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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

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TRIAL CHAMBER II

Original: English

Before Judges: William H. Sekule, Presiding
Winston C. Matanzima Maqutu
Arlette Ramaroson

Registrar: Adama Dieng

Judgment of: 1 December 2003

THE PROSECUTOR
v.
Juvénal KAJELIJELI

Case No. ICTR-98-44A-T

JUDGMENT AND SENTENCE

Counsel for the Prosecution:
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Part I Introduction

A. The Tribunal and its Jurisdiction

1. This Judgment in the case of The Prosecutor v. Juvénal Kajelijeli is rendered by Trial Chamber II ("Trial Chamber" or "Chamber") of the International Criminal Tribunal for Rwanda ("Tribunal"), composed of Judge William H. Sekule, presiding, Judge Winston C. Matanzima Maqutu, and Judge Arlette Ramaroson.

2. The Tribunal was established by the United Nations Security Council after the Council considered official United Nations reports indicating that genocide and widespread, systematic, and flagrant violations of international humanitarian law had been committed in Rwanda.[1] The Security Council determined that this situation constituted a threat to international peace and security; determined to put an end to such crimes and to bring to justice the persons responsible for them; and expressed conviction that the prosecution of such persons would contribute to the process of national reconciliation and to the restoration and maintenance of peace. Consequently, on 8 November 1994, the Security Council acting under Chapter VII of the United Nations Charter adopted Resolution 955 establishing the Tribunal.[2]

3. The Tribunal is governed by the Statute annexed to Resolution 955 ("Statute"), and by its Rules of Procedure and Evidence ("Rules").

4. Pursuant to the Statute, the Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states. Under Article 1 of the Statute, *ratione temporis* jurisdiction is limited to acts committed between 1 January 1994 and 31 December 1994. The Tribunal has *ratione materiae* jurisdiction over genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions ("Common Article 3") and Additional Protocol II thereto, as provided in Articles 2, 3, and 4 of the Statute. The provisions of Articles 2 and 3are set out below in Part IV.

B. The Accused

5. Juvénal Kajelijeli ("the Accused") was born on 26 of December 1951 in Mukingo *commune*, Rwinzovu *secteur*, Ruhengeri *préfecture* in Rwanda.[3]

6. The Accused served as a *bourgmestre* of the Mukingo *commune*, Ruhengeri *préfecture* from 1988 to 1993 and was re-appointed *bourgmestre* of the Mukingo *commune* in June 1994 and remained so until mid July 1994.[4]

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[1] UNSG Report on Rwanda, 1994/924; Expert Report Pursuant UNSC Resolution 935, 1994/1125; Special Rapporteur Reports, 1994/1157, Annexes I and II.
[2] UN Doc. S/RES/955 (1994).
[3] T. 14 April 2003, pp.3 and 4 (ACCUSED); Indictment, paragraph 1.1.

C. Procedural Background

1. Pre-Trial Phase

7. On 5 June 1998, pursuant to the request of the Prosecutor, the Bénin authorities arrested the Accused in Joseph Nzirorera's residence in Bénin.

8. On 29 August 1998, the Tribunal reviewed and confirmed against the Accused and seven others[5] an Indictment dated 22 August 1998; and issued a Warrant of Arrest and Order for Transfer and Detention[6] against the Accused (then detained in Bénin) pursuant to a Prosecutor's request under Rule 40*bis* of the Rules.

9. The Accused was transferred to the seat of the Tribunal in Arusha on 9 September 1998 and the Prosecutor filed a redacted indictment with the Registry for purposes of the initial appearance initially scheduled for 28 November 1998.

10. On 7 and 8 April 1999, the Accused's initial appearance was finally held before Trial Chamber II (then composed of Judge Sekule, Judge Ostrovsky and Judge Khan), after having been postponed several times due to delays in the assignment of Defence Counsel. The Accused pleaded not guilty to all 11 counts.

11. On 8 May 2000, the Trial Chamber dismissed the Defence's motion concerning the [allegations of] arbitrary arrest and illegal detention of the Accused. The Chamber was satisfied that the Accused was legally arrested as a "suspect" under Rule 40(A)(i).[7] The Defence appealed that Decision and, on 11 August 2000, the Appeals Chamber issued an Order dismissing the appeal on procedural grounds.

12. On 29 June 2000, Trial Chamber II composed of Judge Laïty Kama, Judge Sekule and Judge Mehmet Güney found inadmissible the Prosecutor's motion for joinder of the trials of the Accused in the Prosecutor v. Ngirumpatse, Nzirorera and Kajelijeli then indicted with five others and denied the Prosecution motion for severance of the Accused in the Prosecution v. Ngirumpatse, Nzirorera and Kajelijeli from the five other accused.[8]

13. On 6 July 2000, Trial Chamber II granted the motion for severance and separate trial filed by the Accused and ordered the Prosecutor to file a separate indictment pertaining only to that accused, bearing the Case Number 98-44A by 15 August 2000.[9]

14. On 12 October 2000, the Trial Chamber granted leave to the Prosecutor to correct the "Amended Indictment" filed on 15 August 2000 so that counts 2 and 4 be formulated

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[4] Indictment, para. 3.5; see also, below: Part III, Section E.
[5] *Kajelijeli*, Decision 29 August 1998, Confirmation Of The Indictment (TC); *Kajelijeli,* Rescission of Non Disclosure Order, 27 September 1999 (TC).
[6] *Kajelijeli*, Decision 29 August 1998, Warrant of Arrest (TC).
[7] *Kajelijeli,* Decision 8 May 2000, Defence Motion On Arbitrary Arrest (TC).
[8] *Kajelijeli,* Decision 29 June 2000, Joinder and Severance (TC).
[9] *Kajelijeli,* Decision 6 July 2000, Opposition To Joinder (TC).

in a manner identical to counts 4 and 3 of the initial indictment of 29 August 1998 and ordered the Prosecution to do so within 15 days of the Decision.[10]

15. On 12 December 2000, during a Pre-Trial Conference held pursuant to Rule 73*bis* of the Rules, Trial Chamber II granted a Defence motion challenging the Indictment filed on 25 October 2000. In an oral ruling, the Chamber directed the Prosecution to file an indictment in conformity with the Chamber's direction, having held that the Prosecution did not abide by the earlier order of 6 July 2000.

16. Seized of a Prosecutor's motion to correct the indictment dated 22 December 2000, filed pursuant to the Order of 12 December 2000, and of a motion to amend the indictment, the Trial Chamber granted on 25 January 2001 the Prosecution's motion to amend the indictment pursuant to Rule 50 of the Rules. After the filing of the amended indictment on 25 January 2001, the Accused made a further appearance on 26 January 2001 before Judge Mehmet Güney and pleaded not guilty to all counts.

2. The Amended Indictment of 25 January 2001

17. The Indictment charges Juvénal Kajelijeli with 11 counts of crimes comprising genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions and Additional Protocol II. The Indictment alleges that the crimes took place between 1 January and 31 December 1994 in the Mukingo *commune* and the neighbouring area within Ruhengeri *prefecture*. The victims, according to the Indictment, were Tutsi civilians who were identified as a racial or ethnic group. The Indictment adds that during those events, there were widespread and systematic attacks directed against a civilian population on political, ethnic or racial grounds; and that there was a state of non-international armed conflict in Rwanda.

18. The Indictment alleges that the Accused served as *bourgmestre* of Mukingo *commune* from 1988 to 1993 and was re-appointed *bourgmestre* in June 1994 until mid-July 1994. According to the indictment, the Accused, in his capacity as *bourgmestre*, exercised authority over his subordinates including civil servants, members of the *police communale* and *gendarmerie nationale*, the civilian population of Mukingo *commune* and *Interahamwe*-MNRD. The indictment further asserts that even when the Accused was not *de jure bourgmestre* he exercised a *de facto* authority of *bourgmestre* of Mukingo *commune* as a result of his association with Joseph Nzirorera.

19. It is alleged that the Accused was a founder and a leader of the *Interahamwe*-MRND and that he consulted regularly with the national secretary general of the MRND, Joseph Nzirorera on military training, distribution of weapons and uniforms to *Interahamwe* and distribution of lists of Tutsi to be eliminated.

20. It is alleged that from April to July 1994, the Accused commanded, organised, supervised and directly participated in attacks against Tutsi within the Mukingo *commune*

[10] *Kajelijeli,* Decision 12 October 2000, Motion To Correct Indictment (TC); *Kajelijeli,* Corrigendum 16 October 2000 To The Decision 12 October 2000 (TC).

and neighbouring areas and that he ordered and witnessed the raping and other sexual assaults on Tutsi females. The Accused is further being proceeded against for failing to exercise his authority to prevent or stop the killings of Tutsi in his *commune* and for setting up roadblocks. It is alleged that the Accused intended to destroy the Tutsi as a racial or ethnic group identified as the enemy by the MRND in furtherance of a government policy to eliminate any base of support for the RPF.

21. For his alleged involvement in the acts described in the Indictment, the Accused is charged with conspiracy to commit genocide (Count 1) pursuant to Articles 6(1) and 6(3) of the Statute; genocide (Count 2) pursuant to Articles 6(1) and 6(3) of the Statute; or alternatively complicity in genocide (Count 3) pursuant to Articles 6(1) and 6(3) of the Statute; direct and public incitement to commit genocide (Count 4) pursuant to Articles 6(1) and 6(3) of the Statute; crimes against humanity—murder (Count 5) pursuant to Articles 6(1) and 6(3) of the Statute; crimes against humanity—extermination (Count 6) pursuant to Articles 6(1) and 6(3) of the Statute; crimes against humanity—rape (Count 7) pursuant to Articles 6(1) and 6(3) of the Statute; crimes against humanity—persecution (Count 8) pursuant to Articles 6(1) and 6(3) of the Statute; crimes against humanity—other inhumane acts (Count 9) pursuant to Articles 6(1) and 6(3) of the Statute; Serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (Counts 10 and 11) pursuant to Articles 6(1) and 6(3) of the Statute.

22. On 13 September 2002, following the close of the case for the Prosecution, the Chamber granted in part a Defence motion for acquittal (pursuant to Rule 98*bis*) and entered a Judgment of acquittal in respect of Counts 10 and 11 of the Indictment (Violations of Common Article 3 and Additional Protocol II of the Geneva Convention).[11]

3. Trial Phase

23. Various protective measures were ordered by the Trial Chamber in this case. These included the use of pseudonyms, the non-disclosure of the identity of witnesses, the disclosure to the Defence of identifying information within 21 days of the testimony of a witness at trial. These measures were adopted for purpose of protection of both the witnesses for the Prosecution[12] and the witnesses for the Defence.[13] The Prosecution filed its Pre-Trial Brief on 5 February 2001.

24. The Trial before Trial Chamber II, then composed of Judge Laïty Kama, Judge William H. Sekule and Judge Mehmet Güney, was scheduled to start on 12 March 2001. However the Defence filed a Preliminary Motion challenging the temporal and personal jurisdiction of the Tribunal on 2 March 2001, this Motion was heard first and the Chamber denied it on 13 March 2001.[14] The Defence appealed that Decision and the Appeals Chamber rejected the appeal.[15] The commencement of the Trial was postponed until 13

[11] *Kajelijeli,* Decision 13 September 2002, Motion Partial Acquittal (TC).
[12] *Kajelijeli,* Decision 6 July 2000, Protective Measures Prosecution Witnesses (TC).
[13] *Kajelijeli,* Decision 3 April 2001, Protective Measures Defence Witnesses(TC).
[14] *Kajelijeli,* Decision 13 March 2001, Jurisdiction of The Tribunal (TC).
[15] *Kajelijeli,* Decision 18 September 2001, (Appeal of Decision 13 March 2001) (AC); *Kajelijeli,* 16 November 2001. Appel de la décision du 13 mars 2001, rejetant la "Objecting to the Jurisdiction of the Tribunal").

March 2001 when the Prosecutor made its opening statement and the first Prosecution witness, an investigator for the Office of the Prosecutor was heard. On 15 March 2001, the trial was adjourned until 2 July 2001.

25. Following the death of Judge Laïty Kama, the President's Order pursuant to Rule 15*bis*(C) dated 29 June 2001[16] was read out in court on 2 July 2001, inviting the Trial Chamber to make a determination as to the rehearing or the continuation of this part heard case. The Defence for Kajelijeli indicated that a trial *de novo* would be in the interests of justice. The Prosecution did not object. The Trial Chamber composed of Judge William H. Sekule, Judge Winston C. Matanzima Maqutu and Judge Arlette Ramaroson granted the Defence request to start the trial *de novo* as well as a Defence request for a one day adjournment. Due to the illness of the first Prosecution witness, the trial re-started on 4 July 2001. On 9 July 2001, the Defence filed a notice of alibi pursuant to Rule 67 (A)(ii). This trial session was adjourned on 25 July 2001.

26. On 1 October 2001, at the resumption of the trial, the Accused was absent from Court. Having reviewed a medical report dated 29 September 2001, the Chamber ordered that the Accused be brought to Court whereas the Defence filed an urgent motion requiring medical care for the accused and the adjournment of the trial. The Chamber ordered that a further medical report be prepared on the medical condition of the Accused. On 2 October 2001, in view of the medical report indicating that the Accused was fit to stand trial, the Chamber rendered an oral decision denying the Defence's Motion for adjournment and ordered that the Accused be present. The Defence appealed that Decision and the Appeals Chamber dismissed the appeal.[17] The trial adjourned on 5 October 2001 after the testimony of one witness. The trial resumed on 26 November 2001 and continued until 13 December 2001.

27. On 8 April 2002, the Prosecution indicated that two remaining Prosecution witnesses were unavailable and a one day adjournment request was granted by the Chamber. On 10 April 2002, the Prosecution closed its case after having called 14 witnesses and prayed to leave the two remaining witnesses GBW and GAR for rebuttal purposes. The Prosecution introduced 35 exhibits.

28. A Pre-Defence Conference and a Status-Conference were held on 15 April 2002. On 16 April 2002, the Chamber partially granted a Prosecutor's motion for judicial notice.[18]

29. The Defence case was heard during three periods: it started on 16 September until 9 October 2002, continued from 18 November until 12 December 2002 and from 31 March until 24 April 2003. A total of 28 witnesses were called by the Defence, including the Accused who testified last. The Defence introduced 56 exhibits. On 24 April 2003, the Chamber adjourned the proceedings *sine die*.

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[16] *Kajelijeli*, President's Order in Terms of Rule 15 bis (C) on Proceedings (TC).
[17] *Kajelijeli*, Decision 14 December 2001 (Appeal of Decision 2 October 2001) (AC).
[18] *Kajelijeli*, Decision 16 April 2002, Judicial Notice (TC).

30. On 28 March 2003, the Prosecution served the Defence with a notice of intention to call rebuttal evidence; and on 11 April 2003, following an order of the Chamber, the Prosecution filed a Motion for leave to call rebuttal evidence pursuant to Rule 85(A)(ii) of the Rules. On 12 May 2003, the Chamber denied the Motion for rebuttal[19] and issued on 13 May 2003 a Scheduling order for the filing of the closing briefs and the closing arguments of the Parties.[20]

31. On 1 July 2003, the Trial Chamber granted the Defence request to admit into evidence the statements of Prosecution witness GAO and admitted them into evidence as Defence exhibits under Rule 89(C) Exhibit marked 8d and 8e for identification and the expert report of Mr. Hagenlocher.[21]

32. Being seized of three Defence motions to admit into evidence documents under Rule 92*bis* (A) and (B) on 1 July 2003, the Trial Chamber denied all of them. [22]

33. The Prosecution and the Defence respectively submitted their Closing Briefs on 16 June 2003[23] and 7 July 2003.[24] On 14 and 15 July 2003 the Prosecution made its oral closing arguments and introduced an Appendix III to the Closing Brief "Corrigendum".[25] On 15 and 16 July 2003, the Defence made its oral closing arguments and submitted its response to the Prosecutor's Appendix III.[26] On 16 July 2003, the Presiding Judge declared the proceeding adjourned *sine die*, for deliberations.

D. Evidentiary Matters

34. The Chamber will in this Part, address general evidentiary matters of concern that arose during the course of the trial, some general principles of evidence evaluation, impact of trauma on witnesses and witness protection issues.

35. The Chamber has considered the charges against the Accused on the basis of testimony and exhibits tendered by the parties to prove or disprove allegations made in the Indictment.

1. General Principles of the Assessment of Evidence

36. The Chamber notes that under Rule 89(A) of the Rules, it is not bound by any national rules of evidence. The Chamber in this case, has therefore applied, in accordance with Rule 89(B), the rules of evidence which, in its view, best favour a fair determination of the matters before it and which are consonant with the spirit of the Statute and the

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[19] *Kajelijeli,* Decision 12 May 2003, Rebuttal Evidence (TC).
[20] *Kajelijeli,* Scheduling Order 13 May 2003 (TC).
[21] *Kajelijeli,* Decision 1 July 2003, GAO's Statements (TC).
[22] *Kajelijeli,* Decision 1 July 2003, Affidavits (TC); *Kajelijeli,* Decision 1 July 2003, Videotape (TC); *Kajelijeli,* Decision 1 July 2003, Rental Receipts Of Witness RHU23 (TC).
[23] Prosecution Closing Brief, 16 June 2003; Prosecution Closing Brief (Corrigendum), 19 June 2003.
[24] Defence Closing Brief, 7 July 2003; Defence Closing Brief (Corrigendum), 11 July 2003.
[25] Prosecution Closing Brief (Corrigendum), Appendix III, 15 July 2003.
[26] Defence Response to the Appendix III of Prosecution Closing Brief (Corrigendum), 16 July 2003.

general principles of law, where such have not been expressly provided for in the Tribunal's Rules of Procedure and Evidence.

2. Credibility

37. The Chamber notes that many of the witnesses who have testified before it have seen and experienced atrocities. They, their relatives or their friends have in several cases, been the victims of such atrocities. The Chamber notes that recounting and revisiting such painful experiences is likely to affect the witness's ability to recount the relevant events in a judicial context. The Chamber also notes that some of the witnesses who testified before it may have suffered—and may have still continued to suffer—stress-related disorders.

38. The Chamber recognises in addition the time that had lapsed between the time of the events in question and the testimony of the witnesses.

39. In assessing the credibility of the witnesses then, the Chamber is mindful of the considerations, which motivated the following judicial pronouncements. We begin with the observations of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") Appeals Chamber[27] saying:

> [...] It is certainly within the discretion of the Trial Chamber to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the "fundamental features" of the evidence. The presence of inconsistencies in the evidence does not, per se, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence. However, the Trial Chamber should consider such factors as it assesses and weighs the evidence.

40. In that pronouncement, the ICTY Appeals Chamber was echoing what it had said in its earlier judgment in the *Delalić* Case. There, it had said as follows:[28]

> As is clear from the above discussion, the other matters raised by Delić as undermining the credibility of the witnesses are not, in the view of the Appeals Chamber, of such a character as would require a reasonable Trial Chamber to reject their evidence. The Appeals Chamber is satisfied that on the evidence before the Trial Chamber it was open to accept what it described as the "fundamental features" of the testimony.
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> [...]
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> Delić also refers to certain inconsistencies in the victim's testimony, which he states illustrate that it was unreliable. The Appeals Chamber notes that as an introduction to its consideration of the factual and legal findings, the Trial Chamber specifically

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[27] *Kupreskic*, Judgment (AC), para. 31; See also: *Musema*, Judgment (AC), para. 20; *Akayesu*, Judgment (TC), paras. 142 and 143.
[28] *Delalic et al. (Celebici Case)*, Judgment (AC), para. 485.

discussed the nature of the evidence before it. It found that often the testimony of witnesses who appear before it, consists of a "recounting of horrific acts" and that often "recollection and articulation of such traumatic events is likely to invoke strong psychological and emotional reactions [...]. This may impair the ability of such witnesses to express themselves clearly or present a full account of their experiences in a judicial context". In addition, it recognised the time which had lapsed since the events in question took place and the "difficulties in recollecting precise details several years after the fact, and the near impossibility of being able to recount them in exactly the same detail and manner on every occasion [...]." The Trial Chamber further noted that inconsistency is a relevant factor "in judging weight but need not be, of [itself], a basis to find the whole of a witness' testimony unreliable".

Accordingly, it acknowledged, as it was entitled to do, that the fact that a witness may forget or mix up small details is often as a result of trauma suffered and does not necessarily impugn his or her evidence given in relation to the central facts relating to the crime. With regard to these counts, the Trial Chamber, after seeing the victim, hearing her testimony (and that of the other witnesses) and observing her under cross-examination chose to accept her testimony as reliable. Clearly it did so bearing in mind its overall evaluation of the nature of the testimony being heard. Although the Trial Chamber made no reference in its findings to the alleged inconsistencies in the victim's testimony, which had been pointed out by Delić, it may nevertheless be assumed that it regarded them as immaterial to determining the primary question of Delić's perpetration of the rapes. The Appeals Chamber can see no reason to find that in doing so it erred.

The Trial Chamber is not obliged in its Judgment to recount and justify its findings in relation to every submission made during trial. It was within its discretion to evaluate the inconsistencies highlighted and to consider whether the witness, when the testimony is taken as a whole, was reliable and whether the evidence was credible. Small inconsistencies cannot suffice to render the whole testimony unreliable. Delić has failed to show that the Trial Chamber erred in disregarding the alleged inconsistencies in its overall evaluation of the evidence as being compelling and credible, and in accepting the totality of the evidence as being sufficient to enter a finding of guilt beyond a reasonable doubt on these grounds.

3. Corroboration

41. As a general principle, the Trial Chamber has attached—or declined to attach—probative value to the testimony of each witness and exhibit according to its relevance and credibility. The Trial Chamber recalls that it is not bound by any national rules of evidence and as such has been guided by the foregoing principles with a view to a fair determination of the issues before it. In particular the Trial Chamber notes the finding in the *Tadić* Appeal Judgment that corroboration of evidence is not a customary rule of international law and as such should not be ordinarily required by the international Tribunal.[29]

[29] *Tadic*, Judgment (AC), para. 65; see also: *Akayesu*, Judgment (AC), paras. 132-136.

42. The Chamber notes further the decision in the *Aleksovski* Appeal Judgment that whether a Trial Chamber will rely on single witness testimony as proof of a material fact will depend on various factors that have to be assessed in the circumstances of each case.[30] It may be that a Trial Chamber would require the testimony of a witness to be corroborated, but according to the established practice of this Tribunal and ICTY, that is clearly not a requirement.[31]

43. In the case of *Aleksovski* the Trial Chamber affirmed that it may rule on the basis of a single testimony, if in its opinion the testimony is relevant and credible.[32] It further stated that:

> (...) it is proper to infer that the ability of the Chamber to rule on the basis of testimonies and other evidence is not bound by any rule of corroboration, but rather on the Chamber's own assessment of the probative value of the evidence before it.
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> The Chamber may freely assess the relevance and credibility of all evidence presented to it. The Chamber notes that this freedom to assess evidence extends even to those testimonies which are corroborated; the corroboration of testimonies, even by many witnesses, does it establish the credibility of those testimonies.[33]

44. The Appeals Chamber in the *Musema* case held that these statements correctly reflect the position of the law regarding the Trial Chamber's discretion in assessing testimonies and evidence before it.[34]

4. Hearsay Evidence

45. The Chamber observes that Rule 89(C) of the Rules provides that "a Chamber may admit any relevant evidence which it deems to have probative value". The Chamber notes that this Rule makes provision for the admission of hearsay evidence even when it cannot be examined at its source and when it is not corroborated by direct evidence. The Chamber however notes that though admissible, it has the discretion whether or not to give weight to this testimony after it has been adduced. The Chamber makes this decision as to the weight to be given to the testimony based on tests of "relevance, probative value and reliability."[35] Accordingly, the Chamber notes that evidence, which appears to be "second-hand", is not, in and of itself, inadmissible; rather it is assessed, like all other evidence, on the basis of its credibility and its relevance.

E. Witness Protection Issues

46. Part of the evidence adduced by the parties was given in closed sessions due to witness protection concerns. In analysing evidence received during closed sessions in this

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[30] *Aleksovski,* Judgment (AC), para. 63, referring to *Tadic*, Judgment (AC), para. 5.
[31] *Aleksovski,* Judgment (AC), para. 62. ("the testimony of a single witness does not require as a matter of law any corroboration"); *Tadic*, Judgment (AC), para. 65; *Celebici*, Judgment (AC), pp. 492 and 506.
[32] *Aleksovski*, Judgment (TC), para. 45-47.
[33] *Aleksovski*, Judgment (TC), paras. 45-47.
[34] *Musema,* Judgment (AC).
[35] *Musema,* Judgment (TC), pp. 51.

Judgment, the Chamber was mindful of the need to avoid unveiling identifying particulars of protected witnesses so as to prevent disclosure of their identities to the press or the public. At the same time, the Chamber wished to provide in the Judgment as much detail as possible to make it easy to follow its reasoning. In view of these concerns, when referring to evidence received in closed sessions in this judgment, the Chamber used language designed not to reveal protected information yet specific enough to convey its reasoning.[36]

[36] *Semanza,* Judgement (TC), pp. 37.

Part II The Defence's case

A. Introduction

47. In an effort to challenge the sufficiency of the evidence supporting the Prosecution case, the Defence raised several arguments, described below, including alibi.

48. The Defence evidence will be considered together with the Prosecution evidence in Part III. The Chamber has, for each allegation of the Prosecution, considered in full the evidence in the case, including both the direct challenge to the Prosecution evidence by the Defence, and also the evidence adduced by the Defence in relation to the Alibi of the Accused.

49. This Part deals with some specific issues raised by the Defence, including the issue of impossibility, issues raised by the Defence Expert Witness, and allegations that the Accused was improperly targeted for prosecution.

B. Impossibility

1. Allegations

50. The Defence asserts that it would have been physically impossible for the Accused to participate in the acts or be at the sites as alleged in the Indictment. Specifically, in connection with the Prosecution allegations regarding rapes that occurred in the Susa area, the Defence submits that in the aftermath of the attack on the President's plane, and specifically after 7 April 1994, it was impossible for civilians to move around Susa region.[37]

2. Evidence

51. **Defence Witness FMB** testified that, due to his remits in military intelligence, he had reliable information about the situation in Kinigi *commune* from February 1993 up until the start of hostilities in 1994.[38] Regarding the *communes* that were not under control of the FAR (forces armees rwandaises), he did not have this information.[39] He testified in cross-examination that he had "extensively" discussed the security situation in Ruhengeri on 7 April 1994, but confirmed that he was in fact in Kigali on the day in question.[40]

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[37] Defence Closing Brief, para.110 ; Defence Closing Brief (Corrigendum), paras. 116-117.
[38] T. 2 April 2003, p. 28 (FMB).
[39] T. 2 April 2003, p. 70 (FMB).
[40] T. 3 April 2003, pp. 22-23 (FMB) (ICS).

52. **Defence Witness FMB** stated during re-examination that he had not heard of any killings of Tutsis before the killings at the Court of Appeal.[41] He also stated that there were no killings at the roadblocks in the town of Ruhengeri.[42]

53. **Defence Witness FMB** testified that from 7 to 10 April 1994, the part of Susa that fell under the Kinigi *commune* was occupied by the RPF [43] and that the other part of Susa falling under Mukingo *commune* was under Rwandan government control.[44] Furthermore, the only vehicles that were permitted to move between Mukingo and Susa were military vehicles which, because of security reasons, were supposed to drop their contents before they reached Shingiro or the west of Kimonyi.[45]

54. **Defence Witness FMB** testified that on 9 April 1994, on the road from Mukingo towards Susa in Kinigi *commune*, at "Shingiro's position", "before one crosses the Susa river", a roadblock was shelled by 81 millimetres mortars, and that there was sporadic shelling of 61 millimetres shells throughout the day.[46] By 10 April 1994 there were indications that there were bombardments with 120 millimetres shells in the Kinigi area in a range of 8 to 10 kilometres and that "this went right up to Nkumba *commune*".[47] Defence Witness FMB further testified that the prohibition on vehicle movement was not lifted and that there was no improvement regarding the movement of civilian vehicles. Furthermore, if there had been any attempt or request for civilian vehicle movement, he would have been aware of it since he was amongst those who signed the *laissez-passer* or documents authorizing such movements.[48]

55. **Defence Witness FMB** admitted in cross-examination that there were other routes that could lead from Mukingo to Susa, despite having testified previously that there was one road.[49] He stated on re-examination that it was "impossible" or "not doable" to use these alternative roads to get into Susa from Mukingo after 6 April 1994.[50]

3. Findings

56. From the testimony of the Accused[51], the Chamber notes that he was able to move with or without his car during the period from 8 April 1994 to at least 14 April 1994.

57. The Chamber finds that, even if the movements of civilians and others were restricted and controlled at roadblocks, and even if the Accused chose to restrict his movements on certain days or at certain times, the evidence shows that it was not impossible for him to move around during that period.

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[41] T. 3 April 2003, p. 76 (FMB).
[42] T. 3 April 2003, p. 79 (FMB).
[43] T. 2 April 2003, p. 60 (FMB) (ICS).
[44] T. 2 April 2003, p. 62 (FMB) (ICS).
[45] T. 2 April 2003, p. 46 (FMB).
[46] T. 2 April 2003, p. 47 (FMB).
[47] T. 2 April 2003, p. 48 (FMB).
[48] T. 2 April 2003, p. 48 (FMB).
[49] T. 2 April 2003, p. 56 (FMB).
[50] T. 3 April 2003, pp. 57-58 (FMB).
[51] See, below: Part II, Section H.

58. The Chamber notes that Defence Witness FMB was never present at the various places (roadblocks, Ruhengeri Court of Appeal) upon which he gave testimony, and relied upon reports that he received. The Chamber notes that it was his duty to be informed about general security situation in certain areas in Ruhengeri *préfecture*, but that his position did not necessarily mean that he was informed in detail about the specific nature of the events that took place at the relevant sites in the present case.

59. The Chamber will address the specific issue of impossibility to access Susa area in Part III.[52]

C. Expert Witness

60. The Defence presented **Dr. François Xavier Bangamwabo** as an expert witness.[53] Dr. Bangamwabo presented a report [54] and was heard by the Chamber on 7, 8 and 9 April 2003.

61. **Dr. Bangamwabo** testified on various general, historical and political issues as well as on some linguistic issues. Most of the issues explored by the witness lack relevancy for the evaluation of the acts and conduct of the Accused in the present case. The Chamber will not embark on a discussion of the historical and political background, or the origin of the Rwandan conflict. The Chamber has a duty: it is to try the Accused for his alleged individual criminal responsibility and criminal responsibility as a superior on the basis of the charges brought against him in the Indictment.

62. The Prosecution submitted that **Defence exhibit D52A, the expert report**, is baseless because it shows no data or scientific research to authenticate its conclusions. Furthermore, the expert himself was biased and subjective in his testimony before the Chamber.[55]

63. The Chamber has considered the full evidence of **Dr. Bangamwabo**. However, due to the very general nature of the issues raised in his report and testimony, and due to the fact that his qualifications are limited to linguistics, the Chamber will set out in detail only the aspects that are related to linguistic issues and which are relevant to the present case.

1. Evidence

64. Defence Witness **Dr. Bangamwabo** testified that he had read that "*Interahamwe*" was defined in some publications as "people who attack together" which is wrong because

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[52] See, below: Part III, Section L.
[53] In answer to a question from the Bench, Dr. Bangamwabo clarified that he had not attained the rank of Professorship, and was not in the habit of referring to himself as Professor Bangamwabo as Defence Counsel had initially indicated. Accordingly, the Chamber will address the Witness by the title of Dr. Bangamwabo. T. 9 April 2003, p. 94.
[54] Rapport de l'expert Prof. François Xavier Bangamwabo: *LES RELATIONS INTERETHNIQUES AU RWANDA, LE CONFLIT D'OCTOBRE 1990, LE MULTIPARTISME SUR LES EVENEMENTS DE 1994*. Defence Exhibits 52a and 52b.
[55] Prosecution Closing Brief (Corrigendum), paras. 306 and 307.

the word "*interahamwe*" comes from the verb "*gutera*",[56] which means to plant, and could refer to people who are identical or look alike. He testified that in the abstract, "*interahamwe*" means to share ideas, or the same objective, and the word is commonly used to describe men in solidarity.[57]

65. In cross-examination, **Dr. Bangamwabo** testified that *Interahamwe* means those who have the same view because they are together, people who have the same height, gait and possibly the same objectives, and it means that they stand in solidarity. It does not mean those who attack together.[58]

66. In answer to a question from the Bench asking why he had specifically stated that it was incorrect to say that a meaning of *Interahamwe* was "to attack together", **Dr. Bangamwabo** admitted that he had "eliminated" some of the meanings of the word. He also stated that he had read the term *Interahamwe* in some newspapers in the refugee camps in Zaire in 1994, where it was translated as "those who attack together", and also that "linguistically, the term *Interahamwe* as it is used generally, it's not even in the physical sense; it's in the abstract sense".[59]

67. **Dr. Bangamwabo** testified that in 1991 Murenzi Desiree, a member of MRND, formed the *Interahamwe* as a think tank for young people, to create political awareness among the youth, and recruit new members.[60] Dr. Bangamwabo testified that *Interahamwe* referred to young civil servants who were brought together to carry out a political or ideological aim.[61]

68. **Dr. Bangamwabo** testified that as multipartism increased, *Interahamwe* became an urban phenomenon, with other parties forming their own youth wings to compete with the *Interahamwe*.[62] The MDR formed one called *Inkuba*, which means "thunder".[63]

69. **Dr. Bangamwabo** testified that other political parties, such as FDC referred to the *Interahamwe* as militia, because they could not remove them or uproot them from Kigali. However, the *Interahamwe* were not really militiamen, they were people responsible for political entertainment, like song and dance, during meetings.[64]

70. **Dr. Bangamwabo** testified that in 1994, when the situation was out of control, ordinary criminals or bandits acquired weapons and got involved in crimes.[65] All the people who were involved in the killing of Tutsis were in pro-government parties thus the

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[56] T. 7 April 2003, p. 70 (Dr. Bangamwabo).
[57] T. 7 April 2003, p. 70 (Dr. Bangamwabo).
[58] T. 9 April 2003, p. 64 (Dr. Bangamwabo).
[59] T. 9 April 2003, p. 104 (Dr. Bangamwabo).
[60] T. 9 April 2003, p. 70 (Dr. Bangamwabo).
[61] T. 9 April 2003, p. 70 (Dr. Bangamwabo).
[62] T. 7 April 2003, p. 71 (Dr. Bangamwabo).
[63] T. 9 April 2003, p. 71 (Dr. Bangamwabo).
[64] T. 7 April 2003, p. 71 (Dr. Bangamwabo).
[65] T. 7 April 2003, p. 71 (Dr. Bangamwabo).

name *Interahamwe* was given to cover those activities with the result that the definition of the word changed to *genocidaire*.[66]

71. In re-examination, **Dr. Bangamwabo** testified that in the context of events of April 1994, the initial application of the word "*interahamwe*" evolved, as did the socio-political situation, and those who fought against the RPF and who were pro-Habyarimana were known by the name *Interahamwe*. The result of this was that in the tense situation people called themselves by this name without necessarily belonging to the party that had initially formed that group.[67]

72. **Dr. Bangamwabo** testified that the word "*inkotanyi*", which has existed for a long time, was taken by the RPF in 1990 to refer to their soldiers and possible activists of RPF *Inkotanyi*.[68] Dr. Bangamwabo testified that unlike the name *Interahamwe*, *Inkotanyi* was not given a broader meaning during the war.[69]

73. **Dr. Bangamwabo** testified that the word "*inyenzi*" was used in the 1960s, by monarchists for themselves, to refer to the guerrilla movement fighting towards the new republic.[70] He testified that the meaning "cockroach" was not in use, rather it was a code word that the monarchist soldiers used for themselves, and came from *cyivugo* in which a person says his good deeds. Dr. Bangamwabo testified that saying *Ingangurarugo*[71] which is "The one who follows me is determined to be the best"[72] came from the times of King Rwabugiri.[73] He testified that this was not common knowledge, hence the conclusion that RPF was being abused by being called a cockroach.[74]

74. **Dr. Bangamwabo** testified that *Inkotanyi* and Tutsi do not have the same meaning, as the RPF was made up of mainly Ugandan soldiers, though there were some Hutus, for example A. Kanyarengwe, T. Lizinde, S. Biseruka, and S. Sendashonga;[75] however, the majority of people in the RPF were Tutsi.

75. **Dr. Bangamwabo** testified that *Inyenzi* and Tutsi do not have the same meaning. Although the movement was monarchist, there were some Hutus, for example, François Rukeba the president of the monarchist party UNAR,[76] who would also be called *Inyenzi*. Calling a Tutsi *Inyenzi* would have been seen as an insult, but this was not the real meaning of the word.[77]

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[66] T. 7 April 2003, p. 72 (Dr. Bangamwabo).
[67] T. 9 April 2003, p. 92 (Dr. Bangamwabo).
[68] T. 7 April 2003, p. 73 (Dr. Bangamwabo).
[69] T. 7 April 2003, p. 73 (Dr. Bangamwabo).
[70] T. 7 April 2003, p. 73 (Dr. Bangamwabo).
[71] T. 7 April 2003, p. 74 (Dr. Bangamwabo).
[72] T. 7 April 2003, p. 73 (Dr. Bangamwabo).
[73] T. 7 April 2003, p. 74 (Dr. Bangamwabo).
[74] T. 7 April 2003, p. 74 (Dr. Bangamwabo).
[75] T. 7 April 2003, pp. 74-75 (Dr. Bangamwabo).
[76] T. 7 April 2003, p. 75 (Dr. Bangamwabo).
[77] T. 7 April 2003, p. 75 (Dr. Bangamwabo).

76. In cross-examination, **Dr. Bangamwabo** testified that he had no evidence of any newspaper in which the terms *Inkotanyi* or *Inyenzi* made reference to Tutsis.[78] He also testified that he heard about *Inkotanyi* when the radio presenters were talking about soldiers of RPF, but never that the Tutsi was equal to *Inyenzi*.[79]

77. **Dr. Bangamwabo** testified that the *Interahamwe* were never recognised by MRND as part of the party, nor was it approved by the Ministry of Justice. Therefore, *Interahamwe* had no legal status, it was a steering committee established in Kigali.[80] He also testified that the leadership of the *Interahamwe* was not exclusively Hutu, as Robert Kajuga,[81] a Tutsi, was the president until 1994.[82]

78. **Dr. Bangamwabo** testified that the phrase "*Umwanzi inyenzi inkotanyi*"[83] referred to the fact that the *Inyenzi* and the *Inkotanyi* had similar ideologies, whereas *Umwanzi* referred to the two sides fighting against each other, RPF and FAR. Dr. Bangamwabo testified that the two sides were enemies, thus an FAR soldier would use *Umwanzi* to refer to his enemy, the RPF soldiers, and the supporters of RPF.[84]

79. In cross-examination, when Prosecution counsel questioned why the report did not mention data on people killed by the FAR and *Interahamwe*, **Dr. Bangamwabo** testified that he had discussed in the report the losses among the Rwandan population in general regardless of the perpetrators of those killings.[85]

80. In cross-examination, **Dr. Bangamwabo** testified that even though there were international investigations regarding the victims, the problem is that the investigations were biased as they concerned one category of victims, whereas the other category was not benefiting from any interest.[86]

2. Findings

81. The Chamber notes that in presenting his testimony Dr. Bangamwabo gave his own version of the history of Rwanda and the interethnic relations in Rwanda. Furthermore, the Chamber notes that the witness gave an account that did not fully portray the extent of the massive killings that took place in Rwanda during 1994. Instead, he focused mainly on the alleged crimes committed by the RPF on the pretext that he was trying to bring out aspects of the Rwandan conflicts that had been neglected by the media and international organizations. Considering also the demeanour of the witness, the Chamber finds that Dr Bangamwabo was not neutral in his testimony. The Chamber therefore was left with the clear impression, at the end of Dr. Bangamwabo's testimony

[78] T. 9 April 2003, p. 60 (Dr. Bangamwabo).
[79] T. 9 April 2003, p. 61 (Dr. Bangamwabo).
[80] T. 7 April 2003, p. 75 (Dr. Bangamwabo).
[81] T. 7 April 2003, p. 76 (Dr. Bangamwabo).
[82] T. 7 April 2003, p. 75 (Dr. Bangamwabo).
[83] T. 7 April 2003, p. 76 (Dr. Bangamwabo)
[84] T. 7 April 2003, p. 76 (Dr. Bangamwabo).
[85] T. 9 April 2003, pp. 47-48 (Dr. Bangamwabo).
[86] T. 9 April 2003, p. 48 (Dr. Bangamwabo).

and after a review of his report, that he is neither an objective nor an independent expert witness who may assist the Chamber in its quest for the truth.

82. The Chamber finds on the basis of the testimony of Dr. Bangamwabo and the totality of the evidence brought before it [87] that *Interahamwe* was, in 1994, the name used to identify the youth-wing of the MRND and that during and after the events of April—July 1994 it became also a synonym for *genocidaire*, used by the general populace.

83. The Chamber is aware that based on the notoriety of the word *Interahamwe* a witness when testifying in court may use the word with reference to either the particular group that existed in Mukingo *commune* and neighbouring areas or the general term used by the populace, which means *genocidaires* or *killers*. The Chamber notes also that in some instances, there may be a likelihood of an overlap between the two meanings. With this in mind, the Chamber, in considering the evidence, took steps to identify the particular sense in which a particular witness employed that term.

D. Allegations that the Accused was targeted

1. Allegations

84. The Defence has always contended that the Accused was arrested illegally and that thereafter the Prosecution sought to find evidence to support this illegal arrest.

85. The Defence submitted that the Accused was brought before the court simply because he was found in the house of Joseph Nzirorera when Nzirorera was being arrested at the instance of the Office of the Prosecutor. The Defence maintains that it was after the Accused was arrested in those circumstances that the Prosecution searched for evidence against him, when he was in custody between 1998 and 2000. The Defence illustrated this point by stating that Prosecution witness GBV gave his first statement on 31 July 1998, despite the fact that the Accused was arrested on 5 June 1998.

86. The Defence submitted that initially, there were no allegations of rape, but once the trial was successfully severed, the Prosecution began to look into rape allegations and the witnesses who gave evidence on this issue were mostly interviewees from 1999 to 2000.

87. The Defence stated that the Accused was a target of the RPF and that there were protracted threats and intimidation against him. To this effect, the Defence tendered into evidence the testimony of Defence Witnesses JK312 and SMR2.[88]

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[87] Parts II and III contains a synthesis of the evidence brought before the Chamber.
[88] T. 19 September 2002, pp. 32, 73 and 74.

2. *Evidence*

(a). Threats to the Accused made by the RPF

88. **Defence Witness SMR2**, a close relative of the Accused, testified that the Accused and his second wife listened to radio programs on Radio Rwanda and Radio Muhabura. The Accused's name was often mentioned over Radio Muhabura and was accompanied by insults. The witness heard them say that the Accused was killing Tutsis and devoured children.[89]

89. **Defence Witness JK312**, a Tutsi male, testified that there had been talk on Radio Muhabura about a threat issued by the RPF on the life of the Accused and a song that threatened the Accused. The Accused was "demonised", and for this reason the Accused lived in his house in Nkuli rather than at his second house in Mukingo. The witness testified that the lyrics of the song played on Radio Muhabura described the Accused as a cannibal who ate children. Radio Muhabura was in the hands of the RPF at that time.[90]

90. **Defence Witness DMR3**, a relative of the Accused, testified that he heard talk on Radio Muhabura saying that the Accused was a dictator and that, if caught, he would be treated like Gasana, the former *bourgmestre* of Kinigi, who was killed by the RPF in Ruhengeri town on 8 February 1992 [sic].[91] The Witness testified that the Accused and his family were frightened by these threats, and that at one point the Accused's family had to move because the RPF Inkotanyi had started looking for him.[92]

91. **The Accused** testified that in 1992 he had taken his family out of Mukingo *commune* during the RPF occupation of Kinigi and Kumba. He kept his family elsewhere until the cease-fire was announced.[93] **Defence Witness SMR2** verified that the family of the second wife of the Accused did move in 1992 to Gisenyi—to a friend's home by the name of Eliap Ndorayabo—for their own security.[94]

(b). Defence Witness ZLA's Accusations about AVEGA

92. **Defence Witness ZLA**, a female Tutsi and former soldier, testified that she fled from Ruhengeri and Rwanda in July 1994 and went into exile in Zaire with members of her family and other Tutsis, including Mrs. Niyoyita, Mrs. Bahempera and Mrs. Munyamasoko. The witness testified that she and those that accompanied her were under the protection of the Accused on their way to Zaire. The witness first lived at a camp known as Kibumba and later lived at a camp known as Gatare. The witness stayed in Zaire for two years and returned to Rwanda from exile in 1996.

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[89] T. 19 September 2002, pp. 72-74 (SMR2) (ICS).
[90] T. 16 September 2002, pp. 47, 101-102 and 106 (JK-312) (ICS).
[91] T. 24 September 2002, pp. 8-9 (ICS).; T. 24 Septembre 2002, pp. 15-17 (DMR3) (HC).
[92] T. 24 September 2002, pp. 8-9 (DMR3) (ICS).
[93] T. 23 April 2003, p. 43 (ACCUSED).
[94] T. 19 September 2002, pp. 72, 74 (SMR2) (ICS).; T. 23 September 2002, p. 7 (SMR2) (ICS).

93. **Defence Witness ZLA** initially worked in Ruhengeri as a dressmaker and then went to Kigali to try and recover her properties.[95]

94. **Defence Witness ZLA** testified that around 1999, while in Kigali, she was invited to the home of her neighbour, a Tutsi named Mrs. Rubayita, and met two ladies whose names she did not remember. The ladies were representatives of AVEGA, which they described as an association of women fighting for the interests and needs of women. They asked the witness to join AVEGA. The ladies asked the witness to make false allegations against the Accused by saying that he raped her in 1994. In return, the ladies promised to assist the witness to recover her property and to receive assistance as a survivor. The witness testified that she was never raped by anyone in 1994 and that she told the ladies that she would not make false allegations against the Accused. The ladies repeatedly visited the witness to solicit her aid.[96]

95. **Defence Witness ZLA** testified that, after this exchange, she visited her father and spent two weeks away with her relatives. When she returned to Kigali to claim her property, the *conseiller* Kabandana asked her what she wanted and accused her of being a member of the *Interahamwe*. The witness was surprised and became afraid because the word *Interahamwe* was only used to refer to Hutus who had participated in the massacres. The witness decided to leave the country at the beginning of 2000 and sought asylum in another African country.[97]

3. Findings

96. The Chamber finds that the allegations of the Defence that the case brought against the Accused is the result of a conspiracy against him by the RPF lacks merit.

97. The Chamber has duly noted all these assertions made by the Defence. And the Chamber still finds that the Accused was properly brought before this Tribunal and that the Prosecution had a proper case made against the him. The Chamber further finds that based on the evidence adduced in this case, the Accused is not a mere victim of circumstances. He had a case to answer.

98. The Chamber will consider the allegation of fabrication of evidence against the Accused with regard to rape in its findings (see, below Part III)[98].

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[95] T. 10 December 2002, pp. 93-94 (ZLA); T. 11 December 2002, p. 15 (ZLA) (ICS).
[96] T. 10 December 2002, pp. 94-96 (ZLA); T. 11 December 2002, pp. 22-24 (ZLA) (ICS).
[97] T. 10 December 2002, pp. 28, 96-97 (ZLA); T. 11 December 2002, p. 27 (ZLA) (ICS).
[98] See below: Part III, Section L.

E. Other Defence allegations

1. Allegations

99. The Prosecution claimed that the Accused viewed the entire Tutsi population of Ruhengeri as RPF accomplices.[99] However, the Defence said that the testimony of the witnesses does not provide a basis for this conclusion. Furthermore, the Defence reminded the Chamber that four Tutsi witnesses testified that they owed their lives to the Accused. Thus, it was illogical to say that the Accused had an animus against Tutsis when some Tutsis had testified that they owed their lives to him, and that he had intervened to save them. The Defence submitted that **Defence Witness RHU26**, who had no reason to lie, is an example. Another such witness is **Defence Witness ZLA** who testified about the Accused's role prior to 1994 in saving her life. The Defence noted that **Defence Witness RHU21**, **Defence Witness RHU26** and **Defence Witness JK312** came to testify on behalf of Kajelijeli in spite of threats against them, and without the approval of the Rwandan government.

2. Evidence

100. **Defence Witness ZLA**, a female Tutsi and former soldier, testified that she saw the Accused in 1990 when he was holding security meetings in various *secteurs* after the RPF had attacked. The witness testified that after the attack, there was a hostile atmosphere and the Accused tried to calm the population and urged them to refrain from attacking one another. The Accused also cautioned the people that, whoever engaged in aggressive activities on the basis of ethnicity, or any other ground, would be punished. The witness personally attended some of these meetings.[100]

101. **Defence Witness ZLA** testified that in 1991 the Accused protected an old Tutsi woman known as Nyirakavuke when her home was being attacked by Hutus who came from Kitabura *secteur* and others who came from Mukingo. The Accused came with policemen, apprehended and imprisoned the attackers and ordered the gendarmes to protect the family. The attackers were asked to pay for the damage to the property of Nyirakavuke.[101]

102. **Defence Witness RHU26**, a Tutsi female,[102] testified that she fled to the home of the Accused because: "In 1992 when Tutsis had been picked, he had gathered the rest of Tutsis even those who had not been taken away, and he gathered them at ISAE and he went to fetch gendarmes at Ruhengeri to ensure their safety."[103]

103. **Defence Witness RHU23** testified that the Accused had instituted some form of protection for the Tutsis and that Munyemvano's compound was a sanctuary.[104] The

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[99] Prosecution Closing Brief (Corrigendum), para.41.
[100] T. 10 December 2002, p. 88 (ZLA).
[101] T. 10 December 2002, p. 91 (ZLA).
[102] T. 30 September 2002, pp. 11-12 (RHU-26) (ICS).
[103] T. 30 September 2002, p. 18 (RHU-26).
[104] T. 24 September 2002, p. 76 (RHU-23) (ICS).

Witness further testified that the Accused did not protect Tutsis up until the death of the President on 6 April 1994; in 1993 the Accused left the position of *bourgmestre*. The measures used to protect Tutsis by gendarmes were not applied in 1994.[105] The Witness testified that there were about 30 refugees at Munyemvano's compound in 1993, at the time when the *bourgmestre* had asked people to protect Tutsis because they were in danger.[106]

104. **Defence Witness ZLA** testified that in 1993 the RPF attacked Ruhengeri region and killed many Hutu officials. People became angry and wanted to attack Tutsis at the Busogo agricultural and animal husbandry institute. The Accused brought gendarmes to protect the Tutsis.[107] The Witness testified that her neighbours wanted to attack her and that she sought refugee at the *bureau communal*. The witness told the Accused, who asked her to join the Tutsis at Busogo. The witness requested that the Accused help her get to Kigali, where she could join relatives. The Accused arranged a police escort for her family and other Tutsis to travel to Kigali.[108]

105. **Defence Witness SMR2**, a close relative of the Accused, testified that the Accused's second wife learned of the death of the President on the night of 7 April 1994 [*sic*] when two Tutsis, Defence Witness RHU21 and his wife, arrived at the home of the Accused's second wife in Mukingo *commune* at approximately 2:00am seeking refuge.[109] The witness was acquainted with the man and woman and identified them in her testimony.[110] These refugees lived in Ruhingiro *secteur* which is nearby to the home of the Accused's second wife in Rwnizovu *secteur*.[111] The witness testified that RHU-21 was panic-stricken because he heard people talking about the death of President Habyarimana.[112] She also testified that RHU21 had previously been in prison because he was regarded as an accomplice of the *Inkotanyi* and that the Accused, when he was *bourgmestre*, had been responsible for his release. RHU21 had come to the house of the Accused because he was confident that the Accused would help him. The Witness confirmed that in the morning of 7 April 1994 the Accused's nephew, Dominique Maniraguha, visited to inform the members of home of the Accused's second wife of the death of the President. The Witness testified that between 8:30am and 9:00am, a Tutsi woman, Defence Witness RHU26, and her child arrived at the home of the Accused's second wife seeking refuge.[113] The Witness identified the woman in her testimony, and testified that the woman and the Accused's second wife had a friendly relationship.[114]

106. **Defence Witness RHU21**, a Tutsi male, testified that the Accused had saved his life twice. The first time was in 1990, when the Witness was arrested by the authorities of

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[105] T. 26 September 2002, p. 106-107 (RHU-23) (ICS).
[106] T. 21 November 2002, p. 94 (RHU-23).
[107] T. 10 December 2002, pp. 91 and 92 (ZLA).
[108] T. 10 December 2002, p. 92 (ZLA)
[109] T. 19 September 2002, pp. 76-77 (SMR2) (ICS).
[110] T. 23 September 2002, p. 9 (SMR2) (ICS).
[111] T. 19 September 2002, p. 79 (SMR2) (ICS).
[112] T. 23 September 2002, p. 10 (SMR2) (ICS).
[113] T. 19 September 2002, pp. 79, 81 and 82 (SMR2) (ICS).
[114] T. 23 September 2002, p. 12 (SMR2) (ICS).

his *cellule* and was transferred and detained at the Mukingo *bureau communal*; the Accused had the Witness released. The Witness testified that the second time the Accused saved the Witness' life was in April 1994, when he sought shelter at the home of the Accused in Mukingo *commune*. The witness, upon learning of the death of President Habyarimana on 6 April 1994 at home, immediately became afraid because it was being said that the Tutsis and their accomplices had brought down the plane. The Witness went to find shelter at house of the Accused because of his previous show of humanity. After a few hours in the bush, the Witness arrived at the Accused's house at 2:00am The Witness testified that he was with his first wife. The Witness testified that the Accused's wife showed them a room where they would spend the daytime hours during the month-and-a-half the witness and his wife remained at the home of the Accused. The Witness confirmed that another person, a Tutsi woman, and her baby also sought refuge at the home of the Accused.[115]

107. **Defence Witness RHU26**[116] testified that she was frightened after learning of the death of the President and decided to flee her home, carrying her child on her back. The Witness sought refuge at the home of the Accused because "He was a good man." The Witness explained that she was referring to the assistance the Accused gave Tutsis in 1992, when he had gathered the Tutsi at the ISAE and fetched gendarmes from Ruhengeri to ensure their safety.[117] The Witness testified that she saw the Accused's wife when she arrived at the residence of the Accused. The witness confirmed that she was not a friend of the Accused's wife before seeking refuge but became her friend after the ordeal. The Accused's wife immediately took the witness to a room where a Tutsi husband and wife, were hiding. However, in her written statement, the Witness only mentioned finding the Tutsi husband at the Accused's house on 7 April 1994. The Witness explained the discrepancy as a mistake of the person who took down the statement.[118] The Witness testified that, for the rest of that day, the refugees prayed, and did not see the Accused.[119]

108. **Defence Witness DMR3**, a relative of the Accused, testified that he learned of the President's plane crash at 6:00am on 7 April 1994 on the Radio Rwanda news. The Witness left his house at 8:30am to go to his grandparents' house and discussed the situation with his grandfather and a paternal uncle. The Witness did not hear any gunfire or explosions near his own house or that of his grandparents, but the Witness heard explosions "in the direction of Kinigi, Nkumbwa, Butaro and Shingiro, that is, around Cyamuhuzi". The Witness then went to the Accused's house in Mukingo *commune* at around 9:30am on the morning of 7 April 1994. There, he saw the wife of the Accused, the children and the maid.[120] The Witness testified that, while at the Accused's house, he did

[115] T. 10 December 2002, pp. 40, 41, 44, 46-48, 60-61 (RHU-21).
[116] T. 30 September 2002, pp. 11-12 (RHU-26) (ICS).
[117] T. 30 September 2002, p. 18 (RHU-26).
[118] T. 30 September 2002, pp. 37-38 (RHU-26) (ICS).
[119] T. 30 September 2002, pp. 19, 20, 21 (RHU-26).
[120] T. 23 September 2002, pp. 38-41 (DMR3).

not see the Accused.[121] The Witness stayed at the Accused's house for approximately 45 minutes to an hour.[122]

109. **Defence Witness DMR3** testified that he went home after leaving the Accused's house in Mukingo *commune* on 7 April 1994 at around 11:00am After getting back to his residence, the Witness went to fetch water and did not see any armed people on the path to the water source. The Witness returned to the Accused's house around 3:30pm and talked to the Accused's wife once more. The Accused's wife was concerned that she might have to spend a second night without her husband. The Witness stayed for more than one and a half hours. The Witness then returned to his house and did not leave for the rest of the day.[123]

110. **Defence Witness JK312**, a Tutsi male, testified that he learned about the crash of the President's plane on the morning of 7 April 1994 from a member of a *gendarmerie* unit.[124] The Witness then called the Accused to seek help as he feared for his own safety and the safety of his wife and two children. The Accused told the Witness that he could not help and that he should calm down. Later that day, the Witness went to the Accused's house in Nkuli to repeat his request for help. By that time the witness had heard screams and other noises in the streets and, in the light of recent reprisal attacks on Tutsis, the Witness felt unsafe. The Witness testified that, on the morning of 7 April 1994, when he went to the Accused's home, the Accused was wearing blue-striped pyjamas and blue sandal-like slippers, called "*Kabambini*" in Kinyarwanda. The Witness saw two or three other persons with the Accused but did not know them. The Witness testified that the Accused repeated what he had said earlier on the phone: "With your current situation, given the situation such as it is, you can go home or I don't know how I could help you. I don't know exactly what is happening, but if there is anything I can do for you, I can try and do something. But in the meantime you need to calm down. Go home and wait there."[125]

111. **Defence Witness JK312** testified that he then went home and locked himself and his family inside. In the afternoon, the Accused's son Ingabire came to the Witness' house and delivered a message from the Accused that the witness and his family would be evacuated the next day "because the situation was worsening".[126] Later in the afternoon a woman came to seek refuge in his house; she was "in a pitiful condition" because her husband had been killed that day and she was giving birth. The woman gave birth to a child during that night in the Witness' house "in very difficult conditions".[127] The Witness testified that he, his wife and children and the woman with her baby were evacuated on the

[121] T. 24 September 2002, pp. 6-8 (DMR3) (ICS).
[122] T. 24 September 2002, pp. 41, 43 (DMR3) (ICS).
[123] T. 24 September 2002, pp. 10-13, 43 (DMR3) (ICS).
[124] T. 16 September 2002, p. 43 (JK-312) (ICS).
[125] T. 16 September 2002, pp. 45, 47-49, 51-52 and 87 (JK-312).
[126] T. 16 September 2002, p. 53 (JK-312).
[127] T. 16 September 2002, p. 54 (JK-312).

next day, 8 April 1994, in the early afternoon. "It was thanks to the Accused that I was evacuated and I owe him my life."[128]

112. **Defence Witness JK312** testified that he did not ask the Accused for help because he believed that the Accused had the means to ensure his evacuation, but merely because the Accused seemed to him "more of a humanitarian than the *bourgmestre*".[129] The Witness testified that it was not the Accused himself who evacuated the witness and his family. The Witness testified: "What I do know is that I was evacuated, thanks to arrangements he made. If not, I do not know the details. All I know is that he made arrangements for that."[130]

113. In answer to a question from the Bench, **Defence Witness JK312** testified that he and his family were evacuated by approximately 100 *gendarmes* and taken to a place in Ruhengeri, about 50 kilometres from Nkuli. They had to pass many roadblocks manned by people the Witness described as *Interahamwe*. The Witness testified that they looked nervous and had "traditional weapons" in their hands but they did not attack the truck because it contained many *gendarmes* and the Tutsis were hidden. The Witness testified that he did not believe that the Accused had the influence to get 100 *gendarmes* to evacuate him as the situation was chaotic and "nobody could control what was happening. They were sent to evacuate my whole family, [...] not to fight but to conceal us [...]".[131]

3. Findings

114. The Chamber notes the evidence of the Defence that the Accused saved the lives of the Tutsi before 1994. But it will not be fair to consider this line of Defence evidence for its intended purpose. This is because during the Prosecution case, the Defence continuously objected successfully to the Prosecution's attempt to question witnesses on matters relating to the conduct of the Accused and his acts towards the Tutsi before 1994, citing the temporal jurisdiction of the Tribunal which is limited to events occurring only in 1994.[132] Consequently, the Prosecution was, at the instance of the Defence, prevented from fully exploring, during the case for the Prosecution, the pre-1994 conduct of the Accused towards the Tutsi.

115. At any rate, the Chamber finds that the evidence brought by the Defence in relation to the alleged acts of the Accused in favour of Tutsis before and during the events of April 1994 does not suffice to impeach the Prosecution evidence in relation to the intent of the Accused to kill the Tutsi population and his act of killing Tutsis. The Accused's intent and actions in this respect will be fully considered in Part III.

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[128] T. 16 September 2002, p. 55 (JK-312).
[129] T. 16 September 2002, p. 77 (JK-312).
[130] T. 16 September 2002, pp. 94 and 95 (JK-312).
[131] T. 16 September 2002, pp. 102-104 (JK-312) (ICS).
[132] See for instance, T. 11 December 2001, pp. 11-16 (ACM) (ICS).

F. Challenge of Prosecution evidence

1. Allegations

116. The Defence challenged the credibility of the Prosecution witnesses and the sufficiency of the evidence supporting the Prosecution case with respect to some counts in the Indictment.[133]

117. The Defence asserts that Prosecution witnesses GBV, GBE, GDD and GAO are detainees who have their own interests to protect, and have therefore gone out of their way to give false testimony about the Accused.

118. The Defence asserts that there were inconsistencies in the testimonies of some of the witnesses. Also, that there were contradictions and conflicting testimonies amongst the Prosecution witnesses with regard to the role of the Accused at different locations, sightings of the Accused at places, times and dates of the happening of certain events and the general demeanour of some of these witnesses when they testified. The Chamber notes that the Defence in attacking the credibility of some of these witnesses also discussed their reputation in the community as a whole. The Defence in attacking the credibility of these witnesses stated that they were not to be believed by the Chamber.

119. The Defence also reminded the Chamber of the fact that the Prosecution witnesses were interviewed after the arrest of the Accused. The Defence noted that the first prosecution witness gave a statement on 31 July 1998, a full 36 days after the Accused was arrested.[134] The Defence stated that this reinforced their contention that the Accused was first arrested and the Prosecutor thereafter sought evidence to support his illegal arrest. The Defence therefore urged the Trial Chamber to evaluate the testimony of the Prosecution witnesses within that context.[135]

120. The Chamber will fully consider the challenges of the Defence with regard to credibility and reliability of Prosecution witnesses in its analysis of the Prosecution's case (see Part III, below).

121. The Accused also made various allegations against specific Prosecution witnesses in his testimony.

2. Evidence

122. **The Accused** testified that he had known Prosecution Witness GBV since he was young while he was working as a gardener at the Parish.[136] The Accused added that Prosecution Witness GBV was responsible of the passing away of several people one of

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[133] Defence Closing Brief (Corrigendum), para. 389.
[134] Defence Closing Brief (Corrigendum), para. 33.
[135] Defence Closing Brief (Corrigendum), para. 35.
[136] T.16 April 2003, p. 17 (ACCUSED).

whom was a cultivator and another a colonel. The Accused added that GBV was among the people who had played a part in the massacre of Hutus who came back from exile.[137]

123. **The Accused** testified that he knew Prosecution Witness GBE. The Accused testified that the witness was the manager of a restaurant where he used to hide brigands and that he was wanted for receiving stolen goods.[138] The Accused also testified that when the refugees came back from exile he was arrested and detained in Nakinama with Prosecution Witness GAO, and that the latter who were both Muslim signed a contract with the *Bourgmestre* of Ruhengeri, Samvura Epimac. According to that contract these two people were at the disposal of IBUKA Association.[139] The Accused testified that when he was a *Bourgmestre*, the witness used to act in complicity with the bandits in Mukingo and he was arrested several times.[140] The Accused testified that he had Prosecution Witness GBE detained several times for stealing property.[141]

124. On cross-examination, **Prosecution Witness GBE** testified that he was arrested in 1985 for stealing shoes.[142] On re-examination, he explained that he was sanctioned for purchasing a pair of stolen shoes, but that he was not aware that they were stolen when he purchased them.[143]

125. **The Accused** testified that he knew Prosecution Witness GBH because he met him when he was young. The Accused added that Witness GBH wanted to destroy a compound in order to use the materials to built his own house and take possession of one of the plot of lands.[144] The Accused testified that he had him arrested and taken to the *commune* prison for trying to take possession of that property.[145]

126. During its cross-examination of **Prosecution Witness GBH**, the Defence tried to cast doubt on his credibility by suggesting that he is testifying against the Accused because he bears a grudge against the Accused for putting him in jail for trying to steal *commune* property.[146] Witness GBH testified that in fact he was not put in a cell, but rather spent the night detained in the Accused's vehicle, and that he was released the following day by the *Préfet*.[147] The Witness further testified that he had land that was used by the Accused and that he has not received compensation for that property. Witness GBH testified that since he would be compensated sometime in the future by the government, he

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[137] T.16 April 2003, p. 17 (ACCUSED).
[138] T.16 April 2003, p. 17 (ACCUSED).
[139] T.16 April 2003, p. 18 (ACCUSED).
[140] T.16 April 2003, p. 18 (ACCUSED).
[141] T.16 April 2003, p. 18 (ACCUSED).
[142] T. 9 July 2001, pp. 123-124 (GBE) (ICS).
[143] T. 10 July 2001, p. 39 (GBE) (ICS).
[144] T. 16 April 2003, p. 19 (ACCUSED).
[145] T. 16 April 2003, p. 19 (ACCUSED).
[146] T. 17 July 2001, p. 94 (GBH).
[147] T. 17 July 2001, p. 95 (GBH).

bears no grudge against the Accused.[148] The Witness testified that he has papers that show that the Accused promised him another plot of land.[149]

127. **The Accused** testified that he knew Prosecution Witness GAO because he was a thief, a delinquent in Byangabo. The Accused specified that Witness GAO was a docker, he used to load and unload vehicles with his band of minors he would sleep anywhere and the Accused arrested him sometimes because he did not respect the curfew.[150]

128. **The Accused** testified that he knew Prosecution Witness GDD. The Accused testified that when he was an accountant at the Nkuli *bureau communal*, he checked the account of Witness GDD because he had embezzled his overdraft and 200,000[151] Rwandan francs were deducted from his salary.[152] The Accused also testified that Witness GDD and his brothers killed an agricultural technician who was in charge of a so-called AIDR project that was implemented in Mukingo *commune*.[153] The Accused added that Witness GDD was sentenced to life imprisonment for these acts from 1992, but as the Witness GDD's father was a judge, the latter bargained compensation with the family of the victims in order to reduce the sentence to seven years. The Accused testified that Witness GDD was later released and as he could no longer teach, he was appointed to the position of youth leader, thanks to the intervention of his father. Yet he was removed from that position because his work was not good enough.[154] The Accused testified that when the war broke out, GDD was no longer a *commune* employee and he had no salary.[155] The Accused added that Witness GDD had come to give false testimony and that this had been proved because lawyers gave him a recording of the declaration he made in Rwanda and in which he did not refer to the Accused.[156]

129. **Prosecution Witness GDD** testified that in 1982 he was sentenced by the Court of First Instance of Ruhengeri for the death of a man when he was a teacher. He explains that he and his brother-in-law were sentenced for this man's death. GDD explains that he was not sentenced to life imprisonment but to 7 years imprisonment.[157] GDD explains that, as a consequence of his murder conviction, he was removed from his official MRND Kinyababa *cellule* leadership position. Witness GDD further testified that following his release from prison, he was not legally eligible to stand for political office.[158] The Witness testified that, "I did not say that I was the leader of the *Interahamwe*."[159]

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[148] T. 17 July 2001, p. 95 (GBH).
[149] T. 17 July 2001, p. 95 (GBH).
[150] T.16 April 2003, p. 21 (ACCUSED).
[151] The English transcript gives the figure of 250, 000. The French gives the figure of 200, 000. The latter amount is taken as authoritative by the Chamber.
[152] T. 16 April 2003, p. 22 (ACCUSED).
[153] T. 16 April 2003, p. 22 (ACCUSED).
[154] T. 16 April 2003, p. 22 (ACCUSED).
[155] T. 16 April 2003, p. 22 (ACCUSED).
[156] T. 16 April 2003, p. 23. The transcripts show the Accused as saying "Witness GDE" which the context shows clearly to be either a typing error, or an unintentional slip by the Accused. It was clear that the Accused was referring to Witness GDD.
[157] T. 3 October 2001, p. 141 and 143 (GDD).
[158] T. 3 October 2001, p. 162; T. 4 October 2001, p. 18, 19 and 20 (GDD).
[159] T. 4 October 2001, p. 111 (GDD).

130. In re-examination **Prosecution Witness GDD** explained that he served a prison sentence of three and a half years because he was given a conditional release by the Minister for Justice having already served half of his term.[160]

131. In re-examination, **Prosecution Witness GDD** denied that he was testifying against the Accused because of his conviction of 1982 and his conviction following the massacres he committed in 1994. He confirmed that he has been telling the truth throughout his testimony at the Tribunal.[161] The Witness further agreed that when the Accused and Nzirorera asked him to train the youth, they were aware that he had been convicted in 1982.[162]

132. **The Accused** testified that Prosecution Witness GDQ was prosecuted for having, in collaboration with Michel Nyigaba, attacked someone with a spear in Kinigi *commune*. Yet, the Accused added, Witness GDQ was released because he said that it was his boss who had instructed him to commit that crime.[163] The Accused testified that Witness GDQ was tried and sentenced to six months imprisonment in front of a trial jurisdiction; he was not sentenced by the Accused who was on leave but by the *Conseiller* who represented the *commune*.[164]

133. In cross-examination, **Prosecution Witness GDQ** explained that he was arrested on 20 April 1995 and that he was arrested with regard to the killing of Gazominari and Nyiramtuzo, who were both killed in front of his house. He admited to being charged with participation in the genocide of 1994.[165] The Witness mentioned his case file number in Rwanda.[166] Witness GDQ testified that with regard to his arrest in Rwanda he has been interviewed by the Rwandan authorities in 1995, 1996, 1997, 1998 and 1999 and he signed statements after they read out what they had written down.[167] In cross-examination GDQ denied that he was charged with killing people and burying them in his brother's backyard and also killing two children. He emphasized that he gave the Defence his case file number so that they could go and verify this information.[168]

134. **The Accused** testified that he first met Prosecution Witness ACM when she was a child.[169] The Accused added that he last saw her in 1993 when the RPF attacked Ruhengeri *Préfecture* and the Accused testified that he saved her life during the war of February 1993.[170]

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[160] T. 4 October 2001, p. 166 (GDD).
[161] T. 4 October 2001, p. 167 and 168 (GDD).
[162] T. 4 October 2001, p. 169 (GDD).
[163] T. 16 April 2003, p. 25 (ACCUSED).
[164] T. 16 April 2003, p. 25 (ACCUSED).
[165] T. 5 December 2001, p. 48 (GDQ).
[166] T. 5 December 2001, p. 55 (GDQ).
[167] T. 5 December 2001, p. 57 and 58 (GDQ).
[168] T. 5 December 2001, p. 94 and 95 (GDQ).
[169] T. 16 April 2003, p. 26 (ACCUSED).
[170] T. 16 April 2003, p. 26 (ACCUSED).

135. In closed session, **Prosecution Witness ACM** testified that she knew the Accused "well" and that he was a friend of her family.[171] The Accused came to their house regularly.[172] The Witness testified that the Accused got along fine with one of her brothers and remembers that her uncle gave the Accused a cow as a token of friendship.[173] Witness ACM testified that the Accused acted as a godfather to one of her brothers.[174] Witness ACM also testified that she knew the Accused as a carpenter in Busogo Parish[175] which is close to her own house.

136. **Prosecution Witness ACM** testified that the Accused ceased to be a friend of the family in 1990 when the *Inkontanyi* attacked Rwanda.[176] The Accused held members of her family responsible for the *Inkontanyi* attacks.[177] The Witness testified that she saw the Accused for the last time on 7 April 1994 and on three occasions that day.[178]

137. **The Accused** testified that he knew Prosecution Witness GAS for a long time.[179] The Accused testified that Witness GAS often moved from one job to another and that after becoming a nun, she was a teacher at the military camp of Kigali thanks to Nzirorera whom she knows because they come from the same region.[180] The Accused testified that while he was a *Bourgmestre* during the war, Witness GAS would show up at the *bureau communal* with Bishop Kalibushi to get identity papers. The Accused testified that she told him that she would like to take several people to Nyundo and therefore she needed papers for that purpose and the Accused issued them.[181]

138. **The Accused** testified that it was the IBUKA association that worked out the testimony of witness GAS.[182]

139. **The Accused** testified that Prosecution Witness GAP's son was arrested by the *commune* authorities with a group that had set fire to the kitchen of the Tutsis during the 23 February [1993] war.[183] The Accused added that as Witness GAP refused to bring his son, the Accused had to retain a quarter of his salary and ask policemen to bring him. The Accused added that the son was detained at the *commune* prison and that his father [Witness GAP] paid a fine.[184]

140. **The Accused** testified that during an attack launched in Kinigi, Prosecution Witness GAP was part of a group which destroyed the houses of the Tutsis and refused to

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[171] T. 11 December 2001, p. 8. (ACM) (ICS).
[172] T. 11 December 2001, p. 8 (ACM) (ICS).
[173] T. 11 December 2001, p. 9 (ACM) (ICS).
[174] T. 11 December 2001, p. 9 (ACM) (ICS).
[175] T. 11 December 2001, p. 9 (ACM) (ICS).
[176] T. 11 December 2001, p. 10 (ACM) (ICS).
[177] T. 11 December 2001, p. 10 (ACM) (ICS).
[178] T. 11 December 2001, p.18 (ACM) (ICS). See below: Part III, Section K.
[179] T. 16 April 2003, p. 26 (ACCUSED).
[180] T. 16 April 2003, p. 26 (ACCUSED).
[181] T. 16 April 2003, p. 27 (ACCUSED).
[182] T. 16 April 2003, p. 27 (ACCUSED).
[183] T. 16 April 2003, p. 29 (ACCUSED) (ICS).
[184] T. 16 April 2003, p. 29 (ACCUSED) (ICS).

join the police contingent that was sent to protect Tutsi property and the Accused had to punish him.[185]

141. **The Accused** testified that Prosecution Witness GAP and himself were not on good terms until he was removed from his position as a *bourgmestre* in 1993, and for that reason Witness GAP has come to testify against him.[186]

142. **The Accused** testified that when he was no longer a *bourgmestre* his successor promoted Witness GAP in 1993.[187]

143. Under cross-examination, **the Accused** testified that he did not know if between 1993 and 1994 Prosecution Witness GAP was an instructor in charge of the military training of *Interahamwe* militia. The Accused added that he could not know because he was not a *bourgmestre* at that time.[188]

144. **Prosecution Witness GAP** testified that while the Accused was *Bourgmestre* and he worked for the *Commune*, they had normal working relations and that the Witness "was under his [the Accused's] orders in every duty [he] performed".[189]

145. On cross-examination, **Prosecution Witness GAP** testified that in 1996 he was arrested by the Rwandan authorities.[190] The Witness testified that he was accused of massacres that occurred in 1991 when the Accused was *Bourgmestre*.[191] The Witness testified that he was charged with the killing of Kisaho Ndayambage and Kabanga, who was in jail in 1991. Witness GAP testified that it was the Accused and the driver Muhunde who took these people from Ruhengeri to the Mukingo *bureau communal* and killed them.[192] He testified that he has not pleaded guilty to the charges because it is the Accused who committed the crimes.[193] The Witness testified that it is true that he is still in jail for those charges.[194]

3. Findings

146. The Chamber will here consider in general terms the Defence attack on the credibility of Prosecution Witnesses. Later in the Factual Findings, where necessary the Chamber will give further reasoning in relation to the assessment of credibility carried out by the Chamber.

147. **In relation to Prosecution Witness GBV**, the Chamber notes the Accused's testimony that Witness GBV was responsible for the deaths of a cultivator and a colonel.

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[185] T. 16 April 2003, p. 29 (ACCUSED) (ICS).
[186] T. 16 April 2003, pp. 29 and 30 (ACCUSED) (ICS).
[187] T. 16 April 2003, p. 30 (ACCUSED) (ICS).
[188] T. 17 April 2003, p. 56 (ACCUSED).
[189] T. 28 November 2001, p. 93 (GAP) (ICS).
[190] T. 3 December 2001, p. 41 (GAP).
[191] T. 3 December 2001, p. 42 (GAP).
[192] T. 4 December 2001, p. 79 (GAP).
[193] T. 3 December 2001, p. 45 (GAP).
[194] T. 3 December 2001, p. 47 (GAP).

The Chamber notes, however, that in its cross-examination of Witness GBV, the Defence did not put these allegations to the Witness. The Chamber notes that in attacking the credibility of Witness GBV, the Defence was unable to establish any link between the alleged acts of the Witness and a reason why the Witness would seek to testify falsely against the Accused. The Chamber will treat the testimony of Witness GBV with the necessary caution warranted by the occasion.

148. **In relation to Prosecution Witness GBE**, the Chamber notes the testimony of the Accused that Witness GBE was a thief and that he was arrested and detained several times when the Accused was *Bourgmestre*. It is the impression of the Chamber that the Accused tried to imply that, by virtue of the fact that he imprisoned Witness GBE, it is likely that Witness GBE would be biased against him. The Chamber notes that the Defence did not raise this matter with Witness GBE during cross-examination. In fact, all that was put to the Witness in this regard is that he had once been sanctioned for purchasing a pair of stolen shoes. The Chamber finds the Defence allegations against the Witness's credibility to be vague, and in any case insufficient to establish a reason why the Witness would want to give false testimony against the Accused.

149. **In relation to Prosecution Witness GBH**, the Chamber notes particularly the allegation of the Defence that Witness GBH bore a grudge against the Accused and that this is why he testified against him. Although the casual observer may understandably take the view that GBH may have some lingering grudge against the Accused, the Chamber does not hold that view. For, after having carefully observed the witness's demeanour during his testimony and having carefully considered his testimony, the Chamber finds that GBH was, beyond a reasonable doubt, a witness of truth. In this regard, the Chamber notes that the witness had denounced even his own son for participating in the killings of Tutsi civilians that were done in 1994. The credibility of Witness GBH will be further addressed by the Chamber in Part III of the Judgment[195].

150. **In relation to Prosecution Witness GAO**, the Chamber notes the allegation by the Accused that the Witness was a thief and a delinquent. However, the Chamber also observes that in cross-examination, this issue was not put to the Witness. The Defence allegations against Witness GAO were too general and lacked specificity, and the Chamber finds that the Defence was unable to establish a reason why Witness GAO would wish to testify falsely against the Accused. The credibility of Witness GAO will be further addressed by the Chamber in Part III of the Judgment[196].

151. **In relation to Prosecution Witness GDD**, the Chamber notes the testimony of the Accused that Witness GDD had once embezzled money and that Witness GDD and his brothers had killed a man. The Chamber has noted the testimony of the Accused that Witness GDD had come to give false testimony about him. The Chamber finds that the Accused was unable to establish any explicit reason why the Witness would bear a grudge against the Accused. The Chamber finds that it is unlikely that the Witness would hold a

[195] See below: Part III, Section N.
[196] See below: Part III, Section K.

grudge against the Accused for a crime committed in 1982. Furthermore, as stated by the Witness in cross-examination, the Accused knew when he was recruiting the Witness that he had been convicted in 1982.

152. **In relation to Prosecution Witness GDQ**, the Chamber finds that the Accused was unable to give any reason as to why the Witness would be inclined to testify against him. The Chamber notes that in cross-examination, Witness GDQ admitted that he was part of those who partook in the genocide in 1994. The Chamber finds that the Defence did not establish a link between the testimony of this Witness in this regard and a likelihood of bias against the Accused.

153. **In relation to Prosecution Witness ACM**, a Tutsi woman, the Chamber notes the testimony of the Accused that he once saved the life of Witness ACM. However, on this point the Chamber finds that even if it were established that the Accused had previously saved the life of Witness ACM, this would not have prevented him from targeting and killing Tutsis. The Chamber also notes that according to Witness ACM, although the Accused was once a friend of her family there was eventually a falling-out.

154. **In relation to Prosecution Witness GAS**, the Chamber notes the testimony of the Accused that witness GAS' testimony was created by someone else. The Chamber notes that the witness was not cross-examined on these allegations.

155. **In relation to Prosecution Witness GAP**, the Chamber notes the allegations of the Accused against the Witness. The Chamber notes that in cross-examination, the Defence made no reference whatsoever to these allegations. The Chamber notes that the Defence stated that there were inconsistencies in the statements that the witness gave to the Office of the Prosecutor.

156. In considering what weight should be given to a specific Witness testimony, the totality of the testimony (demeanour, corroboration, credibility, etc.) of the witnesses is taken into account by the Chamber.

157. The Chamber finds that there were many instances in which the Defence made no reference to these allegations about Prosecution witnesses during cross-examination of these witnesses, thus not giving the Witness an opportunity to answer on the record. This factor has been taken into account by the Chamber in making its findings on the Defence attack on the credibility of Prosecution Witnesses.

G. Submissions that the killings of the Tutsi were a spontaneous reaction.

1. Allegations

158. The Defence submitted that the Prosecution's allegation that the killings that took place in the Mukingo, Nkuli and Kinigi *communes* were part of a "long and well conceived plan" is false. The Defence asserts that the killings that took place during that period were rather a spontaneous reaction by the Hutus to the fact that their President had been killed. The Defence states further that since this was a spontaneous reaction, there is

no way that the Accused can be found guilty of a preconceived plan to kill as he could not have been a leader or the organizer of a group of people who were reacting naturally to the shooting down of their President's plane. [197] For example, there is no clear evidence that the killings that took place in Ruhengeri Prefecture from April of 1994 "was long conceived and well organized." The Defence submits that the death of the President was a surprise to the population at large and the response of violence towards the Tutsis was spontaneous.[198]

159. While the Defence does not contest the violence and killings during 1994, after the death of the President, the Defence contends that these represent spontaneous rage and confusion which had been brewing for years since early 1990. Between 1990 and 1994, the RPF attacks on the Hutu population had resulted in death, homelessness and dislocation of the population.[199] Periodically, the Hutu retaliated. But these battles were viewed as an internal civil war by the Rwandan population. This was evidenced by witnesses' testimonies that the country was at war.[200] What resulted were cycles of attacks by RPF and reprisals by the population against perceived Tutsis within the country. The Defence submits that this was not a genocide but part of the internal fighting between the Hutus and the Tutsis which was sporadic, uneven and without the coherency of a plan. With the President's death, which many blamed on the RPF, the shock and grief of the population was laden with anti-Tutsi sentiments. Contrary to the Prosecutor's scenario that Hutu extremist were laying in wait to teach the Tutsis a lesson, the country was in chaos on 7 April 1994, without leadership and with no "new" leadership stepping up to the plate.[201]

2. Findings

160. The evidence submitted by both parties on this issue is presented in the Part III.

161. On the basis of all this evidence the Chamber finds that, in Mukingo *commune* and neighbouring areas in April 1994, the killings of the Tutsi were not a spontaneous reaction of the Hutu populace to the death of the President. The evidence shows that the killers were, amongst others, *Interahamwe* who were directed to kill all the Tutsis and received assistance and were supplied with weapons to do so.

162. The issue whether the Accused conspired with others to work out a plan to exterminate the civilian Tutsi population will be considered below in Part III of the Judgment[202].

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[197] Defence Closing Brief (Corrigendum), para. 372.
[198] Defence Closing Brief (Corrigendum), para. 372.
[199] T. 7 April 2003, pp. 50, 51 and 55-57 (Dr. Bangamwabo).
[200] T. 7 April 2003, pp. 50, 51 and 55-57 (Dr. Bangamwabo).
[201] Defence Closing Brief (Corrigendum), para. 467.
[202] See below: Part III, Section J.

H. Alibi

163. After the start of the Trial the Defence advanced an alibi pursuant to Rule 67 of the Rules of procedure and evidence. In his alibi, the Accused asserts that at all times referred to in the Indictment and especially on 7 and 8 of April 1994, he was not at the site where any of the massacres occurred.[203]

1. Applicable Law

164. Pursuant to Rule 67(A)(ii) the Defence shall notify the Prosecution of its intent to advance an alibi as early as reasonably practicable, and in any event, prior to the commencement of the Trial. Although Rule 67(B) provides that the failure to give such notice does not limit the right of the Accused to rely on the alibi, the Chamber may take such failure into account when weighing the credibility of the alibi.[204]

2. The burden of proof regarding the alibi

165. As has been held by the Appeals Chamber in the *Čelibići Case*, the submission of an alibi by the Defence does not constitute a defence in its proper sense.[205] The relevant section of the judgment reads:

> "It is a common misuse of the word to describe an alibi as a "Defence". If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a Defence in its true sense at all. By raising this issue, the defendant does no more that require the Prosecution to eliminate the reasonable possibility that the alibi is true."[206]

166. Therefore, as consistently held throughout the jurisprudence of the Tribunal and as asserted by the Defence,[207] when an alibi is submitted by the Accused the burden of proof rests upon the Prosecution to prove its case beyond a reasonable doubt in all aspects.[208] Indeed, the Prosecution must prove "that the accused was present and committed the

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[203] Defence's notice of alibi filed on 9 July 2001.
[204] *Kayishema,* Decision 3 Sept. 1998 Rule 67 (A)(ii) (TC), (ICTR Reports, 1998, pp. 1003-1006) - recalled in *Kayishema and Ruzindana,* Judgment (TC), para.237. See also: *Musema,* Judgment (TC), para.107; *Niyitegeka,* Judgment (TC), para. 50; *Semanza,* Judgement (TC), para. 82. The Appeals Chamber in the Rutaganda case stated that not withstanding Rule 67 (B) failure to raise the alibi in due time may have consequences on the Trial Chamber's findings: *Rutaganda,* Judgment (AC), footnote 392.
[205] *Delalic et al. (Celebici Case)*, Judgment (AC), para. 581.
[206] *Delalic et al. (Celebici Case)*, Judgment (AC), para. 581.
[207] Defence Closing Brief, para. 98.
[208] *Kayishema and Ruzindana,* Judgment (TC), para. 234 - confirmed in *Kayishema and Ruzindana,* Judgment (AC), para. 113; *Musema,* Judgment (TC), para.. 108 - confirmed in *Musema,* Judgment (AC), para. 200; *Ntakirutimana and Ntakirutimana*, Judgment (TC), para. 294; *Niyitegeka*, Judgment (TC), para. 51.

crimes for which he is charged and thereby discredit the alibi defence".[209] If the alibi is reasonably possibly true, it will be successful.[210]

167. Pursuant to Rule 67(A)(ii), the Defence is solely required at the pre-trial phase—in addition to the notification of his intention to rely on the alibi—to disclose to the Prosecution the evidence upon which the Defence intends to rely to establish the alibi.[211] Thus, during the trial the Defence bears no onus of proof of the facts in order to avoid conviction. But, during the trial, the Accused may adduce evidence, including evidence of alibi, in order to raise reasonable doubt regarding the case for the Prosecution.[212] It must be stressed, however, that the failure of the Defence to submit credible and reliable evidence of the Accused's alibi must not be construed as an indication of his guilt.[213]

3. Notice of alibi

168. The Defence Notice of Alibi filed on 9 July 2001 states as follows:

> That at all material times of the Indictment specifically related to the events unfolding on April 7, 1994, Mr. Kajelijeli spent the day between his home in Nkuli and the canteen in Nkuli.
>
> Mr. Kajelijeli will rely upon the following witnesses to establish this defence: JK27 ; SMR1; JK31 ;JK312
>
> That on April 8, 1994, he was at his home in Nkuli all that morning and that he only left his home in Nkuli to visit his second home in Mukingo approximately at noon, briefly visited the *Bourgmestre* of Mukingo for approximately 30 minutes, met with his family at his home in Mukingo for approximately 1 hour and returned home in Nkuli at approximately 2:30pm and remained home thereafter.
>
> Mr. Kajelijeli will rely upon the following witnesses to establish this defence: LMR1; SMR2 ; JK311; DMR3
>
> Defence investigations are still ongoing in Rwanda, Malawi, Zimbabwe, Togo, Cameroon, South Africa, etc [...]. The defence reserves the right to supplement the list of witnesses for the alibi.

169. In the present case a Prosecution motion for leave to call rebuttal evidence, partly based on the failure of the Defence to notify in due time of its intention to rely on the alibi, has been dismissed by the Trial Chamber on the basis of the irrelevance of the proposed witnesses.[214]

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[209] *Musema,* Judgment (AC), para. 205; *Musema,* Judgment (TC), para. 108.
[210] *Musema,* Judgment (AC), para. 205-206; *Musema,* Judgment (TC), para. 108;*Ntakirutimana and Ntakirutimana,* Judgment (TC), para. 294; *Niyitigeka,* Judgment (TC), para. 51.
[211] *Kayishema and Ruzindana,* Judgment (TC), para. 111; *Rutaganda,* Judgment (AC), para. 242.
[212] *Kayishema and Ruzindana,* Judgment (TC), para. 111; *Rutaganda,* Judgment (AC), para. 242.
[213] *Kayishema and Ruzindana,* Judgment (TC), para. .112; *Semanza,* Judgment (TC), para. 148.
[214] *Kajelijeli,* Decision 12 May 2003, Rebuttal Evidence (TC).

170. Although the notice of alibi was not filed in due time by the Defence, as required by Rule 67(A), this point has not been raised by the Prosecutor in its closing brief. Therefore it is for the Trial Chamber to decide whether it should raise this question.

171. The Chamber has decided that, in the particular circumstances of the case, it will fully consider the Accused's alibi in light of Rule 67(B), notwithstanding the non-compliance of the Defence with Rule 67(A).

4. Discussion of the Accused's Alibi

(a) Averments

172. The Defence aver that the Accused was: at his house on 6 April 1994 from 5:00pm until around 9:00am on 7 April 1994; at the Nkuli communal Office from around 9:00am until 11:00am on 7 April 1994 and at his house or in front of his house for the rest of that day and night; at his house during the morning of 8 April 1994 and later at around 12:45pm at the Mukingo *bureau communal* and later at his wife's house in Mukingo *commune*; then he returned to his home in Nkuli *commune* at 3:00pm the same day and stayed there; at the Mukingo *bureau communal* around 9:00am or 10:00am on 9 April 1994 and later at the burial of *Bourgmestre* Harerimana, for the whole day; at his home in Nkuli *commune* on 10 April 1994; in movement and at Mukamira on 11 April 1994 up to the morning of 12 April 1994; in his home in Nkuli *commune* during the morning of 12 April 1994 up until 9:30am when he left to Mukingo *commune*; at his home in Nkuli *commune* around and after 4:00pm on 12 April 1994; in Rusiza, Nkuli *bureau communal* sometime on 13 April 1994 and later, around and after 4:30pm at his house in Nkuli *commune*; in a forest in Kareba, Nkuli *commune* sometime during the day on 14 April 1994 and later, around and after 5:00pm at his home in Nkuli *commune*.

(b) Evidence

173. The Accused, Defence Witness JK27, Defence Witness LMR1, Defence Witness JK31, Defence Witness JK312, Defence Witness SMR2, Defence Witness JK311, and Defence Witness DMR3 testified regarding the whereabouts of the Accused between 6 April and 9 April 1994. Whereas no mention of an alibi has been made in the notice of alibi or in the closing arguments for the period from 10 April 1994 to 14 April 1994 the Accused testified on this date and therefore his testimony will be assessed below.

- **Night of 6 April 1994 to 7 April 1994**

174. **The Accused** testified that on the morning of 6 April 1994, he was at his home in Nkuli.[215] He had two houses: one in Nkuli and another one in Mukingo.[216] The Accused

[215] T. 15 April 2003, p. 33 (ACCUSED).
[216] T. 15 April 2003, p. 33 (ACCUSED).

testified that for safety reasons he would spend a night in Nkuli and another night in Mukingo.[217]

175. **The Accused** testified that that day he left his house at 9:00am to go to Mukamira *cellule*[218] where he was supervising construction works.[219] In order to move he used a red Toyota Hilux bearing the STB sign.[220] The Accused testified that he spent the day there and came home at 5:30pm.[221] The Accused testified that when he got back home, he parked the vehicle in his compound.[222] The Accused testified that he was very tired and did not leave his home once he got there.[223] They watched a video tape and went to bed at 9:00pm while they usually went to bed between 10:00pm and 10:30pm.[224] They turned on the radio around 3:00am [7 April 1994] and they heard classical music.[225]

176. Moreover, **the Accused** testified that he would not have been able to go out because of safety problems and of the cease-fire: everyone had to be home between 6:00pm and 6:00am.[226]

177. Under cross-examination, **the Accused** denied that he was in Nkuli *Bureau Communal* from 10:00pm until the early hours of 7 April 1994.[227]

178. **The Accused** testified that at 6:00am on 7 April 1994, the news of the death of the President was announced. The Accused testified that he was still in bed but he was awake. They were shocked and dismayed at the news, and that the Accused did not know what to do. The news of the death of the Presidents of Rwanda and Burundi was followed by a communiqué by the Minister of Defence telling people to stay at home.[228]

179. **Defence Witness LMR1**, who is a close relative of the Accused, testified that the Accused spent the night with his (Accused's) first wife on the evening of 6 April 1994, and that he was with her until about 9:00am on the morning of 7 April 1994 when he went to visit the *bourgmestre* of Nkuli *commune*.

- **7 April 1994:**

  - **The Accused's Testimony**

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[217] T. 14 April 2003, pp. 32-34 (ACCUSED).
[218] T. 15 April 2003, p. 34 (ACCUSED).
[219] T. 15 Aprils 2003, p. 34 (ACCUSED).
[220] T. 15 April 2003, p. 35 (ACCUSED).
[221] T. 15 April 2003, p. 34 (ACCUSED).
[222] T. 15 April 2003, p. 35 (ACCUSED).
[223] T. 15 April 2003, p. 34 (ACCUSED).
[224] T. 15 April 2003, p. 37 (ACCUSED).
[225] T. 14 April 2003, p. 43 (ACCUSED). Defence Exhibits, D55A and D55B.
[226] T. 15 April 2003, p. 36 (ACCUSED).
[227] T. 17 April 2003, p. 67 (ACCUSED).
[228] T. 15 April 2003, p. 38 (ACCUSED).

180. **The Accused** testified that his sister came to his place at around 6:15am.[229] He immediately got out of his bed once he learned that someone had come to pay him a visit.[230] The Accused testified that his sister left around 8:30am.[231] The Accused was aware of the lack of safety in Nkuli *commune*, but his sister only lived a kilometre away and had no reason not to go back home.[232]

181. **The Accused** testified that he received a telephone call from Defence Witness JK312.[233] Witness JK312 wanted to know if the Accused had learned the news (of the death of the President in the plane incident) and expressed his fears to the Accused.[234] The Accused testified that witness JK312 came to the Accused's house and stayed until 8:30am.[235] They talked in the courtyard of the house with the gate left open.[236] The Accused was still wearing pyjamas and sandals.[237] Witness JK312 asked the Accused to give him shelter but the Accused declined because there were already eleven people and he could not host five more.[238] Moreover, Witness JK312 was under the protection of the *gendarmerie*.[239] The Accused added that his house was on the edge of the road and everyone knew where he lived; he thought that the situation could only get worse.[240] The Accused testified that Witness JK312 sought refuge after hearing the news of the death of the President because it was during a time of war and because his house could be considered a sanctuary.[241]

182. **The Accused** testified that he telephoned his brother-in-law, Nzabarusha Lupaul,[242] who was a chief warrant officer in the army at Mubona Camp in Ruhengeri, until around 9:00am.[243] The Accused told him he had a friend, Witness JK312 who needed help and asked him to come and pick up Witness JK312 at 8:00am.[244] The Accused testified that he did not ask the *militaries* for help; his brother-in-law agreed with the chief of the *gendarmerie* to send *gendarmes* who were protecting Witness JK312.[245] The Accused then had breakfast.[246]

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[229] T. 17 April 2003, pp. 68 and 69 (ACCUSED). There is a slight discrepancy between the French and English transcripts; 6h30 in the French transcripts (T. 17 Avril 2003, p. 67).
[230] T. 17 April 2003, p. 69 (ACCUSED).
[231] T. 17 April 2003, p. 69 (ACCUSED).
[232] T. 17 April 2003, p. 69 (ACCUSED).
[233] T. 15 April 2003, p. 38 (ACCUSED).
[234] T. 15 April 2003, p. 38 (ACCUSED).
[235] T. 15 April 2003, p. 41 (ACCUSED).
[236] T. 15 April 2003, p. 41 (ACCUSED).
[237] T. 15 April 2003, p. 41 (ACCUSED).
[238] T. 15 April 2003, p. 41 (ACCUSED).
[239] T. 15 April 2003, p. 38 (ACCUSED).
[240] T. 17 April 2003, p. 71 (ACCUSED).
[241] T. 17 April 2003, p. 70 (ACCUSED).
[242] Discrepancies between the French transcripts and the English transcripts spelling. In the French the name is spelled: Leopold.
[243] T. 17 April 2003, p. 72 (ACCUSED).
[244] T. 17 April 2003, p. 72 (ACCUSED).
[245] T. 17 April 2003, p. 77 (ACCUSED).
[246] T. 15 April 2003, p. 44 (ACCUSED).

183. **The Accused** testified that, after the telephone conversation, his stepsister, Angelina Ntawigomwa came to his place to discuss payment of school fees. She returned home after learning of the death of the President.

184. **The Accused** testified that around 9:00am he went to the Nkuli *bureau communal* and arrived 9:05am or 9:10am.[247] The Accused testified that the distance between the office and the house is about 150 to 200 metres.[248] On the way, the Accused met and talked with *bourgmestre* Gatsimbanyi Dominique [249] outside the *bureau communal*.[250] The Accused expressed concern for the safety of his family in Mukingo *commune*; the *bourgmestre*, who had just come back from Mukingo, told the Accused that the situation was still calm when he left.[251] They talked to each other for ten minutes.[252] Two policemen accompanied the *bourgmestre* and there were other people present: police agents like Sebagabo and Sebazungu and tradesmen like Daniel Mihigo, Kabonanye and Ntagahira.[253] The Accused talked to the tradesmen after the *bourgmestre* left. [254] The Accused also talked with Pheneas Karekesi, the president of the Seventh Day Adventist Church who had come to request help. When he realized that the *bourgmestre* was no longer there, Elias Karekesi went back to the mission.[255]

185. **The Accused** testified that he remained at the Nkuli *bureau communal* between 10:00am and 11:00am and then he returned home.[256] Around this time, the Accused heard gunfire coming from the direction of Miniariga and the mission of Ruhenkeli in Nkuli *commune*. The Accused testified that he also heard the detonation of heavy weapons coming from the direction of Mukingo *commune* but later denied having said that the gunfire came from Mukingo *commune*.[257] The Accused testified that he heard gunfire coming from Kinigi, from the direction of Kinyababa, near Gitwa, in a place called Rwankeri of 7th Day Adventist Church.[258]

186. **The Accused** testified that he was already home by around 11:00am.[259] The Accused remained near his house, watching what was going on and did nothing else.[260] During the afternoon of 7 April 1994, he watched passers-by.[261]

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[247] T. 15 April 2003, p. 47 (ACCUSED).
[248] T. 15 April 2003, p. 47 (ACCUSED).
[249] T. 15 Avril 2003, p. 49 (ACCUSED).
[250] T. 15 April 2003, p. 47 (ACCUSED).
[251] T. 15 April 2003, p. 47 (ACCUSED).
[252] T. 23 April 2003, p. 62 (ACCUSED).
[253] T. 15 April 2003, p. 48 (ACCUSED).
[254] T. 15 April 2003, p. 48 (ACCUSED).
[255] T. 15 April 2003, p. 48 (ACCUSED).
[256] T. 15 April 2003 p. 50 (ACCUSED).
[257] T. 17 April 2003 p. 74 (ACCUSED).
[258] T. 17 April 2003, p. 73 (ACCUSED). The French Transcript gives a slightly different picture: T. 17 Avril 2003, p. 73 (ACCUSED). Extract: « Ce que j'ai dit — et je le répète, vous pouvez vérifier —, que j'ai entendu les coups de feu de la direction de Kinyababa, à côté de Gitwa, près de Rwankeri, à côté de l'église Adventiste du septième jour et, également, de la direction de Mukamira. »
[259] T. 15 April 2003, p. 51 (ACCUSED).
[260] T. 15 April 2003, p. 51 (ACCUSED).
[261] T. 15 April 2003, p. 53 (ACCUSED).

187. **The Accused** testified that an orderly from the Nkuli Court who passed by his house informed him that Tutsis from Kinyababa *cellule* were being beaten up and killed.[262]

188. **The Accused** testified that between 3:00pm and 4:00pm he learned on the radio that the situation had become worse in Kigali and that the Prime Minister had been killed.[263]

189. **The Accused** testified that he heard about the massacre of Tutsis at the nuns' convent in Mukingo *commune* during the day of 7 April 1994.[264] The Accused testified that he received the news from Agnes [a nurse].[265]

190. **The Accused** testified that he heard detonations coming from Mukingo *commune* and decided that he should go to Mukingo to pick up his family.[266] The Accused added that instructions were given on the radio prohibiting people from going out between 3:00pm and 4:30pm; following the instructions, the Accused returned home.[267] The Accused testified that he decided not to check on his family in Mukingo because of the state of insecurity, though he had nightmares all night long.[268] The Accused testified that he did not have to take the same precautions for his family in Mukingo as he had taken for Witness JK312 because the latter was a Tutsi and was not in the same situation as the Accused.[269]

191. **The Accused** denied that he gave instructions to Dusabe on 7 April 1994 because he did not go out of his house.[270] The Accused denied that on the afternoon of 7 April 1994 he bought oil [petrol] to fill the tank that the *Interahamwe* had used.[271] The Accused denied that he was seen at Karorero's canteen in Nkuli *commune* and that he bought drinks for the *Interahamwe* after they finished killing Tutsis.[272]

192. Under cross-examination, **the Accused** testified that between Nkuli *Commune* and Mukingo *Commune*, he thinks there are eight to nine kilometres and that this distance can be covered in about 20 minutes.[273]

193. Under cross-examination, **the Accused** testified that he could give an estimation of the time at which he carried out his different activities because he was listening to the radio and the news was broadcast at precise hours.[274]

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[262] T. 15 April 2003, p. 53 (ACCUSED).
[263] T. 15 April 2003, p. 54 (ACCUSED).
[264] T. 17 April 2003, p. 75 (ACCUSED).
[265] T. 17 April 2003, p. 75 (ACCUSED).
[266] T. 15 April 2003, p. 55 (ACCUSED).
[267] T. 15 April 2003, p. 55 (ACCUSED).
[268] T. 15 April 2003, p. 55; T. 17 April 2003, p. 75 (ACCUSED).
[269] T. 17 April 2003, p. 78 (ACCUSED).
[270] T. 17 April 2003, pp. 57 and 58 (ACCUSED).
[271] T. 17 April 2003, p. 79 (ACCUSED).
[272] T. 17 April 2003, p. 79 (ACCUSED).
[273] T. 17 April 2003, p. 80 (ACCUSED).
[274] T. 17 April 2003, p. 82 (ACCUSED).

- **Defence witnesses**

194. **Defence Witness JK27** testified that at around 7:30am on the morning of 7 April 1994, he took a bus to his parents' home in Nkuli. Defence Witness JK27 testified that upon arrival at his parents' home he first saw the Accused at around 9:00am, then at 11am while the Accused was at the *bureau communal*, and then at 3:00pm in front of the [Accused's] house talking to others.[275] The Witness testified that he saw the Accused clearly and that there were no structures or objects to interfere with his vision.[276]

195. **Defence Witness LMR1**, a close relative of the Accused, testified that the first wife of the Accused verified that the Accused spoke to visitors before having his bath. The Witness testified that the Accused left their house around 9:00am to go to the Nkuli *bureau communal* and to say hello to the *bourgmestre* of Nkuli. The Witness testified that the Accused returned to the house at around 11:00am and did not go out afterwards. The Witness added that the Accused stayed at their (Accused's family) house in Nkuli on the night of 7 April 1994. The Witness testified that the Accused possessed a red Hilux with the inscription "STB". The Accused never used the car on 7 April 1994 but did so on 8 April 1994.[277]

196. **Defence Witness JK312**, a Tutsi male, testified that after he learned about the crash of the President's plane on the morning of 7 April 1994[278] he called the Accused to seek help, as he feared for his own safety and the safety of his wife and two children. The Accused told the Witness that he could not help and that he should calm down.[279] The Witness testified that later that day he went to the Accused's house in Nkuli to repeat his request for help. By that time the Witness had heard screams and other noises in the streets and, in the light of recent reprisal attacks on Tutsis,[280] the Witness felt unsafe. The Witness testified that, on the morning of 7 April 1994, the Accused was wearing blue-striped pyjamas and blue, sandal-like slippers, called "Kabambini" in Kinyarwanda. The Witness testified that he saw two or three other persons with the Accused but did not know them.[281] The Witness testified that the Accused told him again that he could not help him and that he should go home.[282]

197. **Defence Witness JK312** testified that he then went home and locked himself and his family inside. In the afternoon, the Accused's son Ingabire came to the Witness' house and delivered a message from the Accused that the witness and his family would be evacuated the next day "because the situation was worsening".[283] The woman gave birth to

[275] T. 17 September 2002, p. 105 (JK-27).
[276] T. 18 September 2002, p. 63 (JK-27).
[277] T. 18 September 2002, pp. 104-107 (LMR1).
[278] T. 16 September 2002, p. 43 (JK-312) (ICS).
[279] T. 16 September 2002, pp. 47-49 (JK-312).
[280] T. 16 September 2002, pp. 45, 87 (JK-312).
[281] T. 16 September 2002, pp. 51-52 (JK-312).
[282] T. 16 September 2002, p. 47-49 et 52 (JK-312).
[283] T. 16 September 2002, p. 53 (JK-312).

a child during that night in the Witness' house "in very difficult conditions".[284] The Witness testified that he, his wife and children and a woman who came to seek refuge in his house[285] with her baby were evacuated on the next day, 8 April 1994, in the early afternoon and that it was thanks to the Accused that he was evacuated and that he owed him his life.[286]

198. **Defence Witness JK312** testified that it was not the Accused himself who evacuated the Witness and his family. The Witness testified: "What I do know is that I was evacuated, thanks to arrangements he made. If not, I do not know the details. All I know is that he made arrangements for that."[287]

- **8 April 1994**

  - **The Accused's Testimony**

199. **The Accused** testified that on the morning of 8 April 1994 he was at home in Nkuli *commune*.[288] The Accused woke up at 6:10 am. The Accused had arranged with his wife for the arrival of his relatives. That day people were talking about the Tutsis in Mukingo *commune* who had taken refuge at the convent and about the *Préfet* who had been killed by the RPF in Ruhengeri *commune*. The RPF had launched attacks against Ruhengeri and the Accused did not know if he could go and pick up his family in Mukingo. In the morning of 8 April 1994 he could go nowhere.[289]

200. **The Accused** testified that he returned home to arrange for his journey.[290] After the news was announced, the Accused took his vehicle to Mukingo *commune*. The Accused wanted to talk to the *bourgmestre* of that *commune* because he was capable of giving more information on the state of safety. The Accused testified that he arrived at the Mukingo *bureau communal* at around 2:45pm and that he saw that the roadblock at the *bureau communal* had been reinforced.[291] The Accused later testified that he arrived at Mukingo *bureau communal* at 12:45am and met with the *bourgmestre* at around 1:00pm. The Accused testified that he talked about the death of the President and the death of Ruhengeri *Préfet* Silvester Bariyanga.[292] The Accused testified that the *bourgmestre* told the Accused that it was a good decision to go to Mukingo *commune* but he was sceptical

[284] T. 16 September 2002, p. 54 (JK-312).
[285] T. 16 September 2002, p. 54 (JK-312).
[286] T. 16 September 2002, p. 55 (JK-312).
[287] T. 16 September 2002, pp. 94-95 (JK-312).
[288] T. 22 April 2003, pp. 5 and 6 (ACCUSED).
[289] T. 15 April 2003, p. 56 (ACCUSED).
[290] T. 15 April 2003, p. 57 (ACCUSED).
[291] T 15 April 2003, p. 59 (ACCUSED).
[292] T. 15 April 2003, p. 58 (ACCUSED).

about his plans.[293] The *bourgmestre* told the Accused that he had arranged for the burial of the Tutsis killed at the convent on 7 April 1994.[294]

201. **The Accused** testified that, afterwards, he went to Rwinzovu *cellule*, where his parents were living, and met his father and his mother and some children. The Accused testified that he spent 15 minutes at his parents' place and went back.[295] The Accused testified that he did not want to stay too long in order not to attract the attention of the neighbours.[296]

202. **The Accused** testified that his wife heard his motor car when he arrived. The Accused's wife took the Accused to the living room and told him that they had visitors—two women, a man and a child. The Accused knew them beforehand; they were Defence Witness RHU21, and his wife Defence Witness RHU26 and her child. These people were all Tutsi. The Accused asked his wife to close all entrances to the house because he was fearful for their safety; the massacre of the Tutsis had already started.[297]

203. **The Accused** testified that he returned to his house in Nkuli around 3:00pm on 8 April 1994 and he took exactly the same route as the one he took when he came.[298] The Accused testified that when he got home he had a conversation with his wife, he was sad and tired and stayed at home during the whole evening and watched video tapes with his family and listened to the news.[299] The Accused testified that he and his wife did not sleep that night.[300]

- **Defence witnesses**

204. **Defence Witness LMR1,** a close relative of the Accused, testified that the Accused left their (the Accused's family) house at around 1:00pm in his red Hilux truck to see his children, second wife and parents, all of who lived in Mukingo *commune*, so that they could be brought to Nkuli *commune*. The Accused returned at around 3:00pm, but without his family because the Accused's father refused to allow the children to travel with the Accused. The Witness testified that the Accused did not leave the house and spent the night in Nkuli.[301]

205. **Defence Witness RHU31** testified that he arrived at the Mukingo *Commune* Office at 7:00am on 8 April 1994. The Witness testified that the *bourgmestre* [Harerimana] arrived at 9:30am. The Witness testified that, at around 1:00pm, the Accused arrived, alone, at the *bureau communal* in a red Toyota Hilux vehicle bearing the "STB"

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[293] T. 15 April 2003, p. 59 (ACCUSED).
[294] T. 22 April 2003, p. 3-5 (ACCUSED).
[295] T. 15 April 2003, p. 63; T. 17 April 2003, p. 84 (ACCUSED).
[296] T. 17 April 2003, p. 84 (ACCUSED).
[297] T. 15 April 2003, p. 68 (ACCUSED).
[298] T. 15 April 2003 p. 69; T. 17 April 2003, p.90 (ACCUSED).
[299] T. 15 April 2003, p. 69 and 70; T. 17 April 2003, p.90 (ACCUSED).
[300] T. 15 April 2003, p. 71 (ACCUSED).
[301] T. 18 September 2002, pp. 107 and 108 (LMR1).

sign from the direction of Byangabo. The Accused spent about 15 minutes at the *bureau communal* and departed in the direction from which he had come. The Witness left at around 3:00pm; *Bourgmestre* Harerimana remained at the *bureau communal*. The Witness did not see the Accused the rest of that day.[302]

206. **Defence Witness JK312** testified that two of his friends visited him at his residence just before noon on 8 April 1994. One left before the news at 12:45pm; the Witness and his other friend went outside after the news and continued their conversation between the fence of the house and the road. While standing there, the Witness and his friend saw the Accused drive by in a red Toyota pick-up truck with "STB" marked on the side at around 1:00pm; the Accused and the young men waved to each other.[303]

207. **Defence Witness DMR3** testified that he went to the house of the parents of the Accused on 8 April 1994 around 11:00am and that the Accused arrived between 1:45pm and 1:55pm in his red Toyota Hilux that bore a sign on the side saying "STB".[304] The Witness estimated the time based on the radio news in French at 1:15pm. The Witness testified that the Accused parked his car at his own house when he arrived.[305] The Witness testified that the Accused spent approximately 30 minutes at the house, telling his family members to be patient and that he wanted to move them. The Witness testified that the Accused then went to his home.[306]

208. **Defence Witness SMR2** testified that the Accused came to her home on 8 April 1994 around 2:00pm. When the Accused arrived, he told the Witness that he had come to fetch them to a safe place because of the explosions around Shingiro *secteur* in Kinigi *commune*.[307] The witness testified that she did not know where the Accused was or what he was doing before he came to her place on the 8 April 1994. The Accused told her that he had been in Nkuli *commune* on 7 April 1994 and the morning of 8 April 1994.[308] The Witness testified that the Accused first went to greet his parents and later came to their home, as it was customary for him to do so when he came to Mukingo. The Witness told the Accused about the people who had sought refuge at her place. The Witness showed the Accused where they were and the Accused greeted them. She testified that the Accused could not evacuate them because they could not move with the refugees at her home out of fear of discovery. The Witness testified that the Accused spent about 30 to 40 minutes at Mukingo. The Witness did not leave her house because she had just given birth and was too tired to move around.[309]

209. **Defence Witness RHU26**, a Tutsi female,[310] testified that she saw the Accused on 8 April 1994 just after lunchtime when he arrived at the home of SMR2 in Mukingo

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[302] T. 1 October 2002, pp. 47-49, 53, 73, 75 and 94 (RHU-31) (ICS).
[303] T. 17 September 2002, pp. 14, 17 and 18 (JK-311) (ICS).
[304] T. 24 September 2002, pp. 18-19 (DMR3) (ICS).
[305] T. 24 September 2002, p. 60 (DMR3) (ICS).
[306] T. 24 September 2002, pp. 20-21 (DMR3) (ICS).
[307] T. 19 September 2002, p. 86 (SMR2) (ICS); T. 23 September 2002, p. 18 (SMR2) (ICS).
[308] T. 23 September 2002, pp. 12-13, 18 (SMR2) (ICS).
[309] T. 19 September 2002, pp. 86-87 (SMR2) (ICS).; T. 23 September 2002, p. 11 (SMR2) (ICS).
[310] T. 30 September 2002, pp. 11-12 (RHU-26) (ICS).

commune. When the Accused arrived, he spoke to SMR2 and then spoke to the people seeking refuge there, including the Witness. The Witness testified that she stayed at the home of SMR2 for two and a half months and that Defence Witness RHU21 and his wife remained for one and a half months.[311]

210. **Defence Witness RHU21**, a Tutsi male who sought refuge at the home of the home of SMR2, testified that the Accused arrived two nights after his arrival. The Witness testified that he personally saw the Accused on 8 April 1994. This was the last time the Witness saw the Accused.[312]

- **9 April 1994—The Accused's Testimony**

211. **The Accused** testified that at 6:00am on 9 April 1994 he learned of the death of the *bourgmestre* of Mukingo *commune*, Emmanuel Harerimana, in a simple announcement on the radio.[313] The Accused testified that he went to get more information at the Mukingo *bureau communal*. The Accused testified that he wanted to discover what measures had been taken and to be with the bereaved family as a relative and a friend.[314] The Accused testified that he arrived there at around 9:00am or 10:00am.[315]

212. **The Accused** testified that the funeral took a long time and lasted until around 4:30pm because the RPF were shelling the area and forced the attendees to leave for a while.[316]

213. **The Accused** testified that he returned home at around 5:30pm and did not leave because of the lack of security. The Accused testified that his wife was sick. That night the Accused told the people at his house what had happened, listened to the news on the radio and watched videotapes.[317]

- **10 April 1994—The Accused's Testimony**

214. **The Accused** testified that on 10 April 1994 he was at home in Nkuli *commune* and did not leave his house.[318] In the early hours of the morning, the Accused learned that the uncle of his wife Laurence had been killed during the massacres that took place on 10 April 1994 with the other Tutsis. The Accused testified that his wife was Tutsi. The victims were taken to a place called "*commune rouge*" and the bodies were covered with

[311] T. 30 September 2002, p. 21, 22, 23 (RHU-26)
[312] T. 10 December 2002, pp. 41 and 48 (RHU-21).
[313] T. 15 April 2003, p. 72 (ACCUSED).
[314] T. 22 April 2003, p. 72 (ACCUSED).
[315] T. 22 April 2003, p. 72 (ACCUSED).
[316] T. 15 April 2003, p. 73 (ACCUSED).
[317] T. 15 April 2003, p. 73 (ACCUSED).
[318] T. 16 April 2003, p. 4 (ACCUSED).

soil.[319] The Accused testified that his wife was sick and asked him to drive her to the hospital, but the Accused did not want to drive so he let her go alone.[320]

- **11 April 1994—The Accused's Testimony**

215. **The Accused** testified that on 11 April 1994 he returned to Mukamira to enable the people who were working there to continue their construction works.[321] The Accused testified that on 11 April 1994 the cease-fire was in effect; though, according to radio broadcasts, the fighting was intense and was getting closer to Mukingo *commune*.[322]

- **12 April 1994—The Accused's Testimony**

216. **The Accused** testified that on 12 April 1994 he came back from Mukamira in the morning and went to his house. The Accused left his house at around 9:30am and drove his vehicle in the direction of Mukingo *commune*, where his workers were cutting wood.[323] The Accused specified that he went back to his house in Nkuli *commune* at around 4:00pm.[324] The Accused testified that he did nothing else on 12 [April 1994].[325]

- **13 April 1994—The Accused's Testimony**

217. **The Accused** testified that he went with his wife Laurence to the house of her maternal uncle in Rusiza, which was two or three kilometres from his house, in Nkuli *commune*.[326] The Accused testified that they returned home at around 4:30pm.[327]

- **14 April 1994—The Accused's Testimony**

218. **The Accused** testified that he spent the day of 14 April [1994] at a forest he owned at Kareba in Nkuli *commune* where he supervised some workers who were cutting wood.[328] The place so far that one had to walk across Karago forest to get there.[329] The

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[319] T. 16 April 2003, p. 74 (ACCUSED).
[320] T. 15 April 2003, p. 73 (ACCUSED).
[321] T. 16 April 2003, p. 4 (ACCUSED).
[322] T. 16 April 2003, p. 6 (ACCUSED).
[323] T. 16 April 2003, p. 6 (ACCUSED).
[324] T. 16 April 2003, p. 6 (ACCUSED).
[325] T. 16 April 2003, p. 6 (ACCUSED).
[326] T. 16 April 2003, pp. 6 and 7 (ACCUSED).
[327] T. 16 April 2003, p. 7 (ACCUSED).
[328] T. 16 April 2003, p. 7 (ACCUSED).
[329] T. 16 April 2003, p. 7 (ACCUSED).

Accused returned home in the evening around 5:00pm.[330] The Accused testified that he did not listen to the radio that day because he was too tired and went to bed after dinner.[331]

*c. **Findings***

219. The Chamber will now consider the evidence in relation to Alibi of the Accused.

- **6 and 7 April 1994**

220. The Accused testified that he arrived at his home in Nkuli *commune* at 5:30pm on 6 April 1994, and did not go out afterwards. He spent the night there with his first wife.

221. Defence Witness JK27 stated that he saw the Accused on three occasions on the 7 April 1994, twice at the Nkuli *Commune* Office, at 9:00am and at 11:00am. And thereafter once in front of his house, which is nearby, at around 3:00pm.

222. Defence Witness JK312, a Tutsi living in Nkuli *commune*, gave evidence that the Accused was at his home in Nkuli *commune* on the morning of 7 April 1994, and that when he went there he found the Accused dressed in his pyjamas and slippers. He had previously telephoned the Accused that same morning, and after being told to stay at home, he had walked to the Accused's house to repeat the request.

223. The Chamber has considered the testimony of Defence Witness JK312, and finds that it is not credible as regards the alibi of the Accused. This witness testified that on 7 April 1994, he walked to the Accused's house to ask for assistance. As a Tutsi who was admittedly fearing for his life, the Chamber finds it implausible that he would have walked to the house of the Accused, especially in view of the fact that according to his own testimony, he was able to make a telephone call to the Accused that same morning, and discuss his safety and to request assistance. The Chamber found the Witness to be purposefully evasive when asked questions under cross-examination, in relation to the Accused's ability to assist him and the reason why it was the Accused that he went to for assistance. From the observations of the Chamber, it was apparent in the witness's demeanour that in answering these questions and others, the witness appeared more interested in protecting the Accused than in giving straightforward answers to questions put to him. Furthermore, in relation to the events of 8 April, the Chamber finds it highly unlikely that, at a time when Tutsis were being openly massacred, Defence witness JK312 could stand in front of his house and chit-chat with his visitors, especially since according to his own testimony he had only the previous day requested shelter from the Accused in a state of desperation. As a final point, the Chamber notes that according to the witness's own testimony, the Accused once saved the witness's life in 1992.

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[330] T. 16 April 2003, p. 7 (ACCUSED).
[331] T. 16 April 2003, p. 7 (ACCUSED).

224. Having taken due note of the relationship existing between Defence Witness LMR1 and the Accused, the Chamber notes that although LMR1 testified that the Accused spent the night of 6 April 1994 in the house, she did not specify the exact time that he was in the house.

225. Having considered the evidence of the alibi witnesses in relation to the events of 6 and 7 April 1994, the Chamber finds that the alibi is not credible in relation to these days.

- **8 April 1994**

226. The Chamber has noted the testimony of the Accused as to his whereabouts on 8 April 1994. The Chamber has also noted the testimonies of Defence witnesses LMR1 (a close relative of the accused), DMR3 (the nephew of the Accused), JK312 (a Tutsi who was allegedly saved by the Accused), RHU26 (a Tutsi who was protected by the Accused's second wife), and RHU31. Each of these testimonies seek to place the Accused at a particular time on 8 April 1994.

227. The Chamber has carefully considered the alibi of the Accused in relation to his whereabouts on 8 April and makes the following findings. The Chamber finds that it is not contested that the Accused was in Mukingo *commune* to see his parents and his wife as stated by the Defence witnesses. However, the totality of the evidence is not inconsistent with the allegation that the Accused was moving around various locations in Mukingo and Nkuli *commune* on 8 April 1994; indeed, the alibi evidence is supportive of this theory. The Accused was a powerful man in the local community who had a high degree of mobility,[332] and only short distances to travel. Thus, the Chamber finds that the Defence alibi in relation to the events of 8 April 1994 does not preclude the Accused from involvement in the criminal transactions of 8 April 1994 as the Prosecution alleges. The Chamber will bear in mind the evidence of the Defence in relation to the alibi of the Accused on 8 April 1994 when making its findings on whether the Prosecution have proved beyond a reasonable doubt that the Accused was involved in the criminal events of 8 April 1994 as charged.

- **9 April 1994**

228. The Chamber notes the alibi of the Accused on 9 April 1994. Based on his own testimony, the Accused was moving around that day in both Nkuli and Mukingo *Communes*. The Chamber further notes the testimony of Prosecution witness GAP, that on 9 April 1994, the Accused distributed Tutsi land.[333] In considering both testimonies as to the alibi of the Accused, the Chamber finds that it is uncontested that the Accused was moving around the Nkuli and Mukingo *communes* on 9 April 1994.

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[332] See evidence in: Part III, Section G and Section H.
[333] T. 4 December 2001, p. 47 (GAP).

229. Thus, the Chamber finds that the Defence alibi in relation to the events of 9 April 1994 does not preclude the Accused from involvement in the criminal activities of 9 April 1994 as the Prosecution alleges. The Chamber will bear in mind the evidence of the Defence in relation to the Alibi of the Accused on 9 April 1994 when making its findings whether the Prosecution have proved beyond a reasonable doubt that the Accused was involved in the events of 9 April 1994 as charged.

- **10 to 14 April 1994**

230. The Chamber notes from the Accused's testimony that he himself was mobile on 10 April 1994, which is consistent with the testimony of Prosecution witness GBE, that on 10 April 1994, at a roadblock between ISAE and Busogo he saw the Accused speaking to Major Bizibarimana of the Mukamira military camp in Nkuli *commune*.[334] The Chamber sees no demonstration of the impossibility that the Accused may have gone about his other activities from 10 to 14 April 1994 as he testified, and also have been involved in the events as the Prosecution charges. The Chamber will bear in mind the evidence of the Defence in relation to the alibi of the Accused from 10 to 14 April 1994 when making its findings whether the Prosecution have proved beyond a reasonable doubt that the Accused was involved in the events of these days as charged.

5. General Conclusion on Alibi

231. The Chamber emphasises that these findings on the alibi do not shift the burden of proof from the shoulders of the Prosecution. The Prosecution must still prove beyond a reasonable doubt that the Accused is guilty as charged. In addition to the direct attack on the Prosecution evidence which the Defence has made, the Chamber will also consider the full evidence adduced in relation to the alibi when making its findings.

[334] T. 9 July 2001, p. 111 (GBE) (ICS).

Part III The Prosecution's Case

A. Introduction

232. The Chamber will not make any findings on certain paragraphs of the Indictment due to the following reasons:

- Paragraphs 2.4, 2.5.1, 5.8 are related to issues which are no longer of any relevance to the case, due to the fact that the Accused was acquitted on Counts 10 and 11 of the Indictment;
- Paragraphs 2.5, 4.1, 4.2, 4.2.1, 4.3, 4.4, 4.5, 5.1 are of a general nature, deal with historical issues, have no direct linkage to this case and/or have such characteristics that there is no need for the Chamber to make findings on them;
- Paragraphs 4.11, 4.14, 4.21, 4.22, 4.23 are related to facts upon which there was no evidence presented to the Chamber.

233. Part III, Section I is dealing with the question of membership of the Accused in the MRND, an allegation made by the Prosecution in its Pre-Trial brief which is related to the following Paragraphs of the Indictment: 3.6, 4.6, 4.8, 4.9, 4.10, 4.11, 4.12, 4.12.1, 4.12.2, 4.14, 4.15, 4.16.1, 4.17, 4.18, 4.18.1, 4.21, 4.22, 4.23, 5.1, 5.7 and 5.9.

234. Paragraph 1.1 of the Indictment has been addressed in Part I (Introduction), Section B (The Accused) of the Judgment.

235. The Charges (Section 6 of the Indictment) will be addressed in Part IV (Legal Findings) of the Judgment.

236. The Chamber will consider in the sections below the following paragraphs of the Indictment: 2.1 (Section 2); 2.2 (Section 3); 3.1, 3.2 and 3.3 (Section 4), 3.5 (Section 5); 3.4 and 3.6 (Section 6); 4.6, 4.6.1 and 5.2 (Section 7); 4.10, 4.12, 4.13, 4.15, 4.16 and 4.16.1 (Section 8); 4.9, 4.12.1, 4.17, 4.18, 4.18.1, 4.19 and 4.20 (Section 10); 4.12.2, 4.18, 4.19.1, 4.24, 5.2, 5.3, 5.4 and 5.9 (Section 11); 4.18, 5.3 and 5.5 (Section 12); 2.3 (Section 13); 5.7 in connections with 4.7, 4.8 and 4.9 (Section 14); 5.6 (Section 15).

237. The Chamber will, for each Section in this Part, review the allegations of the Prosecution, the evidence brought by the Parties, and then make its findings accordingly. The evidence contained in the relevant sub-sections is a summary of the testimonies of the Witnesses and of the content of the exhibits.

B. Paragraph 2.1 of the Indictment

1. Allegations

238. Paragraph 2.1 of the Indictment reads:

> The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994 and in particular the Mukingo *commune* and the neighbouring area within the Ruhengeri préfecture.

2. Findings

239. According to paragraph 2.1 of the Indictment, the crimes that the Prosecutor charges against the Accused were committed in the Mukingo *Commune* and the neighbouring area within the Ruhengeri prefecture in Rwanda. There is no doubt that this means the Mukingo *commune* and the *communes* of Ruhengeri *préfecture*, which border Mukingo (Nkuli, Nyakinama, Kigombe, Kinigi), and also all the other *communes* of the Ruhengeri *préfecture* (Nyamutera, Gatonde, Ndusu, Nyarutovu, Ruhondo, Nyamugali, Cyeru, Nkumba, Kidaho, Butaro and Ruhengeri town).[335] Taking into account the evidence actually presented in the case, this will limit the Chamber's consideration to events which occurred in Mukingo, Nkuli, Kinigi and Kigombe *communes*; the events in Kigombe *commune* concern the attack at the Ruhengeri Court of Appeal.

C. Paragraph 2.2 of the Indictment

1. Allegations

240. Paragraph 2.2 of the Indictment reads: Indictment

> During the events referred to in this indictment, the Tutsis were identified as a racial or ethnic group.

2. Findings

241. The Chamber took Judicial notice of the fact that:

> Between 6 April 1994 and 17 July 1994, citizens native to Rwanda were severally identified according to the following ethnic classifications: Tutsi, Hutu and Twa.[336]

242. Accordingly, it has been established for the purposes of this case that the Tutsi in Rwanda were an ethnic group.

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[335] See: Map of Ruhengeri Préfecture, Prosecution Exhibit, P4.
[336] *Kajelijeli,* Decision 16 April 2002, Judicial Notice (TC), Annex A.

D. Paragraph 3.1, 3.2 and 3.3 of the Indictment

1. Allegations

243. Paragraph 3.1, 3.2 and 3.3 of the Indictment reads:

> During the events referred to in this indictment, Rwanda was divided into eleven (11) *préfectures,* one of which was Ruhengeri. This *préfecture* was divided into *communes* one of which was Mukingo and the *commune* was divided into *secteurs* which were also divided into *cellules*.
>
> The *Préfet* represented executive power at the *préfecture* level. The *Préfet* was appointed by the President of the Republic on the recommendation of the Minister of the Interior and carried out his duties under that Minister's hierarchical authority. The *Préfet*'s authority covered the entire *préfecture* and he administered the *préfecture*.
>
> In his capacity as administrator of the *préfecture*, the *Préfet* was responsible for ensuring peace, public order and the safety of people and property. The *Préfet* had hierarchical authority over all civil servants and all persons holding public office within the boundaries of the *préfecture*, including the *Bourgmestres* and the *Conseillers de secteur*.

2. Findings

244. The Chamber took Judicial notice of the fact that: [337]

> During the events referred to in the Indictments, Rwanda consisted of the following administrative structures:
>
> Eleven (11) prefectures: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri.
>
> Each prefecture was subdivided into *communes*.
>
> Each *commune* was subdivided into *secteurs*.
>
> Each *secteur* was subdivided into *cellules*.
>
> Between 1 January 1994 and 17 July 1994, the office of the Prefect was characterised by the following features:
>
> The Préfet represents executive power at prefectural level.
>
> The Préfet is appointed by the President of the Republic on the recommendation of the Minister of the Interior and carries out his duties under that Minister's hierarchical authority.
>
> The Prefet's authority covers the entire prefecture.
>
> In his capacity as administrator of the prefecture, the Préfet is responsible for ensuring peace, public order and the safety of people and property.
>
> The Préfet has hierarchical authority over all civil servants and all persons holding

[337] *Kajelijeli,* Decision 16 April 2002, Judicial Notice (TC), Annex A.

public office within the boundaries of the prefecture, including the *bourgmestres* and conseillers de *secteur*.

E. Paragraph 3.5 of the Indictment

1. Allegations

245. Paragraph 3.5 of the Indictment reads:

> The Accused served as *Bourgmestre* of Mukingo *commune* from 1988 to 1993 and was re-appointed *Bourgmestre* of Mukingo *commune* in June 1994. He remained in that post until mid-July 1994.

246. The Defence did not dispute that the Accused was *bourgmestre* of Mukingo *commune* from 1988 to 1993. After leaving office as *bourgmestre* in 1993, the Accused went into private business and was not involved in any political activities at the préfecture, *commune* or *secteur* level. The Defence highlighted that none of the alleged acts cited in the Amended Indictment occurred during the time period that the Accused was *bourgmestre* in 1994. During the temporal jurisdiction of this Tribunal, the Accused was elected and served as *bourgmestre* for less than 3 weeks, from the end of June to mid July 1994.[338]

2. Evidence

247. **Prosecution Witness GBH** testified that Nzirorera, as a Minister and Member of Parliament, introduced the Accused as *bourgmestre* before the population at the football pitch.[339] The population was asked to come and welcome the Accused as the *bourgmestre*. The Witness did not remember the year.[340]

248. **Prosecution Witness GBH** testified that, after the Accused was removed from his position as *bourgmestre*, Semahane replaced the Accused, and then Harerimana replaced Semahane.[341]

249. **Prosecution Witness GAO** testified that, on the evening of 8 April 1994, *bourgmestre* [Harerimana] was killed by "certain people."[342]

250. **Prosecution Witness GBH** testified that, after Harerimana's death during the genocide in 1994, the Accused became *bourgmestre* again. The Witness recalled a meeting, where the Accused was introduced to the Mukingo population and where the people were told that the Accused was to become *bourgmestre*. This was after the

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[338] Defence Pre-Trial-Brief, paras. 1.19, 1.21, 1.22, 1.24
[339] T. 17 July 2001, p. 90 (GBH).
[340] T. 17 July 2001, p. 8 (GBH).
[341] T. 17 July 2001, p. 91 (GBH).
[342] T. 24 July 2001, p. 92 (GAO).

Interahamwe had already killed people. The Witness admitted in cross-examination that the Accused may not have become *bourgmestre* until 26 or 27 June 1994.[343]

251. **Prosecution Witness GAP** testified that the Accused became *bourgmestre* once again after 12 April 1994. One week after Harerimana's death, the Accused "brandished" a telegram saying that he was the *bourgmestre* of the *commune*. The Witness testified that the Accused claimed Nzirorera had sent the telegram. The Communal Development Council (*Conseil communal de développement*) subsequently re-appointed the Accused *bourgmestre*. At the election for *bourgmestre*, the Accused came in first place, followed by Manuel Gaba, and Felicien Semahane. Semahane, the deputy *bourgmestre*, was appointed by "the person who was supervising the elections" to be the interim *bourgmestre* until the Ministry of Interior confirmed the Accused's appointment. The Witness testified that Semahane acted as interim *bourgmestre* for one week. The Accused was sworn in as *bourgmestre* between April and May 1994.[344]

252. Prosecution Witness GAP further testified that, while the Accused was *bourgmestre* the Witness "was under [the Accused's] orders in every duty [he] performed".[345] The Accused paid the Witness's salary for the months of April, May and June 1994.[346]

253. **Defence Witness MEM** testified that Asiel Ndisetse succeeded Harerimana as acting *bourgmestre* for one week after the killing of Tutsis began in April 1994. Felicien Semahane acted as assistant *bourgmestre* to Asiel Ndisetse until he became *bourgmestre* at the end of April 1994. Jean Ndamasene Niyoyita assisted Semahane during that period. The Accused succeeded Semahane as *bourgmestre* on 17 June 1994.[347] The Witness stated that it was communal law for a *conseiller* to replace the *bourgmestre*.[348]

254. **Defence Witness Joseph Nzirorera**, an accused before this Tribunal, testified that, in March 1993, the Accused was removed from his position as *bourgmestre*. When asked why the Accused was removed from his duties, the Witness recalled that, during negotiations with the RPF, the RPF had asked for the removal of some communal and *prefectural* officials. The Accused, "who was in the bad books", was one of those the RPF requested to be removed. The Witness denied any knowledge that the RPF demanded the Accused's dismissal because of the Accused's involvement in the killing of Tutsis in 1993. The Witness testified that the Rwandan government granted the RPF request and the Accused was among those removed from their duties.[349]

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[343] T. 17 July 2001 pp. 91 and 106 (GBH)
[344] T. 3 December 2001, p. 16 (GAP); T. 4 December 2001, pp. 47, 62-64 and 105 (GAP).
[345] T. 28 November 2001, p. 93 (GAP) (ICS).
[346] T. 4 December 2001, p. 63 (GAP).
[347] T. 26 November 2002, pp. 32, 89, and 90 (MEM) (ICS).
[348] T. 26 November 2002, pp. 45-47 (MEM) (ICS).
[349] T. 3 decembre 2002, pp. 7 and44-47 (NZIRORERA)

255. Defence Witness Joseph Nzirorera testified that the Accused, after a short-listing of the candidates, became *bourgmestre* again during the second half of June 1994. Because the *préfet* of Ruhengeri had been killed by the RPF on 8 April 1994, it was necessary to wait until the appointment of a new *préfet* before beginning the short-listing procedure. The official appointment of the Accused occurred on 7 June 1994. The Witness stated that by June 1994 the candidates applying for *bourgmestre* were short listed and ranked by the *conseil communal de développement*, a communal body that included all political parties and those responsible for communal departments. The list was then sent to the appointment authority that would confirm the decision.[350]

256. Defence Witness Joseph Nzirorera testified that the *conseil communal de développement* short listed the Accused, and ranked him first among the candidates. The Witness added that the then Home Minister (*Ministre de l'Intérieur*), Munyazesa Faustin, did nothing more than confirm the Accused's appointment.[351]

257. **The Accused** testified that he was a *bourgmestre* from August 1988 to February 1993.[352] In 1988, after a presidential decree, the Accused became *bourgmestre* of Mukingo *commune*. First, *Préfet* Zigiranyirazo made a proposal and then the ministry in charge of communal issues suggested the Accused's name to the President. In response to cross-examination questions from the Prosecution, the Accused testified that his lack of advanced education was not a hindrance to performing his duties as *bourgmestre*. He denied that his close ties to Joseph Nzirorera, who was then a prefectural and national authority within the MRND, helped him get the position.[353]

258. The Accused testified that his hierarchical chief was the *préfet* of Ruhengeri *préfecture*, a position held, consecutively, by Zigiranyirazo between 1988 and 1989, Charles Nzabagerageza until 1992 and Sylvester Baliyanga until he was killed by the RPF on 8 April 1994. These three *préfets* were Hutus and, under the single-party system, members of the MRND, but the Accused did not know which political party they belonged to after the advent of multiparty politics.[354]

259. The Accused testified that in February 1993 he was removed from his position, pursuant to a presidential decree, because of pressure from opposition parties and the RPF.[355] The Accused verified that he was removed from his position, along with other *bourgmestres* and state agents, after the RPF launched an attack on Ruhengeri.[356]

260. The Accused testified that he was officially replaced by Emmanuel Harerimana, who was appointed to the position, yet he actually handed over power to the person who was going to be the acting *bourgmestre*, a *conseiller* named Felicien Semahane.[357]

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[350] T. 3 decembre 2002, pp. 48-49 and 60-62 (NZIRORERA)
[351] T. 3 decembre 2002, pp. 60-62 (NZIRORERA).
[352] T. 14 April 2003, p. 14 (ACCUSED).
[353] T. 16 April 2003, p. 51 (ACCUSED).
[354] T. 16 April 2003, p. 52 (ACCUSED).
[355] T. 14 April 2003, p. 36 (ACCUSED).
[356] T. 17 April 2003, p. 43 (ACCUSED).
[357] T. 14 April 2003, p. 65 (ACCUSED).

The Accused testified that, between February 1993 and 26 June 1994, he dealt with his personal business, including agricultural and commercial activities, in Mukingo *commune*.[358]

261. The Accused testified that, although as *bourgmestre*, he was the local representative of the central government at the *commune* level, not all of the civil servants who worked for the civil service in Mukingo *commune* were under his authority. There were certain public functions that were not under the authority of the *bourgmestre*, such as people working for the office of the prosecutor and the military. The number of the people under the Accused's authority varied according to economic circumstances. From 1988-1989 until 1993, he had a total of 60 employees.[359]

262. The Accused testified that his role as *bourgmestre* was to coordinate the different organs of government, to promote understanding within the population, to preside over *commune* meetings, to prepare the agenda of the *commune* meetings, to prepare and implement the *commune* budget, to preside over the meetings of the *conseil communal de développement*, to represent the *commune* at tribunals, to promote development projects of the different *secteurs* of the *commune*, to preside over the assembly of the *commune* and to guarantee the safety of the *commune*.[360] The Accused testified that he was in charge of keeping the peace and safety of citizens and property in Mukingo *commune*. When necessary, the *conseiller* would inform the *commune* authorities about the need for police services. If the problem went beyond the *bourgmestre's* authority, the case would be brought to the *préfet*, who would decide to send the *gendarmerie*.[361] As an example of this responsibility to guarantee the safety of the citizens of Mukingo, between 8 and 20 February 1993, the Accused gathered threatened Tutsis at Busogo agricultural building and the *Préfet* sent *gendarmes* to protect them.[362] **Defence Witness RHU31**, *a former local administration official*,[363] verified that the Accused protected Tutsi refugees upon their request, and had them guarded at the ISAE when he was *bourgmestre*.[364] **The Accused** testified that he did not ask for the assistance of the *gendarmerie*; rather, he consulted the *préfet*, who granted requests to the extent of his means. The Accused testified that he did not control the *gendarmes* when they came to assist him.[365]

263. **The Accused** testified that law enforcement is the first responsibility of the *bourgmestre*. The Accused confirmed that he had the power to detain people, but this power was limited and depended upon the infraction. The *gendarmerie* had competence all over the territory and its representative could make the decision to arrest anyone in the *commune* without consulting the *bourgmestre*. In addition, the

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[358] T. 14 April 2003, p. 36 and p. 65 (ACCUSED); T. 16 April 2003, p. 4 and 5 (ACCUSED); T. 22 April 2003, p. 90 (ACCUSED).
[359] T. 16 April 2003, pp. 53 and 64 (ACCUSED).
[360] T. 14 April 2003, p. 60 (ACCUSED); T. 16 April 2003, p. 53 (ACCUSED).
[361] T. 16 April 2003, p. 55 (ACCUSED).
[362] T. 23 April 2003, p. 38 (ACCUSED).
[363] T. 1 October 2002, p.18 (RHU31) (ICS)
[364] T. 1 October 2002, p.26 (RHU31).
[365] T. 16 April 2003, p. 54 (ACCUSED).

district judge had limited responsibility and competence at the *préfecture* level and could arrest anyone, the *bourgmestre* included, without consulting the *bourgmestre*.[366]

264. The Accused testified that he issued identity cards and "notarial acts" to citizens. A notarial act is used to register an agreement to sell real property; a document called a notarial act is issued to both parties. The Accused also issued birth certificates, wedding certificates and resident permits for the non-residents of Mukingo. Not all of these documents bore the ethnic origin of the bearer; though identity cards did so. Identity cards were issued by the Government.[367]

265. The Accused testified that, at the *commune* level, meetings were held with the *conseillers*. During these meetings, each *conseiller* would present a report on the situation of his *secteur* and, on the basis of this report, the Accused was aware of what was going on in the different *secteurs* within Mukingo *commune*. The Accused would explain the state of public business and the policies of the government in power and give instructions for the implementation of these policies. He testified that he did not ask the *conseillers* to make lists of Tutsis who lived in Mukingo *commune*. The Accused added that the discussions that took place during the meetings were recorded and reports were submitted to the *préfet*; no decision was taken without the approval of the *préfet*, which usually took two weeks.[368]

266. The Accused testified that he did not become *bourgmestre* immediately after the death of the *bourgmestre* Harerimana, but only after appointment to that position. He also testified that he did not replace Harerimana directly either; between their tenures, there were two acting *bourgmestres*.[369]

267. The Accused testified that there were between 7 and 14 candidates running for election at the same time as him. He identified Félicien Semahane, Niyohita, Maniragaba and Ndakaza but could not remember the other individuals. The appointment to the position of *bourgmestre* was the result of an electoral process and a system of recommendation. The Accused testified that he was an independent candidate without party affiliation. Each candidate ran on an individual basis. The election lasted one day and the counting of the votes took place the same day. The first announcement was made on 17 June 1994; another announcement was made the following day. The Accused then received a copy of the presidential decree. The Accused testified that on 26 June 1994, he became *bourgmestre*.[370]

3. Findings

268. The Chamber notes that it is not uncontested that the Accused served as *bourgmestre* of Mukingo *commune* from 1988 to 1993. The Chamber finds that the

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[366] T. 16 April 2003, p. 59 (ACCUSED).
[367] T. 16 April 2003, pp. 60 and 61 (ACCUSED).
[368] T. 17 April 2003, pp. 12-15 (ACCUSED).
[369] T. 22 April 2003, pp. 33, 36 and 37 (ACCUSED).
[370] T. 14 April 2003, pp. 68, 70 and 71 (ACCUSED); T. 22 April 2003, p. 35 (ACCUSED); T. 23 April 2003, p. 66 (ACCUSED).

Accused was removed from office in February 1993 and that following the death of *bourgmestre* Harerimana on 8 April 1994, the Accused was appointed *bourgmestre* of Mukingo *commune*, for a second time, on 26 June 1994. The evidence brought by both parties is consistent in relation to the re-appointment of the Accused, with the exception of the testimony of Prosecution Witness GAP who mentioned a scene in April 1994 where the Accused brandished a telegram from Joseph Nzirorera appointing him as *bourgmestre*. The Chamber does not find the testimony GAP sufficiently precise as to prove that the Accused was re-appointed *bourgmestre* in April 1994.

269. The Chamber finds that the Accused remained in the post of *bourgmestre* until his departure from Rwanda in mid-July 1994.

F. Paragraph 3.4 and 3.6 of the Indictment

1. Allegations

270. Paragraph 3.4 of the Indictment reads:

> The *Bourgmestre* represented executive power at the level of the *commune*. Like the *Préfet*, he was appointed by the President of the Republic on recommendation from the Minister of the Interior. The *Bourgmestre* was under the hierarchical authority of the *Préfet*. He had authority over the civil servants posted in his *commune*. Moreover, he had policing duties in regard to maintaining order and law enforcement and for ensuring peace, public order and the safety of people and property within the Mukingo *commune*. In discharging these duties, he may request for the intervention of the *Police Communale* and *Gendarmerie Nationale*.

271. Paragraph 3.6 of the Indictment reads:

> In his capacity as *Bourgmestre*, the Accused exercised authority over his subordinates including civil servants, members of the *Police Communale* and *Gendarmerie Nationale*, the civilian population of Mukingo *commune* and *Interahamwe*-MRND.

2. Evidence

272. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

273. **Prosecution Witness GAP** testified that, while the Accused was *bourgmestre* the Witness "was under [the Accused's] orders in every duty [he] performed".[371] The Accused paid the Witness's salary for the months of April, May and June 1994.[372]

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[371] T. 28 November 2001, p. 93 (GAP) (ICS).
[372] T. 4 December 2001, p. 63 (GAP)

274. **The Accused** testified that there were no killings during his second term as *bourgmestre* in 1994. The Accused was updated on the occurrences in the *commune* by daily reports from the *conseillers*. The Accused testified that his first priorities as *bourgmestre* were to stabilise the situation—part of Mukingo *commune* was under the control of the RPF—and to maintain peace in the population. The Accused testified that, when he became *bourgmestre* again in 1994, he took measures to discover what had occurred over the past couple of months in regard to the massacre of Tutsis. The Witness heard about the number of Tutsis killed at the Busogo convent and organised a religious service in their memory one week after this tragedy that happened in April 1994. In June 1994, the Accused made attempts to find survivors of the massacres and to visit them.[373]

275. The Accused testified that most of the perpetrators of the massacres were people who deserted the army and people displaced by the war. The Accused worked in collaboration with the *secteur* and *cellule* authorities to find the assailants. The relevant organs of the Office of the Prosecutor [of Rwanda] had carried out investigations. In June 1994, the Accused jailed some of the perpetrators of the massacres including those that committed crimes in April in Mukingo *commune*. The Accused identified Moussafori [Musafiri] as among those arrested and jailed.[374]

276. The Accused testified that, during the evenings, he could not remain in Mukingo *commune*. He only came to the *commune* in the daytime and was accompanied by the communal police. There were RPF sympathisers working in the *commune* who threatened the Accused. During this time of insecurity, the Accused's family fled, just one week before the Accused went into exile.[375]

3. Findings

277. The Chamber took Judicial Notice of the fact that between 1 January 1994 and 17 July 1994, the office of the *bourgmestre* was characterised by the following features: the *bourgmestre* represented executive power at the *commune* level; the *bourgmestre* was under the hierarchical authority of the *préfet*; the *bourgmestre* had authority over the civil servants posted in his *commune*; in discharging his duties, the *bourgmestre* may request for the intervention of the police *communale*.[376]

278. The Chamber recalls its finding that the Accused was removed from the post of *bourgmestre* of Mukingo *commune* in February 1993 and re-appointed on 26 June 1994.

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[373] T. 14 April 2003, pp. 41-42 (ACCUSED); T. 22 April 2003, p. 31 (ACCUSED); T. 23 April 2003, pp. 46-48 (ACCUSED).
[374] T. 22 April 2003, pp. 8 and 34 (ACCUSED).
[375] T. 22 April 2003, pp. 55 (ACCUSED).
[376] *Kajelijeli*, Decision 16 April 2002, Judicial Notice (TC), Annex A; see also article 104 of the : « Loi du 23 novembre 1963 sur l'Organisation communale » (Amended) : « Le *bourgmestre* a seule autorité sur les agents de la Police communale et, par délégation du préfet, sur les éléments de la Police Nationale [lire Gendarnerie Nationale] mis à la disposition de la *commune*. »
Free translation : « The *bourgmestre* has the exclusive authority upon the *Police communale* and, by delegation of power from the *préfet*, upon the agents of the *Gendarnerie Nationale* put at the disposal of the *commune*. »

Consequently, the Chamber finds that the Accused was not the *bourgmestre* of Mukingo *commune* during the period from February 1993 to 26 June 1994. The Chamber notes also that, with the exception of the allegations of facts in relation with to conspiracy [see Part III, Section J] and the allegations of failure to prevent and punish the alleged crimes [see Part III, Section O], the events alleged in the Indictment took place in April 1994. That is to say, during a time when the Accused was not *bourgmestre*.

G. Paragraphs 4.6, 4.6.1 and 5.2 of the Indictment

1. Allegations

279. Paragraph 4.6 of the Indictment reads:

> The Accused had close ties with MRND's National secretary-general, Joseph Nzirorera, former Minister in the MRND Governments of 1987, 1989, 1990 and 1991, and a fellow native of Mukingo *commune*, and he benefited in authority and status from this association.

280. Paragraph 4.6.1 of the Indictment reads:

> At times other than those referred to in paragraph 3.5 [of the Indictment], the Accused exercised the *de facto* authority of *Bourgmestre* in Mukingo *commune* as a result of his association with, and patronage of, Joseph Nzirorera.

281. Paragraph 5.2 of the Indictment reads:

> The Accused's relationship with such an influential figure as Joseph Nzirorera enabled him to flout the local authorities, carry out atrocities against the Tutsi population and avoid any criminal sanctions.

282. The Chamber recalls its earlier finding that the Accused served as *bourgmestre* of Mukingo from 1988 to February 1993 and from 26 June 1994 to mid-July 1994. Hence, the reference in paragraph 4.6.1 of the Indictment to "At times other than those referred to in paragraph 3.5 of the Indictment" must be understood to be the period between February 1993 and 26 June 1994.

2. Evidence

283. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

284. **Defence Witness Joseph Nzirorera**, an Accused before this Tribunal, confirmed that the Accused was a long-standing friend, hailing from the same *commune* as himself. Under cross-examination, the Prosecution produced an affidavit—signed by the Accused before this Trial Chamber—in which the Accused described the Witness as being his benefactor. The Witness denied that he used his position and authority in the Rwandan political structure to garner positions of authority for the Accused. When asked if the Witness had helped the Accused in his career, the Witness testified that the

Accused was appointed in 1988 by decree of the Home Minister, a position the Witness never held. In addition, the Witness denied exerting any influence in the appointment of the Accused in June 1994. Moreover, the Witness testified that the chairman of the MRND for Mukingo *commune*, Jean Damascene Niyoyita, was the only person who had the power to convene meetings for the party.[377]

285. **Prosecution Witness GBV** testified that it was "customary" for the Accused and Nzirorera to meet at Nzirorera's residence and that "when Nzirorera wanted to carry out something within the *commune*, he went through Kajelijeli."[378]

286. **Prosecution Witness GBH** testified that the Accused, Nzirorera and the *préfet* used to hold meetings to the exclusion of others at Nzirorera's residence.[379]

287. **Prosecution Witness GBG** testified that he attended a meeting convened by Nzirorera and the Accused. The Witness did not remember the date of the meeting, but it took place during the first few months of 1993, "before the 1994 war" and when the Accused was still *bourgmestre*.[380]

288. Prosecution Witness GBG testified that, during the meeting, Joseph Nzirorera expressed that a "group of young people [with] a distinct and separate attire" would be set up to "help them search for accomplices." The Witness further testified that the Accused said "it would be good for those young people to assist them in searching for the rest of the accomplices because most of those accomplices or the more influential of those accomplices had been eliminated."[381]

289. **Prosecution Witness GAP** testified that all of the meetings that took place at the *commune* office were chaired by the Accused, while those that took place at Nzirorera's house were chaired by Nzirorera. The Witness testified that he was present at those meetings, but he did not attend meetings at which lists of Tutsis were drawn up.[382]

290. **Prosecution Witness GDD** testified that in meetings organised by the Accused and one Shadrak Sendugu between 1992 and 1993, the Accused and other authorities alleged that the RPF was made up of the Tutsis.[383] From these meetings, the Witness understood that recruitment of young people into the *Amahindure* was necessary to protect the country against the RPF. The Witness testified that their leader, the Accused, carried out the recruitment.[384] The Witness testified that, at meetings toward the end of 1993 at Nkuli *commune* and at Isimbi, both Nzirorera and the Accused

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[377] T. 3 December 2002, pp. 31 and 70 (NZIRORERA).
[378] T. 4 July 2001, p. 134 (GBV).
[379] T. 18 July 2001, p. 9 (GBH).
[380] T. 12 July 2001 pp. 37-39, 93 (GBG).
[381] T. 12 July 2001, p. 39 (GBG).
[382] T. 4 December 2001 pp. 33 and 105 (GAP).
[383] T. 2 October 2001, p. 88 (GDD).
[384] T. 4 October 2001, p. 56 (GDD).

spoke with the purposed of sensitising and inciting the population to fight against the Tutsi enemy.[385]

291. **Prosecution Witness GDQ** testified that, even after the Accused was suspended from being *bourgmestre*, the Accused continued to appear as a leader within the community, to conduct himself as *bourgmestre*,[386] and he continued as leader of the MRND in Mukingo.[387]

292. **Prosecution Witness GBG** testified that, "after the war broke out" in April 1994, the Accused "took up the duties of the *bourgmestre*."[388]

293. **Prosecution Witness GAO** testified that the Accused, in collaboration with Chairman Bambonye of the CDR and Chief Warrant Officer Karorero, sent the Witness and other *Interahamwe* to Busogo *secteur* to kill the Tutsis. The Witness obeyed the Accused because the Accused "went around the *commune* with the [*sic*] pistol" and because the Accused "was more powerful than the *bourgmestre*." The Witness testified that the Accused "issued orders to the inhabitants of Mukingo *commune*." The *bourgmestre*, Harerimana, "could not do anything without consulting" the Accused.[389]

294. **Defence Witness MEM** testified that, after the Accused was suspended from being *bourgmestre*, it would have been impossible for him to use the "communal vehicle" because the person who replaced the Accused as *bourgmestre* "could not allow [the Accused] to use the vehicle when he was the authority".[390]

295. **Defence Witness RHU21** testified that the Accused was influential because he had success with the population of Mukingo *commune*, but the Accused was no longer *bourgmestre* in 1994.[391]

296. **Prosecution Witness GDD** testified about a meeting of the *Interahamwe*, held at the end of 1993 at Isimbi house, which was Nzirorera's pub in Mukingo *commune*. The Witness went there on the invitation of the Accused who told them that Minister Nzirorera wanted to talk to them. From his *commune* [Nkuli *commune*] there were Sharire Habyimana (President of the CDR Party), Sendugu Shadrack (President of the MRND), Regazimbanyi Dominic, the *Bourgmestre* of Nkuli *commune* and most of the *Interahamwe* of Mukingo. All these people were Hutu: in that bar at Isimbi no Tutsi could enter because they were afraid. He explained that Isimbi was at Byangabo Centre in Mukingo *Commune* and that almost all the meetings took place in this bar. The Witness testified that, at this meeting, "Nzirorera clearly said it himself, that all that Kajelijeli could give us as information, we should understand that it came from

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[385] T. 3 October 2001 pp. 71-72, 78-79, 140-144 and 162 (GDD).
[386] T. 5 December 2001, p. 93 (GDQ).
[387] T. 5 December 2001 p. 92 (GDQ).
[388] T. 12 July 2001, p. 52 (GBG).
[389] T. 23 July 2001 pp. 26, 73, 93 (GAO).
[390] T. 25 November 2002, pp. 19-20 (MEM).
[391] T. 10 December 2002, p. 66 (RHU21).

him, and that he was the minister and that he received such information from the Government." The Witness testified that the Accused was a spokesman of Nzirorera and that they were best friends. The Witness maintained that he was ordered by the Accused, among others, to "catch" any Tutsi crossing the Ruhengeri-Gisenyi roadblock and "take him to the *bourgmestre*'s office in Nkuli." The Witness and other assailants obeyed the Accused "because Kajelijeli was the spokesman of Nzirorera [...] because it was said that if you do not do what we want you to do, if you do not fight against the enemy, the enemy that is Tutsi, that is tantamount to your being on their side."[392] However, in cross-examination, notwithstanding that GDD confirmed that the meeting (or consultation) of 1993 at Isimbi was convened by Nzirorera, he nonetheless agreed that in his statement of 26 June 2000 he told the ICTR investigators that he did not attend meetings convened by Nzirorera because Nzirorera only invited *bourgmestres* and traders to his meetings. He explained this discrepancy as a mistake on his part. GDD explained to the Chamber that the meeting he made reference to was not really a meeting but a consultation.[393] In re-examination the Prosecution read a passage in GDD's statement of 26 June 2000 in which there is a discrepancy between the English and the French: in the French statement it is stated that GDD attended "meetings" organised by Nzirorera, while in the English it says "rallies." GDD clarified that he meant meetings and that the meeting at the Isimbi is one of such convened by Nzirorera.[394]

297. **Defence Witness Nzirorera** denied that he used his position and authority in the Rwandan political structure to garner positions of authority for the Accused. When asked if the Witness had helped the Accused in his career, the Witness testified that the Accused was appointed in 1988 by decree of the Home Minister, a position the Witness never held. In addition, the Witness denied exerting any influence in the appointment of the Accused in June 1994.[395]

298. **Prosecution Witness GBV** testified that all members [residents] of the *commune* were required to attend MRND meetings when the Accused was *bourgmestre*.[396] At the inception of multi-party politics in 1992, residents of the Witness's *cellule* were still required to attend MRND meetings.[397] Those who refused to attend were imprisoned or fined. The Witness gave the example of Ntabwiko Faustin, from Nyabirehe, whose beating "led to his death". Even after the appointment of Niyoyita as chairman of the party for the *commune*, the Accused attended all of the MRND meetings and often took the floor. "In actual fact, real power was held by Kajelijeli. Niyioyita was—could be considered as a mere—as a figure-head [...] whatever [the Accused] wanted done in the *commune* was done. There was no objection to his desires."[398] The Witness stated that the Accused could not be *bourgmestre* and

[392] T. 3 October 2001 pp. 59-61 (GDD); T. 4 October 2001 pp. 49, 140-144 (GDD).
[393] T. 4 October 2001, pp. 144-149 (GDD).
[394] T. 4 October 2001, pp. 183-186 (GDD).
[395] T. 3 December 2002, pp. 30-32 (NZIRORERA).
[396] T. 4 July 2001, p. 92 (GBV).
[397] T. 5 July 2001, pp. 26-27 (GBV).
[398] T. 4 July 2001, pp. 93-94 (GBV).

President of MRND simultaneously because a policy at the time prohibited administrative heads from being leaders of political parties.[399]

299. **Prosecution Witness GBE** testified that the Accused continued to influence the population because he belonged to the MRND even after the Accused was removed as *bourgmestre*. Since the person who replaced the Accused as *bourgmestre* was an MDR member, the population preferred to listen to the Accused.[400] The Witness was not aware if the Accused was ever MRND chairman in Mukingo *commune*, but the Accused had "installed" Niyoyita and convened and chaired the meetings at the *commune* level.[401]

300. **Prosecution Witness GBH** testified that he saw *Interahamwe* moving around with the Accused, wearing red and white coloured uniform, singing and saying that "they are the Interahamwe."[402] The Witness testified that the Accused ruled the *commune* and he imagined that the Accused was the one who supplied the uniforms."[403]

301. **Prosecution Witness GAP** testified that it was the duty of the communal police brigadier to protect the local population, but, with only nine policemen under his command, the communal police brigadier could not challenge the Accused, who had 80 people trained and armed with guns and grenades.[404]

302. **Defence Witness Joseph Nzirorera** testified that the Accused could not convene meetings of the MRND nor chair such meetings at the *commune* level between 1991 and 1994 because the Accused was not a member of any organ of the MRND. Moreover, the Witness testified that the chairman of the MRND for Mukingo *commune*, Jean Damascene Niyoyita, was the only person who had the power to convene meetings for the party.[405]

303. **The Accused** testified that before 1988 he was not the MRND leader of his *commune*.[406] When the Accused was appointed *bourgmestre*, he automatically became an MRND leader given that there was a single-party system and that the *bourgmestre* was the representative of the central authority for the party.[407] The Accused testified that, at that time, he became the person in charge of implementing MRND's policy in Mukingo *commune*. The Accused testified that the *préfet* of Ruhengeri was in charge of implementing MRND's policy for the *préfecture*. The Accused testified that during his term as *bourgmestre* he was president of the MRND; though, afterwards, he did not obtain a party membership card. As the president of the MRND, the Accused used to

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[399] T. 5 July 2001, pp. 45-46 (GBV).
[400] T. 9 July 2001, pp. 76-77 (GBE) (ICS).
[401] T. 9 July 2001, pp. 134-135 (GBE) (ICS).
[402] T. 17 July 2001, p. 54 (GBH).
[403] T. 17 July 2001, p. 56-57 (GBH).
[404] T. 3 December 2001, p. 123 (GAP).
[405] T. 3 decembre 2002, pp. 47-49 (NZIRORERA).
[406] T. 16 April 2003, p. 49 (ACCUSED).
[407] T. 16 April 2003, p. 53 (ACCUSED); T. 17 April 2003, p. 17 (ACCUSED).

hold meetings of MRND members in his *commune*. With the advent of multiparty politics, the Accused discontinued being a member of the MRND.

304. The Accused testified that, as *bourgmestre*, he was under the authority of the Home and Communal Matters Ministry as *bourgmestre* of Mukingo *commune*. The ministry was controlled by the MRND before the advent of the multiparty system. Afterwards, all ministries were supposed to carry out a neutral policy. The Accused affirmed that a ministry under the control of an individual affiliated with the MRND did not mean that subordinates received instructions from the MRND.[408]

305. **Prosecution Witness GBE** testified that, on 10, 11 and 12 April 1994, he was able to go back to his "normal activities" provided he carried identification papers. There was a roadblock at the intersection of the road that goes through the ISAE [*Institut Superieur d'agriculture et d'elevage*] and the road coming from Busogo. On 10 April 1994, at this roadblock, the Witness saw the Accused speaking with Major Bizabarimana, deputy commander of the military camp. Subsequently, members of Bizabarimana's escort gave ammunition to the *Interahamwe* who were manning the roadblock.[409]

306. **Prosecution Witness GAO** testified that Major Bizambarimana collaborated with and supported the Accused.[410]

307. **The Accused** testified that when he was *bourgmestre* in 1992 the Defence Ministry granted him a licence to bear a gun. The Accused gave the gun back to the *Gendarmerie* when he left the position in February 1993 and was not allowed to bear arms even after he recovered his position in June 1994.[411] The Accused testified that in 1994 he did not have the ability to ask military personnel to protect his family; the Accused no longer had the authority to do so.[412] In addition, the Accused denied that he had the authority to request military personnel to help escort someone in Nkuli *commune*, or the power to mobilise the military in order to go and kill Tutsis.[413]

308. **Prosecution Witness GDQ** testified that, after the killings in Byangabo Market on the morning of 7 April 1994, the *bourgmestre*, Emmanuel Harerimana told the Witness that he could do nothing because he himself was being hunted by the Accused's *Interahamwe* so that the Accused could become *bourgmestre*.[414]

309. **Prosecution Witness GAP** testified that when the Accused asked *bourgmestre* Harerimana to bury the people killed on 7 April 1994, Harerimana refused to bury them before reporting the deaths. The Accused then proposed to buy Harerimana a drink at a bar belonging to Semahane. The Witness testified that when they finished

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[408] T. 17 April 2003, p. 23 (ACCUSED)
[409] T. 9 July 2001, pp. 110-111 (ICS).
[410] T. 23 July 2001, p. 30 (GAO).
[411] T. 16 April 2003, p. 16 (ACCUSED).
[412] T. 23 April 2003, p. 43 (ACCUSED).
[413] T. 17 April 2003, p. 73 (ACCUSED).
[414] T. 5 December 2001, pp. 31-32 (GDQ).

their drinks "we returned to the communal office and Harerimana died". Harerimana died in his office around 3 p.m. on 8 April 1994 while he was signing passports for members of the population to go to Ruhengeri to report what they had seen. [415]

310. Prosecution Witness GAP further testified that, after the *bourgmestre* was buried, the Accused and the *Interahamwe* sang "the song of triumph, of victory"[416] and the Accused claimed that Nzirorera had sent a telegram telling the Accused that he had become *bourgmestre* of Mukingo *commune* again.[417]

311. **Prosecution Witness GAO** testified that on the evening of 8 April 1994, *bourgmestre* Harerimana was killed by "certain people."[418]

312. **Defence Witness RHU31** testified that the Accused did not have the power to give orders to the *bourgmestre* as he held no official functions. This was in response to a suggestion by the Prosecution that the Accused came to the communal office on 8 April 1994 to request that the *bourgmestre* make arrangements for the burial of corpses and that this was followed by a dispute.[419]

313. **Prosecution Witness GDQ** testified that, after the Tutsis were killed, their property was distributed to the *Interahamwe*. The Accused also took some lands.[420] The *Interahamwe* distributed other lands; roofing sheets from houses were removed and sold to farmers; livestock were slaughtered; and other property, such as money, were looted.[421]

314. **Prosecution Witness GAP** testified that on 9 April 1994, the Accused began distributing Tutsi land to the *Interahamwe*, who sold the land and used the proceeds to buy drink.[422]

315. **Prosecution Witness GAO** testified that, after the attack on the Court of Appeal, the Accused, *conseiller* Ndisetse, a police officer named Sinaribon Nahasone and others set up a committee to sell the property of Tutsis. The sale of Tutsi property began only a few days after the attack on the Court of Appeal, between 12 and 14 April 1994.[423] The Accused, as a reward for the killings, offered to give *Interahamwe* a piece of property located above the Accused's house, which had belonged to a Tutsi woman named Rachel.[424] The *Interahamwe* complained that the land was too small, so the Accused told them to go to the market and ask for 5000 francs from each businessman who did not participate in the killings.[425] The *Interahamwe* asked for and

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[415] T. 28 November 2001, p. 123 (GAP); T. 3 December 2001, pp. 12 and 13 (GAP).
[416] T. 3 December 2001, p. 16 (GAP).
[417] T. 3 December 2001, p. 16 (GAP).
[418] T. 24 July 2001, p. 92 (GAO).
[419] T. 2 octobre 2002, (RHU31) (ICS).
[420] T. 6 December 2001, p.43 (GDQ).
[421] T. 5 December 2001, pp. 42-43 (GDQ).
[422] T. 4 December 2001, p. 77 (GAP).
[423] T. 23 July 2001, pp. 42-43, 46-47 and 111 (GAO); T. 24 July 2001, pp. 77 and 78 (GAO).
[424] T. 23 July 2001, p. 43, 47, 51; T. 24 July 2001 pp. 79-81 (GAO).
[425] T. 24 July 2001, pp. 87 and 90 (GAO).

received money from the businessmen, including Barayasesa, Bazambanza, Muhura, Bireme, Gatovu, Sebareme, Budura and Durira, and from all drinking establishments that sold banana wine. Michel Niyigaba distributed the money.[426] The Witness testified that the Accused sent Michel Niyigaba to ask Bahembira for 90,000 francs, which belonged to a Tutsi woman.[427]

316. **Defence Witness RHU23** testified that refugees looted the properties of the deceased Tutsis. When Semahane had become *bourgmestre*, the *commune*'s policy was to rent or sell the property. The Witness testified that he rented a plot from the *commune* in mid June 1994 to be used in cultivating potatoes. The Witness stated that the owner of the land retrieved the land when the true owner returned from Zaire.[428]

317. **Defence Witness RGM** testified that he has no knowledge of what happened to the property of Tutsis killed during the events of 7 and 8 April 1994. Furthermore, the Witness was unaware of Rachelle's property being given to the *Interahamwe* as a reward for those killings.[429]

318. **Defence Witness MEM** testified that after the events of April 1994, the *commune*'s technical committee under the leadership of the *bourgmestre* created a committee that would manage and control the sale or lease of real property belonging to Tutsis. The amount due would be paid to that committee and the *commune* would issue a receipt. This money was deposited with the accountant and used as normal communal revenue. The Witness denied that the land of massacred Tutsis was distributed to Hutus. The Witness testified that the Accused did not participate at any level in the committee to lease or dispose of Tutsi properties.[430]

319. **The Accused** testified that the lands belonging to Tutsis were abandoned. The *commune* decided to manage the property of the Tutsis, who were likely to come back, rather than let people take them. A law regulating the status of communal property held that abandoned property was given to the *commune* and, if the true owner returned, they would take back possession. The *commune*, pending the return of the legitimate owner, could lease for one-year periods the abandoned property; in such cases, the money was used for the development of the *commune*. However, it was prohibited to sell the property. The law was in existence when the Accused was *bourgmestre* between 1988 and 1993.[431]

320. The Accused testified that when he recovered his position as *bourgmestre* between 16 and 17 June 1994 he did not deal with the redistribution of the lands belonging to the Tutsis. When the Accused took up his functions as *bourgmestre* he was not aware that the *commune* was managing property belonging to the Tutsi, but the Accused specified that such might have been done beforehand. The Accused testified that the

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[426] T. 23 July 2001, p. 43 (GAO); T. 24 July 2001, pp. 82-83 (GAO).
[427] T. 28 November 2001, p. 77 (GAO).
[428] T. 25 September 2002, p. 40 and 73 (RHU23) (ICS).; T. 26 September 2002, p. 105 (RHU23) (ICS).
[429] T. 19 November 2002, pp. 16-17 (RGM).
[430] T. 25 November 2002, pp. 64-66 and 68-69 (MEM) (ICS); T. 26 November 2002, pp. 91-92 and 96 (MEM) (ICS).
[431] T. 16 April 2003, p. 14 (ACCUSED); T. 22 April 2003, p. 50 (ACCUSED).

commune made an unlawful policy decision if it did not rent the land by official act. However, the Accused added that this might have been done.[432]

3. Findings

321. The Chamber notes that it is not contested that the Accused and Joseph Nzirorera were friends and natives of Mukingo *commune*. However, the Chamber finds that the allegations in the Indictment as to the manner in which the Accused benefited in authority and status from his association with Joseph Nzirorera are vague and that the evidence adduced by the Prosecution did not clearly demonstrate these allegations. The Chamber recalls that the Accused had been *bourgmestre* of the Mukingo *commune* from 1988 to 1993, a significant amount of time prior to the advent of the events that fall under the Tribunal's jurisdiction, and therefore finds that he could have been perceived as a figure of authority in the Mukingo *commune* and the neighbouring areas in his own right, irrespective of his ties with Joseph Nzirorera.

322. The Chamber finds that there is insufficient evidence to demonstrate that the Accused exercised authority as *de facto bourgmestre* in Mukingo *commune* during the period in which he was not in office namely, from February 1993 to 26 June 1994. In particular, the Chamber finds that there is insufficient evidence that during this period, or part thereof, the Accused exercised any of the powers of the office of *bourgmestre*.

323. The Chamber is satisfied that Tutsi properties were distributed to the *Interahamwe* and that the Accused was involved in the distribution.

324. The finding made here is limited to the question of whether the Accused exercised *de facto* authority of the *Bourgmestre* of Mukingo *commune* from February 1993 to 26 June 1994. This finding does not deal with whether or not the Accused exercised authority in any other capacity.

325. The Chamber will consider the question of the Accused's power, and exercise thereof, in capacities other than de *facto bourgmestre* in the relevant sections below [Part III, Sections H and L]. Similarly, the Chamber will also consider allegations regarding the Accused's ability to ignore local authorities and to commit crimes with impunity [Part III, Section O].

H. Paragraphs 4.10, 4.15, 4.12, 4.13, 4.16 and 4.16.1 of the Indictment

1. Allegations

326. Paragraph 4.10 of the Indictment reads:

> In 1991, the MRND created its own youth wing. The members of the MRND's youth wing were known as the "*Interahamwe*". The youth wing was formed in response to two requirements within the MRND:

[432] T. 16 April 2003, p. 15 (ACCUSED); T. 22 April 2003, p. 49 (ACCUSED).

(a) Sensitizing the youth to politics and

(b) Mobilizing the youths.

327. Paragraph 4.15 of the Indictment reads:

The Accused was a founder and leader of *Interahamwe* in the Mukingo *commune* from 1991 to July 1994.

328. Paragraph 4.12 of the Indictment reads:

Beginning in 1992, numerous MRND youth wings' members received military training and weapons and were thus transformed from youth movements into militias.

329. Paragraph 4.13 of the Indictment reads:

The military training and the distribution of the weapons to the member of the *Interahamwe* were organized by the leaders of the MRND including the *Préfet* and *Bourgmestre*, in collaboration with the officers of the *Forces Armées Rwandaises (FAR)*. The Accused participated actively in the training and the distribution of weapons.

330. Paragraph 4.16 of the Indictment reads:

The *Interahamwe* in the Mukingo *commune* under the leadership of the Accused from 1991 to July 1994 were: (a) given military training organized by the Accused; (b) distributed weapons and uniforms by the Accused which were provided by Joseph Nzirorera; and (c) distributed lists of Tutsis to be eliminated.

331. Paragraph 4.16.1 of the Indictment reads:

The Accused consulted regularly with the National secretary-general of the MRND, Joseph Nzirorera on the matters set out in paragraph 4.16 above.

332. The Defence denied that the Accused was a founder, member, leader, honorary member or honorary chairman of the *Interahamwe* at the *préfecture*, *commune* or *secteur* level. Moreover, the Accused never participated in the distribution of arms, uniforms or was engaged in any training of militias or *Interahamwe*.[433]

2. Evidence

333. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

334. **Prosecution Witness GDD** testified that the Accused "put together the *Interahamwe*."[434] The Witness further testified that the Accused was the primary

[433] Defence Pre-Trial-Brief, paras. 1.25, 1.26.
[434] T. 2 October 2001, p. 86 (GDD); T. 3 October 2001, p. 61 (GDD).

founder of the *Amahindure* force. According to the Witness, other founders of the *Amahindure* included Joseph Nzirorera, former Minister in charge of public works who funded the force, Colonel Nkibitura and former Chief Warrant Officer Karorero of the Rwandan Army.[435]

335. **Prosecution Witness GAO** said that the Accused, when he was *bourgmestre*, and other authorities set up a branch of the MRND called Civil Defence, or "Virunga force," to protect the population and fight in the volcanoes.[436] "[T]his Civil Defence was responsible for protecting the population. It was trained in the handling of firearms. And it is this same Civil Defence which subsequently killed the population, the same population that it was supposed to protect."[437]

336. **Prosecution Witness GBE** testified that the Accused "set up" the Interahamwe in the Witness's *secteur* in Mukingo *commune*.[438]

337. **The Accused** testified that when he was *bourgmestre* of Mukingo *commune* there was not an organisation called *Umuganda*. There was an association of political parties called *Umuganda* that organised community work countrywide, but it was not the initiative of a single individual. There was not a register of people in the *commune* who volunteered for this community work. Within the *communes*, the *Umuganda* system was for the citizens as a whole and not only for young people. The Accused testified that members of *Umuganda*, an association that organised community work countrywide, did not automatically become members of the *Interahamwe* when the latter was created.[439]

338. The Accused testified that there were *Interahamwe* organised in Kigali and that they represented the youth wing of the MRND. There were youth wings within other political parties in Rwanda in 1994. The *Interahamwe* was launched in Kigali in 1991 and spread nation-wide, including Mukingo *commune*. The Accused testified that he did not know why this youth wing was created within the MRND nor does he remember when the *Interahamwe* movement was started in Ruhengeri *préfecture* or Mukingo *commune*.[440]

339. **Defence Witness RGM** testified that he was not aware of any role that the Accused played in the establishment of the *Interahamwe*. According to the Witness there was a youth association called *Uruyange* that had 52 members. The association did not have an office because it was an association of peasants; activities were carried out at the house of the chairman. The objective of the association was to develop agriculture and animal husbandry and to help the members meet their needs. The Witness testified that, initially, he was the assistant to the deputy of the chairman. In 1992, the Witness was elected as the youth official, after which he was elected

[435] T. 2 October 2001, pp. 95-96 (GDD); T. 4 October 2001, pp. 49-50, 86-87 (GDD).
[436] T. 23 July 2001, pp. 53-54 (GAO).
[437] T 23 July 2001, pp. 53-54 (GAO).
[438] T. 9 July 2001, p. 75 (GBE) (ICS).
[439] T. 17 April 2003, pp. 33-34 and 50 (ACCUSED).
[440] T. 17 April 2003, pp. 31-32 (ACCUSED).

president. The Witness identified some of the members of this youth association: Alexis Rukundo, Jean Ndamasene Bagabo, Ndalifite, Bararwerakana, Hakuzimana, Nsengiyumva, Mbonankira, Barebereho and Bayisenge.[441]

340. Defence Witness RGM testified that he first heard the word "*amahindure*" in 1985, when his mother used it to describe the rains. The Witness heard the word "*amahindure*" again in 1994 when in exile; he saw volcanic eruptions referred to as "*amahindure*". The Witness testified that he never heard the term being used to describe the *Interahamwe.*[442]

341. Defence Witness RGM testified that in February 1993, the youth met at Busogo at a football pitch. Niyoyita Ndamasene, who was unaccompanied, came and told the youth that a youth wing, called the *Uruyange*, was going to be set up in which all youth of good conduct, good morals and aged 18 could register with the MRND party. The Witness testified that [at that time] Asiel Ndisetse was *bourgmestre* of Mukingo *commune*. Some members accepted to join the *Interahamwe*, though not all did so. The Witness testified that the *Uruyange* association continued its activities and had its own management and financial control and that it was possible for some members to be members of the *Interahamwe* as well.[443]

342. **Defence Witness MEM** testified that there was a group of youth in Busogo *secteur* who organised themselves on their own initiative into a group called the *Interahamwe.* They did not have any "distinctive uniform" nor did they hold any meetings. Prior to 1994, the group formed agricultural associations that raised money that was given to different persons.[444]

343. **Prosecution Witness GBE** testified that he attended a meeting once in Ruhengeri.[445] The Witness could not recall the date of the meeting.[446] The Witness later testified that the meeting took place after the capture of Ruhengeri, after the *Inkotanyi* had left.[447] On cross-examination, the Witness testified that it took place in 1993, at the beginning of the Arusha negotiations.[448] When asked whether the Witness saw Nzirorera and the Accused together, the Witness responded, "No…Nzirorera and the […] other officials came from Kigali, while the local officials in the various *communes* came accompanied by *Interahamwe* and other MRND officials."[449] President Habyarimana was also present at the meeting.[450] The Witness affirmed that the Accused attended the meeting with the MRND youth wing, which staged dances at the Ruhengeri stadium.[451] The Accused, who was *bourgmestre* of Mukingo *commune*

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[441] T. 18 November 2002, pp. 20-22, 24-25 and 27-28 (RGM) (ICS).
[442] T. 19 November 2002, p. 17 (RGM).
[443] T. 18 November 2002, pp. 26-28 (RGM) (ICS).
[444] T. 25 November 2002, pp. 56-57 (MEM).
[445] T. 9 July 2001, p. 138 (GBE) (ICS).
[446] T. 9 July 2001 pp. 64, 138 (GBE) (ICS).
[447] T. 9 July 2001, p. 140 (GBE) (ICS).
[448] T. 9 July 2001 pp. 64, 138 (GBE) (ICS).; T. 10 July 2001, p. 40 (GBE) (ICS).
[449] T. 9 July 2001 pp. 138-139 (GBE) (ICS).
[450] T. 9 July 2001, p. 65 (GBE) (ICS).
[451] T. 9 July 2001, p. 65 (GBE) (ICS).

at the time, travelled in a *commune* vehicle.[452] The Accused did not speak at the meeting, but the préfet [Nzabageragera], Nzirorera and Mathieu spoke; Nzirorera was introduced with the *Interahamwe* from each *commune*.[453] The Witness saw Nzirorera and the Accused sitting and talking together in the seats reserved for officials, but he could not hear what they were saying.[454]

344. **Defence Witness RGM** testified that the *Interahamwe* was the youth wing of MRND whose objective was to build awareness of the party. The Witness testified that during a meeting or rally presided over by President Habyarimana on 15 November 1992, the President explained the *Interahamwe* and their activities.[455] The *bourgmestres* of Ruhengeri were present, including the Accused; although, the Accused did not speak nor was he introduced. Following the arrival of the President, *Préfet* Charles Nzabagerageza gave a speech: the President addressed the crowd and people then left. The Witness testified that the President told those present that the time had come to face the other political parties and to ensure victory in the elections by enlisting more members.[456]

345. **Defence Witness MEM** testified that the MRND had a youth wing called the *Interahamwe*. He heard the name [*Interahamwe*] for the first time in a speech by President Habyarimana at a meeting he attended in Ruhengeri in 1992 or 1993. All members of the MRND in Ruhengeri *préfecture*, including the *bourgmestres*, were invited to this meeting, which was meant to celebrate the reconstitution of the MRND. The Witness testified that the Accused was present, but he did not take the floor to speak.[457]

346. **The Accused** testified that between 1991 and 1994, he never attended a meeting for the MRND in Ruhengeri town.[458]

347. The Accused testified that on 15 November 1992, he attended a meeting intended to greet the President of the Republic, Juvénal Habyarimana. The Accused was invited as *bourgmestre* of Mukingo *commune*. Members of the MRND attended the meeting. Joseph Nzirorera was not present because he was on assignment abroad. Casimir Bizimungu, whom the Accused knew well and was the President of the MRND, took the floor to speak. The Accused testified that he did not take the floor during that meeting nor did he represent anyone. The meeting was broadcasted on TV and included cultural or traditional dances. The dancers were wearing different kinds of clothing: some wore traditional clothes, others wore the MRND uniform and others were dressed normally. The Accused testified that President Habyarimana was among the last speakers. When the President used the term *Interahamwe*, it was the first time

[452] T. 10 July 2001, p. 41 (GBE) (ICS).
[453] T. 10 July 2001 pp. 41-42 (GBE) (ICS).
[454] T. 9 July 2001, p. 139 (GBE) (ICS).
[455] T. 18 November 2002, p. 25 (RGM) (ICS).
[456] T. 18 November 2002, pp. 35-36 (RGM).
[457] T. 25 November 2002, pp. 55-56 (MEM).
[458] T. 15 April 2003, p. 2 (ACCUSED).

that the word was heard by the Accused in Ruhengeri *préfecture*. At the meeting, the *Interahamwe* danced to greet the President along with other citizens.[459]

348. The Accused testified that, as an administrator, he never attended ceremonies at the *communal* level with the *Interahamwe*. The *Interahamwe* that the Accused saw that day [at the Ruhengeri meeting in November 1992] had come from Kigali. The Accused testified that, during the meeting, the elections issue was mentioned, though the President did not talk about the March 1993 municipal elections or "ulterior" elections scheduled within the MRND. The Accused denied that the use of the *Interahamwe* as a militia to fight other parties was mentioned during that meeting.[460]

349. The Accused testified that after he left the 15 November 1992 meeting, he learned that there was an initiative to create an organisation to promote the MRND in Mukingo *commune*. Young people who used to come around the communal office launched the Interahamwe. The Accused did not watch the way this initiative evolved. He never met anybody who identified himself or herself as *Interahamwe*; he only knew a few young people who were a part of the movement, but he was not interested in knowing their identity.[461]

350. **Prosecution Witness GDQ** testified that the youth wing of the MRND was called the *Interahamwe* and that it existed since the formation of the MRND Party by President Habyarimana. When the Accused was *bourgmestre*, their representative, Jean Damascene Niyoyita, the Inspector of Education at the *secteur* level, controlled the *Interahamwe* in Mukingo *commune*. The Witness further testified that the word "*amahindure*" meant "a volcanic eruption" and in Mukingo *commune* there were youths called the *Amahindure* who were controlled by the Accused.[462]

351. **Prosecution Witnesses GDO, ACM, GBH** and **GBV** all provided testimony that the Accused was the leader of *Interahamwe*,[463] whom Witness GBH referred to as the *Ubutuahamwe*.[464]

352. **Prosecution Witness GBV** testified that the Accused introduced the *Interahamwe* during one of the communal meetings. Each sector had its own group of *Interahamwe*, but there was a group of *Interahamwe* leaders who were at the disposal of the *bourgmestre* whenever the need arose.[465]

353. **Prosecution Witness GAP** testified that the Accused became the leader of the *Interahamwe* after he was removed from his position as *bourgmestre* in 1993.[466]

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[459] T. 15 April 2003, pp. 3-4; T. 17 April 2003, p. 32 (ACCUSED).
[460] T. 15 April 2003, p.5 (ACCUSED); T. 17 April 2003, p. 32-34 (ACCUSED).
[461] T. 15 April 2003, pp. 5-7 (ACCUSED).
[462] T. 5 December 2001, pp. 14-16 (GDQ).
[463] T. 18 July 2001, p. 46 (GDO); T. 11 December 2001, p. 33 (ACM); T. 17 July 2001, p. 103 (GBH); T. 4 July 2001, pp. 96-97 (GBV).
[464] T. 17 July 2001, p. 46 (GBH).
[465] T. 4 July 2001 pp. 98-99 (GBV).
[466] T. 4 December 2001, p. 14 (GAP).

354. Prosecution Witness GAP further testified that the Accused had eighty, well trained *Interahamwe* from Mukingo *commune* under his authority from the time of the death of President Habyarimana. Another 600 *Interahamwe* were subsequently recruited from Mukingo and Nkuli *communes*. These were the same *Interahamwe* who massacred people on 7 April 1994.[467] The Witness later testified that there were, in April 1994, about 690 *Interahamwe*, "the first batch of 90, and then another batch of 600".[468] The Witness affirmed that the "organizers" of the initial 80 members of the *Interahamwe* and the 600 new recruits were the Accused, Chief Warrant Officer Karorero and Bahera. However, the main leader of the *Interahamwe* was Nzirorera.[469] The Witness further testified that the Accused was the "chairman or president "of the *Interahamwe* in Mukingo when he re-assumed the office of *bourgmestre* in 1994.[470]

355. **Prosecution Witness GBH** testified that there was another group of youth called the *Amahindure* that was set up to increase numbers in the *Interahamwe*. The *Interahamwe* was created first and existed before 1993, but the *Amahindure* was said to be Nzirorera's group. The Witness saw the *Interahamwe* moving around with the Accused, wearing red and white coloured uniforms, singing and saying that they were the *Interahamwe*. The Witness knew the *Interahamwe* by sight, but he did not know them individually. The Witness testified that, if the Accused was not their leader, "a man of his position as a *bourgmestre* could [have] had the power to stop or lock [up] the young people wearing uniform, engaged in training, singing and dancing."[471]

356. **Prosecution Witness GBE** provided testimony that the Accused never bothered the Interahamwe even when they were "molesting or harassing" people, even though the Accused was *bourgmestre*.[472]

357. **Prosecution Witness GBG** testified that the Accused stated, at a meeting for youth, that it would be good for the young people [*Interahamwe*] to assist in the search for the rest of the accomplices because most of the accomplices or the more influential of them had been eliminated. The comment was made at a meeting convened by Nzirorera and the Accused "before the 1994 war".[473] The *Interahamwe* obeyed the Accused's orders "because of that speech" and because he was the one who gave them uniforms.[474]

358. **Prosecution Witness GBG** testified that the link between the Accused and the *Interahamwe* was "the fact that they engaged in the same activities", "[t]hey wore this

[467] T. 28 November 2001 pp. 116-118 (GAP).
[468] T. 3 December 2001, p. 27 (GAP).
[469] T. 28 November 2001, p. 116 (GAP).
[470] T. 3 December 2001, p. 19 (GAP).
[471] T. 17 July 2001 pp. 47, 50-51, 54 and 104 (GBH).
[472] T. 9 July 2001, p. 76 (GBE) (ICS).
[473] T. 12 July 2001, p. 39 (GBG).
[474] T. 12 July 2001, p. 53 (GBG).

uniform, went on a vehicle, a Hilux model, red-coloured belonging to the *commune*," and the Accused was "always with the *Interahamwe*."[475]

359. **The Accused** testified that he was not the president of the *Interahamwe* nor was he in charge of their training.[476]

360. **Prosecution Witness GAO** testified that the Accused and other authorities set up a branch of the MRND called Civil Defence, also called the Virunga force or *Amahindure*, whose members were trained in the use of firearms. People began training in 1991. The trainings continued until 1994. The Witness participated in training in 1993 and was trained to handle M26 and Chinese-made grenades, Kalashnikovs and R4s.[477]

361. Prosecution Witness GAO testified that Dusabe Karorero, a sergeant in Habyarimana's army and a "person of Nyiramakuba," as well as two corporals named Musafiri and Bimenya, son of Sebigori, conducted the training. The Accused was not an actual instructor but would come to the training grounds every morning.[478] The Accused told them to complete their training quickly so that he could send them to the volcanoes to fight against the "*Inkotanyi*, the *Inyenzi*." The Witness testified that the people who carried out the training said that soldiers in the Bigogwe camp had already trained the Accused. Some Byangabo traders also completed training in Bigogwe at the same time as the Accused.[479] Witness GAO testified that when the Accused was *bourgmestre*, he together with "the adjudant" and Karorero gave *Interahamwe* military training. "So those were the two people who gave [them] military training."[480]

362. **Prosecution Witness GDD** testified that the Accused, Sendugu Shadrack (President of the MRND from Nkuli *commune* and director of the Primary school in Gitovu in Kintobo) and other politicians solicited Augustin Habiyambere to train young *Interahamwe* recruits of Hutu ethnic origin for "preparation of the offences."[481] Augustin Habiyambere was directed by them "to carry out an attack on the enemy" because Rwanda was being attacked by the RPF since 1990 and "[they] should be ready because some day [they] would be attacked." The Accused and Sendugu Shadrack supervised the training of the *Interahamwe* youth in the use of weapons, including Kalashnikovs and ML4 rifles. The Witness affirmed that "two military instructors, one from the Mukamira Camp and another former FAR" were present at each training session. A sensitisation meeting was held after each military session to prepare the young militants for combat.[482] Prosecution Witness GDD also testified that the trainers learned how to handle weapons at Mukamira camp so they led the youth at Eager School on exercises training in the handling of weapons, particularly the

[475] T. 12 July 2001, pp. 61-62 (GBG).
[476] T. 17 April 2003, p. 50 (ACCUSED).
[477] T. 24 July 2001, pp. 53-54 and 68 (GAO).
[478] T. 23 July 2001, p. 51 (GAO).
[479] T. 23 July 2001, pp. 54-55 (GAO); T. 24 July 2001, p. 92 (GAO).
[480] T. 23 July 2001, p. 14 (GAO).
[481] T. 3 October 2001, p. 9; T. 4 October 2001, p. 11 (GDD).
[482] T. 2 October 2001, pp. 88, 90 and 95; T. 4 October 2001, pp. 43-49 (GDD).

Kalashnikov. He testified that the trainers taught them at the order of politicians of Nkuli *commune*, among others, the local commander and the Accused.[483]

363. **Prosecution Witness GAP** testified that the training of the *Interahamwe* included the manipulation of weapons and grenades as well as military exercises. The Accused was the lead instructor of the *Interahamwe*, "responsible for political ideology". Second in charge of training was Chief Warrant Officer Karorero, who was responsible for physical training. Others were demobilized from military service to assist in training the *Interahamwe*.[484]

364. Prosecution Witness GAP testified that before 6 April 1994, he saw eighty members of the *Interahamwe* at the *Isimbi* chemist shop, which belonged to Joseph Nzirorera, being trained in how to handle weapons including guns and grenades.[485] The Witness said that the *Interahamwe* also practised at the Mukamira camp.[486]

365. **Prosecution Witness GAP** testified that the 600 or 620[487] members of the *Interahamwe* from Mukingo and Nkuli *communes* began to train at the *commune* office after the Accused took over the responsibilities of *bourgmestre* again.[488]

366. **Prosecution Witness GBH** testified that the Accused was "seen in the company of the young people while they trained on a football field using the guns, wooden guns."[489]

367. **Defence Witness RGM** testified that there was no military training of the *Interahamwe* in Busogo *secteur* in 1993 or 1994. The Witness testified that he was familiar with the building in Byangabo Market owned by the Accused where beer was sold; though he was not aware of other activities taking place there.[490] In addition, Defence Witnesses JK312, RGM and MEM testified that they did not see, hear or were aware of any military training taking place in front of or inside the Mukingo *Commune* Office in 1993 or 1994.[491]

368. **The Accused** testified that the *Interahamwe* did not have an office in the *Isimbi* building at Byangabo centre in Mukingo *commune*. The Accused denied that he had any knowledge that military training of the *Interahamwe* was carried out at the Mukingo *Commune* Office or at the *Isimbi* building between 1993 and 1994.[492] The Accused testified that there was neither an *Interahamwe* organisation nor military

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[483] T. 2 October 2001, p. 79 (GDD) (ICS).
[484] T. 28 November 2001, pp. 119-120 (GAP).
[485] T. 28 November 2001, p. 119 (GAP); T. 3 December 2001 pp. 25-26 (GAP); T. 4 December 2001, p. 84 (GAP).
[486] T. 3 December 2001, pp. 26 and 55 (GAP).
[487] T. 4 December 2001, p. 67 (GAP).
[488] T. 28 November 2001, p. 119 (GAP); T. 3 December 2001, pp. 18 and 56 (GAP).
[489] T. 17 July 2001, p. 51 (GBH).
[490] T. 18 November 2002, pp. 29 and 32 (RGM).
[491] T. 16 September 2002, pp. 121-122 (JK312); T. 18 November 2002, p. 35 (RGM); T. 25 November 2002, p. 63 (MEM) (ICS).
[492] T. 15 April 2003, pp.8-9 (ACCUSED); T. 17 April 2003, p. 63 (ACCUSED).

training in Mukingo *commune* when he was *bourgmestre*.[493] The Accused testified that he might not have known if there had been military training of the *Interahamwe* at any other place in the *commune* because his position as *bourgmestre* kept him busy. The Accused testified that after he left the position of *bourgmestre* he withdrew from public life, but he believes that he would have been informed if there were any military training in progress in Mukingo.[494]

369. The Accused testified that he knew Karorero, a warrant officer in the Rwandan Armed Forces from Nkuli *commune*. The Accused met him when he was *bourgmestre*. After being released from military service from the army, Karorero engaged in business and owned a canteen located on the premises of the Mukingo *Commune* [Office]. The Accused testified that that Karorero did not help him train the *Interahamwe* and that the *Interahamwe* were never trained.[495]

370. **Defence Witness JK27** insisted that there were no militia training activities going on in Nkuli *commune*.[496]

371. **Prosecution Witness GBE** testified that he remembers seeing youth go to the residence of Nzirorera to get uniforms at the end of 1991 or the beginning of 1992. The uniforms were made of *kitenge* material in green and the colours of the MRND flag.[497]

372. **Prosecution Witness GBG** testified that Nzirorera distributed uniforms to the *Interahamwe* "in collaboration with" the Accused.[498] The Witness saw the Accused give uniforms, which were green and yellow in colour and made of *kitenge* fabric,[499] to the *Interahamwe* at Nzirorera's house in Byangabo Market "around 1993".[500] The *Interahamwe* obeyed the Accused's orders because he was the one who gave them uniforms.[501] The Witness also observed the Accused distributing uniforms to the *Interahamwe* after a meeting convened by the Accused and Nzirorera before the war in 1994.[502] At that time, not many people were seen wearing the *Interahamwe* uniform; the Witness never saw a woman or a "kid" wearing the uniform. In fact, the Witness never saw anyone other than members of the *Interahamwe* wearing *kitenge* fabric or the fabric in stores.[503]

373. **Prosecution Witness GDD** testified that the Accused delivered uniforms to President Shadrack of the MRND after the death of President Habyarimana. The

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[493] T. 15 April 2003, pp. 8-9 (ACCUSED).
[494] T. 17 April 2003, p. 63 (ACCUSED).
[495] T. 15 April 2003, p. 7 (ACCUSED); T. 17 April 2003, pp. 51-52 (ACCUSED).
[496] T. 18 September 2002, p. 25 (JK27).
[497] T. 9 July 2001, pp. 67 and 140-141 (GBE) (ICS).
[498] T. 12 July 2001, pp. 35-37 and 61 (GBG).
[499] T. 16 July 2001, p. 49 (GBG).
[500] T. 12 July 2001, pp. 59-60 (GBG); *see also* French transcript: T. 12 Juillet 2001, pp. 73-75 (GBG); T. 16 July 2001, p. 106 (GBG).
[501] T. 12 July 2001, p. 53 (GBG).
[502] T. 12 July 2001, p. 39 (GBG); T. 16 July 2001, p. 107 (GBG).
[503] T. 16 July 2001, pp. 103-104 and 114 (GBG).

Witness testified "Nzirorera promised [the *Interahamwe*] these uniforms in a meeting held at Nkuli *commune*".[504] During the attacks, the *Amahindure* wore these MRND-*Interahamwe* uniforms. The uniforms were wrap-around uniforms with an MRND logo, made of *Ibtenge* [*kitenge*] material with a yellow, green and sky blue pattern.[505]

374. **Prosecution Witness GAO** testified that some of the attackers on 7 April 1994 were wearing camouflage uniforms supplied by Nzirorera. Nzirorera had brought the uniforms to Mukingo *commune* and gave them to the Accused. The Accused, who was still *bourgmestre* at the time, then delivered the uniforms at Nyiramakuba to Michel, the *secteur* president of the *Interahamwe*, for distribution. The uniforms were made of traditional *kitenge* cloth in yellow, white and green. The Witness testified that others who wore red and black hats were known as "MDR Parmehutu."[506] In addition, the Accused distributed photo identity cards to the *Interahamwe* sometime in 1993.[507]

375. **Prosecution Witness ACM** testified that Nzirorera provided the *Interahamwe* with uniforms and weapons and that the Accused distributed them as a sort of graduation from training.[508]

376. **Defence Witness JK312** testified that the *Interahamwe* wore the uniform of the MRND, since all *Interahamwe* members were members of that party. The Witness testified that he could not differentiate between a regular member of the MRND and a member of the *Interahamwe* because there was just one MRND uniform.[509]

377. **Defence Witness RGM** testified that he never saw the Accused or Joseph Nzirorera distribute uniforms to the *Interahamwe*. The Witness testified that the Interahamwe did not wear a military uniform; the MRND had a uniform made from cloth that could be purchased in shops and that could be worn by anyone: members, sympathisers, women, youth and old men.[510]

378. **The Accused** testified that the *Interahamwe* did not wear a specific uniform.[511]

379. **Prosecution Witness GAP** testified that there was a march-past organized by the Accused and Joseph Nzirorera, at which time the Accused was sworn in as *bourgmestre* of Mukingo *commune*. The march-past took place sometime between April and May 1994; the Accused's speech was followed by that of Nzirorera. The purpose of the march-past was to "show people the *Interahamwe* and thank them for a job well done".[512]

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[504] T. 3 October 2001, p. 16, 17, 65, 66 and 69 (GDD).
[505] T. 3 October 2001, pp. 16-17 and 69 (GDD).
[506] T. 23 July 2001, pp. 24, 30-31, 56-57 and 93-94 (GAO).
[507] T. 23 July 2001, p. 14 (GAO).
[508] T. 11 December 2001, p. 75 (ACM).
[509] T. 17 September 2002, pp. 49-53 and 56-58 (JK312).
[510] T. 18 November 2002, pp. 29, 31 (RGM) (ICS).
[511] T. 17 April 2003, p. 50 (ACCUSED).
[512] T. 3 December 2001, pp. 26-27 (GAP).

380. **Prosecution Witness GBV** testified that Nzirorera was "instrumental in the formation of the *Interahamwe*" because he was "a high-ranking personality and he had financial resources." The Accused's role was to recruit young men to become *Interahamwe* and to supply them with funds from Nzirorera to buy weapons.[513]

381. **Prosecution Witness GBE** testified that "each time Nzirorera came to our area, he was accompanied by Kajelijeli."[514] When Nzirorera came to visit his mother, Nyiramakuba, the Accused would go with the Interahamwe to Nzirorera's house or Nyiramakuba's house "for purposes of entertainment."[515] Nzirorera's house, known as Nsimbi[516] [Isimbi], was separated by only one building from the house of the Accused.[517]

382. **Prosecution Witnesses GBE** and **GAO** testified that Nzirorera's house in Byangabo Market—*Isimpirayabisogo or Isimbi ya Busogo*—had a room set aside for use by the *Interahamwe*. Meetings were held and Interahamwe documents were kept at Isimbi according to Witness GAO.[518] However, according to Witness GBE, most of the *Interahamwe* meetings took place at Nzirorera's mother's house and the room at *Isimbi* house was seldom used. Both Witnesses confirmed that a store had been opened up at *Isimbi* house where soft drinks and/or medications were sold.[519]

383. **Prosecution Witness GAO** further testified that meetings of the *Interahamwe* also took place at Nzirorera's house at Nyiratarengwa. The Witness testified that a second meeting of the Interahamwe took place at the house of Amiel Rucukeri, where bread was sold.[520]

384. **Prosecution Witness GBV** testified that the Interahamwe met either in Nzirorera's home, or at the bar of Nzirorera's younger brother, Silas Ntamakemwa, which was located close to Nzirorera's residence in Busogo *secteur* about 5 meters from the road. On cross-examination, the Witness affirmed that the Interahamwe did not meet at Nzirorera's house, but at Nzirorera's mother's house. The Witness had never entered this house, but the Witness could see members of the Interahamwe enter. Once, when walking past Nzirorera's younger brother's bar, the Witness saw the Accused, Namakimwa and Nzirorera, but could not hear what was being said. The Witness testified that Nzirorera had another house located 2 or 3 km from Byangabo centre in the direction of Nkuli.[521]

385. **Prosecution Witness GAO** testified that, sometime in 1993 at a meeting at Nzirorera's mother's house, Nzirorera instructed members of the *Interahamwe* to seize

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[513] T. 4 July 2001, pp. 135 and 136 (GBV); T. 10 July 2001, pp. 42 and 43 (GBE) (ICS).
[514] T. 9 July 2001, pp. 138-139 (GBE) (ICS).
[515] T. 9 July 2001, p. 68 (GBE) (ICS).
[516] T. 10 July 2001, p. 54 (GBE) (ICS).
[517] T. 9 July 2001, p. 144 (GBE) (ICS).
[518] T. 9 July 2001, pp. 142-143 (GBE) (ICS).; T. 23 July 2001, p. 57 (GAO)
[519] T. 9 July 2001, p. 143 (GBE) (ICS).; T. 10 July 2001, p. 43 (GBE) (ICS).
[520] T. 23 July 2001, pp. 57 and 60 (GAO); T. 25 July 2001, p. 14 (GAO).
[521] T. 4 July 2001, pp. 99-100 (GBV); T. 5 July 2001 2001 pp. 68, 70, 72 and 74-76 (GBV).

the flags of the PSD and MDR parties in the Yaounde and Kabore neighbourhoods and to kill anyone who refused to give them the flags.[522] The meeting took place after Nzirorera returned from Kigali, passing through the Yaounde neighbourhood with Natanzi, Damaseni, the Accused, and Sinarimbonye Nasoni in a Hilux vehicle belonging to the STB [ESTB].[523] The Witness affirmed that a meeting took place at Nyirakambu's house and Kigozi, son of Ntamuhanga, made a decision to seize the PSD and MDR flags. The Accused was present at this meeting.[524]

386. **Prosecution Witness GAP** testified that, in January 1994, the Accused participated in a meeting at Joseph Nzirorera's house at a time when Nzirorera "was preparing the elimination of Tutsis."[525] At the time of the meeting, the Accused was the leader of the *Interahamwe* of Mukingo *commune*, a position the Accused retained up to 10 April 1994. The following people attended the meetings at Nzirorera's house: the president of the MRND, the president of the CDR, the school inspectors, the *conseillers*, some businessmen and other representatives of the political parties and *Interahamwe* committees. Specific individuals who attended included: Jean Darmecene Niyoyita, Baheza Shadras [Bahiza Esdras], Myabisora [Nyamusore] and the Accused.[526]

387. Prosecution Witness GAP testified that he could not remember the number of times that meetings were held at Nzirorera's house, but at the end of 1994 they occurred "each Saturday" on the "last Saturday before the end of the month".[527] The meetings "focused on the manner of dismantling the flags, in the region, that belonged to other parties apart from MRND and CDR" as well as the issues of denying jobs to members of opposition parties, "sensitisation on the issue of calling the Tutsi the main enemy" and hunting down Tutsis. The Witness denied that the agenda of the meetings included discussion of denying jobs to members of other parties.[528]

388. **Defence Witness RGM** testified that he was not aware of any meetings between the Accused and Joseph Nzirorera that took place between 1993 and 1994 at the *Isimbi* house, which was owned by Ntamakewa and Joseph Nzirorera.[529]

389. **Prosecution Witness GBE** testified that people often went to Nzirorera's house "to submit various types of problems." The Witness affirmed that the Accused "was always with the Interahamwe at Nzirorera's and they feasted together.[530] At the end of 1991 or the beginning of 1992, the Witness remembered seeing youth go to the residence of Nzirorera to get uniforms. The uniforms were made of kitenge cloth in

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[522] T. 25 July 2001, pp. 8 and 17 (GAO); T. 24 July 2001, p. 97 (GAO).
[523] T. 24 July 2001, pp. 93-95 (GAO).
[524] T. 24 July 2001, pp. 22 and 34 (GAO).
[525] T. 28 November 2001, p. 114 (GAP); T. 4 December 2001, p. 45 (GAP).
[526] T. 28 November 2001, pp. 114-115 (GAP); T. 3 December 2001, pp. 22-23 (GAP).
[527] T. 3 December 2001, p. 21 (GAP).
[528] T. 28 November 2001, pp. 115-116; T. 3 December 2001, pp. 23-24; T. 4 December 2001, pp. 52, 53, 55 and 57 (GAP).
[529] T. 18 November 2002, pp. 32-35 (RGM).
[530] T. 10 July 2001, pp. 12, 42 and 43 (GBE) (ICS).

green and the colours of the MRND flag.[531] The Witness further testified that the MRND flag was occasionally hoisted at Isimbi house. The Witness affirmed that he would pass by *Isimbi* house and, sometimes, the *Interahamwe* would be in the house drinking, and the Witness would greet them "since [he] knew them."[532]

390. **Prosecution Witness GBG** further testified that he saw the *Interahamwe* planting a piece of wood in front of Nzirorera's house, upon which an MRND flag was hoisted, around noon on a day in 1992. Every morning the *Interahamwe* came to raise the MRND flag and every evening they took it down. The Witness personally Witnessed the flag-raising two times, and the flag lowering one time.[533] On one occasion, the Witness saw Nzirorera distributing money at his house to the *Interahamwe* who were singing, "Long live our parents." The Witness affirmed that this was a reference to Nzirorera and the Accused.[534]

391. **Prosecution Witness GAP** testified that he saw *Interahamwe* being trained in how to handle weapons, including guns and grenades, before 6 April 1994, at the Isimbi chemist shop, which belonged to Nzirorera.[535] The Witness further testified that the *Interahamwe* practised at the Mukamira camp. Eighty members of the *Interahamwe* were trained "before the Isimbi pharmacy in Byangabo" and practised military training at Mukulima [Mukamira] camp.[536]

392. **Defence Witness RGM** affirmed that he never saw the Accused or Nzirorera distribute uniforms to the *Interahamwe*.[537]

393. **Defence Witness MEM** testified that *Isimbi* house, which was located at Byangabo Market, belonged to Nzirorera's brother-in-law.[538] **Defence Witness TLA** testified that *Isimbi* house belonged to the Nzirorera family.[539] **Defence Witnesses RGM, MEM** and **TLA** testified that the *Isimbi* building housed a pharmacy, a bar and the office of the "BCOM" project that was in charge of water works.[540] **Defence Witnesses RGM** and **TLA** confirmed that there were neither meetings held by the *Interahamwe* nor military training of youths at the Isimbi house.[541]

394. **Defence Witnesses MEM** and **TLA** testified that teachers, who were members of the MRND, rented the space in the back courtyard of Isimbi house.[542] Although they did not own the building, the teachers flew the flag of the MRND in front of the

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[531] T. 9 July 2001, pp. 67, 140 and 141 (GBE) (ICS).
[532] T. 10 July 2001, pp. 43-44 (GBE) (ICS).
[533] T. 16 July 2001, pp. 8-13, 102, 112 and 113 (GBG); T. 17 July 2001, p. 3 (GBG).
[534] T. 16 July 2001, p. 105 (GBG).
[535] T. 28 November 2001, p. 92 (GAP) (ICS); T. 3 December 2001 pp. 41-42, 45, 47 and 113 (GAP) (ICS).
[536] T. 28 November 2001, p. 119; T. 3 December 2001 pp. 25-26 and 55; T. 4 December 2001, p. 84.
[537] T. 18 November 2002, p. 31 (RGM).
[538] T. 25 November 2002, pp. 52 and 53 (MEM).
[539] T. 2 December 2002, p. 43 (TLA).
[540] T. 18 November 2002, p. 32-33 (RGM); T. 25 November 2002, pp. 52-53 (MEM); T. 2 December 2002, pp. 42-43 (TLA).
[541] T. 18 November 2002, p. 33 (RGM); T. 2 December 2002, pp. 44 and 45 (TLA).
[542] T. 26 November 2002, pp. 7-9 (MEM) (ICS); T. 2 December 2002, pp. 42 and 43 (TLA).

building.[543] According to these Witnesses, the MRND flag was not flown at any other establishment along the Ruhengeri-Gisenyi road, from the Mukingo *Commune* Office to the end of Byangabo Market, but the flags of the MRND, CDR, MDR and PSD political parties were flown.[544] However, **Defence Witness RGM** testified that the MRND flag was flown outside other locations in Byangabo Market as well.[545] **Defence Witness TLA** saw members of the MRND hoist the flag in the morning and bring it down in the evening.[546] **Defence Witness MEM** testified that the people coming to drink at the bar were not exclusively MRND party members.[547]

395. **Defence Witness MEM** testified that he did not see any distribution of weapons or clothes or any military training of youth before April 1994 in front of Isimbi house.[548]

3. Findings

(a) The foundation of Interahamwe *in Mukingo commune*

396. The Chamber finds, on the basis of the testimonies of Prosecution Witnesses GDD and GDQ, the testimony of the Accused, and the corroborating testimony of Defence Witness MEM, that the *Interahamwe* were formed in Kigali in 1991, as the youth wing of the MRND party, and spread nation-wide. The Chamber notes, in particular, the Accused's testimony according to which the *Interahamwe* was launched in Kigali in 1991 and spread nation-wide, including various areas in Ruhengeri *préfecture* and Mukingo *commune.*[549] The Chamber also finds, based on the testimonies of Prosecution Witnesses GBV,[550] GAP[551] and GBH[552] that the *Interahamwe* existed in Ruhengeri *prefecture* were in existence in Ruhengeri *préfecture* by the end of 1992 and in Mukingo *commune* by the beginning of 1993. The Chamber finds that from the evidence, it emerges clearly that a meeting took place in Ruhengeri in November 1992 and that President Habyarimana was present and made a speech at the meeting. The Chamber also finds, based on the testimony of Prosecution Witness GBE, as corroborated by Defence Witnesses RGM, MEM and the Accused, that the Accused was present at that meeting. The Accused also testified that the President introduced the term "*Interahamwe*" in his speech and that *Interahamwe* were present at the meeting, along with members of the MRND. This is further corroborated by the testimony of Defence Witness MEM, who stated that the MRND had a youth wing called *Interahamwe* and that he heard the name *Interahamwe* for the first time in the said presidential speech.[553] However, the testimonies by Prosecution Witness GBE,

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[543] T. 25 November 2002, pp. 52 and 53 (MEM); T. 26 November 2002, pp. 7-9 (MEM) (ICS).
[544] T. 25 November 2002, pp. 52 and 53 (MEM); T. 26 November 2002, pp. 7-9 (MEM) (ICS); T. 2 December 2002, p. 45 (TLA).
[545] T. 18 November 2002, p. 33 (RGM).
[546] T. 2 December 2002, pp. 46 and 126 (TLA) (ICS).
[547] T. 26 November 2002, p. 7 (MEM) (ICS).
[548] T. 25 November 2002, p. 63 (MEM) (ICS); T. 26 November 2002 , pp. 4-5 and 87 (MEM) (ICS).
[549] T. 17 April 2003, p. 32 (ACCUSED).
[550] T. 4 July 2001, p. 96 (GBV).
[551] T. 4 December 2001, p. 14 (GAP).
[552] T. 17 July 2001 (GBH).
[553] T. 25 November 2002, pp. 55 and 56 (MEM).

Defence Witness RGM, Defence Witness MEM and the Accused, also affirm that the Accused did not take the floor to speak. The Chamber finds these testimonies reliable on these issues. The Chamber therefore finds, that there is insufficient evidence that the Accused participated in the meeting as a founder of the *Interahamwe*.

397. The Chamber further finds that the testimonies of both Prosecution Witness GDD, according to which the Accused "put together the *Interahamwe*",[554] and Prosecution Witness GBE, according to which the Accused "set up" the *Interahamwe*,[555] insufficiently detailed with respect to pertinent considerations such as the time, place and manner. Consequently, the Chamber finds that the Prosecution did not meet its burden of proving beyond reasonable doubt that the Accused was a founder of the *Interahamwe* in Mukingo *Commune*.

398. The Chamber finds consistent and reliable evidence of close connections, and at times overlap, between the *Interahamwe*, on the one hand, and *Amahindure* (a.k.a. "Virunga Force") and the *Uruyange* on the other. These connections emerged clearly from the testimonies of Prosecution Witnesses GDD and GBH and Defence Witness RGM. Witness GDD testified that he trained *Interahamwe* who were of the "*Amahindure* Battalion" and who were also known as "Virunga Force".[556] Witness GBH testified that the *Interahamwe* was first created and "then the *Amahindure* movement was set up to increase the number of these young people".[557] However, the evidence that the Accused was the founder of the *Amahindure*, provided by Witnesses GDD,[558] or that the Accused was the founder of the "Virunga Force", provided by Prosecution Witness GAO,[559] were vague, in that they lacked specifics as to times, places and manner. Therefore, the Chamber finds that there is insufficient evidence to find beyond a reasonable doubt that the Accused was a founder of the *Amahindure* or the *Uruyange*.

399. This finding, however, relates to the specific question whether the Accused was a founder of the *Interahamwe*, founder of the *Amahindure*, or a founder of the "Virunga Force", or a founder of the *Uruyange*. This finding does not relate to the question of the Accused's association with any group(s) known by these names: that question is addressed below.

(b) The training of the Interahamwe

400. The Chamber finds that by 6 April 1994 the Accused was actively involved in the training of the *Interahamwe*. This is evidenced in the eye witness testimony of Prosecution Witness GBH, who stated that the Accused was "seen in the company of the young people while they trained on a football field using the guns, wooden

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[554] T. 2 October 2001, p. 86 (GDD); T. 3 October 2001, p. 61 (GDD).
[555] T. 9 July 2001, p. 75 (GBE) (ICS).
[556] T. 2 October 2001, p. 93, 94 and 95 (GDD).
[557] T. 17 July 2001, p. 47 (GBH).
[558] T. 2 October 2001, pp. 95 and 96 (GDD); T. 4 October 2001, pp. 49-50 and 86-87 (GDD).
[559] T. 23 July 2001, pp. 53-54 (GAO).

guns."[560] Corroborating evidence is found in the testimonies of Prosecution Witnesses GDD and GAO, both of whom gave similar and largely consistent testimonies of the Accused's involvement in the training of the *Interahamwe*. Witness GDD, a former member of the *Interahamwe*, testified that the Accused and other politicians solicited him to train young *Interahamwe* recruits.[561] Witness GAO, another former member of the *Interahamwe*, also confirmed that when the Accused was *bourgmestre* he [the Accused], together with others, gave *Interahamwe* military training.[562] Witness GAO also testified that the Accused would come to the training grounds every morning,[563] and that the Accused told *Interahamwe* to complete their training quickly so that he [the Accused] could send them to the volcanoes to fight against the "Inkotanyi, the Inyenzi." [564] The Chamber notes in particular, the testimony of Prosecution Witness GAP who stated that the Accused was the leading instructor "responsible for political ideology".[565] Although there are minor ambiguities among them regarding the timing of various training activities of the militia in Mukingo *commune* and the neighbouring areas, the Chamber finds their testimonies consistent and establish beyond reasonable doubt that the Accused did actively participate in the training of *Interahamwe* in Mukingo *commune*. The Chamber finds, however, that there is insufficient evidence that the Accused organized these trainings.

(c) The distribution of uniforms and weapons to the Interahamwe

401. Upon close examination of the record, the Chamber finds insufficient evidence that the Accused distributed weapons to the *Interahamwe* prior to 6 April 1994. The evidence provided by Prosecution Witness ACM, according to which Joseph Nzirorera provided the *Interahamwe* with uniforms and weapons and that the Accused distributed them at graduation from training,[566] was hearsay testimony. In the absence of corroborating testimony, the Chamber finds this hearsay evidence insufficient to base a finding that the Accused distributed weapons prior to 6 April 1994. The Chamber will consider evidence relating to distribution of weapons and uniforms after 6 April 1994 in the Part III, Section K, below.

402. The Chamber does, however, find that *Interahamwe* in Mukingo *commune* used distinctive uniforms and that the Accused participated in the distribution of these uniforms. In this regard, the Chamber recalls the consistent testimonies of Prosecution Witnesses GDD, GAO and GBG,[567] which were corroborated by the testimony of Defence Witness JK312, confirming that the *Interahamwe* used distinctive uniforms. The Chamber notes that Prosecution Witness GBG, provided eyewitness testimony of the Accused's participation in the distribution of uniforms to the *Interahamwe* at

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[560] T. 17 July 2001, p. 51 (GBH).
[561] T. 3 October 2001, p. 9; T. 4 October 2001, p. 11 (GAO).
[562] T. 23 July 2001, p. 14 (GAO).
[563] T. 23 July 2001, p. 51 (GAO).
[564] T. 23 July 2001, pp. 53-55 (GAO).
[565] T. 28 November 2001, p. 120 (GAP).
[566] T. 11 December 2001, p. 75 (ACM).
[567] T. 17 September 2002, pp. 49-53 and 56-58 (JK312); T. 3 October 2001, p. 16, 17, 65, 66 and 69; T. 23 July 2001 pp. 24, 30-31, 56-57, 93-94 (GAO); T. 16 July 2001, p. 49 (GBG).

Byangabo Market "around 1993". This account is consistent with the first hand accounts provided by Witnesses GDD[568] and GAO.[569] The Chamber therefore finds that the Accused participated in the distribution of uniforms to the *Interahamwe* in Byangabo Market around 1993.

(d) The leadership of Interahamwe in Mukingo commune and Nkuli commune

403. The Chamber considered the evidence given by Prosecution Witnesses GDQ, GAP and GBG according to which the Accused was associated with the *Interahamwe* and had influence and control over them. Witness GDQ testified that in Mukingo *commune* there were youths called the *Amahindure* who were controlled by the Accused.[570] Witness GBV testified that the Accused introduced the *Interahamwe* during one of the communal meetings and that there was a group of *Interahamwe* leaders who were at the disposal of the *bourgmestre* whenever the need arose.[571] Witness GAP testified that the Accused became the leader of the *Interahamwe* after he was removed from his position as *bourgmestre* in 1993.[572] Witness GAP further testified that the Accused had 80 well-trained *Interahamwe* from Mukingo *commune* under his authority from the time of the death of President Habyarimana and that the Accused was among the "organizers" of the initial 80 members of the *Interahamwe* and of 600 subsequent recruits.[573] Witness GBG testified that that the *Interahamwe* obeyed the Accused's orders to assist in the search for accomplices.[574] Witness GBG further testified that the Accused was "always with the *Interahamwe*."[575] Witnesses ACM and GBV provided reliable corroborating testimony that the Accused was a leader of *Interahamwe* in 1993.[576]

404. The Chamber notes in particular the detailed and reliable account of Prosecution Witness GBH, who stated that the Accused "was the one who gave instructions to the young people who had to do anything. He supervised them and gave them orders... The young people in question were the *Interahamwe*." [577] Witness GBH also testified that "a man of his position as a *bourgmestre* could [have] had the power to stop or lock the young people wearing uniform, engaged in training, singing and dancing."[578] This testimony was further corroborated by Prosecution Witness GBE, who provided testimony that the Accused never bothered the *Interahamwe* even when they were "molesting or harassing" people, though as *bourgmestre* he was both able and obliged

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[568] T. 3 October 2001, p. 16, 17, 65, 66 and 69 (GDD).
[569] T. 23 July 2001, pp. 24, 30-31, 56-57 and 93-94 (GAO); T. 12 July 2001, pp. 59-60 (GBG), *see also:* French transcript: T. 12 Juillet 2001, pp. 73-75 (GBG); T. 16 July 2001, p. 106 (GBG); T. 16 July 2001, p. 49 (GBG).
[570] T. 5 December 2001, pp. 14-16 (GDQ).
[571] T. 4 July 2001, pp. 98-99 (GBV).
[572] T. 4 December 2001, p. 14 (GAP).
[573] T. 28 November 2001, p. 116 (GAP).
[574] T. 12 July 2001, p. 53 (GBG).
[575] T. 12 July 2001, pp. 61-62 (GBG).
[576] T. 18 July 2001, p. 46 (GDO); T. 11 December 2001, p. 33 (ACM); T. 17 July 2001, p. 103 (GBH); T. 4 July 2001, pp. 96-97 (GBV).
[577] T. 17 July 2001, p. 45-46 (GBH).
[578] T. 17 July 2001, pp. 47, 50-51, 54 and 104 (GBH).

to do so.[579] The Chamber finds that these testimonies present a clear picture of the Accused's close association with, and control over, the *Interahamwe*. The Chamber consequently finds that the Accused was a leader of *Interahamwe* with control over the *Interahamwe* in Mukingo *commune*, and that he also had influence over the *Interahamwe* of Nkuli *commune* from 1 January 1994 to July 1994.

405. The Chamber will consider the issue of the continuous leadership and effective control of the Accused on the *Interahamwe* during the events that took place from 6 April 1994 to mid-July 1994 in the Part III, Sections K and L, below.

I. Allegation of Membership of the MRND and Membership of Prefectural congress of the MRND

1. Allegations

406. The Prosecution has alleged in its Pre-Trial brief, though not in the Indictment, that the Accused remained an active member of the MRND Party after the introduction of multiparty politics on 10 June 1991.[580]

407. The Indictment refers to the MRND in numerous paragraphs[581] and makes several references to the links between the Accused and the MRND leadership and their involvement in the massacres that occurred in April 1994 in the Mukingo *commune* and the neighbouring areas.

408. The Chamber considers that the Accused received adequate notice of the Prosecution allegations regarding his membership in the MRND and links with MRND members and had sufficient information to prepare its Defence on those matters. The Accused was able to cross-examine the Prosecution Witnesses and has presented evidence on those matters.

2. Evidence

409. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

410. **Prosecution Witness GBE** affirmed that the Accused encouraged MDR members to join the MRND because the MDR "was a party of the Inyenzi." The Accused issued MRND cards to new members; however, the Accused's signature did not appear on the card. The *commune*-level MRND chairman, Alphonse Niyoyita, signed the card. The Witness testified that the Accused had "installed" Niyoyita and that the Accused convened and chaired the meetings at the *commune* level.[582]

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[579] T. 9 July 2001, p. 76 (GBE) (ICS).
[580] Prosecution Pre-Trial-Brief, paragraph 12.
[581] Paragraphs 3.6, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, 4.10, 4.11, 4.12, 4.12.1, 4.12.2, 4.13, 4.14, 4.16.1, 4.18, 4.21, 4.22, 4.23, 5.1, 5.7 and 5.9
[582] T. 9 July 2001, pp. 53-54 and 131-135 (GBE) (ICS).

411. **Prosecution Witness GAP** testified that the Accused was a senior political figure.[583] Since the establishment of the MRND, the Accused has been one of its leaders. The Witness claimed that there were documents showing that the Accused was a leader of the MRND.[584] In addition, the Witness worked with the Accused within the MRND Party.[585]

412. **Defence Witnesses LMR1** and **SMR2** testified that the Accused was a member of the MRND until 1991, when multiparty politics was introduced in Rwanda. The Witnesses testified that the Accused remained neutral in politics until he was suspended in 1993 because, as *bourgmestre*, the Accused was not authorized to join political parties. The Witnesses denied that the Accused was one of the leaders of the MRND.[586]

413. **Defence Witness TLA** testified that the Accused did not have any function within the MRND; the Accused was only the *bourgmestre* and never played any role in the MRND at the *prefecture* level. The Witness further testified that, after the Accused was removed from office in 1993, he did not exercise any function or exert any influence in the MRND.[587]

414. **Defence Witness Joseph Nzirorera** denied that the Accused was a founder of the MRND or a member of the prefectural committee of the MRND in Ruhengeri *prefecture*.[588] The Witness testified that the Accused was not present when the founding statutes of the MRND were signed in Kigali on 5 July 1991 and that the name of the Accused does not appear among the signatories to the statutes.[589] The MRND party was registered at the Home Ministry on 31 July 1991 and its statutes were published in the *Journal Officiel de la République Rwandaise* dated 15 August 1991.[590]

415. Defence Witness Nzirorera testified that, in the 1992 elections within the MRND, the Accused was neither a candidate nor an elector, and therefore could not be elected to any official function within the party. To the Witness's knowledge the Accused did not join and was never a member of the new MRND.[591] The Witness confirmed that, under the one-party system, the *bourgmestre* was also the chairman of the MRND for the *commune*. However, with the advent of a multiparty system, the two positions were separated and officers of the central administration, including the *bourgmestre*, were prohibited from concurrently occupying a political party office and an administrative

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[583] T. 28 November 2001, p. 92 (GAP) (ICS).
[584] T. 4 December 2001, p.16 (GAP).
[585] T. 4 December 2001, p. 15 (GAP).
[586] T. 18 September 2002, p. 101 (LMR1); T. 19 September 2002, pp. 22 and 75-76 (SMR2) (ICS).
[587] T. 2 December 2002, pp. 47-48 (TLA).
[588] T. 3 December 2002, p. 9 (NZIRORERA).
[589] T. 3 December 2002, pp. 8-10 (NZIRORERA).
[590] T. 3 December 2002, pp. 17-19 (NZIRORERA).
[591] T. 3 December 2002, pp. 10-11 (NZIRORERA).

public office.[592] Therefore, when the Accused was elected *bourgmestre* in June 1994, he could not be chairman of the MRND in the *commune*.[593]

416. **The Accused** testified that in 1978 all Rwandans were members of the MRND. The Accused testified that no one told him that he was a member of the MRND. Before he became *bourgmestre* he never had a membership card. The Accused testified that in 1978, he was a technician and would not attend MRND meetings.[594] Before the introduction of multiparty politics in Rwanda in June 1991, he was a member of Rwanda's only political party, the MRND. Membership was compulsory for state civil servants. After the advent of multiparty system, the Accused no longer belonged to any party. The Accused testified that during the period of political pluralism, including February 1993, he did not belong to any political party because the *bourgmestre* was not allowed to have a party affiliation. The Accused testified that he did not have time to be involved in politics.[595]

417. **Prosecution Witness GAP** testified that the Accused was a member of the prefectural congress of the MRND when he assumed the office of *bourgmestre* after the death of Habyarimana. The prefectural congress consisted of communal representatives and the presidents of the MRND and *Interahamwe* from each of the *communes* within the *préfecture*; whereas the prefectural committee consists of members of the prefectural *bureau*.[596]

418. **Prosecution Witness GDD** testified that the Accused was a member of both the prefectural congress and the eight-member prefectural committee of the MRND. On the basis of a published list, the Witness testified that he knew the Accused was elected from the *commune* as a member of the MRND prefectural congress in Ruhengeri.[597] Prosecution Witness GDD also testified that when elections were held at the stadium of the Ruhengeri Prefecture in Kigombe Urban *commune*, The Accused was one of eight candidates, and that he was subsequently elected to the Prefectural Committee.[598]

419. **Prosecution Witness GAO** testified that the Accused was a member of the high committee of Ruhengeri *préfecture*.[599] The Witness was aware of four meetings held by the committee, on Tuesdays and Thursdays, at the communal office.[600] The committee consisted of representatives from each *commune* in Ruhengeri *préfecture*; the Accused represented Mukingo *commune*, Gatsimbanyi (the Accused's brother and *bourgmestre* of Nkuli *commune*) represented Nkuli *commune* and Brigadier Alois

[592] T. 3 December 2002, pp. 82-83 (NZIRORERA).
[593] T. 3 December 2002, pp. 72 and 83 (NZIRORERA).
[594] T. 16 April 2003, p. 40 (ACCUSED); T. 17 April 2003, p. 31 (ACCUSED).
[595] T. 14 April 2003, pp. 64, 74-76 (ACCUSED).
[596] T. 4 December 2001, pp. 13-14, 20-21 and 105 (GAP).
[597] T. 2 October 2001, pp. 90-91; T. 4 October 2001, p. 11 (GDD).
[598] T 4 October 2001, pp. 13-17 (GDD).
[599] T. 23 July 2001, p. 13 (GAO).
[600] T. 23 July 2001, p. 109 (GAO).

represented Kinigi *commune*.[601] Other members of the prefectural committee included Charles, Bazil (*préfet* of Ruhengeri) and Nzanana (sub-*prefét*).[602] All members of the committee were members of the MRND Party.[603] The Witness never participated in a *préfecture*-level meeting, but the president of the *Interahamwe* would attend the meetings and report back to them about what transpired.[604]

420. **Defence Witness Joseph Nzirorera** denied that the Accused was a member of the prefectural committee of the MRND in Ruhengeri *prefecture*. The Witness testified that, after the constituent congress of 5 July 1991, it was necessary for the MRND to reform its organs and, for that purpose, the MRND carried out elections at the communal, prefectural and national levels. In February 1992, the MRND organised elections for the prefectural congress in Ruhengeri. The Ruhengeri prefectural congress elected the 20-member prefectural committee, of which the Witness was a member. The prefectural congress also elected the four-member board of the prefectural committee, which consisted of a president, a vice-president, a secretary and a treasurer. The Witness testified that he was elected vice-president and that Casimir Bizimungu, Jean-Bosco Bicamumpaka and Celestin Kayinamura were elected president, secretary and treasurer, respectively. The Witness testified that the elections were public and accessible to the public and private press; the results were published on the radio and in some newspapers, especially local newspapers.[605]

421. **The Accused** testified that he was not a member of the prefectural committee of the MRND, not even during the period before the multiparty system was introduced in Rwanda. The Accused did not attend Ruhengeri prefectural committee meetings, nor was he obligated to do so because his position as *bourgmestre* automatically made him the president of the MRND communal committee. The Accused testified that between 1991 and 1994 he never attended MRND meetings in Ruhengeri. He was never a member of the MRND central committee, nor did he hold any position within the MRND.[606]

422. **Defence Exhibit D35** is a copy of the MRND Statutes "*Statuts du Mouvement Républicain National pour la Démocratie et le Développement* (MRND)" registered on 31 July 1991.[607] Article 9 states (in French) that the members of the MRND are named *militants* and that the MRND accepted also *sympathisants* (sympathizers). Article 10 of MRND Statutes establishes the conditions for acquiring the quality of *militant*, the adhesion to the MRND being a voluntary act, whilst article 11 specified that the quality of *militant* is proved by a membership card [*carte du Parti*].

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[601] T. 23 July 2001, pp. 110-111 (GAO).
[602] T. 23 July 2001 pp. 113-115 (GAO).
[603] T. 23 July 2001, p. 114 (GAO).
[604] T. 23 July 2001 pp. 106, 108 (GAO)
[605] T. 3 decembre 2002, pp. 18, 27, 64 (NZIRORERA).
[606] T. 15 April 2003 (ACCUSED); T. 17 April 2003 (ACCUSED); T. 23 April 2003 (ACCUSED).
[607] Defence Exhibit, D35: Arrêté ministériel 23/04.09.01 du 31 Juillet 1991, Journal Officiel de la République rwandaise du 15 août 1991.

423. Article 13 of the MRND Statutes defines the sympathizer as any person who accepts and supports the Movement without, however, participating in its organisational activities.[608]

424. Article 40 of the MRND Statutes provides that the *bourgmestre* who are members of the MRND are members of its prefectural congress, in the area concerned.[609]

425. The name of the Accused does not appear in the list of the signatories of the said Statutes.[610]

3. Findings

426. Notwithstanding the fact that the Chamber in its previous findings [Part III, Section H] stated that the Accused was a leader of the *Interahamwe*, the youth wing of the MRND, the Chamber finds, on the basis of the evidence, that there is inconclusive evidence to establish that the Accused was either (a) a registered member[611] of the new MRND, established by the July 1991 Statute; (b) a member of the prefectural committee or a member of the prefectural congress of this party. The aforesaid notwithstanding, the Chamber finds that the Accused was closely associated with the new MRND and its leadership and that, especially from January 1994 to mid-July 1994, he was actively involved in many activities of this party in Mukingo *commune* and the neighbouring areas. He may as well have been a member of the MRND party.

J. Paragraphs 4.9, 4.12.1, 4.17, 4.18, 4.18.1, 4.19 and 4.20 of the Indictment

1. Allegations

427. Paragraph 4.9 of the Indictment reads:

> Furthermore, from late 1990 through about July 1994, military personnel, members of the government, political leaders, civil servants and other influential personalities including the Accused and Joseph Nzirorera conspired among themselves and with others to work out a plan to exterminate the civilian Tutsi population and eliminate members of the opposition, so that the MRND could remain in power.

428. Paragraph 4.12.1 of the Indictment reads:

> The reason for creating the Militia was to use them at the appropriate time to execute the plan of the MRND to exterminate the Tutsis.

429. Paragraph 4.17 of the Indictment reads:

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[608] MRND Statute, Article 13 (French text): « Est sympathisant, toute personne qui accepte et soutient le Mouvement sans toutefois participer à ses activités organisationnelles. » in Arrêté ministériel 23/04.09.01 du 31 Juillet 1991, Journal Officiel de la République rwandaise du 15 août 1991.
[609] MRND Statute, Article 40 (French text): « Sont membres du Congrès préfectoral : (...) 6. Les *Bourgmestres*, militants du Mouvement du ressort. »
[610] Arrêté ministériel 23/04.09.01 du 31 Juillet 1991, Journal Officiel de la République rwandaise du 15 août 1991.
[611] Article 9 of the MRND Statutes states that, in French, the members of the MRND are named *militants*.

> In pursuance of the plan to exterminate the Tutsis, several meetings were held in the *préfectures*, *communes* and at the government level between 1 January and April 1994, by the persons mentioned in paragraph 4.9 [of the Indictment], who shared this extremist cause with a view to formulating the strategies for the plan.

430. Paragraph 4.18 of the Indictment reads:

> During such meetings, speeches were made by influential persons including the Accused and Joseph Nzirorera, inciting their audience who were predominantly members of MRND and Hutus, to assault, rape and exterminate the Tutsis who were excluded from such meetings on account of their ethnicity.

431. Paragraph 4.18.1 of the Indictment reads:

> Apart from the public meetings, there were also private meetings at such places like the communal offices, homes of influential persons such as military personnel, MRND's officials, *Bourgmestres* or *Préfets* and Government officials including the home and communal office occupied by the Accused.

432. Paragraph 4.19 of the Indictment reads:

> The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated.

433. Paragraph 4.20 of the Indictment reads:

> On 6 April 1994, the plane carrying the President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali, Rwanda. This situation created a perfect opportunity for the execution of the plan and the massacre of the Tutsis began soon thereafter throughout Rwanda.

2. Public and Private Meetings Prior to April 1994

(a) Evidence

434. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

435. **Prosecution Witness GBG** testified that he attended a meeting convened by Nzirorera and the Accused.[612] The Witness did not remember the date of the meeting, but recalled that it took place during the first few months of 1993, "before the 1994 war" and when the Accused was still *bourgmestre*.[613] During the meeting, Nzirorera said that he would set up a "group of young people [...with...] a distinct and separate attire" to "help

[612] T. 12 July 2001, pp. 37-38 (GBG).
[613] T. 12 July 2001, pp. 39, 93 (GBG).

them search for accomplices."[614] The Accused said "it would be good for those young people to assist them in searching for the rest of the accomplices [those collaborating with the RPF] because most of those accomplices or the more influential of those accomplices had been eliminated."[615]

436. **Prosecution Witness GDD** affirmed that he participated in meetings organised by the Accused and Shedrack Sendugu between 1992 and 1993. At those meetings, the Accused and other authorities said that the RPF was made up of Tutsis.[616] From these meetings, the Witness understood that recruitment of young people into the *Amahindure* was necessary to protect the country against the RPF. The leader, the Accused, carried out the recruitment.[617] At meetings toward the end of 1993 in Nkuli *commune* and at *Isimbi*, both Nzirorera and the Accused spoke to sensitise and incite the population to fight against the Tutsi ethnic enemy.[618]

437. **Defence Witness MEM** testified that the MRND did not hold meetings at the Mukingo *bureau communal* after the introduction of the multiparty system.[619]

438. **The Accused** testified that in 1992 it was not necessary for the MRND to recruit militants elsewhere because they already had quite a number of militants. The Accused denied that, in 1992-1993, he gave instructions to the *Interahamwe* to take the flags or symbols of other political parties.

439. **Prosecution Witness GAP** testified that two meetings took place at which lists of the names of Tutsis to be killed were prepared. The Accused convened the first meeting, which took place between October and November 1990, and all *secteur* leaders were invited.[620] The Witness testified that the *conseillers* of various *secteurs* came to the meeting, summoned the *cellule* leaders and informed them that they should seek out all Tutsi intellectuals in their *cellules*. Witness GAP testified that during the meeting he stood at the entrance and could hear what was being said.[621]

440. Prosecution Witness GAP testified that "the officials" drew up a list of people to be sought out and arrested, including Gasahane, Kadarevu, Kabango, Segahwege, Rudatinya, Bukumba, Biniga., Sabini, Mutanguha, Ndayambaje, Gihoza, Karyango, Bahiza, Bernard, Kabanda and Ngango.[622] After the 1990 meeting, the listed Tutsi were arrested and then released. The war resumed in 1991 and a second meeting was held between January and February 1991, after which the same people were arrested and killed.[623]

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[614] T. 12 July 2001, p. 39 (GBG).
[615] T. 12 July 2001, p. 39 (GBG).
[616] T. 2 October 2001, p. 88 (GDD).
[617] T. 4 October 2001, p. 56 (GDD).
[618] T. 3 October 2001, pp. 71-72 and 78-79; T. 3 October 2001 pp. 140-144 and 162 (GDD).
[619] T. 26 November 2002, p. 85 (MEM) (ICS).
[620] T. 28 November 2001, p. 97; T. 4 December 2001, pp. 23-24 and 96 (GAP).
[621] T. 4 December 2001, p. 53 (GAP).
[622] T. 28 November 2001, pp. 102-107 (GAP).
[623] T. 4 December 2001, pp. 32, 32, 40-44 (GAP).

441. Prosecution Witness GAP further testified that the Accused and the *conseiller*[624] personally asked him to prepare lists of Tutsi collaborators in his *cellule*. The Witness testified that he did not prepare a list because there were no "accomplices" in his *cellule*.[625] Furthermore, the Accused asked the Witness to put a certain man's name on the list of Tutsis in the Witness's *cellule*, but the Witness told the Accused that he could not because that man had a Hutu identification card.[626] Around April 1991, the Accused warned the Witness that the Tutsis who were not included on the list by the Witness would denounce them and inform their "brothers" of what happened.[627]

442. **Defence Witness RHU31** testified that between 1992 and 1994 he never saw any list of Tutsis that had been compiled. The Witness testified that if such a list had existed or if a Tutsi had been arrested by a *conseiller*, a communal police officer or a *cellule* leader, the Witness would have known.[628]

443. **Defence Witness MEM** testified that between 1991 and 1994, no lists of Tutsis were drawn up at these meetings.[629] However, he further testified that, in 1991, soldiers arrested some of the heads of Tutsi families for being accomplices.

444. **Defence Witness TLA** stated that between 1991 and 1994, he never heard of a list of Tutsi names being prepared and distributed. The Witness testified that the relationship between himself and the *bourgmestre* of Mukingo *commune* did not involve the *bourgmestre*'s agenda at meetings or daily activities. The Witness further testified that he would be aware of activities within the framework of MRND such as compilation of a list of Tutsis.[630]

445. **The Accused** testified that meetings were held with the *conseiller*s at the *commune* level. The Accused testified that he did not ask the *conseiller*s to make lists of Tutsis who lived in Mukingo *commune*. The Accused added that the discussions that took place during the meetings were recorded and reports were submitted to the *préfet*: no decision was taken without the approval of the *préfet*, which usually took two weeks.[631]

(b) Findings

446. Having considered all the evidence relating to this issue, the Chamber finds that prior to 1994, and between 1992 and 1993, the Accused was involved in local community meetings, which included the participation of both local and national level MRND authorities such as Shadrack Sendugu and Joseph Nzirorera. At certain of these meetings, the setting up of local militia groups was discussed, as was their purpose at that time,

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[624] The name of the *conseiller* was submitted to the Chamber, admitted, and sealed, as Defence Exhibit. D9
[625] T. 4 December 2001, pp. 36, 40 (GAP).
[626] T. 28 November 2001, p. 109 (GAP).
[627] T. 4 December 2001, pp. 97-98 (GAP).
[628] T. 1 octobre 2002 (RHU31) (HC) ; T. 1 October 2002, pp. 19-20 and 66-67. (RHU31) (ICS)
[629] T. 25 November 2002, p. 62 (MEM) (ICS).
[630] T. 2 December 2002,, pp. 55, 57, 123 (TLA) (ICS).
[631] T. 17 April 2003, p. 15 (ACCUSED).

which, amongst others, was to fight against the RPF and their accomplices, largely of Tutsi ethic origin.

447. Paragraph 4.18.1 of the Indictment charges the Accused with being involved in private meetings at the homes of influential persons, including government officials. Based upon the credible evidence of Prosecution Witness GAP on this point, the Chamber finds that in January 1994, the Accused was involved in a meeting at the house of Joseph Nzirorera. Attendant at the meeting were the presidents of the communal branches of the MRND and CDR parties, the school inspectors, the *conseillers*, some businessmen and other representatives of the political parties and *Interahamwe* committees. Specific individuals who attended included Joseph Nzirorera as the host, the Accused, Jean Darmecene Niyoyita, Baheza Shadras, and Myabisora. At this meeting there was discussion focusing on various methods of keeping the local branch of the MRND in power. However, in relation to the charge, contained in paragraph 4.17 of the Indictment, that those present shared an extremist cause and formulated plans to exterminate the Tutsi, the Chamber finds that the evidence was inconclusive regarding such discussions or any agreement generated by those discussions. The Chamber also finds that there is insufficient evidence to prove, as charged in paragraph 4.18 of the Indictment, that during the meetings which were held between 1 January and 6 April 1994 speeches were made by the Accused, inciting the audience to assault, rape or exterminate Tutsis.

448. The Chamber finds that, although there is convincing evidence that prior to 1992 the Accused, whilst he was *bourgmestre*, requested lists of Tutsi names to be drawn up, there is insufficient evidence to demonstrate the allegation contained in paragraph 4.19 of the Indictment that those lists were for the purpose of elimination of those on them, or that they formed part of a plan in which the Accused was involved.

449. The Chamber finds that there is insufficient evidence to prove, as charged in paragraph 4.9 of the indictment, that from late 1990 to about July 1994, the Accused conspired with others to work out a plan to exterminate the civilian Tutsi population and eliminate members of the opposition, so that the MRND could remain in power.

3. The Training of the Interahamwe as evidence of involvement in a Conspiracy

(a) Evidence

450. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

451. The evidence concerning the alleged participation of the Accused in the training of militiamen has already been considered by the Chamber in its factual findings in relation to Paragraphs 4.10, 4.12, 4.13, 4.15, 4.16 and 4.16.1 of the Indictment (see Part III, Section H, above).

(b) Findings

452. The Chamber has already found that the Accused was actively involved in the training of the *Interahamwe* prior to 6 April 1994.[632] The Prosecution alleged in paragraph 4.19 of the Indictment that training of militiamen was a part of the conspiracy in which the Accused was involved in order to eliminate the Tutsi. However, the Chamber finds that there was no evidence proving beyond reasonable doubt that the elimination of Tutsi was the objective of that training.

453. The Chamber will, in its legal findings, assess the Charge of Conspiracy to Commit Genocide based upon the totality of evidence in the case (see Part IV of the Judgment).

K. Paragraphs 4.12.2, 4.18, 4.19.1, 4.24, 5.2, 5.3, 5.4 and 5.9 of the Indictment

1. Allegations

454. Paragraph 4.12.2 of the Indictment reads:

> The Tutsis were considered the enemies of the MRND, the State and the *Interahamwe*.

455. Paragraph 4.18 of the Indictment reads:

> During such meetings, speeches were made by influential persons including the Accused and Joseph Nzirorera, inciting their audience who were predominantly members of MRND and Hutus, to assault, rape and exterminate the Tutsis who were excluded from such meetings on account of their ethnicity.

456. Paragraph 4.19.1 of the Indictment reads:

> In executing the plan, the persons referred to in paragraphs 4.9 and 4.18.1 [of the Indictment], organized, ordered and participated in the massacres perpetrated against the Tutsi population and moderate Hutus.

457. Paragraph 4.24 of the Indictment reads:

> The Accused adhered to, elaborated and executed this plan at the *commune* level in Mukingo and neighbouring areas.

458. Paragraph 5.2 of the Indictment reads:

> The Accused's relationship with such an influential figure as Joseph Nzirorera enabled him to flout the local authorities, carry out atrocities against the Tutsi population and avoid any criminal sanctions.

459. Paragraph 5.3 of the Indictment reads:

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[632] See above: Part III, Section H.

> From April through July 1994, many Tutsi men, women and children were attacked, abducted, raped and massacred in their residences or at their places of shelter within the Mukingo *commune* or arrested, detained and later murdered. The Accused commanded, organized, supervised and participated in these attacks.

460. Paragraph 5.4 of the Indictment reads:

> These attackers, comprising the members of the *Police communale*, *Gendarmerie nationale* and *Interahamwe* militia who were under the control of the Accused, used guns, grenades, machetes, spears, pangas, cudgels and other weapons to slaughter the Tutsis.

461. Paragraph 5.9 of the Indictment reads:

> The Accused, in his position of authority and acting in concert with others participated in the planning, preparation or execution of a common scheme, strategy or plan to commit the atrocities set forth above. He committed some of the crimes personally, and some were committed through persons he assisted or by his subordinates including the members of the *Police communale*, *Gendarmerie nationale* and *Interahamwe*-MRND, with his knowledge and consent.

2. Events

462. The Chamber will consider the events categorised on the basis of their locales and following a chronology which starts on 6 April 1994.

(a) 6 April 1994—The Meeting at the Canteen Next to the Nkuli bureau communal after the Death of President Habyarimana

- **Evidence**

463. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

464. **Prosecution Witness GDD** testified that between 10:00pm and 11:00pm on 6 April 1994, Deputy Brigadier Boniface Ntambareshya came to the home of the Witness and said that the Accused wanted to see him at the Nkuli *bureau communal*.[633] At the *bureau communal*, the Witness found the Accused and others—all of Hutu ethnic origin—including President Shadrack Sendugu of the MRND, Senior Brigadier Sebazungu, Deputy Brigadier Boniface Ntambareshya, CDR President Iyakaremye, and Chief Warrant Officer Karorero. At the request of the Accused, the group met in the officers' canteen.

465. **Prosecution Witness GDD** testified, "Kajelijeli first of all told [them] [...] you very well know that it was the Tutsis that killed—that brought down the Presidential plane. What are you waiting for to eliminate the enemy?"[634] The Witness affirmed that

[633] T. 3 October 2001, p. 20; T. 4 October 2001, pp. 64-65 (GDD).
[634] T. 3 October 2001, p. 25; T. 4 October 2001, pp. 105-111 (GDD).

the Accused, after being informed by Shadrack Sendugu that there were no weapons to attack the population, left the group at the canteen to go with Deputy Brigadier Boniface Ntabareshya to make a telephone call in the communal police station.[635] When the Accused returned, he informed the group that Major Bizabarumana had agreed to provide them with "equipment" at the *commune* the following morning. The Accused also promised *Interahamwe* reinforcements from Mukingo for the attack on Kinyababa *cellule*.[636] The Accused, accompanied by Senior Brigadier Sembandugu [Sebazungu], returned to his house, which was located sixty to seventy metres from the canteen. After the Accused left, Sendugu Shadrack and another participant in the meeting discussed how they were going to "find youths to assist us in killing the Tutsis".[637]

466. **The Accused** testified that Karorero, a warrant officer in the Rwandan Armed Forces, from Nkuli *commune*, owned a canteen located on the premises of the Nkuli *bureau communal*. The Accused denied that he met Karorero at the canteen on the evening of 6 April 1994.[638]

- **Findings**

467. The Chamber notes that Prosecution Witness GDD is currently serving a sentence in Rwanda for murder, connected with the same course of events as those presently involving the Accused in this case. As regards the relationship between the Witness and the Accused, the Witness claimed that Kajelijeli was a friend with whom he sometimes shared a drink. The Accused admitted to knowing Witness GDD, as Witness GDD was formerly a local administration official. The Defence challenged the credibility of the Witness, and brought Defence Witness JK27, who is Witness GDD's brother, to testify before the Chamber. Witness JK27 told the Chamber that Witness GDD was a liar and a thief who had previously stolen things from his own family. The Defence also drew attention to the fact that in Witness GDD's written statement of 23 June 2000 taken by Tribunal investigators, the Witness made no mention of the Accused, let alone the Accused's participation in a meeting on 6 April 1994.[639] In answer to this challenge, Witness GDD responded that he answered the questions asked of him during the interview resulting in the previous written statement, that his declarations were purposefully succinct, as is the judicial practice in Rwanda, and that in signing the declaration he reserved his right to reveal additional details.[640] The Chamber accepts Witness GDD's explanation for these omissions. Furthermore, the Chamber notes that in his second interview with the Tribunal investigators of 20 July 2000, the Witness did in fact place the Accused at the alleged meeting on the evening of 6 April 1994. Having considered fully the testimony of Witness GDD viewed in the light of the evidence presented in the case as a whole, and taking into account the demeanour of the Witness during his testimony, the Chamber finds Witness GDD to be a credible Witness.

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[635] T. 3 October 2001, pp. 25, 112 (GDD).
[636] T. 3 October 2001, p. 26; T. 4 October 2001, p. 71 (GDD).
[637] T. 3 October 2001, pp. 25-28 (GDD).
[638] T. 15 April 2003, p. 7; T. 17 April 2003, p. 52 (ACCUSED).
[639] Defence Closing Brief (Corrigendum), para. 135.
[640] T. 4 October 2001, pp .74-75, 124-125 (GDD).

468. The Accused denied attending the meeting, and the Defence submitted that there was a lack of corroboration on the issue. However, the Chamber considers the testimony of Witness GDD on this issue to be detailed, credible, internally consistent, and consonant with the fundamental features of the case.[641]

469. The Chamber finds that Witness GDD was summoned to a meeting on the evening of 6 April 1994 following the death of the President, at the Canteen next to the Nkuli *bureau communal*. Those present at the meeting included Kajelijeli, President Shadrack Sendugu of the MRND, Senior Brigadier Sebazungu, Deputy Brigadier Boniface Ntambareshya, CDR President Iyakaremye, and Chief Warrant Officer Karorero. The Accused seized the leading role in the meeting, and addressed those persons present—who were all of Hutu ethnic origin.[642] And he said to them "[Y]ou very well know that it was the Tutsi that killed—that brought down the Presidential plane. What are you waiting for to eliminate the enemy?" By "the enemy", Witness GDD understood the Accused to mean the Tutsi ethnic group.[643] This is also the understanding and the finding of the Trial Chamber, given the particulars of that speech, and the circumstances under which it was made. After receiving information from Sendugu Shadrack that there were no weapons available to attack the population, the Accused left the meeting with Deputy Brigadier Boniface Ntabareshya. When he returned he informed those present that Major Bizabarumana had agreed to provide them with "equipment" at the *commune* the following morning. The Accused also promised to bring *Interahamwe* reinforcements from Mukingo *commune* for the attack on Kinyababa *cellule*.

(b) 7 April 1994—The Delivery of Weapons to Nkuli Commune and the Distribution of Weapons

- **Evidence**

470. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

471. **Prosecution Witness GDD** who participated in the meeting on 6 April 1994, testified that he was on duty at the Ruhengeri-Gisenyi roadblock in front of the Nkuli *bureau communal* on the morning of 7 April 1994. That morning, weapons were delivered by a military land rover to Shadrack Sendugu between 5:00am and 6:00am The weapons came from Major Bizabarumana, who was the officer commanding the Mukamira camp. Kalashnikovs, grenades and boxes of cartridges were deposited in front of the office of the Inspector of Primary Schools, who was Shadrack Sendugu's wife.[644] This office was also located within the Nkuli *bureau communal* complex.[645] One of the police officers woke the Accused to inform him of the material assistance from Mukamira camp. The Witness

[641] See above: Part I, Section D.
[642] T. 3 October 2001, p. 28-29 (GDD).
[643] T 3 October 2001, p. 39 (GDD).
[644] T. 3 October 2001, pp. 29-31; T. 4 October 2001, pp. 87-88, 101-104 (GDD).
[645] T. 3 October 2001, pp. 31 (GDD).

testified that, when the Accused arrived, he said, "[W]ell, okay, gentlemen, [name struck out], [...] Sendugu, Shadrack, it is now your turn to act. I am leaving for Mukingo to monitor the situation, and we [can] get together again in the afternoon and then you [will] report to me on what you have done."[646] Witness GDD later said that the Accused told them that morning that "It is your business to act. Sendugu and myself are going to Mukingo".[647] However, Witness GDD also said that the Accused left with Iyakaremye and two *Interahamwe* in his vehicle.[648]

472. Prosecution Witness GDD affirmed that, after the delivery of weapons from the Mukamira military camp on the morning of 7 April 1994, the Accused left the Nkuli *bureau communal* in his red Hilux pick-up. The Accused was accompanied by his two *Interahamwe* guards and CDR President Iyakaremye, who was to guide the Mukingo *Interahamwe* reinforcements back to the designated massacre site in Kinyababa *cellule*. The Witness, who was one of the leaders in the attack on Kinyababa *cellule,* was not an eyewitness to the Accused's involvement in the activities or killings in Mukingo *commune* on 7 April 1994.[649]

473. Prosecution Witness GDD testified that the President of the MRND, Shadrack Sendugu, and the Witness were the officials left behind in charge of the youth. They distributed some weapons to the mobilised youth, particularly those of the *Amahindure* battalion, at the Nkuli *bureau communal* and carried other weapons for distribution at the massacre site. The Witness and Sendugu then led the attack on Kinyababa *cellule*.[650]

- **Findings**

474. The Chamber is satisfied as to the veracity of Prosecution Witness GDD's testimony on this event, and finds that Witness GDD was on duty at the Ruhengeri-Gisenyi roadblock at the Nkuli *bureau communal* between 5:00am and 6:00am on the morning of 7 April 1994, when a Land Rover arrived from Mukamira military camp. The Land Rover had brought Kalashnikovs, grenades and boxes of cartridges. Sendugu Shadrack, the local President of the MRND political party, who had informed the Accused in the meeting the previous evening that they needed weapons, received the weapons and placed them in his wife's office within the Nkuli *bureau communal* complex. A communal policeman was sent to wake the Accused to inform him that a delivery had arrived from Major Bizabarumana, the Commanding Officer at the Mukamira camp. When the Accused arrived at the Nkuli *bureau communal*, he reminded those present of the agreement they had reached the previous evening and that it was now their "business to act".[651] The Accused said "I am leaving for Mukingo to monitor the situation, and we [can] get together again in the afternoon and then you [will] report to me on what you have

[646] T. 3 October 2001, p. 32 (GDD).
[647] T. 3 October 2001, pp. 39-40 (GDD).
[648] T. 3 October 2001, p. 40 (GDD).
[649] T. 3 October 2001, pp. 33-34, 37 and38-40; T. 4 October 2001, pp. 99-101 (GDD).
[650] T. 3 October 2001, pp. 41-42; T. 4 October 2001, pp. 113-116 (GDD).
[651] T 3 October 2001, pp. 39-40 (GDD).

done."[652] The Accused then left with Iyakaremye, the CDR President, and two *Interahamwe* in his red Hilux pickup.

475. Although Witness GDD did not leave with the Accused, he informed the court that due to the agreement reached the previous night at the Nkuli *bureau communal* meeting, he knew that the Accused was going to Mukingo to fetch reinforcements.

476. These events represent the fulfilment of the Accused's promise to those present at the meeting on the evening of 6 April 1994 that he would get them weapons for the attack the next day. The Chamber notes that the testimony of Witness GAO regarding the method by which the *Interahamwe* acquired weapons is consistent with the method described by Witness GDD. In relation to the attack at Busogo Hill, Rwankeri *cellule*. Witness GAO told the Chamber that when they were initially repelled by the Tutsi, Michel Niyigaba, the leader of the *Interahamwe*, told them that the Accused had just been to Mukamira camp to ask for guns, and that Major Bizibarimana would bring them. These weapons arrived and were distributed to those who knew how to use them.[653] Witness GAO noted that Major Bizibarimana was one of the people who "supported Kajelijeli most".[654]

477. The Chamber thus finds that the Accused procured weapons for the *Interahamwe* to use during their attacks and killings.

(c) 7 April 1994—Meeting in Mukingo Commune

- Evidence

478. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

479. Prosecution Witness GAP testified that he was working the night shift at Mukingo bureau communal when President Habyarimana's plane was shot down on 6 April 1994. Before 7:00am or 8:00am the next morning, the Accused, armed with a Kalashnikov gun but not in uniform, came to the communal office with a businessman named Bahesa and seven Interahamwe armed with rifles and grenades.[655] The Witness recognised some of the Interahamwe—all Hutus—as Michel Niyigaba, Ntamugabumwe Bikete, Noheli, Muhombo and Bereberaho. The Witness had seen them training and they were wearing MRND uniforms. The Accused spent approximately 30 minutes at the Mukingo *bureau communal*.[656] The Accused asked Bourgmestre Harerimana to give the Accused some police officers to help the Interahamwe kill Tutsis. Harerimana told the Accused that the police officers had not reported to duty that day due to the radio announcement instructing

[652] T. 3 October 2001, p. 32 (GDD).
[653] T. 23 July 2001, p. 27 (GDD).
[654] T. 23 July 2001, p. 30 (GAO).
[655] T. 28 November 2001, pp. 15 and 120-121 (GAP).
[656] T. 3 December 2001, pp. 15-16, 119 (GAP).

everyone to remain at home, but there was one person available named "JP".[657] The Accused subsequently left the communal office. The Witness testified that from 8:00am onwards, "we heard explosions, grenade explosions, and gunshots in the *secteur*".[658] The Witness was not an eyewitness to the killings that occurred on 7 April 1994; he had remained at his duty station at the communal office.[659] On re-examination, the Witness testified that, though he was not present at the massacre sites, a plan to commit the killings was agreed upon in the Witness's presence.[660]

480. Defence Witness RHU31 testified that he went to work, as usual, at the Mukingo *bureau communal* on the morning of 7 April 1994. When the Witness arrived, he found a police officer on duty named Bigirimana and no one else. The Witness testified that Brigadier Bazimenyera of the Mukingo communal police was not present at the bureau *communal* when he arrived at 8:30am. The Witness testified that in April 1994 the *commune* owned a red Hilux pick-up with "Mukingo *Commune*" written on its side. According to the Witness, at 8:30am on 7 April 1994, neither the vehicle nor the driver, Muhunde Avit, was at the *bureau communal*. The Witness left the *bureau communal* by 11:00am The Witness testified that he did not see the Accused, the Accused's driver, the brigadier or Emmanuel Harerimana at the *bureau communal* between 8:30am and 11:00am. In travelling to and from the *bureau communal*, the Witness did not see any roadblocks.

- **Findings**

481. The Chamber has considered the evidence on the events at the Mukingo *bureau communal* on the morning of 7 April: in particular, the testimonies of Prosecution Witness GAP and Defence Witness RHU31. The Chamber is not convinced that on such an eventful morning as 7 April 1994, Witness RHU31 would be the only administration official to report for duty at the *bureau communal*. It was a time of obvious crises, and the Chamber considers his testimony on this point to be of questionable value. Nevertheless, the Chamber notes that there is not necessarily an incompatibility between the accounts of Witnesses RHU31 and GAP. Witness GAP gave the time that he observed the meeting between the Accused and the Bourgmestre as "before 7:00am or 8:00am". This would have left enough window of opportunity for the Accused, the Interahamwe, Witness GAP and even Bourgmestre Harerimana to have come and gone, without the knowledge of RHU31, by the time that RHU31 got to the Mukingo *bureau communal* at 8:30am.

482. Prosecution Witness GAP and Prosecution Witness GDD, although based in different *communes*, support each other on many important points regarding the movement and activities of the Accused on the morning of 7 April 1994. Witness GDD testified that after receiving a delivery of weapons, including kalashnikovs, at the Nkuli *bureau communal* between 5:00am and 6:00am that morning, the Accused left in his vehicle for Mukingo *commune* in order to find Interahamwe reinforcements for the attack that day in

[657] T. 28 November 2001, p. 121; T. 3 December 2001, p. 120 (GAP).
[658] T. 28 November 2001, pp. 122-123 (GAP).
[659] T. 4 December 2001, pp. 47-48 (GAP).
[660] T. 4 December 2001, pp. 75-76 (GAP).

Nkuli. Witness GAP identified the Accused at Mukingo *bureau communal* approximately two hours later, and testified that he was armed with a Kalashnikov, accompanied by seven Interahamwe, and asking for communal policemen to assist in the attack against the Tutsi.

483. The Chamber is satisfied with the veracity of the testimony of Witness GAP, and finds that the Accused arrived at the Mukingo *bureau communal* on the morning of 7 April, between the hours of 7:00am and 8:00am. The Accused arrived armed with a Kalashnikov rifle and accompanied by a businessman named Bahesa, and seven Interahamwe who were all Hutus armed with rifles and grenades. The Accused asked Bourgmestre Harerimana for Police officers to assist in the killing of Tutsi, but was informed that they had not reported for duty. After this exchange between the Accused and Bourgmestre Harerimana, the Accused left the Mukingo *bureau communal* in his vehicle.

(d) 7 April 1994—Killing of Tutsi Residing in Kinyababa cellule in Nkuli commune

- **Evidence**

484. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

485. **Prosecution Witness GDD** testified that the Accused provided weapons to the young militants at the Nkuli *bureau communal* between 5:00am and 6:00am on 7 April 1994, before he left for Mukingo *commune*. Afterwards, the Witness and Sendugu Shadrack, the President of the MRND, led the attack on Kinyababa *cellule*. The killers proceeded to Kinyababa after the delivery of weapons from Mukamira camp and the departure of the Accused for Mukingo *commune*.[661] The Witness estimated that the attack at Kinyababa commenced around 9:00am and continued throughout the same day until 4:00pm or 5:00pm. The young militants numbered approximately over one hundred. They were assisted by five other groups of Hutus: youth from Nkuli *commune*; recruits from Mukingo led by the CDR President from the Gitwa *secteur*, Iyakaremye; a group from the Rukoma Mountains; forces from Mukamira; and soldiers in civilian attire from IGA. The assailants carried either guns or traditional weapons such as spears, clubs or machetes.[662]

486. Prosecution Witness GDD testified that, at the end of the day, the assailants had killed approximately 80 Tutsis in more than 12 families, destroyed all houses in Kinyababa *cellule* and looted the victims' property.[663] The Witness and Sendugu Shadrack, the President of the MRND, looted a cow, killed it and shared it before going to the canteen. The Witness testified: "Of course, we didn't forget Kajelijeli. We sent him a

[661] T. 3 October 2001, pp. 41-42 (GDD).
[662] T. 3 October 2001, pp. 45-46; T. 4 October 2001, pp. 85 and 123-124 (GDD).
[663] T. 3 October 2001, p. 48 (GDD).

bucket full of meat."[664] The Witness testified reporting to the Accused, "... Mr. Juvénal, the only thing that remained there is the smoke. We have eliminated everything."[665]

- **Findings**

487. Based primarily upon Witness GDD's consistent and detailed account of the attack on Tutsis residing in Kinyababa *cellule* in Nkuli *commune*, the Chamber finds that Witness GDD and Sendugu Shadrack led an attack on the morning of the 7 April 1994, following the delivery of weapons from Mukamira camp in which approximately 100 young militants, including youth from Nkuli *commune*; recruits from Mukingo led by the CDR President from the Gitwa *secteur*, Iyakaremye; a group from the Rukoma Mountains; forces from Mukamira; and soldiers in civilian attire from IGA, attacked and killed approximately 12 families of Tutsis, numbering approximately 80 people. The Chamber is satisfied that Witness GDD actively participated in the preparation for and actual attack on the Kinyababa *cellule*, Nkuli *commune* on 7 April 1994, for which he has been convicted of genocide by the Rwandan national courts.

488. The Chamber finds that this attack was carried out in furtherance of the agreement reached at the previous night's meeting, in which several local officials were present, including the Accused, and Iyakaremye, who was the President of the CDR party in Gitwa *secteur*. Iyakaremye also took part in the attack. The Chamber finds that the weapons procured by the Accused, which arrived early that morning at the Nkuli *bureau communal*, were used in the attack. Furthermore, based upon the testimony of Witness GDD, the Chamber finds that Witness GDD, amongst others, reported back to the Accused at the end of the day on what had been achieved, and assured the Accused that they had "eliminated everything".

(e) 7 April 1994 –Presence and Acts of the Accused at Byangabo Market

- **Evidence**

489. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

490. **Prosecution Witness GAO** testified that he went to Byangabo Market, Busogo, at 6:30am on 7 April 1994.[666] The Accused arrived between 8:00am and 9:00am in a vehicle accompanied by Bambonye and Chief Warrant Officer Karorero. The Accused then met with the Witness and thirty-three other members of the *Interahamwe*.[667]

491. Prosecution Witness GAO testified that the Accused exclaimed: "The others are finished their work and you are still there. Come on quickly. Meet me at my bar. [...] Kill

[664] T. 3 October 2001, pp. 48-49 (GDD).
[665] T. 3 October 2001, p. 51 (GDD).
[666] T. 23 July 2001, pp. 16 and 58 (GAO).
[667] T. 23 July 2001 p.16; T. 24 July 2001, p. 28 (GAO).

and exterminate all those people at Rwankeri."[668] The Accused repeated this statement at his bar[669] located on the Byangabo road on the left side going towards the Busogo Parish. The Witness testified that the Accused also said: "The others have finished their work, why are you sparing these people?"[670] The Witness affirmed that the Accused was referring to the other *Interahamwe* under his authority in Nkuli *commune* and Busogo *cellule*, who had finished killing Tutsis.[671]

492. Prosecution Witness GAO further testified that Bambonye directed the gathering mob: "Kill all of them, including those in the mothers' wombs."[672] The Witness stated that the Accused gave further instructions to "exterminate the Tutsis."[673] The Witness testified that among the *Interahamwe* present were Michel Niyigaba, the president of the *Interahamwe*, Dusabe (son of Nyiramakuba), Noel (son of Mutima), Muhombo (son of Mutima), Musafiri (son of Rwerasira), Barebee (son of Sebakamyi), Harera (son of Nyabindahedya), Nyimuharemyae (son of Zirarusha), Sibomana (brother of Nyimuharemye), Ntebayeyi (from Rwinzovu), Gatama (son of Bugali), and Ntamugabumwe (a teacher and brother of the Accused).[674]

493. **Prosecution Witness GBV** testified that he saw, from a distance of about 50 metres, the Accused at Byangabo Market between 8:00am and 9:00am. The Accused was talking to a group of *Interahamwe*: the Witness testified that he heard the Accused tell the *Interahamwe* "to go and dress up and to start work."[675]

494. **Defence Witness RGM** testified that he went to the shopping centre at Byangabo 7:00am on 7 April 1994. The Witness was responding to noise coming from Byangabo. When the Witness arrived, he saw a gathering mob of refugees from Cyeru *commune*, Butaro, Kidaho and Kinigi. The Witness testified that many of the people were agitated. The Witness affirmed that the *conseiller* of Busogo *secteur*, Asiel Ndisetse, was present. The Witness testified that Lieutenant Mburuburengero arrived at 7:00am and told the gathering crowd that Tutsis had played a role in downing the President's plane. The Witness denied that he saw the Accused at Byangabo Market at any time on the morning of 7 April 1994.[676]

495. **Defence Witness MEM** testified that he was awakened at 11:00pm on 6 April 1994 by neighbours and informed that the President's plane had been shot down. The Witness testified that he and his neighbours did not sleep until 6:00am on 7 April 1994; however, the Witness later testified that he left his home at 6:00am and arrived at Byangabo Market at 6:30am. Upon arrival at Byangabo Market, the Witness found people displaced by the war from Butaro *commune* and people from the neighbourhood of

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[668] T. 23 July 2001, pp. 17 and 19-20 (GAO).
[669] T. 24 July 2001, pp. 28-29 (GAO).
[670] T. 26 November 2001, p. 98 (GAO).
[671] T. 23 July 2001, pp. 19-20 (GAO).
[672] T. 23 July 2001, p. 17 (GAO).
[673] T. 23 July 2001, p. 17 (GAO).
[674] T. 23 July 2001, pp. 18-19 (GAO).
[675] T. 4 July 2001, pp. 105-106 T. 5 July 2001, pp. 114-116 (GBV).
[676] T. 18 November 2002, pp. 54-55 (RGM); T. 19 November 2002, p. 60 (RGM).

Byangabo. The Witness testified that he discussed the President's demise with local traders. The Witness denied that he saw the Accused, the Accused's small, red Toyota with markings—"ESTB"—on the side, or the communal vehicle from the time he arrived at Byangabo Market to around 4:30pm, when the Witness left the market. The Witness testified that the Accused did not come to his shop at Byangabo Market on the morning of 7 April 1994 and that the shop, like all shops in the centre, remained closed all day.[677]

496. **Defence Witness MLNA** testified that, between 5:00am and 6:00am on 7 April 1994, he was informed of the death of President Habyarimana. Upon hearing the news, the Witness and a woman went to Byangabo Market. The Witness found many people at Byangabo Market: residents of Byangabo, refugees from Cyeru and Butaro, others from Byumba and Ruhengeri, and people from the neighbouring hills of Nyakinama. The people were gathered into groups and were discussing the death of President Habyarimana. The Witness knew many of these people; in particular, he identified the *conseiller* of Busogo *secteur*, Asiel Ndisetse. The Witness was also able to identify Michel, Rukundo, Noheli, Mwana, Mufuna, Rugumire, Musafiri, Theogene Muhombo and Dusabe. The Witness testified that he did not see the Accused or his red Toyota Hilux vehicle among the people gathered at Byangabo Market on the morning of 7 April 1994. When asked if it is possible that the Accused was present but out of the Witness's sight because of the gathered masses, the Witness agreed that it was possible.[678]

497. **Defence Witness RHU23** testified that, when he arrived at Byangabo Market on the morning of 7 April 1994, he saw a lot of young people near a military Jeep talking to the *conseiller* of Busogo *secteur*, Ndisetse. The Witness then returned to his place of work at the ISAE. From this location, the Witness saw the young people from Byangabo Market heading towards the ISAE. The young people were shouting, jumping and carrying big sticks; though they were not wearing any uniform or dressed in distinctive colours. The Witness testified that the young people accompanied the soldiers and headed towards the residences of Tutsis in Rwankeri *cellule*. The Witness later heard explosions and saw houses burning.[679]

498. **Prosecution Witness GAP** testified that while travelling towards Byangabo Market he observed the death of Rukara on 8 April 1994. The Witness saw the *Interahamwe* gathered at the Accused's bar, drinking and singing. The Witness then went toward Busogo, where he saw the bodies of three Tutsis.[680]

499. **Prosecution Witness GAO** testified that he was present at Byangabo Market on the morning of 7 April 1994. The Witness affirmed that, immediately after the Accused spoke at Byangabo Market, the *Interahamwe* killed a young Tutsi man named Rukara. The Witness testified that a small axe was used. The Witness further testified that Michel Niyigaba, the leader of the *Interahamwe*, killed Rukara. The mob then apprehended

[677] T. 25 November 2002, pp. 29-33, 47-48, 50-51 (MEM); T. 26 November 2002, pp. 58-59, 82-83 (MEM) (ICS).
[678] T. 31 March 2003, pp. 29-30, 32, 36, 83 (MLNA) (ICS).
[679] T. 25 September 2002,, pp. 10-12, 14-15 (RHU23) ; T. 26 September 2002, p. 83 (RHU23)
[680] T. 4 December 2001, p. 77

Lucien [Rusiyani] (Rukara's older brother), and Musafiri (the son of Rugerasira) shot Lucien at Lucien's house.[681] Rukara and Lucien were Tutsi.[682]

500. **Prosecution Witness GBV** testified that he was present at Byangabo Market on the morning of 7 April 1994. The Witness verified that the *Interahamwe* killed a young Tutsi man named Rukara, though the Witness stated that the *Interahamwe* used a club spiked with nails. The Witness also stated that the Accused was present when Rukara was killed: however, on re-examination, the Witness testified that the Accused was "in the vicinity…in his house".[683]

501. **Prosecution Witness GDQ** testified that, on the morning of 7 April 1994, he met the Accused at Byangabo Market. The Accused was joined by *Conseiller* Ndisetse, a businessman named Baheza and Lieutenant Mburaburengero, as well as some *Interahamwe* that had come from Busogo and Mugogo. The Witness did not recall the time. When the Witness arrived, the *Interahamwe* immediately killed two young Tutsis, Rukara and his elder brother Rudasingwa [Lucien], in the Accused's presence.[684] Rukara was killed with an axe and Rudasingwa [Lucien] was beaten to death with sticks.[685]

502. Prosecution Witness GDQ testified that the members of the *Interahamwe* who killed Rukara and Rudasingwa included Michel Niyigaba, the leader of the *Interahamwe*, Musafiri, Abu Karim Gato, Dusabe, Ezekiel Karambizi, Gakuru, Bagabo, Mwambutsa, Mbonankira, and several others. After the killings, the Witness went to report what he saw to the *bourgmestre*, Emmanuel Harerimana, because these killings took place in front of the *conseiller*, who did nothing. The *bourgmestre* told the Witness that he could do nothing because the Accused's *Interahamwe* were hunting him (the *bourgmestre*) as well so that the Accused could be *bourgmestre*.[686]

503. **Prosecution Witness GBE** testified that on the morning of 7 April 1994 between 4:30am and 5:00am, he left his home to go to the city centre to take a transport to Kigali. At the city centre, he heard people talking about the death of President Habyarimana. People were getting angry and saying that "*Inyenzi*" had killed "their relative." The Witness was an eyewitness to the beating of Rukara with an axe by Michel, the President of the *Interahamwe* in Busogo. The *conseiller* attempted to intervene, but Michel told the *conseiller* that if he was not careful he would be killed for protecting Tutsis and for receiving livestock as gifts from Tutsis. In the market, there were other members of the *Interahamwe*, including Bagavo, Gakara, Gato, Gakuru, Musafiri, and Rukundo. A crowd, armed with machetes and other types of weapons, started to form. When the Witness left Byangabo Market to head towards Rwankeri *cellule*, he saw the *Interahamwe* begin to leave as well. The Witness did not see the Accused that morning.[687]

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[681] T. 23 July 2001, pp. 16, 25, 58; T. 27 November 2001, p. 12
[682] T. 23 July 2001 pp25-26
[683] T. 4 July 2001, pp. 105-108, 126; T. 5 July 2001, pp. 114-116, 159
[684] T. 5 December 2001 p.26
[685] T. 5 December 2001, pp. 25-26, 105
[686] T. 5 December 2001, pp. 28, 31-32
[687] T. 9 July 2001, pp. 77-79, 82-83, 87, 90 (ICS).

504. **Defence Witness RGM** testified that Lieutenant Mburuburengero solicited the mob to fetch Rukara, a Tutsi who made breezeblocks at Mukamira military camp. The Witness, accompanied by Dusabimana, Musafiri, Mbonankira and Semanza, fetched Rukara and began beating him with metal pipes that they had found in the neighbourhood. Lieutenant Mburuburengero then told the crowd that when he returned he wanted to see that they had killed all of the Tutsis. After the Lieutenant left, the mob killed Rukara.[688]

505. Defence Witness RGM gave eyewitness testimony on the manner in which Rukara was killed. The Witness testified that Rukara begged for forgiveness, and although the Witness acknowledged that Rukara had done nothing wrong, Michel Niyigaba killed Rukara.[689]

506. Defence Witness RGM testified that *Conseiller* Asiel Ndisetse tried to prevent the gathered crowd, especially the youth, from avenging the President's death. When Lieutenant Mburuburengero returned to Byangabo Market and was informed that the *conseiller* had stopped the crowd from carrying out reprisals on the Tutsis, the Lieutenant ordered that the *conseiller* be killed. However, the *conseiller* was able to flee and the youth did not pursue him.[690]

507. Defence Witness RGM testified that after they killed Rukara, the crowd was ordered by Lieutenant Mburuburengero to kill Lucien, the older brother of Rukara who was in the house where they had found Rukara. Musafiri brought Lucien out of the house and killed him with a knife. The Witness testified that Prosecution Witness GAO was present.[691]

508. Defence Witness RGM testified that members of the *Interahamwe* killed Rukara and Lucien. On that particular morning, none of the killers of Rukara and Lucien was wearing any uniform. The Witness testified that Michel Niyigaba was wearing ordinary clothes. The Witness also testified that he did not see the Accused at Byangabo Market at any time on the morning of 7 April 1994.[692]

509. **Defence Witness MEM** testified that, at about 8:00am on 7 April 1994, the youth of Busogo *secteur*, displaced people from Butaro and refugees from Zaire gathered together next to a tree at Byangabo Market, Busogo *secteur*, and declared that they wanted to "seek out the accomplices in order to avenge the [President]". The young men were angry and furious and were carrying clubs, but the Witness did not see any other weapons displayed. The Witness gave first hand testimony that *Conseiller* Ndisetse did admonish the gathering crowd that there were no Tutsi accomplices in Busogo *secteur* and that "whosoever attacked the Tutsi would be held responsible".

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[688] T. 18 November 2002, pp. 47-53 (RGM).
[689] T. 18 November 2002, pp. 53-54 (RGM); T. 19 November 2002, pp. 20, 23 (RGM) (ICS).
[690] T. 18 November 2002, p. 51 (RGM); T. 19 November 2002, p. 55 (RGM).
[691] T. 18 November 2002, pp. 54-55 (RGM).
[692] T. 18 November 2002, pp. 54-55 (RGM); T. 19 November 2002, p. 60 (RGM).

510. Defence Witness MEM testified that he observed Michel Niyigaba and Gato Nzabonimpa, the younger brother of Ishabani Rukera, among those who attacked Rukara. The Witness recognised Niyigaba and others in the mob who were members of the *Interahamwe*. The youths spoke to Lieutenant Mburuburengero, the most senior officer present, and told him that it was *Conseiller* Ndisetse who had prevented them "from avenging the death of the president". Lieutenant Mburuburengero then ordered the mob to kill the *conseiller*. As the youths started moving towards him, the *conseiller* fled the market. The Witness left the market at this stage.[693]

511. Defence Witness MEM testified that he did not see the Accused at Byangabo Market at the time of Rukara's beating. The Witness confirmed that he did not see the Accused, the Accused's vehicle or the communal vehicle in or around Byangabo Market between 6:30am and 4:00pm on 7 April 1994.[694]

512. **Defence Witness MLNA** confirmed that the mob gathered at Byangabo Market on the morning of 7 April 1994 had sought permission from *Conseiller* Ndisetse to kill the Tutsis but the *conseiller* refused. The youth then turned against the *conseiller*, who fled for his life. A military vehicle arrived at Byangabo Market and, after the mob spoke to the soldiers on board, they killed Rukara and proceeded to Rwankeri. The Witness was an eyewitness to the murder of Rukara by Michel Niyigaba, Musafiri and others. The Witness testified that Michel Niyigaba was a leader of the group, as manifested in the attack that took place at Ruhengeri and the killing of Rukara.[695]

513. **Defence Witness TLA** testified that he heard the steps of people passing in front of his house on the tarred road at approximately 7:00am or 7:30am.[696] Upon investigation, the Witness saw a mob coming from Byangabo Market. The mob was dressed in ordinary clothing, except for those individuals displaced by the war who were wearing dirty and torn clothes, and were carrying clubs, bamboo sticks and sharpened stones. The Witness stated that it appeared that these people were going to the war front.[697] The crowd numbered approximately 500 to 700 people.[698]

514. Defence Witness TLA testified that, at approximately 8:00am or 8:30am, he saw *Conseiller* Ndisetse running towards his house, which was close to the Witness's position.[699] The Witness testified that *Conseiller* Ndisetse was fearful for his life because he had attempted to stop the mob from attacking Tutsis and Lieutenant Mburuburengero had given orders to kill the *conseiller*. The Witness did not enter the *conseiller's* compound but spoke to him from his own compound. The two spoke for about five to ten

[693] T. 25 November 2002, pp. 31-34, 38-39, 41-46 (MEM); T. 26 November 2002, pp. 62, 64, 97 (MEM) (ICS).
[694] T. 25 November 2002, pp. 46-47 (MEM); T. 26 November 2002, pp. 82-83 (MEM) (ICS).
[695] T. 31 March 2003, pp. 36-38, 48-49 (MLNA); T. 1 April 2003, p. 59 (MLNA)
[696] T. 2 December 2002, p. 25 (TLA) (ICS).
[697] T. 2 December 2002, p. 27 (TLA).
[698] T. 2 December 2002, p. 122 (TLA) (ICS).
[699] T. 2 December 2002, p. 28 (TLA).

minutes between 8:30am and 8:45am. The Witness later saw *Conseiller* Ndisetse leave his hiding place at about 9:20am or 9:30am.[700]

515. Defence Witness TLA testified that the mob split into two groups: one group went towards Busogo or Rwankeri *cellule*, and the other, numbering approximately 200 people, passed in front of the Witness's house. The mob was surrounding a parked military vehicle that was facing towards Nkuli *commune*. According to the information given to him by *Conseiller* Ndisetse, the crowd was on its way to take revenge on the Tutsis by order of Lieutenant Mburuburengero.[701] The Witness was not able to identify individual members of the mob, except for individuals standing in the crowd, such as Michel Niyigaba, Musafiri and Rukindo. The Witness testified that he did not witness the death of anyone at the market that morning, although members of the crowd shouted that somebody had just died.[702] After 9:00am, the crowd had virtually dispersed and the Witness began to hear the sound of grenade explosions and gunshots coming from the direction of Rwankeri *cellule*. The Witness testified that he remained at his lookout throughout the day.[703]

516. Defence Witness TLA testified that a lady named Nyiramafaranga rented the house from the Accused and used it as a bar. The Witness testified that the bar did not open at any time that day. The Witness denied seeing the Accused address any crowd of youths outside the bar. The Witness acknowledged that the Accused drove a red Toyota Hilux with the letters "STB" on the side. The Witness testified that, between 6:30am and 5:00pm on 7 April 1994, he did not see the Accused or his vehicle at Byangabo Market.[704]

517. **Defence Witness RHU23** testified that he passed by the Accused's house next to the *commune* office on his way to Byangabo Market on the morning of 7 April 1994. The Witness saw the Accused's vehicle inside the courtyard but did not see the Accused. During the time that the Witness was at Byangabo Market, he never saw the Accused. On his way back to Nkuli *commune*, the Witness saw that the Accused's vehicle was still parked in the compound of his house. The Witness recognized the vehicle because it was marked on its side with "STB", the name of the institution where the Accused worked.[705]

518. **Defence Witness RHU31** testified that he went to the Mukingo *bureau communal* at 8:30am on the morning of 7 April 1994. When the Witness arrived, he found a police officer on duty named Bigirimana and no one else. The Witness denied that Brigadier Bazimenyera of the Mukingo communal police was present at the communal office. In April 1994, the *commune* owned a red Hilux pick-up with "Mukingo *Commune*" written on its side. According to the Witness, at 8:30am on 7 April 1994, neither the vehicle nor the driver, Muhunde Avit, was at the *bureau communal*. The Witness left the *bureau communal* and headed home by 11:00am. The Witness testified that he did not see the Accused, the Accused's driver, the brigadier, or Emmanuel Harerimana at the *bureau*

[700] T. 2 December 2002, pp. 32-33, 103, 107 (TLA) (ICS).
[701] T. 2 December 2002, pp. 39, 128-129 (TLA) (ICS).
[702] T. 2 December 2002, pp. 101, 105-106 (TLA) (ICS).
[703] T. 2 December 2002, pp. 40-41 (TLA) (ICS).
[704] T. 2 December 2002, pp. 26, 39, 41-42, 118 (TLA) (ICS).
[705] T. 25 September 2002, pp. 9, 14, 16 (RHU23).

communal between 8:30am and 11:00am. In travelling to and from the *bureau communal*, the Witness did not see any roadblocks. However, the Witness did not use the road; rather, the Witness used a path that passes near Ruhehe hill.[706]

- **Findings**

519. The Chamber has heard evidence regarding the mob-killings of two Tutsi brothers, Rukara and Lucien, at Byangabo Market in Busogo *Secteur* of Mukingo *Commune* on the morning of 7 April 1994. Prosecution Witnesses GAO, GBV, GDQ and GBE and Defence Witnesses RGM and MLNA all witnessed the same killings. There are differences between the accounts, such as the descriptions of weapons used, however the accounts show that the these two Tutsi men were beaten to death using various weapons by an aggressive mob of *Interahamwe*, led by Michel Nyigaba, the President of the *Interahamwe* in the *secteur*. The Chamber regards the differences between the accounts given of the exact method of the killing as insignificant and not affecting the Witness's credibility. The Prosecution assert that the Accused was present and incited the killings, and the Defence deny that he was there at all.

- **The Role of Lieutenant Mburuburengero**

520. Several Witnesses testified to the presence of Lieutenant Mburuburengero and a military vehicle at the market on the morning of 7 April 1994. Defence Witness MEM testified that when *Conseiller* Ndisetse tried to admonish the crowd not to kill Tutsis, Lieutenant Mburuburengero ordered the *conseiller* to be killed, and the *conseiller* had to run for his life.

521. Defence Witness MEM is currently detained by the Rwandan Authorities and charged with taking part in the killings that occurred in that area in 1994. He also worked directly with the Accused in an official capacity, and has known him for many years. The Chamber believes that these factors may have tainted his testimony, and treats his evidence with some caution.

522. The Defence challenged the credibility of Prosecution Witness GAO by saying that in a prior written statement he attributed the same words that he now attributes to the Accused to Lieutenant Mburuburengero. The Defence also contested his credibility on grounds of inconsistencies between his testimony before the Tribunal, in which he attested to having been present as an eyewitness during the killing of a Tutsi man called Rukara and his brother Lucien, and his confession letter of 2 February 1999 in which he indicated that he learned of Rukara and Luciens' deaths from others after the fact. The Defence directs the attention of the Chamber to the fact that an expert concluded that Witness GAO's fingerprints were on the documents, which Witness GAO had disputed as forgeries.[707] The Defence further points to inconsistencies between the confession letter and the written statement of 2 February 1999. The Chamber views these inconsistencies between the Witness's statement made to the Tribunal investigators, the letter of

[706] T. 1 octobre 2002 (RHU31) (HC) ; T. 1 October 2002, pp. 40-42 (RHU31) (ICS).
[707] Defence Exhibit, D8g.

confession and the oral testimony in court, in light of the fact that the Witness is illiterate and testified that he can neither read nor write. Witness GAO told the court that a fellow prisoner who did not want to implicate the Accused wrote his initial letter of confession. The Chamber is convinced by his testimony on this point. The Witness explained in court that he could not read the written documents produced on his behalf, nor authorize their content. When confronted with an illiterate Witness such as is the case with Witness GAO, the Chamber gives considerably more weight to the Witness's in-court testimony than to written statements. In this case, the Chamber is satisfied that the Witness's demeanour and his responses to the questions on the stand, were satisfactory both in explaining the discrepancies between the written documents and the oral testimony and in providing reliable information as to his eye-witness testimony regarding the killings in Byangabo Market and at the Ruhengeri Court of Appeal.

523. The Chamber finds it to be likely that Lieutenant Mburuburengero was indeed present that morning, and was involved in giving instructions to the gathered crowd. Clearly, however, this does not rule out the possibility that the Accused was also there that morning. Indeed, Prosecution Witness GDQ testified to seeing the Accused and Mburuburengero together at Byangabo Market.

- **The Accused's Presence at Byangabo Market between 8:00am and 9:00am on 7 April 1994**

524. Prosecution Witnesses GAO, GDQ and GBV all identified the Accused as being present at Byangabo Market on the morning of 7 April 1994. The Defence alleged that the testimonies of Prosecution Witnesses GBV and GAO are conflicting in that Witness GBV testified to seeing the Accused at Byangabo Market between 8:00am and 9:00am on the morning of 7 April 1994, whereas the testimony of Witness GAO places the Accused at Byangabo Market at 6:30am that morning. Upon close examination of the record, the Chamber finds that there is no conflict between the two testimonies, as Witness GAO's precise testimony was that "On that day, very early in the morning, I went to the market at 6:30".[708] And, in response to the Defence's cross-examination question, "When you say he [the Accused] met you there, did he come there after you were there at 6:30?", the Witness answered, "Yes, he came later (...) between 8 and 9 o'clock, Kajelijeli arrived at the market."[709] In other words, Witnesses GBV and GAO corroborate each other in respect of the timing of the Accused's arrival at Byangabo on the morning of 7 April 1994.

525. Prosecution Witness GDQ placed the Accused at the market that morning but could not recall the time. However, it is reasonable to infer that the time is the same as the sightings by Witnesses GAO and GBV, as GDQ saw the Accused arrive just before Rukara was killed.

526. The Defence denied that the Accused was present at the market that morning. Several witnesses testified that they were at the market and did not see the Accused. Defence Witness MEM says that he left the market after the mob turned against *Conseiller*

[708] Transcripts of 23 July 2001, pp. 16 and 58 (GAO).
[709] Transcripts of 24 July 2001, pp. 27-28 (GAO).

Ndisetse, but claims still to have witnessed the subsequent events from his house, which was nearby. He claims not to have seen the Accused at the market that morning. However, Prosecution Witness GDQ, who knows the identity of Defence Witness MEM, said that he saw him talking with the Accused, Lieutenant Mburuburengero, and businessman Bahesa at the market. Having considered the evidence, the Chamber finds that Defence Witness MEM is not telling the whole truth as regards the events he witnessed that morning. In addition, and very importantly, the Chamber considers that Witness MEM could not have had a clear view of the entire Byangabo Market from his house, and could easily have missed the Accused.

527. Defence Witness RGM denied the presence of the Accused at Byangabo Market that morning. The Chamber has assessed the credibility of Witness RGM and finds him not to be a credible Witness with regard to his testimony on the presence of the Accused, at any of the events with which this trial is concerned. The Chamber has noted that Witness RGM presented detailed and informed evidence regarding many of the events with which the Accused is charged. It is clear, both from self-admission during testimony and evidence of other witnesses, particularly Prosecution Witness GAO, that RGM was a key player in the atrocities that took place in Mukingo *commune* during April 1994. Although informative to the Chamber in its consideration of the events and their surrounding circumstances, especially where other witnesses corroborate, the Chamber is convinced that Witness RGM's mission in testifying was to remove the Accused from the events with which the Prosecution charges him. The Chamber notes in particular that he seemed bent on denying everything that Prosecution Witness GAO had testified to, to the extent that in answer to one question during cross-examination, he admitted "had I known what he [Witness GAO] had said, I would have denied a large part of what he might have said". Thus, with regard to questions on the presence of the Accused at a particular place and time, the Chamber attributes little weight to his evidence.

528. Defence Witness MLNA admitted in cross-examination that it was possible that the Accused may have been at Byangabo Market, and that he might have missed him. The Chamber finds that there is no impossibility that someone at the market that morning may have witnessed the events including the killing of Rukara and Lucien, but missed seeing the Accused, who may have been moving around.

529. The testimony regarding the Accused's presence at Byangabo Market on the morning of 7 April is also corroborated by the overall pattern of events. Witness GDQ observed the Accused talking with the businessman Bahesa that morning at Byangabo Market. Prosecution Witness GAP testified to the Accused arriving in his vehicle with the businessman Bahesa at the Mukingo *bureau communal* early that morning, before 7:00am or 8:00am, accompanied by seven *Interahamwe* and asking for assistance from the communal police to help with the massacres. Byangabo Market is a short distance from the Mukingo *bureau communal*, and the Accused was seen in both locations within a small window of time, talking with the same person. Witness GAP named some of the *Interahamwe* who accompanied the Accused to the Mukingo *bureau communal*, and these persons were also seen present with the Accused at Byangabo Market shortly afterwards.

530. Accordingly, the Chamber finds that the Accused was present at Byangabo Market on the morning of 7 April 1994, between 8:00am and 9:00am.

- **The Accused's Directions to the *Interahamwe***

531. Prosecution Witness GAO reports that the Accused, accompanied by Chief Warrant Officer Karorero and Bambonye, told him and 33 other *Interahamwe* to follow him to his bar. When there, the Accused repeated the same message that he had given at the market to "[k]ill and exterminate all those people in Rwankeri" and "exterminate the Tutsis". Prosecution Witness GBV also saw the Accused addressing a group of *Interahamwe* at the market, where he told them to "go and dress up and start to work". Accordingly, the Chamber finds that the Accused assembled members of the *Interahamwe* at Byangabo Market on the morning of 7 April 1994, and instructed them to "[k]ill and exterminate all those people in Rwankeri" and to "exterminate the Tutsis". He also ordered them to dress up and "start to work".

532. A large group of people was later seen heading towards Rwankeri *cellule* by both Prosecution and Defence Witnesses, and gunshots and explosions could be heard shortly afterwards. Defence Witness TLA said the crowd, which passed his house that morning between 7:00am and 7:30am numbered approximately 500—700 people, who were armed with basic traditional weapons such as sharpened sticks and stones. The discrepancies in time given by the various Witnesses regarding the movement of the mob do not raise a reasonable doubt in the perception of the Chamber as to the general direction of movement of the mob from Byangabo Market to the direction of Busogo Hill, Rwankeri *cellule*.

(f) 7 April 1994—The Killing of Tutsi at Busogo Hill, Rwankeri Cellule

- **Evidence**

533. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

534. **Prosecution Witness GAO** testified that on 7 April 1994 the *Interahamwe* left Byangabo Market, singing: "Let us exterminate the *Inyenzi*; let us exterminate the accomplices; Let us exterminate Kagame."[710] When the *Interahamwe* arrived at Rwankeri, they found that the Tutsis were armed with bows. The Witness testified that Michel Niyigaba, the *Interahamwe* leader, then spoke to the Accused, who assured Michel Niyigaba that Major Bizabarimana would supply the *Interahamwe* with guns. The Witness did not personally see the Accused at this time, but was privy to this information because of his very close relationship with Michel Niyigaba.[711]

[710] T. 23 July 2001, pp. 22-24 (GAO).
[711] T. 23 July 2001, pp. 26-28 and 45-46 (GAO)

535. Prosecution Witness GAO testified that he was present when Bizabarimana arrived with guns.[712] Buhire, Michel Niyigaba and Dusabe, the brother of Nzirorera, distributed the weapons to those who knew how to use them. Those who did not receive guns used machetes and burned houses.[713] The attack on Rwankeri began sometime in the morning and lasted until about 5:00pm, when the Witness and the other *Interahamwe* left to attack Tutsi refugees at the Convent at Busogo Parish.[714] The dead were too numerous to count: there were 80 families of between 12 and 15 people each, including the families of Rudatinya, Epimak, Bukumba, Karasankima, Sebirayi, Gasahane, Gateyiteyi, Kamakora, Bijanja, Rukara, Lucien Karakezi, and Bihutu.[715] The Witness testified that the heads of some of the families killed at Rwankeri had died before April 1994 (i.e., Gasahane and Rudatinya, the father of Epimak Samvura, current *bourgmestre* of Mukingo *commune*).[716]

536. **Prosecution Witness GBE** testified that, at about 8:00am, he heard gunfire and grenades being thrown not far from his house in Rwankeri *cellule*. The Witness saw smoke. He could see what was going on not far away through the fence surrounding his house. People were calling for help but nobody dared to assist. The Witness was unable to identify any of the *Interahamwe* that he saw from his house and did not see the Accused that morning. These incidents lasted about one hour.[717]

537. **Defence Witness MEM** testified that, on the morning of 7 April 1994, he saw "the youths and other people" moving towards Rwankeri in Byangabo Market. He saw this from his hiding place. The youths were wearing ordinary clothes; they were accompanied by ex-soldiers or deserters dressed in ordinary clothes. After the crowd left Byangabo Market, the Witness heard grenades exploding from the direction of Ruhengeri and from the direction of Busogo Hill, where the Tutsis lived. The Witness knew at that point that Tutsis were being killed.[718]

538. **Defence Witness RGM** testified that many of the people gathered at Byangabo Market went to Rwankeri, a locality where Tutsis lived, at the insistence of Lieutenant Mburuburengero. The mob was comprised of people from all walks of life, including members of the *Interahamwe*, the displaced population and local inhabitants. At Rwankeri, the mob began attacking the Tutsis, who had fled to Busogo Hill and were armed with bows, arrows and spears. In his statement to Defence Counsel dated 24 September 2001, the Witness stated: "There was no need for traditional weapons at Rwankeri because, first of all, the Tutsi were not armed". The Witness testified that he was referring to fire arms, as opposed to bows, arrows, spears or big sticks. The Witness affirmed that "There was no need for additional weapons at [Rwankeri] because first of all the Tutsis were not armed and we had the assistance of the military who were armed."

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[712] T. 23 July 2001, p. 27; T. 24 July 2001, p. 65 (GAO).
[713] T. 23 July 2001, p. 27; T. 24 July 2001, pp. 65-67 (GAO).
[714] T. 24 July 2001, pp. 31, 38 and 45 (GAO).
[715] T. 23 July 2001, pp. 36-37 (GAO).
[716] T. 23 July 2001, pp. 37-38; T. 24 July 2001, p. 106 (GAO).
[717] T. 9 July 2001, pp. 79-80, 83-86 and 90 (ICS) (GBE).
[718] T. 25 November 2002, pp. 48-50 (MEM); T. 26 November 2002, p. 62 (MEM) (ICS).

Moreover, there was no need for additional weapons since the assailants outnumbered the victims.[719]

539. Defence Witness RGM testified that two military vehicles, carrying soldiers armed with firearms and grenades arrived at Rwankeri from Mukamira military camp in the forenoon. The soldiers arrived under the orders of Lieutenant Mburuburengero. The Witness recognised some of the soldiers, including Rachel and Mwambutsa, who siphoned fuel from the vehicles to burn houses. The soldiers began to shoot, causing the Tutsis to lock themselves inside their houses; after which the group with the Witness began to break windows and doors and the soldiers began to throw grenades into the houses. The people who tried to escape were killed using traditional weapons, including clubs, bludgeons, machetes and big sticks. The Witness did not participate in these particular killings, though the Witness did participate in other killings and looting. The Witness stated that he did not leave with any of the spoils. The Witness testified that the killings began between 8:30am and 9:00am and concluded at 4:00pm, after which the Witness returned home. The massacre took the entire day because victims were being killed gradually while some assailants were busy looting.[720]

540. Defence Witness RGM testified that the number of people who participated in the killings at Rwankeri numbered between 650 and 700 people. The number of *Interahamwe* members present at Rwankeri numbered no more than ten. The rest of the group was made up of persons displaced by the war and men and women of the local population. The Witness testified that Prosecution Witness GAO was present at Rwankeri. The Witness denied that the Accused was present and testified that he did not see the Accused's vehicle at Rwankeri on 7 April 1994.[721]

541. Defence Witness RGM identified some of the people killed at Rwankeri: an old man called Bihutu, his daughter Karasankima, a girl called Nyiraburanga, Sengoga, Seburayi and Gasominari. The Witness testified that people living in the neighbourhood buried the bodies of the Tutsis who had been killed, but the Witness was not present for the burials.[722]

542. **Defence Witness MLNA** testified that on 7 April 1994 at around 8:00am the mob, which numbered about 300—400 people, proceeded towards Rwankeri and Busogo Hill and launched an attack that lasted until noon. The Witness confirmed that he followed the crowd because he was curious how the group was going to achieve its objective to kill the Tutsis. The Witness testified that the Accused was not among this group. At Busogo Hill, the Witness recalled seeing Dusabe, Muhombo, Theogen, Noheli, Musafiri and Rugumire fighting with traditional weapons including stones, machetes, bows and arrows, spears and sharpened sticks. When questioned by the Bench as to who supplied the weapons used at Busogo Hill, the Witness testified that the machetes, sticks and stone were readily available on the way to the massacre site; therefore, there was no distribution of weapons.

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[719] T. 19 November 2002, pp. 31, 55-58 and 72 (RGM).
[720] T. 18 November 2002, p. 58-61 (RGM); T. 19 November 2002, pp. 29, 33and 74-75 (RGM).
[721] T. 18 November 2002, pp. 59-60 (RGM); T. 19 November 2002, pp. 61, 66 (RGM).
[722] T. 18 November 2002, pp. 59-60 (RGM).

The Witness testified that after the mob began shooting, the victims ran to their homes, but the mob followed them and set their houses on fire. This "sad scene horrified and traumatised" the Witness: he then decided to return home around 7:00pm.[723]

543. Defence Witness MLNA confirmed that Nzirorera,[724] Musafiri, Michell, Alex, Rukundo, Michel, Mafuna, Rugumire, Theogene Muhombo, Noel and Dusabe were his fellow youth but denied participating with them in the massacre. The Witness denied that they were members of the *Interahamwe*; rather, the Witness referred to them as "youth from Byangabo". The Witness denied that the mob that attacked the Tutsis at Busogo Hill and Rwankeri were members of the *Interahamwe* and stated that the attackers were not wearing "funny uniforms of leaves".[725]

- **Findings**

544. The testimonies reveal that a large number of Tutsi civilians were killed at Busogo Hill in Rwankeri *cellule*, Mukingo *commune*, on 7 April 1994.

545. The Chamber notes Witness GAO's testimony that he left Byangabo Market for Rwankeri on the orders of the Accused, Bambonye who was chairman of the CDR, and Chief Warrant Officer Karorero. Witness GAO, who accompanied Michel Niyigaba, testified that when they discovered that the Tutsi were armed with bows, arrows and spears, Michel Niyigaba spoke to the Accused to request assistance. Michel Niyigaba subsequently told him that the Accused had spoken to Major Bizabarimana and Bizabarimana was going to bring weapons for the attack. GAO himself later saw Major Bizabarimana arrive with weapons, which were distributed to those that knew how to use them. The others used machetes, or burnt down houses.

546. Prosecution Witness GBV testified that, on the morning of 7 April 1994, he observed from a distance of approximately three to four metres the Accused driving a red Hilux Toyota, belonging to the *commune*, in the direction of the Busogo Parish at Rwankeri. The Witness further testified that there were weapons in the vehicle and there were approximately 20 *Interahamwe* in the rear of the vehicle or on foot. The Witness testified that the Accused directed the movement of the *Interahamwe* at Rudatinya's home in Rwankeri *cellule*, who were armed with machetes, guns and clubs, telling the attackers that "some of them should go to the right and others to the left". A girl was found by the *Interahamwe* on the path from the house to the road and killed with a club.

547. Witness GBE testified that during the day of 7 April 1994 he observed the Accused at his bar with armed *Interahamwe*, including Michel Niyigaba, who were drinking beer and singing songs about killing the *Inyenzi*, *Inkontanyi* and their accomplices. The Accused and the *Interahamwe* left in the Accused's vehicle, passing in front of the Witness's house and continuing in the direction of Busogo. Shortly thereafter Witness

[723] T. 31 March 2003, pp. 41-45 (MLNA); T. 1 April 2003, pp. 59-60, 63 (MLNA).
[724] It is not the Chamber's understanding that the "Nzirorera" here referred to is the same "Nzirorera" who is an Accused before this Tribunal, and who has been mentioned in other parts of this Judgment.
[725] T. 31 March 2003, p. 52 (MLNA).

GBE heard explosions from Busogo, and then observed the Accused return alone in his vehicle to his bar. The Chamber finds this to show that the Accused was actively moving around with the *Interahamwe*, and encouraging them in their activities.

548. The Chamber notes the testimony of Witness GBH that on 8 April 1994 he encountered the Accused in Busogo, armed with a rifle and surrounded by *Interahamwe*, hunting for possible survivors, and inspecting dead bodies. The Chamber will later make a finding on this testimony,[726] and views this evidence to be supportive of Witness GAO's account that the Accused was one of those who directed the killings by the *Interahamwe*.

549. The Chamber therefore finds that Tutsi civilians were attacked or killed in Mukingo *Commune*, in their residence or at their places of shelter on 7 April 1994, as alleged in the Indictment. Having considered all the evidence presented, the Chamber finds that the Accused participated in this attack by directing the *Interahamwe* from Byangabo Market towards Rwankeri *cellule*, to join that attack, and by acting as a liaison with Mukamira camp for military and weapons assistance. The attack at Busogo Hill claimed the lives of many Tutsis.

(g) 7 April 1994—The Killing of Tutsi Residing at the home of Rudatinya[727] in Rwankeri Cellule

- **Evidence**

550. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

551. **Prosecution Witness GBV** testified that the Accused drove a red Toyota Hilux truck belonging to the *commune*, and in the back were guns and *Interahamwe*. This was just after Rukara was killed at Byangabo. He saw the vehicle drive past him on the way to Busogo Parish. And further down the road, he saw the vehicle stop at the home of a certain Rudatinya, where they were killing people. The Witness testified that because people lived on either side of the road, when the Accused arrived he told the attackers, who were armed with machetes, guns and clubs, that "some of them should go to the right and others to the left". Immediately after the Accused spoke, the Witness saw a girl killed with a club.[728]

552. **Defence Witness RHU23** testified that between 8:00am and 8:30am he saw Tutsis being killed at the home of Rudatinya and after 9:00am he saw the attack at Busogo Parish.[729]

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[726] See evidence and findings in Part III, Section N.
[727] The official transcripts give two variant spellings, "Rutatinya" and "Rudatinya". It is clear that both refer to the same person, and for the sake of consistency the Chamber will use the letter spelling throughout this Judgment.
[728] T. 4 July 2001, pp. 114-115 and134 (GBV).
[729] T. 26 September 2002, pp. 39-40 (RHU23) (ICS).

- **Findings**

553. The Chamber notes that both Prosecution Witness GBV and Defence Witness RHU23 testified to killings of Tutsis that took place around the home of Rudatinya. Both Witnesses gave the same time frame for the killings, which the Chamber finds to have occurred between 8:00am and 9:00am. The Chamber finds that GBV reliably identified the Accused in his vehicle, and observed the Accused transporting armed men towards the killings at the home of Rudatinya. Rudatinya's house was located between Byangabo Market and Munyemvano's Compound, two places where other Witnesses identified the Accused before and after the killing at Rudatinya's house.[730] Thus, the Chamber finds that the Accused transported armed men in the back of a red Toyota Hilux vehicle from the direction of Byangabo Market towards the direction of Busogo Parish, but that this vehicle stopped on the way. When the Accused arrived at the home of Rudatinya where the killings were happening, which is located on the way from Byangabo Market to Busogo Parish, he gave directions to the attackers that "some of them should go to the right and others to the left".

554. The Chamber does not find the evidence to be sufficiently detailed to conclude that the Accused specifically ordered the killing of the girl that Witness GBV saw killed with a club. However, the Chamber is satisfied that the Accused was immediately present during this incident.

555. Thus, in relation to Paragraph 5.3 of the Indictment, the Chamber finds that Tutsis were attacked and killed in their residences or at their places of shelter within the Mukingo *commune*, specifically at the home of Rudatinya. The Chamber further finds that the Accused ordered and supervised this attack and participated in it.

(h) 7 April 1994—Celebration with the Interahamwe at the Accused Bar in Byangabo Market

- **Evidence**

556. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

557. **Prosecution Witness GBE** testified that, when the situation in Rwankeri *cellule* had calmed, he returned to Byangabo Market, near the bar owned by the Accused, to find out what was happening. The Witness was told that the Tutsis of Rwankeri *cellule* had been killed. The Witness saw people, including "the president who was the leader of the *Interahamwe*" [Michel Niyigaba] and the Accused, drinking on the front terrace of the bar owned by the Accused in Byangabo on the road to Rwankeri. The Witness observed the bar from across the street and could see what occurred inside because one side of the bar, which remained open, faced the road. The stores were still closed and no vehicles were

[730] See findings in Part III, Section K.

passing by with the exception of military vehicles. The Accused's vehicle, a red Toyota Hilux, was parked at the bar. The *Interahamwe* were also at the bar: some wearing uniforms, some wearing uniform trousers and some in civilian attire. The *Interahamwe* were carrying weapons, including guns and grenades, and were singing a song "*Tuzitsemba Tsembe*," but he could not hear what they were saying.[731] The song referred to "*Inyenzi*, *Inkotanyi* and their accomplices" and "it means simply to kill." The *Interahamwe* continued to sing for some period of time.[732]

558. Prosecution Witness GBE testified that Michel, Marrive[733] and others then left in the Accused's vehicle. The Accused was driving the vehicle as it passed on the road in front of the Accused's house and continued in the direction of Busogo. Shortly afterwards, the Witness heard explosions from the direction of Busogo. The Accused returned to the bar alone and the explosions continued. When the gunfire stopped, the *Interahamwe* returned to the bars in the city centre, singing and saying: "they had finished what they had to do." The Witness testified that the *Interahamwe* were discussing the names of Tutsis whom they were looking for in order to kill them, including Samuel and Karasankima. The Accused's car was still parked at his place but the Witness did not know when the Accused left.[734] The Witness did not see any other vehicles on the road at the time except for military vehicles.[735] The Witness returned home that day but does not know exactly when.[736] The Witness visited Busogo three or four days later and saw that the buildings were damaged to such a degree that "one could conclude that there had been a very severe confrontation. [...] [O]ne could see blood and it was obvious people had been killed in that place."[737]

- **Findings**

559. In relation to this event, the Chamber finds that the Accused, from a position of authority over the *Interahamwe*, assisted and encouraged them in their actions during the course of the day on 7 April 1994, as alleged in general terms in paragraph 5.9 of the Indictment. Specifically, the Chamber finds that the Accused was drinking at his bar with Michel Niyigaba, Marrive and other *Interahamwe* during the course of the day on 7 April 1994. The *Interahamwe* were armed with guns and grenades, some dressed in uniform and some in civilian attire. The *Interahamwe* sang songs about killing Tutsis. The Accused then conveyed Michel Niyigaba, Marrive and the other *Interahamwe*, who were drinking at his bar, in the direction of Busogo and returned subsequently in his empty vehicle. Explosions could be heard from the direction of Busogo. The Chamber notes particularly the presence of Michel Niyigaba, whom, from other evidence in this case, it is clear to the Chamber, was an *Interahamwe* who killed many people that day.

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[731] T. 9 July 2001, pp. 90-91, 93-96 (ICS) (GBE).
[732] T. 9 July 2001, p. 112 (ICS) (GBE).
[733] French Transcripts spells: Marere. T. 9 Juillet 2001, pp. 133-114 (GBE) (HC).
[734] T. 9 July 2001, pp. 96-98 and 100-101 (ICS) (GBE).
[735] T. 9 July 2001, p. 56 (ICS) (GBE).
[736] T. 9 July 2001, p. 104 (ICS) (GBE).
[737] T. 9 July 2001, p. 99 (ICS) (GBE).

(i) 7 April 1994—The Killing of Tutsi Residing at Munyemvano's Compound in Manjari II Cellule, Mukingo commune and at Busogo Parish

560. The Chamber will now consider a group of events that are temporally and geographically interrelated.

- **Evidence**

561. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

562. **Prosecution Witness GAO** testified that Ntamugabomwo and Bikete, the brother of the Accused, informed the *Interahamwe* at Rwankeri and Busogo that Tutsis had sought refuge at a nuns' convent. The Witness was part of the group of *Interahamwe*, led by Defence Witness RGM that proceeded to the Convent on 7 April 1994. On the way, the Witness left the group to steal a cow. Afterwards, the Witness encountered a man fleeing with two Tutsi children. The Witness brought them back to the place where the massacres had started and handed them over to Gatama (son of Bugari) who, together with "a daughter" called Azele of the CDR, killed the children. The *Interahamwe* who had gone to the Convent later re-joined the Witness, and together they went to the ISAE.[738] The Witness estimated that more than three hundred people were killed at the Convent. Although he was not present at the massacre, the Witness helped to bury approximately 300 bodies on the following day of 8 April 1994.[739]

563. **Defence Witness RHU26** testified that she heard gunfire coming from the direction of Busogo *secteur* on the morning of 7 April 1994. The Witness overheard passers-by saying that they had started killing Tutsis in Rwankeri, Busogo and at the Convent. The Witness was not an eyewitness to any killings. In response to a question posed by the Bench, the Witness stated that killings occurred anywhere Tutsis were found, not just at the nunnery.[740]

564. **Defence Witness RGM** testified that he did not witness the killings that took place at the Convent at Busogo Parish on 7 April 1994. However, the Witness observed looting there on that day. The Witness saw five vehicles that belonged to the nuns being driven around Byangabo. The Witness identified Alex Rukundo, Theoneste Barebereho, Kwitonda (nicknamed Sesera), Turgeon Nsengimana and Ndayisabye as the drivers of the vehicles. The Witness testified that the distance between Busogo Hill and Busogo Parish is 500 metres and that he could hear the gunshots and grenades exploding from Busogo Parish.[741]

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[738] T. 23 July 2001, pp. 31-32; T. 24 July 2001, pp. 39-40 (GAO).
[739] T. 24 July 2001, pp. 49-50 and124 (GAO).
[740] T. 30 September 2002, pp. 15-17 and 42 (RHU26) (ICS).
[741] T. 19 November 2002, pp. 6-7 and 59-60 (RGM).

565. **Defence Witness JK311** testified that he did not see any damage to the Busogo Parish when attending mass between 7 April and early July 1994. The Witness testified that he was not informed that there was a slaughter of Tutsis in the nuns' convent on 7 April 1994.[742]

566. **Defence Witness SMR2** testified that there were Tutsis who had sought refuge at Munyemvano's compound in the area of the Parish and that they were killed at Busogo on 7 April 1994. The Witness recognised one of the victims by the name of Gateyiteyi—he was a nurse. The Witness was told that Gateyiteyi was killed a bit further from the Parish. The Witness never saw his corpse.[743]

567. **Prosecution Witness GBG** testified that the Munyemvano residence was attacked on the morning after the death of President Habyarimana. The Accused arrived that morning in a vehicle with uniformed *Interahamwe*, some aboard the vehicle and others on foot. The Accused was not wearing a uniform. There were more than 100 attackers. The attack lasted from 8:00am until noon. The attackers also looted and destroyed houses.[744]

568. Prosecution Witness GBG testified that, upon arriving at the house of Munyemvano, the Accused shot and killed Gateyiteyi, who was Munyemvano's son, at a spot where they had dug a compost ditch.[745] The Witness, hiding behind a tree within the enclosure at Gateyiteyi's residence, observed the shooting. After the shooting, the Witness was hit on the head with a baton and ran to hide close to the fence.[746]

569. Prosecution Witness GBG testified that the killing of Gateyiteyi was a "sign that people should be killed": the *Interahamwe* and members of the population then started attacking the fleeing Tutsis. Some of the attackers were armed with sharpened pieces of wood, spears and clubs. The attackers chased and shot some people, while others were killed with sharp sticks and traditional weapons. Many victims did not die immediately. The Witness testified that he was among three that survived the killings, including another child and a third person, though he could not be certain how many people actually survived the incident. He was the only member of his family who survived.[747] The Witness recognized some of the attackers, all of whom were Hutu, including the Accused, the brigadier called Nahason, Bambara, Tourdi and Kamangu.[748]

570. **Prosecution Witness ACM** testified that, at around 9am on 7 April 1994, she saw the Accused bring about thirty *Interahamwe* aboard his vehicle, a red pick-up that belonged to Mukingo *commune*, and leave them at Munyemvano's compound. The *Interahamwe* went around the compound exclaiming that the hour of the Tutsi had arrived. The Accused was wearing the same uniform as the *Interahamwe* and was carrying a gun. The Witness testified that the Accused instructed the *Interahamwe* "...not to kill anyone

[742] T. 17 September 2002, pp. 6 and 25-26 (JK312) (ICS).
[743] T. 19 September 2002, pp. 88-89 (SMR2) (ICS).
[744] T. 16 July 2001, pp. 26, 35-36, 49, 51-52 and 54 (GBG).
[745] T. 12 July 2001, pp. 46-47; T. 17 July 2001, p. 14 (GBG).
[746] T. 16 July 2001, pp. 52-53 and 54 (GBG).
[747] T. 12 July 2001, p. 41(GBG).
[748] T. 12 July 2001, pp. 47, 49-52, 70; T. 17 July 2001, p. 17 (GBG).

yet, but to wait for the order to start." The Accused later departed, leaving behind the *Interahamwe*. The Accused was followed by a white pick-up that belonged to Baheza and also carried the *Interahamwe*. The Witness recognized some of the *Interahamwe*, all of whom were Hutu, and identified Nkundile, Mbarushemana, Tuyeringire and Kazungu.[749]

571. Prosecution Witness ACM testified that the Accused returned to Munyemvano's compound between 9:00am and 10:00am. The Accused ordered the *Interahamwe* to "go out and kill the Tutsi because the others have already started killing them." In response to the Accused's order, the *Interahamwe* started throwing grenades into the houses and burning them down. Four of the Witness's relatives were shot, including three old females, and one handicapped male.[750]

572. Prosecution Witness ACM testified that the Accused then ordered the *Interahamwe* to take the survivors from Munyemvano's compound to the Busogo Parish. Felix Ndyambaje shot Gateyiteyi, when he refused to go to the Parish.[751] The Accused then followed the *Interahamwe* as they took the Tutsis at Munyemvano's compound to the Busogo Parish.[752]

573. **Defence Witness RHU25** testified that on 7 April 1994 at 8:00am a person named Georgette Madelin came to the Convent to inform Gateyiteyi that his family had sought refuge at the Convent. The Witness testified that he left the Busogo Convent's medical centre with Gateyiteyi, who did not immediately check on his family and first went to check his house. The Witness and Gateyiteyi heard gunshots and met people fleeing from Rwankeri *cellule*. The fleeing people told them that the Tutsis were being attacked and killed by the *Interahamwe*. The refugees that they spoke to included Niyobizera Faustin, who came from Rwankeri, Niyibizi and Callixte.[753]

574. Defence Witness RHU25 testified that he and Gateyiteyi then ran into the woods as the refugees dispersed. While in the woods, the Witness and Gateyiteyi could see Tutsis going to the Convent. Gateyiteyi continued on his way to his house, but on the way Ndayambaje shot him near Elias Ruziga's house. The Witness then fled.[754]

575. **Defence Witness RHU23** testified that, at 9:00am on 8 April 1994, he and others came to the Parish with *Bourgmestre* Harerimana, who was driving the red vehicle belonging to the *commune*, to begin burying the corpses. The Witness stated that people found the bodies of two teachers, Gateyiteyi and Gitanyao. The Witness testified that Gateyiteyi was shot the previous day at Ruziga's place and that was where people found his body. The Witness stated that Gateyiteyi's family sought refugee at the Convent after his death; however, the Witness later denied making this statement. The Witness testified that Gateyiteyi died at around 11:00am, but later amended his testimony and stated that

[749] T. 11 December 2001, pp. 29, 32-36 and 39 (ACM).
[750] T. 11 December 2001, pp. 40, 42-43 and 74 (ACM).
[751] T. 11 December 2001, pp. 44-45 (ACM).
[752] T. 11 December 2001, pp. 50 and74 (ACM).
[753] T. 21 November 2002, pp. 3-4, 6, 9-13, 59 and 93 (RHU25).
[754] T. 21 November 2002, p. 26 (RHU25) (ICS).

Gateyiteyi died about thirty minutes after the events at the Convent, approximately 9:30am The Witness testified that the bodies were buried at Munyemvano's compound.[755]

576. **Prosecution Witness ACM** testified that, upon reaching the Parish, members of the *Interahamwe* took individual victims outside to kill them. The Witness was taken out by a member of the *Interahamwe*, Manayeri,[756] and managed to hide when he left her unattended for a brief period. The Witness hid in the bush next to the Parish until late that evening. The Witness was unable to see the Accused from her hiding place and eventually escaped, going towards Nkuli *commune*.[757]

577. **Defence Witness RHU25** testified that people carrying weapons (such as clubs and machetes) and soldiers stopped him at the entrance to Busogo Parish. Among the soldiers, the Witness identified Rachelle, who told Sister Georgette to ask the Tutsis hiding in the Convent to depart so that the Convent would not be destroyed: Sister Georgette objected. Sister Lennie Roger then came out of the Convent and was informed by Sister Georgette that the Tutsis hiding in the Convent were being sought to be killed. Sister Georgette telephoned the *commune* office to ask for assistance, but was refused.[758] Sister Georgette pleaded for the attackers to go away, but someone slapped her and she fell down. The Witness testified that the group immediately stormed inside the Convent and started shooting and killing people. The Witness then fled.[759]

578. Defence Witness RHU25 denied that the Accused played any role in the events at Busogo Parish Convent. The Witness further testified that he did not see the Accused or the Accused's vehicle at the Convent throughout the day of 7 April 1994.[760] The Witness testified that he never heard anyone say that the Accused was present; and that had the Accused participated in massacres, his name would have appeared on the list of those involved in the killings. The Witness admitted that, after he fled the scene, the Accused might have arrived at the Parish.[761]

579. **Defence Witness MLCF** testified that he left his house at about 7:00am on 7 April 1994. The Witness was in front of the Convent when shooting started. The Witness estimated the time to be between 8:30am and 9:00am. The Witness, "after some minutes or so", then went home to clean up. Whilst in the house, the Witness heard "explosions and detonations". The Witness estimated the time to be around 8:00am. The noise from the detonations and explosions seemed to be coming from the direction of Byangabo.[762]

580. Defence Witness MLCF testified that he saw at least thirty people fleeing from the Busogo Parish Convent. Those who were fleeing seemed to be in a panic and consisted largely of women and children. Shortly thereafter, the Witness heard the noise of many

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[755] T. 25 September 2002, pp. 37-38, 78 (RHU23); T. 26 September 2002, pp. 68, 70, 75 (RHU23) (ICS).
[756] T. 12 December 2001, p. 77 (ACM).
[757] T. 11 December 2001, pp. 49-57 (ACM).
[758] T. 21 November 2002, pp. 27 and 29-30 (RHU25) (ICS).
[759] T. 21 November 2002, p. 33-36 (RHU25).
[760] T. 21 November 2002, pp. 32, 42 (RHU25).
[761] T. 21 November 2002, pp. 84-86 (RHU25).
[762] T. 5 December 2002, pp. 39-42 (MLCF); T. 10 December 2002, p. 3 (MLCF) (ICS).

people coming from the Convent and the dispensary. At the Convent, the Witness could see that a crowd, consisting of people in military attire and people in dirty and old civilian attire, had surrounded the Convent. Members of the mob were shooting at the Convent and throwing grenades. As the Witness and his three companions got closer, they observed that some people were climbing over the wall to the Convent and were wielding machetes, spears and clubs. The Witness also saw a soldier carrying a rifle. According to the Witness, bystanders were present and there was a lot of confusion. When the Witness got to the front of the building he could hear cries for help from inside the building. The Witness identified among the perpetrators three people: Rachel, Noel and Bagabo. The Witness stated that Rachel was firing through the windows with a gun while the others were carrying machetes. The Witness estimated that the attack lasted about 45 minutes. The Witness testified that he was traumatised, returned home at around 10:00am and swallowed some tablets to sleep. During the evening, the Witness received a visitor who informed him that the *bourgmestre* had visited the Convent to view the bodies.[763]

581. Defence Witness MLCF testified that he did not see the Accused among the attackers nor did he see the vehicle that the Accused drove.[764]

582. **Defence Witness RHU23** testified that he went to work at the ISAE by bicycle on the morning of 7 April 1994. The Witness initially testified that he went to the ISAE before 6:00am, but later corrected that it was between 6:30am and 7:15am and that he went to retrieve his radio but that on the way he was stopped by Lieutenant Mburuburengero.[765] The Witness testified that he did not see any Tutsis around and that Munyemvano's family had already sought refugee at the Parish at around 4:30am, before the Witness had awakened. The information concerning Tutsis seeking refuge at the Parish at around 4:30am on 7 April 1994 was given to the Witness by the refugees residing at the Parish.[766] He testified that he returned home from the ISAE at around 8:00am. The Witness observed that the Tutsis had taken refuge at the Convent at Busogo Parish and that a mob of young people and soldiers were proceeding in that direction.[767] The Witness testified that between 8:00am and 8:30am he saw Tutsis being attacked at the home of Rudatinya and after 9:00am he saw the attack at Busogo Parish. At the Parish, there were more than 1,500 refugees. The Witness testified that he could clearly hear the voices of the Tutsis being killed at the Parish.[768] The Witness testified that the killings at the Parish involved nine families and that no Tutsis from other areas were killed there. The Witness identified the attackers at Busogo Parish as Hutus from other regions.[769] The Witness affirmed that the displaced people ransacked and destroyed the houses at Munyemvano's compound and pillaged the wood. The Witness testified that nobody was killed at Munyemvano's compound since no bodies were found there. When the Witness arrived at the Busogo Parish at around 9:00am, he found bodies and used wheelbarrows to transport

[763] T. 5 December 2002, pp. 42-45, 50-51, 56-57, 59-60 (MLCF); T. 10 December 2002, p. 24 (MLCF) (ICS).
[764] T. 5 December 2002, pp. 58, 61 (MLCF).
[765] T. 24 September 2002, pp. 88, 90 (RHU23) (ICS).; T. 25 September 2002, pp. 7-8 (RHU23).
[766] T. 26 September 2002, p. 3, 45, 47 (RHU23) (ICS).
[767] T. 25 September 2002, pp. 12, 22 (RHU23).
[768] T. 26 September 2002, pp. 39-40 (RHU23) (ICS).
[769] T. 26 September 2002, pp. 101-102, 108 (RHU23) (ICS).

the bodies.[770] The Witness stated that he did not see the Accused at Busogo Parish that day.[771]

583. Defence Witness RHU23 testified that, at 9:00am on 8 April 1994, he and others came to the Parish with *Bourgmestre* Herera [Harerimana], who was driving the red vehicle belonging to the *commune*, to begin burying the corpses. The Witness stated that people found the bodies of two teachers, Gateyiteyi and Gitanyao. The Witness testified that Gateyiteyi was shot the previous day at Ruziga's place and that was where people found his body. The Witness stated that Gateyiteyi's family sought refugee at the Convent after his death: however, the Witness later denied making this statement. The Witness testified that Gateyiteyi died at around 11:00am, but later amended his testimony and stated that Gateyiteyi died about thirty minutes after the events at the Convent, at about 9:30am. The Witness testified that the bodies were buried at Munyemvano's compound.[772]

584. **Defence Witness RHU29** testified that everyone at Munyemvano's compound sought refuge at the Busogo Parish at around 6:00am on 7 April 1994. Early that morning, the Witness saw soldiers in military attire and carrying guns in the company of civilians, who wore various clothing and were carrying spears and clubs, going towards Busogo Parish. The Witness did not recognise any of the civilians or soldiers apart from Rachele, a soldier. However, the Witness did see that some people in the company of the soldiers were members of the *Interahamwe*. The Witness testified that "[...] once they got to the church, I heard gun shots, I heard people shouting and subsequently, rumour had it that those civilians and soldiers had gone to attack the refugees who were at the Busogo church." The shooting and cries of people lasted an hour.[773]

585. Defence Witness RHU29 testified that there were many Tutsi refugees at the Busogo Parish. The refugees hailed from Cyeru, Butaro, Kinigi and Nkumba *communes*.[774] The Witness testified that he saw *bourgmestre* Harerimana and his driver, Mohunde, at the Parish at around 9:00am. The Witness had heard that Harerimana asked a *conseiller* to bury the bodies of the victims.[775]

586. **Defence Witness RHU29** testified that he was well acquainted with the Munyemvano family and lived close by.[776] The Witness further testified that Nyirabushashi and all the members of the Munyemvano family died at the Busogo Parish; there were no massacres and no one was killed at Munyemvano's compound.[777] The Witness testified that he did not see the Accused's vehicle—a red Toyota bearing the

[770] T. 25 September 2002, pp. 37-39 (RHU23) (ICS).
[771] T. 26 September 2002, p. 88 (RHU23).
[772] T. 25 September 2002, pp. 37-38 and78 (RHU23); T. 26 September 2002, pp. 68, 70 and 75 (RHU23) (ICS).
[773] T. 7 October 2002, pp. 17-20, 25 (RHU29).
[774] T. 7 October 2002, p. 63 (RHU29).
[775] T. 7 October 2002, p. 21 (RHU29).
[776] T. 7 October 2002, pp. 12-13 (RHU29) (ICS).
[777] T. 7 October 2002, pp. 21, 56, 58 (RHU29).

writing "ESTB" that belonged to the school for which the Accused was chairman—at Munyemvano's compound or at the Busogo Parish.[778]

587. **Defence Witness KAA** testified that he and the three youths accompanying him, responding to the noise of grenades, travelled towards Byangabo Market on the morning of 7 April 1994. The Witness estimated that the time was around 8:00am.[779] On the road leading to Byangabo, the Witness and fellow youths came to a junction with a road that leads to Busogo Parish. The Witness and the youth covered 15 to 20 metres and then saw a crowd coming in their direction. The crowd was made up of people wearing military uniforms and others in ordinary clothes; the soldiers had guns and were carrying grenades at the waist, and the civilians carried machetes, clubs, sticks or stones. The Witness could not estimate the number of people but he specified that they were coming in separate groups and seemed very numerous. The Witness could not identify who was leading the mob. The Witness testified that he and his companions decided to let the mob pass because they could see that the crowd did not have good intentions. The Witness testified that the objectives of the members of the crowd were clear by the weapons they were carrying and because members of the crowd were singing, "let's exterminate them", and the displaced people in the crowd were saying that "these people had sent them away from their properties and that they could no longer stand for that".[780] The witness further testified that it was not the first time that he had heard this song: when the soldiers of the Rwandan government used to go to the front they would sing, "let's exterminate them". The Witness added that the singers were referring to the RPF soldiers. The Witness recognised that some in the crowd were persons displaced by the war because these people lived in Byangabo, and in areas near his home. The Witness specified that these were people who had been forced away from their property: their clothing distinguished them from the other members of the population because they were wearing dirty and torn clothes.[781]

588. Defence Witness KAA testified that when the crowd thinned, he and his companions decided to follow them towards the Busogo Parish. The Witness emphasized that he was among a group of people not involved in the attack. The Witness testified that it took quite a while to reach the Parish. The killers had arrived at the scene long before. In response to a question by the Bench, the Witness testified that he knew that the mob did not want to kill him because they could have done so when they passed by on the road.[782] The Witness stated that he and his companions saw that the crowd, composed of Hutus, was heading specifically towards the Convent in Busogo Parish. When the Witness arrived at the Convent, he saw that the dense crowd had already begun the attack. Some people were using clubs, guns and grenades. Others threw stones and sticks. During the attack, the Witness and other bystanders would run away and watch from afar, but when there was calm, they would return to witness the events. The Witness testified that not all the people present at the Parish were among the attackers; some of those present were curious

[778] T. 7 October 2002, pp. 19-20 (RHU29).
[779] T. 3 decembre 2002, p. 75 (KAA); T. 4 decembre 2002, pp. 13, 20-21, 76 (KAA).
[780] T. 3 decembre 2002, pp. 77-78 (KAA); T. 4 decembre 2002, pp. 2, 16, 21 (KAA).
[781] T. 4 decembre 2002, pp. 3, 21 (KAA).
[782] T. 4 decembre 2002, pp. 3, 23, 34-35 (KAA).

bystanders like the Witness. The Witness recognised some of the attackers, but not all of them. The Witness specified that he saw a soldier named Rachel, who was wearing a black military beret, a jacket and a cord round the waist, boots and carried grenades and a R4 gun. The Witness testified that the people inside the Convent were not shooting, but the Witness noted that he could not verify this fact. The Witness heard people inside the Convent shouting in distress and asking for help. Other noises were coming from behind the building. The Witness specified he could hear this shouting when the mob stopped shooting at the building. The Witness testified that he did not know who was inside the Convent besides the nuns.[783]

589. Defence Witness KAA testified that, on the lawn in front of the Parish, a child was found hiding in the grass and the person who found him threw a big stone at the child. The Witness testified that he and his companions screamed, but the attacker, who was armed with a gun, threatened them in response. The Witness and his companions then ran away. Afterwards, the Witness and his companions returned to the massacre site. The situation had calmed down and the Witness entered the courtyard inside the Convent through the gate. From there, the Witness saw that corpses littered the courtyard, including the bodies of small children. The Witness identified that some of the corpses were Tutsis. The Witness testified that he and his companions were surprised, amazed and traumatised by what had happened; and went back home. The Witness estimated that the attack lasted about an hour or an hour and 20 minutes.[784]

590. Defence Witness KAA testified that he could not completely deny that, as suggested by the Prosecutor, the Accused was present at Busogo Parish when the Tutsis were massacred on 7 April 1994. However, the Witness confirmed that, from the time he met the attackers up to the moment he left Busogo Parish, he could state with certainty that the Accused was not present at the scene.[785]

- **Findings**

The Attack on Munyemvano's Compound

591. Prosecution Witnesses GBG and ACM gave eyewitness accounts of an attack that occurred at Munyemvano's Compound in Rwankeli *Cellule* on the morning of 7 April 1994. Both claimed to have been in the compound during the attack and to have been survivors of that massacre. According to both Witnesses, the attack was directed by the Accused, who arrived in his vehicle carrying *Interahamwe*.

592. Prosecution Witness GBG gave the number of *Interahamwe* participating in the attack as around 100; ACM gave the number of *Interahamwe* participating in the attack as around 30. Both Witnesses were able to name some of the *Interahamwe* who were present, and they testified that these *Interahamwe* were all Hutu.

[783] T. 4 decembre 2002, pp. 3-7, 11, 23-26, 35 (KAA).
[784] T. 4 decembre 2002, pp. 7-8, 11, 18, 24, 26 (KAA).
[785] T. 4 decembre 2002, pp. 30, 32 (KAA).

593. According to the testimony of Witness GBG, the Accused started off the attack by shooting Gateyiteyi the son of Munyemvano. The *Interahamwe* then followed suit, killing all the refugees at the compound with sharp sticks or traditional weapons. Some also had guns, which they used. The Witness escaped death first by hiding behind a tree, and then by moving closer to the fence. GBG said that the Accused was not wearing any uniform.

594. According to the testimony of Witness ACM, the Accused first drove the attackers to the compound accompanied by a second vehicle owned by Bahesa; he left the attackers there and told them to wait for the order before attacking; and he subsequently returned approximately one hour later to give the order. After he gave the order, the attack commenced. Gateyiteyi was among the survivors of the attack. When the attack had finished, the survivors were marched to the Convent. When Gateyiteyi refused to go, a man called Felix Ndayambaje shot him. The attack included the use of grenades and the burning of houses. ACM said that the Accused was wearing the same uniform as the *Interahamwe*.

595. Although there are differences between the testimonies of Prsecution Witness GBG and ACM—such as a difference between the numbers of attackers given, and the type of attire the Accused was wearing—the Chamber can make an allowance, as both Witnesses were in fear of their lives, and the Witnesses' attention would have been otherwise focused than paying attention to details. However, considering that Prosecution Witnesses ACM and GBG identified different persons as shooting Gateyiteyi dead, the Chamber does not find the identity of Gateyiteyi's killer to be established.

596. Defence Witnesses RHU29 and RHU23 gave unpersuasive accounts that there was no massacre that occurred at Munyemvano's compound. The Chamber is not inclined to believe their testimonies. Also, Witness RHU29 stated that all the members of Munyemvano's family were killed at the Busogo Parish. However, from the testimony of Prosecution Witness ACM, the Chamber is convinced that this information is incorrect. The evidence of a massacre occurring at Munyemvano's compound, particularly the testimonies of Prosecution Witnesses GBG and ACM, is convincing.

597. The Chamber has considered all the evidence relating to this event, and finds that, with specific reference to paragraphs 5.3, 5.4 and 5.9 of the Indictment, on 7 April 1994 many Tutsi men, women and children were attacked and massacred at a place of shelter within the Mukingo *commune*, in this case the place known as Munyemvano's compound in Rwankeri *cellule*. The Accused was present during the attack and, in his position of authority over the *Interahamwe* attackers, commanded and supervised the attack. The *Interahamwe* attackers involved in the attack at Munyemvano's compound used traditional weapons, guns and grenades to slaughter their Tutsi victims.

The Killings at the Convent

598. Prosecution Witness GAO testified that Ntamugabomwo and Bikete, the brother of the Accused, informed the *Interahamwe* at Rwankeri and Busogo that the Tutsis had sought refuge at the Convent. The Witness testified that he was part of a group that

proceeded towards the Convent on 7 April 1994, led by Defence Witness RGM. However, Witness GAO himself was distracted *en route* and broke away from the group in order to loot a cow, and did not actually take place in any massacre there. He testified that the following day he participated in the burial of approximately 300 dead bodies there.

599. The Chamber notes the testimony of Defence Witness RHU25 that he was with a nun known as Sister Georgette at the entrance of the Parish when people carrying weapons such as clubs and machetes stopped him. Defence Witness RHU25 identified Rachel as one of the soldiers who told sister Georgette to ask the Tutsis to leave the Parish to avoid having it destroyed. The Chamber notes from the testimony of Defence Witness RHU25, that sister Georgette called the *commune* office to ask for assistance but she was refused. The Chamber further notes that sister Georgette pleaded for the attackers to go away but they refused, stormed inside the Convent and started shooting and killing the Tutsis who were inside.

600. The Chamber notes the testimonies of Defence Witnesses RHU26, Defence Witness RGM, Defence Witness RHU25, Defence Witness KAA, and Defence Witness MLCF that, on 7 April 1994, they all either heard gunshots or explosions coming from the direction of Busogo *secteur* (where the Convent is located). Defence Witness RHU26 and Defence Witness RGM stated that they did not see any killings at the Convent at the Busogo *secteur* on 7 April as they were not present at the scene. However, Defence Witness RGM stated that he saw that five vehicles had been looted from the Convent and these vehicles were being driven by Alex Rukundo, Theoneste Barebereho, Kwitonda nicknamed Sesera, Turgeon Nsengimana and Ndayisabye.

601. The Chamber further notes the testimony of Defence Witness MLCF that he recognised three people at the scene of the massacre: Rachel, Noel and Bagabo. Defence Witnesses KAA and RHU25 also identified Rachel, who is a soldier, at the scene of the massacre.

602. The Chamber has noted the testimony of Defence Witness JK311, that he did not see any damage to the Busogo Parish when he attended mass between 7 April and early July 1994, and finds that the testimony is not credible if it was intended to suggest that there was no attack at the Busogo Parish.

603. The Chamber notes the testimony of Prosecution Witness ACM, who was present at the Convent on 7 April 1994 and was an eyewitness to the events that took place there. Prosecution Witness ACM testified that at the Parish, members of the *Interahamwe* took individuals outside to kill them. Prosecution Witness ACM stated that she was taken out by an *Interahamwe* named Manayeri, but managed to escape when he left her for a brief period.

604. Based upon the totality of the evidence, the Chamber finds that 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. Members of the *Interahamwe* were involved in the attack.

(j) 8 April 1994—Killing of Tutsi in Gitwa Secteur, Nkuli commune

- **Evidence**

605. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

606. **Prosecution Witness GDD** testified that on the morning of 8 April 1994 he and other assailants killed a woman named Nyirabusoro and her five children. Nyirabusoro was the wife of a Hutu named Muvuka. The Witness affirmed that the killings were in response to the Accused's order to "fine-comb" the Gitwa *secteur*.[786] The Witness further testified that he killed the five children of mixed Hutu and Tutsi origin "upon the order of the authorities ... among others, Nzirorera and Kajelijeli."[787]

607. Prosecution Witness GDD testified that on the afternoon of 8 April 1994 he and a veteran named Barabara continued to search for Tutsis in furtherance of the Accused's instruction to "fine comb" the *commune* for Tutsis. The Witness and Barabara "went up towards Ruhafi where the two children of Seruyombo were hiding [...]. Ndagijimana ... was killed with a bullet from my Kalashnikov [...] and his sister Nyirabukobwa was killed with the traditional club."[788]

- **Findings**

608. The Chamber finds that Prosecution Witness GDD, an *Interahamwe* member, went out on 8 April 1994 and killed eight people. His victims, who he was able to name, were a Tutsi woman and seven children, who were of mixed Tutsi and Hutu ethnicity. Witness GDD stated that he committed these murders in Gitwa *secteur* in the Nkuli *commune*, in furtherance of the Accused's order to "fine comb" the Nkuli *commune* for Tutsis. The Chamber finds accordingly.

609. Based upon consideration of all the evidence on the events from 6 April 1994 to 8 April 1994, the Chamber finds beyond reasonable doubt that the Accused held and maintained effective control over *Interahamwe* in Mukingo and Nkuli *communes* on these dates.

(k) 12-14 April 1994—The Killing of Tutsi Seeking Refuge at the Ruhengeri Court of Appeal

- **Evidence**

610. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

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[786] T. 3 October 2001, pp. 52,and56-59 (GDD).
[787] T. 3 October 2001, pp. 56-57 (GDD).
[788] T. 3 October 2001, pp. 53, 57 and 113-114 (GDD)..

611. **Prosecution Witness GAO** testified that, sometime between 12 and 14 April 1994, Tutsis were taken to the Ruhengeri Court of Appeal. They were taken there from Ndusu *commune*, Busengo[789] sub-*préfecture* in the *préfecture* of Ruhengeri. The Witness testified that the *Interahamwe* in Byangabo refused a request for assistance from the *Interahamwe* in the neighbourhood of the Ruhengeri Court of Appeal. The Witness testified that the Accused, together with Chief Warrant Officer Karorero, came to the PetroRwanda filling station that was owned by Esdras Baheza, near the Mukamira camp. The Witness indicated that the Accused personally told the Witness that the Tutsis at the Court of Appeal had repelled an attack and that the "others" needed help. The Witness responded to the Accused that he did not have the "tools" necessary to aid the attack. The Accused responded "Don't worry, come with me. Get on board the vehicle. The tools are available and you will be given them."[790]

612. Prosecution Witness GAO testified that he then got into the Accused's Toyota Hilux, which the Accused was driving, along with Karorero. The Witness testified that the Accused drove to Karorero's house in Nkuli *commune*, where Karorero gave the Witness four grenades of the M26 and Chinese-made type. They then drove to the house of Gervais, who was the chairman of the CDR and a businessman at Mukamira, in order to secure reinforcements from other members of the CDR. The Witness testified that Gervais provided the Accused with other members of the CDR to go with the Accused.[791]

613. Prosecution Witness GAO testified that the Accused then returned to the PetroRwanda filling station, where the Accused purchased petrol. Afterwards, they went to Byangabo, where the Witness gave a grenade to Defence Witness RGM, who stayed at the premises while the *Interahamwe* got on board the vehicle to go to the Court of Appeal. The Accused did not accompany them to the Court of Appeal. The Witness did not see the Accused again that day until he returned from Ruhengeri at 8:00pm or 9:00pm. When the *Interahamwe* arrived at the Court of Appeal, two fleeing *gendarmes* met them. An *Interahamwe* named Musafiri opened the door to the Court of Appeal with his gun and another named Toto shot through the door with his "stream [gun]." The *Interahamwe* killed all of the people at the Court of Appeal; about 300 Tutsis were killed. Witness GAO testified that there were enough attackers—all Hutu—to fill the two Daihatsu vehicles that came from Ruhengeri.[792]

614. **Prosecution Witness GAP** testified that Nzirorera telephoned the Accused to inform the Accused that Tutsi had been moved from Busengo sub-*préfecture* to the Ruhengeri Court of Appeal and "that from there they could be easily got".[793] The Witness testified that, between 10 and 15 April 1994, the *Interahamwe* went to the Mukingo *bureau communal* before going to kill Tutsis at the Court of Appeal, and asked the brigadier of the *commune* for grenades. The brigadier told them that there were no grenades, after which the *Interahamwe* told the brigadier that he "would be lucky if they

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[789] Also spelled Busenge.
[790] T. 23 July 2001, pp. 39-40, 45; T. 24 July 2001, pp. 61-62 (GAO).
[791] T. 23 July 2001, pp. 40-41 and 45; T. 24 July 2001, pp. 63-65 (GAO).
[792] T. 23 July 2001, pp. 41-42 and44-46; T. 24 July 2001, p. 64 (GAO).
[793] T. 4 December 2001, p. 106 (GAP).

came back in peace and if none of them were hurt". After the killings at the Court of Appeal, the *Interahamwe* came back and told the brigadier "you're lucky, we all came back, no one was left behind".[794]

615. **Defence Witness RGM** testified that there was an attack at the Ruhengeri Court of Appeal on 14 April 1994. The Witness was not an eyewitness to the massacres at the Court of Appeal. The Witness was informed of the attack by the attackers themselves. The Witness testified that Prosecution Witness GAO, Musafiri, Uyamuremye, Sebunane and Mbonakira took part in the attack, among others unknown to the Witness. Prior to the attack, these people were at Byangabo Market. These individuals then boarded two vehicles, a blue and a white Daihatsu and proceeded towards Ruhengeri. The vehicles, which were driven by Isa and Sebuhinja, nicknamed Cyaca, initially drove towards Mukamira. On the way back, the vehicles stopped again at Byangabo Market. The Witness testified that he did not see the Accused or his vehicle at Byangabo that day and the individuals who partook in the massacre did not mention the Accused.[795]

616. **Defence Witness FMB** testified that his superior in the military informed him of the massacre at the Court of Appeal when he arrived at headquarters. The Witness could not remember the date that the Tutsis were killed at the Court of Appeal. The Witness went to the Court of Appeal to look into the situation. Afterwards, the Witness went to the hospital and found the survivors. The Witness testified that the nature of his position did not grant him the opportunity to inquire into how many Tutsis were killed, nor by who. A member of the *gendarmerie* informed the Witness that young looters had killed the Tutsis. The Witness further testified that any inquiry into the killings was under the jurisdiction of the *préfet* and the civil authorities. The Witness learned, only after going into exile, that military soldiers were involved in the Ruhengeri massacres. The Witness insisted that the massacres were not committed by supervised soldiers: the crimes may have been committed by soldiers on leave or by deserters.[796]

617. **The Accused** testified that he heard on the radio that the government had been transferred from Kigali to Gitarama. The Accused gave inconsistent dates, stating that it occurred either on 12 or 15 April 1994. According to the news, refugees had settled at the Ruhengeri Court of Appeal but the army had attacked and bombed the place. The Accused did not get more details that day. The Accused later met a military doctor from Ruhengeri named Martin, who told the Accused that the news was not accurate and that it was Tutsis who had taken refuge and were killed at the Court of Appeal. The Accused learned that the refugees at the Court of Appeal had been attacked by passers-bys who overwhelmed the *gendarmes*.[797]

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[794] T. 4 December 2001, p. 78 (GAP).
[795] T. 19 November 2002, pp. 8-9, 14-16 and 47 (RGM).
[796] T. 3 April 2003 pp. 26, 30-31 and74 (FMB) (ICS).
[797] T. 16 April 2003, p. 7-9 (ACCUSED).

- **Findings**

618. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

619. The Defence did not contest the issue of the attack itself on the Court of Appeal. The Defence, however, submitted that Prosecution Witness GAO is a discredited Witness, and if the Accused was at Byangabo and provided weapons to Witness GAO which he subsequently used at the Court of Appeal attack, he would have included this information in either his confession letter to the Rwandan Authorities dated 2 February 1999 or in his statement to ICTR representatives dated 7 May 1999.[798] The Defence also drew attention to the fact that Witness GAO's assertion that the Accused was at Byangabo on the date of the Court of Appeal's attack was denied by Witness RGM. The Chamber has already evaluated the testimony of Defence Witness RGM, and found that his testimony as regards the presence of the Accused is not credible. (see Part III, Section K).

620. The Chamber has analysed the testimony of Prosecution Witness GAO and finds his accounts of the events that took place at the Ruhengeri Court of Appeal on and around the 14 April 1994 to be credible. All the Witnesses who testified to this event were consistent in that the Accused was not present at the Court during the massacre. However, the Chamber finds that though the Accused was not physically present at the Court of Appeal, he played a vital role as a facilitator and organizer of the events that took place at the Ruhengeri Court of Appeal. The Chamber makes this finding based on testimony of Prosecution Witness GAO, who was an eyewitness and direct participant in the massacre. The Chamber also notes that Defence Witness RGM confirmed that Prosecution Witness GAO was part of the group that went to attack the Tutsi at Ruhengeri Court of Appeal.

621. The Chamber finds that, on or around 14 April 1994, the Accused approached Witness GAO and asked him to help the "others" at the Ruhengeri Court of Appeal who had been repelled by the Tutsi.[799] When Witness GAO informed the Accused that he did not have the necessary "tools", the Accused personally drove him to a place where he was provided with grenades. The Accused then drove to find more reinforcements. Although Defence Witness RGM claims that he never saw the Accused on that day,[800] he also identified two Daihatsu vehicles at Byangabo centre, which according to him picked up Prosecution Witness GAO, Musafiri, Uyamuremye, Sebunane and Mbonakira, who were all *Interahamwe,* and headed to the Court of Appeal. Prosecution Witness GAO and Defence Witness RGM also named some of the same *Interahamwe* as participants. The Chamber finds that this transportation was facilitated by the Accused, and although he never went to the Court of Appeal himself, he personally bought the petrol to fuel the two Daihatsu vehicles which transported the *Interahamwe* to the Court of Appeal.[801]

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[798] Defence Closing Brief (Corrigendum), para. 358.
[799] T 23 July 2001, p. 44 (GAO).
[800] See above: Part III, Section K.
[801] T 24 July 2001, pp. 64 (GAO).

622. The Chamber finds that at the Ruhengeri Court of Appeal, *Interahamwe*, who were all Hutus, killed about three hundred Tutsis. During the attack, Musafiri, an *Interahamwe* who was one of the *Interahamwe* that travelled to the Court of Appeal on a vehicle filled with petrol bought by the Accused, used his gun to open the door, and another *Interahamwe* named Toto shot through the door with a type of gun known as a "stream" gun.

623. The Chamber has also considered the testimony of Defence Witness FMB, concerning the fact that he heard that young looters has killed the Tutsis at the Ruhengeri Court of Appeal. The Chamber did not find the testimony of Defence Witness FMB to be credible, and also noted that this testimony on this event was based solely upon second hand information.

624. The Chamber finds credible the testimony of Prosecution Witness GAP, that on the day of the massacre at the Ruhengeri Court of Appeal, the *Interahamwe* came to the Mukingo *bureau communal* looking for grenades and other weapons. This ties in with the finding that the *Interahamwe* did not have the right tools for the attack, and that the Accused told him that they would be provided. However, regarding the Prosecutor's contention that the Accused received a telephone call from Joseph Nzirorera, who told him that the Tutsi had been taken to the Court of Appeal to make it easier for them to be "easily got", the Chamber is clear that as Witness GAP was not a party to that telephone call, the evidence is insufficient to conclude that this was what was actually discussed. The Prosecution did not establish that Witness GAP was present when the alleged telephone call was made.

625. After careful consideration of all the evidence regarding the massacre at the Ruhengeri Court of Appeal on or around 14 April 1994, the Chamber finds that the Accused played a vital role as an organizer and facilitator of the *Interahamwe* and other attackers. He did this by procuring weapons, rounding up the *Interahamwe* and facilitating their transportation to the Ruhengeri Court of Appeal by supplying them with petrol. The *Interahamwe* were to assist in killing the Tutsis who had been taken from Busengo sub-*prefecture* in Ndusu *Commune* and left at the Ruhengeri Court of Appeal, and who had until that point been successfully resisting attacks by the local militia.

626. The Chamber previously found that the Accused held and maintained effective control over the *Interahamwe* from 6 April until 8 April 1994.[802] Based upon evidence presented with regard to the attack on the Ruhengeri Court of Appeal, and with regard to the finding on the Accused's involvement in the attack, the Chamber finds that the Accused held and maintained effective control over *Interahamwe* from Mukingo and Nkuli *communes* from 6 April until at least 14 April 1994.

[802] See above: Part III, Section K.

L. Paragraphs 4.18, 5.3 and 5.5 of the Indictment

1. Allegations

627. Paragraph 4.18 of the Indictment reads:

> During such meetings, speeches were made by influential persons including the Accused and Joseph Nzirorera, inciting their audience who were predominantly members of MRND and Hutus, to assault, rape and exterminate the Tutsis who were excluded from such meetings on account of their ethnicity.

628. Paragraph 5.3 of the Indictment reads:

> From April through July 1994, many Tutsi men, women and children were attacked, abducted, raped and massacred in their residences or at their places of shelter within the Mukingo *commune* or arrested, detained and later murdered. The Accused commanded, organized, supervised and participated in these attacks.

629. Paragraph 5.5 of the Indictment reads:

> The Accused ordered and Witnessed the raping and other sexual assaults on the Tutsi females. At all times material to this indictment, the Accused, as a person in authority over the attackers failed to take any measure to stop these nefarious acts on the Tutsi females.

630. The Defence reminded the Trial Chamber that the allegations of rape were developed after the Accused was granted his Motion for Severance on 6 July 2000. The Prosecution was then compelled to file an amended indictment. The individual statements alleging rape were taken between 1 March 2000 and 8 March 2000.[803] The Defence explicitly alleged that attempts to intimidate and compromise the independence of the Tribunal were carried out by civic organizations, specifically IBUKA and AVEGA, in connection with allegations of rape.[804]

2. Evidence

631. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II, Section H on Alibi and in the previous sections of this Part III.

632. **Prosecution Witness GAO** testified that, on the morning of 7 April 1994, he and the *Interahamwe* went to Rwankeri *cellule* after the Accused instructed the individuals gathered at Byangabo Market "to kill and exterminate". At Rwankeri, the Witness saw two *Interahamwe*, Gapfobo Mbonankira and Rugumire Ntuziyiremye, rape a Tutsi girl named

[803] Defence Closing Brief, paras. 147 and 294;
[804] Defence Closing Brief, para. 249.

Joyce at the home of Rudatinya.[805] After they raped her, they pierced her side and her sexual organs with a spear,[806] and covered her with her skirt after she died.[807]

633. **Defence Witness RGM** testified that he did not witness any rapes at Rwankeri and that the first time he heard that rapes had taken place was during the *Gacaca* hearings held in Ruhengeri prison, when 47 detainees gave testimony.[808]

634. **Prosecution Witness GAO** testified that he saw Uyamuremye, the son of Nzirarusha, cut off the breast of a girl named Nyiramburanga. After cutting off her breast, Uyamuremye sucked it or licked her blood. The Witness gave hearsay evidence that Uyamuremye also raped a woman named Kizungu. At the time, the Witness was killing people about 30 metres away.[809]

635. **Defence Witness RGM** testified that he was not aware that Uyamuremye[810] had cut off the breast of a Tutsi woman and licked her blood. The Witness initially testified that he observed Uyamuremye throw a spear towards a girl that hit her in the chest. In cross-examination, the Witness corrected himself and stated that Uyamuremye struck the girl with a knife in the chest.[811]

636. **Prosecution Witness ACM** testified that she escaped the massacre at Busogo Parish on 7 April 1994 and hid in the bush next to the Parish. The Witness left her hiding place in the evening to go to Nkuli *commune*. The Witness testified that she was stopped at a roadblock, near the Parish, located in Kabyaza *cellule*, Gitwa *secteur*, Nkuli *commune*, managed by the *Interahamwe*. The Witness identified Felix, Nyakamwe, Tuyiringire, Mbarushimana and Twarayisenze as members of the *Interahamwe* manning the roadblock. The Witness recognized that these members of the *Interahamwe* were previously at Munyemvano's compound earlier that day. The Witness observed that they were wearing uniforms and carrying guns and machetes. The Witness was stopped and Felix and Tuyiringire raped her. After the rape, Felix and Tuyiringire told the Witness to leave, saying that others at the roadblock would kill her. The Witness was bleeding profusely and sought refuge with a Hutu friend in Nkuli.[812]

637. **Prosecution Witness GDO** testified that she saw the Accused in a red Toyota pick-up early on the morning of 7 April 1994. The Witness, who declared in a written statement to investigators that she was a distance of about 50 metres from the Accused, was taking refuge near a bamboo forest with her three children, including a 15 year-old handicapped daughter. In her testimony at trial, the Witness denied that she told the ICTR investigators that she was 50 metres away from the Accused, insisting that she did not

[805] T. 26 November 2001, p. 112 (GAO).
[806] T. 23 July 2001, p. 30 (GAO).
[807] T. 23 July 2001, p. 28 (GAO).
[808] T. 18 November 2002, p. 61 (RGM).
[809] T. 23 July 2001, pp. 28-30 and 36-37 (GAO).
[810] The alternate spellings of "Yamuremye" [mostly RGM] and "Uyamuremye" [mostly GAO] are given in the transcripts. The Chamber treats these to be one and the same person, and will use the latter spelling for the purposes of consistency.
[811] T. 18 November 2002, pp. 61, 71 (RGM); T. 19 November 2002, pp. 33-34, 37, 44-45 (RGM).
[812] T. 11 December 2001, pp. 57-62 (ACM).

know how to estimate distance in metres.[813] The Witness testified that the Accused told the *Interahamwe*: "it was necessary to look for the Tutsi women, rape them and kill them." The Witness testified that the Accused ordered the *Interahamwe* to rape Tutsi women, "that [the Accused] had to separate the good grain from the bad one".[814]

638. Prosecution Witness GDO testified that the *Interahamwe* began searching the forest for Tutsis and found her daughter, whom they threw to the ground, undressed and raped. The Witness was unable to count the number of members of the *Interahamwe* raping her daughter. While hiding, the Witness could see the Accused in his vehicle with the remaining *Interahamwe*. The *Interahamwe* searching the forest then saw the Witness and the baby she was carrying on her back. The *Interahamwe* put the baby on the ground and stripped and beat the Witness until she lost consciousness. The Witness did not see that the *Interahamwe* carried any weapons when they attacked her. When the Witness regained consciousness, she saw her raped daughter dead, with her mouth open and her legs apart. Another child, soaked in the blood from her raped daughter's vagina, was screaming next to the dead body.[815]

639. **Defence Witness RHU30** testified to the circumstances surrounding the death of a handicapped child. The Witness estimated that the girl was between 17 and 20 years old in April 1994. The girl was handicapped to the extent that she used crutches to walk.[816]

640. Defence Witness RHU30 testified that Witness GDO, who had lived in his region prior to 1990, moved to a named *cellule* in 1994. Between 1991 and 1992, during the war, GDO departed her home and sought refuge at Mugali church. GDO left her daughter behind at the Gategara Physically Handicapped People Centre. The Witness testified that he later learned that the *Inkotanyi* came to Mugali church one night and abducted the Tutsi refugees, including GDO.[817]

641. Defence Witness RHU30 testified that the handicapped daughter of Witness GDO came to stay with him on 7 April 1994.[818] However, in response to a question from the Bench, the Witness stated that she arrived on 5 April 1994.[819] In response to further questions as to why the girl would come before the death of the President, the Witness replied that she came on 5 April 1994 because "fighting was going on between the national armed forces and the *Inkotanyi*. [...] We were caught in the cross-fire". In response to the Bench, the Witness stated that "I could not recall all the dates, but what I know is that on the 7th, she was already at my home".[820]

642. Defence Witness RHU30 testified that he woke up at around 8:00am on 8 April 1994 and saw young people running towards his house. They were not wearing any type

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[813] T. 18 July 2001, p. 29 (GDO).
[814] T. 18 July 2001, pp. 38, 47 and 51-52 (GDO).
[815] T. 18 July 2001, pp. 41, 43, 57-58, 60-61 and 63 (GDO).
[816] T. 30 September 2002, pp. 59-61, 67 (RHU31) (ICS).
[817] T. 30 September 2002, pp. 59-62 (RHU30) (ICS).
[818] T. 30 September 2002, p.62 (RHU30) (ICS).
[819] T. 1 October 2002, p.8 (RHU30) (ICS).
[820] T. 1 October 2002, p. 10 (RHU30) (ICS).

of uniform and called themselves the "*Interahamwe* Amahindure".[821] The Witness affirmed that "I was frightened because that was the first time in my life I had heard the word Amahindure. Now with regard to *Interahamwe*, I heard people saying that they did exist; however, they had not yet arrived at our area".[822] When the *Interahamwe* arrived, the daughter of Witness GDO and another girl named Esther Nyiragitaliro were inside the house. The Witness asked the *Interahamwe* what they wanted and they replied, "We are looking for Tutsis. We are looking for accomplices, and please, act fast before we attack you."

643. Defence Witness RHU30 testified that Ndahayo, one of the *Interahamwe*, grabbed Witness GDO's daughter and shot her. The *Interahamwe* also hit the Witness and Nyiragitaliro. One of the members of the *Interahamwe* threatened to take the Witness along with them. Another said "Let [her] bury the person who has just died, we will come to get [her] in due course or later". After the *Interahamwe* left, the Witness took a mat and, with the help of neighbours who were present, buried Witness GDO's daughter next to the Witness's house. Witness RHU30 recalled the names of some of the neighbours who assisted in the burial: Hakizimana, also known as Magwanga, Bahembera, Serugendo and Nyerakamili.[823]

644. Defence Witness RHU30 identified two of the members of the *Interahamwe*: L'homme and Ndahayo. In response to a question from Defence Counsel, the Witness affirmed that he knew Bugeli but that he was not present that morning and that he does not know Bizimana.[824]

645. Defence Witness RHU30 testified that GDO's daughter was not raped nor was Witness GDO present when her daughter was killed. Moreover, the Witness did not see the Accused anywhere in the vicinity of the murder on the morning of 8 April 1994.[825]

646. **Defence Witness RHU27** testified that he knew Witness GDO. Witness GDO's husband was taken away by soldiers in 1991. Witness GDO and her husband had children. GDO's daughter was handicapped and was between 16 and 18 years of age in 1994.[826] The Witness testified that Witness GDO's home was 200 or 300 metres from the Witness's home, although their homes were located in different *cellules*. The Witness testified that his family had a good relationship with Witness GDO.[827]

647. Defence Witness RHU27 testified that "After the attack launched by the RPF on Ruhengeri town on 8 February 1993, during which people were killed in Kinigi, Bisate and Susa, Witness GDO and other Tutsi women became afraid and went to seek refuge at the Mugari Adventist Church." Later, Witness GDO was taken away by RPF soldiers, who infiltrated Mugari church during the night and took her to Kinihira. The Witness testified

[821] T. 30 September 2002, pp. 64, 66, and73 (RHU30) (ICS).
[822] T. 30 September 2002, p.79 (RHU30) (ICS).
[823] T. 30 September 2002, pp. 64-65 and67 (RHU30) (ICS).
[824] T. 30 September 2002, pp. 66-67 (RHU30) (ICS).
[825] T. 30 September 2002, pp. 64-65 (RHU30) (ICS).
[826] T. 28 November 2002, pp. 5-6, 28 (RHU27) (ICS).
[827] T. 27 November 2002, pp. 38-40 (RHU27) (ICS).

that Witness GDO could not have hidden at the home of a Hutu on 7 or 8 April 1994 because, if she had, both the Hutu and Witness GDO would have been killed. The Witness stated that Witness GDO was not hiding in any forest on 8 April 1994 because the refugees had cut all of the trees down for firewood.[828]

648. Defence Witness RHU27 testified that Witness GDO's daughter went to live with Witness RHU30 a few days before the death of the President. At that time, Witness RHU27 saw Witness GDO's daughter while going to work. Witness RHU27 did not question Witness RHU30 as to why GDO's daughter was at his house. Witness RHU27 did not have any knowledge of the relationship between Witness RHU30 and Witness GDO's daughter's family. On 8 April 1994, Witness RHU27 returned from work, where he had spent the night, at around 10:00am and his wife informed him that the handicapped girl had just been killed and had already been buried. Witness RHU27 stated that Witness GDO's daughter was killed in a named *cellule* in Bushingiro *secteur* at Witness RHU30's place where she was buried. The Witness did not know whether Witness GDO was present when her daughter was killed. Witness RHU27 testified that Munyengango, also known as Kagingi, Ndahayo and Ndayahoze killed Witness GDO's daughter. Witness RHU27 confirmed that he never met with Witness RHU30 after the murder of Witness GDO's daughter .[829]

649. Defence Witness RHU27 testified: "On 7th I was in the same group as Ndayahoze, Muzuka, Ngwijabanza and Nyamada. On the 8th, Ndahayo, Munyengango and Ndayahoze went to kill GDO's daughter. Let me say that Munyengango is also called Kagingi. They went to kill GDO's daughter, but I will not be able to say the kind of weapon they used."[830]

650. **Defence Witness KNWA** testified in reference to Witness GDO and the death of her daughter.[831] The Witness recalled that Witness GDO had five children, though only four were still alive in 1994. The last time the Witness saw Witness GDO's daughter was on Sunday, 3 April 1994, at Nyiragihima church.[832]

651. Defence Witness KNWA testified that he was at home from 2 to 6 April 1994, during which time he did not see Witness GDO. Witness KNWA stated that he knew that Witness GDO was not present because she was a family friend, and their families often visited each other. Witness KNWA testified that he next saw Witness GDO in 1999, after she had heard that the Witness had been released from prison and had come to see him. The two exchanged information on various problems that they had encountered during the past years, and according to Witness KNWA, Witness GDO told him the circumstances under which her daughter had died. Witness GDO told the Witness KNWA that, in April 1994, she had been evacuated to Uganda, with other Tutsis, by the RPF and her son. Witness GDO told the Witness KNWA that, although she was not an eyewitness to the

[828] T. 27 November 2002, pp. 41-43 (RHU27) (ICS).; T. 28 November 2002, p. 16 (RHU27) (ICS).
[829] T. 27 November 2002, pp. 41-43 (RHU27) (ICS).
[830] T. 27 November 2002, p. 73 (RHU27) (ICS).
[831] T. 28 November 2002, p. 62 (KNWA) (ICS).
[832] T. 28 November 2002, pp. 53-59, 65 (KNWA) (ICS).

murder, Ndahayo had killed her daughter in Rukoma *cellule* and was buried there. Witness KNWA denied that Witness GDO mentioned anything else that might have happened to her daughter. The Witness testified that Witness GDO did not mention the Accused's name in relation to the death of her daughter.[833]

652. **Prosecution Witness GDT**, a Tutsi female,[834] testified that at around 10:00am on 7 April 1994 a neighbour's child came to her house.[835] The child was sent by the child's mother to warn the Witness that an attack was going to be launched against her and that they were to run away and hide. The child added that the Witness's father's mother-in-law [or maternal aunt], who was a Tutsi, had just been killed.[836] After the child left, the Witness did not do anything because the *Interahamwe* and approximately 20 soldiers arrived and she started hearing boisterous noise coming from the direction of Mukingo *commune*.[837]

653. Prosecution Witness GDT testified that she hid under her bed, but the *Interahamwe* entered the house and found her and her husband, who had been hiding in the toilet.[838] The *Interahamwe* told the Witness's husband that they were going to kill both of them.[839] Though the Witness did not see it, her 16-year-old daughter was shot at close range as she ran from their house and subsequently lost a leg.[840]

654. Prosecution Witness GDT testified that the *Interahamwe* then took the Witness to Kazi River, about 30 or 40 steps from her house.[841] The Witness was very tired because of the blows the *Interahamwe* delivered to her.[842] As soon as they approached the river, the *Interahamwe* pushed the Witness down, spread her legs and started raping her. According to her, all these people took their turns in inserting their sexual organs in her sexual organ. And when the sixth person finished raping her, she became unconscious. She was unable to count the number of persons that raped her.[843] The Witness could not resist because the *Interahamwe* were armed and, even if she was armed, the Witness thought a weapon would be useless.[844]

655. Prosecution Witness GDT testified that she subsequently realised that the *Interahamwe* had cut off a part of her sexual organ, but she could not tell what weapon or tool they used.[845] The *Interahamwe* left the Witness, believing that she was dead.[846] The skin that was cut off from her sexual organ has affected her health; for the Witness is no

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[833] T. 28 November 2002, pp. 58, 60-62 (KNWA) (ICS).
[834] T. 7 December 2001, p. 41 (GDT).
[835] T. 6 December 2001, p. 81 (GDT).
[836] T. 6 December 2001, pp. 82-83 (GDT).
[837] T. 6 December 2001, p. 84 (GDT).
[838] T. 6 December 2001, pp. 84-85 (GDT).
[839] T. 6 December 2001, p. 85 (GDT).
[840] T. 6 December 2001, p. 94 (GDT).
[841] T. 6 December 2001, pp. 86-87 (GDT).
[842] T. 6 December 2001, p. 86 (GDT).
[843] T. 6 December 2001, pp. 90-91 (GDT).
[844] T. 6 December 2001, p. 91 (GDT).
[845] T. 6 December 2001, p. 92 (GDT).
[846] T. 6 December 2001, p. 92 (GDT).

longer able to give birth normally.[847] The Witness testified that she believes the Accused was responsible for her rape because the people who attacked her subsequently said that the Accused told them "to be quick about it and go back to where he was before he finished drinking his bottle of beer". In addition, one of the aggressors said that if an investigation was carried out in Ruhengeri to determine the main killers, the Accused would be number one; and, that at the meetings he organised, he distributed to the population guns that were intended to kill people.[848]

656. Prosecution Witness GDT testified that she recognised Gahamanyi, Munyarimbanje and Bugeri, all Hutus from Mukingo *commune*, among the people who took her to the river. However, Munyarimbanje was not with them when they went down the river.[849] The Witness testified that Gahamanyi was a soldier, Bugeri was a forest ranger who worked at the park and all three were members of the *Interahamwe*. Bugeri was wearing the uniform of the forest rangers on that day.[850] The Witness testified that she tried to bring an action against Bugeri, Gahamanyi and Ndahayo in Rwanda for the rape. Regarding Gahamanyi, the Witness brought an action against him, but the authorities could do nothing because he was not in Rwanda. The Witness said that Munyaribanje died during the "war of the infiltrators". The Witness testified that she knew that Bugeri and Ndahayo were in Ruhengeri Prison in connection to her law suit and that they were responsible for the death of people in 1994.[851] The Witness testified that she also sued the Accused in Kigali in 2000.[852]

657. **Defence Witness RHU27** testified that on 7 April 1994 he was accompanied by four men when he went to kill Tutsis. Three, including himself, Ndayahoze and Nyamada, carried Kalashnikovs and Ngwijabanza and Muzuka carried clubs. The four people in his group said they were *Interahamwe* members and wore ordinary clothes. The Witness admitted to having killed two women, a young girl of 20 years and four men but denied that he killed any children. The Witness stated that his group started killing around 11:00am and finished around 3:00pm. The killings took place in Rukoma *cellule* in Shingiro *secteur*, Mucaca *cellule* in Muhingo *secteur*, and at Susa in Kinege *cellule* in Shingiro *secteur*, all within the Mukingo *commune*. The Witness testified that he killed two Tutsis in Susa and that these Tutsis were the only ones in Susa. The Witness insisted that he was not in the company of Munyarimbaje, Ndahayo and Gahamonye, as the Prosecutor suggested, when he went about his killings. The Witness stated that Ndahayo was in the group that carried out killings on 8 April 1994, but the Witness did not see Ndahayo on that day.[853]

658. Defence Witness RHU27 testified that Susa, a river that serves as a boundary between Mukingo and Kinigi *communes*, was in the buffer zone before the death of President Habyarimana. No vehicle could reach the area of Susa because, previously. RPF

[847] T. 6 December 2001, pp. 93, 108 and 124 (GDT).
[848] T. 6 December 2001, pp. 121-122 (GDT).
[849] T. 6 December 2001, pp. 88-90 (GDT).
[850] T. 6 December 2001, p. 89; T. 7 December 2001, p. 36 (GDT).
[851] T. 7 December 2001, p. 38 (GDT).
[852] T. 7 December 2001, p. 39 (GDT).
[853] T. 27 November 2002, pp. 24, 51-52, 68, 69, 70 and 74-76 (RHU27) (ICS).

soldiers had clandestinely infiltrated the area and killed the inhabitants. UN troops were mobilized to patrol the road in the area to ensure that no RPF soldiers or Rwandan government soldiers were present. The Witness was able to pass through the area under the surveillance of UNAMIR soldiers. The situation changed after the assassination of the President.[854]

659. **Prosecution Witness GDF** testified that she, her husband, younger sister and children went into hiding after hearing the news of President Habyarimana's death early one morning in 1994. The Witness was living in Susa *secteur* Kinigi *commune*. Four days after the death of President Habyarimana, around 10:00am on 10 April 1994, the Witness and her family returned to their house from the hiding place to get supplies.[855]

660. Prosecution Witness GDF testified that she saw the Accused in a red vehicle with an open back through a passage in the bamboo-fence surrounding her home. The Witness had seen the Accused with the same vehicle once before. The Accused was with uniformed *Interahamwe*. The back of the vehicle was empty. The Witness testified that the uniforms of the *Interahamwe* could be distinguished from the uniforms worn by the *gendarmerie* by the red headbands worn by the *Interahamwe*. Some of the *Interahamwe* were carrying guns and clubs. The Witness further testified that she knew these men were *Interahamwe* not only because they were in uniform and carrying weapons, but also because they accompanied the Accused. There were people of the neighbourhood present when the Accused and *Interahamwe* arrived, but the Witness did not recognise them.[856]

661. Prosecution Witness GDF testified that, from her hiding place, she saw the Accused talking with the *Interahamwe*. The Witness did not notice if the Accused was armed but saw that he was wearing khaki-coloured clothing. The Accused got back into the vehicle after speaking with the *Interahamwe*, at which time twelve *Interahamwe* approached her house.[857]

662. Prosecution Witness GDF testified that she and her sister ran and hid in the maize field when they realised that the *Interahamwe* and neighbourhood residents approaching the house had spotted them.[858] Some *Interahamwe* came to the place where the Witness and her sister were hiding. The *Interahamwe* first attacked the Witness's sister. Four *Interahamwe* then came to the Witness and undressed her.[859] The Witness protested and the *Interahamwe* threw her to the ground.[860] Before raping the Witness, the first *Interahamwe* said, "Allow me to have sex with a Tutsi woman to taste her."[861] While this

[854] T. 27 November 2002, pp. 34, 38, 50 (RHU27) (ICS).
[855] T. 10 July 2001, pp. 66-67 and 69-70; T. 11 July 2001, pp. 35-37 and 46 (GDF).
[856] T. 10 July 2001, pp. 71-75, 89-90 (GDF).
[857] T. 10 July 2001, pp. 74-75 (GDF).
[858] T. 10 July 2001, pp. 74 and 77 (GDF).
[859] T. 10 July 2001, p. 83 (GDF).
[860] T. 10 July 2001, p. 90 (GDF).
[861] T. 10 July 2001, p. 85 (GDF).

individual raped the Witness, the others held her down, watched and mocked her. Two others then raped her. Each took an estimated 20 minutes.[862]

663. Prosecution Witness GDF testified that the fourth *Interahamwe* looked at her sexual organ and said, "I cannot fall on a Tutsi", after which he threw a cigarette stub in her sexual organ and kicked the Witness. The Witness became unconscious at that time and could not hear anything else. The Witness could not identify the attackers, but stated: "all I saw on that day was that Kajelijeli came with his *Interahamwe*. He is the one I recognised amongst the people who came."[863]

664. Prosecution Witness GDF testified that she had never been raped before. The Witness has "little wounds everywhere", including on her sexual organ and breasts, stomach pains, and continues to bleed from her sexual organ. The Witness has not remarried and has not had sexual relations since she was raped.[864] The Witness testified that her sister "suffered the same fate"; although she did not see her sister being raped, the Witness was close by.[865] As "a consequence of what happened," the Witness's sister, who was 15 years old at the time, is now "mentally unstable" and is being treated in Ndera. The Witness testified that she believes that the Accused is responsible for what happened to her.[866]

665. Prosecution Witness GDF testified that the "*Inkotanyi*" treated her at the Apicure hospital in Ruhengeri. The Witness later described the place in which she was treated as more of a military camp than a hospital. The Witness stayed at the Apicure hospital for three months. The Witness was subsequently taken to someone in Ruhengeri.[867]

666. **Defence Witness ZLG** testified that his father was killed by the RPF in the attack of 8 February 1993. During the attack, the RPF controlled the whole of Kinigi *commune* and a portion of Kigombe *commune* and Mukingo *commune*. Throughout that time, it was difficult to get to Kinigi because there were roadblocks erected by government soldiers and others erected by the "Inkotanyi". When the Witness would visit the Susa trading centre, he noticed an RPF roadblock opposite one of the government forces. These roadblocks were on the road linking Kinigi to Kigombe and Mukingo and Kinigi. The Witness testified to the fact that the area around Susa was inaccessible because the roadblocks prevented people from reaching Kinigi.[868] After the Peace Accords, the area was declared a buffer zone under UNAMIR control and people could travel to and from Kinigi. The roadblocks previously held by the RPF were dismantled and vehicles could move freely in Mukingo *commune* but those who wanted to cross towards Susa into Kinigi *commune* were not able to do so without a UNAMIR escort.[869] When the Witness attempted to visit a relative, who lived about 800 metres from Susa, in December 1993 and

[862] T. 10 July 2001, pp. 84-85 (GDF).
[863] T. 10 July 2001, pp. 86-87 (GDF).
[864] T. 10 July 2001, pp. 90-91 (GDF).
[865] T. 10 July 2001, pp. 86-87; T. 11 July 2001, p. 53 (GDF).
[866] T. 10 July 2001, pp. 93-94 (GDF).
[867] T. 11 July 2001, pp. 26-28, 48 and 53 (GDF).
[868] T. 4 December 2002, pp. 65-66 and 69 (ZLG).
[869] T. 4 December 2002, pp. 60, 62-63 and70-71 (ZLG).

March 1994, he noticed that vehicles could not move between Kinigi and Mukingo unless they were with a UNAMIR escort.[870] The Witness did not know when UNAMIR soldiers left Kinigi *commune* because he was not in Kinigi at the time.[871]

667. Defence Witness ZLG testified that Susa was located in Nyarugina *secteur* in Kinigi *commune*. Nyarugina *secteur* is the neighbourhood of Tero and Bisate as well as Shingiro *commune*.[872] On 10 and 11 April 1994, the bombardment of Ruhengeri *préfecture* intensified.[873] The Witness, who was at his home in Kigombe *commune*,[874] stated that people who came from Tero, Nyarugina, Musanze and Gihora told him that they saw a large number of "Inkotanyi" arriving in the area.[875]

668. Defence Witness ZLG testified that Apicur is a secondary school opposite a military camp, Camp Hoza, which his elder brother attended. The RPF did not occupy the camp or the school during March or April 1994.[876]

669. **Defence Witness FMB** testified that on 8 February 1993, during the RPF attack on Ruhengeri *préfecture*, the RPF forces took over the town of Ruhengeri. This affected Kigombe, Kinigi, a small part of Mukingo, Mukumba, Kidaho, a small part of Ruhondo and the remaining part of Butaro *communes*. Kinigi *commune* was not occupied by the RPF, but fell within the demilitarised zone. Kinigi *commune* remained in the demilitarised zone on 7 April 1994. The only troops that could pass through were the UNAMIR troops. However, civilians were authorized to move through the demilitarised zone.[877]

670. Defence Witness FMB testified that, between February 1993 and 6 April 1994, the occupants of civilian vehicles would be checked at the roadblocks before the obstacles on the road would be removed to allow the vehicle to proceed. In areas that directly bordered or neighboured areas controlled by the Rwandan Armed Forces, movement of the civilian population was free; though the vehicles were stopped and searched at roadblocks so as to avoid the movement of weapons. These vehicles required authorisation, signed by a commanding officer of that area, before being allowed to proceed. UNAMIR was responsible for regulating the movement of civilians inside the buffer zone in Kinigi *commune*.[878]

671. Defence Witness FMB testified that there was a minimum of five roadblocks in Ruhengeri *préfecture* and that he was part of the command structure that authorized their emplacement. There were two roadblocks on the roads leading from Mukingo *commune*

[870] T. 4 December 2002, p. 72 (ZLG).
[871] T. 5 December 2002, p. 20 (ZLG).
[872] T. 5 December 2002, p. 8 (ZLG).
[873] T. 4 December 2002, p. 79 (ZLG).
[874] T. 5 December 2002, p. 16 (ZLG).
[875] T. 5 December 2002, pp. 13-14 (ZLG).
[876] T. 5 December 2002, p. 18 (ZLG).
[877] T. 1 April 2003, pp. 75, 77 and 81 (FMB) (ICS).
[878] T. 1 April 2003, pp. 80 and86 (FMB); T. 2 April 2003, pp. 25 and 32 (FMB).

towards Kinigi *commune*: one at Shingiro opposite Susa and the other on a small road which goes from Kimonyi towards Kinigi and a small village.[879]

672. Defence Witness FMB testified that the Apicur School in Ruhengeri town was never under the control of the RPF between 6 April and mid-July 1994 and that he knew of no other institution bearing the same name in the Ruhengeri area. The Witness did not know whether the school had been used as a hospital. The Witness stated that the Ruhengeri hospital was still operational at that time.[880]

673. **Defence Witness ZLA** testified that she fled from Ruhengeri and Rwanda in July 1994 and went into exile in Zaire with members of her family and other Tutsis. The Witness testified that she and those that accompanied her were under the protection of the Accused on their way to Zaire. [881]

674. Defence Witness ZLA testified that around 1999, while in Kigali, she was invited to the home of her neighbour, a Tutsi named Mrs. Rubayita, and met two ladies whose names she did not remember. The ladies were representatives of AVEGA, which they described as an association of women fighting for the interests and needs of women. The ladies asked the Witness to join AVEGA. The ladies asked the Witness to make false allegations against the Accused by saying that he raped her in 1994. In return, the ladies promised to assist the Witness to recover her property and to receive assistance as a survivor. The Witness testified that she was never raped by anyone in 1994 and that she told the ladies that she would not make false allegations against the Accused. The ladies repeatedly visited the Witness to solicit her aid.[882]

675. Defence Witness ZLA testified that, after this exchange, she visited her father and spent two weeks away with her relatives. When she went returned to Kigali to claim her property, the *conseiller*, Kabandana, asked what she wanted and accused her of being a member of the *Interahamwe*. The Witness was surprised and became afraid because the word *Interahamwe* was only used to refer to Hutus who had participated in the massacres. The Witness decided to leave the country at the beginning of 2000.[883]

3. Findings

676. The Chamber recalls its finding in [Part III, Section K] that the Accused assembled members of the *Interahamwe* at Byangabo Market on the morning if 7 April 1994, and instructed them to "[k]ill and exterminate all those people in Rwankeri" and to "exterminate the Tutsis". He also ordered them to dress up and "start to work". In particular, the Chamber recalls the testimonies of Prosecution Witnesses GAO and GBV. Witness GAO attested that the Accused instructed the *Interahamwe* to "exterminate the Tutsi"[884] and stated: "others have finished their work, why are you sparing these

[879] T. 1 April 2003, pp. 80, 86 (FMB).
[880] T. 2 April 2003, pp. 50-51 (FMB).
[881] T. 10 December 2002, pp. 93-94 (ZLA); T. 11 December 2002, p. 15 (ZLA) (ICS).
[882] T. 10 December 2002, pp. 94-96 (ZLA); T. 11 December 2002, pp. 22-24 (ZLA) (ICS).
[883] T. 10 December 2002, pp. 28 and 96-97 (ZLA); T. 11 December 2002, p. 27 (ZLA) (ICS).
[884] T. 23 July 2001, p. 17 (GAO).

people?"[885] Prosecution Witness GBV testified that the Accused addressed a group of *Interahamwe* telling them to "start work".[886]

677. Prosecution Witness GAO also testified that, on the morning of 7 April 1994, he and other *Interahamwe* went to Rwankeri *cellule*, on the orders of the Accused.[887] The Witness attested that "on that day they were telling us to exterminate those people; as well as the babies in their mothers' wombs. And I did not know exactly what their objective was."[888] Once they arrived at Rwankeri *cellule*, Witness GAO saw two *Interahamwe* named Gapfobo Mbonankira and Rugumire[889] rape a Tutsi woman named Joyce. Witness GAO testified that Mbonankira and Rugumire "rape[d] her and [then] they used a spear to pierce her side, and they also pierced her sexual organs. She was killed and her skirt was used to cover her."[890] The Chamber finds Witness GAO's testimony regarding these events reliable and therefore finds that a Tutsi woman named Joyce was raped and killed by *Interahamwe* on 7 April 1994 at Rwankeri *cellule*. Furthermore, the Chamber finds that the *Interahamwe* pierced Joyce's side and sexual organs with a spear, and then covered her dead body with her skirt.

678. Prosecution Witness GAO also testified that he saw the mutilation of a Tutsi girl named Nyiramburanga by two *Interahamwe* members named Ntenzireyerimye and Uyamuremye. The Witness testified that he saw Uyamuremye cut of the victim's breast and then lick it.[891] This eyewitness testimony was corroborated by the testimony of Defence Witness RGM, who testified on cross-examination that "Uyamuremye threw a spear towards a girl and the spear hit her on the chest. I don't know whether he cut off the girl's breast or not."[892] While the Chamber notes minor inconsistencies in regard to the type of weapon used by the assailant, the Chamber regards the testimonies as corroborative on the event described. The Chamber therefore finds that Ntenzireyerimye and Uyamuremye, members of the *Interahamwe*, mutilated a Tutsi girl named Nyiramburanga by cutting off her breast and then licking it, on the morning of 7 April 1994 in Rwankeri *cellule*.

679. Additional reliable evidence of rape is found in the testimony of Prosecution Witness ACM. Witness ACM testified that, on the evening of 7 April 1994, as she was fleeing the massacre at the Busogo Parish, she was stopped at the nearby roadblock located in Kabyaza *cellule* in Nkuli *commune* and raped by two members of the *Interahamwe*. The Witness recognized the attackers and identified them as Felix and Twarayisenze.[893] The Chamber finds the detailed testimony of Witness ACM to be reliable. The Chamber therefore finds that Witness ACM, a Tutsi woman, was raped by members of the *Interahamwe* in Kabyaza *cellule* on 7 April 1994.

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[885] T. 26 November 2001, p. 98 (GAO).
[886] T. 4 July 2001, pp. 105-106; T. 5 July 2001, pp. 114-116 (GBV).
[887] T. 23 July 2001, p. 26 (GAO).
[888] T. 23 July 2001, p. 22 (GAO).
[889] Spelled NTUZIYIREMYE in the French Transcripts: T.23 Juillet 2001]
[890] T. 23 July 2001, p. 28 (GAO).
[891] T. 23 July 2001, p. 28 and 29 (GAO).
[892] T. 19 November 2002, pp. 34 (RGM). Uyamuremye is also spelled "Yamuremye".
[893] T. 11 December 2001, pp. 57-62 (ACM).

680. Prosecution Witness GDO provided first-hand testimony about the rape and killing of her daughter on 7 April 1994, in Rukoma *Cellule*, Shiringo *Secteur*. The Witness attested that she took refuge in a bamboo forest, which is on her property, with her three children, including the victim, a 15 year-old handicapped girl,[894] when a group of *Interahamwe* began to search the forest for Tutsis and found her daughter. The Witness further testified that *Interahamwe* threw the daughter on the ground, undressed her and raped her. The Witness testified that from her hiding place she could see the Accused in his vehicle with the remaining *Interahamwe*. The Witness also testified that the Accused ordered the *Interahamwe* to rape Tutsi women and specifically, that the Accused told the *Interahamwe* that "it was necessary to look for the Tutsi women, rape them and kill them" and that "that they should forcefully rape them and then kill them, that he had to separate the good grain from the bad ones."[895] The Witness testified that, concurrent with the rape of her daughter, she was subjected to beating and to stripping by the *Interahamwe* and that at one point she lost consciousness due to the beating. When the Witness regained consciousness, she saw the body of her dead daughter, with her mouth open and her legs apart. The Chamber also notes the testimonies of Defence Witnesses RHU30, [896] RHU27[897] and KNWA,[898] who testified that the Witness's daughter was killed by *Interahamwe* but was not raped, and that Witness GDO was not present at the site of her daughter's killing. The Chamber rejects this version of the events, noting the inconsistencies between the Defence Witnesses testimonies in relation to dates and to the age of the victim as well as the fact that Witnesses RHU27 and KNWA were not present at the events, but rather those were related to them at a later time. The Chamber finds Witness GDO's testimony credible and notes in particular her demeanour while testifying, including the emotional intensity of her recollection of the events and her breakdown during the testimony. For these reasons, the Chamber accepts the testimony of Witness GDO insofar as she alleges that her daughter was raped and killed by a group *Interahamwe* on 7 April 1994 in the Rukoma *Cellule*, Shiringo *Secteur*. However, the Chamber, by a majority, Judge Ramaroson dissenting, notes inconsistencies between the Witness's written statement (in which she located the Accused at a distance of 50 meters and recalled the time of the rape to be 4:00am) and her testimony at trial (in which she insisted that she did not know how to estimate distance in meters and recalled the time as early in the morning).[899] The Chamber also takes note that the events took place in a forest, which, in the majority opinion of the Chamber, makes visibility and hearing more difficult. For these reasons, the Chamber finds that there is reasonable doubt as to whether the Accused was present at the scene. Consequently, the Chamber finds, by a majority, Judge Ramaroson dissenting, that the Prosecution did not prove beyond reasonable doubt that the Accused was present at the scene during the time of the rape or that he specifically instructed the rape and the killing of Witness GDO's daughter.

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[894] T. 18 July 2001, p. 29 (GDO).
[895] T. 18 July 2001, pp. 38, 47 and 51-52 (GDO).
[896] T. 30 September 2002, p.62 (RHU30) (ICS).; T. 1 October 2002, p.8 (RHU30) (ICS).
[897] T. 27 November 2002, pp. 41-43 (RHU27) (ICS).; T. 28 November 2002, p. 16 (RHU27) (ICS).
[898] T. 28 November 2002, pp. 53-59, 60-62, 65 (KNWA) (ICS).
[899] T. 9 July 2001, p. 36 (GDO).

681. Prosecution Witness GDT testified that on the morning of 7 April 1994 a group of *Interahamwe* accompanied by approximately 20 soldiers arrived at her home which is located in Susa *secteur*, Kinigi *Commune*. The Witness attested that the *Interahamwe* entered the house, and took her to the Kazi River, which is located approximately 30 or 40 steps from her home.[900] The Witness testified that she recognized three of the people who took her to the river—named Gahamanyi, Munyarimbanje and Bugeri—and that all three were members of the *Interahamwe* in Mukingo *commune*.[901] As soon as they reached the river, according to the Witness, the *Interahamwe* pushed her down, spread her legs and raped her. The Witness testified that after the sixth person had finished raping her she lost consciousness and therefore could not recall the exact number of *Interahamwe* who raped her.[902] Witness GDT testified that when she regained consciousness she realised that the *Interahamwe* also cut off a part of her sexual organ,[903] causing her permanent physical damage.[904] The Witness alleged that the Accused was responsible for the attack. Specifically, the Witness testified that she heard her assailants subsequently say that the Accused told them "to be quick about it and go back to where he [the Accused] was before he finished drinking his bottle of beer" and that one of the aggressors said that if an investigation was carried out in Ruhengeri to determine the main killers, the Accused would be number one.[905] According to the Defence, the Prosecution has not produced a single witness to corroborate that the Accused was indeed at a bar, drinking beer between 9:00am and 10:00am in the morning. To the contrary, Prosecution Witnesses GAO, GBV, GBG, and ACM do not place the Accused at a bar at 10:00am on the morning of 7 April 1994.[906] The Defence also challenges the credibility of Witness GDT insofar as the area by the River, where Witness GDT claimed to have been raped, was inaccessible at this time. In support of its allegation, the Defence relies on the testimonies of Defence Witnesses ZLG and FMB. Both Defence Witnesses stated that, as the area around the Kazi River was within a demilitarised zone until March or April 1994, it would have been impossible for any armed *Interahamwe* to go through the checkpoints. However, both Witnesses were unable to provide the Chamber with any information regarding the military status of this area after 7 April 1994. Furthermore, the Chamber finds that, considering the content of the Witness testimony and the lapse of time since the event, the fact that she was not able to specify the exact location where the rapes occurred does not affect her overall credibility. After careful consideration of the evidence presented at trial the Chamber is convinced that Witness GDT was raped by members of the *Interahamwe* on 7 April 1994 in Susa *secteur*, Kinigi *Commune*. It is not in contention that the Accused was not present at the scene of the rape of GDT. The Chamber finds, by a majority, Judge Ramaroson dissenting, that the Prosecution did not prove that the Accused issued a specific order to rape or sexually assault Tutsi women in Susa *secteur*, Kinigi *Commune* on that day.

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[900] T. 6 December 2001, pp. 86-87 (GDT).
[901] T. 6 December 2001, p. 89; T. 7 December 2001, p. 36 (GDT).
[902] T. 6 December 2001, pp. 90-91 (GDT).
[903] T. 6 December 2001, p. 92 (GDT).
[904] T. 6 December 2001, pp. 93, 108 and 124 (GDT).
[905] T. 6 December 2001, pp. 121-122 (GDT).
[906] Defence Closing Brief, para. 260..

682. Prosecution Witness GDF testified that on 10 April 1994 she was raped in a maize field near her home which is located in Susa *secteur*, Kinigi *Commune*. According to the Witness, around 10:00am that day she saw the Accused, in his red vehicle, accompanied by armed and uniformed *Interahamwe*. The Accused talked to the *Interahamwe* and got back into the vehicle at which time twelve *Interahamwe* approached her house.[907] Shortly thereafter, a group of *Interahamwe* tracked down the Witness and her sister in their hiding place in the maize field. While at least three *Interahamwe* raped her and her sister, the other held her down, watched and mocked her. The Witness testified that before raping her, the first *Interahamwe* said, "Allow me to have sex with a Tutsi woman to taste her."[908] One *Interahamwe* inserted a cigarette stub in her sexual organ and left her unconscious. According to the Witness, she and her sister still suffer both physical and mental disorders from this experience. Although she did not see her sister being raped, Witness GDF says she was close by.[909] As "a consequence of what happened" her sister is now "mentally unstable" and is being treated in Ndera.[910] The Defence challenged the credibility of the Witness on the same basis as it challenged the credibility of Witness GDT: namely, the Defence alleges that this area was inaccessible on 10 April 1994. The Chamber recalls its finding, in the previous section, about the accessibility of the area and finds the Witness to be credible and trustworthy. The Chamber is convinced that Witness GDF was raped on 10 April 1994 by members of the *Interahamwe*. The Chamber is not convinced, by a majority, Judge Ramaroson dissenting, that the Accused was present at the site of the rape during the time of the rape itself.

683. Pursuant to the above testimonies of Prosecution Witnesses GAO, ACM, GDO, GDT and GDF, the Chamber is convinced that members of the *Interahamwe*, including *Interahamwe* from Mukingo *commune* and neighbouring areas committed rapes and sexual assaults in the Ruhengeri *Prefecture* between 7 and 10 April 1994. The Chamber notes that the Defence does not dispute the occurrence of the said rapes and assaults. Rather, the Defence alleges that the testimonies placing the Accused at the scenes of these acts were fabricated by the Prosecution Witnesses. In addition, the Chamber notes the testimony given by Defence Witness ZLA, who said that representatives of the civic group AVEGA tried to induce her to falsely allege that the Accused raped her in 1994, in return for which testimony they will help her to recover her property and to receive assistance as a survivor. Having carefully considered the allegations and evidence set forth by both Prosecution and Defence, the Chamber finds, in the absence of corroboration of Witness ZLA's allegation, insufficient evidence to determine that subornation of perjury or intimidation attempts did in fact occur. However, the majority of the Chamber, Judge Ramaroson dissenting, is not convinced that the Accused was present during any of the said rapes and sexual assaults. Consequently, it is the finding of the majority of the Chamber that the Prosecution did not prove that the Accused was physically present during the commission of the rapes and sexual assaults by members of the *Interahamwe*.

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[907] T. 10 July 2001, pp. 74-75 (GDF).
[908] T. 10 July 2001, p. 85 (GDF).
[909] T. 10 July 2001, pp. 86-87; T. 11 July 2001, p. 53 (GDF).
[910] T. 10 July 2001, p. 94 (GDF).

M. Paragraph 2.3 of the Indictment

1. Allegations

684. Paragraph 2.3 of the Indictment reads:

> During the events referred to in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

2. Evidence

685. In this section the Chamber recalls the applicable evidence presented in the Part III, Sections K and L.

3. Findings

686. Based upon the totality of the evidence received relating to events occurring between 6 April 1994 and 14 April 1994, the Chamber finds that, between 7 and 14 April 1994, killings of members of the Tutsi group occurred on a mass scale in Mukingo *commune*, Nkuli *commune* and at the Ruhengeri Court of Appeal in Kigombe *commune*. These attacks were carried out by groups of attackers and were directed against a large number of victims on the basis of their Tutsi ethnicity. The targets were whole populations of people of Tutsi ethnicity such as neighbourhoods, or places of shelter and refuge. Entire families and neighbourhoods were eliminated. Thus, the Chamber finds that during April 1994 in Mukingo *commune* and neighbouring *communes* within Ruhengeri *prefecture*, there was a widespread attack upon a civilian Tutsi group, carried out on the basis of ethnicity.

687. Having found the existence of a widespread attack, the Chamber does not find it necessary to consider whether or not the attack against the civilian Tutsi population was also systematic.

N. Paragraph 5.7 of the Indictment in connection with Paragraphs 4.7, 4.8 and 4.9

1. Allegations

688. Paragraph 5.7 of the Indictment reads:

> The Accused intended to destroy the Tutsi as a racial or ethnic group, they having been identified as the enemy by the MRND as defined in paragraphs 4.7, 4.8 and 4.9 [of the Indictment], in furtherance of the government policy to defeat the RPF, eliminate the Tutsis and retain power.

689. Paragraph 4.7, 4.8 and 4.9 of the Indictment read:

> After the attack of October 1990 in Rwanda, by the Rwandan Patriotic Front (RPF),

an allegedly Tutsi organisation, some groups within the then Rwandan Government and military structure, initiated the characterization of the Tutsis as the enemy to be eliminated from Rwanda.

This characterization defined the main enemy as the Tutsis from inside or outside the country, who allegedly wanted power, who allegedly did not recognize the achievement of the revolution of 1959 and who allegedly were seeking armed confrontation. The secondary enemy was defined as the moderate Hutus who provided any kind of assistance to, or sympathized with the main enemy or opposed the government or the MRND's policies.

Furthermore, from late 1990 through about July 1994, military personnel, members of the government, political leaders, civil servants and other influential personalities including the Accused and Joseph Nzirorera conspired among themselves and with others to work out a plan to exterminate the civilian Tutsi population and eliminate members of the opposition, so that the MRND could remain in power.

2. Elements

(a) The Training of the Interahamwe *Included the Use of Incendiary Language Illustrative of an Intent to Exterminate the Tutsi Population*

- **Evidence**

690. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

691. **Prosecution Witness GAO** testified that the Accused and other authorities set up a branch of the MRND called Civil Defence, or Virunga force or *Amahindure*. The Witness stated that the Accused told the members to complete their training quickly so that he could send them to the volcanoes to fight against the "*Inkotanyi*, the *Inyenzi*."[911]

692. **Prosecution Witness GDD** testified that the Accused, Sendugu Shadrack (President of the MRND from Nkuli *commune*) and other politicians retained the Witness to train young *Interahamwe* recruits of Hutu ethnic origin for "preparation of the offences." He was directed by them "to carry out an attack on the enemy" because Rwanda had been under attack by the RPF since 1990 and "we should be ready because some day we would be attacked." According to the Witness, a sensitisation meeting was held after each military session to prepare the young militants for combat.[912]

- **Findings**

693. The Chamber finds that the establishment of militia forces and their training prior to the events of 1994 does not prove by itself the existence of a plan to kill the Tutsi as such.

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[911] T. 23 July 2001, pp. 53-55 (GAO).
[912] T. 2 October 2001, pp. 88-90; T. 4 October 2001, pp. 44-49 (GDD).

(b) 7 April 1994—The Meeting with the Accused at a Canteen in Nkuli Commune

- **Evidence**

694. **Prosecution Witness GDD** testified that those that participated in the killings went to a canteen in Nkuli *commune* for an appointment with the Accused, who was to come in the evening to see whether they had actually done as promised. The assailants bought themselves drinks with the money they looted. The Witness testified that the Accused, who arrived at the canteen in his STB [ESTB] red vehicle, enquired, "[W]ell, gentlemen you have done what we promised each other?" The Witness and those present at the canteen assured the Accused that they had "eliminated everything". According to GDD, the Accused rewarded the men with drinks and money.[913] The Accused then instructed the assailants "to fine-comb this area so that we do not have a single Tutsi left in the Gitwa *secteur*" Those present at this meeting promised to do so before the Accused left to return to his first wife.[914]

- **Findings**

695. The Chamber notes that the Prosecution evidence apparently places the Accused in two different locations on the same evening of 7 April 1994. Witness GAO places the Accused at celebrations happening at the ISAE. Witness GDD places the Accused at the Nkuli *commune* office. This raises the issue of the mobility of the Accused. The Chamber has considered the evidence of the witnesses carefully, as well as examined the exhibits tendered at trial. Some of this evidence bears on the matter of distances and the correlation of localities. The distances are short between these places. The Chamber notes that Kajelijeli was an important figure in the community: he possessed a vehicle of his own and, according to his own testimony, the necessary documents permitting mobility. Having considered the totality of the evidence, the Chamber finds that during the evening of 7 April 1994, the Accused was in a position easily to commute the distance involved in a travel between the ISAE and the Nkuli *commune* office, thus enabling him to attend both places in the same evening.

696. Furthermore, the Chamber notes that all the major sites in Mukingo and Nkuli *communes* where the Accused is alleged to have been involved are within short distances of each other. The Chamber finds that during the events alleged to have happened from 6 April to 14 April 1994, the Accused was in a position to move around from one place to another within the *communes* of Mukingo and Nkuli within a short space of time. The evidence presented by the Defence regarding difficulty of movement is of little persuasive value. According to the evidence before it, the Chamber finds no impossibility in the Accused's presence at several different locations within the Nkuli or Mukingo *Communes* on the same day or evening.

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[913] T 3 October 2001, p. 51 (GDD).
[914] T. 3 October 2001, pp. 49 and51-52; T. 4 October 2001, pp. 136-137 (GDD).

697. The Chamber has already found GDD to be credible in his testimony before this Chamber.[915] The Chamber accepts GDD's continued narrative of the events 7 April 1994, which discusses the follow-up meeting to that of the same morning, where the weapons were delivered and the Accused said "I am leaving for Mukingo to monitor the situation, and we [can] get together again in the afternoon and then you [will] report to me on what you have done."[916] The Chamber finds that on the evening of 7 April 1994, that follow-up meeting did indeed happen, back at the canteen at the Nkuli *bureau communal*. Those that participated in the killings went to the canteen that evening and bought themselves celebratory drinks with the money they looted. The Accused arrived at the canteen some time later in his vehicle, and enquired, "[W]ell, gentlemen you have done what we promised each other?" The Witness and those present at the canteen assured the Accused that they had "eliminated everything". The Accused rewarded the men with drinks and money. The Accused then instructed the assailants "to fine-comb this area so that we do not have a single Tutsi left in the Gitwa *secteur*" Those present at this meeting promised to do so, and the Accused left.

(c) 7 April 1994—The Meeting with the Accused at the ISAE to Congratulate the Interahamwe *on Carrying Out the Massacres*

- **Evidence**

698. **Prosecution Witness GAO** testified that the Witness went to the ISAE on the evening of 7 April 1994. The Witness joined the Accused and Nyabusore, a close friend of the Accused and director of the ISAE. Nyabusore bought drinks for the Witness and the other *Interahamwe*. The Witness testified that the Accused told the *Interahamwe* "I hope you have killed everyone, that you have not spared anyone... by the way, you should be given beer so that you can also drink."[917] The Accused bought the *Interahamwe* beer after Nyabusore had already done so. In response to a question by the Defence that the ISAE was being used as a headquarters by UN observers in April 1994, the Witness testified that there were no UN forces there and that the premises were occupied by Nyabusore.[918]

699. **Defence Witness RHU23** testified that he went to the ISAE on the evening of 7 April 1994.[919] The Witness confirmed that he did not see the Accused at the ISAE.[920]

700. **Defence Witness RGM** testified that, on the evening of 7 April 1994, he was not aware of any members of the *Interahamwe* who went to the ISAE for a drink, nor did he know of anyone who went to the bar in the building owned by the Accused after the killings in Rwankeri *cellule*. The Witness further testified that the ISAE was closed on the evening of 7 April 1994; although he was not actually there himself.[921]

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[915] See above: Part III, Section K.
[916] See above: Part III, Section K.
[917] T. 23 July 2001, pp. 33-35 (GAO).
[918] T. 24 July 2001, pp. 51-52 (GAO).
[919] T. 24 September 2002, p. 76 (RHU23) (ICS).
[920] T. 25 September 2002, p. 35 (RHU23) (ICS).; T. 26 September 2002, p. 88 (RHU23)
[921] T. 18 November 2002, p. 71 (RGM); T. 19 November 2002, pp. 57-58 (RGM).

- **Findings**

701. The Chamber recalls the testimony of Defence Witness RHU23, who was a neighbour of the Accused from the time of secondary school, and finds his testimony before the Chamber to be filled with exaggerations and inconsistencies on important points, which came to light both during cross-examination and the questions from the Bench. The Chamber considers that the testimony of Defence Witness RHU23 lacks credibility.

702. The Chamber is satisfied as to the veracity of the evidence regarding GAO's account of the meeting at the ISAE on the evening of 7 April 1994. The Chamber finds that the *Interahamwe* were bought beers by the Director of the ISAE and the Accused, who were friends, and the Accused told the gathered *Interahamwe* that he hoped they had spared no one.

(d) 8 April 1994—The Accused Rebuffed a Plea to Stop the Killings

- **Evidence**

703. **Prosecution Witness GBH** testified that on 8 April 1994 he encountered the Accused, who was carrying a gun on his shoulder and was surrounded by the *Interahamwe*.[922] The Accused and the *Interahamwe* were inspecting bodies and searching for survivors. The Witness pleaded with the Accused to stop the killing, but the Accused rebuffed him. Witness GBH specified that "When I met him, he was carrying a gun. We greeted each other. We shook hands. Then he asked me, 'But, old man, what are you doing here?' And I replied, 'I've also come to see what's happening. I've come to see the dead bodies'. And I asked him to stop the killing. And I said, a lot of people were dead, and that it was now time to bury those dead bodies. He refused. He said, it was necessary to continue, look for those or hunt for those who had survived. And I let him continue."[923] .The Accused and the *Interahamwe* then went towards the house of a Tutsi woman named Rachelle in Byangabo Market to search for hiding Tutsis. The Witness did not see the Accused kill anyone.[924]

- **Findings**

704. The Defence attempted to cast doubt on the credibility of GBH by suggesting that he bore a grudge against the Accused, because the Accused had once appropriated some of his land for communal use, and GBH has still not received compensation. The Chamber has considered the credibility of Witness GBH and finds him to be a highly credible Witness. The Chamber is persuaded by his detailed and consistent testimony, his demeanour, and the balanced nature of his evidence. He was also ready to denounce his own son for taking part in killings during 1994. Moreover, in his demeanour, the Chamber was unable to detect any form of resentment or grudge borne against the Accused.

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[922] T. 17 July 2001, pp. 33 and 111 (GBH)..
[923] T. 17 July 2001, p 61 (GBH)..
[924] T. 17 July 2001, pp. 59-61 (GBH)..

705. The Chamber finds that, on 8 April 1994, Witness GBH met the Accused, who was carrying a gun on his shoulder and who was surrounded by the *Interahamwe*. The Accused and the *Interahamwe* were inspecting bodies and searching for survivors. Armed with the feeling of familiarity with the Accused and the privilege of his old age, Witness GBH approached the Accused and pleaded with the Accused to stop the killings. However, in the words of GBH, the Accused rebuffed him, saying "that it was necessary to continue, look for those or hunt for those who had survived".

(e) 8 April 1994—The Feast at a Bar Owned by the Accused to Celebrate the Massacres in Mukingo Commune

- **Evidence**

706. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

707. **Prosecution Witness GDQ** testified that on 8 April 1994, the *Interahamwe* organized a feast at a bar owned by the Accused to congratulate themselves on their victory the day before.[925] The Witness stated that, in the presence of the Accused,[926] they sang a song with the words "*Tuzu, tsemba tsembe*", which means to exterminate something you hope to have disappear completely. According to the Witness, when the *Interahamwe* sang the song they meant persons who were considered the enemies of the country, in other words, the Tutsi-Bigogwe.[927]

- **Findings**

708. The Chamber has already found that on the evening of 7 April 1994 there were two separate meetings where the *Interahamwe* drank together in a congratulatory fashion after the day's killings. The Chamber finds GDQ's account to be credible, and that a feast was held at the Accused's bar on the evening of 7 April 1994 where the *Interahamwe* feasted together and sang songs after the day's killings. The Accused was present during this event.

(f) 8 April 1994—The Killing of a Tutsi Woman at the Roadblock in Front of the Accused's Shop is Byangabo Market

- **Evidence**

709. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

710. **Prosecution Witness GDQ** testified that, between 3:00pm and 4:00pm on 8 April 1994, he saw the Accused at a roadblock in front of his shop where the *Interahamwe* were

[925] T. 5 December 2001, pp. 55, 100-103 (GDQ). (ICS).
[926] T. 5 December 2001 p.30 (GDQ).
[927] T. 5 December 2001, pp. 30-31 (GDQ).

showing him the Tutsi wife of one Kanoti and their son.[928] An *Interahamwe* by the name of Musafiri killed the wife and her son in the presence of the Accused. The Witness testified that as this was happening, the Accused was heard to have said, "No Tutsi should survive at Mukingo."[929] The *Interahamwe* did not kill Kanoti, who was Hutu.[930]

711. **Defence Witness MLNL** testified that he is a relative of Kanoti, and that he knows that Kanoti's first wife, who was a Hutu and whose name was Valentine Ayingorore, was alive in March 2000. The Witness also testified that "Kanoti normally married from time to time. He took a wife today, he left her tomorrow, he took another and that is how he was".[931]

- **Findings**

712. The Chamber has assessed the testimony of Prosecution Witness GDQ regarding a killing that he witnessed at a roadblock. Prosecution Witness GDQ testified as to the killing of a Tutsi woman and her son, at a roadblock in front of GDQ's house, on 8 April 1994. He identified the woman who was killed as "Kanoti's Wife". The Defence challenged both the proposition that Kanoti's wife was killed at that roadblock in 1994, and the credibility of Prosecution Witness GDQ, by calling Defence Witness MLNL, who testified that Kanoti's wife was still alive in Martch 2000.

713. Having considered the testimony of Defence Witness MLNL, the Chamber observes that this Witness also testified that Kanoti had married several times. Thus, there is the distinct possibility that he did indeed see Kanoti's wife alive in 2000, but that a different or previous wife of Kanoti was killed at a roadblock in 1994. There is also the possibility that Witness GDQ did not correctly identify, as "Kanoti's wife", the woman who accompanied Kanoti that day. To the Chamber, this discrepancy is sufficient to raise a reasonable doubt regarding the identity of the woman about whom GDQ testified as having been killed at the roadblock. The doubt raised here does not, however, damage Prosecution Witness GDQ's credibility on this event in general.

714. Thus, having considered all the evidence, the Chamber finds that a woman who was thought to be Tutsi and her son were singled out at a roadblock in front of Witness GDQ's house on 8 April 1994, and subsequently killed by an *Interahamwe* named Musafiri. Kanoti, a Hutu who was also present, was not killed. The Accused was present at the roadblock during this event, and he was heard saying, "No Tutsi should survive at Mukingo".

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[928] T. 5 December 2001, pp. 55, 100, 103 (GDQ) (ICS).
[929] T. 5 December 2001, p. 39 (GDQ).
[930] T. 5 December 2001, pp. 38-42 (GDQ).
[931] T. 11 December 2002, p. 62 (MLNL).

O. Paragraph 5.6 of the Indictment

1. Allegations

715. Paragraph 5.6 of the Indictment reads:

> During the course of the events referred to in this indictment, the Accused had the authority to issue circulation passes (*laissez-passer*) to persons in the *commune* who were eventually evacuated from the *commune* but he refused to exercise this authority to prevent or stop the killings of Tutsis in his *commune*. Rather he employed various means including roadblocks to deny them free movement within and outside the *commune*.

716. The Defence claimed that the Accused, within the meaning of Article 6(3) of the Tribunal's Statute, was not an individual who had any supervisory authority or responsibility during the temporal jurisdiction of this Tribunal. Furthermore, the Defence contended that, contrary to the Prosecutor's assertions, the Accused did not have the material ability to prevent the alleged crimes committed in April 1994.[932]

2. Evidence

717. In this section the Chamber considers the following evidence in addition to the relevant evidence presented in Part II and in the previous sections of this Part III.

(a) The Accused was in a Position, as a Leader of the Interahamwe *and MRND and as* Bourgmestre*, to Prevent the Killing of Tutsis*

718. **Prosecution Witness GBH** testified that if the Accused was not the leader of the *Interahamwe*, "a man of his position as a *bourgmestre* could [have] had the power to stop or lock [up] the young people wearing uniform, engaged in training, singing and dancing."[933]

719. **Prosecution Witness GBE** testified that the Accused never bothered the *Interahamwe* even when they were "molesting or harassing" people, even though the Accused was *bourgmestre*.[934]

720. **Prosecution Witness GDQ** testified that, even after the Accused was suspended from being *bourgmestre*, the Accused continued to appear as a leader within the community.[935] The Witness maintained that, during the events of April 1994, in actual fact the Accused never lost the position of *bourgmestre* because he conducted himself like a *bourgmestre*.[936]

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[932] T. 4 July 2001, pp. 58-59 (Opening Statements); Defence Closing Brief, paras. 57 and341
[933] T. 17 July 2001, p. 104 (GBH). See also French Transcripts: T. 17 Juillet 2001 (GBH) for ascertaining the meaning of the words used by the Witness.
[934] T. 9 July 2001, p. 76 (GBE) (ICS).
[935] T. 5 December 2001, p. 10 (GDQ).
[936] T. 5 December 2001, p. 93 (GDQ).

721. **Prosecution Witness GBG** testified that the Accused was *bourgmestre* in Mukingo in charge of administration and "guaranteeing security for the population". However, according to the Witness, the Accused did not fulfil this obligation because people in the community were killed and he "had a role to play in their death."[937]

(b) 8 April 1994—The Accused Rebuffed a Plea to Stop the Killings

722. **Prosecution Witness GBH** testified that on 8 April 1994 the Accused rebuffed a plea to stop the killings.[938]

(c) Individuals were Killed and/or Raped by the Interahamwe *in the Presence of the Accused*

723. **Prosecution Witnesses GAO** and **GDQ** gave eyewitness testimony that the Accused was present at Byangabo Market on the morning of 7 April 1994 during the murder of a Tutsi named Rukara.[939]

724. **Prosecution Witness GBV** testified that the Accused was present at the home of Rudatinya in Rwankeri *cellule* on the morning of 7 April 1994 when a Tutsi girl was killed.[940]

725. **Prosecution Witnesses GBG** and **ACM** gave eyewitness testimony that the Accused was present at Munyemvano's compound on the morning of 7 April 1994 and orchestrated the massacre that occurred there. Furthermore, Witness GBG suggested that the killing of Gateyiteyi by the Accused was a signal for the *Interahamwe* to begin the massacre at Munyemvano's compound. Witness ACM continued that the Accused then supervised the movement of Tutsis from at Munyemvano's compound to Busogo Parish, where the survivors were killed.[941]

726. **Prosecution Witness GDO** testified that the Accused was present and directed the *Interahamwe* to rape Tutsi women on the morning of 7 April 1994, in direct consequence of which her handicapped daughter was raped and killed.[942]

727. **Prosecution Witnesses GDD** and **GAO** testified that the Accused visited the *Interahamwe* gathered at a canteen in Nkuli *commune* and at the ISAE in Mukingo *commune* to celebrate the killing of Tutsis.[943]

728. **Prosecution Witnesses GDQ** and **GBE** gave testimony that the Accused was seen at roadblocks which were intended to apprehend Tutsis. Witness GDQ testified that the

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[937] T. 12 July 2001, pp. 29-30 (GBG).
[938] T. 17 July 2001, pp. 59-61; See above: Part III Section N
[939] See above: Part III, Section K
[940] See above: Part III, Section K
[941] See above: Part III, Section K
[942] See above: Part III, Section K
[943] See above: Part III, Section K

Accused was present when a Tutsi woman was picked out and killed by *Interahamwe* manning the roadblock.[944]

729. **Prosecution Witnesses GAO** and **GAP** testified that the Accused provided material assistance to the assailants who attacked the Ruhengeri Court of Appeal, where Tutsis had gathered in refuge.[945]

730. The Defence did not address this issue through specific witness testimony. For testimonies in relation with the allegation that the Accused had no authority in Mukingo *commune* during the relevant period, see above: Part III, Section E. For testimonies from Defence witnesses on the Accused's whereabouts during the events of April 1994,see above: Part II, Section H.[946] See also the relevant testimony of Defence Witnesses who affirmed that the Accused was not present at the massacre sites.[947]

731. **The Accused** testified that he did not observe any killings after 26 June 1994, and that there were no killings during his term as a *Bourgmestre*. Each morning, the report of the *conseillers* kept him informed of what was going on in the *commune*.[948]

732. The Accused testified that when he recovered his position as *Bourgmestre*, his first aim was to stabilise the situation—part of his *commune* was controlled by the RPF—and maintain peace within the population.[949]

733. The Accused testified that his priorities when he recovered his position, for two weeks, were the safety of the population, their welfare and peaceful coexistence[950]

734. The Accused testified that he only heard later on the radio the news on the massacres that had taken place in Rwankeri and Busogo. When he became *Bourgmestre* again he took measures to find out what had happened. He heard about the number of Tutsis who were killed at the Convent. He had a religious service organised in memory of the victims, a week after this tragedy that happened in April 1994.[951]

735. The Accused testified that the massacres ended in April 1994. In June when he recovered his position there was no massacre. At that moment, he saw Tutsi who were still alive. The survivors came out of their hiding places. Nobody persecuted the Tutsis or even the Hutus.[952] In June 1994, he tried to find the survivors and paid them a visit.[953]

736. The Accused testified that most of the perpetrators of the massacres were people who had deserted the army. Displaced people had participated in the acts of violence. He

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[944] See above: Part III, Section K
[945] See above: Part III, Section K
[946] See above: Part II, Section H.
[947] See above: Part III Sections K and L.
[948] T.14 April 2003, pp. 41-42 (ACCUSED); Defence Exhibits, D55A and D55B.
[949] T. 14 April 2003, p. 49 (ACCUSED); Defence Exhibits, D55A and D55B.
[950] T.23 April 2003, p. 46 (ACCUSED).
[951] T. 22 April 2003, p. 31 (ACCUSED).
[952] T. 22 April 2003, p. 38 (ACCUSED).
[953] T. 23 April 2003, p. 48 (ACCUSED).

was then working in collaboration with *secteur* and *cellule* authorities. The relevant organs of the Rwandan Office of the Prosecutor had carried out investigations. In June 1994, he had put some of the authors of the massacres in jail including the perpetrators of the crimes committed in April in Mukingo *commune*. Moussafori [Musafiri] was among the people he arrested and jailed. [954]

737. The Accused testified that when he was *bourgmestre* a hunt for delinquents and criminals was carried out. Some were put in jail then released because there was no food to give them. Unfortunately, the investigations that were conducted produced no result. The Accused asked the Police and the *conseillers* for information. They wanted to find the perpetrators of the massacres. They had no jail. They tried to conduct a census of the people who had been killed.[955]

738. The Accused testified that when he became a *bourgmestre* for the second time, his safety was not guaranteed. The soldiers that had deserted were threatening him. Part of Mukingo *commune* had been deserted. Many people had been massacred by the RPF. People were fleeing the massacres. It was even being said that the RPF had infiltrated the area. No civil servant could do their job, as they wanted. During the night, the Accused could not stay in Mukingo. He was only there in the daytime and was moving about accompanied by the *commune* police. There were RPF sympathisers who were working in the *commune*. People from the RPF knew the Accused, and he could not hide from them. It was then that his family ran away, a week before he himself left.[956]

3. Findings

739. The Chamber recalls its previous findings to the effect that:

- The Accused served as *bourgmestre* of Mukingo *commune* from 1988 to 1993. The Accused was removed from office on February 1993. Following the death of *bourgmestre* Harerimana on 8 April 1994, the Accused was appointed *bourgmestre* of Mukingo, for a second time, on 26 June 1994.[957]
- The Accused remained in the post of *bourgmestre* until his departure from Rwanda in mid-July 1994.[958]
- The Accused was a leader of *Interahamwe* with control over the *Interahamwe* in Mukingo *commune*. He also had influence over the *Interahamwe* of Nkuli *commune* from 1 January 1994 to July 1994. [959]
- The Accused procured weapons for the *Interahamwe* to use during the massacres.[960]
- The Accused arrived at the Mukingo *bureau communal* on the morning of 7

[954] T. 22 April 2003, p. 39 (ACCUSED).
[955] T. 23 April 2003, p. 46 (ACCUSED).
[956] T. 22 April 2003, p. 55 (ACCUSED).
[957] See above: Part III, Section E.
[958] See above: Part III, Section E.
[959] See above: Part III, Section H.
[960] See above: Part III, Section K.

April 1994, between the hours of 7:00am and 8:00 am.[961]

- Tutsis residing in Kinyababa *cellule* in Nkuli *commune* were attacked on the morning of the 7 April 1994.[962] This attack was carried out in furtherance of the agreement reached at the previous night's meeting,[963] in which several local officials were present, including the Accused, and Iyakaremye, who was the President of the CDR party in Gitwa *secteur*. The weapons procured by the Accused, which arrived early that morning at the Nkuli *bureau communal*,[964] were used in the attack. Furthermore, Witness GDD, amongst others, reported back to the Accused at the end of the day on what had been achieved, and assured the Accused that they had "eliminated everything".[965]
- The Accused assembled members of the *Interahamwe* at Byangabo Market on the morning of 7 April 1994, and instructed them to "[k]ill and exterminate all those people in Rwankeri" and to "exterminate the Tutsis". He also ordered them to dress up and "start to work".[966]
- Tutsi civilians were attacked or killed in Busogo Hill, Rwankeri *cellule*, Mukingo *Commune*, in their residence or at their places of shelter on 7 April 1994, as alleged in the Indictment. The Accused participated in this attack by directing the *Interahamwe* from Byangabo Market towards Rwankeri *cellule*, to join that attack, and by acting as a liaison with Mukamira camp for military and weapons assistance.[967]
- On 7 April 1994, the Accused transported armed men in the back of a red Toyota Hilux vehicle from the direction of Byangabo Market towards the direction of Busogo Parish, but that this vehicle stopped on the way. When the Accused arrived at the home of Rudatinya where the killings were happening, which is located on the way from Byangabo Market to Busogo Parish, he gave directions to the attackers that "some of them should go to the right and others to the left".[968]
- Tutsis were attacked and killed in their residences or at their places of shelter within the Mukingo *commune*, specifically at the home of Rudatinya. The Accused ordered, supervised and participated in this attack. In relation to this event, the Accused, from a position of authority over the *Interahamwe*, assisted and encouraged them in their actions during the course of the day on 7 April 1994, as alleged in general terms in paragraph 5.9 of the Indictment.[969]
- With specific reference to paragraphs 5.3, 5.4 and 5.9 of the Indictment, on 7 April 1994 many Tutsi men, women and children were attacked and massacred at a place of shelter within the Mukingo *commune*, in this case the place known as Munyemvano's compound in Rwankeri *cellule*. The Accused was present during the attack and, in his position of authority over the *Interahamwe*

[961] See above: Part III, Section K.
[962] See above: Part III, Section K.
[963] See above: Part III, Section K.
[964] See above: Part III, Section K.
[965] See above: Part III, Section K.
[966] See above: Part III, Section K.
[967] See above: Part III, Section K.
[968] See above: Part III, Section K.
[969] See above: Part III, Section K.

attackers, commanded and supervised the attack. The *Interahamwe* attackers involved in the attack at Munyemvano's compound used traditional weapons, guns and grenades to slaughter their Tutsi victims.[970]

- There was a killing of a large number of Tutsis at the Convent at Busogo Parish on the morning of 7 April 1994. Going by the number of bodies buried the following day, approximately 300 people died in the attack. Members of the *Interahamwe* were involved as assailants in the attack.[971]
- Prosecution Witness GDD, an *Interahamwe* member, went out on 8 April 1994 and murdered eight Tutsis. His victims, who he was able to name, were a Tutsi woman and seven children, who were of mixed Tutsi and Hutu ethnicity. Witness GDD stated that he committed these murders in Gitwa *secteur* in the Nkuli *commune*, in furtherance of the Accused's order to "fine comb" the Nkuli *commune* for Tutsis.[972]
- On the evening of 7 April 1994, the *Interahamwe* were bought beers by the Director of the ISAE and the Accused, who were friends, and the Accused told the gathered *Interahamwe* that he hoped they had not spared anyone.[973]
- There was a feast was held at the Accused's Bar on the evening of 7 April 1994 where the *Interahamwe* feasted together and sang songs after the day's killing. The Accused was present during this event.[974]
- A woman who was thought to be Tutsi and her son were singled out at a roadblock in front of Witness GDQ's house on 8 April 1994, and subsequently killed by an *Interahamwe* named Musafiri. Kanoti, a Hutu who was also present, was not killed. The Accused was present at the roadblock during this event and was heard to have said "No Tutsi should survive at Mukingo".[975]
- The Accused held and maintained effective control over *Interahamwe* in Mukingo and Nkuli *communes* between 6 and 8 April 1994.[976]
- The Accused played a vital role as an organizer and facilitator of the *Interahamwe* and other attackers during the massacre at the Ruhengeri Court of Appeal on or around 14 April 1994. He did this by procuring weapons, rounding up the *Interahamwe* and facilitating their transportation to the Ruhengeri Court of Appeal by supplying them with petrol. The *Interahamwe* were to assist in killing the Tutsis who had been taken from Ndusu *Commune* in Busengo sub-*prefecture* and left at the Ruhengeri Court of Appeal, and who had until that point been successfully resisting attacks by the local militia to exterminate them.[977]
- Regarding the attack at the Ruhengeri Court of Appeal, the Accused held and maintained effective control over the attacking *Interahamwe* from Mukingo and

[970] See above: Part III, Section K.
[971] See above: Part III, Section K.
[972] See above: Part III, Section K.
[973] See above: Part III, Section K.
[974] See above: Part III, Section K.
[975] See above: Part III, Section K.
[976] See above: Part III, Section K.
[977] See above: Part III, Section K.

Nkuli *communes* from 6 April until at least 14 April 1994.[978]

- On 8 April 1994, Witness GBH met the Accused, who was carrying a gun on his shoulder and who was surrounded by the *Interahamwe*. The Accused and the *Interahamwe* were inspecting bodies and searching for survivors. Witness GBH pleaded with the Accused to stop the killings. But the Accused shunned this plea saying "that it was necessary to continue, look for those or hunt for those who had survived".[979]

740. From the evidence presented in the present section and these findings regarding the Accused's active involvement in the killings that occurred in Mukingo, Nkuli and Kigombe *communes* in April 1994, it follows that the Accused knew that *Interahamwe* from Mukingo and Nkuli *communes*—who where under his effective control at that time—were participating in those killings. The Chamber finds that the Accused failed to take any measures to prevent or stop those acts. In making this finding, the Chamber found further corroboration in the testimony of Prosecution Witness GBH, who stated that he pleaded with the Accused to stop the killings but the Accused refused, saying that "it was necessary to continue, look for those or hunt for those who had survived".[980] Thus, even though the Prosecution failed to provide any evidence establishing that the Accused indeed had authority to issue circulation passes (*laissez-passer*) between the 1 January 1994 and 26 June 1994 or that he refused to do so, the Chamber finds that the Accused failed to prevent or stop the killings of early to mid April 1994 in Mukingo, Nkuli and Kigombe *communes*.

741. The Chamber considered the Accused's testimony that he attempted to punish those involved in these crimes, but does not find it credible. Therefore, the Chamber does not find it established that the Accused did in fact take measures to punish the attackers. The Chamber also finds, however, that the Prosecution did not prove that the situation prevailing at the end of June 1994 was such that the Accused, as the new *bourgmestre*, would have had the material ability to punish the perpetrators for the killings. Accordingly, the Chamber does not find that the Accused failed to punish the perpetrators.

742. The Chamber will consider the Accused's command responsibility under Article 6(3) under each relevant Count, below.[981]

[978] See above: Part III, Section K.
[979] See above: Part III, Section K.
[980] T. 17 July 2001, pp. 59-61 (GBH).
[981] See below: Part IV, Legal Findings.

Part IV Legal Findings

743. In the present Part, the Chamber will make its legal findings, on the basis of the factual findings made above in Parts II and III.

A. Judicial Notice

744. The Chamber took Judicial Notice[982] of the fact that:

> Between 1 January 1994 and 17 July 1994, Rwanda was a State Party to the Genocide Convention on the Prevention and Punishment of the Crime of Genocide (1948) – having acceded to it on 12 February 1975; and
>
> Between 1 January 1994 and 17 July 1994, Rwanda was a Contracting Party to the Geneva Conventions of 12 August 1949 and their Additional Protocol II of 8 June 1977 – having acceded to the Geneva Conventions of 12 August 1949 on 5 May 1964 and acceded to Protocols Additional thereto of 8 June 1977 on 19 November 1984.

B. Cumulative convictions

745. In almost every case tried before this Tribunal, the issue has arisen as to whether or not the accused may be convicted of multiple offences based on the same facts. In *Musema*,[983] this Tribunal's Appeals Chamber finally had an opportunity to pronounce itself on the matter. This issue as it arose in that case was whether it was permissible to convict the prisoner of both genocide and extermination (as a crime against humanity) based on the same facts. Approving and adopting the applicable test as it was enunciated in the ICTY Appeals Chamber's case of *Delalic et al.* (the '*Celebici* Case'),[984] the ICTR Appeals Chamber in *Musema* held that it was permissible so to convict the prisoner.

746. In the *Celebiči* Case, the relevant test was set out as follows:

> Having considered the different approaches expressed on this issue both within this Tribunal and other jurisdictions, this Appeals Chamber holds that reasons of fairness to the accused and the consideration that only distinct crimes may justify multiple convictions, lead to the conclusion that multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.

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[982] *Prosecutor v. J. Kajelijeli*, Case No ICTR-98-44-A-T, Decision On The Prosecutor's Motion For Judicial Notice Pursuant To Rule 94 Of The Rules (TC), 16 April 2002, Annex A.
[983] *Musema*, Judgment (AC), 16 November 2001, paras. 346-370.
[984] *Celibici (Delalic et al.)*, Judgment (AC), 20 February 2001, para. 370.

> Where this test is not met, the Chamber must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld. Thus, if a set of facts is regulated by two provisions, one of which contains an additional materially distinct element, then a conviction should be entered only under that provision.

747. In the *Musema* Case, the ICTR Appeals Chamber also noted as follows:

> In the Jelisic Appeal Judgment, ICTY Appeals Chamber adopted the reasoning it had followed in the Celebici case, and held that the multiple convictions entered under Article 3 and Article 5 of ICTY Statute are permissible because each Article contained a distinct element requiring proof of a fact not required by the other Article.

748. Having reviewed these ICTY cases, the Appeals Chamber in *Musema* approved the test therein indicated as one that "reflects general, objective criteria enabling a Chamber to determine when it may enter or affirm multiple convictions based on the same acts"[985] and then confirmed the test as "the test to be applied with respect to multiple convictions arising under ICTR Statute."[986]

749. As regards the elements of the offences to be taken into consideration in the application of this test, the ICTR Appeals Chamber said as follows:

750. The Appeals Chamber further endorses the approach of the *Celebici* Appeal Judgment, with regard to the elements of the offences to be taken into consideration in the application of this test. In applying this test, *all* the legal elements of the offences, including those contained in the provisions' introductory paragraph, must be taken into account.[987]

751. Applying the foregoing analysis to the issue in the *Musema* Case, the Appeals Chamber held as follows:

> Applying the provisions of the test articulated above, the first issue is whether a given statutory provision has a materially distinct element not contained in the other provision, an element being regarded as materially distinct from another if it requires proof of a fact not required by the other.
>
> Genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial or religious group; this is not required by extermination as a crime against humanity. Extermination as a crime against humanity requires proof that the crime was committed as a part of a widespread or systematic attack against a civilian population, which proof is not required in the case of genocide.
>
> As a result, the applicable test with respect to double convictions for genocide and extermination as a crime against humanity is satisfied; these convictions are permissible. Accordingly, Musema's ground of appeal on this point is dismissed.

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[985] *Musema*, Judgment (AC), 16 November 2001, para. 363.
[986] *Musema*, Judgment (AC), 16 November 2001, para. 363.
[987] *Musema*, Judgment (AC), 16 November 2001, para. 363.

752. In deciding the issue as it did on that occasion, however, the Appeals Chamber declined to pronounce itself on the question of whether multiple convictions under different Articles of the Statute are always permitted.[988]

753. The Chamber considers that in the present case there is no need to pronounce on the same question, especially as the Chamber has not been invited to do so by the Parties.

C. Criminal responsibility

1. Indictment

754. The Indictment alleges that :

> For all of the acts described in the paragraphs specified in each of the counts below, the Accused either planned, incited to commit, ordered, committed, or in some other way aided and abetted the planning, preparation or execution of the said acts,
>
> And,
>
> The Accused knew, or had reason to know, that his subordinates were preparing to commit or had committed one or more of the acts referred to in Articles 2 to 4 of the statute of the Tribunal and failed to take the necessary and reasonable measures to prevent the said acts from being committed or to punish those who were responsible.

2. The Statute

755. The Article 6 of the Statute on Individual Criminal Responsibility reads:

> 1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.
>
> 2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
>
> 3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
>
> 4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

[988] *Musema*, Judgment (AC), 16 November 2001, para. 368.

3. Jurisprudence

(a) Responsibility under Article 6.1 of the Statute

756. Article 6(1) addresses criminal responsibility for unlawful conduct of an accused and is applicable to all three categories of crimes (genocide and derivative crimes; crimes against humanity; and violations of Article 3 Common to the Geneva Conventions and Additional Protocol II).

757. Article 6(1) reflects the principle that criminal responsibility for any crime in the Statute is incurred not only by individuals who physically commit that crime, but also by individuals who participate in and contribute to the commission of a crime in other ways, ranging from its initial planning to its execution, as specified in the five categories of acts in this Article: planning, instigating, ordering, committing, or aiding and abetting.[989]

758. Pursuant to Article 6(1), an individual's participation in the planning or preparation of an offence within the Tribunal's jurisdiction will give rise to criminal responsibility only if the criminal act is actually committed. Accordingly, crimes which are attempted but not consummated are not punishable, except for the crime of genocide, pursuant to Article 2(3)(b),(c) and (d) of the Statute.[990]

759. Jurisprudence has established that for an accused to incur criminal responsibility, pursuant to Article 6(1), it must be shown that his or her participation has substantially contributed to, or has had a substantial effect on, the completion of a crime under the Statute.[991]

760. The elements of the crimes of genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions and Additional Protocol II, articulated in Articles 2 to 4 of the Statute, are inherent in the five forms of criminal participation enumerated in Article 6(1), for which an individual may incur criminal responsibility. These five forms of participation are discussed below.

- **Forms of Participation**

(i) Planning

761. "Planning", implies that one or more persons contemplate a design for commission of a crime at both the preparatory and execution phases.[992] The existence of a plan may be

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[989] *Semanza*, Judgment (TC), para. 377; *Kayishema and Ruzindana*, Judgment (AC), para. 185; *Musema*, Judgment (TC), para. 114; *Rutaganda*, Judgment (TC), para. 33; *Kayishema and Ruzindana*, Judgment (TC), paras. 196-197; *Akayesu*, Judgment (TC), para. 473.

[990] *Semanza*, Judgment (TC), para. 378; *Musema*, Judgment (TC), para. 115; *Rutaganda*, Judgment (TC), para. 34; *Akayesu*, Judgment (TC), para. 473.

[991] *Kayishema and Ruzindana*, Judgment (AC), paras. 186 and 198; *Ntakirutimana*, Judgment (TC), para. 787; *Bagilishema*, Judgment (TC), paras. 30, 33; *Musema*, Judgment (TC), para. 126; *Rutaganda*, Judgment (TC), para. 43; *Kayishema and Ruzindana*, Judgment (TC), paras. 199 and 207; *Akayesu*, Judgment (TC), para. 477.

[992] *Semanza*, Judgment (TC), para. 380; *Blaskic*, Judgment, TC , para. 386; *Musema* , Judgment (TC), para. 119; *Akayesu*, Judgment (TC), para. 480.

demonstrated through circumstantial evidence.[993] In *Bagilishema*, it was held that the level of participation in planning to commit a crime must be substantial, such as actually formulating a plan or endorsing a plan proposed by another individual.[994]

(ii) Instigating

762. The second form of participation, "instigating", involves prompting another person to commit an offence.[995] Instigation need not be direct and public.[996] Both positive acts and omissions may constitute instigation.[997] Instigation is punishable on proof of a causal connection between the instigation and the commission of the crime.[998]

(iii) Ordering

763. The third form of participation, "ordering", implies a situation in which an individual with a position of authority uses such authority to impel another, who is subject to that authority, to commit an offence.[999] No formal superior-subordinate relationship is required for a finding of "ordering" so long as it is demonstrated that the accused possessed the authority to order.[1000]

(iv) Committing

764. To "commit" a crime usually means to perpetrate or execute the crime by oneself or to omit to fulfil a legal obligation in a manner punishable by penal law. In this sense, there may be one or more perpetrators in relation to the same crime where the conduct of each perpetrator satisfies the requisite elements of the substantive offence.[1001]

(v) Aiding and Abetting in the Planning, Preparation, or Execution

765. "Aiding and abetting" relate to discrete legal concepts.[1002] "Aiding" signifies providing assistance to another in the commission of a crime. "Abetting" signifies facilitating, encouraging, advising or instigating the commission of a crime.[1003] Legal usage, including in the Statute and case law of ICTR and ICTY, so often inter-links the two terms that they are treated as a broad singular legal concept.[1004]

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[993] *Blaskic*, Judgment (TC), para. 278.
[994] *Bagilishema*, Judgment (TC), para 30.
[995] *Semanza,* Judgment (TC), para. 381; *Bagilishema*, Judgment, TC, para. 30; Akayesu, Judgment (TC), para. 482.
[996] *Semanza,* Judgment (TC), para. 381 ; *Akayesu*, Judgment (AC), paras. 478-482.
[997] *Kordic and Cerkez*, Judgment (TC), para. 387.
[998] *Semanza*, Judgment (TC), para. 381; *Bagileshema*, Judgment (TC), para. 30.
[999] *Semanza,* Judgment (TC), para. 382; *Bagilishema,* Judgment (TC), para. 30; *Rutaganda,* Judgment (TC), para. 39 ; *Akayesu,* Judgment (TC), para. 483.
[1000] *Kordic and Cerkez*, Judgment (TC), para. 388.
[1001] *Kayishema and Ruzindana*, Judgment (AC), para. 187; *Tadic*, Judgment (AC), para. 188; *Kunarac, Vukovac and Kovac,* Judgment (TC), para. 390; *Semanza*, Judgment (TC), para. 383.
[1002] *Semanza*, Judgment (TC), para. 385; *Akayesu*, Judgment (TC), para. 484.
[1003] *Semanza*, Judgment (TC), para. 384; *Ntakirutimana*, Judgment (TC), para. 787; *Akayesu*, Judgment, para. 484.
[1004] *Semanza*, Judgment (TC), para. 384, referring to Mewett & Manning, *Criminal Law*(3rd ed. 1994), p. 272 (noting

766. "Aiding and abetting", pursuant to the jurisprudence of the *ad hoc* Tribunals, relates to acts of assistance that intentionally provide encouragement or support to the commission of a crime.[1005] The act of assistance may consist of an act or an omission, and it may occur before, during or after the act of the actual perpetrator.[1006] The contribution of an aider and abetter before or during the fact may take the form of practical assistance, encouragement or moral support, which has a substantial effect on the accomplishment of the substantive offence.[1007] Such act of assistance before or during the fact need not have actually caused the consummation of the crime by the actual perpetrator, but it must have had a substantial effect on the commission of the crime by the actual perpetrator.[1008]

- **Mens Rea**

767. To be criminally culpable of a crime, the perpetrator who of the crime must possess the requisite *mens rea* for that underlying crime.[1009]

768. For purposes of accomplice liability, the *mens rea* requirement will be fulfilled where an individual acts with the knowledge that his or her act(s) assist in the commission of the crime by the actual perpetrator(s). While the accused need not know the precise offence being committed by the actual perpetrator(s), the accused must be aware of the essential elements of the crime, and must be seen to have acted with awareness that he or she thereby supported the commission of the crime.[1010]

769. An accused's position of superior authority, in and of itself, does not suffice to conclude that the accused, by his or her mere presence at the scene of the crime, encouraged or supported the offence. The presence of the accused at the crime site, however, may be perceived as a significant *indicium* of his or her encouragement or support.[1011] The requisite *mens rea* may be established from an assessment of the circumstances, including the accused's prior and similar behaviour, failure to punish or verbal encouragement.[1012]

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that aiding and abetting are "almost universally used conjunctively").

[1005] *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Celebici*, Judgment (AC), para. 347; *Semanza*, Judgment (TC), para. 385.*Ntakirutimana*, Judgment (TC), para. 787; *Bagilishema*, Judgment (TC), paras. 33, 36; *Musema*, Judgment (TC), paras. 125-126; *Kayishema and Ruzindana*, Judgment (TC), paras. 200-202; cf *Akayesu*, Judgment (TC), para. 484.

[1006] *Kunarac, Vukovic and Kovac*, Judgment, (TC), para. 391; *Semanza*, Judgment, (TC), para. 386.

[1007] *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Kunarac, VuKovac and Kovac*, Judgment (TC), para. 391; *Semanza*, Judgment (TC), para. 385.

[1008] *Kunarac, Vukovic and Kovac*, Judgment, (TC), para. 391; *Semanza*, Judgment, (TC), para. 386.

[1009] *Kayishema and Ruzindana*, Judgment (AC), para. 187; *Semanza*, Judgment (TC), para. 387.

[1010] *Kayishema and Ruzindana*, Judgment (AC), paras. 186-187; *Semanza*, Judgment (TC), para. 387; *Baglishema*, Judgment (TC), para. 32; *Kayishema and Ruzindana*, Judgment (TC), para. 201.

[1011] *Kayishema and Ruzindana*, Judgment (AC), para. 186; *Bagilishema*, Judgment (TC), para. 32; *Kayishema and Ruzindana*, Judgment (TC), para. 201.

[1012] *Semanza*, Judgment (TC), para. 388; *Kayishema and Ruzindana*, Judgment (TC), paras. 201 and 205. *Aleksovski*, Judgment (AC), para 162; *Vasiljevic*, Judgment (TC), para. 71; *Krnojelac*, Judgment (TC), paras. 75 and 90; *Kvocka*, Judgment (TC), paras. 255 and 262; *Kunarac*, Judgment (TC), para. 392; *Furundzija*, Judgment (TC), para. 249. But see *Ntakirutimana and Ntakirutimana*, Judgment (TC), para. 787 (stating that aiding and abetting, pursuant to Article 6(1) requires proof that an accused possessed the *mens rea* of the underlying crime, for example, the specific intent of genocide); *Akayesu*, (TC), paras. 485 and 547. The Trial Chamber observes that these cases do not provide any

(b) Responsibility Under Article 6(3) of the Statute

770. Article 6(3) of the ICTR Statute addresses the criminal responsibility of a superior by virtue of his or her knowledge of the acts and omissions of subordinates and for failure to prevent, discipline, or punish the criminal acts of his or her subordinates in the preparation and execution of the crimes charged. The principle of superior responsibility, which derives from the principle of individual criminal responsibility as applied in the Nuremberg and Tokyo trials, was subsequently codified in Article 86 of the Additional Protocol I to the Geneva Conventions in 1977. Article 6(3) of the Statute, which is applicable to genocide, crimes against humanity, and serious violations of Article 3 Common to the Geneva Conventions and Additional Protocol II, provides as follows:

> The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.[1013]

771. The jurisprudence of both the ICTR and the ICTY has recognised that a civilian or a military superior, with or without official status, may be held criminally responsible for offences committed by subordinates who are under his or her effective control.[1014] The chain of command between a superior and subordinates may be either direct or indirect.[1015]

772. The following three concurrent conditions must be satisfied before a superior may be held criminally responsible for the acts of his or her subordinates:

(i) There existed a superior-subordinate relationship between the person against whom the charge is directed and the perpetrators of the offence;

(ii) The superior knew or had reason to know that the criminal act was about to be or had been committed;[1016]

(iii) The superior failed to exercise effective control to prevent the criminal act or to punish the perpetrators thereof.[1017]

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explanation for treating the *mens rea* requirement for aiding and abetting, pursuant to Article 6(1) differently than the requirement for complicity in genocide, which does not require proof of the *mens rea* of the underlying crime.)

[1013] ICTR Statute, Article 6(3).

1014 Semanza, Judgment (TC), para. 400; Bagilishema, Judgment (AC), paras. 50 and 51; Kayishema and Ruzindana, Judgment (TC), para. 294; Musema, Judgment (TC), para. 148; Celebici, Judgment (AC), paras. 192-196.

1015 Semanza Judgment (TC), para. 400.

1016 i.e. crimes within the jurisdiction of the Tribunal.

1017 Celebici, Judgment (AC), paras. 189-198, 225-226, 238-239, 256 and 263; Celebici, Judgment (TC), para. 346; Blaskic, Judgment (TC), para. 294; Aleksovski, Judgment (TC), para. 69; Kordic, Judgment (TC), para. 401; Kunarac and Kovac, Judgment (TC), para. 395; Kayishema and Ruzindana, Judgment (TC), paras. 217-231; Bagilishema, Judgment (AC), paras. 26-62 ; Bagilishema, Judgment (TC), paras. 38-50; Semanza, Judgment (TC), para. 400; Niyitegeka, Judgment (TC), para.477.

- **Existence of a Superior-Subordinate Relationship**

773. The test for assessing a superior-subordinate relationship, pursuant to Article 6(3), is the existence of a *de jure* or *de facto* hierarchical chain of authority, where the accused exercised effective control over his or her subordinates as of the time of the commission of the offence. The cognisable relationship is not restricted to military hierarchies, but may apply to civilian authorities as well.[1018]

774. By effective control, it is meant that the superior, whether a military commander or a civilian leader, must have possessed the material ability, either *de jure* or *de facto*, to prevent or to punish offences committed by subordinates.[1019] The test to assess a superior-subordinate relationship, in the words of the Appeals Chamber in *Bagilishema* is:

> Whether the accused exercised effective control over his or her subordinates; this is not limited to asking whether he or she had *de jure* authority. The ICTY Appeals Chamber held in the *Čelebići* Appeal Judgment that '[a]s long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control.[1020]

- **Mens Rea Requirement That the Superior Knew or had Reason to Know**

775. To hold a superior responsible for the criminal conduct of subordinates, the Chamber must be satisfied that the superior possessed the requisite *mens rea*, namely that he or she knew or had reason to know of such conduct.

776. A superior in a chain of hierarchical command with authority over a given geographical area will not be held strictly liable for subordinates' crimes.[1021] While an individual's hierarchical position may be a significant *indicium* that he or she knew or had reason to know about subordinates' criminal acts, knowledge will not be presumed from status alone.[1022]

777. A superior is under a duty to act where he or she knew or had reason to know that subordinates had committed or were about to commit offences covered by Articles 2, 3, and 4 of the Statute.[1023]

[1018] *Celebici*, Judgment (AC), paras. 192-193 and 197-198.
[1019] *Celebici*, Judgment (AC), para. 186 ; *Bagilishema*, Judgment (AC), paras. 59-61.
[1020] *Bagilishema*, Judgment (AC), para. 61
[1021] *Semanza*, Judgement (TC), para. 404; *Bagilishema*, Judgment (TC), paras. 44-45; *Akayesu*, Judgment (TC), para. 489.
[1022] *Semanza*, (TC), para. 404; *Bagilishema*, Judgment (TC), para. 45.
[1023] *Semanza*, Judgement (TC), para. 405 ; *Bagilishema*, Judgment (TC), para.46; *Celebici*, Judgment (TC), paras. 384-

778. In according with current jurisprudence on Article 6(3), a superior will be found to possess, or will be imputed with, the requisite *mens rea* sufficient to incur criminal liability, where, after weighing a number of *indicia,* the Chamber is satisfied that (1) the superior had actual knowledge, established through direct or circumstantial evidence, that his or her subordinates were committing or were about to commit, or had committed an offence under the jurisdiction of the Statute or (2) information was available to the superior which would have put him or her on notice of offences committed by subordinates.[1024]

- **Effective Control of Subordinates to Prevent or Punish Their Criminal Acts**

779. Where it is demonstrated that an individual is a superior, pursuant to Article 6(3), with the requisite knowledge, then he or she will incur criminal responsibility only for failure to take "necessary and reasonable measures" to prevent or punish crimes subject to the Tribunal's jurisdiction committed by subordinates. Such measures have been described as those within the "material possibility" of the superior, even should the superior lack the "formal legal competence" to take the measures.[1025] Thus a superior has a positive duty to act in those circumstances in which he or she has effective control over the subordinates, and the extent of an individual's effective control, under the circumstances, will guide the assessment of whether he or she took reasonable measures to prevent, stop, or punish a subordinate's crimes.[1026]

4. Findings

780. The Chamber found that the Accused was a leader of *Interahamwe* with control over the *Interahamwe* in Mukingo *commune*, and that he also had influence over the *Interahamwe* of Nkuli *commune* from 1 January 1994 to July 1994 and that from 6 April 1994 to 14 April 1994, at least, he held and maintained effective control over *Interahamwe* in Mukingo and Nkuli *communes*.[1027]

781. Therefore the Chamber finds that at all relevant times pleaded in the Indictment, the Accused had a superior-subordinate relationship with the *Interahamwe* of Mukingo and Nkuli *Communes*.

386.

[1024] *Semanza,* Judgement (TC), para. 405; *Bagilishema,* Judgment (AC), para. 28; *Bagilishema,* Judgment (TC), para. 46; *Kayishema and Ruzindana,* Judgment (TC), para. 228; *Celebici,* Judgment (AC), para. 239; *Celebici,* Judgment (TC), paras. 390-393.

[1025] *Semanza,* Judgment (TC), para. 406; *Kayishema and Ruzindana*, Judgment (AC), para. 302; *Celebici*, Judgment (TC), para. 395.

[1026] *Semanza* Judgment (TC), para. 406; *Kayishema and Ruzindana* (TC), paras. 228-230.

[1027] See above: Part III, Sections H, paras.403-405 and Section K.

782. The Chamber will consider the elements of the individual criminal responsibility of the Accused under the Article 6(1) of the Statute and his responsibility as a superior under the article 6(3) of the Statute in the relevant sections below in relation with each count of the Indictment.

D. Genocide and Allied Crimes

783. Count 1 of the Indictment charges the Accused with conspiracy to commit genocide. Count 2 charges the Accused with genocide. Count 3 charges him with complicity to commit genocide and Count 4 charges the Accused with direct and public incitement to commit genocide.

1. The Statute

784. Article 2 of the Statute on Genocide reads:

> 1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.
>
> 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.
>
> The following acts shall be punishable:
>
> (a) Genocide;
>
> (b) Conspiracy to commit genocide;
>
> (c) Direct and public incitement to commit genocide;
>
> (d) Attempt to commit genocide;
>
> (e) Complicity in genocide.

2. Conspiracy to commit Genocide

(a) Indictment

785. Count 1 of the Indictment charges:

> *Count 1: Conspiracy to commit genocide, pursuant to Article 2(3)(b) of the Statute*
>
> Juvénal Kajelijeli by the acts or omission described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9
>
> Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9
>
> Conspired with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed CONSPIRACY TO COMMIT GENOCIDE, pursuant to Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal for Rwanda.

786. For the reasons indicated in Part III, Section A of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 1.

(b) Jurisprudence

787. The Trial Chamber in *Musema* held that conspiracy to commit genocide is to be defined as, "[a]n agreement between two or more persons to commit the crime of genocide."[1028] The agreement in a conspiracy is one that may be established by the prosecutor in no particular manner, but the evidence must show that an agreement had indeed been reached. The mere showing of a negotiation in process will not do. In this connection, we approve of the following observations of Professors Smith and Hogan:

> It may be that an agreement in the strict sense required by the law of contract is not necessary but the parties must at least have reached a decision to perpetuate the unlawful object. In *Walker* a conviction was quashed although it was "perfectly clear" that D had discussed with others the proposition of stealing a payroll, because it was not proved that they had got beyond the stage of negotiation when D withdrew.[1029]

[1028] *Musema* Judgment at para. 189; *Niyitegeka* Judgment at para. 423; *Ntakirutimana and Ntakirutimana* Judgment at para. 798

[1029] Smith and Hogan, *Criminal Law* p. 246. See also: G. Williams, *Textbook of Criminal Law* (1978), p..p. 351.

788. With respect to the *actus reus* of the crime of conspiracy to commit genocide it is the agreement which is punishable, whether or not it results in the actual commission of genocide.[1030]

789. In considering whether a person may be punished for both conspiracy to commit genocide and genocide itself, the Trial Chamber in *Musema* first looked at the practice of civil law systems by which, if the conspiracy is successful and the substantive offence is consummated, the accused will only be convicted of the substantive offence and not of the conspiracy.[1031]

790. The same Trial Chamber noted that under common law, an accused can in principle be convicted of both conspiracy and a substantive offence, in particular where the objective of the conspiracy extends beyond the offences actually committed. The Trial Chamber expressed the view that the common law approach has been the subject of criticism.[1032]

791. Finally, in *Musema* the Trial Chamber opted to adopt the definition most favourable to the Accused, whereby an accused cannot be convicted of both genocide and conspiracy to commit genocide on the basis of the same acts, in keeping with the intention of the Genocide Convention (1948) as shown in the *Travaux Preparatoires*.[1033]

792. On the other hand, the Trial Chamber in *Niyitegeka* while finding Niyitegeka guilty of the crime of genocide convicted and punished him for conspiracy to commit genocide as well.[1034]

793. In the particular circumstances of the case here under consideration, we do not feel called upon to express a preference regarding which of the *Musema* or *Niyitegeka* approach to follow.

(c) Findings

794. The Chamber found that there is insufficient evidence to prove beyond a reasonable doubt that, as charged in paragraph 4.9 of the Indictment, from late 1990 through about July 1994, the Accused conspired with others to destroy, wholly or partially, the civilian Tutsi population and eliminate members of the opposition, so that the MRND could remain in power.[1035] The Chamber also found that there was no evidence proving that the elimination of Tutsi was the objective of the training of the *Interahamwe* before the 6 April 1994.[1036]

[1030] *Musema,* Judgment (TC), para. 193.
[1031] *Musema,* Judgment (TC), para. 196.
[1032] *Musema,* Judgment (TC), para. 197.
[1033] Sixth Committee of the General Assembly, Third Session, Summary records of meetings, 21 September-10 December 1948.
[1034] *Niyitegeka,* Judgment (TC), paras. 429, 480 and 502.
[1035] See above: Part III, Section J.
[1036] See above: Part III, Section J.

795. The Chamber finds that the Prosecution has failed to prove beyond a reasonable doubt that the killings occurring after 6 April 1994 were the result of a conspiracy in which the Accused was involved, as pleaded by the Prosecution.

796. Therefore the Chamber finds that the Prosecution failed to prove beyond reasonable doubt that the Accused conspired with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy the Tutsi ethnical group.

797. The Chamber notes that the Prosecution made no attempt to demonstrate its allegation under Count 1 of the Indictment to the effect that the Accused "by omission" conspired to commit genocide, and that he bears responsibility for the acts of his subordinate in relation to conspiracy.

(d) Conclusion

798. Accordingly the Chamber finds the Accused NOT GUILTY on **Count 1**, CONSPIRACY TO COMMIT GENOCIDE.

3. Genocide

(a) Indictment

799. Count 2 of the Indictment charges:

> *Count 2: Genocide, pursuant to Article 2(3)(a) of the Statute*
>
> Juvénal Kajelijeli by the acts or omission described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 3.5, 3.6, 4.6, 4.6.1, 4.8, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9
>
> Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9
>
> Is responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed GENOCIDE, pursuant to Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal for Rwanda.

800. For the reasons indicated in Part III, Section A of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 2.

(b) Jurisprudence

801. The Tribunal is empowered to try the crime of Genocide under Article 2 of the Statute.

802. Article 2 of the Tribunal's Statute is a reproduction of Article II and III of the Convention on the Punishment of the Crime of Genocide, which was adopted on 9 December 1948.[1037]

803. As with other crimes, the crime of genocide requires a finding of both *mens rea* and *actus reus*. The *mens rea* for genocide comprises of the specific intent or *dolus specialis* described in the general clause of Article 2(2) of the Statute – *i.e.* the commission of a genocidal act '*with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*'. And the *actus reus* consists of any of the five acts listed under Article 2(2) of the Statute, as shown above.[1038]

- **Proof of Specific Intent**

804. In determining the specific intent of the crime of genocide it is instructive to consider the following pronouncement of Trial Chamber I in the *Akayesu* Case:

> "[i]ntent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against the same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of membership of a particular group, while excluding the members of other groups can enable the Chamber to infer the genocidal intent of a particular act."[1039]

805. The Chamber generally approves of this statement adding only that intent to commit a crime, even genocide, may not always be difficult or impossible to discern from the circumstances of the case.

806. In *Kayishema and Ruzindana*[1040], Trial Chamber II also agreed that it may be difficult to find explicit manifestations of intent by perpetrators. In those circumstances, the Chamber held, the perpetrator's actions, including circumstantial evidence, may

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[1037] The Draft Convention was approved by the General Assembly Plenary Session with 55 votes for, none against and no abstentions. The Convention was immediately signed by twenty States. Rwanda acceded, by legislative decree to the Convention on Genocide on 12 February 1975; *see also: Jelisic,* Judgment (TC), 14 December 1999, para. 60; *Akayesu,* Judgment (TC), 2 September 1998, para. 496.

[1038] See above: Part IV, Section D.

[1039] *Akayesu,* Judgment (TC), para. 523.

[1040] *Kayishema and Ruzindana,* Judgment (TC), para. 93.

provide sufficient evidence of intent.[1041] According to the Chamber, some of the indicia of intent may be "[e]vidence such as the physical targeting of the group or of their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing."[1042] In the ICTY *Jelisic* Judgment, the Commission of Experts Report was quoted to this effect: "[i]f essentially the total leadership of a group is targeted, it could also amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others - the totality per se may be a strong indication of genocide regardless of the actual numbers killed."[1043]

807. The Trial Chamber in *Bagilishema* stated that when demonstrating the 'specific intent' of an Accused through his words and deeds, a balance has to be struck between his words and deeds and his actual purposeful conduct, especially when his intention is not clear from what he says or does.[1044]

- **To destroy**

808. An Accused may be liable under Article 2 if he 'intends to destroy a [...] group.' The Trial Chambers of the Tribunal and particularly that in *Semanza* made reference to the Report of the International Law Commission which states that destruction within the meaning of Article 2 is "[t]he material destruction of a group either by physical and biological means and not the destruction of the national, linguistic, religious, cultural or other identity of a particular group."[1045]

- **In whole or in part**

809. Under Article 2, an accused may be liable if he 'intends to destroy in whole or in part a [...] group.' As has been explained in judgments of this Tribunal, in order to establish an intent to destroy 'in whole or in part', it is not necessary to show that the perpetrator intended to achieve the complete annihilation of a group from every corner of the globe. Nevertheless, the perpetrator must have intended to destroy more than an imperceptible number of the targeted group.[1046] In effect, the *Semanza* Trial Chamber was correct in observing that while the Prosecution must establish, beyond reasonable doubt,

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[1041] The Chamber drew conclusions from a legal text, which cited the Final Report of Commission of Experts to the effect that the specific intent may be inferred from sufficient facts such as the number of group members affected: see *Kayishema and Ruzindana,* Judgment (TC), para. 93.
[1042] *Kayishema and Ruzindana,* Judgment (TC), para. 93.
[1043] *Jelisic,* Judgment (TC), 14 December 1999, para. 82.
[1044] *Bagilishema,* Judgment (TC), 7 June 2001, para. 63; *Kayishema and Ruzindana,* Judgment (TC), para. 93.
[1045] *See* "ILC Report 1996; Draft Code of Crimes Against the Peace and Security of Mankind", p. 90; *Semanza,* Judgment (TC), 15 May 2003, para. 315; *Kayishema and Ruzindana,* Judgment (TC), para. 95.
[1046] *See* "ILC Report 1996; Draft Code of Crimes Against the Peace and Security of Mankind", p. 90; *Bagilishema,* Judgment (TC), para. 64; *Kayishema and Ruzindana,* Judgment (TC), para. 96; *Akayesu,* Judgment (TC), para. 496 - 499; *Semanza,* Judgment (TC), para. 316.

the intent of the perpetrator to destroy the target group in whole or in part, there is no numeric threshold of victims necessary to establish genocide.[1047]

810. The *Kayishema and Ruzindana* Trial Chamber quoted the Report of the Sub-Commission on Genocide where the Special Rapporteur stated that, "[t]he relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Articles II and III of the Genocide Convention, is strong evidence to prove the necessary intent to destroy a group in whole or in part."[1048]

- **Protected groups**

811. It is required to show under Article 2 that the Accused, in committing genocide intended to destroy 'a national, ethnical, racial or religious' group. Trial Chambers of this Tribunal have noted that the said concept enjoys no generally or internationally accepted definition, rather each concept must be assessed in the light of a particular political, social, historical and cultural context.[1049] Accordingly, "[f]or purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept [where] the victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction."[1050] A determination of the categorized groups should be made on a case-by-case basis, by reference to both objective and subjective criteria.[1051]

- **The acteus reus**

812. The *acteus reus* for the crime of genocide is provided for under Article 2(2) of the Statute. As the issues arising in the present case are so limited, the Chamber shall only review the meaning of the requirements: (a) "killing members of the group"; and (b) "causing serious bodily or mental harm to members of the group".

- **Killing Members of the Group**

813. It is clear from judgments of this Tribunal that in order to be held liable for genocide by killing members of the group, the Prosecutor must show that the perpetrator, killed one or more members of the group, while the perpetrator possessed an intent to destroy the group, as such, in whole or in part. Given that the element of *mens rea* in the killing has been addressed in the special intent for genocide, there is no requirement to prove a further element of premeditation in the killing.[1052] An analysis or the case law of this Tribunal also requires the evidence to show that such victim or victims either (a)

[1047] *Semanza,* Judgment (TC), para. 316.
[1048] *Kayishema and Ruzindana*, Judgment (TC), para. 93.
[1049] *Bagilishema,* Judgment (TC), para. 65; *Musema,* Judgment (TC), para. 161.
[1050] *Rutaganda,* Judgment (TC), para. 56; *Musema,* Judgment (TC), para. 161; *Semanza,* Judgment (TC), para. 317.
[1051] *Semanza,* Judgment (TC), para. 317.
[1052] *Semanza,*Judgment (TC), para. 319; *Bagilishema,* Judgment (TC), para. 55, 57 and 58; *Musema,* Judgment (TC), para. 155; *Rutaganda,* Judgment (TC), para. 49 and 50; *Kayishema and Ruzindana,* Judgment (TC), para. 103 ; *Kayishema and Ruzindana,* Judgment (AC), para. 151; *Akayesu,* Judgment (TC), para. 501.

belonged to the targeted ethnical, racial, national, or religious group[1053] or (b) was or were believed by the perpetrator to so belong.

- **Causing Serious Bodily or Mental Harm to Members of the Group**

814. Regarding the requirement under Article 2(2)(b) that in order to be held liable by causing serious bodily or mental harm to members of the group, the International Law Commission has indicated that this covers two types of harm that may be inflicted on an individual, namely bodily harm which involves some type of physical injury and mental harm which involves some type of impairment of mental faculties. The International Law Commission further observed that 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. [1054]

815. Trial Chambers of the Tribunal have held that what is 'bodily' or 'mental' harm should be determined on a case-by-case basis. They have held that 'serious bodily harm' does not necessarily have to be permanent or irremediable,[1055] and that it included non-mortal acts of sexual violence, rape, mutilations and interrogations combined with beatings and/or threats of death.[1056] As regards 'serious mental harm,' the Trial Chamber in *Kayishema and Ruzindana* has regarded this as including more than minor or temporary impairment of mental faculties such as the infliction of strong fear or terror, intimidation or threat.[1057] Perhaps, the state of the law in this regard is aptly captured by following conclusion drawn by the *Semanza* Trial Chamber after a review of the case law:

> The Chamber adopts the foregoing standards pronounced in *Akayesu* and *Kayishema and Ruzindana* as to the determination of serious bodily or mental harm. In addition, the Chamber finds that serious mental harm need not be permanent or irremediable.[1058]

816. This Chamber approves of the foregoing pronouncement as a proper reflection of the law on this subject.

(c) Findings

817. The Chamber found that it has been established for the purposes of this case that the Tutsi in Rwanda were an ethnic group.[1059]

818. The Chamber will consider successively the following issues: (1) intent to destroy in whole or in part the Tutsi ethnical group; (2) the *actus reus* of genocide ; (3) the

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[1053] *Semanza,* Judgment (TC), para. 319; *Semanza,*Judgment (TC), para. 55; *Semanza,*Judgment (TC), paras. 154 and 155; *Rutaganda,* Judgment (TC), para. 60; *Kayishema and Ruzindana,* Judgment (TC), para. 99; *Akayesu,* Judgment (TC), para. 499.
[1054] *See* ILC Report (1996), p. 91.
[1055] *Semanza,* Judgment (TC), para. 320; *Akayesu,* Judgment (TC), para. 502; *Kayishema and Ruzindana,* Judgment (TC), para. 108.
[1056] *Semanza,* Judgment (TC), para. 320; *Akayesu,* Judgment (TC), para. 502; *Kayishema and Ruzindana,* Judgment (TC), para. 108.
[1057] *Kayishema and Ruzindana,* Judgment (TC), para. 110; *Semanza,* Judgment (TC), para. 321.
[1058] *Semanza,* Judgment (TC), para. 322.
[1059] See above: Part III, Section C.

individual criminal responsibility of the Accused; (4) the responsibility of the Accused as a superior.

- **Intent to destroy in whole or in part the Tutsi ethnical group**

819. The Chamber found that at a meeting on the evening of 6 April 1994 following the death of the President of the Republic of Rwanda, at the Canteen next to the Nkuli *Commune* Office the Accused addressed those persons present - who were all of Hutu ethnic origin – saying to them "you very well know that it was the Tutsi that killed – that brought down the Presidential plane. What are you waiting for to eliminate the enemy?" The Chamber found that by "the enemy" the Accused meant the Tutsi ethnic group.

820. The Chamber found that on the morning of 7 April 1994 the Accused reminded those present at the Nkuli *Commune* Office of the understanding they had reached the previous evening and that it was now their "business to act".

821. The Chamber found that on the morning of 7 April, at the Mukingo *Commune* Office, the Accused asked *Bourgmestre* Harerimana for Police officers to assist in the killing of Tutsi, but was informed that they had not reported for duty.

822. The Chamber found that there was an attack on the morning of the 7 April 1994 against approximately 12 families of Tutsis living in Kinyababa cellule, totalling approximately 80 people. The Chamber found that this attack was carried out in furtherance of the understanding reached at the previous night's meeting at the Nkuli *Commune* Office, in which several local officials were present, including the Accused. The Chamber found that Witness GDD, amongst others, reported back to the Accused at the end of the day on what had been achieved, and assured the Accused that they had "eliminated everything".

823. The Chamber found that, at Byangabo market on the morning of 7 April 1994, between 8 and 9am, the Accused assembled members of the *Interahamwe*, and instructed them to "[k]ill and exterminate all those people in Rwankeri" and to "exterminate the Tutsis". He also ordered them to dress up and "start to work".

824. The Chamber found that Tutsi civilians were attacked or killed in Busogo Cellule, Mukingo *Commune*, in their residence or at their places of shelter on 7 April 1994. The Chamber found that the Accused participated in this attack by directing the *Interahamwe* from Byangabo market towards Rwankeri Cellule, to join that attack, and by acting as a liaison with Mukamira camp for military and weapons assistance. The *Interahamwe* attackers at Busogo Hill formed part of a much larger group of people who were attacking the Tutsis in Busogo. This attack killed approximately 80 entire Tutsi families.

825. The Chamber found that Prosecution Witness GDD, an *Interahamwe* member, went out on the 8 April 1994 and murdered 8 Tutsis in Gitwa *secteur* in the Nkuli *commune*. His victims, who he was able to name, were a Tutsi woman and seven children, who were of mixed Tutsi and Hutu ethnicity. The Chamber found that Witness GDD

committed these murders, in furtherance of the Accused's order to "fine comb" the Nkuli *commune* for Tutsis.

826. The Chamber found that a woman who was thought to be Tutsi and her son were singled out at a roadblock in front of Witness GDQ's house on 8 April 1994, and subsequently killed by an *Interahamwe* named Musafiri. Kanoti, a Hutu man who was also present, and accompanying these victims, was not killed. The Accused was present at the roadblock during this event and was heard saying, "No Tutsi should survive at Mukingo".

827. The Chamber found that, on 8 April 1994, the Accused and the *Interahamwe* were inspecting bodies and searching for survivors. Witness GBH pleaded with the Accused to stop the killings, however, in the words of GBH, the Accused responded by saying "that it was necessary to continue, look for those or hunt for those who had survived".

828. On the basis of the established facts, the Chamber finds that the killings upon which the Chamber heard evidence as occurring in Mukingo, Nkuli and Kigombe *Communes*, were, at all relevant times pleaded in the Indictment, systematically directed against Tutsi civilians. The words and deeds of the Accused show clearly that he directed and participated in those killings with the specific intent to destroy the Tutsi ethnical group.

- **Killing of Members of the Tutsi Group**

829. The Chamber found that Tutsi civilians were attacked or killed in Busogo Cellule, Mukingo *Commune*, in their residence or at their places of shelter on 7 April 1994. The Chamber found that the Accused participated in the attack by directing the *Interahamwe* from Byangabo market towards Rwankeri Cellule, to join that attack, and by acting as a liaison with Mukamira army camp for military and weapons assistance. The *Interahamwe* attackers at Busogo Hill formed part of a larger group of people who were attacking the Tutsis in Busogo. This attack killed approximately 80 entire Tutsi families.

830. The attack at the home of Rudatinya, was one of the attacks that occurred on 7 April 1994 against the Tutsi in Mukingo *Commune*. The Accused ordered, supervised and participated in this attack.

831. In relation to this event, the Chamber found that the Accused, from a position of authority over the *Interahamwe*, assisted and encouraged them in their actions during the course of the day on 7 April 1994.

832. The Chamber found that on 7 April 1994 Tutsi men, women and children were attacked and killed at Munyemvano's compound in Rwankeri cellule, Mukingo *commune*, where they had taken refuge. The Chamber found that the Accused was present during the attack and, in his position of authority over the *Interahamwe* attackers, commanded and supervised the attack.

833. The Chamber recalls its finding that Prosecution Witness GDD, an *Interahamwe* member, went out on 8 April 1994 and murdered eight Tutsis, in Gitwa *secteur* in the

Nkuli *Commune*; and that Witness GDD committed these murders, in furtherance of the Accused's order to "fine comb" the Nkuli *Commune* for Tutsis.

834. The Chamber found that on or around 14 April 1994 at the Ruhengeri Court of Appeal, about three hundred Tutsi were killed by *Interahamwe*. The Chamber found that the Accused played a vital role as an organizer and facilitator of the *Interahamwe* and other attackers. He did this by procuring weapons, rounding up the *Interahamwe* for purposes of the attack, and facilitating their transport to the Ruhengeri Court of Appeal by supplying them with petrol.

835. Accordingly, the Chamber finds that genocidal killings of members of the Tutsi group occurred in Mukingo, Nkuli and Kigombe *Communes* (at the Ruhengeri Court of Appeal) in April 1994, and that the Accused participated in those killings.

- **Individual Criminal Responsibility of the Accused (Article 6.1 of the Statute)**

836. On the basis of its factual findings and its legal findings above the Chamber finds that the Accused participated in the killings in Mukingo and Nkuli *communes* by instigating the attacks against members of the Tutsi group, ordering the *Interahamwe* to kill members of the Tutsi group and instigating others to kill members of the Tutsi group.

837. The Chamber finds that the Accused participated to the killings of members of the Tutsi group in the Ruhengeri Court of Appeal in Kigombe *commune* by aiding and abetting the commission of the crime.

838. The Chamber finds that at the time of his participation in these killings, the Accused harboured the intent to destroy the Tutsi ethnic group in whole or in part.

- **Criminal Responsibility of the Accused as a superior (Article 6.3 of the Statute)**

839. On the basis of all the evidence reviewed to in Part III and on the basis of its previous findings the Chamber finds that the Accused knew or had reason to know that the *Interahamwe* were about to commit acts of genocide in Mukingo and Nkuli *Communes* and at the Ruhengeri Court of Appeal in Kigombe *Commune* between 7 and 14 April 1994.

840. The Chamber infers from the evidence and its previous findings as well as from the circumstances of the case that the Accused failed to take the necessary and reasonable measures to prevent the acts of genocide committed by his subordinates.

841. There is, however, insufficient evidence for the Chamber to find that the Accused failed to take the necessary and reasonable measures to punish the acts of genocide committed by his subordinates.

(d) Conclusion

842. In conclusion, the Chamber finds beyond a reasonable doubt that the Accused is individually criminally responsible for instigating, ordering, and aiding and abetting the killing of members of the Tutsi ethnic group in Mukingo *Commune* and Nkuli *Commune*, as well as at the Ruhengeri Court of Appeal in Kigombe *Commune*, pursuant to Article 6(1) of the Statute.

843. The Chamber finds beyond a reasonable doubt that the Accused is criminally responsible for the acts of genocide (killing of members of the Tutsi ethnic group) committed by his subordinates in Mukingo and Nkuli *Communes* and at the Ruhengeri Court of Appeal in Kigombe *Commune*, pursuant to Article 6(3) of the Statute.

844. Having found the Accused criminally responsible for the killing of members of the Tutsi group in the areas mentioned above, the Chamber will not consider the question whether the Accused or his subordinate caused serious bodily or mental harm to members of the Tutsi population.

845. Accordingly, the Chamber finds Juvénal Kajelijeli GUILTY of GENOCIDE, pursuant to Article 2(3)(a), as charged in **Count 2** of the Indictment.

4. Complicity of Genocide

(a) Indictment

846. As an alternative count to Count 2, Count 3 of the Indictment charges:

> *Count 3: Complicity to commit genocide, pursuant to Article 2(3)(e) of the Statute*
>
> Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.18, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9,
>
> Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.18, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9,
>
> Is responsible for killing and causing serious bodily and mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed COMPLICITY IN GENOCIDE, pursuant to Article 2(3)(e) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

(b) Conclusion

847. The Chamber recalls that Count 3 is an alternative count to Count 2 of the Indictment and that both charges arose out of the same factual allegations. Considering that the Chamber has already found the Accused guilty of genocide under Count 2

pursuant to Article 2(3)(a) of the Statute, the Chamber will make no finding on the charge of complicity in genocide pursuant to Article 2(3)(e) of the Statute as charged in Count 3. In the circumstances, Count 3 is hereby dismissed.

5. Direct and Public Incitement to Genocide

(a) Indictment

848. Count 4 of the Indictment charges:

> *Count 4: Direct and public incitement to genocide, pursuant to Article 2(3)(c) of the Statute*
>
> Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.10, 4.16, 4.18, 4.18.1, 4.19, 4.19.1, 4.23,
>
> Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, .5, 3.6, 4.10, 4.16, 4.18, 4.18.1, 4.19, 4.19.1, 4.23,
>
> Is responsible for direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed DIRECT AND PUBLIC INCITEMENT TO GENOCIDE, pursuant to Article 2(3)(c) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

849. For the reasons indicated in Part III, Section A of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 4.

(b) Jurisprudence

850. In the common law jurisdictions, incitement to commit a crime is defined as encouraging or persuading another to commit the crime, including by use of threats or other forms of pressure,[1060] whether or not the crime is actually committed.[1061] Civil law systems punish direct and public incitement assuming the form of provocation, which is defined as an act intended directly to provoke another to commit a crime or a misdemeanour through speeches, shouting or threats, or any other means of audiovisual communication.[1062]

851. The "public" element of incitement to commit genocide is appreciated by looking at the circumstances of the incitement—such as where the incitement occurred and whether or not the audience was select or limited. The Trial Chamber in *Akayesu* makes reference to the International Law Commission, which characterizes public incitement by

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[1060] Ashworth, *Principles of Criminal Law* , p. 462, cited in *Akayesu,* Judgment (TC), para. 555.
[1061] G. Williams, *Textbook of Criminal Law* (1978), p. 384.
[1062] *Akayesu,* Judgment (TC), para. 555, which makes reference to the French Penal Code

the call, for criminal action, to a number of individuals in a public place or to members of the general public at large by such means as the mass media, for example radio or television.[1063]

852. The "direct" element of incitement to commit genocide requires "[s]pecifically urging another individual to take immediate criminal action rather than merely making a vague or indirect suggestion."[1064] In civil law systems, provocation, the equivalent of incitement, is regarded as being direct where it is aimed at causing a specific offence to be committed. For such a charge, the Prosecution is obliged to prove a definite causation between the act characterized as incitement, or provocation in this case, and a specific offence.[1065]

853. The *Akayesu* Trial Chamber based itself on the evidentiary findings it made and opined that the direct element of incitement should be viewed in the light of its cultural and linguistic content.[1066] The Trial Chamber finally noted that, "[w]hatever the legal system, direct and public incitement must be defined for the purposes of interpreting Article 2(3)(c) as directly provoking perpetrator(s) to commit genocide, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication."[1067]

854. *Akayesu* determined that the *mens rea* of the crime of direct and public incitement to commit genocide lies in the intent directly to prompt or provoke another to commit genocide. The Trial Chamber stated that the inciter must possess the desire to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging, that is to say that the person who is inciting to commit genocide must himself have the specific genocidal intent.[1068]

855. As noted earlier, the crime of incitement is an inchoate offence under common law systems whereby the communication alone is punishable, irrespective of the accomplishment of the object of the communication. The Trial Chamber in *Akayesu* took the view that, "[g]enocide clearly falls within the category of crimes so serious that direct and public incitement to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator."[1069] This Chamber agrees.

[1063] *Akayesu*, Judgment (TC), para. 556.
[1064] ILC Report (1996), Draft Code of Crimes Against the Peace and Security of Mankind, art. 2(3)(f) cited in *Akayesu*, Judgment (TC), para. 557.
[1065] *Akayesu*, Judgment (TC), para. 557.
[1066] *Akayesu*, Judgment (TC), para. 557.
[1067] *Akayesu*, Judgment (TC), para. 559.
[1068] *Akayesu*, Judgment (TC), para. 560.
[1069] *Akayesu*, Judgment (TC), para. 562.

(c) Findings

856. The Chamber has already found that, on the morning of 7 April 1994, the Accused instructed the *Interahamwe* at Byangabo Market and incited the crowd assembled there to "[k]ill and exterminate all those people in Rwankeri" and to "exterminate the Tutsis". He also ordered the *Interahamwe* to dress up and "start to work".

857. The Chamber has also already found that the Accused acted with the requisite intent to destroy the Tutsi ethnic group in whole or in part.

858. The Chamber therefore finds that on 7 April 1994, at Byangabo market, Mukingo *Commune* the Accused incited directly and in public the *Interahamwe* and the crowd to commit Genocide against the Tutsi population.

859. However, the Chamber does not find, upon the evidence adduced, that persons who may properly be characterized as subordinates of the Accused did engage in direct and public incitement to commit genocide against the Tutsi population, for purposes of Article 6(3) of the Statute.

860. In conclusion, the Chamber finds that it has been proved beyond a reasonable doubt that the Accused is criminally responsible, pursuant to Article 6(1) of the Statute, for inciting directly and in public the *Interahamwe* and the crowd to commit genocide by killing or causing serious bodily or mental harm to members of the Tutsi population in Rwankeri, Mukingo *Commune*.

(d) Conclusion

861. Accordingly, the Chamber finds Juvénal Kajelijeli GUILTY of DIRECT AND PUBLIC INCITMENT TO COMMIT GENOCIDE as charged in **Count 4** of the Indictment.

E. Crimes against Humanity

1. General elements

(a) Indictment

862. The Accused is charged with the following acts as crimes against humanity: murder (Count 5), extermination (Count 6), rape (Count 7) and other inhumane acts (Count 9).

(b) The Statute

863. Pursuant to Article 3 of the Statute:

> The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or

systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation;

(e) Imprisonment;

(f) Torture;

(g) Rape;

(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts.

(d) Jurisprudence

- **The Relationship Between the Enumerated Acts and the General Elements**

864. The Accused is charged with the acts of Murder, Extermination, Rape, and Other inhumane acts as Crimes against Humanity.[1070] The commission of any of these acts by the Accused will only amount to a Crime against Humanity, if the Chamber finds that it was committed as part of a widespread or systematic attack on a civilian population on any of the following discriminatory grounds: nationality, political persuasion, ethnicity, race or religion.

865. In relation to each count which charges the Accused with a Crime against Humanity, the Prosecution is required to prove the elements indicated above.

866. An act may form part of the widespread or systematic attack without necessarily sharing all the same features, such as the time and place of commission of the other acts constituting the attack. In determining whether an act forms part of a widespread or systematic attack, the Chamber will consider its characteristics, aims, nature, and consequence.

- **The General Elements**

  - **The Attack**

[1070] The Count 7 on Persecutions on political, racial and religious grounds as a Crime Against Humanity was withdrawn by the Prosecution in its Closing brief (Corrigendum), 19 June 2003, paras. 138 and 139.

867. The Chamber adopts the accepted definition of "attack" within this Tribunal, where it is generally defined as "an unlawful act, event, or series of events of the kind listed in Article 3(a) through (i) of the Statute."[1071] This definition has remained constant throughout the jurisprudence of the Tribunal.[1072]

868. Moreover, an attack committed on specific discriminatory grounds need not necessarily require the use of armed force, it could also involve other forms of inhumane mistreatment of the civilian population.[1073]

The Attack Must be Widespread or Systematic

869. The French and the English language versions of the Statute, equally authentic, do not say the same thing. The French language version has the conjunctive "widespread and systematic"[1074] whilst the English language version has the disjunctive "widespread or systematic". The practice of the ICTR and ICTY Tribunals has been to accept the English language version,[1075] in line with customary international law.[1076]

870. Trial Chamber III in *Semanza* held that: "The Chamber does not see any reason to depart from the uniform practice of the two Tribunals."[1077] This Chamber also adopts this practice, and will use the English language version, where the applicable standard is "widespread or systematic".

Widespread

871. The term "Widespread", as an element of the attack within the meaning of Article 3 of the Statute, has been given slightly different meanings within the various Trial Chamber Judgments of the Tribunal. However, all can be said to refer to the scale of the attack, and sometimes the multiplicity of victims.[1078] The Chamber, following broadly the

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[1071] *Semanza*, Judgment (TC), para. 327.
[1072] *Musema*, Judgment (TC), para. 205; *Rutaganda*, Judgment (TC), para. 70; *Akayesu*, Judgment (TC), para. 581.
[1073] *Semanza*, Judgment (TC), para. 327 ; *Musema*, Judgment (TC), para.205; *Rutaganda*, Judgment (TC), para. 70; *Akayesu*, Judgment (TC), para. 581.
[1074] The relevant provision of the French text in Article 3 of the Statute reads « généralisée et systématique ».
[1075] *Semanza*, Judgment (TC), para. 328; *Ntakirutimana and Ntakirutimana*, Judgment (TC), para. 804; *Bagilishema*, Judgment (TC), para. 77; *Musema*, Judgment (TC), paras. 202-203; *Rutaganda*, Judgment (TC), para. 68; *Kayishema and Ruzindana*, Judgment (TC), para. 123; *Akayesu*, Judgment (TC), para. 579. The same position has been taken in the ICTY, however it must be emphasized that article 5 of ICTY Statute does not contain the requirement that the crimes must be committed as part of a widespread or systematic attack, which has been constructed in ICTY jurisprudence in line with customary international law. *Tadic*, Judgment (TC), paras. 646-648. *See also Kunarac*, Judgment (AC), para. 93; *Tadic*, Judgment (AC), para. 248; *Krnojelac*, Judgment (TC), para. 55; *Krstic*, Judgment (TC), para. 480; *Kordic and Cerkez*, Judgment (TC), para. 178; *Blaskic*, Judgment (TC), para. 202; *Kupreskic*, Judgment (TC), para. 544; *Jelisic*, Judgment (TC), para. 53.
[1076] For a review of the International practice on this issue see: *Tadic*, Judgment (TC), paras. 646-648.
[1077] *Semanza*, Judgment (TC), para. 328.
[1078] *Semanza*, Judgment (TC), para. 329; *Niyitegeka*, Judgment (TC), para 439; *Ntakirutimana and Ntakirutimana*, Judgment (TC), para. 804; *Bagilishema*, Judgment (TC), para. 33; *Musema*, Judgment (TC), para. 204, *Rutaganda*, Judgment (TC), para. 69; *Kayishema and Ruzindana*, Judgment (TC), para. 123; *Akayesu*, Judgment (TC), para. 580.

definition given in the *Niyitegeka*[1079] and *Ntakirutimana*[1080] Judgments, adopts the test of "large scale, involving many victims".

Systematic

872. There has been some debate in the jurisprudence of this Tribunal about whether or not the term systematic necessarily contains a notion of a policy or a plan.[1081] The Chamber finds that it does not, and adopts the same position as Trial Chamber III in *Semanza*, where it endorsed the jurisprudence of the Appeals Chamber of the ICTY in *Kunarac*, that whilst "the existence of a policy or plan may be evidentially relevant, in that it may be useful in establishing that the attack was directed against a civilian population and that it was widespread and systematic, [...] the existence of such a plan is not a separate legal element of the crime".[1082] The Chamber finds that "Systematic", as an element of the attack within Article 3 of the Statute, describes the organized nature of the attack. Demonstration of a pattern of conduct will also carry evidential value in the Chamber's final analysis.

The Attack Must be Directed Against any Civilian Population

873. *Akayesu* defined the civilian population as:

> [...] people who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms and those persons *hors de combat* by sickness, wounds, detention or any other cause. Where there are certain individuals within the civilian population who do not come within the definition of civilians, this does not deprive the population of its civilian character.[1083]

874. This definition has been consistently followed in the jurisprudence of the Tribunal.[1084] *Bagilishema* added:

> It also follows that, as argued in *Blaskic*, "the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian".[1085]

[1079] *Niyitegeka*, Judgment (TC), para 439.
[1080] *Ntakirutimana and Ntakiutimana*, Judgment (TC), para. 804.
[1081] *Semanza*, Judgment, (TC), para. 329; *Bagilishema*, Judgment (TC), para. 77; *Kayishema and Ruzindana*, Judgment (TC), para. 123-124.
[1082] *Semanza*, Judgment (TC), para. 329; referring to *Kunarac*, Judgment (AC), para. 98.
[1083] *Akayesu*, Judgment (TC), para. 582.
[1084] *Rutaganda*, Judgment (TC), para. 72; *Musema*, Judgment (TC), para. 207; *Semanza*, Judgment (TC), para. 330.
[1085] *Bagilishema*, Judgment (TC), para. 79, referring to *Blaskic*, Judgment (TC), para. 214.

875. It was also noted in *Bagilishema* that the term "population" does not require that the crimes against humanity be directed against the entire population of a geographic territory or area.[1086] *Semanza* further clarified that:

> The victim(s) of the enumerated act need not necessarily share geographic or other defining features with the civilian population that forms the primary target of the underlying attack, but such characteristics may be used to demonstrate that the enumerated act forms part of the attack.[1087]

876. The Chamber endorses this jurisprudence.

The Attack Must be Committed on Discriminatory Grounds

877. Article 3 of the Statute provides that the attack against the civilian population be committed on "national, political, ethnical, racial or religious grounds". This provision is jurisdictional in nature, limiting the jurisdiction of the Tribunal to a narrower category of Crimes, and not intended to alter the definition of Crimes Against Humanity in International Law. The distinction is a fine one. The Appeals Chamber in the Akayesu Appeals clarified the position:

> In the opinion of the Appeals Chamber, except in the case of persecution, a discriminatory intent is not required by international humanitarian law as a legal ingredient for all crimes against humanity. To that extent, the Appeals Chamber endorses the general conclusion and review contained in *Tadic*, as discussed above. However, though such is not a requirement for the crime *per se*, all crimes against humanity, may, in actuality, be committed in the context of a discriminatory attack against a civilian population. As held in *Tadic*: "[i]t is true that in most cases, crimes against humanity are waged against civilian populations which have been specifically targeted for national, political, ethnic, racial or religious reasons". It is within this context, and in light of the nature of the events in Rwanda (where a civilian population was actually the target of a discriminatory attack), that the Security Council decided to limit the jurisdiction of the Tribunal over crimes against humanity solely to cases where they were committed on discriminatory grounds. This is to say that the Security Council intended thereby that the Tribunal should not prosecute perpetrators of other possible crimes against humanity.
>
> The Appeals Chamber found that in doing so, the Security Council did not depart from international humanitarian law nor did it change the legal ingredients required under international humanitarian law with respect to crimes against humanity. It *limited* at the very most the jurisdiction of the Tribunal to a sub-group of such crimes, which in actuality may be committed in a particular situation. (...) In the case at bench, the Tribunal was conferred jurisdiction over crimes against humanity (as they are known in customary international law), but solely "when committed as part of a widespread or systematic attack against any civilian population" on certain

[1086] *Bagilishema*, Judgment (TC), para. 80, following *Tadic*, Judgment (TC), para. 644.
[1087] *Semanza*, Judgment (TC), para. 330.

> discriminatory grounds; the crime in question is the one that falls within such a scope. Indeed, this narrows the scope of the jurisdiction, which introduces no additional element in the legal ingredients of the crime as these are known in customary international law.[1088]

878. The Chamber follows this jurisprudence of the Appeals Chamber. However, such acts committed against persons outside the discriminatory categories need not necessarily fall out with the jurisdiction of the Tribunal, if the perpetrator's intention in committing these acts is to support or further the attack on the group discriminated against on one of the enumerated grounds.[1089]

879. The Chamber notes that a specific discriminatory intent is required for the charge of Persecution as a Crime Against Humanity. However, since the Prosecution informed the Chamber during its closing arguments that it no longer wished to pursue this charge of Persecution, the Chamber does not find it necessary to consider the legal elements of this crime.[1090]

- **The Mental Element for Crimes Against Humanity**

880. The clearest statement of the Mental Element of Crimes Against Humanity so far is to be found in the *Semanza* Judgment:

> The accused must have acted with knowledge of the broader context of the attack and knowledge that his act formed part of the attack on the civilian population.[1091]

881. The Chamber fully endorses this position.

(e) Findings

882. The Chamber has already found that killings of members of the Tutsi group occurred on a mass scale in Mukingo *Commune*, Nkuli *Commune* and at the Ruhengeri Court of Appeal in Kigombe *Commune*, during April 1994. These attacks were carried out by groups of attackers and were directed against a large number of victims on the basis of their Tutsi ethnicity. The targets were whole populations of people of Tutsi ethnicity such as neighbourhoods, or places of shelter and refuge. Entire families and neighbourhoods were eliminated. The Chamber finds that in Mukingo *Commune* and neighbouring *communes* in Ruhengeri *Prefecture*, and during April 1994, there was a widespread attack upon a civilian Tutsi ethnic group.

[1088] *Akayesu*, Judgment (AC), para. 464-465.
[1089] *Semanza*, Judgment (TC), para. 331; *Musema*, Judgment (TC), para. 209; *Rutaganda*, Judgment (TC), para. 74.
[1090] See below: Part IV, Section D, Sub-Section 5
[1091] *Semanza*, Judgment (TC), para. 332; *Ntakirutimana and Ntakirutimana,* Judgment (TC), para. 803; *Bagilishema*, Judgment (TC), para. 94; *Musema*, Judgment (TC), para. 206; *Kayishema and Ruzindana*, Judgment (TC), para.134.

883. Having found the occurrence of a widespread attack, the Chamber does not find it necessary to consider whether or not the attack against the civilian Tutsi population was also systematic.

2. Crimes against humanity - murder

(a) Indictment

884. Count 5 of the Indictment charges:

> *Count 5: Crimes against humanity-Murder, pursuant to Article 3(a) of the Statute*
>
> Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10
>
> Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9
>
> Is responsible for the murder of Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed CRIMES AGAINST HUMANITY, pursuant to Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

(b) Jurisprudence

885. For the reasons set out in the next section on Legal Findings related to murder, in the Legal Findings section on extermination as a crime against humanity, and in the Chamber's findings on the law relating to cumulative conviction on the same facts for both murder and extermination as crimes against humanity,[1092] the Chamber does not find it necessary to here set out the law relating to murder as a crime against humanity.

(c) Findings

886. The Chamber notes that apart from the question of scale, the essence of the crimes of murder as a crime against humanity and extermination as a crime against humanity is the same. The Chamber finds that there was insufficient distinction drawn in the Indictment between the general allegations of murder as a crime against humanity and extermination as a crime against humanity. The Chamber also notes that the Indictment contains no particularization of the identities of those victims in whose murders the Prosecution charges the Accused to have been concerned, and on which it brought evidence. This includes such killings as the killing of a girl on the path at Rudatinya's House, or the killing of Gateyiteyi at Munyemvano's Compound. Having received and

[1092] See above: Part IV, Section B

considered the evidence in the case, the Chamber finds it more appropriate in the circumstances to consider the evidence relating to the killing of specific individuals as examples of the general targeting of populations or groups of people for purposes of extermination, rather than murder specifically. This position accords with the Chamber's finding on the law relating to cumulative conviction on the same facts for murder and extermination.

(d) Conclusion

887. Accordingly, the Chamber will make no finding in relation to **Count 5** of the Indictment (MURDER AS A CRIME AGAINST HUMANITY). The count is hereby dismissed.

3. Crimes against humanity - extermination

(a) Indictment

888. Count 6 on Crimes against humanity - extermination of the Indictment charges:

> *Count 6: Crimes against humanity-Extermination, pursuant to Article 3(b) of the Statute*
>
> Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9
>
> Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9
>
> Is responsible for the extermination of Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed CRIMES AGAINST HUMANITY, pursuant to Article 3(b) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

889. For the reasons indicated in Part III, Section A of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 6.

(b) Jurisprudence

890. It is well established in ICTR case law that:

> Extermination is a crime, which by its very nature is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction, which is not required for murder.[1093]

891. Thus, the killings must be on a large scale. There is no conclusive authority on how many murders make extermination. The first Judgments concerning extermination as a crime against humanity considered that "large scale" does not suggest a numerical minimum. It must be determined on a case-by-case basis, using a common-sense approach."[1094] Accordingly, Trial Chamber I in *Bagilishema* held that:

> A perpetrator may nonetheless be guilty of extermination if he kills, or creates conditions of life that kill, a single person, providing that the perpetrator is aware his or her acts or omissions form part of a mass killing event, namely mass killings that are proximate in time and place and thereby are best understood as a single or sustained attack".[1095]

892. In contrast more recent judgments have held that "Responsibility for a single or a limited number of killings is insufficient." [1096] This most recent approach appears more in conformity with the established jurisprudence that an element of mass destruction is required.

893. The Chamber is satisfied that a single killing or a small number of killings do not constitute an extermination. In order to give practical meaning to the charge as distinct from murder, there must in actual fact be a large number of killings, and the attack should have been directed against a group, such as a neighbourhood, as opposed to any specific individuals within it. However, the Chamber may consider evidence under this charge relating to the murder of specific individuals as an illustration of the extermination of the targeted group.

894. In *Bagilishema* and *Kayishema and Ruzindana* it was held that extermination is not limited to intentional acts or omissions but also covers reckless or grossly negligent conduct of the accused.[1097] The Chamber notes that more recent Judgments have taken a slightly different approach, with *Semanza* holding that:

> [...] in the absence of express authority in the Statute or in customary international law, international criminal liability should be ascribed only on the basis of intentional conduct. [1098]

[1093] *Akayesu,* Judgment (TC), para. 591. This position has been endorsed in all the Judgments following *Akayesu*: *Kayishema and Ruzindana*, Judgment (TC), para. 142; *Rutaganda*, Judgment (TC), paras. 80-82; *Musema*, Judgment (TC), para. 217; *Bagilishema*, Judgment (TC), para. 86; *Ntakirutimana and Ntakiritimana*, Judgment (TC), para. 813; *Niyitegeka*, Judgment (TC), para. 450; *Semanza*, Judgment (TC), para. 340.
[1094] *Bagilishema,* Judgment (TC), para. 87; *Kayishema and Ruzindana*, Judgment (TC), para.142.
[1095] *Bagilishema*, Judgment (TC), para. 88; *Kayishema and Ruzindana,* Judgment (TC), para. 147; *Kristic*, Judgment (TC), para. 490; Recently an ICTY Trial Chamber has adopted the same position, *Stakic*, Judgment (TC), para. 640.
[1096] *Semanza*, Judgment (TC), para. 340; *Ntakirutimana and Ntakiritimana*, Judgment (TC), paras. 813-814; *Vasilijevic*, Judgment (TC), para. 227 which review all the jurisprudence on the matter.
[1097] *Bagilishema*, Judgment (TC), para. 89; *Kayishema and Runzidana*, Judgment (TC), para. 144.
[1098] *Semanza,* Judgment (TC), para. 341.

895. We do not understand *Bagilishema* and *Kayishema and Ruzindana* to be suggesting that any one may be found guilty of a *crime* against humanity if the person had no *mens rea* for such a crime, but rather that recklessness or grossly negligent conduct are forms of *mens rea*. Understood in that way, the *Semanza* position is not at odds with the *Bagilishema* and *Kayishema and Ruzindana* judgments.

(c) Findings

896. The Chamber found that there was an attack in Nkuli *commune* on the morning of the 7 April 1994 against approximately 12 families of Tutsis living in Kiyababa cellule, totalling approximately 80 people. The Chamber found that this attack was carried out in furtherance of the agreement reached at the previous night's meeting at the Nkuli *commune*'s office, in which several local officials were present, including the Accused. The Chamber found that Witness GDD, amongst others, reported back to the Accused at the end of the day on what had been achieved, and assured the Accused that they had "eliminated everything".

897. The Chamber found that, at Byangabo market on the morning of 7 April 1994, between 8 a.m. and 9 a.m., the Accused assembled members of the *Interahamwe*, and instructed them to "[k]ill and exterminate all those people in Rwankeri" and to "exterminate the Tutsis". He also ordered them to dress up and "start to work".

898. The Chamber found that Tutsi civilians were attacked or killed at Busogo Hill, Mukingo *commune*, in their residences or at their places of shelter on 7 April 1994. The Chamber found that the Accused participated in this attack by directing the *Interahamwe* from Byangabo market towards Rwankeri *cellule*, to join that attack, and by acting as a liaison with Mukamira camp for military and weapons assistance. The *Interahamwe* attackers at Busogo Hill formed part of a group of people who were attacking the Tutsis in Busogo. This attack killed approximately 80 entire Tutsi families.

899. The Chamber found that on the 7 April 1994 Tutsis were attacked and killed in their residences or at their places of shelter within the Mukingo *commune*, specifically at the home of Rudatinya, and that the Accused ordered, supervised and participated in this attack.

900. The Chamber found that on 7 April 1994 Tutsi men, women and children were attacked and killed at Munyemvano's compound in Rwankeri *cellule*, Mukingo *commune*, where they had taken refuge. The Chamber found that the Accused was present during the attack and, in his position of authority over the *Interahamwe* attackers, commanded and supervised and ordered the attack.

901. The Chamber found that there was a massacre of a large number of Tutsis at the Nuns' compound at Busogo Parish on the morning of 7 April 1994. Members of the *Interahamwe* were involved in the attack.

902. The Chamber found that on or around 14 April 1994 at the Ruhengeri Court of Appeal, members of the *Interahamwe* killed about three hundred Tutsis. The Chamber found that the Accused played a vital role in the attack, as an organizer and facilitator of the *Interahamwe* and other attackers. He did this by procuring weapons, mobilising the *Interahamwe* for the attack and facilitating their transport to the Ruhengeri Court of Appeal by supplying them with petrol.

903. Thus, the Chamber finds that killings of members of the Tutsi group occurred on a mass scale in Mukingo *commune*, Nkuli *commune* and at the Ruhengeri Court of Appeal in Kigombe *commune*, during April 1994. The targets were whole populations of people of Tutsi ethnicity such as neighbourhoods, or places of shelter and refuge. The Chamber further finds that this constitutes a widespread attack upon a civilian Tutsi ethnic group.

904. The Chamber finds that within the context of this attack, and in full knowledge that his actions formed a part of that attack, the Accused directed attacks against neighbourhoods and places of shelter and refuge where Tutsis were grouped in large numbers. Hundreds of Tutsis within Mukingo, Nkuli and Kigombe *communes* in Ruhengeri prefecture were exterminated as a direct result of the Accused's participation by ordering and supervising, or, in the case of the attack upon the Ruhengeri Court of Appeal, by aiding, these attacks.

(d) Conclusion

905. In conclusion, the Chamber finds beyond a reasonable doubt that the Accused is individually criminally responsible, pursuant to Article 6(1) of the Statute, for instigating, ordering, and aiding and abetting the extermination of members of the Tutsi ethnic group in Mukingo *Commune*, Nkuli *Commune* and at the Ruhengeri Court of Appeal in Kigombe *Commune*, with a clear intent to do so.

906. The Chamber finds beyond a reasonable doubt that the Accused is criminally responsible for the acts of extermination as a crime against humanity committed by his subordinates in Mukingo *Commune*, Nkuli *Commune* and at the Ruhengeri Court of Appeal in Kigombe *Commune*, pursuant to Article 6(3) of the Statute.

907. Accordingly, in relation to **Count 6** of the Indictment, the Chamber finds the Accused GUILTY of EXTERMINATION AS A CRIME AGAINST HUMANITY.

4. Crimes against humanity – rape

(a) Indictment

908. Count 7 on Crimes against humanity – rape of the Indictment charges:

Count 7: Crimes against humanity-Rape, pursuant to Article 3(g) of the Statute

> Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9
>
> Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9
>
> Is responsible for the rape of Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed CRIMES AGAINST HUMANITY, pursuant to Article 3(g) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

909. For the reasons indicated in Part III, Section A of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 7.

(b) Jurisprudence

910. In *Akayesu* the Trial Chamber considered that the traditional mechanical definition of rape did not adequately capture its true nature[1099] and instead offered a definition of rape as:

> A physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.[1100]

911. This conceptual definition of rape was approved in *Musema*,[1101] where the Chamber highlighted the difference between "a physical invasion of a sexual nature", and "any act of a sexual nature" as being the difference between rape and sexual assault.[1102] Meanwhile, a Trial Chamber of the ICTY handed down the *Furundžija* Judgment, in which the Chamber preferred the following more detailed definition related to objects and body parts:

> Most legal systems in the common and civil law world consider rape to be the forcible sexual penetration of the human body by the penis or the forcible insertion

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[1099] *Akayesu*, Judgment (TC), para. 597.
[1100] *Akayesu*, Judgment (TC), para. 598.
[1101] *Musema*, Judgment (TC), para. 226; See also *Celebici*, Judgment (TC), para. 479; *Niyitegeka*, Judgment (TC), para. 456.
[1102] *Musema*, Judgment (TC), para. 227.

of any other object into either the vagina or the anus".[1103]

912. This definition[1104] substantially modified and completed by Trial Chamber II in the *Kunarac* Judgment has been endorsed by the Appeals Chamber. It reads as follow:

913. The *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight:

> (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
>
> (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances.

914. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim. [1105]

915. Given the evolution of the law in this area, culminating in the endorsement of the *Furundžija/Kunarac* approach by the ICTY Appeals Chamber, the Chamber finds the latter approach of persuasive authority and hereby adopts the definition as given in *Kunarac* and quoted above. The mental element of the offence of rape as a crime against humanity is the intention to effect the above described sexual penetration, with the knowledge that it was being done without the consent of the victim.

916. Other acts of sexual violence which may fall outside of this specific definition may of course be prosecuted, and would be considered by the Chamber under other categories of crimes for which the Tribunal has jurisdiction, such as *other inhumane acts*.

(c) Findings

917. The Chamber found that pursuant to an order of the Accused given at Byangabo Market on 7 April 1994 to "exterminate the Tutsis" the *Interahamwe* went to Rwankeri cellule. The Chamber further found that at Rwankeri cellule, a Tutsi woman named Joyce was raped and killed by *Interahamwe*.

918. The Chamber found that Witness ACM, 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.

919. The Chamber found that the handicapped daughter of Witness GDO, a Tutsi woman, was raped and killed by members of the *Interahamwe* in Rukoma *Cellule*,

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[1103] *Furundzija*, Judgment (TC), para. 181.
[1104] *Furundzija*, Judgment (TC), para. 185.
[1105] *Kunarac*, Judgment (TC), para. 412; *Kunarac*, Judgment (AC), para. 128; See also: *Semanza*, Judgment (TC), paras. 345-346.

Shiringo *Secteur* on 7 April 1994. The Chamber by majority, Judge Ramaroson dissenting, found that the Accused was not present at the scene of the crime, and the Chamber by majority found not proven the allegation that he specifically instructed the rape and murder of Witness GDO's daughter.

920. The Chamber found that Witness GDT, a Tutsi woman, was raped and sexually mutilated by members of the *Interahamwe* in Susa *secteur*, Kinigi *commune* on 7 April 1994. The Chamber, by a majority, Judge Ramaroson dissenting, also found not proven the allegation that the Accused issued a specific order to rape or sexually assault Tutsi women in Susa *secteur*, Kinigi *Commune* on that day.

921. The Chamber found that Witness GDF, a Tutsi woman, was raped by members of the *Interahamwe* in Susa *secteur*, Kinigi *Commune* on 10 April 1994. The Chamber was not convinced however that the Accused was present during the rape.

922. The Chamber finds that between 7 April and 10 April 1994 some rapes were committed by members of the *Interahamwe* in Mukingo and Kinigi *Communes*, Ruhengeri *Préfecture*. Furthermore, given the circumstances under which these acts were committed, the Chamber finds that these rapes were committed in the course of a widespread attack upon the Tutsi civilian population. In relation to this finding, Judge Ramaroson attaches her separate and dissenting opinion.

- **Article 6(1) responsibility**

923. Based upon the factual findings of the Chamber set out above, the Chamber finds, by a majority, Judge Ramaroson dissenting, that the Prosecution failed to prove beyond a reasonable doubt that the Accused either planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the rapes which the Chamber found to have occurred.

- **Article 6(3) responsibility**

924. For the reasons set out in her dissenting opinion, Judge Ramaroson does not find it necessary to consider the Accused's responsibility under Article 6(3) of the Statute for Rape but rather under Article 6(1). Therefore the following findings of the Chamber in relation to Article 6(3) responsibility are by a majority decision of the Chamber. The Chamber finds by a majority that during the rapes, which the Chamber found to have been committed by members of the *Interahamwe*, the Accused was not personally present. It was not established that the Accused ever gave an order for the *Interahamwe* to rape, but rather his instructions were, in general, to kill or to exterminate. Furthermore, it is not possible on the evidence and in the circumstances to infer that the Accused knew or had reason to know that these rapes were being committed by members of the *Interahamwe*. The Chamber finds therefore by a majority that the Prosecution failed to establish beyond a reasonable doubt that the Accused knew or had reason to know about the rapes committed by members of the *Interahamwe*, which the Chamber found to have occurred in Mukingo and Kinigi *Communes* between 7 and 10 April 1994. Thus, in relation to the

charge of rape as a crime against humanity, the Prosecution has failed to meet the requirements of establishing individual criminal responsibility under Article 6(3) of the Statute.

(d) Conclusion

925. Thus, in relation to **Count 7** of the Indictment, the Chamber, by a majority, Judge Ramaroson dissenting, finds the Accused NOT GUILTY of RAPE AS A CRIME AGAINST HUMANITY.

5. Crimes against humanity – Persecution

(a) Withdrawal of the Count

926. In its closing arguments, the Prosecution notified the Chamber that it was withdrawing the charge of Persecution as a Crime Against Humanity due to insufficient evidence.[1106] The Chamber regards that in doing so, the Prosecution made an oral Motion for withdrawal of Count 8 of the Indictment.

927. Having considered that the Prosecution request met no objection from the Defence, and having considered the provisions of Rules 50 and 51 of the Rules of Procedure and Evidence in relation to withdrawal of the Indictment, the Chamber grants the Prosecution request for withdrawal of Count 7 of the Indictment.

(b) Conclusion

928. In the circumstances, the Chamber DISMISSES the charge of PERSECUTION AS A CRIME AGAINST HUMANITY, as charged in **Count 8** of the Indictment.

6. Crimes against humanity – Other inhumane acts

(a) Indictment

929. Count 9 of the Indictment charges:

> Count 9: Crime against humanity – Other Inhumane Acts, Pursuant to Article 3(i) of the Statute
>
> Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:
>
> Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

[1106] Prosecutor's Closing Brief (Corrigendum), paras. 138 and 139.

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Is responsible for other inhumane acts against the Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed CRIMES AGAINST HUMANITY, pursuant to Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

930. For the reasons indicated in Part III, Section A of this Judgment, the Chamber has made these factual findings based only on the relevant paragraphs of the Indictment referred to in Count 9.

(b) Jurisprudence

931. In *Kayishema and Ruzindana* the Trial Chamber noted that since the Nuremberg Charter, the category "other inhumane acts" has been maintained as a useful category for acts not specifically stated but which are of comparable gravity.[1107]

932. Crimes which may fall under this category would only be acts or omissions similar in gravity to the conducts enumerated in Article 3 of the Statute, and would be decided by the Tribunal on a case-by-case basis.[1108] In proving its case, the Prosecution must prove a nexus between the inhumane act and the great suffering or serious injury to the mental or physical health of the victim.[1109] Inhumane Acts are only those which deliberately cause suffering. Therefore, where third parties observe acts committed against others, in circumstances in which the Accused may not have had an intention to injure those third parties by their observation of these acts, he may be held accountable for their mental suffering.[1110]

933. In *Kayishema and Ruzindana* the position was summarised that:

> [...] for an accused to be found guilty of crimes against humanity for other inhumane acts, he must commit an act of similar gravity and seriousness to the other enumerated crimes, with the intention to cause the other inhumane act, and with knowledge that the act is perpetrated within the overall context of the attack.[1111] In the *Niyitegeka* Judgment, Trial Chamber I found that by perpetrating gross acts of sexual violence upon a dead woman's body, the Accused caused mental suffering to civilians, his actions constituted a serious attack on the human dignity of the Tutsi community as a whole,[1112] and that these acts were part of a widespread and systematic attack against the civilian Tutsi population on ethnic grounds.

[1107] *Kayishema and Ruzindana*, Judgment (TC), para. 149.
[1108] *Kayishema and Ruzindana*, Judgment (TC), para. 151.
[1109] *Kayishema and Ruzindana*, Judgment (TC), para. 151.
[1110] *Kayishema and Ruzindana*, Judgment (TC), paras. 152-153.
[1111] *Kayishema and Ruzindana*, Judgment (TC), para. 154.
[1112] *Niyitegeka*, Judgment (TC), paras. 465-467.

(c) Findings

934. The Chamber found that, at Rwankeri cellule on 7 April 1994, the *Interahamwe* raped and killed a Tutsi woman called Joyce. Furthermore, the Chamber found that they pierced her side and her sexual organs with a spear, and then covered her dead body with her skirt.

935. The Chamber found that, at Rwankeri cellule on 7 April 1994, a Tutsi girl named Nyiramburanga was mutilated by an *Interahamwe* who cut off her breast and then licked it.[1113]

936. The Chamber finds that these acts constitute a serious attack on the human dignity of the Tutsi community as a whole. Cutting a woman's breast off and licking it, and piercing a woman's sexual organs with a spear are nefarious acts of a comparable gravity to the other acts listed as crimes against humanity, which would clearly cause great mental suffering to any members of the Tutsi community who observed them. Furthermore, given the circumstances under which these acts were committed, the Chamber finds that they were committed in the course of a widespread attack upon the Tutsi civilian population.

- **Article 6(1) responsibility**

937. There was no evidence, however, that the Accused was present during these acts, or gave an order for them to be committed.[1114] Thus, the Chamber finds that the Prosecution failed to prove beyond a reasonable doubt that the Accused either planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these inhumane acts.

- **Article 6(3) responsibility**

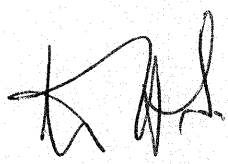
938. The Chamber finds that during these other inhumane acts, which the Chamber found to have been committed by members of the *Interahamwe*, the Accused was not personally present. The Chamber finds that it was not established that the Accused ever gave an order for the *Interahamwe* to commit these acts, but rather his instructions were, in general, to kill or to exterminate. Furthermore, it is not possible on this evidence and in the circumstances to infer that the Accused knew or had reason to know that these other inhumane acts were being committed by members of the *Interahamwe*. The Chamber finds therefore that the Prosecution failed to establish beyond a reasonable doubt that the Accused knew or had reason to know about these other inhumane acts committed by members of the *Interahamwe*, which the Chamber found to have occurred in Mukingo *Commune* on 7 April 1994.

939. Thus, in relation to the charge of other inhumane acts as a crime against humanity, the Chamber finds that the Prosecution has failed to meet the requirements of establishing individual criminal responsibility under Article 6(3) of the Statute.

[1113] See above: Part III, Section L.
[1114] See above: PartIII, SectionL.

(d) Conclusion

940. Thus, in relation to Count 9 of the Indictment, the Chamber finds the Accused NOT GUILTY of OTHER INHUMANE ACTS AS A CRIME AGAINST HUMANITY.



Part V The Verdict

941. For the reasons set out in this Judgment, having considered all the evidence and arguments, the Trial Chamber finds in respect of the Accused as follows.

942. Unanimously:

Count 1 (Conspiracy to Commit Genocide): **NOT GUILTY**

Count 2 (Genocide): **GUILTY**

Count 3 (Complicity in Genocide): **DISMISSED**

Count 4 (Direct and Public Incitement to Commit Genocide): **GUILTY**

Count 5 (Murder as a Crime Against Humanity): **DISMISSED**

Count 6 (Extermination as a Crime Against Humanity): **GUILTY**

Count 8 (Persecution as a Crime Against Humanity): **DISMISSED**

Count 9 (Other Inhumane Acts as a Crime Against Humanity): **NOT GUILTY**

943. By a majority (Judge Ramaroson dissenting):

Count 7 (Rape as a Crime Against Humanity): **NOT GUILTY**

Arusha, 1 December 2003

William H. Sekule
Presiding Judge

Winston C. Matanzima Maqutu
Judge

Arlette Ramaroson
Judge

(*Seal of the Tribunal*)

Part VI Sentence

A. General Sentencing Practice

944. In considering the sentence to be imposed on Kajelijeli, the Chamber is mindful that this Tribunal was set up by the Security Council of the United Nations under Chapter VII of the Charter of the United Nations. The Chamber is particularly mindful of Security Council Resolution 955 (1994), which in the preamble stressed in the terms set out below the themes of deterrence, justice, reconciliation, and the restoration and maintenance of peace.

> [...]
>
> *Determined* to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,
>
> *Convinced* that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,
>
> *Believing* that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,
>
> [...]

945. In considering the appropriate sentence to be passed upon Kajelijeli, the Chamber weighs heavily the factors, which will contribute towards to the realisation of these objectives. In view of the grave nature of the crimes committed in Rwanda in 1994, it is essential that the international community condemn them in a manner that carries a substantial deterrent factor against their reoccurrence anywhere, whether in Rwanda or elsewhere. Reconciliation amongst Rwandans, towards which the processes of the Tribunal should contribute, must also weigh heavily in the Chamber's mind when passing sentence.

946. In sentencing Kajelijeli, the Chamber will take into account the gravity of the offences pursuant to Article 23[1115] of the Statute and Rule 101[1116] of the Rules, the

[1115] The text of Article 23 appears as follows:

> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.
>
> 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

individual circumstances of Kajelijeli, aggravating and mitigating circumstances as well as the general sentencing practice of the Tribunal. In terms of Rule 101 of the Rules, the Chamber must take into account the general practice regarding prison sentences in the courts of Rwanda. Should it be appropriate, the Chamber will give credit to Kajelijeli for time served in custody pending trial.

B. Mitigating Factors

947. The Defence submitted in its closing brief that should Kajelijeli be convicted, he should be allowed the fullest benefits of the mitigating circumstances, in particular the fact that numerous Tutsi witnesses testified that they owed their lives to Kajelijeli. The Defence further submitted that the Trial Chamber has the discretion to impose any sentence that would advance the interests of justice.[1117]

948. The Chamber will not consider as a mitigating circumstance the fact that Kajelijeli had allegedly saved Tutsi lives before 1994. First, the Chamber notes that this time period is outside the Chamber's jurisdiction. And, secondly, the Prosecution was, at the instance of objections from the Defence, prevented from leading the inquiry into Kajelijeli's

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3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

[1116] The text of Rule 101 appears as follows:

(A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 23 (2) of the Statute, as well as such factors as:

(i) Any aggravating circumstances;

(ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) The general practice regarding prison sentences in the courts of Rwanda;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.

[1117] Defence Closing Brief (Corrigendum), para. 589-594.

possible involvement in Tutsi deaths and mistreatment prior to 1994, with the result that this subject matter was not fully explored at trial.

949. The Chamber finds upon a careful consideration of the evidence of Defence Witness JK-312 that Kajelijeli assisted in the evacuation of a Tutsi family on or about 8 April 1994.

950. The Chamber finds that no credit is due to Kajelijeli on the basis that a handful of Tutsi civilians received shelter at the home of Kajelijeli's second wife. The Chamber finds that it was the wife that took these refugees in and stayed with them, and not Kajelijeli. Hence, any credit due in this regard will more appropriately go to the wife of Kajelijeli, and not to Kajelijeli himself.

951. The Chamber considers that assisting in the evacuation of one Tutsi man and his family is insufficient to mitigate Kajelijeli's sentence, in light of the number of Tutsis whom Kajelijeli not only failed to protect, but whose deaths he actively brought about.

952. The Chamber finds that there are no circumstances to mitigate the culpability of Kajelijeli for the crimes for which he has been found guilty.

C. Aggravating Factors

953. The Chamber notes that according to Article 23(2) of the Statute, the gravity of the crimes committed should be taken into account during sentencing. The Chamber interprets this to mean that the more heinous the crime, the higher the sentence that should be imposed upon its perpetrator. However, in assessing the gravity of the offence, the Chamber ought to go beyond the abstract gravity of the crime to take into account the particular circumstances of the case as well as the form and the degree of the participation of Kajelijeli in the crime.[1118]

954. Kajelijeli has been found guilty on two counts of Genocide and one count of Extermination as crime against humanity.

955. The Chamber notes that there is no evidence of any previous criminal conduct on the part of Kajelijeli.

956. The Prosecution submitted that Kajelijeli should be sentenced to imprisonment for the remainder of his life.[1119] It gives its reasons for making this submission as, first, that the crime of genocide constitutes the "crime of crimes" and that this should be taken into account when deciding the sentence. Secondly, that only a sentence for the remainder of his life will provide an appropriate punishment for the heinous crimes that Kajelijeli committed. Thirdly, that Kajelijeli was central in organizing hundreds of perpetrators, an entire community, to murder the defenceless civilian Tutsi in Ruhengeri *prefecture,* nearly

[1118] *Semanza*, Judgment (TC), para. 555.
[1119] Prosecution Closing Brief (Corrigendum), para. 355.

eliminating the entire Tutsi population of Mukingo, Nkuli and Kigombe *communes* through his direct participation, incitement, planning, and ordering of the attacks.

957. The Prosecution in its Closing brief emphasised several aggravating factors it felt were necessary for the Chamber to consider in determining the appropriate sentence.[1120] In determining the extent of the existence of any aggravating factors, the Chamber will consider only those factors on which it has made a positive finding.[1121]

958. The Prosecution submits that the Chamber should consider as aggravating factors the fact that Kajelijeli was a leader of the *Interahamwe* in Mukingo *commune*; that he was the Executive Treasurer of a popular school in Mukingo *commune*; and, that he was a member of the MRND party in Ruhengeri *prefecture* during the events charged in the Indictment.

959. The Prosecution further stated that Kajelijeli was a former public officer who held offices as *bourgmestre* and accountant of Mukingo and Nkuli *communes* and was a prominent figure within his community. Also that Kajelijeli was popular and well known in Ruhengeri *préfecture*, his home *préfecture*, where he was President of the MRND of Mukingo *commune* and later a member of the prefectural committee of the party. As a civic leader and a member of the government's territorial administration he was duty-bound to espouse and propagate the principles laid down in the Constitution and to uphold the public order. Instead, he supported the MRND ideology as it degenerated into the extremism of "Hutu Power", and actively engaged in the killings of Tutsi and incited others to kill. He was a leader of the *Interahamwe*, and intended the organization to be used to perpetrate the attacks which occurred.[1122] The Prosecution added further that Kajelijeli failed to renounce, prevent or punish the crimes of those around him who were killing.

960. Finally, the Prosecution submit that Kajelijeli has shown no remorse for his crimes.[1123]

961. The Chamber had considered the submissions of the Parties and finds the following aggravating factors when considering the culpability of Kajelijeli for the crimes for which he has been found guilty.

962. The Chamber finds that Kajelijeli used his considerable influence to bring together people in order to commit the massacres. He acted as a bridge between the military and civilian spheres in an effort to attack and massacre the civilian Tutsi population; and he ordered, incited and led a large group of people to that enterprise. He saw to it that weapons were provided to the killers so that the attacks would be more devastating. He directed and participated in the killings that went on in various locations around Ruhengeri Prefecture. And even when requested to stop the killings because it was the time to bury

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[1120] Prosecution Closing Brief (Corrigendum), paras. 314-316.
[1121] *Delalic et al. (Celebici Case)*, Judgment (AC), p. 763.
[1122] Prosecutor Closing Brief (Corrigendum), para. 315.
[1123] Prosecutor Closing Brief (Corrigendum), para. 316.

F. Conclusion

968. Given all of the foregoing, the Chamber now sentences Kajelijeli as follows:

for Genocide (Count 2): **imprisonment for the remainder of his life;**

for Direct and Public Incitement to Commit Genocide (Count 4): **imprisonment for fifteen years;**

for Extermination as a Crime Against Humanity (Count 6): **imprisonment for the remainder of his life;**

969. These sentences shall run concurrently.

970. Credit for time served, calculated at five years, five months and twenty five days shall be deducted from the sentence given for Count 4.

971. In accordance with Rules 102(A) and 103, Kajelijeli shall remain in the custody of the Tribunal pending transfer to the State where he shall serve his sentence.

972. Judge Ramaroson appends her separate opinion to this Judgment.

973. Done English and French, the English text being authoritative.

Arusha, 1 December 2003

William H. Sekule
Presiding Judge

Winston C. Matanzima Maqutu
Judge

Arlette Ramaroson
Judge

(*Seal of the Tribunal*)

the dead, he was unwavering in his genocidal resolve, insisting that it was necessary to continue. Kajelijeli is clearly a man who was devoted to his evil cause.

D. Sentencing Ranges

963. The Chamber has taken into consideration the sentencing practice in the ICTR and the ICTY, and notes particularly that the penalty must first and foremost be commensurate to the gravity of the offence. Principal perpetrators convicted of either genocide or extermination as a crime against humanity or both have been punished with sentences ranging from fifteen years to life imprisonment. Secondary or indirect forms of participation have generally resulted in a lower sentence. For example, Georges Ruggiu received a twelve-year sentence for incitement to commit genocide after a plea of guilty and Elizaphan Ntakirutimana received a ten-year sentence for aiding and abetting genocide, with special emphasis on his advanced age.

964. The Chamber has considered the general sentencing practice regarding prison sentences in Rwanda. The Chamber notes that for the most serious crimes, comparable to the crimes for which Kajelijeli has now been convicted, a convict under the Rwandan judicial system would be liable to the death penalty. In regard to lower categories of crimes in Rwanda, a Rwandan court would have the power to impose a life sentence. Thus, the Chamber regards this as one factor supporting the imposition of a heavy penalty upon Juvenal Kajelijeli.

E. Credit for time served

965. On 5 June 1998, pursuant to the request of the Prosecutor, the Benin authorities arrested Kajelijeli in Benin. On 29 August 1998, the Tribunal reviewed and confirmed an Indictment against Kajelijeli dated 22 August 1998; and issued a Warrant of Arrest and Order for Transfer and Detention[1124] against Kajelijeli (then detained in Benin) pursuant to a Prosecutor's request under Rule 40*bis* of the Tribunal's Rules of Procedure and Evidence. Kajelijeli was transferred to the seat of the Tribunal in Arusha on 9 September 1998

966. Pursuant to Rule 101(D), Kajelijeli is entitled to credit for the period during which he was detained in custody pending surrender and trial. The Chamber considers that this period also covers the periods during which Kajelijeli was detained solely on the basis of the Rwandan warrant of arrest because this warrant was based on the same allegations that form the subject matter of this trial. In such circumstances, fairness requires that account be taken of the total period Kajelijeli spent in custody.

967. The Chamber finds that Kajelijeli is entitled to credit for time served of five years, five months and twenty five days.

[1124] *Kajelijeli*, Decision 29 August 1998, Warrant of Arrest (TC).

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ANNEX I - Amended Indictment of 25 January 2001

ICTR-98-44A-T
25/01/2001
(965—951)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-98-44A-I

2001 JAN 25 P 12: 27

ICTR
JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

AGAINST

JUVENAL KAJELIJELI

AMENDED INDICTMENT PURSUANT TO THE TRIBUNAL ORDER DATED 25 JANUARY 2001

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the Statute of the Tribunal) charges:

JUVENAL KAJELIJELI

with **GENOCIDE or in the alternative COMPLICITY IN GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, CRIMES AGAINST HUMANITY**, and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II**, offences stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal.

1. THE ACCUSED:

1.1 **Juvénal Kajelijeli** was born on 26 December 1951 in Rwinzovu *cellule*, Rwinzovu *secteur*, Mukingo *commune*, Ruhengeri *préfecture*, Rwanda.

2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

2.1 The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994 and in particular the Mukingo *commune* and the neighbouring area within the Ruhengeri *préfecture.*

2.2 During the events referred to in this indictment, the Tutsis were identified as a racial or ethnic group.

2.3 During the events referred to in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

2.4 During the events referred to in this indictment, there was a state of non-international armed conflict in Rwanda.

2.5 The victims referred to in this indictment were Tutsi civilians in Mukingo *commune* and other persons of Tutsi origin who had taken refuge in that *commune* and its neighbouring area.

2.5.1 These victims were persons who were protected under Article 3 common to the Geneva Conventions of 1949 and Additional Protocol II thereof and did not actively participate in the conflict.

3. The Local Public Administration

3.1 During the events referred to in this indictment, Rwanda was divided into eleven (11) *préfectures,* one of which was Ruhengeri. This *préfecture* was divided into *communes* one of which was Mukingo and the *commune* was divided into *secteurs* which were also divided into *cellules*.

3.2 The *Préfet* represented executive power at the *préfecture* level. The *Préfet* was appointed by the President of the Republic on the recommendation of the Minister of the Interior and carried out his duties under that Minister's hierarchical authority. The *Préfet*'s authority covered the entire *préfecture* and he administered the *préfecture.*

3.3 In his capacity as administrator of the *préfecture*, the *Préfet* was responsible for ensuring peace, public order and the safety of people and property. The *Préfet* had hierarchical authority over all civil servants and all persons holding public office within the boundaries of the *préfecture*, including the *Bourgmestres* and the *Conseillers de secteur*.

3.4 The *Bourgmestre* represented executive power at the level of the *commune*. Like the *Préfet*, he was appointed by the President of the Republic on recommendation from the Minister of the Interior. The *Bourgmestre* was under the hierarchical authority of the *Préfet*. He had authority over the civil servants posted in his *commune*. Moreover, he had policing duties in regard to maintaining order and law enforcement and for ensuring peace, public order and the safety of people and property within the Mukingo *commune*. In discharging these duties, he may request for the intervention of the *Police Communale* and *Gendarmerie Nationale*.

3.5 **The Accused** served as *Bourgmestre* of Mukingo *commune* from 1988 to 1993 and was re-appointed *Bourgmestre* of Mukingo *commune* in June 1994. He remained in that post until mid-July 1994.

3.6 In his capacity as *Bourgmestre*, **the Accused** exercised authority over his subordinates including civil servants, members of the *Police Communale* and *Gendarmerie Nationale*, the civilian population of Mukingo *commune* and *Interahamwe*-MRND.

4. The Political Parties, Youth Wings and Militia

Political Parties

4.1 The MRND (*Mouvement Révolutionnaire National pour le Développement*) was founded by Juvénal Habyarimana on 5 July 1975. The organization was in fact a true Party-State. Its aim was to provide the President of the Republic with a powerful apparatus intended to control the workings of the State. The movement's objectives were, among others, to support and control the actions of the various State powers. Only the Chairman of the MRND could stand for the Presidency of the Republic. All Rwandans were members of the MRND from birth.

4.2 The organs of the MRND (*Mouvement Révolutionnaire National pour le Développement*) were centralized at the top and spread out at the bottom. The national organs included the chairmanship, the general secretariat, the national congress and the central committee. The central committee was made up of the Chairman, other members appointed by the Chairman, the National secretary-general and the Speaker of Parliament (the *Conseil National de Développement - CND*). At local level, there were organs at *préfecture*, *commune* and *cellule* levels.

4.2.1 The *Préfet* and *Bourgmestre* were each responsible for the implementation of the policy of the MRND in their respective administrative districts. These two figures were civil servants directly appointed by the President of the Republic, who was also the Chairman of the MRND.

4.3 The MRND controlled the policy of the Government and the government gave effect to that policy at the national, *préfecture* and *commune* levels through the structures set out in **paragraph 3.3** and **3.4** above.

4.4 With the institution of the multiparty system and the adoption of a new Constitution on 10 June 1991, the *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed the *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). Although its statutes were amended, the structure of the new party remained the same.

4.5 The renamed MRND was a political party in Rwanda during 1994.

4.6 **The Accused** had close ties with MRND's National secretary-general, Joseph Nzirorera, former Minister in the MRND Governments of 1987, 1989, 1990 and 1991, and a fellow native of Mukingo *commune*, and he benefited in authority and status from this association.

4.6.1 At times other than those referred to in **paragraph 3.5** above, **the Accused** exercised the de facto authority of *Bourgmestre* in Mukingo *commune* as a result of his association with, and patronage of, Joseph Nzirorera.

The Youth Wings and the Militia

4.7 After the attack of October 1990 in Rwanda, by the Rwandan Patriotic Front (RPF), an allegedly Tutsi organisation, some groups within the then Rwandan Government and military structure, initiated the characterization of the Tutsis as the enemy to be eliminated from Rwanda.

4.8 This characterization defined the main enemy as the Tutsis from inside or outside the country, who allegedly wanted power, who allegedly did not recognize the achievement of the revolution of 1959 and who allegedly were seeking armed confrontation. The secondary enemy was defined as the moderate Hutus who provided any kind of assistance to, or sympathized with the main enemy or opposed the government or the MRND's policies.

4.9 Furthermore, from late 1990 through about July 1994, military personnel, members of the government, political leaders, civil servants and other influential personalities including **the Accused** and Joseph Nzirorera conspired among themselves and with others to work out a plan to exterminate the civilian Tutsi population and eliminate members of the opposition, so that the MRND could remain in power.

4.10 In 1991, the MRND created its own youth wing. The members of the MRND's youth wing were known as the "*Interahamwe*". The youth wing was formed in response to two requirements within the MRND:-

(a) Sensitizing the youth to politics and
(b) Mobilizing the youths.

4.11 The *Interahamwe*-MRND was highly structured, along the same lines as the MRND party. At the national level, it had a Chairman, two Vice-chairmen, a Secretary-general and a Treasurer. The Chairman was to liaise with the central committee of the MRND, among other things.

4.12 Beginning in 1992, numerous MRND youth wings' members received military training and weapons and were thus transformed from youth movements into militias.

4.12.1 The reason for creating the Militia was to use them at the appropriate time to execute the plan of the MRND to exterminate the Tutsis.

4.12.2 The Tutsis were considered the enemies of the MRND, the State and the *Interahamwe*.

4.13 The military training and the distribution of the weapons to the member of the *Interahamwe* were organized by the leaders of the MRND including the *Préfet* and *Bourgmestre*, in collaboration with the officers of the *Forces Armées Rwandaises (FAR)*. **The Accused** participated actively in the training and the distribution of weapons.

4.14 In order to ensure a smooth and swift execution of the plan referred to in **paragraph 4.9** above, the central committee of the MRND decided to create *Interahamwe*-MRND branches in the various *préfectures* which would in effect create an adequate representation of the militias in every locality sufficient to carry out the said plan.

4.15 **The Accused** was a founder and leader of *Interahamwe* in the Mukingo *commune* from 1991 to July 1994.

4.16 The *Interahamwe* in the Mukingo *commune* under the leadership of **the Accused** from 1991 to July 1994 were:-

(a) given military training organized by **the Accused ;**
(b) distributed weapons and uniforms by **the Accused** which were provided by Joseph Nzirorera; and
(c) distributed lists of Tutsis to be eliminated.

4.16.1 **The Accused** consulted regularly with the National secretary-general of the MRND, Joseph Nzirorera on the matters set out in **paragraph 4.16** above.

4.17 In pursuance of the plan to exterminate the Tutsis, several meetings were held in the *préfectures*, *communes* and at the government level between 1 January and April 1994, by the persons mentioned in **paragraph 4.9** above, who shared this extremist cause with a view to formulating the strategies for the plan.

4.18 During such meetings, speeches were made by influential persons including **the Accused** and Joseph Nzirorera, inciting their

audience who were predominantly members of MRND and Hutus, to assault, rape and exterminate the Tutsis who were excluded from such meetings on account of their ethnicity.

4.18.1 Apart from the public meetings, there were also private meetings at such places like the communal offices, homes of influential persons such as military personnel, MRND's officials, *Bourgmestre*s or *Préfets* and Government officials including the home and communal office occupied by **the Accused.**

4.19 The components of this plan consisted of, among other things, recourse to hatred and ethnic violence, the training of and distribution of weapons to militiamen as well as the preparation of lists of people to be eliminated.

4.19.1 In executing the plan, the persons referred to in **paragraphs 4.9** and **4.18.1**, organized, ordered and participated in the massacres perpetrated against the Tutsi population and moderate Hutus.

4.20 On 6 April 1994, the plane carrying the President Juvénal Habyarimana of Rwanda crashed on its approach to Kigali, Rwanda. This situation created a perfect opportunity for the execution of the plan and the massacre of the Tutsis began soon thereafter throughout Rwanda.

4.21 Following the news of the death of President Habyarimana, a new Government was constituted by the MRND and several meetings were held amongst themselves, with the *Préfet*s and other persons in authority between 8 and 13 April 1994 for the purpose of assessing and analyzing the situation in the country at the time, particularly the massacres in each *préfecture*. Similarly, meetings were held in the *préfecture*s and *communes* including Ruhengeri and Mukingo.

4.22 The policies of the MRND formulated at the said meetings were implemented at the national, *préfecture*, *commune* and *cellule* level through the structures set out in **paragraphs 3.3** and **3.4** above.

4.23 The massacres of members of the Tutsi population and the murder of the moderate Hutus extended throughout the territory of Rwanda. In every *préfecture*, local civil and military authorities and militiamen including *Interahamwe*-MRND espoused the plan of extermination and followed the directives in order to execute it.

They called on the civilian population to eliminate the enemy and its accomplices. They distributed weapons to the civilians and militiamen. They gave orders to commit, aided, abetted and participated in the massacres.

4.24 **The Accused** adhered to, elaborated and executed this plan at the *commune* level in Mukingo and neighbouring areas.

5. Concise Statement of Facts: Events in RUHENGERI *Préfecture*

5.1 The Ruhengeri *préfecture* is located in the northwest of Rwanda, a region that was historically a power base for the MRND. Between 1973 and 1992 Ruhengeri was the site of periodic massacres of the civilian Tutsi population.

5.2 **The Accused**'s relationship with such an influential figure as Joseph Nzirorera enabled him to flout the local authorities, carry out atrocities against the Tutsi population and avoid any criminal sanctions.

5.3 From April through July 1994, many Tutsi men, women and children were attacked, abducted, raped and massacred in their residences or at their places of shelter within the Mukingo *commune* or arrested, detained and later murdered. **The Accused** commanded, organized, supervised and participated in these attacks.

5.4 These attackers, comprising the members of the *Police Communale, Gendarmerie Nationale* and *Interahamwe* militia who were under the control of **the Accused**, used guns, grenades, machetes, spears, pangas, cudgels and other weapons to slaughter the Tutsis.

5.5 **The Accused** ordered and witnessed the raping and other sexual assaults on the Tutsi females. At all times material to this indictment, **the Accused,** as a person in authority over the attackers failed to take any measure to stop these nefarious acts on the Tutsi females.

5.6 During the course of the events referred to in this indictment, **the Accused** had the authority to issue circulation passes (*laissez-*

passer) to persons in the *commune* who were eventually evacuated from the *commune* but he refused to exercise this authority to prevent or stop the killings of Tutsis in his *commune*. Rather he employed various means including roadblocks to deny them free movement within and outside the *commune*.

5.7 **The Accused** intended to destroy the Tutsi as a racial or ethnic group, they having been identified as the enemy by the MRND as defined in **paragraphs 4.7, 4.8** and **4.9** above, in furtherance of the government policy to defeat the RPF, eliminate the Tutsis and retain power.

5.8 **The Accused** intended the incitement and massacres, described in the indictment, to be part of the non-international armed conflict against the RPF. By his actions during the period referred to in this indictment, the accused sought to eliminate any base of support for the RPF that might exist in Ruhengeri *préfecture* with particular reference to Mukingo *commune* by eliminating the Tutsis.

5.9 **The Accused,** in his position of authority and acting in concert with others participated in the planning, preparation or execution of a common scheme, strategy or plan to commit the atrocities set forth above. He committed some of the crimes personally, and some were committed through persons he assisted or by his subordinates including the members of the *Police communale, Gendarmerie nationale* and *Interahamwe*-MRND, with his knowledge and consent.

6. THE CHARGES

For all of the acts described in the paragraphs specified in each of the counts below, **the Accused** either planned, incited to commit, ordered, committed, or in some other way aided and abetted the planning, preparation or execution of the said acts,

And,

The Accused knew, or had reason to know, that his subordinates were preparing to commit or had committed one or more of the acts referred to in Articles 2 to 4 of the statute of the Tribunal and failed to take the

necessary and reasonable measures to prevent the said acts from being committed or to punish those who were responsible.

Count 1: Conspiracy to commit genocide, pursuant to Article 2(3)(b) of the Statute

Juvénal Kajelijeli by the acts or omission described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9

Conspired with others to kill or cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **CONSPIRACY TO COMMIT GENOCIDE,** pursuant to Article 2(3)(b) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal for Rwanda.

Count 2: Genocide, pursuant to Article 2(3)(a) of the Statute

Juvénal Kajelijeli by the acts or omission described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 3.5, 3.6, 4.6, 4.6.1, 4.8, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.17, 4.18, 4.18.1, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.9

Is responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, pursuant to Article 2(3)(a) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal for Rwanda,

Or, alternatively

Count 3: Complicity to commit genocide, pursuant to Article 2(3)(e) of the Statute

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.18, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9,

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16.1, 4.18, 4.19, 4.19.1, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9,

Is responsible for killing and causing serious bodily and mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **COMPLICITY IN GENOCIDE**, pursuant to Article 2(3)(e) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 4: Direct and public incitement to genocide, pursuant to Article 2(3)(c) of the Statute

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.10, 4.16, 4.18, 4.18.1, 4.19, 4.19.1, 4.23,

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, .5, 3.6, 4.10, 4.16, 4.18, 4.18.1, 4.19, 4.19.1, 4.23,

Is responsible for direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **DIRECT AND PUBLIC INCITEMENT TO GENOCIDE**, pursuant to Article 2(3)(c) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 5: Crimes against humanity-Murder, pursuant to Article 3(a) of the Statute

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Is responsible for the murder of Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed **CRIMES AGAINST HUMANITY,** pursuant to Article 3(a) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 6: Crimes against humanity-Extermination, pursuant to Article 3(b) of the Statute

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Is responsible for the extermination of Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed **CRIMES AGAINST HUMANITY,** pursuant to Article 3(b) and punishable in reference to

Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 7: Crimes against humanity-Rape, pursuant to Article 3(g) of the Statute

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.21, 4.22, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Is responsible for the rape of Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed **CRIMES AGAINST HUMANITY,** pursuant to Article 3(g) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 8: Crimes Against Humanity-Persecution on Racial, Political, Religious Grounds Pursuant to Article 3(h) of the Statute

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10

Is responsible for the persecution of Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST**

HUMANITY, pursuant to Article 3(h) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 9: Crimes against humanity-Other Inhumane Acts, Pursuant to Article 3(i) of the Statute

Juvénal Kajelijeli by the acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Is responsible for other inhumane acts against the Tutsi(s) as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed **CRIMES AGAINST HUMANITY,** pursuant to Article 3(i) and punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 10: Serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II, pursuant to Article 4(a) of the Statute

Juvénal Kajelijeli, during a non-international armed conflict, by his acts or omissions described in the paragraphs to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Is responsible for causing violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such

as torture, mutilation or any form of corporal punishment against the Tutsi(s) and has thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 FOR THE PROTECTION OF WAR VICTIMS, AND OF ADDITIONAL PROTOCOL II THERETO OF 8 JUNE 1977**, pursuant to Article 4(a), a crime which is punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

Count 11: Serious Violations of Article 3 Common to the Geneva Conventions and Additional Protocol II, pursuant to Article 4(e) of the Statute

Juvénal Kajelijeli, during a non-international armed conflict, by his acts or omissions to which reference is made herein below:

Pursuant to Article 6(1): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Pursuant to Article 6(3): Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.5, 3.6, 4.6, 4.6.1, 4.9, 4.12, 4.12.1, 4.13, 4.15, 4.16, 4.16(1), 4.18, 4.19, 4.23, 4.24, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9

Is responsible for causing outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault against the Tutsi(s) and has thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 FOR THE PROTECTION OF WAR VICTIMS, AND OF ADDITIONAL PROTOCOL II THERETO OF 8 JUNE 1977,** pursuant to Article 4(e), a crime which is punishable in reference to Articles 22 and 23 of the Statute of the International Criminal Tribunal of Rwanda.

At Arusha, on this 25th day of January 2001

for **Carla Del Ponte**
Prosecutor

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIEE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: Kouambo Roger-Noel
SIGNATURE: ..... DATE: 05/11/2003

ANNEX II - Lists of Exhibits

ICTR-98-44A-T
(Prosecutor vs. Juvénal KAJELIJELI)

LIST OF PROSECUTION EXHIBITS

Exh. #	DESCRIPTION OF EXHIBIT	TESTIFYING WITNESS	DATE RECEIVED	LANGUAGE
1	Protected Information Sheet **(Sealed)**	GBV	04.07.2001	English
2	Protected Information Sheet **(Sealed)**	GBE	09.07.2001	English
3	Protected Information Sheet **(Sealed)**	GDF	10.07.2001	English
4	MAPS - Ruhengeri, Kinigi, Mukingo and Nkuli Communes (K0164878-K0164882)	TONY LUCUSSEN	11.07.2001	English
5	Mukingo / Nkuli SKETCH (K0164869-K0164873). **Pages K0164872 and K0164873 are Sealed.**	"	"	English
6	Busogo Parish SKETCH (K0164874-K0164877). **Page K0164877 is Sealed.**	"	"	English
7	Photographs information (K0167242-K0164873) plus ALBUM (KD00-0062) containing 114 colored photos. **Page K0167243 is Sealed.**	"	"	English
8	Protected Information Sheet **(Sealed)**	GBG	12.07.2001	English
9	Protected Information Sheet **(Sealed)**	GBH	17.07.2001	English
10	Protected Information Sheet **(Sealed)**	GDO	18.07.2001	English
11	Protected Information Sheet **(Sealed)**	GAO	23.07.2001	English
12	Protected Information Sheet **(Sealed)**	GDD	02.10.2001	English
13	Sketch (hand written) Kinyababa Cellule	GDD	03.10.2001	French
14	Statement dated 20 July 2000 and signed on 21 July 2000 of witness GDD as highlighted **(Sealed)**	GDD	05.10.2001	English and French
15	Protected Information Sheet **(Sealed)**	GAP	28.11.2001	English
16	Protected Information Sheet **(Sealed)**	GDQ	05.12.2001	English
17	Protected Information Sheet **(Sealed)**	GDT	06.12.2001	English
18	Protected Information Sheet **(Sealed)**	ACM	11.12.2001	English
19	Hand written names of witness ACM relations shot at during the Busogo Parish Massacres, and Name of Interahamwe who took her out of the Parish (Sealed)	"	"	French and Kinyarwanda
20	Protected Information Sheet **(Sealed)**	GAS	12.12.2001	English
21	Statement dated 5 May 1999 of witness ACM as highlighted **(Sealed)**	ACM	13.12.2001	English and French
22	Statement dated 20 March 2002 of witness RHU 30 as highlighted **(Sealed)**		09.10.2002	English and French
23	Statement dated 30 September 2002 of witness RHU 23 as highlighted **(Sealed)**		09.10.2002	English and French
24	Statement dated 20 March 2002 of		09.10.2002	English and

	witness RHU 31 as highlighted **(Sealed)**			French
25	Statement dated 23 September 2001 of witness RHU 29 as highlighted **(Sealed)**		09.10.2002	English and French
26	SKETCH (Hand written) Defence by witness TLA	TLA	02.12.2002	
27	Statement dated 24 September 2001 of witness RGM as highlighted **(Sealed)**		12.12.2002	English and French
28	Statement dated 24 September 2001 of witness MEM as highlighted **(Sealed)**		12.12.2002	English and French
29	Copy of hand written sketch (D46) as marked by Witness MLNA (Sealed)	MLNA	01.04.2003	French
30	TITRE DE VOYAGE: pour étrangers qui ne sont pas réfugiés politiques (KA005206)	Juvénal KAJELIJELI	22.04.2003	French
31	SAUF CONDUIT SPECIAL (KA005084), Brazzaville, le 29 avril 1997	‘’	22.04.2003	French
32	Hand written Letter (KA005100) dated 04/08/97 by Juvénal Kajelijeli.	‘’	22.04.2003	French
33	Hand written Letter (KA005102) dated 04/08/97 by Juvénal Kajelijeli.	‘’	22.04.2003	French
34	Pink Exercise Book containing Draft letter dated 28/08/97 (KA005110A – D) by Juvénal Kajelijeli to Maman Chirac Bernadette	‘’	23.04.2003	French
35	Letter dated 09/12/97 (KA005150) by Juvénal Kajelijeli to Maman Chirac Bernadette by Juvénal Kajelijeli	‘’	23.04.2003	French

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ICTR-98-44A-T
(Prosecutor vs. Juvénal KAJELIJELI)

LIST OF DEFENCE EXHIBITS

Exh. #	DESCRIPTION OF EXHIBIT	TESTIFYING WITNESS	DATE RECEIVED	LANGUAGE
1a	PHOTO 40	TONY LUCUSSEN	11.07.2001	
1b	PHOTO 41	"	"	
1c	PHOTO 42	"	"	
1d	PHOTO 20	"	"	
2	SKETCH (Hand written)	GBE	10.07.2001	
3	SKETCH K0164874-K0164877. BUSOGO PARISH **(Page K0164877 is sealed)**	GBG	16.07.2001	English
4	Statement dated 31 July 2001 of witness GBV as highlighted **(Sealed)**	GBV	25.07.2001	English only
5	Statement dated 8 March 2001 of witness GDO as highlighted **(Sealed)**	GDO	25.07.2001	English and French
6	Statement dated 7 May 1999 of witness GAO as highlighted **(Sealed)**	GAO	25.07.2001	English and French
7a	Statement dated 23 June 2000 and signed on 26 June 2000 of witness GDD as highlighted **(Sealed)**	GDD	05.10.2001	English and French
7b	Statement dated 20 July 2000 and signed on 21 July 2000 of witness GDD in its entire form **(Sealed)**	GDD	05.10.2001	English and French
8a	Statement dated 18 April 1997 of witness GAO **(Sealed)**	GAO	28.11.2001	Kinyarwanda
8b	Statement dated 22 May 1997 of witness GAO **(Sealed)**	GAO	28.11.2001	Kinyarwanda
8c	Statement dated 02 February 1992 which was meant to have been dated 2 February 1999 of witness GAO **(Sealed)**	GAO	28.11.2001	Kinyarwanda
8d	Statement dated 18 February 1999 of witness GAO **(Sealed)**	GAO	01.07.2003 **(As Par TCII Decision of 01/07/03)**	Kinyarwanda
8e	Statement dated 25 May 1999 of witness GAO **(Sealed)**	GAO	01.07.2003 **(As Par TCII Decision of 01/07/03)**	Kinyarwanda
8f MFI	Statement dated 19 October 1999 of witness GAO **(Sealed)**	GAO	26.11.2001	Kinyarwanda
8g	Expert Report of Mr. Arthur F. Hagenlocher dated 27 May 2003 **(Sealed)**		01.07.2003 **(As Par TCII Decision of 01/07/03)**	English
9	Hand written Name of Conseiller of witness GAP's Sector in 1994 **(Sealed)**	GAP	04.12.2001	
10a	Statement dated 21 April 1999 of	GAP	12.12.2001	English and

	witness GAP as highlighted **(Sealed)**			French
10b	Statement dated 26 June 2000 of witness GAP as highlighted **(Sealed)**	"	12.12.2001	English and French
11	Statement dated 26 June 2000 of witness GDQ as highlighted **(Sealed)**	GDQ	"	"
12	Statement dated 8 March 2000 of witness GDT as highlighted **(Sealed)**	"	"	"
13a	Statement dated 12 August 1998 of witness ACM as highlighted **(Sealed)**	ACM	13.12.2001	English and French
13b	Statement dated 5 May 1999 of witness ACM as highlighted **(Sealed)**	"	13.12.2001	English and French
14	Protected Identification Sheet of Witness JK 312 **(Sealed)**	JK 312	16.09.2002	English
15	Protected Identification Sheet of Witness JK 311 **(Sealed)**	JK 311	16.09.2002	English
16	SKETCH (Hand written) by Witness JK 311	''	17.09.2002	French
17	Protected Identification Sheet of Witness JK 27 **(Sealed)**	JK 27	17.09.2002	English
18	SKETCH (Hand written) by Witness JK 27	''	17.09.2002	French
19	Protected Identification Sheet of Witness LMR 1 **(Sealed)**	LMR 1	18.09.2002	English
20	Protected Identification Sheet of Witness SMR 2 **(Sealed)**	SMR 2	19.09.2002	English
21	Protected Identification Sheet of Witness DMR 3 **(Sealed)**	DMR 3	23.09.2002	English
22	Protected Identification Sheet of Witness RHU 23 **(Sealed)**	RHU 23	24.09.2002	English
23	Protected Identification Sheet of Witness RHU 26 **(Sealed)**	RHU 26	30.09.2002	English
24	Protected Identification Sheet of Witness RHU 30 **(Sealed)**	RHU 30	30.09.2002	English
25	Protected Identification Sheet of Witness RHU 31 **(Sealed)**	RHU 31	01.10.2002	English
26	Protected Identification Sheet of Witness RHU 29 **(Sealed)**	RHU 29	07.10.2002	English
27	Protected Identification Sheet of Witness RGM **(Sealed)**	RGM	18.11.2002	English
28	Protected Identification Sheet of Witness RHU 25 **(Sealed)**	RHU 25	20.11.2002	English
29	Protected Identification Sheet of Witness MEM **(Sealed)**	MEM	25.11.2002	English
30	Protected Identification Sheet of Witness RHU 27 **(Sealed)**	RHU 27	27.11.2002	English
31	Protected Identification Sheet of Witness KNWA **(Sealed)**	KNWA	28.11.2002	English
32	Protected Identification Sheet of Witness KNWA **(Sealed)**	TLA	02.12.2002	English
33	SKETCH (Hand written) by Defence witness TLA	TLA	02.12.2002	English
34	Protected Identification Sheet of Joseph Nzirorera **(Confidential)**	Joseph Nzirorera	03.12.2002	English
35	Copy of official gazette of the Republic of Rwanda of March 1991	''	03.12.2002	French and Kinyarwanda

36	Protected Identification Sheet of Witness KAA **(Sealed)**	KAA	03.12.2002	English
37	SKETCH (Hand written) by Defence Witness KAA **(Sealed)**	''	04.12.2002	French
38	Protected Identification Sheet of Witness ZLG **(Sealed)**	ZLG	04.12.2002	English
39	MAP (Hand written) by Defence Witness ZLG **(Sealed)**	''	04.12.2002	French
40	Protected Identification Sheet of Witness MLCF **(Sealed)**	MLCF	05.12.2002	English
41	Protected Identification Sheet of Witness RHU 21 **(Sealed)**	RHU 21	10.12.2002	English
42	Protected Identification Sheet of Witness ZLA **(Sealed)**	ZLA	10.12.2002	English
43	Protected Identification Sheet of Witness MLNL **(Sealed)**	MLNL	11.12.2002	English
44	Diagram (Hand written) of Family Tree by Defense Witness MLNL	''	11.12.2002	French
45	Protected Identification Sheet of Witness MNLA **(Sealed)**	MNLA	31.03.2003	English
46	SKETCH (Hand written) by Defence Witness MLNA depicting Byangabo Center **(Sealed)**	''	31.03.2003	French
47	SKETCH (Hand written) by Defence Witness MLNA depicting Byangabo Center and Byangabo Market **(Sealed)**	''	01.04.2003	French
48	Protected Identification Sheet of Witness FMB **(Sealed)**	FMB	01.04.2003	English
49	Large MAP of Ruhengeri Prefecture depicting Kinigi Commune	''	02.04.2003	French
50	Protected Identification Sheet of Witness FXB **Prof. Francois Xavier Bangamwabo**	FXB Dr. François Bangamwabo	07.04.2003	English
51a	CURRICULUM VITAE: Dr. François Xavier Bangamwabo	''	07.04.2003	English
51b	**French version of the Curriculum Vitae when translation would be completed**		07.04.2003	
52a	Rapport de L'expert Prof. François Xavier Bangamwabo: LES RELATIONS INTERETHINIQUES AU RWANDA, LE CONFLIT D'OCTOBRE 1990, LE MULTIPARTISME SUR LES EVENEMENTS DE 1994	''	07.04.2003	French
52b	**English version of The Report when translation would be done**		07.04.2003	
53	Annexes I, II, III, IV et V du rapport intitulé '' LES RELATIONS INTERETHINIQUES AU RWANDA, LE CONFLIT D'OCTOBRE 1990, LE MULTIPARTISME SUR LES EVENEMENTS DE 1994	''	07.04.2003	French

54	Protected Identification Sheet of Accused Juvénal KAJELIJELI	Juvénal KAJELIJELI	14.04.2003	English
55a.	Audiotape B1: Copy of original tape A1 of Kajelijeli's interview of 12/06/98 at Cotonou, BENIN	''	14.04.2003	French
55b.	Audiotape B2: Copy of original tape A2 of Kajelijeli's interview of 12/06/98 at Cotonou, BENIN	''	14.04.2003	French
55c.	Transcription de Interrogatoire de Jevénal KAJELIJELI (KT00-0091 – KT00-0092): Le 12 juin 1998 a Cotonou, BENIN.	''	14.04.2003	French
55d.	Transcript of Interview of KAJELIJELI (K0267367 – K0267399): KT00-0091 – KT00-0092 on 12 June 1998 at Cotonou, BENIN.	''	14.04.2003	English
56	SKETCH: Floor plan for Mukingo Communal office drawn by Accused Juvénal Kajelijeli	''	15.04.2003	French

ANNEX III - Lists of Witnesses

ICTR-98-44A-T
(Prosecutor vs. Juvénal KAJELIJELI)

LISTOF PROSECUTION WITNESSES

Pw.	NAME OF WITNESS	DATE (S) TESTIFIED
1	GBV	04/07/01 & 05/07/01.
2	GBE	09/07/01, & 10/07/01.
3	GDF	10/07/2001 & 11/07/01
4	TONY LUCUSSEN	11/07/01,
5	GBG	12/07/01 & 16/07/01
6	GBH	17/07/01& 18/07/01
7	GDO	18/07/01 & 19/07/01
8	GAO	23/07/01, 24/07/01, 25/07/01, 26/11/01, 27/11/01 & 28/11/01
9	GDD	02/10/01, 03/10/01, 04/10/01
10	GAP	28/11/01, 03/12/01 & 04/12/01
11	GDQ	05/12/01 & 06/12/01
12	GDT	06/12/01 & 07/12/01
13	ACM	11/12/01 & 12/12/01
14	GAS	12/12/01 & 13/12/01.
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: Kavamba Roger Noel

SIGNATURE: 05/11/2003

ICTR-98-44A-T
(Prosecutor vs. Juvénal KAJELIJELI)

LISTOF DEFENCE WITNESSES

Dw.	NAME OF WITNESS	DATE (S) TESTIFIED
1	JK 312	16/09/02
2	JK 311	16/09/02 & 17/09/02
3	JK 27	17/09/02 & 18/09/02
4	LMR 1	18/09/02 & 19/09/02
5	SMR 2	19/09/02 &23/09/02
6	DMR 3	23/09/02 & 24/09/02
7	RHU 23	24/09/02,25/09/02 & 26/09/02
8	RHU 26	30/09/02
9	RHU 30	30/09/02 & 01/10/02
10	RHU 31	01/10/02 & 02/10/02
11	RHU 29	07/10/02
12	RGM	18/11/02, 19/11/02
13	RHU 25	20/11/02 & 21/11/02
14	MEM	25/11/02, & 26/11/02
15	RHU 27	27/11/02, 28/11/02
16	KNWA	28/11/02 & 29/11/02
17	TLA	02/12/02
18	Joseph NZIRORERA	03/12/02
19	KAA	03/12/02 & 04/12/02
20	ZLG	04/12/02 & 05/12/02
21	MLCF	05/12/02 & 10/12/02
22	RHU 21	10/12/02
23	ZLA	10/12/02 & 11/12/02
24	MLNL	11/12/02
25	MLNA	31/03/03 & 01/04/03
26	FMB	01/04/03, 02/04/03 & 03/04/03
27	Dr. François Xavier Bangamwabo	07/04/03, 08/04/03 & 09/04/03
28	Juvénal KAJELIJELI	14/04/03, 15/04/03, 16/04/03, 17/04/03, 22/04/03 & 23/04/03
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Tribunal pénal international pour le Rwanda

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NAME / NOM: Kayumba Roger Noel

SIGNATURE: [signature] DATE: 05/11/2003

ANNEX IV - List of Cited Sources and Abbreviations

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Annex IV - List of Cited Sources and Abbreviations

▪ *International Criminal Tribunal for Rwanda, ICTR Reports of Orders, Decisions and Judgements*

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The Prosecutor v. Ignace Bagilishema	
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The Prosecutor v. Clément Kayishema and Obed Ruzindana	
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The Prosecutor v. Elieser Niyitegeka

Prosecutor v. Niyitegeka, Case No ICTR-96-14-T, Judgment (TC), 16 May 2003.	*Niyitegeka*, Judgment (TC).

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Prosecutor v. Rutaganda, Case No ICTR-96-3-T, Judgment (TC), 6 December 1999.	*Rutaganda,* Judgment (TC).
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Prosecutor v. Furundzija, Case No IT-95-17/1-T, Judgment (TC), 10 December 1998.	*Furundzija*, Judgment (TC).

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Prosecutor v. Kupreskic, Case No IT-95-16-T, Judgment (TC), 14 January 2000.	*Kupreskic*, Judgment (TC).
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The Prosecutor v. Kvocka

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The Prosecutor v. Stakic

Prosecutor v. Stakic, Case No IT-97-24-T, Judgment (TC), 31 July 2003.	*Stakic*, Judgment (TC).

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Prosecutor v. Kajelijeli and others, Case No. ICTR-98-44-I, Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvénal Kajelijeli, 6 July 2000.	*Kajelijeli*, Decision 6 July 2000, Opposition To Joinder (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T,	*Kajelijeli*, Decision 6 July 2000,

Decision On The Prosecutor's Motion For Protective Measures For Witnesses (TC), 6 July 2000.	Protective Measures Prosecution Witnesses (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On The Prosecutor's Motion To Correct The Indictment (TC), 12 October 2000	*Kajelijeli,* Decision 12 October 2000, Motion To Correct Indictment (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Corrigendum To The Decision On The Prosecutor's Motion To Correct The Indictment (TC), 16 October 2000.	*Kajelijeli,* Corrigendum 16 October 2000 To The Decision 12 October 2000 (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On The Defence Motion Objecting To The Jurisdiction Of The Tribunal (TC), 13 March 2001.	*Kajelijeli,* Decision 13 March 2001, Jurisdiction Of The Tribunal (TC).
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Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On The Prosecutor's Motion To Reinstate A Witness On The List Of Witnesses To Be Called At Trial And Order For The Transfer Of Four Detained Witnesses Pursuant To Rule 90 Bis (TC), 29 June 2001.	*Kajelijeli,* Decision 29 June 2001, List Of Witnesses And Transfer Of Detained Witnesses Pursuant (TC).
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Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Arrêt (Appel de la décision du 13 mars 2001, rejetant la "Defense Motion Objecting to the Jurisdiction of the Tribunal")(AC), 16 November 2001.	*Kajelijeli,* 16 November 2001. Appel de la décision du 13 mars 2001, rejetant la "Objecting to the Jurisdiction of the Tribunal")
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T,	*Kajelijeli,* Decision 16 April 2002,

Decision on the Prosecutor's Motion for Judicial Notice Pursuant to rule 94 of the rules (TC), 16 April 2002, Annexe A.	Judicial Notice (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On Kajelijeli's Motion For Partial Acquittal Pursuant To Rule 98 *Bis* (TC), 13 September 2002.	*Kajelijeli,* Decision 13 September 2002, Motion Partial Acquittal (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On The Prosecution Motion For Leave To Call Rebuttal Evidence (Rule 85) (TC), 12 May 2003.	*Kajelijeli,* Decision 12 May 2003, Rebuttal Evidence (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Scheduling Order (TC), 13 May 2003.	*Kajelijeli,* Scheduling Order 13 May 2003 (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On Kajelijeli's Request To Admit Into Evidence The Statements Of GAO (TC), 1 July 2003.	*Kajelijeli,* Decision 1 July 2003, GAO's Statements (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On Kajelijeli's Motion To Admit Into Evidence Affidavits Pursuant To Rule 92 *Bis* (B) (TC), 1 July 2003.	*Kajelijeli,* Decision 1 July 2003, Affidavits (TC).
Prosecutor v. Kajelijeli, Case No ICTR-98-44-A-T, Decision On Kajelijeli's Motion To Admit Into Evidence Rental Receipts Of Witness RHU23 Pursuant To Rule 92 *Bis* (A) 1 July 2003.	*Kajelijeli,* Decision 1 July 2003, Rental Receipts Of Witness RHU23 (TC).
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Prosecutor v. Kayishema and Ruzindana, Case No ICTR-95-1-T, Decision On The Prosecution Motion For A Ruling On The Defence Continued Non Compliance With Rule 67 (A)(ii) And With The Written And Oral Orders Of The Trial Chamber (TC), 3 September 1998 (ICTR Reports, 1998, pp. 1003-1006).	*Kayishema,* Decision 3 September 1998, Rule 67 (A)(ii) (TC).

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Preliminary Report of the Independent Commission of Experts *Established Pursuant to Security Council Resolution 935 (1994)*, UN Doc. S/1994/1125	Expert Report Pursuant SC Resolution 935, 1994/1125
Reports of the Special Rapporteur for Rwanda of the UN Commission on Human Rights, UN Doc. S/1994/1157, Annexes I and II	Special Rapporteur Reports, 1994/1157

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- ***List of Abbreviations***

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Transcripts in English of the hearing (Open session) on the 9 July 2001, p. 111. Witness GBE.	T. 9 July 2001, p. 111 (GBE).
Transcripts in French of the hearing (Closed session) on the 9 July 2001, p. 111. Witness GBE.	T. 9 Juillet 2001, p. 111 (GBE) (HC).
Transcripts in French of the hearing (Open session) on the 9 July 2001, p. 111. Witness GBE.	T. 9 Juillet 2001, p. 111 (GBE).
Prosecution Exhibit No 4 (see: Exhibits list)	Prosecution Exhibit, P4
The Prosecutor v. Kajelijeli, Amended Indictment of 25 January 2001 (Certified copy annexed)	Indictment
Statute of the ICTR	Statute (The)
Rules of Procedure and Evidence	Rules (The)
Trial Chamber II	Chamber (The)
International Criminal Tribunal for Rwanda	Tribunal (The)
United Nations Security Council	UNSC
United Nations	UN
International Criminal Tribunal for Rwanda	ICTR
International Criminal Tribunal for the former Yugoslavia	ICTY
Article 3 common to the Geneva Conventions	Common Article 3
Mouvement Révolutionnaire National pour le Développement [before July 1991]	MRND
Mouvement Républicain National pour la Démocratie et le Développement [After July 1991]	MRND
Mouvement démocratique républicain	MDR
Rwandan Patriotic Front	RPF
Forces armées rwandaises	FAR