¹⁶ Adjudicated fact no. 124 – *Niyitegeka* Trial Judgement.
¹⁴¹⁷ Adjudicated fact no. 127– *Niyitegeka* Trial Judgement.
¹⁴¹⁸ Adjudicated fact no. 128– *Niyitegeka* Trial Judgement.
¹⁴¹⁹ Adjudicated fact no. 129– *Niyitegeka* Trial Judgement.
¹⁴²⁰ Adjudicated fact no. 130– *Niyitegeka* Trial Judgement.
¹⁴²¹ Adjudicated fact no. 131– *Niyitegeka* Trial Judgement.
¹⁴²² Adjudicated fact no. 133– *Niyitegeka* Trial Judgement.
¹⁴²³ Adjudicated fact no. 134– *Niyitegeka* Trial Judgement.
¹⁴²⁴ Adjudicated fact no. 135– *Niyitegeka* Trial Judgement.
¹⁴²⁵ Adjudicated fact no. 136– *Niyitegeka* Trial Judgement.

promised they would get his contribution in due course. He promised that not less than a hundred *Interahamwe* would assist in the attacks against the Tutsis.¹⁴²⁶

1162. Attacks in the vicinity of Muyira Hill continued into June 1994.¹⁴²⁷

Radio Rwanda Broadcast of 13 May 1994

1163. The exhibit is the transcription of a Radio Rwanda broadcast of 13 May 1994, which contains multiple references to Karemera's presence at a meeting of the MRND Political Bureau that took place on 12 and 13 May 1994 in Murambi.

1164. In the transcript, Nzirorera states that Karemera was present at the meeting on both days. Nzirorera read the recommendations made by the bureau, which included Karemera's signature at the bottom of the document that was dated 13 May 1994. The transcript also features Karemera reading the report of the bureau meeting on 13 May 1994. Finally, the news portion of the radio broadcast mentions that the meeting took place on 12 and 13 May under Karemera's chairmanship.¹⁴²⁸

Prosecution Witness AMM

1165. The witness was a Tutsi who lived and worked in the Gisovu area in 1994.¹⁴²⁹ He testified that he went to Bisesero around 20 April after fleeing attacks against Tutsis in his *secteur*.¹⁴³⁰ He then travelled around the Bisesero area throughout May 1994, hiding in the forests and in bushes to escape the attacks that were taking place against Tutsis.¹⁴³¹

1166. On 13 May 1994, the witness saw Eliézer Niyitegeka, Alfred Musema, Obed Ruzindana, and Aloys Ndimbati arrive at Cyapa in Bisesero. Niyitegeka brought guns in a white twin cabin car. There was also a vehicle from the tea factory, together with several buses carrying *Interahamwe* and military vehicles carrying soldiers. Following their arrival, there was a massive attack during which many Tutsis were killed.¹⁴³²

1167. The witness saw Karemera twice in Bisesero during May 1994. The first occasion was on 14 May.¹⁴³³ The witness was hiding in Nyabushyoshyo forest, which was above the road approximately 20 to 30 metres away,¹⁴³⁴ when he saw Karemera arrive in his vehicle with Charles Sikubwabo, Aloys Ndimbati, policemen, and soldiers. They stayed for about 30 minutes and then departed in the vehicle towards Gisovu *commune*. Later the same day the vehicle returned with Karemera, Ndimbati, the policemen, and the soldiers. The group got out of the vehicle and went behind it "to see how people were chasing others".¹⁴³⁵ The group then drove to Gishyita and then back to Gisovu *commune*. They returned briefly in

¹⁴²⁶ Adjudicated fact no. 137– *Niyitegeka* Trial Judgement.

¹⁴²⁷ Adjudicated fact no. 110 – *Kayishema* Trial Judgement.

¹⁴²⁸ Exhibit P247, "Radio Rwanda Broadcast of 13 May 1994".

¹⁴²⁹ T. 19 June 2007, p. 4.

¹⁴³⁰ T. 20 June 2007, p. 10.

¹⁴³¹ T. 19 June 2007, pp. 4, 5.

¹⁴³² T. 20 June 2007, pp. 22, 23, 33-35.

¹⁴³³ During examination-in-chief, the witness stated that he saw Karemera around 13 May 1994: see T. 19 June 2007, p. 8. During cross-examination, however, he stated that the date was in fact 14 May 1994: see T. 20 June 2007, pp. 23, 33, 37.

¹⁴³⁴ T. 19 June 2007, p. 19; T. 20 June 2007, pp. 33, 35

¹⁴³⁵ T. 19 June 2007, pp. 8, 9, 18, 19.

the evening and met with assailants who were returning from the attacks. The group then left to an unknown destination and did not return.¹⁴³⁶

1168. The witness estimated that over 500 individuals were involved in the killing of Tutsis in the Bisesero area on 13 May. The killers were *Interahamwe* using both traditional and military weapons. The Tutsi victims were ordinary citizens armed only with a few traditional weapons as well as sticks and stones.¹⁴³⁷

1169. The witness saw Karemera again around 18 May in Bisesero. The witness was again hiding in the pinus forest, approximately ten metres away, when Karemera, Clement Kayishema, Cyprien Munyampundu, and soldiers arrived in a vehicle and stopped at a place called Jurwee, on the road that leads to the Mubuga school. Those aboard the vehicle got out and saw that a group had gathered on top of a hill. Karemera waved to a soldier and told him to go and call the people on top of the hill, some of whom began to come down. Three military vehicles then arrived and parked nearby, causing the people to run away. Soldiers got out of the vehicles and chased the people, shooting at them as they ran away. Karemera, Kayishema, and Munyampundu remained for a short time talking amongst themselves, before leaving in their vehicles uphill towards Gisovu.¹⁴³⁸

1170. *Interahamwe* and soldiers killed a very large number of people, including babies, young men, and young women, in Bisesero on 18 May. Some were killed with machetes while others were shot.¹⁴³⁹ The witness estimated that Karemera was present at the scene for around thirty minutes.¹⁴⁴⁰ During that time, Karemera did not try to stop the attackers or go into the bush where people were being killed; rather, he stood with Kayishema and Munyampundu talking and making hand gestures. Karemera "was there as a leader".¹⁴⁴¹

Prosecution Witness AMN

1171. The witness was a Tutsi farmer in Kibuye *préfecture*.¹⁴⁴² In April 1994 he sought refuge at Muyira Hill, in the Bisesero region, and remained there until the end of June. A number of Tutsis had gathered at the hill because it enabled them to see the attackers coming and it is surrounded by a forest in which they could hide.¹⁴⁴³ The witness testified that there were more than 40 attacks against Tutsis in Bisesero between April and June. The Tutsis tried to defend themselves using sticks and stones.¹⁴⁴⁴

1172. The witness saw Karemera at Muyira Hill on three occasions during May and June 1994.¹⁴⁴⁵ The first occasion was in mid-May.¹⁴⁴⁶ The witness was hiding approximately 50 or 60 metres away when he saw Karemera arrive with a number of senior officials, including Eliezer Niyitegeka, Alfred Musema, Aloys Ndimbati, and Charles Sikubwabo.¹⁴⁴⁷

¹⁴³⁶ *Id.*, pp. 8, 9, 20.

¹⁴³⁷ *Id.*, pp. 18, 19.

¹⁴³⁸ *Id.*, pp. 21-26.

¹⁴³⁹ *Id.*, pp. 27-29.

¹⁴⁴⁰ *Id.*, p. 26.

¹⁴⁴¹ *Id.*, p. 28.

¹⁴⁴² T. 1 October 2007, p. 24; Exhibit P109 (under seal).

¹⁴⁴³ T. 3 October 2007, p. 10.

¹⁴⁴⁴ *Id.*, pp. 11, 19.

¹⁴⁴⁵ T. 1 October 2007, pp. 23-25; T. 3 October 2007, p. 4; T. 4 October 2007, p. 11.

¹⁴⁴⁶ T. 1 October 2007, p. 25.

¹⁴⁴⁷ *Id.*, pp. 25, 26.

Accompanying Karemera's vehicle were two military vehicles and several other vehicles. A number of soldiers and *Interahamwe* followed behind them. Upon arrival, Karemera spoke to the other officials for approximately 20 minutes, after which they told the soldiers and *Interahamwe* that they had to surround the Tutsis and kill them. The soldiers and *Interahamwe* then began killing Tutsis and continued until 6.00 p.m.¹⁴⁴⁸

1173. The witness again saw Karemera at Muyira Hill in late May. The witness was hiding in the ruins of a house, about six to ten metres away, when he saw Karemera arrive. Accompanying Karemera were a number of senior officials, including Eliezer Niyitegeka, Kayishema, Sikubwabo, Musema, Ruzindana, Gishyita, and the *bourgmestre* of Gisovu, as well as several businessmen from Gisovu and a large group of *Interahamwe* and soldiers.¹⁴⁴⁹ As Karemera moved away from the other officials he stated that "everyone had to be exterminated."¹⁴⁵⁰ Karemera also told the *Interahamwe* that if they needed food they should kill the Tutsis in Bisesero and then take their food. The soldiers and *Interahamwe* subsequently killed a large number of Tutsis.¹⁴⁵¹

1174. The witness saw Karemera at Muyira Hill on a third occasion around 25 June. The witness was hiding in a tree approximately six or seven metres away when he saw Karemera arrive.¹⁴⁵² At that time, the government wanted to move into exile in Zaire and many people were moving across the Bisesero area. Karemera spoke to those people who were on the run and told them, "Stop here and exterminate all these *Inyenzi* before moving on."¹⁴⁵³ The attackers then killed a large number of Tutsis over a period of about three days. They left only after the French arrived.¹⁴⁵⁴

Prosecution Witness HH

1175. The witness¹⁴⁵⁵ testified that Seraphin Twahirwa asked him to find *Interahamwe* to send to Bisesero to help the *Interahamwe* there. Twahirwa told the witness that Tutsis had killed the guards in Bisesero and put up a stiff resistance to the *Interahamwe* of the region. Twahirwa said that he had discussed the issue with Nzirorera who had asked him to find people to send there. Twahirwa subsequently told the witness that it was no longer necessary because Yusuf Munyakazi had supplied men who had gone to help the *Interahamwe* in Bisesero.¹⁴⁵⁶

Prosecution Witness AMB

1176. The witness was a truck driver in 1994.¹⁴⁵⁷ He testified that he drove members of the *Impuzamugambi* militia from Gisenyi to Bisesero in late June 1994.¹⁴⁵⁸ In Bisesero they were joined by a number of other groups brought by Obed Ruzindana. Some of the group

¹⁴⁴⁸ *Id.*

¹⁴⁴⁹ T. 1 October 2007, pp. 24, 32, 33; T. 3 October 2007, p. 5.

¹⁴⁵⁰ T. 1 October 2007, pp. 28, 32.

¹⁴⁵¹ *Id.*, pp. 28, 29.

¹⁴⁵² *Id.*, p. 37.

¹⁴⁵³ *Id.*, p. 33.

¹⁴⁵⁴ *Id.*, pp. 33, 37.

¹⁴⁵⁵ See para. 170, *supra*.

¹⁴⁵⁶ T. 9 November 2006, p. 34; T. 20 November 2006, p. 52.

¹⁴⁵⁷ T. 1 October 2007, p. 60.

¹⁴⁵⁸ *Id.*, p. 62.

members were armed with firearms, machetes, and clubs.¹⁴⁵⁹ They shouted and screamed in order to flush out Tutsis who were hiding in houses and holes. When Tutsis left their hiding places, the attackers killed them. These killings continued for three days.¹⁴⁶⁰

1177. The witness stated that Obed Ruzindana was the leader of the attacks. Ruzindana drew up the attackers' programme, provided them with food and drinks, and organised where they would spend their nights.¹⁴⁶¹

Karemera Defence Witness XWZ

1178. The witness ran a shop in the area in 1994.¹⁴⁶² She testified that she never heard of Karemera visiting Bisesero during the events of 1994.¹⁴⁶³

Karemera Defence Witness LSP

1179. The witness¹⁴⁶⁴ testified that he never heard of Karemera visiting Bisesero between April and May 1994.¹⁴⁶⁵ He did not think Karemera supervised the attacks of Bisesero because it was impossible for a minister to take part in such acts; rather, the attacks were the work of bandits.¹⁴⁶⁶

Karemera Defence Witness RTM

1180. The witness's¹⁴⁶⁷ wife, who is Tutsi, survived the attacks in Bisesero but many members of her family were killed. She informed the witness that Karemera was not present in Bisesero during the attacks against Tutsis.¹⁴⁶⁸

Karemera Defence Witness ECM

1181. The witness was a student in 1994.¹⁴⁶⁹ He testified that he participated in the Bisesero attacks between April and June 1994, but he did not see any authorities intervene or participate.¹⁴⁷⁰ He did not see Karemera during the Bisesero attacks, nor did he hear about him arriving in the area. The witness stated that he would have known had Karemera been in the area.¹⁴⁷¹

Karemera Defence Witness Théophile Urikumwenimana

¹⁴⁵⁹ *Id.*, pp. 66, 67.

¹⁴⁶⁰ *Id.*, p. 67.

¹⁴⁶¹ *Id.*, pp. 66-68.

¹⁴⁶² T. 25 March 2009, p. 4 (closed session).

¹⁴⁶³ *Id.*, p. 12.

¹⁴⁶⁴ See para. 972, *supra*.

¹⁴⁶⁵ T. 10 July 2008, p. 19.

¹⁴⁶⁶ *Id.*, p. 20.

¹⁴⁶⁷ See para. 319, *supra*.

¹⁴⁶⁸ T. 12 November 2008, pp. 38,39.

¹⁴⁶⁹ Exhibit DK109 (under seal).

¹⁴⁷⁰ T. 25 March 2009, pp. 45, 6.

¹⁴⁷¹ *Id.*, pp. 46, 47.

1182. The witness ran a small bakery in Ryaruhanga *cellule*, Mubuga *secteur*.¹⁴⁷² He testified that he participated in the attacks in Bisesero in 1994.¹⁴⁷³ He was then imprisoned for his role in the genocide.¹⁴⁷⁴ The attacks were initially retaliatory because Tutsis had killed some Hutus and soldiers in Bisesero.¹⁴⁷⁵ The attackers often met at Ryaruhanga before perpetrating killings in Bisesero and they sometimes went with MDR *bourgmestre* Charles Sikubwabo.¹⁴⁷⁶

1183. The witness did not see Elizaphan Ntakirutimana, Eliezer Niyitegeka, Alfred Musema or Clément Kayishema in Bisesero during the attacks.¹⁴⁷⁷

1184. The witness did not see Karemera in Bisesero during the attacks. According to the witness, had Karemera visited Bisesero during that period, the witness would have seen him personally as he would have passed through the centre of Mubuga because all the other roads that led to Bisesero had been blocked. The witness also insisted that he would have known if such a high profile person had come to Bisesero through conversations with other prisoners during the witness's incarceration. However, none of his fellow prisoners who confessed to participating in the Bisesero attacks ever mentioned Karemera's presence in Bisesero.¹⁴⁷⁸

Karemera Defence Witness Brigitte Niyonsaba

1185. The witness is Karemera's wife. She testified that Karemera visited her in Kibuye almost every two weeks between late April and June 1994.¹⁴⁷⁹

Karemera Defence Witness EPJ

1186. The witness worked in Gitesi *commune* office in 1994.¹⁴⁸⁰ He had no knowledge of meetings held at the Kibuye *préfecutre* office in Gitesi *commune* around 10 and 17 June 1994. He stated that he would have known had the *bourgmestres* and government ministers been in town.¹⁴⁸¹

Nzirorera Defence Witness Eliezer Niyitegeka

1187. The witness¹⁴⁸² testified that, contrary to the Prosecution's submissions, he never went to Bisesero to chase Tutsis. At 8.00 a.m. on 13 May 1994 the witness met with the Prime Minister in Murambi in Gitarama *préfecture*, 150 kilometres away from Muhira Hill in Bisesero, and this appointment is recorded in the Prime Minister's diary. The witness also attended a cabinet meeting in Murambi on 13 May 1994.¹⁴⁸³ He denied that he went to

¹⁴⁷² T. 13 November 2008, p. 6.

¹⁴⁷³ *Id.*, pp. 6, 7, 12.

¹⁴⁷⁴ *Id.*, pp. 13, 14.

¹⁴⁷⁵ *Id.*, p. 12.

¹⁴⁷⁶ *Id.*

¹⁴⁷⁷ *Id.*, pp. 44-46.

¹⁴⁷⁸ *Id.*, pp. 13, 14.

¹⁴⁷⁹ T. 6 April 2009, p. 29.

¹⁴⁸⁰ T. 31 March 2009, p. 51 (closed session).

¹⁴⁸¹ *Id.*, pp. 63-65.

¹⁴⁸² See para. 794, *supra*.

¹⁴⁸³ T. 2 March 2010, pp. 7-9.

Muhira Hill on the morning of 14 May and noted that the Appeals Chamber of the Tribunal acquitted him of that allegation in its decision of 9 July 2004.¹⁴⁸⁴

Édouard Karemera

1188. Karemera testified that he visited Kibuye between 2 and 4 May 1994, approximately two weeks later, and again around 20 June 1994. However, he denied travelling to Bisesero at all during this period.¹⁴⁸⁵ He testified that he led a meeting of the MRND Political Bureau in Murambi on 12 and 13 May 1994.¹⁴⁸⁶

1189. When asked whether he was aware of the killings against the Tutsi population in Bisesero in May and June 1994, Karemera acknowledged that Tutsis were killed in Bisesero, but stated that many Hutus were also killed.¹⁴⁸⁷ The RPF had infiltrated the area and had broadcast on the radio an appeal to the Tutsis to come and assist them. Subsequently, there were “hard-fought battles” between the RPF infiltrators, who were leading the refugees in the Bisesero area, and members of the population.¹⁴⁸⁸

Written Statements

1190. Enos Kagaba stated that he never participated in the attacks at Muyira Hill in May 1994 and he never attended any meetings in June at the Kibuye *préfecture* office.¹⁴⁸⁹

1191. Fulgence Rukerikibaye stated that he was at the attacks in Bisesero and that neither Ntakirutimana nor Niyitegeka were present.¹⁴⁹⁰

1192. Jean Baptiste Kayihura stated that he participated in the attacks in Bisesero at the end of May 1994 and never saw or heard anyone talk about Niyitegeka, Ntakirutimana, Kayishema, or Musema participating in the attacks. He also stated that he never heard anyone mention those people during *gacaca* trials.¹⁴⁹¹

Deliberations

1193. The Chamber conducted a site visit to Bisesero and noted that Bisesero is a vast hilly and partly forested area that extends between two valleys.

Cautionary Issues

1194. The Chamber recalls that, at the time of their testimony, Prosecution Witness HH, and Defence Witness Niyitegeka were convicted and imprisoned for participating in the

¹⁴⁸⁴ *Id.*, p. 9.

¹⁴⁸⁵ T. 25 May 2009, pp. 10-15, 17-18, 20-23.

¹⁴⁸⁶ T. 19 May 2009, p. 58; T. 20 May 2009, p. 17.

¹⁴⁸⁷ T. 26 May 2009, p. 65.

¹⁴⁸⁸ T. 25 May 2009, pp. 24-26.

¹⁴⁸⁹ Exhibit DNZ637, “Written Statement of Enos Kagaba, dated 27 September 2007”.

¹⁴⁹⁰ Exhibit DNZ641, “Written Statement of Fulgence Rukerikibaye, dated 6 August 2009”.

¹⁴⁹¹ Exhibit DNZ642, “Written Statement of Jean-Baptiste Kayihura, dated 5 August 2009”.

genocide.¹⁴⁹² Furthermore, at the time of his testimony, Defence Witness Urikumwenimana was detained and awaiting trial on genocide charges.¹⁴⁹³

1195. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Regular Attacks at Bisesero Throughout April, May and June 1994

1196. The Chamber notes that the Defence evidence does not seek to rebut the adjudicated facts or the testimony of Prosecution Witnesses AMN, AMM and ABM that attacks were launched against Tutsis seeking refuge in the Bisesero area throughout April, May and June 1994. Rather, the evidence of several Defence witnesses (Witnesses LSP, RTM, Urikumwenimana, Rukerikibaye, Kayihura and Karemera) tends to confirm that the attacks occurred. The Chamber is, therefore, convinced beyond reasonable doubt that such attacks did occur throughout April, May and June 1994.

Role of National and Regional Authorities other than Karemera

1197. The Chamber is not convinced by the Defence evidence that attempts to challenge the adjudicated facts and the evidence of Witnesses AMM, AMN, and AMB that Eliezer Niyitegeka, Clément Kayishema, Obed Ruzindana, and Alfred Musema did not participate in the Bisesero attacks. Thus, the Chamber is more convinced by evidence emanating from eyewitnesses who affirm what they actually saw (Witnesses AMM, AMN, and AMB) and adjudicated facts based on such evidence than the evidence from witnesses who claim that they did not see the relevant authorities during the attacks (Urikumwenimana, Rukerikibaye and Kayihura). The Chamber also notes that Bisesero was a vast, partly forested area, that the attacks on Tutsis there occurred over the course of 2 to 3 months, and that many people were involved, wherefore certain figures of authority could have been present without the Defence witnesses being aware of it.

1198. The testimony of Defence Witness EPJ that he was not aware of meetings at the Kibuye prefectural office in June 1994 also carries little weight because it is entirely possible that the witness would not have known about every single event that took place in his *commune*. Further, the opinion of Defence Witness LSP that the attacks were the work of bandits is clearly contradicted by Urikumwenimana's testimony that *bourgmestre* Sikubwabo was involved in the killings. It is also contradicted by the Chamber's finding below that Karemera, as Minister of the Interior, approved the *préfets'* plan for a mopping-up operation and requested the *gendarmérie* and the army to assist (see V.6.3). Furthermore, Niyitegeka and Kagaba clearly had an interest in denying their own role in the attacks in Bisesero.

1199. Consequently, the Chamber finds that on or about 13 May 1994, national and regional political authorities from Kibuye, including Eliezer Niyitegeka, Clément Kayishema, Obed Ruzindana, and Alfred Musema, arrived in Bisesero accompanied by *Interahamwe*, soldiers, and *gendarmes*. These authorities ordered, instigated, and directed

¹⁴⁹² See paras. 170 (HH) and 794 (Niyitegeka).

¹⁴⁹³ See para. 1182.

large-scale attacks against Tutsi civilians in Bisesero over the course of several days, during which thousands of Tutsis were killed.

Karemera's Presence at Bisesero and Role in the Attacks

1200. The Prosecution relies on the evidence of Witnesses AMM and AMN, both Tutsis who sought refuge in Bisesero from April to June 1994, to support the assertion that Karemera was among the authorities who were present in Bisesero and appeared to be coordinating the attacks as asserted in the Prosecution's Closing Brief.¹⁴⁹⁴ In assessing the credibility of these witnesses, the Chamber considers several aspects of their testimony to be problematic.

1201. First, in view of the brutal killings that were taking place in Bisesero and the serious danger that Tutsis faced at the time, the Chamber finds it difficult to believe that Witnesses AMM and AMN would have been able to observe Karemera's conduct in detail during his visits to Bisesero. Both witnesses testified that while *Interahamwe* were attacking and other Tutsis were fleeing, they stayed back and hid in trees or abandoned houses, from which they were able to view Karemera's arrival and observe his movements. Specifically, Witness AMM testified that he was hiding in a tree on two occasions when Karemera arrived in Bisesero. On one occasion he was about 20 to 30 metres away from Karemera, while on the other occasion he was only 10 metres away. Similarly, Witness AMN testified that saw Karemera on three occasions from various hiding places, including a tree about six or seven metres away and the ruins of a house about six to ten metres away. Both witnesses were able to describe Karemera's movements in detail, and Witness AMN also claimed that he could hear Karemera's instructions to other officials and *Interahamwe*. The Chamber considers it unlikely that the witnesses would have been able to make these detailed observations on more than one occasion given the situation that prevailed in Bisesero at the time.

1202. Second, the Chamber notes that there are a number of inconsistencies between these witnesses' pretrial statements, their testimony in other trials at this Tribunal, and their testimony in this trial. While some of these inconsistencies are minor and can be explained by the circumstances in which the witnesses made their pretrial statements and the lapse of time between the events and their testimony, other inconsistencies are significant and raise further doubts about the witnesses' credibility. The Chamber also notes that the Radio Rwanda Broadcast of 13 May 1994 shows that Karemera presided over an MRND Political Bureau meeting in Murambi on 13 May 1994. Although the broadcast does not show when the meeting ended, the Chamber, having travelled the same route during its site visit, finds it unlikely that Karemera could have reached Bisesero on 13 May 1994 before sundown.

1203. Witness AMM gave a number of pre-trial statements between 1995 and 2003 in which he described the attacks in Bisesero and identified a number of officials who were present in Bisesero at the time.¹⁴⁹⁵ He did not mention the presence of Karemera in Bisesero until his fifth and final statement of 13 November 2003, in which he said that he saw Karemera in Bisesero on 14 May 1994 and again four or five days later directing the attacks. In his testimony before this Chamber, the witness stated that he saw Karemera in Bisesero on 13 May and again on 20 May. The witness subsequently changed his testimony

¹⁴⁹⁴ Prosecution Closing Brief, para. 134.

¹⁴⁹⁵ Exhibits DK14, DK15, DK16, DK18 (all under seal).

to state that he first saw Karemera in Bisesero on 14 May rather than 13 May. He explained that he had not mentioned Karemera in earlier interviews because the investigators had not asked about him and it was difficult for the witness to remember all of the authorities who were present in Bisesero.¹⁴⁹⁶ The Chamber accepts that different interviews would have focused on different accused and therefore the witness may have failed to mention certain authorities who were present at Bisesero during the attacks. The Chamber also recognises the difficulty of remembering precise details several years after the events. Nonetheless, the Chamber considers it problematic that prior to November 2003, the witness consistently named a number of officials who were present at Bisesero and yet failed to mention such a high-profile official as Karemera.

1204. The Chamber further notes that in his first statement of 17 June 1995, Witness AMM claimed that he hid in a tea plantation in Gisovu from 8 April until 20 May 1994 and then went to Bisesero, whereas in his testimony before this Chamber he stated that he saw Karemera in Bisesero on 14 May 1994. When questioned about this discrepancy in cross-examination, the witness stated that the investigators who had conducted the pre-trial interview had recorded the date incorrectly, that it should in fact be 20 April rather than 20 May, and that he had since corrected this error.¹⁴⁹⁷ The Chamber acknowledges that witnesses' pre-trial statements are often made in difficult circumstances and may contain incorrect information. The Chamber also notes that witness statements given to Tribunal investigators in another case have considerably less probative value than direct sworn testimony before this Chamber.¹⁴⁹⁸ Nonetheless, the alleged error that the witness is attempting to correct is crucial to his testimony in this case regarding Karemera's presence at the scene of the attacks in Bisesero on 14 May 1994. The Chamber therefore considers this discrepancy to be significant.

1205. There are also a number of inconsistencies in Witness AMM's statements and testimony regarding the presence of certain key officials in Bisesero. In his first statement of 17 June 1995, the witness said that he saw Musema, Ruzindana, and Ndimbati three times in Bisesero during the attacks, and on each occasion he saw "only the three persons named above". In several of his statements, the witness expressly avowed that he did not personally see Kayishema in Bisesero during the attacks. In contrast, in his testimony before this Chamber, the witness stated that he saw Karemera in Bisesero on 14 May with Ndimbati and Sikubwabo, and again on 20 May with Kayishema, Ndimbati, and Munyampundu. This clearly contradicts the witness's earlier statements and undermines his credibility.

1206. Turning to Witness AMN, the Chamber notes that he gave several pre-trial statements between 1995 and 2003 in which he described the attacks in Bisesero and identified a number of officials who were present in Bisesero at the time.¹⁴⁹⁹ However, it was not until his last statement of 12 November 2003 that he mentioned Karemera's presence in Bisesero during the attacks. The witness also failed to mention Karemera's presence in Bisesero when he testified in the *Musema* trial in 1999, despite naming a number of other officials who were present with Musema during the attacks.¹⁵⁰⁰ In his

¹⁴⁹⁶ T. 20 June 2007, pp. 29, 30; Exhibit DK18 (under seal).

¹⁴⁹⁷ T. 20 June 2007, pp. 11, 12.

¹⁴⁹⁸ *Muvunyi* Retrial Judgement, para. 11.

¹⁴⁹⁹ Exhibits DNZ331, 332, 334, DNG83 (all under seal).

¹⁵⁰⁰ T. 3 October 2007, p. 7.

testimony before this Chamber, the witness stated that he saw Karemera with Musema and a number of other officials in mid-May and again in late May 1994. When asked about his failure to mention Karemera during the *Musema* trial, the witness stated that he could not remember all the people who were with Musema in Bisesero.¹⁵⁰¹ The witness also explained that in the *Musema* trial, he was testifying against Musema rather than Karemera, and his “testimonies change on the basis of when people are arrested and accused”.¹⁵⁰²

1207. There were also other inconsistencies between the witness’s pre-trial statements, his testimony in the *Musema* trial, and his testimony in the present trial, particularly in regard to the circumstances in which his family members were killed in Bisesero and the number of times he saw Karemera in 1994. When questioned about these inconsistencies during cross-examination, Witness AMN stated that there may have been errors in translating his pre-trial statements as the investigators did not read his statements back to him in Kinyarwanda before he signed them.¹⁵⁰³ The Chamber is reluctant to believe that these multiple inconsistencies can all be attributed to errors in translation.

1208. Finally, the Chamber considers that Witnesses AMM and AMN were evasive in their answers during cross-examination. On several occasions, the witnesses contradicted themselves on important points.

1209. The Chamber finds that the cumulative weight of the problems outlined above severely impairs the credibility of Witnesses AMM and AMN. The Chamber is therefore unwilling to rely on the testimony of these witnesses in regard to Karemera’s presence and direct involvement in the attacks in Bisesero. Consequently, despite being satisfied that the attacks took place and the authorities were present, the Chamber does not consider that the Prosecution has proved beyond a reasonable doubt that Karemera was among the authorities present in Bisesero to coordinate the attacks, as alleged in the Prosecution Closing Brief.

Conclusion

1210. The Prosecution has proved beyond reasonable doubt that attacks against Tutsis occurred in Bisesero Hills throughout April, May and June 1994. The Prosecution has also proved the allegation in paragraph 54 of the Indictment beyond a reasonable doubt. The authorities identified in paragraph 64.2 of the Indictment, namely Eliezer Niyitegeka, Clement Kayishema, Obed Ruzindana, and Alfred Musema, ordered, instigated, and directed large-scale attacks against Tutsi civilians in Bisesero from 13 May 1994.

The Prosecution has not proved beyond a reasonable doubt that Karemera was among the authorities present in Bisesero to coordinate the attacks.

6.3 Meeting of *Conseils des Ministres* on 17 June 1994 and Further Attacks on Surviving Tutsis in Bisesero Hills

Allegation in the Indictment

¹⁵⁰¹ *Id.*, p. 5.

¹⁵⁰² *Id.*, p. 12.

¹⁵⁰³ See e.g., T. 3 October 2007, pp. 49-54, 62; T. 4 October 2007, pp. 1-9.

1211. Attacks against Tutsis in Bisesero continued through late June 1994, particularly after 17 June 1994 when Karemera, on behalf of the Interim Government, requested military authorities to send reinforcements from Gisenyi to eliminate any surviving Tutsis in Bisesero. The requested “*ratissage*” [“mopping up” operation] was intended to destroy the Tutsis of Kibuye completely and to conceal the crimes of the preceding months that would be revealed by the accounts of survivors.¹⁵⁰⁴

1212. On or about 17 June 1994, the Interim Government convened in a *conseil des ministres*, whereupon it decided to request reinforcements from Gisenyi *commandant de secteur* Lt. Col. Anatole Nsengiyumva for further attacks upon surviving Tutsis in the Bisesero hills in Kibuye *préfecture*. Minister of Interior Karemera participated in the *conseil des ministres* and made the formal written request to Nsengiyumva the following day. Attacks against those Tutsis that had survived the major attacks in May and early June continued with reinforcements of *Interahamwe* from Gisenyi, Cyangugu, and Kigali, causing many deaths.¹⁵⁰⁵

Evidence

Telegram from Kayishema to the Minister of Defence, 12 June 1994

1213. Further to his telegram of 9 June 1994, the Kibuye *préfet* Kayishema informed the Minister of Defence that the people of Bisesero were “ready to undertake a clean-up operation in the interest of civil defense.” Kayishema requested the Minister of Defence to give the Kibuye commander a formal order to oversee the operation. The operation was to last four days, from 15 to 18 June, and would require at least 30 gun grenades, at least 50 hand grenades, bullets for R4 rifles, and four magazines for machine guns.¹⁵⁰⁶

Karemera’s Handwritten Notes of the Council of Ministers’ Meeting, 17 June 1994

1214. Karemera noted that during the 17 June 1994 meeting of the Council of Ministers, the Government had decided “to intervene vigorously in Bisesero, if need be, with the support of Gisenyi, by 20 June 1994, at the latest.”¹⁵⁰⁷

Letter from Karemera to Nsengiyumva, 18 June 1994

1215. Karemera informed Nsengiyumva that during the 17 June 1994 meeting of the Council of Ministers, the Government had decided to request the operational *secteur* commander in Gisenyi to support the Kibuye *gendarmerie* in undertaking, with the support of the population, an “*opération de ratissage*” in Bisesero, which had “become a sanctuary for the RPF”. The Government asked that this operation be completed by 20 June at the latest. Karemera noted that in the absence of the Minister of Defence, the Minister of the Interior was authorised to communicate this decision and to ensure that it was followed. Karemera requested the *préfet* of Kibuye and the commander in Kibuye, whom Karemera

¹⁵⁰⁴ Indictment, paras. 60, 64.3.

¹⁵⁰⁵ *Id.*, para. 60.

¹⁵⁰⁶ Exhibit P53, “Telegram from *Préfet* of Kibuye to Minister of Defence, dated 12 June 1994.”

¹⁵⁰⁷ Exhibit P56, “Karemera’s handwritten notes on the Council of Ministers’ Meeting”.

had sent a copy of this letter, to make arrangements to facilitate the realisation of this operation in the time allowed.¹⁵⁰⁸

Letter from Karemera to Kayishema, 20 June 1994

1216. In reference to Kayishema's telegrams of 9 and 12 June 1994, Karemera stated that the Cabinet Meeting of 17 June had requested that the commander of Gisenyi *secteur* support the Kibuye *gendarmerie groupement* to carry out the search operation in Bisesero by 20 June at the latest. The Minister of Defence had confirmed those instructions. It was therefore Kayishema's duty to closely monitor this operation, which required the support of the inhabitants of Gishyata, Gisovu, and Gitesi *communes*, and to give Karemera feedback before the end of June.¹⁵⁰⁹

Letter from Bagilishema to Kayishema, 24 June 1994

1217. Bagilishema, the *bourgmestre* of Mabanza *commune*, referred to his 22 June 1994 conversation with Kayishema regarding the *Interahamwe* who had come from Gisenyi to reinforce the attacks in Bisesero between 19 and 22 June 1994 and who were to stop at the Rubengera centre at Mabanza to launch an attack. Bagilishema stated that he regretted to inform Kayishema that this attack had taken place. When they arrived at the roadblock outside the *commune* office, the "*Interahamwe*" fired a number of shots, which terrified the people and caused them to flee their homes. They killed a child aged about 14. A number of people took refuge in the *group scolaire*, and a climate of terror prevailed until evening.¹⁵¹⁰

Letter from Bagilishema to the Kibuye Préfet, sometime after 6 June 1994

1218. Bagilishema informed the Kibuye *préfet* that there were no more "accomplices" in Mabanza *commune*.¹⁵¹¹

Prosecution Witness AMB

1219. The witness¹⁵¹² testified that he drove members of the *Impuzamugambi* militia from Gisenyi to Bisesero in late June 1994.¹⁵¹³ In Bisesero they were joined by a number of other groups comprising members of the MRND brought by Obed Ruzindana. Some of the group members were armed with firearms, machetes, and clubs. A number of *gendarmes* also came from Kibuye to support the militia during the attack. They shouted and screamed in order to flush out Tutsis who were hiding in houses and holes. When Tutsis left their hiding places, the attackers killed them. These killings continued for three days, during which time the witness did not see any armed Tutsis or members of the RPF.¹⁵¹⁴

¹⁵⁰⁸ Exhibit P58, "Letter from Karemera to Nsengiyumva, 18 June 1994".

¹⁵⁰⁹ Exhibit P54, "Letter from the Minister of the Interior and Communal Development to the *Préfet* of Kibuye dated 20 June 1994".

¹⁵¹⁰ Exhibit P57, "Letter from the *bourgmestre* of Mabanza *commune* to the *Préfet* of Kibuye dated 24 June 1994".

¹⁵¹¹ Exhibit P327 (under seal).

¹⁵¹² See para. 1176, *supra*.

¹⁵¹³ T. 1 October 2007, p. 62.

¹⁵¹⁴ *Id.*, pp. 66, 67.

Karemera Defence Witness LSP

1220. The witness¹⁵¹⁵ testified that a large number of Tutsis sought refuge in Bisesero because there were many RPF infiltrators there who could therefore defend Tutsis.¹⁵¹⁶

Matthieu Ngirumpatse

1221. Ngirumpatse testified that it is not correct to presume that Bisesero was a camp for refugees and civilians. Rather, Bisesero was an RPF military camp; the Tutsis there had guns and they actually killed one or two *gendarmes*. Radio Muhabura advised, through its broadcasts, that Tutsis seeking shelter should run to the hilltops of Bisesero. The RPF provided protection to the Tutsis in that area.¹⁵¹⁷

1222. However, during the events of 1994, the members of the government did not know much about those present in Bisesero. They knew that there was a group of Tutsis who had taken refuge in that area, but they now know much more than that. Today, they know that RPF delegates had invited the Tutsis to take refuge at Bisesero because they could constitute stocks in the galleries or in the areas of the old tin mines, but the authorities did not know that at the time.¹⁵¹⁸

Édouard Karemera

1223. Karemera testified that the Interim Government made a decision during the Council of Ministers' meeting of 17 June 1994 to conduct a cleanup operation in the Bisesero area. The Government's decision was taken following a telegram sent by the *préfet* of Kibuye, Clément Kayishema, on 12 June 1994 to the Minister of Defence, with copies to the Prime Minister and the Minister for the Interior. However, the Government did not agree with Kayishema's suggestion that members of the population should conduct the operation in the framework of civil defence. Instead, the Government decided to instruct military *secteur* commanders to take care of the situation.¹⁵¹⁹

1224. According to Karemera, the government was aware that Bisesero was full of RPF infiltrators and that the RPF had ammunition depots and weapons there. *Préfet* Kayishema made a report about the insecurity in Bisesero, and there were speakers at the pacification meeting of 3 May 1994 who discussed this issue. There were also broadcasts on Radio Muhabura calling on RPF supporters to move to Bisesero and resist while awaiting reinforcements. These factors informed the Government's decision of 17 June 1994 in an effort to eliminate RPF partisans.¹⁵²⁰

1225. Karemera forwarded the Government's decision by letter of 18 June 1994 to the operational commander in Gisenyi, Lt Col Anatole Nsengiyumva.¹⁵²¹ Karemera testified that the letter did not ask Nsengiyumva to send militia, and in any case Nsengiyumva didn't have militia; rather, the government asked Nsengiyumva to carry on a military operation

¹⁵¹⁵ See para. 972, *supra*.

¹⁵¹⁶ T. 10 July 2008, p. 15.

¹⁵¹⁷ T. 3 February 2011, pp. 41, 42.

¹⁵¹⁸ T. 18 February 2011, pp. 12, 13.

¹⁵¹⁹ T. 20 May 2009, pp. 19-25.

¹⁵²⁰ T. 20 May 2009, pp. 23, 24, 28-30; T. 26 May 2009, pp. 3-5, 55, 56.

¹⁵²¹ T. 20 May 2009, p. 25.

with soldiers and to support the Kibuye *gendarmerie* group.¹⁵²² The letter specified that the operation should be completed by 20 June 1994 at the latest. Karemera testified that this short time-frame was based on the knowledge that soldiers would be much faster than the local inhabitants in carrying out a clean-up operation.¹⁵²³

1226. Nsengiyumva responded that he would not take military orders from the Minister of the Interior. Karemera subsequently realised that, in the absence of the Minister of Defence, the Government should have given the order to the Chief of Staff of the Army, who would have then communicated it to the operational commander in Gisenyi. Unfortunately however, the government had transmitted the order without respecting the correct procedure, and as a result Nsengiyumva did not implement the order.¹⁵²⁴

1227. When the Minister of Defence returned on 19 or 20 June, Karemera informed him of the events and the Minister confirmed that Karemera had not followed the correct procedure. The Minister told Karemera that he would immediately send a telegram to the Chief of Staff of the Army and the *gendarmerie* to correct the error.¹⁵²⁵

1228. *Préfet* Kayishema never reported on the implementation by the army of this cleanup operation, which was to take place in his administrative area, because such an operation did not take place.¹⁵²⁶ In this regard, Karemera noted that the Prosecution had not presented any evidence that Tutsis in Bisesero had been killed using machine guns and R4 rifles.¹⁵²⁷

Deliberations

The Operation

1229. The Prosecution exhibits listed above show clearly that Karemera, acting on behalf of the Interim Government, ordered an “*opération de ratissage*” in Bisesero in June 1994. In his letter of 18 June 1994, Karemera requested assistance from the operational *secteur* commander in Gisenyi, the commander in Kibuye, and the *préfet* of Kibuye to facilitate the realisation of this operation. Furthermore, Karemera’s letter of 20 June 1994 to Kayishema expressly called for the support of the *communes* surrounding Bisesero hills in conducting the cleanup operation.

1230. The letter of 24 June 1994 from Bagilishema to Kayishema indicates that attacks against Tutsis in Bisesero did in fact take place between 19 and 22 June, and that *Interahamwe* travelled from Gisenyi to Bisesero in order to reinforce those attacks. The Chamber also recalls the testimony of Prosecution Witness AMB that a large number of militia and *gendarmes* travelled from Kibuye to Bisesero in late June to participate in attacks against Tutsis. This is consistent with Adjudicated Fact number 134, which provides that on or about 18 June 1994, Niyitegeka attended a meeting at Kibuye prefectural office where he promised to supply *gendarmes* for the next day’s attack and urged *bourgmestres* and others to do all they could to ensure participation in the attacks so that all the Tutsis in Bisesero could be killed. Another attack took place the next day, as planned.

¹⁵²² *Id.*, p. 27.

¹⁵²³ T. 26 May 2009, p. 17.

¹⁵²⁴ T. 20 May 2009, pp. 26-28; T. 26 May 2009, pp. 3, 23, 26-27.

¹⁵²⁵ T. 26 May 2009, p. 28.

¹⁵²⁶ *Id.*, pp. 29, 30.

¹⁵²⁷ T. 25 May 2009, p. 37.

Bisesero as an RPF Base

1231. Karemera's testimony that the RPF-controlled Radio Muhabura called on Tutsis to seek refuge in the Bisesero area has not been disputed. The Chamber, however, recalls its findings that mass slaughters of Tutsis were taking place in Kibuye *préfecture* at the instigation or with the approval of the authorities (see V.3.2; 3.3). Karemera, therefore, had no reason to consider Radio Muhabura's call as anything but justified advice to Tutsis to seek to protect themselves.

1232. Concerning Karemera's claim that the Tutsis in Bisesero were armed and included a large number of RPF infiltrators, the Chamber notes that the majority of witnesses who testified about the attacks in Bisesero stated that the Tutsis there were unarmed and could only defend themselves with sticks and stones. National leaders passed through Bisesero on numerous occasions between April and June 1994, and would have been aware of the situation. Thus, they would have had no reason to consider the Tutsis' counter-attacks, including the killing of one or two *gendarmes*, as anything but justified self-defense.

1233. Furthermore, it makes little sense to assume that Tutsis who had sought refuge in Bisesero were "RPF infiltrators". Bisesero was far from the warfront. The Tutsis isolated there who struggled to survive with primitive self-defence tactics against well-armed attackers in this remote area would not have been able to infiltrate RPF combatants from the front lines into their ranks. Finally, the Chamber notes that there is no indication in the communication between Karemera and other authorities that the mopping-up operation should spare women, children or the elderly who could not have possibly presented a danger to the security or war efforts of the Interim Government. Thus, the Chamber finds that the "*opération de ratissage*" was directed at Tutsi civilians generally.

Conclusion

1234. The Prosecution has proved beyond a reasonable doubt that around 18 June 1994, Karemera ordered an "*opération de ratissage*" against the Tutsis in Bisesero and that this operation was in fact carried out, resulting in the death of scores of Tutsi civilians.

7. ATTACKS ON TUTSIS AND HUTU OPPONENTS*Allegation in the Indictment*

1235. Over the weekend of 8-10 April 1994, soldiers and militiamen set up roadblocks in Kigali, checked the identity cards of passersby, and killed most of those who were identified as Tutsi. Karemera and Ndirumpatse together with Nzirorera exercised control over *Interahamwe* at the roadblocks and were aware of the killings, as demonstrated by their directions to militiamen to stop the killings temporarily when international journalists present in Kigali began to issue critical reports on the widespread killings.¹⁵²⁸

1236. By 12 April 1994, thousands of civilians throughout Rwanda had been killed in attacks by soldiers and militiamen ordered or instigated by MRND National Leaders and

¹⁵²⁸ Indictment, para. 37.

top government officials including the Accused. Those killed were mostly Tutsis but also included people believed to be opponents of the Hutu Power political movement.¹⁵²⁹

1237. By mid-July 1994, when the Interim Government fled Rwanda hundreds of thousands of unarmed men, women and children had been killed as a direct result of policies initiated and authorised by the MRND and affiliated “Hutu Power” political parties and executed through the instrumentalities of the state.¹⁵³⁰

7.1 Extent of Killings by Soldiers and Militiamen

Evidence

Adjudicated Facts

1238. The Chamber has taken judicial notice of the following facts that have been adjudicated in other completed trials.

1239. As from an unspecified date in mid-April 1994, a roadblock was erected by *Interahamwe* on the *Avenue de la Justice* near a traffic light not far from the entrance to the Amgar Garage at the Cyahafi Sector boundary, in Nyarugenge Commune of Kigali-ville *préfecture*.¹⁵³¹ At the roadblock, the *Interahamwe* checked the identity cards of those who crossed it and detained those who carried identity cards bearing the “Tutsi” ethnic reference, or were otherwise considered as “Tutsi” because they had stated that they were not in possession of an identity card.¹⁵³²

1240. The handicapped daughter of a Tutsi woman was raped and killed by members of the *Interahamwe* in Rukoma *cellule*, Shiringo *secteur* on 7 April 1994.¹⁵³³

1241. Many of the refugees who escaped or survived the attack at ETO in Kicukiro *secteur*, Kicukiro *commune* headed in groups towards the Amahoro Stadium.¹⁵³⁴ Flanked on both sides by *Interahamwe*, approximately 4,000 refugees were then forcibly marched to Nyanza.¹⁵³⁵ At Nyanza, an attack took place on 11 April 1994, in the late afternoon and into the evening, when the *Interahamwe* began killing people with clubs and other weapons. Many were killed in this attack.¹⁵³⁶

1242. The attack at Busogo Hill, Rwankeri *cellule*, Mukingo *commune*, on 7 April 1994 claimed the lives of many Tutsis.¹⁵³⁷

1243. The *Interahamwe* attackers involved in the attack at Munyemvano’s compound on 7 April 1994 used traditional weapons, guns, and grenades to slaughter their Tutsi victims.¹⁵³⁸

¹⁵²⁹ *Id.*, para. 41.

¹⁵³⁰ *Id.*, para. 65.

¹⁵³¹ Adjudicated Fact no. 146 – *Rutaganda* Trial Judgement.

¹⁵³² Adjudicated Fact no. 147 – *Rutaganda* Trial Judgement.

¹⁵³³ Adjudicated Fact no. 22 – *Kajelijeli* Trial Judgement.

¹⁵³⁴ Adjudicated Fact no. 25 – *Rutaganda* Trial Judgement.

¹⁵³⁵ Adjudicated Fact no. 27 – *Rutaganda* Trial Judgement.

¹⁵³⁶ Adjudicated Fact no. 28, 29 – *Rutaganda* Trial Judgement.

¹⁵³⁷ Adjudicated Fact no. 54 – *Kajelijeli* Trial Judgement.

¹⁵³⁸ Adjudicated Fact no. 57 – *Kajelijeli* Trial Judgement.

1244. There was a killing of a large number of Tutsis at the convent at Busogo Parish on the morning of 7 April 1994. The number of bodies buried the following day is an indicator that approximately 300 people died in the attack.¹⁵³⁹ Members of the *Interahamwe* were involved in the attack.¹⁵⁴⁰

1245. From 8 April 1994, there were daily attacks on the mostly Tutsi, civilian refugees on Mwulire Hill where, by 10 April 1994, more than 5,000 people sought refuge.¹⁵⁴¹

1246. Semanza was armed and present on 12 April 1994 during the attack on Mabare mosque and the attack resulted in the death of around 300 Tutsi refugees.¹⁵⁴²

1247. On 8 April 1994 in the morning, Semanza met Rugambarara and a group of *Interahamwe* in front of a certain house in Bicumbi *commune*. Semanza told the *Interahamwe* that a certain Tutsi family had not yet been killed, that no Tutsi should survive, and that the Tutsis should be sought out and killed.¹⁵⁴³ Later the same day, the *Interahamwe* searched a field near the house of the family mentioned by Semanza, found four members of that family, and killed them.¹⁵⁴⁴

UNAMIR Situation Reports

1248. A report of 7 April 1994 shows that UNAMIR was attempting to conduct joint patrols with the *gendarmerie* on 7 April. It confirms the existence of roadblocks, which blocked the movement of UNAMIR armored personnel carriers that had been called to assist Agathe Uwilingiyimana when her guards were overpowered by Presidential Guard after she had sought refuge in the UNDP compound.¹⁵⁴⁵

1249. A report of 9 April 1994 shows that as of that date, the Presidential Guard, RGF, and *gendarmes* were monitoring the actions of the *Interahamwe* (referred to in the report as the party militia of the MRND) as they committed atrocities. The *Interahamwe* controlled the areas of Nyamirambo, Bilyogo, and Kimisagara. Thousands had been killed as killings continued in government controlled areas. The victims were mostly Tutsis and Hutus from the south or non-MRND/CDR political parties.¹⁵⁴⁶

Prosecution Witness HH

1250. The witness¹⁵⁴⁷ testified that Maniragaba and Kajuga had given the instruction to set up roadblocks on 8 April 1994 in order to protect Kigali from the enemy who was thought to be coming from the direction of Gitarama. He was told that the purpose of the roadblocks was to prevent the enemy from infiltrating the city and detect any accomplices.

¹⁵³⁹ Adjudicated Fact no. 58 - *Kajelijeli* Trial Judgement.

¹⁵⁴⁰ Adjudicated Fact no. 59 - *Kajelijeli* Trial Judgement.

¹⁵⁴¹ Adjudicated Fact no. 66 - *Semanza* Trial Judgement.

¹⁵⁴² Adjudicated Fact no. 68 - *Semanza* Trial Judgement.

¹⁵⁴³ Adjudicated Fact no. 144 - *Semanza* Trial Judgement.

¹⁵⁴⁴ Adjudicated Fact no. 145 - *Semanza* Trial Judgement.

¹⁵⁴⁵ Exhibit DNZ404, "UNAMIR Sitrep 7 April 1994".

¹⁵⁴⁶ Exhibit P141, "UNAMIR Sitrep 9 April 1994", paras. 3, 8.

¹⁵⁴⁷ See para. 170, *supra*.

1251. There were no specific instructions from Kajuga as to how to detect who was an accomplice. They were to work in conjunction with the military in this endeavour. People had to show identification at roadblocks, and those identified as Tutsi were to be killed.

Prosecution Witness T

1252. The witness¹⁵⁴⁸ testified that the *Interahamwe* fought against the RPF and its accomplices using methods including checking the identity cards of individuals at roadblocks to see that infiltrators were not moving about, which was a legitimate means of self-defence under the circumstances.¹⁵⁴⁹

1253. Although only a negligible number of women were said to have been RPF infiltrators and no cases of children RPF infiltrators were known, women and children were massacred indiscriminately by the *Interahamwe*.¹⁵⁵⁰

Prosecution Witness G

1254. The witness¹⁵⁵¹ testified that by 7 April 1994, the *Interahamwe* were already armed and wearing MRND uniforms and had begun killing Tutsis on the previous night. At the time, people had been instructed not to leave home but the *Interahamwe* were moving about, so he believed they had instructions from an official to do so.¹⁵⁵²

1255. When he left his property on 9 April 1994, and travelled approximately five kilometres to Gicyovu, he saw thousands of corpses along the sides of the road.¹⁵⁵³ He could tell that most of the bodies were those of Tutsis,¹⁵⁵⁴ and he was told that they had been killed by the *Interahamwe* and soldiers.¹⁵⁵⁵

1256. The witness was unsure who authorised the erection of roadblocks in Kigali on the night of 6 April 1994, though he realised that somebody must have ordered or authorised it.¹⁵⁵⁶ President Theodore Sindikubwabo, in a speech that was broadcast on the radio on 10 April 1994, requested that all unauthorised roadblocks be dismantled; this did not occur.¹⁵⁵⁷

1257. After 6 April 1994, the term "*Interahamwe*" no longer specifically referred to the youth wing of the MRND, but to people from the youth wings of all political parties that were mixed together at roadblocks.¹⁵⁵⁸

Prosecution Witness UB

1258. The witness¹⁵⁵⁹ testified that the people killed at the roadblocks were Tutsi men, women and children. Every Tutsi that wanted to pass through a roadblock had to show an

¹⁵⁴⁸ See para. 178, *supra*.

¹⁵⁴⁹ T. 30 May 2006, p. 7.

¹⁵⁵⁰ T. 6 June 2006, p. 25.

¹⁵⁵¹ See para. 175, *supra*.

¹⁵⁵² T. 11 October 2005, p. 53.

¹⁵⁵³ *Id.*, pp. 53, 54.

¹⁵⁵⁴ T. 11 October 2005, p. 54; T. 26 October 2005, p. 28.

¹⁵⁵⁵ T. 18 October 2005, p. 26; T. 26 October 2005, p. 44.

¹⁵⁵⁶ T. 18 October 2005, p. 21.

¹⁵⁵⁷ T. 19 October 2005, p. 21.

¹⁵⁵⁸ T. 18 October 2005, p. 28.

identity card, and even before 7 April 1994 the Tutsi residences were all known. The roadblocks were erected extremely quickly and by 9 April there were roadblocks everywhere in all *secteurs*.

1259. There was no official order to establish the roadblocks, but they had been used in the past, so the population was used to setting them up. The roadblocks were set up to kill Tutsis, and the *Interahamwe* had been trained and instructed in advance to set them up.¹⁵⁶⁰

Prosecution Witness AWE

1260. The witness¹⁵⁶¹ testified that he was aware of roadblocks erected by *Interahamwe* at Gitega and Gakinjira, both on Nyamirambo road, between 6 and 9 April 1994. On 9 April 1994, the witness attended a meeting where Tharcisse Renzaho ordered the erection of roadblocks and said that he would provide weapons to be distributed to members of the population.

1261. The witness then set up three roadblocks within the *secteur* with the help of *cellule* leaders. *Interahamwe* were summoned to Rutaganda's place where Robert Kajuga instructed them to man these and other roadblocks where they would check identity cards of Tutsis. The purpose was to ensure that the RPF did not advance through any of the roadblocks. Weapons were received on approximately 12 April 1994 by which time Tutsis, including women and children, were being killed at roadblocks or in their homes. The witness reported this to Renzaho, who gave no reply.¹⁵⁶²

Prosecution Witness BDX

1262. The witness, a Hutu friend of the Nzirorera family,¹⁵⁶³ stated that he was in Joseph Nzirorera's convoy when they fled from Kigali to Gitarama. The convoy crossed three roadblocks by the time they reached the traffic lights at Nyabugogo, and more roadblocks at Gitikinyoni and Ruyenzi. The roadblocks were manned mostly by *Interahamwe* (and sometimes one or two soldiers, or members of the population) who bore weapons such as firearms, machetes, clubs, and spears.¹⁵⁶⁴ The people manning another roadblock were checking identity cards and not letting Tutsis pass. The convoy passed the roadblocks easily.

Prosecution Witness GBY

1263. The witness was a Tutsi who survived because he hid in various places during the killings in 1994.¹⁵⁶⁵ He observed three dead bodies at a roadblock situated opposite from the Ministry of Finance. The witness saw one girl being killed with a piece of wood, and

¹⁵⁵⁹ See para. 154, *supra*.

¹⁵⁶⁰ T. 27 February 2006, pp. 20, 23.

¹⁵⁶¹ See para. 299, *supra*.

¹⁵⁶² T. 4 July 2007, pp. 27, 28.

¹⁵⁶³ T. 9 October 2007, p. 14.

¹⁵⁶⁴ *Id.*, pp. 36, 37.

¹⁵⁶⁵ T. 25 June 2007, pp. 4, 5; 8, 9; 10, 11; 60, 72; T. 26 June 2007, pp. 38, 43.

said that Ngirumpatse could have seen the bodies in the road, which were above the level of his car, though it is possible that he did not see them.¹⁵⁶⁶

Prosecution Witness ALG

1264. The witness¹⁵⁶⁷ testified that the *Interahamwe* set up roadblocks and had lists of people that they should kill, either at the roadblocks or at their residences.¹⁵⁶⁸

Nzirorera Defence Witness Georges Rutaganda

1265. The witness¹⁵⁶⁹ did not notice any *Interahamwe* at the roadblocks in Kigali beginning on 8 April 1994, and any *Interahamwe* who manned roadblocks did not do so in their role as *Interahamwe*, but in the same way other ordinary civilians did. The roadblocks he saw in Kigali were manned by soldiers. However, in other areas civilians and soldiers were mixed. There were many “unofficial” roadblocks, which had been manned by some people without receiving any orders.¹⁵⁷⁰

1266. He saw dead bodies on the streets from 10 April 1994, but not exclusively at the roadblocks. Some roadblocks did not have any dead bodies. From 7 to 11 April 1994 nobody was being tracked down because they were Tutsi; rather, these were “targeted assassinations”. You never knew who was manning roadblocks and you could come across somebody who had a conflict with you and they would have killed you.

Nzirorera Defence Witness Eliézer Niyitegeka

1267. During a TV interview on 8 May 1994, the witness¹⁵⁷¹ stated that militias were manning the roadblocks, and that they were controlled by the government. He testified, however, that this was a comment made to a journalist, not a judge, and that it was all lies. The information was provided for the consumption of the journalist and his audience, who could have included the RPF.¹⁵⁷²

Nzirorera Defence Witness Tharcisse Renzaho

1268. The witness¹⁵⁷³ stated that the roadblocks were not ordered by anybody but erected by people to protect themselves from the RPF.¹⁵⁷⁴

Nzirorera Defence Witness Pauline Nyiramasuhuko

1269. The witness¹⁵⁷⁵ testified that anyone who had a Tutsi identity card was in a “really unfortunate situation”¹⁵⁷⁶ because “one could not distinguish between a Tutsi and an accomplice.”¹⁵⁷⁷

¹⁵⁶⁶ T. 25 June 2007, pp. 62-65; T. 28 June 2007, pp. 49-53; 55-57; T. 2 July 2007, p. 11.

¹⁵⁶⁷ See para. 157, *supra*.

¹⁵⁶⁸ T. 6 November 2006, p. 22.

¹⁵⁶⁹ See para. 187, *supra*.

¹⁵⁷⁰ T. 12 April 2010, p. 45; T. 14 April 2010, p. 20.

¹⁵⁷¹ See para. 794, *supra*.

¹⁵⁷² T. 3 March 2010, p. 29.

¹⁵⁷³ See para. 312, *supra*.

¹⁵⁷⁴ T. 15 April 2010, p. 24.

Transcript of Nzirorera Defence Witness Agnes Ntamabyaliro from Bizimungu et al. Trial

1270. The witness¹⁵⁷⁸ testified that roadblocks in 1994 were manned by *Interahamwe*, but it was not true that people were killed at every roadblock.¹⁵⁷⁹

Transcript of Nzirorera Defence Witness Emmanuel Ndindabahizi from Bizimungu et al. Trial

1271. The witness¹⁵⁸⁰ testified that he was present at a security meeting led by Tharcisse Renzaho in Kigali on 11 April 1994. Renzaho told them that Kigali was in chaos, and roadblocks were being manned by unknown persons.¹⁵⁸¹ Farmers and inhabitants of Kigali had begun erecting roadblocks in their neighbourhoods to prevent RPF infiltrators from moving in.¹⁵⁸²

1272. He knew for a fact that the youth wing of the PSD, the *Abakombozi*, had never been accused of killings, but that the *Interahamwe* had.¹⁵⁸³

Karemera Defence Witness Ildephonse Munyeshyaka

1273. The witness was a member of the MRND in 1994.¹⁵⁸⁴ He testified that when he, his wife, Ruzindana and Augustin Misago arrived at Nyabugogo Roadblock, they were asked to get out of the car and were subsequently ridiculed by the youths manning the roadblock; however, they were never asked their ethnic group or for any documents.¹⁵⁸⁵

Karemera Defence Witness XFP

1274. The witness¹⁵⁸⁶ testified that the Rwandan army took no part in the massacres, except for small groups such as the Presidential Guard.¹⁵⁸⁷

Ngirumpatse Defence Witness André Nzabanterura

1275. The witness¹⁵⁸⁸ stated that after the President's plane crash, youths of all political parties set up roadblocks, called themselves *Interahamwe*, and set out to tarnish the name of the MRND by committing massacres and acts of violence in the name of the *Interahamwe*.

¹⁵⁷⁵ See para. 915, *supra*.

¹⁵⁷⁶ T. 4 May 2010, p. 17.

¹⁵⁷⁷ *Id.*, p. 18.

¹⁵⁷⁸ See para. 334, *supra*.

¹⁵⁷⁹ Exhibit DNZ512, *Bizimungu et al.*, T. 28 August 2006, p. 24.

¹⁵⁸⁰ See para. 924, *supra*.

¹⁵⁸¹ Exhibit DNZ513, *Bizimungu et al.*, T. 30 April 2007, p. 39.

¹⁵⁸² Exhibit DNZ513, *Bizimungu et al.*, T. 30 April 2007, pp. 57, 58.

¹⁵⁸³ Exhibit DNZ513, *Bizimungu et al.*, T. 2 May 2007, pp. 10, 11.

¹⁵⁸⁴ T. 7 May 2008, p. 44.

¹⁵⁸⁵ T. 8 May 2008, p. 38.

¹⁵⁸⁶ See para. 926, *supra*.

¹⁵⁸⁷ T. 11 July 2008, p. 29.

¹⁵⁸⁸ See para. 429, *supra*.

RPF collaborators were working in close proximity with the youth wings from other political parties.¹⁵⁸⁹

Ngirumpatse Defence Witness PTR

1276. The witness¹⁵⁹⁰ testified that the young people at the roadblocks were civilians and some of them were wearing uniforms. They had weapons that included traditional self-defence weapons (machetes, spears, clubs). They were well armed against civilians.¹⁵⁹¹

1277. Red Cross ambulances were stopped at roadblocks and if the patient looked like a Tutsi he would be removed from the ambulance and killed. As a result, the witness contacted Kajuga and Rutaganda and received a *laissez-passer* for safe passage signed by Kajuga. The *laissez-passer* was respected at roadblocks where *Interahamwe* were in charge, but did not solve all problems at other roadblocks.¹⁵⁹²

Ngirumpatse Defence Witness Delphine Ngirumpatse

1278. The witness¹⁵⁹³ testified that she and her family left home in Kicukiro on or around 10 April 1994 to drive from Kigali to Gitarama.¹⁵⁹⁴ Along the way, the car was stopped at roadblocks. She could not recall precisely whether the people manning the roadblocks were civilians or soldiers, but thought they were soldiers. She could not say whether they were *Interahamwe*.¹⁵⁹⁵

1279. The witness later travelled by road from Gitarama to Bukavu with Daniel Mbangura, a government minister,¹⁵⁹⁶ and passed through roadblocks along the way. At the first roadblock, they were asked to produce identity cards. The witness's identity card was deemed inaccurate, and those at the roadblocks wanted to detain her, but Mbangura negotiated with them. She was similarly treated at the next two roadblocks.¹⁵⁹⁷ Because of her physical features, people often assume she is a Tutsi and this was why she was threatened at roadblocks.¹⁵⁹⁸

Édouard Karemera

1280. Karemera testified that prior to becoming Minister of the Interior, he would occasionally face problems at unofficial roadblocks, which had been set up by bandits to ransom people.¹⁵⁹⁹ Even with a military escort, negotiating passage through the roadblocks was difficult.¹⁶⁰⁰

¹⁵⁸⁹ T. 29 September 2010, pp. 31-33.

¹⁵⁹⁰ See para. 226, *supra*.

¹⁵⁹¹ T. 18 November 2010, pp. 40, 41.

¹⁵⁹² T. 19 November 2010, pp. 8, 12.

¹⁵⁹³ See para. 229, *supra*.

¹⁵⁹⁴ T. 10 January 2011, pp. 11, 12.

¹⁵⁹⁵ *Id.*, p. 31.

¹⁵⁹⁶ *Id.*, p. 35.

¹⁵⁹⁷ *Id.*, p. 14.

¹⁵⁹⁸ *Id.*, p. 32.

¹⁵⁹⁹ T. 19 May 2009, p. 34.

¹⁶⁰⁰ T. 27 May 2009, p. 40.

Deliberations

Cautionary Issues

1281. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH, UB, AWE, ALG, and Defence Witnesses Rutaganda, Niyitegeka, Renzaho, Ndindabahizi, and Nzabanterura were convicted and imprisoned for participating in the genocide.¹⁶⁰¹ Furthermore, at the time of their testimony, Prosecution Witness T, and Defence Witnesses Nyiramasuhuko and Ntamabyaliro were detained and awaiting trial on genocide charges.¹⁶⁰² The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program,¹⁶⁰³ and that Rutaganda called Ngirumpatse as a Defence witness in his own trial. Moreover, it recalls that Witness Delphine Ngirumpatse is Ngirumpatse's daughter.¹⁶⁰⁴

1282. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Erection and Manning of Roadblocks

1283. It is undisputed that roadblocks were set up in Kigali following the downing of the President's plane. This is evident from the testimony of nearly all witnesses, which is corroborated by the adjudicated facts and the UNAMIR situation report of 7 April 1994.

1284. According to adjudicated facts and the evidence of Prosecution Witnesses HH, AWE, BDX, and ALG, and Defence Witness Ntamabyaliro, which is corroborated by Niyitegeka's radio interview, the roadblocks were established and manned by *Interahamwe*.

1285. Although a few Defence witnesses contend that Prosecution Witness BDX was not in Nzirorera's convoy when it left Kigali, the Chamber does not find that their evidence disproves that Witness BDX passed roadblocks when leaving Kigali, and the Chamber believes his evidence that he did.

1286. Many witnesses mentioned different groups as being responsible for at least partly establishing and manning roadblocks. Witnesses UB, BDX, Rutaganda and Ndindabahizi mentioned the population. Witness AWE named local authorities pursuant to an instruction of 9 April 1994 by *Préfet* Renzaho. Witnesses BDX and Rutaganda mentioned soldiers. Witness Ndindabahizi named farmers and inhabitants of Kigali. Witness Nzabanterura referred to the youth of all political parties who collectively referred to themselves as *Interahamwe*. Witness PTR mentioned young civilians, and Karemera named bandits.

1287. The Chamber does not discount the possibility that not all roadblocks in Kigali were set up and manned by MRND *Interahamwe* or that the MRND *Interahamwe* at some roadblocks were joined by non-MRND youths or that the term "*Interahamwe*" over time became diluted to mean all youths engaged in anti-Tutsi activities. Furthermore, the Chamber notes that the Indictment refers to militia and soldiers as the principal perpetrators

¹⁶⁰¹ See paras. 170 (HH); 154 (UB); 299 (AWE); 157 (ALG); 187 (Rutaganda); 794 (Niyitegeka); 312 (Renzaho); 924 (Ndindabahizi); and 429 (Nzabanterura).

¹⁶⁰² See paras. 178 (T); 915 (Nyiramasuhuko); and 334 (Ntamabyaliro).

¹⁶⁰³ See paras. 175 (G) and 178 (T).

¹⁶⁰⁴ See para. 230.

of the killings, not specifically the *Interahamwe*, and that the Prosecution Closing Brief specifies that the youth wings of the PDS and CDR parties joined the *Interahamwe* movement.¹⁶⁰⁵

1288. The Chamber, however, finds that the evidence with respect to the weekend of 8 to 10 April 1994 convincingly shows that the majority of the roadblocks were set up or manned by MRND *Interahamwe* or controlled by MRND *Interahamwe*. This finding is further corroborated by the undisputed fact that the MRND leaders sent the Provisional National Committee of the *Interahamwe* on a tour to the roadblocks at the behest of the Interim Government to instruct the *Interahamwe* to stop killings.

1289. Concerning the involvement of soldiers, it follows from the UNAMIR situation report of 9 April 1994 and the evidence of Witnesses HH, G, BDX and Rutaganda, which was corroborated by the hearsay evidence of Witness T, that soldiers either participated in manning roadblocks or supervised the activities of the youth militias. Only Defence Witness XFP refuted that soldiers were involved, apart from the Presidential Guard, but he was not in Rwanda at the time and did not explain the basis for his statement. The Chamber is convinced by the evidence that soldiers participated in manning roadblocks and/or supervised the activities of the youth militias at the roadblocks.

Detention and Killing of Tutsis at Roadblocks

1290. The Chamber notes that it follows from adjudicated facts 146 and 147 and the testimony of Witnesses HH, T, UB, AWE, and BDX that the identity of passers-by at roadblocks was checked, which seems to be an essential purpose of erecting roadblocks, and that Tutsis were detained. It follows from the same evidence, apart from that of Witness BDX, that the detained Tutsis were killed. Witness G corroborates this evidence because he asserts that he saw dead bodies of Tutsis on the roadside. Witness PTR also corroborates this evidence because he stated that patients were removed from ambulances at roadblocks and killed if they appeared Tutsi.

1291. Some witnesses testified that the people killed at the roadblocks were not selected because they were Tutsis. Witness ALG said they were killed because they were on a list. Rutaganda claimed that these persons were killed as a means to settle old scores. Ntamabyaliro contended that people were not killed at every roadblock.

1292. The Chamber does not discount that some roadblocks were manned by people who did not kill or that Hutus who attempted to pass roadblocks were killed because they were on a list or because the persons manning the roadblock had an old grudge to settle with them. Nevertheless, the Chamber is convinced that people identified as Tutsis were killed because of their ethnicity at most roadblocks.

Scale of Killings of Civilians by Militias and Soldiers by 12 April 1994

1293. The Prosecution has not led any evidence concerning the scale of the killings of civilians by militias and soldiers throughout Rwanda that specifically relates to the period until 12 April 1994. Moreover, the Chamber notes from the evidence in (V.2) that mass killings only began in Gitarama and Butare after 12 April.

¹⁶⁰⁵ Prosecution Closing Brief, para. 36.

1294. With respect to Kigali, however, the Chamber refers to its findings in (IV.1.4) that on 10 April 1994 the MRND leadership and the Interim Government took the initiative to stop the killings so that dead bodies could be collected and buried. Based thereon, and recalling the adjudicated facts in this case, the Chamber is convinced that in Kigali alone “thousands of civilians” were killed by militias and soldiers by 12 April 1994 as alleged by the Prosecution.

Scale of Killings of Civilians by Militias and Soldiers by Mid-July 1994

1295. It follows from the adjudicated facts mentioned in paragraphs (1215-1218) and the Chamber’s findings concerning assaults on Tutsis in Kigali, Gitarama, Butare and Kibuye that killings of unarmed men, women and children of mainly Tutsi ethnicity took place at a massive scale as a direct result of policies initiated and authorized by the MRND and affiliated “Hutu Power” political parties and executed through the instrumentalities of the state. However, the Chamber has no basis to quantify the number of victims.

7.1.1 Awareness and Control of the Accused

Evidence

Radio Rwanda Broadcast of 10 April 1994

1296. In this radio broadcast, Ngirumpatse urged MRND members to take the path of security, and stated that no political party had ever asked its members to indulge in killing. What had occurred since the death of President Habyarimana was “like an impulse from the people’s hearts.” He appealed to the MRND, especially the youth, to provide security for others, especially the weak ones, instead of doing evil. The people must leave the roadblocks, thieves must stop stealing, and killers should stop killing. He stated, “we have dispatched people to the neighbourhoods in order to free the roads, so that they could provide security for others instead of robbing and attacking them. We believe that we should fight those who attack us, but we should not fight those who are not armed.” Ngirumpatse stated that MRND members should know that they were being attacked by *Inkotanyi*, not ordinary citizens.¹⁶⁰⁶

UNAMIR Situation Reports

1297. According to a report of 9 April 1994, the Presidential Guard, Rwandan Government Forces, and *gendarmes* were monitoring the actions of the *Interahamwe* (referred to in the report as the party militia of the MRND) as they committed atrocities up to that date. The *Interahamwe* controlled the areas of Nyamirambo, Bilyogo, and Kimisagara. Thousands had been killed as killings continued in government controlled areas. The victims were mostly Tutsis and Hutus from the south or non-MRND/CDR political parties.¹⁶⁰⁷

Prosecution Witness HH

¹⁶⁰⁶ DNZ22, “Transcript of Radio Rwanda Broadcast of 10 April 1994.”

¹⁶⁰⁷ Exhibit P141, “Outgoing Cable Code 9 April 1994”, paras. 3, 8.

1298. The witness¹⁶⁰⁸ testified that Maniragaba and Kajuga had given the instruction to set up roadblocks on 8 April 1994 to protect Kigali. Those setting up the roadblocks were to work in conjunction with the military in this endeavour. Kajuga and Rutaganda were amongst the group who toured the roadblocks on 8 April 1994 to assess whether weapons were needed, after which lists of those who required training in weapons handling were created.¹⁶⁰⁹

Prosecution Witness T

1299. The witness¹⁶¹⁰ testified that the *Interahamwe* Provisional National Committee did not have the means to stop the killings. The MRND and the government had the means at their disposal to help the committee effectively carry out the supposed orders it was given to stop the killings. They did not, however, use the army and *gendarmérie* at their disposal to help the committee effectuate its orders.

1300. The witness believed that this was intentional, and a means to shift the blame for failure to control the *Interahamwe* off the MRND and onto the Provisional National Committee of the *Interahamwe*.¹⁶¹¹

Prosecution Witness G

1301. The witness¹⁶¹² testified that by 7 April 1994 people had been instructed not to leave home; however, the *Interahamwe* were moving about, so he believed they had instructions from an official to do so.¹⁶¹³ The *Interahamwe* were never prosecuted, punished, or imprisoned for any of the killings that took place following 7 April 1994; instead they were co-opted into civil defence.¹⁶¹⁴

1302. The witness was unsure who authorised the erection of roadblocks in Kigali on the night of 6 April 1994, though he realised that somebody must have ordered or authorised it.¹⁶¹⁵ President Theodore Sindikubwabo, in a speech that was broadcast on the radio on 10 April 1994, requested that all unauthorised roadblocks be dismantled; however, this did not occur.¹⁶¹⁶

1303. The witness was summoned to a meeting at the *Hôtel des Diplomates* on the morning of 10 April 1994 and sent on the pacification tour. It seemed as though the government did not want the killings to stop and the purpose of the mission was to give the impression to the international community that there had not been many killings.¹⁶¹⁷

1304. Had the government wanted the killings to stop, government officials and political party leaders could have given orders to soldiers to have them stopped.¹⁶¹⁸ The Accused had

¹⁶⁰⁸ See para. 170, *supra*.

¹⁶⁰⁹ T. 14 November 2006, p. 14.

¹⁶¹⁰ See para. 178, *supra*.

¹⁶¹¹ T. 31 May 2006, pp. 11-13.

¹⁶¹² See para. 175, *supra*.

¹⁶¹³ T. 11 October 2005, p. 53.

¹⁶¹⁴ T. 28 October 2005, p. 24.

¹⁶¹⁵ T. 18 October 2005, p. 21.

¹⁶¹⁶ T. 19 October 2005, p. 21.

¹⁶¹⁷ T. 18 October 2005, pp. 30, 31.

¹⁶¹⁸ T. 11 October 2005, pp. 60, 61.

the power to stop the massacres, and could have stopped them well before May, but instead they did the opposite, and encouraged the population to kill.¹⁶¹⁹ If the killings had stopped in Kigali, they would not have spread to the other *préfectures*. Immediately after 10 April the killings resumed.¹⁶²⁰

Prosecution Witness UB

1305. The witness¹⁶²¹ testified that the *Interahamwe* leaders in Kigali-ville were at the roadblocks, which meant that the *Interahamwe* were being controlled by the leaders of the MRND.¹⁶²² The *Interahamwe* had their headquarters within the MRND main office building.¹⁶²³

1306. On 11 April 1994, the witness called Ngirumpatse at the *Hotel des Diplomates* to inform him that the *Interahamwe* were killing Tutsis arbitrarily. Ngirumpatse said that the *Interahamwe* knew what they were doing, and that he was busy with other matters.¹⁶²⁴

1307. The instructions from *Préfet* Renzaho to dismantle roadblocks were just speeches because those instructions were never followed. The *préfet* never gave the witness instructions to go to the roadblocks and replace people who were engaged in criminal acts.¹⁶²⁵ With respect to functions as a local government authority, none of the Accused exercised control over him.¹⁶²⁶

1308. He telephoned Ngirumpatse in June 1994 when Ngirumpatse was at the *Hôtel Meridien* in Gisenyi and they “talked of the *Interahamwe* problem”.¹⁶²⁷ In late June 1994, the witness met with Ngirumpatse at the *Hôtel Meridien*.¹⁶²⁸ The witness informed Ngirumpatse that the *Interahamwe* from Gisenyi *préfecture* were killing civilians from Kigali who were seeking refuge in Gisenyi. Ngirumpatse told the witness that he was very busy and that he should speak with the president of the *Interahamwe* in Gisenyi *préfecture*.¹⁶²⁹

Prosecution Witness AWE

1309. The witness¹⁶³⁰ testified that the *Interahamwe* erected roadblocks at Gitega and Gakinjoro, both on Nyamirambo road, between 6 and 9 April 1994. This began the evening of 6 April 1994 in a manner that seemed organised. He believed that the *Interahamwe* would not take such action without being ordered to do so by the MRND Executive Bureau, including the Ngirumpatse, Karemera, and Joseph Nzirorera.¹⁶³¹

¹⁶¹⁹ T. 13 October 2005, p. 7.

¹⁶²⁰ T. 26 October 2005, pp. 45, 46.

¹⁶²¹ See para. 154, *supra*.

¹⁶²² T. 22 February 2006, p. 29; T. 23 February 2006, p. 30; T. 27 February 2006, p. 24.

¹⁶²³ T. 1 March 2006, p. 22.

¹⁶²⁴ T. 27 February 2006, pp. 62-63.

¹⁶²⁵ T. 8 May 2006, pp. 22, 26.

¹⁶²⁶ T. 6 March 2006, p. 13.

¹⁶²⁷ T. 27 February 2006, p. 61.

¹⁶²⁸ T. 28 February 2006, p. 32; T. 8 March 2006, p. 48.

¹⁶²⁹ T. 28 February 2006, p. 32.

¹⁶³⁰ See para. 299, *supra*.

¹⁶³¹ T. 4 July 2007, pp. 24-26.

1310. On 9 April, the witness attended a meeting where Tharcisse Renzaho ordered the erection of roadblocks and said that he would provide weapons to be distributed to members of the population. By this point, the killing of Tutsis was already underway. Renzaho told the witness and others present that this order had been made in conjunction with the Accused, Nzirorera, and Rwandan army officers.¹⁶³²

Prosecution Witness BDX

1311. The witness¹⁶³³ testified that while driving in Joseph Nzirorera's convoy from Kigali to Gitarama he observed that the *Interahamwe* addressed Nzirorera as "president" at the roadblock in Nyabugogo. Nzirorera "urged or encouraged the militiamen" and told the *Interahamwe* to be vigilant in order to block the way for any *Inyenzi*.

Prosecution Witness GBY

1312. The witness¹⁶³⁴ testified that while hiding in a building at the Muhima roadblock¹⁶³⁵ he observed Ngirumpatse arriving at the roadblock in a dark Mercedes followed by a convoy of cars.¹⁶³⁶ When Ngirumpatse arrived the *Interahamwe* started singing and dancing.¹⁶³⁷ Ngirumpatse did not stay long; during the short stop one *Interahamwe* said "[o]h, there is our president" and Ngirumpatse (who they referred to as "Matayo") stuck his head out, pointed at the *Interahamwe* and said, "[w]e are together".

Prosecution Witness ALG

1313. The witness¹⁶³⁸ testified that Ngirumpatse addressed members of the National Bureau of the *Interahamwe* and requested them to set up roadblocks to fight the enemy and told them that they should comply with the orders of soldiers.¹⁶³⁹ Roadblocks were erected as early as 7 April 1994 on the order of the MRND and other authorities. He received this information from the *bourgmestre* of Kacyiru *commune* and several others.¹⁶⁴⁰

Nzirorera Defence Witness Tharcisse Renzaho

1314. The witness¹⁶⁴¹ testified that he could not imagine the MRND issuing orders to erect roadblocks to kill Tutsis.¹⁶⁴² He refuted the testimony of Prosecution Witness AWE that at a councillors meeting, Renzaho relayed a message that the Accused had been consulted and had ordered the erection of roadblocks.¹⁶⁴³

¹⁶³² *Id.*, p. 27.

¹⁶³³ See para. 1239, *supra*.

¹⁶³⁴ See para. 1240, *supra*.

¹⁶³⁵ T. 2 July 2007, pp. 34, 35.

¹⁶³⁶ T. 25 June 2007, pp. 62-65; T. 2 July 2007, p. 11; Exhibit DNZ307, "Investigator's Interview Report", p. 3.

¹⁶³⁷ Exhibit DNZ307, "Investigator's Interview Report", p. 3.

¹⁶³⁸ See para. 157, *supra*.

¹⁶³⁹ T. 26 October 2006, p. 63.

¹⁶⁴⁰ *Id.*, pp. 61, 62.

¹⁶⁴¹ See para. 312, *supra*.

¹⁶⁴² T. 15 Apr 2010, p. 27.

¹⁶⁴³ *Id.*, pp. 28, 29.

1315. He attended the 10 April 1994 *Hôtel des Diplomates* meeting to help ensure that those at the roadblocks would receive the message that they needed to allow Red Cross personnel to move about. That same day, he issued a *communiqué* where he requested the disbanding of all unauthorised roadblocks in the city.¹⁶⁴⁴

Nzirorera Defence Witness Pauline Nyiramasuhuko

1316. The witness¹⁶⁴⁵ testified that the MRND never incited people to kill; instead it was a party of peace and unity. The Interim Government spared no effort in trying to stop the killings, but was unable to. The MRND leadership did not have enough support base to stop the killings either.¹⁶⁴⁶

1317. The Interim Government had talked about roadblocks, and wanted them to be manned and supervised by people known to the government.¹⁶⁴⁷

Nzirorera Defence Witness Georges Rutaganda

1318. The witness¹⁶⁴⁸ testified that none of the Accused gave instructions to the *Interahamwe* to create or man roadblocks.¹⁶⁴⁹ He denied receiving any orders after 6 April from the Karemera and Ngirumpatse to kill people.¹⁶⁵⁰ He witnessed the situation, and never saw Karemera or Ngirumpatse talk to people at roadblocks or elsewhere. He did not see them play any direct role in the killings in Kigali. Further, he does not see how they could have had the capacity to punish the perpetrators of the killings. Karemera and Ngirumpatse did all they could in their capacities as MRND leaders by calling on members and supporters to abstain from involvement in the killings.¹⁶⁵¹

Nzirorera Defence Witness Eliézer Niyitegeka

1319. The witness¹⁶⁵² testified that his comments on 8 May 1994 during a TV interview that militia were manning the roadblocks, and that they were controlled by the government, were all lies. The information was provided for the consumption of the journalist and his audience, who could have included the RPF.¹⁶⁵³

Transcript of Nzirorera Defence Witness Agnes Ntamabyaliro from Bizimungu et al. Trial

1320. The witness¹⁶⁵⁴ stated that at the 10 April 1994 meeting, the political leaders requested that disciplinary action be taken against unruly soldiers. The Minister of Defence

¹⁶⁴⁴ T. 15 Apr 2010, p. 29; Exhibit DNZ074, "10 April Renzaho Communiqué".

¹⁶⁴⁵ See para. 915, *supra*.

¹⁶⁴⁶ T. 3 May 2010, pp. 20, 21.

¹⁶⁴⁷ T. 4 May 2010, pp. 9, 10.

¹⁶⁴⁸ See para. 187, *supra*.

¹⁶⁴⁹ T. 12 April 2010, p. 46.

¹⁶⁵⁰ T. 13 April 2010, p. 20.

¹⁶⁵¹ T. 13 April 2010, p. 21.

¹⁶⁵² See para. 794, *supra*.

¹⁶⁵³ T. 3 March 2010, p. 29.

¹⁶⁵⁴ See para. 334, *supra*.

was not present at this meeting because he was out of the country, so she was not sure how this message was communicated.¹⁶⁵⁵

1321. Although the government in Gitarama was unable to stop the violence, this was mostly because telephone lines had been cut since 7 April 1994 and the only means of communicating was to broadcast their messages on Radio Rwanda.¹⁶⁵⁶

Transcript of Nzirorera Defence Witness Emmanuel Ndindabahizi from Bizimungu et al. Trial

1322. The witness¹⁶⁵⁷ stated that because the Interim Government was set up on 9 April 1994, and the massacres began on 6 April, there were three days during which the government was not in control of the security situation.¹⁶⁵⁸

1323. The witness was present at the first meeting of the Interim Government on 9 April 1994, where a topic of discussion was ending the violence that had begun three days prior. He could not recall whether, at that meeting, Justin Mugenzi was assigned the task of talking to MRND executives to prevail upon them to stop the *Interahamwe* from killing, but he agreed that this probably happened.¹⁶⁵⁹ The government did ask all political parties, including the MRND, to tell their youth wings to calm down.¹⁶⁶⁰

Karemera Defence Witness XQL

1324. The witness¹⁶⁶¹ testified that after 6 April 1994, the MRND did not have the same degree of control over the *Interahamwe* that it previously had.¹⁶⁶²

Ngirumpatse Defence Witness Delphine Ngirumpatse

1325. The witness¹⁶⁶³ testified that she and her family left home in Kicukiro on or around 10 April 1994 to drive from Kigali to Gitarama.¹⁶⁶⁴ Along the way, the car was stopped at roadblocks, which she believed were closer to Gitarama than Kigali. Nobody exited the vehicle at any of the roadblocks, but she recalled her father negotiating with those manning the roadblocks in order to get the car through. She did not remember him giving orders to anyone manning the roadblocks.

1326. The witness later travelled by road from Gitarama to Bukavu with Daniel Mbangura, a government minister,¹⁶⁶⁵ and passed through roadblocks along the way. At the first roadblock, the car's occupants were asked to produce identity cards by those manning the roadblocks. The witness's identity card was deemed inaccurate, and those at the roadblocks wanted to detain her, but Mbangura negotiated with them. Being the daughter of

¹⁶⁵⁵ *Bizimungu et al.*, T. 21 August 2006, p. 44.

¹⁶⁵⁶ *Bizimungu et al.*, T. 22 August 2006, pp. 3, 4.

¹⁶⁵⁷ See para. 924, *supra*.

¹⁶⁵⁸ Exhibit DNZ513, *Bizimungu et al.*, T. 1 May 2007, p. 63.

¹⁶⁵⁹ Exhibit DNZ513, *Bizimungu et al.*, T. 2 May 2007, pp. 8, 9.

¹⁶⁶⁰ Exhibit DNZ513, *Bizimungu et al.*, T. 2 May 2007, p. 10.

¹⁶⁶¹ See para. 583, *supra*.

¹⁶⁶² T. 5 May 2008, p. 24.

¹⁶⁶³ See para. 229, *supra*.

¹⁶⁶⁴ T. 10 January 2011, pp. 11, 12.

¹⁶⁶⁵ *Id.*, p. 35.

Ngirumpatse afforded her no benefits at the roadblocks because she was similarly treated at the next two roadblocks.¹⁶⁶⁶

1327. Though her identity card had Ngirumpatse's name on it, those manning the roadblocks were not interested in who she or her father were.¹⁶⁶⁷ Because of her physical features, people often assume she is a Tutsi and this was why she was threatened at roadblocks.¹⁶⁶⁸

Édouard Karemera

1328. Karemera testified that the radio address by President Sindikubwabo on 10 April 1994 ordering all unauthorised roadblocks to be dismantled was sincere.¹⁶⁶⁹

Matthieu Ngirumpatse

1329. Ngirumpatse testified that his address on Radio Rwanda on 10 April, where he called for people to stop killing, stealing, and to leave the roads was meant and understood to mean that they should dismantle the roadblocks.¹⁶⁷⁰ The French and English translations of the transcript of the radio address are inaccurate because they do not include the part where he calls for the people to stop the killings and leave the roads.

1330. He never called for the *Interahamwe* Provisional National Committee to control its men, and never implied that the committee was in control of the men at the roadblocks. The youth who were causing trouble on the streets were not only from the MRND, they were people from the general population. There was no control over them by the Provisional National Committee or MRND, or really even the government. Those in control were those with weapons, but really there was no control.¹⁶⁷¹

Deliberations

Cautionary Issues

1331. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH, UB, AWE, ALG, and Defence Witnesses Rutaganda, Niyitegeka, Renzaho, and Ndindabahizi were convicted and imprisoned for participating in the genocide.¹⁶⁷² Furthermore, at the time of their testimony, Prosecution Witness T, and Defence Witnesses Nyiramasuhuko and Ntamabyaliro were detained and awaiting trial on genocide charges.¹⁶⁷³ The Chamber also takes into account that Prosecution Witnesses G and T have received extensive benefits under the Prosecution's witness protection program¹⁶⁷⁴ and that

¹⁶⁶⁶ *Id.*, p. 14.

¹⁶⁶⁷ *Id.*, p. 16.

¹⁶⁶⁸ *Id.*, p. 32.

¹⁶⁶⁹ T. 19 May 2009, pp. 26, 27.

¹⁶⁷⁰ T. 27 January 2011, p. 6.

¹⁶⁷¹ *Id.*, pp. 7, 8.

¹⁶⁷² See paras. 170 (HH); 154 (UB); 299 (AWE); 157 (ALG); 187 (Rutaganda); 794 (Niyitegeka); 312 (Renzaho); and 924 (Ndindabahizi).

¹⁶⁷³ See paras. 178 (T); 915 (Nyiramasuhuko); and 334 (Ntamabyaliro).

¹⁶⁷⁴ See paras. 175 (G) and 178 (T).

Rutaganda called Ngirumpatse as a Defence witness in his own trial. Moreover, it recalls that Witness Delphine Ngirumpatse is Ngirumpatse's daughter.¹⁶⁷⁵

1332. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Awareness of the Killings

1333. It is undisputed that Karemera and Ngirumpatse were aware that widespread killing had commenced on 8 April 1994 as evidenced by: the initiatives they took on 10 April 1994 in the form of instructing the Provisional National Committee to tour the roadblocks; the radio broadcast of a *communiqué* drafted by Karemera; and Ngirumpatse's radio address.

Control Over the Interahamwe

1334. The Chamber recalls that the MRND Executive Bureau exercised control over the *Interahamwe* in areas where the *Interahamwe* was organized according to party structures, such as Kigali, and over the Provisional National Committee of the *Interahamwe*, which exercised control of the *Interahamwe* in at least Kigali (see IV.1.3).

1335. The evidence of Prosecution Witnesses BDX and GBY that Nzirorera and Ngirumpatse greeted and expressed support for the *Interahamwe* when their convoys passed roadblocks manned by *Interahamwe* would tend to corroborate the above finding. The Chamber is, however, doubtful as to what the witnesses would have been able to hear from their respective positions (inside a car somewhere behind Nzirorera's car and in a nearby building), and is mindful that expressing support and greeting *Interahamwe* when passing roadblocks could be opportunistic gestures to extract oneself and others from a potentially dangerous situation. Accordingly, the Chamber need not address the Defence's challenges to the testimony of BDX and GBY in this regard.

1336. The finding that Ngirumpatse and Karemera were generally in control of the *Interahamwe* does not discount that the genocide could have started as a response to the assassination of President Habyarimana. The Chamber will discuss whether this was the case or whether the genocide was planned in advance of Habyarimana's assassination in (VI.3.2).

8. RAPE AND SEXUAL ASSAULT OF TUTSI WOMEN AND GIRLS

Allegation in the Indictment

1337. *Interahamwe* and militiamen raped and sexually assaulted Tutsi women in Ruhengeri *préfecture*, during early-mid April 1994, Kigali-ville *préfecture* during April 1994, Butare *préfecture* during mid-late April 1994, Kibuye *préfecture* during May-June 1994, and Gitarama *préfecture* during April and May 1994, and elsewhere throughout Rwanda.¹⁶⁷⁶ The resulting serious bodily or mental harm occurred as part of widespread and

¹⁶⁷⁵ See para. 230.

¹⁶⁷⁶ Indictment paras. 66, 68.

systematic attacks against Rwandan civilians based on their Tutsi ethnicity and was intended to destroy the Tutsi ethnic group.¹⁶⁷⁷

8.1 Kigali-ville Préfecture

Oral Testimony

Prosecution Witness HH

1338. The witness¹⁶⁷⁸ testified that the *Interahamwe* raped Tutsi women between April and July 1994.¹⁶⁷⁹ On one occasion, Georges Rutaganda requested that the witness assist two Tutsi girls in his company to cross the Nyabarongo River; however, the *Interahamwe* at Kigali prison prevented him from doing so.¹⁶⁸⁰ Tutsi women would spend the day with Robert Kajuga and Séraphin Twahirwa at Photo Moussa, and one could observe that their behaviour was “not appropriate”.¹⁶⁸¹ The girls were forced to be there. *Interahamwe* were killing Tutsi women at the time.¹⁶⁸²

1339. The witness raised the issue with Séraphin Twahirwa who appeared unwilling to understand, and with Bernard Maniragaba, who in April 1994 appeared to have taken command and was giving orders to *Interahamwe*, including Georges Rutaganda and Robert Kajuga.¹⁶⁸³ Maniragaba told the witness that he had found Twahirwa and Kajuga in the company of four women, who the witness understood to have been concubines. Maniragaba expressed his disapproval that *Interahamwe* were having sexual intercourse with Tutsi women because they were at war with the women’s brothers and families.¹⁶⁸⁴ He did not have pity for the Tutsi women but was worried that the *Interahamwe* might be at risk of catching AIDS.¹⁶⁸⁵

1340. Maniragaba stated that he would report these actions to the senior authorities and his brother-in-law, the *Interahamwe* president of Gitega. A few days later, there were no girls with the *Interahamwe* in either Amgar Garage or Photo Moussa, and the witness concluded that this was a consequence of Maniragaba’s report. The witness made written reports to Maniragaba and discussed their content with Maniragaba. Maniragaba said he was transmitting the reports to the national secretary of the party and the witness had no reason to believe that he did not do so.¹⁶⁸⁶

Prosecution Witness UB

1341. The witness¹⁶⁸⁷ testified that following the death of President Habyarimana in 1994, the *Interahamwe* led attacks against Tutsis during which they tortured and raped Tutsi

¹⁶⁷⁷ *Id.*

¹⁶⁷⁸ See para. 170, *supra*.

¹⁶⁷⁹ T. 9 November 2006, p. 31; T. 20 November 2006, p. 42.

¹⁶⁸⁰ T. 9 November 2006, pp. 31, 32.

¹⁶⁸¹ *Id.*, p. 30.

¹⁶⁸² *Id.*, p. 32.

¹⁶⁸³ *Id.*, pp. 28, 29, 31.

¹⁶⁸⁴ *Id.*, pp. 30-33.

¹⁶⁸⁵ *Id.*, p. 32.

¹⁶⁸⁶ *Id.*, pp. 32, 33.

¹⁶⁸⁷ See para. 154, *supra*.

women before killing them.¹⁶⁸⁸ Despite the fact that the witness turned to the authorities, they did nothing to protect these people. The number of female victims of sexual assault admitted to hospital was beyond comprehension. Between 7 April 1994 and late June, it was impossible to be unaware that rape was occurring or that any political leader could have been unaware of the crimes being perpetrated.¹⁶⁸⁹

1342. The witness testified that on 7 April 1994, he saw the Tutsi women who resided at the JOC institute in Kigali-ville being separated from their Hutu counterparts by soldiers and *Interahamwe*. The Tutsi women were taken away whereas the Hutu women were authorised to go and join other families.¹⁶⁹⁰

1343. *Interahamwe* who were present later told the witness that the girls were taken to houses, kept there and made “wives” by force. He visited an *Interahamwe* and saw that he was keeping a girl there. One young woman told the witness that she had consented to one of the men in order to “save her skin”. The witness concluded that they had been raped. He does not know what eventually happened to the approximately fifteen girls who were taken. Others had been killed on the spot.¹⁶⁹¹ He reported the rape to the *bourgmestre* of Nyarugenge *commune*, the *gendarmerie* group in the area and the *préfet*, Tharcisse Renzaho. He asked Commander Bazaruhiza why the *gendarmerie* had done nothing and he responded that he did not have the instructions or arms to oppose the *Interahamwe*.¹⁶⁹²

1344. The witness was tasked with writing daily reports on the situation in his *secteur* that were forwarded to his superiors. He noted that rape was occurring in these reports, including one incident where he stopped a soldier who specifically desired a Muslim Tutsi woman from raping a fourteen year old girl and the rapes of three other women by *Interahamwe*.¹⁶⁹³

1345. The witness reported the rape of a woman in his *secteur* by soldiers between 15 and 20 April 1994 to *préfet* Renzaho by phone and in a written report specifying that killings were continuing and the situation was worsening. The witness understood that the *Interahamwe* had handed her over to the soldiers in Camp Kigali. His report “obtained no results”.¹⁶⁹⁴

1346. The witness sent his reports to the *bourgmestre* and the *préfet* but does not know whether they reached the Executive Bureau. It was up to his superiors to inform the “other party organs” of what was occurring in the *secteur*. The *préfet* had influence over the political parties and if he wanted them to know something, he would ensure that they learnt of it.¹⁶⁹⁵

Prosecution Witness T

¹⁶⁸⁸ T. 22 February 2006, pp. 35, 36; T. 28 February 2006, pp. 11, 12.

¹⁶⁸⁹ T. 28 February 2006, p. 18.

¹⁶⁹⁰ T. 24 February 2006, p. 26.

¹⁶⁹¹ *Id.*, p. 27.

¹⁶⁹² *Id.*, pp. 27, 28.

¹⁶⁹³ T. 28 February 2006, pp. 18, 22.

¹⁶⁹⁴ *Id.*, p. 11.

¹⁶⁹⁵ T. 7 March 2006, pp. 47, 48.

1347. The witness¹⁶⁹⁶ testified that during the war there were killings and rapes practically everywhere, as happens throughout the world during times of conflict. There were rapes nearly everywhere in Kigali, including in areas controlled by the government and the RPF. However, there were no rapes at the *Petit Kigali*. There were Tutsi friends, including women and girls, who stayed there until they could be transferred to a secure location. If they had not been at the *Petit Kigali* there was a high risk they would have become victims of the massacres occurring at the time. The witness, and others, who had known the women for a long time engaged in consensual sexual activity with them.¹⁶⁹⁷

Nzirorera Defence Witness Albert Lavie

1348. In 1994, the witness was a policeman at the Kigali prefectural office and was in charge of security for a Prosecution witness.¹⁶⁹⁸ He testified that, in addition to killing, the *Interahamwe* in Biryogo raped Tutsi women who were not members of the RPF.¹⁶⁹⁹

Written Statements

*Prosecution Witness ATE*¹⁷⁰⁰

1349. An *Interahamwe* abducted the witness and took her to his house in Kiyovu where she was forced to have sex eight times under threat of death. Whilst raping her, her attacker told her that he wanted to check if it was true that Tutsi women tasted nice. She was also raped by two other men, one of whom said that the Tutsis had killed the President. When she left the house she became the “wife” of another man in exchange for security.

*Prosecution Witness DBV*¹⁷⁰¹

1350. Following the death of Habyarimana, the witness, a Tutsi, fled to the ETO with other refugees. After the white people left she fled to *conseiller* Biziyaremye’s residence where she stayed for two weeks with approximately 2,000 other people. Originally, forty *Interahamwe* would arrive each day to take girls and rape them in the bush. Later, sixty *Interahamwe* would come each day and take about forty girls to be raped on the hill. It was possible to see and hear what was happening to the other girls. The *Interahamwe* would beat the women if they resisted. The witness was raped multiple times.

Adjudicated Facts

1351. Many of the refugees who escaped or survived the attack at the *École Technique Officielle*, in Kicukiro *secteur*, Kicukiro *commune* headed in groups towards the Amahoro Stadium.¹⁷⁰² Some women were forcibly taken from the group and raped.¹⁷⁰³ Flanked on both sides by *Interahamwe*, approximately 4,000 refugees were then forcibly marched to

¹⁶⁹⁶ See para. 178, *supra*.

¹⁶⁹⁷ T. 26 May 2006, pp.18, 19; Exhibit P28, “Video of petit Kigali”.

¹⁶⁹⁸ T. 24 May 2010, p. 39.

¹⁶⁹⁹ T. 25 May 2010, p. 9.

¹⁷⁰⁰ Exhibit P123, “Witness Statement”.

¹⁷⁰¹ Exhibit P124, “Witness Statement”.

¹⁷⁰² Adjudicated fact no. 25 – *Rutaganda* Trial Judgement.

¹⁷⁰³ Adjudicated fact no. 26 – *Rutaganda* Trial Judgement.

Nyanza.¹⁷⁰⁴ At Nyanza, an attack took place on 11 April, in the later afternoon and into the evening. Many were killed in this attack.¹⁷⁰⁵ The *Interahamwe* then began killing people with clubs and other weapons. Some girls were selected, put aside, and raped before they were killed. Clothing had been removed from many of the women who were killed.¹⁷⁰⁶

Deliberations

Cautionary Issues

1352. The Chamber recalls that, at the time of their testimony, Prosecution Witnesses HH, and UB were convicted and imprisoned for participating in the genocide.¹⁷⁰⁷ Furthermore, at the time of his testimony, Prosecution Witness T was detained and awaiting trial on genocide charges.¹⁷⁰⁸ The Chamber also takes into account that Witness T has received extensive benefits under the Prosecution’s witness protection program.¹⁷⁰⁹

1353. None of the witnesses mentioned above were direct accomplices of the Accused. The Chamber will apply the requisite degree of caution to each when assessing their credibility and the weight of their evidence.

Rapes

1354. The testimony and statements of Witnesses HH, UB, T, ATE, DBV, and Lavie together with the adjudicated facts from the *Rutaganda* trial provide consistent evidence that rapes of Tutsi women by *Interahamwe* and soldiers occurred on a large scale in Kigali-ville *préfecture* during the period when Tutsis were assaulted as a group. The Chamber notes that the Defence has not sought to rebut the Prosecution evidence.

8.2 Ruhengeri Préfecture

Oral Testimony

Prosecution Witness GAY

1355. The witness¹⁷¹⁰ was 17 years old in April 1994.¹⁷¹¹ She was abducted and raped by Michel Niyigaba on 8 April 1994. She was raped by Nzamba shortly thereafter in the same house. The following night she was raped by Dusabe, a member of Nzirorera’s family. On the third occasion, she was raped by Musafiri. She was never raped by Noel. She was raped by more than eight men, each taking their own turn, virtually every day.¹⁷¹²

1356. She saw the bodies of her younger sisters, Joyce and Denise on 7 April 1994. The breast of one of Denise’s daughters was cut off, while the other one had a piece of wood

¹⁷⁰⁴ Adjudicated fact no. 27 – *Rutaganda* Trial Judgement.
¹⁷⁰⁵ Adjudicated fact no. 28 – *Rutaganda* Trial Judgement.
¹⁷⁰⁶ Adjudicated fact nos. 29, 30 – *Rutaganda* Trial Judgement.
¹⁷⁰⁷ See paras. 170 (HH) and 154 (UB).
¹⁷⁰⁸ See para. 178.
¹⁷⁰⁹ *Id.*
¹⁷¹⁰ See para. 305, *supra*.
¹⁷¹¹ T. 18 January 2010, p. 29 (closed session).
¹⁷¹² *Id.*, pp. 23-29 (closed session).

inserted in her genitals. The underwear had been taken off of her younger sister's body, her legs were spread out and one of her breasts had been cut off and blood was oozing from her genitals. She was told to go see Joyce's body and saw it naked and covered with some grass. Joyce had a stick rammed up her genitals and she lay in a pool of blood.¹⁷¹³

1357. Prior to being raped by Dusabe, the witness's mother and father were threatened with rape and beaten, respectively, if they did not disclose the witness's hiding place. The witness's mother was also beaten before the witness emerged and was taken to Ntamakemwa's house where she was raped so violently that she could barely walk afterwards.¹⁷¹⁴

1358. When she was abducted by Musafiri, she was raped all night until 3 a.m. Thereafter, pus was coming out of her sexual organ and she had to drag herself away with her legs spread out. After that, she was raped by Katasimbi and Kanyarubanza in Kajelijeli's house.¹⁷¹⁵ She was gagged on that occasion and raped six times. She was released at 4 a.m. and waited outside Ntjambo's door because he refused to open for her despite her screams and pleas for help. She waited until sunrise, fearing she would be eaten by dogs that were devouring corpses on the streets. At dawn, she dragged herself home once again, legs apart.¹⁷¹⁶

1359. The witness was also raped by Gakuru after Musafiri. She tried to escape but her prior rapists had impregnated her and infected her with syphilis so she was not able to flee quickly and was caught. She was held down by several men while Gakuru raped her. The group encouraged another man to rape her but he did not want to.¹⁷¹⁷

1360. The witness was called to *gacaca* proceedings against Michel Niyigaba and Gakuru but the judges did not believe that she had been raped by them. Outside the proceedings, Niyigaba constantly threatened to kill her if she testified that he had raped her. Niyigaba's wife approached the witness in a bar and paid her 15,000 Rwandan francs to remain silent about the rape. Niyigaba escaped arrest shortly thereafter and was at large when the witness testified before the Chamber.¹⁷¹⁸

Prosecution Witness GBU

1361. The witness,¹⁷¹⁹ an *Interahamwe*, testified that on 7 April 1994, his fellow *Interahamwe*, Nteziyaremye and Gapfogo, raped a lady. The witness was standing nearby.¹⁷²⁰

Nzirorera Defence Witness Juvenal Kajelijeli

¹⁷¹³ *Id.*, p. 32, (closed session).

¹⁷¹⁴ T. 19 January 2010, p. 9 (closed session).

¹⁷¹⁵ *Id.*, p. 10 (closed session).

¹⁷¹⁶ *Id.*, pp. 11, 12 (closed session).

¹⁷¹⁷ *Id.*, pp. 15, 16 (closed session).

¹⁷¹⁸ *Id.*, pp. 17-23, (closed session).

¹⁷¹⁹ See para. 306, *supra*.

¹⁷²⁰ T. 4 December 2006, pp. 24, 25, 39.

1362. The witness¹⁷²¹ testified that he heard no mention of rape when he lived in Mukingo *commune*.¹⁷²² A man did not come to him and report that his daughter was being raped by Michel Niyigaba.¹⁷²³

Nzirorera Defence Witness Assiel Ndisetse

1363. The witness¹⁷²⁴ testified that he heard of an allegation that Noeli and some young people stopped a vehicle from Kigali and sought to inspect the girls inside, and that Noeli was subsequently killed by Mburuburengero from Mukamira *secteur* camp.¹⁷²⁵

1364. The *Interahamwe* did not commit rapes in Mukingo *commune*, and he received no complaints of rapes; in any event, such complaints would have gone to the criminal investigations officer. Michel Niyigaba's group started killing Tutsis on 7 April 1994 but he never knew of them raping anyone.¹⁷²⁶

Written Statements

*Prosecution Witness GAY*¹⁷²⁷

1365. The witness¹⁷²⁸ was raped five times by Michel Niyigaba at Byangabo market on 7 April 1994. The following day she was raped three times each by two other *Interahamwe* named Msafiri and Noel. They joked that before she had refused to sleep with them, but now they had her. She later found the naked body of a young girl with blood running from her vagina and a breast cut off. The witness was also raped in Nzirorera's mother's house by a relative of Joseph Nzirorera. The witness heard that the *Interahamwe* in Mukingo gang raped a woman named Joyce. She saw the stick that they had thrust into her vagina and her half-burnt body.¹⁷²⁹

*Prosecution Witness GDT*¹⁷³⁰

1366. The witness, a Tutsi, stated that on 7 April 1994, six *Interahamwe* took the witness to the Kazi river and raped her. They then mutilated her in the genitals with a nail or knife.

*Prosecution Witness FAL*¹⁷³¹

1367. The witness, a Tutsi, was heavily pregnant on 6 April 1994. She stated that on 7 April 1994, she saw a group of *Interahamwe* rape a young girl to death. A few days later, the witness saw the massacre of fifty-three Tutsis by *Interahamwe* with machetes in a pre-planned operation at the Mukungwa river. Her life was spared by a *gendarme* and she was

¹⁷²¹ See para. 324, *supra*.

¹⁷²² T. 1 February 2010, p. 50.

¹⁷²³ *Id.*, p. 52.

¹⁷²⁴ See para. 314, *supra*.

¹⁷²⁵ T. 24 November 2009, p. 1, 24-27.

¹⁷²⁶ *Id.*, pp. 25, 26, 35; T. 25 November 2009, pp. 5, 6.

¹⁷²⁷ Exhibit P111, "Witness Statement".

¹⁷²⁸ See para. 305, *supra*.

¹⁷²⁹ Exhibit P111, "Witness Statement".

¹⁷³⁰ Exhibit P113, "Witness Statement".

¹⁷³¹ Exhibit P112, "Witness Statement".

taken to the *gendarmérie* brigade in Ruhengeri where she was then raped by at least three *gendarmes* a day from 13 April to 23 July 1994. She could not resist because she was weak, having given birth only a few days previously. The *gendarmes* said her brothers, the *Inkotanyi*, were bombing them and would rape her in retaliation anytime they were bombed. One rapist made derogatory remarks about Tutsis. Approximately 30 *gendarmes* raped her in total, in front of her children.

Adjudicated Facts

1368. Members of the *Interahamwe*, including *Interahamwe* from Mukingo *commune* and neighbouring areas committed rapes and sexual assaults in the Ruhengeri *préfecture* between 7 and 10 April 1994.¹⁷³² The *Interahamwe* pierced Joyce's side and sexual organs with a spear, and then covered her dead body with her skirt.¹⁷³³ A Tutsi woman was raped by members of the *Interahamwe* in Busogo parish and in Kabyaza *cellule* on 7 April 1994, after having been stopped at a roadblock.¹⁷³⁴ The handicapped daughter of a Tutsi woman was raped and killed by members of the *Interahamwe* in Rukoma *cellule*, Shiringo *secteur* on 7 April 1994.¹⁷³⁵ A Tutsi woman was raped and sexually mutilated by members of the *Interahamwe* in Susa *secteur*, Kinigi *commune* on 7 April 1994.¹⁷³⁶ A Tutsi woman was raped by members of the *Interahamwe* in Susa *secteur*, Kinigi *commune* on 10 April 1994.¹⁷³⁷

Deliberations

Cautionary Issues

1369. The Chamber recalls that, although not a direct accomplice of the Accused, Defence Witness Kajelijeli was convicted and imprisoned for his participation in the genocide at the time of his testimony. Accordingly, it treats his testimony with the requisite level of caution.

Rapes

1370. The testimony and statements of Witnesses GBU, GDT and FAL together with the adjudicated facts from the Kajelijeli Trial Judgement provide consistent evidence that Tutsi women were being raped by *Interahamwe* and *gendarmes* in Ruhengeri *préfecture* during the period when Tutsis were being assaulted as a group. In arriving at this determination, the Chamber has applied the requisite degree of caution to the testimony of Witness GBU, on account of his alleged relationship with Prosecution Witness BTH (see II.13.1).

1371. The cross-examination of Witness GAY revealed a number of discrepancies between her prior statements to investigators, written statement, and testimony in court. Her credibility was challenged by the fact that she had accepted a bribe to withdraw charges against Michel Niyigaba before the Gacaca court. Her demeanour, however, and the nature

¹⁷³² Adjudicated fact no. 17 – *Kajelijeli* Trial Judgement.

¹⁷³³ Adjudicated fact no. 20 – *Kajelijeli* Trial Judgement.

¹⁷³⁴ Adjudicated fact no. 21 – *Kajelijeli* Trial Judgement.

¹⁷³⁵ Adjudicated fact no. 22 – *Kajelijeli* Trial Judgement.

¹⁷³⁶ Adjudicated fact no. 23 – *Kajelijeli* Trial Judgement.

¹⁷³⁷ Adjudicated fact no. 24 – *Kajelijeli* Trial Judgement.

of the discrepancies were consistent with the fact that she is a severely traumatised victim of sexual torture and numerous violent rapes. The Chamber believes that she was raped by several *Interahamwe* over an extended period.

1372. The Chamber attaches little weight to the testimony of Kajelijeli, Ndisetse, and Niyigaba, noting that Kajelijeli's claimed ignorance of the rapes can be attributed to his own personal involvement in the assault on Tutsis in Mukingo *commune* and indifference to the suffering of Tutsi rape victims. The Chamber also considers that Niyigaba himself was suspected of rape, and that people may not have complained to Ndisetse about the *Interahamwe* rapists for fear of retaliation.

Conclusion

1373. The Prosecution has proved beyond a reasonable doubt that Tutsi women were raped by *Interahamwe* and *gendarmes* in Ruhengeri *préfecture* during the period when Tutsis were being assaulted as a group.

8.3 Gitarama Préfecture

Oral Testimony

Prosecution Witness FH

1374. The witness¹⁷³⁸ testified that on 12 May 1994, soldiers killed the Hutu director of the Kabgayi nurses' training college after she refused to permit them to rape the Tutsi students there. The soldiers then raped the girls.¹⁷³⁹ The witness learnt of it the next morning and the case was widely reported in the region. Tension in Gitarama was very high. They waited for a reaction from the government or commanding officers but there was none and they had no means to do anything.¹⁷⁴⁰

1375. The witness does not know whether the national authorities in Murambi were aware of the rapes of the students at Kabgayi, but affirmed that the incident was well known. The *préfet* was present at the director's funeral. The witness did not know whether the soldiers were sent there to commit the rapes but believed that the authorities were certainly informed and could have taken measures to prevent it.¹⁷⁴¹

1376. He knows of many other cases of rape at Kabgayi because he visited there regularly. Many Tutsi women sought refuge at Kabgayi, including his family members. His niece used to disguise herself as a mother because the rapists were looking for unmarried young women.¹⁷⁴² Soldiers, *Interahamwe* and other civilians committed rapes.¹⁷⁴³

1377. The witness did not know whether written reports were made to the national authorities about the rapes or about other attacks. The *préfet* visited Gitarama regularly and the witness and others would inform him of the crimes that were occurring. The *préfet* also

¹⁷³⁸ See para. 609, *supra*.

¹⁷³⁹ T. 12 July 2007, pp. 33, 34.

¹⁷⁴⁰ *Id.*, pp. 34, 35.

¹⁷⁴¹ *Id.*, p. 35.

¹⁷⁴² *Id.*

¹⁷⁴³ *Id.*

visited Murambi.¹⁷⁴⁴ The authorities may not have had the means to prevent the crimes from being committed but were certainly informed of them.¹⁷⁴⁵

Written Statements

*Prosecution Witness AQQ*¹⁷⁴⁶

1378. The witness, a Tutsi, stated that on 20 April 1994, she fled to Bugona *cellule*. A Hutu man found her and took her to the Buhonga roadblock to be killed. Shortly before they reached it, they met a soldier who took her into the bush and raped her twice before telling her to return to her family. On 23 April 1994, twenty-four *Interahamwe* came to her house and six of them raped her in front of her mother and threatened to stick a piece of wood in her sister's vagina. The following day, she was raped by two militiamen in a coffee plantation.

*Prosecution Witness GV*¹⁷⁴⁷

1379. The witness stated, that around 17 or 18 April 1994, she took refuge in Taba *commune* office with other Tutsis and persons in mixed marriages. She saw other women being raped by the *Interahamwe* and communal policemen. Jean-Paul Akayesu watched and Silas Kubwimana gave orders. Around 20 May 1994, she heard Akayesu say at a security meeting in Bugoba *secteur* that though they had been spared until then, women and girls must be exterminated, including those still in their mother's womb.

1380. After the meeting *Interahamwe* took the women and struck them with machetes. Before raping Tutsi women the *Interahamwe* said that they wanted to try them to see if they were like Hutu women. The witness was raped by the man who killed her husband. She bribed the rest of his team so that they would not rape her too.

*Prosecution Witness CSB*¹⁷⁴⁸

1381. The witness, a Tutsi, stated that soon after 14 April 1994, she attempted to reach Kabgayi. She encountered a roadblock near Shyogwe where, after failing to produce her identity card, she was dragged into a forest and raped by three soldiers. She then sought refuge at TRAFIPRO and after two weeks was selected by the soldiers and beaten and raped in the forest by three soldiers. Three days later she was dragged into the forest again and raped by one *Interahamwe*. The soldier asked why she did not leave TRAFIPRO to join her brothers, the *Inkotanyi*. Both the soldiers and *Interahamwe* would take women from TRAFIPRO, many of whom never returned.

*Prosecution Witness DBG*¹⁷⁴⁹

¹⁷⁴⁴ *Id.*, pp. 35, 36.

¹⁷⁴⁵ *Id.*, p. 35.

¹⁷⁴⁶ Exhibit P126, "Witness Statement".

¹⁷⁴⁷ Exhibit P114, "Witness Statement".

¹⁷⁴⁸ Exhibit P115, "Witness Statement".

¹⁷⁴⁹ Exhibit P116, "Witness Statement".

1382. The witness, a Tutsi, stated that on or around 19 April 1994, she fled to Kabgayi to seek refuge at TRAFIPRO. Some days after her arrival, she was raped by three soldiers in the bush. People were being raped and killed and she saw corpses there.

Adjudicated Facts

1383. During the events of 1994, Tutsi girls and women were subjected to sexual violence, beaten and killed on or near the *bureau communal* premises, as well as elsewhere in the *commune* of Taba. Hundreds of Tutsis, mostly women and children, sought refuge at the *bureau communal* during this period.¹⁷⁵⁰

1384. A woman was taken by *Interahamwe* from the refuge site near the *bureau communal* to a nearby forest and raped there. She was also raped repeatedly on two separate occasions in the cultural centre on the premises of the *bureau communal*, once in a group of fifteen girls and women and once in a group of ten girls and women.¹⁷⁵¹

1385. Women and girls were selected and taken by *Interahamwe* to the cultural centre to be raped. Two *Interahamwe* took a woman and raped her between the *bureau communal* and the cultural centre.¹⁷⁵²

1386. A woman was taken from the *bureau communal* and raped in a nearby field. Three women were raped at Kimihira, the killing site near the *bureau communal*, and another woman found her younger sister, dying, after she had been raped at the *bureau communal*.¹⁷⁵³

1387. Many other instances of rape in Taba took place outside the *bureau communal* – in fields, on the road, and in or just outside houses.¹⁷⁵⁴ Other acts of sexual violence took place on or near the premises of the *bureau communal* – the forced undressing and public humiliation of girls and women.¹⁷⁵⁵ Much of it occurred in front of large numbers of people, and all of it was directed against Tutsi women.¹⁷⁵⁶ With regard to the rape on or near the premises of the *bureau communal*, the perpetrators were all *Interahamwe*.¹⁷⁵⁷ *Interahamwe* were also identified as the perpetrators of many rapes that occurred outside the *bureau communal*.¹⁷⁵⁸

Deliberation

Cautionary Issues

1388. The Chamber recalls that, although not a direct accomplice of the Accused, Prosecution Witness FH was detained and awaiting trial on charges related to the genocide

¹⁷⁵⁰ Adjudicated fact no. 1 – *Akayesu* Trial Judgement.

¹⁷⁵¹ Adjudicated fact no. 2 – *Akayesu* Trial Judgement.

¹⁷⁵² Adjudicated fact no. 3 – *Akayesu* Trial Judgement.

¹⁷⁵³ Adjudicated fact no. 4 – *Akayesu* Trial Judgement.

¹⁷⁵⁴ Adjudicated fact no. 5 – *Akayesu* Trial Judgement.

¹⁷⁵⁵ Adjudicated fact no. 6 – *Akayesu* Trial Judgement.

¹⁷⁵⁶ Adjudicated fact no. 7 – *Akayesu* Trial Judgement.

¹⁷⁵⁷ Adjudicated fact no. 8 – *Akayesu* Trial Judgement.

¹⁷⁵⁸ Adjudicated fact no. 9 – *Akayesu* Trial Judgement.

at the time of his testimony.¹⁷⁵⁹ Accordingly, it treats his testimony with the requisite level of caution.

Rapes

1389. The testimony and statements of Witnesses FH, AQQ, GV, CSB and DGB together with the adjudicated facts from the *Akayesu* trial provide consistent evidence that rapes of Tutsi women by *Interahamwe*, other militias, soldiers and civilians occurred on a large scale in Gitarama *préfecture* during the period when Tutsis were assaulted as a group. The Chamber notes that the Defence has not sought to rebut the Prosecution evidence.

Conclusion

1390. The Prosecution has proved beyond a reasonable doubt that Tutsi women were raped by *Interahamwe*, other militias, soldiers and civilians at a large scale in Gitarama *préfecture* during the period when Tutsis were being assaulted as a group.

8.4 Kibuye Préfecture

Oral Testimony

Prosecution Witness AMN

1391. The witness¹⁷⁶⁰ testified that there were many cases of rape during the attacks at Bisero. More than three girls were taken near the place where Eliézer Niyitegeka and Édouard Karemera were. They were never seen again and the witness thinks that they may have been taken to be raped. Several women were raped in the bushes. Any man who wanted to rape a woman could do so and anyone who arrested a girl could do whatever he wanted with her. Some people took girls to their homes and killed them after they had finished with them.¹⁷⁶¹

Karemera Defence Witness ETK

1392. The witness¹⁷⁶² testified that he was appointed a local government official in late April 1994.¹⁷⁶³ He was never informed that rapes occurred in Birambo in June 1994 and knew nothing about it.¹⁷⁶⁴ When confronted with a letter addressed to him and dated 18 June 1994 that cited rape as a subject discussed at a security meeting in Masango,¹⁷⁶⁵ he maintained that no rapes occurred in Birambo. The letter was also addressed to the President, Prime Minister, Minister of Defence and various *préfets*.¹⁷⁶⁶

Written Statements

¹⁷⁵⁹ See para. 609.

¹⁷⁶⁰ See para. 1171, *supra*.

¹⁷⁶¹ T. 1 October 2007, p. 40.

¹⁷⁶² See para. 321, *supra*.

¹⁷⁶³ T. 11 November 2008, pp. 9,10 (closed session).

¹⁷⁶⁴ *Id.*, p. 57.

¹⁷⁶⁵ Exhibit P334, "Note on Subjects Discussed at Security Meeting".

¹⁷⁶⁶ T. 11 November 2008, p. 58.

*Prosecution Witness APK*¹⁷⁶⁷

1393. The witness, a Tutsi, stated that her sister told her she was raped by *Interahamwe* who were former soldiers. She was killed a week later. The witness was raped on 21 April 1994 in Kimana *cellule*. Her attackers threatened her with a machete and said that if she refused she would be killed. She ran away after fearing they were going to keep her in a house as a forced "wife." She then stayed at the house of a friend whose brother was a soldier. He raped her every night she was there, claiming that he was stopping attackers from coming to get her. *Interahamwe* would come to the house and speak but did not know she was being kept in another room. On one occasion an *Interahamwe* came and spoke about two ladies and said any young men from the area could rape them and other *Interahamwe* mentioned that they had also raped them. They said that Tutsi women were tender, tasted good and it was not difficult to rape them.

*Prosecution Witness APW*¹⁷⁶⁸

1394. The witness, a Tutsi, testified that she fled her local area after her *conseiller* and *responsable de cellule* told Hutus to start killing Tutsis. On 16 April 1994 she was on Karonzi hill where *Interahamwe* caught her and four other women and raped three of them. Two *Interahamwe* raped her while other *Interahamwe* were killing her two children and her sister-in-law with clubs. They left her alive because she told them she was a Hutu but killed her third child. Two other women were raped then killed near to her. She saw Obed Ruzindana often at Karonzi hill in May. On one occasion she overheard Ruzindana tell *Interahamwe* to kill all Tutsis, including a small child and that they should rape the beautiful girls that they found.

*Prosecution Witness APM*¹⁷⁶⁹

1395. The witness, a Tutsi, testified that she fled to Mushubati Parish after her house was looted by attackers on 7 April 1994. Two nights later, Bagileshima, the *bourgmestre* of Mubanza *commune*, came to the parish with *Interahamwe* and loaded a pick-up with Tutsi displaced persons. The car was stopped before it reached the communal *bureau* and *Interahamwe* forced the internally-displaced persons out and beat them. Bagileshima told them to "go to work" and added they should rape and then kill the women. The witness saw a woman being raped by three men and then decapitated after which the *Interahamwe* walked around with her head. The witness was raped. Four men asked her rapist what he was doing and said that he should kill her because they did not want her ethnic group. They beat the witness until they thought she was dead and threw her into a hole.

1396. The witness later left the hole and hid at Kibuye stadium. She fled to Gatwaro hill after it was attacked. Towards the end of May, she heard Ruzindana say through a loudspeaker that they should rape any beautiful girls they found. Bagileshima brought *Interahamwe* to the hill. When they found women hiding, the *Interahamwe* would generally rape then kill them. She saw this happen five times and saw one girl raped by ten *Interahamwe* and then impaled with a stick. Five *Interahamwe* raped another girl. She also

¹⁷⁶⁷ Exhibit P117, "Witness Statement".

¹⁷⁶⁸ Exhibit P118, "Witness Statement".

¹⁷⁶⁹ Exhibit P119, "Witness Statement".

saw ten *Interahamwe* rape four women and kill them by decapitation. A group of fifty *Interahamwe* said that they were taking two girls to the "surgeon". The witness saw five women surrounded by *Interahamwe* and killed. The soldiers said they would rape them.

*Prosecution Witness BB*¹⁷⁷⁰

1397. The witness, a Tutsi, stated that he was at Mugonero hospital on 16 April 1994 during an attack against the internally-displaced persons led by Elizapahan Ntakirutimana and Obed Ruzindana. Whilst hiding in the surgery room, he saw soldiers rape two women. He did not hear what the soldiers said and only survived because he was covered by bodies. He saw an *Interahamwe* undressing the witness's cousin. He fled to Murambi and returned on 17 April whereupon he found the body of his cousin impaled with sharpened bamboo wood from the vagina to the throat. In mid-May 1994, he was hiding in Gitwe catholic primary school and saw a girl being raped by an *Interahamwe* while five others held her down. They said they wanted to see what "Tutsi female sex looked like." They cut her in the vagina with a machete and she died a few minutes later. He fled to Bisesero in June 1994. Two *Interahamwe* found and raped the only girl left in his group and took her with them. He has not seen her since.

*Prosecution Witness ATA*¹⁷⁷¹

1398. The witness, a Tutsi, fled to Mugonero hospital via Nyarusange hill following an attack by Hutus against her house. During an attack on 16 April 1994, she hid in the surgery ward under bodies. She heard a man named Mika tell another man who was about to strike a woman with a machete not to kill her so that he could have her for himself. She presumed the man wanted to rape her.

1399. In May 1994, the witness was hidden on Muiyara hill when the man named Mika and another soldier arrived and raped a woman after finding her in the bushes. She begged them to kill her instead of torturing her. When they had finished, Mika instructed her to go to the car and they took her away. Mika's young Tutsi housekeeper later told the witness that the woman had been killed at Gishyita market place.

1400. During the genocide, the witness saw the bodies of Tutsi women and men with mutilated sexual organs. She saw many dead Tutsi women with their legs apart and those who had been pregnant had been disembowelled and their foetus left on the ground beside them.

*Prosecution Witness ARP*¹⁷⁷²

1401. The witness, a Tutsi, stated that at the end of April 1994, he was on Rwirambo hill when *Interahamwe* and civilians arrived in vehicles, one of which carried Emmanuel Ndindabahizi and started attacking the Tutsis hiding there. Many girls were raped and then killed. he saw the attackers catching them and taking them into nearby bushes. he later saw their partly naked corpses in the bushes.

¹⁷⁷⁰ Exhibit P120, "Witness Statement".

¹⁷⁷¹ Exhibit P121, "Witness Statement".

¹⁷⁷² Exhibit P122, "Witness Statement".

1402. In mid-May 1994, the witness was at Gitwa hill when cars and trucks with *Interahamwe*, soldiers and civilians arrived. Emmanuel Ndindabahizi, Clément Kayishema and Augustin Karara were there. They searched for survivors and started attacking them. Many women were raped and killed. he did not see the rapes but heard the women screaming and one survivor told him that the women were killed after they were raped.

Adjudicated Facts

1403. On 28 June 1994, near the Technical Training College, on a public road between Charroi Naval and Kibuye, Niyitegeka ordered *Interahamwe* to fetch and sharpen a piece of wood and insert it into the genitalia of a woman who had just been shot dead.¹⁷⁷³ This act was then carried out by the *Interahamwe* in accordance with his instruction.¹⁷⁷⁴ The body of the woman, with the piece of wood protruding from it, was left on the roadside for some three days thereafter. Niyitegeka referred to the women as “*Inyenzi*” by which he meant to refer to Tutsi.¹⁷⁷⁵

1404. Within the area of Gisovu Tea Factory, Twumba *cellule*, Gisovu *commune*, Musema ordered the rape of Annunciata Mujawayezu a Tutsi woman, and the cutting off of her breasts to be fed to her son. She was in fact killed.¹⁷⁷⁶

Deliberations

1405. The testimony and statements of Witnesses AMN, APK, APW, APM BB and ARP together with the adjudicated facts from the *Niyitegeka* and *Musema* trials provide consistent evidence of large-scale rape of Tutsi women by *Interahamwe*, soldiers and others during the period when Tutsis were being assaulted as a group.

1406. The Chamber attaches no weight to the evidence of Witness ETK that he was not informed of any rapes in his *commune*, noting that the letter dated 18 June 1994 shows that he was informed.

Conclusion

1407. The Prosecution has proved beyond reasonable doubt that Tutsi women were raped on a large scale in Kibuye *préfecture* by *Interahamwe*, soldiers and others during the period when Tutsis were assaulted as a group.

8.5 Butare Préfecture

Written Statements

*Prosecution Witness BIX*¹⁷⁷⁷

1408. The witness, a Tutsi, stated, that on 7 April 1994, she overheard Hutus say they were going to kill Tutsis because they were accomplices to the *Inkotanyi* and responsible

¹⁷⁷³ Adjudicated fact no. 10 – *Niyitegeka* Trial Judgement.

¹⁷⁷⁴ Adjudicated fact no. 11 – *Niyitegeka* Trial Judgement.

¹⁷⁷⁵ Adjudicated fact no. 12 – *Niyitegeka* Trial Judgement.

¹⁷⁷⁶ Adjudicated fact no. 13 – *Musema* Trial Judgement.

¹⁷⁷⁷ Exhibit P125, “Witness Statement”.

for the President's death. The *Interahamwe* and soldiers attacked and killed Tutsis in the area. At one point, the witness met three *Interahamwe* who had abducted two women. They ordered her to sit on the ground with the two women. After killing three Tutsi boys, the two women and the witness were raped by the *Interahamwe*.

1409. She remained there for three days before leaving for Rukabakobwa. She encountered two *Interahamwe* and two soldiers in civilian clothes who raped her and left her in a dilapidated house. They were aware of her party membership and knew her brother. The following day, a woman informed her that Habyarabatuma, the head of the *gendarmerie* had told his men to rape Tutsi women in Rukabakobwa.

1410. The witness and the women left to look for food and found out that *Conseiller* Barayavuga had granted an amnesty to women and girls, and rather than being killed, they would be "married" to Hutu men. However, people then told them it was a ruse to get survivors to show up. Whilst fleeing to Bukavu, they were stopped and raped at two different roadblocks.

Deliberations

1411. The statement of Witness BIX is corroborated by the pattern of evidence from other *préfectures*; moreover, the Defence has not sought to rebut her evidence.

Conclusion

1412. The Prosecution has proved beyond reasonable doubt that Tutsi women were raped on a large scale in Butare *préfecture* by *Interahamwe*, soldiers and others during the period when Tutsis were assaulted as a group.

8.6 Rest of Rwanda

Evidence

*RTL/ Radio Rwanda Broadcast 21/06/1994 Transcript*¹⁷⁷⁸

1413. On 21 June 1994 in an RTL broadcast, Ananie Nkurunziza stated that "people are talking about youths calling themselves *Interahamwe* who are committing various types of atrocities: killing, raping and looting" and then defined rape. He then stated that the *Interahamwe* were at the front. He referred the problem to the leaders of the *Interahamwe* and noted that the *Interahamwe* is a branch of the MRND.

Reports

1414. A report by René Degni-Ségui, the Special Rapporteur assigned by the Commission on Human Rights to investigate the situation of human rights in Rwanda notes, following visits to Rwanda in 1994, that tutsi women and hutu women married to tutsis were raped, massacred, tortured and subjected to other brutalities. Rape was systematic and used as a

¹⁷⁷⁸ Exhibit P253, "RTL/ Radio Rwanda Broadcast 21/06/94".

weapon by the perpetrators of the massacres. It occurred in various forms and had lasting effects on the victims.¹⁷⁷⁹

1415. A Report of the UN High Commissioner for Human Rights, Mr José Ayala Lasso, on his mission to Rwanda 11-12 May 1994 and a Report of the Secretary-General on the Situation in Rwanda dated 31 May 1994, note the massacres and high number of civilian casualties that occurred in Rwanda in 1994 but make no specific reference to rape and sexual violence.¹⁷⁸⁰

1416. A report by four non-governmental human rights organisations dated March 1993 on human rights violations in Rwanda since 1 October 1990 notes the rape of Tutsi and Bagogwe women by soldiers and communal police.¹⁷⁸¹

Oral Testimony

Prosecution Witness ZF

1417. The witness¹⁷⁸² testified that between April and July 1994, he heard from Lieutenant Bizumuremyi that in Rubavu town (Gisenyi *prefecture*) it was “customary and usual” that the women arrested among suspected *Inyenzi* were raped by the *Interahamwe* or *Impuzamugambi* before being executed.¹⁷⁸³

1418. The witness was often at a bar frequented by the *Interahamwe* and *Impuzamugambi*. They often spoke of women who would stop other women and take them to a house where they would take *Interahamwe* and *Impuzamugambi* to “force sexual pleasure” on the women as a form of torture. They would then be killed at the *commune rouge*.¹⁷⁸⁴

1419. In the Ibareshi neighbourhood of Rubavu town, there was a house belonging to Tutsis which had been abandoned. A militiaman who used the house told the witness that Tutsi women and girls were taken there and kept there for *Interahamwe* to “take their pleasure with”. They would then be taken to the *commune rouge* and killed. Lieutenant Bizumuremyi told the militiamen that they could do what they wanted with the women provided that they killed them afterwards so they could not flee to Goma.¹⁷⁸⁵

1420. An *Interahamwe* who killed an assistant *bourgmestre* for Rubavu *commune* told Lieutenant Bizumuremyi that the woman had previously refused his love so before killing her “he enjoyed her favours”. She was identified as Tutsi on the basis of her physical appearance, which was common practice among militiamen in Gisenyi.¹⁷⁸⁶

¹⁷⁷⁹ Exhibit P280, “Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994. E/CN.4/1996/68”, paras. 11(a), 13, 16-18, 19-24.

¹⁷⁸⁰ Exhibit P545, “Report of the UN High Commissioner for Human Rights, Mr. José Ayala Lasso, on his Mission to Rwanda, 11-12 August 1994”; Exhibit P546A/B, “Report of the Secretary-General on the Situation in Rwanda.”

¹⁷⁸¹ Exhibit P393, “Report of the International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990” pp. 19, 33.

¹⁷⁸² See para. 288, *supra*.

¹⁷⁸³ T. 17 May 2006, pp. 24, 25.

¹⁷⁸⁴ *Id.*, p. 25.

¹⁷⁸⁵ *Id.*, p. 25.

¹⁷⁸⁶ *Id.*, pp. 25-26.

Deliberations

1421. The evidence concerning Ruhengeri, Kigali-ville and Gitarama *préfectures* shows a pattern of Tutsi women and girls being raped by *Interahamwe*, soldiers, and others on a large scale during the period when Tutsis were being assaulted as a group. The Chamber considers that these rapes and sexual assaults occurred on a widespread and massive scale. Although the evidence concerning Butare *préfecture* was based on only one witness, it suggested the same pattern seen in the other *préfectures*.

1422. The evidence of Prosecution Witness ZF concerning Gisenyi *préfecture* is consistent with the evidence concerning Ruhengeri, Kigali-Ville, Gitarama and Butare *préfectures*. The Chamber has not been presented with evidence from the remaining *préfectures*, but notes that the cited *préfectures* were the most populated in Rwanda.

1423. Although the Chamber has not had access to the material on which the general conclusions of the human rights reports were based, or the basis for the RTLM radio broadcast, it finds that the reports and broadcast corroborate the finding that Tutsi women and girls throughout Rwanda were subjected to widespread rapes and sexual assaults by the same persons that were attacking Tutsis as a group, namely *Interahamwe* and soldiers.

Conclusion

1424. The Prosecution has proved beyond reasonable doubt that Tutsi women and girls throughout the rest of Rwanda were subjected to widespread, large-scale rapes and sexual assaults by the same persons that were attacking Tutsis as a group, namely *Interahamwe* and soldiers.

CHAPTER VI: LEGAL FINDINGS

1. INDIVIDUAL CRIMINAL RESPONSIBILITY

1.1 Direct Responsibility under Article 6(1)

1425. Article 6(1) of the Statute encompasses various modes of individual criminal liability applicable to crimes falling under the Tribunal's jurisdiction, including planning, instigating, ordering, committing or otherwise aiding and abetting the planning, preparation or execution of a crime provided for in Articles 2 and 4 of the Statute.

Planning

1426. "Planning" requires that one or more persons conceive of the commission of a crime in terms of both the preparation and the execution.¹⁷⁸⁷ It is sufficient to show that the planning substantially contributed to the criminal conduct. The *mens rea* entails the intent to plan the commission of a crime or, at a minimum, the awareness of the substantial

¹⁷⁸⁷ *Prosecutor v. Gacumbitsi*, Case No ICTR-01-64-T, Judgement (TC), 17 June 2004, para. 271, ("Gacumbitsi Trial Judgement") citing *Prosecutor v. Blaškić*, Case No IT-95-14-T, Judgement (TC), 3 March 2000, para. 386, (*Blaškić Trial Judgement*"); *Prosecutor v. Musema*, Case No ICTR-96-13-A, Judgement (TC), 27 January 2000, para. 119, ("*Musema Trial Judgement*"); *Prosecutor v. Akayesu*, Case No ICTR-96-4-T, Judgement (TC), 2 September 1998, para. 480, ("*Akayesu Trial Judgement*").

likelihood that a crime will be committed in the execution of the acts or omissions planned.¹⁷⁸⁸

Instigating

1427. “Instigation” implies prompting another person to commit an offence.¹⁷⁸⁹ It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused. It is sufficient to show that the instigation substantially contributed to the conduct of another person committing the crime. The *mens rea* is the intent to instigate another person to commit a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the acts or omissions instigated.¹⁷⁹⁰

Ordering

1428. “Ordering” requires that a person in a position of authority instructs another person to commit an offence.¹⁷⁹¹ A person in a position of authority may incur responsibility for ordering if the order has a direct and substantial effect on the commission of the illegal act.¹⁷⁹² Responsibility is also incurred when an individual in a position of authority orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, and if that crime is effectively committed subsequently by the person who received the order.¹⁷⁹³ No formal superior-subordinate relationship between the accused and the perpetrator of the crime is required.¹⁷⁹⁴ It is sufficient that there is proof of some position of authority on the part of the accused that

¹⁷⁸⁸ *Prosecutor v. Setako*, Case No ICTR-04-81-T, Judgement (TC), 25 February 2010, para. 446, (“*Setako* Trial Judgement”) citing *Prosecutor v. Nsengimana*, Case No ICTR-01-69-T, Judgement (TC), 17 November 2009, para. 796.

¹⁷⁸⁹ *Setako* Trial Judgement, para. 447; *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Case No ICTR-99-52-A, Judgement (AC), 28 November 2007, para. 480, (“*Nahimana et al.* Appeal Judgement”).

¹⁷⁹⁰ *Setako* Trial Judgement, para. 447; *Nahimana et al.* Appeal Judgement, para. 480.

¹⁷⁹¹ *Setako v. Prosecutor*, Case No ICTR-04-81-A, Judgement (AC), 28 September 2011, para. 240, (“*Setako* Appeal Judgement”); *Renzaho v. Prosecutor*, Case No ICTR-97-31-A, Judgement (AC), 1 April 2011, para. 315, (“*Renzaho* Appeal Judgement”).

¹⁷⁹² *Setako* Appeal Judgement, para. 240; *Renzaho* Appeal Judgement, para. 315; *Nahimana et al.* Appeal Judgement, paras. 481, 492; *Gacumbitsi v. Prosecutor*, Case No ICTR-01-64-A, Judgement (AC), 7 July 2006, para. 185, (“*Gacumbitsi* Appeal Judgement”); *Kamuhanda v. Prosecutor*, Case No ICTR-99-54A-A, Judgement (AC), 19 September 2005, para. 75, (“*Kamuhanda* Appeal Judgement”) citing *Prosecutor v. Kayishema and Ruzindana*, Case No ICTR-95-1-A, Judgement (AC), 1 June 2001, para. 186, (“*Kayishema* Appeal Judgement”).

¹⁷⁹³ *Renzaho* Appeal Judgement, para. 315, citing *Nahimana et al.* Appeal Judgement, para. 481.

¹⁷⁹⁴ *Setako* Appeal Judgement, para. 240; *Renzaho* Appeal Judgement, para. 315; *Nahimana et al.* Appeal Judgement, fn. 1162; *Semanza v. Prosecutor*, Case No ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 361, (“*Semanza* Appeal Judgement”); *Prosecutor v. Kordić and Čerkez*, Case No IT-95-14/2-A, Judgement (AC), 17 December 2004, para. 28, (“*Kordić et al.* Appeal Judgement”); *Prosecutor v. Boškoski and Tarčulovski*, Case No IT-04-82-A, Judgement (AC), 19 May 2010, para. 164, (“*Boškoski et al.* Appeal Judgement”). The Chamber notes that some cases mentioned that “ordering” implies the *existence of a superior-subordinate relationship* between the person giving an order and the person carrying out the order (emphasis added). See for instance *Gacumbitsi* Trial Judgement, para. 281; and *Gacumbitsi* Appeal Judgement, para. 181. However, the prevalent case law only requires a position of authority between the person who orders and the persons who follows this order. The existence of a superior-subordinate relationship is required under Article 6.3 of the Statute.

would compel another person to commit a crime in following the order of the accused.¹⁷⁹⁵
The authority creating the type of relationship envisaged under Article 6(1) of the Statute for ordering may be informal or temporary in nature.¹⁷⁹⁶

Aiding and Abetting

1429. "Aiding and abetting" implies that the accused provided assistance and support for the commission of the crime. This can be either through material assistance, by encouragement or through moral support that has a substantial effect on the perpetration of the crime. The establishment of the substantial effect on the perpetration of the crime is a "fact-based inquiry."¹⁷⁹⁷ The said assistance and support may occur before, during or after the principal crime has been perpetrated and need not serve as a condition precedent for the commission of the crime.¹⁷⁹⁸ Furthermore, "aiding and abetting" does not require that the accused be in a position of authority.¹⁷⁹⁹

1430. The mere presence of the accused at the scene of the crime is not sufficient to prove his participation by aiding and abetting, unless it can be shown that his presence had the effect of legitimising or of substantially encouraging the acts of the principal perpetrator of the crime.¹⁸⁰⁰ The aider and abettor need not, although he or she may, share the principal's criminal intent, but must at least know that his or her acts are assisting the principal to commit the crime.¹⁸⁰¹ In cases of specific intent crimes such as persecution or genocide, the aider and abettor must have knowledge of the principal perpetrator's specific intent.¹⁸⁰² The Appeals Chamber has confirmed that an accused can be convicted for aiding and abetting a crime when it is established that his or her conduct amounted to tacit approval and

¹⁷⁹⁵ *Gacumbitsi* Appeal Judgement, para. 182, citing *Semanza* Appeal Judgement, para. 361.

¹⁷⁹⁶ *Setako* Trial Judgement, para. 449; *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, Case No ICTR-98-41-T, Judgement (TC), 18 December 2008, para. 2008, ("*Bagosora et al.* Trial Judgement") citing *Semanza* Appeal Judgement, paras. 361, 363.

¹⁷⁹⁷ *Prosecutor v. Rukundo*, Case No ICTR-01-70-A, Judgement (AC), 20 October 2010, para. 52, ("*Rukundo* Trial Judgement") citing *Prosecutor v. Blagojević and Jokić*, Case No IT-02-60-A, Judgement (AC), 9 May 2007, para. 134, ("*Blagojević et al.* Trial Judgement").

¹⁷⁹⁸ *Prosecutor v. Ndindiliyimana, Bizimungu, Nzuwonemeye and Sagahutu*, Case No ICTR-00-56-T, Judgement (TC), 17 May 2011, para. 1914 ("*Military II* Trial Judgement"), citing *Blagojević and Jokić* Appeal Judgement, para. 127, ("*Blagojević and Jokić* Appeal Judgement"); *Blaškić* Appeal Judgement, para. 48; *Prosecutor v. Simić*, Case No IT-95-9-A, Judgement (AC), 28 November 2006, para. 85, ("*Simić* Appeal Judgement"); *Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, Case No ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 372, ("*Ntagerura* Appeal Judgement").

¹⁷⁹⁹ *Rukundo* Appeal Judgement, para. 92, citing *Prosecutor v. Muhimana*, Case No ICTR-95-1B-T, Judgement (AC), 28 April 2005, para. 189, ("*Muhimana* Appeal Judgement").

¹⁸⁰⁰ *Prosecutor v. Seromba*, Case No ICTR-01-66-I, Judgement (TC), 13 December 2006, para. 308, ("*Seromba* Trial Judgement"), citing *Prosecutor v. Krnojelac*, Case No IT-97-25-T, Judgement (TC), 15 March 2002, para. 89, ("*Krnojelac* Trial Judgement"); *Prosecutor v. Bagilishema*, Case No ICTR-95-1A-T, Judgement (TC), 7 June 2001, para. 36, ("*Bagilishema* Trial Judgement").

¹⁸⁰¹ *Prosecutor v. Semanza*, Case No ICTR-97-20-T, Judgement (TC), 15 May 2003, para. 388, ("*Semanza* Trial Judgement"); *Prosecutor v. Aleksovski*, Case No IT-95-14/1-A, Judgement (AC), 24 March 2000, para. 162, ("*Aleksovski* Appeal Judgement").

¹⁸⁰² *Blagojević and Jokić* Appeal Judgement, para. 127. See also *Prosecutor v. Krstić*, Case No IT-98-33-A, Judgement (AC), 19 April 2004, paras. 137-138, 144, ("*Krstić* Appeal Judgement").

encouragement of the crime and that such conduct substantially contributed to the crime.¹⁸⁰³

Aiding and Abetting by Omission

1431. Omission proper may lead to individual criminal responsibility under Article 6(1) of the Statute where there is a legal duty to act. The *actus reus* of aiding and abetting by omission consists of the failure to discharge a legal duty, where that failure assisted, encouraged, or lent moral support to the perpetration of the crime and had a substantial effect on the realisation of that crime. This implicitly requires that the accused had the ability to act, such that means were available to the accused to fulfil his or her duty. As for the *mens rea*, the aider and abettor must know that his or her omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal.¹⁸⁰⁴

Commission

1432. “Committing” implies the physical perpetration of a crime, with criminal intent, or a culpable omission of an act that is mandated by a rule of criminal law. It is established in the jurisprudence of the Tribunal that “committing” is not limited to direct and physical perpetration and that other acts can constitute direct participation in the *actus reus* of the crime.¹⁸⁰⁵ The question is whether an accused’s conduct was as much an integral part of the genocide as were the killings which it enabled.¹⁸⁰⁶

1.2 Joint Criminal Enterprise (“JCE”) as a Mode of Direct Responsibility

1433. Although Article 6(1) does not explicitly refer to “joint criminal enterprise” (“JCE”), the Appeals Chamber has held that participating in a JCE is a form of liability which exists in customary international law and that it is a form of “commission” under Article 6(1).¹⁸⁰⁷

¹⁸⁰³ *Prosecutor v. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje*, Case No ICTR-98-42-T, Judgement (TC), 24 June 2011, para. 5596 (“*Butare Trial Judgement*”), citing *Kalimanzira v. Prosecutor*, Case No ICTR-05-88-A, Judgement (AC), 20 October 2010, para. 74, (“*Kalimanzira Appeal Judgement*”).

¹⁸⁰⁴ *Butare Trial Judgement*, para. 5597, citing *Prosecutor v. Mrkšić and Šljivančanin*, Case No IT-95-13/1-A, Judgement (AC), 5 May 2009, para. 49, (“*Mrkšić and Šljivančanin Appeal Judgement*”); *Prosecutor v. Orić*, Case No IT-03-68-A, Judgement (AC), 3 July 2008, para. 43, (“*Orić Appeal Judgement*”).

¹⁸⁰⁵ *Prosecutor v. Seromba*, Case No ICTR-01-66-A, Judgement (AC), 12 March 2008, para. 161, (“*Seromba Appeal Judgement*”) citing *Gacumbitsi Appeal Judgement*, para. 60; *Prosecutor v. Nindabahizi*, Case No ICTR-01-71-A, Judgement (AC), 16 January 2007, para. 123, (“*Nindabahizi Appeal Judgement*”).

¹⁸⁰⁶ *Butare Trial Judgement*, para. 5594, citing *Kalimanzira Appeal Judgement*, para. 219.

¹⁸⁰⁷ See *Prosecutor v. Tadić*, Case No IT-94-1-A, Judgement (AC), 15 July 1999, paras. 188, 195-226, (“*Tadić Appeal Judgement*”). See also *Prosecutor v. Kvočka, Radić, Žigić and Prcać*, Case No IT-98-30/1-A, Judgement (AC), 28 February 2005, paras. 79-80, 99, (“*Kvočka et al. Appeal Judgement*”); *Prosecutor v. Ntakirutimana and Ntakirutimana*, Cases Nos ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, paras. 461-462, 466, 468, (“*Ntakirutimana Appeal Judgement*”); *Prosecutor v. Vasiljević*, Case No IT-98-32-A, Judgement (AC), 25 February 2004, paras. 94-95, (“*Vasiljević Appeal Judgement*”); *Prosecutor v. Simba*, Case No ICTR-01-76-T, Judgement (TC), 13 December 2005, para. 385, (“*Simba Trial Judgement*”). See also *Prosecutor v. Rwamakuba*, Case No ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004, para. 31,

1434. According to the jurisprudence JCE liability exists in three forms: basic, systemic, and extended.¹⁸⁰⁸

1435. Liability for participation in a JCE is as wide as its purpose, even if that purpose amounts to a “nation-wide government-organised system of cruelty”.¹⁸⁰⁹ Both basic and extended JCE liability can be applied to joint criminal enterprises of vast scope.¹⁸¹⁰

1.3 JCE Liability in the Basic Form

1.3.1 Law

1436. The following three elements must be proven for JCE liability in its basic form to be incurred.¹⁸¹¹ First, a plurality of persons is required.¹⁸¹² These persons need not be organised in a military, political or administrative structure.¹⁸¹³ Second, the existence of a common purpose that amounts to or involves the commission of a crime under the Statute is required.¹⁸¹⁴ The common purpose need not be express and may be inferred from the facts. It can therefore arise extemporaneously.¹⁸¹⁵ Third, the accused must contribute to the common purpose.¹⁸¹⁶ This contribution need not involve the commission of a specific crime under the Statute but can take the form of any contribution to the execution of the common criminal purpose.¹⁸¹⁷ The contribution need not be essential for the commission of the crime but must form a link in the chain of causation and constitute a significant contribution to the crimes for which the accused is to be held responsible.¹⁸¹⁸

1437. All participants in the joint criminal enterprise are equally guilty of the crime regardless of the part played by each in its commission.¹⁸¹⁹ However, this does not mean that individual criminal responsibility arises as a result of mere membership in a criminal enterprise.¹⁸²⁰ In order to incur criminal liability, the accused is still required to contribute to the common purpose in the manner described above.

1438. There is no requirement that the accused is present at the time and place of the perpetration of the crime.¹⁸²¹

1439. The intent that a certain crime be perpetrated must be shared by all JCE members.¹⁸²² Where the underlying crime requires a special intent, such as discriminatory

(“*Rwamakuba* Appeal Chamber Decision”) (recognising applicability of joint criminal enterprise to the crime of genocide).

¹⁸⁰⁸ *Kvočka et al.* Appeal Judgement, paras. 62-83; *Ntakirutimana* Appeal Judgement, paras. 463-465; *Vasiljević* Appeal Judgement, paras. 96-99.

¹⁸⁰⁹ *Rwamakuba* Appeal Chamber Decision, para. 25.

¹⁸¹⁰ *Brđanin* Appeal Judgement para. 425.

¹⁸¹¹ *Kvočka et al.* Appeal Judgement, para. 96; *Vasiljević* Appeal Judgement, para. 100.

¹⁸¹² *Brđanin* Appeal Judgement, paras. 364, 430; *Kvočka et al.* Appeal Judgement, para. 96; *Vasiljević* Appeal Judgement, para. 100.

¹⁸¹³ *Vasiljević* Appeal Judgement, para. 100; *Tadić* Appeal Judgement para. 227.

¹⁸¹⁴ *Brđanin* Appeal Judgement, paras. 364, 418; *Simba* Appeal Judgement, para. 90; *Ntakirutimana* Appeal Judgement, para. 466.

¹⁸¹⁵ *Brđanin* Appeal Judgement, paras. 364, 410, 418; *Ntakirutimana* Appeal Judgement, para. 466.

¹⁸¹⁶ *Brđanin* Appeal Judgement, para. 430; *Simba* Appeal Judgement, para. 303.

¹⁸¹⁷ *Brđanin* Appeal Judgement, para. 424; *Ntakirutimana* Appeal Judgement, para. 466.

¹⁸¹⁸ *Kvočka et al.* Appeal Judgement para. 98; *Simba* Appeal Judgement para. 303.

¹⁸¹⁹ *Vasiljević* Appeal Judgement’ paras. 111

¹⁸²⁰ *Brđanin* Trial Judgement para. 263

¹⁸²¹ *Popović* Trial Judgement, para. 1026.

intent, the accused, as a JCE member, must share the special intent.¹⁸²³ If the accused does not share the discriminatory intent, then he may still be liable as an aider and abettor if he knowingly makes a substantial contribution to the crime.¹⁸²⁴

1440. For a member of a JCE to incur responsibility for crimes within the common purpose of the JCE committed by non-members of that JCE, it must be shown that the crimes can be imputed to one member of the JCE and that this member, when using the non-member to perpetrate the crime, acted in accordance with the common purpose.¹⁸²⁵

1.3.2 JCE Liability of the Accused in the Basic Form

Allegation in the Indictment

1441. The Prosecution has pleaded JCE liability in the basic form for both Accused with respect to crimes of direct and public incitement to commit genocide (count 2), genocide (count 3), complicity in genocide (count 4), extermination as a crime against humanity (crime 6) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (count 7).

Deliberations

Notice

1442. The Defence raises some general issues with respect to the pleading of the requisite elements of joint criminal enterprise.¹⁸²⁶ The Chamber has already addressed these and other similar issues above and will not restate its position here.¹⁸²⁷

Common Purpose

1443. The Prosecution has claimed that the common purpose of the basic JCE was the destruction of the Tutsi population in Rwanda by means of the crimes mentioned above.¹⁸²⁸

Existence of a JCE to Pursue the Common Purpose

1444. The Prosecution has not led any evidence of any express agreement between the Accused and other persons to jointly pursue the destruction of the Tutsi population in Rwanda. The issue, therefore, is whether a JCE may be inferred from the facts and circumstances of the case.

Events Prior to 8 April 1994

1445. The Chamber has found the following facts proven beyond a reasonable doubt:

¹⁸²² *Ntakirutimana Appeal Judgement*, para. 467; *Vasiljević Appeal Judgement*, para. 101.
¹⁸²³ *Simba Appeal Judgement* para. 388; *Kvočka et al. Appeal Judgement*, para. 110.
¹⁸²⁴ *Kvočka et al.* para. 110
¹⁸²⁵ *Martić Appeal Judgement*, paras. 171; *Brđanin Appeal Judgement*, paras. 410, 413.
¹⁸²⁶ *Karemera Closing Brief*, paras. 99-120; *Ngirumpatse Closing Brief*, para. 855.
¹⁸²⁷ See (II. 6).
¹⁸²⁸ See paras. 5, 7 of the Indictment.

- (1) Ngirumpatse initiated or supported the formation of the *Interahamwe* as the youth wing of the MRND and contributed to its expansion throughout Rwanda (see IV.1.2). Ngirumpatse and the MRND Executive Bureau, including Karemera, represented the ultimate authority over the *Interahamwe* in Kigali and Gisenyi (see IV.1.3).
- (2) The Accused, as members of the Executive Bureau of the MRND, agreed to provide military training to the *Interahamwe* beginning in 1993 (see IV.1.4). The Accused were involved in the distribution of weapons to the *Interahamwe* and the stockpiling and concealment of weapons for later distribution to the *Interahamwe* (see IV.1.5).
- (3) A rally was held on or about 23 October 1993 at Nyamirambo Stadium in Kigali where speeches were made that characterized Tutsis as the enemy. The MRND Executive Bureau condoned the rally and its general purpose of showing unity for the Hutu Power cause. Karemera arrived late and did not address the audience (see IV.2.4). A rally was also held on or about 27 October 1993 at Umuganda Stadium in Gisenyi. Karemera, Ngirumpatse, and Bagosora participated in the rally (see IV.2.5). Another rally that promoted Hutu Power took place in Nyamirambo Stadium in Kigali on 7 November 1993 where Karemera, Ngirumpatse, and leading MRND politicians addressed the public (see IV.2.6.1). A fourth rally took place on 16 January 1994 at Nyamirambo Stadium that promoted Hutu Power and featured Karemera, Ngirumpatse, and other leading MRND politicians as speakers (see IV.2.6.2). The *Interahamwe* provided entertainment and security during all rallies (see IV.2).
- (4) Army Chief of Staff Déogratias Nsabimana held a meeting on 29 March 1994 with the *préfet* of Kigali and the *commandant de secteur* for the city of Kigali to fine-tune the structure and organization of a civil defence plan (see IV.3.1).

1446. The Chamber does not consider that the only reasonable inference that can be drawn from this body of circumstantial evidence is that Karemera and Ngirumpatse intended that crimes covered by the Statute be committed. In light of the ongoing conflicts with other political parties and the RPF, and the assassination of political leaders, the Chamber considers that it is also reasonable to infer that the Accused and other MRND leaders were merely seeking to protect themselves and their supporters from attacks from other opposition political parties, or the RPF, by forming, expanding, training, and arming the *Interahamwe* prior to 8 April 1994.

1447. For the same reasons, it is also reasonable to infer that Nsabimana called the 29 March 1994 meeting and fine-tuned the Civil Defence Plan to prepare for the possibility of another RPF invasion, or an armed struggle for power in Rwanda. Regarding the rallies, the Chamber considers that, in light of the ongoing conflicts with other political parties and the RPF, it is also reasonable to infer that the Accused and other MRND leaders merely held these political rallies to galvanize support for their party and speak out against opposition parties and the RPF.

1448. Furthermore, it is reasonable to infer that the large scale attacks on Tutsis that began on 7 April 1994 may have started as a reaction to the assassination of President Habyarimana, which was fuelled by the preceding anti-Tutsi propaganda that all Tutsis supported the RPF, and the public belief that the RPF was responsible for the assassination.

1449. Accordingly, the Chamber finds that the Prosecution has not proven beyond a reasonable doubt that a JCE to pursue the destruction of Tutsi population in Rwanda came into existence prior to 8 April 1994.

Events from 8 April to Mid-July 1994

1450. The Chamber has found the following facts proven beyond a reasonable doubt:

- (1) Around 11 April 1994, weapons were distributed to the *Interahamwe* at the *Hôtel des Diplomates* in the presence of Col. Bagosora and with the consent of Ngirumpatse and Nzirorera. A second distribution took place on 12 April 1994 pursuant to an arrangement between Bagosora and Nzirorera. At this stage, it was foreseeable to them that the weapons would be used to kill Tutsis (see V.1.4; 1.5).
- (2) On 17 April 1994, the Interim Government removed the *prefets* of Butare and Kibungo because they were known to protect the Tutsi population (see IV.2.2).
- (3) On 18 April 1994, at a meeting in Murambi, several ministers of the Interim Government, including the Prime Minister, and several national political party leaders, including Karemera and Ngirumpatse, intimidated the territorial administration of Gitarama *préfecture* so they would not interfere with the *Interahamwe*'s attacks on Tutsis and instead allow them to continue (see V.2.1).
- (4) On 19 April 1994, at the installation of the new *prefet* of Butare, the Interim President gave a speech that incited the population in Butare to attack Tutsis. The speech was broadcast over the radio and given in the presence of several Interim government ministers, including the Prime Minister, and several national political party leaders (see V.2.1).
- (5) On 3 May 1994, shortly after approximately 2,000 Tutsis had been massacred in the vicinity of the meeting place Karemera participated in a public meeting attended by Interim Government officials in Kibuye where he paid tribute to the *Interahamwe* in his speech, calling on them to continue flushing out, stopping, and combating the enemy, thereby inciting the audience to physically attack and destroy Tutsis as a group (see V.3.2).
- (6) On 16 May 1994, the Interim President held a meeting in Kibuye where he congratulated the army and the population for restoring the security of persons and property despite the public knowledge of the killings and mass graves in the area, thereby condoning the massacres (see V.3.3).
- (7) The Interim Government issued five Civil Defence Documents, which defined and set in motion the genocidal Civil Defence Plan, during the period where Karemera and Ngirumpatse were inextricably linked with the policies of the Interim Government. The Chamber is convinced that these documents manifested an agreement to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population (see V.3.4).
- (8) Attacks against Tutsis occurred in Bisesero Hills throughout April, May and June 1994. Interim Government Minister Eliezer Niyitegeka and *prefet* Clement Kayishema were among the authorities who ordered, instigated, and directed large-scale attacks against Tutsi civilians in Bisesero from 13 May 1994 (see V.6.1; 6.2).
- (9) Around 18 June 1994, Karemera ordered a "mopping-up" operation against the Tutsis in Bisesero, which resulted in the death of scores of Tutsi civilians (see V.6.3).
- (10) The majority of the roadblocks during the genocide were set up or manned by MRND *Interahamwe* or controlled by MRND *Interahamwe*. People identified as Tutsis were killed because of their ethnicity at most roadblocks. In Kigali alone, thousands of civilians were killed by militias and soldiers by 12 April 1994 (see V.7).

- (11) Unarmed men, women and children had been killed at a massive scale as a direct result of policies of the Interim Government by mid-July 1994 (see V.7).

1451. The Chamber notes that the acts listed above as numbers 1 through 9 facilitated the killings listed above as numbers 10 and 11 of civilians who were predominantly Tutsi. The persons involved in the weapons distribution around 11 April 1994 were: 1) two of the principal leaders of the MRND (Ngirumpatse and Nzirorera); and 2) Bagosora, *chef de cabinet* of the Ministry of Defence, who was appointed by the MRND leaders. The acts that followed the distribution and continued throughout the genocide involved the same and more political leaders from the MRND and the other parties behind the Interim Government, including Karemera, the Interim President of Rwanda and members of the Interim Government, as well as influential businessmen.

1452. The political leaders and Bagosora were engaged in a civil war against the predominantly Tutsi RPF army for the control of Rwanda. The physical perpetrators of the killings were predominantly: 1) party militias, in particular the *Interahamwe* who were controlled by the MRND leaders; 2) soldiers and *gendarmes* who fell under the MRND-controlled Ministry of Defence; and 3) other civilians participating in a civil defence program, which fell under the MRND-controlled Ministries of Defence and Interior and was organized by the territorial administration, which was controlled by the Ministry of the Interior.

1453. The Chamber finds the only reasonable inference from these facts and circumstances to be that a JCE materialised on 11 April 1994 when Ngirumpatse, Nzirorera, and Bagosora agreed to distribute weapons to *Interahamwe* in Kigali. The JCE was consolidated after the flight of the government and party leaders to Gitarama. The JCE was composed of: 1) political leaders, including Karemera and Ngirumpatse; 2) persons of authority within the military, the *Interahamwe*, and the territorial administration; and 3) influential businessmen including Felicien Kabuga, Obed Ruzindana and Alfred Musema.

1454. Considering the massive scale of the killings along with their systematic and public nature, and recalling that the victims were predominantly Tutsi, including women, children and the elderly who could not possibly have been considered actual or potential combatants, the Chamber is convinced beyond reasonable doubt that the common purpose of the JCE was the destruction of the Tutsi population in Rwanda. The Chamber is also convinced that the members of the JCE shared this purpose which constituted genocidal intent.

1455. The Chamber notes that the *modus operandi* of the JCE was to prompt non-members of the JCE to perpetrate the killings. The intent of the participants in the JCE would, therefore, have included the specific intent to engage in direct and public incitement to commit genocide.

1456. With respect to the rapes and sexual assaults on Tutsi women and girls perpetrated by non-members of the JCE, the Chamber recalls that the Prosecution also pleads JCE liability for them in the extended form. The Chamber does not consider that the evidence exposes a shared intent by JCE members to cause serious bodily or mental harm by raping and sexually assaulting Tutsis; thus, the Chamber does not find that JCE liability in the basic form encompasses these acts.

Contribution to the Common Purpose

1457. Karemera substantially contributed to the common purpose through the acts listed above as numbers 3, 5, 7 (as of 25 May 1994), and 9.¹⁸²⁹ The Chamber considers that his contributions were significant to the furtherance of the common purpose of the JCE.

1458. Ngirumpatse substantially contributed to the common purpose through the acts listed above as numbers 1 and 3.¹⁸³⁰ The Chamber considers that his contributions were significant to the furtherance of the common purpose of the JCE.

Liability of the Accused for Crimes Perpetrated by Other JCE Members

1459. The acts listed above as numbers 1 through 9 can be attributed to at least one member of the JCE.

1460. The Chamber considers that these acts fall within the common purpose of the JCE, whether they may be qualified as direct and public incitement to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, or serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II. Consequently, JCE liability in the basic form for each Accused applies to all these acts.

Liability of the Accused for Crimes Perpetrated by Non-Members of the JCE

1461. The acts listed above as numbers 8 through 11 were perpetrated by non-members of the JCE. The Chamber will address whether these crimes can be imputed to a member of the JCE, and whether that member acted in accordance with the common purpose when using the non-member, in its individual legal findings below for each count.

1.4 JCE Liability in the Extended Form

1.4.1 Law

1462. Liability for a crime outside the common purpose of a JCE (“extended crime”) committed by another JCE member requires that the accused had the requisite intent to participate in and significantly contribute to the JCE.

1463. In addition, however, it must have been foreseeable that the extended crime was a possible consequence of the implementation of the JCE and that the accused was aware that the extended crime was a possible consequence of the implementation of the common purpose of the JCE. The accused must also have willingly taken the risk that the extended crime would be committed. Willingness to take this risk is demonstrated by continuing to participate in the JCE despite the awareness that the extended crime is a possible consequence of the implementation of that enterprise.¹⁸³¹ The extended crime must be perpetrated in the execution of the common purpose.¹⁸³²

1464. Liability for an extended crime committed by a non-member of the JCE requires that the accused had the requisite intent to participate in and significantly contributed to the JCE and, in the circumstances of the case: 1) it was foreseeable that the non-member would commit the extended crime in the execution of a crime forming part of the common

¹⁸²⁹ See (VI.2.3) for an explanation of Karemera’s superior liability for these killings.

¹⁸³⁰ See (VI.2.4) for an explanation of Ngirumpatse’s superior liability for these killings.

¹⁸³¹ *Brđanin* Appeal Judgement, para. 411.

¹⁸³² *Stakić* Appeal Judgement, para. 87.

purpose of the JCE; and 2) the accused was aware that the extended crime was a possible consequence of the implementation of the common purpose of the JCE, and willingly took the risk that it would be committed.¹⁸³³

1.4.2 JCE Liability of the Accused in the Extended Form

Allegation in the Indictment

1465. The Prosecution has pleaded JCE liability in the extended form for genocide, complicity in genocide, and rape as a crime against humanity with respect to the rapes and sexual assaults of Tutsi women and girls, which were perpetrated by *Interahamwe* and other militiamen. Karemera and Ngirumpatse were aware that rape was the natural and foreseeable consequence of the execution of the JCE and knowingly and willfully participated in that enterprise.¹⁸³⁴

Evidence

Prosecution Witness G

1466. The witness¹⁸³⁵ testified that he was not aware of any instructions given by the MRND, or *Interahamwe* leaders, in public or private, that *Tutsi* women should be sexually assaulted.¹⁸³⁶

Kangura Newspaper

1467. The Hutu Ten Commandments, which were published in *Kangura* newspaper in December 1990, portrayed *Tutsi* women as seductresses of Hutu men.¹⁸³⁷

Joseph Nzirorera

1468. Joseph Nzirorera testified that he had nothing to do with the rape of any individual.¹⁸³⁸ The national leaders of the MRND played no role in the rapes that occurred.

1469. On 10 April 1994, the five political parties published a *communiqué* appealing to the population to maintain peace. That same day, and on behalf of the MRND party, Matthieu Ngirumpatse and Joseph Nzirorera made a broadcast over Radio Rwanda calling on the population to maintain peace and in particular, telling the young people not to carry out rape, amongst other things.¹⁸³⁹

Édouard Karemera

1470. Édouard Karemera testified that rape committed by soldiers and militiamen was never discussed in the cabinet from 20 May 1994, when he became a cabinet member.

¹⁸³³ *Brđanin* Appeal Judgement, para. 411.

¹⁸³⁴ Indictment, para. 66.

¹⁸³⁵ See para. 175, *supra*.

¹⁸³⁶ T. 18 October 2005, p. 21.

¹⁸³⁷ Exhibit P471, "Appeal to the Conscience of the Hutu".

¹⁸³⁸ See T. 17 May 2010, p. 20

¹⁸³⁹ T. 18 May 2010, pp. 7, 8.

During wartime, soldiers rape women so it is ridiculous to think that soldiers do not rape during war. He was not in charge of punishing soldiers who raped women and he denounced soldiers who ran away from the front and came back to rape women and pillage. He denounced raping and pillaging in a report and during his meeting on 28 May 1994 with the *préfet*. In the report, he asked the Minister of Defence to sanction those causing insecurity, including those committing rape.¹⁸⁴⁰ He was not in charge of the *Interahamwe* or soldiers.¹⁸⁴¹

Matthieu Ngirumpatse

1471. Matthieu Ngirumpatse stated that he was not informed that the *Interahamwe* raped and sexually assaulted Tutsi women and girls during the events of 1994. He did not ask the *Interahamwe* to use rape as a weapon against Tutsi women. He did not have the means to prevent acts of sexual assault perpetrated against Tutsi women.¹⁸⁴²

1472. He was not aware of the rapes that occurred between 15 and 20 April in Prosecution Witness UB's *secteur* and notes that Prosecution Witness UB is himself accused of rape.

Deliberation

1473. The Chamber has found it proved beyond a reasonable doubt that Tutsi women were raped, mutilated, and sexually assaulted by *Interahamwe*, other militias, soldiers, and civilians on a large scale in Ruhengeri, Kigali-Ville, Butare, Kibuye, and Gitarama *préfectures*, along with the rest of Rwanda, as part of the widespread attack against Tutsis as an ethnic group (see V.8).

Foreseeability of Rapes and Sexual Assaults

1474. The Chamber notes that no link has been established between the MRND and *Kangura* newspaper.

1475. Karemera testified that it would be ridiculous to believe that soldiers would not commit rape during war. The Chamber agrees that there is a heightened risk that the strong will abuse the weak during a war when law and order is suspended and, especially, that soldiers and other combatants, if not restricted by their superiors, will commit rapes against women and girls of the opposite party to the conflict. The Chamber, however, notes that the Tutsi women and girls were not raped and sexually assaulted in connection with the war between the RPF and Rwandan Armed Forces, which does not form part of the JCE. Rather, they were committed in the context of a campaign to destroy the Tutsi population in Rwanda and as such also took place in areas far from the front line. Furthermore, the Tutsi women and girls were not raped and sexually assaulted by invading soldiers, but by fellow Rwandan citizens, albeit of another ethnicity.

1476. The Chamber finds that during a campaign to destroy, in whole or in part, a national, ethnic, racial, or religious group, a natural and foreseeable consequence of that

¹⁸⁴⁰ T. 27 May 2009, p. 35.

¹⁸⁴¹ *Id.*, p. 36.

¹⁸⁴² T. 27 January 2011, pp. 30, 31.

campaign will be that soldiers and militias who participate in the destruction will resort to rapes and sexual assaults unless restricted by their superiors.

1477. Accordingly, the Chamber finds that the rape and sexual assault of Tutsi women and girls by soldiers, *gendarmes*, and militiamen, including the MRND *Interahamwe*, was a natural and foreseeable consequence of the JCE to destroy the Tutsi ethnicity because the perpetrators were participating in the campaign to exterminate Tutsis in Rwanda.

Awareness of the Accused and Acceptance of the Risk

1478. The Prosecution has not presented evidence that rapes and sexual assaults were reported to the MRND leadership apart from the evidence of Witness HH that *Interahamwe* leader Maniragaba told him that he would report to the MRND national secretary that *Interahamwe* leaders were having sexual relations with Tutsi women (see V.8.1) This, however, is not sufficient for the Chamber to conclude that the MRND leadership was informed that *Interahamwe* and others in general were raping Tutsi women.

1479. The Chamber notes that Niyitegeka, the Minister of Information for the Interim Government, and *Bourgmestre* Akayesu were convicted of their involvement with rapes in Kibuye and Gitarama *préfectures*, respectively. It also recalls the evidence of Witness UB that he had reported rapes to the *bourgmestre*, the *gendarmerie*, and *Préfet* Renzaho.

1480. Furthermore, it recalls the testimonies of Witness APW that Ruzindana was involved in rapes in Kibuye *préfecture* and of Witness APM that *Bourgmestre* Bagilishema was involved in rapes in Kibuye *préfecture* (see V.8.4). Nevertheless, this is not sufficient for the Chamber to conclude that these authorities would have informed the Accused of the rapes and sexual assaults against Tutsi women.

1481. With respect to Ngirumpatse, the Chamber notes that, although he may have lived a life that sheltered him from direct confrontation with the actual perpetration of killings, rapes, and sexual assaults, and was away from the country on official mission during part of the genocide, he participated in activities as part of the MRND leadership, which would have given him access to information concerning events throughout the parts of the country that were controlled by the Interim Government.

1482. For example, he was involved in deliberations with MRND government ministers prior to cabinet meetings and with regional MRND leaders in the MRND Political Bureau. He was also involved in deliberations with the Provisional National Committee of the *Interahamwe*. Moreover, noting that rapes and sexual assaults on Tutsi women and girls were vast in scope and conducted in an open and notorious manner over a long period of time, it is hard for the Chamber to believe that he was not informed of and therefore aware that rapes and sexual assaults were occurring against Tutsi women throughout Rwanda. It appears, however, from his testimony that he was not concerned with the rapes or sexual assaults and took no action to inform himself of the situation.

1483. Based on these facts and circumstances, the Chamber is convinced beyond a reasonable doubt that Ngirumpatse was aware that widespread rapes and sexual assaults on Tutsi women were at least a possible consequence of the JCE to pursue the destruction of the Tutsi population in Rwanda. Furthermore, the Chamber finds that he willingly took the risk of facilitating further rapes and sexual assaults on Tutsi women and girls because he continued to participate in the JCE to destroy the Tutsi population of Rwanda despite the widespread occurrence of rapes and sexual assaults on Tutsi women and girls. This is particularly apparent from the fact that most of the rapes and sexual assaults in Ruhengeri, Kigali-Ville, and Butare *préfectures* occurred in April 1994 yet he insisted on making

significant contributions to the execution of the the basic JCE during that month and remained as the international envoy of the Interim Government until it fled Rwanda (see IV. 1.4; 2.1).

1484. In fact, the rapes and sexual assaults continued for the duration of the attacks committed in furtherance of the common purpose of the basic JCE, with large scale rapes and sexual assaults occurring in Kibuye *préfecture*, for example, from May to June 1994.

1485. With respect to Karemera, the same analysis applies except that the Chamber notes that he was in the country during the entire period of the genocide. The Chamber also recalls that Karemera travelled to Kibuye *préfecture* and took part in meetings with the population on several occasions. Furthermore, as Minister of the Interior from 25 May 1994, he had access to information from the territorial administration about the security situation in the parts of Rwanda under the Interim Government's control. Moreover, Karemera acknowledged that he assumed that women would be raped.

1486. Based on these circumstances, the Chamber is convinced beyond a reasonable doubt that Karemera was aware that widespread rapes and sexual assaults on Tutsi women were at least a possible consequence of the JCE to pursue the destruction of the Tutsi population in Rwanda and willingly took the risk of further rapes and sexual assaults on Tutsi women and girls by continuing to participate in the JCE to destroy the Tutsi population of Rwanda despite the widespread occurrence of rapes and sexual assaults on Tutsi women and girls.

1487. The *Interahamwe*, soldiers, and others who carried out the vast majority of the rapes and sexual attacks were not members of the JCE to pursue the destruction of the Tutsi population in Rwanda. Nevertheless, for the reasons stated above, it was foreseeable that these non-members would commit the rapes and sexual attacks as part of the destruction of the Tutsi population in Rwanda, which was the common purpose of the JCE. Moreover, as stated above, the Accused were aware that the rapes and sexual assaults were possible consequences of the implementation of the JCE and willingly took the risk that they would be committed.

1488. For the reasons stated below in its legal findings for superior responsibility, the Chamber does not consider that the 10 April *communiqué* referred to by Nzirorera constitutes a genuine attempt to prevent attacks against Tutsis (see VI.2.4). In any event, the *communiqué* does not specifically refer to rapes, as claimed by Nzirorera.¹⁸⁴³

1489. Although Karemera claims that he sent a report to the Minister of Defence to sanction those soldiers who left the warfront and came back to rape women and pillage,¹⁸⁴⁴ he never entered this report or any additional proof to support his claim into evidence. Furthermore, the Chamber notes that this alleged report was not mentioned in his closing brief or during his closing argument. Therefore, the Chamber assigns no weight to this contention.

Conclusion

¹⁸⁴³ Exhibit DK132; Exhibit DNZ022.

¹⁸⁴⁴ T. 27 May 2009, p. 35.

1490. Accordingly, Karemera and Ngirumpatse incur JCE liability in the extended form for the rapes and sexual assaults committed after 18 April 1994 by the *Interahamwe*, soldiers, and others, which the Prosecution has proved beyond a reasonable doubt. The Chamber will address whether these rapes and sexual assaults constitute genocide and a crime against humanity under this mode of liability in its legal findings below.

2. SUPERIOR RESPONSIBILITY

2.1 Law

1491. Pursuant to Article 6(3) of the Statute, a superior can incur criminal responsibility for the acts of his subordinate if he knew or had reason to know that the subordinate was about to commit such acts, or had done so, and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

1492. Superior responsibility encompasses criminal conduct by subordinates under all modes of participation pursuant to Article 6(1) of the Statute. As a result, a superior can be held criminally responsible for his or her subordinates' planning, instigating, ordering, committing or otherwise aiding and abetting a crime. An accused, however, cannot be held responsible for a subordinate's criminal conduct before he or she assumed command over this subordinate.¹⁸⁴⁵

1493. The following three elements must be proved to hold a civilian or military superior criminally responsible pursuant to Article 6(3) of the Statute for crimes committed by subordinates: (1) the existence of a superior-subordinate relationship between the accused and the perpetrator; (2) the superior's knowledge or reason to know that the criminal acts were about to be or had been committed by his subordinates; and (3) the superior's failure to take necessary and reasonable measures to prevent such criminal acts or to punish the perpetrators.¹⁸⁴⁶ The accused need not have the same intent as the perpetrator of the criminal act.¹⁸⁴⁷

Superior-Subordinate Relationship

1494. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship. The superior must possess the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates.

¹⁸⁴⁵ *Orić* Appeal Judgement, paras. 20-21; *Nahimana et al.* Appeal Judgement, para. 486; *Prosecutor v. Halilović*, Case No IT-01-48-A, Judgement (AC), 16 October 2007, para. 67, ("*Halilović* Appeal Judgement"). See also *Military II* Trial Judgement, paras. 1959-1963, where the Chamber did not convict Augustin Bizimungu for the acts committed by soldiers and *Interahamwe* one week before he had been appointed Chief of Staff of the Rwandan Army. However, the Chamber strongly criticised the limitations of the current jurisprudence refraining to convict "Bizimungu's failure to sanction his subordinates who killed thousands of Tutsi civilians."

¹⁸⁴⁶ *Bagosora et al.* Trial Judgement, para. 2011; *Orić* Appeal Judgement, para. 18; *Nahimana et al.* Appeal Judgement, para. 484; *Gacumbitsi* Appeal Judgement, para. 143; *Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, Case No ICTR-99-46-T, Judgement (TC), 25 February 2004, para. 627, ("*Ntagerura et al.* Trial Judgement"); *Semanza* Trial Judgement, para. 400.

¹⁸⁴⁷ *Butare* Trial Judgement, para. 5645, citing *Prosecutor v. Milošević*, Case No IT-98-29/1-A, Judgement (AC), 12 November 2009, para. 280, ("*Milošević* Appeal Judgement"); *Nahimana et al.* Appeal Judgement, para. 865.

1495. The superior must have 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.¹⁸⁴⁸ This requirement is not satisfied by a showing of general influence on the part of the accused.¹⁸⁴⁹ In this connection, the exercise of *de jure* authority is neither necessary nor sufficient to establish beyond a reasonable doubt that a superior officer had effective control over his subordinates.¹⁸⁵⁰

1496. Factors indicative of effective control include the accused's position, the procedure for appointment, the actual tasks performed, his or her capacity to issue orders, the nature of such orders, and whether any orders were followed.¹⁸⁵¹ These indicators are more a matter of evidence than of substantive law, and are limited to showing that the accused had the power to prevent, punish, or initiate measures leading to proceedings against the alleged perpetrators where appropriate.¹⁸⁵²

1497. A direct and individualised superior-subordinate relationship is not required for responsibility pursuant to Article 6(3). Effective control may descend from the superior to the subordinate culpable of the crime through intermediary subordinates.¹⁸⁵³

Knowledge of the Superior Regarding Criminal Acts of Subordinates

1498. A superior will be found criminal responsible, if: (1) it is established, through direct or circumstantial evidence, that the superior had actual knowledge that his subordinates were about to commit, were committing, or had committed, a crime under the Statute; or (2) 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 his or her subordinates.¹⁸⁵⁴

1499. 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 was widespread, the tactical tempo of operations, the

¹⁸⁴⁸ *Prosecutor v. Orić*, Case No IT-03-68-T, Judgement (TC), 30 June 2006, para. 311, (“*Orić* Trial Judgement”) citing *Prosecutor v. Mucić, Delić, Landžo and Delalić*, Case No IT-96-21-T, Judgement (TC), 16 November 1996, para. 378 (“*Čelebići* Trial Judgement”).

¹⁸⁴⁹ *Prosecutor v. Renzaho*, Case No ICTR-97-31-T, Judgement (TC), 14 July 2009, para. 745, (“*Renzaho* Trial Judgement”) citing *Bagosora et al.* Trial Judgement, para. 2012.

¹⁸⁵⁰ *Orić* Appeal Judgement, para. 91.

¹⁸⁵¹ *Butare* Trial Judgement, para. 5651, citing *Prosecutor v. Strugar*, Case No IT-01-42-A, Judgement (AC), 17 July 2008, para. 254, (“*Strugar* Appeal Judgement”); *Halilović* Appeal Judgement, para. 66; *Blaškić* Appeal Judgement, para. 69.

¹⁸⁵² *Ntagerura et al.* Appeal Judgement, para. 341, citing *Blaškić* Appeal Judgement, para. 69.

¹⁸⁵³ *Butare* Trial Judgement, para. 5649, citing *Orić* Appeal Judgement, para. 20; and *Nahimana et al.* Appeal Judgement, para. 785.

¹⁸⁵⁴ *Bagosora et al.* Trial Judgement, para. 2013, citing *Prosecutor v. Mucić, Delić, Landžo and Delalić*, Case No IT-96-21-A, Judgement (AC), 20 February 2001, para. 232 (“*Čelebići* Appeal Judgement”). See also *Hadžihasanović and Kubura* Appeal Judgement, para. 28; *Prosecutor v. Galić*, Case No IT-98-29-A, Judgement (AC), 30 November 2006, para. 184; *Prosecutor v. Bagilishema*, Case No ICTR-95-1A-A, Judgement (AC), 3 July 2002, paras. 37, 42, (“*Bagilishema* Appeal Judgement”); *Ntagerura et al.* Trial Judgement, para. 629; *Semanza* Trial Judgement, para. 405; *Renzaho* Trial Judgement, para. 746.

modus operandi of similar illegal acts, the officers and staff involved, and the location of the superior at the time.¹⁸⁵⁵

Failure to Prevent or Punish

1500. A superior may incur responsibility for having failed to take “necessary and reasonable measures” to prevent or punish a crime under the Statute committed by subordinates. According to the Appeals Chamber, ‘necessary’ measures can be defined as the measures appropriate for the superior to discharge his obligation and ‘reasonable’ measures are those reasonably falling within the material power of the superior.¹⁸⁵⁶ Accordingly, what constitutes necessary and reasonable measures is not a matter of substantive law but of fact,¹⁸⁵⁷ and is to be determined on the basis of the particular circumstances of the case.¹⁸⁵⁸ To this end, the degree of the superior’s effective control guides the assessment of whether the individual took reasonable measures to prevent, stop, or punish a subordinate’s crime.¹⁸⁵⁹

1501. A superior need not dispense punishment personally¹⁸⁶⁰ and may discharge his duty to punish by reporting the matter to the competent authorities, provided that this report is likely to trigger an investigation or initiate disciplinary or criminal proceedings.¹⁸⁶¹ If a superior receives widespread information that his subordinates are committing crimes, the failure to issue orders or speak to subordinates may be considered indicators of his failure to prevent the future commission of the crimes by his subordinates.¹⁸⁶²

Cumulative Convictions under Articles 6(1) and 6(3)

1502. Finally, the Trial Chamber bears in mind that it is not appropriate to convict an accused for a specific count under both Article 6(1) and Article 6(3) of the Statute.¹⁸⁶³ When the accused’s responsibility is pleaded pursuant to both provisions for the same conduct and the same set of facts, and the accused could be found liable under both, the Trial Chamber should enter a conviction on the basis of Article 6(1) of the Statute alone and consider the superior position of the accused as an aggravating factor in sentencing.¹⁸⁶⁴

¹⁸⁵⁵ *Bagosora et al.* Trial Judgement, para. 2014, citing *Prosecutor v. Delić*, Case No IT-04-83-T, Judgement (TC), 15 September 2008, para. 64; *Prosecutor v. Strugar*, Case No IT-01-42-T, Judgement (TC), 31 January 2005, para. 368, (“*Strugar* Trial Judgement”); *Prosecutor v. Limaj, Bala and Musliu*, Case No IT-03-66-T, Judgement (TC), 30 November 2005, para. 524, (“*Limaj et al.* Trial Judgement”); *Renzaho* Trial Judgement, para. 747.

¹⁸⁵⁶ *Orić* Appeal Judgement, para. 177, citing *Halilović* Appeal Judgement, para. 63.

¹⁸⁵⁷ *Orić* Appeal Judgement, para. 177; *Hadžihasanović and Kubura* Appeal Judgement, para. 33.

¹⁸⁵⁸ *Prosecutor v. Halilović*, Case No IT-01-48-T, Judgement (TC), 16 November 2005, para. 74, (“*Halilović* Trial Judgement”). See also *Blaškić* Appeal Judgement, para. 72.

¹⁸⁵⁹ *Ntagerura et al.* Trial Judgement, para. 630, citing *Semanza* Trial Judgement, para. 406.

¹⁸⁶⁰ *Hadžihasanović* Appeals Judgement, para. 154.

¹⁸⁶¹ *Boskoski et al.* Appeal Judgement, para. 8.

¹⁸⁶² *Krnjelac* Appeal Judgement, paras. 169-171.

¹⁸⁶³ *Setako* Appeal Judgement, para. 266. See also *Butare* Trial Judgement, para. 5652, citing *Renzaho* Appeal Judgement, para. 564; *Nahimana et al.* Appeal Judgement, paras. 487-488; *Prosecutor v. Kajelijeli*, Case No ICTR-98-44A-A, Judgement (AC), 23 May 2005, paras. 81-82, 318-319, (*Kajelijeli* Appeal Judgement”); and *Blaškić* Appeal Judgement, para. 91.

¹⁸⁶⁴ *Setako* Appeal Judgement, para. 266, citing *Renzaho* Appeal Judgement, para. 564; and *Nahimana et al.* Appeal Judgement, paras. 487-488.

1503. The Appeals Chamber, however, recalled that the Trial Chamber must make a finding beforehand on the accused's superior responsibility.¹⁸⁶⁵ While a position of authority, even at a high level, does not automatically warrant a harsher sentence, it is the abuse of such authority which may serve as an aggravating factor in sentencing.¹⁸⁶⁶

2.2 Superior Responsibility of the Accused

Allegation in the Indictment

1504. The Prosecution alleges that Karemera and Ngirumpatse, in their capacities as First Vice-Chairman and Chairman of the MRND Executive Bureau, respectively, and members of the MRND Political Bureau and the MRND National Committee, exercised effective control over: the national and regional leaders and militia members of the *Interahamwe*, party office-holders and leaders, *préfets*, *bourgmestres* and *conseillers* that were members of the MRND, commanders and members of the Civil Defence Program, and administrative personnel in the ministries controlled by the MRND.¹⁸⁶⁷

1505. In addition, Karemera, in his capacity as Minister of Interior after 25 May 1994, exercised *de jure* and *de facto* authority over the regional territorial administration of *préfets*, *sous-préfets*, and *bourgmestres* throughout Rwanda.¹⁸⁶⁸

1506. Based on the evidence set forth by the Prosecution, the Chamber has found that only the following alleged subordinates of the Accused committed crimes: *Interahamwe* (see IV.1.4; 2.1; 6; 7; and 8); members of the Civil Defence Program (see IV.6; 7); local government officials in the territorial administration (see IV.6); and administrative personnel in the ministries controlled by the MRND (see IV.1.4.2). Therefore, the Chamber will not assess the Accused's superior responsibility with respect to the other categories of subordinates alleged in the Indictment.

Notice

1507. The Defence's submissions regarding lack of notice have already been addressed above (see II.6).

2.3 Karemera's Superior Responsibility

2.3.1 Superior-Subordinate Relationship

1508. Karemera submits that it is unreasonable to infer his responsibility for crimes committed by *Interahamwe* who have not been otherwise identified throughout Rwanda.¹⁸⁶⁹ Moreover, he adds that he did not have the material ability to prevent MRND members from committing crimes or to punish them for these crimes.¹⁸⁷⁰

1509. The Chamber does not agree with Karemera's submission that *Interahamwe* who committed crimes must be identified as a preliminary matter to determine the question of

¹⁸⁶⁵ *Setako* Appeal Judgement, paras. 268, 272.

¹⁸⁶⁶ *Butare* Trial Judgement, para. 5652, citing *Milošević* Appeal Judgement, para. 302.

¹⁸⁶⁷ Indictment, para 18.

¹⁸⁶⁸ *Id.*, para. 12.

¹⁸⁶⁹ Karemera Closing Brief, para. 602.

¹⁸⁷⁰ *Id.*, para. 606.

command responsibility. The Prosecution must only identify categories of assailants¹⁸⁷¹ and it has done so by mentioning the *Interahamwe* and members of the Civil Defence Program.

De Jure Authority

1510. Karemera held the position of National Secretary of the MRND from June 1991 to April 1992 and became First Vice President of the MRND and member and Vice-Chairman of the MRND Executive Bureau in April 1993. He became Minister of the Interior and Communal Development in the Interim Government on 25 May 1994 until he fled the country in July 1994 see (I.1.1).

1511. The Statutes of the MRND¹⁸⁷² do not enumerate the powers granted to the Vice President. However, as a member of the Executive Bureau, Karemera had to perform several duties and activities such as: evaluating the activities of the party to report to the National Congress; organising elections within the party; supervising subordinate organs of the party; suspending decisions of lower organs of the party and referring the matter to the next National Congress; establishing and amending the general rules of procedure; and defining the cooperation policy of the party with other national and foreign political formations.¹⁸⁷³

1512. In his capacity as Minister of Interior of the Interim Government, Karemera had to participate in the Council of Ministers¹⁸⁷⁴ and issue directives and instructions to local authorities such as *préfets* (see V.3.4). He was also, along with the Minister of Defence, a member of civil defence programming at the national level.¹⁸⁷⁵ For instance, he detailed the funds available for civilian self-defence of the *préfectures* (see V.3.4.2). He also had the ability to issue orders regarding security, as he did for Bisesero, and could ask for the support of the *gendarmerie* (see V.6.3).

1513. As the Minister of Interior, Karemera was the legal intermediary between the *préfets* and the Prime Minister.¹⁸⁷⁶ He demanded reports from the *préfets* and *bourgmestres* about the activities under their jurisdiction and asked them for feedback.¹⁸⁷⁷

1514. He also informed the military authorities about the decisions taken during the Council of Ministers and could, in the absence of the Minister of Defence, ensure that decisions related to security matters were enforced.¹⁸⁷⁸ He was accountable to the

¹⁸⁷¹ *Prosecutor v. Krnojelac*, Case no. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 46; *Blaškić* Appeal Judgement, para. 217 citing Paragraph 19 and 46 of this decision.

¹⁸⁷² Exhibit DNG2, "Statutes of the MRND".

¹⁸⁷³ *Id.*, Article 54.

¹⁸⁷⁴ See for example Exhibit P. 56, "Karemera's handwritten notes on the Council of Ministers' Meeting".

¹⁸⁷⁵ Édouard Karemera, T. 19 May 2009, pp. 62-66; T. 27 May 2009, p. 8.

¹⁸⁷⁶ See for example Exhibit P59 : the Letter from Édouard Karemera to *Préfets* Regarding Implementation of Jean Kambanda's Directives – 25 May 1994.

¹⁸⁷⁷ See for example Exhibit P54: the letter from Karemera to Kayishema dated 20 June 1994 where Karemera explains that it is Kayishema's duty to closely monitor one operation, which required the support of the inhabitants of Gishyata, Gisovu, and Gitesi *communes*, and to give Karemera feedback before the end of June.

¹⁸⁷⁸ See for example Exhibit P58: the letter from Karemera to Nsengiyumva, the army commander of the operational *secteur* of Gisenyi where Karemera informed him that during the 17 June 1994 meeting of the Council of Ministers, the Government had decided to request the operational *secteur* commander in Gisenyi to

Government and Parliament concerning his administration and was the guarantor of law and order.¹⁸⁷⁹

1515. In light of the above, the Chamber is satisfied that Karemera occupied an important position in the civilian chain of control and had substantial *de jure* authority during the genocide in Rwanda, generally. It appears that a large amount of his *de jure* authority, particularly as Minister of the Interior, applied to civilian participants in the Civil Defence Program and local authorities who were part of the territorial administration. Although the Chamber does not consider that he possessed *de jure* authority over the *Interahamwe* and civilian participants in the Civil Defence Programme in Rwanda, at all times, it is convinced that he held *de jure* authority over local authorities in the territorial administration as of 25 May 1994 when he became Minister of the Interior.

De Facto Authority

1516. The Chamber has found that Karemera was one of four persons who comprised the Executive Bureau of the MRND – the ultimate authority over the *Interahamwe* in Kigali and Gisenyi throughout the genocide (see III; IV.1.3)

1517. Moreover, Karemera was a well-known figure in Rwanda due to his national positions in the MRND and Interim Government. The Chamber has found that he carried out numerous activities before and during the genocide that furthered his status, influence, and *de facto* authority in Rwanda during that period, particularly over the *Interahamwe* in Kigali and Gisenyi and civilian participants in the Civil Defence Programme.

1518. As a member of the Executive Bureau of the MRND, Édouard Karemera agreed to provide military training to the *Interahamwe* beginning in 1993 (see IV.1.4). He was involved in the distribution of weapons to the *Interahamwe* and the stockpiling and concealment of weapons in Kigali for later distribution to the *Interahamwe* (see IV.1.5). Moreover, when Col. Théoneste Bagosora, *chef de cabinet* for the Ministry of Defence, was threatened with early removal by the Minister of Defence, he sought assistance from the Executive Bureau of the MRND and Karemera and the rest of the bureau spoke to their minister and ensured that Bagosora was treated fairly.¹⁸⁸⁰

1519. Even before his nomination as Minister of Interior for the Interim Government, Karemera spoke during large public meetings such as the 3 May meeting in Kibuye, alongside Prime Minister Jean Kambanda and the Minister of Information, Eliézer Niyitegeka (see V.3.2). He also attended the 18 April 1994 meeting in Gitarama and addressed the audience as a national political leader (see V.2.1). Further, as Vice-Chairman of the MRND, he drafted, signed, and read MRND *communiqués* at public meetings, which were broadcast on the radio. Moreover, the MRND leadership, including Karemera, influenced the decisions that were taken by the Interim Government (see V.3.4).

1520. The Chamber has also found that Karemera, while Minister of Interior for the Interim Government, issued three of five Civil Defence Documents on behalf of the Interim Government, which defined and set in motion the Civil Defence Plan throughout

support the Kibuye *gendarmérie*). Karemera noted that in the absence of the Minister of Defence, the Minister of the Interior was authorised to communicate this decision and to ensure that it was followed.

¹⁸⁷⁹ See Charles Ntampaka's Expert Report, K0377415, p. 37.

¹⁸⁸⁰ Bagosora, T. 29 June 2010, pp. 17-19.

Rwanda (see V.3.4) Through one of these documents, Karemera ordered a mopping-up operation against the Tutsis in Bisesero, which was in fact carried out, resulting in the death of scores of Tutsi civilians (see V.6.3).

1521. Furthermore, Karemera as Minister of Interior for the Interim Government controlled the entire territorial administration in Rwanda. As an example of his power, the Chamber recalls that he selected Col. Alphonse Nteziryayo as the replacement *préfet* for Butare and Major Damascene Ukulikiyeyezu as the replacement *préfet* for Gitarama (see V.2.2; 2.4). Therefore, the Chamber finds that Karemera had considerable *de facto* authority relative to the Civil Defence Plan.

1522. Accordingly, the Chamber finds that Karemera was an influential person with considerable *de facto* authority in Rwanda during the genocide. The Chamber specifically finds that he had *de facto* authority over the *Interahamwe* in Kigali and Gisenyi, civilian participants in the Civil Defence Programme, local officials who were part of the territorial administration, and administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora.

2.3.2 Effective Control

1523. The Chamber has found that *Interahamwe* committees were established in Kigali-Ville and Gisenyi *préfectures* according to MRND party structures (IV.1.3). Moreover, Karemera was one of four members and the Vice-Chairman of the Executive Bureau of the MRND, the ultimate authority over the *Interahamwe* of Kigali and Gisenyi (see III; IV.1.3). Thus, the Chamber is convinced that he could have prevented offences committed by the Kigali and Gisenyi *Interahamwe* by speaking out and forbidding them. It stands to reason that one of the four most respected and powerful leaders of a civilian political organization with a defined hierarchy is capable of wielding such power to prevent offences by his subordinates. Such an individual has the capacity to issue orders from the very top of the organisation, which will be followed.

1524. Furthermore, the Chamber is sure that Karemera could have punished offenders among the Kigali and Gisenyi *Interahamwe* on account of his status and authority over those organisations. He could have sanctioned offenders politically, removed them from the ranks of the organisation, disabled their benefits and privileges, publically humiliated them, or demoted them within the organisation, among other measures.

1525. Recalling the degree of his *de jure* and *de facto* authority relative to the Civil Defence Programme, the Chamber is convinced that Karemera could have prevented offences committed by civilians and local officials who participated in the programme. As national leader of the territorial administration and the highest figure in the administration of the Civil Defence Programme alongside Prime Minister Kambanda, Karemera could have spoken out and forbidden such offences. He could have issued nationwide directives or addressed the nation through public media, among other things, to prevent offences by these individuals. A person with Karemera's power and authority would have been able to speak on behalf of the national government and issue orders that would have been followed.

1526. Furthermore, on account of his *de jure* authority over local officials and *de facto* authority over administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora, the Chamber is convinced that he could have prevented them from facilitating further attacks and killings by removing them from office. This much is clear on account of his proven ability to replace *préfets* such as Nsabimana and Uwizeye and ensure that Bagosora was not removed from office prematurely.

1527. Moreover, the Chamber is sure that Karemera could have punished offenders among the civilians who participated in the Civil Defence Programme, local officials who were part of the territorial administration, and administrative personnel in the ministries controlled by the MRND. With the authority invested in him as Minister of the Interior, he could have ordered offenders jailed or removed them from the programme and their office, among other measures.

1528. Thus, the Chamber finds that Karemera had the material ability to prevent the commission of offences by the Kigali and Gisenyi *Interahamwe*, regardless of their location within Rwanda during the various stages of the genocide, civilians who participated in the Civil Defence Programme, local officials who were part of the territorial administration, and administrative personnel in the ministries controlled by the MRND. The Chamber also finds that he had the material ability to punish such offences. Accordingly, the Chamber considers that Karemera had effective control over these groups of subordinates.

Timeframe of Effective Control

1529. The Chamber finds that Karemera's effective control over the Kigali and Gisenyi *Interahamwe* and administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora, existed throughout the entirety of the genocide because he remained a member of the MRND Executive Bureau throughout this period. Karemera had effective control over civilians who participated in the Civil Defence Programme and local officials who were part of the territorial administration as of 25 May 1994, the date he became Minister of Interior of the Interim Government and issued the first of the three Civil Defence Documents he authored.

2.3.3 Knowledge of the Crimes of his Subordinates

1530. The Chamber is satisfied that Karemera had actual knowledge that his subordinates were about to commit crimes or had in fact committed them. As discussed in the factual findings, the massacres and attacks committed by the *Interahamwe*, members of the Civil Defence Program, local officials who were part of the territorial administration, and administrative personnel in the ministries controlled by the MRND, among others, were so widespread and public that it would have been impossible for Karemera to be unaware of them.

1531. Specifically, the Chamber has found that Karemera was aware that widespread killings had commenced on 8 April 1994 in Kigali, as evidenced by the instructions of the MRND leadership to the *Interahamwe* Provisional National Committee on 10 April 1994 to tour the roadblocks where killings were occurring (see V.1.4.1). It has also found that it would have been impossible for Karemera to be unaware of the massacres that had occurred in Kibuye immediately prior to his speech on 3 May 1994 (see V.3.2). Moreover, Karemera knew that rapes and sexual assaults were occurring throughout Rwanda (see V.8). Finally, Karemera personally ordered the massacre of the remaining Tutsis in Bisesero Hills in mid-June 1994 after *Interahamwe*, civilians participating in the Civil Defence Programme, and local officials in the territorial administration had already committed or facilitated mass killings in the area (see V.6.3).

1532. Moreover, the Chamber considers that as Vice-Chairman of the Executive Bureau of the MRND, Karemera was aware of Col. Théoneste Bagosora's involvement in the distribution of weapons to the *Interahamwe* on 11 April 1994 (see V.1.4.2).

Ndy

1533. For the reasons mentioned above, the only reasonable conclusion is that Karemera had actual knowledge that his subordinates were about to attack Tutsis, had already attacked them during the genocide, or had facilitated attacks upon them.

2.3.4 Failure to Prevent or Punish

1534. As noted above, it has been established that Karemera exercised effective control over the Kigali and Gisenyi *Interahamwe* and administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora, throughout the genocide. The Chamber has also found that as of 25 May 1994, he exercised effective control over civilians who participated in the Civil Defence Programme and local officials who were part of the territorial administration.

1535. Karemera submits that his material ability to prevent or to punish is particularly confusing when it comes to civilians because, in their case, the obligation for a subordinate to obey an order is not as clearly defined as in military structures. Karemera further submits that this issue becomes particularly significant in this case because neither he nor Ndirumpatse had the military ability to prevent MRND members from committing crimes or punish them for these crimes. He cites Article 60 of the MRND Statute to support this point.¹⁸⁸¹

1536. The Chamber, however, recalls that civilian superiors are also included in the command responsibility doctrine. The *Aleksovski* and *Brdjanin* Trial Chambers of the ICTY have held that civilian superiors, who may lack the disciplinary or sanctioning powers of military commanders, may discharge their obligation to punish by reporting to the competent authorities whenever a crime has been committed if these reports are likely to trigger an investigation or initiate disciplinary or criminal proceedings.¹⁸⁸² Moreover, this approach has been upheld by the Appeals Chamber in *Boškoski et al.*¹⁸⁸³ Furthermore, the Chamber notes that Article 60 of the MRND Statute clearly states that expulsion is one of the measures envisioned as punishment.¹⁸⁸⁴ Accordingly, the Chamber dismisses Karemera's concern.

1537. The Chamber has found that Karemera had a considerable degree of effective control over his subordinates as member and Vice-Chairman of the Executive Bureau of the MRND and Minister of the Interior for the Interim Government. Furthermore, he took several steps to further the commission of these crimes.

1538. The Chamber has found that Karemera incited the audience at a meeting in Kibuye on 3 May 1994 to physically attack and destroy Tutsis as a group (see V.3.2). Moreover, he and Ndirumpatse agreed with the Interim Government to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda's Tutsi population (see V.3.4). Finally, the Chamber recalls that Karemera personally ordered the massacre of the remaining Tutsis in Bisesero in mid-June 1994 and that *Interahamwe* from Gisenyi, other militiamen, and *gendarmes*, arrived in Bisesero and carried out the attacks, killing scores of innocent civilians (see V.6.3)

¹⁸⁸¹ Karemera Closing Brief, para. 606.

¹⁸⁸² *Aleksovski* Trial Judgement, para. 78; *Brdjanin* Trial Judgement, para. 281.

¹⁸⁸³ *Boškoski et al.* Trial Judgement, para. 8.

¹⁸⁸⁴ Exhibit DNG2, "Statutes of the MRND", p. 36.

1539. Accordingly, Karemera failed in his duty to prevent the crimes because he in fact participated in them. Moreover, there is absolutely no indication that his subordinates who perpetrated the crimes were punished afterwards.

1540. Although Karemera submitted during his testimony that he sent a report to the Minister of Defence to sanction those soldiers who left the warfront and came back to rape women and pillage,¹⁸⁸⁵ he never entered this report or any additional proof to support his claim into evidence. Furthermore, the Chamber notes that this alleged report was about soldiers who are outside the scope of his command responsibility and is not mentioned in his Closing Brief or during his closing argument. Therefore, the Chamber assigns no weight to this contention.

1541. In light of the foregoing, the Chamber considers beyond a reasonable doubt that Karemera failed to prevent or punish the crimes committed by his subordinates.

2.3.5 Conclusion

1542. Karemera bears superior responsibility for the crimes committed by the Kigali and Gisenyi *Interahamwe* and administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora, throughout the entirety of the genocide. He also bears superior responsibility as of 25 May 1994 for the crimes committed by civilians who participated in the Civil Defence Programme and local officials who were part of the territorial administration.

2.4 Ngirumpatse's Superior Responsibility

2.4.1 Superior-Subordinate Relationship

De Jure Authority

1543. Ngirumpatse entered domestic politics in 1991, when he was elected chairman of the MRND prefectural committee in Kigali-ville. He became National Secretary of the MRND in April 1992, and National Party Chairman and Chairman of the MRND Executive Bureau in July 1993, and held these positions in 1994. He was also Minister of Justice from December 1991 to 7 April 1992 (see I.1.2).

1544. Article 51 of the MRND Statute states that the Chairman of the MRND shall: advise and direct the Movement in line with the directives adopted by the National Congress; convene the National Congress and chair its meetings; establish and organise the administrative services of the movement; appoint and dismiss the administrative officers; and represent the Movement within the country and abroad.¹⁸⁸⁶ Ngirumpatse also had the power to convene important meetings.¹⁸⁸⁷

1545. Accordingly, while Ngirumpatse enjoyed considerable *de jure* authority over the MRND party generally, it does not appear that he possessed *de jure* authority over the *Interahamwe* or members of the Civil Defence Programme.

¹⁸⁸⁵ T. 27 May 2009, p. 35.

¹⁸⁸⁶ Exhibit DNG2, "Statutes of the MRND", pp. 33, 34.

¹⁸⁸⁷ *Id.*, p. 40, Article 74.

De Facto Authority

1546. The Chamber has found that Ngirumpatse was the Chairman of the Executive Bureau of the MRND – the ultimate *de facto* authority over the *Interahamwe* in Kigali and Gisenyi throughout the genocide (see III; IV.1.3). Accordingly, Ngirumpatse was the individual in Rwanda with the most *de facto* power, influence, and authority over the *Interahamwe* during the genocide.

1547. Moreover, Ngirumpatse was a well-known figure in Rwanda on account of his prior roles as diplomat and Minister of Justice; high stature in society and the arts;¹⁸⁸⁸ and national positions in the MRND. In addition, the Chamber has found that he carried out numerous activities before and during the genocide that furthered his status, influence, and *de facto* authority in Rwanda during that period, particularly over the *Interahamwe* in Kigali and Gisenyi.

1548. As the Chairman of the Executive Bureau of the MRND, Ngirumpatse agreed to provide military training to the *Interahamwe* beginning in 1993 (see IV.1.4) He was involved in the distribution of weapons to the *Interahamwe* and the stockpiling and concealment of weapons in Kigali for later distribution to the *Interahamwe* (see IV.1.5) Moreover, when Col. Théoneste Bagosora, *chef de cabinet* for the Ministry of Defence, was threatened with early removal by the Minister of Defence, he sought assistance from the Executive Bureau of the MRND and Ngirumpatse and the rest of the bureau spoke to their minister and ensured that Bagosora was treated fairly.¹⁸⁸⁹

1549. Ngirumpatse attended the 18 April 1994 meeting in Gitarama and addressed the audience as a national political leader (see IV.2.1). Furthermore, he was an international envoy for the Interim Government. Moreover, the MRND leadership, including Ngirumpatse, influenced the decisions that were taken by the Interim Government.

1550. Accordingly, the Chamber finds that Ngirumpatse was an influential person with substantial *de facto* authority in Rwanda during the genocide. The Chamber specifically finds that he was the individual with the greatest *de facto* authority over the *Interahamwe* in Kigali and Gisenyi, and that he possessed considerable *de facto* authority over administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora.

2.4.2 Effective Control

1551. The Chamber has found that *Interahamwe* committees were established in Kigali-ville and Gisenyi *préfectures* according to MRND party structures (see IV.1.3). Moreover, Ngirumpatse was the Chairman of the Executive Bureau of the MRND (see III; IV.1.3). Thus, the Chamber is convinced that he could have prevented offences committed by the Kigali and Gisenyi *Interahamwe* by speaking out and forbidding them. It stands to reason that the most respected and powerful leader of a civilian political organization with a defined hierarchy is capable of wielding such power to prevent offences by his subordinates. Such an individual has the capacity to issue orders as the person with the most authority over the organization, ensuring that they will be followed.

¹⁸⁸⁸ Ngirumpatse Closing Brief, paras. 87-92.

¹⁸⁸⁹ Bagosora, T. 29 June 2010, pp. 17-19.

1552. In fact, Ngirumpatse did order the national leaders of the *Interahamwe* on several occasions and his orders were obeyed. For example, at the meeting held on 10 April 1994 at the *Hôtel des Diplomates*, Ngirumpatse ordered the Provisional National Committee of the *Interahamwe* to tour the roadblocks in Kigali to control the *Interahamwe* stationed at them and remove corpses from the streets. He also ordered the *Interahamwe* leaders to return and report on the situation at the roadblocks. Pursuant to his instructions, the leaders carried out their mission to the roadblocks and reported to him the following day (see IV. 1.4) The fact that his instructions were actually followed constitutes an added indication of effective control.

1553. Furthermore, the Chamber is sure that Ngirumpatse could have punished offenders among the Kigali and Gisenyi *Interahamwe* on account of his status and authority over those organisations. He could have sanctioned offenders politically, removed them from the ranks of the organisation, disabled their benefits and privileges, publically humiliated them, or demoted them within the organisation, among other measures.

1554. On account of his substantial *de facto* authority over administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora, the Chamber is convinced that he could have prevented them from facilitating further attacks and killings by removing them from office. This much is clear on account of his proven ability to ensure that Bagosora was not removed from office prematurely.

1555. Moreover, the Chamber is sure that Ngirumpatse could have punished offenders among the administrative personnel in the ministries controlled by the MRND. With his considerable *de facto* authority, he could have ordered offenders jailed or removed them from the programme and their office, among other measures.

1556. Thus, the Chamber finds that Ngirumpatse had the material ability to prevent the commission of offences by the Kigali and Gisenyi *Interahamwe*, regardless of their location within Rwanda during the various stages of the genocide, and administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora. The Chamber also finds that he had the material ability to punish such offences. Accordingly, the Chamber considers that Ngirumpatse had effective control over these groups of subordinates.

Timeframe of Effective Control

1557. The Chamber finds that Ngirumpatse's effective control over the Kigali and Gisenyi *Interahamwe* and administrative personnel in the ministries controlled by the MRND existed throughout the entirety of the genocide because he remained Chairman of the MRND Executive Bureau throughout this period.

2.4.3 Knowledge of the Crimes of his Subordinates

1558. The Chamber is satisfied that, despite his absence from Rwanda during part of the genocide, Ngirumpatse had actual knowledge that his subordinates were about to commit crimes or had in fact committed them. As discussed in the factual findings, the massacres and attacks committed by the Kigali and Gisenyi *Interahamwe*, among others, were so widespread and public that it would have been impossible for the Accused to be unaware of them.

1559. Specifically, the Chamber has found that Ngirumpatse was aware that widespread killings had commenced on 8 April 1994 in Kigali, as evidenced by his instructions to the *Interahamwe* Provisional National Committee on 10 April 1994 to tour the roadblocks

where killings were occurring (see IV.1.4). Ngirumpatse stated himself that by 9 April 1994, he and his consorts had “obtained a lot of information” regarding the killings in Rwanda. He asserted that the Interim Government and its associates exchanged information, which they had obtained from the army and *gendarmérie*, during its first cabinet meeting on 9 April 1994. According to Ngirumpatse, “everyone was made aware of the scope of the killings that were being perpetrated, killings which had started on the 7th during the day...[f]rom the 9th we had a great deal of information.”¹⁸⁹⁰

1560. Ngirumpatse was also aware of Col. Théoneste Bagosora’s involvement in the distribution of weapons to the *Interahamwe* on 11 April 1994 because he consented to that distribution as Chairman of the Executive Bureau of the MRND (see IV.1.4.2). Moreover, Ngirumpatse knew that rapes and sexual assaults were occurring throughout Rwanda (see V.8).

1561. For the reasons mentioned above, the only reasonable conclusion is that Ngirumpatse had actual knowledge that his subordinates were about to attack Tutsis, had already attacked them during the genocide, or had facilitated attacks upon them.

2.4.4 Failure to Prevent or Punish

1562. As noted above, it has been established that Ngirumpatse exercised effective control over the Kigali and Gisenyi *Interahamwe* and administrative personnel in the ministries controlled by the MRND throughout the genocide. The Chamber has also found that Ngirumpatse had a considerable degree of effective control over his subordinates as Chairman of the Executive Bureau of the MRND.

1563. On 10 April 1994, Ngirumpatse addressed the nation in a Radio Rwanda broadcast on behalf of the MRND.¹⁸⁹¹ Having reviewed the original translations of the broadcast in addition to the re-translation requested by Ngirumpatse,¹⁸⁹² the Chamber considers that Ngirumpatse’s address makes a general call for peace. His address, however, did not amount to a necessary and reasonable measure to prevent his subordinates from massacring Tutsis.

1564. The Chamber has found, and Ngirumpatse has acknowledged, that by 10 April 1994, widespread, systematic, and public killings were occurring in Kigali (see V.7). The Chamber has also found that these killings were primarily against Tutsis and innocent civilians and that they were mostly being committed by the *Interahamwe* (see V.7). In light of these circumstances, the Chamber considers that the necessary and only reasonable measure for preventing mass killings by the Kigali *Interahamwe* would have been to take any step that delivered the unequivocal message that the *Interahamwe* should stop massacring innocent Tutsi civilians immediately.

1565. Instead, Ngirumpatse chose to either use unreasonably vague language that completely ignored the unfolding genocide being perpetrated by his subordinates, or make unreasonably abstract requests that killings be stopped. Instead of ordering the Kigali *Interahamwe* to immediately stop massacring innocent Tutsi civilians, Ngirumpatse, the

¹⁸⁹⁰ T. 26 January 2011, p. 41.

¹⁸⁹¹ Exhibit DK132, “RTL/Radio Rwanda 11/04/1994 Broadcast”; Exhibit DNZ22, “RTL/Radio Rwanda 11/04/1994 Broadcast”.

¹⁸⁹² Re-translation of Exhibit DNZ22, forwarded via email to Andrés Pérez, Judgement Coordinator, by Justine Ndongo-Keller, Chief of Language and Services Section, on 9/11/11.

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individual with ultimate authority over this group, squandered his first opportunity to prevent the killings by deliberately restricting his address to comments like: “opt for the path of security;” “see to other people’s security;” “leave the roads;” “thieves should stop stealing;” “instead of doing evil...provide security for others, especially the weak ones;” “we have dispatched people...to free the roads so that they could provide security for others instead of robbing and attacking them;” “we should fight those who attack us...not those who are not armed;” and “members must know that those...attacking them are the *Inkotanyi*...not the ordinary citizen.”¹⁸⁹³

1566. His only references to killings were: “no political party has ever asked its members to indulge in killing” and “killers should stop killing”. While the latter literally requests an end to “killings”, the Chamber considers that it falls markedly short of a reasonable measure for preventing an ongoing genocide. This is particularly the case when the person making the declaration is the individual with the ultimate authority over the perpetrators. When confronted with a situation where a superior is aware that his subordinates are committing genocide, there is no room for ambiguity when taking a measure to prevent the crime. In this regard, “killers should stop killing” is unreasonably ambiguous. If Ngirumpatse had been genuinely interested in taking a measure to prevent the genocide being committed by his subordinates, the only reasonable message he could have given is: “the *Interahamwe* must stop massacring Tutsis immediately”. He did not give that message.

1567. Furthermore, he took several steps to further the commission of these crimes. The Chamber has found that Ngirumpatse arranged with Col. Théoneste Bagosora to distribute weapons to the Kigali *Interahamwe* stationed at roadblocks on 11 April 1994, during a period of mass killings that were known to him (see V.1.4.2). Moreover, he and Karemera agreed with the Interim Government to mobilise extremist militiamen and armed civilians to attack, kill, and destroy Rwanda’s Tutsi population (see V.3.4).

1568. Accordingly, Ngirumpatse failed in his duty to prevent the crimes because he in fact participated in them. Moreover, there is no indication that his subordinates who perpetrated the crimes were punished afterwards. Thus, the Chamber rejects Ngirumpatse’s argument that he stretched himself to the limit to use his influence to restore security and peace and save human lives.¹⁸⁹⁴

1569. The Chamber also dismisses Ngirumpatse’s claim that it was the responsibility of administrative, judicial and security authorities to make arrests and punish people and that he did not have any of those resources.¹⁸⁹⁵ There is no indication that he discharged his obligation to punish his subordinates by reasonably resorting to any of the options discussed above or reporting the crimes of his subordinates to the judicial and security authorities. To the extent that he lacked resources, it is because he had committed those very resources to executing the crimes.

1570. In light of the foregoing, the Chamber considers beyond a reasonable doubt that Ngirumpatse failed to prevent or punish the crimes committed by his subordinates.

¹⁸⁹³ *Id.*

¹⁸⁹⁴ Ngirumpatse Closing Brief, para. 893.

¹⁸⁹⁵ *Id.*, para. 898.

2.4.5 Conclusion

1571. Ngirumpatse bears superior responsibility for the crimes committed by the Kigali and Gisenyi *Interahamwe* and administrative personnel in the ministries controlled by the MRND, such as Col. Théoneste Bagosora, throughout the entirety of the genocide.

3. CRIMES

3.1 Findings Which Exclude Conviction

Events Prior to 8 April 1994

1572. In its findings for JCE above, the Chamber did not consider that the only reasonable inference that can be drawn from the body of circumstantial evidence related to events prior to 6 April 1994 is that Karemera and Ngirumpatse intended that crimes covered by the Statute be committed. The Chamber also found that Karemera and Ngirumpatse did not participate in a JCE prior to 6 April 1994. Therefore, no convictions can be made with respect to these events.

Events from 8 April to Mid-July 1994.

1573. With respect to the following events, the Chamber has not found that the relevant facts were proven beyond a reasonable doubt or has found that no crime covered by the Statute was alleged.

- 1) Failed attempt by Théoneste Bagosora to take control of Rwanda through the Ministry of Defense and the Rwandan Armed Forces after the assassination of President Habyarimana.
- 2) Decision to designate Theodore Sindikubwabo as successor to President Habyarimana and head of the army. Appointment of Gatsinzi to succeed Nsabimana.
- 3) Implication that Bagosora ordered the assassination of key opposition figures after President Habyarimana's plane was shot down.
- 4) That the Accused and others formed the Interim Government with genocidal intent on 8 April 1994.
- 5) That the pacification mission ordered during the 10 April meeting at the *Hôtel des Diplomates* was launched to aid and abet future killings.
- 6) Meeting of Interim Government officials and most *préfets* at the *Hôtel des Diplomates* on 11 April 1994 (see V.1 for 1-6 above).
- 7) That the Interim Government transferred military officers who did not support attacks on the Tutsi population. Nor did it prove beyond a reasonable doubt that the Interim Government recalled retired, extremist military officers into service (see V.2.3).
- 8) That the new *préfet* of Gitarama in early June 1994 Major Damascène Ukuyikiyeyezu directed the resources of the *préfecture* towards exterminating Tutsis (see V.2.4).
- 9) Meeting of 17 May 1994 between Interim Government Ministers to discuss civil defence (see V.4.2).

- 10) That the general intent of the “pacification tours” throughout the part of the country controlled by the Interim Government was to incite the further killings of Tutsis (see V.3.1).
- 11) That in June 1994 Karemera, Ngirumpatse, or Nzirorera participated in meetings with influential businessmen linked to the MRND and Hutu Power to raise funds to buy weapons to distribute to soldiers, *Interahamwe*, and other militias. No evidence was led that members of the JCE participated in these meetings (see V.5.2).
- 12) That Karemera when visiting Mwendo *commune* in late April 1994 told a group of local authorities and members of the population to go to Bisesero to help Hutus to kill Tutsis (see V.6.1).

1574. Consequently, no conviction can be made with respect to these events.

3.2 Conspiracy to Commit Genocide

3.2.1 Introduction

1575. Apart from facts for which, pursuant to the Chamber’s factual findings, no convictions can be made, the Prosecution charges Karemera and Ngirumpatse with conspiracy to commit genocide based on facts concerning the implementation of the Civil Defence Plan.

1576. According to the Prosecution, the conspiracy included all persons named as members of the JCE.¹⁸⁹⁶

3.2.2 Law

1577. Conspiracy to commit genocide is “an agreement between two or more persons to commit the crime of genocide”.¹⁸⁹⁷ The factual element of the crime is the entering into an agreement to commit genocide and the mental element the same as for genocide, namely that the individuals involved in the conspiracy must possess the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.¹⁸⁹⁸ As an inchoate offence, the crime is completed at the time the agreement is concluded regardless of whether genocide is actually committed as a result of the agreement.¹⁸⁹⁹

1578. The existence of a formal or express agreement is not needed to prove the charge of conspiracy.¹⁹⁰⁰ It can be inferred from circumstantial evidence, as long as the existence of conspiracy to commit genocide is the only reasonable inference.¹⁹⁰¹ In particular, an agreement can be inferred from the concerted or coordinated actions of a group of

¹⁸⁹⁶ See para. 23 of the Indictment.

¹⁸⁹⁷ *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, paras. 894, 896.

¹⁸⁹⁸ *Nahimana et al.* Appeal Judgement, para. 894; *Bagosora et al.* Trial Judgement, para. 2087.

¹⁸⁹⁹ *Nahimana et al.* Appeal Judgement, para. 720 (listing conspiracy to commit genocide as an inchoate offence). See also *Popović et al.* Trial Judgement, para. 868; *Niyitegeka* Trial Judgement, para. 423.

¹⁹⁰⁰ *Nahimana et al.* Appeal Judgement, para. 898; *Popović et al.* Trial Judgement, para. 869.

¹⁹⁰¹ *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896. For the standard of proof applicable to circumstantial evidence, see *Stakić* Appeal Judgement, para. 219; *Nahimana et al.* Appeal Judgement, para. 896.

individuals.¹⁹⁰² Given the requirements of “concerted or coordinated”, it is insufficient to simply show similarity of conduct.¹⁹⁰³

1579. As for the mental element, although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.¹⁹⁰⁴ The perpetrator does not have to be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive prevent him from having the specific intent to commit genocide.¹⁹⁰⁵

1580. In the absence of direct evidence, a perpetrator’s intent to commit genocide can be inferred from relevant facts and circumstances that lead beyond any reasonable doubt to the existence of the intent. Factors that may give rise to 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 protected group, or the repetition of destructive and discriminatory acts.¹⁹⁰⁶

1581. It is firmly established that the Tutsi ethnicity is a protected group.¹⁹⁰⁷

3.2.3 Deliberations

1582. 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 a reasonable doubt, based on the evidence in this case, that Karemera and Ngirumpatse committed the crime of conspiracy to commit genocide.

Participants in the Alleged Conspiracy

1583. Another general matter relates to the participants in the alleged conspiracy. The Prosecution argues that the Accused conspired amongst themselves and with other named civilian and military authorities. There is no requirement that the Chamber conclude that the Accused conspired with all alleged co-conspirators named in the Indictment. It suffices if the Prosecution can establish that Karemera and Ngirumpatse conspired with at least each other, or one other person with whom they are alleged to have planned to commit genocide. The Chamber observes that there is limited evidence with respect to many of the other alleged co-conspirators in the record, in particular with respect to their role in planning the alleged conspiracy.

¹⁹⁰² *Nahimana et al.* Appeal Judgement, para. 897.

¹⁹⁰³ *Nahimana et al.* Appeal Judgement, para. 898.

¹⁹⁰⁴ *Bagosora et al.* Trial Judgement, para. 2115, citing *Seromba* Appeal Judgement, para. 175, *Gacumbitsi* Appeal Judgement, para. 44, *Simba* Trial Judgement, para. 412, *Semanza* Trial Judgement, para. 316.

¹⁹⁰⁵ *Bagosora et al.* Trial Judgement, para. 2115, citing *Simba* Appeal Judgement, para. 269, *Ntakirutimana* Appeal Judgement, paras. 302-304, *Niyitegeka* Appeal Judgement, paras. 48-54, *Krnojelac* Appeal Judgement, para. 102, referring to *Jelisić* Appeal Judgement, para. 49.

¹⁹⁰⁶ *Bagosora et al.* Trial Judgement, para. 2116, citing *Seromba* Appeal Judgement, para. 176, referring to *Seromba* Trial Judgement, para. 320, *Nahimana et al.* Appeal Judgement, paras. 524-525, *Simba* Appeal Judgement, para. 264, *Gacumbitsi* Appeal Judgement, paras. 40-41, *Rutaganda* Appeal Judgement, para. 525, *Semanza* Appeal Judgement, para. 262, citing *Jelisić* Appeal Judgement, para. 47, *Kayishema and Ruzindana* Appeal Judgement, paras. 147-148. See also *Nsengimana* Trial Judgement, para. 832.

¹⁹⁰⁷ *Bagosora et al.* Trial Judgement, para. 2117; *Military II* Trial Judgement, para. 2074.

1584. The Chamber has made the following findings concerning the facts underpinning the allegation of conspiracy.

1585. Karemera and Ngirumpatse were linked with the Interim Government during the genocide and involved in its decision-making process. The MRND leaders, including Karemera and Ngirumpatse, influenced the decisions taken by the Interim Government and Karemera eventually, on 25 May 1994, became Minister of the Interior for the Interim Government, commanding the entire territorial administration in the part of Rwanda that was under the control of the Interim Government.

1586. During the period where the Accused were inextricably linked with the policies of the Interim Government in this concerted and coordinated manner, Prime Minister Jean Kambanda issued a general instruction on 27 April 1994 to ensure that security and calm would return quickly to Rwanda. The letter, however, was a thinly-veiled attempt to deliver a false message of pacification for the purpose of hiding, at the very least, the Interim Government's implicit approval of the genocide from the world and from posterity.

1587. On 25 May 1994, Prime Minister Kambanda and Minister of the Interior Karemera issued two Civil Defence Documents on behalf of the Interim Government, that defined the organised structure for the Civil Defence Plan. In mid-June 1994, Karemera issued instructions for the use of funds for civil defence and a letter instructing the army to assist in a mopping-up operation in Bisesero where Tutsis had sought refuge. The Chamber has found that these documents manifested an agreement to galvanise fear and loathing of Tutsis among Hutus by deliberately failing to curb the killing of Tutsis and encouraging Hutus, extremist militiamen, and armed civilians to continue killing Tutsis at the height of the genocide (see V.3.4).

1588. Considering the concerted and coordinated actions of party leaders and the Interim Government that gave rise to this policy of genocide, the Chamber is convinced beyond a reasonable doubt that the only reasonable inference based on the credible evidence is that an agreement with the specific intent to destroy Rwanda's Tutsi population in whole or in part had materialised prior to 25 May 1994 and manifested itself in the instructions of 25 May 1994.

1589. Further, considering Ngirumpatse's involvement as President of the MRND, which was the party of the two ministries coordinating the civil defence (Ministry of Defence and Ministry of the Interior), the Chamber is convinced beyond a reasonable doubt that Ngirumpatse was part of the conspiracy to commit genocide.

1590. The same arguments apply to Karemera because he was the Vice-President of the MRND. Furthermore, he was the Minister of the Interior from 25 May 1994 and issued three of the Civil Defence Documents. The Chamber is therefore convinced beyond a reasonable doubt that Karemera was part of the conspiracy to commit genocide.

1591. Accordingly, the Chamber finds that Karemera and Ngirumpatse conspired among themselves and with others to commit genocide by at least 25 May 1994.

3.3 Direct and Public Incitement to Commit Genocide

3.3.1 Introduction

1592. Count 2 of the Indictment charges Karemera and Ngirumpatse with direct and public incitement to commit genocide pursuant to Article 2 of the Statute. The Prosecution has alleged that the Accused have direct criminal responsibility under Article 6(1),¹⁹⁰⁸ including JCE responsibility in the basic form, and criminal responsibility as superiors under Article 6(3).¹⁹⁰⁹

3.3.2 Law

1593. A person may be found guilty of direct and public incitement to commit genocide if he or she directly and publicly incited the commission of genocide (*actus reus*) and had the intent to directly and publicly incite others to commit genocide (*mens rea*).¹⁹¹⁰ Such intent presupposes genocidal intent.¹⁹¹¹ It is not a requirement that the incitement lead to the actual perpetration of any genocidal crimes, only that the audience for the incitement understood it as a call to commit genocide.

1594. The notion of “direct” incitement entails a direct appeal to commit an act referred to in Article 2(2) of the Statute. The speech has to be more than a mere vague or indirect suggestion. A hate speech that does not directly appeal to commit genocide cannot constitute a sufficient basis for a conviction under Article 2(3)(c) of the Statute. However, when a speech that does not contain an explicit appeal to commit genocide is analysed in a particular context, it may still constitute direct incitement to commit genocide as long as it is not considered ambiguous within that context; it does not matter whether the message may appear ambiguous in another context. For this reason, it might be helpful to examine how a speech was understood by its intended audience. In the context of Rwanda, the culture and the nuances of the Kinyarwanda language should be considered in determining whether a speech constitutes direct and public incitement to commit genocide.¹⁹¹²

1595. Concerning the “public” element of this crime, the Appeals Chamber recently noted that all convictions before the Tribunal for direct and public incitement to commit genocide involve speeches made to “large, fully public assemblies, messages disseminated by the media, and communications made through a public address system over a broad public area”.¹⁹¹³ Furthermore, the *travaux préparatoires* of the Genocide Convention, confirm that “public” incitement to commit genocide pertains to mass communications, whereas the notion of “private” incitement, understood as more subtle forms of communications such as conversations, private meetings, or messages, was removed from the Convention.¹⁹¹⁴

3.3.3 Deliberations

Kibuye Meeting on 3 May 1994

¹⁹⁰⁸ Indictment, para. 4; Introductory paragraph to Count 2.

¹⁹⁰⁹ *Id.*, paras. 7, 17; Introductory paragraph to Count 2.

¹⁹¹⁰ *Kalimanzira* Appeal Judgement, para. 155; *Bikindi* Appeal Judgement, para. 135.

¹⁹¹¹ *Bikindi* Appeal Judgement, para. 135; *Nahimana et al.* Appeal Judgement, para. 677.

¹⁹¹² *Nahimana et al.* Appeal Judgement, paras. 692, 693, 700, 701.

¹⁹¹³ *Kalimanzira* Appeal Judgement, para. 156; *Butare* Trial Judgement, para. 5987.

¹⁹¹⁴ *Kalimanzira* Appeal Judgement, para. 158.

1596. The Chamber has found that a large, public meeting took place on 3 May 1994 at the Kibuye prefectural office, which was attended by Prime Minister Kambanda, Minister Niyitegeka, and Karemera – all members of the Interim Government. The meeting was broadcast over the radio and Kambanda spoke and urged the population to assist the military in the fight against the RPF. Karemera also spoke and paid tribute to the *Interahamwe*, calling on them to flush out, stop and combat the enemy.

1597. By not condemning, or even addressing, the recent massacre of more than 2,000 Tutsi civilians, which had taken place in the vicinity of the meeting venue, the speakers condoned the killings and instigated and incited the population to continue killing Tutsis.

1598. The Chamber finds that, in the context of the recent massacres, the speeches were understood by the audience as a direct call to continue killing of Tutsis in order to destroy the Tutsi population in Rwanda in whole or in part. The Chamber considers that Karemera and the other Interim Government speakers had the intent to incite the population to continue these killings.

1599. Accordingly, the Chamber finds Karemera guilty of committing direct and public incitement to commit genocide.

1600. The Chamber recalls that Karemera, Kambanda and Niyitegeka were members of the JCE and recalls that direct and public incitement to commit genocide was part of the common purpose of the enterprise (see para. 1455). Moreover, the Chamber recalls that Karemera and Ngirumpatse substantially contributed to the execution of the common purpose of the JCE (see paras. 1457, 1458). Further recalling that each JCE member is liable for the acts of other JCE members committed in furtherance of the common purpose, the Chamber finds that Ngirumpatse has incurred JCE liability in the basic form for direct and public incitement to commit genocide.

Kibuye Meeting on 16 May 1994

1601. The Chamber has found that President Sindikubwabo attended a “security meeting” in Kibuye on 16 May 1994, during which he thanked the army and the people of Kibuye for restoring the security of persons and property. The speech was broadcast over the radio and given one month after 2,000 civilian Tutsis had been massacred; thus the Chamber has found that Sindikubwabo condoned the killings and instigated and incited further killings of Tutsis.

1602. Considering the context of the recent massacres, the Chamber finds that the speeches were understood by the audience as a direct call to continue killing Tutsis in order to destroy the Tutsi population in Rwanda in whole or in part, and that Sindikubwabo had the intent to incite the population to do so.

1603. The Chamber recalls that Sindikubwabo was a member of the JCE to destroy the Tutsi population in Rwanda and finds that his acts furthered the common purpose of the enterprise.

1604. The Chamber further recalls that direct and public incitement to commit genocide was part of the common purpose of the JCE (see para. 1455). Moreover, the Chamber recalls that Karemera and Ngirumpatse substantially contributed to the execution of the common purpose of the JCE (see paras. 1457, 1458). Noting that each JCE member is liable for the acts of other JCE members committed in furtherance of the common purpose, the Chamber finds that Karemera and Ngirumpatse have incurred JCE liability in the basic

form for direct and public incitement to commit genocide in relation to Sindikubwabo's speech and the resulting continued killings.

3.4 Genocide

3.4.1 Introduction

1605. Count 3 of the Indictment charges Karemera and Ngirumpatse with genocide pursuant to Article 2 of the Statute. The Prosecution has alleged that the Accused have direct criminal responsibility under Article 6(1), including JCE responsibility in the basic form.¹⁹¹⁵ The Prosecution also charges the Accused with extended JCE liability for genocide with respect to rapes and sexual assaults on Tutsi women and girls¹⁹¹⁶ and criminal responsibility as superiors under Article 6(3).¹⁹¹⁷

3.4.2 Law

1606. In order to convict for the crime of genocide, it must be established that the accused committed at least one of the enumerated acts in Article 2(2) of the Statute 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.¹⁹¹⁸ Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.¹⁹¹⁹ 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.¹⁹²⁰

1607. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that lead beyond 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 of a protected group, or the repetition of destructive and discriminatory acts.¹⁹²¹ Physical perpetration need not only mean physical killing; other acts can constitute direct participation in the crime. The question is whether an accused's conduct "was as much an integral part of the genocide as were the killings which it enabled."¹⁹²²

1608. Killing members of a group pursuant to Article 2(2)(a) of the Statute requires a showing that the principal perpetrator intentionally killed one or more members of the group.¹⁹²³ For this purpose, it has been established in all jurisprudence of this Tribunal that the Tutsi ethnicity is a protected group.¹⁹²⁴

¹⁹¹⁵ Indictment, para. 4; Introductory paragraph to Count 3.

¹⁹¹⁶ *Id.*

¹⁹¹⁷ *Id.*, para. 17; Introductory paragraph to Count 3.

¹⁹¹⁸ *Military II* Trial Judgement, para. 2072.

¹⁹¹⁹ *Id.*

¹⁹²⁰ *Bagosora et al.* Trial Judgement, para. 2115.

¹⁹²¹ *Military II*. Trial Judgement, para. 2073.

¹⁹²² *Kalimanzira* Appeal Judgement, para. 219.

¹⁹²³ *Military II* Trial Judgement, para. 2074.

¹⁹²⁴ *Bagosora et al.* Trial Judgement, para. 2117.

1609. Pursuant to Article 2(2)(b) of the Statute, a conviction for genocide may be based on causing serious bodily or mental harm to members of a group. The term “serious bodily or mental harm” is not defined in the Statute.¹⁹²⁵ However, the term “causing serious bodily harm” refers to acts of “sexual violence” and “serious physical violence” which fall short of killing but seriously damage the health, disfigure, or cause any serious injury to the external or internal organs or senses.¹⁹²⁶ The Appeals Chamber has held that, “the quintessential examples of serious bodily harm are torture, rape, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs.”¹⁹²⁷ Serious mental harm refers to “more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat”.¹⁹²⁸ The serious bodily or mental harm need not be an injury that is permanent or irremediable.¹⁹²⁹ This harm can include crimes of sexual violence, including rape.¹⁹³⁰ To support a conviction for genocide, the bodily or mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.¹⁹³¹

3.4.3 Deliberations

Arrangement with Bagosora to Obtain Firearms (V.1.4.2)

1610. The Chamber has found that weapons were distributed to the *Interahamwe* at the *Hôtel des Diplomates* in Kigali on 11 April 1994, in the presence of Bagosora. The distribution occurred with the consent of Ngirumpatse and Nzirorera.

1611. The Chamber has also found that on or about 12 April 1994, Nzirorera arranged with Bagosora to provide more weapons to the *Interahamwe* who were manning roadblocks. Under these circumstances, it was foreseeable that the weapons, apart from being used to protect people manning the roadblocks, would also be used for killing Tutsis.

1612. In Kigali alone, thousands of civilians, mostly Tutsis, including unarmed men, women and children, were killed by militias and soldiers by 12 April 1994 (see V.7). 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.

1613. The Chamber considers the only reasonable inference to be that Ngirumpatse, as Chairman of the MRND Executive Bureau, aided and abetted the killings at roadblocks in Kigali through the distribution of weapons on 11 April 1994. The provision of weapons on 11 April 1994 substantially contributed to the genocide by providing the physical perpetrators of the killings with the material means to kill Tutsis.

¹⁹²⁵ *Seromba* Appeal Judgement, para. 46. See also *Kayishema and Ruzindana* Trial Judgement, paras. 110, 113, holding “that ‘causing serious mental harm’ should be interpreted on a case-by-case basis in light of the relevant jurisprudence.”

¹⁹²⁶ *Military II* Trial Judgement, para. 2075; *Ntagerura et al.* Trial Judgement, para. 664.

¹⁹²⁷ *Seromba* Appeal Judgement, para. 46.

¹⁹²⁸ *Id.*

¹⁹²⁹ *Military II* Trial Judgement, para. 2075.

¹⁹³⁰ *Seromba* Appeal Judgement, para. 46.

¹⁹³¹ *Id.*, citing *Kajelijeli* Trial Judgement, para. 184; *Krajišnik* Trial Judgement, para. 862; Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May - 26 July 1996, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 91, UN Doc. A/51/10 (1996).

1614. Considering the open and notorious targeting and slaughter of Tutsis at roadblocks, and their willingness to provide weapons to the killers, the Chamber is convinced that Ngirumpatse was aware of the genocidal intent of the perpetrators and shared it.

1615. The weapons distributed on 12 April 1994 substantially contributed to the genocide in the same way. The Chamber does not discount the possibility that the decision to organise this latter weapons distribution was taken by Nzirorera without consultation with Ngirumpatse, given that the Accused fled Kigali on that day. Recalling the Chamber's finding that at a JCE to pursue the destruction of Tutsi population in Rwanda manifested itself with the weapons distribution on 11 April 1994, the Chamber, however, considers that the distribution of weapons on 12 April 1994 furthered the JCE to destroy the Tutsi population in Rwanda.

1616. Noting that Nzirorera and Bagosora were members of the JCE and recalling that each member of a JCE is criminally liable for acts pursuant to the common purpose which have been committed by, or can be imputed to, a JCE member, the Chamber finds that Ngirumpatse has incurred JCE liability in the basic form for the distribution of weapons carried out by Bagosora and Nzirorera on 12 April 1994, which intended for the weapons to be used to kill Tutsis. Moreover, the Chamber recalls that Ngirumpatse substantially contributed to the execution of the common purpose of the JCE (see para. 1458).

1617. Thus, Ngirumpatse is guilty of genocide pursuant to Article 6(1) of the Statute for the distributions of weapons that took place on 11 and 12 April 1994.

1618. Recalling that Karemera and Ngirumpatse bear superior responsibility for the acts of administrative personnel in the ministries controlled by the MRND, such as Bagosora, the Chamber finds that they are also responsible as superiors for Bagosora's participation in the distribution. Noting that Karemera and Ngirumpatse took no steps to punish Bagosora for his involvement in the weapons distribution, the Chamber finds Karemera guilty of genocide pursuant to Article 6 (3) of the Statute and will consider Ngirumpatse's superior responsibility as an aggravating factor during sentencing.

Meeting at Murambi Training School on 18 April 1994 (V.2.1)

1619. The Chamber has found that the Interim Government ministers and national party leaders, including Karemera and Ngirumpatse, met on 18 April 1994 with the local authorities of Gitarama. During the meeting, they intimidated the local authorities to stop protecting Tutsis and instead allow the *Interahamwe* to continue killing Tutsis.

1620. Hundreds of thousands of unarmed civilians were killed by *Interahamwe*, other militias, and soldiers throughout Rwanda by mid-July 1994 (see V.7). Given the circumstances in Rwanda at the time, the only reasonable conclusion is that the perpetrators of these acts possessed the intent to destroy, in whole or in substantial part, the Tutsi group.

1621. The Chamber finds that Karemera and Ngirumpatse aided and abetted the commission of genocide by intimidating local government officials so they would stop protecting Tutsis and allow *Interahamwe* to kill Tutsis. By eliminating the resistance offered by the immediate superiors of the perpetrators, the Accused substantially contributed to the killing of Tutsis in Gitarama. Considering the situation in Rwanda at the time, and the speeches made at the Murambi meeting, the Chamber finds the only reasonable inference to be that the Accused were aware of the perpetrators' genocidal intent and shared it with them. Therefore, the Chamber finds the Accused liable for genocide under Article 6 (1) for aiding and abetting genocide.

1622. The Chamber has found that Karemera and Ngirumpatse were members of a JCE to destroy the Tutsi population in Rwanda by this point (see VI.1). The Chamber finds that Karemera and Ngirumpatse acted pursuant to the common purpose of that enterprise during the meeting. Noting that the victims included women, children and the elderly who could not possibly have been suspected of being actual or potential combatants in the armed conflict between the Rwandan Armed Forces and the RPF, the Chamber finds that the only reasonable explanation to be that Karemera and Ngirumpatse, along with the other JCE members at the meeting, possessed genocidal intent.

1623. The killings that occurred after the meeting furthered the common purpose of the JCE. They were perpetrated by non-members of the JCE including, to a large extent, the *Interahamwe* who followed the Interim Government from Kigali to Gitarama. For the reasons mentioned above, the Chamber finds that the *Interahamwe* perpetrators had genocidal intent. The Chamber also finds that these killings committed by non-members can be imputed to Karemera and Ngirumpatse, because the latter facilitated the killings by intimidating the Gitarama officials. Therefore, the Chamber finds that Karemera and Ngirumpatse have also incurred JCE liability in the basic form for the killings that continued after the meeting.

1624. Additionally, Karemera and Ngirumpatse bear superior responsibility for the killings that followed the meeting because they exercised effective control over the Kigali *Interahamwe* who had followed them to Gitarama and participated in the killings, and the Chamber will consider this as an aggravating factor during sentencing

Replacement of Préfets of Butare and Kibungo (V.2.2)

1625. The Chamber has found that on or about 17 April 1994, Jean-Baptiste Habyalimana and Godfroide Ruzindana were removed from their positions as *préfets* of Butare and Kibungo, respectively, because they opposed attacks on Tutsis. Nsabimana was installed as Habyalimana's replacement on 19 April 1994 because the Interim Government believed he embraced its genocidal policy. During Nsabimana's investiture, Interim President Sindikubwabo, in the presence of other political authorities, gave a speech in Butare that urged the population to kill Tutsis. The speech was broadcast over the radio.

1626. Following the speech, Tutsis including women, children, and the elderly, who could not possibly have been suspected of being actual or potential combatants in the war between the Rwandan Armed Forces and the RPF, were being killed on a large scale in Butare *préfecture*.

1627. The Chamber has found that Karemera and Ngirumpatse were members of a JCE to destroy the Tutsi population in Rwanda by this point. The Chamber considers that Interim President Sindikubwabo and several of the members of the Interim Government, including Prime Minister Jean Kambanda, who were responsible for the replacement of the *préfet* of Butare, were also members of the JCE. The removal of the *préfet* and Sindikubwabo's speech furthered the common purpose of the JCE.

1628. The killings that took place after Sindikubwabo's speech were perpetrated by non-members of the JCE. For the reasons stated above, the Chamber considers that the perpetrators of the killings had genocidal intent. Because the killings were prompted by the Interim Government's decision to replace the *préfet* and by Sindikubwabo's speech, they can be imputed to the members of the JCE. Consequently, and recalling their substantial contributions to the execution of the common purpose of the JCE (see paras. 1457, 1458), the Chamber finds that Karemera and Ngirumpatse have incurred JCE liability in the basic

form for genocide with respect to the killings that followed the removal of the *préfet* and Sindikubwabo's speech.

1629. The Prosecution did not present any evidence that subordinates of the Accused perpetrated the killings in Butare.

1630. With respect to Kibungo *préfecture*, the Chamber has not found it proven beyond a reasonable doubt that the person who replaced Ruzindana as *préfet* was in favour of killing Tutsis, or that the replacement affected the security of Tutsis in the *préfecture*. Therefore, the Chamber has no basis with which to assess the guilt of the Accused under this sub-allegation.

Letter from Jean Kambanda Concerning Instructions to Restore Security in the Country and Directive of Jean Kambanda to all Préfets on the Organisation of the Civil Defence (V.3.4.2)

1631. The Chamber has found that Prime Minister Kambanda's letter with instructions to restore security in the country manifests an agreement to approve the ongoing massacres of Tutsis by deliberately failing to curb their killing, thus encouraging extremist militiamen and armed civilians to attack and kill Tutsis and destroy Rwanda's Tutsi population.

1632. The Chamber also found that Kambanda's directive to all *préfets* dated 25 May 1994 on the organisation of civil defence manifests an agreement to encourage extremist militiamen and armed civilians to attack and kill Tutsis and destroy Rwanda's Tutsi population.

1633. By mid-July 1994, hundreds of thousands of unarmed men, women, and children were killed by militias and soldiers in Rwanda. In these circumstances, the only reasonable inference is that the perpetrators of the killings possessed the requisite intent to destroy, in whole or in substantial part, the Tutsi population.

1634. The Chamber considers that Kambanda, as Prime Minister of the Interim Government, was a member of the JCE and that the letter and directive furthered the common purpose of the enterprise. Accordingly, recalling that all participants in a JCE are equally guilty of the underlying crime regardless of the part played by each, the Chamber finds that Karemera and Ngirumpatse have incurred JCE liability in the basic form. This liability encompasses the continued killings of Tutsis that resulted from Kambanda's letter and directive. Thus, the Chamber finds Karemera and Ngirumpatse guilty of genocide pursuant to Article 6 (1) of the Statute. In arriving at this conclusion, the Chamber is mindful that Karemera and Ngirumpatse substantially contributed to the execution of the common purpose of the JCE (see paras. 1457, 1458).

Letter from Édouard Karemera to Préfets Regarding Implementation of Jean Kambanda's Directives (V.3.4.2)

1635. The Chamber has found that Karemera's letter of 25 May 1994 regarding the implementation of Jean Kambanda's directives, which he issued to *préfets* as Minister of the Interior for the Interim Government, had the effect of encouraging the continued killing of Tutsis. The only reasonable conclusion is that the perpetrators of the killings had the intent to destroy, in whole or in part, the Tutsi group.

1636. The Chamber considers the only reasonable inference to be that Karemera aided and abetted the genocide through the issuance of this letter. His encouragement, as Minister of the Interior and Vice-President of the MRND, to continue killing Tutsis seven weeks after the genocide had begun had a substantial effect on its realisation.

1637. Considering the scale of the open and notorious killing of Tutsis by 25 May 1994, and noting Karemera's willingness to encourage them, the Chamber is convinced that he was aware of the genocidal intent of the perpetrators and shared it.

1638. The Chamber also finds that Karemera instigated further killings of innocent Tutsi civilians by issuing this letter.

1639. The Chamber considers that the letter also furthered the common purpose of the JCE. Accordingly, recalling that all participants in a JCE are equally guilty of the underlying crime regardless of the part played by each, the Chamber finds that Ngirumpatse has incurred JCE liability in the basic form for Karemera's issuance of the letter. The liability of Karemera and Ngirumpatse encompasses the continued killings of Tutsis that resulted from the letter. Thus, the Chamber finds Karemera and Ngirumpatse guilty of genocide pursuant to Article 6 (1) of the Statute. In arriving at this conclusion, the Chamber is mindful that Ngirumpatse substantially contributed to the execution of the common purpose of the JCE (see para. 1458).

Ministerial Instructions to the Préfets of the Préfectures on the Use of Funds Earmarked for the Ministry of Interior and Communal Development for Civil Self-Defence (V.3.4.2)

1640. The Chamber has found that Karemera's instructions of mid-June on the use of funds, as Minister of the Interior of the Interim Government, manifests an agreement to encourage extremist militiamen and armed civilians to attack, kill and destroy Rwanda's Tutsi population. The only reasonable conclusion is that the perpetrators of the killings had the intent to destroy, in whole or in part, the Tutsi group.

1641. The Chamber considers the only reasonable inference to be that Karemera aided and abetted the killings of innocent Tutsi civilians by suggesting that all *préfets* should purchase cutting and thrusting weapons nearly three months into the genocide, at a point where it was clear that these types of weapons were useless against the RPF and being used primarily to slaughter innocent Tutsis. The Chamber is convinced that this suggestion had a substantial effect on the realisation of genocide because it encouraged extremist militiamen and armed civilians to continue to attack, kill, and destroy Rwanda's Tutsi population.

1642. Given the open and notorious slaughter of Tutsis with cutting and thrusting weapons, and Karemera's suggestion that the *préfectures* arm themselves with these weapons, the Chamber is convinced that Karemera was aware of the genocidal intent of the perpetrators and shared it.

1643. The Chamber also finds that Karemera instigated further killings of innocent Tutsi civilians by issuing these instructions.

1644. The Chamber considers that the letter also furthered the common purpose of the JCE. Accordingly, recalling that all participants in a JCE are equally guilty of the underlying crime regardless of the part played by each, the Chamber finds that Ngirumpatse has incurred JCE liability in the basic form for Karemera's issuance of the letter. The liability of Karemera and Ngirumpatse encompasses the continued killings of Tutsis that resulted from the letter. Thus, the Chamber finds Karemera and Ngirumpatse guilty of genocide pursuant to Article 6 (1) of the Statute. In arriving at this conclusion, the Chamber recalls Ngirumpatse's substantial contribution to the execution of the common purpose of the JCE (see para. 1458).

Creation of a National Defence Fund (V.5.1)

1645. The Chamber has found that on or about 25 April 1994, Felicien Kabuga organised a meeting to create a *Fonds de Défense Nationale* and that Karemera and Ngirumpatse knew or had reason to know that the fund was created.

1646. By 25 April 1994, the atrocities committed in Rwanda were widespread and public and militiamen and civilians to be supplied by the fund were killing Tutsis throughout the country. The vast majority of the killers were *Interahamwe* and other groups of armed civilians who routinely used traditional weapons to massacre Tutsis. Kabuga made it clear in his letter to the Interim Government that he intended to use the fund to purchase traditional weapons for the military, militiamen, and civilians. In these circumstances, the only reasonable conclusion is that Kabuga and the assailants who physically perpetrated the killings possessed the intent to destroy, in whole or in a substantial part, the Tutsi group.

1647. Considering the public and widespread massacres of Tutsis in Rwanda, the Chamber is convinced that Karemera and Ngirumpatse were aware of the genocidal intent of the perpetrators and shared it.

1648. The Chamber recalls that Félicien Kabuga is a member of the JCE and considers his proposal to establish the national defence fund to be a significant contribution to that enterprise. Moreover, the creation of the fund furthered the common purpose of the JCE. Accordingly, recalling that all participants in a JCE are equally guilty of the underlying crime regardless of the part played by each, the Chamber finds that Karemera and Ngirumpatse have incurred JCE liability for genocide in the basic form for Kabuga's creation of the fund. This liability encompasses the continued killings of Tutsis that resulted from the provision of weapons to the killers. Thus, the Chamber finds Karemera and Ngirumpatse guilty of genocide pursuant to Article 6 (1) of the Statute. The Chamber recalls that Karemera and Ngirumpatse substantially contributed to the execution of the common purpose of the JCE (see paras. 1457, 1458).

Massacre of Tutsis in Bisesero Hills (V.6)

1649. The Chamber has found that throughout April, May, and June 1994, thousands of Tutsis were killed in Bisesero Hills in several large-scale attacks organised by local officials and carried out by *Interahamwe*, *gendarmes*, soldiers, and civilians. On or about 13 May 1994, national and regional political authorities including Eliezer Nityitegeka and Clément Kayishema, *bourgmestres* Aloys Ndimbati and Charles Sikubwabo and businessmen Obed Ruzindana and Alfred Musema ordered and instigated many of the killings.

1650. Considering the scale of the assaults and the brutal and systematic manner in which the Tutsi victims were attacked, the Chamber finds it proven beyond a reasonable doubt that the assailants who physically perpetrated the killings possessed the intent to destroy, in whole or in substantial part, the Tutsi group. In the context of the notorious and open slaughter of Tutsis in Bisesero at which the national and regional authorities were present, the Chamber concludes, as the only reasonable inference, that the authorities who ordered and instigated these attacks, as well as Karemera and Ngirumpatse, shared the assailants' genocidal intent.

1651. The Chamber considers that the Bisesero killings furthered the common purpose of the joint criminal enterprise.

1652. With respect to attacks and killings prior to 13 May 1994, the Chamber notes that the evidence does not sufficiently identify the local authorities who organised the attacks or

whether the *Interahamwe* who participated came from *préfectures* where the *Interahamwe* was under the effective control of Karemera and Ngirumpatse. Accordingly, the Chamber does not have a sufficient basis for a finding of guilt with respect to these attacks and killings.

1653. However, recalling that all participants in a JCE are equally guilty of the underlying crime regardless of the part played by each, the Chamber finds that Karemera and Ngirumpatse have incurred JCE liability in the basic form for the attacks and killings at Bisesero that which were organized by other JCE members on or about 13 May 1994. Thus, the Chamber finds Karemera and Ngirumpatse guilty of genocide pursuant to Article 6 (1) of the Statute. In this regard, the Chamber has noted that Karemera and Ngirumpatse substantially contributed to the execution of the common purpose of the JCE (see paras. 1457, 1458).

1654. Moreover, the Chamber has found that Karemera bears superior responsibility as of 25 May 1994 for the acts of civilian participants in the Civil Defence Programme and local authorities who were part of the territorial administration. Accordingly, it will consider Karemera's superior responsibility for all attacks and killings committed in Bisesero by these subordinates as of 25 May 1994 as an aggravating factor in sentencing.

Mopping-up Operation and Further Attacks in Bisesero Hills (V.6.3)

1655. The Chamber has found that around 18 June 1994, Karemera as Minister of the Interior for the Interim Government ordered a mopping-up operation against the Tutsis in Bisesero and that the operation took place with participation of *gendarmes*, *Interahamwe* from Gisenyi and others and resulted in the deaths of scores of Tutsi civilians.

1656. By the time the operation took place, regular attacks directed against Tutsi civilians had already occurred in the Bisesero region. During these assaults, thousands of Tutsis were killed, injured, and maimed (see V.6.2). Considering this general context, the only reasonable conclusion is that the assailants who physically perpetrated the killings possessed the intent to destroy Tutsis in Rwanda in whole or in substantial part, and that Karemera was aware of the genocidal intent of the perpetrators and shared it.

1657. The Chamber further considers that the mopping-up operation furthered the common purpose of the joint criminal enterprise. Accordingly, recalling that all participants in a JCE are equally guilty of the underlying crime regardless of the part played by each, the Chamber finds that Ngirumpatse has incurred JCE liability in the basic form for the mopping-up operation and the resulting attacks and killings. In this regard, the Chamber recalls Ngirumpatse substantial contribution to the execution of the common purpose of the JCE (see para. 1458).

1658. Thus Karemera and Ngirumpatse are guilty of genocide pursuant to Article 6(1) of the Statute.

1659. Moreover, the Chamber found that *Interahamwe* from Gisenyi participated in the mopping-up operation in Bisesero (see V.6.3). Accordingly, recalling that the Gisenyi *Interahamwe* were Karemera's subordinates (see VI.2.3), the Chamber concludes that he also bears superior responsibility for the Gisenyi *Interahamwe*'s role in the mopping-up operation. Accordingly, it will consider Karemera's superior responsibility for all attacks and killings committed in Bisesero by these subordinates as of 25 May 1994 as an aggravating factor in sentencing.

1660. With respect to Ngirumpatse, the Chamber notes that he was away on mission from 1 June until around 26 June and again from 9 July until the end of the genocide and, thus, was absent during the event and had little time to hold his subordinates responsible between his June return and his July mission. The Chamber, therefore, does not have a sufficient basis to conclude that Ngirumpatse bears superior responsibility in relation to the mopping-up operation.

Kibuye Speeches of 3 and 16 May 1994 (V.3.2; 3.3)

1661. Noting that the speeches given by Karemera and Sindikubwabo in Kibuye on 3 and 16 May 1994 were general calls for killings and not directly related to Bisesero, and recalling that the officials who attended the speeches were themselves JCE members, the Chamber does not find that the speeches substantially contributed to killings related to the genocide. Accordingly, the Chamber does not consider that Karemera and Ngirumpatse are guilty of instigating genocide on account of the speeches given by Karemera and Sindikubwabo on 3 and 16 May 1994.

Killings in Kigali by 12 April 1994: (V.1.4)

1662. The Chamber has found that the majority of roadblocks during the genocide were set up and manned or controlled by MRND *Interahamwe*, that soldiers participated in manning roadblocks and supervised the activities of the youth militias at the roadblocks, and that people identified as Tutsis were killed because of their ethnicity at most roadblocks. In Kigali alone, thousands of civilians were killed by militias and soldiers by 12 April 1994. Karemera and Ngirumpatse were aware that widespread killing had commenced on 8 April 1994, but, nevertheless, Ngirumpatse facilitated the killing campaign by providing weapons on 11 April 1994 (see V.1.4).

1663. In these circumstances, the only reasonable conclusion is that the assailants who physically perpetrated the killings possessed the genocidal intent to destroy, in whole or in substantial part, the Tutsi group. Accordingly, the Chamber finds that Ngirumpatse aided and abetted the killings that occurred in Kigali by 12 April 1994 and is guilty of genocide pursuant to Article 6(1) of the Statute.

1664. Moreover, recalling its finding that the Karemera and Ngirumpatse had superior responsibility over the Kigali *Interahamwe* for these killings, and noting that they did nothing to punish the killers, the Chamber finds Karemera liable under Article 6(3) for the killings in Kigali that occurred by 12 April 1994 and will take Ngirumpatse superior responsibility into account during sentencing when assessing his aggregate liability for genocide.

Systematic Rape and Sexual Assault of Tutsi Women and Girls (V.8)

1665. The Chamber has found that from April to June 1994, Tutsi women and girls were raped and sexually assaulted systematically and on a large scale by the same individuals who were attacking Tutsis as a group (*Interahamwe* and other militias, *gendarmes*, soldiers, and civilians (see V.8). The rapes and sexual assaults occurred throughout Rwanda, including Kigali-ville, Ruhengeri, Gitarama, Kibuye, and Butare *préfectures*.

1666. Considering the nature of the crimes and the brutal and often public manner in which they were carried out, often repeatedly and by more than one assailant, the Chamber concludes that the sexual assaults, mutilations and rapes that Tutsi women were forced to

endure from April to June 1994 certainly constituted acts of serious bodily and mental harm.

1667. In light of the evidence brought before it, the Chamber is satisfied that the rapes, mutilations and other acts of sexual violence against Tutsi women and girls were systematic and widespread. Many of these women were subjected to severe humiliation and physical injuries. As a consequence, these crimes did not only cause serious bodily and mental harm to the women themselves, but also, by extension, to their families and communities. Furthermore, many Tutsi women were killed after they were subjected to rapes and sexual assaults.

1668. The Chamber concludes that these women were raped and sexually assaulted in order to increase their suffering before they were killed by the assailants with the intent to destroy, in whole or in part, the Tutsi group. In this context, the Chamber finds it proven beyond a reasonable doubt that the rapes and sexual assaults that Tutsi women endured from April to June 1994 throughout Rwanda were acts of genocide and, thus, that the perpetrators had a genocidal intent.

1669. The Prosecution has led no evidence to support a finding that Karemera and Ngirumpatse personally planned, instigated, ordered, committed, or aided and abetted the rapes and sexual assaults. Moreover, the Chamber has already found that the rapes and sexual assaults of Tutsi women and girls were not part of the common purpose of the JCE to destroy the Tutsi population in Rwanda.

1670. Nevertheless, the Chamber has found that Karemera and Ngirumpatse have extended JCE liability for the rapes and sexual assaults that occurred after 11 April 1994. Accordingly, the Chamber finds them liable for the rapes and sexual assaults as genocide under this mode of liability pursuant to Article 6(1) of the Statute.

1671. The Chamber has also found that Karemera and Ngirumpatse exercised effective control over the *Interahamwe* in Kigali and Gisenyi *préfectures* throughout the genocide. Therefore, it considers that they are liable as superiors for any rapes and sexual assaults committed by the Kigali and Gisenyi *Interahamwe* during the genocide and will take this into account during sentencing when assessing their aggregate liability for genocide.

3.5 Complicity in Genocide

1672. Count 4 of the Indictment charges Karemera and Ngirumpatse with complicity in genocide, which is pleaded as an alternative to Count 3 (Genocide). In light of the Chamber's findings in relation to genocide under Count 3, it makes no findings in relation to the charges of complicity in genocide.

3.6 Rape as a Crime against Humanity

3.6.1 Introduction

1673. Count 5 of the Indictment charges Karemera and Ngirumpatse with rape as a crime against humanity pursuant to Article 3 (g) of the Statute.

3.6.2 Law

1674. To qualify as a crime against humanity, the crimes enumerated in Article 3 of the Statute must be committed as part of a widespread or systematic attack against the civilian population on national, political, ethnic, racial or religious grounds.¹⁹³² An “attack against a civilian population” means the perpetration against a civilian population of a series of acts of violence, or of the kind of mistreatment referred to in subparagraphs (a) to (i) of Article 3.¹⁹³³ “Widespread” refers to the large-scale nature of the attack and the number of victims, while “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.¹⁹³⁴ “Widespread” and “systematic” are disjunctive elements, such that proof of either is sufficient to establish liability.¹⁹³⁵

1675. The accused 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.¹⁹³⁶ 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 intent must be established.¹⁹³⁷

1676. Rape as a crime against humanity is the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator. Consent in this regard refers to voluntary consent, which results from the victim’s free will.¹⁹³⁸ Non-consent can be inferred from the existence of coercive background circumstances under which meaningful consent is not possible.¹⁹³⁹ Force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape.¹⁹⁴⁰

1677. The accused must have the intention to effect prohibited sexual penetration, and the knowledge that it occurs without the consent of the victim.¹⁹⁴¹ Awareness of the coercive circumstances that undermine the possibility of genuine consent may prove knowledge of non-consent.¹⁹⁴²

3.6.3 Deliberations

1678. The Chamber has found that there were widespread attacks against a civilian population throughout Rwanda based on Tutsi ethnic identification as well as killing of politicians who opposed the MRND and its allies (see V). During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to

¹⁹³² *Military II Trial Judgement*, para. 2087; *Bagosora et al. Trial Judgement*, para. 2165, citing *Semanza Appeal Judgement*, paras. 326-322.

¹⁹³³ *Military II Trial Judgement*, para. 2087; *Nahimana et al. Appeal Judgement*, paras. 915-918.

¹⁹³⁴ *Nyiramasuhuko et al. Trial Judgement*, paras. 918, 920.

¹⁹³⁵ *Military II Trial Judgement*, para. 2087.

¹⁹³⁶ *Military II Trial Judgement*, para. 2088; *Bagosora et al. Trial Judgement*, para. 2166, citing *Gacumbitsi Appeal Judgement*, paras. 86, 103.

¹⁹³⁷ *Bagosora et al. Trial Judgement*, para. 2166, citing *Akayesu Trial Judgement*, paras. 464-469, 595.

¹⁹³⁸ *Nyiramasuhuko et al. Trial Judgement*, para. 6075; *Gacumbitsi Appeal Judgement*, para. 151 quoting *Kunarac et al. Appeal Judgement*, paras. 127-129.

¹⁹³⁹ *Gacumbitsi Appeal Judgement*, para. 155.

¹⁹⁴⁰ *Military II Trial Judgement*, para. 2121; *Kunarac et al. Appeal Judgement*, para. 129.

¹⁹⁴¹ *Nyiramasuhuko et al. Trial Judgement*, para. 6075; *Gacumbitsi Appeal Judgement*, para. 151 citing *Kunarac et al. Appeal Judgement*, paras. 127-129.

¹⁹⁴² *Gacumbitsi Appeal Judgement*, para. 157.

belong to the Tutsi ethnic group. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity.¹⁹⁴³ In connection with these attacks, Tutsi women and girls were subjected to rapes and sexual assaults on a massive scale throughout Rwanda during the genocide (see V.8).

1679. The Chamber has found that the rapes and sexual assaults against Tutsi women and girls constituted genocide (see VI.3.4.3). On the same basis, the Chamber is satisfied that the rapes and sexual assaults were conducted on ethnic grounds and that the perpetrators were aware of this fact. The Chamber has also found that Karemera and Ngirumpatse were aware that the rapes and sexual assaults were occurring on ethnic grounds throughout Rwanda (see V.8).

1680. The genocide took place in the context of a civil war for the control of Rwanda between the predominantly Tutsi RPF and predominantly Hutu political parties, or factions of parties, that were opposed to sharing power with the RPF. Moreover, the Tutsis were targeted in the civil war because they were assumed to be the power base of the RPF. The Chamber, therefore, also finds that the assaults on Tutsis, including the rapes and sexual violence against Tutsi women and girls, were politically motivated.

1681. Given the horrific circumstances surrounding these attacks, it is clear that there could have been no consent for these acts of sexual violence and that the perpetrators would have known this fact. It is also clear on account of the sheer number of victims that the rapes and sexual assaults were widespread.

1682. The Chamber has found that Karemera and Ngirumpatse have incurred JCE liability in the extended form for the rapes and sexual assaults that occurred after 11 April 1994. Accordingly, the Chamber finds the Accused liable for them as crimes against humanity under this mode of liability.

1683. The Chamber also considers that the Accused are liable as superiors for any rapes and sexual assaults committed by the Kigali and Gisenyi *Interahamwe* during the genocide and will take this into account during sentencing when assessing their aggregate liability for crimes against humanity.

1684. Thus, the Chamber finds Karemera and Ngirumpatse guilty of rape as a crime against humanity (Count 5) for rapes and sexual assaults committed against Tutsi women in Ruhengeri *préfecture* during early-mid April 1994, Kigali-ville *préfecture* during April 1994, Butare *préfecture* during mid-late April 1994, Kibuye *préfecture* during May-June 1994, Gitarama *préfecture* during April and May 1994, and elsewhere throughout Rwanda under Article 6(1) of the Statute. They are also both responsible as superiors under Article 6(3) for the rapes and sexual assaults throughout Rwanda committed by the Kigali and Gisenyi *Interahamwe* during the genocide.

3.7 Extermination as a Crime Against Humanity

3.7.1 Introduction

1685. Count 6 of the Indictment charges Karemera and Ngirumpatse with extermination as a crime against humanity under Article 3(b) of the Statute.

¹⁹⁴³ *Karemera et al.*, Decision on Appeals Chamber Remand of Judicial Notice (TC), 11 December 2006 (“11 December 2006 Judicial Notice Decision”).

3.7.2 Law

1686. The Chamber refers to the general criteria for crimes against humanity as described in (VI.3.6.2)

1687. The crime of extermination is the act of killing on a large scale.¹⁹⁴⁴ Any act, omission, or any combination thereof that contributes to the killing of a large number of people is punishable.¹⁹⁴⁵ Although the killings must be on a “large scale”, there is no numerical minimum that must be reached.¹⁹⁴⁶ The accused must have the intent, by his or her acts or omissions, to kill persons on a massive scale or subject a large number of people to conditions of living that would inevitably lead to death.¹⁹⁴⁷ The perpetrator must be aware of the “broader context” of their participation, but need not share the underlying rationale or goals of the killings.¹⁹⁴⁸

3.7.3 Deliberations

1688. The Chamber has already determined that the killing of Tutsis at roadblocks in Kigali by 12 April 1994 as well as the massacres of Tutsis in Bisesero Hills and the killings on a massive scale of unarmed Tutsis, including women, and children by mid-July 1994 constituted genocide. On the same basis, the Chamber is satisfied that these killings were conducted on ethnic grounds. For the reasons given above in its discussion regarding rapes and sexual assaults as genocide, the Chamber finds that the extermination of Tutsis was also politically motivated.

1689. Accordingly, the Chamber finds that attacks were launched against members of the civilian population in Rwanda on ethnic and political grounds after President Habyarimana’s death and until mid-July 1994.

1690. It is clear on account of the sheer number of victims that these killings satisfy the requirement of killings on a large scale. Also the assailants and the Accused were aware that these killings formed part of widespread and systematic attacks against the civilian population on ethnic and political grounds. Thus, they amount to extermination as a crime against humanity.

1691. The Chamber has already found Karemera and Ngirumpatse criminally liable for the killings underpinning this charge (see VI.3.4.3). Accordingly, the Chamber finds Karemera and Ngirumpatse guilty of extermination as a crime against humanity.

1692. Karemera and Ngirumpatse are also liable as superiors for the same reasons stated in the legal findings for genocide.

¹⁹⁴⁴ *Military II* Trial Judgement, para. 2109; *Butare* Trial Judgement, para. 6048.

¹⁹⁴⁵ *Military II* Trial Judgement, para. 2109; *Bagosora et al.* Trial Judgement, para. 2191, citing *Seromba* Appeal Judgement, para. 189.

¹⁹⁴⁶ *Bagosora et al.* Trial Judgement, para. 2191; *Nyiramasuhuko et al.* Trial Judgement, para. 6048.

¹⁹⁴⁷ *Munyakazi* Appeal Judgement, para. 141, citing *Munyakazi* Trial Judgement, para. 506; *Military II* Trial Judgement, para. 2109.

¹⁹⁴⁸ *Military II* Trial Judgement, para. 2109.

3.8 Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

3.8.1 Introduction

1693. Count 7 of the Indictment charges Édouard Karemera and Mathieu Ndirumpatse with serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for murder and causing violence to health and physical or mental well-being, pursuant to Article 4(a) of the Statute.

3.8.2 Threshold Elements

1694. To establish the responsibility of an accused under 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 at the time of the commission of the alleged breach; (2) the existence of a nexus between the alleged breach and the armed conflict; and (3) that the victims were not direct participants to the armed conflict.¹⁹⁴⁹

3.8.3 Non-International Armed Conflict

1695. The jurisprudence establishes that “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”¹⁹⁵⁰ The existence of a non-international armed conflict between the Rwandan government forces and the RPF between 1 January 1994 and 17 July 1994 is a notorious fact not subject to reasonable dispute.¹⁹⁵¹ Accordingly, the Chamber has taken judicial notice of the existence of a non-international armed conflict during this period pursuant to Rule 94(A) of the Rules.¹⁹⁵²

3.8.4 Nexus

1696. A nexus exists between the armed conflict and the alleged offences when the offence is “closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.”¹⁹⁵³ The requisite nexus need not be a causal link, but the existence of an armed conflict must have played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Therefore, “if it can be established ... that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.”¹⁹⁵⁴

1697. The Chamber considers that the ongoing armed conflict between the Rwandan government forces and the RPF created the environment and provided a pretext for the

¹⁹⁴⁹ *Bagosora et al.* Trial Judgement, para. 2229; *Setako* Appeal Judgement, para. 246.

¹⁹⁵⁰ *Krstić* Appeal Judgement, para. 481; *Musema* Trial Judgement, paras. 247-248.

¹⁹⁵¹ *Semanza* Appeal Judgement, para. 192 (“the Chamber took notice only of general notorious facts not subject to reasonable dispute, including, *inter alia*: ... that there was an armed conflict not of an international character in Rwanda between 1 January 1994 and 17 July 1994 ...”).

¹⁹⁵² 11 December 2006 Judicial Notice Decision.

¹⁹⁵³ *Semanza* Appeal Judgment, para. 369.

¹⁹⁵⁴ *Setako* Appeal Judgement, para. 249.

extensive killings and other abuses of members of the civilian population, particularly Tutsis. The RPF was identified with the Tutsi minority and with many members of the political opposition in Rwanda. The killings began on 7 April 1994, within hours of the death of President Habyarimana, and hostilities resumed between the RPF and government forces later that day.¹⁹⁵⁵

1698. The Chamber has found that the main perpetrators of the crimes against Tutsis included soldiers and *gendarmes* in the Rwandan army and *gendarmerie*. With respect to the crimes committed at roadblocks, the Chamber has noted the frequent mixing of military and civilian personnel at them (see V.1.4; 7.1). The evidence shows that a main pretext of the killings at them was to identify RPF infiltrators (see V.1.4; 7.1). Moreover, the evidence also reveals that the same pretext was responsible for many of the killings that resulted from the implementation of the Civil Defence Program (see V.3.4). In this regard, the Chamber is convinced that the killings of Tutsis at roadblocks in Kigali during the weekend of 8-10 April 1994, the killing of thousands of civilians in Kigali and throughout Rwanda by 12 April 1994, and the killing at a massive scale of unarmed men, women, and children throughout Rwanda by mid-July 1994 were closely related to the conflict between the Rwandan armed forces and the RPF.

1699. The Chamber is also satisfied that the killings in Bisesero were closely related to the conflict between Rwandan armed forces and the RPF. The Chamber has found that Rwandan soldiers, *gendarmes* and militiamen carried out regular attacks against Tutsis in Bisesero between April and June 1994, resulting in the deaths of tens of thousands of Tutsi civilians. In June 1994, Karemera ordered an "*opération de ratissage*" in Bisesero and requested assistance from military commanders to carry out that operation, ostensibly because Bisesero had "become a sanctuary for the RPF". This operation resulted in the deaths of a large number of Tutsi civilians. According to Karemera, Bisesero was full of RPF infiltrators and the RPF had ammunition depots and weapons there, and these factors informed the Government's decision to order the operation in an effort to eliminate RPF partisans.¹⁹⁵⁶ In the view of the Chamber, therefore, the armed conflict between Rwandan government forces and the RPF not only provided a pretext for the killings of Tutsi civilians in Bisesero, but it also provided the context of hostility and lawlessness within which those crimes were committed.

1700. The Chamber considers that the military and civilian perpetrators of these crimes were acting in furtherance of the armed conflict or under its guise. Accordingly, the Chamber finds that the alleged violations of Article 4(a) of the Statute had the requisite nexus to the armed conflict between Rwandan government forces and the RPF.

3.8.5 Victims

1701. The victims of the alleged violations were primarily unarmed civilians who were attacked either in their homes, at places of refuge such as religious sites and schools, or at roadblocks while fleeing the hostilities and other attacks. The Prosecution has therefore established beyond reasonable doubt that the victims of the alleged violations of Article 4(a) of the Statute were not taking an active part in the hostilities.

¹⁹⁵⁵ *Bagosora et al.* Trial Judgement, para. 2232; *Semanza* Appeal Judgement, para. 369.

¹⁹⁵⁶ T. 20 May 2009, pp. 23, 24, 28-30; T. 26 May 2009, pp. 3-5, 55, 56.

3.8.6 Violence to Life, Health, and Physical or Mental Well-Being

Introduction

1702. Count 7 of the Indictment charges Karemera and Ngirumpatse with violence to health and physical or mental well-being as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 4(a) of the Statute. In particular, the Prosecution focuses on “killings” as evidence of the “violence to health and or physical or mental well-being.”

Law

1703. To establish the responsibility of an accused under Article 4(a) of the Statute, the Prosecution must prove, in addition to the threshold elements of Article 4 recalled above, the following specific elements: (1) the death of a victim taking no active part in the hostilities; (2) that the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible; and (3) the intent of the accused, or of the person or persons for whom he is criminally responsible, to kill the victim or to willfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.¹⁹⁵⁷

Deliberations

1704. In its previous findings, the Chamber has found Karemera and Ngirumpatse guilty of genocide (Count 3) for the killings of Tutsis in Rwanda, including those at Bisesero Hills, under Article 6(1) of the Statute. Specifically, it found Ngirumpatse guilty for the killings from 12 April to mid-July 1994 and Karemera guilty for the killings from 17 April to mid-July 1994. They were also found responsible as superiors under Article 6(3) for all killings throughout Rwanda that were committed by the Kigali and Gisenyi *Interahamwe* from 12 April 1994 to mid-July 1994, including those at Bisesero Hills.

1705. It follows from those findings, that these killings also amount to murder under Article 4(a) of the Statute. As discussed above, each of these crimes had the requisite nexus to the armed conflict between the Rwandan government forces and the RPF. Furthermore, 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. The Accused or the persons for whom they are criminally responsible, possessed the intent to kill the victims or to willfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.

Conclusion

1706. The Chamber finds Karemera and Ngirumpatse guilty for killing and causing violence to health and physical or mental well-being as a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (Count 7), for the killing of Tutsis in Rwanda, Ngirumpatse from 12 April, Karemera from 17 April, through mid-July 1994, including those at Bisesero Hills, under Article 6(1) of the Statute. They are responsible as

¹⁹⁵⁷ *Setako* Appeal Judgement, para. 257.

superiors under Article 6(3) for all killings throughout Rwanda that were committed by the Kigali and Gisenyi *Interahamwe* from 12 April 1994 to mid-July 1994, including those at Bisesero Hills.

4. CUMULATIVE CONVICTIONS

4.1 Introduction

1707. The Chamber has found that the evidence supports findings under different statutory provisions on the basis of the same conduct. The Appeals Chamber has held that cumulative convictions are permissible where each crime has a materially distinct element not contained in the other.¹⁹⁵⁸ An element is materially distinct from another if it requires proof of a fact not required by the other element.¹⁹⁵⁹ Where this test is not met, a conviction will be entered only under the more specific provision. The more specific offence subsumes the less specific one because the commission of the former necessarily entails the commission of the latter.¹⁹⁶⁰

1708. In light of these legal principles, the Chamber turns to consider whether it may enter cumulative convictions based on its findings with respect to the policy of the Interim Government after 18 April 1994.

4.2 Genocide and Conspiracy to Commit Genocide

1709. With respect to the civil defence policy of the Interim Government, the Chamber has found that the evidence supports findings of the crime of genocide and conspiracy to commit genocide, which are treated as distinct crimes under Articles 2(3)(a) and 2(3)(b), respectively. The *actus reus* for the crimes is materially distinct. While the crime of genocide requires one of the enumerated acts in Article 2(2) to have been committed, the crime of conspiracy to commit genocide merely requires the act of entering into an agreement to commit genocide. Therefore, the underlying acts or omissions upon which the crimes are based are distinct.¹⁹⁶¹ Accordingly, as noted recently by the Trial Chamber in *Gatete* and the ICTY Trial Chamber in *Popović et al.* ("*Popović*"), convictions for genocide and conspiracy to commit genocide are not necessarily cumulative because the conduct relevant to the crime of conspiracy is the agreement, which is not a requisit element for genocide.¹⁹⁶²

1710. The Trial Chamber in *Popović*, however, noted that the basis of the concern regarding multiple convictions for the same act is one of fairness to the accused and further observed that the purpose of criminalising an inchoate offence such as conspiracy is to

¹⁹⁵⁸ *Ntakirutimana* Appeal Judgement para. 542, citing *Musema* Appeal Judgement paras. 358-370; *Kordić and Čerkez* Appeal Judgement para. 1033; *Krstić* Appeal Judgement para. 218; *Čelebići* Appeal Judgement para. 412.

¹⁹⁵⁹ *Ntakirutimana* Appeal Judgement para. 542, citing *Čelebići* Appeal Judgement, para. 412. The standard was clarified in the *Kunarac et al.* Appeal Judgement, para. 168. See also *Vasiljević* Appeal Judgement, paras. 135, 146; *Krstić* Appeal Judgement, para. 218.

¹⁹⁶⁰ *Popović et al.* Trial Judgement para. 2111, citing *Galić* Appeal Judgement para. 163; *Krstić* Appeal Judgement para. 218.

¹⁹⁶¹ *Popović et al.* Trial Judgement para. 2118, citing *Seromba* Appeal Judgement para. 221; *Nahimana et al.* Appeal Judgement paras. 894, 896; *Bagosora et al.* Trial Judgement para. 2087; *Krstić* Appeal Judgement para. 6. See also *Nahimana et al.* Appeal Judgement para. 492

¹⁹⁶² *Gatete* Trial Judgement, para. 654; *Popović et al.* Trial Judgement para. 2118.

prevent the commission of the substantive offence. Thus, once the substantive offence is committed, the justification for punishing the prior conspiracy is less compelling, especially when proof of the substantive offence is the main piece of evidence from which an inference of a prior illegal agreement is drawn and upon which the conspiracy is based.¹⁹⁶³

1711. In *Popović*, the Trial Chamber's findings for both genocide and conspiracy to commit genocide were based on the accused's participation in a joint criminal enterprise to murder with genocidal intent.¹⁹⁶⁴ Accordingly, it decided to follow the approach set forth by the *Musema* Trial Chamber and concluded that entering a conviction for the substantive offence of genocide rendered a conviction for conspiracy redundant, noting that the position most favourable to the accused must be paramount.¹⁹⁶⁵

1712. In *Gatete*, the Chamber was faced with a similar scenario because it had inferred that Gatete had entered into an agreement to commit genocide from the evidence establishing that he had participated in a joint criminal enterprise to commit genocide.¹⁹⁶⁶ In light of those circumstances, and noting that a conviction for genocide, and not also conspiracy to commit genocide did not lessen the accused's criminal culpability, the Chamber decided to follow the approach taken by the *Popović* Trial Chamber and entered a conviction for genocide but not for conspiracy to commit genocide.¹⁹⁶⁷

1713. In this case, the Chamber is faced with a situation analogous to *Gatete* and *Popović*. It has inferred that the Accused entered into an agreement to commit genocide from evidence regarding the policy of the Interim Government after 18 April 1994, which establishes that they participated in a joint criminal enterprise to destroy the Tutsi population in Rwanda. Accordingly, the Chamber concurs with the *Musema*, *Popović*, and *Gatete* Trial Chambers that the position most favourable to the accused must be paramount. Considering that the full criminality of the Accused is accounted for by a conviction for genocide, the Chamber finds that a further conviction for the inchoate crime of conspiracy would be duplicative and unfair to the Accused.

¹⁹⁶³ *Popović et al.* Trial Judgement para. 2124.

¹⁹⁶⁴ *Id.*, Trial Judgement para. 2125.

¹⁹⁶⁵ *Id.*, Trial Judgement para. 2127.

¹⁹⁶⁶ *Gatete* Trial Judgement, para. 661.

¹⁹⁶⁷ *Id.*, paras. 661, 662.

CHAPTER VII : VERDICT

1714. For the reasons set out in this Judgement, having considered all evidence and arguments, the Trial Chamber finds unanimously that

ÉDOUARD KAREMERA is guilty as follows:

- Count 1: of Conspiracy to Commit Genocide
- Count 2: of Direct and Public Incitement to Commit Genocide
- Count 3: of Genocide
- Count 5: of Crimes Against Humanity (Rape)
- Count 6: of Crimes Against Humanity (Extermination)
- Count 7: of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Killing and Causing Violence to Health and Well-Being)

1715. On the basis of the principles relating to cumulative convictions, the Chamber does not enter a conviction against Karemera for the count of conspiracy to commit genocide.

MATTHIEU NGIRUMPATSE is guilty as follows:

- Count 1: of Conspiracy to Commit Genocide
- Count 2: of Direct and Public Incitement to Commit Genocide
- Count 3: of Genocide
- Count 5: of Crimes Against Humanity (Rape)
- Count 6: of Crimes Against Humanity (Extermination)
- Count 7: of Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II (Killing and Causing Violence to Health and Well-Being)

1716. On the basis of the principles relating to cumulative convictions, the Chamber does not enter a conviction against Ngirumpatse for the count of conspiracy to commit genocide.

CHAPTER VIII: SENTENCING

1. INTRODUCTION AND APPLICABLE LAW

1717. Having found Édouard Karemera and Matthieu Ngirumpatse guilty of conspiracy to commit genocide, direct and public incitement to commit genocide, genocide, rape and extermination as crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II, the Chamber must determine appropriate sentences.

1718. The Appeals Chamber has stated that “sentences of like individuals in like cases should be comparable”.¹⁹⁶⁸ However, similar cases do not provide a legally binding benchmark for sentences. Although assistance can be drawn from previous decisions, such assistance is often limited, as each case contains a multitude of variables.¹⁹⁶⁹ In light of this, the Appeals Chamber has recognised that “[d]ifferences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results”.¹⁹⁷⁰

1719. All crimes under the Tribunal’s Statute are serious violations of international humanitarian law.¹⁹⁷¹ When determining a sentence, a Trial Chamber has considerable, though not unlimited, discretion on account of its obligation to determine penalties to fit the individual circumstances of an accused and to reflect the gravity of the crimes for which the accused has been convicted.¹⁹⁷²

1720. The Chamber has considered that under Rwandan law, genocide carries the possible penalty of life imprisonment, depending on the nature of the accused’s participation.¹⁹⁷³ In the Tribunal’s jurisprudence, principal perpetration generally warrants a higher sentence than aiding and abetting.¹⁹⁷⁴ However, this alone does not mean that a life sentence is the only appropriate sentence for a principal perpetrator of genocide.¹⁹⁷⁵ At this Tribunal, a sentence of life imprisonment is generally reserved for those who planned or ordered atrocities and those who participate in the crimes with particular zeal or sadism.¹⁹⁷⁶ Offenders receiving the most severe sentences tend to be senior authorities.¹⁹⁷⁷

¹⁹⁶⁸ *Dragomir Milošević* Appeal Judgement, para. 326; *Strugar* Appeal Judgement, para. 348.

¹⁹⁶⁹ *Dragomir Milošević* Appeal Judgement, para. 326; *Kvočka et al.* Appeal Judgement, para. 681.

¹⁹⁷⁰ *Dragomir Milošević* Appeal Judgement, para. 326; *Nikolić* Judgement on Sentencing Appeal, para. 19.

¹⁹⁷¹ *Kayishema and Ruzindana* Appeal Judgement, para. 367 (quoting Article 1 of the Statute). See also *Nyiramasuhuko et al.* Trial Judgement, paras. 6188-6199.

¹⁹⁷² *Nahimana et al.* Appeal Judgement, para. 1037.

¹⁹⁷³ Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996, as amended by Organic Law No.66/2008 of 21/11/2008 Modifying and Complementing Organic Law No. 31/2007 of 25/07/2007 Relating to the Abolition of the Death Penalty.

¹⁹⁷⁴ *Semanza* Appeal Judgement, para. 388.

¹⁹⁷⁵ *Ntakirutimana* Trial Judgement, paras. 791-793, 832-834, 908-909, 924 (imposing 25 years’ imprisonment for personal participation).

¹⁹⁷⁶ *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); *Nchamihigo* Trial Judgement, para. 395 (deputy prosecutor, the Chamber noting that he exhibited extreme zeal in killing); *Niyitegeka* Trial Judgement, para. 486; *Muhimana* Trial Judgement, paras.

1721. The gravity of the offences committed is the deciding factor in the determination of the sentence.¹⁹⁷⁸ Gravity entails the particular circumstances of the case, the form and degree of the participation of the accused in the crimes, and the number of victims.¹⁹⁷⁹ The consequences of the crime upon any victims who were directly injured are also relevant.¹⁹⁸⁰

1722. Pursuant to Article 23 of the Statute, and Rule 101 (B) of the Rules, the Chamber shall take into account the general practice regarding prison sentences in the courts of Rwanda, any aggravating circumstances, any mitigating circumstances, and the extent to which the convicted person has already served any penalty imposed by a court of any State for the same act. These factors are not exhaustive.¹⁹⁸¹

1723. Under Rwandan law, similar crimes as those at issue here carry the possible penalty of life imprisonment, depending on the nature of the accused's participation.¹⁹⁸²

1724. Aggravating circumstances need to be proven beyond reasonable doubt.¹⁹⁸³ The Chamber may only consider aggravating circumstances that are pleaded in the indictment,¹⁹⁸⁴ and any circumstance that is included as an element of the crime for which an individual is convicted will not be considered as an aggravating factor.¹⁹⁸⁵

1725. The Appeals Chamber has listed various factors which, if proven beyond reasonable doubt, may qualify as aggravating circumstances. These include the position of the accused,

604-616 (*conseiller*, but recounting the particularly atrocious manner in which the accused personally raped, killed, mutilated, and humiliated his victims).

¹⁹⁷⁷ Life sentences have been imposed against senior government authorities in: *Ndindabahizi* Trial Judgement, paras. 505, 508, 511 (Minister of Finance); *Niyitegeka* Trial Judgement, paras. 499, 502 (Minister of Information); *Kambanda* Trial Judgement, paras. 44, 61-62 (Prime Minister); *Kamuhanda* Trial Judgement, paras. 6, 764, 770 (Minister of Higher Education and Scientific Research). In addition, life sentences have been imposed on lower level officials, as well as those who did not hold government positions. See *e.g.*, *Nchamihigo* Trial Judgement, paras. 395-396 (deputy prosecutor in Cyangugu *préfecture*); *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).

¹⁹⁷⁸ *Nshogoza* Appeal Judgement, para. 98; *Nahimana et al.* Appeal Judgement, para. 1060.

¹⁹⁷⁹ *Munyakazi* Appeal Judgement, para. 185.

¹⁹⁸⁰ See *Blaškić* Appeal Judgement, para. 683 (addressing this issue in a subsection labeled "[t]he gravity of the offence").

¹⁹⁸¹ *Seromba* Appeal Judgement, para. 228; *Nahimana et al.* Appeal Judgement, para. 1038.

¹⁹⁸² *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 28 June 2011, paras. 47-50 (assessing Rwanda's penalty structure); *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-2000-61-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 17 November 2008, paras. 22-25 (same); *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008, paras. 22-25 (same). See also *Nyiramasuhuko et al.* Trial Judgement, paras. 6186, 6192 (finding Alphonse Nteziryayo guilty only of direct and public incitement to commit genocide, and considering that Rwandan law would carry the possible penalty of life imprisonment for similar crimes at issue in that Judgement); *Semanza* Appeal Judgement, para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice.'"), quoting *Serushago* Appeal Judgement, para. 30; *Dragan Nikolić* Appeal Judgement, para. 69.

¹⁹⁸³ *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, paras. 82, 294.

¹⁹⁸⁴ *Renzaho* Appeal Judgement, para. 615; *Simba* Appeal Judgement, para. 82.

¹⁹⁸⁵ *Ndindabahizi* Appeal Judgement, para. 137.

the length of time during which the crime continued, premeditation and motive, and the circumstances of the offences generally.¹⁹⁸⁶

1726. In circumstances where the Chamber has not found alleged superior responsibility beyond reasonable doubt, the Chamber may consider an individual's influence as an aggravating circumstance.¹⁹⁸⁷ Similarly, while a position of authority does not automatically warrant a harsher sentence, the abuse of such a position may constitute an aggravating factor.¹⁹⁸⁸

1727. Mitigating circumstances need only be established by the balance of probabilities.¹⁹⁸⁹ Such circumstances include an expression of remorse, good character with no prior criminal convictions, personal and family circumstances, the character of the accused subsequent to the conflict, duress, indirect participation, age and assistance to victims.¹⁹⁹⁰ Selective assistance of Tutsis may be given only limited weight as a mitigating factor,¹⁹⁹¹ and poor health is to be considered only in exceptional or rare cases.¹⁹⁹²

1728. Rule 86 (C) of the Rules states that “[t]he parties shall also address matters of sentencing in closing arguments”, and it is therefore the parties' prerogative to identify any relevant circumstances at the time. As a general rule, if a party fails to put forward relevant information at the appropriate time, the Chamber is not under an obligation to seek out such information.¹⁹⁹³ Nevertheless, to the extent that the parties did not identify any relevant circumstances, the Chamber will consider them in the interests of justice.

2. SUBMISSIONS

2.1 Prosecution

1729. The Prosecution submits that Karemera and Ngirumpatse should be sentenced to life imprisonment because they deliberately steered their country towards genocide. The coordinated, systematic and widespread attacks against a persecuted, particularly vulnerable ethnic minority caused wanton suffering and the death of nearly 75% of Rwanda's Tutsi population in 1994. These crimes not only threaten the foundations of the society in which they occurred, but also those of the international community as a whole.¹⁹⁹⁴

1730. The Chamber should consider the general practice regarding sentencing in the courts of Rwanda, as provided for by Article 23(1) of the Statute and Rule 101(iii). The Accused, if tried in Rwanda, would be considered “category 1” offenders and would face the maximum penalty available to Rwandan courts.¹⁹⁹⁵

¹⁹⁸⁶ *Blaškić* Appeal Judgement, para. 686.

¹⁹⁸⁷ *Semanza* Appeal Judgement, paras. 335-336.

¹⁹⁸⁸ *Munyakazi* Appeal Judgement, para. 170; *Dragomir Milošević* Appeal Judgement, para. 302.

¹⁹⁸⁹ *Nahimana et al.* Appeal Judgement, para. 1038; *Kajelijeli* Appeal Judgement, para. 294.

¹⁹⁹⁰ *Blaškić* Appeal Judgement, para. 696.

¹⁹⁹¹ *Nchamihigo* Appeal Judgement, para. 389.

¹⁹⁹² *Blaškić* Appeal Judgement, para. 696.

¹⁹⁹³ *Setako* Appeal Judgement, para. 286; *Rukundo* Appeal Judgement, para. 255; *Bikindi* Appeal Judgement, para. 165; *Muhimana* Appeal Judgement, para. 231.

¹⁹⁹⁴ Prosecution Closing Brief, para. 535.

¹⁹⁹⁵ *Id.*, para. 536.

1731. The Accused were among the most learned, respected, powerful and privileged citizens of Rwanda, yet they used their gifts and authority to corrupt and criminalise an entire nation, victimising generations of Rwandans.¹⁹⁹⁶

1732. As members of the MRND Executive Bureau, the Accused were revered figures within the MRND party and its *Interahamwe* youth wing. Their influence over the physical perpetrators of the crimes was sufficiently substantial to constitute an aggravating factor for sentencing. Moreover, Édouard Karemera worked closely with various government ministries since 1977 and occupied several key ministerial positions for over twenty years, commanding particular respect in his native region of Kibuye. His position of authority is an aggravating factor for sentencing.¹⁹⁹⁷

1733. Ngirumpatse was a popular, well-known, and respected politician in Kigali who once served as Minister of Justice. There is no greater outrage than for a person so highly esteemed to use his status and authority to influence thousands of individuals to kill, rape, and maim innocent, unarmed civilians just so that he could hold on to power and privilege as a member of the ruling political class.¹⁹⁹⁸

1734. The crimes committed by the Accused were calculated and premeditated. This is evident in the degree of preparation and coordination that was required to implement their criminal designs. No mitigating circumstances exist because the Accused have shown no remorse for the crimes they committed; instead, they characterised themselves as victims, refusing to recognise their wrongful acts. They deserve no leniency in their punishment.

2.2 Édouard Karemera

1735. The Chamber should acquit Karemera on all counts and order his immediate release. He should be granted the benefit of mitigating circumstances, if convicted of any count. His important role in the birth of multiparty politics in Rwanda, his commitment to the Arusha Accords, the assistance he gave to millions of fleeing internally displaced persons, and the many favourable testimonies regarding his integrity are mitigating circumstances.¹⁹⁹⁹

1736. Karemera should be granted adequate damages for the prejudice he has suffered as a result of the violation of his right to be tried without undue delay.²⁰⁰⁰

2.3 Matthieu Ngirumpatse

1737. Although Ngirumpatse did not present any submissions in his closing brief that expressly concern sentencing, the Chamber has noticed that the chapter in his closing brief titled "M. Ngirumpatse's Actions and Character" contains several assertions that could be regarded as an attempt to submit mitigating circumstances. Therefore, in the interests of justice, the Chamber will consider the following when determining the appropriate sentence for Ngirumpatse.

1738. Ngirumpatse was a gifted student and diplomat, serving his country in a multitude of posts in Africa and Europe before becoming Minister of Justice in the first multiparty

¹⁹⁹⁶ *Id.*, para. 537.

¹⁹⁹⁷ Prosecution Closing Brief, paras. 538, 539.

¹⁹⁹⁸ *Id.*, para. 540.

¹⁹⁹⁹ Karemera Closing Brief, para. 670.

²⁰⁰⁰ *Id.*

government in Rwanda until April 1992, when he became National Secretary of the MRND. He was known for his commitment, culture, art, and social sciences, serving as promoter, founder, or high official in several associations in these fields and contributing his skills as poet, composer, and musician.²⁰⁰¹

1739. He endeavoured to recruit Tutsis into his choir, SONARWA (where he served as Director General), Eden Garden (a business managed by his wife), and in his private activities. Ngirumpatse attended Kayibanda's wedding alongside members of the Rwandan opposition, supported Tutsi traditional culture, and maintained business ties with Paul Kagame's father-in-law despite the sacrifice that such acts entailed and the manner in which it compromised him in his political and social circles.²⁰⁰²

1740. Ngirumpatse's Defence witnesses unanimously praised him as a tolerant, peaceful, unifying, selfless, and patriotic man with a strong sense of justice and law. He led the democratization process in Rwanda, braving slander and defamation. During the events that followed President Habyarimana's death, Ngirumpatse appealed for international assistance, restoration of peace, and respect for life to the best of his ability. He opened his home to provide refuge to those in need in the early hours of the tragedy that befell Rwanda, striving to save the greatest number of persons possible, regardless of their ethnicity, at the risk of his own safety. Ngirumpatse saved an entire people by contributing to *Opération Turquoise* through diplomacy.²⁰⁰³

3. DELIBERATIONS

3.1 Édouard Karemera

3.1.1 Gravity of the Offences

1741. The Chamber has convicted Karemera of five crimes: direct and public incitement to commit genocide, genocide, rape as a crime against humanity, extermination as a crime against humanity, and killing and causing violence to health and well-being as serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II. The Prosecution has linked the inchoate crime of direct and public incitement to commit genocide with specific instances of killings or other attacks that directly injured victims.

1742. These crimes were serious violations of international humanitarian law, three of which require genocidal intent (conspiracy to commit genocide, direct and public incitement to commit genocide, genocide). The Chamber also takes particular note that Karemera is directly responsible for these crimes because he actively committed them. In this regard, the Chamber has found that Karemera committed conspiracy to commit genocide and direct and public incitement to commit genocide.

1743. Furthermore, he instigated, ordered, and aided and abetted genocide, extermination as a crime against humanity, and killing and causing violence to health and well-being as serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II. He also committed these crimes via a basic joint criminal enterprise whose purpose was to exterminate the Tutsi population of Rwanda. Moreover, he bears extended liability for

²⁰⁰¹ Ngirumpatse Closing Brief, paras. 87-92.

²⁰⁰² *Id.*, para. 93.

²⁰⁰³ *Id.*, paras. 94-100.

the joint criminal enterprise of which he was a member for rapes and sexual assaults as crimes against humanity.

1744. There is no doubt that the commission of these crimes is inherently grave, regardless of the circumstances surrounding their commission, instigation, ordering, and aiding and abetting.

1745. Given the circumstances under which Karemera committed these crimes and the extended time period during which he acted, there is no doubt that he knew of their consequences. Moreover, his role in expanding this horror to areas which had remained relatively peaceful further enhances the gravity of his crimes.

3.1.2 Individual, Aggravating, and Mitigating Circumstances

1746. As he committed his crimes, Karemera was the vice-president of the MRND, the most powerful political party in Rwanda. He was also the vice-president of its Executive Bureau and, thus, at the highest level of policy-making in the country. Furthermore, he eventually became Minister of the Interior for the Interim Government, which meant that he commanded the entire territorial administration in the part of Rwanda which was under the control of the Interim Government. These were undoubtedly positions of authority during the relevant time period. Instead of utilising his position and the influence that flows from it to reintroduce harmony into Rwanda, Karemera abused it to conspire, commit, incite, instigate, order, and aid and abet crimes designed to assist with, or which resulted from, the execution of a joint criminal enterprise to exterminate the Tutsi population of Rwanda.

1747. Moreover, the Chamber recalls that it has found Karemera responsible as a superior for genocide, rape as a crime against humanity, extermination as a crime against humanity, and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II and considers this an aggravating circumstance.

1748. As for individual and mitigating factors, the Chamber first notes that prior to the tension surrounding the Arusha Accords, Karemera appears to have had a peaceful disposition and to have worked towards democratic principles.²⁰⁰⁴ On a few select occasions, he expressed regret that killings and rapes had occurred.²⁰⁰⁵ The Chamber accords these factors some weight.

1749. In the Chamber's view, however, Karemera's individual and mitigating factors are not sufficiently exceptional or rare as to justify mitigation. The Chamber also does not consider that the length of these proceedings or of his detention warrants mitigation because it has not found that there was a violation of his rights in this respect.²⁰⁰⁶

1750. These circumstances will be taken into account in determining an appropriate sentence. Nevertheless, the Chamber recalls that the gravity of the offences is to be the primary consideration in sentencing.²⁰⁰⁷

²⁰⁰⁴ Karemera Closing Brief, para. 670, T. 23 August 2011, p. 41.

²⁰⁰⁵ T. 25 May 2009, p. 37; T. 27 May 2009, p. 35.

²⁰⁰⁶ See generally *Setako* Appeal Judgement, para. 297.

²⁰⁰⁷ See, e.g., *Nahimana et al.* Appeal Judgement, para. 1038.

3.2 Matthieu Ngirumpatse

3.2.1 Gravity of the Offences

1751. The Chamber has convicted Ngirumpatse of five crimes: direct and public incitement to commit genocide, genocide, rape as a crime against humanity, extermination as a crime against humanity, and killing and causing violence to health and well-being as serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II. The Prosecution has linked the inchoate crime of direct and public incitement to commit genocide with specific instances of killings or other attacks that directly injured victims.

1752. These crimes were serious violations of international humanitarian law, three of which require genocidal intent (conspiracy to commit genocide, direct and public incitement to commit genocide, genocide). The Chamber also takes particular note that Ngirumpatse is directly responsible for these crimes because he actively committed them. In this regard, the Chamber has found that Ngirumpatse committed conspiracy to commit genocide.

1753. Furthermore, he instigated and aided and abetted genocide, extermination as a crime against humanity, and killing and causing violence to health and well-being as serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II. He also committed these crimes via a basic joint criminal enterprise whose purpose was to exterminate the Tutsi population of Rwanda. Moreover, he bears extended liability for the joint criminal enterprise of which he was a member for rapes and sexual assaults as crimes against humanity.

1754. There is no doubt that the commission of these crimes is inherently grave, regardless of the circumstances surrounding their commission, instigation, and aiding and abetting.

1755. Given the circumstances under which Ngirumpatse committed these crimes and the extended time period during which he acted, there is no doubt that he knew of their consequences. Moreover, his role in expanding this horror to areas which had remained relatively peaceful further enhances the gravity of his crimes.

3.2.2 Individual, Aggravating, and Mitigating Circumstances

1756. As he committed his crimes, Ngirumpatse was the president of the MRND, the most powerful political party in Rwanda. He was also the chairman of its Executive Bureau and, thus, at the highest level of policy-making in the country. As for individual and mitigating factors, the Chamber notes that prior to the tension surrounding the Arusha Accords, Ngirumpatse appears to have been a peaceful and dedicated civil servant and politician who made innumerable and long-lasting contributions to politics, arts, and social sciences in Rwanda. Furthermore, he had many Tutsi acquaintances and worked to preserve Tutsi traditional culture. He opened his home to provide refuge to several persons in need in the early hours of the tragedy that befell Rwanda. Ngirumpatse also expressed his remorse for the deaths and the suffering of all Rwandans during the genocide on multiple occasions.²⁰⁰⁸ The Chamber accords these factors some weight.

²⁰⁰⁸ T. 19 January 2011, p. 9; T. 26 January 2011, p. 37; T. 28 January 2011, p. 29; T. 15 February 2011, p. 30; T. 18 February 2011, p. 15.

1757. Nevertheless, it is clear that instead of utilising his position and the influence that flows from it to reintroduce harmony into Rwanda, Ngirumpatse abused it to conspire, commit, incite, instigate, order, and aid and abet crimes designed to assist with, or which resulted from, the execution of a joint criminal enterprise to exterminate the Tutsi population of Rwanda.

1758. Moreover, the Chamber recalls that it has found Ngirumpatse responsible as a superior for genocide, rape as a crime against humanity, extermination as a crime against humanity, and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II and considers this an aggravating circumstance.

1759. Accordingly, Ngirumpatse's individual and mitigating factors are not sufficiently exceptional or rare as to justify mitigation. The Chamber also does not consider that the length of these proceedings or of his detention warrants mitigation because it has not found that there was a violation of his rights in this respect.²⁰⁰⁹

1760. These circumstances will be taken into account in determining an appropriate sentence. Nevertheless, the Chamber recalls that the gravity of the offences is to be the primary consideration in sentencing.²⁰¹⁰

²⁰⁰⁹ See generally *Setako* Appeal Judgement, para. 297.

²⁰¹⁰ See, e.g., *Nahimana et al.* Appeal Judgement, para. 1038.



3.2.3 Conclusion

1761. 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.²⁰¹¹ The convictions for all counts are based largely on the same underlying criminal acts.

1762. Considering all the relevant circumstances discussed above, the Chamber **SENTENCES** Édouard Karemera to

LIFE IMPRISONMENT

1763. The Chamber **SENTENCES** Matthieu Ngirumpatse to

LIFE IMPRISONMENT

4. CONSEQUENTIAL ORDERS

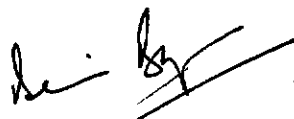
1764. The above sentences shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

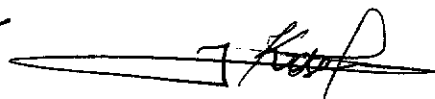
1765. Until their transfer to their designated places of imprisonment, Édouard Karemera and Matthieu Ngirumpatse shall be kept in detention under the present conditions.

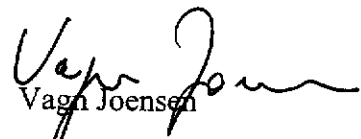
1766. Pursuant to Rule 102 (B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

1767. The Chamber requests the Registry to make the necessary arrangements.

Arusha, 2 February 2012


Dennis C.M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

(Seal of the Tribunal)



²⁰¹¹ *Nahimana et al.* Appeal Judgement, paras. 1042-1043; *Simba* Trial Judgement, para. 445; *Ndindabahizi* Trial Judgement, para. 497.

ANNEX A: PROCEDURAL HISTORY**1998**

1768. *The Prosecutor v. Mathieu Ngirumpatse*, Case NO. ICTR-97-28-DP, Order for Transfer and Provisional Detention (Under Rule 40 *bis* of the Rules) (TC), 30 June 1998.

1769. *The Prosecutor v. Mathieu Ngirumpatse*, Case NO. ICTR-97-28-DP, Order Extending Provisional Detention (Under Rule 40 *bis* of the Rules) (TC), 10 August 1998.

1770. *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-I, Warrant of Arrest and Order for Continued Detention (TC), 29 August 1998.

1999

1771. *The Prosecutor v. Mathieu Ngirumpatse, Édouard Karemera, Andre Rwamakuba, Joseph Nzirorera, and Juvenal Kajelijeli*, Case No. ICTR-98-44-I (“*Ngirumpatse et al.*”), Decision on the Prosecutor’s Request for Amendment of the Order of Confirmation and Non-Disclosure of the Indictment (TC), 6 April 1999.

1772. *The Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Decision on the Defence Motion for the Release of the Accused (TC), 10 December 1999.

1773. *The Prosecutor v. Matthieu Ngirumpatse*, Case No. ICTR-97-44-I, Decision on the Defence Motion Challenging the Lawfulness of the Arrest and Detention and Seeking Return or Inspection of Seized Items (TC), 10 December 1999.

1774. *The Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Decision on the Defence Motion for the Restitution of Documents and Other Personal or Family Belongings Seized (Rule 40 (C) of the Rules of Procedure and Evidence), and the Exclusion of such Evidence which may be Used by the Prosecutor in Preparing an Indictment Against the Applicant (TC), 10 December 1999.

2000

1775. *The Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-I, Corrigendum to the Decision on the Defence Motion for the Restitution of Documents and Other Personal or Family Belongings Seized (Rule 40 (C) of the Rules of Procedure and Evidence), and the Exclusion of such Evidence which may be Used by the Prosecutor in Preparing an Indictment Against the Applicant (TC), 13 April 2000.

1776. *The Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-96-14-T; *The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme Bicomumpaka, and Prosper Mugiraneza*, Case No. ICTR-99-50-T; *The Prosecutor v. Augustin Bizimana, Édouard Karemera, Callixte Nzabonimana, André Rwamakuba, Mathieu Ngirumpatse, Joseph Nzirorera, Félicien Kabuga, and Juvénal Kajelijeli*, Case No. ICTR-98-44-T, Decision on the Prosecutor’s Motion to Withdraw the Motion for Joinder of the Accused (TC), 27 April 2000.

1777. *Mathieu Ngirumpatse v. The Prosecutor*, Case No. ICTR-98-44-A, Decision (Interlocutory Appeals Filed Against the Decisions of 18 November 1999 and 10 December 1999) (AC), 28 April 2000.

1778. *Édouard Karemera v. The Prosecutor*, Case No. ICTR-98-44-AR72, Decision (AC), 18 May 2000.

1779. *The Prosecutor v. Joseph Nzirorera*, Case No. ICTR-97-20-I, Decision on the Defence Motion Seeking an Order to the Prosecutor to Investigate the Circumstances of the Crash of President Habyarimana's Plane (TC), 2 June 2000.

1780. *The Prosecutor v. Mathieu Ndirumpatse, Joseph Nzirorera, and Juvénal Kajelijeli*, Case No. ICTR-98-44-I, Decision on the Prosecutor's Motion for Joinder of Accused and on the Prosecutor's Motion for Severance of the Accused (TC), 29 June 2000.

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2661. *Karemera et al.*, Order Reclassifying Prosecution Closing Brief and Annexes as Public Filings (TC), 3 November 2011.
2662. *Karemera et al.*, Ordonnance préliminaire à la décision portant sur la communication de documents en application de l'article 68(A) du règlement (TC), 3 November 2011.
2663. *Karemera et al.*, Décision faisant suite à l'ordonnance de la chambre concernant la communication confidentielle du procureur d'éléments de preuve en vertu de l'article 68(A) (TC), 14 November 2011.
2664. *Karemera et al.*, Scheduling Order (TC), 21 November 2011.

ANNEX B: CITED MATERIALS AND DEFINED TERMS

1. JURISPRUDENCE

1.1 International Criminal Tribunal for Rwanda

Akayesu

Prosecutor v. Akayesu, Case No ICTR-96-4-T, Judgement (TC), 2 September 1998 ("Akayesu Trial Judgement")

Prosecutor v. Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 ("Akayesu Appeal Judgement")

Bagilishema

Prosecutor v. Bagilishema, Case No ICTR-95-1A-T, Judgement (TC), 7 June 2001 ("Bagilishema Trial Judgement")

Prosecutor v. Bagilishema, Case No ICTR-95-1A-A, Judgement (AC), 3 July 2002 ("Bagilishema Appeal Judgement")

Bagosora et al.

Prosecutor v. Bagosora, Kabiligi, Ntabakuze, and Nsengiyumva, Case No. ICTR-98-41-T, Judgement (TC), 18 December 2008 (“Bagosora et al. Trial Judgement”)

Bikindi

Prosecutor v. Bikindi, Case No ICTR-01-72-T, Judgement (TC), 2 December 2008 (“Bikindi Trial Judgement”)

Prosecutor v. Bikindi, Case No ICTR-01-72-A, Judgement (AC), 18 March 2010 (“Bikindi Appeal Judgement”)

Bizimungu et. al.

Prosecutor v. Casmir Bizimungu, Mugenzi, Bicamumpaka, and Mugiraneza, Case No. ICTR-99-50-T, Judgement (TC), 30 September 2011 (“Bizimungu et. al. Trial Judgement”)

Cyangugu

Prosecutor v. Ntagurera, Bagambiki, and Imanishimwe, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“Cyangugu Appeal Judgement”)

Gacumbitsi

Prosecutor v. Gacumbitsi, Case No ICTR-01-64-T, Judgement (TC), 17 June 2004 (“Gacumbitsi Trial Judgement”)

Gacumbitsi v. Prosecutor, Case No. ICTR-01-64-A, Judgement (AC), 7 July 2006 (“Gacumbitsi Appeal Judgement”)

Kambanda

Prosecutor v. Kambanda, Case No. ICTR-97-23-A, Judgement (AC), 19 October 2000 (“Kambanda Appeal Judgement”)

Kamuhanda

Kamuhanda v. Prosecutor, Case No. ICTR-99-54A-A, Judgement (AC), 19 September 2005 (“Kamuhanda Appeal Judgement”)

Kajelijeli

Prosecutor v. Kajelijeli, Case No. ICTR-98-44A-T, Judgement (TC), 1 December 2003, (“Kajelijeli Trial Judgement ”)

Juvénael Kajelijeli v. Prosecutor, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 (“Kajelijeli Appeal Judgement”)

Kalimanzira

Prosecutor v. Kalimanzira, Case No. ICTR-05-88-T, Judgement (TC), 22 June 2009 (“Kalimanzira Trial Judgement”)

Kalimanzira v. Prosecutor, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010 (“Kalimanzira Appeal Judgement”)

Karemera et. al.

Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera, Case No ICTR-98-44-T, Decision on Appeals Chamber Remand of Judicial Notice (TC), 11 December 2006 (“11 December 2006 Judicial Notice Decision”).

Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera, Case No ICTR-98-44-T, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006.

Karera

Karera v. Prosecutor, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 ("Karera Appeal Judgement")

Kayishema and Ruzindana

Prosecutor v. Kayishema and Ruzindana, Case No ICTR-95-1-T, Judgement (TC), 21 May 1999 ("Kayishema and Ruzindana Trial Judgement")

Prosecutor v. Kayishema and Ruzindana, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001 ("Kayishema and Ruzindana Appeal Judgement")

Muhimana

Prosecutor v. Muhimana, Case No ICTR-95-1B-T, Judgement (TC), 28 April 2005 ("Muhimana Trial Judgement")

Muhimana v. Prosecutor, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 ("Muhimana Appeal Judgement")

Munyakazi

Prosecutor v. Munyakazi, Case No ICTR-97-36A-T, Judgement (TC). 30 June 2010 ("Munyakazi Trial Judgement")

Prosecutor v. Munyakazi, Case No ICTR-97-36A-A, Judgement (AC), 28 September 2011 ("Munyakazi Appeal Judgement")

Musema

Prosecutor v. Musema, Case No ICTR-96-13-A, Judgement (TC), 27 January 2000 ("Musema Trial Judgement")

Muvunyi

Muvunyi v. Prosecutor, Case No. ICTR-00-55A-A, Judgement (AC), 29 August 2008 ("Muvunyi Appeal Judgement")

Prosecutor v. Muvunyi, Case No. ICTR-00-55A-T, Judgement (TC), 11 February 2010 ("Muvunyi Trial Judgement").

Prosecutor v. Muvunyi, Case No. ICTR-00-55A-T, Judgement (TC), 12 September 2006 ("Muvunyi First Trial Judgement").

Nahimana et al.

Prosecutor v. Nahimana, Barayagwiza, and Ngeze, Case No. ICTR-99-52-T, Judgement (TC), 3 December 2003 ("Nahimana et al. Trial Judgement")

Nahimana, Barayagwiza, and Ngeze. v. Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 ("Nahimana et al. Appeal Judgement")

Nchamihigo

Prosecutor v. Nchamihigo, Case No. ICTR-01-63-I, Judgement (TC), 12 November 2008

Ndindabahizi

Ndindabahizi v. Prosecutor, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 (“Ndindabahizi Appeal Judgement”)

Ndindiliyimana et. al.

Prosecutor v. Ndindiliyimana, Augustin Bizimungu, Nzuwonemeye, and Sagahutu, Judgement (TC), 17 May 2011 (“Ndindiliyimana et. al. Trial Judgement”)

Niyitegeka

Prosecutor v. Niyitegeka, Case No. ICTR-96-14-T, Judgement (TC), 16 May 2003 (“Niyitegeka Trial Judgement”)

Niyitegeka v. Prosecutor, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 (“Niyitegeka Appeal Judgement”)

Nsengimana

Prosecutor v. Nsengimana, Case No ICTR-01-69-T, Judgement (TC), 17 November 2009 (“Nsengimana Trial Judgement”)

Ntagerura et al.

Prosecutor v. Ntagerura, Bagambiki and Imanishimwe, Case No ICTR-99-46-T, Judgement (TC), 25 February 2004 (“Cyangugu Trial Judgement”)

Prosecutor v. Ntagerura, Bagambiki, and Imanishimwe, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 (“Cyangugu Appeal Judgement”)

Ntakirutimana

Prosecutor v. Ntakirutimana and Ntakirutimana, Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 (“Ntakirutimana Appeal Judgement”)

Nyiramasuhuko et al.

Prosecutor v. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi, and Ndayambje, Case No. ICTR-98-42-T, Judgement (TC), 24 June 2011 (“Nyiramasuhuko et al. Trial Judgement”) (“Butare Trial Judgement”)

Renzaho

Prosecutor v. Renzaho, Case No. ICTR-97-31-T, Judgement (TC), 14 July 2009 (“Renzaho Trial Judgement”)

Renzaho v. Prosecutor, Case No. ICTR-97-31-A, Judgement (AC), 1 April 2011 (“Renzaho Appeal Judgement”)

Ruggiu

Prosecutor v. Ruggiu, Case No. ICTR-97-32-I, Judgement (TC), 1 June 2000 (“Ruggiu Trial Judgement”)

Rukundo

Prosecutor v. Rukundo, Case No. ICTR-01-70-T, Judgement (TC), 27 February 2009 (“Rukundo Trial Judgement”)

Prosecutor v. Rukundo, Case No ICTR-01-70-A, Judgement (AC), 20 October 2010 (“Rukundo Appeal Judgement”)

Rutaganda

Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgement (TC), 6 December 1999 ("Rutaganda Trial Judgement")

Prosecutor v. Rutaganda, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 ("Rutaganda Appeal Judgement")

Rwamakuba

Prosecutor v. Rwamakuba, Case No ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide (AC), 22 October 2004 ("Rwamakuba Appeal Chamber Decision")

Semanza

Prosecutor v. Semanza, Case No ICTR-97-20-T, Judgement (TC), 15 May 2003 ("Semanza Trial Judgement")

Semanza v. Prosecutor, Case No ICTR-97-20-A, Judgement (AC), 20 May 2005 ("Semanza Appeal Judgement")

Seromba

Prosecutor v. Seromba, Case No ICTR-01-66-I, Judgement (TC), 13 December 2006 ("Seromba Trial Judgement")

Prosecutor v. Seromba, Case No. ICTR-01-66-A, Judgement (AC), 12 March 2008 ("Seromba Appeal Judgement")

Setako

Prosecutor v. Setako, Case No. ICTR-04-81-T, Judgement (TC), 25 February 2010 ("Setako Trial Judgement")

Setako v. Prosecutor, Case No ICTR-04-81-A, Judgement (AC), 28 September 2011 ("Setako Appeal Judgement")

Simba

Prosecutor v. Simba, Case No. ICTR-01-76-T, Judgement (TC), 13 December 2005 ("Simba Trial Judgement")

Simba v. Prosecutor, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 ("Simba Appeal Judgement")

Zigiranyirazo

Prosecutor v. Zigiranyirazo, Case No. ICTR-01-73-T, Judgement (TC), 18 December 2008 ("Zigiranyirazo Trial Judgement")

Prosecutor v. Zigiranyirazo, Case No. ICTR-01-73-A, Judgement (AC), 16 November 2009 ("Zigiranyirazo Appeal Judgement")

1.2 International Criminal Tribunal for the Former Yugoslavia

Aleksovski

Prosecutor v. Aleksovski, Case No IT-95-14/1-A, Judgement (AC), 24 March 2000 ("Aleksovski Appeal Judgement")

Blagojević and Jokić

Prosecutor v. Blagojević and Jokić, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 ("Blagojević and Jokić Appeal Judgement")

Blaškić

Prosecutor v. Blaškić, Case No IT-95-14-T, Judgement (TC), 3 March 2000 (“Blaškić Trial Judgement”)

Prosecutor v. Blaškić, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 (“Blaškić Appeal Judgement”)

Boškoski and Tarčulovski

Prosecutor v. Boškoski and Tarčulovski, Case No IT-04-82-A, Judgement (AC), 19 May 2010 (“Boškoski and Tarčulovski Appeal Judgement”)

Brđanin

Prosecutor v. Brđanin, Case No IT-99-36-T, Judgement (TC), 1 September 2004 (“Brđanin Trial Judgement”)

Prosecutor v. Brđanin, Case No IT-99-36-A, Judgement (AC), 3 April 2007 (“Brđanin Appeal Judgement”)

Čelebići

Prosecutor v. Mucić, Delić, and Landžo, Case No. IT-96-21-Abis, Judgement (AC), 8 April 2003 (“Čelebići Appeal Judgement”)

Delić

Prosecutor v. Delić, Case No IT-04-83-T, Judgement (TC), 15 September 2008 (“Delić Trial Judgement”)

Galić

Prosecutor v. Galić, Case No IT-98-29-A, Judgement (AC), 30 November 2006 (“Galić Appeal Judgement”)

Hadžihasanović and Kubura

Prosecutor v. Hadžihasanović and Kubura, Case No IT-01-47-A, Judgement (AC), 22 April 2008 (“Hadžihasanović and Kubura Appeal Judgement”)

Halilović

Prosecutor v. Halilović, Case No IT-01-48-T, Judgement (TC), 16 November 2005 (“Halilović Trial Judgement”)

Prosecutor v. Halilović, Case No IT-01-48-A, Judgement (AC), 16 October 2007 (“Halilović Appeal Judgement”)

Jelisić

Prosecutor v. Jelisić, Case No IT-95-10-A, Judgement (AC), 5 July 2001 (“Jelisić Appeal Judgement”)

Kordić and Čerkez

Prosecutor v. Kordić and Čerkez, Case No IT-95-14/2-A, Judgement (AC), 17 December 2004 (“Kordić and Čerkez Appeal Judgement”)

Krajišnik

Prosecutor v. Krajišnik, Case No IT-00-39-T, Judgement (TC). 27 September 2006 (“Krajišnik Trial Judgement”)

The Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-A, Judgement (AC), 17 March 2009 (“Momčilo Krajišnik Appeal Judgement”)

Krnojelac

Prosecutor v. Krnojelac, Case No IT-97-25-T, Judgement (TC), 15 March 2002 (“Krnojelac Trial Judgement”)

Prosecutor v. Krnojelac, Case No IT-97-25-A, Judgement (AC), 17 September 2003 (“Krnojelac Appeal Judgement”)

Krstić

Prosecutor v. Krstić, Case No IT-98-33-A, Judgement (AC), 19 April 2004 (“Krstić Appeal Judgement”)

Kupreškić et al.

Prosecutor v. Kupreškić, Kupreškić, Josipović, and Šantić Case No. IT-95-16-A, Judgement (AC), 23 October 2001 (“Kupreškić et al. Appeal Judgement”)

Kunarac et al.

Prosecutor v. Kunarac et al., Case No IT-96-23 & 23/1-A, Judgement (AC). 12 June 2002 (“Kunarac et al. Appeal Judgement”)

Kvočka et al.

The Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 (“Kvočka et al. Appeal Judgement”)

Limaj, Bala and Musliu

Prosecutor v. Limaj, Bala and Musliu, Case No IT-03-66-T, Judgement (TC), 30 November 2005 (“Limaj, Bala and Musliu Trial Judgement”)

Martić

Prosecutor v. Martić, Case No IT-95-11-A, 8 October 2008 (“Martić Appeal Judgement”)

Milošević

Prosecutor v. Milošević, Case No IT-98-29/1-A, Judgement (AC), 12 November 2009 (“Milošević Appeal Judgement”)

Mrkšić and Šljivančanin

Prosecutor v. Mrkšić and Šljivančanin, Case No IT-95-13/1-A, Judgement (AC), 5 May 2009 (“Mrkšić and Šljivančanin Appeal Judgement”)

Mucić, Delić, Landžo and Delalić

Prosecutor v. Mucić, Delić, Landžo and Delalić, Case No IT-96-21-T, Judgement (TC), 16 November 1996 (“Čelebići Trial Judgement”)

Prosecutor v. Mucić, Delić, Landžo and Delalić, Case No IT-96-21-A, Judgement (AC), 20 February 2001, para. 232 (“Čelebići Appeal Judgement”)

Naletilić and Martinović

Prosecutor v. Naletilić and Martinović, Case No. IT-98-34-A, Judgement (AC), 3 May 2006 (“Naletilić and Martinović Appeal Judgement”)

Orić



Prosecutor v. Orić, Case No IT-03-68-T, Judgement (TC), 30 June 2006 (“Orić Trial Judgement”)

Prosecutor v. Orić, Case No IT-03-68-A, Judgement (AC), 3 July 2008 (“Orić Appeal Judgement”)

Popovic et al.

Prosecutor v. Popovic et al., Case No IT-05-88-T, Judgement (TC). 10 June 2010 (“Popovic et al. Trial Judgement”)

Simić

Prosecutor v. Simić, Case No IT-95-9-A, Judgement (AC), 28 November 2006 (“Simić Appeal Judgement”)

Stakić

Prosecutor v. Stakić, Case No IT-97-24-A, Judgement (AC). 22 March 2006 (“Stakić Appeal Judgement”)

Strugar

Prosecutor v. Strugar, Case No IT-01-42-T, Judgement (TC), 31 January 2005 (“Strugar Trial Judgement”)

Prosecutor v. Strugar, Case No IT-01-42-A, Judgement (AC), 17 July 2008 (“Strugar Appeal Judgement”)

Tadić

Prosecutor v. Tadić, Case No. IT-94-1-A, Judgement (AC), 15 July 1999 (“Tadić Appeal Judgement”)

Vasiljević

Prosecutor v. Vasiljević, Case No IT-98-32-A, Judgement (AC), 25 February 2004 (“Vasiljević Appeal Judgement”)

2. DEFINED TERMS AND ABBREVIATIONS

Arusha Accords

A set of five accords (or protocols) signed in Arusha, Tanzania on 4 August 1993, by the Rwandan Government and the Rwandan Patriotic Front, designed to implement a power-sharing arrangement through a broad-based transitional government

BBC

British Broadcasting Corporation

BBTG

Broad Based Transitional Government, established pursuant to the Arusha Accords

Bourgmestre

Mayor of a *commune*

CDR

Coalition pour la Défense de la République

Cellule



A political and administrative subdivision of a *secteur*

Closing Arguments

T. 22 August 2011; T. 23 August 2011; T. 24 August 2011; T. 25 August 2011

Commune

A political and administrative subdivision of a *préfecture*

Conseiller

An individual responsible for the administration of a *secteur*

DRC

Democratic Republic of Congo (formerly Zaire)

EER

École Évangéliste du Rwanda

ESO

École des Sous-Officiers, an officers' training school in Butare *préfecture*

ETO

École Technique Officielle

fn.

Footnote

Gendarme

An officer of the *Gendarmerie*

Gendarmerie nationale

Replaced the National Police force in 1973, responsible for maintaining public law and order and enforcing the laws in force in Rwanda; members were assigned to public security territorial companies and brigades

HC

Reference to French transcripts heard in closed session

ICS

Reference to English transcripts heard in closed session

ICTR or Tribunal

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

ICTY

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Indictment

Prosecutor v. Karemera et. al., Case No. ICTR-98-44-T, Prosecutor's Submission of Eighth Amended Indictment Pursuant to Trial Chamber III Order of 23 August 2010, filed on 24 August 2010, ("Indictment")

Interahamwe

The youth wing of the MRND

Interim Government

Government formed on 8 April 1994

IRST

L'Institut de Recherche Scientifique et Technique (National Institute of Scientific Research)

Karemera Closing Brief

Mémoire Final de Karemera conformément a l'article 86 B) du règlement de procédure et de preuve, filed on 2 June 2011, ("Karemera Closing Brief")

Karemera Pre-Defence Brief

Mémoire préalable a la présentation de la preuve a décharge d'Édouard Karemera, filed on 31 January 2008, ("Karemera Pre-Defence Brief")

MDR

Mouvement Démocratique Républicain

MDR-Power

A wing of the *Mouvement Démocratique Républicain* Party

MIFAPROFE

Ministry of the Family and Women's Development

MIJEUMA

Ministry of Youth and Associated Movements

MINADEF

Ministry of Defence

MINIFOP

Ministry of Public Service and Employment

MININTER

Ministry of the Interior

MINITRAP

Ministry of Public Works

MINITRASO

Ministry of Labour and Social Affairs

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement

MSF

Médecins Sans Frontières

NGO

Non-Governmental Organisation

Ngirumpatse Closing Brief

Mémoire final pour Matthieu Ngirumpatse, filed on 2 June 2011, (“Ngirumpatse Closing Brief”)

Ngirumpatse Pre-Defence Brief

Mémoire préalable a la présentation de la preuve a décharge d’Matthieu Ngirumpatse, (“Ngirumpatse Pre-Defence Brief”)

OAU

Organisation of African Unity

ONATRACOM

Office National de Transport en Commun (National Office for Public Transport)

ORINFOR

Office Rwandais d’Information (Rwandan Office of Information)

OTP

ICTR Office of the Prosecutor

p. (pp.)

page (pages)

PAMU

Projet Agricole de Muganza (Muganza Agricultural Project)

para. (paras.)

paragraph (paragraphs)

PDC

Parti Démocrate Chrétien (Christian Democrat Party)

PL

Parti Libéral (Liberal Party)

Préfecture

A territorial and administrative unit in Rwanda

Préfet

An individual responsible for the administration of a *préfecture*

Presidential Guard

The Presidential Guard Battalion, a specialised unit of the Rwandan Armed Forces, was responsible for ensuring the security of the Rwandan President

Prosecution Closing Brief



Prosecutor's Final Brief, filed on 2 June 2011, ("Prosecution Closing Brief")

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Prosecution Pre-Trial Brief

Prosecutor's Pre-Trial Brief, filed on 27 June 2005, ("Prosecution Pre-Trial Brief")

PSD

Parti Social Démocrate

Responsable de cellule

An individual responsible for the administration of a *cellule*

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

Secteur

A political and administrative subdivision of a *commune*

Sous-préfecture

A territorial and administrative unit below the *préfecture* unit in Rwanda

Sous-préfet

An individual responsible for the administration of a *sous-préfecture*

Statute

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

T.

Transcript

UN

United Nations

UNAMIR

United Nations Assistance Mission for Rwanda

UNHCR

United Nations High Commissioner for Refugees



